

THE  
TARANAKI REPORT  
KAUPAPA TUATAHI



WAITANGI TRIBUNAL REPORT 1996

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*The claims were brought  
to the Tribunal as 'Muru me te Raupatu'.  
In Taranaki, 'muru' describes the confiscation  
or plunder of property as punishment for alleged offences,  
'raupatu', the conquest or subjugation of the people by Government control.*

THE  
TARANAKI REPORT  
KAUPAPA TUATAHI

WAI 143

*Muru me te Raupatu*

*The Muru and Raupatu of the Taranaki Land and People*

WAITANGI TRIBUNAL REPORT 1996





The cover design by Cliff Whiting invokes the signing  
of the Treaty of Waitangi and the consequent interwoven development  
of Maori and Pakeha history in New Zealand as it continuously  
unfolds in a pattern not yet completely known

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The Waitangi Tribunal  
Wellington

The Honourable John Luxton  
Minister of Maori Affairs

and

The Honourable Douglas Graham  
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings  
Wellington

14 June 1996

Tena korua

Enclosed is the first part of an interim report on the Taranaki claims.

We understand the Government and claimants are seeking a negotiated settlement. Claimants and Crown counsel are none the less agreed that, to assist a settlement, the Tribunal should report its initial opinion, although its inquiry is incomplete.

The size of the Taranaki claims and the pressure of other business has compelled the Tribunal to complete this interim report in stages. We enclose our opinion on the general background, with some views on settlement strategies. A further report on the impact of events on the various hapu should follow soon.

If the impact of Treaty breaches and the measures necessary to restore an equilibrium are significant criteria, then the gravamen of the enclosed report is to forewarn you that you may be dealing with the country's largest claim. Our reasons for so saying are summarised in the first chapter. While the basis for settling large historical claims has not been finally determined, some comments on the general approach are in the last chapter.

Ka mutu i konei mo tenei wa

E T Durie  
Chairperson



## PREFACE

To expedite intended negotiations for a settlement, it was arranged for the Tribunal to report on its preliminary views on the Taranaki claims, based on the inquiry so far.

Accordingly, this report gives initial opinions only. The Crown has yet to be heard on many matters raised and all others must respond before final conclusions are drawn. The inquiry having proceeded for some years, however, with indications that replies would consume more years in preparation and presentation, the Tribunal considered that a report on its understanding of the position at this stage might hasten a settlement.

Because no final conclusions can be given, no recommendations are made, or can be, in terms of section 6 of the Treaty of Waitangi Act 1975.

At this point, in paper 2.108 the Crown has recorded its view that:

- the Waitara purchase and the wars constituted an injustice and were therefore in breach of the principles of the Treaty of Waitangi;
- the confiscation of land, as it occurred in Taranaki, also constituted an injustice and was therefore in breach of the principles of the Treaty of Waitangi;
- confiscation had a severe impact upon the welfare, economy, and development of Taranaki iwi;
- in general terms, the delays in setting aside reserves contributed to the adverse effects of the confiscations; and
- events relating to the implementation of the confiscations leading to the invasion of Parihaka in 1881, the invasion itself, and its aftermath constituted a breach of the principles of the Treaty of Waitangi.

Leave has been reserved to parties or those admitted as interested persons to seek further hearing on the whole or any aspect of the claims or this report, if the proposed negotiations are unsuccessful or would benefit from further consideration of particular items.

In addition to reviewing the material received, the Tribunal has undertaken research of its own. The report discloses the further research done, on which all counsel may wish to be further heard.

This report relates to 21 claims concerning the Taranaki district. The record of the claims filed, the documents submitted, and the hearings conducted are described in appendix I. The bibliography includes relevant secondary sources that were read. Some were referred to us but are not cited in the text because they were not relied on.

The claim area is depicted in figures 1 and 2. Figure 4 depicts the location of the various tribal groupings (as seen by those groups today) that signified an interest at the opening of our inquiry.



## LIST OF ABBREVIATIONS

AJHR	<i>Appendices to the Journals of the House of Representatives</i>
ALT	Alexander Turnbull Library, Wellington
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (Shannon, Irish University Press)
ch	chapter
doc	document
fig	figure
fn	footnote
MB	minute book
NA	National Archives
NZJH	<i>New Zealand Journal of History</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
p	page
s	section (of an Act)
sec	section (of this report)

## FOOTNOTES

Please consult the record of documents in appendix I for details of the documents referred to in the footnotes.

## CHAPTER 1

# OVERVIEW

### 1.1 PURPOSE

This overview introduces the main aspects of the Taranaki claims.<sup>1</sup> They could be the largest in the country. There may be no others where as many Treaty breaches had equivalent force and effect over a comparable time.

For the Taranaki hapu, conflict and struggle have been present since the first European settlement in 1841.<sup>2</sup> There has been continuing expropriation by various means from purchase assertions to confiscation after war. In this context, the war itself is not the main grievance. The pain of war can soften over time. Nor is land the sole concern. The real issue is the relationship between Maori and the Government. It is today, as it has been for 155 years, the central problem.

### 1.2 THE NEVER-ENDING WAR

Land conflict has continued in Taranaki, with little amelioration, for 155 years. On current estimates, some promises about land cannot be fulfilled for a further 63 years. We are unaware of another part of the country where a similar situation prevails.

Tension was evident from 1841, when the first settlers arrived. Though the fighting that resulted was mainly between Maori, the precipitate influx of settlers and their attempts to acquire land were still the cause. When war broke out in 1860, there had already been 19 years of preceding turmoil, attempts to constrain settlers, and fighting among Maori groups. This was all the result of a colonisation that had been programmed for Taranaki even before the Treaty of Waitangi was signed. In the other war districts, systematic settlement did not begin until after the confiscations had been made.

- 
1. The report covers 21 claims: five for Taranaki generally (the Taranaki Maori Trust Board, the Taranaki Iwi Katoa Trust, Nga Iwi o Taranaki, the Parininihi-ki-Waitotara Incorporation, and Taranaki Tribes) and the remainder for various kin groupings (Ngati Tama, Ngati Maru, Ngati Mutunga, Te Atiawa, Taranaki, Nga Ruahine, Ngati Ruanui, Tangahoe, Pakakohi, and Nga Rauru) or hapu within those groupings. These are depicted in figure 4. The claims are more particularly specified in the record of proceedings in appendix I.
  2. We use 'hapu' for tribe, not sub-tribe, concurring in that respect with P Addis (when presenting document D3) that the hapu were the main social units of traditional Taranaki society. As we see it, 'hapu' may refer both to a single hapu and to a combination of hapu, thus Ngati Te Whiti is a hapu of the Te Atiawa (group of) hapu. A combination of persons, however, may also be called an iwi ('the people') and today, hapu combinations are regularly so called.

The nub of the Taranaki complaint is the land confiscations during the 1860s wars. In that respect, Taranaki stands with other places where lands were so taken after war: south Auckland, Hauraki, Waikato, Tauranga, Whakatane, Opotiki, Urewera, Gisborne, and the East Coast to Hawke's Bay. Of these, the Waikato claims have been settled, and were appropriately settled first in our view for, although the war began in Taranaki, it was the Kingitanga of Waikato that carried the burden of representing a common Maori position.

The essential feature of Taranaki, however, is that the wars began there before extending elsewhere, but they were over in south Auckland, Hauraki, and Waikato, gone from Tauranga, finished in Whakatane, completed in Opotiki, done in Urewera, and ended throughout the East Coast, while during all this time the war in Taranaki carried on. Taranaki Maori suffered more as a result. In most districts, the fighting was over in months, but armed initiatives did not cease in Taranaki until after an unparalleled nine years.

Even then, the period of armed struggle was in fact much longer. History creates time slots to compartmentalise war, and 1860 to 1869 has been given for the Taranaki fighting; but just as conflict was apparent from 1841, so also did it continue after 1869. Military action on the Government's part did not end until the invasion of Parihaka in 1881. Thus, in Taranaki, conflict with the use of arms was spread not over a few months, as in most places, or even over a decade, but over a staggering 40 years. In no other part of New Zealand did a contest of that nature continue for so long or Maori suffer so much the deprivations of strife after British sovereignty was proclaimed.

The tension did not cease with the abandonment of arms. The confiscations came with an undertaking that lands necessary for hapu survival would be returned without delay, but the promise was not maintained. The same promise was also made in other districts, but we understand that in most cases land was promptly offered and given over for Maori possession. In Taranaki, however, many hapu were left with nothing of their own to live on and became squatters on Crown land. More than a decade after the war, they had not received anything more than promises of land. It was only after more conflict that some reserves were eventually defined, but they were given over to administrators to hold for Maori and 'the promotion of settlement'. They were then leased to settlers on perpetual terms, with the result that Taranaki Maori, and they alone, have still to receive the right to occupy the lands promised after the war.

Legislation is now proposed to terminate those leases within 63 years. Though competing equities now apply, it may none the less be observed that the promises of reserves made in the confiscations of the 1860s, limited though they may have been, have still to be given effect and on current projections will not have final effect for a further 63 years – over 180 years after they were made. It should be seen at once that this history is not a thing of the past.

Thus, the distinctive Taranaki circumstance. If war is the absence of peace, the war has never ended in Taranaki, because that essential prerequisite for peace among peoples, that each should be able to live with dignity on their own lands, is still absent and the protest over land rights continues to be made.





### **1.3 CONTINUING EXPROPRIATION**

War and confiscation are not the only foundations for the claims. Although they are severable to time slots, with the confiscation period being the better known, such divisions should not obscure the record of continuing expropriation from first European settlement, the cumulative impact of the process as a whole, or the various rights that were expropriated in many ways. It needs to be appreciated that what was involved was a process, not a set of unconnected incidents.

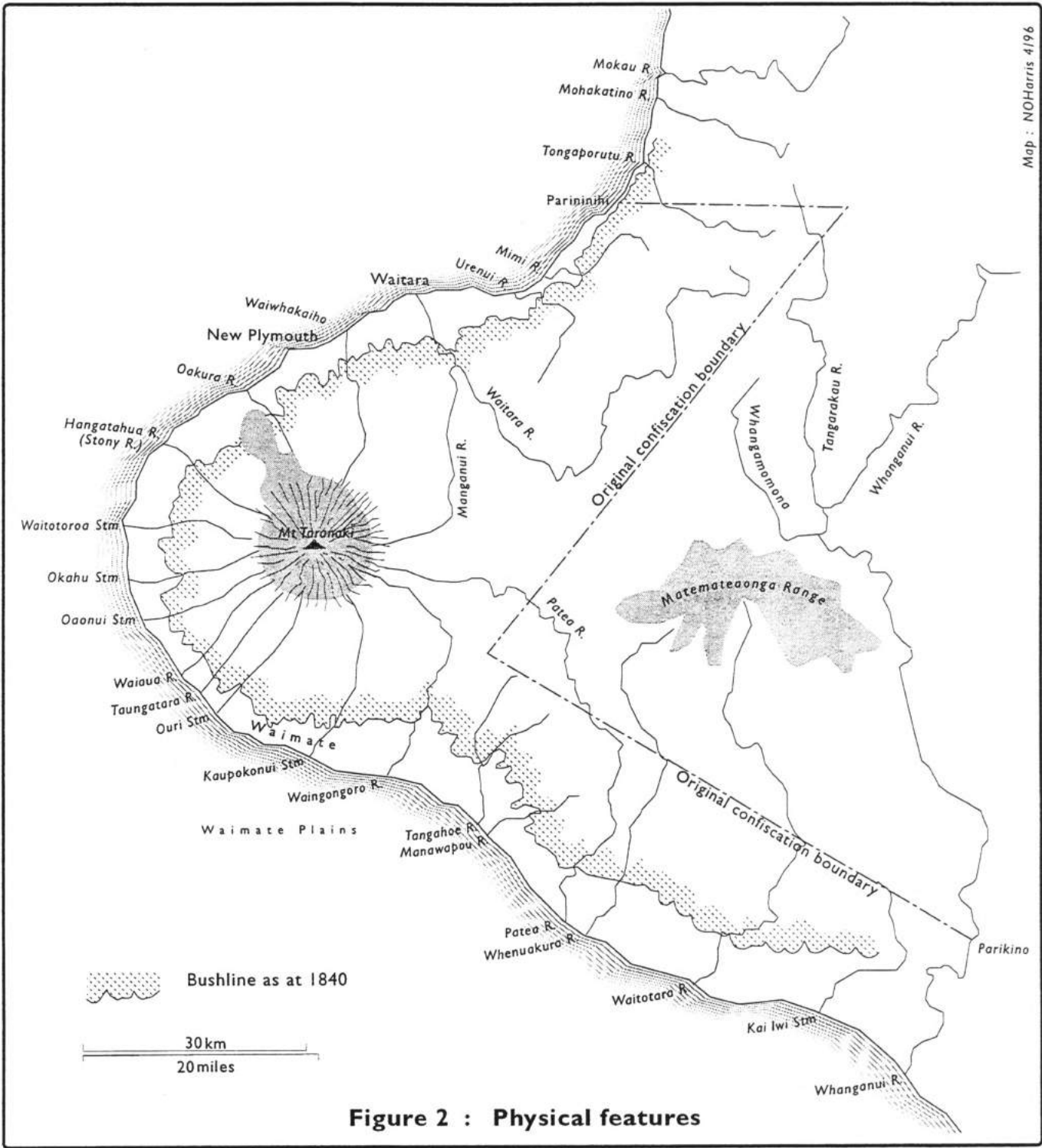
One form of expropriation was that, at various times, absentees (ie, Taranaki Maori who were then living away) were excluded from having interests. We believe that those exclusions were not justified. Another form of expropriation, before the wars, were Crown purchases while customary rights and the process for alienation had not been agreed. In our view, for those reasons alone, in terms of the Treaty, those purchases should be vitiated.

More buying was done after the confiscations, but outside the confiscation district. The buying took in nearly all the area beyond the confiscations, but again, it was done on such conditions and by such arrangements that, in terms of the principles of the Treaty of Waitangi, it too should be set aside.

The confiscation of tribal interests by imposed tenure reform was probably the most destructive and demoralising of the forms of expropriation. All land that remained was individualised, even reserves and lands returned. No land was thus passed back in the condition in which it was taken; it came back like a gift with an incendiary device. This land reform, so clearly contrary to the Treaty when done without consent, made alienations more likely, undermined or destroyed the social order, jeopardised Maori authority and leadership, and expropriated the endowments to which hapu, as distinct from individuals, were entitled. The subsequent fragmentation of title and ownership was the inevitable consequence, making Maori land the illusory asset that it is for Maori today, and bequeathing to generations of Maori farmers frustration for their labours and divisions within their families.

The purchase of individual interests began as soon as individual interests were created. The practice continued even when the extent of Maori landlessness was plain, so that little Maori land now remains.

The mood to capture as much Maori land as possible permeated through to today. The targeting of Maori land for public works or Government-supported industrial schemes was apparent as late as the 1970s and 1980s with the acquisitions for the New Plymouth Airport and various major economic projects in north Taranaki. The Treaty principle that each hapu should possess sufficient land endowments had long ceased to exist in Government policy, if it had ever been part of that policy at all. There was no change of attitude until the land march of 1975, when the catch-cry 'Not one more acre . . .' drew attention to what had been happening continuously for over 100 years.



## 1.4 AUTONOMY

We see the claims as standing on two major foundations, land deprivation and disempowerment, with the latter being the main. By 'disempowerment', we mean the denigration and destruction of Maori autonomy or self-government.<sup>3</sup> Extensive land loss and debilitating land reform would likely have been contained had Maori autonomy and authority been respected, as the Treaty required.

Maori autonomy is pivotal to the Treaty and to the partnership concept it entails. Its more particular recognition is article 2 of the Maori text. In our view, it is also the inherent right of peoples in their native territories. Further, it is the fundamental issue in the Taranaki claims and appears to be the issue most central to the affairs of colonised indigenes throughout the world.

The international term of 'aboriginal autonomy' or 'aboriginal self-government' describes the right of indigenes to constitutional status as first peoples, and their rights to manage their own policy, resources, and affairs, within minimum parameters necessary for the proper operation of the State. Equivalent Maori words are 'tino rangatiratanga', as used in the Treaty, and 'mana motuhake', as used since the 1860s.

The acquisition of Maori land in the pre-war purchase era falls foul of the autonomy principle. Questions arose as to which Maori owned what and who could effect a sale. The problem is not only that the Government's answers were wrong but that the Government presumed to decide the questions at all, for it is the right of peoples to determine themselves such domestic matters as their own membership, leadership, and land entitlements. Remarkably, it was presumed that the Government could determine matters of Maori custom and polity better than Maori and that it should have the exclusive right to rule on what Maori custom meant.

The result was not only the distortion of Maori custom by those who did not understand it but the introduction of a profoundly wrong process. The process, which still applies today, is one where decisions particular to Maori are made not by Maori but on their behalf, even in the administration of their land or in the application of their traditions. Administrators, for example, may be proposed by landowners but have still to be approved by a court, whether or not there is a dispute.

The Government also determined the protocols and terms whereby Maori land might be bought and sold, when these were also matters that ought to have been mutually agreed. The Government's presumption in unilaterally determining these matters led directly to war, with consequential property loss and personal suffering. The option, never pursued, was to support or develop customary institutions to provide a negotiating face. Not only was that not pursued but it was opposed. Maori collectivities were branded as unlawful combinations; for without collectivity, the Government could divide and rule and Maori could not be strong.

The rhetorical question in the Government's eyes was, 'whose authority should prevail, that of Maori or that of the Queen?' The question in Maori eyes, as evidenced from the leadership of Wiremu Kingi, Te Whiti, and the Maori King, was

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3. Maori autonomy, or aboriginal autonomy as it is internationally known, is introduced more fully in chapter 2 and is described at various stages throughout this report.



how the respective authorities of Maori and Pakeha were to be recognised and respected and the partnerships maintained. To the governors of the day, such a position was an invitation to war. To Maori, it was the only foundation for peace. It was peaceful purpose that the Maori leadership most consistently displayed.

This dichotomy of approach permeates all the claims. Through war, protest, and petition, the single thread that most illuminates the historical fabric of Maori and Pakeha contact has been the Maori determination to maintain Maori autonomy and the Government's desire to destroy it. The irony is that the need for mutual recognition had been seen at the very foundation of the State, when the Treaty of Waitangi was signed.

At no point of which we are aware, however, have Taranaki Maori retreated from their historical position on autonomous rights. Despite the vicissitudes of war and the damage caused by expropriation and tenure reform, their stand on autonomy has not changed. Nor can it, for it is that which all peoples in their native territories naturally possess. If the drive for autonomy is no longer there, then Maori have either ceased to exist as a people or ceased to be free.

## 1.5 MURU

Few Maori have been as inhumanely penalised for standing by their rights as the Taranaki hapu. Perhaps this was because the war was not only longer there but more intense and severe and because, despite the marshalling of several thousand Imperial troops, it was in Taranaki that a Maori ascendancy was most maintained.

During its course, the war passed through stages of intensity characteristic of prolonged hostility. Chivalry gave way to attrition. Eventually, military expeditions traversed the length of Taranaki to destroy all homes and cultivations in the way. A cavalry charge on a party of boys, all under 13, that killed eight was indicative of the growing excesses perpetrated by both sides and the developing climate of fear.

Then, in the last year of the wars, Titokowaru emerged from the slopes of Taranaki mountain to clear the land of all soldiers and settlers for a distance of over 40 miles. With a taua of over 1000, larger than any that local leaders had assembled before, he pushed beyond Taranaki to establish a pa near Whanganui, where settlers and soldiers had taken refuge.

The anticipated attack on Whanganui never came. In 1869, while flushed with victory, and for reasons that have never been clear, Titokowaru and his forces packed up and left.

That is how Taranaki Maori ended their fighting. Never again did they raise arms in aggression; only in defence when pursued. They placed their faith instead in the pacifist prophets of Parihaka, Tohu, and Te Whiti, and even Titokowaru joined them. With more than 2000 adherents, the prophets developed new arts of cultivation and cultivated new arts of peace.

Accordingly, Taranaki Maori, unlike Maori of other places, do not use 'raupatu', or conquest, to describe confiscations resulting from war. They use 'raupatu' for

their marginalisation by the organs of the State, for on this view, they were never conquered by the sword but were taken by the pen.

There was, however, no end to the dread and fear of Maori after such prolonged and indeterminate warfare. Even in such high places as the superior New Zealand courts, Maori were characterised as 'savages' and 'primitive barbarians'. Titokowaru was especially feared. Once all chance of overt war had passed, he was to be thrice imprisoned for long terms. Mainly, he was held for failing to produce sureties to keep the peace, for sums too large for any Maori to find; but in our view, his commitment to pacifism for the previous 12 years meant sureties were not required.

Because of the independence Maori had shown in the war, the Government made efforts to deprive Maori not only of their land but of all by which their traditional autonomy had been sustained. Dialogue with established leaders was declined and they were ignored or imprisoned. Such land as was returned from confiscation was broken into discrete parts and allocated to individuals in prescribed shares.

Maori protested but, true to a new policy of peace, did not resort to arms. Despite every provocation and dire consequence, they maintained peaceful roles. Protest came after no less than 12 years, when, with the whole of their lands confiscated and their habitations given over to settlers, they were still waiting for promised reserves. The protest that then came took the form not of arms but of ploughing settler land. The weapon was the tool of peace – the ploughshare. Protest ploughing soon spread throughout Taranaki.

They were no ordinary ploughmen who first took the field but the leading Taranaki chiefs, 'loyal' and 'rebel' alike. They disdained all threats that they and their horses would be shot, and they gave no resistance when surrounded. As the ploughmen were arrested, Titokowaru among the first, others took their place, until over 400 Taranaki ploughmen swelled the gaols of Dunedin, Lyttelton, Hokitika, and Mount Cook in Wellington. The Government was confronting organised and disciplined passive resistance and the dogma of moral right.

Again, no resistance was offered when the Armed Constabulary took possession of the remaining Maori land to divide and sell it for European settlement. Included was the very land that Maori were cultivating or had planted in crops and on which whole communities depended in order to survive. When the army broke fences and the crops were exposed to destruction as a result, Maori simply re-erected them. As they were torn down, they were put up again. There was no violent response to the consequential cajoling and arrests. As happened with the ploughmen, new fencers replaced those who were incarcerated, until over 200 Taranaki fencers joined the ploughmen in the South Island gaols.

Throughout this period, the rule of law and the civil and political rights of Taranaki Maori were suspended. By special legislation, all rights of trial were denied in all but 40 cases. Several hundred were sent to gaol for indefinite periods at the Governor's pleasure. This was well after the 'end of the wars' in 1869.

At all times the Maori protest had been peaceful, when eventually a force of 1589 soldiers invaded and sacked Parihaka, the prophets' home, dispersed its population of some 2000, and introduced passes to control Maori movements. This large and prosperous Maori settlement, rumoured to have been preparing for war, had not one

fortification, nor was there any serious show of arms. That was a fact the Government knew full well before the invasion began. There were official reports to say so.

When the cavalry approached, there were only two lines of defence; the first, a chorus of 200 boys, the second, a chanting of girls. On Te Whiti's clear orders, there was no recourse to arms, despite the rape of women, theft of heirlooms and household property, burning of homes and crops, taking of stock, and forced transportations that ensued. There was no resistance again when Tohu and Te Whiti were imprisoned and charged with sedition. The prophets had only one question of their accusers: 'Had the people been shown their reserves?' To this, the answer could only have been 'no', for in truth none had been made. None had been made, though 19 years had by then elapsed since the whole of the Maori land had been confiscated and settled, with promises that reserves for Maori would be provided. A section of the dispersed people began marching the land, marching throughout Taranaki so that a home might be found.

Then, when it appeared the charges of sedition might not be sustained against the prophets and the actions of the Armed Constabulary might be questioned instead, legislation was passed to make any action the soldiers had taken legal and beyond review. By the same legislation, the trial of Te Whiti and Tohu was terminated in order to avoid an acquittal and ensure their incarceration for as long as the Government might wish.

Only then were reserves made, years after they were due, but as if to ensure that several hapu would be scattered to the winds, most reserves were held back from their possession, to be leased to settlers on perpetual terms. Thus, the conflict has not ended in Taranaki. To this day, Maori have still to receive the lands that were their minimal due in terms of the promises of that war.

It is a further consequence of this extraordinary record of expropriation and deprivation that there is not one hectare of Taranaki land that is now held entirely on Maori terms and by Maori rules. All that could have been done was done to destroy the land base for Maori autonomy and representation. In the governance of the Taranaki province, since the Treaty of Waitangi was signed, land has been reserved for the bush and the birds but not one acre could be guaranteed as a haven for Maori.

## **1.6 VALIDITY AND LEGALITY**

The wars, in our view, were not of Maori making. The Governor was the aggressor, not Maori, and in Treaty terms it was the Governor who was in breach of the undertakings made in the name of the Queen.

Of the numerous Treaty breaches, we believe none was more serious than the Government's failure to respect Maori authority. While historians and previous commissions have generally concluded that the Governor caused the war through errors of fact on Maori customary tenure, a 'blunder worse than a crime' in the opinion of W Pember Reeves, we consider the larger error was one not of fact but

of principle. The Governor assumed that his own authority must prevail and that of Maori be stamped out, when the principles of the Treaty required that each should respect the other. While the Governor would not recognise this principle, Maori placed their faith in it.

In terms of strict law, according to the legal advice we have taken and with which we concur, the initial military action against Maori was an unlawful attack by armed forces of the Government on Maori subjects who were not in rebellion and for which, at the time, the Governor and certain Crown officers were subject to criminal and civil liability. Subsequently, if Maori were in rebellion against the Crown, it was only because the Government itself had created a situation where that must inevitably have been so, as a matter of fact, and had then passed legislation to ensure that it was so, as a matter of law. Even in the strict terms of the statute, however, it appears most hapu had not been in rebellion at all at the time their lands were taken.

In any event, were the Treaty the law, however, then as we see the Treaty today, the opposite situation would apply. The Governor was in rebellion against the authority of the Treaty and the Queen's word that it contained. Maori were not in rebellion, in Treaty terms, because they supported the Treaty position and the expectation of partnership that it implied. The written record is replete with Maori statements that demonstrate this approach; there was a place for Pakeha in their country, provided Pakeha could respect them.

It follows that, in Treaty terms, the confiscations were not valid either. While the norms of a Treaty, like those of an international covenant, may be suspended in an emergency, the emergency in this case was caused by the Governor and he could not reap the benefit of his own wrong.

In addition, however, it seems almost certainly the case that the confiscations in Taranaki were unlawful. We refer not to the larger question of whether the legislation was *ultra vires* the Parliament but to the clearer fact that the Governor did not follow the legislation, as he was required to do by law. A major difference would have resulted had the Governor kept to the strict terms of the New Zealand Settlements Act 1863. The statute required that the Governor declare districts where rebellion was occurring, that he define sites eligible for European settlement within those districts, and that he then take such land as might be necessary for those settlements. This, the Governor did not do. We are satisfied upon the facts that there was no rebellion or no sufficient evidence of rebellion in the greater parts of north, central, and southern Taranaki at the time that the confiscations were made. In addition, however, not only did the Governor declare districts larger than the theatre of the war but he declared the whole of those districts to be eligible settlement sites: mountain, hill, and vale. Some parts, the mountain for example, have not been settled to this day, and most could not have been readily settled at the time. There was simply no proper exercise of discretion. For Maori, the consequences were horrendous. There was nothing left for them to live on. Far from ending the war, the confiscations became the cause of its continuance and forced Maori to unaccustomed levels of desperation.

This illegality may have been technically cured by a later amendment to the Act that made all illegalities legal, or at least beyond judicial review, but in our view this

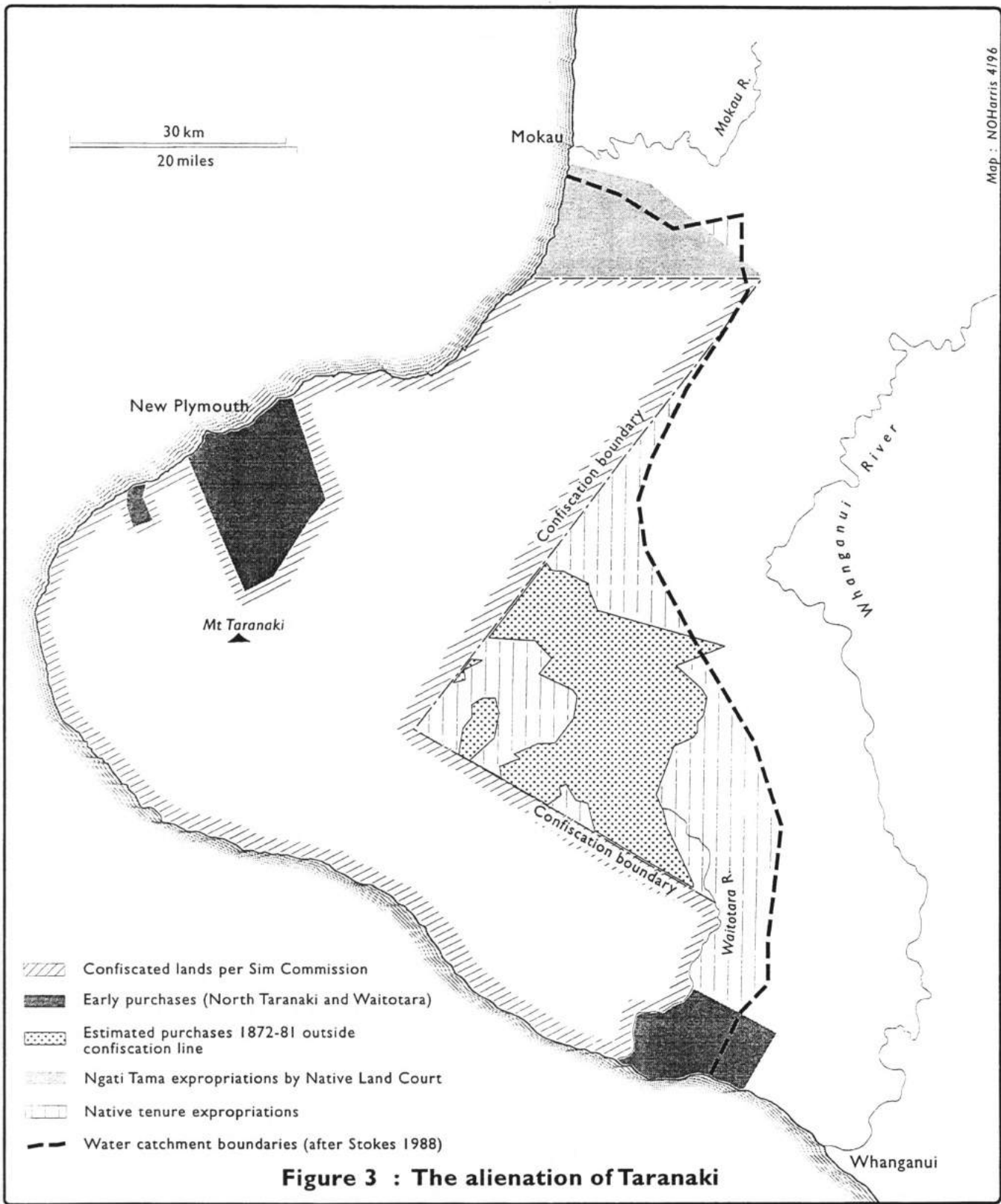
remarkable piece of legislative wit did nothing to save the unlawfulness of the confiscation of Parihaka lands, or the rest of central Taranaki. By the governing statute, all land was merely deemed to be confiscated, and then only for the purpose of the Act, namely, to promote peace by settlement; and no acre was actually taken until it was Crown granted for the purpose of a settlement. When the powers of acquisition under the Act expired, no part of central Taranaki had been taken and settled in that way. Twelve years of peace had elapsed and the Government had never taken possession of any part. Then, unexpectedly, after 12 years of inaction, the Government presumed to survey and sell the land as though it were the Crown's, which, in our view, it was not. It was merely deemed to be held for the purpose of the Act, but the purpose of the Act – to secure peace – had long been fulfilled, and the Act itself had expired. That which had been deemed to be Crown land could no longer be so.

This matter may well have emerged at the trial of Te Whiti and Tohu, but it did not because legislation was passed to prevent that trial from proceeding. The same legislation legalised the actions of the military, but in this instance, nothing was done to legalise the Crown's unlawful assumption of the land. We believe that it was unlawful at the time, and although most lands will now have the protection of having passed to third parties, nothing has been done to this day to make the original acquisition lawful.

## **1.7 RAUPATU**

The raupatu was effected through a reconstruction programme to make Taranaki Maori subservient to Government control. One of the few safeguards that Britain saw in the confiscation legislation was the provision for an independent and impartial Compensation Court to return land to those who had not rebelled. Instead, the court introduced the process of subjugation of the people as a whole. It excluded from land rights hundreds of Maori who were absent at some relevant time but whose ancestral interests in our view could not have been doubted. The court deprived hundreds more of their land for being rebels without an inquiry into their war complicity, and it then turned its back on compensating the remainder with land on the ground that, owing to the rate of English settlement, there was not enough land left for them. Instead, the court called for political solutions. It created the very situation the Secretary of State for the Colonies had warned against: Maori were left without the protection of a court and at the mercy of the Government.

The political solution came in the guise of the West Coast Commission, under a politician who was in the General Assembly for most of the time that he was also a commissioner. He had been the prime mover of the confiscation legislation. The commission's ostensible task was not to determine what lands Maori should fairly receive but, following the protest and imprisonment of the ploughmen, to give effect to what political promises may have been made, whether arising from the Compensation Court's operations or otherwise. In practice, the commission assumed another task: to secure central Taranaki for the Government. That area had not been



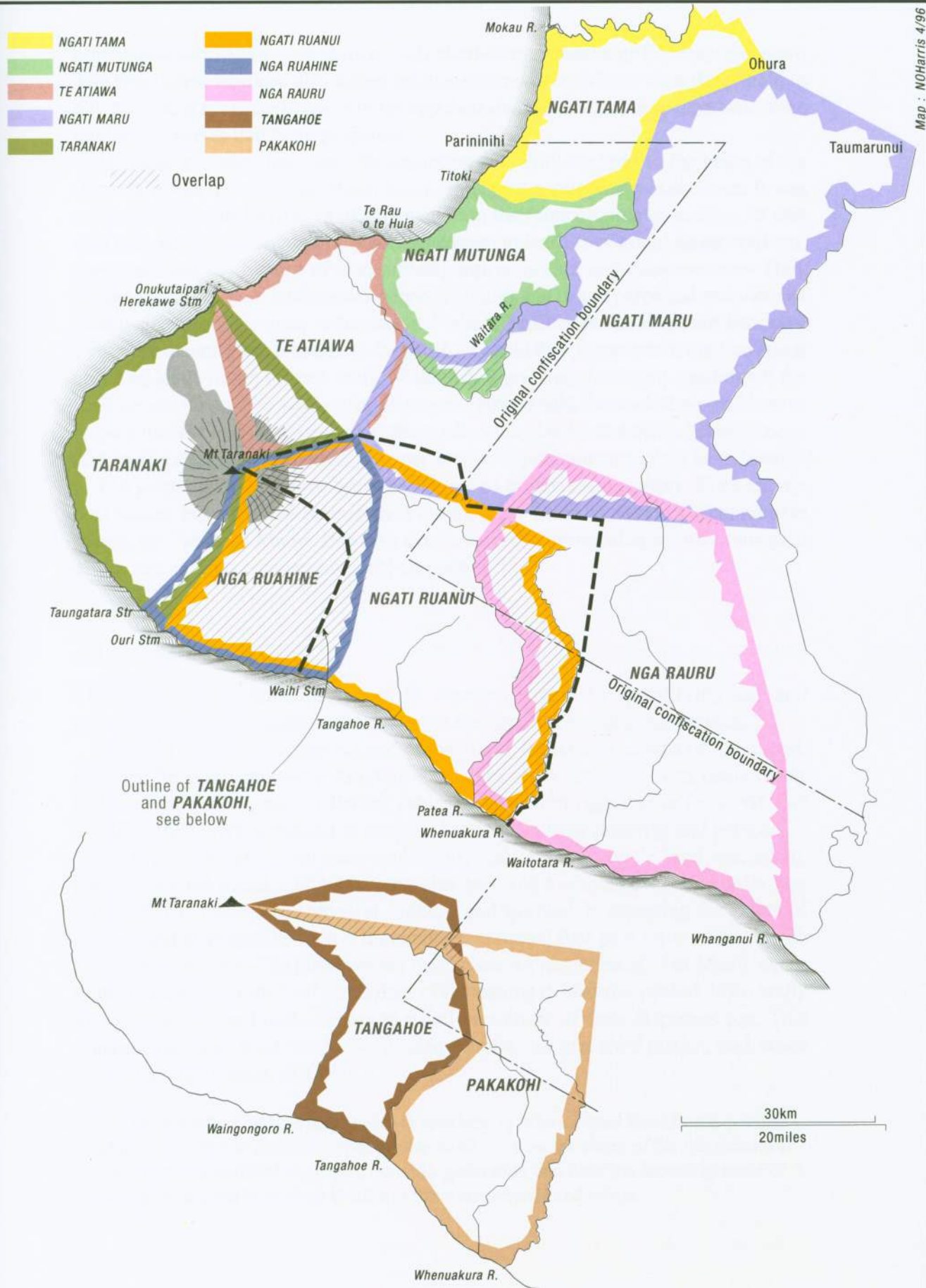
touched by European settlers and the confiscation of that part had been abandoned. Under the guise of making reserves for Maori, however, the commission expropriated the remainder, the bulk of the land, to assist a heavily indebted Government, of which the commissioner was a member, by selling it to settlers. There was thus the irony that, while some Maori were required to settle for less than their lawful due because, it was said, nearly all the land had been taken up by Europeans, the commission was in fact relieving Maori of huge areas to provide for settlers still to come. This was the Maori introduction to the *raupatu*: the subjection of Maori rights to the whim and caprice of politicians. The Compensation Court and the West Coast Commission, along with the ever-present Crown purchase agents, were vanguards to a process of conquest and subjugation by officials – legislative, administrative, and judicial.

The denial to Maori of land that could and should have returned to them was but the beginning. As noted earlier, such land as was returned was individualised to entrench the regime for cultural and social destruction. The same land was then handed to a Government functionary to administer, who, according to arrangements set in place by the West Coast Commission, then leased the greater part of the Maori reserved lands to settlers. As observed before, they were leased on terms that gave away the possession of those lands forever. In all, 214,675 acres returned. On average, this was 38 acres per head for those lucky enough to receive anything, but the blocks were generally larger with several owners in each. By 1912, the reserves comprised 193,666 acres, of which 138,510 acres were leased to Europeans, with a mere 24,800 acres for Maori farmers under occupational licences.

For over 100 years, Maori protested the Government's assumed right to administer the lands reserved for Maori, lease those lands without Maori consent, and make those leases perpetual. The first protests involved yet further ploughing and imprisonments but changed to parliamentary petitions and the representations of the Maori members of Parliament. None the less, there were further legislative changes, without consultation let alone consent, to give more advantage still to the lessees and to worsen the Maori position. Rents were reduced. In the depression and at other times, rent arrears were remitted. For Maori, inflation and share fragmentation arising from the imposed land tenure system meant that the rents themselves became meaningless. Based on rent formulas favouring tenants and with reviews only every 21 years, the rents were conservative at the start of the lease terms and minuscule for most of the remainder, particularly following inflation in the 1960s. Provisions were also made to help the lessees buy the freehold. By 1976, 63 percent of the Maori reserves had been sold by the officials administering them.

Thus, land was said to have 'returned' to Maori, when in fact they were denied the control and possession of it. It was a sleight of hand, a show of justice while denying the substance. Maori had at best the right to apply to use their own land, if they could show some farming capability. As earlier noted, very little passed to them. Today, Maori hold without hindrance less than 5 percent of the area reserved for them following the confiscation. Maori who gained land still had to pay rent to the administrator because the land was severally owned. Then, while Europeans received long-term leases and were able to attract development loans and stock and





**Figure 4 : Claimants' boundaries**

Revised to Freehand 8: 11/96,1/2000





other subsidies, Maori were allowed only short-term, unbankable licences to occupy. The short-term licences also meant regular rent reviews. Maori were thus liable to pay more rent for mere licences to occupy their own land than Europeans, who were paying for leases that were perpetual.

The leases in perpetuity were the unkindest cut of all, the twist to the blade of the *raupatu*. It was not only that Maori lost a century of development experience. It was not only that with inflation and fragmentation the rents became as nothing. It was also that, as each generation of Maori succeeded to lands they could never walk on, they inherited the history of war, protest, imprisonment, and dispossession. They succeeded not only to lands under perpetual leases but to the perpetual reminder of forced alienation. As many witnesses and whole families protested at our hearings, they were denied even the right to forget. How could they forget when they saw their children leave home to seek work while they knew that the family land down the road would always be worked by strangers? How could they ask their children to respect the law and the property of others when they knew, and their children knew, that by the same law their own property had been permanently taken from them?

The perpetual leases have been the subject of protest for a century. They are not past history but are a live issue in the present. They describe a part of what *raupatu* means for Taranaki Maori. It means the conquest so arranged as to inflict the pain of the past on every generation of their people.

## **1.8 PREJUDICE**

The prejudice to claimants cannot be assessed simply by quantifying the land expropriations; but quantification is, none the less, a relevant consideration.

Taranaki Maori were dispossessed of their land, leadership, means of livelihood, personal freedom, and social structure and values. As Maori, they were denied their rights of autonomy, and as British subjects, their civil rights were removed. For decades, they were subjected to sustained attacks on their property and persons.

All were affected, even non-combatants, because everyone's land was taken, people were relocated, land tenure was changed, and a whole new social order was imposed. The losses were physical, cultural, and spiritual. In assessing the extent of consequential prejudice today, it cannot be assumed that past injuries have been forgotten over time. The dispossessed have cause for longer recall. For Maori, every nook and cranny of the land is redolent with meaning in histories passed down orally and a litany of landmarks serves as a daily reminder of their dispossession. This outcome had been foretold. As Sir William Martin, our first chief justice, said, when opposing confiscation in 1864:

The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; . . . how the claim of the dispossessed owner is remembered from generation to generation and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.

In fact, grievances compound over time. As their economic performance is criticised, Maori have cause to reflect on their progress before their land was taken and on the opportunities lost in experience and infrastructure. When the harvesting of natural resources is curtailed, they have cause to consider that they had taken from them not only arable land but their interest in the bush, rivers, lakes, and sea. While they live with massive uncertainties as to their institutional structures and representation for their groups, they live also with the knowledge that their leaders were imprisoned and their institutions destroyed.

The nature and extent of prejudice is thus not defined by the quantum of land wrongly acquired by the Crown. Quite rightly, it was not the quantum of loss but the impact of loss over time that the claimants most stressed. It is instructive, however, to consider the total taken, especially as a proportion of the district and with regard to the numbers that the balance had to sustain.

In this respect, for the past 68 years reliance has been placed on figures that we would question. In 1927, the Government submitted to the Sim commission of inquiry that the total Taranaki confiscation was 1,275,000 acres, of which the Government purchased 557,000 and returned 256,000, leaving only 462,000 acres as taken. The Sim commission did not question these figures. It considered that an annuity should be paid for the wrong done. This prestigious commission, which brought relief to Maori for the first time, was unfortunately constrained by the chairman's ill-health and the size of the task. It was given eight months to report on not only all the New Zealand confiscations but also the north Auckland surplus land question and 57 Maori parliamentary petitions.

The Government compiled the expropriation figures itself, and owing to the exigencies confronting the commission, they were uncritically received. Had circumstances permitted a full inquiry, it would necessarily have been found that the so-called purchased area had not been properly purchased at all. To all appearances the land had been confiscated, but some Maori were offered money in return for signing a deed or receipt. It was a gross distortion of reality, a camouflage for a fiction perfumed with a whiff of legality. How could the Government claim to have bought that which it insisted it had already taken away? It would also have been observed, as the Government's own records showed, that about half of the so-called purchase area had been the subject of an inquiry by a commission at the time the 'purchases' were being made. That commission had two main observations, the first relating to the extensive fraud and corruption of certain Crown agents involved; the second relating to the process itself, which in the commission's view was nothing but 'secret bribery'.

With regard to the so-called 'returned' land, there were at least three major impediments. It was returned not to the hapu from which it was taken but to selected individuals, who may or may not have been of that group. It was returned not in the condition in which it was taken but under a new tenure system, by which the autonomy and integrity of the hapu would be destroyed. Finally, most of the land was not returned to Maori possession; it was leased to Europeans and is held by Europeans to this day. The amount that we would discount for lands 'purchased' and 'returned' is nil.

Further, to the confiscated area we would add the land acquired in a climate of tension and hostility both before and after the war proper, the land of Ngati Tama beyond the confiscation boundaries that was wrongly awarded by the Native Land Court, and the land, also beyond the confiscation boundaries, that was expropriated from hapu through court awards to individuals. Assuming the ranges prescribing water catchment areas make fair tribal divides, then as shown in figure 3, we would assess as follows the areas affected by various expropriations that were inconsistent with the principles of the Treaty:

Confiscated lands (per Sim commission, less north Taranaki pre-war purchases)	1,199,622 acres
Early purchases (north Taranaki and Waitotara)	107,578 acres
Estimated post-war purchases outside confiscation line	189,000 acres
Ngati Tama expropriation, Native Land Court, north Taranaki	66,000 acres
Balance where native tenure expropriated	approx 360,000 acres
Expropriation in Treaty terms	approx 1,922,200 acres

In effect, the whole of the Taranaki land was affected by processes prejudicial to Maori and inconsistent with the principles of the Treaty, and the tribal rights in respect of the whole of that land were wrongly taken away.

## 1.9 REMEDY

The principles for the resolution of historical claims, where factual issues are beyond living memory and new variables have intervened with time, may call for other than a strictly legal approach to rectification. We observe in that respect that the Tribunal's jurisdiction in making recommendations does not include criteria that are usual for compensation in the courts.

The quantification of property loss, personal injury, social impairment, and forfeited development opportunities may assist the consideration of comparative equities between claimant groups, but it is not necessarily determinative of the measures appropriate for relief in any one case today. As we consider further at the end of this report, in resolving historical claims a pay-off for the past, even if that were possible, may not be as important as the strategies required to ensure a better future. Similarly, an endowment that provides adequately for tribal autonomy in the future is important, not payments for individual benefit.

The proper approach to take would need to be fully debated if we were to progress this inquiry further. The most careful deliberations would be required. At this stage, however, we can observe that, having regard to the historical record and the suffering to which the Taranaki people have been exposed, we could be dealing with the country's largest claims.



## CHAPTER 2

# FIRST PURCHASES

I will not agree to our bedroom being sold (I mean Waitara here), for this bed belongs to all of us; and do not you be in haste to give the money. If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it . . . All I have to say to you, O Governor, is that none of this land will be given to you, never, never, till I die. I have heard it is said that I am to be imprisoned because of this land. I am very sad because of this word. Why is it? You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.

Wiremu Kingi to Governor Browne, April 1859

The compact between the Crown and the Maori through which the peaceful settlement of New Zealand was contemplated called for the protection by the Crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres.

Justice Richardson, Court of Appeal, 1987

### 2.1 PARTNERSHIP AND AUTONOMY

Graphically arising from the Taranaki claims is a question of the relationship between governments and indigenes. What status do they have in relation to each other, what are their respective interests and spheres, and what protocols are needed between them to ensure good order, harmony, and peace? The nature of that relationship was most at issue in the Taranaki wars and in the land dealings that led to them. It is a concern to this day, being the subject of current protests concerning 'Maori sovereignty'.

Because of the centrality of this issue to past and present contentions, we open this chapter with some comments on it.<sup>1</sup> The instinct of peoples for autonomy explains a consistent Maori perception of both the events and the prejudice now seen to exist. It also informs our statutory duty, when considering proven claims, to recommend the action required 'to compensate for or remove the prejudice, or to prevent other persons from being similarly affected in the future'.<sup>2</sup>

The execution of the Treaty of Waitangi is evidence itself that the need for protocols between the Government and Maori had been foreseen. Before anything

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1. This chapter draws mainly from a report of Dr A Parsonson, 'Land and Conflict in Taranaki, 1839-1859' (docs A1(a), (b)). Aspects of the transactions are also particularised in the submissions of Dr N Love (docs D11, D14) and the reports of A Harris, 'Title Histories of the Native Reserves . . .' (docs F23, F23(a)), and J Ford, 'Title Histories of the Native Reserves . . .' (doc F24) and 'Schedule of Land Purchases and Native Reserves, Taranaki, 1839-1860' (doc D19).

2. See s 6(3) Treaty of Waitangi Act 1975

could be done, it was necessary for the Crown to at least acknowledge that Maori had prior inhabitant status. That status was not changed by the recognition given to a new form of governance.

The broad nature of the anticipated relationship may be determined from the Treaty's texts, associated Crown documents, and the record of Maori opinion before, during, and after the Treaty signings. From expert opinion on that material, and though he considered that the Treaty should be seen 'as an embryo rather than a fully developed and integrated set of ideas', the president of the Court of Appeal considered, in a landmark decision of 1987, that 'the Treaty signified a partnership between races'. President Cooke added that the answer to the case then before the court had to be found within that concept of partnership.<sup>3</sup> We consider that it is within that same concept that the Taranaki claims must now be viewed.

Other members of the five-member court in that case expressed much the same view, emphasising it was the spirit of the Treaty that counted most, not its specific terms. Justice Richardson, the current president of that court, added:

There is, however, one paramount principle which I have suggested emerges from consideration of the Treaty in its historical setting: that the compact between the Crown and the Maori through which the peaceful settlement of New Zealand was contemplated called for the protection by the Crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres. That is I think reflected both in the nature of the Treaty and in its terms.

It was a compact through which the Crown sought from the indigenous people legitimacy for its acquisition of government over New Zealand. Inevitably there would be some conflicts of interest. There would be some circumstances where satisfying the concerns and aspirations of one party could injure the other. If the Treaty was to be taken seriously by both parties each would have to act in good faith and reasonably towards the other.<sup>4</sup>

We have been struck by the coincidence between this current perception of partnership and good faith and the view of Maori leaders at the time. The predominant Maori view, as we see it, was that there was a place for Pakeha, provided Maori authority was also acknowledged. Nor was this expectation of respect couched in unreasonable or demanding terms. On the eve of the New Zealand wars of the 1860s, for example, as the Government was preparing to attack him, the Te Atiawa leader, Wiremu Kingi, wrote simply to the Governor:

You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.<sup>5</sup>

Later, when a military commander presented an ultimatum, a virtual declaration of war alleging Kingi was in rebellion, Kingi replied:

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3. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 663–664

4. *Ibid*, pp 680–681

5. Kingi to Governor, 25 April 1859, AJHR, 1860, D-3, p 6

Friend, Colonel Murray, salutation to you in the love of our Lord Jesus Christ . . . You say that we have been guilty of rebellion against the Queen but we consider we have not. [He then went on to explain his position and concluded:] This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and Maories. Listen, my love is this, put a stop to your proceedings, that your love of the Europeans and the Maories may be true.<sup>6</sup>

There is small evidence of Maori belligerence in this case, but, none the less, there was a firm expectation that Maori authority would be respected and reasonable dialogue maintained.

Twenty years later, when the war had come and gone, the leadership, as represented by Te Whiti, still maintained the same position: there was a place for Pakeha and a place for Maori but Maori authority had to be recognised and dialogue between Maori and the Government had to be maintained. Te Whiti and Kingi, in turn, were adherents of the Kingitanga, the movement under the Maori King, where the relationship between the separate authorities of the colonisers and Maori was exemplified in the symbolic depiction of 'the [Maori] King on his piece; the Queen on her piece, God over both; and Love binding them to each other'.<sup>7</sup>

The symbols were seen by the Governor as a challenge to the Queen's authority, but it is difficult to comprehend that that was ever intended. The symbols are similar to those now used on our current coat of arms.

For Maori, their struggle for autonomy, as evidenced in the New Zealand wars, is not past history. It is part of a continuum that has endured to this day. The desire for autonomy has continued to the present day in policies of the Kingitanga, Ringatu, the Repudiation movement, Te Whiti, Tohu, the Kotahitanga, Rua, Ratana, Maori parliamentarians, the New Zealand Maori Council, Te Hahi Mihinare, iwi runanga, the Maori Congress, and others. It is a record matched only by the Government's opposition and its determination to impose instead an ascendancy, though cloaked under other names such as amalgamation, assimilation, majoritarian democracy, or one nation.

Yet New Zealanders as a whole appear unaware of the cause of today's tensions or the history behind them. We are prone to observe the ethnic dispute in Bosnia or the tribal conflict in Rwanda without seeing the Bosnia and Rwanda in our own present and past.

In modern times, overseas countries have seen the indigenous component of a symbiotic relationship with the Government under the rubric of 'aboriginal autonomy'. Also called 'aboriginal self-government', it equates with 'tino rangatiratanga' and 'mana motuhake'.

Without examining detail, it may also be considered that, in recent times, the underlying issue of aboriginal autonomy has been addressed more thoroughly in places other than our own. Support for this view may be found in the position in the United States of America and developments in Canada and Australia. These suggest the recognition of aboriginal autonomy is not in fact a barrier to national unity but

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6. Kingi to Murray, 21 February 1860, BPP, vol 12, p 9

7. Quoted by 'Curiosus' in the *New Zealander*, 3 July 1858



an aid. They go further to recognise that conciliation requires a process of empowerment, not suppression.

Some official opinions suggest the lack of a comprehensive definition of 'aboriginal autonomy' is actually appropriate at this stage: that it is better to focus on the problem and the options for relief than to argue word prescriptions too soon.<sup>8</sup> Broadly, however, we understand 'aboriginal autonomy' to describe the right of indigenes to constitutional status as first peoples, and their rights to manage their own policies, resources, and affairs (within rules necessary for the operation of the State) and to enjoy cooperation and dialogue with the Government.

The autonomy approach posits two presumptions that seem to us to be true:

- that autonomy is the inherent right of all peoples in their native countries; and
- on the colonisation of inhabited countries, sovereignty, in the sense of absolute power, cannot be vested in only one of the parties.

In terms of the Treaty of Waitangi, in our view, from the day it was proclaimed, sovereignty was constrained in New Zealand by the need to respect Maori authority (or 'tino rangatiratanga', to use the Treaty's term).

State responsibility, not absolute power, is the more necessary prerequisite to governance in this context. So also is State responsibility of increasing importance in the current global environment, where international norms carry the objectives of world security, free trade, and peace. Thus, it is more apparent today that the legal paradigm of State sovereignty had necessarily to change when different peoples met and one colonised the lands of another, but at least it can be said that both Government authority and Maori authority were recognised in the Maori text of the Treaty of Waitangi.

The matter has new significance in the current climate of the International Decade of Indigenous Peoples and its focus on the associated Draft Declaration on the Rights of Indigenous Peoples, with its acknowledgement of autonomy. At this time, too, as inter-State tensions ease, ethnic conflict may be seen as taking pre-eminence in global concerns for peace. It is thus of concern that the decade has barely been acknowledged in New Zealand, the draft declaration is hardly known here, and policies for the conciliation of peoples in New Zealand are comparatively undeveloped.

The historical record seems to us to be clear that this right of autonomy was assumed by Maori (though those words were not used). This was seen by them not as a likely cause of conflict but as the natural foundation for peace; and that is not surprising, considering their world view. Maori protocols in meeting, as used to this day, are honed to the punctilious recognition of the authority of others, call for a fulsome display of respect, and insist on strict speaking orders to promote dialogue. The value of such an order for the maintenance of peace is not diminished by the extent of warfare that in fact prevailed; rather, the warlike conditions gave rise to it.

We have introduced this matter at length because of its place in an understanding of the Maori position in Taranaki history. The need to respect other peoples is clearer

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8. For example, see *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, Federal Policy Guide, Minister of Public Works and Government Services, Ottawa, 1995, p 1

today than formerly, and we more readily appreciate now that the conciliation of subjugated peoples requires a process of re-empowerment. Our colonial forebears, however, sought mainly to impose their own will. The single thread that most illuminates the historical fabric of Maori and Pakeha contact in Taranaki for over 150 years has been the determination of Maori to maintain their own autonomy and status and official attempts to constrain that determination. One sought peace by dialogue on equal terms, the other, by domination or by removing Maori altogether.

The disparity between the opinions of the Treaty proponents on the one hand and colonial officials on the other is painfully apparent in the Taranaki case. The changed position was obvious from the earliest arrangements for the acquisition of land and the resolution of disputes. It was presumed that the arrangements would be made entirely by the Government on its terms, that the Government alone could determine the justice of disputes, and that Maori authority should be tolerated only until it could, in fact, be suppressed.

## 2.2 ISSUES

The first item of claim relates to the Government's claim to have purchased 75,370 acres in nine blocks extending out from New Plymouth, between 1844 and 1859, comprising some of the most valuable Taranaki land. These purchases, and attempts to conclude others, led to the war and confiscations.

As we see it, the first and most important question, as indicated in the preceding discussion, is whether the process was fairly settled and agreed between the Government and the appropriate Maori.

The second, and secondary, question is whether, even accepting the process used, the purchases were otherwise consistent with the principles of the Treaty of Waitangi. On that aspect of the case, the following observations summarise previous Tribunal opinion.

In the English text, the Treaty articles guaranteed to Maori the full, exclusive, and undisturbed possession of their lands for so long as they wished to retain them. The Maori text was clearer in guaranteeing to Maori the full authority of their lands. This clarified that Maori would not only possess their own land but decide and determine the laws affecting them; for example, the forms of tenure and management.

The articles also conferred on the Crown a pre-emptive right in buying – a privilege that carried a concomitant duty to protect Maori interests when so doing. Further promises of protection are found in the Treaty's preamble, the record of the Treaty discussion (including Lieutenant-Governor Hobson's address at Waitangi on 6 February 1840<sup>9</sup>) and Lord Normanby's accompanying instructions, which prescribed, among other things, 'fair and equal contracts' and the assurance of adequate Maori reserves.<sup>10</sup> It is pertinent to ask:

- whether adequate endowments were secured for the future support and development of the hapu;

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9. See W Colenso, *Signing of the Treaty of Waitangi*, Christchurch, Caxton Press, 1971, pp 16–17

10. See BPP, vol 3, p 86

- whether customary ownership and decision-making were respected; and
- whether fiduciary responsibilities were maintained for Maori protection (this includes such matters as whether the consideration was adequate, the associated conditions appropriate, and the arrangements fully understood).

## **2.3 BACKGROUND**

While not wishing to write a definitive history, some perspective of the background events is needed to deal with the claims in issue. In this instance, the purchases cannot be considered without reference to the preceding events by which they were conditioned. Below is an overview of the relevant events, as we see them, followed by a more detailed examination of some aspects.

### **2.3.1 Tribal war, dispersal, and absentees**

For a millennium or more, the iwi of Taranaki occupied the length of the Taranaki coast. In broad terms, the coast was cleared for cultivations, while the interior bush was largely intact, as illustrated in figure 2. The iwi were descendants both of those there ‘from before time’ and of subsequent Pacific migrants. Like all Maori hapu, however, they also had a history of mobility and, accordingly, have ancestral connections throughout the country.

For some decades before European contact, however, there was intermittent warfare with iwi from north Auckland to Waikato. This warfare escalated and intensified with the advent of muskets to the north, giving their foe an uncustomary edge. Some devastating battles resulted, and a series of movements out of Taranaki between 1821 and 1834 followed. Some Maori were taken to Waikato as prisoners of war, but the greater number went to Cook Strait in pursuit of guns and goods from whalers and traders. The majority were still absent from Taranaki when the first Europeans arrived.

### **2.3.2 The New Zealand Company: the ‘null and void’ acquisition of north Taranaki**

The New Zealand Company was a private enterprise established in Britain and having for its business the profitable colonisation of New Zealand; generally, by buying land cheaply and selling it well. In August 1839, Colonel William Wakefield, a land purchase agent for the company, arrived in Cook Strait. He had been dispatched from London in May, soon after the company learnt that Britain intended to intervene in New Zealand, negotiate a cession of sovereignty, and prohibit private purchases of Maori land. The company sought to acquire land before any prohibition took effect, and accordingly, Colonel Wakefield had cause to act with haste. The intention that future private purchases be excluded was specified in Lord Normanby’s instructions to Hobson on 14 August 1839.

From here, events assume a quixotic character. In October 1839, after other acquisitions were purportedly made for the company around Wellington, Wakefield

claimed he had acquired some 20 million acres (comprising about one-third of New Zealand) from certain Taranaki and other Maori in Wellington. The area extended from Aotea Harbour near Waikato in the north to the Hurinui River in the South Island.

There was clearly no reality to the transaction and the company later abandoned any claim under it. For convenience, we will call it the 'New Zealand central transaction' to distinguish it from others. It took in the whole of Taranaki and many other districts besides.

Also during 1839, increasing numbers of Maori returned to Taranaki, either from Cook Strait or, following their release from captivity, from Waikato.

As had been forewarned, on 14 January 1840, while New Zealand was a dependency of New South Wales, Governor Gipps issued a proclamation that any alleged purchase of Maori land by private interests after that date would be absolutely null and void and would be neither confirmed nor in any way recognised by the Crown. On 30 January 1840, on his arrival in New Zealand, Lieutenant-Governor Hobson issued a further proclamation to the same effect.

In addition, on 6 February 1840, the Treaty of Waitangi was signed. This asserted the Crown's pre-emptive right to purchase Maori land. In terms of Lord Normanby's instructions, the Crown's Treaty right of pre-emption carried a concomitant duty to protect Maori interests, a duty that Governor Hobson sought to fulfil by appointing a Protector of Aborigines to conduct land purchases and ensure proper terms.<sup>11</sup>

Notwithstanding that Taranaki was included in the New Zealand central transaction, and notwithstanding the Treaty or the proclamations that had issued, of which he appears to have been aware, Colonel Wakefield arranged the completion of two further purchase deeds at New Plymouth from certain Maori living there. These were given effect to on 15 February 1840.

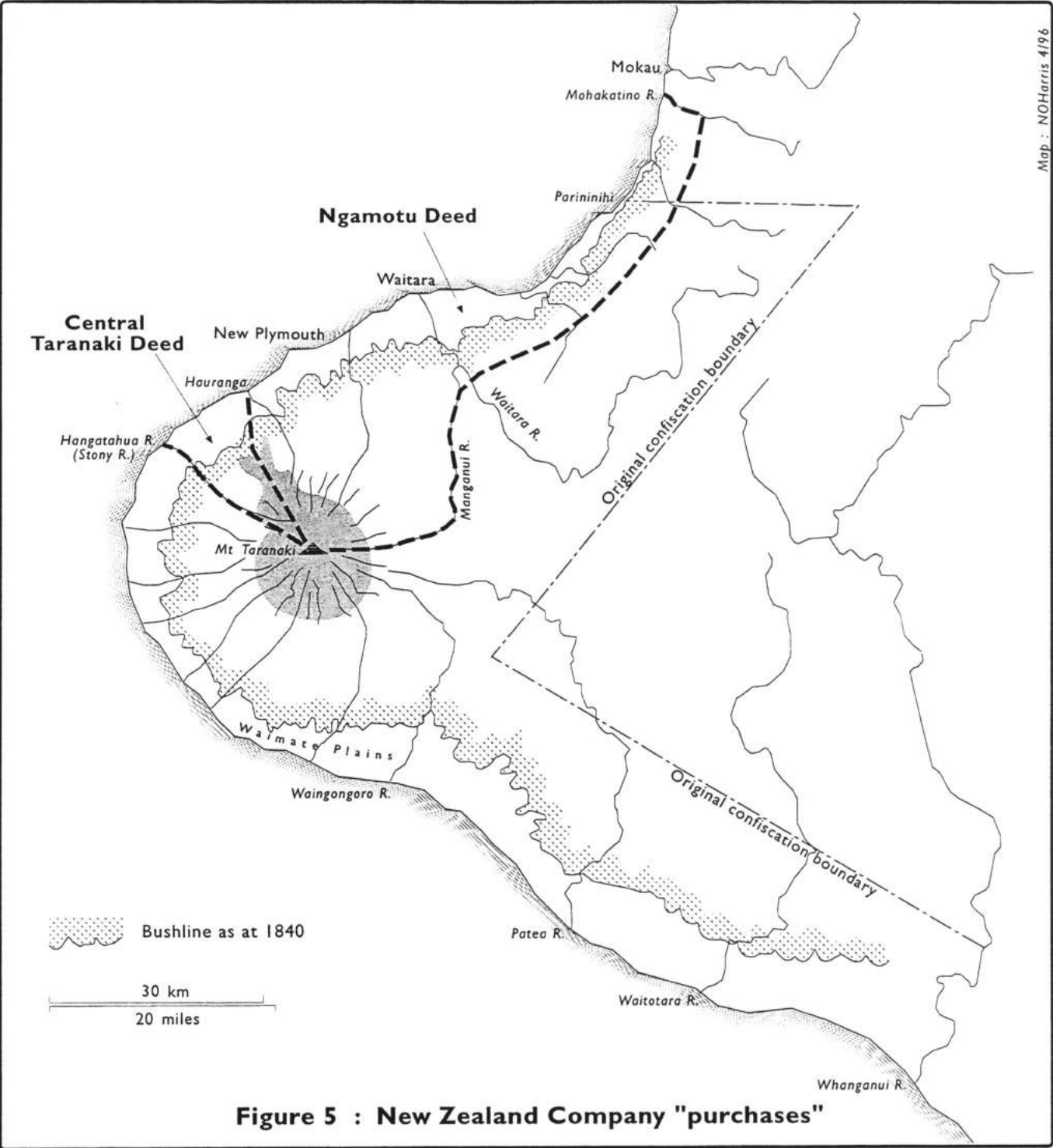
Like Wakefield's previous transactions, those completed at New Plymouth were accompanied by the delivery of an assortment of guns, blankets, and other chattels. The first, called the 'Nga Motu deed' after certain islands near New Plymouth, extended beyond New Plymouth to embrace all the coastal lands of north Taranaki. These were lands that over generations had been cleared for villages and cultivations by numerous independent hapu. Also included in the deed was Waitara, a major Maori settlement area, which was seen by Maori and Pakeha alike as the most valuable of the coastal lands.

Although the total area in the Nga Motu deed was uncertain, it was obviously large. It is approximately delineated in figure 5, which also shows the estimated bushline at 1840.

The second deed, for the sale of lands in central Taranaki, was also for a large area of uncertain size. The land lay immediately south of New Plymouth and is also shown in figure 5.

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11. The Protector of Aborigines, however, was later to contend that the tasks of buying and protecting should be separated.



The transactions promised to reserve to Maori vendors one-tenth of all land purchased, the clause in the Nga Motu deed reading:

A portion equal to one tenth of the land ceded by them will be reserved by . . . the New Zealand Company . . . and held in trust by them for the future benefit of the said chiefs their families, tribes and successors forever.<sup>12</sup>

The company considered that these reserves would greatly increase in value with the settlement of the balance by industrious colonists and would have greater long-term value than the payments made on the deeds.

The Treaty of Waitangi was affirmed at Wellington soon after. The Reverend Henry Williams obtained 34 signatures at Port Nicholson on 29 April 1840, 27 at Queen Charlotte Sound on 4 and 5 May, 13 on Rangitoto Island on 11 May, and 20 at Waikanae on 16 May. The signatories included Wiremu Kingi Te Rangitake (signing as Wite) and his father Te Rere-Ta-Whangawhanga.<sup>13</sup> The former was to be prominent in the Taranaki wars.

### **2.3.3 Arrangements to examine the company's claim to acquisitions**

During the debate on the Treaty at Waitangi, Lieutenant-Governor Hobson had promised that private purchases before the Treaty would be examined and 'lands unjustly held would be returned'.<sup>14</sup> Soon after, in August 1840, the New South Wales Legislature enacted the New Zealand Land Claims Ordinance (re-enacted in New Zealand as the Land Claims Ordinance 1841). Under the ordinance, the Governor was to appoint commissioners to examine claims to the previous purchase of land. In practice, when Maori affirmed a purchase, the commissioners were to recommend a land grant to the Governor. The area of the grant was dependent on the price paid and assumed land values and was limited to a maximum of 2560 acres, but the Governor had the discretion to grant more. The sliding scale envisaged land grants at one acre for every sixpence worth of goods given between 1815 and 1824, rising to between four and eight shillings per acre in 1839. The goods were to be valued at three times their Sydney prices.

Despite the ordinance, a special arrangement was proposed for the New Zealand Company. This was probably because of the company's special position, its large investment, its extensive claims to the acquisition of land, and the fact it had already on-sold sections in England. The company also had political influence through its distinguished directorship, with five of its directors being members of the British Parliament. Accordingly, by an agreement of November 1840, the company renounced its claims to massive areas in return for four acres for every pound it had spent on colonisation, to be taken from the lands in any deed.<sup>15</sup> This arrangement

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12. Nga Motu deed, in Turton, *Maori Deeds of Old Private Land Purchases in New Zealand*, p 393

13. See C Orange, *The Treaty of Waitangi*, Wellington, Allen and Unwin, 1987

14. See Colenso

15. A copy of the arrangements was transmitted to Joseph Somes by the Colonial Office on 18 November 1840 and a letter from Somes to Russell on 19 November 1840 conveyed the company's acceptance of the terms. Both are enclosed in Russell to Hobson, 10 March 1841, BPP, vol 3, pp 207-210.

was made law by an amendment to the ordinance in 1842, but as shall be seen later, the 1842 ordinance was disallowed by the British Government on 6 September 1843.

In any event, it must be presumed, however, that the New Zealand Company's arrangement was not seen to apply to the Nga Motu deed. Under clause 5, the agreement applied only to land acquired before Hobson's arrival, and Hobson had already arrived when the deed was signed. The ordinance also presumed the same, referring to transactions up to December 1839. None the less, in New Zealand a claim to Taranaki was filed on behalf of the company.

On 20 January 1841, William Spain was appointed Land Claims Commissioner to examine the company's Wellington claims, but owing to disputes between the Governor and the company, some time elapsed before he could assume his duties. He was later authorised to investigate any Taranaki claims.

#### **2.3.4 Company assumes title though claims not proven; Maori protest**

Although the New Zealand Company's purchase had not been proven; was null and void in terms of the proclamations; was contrary to the pre-emption clause in the Treaty; and was excluded from the special arrangement between the company and the British Government:

- (a) In January 1841, the company surveyor began to survey the Taranaki lands. New Plymouth was laid out over 550 acres, and suburban and rural sections were proposed along the coast to beyond the Waitara River. The plans covered about 68,500 acres, being the whole of the cleared, coastal lands from New Plymouth to beyond Waitara.<sup>16</sup>
- (b) Sections had been sold or promised in England before settlers came to New Zealand.
- (c) In March 1841, the first immigrants were introduced. By 1843, there were over 1000, and as they arrived, they presumed to occupy allotments throughout the coast to beyond Waitara.

Almost immediately, Maori interrupted survey work and disputed the settlers' rights to land much beyond New Plymouth, forcing the settlers to retreat to the New Plymouth area.

In September 1841, Governor Hobson proposed to implement the New Zealand Company's agreement by allowing it an exclusive right to buy specified lands at Wellington, Whanganui, and Taranaki, suggesting for Taranaki a right to buy some 50,000 acres extending 10 miles north of New Plymouth along the coast and eight miles inland. When the company complained that this excluded Waitara, the Governor extended the area to four miles north of the Waitara River.<sup>17</sup> The proposal

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16. See doc A1(a), pp 30, 34

17. *New Zealand Gazette*, 13 November 1841, and see also doc A1(a), p 41. The Governor's response in declining Spain's recommendations was on the principal grounds that in his view, he could not take land from people who had not agreed to sell and that a 'large number of Natives would be set aside by Mr Spain (namely those who were absent or in captivity at the time when their lands were said to have been sold), whose claims I am bound to recognise and maintain' (FitzRoy to Wakefield, 8 August 1844, enclosed in FitzRoy to Stanley, 22 February 1845, BPP, vol 5, p 143).

was not pursued, however, because the company claimed it had already purchased the lands concerned and should simply receive four acres for every pound spent.

The Governor and Spain both agreed the company would first need to show that its purchases were valid. The need for a hearing was clarified in the 1842 amendment to the ordinance. None the less, when hearings began in Wellington in May 1842, Wakefield delayed proceedings further while pressure was maintained on the Colonial Secretary in England to dispense with the inquiries into the purchases. The company was ultimately unsuccessful.

Meanwhile, Maori were disputing the settlers' entitlements. In July 1842, a party drove off settlers who had taken up land north of the Waitara River. In 1843, there was a further confrontation when 100 men, women, and children sat in the surveyors' path. There were various other challenges south of Waitara as different hapu asserted their right to the land.

### **2.3.5 Commission's recommendation to grant lands declined**

Owing to the delays caused in Wellington, Spain did not commence the Taranaki inquiries until May 1844. The company then withdrew the New Zealand central and Taranaki central claims, leaving only the Nga Motu transaction under review. The claim was opposed by Maori. It was one contention that the Nga Motu deed had not been signed by the numerous Taranaki absentees.

In June 1844, however, the commission found the absentees had no interests, upheld the transaction, and recommended to the Governor an award of 60,500 acres (being the area then surveyed and comprising most of the Te Atiawa land), reserving one-tenth for Maori.

There was an immediate Maori protest. A party formed to drive out the settlers, and the Sub-Protector of Aborigines found it necessary to head it off with assurances that the Governor would favourably review the position.

Governor FitzRoy, who had replaced Hobson by then, disagreed with the position concerning absentees and declined to accept the recommendations.<sup>18</sup> This gave relief to Maori but caused settlers to threaten a recourse to arms.

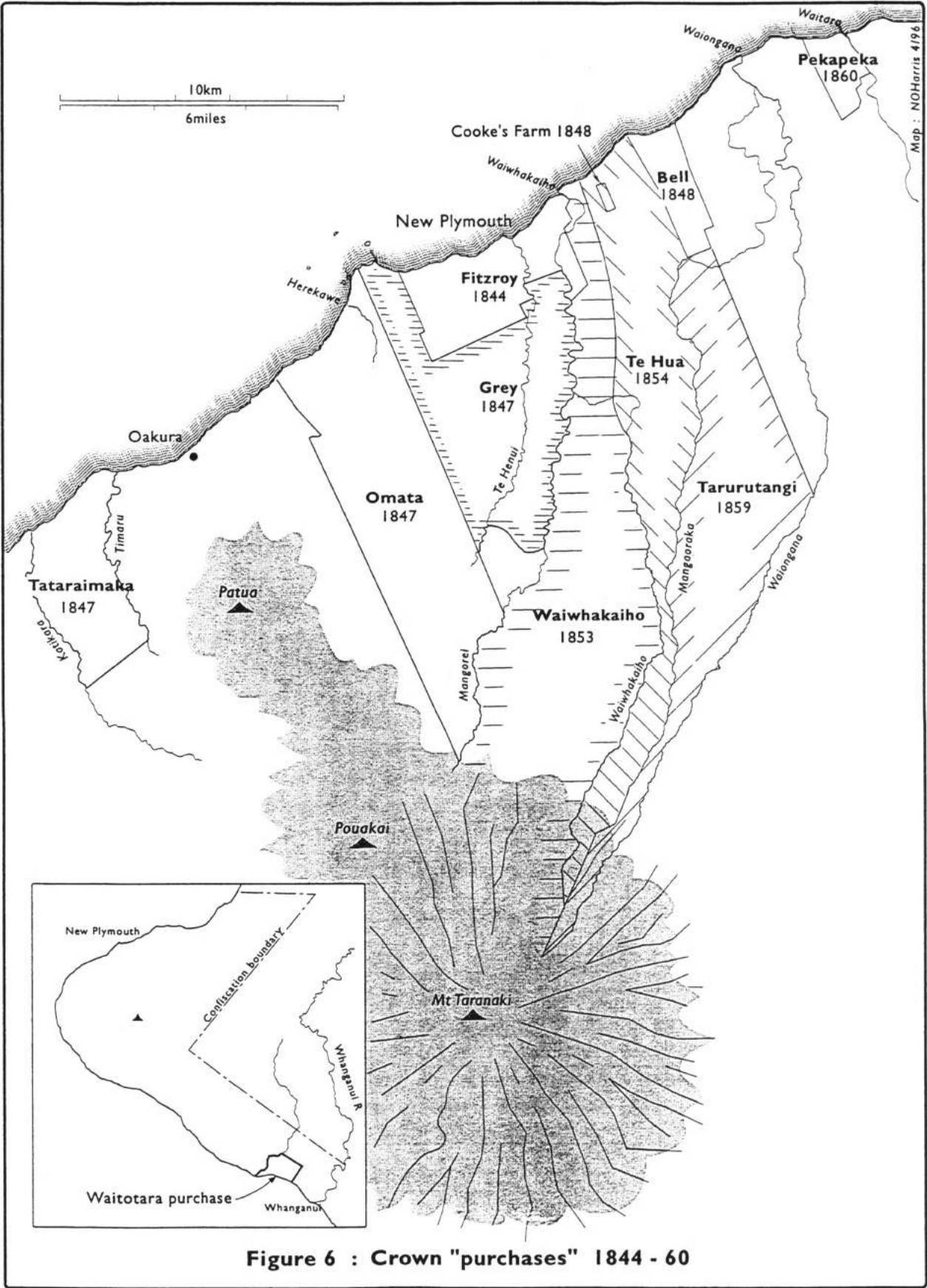
### **2.3.6 Maori seek to limit settler expansion; Government moves to buy**

The eventual outcome was that Maori agreed to transfer the FitzRoy block at New Plymouth on the basis that the settlers would expand no further. None the less, the New Zealand Company continued to introduce more settlers, with promises of land for each, and to maintain pressure on the Governor to buy more land. A new government in England was more sympathetic, and when Governor Grey was appointed in 1845, he had instructions on the matter and resolved to recover for settlers the area the Land Claims Commission had proposed. In 1847, three years after the FitzRoy sale, the Governor convened a meeting at New Plymouth with Te Atiawa leaders of both Wellington and Taranaki. Adopting a 'high tone' with them,

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18. The commissioner's decision of 8 June 1844 is recorded in the report to the Governor of 31 March 1845: see commissioner's report with annexure, BPP, vol 5, p 57 et seq.





he confidently expected they would succumb to his demands. Instead, the leadership opposed further sales and affirmed the earlier position that the settlers should not advance further along the coast than the FitzRoy block boundaries. The main opposition was from the leading rangatira, Wiremu Kingi. At that time, he was living with his people near Wellington, but at the meeting, he announced his intention to return to his home at Waitara.

The Governor's response was to reject the opinion of the leadership and to talk to those at a lesser level, from whom he then purported to acquire five blocks, amounting in all to over 27,000 acres, during 1847 and 1848.

### **2.3.7 Wiremu Kingi returns; continuing purchases despite warfare**

This spate of land buying was interrupted when Wiremu Kingi returned to Waitara in 1848. Though advances were made, no sales were finalised thereafter for five years. Then, despite intense opposition, the Government purported to have acquired a further two blocks by deeds of 1853 and 1854 for 30,500 acres. During this time and later, there was open warfare between selling and anti-selling factions, but nevertheless, after a further five years the Government purported to have acquired a further 14,000 acres by a deed of 1859.

At this point, the Government assumed it had recovered most of the land between New Plymouth and Waitara, save Waitara itself. More particularly, as a result of its aggressive purchasing policy, the Government claimed to have acquired 75,378 acres in nine purchases over 15 years, all despite a continual opposition so large that it erupted into fighting between sellers and non-sellers. The so-called purchases are summarised in the table over and are depicted in figure 6. The principal groupings of Te Atiawa hapu are shown in figure 7.

The purchases extended either side of New Plymouth and were all lands that had been included in the New Zealand Company's deeds for either northern or central Taranaki.

## **2.4 ANALYSIS**

Aspects of the foregoing discussion are now examined in more detail.

### **2.4.1 Initial conflict and issues of authority**

The following records our opinions on Maori constraint and on the issues of authority that were not addressed.

Tension was evident in Taranaki from the arrival of the first settlers in 1841, when Maori disrupted surveys and relocated settlers closer to New Plymouth. The remarkable feature, however, was the Maori restraint. Though Maori were angered by settler occupations beyond New Plymouth, and though they were the majority and were well supplied with arms from Cook Strait, they did not resort to violence. Settlers were forced from their makeshift homes and their improvements were sometimes destroyed, but there were no assaults or injuries to persons. Nor was there

*The Taranaki Report: Kaupapa Tuatahi*

Block name and tribal district	Number of Maori signatories and reserves	Turton deed number	Date	Size (acres)	Price
FitzRoy (Te Atiawa)	83 signatories 19 reserves (326 acres)	2	28 November 1844	3500	£50 and goods
Tataraimaka (Taranaki hapu)	20 signatories no reserves	6	11 May 1847	4000	£150
Omata (Taranaki hapu)	66 signatories 2 reserves (381 acres)	7	30 August 1847	12,000	£400
Grey (Te Atiawa)	28 signatories 4 reserves (1187 acres)	8	11 October 1847	9770	£380
Cooke's Farm (Te Atiawa)	11 signatories 1 reserve (5 acres)	9	25 November 1848	100	cattle
Bell (Te Atiawa)	76 signatories 1 reserve (165 acres)	10	29 November 1848	1500	£200
Waiwhakaiho (Te Atiawa)	315 signatories 17 reserves (2663 acres)	—	24 August 1853	16,500	£1200
Hua (Te Atiawa)	129 signatories 4 reserves (250 acres)	15	3 March 1854	14,000	£3000
Tarurutangi (Te Atiawa)	162 signatories 1 reserve (10 acres)	—	25 February 1859	14,000	Not stated; later given as £1400
<p>Note: Some areas given have been adjusted to accord with later surveys. The prices are those in the deeds. Some additional payments were made to persons left out of the original purchases.</p>					

Summary of the Government's nine 'purchases' between 1844 and 1859

any interference with those living at New Plymouth, where the local people might have been seen to have agreed to a settlement. The impression is that Maori were not opposed to settlement as such and would not interfere with such arrangements as the Nga Motu people might have made, but it was another matter for settlers to spread beyond the area where the Nga Motu people had authority without prior agreement with the affected hapu.

It is also apparent that Maori expected benefits from a European settlement nearby and, unless pressed, would not drive the settlers away. Accordingly, opposition was constrained and protest was passive, as with the sit-in of some 100 persons to force an end to surveys. This passive protest was to be a feature of Taranaki Maori responses. It enabled them to demonstrate both their grievance and their desire for peace.

That, then, describes the immediate cause of the trouble in North Taranaki: settlers were coming into the district before their rights to land had been properly agreed. Indeed, the company was selling land in England before a title in New Zealand had been obtained.

The Government, however, would not address the more fundamental issue: the need for dialogue with the Maori leadership. Though traders and missionaries had recognised Maori authority for 20 years, the colonists were not willing to do the same.

Instead, the Governor established a Pakeha commission to resolve matters in a Pakeha way. When that failed, the Government settled upon a programme of buying land, when again, from a Maori perspective, the process was Pakeha, the arrangements would be effected on Pakeha terms, and disputes would be resolved by Pakeha persons. In our view, what was most needed were regular meetings with the Maori leadership to agree upon terms for European settlement and a process for giving over land and adjusting disputes. There was no real respect for Maori authority and dialogue, and in our view, that was the main cause of conflict.

#### **2.4.2 Abandonment and absentees**

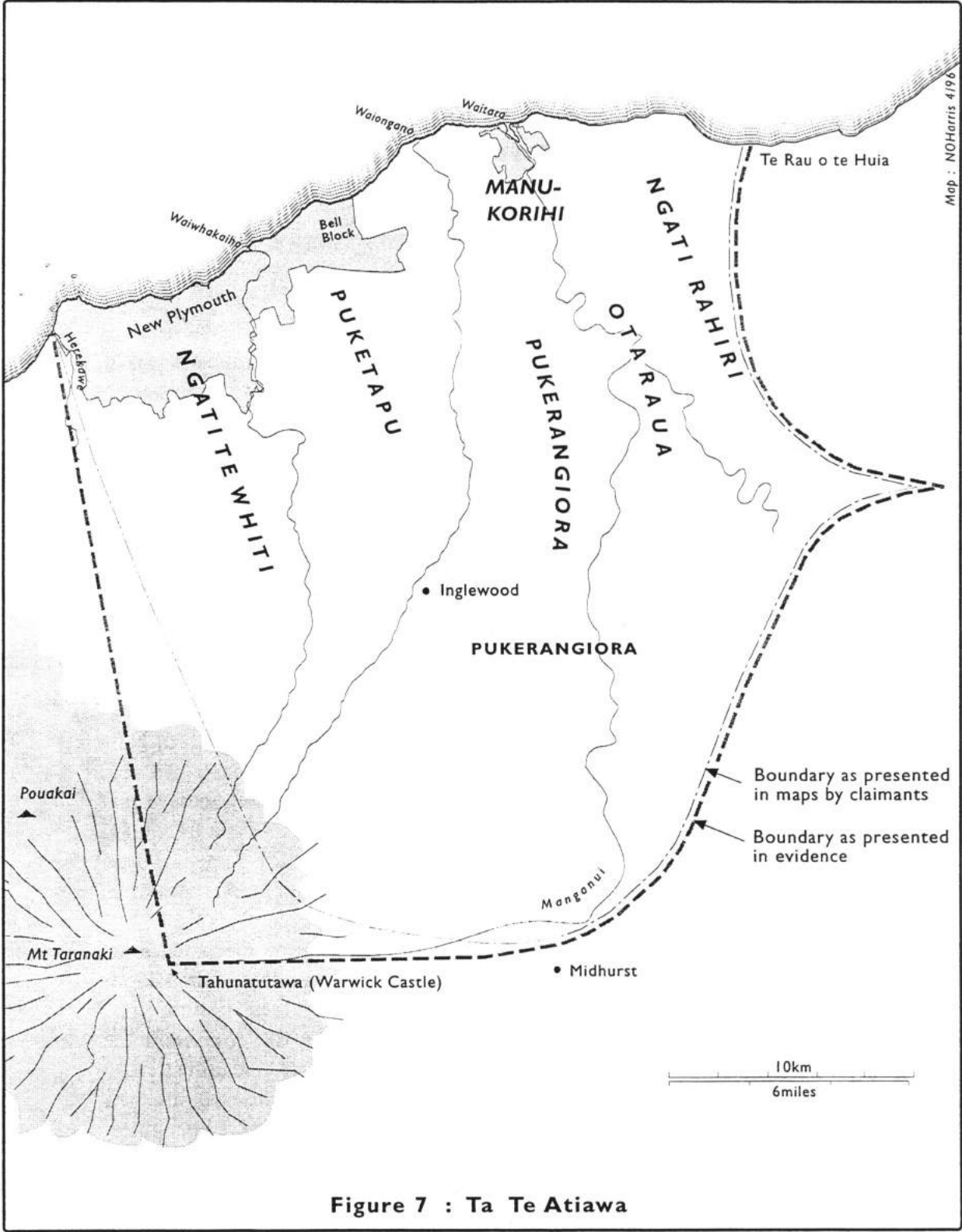
Here, we challenge the Land Claims Commission's view that those who were absent from the land had abandoned all right to it. Elsewhere (see sec 2.4.5), we also challenge the view that this was an issue that the Government, through the commission, could decide.

The settler response was that, apart from those at Nga Motu, Maori had deserted the land or did not really own it, owing to conquest by Waikato. One cannot be sure of the precise position today, but settler depictions of a large area north of New Plymouth as totally deserted were self-serving and probably exaggerated. Subsequent evidence from Donald McLean (later to be Sir Donald) showed that Waitara was in fact inhabited at that time, and if that was so, there is a likelihood that there were other small communities in the area as well.<sup>19</sup> It further appears there was no single exodus to Cook Strait; rather, there were several migrations over time, with some people travelling back and forth.

It is unnecessary, however, to come to a finite conclusion on the facts. Even assuming that, through war, every man, woman, and child left northern Taranaki for Cook Strait in search of guns and left in one exodus, it did not mean that they had deserted the land. Maori tribes were not fixed in one place, as they are seen to be today. It was not unusual for groups to leave a district for another to regain strength and to return later, even after generations, to re-establish themselves in their homeland. As we see it, the land in question had been Te Atiawa land for centuries. It was still their land when they were absent, and it remained their land unless they indicated an intended abandonment or until another took and maintained adverse possession for some length of time (and no one did).

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19. In 1847, McLean affirmed the view, after a visit to Waitara, that at the time the deed was signed there were in fact people there who had received nothing for the land: D McLean, *Diaries and Notebooks, 1846-47*, box 1, 4 November 1847.



The opinion that Maori lost land rights by not keeping their fires on the land, a concept called *ahi ka*, was interpreted wrongly to serve colonial ends. It is only natural that *ahi ka* was evidence of ownership, but the absence of fires did not mean the land was abandoned or no one owned it. In Maori law, every part of the country was spoken for by someone, fires or no fires.

Paradoxically, the view that the absentees had abandoned their land rights was promoted by English migrants, who never presumed for one moment that on emigrating they had abandoned ownership or inheritance rights in England.

For Maori, as much as for Pakeha, absence was not proof of non-ownership and was evidence of no more than absence. For Maori, as much as for Pakeha, the fact that lands that were once held were now vacant did not mean no one owned them; it was merely proof that no one had taken possession adverse to whoever held the valid title. Keeping one's fires on the land was helpful, but not essential. It was only one item of evidence of ownership and was not the prerequisite for it. English law was no different: land may be owned though it is vacant. Land may also be owned by someone other than the person in possession. We consider that Maori law was clear and substantially similar to that of the English: abandonment, if not manifestly expressed, could be presumed only by exceptional circumstances, such as long-term adverse possession without objection.

In this case, however, there were some Maori in the district when the deed was signed, including those at Nga Motu, who appear to have been mainly the Ngati Te Whiti hapu of Te Atiawa. The question is then whether or not they claimed for themselves to the exclusion of their relatives in Cook Strait and, if they did, whether they could in fact have excluded them. Doubtless, they could not have stopped their numerous relatives from returning in this instance, even if they had wished to. Had time so passed to the extent that those in Taranaki had become the more powerful unit, the question would then be whether they would admit their increasingly remote relatives if the latter sought admission. One might presume that in that circumstance the answer would be 'no', but in the tribal dynamics of last century, it was more usual to admit others than to exclude them, in order that the hapu would be stronger.

Accordingly, although Maori were still returning to northern Taranaki when the first settlers arrived in 1841, and indeed most were still in Cook Strait at that time, this is not a case where Maori and Pakeha were in competition for the same vacant land. It is clear that Te Atiawa owned the land and the settlers did not. The land had not been taken from Te Atiawa by conquest, nor had it been sold. Even assuming the small group at Nga Motu understood the transaction as a sale, which we think was unlikely, their possessory interests did not extend beyond the immediate New Plymouth locality. To the extent that those at Nga Motu included persons of several hapu, they were but a fraction of the total number with an interest in the district. At best, they were as keepers of the land for the people but not the holders of the title.

The absentee issue was important and was to surface time and time again when Taranaki land matters were decided. The official position was never clear; absentees were recognised when it suited but excluded when it did not. We are of the opinion that none of the absentees can be presumed to have abandoned land interests at the relevant time. We are of the view that the interests of the affected hapu, whether or

not most of the hapu were living in Taranaki or elsewhere at the time, had not been extinguished by the pretended purchase of the New Zealand Company.

#### **2.4.3 The coastal strip: hapu interests**

Central to understanding the conflict was the physical fact that the vast lands of Taranaki comprised dense, near impenetrable bush, save for expansive clearings along a coastal strip. Generations of Maori had cleared these lands for their villages and cultivations. An illustration of the Taranaki clearances and bushline, as estimated by an early ethnographer, is given in figure 5.

The settlers' habitual contention that there was ample land for all (because the whole of Taranaki was held by a few) fudged two issues. The first was that the settlers would take no land other than that which Maori had cleared and would not tackle the bush, while Maori would not forgo their ancestral improvements, homes, and sacred sites. The second was that Maori were not simply Maori; they were divided into separate hapu holding different areas. The lands sought by the New Zealand Company would have left some hapu landless.

Obviously, some better arrangement was required. The settlers' contention merely highlighted the need for dialogue so that the areas that might be given over for Europeans could be agreed. A settler expansion inland from the New Plymouth coast might have been acceptable to Maori. While making settlement more difficult, it might still have been feasible. Given the Maori ownership, as protected by the Treaty of Waitangi, however, and given that Maori would relinquish no more of the coast but would give of the plains in the interior, it seems to us the settlers really had no other choice.

#### **2.4.4 The Nga Motu deed**

The Nga Motu deed did not validly convey anything. It postdated two proclamations that simply made it invalid. It also followed that the deed was contrary to the Treaty of Waitangi. The purchase had properly to be made by the Government, which in turn had the responsibility to protect Maori interests. For this purpose, the Governor had required all purchases to be made through the Protector of Aborigines, but this transaction passed without the benefit of his advice. Before the Land Claims Commission, the protector was to oppose the Nga Motu transaction, but he was overruled. Had the Treaty been followed, the protector, not the commission, would have had the say.

In any event, the transaction was lacking in reality. It was impossible for a small group then living at one extremity of the block to have had sufficient right, title, and interest to convey the vast territory concerned. From our own knowledge of customary interests, the assumption that such a group could hold title to the whole is patently absurd.<sup>20</sup> As at 1839, the owners were mainly the absentees.

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20. There are few reliable texts on the nature of Maori customary interests based on sound anthropology, but we consider certain studies relating to Polynesian tenure generally are applicable. An introduction to the complex web of customary land interests is provided by R Crocombe in 'An approach to the Analysis of Land Tenure Systems', in H P Lundsgaarde (ed), *Land Tenure in Oceania*, Honolulu, University Press of

Further, the Maori parties cannot be presumed to have understood the transaction in the terms of the deed. It is likely they did not. It is well known now that not only was the sale of land unknown to Maori but it invoked concepts antithetical to their world view. On the other hand, the incorporation of migrants into local communities was well known, being practised throughout the Pacific. The practice was readily applied to Europeans for the services they could contribute to the group. Maori, like others, sought arrangements to secure Pakeha, but these arrangements were to strengthen the tribe, not to sell the land.

There is good cause to consider that such an arrangement was in the people's minds at the time. The Nga Motu transaction was effected for the company by the trader Richard Barrett. Some years previously, before transferring to Wellington, Barrett had lived with the Ngati Te Whiti people of Nga Motu. He had traded with them, been incorporated into their community, and been provided with land and a wife of distinguished rank. In turn, he had introduced trade goods and had provided defence, using the cannon from his ship successfully to defend the local people during an attack by Waikato tribes. Ngati Te Whiti had cause to trust him and to welcome his return. It is unlikely they saw anything in the transaction other than that Barrett would bring more Pakeha to live with them.

The company's records suggest its officials had some inkling that Maori did not see such deeds as sales in Western terms. After the deed for the Wellington lands was signed, E J Wakefield reported on Maori amazement when numerous of the company's settlers arrived, concluding that 'their minds had evidently not been of sufficient capacity to realise the idea of such numbers'. He recorded Te Wharepouri as stating he had not expected so many white people:

I thought you would have nine or 10 [Pakeha] . . . I thought that I could get one placed at each pa, as a White man to barter with the people and keep us well supplied with arms and clothing; and that I should be able to keep these white men under my hand and regulate their trade myself. But I see that each ship holds 200, and I believe, now, that you have more coming. They are all well armed; and they are strong of heart, for they have begun to build their houses without talking. They will be too strong for us; my heart is dark. Remain here with your people; I will go with mine to Taranaki.<sup>21</sup>

The Maori objective in signing the deed, to secure a Pakeha presence for protection from enemies, was also foreseen. Colonel Wakefield recorded:

The natives here [Cook Strait], some of them ancient possessors of Taranake, are very desirous that I should become the purchaser of that district, in order that they may return to their native place without fear of the Waikato tribes.

He also noted that Maori:

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Hawaii, ASAO Monograph No 2, and R Crocombe, 'Overview and Land Reform: Prospects for Prosperity', in R Crocombe (ed), *Land Tenure in the Pacific*, 3rd ed, University of the South Pacific, 1987.

21. E J Wakefield, *Adventure in New Zealand*, vol 1, pp 202–203 (doc A1(a), p 25)



betrayed a notion that the sale would not affect their interests, . . . [or] prevent them retaining possession of any parts they chose or even of reselling them . . .<sup>22</sup>

In our view, the Nga Motu deed was void. It was also inconsistent with the Treaty. The vendors did not own that which was conveyed and if they had there would probably have been an insufficient meeting of minds to justify a conveyance. The land description was also uncertain: it could be read as transferring the land as far as the Whanganui River.

#### **2.4.5 Land Claims Commission and absentees**

This section concerns the confirmation of the Nga Motu deed by the Land Claims Commission on the ground that the only owners were those remaining at Nga Motu, the rest having lost all interests by departing the district.<sup>23</sup> Earlier, we considered that the absentees were the main owners (see sec 2.4.2). Here, however, we are mainly concerned with the right of the commission to have determined that matter at all.

The land was Te Atiawa land. That fact was ascertainable and was known. Though most Te Atiawa were in the vicinity of Cook Strait, it was not impracticable to assemble the leadership to discuss the land, and in fact Governor Grey was to do that in 1847. It was not, therefore, impracticable to seek an arrangement concerning European settlement. A satisfactory arrangement may have been achievable, considering the goodwill between the Taranaki leadership and the settlers in Wellington. Instead, the Government proceeded to appoint a commission to determine the issue. The primary difficulty with the commission is not the content of its decision, which is questionable in itself, but that a decision was made at all. Had Maori authority been respected, as the Treaty required, the matter would have been discussed between the Te Atiawa leadership and the Government. The company's claim would then have been affirmed, set aside, or adjusted, as had been decided.

The commission process denied Maori the right to decide matters that were entirely within their authority to determine and reduced their status from partners to supplicants. The result was the remarkable spectacle of an English lawyer deciding who of Te Atiawa had land rights according to Te Atiawa custom, with Te Atiawa making submissions, when the matter was most within the competence of Te Atiawa to determine and it was their God-given right to decide. This was the start of a presumption that English lawyers could determine Maori land rights, though they showed no appreciation of the complex tenurial patterns that existed and the intersecting use rights, which were overlaid by hapu political authority and other iwi claims. The consequences have been both a presumption that Pakeha solutions may be had for Maori problems and distortions of Maori law.

In our view, it is not an answer that Governor Hobson may have contemplated a commission of inquiry to adjudicate on disputes when he was speaking at Waitangi.

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22. Colonel William Wakefield, 2 November 1839, *Diary*, 1839–42, typescript (doc A1(a), p 27)

23. 'Minutes of the Proceeding of the Court of Land Claims', in FitzRoy to Stanley, 13 September 1845, BPP, vol 5, p 141

Dialogue was needed first to determine whether any dispute existed at all. The biggest loss caused by this pretentious commission process was the opportunity for Maori and the Government to agree upon a policy for European settlement in north Taranaki.

In any event, this large question about the title of the absentees was dressed-up nonsense. It was a convenient construct for settlers to claim the land as vacant and eliminate any objectors. To support the settlers' case, arguments were contrived that were no more than a manipulation of custom, as we discussed earlier. In reality, the matter was simple. If Te Atiawa had ceased to have interests, that could only have been because they had abandoned the land, and because that depends on intent, the best way to determine whether Te Atiawa had abandoned the land was to ask them. That did not require a commission. It was clear that Te Atiawa did not agree they had abandoned the land and accordingly the Government had no alternative but to talk with them. It is also clear that the commission should have done no more than seek affirmation of the sale and, if it were not generally agreed, refer the matter to the Government to renegotiate.

The commission's approach involved a total distortion of Maori practice and methodology. In any event, Maori interests were predominantly communal, and any individual interests were held by virtue of the predominant interest of the group. It was clear that the various hapu of Te Atiawa owned the land in question. Precisely who owned what within Te Atiawa was Te Atiawa's own business. If Maori authority were to be respected, as the Treaty required, outsiders could hope to treat only with the leadership, for which purpose a collective meeting would be required.

#### **2.4.6 Land Claims Commission: other matters**

The Land Claims Commission did not examine its jurisdiction to consider the New Zealand Company's claim. The transaction was 'absolutely null and void' in terms of the preceding proclamations and this defect does not appear to have been cured by the Land Claims Ordinance 1841. The preamble, section 3, and Schedule B (which provides for purchases only to December 1839) compel the view that transactions made after the 1840 proclamations were not within the commission's authority to review.

Nor did the commission discharge its duty to consider the equity of the transactions and especially whether the purchase price, a bagatelle of goods from looking-glasses to sealing-wax, was adequate. The opinion that the price was irrelevant because the real gains were 'civilisation' and the added value over time of the reserves was not sustainable when 'civilising benefits' were not specified as part of the contract, or were not quantified in terms of medical or teaching services or the like, and when the Government's policy on reserves was unclear.

The commission was entitled to rely upon clause 13 of the agreement between the Government and the New Zealand Company, which promised that reserves would be respected, and to note that the Nga Motu deed provided for 10 percent of the land to be reserved for Maori. No inquiry was made, however, as to whether 10 percent was adequate for Te Atiawa's needs, having regard not only to quantum but to the

reserves' location and condition; nor did the Government have policies in place to protect those reserves in order to guarantee that the 'added value' to Te Atiawa would be achieved over time.

The commission's report does not show how the 60,500 acres were related to colonisation expenditures, as the ordinances required. It appears to have been assumed that approximately 60,000 acres of the company's maximum entitlement of 160,000 acres (as referred to in clause 6 of the agreement between the Government and the New Zealand Company) would be met by land from Taranaki. It is difficult not to gain the impression from the documentation that the commission entered upon its inquiry with the intention of achieving that result.

The commission did not satisfy itself that the sellers understood the deed. It recorded that 'every fair opportunity' had been afforded them to do so, but that is not the same as finding that they did. The evidence before the commission showed Maori either had not heard the deed read and translated or did not regard it as important. Upon reading the deed ourselves, we wonder how anyone of that time, Maori or Pakeha, could have made sense of it. It is difficult to comprehend even in Western terms.

The commission did not satisfy itself that Maori were willing to affirm the transaction before it. On the evidence, not only did they not affirm the transaction but they opposed it, but their evidence was simply discounted as 'prevaricating', 'dishonest', or 'an invention'.

The commission did not adequately consider whether all in the area at the time had been consulted and had agreed. One witness, called by the Sub-Protector of Aborigines, claimed that he and others living at Waitara had not been consulted. He was dismissed, however, both as a 'wilful inventor' and because he was a former 'slave'.

The commission did not consider the improbability that a small section of people living at the southern end of this vast territory could be presumed to have title to the whole of it. The commission (as with others involved in Maori land management) was clearly unaware of the web of use rights, associational interests, and social obligations that characterised customary Maori land tenure.

We can find no evidence that any other claims were notified and were properly before the commission at the time, but we note that in the course of the inquiry the commission in fact disposed of claims made orally by Richard Barrett and the Wesleyan Mission, and it recommended grants to Barrett and the mission from areas designated as Maori reserves.<sup>24</sup> Barrett was also the agent for the company in effecting the north Taranaki deed. According to Barrett's evidence, Maori understood the transaction as a sale. In the commission's findings, he told 'the plain, honest truth', although when a Mr Forsaith expressed a contrary opinion on the Maori understanding, Forsaith was cautioned by the commission to adhere strictly to his role as interpreter. Maori were not tested as to their understanding, because they were 'untruthful'.

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24. In those cases, the recommendations were in fact effected by Crown grants. Barrett received two sections totalling 180 acres and the Wesleyan Mission station received 100 acres.

The commission considered that those taken captive had lost their land rights through conquest, but there was no evidence that any conquest had ensured to alter the incidence of customary rights distribution, save possibly to admit of a Waikato interest.<sup>25</sup>

In view of the settlers' continuing support for the commission's 'award' once it had been 'overturned' by the Governor, the point also needs to be made that it was not an award at all but a recommendation and the decision was the Governor's to make. In our opinion, the Governor's decision was demonstrably correct. Support for his conclusion at the time came from Lord Stanley, the Secretary for War and Colonies.

Most especially, however, it is doubtful the commission had legal authority to recommend a grant of 60,500 acres in any event. We need not determine the matter with any finality because the commission's recommendation was not approved by the Governor; and we should not do so in this case because the issue may need to be finally resolved on other claims like that of Wellington Tenth. Some comment is needed, however, for the reason above that 'Spain's award' was regularly pointed to as deserving and proper and has been so described even to this day. The point is that, at all times when the commission was sitting in Taranaki, the 1842 ordinance, providing for the New Zealand Company's arrangement, was void and of no effect because it had been disallowed in Britain. The 1841 ordinance alone applied, by which the commission was limited to an award based upon the value of the goods paid (which the commission did not bother to assess) or 2560 acres, whichever was the larger. It appears to us at this stage that the commission was simply acting outside its legal authority, and had the Governor accepted the recommendation and issued a Crown grant in terms of *Queen v Clarke* (1849–51) NZPCC 516, 520, the grant would have been voidable.

#### **2.4.7 First purchase: the FitzRoy block arrangement**

The first so-called purchase, in November 1844, was of the FitzRoy block, which centred on New Plymouth. In its terms, it was a deed of cession. In reality, it had more of the character of a treaty. It was effected in a climate of tension brought on by the absence of dialogue and by the continual arrival of settlers, despite the known defect in the company's title. After the first colonists came in 1841, a further five shiploads arrived in the next two years, bringing the settler population to over 1000.

Tension mounted after the commission announced its opinion on the New Zealand Company's claim. It did not have the function of publicly promulgating a decision in that way, in our view, but had properly to announce no more than that it was reporting to the Governor for a decision to be made. In any event, as a result of the commission's premature announcement at the end of its hearing, the Sub-Protector of Aborigines claimed he had found it necessary to head off a Maori party that had

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25. (a) The assumption that former captives lost land rights was probably a factor in the former captives' subsequent assertion of authority by the sale of land, even in the face of opposition by others. Their authority to sell was recognised by officials on those occasions.  
(b) Waikato in fact claimed an interest for which, in a separate arrangement, Te Wherowhero was paid a sum by Governor Hobson.

formed to drive out settlers with assurances that the Governor would favourably review the position.

When the Governor declined the commission's recommendations, on the ground that he was bound to recognise the interests of the absentees, the settlers were equally bellicose, suggesting the use of force as a necessary remedy. That was the situation when McLean was sent to assist in the purchase of a much smaller block around New Plymouth.

Accordingly, the FitzRoy block 'purchase' was not a purchase in the ordinary sense, in our view, but a political settlement based on the reality that there were already settlers on the land, who had to be either accepted or driven out. As we said, although on its face the deed was a land sale, the record of prior discussion discloses something more akin to a treaty, because Maori also imposed two significant conditions. The first was that settlers still outside the FitzRoy block would be brought back into it (and the deed was not executed until certain settlers had shifted) and the second was that the settlers would expand no further.<sup>26</sup>

In our view, it is regrettable that the FitzRoy block arrangement was drawn up as a land sale, when what Maori were seeking, and quite properly so, was an agreed policy for settlement. The importance of treating with Maori on a matter of policy was not foreseen. The Government's concern was to extinguish Maori interests through land buying, but it had properly to secure Maori interests in policy agreements before land transactions could peacefully proceed.

In any event, however, the FitzRoy transaction maintained the peace and there were to be no more sales for another three years. The area was sufficient to satisfy the company's commitments to the settlers, with some surplus.<sup>27</sup> The only problem was that the company continued to bring more settlers in.

Examining the transaction in more detail, we note that:

- (a) Prior to the FitzRoy block purchase, the Government permitted settlers to occupy the block, though the company's right to it had not been proven at the time (and was later rejected). The Government placed no constraint on the company in introducing further settlers, Maori ownership was not settled beforehand, and the sellers may not have been the true owners. Of those likely to have been owners, there was opposition from certain of Ngati Te Whiti, Huatoki, and Puketapu hapu.<sup>28</sup> As Pohorama of Ngati Te Whiti is said to have put it:

The land belongs to me, I will not part with it. Some time ago I was foolish and [would] have sold it, but now that I know the value of it I will not. I don't want to part with my lands to be made a slave of by the Europeans.<sup>29</sup>

Certain absentees had interests but were not present and did not agree, while the 'sellers' appear to have included Te Atiawa representatives without

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26. D McLean, *Diary*, 1844, entries for 6, 9, 27 September 1844 (quoted in doc A1(a), p 62)

27. Wicksteed to Wakefield, 21 December 1844, NZC 3/24, no 58/44, pp 474–475 and note app 4 for on-sales

28. Document A1(a), p 61 et seq

29. Journal entry in D McLean, *Letterbook*, Protector of Aborigines (1844)

a land interest but with an interest in limiting further settler expansion.<sup>30</sup> They appear to have seen themselves as executing something other than a sale.

(b) As to the terms of the deed:

- (i) the acreage was not specified;
- (ii) the agreement contemplated the subsequent execution of 'a proper deed of cession' (none was executed);
- (iii) the consideration appears to have been below fair value<sup>31</sup> (Maori in fact sought a larger sale price<sup>32</sup>);
- (iv) the reserves were not all that were asked for (but were those that the Government allowed as reasonable);<sup>33</sup> and
- (v) the reserves provided (326 acres in all) appear to have been inadequate.<sup>34</sup>

#### **2.4.8 Waiver of pre-emption**

Concurrent with the rejection of the Land Claims Commission's report and the acquisition of the FitzRoy block, the Governor sought to ease the settlers' situation by waiving the Crown's right to pre-empt the purchase of north Taranaki land in favour of the New Zealand Company. This was not an abandonment of the Crown's responsibility; Crown officers still assumed the responsibility for buying and company agents were appointed as salaried Crown officers to assist.

Although a purchase was still required, the policy none the less prejudiced Maori because it reinforced settler beliefs that the company had a right to the whole area, that its acquisition could be only a matter of time, and that the problem was only that further 'compensation' was payable to some persons. Similarly, Maori may then have felt that resistance to the loss of their land would be more difficult, if not useless.

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30. Later, the interests of the absentees were admitted by the Government when some were paid compensation.

31. Based on the given value of the goods exchanged, the total consideration was £350. Excluding the Maori reserves from the block, the price equated to two shillings per acre. On-sales by the company were generally £2 per acre for suburban and rural land and £50 per acre for township land, 550 acres of the block being designated township land: see doc A1(a), pp 212–215.

The Land Claims Ordinance 1841 provided for purchasers to receive an acre for every four to eight shillings paid to Maori for purchases immediately before 1840; that is, before sovereignty was proclaimed and Crown grants could be given. A varying rate applied according to the class of land. The FitzRoy block was of the highest category.

32. See doc A1(a), p 168

33. D McLean, *Diary*, 1844, entry for 4 December 1844

34. Although the reservation of one-tenth of the land sold was a standard norm for New Zealand Company transactions, and although one-tenth was provided for in both the north Taranaki transaction and the commission's recommendations, slightly less than one-tenth was reserved in the FitzRoy block. The company's one-tenth policy envisaged the reservation of surveyed township and suburban–rural allotments for Maori so that they might participate in development. In this case, a number of the reserves were hill-top pa sites and sacred sites. Governor FitzRoy had considered that to protect Maori interests it was necessary to set aside 'at least a tenth of all lands sold, besides extensive reserves in addition': see doc A1(a), p 76.

There is some evidence that 20 extended families were immediately affected: see doc A1(a), p 217. Although Maori extended families are much larger than European nuclear families, assuming them to have been the same and based upon the average allotments taken up by European families, a reserve of 1000 acres at bare minimum would have been needed to provide any parity of treatment.

#### **2.4.9 Developing conflict; arrival of Grey**

Prospects for conflict increased with Grey's appointment as Governor in 1845, replacing FitzRoy. Grey could broach no authority but his own and he sought to subjugate Maori to his will by whatever strategy was necessary, from patronage to force, because in his view Maori 'regard the Europeans, as in every respect, in their power'.<sup>35</sup>

The pressure continued for more land. The New Zealand Company required a large land base and a regular influx of settlers to maintain profitability, and settlers continued to arrive with the expectation of land. In England and New Zealand, the company and the settlers continued to petition for the recovery of the company's 'purchase' of 60,500 acres, and there was sympathy for the company following a change in the British Government in the mid-1840s.<sup>36</sup>

For his part, the Governor would not dampen settler expectations or stem the flow of immigrants, despite Maori opposition to sales. On the contrary, the Governor was instructed to recover 'Spain's award' and to 'deal firmly' with Maori, which he proceeded to do. He took charge of Taranaki purchase operations, and finding the Protectorate Department inconvenient for rapid land acquisition, he abolished it in 1846. Thereafter there was no independent body to assess the Crown's performance of its protective responsibilities. McLean ceased to be Sub-Protector of Aborigines and was made Inspector of Police, with additional instructions to recover 'Spain's award', if possible. McLean, with a force of 10 constables and one sergeant, was now enjoined under the Armed Constabulary system not to protect Maori but to control them.

Similarly, new practices and policies characterised purchase operations, which were effected by private treaty, not public meetings as previously, and there is less record of Maori discussion. The practice of reserving tenths also ceased. Since, in previous discussions it had been assumed that reserves would be given, Maori may have expected them even if they were not written into the deeds. The allocation of reserves, however, was left to the discretion of individual Crown purchase agents.<sup>37</sup> In addition, although practice varied and a regular policy is not easy to determine, from here on the presumption was clear that the company's purchase had been valid and, accordingly, Maori objections to a further 'sale' could be overridden if need be.<sup>38</sup> On the basis of the previous 'sale', the Governor directed that Maori should be paid, on average, less than 1s 6d per acre. Finally, the vendors came to be described in the deed as selling not only for themselves but for their absent relatives, thus covering everybody, whether they knew it or not.

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35. Governor Grey to Earl Grey, 2 March 1847, BPP, vol 6, p 3

36. W E Gladstone, the new Secretary of State for the Colonies, condemned FitzRoy's refusal to follow Spain's recommendations: see doc A1(a), p 67.

37. As some evidence of the developing mind-set, McLean complained of the sellers' 'extravagant and urgent demands for extensive reserves' and argued that they should be talked out of them: McLean to Colonial Secretary, 18 June 1847, Sir D McLean, *Private Letters and Native Correspondence, 1846-47*, (102) Turnbull Library (doc A1(a), p 77).

38. Grey, 'Memorandum of Course to be Pursued in Reference to the Contemplated Occupation of Lands at New Plymouth', 5 March 1847, enclosure in Bell to Wakefield, 8 March 1848, NZC 105/7; also in Grey to Grey, 5 April 1847, BPP, vol 6, pp 13-14 (doc A1(a), p 72)

In 1847, Governor Grey went to Taranaki, accompanied from Wellington by the influential Te Atiawa chiefs Te Puni, Wi Tako, and Wiremu Kingi, who had all sold land there. Grey hoped they would influence local Te Atiawa to do the same but his plan misfired. Adopting what he called a 'high tone',<sup>39</sup> Grey managed to alienate them all. Poharama of Ngati Te Whiti, who had led resistance to the FitzRoy block sale, threatened not to sell any more land and was duly castigated by Grey. Those at Wellington responded by adopting the same position. Wi Tako and Te Puni claimed payment for the FitzRoy block (and eventually received it<sup>40</sup>), and Kingi supported the earlier tribal decision and 'would not, upon any terms, permit the Europeans to move beyond the [FitzRoy] block of 3,500 acres'. Kingi then announced his intention to resettle his people on their customary lands at Waitara, adding that no sale could be concluded there without his sanction and presence because many were absent and all, 'however low in rank', had an interest in the land.<sup>41</sup> Kingi also rejected the Governor's proposal that he be settled in a model village on the north bank of the river. The Wesleyan missionary, H H Turton, wrote after a conversation with Grey:

[Kingi] told the Governor at once, that he did not need his assistance, that he could erect his Pa himself, and moreover he would built it *where* he pleased and *when* he pleased, without asking permission from anyone . . . Governor Grey was much annoyed at this impudent speech of Kingi's, and replied immediately, 'Tell him, that I say he is to remain at Waikanae, and that I will place him under guard; and that if he dares to remove to Waitara without my permission, I will send the steamer after him, and destroy all his canoes . . .' [Emphasis in original.]<sup>42</sup>

Because the leadership would not part with land beyond the FitzRoy block, the Governor left it to McLean to buy from whomever he could. He wrote:

the most ample reserves for their present and future wants should be marked off for the resident natives, as well as for those who were likely to return to Taranaki; but that the remaining portion of . . . that district, should be resumed by the Crown, and for the use of Europeans.<sup>43</sup>

He gave further instructions that, when reserves had been made for 'the several tribes . . . amply sufficient for their present and future wants', the rest should be 'resumed' for the European population, when a decision would be made on 'what price shall be paid to the Natives for it' – a price, Grey added, that should average less than 1s 6d per acre.

Though the logical basis for this line of thought is elusive at best, the Governor clearly intended that the area the company claimed was to be deemed to have been

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39. Governor Grey to Earl Grey, 2 March 1847, BPP, vol 6, p 3

40. A Parsonson, 'He Whenua te Utu: The Payment will be Land', PhD thesis, 1978, p 247

41. Sir D McLean, *Private Letters and Native Correspondence, 1846-47*, (58) Taranaki land claims (doc A1(a), p 69)

42. H H Turton to the editor, *Taranaki Herald*, 5 September 1855

43. Governor Grey to Earl Grey, 2 March 1847, BPP, vol 6, p 4 (doc A1(a), p 71)



validly acquired, subject only to making reserves and paying compensation. Accordingly, he instructed McLean:

Those natives who refuse to assent to this arrangement, must distinctly understand that the Government do not admit that they are the true owners of the land they have recently thought proper to occupy.<sup>44</sup>

In future dealings with Te Atiawa, the Governor called upon them not so much to sell as to abandon their 'pretensions'.<sup>45</sup>

#### **2.4.10 Second 'purchases', 1847–48**

Contrary to the Maori condition on the FitzRoy sale in 1844 (as affirmed by the leaders at the 1847 meeting) that 'FitzRoy's arrangements [were] to remain and no more land [was] to be sold',<sup>46</sup> the Government treated behind the leadership to buy from individuals.

The first two acquisitions, the Tataraimaka and Omata blocks, may not have constituted a breach of the FitzRoy arrangement because they were south-west of New Plymouth and belonged to a separate group of hapu called Taranaki. These lands had been included in the New Zealand Company's abandoned transaction for Taranaki central. The third transaction, the Grey block purchase, being on the other boundary, contradicted the FitzRoy agreement but it at least expanded into the interior. The remaining two, however, Cooke's Farm and the Bell block, took in further portions of the disputed coast.

The Tataraimaka block of 4000 acres to the immediate south-west of New Plymouth was acquired from 20 persons of the hapu called Taranaki for £150, according to the deed, but it appears £210 was paid. There is no minute or report of any discussion. It is also noted that:

- (a) There is no record of any inquiry as to the need for reserves and no reserves were provided.
- (b) The purchase price of just over one shilling per acre was less than reasonable. This was productive coastal land. Although the Governor had set a maximum of 1s 6d per acre for land in north Taranaki, on the basis of his misinformed view that the land had already been acquired, this block lay outside the north Taranaki 'purchase' and accordingly, even in the Governor's terms, there was no basis for the reduction.
- (c) There is no record of an inquiry as to whether the 20 vendors were the true and only owners and, if they were only some of the owners, whether the proceeds were properly distributed to all others entitled.

The Omata block of 12,000 acres, situated immediately west of the Grey block, was acquired three months later from 66 persons of the Taranaki hapu for £400. In

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44. Governor Grey, 'Memorandum of Course to be Pursued in Reference to the Contemplated Occupation of Lands at New Plymouth', 5 March 1847, enclosure in Bell to Wakefield, 8 March 1848, NZC 105/7; also in Governor Grey to Earl Grey, 5 April 1847, BPP, vol 6, pp 13–14 (doc A1(a), p 72)

45. See various quotations in doc A1(a), pp 89, 91

46. Ibid, p 70

this case, McLean diarised that the sale had been given 'the utmost publicity' and followed a public meeting when over 30 speakers in succession had stood to agree.<sup>47</sup> However:

- (a) There is no record of an inquiry as to reserves. No reserves were provided for in the deed, but two reserves totalling 381 acres were given later.<sup>48</sup>
- (b) Although the land was outside the north Taranaki 'purchase', the purchase price was eightpence per acre.

Two months later, Mangorei, later called the Grey block, comprising 9778 acres to the immediate south of the FitzRoy block, was sold for £380 by 28 Maori, apparently of Ngati Te Whiti. It was the first inroad into Te Atiawa territory since the FitzRoy sale but was inland.

We note that:

- (a) The ownership, including the rights of absentees, was not settled beforehand. Although McLean asserted that he had widely sought objectors, it appears to us there were indeed objectors and their objections had been made known at the meeting with the Governor in February. There were also disputes when the block came to be surveyed.
- (b) After allowing for reserves, the purchase price was just over ninepence per acre.
- (c) The purchase price was paid in instalments, but not all the instalments were paid to the 28 vendors. When absentees in Wellington made claims, part of the purchase price was paid to them, pursuant to a second deed, signed at Wellington in April 1848.<sup>49</sup>
- (d) The 28 vendors received four reserves totalling 1187 acres (originally given as 910 acres in the deed). This was more generous than previously but carried an ominous incentive to sell. Because pre-sale titles were uncertain, and because reserves were only for sellers, selling was the only way to secure a clear and guaranteed title for part of the land, and non-sellers would receive nothing. There is evidence that larger reserves were sought but were rejected as 'extravagant'.

Two more purchases, effected shortly after Kingi's return, were pursuant to preceding negotiations. The first resulted from the allocation of a farm to John Cooke, who was living with a sister of the pre-eminent Wi Tako, then resident in Wellington. Others disputed Cooke's presence, but eventually the New Zealand Company's agent, F D Bell, acting as a Crown agent, was able to complete a deed with 11 persons.

Some aspects may be briefly noted. There is no evidence that the customary title was settled and agreed to by all and some evidence that it was subject to a complex dispute. The deed gave no acreage, but the area was later surveyed at 100 acres. No reserves were specified, but a five-acre reserve was later provided. Finally, the sale

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47. D McLean, *Diaries and Notebooks*, box 1, entry for 19 April 1847 (*Diary*, December 1846–47)

48. Document D19, p 9

49. McLean estimated the numbers affected living in Cook Strait at that time at 555: McLean to Lieutenant-Governor, 12 April 1848, Sir D McLean, *Official Letter Books*, Police and Native Land Purchase Department.

was for cattle, not cash, cattle being a scarce and valued commodity at this time and often preferred to money.

The second transaction for Mangati, known later as the Bell block, followed lengthy and unsatisfactory negotiations between Bell and members of the Puketapu hapu of Te Atiawa. It appears payments were made to different factions when it was not clear they had agreed to sell. We note that:

- (a) Although 76 persons eventually signed a deed, the hapu was in fact divided over the sale. There was considerable opposition, but equally, Bell publicly declared his 'determination to get it'.<sup>50</sup> Owing to the extent of opposition, however, it was necessary to defer the settler occupations.

The apparent technique had been to effect an agreement with those who would sell, then pay 'compensation' to others over time but without admitting that they ever had title in the first instance.

- (b) The sellers in fact sought a larger sum than the £200 stated in the deed (2s 8d per acre), but they gave in when stock was offered instead. Part of the purchase price was retained on account of the ownership dispute, however, and was not paid until four years later, in 1852. By then, the disputants had to accept the amount offered or they would receive nothing. They were 'full of scorn' for the size of the payments but were anxious to develop their own farms, and they made it clear that they sought 'cattle, horses, carts, threshing machines, indeed every conceivable article of farming implements'.<sup>51</sup>
- (c) The deed provided for a reserve of unspecified size for the sellers, which was later surveyed at 165 acres.

The acquisitions of 1847 and 1848 did much to relieve the settlers' demands for land, but few were willing to occupy the bush-covered parts when there was a prospect of obtaining the open country at Waitara, which was the ancestral land of Wiremu Kingi and others.

#### **2.4.11 Kingi returns**

While the above purchases were being made, and following his undertaking to the Governor at the meeting in 1847, Wiremu Kingi prepared for the migration of his people back to Waitara. Many groups had returned at various times, or were to do so later, but the heke of Wiremu Kingi in 1848 is the best known, owing partly to the Governor's opposition and the consequential close recording of Kingi's movements and partly to Kingi's own renown and large following. Because Kingi's return was significant for later events, some observations are appropriate.

Kingi had a record of supporting settlers. He had previously assisted the Governor's campaigns following fighting in Wairau and the Hutt Valley. He enjoyed the close confidence of the Otaki missionary Octavius Hadfield, and demonstrated a Christian disposition. He was, none the less, a fighting chief and would tolerate no diminution of his own authority. First seen by Pakeha as 'loyal' and 'friendly', he

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50. See doc A1(a), p 80

51. P Te Huia to Cooper, 24 June 1852, McLean papers, MS papers 32, folder 676C (doc A1(a), p 83)

came to be branded as 'coarse-minded' and a 'rebel'. The same fate would await many others.

Kingi's return was not entirely a reaction to the Governor because it had long been contemplated. He claimed he would have returned earlier but was busy protecting Wellington settlers from the attacks of other tribes.<sup>52</sup> He had written of his intention to return with his father as early as 1845.<sup>53</sup>

Though it was his lawful right to return, for the company's claim had been rejected, the Governor attempted to prevent him. On 5 March 1847, Grey and McLean proposed to stop the party en route and seize the waka.<sup>54</sup> In April, the Governor threatened to confiscate or dismantle nine waka that Kingi had assembled.<sup>55</sup> In March 1848, on the eve of Kingi's departure, Grey sent McLean and a party of Taranaki Maori to encourage Kingi to give up all claims to land south of the Waitara River. When Ihaia Te Kirikumara spoke of his intention to sell those lands, Kingi made it clear he would not give them up. According to McLean, he responded:

My fathers and friends why treat me in this manner . . . now that I am in the canoe to leave here, you sell the land to which I was returning from under my feet: My land! my land! . . . I will not give up my land till I am first dragged by the hair and put in gaol!<sup>56</sup>

The migration of 587 men, women, and children from Waikanae to Waitara took seven months between March and November 1848. Some travelled by waka, others drove stock before them along the coast. On their arrival, Kingi occupied the south bank of the Waitara River (where the town of Waitara stands today), returning to the cultivations and three-pa complex of his forebears. Once there, some may have dispersed, because members of several hapu were included in his following. Kingi established his people in agricultural pursuits and supplied a settler market; his followers also obtained money from labouring on settler farms and they developed substantial cultivations and pastoral units of their own. G S Cooper commented on the large and annually increasing cultivations of this section of Te Atiawa ('the richest of all the neighbouring tribes') and their substantial crops of wheat, oats, maize, and potatoes. He estimated that during 1853 they sold over £2800 worth of produce to the two largest local exporting firms, and it was estimated that this figure would rise to nearly £5000 in 1854. It was considered that 'Ngatiawa' (who numbered about 1000) owned 150 horses, 250 to 300 head of cattle, 40 carts, 35 ploughsbars, 20 pairs of harrows, and three winnowing machines. They had not built any flour mills because 'it pays them better to sell their wheat in the English

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52. Kingi to McLean, 9 December 1846, enclosure in McLean to Colonial Secretary, 1 February 1847, MA/MLP/NPI, no 47/4

53. Kingi to Kemp, 2 September 1845 (see doc A1(a), p 85)

54. Sir D McLean, *Private Letters and Native Correspondence, 1846-47*, (58), Taranaki land claims

55. Governor Grey to Cleverdy, 27 April 1847 (doc A1(a), p 86)

56. McLean to Eyre, 8 April 1848, McLean's translation; McLean to the Lieutenant-Governor, 8 April 1848, MA/MLP/NPI, no 48/1

market'.<sup>57</sup> The developing Maori expertise alarmed settlers, the *Taranaki Herald* reporting that Te Atiawa 'are everyday getting more sensible of the value of available land, and will consequently be more difficult to bargain with'.<sup>58</sup> There is, however, no reason to consider that Kingi's desire was other than to maintain and develop good relations and to trade with the settlers.

#### **2.4.12 Third 'purchases', 1853–54, and warfare**

In 1848, following Kingi's return, the Maori and Pakeha populations from New Plymouth to Waitara are thought to have been about the same, approximately 1100 each.<sup>59</sup> The Pakeha population was expanding, however, as settlers continued to arrive, and by 1858 it was 2652. Thus, settler pressure to 'recover their land' continued unabated. Maori intransigence remained as before. Their opposition was ostentatiously announced in 1849 by the erection of a carved pole 40 feet tall on the north bank of the Waiwhakaiho River, which was to mark the outer limit of settler expansion along the coast. This traditional form of pouwhenua to delineate an aukati, or a line that was war to cross, could have such serious consequences that one was to be erected only after an extensive tribal agreement. We think it was a better indication of the tribal position than the disparate signatures on a deed.

Of further indicative significance were Maori reactions to the Governor. The Governor's meeting with Maori in 1850 'nearly terminated in a disturbance' and he was physically prevented from visiting Pukerangiora in the Waitara area when he and his entourage were turned back.

None the less, and although no sales were finalised for five years after Kingi's return, down payments to individuals were continually made to sow the seeds for sales. In 1853 and 1854, deeds were completed purporting to convey the Waiwhakaiho and Hua blocks respectively. The general opposition to sales was such, however, that the mandate of those purporting to sell and the integrity of the sale process as a whole can hardly be sustained.

Significant tactics were involved. No hapu accord being practicable, persons were dealt with privately and secretly, and payments were made to secure cooperation. Unpublicised payments were much resented, but the rumour of them provoked others to sell in return. There were also those willing to sell others' land in order to keep their own, and the Maori response was sometimes to insist that the whole should then be sold. Thus, Poharama wrote to the Governor:

We do not consider it fair that the natives of 'Te Hua' should have the selling of our land, while at the same time they are carefully reserving their own portions; therefore we are determined that Te Hua should be included within the sale of the land, over which, in reality, they have no voice.<sup>60</sup>

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57. G S Cooper, draft report to Colonial Secretary, 29 April 1854, McLean papers, MS papers 32, folder 126 (65)

58. *Taranaki Herald*, 8 December 1852

59. See doc A1(a), p 94, and 'Statistics of New Zealand, 1848', McLean papers, MS papers 32, folder 127

60. Poharama Hautere Te Whiti to the Governor, 18 December 1852, Maori letters, Grey collection, Auckland Public Library (doc A1(a), p 110)

McLean had left Taranaki in September 1852 and land purchase operations had passed to G Cooper. By then, Crown agents had more money to buy land, and through the provincial councils established in 1853, the settlers could exert more pressure on them. Cooper, in particular, pressed influential hapu members to accept down payments in the expectation of a chain reaction. It appears a variety of motives for selling then became apparent. Some, it seems, sought to increase their standing with Europeans, some sought to prove their right or authority, while a few sought to sell the land of others as *utu* for some previous slight or wrong. Strangest of all to Western ears were sales to 'whakahe' one's own people (to put all the hapu at risk on account of some injury or slight to the seller). Whatever the motive, offers to sell land were accepted and sealed with a payment so that the remainder of the hapu were forced into the transaction irrespective of their opinion. The process was to intensify internal Maori fighting and cause bloodshed.

In August 1853, Cooper claimed to have finalised the Waiwhakaiho purchase. The record is unsatisfactory on several counts. The deed did not give the area of the land sold or locate the reserves promised within it; yet this was the largest of all the pre-war purchases, being assessed later at 16,500 acres. The deed itself escaped official recording and it could be that it was not originally seen as a complete transaction. Only a copy of the deed, found among McLean's papers, now survives. The reserves were purportedly delineated on an associated map, but the map cannot be located and there is no record of who sold. The copy deed does not recite the vendors' names but advises only that the deed was signed by 115 people.

The purchase price is unclear. It appears Cooper had hoped to pay by instalments but was eventually forced to pay £1200 as a lump sum.<sup>61</sup> This was the figure stated in the deed, but there also appear to have been prior advances that were not included in that sum. As for advance payments made to separate groups, McLean hoped they would arouse 'petty jealousies', which would work 'most opportunely'.<sup>62</sup> After allowing for the reserves as later surveyed, the sale price, based on that stated in the deed, was just over 1s 5d an acre. By that time, the Governor had lowered the on-sale price to settlers to 10 shillings per acre. The reserves, when actually surveyed, were more generous than usual, being 2663 acres, or 16 percent of the sale area. This may have been because of the number of protests.

Some claimed to have been left out of the transaction and McLean, living in Wellington at the time, was obliged to make another payment of £400 to the absentees living there. Others remained staunch opponents to the sale, among them Te Whare, the son of the renowned Te Puni of Wellington. Te Whare led a return expedition in 1853 to occupy the coastal part of the Waiwhakaiho block. He and his followers, who were said to have signed an accompanying paper but to have then refused to accept a share of the payment, built a pa on the land and proceeded to spread their cultivations over 500 acres. Cooper described them as being as 'obstinate as mules', and he later reported that they were 'successfully withholding'

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61. A Parsonson, 'He Whenua te Utu: The Payment will be Land', p 272

62. See doc A1(a), pp 108-111

settlement of about 1200 acres.<sup>63</sup> Te Whare and his group prevented settler occupation of the most valuable parts of the land until after the war in 1860. Finally, inter-tribal fighting broke out. Rawiri Waiaua probably put his finger on the problem when he wrote of the importance of gaining the consent of all.<sup>64</sup>

Contemporaneously, Cooper and McLean were involved in a variety of purchase proposals and making preliminary payments to extend Crown purchases to Waitara. Delays were, however, causing much settler frustration.<sup>65</sup> Soon afterwards, in 1854, the 14,000-acre Hua block deed was executed. Although it was signed by 129 Maori, McLean wrote of the difficulties in buying the land owing to the 'decided minority of Natives in favour of a sale'.<sup>66</sup> It appears those opposed to a sale were left out, including the Ngati Tu hapu, which claimed interests there.

In this case, another strategy was developed: a proposal for re-purchase. Maori were paid £2000 of the £3000 purchase price, the balance being held to buy back surveyed sections at 10 shillings per acre. The Maori gain was the receipt of secure titles previously in dispute, but the Government gained the bigger advantage, because non-sellers had to join in or miss out on the section allocations. It also meant partitioning Maori into individually held allotments, reordering them according to the settlers' social structure. McLean had high hopes for this policy of re-purchasing. He thought it would:

lead without much difficulty to the purchase of the whole of the Native Lands in this Province, and to the adoption by the natives of exchanging their extensive tracts of country at present lying waste and unproductive for a moderate consideration, which will be chiefly expended by them in repurchasing land from the Crown.<sup>67</sup>

Instead, however, hostilities broke out over who might receive sections. In the end, Maori obtained 1800 acres in over 1000 allotments.<sup>68</sup> It was small change for the 14,000 acres given over for £2000.

The sale of 14,000 acres, less the reserves (surveyed later at 250 acres), worked out at a price of just over 2s 10d per acre, more than previously but much lower than the 10 shilling per acre buy-back rate for the same land, which had been improved only by being surveyed. In addition, if the arrangement gave surer title for uncertain ones, they were not necessarily just titles that would end all dispute. They did not resolve whether the right people had sold or who was properly entitled to sections. This uncertainty of ownership arose not from the Maori dispute but from the Government's practice of treating with sellers without allowing for a prior agreement on ownership and boundaries.

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63. Evidence of Robert Parris, 7 June 1857, Maori Land Court minutes, Taranaki MB 3; Parris to Chief Commissioner, 6 June 1861, AJHR, 1861, C-1, no 97 (doc A1(a), p 114)

64. Rawiri Waiaua to the Governor, 23 October 1852, Maori letters, Grey collection (doc A1(a), p 111)

65. The settlers vented their anger on Cooper, reducing his salary as a police inspector. It was also at this time that McLean made further payments to the Cook Strait absentees, apparently to keep them from returning to Taranaki.

66. McLean to Colonial Secretary, 20 February 1854, AJHR, 1861, C-1, no 39

67. McLean to Colonial Secretary, 7 March 1854, AJHR, 1861, C-1, no 4

68. Deduced from McLean to Rogan, 29 May 1854, and Rogan to McLean, 14 June 1855, AJHR, 1861, C-1, pp 153, 206-207

#### **2.4.13 Hostilities**

Contradicting suggestions that Te Atiawa freely and willingly sold most of their land is the record of armed conflict between selling and non-selling factions and the extent of fighting to stop it. If most Maori were not opposed to selling, which seems to be inferred, at the very least there was concerted opposition. How, then, could the land have been sold except that the Government was buying from sellers as though they alone were entitled, creating a situation where one had to be in or receive nothing?

The reasons for selling, amply developed in Dr Ann Parsonson's report, appear to have been rooted in local politics and custom. The main cause, it seems, was that certain returned war captives, customarily seen to have lost status, sought to reinstate their pre-eminence through sales. Selling land was thought to prove their competence to do so and thus affirmed their status. It also carried favour with the Government, which might support them in their position. The non-sellers were generally the Cook Strait rangatira who had retained their liberty.

So long as some would sell, however, the Government was inclined to recognise them as the true owners. Though officials were keen to attract offers to sell from those with substantial followings, the system lent itself to favouring sellers and this favouritism automatically engendered disputes and jealousies, causing internal war.

#### **2.4.14 Last 'purchase', 1859**

After the sale of the Hua block, Maori offers to sell, Government offers to buy, and private payments or 'presents' to sellers continued to be made for lands now extending into the Waitara catchment area. None the less, no formal deed could be completed for a further five years owing to inter-tribal fighting, which had assumed such proportions by 1855 that 400 Imperial troops were stationed in Taranaki for the settlers' protection.

Despite this turmoil, the acquisition of the Tarurutangi block was claimed by R Parris, the new Inspector of Police and District Land Purchase Commissioner. Parris was a former trader, however, and as the resident magistrate observed, it was doubtful that he could act impartially because various Maori owed him some £500 to £600.<sup>69</sup>

It appears the troubles began when Ngati Tu, wrongly excluded from the sale of the Hua block, offered the front portion of the Tarurutangi block in retaliation and Rawiri Waiaua, stung by the destruction of his crops as part of that dispute, reacted by offering the whole block. Waiaua was prominent in the district and his death with five relatives in a consequent skirmish led to further fighting among the various groups, exacerbated by the Crown agent's offers of cash. Eventually, in 1859, a deed was produced with 162 signatures. It may be noted, however, that no acreage was given in the deed and the boundaries were unclear. (On survey, the area was given as 14,000 acres.) In addition, no purchase price was stated (this was possibly because payments had previously been drip-fed to individuals). Nor were any

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69. Flight to McLean, 13 March 1857, McLean papers, MS papers 32, folder 276(23) (doc A1(a), p 155)



reserves prescribed, although 10 acres were later set aside (representing 0.07 percent of the land alienated).

More importantly, however, Maori interests were hotly contested and there was never an agreement on ownership. Under this process, such matters were left to the Government to decide or, more particularly, to the purchase agent; in this case, the former trader. It will be seen that, after the wars, this same agent was to act simultaneously as a purchaser for the Government and for himself.

#### **2.4.15 Outcome and process**

By the various means described above, nearly all Te Atiawa lands south of Waitara were claimed by the Government by 1859. With the addition of purchases to the south of New Plymouth, approximately 75,378 acres were claimed to have been acquired, more than that originally proposed by the Land Claims Commission but not quite the same land, because Waitara itself remained held by Wiremu Kingi.

As mentioned above, the whole was acquired by a process that was not agreed. It is further evident from the correspondence of Wiremu Kingi that Maori assumed the process would be mutually decided. Kingi wrote to both the Governor and McLean, warning them of the consequences of the process they were adopting and reminding them that the process had to be settled on both sides. More particularly, he wrote for 'our Runanga', advising that lands as far as Mokau were reserved from sale:

The boundary of the land which is given for ourselves is at Mokau. These lands will not be given by us into the Governor's and your hands, lest we resemble the seabirds which perch upon a rock, when the tide flows the rock is covered by the sea, and the birds take flight, for they have no resting place . . . My word is not a new word, it is an old one . . . You, Mr McLean, are aware of that word of mine when you first came here and saw me, you heard the same word from me, 'I will not give the land to you'.

I have therefore written to the Governor and you to tell you of the Runanga of this new year, which is for withholding the land because some of the Maories still desire to sell land, which causes the approach of death; it is said that I am the cause, but it is not so, it is the men who persist; they have heard, yet they still persist. If you hear of any one desiring to sell land within these boundaries which we have here pointed out to you, do not pay any attention to it, because that land selling system is not approved of.<sup>70</sup>

#### **2.4.16 Reserves**

To complete our consideration of the amount of land acquired from the various Te Atiawa hapu (the whole of the lands of most of them), it is necessary to review what happened to the reserves, bearing in mind that only 4987 acres, or 6.6 percent of the land, had been reserved for Maori in the first instance. The reserves were not to be reserved for Maori 'forever', as originally promised. Instead, the administration of the reserves is a pitiful story.<sup>71</sup>

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70. See AJHR, 1860, E3A, pp 5–6

71. The administration, devolution, and alienation of the reserves are detailed in the reports of A Harris (docs F23, F23(a)) and J Ford (doc F24).

Some hapu received no reserves at all. Moreover, not only was the siting and extent of the reserves determined mainly by officials, but until 1976, officials, not Maori, were to administer most of them. By the end of that long period of over a century of official control, 90 percent of the reserves had been alienated. Today, only 480 acres remain, representing 9.6 percent of the original reserve area and 0.6 percent of the lands 'sold'.

Some years elapsed before the Maori beneficial owners of many blocks were determined, and the beneficiaries were sometimes a mere handful of those who, as sellers, had been promised lands.

Reserves in the FitzRoy block in the vicinity of New Plymouth were used for public purposes, even before Maori beneficial ownership was determined. They were used for reservoirs, schools, hospitals, military establishments, prisons, scenic reserves, and, inexplicably, to meet establishment costs incurred by the New Zealand Company. Today, all that remains of the FitzRoy block reserves is a one-eighteenth share, equating to one acre in a scenic reserve and a quarter-acre burial ground.

By 1900, 27 percent of the reserves had been alienated. In the succeeding years to 1930, 32 percent passed to the Crown and 22 percent to private interests, mainly lessees, and 7 percent was taken for public works. During this time, many of the reserves were statutorily held by officials with powers to sell or lease.

With the continued sale or leasing of reserves by officials, Maori beneficiaries also endeavoured to sell by direct treaty for better prices. They had no legal authority to do so but those sales were then validated by special legislation.

Of the 480 acres that survive, most are either sacred sites or subject to perpetual leases to Pakeha, arranged many years ago by officials.

## **2.5 CONCLUSIONS**

By way of a summary, we consider that:

- (a) The failure to negotiate with the Te Atiawa leadership for a settlement policy and land sharing process was denigrating of Te Atiawa tribal authority and contrary to the principles of the Treaty of Waitangi, by which that authority was to be respected. The prejudice to Te Atiawa was the loss of most of their land by processes that were not agreed on and over which they had no control and the relegation of Te Atiawa status from that of equals to that of supplicants. In the result, none of the acquisitions of land in north Taranaki can be seen as having been acquired consistently with the Treaty.
- (b) The same applied to the various hapu of central Taranaki in respect of the lands acquired there.
- (c) The determination of Maori customary rights by the Land Claims Commission was contrary to the Treaty of Waitangi for the same reason. The commission's opinions were also wrong.
- (d) In the absence of previously agreed protocols, not only was the process of acquiring Maori land contrary to the Treaty of Waitangi but the acquisitions were contrary to the principles of the Treaty in that they were not fair and

equal contracts in their own terms and were made without any protective arrangements.

As sales, each of the transactions failed to satisfy one or more of certain minimum criteria relating to the prior determination of ownership, the determination of Maori consensus by Maori process,<sup>72</sup> fairness of terms, certainty of subject-matter and consideration, and mutuality of understanding.<sup>73</sup>

- (e) The purchasing of interests by private treaty when titles were not generally agreed was also contrary to the Treaty of Waitangi and prejudicial to Maori in that it was the cause of war between Maori and, later, between Maori and the Government.
- (f) The practices and policies adopted by the Crown for the acquisition of land were inconsistent with the principles of the Treaty of Waitangi in that they proceeded from the Crown's desire to obtain a certain area on a wrongful presumption of some moral right, with the result that the practices were overly pressured and unfair, and the steps necessary to protect Maori interests were not maintained.
- (g) Contrary to Treaty principles and the promises of governors, no or inadequate reserves were set aside for the support and future development of hapu. There is evidence that the Crown was aware of, but was not disposed to heed, the warnings of its own officials that, if proper allowance were made for all hapu, there would be little land left to buy, except in the bush, and that large block purchases of the type in fact effected would threaten the facility of Maori to maintain themselves and their institutions.<sup>74</sup>
- (h) Such reserves as were provided were not secured to the hapu for their own use, established under hapu administration, or protected against alienation, and instead they were alienated as the direct or indirect consequence of Crown action.
- (i) The Crown's purchase policies and practices, especially the lack of public, tribal hui and the use of advance payments, secret payments, and instalments, were the direct or indirect cause of, or exacerbated, internecine Maori warfare and divisiveness, leading to the loss of lives and the undermining of traditional authority. The manufacture or exacerbation of local enmity and the compromising of traditional authority were part of intentional policies to foster sales and secure possession.
- (j) Undue pressure and the prospect of conflagration also arose from the Crown's failure to dampen settler expectations of ready access to Maori

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72. In our view, the need for collective consents by tribal process was contemplated in the Treaty of Waitangi, which recognised that lands might be 'collectively or individually possessed' and which, in the Maori text, recognised 'te tino rangatiratanga', or the authority of Maori over their lands.

73. It is doubtful that all the sellers understood the transactions as entirely terminating their association with the land. The prevention of surveys by sellers, even after signing deeds, provides some support for this. The concept of severing ancestral associations was unthinkable in Polynesian philosophy, and made sense only in a society where land was a commodity. It seems unlikely that the Maori world view, entrenched in generations, would be readily displaced by either a deed or an oral explanation.

74. See doc A1(a), p 208

lands or to stem the flow of immigrants, despite their uncertain right to the land and the known Maori opposition.

- (k) Inherent in the Crown's policies and practices was an assumption that individual ownership should replace communal tenure, without inquiry as to Maori preferences or alternatives in tenurial reform but with the underlying expectation that Maori would thereby be amalgamated with Pakeha and controlled.
- (l) As a direct result of the Crown action and policies complained of, Maori were severely prejudiced by land loss, loss of life, and the depreciation of traditional mechanisms for the maintenance of authority and the resolution of disputes.

The primary trouble, however, was the Government's refusal to respect Maori authority by treating with Maori as the equals that they were. From the outset, governors would not meet with the Maori leadership to agree upon the terms on which north Taranaki might be settled. Such was required by the Treaty, in our view. It was also plain good manners and common sense to treat with the leaders of a place before entering on it.

No feat of comprehension was required to ascertain whose tribal land it was and where the leaders could be found. As time would amply show with regard to other places, the formalising of tribal authorities, if that was required, was not impractical either. But the Government would not consider such options. It chose instead to elevate the sham of a ridiculous piece of paper, presented to a small community with no affinity to its concepts and purporting to sell that which they could not possibly have controlled.

The problem compounded over time. There was no basis for the Government to purchase land when it liked, where it liked, and from those whom it chose, when the process as a whole had not been agreed with the Maori leadership. The process, chosen unilaterally, ensured that matters would be determined by British practices, on British terms, and by British persons, with Maori under British control. It allowed and encouraged manipulation, with devastating results in war. The Government could determine all matters: the price, who could sell, and whether a sale was effected. Being a judge in its own cause, the Government unsurprisingly found itself in the right. This was not a valid exercise of the Government in terms of the Treaty of Waitangi, but the assumption of a licence to destroy.

A most regrettable aspect is that an evident Maori willingness to receive settlers was soured. Even after they had good cause to reconsider their opinion of them, respect for the settlers' rights in New Plymouth were maintained and protest against settlers was constrained. Yet every opportunity to develop mutually acceptable arrangements appears to have been rejected or ignored. The settlers occupied the New Plymouth coast and their expansion into the interior may have caused few concerns. In addition, lease options were possible. Some leases between Maori and settlers were arranged, but the leasing of Maori land was then forbidden. Leases

already effected were declared null and void and thereafter penalties were imposed on settlers who sought them.<sup>75</sup>

A further regrettable aspect is the clear evidence of economic growth and development Maori experienced from supplying settler markets when they had their own land and the opportunity to develop their full potential that Maori were denied by the acquisition of that land.

A further outcome was one of cultural labelling, which created the mind-set for the wars to come and obscured a Pakeha understanding of the Maori vision. Maori were simply 'coarse' or 'hostile', unless they were disposed to sell, in which case they were 'friendly'. In fact, on the evidence, Maori were keen to negotiate trade and living arrangements and, generally, were hostile not to Pakeha but to the attitude they perceived.

The Government thus destroyed the opportunities for trade and development between races, for Maori to share equitably in the benefits of colonisation, and for Maori to participate in the development of the country as equals and on their own terms.

More specifically, we consider that the circumstances surrounding the alienation of lands before the wars were such that, in assessing the steps necessary to remove the prejudice today, no distinction should be made between the lands said to have been sold prior to the wars and the lands confiscated as a result of those wars.

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75. See doc A1(a), app II

## CHAPTER 3

# WAITARA, WAITOTARA, AND WAR

They say that to Teira only belongs that piece of land. No, it belongs to us all: to the orphan and to the widow, belongs that piece of land.

Wiremu Kingi, 1859

### 3.1 ISSUES

Judgement is not taxed to conclude that, whatever the causes of the war, high among them was the Governor's claim to have bought land when those with an interest had not agreed upon a sale. Nor is it necessary to labour the point that the Governor's action in that respect was contrary to the principles of the Treaty of Waitangi. These things have been generally admitted. More difficult to see today is the manner in which the Governor's process affected Maori autonomy. It is with that that this chapter is mainly concerned.<sup>1</sup>

In that respect, while the Crown's attempted acquisition of the Pekapeka block at Waitara is generally seen as having started the war, it is rather to be viewed as the last straw in a purchase process that had been going on for 19 years (as described in chapter 2). It affected mainly the north of Taranaki and, to a lesser extent, the centre, but the underlying issue, the place of Maori authority, applied everywhere. As it turned out, that issue was to be raised as squarely as anywhere else in south Taranaki. This chapter considers that matter. Although it was suggested to us in one submission that the northerners started the war but the south carried the burden, that is not the position as we see it. Had the war not started with Te Atiawa over Waitara, it would likely have begun with Nga Rauru and Ngati Ruanui over Waitotara.

The Waitotara and Pekapeka blocks are depicted in figure 6 and the Waitotara block is shown in more detail in figure 8. The Waitotara block is located in the far south, while the Pekapeka block is in the north, where the town of Waitara now stands.

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1. This chapter draws mainly on the reports of Dr A Parsonson, 'The Waitara Purchase and War in Taranaki', July 1990 (doc A3), H Riseborough, 'Background Papers to Confiscation' (doc A2), and A Harris, 'An "Iniquitous Job"? Acquisition of the Waitotara Block by the Crown' (doc I20). Reference has also been made to the literature cited in the bibliography, including especially K Sinclair, *The Origins of the Maori Wars*, Wellington, New Zealand University Press, 1957.

## **3.2 BACKGROUND**

We now summarise the record before returning to particular parts.

### **3.2.1 Waitara and Waitotara as prize lands**

Though it was untenable, the opinion was still maintained that the settlers had some right to Waitara through the Land Claims Commission's support for the New Zealand Company's purchase. That view was adhered to, even though the commission's recommendations were rejected and the purchase was disallowed and even though, through buying on the western side of New Plymouth as well, the Government had acquired more land for the settlers than the commission had recommended the settlers should receive. The claim to Waitara was also insisted on, though much of the land then held was surplus to the settlers' needs and was not utilised.<sup>2</sup> In addition, Waitara supported a burgeoning and progressive Maori population, and as Wiremu Kingi had made clear for 15 years, it was their ancestral land and was not for sale. Kingi was a rangatira of significance and his opinion could not have been lightly disregarded.<sup>3</sup> From the settlers' viewpoint, however, the Waitara land was the best and they were entitled to it.

Similarly, in the south, Waitotara was choice land, not too distant from the township of Whanganui, which supported a large Maori population. It had formed part of the New Zealand Company's Whanganui purchase, but in that case, the Land Claims Commission had left it out of the area it had recommended.

### **3.2.2 Maori authority, pan-tribal policy, and land leagues**

Increasingly, however, the issue was more than whether these lands had been formerly acquired. As one commentator put it, with reference to Waitara: 'We seem to be fast approaching a settlement of the point, whether Her Fair Majesty or His Dark Majesty shall reign in New Zealand.'<sup>4</sup>

The issue, in our view, was not which of two groups should rule but how those groups should relate – but at least it was recognised that a question of authority was involved.

After the initial purchases of the Omata and Tataraimaka blocks, Maori in central Taranaki became strongly opposed to further sales. The same position applied in the south; at Taiporohenui, in April 1854, hapu from both central and southern Taranaki gathered in a tribal conclave and resolved to stop land sales. Then, when a three-year war involving sellers and non-sellers broke out in north Taranaki, southern tribes

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2. There was no shortage of land in Crown ownership in 1859 and the purchase of Tarururangi in January of that year added 14,000 acres for further settler selection. There was also much unoccupied Crown land nearer to New Plymouth, as well as the greater part of the bushclad interior.

3. Most authorities at the time and historians since have regarded Kingi as the pre-eminent rangatira at Waitara. When war broke out in 1860, however, the Government attempted to manipulate the whakapapa to make the principal seller, Te Teira, of superior descent to Kingi. This was exposed by Judge Fenton in the Compensation Court in 1867 and is discussed more fully by Keith Sinclair in 'Some Historical Notes on an Atiawa Genealogy', *Journal of the Polynesian Society*, 1951, pp 55–65. Local families appearing before us acknowledged Kingi as a principal rangatira of Waitara, but as one of several of Te Atiawa.

4. C Brown to C W Richmond, 19 February 1860, *The Richmond Atkinson Papers*, vol 1, p 522

joined the non-selling faction. Finally, the Kingitanga also declared areas where no land sales would occur, and these areas included south Taranaki.

Such broadening collegiality led to settler charges that Maori had formed a 'land league', an illegal combination in restraint of trade. That contention raises questions fundamental to group authority concerning individual rights, group rights, and freedoms of association.

### **3.2.3 Waitotara**

The right of Maori to develop common policy and to have that respected and maintained was an important issue in the Waitotara 'sale'. This was a substantial block, some 40,000 acres initially, bigger than any single block 'sold' in the north and well over half of all Te Atiawa land that the Government had acquired over 19 years. While the Government purported to buy this block from a group of sellers, others were opposed, including a group who were absent, assisting the non-sellers in the north. Given the policy decision at Taiporohenui, of which the Government was aware, the Government's action was provocative, challenging the right of Maori to decide matters relating to their land through processes of their own. Despite the Taiporohenui resolution, the Government recognised the title of a handful of sellers but, because they were only a few, held off from claiming a final purchase in the expectation that more signatures would be secured later. More signatures were secured in 1863, during the course of the war, and the Government claimed to have purchased the land. Thus, as in the case of Waitara, the Government process was that the Government alone could decide who owned Maori land and that it could deal privately with a few, and not publicly with all.

### **3.2.4 Waitara and war**

At about the same time that the Government first moved to buy Waitotara, a selling faction offered Waitara for sale and the Government's focus shifted there. The same questions arose: could the Government determine who in the hapu held the interests in Maori land or was that a matter for the hapu? Was the Governor entitled to deal with particular individuals or was he bound to treat openly with all?

In Waitara, the Government once more changed the rules. Previously, it had presumed to know who held what, and sellers were generally assumed to be the owners of the whole. On this occasion, that could not be done at first because Wiremu Kingi, a major rangatira, was opposed, so the Government declared it would simply buy the sellers' share. The issue of authority, however, was still the same: did the Government have the right to deal with individuals and not with the tribe? In the end, the new tactic did not apply. The Government came to the view, which was preposterous at that time, that the selling faction owned all or, conversely, that Wiremu Kingi had no interest; and on that basis, Waitara was considered to have been acquired.

To prevent the sale, Kingi obstructed the survey of the land. Troops were brought in, Kingi was attacked, and the war began. It must have been obvious that if Waitara could be taken that easily, despite the opposition of a major rangatira known as a



former Government ally, Waitotara and other places could not be far behind. On that basis, the southern tribes could have had no option, if they wished to keep their land, but to oppose the Governor in the war. This, they did. For his part, Kingi adopted the politics of the southern tribes, calling upon a larger collectivity for support by placing his lands under the mana of the Maori King.

For each block, the outcome was the same, though different methods applied. Thus, when it was later admitted that Kingi did have an interest in the land, the claim to the Pekapeka block by purchase was abandoned, but it was then confiscated on account of the war. In the Waitotara case, the process was the reverse. The land was confiscated because the initial purchase was not seen to be complete and the confiscation was then abandoned when it was considered that a purchase had been made. Confiscation or purchase, the result was the same.

### **3.3 AUTHORITY AND UNLAWFUL COMBINATIONS**

It was not Wiremu Kingi who brought the issue of Maori autonomy to a head. It was mainly the concerns of central and southern hapu to prevent further alienations and settler allegations that the developing common policy was evidence of an unlawful combination.

After the alienation of Omata and Tataraimaka in 1847, further efforts to acquire land in central Taranaki were stymied. In 1849, an advance payment for land between those blocks came to naught, because of the vehement opposition of Nga Mahanga, one of the central Taranaki hapu.

The same opposition was experienced in the south. There, Ngati Ruanui and others had actively seized market opportunities for their produce and had invested their takings in flour mills, horses, and cattle and were wary of selling land. Indeed, Ngati Ruanui would not even sell land to the missionary William Woon for a mission station.

Accordingly, when McLean and Cooper went to Patea in September 1852 seeking land, they found the people fully determined not to dispose of any of their lands, having made a 'solemn compact' not to sell to the Government.<sup>5</sup>

Settler rumour-mongering, with some official support, converted this news of Ngati Ruanui opposition into the existence of a pan-tribal land league. In February 1854, McLean visited the Taranaki hapu and wrote:

a league . . . has been entered into by the Ngatiawa, Taranaki and Ngatiruanui tribes, by which they have solemnly bound themselves and each other to put a stop to all sales of land to the North of the Bell block, or South of Tataraimaka; and . . . in order to give greater solemnity to the covenant, and by way of rendering it as binding as possible on the parties, a copy of the Scripture was buried in the earth with many ceremonies, thereby, as it were, calling the Deity to witness the inviolability of their compact.<sup>6</sup>

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5. Cooper to Civil Secretary, 18 September 1852, MA/MLP/NP

6. McLean to Colonial Secretary, 20 February 1854, p 84, and see K Sinclair, 'Te Tikanga Pakeke: The Maori Anti-Land Selling Movements in Taranaki' in P Munz (ed), *The Feel of Truth*, Wellington, A H and A W Reed, 1969

A hui in the great house of Taiporohenui, some 120 feet long, at Manawapou in April 1854 seemed to lend substance to the rumours. It was resolved not to sell any more land between Okurukuru on the southern border of the Omata block and Kai Iwi, a huge area taking in all Taranaki south of New Plymouth not previously alienated. Hosted by Ngati Ruanui, some 500 to 1000 people throughout Taranaki and beyond are said to have attended, though there is some opinion that Wiremu Kingi was absent.<sup>7</sup>

The hui was seen as an attempt to unite the tribes against land selling. Cooper, who did not attend, wrote afterwards of an 'anti land selling league' having been ratified at several recent meetings, though he also claimed to have evidence that it was 'breaking up'.<sup>8</sup>

Further, when fighting erupted in north Taranaki and Ngati Ruanui became involved, it was thought the so-called 'Taranaki Land League' had spread there. The fighting, mainly within Puketapu, lasted for three years from 1854, with Ngati Ruanui maintaining a presence throughout that time. As one prominent Taranaki settler and politician put it:

Of late there has been formed a League amongst various tribes on Cook's Straits for resisting further alienations of land to the Europeans. This is the great bond of union between Wiremu Kingi, Katatore and the Ngatiruanui. Rawiri was sacrificed because he had rebelled against the League. You will understand it is a Combination . . . not to protect the tribes in the exercise of their admitted right to retain their lands, but to coerce those who are desirous of selling.<sup>9</sup>

Wiremu Kingi was regularly described as masterminding the matter, but we have found no record of his involvement. The evidence is rather that Kingi eschewed disputes not immediately affecting him.

The Puketapu feuding appears to have arisen from the sale of the Hua block in 1854, from subsequent advances on purchases and competing offers, and from personal animosities. At the beginning, Katatore invited Ngati Ruanui to assist him against his enemies. The engagement of others from a distance to do battle on one's behalf was common among Maori, the practice having as one of its purposes the limitation of the cycle of *utu* within kin. Prominent in the other camp was Ihaja Te Kirikumara, a former prisoner in Waikato, who sought to recover a leadership by selling land and aligning himself with the Government.

In 1858, however, after Ngati Ruanui had left, Katatore and his party were slain following a conciliatory feast hosted by Te Kirikumara. The subsequent outcome was indicative of the settlers' predisposition. Those Maori opposed to sales, including Kingi, were regularly portrayed as the instigators of trouble and as murderers, and it was often demanded that they should be arrested for their offences. Te Kirikumara, however, was a seller, and notwithstanding his apparent treachery in the murder of Katatore and his party, he was sheltered and treated at New Plymouth hospital. None the less, the image of Kingi as the leading figure in a

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7. Sinclair, 'Te Tikanga Pakeke', p 85

8. Draft report of 29 April 1854, Sinclair, 'Te Tikanga Pakeke', p 86

9. C W Richmond to T Richmond, 27 August 1855, *The Richmond Atkinson Papers*, vol 1, pp 177-178

murderous league determined to stop honest persons from exercising their right to sell was conveyed to a new Governor fresh from Britain and influenced his eventual decision to launch an attack on Kingi's pa.

There was further evidence of a combination of some sort in the selection of a Maori King. During the fighting in north Taranaki, a hui at Pukawa on Lake Taupo in 1856, called as part of the King selection process, marshalled opposition to the sale of land. The hui declared a large part of the central North Island as an area where land would not be sold, and presumably because of the tribal representation there, the prohibition was extended as far as southern Taranaki. Following the induction of a King in 1858, Kingitanga emissaries maintained visits to south Taranaki to keep this kaupapa. Inevitably, however, there were individuals who, in seeking to assert the authority they believed was their due, would prove their power by selling land. Thus, the crucial question was raised: could the Governor treat with individuals acting contrary to positions collectively resolved?

The perceived illegality of combinations in restraint of trade, and the imagining of a Taranaki land league in that category, flowed from an ideology then in vogue in Britain that elevated individual rights to trade above all else. This applied to the extent that even trade unions were then unlawful. A Taranaki land league was thus presumed to exist as an unlawful cartel preventing honest individuals from selling.

The existence of a cartel in that form, especially one that portrayed Wiremu Kingi as its principal founder, was a figment of the imagination. A policy against land sales did exist, however, and was apparent in tribal meetings from as early as the FitzRoy block sales. Support for the policy had spread geographically, and attempts were increasingly made to develop it at pan-tribal levels. The policy, as we see it, was antagonistic not to settlement as such but to the manner in which the Government was giving effect to it. It could only have seemed that, unless the Government were to regard the Maori groups as equal bodies, it would take, by whatever means it could, all that could be taken. It could also only have seemed that Maori would have to combine if they were to achieve the relationship with the Government that was sought.

Accordingly, the issue is not whether the rule against restraint of trade was right or wrong but whether it applied in the circumstances. For one thing, it assumed the land was the individual's to sell, when in Maori terms it was not. Maori were members of hapu, which, like other associations, had rules and policies binding on members, which rules and policies were reasonable and necessary. A rule constraining individuals from selling hapu land was reasonable in Maori terms. It did not abrogate a right, because no right of private alienation had ever existed. It was also needed to maintain the integrity of the hapu, because a hapu could be destroyed if even part of its land was sold without general agreement. This rule was consonant with custom. There was no restraint on trade as such, only a constraint on process.

Similarly, all peoples have the right to restrain land sales by their individual members. While individual liberties are important, it is the right of any State, for example, to prevent the sale of land to outsiders without State approval. There is still a statute to this effect in New Zealand.

It further appears to us that, although pan-tribal policy making had not previously been regular before the arrival of Europeans, that was only because it had not previously been needed. Moreover, there was no rule that could prevent Maori from forming large associations. Freedom of association and the freedom to form combinations at any level are the inherent rights of peoples. The settlers were exercising those rights all the time.

These things are comprehensible in terms of the Treaty of Waitangi. Rules constraining individual members, expectations that those rules will be respected by third parties, and rights of pan-tribal association are all aspects of the authority, autonomy, or rangatiratanga that the Treaty guaranteed.

In brief, the depiction of a Taranaki land league both distorted the facts and invoked a wrong principle.

### **3.4 THE KINGITANGA**

The Kingitanga was demonstrative of the Maori right to combine. No one understands the wars and confiscations who does not also see the centrality of the Kingitanga in the relevant events, the significance of the symbolism it evoked, or the burden that it bore for the Maori people.

The Kingitanga represented the right of hapu to retain their own land or to agree to its alienation only in accordance with their own rules. Alarm had arisen throughout the North Island over the extent of land loss among Maori at the forefront of settlement and the amount of land 'sold' without full approval, understanding, or agreement. It was proposed by Maori from throughout the north that lands could be placed under the King's mantle, in the same way that all the land in England is seen to come from the King, to prevent a recalcitrant few from alienating the patrimony of their people and to require alienations by tribal process. We understand this idea was not entirely new – the placing of lands under the mana of another to secure greater strength having previously been practised.

The Kingitanga also epitomised the need for a tribal land base: the retention of a turangawaewae sufficient for each hapu. The King's marae at Ngaruawahia, being named 'Turangawaewae', or a permanent place to stand, gave expression to this sentiment.

It was also apparent that, were settlement to continue as previously, Maori would be not only landless but outnumbered, as indeed they were by 1860, and their tribal authority would be subsumed. The Kingitanga also symbolised the maintenance of tribal authority. Accordingly, it appears to have represented not the authority of the King over others but the independent authority of the people, as symbolised by the King. The expression used at the time was 'te mana Maori motuhake', or the independent authority of Maori. These words were emblazoned on the King's crest.

Because of this threatened loss of land and power, Maori began a long process of discussions, which culminated in the selection in 1858 of one of their ariki, Potatau Te Wherowhero of Waikato, as King. The concepts appear to have come from Tamihana Te Rauparaha and Matene Te Whiwhi of Otaki in about 1853 and the

drive from Wiremu Tamehana, 'the kingmaker' of Matamata. The discussions began at Taiporohenui in Taranaki. A decision in principle was made at Pukawa, Taupo, in 1856, and the mantle, or the burden as it might better be called, passed to Waikato. Certainly, not all the tribes were involved and some kept their distance, but the extent of concern is apparent in the fact that so many were involved and could agree, when earlier some had been arch-enemies (like Taranaki and Waikato).

Accordingly, the Kingitanga was at once a new innovation and an extension of old values, a necessary development to deal with new variables that the old order could not control. Of even greater significance was the essential symbolism. It was not just that the Kingitanga stood for the right of hapu to retain their land and authority. It presaged especially of a partnership between Pakeha and Maori, where both could have a place and be respected. The Kingitanga was not anti-Pakeha, as those threatened by the thought of power-sharing often said. Rather, it demonstrated an essential difference between Maori and colonial Pakeha thinking, the latter being that unity comes from conformity, the former, that it comes from acknowledging differences and respecting them. Thus, the image given by Maori of the time was of 'the [Maori] King on his piece; the Queen on her piece, God over both; and Love binding them to each other'.<sup>10</sup> Likewise, a new meeting house was envisaged, the rafters on one side being Maori, those on the other Pakeha, with God as the ridge-pole supporting both in the middle, and the house being called New Zealand.<sup>11</sup> Few things could so represent the consistent Maori position, as it was then and for the most part has since been, that there must be a place for Pakeha and a place for Maori as well, but with a common commitment to the national wellbeing.

While the Kingitanga symbolised these things, the Treaty of Waitangi stated them. The right of Maori to retain their lands and authority was Treaty guaranteed; and although it took some time, it was eventually recognised in the New Zealand Court of Appeal that the Treaty foreshadowed a partnership.<sup>12</sup> Thus was the Kingitanga an affirmation of the Treaty's terms.

At the time, however, there was no mood to understand the Kingitanga message. Anything that might restrict the ready acquisition of Maori land was likely to incur settler opposition; while, for contemporary administrators, like Governor Sir George Grey, the sharing of power was unthinkable.

### **3.5 THE ACQUISITION OF WAITOTARA**

In the opinion of General Cameron during the wars, the acquisition of the Waitotara block was 'a more iniquitous job than that of the Waitara block'. The general had become increasingly disturbed by what he saw as the task expected of him: the defeating of Maori in order to satisfy the colony's 'profit and gratification'.<sup>13</sup> When he was sent to recover Waitotara, and on becoming informed of the 'true history' of

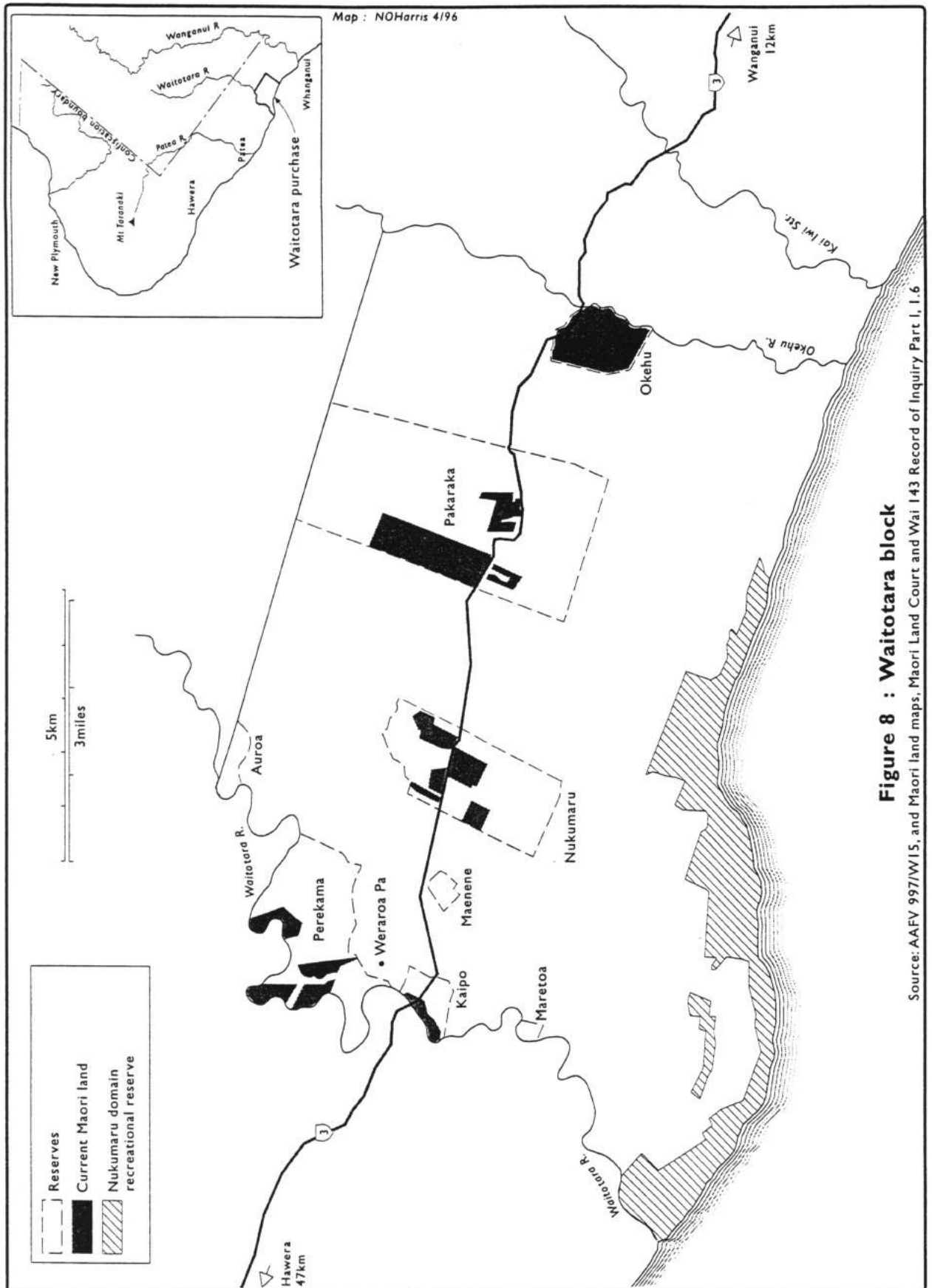
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10. Quoted by 'Curiosus' in the *New Zealander*, 3 July 1858

11. Cited in Sinclair, *The Origins of the Maori Wars*, p 69

12. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641

13. Cameron to Grey, 28 January 1865, AJHR, 1865, A-4, no 19, p 6



Source: AAFV 997W15, and Maori land maps, Maori Land Court and Wai 143 Record of Inquiry Part I, 1.6

the purchase, as he put it, Cameron, the commander of the Imperial forces in New Zealand, finally resigned in protest. Several of his officers felt the same way. The land was acquired from Maori 'who had not the smallest title to the land', one officer claimed, adding, 'This is what we are here for, to eject the lawful owners from the land they did not wish to sell; and for this England is spilling her best blood!'<sup>14</sup>

The difficulty for us is that, in the subsequent war of words, there is much assertion but little 'true history' to be found, whether on the part of General Cameron or his officers or on the part of the Governor. The details of the transaction are set out in a lengthy research report, with supporting documentation, which tells of substantial complications.<sup>15</sup> From this, we have formed some opinions, which are set out below.

The first is that, irrespective of who had interests in the land, there had previously been a consensus at a general tribal hui at Manawapou in 1854 that this land, and the land extending beyond it to Kai Iwi, was not available for sale. In May 1859, however, Hare Tipene and 13 others, whose land interests could not have been exclusive, were paid £500 as a deposit on the land. The receipt for this instalment promised that the sellers would receive the balance, an unspecified amount, when the survey was complete. It was recorded in the receipt, however, that 'our having received this money is a guarantee of the cession of this land to the government'.<sup>16</sup> Later, Tipene and some other sellers sought to avoid the transaction in the light of several objections. It was demanded that Tipene repay the deposit, which he was unable to do because he had dispersed the money, or that he proceed, which he was not willing to do. The receipt was then relied upon to claim that the transaction could not be set aside. It was added that those of the tribe who had imposed the restriction on sales were not the owners of this land. To us, however, that is not the point, even assuming it were true. The question is whether those at the hui were competent to settle upon a tribal policy binding upon the 'owners' in the district and whether there was a general tribal interest in particular pieces of land.

Secondly, for various reasons, including the involvement of the local hapu in the war in the north and delays over surveying reserves, the completion of the transaction was deferred until 1863. In the interim, numerous other Maori claiming interests registered their opposition to the deal. Further, many of Nga Rauru who might have claimed an interest or tribal rights were away, having still to return from the fighting at Tataraimaka. None the less, another Crown agent resumed negotiations in 1862, trying to reduce the price and the size of reserves. Unable to come to an agreement with Tipene, the Crown agent dealt with another group, headed by Rio Haeaterangi and Piripi Rai Rauhata. They and 30 others signed an agreement to sell the block for an additional payment of £2000 on 4 July 1863. The sale was concluded despite the objections of Tipene and others; but the sale did not

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14. Enclosure 1, 'Extracts from the *Morning Star* of the 12th of May, 1865', enclosure 2, 'Extracts from the *Morning Star* of the 13th May, 1865', AJHR, 1866, A-1, no 14, pp 20-21

15. Document I20

16. *Ibid*, p 7

resolve matters because the objectors prevented the occupation of the land by the settlers. It was then that the army was brought in.

Government doubt as to the effectiveness of the Waitotara purchase is apparent from its subsequent conduct. Not willing to rely on purchase alone, the Government confiscated the land in 1865, and the block was not excluded from the confiscations, as the Crown-purchased lands of central and northern Taranaki were. It was only later, when Whanganui allies of the Government contended that the land to the Waitotara River was theirs and was wrongly confiscated, that the confiscation was abandoned and the Government claimed the right to Waitotara by purchase.

We are of the opinion that the acquisition was contrary to the principles of the Treaty on the grounds of insufficient agreement and lack of tribal process. It is also apparent that those who signed the final deed could represent only a small proportion of Nga Rauru who had interests, quite apart from those of Ngati Ruanui and Whanganui who also appear to have had tribal associations that constituted interests at Maori law.

We see no reason to dwell at length on several other concerns mentioned in the research report other than to say that, in addition, the record implies that the area to be sold, the price to be paid, and the reserves to be set aside were not generally agreed upon, even by those who were in fact parties to the deal, but instead the final terms and conditions were largely imposed.

As to the reserves, once again the lack of adequate measures to ensure their protection is evident by the eventual result. Eight reserves, totalling 6713 acres, were created, but the Native Land Court then reshaped their terms of tenure so that group control was lost, and today only 1305 acres, less than 20 percent, remain.

### **3.6 WAITARA**

No sooner had some peace been made to end the three years of Puketapu fighting in 1857 than one of the combatants, Ihaia Te Kirikumara, offered to sell lands at Waitara and at Turangi, further to the north. His relation Pokikake Te Teira did the same, but owing to the opposition of Wiremu Kingi and even of Te Teira's father, Te Raru, those offers were not pursued at that time.

Responsibility for the Waitara problem (that is, the settlers' anxiety to 'recover' that which Kingi would retain) now rested with Colonel Thomas Gore Browne, who had replaced Grey as Governor in 1855. Browne lacked Grey's knowledge of Maori language and culture and was more reliant on the advice of his officials. His resolve to secure Taranaki lands for settlement was no different from Grey's policy, but his decision to challenge Kingi and to push the purchasing into Waitara was probably due more to bad advice than to his own assessment.

Settler opinion was undoubtedly influential. In their eyes, Kingi was the leader of a land league and was not only intransigent but acting unlawfully. Because deaths had resulted from the Puketapu feuding between sellers and non-sellers, by implication he was also an accessory to murder.



Initially, the Governor was cautious. In 1856, he appointed a board to inquire and report, *inter alia*, on the nature of customary tenure and the rights of individuals in relation to the group. Although today's scholars would refine some of the board's conclusions, its main advice on the interplay between the individual and the group was correct in substance, if not detail, and the real concern is that the Governor did not heed it.

In the board's view, it was the 'tribe' that had the only authority to dispose of land, and while the individual had certain possessory rights, 'there is no such thing as an individual claim, clear and independent of the tribal right'.<sup>17</sup> The Governor's alternative policy of favouring individual sellers against tribal representatives went against this finding and led to war.

The Governor's first visit to Taranaki on 8 March 1859 was eventually to bring this issue to a head. Speaking to a mixed audience of settlers and Maori at New Plymouth, he announced a policy but then, within a few days and to Maori confusion, changed it. He initially announced that:

- (a) any person committing violence or outrage within 'European boundaries' would be dealt with under the criminal law;<sup>18</sup> and
- (b) he would not buy land with a disputed title and 'would buy no man's land without his consent'; but
- (c) he would allow no one to interfere in the sale of land, 'unless he owned a part of it'.

Because of later events, it is the second item, that the Governor would not buy land that was in dispute, that has most to be remembered. Wiremu Kingi was later to remind the Governor of this undertaking when he proceeded to buy the Pekapeka block while a dispute was unresolved.

The reference to 'European boundaries' in the first item was also significant. It needs to be clear that, at the time, both Maori and the Government thought in these terms; that is, that some land was European land and some land was Maori land. Even in Britain, matters were seen that way, and by section 71 of the New Zealand Constitution Act 1852 (UK), the Governor was authorised to declare Maori districts where Maori law would prevail. As shall be seen, this acceptance of distinctive areas was to become significant during the war. At the height of hostilities, and in demonstration of their 'right', Maori were cautious to ensure that their own attacks were conducted on Maori land, where soldiers were trespassers, and to take careful note when soldiers erected stockades or effected manoeuvres on other than the 'Europeans' land'. In Maori law, where *aukatī*, or demarcation lines, were usual devices for the management of war, armed trespass across the line was an act of aggression that justified retaliation.

Soon after the Governor had spoken, Te Teira, a co-resident with Kingi on the Pekapeka block at Waitara, offered the block for sale. According to the translation in the *Taranaki Herald*, Te Teira said that:

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17. 'Report of the Board of Native Affairs', *Votes and Proceedings of the House of Representatives*, 1856, B-3, p 4

18. It is not clear whether the Governor intended 'European boundaries' to mean the perimeter of the lands already purchased or the boundaries prescribed by the Land Claims Commission.

he was anxious to sell land belonging to him, that he had heard with satisfaction the declaration of the Governor referring to individual claims, and the assurance of protection that would be afforded by his Excellency. He minutely defined the boundaries of his claim, repeated that he was anxious to sell, and that he was the owner of the land he offered for sale. He then repeatedly asked if the Governor would buy this land. Mr McLean on behalf of his Excellency replied that he would. Te Teira then placed a parawai (bordered mat), at the Governor's feet, which his Excellency accepted. This ceremony, according to Native custom, virtually places Teira's land at Waitara in the hands of the Governor.<sup>19</sup>

It appears to us that Te Teira and the reporter of this conversation were not of one mind. There was no part that Te Teira could call his own, so the description he gave could not have been of his own land. It was more likely a description of the whole block (or larger, in the usual Maori way), in which he was one of many with an unpartitioned interest.<sup>20</sup> We think it is actually doubtful that Te Teira intended to offer the whole block, but consider he was speaking only for his undivided interest. Three days later, he sent a letter to the Governor suggesting he was selling an undefined interest in the block and that it was not necessarily large. He wrote, with typical Maori imagery where the whole speaks for the part:

Friend, it is true I have given up Waitara to you; you were pleased with my words, I was pleased with your words. It is a piece of land belonging to Retimana and myself, if you are disposed to buy it never mind if it is only sufficient for three or four tents to stand upon, let your authority settle on it . . .<sup>21</sup>

Later, the matter became distorted into an assumption that Te Teira and his followers were the owners of the whole block. At the time of the meeting, however, the Governor consulted his advisers and announced he would accept Te Teira's offer, provided that Te Teira could prove his title. Kingi was present and recorded a brief objection:

I will say only a few words and then we will depart . . . Listen, Governor. Notwithstanding Teira's offer I will not permit the sale of Waitara to the Pakeha. Waitara is in my hands, I will not give it up . . .<sup>22</sup>

Kingi left, in the Governor's words, 'with some want of courtesy to myself'.

Te Teira's motives in selling are not clear. It has been conjectured that he sold from personal animosity. Archdeacon Williams, Archdeacon Hadfield, and E Shortland each considered that Kingi had sheltered a girl whom Te Teira had abducted to marry to a relative and that Te Teira had vowed revenge by selling the land of the hapu. J Cowan recorded Maori opinions that Te Teira sought revenge for his relative Ihaia Te Kirikumara, who had earlier endeavoured to sell Waitara and

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19. *Taranaki Herald*, 12 March 1859 (doc A3, p 14)

20. It was usual for Maori to 'call' those spots with which they had ancestral associations, connecting the lines together, and to do so in their own name. There was good reason for this custom. It was presumptuous to speak for others. It was never understood, however, that the speaker was claiming an exclusive right.

21. Teira and Retimana to Browne, 15 March 1859, AJHR, 1860, E-3, p 4

22. *Ibid*

who had other unrequited grievances. Te Teira had returned to Waitara as an insignificant member of Kingi's heke in 1848.<sup>23</sup> He supported Te Kirikumara in the Puketapu feuds. Domestic incidents may obscure deeper frustrations, however, and a hidden ambition to wrest the leadership from Kingi by aligning with Pakeha cannot be discounted.<sup>24</sup>

Three days after the meeting with the Governor, a deputation of settlers persuaded the Governor to change his mind about buying disputed land and to prefer Te Teira on the basis that the individual right to sell was paramount. At heart were questions of representation and the relationship between the individual and the group, but if the Governor had begun well in having those issues impartially examined by the Native Affairs Board, he was now about to discard the board's opinion. The Governor was urged to individualise Maori titles generally in order to destroy the tribal system and break the land league that Kingi allegedly supported. Earlier, Taranaki and other settlers had promoted the Native Territorial Rights Bill to individualise Maori land. This had been enacted in 1858 but was later disallowed by the Imperial Government, and now the settlers were proposing the policy once more. The Governor was convinced. He considered 'the surest remedy for existing evils was to prevail upon the natives to individualise their claims and obtain crown grants for their lands', directed the survey of 'Teira's piece' as though it were legitimately severable, and ordered negotiations for the identification of each person's part. This was now a radical departure from the previous practice of total block buying.<sup>25</sup>

Both in terms of Maori law and in terms of providing an economic unit for European settlement, 'Teira's piece' was a figment of the imagination. It was impossible to cut it out. The land was jointly occupied by Te Teira, Kingi, and others.<sup>26</sup> Kingi had separate pa on the land surrounded by numerous kainga. Near to the pa was a patchwork pattern of cultivations, in which, in the usual Maori way, families held several small plots throughout a horticultural mosaic, none of which constituted a sizeable, sellable unit. Kingi's 'pieces' and Te Teira's 'pieces' were intertwined. Beyond the cultivations, all was held in common. So strange was this notion of individual pieces that there was no Maori word for it. Officials used 'pihi', a transliteration of 'pieces'.

McLean did not return to Taranaki before the outbreak of the Waitara war, more than a year later. Instead, he went to Queen Charlotte Sound, Nelson, Wellington, and the Kapiti coast to have the Taranaki Maori there sign a deed. It was now convenient to recognise the absentees in the expectation that their signatures to a

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23. K Sinclair, 'Some Historical Notes on an Atiawa Genealogy', *Journal of the Polynesian Society*, vol 60, no 1, March 1951, p 60.

24. The stories are collated by Parsonson at doc A2, pp 7-9, and doc A3, pp 6-10.

25. (a) Although the previous policy had been to buy whole blocks in Taranaki, the policy had none the less been compromised in practice, because the Crown had still purported to treat with those whom it deemed were the rightful hapu representatives, acknowledging some and ignoring others.

(b) As matters turned out, the whole of the Pekapeka block was to be surveyed and acquired.

26. While Kingi is regularly described in history as the paramount chief of the area, Maori opinions are not so clear-cut. An analysis of genealogies by the Compensation Court in 1866 described Te Teira and Kingi as both possessed of important pedigrees but had Kingi as the senior and probably a rangatira ariki. The chief judge of that court later wrote: 'How anyone could think of negotiating for that block from Taylor [Teira] I can't think' (Fenton to W Rolleston, 1 August 1866, W Rolleston MSS1).

deed would 'very much weaken the opposition of Wm King and others' to the sale.<sup>27</sup> Once more, it was an attempt to divide and rule but no one signed the deed that was presented. Thereafter, McLean still did not return to Taranaki; he went to Hawke's Bay, where he sought to facilitate the Pekapeka purchase by correspondence. On 18 March, he wrote to Kingi, Wiremu Ngawaka Patukakariki, and 'nga tangata katoa o Waitara', asking them to point out:

your pieces of land which lie in the portion given up by Te Teira to the Governor. You are aware that with each individual lies the arrangement as regards his own piece; in like manner Te Teira has the arrangement of his piece.<sup>28</sup>

With McLean absent, it was left to Robert Parris, the Crown purchase agent in Taranaki, to attempt to complete the Waitara purchase. Te Teira complained that Kingi and the others would not agree to mark out 'their own pieces of land without our line'.<sup>29</sup> Parris was instructed to reassure him that:

The Governor consents to your word, that is, as regards your own individual piece, but be careful that your boundary does not encroach upon the land of any person who objects to sell . . . consent will be given to the purchase of land that belongs to yourself.<sup>30</sup>

Another letter was addressed to Kingi:

The Governor has consented to his [Te Teira's] word, that is, as regards his own individual piece, not that which belongs to other persons. The governor's rule is, for each man to have the word (or say) as regards his own land; that of a man with no claim will not be listened to.<sup>31</sup>

Te Teira and Kingi replied to these letters. Te Teira said:

The land that I and Richmond consented for you to have, belongs to myself, Richmond, Hemi Watakingi, Paranihi, Rawiri, my father Thomas, and Nopera. It belongs to all of us . . . the seven consent to our offering it to you . . . I am not rashly interfering with other people's land, the land is ours.

Te Teira urged the Governor to settle for the land at once.<sup>32</sup>

Kingi, aware that Te Teira had asked for payment, wrote a few days later:

I will not agree to our bedroom being sold (I mean Waitara here), for this bed belongs to all of us; and do not you be in haste to give the money. If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it . . . All I have to say to you, O Governor, is that none of this land will be given to you, never, never, till I die. I have heard it is said that I am to be imprisoned because of this land.

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27. McLean to C W Richmond, 25 April 1859 (doc A3, p 24)

28. McLean to Kingi and others, 18 March 1859 (doc A3, p 18)

29. Te Teira and Retimana to Browne, 20 March 1859 (doc A3, p 19)

30. T H Smith to Te Teira, 2 April 1859 (doc A3, p 19)

31. Smith to Kingi, 2 April 1859 (doc A2, p 19)

32. Te Teira and others to Browne, 20 April 1859 (doc A3, p 20)

I am very sad because of this word. Why is it? You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.<sup>33</sup>

The correspondence went to the core of the Waitara problem. The Governor would break tribal opposition to land sales by promoting the right of individuals or individual whanau to sell their 'piece' of land in defiance of rangatira responsible for the collective interests of all. Maori tenure recognised individual whanau rights of occupation and use centred on kainga, cultivations, and resource sites, but any admission of strangers that might prejudice the integrity of the group, as might occur on the sale of part, required communal sanction at a hapu or even wider level. This 'tribal right', as it was then called, was known at the time and had been spelled out in the 1856 report of the Board of Native Affairs.

The different views of Kingi and Te Teira became more evident as the crisis grew, which developed because the Governor forced the issue. Reporting to the Colonial Office after the March meeting at New Plymouth, he wrote:

progress has been made in ascertaining Teira's right to dispose of the land (of which there seems to be little doubt), and, if proved, the purchase will be completed. Should this be the case it will probably lead to the acquisition of all the land south of the Waitara river, which is essentially necessary for the consolidation of the province, as well as for the use of the settlers.

It is also most important to vindicate our right to purchase from those who have both the right and the desire to sell.

. . . I have, however, little fear that William King will venture to resort to violence to maintain his assumed right; but I have made every preparation to enforce obedience should he presume to do so.<sup>34</sup>

By so gravely misinterpreting Maori law and Kingi's determination to uphold it, the Governor was expediting the crisis he would avert. Throughout, however, he was misadvised and misinformed. The Crown purchase agent, for example, purveyed the view that Kingi had no possessory interest in the land, omitting to advise the Governor that Kingi and some 200 of his followers lived there. It is clear that the agent knew of this, because he had earlier claimed that Kingi had returned to live at Waitara only with Te Teira's permission. This opinion was spuriously based on advice that, on his return from Cook Strait, Kingi had waited on Te Teira before occupying the land. In fact, however, Te Teira had accompanied Kingi. Kingi was returning to his father's pa and cultivations and had no need to seek Te Teira's permission to settle there. The point, however, is that the agent obviously knew of Kingi's residence on the land, but he reported only that Kingi was simply dictating 'authority over [the] land'.<sup>35</sup> Accordingly, the Governor was to assume that the question was whether Kingi had the right to exercise a chiefly veto, when that was not the question because Kingi had an interest in possession.

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33. Kingi to Browne, 25 April 1859, AJHR, 1860, E-3, p 6

34. Browne to Lytton, 29 March 1859 (doc A3, pp 21-22)

35. Parris to Richmond, 21 September 1859, AJHR, 1860, E-4, p 25 (doc A3, p 29)

Kingi refused to point out his 'piece'. He could not have done otherwise. It is helpful to understand the attributes of rangatira to appreciate why this should be so, but it is not practicable to explain that immediately. Suffice it to say for the moment that the rangatira were not merely the leaders of the people – they were the people. They were inclined to use 'I' where others would use 'the people' or 'we'. They owned everything and yet might claim nothing personally. They were entitled to be first and yet might put the least within the tribe ahead of themselves. They placed importance on honour and were keen to honour others but were most insistent on maintaining their own. As part of keeping honour, they would not demean themselves by doing less than was expected of them. As the name 'rangatira' implies, their primary function was to unite the people as one body. In our view, Wiremu Kingi was the epitome of a rangatira. It was not possible for him to countenance a division of the land or to accept that one person could take unilateral action to the detriment of any others.

Perhaps not appreciating the cultural sensitivities, the Crown agent complained that Kingi, 'full of dogged obstinacy' and 'assuming the right to dictate authority over the land', would not or could not point to his part.<sup>36</sup> The Governor replied:

If Mr Parris is satisfied that Teira and the others who offer to sell have an indisputable title to the land, an advance should be made to them at once in part payment for it. They should, however, be told that the purchase will not be completed until Mr McLean reaches Taranaki.<sup>37</sup>

The agent was thus authorised to make an 'immediate advance' once he was satisfied that the 'parties offering it, have an indisputable title'.<sup>38</sup> After waiting in vain for McLean to arrive, he eventually made a deposit on 29 November 1859, having duly announced it beforehand. The ceremony took place in New Plymouth, in the presence of both parties to the dispute and several settlers. The agent read out the boundaries of the block and promised that anyone who had land within it ('his own strip of cultivation ground') and did not want it to be sold would have it 'distinctly marked off and his portion left to him'. It was added that, when the boundary lines had been cut and the price fixed, the remainder of the payment would be handed over.<sup>39</sup>

The agent then recorded his questions to Kingi and Kingi's responses:

Q: Does the land belong to Teira and party?

A: Yes, the land is theirs, but I will not let them sell it.

Q: Why will you oppose their selling that which is their own?

A: Because I do not wish for the land to be disturbed; and although they have floated it, I will not let them sell it.

Q: Shew me the justness or correctness of your opposition?

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36. Parris to C W Richmond, 21 September 1859 (doc A3, p 29)

37. Browne to C W Richmond, 19 July 1861 (doc A3, p 30)

38. T H Smith to Parris, 27 September 1859 (doc A3, p 30)

39. AJHR, 1861, C-1, pp 224–225

- A: It is enough, Parris, their bellies are full with the sight of the money you have promised them, but don't give it to them; if you do, I won't let you have the land, but will take it and cultivate it myself.<sup>40</sup>

Leaving aside the self-serving opportunities presented to the Crown agent, and assuming the faithfulness of his transcript and translations, in cultural terms the answers support Kingi's position. As a rangatira, he excluded no one. He included Te Teira and his party and he claimed nothing for himself, because, as rangatira, all that he had was the people's. It is instructive, then, to compare those responses with that which Kingi put in his own hand. His confusion and anger over the Governor's perspective, which could only have been incomprehensible to him, and his expectation that the Governor would adhere to his original undertaking not to buy disputed land are evident in his letter to Archdeacon Hadfield:

Father, hearken, this is to ask you to explain to me the new system of the Governor; I heard it from Mr Parris when I went to town to close (stop payment of) the money of the Governor, the payment for Waitara, one hundred pounds . . . I said to that Pakeha, 'Friend, keep away your money.' That Pakeha said, 'No' . . . I also said to Mr Parris, disputed land the Governor does not desire. That Pakeha replied, 'That was some time ago: now this is a new system of the Governor's.' From what I know (in my opinion) the Governor is seeking a quarrel for himself, for he has fully exhibited death. I therefore ask you to explain it to me, perhaps you have heard of the Governor's new system . . . insisting upon disputed land and unwarrantably paying for disputed land, which has not been surveyed. Do you hearken. I will not give the ground. If the Governor strikes without cause, then death, then he will have no line of action (tikanga) for this is an old word, 'man first, the land next.' My word is therefore spoken, that you might distinctly hear what my offence is, and also the error of all the Pakehas, of Mr Parris, Mr Whitely, and the Governor.

He then emphasised, by metaphorical reference to the most needy of his hapu, the nature of communal ownership:

They say that to Teira only belongs that piece of land. No, it belongs to us all: to the orphan and to the widow, belongs that piece of land.<sup>41</sup>

Feelings ran high as events moved to war. Even prominent settlers were expressing views that Kingi should be surrounded, deported, and, if he fired one shot, hanged. Te Teira insisted that the Governor 'consummate the marriage', writing on 19 January 1860: 'We are sad because our marriage with this woman [is] being deferred so long.'<sup>42</sup> A week later, the Governor gave instructions that the survey proceed, that Kingi be informed 'indirectly, but not officially' when it would start, that the surveyors be protected by an adequate military force, and that the senior military officer be authorised to declare martial law. Once the survey was complete, the military were to keep possession of the land to prevent any

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40. Doc A3, p 34

41. Kingi to Hadfield, 5 December 1859, McLean papers, MS papers 32, folder 9(14A)

42. Te Teira to Browne, 19 January 1860 (doc A2, p 36)

occupation. The Native Minister instructed that, were the survey to be interrupted, the surveyors were to retire, the military were to occupy the land, and the survey was to then be completed under military protection. The Crown agent had discretion as to when to pay the balance purchase moneys.<sup>43</sup>

The Crown agent kept Kingi informed, seeking again that he disclose the pieces in which he was interested. Kingi responded, 'I will not consent to divide the land, because my Father's dying words, and instructions were, to hold it.'<sup>44</sup>

There is no evidence that Kingi wanted war. The evidence is rather that, while the Crown prepared for military operations, Kingi attempted to avert any fighting. On 20 February, three surveyors sought to survey the external boundaries of the block, but some 60 to 80 of Kingi's people, unarmed and mainly women, refused to let the survey proceed. Colonel Murray then sent an ultimatum:

William King, it has given me much pain to hear from Mr Parris that the Government surveyors sent down to survey the land purchased from Te Teira were stopped by your people. This is rebellion against the Queen. I am most anxious that no harm should come to any Maoris caused by your conduct; but I must tell you plainly that the Governor has ordered me to take possession of the land with the soldiers, and I must obey him if you continue in opposition. As I wish to keep everything peaceable between the Europeans and the natives, I will wait till 4 o'clock to-morrow afternoon, for your answer, whether I am to go or not.<sup>45</sup>

Kingi replied:

Friend Colonel Murray, salutation to you in the love of our Lord Jesus Christ . . . You say that we have been guilty of rebellion against the Queen, but we consider we have not, because the Governor has said he will not entertain offers of land which are disputed. The Governor has also said, that it is not right for one man to sell the land to the Europeans, but that all the people should consent. You are now disregarding the good law of the Governor, and adopting a bad law. This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and Maories. Listen; my love is this, you and Parris put a stop to your proceedings, that your love for the Europeans and the Maories may be true. I have heard that you are coming to Waitara with soldiers, and therefore I know that you are angry with me. Is this your love for me, to bring soldiers to Waitara? This is not love; it is anger. I do not wish for anger; all that I want is the land. All the Governors and the Europeans have heard my word, which is, that I will hold the land. That is all. Write to me. Peace be with you.<sup>46</sup>

Colonel Murray then declared martial law. The Maori text of the proclamation read:

HE PANUITANGA. Na Te Kawana, Colonel Thomas Gore Browne, Tino Rangatira, aha, aha, na te Kawana o tenei Koroni o Niu Tireni tenei Panuitanga. Ko te mea, meake ka timata nga Hoia o Te Kuini ta ratou mahi ki nga Maori i Taranaki, e tutu ana, e

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43. Richmond to Parris, 25 January 1860 (doc A2, p 37)

44. Parris to Richmond, 16 February 1860 (doc A2, p 40)

45. Murray to Kingi, 20 February 1860, BPP, vol 12, p 9 (doc A2, p 41)

46. Kingi to Murray, 21 February 1860, BPP, vol 12, p 9 (doc A2, p 42)



whawhai ana ki to te Kuini mana – Na, ko ahau tenei ko Te Kawana, te panui te whakapuaki nui nei i tenei kupu, Ko te Ture whaw[h]ai kia puta inaiane ki Taranaki, hei Ture tuturu tae noa ki te wa ka panuitia te whakarereanga.

Of some interest is the use of 'tino rangatira' for 'governor', an awkward slip of the pen, because 'tino rangatiratanga' was precisely that which the Treaty of Waitangi had guaranteed to Maori.

The English translation of the operative clause was:

. . . Whereas Active Military operations are about to be undertaken by the Queen's Force against Natives in the Province of Taranaki, in arms against Her Majesty's Sovereign Authority, Now I, the Governor, do hereby PROCLAIM and DECLARE that MARTIAL LAW will be exercised throughout the said Province from publication hereof . . . until the relief of the said district from Martial Law by public Proclamation.

It should be noted that, as a matter of law, a formal proclamation of martial law is not necessary for the exercise of martial law powers.<sup>47</sup> The exercise of power by the military may be undertaken whenever a state of war in fact exists. In this case, the proclamation has more the character of a notice of Crown attack. The statement that Maori were 'in arms against Her Majesty's Sovereign Authority' is singularly unsupported by the evidence.

The Maori text, however, especially reads as a declaration of war. Maori were accustomed to settling the rules of war prior to battle, and 'martial law' had been rendered as 'Ko te Ture whawhai kia puta inaiane ki Taranaki', so that the document proclaimed 'the law of fighting now introduced to Taranaki'. Indicative of Maori expectations was the consequential withdrawal of women and children from the disputed area.

A deed of purchase for the Pekapeka block was executed on 24 February with 20 Maori signatories of Te Teira's family.<sup>48</sup> It appears that, because no one else identified their 'pieces', Te Teira and the other signatories were accepted as owners of the whole. Boundaries were listed but no reserves were mentioned. A payment was made, the deed reciting the price as £600, and the Crown assumed that title had passed hands. Three years later, a new Governor was to admit the error, declaring the Government was unaware that Kingi was a part-owner and lived upon the land, but by then the war, which had lasted a year, had just been resumed. Te Teira was later to claim that full payment was never made and that reserves had been promised but not given.

The Governor arrived from Auckland with some 200 men of the 65th Regiment to reinforce the troops already there and the settler militia, who had been called to arms. He sought a conference with Kingi at New Plymouth and offered him safe conduct. Kingi proposed a council at Kaipakopako, midway between Waitara and New Plymouth, but the Governor regarded this as a subterfuge while Kingi waited for reinforcements and thus no meeting took place. The Governor, however, spoke

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47. See F M Brookfield, 'Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu . . .' (doc M19(a), p 19)

48. The deed is in Turton, p 61

to a gathering of Maori in New Plymouth, and in a mixture of blandishments and bluster, he told them that the Treaty of Waitangi secured their rights and property and assured them of the Queen's disinterested love for them and of her power and many soldiers. He continued:

Yet William King presumes to say that he will not respect the Queen's promise to her subjects. The Queen says each man shall keep his property if he pleases, and sell his property if he pleases. William King says, Teira shall not sell his property as he pleases. Is this wise? Is it right? . . . Teira's title to the land is a good title, and William King and you all know that it is so . . . I desire peace and hate war. It is with William King to choose between peace and war. If he chooses war the blood will be required at his hands, and not at mine, and it is for him to consider the consequences while there is yet time.<sup>49</sup>

The Governor then circulated a manifesto asserting the correctness of his position and that the mana of the land was not with Kingi, that Browne had accepted Te Teira's title on the condition that it was undisputed, that an investigation showed it was 'not disputed by anyone', and that, since Te Teira had received payment, the land was now Crown land and Kingi would not be permitted to interfere with it.

### **3.7 WAR**

On 4 March, the Governor instructed Colonel Gold, who was in command of the troops, to occupy the land. The approach was by sea. Some 400 men landed at Waitara the next day to fortify a position. The Governor then arrived with the blue jackets and marines to occupy what was described as 'Kingi's pa' near the river mouth. On 6 March, it was discovered that Hapurona and others of Kingi's supporters had thrown up a stockade. They were given 20 minutes to evacuate, which they did, and the pa was taken. That same day, Te Teira's people destroyed Kingi's pa at Kuhikuhi on the Pekapeka block.

The survey of the block began on 13 March and there was no resistance. On the night of 15 March, however, Kingi's people constructed an L-shaped pa at Te Kohia, at the south-west extremity of the block, commanding the road access. On 16 March, they uprooted the surveyor's boundary markers. On 17 March, Gold marched his troops to Te Kohia Pa and demanded that Kingi and his people surrender. When they refused to do so, the troops opened fire. The long war had begun. It was only 12 months after the new Governor had visited New Plymouth for the first time and promised those present that disputed lands would not be acquired.

Some 500 troops effected the artillery bombardment of Te Kohia Pa, but in the night the defenders quietly disappeared, without loss of life, and the next day all that was captured was an empty pa. If the Governor had anticipated a quick, decisive victory to bring Kingi to heel and to deter others from joining him, he had miscalculated. In Maori terms, however, the engagement had other significance. By Maori law, Kingi's action was a necessary stratagem. Outnumbered and outgunned,

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49. As printed in *Te Karere* (the Maori Messenger) (doc A3, p 46).

he needed allies to fight from several places, but by Maori tikanga, support is not regularly available to an aggressor or to someone in the wrong. Te Kohia Pa, at the extremity of the disputed block and with a ready escape route by road and into the bush, had been hastily constructed with an apparent view to its abandonment if attacked. It appears to have had no other purpose than to evidence the Governor's 'wrong'.

Strangely, the Governor was sensitive to this tactic but still ordered an attack. This is apparent from an initial caution to Colonel Gold:

The first blood shed is a matter to which the natives attach great weight, and other tribes would join William King in a demand for utu if he could satisfy them that he had not been the first aggressor.<sup>50</sup>

The aggressor having been identified in accordance with Kingi's ploy, others were then free to launch reprisals under Maori utu laws. In a sense, they were obliged to. The popular rendition of utu as revenge is a misconception. Utu concerns the maintenance of balance as a mechanism for harmony and peace. This includes punishment for wrongdoing, which, to remove any connotation of revenge, was regularly exacted by other than those directly aggrieved and, for the same reason, was effected against other than the immediate offender. The strength of utu in personal affairs lay not in giving effect to it but in the certainty of it happening if a wrong were perpetrated. Accordingly, those who responded in this case were able to claim, in their terms, not only that they were justified in attacking but that they were obliged to do so, for by such means is tikanga, a proper line of action, maintained.

By this strategy, the war against Kingi became a Taranaki war and that was the more important factor in securing a measure of Maori success.

### **3.8 CONCLUSIONS**

It is tempting to generalise matters to conclude that the war was a result of a desperate shortage of land for European settlement, as settlers were forever claiming. In reality, there was no shortage of land in Government hands in 1859. The most compelling evidence for saying so is the number of settlers the Government had to introduce later to fill the available territory. The Tararutangi purchase, completed in January 1859, was made over for selection soon afterwards, and added some 14,000 acres for settlement. There was much other unoccupied Crown land nearer to New Plymouth. In comparison, the landholdings of many Maori hapu had been reduced to small reserves.

The causes of war are many. In this case, however, they point generally to the conclusion that the Governor started it. Most especially, he disregarded Maori law and authority. Contrary to Maori law, and in disregard for Maori authority, he presumed to buy from one group, though to do so would affect all and when, by their

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50. Browne to Gold, 3 March 1860, BPP, vol 12, p 13

own collective process, not all affected had agreed. Maori law and authority with regard to the ownership and possession of land were Treaty guaranteed, and thus the Governor's actions, which caused the war, were contrary to the Treaty.

The disregard of customary tenure, institutions, and process occurred despite the advice of the Board of Native Affairs. In that respect, the Governor's actions were contrary not only to the Treaty but also to principles of law. That Maori ownership should be determined in accordance with Maori custom had been recognised by the New Zealand courts in a celebrated case of 1847, still quoted internationally in indigenous rights fora, *R v Symonds*, with Chief Justice Martin presiding.<sup>51</sup> It had been subsequently noted by the Board of Native Affairs. Commenting on the board's review later, Martin noted:

Among the questions put by the Board to the witnesses was the following:

Has a native a strictly individual right to any particular portion of land, independent and clear of the tribal right over it?

This question was answered in the negative by 27 witnesses, including Mr Commissioner McLean; and by two only in the affirmative.<sup>52</sup>

The determination of ownership in accordance with custom was further recognised in the Native Land Act 1862, even though that Act proceeded to change that tenure once ownership was ascertained. Previous Crown purchase policy had also recognised the same principle, though it was imperfectly observed. As for some recent statements of the same position, reference may be made to Justice Brennan in *Mabo v Queensland No 2*:

Native title . . . has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs.<sup>53</sup>

It is clear that at all material times the Governor was obliged to negotiate for Maori land on the basis of the incidents ordinarily accruing to native title, but he did not do so, despite being informed of them.

The matter was confused when officials debated whether Kingi had 'a chiefly power of veto'. In our view, this was the wrong question. First, Kingi had an interest in possession and his consent was required in that capacity. Secondly, as a rangatira, Kingi was expressing not a personal veto but the majority view. The question was whether individuals could presume to alienate land or whether a collective decision was required, as expressed through the rangatira, which would bind individual members.

In this way, the 'rangatiratanga' guaranteed by the Treaty was very much in issue, because the question was one not of ownership but of the customary process for managing land and its disposal. We have no doubt of the appropriate custom law

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51. *R v Symonds* (1847) NZPCC 387

52. See AJHR, 1890, G-1

53. *Mabo v Queensland No 2* (1992) 175 CLR 1, 38

principle. Any disposition that could introduce outsiders to the community, as in this case, affected everyone, and accordingly a community decision, as expressed through the rangatira, was required. If there were two rangatira, no disposition could be made if they did not agree.

Consequently, Te Teira was acting contrary to custom law principle in selling a part when not all were agreed. We suspect he was using the novelty of a sale to make a new law and to claim at the same time that he held more mana than Kingi, in that Kingi could not stop him. Kingi, on the other hand, was asserting the customary value, in our opinion, and was acting strictly in accordance with Maori law.

For his part, the Governor was also creating a new law. He presumed to deal with individuals, when, by English law and the doctrine of aboriginal title, he was obliged to follow Maori law when buying land, which required that he deal with the collective interests through their representatives.

In any event, the land having been acquired unlawfully, that is, without proper regard for Maori custom as required by English law, the Governor's violent seizure of the block was also unlawful.

With regard to the war itself, it is further apparent that Wiremu Kingi was unjustly attacked. We have obtained the opinion of a senior constitutional lawyer in the matter, and we concur with his view that the opening of the war at Waitara was represented in an unlawful attack by the armed forces of the Crown on Maori not at that time in rebellion and that there was no justification for the Governor's use of force. We note further his view that, at the time, the Governor and certain officers were liable for criminal and civil charges for their actions.<sup>54</sup>

The evidence for the view that the Governor was willing to go to war to settle the question of authority but that Maori were keen for peace is compelling. What was not apparent to the Governor, however, was that, in opposing Maori authority in this way, he was in 'rebellion' against the Queen's word in the Treaty.

Given the background described, when the war began in the north, southern hapu had little practical option but to join in. The Governor's policy and intention were clear. They would not be able to retain their own homes or the status to which they were entitled under his policy and laws, and had thus to defend their own positions once Kingi was attacked.

Support for these conclusions is to be found in independent opinions. The 1927 royal commission to inquire into the confiscations was emphatic in its views that Te Teira could not have sold without Kingi's consent, that Maori had no alternative but to fight in self-defence, and that:

When martial law was proclaimed in Taranaki . . . Wiremu Kingi and his people were not in rebellion against the Queen's sovereignty; and when they were driven from the land, their pas destroyed, their houses set fire to, and their cultivations laid waste they were not rebels, and they had not committed any crime.<sup>55</sup>

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54. Document M19(a), pp 39, 52

55. AJHR, 1928, G-27, pp 1, 11

The commission placed weight on the views of William Pember Reeves, who considered that the Waitara affair 'would always remain for New Zealand a blunder worse than a crime'.<sup>56</sup> More particularly, the commission stated:

The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home . . . The government was wrong in declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under that purchase.

Subsequent historians have identified wider causes of the war than the royal commission perceived but without demur from the commission's basic findings.<sup>57</sup> We concur with James Belich's view that what was most at stake was a question of authority and the colonists' desire to assert their own rules that Maori land could be acquired and affairs arranged on the colonists' terms.<sup>58</sup> Governor Browne, who forced the Waitara issue to war, believed that more than a piece of land was involved. As he put it, 'I must either have purchased this land or recognised a right which would have made William King virtual sovereign of this part of New Zealand.'<sup>59</sup> We believe that his depiction of the issue as one of 'sovereignty' and not 'autonomy' was mistaken, especially considering that the Governor later regarded the Kingitanga as a greater threat to the sovereignty of the Queen and declared it an unlawful combination. We do not see that Maori were in fact in opposition to the authority of the Queen. It is rather that they understood the position in different terms, consistent with their culture; that is, that respective authorities are to be respected or that there must be, in a word, 'co-existence'. That is also our understanding of the Treaty's terms, and that Maori retained autonomy of the kind that Kingi was exercising at Waitara. Belich thought that 'Perhaps the Taranaki and Waikato conflicts were more akin to classic wars of conquest than we would like to believe.'<sup>60</sup>

A Maori rejoinder was impossible to constrain. In our view, it is a truism that conflict, even war, is inevitable when the freedom of a people is denied. Denied in this case was the freedom of hapu to make their own decisions, form their own policy, manage their lands and affairs in their own manner, and form pan-tribal associations. More particularly denied at the time was the right of rangatira to control recalcitrant individuals in alienating community land.

The lessons of Waitara and Waitotara are seen as these:

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56. W P Reeves, *The Long White Cloud*, 3rd ed, p 196

57. See K Sinclair, *Origins of the Maori Wars*; A Ward, 'The Origins of the Anglo-Maori Wars: A Reconsideration', *New Zealand Journal of History*, vol 1, no 1, 1967, pp 148-170; B J Dalton, *A New Look at the Maori Wars*; I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832-1852*, Wellington, Department of Internal Affairs: Historical Publications Branch, 1968

58. J Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, Auckland, 1986, ch 4

59. Cited in Belich, p 11

60. *Ibid*, p 80

- (a) While the focus was on the land question alone, at heart was a people's right to autonomy and their right to have their most important lands clearly reserved, as a turangawaewae, before any acquisitions began.
- (b) The positing of the issue as a question of whose authority would prevail was an error. When peoples meet, the authority of each is to be respected, and the question is how, in the interests of peace, respective authorities are to be reconciled.
- (c) The issue was not solely the maintenance of custom, be it that of the British or Maori, because the modification of the customs of both may be necessary for effective conciliation.
- (d) The separate authority of governance and rangatiratanga was acknowledged in the Treaty of Waitangi, and the need to develop protocols for their mediation should have been foreseen.
- (e) Fundamental to the Crown's assumption of the right to govern was its concomitant undertaking to protect Maori interests. The lesson of Waitara and Waitotara would appear to be that, without clear constitutional or other legal requirements, promises are too easily forgotten.

## CHAPTER 4

# THE TARANAKI WARS

Friend Colonel Murray, Salutation to you in the love of our Lord Jesus Christ . . . You say that we have been guilty of rebellion against the Queen, but we consider we have not, because the Governor has said he will not entertain offers of land which are disputed. The Governor has also said, that it is not right for one man to sell the land to the Europeans, but that all the people should consent. You are now disregarding the good law of the Governor, and adopting a bad law. This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and Maories. Listen; my love is this, you and Parris put a stop to your proceedings, that your love for the Europeans and the Maories may be true. I have heard that you are coming to Waitara with soldiers, and therefore I know that you are angry with me. Is this your love for me, to bring soldiers to Waitara? This is not love; it is anger. I do not wish for anger; all that I want is the land. All the Governors and the Europeans have heard my word, which is, that I will hold the land. That is all. Write to me. Peace be with you.

Wiremu Kingi, on the eve of war, 21 February 1860

We shall live in a dreamland until we fairly conquer the rebel natives (meaning all of them) and when we are absolute masters of the country it will be time enough to talk of technical law and civilized justice . . .

Judge Maning, 1869<sup>1</sup>

This is the year of the daughters, this is the year of the lamb.

Titokowaru, 1867

### 4.1 PURPOSE

On behalf of the Government, Crown counsel accepted in this claim that the Waitara purchase and the wars constituted an injustice and were therefore in breach of the principles of the Treaty of Waitangi. That admission is appropriate. The historical record leads indelibly to the view that Wiremu Kingi and his people never rebelled but were attacked by British troops in violation of the principles of the Treaty. Thereafter, a climate for war developed, where, in our view, Maori could not expect anything like the protection promised in the Treaty. They had cause to consider, in the circumstances of the time, that their best hopes for keeping their homes, lands, and status lay in the assertion of arms.

Despite the Crown's admission, a review of the wars is required to determine who was responsible. To begin with, the Government of the day portrayed the wars as divided into two parts and admitted responsibility for the first but blamed Maori for the second, and on the basis of the second war, confiscated Maori land. More

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1. Maning to J Webster, 21 March 1869, Maning autograph letters, Auckland Public Library



particularly, in the Government's view, the first war, which started with the assault on Kingi's Te Kohia Pa on 17 March 1860, ended with a truce on 18 March 1861. The second war, in the Government's view, began with a Maori assault on a British escort at Oakura on 4 May 1863 and continued intermittently until March 1869. The confiscation was based on the second war and assumed that those Maori who attacked the escort at Oakura, and those who subsequently joined the fighting, were guilty of rebellion. For the reasons given in this chapter, we consider that the second war began earlier with the Governor's invasion of that area and that the Government was responsible for the second war, just as it admitted responsibility for the first.<sup>2</sup> We also consider, bearing in mind that the land was confiscated from Maori on account of their alleged rebellion, that rebellion against the Queen's authority was not in fact the Maori intent and, for the most part, cannot be shown to have existed at the time the confiscations took place.

The wars at the time are also examined because they illuminate the Maori positions. The fighting was such that inevitably there were moments of attrition, yet we would say of the Maori leadership that their actions were directed not against Pakeha as such but against Government aggression and the denial of their rights. The Maori search, as we read the record, was not for war but for a peace where Maori would be respected and a proper relationship with the Government would be forged.

To begin with, some factors may be noted to dispel popular misconceptions. It is unlikely that Maori were unprepared for the size of the force or the weaponry deployed against them. As a British ally near Cook Strait, Wiremu Kingi had previous experience of British troops. It is clear, however, that the British underestimated the Maori capacity for war. Maori fighting strengths lay in their careful strategies; ability to form common policy in war; familiarity with the land; history of war experience; and ability to adapt fortifications of palisades, bunkers, and trenches against artillery attacks. Weakness lay in the absence of a central command, disparate armies, and the lack of a full-time force. Maori fighters were often accompanied by their families and regularly stopped war to tend to crops. As a result, engagements were abandoned at crucial times for domestic chores, especially during planting. None the less, there was a capacity for sustained warfare with the result that the anticipated quick victory at Waitara did not happen, and hostilities continued for nine years.<sup>3</sup> This was despite the fact that an appreciation of Maori military capacities grew rapidly, as evidenced by the early import of additional troops so that Maori were outnumbered and outgunned throughout. The war opened with 423 regular troops and 300 militia and volunteers against Kingi's force, which was estimated at 300. By September 1860, there were 2300 Imperial troops. When other hapu joined the battle, the fighters were estimated at 600 in the north and 800 in the south. By 1864, and for the purpose of the Waikato campaign,

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2. This chapter draws largely from documents in the *Raupatu Document Bank*, Wellington, Waitangi Tribunal, 1990; the research report by H Bauchop, 'The Wars and Iwi Losses in Taranaki, 1860-70' (doc H11); and several texts, but especially K Sinclair, *The Origins of the Maori Wars*; J Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1922; and J Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, Auckland, 1986.

3. See Belich

the Governor had amassed a force of 14,000. By early 1865, when General Cameron opened a second front in Taranaki at Waitotara, nearly 5000 troops were employed in the province. It was apparent that by then Maori fighting strengths were well known, though the taua in Taranaki at this time comprised only about 1500 men, women, and children to stand against the Imperial and colonial troops.<sup>4</sup>

## 4.2 THE FIRST WAR

The record suggests the Governor assumed a quick and decisive victory would be obtained to bring Kingi to submission and deter others from joining the action. He was in fact to start a nine-year war – a war that would spread widely through the island. On 17 March 1860, some 500 troops began the bombardment of Kingi's Te Kohia Pa. That night the defenders quietly evacuated, without loss of life, and the next day the pa was taken empty. If it was a British victory, it was a small one, for the ground was taken but not the enemy. From a Maori point of view, the strategy was necessary and proved successful. As discussed in chapter 3, the aim was to gain support from other Maori by exposing the Government's aggression (see sec 3.7).

The reprisals from other hapu came quickly. Those south of New Plymouth, particularly Taranaki, Ngati Ruanui, and Nga Rauru, attacked outlying settlers, who were forced to take refuge in the township. The Governor was compelled to face opponents on two flanks.

The next engagement, the so-called 'battle' of Waireka on 28 March, was a badly coordinated attempt by regular troops and local militia to rescue besieged settlers south of New Plymouth. Though most of the settlers were saved, Waireka was not the victory that the Governor claimed. The European casualties numbered 14, according to Cowan, and the Maori fatalities 'probably . . . 50, with as many wounded',<sup>5</sup> but Belich considers the Maori casualties were grossly exaggerated and amounted to 'about one'. In his view, it was 'a classic example . . . of a paper victory'.<sup>6</sup> In reality, the victory lay with the Taranaki war party and its allies, who plundered the settler farms and endangered New Plymouth. Indeed, in the early months of the war, Kingi and his allies held the upper hand, with the settlers and the Imperial troops confined to the township of New Plymouth and stockades at Omata and Waitara. Many of the women and children were shifted to Nelson.

Far from being over quickly, it was soon apparent that the war would be a prolonged encounter. Civilians were to be targeted as well. Just as Maori attacked settlers and burned their homes, the military attacked Maori villages and productive Maori farms, leaving defended pa untouched. The bombardment of Warea Village on 29 March and the destruction of its stores, stock, and crops was a case in point.

The Governor waited for reinforcements before resuming the offensive. Meanwhile, Maori were courting allies. In April, a delegation representing Te Atiawa, Taranaki, and Ngati Ruanui tendered their allegiance to King Potatau.

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4. Document H11, pp 69–70

5. Cowan, vol 1, p 188

6. Belich, pp 84, 88

Although the King advised his own people against any intervention, others associated with the King movement could not be stopped and war parties, mainly from Ngati Maniapoto, went to Kingi's aid. They moved along the old war trails into north Taranaki, setting aside their traditional enmities to fight in common cause.

Ngati Maniapoto first became involved in the fighting at Puketaukauere, near Waitara, which Belich describes as the most important battle in the Taranaki war. The Ngati Maniapoto taua, under Epiha Tokohihi, joined forces with Te Atiawa under Kingi's military commander Hapurona, along with contingents from Taranaki, Nga Rauru, and Whanganui – which gives some illustration of the widespread unity of the time. Maori were opposed by elite troops from the 40th Regiment, assisted by a naval brigade and guided by none other than Ihaia Te Kirikumara. Though the British had superior numbers and weaponry, they were outwitted by Hapurona and subjected to what Belich has described as 'one of the three most clear cut and disastrous defeats suffered by imperial troops in New Zealand'.<sup>7</sup>

The British defeat had a twofold effect. On the one hand, it engendered a confidence in the Maori camp whereby some moved to the outskirts of New Plymouth (though no frontal attack was mounted), with sections of Waikato joining in. On the other, the British changed tactics, preparing for a long haul. Colonel Gold, who was seen as incompetent, was replaced by the cautious General Pratt, who used his troops to dig long, laborious saps to the ramparts of pa before the final assault. It was a slow and costly business, which much amused Pratt's foe, who offered to help in the work for a shilling a day, only to abandon the pa at the last moment and start again elsewhere.<sup>8</sup>

In the spring of 1860, the pressure was reduced when Maori withdrew to plant their crops. Even so, the British were unable to gain any effective victories until, fortuitously, they won a battle at Mahoetahi early in November. There, more than 600 British regulars, colonial militia, and Maori allies attacked some 150 Waikato, mostly Ngati Haua, under the command of Wetini Taipourutu, before they managed to entrench themselves. Though they fought with reckless bravado, Taipourutu and his men were heavily outnumbered, unable to withstand the British bayonet charges, and suffered heavy casualties. One-third of the force was killed and another third was wounded, the British losing only four men, with 16 wounded.<sup>9</sup>

Waikato reinforcements arrived seeking revenge, and the local hapu who had not been engaged at Mahoetahi continued to harass the army while constructing further pa. At the end of December, Pratt took the field once more, carefully advancing by sap before assaulting strongly defended pa at Kairau and Huirangi on the northern approaches to Waitara. These pa also guarded Te Arei, at the approach to the historic pa of Pukerangiora. It took Pratt a month to capture Huirangi, though he also repulsed a reckless counter-attack by Te Atiawa and Waikato troops on one of his redoubts, inflicting almost as many casualties as were suffered at Mahoetahi.<sup>10</sup> After

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7. Belich, p 92

8. Sinclair, p 228

9. Cowan, vol 1, pp 193–200. Belich, pp 101, 190, underplays the Maori defeat and regards the battle as a 'minor action'.

10. See Belich, p 189, and Cowan, vol 1, pp 205–210

this, the military settled down to push a long double sap towards Te Arei, while constructing further redoubts to protect the rear. This incipient trench warfare was inconclusive, however, with progress frequently being interrupted by Maori sniping by day and filling the saps by night.

### 4.3 PEACE

So far, the war had produced no clear result but was enough to encourage the Governor to accept a truce. The initiatives appear to have come from Waikato. The Kingitanga was committed to supporting Kingi, who had placed his lands under the mana of the Maori King, but the support was through emissaries for peace rather than through arms. The chief peacemaker was Wiremu Tamehana, the Ngati Haua leader known as 'the kingmaker' for his role in the selection of a king. He opposed involving the Kingitanga in the Taranaki war, urged Ngati Haua against joining Taipourutu there, and initiated peace moves. For that purpose, the Kingitanga first met the Governor in Auckland early in 1861. At that time, the Governor did not agree. In March, Tamehana arrived in Taranaki but had difficulty in persuading the military officers of his peaceful intent. The Governor, however, sent the Native Secretary to the scene and a cease-fire was agreed on 18 March. Tamati Ngapora and two other Waikato rangatira then accompanied the Governor from Auckland to Taranaki to finalise the peace terms.<sup>11</sup>

The terms, formalised on 3 April, included a promise by the Governor to investigate the Pekapeka purchase and to 'divide the land . . . amongst its former owners'.<sup>12</sup> It was agreed that plunder taken from settlers would be restored by Te Atiawa, who would submit to the Queen's authority. Tamehana signed for Waikato and Hapurona for Te Atiawa, but not all Waikato felt bound, nor did all Te Atiawa agree, Kingi himself declining to sign at that time. Other Taranaki hapu were not involved.

Later, Kingi wrote to the Governor to say that he 'consented to the peace', and then, as if to prove the integrity of his word, he left Taranaki to take up residence with Rewi Maniapoto at Kihikihiki, where he remained for some two years. The cease-fire was maintained for over two years, and there is no record that Kingi or his followers ever returned to arms once their consent to the peace terms had been given.

Following the peace agreement, Pekapeka remained occupied by the military, pending an inquiry, while by way of set-off, the hapu of central Taranaki, assisted by Ngati Ruanui from the south, held on to Omata and Tataraimaka. Although not party to the peace terms, they abided the arrangement and New Plymouth was not attacked.

There then occurred what we consider a most provocative act, assuming Maori were aware of it and understood its portent. Despite the truce and though a question of land tenure had sparked the preceding war, and without awaiting the Governor's

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11. The events are more fully described in document A3, pp 55–58.

12. See Browne to William King, 7 April 1861, and enclosure, BPP, vol 13, p 52 (doc A3, pp 56–57)

promised inquiry into Pekapeka, the General Assembly passed the Native Lands Act 1862. This replaced traditional communal tenure with ownership of prescribed 'pieces' in severalty along the very lines that the Governor had sought and Kingi, rightly in our view, had opposed. Thus, the Taranaki settlers had their way, even though the earlier Act, the Native Territorial Rights Act, which provided for individual Maori land ownership, had formerly been disallowed in Britain. The purpose of the Native Lands Act, as we see it, was to facilitate the sale of Maori land and prevent tribal leaders from exercising any kind of tribal authority that might constrain sales.

The historical record also leaves little doubt that during this period the Governor temporised with peace while preparing for war. He used the time to plan the invasion of Waikato, because, in his view, the Kingitanga was the core of the 'rebellion'. During the truce, which Maori scrupulously observed, most of the British troops were shifted to Auckland to construct a military road through the Hunua Ranges to the Waikato River. New Plymouth was very vulnerable at this time, but no Maori attack was made.

The policy of promoting peace while preparing for war was continued by the new Governor, Sir George Grey, who arrived late in 1861. Grey established 'civil institutions' in Maori districts, which were headed by a European civil commissioner and officials but included Maori assessors and constables, to work alongside Maori runanga.<sup>13</sup> While purporting to recognise Maori authority, this system brought it under European control. In Waikato, it was seen as a direct challenge to the Kingitanga, along with various other measures aimed at military intervention, including the construction of the military road from south Auckland towards the King's inner border at Mangatawhiri. With preparations for war becoming more evident, the Kingitanga sent Pakeha residents out of Waikato and declared they would fight if the military road crossed the Mangatawhiri River. On 12 July 1863, the Imperial army and local militia crossed the river, and the war in Waikato began.

The invasion of Waikato, for which the Government has now admitted responsibility,<sup>14</sup> enlarged the scope of the war. It assumed a national character as Maori from as far afield as the East Coast went to the support of the King.

Meanwhile, even before the invasion of Waikato, steps had been taken to resurrect the Taranaki war.

#### **4.4 RESUMPTION OF WAR**

The events leading to the resumption of warfare in Taranaki need analysis, because it is only on the second war that the land confiscations were based. We summarise the events as follows:

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13. Sinclair, pp 237–252; B R Dalton, *War and Politics in New Zealand, 1855–1870*, Sydney, Sydney University Press, 1967, pp 138–164

14. *Deed of Settlement: Her Majesty the Queen in Right of New Zealand and Waikato*, 22 May 1995, p 4

- (a) With the negotiation of a truce in Taranaki, British troops retained Pekapeka and some Waitara Maori land, but as a set-off, and pending an inquiry, southern hapu held Omata and Tataraimaka.
- (b) Before any inquiry as to Pekapeka was made, as had been promised, on 12 March 1863, British troops occupied Omata and on 4 April they moved on to Tataraimaka. There is no evidence of any provocation. It will be observed by reference to figure 6 that these two blocks were separate and that it was necessary to cross Maori land to move from one to the other.
- (c) At the same time as the troops were directed to move, Ministers and officials were discussing proposals to confiscate Maori land to pay for the war.
- (d) Two days later, the Governor purported to investigate the Pekapeka purchase and found what he called 'new facts'. Of course they were well known before. It was 'found', however, that Kingi had a pa and cultivations on the block, that Te Teira did not have an undisputed title, and that the purchase, despite an initial payment, had not been completed. It was then agreed that Pekapeka was not Crown land after all.
- (e) Though it was then decided that the land must be returned, the Governor delayed saying so. It was not until 22 April that his decision was conveyed to his Ministers. They in turn delayed a fortnight further before doing anything.<sup>15</sup> It seems no one was prepared to announce this unpalatable fact to the settlers, to admit wrong to Maori, or to do anything that might defer the military resumption of Omata and Tataraimaka.
- (f) At all times, Maori were unaware of anything other than the military activities south of New Plymouth. At Taiporohenui, they debated the Government's breach of the truce by the reoccupation of Omata and Tataraimaka and the trespass of troops on the Maori land between. They appear to have decided to respond. On 4 May, a month after the military had reoccupied Tataraimaka, a military escort was ambushed on Maori land at Oakura, between Omata and Tataraimaka, and nine soldiers were killed. The ambush, it will be noted, was against soldiers on Maori land. It could be said, in Maori terms, that the soldiers were in error, for they were caught where they should not have been, and that their trespass was a provocation. Indeed, it is likely that Maori saw the trespass on Maori land as more significant than the resumption of Omata. Even before the war, Maori had become acutely conscious of the need to maintain boundaries where Europeans were concerned, and to enforce recognition of their ownership, they had imposed a toll on Europeans crossing the area.
- (g) That same night, as soon as they were informed of the ambush, the Ministers agreed to renounce the Waitara purchase. They also decided that the land between Omata and Tataraimaka that belonged to the party who had carried out the ambush should be confiscated by the Crown in retaliation and should become a military settlement. They further advised the Governor to summon

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15. Sinclair, pp 260–266; Dalton, pp 165–171

a meeting of Te Atiawa at Waitara to issue a declaration of the Government's decision:

That circumstances connected with the purchase of Waitara having come to light which made it, in the opinion of Government, inadvisable to complete the purchase, the government are willing and ready to restore the Waitara to its former owners, and to publish a general amnesty for all former offences; on condition that those engaged in the late insurrection should absolutely separate themselves from the Southern tribes and leave the punishment of the late murders entirely in the hands of the Governor.

If they failed to comply and assisted the southern tribes:

the whole of their own land at Waitara will be declared forfeited in like manner as the territory between Omata and Tataraimaika.

- (h) At the same time, politicians were proposing larger confiscations throughout Taranaki, south Auckland, Hauraki, and Waikato.<sup>16</sup>
- (i) On 11 May, Grey issued a proclamation abandoning the Waitara purchase and all claims on it by the Government.<sup>17</sup>
- (j) A proclamation on 6 July 1863 notified an intention to survey settlements at Oakura and to place military settlers in possession of sections in return for military services.<sup>18</sup> This was the first formal notice of a confiscation intent. At that time, no empowering legislation was in place.
- (k) On 3 December 1863, the General Assembly enacted the legislation for the confiscation of Maori land. The Taranaki confiscations were then proclaimed in 1865.

The retraction in respect of Pekapeka was amazing in light of the tragedy of the previous war and startling for its omissions and timing. The question of whether land could be sold without a general hapu agreement was not considered. Instead, legislation (the Native Land Act 1862) had already been passed to enable land to be sold without tribal consent and control. The retraction blatantly avoided an honest inquiry into who was to blame for the war and gave no thought to compensating Maori. The retraction was also made after the Oakura ambush and the resumption of hostilities. If it were true that Maori had held the southern blocks as a *quid pro quo* for Pekapeka, pending its return, and if the abandonment of Pekapeka had been announced beforehand, the ambush might not have happened. In a touch of irony, Pekapeka was confiscated two years later on the basis that Kingi was at war, although there is no evidence that he had engaged in hostilities since the resumption of the war.

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16. See 'Memorandum on the Native Question by the Superintendent of Taranaki and Correspondence', 2 May 1863, AJHR, 1863, E-18, p 1. By June 1863, there were detailed plans to confiscate the Oakura land: see 'Papers Relative to Waitara', AJHR, 1863, E-2, pp 20–21. See also Domett to Governor, 24 June 1863, AJHR, E-7, p 9.

17. Proclamation, 11 May 1863, published in the *New Zealand Gazette*, 15 May 1863, AJHR, E-2, p 27

18. *New Zealand Gazette*, 1863, no 27, p 265

The retraction, it seems to us, was simply play-acting; the fabrication of a scene to place blame on the former Governor, so that the new Governor might restart the war with a clean slate.

We can thus reach some conclusions on the resumption of the war. The Government contends that the second war dated from the Oakura ambush of 4 May, a view that posits Maori as the aggressors and responsible for the second war. That position has long been regarded as untenable. The second war arose from the Government's breach of the peace, the failure to inquire promptly and honestly into Pekapeka, the military reoccupation of Omata and Tataraimaka, and the military trespass on Maori land. These were hostile acts, in our view, which were undertaken during the truce and which could have implied only that the war had been unilaterally resumed. They were contrary to the honest conduct expected under the principles of the Treaty of Waitangi.

Our conclusion is thus similar to that reached by the Sim commission in 1927, which apportioned no blame to Maori for the outbreak of the second war but saw it as a continuation of the first. That commission went further to observe that 'the armed occupation of Tataraimaika was, in the circumstances, a declaration of war against the Natives, and [it] forced them into the position of rebels'.<sup>19</sup>

#### 4.5 THE SECOND WAR

Some commentators have written of a Maori custom so precise that even in war certain courses of action were predictable. In practice, the war conventions of races are imperfectly observed but breaches are not proof that no rules applied. With that qualification, it may be said of the first war that it was characterised by set battles, where gallantry and honour were not rare. Some indication of the Maori attitude to warfare may be found in the Maori word for enemy – *hoariri*, or one's friend in a fight. It may be said of the second war, however, that it was marked by a descent to attrition, as the Government faced criticism over progress and as Maori saw that the war was no longer a dispute on the method of buying land but part of a programme for confiscating their land.

Change came in response to the Government's new policies. Formerly, Maori had taken set positions, challenging the army to an open contest. In the second war, the settlers were to remain behind a protecting ring of redoubts, which the army gradually extended. As the line of fortresses expanded, military settlers were introduced to fill the land behind them. By this means, the frontier was pushed beyond the lands claimed by purchase, to effect a creeping confiscation of Maori land. It was a strategy of systematic military conquest and colonisation that had been used as early as Roman times in Britain.<sup>20</sup> Under this new system, it was clear the objective was no longer to define the settler and Maori pieces but to take all the territory. In support came a series of proclamations, laws, and regulations to make

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19. AJHR, 1928, G-7, p 11

20. For a fuller discussion, see Nigel Prickett, 'The Archaeology of a Military Frontier: Taranaki, New Zealand, 1860-1881', *passim*.



the process legal and to put Maori in rebellion at law, irrespective of the position in fact.

Based on the research provided, we emphasise some features of the war that might not otherwise be obvious. The war was not a war between Maori and Pakeha. There were Maori on both sides, and many Pakeha advocated a Maori point of view. Most prominent among the latter were Sir William Martin, the retired chief justice, who wrote extensively on the topic, Bishop Selwyn, and the Reverend Octavius Hadfield. Even military officers were opposed to what was happening, the commander of the Imperial forces eventually resigning his office in protest. In effect, the war was about Government policy, not race.

Similarly, it is not sufficient to say that certain hapu participated in the war but the balance did not, because some hapu were divided and, irrespective of the general tribal position, there were always individuals who would go the other way.

In addition, the Maori involved were not limited to those from Taranaki. Much to the Government's dismay, Maori from elsewhere joined them, and much to Maori dismay, the Government itself recruited Maori from outside.

Finally, the war should not be seen as an isolated event or one continuous fight. While a constant tension was evident throughout the nine-year course of the wars, there were lulls in the fighting and civilian activities never ceased to expand. As stockades were built, farms were settled, lands were surveyed, roads and (eventually) railways were built, courts sat, and provincial councils deliberated. The infrastructure of European settlement and officialdom was being established.

#### **4.6 THE MILITARY OCCUPATION OF CENTRAL TARANAKI**

The second Taranaki war began in a desultory pattern of raids and engagements south of New Plymouth. Once more, Tataraimaka was abandoned by the Imperial army and the troops pulled back to defensive positions at Omata and the Bell block. The settlers remained in the sanctuary of the town or redoubts, while the army conducted occasional raids on Maori pa and kainga.

The first indication of an invasion was a proclamation under the Government's new policy of 'creeping confiscation'. The proclamation, published in the *New Zealand Gazette* on 6 July 1863, set out conditions for a military settlement on Maori land between Omata and Tataraimaka. The land was to be confiscated because, it was claimed, the owners were responsible for the Oakura ambush. The proclamation proposed the allocation of lands for settlers in return for military service, prescribed the terms of service and the allotments to be received, and defined the area to be taken. All this was done, even though the empowering law for confiscation had still to be enacted.<sup>21</sup>

The military settlers, recruited mainly from the Victorian and Otago goldfields, were rapidly introduced during the latter months of 1863 and were soon engaged in hostilities alongside the Imperial troops of the 57th Regiment and local Taranaki

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21. The New Zealand Settlements Act was assented to on 3 December 1863. The Oakura confiscation was not proclaimed until 31 January 1865, by which time part of the land had been well and truly settled.

settler militia. They were known variously as the Taranaki Military Settlers and the Melbourne and Otago Volunteers and fought as a separate company in a series of search and destroy missions south of Oakura. They gave new impetus to the 'scorched earth' practice of laying waste to Maori villages and cultivations in the area.

It was soon apparent that the establishment of the military settlement in central Taranaki was likely to be but a foretaste of much more. The New Zealand Settlements Act of 3 December 1863, which followed soon after, envisaged large-scale land confiscation of loyal and rebel land alike. Military settlements; a scorched earth policy of attrition, with indiscriminate attacks on villages, whether warlike or otherwise; confiscation without distinction as to loyal or rebel land; and the Government's unlikely claim to have purchased Waitotara, despite the trouble over Waitara, could have served only to convince Maori that the settlers' hunger for land knew no bounds. Unsurprisingly, a new level of desperation became evident in the Maori response. This was first apparent following a search and destroy operation and the destruction of Maori crops at Ahuahu, near Oakura, by a party from the 57th Regiment. The group was taken by surprise on 6 April and the captain and six others were killed. This was the first known action in the war by the adherents of Pai Marire, a religion based largely on the Old Testament and founded by Te Ua Haumene at Te Namu in September 1862. Following tradition to demonstrate the vulnerability of an enemy, and with the biblical precedent of David and Goliath and others to sustain it, the slain soldiers were decapitated. The heads were preserved and later taken around the island by emissaries of the new faith to symbolise their power and enlist support for their cause.<sup>22</sup> They succeeded in attracting many, and they then directed their efforts away from their own area to relieving Te Atiawa in the north. The Te Atiawa position is now explained.

#### **4.7 THE MILITARY OCCUPATION OF NORTH TARANAKI**

There was little sign of Te Atiawa aggression after the resumption of war in May 1863 and yet their lands were also about to be invaded and confiscated. 'Kingi's Natives', as they were called in the local press, reinforced their old pa and were sometimes engaged in skirmishes with the settler militia, usually over cattle, but they did not go on the offensive.<sup>23</sup> Kingi himself was not involved. On the contrary, his actions were exemplary. When the first war ended, he left Waitara to live with Rewi Maniapoto at Kihikihi in the King Country, and he was still there when the second Taranaki war started.<sup>24</sup> Having agreed to the truce and having obtained the Governor's admission that the Pekapeka arrangements were wrong, for the most part Kingi distanced himself from the scene, providing the Governor with no proper

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22. Cowan, vol 2, pp 16–18; Warre to Grey, 23 April 1864, RDB, vol 11, pp 3922–3924

23. S Cross, 'Muru me te Raupatu: Confiscation, Compensation, and Settlement in North Taranaki, 1863–1880', MA thesis, University of Auckland, 1993, pp 69–72

24. Cowan, vol 1, p 222

grounds for further military action against him or for the confiscation of his land, but his lands were invaded and confiscated just the same.

The army, which had begun its attacks on central Taranaki, extended its raids on Maori pa and kainga into north Taranaki, initially utilising strongholds at New Plymouth and on the Bell block. Later, in September 1863, the colonial troops went on the offensive when the Forest Rangers attacked Te Atiawa Maori in the bush between the Bell block and Mataitawa.

Subsequently, the military presumed not merely to attack Maori on Crown land but to begin the occupation of the Maori lands as well. Early in the execution of that strategy came the occupation of a pa on Maori land at Sentry Hill, north of the Waiongana River, by the Taranaki Volunteers in January 1864. In February, troops under the command of Colonel Warre began constructing a redoubt there, at this stage without resistance from local Maori, though they were reported to have called for support from the south.<sup>25</sup>

The Maori response, when it finally came on 30 April 1864, was led by prophets of the Pai Marire faith, though the founder, Te Ua, was not there. With a combined force of some 200, thought to be of Te Atiawa, Taranaki, Ngati Ruanui, Nga Rauru, and Whanganui hapu, they assaulted Sentry Hill. The redoubt, being on Te Atiawa land, was a deliberate affront and challenge to Te Atiawa and their allies.<sup>26</sup> According to British reports, the Pai Marire force advanced on the redoubt in broad daylight, fully exposed with their right hands raised and chanting 'hapa, pai marire'. They were cut down in droves, with about 50 killed, including the leader, the apostle Hepanaia Kapewhiti.<sup>27</sup> A recent historian, Paul Clark, has cast doubts on this and other depictions of Pai Marire and their alleged 'blind fanaticism' at Sentry Hill. Such characterisations helped justify British aggression. The Pai Marire party, in Clarke's view, had expected the troops to emerge from the redoubt to fight them in the open.<sup>28</sup> 'Pai Marire', meaning 'peace', was indicative of the movement's ostensible purpose. The name 'Hauhau' was given to it by the settlers.

Late in 1864, as the war in other parts of the country ended, troops were released to concentrate on Taranaki, and the military occupation of Maori land in north Taranaki was resumed. In October, the troops captured Manutahi Pa near Sentry Hill. Then, the formidable Te Arei Pa, which had frustrated General Pratt in 1860 and 1861, was taken without a fight.<sup>29</sup> Wiremu Kingi's people, who had put up little resistance, withdrew along the Whakaahurangi track into Ngati Maru country on the upper Waitara River, where they were to stay for the remainder of the war. Later on, Kingi was to join them there.

The military established a line of redoubts along the lower Waitara at Mataitawa, Manutahi, Matakara, Te Arei, and Huirangi. These in turn provided security for

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25. Warre to Colonial Defence Office, 16 February 1864, RDB, vol 135, pp 51,919–51,926

26. Cowan, vol 2, p 22

27. Ibid, pp 23–27; RDB, vol 11, pp 3925–3926

28. Paul Clark, *'Hauhau': The Pai Marire Search for Maori Identity*, Auckland University Press, Auckland, 1975, p 14

29. Cowan, vol 2, pp 28–29; H J Warre to D A Cameron, 12 October 1864, RDB, vol 11, pp 3973–3975. Although Warre mentions 'Wm King's Natives' and his flagstaff, he does not indicate whether Kingi himself was present during this engagement.

military settlements that were later established at Mataitawa, Manutahi, Huirangi, and Manganui.<sup>30</sup> At the same time, the lands on either side of the Waitara River were formally confiscated, as will be discussed in chapter 5, by proclamations on 31 January 1865 (for the lands to the south) and 5 September 1865 (for the lands to the north).

In the early months of 1865, the pattern of military occupation and creeping confiscation was extended northwards, not because of any local hostility but because of a rumour that the old war paths would be used again by the Waikato tribes. In April, Pukearuhe in the far north was occupied by troops on Colonel Warre's instructions after reports were received of the 'movements of the Rebel Natives apparently with a view to recommencing hostilities in the Province'.<sup>31</sup> In fact, there is no record of any hostilities at all but a military settlement was established. A military redoubt was erected soon after at Urenui. Although the Ngati Mutunga people there and at Mimi were seen as loyal to the Crown,<sup>32</sup> the military were concerned about Kingi, who had returned to Taranaki and was said to be at Kaipikari, near Urenui.<sup>33</sup> Kingi did not offer any resistance and retired to the upper Waitara River, where he remained until 1872. In May, another military settlement was established at Tikorangi, on the north bank of the Waitara, where the local Ngati Rahiri people were also loyal. All this occurred before the land was formally confiscated by the proclamation on 5 September 1865.

With such a lapse of time as now prevails, one cannot be certain of all the facts, but the historical record certainly suggests that the whole or at least the greater part of northern Taranaki was invaded, occupied, and finally confiscated without any act of rebellion having taken place from and after 1 January 1863, being the date from which the law of confiscation for rebellion applied. In so far as Maori fought at all – and few did – they were merely defending their kainga, crops, and land against military advance and occupation. The only possible exception of which we are aware is the Maori attack on Sentry Hill. This redoubt, erected on Te Atiawa land after the truce and without any act of aggression, rebellion, or insurrection to justify the occupation of the land, was an unlawful trespass, if not an invasion, and Te Atiawa were entitled to seek the recovery of that which was theirs. Technically, however, the attack may be classed as a rebellion, but a Pai Marire rebellion, not a rebellion by Te Atiawa as such, unless there is evidence that the Te Atiawa leadership was implicated. Whatever the view, however, Sentry Hill was a small part indeed of the tribal and geographical landscape of north Taranaki, and the attack could not possibly have justified the confiscation of the whole area, including lands well beyond Te Atiawa's influence.

Indeed, with the absence of Maori-initiated warfare in north Taranaki after the truce, one could fairly ask whether, apart from immediate responses to the initiatives of the Imperial troops, the second war ever really happened there. In the result, when most of north Taranaki was eventually confiscated in 1865, for the ostensible

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30. Cross, pp 73–74

31. Ibid, p 141

32. Ibid, pp 143

33. H A Warre to H A Atkinson, 30 May 1865, RDB, vol 18, p 6976

purpose of introducing settlers to the land to keep the peace, in terms of the legislation all that was necessary to keep the peace was for the army to withdraw. There was no need or justification for the Act to be applied, because Maori were not at war.

In other words, on the evidence, such as it is now, one can assume only that the confiscation of the whole of north Taranaki was not only contrary to the principles of the Treaty of Waitangi but unlawful in terms of the confiscation legislation itself, for the fundamental circumstances on which any action under that Act might be taken did not exist at the time that action was taken.

Of course, it may be that there were circumstances that were known at the time and of which we are now unaware, even though we have examined a substantial collection of documents.<sup>34</sup> We consider, however, that the confiscation of the thousands of acres of a distinct people could not be said to have been done with any measure of integrity when there was no carefully documented record of the acts of aggression and warlike circumstances that would justify, without any measure of doubt, such an extreme measure. In fact, the evidence is rather of a culpable lack of concern. At best, it was assumed a warlike state applied. At worst, evidence that a warlike state did not exist was deliberately ignored. This applies especially to the confiscation in the far north and to the first military settlements there. It is perfectly clear, and was obviously known at the time, that the war had not extended that far and the hapu there were at peace. If, on military grounds, there had been a case for a military outpost at Pukearuhe – to guard against possible Kingitanga raids into Taranaki – that could not justify the confiscation of the surrounding land of local people who were not in rebellion.

In any event, the war in north Taranaki was at an end. The only subsequent trouble, the killing of the Wesleyan missionary John Whitely and several military settlers in February 1869, was carried out not by local hapu but by others from outside Taranaki and occurred long after the confiscations had been made.

#### **4.8 THE MILITARY OCCUPATION OF SOUTH TARANAKI**

The third expansion of the military frontier came from Whanganui in the south. Though the Imperial troops and military settlers held redoubts beyond New Plymouth as far as Tataraimaka, the long territory from there to Whanganui remained in Maori hands. In the southern region lay the Waitotara block. In July 1863, the Government claimed to have completed the purchase of that block by a payment to some Nga Rauru Maori. In 1864, in preparation for the sale of Waitotara land to settlers, a road was pushed into the block, to the consternation of local Nga Rauru, who viewed it as Waikato had viewed the military road to Mangatawhiri. A sale was held in Wellington on 17 October 1864, when 12,475 acres of land were sold, including 1980 acres for military land orders.<sup>35</sup> In November, as the road work approached the Waitotara River, the road makers were stopped by Hare Tipene and

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34. This includes the 139 volumes of documents in the *Raupatu Document Bank*.

35. Document 120, p 44

Pehimana. Though the sale of the Waitotara block was hotly disputed, to have taken the road beyond the Waitotara River would have been to invade what was clearly Maori land. The Governor responded by instructing General Cameron, who had now completed the Waikato and Tauranga campaigns, to use two regiments to secure 'sufficient possession' of land between Whanganui and the Patea River in order that the Waitotara road could proceed.<sup>36</sup> It was the beginning of a grand strategy for a thoroughfare north from Whanganui to New Plymouth, with redoubts and military settlements to protect it along the way.

As in north Taranaki, the military advance and settlement preceded formal confiscation. Cameron's advance from Whanganui began early in 1865. The confiscation itself was not effected until 5 September 1865, when the whole of the coast from Whanganui to Tataraimaka was taken. The military fought an engagement at Nukumarū, in the middle of the Waitotara block, on 24 January, crossed the Waitotara River on 3 February, and then continued their advance northwards. They were continually harassed by Maori forces, being unwilling to follow them into the bush or even assault them in strongly entrenched pa. The failure to attack Weraroa, subsequently captured by a mixed force of colonial militia and Maori auxiliaries, serves as an example. Nevertheless, the slow advance continued and military posts were established at the various river crossings. By the end of March, the troops had reached the Waingongoro River, deep in Ngāti Ruanui territory. Settlement proceeded behind the military progression.

At the same time, Colonel Warre was extending military outposts south of New Plymouth. In April 1865, he established posts at Warea and Opunake. Early in June, two small British forces, one from Opunake, the other from Waingongoro, effected a junction. The old coastal track from Whanganui to New Plymouth was thus reopened, but it was only precariously held since the military authority hardly extended beyond rifle-shot from the redoubts. Over the next few months, there was considerable fighting following the destruction of undefended kainga in the vicinity of Warea.<sup>37</sup>

At the end of 1865, the character of the war changed again. The scorched earth policy of stripping the land of Maori homes and crops that had been applied since the beginning of the war in 1863 was supplemented by 'bush-scouring'. This strategy aimed to take the fight to Maori in the bush, the army by then having the assistance of Maori contingents from other districts. Though the British regiments were being withdrawn, in accordance with the 'self-reliant' policy of the Government of the time, the remaining troops were put under the command of Major-General Trevor Chute. Cameron had been reluctant to prosecute the war, which he saw as being prolonged in order to facilitate land confiscation. Chute, on the other hand, was prepared to wage the war relentlessly and to carry it into the bush. On 30 December, he led a mixed force of Imperial troops, colonial militia, and the Whanganui Native Contingent to attack bush settlements and destroy crops north of Waitotara. In mid-January 1866, Chute's force captured the strongly fortified Otapawa Pa on the Tangahoe River. The force then moved across the Waingongoro

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36. *Ibid.*, p 47

37. Cowan, vol 2, pp 46–58

River, destroying kainga as it went. Instead of proceeding along the coast, however, Chute went inland, following the ancient Whakaahurangi track, which ran around the eastern foothills of Taranaki to Pukerangiora on the Waitara River. After an exhausting nine days' march, Chute's force arrived in New Plymouth on 26 January 1866. Then, to complete the subjugation of the province, he took the troops back round the coast, completing the encirclement of Taranaki mountain and assaulting Maori pa along the way. In a campaign that lasted five weeks, Chute's force destroyed seven fortified pa and 21 kainga and inflicted heavy casualties.<sup>38</sup> Belich was to write:

Not all the pa stormed were hostile, not all the villages destroyed were fortified, and not all the Maori slain were armed, but the devastation was just the same. This was the terrible strategy known as 'bush-scouring' – sudden attacks on soft targets, even deep in the bush.<sup>39</sup>

This was the last significant involvement of British troops in the New Zealand wars. Although one British regiment remained in New Zealand until 1871, it was largely confined to barracks. For the remainder of the war, the fight against Maori resisters was carried out by colonial militia, military settlers, and Maori units.

It was now assumed that the confiscated land of south Taranaki could be occupied by military settlers. Some 50,000 acres between the Waitotara and Waingongoro Rivers were laid out for military settlers around townships at Kakaramea, Mokoia, and Ohawe, while a military camp was established at Patea under Major Thomas McDonnell. A survey of land for settlement was started at Manutahi in Pakakohi country, but it was resisted and warfare was resumed. In the second half of 1866, McDonnell's forces fought several engagements against Ngati Ruanui and their allies, including a sharp conflict at Pungarehu, just to the west of the Waingongoro River.<sup>40</sup>

#### **4.9 TITOKOWARU'S WAR**

The final phase of the war is named after its chief protagonist, Riwha Titokowaru, the leader and prophet of Nga Ruahine. Though much of the person and his motives for beginning and abandoning the war remain obscure, his reputation was widespread. Titokowaru's onslaught on the settlements of south Taranaki was so successful that Whanganui was threatened and fears were held for settlers as far south as Wellington. Yet his military campaigns ended when, for unknown reasons and while at the height of success, his forces abandoned their position. Titokowaru himself took refuge with Ngati Maru.

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38. Cowan, vol 2, pp 61–71

39. J Belich, *I Shall Not Die: Titokowaru's War, New Zealand, 1868–1869*, Wellington, Allen and Unwin and Port Nicholson Press, 1989, p 8

40. Cowan, vol 2, pp 143–152



*On General Chute's March by Gustavus von Tempsky. Photograph courtesy of the Museum of New Zealand Te Papa Tongarewa.*



The extent of Titokowaru's influence and his initial hopes for peace were apparent when he announced 1867 as the year of the daughters and the lamb,<sup>41</sup> because Maori resistance then ceased. European settlement was to proceed unhindered, save that Ngati Ruanui and Pakakohi expected the settlers to obey Maori laws and exacted muru against settlers as punishment for offences. In Belich's view, Titokowaru's peacemaking was so successful that it alone 'would have made him famous had he done nothing else'.<sup>42</sup> Cowan, on the other hand, claimed that Titokowaru used the peace to organise for war.<sup>43</sup>

Whatever the explanation, the year of the lamb was replaced by the year of the lion. The change apparently followed a dispute over some horses and the overly zealous actions of a magistrate in arresting three of Titokowaru's men. In June 1868, three military settlers were killed in reply at Te Rauna, east of the Waingongoro River, by a party from Titokowaru's pa at Te Ngutu-o-te-manu. Another military settler was killed a few days later near the redoubt at Waihi. A hotel and house belonging to Edward McDonnell, Colonel McDonnell's brother, were burned down. It appeared Titokowaru was challenging Colonel McDonnell to fight. McDonnell was the target of Maori criticism following allegations that he had been party to a cavalry charge on, and killing of, a group of defenceless children. Then, on 12 July, a force led by Haowhenua, a close relative of Titokowaru, stormed the redoubt at Turuturu-mokai, near Hawera, killing 10 and wounding six of the garrison of 27. Upon the arrival of a relief force led by Von Tempsky, the Maori troops withdrew, leaving three dead.

With only one Imperial regiment remaining, the colonists had to rely largely on their own resources. McDonnell assembled a mixed force of nearly 1000 volunteer militia, military settlers, and Maori allies from Whanganui for an advance on Titokowaru's settlement at Te Ngutu-o-te-manu. Titokowaru, by contrast, had a force of about 60, mostly Nga Ruahine.<sup>44</sup> Despite the imbalance, the contest, when it finally occurred on 21 August, was indecisive. McDonnell attacked an undefended settlement, but his troops were continually harassed as they withdrew.<sup>45</sup> His second attack on 7 September was a disaster. In seeking to advance on the pa from the rear, many of the soldiers became lost in the bush. When they reached a clearing and began to attack the pa, they were met by withering fire from Maori concealed in the surrounding bush. McDonnell lost control and could not coordinate his forces, and his withdrawal turned into a rout, his fleeing troops being continually harassed. Altogether, 24 of McDonnell's men were killed, including five officers. The claim that Titokowaru's losses were 28 was unsubstantiated and is thought to be unlikely.<sup>46</sup>

Titokowaru then challenged McDonnell again by moving south across the Waingongoro River and occupying open country at Taiporohenui. McDonnell made a desultory attack on 20 September, but retreated without dislodging him. With the remnant of his volunteer army disintegrating and the Maori allies returning to

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41. Cowan, vol 2, p 179

42. J Belich, *I Shall Not Die*, p 22

43. Cowan, vol 2, p 179

44. Ibid, pp 76-88

45. Ibid, pp 102-113

46. Ibid, pp 214-215

Whanganui, McDonnell was forced to retreat still further. All redoubts north of the Patea River were abandoned, along with the main military camp at Waihi, though a garrison remained holed up at the Patea township. Titokowaru, on the other hand, increased his strength with the addition of Pakakohi and Nga Rauru allies, and proceeded to harass settlers still in occupation of land south of the Waitotara River.

Before McDonnell could organise a counter-attack, he was dismissed from the command and replaced by Colonel Whitmore. Titokowaru had built a new pa at Moturoa, just inside the bushline between the Waitotara and Whenuakura Rivers. Whitmore assaulted the pa with a combined force of colonial volunteers and Whanganui allies but they were repulsed by a counter-attack from the pa and the surrounding bush. This time the troops beat an organised retreat, suffering some 50 or 60 casualties. Once again, Titokowaru's victory brought him new recruits – from the local Nga Rauru and even, it appears, from central and north Taranaki – giving him a force of about 1000. He then continued his relentless advance southwards, threatening the small garrison at Weraroa and another at Nukumaru, and constructing a pa at Tauranga-ika, within 20 kilometres of Whanganui. Whitmore's troops were forced to retreat yet further, and by 18 November, Titokowaru had reached Kai Iwi, within eight kilometres of Whanganui.<sup>47</sup>

The threat to colonial settlements was not confined to Whanganui. Te Kooti had escaped from the Chatham Islands and on 10 November he had attacked the settlers at Matawhero near Gisborne. Whitmore had to withdraw his best troops for an East Coast campaign, leaving Titokowaru in command of the countryside throughout south Taranaki to the outskirts of Whanganui. With the forts, redoubts, and military camps of south Taranaki abandoned, the settlers in refuge at Whanganui, and 1000 Maori troops encamped in a pa nearby, and with the contemporaneous attacks from Te Kooti in Poverty Bay and the Bay of Plenty, the colony faced its darkest moment. Titokowaru, however, did not attack.

It was not until Te Kooti was dislodged from his fortress at Ngatapa early in January 1869 that operations against Titokowaru could be resumed. On 2 February, Whitmore and some 2000 troops began an artillery bombardment on Titokowaru's elaborately engineered and virtually impregnable pa at Tauranga-ika. Titokowaru's troops returned fire then, unexpectedly, evacuated the pa in the night.

The remainder of the war consisted of the pursuit of Titokowaru's disbanding forces. In the weeks that followed, there were engagements at Weraroa, on the west bank of the Waitotara River, and at Otautu, on the east bank of the Patea River, with a last engagement in March 1869 at Whakamara near Taiporohenui, the site of one of the first anti-land selling hui as long ago as 1854. Titokowaru, now a fugitive with a price of £1000 on his head, inflicted casualties on his pursuers but always managed to extricate himself. He was never captured and took refuge with Ngati Maru in the upper reaches of the Waitara River.<sup>48</sup> The long Taranaki wars had ended.

In recognition of that fact, 233 Pakakohi men, women, and children came down from the hills and surrendered on the basis of promises they would not be harmed. Of these, 96 were tried for treason and 74 were sentenced to death, the sentences

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47. *Ibid.*, pp 244–262

48. Belich, *I Shall Not Die*, pp 250–264

being later commuted to imprisonment in Dunedin. It was the start of a new route for Taranaki Maori – the trail of broken promises.

#### 4.10 CONCLUSIONS

For the reasons given in chapter 3, the Government's initial invasion of north Taranaki was, in our view, contrary to the principles of the Treaty of Waitangi. Wiremu Kingi was forthright in the pursuit of peace and did not rebel, but he was attacked. In the second war, north Taranaki was invested once more, and again, there was no prior act of aggression or provocation from Maori to justify the action taken. Kingi actually left the district, which gave the Government no ground to fight again or to take his people's land. The record is sufficiently clear to establish that the Government was the aggressor and, consequently, that its action in taking up arms against Maori in north Taranaki and occupying and confiscating their land was contrary to the Treaty. In addition, though questions of law require another standard of evidential proof, now hampered by lapse of time, we think it probable, on the historical record and for the reasons given earlier, that the confiscation of north Taranaki was unlawful as well.

Central Taranaki was invaded on the basis that local hapu had breached the truce by carrying out the Oakura ambush. In fact, the Government had earlier breached the truce by taking Omata and Tataraimaka and by conducting military manoeuvres on Maori land. The Oakura ambush must be seen as an attempt by Maori to stop the military's continued trespass. The Sim commission came to the view that the Crown's armed occupation of the Tataraimaka block was, 'in the circumstances, a declaration of war against the Natives . . . [which] forced them into the position of rebels'.<sup>49</sup> The commission appears to have concluded that in the first war Maori were not in rebellion but fighting in self-defence and that in the second they were forced into rebellion. Leaving aside for the moment some questions as to the extent to which Maori could lawfully respond to aggression, we concur with the Sim commission's view that the second war began with the Crown's taking of Omata and Tataraimaka. In addition, we would give weight to the military activity carried out on Maori land between those blocks. It seems to us that the Maori action was carefully planned to occur on their own land so there could be no doubting that they were responding to aggression.

Given the circumstances in which the Crown invaded the area – during a truce, without prior discussion, and without mention of the proposed return of Waitara – it is apparent that the Government was setting up a situation where the inevitable Maori response would put Maori in the wrong. Accordingly, the intention as we see it was not to challenge the Queen's authority but to respond to an invasion. That invasion was without just cause and contrary to Treaty principles.

Whether or not the confiscation was unlawful for lack of evidence of rebellion is another issue. The legal issues are more fully developed in the next chapter, but it may be said here that there were occasions when the Maori response, though

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49. AJHR, 1928, G-7, p 11

justified, was not strictly limited to self-defence and that therefore there was a rebellion in terms. That in itself, in terms of the law, was sufficient to permit the area to the south of New Plymouth to be confiscated, as was done in January 1865. Our concern for the moment is that in September 1865 the land confiscated extended far beyond the area to the south of New Plymouth and covered the whole of central Taranaki. We can find no evidence that, as at the date of that confiscation, the central hapu were in rebellion in any part, save, for the above reasons, for the Oakura area. At the time in question, they were subjected to the invasion of troops under Cameron and Warre, with indiscriminate attacks on pa and kainga, but the evidence is that their response at the time (but not afterwards) was entirely in self-defence. From this distance in time, one cannot be completely sure of the facts, but once more it certainly appears that the confiscation of almost all of central Taranaki was unlawful at the time and that the New Zealand Settlements Act 1863 was wrongfully applied.

The war in the south was also commenced by the Government and again, being done without just cause, was contrary to the Treaty of Waitangi. More particularly, the Government began the war not because of any prior hapu acts but because of Maori opposition to the Government's purchase of the Waitotara block and the construction of a military road over the land. The purchase of that block, however, was even less defensible than that of the Pekapeka block, where the Government admitted its wrongdoing. Here again, Maori had good cause to protest the survey and sale of the block and the construction of roads on that land. There was thus no justification for the use of military force to take the land or to extend the invasion well beyond the block to take the whole of south Taranaki. In our view, that action was also contrary to the principles of the Treaty.

Here again, we consider there was no rebellion at the time of the confiscation, but rather there were at that time acts of self-defence in the face of an overt invasion. Certainly acts of aggression well beyond self-defence came later in response to the confiscations and other Government action. It appears to us, however, that at the material times (from 1 January 1863 to the confiscation in 1865) there had been no rebellion in terms anywhere within the relevant part of the Ngati Ruanui confiscation district. Again, it would seem that the lawfulness of the confiscations, in terms of the Government's own legislation, is very much in question.

Speaking more broadly, and not in terms of the strict letter of the law, it is doubtful that any Maori could be seen as acting from other than a defensive position once Wiremu Kingi was so clearly and unjustifiably attacked and the Pekapeka and Waitotara blocks were so easily acquired, or once Omata and Tataraimaka were taken during a truce, for the trust in the Governor was broken. Conversely, no Government action can be read as being consistent with Treaty principles when underlying the action as a whole was an intention, manifest at an early stage of the war, to confiscate the greater part of the land for European settlement. Thereafter, the Government could no longer be impartial. The appearance became more important than the reality. All that was needed to justify the Government's actions was for Maori to react predictably to the deployment of troops, or settlers, on Maori lands. Similarly, promises and proclamations that lands would not be confiscated from those who laid down arms were meaningless when they bore no relation to the

creeping confiscation that was happening on the ground and the indiscriminate attacks on villagers. Maori were not rebelling but simply responding and had been left with no choice if they were to avoid being subjugated and dispossessed of their land. On their own terms, they were bound to take action to keep the balance, as required by *utu*.

Legal machinations to define, declare, and create rebellion, as referred to hereafter, were likewise unjustified when what was fought for was that which no free society could deny and that which the Treaty had guaranteed. It was evident from an early stage that Maori were fighting to protect their way of life, their freedoms as a people, and, more pragmatically, their hearth and home.

Though the wars united the Maori of Taranaki in unexpected ways, with *taua* coming from all over to assist those who were attacked, the wars also divided people, because while most of the 'friendly' native contingents came from outside Taranaki, some of the local *hapu* actively assisted the Government. The local divisions created a lasting bitterness between the 'loyals' and the 'rebels'.

There was also some particular anger from the *loyals*. The confiscations included the land of *loyals* and rebels alike, and the former had to prove their loyalty before a court. As is noted later, in most cases the court then failed to protect loyal groups in the ownership of their land. Certain Maori auxiliaries who found they were treated no better than those branded as rebels were particularly bitter. The outstanding loyalist Major Keepa, for example, became a leading opponent of the Government over the alienation of Maori land, and other leading *loyals* were later to be imprisoned for their protest actions. It was one of the surer points of the war that in the end it did not matter which side one had been on. Maori 'loyalty' was something the Government respected when it had need to and forgot when it did not.

Relevant in assessing the impact of the war is the length of it. It is sometimes not appreciated that the wars lasted longer in Taranaki than anywhere else. The New Zealand wars began there. The focus then shifted to other parts of the country, but the main engagements lasted for only 18 months in Waikato and were over even sooner in other centres like Tauranga, Whakatane, Opotiki, Gisborne, Wairoa, and Hawke's Bay. Throughout this time, the war in Taranaki continued and it was there that, after nine years and following the concentrated efforts of the battalions that had fought elsewhere, the major engagements of the New Zealand wars ended. That was in 1869, but even then, Maori resistance had not finished. Passive resistance continued in Taranaki, culminating in the 1881 invasion of Parihaka by a force of 1500 soldiers, who sacked the village and harassed and dispersed its population.

Some indication of the scale of the war is apparent from the record of troop deployments. At the start of the first war in 1860, British troops in Taranaki numbered 800. By 1861, that number had risen to 3500, and by 1865, it was nearly 5000. Maori were consistently outnumbered, there being an estimated 200 to 300 Te Atiawa and 400 to 500 central and southern fighters and not more than 1500 altogether, if we include women and children with the men. Titokowaru fought his first campaign outnumbered by nearly 12 to one. By the mid-1860s, there were several native contingents serving with the Imperial army, including 457 men of the Whanganui Native Contingent in the field in November 1868.

At this distance in time, it is impossible to quantify the losses of life and property. Cowan's casualty figures (taken from official records) were, as he admitted, clearly too low with regard to the Maori side, because, in accordance with certain beliefs, Maori removed their dead and wounded from battle sites. The record for Taranaki, however, is that 534 Maori were killed and 161 wounded, while 205 Taranaki and colonial troops and Maori allies were killed and 321 wounded.<sup>50</sup>

Personal injury and the loss of crops and homes is part of the equation in assessing the consequences. Of course, settlers lost too, but without wishing to minimise the extent of destruction and slaughter that they suffered, it should not be forgotten that a claims system was introduced for their property losses, and they were compensated from the proceeds of the sale of Maori land. There was no compensation for Maori and their loss was permanent. The greater part of Taranaki was simply confiscated.

The larger loss on both sides arose from the legacy of fear and loathing. The prospect of a conquest by Maori seemed never more likely than in Taranaki. The consequential fear led to an outburst of hatred, with Maori regularly depicted in cartoons, papers, and periodicals in an unwholesome way. Some sensitivity to racial characterisations remains, for cartoon images of a heathen and contemptible people survived to influence generations of racial attitudes.

Retribution was also swift and terrible. For reasons given later, we doubt that any Maori were more harshly treated in post-war operations than those of Taranaki. Incarceration was to become the order of the day, beginning with the Pakakohi people sent to Dunedin.

For Maori, the picture of Pakeha was little better. Recollections of atrocities were passed down, mainly from the scorched earth and bush scouring periods, and though their veracity may not all be proven, the significant reality is that such images remain. Those incidents with some corroboration in contemporary written accounts include attacks on 'civilian' targets, of which a notable example is the bombardment and sacking of the prosperous Warea Mission, which traded in flour and other foodstuffs, while the nearby pa, which was set up for an encounter, was avoided. The slaughter of unarmed persons is also referred to; for example, the attack on Pokaikai after it had sought neutrality or peace and the sabre charge on a party of 12 boys aged six to 12, which, by the soldiers' reckoning, killed eight. The bounty of £10 a head for chiefs and £5 for 'ordinary men', which unexpectedly led to decapitations, has also been recorded, together with various reports of rape, plunder, pillage, and the destruction of crops, waka, homes, and sacred shrines.

The consequences cannot be assessed solely in terms of property loss and personal injuries: the homes destroyed, crops burned, and numbers killed or maimed. The atrocities of the war, real or imagined, linger in people's minds. The legacy of fear and racial hatred was manifest in acts of retribution against Maori for many years to come. On the Maori side, memories of the war have lasted longer because they were, and remain, excluded from their forebears' lands. Every nook and cranny of those lands was redolent with ancient history and meaning, and the silent land spoke

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50. Cowan, vol 1, pp 465–466, vol 2, pp 550–553

loudly to them of their ancestors and their own dispossession. They were confronted by a new landscape, peopled by military settlers and grid-ironed with forts and redoubts. They had to contend with new layers of authority, exercised by local, provincial, and central government officials. All came to supplant the rangatiratanga of their chiefs, who were submerged by colonisation.

We were reminded of this in certain submissions during the Tribunal sittings at Waitara. It became obvious there that, though the wars are remote for some, for others the message remains alive; this dark era of our history is deeply entrenched in their consciousness and a litany of landmarks serves as a daily reminder to them. Beneath the escarpment that marks the Owae–Waitara Marae, for example, is the town of Waitara, where the wars began. There, on the lands that were once held by Wiremu Kingi and generations of his forebears, and to the offence of many Maori, the street names are a celebration of military and political conquerors. It is our view that name changes are needed. It is when leaders like Kingi, who understood the prerequisites for peace, are similarly memorialised on the land and embedded in public consciousness that those names will cease to stand for conquest and the Waitara war will end.

## CHAPTER 5

# CONFISCATION

When I look at a map of Taranaki and trace the confiscation line, it is an arrow piercing the heart of my people.

Peter Moeahu to the Waitangi Tribunal, 1990

On the 13th June 1869 I was taken prisoner and removed to Wellington, where I remained three months before being tried. When my trial came on I waited to see what would be done about the land . . . I was told 'Taurua, you and your people have done wrong in rebelling against the Queen.' I answered 'I have not done wrong, I have not carried arms against the Queen, but against you, and now you say it is done against the Queen.'

Taurua of Pakakohi to the West Coast Commission, 1880

### 5.1 ISSUES

During 1865, some 1,199,622 acres of Taranaki were confiscated (see fig 9).<sup>1</sup> The Government later claimed to have returned part of the land, but for reasons given later in this report, we do not regard any of it as having been properly returned.

This chapter considers whether the confiscations were consistent with the principles of the Treaty of Waitangi, and if they were not, whether the Treaty could be set aside on account of extraordinary circumstances, whether such circumstances existed, and, if so, whether confiscation was necessary and appropriate.<sup>2</sup>

This chapter also considers whether the confiscations were unlawful; either because they were contrary to constitutional norms or fundamental principles of law or because they failed to satisfy the terms or purposes of the New Zealand Settlements Act 1863.

We review the basis for the legislation, the historical background, the legislation itself, and the confiscatory steps taken, before returning to the questions stated above. We conclude that the confiscations were unlawful, contrary to the Treaty of

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1. In 1927, the land officer for the Sim commission assessed the acreage confiscated at 1,275,000. This figure excluded the area south of the Waitotara River, which was abandoned in 1867, but the officer had omitted to exclude the 75,378 acres acquired in the pre-war purchases (see ch 2).
  2. The main reports to the Tribunal relevant to this chapter are: H Riseborough, 'Background Papers for the Taranaki Raupatu Claim' (doc A2); H Bauchop, 'The Aftermath of Confiscation: Crown Allocation of Land to Iwi, Taranaki, 1865–80' (doc I18); J Ford, 'Decisions and Awards of the Compensation Court in Taranaki' (doc E6); K Barry, 'Evidence on the Historico-Jurisprudential Basis for Land Confiscation' (doc H19); F M Brookfield, 'Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu . . .' (doc M19(a)); and A Parsonson, 'The New Zealand Settlements Act 1863' (docs I22, I22(a), (b)). See also S M Cross, 'Muru me te Raupatu: Confiscation, Compensation, and Settlement in North Taranaki, 1863–1880', MA thesis, University of Auckland, 1993.



Waitangi, and prejudicial, because most hapu were deprived of their means of subsistence.

## **5.2 THE BASIS FOR CONFISCATION**

The legal basis for the confiscation of Maori land needs to be established at the outset. This is important; first, because it is doubtful that the purpose in the governing Act was the true or only purpose and, secondly, because the amount of land taken exceeded that which the Act appears to have contemplated or allowed, which further suggests another purpose was intended.

The Act was the New Zealand Settlements Act 1863, which on its face was not for the confiscation of Maori land but for the maintenance of law, order, and peace. The New Zealand Settlements Act was directed to national security, and the rationale was stated in the statute itself: its purpose was to achieve law and order by establishing 'a sufficient number of settlers able to protect themselves and to preserve the peace'. The taking of land was so coincidental that words like 'confiscation' did not rate a mention. Still, it was apparent on a closer reading that the expropriation of Maori land was involved, that it was being taken for rebellion, and that in most cases there would be no compensation. Accordingly, because the Act was punitive, it was to be strictly construed. To be lawful, a confiscation had to be referable to the Act's purpose of keeping the peace and could not have been more than that which was necessary to keep the peace.

The lawfulness of the confiscations in terms of the Act is to be decided on narrower evidence than that now to be reviewed. A broad examination of the background follows, however, because we must consider not only the legislation but the policies and practices that existed in fact, even if not admitted, where these are relevant to Treaty obligations.

## **5.3 BACKGROUND**

The contemporary debate illustrates how, in the Ministers' minds, the purpose behind the confiscation of land was not limited to that given in the New Zealand Settlements Act. Indeed, had the Act's objectives been upper-most in their minds, the confiscations could only have been more constrained. The debate suggests that Ministers saw the main purpose as the acceleration and financing of colonisation, and during the debate, the confiscation of land was rationalised on several grounds. We will examine the proposals made before the Act was introduced, the debate in the General Assembly, the public debate, the Imperial Government's response, and the subsequent local reaction.

### 5.3.1 Initial confiscation proposals

The confiscation of land to advance settlement and defray costs was mooted even before the second Taranaki war began in 1863. Governors Browne and Grey both proposed it in 1861. Grey had just returned after a term as Governor of Cape Colony, South Africa, where the military settlement of Xhosa land had been undertaken.<sup>3</sup> In New Zealand, confiscation was soon demanded by the colonial press and pursued by Ministers with what one historian has called 'a greedy enthusiasm'.<sup>4</sup>

On 2 May 1863, even before the Oakura ambush, the Taranaki superintendent wrote: 'It would be rightful to confiscate from the tribes which should fight against us, territories of sufficient value to cover fully all the cost of the war.'<sup>5</sup>

Three days later, the minutes of the agreement between the Governor and his Ministers for the return of Waitara formally proposed that the land between Omata and Tataraimaka be confiscated. At the same time, Te Atiawa were warned that Waitara would be confiscated as well unless they distanced themselves from those responsible for the Oakura attack.<sup>6</sup>

The Domett Ministry gradually expanded the confiscation plans in a series of memoranda later in 1863, all before the Act was introduced. By 24 June, even before the invasion of Waikato, the Ministry was planning a line of defence posts from the Hauraki Gulf along the Waikato River to Ngaruawahia, clearing 'all hostile natives' north of the line, and proposing:

to confiscate the lands of the hostile natives, part of which lands would be given away and settled on military terms to provide for the future security of the districts nearer Auckland, and the remainder sold to defray the expenses of the War.<sup>7</sup>

In a proclamation of 11 July 1863, land confiscation was further threatened if Maori in Waikato resisted the establishment of military posts on their land. In both Taranaki and Waikato, resistance to military invasion was regarded as sufficient cause for confiscating land, and the threat of confiscation was made after military invasions or occupations had begun. Land was also confiscated on the ground in both places before its taking was made legal. Thus, notice of the terms for granting land between Omata and Tataraimaka to military settlers was published on 6 July 1863, and settlement followed soon after, but the land had not been legally confiscated because no enabling legislation was then in place.<sup>8</sup> Similar notices on 3 August offered land in Waikato for additional military settlements.<sup>9</sup>

By the end of August, the Governor and his Ministers had a comprehensive scheme for confiscation and military settlement, which proposed 5000 military settlers on the Waikato and Taranaki frontiers, each holding a 50-acre farm on

3. Browne to Newcastle, 6 July 1861 (doc H19, p 29); Grey to Newcastle, 17 December 1863 (doc H19, p 29); J Rutherford, *Sir George Grey: A Study in Colonial Government*, London, Cassell, pp 91–92, 304–385

4. K Sinclair, *A History of New Zealand*, Harmondsworth, Penguin Books, 1959, p 138

5. Brown to C W Richmond, 2 May 1863, RDB, vol 16, p 6154

6. RDB, vol 16, pp 5808–5809

7. A Domett, memorandum for Governor, 24 June 1863, RDB, vol 16, p 6076

8. RDB, vol 11, p 3768

9. Ibid, pp 3774–3776

military tenure.<sup>10</sup> The plan had no legal sanction but there was confidence that the General Assembly would pass the necessary laws.

Then, when Parliament met in October, the Colonial Secretary proposed much more. He submitted a 'Memorandum on Roads and Military Settlements in the Northern Island of New Zealand', which, with its accompanying map, recommended a massive expansion of the confiscation and military settlement schemes. This grandiose plan proposed that the number of military settlers be increased from 5000 to 20,000, to be located in settlements in Taranaki, Waikato, and other parts of the island. These settlements would be linked by 1000 miles of roads, which the settlers would help to construct. The scheme was to be funded initially by a £4 million Imperial loan, which would be repaid by the sale of surplus confiscated land. In Taranaki, there would be 8000 military settlers in about 40 settlements stretching across 200,000 acres from Waitara to Waitotara.<sup>11</sup> Accordingly, when the New Zealand Settlements Bill reached the House, it was well established in members' minds that the purpose and proposals were extremely large – larger, we think, than the Bill provided for. Of course, for lawyers, what counts is what is in the Act, not what is in the mind.

### **5.3.2 The parliamentary debate**

The confiscation legislation, which vitally affected Maori, was enacted by a parliament without Maori parliamentarians, even though Maori comprised about one-third of the population. Article 3 of the Treaty of Waitangi guaranteed to Maori the rights and privileges of British subjects. As such, Maori, or, more particularly at that time, Maori men of property, were entitled to voting rights but were in fact disenfranchised.

When the New Zealand Settlements Bill was introduced into the House of Representatives on 5 November 1863, it attracted little debate. Only two voted against it in the Lower House and two in the Legislative Council. In fact, this major measure passed through both Houses and committees and received the royal assent in under one month. This outcome was predictable, however, for confiscation had already happened. Allotments had already been marked out and allocated to military settlers, and so the Bill was needed partly to validate past actions and contracts already let.

The Bill was introduced to the House by the Native Minister. In his view, its purpose was primarily to suppress the 'present rebellion'; a goal that could be achieved only by establishing a large body of military settlers on the frontiers of the confiscated lands. The Minister admitted that the proclamation of confiscation over a district would have a blanket effect so that the lands of 'Natives [who] have not been in rebellion' could also be confiscated, but he stressed they would be entitled to compensation through a Compensation Court. He made no reference to the Treaty of Waitangi.<sup>12</sup>

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10. Grey to Newcastle, 29 August 1863, RDB, vol 16, pp 5727–5730

11. RDB, vol 16, pp 5745–5757

12. W Fox, 5 November 1863, NZPD, 1861–63, pp 782–783

Only two other members spoke: J E FitzGerald, who delivered a lengthy attack on the Bill, and G Brodie, who gave a brief speech supporting it. FitzGerald argued that the Bill was:

a repeal . . . of every engagement of every kind whatsoever which has been made by the British Crown with the Natives from the first day when this was a colony of the Crown . . . [and that it was] contrary to the Treaty of Waitangi, which has distinctly guaranteed and pledged the faith of the Crown that the lands of the Natives shall not be taken from them except by the ordinary process of law – that is, taken within the meaning of the Treaty.

FitzGerald thought that taking the land of loyals as well was repugnant to the law of England and that the Bill, if passed, would 'drive every [Maori] . . . into a state of hopeless rebellion . . . be they friends or be they foes'. He reviewed the Waitara purchase and the events leading to the renewal of the war and criticised the occupation of Tataraimaka before agreeing to return Waitara. Finally, he called for a greater understanding of Maori by the Crown and lamented the absence of Maori parliamentarians for the purposes of debate.<sup>13</sup> (There were no Maori representatives in Parliament until 1868.)

As he himself had been a critic of the Waitara purchase, the Native Minister replied in a conciliatory manner, but he claimed that the Government had since been faced with a widespread armed rebellion that had to be suppressed. He offered to amend the Bill to take account of the criticisms if a better way could be devised to separate the land of loyals from that of rebels.<sup>14</sup>

On reporting back from the committee of the House, the Native Minister indicated that, following discussions with FitzGerald, he had introduced amendments to distinguish more clearly between loyals and rebels. On FitzGerald's suggestion, a new clause was added, 'closely analogous to what was done in the case of the Scottish rebellion', allowing rebels who surrendered by a certain date to submit to trial and thus become eligible for compensation (this clause became section 6). The Bill was passed without further comment or amendment in the Lower House.<sup>15</sup>

There was a fuller discussion in the Legislative Council when the Attorney-General moved the second reading there. He contended that Maori were British subjects and were therefore in rebellion, adding that, when one party violated a treaty, the other side 'was discharged from all obligation; and the Natives had most certainly violated the Treaty of Waitangi'.

The main opposition came from former Attorney-General William Swainson. Swainson, like FitzGerald, was opposed to the measure in principle, not in so far as it was designed to suppress a rebellion but because 'it authorised the Government to take the land of Her Majesty's Native subjects who were not in rebellion'. He appealed to the authority of both the Treaty of Waitangi and the New Zealand Constitution Act 1852 (UK). As to the Treaty, he quoted from article 2 of the English text, adding both that 'the Crown itself, in the face of this treaty, could not,

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13. Ibid, pp 783–789

14. Ibid, p 790

15. Ibid, pp 824–825

consistently with honour and good faith, seize the land of peaceable Maori subjects without their consent' and that 'it was impossible for anyone to deny that the Bill . . . was inconsistent with the Treaty of Waitangi'. He then contended that the Bill was inconsistent with the New Zealand Constitution Act, which did not give the General Assembly the power 'to make laws for seizing, occupying, and disposing of lands guaranteed to the natives, under treaty, by the Crown'.

Swainson then quoted from the latest dispatch of the Secretary of State for the Colonies. Although the secretary had not opposed the principle of confiscating rebel land, merely urging restraint, he was quoted as saying:

policy, not less than justice, requires that the course of the Government should be regulated with a view to the expectations which the Maoris have been allowed to base on the Treaty of Waitangi, and the apprehensions which they have been led to entertain respecting the observation of that treaty.

Dr Pollen, the other main speaker, accepted the Bill in principle, in so far as it was necessary to confiscate sufficient land for military settlements, but argued that the Government should take 'not one acre more'. In his view, however, the Bill was 'in fact a Bill for the confiscation of the Native lands of the province, that object being veiled by a specious form of words'. Pollen then referred to the Treaty of Waitangi and, noting that he had been present when it was signed at Waitangi on 6 February 1840, claimed that:

He heard Her Majesty's representative arguing, explaining, and promising to the Natives; pledging the faith of the Queen and of the British people to the due observance of it; giving upon the honour of an English gentleman the broadest interpretation of the words in which the treaty was couched . . . The ink was scarcely dry on the treaty before the suspicions . . . were awakened with redoubled force; and . . . from that time to this every action of ours affecting the Natives had presented itself to their eyes, and had been capable of that interpretation, as showing that our object and business in this colony was to obtain possession of the lands of the Natives *recti si possimus; si non, quocunque modo* [legally, if possible; if not, by whatever means]. Before we talked of the duties of the Natives to us in this Colony, we ought to be able to show that some of the duties which the Crown undertook to discharge to the Native people had been discharged . . . And now the Assembly were about to legislate in respect to Native lands, to give power to take these lands by force, and to abrogate, as it will appear to them, the Treaty of 1840.

He questioned the profit motive:

The soundness of the financial policy of confiscation might be tested by a very simple calculation, the elements were at hand. We could determine, approximately at least, the cost of the work of extermination: We might be said to have been at war for three years; we had spent – including the Imperial charges – perhaps £5,000,000 during that period; we had killed a hundred and fifty or two hundred Natives. How much, at

that rate, would it cost to kill ten thousand? This policy of confiscation was immoral, and could not be made profitable financially.<sup>16</sup>

Pollen predicted that confiscation and military settlement would lead to a war of extermination. R Stokes, another critic of the Bill, agreed.

The Attorney-General replied that three-quarters of the Maori land in the country was held by conquest, which was accepted in Maori custom. When there was a division over the Bill, however, Pollen and Stokes voted for it and only Swainson and Henry Sewell (who had not spoken) voted against it.<sup>17</sup>

### **5.3.3 The public debate**

Outside the General Assembly, the prospect of cheap land and the repayment of war loans from Maori land had much appeal. Confiscation was promoted by the press and the populace; especially those with pecuniary interests through their legal, real estate, or financial businesses.

None the less, there were others outside the Assembly who were opposed to confiscation. In particular, retired chief justice Sir William Martin wrote vigorously on the topic. He noted, prophetically:

The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; how the claim of the dispossessed owner is remembered from generation to generation, and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.<sup>18</sup>

From Britain, the Aborigines Protection Society protested:

We can conceive of no surer means of adding fuel to the flame of War; of extending the area of disaffection; and of making the Natives fight with the madness of despair, than a policy of confiscation. It could not fail to produce in New Zealand the same bitter fruits of which it has yielded so plentiful a harvest in other countries, where the strife of races has perpetuated through successive generations; and that, too with a relentlessness and a cruelty which have made mankind blush for their species.<sup>19</sup>

### **5.3.4 Aspects of the debate**

Other aspects of the debate describe the attitudes of the day. It was a strongly held view, for example, that Maori should be relieved of the burden of their lands that they might adjust to 'civilisation' and learn to labour for a living. It was said:

Ministers believe that nothing has been or can be more pernicious to the native race than the possession of large territories under tribal titles which they neither use, know how to use, nor can be induced to use . . . [The possession of such land] has, in the

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16. Pollen, 16 November 1863, NZPD, 1861–63, p 872

17. Ibid, pp 869–874

18. AJHR, 1864, E-2, p 14. See also Martin, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', enclosure 2 in Grey to Newcastle, 6 January 1864, AJHR, 1864, E-2, pp 13–14

19. Aborigines Protection Society to Grey, 26 January 1864, AJHR, 1864, E-2, p 16

opinion of the Ministers, been the principal cause of the slow progress and in some respects (particularly in their physical condition) of the actual retrogression and decay of the race.<sup>20</sup>

Related to this popular view was the belief that the civilising advantages to be gained by relieving Maori of their land could be enforced by war, if need be. In his memorandum on roads and military settlements, which was referred to earlier (see sec 5.3.1), the Colonial Secretary demanded:

Power first – as the only thing that commands the respect of these undisciplined men; after it the humanising institutions; after it, every wise and mild contrivance to elevate and improve them. This is the natural order of things. Until you get rid of the rank growths of savagery, how can you rear the plants of civilization? The axe and the fire are wanted before the plough and the seed-corn. Cut down the towering notions of savage independence so long nurtured by Maoris . . . root up their ill-concealed passion for lawless self-indulgence. Then you will have clear space and a free soil for the culture of the gentle and more useful products of the heart and the intellect.<sup>21</sup>

Although a right to the land by conquest was not generally advocated because the Bill was presented as the harbinger of peace, the opinion was still propagated that confiscation following conquest was usual in Maori law. It was said:

In their wars a conquered tribe not only forfeited its lands, but the vanquished survivors were reduced to a tributary position, and large numbers to personal slavery. The Government of New Zealand has always recognised such a title as valid.<sup>22</sup>

The colonial image of a lawless Maori society where only might was right was maintained by the Native Land Court; but in our view the image was wrong. The Maori saying that land was kept by the strength of one's arm did not mean that might alone applied. Maori law, no less than that of others, required good cause, or *tikanga* – a proper line of action – to support war. Exceptional cases, as happened in all societies, did not disprove this rule.

Punishment for offences was not, however, claimed as a ground for confiscation. This was possibly because the first wrong, at Waitara, had been committed by the Governor, as the Government had acknowledged. It may also have been because trials and proof of wrongdoing would have been required and would not have enabled large and rapid acquisitions. It would also have raised the need to punish the person, not take the land.

In contrast, Taranaki Maori saw the confiscation purely in punitive terms as a *muru*, or punishment for wrong, even though no wrongdoing was admitted. Taurua later stated the position in those terms. Following his release from prison in Dunedin, he found his lands had also been taken. With regard to his trial, he said,

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20. Fox to Aborigines Protection Society, 5 May 1864, AJHR, 1864, E-2, p 20

21. RDB, vol 16, p 5756

22. Fox to Aborigines Protection Society, 5 May 1864, AJHR, 1864, E-2, p 20. See also Whitaker, 16 November 1863, NZPD, 1861–63, p 869.

'the blame was put onto me and not on the land . . . My body was punished for my offences.'<sup>23</sup>

### **5.3.5 The Colonial Office position**

The Governor's power to give the royal assent to a Bill was conferred by section 56 of the New Zealand Constitution Act 1852, which also gave the alternative of reserving the Bill for the signification of the Queen's pleasure – in effect, for the approval of the United Kingdom Government. Despite some claims in the New Zealand debate that the Bill was repugnant to the laws of England, the Governor assented to the Bill on 3 December 1863. The Queen was still empowered to disallow the Act, however, provided this was done within two years from the date on which the Secretary of State for the Colonies received an official copy.<sup>24</sup>

The Governor sent a copy of the Act to the Secretary of State, the Duke of Newcastle, on 6 January 1864, claiming he had agreed reluctantly with the principle. It was, however, unlikely that the secretary would disallow the measure. Britain had borne most of the cost of the war and the Bill would shift the burden to 'rebel' Maori. In addition, approval in principle had previously been given on receipt of the Governor's advice as to the number of hostile Maori in arms and his undertaking that, 'acting upon the principle of the great wisdom of showing a large generosity towards defeated rebel subjects, I would not carry the system too far'.<sup>25</sup>

The Governor's dispatch was eventually answered by Edward Cardwell, who succeeded the Duke of Newcastle as Secretary of State. He was alarmed that the scheme exhibited 'a rapid expansion of the principles in which the Duke of Newcastle acquiesced with so much reserve' and noted the settlers and affected land had quadrupled since notice of confiscation was first given in August 1863. He observed the difficulty of applying 'the maxims of English law' to Maori, who occupied, in his view:

an anomalous position . . . as having acknowledged the Queen's sovereignty, and thus become liable to the obligations and entitled to the rights of British subjects, and on the other hand as having been allowed to retain their tribal organisation and native usages, and thus occupying in a great measure, the position of independent communities. Viewed in the former capacity, they have, by levying war against the Queen, rendered themselves punishable by death and confiscation of property. These penalties, however, can only be inflicted according to the rules and under the protection of the criminal law. Viewed in the latter capacity, they would be at the mercy of their conquerors.

He listed several objections: the Act was a permanent measure; it could be applied to Maori in any part of the island; it allowed unlimited confiscation; some could be dispossessed without having been engaged in rebellion; decisions could be made in secret without argument or appeal; the provision for compensation was 'as rigidly confined as the provision for punishment [was] flexible and unlimited'; and,

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23. Taurua of Pakakohi to the West Coast Commission, AJHR, 1880, G-2, pp 37–38

24. Section 58 of the New Zealand Constitution Act 1852

25. Grey to Newcastle, 6 January 1864, AJHR, 1864, E-2, p 161



generally, the powers, being permanently embodied in the law, formed 'a standing qualification of the Treaty of Waitangi'.

In the end, however, the secretary concluded 'the rights of the Maori insurgents must be dealt with by methods not described in any law book, but arising out of exceptional circumstances of a most anomalous case'. Like his predecessor, Cardwell accepted the necessity of confiscation and cautioned against harsh and excessive application, but he recognised:

the necessity of inflicting a salutary penalty upon the authors of a war which was commenced by a treacherous and sanguinary outrage, and attended by so many circumstances justly entailing upon the guilty portion of the Natives measures of condign punishment.<sup>26</sup>

Thus, obviously influenced by the Governor's description of events, the Secretary of State was prepared to leave the responsibility for implementing the Act with the Governor and his local advisers:

Considering that the defence of the Colony is at present effected by an Imperial force, I should perhaps have been justified in recommending the disallowance of an Act couched in such sweeping terms, capable therefore of great abuse, unless its practical operation were restrained by a strong and resolute hand, and calculated, if abused, to frustrate its own objects, and to prolong, instead of terminate war. But not having received from you any expression of your disapproval, and being most unwilling to take any course of action which would weaken your hands in the moment of your military success, Her Majesty's Government have decided that the Act shall for the present remain in operation.<sup>27</sup>

None the less, the secretary proposed modifications. He asked that the Governor seek a cession of land from defeated tribes as a condition of clemency, that he apply the Act only if that failed, and that the Act be limited to 'perhaps' two years:

a period long enough to allow the necessary inquiries respecting the extent, situation, and justice of the forfeiture, yet short enough to relieve the conquered party from any protracted suspense, and to assure those who have adhered to us there is no intention of suspending in their case the ordinary principles of the law.<sup>28</sup>

The secretary recommended the establishment of an independent commission to determine what lands might be forfeited, and he cautioned that the Governor's concurrence in any confiscation should not be 'a mere ministerial act' and should be withheld unless he, personally, was satisfied that it was 'just and moderate'. He added:

And here I must observe that if in the settlement of the forfeited districts all land which is capable of remunerative cultivation should be assigned to Colonists, and the original power, the Maori, be driven back to the forest and morass, the sense of

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26. Cardwell to Grey, 26 April 1864, RBD, vol 17, pp 6684–6685

27. Ibid, pp 6685–6686

28. Ibid, p 6686

injustice, combined with the pressure of want, would convert the native population into a desperate banditti, taking refuge in the solitudes of the interior from the pursuit of the police or military, and descending, when opportunity might occur, into the cultivated plain to destroy the peaceful fruits of industry. I rely on your wisdom and justice to avert a danger so serious in its bearing on the interests of the European not less than of the Native race.<sup>29</sup>

He finally noted that, because the power to pass such a measure had been questioned in New Zealand, the Act, along with the Suppression of Rebellion Act 1863, had been submitted to the law officers of the Crown, whose reply had still to be received. Their advice, given subsequently, was to the effect that the legislation was within the power of the New Zealand General Assembly to pass and was not repugnant to the laws of England.

### **5.3.6 The Governor's response**

More than a year elapsed between the enactment of the New Zealand Settlements Act and its implementation. The Governor, at odds with his Ministers, declined to issue the necessary confiscatory proclamations. The problem appears to have been related both to the enthusiasm of certain Ministers to expand the confiscations as much as possible (some had businesses likely to profit from augmented real estate activity) and to the Governor's anxiety to maintain control. The issue was complicated by plans to pardon those who surrendered. In September 1864, the Governor offered his Ministers a draft proclamation promising a pardon to rebels who swore allegiance and ceded such territory as the Governor (but not the Ministers) required. The Ministers refused to agree unless they could dictate the terms and, in particular, the amount of land to be given up.<sup>30</sup> At the end of September, the Ministers resigned.

Subsequent action suggests the Governor's aim had been to assert power over his Ministers, not limit the confiscations. Following the resignations, and working with a new Ministry, the Governor was to confiscate all that the previous Ministers had sought.

### **5.3.7 Confiscation on the ground**

The delay in implementing the Act need not have concerned the Governor, for with or without legal sanction, the land was in fact being taken.

As mentioned earlier, Oakura was occupied even before the Act was passed. In other places, not only were lands occupied before they were formally taken but the hapu concerned were not actually at war. This was the case at Tikorangi, north of Waitara, where a blockade and settlement were made on Ngati Rahiri land, even though Ngati Rahiri had been the Government's allies in arms. Encouraged to move elsewhere, Ngati Rahiri returned to find their lands swamped with settler homes and farms. Despite repeated protests, their lands were never returned to them.

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29. Ibid

30. Document A2, pp 29–30

The Pukearuhe redoubt and settlement were laid out at a strategic extremity some 30 kilometres to the north to guard against a possible Waikato invasion. At no stage, however, had the war ever extended that far, and there was (and still is) no evidence that the local Ngati Tama had been involved in any part of the war.

As General Cameron's campaign proceeded north from Whanganui to clear the southern district, settlers were offered land there. Again, the settlement offers date from a time before a formal confiscation was made.

#### **5.4 CONFISCATION LAW**

As discussed, the primary instrument for the confiscation of Taranaki land was the New Zealand Settlements Act 1863 and its amendments, which were passed annually from 1864 to 1867 (collectively called 'the Act'). (The New Zealand Settlements Act is reproduced in appendix II.) Beguiling for the innocence of its name, in its terms the Act dealt with national security, not confiscation, the word 'confiscation' nowhere appearing in it. The Act's primary purpose was to protect persons, prevent rebellion, and maintain law and order by placing on the land a sufficient number of settlers, generally on military contracts, who were able to protect themselves and keep the peace. The land would be taken from Maori, but those affected who had not been involved in the war would be able to claim compensation.

The state of affairs, as the Legislature saw it, and the objectives of achieving law, order, and peace through settler occupation were set out in the preamble as follows:

Whereas the Northern Island of the Colony of New Zealand has from time to time been subject to insurrections amongst the evil-disposed persons of the Native race to the great injury alarm and intimidation of Her Majesty's peaceable subjects of both races and involving great losses of life and expenditure of money in their suppression And Whereas many outrages upon lives and property have recently been committed and such outrages are still threatened and of almost daily occurrence And Whereas a large number of the Inhabitants of several districts of the Colony have entered into combinations and taken up arms with the object of attempting the extermination or expulsion of the European settlers and are now engaged in open rebellion against Her Majesty's authority And Whereas it is necessary that some adequate provision should be made for the permanent protection and security of the well-disposed Inhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty's authority and of Law and Order throughout the Colony And Whereas the best and most effectual means of attaining those ends would be by the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country:

Be it therefore enacted by the General Assembly of New Zealand . . .

The Act's main features are given below.

- (a) The Act declared the existence of insurrection and rebellion.<sup>31</sup> Accordingly, rebellion was not judicially determined to exist but legislatively declared so that it came to exist in law, irrespective of the position in fact.
- (b) The Act referred to retrospective acts of rebellion, but these dated only from 1 January 1863. That Maori were not responsible for the first war was thus acknowledged.
- (c) The Act gave its purpose as the placing of settlers on the land for the maintenance of peace.<sup>32</sup> Accordingly, by law, the motive was 'peace', not 'land grab' or profit, notwithstanding any true intentions. The corollary, however, was that confiscation was required to be limited to only that necessary for the maintenance of peace.
- (d) The Act provided for a four-stage process:
  - (i) To declare, before 4 December 1867, districts where land could be taken on account of rebellions. The declaration was to be effected by executive discretion without the need for an independent inquiry.<sup>33</sup> More particularly, the Governor, once satisfied that 'any Native Tribe or Section of a Tribe or any considerable number thereof' had been 'engaged in rebellion against Her Majesty's authority' since 1 January 1863, could declare their land a district under the Act.
  - (ii) To set apart 'eligible sites for settlement' within those districts<sup>34</sup> and to lay out town and farm allotments thereon; first, to offset military contracts and, secondly, to sell the remainder profitably.<sup>35</sup>
  - (iii) To reserve or take any land within such districts for the purposes of those settlements.<sup>36</sup>
  - (iv) To compensate, with cash or land awards, those whose lands had been taken and who were entitled to compensation on account of their loyalty, such compensation to be determined by the Compensation Court.<sup>37</sup>

More particularly, compensation was not to be given to those who, *inter alia*, had taken up arms against the Crown; assisted, comforted, or counselled those in arms; or declined to deliver up arms or submit to trial when so required by proclamation.<sup>38</sup> Effectively, those who had taken up arms and the like were rebels.

It was later added that persons so excluded from compensation remained excluded, despite a proclamation of 2 September 1865 that declared that those who surrendered would become entitled to a piece of land.<sup>39</sup>

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31. See the preamble

32. See the preamble

33. See s 2 New Zealand Settlements Act 1863 and s 2 New Zealand Settlements Amendment and Continuance Act 1865

34. See s 3 New Zealand Settlements Act 1863

35. See ss 16–18 New Zealand Settlements Amendment and Continuance Act 1865 and s 2 New Zealand Settlements Acts Amendment Act 1866

36. See s 4 New Zealand Settlements Act 1863

37. See ss 5, 6 New Zealand Settlements Act 1863. 'Loyalty' effectively meant non-participation in the war or the provision of assistance to the Governor.

38. See ss 5, 6 New Zealand Settlements Act 1863

39. See s 7 New Zealand Settlements Acts Amendment Act 1866

The Confiscated Lands Act 1867 provided some relief, enabling the Governor at his discretion:

- (a) to award lands to those omitted from compensation awards or to increase such awards as had been made;
- (b) to award reserves to friendly Maori (which included Maori from elsewhere fighting alongside the Governor); and
- (c) to make reserves for rebels who surrendered.

At this point, we will explain our use of terms. We use 'loyal' as a diminutive for 'loyalist', which was more usually deployed at the time, in order to keep part of the contemporary language but without accepting that 'faithful in allegiance to the sovereign' was necessarily implied. 'Loyal' encompassed both those who did not take up arms and those who fought with the Crown, but care must be taken with the term. It appears many of the Governor's Maori allies were loyal, true, or faithful, not to the Governor but to themselves, seeking to settle old scores or, simply, to protect their own lands. Maori used the word 'kupapa', which to the Governor meant 'friendly' or 'ally' but to Maori meant 'neutral' – those concerned to avoid the debate of others and simply look after themselves.

It has next to be observed that the Act was but one of several relevant to the wars and confiscations (see app II). These others affirm, qualify, or expand on the New Zealand Settlements Act or indicate the Government's mind-set at the time:

- (a) The Militia Act 1858 enabled the Governor to raise an army and define militia districts for the control of rebellion. It predicated that rebellion existed or was likely.
- (b) The Native Lands Act 1862, to individualise Maori titles, was enacted during the Waitara truce. While it was promoted as an Act to settle the question of who owned land before it was bought, it was still provocative at the time because it also predetermined an issue on the Waitara sale that was meant to be investigated in terms of the truce. The Act made two large assumptions, both crucial issues in the war: namely, that the Government could decide all matters relating to rights in Maori land and that the tribal basis for managing land should disappear. The Act was replaced by the Native Lands Act 1865, which strengthened the land reform provisions.
- (c) The Suppression of Rebellion Act 1863 assumed a state of rebellion existed and envisaged the suspension of habeus corpus and the introduction of martial law. This enabled military courts to hold trials and pass death sentences and sentences of penal servitude.
- (d) The New Zealand Loan Act 1863 facilitated a £3 million loan to pay for colonisation costs and the war. The intention that the loan be redeemed from the sale of confiscated land, and the use of the loan for colonisation costs, made it likely, as proved to be the case, that Maori land would be confiscated for financial purposes, not merely to keep the peace.
- (e) The New Zealand Loan Appropriation Act 1863 apportioned the loan to competing provinces to pay local development costs. Again, the provinces understood the loan would be repaid by the sale of confiscated land.

- (f) The Public Works Act 1864 was the first Act to allow Maori land to be taken for public works. When it was passed, Ministers had most in mind the construction of a road from Whanganui to New Plymouth.<sup>40</sup> Compensation was not to be given to 'rebels'.
- (g) The Native Rights Act 1865 made it clear that Maori and their property were subject to the ordinary jurisdiction of the courts. This Act did not confer rights but ensured that Maori matters would be determined by the courts. It took from Maori the right to determine certain domestic matters themselves.
- (h) The Native Lands Act 1865 reformed the Native Lands Act 1862 and aimed to individualise native titles through the Native Land Court. It effected a major confiscation of tribal rights and facilitated the acquisition of Maori land.
- (i) The Outlying Districts Police Act 1865 enabled more land to be forfeited when chiefs failed to surrender fugitives. A proposal to use this Act to take a further 200,000 acres at Taranaki does not appear to have eventuated.<sup>41</sup>
- (j) The Friendly Natives Confirmation Act 1866 validated land awards of uncertain legality arising from out-of-court settlements of compensation claims and indicated that failure to adhere to the New Zealand Settlements Act process would not be fatal.

Each of these Acts was either wholly or partly inconsistent with the principles of the Treaty of Waitangi because it promoted land confiscation or abrogated tribal or civil rights. They indicate as well the contemporary mind-set. It should especially be noted that, though the New Zealand Settlements Act provided that confiscation was to be used only for the purpose of keeping the peace, the Loan Act and Loan Appropriation Act assumed confiscation would also be used to pay for the costs of colonisation.

## **5.5 CONFISCATORY STEPS**

It is necessary to note the steps taken to confiscate Taranaki land, because those steps did not follow the Act. The result of this was that more land was taken than the law allowed. The steps were:

- (a) By proclamation on 26 October 1864, made pursuant to section 6 of the New Zealand Settlements Act (by which the Governor could call on Maori to lay down their arms or be excluded from compensation), the Governor notified an intention to pardon all who 'came in' before 10 December 1864, took the oath of allegiance, and ceded such territory as he might require.<sup>42</sup> This gave effect to the recommendation of the Secretary of State, but given the circumstances of the Taranaki war at that time, a surrender was most unlikely anywhere in the area.

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40. See 'Memorandum by Ministers', AJHR, 1865, A-2, p 1

41. See FitzGerald to Parris, 30 August 1865, AJHR, 1879, sess I, A-8, p 3

42. *New Zealand Gazette*, 1864, no 41, p 399

- (b) By proclamation on 17 December 1864, soon after the pardon period, the intention was notified:
- (i) to assume and retain such lands of rebels as the Governor might decide.
  - (ii) to make roads over Maori land (compensation would be paid to those who consented and those who obstructed would suffer 'forcible repression'); and
  - (iii) to assure 'the full benefit of their lands' to those who 'continued' in 'peace and friendship with the Governor'.<sup>43</sup>
- Like the previous proclamation, this seems to have been a case of play-acting. It did not purport to do anything and was at best a notice of intention.
- (c) By proclamation on 30 January 1865, the Governor declared the middle Taranaki district to be a district where Maori were or had been in rebellion since 1 January 1863 and within which eligible sites for settlement might be taken.<sup>44</sup> This district, from the Waitara River in the north to the Waimate Stream in the south, is depicted in figure 9. It included parts of central Taranaki that were well outside the theatre of the war, and as a result, the proclamation was questionable.
- (d) Two other proclamations on 30 January 1865 then set aside the lands designated as Oakura and Waitara South as eligible sites, being discrete areas within the middle Taranaki confiscation district (see fig 10).<sup>45</sup>
- (e) By notice on 5 April 1865, the Colonial Secretary required those seeking compensation in the middle Taranaki district to file claims with him within three months (the forms were to be obtained from the Native Land Court in Auckland or from any resident magistrate or native assessor).<sup>46</sup>
- (f) Then, and this is the main 'offending' action, by proclamation on 2 September 1865, the Governor:
- (i) Expanded the confiscation area enormously, prescribing the Ngati Awa and Ngati Ruanui districts, as shown in figure 9, and including huge areas that had little or nothing to do with the war, making all but the Taranaki hinterland liable for confiscation.
  - (ii) Set aside the lands then designated as Ngati Awa Coast and Ngati Ruanui Coast as eligible sites (see fig 10), this being the whole of the land then remaining inside the total confiscation boundary from Parininihi in the north to Whanganui in the south and to beyond Taranaki mountain in the interior. Then, in the grossest act of confiscation of which complaint is made, the proclamation purported to take all that land for settlement.
  - (iii) Declared no land of any loyal inhabitant would be taken, except where it was absolutely necessary for security purposes, in which case compensation would be paid. This was a contradiction of the immediately preceding clause, by which all the land had been taken.

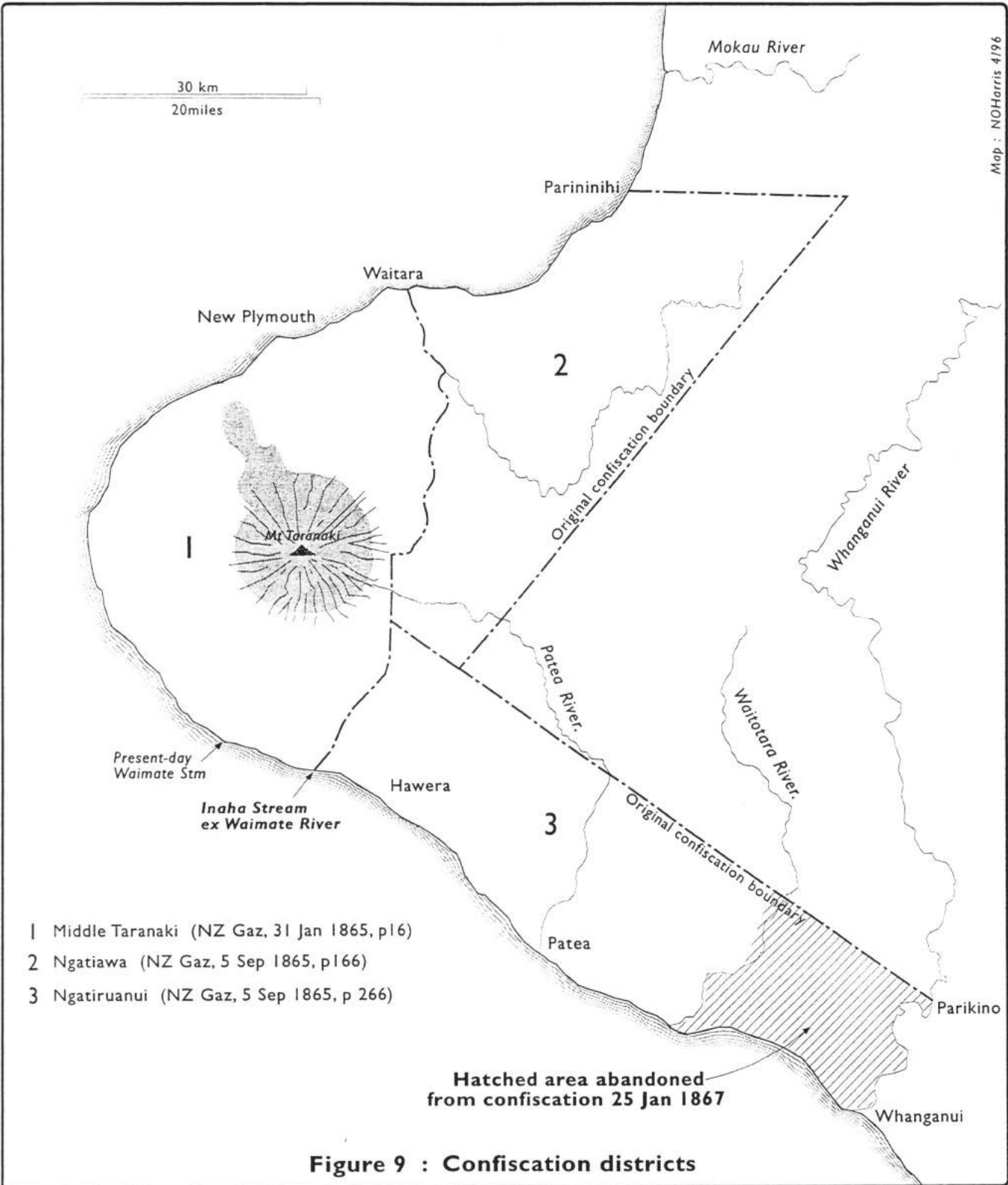
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43. *New Zealand Gazette*, 1864, no 49, p 461

44. *New Zealand Gazette*, 1865, no 3, p 15

45. *Ibid*, pp 16, 17

46. *New Zealand Gazette*, 1865, no 12, p 74





(iv) Declared that rebels who, within a reasonable time, came in and made submission to the Queen would receive a sufficient quantity of land within the said districts under grant from the Crown, although there was no legislative authority to say so at the time.<sup>47</sup>

- (g) On the same day as the previous proclamation was made, 2 September 1865, a 'peace proclamation' declared 'the War which commenced at Oakura is at an end' (even though the war was still being fought). It added that 'sufficient punishment' had been inflicted and no more land would be confiscated 'on account of the present war'. This was unsurprising, because all that could have been acquired had already been taken.

The proclamation stated that past offences were forgiven and the Government would 'at once restore considerable quantities' of land, but that those people who did not 'come in at once' had to expect to be excluded.

- (h) Following an amendment to the Act in 1865, a proclamation on 25 January 1867 abandoned the confiscated land south of the Waitotara River (see fig 9).<sup>48</sup> Apparently, the land was abandoned because the district was claimed by Whanganui hapu who were fighting as allies of the Crown. In addition, the Government claimed to have purchased the Waitotara block, which comprised the greater part of that area to the Okehu River.

In effect, the Governor declared all but the interior of the Taranaki province (and beyond) a confiscation district, within which lands might be taken from out of prescribed settlement sites, then declared the whole district an eligible settlement site and confiscated it all.

## **5.6 THE LAWFULNESS OF THE CONFISCATIONS**

### **5.6.1 Jurisdiction**

The lawfulness of the confiscations has long been an outstanding concern, previous attempts to put the matter to courts or commissions of inquiry having failed. Court proceedings were constrained; first, because Parliament validated any confiscations invalid as to form and, secondly, because the courts considered land confiscation to be an unreviewable act of State.<sup>49</sup> The latter view, which treated Maori as foreign to the domestic regime, is unlikely to be followed today but was a deterrent to the progressing of matters before the courts at the time.

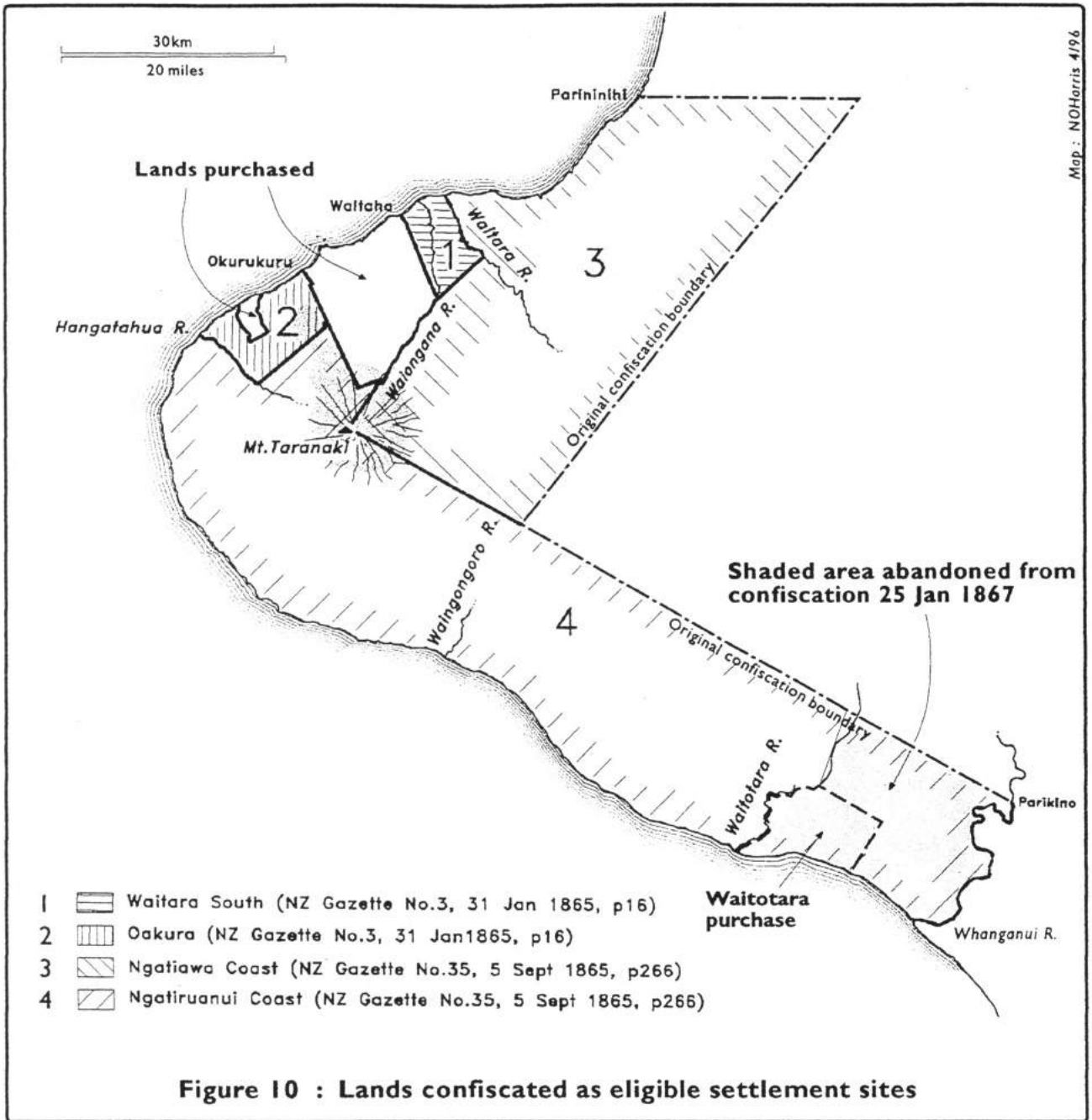
Lawyers' attempts to raise the legality of land confiscations before the 1880 Royal Commission on the West Coast and the 1927 Royal Commission on Confiscated Land also failed, the commissions holding the issue to be outside their terms of reference. The 1880 commission reported that it:

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47. *New Zealand Gazette*, 1865, no 35, p 266

48. *New Zealand Gazette*, 1867, no 15, p 112

49. See Justice Edwards in *Teira Te Paea v Roera Tareha* (1896) 15 NZLR 91



refused to hear counsel who wished to question the validity of the confiscation, and we told the natives at the very outset that we were not there to discuss such questions with them.<sup>50</sup>

The grievance thus grew among Maori that their case had never been properly heard. Their frustration was rekindled in 1981, following the dissemination of a legal opinion to the Secretary of Maori Affairs. This considered that the confiscation legislation was *ultra vires* the New Zealand Constitution Act 1852.<sup>51</sup>

On a related claim, Crown counsel contended that the Waitangi Tribunal could not consider the question either, for reasons including that the Tribunal cannot determine questions of law. In that case, the Tribunal concluded it could, and should, address the matter and that is the course we propose to adopt here.<sup>52</sup> While the Tribunal cannot conclusively determine questions of law, the lawfulness of the statutes, actions, or policies complained of is relevant to the honesty and integrity of the Crown's actions as a Treaty partner. It also seems important to address the issue in this case. The matter has long been outstanding, court proceedings are now statute barred, lasting settlements may depend on full inquiries, and it would defeat the purpose of the Treaty of Waitangi Act 1975 – to promote a remedy for historical grievances – if relevant matters could not be reviewed.

Because we are not a court, however, and because the matter was not fully argued before us and may be raised further, our views are preliminary and brief. They draw upon the more elaborate reasons of Emeritus Professor F M Brookfield, a constitutional lawyer whose opinion we commissioned.<sup>53</sup>

### **5.6.2 Fundamental principles and the constitution**

We concur with Professor Brookfield's opinion that the New Zealand Settlements Act 1863 and associated legislation were within the authority of the New Zealand General Assembly to enact. In other words, the Act itself is not unlawful. This opinion is significant in the light of earlier claims that, by section 53 of the New Zealand Constitution Act 1852, the General Assembly was empowered only 'to make laws for the peace, order and good government of New Zealand', and then 'provided no such laws [should] be repugnant to the law of England'. From that, it was argued that the confiscation legislation was not for peace, order, and good government but for ulterior and discriminatory motives and was in any event repugnant to fundamental principles of English law. The legal opinion on which we rely states that it is for the Government, not the courts, to determine that which is for peace, order, and good government; and secondly, the reference to 'the law of England' is a reference to the statute laws of the United Kingdom, not to fundamental principles of English law. In any event, the laws of England have long

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50. AJHR, 1880, G-2, p xlvii

51. See J G Bentinck Stokes to Secretary of Maori Affairs, 20 May 1981 (doc A26). His view is not supported, however, by F M Brookfield (doc M19(a), p 16).

52. See claim Wai 46 record of proceedings, paper 2.129 ('Inquiry into Ngati Awa and other claims . . .', Tribunal memorandum, 27 September 1995)

53. See doc M19(a)

recognised the necessity of exceptional legislation to suppress insurrection threatening the existence of the State, and confiscatory statutes have been applied in the United Kingdom before, especially in Scotland and Ireland.

This same view, that the Act was not *ultra vires* the New Zealand Parliament, was taken at the time by the law officers advising the Secretary of State.

The opinion given to the Secretary of Maori Affairs in 1981 was that the New Zealand Settlements Act could not have been passed without the express amendment or repeal of section 73 of the New Zealand Constitution Act 1852. We are advised, and agree, that this opinion is untenable. Section 73 did not prevent land confiscation. In addition, by the New Zealand Provincial Government Act 1862 (UK), it was not necessary for legislation in New Zealand to have been consistent with that section.

Because the matter had been raised, we were advised for the sake of completeness that the 'conditions' proposed by the Secretary of State for the Colonies, when he declined to exercise the power to disallow the New Zealand Settlements Act, were not and could not have been binding upon the Governor in New Zealand (the conditions were not fulfilled). They were directory only, and thus their non-observance could not affect the validity of the confiscatory action.

### **5.6.3 Compliance with statute**

On the other hand, however, for the reasons below and those given by Professor Brookfield, it appears the confiscations were unlawful because they did not comply with the statute's terms. We think there were many respects in which the statute was not followed, but we refer to those that went more to substance than to form:

- (a) Section 4 of the New Zealand Settlements Act required the Governor to be satisfied on certain matters before land was taken. In the north and the far south and at Oakura, however, settlements were established before the legislation was passed in 1863 or before the land was taken in 1865, as earlier seen, and thus the Governor could not have been so satisfied. In addition, one of the matters on which he had to be satisfied was that there were tribes in rebellion in the area. In our view, that could not have been said at the time in respect of the lands that were informally occupied, save for Oakura.
- (b) The same difficulty confronted the formal acts of confiscation. By section 2, the Governor was to be satisfied that the tribes of an area or a considerable number of them were in rebellion before their land was included in a confiscation district. We would expect some evidence of the information the Governor had before him and on which he relied in order to apply his mind to the facts. We can find no evidence that he ever had such information. It appears that any inquiry was fleeting and that the Governor was not aware of the true position. The lands of several northern hapu were included – Ngati Tama, Ngati Mutunga, and various hapu of Te Atiawa, for example – but the war had not reached their areas. Similarly, there were so few Maori in the northern part of Taranaki at that time, owing to the absence of most

Ngati Mutunga and Ngati Tama, that there could not have been a realistic threat to peace, as the Act required. In the east, Ngati Maru land was taken when they were not then involved in the war, and though there is no record of fighting at the time by several of the hapu of the centre or the south, their lands were also included in the confiscation district. Even the lands of the Whanganui hapu were within the confiscation district, and their alliance with the Government was well known.

The evidence suggests that the Governor simply defined an area, being all the land for several miles inland from the whole coast, with the northern boundary fixed purely to accommodate a stockade at one frontier, the eastern boundary running as parallel to the coast as convenient trigonometrical lines might allow, and the southern boundary being simply the most southerly point possible. The centre was taken for no greater reason, it seems, than that it fell within those northern and southern extremities. In brief, the confiscation districts bore no relationship to the theatre of the second war or to tribal aggregations according to appropriate geographic divisions.

It is telling that the confiscation names, Ngati Awa Coast and Ngati Ruanui Coast, attracted resentment when they were discussed by the claimants during our hearings. Ngati Awa and Ngati Ruanui are but two of several significant hapu aggregations, each in relatively distinct geographical zones but all enclosed by the confiscation districts of those names. These other hapu also lost their lands, but adding insult to injury, they lost them under another hapu's name. The names were there, it seems, because in the colonists' eyes Ngati Awa and Ngati Ruanui were troublemakers. To understand the situation, it might help to imagine that the United Kingdom was colonised from the other side of the world, the English caused trouble, and the Scots, Welsh, and Irish were then called English and held to blame because, to the coloniser's mind, they all looked the same. In this case, it was as though either the other hapu were to blame for the 'sins' of the two named or the Governor was not concerned to distinguish one hapu from another. To us, it merely shows that the districts were too large and that no consideration could possibly have been given to the rebelliousness of particular hapu.

- (c) In our view, the third error is even more serious. By section 4 of the Act, the Governor could do no more than take specific lands for particular settlements within prescribed districts. Instead, the Governor defined an enormous part of Taranaki province (and beyond) as a confiscation district in three parts then, in one proclamation, declared the whole area to be eligible settlement sites and took the lot.

The Act required a three-stage process. By section 2, the Governor was obliged to declare districts where tribes or a significant number of tribes were in rebellion. By section 3, he was then to set apart 'eligible sites for settlement', being prescribed and suitable areas within such districts. By section 4, he was finally to take such lands within those areas as might be necessary. The statutory prescription, which was essential for the survival of the hapu in this case, was not followed. The Governor declared extremely

large districts then purported to take the lot on the basis that the whole was an eligible site. This was done without an inquiry, which he was obliged to make, into such matters as which lands were suitable for settlement and how settlement could be arranged and without first laying out the settlements by survey in order to define the parts to be taken.

The effect was to alter fundamentally the Act's objective of taking land in discrete areas for such numbers of settlers as might be sufficient to keep the peace in the district as a whole. An entirely different regime was substituted whereby, except for the remote interior, the whole of the province was taken.

An inquiry as to eligibility was needed, along with some discretion and selection. Instead, there was a global taking of mountain, hill, and vale, and some places taken have never been divided into town or farm allotments to this day. The whole of Taranaki mountain was confiscated, despite it being patently obvious that most of it was unsuitable for settlement. We consider the whole confiscation to have been unlawful.

- (d) A fourth error is described later (in chapter 8) because it flows from events that happened later. The confiscation of central Taranaki appears to have been unlawful because the purpose of the Act had become redundant when, a decade later, it was implemented as though it could still apply.

The consequences of these unlawful operations outside the statute's terms were extremely serious for the hapu. Every hapu in Taranaki, rebel or other, save only for those few with cultivations in the deep interior, lost the whole of the lands on which they relied to survive. They were thrown entirely upon the Governor's mercy for anything they might receive. There were three main results. The first was that, because settlements were so rapidly and extensively laid out over the cultivatable lands in the north, little or no land was left to return, as was promised, even to loyals. The second was the measure of desperation that was brought to the Maori resistance, as some of the critics of confiscation had predicted, which was probably the reason why the war lasted longer in Taranaki than elsewhere. The third was the desperation that was to last well after the war, in the form of protest and obstructions, and that led, 15 years later, to the military invasion of Parihaka. This desperation has not yet dissipated.

#### **5.6.4 Statutory compliance and rebellion**

There is a further question as to what constitutes rebellion. Although the Act declared rebellion to exist whether or not it existed in fact, the Governor had still to be satisfied there was rebellion in any area before land could be confiscated there. But what was rebellion? It was not rebellion, for example, to resist an unlawful attack and so to defend oneself and one's home, as Professor Brookfield has explained. Resistance became rebellion only when it extended to some act of counter-aggression. This rule of the common law applied, despite the inference in section 5 that anyone who carried arms against Her Majesty's forces was in rebellion.

Much therefore depends on the interpretation of the facts. By way of example, Professor Brookfield considers that in 1860 Wiremu Kingi was unlawfully attacked, an interpretation with which we agree. He added that certain Crown officers were criminally and civilly liable as a result, though of course no suit was taken against them. Unsurprisingly, the New Zealand Settlements Act excluded the first war, for which the Governor accepted blame, and referred only to acts of rebellion from 1 January 1863 on.

On the record that survives, however, there was no rebellion throughout the greater part of northern, central, and southern Taranaki from 1 January 1863 through to the land takings in 1865. There was evidence of rebellion at Oakura, in the sense that the ambush was an attack, and also at Sentry Hill, but there it is difficult to attach anything to any hapu, for the attack was committed by persons from several places, whose sole commonality was that they belonged to one faith. Elsewhere, Maori appear to have acted only in self-defence.

In so far as the Governor does not appear to have possessed, and the Government has not maintained, sufficient documentation on the perceived state of affairs when the confiscation districts were declared, and because it is clear that large areas were included where the hapu were either loyal or neutral or where the district was outside the theatre of the war, the confiscations in our view were again unlawful, owing to the lack of evidence of rebellion.

#### **5.6.5 Statutory purpose**

Further to this, it is our view that the confiscations as effected by the Governor were inconsistent with the objects and purposes of the governing statute and again, for that reason, were unlawful. Although this point is covered but not developed by Professor Brookfield, we think it important to pursue it. As earlier described, the purpose of the New Zealand Settlements Act, as stated in the preamble, was to achieve law and order by establishing a sufficient number of settlers on the land who could protect themselves and preserve the peace. It is axiomatic that the Governor did not consider the numbers necessary or the land needed for that purpose, because he simply took all the land that was capable of settlement (and a great deal that was not). In effect, an Act that was passed for the maintenance of peace was converted into an Act for the furtherance of colonisation. The ostensible objective of the Governor was to settle sufficient numbers to keep the peace; his actual purpose was simply to take the land.

As the Act was confiscatory of rights, it was to be strictly construed. Any confiscation had to be referable to the Act's purpose and should not have exceeded the minimum necessary for that objective. The confiscation was clearly more than was necessary, and for breach of statutory purpose, it was again illegal.

#### **5.6.6 Validation**

Subsequently, section 6 of the New Zealand Settlements Acts Amendment Act 1866 provided:

All orders proclamations and regulations and all grants awards and other proceedings of the Governor or of any Court of Compensation or any Judge thereof heretofore made done or taken under authority of the said [New Zealand Settlements Act] . . . are hereby declared to have been and to be absolutely valid and none of them shall be called in question by reason of any omission or defect of or in any of the forms or things provided in the said [New Zealand Settlements Act].

It is arguable, and it seems to us, that this did no more than validate illegalities arising from want of proper process and form and, more particularly, that it did not make lawful those actions of the Governor that were fundamentally outside the authority of the statutory scheme. We need not, however, reach a conclusion on the point. The question of whether the confiscations were subsequently validated by this section is of academic interest only. Proceedings are statute barred and properties have changed hands. Our concern is whether the confiscations were unlawful at the time, not whether they were made lawful later, and, if they were unlawful at the time, how that informs the Government's fulfilment of its Treaty obligations.

## **5.7 CONFISCATIONS AND THE TREATY OF WAITANGI**

The New Zealand Settlements Act 1863 and the confiscation of land in Taranaki were obviously prejudicial to claimants and inconsistent with the principles of the Treaty of Waitangi. The Treaty guarantee to Maori of their lands and estates for as long as they wished to keep them was an unequivocal undertaking, with which the Act and policies were in direct conflict.

No one has seriously contended otherwise. Crown counsel, though without elaboration, admitted the Taranaki confiscation was an injustice and a breach of Treaty principles. The real issues are whether the Treaty could be set aside on account of extraordinary circumstances, whether such circumstances existed, and, if so, whether confiscation was appropriate to the situation. The first question can be disposed of briefly. The specific terms of treaties, the rule of law, and civil rights may all be suspended in an emergency to the extent that is absolutely necessary. Article 4 of the International Covenant on Civil and Political Rights illustrates this position. The last two questions, and the various arguments of the time, reduce to one question: whether, in all the circumstances, confiscation could be justified.

In illustration, it was claimed that the Oakura ambush was a rebellion against the Queen, for which the Queen's promises could be set aside. This claim made several assumptions, including: was the ambush in fact a rebellion or a response to provocation?; could all Maori be held responsible for those who did the deed?; did the punishment fit the 'crime'?; and so on. The Native Minister argued that, by article 3 of the Treaty, Maori were British subjects, they were in rebellion, and, as British subjects in rebellion by English law, their property could be forfeited. The questions we have raised apply here. There is also the question of whether, as British subjects, Maori were first entitled to a fair trial and whether the property guarantee was more important than article 3 on this occasion. Both arguments showed the need



to look widely at the circumstances rather than reach a conclusion on some narrow ground.

While the specific terms of the Treaty may be suspended in an emergency, the general principles enure to the extent that they provide criteria for assessing the circumstances. The Treaty furnishes a superior set of standards for measuring the propriety of the State's laws, policies, and practices. This shifts the debate from the legal paradigm where the rules must protect the Government's authority to one where Government and Maori authorities are equal. For reasons given in section 2.1, the test to be applied, in terms of the Treaty, is whether Maori and the Government have acted reasonably and in good faith towards each other.

In light of the record, as described in chapter 3, it cannot be said that the Governor acted in good faith. Wiremu Kingi was unjustly attacked; Waitara was unlawfully seized; Omata and Tataraimaka were taken during a truce; the presence of troops at Oakura was provocative; Waitotara was not properly purchased; and, in the second war, most of Taranaki was invested by the army without prior Maori aggression.

Nor could it be said that the settlement of military settlers on confiscated land was actually needed for peace. Land grabs and profit-making were thinly disguised as a security measure and the confiscations were more likely to add to the war. Peace really required both an assurance to Maori that their lands would be protected and that the Government treat openly with them for agreed colonisation terms. In our view, a peace on that basis was feasible at all times. Both before and during the war, Maori sought a peaceable arrangement, even before any question of confiscation had been raised.

Indicative of the Government's performance in this area was its disregard of the statute's terms, as earlier described – the pursuit of profit before peace, the taking of more land than the Act authorised, and the like. The disregarding of Imperial advice that an independent commission should determine the lands to be taken was further indicative of the Government's lack of concern to avoid conflicts of interests.

Thus, while motives and intention are irrelevant to whether or not there was a rebellion, these things are important when determining good faith. It becomes pertinent to ask whether a charge of rebellion against the Queen's authority can be fairly levelled when the Queen's authority was not established, in fact, upon the ground. It is further relevant that Maori may have seen themselves not as opposing the Queen but, more prosaically, as opposing their treatment. As we understand the Maori view of things, through much of history, and even today, Maori have viewed the monarch not as the Government, as most people do, but as the fount of justice, separate from the Government, which the monarch might even admonish. The monarch was thus an ariki, as distinct from a rangatira. After his release from Dunedin gaol, Taurua, a leader of Pakakohi and Nga Rauru, deposed to the West Coast Commission in 1880:

On the 13th June 1869 I was taken prisoner and removed to Wellington, where I remained three months before being tried. When my trial came on I waited to see what would be done about the land . . . I was told 'Taurua, you and your people have done wrong in rebelling against the Queen.' I answered 'I have not done wrong, I have not

carried arms against the Queen, but against you, and now you say it is done against the Queen.'

(So sincerely have older Maori impressed upon us that the Crown and the Government are distinct and that their claims should be against the Government, not the Crown, that in this report we generally refer to 'the Government' where 'the Crown' would otherwise be used.)

Similarly, past examples of forfeiture for rebellion, as referred to by the Ministers of the day, cannot honestly be seen as strategies for peace, no matter what words were used, but can be seen as models for conquest. The popular justification for the confiscations had relied on the opinion that forfeiture for rebellion was old law. So strong had this contention been that we commissioned research on the jurisprudential record.<sup>54</sup>

From that report, we understand that forfeiture for rebellion has a history dating from Roman, Saxon, and Norman feudal times. It was applied in Scotland after the rebellions of 1745 and 1750. Ireland, the first of England's 'colonies', experienced bouts of land confiscation and military settlement from the Anglo-Norman conquests of the twelfth to the early eighteenth century. These instances were known to New Zealand legislators of the 1860s and the confiscation of Maori land was drawn from Irish precedents. The New Zealand Settlements Act 1863 was similar in title and terms to Cromwell's Act of Settlement 1652; and the Suppression of Rebellion Act 1863 was copied, with virtually no changes, from the Irish Act of that name of 1799. The New Zealand Loan Act 1863, which looked to the profitable sale of confiscated land to pay the costs of colonisation, followed the Irish Adventurers Act 1642. Absent from the New Zealand statutes, however, was any specific provision for pardons. If forfeiture was old law, so too was clemency, which had a pedigree dating from at least the reign of Elizabeth I. (Nor was there anything in New Zealand comparable to the large land returns carried out in Scotland once the wars ended there.) Land confiscation also prevailed in British colonies in North America (through treaty renegotiation), South Africa, and Ceylon.

The question, however, was not whether models existed but whether they worked. Peace was the ostensible object of the New Zealand Settlements Act and the taking of land may be justified in war if peace will result from that taking. The antecedents, however, were not proof of that result. It seems to us the Roman and Norman strategies, and those of Scotland and Ireland, had little to do with peace. They were thoroughly concerned with conquest. Indeed, if peace was the goal, then the example of Ireland showed, as Sir William Martin maintained, how little was to be achieved by confiscating land.

## 5.8 CONCLUSIONS

Our conclusions are summarised as follows. The confiscation laws were within the authority of the New Zealand General Assembly to enact. The statutes as such were

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54. See doc H19, fn 1

not unlawful, but the confiscations themselves were. They were unlawful on several grounds: they did not comply with the New Zealand Settlements Act's terms and they were carried out without sufficient evidence of rebellion and without proper regard for the statutory purpose of achieving peace. The result was that more land was taken than the Act provided for – so much more, in fact, that nearly all hapu were left without the means to subsist, driving them, of necessity, to fight with unprecedented desperation.

In their terms, the New Zealand Settlements Act and the confiscations were inconsistent with the principles of the Treaty of Waitangi and with the guarantee that land would not be taken without consent. Good grounds did not exist for suspending that guarantee. While extraordinary measures may be necessary to secure peace and Treaty guarantees may be set aside in an emergency, confiscation was not a means of securing peace in this instance. Peace terms were practicable without confiscation, but peace was not the Government's apparent purpose.

The primary test is whether the Government and Maori acted reasonably and in good faith towards each other. The contemporary debate; the proposals for confiscation, made even during the truce; the New Zealand Loan Act 1863, which allowed colonisation costs to be met from the proceeds of the sale of confiscated Maori land; and the taking of far more land than was needed to keep the peace all showed that the Government's true purpose was other than that which honesty, integrity, and good faith towards Maori required.

## **5.9 IMPACTS AND REMEDIES**

Justifiably, the claimants saw the confiscations as so blatantly wrong that their submissions were directed to its impact on their hapu. Hapu losses are not considered in the present report. Here, we are concerned with the approach required for relief.

In that context, it needs to be noted that more than land was taken. Expropriated with it were the right of community and the social order through which centuries of affairs had been managed. Accordingly, the loss cannot be quantified simply by measuring the land. The principles applicable to persons do not necessarily fit peoples. Those who lose land for a necessary public work have the benefit of knowing that their loss was, ostensibly at least, for the greater good of the society of which they are a part. People who lose their lands to an alien culture bear the additional risk of identity loss and social and cultural impairment. This could not have been more apparent than in the confiscation of Maori land, where the effect was not only to acquire land but to take control of the people and to effect a social reordering. Loss must therefore be assessed not only in terms of individual deprivation and personal suffering but in terms of the impairment of the group's social and economic capacity, the generational distortion of its physical and spiritual wellbeing, and the flow-on effects on subsequent standards of living. The lack of established criteria for assessing losses of that kind need not deter a search for the proper approach. To consider the measures necessary to re-establish the hapu as a

people, or iwi, and to secure their place in the future would have the benefit of focusing reparation on the most significant loss sustained – the society of the people. Hapu are the lifeblood of the Maori civil order. It may be noted that the numerous hapu that existed during the war are now down to a few score and cultural survival is now at risk.

That which is necessary to remove the sense of grievance is a related consideration. It cannot be assumed that grievance dissipates with time. Witness after witness described the numerous respects in which they, in their view, have been marginalised as a people and how the burden of the war is still with them and their dispossession has preoccupied their thinking. When a grievance of this magnitude is left unaddressed, it compounds over time and expands, as do generations, in geometric progression.

The measures necessary to re-establish Maori units as viable, self-governing authorities must also form part of the considerations. After all, it was the autonomy of the people that was most in issue in the war and it was the traditional authority that was most destroyed in the social reordering that followed the war. The opportunity to develop representational institutions over time was foreclosed on. It appears to us that the current uncertainties concerning representation for the hapu today are a direct result of the destruction of traditional institutions that accompanied the confiscation of the land.



## CHAPTER 6

# COMPENSATION

I have a few words to say with regard to our lands . . . which were awarded by the Compensation Court. I want to know where they are.

Wile Arei to the West Coast Commission on lands promised by the court 14 years earlier but not provided

If we are all located upon this piece of land we shall be obliged to have recourse to infanticide to keep our numbers down.

Taurua to Richmond, 1867

### 6.1 THE FAILURE OF COMPENSATION POLICY

The Compensation Court made 518 determinations entitling loyal Maori to 79,238 acres by way of compensation, which represented about 6 percent of the confiscated area. Over a decade later, and after numerous complaints, it was found that at least 38 percent of the land promised by the Compensation Court had never been allocated. It was not until 15 to 20 years after the court had sat that many of those entitled to compensation received anything, and then only because a further body, the West Coast Commission, was established to give such effect as could then be given to the court's outstanding obligations. It was further found that nearly all the land that had been allocated had been given in the form of individually owned sections and that most of those sections had then been sold.

Far more Maori, however, were not entitled to compensation. Because most hapu had had all their land confiscated, they depended upon such reserves as the Governor thought fit to provide. Then, several years later, the commission found that promises to reserve land had been made throughout the length and breadth of Taranaki, but except in the south, virtually no reserves had actually been defined on the ground. Thus, most Maori were surviving as squatters on Crown land and were always liable to have the land sold from underneath them for the purposes of European settlement. Accordingly, as well as giving effect to the outstanding Compensation Court promises, the West Coast Commission was also directed to provide, to the extent that it could, for all the many reserves that had been promised but not delivered. The work of the commission is considered later. This chapter deals with the

Compensation Court's function of compensating loyals and the duty of the Governor to reserve lands for rebels.<sup>1</sup>

It put considerable pressure on the compensation scheme that, while the New Zealand Settlements Act and the Governor's undertakings to the Secretary of State in Britain had suggested that confiscation would be limited, in fact most of the Taranaki province was taken. As a result, every hapu of Taranaki was affected, whether or not they had been involved in the war. Similarly, of those responsible for enacting the New Zealand Settlements Act, none had denied that compensation for loyals should be swift, honest, and sure, or that rebels should be treated with clemency once the war ended. Contrary to consequential expectations and the principles of the Treaty of Waitangi requiring the fair and honest performance of responsibilities, the compensation scheme was not swift, honest, certain, or clement. Over a decade after the scheme had begun, most loyals were without compensation and most Maori were still without land; and although it had been thought that the work would be done mainly by an impartial and independent court, in the end, delivery came to depend entirely on executive action.

The compensation scheme was inconsistent with Treaty principles in that it failed to meet proper standards of honesty and fairness. It was also in breach of its terms when land was returned in other than customary tenure and when judicial officers determined who had rights in Maori land and how that land should be held. This, in fact, was Maori business. The Compensation Court, which showed no understanding of Maori values, grossly restructured traditional Maori systems, changing the whole way in which Maori had related to one another for centuries. Although this court was set up to make a proper inquiry and provide justly for Maori, it gave justice to no one, becoming lost in its own legal bureaucracy. It excluded hundreds of Maori from sharing in land, not just because they were rebels and were not entitled to compensation but mainly through rules of the court's own making. This was because it never inquired, relying entirely on whoever filed claims, then excluded hundreds of claimants for no reason other than their failure to appear in court or for having been absent from the land in the past. Those few who survived the bureaucratic hurdles were, in nearly every case, shunted out of the court and into a 'settlement', which of necessity required them to accept less than their due. It was unfortunate that, for most Maori, this was their introduction to 'the law'.

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1. The main reports submitted to the Tribunal relevant to this chapter are: H Riseborough, 'Background Papers for the Taranaki Raupatu Claim' (doc A2); H Bauchop, 'The Aftermath of Confiscation: Crown Allocation of Land to Iwi, Taranaki, 1865-80' (doc I18); J Ford, 'Decisions and Awards of the Compensation Court in Taranaki' (doc E6); J Ford, 'A Comparison between the Awards of the Compensation Court that were Intended to be Implemented and those that were Implemented in Taranaki, 1867-1885' (doc F25); J Ford, 'Report upon the Awards in Favour of the Absentee Members of the Ngatiawa, Ngatitama, Ngati Mutunga and Taranaki Tribes' (doc E6, p 58); A Harris, 'Crown Acquisition of Confiscated and Maori Land in Taranaki in 1872-1881' (doc H3). See also S M Cross, 'Muru me te Raupatu: Confiscation, Compensation and Settlement in North Taranaki, 1863-1880', MA thesis, University of Auckland, 1993.

Special consideration has been given to the reports of the West Coast Commission, AJHR, 1880, G-2.

## **6.2 THE TRIBAL RIGHT**

In this report, the Compensation Court process is assessed in its own terms, but with the qualification that the terms themselves were wrong. The process diminished the hapu, the authority by which Maori managed their lands. This point has been made before but needs to be emphasised. It was integral to the Treaty that hapu would be respected and would have authority over their land. The court process changed the tenure of that land to take that authority away. The land taken wrongly from loyal hapu should properly have been returned to the hapu in the condition in which it had always been. Instead, such land as was returned was returned to individuals. It needs to be appreciated that the return of land was no ordinary restitution; it was carried out within the framework of a larger plan of social control through the reformation of customary tenure. No matter how sincere the motives of some of the Ministers and officials involved, the scheme carried the germ for cultural genocide. A communal right was taken and not restored. Maori held their rights to land through loyalty to community and kin. The rights returned to them were based on loyalty only to oneself.

## **6.3 PROCESS AND WAR**

It should not be overlooked that the Compensation Court sat during the war. Had it worked well, it may have facilitated an early peace. Instead, it worked against this. In political strategy, one might expect certain and expeditious restitution to convey to all the benefits of peace and the perception of a tolerant regime. This was the expectation of Weld, the Premier in 1865, who claimed that land confiscation would not be an irritant to Maori because the action would be clearly stated to them and implemented with expediency.<sup>2</sup> The reality was to be very different.

In north Taranaki, rapid settlement of the cleared land and the failure to keep some land in reserve meant that there was insufficient to compensate the loyals, who should never have lost their land in the beginning. There was simply not enough land left for the court to do its job properly. In other confiscation districts, Maori were transferred to reserves, but in north Taranaki no reserves were made, the Compensation Court was tardy in producing results, and the people squatted where they could or remained in the hills.

The Governor's undertaking that the land returns would be just was but the beginning of a myriad of broken promises, which produced no larger harvest than suspicion and distrust. As some had predicted, Maori armed resistance increased in scale and desperation as the reality and extent of the confiscations were realised. Happily for the settlers, however, the more Maori who joined the war, the fewer there were entitled to relief. The compensation process came to be conducted in a climate of escalating war and bitterness. Nor did the struggle finish with the ending of the war – it merely took another shape.

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2. Memorandum from Weld, 2 September 1865, AJHR, 1865, A-1, pp 26–27



#### **6.4 THE COMPENSATION SCHEME**

The compensation scheme involved a mixture of allocations to loyalists through the Compensation Court and awards for 'friendlies' and 'surrendered rebels' and reserves for all the hapu through the Governor at his discretion. An interplay of judicial determination and executive discretion was thus provided for, but executive action came to dominate, and even displace, the court. Grants by the court and by the Governor are considered separately.

#### **6.5 THE COMPENSATION COURT**

The process of the Compensation Court was prescribed by the New Zealand Settlements Act 1863, its amendments (passed annually up to 1866), and its associated court rules.<sup>3</sup> In practice, the process changed according to expedience, so the statutes and rules are not reliable indicators of what in fact happened. In essence, the purpose of the court was to hear and determine loyalists' claims to a share of land (the original provision for cash only having been amended).

An explanation of the process is needed to explain the results, and the distinctions between 'certificates', 'entitlements', 'awards', and 'grants' has to be kept in mind, because these terms were later confusingly merged as 'awards'. The distinctions are integral to any secure title scheme. More particularly, loyalists claiming interests in any of the confiscated sites – Oakura, Waitara South, Ngati Awa Coast, and Ngati Ruanui Coast (the four 'eligible sites') – were to submit claims in order to recover land within them. When satisfied as to which claimants were 'loyal' and had customary rights, the court was to assess the total customary interests in order to calculate the admitted loyalists' shares. 'Certificates' were then to issue, showing the admitted claimants' entitlement to a given quantum of land in the confiscation site. The precise location of the land was to be settled later with officials or, failing agreement, by the court, and the area was then to be surveyed and depicted on a plan. On production of a survey plan locating the land concerned, an 'award' defining the land, the persons entitled to it, and their shares was to be sealed by the court. The Governor was then to issue a title for the award in the form of a 'Crown grant'. Confusion arose because the court used the term 'award' for a mere 'entitlement' (the West Coast Commission did the same). The result was that the status of the work in progress was uncertain and it was never clear whether lands said to have been awarded had in fact been defined on the ground.

It was no small task to get before the court. Claims were to be filed with the Colonial Secretary in Wellington within a period set by the court, being not less than two months from notification of the first sitting. Claim forms were distributed for this purpose.<sup>4</sup> Persons claiming compensation were meant to file separate claims,

3. See especially ss 9, 10, and 12 New Zealand Settlements Amendment and Continuance Act 1865; s 3 The New Zealand Settlements Acts Amendment Act 1866; and rr 8, 9 at *New Zealand Gazette*, no 36, 16 June 1866, p 250.

4. The notice period in s 11 New Zealand Settlements Amendment and Continuance Act 1865 was not less than three months from the first publication of an intended sitting. Rule 2 of an Order in Council of 16 June 1866, *New Zealand Gazette*, no 36, 20 June 1866, p 250, effectively reduced this to two months, though

although in practice, individuals filed claims for themselves and their relatives. We have no way of knowing how many of those entitled did not file claims. These were war times and communications and written comprehension were not as they are today, but those who did not file claims were excluded from the start.

While all claimants were required to establish both that they had an interest in the land and that they had been loyal, in practice the court relied on one or two informants to determine who had an interest and who was a loyal and who was a rebel.<sup>5</sup> There never was a proper inquiry. Effectively, Maori collaborators became the judges. To make it clear that the onus was on claimants to prove their right, the rules required that the claimants proceed as plaintiffs, with the Crown as defendant.<sup>6</sup> As to counsel, an agent was appointed for the Crown and a native agent, who was not a lawyer, was appointed for Maori. The native agent was also the district Civil Commissioner, who, in his capacity as commissioner, was also charged with buying the interests of those who would sell. It raised the prospect that the native agent might admit the claims of sellers but not others. His integrity was already in question. He had been party to secret payments in buying land before the war, which had led to internal conflict. It was his advice to the Governor on Pekapeka that had led to the outbreak of war.<sup>7</sup> Further, when buying from those awarded land by the court, he was to buy for himself as well as for the Government.

Then, despite the obligation on Maori to comply with the court's process, and though many claims were thrown out for failure to do so, the court itself was not obliged to follow its own rules. All determinations of the court were deemed valid and beyond further judicial scrutiny, despite any such non-compliance.<sup>8</sup>

The process presented many problems. It is known that some Maori who were entitled to claim never did, Wiremu Kingi among them for Waitara South, and it is likely that there were large numbers in that category. The statutory process was also muddled by conflicting proclamations and, presumably, by the way in which they were relayed to Maori. The 'peace proclamation' of September 1865, for example, promised that the Governor would restore lands and commissioners would 'put the natives who may desire it upon their lands at once'.<sup>9</sup> It was unclear whether this would come as a matter of course or whether claims were still required. Further, while the rules did not show that rebels might need to signify an interest, the loyalists' shares could not be calculated unless the total shares of all were known. Evidence as to ownership was thus anecdotal and thin, and the court generally worked on the assumption, which it could not properly have drawn, that the admitted claimants and those whose claims were rejected represented the total hapu population.

How many were actually given notice and were able to file claims in Wellington must also be doubtful. In addition, although the fighting had abated when the court

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it is doubtful the rule complied with the statute. Only two months' notice was given in most cases, but the Colonial Secretary had the discretion to receive claims out of time for forwarding to the court.

5. See Waitara South: List of persons proved to be rebels, 1/10, Taranaki Confiscated Land 1866, DOSLI, New Plymouth (doc 118, p 84)

6. Rules 3 and 4 of an Order in Council of 16 June 1866, *New Zealand Gazette*, 1866, no 36, p 250

7. It is not clear that the native agent actually spoke in court (see doc 118, p 47).

8. Section 15 of the New Zealand Settlements Act 1863

9. Proclamation of peace, 2 November 1865, *New Zealand Gazette*, 1865, no 35, p 267 (doc 118, p 58)

sat, it was war time none the less, and yet claimants were expected to attend sittings. This must have presented difficulties, because the court sat only at New Plymouth and twice at Whanganui. While it is therefore hardly surprising that many were unable to attend, hundreds of claims were dismissed for want of appearance. The claimant lists were unreliable in any event: names were duplicated, many of those listed had died (though it was customary to claim rights through deceased parents), and some had included their children. It appears claimants also made claims for pre-war purchase lands that were not confiscated, raising the question of whether they knew what was taken.<sup>10</sup> In addition, of course, rebels in arms faced extra difficulties in attending to give evidence, so that there is every likelihood that accounts were one-sided. The process encouraged divisiveness and lasting enmities as claimants added some to their lists and excluded others and as court informers or collaborators declared some to be loyal and branded others as rebels.

The main problem, especially in the north, was that, because land had been allocated to military settlers or set apart to sell for the war and settlement loan, there was insufficient usable land to meet the admitted claims. Because the court could not award the proper entitlements, it developed the practice of not assessing entitlements at all, instead requiring the Crown agent to seek an agreement with those whose claims were admitted. This meant that Maori were to settle for whatever they could get, with the court specifically declining to inquire into the fairness or even the terms of the arrangement made. This practice, if it was justifiable anywhere, was relevant only to the north but was applied generally. Out of the 13 divisions into which the four eligible sites were divided, out-of-court settlements were arranged in all but one. Only in the thirteenth sector did certificates of entitlement issue based upon the court's own inquiry and assessment of that which was due. In all other areas, judicial duty gave way to executive expedience. It was probably no coincidence then that it was in the last sector that the largest acreage was designated for return to Maori, and it may also be significant that the claims in that district were heard by another judge. It is apparent that elsewhere Maori did not receive certificates of entitlement for the amount of land that was due to them.

The court cannot, in fact, be excused on the grounds that the necessary usable land was not there. At all times, the Act left it open to the court to assess the compensation to which persons were entitled and, if the land was unavailable, to award cash compensation or land scrip for the deficiency. The court's actions, however, were protected from judicial review.

It should also be noted that the Crown agents' agreements did not always amount to anything more than a promise to set aside a stated quantity of land when it could be found. In 1880, the West Coast Commission reported on Maori claims that the promised land had not been provided. Fourteen years after the agreements had been made, Crown grants had still not issued for 79,823 acres, or 96 percent of the land that had been promised. In many cases, land had been allocated even though it was not secured by a Crown grant, and its location was not always clear to Maori or it was situated in barren areas or remote hills or bush. Comparative values had not been used to augment the inferior land given. In addition, since Crown grants had

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10. Halse to Fenton, 25 April 1865, MA 4/7 (doc I18, p 61)

not been issued for these lands, they were only tentatively allocated and could be changed if officials wished. Thus, the allocation of 700 acres of flat land by the upper Patea River was changed when a land board wished to lay out a town on the site.

The amount of land so at risk was extensive, titles having issued for only 4 percent of the land. It appears that officials were reluctant to finalise arrangements for Maori until they could be sure that all obligations to military settlers had been satisfied and that sufficient land had been set aside to repay war and settlement debts.

The process of holding back on Crown grants and individualising titles lent itself to the sale of Maori interests. Certificates of entitlement were like tradeable land scrip, entitling the bearer to a quantity of land from the Government. Awards were similar in that they entitled the bearer to a particular parcel of land, but they were not guaranteed and could be changed. In the most southern district, the court had issued awards for 17,280 acres, of which at least 14,192 acres, or 82 percent, had been sold by 1880. The court had placed alienation restrictions on its awards, but they were sold none the less, the restricting clause simply being struck out, although whether by the Crown agents or the selling or buying parties was never clear.

In 1880, the situation was explained by the Commissioner of Crown Lands. He had been asked by the West Coast Commission to report on the lands granted or awarded in Taranaki, whether by way of compensation or as pre-war purchase reserves or the like. He reported that:

I have furnished in the Schedules the particulars required by the Commission, so far as lies in my power. Return A will fully bear out the assertion I made before the Commission that the effect of Native title by Crown grant had been to alienate the land from the Aboriginal grantee; and it will be seen that Crown grants seem, as a rule, to be but little valued by the natives who generally allow them to remain in the Crown Land's Office without attempting to uplift them. The uplifting of a native grant is, in nearly every instance, a proof that the land included in it has become the property of a settler. As a rule, therefore, though I think it would be detrimental to the interests of settlement of civilization if large tracts of country were to be inalienably vested in Aboriginal natives tribally, yet, in cases of small and medium holdings individualized, every well-wisher of the Maori race must, I think, recognize the desirability of absolutely vesting the land comprised in the grant in the Aboriginal grantee and his descendants. Though I have endeavoured to give the name of the purchaser in each case where the land has been purchased from the Maori grantee by a European, yet I have not always been able to trace the alienation of the first purchaser. For some reason, first purchasers have in many instances carefully omitted to register, and dealings have only been registered after the land has passed through two or more hands. The same omission to register prevents me from fully completing the return by showing the European purchaser in many cases. Sections of land comprised in the grants which, according to the returns, still vest in the aboriginal grantee, have actually been sold, but there is no record of the transaction in the Registration Office, and I have no means of verifying the alienation.<sup>11</sup>

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11. AJHR, 1880, G-2, app B

Accordingly, the land that was eventually Crown granted was not generally granted to Maori, because the Maori interest had previously been sold. Uncustomary titles, the dismantling of traditional hapu controls, settler and Crown pressure to buy (as considered in the next chapter), the possession of paper promises and not land, and the greater chance that settlers had of converting entitlements to grants all had an effect. These were also war times, when much of the Maori horticultural production had fallen or the crops had been destroyed and persons faced starvation.

Another factor contributing to sales was the placing of Maori on other than their family land. By their own laws, they would know the land was not really theirs to hold, and there were traditional constraints on using it in those circumstances.

A further category of Maori was resurrected from the past in the course of the court proceedings: the absentees. In determining who had customary interests and, as loyals, could make a claim, the court excluded those who were absent in 1840 and, making no allowances for the ravages of the war, those who had failed to maintain a sufficient residence thereafter. Set down in brilliantly learned and erudite tomes, these judgments shone rays of precedent to the Native Land Court, which followed, and the precedent thus established survived to influence modern Maori land law. The judgments suffered but one impediment: neither the reasoning nor the result had much at all to do with Maori custom.

In our view, the absentees' interests were confiscated by the court for the reasons we discussed in chapter 2. As was said at the time by Alexander Mackay, an adviser to the Government on Maori custom, the Compensation Court decisions were 'absurd'. There was also no need for the court to take away the right of hapu to determine customary entitlement themselves. If some of a hapu had taken part in a war, all that was needed was to take some of its land and leave the hapu with the balance. The consequence of excluding absentees was to increase the proportion of rebels to loyals and thus reduce the amount of land that the Government would have to find as compensation.

In practice, the absentee rule was inconsistently applied. An exception was made to accommodate absentees recognised by the Government.<sup>12</sup> Absentees who had effected pre-war sales were thus included in the lands, because their exclusion would have cast doubts on the validity of the pre-war transactions they had purported to effect. In other words, the title of absentees was recognised when they were sellers, but was not recognised when they were not.

The rule was also varied by the Governor. Such was the concern for the safety of Wellington during the war of Titokowaru, and such was the need to keep the local absentees 'friendly', that the Governor promised to provide for them.

A further anomaly was the exclusion of Maori from lands that were not seen as valuable at the time but are valuable now for production or conservation purposes. In assessing Maori entitlements in one case, about 8000 acres were deducted from the total acreage on the ground that they were 'worthless' or 'mountainous'. The apparent effect – to increase the Maori share in the productive land – was unimportant in this instance since there was insufficient productive land left to meet

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12. Thus, four who were included in Waitara South were absentees who had rendered services to the Government (see doc E6, pp 43–44).

their claims anyway. The real effect was to reduce the areas that Maori could recover. The anomaly was that the land had been confiscated as an 'eligible site' for settlement, which assumed it had some productive capacity or could be settled, but was then excluded from return to Maori on the ground that it was hilly and worthless.

The quasi-judicial and mainly bureaucratic Compensation Court thus had the elements of a lottery. Its main effect was to exclude hundreds from land interests because they were absentees, did not attend court, were rebels, or did not complete claims. It then facilitated settlements out of court that ensured that Maori received less than their due. It proposed land entitlements that did not translate to hard dirt, and it introduced a land tenure that ensured the land was sold soon after it was received.

## 6.6 COMPENSATION COURT DECISIONS

To particularise the points above, a brief analysis of the Compensation Court decisions follows. The court heard claims in respect of the four 'eligible sites' (as depicted in figure 10) as detailed in the table below.<sup>13</sup>

Site	Venue	Date
Oakura	New Plymouth	1 June to 12 July 1866 25 March 1869
Waitara South	New Plymouth	1 June to 12 July 1866
Ngati Awa Coast	New Plymouth	21 September to 25 October 1866 25 March 1869
Ngati Ruanui Coast	New Plymouth	15 to 25 October 1866
	Whanganui	12 December 1866 to 14 January 1867 18 February 1874

### 6.6.1 Oakura eligible site

#### (1) *Initial proceedings*

The Oakura eligible site was said to be owned by Ngati Tairi of the Taranaki group. In various claims, 872 names were submitted but 569 were then excluded as absentees. The site, assessed at 27,500 acres, was thus 'owned' by the remaining 303. Of those, a further 188 were excluded as rebels on the evidence of a few informants, leaving just 115. Assuming 303 was the total number of owners and each owner had an equal share, and after deducting some 8000 acres because they

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13. For the judgments concerning Oakura and Waitara South, see 'Further Papers Relative to Native Affairs', AJHR, 1866, A-13, p 1. See also F D Fenton, *Important Judgements Delivered in the Compensation Court and Native Land Court, 1869-1879*, Native Land Court, 1879, p 14.

were 'worthless' or 'mountainous', the court calculated that the balance of 115 persons was entitled to 7400 acres. Since the Crown agent advised that only 2500 acres remained that had not been taken by Europeans, there was nothing more that could be done, in the court's view, than to urge the parties to come to an arrangement.<sup>14</sup> The senior judge of that court, aware of the 'serious embarrassment which would occur to the government' if the court awarded land occupied by military settlers, dispatched Judge Rogan to Wellington. The judge returned with the Native Minister, Colonel A H Russell, who effected an out-of-court settlement with the claimants. 'What the terms of Colonel Russell's arrangement were,' the chief judge added, 'the Court did not think it their duty to inquire.'<sup>15</sup> In obiter comments, the court considered the settlers' titles to be of doubtful validity, principally on the ground that settlements had been laid out and contracts effected before the land had been legally confiscated.

## *(2) Outcome*

The agreement was described in letters between the agents in June 1866. The Crown agent offered the whole of the remaining land in full satisfaction. The native agent presumed 'the whole of the remaining land' meant 'all the Government reserves and the whole of the land not allotted to the military settlers', adding, 'With this understanding I agree on behalf of the native claimants'. This appears to have been the only case where the native agent took active steps to protect Maori interests, but the matter does not appear to have been followed up, and as it turned out and despite the agent's insistence, Maori did not receive 'the whole of the land not allotted'. The court overlooked or disregarded the agent's addition and it also overlooked or disregarded the entitlements of the 115 persons. On 25 March 1869, the court simply issued a certificate that three persons, Robert Ngarongomate, Porika, and Komene, were entitled to 'all the unappropriated land inland of the Military Settlement'. This determination was categorised as standing in 'Division VII – Omata to Stoney River'.

We have been unable to discover the eventual result. According to the West Coast Commission, 8700 acres in 'Division VIII [it should read VII] Omata to Stoney River' were 'allocated to Ngarongomate and others'. We have examined the commission's record of Crown grants, sections allocated but not Crown granted, native reserves, and town, suburban, and rural sections for Okato and Oakura, but we could not find near to 8700 acres as given over. Crown grants, which provide the only certainty that titles actually returned, were represented in 17 allotments in the Okato district, each grant being vested in a single person, with 16 persons in all (not three) having from 50 to 371 acres, totalling 1982 acres. Of that, at least 810 acres had been sold.

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14. The court simply accepted the advice of the Crown agent as to the area appropriated and made no inquiry into that assertion. See Fenton, 'Narrative of the Events of the Sittings of the Compensation Court at New Plymouth', AJHR, A-13, pp 5–6 (doc 118, p 90).

15. RDB, vol 19, p 7482

It is not certain that the claimants received the 8700 acres, as described by the West Coast Commission. If they did, it was still not the whole of the residue of 8000 acres of 'worthless' land and 2500 acres of 'available' land.

*(3) Comments*

It is necessary to summarise our opinions. The full inquiry that the Act required was not carried out. In addition, the claimants were entitled to much more than the 7400 acres originally assessed by the court, because some 8000 acres of 'worthless' or 'mountainous' land had been wrongly omitted from the equation and comparative values were not applied. The 8700 acres said to have been given were not the whole of the balance, as had been agreed. We also note that the absentees should not have been excluded, there was no proper inquiry as to who were loyals and who were rebels, the basis for determining the unequal entitlements was not given, there is no explanation for the reduction of 115 persons entitled to land to 16, and there were no safeguards against the alienation of such lands as were Crown granted.

**6.6.2 Waitara South eligible site**

*(1) Initial proceedings*

In Waitara South, 238 claims were rejected as being from absentees, 149 were disallowed for the non-appearance of the claimants, and other claimants were divided into loyals and rebels on the evidence of one or two witnesses. The most prominent of these witnesses was described in the court's records as the Crown agent's witness.<sup>16</sup> Matters had not progressed further when a settlement was announced to bring the proceedings to an end. The terms of that settlement were not given. The Crown agent simply announced that an agreement had been reached and that the claimants had asked the court not to adjudicate on their claims.

Waitara South included Pekapeka, where the wars began. Some historians have argued that an out-of-court settlement was reached to avoid embarrassing findings on the ownership of Pekapeka and thus on the cause of the war.<sup>17</sup> In support, they have cited the senior judge of the Compensation Court, who admitted to the Native Land Laws Commission in 1890 that the court was 'so much struck with the facts elicited in evidence' that it adjourned and 'made a communication to mutual friends that some of the Ministers ought to be sent down and prevent judgment being given'. The Native Minister came, a further adjournment was allowed, a settlement was agreed, and at the end of the week there was, as the judge put it, 'no appearance of anybody, so there was no judgment'.<sup>18</sup>

It is also of interest to note those who were not among the claimants. Like many others, Wiremu Kingi did not participate in the court's proceedings. Te Teira was present, but Kingi and his people remained in the upper Waitara Valley, where they had taken residence with Ngati Maru. He is not included among the names for Waitara South, where he lived, but his name appears as a rebel on the lists for Ngati

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16. RDB, vol 114, p 44,175

17. For a summary of their views, see Cross, pp 93-96.

18. AJHR, 1891, G-1, p 46



Awa Coast. We are aware of no evidence that Kingi was involved in the second war or in any fighting on or after 1 January 1863, the date from which rebellion was deemed to have commenced. We also know of no evidence that Kingi received a piece of land. The line from Wiremu Kingi is not known, and no persons appearing before us claimed him as their forebear. His descendants were left landless.

*(2) Outcome*

The agreements of July 1866 were simply to the effect that the balance lands not taken up by settlers or proposed for them would return to Maori. This balance was called 'the Puketapu block', which stood in two divisions: Waitara East and Waitara West. Correspondence suggests that most of the fertile lands, amounting to about 25,000 acres, had been taken, leaving some 10,000 acres for Maori, though parts were coastal sand dunes or inland hills.

Many more meetings were needed to divide this balance among the numerous claimants, because 'some of the chiefs wanted the lion's share'. The division of 741 acres of the inland part could not be settled until 1875, for example, and another part, of 595 acres, had to be left undivided for eventual reference to the Native Land Court. More inquiry would be needed to establish the exact position, but from the returns of the West Coast Commission, it appears as follows:

- (a) The greater part of the balance was divided into 138 rural sections. While the majority of these sections were under 50 acres in area, some were larger, including the 595-acre section which was referred to the Native Land Court. The rural sections totalled 8680 acres.
- (b) In Waitara East and Waitara West, 125 town sections and 50 town sections were set aside respectively, for a total of 44 acres.
- (c) An area of 'barren sand' was not divided and was considered to belong to the 'Puketapu tribe'. It was approximately 1000 acres in area.
- (d) Four tribal reserves totalling 791 acres were created, including the Kaipakopako reserve of 594 acres for Tamihana Tuhaehe, Wi Karewa, and others.

The approximate total of the above was 10,615 acres.

Of the rural and town sections, about 6000 acres were awarded to individuals for varying sized shares and Crown grants were issued for them. By 1880, about 3350 acres of the Crown grants had been sold. The balance appears to have been held by the Crown to satisfy any further claims.

The native agent was a major purchaser, buying several of the grants.

*(3) Comments*

In brief, there was not the full inquiry by the court that the New Zealand Settlements Act required; the amount of land to which the loyals were entitled, based upon the number of loyals, the owners as a whole, and the total area, was not assessed because it was simply settled that Maori would take what remained; comparative values were not used; the basis for determining the unequal entitlements was not given; there were no safeguards against the alienation of such lands as were Crown

granted; it is not known whether the balance that was not Crown granted eventually reached Maori hands; the personal acquisition of interests by the native agent was contrary to regulations in that he also had the duty of buying for the Crown; and Wiremu Kingi and his followers were left out, but it is doubtful they were rebels in terms of the Act. No proper inquiry as to loyalists or rebels was ever made.

### 6.6.3 Ngati Awa Coast eligible site

#### (1) *Initial proceedings*

With regard to the Ngati Awa Coast eligible site, 560 claimants were rejected as absentees. The remainder were divided into 403 rebels and 575 'admitted claimants'. The list of rebels included Wiremu Kingi Te Rangitaake.<sup>19</sup> No further progress was, however, made; the court was again advised of a settlement and decided to forego its statutory responsibility to conduct an inquiry.

#### (2) *Outcome*

By various agreements, four during October 1866 and one of 15 March 1867, it was agreed that the Ngati Awa Coast site would be settled out of court. Because it was a very large district, it was also agreed that it should be settled in seven divisions. The following tables give a brief summary giving the eventual result in each division. A map of those divisions has not been found, but the place names in figure 11 indicate where they may have been.

Division I	
District	The Pukearuhe district from Waipingao (White Cliffs) to Titoki. It was the northernmost area confiscated.
Acreage	Not given.
Hapu affected	Not given, but presumably Ngati Tama.
Total customary interests	No assessment was made of the number with customary interests in this district owing to an out-of-court settlement.
Apportionment	No assessment was made of the amount of land to be returned by reference to the acreage of the district, the number of admitted claimants, and the total number of persons with customary interests.
Outcome	(a) It appears to have been agreed that 12 persons should receive varying amounts between 200 and 500 acres, for a total of 3458 acres from out of the district. (b) Court determinations were made on 25 March 1869 and certificates issued that those 12 were entitled to receive lands from out of the district for the given amounts. (c) In 1880, the West Coast Commission noted that, as at that date (14 years after the agreements were made), no Crown grants had issued and in its view nothing had been returned.

19. RDB, vol 115, p 44,609

*The Taranaki Report: Kaupapa Tuatahi*

Division I—continued	
Comments	There was not the full inquiry that the Act required; it was never determined if there were any rebels; the proportion of land proposed for return to the total district was not given, but it seems all the land should have returned because the local hapu was not in the war; the provision for 12 only may reflect that most of Ngati Tama were out of the district at the time; no basis was given for the unequal shares; and on such evidence as exists, the whole of this district should have been secured for the hapu as tribal land and no part of it was liable for confiscation.

Division II	
District	From Titoki to Urenui.
Acreage	Not given.
Hapu affected	Not given, but probably Ngati Mutunga.
Total customary interests	No inquiry was made.
Apportionment	No assessment of the amount due for return was made.
Outcome	(a) It was settled that 35 persons should receive some 50 to 500 acres each, for a total of 6450 acres. (b) By a court determination of 25 March 1869, certificates issued that those 35 were entitled to receive such areas from out of the district. (c) The Government later claimed that some of those entitled had participated in the Onaero-Urenui block sale of 1874, affecting part of the land intended for them, and in its view they therefore had to be taken to have forfeited their entitlements. (d) As at 1880, no land had been returned.
Comments	No proper inquiry was made; it is doubtful that any land in this district should have been confiscated because there was no evidence or insufficient evidence that the local hapu had been involved in the war; the proportion of the district proposed for return is not known; most of Ngati Mutunga were not in the district at the time; if part of the land intended to be given was included in the so-called 'sale', then because the location of that sale is known, it can be established that the land intended to be given comprised rugged, interior hills; no basis was given for the unequal shares; and the validity of the alleged 'sale' is questionable, as is referred to in chapter 7.

Division III	
District	From Urenui to Te Rau-o-te-Huia.
Acreage	Not given.
Hapu affected	Not given, but probably Ngati Mutunga.
Total customary interests	No inquiry was made.
Apportionment	No inquiry was made as to the amount due for return.

## Compensation

Division III— <i>continued</i>	
Outcome	<p>(a) It was settled that 52 persons should receive 50 to 200 acres, for a total of 3450 acres.</p> <p>(b) By a court determination of 25 March 1869, certificates issued that those 52 were entitled to receive such areas from out of the district.</p> <p>(c) The Government later claimed that most of those entitled had participated in the Onaero–Urenui block sale of 1874, affecting all but 2800 acres of the land that was intended for them, and that the 2800 acres would be for those who did not participate in that sale.</p> <p>(d) As at 1880, no land had been returned.</p>
Comments	No proper inquiry was made; for lack of evidence of war complicity, it is doubtful that any of this land should have been confiscated; the proportion of the district proposed for return is not known; most of Ngati Mutunga were absent at the time; the so-called 'sale' indicated that the land proposed for return was in the hills; no basis was given for the unequal shares; and the validity of the sale was questionable, as is referred to in chapter 7.

Division IV	
District	From Te Rau-o-te Huia to Titirangi.
Acreage	Not given.
Hapu affected	Not given, but apparently Ngati Rahiri of the Te Atiawa group.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	<p>(a) An agreement of 19 October 1866 provided for 'all land owned by [the signatories] not taken for the Military Settlement' to be returned to the 150 signatories.</p> <p>(b) Despite some pressure and offers of gifts, the hapu resisted all attempts to impose individual shareholdings for that land.</p> <p>(c) Pursuant to a court determination of 25 March 1869, a certificate issued that the 'Ngatirahiri Tribe' was entitled to 'all the land owned by them [in the district] not taken for military settlement'.</p> <p>(d) After surveying the military settlement, the Turangi block of 13,100 acres was then given over for the occupation of the hapu. To ensure that no more of their land was taken, the hapu contributed to the survey costs and agreed to a road crossing the block but took no compensation for it. It was said they had become 'staunch Te Whiti-ites'. In 1879, a number were taken prisoner as a result of protest activity.</p> <p>(e) As at 1880, the land had not been formally returned. No Crown grant had issued for it, but according to the 1880 commission, the 'Ngatirahiri Block at Onaero', given there as '15,000 acres', had been allocated.</p>
Comments	No proper inquiry was made; no inquiry was made as to Ngati Rahiri's participation in the war (they were in fact a 'loyal' hapu); the proportion of the district confiscated is not known; and if Ngati Rahiri had contributed to the survey costs, there is no reason why a Crown grant could not have issued for that land (it would then be known whether Ngati Rahiri in fact received the whole of the residue or whether the Crown kept the 'worthless' land for itself).

*The Taranaki Report: Kaupapa Tuatahi*

Division V	
District	From Titirangi to Waitara.
Acreage	Not given.
Hapu affected	Not given, but presumably various hapu of Te Atiawa.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) It was eventually settled that 152 persons should receive varying amounts of land, for a total of 1485 acres. (b) By a court determination of 25 March 1869, certificates issued that those 152 were entitled to receive such areas from out of the district. (c) Crown grants issued for 41 sections in the Titirangi block of between five and 100 acres, totalling 1485 acres. The 152 owners were spread over the sections, with shares equivalent to between five and 75 acres.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; the proportion of the district returned from confiscation is not known; and no basis was given for the unequal shares. This was the only case where, as at 1880, Maori had received titles to land in the Ngati Awa Coast confiscation site.

Division VI	
District	'Land Between Waiongona and Mangonui.'
Acreage	Not given.
Hapu affected	Puketapu.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) By an agreement of 23 October 1866, 227 persons acknowledged that they had received a total of 10,000 acres and therefore abandoned all claims. (b) By a court determination of 25 March 1869, a certificate issued that the 'Puketapu Tribe' was entitled to 10,000 acres. (c) The 10,000 acres were included in the Moa block 'sale' of 1873-74, which was for 32,830 acres extending from the summit of Taranaki mountain to beyond present-day Inglewood. It can now be determined that the 10,000 acres referred to in the 1866 agreement was somewhere within that area.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; and the proportion of the district returned from confiscation is not known. The 'so-called' sale is considered in chapter 7.

## *Compensation*

Division VII	
District	'Land Between Mangonui and Waitara (Pukerangiora claim).'
Acreage	Not given.
Hapu affected	Not given, but referred to later as the 'Pukerangiora Tribe'.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) By an agreement of 15 March 1867, as later refined, 63 persons were to receive 2000 acres in all from out of the district. The shares were not defined. (b) By a court determination of 25 March 1869, a certificate issued that the Pukerangiora tribe was entitled to 2000 acres from out of the district. (c) As at 1880, no land had been returned.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; and the proportion of the district returned from confiscation is not known.

### *(3) Comments*

In about 1866, under agreements made directly with Maori, not through the native agent, it had been agreed to return 41,843 acres of the Ngati Awa Coast. By 1880, 14 years after those agreements were made, only 1485 acres had been returned as Crown grants in accordance with the confiscation scheme.<sup>20</sup>

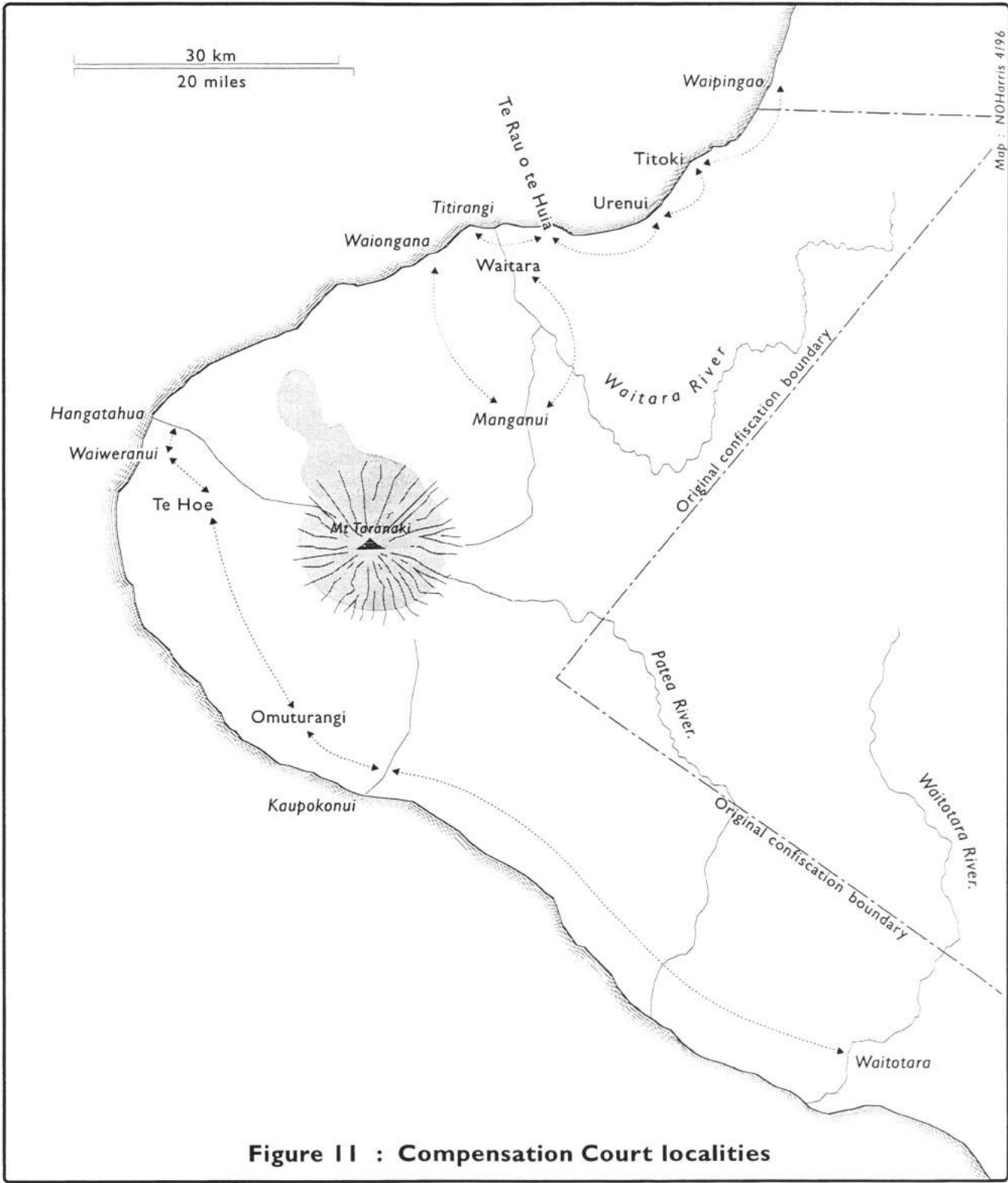
A block of 13,100 acres had been identified on the ground and given over for occupation but no title had issued, probably because the partitioning of that land had been opposed (see under division IV above). Promises to provide a further four blocks totalling 15,358 acres had been made but these had been neither granted nor formally identified on the ground. It is, however, likely that they were informally known. It appears this was so in at least two cases where it was claimed that parts of the land had been sold.

The whole of the remaining block of 10,000 acres had been 'sold', though it had not been converted to a Crown grant. It appears many of the areas proposed for return were in the hills, and in no cases were comparative values brought into account.

Because the Crown agent had arranged all the agreements, the only practical effect of the court was the exclusion of 560 absentees and 403 rebels. This left it to the Crown agent to deal with the remaining 575 persons. Later, the court simply confirmed the arrangements finally made. Even the court's initial determination of those entitled to claim did not appear to have been seen as binding, because the agreements in fact admitted nearly 100 more.

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20. AJHR, 1880, G-2, pp xxxvi-xxxvii (and see tables annexed)



Effectively, then, it was the Crown agent who was to determine the amount of land to which the admitted claimants in each claim area were entitled. He did not do this in any formal way, because there was no assessment of the total land in each division. Instead, it appears the claimants simply agreed to take a specified block of land in settlement of all matters, but in most cases the precise location of the block was not formally recorded and the lands were not formally granted. Technically, Maori were squatters on Crown land.

The Ngati Rahiri case was exceptional. They held out for the whole of the balance of their lands not settled. They then succeeded in retaining the land in tribal ownership, at least for a time, but they also failed to obtain a title, even after paying their share of the survey costs.

#### 6.6.4 Ngati Ruanui Coast eligible site

The Ngati Ruanui Coast eligible site was divided into northern, middle, and southern sectors. Each is now referred to.

##### (1) Northern section

The Ngati Ruanui Coast northern section extended from Hangatahua, or Stoney River, to Kaupokonui (see fig 10). Matters had not proceeded far before the court when a settlement was announced by the Crown agent. The terms were not made known to the court other than that agreements had been reached with Maori in four divisions and, as a result, the claimants wished to abandon their claims. The divisions are given below.

Division VIII	
District	Stoney River (Hangatahua) to Waiweranui.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.
Outcome	(a) It was agreed to return 1675 acres to 24 persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the 24 persons were entitled to receive lands from out of the district for the amounts agreed. (c) As at 1880, 14 years after the agreement, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.



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Division IX	
District	Waiwera to Te Hoe.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.
Outcome	(a) It was agreed to return 1250 acres to 18 persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the 18 persons were entitled to receive lands from out of the district for the amounts agreed. (c) As at 1880, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

Division X	
District	Te Hoe to Omuturangi.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.
Outcome	(a) It was agreed to restore 8275 acres to 94 persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the 94 persons were entitled to receive lands from out of the district for the amounts agreed. (c) As at 1880, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

Division XI	
District	Omuturangi to Kaupokonui.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.

## *Compensation*

Division XI— <i>continued</i>	
Outcome	(a) It was agreed to return 800 acres to eight persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the eight persons were entitled to receive lands from out of the district for the amounts agreed. (c) As at 1880, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

### *(2) Southern section*

The southern section of Ngati Ruanui Coast, south of the Waitotara River, was dealt with next. After repeated postponements of the sitting, the Crown agent announced on 25 January 1867 that the confiscation was abandoned in respect of that area. It will be recalled that this land was claimed by Whanganui hapu who fought with the Government, but the Crown also claimed part by purchase.

### *(3) Middle section*

(a) *Initial proceedings:* In the middle section of Ngati Ruanui Coast, from Kaupokonui to Waitotara, there were 630 claimants, of whom 365 were rejected, mainly for want of appearance, 146 were disallowed, and 119 were accepted. In a departure from previous practice, the court included 79 absentees in the 119 beneficiaries. The absentees had recently held residence or had near relatives in possession.

There then followed some magic arithmetic founded on contrived logic. In the court's view, the interests of the admitted absentees:

must be held as subject to diminution in proportion to the extent to which the residents became dispossessed of or forfeited their right in the land. The interests of a loyal absentee claimant will thus bear that proportion to the interest of a loyal resident which the number of loyal residents bear to the number of resident rebels.

On that basis, the interest of a loyal absentee was found to be 4 percent of a loyal resident.

To calculate entitlements, the court divided the 420,000 acres of the confiscated land in the middle section into 131,720 acres of 'open land' and 296,280 acres of 'bush'. Those with valid customary interests by residence in that area were then assessed at 997, of whom 957 were thought to be rebels, leaving a mere 40 as resident loyals. Based upon the proportion of loyals to the total, each was determined as entitled to 120 acres of open land and 280 acres of bush. The loyal absentees, their interests discounted pro rata, were declared entitled to five acres of open country and 11 acres of bush. This would have given a total area of 17,264 acres, to be shared between 119 persons, 40 receiving 400 acres, 79 receiving 16 acres.

The Colonial Secretary and the successful claimants then had to settle upon locations before awards could issue, with Crown grants to follow.

(b) *Outcome*: Sections for the prescribed amounts were then cut out, totalling 14,368 acres in the Waitotara district, 912 acres in the Whenuakura district, and 2000 acres in the Patea (Carlyle) district. This apparently took some time, for it was not until eight years later, on 18 February 1874, that the court was able to sit for the purpose of making final orders. These were to the effect that 40 named persons were entitled to 400 acres each and 80 persons (one absentee having been added) were entitled to 16 acres each, for a total of 17,280 acres (17,264 acres on final survey). These sections were described as standing in 'Division XII, Kaupokonui to Waitotara'.

The 1880 report of the West Coast Commission discloses that, as at that date, none of the sections had been Crown granted. Many did not need to be, because the Government had acquired numerous section awards, amounting to 9032 acres. This left sections totalling 8248 acres requiring Crown grants. Of those, sections amounting to 5160 acres had been purchased privately. At that point, only 3088 acres remained in Maori hands, as ungranted awards.

(c) *Comments*: The inquiry required by the Act appears to have been completed, although the arithmetical decision and method of determining entitlements were questionable. No protections were in place with regard to alienations, and the Government itself was the main purchaser.

#### **6.6.5 Summary of district outcomes**

The table opposite was adapted from the West Coast Commission and summarises the outcomes in the various districts.<sup>21</sup> The total area 'promised' for Maori was 79,823 acres and the total area secured for Maori as Crown grants was approximately 3500 acres.

### **6.7 CONCLUSIONS ON THE COMPENSATION COURT**

In 1880, some 14 years after the Compensation Court inquiries, the West Coast Commission assessed that the court had made 518 determinations for nearly 80,000 acres, representing some 6 percent of the 1,199,622 acres originally confiscated, but it noted that Crown grants had still not issued for other than a mere 3500 acres. It was observed that the Compensation Court had issued numerous awards as inalienable but the clause against alienation had been struck out of the award documents. In the Waitara East and West blocks, for example, the clause had been deleted in every single award, and three-quarters of the land had passed to settlers.

We have formed these opinions of the general process:

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21. See AJHR, 1880, G-2, p 24 (note that this table omits Waitara South)

### *Compensation*

District	Division	Entitlement/ settlement (acres)	Granted as at 1880 (acres)	Notes
Ngati Awa	I	3458	Nil	No record that land was allocated.
	II	6450	Nil	The Government claims to have purchased some entitlements.
	III	3450	Nil	The Government claims to have purchased some entitlements.
	IV	15,000	Nil	Area allocated but not awarded.
	V	1485	1485	
	VI	10,000	Nil	The Government claims to have purchased all the entitlements.
	VII	2000	Nil	
Oakura	..	8700	1982	The area not granted was said to have been allocated. About half the grants were sold.
Ngati Ruanui Coast	VIII	1675	Nil	
	IX	1250	Nil	
	X	8275	Nil	
	XI	800	Nil	
	XII	17,280	Nil	17,280 acres were awarded, of which 14,192 acres were sold.

#### Summaries of outcomes in the various districts

- (a) The loyals, especially in the north, never received the entitlements that were their lawful due.
- (b) The court did not make the full inquiry that it should have made, and in the end delivered not land but promissory paper – the illusion of compensation, not hard dirt. The tortuous calculation of interests is merely testimony to the extreme distortion of ancestral values. In our view, the extent and impact of this has rarely been understood or appreciated by governments in New Zealand.
- (c) The process was legalistic, was not adjusted to the clientele, and served to impress not the rule of law but the rule that might was right. Regard for form was mainly in display. Without the benefit of the court's assessment of their entitlements, Maori entered into agreements for what they could get. Evidence of total ownership was thin; it was not considered whether an individual's interest was larger or smaller than others; 'rebels' were excluded on unreliable opinions; no review of the settlements was made; the

settlements did not explain the basis for shareholding disparities; and when Maori were left with the less productive residue lands, comparative values were not brought into account to increase the area given. Several hundred persons were excluded simply for failing to appear, and several hundred more were wrongly excluded as absentees.

- (d) Judicial process became subservient to executive whim, with the main problem left to Crown agents to resolve. Three years after being criticised for failing to produce awards, the court reversed its 1866 decision to wash its hands of responsibility and to leave all to the politicians and agents. In 1869, it sat again to issue awards in all cases where it could. But this was no more than a formality. The court made no independent inquiry, merely giving its approval to arrangements the agents had already secured. The court called them 'awards', but in most cases, they were really only determinations of entitlement. Effectively, the amount of the entitlements was determined by the Crown agents, not by the court.

In Oakura, where arrangements were not complete when the court sat the second time, the declaration that Maori were simply entitled to all land except that taken for settlement was voidable for vagueness and for being inconsistent with the Act, and was not effective in any event.

The decision regarding the middle section of the Ngati Ruanui Coast site was exceptional. There the court, under another judge, followed the process more closely and produced the largest allocation to have been made. While this was marred by taking eight years to complete, still, entitlement was determined, locations were agreed and surveyed, and awards were issued to named persons for prescribed sections. Though grants did not issue to complete the process, that was a matter for the Governor, not the court. Here, however, the gravamen of complaint is the lack of protection against alienation and the action of the Government in buying the land. Nearly all the awards were sold; in fact, as shall be seen later, most had been sold before the court sat in 1874 to issue awards and the Government was the main purchaser.

Of more general concern in the middle Ruanui Coast was the assessment of customary interests by contrived arithmetical equations. The 1880 West Coast Commission described this 'fantastic scheme' in these terms:

The Court decided that 'the interest of a loyal absentee was to bear the same proportion to the interest of a loyal resident, as the number of loyal residents bore to the number of resident rebels'. What a loyal native's right under the statute had to do with the number of the rebels, is hard to see: the effect, however, of this queer equation was that if there were only 40 loyal residents to 957 rebels, the loyal resident got 400 acres, while the absentee got 16. No wonder that the way this operated upon the chiefs failed to elicit their assent. Nothing, for instance, could be more grotesque than a solemn judgment by which the warrior Whanganui Chief Mete Kingi Paetahi, who had fought many a battle by our side, was to have 16 acres in 'extinguishment' of his tribal rights; especially as it was carefully provided (lest such munificence should be

too much for him) that only five acres of it should be open land, and the other 11 acres be somewhere in the bush.<sup>22</sup>

- (e) For the most part, the out-of-court arrangements were effected by the Crown agent without significant contribution from the native agent or other Maori representative. The native agent appears to have been more preoccupied with purchasing entitlements, either for the Government or for himself.
- (f) In all, the court was a small player in the design. It was not meant to be. In approving the legislation, the Secretary of State for the Colonies had seen the court's role as pivotal in protecting Maori interests. In reality, most reparations were the result of executive decisions, both within and outside the court compensation system. This was the very situation that the Secretary of State had hoped would be avoided, so that Maori would not be left to the mercy of 'their conquerors'.
- (g) The relegation of customary interests to arithmetical calculations without the evaluation of the different types of interests that people had distorted Maori concepts of use rights and had long-term effects. Computed shareholding is still the basis for Maori land titles, the present fragmentation of shares resulting from the disastrous compounding of this system over years. Accordingly, the current complaint regarding the court's early methodology is not a matter of the past, because it has fully devolved to the present, making the little Maori land remaining today as illusory an asset as compensation was for Maori in 1863.

Despite their learned erudition, the judgments are thus exemplars of no more than the disastrous results of applying the logic of one culture to another that proceeds from another set of norms.

- (h) Mention has been made of the intention to reform traditional tenure, which arose from both good and bad motives. All was individualised. Though some land returned initially to 'tribes', its return was never more than temporary until the land could be divided into shares. In the result, the whole of hapu lands was confiscated; no land was given to the hapu as a unit in return; and no land can be counted as having been returned in the condition in which it was taken. The loss of the tribal right was not compensated, wholly or in part, by one acre.
- (i) In the final analysis, the main consequence of the court had been to settle who could claim compensation and thereby to exclude hundreds of persons for failure to attend, for being absentees, for being rebels, or simply for not completing claims. The court's second task, the determination of the entitlement of admitted claimants, was generally not performed. In the main, the court simply did not do its job, but then, having regard to the result when it did, that may have been a blessing. The hapu that most succeeded, Ngati Rahiri, was one that avoided the court and held out for the whole of its remaining lands in tribal tenure, refusing to agree to any other terms. Ngati Rahiri thus recovered the entire Turangi block, despite pressure to have it

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22. AJHR, 1880, G-2, p xxxv

individualised. It is true that the land was eventually divided, but only much later, after their protests and imprisonment had left them powerless.

- (j) There were no checks that sales were consistent with equity and good conscience or were not otherwise detrimental to the alienator. In our view, land returned for Maori benefit is not secured for Maori benefit, if having regard to the uncustomary tenure imposed and the people's circumstances, there are no adequate safeguards against alienation.
- (k) The conduct of the process as a whole was entirely inconsistent with the principles of the Treaty of Waitangi. There is nothing in the record to satisfy us of compliance with even minimal protective standards or the performance of fiduciary obligations. Worse, the scheme was an engine for the destruction of the traditional values that the Treaty had guaranteed.
- (l) The scheme, as implemented, was probably also unlawful, though the court was protected from the scrutiny of a higher court by virtue of the privative clause in the Act.

The most serious problem for the immediate future was that entitlements, determined or agreed, were not given in land to live on or, if they were given, were not secured. Fourteen years after the event, Crown grants had issued for only 4.4 percent of the land 'returned', and at least 38 percent of the promised land had not been identified on the ground.

## **6.8 GOVERNMENT 'AWARDS'**

From 1864, the Governor in Council had the discretionary power to increase awards to successful claimants; make awards for unsuccessful claimants (including absentees); provide reserves for 'friendly' natives (generally, those of other iwi providing military service); and make reserves for surrendered rebels (including those released from prisons in Dunedin and other places.<sup>23</sup> The seeds of internal discord were thus sown for perennial harvesting as the remainder lands of once compact hapu were proposed for division to loyals, friendlies, absentees, and rebels (released or surrendered).

In essence, the Governor was empowered to adjust awards and provide reserves for rebels and others not covered by the Compensation Court scheme. Practice varied according to the different circumstances of the various land divisions that had been settled in the Compensation Court, and we now review each in turn.

### **6.8.1 Northern divisions**

In the northern division of Ngati Awa Coast, Oakura, and Waitara South, virtually no 'Governor awards' were made, except to individual absentees who had become known to Ministers in Wellington. Very few reserves could be provided because of the shortage of spare land. Reserves for individual 'friendlies' and 'favourites' were limited to a scattering of rural and suburban allotments in European settlements and

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23. Section 2 of the New Zealand Settlements Amendment Act 1864

### *Compensation*

a peppering of sections in towns. The Otaraoa block of 2000 acres on the south bank of the Waitara River was, however, allocated to the 'Otaraoa tribe', although it is not clear whether this land was actually reserved or merely promised.

It was then observed in July 1867 that, while the court had included absentees in the middle Ngati Ruanui Coast, this had not been done in any consistent way in the other divisions. Bowing to some pressure from the absentees, many of whom had lived in the district for some time, it was decided to admit them in these other places too, but on the basis of the magic arithmetic of the middle Ngati Ruanui Coast. There, the court had produced a diminished entitlement for absentee loyals of five acres of open country and 11 acres of bush, but since that formula was based on the particular proportion of loyals to absentees in that area, it was even more illogical to apply the result of that formula to other parts. None the less, because 755 excluded absentees were seen to be entitled to 16 acres each, 12,080 acres were required, and since they were unavailable in the north, except in the bush, the figure was upgraded to 12,200 acres and bush locations were proposed for all. An additional 500 acres were then added for four 'Wellington chiefs', whose protests at their exclusion had been as loud as their record of faithful service had been long.

When applied to the northern divisions, the following entitlements emerged:

District	Acres	Beneficiaries
White Cliffs to Titoki	1300	Ngati Tama absentees
Titoki to Rau-o-te-Huia	3000	Ngati Mutunga absentees
Titirangi to Onatiki	2700	Te Atiawa absentees
Onatiki to Waitara	2100	Puketapu absentees
Not stated	500	Four 'Wellington chiefs'
	$\Sigma$ 9600	

In fact, the Government need hardly have bothered. Though they were called 'awards', they were no more than declarations of entitlement. Being called 'awards', however, they helped to keep the much-needed support of loyals during the war. It was a sham. The entitlements were never defined on the ground, and had they been in the hills and bush as was proposed, the outrage could have been only the louder. As at 1880, they were still undefined – a mere addition to the mounting record of outstanding promises.

A further category of promise was no more efficacious. A proclamation of November 1867 declared that, before any further sales could be made, 5 percent of the value of every rural and suburban block to be sold in each of the districts would be reserved for such tribes of Ngati Awa, Taranaki, Ngati Ruanui, and Nga Rauru as the Governor might appoint. Though the proclamation was repeated in 1870 and 1871, it appears to have been no more than a puff to secure peace or solicit support in the war. Reference to Nga Ruahine and Pakakohi, from whom Titokowaru drew support, was conspicuously omitted. It could also mean nothing for the north, where



the lands had already been sold. The proclamation has significance today only as further evidence of the trail of broken promises. As the 1880 commission noted, it 'had always been a dead letter'.<sup>24</sup>

The proclamation contained a further promise to provide 16 acres for every absentee, but again this was mere words. It added to the allocation promised to absentees in July 1867, but no land was in fact set aside under this provision.

The problem was further compounded the following year. The absentee 'awards' were for only those absentees who had appeared before the court and had then been excluded. In 1868, however, two further shiploads of absentees arrived. These were 270 of Ngati Tama and Ngati Mutunga, who were returning from their occupation of the Chatham Islands, fearful for their interests 'at home'. They could not be located in the earlier absentee 'awards' because they were not beneficiaries in those awards, and in any event, the awards were only on paper. The new arrivals took residence on Crown land at Mimi and Urenui as tenants on sufferance, and the proclamation of November 1867 was disregarded. In 1880, the West Coast Commission considered that 10,000 acres would be needed for them, but there were not 10,000 acres of useable land to give.

There were no other reserves or 'awards' in the north.

#### **6.8.2 Central Taranaki from Hangatahua (Stoney River) to the Waingongoro River**

In central Taranaki, from Hangatahua (Stoney River) to the Waingongoro River, the fictional 'award' to absentees amounted to 3100 acres for the 'Taranaki Tribe', but the area was never defined. The 5 percent declaration was also never applied. There were no other Government 'awards'.

There are circumstances peculiar to this district, however, that need to be brought into account. This was the only part of Taranaki untouched by European settlement. No doubt its remoteness from the military centres of New Plymouth and Whanganui was one reason and the density of the bush on the complex terrain of the lower mountain reaches was another. It was here, at Te Ngutu o te Manu, that the Government's military fortunes were reversed and it was from here that Titokowaru came down to clear the south of settlers.

Because there were no European settlements in central Taranaki, there were considerable areas that could have been reserved, in addition to such small amounts as the Compensation Court had proposed. In fact, it was unnecessary for the court to have sat here at all, for a solution to end all grievances was entirely feasible by defining 'Maori' and 'settler' areas at the beginning with genuine clemency.

That was, however, not to be. After the war, the Government sought to expand settlement to the centre entirely on its own terms. Accordingly, reserves were not proposed except for some for hapu whose loyalty had never been in question. There was ample space to treat generously with them, and in two cases, the Government did. The problem was that it was never really clear whether these reserves were in fact made or were merely promised.

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24. AJHR, 1880, G-2, p 1(iv)

In 1880, the West Coast Commission described two large areas which it said had been 'restored to natives' in this district. There is no record that they were formally 'restored' at all, but none the less, the areas, as depicted in figure 12, were the Stoney River block and the Opunake block:

- (a) The Stoney River block, from the Hangatahua River to the Waiweranui River, was estimated at 18,000 acres and extended from the rivers' mouths to their sources on Taranaki mountain. This was the customary land of the Nga Mahanga hapu, which, it was said, surrendered in 1865 and came in under the Governor's proclamation of peace. 'Informal restitution' was said to have been made by the Government or the Governor in 1866, at about the time the court sat.
- (b) The Opunake block was defined by the Moutoti and Taungatara Rivers from their mountain sources to their mouths and was assessed at 44,000 acres. This was the customary land of the Ngati Haumiti hapu under Wi Kingi Matakatea and Arama Karaka, who had 'remained loyal to the Queen all through the war' and were well known for 'kindness to Europeans'. 'Informal restitution' was said to have been effected by the Government or the Governor in 1866, except for 1400 acres, being land surveyed, but not settled, for the Opunake township. Matakatea, it was said, had agreed to cede the 1400 acres, though no deed of cession had been taken. Whether there was in fact an agreement for the township is not clear. At a meeting in 1867, Maori protested the building of a town, which, they thought, might become like the military settlement at Warea (where the adjoining Maori kainga were bombarded and destroyed). They threatened to burn any buildings put there. In reply, it was said that, if that were done, the land would be taken, and the objections apparently then ceased.

As with many Maori awards, reserves, or allocations, the position was unclear. Were the lands in fact 'returned'? In terms of the Act, a 'return' required a formal abandonment, but no formal abandonment had been proclaimed. A reserve also required a formal proclamation for it to be 'set aside', but no proclamation was recorded. Technically, it was still Crown land by confiscation, as was later evident when, without a formal taking, a public reserve of nine miles radius was placed around Taranaki mountain and parts of these lands were subsumed.

Was it clear to the hapu that the lands were meant to be 'returned'? The answer would appear to be 'no'. Later, Matakatea was to be arrested and imprisoned for joining Te Whiti's protests on the ground that, despite the promises, no reserves had been made. The trouble was that, as was the case with many allocations for Maori, officials would say that such and such an area had been awarded, set apart, reserved, or the like, but when it came to finding a certificate, award, proclamation, or title for the land, one could rarely be found; and the Government, having said the land had been awarded, could later sell it because there was no record of it being Maori land.

Still, we have included these areas as though they were reserves for the following reasons: the location was certain, though not surveyed; the evidence is clear that the areas were meant to be reserved at the time; and the areas were recorded as 'lands restored to natives' in the *Domesday Book* of the West Coast Commission. The

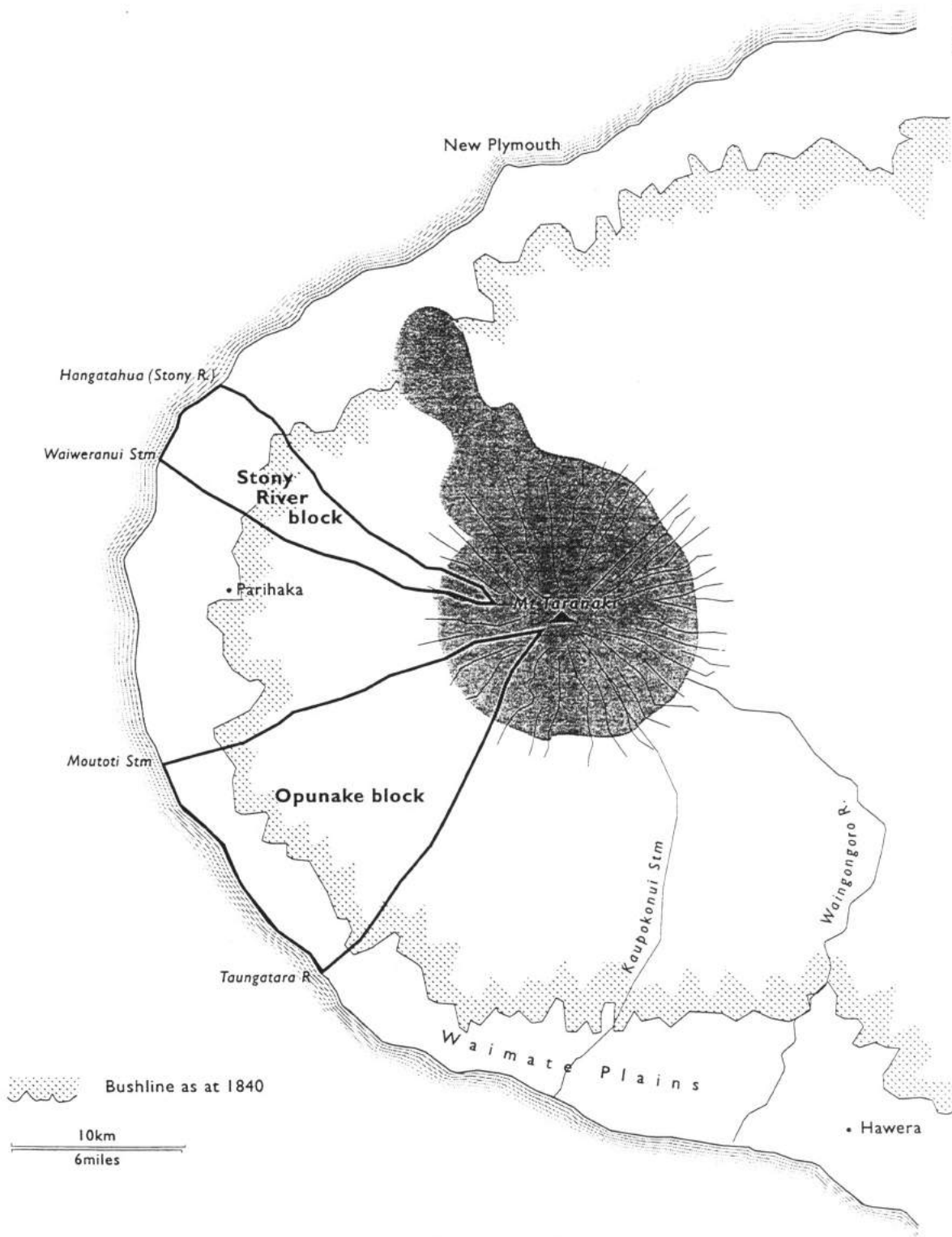


Figure 12 : Stony River and Opunake blocks

commission further considered that the court 'awards' for these areas became 'merged' with the 'return'. Whether the 'reserves' were in fact to be protected to the hapu over time is another question.

There were no other 'awards' or 'reserves' made in this part of central Taranaki, but promises were rife. These promises, which never became as concrete as those for the Stoney River and Opunake blocks, were the cause of much future strife, as is considered in chapter 8.

The promises related particularly to the districts of Parihaka and the Waimate Plains (see fig 12). These localities must now be fixed firmly in the mind, because just as the focus of history had shifted from the north to the south, the action was about to transfer to these areas. It was on this centre stage, beneath the mountain, that the final scenes in the tragedy of Taranaki were to be played out.

### **6.8.3 South Taranaki: from the Waingongoro River to the Waitotara River**

In south Taranaki from the Waingongoro River to the Waitotara River, there were no Government awards. The absentees had been captured in the court's computation and the 5 percent declaration was not applied. As the 1880 commission reported, it had been 'a dead letter'.

The position with regard to reserves once more reflected the circumstances unique to the area. The land had not been settled with the intensity of the north, and because there was more vacant land, especially near to the Waingongoro River, the formal reserves were more generous. There were also more reserves here, owing to the developments in the war, which we now describe.

Though parties of southern hapu had joined the war in the north, there had been little fighting in the south until the Government sold and settled the Waitotara block and a massive invasion by Imperial and colonial forces had destroyed pa, kainga, and cultivations in 1865. Maori saw themselves as being in the right, and it was not clear to them that this southern area would be confiscated, although on paper it already had been.

When the court sat in 1866, and as settlers moved north of the Waitotara River, it became apparent that these lands had indeed also been taken. Though Titokowaru declared 1867 as a year of peace, the prospect of conflagration was seen as real. To allay fears, the Government moved, rather swiftly it would seem in this case, to demonstrate that confiscation would be humane. Even as the court was sitting, the Government was making reserves. By the end of 1867, 23 reserves had been surveyed and defined on the ground, for a total of 22,364 acres, with sacred sites delineated and protected. Of these reserves, the largest blocks were at Whareroa (10,500 acres), Mokoia (4800 acres), Taumata (2800 acres), and Otoia (1200 acres).

There was conflict between Maori and settlers, however, and war resumed in 1868. Titokowaru utilised taua mainly from Nga Ruahine, Nga Rauru, and Pakakohi, all of whom had interests in the area, and moved all the settlers to Whanganui, clearing the subject land and beyond for a distance of 40 miles.

The war ended in 1869. By then, the settlers' homes and stockades had been destroyed. During the pursuit of Titokowaru, the pa, kainga, and cultivations of

Maori had been burnt in retaliation, and by the end of that year, or by early 1870, the land was denuded of all but the soldiers. The settlers were in Whanganui stockades. Nga Ruahine had taken refuge in the remote fastnesses of Ngati Maru in the north, Nga Rauru were among sympathisers at the upper Whanganui River, and Pakakohi, who had surrendered, were in Dunedin gaol or Mount Cook Prison in Wellington.

Some settlers sought recompense from the Government for its failure to deliver quiet titles, but most were persuaded to return to their farms early in 1870, when £10,000 was voted to assist their re-establishment and a promise was made that no rebel would be allowed south of the Waingongoro River. In the settlers' view, the Government had promised to keep out all Maori, but the Government did not agree that that was so. In any event, returned rebels were in fact to be provided for when it seemed that the peace of the country could not otherwise be achieved.

The settlers' opinion may none the less explain the eight-year delay in formally completing the Compensation Court awards for loyals and may also explain the Government's enthusiasm, from 1872 on, to purchase these entitlements once their location had been resolved. Some of these loyals, it was suspected, had proven not to be loyal at all but to have taken part in the 1868 'insurrection'.

The Waingongoro River was also seen by Maori as an important divide. To their minds, it had become the new northern limit to settler expansion.

Maori began to return to their lands from 1872, although their cultivations and homes had all been destroyed by soldiers and settlers. The returnees included rebels and loyals alike, for such had been the nature of the war that sanctuary had been sought by all. In fact, there now appeared to be little difference between loyals and rebels. It was the 'loyal' hapu who in fact clamoured the most for the 'rebel' Pakakohi to be released from gaol and given land. The Government seemed powerless to stop Maori from returning, if peace was to be maintained. In any case, it was more dangerous to have Maori in the hills, though to the settlers' chagrin, at meetings with Maori, the Ministers appeared to be inviting them to peacefully reoccupy their land.

To secure that end, 7320 acres in 22 reserves were surveyed and formally proclaimed for various groups in January 1873. Of this, 2000 acres were for Taurua and his Pakakohi people, now released from confinement. The Pakakohi reserve was extraordinarily small for the number of persons involved.

As shall be seen later, the creation of the reserves was part of a larger plan of relocation; the reserves were provided in order to keep the peace, but they also caused Maori to move inland, away from the main settlement areas. A start was made with Pakakohi, because having recently returned from prison, 'they were more subdued and could be more easily dealt with than other Natives'.<sup>25</sup>

Soon after, another eight reserves were added, for a total of 13,213 acres, including the 10,000-acre Tirotiromoana reserve and a 1500-acre reserve at Waitotara. The former lay inland behind Normanby (Ketemarae) and Hawera, not too distant from the Waingongoro River. To some extent, it was bait for others. The

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25. AJHR, 1880, G-2, p 57

Crown agent considered that such a display of largesse was needed to encourage those on the other side of the river to accept settlers on the Waimate Plains.

There was, however, some disquiet. The reserves were all to be divided and individualised. Tiroitiromoana had first been settled by being marked out on the ground, and it was assessed at 10,000 acres. On survey, it was shown to be 16,000 acres and the reserve was then reduced to the amount first assessed. (By way of comparison, in every case where land was purchased from Maori and survey showed the area to be more, the Government kept the difference.)

Taurua, who was connected to both Pakakohi and Nga Rauru, had compelling evidence that two senior Ministers had promised Nga Rauru the land between the Patea and Whenuakura Rivers, except for the township of Patea (Carlyle). In 1880, the West Coast Commission agreed that such promises had been made and had not been delivered, but it declined a recommendation to provide more land until certain payments for Taurua were inquired into. There is no record that the inquiry was made.

Major Te Rangihwinui (Kemp), who had fought with distinction for the Government in Taranaki and elsewhere, claimed 1600 acres between the Waitotara and Wairoa Rivers. With difficulty, he had been induced to accept 400 acres after a royal commission had failed to satisfy his demands.

After all the fuss about loyals and rebels, it mattered little, in the end, which side of the war one had been on. In a touch of irony, the former famous ally Major Te Rangihwinui was to become a significant opponent of the Government over its purchase of Maori land. In the end, the major's position was to become the same as that which Wiremu Kingi had taken, a fate that was to await many other loyals.

#### **6.8.4 The Waitotara block**

To complete the terrier of Maori lands following the wars, regard must be had to the area south of the Waitotara River. There, the Government had formally abandoned confiscation when the area was claimed by Maori of Whanganui who had assisted the Government in the wars. The Government none the less contended, and assumed, that it had the right to the Waitotara block by purchase.

The so-called Waitotara purchase was discussed in chapter 3. We seriously doubt the efficacy of that purchase. The reserves were also described in chapter 3. They were, however, hardly 'reserved'. Much buying accompanied the settlement of the Waitotara block, and by the end of the war, most of the interests in the reserves had been acquired.

#### **6.8.5 Conclusions on Treaty compliance**

Maori could have expected no less from the Treaty of Waitangi than the benefits of a regime competent to ensure justice and maintain principle. There was no part of the compensation scheme that delivered that expectation. Compensation was reordered to suit Western, not Maori, plans. Maori were excluded without good reason and the award of land depended not on principle but on expedience. The effect was to impress not the rule of law but the rule that might was right.

Maori could also have expected no less from the Treaty than that they would retain their own polity and sufficient land for their survival as a people and that they would contribute as a people to New Zealand as a whole. Instead, they were denied lands, and through land reform, their representation structures were destroyed. The record of the delivery of compensation and the award of clement reserves fails to comply with even minimal Treaty standards for the protection of hapu.

As a result of ad hoc circumstance – nothing to do with a managed plan – some hapu received more than others. To assess losses by reference to the area confiscated and the land returned is, however, to miss the point. Given the uncertainty of title and recording, an exact assessment of the land given and returned is impracticable anyway. How does one regard land as returned when, through alteration of tenure, none was returned in the condition in which it was taken? Can one regard land as returned when it was returned without protection against future alienation and when the circumstances of the time and the imposed tenure system made alienation likely? Can it be counted as returned when it was sold even before a title was given? The point is rather that every hapu lost, not one hapu was left with its traditional structures intact, and the prejudice cannot be assessed simply by calculating land acreages.

A more viable approach to the assessment of loss and prejudice is to examine the land that now remains in Maori ownership and to assess the extent to which that land is in fact an asset, not for individuals but for the people. If that approach is followed, it then becomes clear that each hapu, as a hapu, has nothing, while formerly they held all.

The following chapter demonstrates the importance of considering the tribal asset base that now remains, rather than the land taken or the method used to take it. Although the Government had awarded lands as entitlements or reserves, any intention to maintain those benefits for future generations was negated by concurrent policies to buy them. The Government developed proposals for massive immigration and settlement, which in Taranaki, despite the exigencies then confronting Maori people, resulted in a concerted campaign to acquire the lands possessed by Maori inside the confiscation line and such lands as they owned outside it. In brief, most of the lands not confiscated, and most of the lands returned, were purchased almost immediately.

## CHAPTER 7

# PURCHASES 1872–81

These lands will not be given by us into the Governor's and your hands, lest we resemble the seabirds which perch upon a rock. When the tide flows the rock is covered by the sea, and the birds take flight for they have no resting place.

Wiremu Kingi to Donald McLean, 1859

All dealings with the Aborigines for their Lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any Contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any Territory the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of Land by the Crown for the future Settlement of British Subjects must be confined to such Districts as the Natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their official protector . . .

From Lord Normanby's instructions  
to Lieutenant-Governor Hobson for the completion of a treaty, 1839

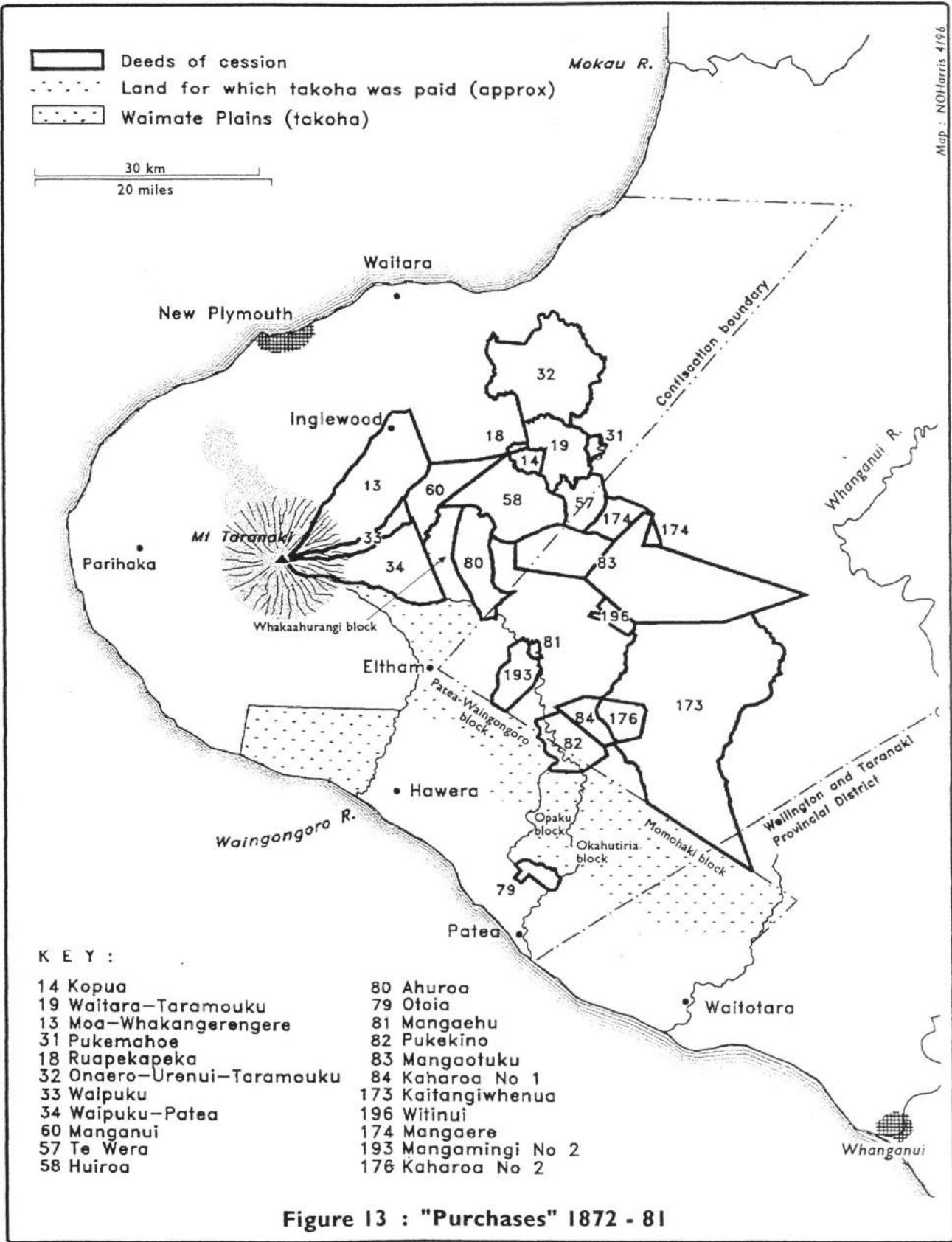
The system [of takoha] had three great evils: it demoralized the natives; it gave a vast personal power to the Commissioner; and at the Waimate Plains it has ended in pure waste.

The West Coast Commission, 1880

### 7.1 CATEGORIES AND QUANTUM

Few things could so gainsay the integrity of the compensation plan as the immediate purchase of compensatory lands and the land outside the confiscation boundaries. These purchases mainly affected the hapu of the central coast, the south, and the interior, the interior hapu having received little attention to this point. In south Taranaki, Maori had secured some reserves on good land near the coast, but settlers, uncomfortable with the 'enemy' living with them, sought their removal. One aspect of the programme was to buy Maori out of these areas and settle them further inland. A much larger part of the programme was to use deeds of cession to purchase the whole of the Maori hinterland – an enormous area, comprising 369,046 acres. A third part of the purchase programme affected central Taranaki most of all. It followed doubts about the efficacy of the confiscations in those areas where lands had been taken but no settlements had been surveyed and laid out. The Government proposed to secure its position by buying those areas as well.





None of these purchases came near to satisfying the necessary standards of honesty and good faith that the Treaty of Waitangi required, and all of them must be discounted as valid acquisitions in Treaty terms. This chapter considers why. At the same time, it notes that the buying became sadly muddled by corruption and fraud, which appear to have been widespread.

Even more disconcerting are the doubts that the hapu of the interior ever intended to sell. In their concern to avoid the confiscations that had affected the hapu of the coast, those of the interior offered to place their lands under the Government. They sought to commit themselves to the Government, that the Government might commit itself to them, but the Government sought only to buy. It is the Government's integrity in buying that is this chapter's main concern.<sup>1</sup>

The purchase programme covered a range of interests, including interests in reserves from pre-war 'sales'; land entitlements, awards, or grants from the Compensation Court; interests in the Governor's reserves; confiscated blocks acquired by deeds of cession; blocks outside the confiscation boundaries acquired by deeds of cession; and confiscated blocks acquired by gratuities. Buying in these categories continued during the war and in its aftermath, when a war mentality continued. We have taken the aftermath to extend to the invasion of Parihaka in 1881.

The largest purchases were made in the aftermath of the war. Leaving aside the continuing acquisition of individual interests in awards, grants, or reserves, 648,098 acres were claimed by purchase, by deed or gratuity, from 1872 to 1881. The blocks purchased by deeds of cession and gratuities are summarised in the table below and are depicted in figure 13. It is not possible to show the blocks acquired by gratuities in any detail because of the lack of associated deeds and plans. The given acreages for those blocks were assessed by the West Coast Commission.

## **7.2 POLICY**

Policy to settle Taranaki and resolve the 'Maori question' changed materially in 1872, when a drive began to buy all the Maori land that could be acquired. Previously, the war-time proclamations had declared an intention to secure land for loyals and returned rebels. Very little was secured for them in north Taranaki, and the status of the land as Crown or Maori land was uncertain in central Taranaki, but there was room to provide adequately for Maori in the south. Any hope of doing so, however, fell prey to fiscal strategies from Wellington.

In 1870, a year after the main fighting in Taranaki had ended, Julius Vogel, a visionary treasurer in the Fox Ministry, persuaded the Government to borrow and

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1. This chapter draws on the following research reports: H Riseborough, 'Background Papers (i) Confiscation on Paper (ii) Confiscation on the Ground' (doc A2); A Harris, 'The Purchase of Land in the Taranaki Provincial District, 1872–1883' (doc H3); J Ford, 'A Comparison between the Awards of the Compensation Court that were Intended to be Implemented and those that were Implemented in Taranaki, 1867–1885' (doc F25); H Bauchop, 'The Wars and Iwi Losses, Taranaki, 1860–1870: A Summary' (doc H11); and H Bauchop, 'The Aftermath of Confiscation – Crown Allocation of Land to Iwi: Taranaki 1865–1880' (doc I18).

Block	Ref in fig 12	Deeds		Date	Acres	Amount	Reserves	Sellers	
		O	T					No	Hapu
Kopua	1	14	91	1 August 1872	3140	£230	2 roods	23	Ngati Maru
Waitara-Taranouku	2	19	50	27 February 1873	12,800	£1600	231 acres	23	Ngati Maru/Ngati Tu hapu of Ngati Mutunga
Moa- Whakangerengere		20	51	19 February 1874		£200		5	
	3	13	26	14 November 1873	32,830	£3750	Nil	107	Puketapu/ Pukerangiora
		35	27	27 February 1874		£1700		103	Puketapu
		63	28	19 May 1874		£50		40	Puketapu (at Waikawa)
		64	29	25 May 1874		£150		38	Puketapu (at Nelson)
Pukemahoe	4	31	53	28 February 1874	1000	£125	1 acre	7	Ngati Maru
Ruapekapeka	5	18	52	28 February 1874	400	£50	Nil	1	Ngati Maru
Onaero-Urenui- Taranouku	6	32	46	3 March 1874	36,000	£3530	700 acres	85	Ngati Uenuku, Ngati Tupawhenua, Ngati Rangi, Ngati Teurwhakawai, Ngati Maru
		55	47	8 October 1874		£400		1	Mitiwai (of Nelson)
Waipuku	7	33	60	12 March 1874	7000	£875	Nil	31	Ahitahi
Waipuku-Patea	8	34	61	22 May 1874	20,700	£2500	700 acres	29	Ahitahi
		62	62	20 November 1874		£700		7	Residents of Nelson and Wellington
Manganui	9	60	41	21 August 1874	11,200	£1350	397 acres 2 roods 28 perches	24	Pukerangiora
		60	45	20 November 1874		£500		6	Residents of Wellington
Te Wera	10	57	42	1 September 1874	6320	£787	50 acres	14	Ngati Maru

Block	Ref in fig 12	Deeds		Date	Acres	Amount	Reserves	Sellers	
		O	T					No	Hapu
Huroa	11	58	43	25 September 1874	25,300	£3100	1050 acres	3	Ngati Ruanui
		61	44	20 November 1874		£500		11	'Wellington aboriginal natives'
Ahuroa	12	80	54	24 February 1875	12,600	£1575	Nil	33	Ngati Ruanui
Oioia	13	79	55	16 March 1875	2660	£322 10s	Nil	45	Ngati Ruanui
Mangaehu	14	81		11 November 1875	560	£70	Nil	5	Natives of Taiporohenui
Pukekino	15	82		16 December 1875	11,870	£1482 10s	10 acres	12	Ngati Ruanui (Ngati Hine hapu)
Mangaotuku	16	83		16 December 1875	61,200	£7650	Nil	18	Ngati Ruanui and Ngati Maru
Kaharoa No 1	17	84		16 December 1875	8750	£1093 15s	Nil	3	Ngati Ruanui
Kaitangiwhenua	18	173		18 December 1880	92,186	£11,723 05s	Nil	6	As owners named by Native Land Court
Witini	19	196		24 August 1881	2080	£260	Nil	12	Natives of Hawera district
Mangaere	20	174		25 August 1881	6250	£781 5s	Nil	7	Natives of Hawera
Mangamangi No 2	21	193		25 August 1881	8200	£1025	Nil	20	Natives of Patea district
Kaharoa No 2	22	176		9 September 1881	7300	£506 5s	Nil	11	Nga Rauu living at Whetuakura
					370,346	£48,586 10s	3140 acres 1 rood 28 perches		

O: Original deed number

T: Turton deed number

Table of purchase deeds, 1872-81

*The Taranaki Report: Kaupapa Tuatahi*

Block	Date	Acres	Amount	Notes	Reserves (acres)
Opaku	By April 1877	24,160	£3118 6s		Uncertain
Okahutiria	By April 1877	14,592	£1909 17s		Uncertain
Waingongoro to Patea	1877-79	73,000	£7513 11s 7d		Uncertain
Moumahaki	1876-79	66,000	£4110 12s 6d		Uncertain
Waimate Plains	1877-80	100,000	£8924 8s 5d	(Payments incomplete at this stage)	Nil
		277,752	£25,576 15s 6d		

Table of purchases by gratuities, as per the West Coast Commission, 1880. Source: AJHR (1880, G-2, p 31).

spend £10 million, more than the country had countenanced as possible, for roads, railways, immigration, and settlement. This courageous scheme was designed to lift the colony from a backwater of half a million settlers to a progressive, competitive state. The rapid acquisition of Maori land was part of the design, however, for roads, railways, and settlements would come to naught if there was no land to put them on. By 1873, Vogel was Premier. Between July 1873 and May 1874, 15,102 immigrants arrived in New Zealand, and in 1875, another 18,324 arrived.

Though many promises of land had been made to Maori in Taranaki, the mood for expansive acquisitions went there as well. From 1872, the Native Minister instructed the Civil Commissioner and various purchase agents that they should exert all influence to acquire such lands as they could, including the lands awarded or reserved (with titles to be individualised to assist that end); those confiscated lands where possession had not been taken or delivered; and the lands outside the confiscation boundaries.

### 7.3 MALPRACTICE

The purchase operations became characterised by laxness of supervision and corruption. To emphasise the goal they were expected to achieve, the Crown agents had been given *carte blanche* to do what was necessary, and several abused that power. In 1880, malpractice became transparent, but the Ministers and senior officials could not be excused on the ground that they were not informed of what was happening locally. 'The Government will leave you unfettered,' is how the Minister's instructions had read.

Purchase became patronage and advantage was taken of Maori circumstances. For example, Maori 'chiefs' signed blank vouchers that were to be filled in later for moneys (which were never given), yet notwithstanding overt evidence of misconduct, we are unaware of any case that led to the return of one acre. Maori were brought into the plan in various capacities from informers to road makers, patronage was the order of the day, and all was paid from one settlement account. In many or most instances, it could not have been clear to Maori whether the payments constituted development assistance or gifts to secure compliance, or whether they were for hospitality given, services rendered, or purchases made. Nor was the purpose of the allegedly made payments apparent to the auditors.

Reports of the Controller and Auditor-General in 1880 and 1881, although subdued, provide an indication of what was happening. It was noted that blank receipts had been obtained from Maori and used to make up accounts. It was a practice, according to the report, 'long attained in the Native Land Purchase Department'.<sup>2</sup> Further:

it is well known that Natives, and even Europeans, have been paid money, charged as the purchase of land, in which they had no proprietary interest which would be recognised in an ordinary Court of Law or by the Native Land Court. Europeans have often been paid for inchoate rights having no legal validity, because having commenced to buy the land, it could not practically be acquired by the Crown unless they were bought off.<sup>3</sup>

The West Coast Commission could not avoid scrutiny, but because the chief commissioner was Premier when some of the purchases were effected, care was taken to place the blame at a local level:

There does not seem to have been the smallest control over the way in which the money was to be spent . . . We can find no trace of any principle laid down to guide him [the Civil Commissioner], of any safeguard against transactions being repudiated by the tribe, of the commonest precaution that at least the Government should know what was being done.<sup>4</sup>

The practice needs to be exposed, and not only to assess the past. There are still perceptions of patronage when funds are distributed to Maori on the basis of favour and not on the impartial assessment of the facts against settled criteria.

Contemporary letters illustrate the pressure and scheming involved, the exhortations to purchase as many of the 'native claims' or other lands as possible, and the directions to exclude Maori from coastal settlements altogether. The tone of the agents' progress reports hints of their objectives and techniques:

The action of the Ngatimaru tribe in boldly coming forward to sell land is having an excellent effect [on others] and is likely to lead to most favourable results . . .<sup>5</sup>

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2. NA 68/5A, report of Auditor-General, 21 April 1881

3. NA – MLP1, 90/52, memorandum from Controller and Auditor-General, 30 August 1880

4. AJHR, 1880, G-2, p xli

5. AJHR, 1872, C-4, no 31, p 26

Native work is progressing favourably; the Natives are beginning to accept the situation, seeing pretty plainly that it is useless making any further direct opposition, but better to fall in with the views of the Government, and make the best terms they can under the circumstances.<sup>6</sup>

They are a reckless and difficult lot of people to deal with, and in the meantime I think it is as well not to press the matter too urgently, but to let them discuss the question among themselves, but at the same time I think it advisable they should be told that the Government will negotiate with separate sections of Natives for their tribal rights to land in that district.<sup>7</sup>

#### **7.4 ENTITLEMENTS, AWARDS, GRANTS, AND RESERVES**

The Government began buying in the pre-war reserves of north Taranaki as early as 1863. Earlier, we noted the rapid erosion of those reserve lands. Because reserves ceased to be customary land, private interests were buying into them as well, any uncertainty on their right to do so having been removed by the Native Land Act 1865. The Government was also buying into those few reserves in the north arising from the compensation process. The last chapter noted the alienation of two such northern reserves. At the time of acquisition, neither had been defined by plan but one was 10,000 acres in area.

In a separate category were the compensation awards and grants. The grants were meagre and tardy, being issued after 1869 and comprising only 7485 acres in the Te Atiawa district and 1982 acres in Oakura. Held in uncustomary titles without traditional hapu controls, subjected to uncommon pressure, and with individuals placed on sections that were not their family lands, it was no surprise to find that by 1880 most of the grants had been sold.

The southern awards did not formally issue from the Compensation Court until 1874, but it is evident that surveying was done, sections were informally allocated, and most of the sections were sold before the court had even sat to award them formally. We concur with the view in the report of Heather Bauchop that the court was probably urged to sit in the district and make orders in 1874, not to assist Maori but in order for purchasers to gain title.<sup>8</sup>

In 1880, the West Coast Commission reported that of the 17,280 acres awarded in the south, 14,192 acres had been sold. The Commissioner of Lands noted that even then the purchase figure was based upon only those transfers that had been registered with him at the time. A Crown agent, Charles Wray, advised the commission that virtually all the land had been bought by the Crown or by settlers and that 'Crown grants are only required in order to perfect the titles of the European purchasers'.<sup>9</sup>

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6. AJHR, 1873, C-4A, no 4, pp 3-4

7. MA – MLP 1, 74/58, Parris to Under-Secretary of Native Affairs (Land Purchase Branch), 7 January 1874

8. Document I18, p 152

9. AJHR, 1880, G-2, p 80. The Crown agent did not need to add that the Crown required title as well. At law, the Crown did not need one, because all land, even customary land, is legally Crown land until a title from the Crown can be shown. We believe that this law, imported from England, was wholly inapplicable to the

The court may have been unaware of the true position, for it made each award inalienable. The difficulty was overcome, according to the evidence of the Crown agent, by the simple expedient of striking out the restrictive clause. The Crown agent, presuming to stand above the court, thought this approach was reasonable because the restriction would not have given 'justice to the buyers who purchased in good faith'.

As mentioned, Government purchase activity accelerated from 1872. So did corruption. By then, fraud was already evident with regard to interests in awards, grants, and reserves. This materialised in the prosecution, conviction, and dismissal of Crown agent George Worgan. In that prosecution, however, the Government was primarily concerned with its own interests in the land in question. The agent purchased a 400-acre award for £400, on-sold it for £1000, kept the difference, and hid the transaction behind a manufactured agreement between the vendors and the ultimate buyer. The only outcome for Maori was a trespass summons for failing to deliver possession.

Before the West Coast Commission, however, it was admitted that Maori had made many further complaints regarding Worgan's nefarious activities. The commission could not investigate them all, finding that to untangle the mass of records known as 'the Worgan papers' would extend its inquiry interminably. It did, however, observe:

our scrutiny of the Worgan papers has since convinced us that there are things which, for the credit of the country, must be sifted and cleared up in connection with that person's official acts during the time when (to the misfortune of everyone) he was allowed to represent the Government in that district.

The commission pursued the matter no further. Its task was to inquire into the promises allegedly made, not criminal activities; but no other inquiry was instituted. Wray, who replaced Worgan, also found great difficulty in understanding his predecessor's papers. He did, however, warn of the extent of purchase operations, advising the Under-Secretary of Crown Lands that, out of the total of 17,264 acres awarded in the south, as at 1873 only 3512 acres remained in the hands of Maori.<sup>10</sup>

The circumstances – uncustomary allocations; the dismantling of hapu control; uncertain 'paper awards', which were much less than grants or titles; the dire circumstances of Maori; and doubts that the promised lands would ever be delivered because it took 11 years for the first awards to come through – encouraged the alienation of Maori interests in land. Our primary concern is to weigh the protection provided, which in this case was virtually non-existent, against the intentions of the Government in buying. The latter may be simply explained. In this case, the Government bought not just to advance European settlement but to keep Maori out

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circumstances in New Zealand. All the land was Maori land, and in our opinion, no part should have been deemed as the Crown's until an acquisition from Maori, whether by purchase or proclamation, could be shown. The importation of the principle has worked great hardship on Maori, shifting to them the burden of proving ownership and leaving them with no title records as to how lands passed from their possession.

10. Wray to Under-Secretary of Crown Lands, 15 August 1873, AJHR, 1873, C-4A, pp 2–3



of the land. The Government was especially concerned to keep Maori in the interior, away from the fertile coast, where Europeans were settled.

The main buying occurred after 1872, following the Native Minister's instructions pursuant to the Government's new fiscal plans. It is helpful to be reminded of the times. The war had barely ended. Settlers had resumed their farms on promises that Maori (or at least rebels) would be excluded from the district. Some 'locals' had returned, including Government allies in native contingents. 'Rebels' were, however, 'loitering' in Ngati Maru territory and elsewhere or they had 'come in' and were 'hovering' on the nearby Waimate Plains. They pledged that they would reoccupy those lands south of the Waingongoro River that were not in the possession of settlers. Finally, there were serious doubts that anyone was really 'loyal'. The awards were made to persons who had been loyal when the court sat in 1866. There had since been a further 'insurrection', and it appeared then that loyals had either changed sides or not really been loyal at all.

The Native Minister's instructions were explicit. The Government:

had practically given a guarantee that the natives should not be allowed to return to the confiscated lands [and] . . . the only practical solution of the difficulty was to buy up as many of the Native claims as possible.<sup>11</sup>

Maori were enticed back to the district in order to sell their court entitlements, and in return, reserves were made for them elsewhere, either removed from the coast, where the settler farms were, or closer to the Waingongoro River, where settler occupations were sparse or non-existent.

Thus, about 17,000 acres in awards were purchased, and some 20,000 acres in reserves were provided in a programme of relocation. The reserves were mainly in disparate patches and many, like that given to Taurua and the returned prisoners, were given to fulfil other obligations. None the less, they included the large, 10,000-acre Tiroitiromoana reserve. The policy was also to discourage the hapu from reoccupying their traditional areas by restricting them to prescribed localities. Accordingly, reserves came not from a generous heart but from the need to delimit the Maori settlement areas. Nor were reserves given easily. Umutahi were persuaded to keep out of the area altogether and remained north of the Waingongoro River. Ahitahi insisted on returning to their traditional district and a reserve was therefore finally agreed to, but 'care [was] taken to fix it as far inland as possible from Europeans' locations'.<sup>12</sup> Thus, the policy was to buy awards, purchase the unsettled parts in order to induce Maori to accept limited reserves, and then create reserves in discrete patches and more remote localities.

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11. Document A2, p 75

12. AJHR, 1872, C-4, no 20, p 28

## **7.5 PURCHASE BY DEEDS OF CESSION**

In 1872, the rebels' occupation of the bushclad strongholds of Ngati Maru and their infiltration back to Parihaka, the Waimate Plains, and the south led to the decision that those lands not physically occupied by settlers and since reoccupied by Maori would have to be purchased. As the Government saw it, Maori did not regard the confiscation as binding except where it had been enforced by settler occupations. The result was that the Government would buy those lands not taken for European occupation, and this was first applied to northern interior lands within and outside the confiscation line. The lands comprised both rugged country and parts that were suitable for settlement. An overview of the situation is given by regions.

### **7.5.1 North**

The Civil Commissioner brooked no delay in implementing the Native Minister's instructions. In the north, most of the usable land near the coast had been taken by settlement, but large tracts (a mixture of rugged terrain, rolling hills, and plains) remained in the bounds of the confiscated territory. By deeds of cession from August 1872 to September 1874, six blocks were sold, each involving Ngati Maru, mainly within the confiscation line and amounting to 59,660 acres in all. Although, in the words of the West Coast Commission, much of this country was 'rough and covered with forest, and useless without roads', the transactions were important 'as indicating not only friendly feelings on the part of the natives who had long been estranged, but the prospect of opening additional fields for settlement'.

There was another reason for proceeding: the transactions would relieve the Government of other obligations. Included in the sales were lands proposed for loyals of Ngati Mutunga in satisfaction of their compensation entitlements and it could be said that those entitlements had been extinguished by purchase. This also suggests that Ngati Mutunga had been placed in Ngati Maru territory, but we cannot be sure, because the Maori land boundaries fluctuated, the extent of tribal influence shifting according to the changing allegiances of the occupants. In any event, the land required for these loyals had not been formally set aside or identified by survey or sketch plan, but the Government presumed that the lands were included in the sale, probably with the loyals' consent, simply because they were meant to have been located somewhere within this territory.

It is not clear whether other entitlements were consumed by purchases in this way, because the location of many entitlements existed only in the minds of Crown agents.

The next group of sales, all within the confiscation line, were effected by Puketapu and other divisions of the Te Atiawa group in deeds of cession from November 1873 to May 1874. The land included rough land and some valuable flats. In terms of current places, they ranged from Inglewood to Stratford. They amounted in all to 71,730 acres. These sales were followed by the alienation of an adjoining 37,900 acres in two blocks by deeds of cession in September 1874 and February 1875, effected with persons of Ngati Ruanui.

By then, a mood for selling had been established. The next batch of northern sales went beyond the confiscation line, though it is unlikely that was known to Maori at the time. The confiscation line extended across rugged country without regard for natural contours and terrain, and it was to become obvious in later evidence before the Native Land Court that the Government itself could not tell how the line related to blocks sold until surveys were effected, well after the deeds were signed. Three blocks, amounting to 69,530 acres, were acquired by deeds of cession. The first, for 61,200 acres, was executed by 18 persons of Ngati Ruanui and Ngati Maru in December 1875. The identity of the 'owners' for the remaining two blocks is uncertain. They are simply described in the deeds as 'natives of Hawera'; there were 12 such 'natives' in one deed and seven in the other.

By then, the Government had acquired, among other things, a continuous tract of land from the sea at Urenui along the Waitara Valley to well beyond the confiscation boundary. In all, 238,820 acres were acquired in the north by deed. There were no purchases by gratuity in this district.

### **7.5.2 Centre**

There were no deeds of cession for the central coast. Instead, about 100,000 acres were claimed by gratuities, as will be explained later.

### **7.5.3 South**

The acquisitions made by deeds in the south, from the Waingongoro River to the Waitotara River, were mainly beyond the confiscation line. The exception was the Otoia block, which was inland from Patea and was acquired in March 1875 from 45 of Ngati Ruanui. This block contained 2660 acres. In the hills beyond the confiscation line, 36,680 acres were acquired in five blocks: 560 acres from five 'natives of Taiporohenui'; 8200 acres from 20 'natives of Patea district'; 7300 acres from 11 persons of Nga Rauru; and 20,620 acres (in two blocks) from 15 persons of Ngati Ruanui. Finally, though not last in time, the largest of the sales was effected. In December 1880, the Government acquired the Kaitangiwhenua block, comprising 92,186 acres. More will be said of this purchase later.

In all, 131,526 acres passed by deeds of cession in the south. In addition, 177,752 acres were claimed to have been acquired by gratuities, as will be considered later, so that the total claimed by purchase in the south was 309,278 acres. As mentioned above, the purchase areas are depicted in figure 13.

## **7.6 THE DEEDS AND THE NATIVE LAND COURT**

In the Government's eyes, the cause of the war had been the uncertain Maori titles. Remedy was sought in the establishment of a native land court soon after the outbreak of the war to enable ownership to be determined judicially before

acquisitions were attempted.<sup>13</sup> Leaving aside the distortion of custom caused by individualisation and other doubts as to the court's efficacy, the policy of determining title in advance seemed sensible. It may also have worked had all titles issued tribally and with only such reforms as were agreed.

The first difficulty confronting the propriety of the deeds of cession referred to is that such protections as the Native Land Court might have given were negated. In broad terms, the effect of the Native Lands Act 1865 and its several amendments and the Native Land Act 1873, which applied at the relevant time, was, first, that land could not be bought until the court had settled the title but thereafter could be bought by the Crown or privately; secondly, that the court would have to be satisfied with the 'justice and fairness' of any sale; and, finally, that the process had to ensure 'to the natives without any doubt whatever a sufficiency of their land for their support and maintenance'.

The court had wide discretion as to what was sufficient, but some guidance lay in a statutory direction to officials that 50 acres were to be reserved in every district for each man, woman, and child.<sup>14</sup>

To expedite its purchase policy in Taranaki, the Government sought to avoid the court. It saw no problem for lands within the confiscation line, because there the court could be avoided on the ground that the lands were not really Maori land but confiscated lands. Thus, the Government treated lands as 'confiscated' when it suited and as 'abandoned from confiscation' when it did not, and lands within the confiscation line had the distinction of being at once both confiscated and not confiscated. These lands were dealt with under the old land purchase system, as described in chapter 2, being the system that had led to the war.

In buying outside the line, the Government found refuge in section 42 of the Immigration and Public Works Amendment Act 1871, introduced to give effect to the immigration and settlement plans. It was there enacted that to establish the 'special settlements':

it shall be lawful for the Governor to enter into arrangements for such purpose previous to the land passing through the Native Land Court and a certificate of title of the person entering into such arrangement with the Governor obtained and on such certificate of title being obtained the arrangements entered into shall be as binding on both parties as if made after the order of the Court.

In brief, the Government considered that it could buy the land before ownership had been decided and then go to the court to issue a certificate of title in the vendors' names. It does not appear to have entered into the Government's consideration that it was relieved from going to the Native Land Court only for 'special settlements' and that most of the lands in this case could not be suitable for that purpose. In any event, all the lands were sold before the court sat to determine who owned them, subject to the court confirming later that the correct persons had sold them. There

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13. The court was first established as the Titles Court in 1862 and became the Native Land Court in 1865.

14. See s 23 Native Land Act 1873

was also provision for the Governor to prevent any private purchaser from competing.

## **7.7 THE DEEDS, THE COURT, PRACTICE, AND MORE MALPRACTICE**

To examine the detail of each deed of cession would overly extend this report. Moreover, there is no need to do so, because the process as a whole departed so much from the standards of good faith and honesty expected under the Treaty that a precise audit is unnecessary. For the record, further particulars of the purchases may be had from the report of Aroha Harris, a member of the Tribunal's staff commissioned to investigate them.<sup>15</sup> A summary of some features follows.

The pre-war practice was followed, the Crown agents negotiating with those thought best, but in addition, the agents arranged for those willing to sell to complete claims for the land, which the agents then filed in the Native Land Court. To encourage sellers, purchase instalments were paid in advance. This was standard in all cases. When the deed was finalised, a title was sought from the court, and unless there were objectors, the court declared those named in the deed as the owners and the sale was complete. Objectors, on proof of customary interests, were either added to the title to share the sale proceeds or partitioned to a land severance.

The process favoured sellers, who were assisted in every way: their claims were filed for them, their interests were represented in court, and they alone received advances. Many objectors knew nothing of the sale or the court sitting and were left to seek a rehearing, provided, of course, that they knew how to do so. Ms Harris's report provides instances. In one case, a rehearing was declined, and it was obtained only after a petition to Parliament. The further hearing was then delayed for six years. It transpired that the boundaries were uncertain (casting doubts on the original decision) and further time was needed for surveys to be finalised. The hearings themselves were also protracted, but they did at least result in part of the land being excluded for the non-selling parties. Finally, at the solicitor's request and despite objections from non-sellers, the court vested the unsold severance in only three persons. It was then sold by those three the very same evening.

In this way were the non-sellers cheated out of their land. The ploy had been prearranged. The purchasers were three Europeans, who acted in a personal capacity, and though there were regulations against such activity, one of them was the Crown purchase agent who had organised the transactions as a whole.

In further illustration, we will refer to:

- (a) The Kaitangiwhenua block in the south, the largest of the several alienations, which affected hapu of Nga Rauru and Ngati Ruanui and possibly others.
- (b) The Ngati Maru alienations in the north, where the purchases began. There, a Maori desire to forge an alliance with the Government was most in

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15. Document H3

evidence. This purpose appears to have permeated all subsequent sales, casting strong doubts on whether sales in Western terms were ever really meant.

### **7.7.1 Nga Rauru–Ngati Ruanui**

The Kaitangiwhenua block of 92,186 acres was the largest of the sales and involved the biggest payment: £11,723. Initially, private buyers claimed to have bought this land; among them one William Williams. Naturally, the ‘purchase’ was dependent upon the vendors obtaining a court title.

In fact, this arrangement was contrary to the law, which forbade private persons from buying Maori land before title was ascertained. The difficulty was thought to have been overcome in this case by a simple arrangement whereby for £1000 the ‘purchasers’ assigned to the Government such interests as they may have had, with the provision that Williams be employed on salary as a Crown purchase agent. This was thought to be legitimate, because the Government claimed to be exempt from the rule against prior buying by section 24 of the Immigration and Public Works Amendment Act. How an honest government could sanction illegalities is hard to know. A further stimulus for Government action was some settler protest that the land, which they thought to be 200,000 acres, should pass to private hands. In their view, genuine settlers would be excluded or would be prevented from buying from the Government on cheap terms.

The Government thought it was necessary to commit more sellers to the sale, and Williams had the task of making more advances in exchange for more signatures. Based on Williams’s advice, £5600 was passed to him for that purpose. A title was then sought from the court, but the application was dismissed because the boundaries were uncertain and irregular. When the Government applied for a rehearing, however, orders were made. Although these were the customary lands of two large tribal groups, the court vested the title in only seven persons, just as the Crown agents had asked.

By this means, the sale went through and the Crown obtained title. It is now clear, however, that a large number of Maori were in fact opposed but were not represented. Ngati Ruanui in particular were adherents of Te Whiti, a noted resistance leader at Parihaka. The Te Whiti supporters generally eschewed agents’ meetings and court hearings, not recognising the rightness of either. In any event, those Te Whiti supporters who had attended meetings or hearings were simply disregarded, Te Whiti and his adherents being seen as affected by a peculiar lunacy, which allowed any of their opinions to be dismissed. On this occasion, many of Ngati Ruanui were in fact at Parihaka, well away from the locality.

In addition, Whanganui Maori claimed an interest and protested that they had no notice of the sale of the land. None other than Major Te Rangihwinui Keepa (Major Kemp), whose support for the Government in many battles was legendary, threatened more than once to force an occupation if something was not done. Te Rangihwinui was to take an entirely different view of the Government from that which he had held during the war. He was to become a significant opponent of

Government land purchase operations, proclaiming an all-Maori territory from Whanganui to Mount Ruapehu.

When the Government met with the sellers after the court hearing to pay the balance due, according to its records only £5411 was outstanding. The sellers who were there protested the smallness of the balance, but the Government pointed out that the rest had been advanced by Williams prior to the sale in the form of cash, goods, various types of assistance, and a deposit, said to have been paid by the original European purchasers. The sellers agreed to take the remainder, which the Government then paid to Williams to distribute.

It was not until 14 years later that the truth transpired. No money had ever been paid. The Government, having cause to doubt Williams's honesty, had set up a commission of inquiry. The commission found that Williams:

obtained the cheque for the balance of the purchase money – £5,411 0s 7d – from [Maori] by treachery, deceit, trickery; and that, having cashed it, he, in breach of the conditions upon which the cheque was handed to him, fraudulently appropriated the proceeds in the manner before mentioned [that is for his own purposes] and has never accounted to the natives, not only for that money, but for the sums received by him through [the Government] prior to final settlement.

Put more simply, Williams deposited the money in his own bank account. That put paid to Williams, but not a thing was done about returning any part of the land, when it was quite clear that Maori knew nothing about what was going on.

If Maori complaints were not as strong as they could have been, that may have been owing to their perception of the transaction, as indicated by the principal vendor and Nga Rauru leader, Te Uru te Angina. After the sale had been concluded, Te Uru wrote to the Government to protest Te Rangihwinui's proposed occupation and happened to disclose his view of the transaction. It indicates to us that a sale, as understood in law, was not at all that which Te Uru had in mind. He wrote:

The land belongs to me and to the Government, that is to say, the Government claim it through me. This is what makes me angry. If he [Te Rangihwinui] goes on to the land, I will go and turn him off. The reason is because I have given it over to the Government and I will not allow him to interfere in it. I will not allow him to go upon that block. I want the Government to hold that block in its own hands and in mine . . .

I am anxious also to become a friend of the Government to assist the Government; because you see I am the one who speaks to my people and the people obey my voice . . . I always remain firm for the Government. I wish you to have confidence in me and my people and to have for us a feeling of kindness and love . . . I do not wish the Government to forsake me, but to communicate to me.

If this statement is married with many similar ones from throughout the country, light is shed on the traditional Maori perspective on transactions between peoples, be they other hapu or the Government, especially following warfare. The objective is to retain one's land and position by securing an alliance and, if need be, to submit to another for that purpose. It will be recalled that, in the same way, Kingi had placed his lands under the mana of the Maori King on the occasion of the Waitara

war, not to alienate his lands but to secure their protection. Since then, circumstances had changed. Those who had placed their land under the mana of the Maori King had lost the war and the Government was confiscating the land of every hapu. What else could one do to hold on to one's land but transfer the mana of the land to the Government in order to maintain one's position?

In our view, Te Uru's letter is more than consistent with that tradition. It is the evidence that an unconditional sale in Western terms was not intended. It is not a quaint recording of elderly Maori opinion. It indicates that there was no consensus *ad idem* between the parties and hence no valid contract. The difference between English and Maori contracts is briefly compared a little later. We say simply for now that the two are so different that any comprehension between Maori and the Government is extremely unlikely unless one fully and knowingly capitulated to the cultural mores of the other.

### **7.7.2 Ngati Maru**

Passages in the report of the West Coast Commission suggest that initiatives to sell the Ngati Maru land came from Ngati Maru. If that were so, it would not be surprising in light of their precarious position, especially if they too had not intended a total alienation.

No clear record exists that Ngati Maru as a group were in the war. The war was mainly a coastal affair, but the remote northern lands of Ngati Maru provided a natural refuge for many people, from Wiremu Kingi to Titokowaru, and the evidence is that large numbers of well-armed forces had gathered there. In terms of the New Zealand Settlements Act, all else being equal, Ngati Maru lands could be confiscated on the grounds of providing 'succour' and 'comfort' to rebels. There were, however, four reasons for not doing that. First, the rebels in hiding were so armed and so many that there were unlikely to be any options for Ngati Maru. Secondly, custom dictated that hospitality be given. Thirdly, in terms of the Act the rebellion or succouring must have occurred before the land was proclaimed as taken, and in this case, the succouring of Titokowaru and others occurred much later. Finally, on account of the expensive roading needed, their lands were not 'eligible settlement sites', so it is doubtful that the confiscation of their lands would have been lawful. Still, lawful or not, confiscation had been effected, and whether anyone knew it, the confiscation line cut through Ngati Maru territory.

The legal position of Ngati Maru had become still more precarious. Perhaps because of their remoteness, they had not participated in the claims' hearings. As a result, they held no entitlements, awards, or reserves by way of compensation. Confiscation may have come home to them, however, if it was proposed, as seems to have been the case, to locate Ngati Mutunga entitlements in their area. Perhaps they knew then that their remoteness was no protection from Government edicts. They were at the Government's mercy – a situation the Colonial Office had hoped, when vetting the legislation, would never be visited on innocent persons.

Having regard to the paucity of contemporary statements from Ngati Maru, other evidence becomes significant. We think that Ngati Maru did not intend to divorce



themselves from their lands when they purportedly sold them and that the Crown has never satisfactorily proved its right to Ngati Maru territory.

The year 1872 saw some startling events, quite apart from the Native Minister's purchase instructions. After 12 years' seclusion, Wiremu Kingi marched out of Ngati Maru land to present himself at New Plymouth and assure the Government of his wish for peace. It was seen by the Native Minister and others as 'the most significant indication and the greatest assurance of future peace'. It is most unlikely that an event like that would have occurred without an intense prior discussion in the northern runanga. It was one of the last recorded acts of this rangatira and, typically, was one of his finest. We do not believe he went to New Plymouth simply to acknowledge the Government – there is every likelihood he went there to save Ngati Maru their land.

Immediately after Kingi's visit to New Plymouth, Ngati Maru offered their land to the Government. There is little conjecture in asserting that this would also have flowed from the same tribal debate. Certainly, officials saw it as a statement of political position. The Civil Commissioner considered it:

to be of far greater importance in a political point of view than the value of the land itself, in as much as it is the best proof we can have of the determination of the natives of this district to withdraw from the old land league, and the combination of the disaffected tribes who have so long been hostile to the Government of the country, to which they now wish to be allied.<sup>16</sup>

The commissioner also recorded:

A tribe that has for years past allowed their district to be a refuge for the disaffected is now exerting itself to establish permanent allegiance to the Government.

Others made similar statements, but all the Government could see was the prospect of a purchase, and it neglected that which was most needed: a renewal of the promises of the Treaty. Symbolism is more significant to Maori than the words in deeds. It is apparent to us that, in Maori terms, Ngati Maru were ceding to the Government an authority in the land that their own interests and occupations might be respected. Again, had not Kingi previously placed the mana of his lands under Te Wherowhero, not to part with them but to secure his own occupation? Had his father not previously been defeated by the same Waikato people? In our view, no understanding of early intentions can ever be complete without reference to the Maori manner of behaving.

Next, we have to consider how Ngati Maru fared with their new friend. The main Ngati Maru lands passed without the benefit of such protections as the Native Land Court might have provided, leaving but one reserve of 230 acres. In this country, it was only enough for at most one family to farm.

There was other land where Ngati Maru had an interest outside the confiscation line to fall to the court's purview. Some 61,200 acres passed in one block, but there were no reserves. There were 6320 acres in a second block, with 50 acres reserved.

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16. AJHR, 1873, G-8, no 30, pp 24–25

Applying the test in the 1873 Act of 50 acres reserved for every man, woman, and child, it might be deduced that the strength of Ngati Maru had fallen to one person, were that so obviously not the case, because there were 14 Ngati Maru sellers.

Ngati Maru interests in more than 120,000 acres were conveyed to the Government with total reserves of less than one percent – 1082 acres.

In 1907, the tribal plight was examined and the Ngati Maru Landless Natives Act was passed to provide them with some land. In 1915, pursuant to that Act, six blocks called Ngati Maru A to F were vested in individuals of Ngati Maru as owners. From such of those blocks as the Tribunal could see from a distance when we visited there, we can at least say that the cliff faces have a certain majesty and charm.

If all that we have previously reported of Ngati Maru were disregarded, at least this much would stand. The Treaty of Waitangi, as entered into on the basis of Lord Normanby's instructions, made it plain that, no matter the terms of land alienation, at the end of the day a sufficiency for the hapu had to remain. In relation to Ngati Maru, there is no way in which the principles of the Treaty could have been maintained. We need to inquire, not only of the good faith of Ngati Maru in submitting to the Government but also of the good faith of the Government in buying the land and then, in so buying, leaving them landless.

## **7.8 ENGLISH CONSENSUS AND MAORI UTU**

The Maori manner of contracting conditioned their search for a political alliance. When forming contracts, the protocols of Maori and Pakeha are not the same and represent a specialised sophistication unique to their own histories. It seems to us the different expectations and behaviour of Maori and English were such that, unless one side was thoroughly familiar with the mores of the other and freely and willingly adopted them, the mutual comprehension necessary for a valid contract by English law is likely to have been lacking.

More lego-anthropological research is needed in this area, but an introductory comparison must be attempted. A typical English contract involves the delivery of property or services on terms agreed in advance, and thus a personal relationship or affection between the parties is not a prerequisite to mutuality and may even be a hindrance. Most regularly, it is expected both parties will gain, and on the contract's performance, the relationship between them will end.

Maori contracts are more regularly the other way around. They are generally about building personal and lasting relationships over time. The delivery of property or services is secondary to the larger goal of an effective bonding. The terms of exchange were not generally fixed in advance, for the essence of the transaction was based upon the principle of reciprocity and was seen to require that each party should totally trust the other and would act generously, even lavishly, in their rejoinders. Thus, a generosity of spirit when transacting was part of the Maori way; to give freely and not to count the cost, but at the same time to give so as to oblige.

The distinction may be seen as the difference between Western consensus, that parties must be of one mind on essential matters before binding relationships ensue,

and Polynesian *utu*,<sup>17</sup> that harmony comes through reciprocity over time. Thus, Dr Dame Joan Metge recently described the *utu* or reciprocal giving in Maori transactions in these terms:

The operation of *utu* involves several important rules. First, the return should never match what has been received exactly but should ideally include an increment in value, placing the recipient under obligation to make a further return. Secondly, the return should not be made immediately (though a small acknowledgement is in order) but should be delayed until an appropriate occasion, months, years and even a generation later. Thirdly, the return should preferably be different from what has been received in at least some respects: one kind of goods may be reciprocated by another kind, goods by services, services by a spouse. By making it difficult to calculate value, a difference in kind reduces the possibility of exact repayment which would bring the relationship to a premature end. Fourthly, the return does not have to be made directly to the giver but may be made to the group to which he or she belongs or to his or her descendants. In these ways, the principle of *utu* ensures an ongoing relationship between individuals and groups. It has the function of binding people together by the criss-crossing (*tuitui*) of reciprocal gifts and obligations.<sup>18</sup>

Of the three best-known fundamental bases upon which the economy of the Maori was sustained, namely, *koha*, a reciprocal gift; *maungaringa*, a gift in support without any strings attached; and *utu*, compensation to clear a debt, *utu* carried the heaviest obligation. In the very early 'sales' of land by Maori, their concept of land transactions and their understanding of what was happening could have come only from their own experience of reciprocity, common usage, and bonding. The element most absent in Western conveyances of land was that of bonding – an element essential to all transactions within Maori culture and custom prior to the prevalence of Western law.

In this case, it appears various interior tribes sought an alliance with the Government, or with settlers, through land conveyances. Had they been asked if the conveyance was absolute, without strings attached, they would certainly have replied that it was, for one should not be chary with trust or cautious with generosity. Yet, in this Maori way, the more one insisted that the giving was total and free, the more one expected a generous future response once the conveyance had been accepted. A reasonable assumption by those who conveyed land to the Government would be that they could continue to live on the land and the Government would protect them. In the case of much of this remote territory, it must also have appeared that in any event there was no one else to take occupation.

It could be argued that, by the time these lands were 'sold', Maori should have known what English sales meant. We think the implicit assumptions should be challenged. The history of previous dealings had given confused and mixed messages; for example, it was regularly impressed on Maori that they would benefit in future from the sale of their land. This may have suggested that the English also

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17. Though popularly rendered as 'revenge', the most common use of *utu* was to restore the balance upset by some infringement.

18. Joan Metge, *New Growth From Old: The Whanau in the Modern World*, Wellington, Victoria University Press, 1995, pp 100–101

understood *utu*. Moreover, it cannot be assumed that those Maori involved in war or in remote refuges readily jettisoned their own value systems or were no longer affected by traditional opinions. The resilience of minority values is regularly underestimated by power cultures. *Utu* transactions are still the most regular mode of business at *hui* and *tangi*. Similarly, those who ask when Maori came to understand Western sales are at risk of assuming that Maori would have wished to pursue Western notions. In fact, there was resistance to Western opinions, especially in war areas, and the question is not only as to when Maori were capable of understanding Western ways but when they chose to. We are aware that even in our times Maori were influenced by traditional value systems in cross-cultural situations, their giving being seen as generous when the purpose was to oblige.

The fact that many individuals of the *hapu* were opposed to sales could have meant many things: that they were opposed to the general tribal policy for example, which would not have been unusual, or that they suspected the Europeans were following other rules. That would not be unexpected. In any society, however, evidence of alternative opinions does not mean that traditional values have ceased to be significant.

## **7.9 OVERVIEW OF THE DEEDS OF CESSION**

For the reasons above and those now given below, we believe the deeds must be discounted, at least in Treaty terms.

The sales were arranged on the basis that the confiscated portions were returned. On that basis, all lands, in every case, were to be regarded as tribal lands. In our view, the Treaty required no less than a tribal decision, free and informed, with the Government position being clearly and honestly stated and with independent advice given to Maori on matters relevant to their interests. It was practicable to have required that at the time. When the Treaty was signed 40 years previously, the need for independent advice had been foreseen, the Colonial Office having required the appointment of a Protector for that purpose.

There was no transaction, of which we are aware, that met those minimum Treaty requirements. The sales proceeded on the same lines as marred the pre-war purchases. The selection of individuals to treat with; the favouring of persons with gifts of carts, bullocks, or clothing or cash gifts thinly disguised as bonuses, fees, or salaries; the conducting of private negotiations with key personnel; the giving of gratuities; and the drip feed of the purchase price by advances before a sale had been agreed to by all concerned were essentially pressure tactics to solicit sales and to take advantage of the short-term attractions of ready cash.

That several deeds were required to conclude the transactions, there being four such deeds in one case, is merely evidence that the process had nothing to do with collective decision-making.

It is also evident that the many who were opposed to sales were subjected to pressure or confronted with obstacles to minimise the airing of their opinions.

Various reasons for selling are evident from the record; from the desire to ally with the Government to domestic disaffections. In the circumstances of the Treaty, however, the vendors' motives are less significant than the Government's integrity in buying. Assessed in terms of policy, process, price, and land reserves, that integrity was far less than was required in these cases.<sup>19</sup> Broadly viewed, there was nothing that came near to meeting Treaty expectations and standards.

Fraud was established on one occasion with regard to the deeds of cession. On another, the Crown agent was also buying in a personal capacity. Those single instances, when coupled with the size of the fraud, Maori inexperience with Western systems, and other evidence of misfeasance at the time, point to a laxness of supervision that provided every prospect for malpractice.

There was no protection for Maori on sales inside the confiscation line. Outside it, the protective mechanisms of the court were barely operable.

Land purchased inside the confiscation line cannot be counted as land returned. No land was returned, and no purchase can count as such when the vendor has no title and is not secure in knowing that, if a sale were resisted, a title would be given. If the Government thereby threw its money away, it is the Government's problem, because a transaction fundamentally flawed cannot be cured by the fact of payment, to give to those paying the benefit of their own misdoings.

Though in our view the Native Land Court was a wrongful imposition, promoting individual caprice and judges' preference above traditional decision-making, it ought none the less to have provided some protection. It failed to do so. With the Crown assisting sellers, the non-sellers were disadvantaged and the process was usable by some but not the majority. The mere notification of an objection presented a problem, as was illustrated in one case when a group sought to give notice of its position not by filing in court at New Plymouth, as it was bound to do, but by placing a letter in a notch cut into a tree on the survey line.

From such cases as we delved into, it was apparent that in determining title there was not the full inquiry that was needed. Judgment was by default or was on such evidence as was arranged. The practice of buying before an award of title severely prejudiced both objectors and the hearings themselves. With 'owners' being settled by Crown agents according to who would sell, and with sellers being assisted to bring claims for a title from the court, non-sellers were cast as objectors, without any help and, generally, without legal representation.

The cases that went to court to determine the ownership of the land could not be divorced from the fact that the land had already been sold. Prepayments put a pressure on the court that ought never to have been there, and rather than a free and impartial investigation of the title, the issues centred on whether those who had been paid were rightful recipients and whether others should share in the payment or have part of the land severed. The 'justice and fairness' of the alienations was not considered, nor whether 'sales' were intended at all. The merest reference to the

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19. As to price, the Native Minister had set a maximum of five shillings per acre. The highest rate paid was 3s 5d per acre for the Moa-Whakangerengere block, which included fertile lands from Inglewood to Stratford.

reserves made is evidence enough that in no case was consideration given by the Government or the court to the retention of sufficient land for the people.

It should also be noted that by 1880 none of the reserves had been defined or gazetted. They joined the myriad of promises awaiting fulfilment. A further inquiry would be needed to see if they were ever made.

We saw no need to examine each transaction in detail. When the foundations are bad, the policy wrong, and the process in error, the whole edifice crumbles.

## **7.10 TAKOHA (GRATUITIES)**

Purchases by gratuities, more regularly called 'takoha', were introduced to extinguish such Maori possessory rights as had been assumed or were claimed in the Waimate Plains or in the south. In the south, takoha was used to pay for confiscated blocks and possibly also for awards, grants, and promised reserves. At least that appears to have been the presumption of the West Coast Commission, as evidenced by its attitude to Taurua's claims. In theory, however, takoha was to apply only to confiscated lands where settler possession had not in fact been taken.

The precise location of the blocks acquired by takoha in the south is not known. Takoha payments were effected without accompanying deeds, surveys, or sketch plans for the blocks concerned. In figure 13, however, we have indicated approximately the lands for which takoha was paid, and we have shown the locality of certain blocks that were named.

In practice, takoha was payment in cash to those Maori who, in the agents' opinions, had an interest in the land or could most influence the delivery of quiet possession. As the word 'gratuity' implies, it was a method of purchasing land rights without admitting that the vendor had any. The concept was taken up by the Native Minister, who had a lot of experience in making similar payments to seduce 'chiefs' under the old land purchase system. That system had been discredited and was meant to have been phased out.

The West Coast Commission was scathing of takoha, calling it 'simply make-believe' and 'nothing but secret bribery'. It was a method of buying off 'chiefs' and ensuring compliance so that quiet possession of land could be taken without protests from 'tribes'.

It arose this way:

- (a) Maori had resumed possession of their ancestral habitations throughout central Taranaki, where no European settlement had been effected. From Maori customary perspective, confiscation was abandoned because war had not been followed by possession. There were no reserves for Maori in central Taranaki, nor were there defined court awards.

Maori were also resuming or threatening the resumption of the unsettled land in the south. Many had left their Ngati Maru camps and were said to be 'hovering' about the Waimate Plains.

- (b) In various statements and actions, the Government itself, keen to keep the peace, had tacitly acquiesced in the reoccupations and had then sent clear

signals, well evidenced in correspondence, that the central Taranaki confiscations were abandoned. That view was well known among both officials and Maori. It led to south Taranaki protests that the leniency given to the centre had not been extended to them.

- (c) The new national policy of 1871 for rapid and extensive acquisitions and settlement was seen to require the purchase of the Waimate Plains and any other lands where confiscation had not been perfected by possession. This led to acquisitions by deeds of cession, a practice that was commenced in the north, where Maori were seen as adopting a policy of cooperation.
- (d) Far from encouraging like-minded action among those of the plains and the south, purchase by deed was seen to reinforce convictions that the confiscation of unsettled lands had been abandoned. As one leader put it:

he did not recognize the confiscation; for had not Mr Parris and Major Brown paid money to the Whenuakura natives for their land, and if that was right, what was the confiscation worth?<sup>20</sup>

- (e) The Native Minister thus instituted takoha, to impress upon Maori that any payments to them were not an acknowledgement that the land was theirs.

It remains to be added that, first, 'takoha', not 'gratuity', became the coinage of the day among both Maori and Europeans. Secondly, there is difficulty in using words as cultural equivalents. Takoha did not mean to Maori what it meant to Europeans. It was not a purchase but a gift, token, or pledge. It carried obligations of respect and support in return but was not a payment for the release of land. It cannot, therefore, be assumed that takoha was given and received with the same understanding.<sup>21</sup> Finally, in law, takoha was ineffective in buying land interests in the court awards and grants or in the Governor's formal grants of reserves. The conveyance of legal land interests requires a deed.

## 7.11 TAKOHA IN THE SOUTH

The payment of takoha in the south appears to have been as follows. Four blocks were identified, as shown in figure 12, being unsettled lands close to the confiscation line. The acreages of those blocks were then assessed and a total value was calculated, having regard to the maximum rate per acre that the Native Minister had imposed. This was much less than a commercial rate. The total 'purchase price' so

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20. The second report of the West Coast Commission, AJHR, 1880, G-2, p xxii. The statement was made by Tapa Te Waero, who had occupied the land of a military settler. He added, 'if the purchase of confiscated land by Parris is good, the confiscation must be bad': MS papers 32, folder 178, Brown to McLean, 26 August 1875.

21. Alexander Mackay, a Government adviser with long experience in Maori matters, had another view: 'Although the term takoha (gratuity) is well understood by the Maoris, it is absurd to think for a moment that they do not look on any takoha payment made to them as being consideration for their lands' (as cited by the West Coast Commission, AJHR, 1880, G-2, p xl). Mackay's point was that payment by takoha, no less than payment by deeds, reinforced Maori convictions that the confiscation had been abandoned in respect of all land not taken by possession.

conceived was then paid from time to time in such amounts and to such persons as the agents thought best. It was not clear whether the blocks included or excluded associated lands proposed as awards or reserves. Payments began in 1876. By the end of that year, the Government was to claim the purchase of the four blocks, altogether covering an estimated 177,752 acres, for a total price of £16,652.

There does not seem to have been any Maori opposition. In 1877, the Civil Commissioner reported:

The natives are gradually but steadily improving in their feeling of submission to the state of things resulting from their defeat by us: so much so, that they have accepted the carrying-out of the confiscation of the remaining land between Patea and Waingongoro without any serious demur. I propose, after I have finished south of the Waingongoro, to cross that river and settle the question of the Waimate Plains.<sup>22</sup>

A vast difference existed, however, between takoha on the plains and in the south. The southern process was accompanied by the purchase of awards and arrangements for reserves. The record of the reserves proposed from time to time gives a confused picture, plans being regularly changed, owing mainly to the concerns of settlers, Maori, and officials as to where the reserves should be and how the boundaries should be defined. Certain reserves of 1873 were cancelled, relocated, or incorporated into others, and some proposed in 1866 may have been acquired. We have been unable to untangle the record to compare promise with delivery, and we have therefore relied upon the West Coast Commission's report for the record of the reserves that had eventuated by 1880 (see ch 6). Some reserves named by the commission cannot be found on survey plans or title records, however, so their location and eventual alienation is uncertain, assuming they were ever 'set aside' at all.

The position is clearer on the plains, for the simple reason that there were no awards or reserves there at all.

## **7.12 TAKOHA ON THE WAIMATE PLAINS**

By the provision of a generous reserve close to the southern banks of the Waingongoro River, it was expected that the recalcitrant Nga Ruahine would relent from their high claim that the centre and the plains, which were uninhabited by settlers, would remain Maori land. Takoha payments for the Waimate Plains began in 1877.

The process was much the same as for the south. The land was perceived as standing in two divisions and £4000 was regarded as an appropriate amount for one part, with £2000 for the balance. To this was added an amount for 'chiefs', and it was then agreed that the total to be paid out should not exceed £15,000.<sup>23</sup> Because

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22. Quoted in the report of the West Coast Commission, AJHR, 1880, G-2, p xxiii

23. How the price was fixed is not known other than that it was unilaterally assessed. The land was fertile and the Native Minister had authorised a special rate of up to 7s 6d per acre. Assuming that to be fair, and based upon the West Coast Commission's assessment of 130,000 acres of good land, a price of £48,750 was



of the protests described in the next chapter, payment was much spread out in time. By March 1880, £8924 had been expended, for which it was estimated 100,000 acres had been acquired. The basis for that estimation has not been explained.<sup>24</sup> In the course of distributing takoha, promises were made of 'large reserves', and it was also promised that 'burial grounds, cultivations and fishing places' would be respected, but there was nothing more specific.

The Civil Commissioner gave some description of how takoha worked. He categorised Maori into three groups: those admitting the confiscation and willing to sign for compensation; the 'lax disciples of Te Whiti', who would take the money but sign nothing; and those who would not participate, claiming that what the Civil Commissioner did, 'he did by might and not by right'.<sup>25</sup> The commissioner wrote later that he was 'guided by the position and influence of the individual to assist [him] in obtaining peaceable possession of the land'.<sup>26</sup> In 1880, he also appeared before the West Coast Commission and added:

I awarded the takoha in two shapes. One was to cover the former tribal rights, which was publicly paid to the natives interested: and the other to cover the mana of the chiefs, which was privately paid, only Europeans being present. The reason for the latter was this: the chiefs said they must oppose my action if all the money was paid publicly, because they would then be obliged to hand it over to the tribe and they would lose their land without getting anything for it.<sup>27</sup>

The West Coast Commission then commented:

But it was a mistake to suppose that such a secret could ever be kept. The records we have examined teem with evidence that the tribe knew money was being secretly received by their chiefs; but they did not know, and were not allowed to know, what sums were really paid.<sup>28</sup>

The commission then had this to say of the practice:

The system had three great evils: it demoralized the natives; it gave a vast personal power to the Commissioner; and at the Waimate Plains it has ended in pure waste. There does not seem to have been the smallest control over the way in which the money was to be spent. The Commissioner could choose at will who should be the recipients of his bounty: he could divide the money as he pleased among the tribe, or withhold it from any but the chiefs. We can find no trace of any principle laid down to guide him . . .<sup>29</sup>

The chief commissioner was to write in 1883:

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24. The West Coast Commission gave the plains as 130,000 acres, after deducting 16,000 acres 'up the mountain'. If the total proposed to be paid was £15,000, it is difficult to see how 100,000 acres were claimed.

25. Browne to Under-Secretary of Native Affairs, 30 July 1877, J 1905/1563

26. Browne to Gill, 8 June 1880, MA/MLP 80/718

27. Report of the West Coast Commission, AJHR, 1880, G2, p xli

28. Ibid

29. Ibid

[Takoha] was a thing which varied with circumstances. Sometimes it was a legitimate payment in the nature of purchase money, and which gave the Crown quiet possession of the land in respect of which it was paid. Sometimes it was in the nature of 'ground bait' scattered here and there to incite an appetite which might lead to a future sale, but for which at the time no specific return was made. Sometimes it was mere 'black mail' intended to prevent obstruction, physical or otherwise, on the part of individual chiefs with whose tribes it was desired to negotiate for the cession of land. And sometimes it was merely a convenient method of obtaining money for some purpose for which none had been appropriated by the signature and which bore no relation, or only the most remote, towards the extinction of Native Title in the districts against which it was improperly charged in the accounts of the Land Purchase Department.<sup>30</sup>

Accordingly, the West Coast Commission decided to examine the vouchers for the £8924 paid up to 31 March 1880, the end of the financial accounting period for the year in which the commission was sitting. After what appears to have been a close scrutiny, the commission found that £4357 was for 'contingent expenses' and only £4567 had actually passed to Maori. On examining further as to a sum of £2500 'for chiefs', the commission was 'surprised to learn that none of the money had reached the tribe at all'.

A large part of the money was said to have been paid for various purposes to Te Teira, the same man who offered Waitara for sale at the start of the war but who had nothing to do with the Waimate Plains. Then, by 'merest accident', the commission found that the money had not actually reached Te Teira at all, though he appears to have had some benefit from a feast at Waitara. Next, it was found that another £1000 had not reached Maori hands either, and the commission decided to require the production of sub-vouchers. The commission was to be treated to evidence of a grand array of 'secret squandering' on a range of miscellany – fine foods and drink, chemises, skirts, French merinos and velvets, perfumery, riding habits, reserved seats at the Star Pantomime, and so on and so on – all hidden in the sub-voucher system. There, the commission stayed its hand. It was wandering beyond its terms of reference and this aspect of the inquiry was taken no further. If anyone was prosecuted, we have found no evidence of it.

More serious for us, and telling of the times, is that Maori had signed vouchers for this money, though, as with Kaitangiwhenua, no money had ever been received. What would have been the result had the vouchers for the south been examined as well or had there been a similar audit of all payments on the deeds of cession? If Maori signed vouchers for money not received, can any more weight be attached to the signatures on the land transfer documents?

When the Civil Commissioner was asked if the Government was any the better for all the money that had been paid in buying the Waimate Plains, he answered simply 'no: and that is the reason why I have recommended in my report that takoha should cease'. And cease it eventually did, on the urgings of the West Coast Commission.

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30. Memorandum from Fox, 7 June 1883, MA 68/9, NA Wellington

## 7.13 CONCLUSIONS ON TAKOHA

The payment of takoha was thoroughly bad and meaningless in law. It had all the evils of the old land purchase system and more. Crown agents defined the lands, set the price, decided who the owners were and what their shares were, paid secretly, and made advances on account of the purchase price to those whom they preferred and in amounts they chose. They kept no record of the 'transactions' other than vouchers for purchase moneys, and expenses incurred, and they then fabricated accounts and were otherwise involved in fraud. As with the deeds of cession, the evidence of fraud and misconduct colours the integrity of the whole scheme.

It makes no difference that Maori accepted some money. Why anyone save the pure should refuse money for land that had already been taken from them is extremely hard to imagine. Settlers in the south had been awarded £10,000 for rehabilitation after the war, and they had the benefit, unavailable to Maori, of cheap loans and help to develop their lands. Why should Maori not have taken money to do the same on their reserves?

Leaving aside all questions of fraud and undue influence, we cannot see that any valid purchase could have been effected by the takoha expedient, nor can we see any basis for saying that those lands were returned. For the purposes of settling this claim, however, our main concern is with the historical opinion that thousands of acres were returned to Maori, which, though re-acquired, is none the less paraded as having reduced the amount of land confiscated. These lands were not in fact returned. They were purchased while title was held by the Crown and without the slightest intention of passing them over to Maori if payment were refused.

Some comment is needed on the payments made to 'chiefs', for few people appreciate how destructive of indigenous society this practice has been. The authority of rangatira comes from the people they embody, and it is through the councils of the people that the rangatira should be approached. We have been struck by historical accounts of the distribution of goods delivered to Maori by early colonists. Regularly, the rangatira disdained participation in the scramble. It was with much the same principle that Wiremu Kingi had placed even 'the widows and the orphans' before himself when claiming land rights. It was the mark of a rangatira to demonstrate that the people came first. Direct payments to 'chiefs' amended the ancient ratio, putting rangatira over people, when the converse formula was true, and abrogating to the colonist the people's right to determine their own leadership. Protocol describes the Maori perception. Takoha is placed on marae for all to see, and the person uplifting the pledge is not necessarily the most senior. The inequity of chiefly favours may be seen more clearly by reference to other places. The manufacture of compliant 'chiefs' by the payment of gratuities was the method by which the first apartheid relocations were effected in South Africa in 1913.<sup>31</sup>

31. The Civil Commissioner claimed that Titokowaru succumbed to takoha. He included Titokowaru among the 'chiefs' who were his target, stating he would 'grease [their] palms' and that, although it was a 'blind struggle', Titokowaru eventually 'swallowed the bait'. He then claimed that the people jeered Titokowaru 'for sitting on another stool'. Despite the commissioner's apparent relish of that result, it cannot be said to have been true. When taxed, no voucher signed by Titokowaru could be produced, and it was claimed that it had been necessary to pay Titokowaru under another name, because 'no expenditure of public money to that individual could be passed [through the Under-Secretary of Native Affairs]'. The truth was, as later evidence well showed, higher approvals were not sought, nor were they required. The explanation appears to have been fabricated.

## CHAPTER 8

# PARIHAKA

Though the lions rage still I am for peace . . . Though I be killed I yet shall live; though dead, I shall live in peace which will be the accomplishment of my aim. The future is mine, and little children, when asked hereafter as to the author of peace, shall say 'Te Whiti', and I will bless them.

Te Whiti o Rongomai, 1881

### 8.1 ISSUES AND EVENTS

Parihaka is symbolic of autonomy – of the right of indigenous peoples to maintain their society on their own terms and to develop, from mutual respect, a peaceful relationship and partnership with the Government. That, in our view, is the autonomy and relationship that Te Whiti of Parihaka sought to achieve. Autonomy, under his direction, was synonymous with prosperity and peace.

Autonomy was guaranteed in the Maori text of the Treaty of Waitangi. It is also plain that no Maori would have agreed to the Treaty had Maori autonomy been taken away or Maori status reduced. Nor could anything less have been expected in return for the gift of settlement than that autonomy and partnership were agreed.

At all relevant times, the New Zealand Constitution Act 1852 envisaged districts where Maori authority would prevail. More significant than the provision itself was that the colonial government did not use it. Once the Treaty was signed, concepts of autonomy and partnership disappeared at the colonial frontier, and the colonial government contemplated no other option than that of domination and control.

We have made some study of overseas circumstances, and while it is far from complete, by reference to the history and development of Canada, Australia, and the United States of America, it appears that aboriginal autonomy was more thoroughly suppressed in New Zealand than in those comparable countries. Parihaka provides an illustration of this. Although the destruction of similar Maori enclaves occurred elsewhere in New Zealand, as the *Orakei Report* shows, the events at Parihaka provide a graphic account of the Government's antagonism to any show of independence. The result, which might have no parallel in world colonisation, is that not one acre exists where land is held and matters are managed entirely on Maori terms. In New Zealand, aboriginal autonomy remains suppressed. While it is promoted by certain organs of the United Nations and is, in varying shapes and degrees, applied and practised in Canada, the United States of America, and Australia, in New Zealand it has not been seriously addressed.

The classic Maori position consistently presumed that a partnership of Maori and Pakeha autonomies was required. No serious student of the philosophy of Wiremu Kingi, the Kingitanga, Te Whiti of Parihaka, or numerous other Maori leaders could fail to be struck by the singular Maori position that aboriginal autonomy was not a basis for war but the foundation for peace. Peace, in this world view, requires punctilious recognition of the status of other peoples and dialogue, based on mutual respect, that workable partnerships might be achieved.

In our opinion, that was one of the messages of Te Whiti o Rongomai and Tohu Kakahi. Much the same was to be sought by Mahatma Gandhi in India and, later still, by Martin Luther King junior in the United States of America. It is probably no accident that each of these leaders taught of divine law. Effectively, they were jurists promoting higher constitutional norms.

If evidence of a right is found in the consequences of its denial, Parihaka establishes that the autonomy of peoples must swell in the human breast as a fundamental need. Those who have suffered the repression of social intercourse by an alien power will know how pernicious foreign domination can be – those who have not can only hope to understand. The Government took from Parihaka not only land but the basic ingredients of society: the right to choose one's leaders and to enjoy freedoms of speech and association. A vibrant and productive Maori community was destroyed and total State control of all matters Maori, with full power over the Maori social order, was sought. Indeed, the rights of chiefs were confiscated and vested in petty officials and, in the result, such land as was not directly taken from Maori was, for the most part, leased to Europeans on perpetually renewable terms. It would have caused less anguish for future generations of Maori had the land been given away.

It is not our function to write the history of Parihaka, but because we are required to distil those matters relevant to the claim, we must maintain some overview of events.<sup>1</sup> We see the position broadly as follows.

After the war had ended, the Government had, to all intents and purposes, abandoned the confiscation in central Taranaki for the whole of the district that had Parihaka at its heart, from the Hangatahua River to the Waingongoro River. No European had settled one acre in that entire area.

A movement for Maori peace and development had been established at Parihaka well before the war's end. Under the inspiration of Te Whiti and Tohu, this movement had grown to pre-eminence. It had flourished in a Maori environment, where development could be effected on Maori terms. From there, the leadership of the central district was to become vested in the Parihaka prophets, and they were also to become pre-eminent for Taranaki as a whole. Their word was law for former rebels and loyals alike, and Parihaka became a haven for all dispossessed and a shrine for all hapu. For nearly a decade after the wars, this peaceful situation obtained and Parihaka's reputation for discipline, faith, organisation, and development grew daily.

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1. This chapter draws particularly from H Riseborough, *Days of Darkness: Taranaki, 1878–1884*, Wellington, 1989, and H Riseborough, 'Background Papers for the Taranaki Claim' (doc A2).

In 1878, however, nine years after the war, the Government brought this situation to an end. It began the survey of the central Taranaki district, with a view to enforcing European settlement there. The purpose, in our view, no matter how it may have been disguised, was no more than to repay the war and settlement loans by the sale of land, without the need to pay Maori one further pound. The Government's action, however, did not solicit from Maori the response that such provocation might reasonably have compelled. After an invitation to discuss the matter with Te Whiti had been declined, Maori took no other steps than to peacefully remove the surveyors south of the Waingongoro River. In seeking negotiations, Te Whiti and Tohu were assuming that Maori were not subordinates in the country but partners and were entitled to respect. In ensuring a peaceful response, the prophets were introducing their passive resistance philosophy.

The united leadership of Te Whiti and Tohu may well have caused some upset at the time, for previously governments had capitalised on Maori divisions to keep control. Without the ability to compromise the Maori leadership in this case, a political game was played whereby the Government sought or claimed contact with Te Whiti without talking with him and without formally acknowledging his status as a leader or agreeing to discuss the justice of his case. In response to the Government's refusal to treat with Te Whiti as an equal and its assumption that Maori would settle for limited relief, the prophets launched an army of ploughmen to plough settler land throughout Taranaki. The first intake was a distinguished and disciplined corp of ploughmen, the most notable of the 'loyal and rebel chiefs', who submitted to the inevitable arrests. As arrests were made, more ploughmen appeared, until several hundred swelled the country's gaols. The Government's response – to remove all usual legal formalities for arrests and trials and to legislate for imprisonment at will – merely emphasised how remote that regime had become from the promises made at Waitangi in the Queen's name and how fragile the rule of law was in New Zealand at the time.

The popular belief that Maori were arming had constrained precipitate Government action until the best of the Taranaki fighting men were in prison. It was only thereafter that central Taranaki was re-entered by the Government. By then, a new Native Minister was at the helm. John Bryce was a Taranaki war veteran, who, in our assessment, had clearly retained his relish of warfare and who saw the exercise of power as the solution to problems. On his own admission, he had always desired a march on Parihaka in order to destroy it. It may be noted that the office of Native Minister was crucial at the time. Bryce replaced John Sheehan, who had at least sought to discuss matters with Te Whiti, and was in turn replaced by William Rolleston, who was probably more concerned than anyone with establishing dialogue.

With 600 of the Armed Constabulary, the Native Minister built a road to Parihaka and initiated such further provocative actions as might goad a warlike response and justify his army's retaliation. Instead, the only battle the Minister could create was with an 'army' of pacifist fencers. Without prior discussion with Te Whiti, the constabulary pulled down cultivation fences to allow for roadways, but as they were pulled down, Maori repaired them. The fences were necessary to restrain wandering

cattle and the constabulary's horses, which would otherwise ruin the crops. It was claimed that the troops in fact destroyed crops and also that they looted property, but at least it is clear that Maori responded entirely without aggression.

When the constabulary arrested the Maori fencers, they quietly submitted to apprehension and others took their place. Although the authority of the Armed Constabulary to effect arrests was uncertain, 216 fencers were taken into custody. The constabulary's authority was never put to the test, however, because no fencer was tried. Instead, they were shipped to gaols in the South Island to be confined at the Governor's pleasure without a court hearing.

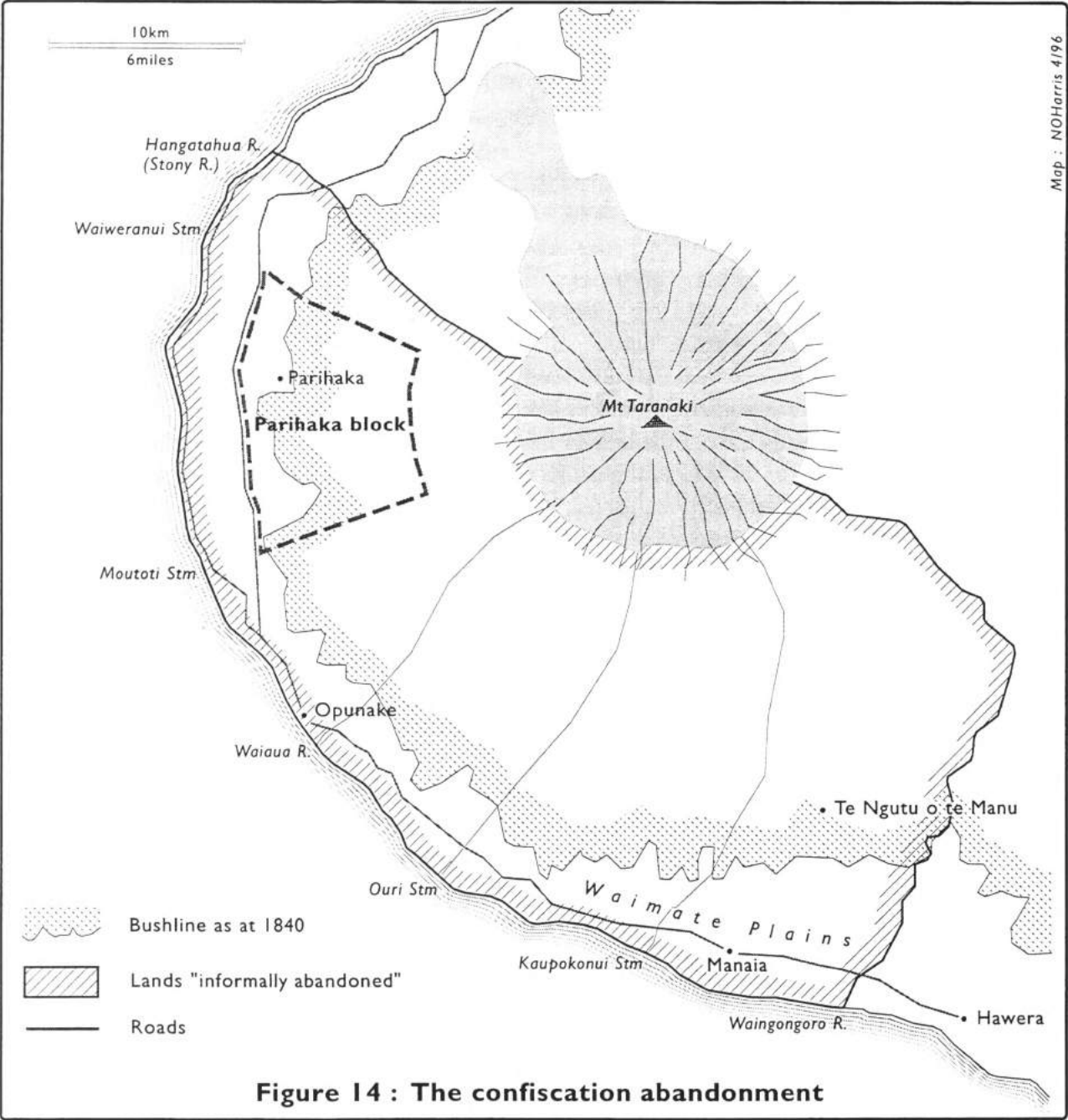
The fencing problem was resolved when Maori erected slip-rails across the roads to allow passage but prevent stock trespass. The Minister's provocation had failed to achieve its ostensible purpose. If he had hoped for an invasion while the fighting men were in prison, he was unable to pursue such a course at that time.

There was a further constraint in that, as a result of the ploughmen's arrests, the West Coast Commission had been appointed to inquire into alleged promises of land that were said not to have been kept. It was difficult for the Minister to take direct action while the inquiry was continuing. Predictably, and though he was barely informed of the record, the Minister had argued that the commission was unnecessary. He thought there could be some justifiable complaints 'of one kind or another' on the west coast but 'probably no grievances to speak of on the Waimate plains'. Despite his protestations, however, the West Coast Commission had been formed.

The commission, comprised of politicians in support of confiscation, went much beyond looking at the many broken promises that it found to exist. It became distracted by its obvious desire to open the remaining Maori lands for settlement. The commission acknowledged takoha was wrong and that confiscated land in the centre had been effectively abandoned, but it was satisfied that Maori would agree to the settlement of the area if adequate reserves were made. This was a remarkable conclusion considering that the leading Maori were not spoken to, even though the opportunity was there. It was also remarkable that the commission could assume the Maori leadership's mind or, alternatively, could presume to know what was best for Maori without talking to them and without considering that the Crown's right to the land may in fact have gone.

At least the commission acknowledged that, after some 16 years, the numerous promises of reserves had never been fulfilled. It observed that broken promises, unfulfilled Compensation Court decisions, and fraud had justified Maori protests. It recommended that there be no further surveys and sales without the prior delineation of expansive Maori reserves and added that 'filling our gaols with prisoners, not for crimes but for political offences in which there is no sign of criminal intent' had done nothing to advance the peace. The report should have been enough to have stopped even an old soldier in his tracks, but it did not.

In light of the report, as well as considerable criticism from England, the retention of the prisoners could no longer be sustained. The Native Minister arranged for their release, albeit unwillingly it seems, but he still endeavoured to profit from the





situation. When the first batch of prisoners was released, the Native Minister sought to impose conditions on their freedom, including the acceptance of reserves.

The Native Minister then resumed the survey and sale of lands in central Taranaki. His actions were so provocative that, in our view, he was also endeavouring to recreate hostilities. More particularly, he proposed the survey and sale of the coastal aspects of the Parihaka block, though those lands were known to be the most fertile part of the block, where Maori had cultivated crops for centuries. This operation was undertaken even though the West Coast Commission had proposed a moratorium on surveys until reserves had been made and even though Parliament had recognised the propriety of that position by reconstituting the commission to ensure that result. Further, the commission had specifically mentioned the need for Parihaka reserves to be made before any action was taken, and the Native Minister's predecessor in office, John Sheehan, had deposed to the commission that, from the hills to the sea, the whole of the Parihaka block should be reserved for the peaceful pursuits of Maori. With that opinion from such a high authority, Maori had good grounds to think they would keep the entire block.

Without any consultation or discussion, however, the Native Minister gave notice that the whole of the coastal portion, Te Whiti's most arable area, was to be surveyed and sold. In the Native Minister's words, the survey would be done 'under Te Whiti's nose' and 'English homesteads would be established at the very doors of his house'.

The spring planting on the coastal land was complete when the surveyors entered, along with the Armed Constabulary, to break the fences and expose the crops once more. Their purpose in doing this was not to make a road but to lay out the whole area for settlers. The Maori food supply was now threatened, and they again reacted by re-erecting the fences. No arrests were made this time because they were not required: in the Minister's mind, as the commission reported, Maori had obstructed the survey, and on that basis Parihaka could now be invaded.

There remained, however, one impediment to that course – the possibility of intervention from London. The British Parliament had inquired about the suspension of the ordinary course of law in New Zealand and rumours that Maori prisoners had been mistreated. The Native Minister had replied evasively, attributing all fault to the fanatical support for Te Whiti and the unwholesome effect of the latter's 'evil eye', but the British Government was unconvinced and had sent a new Governor to review matters and report. Governor Gordon was more sympathetic to the indigenes.

Parihaka prepared to welcome the new Governor and a 'new and commodious house' was built to receive him.<sup>2</sup> His aide-de-camp visited Parihaka and reported positively on the extensive cultivations and the contented and friendly disposition of the people. Most importantly, the aide was able to scotch the irresponsible media accounts that Parihaka was arming and fortifying. He reported that there were no fortifications or military preparations. The aide urged negotiation, not force – a course which the Native Minister described as 'perfectly preposterous'.<sup>3</sup>

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2. *Taranaki Herald*, 30 May 1891

3. BPP, vol 16, p 477

It happened, however, that the 'British problem' was resolved by the Governor's temporary absence in Fiji. Initially, the Government had been anxious to restore its good name in Britain. It declined the Native Minister's proposals for a march on Parihaka, blamed the Minister for attempting to engage the Government in hostilities, and brought about that Minister's resignation (though he was later reinstated). The Governor none the less completed a report and an embarrassed Government suppressed its presentation in London for more than a year. When the Governor then indicated that he would not sign further proclamations extending the Confiscated Lands Inquiry and Maori Prisoners' Trials Act 1879 for prisoners to be held without trial, the Government was bound to do something. It did; it expedited the release of the remaining prisoners.

In mid-September 1881, however, the Governor left for Fiji. The then chief justice, whose description of Maori as 'savages' and 'barbarians' informs his disposition, became administrator of the Government in the Governor's absence. Almost immediately the Governor had departed, the strength of the west coast Armed Constabulary was increased and £84,000 was voted for 'contingent defence'.

With this obvious preparation for war, there was unease at the Parihaka half-yearly meeting on 17 September. The press attended, and some reporters worked up a scare that Te Whiti's address, given in Maori, had menacing portent. There were even rumours that he was about to invade and burn New Plymouth. These reports were groundless and William Rolleston, the Native Minister at the time, visited the area and confirmed their lack of substance. As the Governor's aide had done, he also reported a total absence of any warlike preparations, noting that the people were 'thoroughly pacific and good tempered' and 'engrossed in agriculture'.

That should have been an end to the matter, but a mood for attack was in the air. Rumours of war and misrepresentations of Te Whiti's intentions continued to be made in the press. No one failed to notice that the prisoners and Titokowaru were again at large. It was further observed that Maori were tending crops on land now sold, that thousands could be expected to gather again for the next monthly meeting at Parihaka, and that trouble would certainly follow.

That was the imaginary scare when it was learnt that the Governor was returning from Fiji earlier than expected. The Government, considering that decisive action was called for, presumably thought it would progress matters if the action were taken before the Governor could intervene. Events followed rapidly. At 8 pm on 19 October, the chief justice, as administrator, issued a proclamation calling upon Te Whiti to submit to such reserves as had been proposed and for the others to disperse or suffer unspecified consequences. At the same time, Bryce, the former Native Minister, was sworn back into office. At 10.30 pm, about an hour after the Executive Council meeting ended, the *Emerald*, conveying the Governor from Fiji, dropped anchor in Wellington Harbour. Next morning, the Governor assembled the Ministers, but one was missing. The Native Minister had left at 4 am to assemble an armed march on Parihaka, as had long been his dream. He had decided to deliver the proclamation at the point of a bayonet and to take punitive action without waiting for a response. The Governor could not recall the decision; by a special arrangement, the proclamation had been published on the same evening it was made in a *Gazette*

*Extraordinary.* In any event, in the Governor's view the Ministers were 'supported in their "vigorous" action by nine tenths of the white population of the colony', and he was obliged to comply with the advice of his Ministers or resign.

The proclamation of the chief justice, as administrator of the Government, berated the people for making themselves poor by their useless expenditure on feasts; for neglecting the cultivation of their own land (though one could not tell whether they legally owned one acre); for listening to the sound of Te Whiti's voice, which had unsettled their minds; for assuming a 'threatening attitude'; and the like. It then exhorted them to leave Parihaka and required that they accept the reserves given and the Queen's law or suffer 'the great evil which must fall on them', whatever that might have meant. There was nothing to indicate that Parihaka was about to be destroyed, or to authorise the destruction that was in fact to occur.

The province assumed the character of a country on the edge of war. Within a week, a call had been made to former soldiers and volunteers throughout the North and South Islands to assemble at Taranaki. When over 1000 answered the call to join the Armed Constabulary already there, it became obvious there was a desire to settle with Maori once and for all.

On 5 November 1881, a military force of 1589 invaded and occupied the unprotected Parihaka. The Native Minister in person was at the head, mounted on a white charger, with sabre and full military uniform.

An information blackout imposed on the Government's actions was indicative of a disturbed conscience. The publication of even the cryptic official reports to the Government was suppressed for over two years. Those reports eventually revealed, however, that Parihaka had been taken without resistance; that it was 'completely broken up'; that about 1500 men, women, and children had been arrested; and that six were imprisoned, including Te Whiti and Tohu, who were held on charges of sedition. Titokowaru, who had recently returned from prison with the ploughmen, was imprisoned again for failing to procure sureties to keep the peace.

Images of a fuller picture escaped later to the public arena; images of assaults; rape; looting; pillage; theft; the destruction of homes; the burning of crops; the forced relocation of 1556 persons without money, food, or shelter; the introduction of passes for Maori to facilitate the military's control of movements in the area; and the suspension of trials and other legal safeguards when it appeared that lawful convictions might not be achieved.

Parihaka provides a damning indictment of a government so freed of constitutional constraints as to be able to ignore with impunity the rule of law, make war on its own people, and turn its back on the principles on which the government of the country had been agreed.

For decades, the shameful history lay largely buried in obscurity. Young Maori were schooled to believe that those of their forebears whose images they should have carved with pride were simply rebels, savages, or fanatics. The Government's criminality was hidden.

New Zealanders were not to know that forced removals, pass laws, and other suspensions of civil liberties, so often criticised of governments elsewhere, had been

applied here. We were not to know, when paying tribute to Gandhi and King, that their policies and practices had first been enunciated by Maori.

The invasion of Parihaka was not the end of the matter. The process for the domination of Maori, which had begun with the war made on them and been furthered by altering the tenure of their land, was still incomplete.

The West Coast Commission was continued, in amended form, to oversee the provision of Maori reserves. Not content with having ensured that some 80 percent of the land had passed to settlers, the commission was then to vest the greater part of the Maori reserves not in Maori but in Government officials to control, that even these might then be settled by Europeans. The Public Trustee was directed to hold the reserves not only for the benefit of Maori but also for European settlement. By regular changes to the law, the settlers' interests were continually advanced, to the detriment of Maori, until most of the reserves had been leased by the trustee on perpetually renewable terms. Many were then to be sold, again through Government policy and not by the voluntary action of Maori.

In the result, although it was regularly claimed that lands had been returned to Maori, most did not return to their possession or control. Taranaki Maori obtained, at best, the right to receive a rent, and then at a rate fixed not by them but for them. Effectively, they had not land but an annuity and, owing to the new tenure of individual entitlements, not one penny passed as of right to a common hapu pool. As the individuals grew in number, fragmented, and dispersed for a living, the money, fragmenting in proportion to their growth, followed after them. There was nothing for the marae. Even the income accruing to the shares of missing owners did not pass back to the hapu. Maori land was made meaningless as a tribal asset, and as a tribal asset, it is largely meaningless to this day.<sup>4</sup>

Aspects of those events more relevant to the claim are now considered.

## **8.2 PAST HISTORY AND CURRENT PERSPECTIVES**

First, it has to be made clear that the Parihaka invasion is not something that can be set aside as a distant event. Few things so capture the identity of Taranaki Maori today as the mountain above and Parihaka at its side. Both meant 'home' for hapu of former years and both are at the bosom of Taranaki culture now.

The destruction of Parihaka in fact wrought the miracle that Tohu and Te Whiti had sought to achieve. From the ashes came the spirit that kept generations of Maori on the land and, from the spirit, their prophecy was maintained. Te Whiti and Tohu live in the people's hearts and minds. Those who set out to destroy them, if their names can be found at all, are recorded on archival shelves.

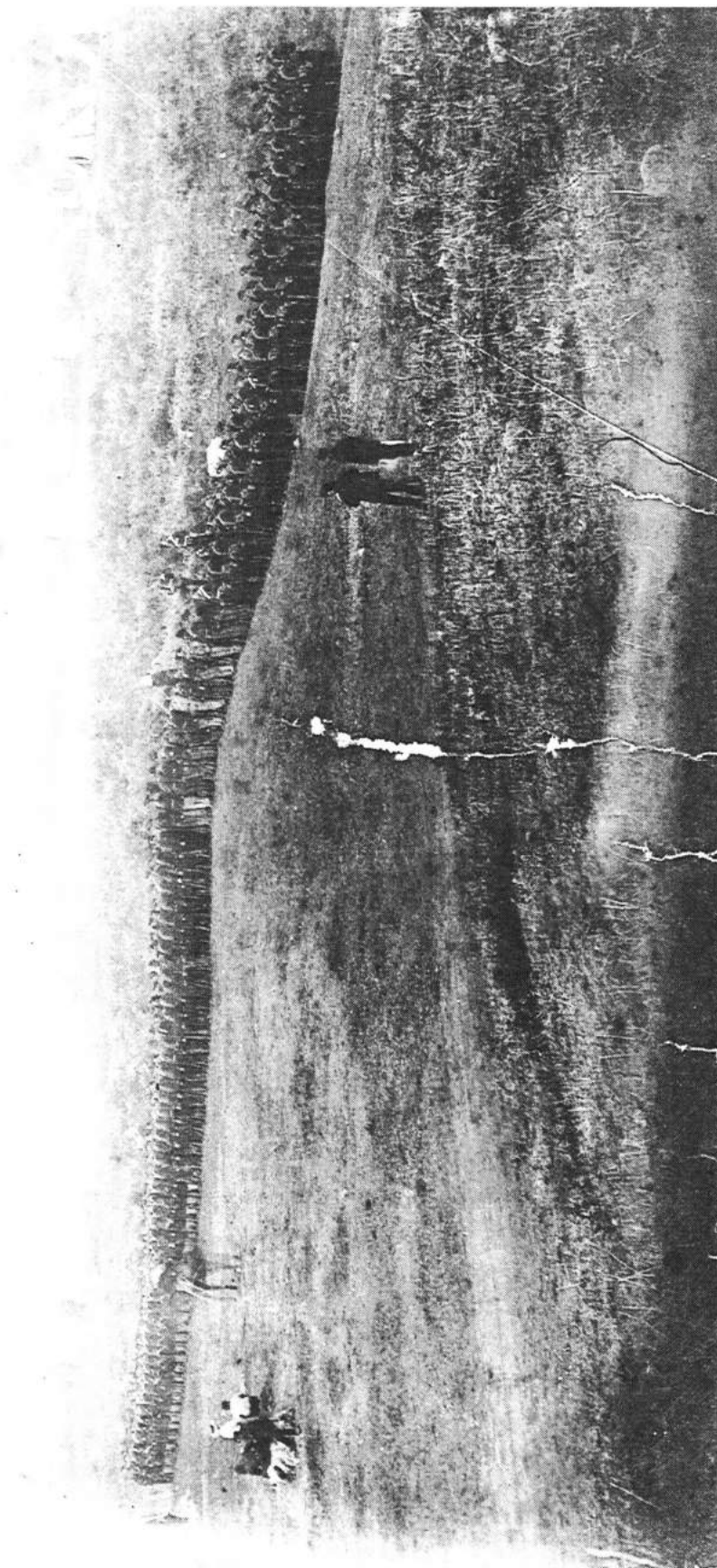
The story of Parihaka is regularly retold. Each building from the reconstruction period is tended with loving care, each cornice a reminder of what happened before. Striking photographs of the old village and invading army are still maintained in the hall on the hill.

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4. The process is discussed further in chapter 9.

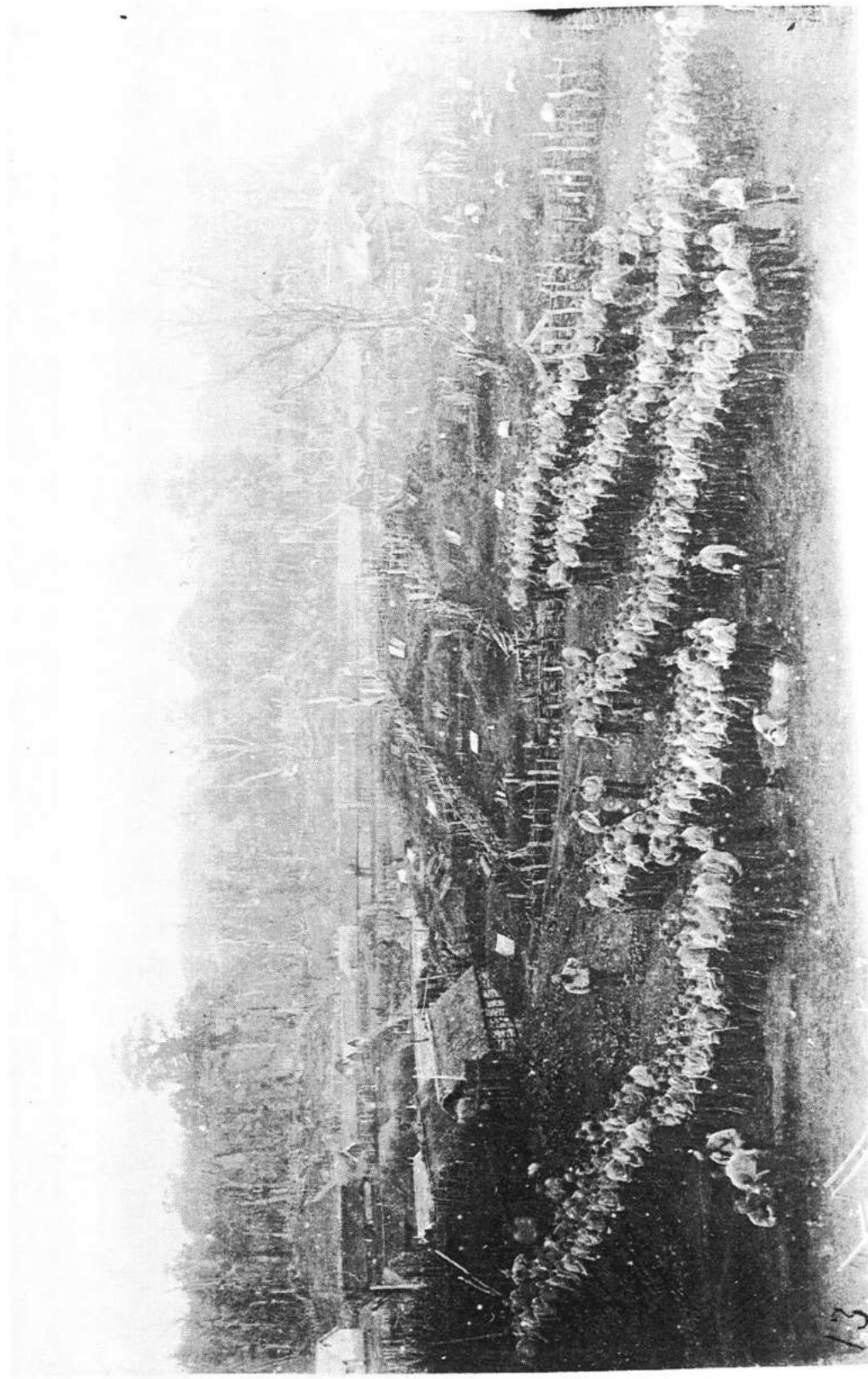


A section of Parihaka prior to the invasion. Photograph courtesy of the Alexander Turnbull Library (G1071).

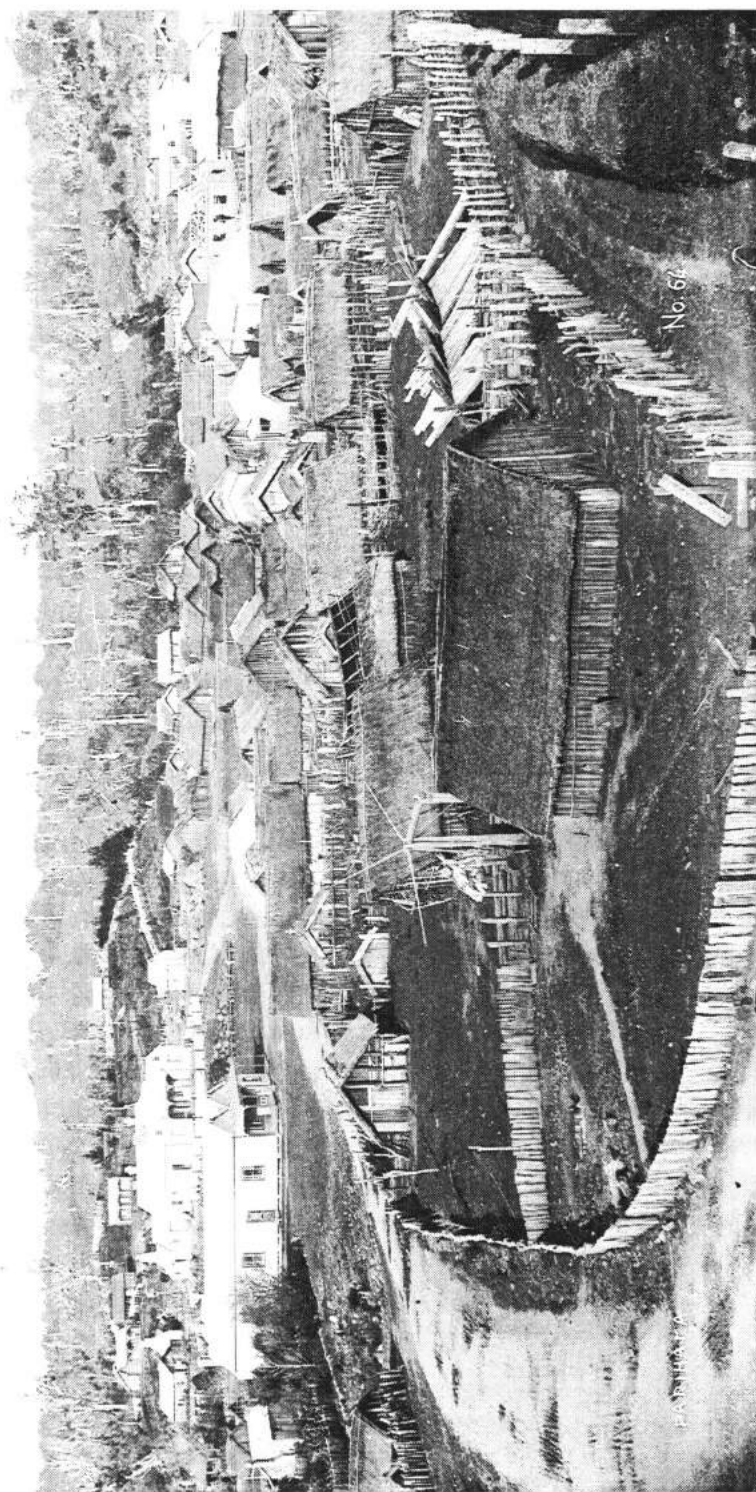


The Armed Constabulary assembled at Rahotu, 1881. Photograph courtesy of the Alexander Turnbull Library (F31613<sup>1</sup>/<sub>2</sub>).





The Armed Constabulary at Parihaka. Photograph courtesy of the Alexander Turnbull Library (F111058<sup>1</sup>/<sub>2</sub>).



Parihaka during reconstruction. Photograph courtesy of the Alexander Turnbull Library (G12106 $\frac{1}{1}$ ).



There was much pain and anger in the submissions of many who spoke of Parihaka. They challenged the Pakeha written record as inadequate and culturally biased, and they would offset it with family accounts passed down orally. We have had regard to this evidence. We were constantly aware, from listening to the people, that the story of Parihaka is no past account but part of a living tradition.

### 8.3 TE WHITI AND TOHU

Because their influence was portrayed as malevolent by various officials, some background to Te Whiti and Tohu is required. They were Christian pacifists and promoters of spiritual and economic growth. Throughout their lives they followed similar paths. Both were of Te Atiawa and Taranaki, were born in about 1830 near Ngamotu (New Plymouth), and as youths were seen to have special powers in prophecy and instruction. In fact, it may be conjectured that their names were later acquired, for the name of one denotes 'instruction' and the other suggests 'the light'.

Together they attended mission school at Warea, built and managed a flour mill there, and arranged horticultural and building schemes until Warea's school, homes, mill, and cultivations were destroyed by troops in 1865. Thereafter, their activities were transferred to Parihaka, which was farther inland and removed from the scene of the war.<sup>5</sup> Te Whiti and Tohu supported the Maori King and opposed land sales, but the greater evidence is that they did not participate in the war.<sup>6</sup>

According to tradition, Tohu saw an albatross descending to the village, symbolising the sanction of the Holy Spirit for the Parihaka movement. The raukura, or albatross feather, came to symbolise peace and the Parihaka spirit. It was worn during the events to be described and is still worn today.

Te Whiti's and Tohu's instructions on Christianity, discipline, and development attracted huge numbers. Through their proclamation of Christian study and pacifist doctrine, their mana grew daily. There was barely a rangatira in Taranaki who did not at some stage seek their counsel. They became the most renowned leaders of Taranaki, yet never did they diminish the authority of others. They became known as prophets with both spiritual and temporal powers.

Although Te Whiti is most spoken of in European accounts, this appears to have happened because Te Whiti was the main negotiator and was therefore more visible to Europeans. Tohu was more active as a teacher and spiritual adviser, and those who appeared before us were agreed that one was not in fact more important than the other.

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5. Some traditions consider that Te Whiti, Tohu, and their people moved to Parihaka in the 1840s seeking a more peaceful clime. The more general opinion appears to be that the move followed the sacking of Warea.

Dr D Keenan, a Maori historian from Taranaki, considers that Parihaka was earlier called Repanga. The new name was to recall the lamentations and sufferings caused by the recent past (Keenan, essay on Te Whiti, *Dictionary of New Zealand Biography*, Wellington, Department of Internal Affairs, vol 2, pp 530–532; see also pp 541–542).

6. The West Coast Commission commented that: 'We ought not to forget how our own records show [Te Whiti] never took up arms against us but did his best . . . to restrain from violence his unruly and turbulent tribe' (AJHR, 1880, G-2, p xliv).

## 8.4 PARIHAKA PROSPERITY

The population of Parihaka grew rapidly. By the end of the 1870s, it was being described as the most populous and prosperous Maori settlement in New Zealand. The permanent population of about 1500 included persons from the local hapu, Te Atiawa, Ngati Tama, Ngati Ruanui, Tangahoe, Pakakohi, Nga Rauru, and Whanganui. Maori throughout Taranaki and from as far away as north Auckland, Rotorua, Wairarapa, the King Country, and the Chatham Islands attended the well-known monthly meetings.<sup>7</sup> It is usual to read in contemporary reports that a certain hapu was 'at Parihaka' at some particular point. Some stayed there for months at a time.

Te Whiti and Tohu rebuilt the mana of Maori war victims from throughout Taranaki and beyond. They gave more than a haven to the many dispossessed; they revitalised their spirit. Governor Gordon, in reporting to the Secretary of State for the Colonies, described Te Whiti as:

Eloquent and subtle, and animated by an unquestionable earnest patriotism, he has for many years exercised a powerful, and, for the most part, beneficial, sway over the hearts and lives, not only of his own tribe, but of a large section of the Maori population. Where his influence extends, drunkenness is unknown, industry is exacted, and peace sedulously inculcated.<sup>8</sup>

Drunkenness and disorder were stamped out, work and enterprise were rewarded,<sup>9</sup> 'Native police' kept order, and the settlement had its own bank.<sup>10</sup> Advanced agricultural machinery – reaping and threshing machines – was in everyday use, and by 1880, a large bakery operated, capable of supplying over 1000 kits of bread for the monthly meetings. Organisation and efficiency abounded; teams worked the coast and bush to harvest sufficient seafood and game to feed the thousands who came to the meetings. Independent observers assessed the visitors at the meetings at about 2000 generally and 'upwards of 3,000' shortly before the invasion, all of whom were fed and housed. Iwi throughout the country sent gifts of food, money, cloaks, and, most especially, that other symbol of peace – greenstone.

European visitors were often loud in their praise of the 'Parihaka experiment', but because they assessed the development in their own terms, they did not generally appreciate the Maori factors involved. For example, Western practices were common, but it was not acknowledged that they were introduced on the back of the traditional value system and the communal ethic still prevailed. At heart was a resistance to the social disintegration that land loss and individualism were causing elsewhere. Despite their cultural bias, the European accounts none the less provide some independent views.

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7. The nineteenth-century historian James Cowan remarked that by 1879 Parihaka had 'grown into a little republic', with Te Whiti as its 'temporal and spiritual president' (Cowan, *The New Zealand Wars*, p 447).

8. Gordon to Kimberley, 26 February 1881, BPP, vol 16, p 466

9. A Ward, *A Show of Justice: Racial 'Amalgamation' in 19th Century New Zealand*, Australian National University Press, 1974, p 202

10. *Taranaki Herald*, 19 November 1880, 14, 19 February 1881; D Scott, *Ask that Mountain: The Story of Parihaka*, Auckland, Heinemann and Southern Cross, 1975, p 159

Robert Parris, the Civil Commissioner, visited there in December 1868 with 200 'friendly natives' to see how the 'disaffected Kingites, under the young chief Te Whiti live'. Even the commissioner was obliged to report that Parihaka was supplied with abundant food and the people were industrious and healthy.<sup>11</sup> In 1871, the Taranaki medical officer wrote that Parihaka was well provisioned and the cleanest, best-kept Maori village he had visited. He noted the absence of drunkenness, which he saw as the scourge of many Maori settlements at that time.<sup>12</sup> In 1879, a correspondent from the *Lyttelton Times* found the community to be 'orderly, sober, good natured and hospitable – in all these respects vastly superior to any European community of a similar size and existing under similar conditions'.<sup>13</sup>

Several journalists visited Parihaka in October 1881, on the eve of the storm. They were highly impressed by the 'square miles of potato, melon and cabbage fields around Parihaka; they stretched on every side, and acres and acres of the land show the results of great industry and care'.<sup>14</sup> A correspondent for the *Taranaki Herald* described it as the:

principal Maori stronghold in New Zealand, an enormous native town of quiet and imposing character . . . there are regular streets of houses . . . I went to the monthly meeting on Wednesday. I never saw such numbers of Maori. It was a most picturesque sight, such gay colours, fine looking men and pretty girls. The young men and boys were having a cricket match; the bats and wickets were home made, but they played just like white men, chucking up the ball when a man was out etc . . .<sup>15</sup>

Gilbert Mair, well-known for his involvement with Bay of Plenty Maori, attended at Parihaka shortly before the invasion. In his diary, he noted that it was 'a tremendous place, about 2400 natives were assembled and a large distribution of food was going on'.<sup>16</sup>

Parihaka was proof of that which governments past and present have sought to avoid admitting: that aboriginal autonomy works and is beneficial for both Maori and the country. It was only at Parihaka and similar enclaves throughout New Zealand that change was being made on Maori terms, and it was at those places that the greater strides in Maori progress were then being achieved. Elsewhere, the Maori population was rapidly declining, as though the will to survive had disappeared.

## 8.5 CONFISCATED LAND 'ABANDONED'

Essential to an appreciation of the Parihaka position was the widespread and justifiable opinion that central Taranaki had become Maori land and the locality an independent Maori district. For almost a decade after the wars, the Government made no claim to the land between the Hangatahua and Waingongoro Rivers by

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11. Document A2, p 65

12. Scott, p 48

13. *Taranaki Herald*, 16 March 1880

14. Scott, p 116

15. *Taranaki Herald*, 18 January 1882

16. Mair papers, MS 92, folder 53, diary 33, ATL

right of confiscation; to all intents and purposes, the confiscated land there had been abandoned.<sup>17</sup> There were no European settlements. Any Government claim to land was on the slender pretence of having effected a purchase, mainly by the discredited process of takoha. In the case of Opunake, however, acquisition was claimed by cession, but there was no deed to satisfy the Statute of Frauds and the only evidence was the self-serving opinion of a Crown agent, whose own testimony disclosed duress and Maori opposition. Despite their invalidity, however, the attempted purchases and the associated negotiations for roads, telegraph lines, and a lighthouse were all evidence that the confiscation was seen to have been abandoned – and in law, it probably was.

Ministers and Government officials likewise wrote to each other on the basis that the confiscation no longer applied in that district and, occasionally, said so distinctly. The West Coast Commissions were so convinced in 1880 and 1883 that the confiscation had been effectively abandoned that they were sharply critical of the Compensation Court for having made compensatory determinations in this area as early as 1865. In 1881, Governor Gordon reported to the Secretary of State for the Colonies that it was ‘a patent fact’ the confiscation had been ‘practically abandoned’ in this part of Taranaki.<sup>18</sup>

Against the view that confiscation had been abandoned were the Native Minister’s purchase instructions of 1872. These had assumed that purchases were necessarily gratuitous, because a ‘nominal confiscation’ had been effected. That view was apparently relayed to Maori at a meeting at Whanganui in 1873, though others insist another view was given at other places, but it hardly deserves serious consideration. If the Minister genuinely believed the land had been confiscated and the Maori interest extinguished, why was he buying and why was he negotiating for roadways and the like? In any event, as Maori observed, Maori law did not regard a conquest as effective when adverse possession was not immediately taken and subsequently maintained. It could only have seemed to them that the Government’s law was the same.

Accordingly, Maori, in continuing in peaceful possession or re-entering into occupations without Government objections and with tacit approval, must be seen as having done so with the legitimate expectation that their efforts and improvements would not later be questioned.

Maori would also have had good grounds for believing, had the question been raised, that the area was a district where peace prevailed under Maori control. It could well have been recognised as a Maori district under the New Zealand Constitution Act 1852. All the necessary structures and controls were there. Parihaka had become home to about 1500 permanent residents. The rangatira of the district regularly referred matters to the monthly Parihaka meetings, where common policy was also resolved. It is clear that a law applied throughout central Taranaki (and beyond), which was formalised by Te Whiti and Tohu at regular meetings. It is

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17. Our view, as a matter of law, is that no confiscation in central Taranaki had been effected. The land could not be confiscated until it was laid out for settlement, and that had not been done before the Act had lapsed. This is dealt with more fully later in this chapter.

18. Gordon to Kimberley, 26 February 1881, BPP, vol 16, p 472

further clear that the prophets had re-established the Maori spiritual code for the determination and enforcement of appropriate behaviour. The close attention of the ploughmen to the strict rules of passive resistance, despite the pressure they were subjected to, spoke amply of how effective the teaching and instruction had been. Apart from motivation, there was no reason why central Taranaki should not have been declared a Maori district under the New Zealand Constitution Act.

## **8.6 THE DECISION TO SURVEY THE LAND**

The decision to survey central Taranaki for settlement came as a major change in the Government's direction. No basis for doing so was formally given but there were at least two possibilities: part of the land had been acquired by takoha or the land had been confiscated.

The worth of those propositions is examined below. For now, we consider that the motivation for entering upon the land was nothing more than political and economic convenience. It simply suited the Government to do so, and the Government did not seriously examine the likely results.

Elsewhere, rapid progress had been made towards European settlement. Although the central government was responsible for the purchase and confiscation of Maori land, Pakeha settlement of that land was carried out by the provincial governments, which were also charged with the administration of the Government's immigration scheme and established colonists on both purchased and confiscated land. In 1874, the Taranaki provincial government obtained control of some 110,000 acres of bush land to the east of Taranaki mountain and founded Inglewood with English farm labourers recruited under the Government's plans. By 1876, some 800 immigrants had been settled in the area.<sup>19</sup>

Public works were underway on the coast road linking settlements north and south of New Plymouth and on an inland road joining the bush settlements of Inglewood and Stratford with New Plymouth and Waitara to the north and Hawera to the south. A rail link between New Plymouth and Waitara was opened in 1875, and an inland route via Inglewood and Stratford reached Hawera in 1881 (and Wellington in 1886). The Armed Constabulary had replaced military settlers in staffing the strategic military posts and was also able to assist with construction. Local Maori provided labour for these works, including the roadway through central Taranaki.

As settlement proceeded, the provincial government maintained pressure on the Government for more land. The Government responded with the sale of the takoha purchase blocks in the south. In the boom conditions induced by the Government's works and immigration policy, the surveyed allotments sold well above the auction's upset price. Sales in 1874 attracted buyers from throughout the country and prices reached more than £4 per acre.

This advantageous return from the sale of land did not alleviate the problems. More settlers simply created more demands for land, but most of the land had been

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19. Rollo Arnold, *The Farthest Promised Land: English Villagers, New Zealand Immigrants of the 1870s*, Wellington, Victoria University Press, 1981, pp 292–303

taken up and the repayment of the loans made to finance the extensive public works had left the Grey Government considerably strapped for cash. It was in these conditions that, without apparent forethought, the decision was made to open up the plains and, eventually, the whole of central Taranaki for settlement. In brief, the cause of the survey was no more than the settlers' demand for more land and the Government's obligation to repay a large loan, both situations arising from the Government's own policies on immigration and settlement.

## **8.7 THE LEGALITY OF CONFISCATION IN CENTRAL TARANAKI**

As mentioned, no explanation was given for the decision to take and sell the central Taranaki land.

The West Coast Commission considered two possible justifications. It was extremely critical of the first: that part of the land had been acquired by *takoha*. It likewise rejected the second, that the land had been confiscated, for in its view, the confiscation had been effectively abandoned. None the less, the commission was comprised of politicians whose desire for European settlement was well known, and this desire was obvious in the commission's report. Indeed, the chairman was a member of the House, and as the former Native Minister, he had introduced the confiscation legislation. To achieve the objective of settlement, the commission simply assumed, even though the evidence was against it, that Maori would be content with settlement of the area provided sufficient Maori reserves were given. The commission, however, never asked Maori if they agreed and, like the Ministers, avoided a meeting with Te Whiti. Maori acquiescence was in fact a figment of the commission's imagination.

Nevertheless, there can be no gainsaying the commission's opinion that no purchase on the basis of *takoha* was sustainable. There was simply no documentary record to meet the basic requirements of a land purchase, and such other evidence as existed was against any purchase having been made. Basically, the *takoha* scheme had been upset by Te Whiti's adamant refusal to cooperate. The Civil Commissioner simply avoided him as a result, focusing instead on those whom he called the principal chiefs of the plains, ranking Manaia and Titokowaru foremost among them. Though the agents' opinions and vouchers are unreliable, more significant than the record of those who are said to have 'succumbed' to *takoha* is the record, by omission, of those who did not. Manaia would not accept payment, though the offer to him was increased from £100 to £1000.<sup>20</sup> Nor, in our view, did Titokowaru accept payment. Though the Civil Commissioner claimed that Titokowaru had accepted payment, for the reasons given earlier we do not think he was to be believed.<sup>21</sup>

In fact, the bulk of the people were adherents of Te Whiti and Tohu and they refused to sell land. Te Whiti and Tohu would take no money that might

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20. See AJHR, 1880, G-2, p 73

21. See ch 7, fn 31

compromise their position. Officials, accustomed to dealing with Maori by bribes, found their 'absence of all desire for money' made it difficult, 'if not hopeless', to obtain any help from them 'in facilitating the work of colonisation'.

If any right by virtue of takoha was in fact maintained, it was in any case eventually discarded. The Government assumed that it owned all the land well beyond the takoha areas.

We agree with the West Coast Commission that the confiscation had been effectively abandoned, but we would add that, in any event, any legal right to it had long disappeared. The commission declined to hear lawyers who wished to raise the question of legality – not surprisingly, for, were they right, further settlement could not have been sustained. The commission found that the confiscation had been abandoned, but it still recommended rapid settlement. It gave no reasoned opinion at all on the title question but could have presumed only that, although 'effectively abandoned', the land had been taken in fact and could therefore be settled none the less. We doubt that this was so.

The New Zealand Settlements Act 1863, being confiscatory of rights, had to be strictly construed. Section 4 of the Act, which enabled lands to be taken, did not provide that the land would then be Crown land. It said it would be deemed to be Crown land freed of all claims; that is to say, it was not Crown land freed of all claims except for the purposes of the Act. The Order in Council of 2 September 1865 said as much. It expressly provided for the land to be held for the purposes of the Act. It did not cease to be freed of all Maori interests, however, until it was Crown granted for the purposes of settlement.

The purpose of the Act, according to the preamble, was not to punish Maori. Nor was it to profit the Government or to promote settlement per se. The purpose was no more than to put settlers on the land in order to preserve the peace. Settlement for peace was the fundamental ideology of the Act.

That purpose had, however, ceased to apply. Elsewhere, settlements had been surveyed, and soon after settlers had been settled on Crown grants in order to keep the peace. None of that had happened in central Taranaki. Thirteen years had elapsed since the Order in Council and not one section had been surveyed and settled. It was now no longer necessary to do so – indeed, it was too late to do so – because the war had been over for nine years and peace had reigned throughout. In fact, peace was regularly being preached by the two foremost Maori leaders, Tohu and Te Whiti. Confiscation could therefore no longer be advanced on the ground of securing peace. It is little wonder that officials had been acting as though the land had not been confiscated; no settlements had been surveyed or arranged.

The substratum for the Act had thus gone and could no longer be applied. By section 2 of the New Zealand Settlements Amendment and Continuance Act 1865, the New Zealand Settlements Act had been made perpetual, but with the proviso that no powers of reserving or taking land for settlement were to be exercised after 3 December 1867. This cut-off date for the exercise of powers was 11 years before the power to enter and survey was exercised in this case. While the Act may have continued for the purpose of completing matters already begun, such as the finalisation of surveys and gazettings, we believe that it could not have continued

for matters that had never been started; and though the proclamation declared that the land was taken for settlements, it was not in fact taken until a settlement was surveyed and the land Crown granted for that purpose.

As a matter of law, it appears to us that the Crown could no longer be deemed to be holding the land free of all claims and interests under the Act. It was holding it, without any proclamation or formal abandonment being necessary, subject to the claims and interests of Maori. In other words, the land was Maori customary land (as it had been previously) and was being held by the Crown subject to Maori usage.

We earlier opined that the confiscations as a whole were unlawful because the clear and distinguishable steps of declaring districts, defining eligible sites within them, and then taking such lands as were needed for the purposes of those settlements had not been followed. Instead, the whole of the districts were declared eligible sites and all was taken in one fell swoop, which showed not only neglect of process but the lack of a necessary discretion in selection. We repeat that opinion, and add in this case that, had the proper course been followed in central Taranaki, it would have been clearer that the land could not have been taken at all, because the eligible sites had still to be identified by sketch plan or survey and only after that had been done could the land have been acquired.

We also observed, however, with regard to the illegal confiscation of Taranaki generally, that some things done invalidly may have been validated by an amendment to the Act made in 1866. That cannot apply to this further illegality in central Taranaki (which occurred much later), however, because the taking there was not pursuant to the Act; it was simply a wrongful assumption that the land was the Crown's without restriction.

It thus appears the Government's assumption of the land in central Taranaki was unlawful at the time and remains unlawful to this day. This makes no difference to current titles of course, since presumably they have all been perfected by Crown grants and are now secured under the land transfer system. It is also to be presumed that those lands still held by the Crown are now held under some subsequent statutory provision, and actions are statute barred in any event. The point still needs to be made, however, that the assumption of the land in central Taranaki, the entry of the surveyors, the destruction of Maori crops and fences, and the forced relocations of people were probably all unlawful.

In any case, the assumption was contrary to the principles of the Treaty. Even were it appropriate to set aside the Treaty on account of an emergency, once normality was restored the Treaty must be taken to have been reinstated too, and it was inconsistent with the Treaty to take land when those living on it were at peace with the Government and had been so for more than a decade. In Treaty terms, the Government was obliged to ensure that the whole of the land was secured and protected for the benefit of Te Whiti and other Maori, unless they wished to sell. It should properly have been declared a Maori district. If, however, the land had in fact been taken and was freed of all claims, then, since it had not been used for the purpose for which it was taken and that purpose could no longer apply, the land had properly to be returned in any event.



In our view, the taking of land at that very late stage, when peace reigned, was also immoral. The only moral argument supporting the confiscation of central Taranaki was that advanced by Major Keepa Te Rangihwinui in 1872. He thought that sparing the central district would be unfair to the south, where confiscation had in fact been implemented. We do not, however, consider that the injustice done to the south was grounds for doing the same elsewhere. In any event, we suspect Major Keepa would have later resiled from this position, for soon after he was to emulate Te Whiti's position. Just as Te Whiti had effectively sought an all-Maori district for central Taranaki, and just as the Kingitanga had demanded the same for the King Country, Major Keepa was to propose such a district for the length of the Whanganui River, from its source to the upper tidal reaches. The old Government ally was about to join those many other loyalists who came more slowly than others to the view that, unless Maori took a stand, they would have nothing left to stand on.

## **8.8 THE REMOVAL OF THE SURVEYORS**

In our view, the Government's decision to survey the plains was negligent, being made without an honest inquiry into the facts. For that and other reasons, it was also contrary to the principles of the Treaty. There was no prior consultation with Maori, though they were crucially affected. The decision was provocative in conception and implementation. We will now summarise the essential events.

Without prior notice to Maori, entry was effected on 29 July 1878. It was nine years since the wars had ended, during which time the district had been held entirely by Maori and peace had been maintained. The occupants were not all former rebels and included Government allies like Manaia. Parihaka had been in Maori possession throughout the war and had not been the scene of war action.

Maori did not physically oppose the surveyors' entry. Te Whiti gave instructions that nothing should be done until he and the Government had discussed the situation and an arrangement had been agreed upon. The Government had made a unilateral decision, but Te Whiti's only response was to call for a meeting.

The surveyors proceeded with their plans, which included the laying off of roads and town and farm allotments. They also made provision for Maori reserves, although those provisions were limited.

Such provisions as the surveyors proposed for Maori were proposed without consultation. The attitude was that Maori would take what they were given. They were even unmindful of past promises. Though the Grey Government had promised a large reserve for Titokowaru, the surveyors thought large reserves would impede 'civilisation' and a peppering of small reserves would be better.

For their record of loyalty, the Government had promised Manaia and his hapu the whole of their lands, but the surveyors gave them only a part, about 1500 acres. In addition, it was 'sectionized' for individual ownership, because in the surveyors' view that was best; but no discussion was had with Manaia as to what he preferred. After his years of service to the Government, Manaia transferred his loyalty to Te

Whiti, and he was among the first of Te Whiti's followers to be arrested. He took a course that other loyals were to follow.

For five months, Maori offered no resistance. Te Whiti had invited the Native Minister, John Sheehan, to come and see him, and in the interim, he declared that no resistance was to be made.

In December 1878, however, the surveyors were 'turned back' when they cut a line through fences and cultivations of various kainga, including Titokowaru's pa. This reaction was inevitable; 'cutting a line' meant clearing growth and obstructions in a wide path, destroying cultivations, pulling down fences, and exposing crops to wandering stock. In those days, crops were fenced to keep stock out because there were no fenced meadows to keep stock in.

Similar action in January and February 1879 led to survey pegs being pulled out. Eventually, in March, the surveyors put a road through Titokowaru's cultivations and a burial ground. This must have been the last straw, yet Titokowaru took no action other than to leave for Parihaka to consult with Te Whiti.<sup>22</sup>

Eventually, and after earlier refusals, the Native Minister met Te Whiti at Parihaka. The Minister came under the pretext of seeking the surrender of a person suspected of murdering the cook for a survey party south of the Waingongoro River some time before. It was expected that the suspect would seek refuge at Parihaka, which he had done, but Te Whiti had taken the precaution of advising the Government the moment the suspect arrived. At the meeting of the Minister and Te Whiti, the parties could not reach common ground and the Minister brought the proceedings to an abrupt end.

It was only after the negotiations had failed that action was taken. The following morning, 24 March 1879, groups of Maori descended on each survey camp, packed the gear on drays, and, without one blow being exchanged or more force being used than was necessary for an eviction, transported the surveyors and their possessions to the far side of the Waingongoro River. For over a year, they were to remain there.

The action of Maori in removing the surveyors was peacefully conducted and was in our view fully justified. Serious negotiations were needed, and such action as was taken was necessary to draw attention to that obvious fact.

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22. The West Coast Commission was critical of the surveyors' actions. It reported that:

The interruption of the survey meanwhile was increasing. On the 12th March one of the surveyors reported that the section pegs were rapidly disappearing from one of the blocks, and that from station to station for several miles the pegs had all been pulled up. The surveyor to whom this happened would not allow that the changed conduct of the natives was connected with his laying of a road line near Titokowaru's settlement at Okaiawa; but after careful inquiry we ourselves entertain no doubt that this road was a principal cause of the surveyor's being turned off the plains. When the road approached Titokowaru's clearings, his grass paddocks, and his village, the surveyor, for engineering reasons which certainly appeared to us very inadequate, insisted on taking this road line in a direction where it cut a large fenced enclosure, sown with English cocksfoot grass, a yearly source of income. Captain Wilson (at the request of Titokowaru) interfered, but without avail, and the line was taken in the direction to which the chief had objected. It had only just been finished when he left for Parihaka; and within a fortnight the surveyors were all removed. (AJHR, 1880, G-2, p xxvi)

## 8.9 THE LACK OF DIALOGUE

Pride and prejudice appear to have provided the more fertile causes of the Parihaka invasion. Owing to both, the effective dialogue by which such extreme actions could have been avoided was never carried out, and pride prevented further meetings with Te Whiti. The Government had cause to be embarrassed over the surveys, which were made without prior discussion, and over the high tone that was adopted, only to find the surveyors were then promptly removed. It was easier to rely upon the prejudice of the then chief justice that Maori were 'savages' and 'primitive barbarians', which, if true, would have made consultation pointless.

The error in declining dialogue was then compounded by the making of a myth, unsupported by the evidence of Maori opinion, that Maori would freely acquiesce in the settlement of the area if sufficient reserves were made.

More particularly:

- (a) Two days after the removal of the surveyors, the Government demonstrated its resolve by advertising the surveyed sections for sale in both Australia and New Zealand, without any reference to Maori reserves. It was a further provocative act, but sales did not proceed, because wiser counsel prevailed.
- (b) The Government then relied upon the report of a meeting on 2 April 1879 between Te Whiti and a special commissioner, who was appointed to stand in for the Minister. The report contended that Te Whiti was willing or could be induced to share the land, the special commissioner reaching this profound view on the strength of his own perception of Te Whiti's 'eager countenance' when reserves were mentioned. Later, the West Coast Commission was to make much more of the transcript of this meeting and of a parabolical phrase about the sharing of a blanket, concluding that Te Whiti was willing to accept settlement provided there were reserves and that other Maori were prepared to do the same.

The special commissioner and the commission were doing no more than creating the case they wanted to hear. We have studied the transcript of the meeting and clearly it was the opposite position that was directly stated and repeated by Te Whiti: that from the Waingongoro River was Maori land; that the Government had no right to make a survey there; that the Government had been so advised before the survey began; and that, even on the Government's own terms of settlement with reserves, its lack of integrity was apparent because reserves had not been surveyed. At most, Te Whiti considered that Maori and the Government should 'walk together'. This was entirely consistent with Te Whiti's policy of cooperation with the Government on such matters as roads, telegraph lines, and the Cape Egmont Lighthouse; but it was not acquiescence to settlement provided reserves were made. Te Whiti's approach was thus similar to the alliances that had been sought by Ngati Maru and Nga Rauru, those who were said to have 'sold' their lands by deeds of cession, as described in chapter 7.

- (c) In visiting Taranaki further, the Native Minister and special commissioner avoided Te Whiti but spoke 'widely' to others. The tactic is still known to

Maori today: 'if the head will not say what officials are wanting to hear, then observe how they talk to the back'. In brief, the Native Minister was able to satisfy himself that the basis for the 'interruption' of the survey was no more than that promised reserves had not been given. Obeisance to penitence could then be made, with the Native Minister declaring in the House on 23 July 1879 that 'from the White cliffs to . . . [Waitotara] the whole country is strewn with unfulfilled promises'. Significantly, the special commissioner thought the establishment of reserves would not only mollify Maori but lessen the influence of Te Whiti.

- (d) The theme was developed by the West Coast Commission under the chairmanship of a member of the House and the former Premier. The commission was especially of the view that the failure to provide even one reserve in central Taranaki had been the cause of all the trouble. It reported that:

[Maori] would have acquiesced in our occupation if sufficient reserves had been previously made for them. General promises had more than once been given to them that their settlements, fishing stations, burial places and cultivations would be respected, and that 'large reserves' would have been made for them; but no step was ever taken to let them really know what was to be theirs . . . the confidence of the Natives was hardly to be won by [the] prolonged secrecy upon the very question [the location of reserves] of all others on which their anxiety were sure to be the greatest. To them it was the question of whether they would be allowed to keep their homes. No-one with any experience in acquiring Native land ever thought of getting quiet possession of the most ordinary piece of country without previously settling about reserves; and there was nothing to justify the idea that it would be otherwise with the Taranaki Confiscation.<sup>23</sup>

We do not agree. The primary trouble, in our view, was the strong and unconstrained desire for Maori land, held as much by the West Coast Commission as by anyone else. The protection of Maori interests and the provision of Maori land was simply subservient to this overarching objective.

- (e) In terms of the commission's recommendations, later surveys were to be conditional upon the prior identification and disclosure of Maori reserves. In fact, prior identification was not made. Instead, the surveys for settlement took in the Maori cultivations on the coastal margin, Maori resisted the destruction of the fences, and the invasion of Parihaka followed. It was then claimed that, although this action was taken, the Parihaka leaders knew where the reserves were to be made. It was claimed that they were simply intransigent, having been kept fully informed 'through different channels'; through notices that were published in the press; by officials, who 'frequently met natives'; and through the discussions and printed material that 'would have been passed on'.

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23. AJHR, 1880, G-2, p v

At no time, however, could they point to direct notice to, or discussion with, either Tohu or Te Whiti. The prophets made this point during their later trial. They each asked one question only of their accusers – had they ever informed them of the reserves? – to which the answer on both occasions was ‘no’.

## **8.10 THE PROPHETS’ POSITION**

The most that may confidently be said of the prophets’ position is that it was unlikely to have been that described by the Government, by officials, or by the West Coast Commission. The prophets had such influence among Maori that it was simpler to put words in their mouths than to argue against their opinions, and Te Whiti was so staunch in negotiations that it was easier to presume as to his wishes or best interests than to ask him.

The prophets’ position, so far as it can be ascertained from recorded actions and statements, and setting aside some self-serving officials’ opinions, appears to have been no different from the stand on autonomy of other Maori leaders in such diverse places as north Auckland, Auckland, the King Country, Waikato, Urewera, the Whanganui River, and Hawke’s Bay. While policy develops over time and the predominant thrust may be difficult to determine, we would decipher the main line of Parihaka policy as involving:

- (a) the maintenance of the territory from the Hangatahua River to the Waingongoro River as a Maori district;
- (b) the recognition of the fact of confiscation elsewhere, while its legality or morality and the sufficiency of reserves were denied;
- (c) the provision of a Maori base for all hapu from Mokau to Whanganui;
- (d) economic and social development utilising Maori and Christian philosophies and Maori and European technologies;
- (e) the reformation and re-establishment of the spiritual dimension to Maori existence;
- (f) respect for the Crown (in the sense of the monarch) and dialogue and cordial relationships with the Government;
- (g) the rejection of land sales and takoha;
- (h) non-violent resistance to any political diminution of Maori authority and status; and
- (i) non-participation in all Government activities that gave inadequate weighting to the authority of Maori leaders (and thus the avoidance of Crown agent meetings and sittings of the Compensation Court, Native Land Court, and West Coast Commission and a passive disinterest in court proceedings that could not adequately address Maori grievances).

Records suggesting an alternative position do not indicate a regular deviation from the above policy. They merely indicate some bending in extenuating circumstances and a willingness to negotiate with persons of appropriate status.

Conversely, the Government's regular portrayal of the district and the people as having succumbed to a widespread religious fanaticism and lunacy is evidence only of the Government's inability to assess the situation or to fairly, temperately, and impartially report it. Most apparent was a reluctance to acknowledge a consistent Maori-owned policy that had wide support.

The general policy, as we perceive it, was no more than a restatement of Wiremu Kingi's position and was in harmony with what was being said by the Kingitanga and other significant Maori movements throughout the country.

## 8.11 THE PLOUGHMEN

When Native Minister Sheehan declined to speak further with Te Whiti and officials proposed no more than reserves, the prophets of Parihaka reacted again, sending unarmed ploughmen to plough settlers' land. The protest was to emphasise the need for negotiations and that the issues were not being addressed, but the Minister maintained a studied indifference.

Significant features of the tactic were the training and discipline involved, the extent of support, and the degree of control. It was a dangerous undertaking, given the settlers' meetings, the tension, and threats by the settlers 'to shoot [Maori] horses and the natives also', but Maori continued with the task unarmed and, to a person, they declined to respond to aggression when removed.<sup>24</sup> The ploughing began at Oakura on 25 May 1879 with 20 persons and five ploughs. It spread to Pukearuhe, to Hawera, and finally throughout Taranaki. A widely held and consistent opinion could not therefore be doubted. Nor could discipline be denied. Despite the widespread ploughing, there was a unified control. When the Minister and officials visited the area, the ploughing stopped. When they spoke to others but avoided Te Whiti, the ploughing started again.

On 29 June, the Government brought in the Armed Constabulary to effect arrests. From Parihaka, it was then directed that those of greatest mana should be the first to put their hands to the ploughshares. They were thus no ordinary ploughmen that then took the field. Among the first to be arrested and sentenced were prominent persons such as Te Iki; the leading rebel, Titokowaru; and the leading loyal, Matakatea. The Government was particularly embarrassed about the latter. Matakatea's name had been much vaunted when he stood on the Government's side during the war and when he safely transported to New Plymouth a shipload of Europeans who had been shipwrecked. Attempts were made to have Matakatea

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24. Te Whiti's instructions were in these terms:

Go, put your hands to the plough. Look not back. If any come with guns and swords, be not afraid. If they smite you, smite not in return. If they rend you, be not discouraged. Another will take up the good work. If evil thoughts fill the minds of the settlers and they flee from their farms to the town, as in the war of old, enter not . . . into their houses, touch not their goods nor their cattle. My eye is over all. I will detect the thief, and the punishment shall be like that which fell upon Ananias.

When the ploughmen asked Tohu what they should do if any of their number were shot, he replied, 'Gather up the earth on which the blood is spilt and bring it to Parihaka' (Scott, pp 56-57).

accept bail and acknowledge that he was a bystander, but he declined and went with the others to prison in Dunedin.

As ploughmen were arrested, others replaced them. By August 1879, about 200 had been taken into custody. In all, about 420 were to be imprisoned.

With hindsight, it is plain to see that the Government was faced with widespread, organised, and disciplined passive resistance. The actions were deliberate and laden with meaning. The special commissioner had proposed that reserves were all that were needed. In response, the protest was carried to places where reserves had been made. The special commissioner considered that the problem was limited to central Taranaki, where there were no reserves. In response, the protest was conducted everywhere but in central Taranaki.

The protest began at Oakura, where the second war started, and was a symbolic statement that the land was Maori land at that time. It was then transferred to Pukearuhe, the most northern extremity, and then taken to Hawera in the south. Each site chosen was demonstrative of a grievance. The Oakura ploughmen, for example, included those loyals who were the customary owners in that land, who had been promised land elsewhere but had then not received a title or secure grant for anything. They were ploughing their customary land and demonstrating that they were now without land at all.

Symbolism assists oral societies to explain events memorialised in stories. Here, the symbols were peaceful but serious. The sword had been replaced by the biblical representation of peace, the ploughshare, but the ploughshare was being used to plough lands unjustly obtained. Te Whiti maintained he was not targeting the settlers but 'ploughing the belly of the government'.

The Government either could not see or preferred not to see the extent of organised resistance involved. It maintained instead that it was dealing with people affected by religious fanaticism. That type of description permeates Government reports, which show a refusal to take seriously any Maori point of view.

## **8.12 THE FENCERS**

It may have seemed Maori had played to the Government's hand, for the Government had no reason to support Maori and had more to gain from upholding settlers' views that Maori were preparing for war and from fulfilling the settlers' desire for more land. With the pick of the Maori fighters in gaol, it was opportune to consider both the survey and sale of land and, if need be, the suppression of such opposition as might then be made. So it was that the Native Minister directed the surveyors to return to the land once the imprisonments had been made.

Not all Europeans were agreed. At the time the Native Minister announced the intention to reinstate the survey, the West Coast Commission had been established to investigate certain concerns, and its chairman was adamant that the survey should not be resumed before the commission had reported.

In October 1879, however, the Government had changed and a new Native Minister, John Bryce, a veteran of the Taranaki wars, was at the helm. He was no

more inclined than his predecessor to meet with Te Whiti and he was a great deal more impetuous; indeed, it may be said that he could not be controlled by his peers. His predisposition was apparent in his well-known desire to march on Parihaka to destroy 'that headquarters of fanaticism and disaffection'.<sup>25</sup> He was appointed amid rumours that Parihaka was arming and following a report that, despite the number of Maori in gaol, the Parihaka meeting of September 1879 had been attended by upwards of 3000 persons. Though the situation called for cool heads, the Premier appears to have decided that a strong head was required.

Following the remonstrance of the West Coast Commission, the new Native Minister eventually agreed that central Taranaki would not be entered upon until the commission had reported, save for the completion of necessary road repairs. With Shakespearian understanding of 'repair', by April 1880 the Native Minister had 600 of the Armed Constabulary 'repairing' a new road direct to Parihaka, while awaiting the commission's report.

The people of that place offered no resistance. Road-making had earlier been agreed to as beneficial. In the result, when the road works began in February 1880, the Native Minister was informed that 'substantial' presents of food were being made to the commander of the road gangs. It was made clear by those effecting delivery that the gifts were from Tohu and Te Whiti. For his part, the Native Minister was 'not inclined to attach very much importance to the fact of presents being thus repeatedly made'. He was of the view that:

Upon the whole, the indication is in favour of peace. I believe the natives see that the settlement of the country must proceed and that presents are probably the most favourable, if not the last opportunity they will have to make favourable terms for themselves.<sup>26</sup>

The ploughmen were replaced by fencers when the road reached Parihaka in June 1880. On the Native Minister's instructions, the Armed Constabulary broke the fences around the large Parihaka cultivations in several places, exposing crops to the constabulary's horses and to wandering stock. As the fences were broken, fencers appeared to repair them. Thereafter, each day they were destroyed, new fences were made. Te Whiti proposed the simple expedient of putting a gate across the road. The Native Minister would not hear of it and gave instructions that if Maori wished to protect their crops they should fence both sides of the road for its full length, a large and costly task. On 19 July, the constabulary began arresting the fencers.

It was doubtful that the fencers were engaged in criminal activity and likely that the constabulary were offending and had no power to effect arrests. It is also likely that the land was not in fact Crown land and therefore the army, not Maori, were in trespass. Urgency was thus taken in the House to hasten the passage of the Maori Prisoners' Detention Bill to validate the fencers' arrests and indefinitely postpone their trials. The Bill was proposed by the Native Minister. The criticism of other

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25. Confidential dispatch, Robinson, 29 December 1879, G26/1, NA Wellington

26. G26/1, NA Wellington



members was scathing, but surprisingly, the Bill had the support in the House of Sir William Fox, for he was also the chairman of the West Coast Commission.

### **8.13 THE TRIAL OF THE PLOUGHMEN AND THE FENCERS**

Over 420 ploughmen were imprisoned in 1879, but only 40 were sent for trial. These 40 were convicted at New Plymouth of malicious injury to property. They were sentenced to only two months' imprisonment, but were then held for a further 10 months for failure to find sureties to keep the peace of £200 each, or £8000 collectively. For protesting their grievances, the remaining ploughmen were held without trial at the Government's will in prisons in Dunedin, Lyttelton, Hokitika, and Ripapa Island. They were released in batches during 1881.

Although there were protests in Parliament, there appears to have been little public concern with this unusual suspension of the rule of law. The background can be given briefly. The New Plymouth gaol became overcrowded once the arrests were under way, and early in the proceedings it had been necessary to send 170 ploughmen to Mount Cook Prison in Wellington. Special legislation was seen to be needed for trials to be held at any Supreme Court centre and for group hearings to be allowed to expedite the criminal process. Some anxiety grew, however, that the Supreme Court in Wellington might acquit the ploughmen who had been taken there. This, it was thought, would be disastrous for the colony. It would so augment beliefs in Te Whiti's supernatural powers as to promote further disruptions. It was thus deemed best to suspend the trials altogether.

By special legislation, the Government deferred the trials for about six months, leaving those charged in legal limbo and de facto incarceration. Eventually, more legislation from the Native Minister dispensed with the trials altogether for those already arrested as well for any others who might follow. Despite the severity of this law, the Native Minister, presuming the necessary legislation would pass easily through the House, had removed the prisoners to South Island gaols some months previously. He was challenged in the House for having done so surreptitiously. It transpired that the prisoners were taken from Mount Cook Prison at about 4 am, when the streets were deserted, so that the event might pass unnoticed. It was characteristic of the Native Minister that actions against Maori should be taken with a minimum of public attention.

None of the 216 fencers arrested in 1880 was granted a trial. The legislation had been framed to cover future offences and they were sent directly to South Island prisons.

The given ground for this legislation, which was so confiscatory of basic rights, was that acquittals could lead to a further disturbance of the peace. The weakness of this argument merely gives more strength to the need to uphold the rule of law as a bulwark against arbitrary State power. Reactions from England show this appreciation of the law to have been known at the time. In fact, it had a pedigree dating from as early as 1215. The main Acts were:

- (a) The Maori Prisoners' Trials Act, assented to on 11 August 1879, which enabled the Governor to fix or amend any trial date, to hold group hearings, and to arrange trials at any Supreme Court centre. When this Act expired in October 1879, no trial date had been set and those charged remained in prison.
- (b) The Confiscated Lands Inquiry and Maori Prisoners' Trials Act, assented to on 19 December 1879, re-enacted the earlier Act, which had expired. The Governor fixed a hearing for 5 April 1880 then amended it to 26 July 1880, at which date this second Act was due to expire. It had already been determined, however, that no trial would take place, and in anticipation of the necessary legislation being passed, the prisoners had already been shipped to the South Island early in the year.
- (c) The Maori Prisoners' Trials Act, assented to on 23 July 1880, was not to provide for trials but to dispense with them. The Act:
  - (i) declared 'it is not deemed necessary to try the said natives with a view to the infliction of punishment';
  - (ii) noted 'it would endanger the peace of the colony and might lead to insurrection if the said Natives were released from confinements';
  - (iii) deemed all those committed for and awaiting trial and all others so detained 'to have been lawfully arrested and to be in lawful custody and may be lawfully detained'; and
  - (iv) prevented the liberation of those people without the Governor's order. There were doubts as to the legality of retaining those held for 10 months for failing to find sureties to keep the peace, and accordingly the Act made those detentions legal.
- (d) The Maori Prisoners' Detention Act, assented to on 6 August 1880, provided for the fencers, or those arrested after 19 July 1880, to be dealt with in terms of the Maori Prisoners' Trials Act; that is to say, to be imprisoned without trial.
- (e) The West Coast Settlement (North Island) Act, assented to on 1 September 1880, affirmed that those arrested or thereafter to be arrested were deemed to be in custody under the Maori Prisoners' Trials Act. It then created a number of new offences – for example, endangering the public peace by removing survey pegs or preventing lawful occupation by ploughing the surface of the earth or erecting a fence – for which an offender could be arrested without warrant by any member of the Armed Constabulary, tried before a justice of the peace, imprisoned for up to two years, and then detained in prison for an indefinite period 'to keep the peace'.
- (f) The West Coast Peace Preservation Act, assented to on 1 July 1882, enabled a justice of the peace to direct the dispersal of an assembly of 50 or more Maori and provided for penalties of up to 12 months' imprisonment.

The passage of such legislation, being in several important respects contrary to the normal standards of law, is indicative not of the times, in our opinion, for those outside New Zealand could view these laws with abhorrence, but of the state that Parliament had got into. The opposition in the House was insufficient to constrain

the Native Minister from having his way. The House could receive with relative equanimity the Native Minister's assertion that the Magna Carta and habeus corpus were 'mere legal technicalities', 'mere form[s] of English law' for lawyers, not statesmen, to fall back on, and could be persuaded by the Minister's threat of resignation if the trials proceeded, because he would 'not like to take the responsibility of remaining in office' were that to happen.<sup>27</sup>

In light of the Minister's threats, others felt satisfied that the Bill suspending trials indefinitely should state that such was necessary for the peace of the country and that by having said so it would then be legally true. Accordingly, it was not only the Native Minister who held such low regard for legal process.

William Rolleston, the Minister's temporary replacement in office, took a similar view. When there were doubts about whether the constabulary had the power to effect arrests, they were instructed plainly 'you take the men and the government will find the law'.<sup>28</sup> In other respects, however, Rolleston was more conciliatory, and he regularly promoted full dialogue with Te Whiti. His difficulty was that he came to office during a crisis.

The effect of all these laws was to reinstate the conditions that prevailed in the war. Maori were to be treated not as British subjects but as alien prisoners of war, to be held at will.

The prisoners were also to be treated as political hostages. The Native Minister used the power to release prisoners as a weapon to bargain for Maori acceptance of his reserve conditions. Their acceptance was to be a prerequisite to their freedom. It was probably for this reason that Te Whiti prohibited the first batch of released prisoners from returning to Parihaka either permanently or for the worship on the eighteenth of each month. This seemingly severe prohibition was to stand until those remaining in gaol had also been freed.

#### **8.14 THE TREATMENT OF PRISONERS**

It is part of the claims that the prisoners were subjected to unconscionable prison conditions.<sup>29</sup> The more serious allegations relate not to the ploughmen and fencers, however, but to those taken prisoner during the war and to Pakakohi in particular, who had preceded them to South Island gaols. The greater fear, as raised in the House by the member for Southern Maori, was that the ploughmen and fencers would be treated as Pakakohi were.

It will be recalled that 233 Pakakohi men, women, and children had surrendered in 1869 on the basis of promises they would not be harmed; 96 men had then been taken to Wellington and incarcerated on a hulk in Wellington Harbour for about a month. Maori claimed that two died during that time. Death sentences were imposed on 74 by courts martial, but the sentences were later commuted to imprisonment in

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27. NZPD, 1879, vol 34, pp 621, 796–798

28. June correspondence, LE 1/8/1879/135. See also Grey's telegrams, PM 6/2.

29. See statement of claim, paras 6.8, 17.23, 17.24, 19.7, 20.7

Dunedin for terms of three or seven years.<sup>30</sup> The prisoners were engaged on public works, including the building of roads.

Among several Maori allegations was one that, during the construction of a certain road, the prisoners, or some of them, were housed nearby in a cave or caves or tunnels that had been sealed and that the ventilation was so bad that they took turns in breathing through a pipe under the door. By way of memorial, in 1987 Maori placed a large stone from Taranaki at one cave where it was said the prisoners had been held.

We have found no records to verify or disprove the claimants' allegations. There are some accounts that in gaolers' views the prisoners were well cared for. It is, however, officially recorded that 18 died. Maori put the number higher, but 18, or 24 percent, is a large proportion of the 74 who were held.

The same problem affects the ploughmen and fencers. Certain allegations were passed down orally but cannot be corroborated by independent accounts and the official records are not informative. At most, there is evidence of serious overcrowding at Lyttelton and Hokitika. One historian has uncovered a note in the *Lyttelton Times* declining the publication of an article on the prisoners because 'our correspondent gives details which are really too disgusting for publication and if true, cast the utmost disgrace upon those who had the prisoners in charge', but again, particulars are lacking.<sup>31</sup> Nor is further information available from such questions in the House as related to the prisoners' circumstances or health. The Native Minister gave only vague replies, such as 'the deaths amongst Maoris have been very few in proportion to the numbers of the prisoners'. The only specific figure mentioned came early in the piece, when a member alleged men were dying in prison while Parliament went on passing Bills to defer their trials. The Native Minister assured him 'only two had died' during that time.

There are poignant photographs in the Parihaka Memorial Hall recording the prisoners' return home. Only months later, however, the village was invaded and they were immediately rearrested.

## **8.15 PLOUGHMEN, FENCERS, AND CIVIL DISOBEDIENCE**

Though distanced in space and time, the thoughts of passive resistance leaders have shown singular accord. In the United States of America in 1963, Martin Luther King junior effectively described the path trodden by Tohu and Te Whiti when he detailed the four basic steps in any non-violent campaign: 'collection of the facts to determine whether injustice exists; negotiation; self-purification; and direct action'.<sup>32</sup>

Just like the Parihaka prophets, King experienced shallow negotiations and broken promises. From Birmingham Jail, he wrote:

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30. AJHR, 1870, A-29, p 1

31. Scott, p 85

32. Martin Luther King jnr, 'Letter from Birmingham Jail', 16 April 1963, in M L King, *Why We Can't Wait*, 1964

As in so many past experiences our hopes had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community. Mindful of the difficulties involved, we decided to undertake a process of self-purification. We began a series of workshops on nonviolence, and we repeatedly asked ourselves: 'Are you able to accept blows without retaliating?' 'Are you able to endure the ordeal of jail?'

The words are reminiscent of Te Whiti's instructions to the ploughmen:

Go, put your hands to the plough. Look not back. If any come with guns and swords, be not afraid. If they smite you, smite not in return. If they rend you, be not discouraged. Another will take up the good work. If evil thoughts fill the minds of the settlers and they flee from their farms to the town, as in the war of old, enter not . . . into their houses, touch not their goods nor their cattle. My eye is over all. I will detect the thief, and the punishment shall be like that which fell upon Ananias.<sup>33</sup>

Likewise, when the ploughmen asked Tohu what they should do if any of their number were shot, Tohu replied they should do no more than:

Gather up the earth on which the blood is spilt and bring it to Parihaka.<sup>34</sup>

The objective for Tohu and Te Whiti, as for King, was to secure resolution by meaningful negotiation. King put it this way:

You may well ask: 'Why direct action? Why sit-ins, marches and so forth? Isn't negotiation a better path?' You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored . . .

The purpose of our direct-action program is to create a situation so crisis-packed that it will inevitably open the door to negotiation.

He could equally have been writing for Taranaki Maori.

Those who break the law are bound to suffer the legal penalty, but even they are entitled to the law's protection. In Taranaki, the normal standards of protection were denied. For the prophets of Parihaka, there must also have been a larger question, since their objective was not the overthrow of the State. Is there a circumstance where civil disobedience is justified? The pacifist's answer is given by King in his letter from Birmingham Jail to his critical fellow clergymen. Like Tohu, Te Whiti, and Gandhi, King based his case on the laws of divinity:

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 . . . at first glance it may seem rather paradoxical for us

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33. Scott, p 52

34. Ibid, p 56

consciously to break laws. One may well ask: 'How can you advocate breaking some laws and obeying others?' The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St Augustine that 'an unjust law is no law at all.'

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St Thomas Aquinas: An unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust . . .

I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law . . . That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.

Of course, there is nothing new about this kind of civil disobedience. It was evidenced sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake. It was practised superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practised civil disobedience. In our own nation, the Boston Tea Party represented a massive act of civil disobedience.

We should never forget that everything Adolf Hitler did in Germany was 'legal' and everything the Hungarian freedom fighters did in Hungary was 'illegal.' It was 'illegal' to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country's antireligious laws.

I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the negro's great stumbling block in his stride toward freedom is not the White Citizen's Councilor or the Ku Klux Klan, but the white moderate, who is more devoted to 'order' than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: 'I agree with you in the goal you seek, but I cannot agree with your methods of direct action'; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a 'more convenient season.' Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice and that when they fail in this purpose they become the dangerously structured dams that block the flow of social progress . . .

In your statement you assert that our actions, even though peaceful, must be condemned because they precipitate violence. But is this a logical assertion? Isn't this

like condemning a robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries precipitated the act by the misguided populace in which they made him drink hemlock? Isn't this like condemning Jesus because his unique God-consciousness and never-ceasing devotion to God's will precipitated the evil act of crucifixion? We must come to see that, as the federal courts have consistently affirmed, it is wrong to urge an individual to cease his efforts to gain his basic constitutional rights because the quest may precipitate violence. Society must protect the robbed and punish the robber.

That, in our view, is the case the ploughmen and fencers would have preferred. It is also the case for the Taranaki claims.

## **8.16 THE WEST COAST COMMISSION**

In response to the protests and arrests, the West Coast Commission was established in 1879 to investigate the numerous complaints of broken promises, which it was wrongly assumed were the only cause of trouble. It was not a commission in the ordinary sense of being independent of Parliament but was tied into the political arena, being constituted to comprise Sir William Fox, the former member for Wanganui, Sir Francis Dillon Bell, a member of the Legislative Council, and Hone Mohi Tawhai, the member for Northern Maori. Tawhai resigned his appointment, claiming that his fellow commissioners were not impartial and had been 'the very men who had created the trouble on the West Coast'. He had good reason to say so. Fox and Bell had both been Native Minister and had supported the confiscation legislation and policy. Fox, a former Premier, had previously supported the enforcement of confiscation in central Taranaki, subject to adequate reserves.

Our view of the commission is that it deprecated the Maori position, focused less on Maori concerns than on the Government's objectives, rationalised the Government's desire to take central Taranaki for settlement, and obfuscated the issue of autonomy.

To the extent that the commission determined what was best for Maori, as it paternalistically did, it was belittling of the right of Maori to determine that for themselves and to resolve matters by direct negotiation. Perhaps predicting this outcome, the prophets forbade attendance at the hearings but invited the commission to discuss matters at Parihaka.

The commission, as a commission, had the facility to accept the Maori offer but, after consulting with the Government, declined it. The commission joins the many who presumed to know what Maori wanted or needed without asking the leadership. The commission carefully tabulated the many Maori who gave evidence contrary to the prophets' instructions, but as Te Whiti said in reply, the commission was talking to the chaff because Te Whiti had already bagged the wheat.

While the commission's brief was to consider the whole of Taranaki, its clear focus was on the centre; not because it was there that most promises were made but because the centre had the most land for further European settlement. Accordingly,

the commission ignored promises to retain land in Maori control and ownership and concentrated on securing the unsettled lands.

It was helpful that the commission tabulated the Compensation Court's determinations and the Government's proposals for reserves. In considering what should be done, however, it was constrained by its cultural blinkers and its predetermined political opinion. It encouraged the process of social conversion, assuming that awards in individual tenure must eventually prevail and equating tribalism with 'barbarism'. In assessing the Maori 'estate', which it thought was generous, it made no allowance for the fact that most of it was in mere entitlements or awards that had already been sold, and it gave no weighting to the fact that some entitlements could never be given legal effect. Maori objectives and social needs were given no thought at all. The parameters for long-term Maori planning, such as they were, were all European oriented and assessed, and none had regard for Maori goals. The commission, like many others, labelled Te Whiti a fanatic and excluded the opinion of his followers because of their perceived irrational turn of mind.

Most seriously, the West Coast Commission assumed its task with a commitment to secure central Taranaki for British settlement, a commitment baldly stated in its report as though that objective had to be assumed. The thought of the centre being set aside for Maori, under Maori control and on Maori terms, so that at least there might be one part of the globe where Maori culture prevailed, did not enter the realms of possibility.

Nor was it considered that the Crown's right to the centre had become tenuous. The Crown's right was simply assumed. Takoha was rejected, the confiscation was seen as abandoned, but the right to take the land for settlement was assumed none the less simply on the fabricated position that most Maori would acquiesce if sufficient reserves were provided. This position was untenable at law. It was also reached without talking to the Maori most concerned and without putting any options to such Maori as appeared.

The promises allegedly made in other parts of Taranaki were not fully investigated, and this was later evidenced by the stream of petitions that continued to flow after the commission had reported.

The commission reported promptly on 15 March 1880, as was necessary in view of the tensions at that time. Its second and third reports did not alter the broad thrust of its first. The commission's substantive finding was that promises had been made but not fulfilled, and its main recommendation was that the survey and settlement of the centre should proceed, provided that the reserves that the commission then proposed were first set aside.

In our view, the prophets were right to boycott the commission and reject its conclusions, because it was belittling of the recognition to which Maori were entitled. Similarly, it may be noted that Native Minister Bryce was never enamoured of the commission's approach. He considered that the question of reserves was 'a small matter in Te Whiti's eyes' and that the confiscations 'held a very subordinate place in his mind'. This is a rare occasion when we would consider that the Native Minister was probably right, but not necessarily for such reasons as the Minister may have given, had he been asked.



## 8.17 THE INVASION

On 1 November 1881, Te Whiti called to the village the scattered working parties attending to the cultivations and other work. He explained the coming assault and directed how Maori were to behave:

If any man thinks of his gun or his horse, and goes to fetch it, he will die by it . . . place your trust in forbearance and peace . . . let the booted feet come when they like, the land shall remain firm forever . . .

I stand for peace. Though the lions rage still I am for peace . . . I am here to be taken. Though I be killed I yet shall live; though dead, I shall live in peace which will be the accomplishment of my aim. The future is mine, and little children, when asked hereafter as to the author of peace, shall say 'Te Whiti', and I will bless them.<sup>35</sup>

On 5 November 1881, the militia and volunteers arrived at the gates of the undefended settlement. Although a colonel was nominally in command, the force was led by the Native Minister, mounted on a white charger. The troops were equipped with artillery and had been ordered to shoot at the slightest hint of resistance. Mounted on a nearby hill and trained on the village was a six-pounder Armstrong gun.

The diary of Gilbert Mair, who acted as aide-de-camp to the commander, and the account given to historian James Cowan by Captain W B Messenger, who was in command of a detachment of 120 Armed Constabulary, provide eyewitness accounts. At 9.30 am, according to Mair, the force 'marched but slowly and surely on Parihaka'. The troops were first confronted by 'about 200 little boys' who 'danced splendidly'. A second line of defence was then formed by '60 girls with skipping ropes'.

Messenger recalled that he was struck by the 'extraordinary attitude of passive resistance and patient obedience to Te Whiti' and added:

There was a line of children across the entrance to the big village, a kind of singing class directed by an old man with a stick. The children sat there unmoving . . . and even when a mounted officer galloped up and pulled his horse up so short that the dirt from its forefeet spattered the children they still went on chanting, perfectly oblivious, apparently, to the pakeha, and the old man calmly continued his monotonous drone.<sup>36</sup>

Among the children was one who was to become the first Maori medical practitioner and Minister of Health, Sir Maui Pomare. For his life, he carried a limp from having been trampled by a cavalry horse. The girls' 'skipping parties', Messenger added, were forceably removed, to the amusement of the watching soldiers.

A hand-picked force led by the Native Minister then approached the marae, where approximately 2500 adults were seated with Te Whiti and Tohu in their midst. When Te Whiti heard the proclamation read out, he said 'Let Mr Bryce come in to the marae, he will only hear good words from me and from my people'. The Native

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35. *Wanganui Chronicle*, 3 November 1881

36. Cowan, vol 2, p 517

Minister had wanted to approach Te Whiti on horseback, in a grand gesture, but was prohibited from doing so by the closely packed people, and at this he was much discomforted. When the Native Minister approached on foot, Te Whiti said, 'I have done nothing but peaceful work'. Te Whiti then sought to 'parley' with him, but the Native Minister commanded that he be arrested. Te Whiti, Tohu, and several others were then taken. Mair was greatly impressed with the dignity and bearing of the chiefs. According to other accounts, Te Whiti counselled his people not to resist as he was being led away:

Even if the bayonet be put to your breasts do not resist . . . be not sorry but turn away the sorrowful heart this day . . . we looked for peace and we find war. Be forbearing, patient and steadfast, keep to peaceful works. Be not dismayed, and have no fear for the ultimate result.

Pillage is said to have followed. Mair noted simply that there was 'no end of taonga in the pa'.<sup>37</sup> Messenger, however, recorded:

a good deal of looting – in fact robbery. Many of our government men stole greenstone and other treasures from the native houses, among them were some fine meres.<sup>38</sup>

After Te Whiti, Tohu, and the others had been taken away, the people remained sitting on the marae, refusing to leave even in the face of threats that they would be fired upon by artillery. Forced removals began two days later by a mass arrest of those who had come there from Whanganui. 'It was just like drafting sheep,' a constabulary officer later recounted. As the men were removed, their houses were torn down and there is evidence that women were raped and otherwise molested.<sup>39</sup> The exercise was then repeated with the other groups, as far as they could be identified. 'Many of us felt sorry for the poor beggars,' a constable recalled in later life.<sup>40</sup>

By 22 November, it was thought that 1600 persons had been forcibly dispersed. They were transported from Parihaka under arrest. About 600 were allowed to remain, and they required passes; thereafter, only persons with passes signed by 'friendly' chiefs and constabulary officers could approach Parihaka. More houses were then destroyed and material from the destroyed houses was used in the construction of an Armed Constabulary camp nearby.

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37. Mair papers, MS 92, folder 53, diary 33, ATL

38. Cowan, vol 2, p 518

39. RDB, vol 48, pp 18,825–18,826, 18,834; Scott, p 127; R S Hill, *The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867–1886*, Wellington, GP Books, 1989, p 329. Te Rangi Matotoru Watene gave evidence to the Sim commission in 1927 that 'The soldiers went on the cultivations, and went there to get food. The women folk were gathering food for the people in the pa, for us, and the soldiers were assaulting the women folk. Some of the women got children through the soldiers. Some of the soldiers gave children to the women and then went away'. Before us, witnesses contended that there were several children born of soldiers and they spoke of the prejudice from other Maori that they and their descendants endured. We were also advised of a rock in a fast-flowing stream that, according to local tradition, was clung to by the women to cleanse and purify their bodies.

40. Scott, p 127

Thereafter, the surrounding crop lands were systematically destroyed and more looting it said to have taken place. Livestock were driven away or slaughtered on the spot. Houses in the vicinity of the marae were pulled down in such a way that the remains would fall within its precincts. In this way, the Native Minister hoped to deprive the ground of 'its sacred character, and break the magic spell'.<sup>41</sup>

By then, Parihaka presented 'a most melancholy appearance', according to reports, and Maori could be seen 'searching among the ruins for such of their household goods as have not been ruthlessly destroyed or stolen'.<sup>42</sup>

In mid-December, it was reported that the dispersed Maori were 'in want of food'<sup>43</sup> and many had suffered great privations. Unless they were allowed back to Parihaka, a Government officer reported, 'their prospects during the winter, and until the next season's crops are ready for use, will be very serious'. In response, the Native Minister offered them road work.

After the cultivations in the vicinity of Parihaka had been systematically destroyed, the constabulary fanned out over the countryside to wreak more extensive damage. The purpose, according to the *Taranaki Herald*, was to ensure that Parihaka 'shall not again become a place of assembly for dangerous and discontented natives, a place of shelter for murderers, and a cause of dread and fear over a wide district'.<sup>44</sup>

It was then decided that 5000 acres of such Parihaka reserves as may have been proposed should be withheld as 'an indemnity for the loss sustained by the government in suppressing the . . . Parihaka sedition'. The areas were chosen 'without regard for the convenience of the natives, but are so taken as to include in the re-confiscated land that most likely to fetch a high price from its contiguity to centres of population'.<sup>45</sup>

In April 1882, the Parihaka residents held a meeting, though meetings were banned, and the Armed Constabulary destroyed more homes as a punishment.

## **8.18 THE TRIAL OF TE WHITI AND TOHU**

Te Whiti, Tohu, Titokowaru, and Hiroki were subsequently transferred to New Plymouth and charged with various crimes; Titokowaru with using threatening language. He was ordered to find two sureties of £500 each and to be kept in gaol until he did. Previously, he had spent one week handcuffed in solitary confinement. Hiroki was tried, convicted of murder, and hanged.

Te Whiti and Tohu were held for sedition. They first appeared before a magistrate and several justices of the peace at New Plymouth on 12 November 1881. Te Whiti was charged with:

wickedly, maliciously and seditiously contriving and intending to disturb the peace, inciting insurrections, riots, tumults, and breaches of the peace, and, to prevent by force

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41. Riseborough, *Days of Darkness*, p 170

42. *Ibid*, pp 169–170

43. Maori Affairs Department, 1 1881/4237 (register entry), NA

44. *Taranaki Herald*, 13 January 1882, see also 1 February 1882

45. *Taranaki Herald*, 5 April 1882

and arms the execution of the law did wickedly declare false, wicked, seditious and inflammatory words.

The 'inflammatory words' alleged were 'naku te whenua' (the land belongs to me), 'naku nga tangata' (the people belong to me), 'ko te tino pakanga tenei o tenei whakatupuranga' (this is the main quarrel – war? – of this generation). He briefly responded to the charges: 'It is not my wish that evil should come to the two races. My wish is for the whole of us to live peacefully and happily on the land . . . that is all I have to say.' He and Tohu had only one question of their accusers: had the promised reserves ever been shown to them? The answer was 'no'.<sup>46</sup>

The Crown prosecutor advised the Government that the Crown's case was weak, that the reports on what Te Whiti was alleged to have said were 'garbled', and that the prophets had 'carefully kept themselves out of the reach' of other charges. After four days' hearing, the trial was postponed. Tohu and Te Whiti were retained in prison both because the destruction of Parihaka was continuing and to allow for reserves to be awarded to grantees under individual title without their interference. As the Premier put it, measures were required to make a trial 'unnecessary' and to prevent the two chiefs from returning to Parihaka until settlement was 'so far advanced as to make their continued resistance futile'.<sup>47</sup>

In April 1882, Te Whiti and Tohu were transferred to Addington gaol in Christchurch. In May, the Native Minister introduced two Bills. The first, enacted as the West Coast Peace Preservation Act 1882, allowed for the indefinite incarceration of Te Whiti and Tohu and rendered their trial 'unnecessary'.<sup>48</sup> It also made any group of more than 50 Maori assembling on the west coast liable to arrest and imprisonment. The second measure was the Indemnity Act 1882, which indemnified those who, in the action taken to 'preserve the peace', might have exceeded their legal powers. The Act particularly applied to the Armed Constabulary. In addition, the Governor could declare any action as coming within the provisions of that Act, thereby making it legal. The only discussion on the Bill came at the third reading, when it was suggested that some provision be made to compensate Parihaka Maori whose property had been destroyed. The Native Minister argued against that course, because the lands on which property had been damaged were 'lands of the Crown'. It is not apparent to us that the land had such status, but at least it verifies the Minister's view that, so far, reserves for Maori had not been made.

The Government later offered the prophets an early release if they would promise to hold no further meetings. They refused. The Native Minister subsequently advised the Government, in a private memorandum of 15 June 1882, that Te Whiti and Tohu could be released 'with safety' in February 1883. By then, food supplies in the neighbourhood of Parihaka would have 'disappeared' through the work of the Armed Constabulary, which was still stationed there. In public, however, the Native

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46. Document A2, p 163; Scott, pp 136–137; Riseborough, *Days of Darkness*, p 174

47. Riseborough, *Days of Darkness*, p 183

48. Though the Government described the Bill as empowering the Governor to release 'certain native chiefs' awaiting trial for sedition, in fact it enabled them to be held at the Governor's pleasure.

Minister, no doubt with an eye to the British Parliament, was disingenuous in justifying their imprisonment without trial. 'There was no wish on the part of the government,' he said, 'or indeed any Europeans to inflict punishment on them.' They were simply being kept in centres of European population, 'in the hope that their minds would be disabused of the idea of greatness as regards their district and themselves, which their long isolation at Parihaka has encouraged'.

The Minister thought they might be freed the following summer, while in their absence, 'matters on the West Coast are being effectively arranged'. The arrangements to which he referred were the provision of Maori reserves, the subdivision of those reserves into individual holdings, and the subsequent vesting of the titles in an administrator to lease them for European settlement.

In the meantime, the Governor finally filed his report with the British Parliament, containing its criticism of events in New Zealand. Ministers learnt of this to their dismay early in 1883, when they received a copy of the 1882 *Blue Book* containing 'Correspondence Respecting Native Affairs in New Zealand and the Imprisonment of Certain Maoris'.<sup>49</sup> It had a dramatic effect. Within three weeks, the Government approved, and had the Governor proclaim, an amnesty for 'all offences and to all Maoris' without exception.<sup>50</sup>

Three days later, Te Whiti and Tohu were released, but to guard against further difficulties the Government passed the West Coast Peace Preservation Act 1882 Continuance Act 1883. By this Act, the prophets remained subject to rearrest without warrant, charge, or trial. The prohibition on Maori gatherings stayed in force and no Maori could travel to or in Parihaka without a special pass. The Armed Constabulary remained stationed there.

## 8.19 THE RESTORATION

Upon their return from the South Island, Te Whiti and Tohu began rebuilding. Although the allocation of reserves in individual title removed much of the communal basis for their support, Parihaka was rebuilt in grand style. Support came from Maori outside Parihaka by way of gifts of money and food. By 1884, solid houses stood about the marae where the old had been destroyed. In 1889, Te Whiti and Tohu began the construction of the vast and majestic buildings 'Raukura' and 'Rangi Kapuia', which were used, among other things, as venues for large meetings.

Te Rangi Hiroa, better known as Sir Peter Buck, was a prominent member of Te Atiawa and Ngati Mutunga and a well-known anthropologist and politician. He visited Parihaka many times and once helped Te Whiti translate international news from local newspapers. At the time of his visit around 1896, Parihaka was traversed with finely constructed roads and contained a bakehouse, slaughter yards, butchery, two small stores, and two dining rooms.<sup>51</sup> Te Whiti and Tohu had reaffirmed their tradition for excellence in religious, agricultural, and industrial instruction. The

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49. The 1882 *Blue Book* is reprinted in BPP, vol 16, pp 349–639

50. *Gazette Extraordinary*, 13 February 1883

51. J B Condliffe, *Te Rangi Hiroa*, Christchurch, Whitcombe and Tombs Ltd, 1971, p 41

sense of innovation had been maintained. Under the prophets' guidance, advanced systems of water supply and electric lighting had been introduced to Parihaka at a time when even the city of Wellington was without electricity.<sup>52</sup>

From time to time, they returned to their old forms of protest. In 1886, ploughmen again operated on lands farmed by settlers near Patea. Te Whiti, Tohu, and Titokowaru were again among those arrested, the latter for the third time. They were found guilty of forcible entry and gaoled for three months.

The people of Parihaka were unwilling to cooperate with the Public Trustee and the Native Land Court. They did not accept the lease rentals that were accumulating with the Public Trustee, and when the Native Land Court sat to grant individual titles for the last of the Parihaka tribal land, the area was immediately fenced off to demonstrate that it was held in common.<sup>53</sup> Later, they concentrated their protests on the leasing of reserves with perpetual rights of renewal. They were, however, powerless to prevent the Native Land Court's operations or the granting of leases by the Public Trustee.

Te Whiti and Tohu both died in 1907, but the faith they established and the spirit they engendered has survived them to this day. Whenever the raukura is worn, the spirit is maintained.

## **8.20 CENTRAL TARANAKI AND THE TREATY**

Nine years had elapsed since the war had ended and 13 years had passed since the confiscation was proclaimed, but at no time had European occupation been effected in any part of the district. Though the Government's right to the land was known to be doubtful, no legal opinion was sought as to the land's legal status, no consideration was given to the Government's moral right in view of its prior disclaimer, and no account was taken of the fact that the land was no longer needed for the only purpose for which it could have been acquired under the statute. Honesty of purpose and good faith toward Maori were therefore lacking when the Government, without any prior warning or consultation, sought to survey the land for settlement. In the circumstances, the Government's action was provocative, likely to cause a breach of the peace, and prone to incite disharmony.

Ulterior motive, wrong purpose, and improper practice applied in the same way to everything done thereafter with regard to seizing the land and dispossessing the people: the breaking of Maori cultivation fences, the construction of roads through crops and sacred sites, and, eventually, the invasion and destruction of Parihaka. Because in our view the Government had no legal right to the land, these actions were unlawful. Lawful or not, for lack of good faith and honesty of purpose, they were contrary to the principles of the Treaty of Waitangi.

In looking to the circumstances of the Treaty's formulation, it was obviously presumed that Maori would be guaranteed their rights to the land before settlement could begin. So important was this presumption that the British Government would

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52. F Irvine and O T J Alpers, *The Progress of New Zealand in the Century*, p 411; see also Scott, p 189

53. Document A19, p 158

not assume the sovereignty of the land without first assuring Maori that their land interests were safeguarded. It must have been obvious that no peaceful settlement could be achieved without such an undertaking. The principle was wholly applicable to the circumstances in central Taranaki. Even were it assumed that the Government was fully and justly entitled to the land, its right was still subject to its duty to provide Maori reserves. If it were not to repeat the mistakes in north Taranaki, where there was not enough land left for Maori reserves, and if it were to avoid unnecessary anxiety, then the Government had obviously to follow the Treaty principle of settling first with Maori, leaving them with no doubt that they would have lands and where those lands would be, before bringing in settlers. Instead, the Government merely engaged in double talk; for example, accusing Te Whiti of farming other than his own lands while at the same time ensuring that 'his own lands' were not defined.

In this case, however, the right of Maori to land in central Taranaki was much larger than the right to some reserves. It was the Government's right to the land that was tenuous, for the reasons given earlier. The purpose of the New Zealand Settlements Act had long expired when the Government presumed to exercise rights under it. If there were ever a time when the Treaty's land guarantee to Maori could have been suspended, that time had passed, and the Treaty guarantee had necessarily to be reinstated. In all the circumstances, we cannot see that the Crown's assumption of the lands in central Taranaki was consistent with the principles of the Treaty of Waitangi.

The military invasion of Parihaka; the assaults on persons; the arrests; the forced removals; the theft; the destruction of homes, crops, and food supplies; and the restrictions on freedoms of association, speech, movement, and religion were unlawful abuses of State power – gross and flagrant breaches of civil rights, which offended all civilised senses of decency. For those same reasons, they were also contrary to the principles of the Treaty of Waitangi, protection under the law being integral to the Treaty's preamble.

While some judges have contended from at least 1848 that in free and democratic countries the right to a fair trial cannot be suspended in any circumstances, even in war,<sup>54</sup> at the least it is obvious that no circumstances could have existed in Taranaki, nine years after the wars, to justify the removal of the ordinary legal standards. Expressed in terms of article 4 of the International Covenant on Civil and Political Rights, there was neither the state of public emergency threatening the life of the nation nor the official proclamation of such a state of emergency as might justify the derogations from principle that were made. As recited in the preamble, the Treaty of Waitangi had for its purpose the maintenance of the necessary laws and institutions for peace and good order. The imprisonments without trial of several hundred Maori; the arrests and imprisonments of Tohu, Te Whiti, and Titokowaru; the retrospective validation of illegal actions against Maori; the creation of political crimes; and the privative legislation denying access to the courts were all contrary to the principles of the Treaty. The same applies to the relevant provisions in the

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54. See Justice Woodbury in *Luther v Borden* 48 US (7 Howell) 1, 29

Maori Prisoners' Trials Act 1879, the Confiscated Lands Inquiry and Maori Prisoners' Trials Act 1879, the Maori Prisoners' Trials Act 1880, the Maori Prisoners' Detention Act 1880, the West Coast Settlement (North Island) Act 1880, the West Coast Peace Preservation Act 1882, and the Indemnity Act 1882.

The failure to engage in fair and equal discussions with Te Whiti, who patently represented the contemporary leadership, was a failure to have serious regard for Maori rights of autonomy and was thus contrary to the principles of the Treaty, where rangatiratanga was guaranteed. In historical terms, this was the more serious Treaty breach, because it was, and has been, ongoing. It was serious at the time, too, for it went to the root of the trouble: the Government mind-set that Maori were to be spoken to, not to be spoken with.

In our view, that was the nub of the problem. Te Whiti was willing to respect the Government but the Government was not willing to respect or recognise him, or the Maori authority that he stood for, and studiously avoided doing so. The partnership expected from the Treaty of Waitangi had become subservient to the politics of power and greed for Maori land.

Parihaka was symbolic of Maori unity and autonomy. Its gratuitous and deliberate destruction by Government forces and the forcible dispersion of its numerous peaceful and defenceless inhabitants affected every hapu. The action of the Government was without any lawful justification and constituted a grave breach of the Treaty, the effects of which still persist. The need to assuage this deep-seated affront to all the hapu of Taranaki must play a prominent part in any settlement proposals.





## CHAPTER 9

# ‘RECONSTRUCTION’

You have come here to arrange about a better law. The law that we think would be a good one is for the land to be returned to us – that is, to allow us to deal with our lands . . . that the Public Trustee should have nothing more to do with them . . .

Ngarangi to Premier John Ballance, 1892<sup>1</sup>

I have a question to put to you. What about the Crown grants that were given to us by a former Government? We have Crown grants that entitle us to these lands – that is, the people. I want to know if these Crown grants were wrongly issued to us in the first instance. Are they worthless? Shall we burn them in the fire? This is my question to you.

Kauika to Premier John Ballance, 1892<sup>2</sup>

### 9.1 INTRODUCTION

This chapter describes how the Government eventually reconstructed Maori matters after the wars and the sacking of Parihaka.<sup>3</sup> It did this by returning land to Maori while keeping total control over its use and alienation. The final land returns came after more than 15 years’ waiting, by which time Maori could only accept what they were given. When debating the confiscation laws of 1863, the Secretary of State for the Colonies had cautioned that an impartial court should decide on land returns so that Maori would not be at the Government’s mercy. The Compensation Court was a failure, however, and the return of land, long after it was due, came to depend on a single politician, sitting as the West Coast Commission. The commission finalised the land returns at 201,395 acres for 5289 persons, an average of 38 acres each. (Another 13,280 acres were later added.)

Consideration is also given to how the land return policy was fashioned. It was designed not really to secure land for Maori but to promote further European settlement. The land returned was only part of that which should have been given; and most of it was leased to settlers on perpetual leases and other advantageous

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1. 20 January 1892, AJHR, 1892, G-2, p 2

2. Ibid, p 4

3. This chapter draws on various research reports, including H Riseborough, ‘Background Papers for the Taranaki Raupatu Claim’ (doc A2); J Ford, ‘The Administration of the West Coast Settlement Reserves in Taranaki by the Public, Native and Maori Trustees, 1881–1976’ (doc M18); B White, ‘Supplementary Report on the West Coast Settlement Reserves’ (doc M20); J Ford, ‘A Comparison between the Crown Grants Recommended for Issue by the Fox–Bell Commission and those that were Issued in Taranaki, 1879–1885’ (doc F26); and M Benson and M Hohaia, ‘Alienation of Land within the Parihaka Block’ (doc I17).

terms. As at 1912, the reserves totalled 193,966 acres, of which 120,110 acres were held by Europeans under perpetual leases, 18,400 acres by Europeans under 30-year leases, a mere 24,800 acres by Maori under occupation licences, and 25,798 acres as 'papakainga or commonages'.

## **9.2 THE WEST COAST COMMISSIONS AND FINAL LAND RETURNS**

### **9.2.1 West Coast Commissions established**

The Confiscated Lands Inquiry and Maori Prisoners' Trials Act 1879 was enacted to manage the incarceration of the ploughmen, to control future disturbances, and to provide for an inquiry into the trouble and Maori allegations of unfulfilled promises. Maori claimed that there was a litter of undertakings to give land made by Ministers and officials within and outside the Compensation Court process but none had been honoured. On 20 January 1880, the Government appointed Sir William Fox, Sir Francis Bell, and Hone Tawhai as a commission ('the first West Coast Commission') to inquire into those promises and consider what should be done. As discussed in the previous chapter, Tawhai resigned in protest over the alleged bias of his fellow commissioners.

The first West Coast Commission completed three reports, ending in August 1880. Some of its conclusions have already been considered. The nub of the problem was said to be the Government's failure, over numerous years, to set aside Maori reserves. The commission described the reserves it thought were needed and recommended that a second commission be set up as soon as possible to create those reserves. The Government agreed and promptly enacted the necessary legislation – the West Coast Settlement (North Island) Act 1880. This enabled the Governor to settle every claim arising from any past award, promise, or engagement in accordance with the first commission's reports. The Governor was to issue Crown grants and provide for reserves, and the reserves were to be administered by some yet to be disclosed scheme, pursuant to an Act that had still to be passed. This was to be the West Coast Settlement Reserves Act 1881, an Act drafted by the commission, which provided that the reserves would be managed by the Public Trustee, who could lease them to Europeans.

On 23 December 1880, Fox and Bell were appointed as the second West Coast Commission to perform the Governor's duties for him. Bell withdrew to become a diplomat and Fox was left in sole charge. The commission was empowered not only to make grants of land but to determine the owners and their shareholdings.<sup>4</sup> For these purposes it could take evidence. It could also engage staff, including surveyors. In effect, it was to do the task of the Native Land Court, but without the court's duty to hold hearings or its liability to appeals.

When the second commission finally reported in 1884, it had made sufficient reserves to cover most of the Compensation Court awards and other promises. As

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4. For the terms of the commission, see AJHR, 1881, G-5, p 7.

reserves were made, however, the titles were individualised, and the management of the reserves was then vested in the Public Trustee.

### **9.2.2 The commission's failure to protect Parihaka**

It should not be overlooked that the first West Coast Commission was sitting during the protests of the ploughmen and fencers and that the second commission was operating when Parihaka was invaded. Since the first commission was to report on the cause of the trouble, it naturally sought to maintain the status quo until it had done so; but nothing could constrain the Native Minister, who would not wait and had sent surveyors, road makers, and the Armed Constabulary into the field to survey and sell land and, if need be, teach Maori a lesson. The constabulary's provocations, however, failed to elicit a Maori response that could justify war against them. In the result, despite the Native Minister's attempts to have the matter resolved by arms, armed conflict had still not occurred when the commission reported. The commission urged that nothing more be done to survey and sell land until Maori reserves, particularly the Parihaka reserve, had been surveyed and identified on the ground. Despite that recommendation, the Government's acceptance of it in the West Coast Settlement (North Island) Act 1880, and the Government's appointment of the second commission to give effect to it, the Native Minister ignored the recommendation and carried on as before with the survey and sale of the coastal aspects of the Parihaka block. When land was sold, the Maori reserves had still to be defined and Maori had no way of knowing where they could cultivate or live or, indeed, if they were to have anything.

The second commission pulled back from its earlier position, capitulating to the bullying tactics of the Native Minister and allowing him to carry on. The commission did not move to survey the Parihaka reserve, as it had recommended, but, turning a blind eye to Parihaka, sent its surveyors to work in the south, or anywhere but Parihaka, succumbing to the Native Minister's intentions. Accordingly, no Parihaka reserves had been made when, in November 1881, Parihaka was invaded on the pretext of ending Maori resistance. In our view, the second commission was as responsible for that invasion as the Native Minister, despite its protestations that it had no part in it.

### **9.2.3 The commissions' bias to European settlement**

The impartiality of the commissions was always in question. By today's standards, Fox's appointment was unusual. As the Native Minister, he had introduced the confiscation legislation and he had later been the leader of the Opposition. He did not contest the next elections, which saw a new Government of his former party colleagues under John Hall. He was appointed by the Hall Government to an inquiry that would question his actions and those of his political colleagues. Though he re-entered politics and returned to the House in May 1880, Fox also continued as a commissioner and was appointed to the second West Coast Commission. Accordingly, throughout most of the relevant times, Fox was both a commissioner and a member of the General Assembly. Similarly, as mentioned in chapter 8 (see

sec 8.16), Sir Francis Bell had been a legislative councillor and, like Fox, had supported the confiscation policy and legislation. On that basis, the third commissioner, Hone Tawhai, had resigned, alleging bias.

The first commission's predisposition was open and apparent. It was scathing of the practices of the chairman's political rivals, especially Native Minister John Sheehan, loud in praise of the chairman's own policies as Minister, and anxious to blame local agents for dubious purchases made when the chairman had ministerial responsibility. The commission's opinion that the trouble arose from the failure to provide reserves was the charge its chairman had made against the Grey Government when he was the leader of the Opposition.

More seriously, behind the rhetoric of how Maori were misled by unfulfilled promises or duped by Crown agents was a larger deception: the commission's display of concern while it in fact promoted more European settlement at Maori expense. Any analysis of the commission's reports cannot fail to expose the consequential inconsistencies and omissions. The commission so stressed the abandonment of the central Taranaki confiscations that it was critical of the Compensation Court for hearing claims there. Yet, in contradiction, it blithely assumed that the Government could take most of and the best of the land there, without any payment, so long as Maori reserves were first created. Maori acquiescence was also assumed but not established. In fact, the matter was not squarely put to them, and Te Whiti, who is unlikely to have agreed, was avoided. Te Whiti invited the commission to meet with him but the invitation was declined. Indicative of the commission's lack of independence is that it declined the invitations on the Government's recommendation that it should do so. Then, without talking to Te Whiti, it presumed that a reserve was all he would have wanted.

To further illustrate the inconsistencies, the commission was concerned that no land of the loyal Nga Mahanga and Ngati Haumiti should be touched. Having pronounced that charitable concern, however, it then took seven miles of their territory in a Government reserve around the summit of Taranaki mountain. Their acquiescence was again assumed. Further, the commission expressed concern that Maori should have their own reserves, where they might 'live in peace', but it then denied peaceful possession by individualising all titles so that reserve interests could be sold to settlers. By passing the reserves to a trustee with power to lease, this could even be done without consent.

Furthermore, although it was hardest to deliver on unfulfilled promises in the north and south, the commission gave scant attention to those districts. It focused instead on the centre, where, for lack of European settlement, the promises were not a problem. It is patently obvious that this distortion was for no reason other than that the commission desired to secure the centre for European settlement. Accordingly, with regard to the north, the commission noted with concern the plight of the loyal Ngati Rahiri, who could not recover their lands; the shortage of land for compensation awards; the paucity of rebel reserves; and the landlessness of Ngati Tama and Ngati Mutunga returnees; but when it reported in 1880, it proposed no answers. In the south, the commission noted the insufficiency of land for Pakakohi but suggested nothing specific.

Instead, the commission concentrated on making reserves for the centre so that the Government could take the balance. This motive was not expressly stated but can be clearly inferred from particular phrases and from the report as a whole. It was said, for example, that, unless reserves were made, 'We may find that we can get neither Parihaka nor the plains except at the price of a struggle' and 'We have to do justice to the natives, but we have also to go on with the European settlement of the country'; and all this while the promotion of European settlement was outside the commission's terms of reference.<sup>5</sup>

The second commission maintained this subliminal preference for European settlement. In its last report of 1884, the commission congratulated itself on its achievements, commented on the construction of roads through the 'unsettled' districts, observed with satisfaction the survey and sale of the remaining confiscated land, and eulogised:

the settlement of the country by Europeans . . . which is fast converting a wilderness, which five years ago was a home only to pigs and wild cattle, into cultivated farms, interspersed with numerous villages, and traversed in numerous directions by excellent roads.<sup>6</sup>

The commission omitted to mention that the largest cultivator in Taranaki had been Te Whiti.

#### **9.2.4 The commissions' limited scope of inquiry**

In all, the first commission did not take seriously the unfulfilled promises in the north and south, nor did it examine what Maori were actually saying in the centre. It grossly understated Te Whiti's position, which was that the validity of the central confiscation was in question, that the justice of the confiscations as a whole needed debating, and that Maori authority and status should be respected and arrangements with them negotiated. Earlier, we opined it was legally too late to take any part of the centre for settlement. Significantly, when the lawyers before it sought to address the legality of the confiscations, the commission expressly forbade them from doing so.

Likewise, the second commission could not determine the justice of the confiscations or the amount that each hapu ought fairly to receive. Its function was simply to give effect to the unfulfilled promises in the way that the first commission had recommended. More particularly, it was required to fulfil, on behalf of the Governor, the Governor's obligations in terms of section 3 of the West Coast Settlement (North Island) Act 1880. That section empowered the Governor:

In such manner as he shall think fit to make a final settlement of every claim or grievance . . . arising out of any award, promise, or engagement how so ever made, by or on behalf of the government of the colony, in respect of land situate within the

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5. AJHR, 1880, G-2, pp ix, xlv

6. AJHR, 1884, A-56, p 3

confiscated territory, to do so in accordance with the [commission's earlier] reports, and to issue crown grants in fulfilment of such awards, promises, and engagements.

### **9.2.5 Commission fails to fulfill promises**

Despite the statute, the second commission did not in fact provide reserves in accordance with the first commission's reports. With regard to the Parihaka block of 58,000 acres, the first commission recommended an inland reserve of 25,000 acres be made and 10,000 acres on the seaward side of the coast road be provided for Compensation Court determinations.<sup>7</sup> It was bad enough that no reason was given as to why Maori should not receive the whole block, the more so since the local hapu had not taken up arms, Te Whiti expressly pursuing peace and keeping his 'turbulent people' from warfare, as the commission acknowledged. It was even worse, however, that the second commission actually reduced the Parihaka reserve by 5000 acres to only 20,000 acres and then did not provide anything near to the 10,000 acres on the coastal side for Compensation Court entitlements. It gave only a smattering of small sections to a favoured few.

On the Waimate Plains, a 'continuous reserve' was proposed, being a belt of 25,000 acres from the Oeo River to the Waingongoro River. Later, as was hinted at in the first report, this was broken up to restrict the ability of the inhabitants to disappear 'into the reserves of the forest', and the area for Maori was again reduced. Despite the commission's scathing criticism of previous governments' failures to keep their promises, the commission failed to keep its own promises.

In addition, there were ominous signs in the commission's reports of 1880 that its promise that Maori would be left in peace would not in fact be respected. First, it did not consider Maori capable of developing the land themselves – though Tohu and Te Whiti had done that with success; secondly, to break the power of the chiefs, the commission considered the titles to all reserves should be individualised as soon as the people were 'ripe for it';<sup>8</sup> and, thirdly, it was thought most of the land should be leased to settlers.

With some irony, in view of later events, the first commission concluded its report by quoting from the British House of Commons debate on the Habeas Corpus Suspension Bill for Ireland that 'there is no statesmanship merely in acts of force and acts of repression'.<sup>9</sup> Fifteen months after receiving the commission's report, the Government invaded and sacked Parihaka.

### **9.2.6 The second West Coast Commission: final land returns**

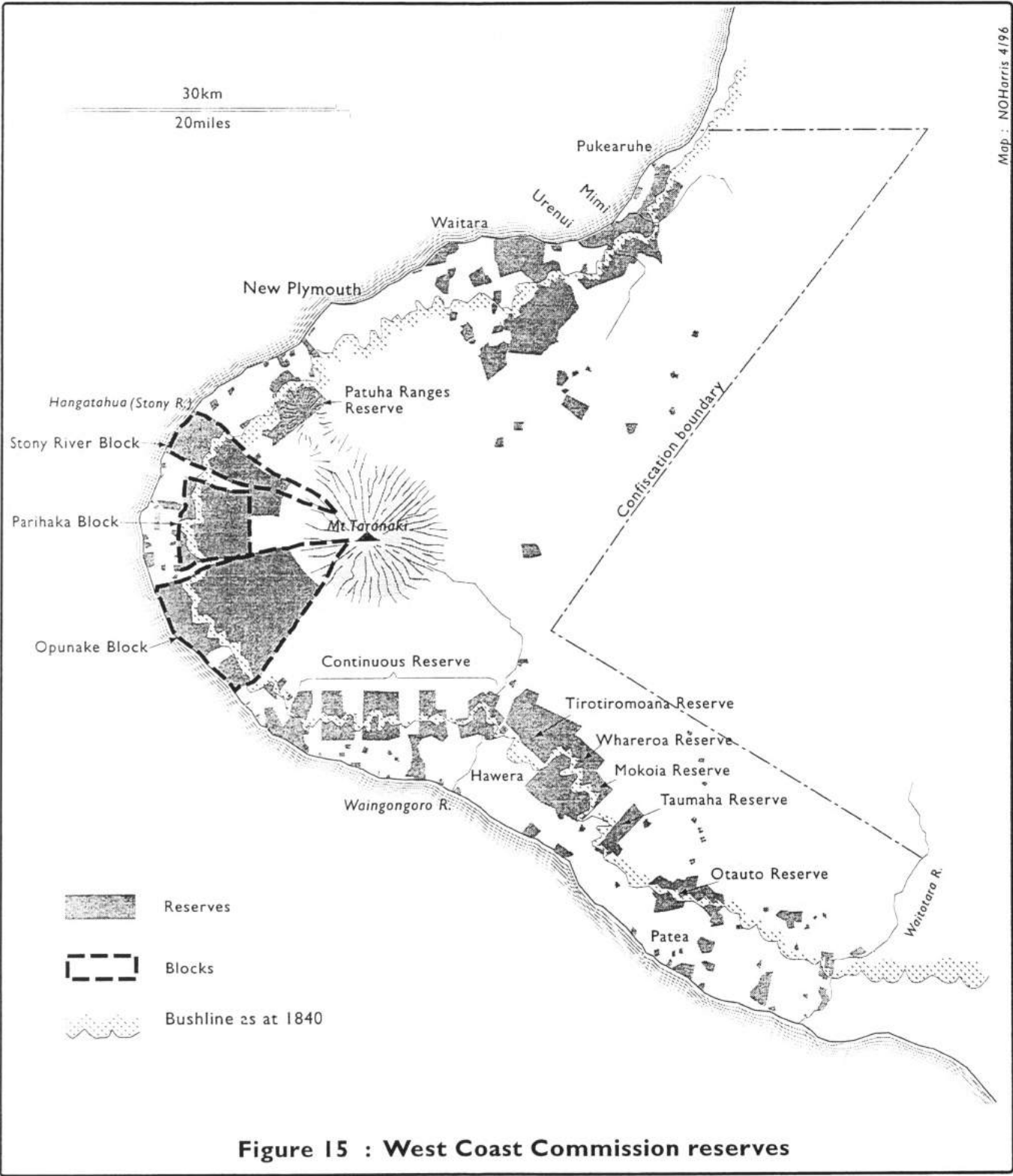
As mentioned, between 1882 and 1884 the second West Coast Commission arranged Crown grants for 201,395 acres, which were awarded to 5289 persons, an average of 38 acres each. Later, a further 13,280 acres were added – mainly to complete the Governor's promise to provide lands in the north and centre to certain absentees –

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7. The commission initially recommended an inland reserve of 20,000 to 25,000 acres, but it was given as 25,000 acres in the final report of August 1880.

8. AJHR, 1880, G-2, p lxi

9. Ibid, p lxiv





making 214,675 acres returned in all. The area awarded by the second commission is depicted in figure 15. Most of the Compensation Court entitlements and, it appears, nearly all the reserves previously created, other than those sold and other than pre-war purchase reserves, were included in the reserves formalised by the commission. Of the 79,238 acres recommended by the Compensation Court, the commission claimed that 12,608 acres had been provided for and that the balance had been 'merged' in its reserves.

The northern area received the least, with only 39,265 acres divided among a mere 1467 grantees. The land consisted of the 37,200 acres that the Compensation Court had awarded for loyals alone, with some additional amounts for absentees, incongruously based on the arithmetic that had been used by the court in the south. Later, 7000 acres were set aside for further Ngati Tama and Ngati Mutunga absentees, but this land was well in the bush. Thus, in the north there were no discretionary hapu reserves without distinction as to loyals or rebels, as there were in the centre and south, and most of the land that was given was in small sections susceptible to sale. It was felt little more could be done because the available land between the bush and the sea had mainly been taken up. Thus, with regard to the most northerly portion, it was stated:

As regards Division I, between Waipingao and Titoki, the difficulty was not so great, consisting chiefly in the fact that the land available within the defined limits was almost entirely bush, the open country between it and the sea having been entirely appropriated to Pukearuhe military settlers, and having by them been subsequently sold to Europeans. The Commissioner cannot help thinking that it was not fair towards the Loyal Natives, who were entitled by law to have their lands returned to them, that they should have been thrust back into the bush and away from the sea frontage in favour of military settlers who never settled, but who received their land merely as so much pay for services, and sold it as soon afterwards as they could to some Europeans, all of whom disposed of their interest to a single European, who now occupies it to the entire exclusion of the original loyal Native owners. But the wrong is past repair, and the Commissioner could only meet these claims out of such lands within the district between Waipingao and Titoki as remained at his disposal.<sup>10</sup>

In divisions II and III, awardees received only one-fourth of their awards in open land, the remainder being in the bush, owing again to the unavailability of clear land. The commission commented, 'the bush portions are very rough, and were surveyed with great difficulty'. It was explained:

In allocating the awards the following method was adopted: Tickets were numbered consecutively with the numbers attached to the awardees on page 17 of Appendix B, G-2, 1880. These were then put in a bag, and drawn out by an impartial person. As the numbers were taken from the bag, the order of drawing was placed opposite each awardee's name, and the Chief Surveyor allocated the sections as nearly as possible in the order of drawing from a given starting point.<sup>11</sup>

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10. AJHR, 1884, A-5B, p 5

11. AJHR, 1884, A-5A, p 6

Where new awards were provided – to accommodate absentees, for example – the allowance per person was particularly small. One block of 789 acres was awarded to 68 persons, another of 589 acres was awarded to 64 grantees, and, as a further example, the allowance of 576 acres for the Ngati Tama hapu was vested in 50 persons. There was no hope that any of this could provide for the future development of the people.

In the southern district, 43,609 acres were granted and apportioned between 1967 grantees. It appears that here the commission did little more than survey the perimeters and internal divisions of blocks that had been set aside long ago by the Government. Compensation Court awards were finalised, but nearly all of them had previously been sold. Then, acting like the Native Land Court, the commission compiled lists of owners and divided the reserves between them. Nearly all the reserves were vested in individuals, save only for some small sections, representing sacred sites, eeling villages, or the like, vested in trustees for named hapu.

In the centre, 118,520 acres were distributed among 1855 grantees. Here the reserves were larger but were none the less scaled down from what they should have been. The Stoney River block was to have been kept whole for the local hapu, on account of their loyalty, but was in fact reduced by seven miles from the summit of Taranaki mountain. The same applied to the Opunake block, where again the local people had not taken up arms. Not only were their lands taken around the mountain, however, but a further part was excised for the Opunake township, although no formal transfer of that land had been effected. Reserves were then provided at Parihaka and on the Waimate Plains, as is referred to below. In both cases, however, the greater part of the blocks passed for European settlement. Further reserves were set apart in this area for the hapu of Hone Pihama and Manaia, who had been loyal, with reserves for fishing stations, sacred sites, and special cultivations. Again, however, it was not the whole of the land of the loyal hapu that was reserved.

The commission thus clarified the lands that finally returned to Maori. The main effect, however, was not to advance Maori interests but once more to limit them. Most especially, being limited to the consideration of unfulfilled promises, the commission precluded the inquiry that was needed into the full justice of the confiscations and the adequacy of lands provided for Maori. That was the real heart of the problem. In the north, the commission did little more than give effect to outstanding Compensation Court awards and promises of the Governor to provide for absentees. In this respect, its provisions were most limited. The commission admitted the difficulty it had in providing much more, owing to the unavailability of open land, but it did not take the opportunity that was available to it to provide additional land in the bush or to increase the bush awards to compensate for comparative value losses. In the south, the commission largely formalised the reserves that earlier governments had arranged but without acknowledging the role those earlier governments had played in doing so. In the centre, it restricted Maori in order to advance settlement, when the real unfulfilled promise to Maori, as the commission initially admitted, was that the whole of the confiscation in the centre had been abandoned.

A further effect was to ensure that the greater length of the coastline, being the most productive land, was held by settlers, with Maori pushed inland. Indeed, the commission admitted that, for example, three-quarters of the reserves between Parininihi and Waitara were in bush.<sup>12</sup> Ironically, this land was later to be valuable for timber, but it was the lessees of that land who obtained the benefit.

#### **9.2.7 The second West Coast Commission: powers assumed**

The second West Coast Commission assumed wider powers than it possessed. It not only created reserves but also reduced them. We have seen that, out of the 58,000-acre Parihaka block, the first commission had proposed to reserve 25,000 acres. It was also proposed that this reserve be cut out and secured before anything was done towards the settlement of the rest. Instead, the second commission held off surveying the reserve while the Native Minister took what he wanted for settlement, which included the most fertile coastal land and the Maori cultivations, pushing Maori to the interior. Then, 5000 acres were deducted from the reserve proposed by the first commission on account of the trouble and expense Te Whiti had caused the Government in obliging the Government to invade him. Finally, the original proposal that 10,000 acres of the arable coastal lands be held for Compensation Court entitlements was not given full effect.

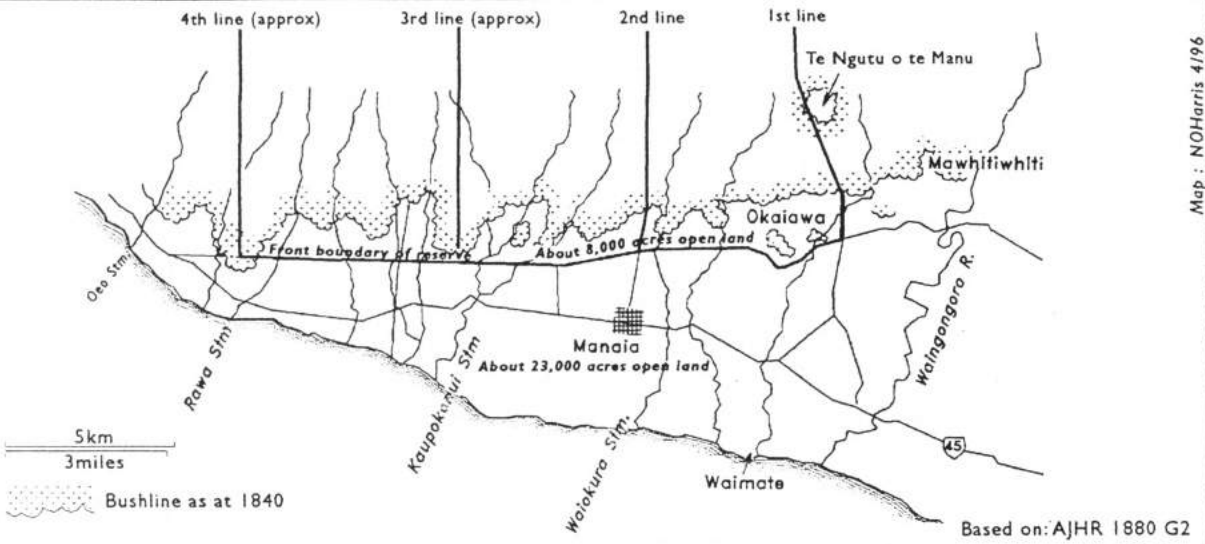
Effectively, the second commission assumed the authority to impose a punishment. We are of the opinion that it had no power to do so and that it acted unlawfully. The West Coast Settlement (North Island) Act 1880 required that matters be done in accordance with the first commission's reports, and the first commission was to do no more than give effect to promises. The grant for Parihaka was not in accordance with the first commission's report, with the result that the Governor did not lawfully discharge his duties under the statute.

The same applied to the continuous reserve proposed for the Waimate Plains. That, too, was reduced by 5000 acres, owing to the alleged complicity of the local hapu, and Titokowaru especially, in Parihaka affairs. The record of this reserve also illustrates how the original proposal became eroded over time and how the fighting pa of Titokowaru, Te Ngutu-o-te-manu, which could not be taken in war, was finally taken by the pen.

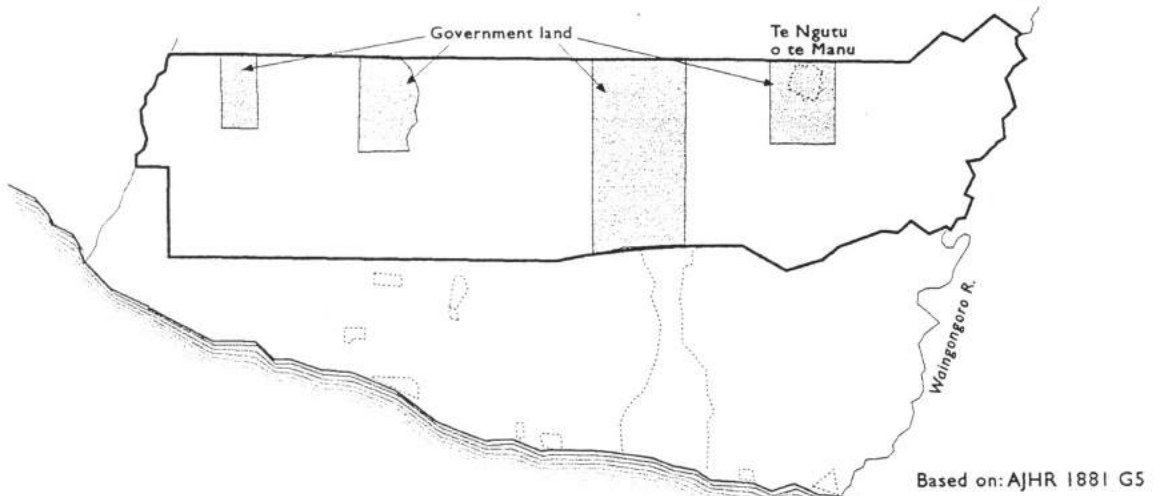
In 1880, the first commission proposed a continuous belt of reserve from the Oeo River to the Waingongoro River, to encompass an area of about 25,000 acres. The commission depicted this in a plan, roughly along the lines of map (a) in figure 16. The following year, the second commission produced a further plan of the area. As if concerned that Maori might develop notions of managing their own territory on such a large reserve, pockets of 'government land' were interspersed in the reserve

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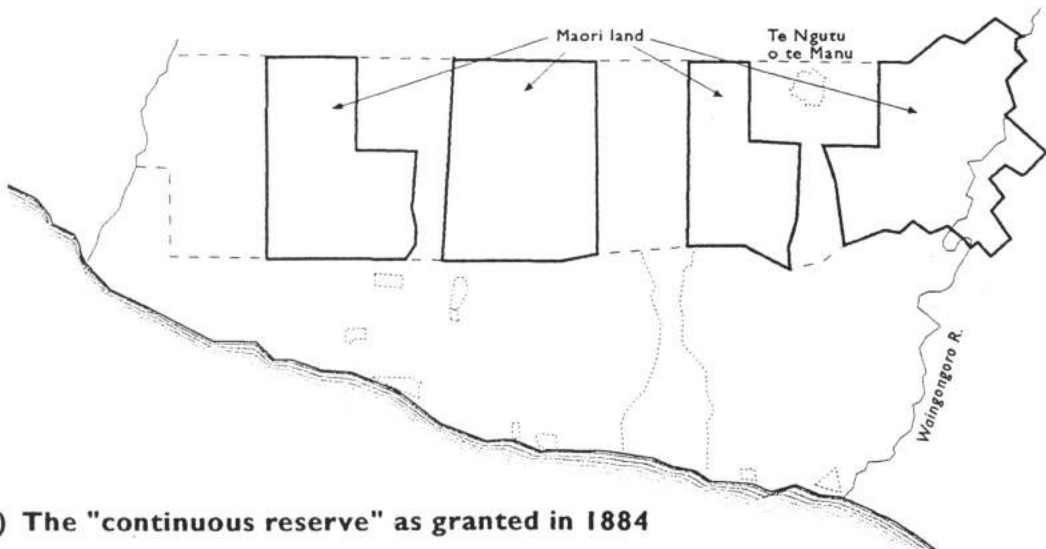
12. AJHR, 1883, G-3, p 2



(a) The "continuous reserve" as proposed by the Commission in its report of 1880



(b) The "continuous reserve" as notified to Maori by the Commission in 1881



(c) The "continuous reserve" as granted in 1884

Figure 16 : The fragmentation of the "continuous reserve"

for the purpose of intermixing European settlement as a 'guarantee of peace' (approximately as shown in map (b) in figure 16), and at the same time Te Ngutu-o-te-manu was included in the Government's territory. The reserve as finally granted was reduced still further by some 5000 acres. As illustrated in map (c) in figure 16, it had none of the character of the continuous reserve the first commission had recommended.

The further and more devastating result of the commission's assumed powers was that it individualised titles. All the lands were vested in individuals outright, save for 18 grants totalling 991 acres, or 0.5 percent, which went to individuals in trust for hapu.<sup>13</sup> These lands were mainly fishing stations, eeling villages, and sacred sites, not development lands, and even these were later to be individualised by the Native Land Court. Although the commission had proposed the reserves as a permanent estate for Taranaki Maori of some 200,000 acres, only some 3725 acres had been made absolutely inalienable, and by the end of the century, all restrictions on the alienation of lands in Crown grants had been removed by statute. Also, although most of the Crown grants had been made inalienable except by lease for terms not exceeding 21 years, most were to be leased perpetually as a result of the commission's own arrangements.

Not only were titles individualised for nearly the whole of the lands, but each reserve was subdivided into several allotments for that purpose. The result was the fragmentation of both ownership and titles. The commission openly supported the division of tribal authority in this way. In so doing, it was addressing the needs of European settlement, not those of Maori. The commission supported the individualisation of land tenure to break the power of the chiefs. Although it was not expressly stated, the same policy in turn facilitated European acquisitions. Moreover, the whole of this individualisation programme was effected by a single commissioner, operating as though he were the Native Land Court but without the usual rights of open hearing and appeal. There is also some evidence that the commission favoured particular individuals, especially half-castes.

In an equally dramatic assumption of power, the commission drafted a new Act for the administration of the reserves by the Public Trustee and through a scheme by which most of the reserves would be leased to Europeans on perpetual terms. This is addressed in section 9.3.

#### **9.2.8 The West Coast Commission: conclusion**

The Treaty required that, in its dealings with Maori, the Government should act with honesty and integrity and should protect Maori interests. Though the post-war circumstances obviously required a full inquiry into the justice of the confiscations and the equitable recovery of land for Maori, the commission's inquiry was too limited in scope and insufficiently independent to be anything near to adequate. The result was an inquiry more bent on promoting European settlement than protecting Maori. The commission could and should have been a body bringing justice and

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13. Figures based upon Crown grants between 1879 and 1885 examined by Janine Ford (see doc F26).

relief to a sorely oppressed people. It was in fact part of the Government's machine to ensure their further dismemberment.

More particularly, the programme for the return of land, which was crucial to Maori survival, came to depend upon partial and political considerations. The prejudice lay mainly in settling the centre without inquiring into the legal or moral basis for so doing; in contributing to the Parihaka invasion by not providing the reserves that could and should have been provided beforehand; in giving less land of good quality than should have been returned; in failing properly to inquire into the land needs of Maori, especially in the north; in punishing certain hapu for supporting Te Whiti by reducing their land awards; in individualising titles; and in denying the authority of Maori to manage their lands themselves. As a consequence, Maori suffered grievous and irreparable loss.

### **9.3 PERPETUAL LEASES**

#### **9.3.1 Overview of perpetual lease problem**

The main legacy of the West Coast Commission has been that most of the lands meant for Maori were given over for settler use and occupation. These have remained in their use and occupation to this day as a result of sales and perpetual leases. The leasing was 'the most unkindest cut of all', for it ensured that the fact of dispossession would be personally conveyed to the children of every succeeding generation. Today as Maori of Taranaki seek jobs for their children, which they say is increasingly difficult, and ponder upon the many who have 'disappeared' in search of work, they reflect with bitterness on how their own lands are worked by Europeans. They consider the sort of infrastructures and experience needed to develop primary and secondary industries, and they ruminate on the opportunities lost over the last 100 years to develop the experience and infrastructures themselves. Since the age-old prejudice that Maori could not work the land anyhow survives, they look back to Parihaka for proof of their capabilities, only to be reminded again of how they as a people were marginalised in their own country. With deep emotion and hurt, older Maori recall the drunkenness and despair that followed land loss and they recall the people's degradation. The irony is that the West Coast Commission was established to deliver on land promises to Maori, but then, abetted by special legislation, it devised a programme that ensured that the promised land was not to be theirs to cultivate and live upon. In the final analysis, the conquest came by the pen, not the sword, and thus they say 'te muru me te raupatu' when talking of the confiscations and perpetual leases.

The dispossession of Maori of their post-confiscation reserves by the imposition of perpetual leases is a major topic, normally deserving an exhaustive report on all aspects. Because the Government has now resolved to terminate the perpetual leases, however, our discussion is limited to an overview. This is followed by a consideration of the appropriate time-scale for the phasing out of perpetual leases and a discussion of an important issue left unresolved by the Government –

compensation to Maori for low rents and loss of possession from 1881 to the date of termination.

### **9.3.2 Perpetual leases begin with the West Coast Commission**

The overview must begin again with the West Coast Commission. Throughout its inquiries and in its several reports, the commission saw no conflict between protecting Maori interests and promoting European settlement, for any tension was simply resolved by putting European interests first. That conflict was transferred without thought to the statute that was to govern the administration of the Maori reserves. The West Coast Settlement Reserves Act 1881 was drafted by the West Coast Commission. It vested the management of the reserves in the Public Trustee, empowered the trustee to lease the reserves, and yet required, in section 8, that the trustee act for the benefit of 'the natives to whom such reserves belong' on the one hand and for 'the promotion of settlement' on the other. From that day forward, the Public Trustee was required to promote two goals inherently in conflict. Like the West Coast Commission, the trustee was to favour European settlement. As one commission of inquiry put it in 1913:

it is unfortunate that while a trustee for the Natives he should have had to consider the question of settlement by Europeans, and take up a position antagonistic to his beneficiaries.<sup>14</sup>

In any event, by drafting this special legislation, the West Coast Commission arranged for the management and administration of all the reserves it created to be vested in the Public Trustee, who would allocate to Maori such land as was thought necessary for their own occupation and lease the balance to Europeans generally on perpetual terms. The trustee was now the rangatira. Traditionally, it had been the function of the hapu, through the kahui rangatira, to arrange all land allocations themselves.

To illustrate the extent of leasing, when a review was made in 1912, 193,996 acres remained as Taranaki Maori reserves. Of that, 120,110 acres were held by Europeans under perpetual leases, 18,400 acres were held by Europeans under 30-year leases, 24,800 acres were held by Maori under occupation licences, 25,798 acres were held as 'papakaingas or commonages', and 4890 acres were in various tenures.<sup>15</sup> The main concerns for Maori have been, first, that the leases were mainly perpetual; secondly, that the conditions of lease were seen as advantageous to the lessees; thirdly, that Maori did not administer the lands, the leases, or the rents; fourthly, that Europeans had long-term leases on which they could borrow but Maori had only occupation licences terminable at will or for terms of up to 7 years; and, finally, that Maori had not agreed to any of the proposals and had never consented to the leases.

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14. A MacIntosh and J H Hosking, 'Report of the Commission Appointed to Inquire into and Report on the Working of the Public Trust Office', 11 April 1913, AJHR, 1913, B-9A, p 15

15. *Ibid*, p 14

### 9.3.3 The legislation and inquiries

The founding statute was the West Coast Settlement Reserves Act 1881, which vested the management of all the reserves in the Public Trustee. The Act is to be read with the various amendments of 1883, 1884, 1885, 1887, and 1889 and, most especially, with the associated regulations.<sup>16</sup> Because the legality of the regulations and the leases became questionable, and because it was desired to change the lease terms to make them more consistent, the law governing the Taranaki reserve leases was rewritten as the West Coast Settlement Reserves Act 1892.<sup>17</sup> This in turn is to be read with the amendments of 1893, 1895, 1900, 1902, 1913, 1914, 1915, 1923, 1948, and 1951 and with some related provisions in the Native Reserves Act Amendment Act 1895; the Reserves, Endowments, and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Act 1898; the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1912; the Native Land Amendment and Native Land Claims Adjustment Act 1916; the Native Trustee Amendment Act 1922; the Native Purposes Act 1933; the Native Purposes Act 1935; and the Maori Purposes Act 1949.

All of the above legislation was replaced by the Maori Reserved Land Act 1955, which did not substantially alter the 1892 leases but sought consistency for Maori reserve leases throughout the country, there being several other places where Maori reserves had been compulsorily leased (for example, in Rotorua, Palmerston North, Wellington, Nelson, and the West Coast of the South Island). It was only in Taranaki, however, that the reserves followed upon the confiscation of the land. The Maori Reserved Land Act 1955 is still current. It in turn has been affected by the Maori Purposes Act 1962 and the Maori Affairs Amendment Act 1967.

A picture of the reserves administration may be obtained from the reports of the many inquiries made at the behest of aggrieved Maori. We particularly refer to reports of the following, which either dealt with the perpetual leases specifically or included them in reports on Maori land generally: the Joint Committee upon the West Coast Settlement Reserves 1890 ('the Stevens committee'),<sup>18</sup> the Native Land Laws Commission 1891 ('the Rees commission'),<sup>19</sup> the Joint West Coast Settlement Reserves Committee 1891 ('the second Stevens committee'),<sup>20</sup> the Royal Commission on Complaints against the Public Trustee in Connection with the Administration of the West Coast Settlement Reserves 1906 ('the Seth-Smith commission'),<sup>21</sup> the Royal Commission of Inquiry into the Alleged Usury on Loans to Maoris 1906 ('the second Seth-Smith commission'),<sup>22</sup> the West Coast Settlement Reserves (North Island) Commission 1912 ('the McArthur commission'),<sup>23</sup> the

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16. For the regulations, see the *New Zealand Gazette*, 1882, pp 224, 483; 1883, pp 202, 778; 1886, p 1679; 1887, p 1638; and 1888, pp 227, 1050.

17. The form of the 1892 lease application and the 1892 lease itself were set by regulations in the *New Zealand Gazette* in 1892 (pp 1447 and 1670 respectively).

18. AJHR, 1890, I-7, I-12

19. AJHR, 1891, G-1

20. AJHR, 1891, I-7

21. AJHR, 1906, G-2

22. Ibid

23. AJHR, 1912, G-2



Commission to Inquire into the Working of the Public Trust Office 1913 ('the MacIntosh commission'),<sup>24</sup> the Royal Commission to Inquire into Confiscations of Native Land and other Grievances Alleged by Natives 1927 ('the Sim commission'),<sup>25</sup> the Commission to Inquire into and Report upon the Departments of Government concerned with the Administration of Native Affairs 1934 ('the Smith commission'),<sup>26</sup> the Royal Commission to Inquire into the Operation of the Law relating to the Assessment of Rentals under Leases of the West Coast Settlement Reserves 1948 ('the Myers commission'),<sup>27</sup> the Committee of Inquiry into Maori Land 1965 ('the Pritchard committee'),<sup>28</sup> and the Commission of Inquiry into Maori Reserved Land 1975 ('the Sheehan commission').<sup>29</sup> Reference may also be made to the reports of the parliamentary native affairs committees, especially those of 1884, 1887, 1893, 1904, and 1923.<sup>30</sup>

### **9.3.4 Initial legislation and opposition**

Having regard to the legislation as a whole to 1955, and the official documentary evidence as compiled for the claims, we have drawn some preliminary conclusions. It is obvious, for example, that the regular Maori claim that they never consented to the leases is only too true and correct.<sup>31</sup> The proposal to vest the reserves in the Public Trustee and the terms and conditions of the leases were unilaterally imposed by statute. Although the 1881 Act directed the Public Trustee to consult with those Maori whom the trustee thought might be necessary and to act in accordance with Maori wishes, too much was left to the trustee's discretion. He was also required to promote European settlement, and Maori, having lost their rights of control, were merely respondents to Government initiatives. Moreover, where the Act did allow Maori a say, as upon lease surrenders or renewals, and when Maori in fact intervened and opposed renewals, their power of intervention was taken away by statutory amendment. In those cases, the statute provided for arbitrators to decide for Maori. Further, the Act did not provide for the hapu to consent to the policy of leasing, as custom would have required, nor did it stipulate for the consent of each individual owner in accordance with Western legal standards. Such individual consents as may have been given were later negated by unilateral statutory changes.

The greater evidence is of Maori objections. Those aligned with Tohu and Te Whiti especially refused to have anything to do with the Public Trustee and the leases, believing that Maori had the right to manage their own lands. For many years, several refused to receive rents. Maori objections were made known to the

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24. AJHR, 1913, G-2

25. AJHR, 1928, G-7

26. AJHR, 1934, G-2

27. AJHR, 1948, G-1

28. Department of Maori Affairs Library

29. AJHR, 1975, H-3

30. See respectively AJHR, 1884, I-2, pp 10-11; 1887, G-7, I-3A; 1893, I-3, p 5; 1904, I-3A; 1923, I-3, p 7

31. In a petition of 1925 brought before the Sim commission, Pouwharemutēi and 19 others stated of the leases that the governing legislation ought to be repealed, 'because the Native owners did not give their consent to this Act': doc M20, p 5.

Government from at least the moment the first legislation was introduced. H Tomoana (the member for Eastern Maori), H K Tararoa (Southern Maori), and Major W Te Wheoro (Western Maori) raised strong objections to the Bill that gave rise to the 1881 Act. As Major Te Wheoro said, 'the hand of the Government should not interfere in any way with such lands as were given back to the Natives . . . The Natives are quite able to deal with their own lands.'<sup>32</sup>

Criticism also came from Maori outside the Government. As early as June 1882, Uru Te Angina and 14 other 'chiefs' on the west coast petitioned the Government, praying that 'the Act appointing a trustee to manage Native reserves on the West Coast be not acted upon'; but the Native Affairs Committee recommended little more than that steps be taken to ensure that Maori understood the Act's provisions.<sup>33</sup>

Also without Maori consent, the lease terms were regularly changed to accommodate the lessees. There were dramatic changes from the beginning. Rents under the first leases were based upon the improved value of the land, but when these were too much for the lessees, the Public Trustee was authorised to remit arrears at his discretion and later the law was changed to effect a substantial drop in rents by basing them on the unimproved value. Later still, the definition of improvements was changed to reduce rents further. For a period, the term of years was changed from 21 to 30 years without perpetual renewal, and it was then changed back to 21 years, on the reduced rent formula and with rights of perpetual renewal. Further, provision was introduced for the lessees to be compensated for their improvements.

The altered terms and conditions of the leases were harshly criticised by the first commission of inquiry, the 1890 Stevens committee, referred to above. It described the Maori interests as having been reduced to the right to receive an annuity – an annuity that was based on the unimproved value of the land and was reviewable only every 21 years. The committee considered that the Maori interests in the improvements had been confiscated.

The situation led to Maori receiving little or no rent. It appears that, in addition to the low rents, Maori were charged for bushfelling, surveying, roading, and administration. Indeed, in the first four years, more money was expended than was received in rents.<sup>34</sup> On occasions, the cost of uplifting the rent payment from the Public Trustee exceeded the rent payment itself.<sup>35</sup> The Rees commission of 1891 added:

The Maoris' rights were confiscated by one dash of the pen, and, at greatly-reduced rentals, new leases for thirty years were given to the lessees . . . the Maoris were plundered. The evidence given . . . in September, 1890, shows that twenty-six European lessees obtained new leases for terms of thirty years of nearly 18,000 acres of land, and that the value of the improvements taken from the Maori owners by the 7th section of the Act of 1887 in those lands alone amounted to £19,821 . . . In one extreme instance

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32. Major Te Wheoro, 19 September 1881, NZPD, vol 40, p 735

33. Colonel Trimble, 'Reports of the Native Affairs Committee', 29 June 1880, AJHR, 1882, 1-2, p 7

34. Document M18, p 35

35. Ibid, p 36

the rent was reduced from £358 per annum to £80. It would be difficult to imagine a more flagrant case of legislative robbery.<sup>36</sup>

The fact that the leases were imposed and unilaterally changed to accommodate the lessees has significance for the arguments that followed. It was often contended that because contracts are sacred covenants between parties they cannot be broken. There was nothing sacred about these contracts, however, at least as between the owners and the lessee, because they were not effected by the parties and the terms were not agreed between them. The lease terms were effected by statute.

Also, from the outset the leases were capable of being made perpetual. Some research advice has assumed that the perpetually renewable leases dated from the 1892 Act. While the Act of 1881 did not spell out the perpetual nature of the leases, the form of the leases was given in the fourth schedule to the 1883 regulations, and a basis for perpetuity was introduced in clause 5. We consider those regulations were *ultra vires* the Act, but the leases were given out none the less and were capable of permanently denying possession to Maori owners.

Maori opposition had developed substantially by 1887, when a Bill of that year proposed further changes to the leases. A petition to Parliament claimed that Maori had insufficient land for their own occupation and asked that the land return to them on expiry of the current lease periods that they might lease it or use it themselves. When the Bill was enacted none the less, Maori began court actions, claiming, among other things, that the leases were unlawful as being pursuant to regulations that were *ultra vires* the Act. The Government responded with an amendment of 1889 to freeze all leases and court actions for a year until validating legislation could be passed. It also established the Stevens committee, which reported in 1890. The committee noted the perpetual nature of the leases, considered that the regulations were indeed unlawful and *ultra vires* the Act, and recommended legislation to legalise new, but terminating, leases. The committee proposed 15 years of low rent on unimproved value and 15 years of full rent on improved value, the leases then to terminate without compensation for improvements. Maori were critical of the committee, but had they known what was in store for them, they may have seized upon the committee's recommendations with alacrity.

### **9.3.5 1892 legislation, inquiries, court actions, and Government validations**

The Government validated the leases by rewriting the law in 1892 and changing the lease terms. Far from creating terminating leases, however, in terms of the committee's recommendations, the West Coast Settlement Reserves Act 1892 expressly provided for perpetually renewable leases. Meanwhile, as the freeze on legal actions had been lifted, Maori pressed on with court actions, introducing for that purpose a further cause of action. The Crown grants or titles for the reserves had

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36. W L Rees and J Carroll, 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', 23 May 1891, AJHR, 1891, G-1, p xiv. See also R C Hamerton, 'Leases in the West Coast Settlement Reserves District', 13 August 1890, AJHR, 1890, G-7B, pp 1-3; E C J Stevens, 'Report and Evidence of the Joint Committee upon the West Coast Settlement Reserves', 4 September 1890, AJHR, 1890, I-12, pp 3-5.

generally issued with the restriction that the lands in the grants would not be alienated except by lease, and then for terms not exceeding 21 years. In the case then before the court, the lands had been leased for a term of 30 years. Maori succeeded in the Court of Appeal on the ground, among others, that the leases could not deviate from the terms of the Crown grant. It was also found that the 1883 regulations were *ultra vires* the Act, except so far as they were sanctioned by section 7 of the 1881 Act.<sup>37</sup> In addition, passages in the decision were highly critical of the Government's policy and legislation. The decision was nullified by the 1892 Act, however, which provided that the alienation restrictions in Crown grants were deemed not to exist.<sup>38</sup>

The 1892 Act re-established the perpetual lease regime along the lines more regularly known today of 21-year perpetually renewable leases, with rents based on the unimproved value. Later amendments adjusted the detail but did not substantially affect the structure. The definition of 'improvements', for example, was changed in 1893 to reduce rents further.

Those with leases under the old Act could also convert them to the more favourable terms of the 1892 Act. By special legislation in the Native Reserves Act Amendment Act 1895 and the Reserves, Endowments, and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Act 1898, the Government later provided the lessees with two further chances to convert those leases to perpetual leases. Most of the lessees did convert their leases, save for a group which prevaricated and continued to hold to their 30-year term leases on 18,400 acres.

Maori complaints continued. James Carroll, later Sir James, told the General Assembly that the 1892 Act was passed:

against the will of the Natives. They had petitions from Natives in all parts of the colony . . . protesting against the House in any way interfering with their rights in the West Coast reserves. But the House, seeing the condition their minds were in, seeing they were not responsible for their actions and for their deeds at the time, seeing them in that pitiable state, passed such legislation as the House thought was for their good, despite all their protestations.<sup>39</sup>

Kuini Wi Rangipupu petitioned that 'by education and experience' she was more than capable of administering:

her own estate, whether occupied by a European leaseholder or by herself, and that [she] . . . would be increasingly encouraged to improve such estate by building and planting if the management was in her own hands, safe from all interference and free from annoying and costly imposts.

Given this state of affairs, she asked the House of Representatives to legislate so that she could:

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37. See *Te Moauroa v The Public Trustee* (1892) NZLR 281 (CA)

38. See s 5 West Coast Settlement Reserves Act 1892

39. 16 July 1895, NZPD, 1895, vol 87, pp 595–596

alone administer her lands, to the great saving of expense, to the evolution of a better home, and to the general improvement of the lands which have been her ancestor's for numberless years.<sup>40</sup>

Maori voiced numerous complaints about the extent of the powers given to the Public Trustee and other matters relating to administration, and the Government responded with several commissions of inquiry. The West Coast Settlement Reserves (North Island) Commission of 1912 was concerned to note that Maori were largely uninformed of the provisions of the 1881 and 1892 Acts.<sup>41</sup> Maui Pomare, later Sir Maui, gave evidence to that commission. He thought that if Maori had known the lands were to be leased for all time, 'they would have been fighting still'.<sup>42</sup>

Also, over the late 1890s and early 1900s, Maori had made a number of allegations that persons were lending money to Maori at exorbitant interest rates through an assignment of rents and that this was leaving them impoverished. In 1895, Tutangi Waionui and others petitioned that the Public Trustee be empowered to advance money to them on mortgage.<sup>43</sup>

The 1906 Royal Commission of Inquiry into the Alleged Usury on Loans to Maoris conclusively found that money had been lent to Maori at usurious rates of interest that were impoverishing them. It recommended that the Public Trustee be empowered, by statute if necessary, to guarantee the debts incurred by Maori for necessities, to pay the amounts so guaranteed, and to deduct them from rents as and when they became payable. This would remove the tradesmen's objections to giving credit to Maori and at the same time would destroy the use of the rents as loan security.<sup>44</sup>

Meanwhile, under the leadership of Maui Pomare, soon to be the member for Western Maori, and Robert Tahupotiki Haddon, a clergyman of the Methodist Church, a union emerged to unite Maori in securing those reserves that were not under perpetually renewable leases and that would revert to Maori at the expiry of their terms. The union was formed at Taiporohenui in 1909 with Kahu Pukoro as president and Wiremu Hipango as chairman.<sup>45</sup> Then, a deputation of 72 union members under Pomare met with the Prime Minister, the Native Minister, the Public Trustee, and others to request the repeal of the 1892 Act as 'a violation of the Treaty', claiming:

Further, that iniquitous and cruel Act vested our lands in the Public Trustee for ever as if he were the absolute owner . . . It empowered the Public Trustee to arbitrarily lease

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40. Petition reproduced in R M Houston, 'Native Affairs Committee: Report on Petitions of Kuini Wi Rangipupu and Heni te Rau', 2 November 1904, AJHR, 1904, 1-3A, p 2

41. A McArthur and W Kerr, 'Report of the West Coast Settlement Reserves (North Island) Commission', 24 June 1912, AJHR, 1912, G-2

42. Ibid, p 105

43. R M Houston, 'Reports of the Native Affairs Committee', 20 August 1895, AJHR, 1895, 1-3, p 11 (cited in doc M18, p 72)

44. H G Seth-Smith, 'Report of the Royal Commission of Inquiry into the Alleged Usury on Loans to Maoris', 8 September 1906, AJHR, 1906, G-1, p 1

45. Document M20, p 15

our lands for all time, regardless of whether we have sufficient for our maintenance or not . . . And now we pray that no further leasing of our lands be continued by the Public Trustee . . . and that you, Sir Joseph, and the Ministers of your Cabinet, will seek some road by which our lands leased by the Public Trustee for all time be returned to us . . .<sup>46</sup>

There was no positive outcome but the 30-year leases were again the subject of debate before the McArthur–Kerr commission of inquiry of 1912. The commission noted many Maori complaints, including that rents continued to be reduced by amendments to the 1892 Act, that interest had been reduced on outstanding payments, and that the Public Trustee, in the complainant's opinion, consistently failed to press the lessees for rent arrears. Counsel for Maori advised the commission that his clients were anxious to bid for the 30-year leases for 18,400 acres once the terms expired. Previously, Maori had not been able to bid for the leasing of their own lands, he said, and the Maori occupants of the reserved lands did not have the advantage of the sorts of lease the Europeans had. Maori had only short-term licences to occupy and these were not acceptable as security for loans.

The Public Trustee was opposed to Maori leasing the 18,400 acres. In the trustee's view, a Maori was not 'as a rule . . . qualified to be a successful occupant of a highly improved farm'.<sup>47</sup> The trustee sought a recommendation that those Europeans who had not yet converted their 30-year leases into perpetual leases be given a further opportunity to do so.

The commission considered that two things were self evident:

The first is, that every legislative measure has been in favour of the lessees; and the second, that on no occasion has the Native owner been consulted in reference to any fresh legislation.<sup>48</sup>

The commission noted that Maori were interested in dairy farming and considered that they should be able to compete with the Europeans for leases. After examining the background, it concluded that the lessees of those leases about to expire should not have a further opportunity to convert them.

The Government response was to move in precisely the opposite direction. Despite the objections of the Maori members in the House,<sup>49</sup> the West Coast Settlement Reserves Amendment Act 1913 was passed to extend the 30-year leases for another 10 years. The Act actually went further, however, enabling the Government to buy the freehold from the Maori owners wishing to sell and permitting its on-sale to the lessees during those 10 years. By the end of that term, 6400 acres had been purchased from Maori. By a further amendment of 1923, the lease terms were then extended for another five years in respect of the remaining 12,000 acres, though on that occasion it was because the accumulated rents in a sinking fund were insufficient to compensate the improvements. The same amending

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46. A McArthur and W Kerr, 'Report of the West Coast Settlement Reserves (North Island) Commission', 24 June 1912, AJHR, 1912, G-2, p 108

47. See AJHR, 1912, sess II, G-2, pp 6–9

48. A McArthur and W Kerr, 'Report of the West Coast Settlement Reserves (North Island) Commission', 24 June 1912, AJHR, 1912, G-2, p 6

49. See especially Sir James Carroll, 10 December 1913, NZPD, 1913, vol 167, p 885

Act, however, allowed Maori to convert their licences to occupy into proper long-term leases.

Maori dissatisfaction with the low rents came to a head in 1934. That year, the arbitration system resulted in a reduction of all rents, when, it seems, everyone had expected a large increase. Maori successfully pursued the matter in court, the Supreme Court holding that the valuation had wrongly included improvements effected prior to the last term.<sup>50</sup> The lessees threatened an appeal but the matter was settled by legislation. Once more, the Government sided with the lessees, overturning the Supreme Court decision and backdating improvements to when the leases first started.<sup>51</sup>

Maori dissatisfaction was rife and resulted in a royal commission on rentals under Sir Michael Myers in 1948. There were also further complaints concerning the Public Trustee's performance in collecting unpaid rent. A petition of Rangihuna Pire and others summed up the criticism:

the West Coast rents were not being paid to the Maoris, partly because lessees were in arrear owing to the slump and partly because of mal-administration by the Department.<sup>52</sup>

The Myers commission reported that Maori had 'suffered grave injustice' in the reduction of their rents since 1934.<sup>53</sup> It recommended that the Maori beneficial owners be compensated by a payment of £30,000 from accumulated profits in the Native Trustee's account, the administration of the leases having been transferred to the Native Trustee in 1920. We find it hard to understand why the Native Trustee was expected to pay, when any rent shortfall had properly to be met from Government funds or by the lessees. The commission had a number of recommendations for the assessment of rentals in future, however, and these were given effect to by the West Coast Settlements Reserves Amendment Act 1948.

The 1948 Act affected 474 leases covering 71,643 acres of reserves. The leases were to be cancelled from 1 January 1948 and replaced with new leases – for 21 years and perpetually renewable – with a new system of valuation. The rentals were to be 5 percent of the unimproved value of the land, with the valuation determined by a committee of three, one each nominated by the Valuer-General, the Maori Trustee, and the West Coast Settlement Reserves Lessees Association.

### **9.3.6 1955 legislation, fragmentation, amalgamation, and incorporation**

A variety of laws for the leasing of Maori reserves, some 43 statutes in all, covering, in addition to Taranaki, reserves in Palmerston North, Wellington, Nelson, Westland, and elsewhere, were brought together under the Maori Reserved Land Act

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50. *In re a Lease; Native Trustee to Crocker* [1935] NZLR 1030

51. See s 19(5) Native Purposes Act 1935

52. MA 93/1, 'Royal Commission to Inquire into the Operations of the Law Relating to the Assessment of Rentals under the Leases of the West Coast Settlement Reserves', 1948, p I.1 (cited in doc M20, p 12)

53. M Myers, A M Samuel, and H T Reedy, 'Report of Royal Commission Appointed to Inquire into and Report upon the Operation of the Law Relating to the Assessment of Rentals under Leases of the West Coast Settlement Reserves', 8 March 1948, AJHR, 1948, G-1, p 6

1955. The Act had two main purposes: to standardise the leases of Maori reserves on a national basis and to deal with rapidly fragmenting beneficial interests. Rentals were fixed at 5 percent of the unimproved value with perpetually renewable terms of 21 years, and the Act gave the Maori Trustee authority to convert any outstanding term leases to leases in perpetuity.

By this time, the owners, now dispossessed of their lands for nearly a century, had grown dramatically in number. Just one owner in a 30- or 40-acre allotment, which was the average allotment at the time that the reserves were created, could now have more than a hundred descendants, and most of these were likely to be living outside Taranaki. In the result, there were many whose shares in land had become exceedingly small through the compounding of Native Land Court successions over the years. The following perspective was given in the House when the 1955 Act was passed:

Many of these minor amounts are so small that they are not worth collecting. Another factor is that the original beneficiaries were small in number and in a confined area. Over the years such tribes as the Taranaki and Ngaitahu, which hold reserves, have spread out over New Zealand, and their members have gone into the cities and taken up other interests. They have practically no knowledge of their Maori Land interests and they just do not care.<sup>54</sup>

The continuing disassociation of Maori from their ancestral land finally became memorialised in 1963, when the interests of all owners in every revenue producing reserve from the north to the south of Taranaki became pooled in one grand amalgamation. Following a report on the state of Maori land in 1960,<sup>55</sup> and pursuant to a statutory direction in the Maori Purposes Act 1962, in 1963 the Maori Land Court amalgamated the owners into one title, which it called the Parininihi-ki-Waitotara reserve. The title comprised the remaining 71,969 acres of perpetual lease land. No doubt the amalgamation was administratively convenient owing to the many owners and their dispersal, but it had nothing to do with the customary preference of Maori. Every person in every hapu who had inherited land no longer held that interest in their home area but had an interest instead in every reserve throughout Taranaki, irrespective of their hapu affiliations. It underlined that in effect the owners' interests were no longer interests in land; they amounted to no more than a right to share in rents according to the vagaries of share devolutions.

The Government then addressed the issue of the small, fragmented shares. By sections 3 and 7 of the Maori Purposes Act 1962, shares worth less than \$20 were vested in the Taranaki Maori Trust Board for a Taranaki education trust. As at 1975, the board held 5956 shares of the 1,280,418 shares in the amalgamation.

The process of assuming uneconomic shares for general purposes has the potential to restore hapu ownership as interests continue to fragment over generations. In this case, however, the uneconomic shares vested not in the hapu traditionally associated with the land but in a regional body.

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54. M Corbett, Minister of Maori Affairs, 12 October 1955, NZPD, 1955, vol 307, p 2948

55. J K Hunn, *Report on Department of Maori Affairs*, Wellington, Government Printer, 1961



Allied to the growing severance of Maori from their land were land sales. The Maori Reserved Land Act 1955 enabled the Maori Trustee to purchase lands for on-sale to lessees. The Maori Affairs Amendment Act 1967 gave direction to the Maori Trustee to buy what lands the trustee could for the benefit of the lessees. Sections 155 and 156 of that Act enabled the lessees to buy the freehold of their leases. The Maori Trustee was authorised to sell to the lessees, at 10 percent of the unimproved value, if the owners were 'willing to sell and in sufficient numbers'. The amalgamation order facilitated sales, enabling the Maori Trustee to canvass and to aggregate individual sellers in order to sell blocks, even if the former owners of those blocks were opposed to selling. Between 1968 and 1974, 16,325 acres were sold from out of the amalgamated title, representing about 22.78 percent of the reserves as held at 1948. The power of sale was repealed in 1975.

The Maori Affairs Amendment Act 1967, with the wide power of sale that it gave to the Maori Trustee, stimulated Maori to renew the pressure to recover the control of their lands. Owners formed the West Coast Settlement Reserves Advisory Committee to establish an incorporation to wrest control from the Maori Trustee.<sup>56</sup> At public meetings at Manukohiri Marae in 1969 and Hawera in 1974, owners voted strongly in support of an incorporation. With pressure from the advisory committee and groups in other places affected by reserved land leases, the Government established the Commission of Inquiry into Maori Reserved Land ('the Sheehan commission').

The task of the Sheehan commission was to review the Maori reserved land leases nationally. It held one sitting in Taranaki and considered 396 leases of 58,249 acres. Like its predecessors, this commission was also highly critical of the perpetual leases. In reporting in 1975, it noted:

There are in fact four distinct parties concerned. These are the Legislature, the Maori Trustee, the lessee, and the beneficial owners who are represented by the Maori Trustee . . . The beneficial owners are not a contracting party and their role is a completely passive one. They are treated as children or persons under disability. They are not well informed upon the law or the facts concerning the lands in which they have an interest. They are not adequately consulted either . . . or indeed capable of being consulted, even when major changes in the law or the leases which affect their interests are contemplated. Even on occasions when they have expressed views on these matters their representations have not carried weight.

It continued:

in reality the parties who alone are free to determine the nature and terms of the leases are Parliament, ie, the Crown and the lessees . . .

and concluded:

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56. Document M18, p 92

to call the Maori Trustee a free, responsible, and informed person entering freely into a contract on behalf of those whom he represents, is completely unreal and indeed to call it absurd would not be too harsh a term.<sup>57</sup>

In what were then dramatic proposals in the light of the preceding centuries' norms, the commission recommended five-year rent reviews, the indexation of rentals, a basic rent of one percent above that for Government stock, and the administration of the leases by the owners through representative organisations; but the commission fell short of recommending that the leases be terminated. Most of the commission's proposals were not implemented, save that relating to the request of the advisory committee that the administration of the reserves should pass to an incorporated body of owners.

Maori incorporations owe their origins to policies developed by Maori leaders last century, essentially as a land management device. As further provided for under Part IV of the Maori Affairs Amendment Act 1967, an incorporation allowed Maori landowners to manage their lands through a collectively elected committee. In this case, the whole of the perpetual lease reserves would be vested in an incorporation of the owners, and every owner would receive shares equal to the value of their previous land interest. The owners would become as equity shareholders in an incorporated company, having shares but no direct interest in a particular block of land.

The Sheehan commission outlined the advantages and disadvantages of incorporation: it may cause owners to lose some identification with their lands, (although in this case, that had already happened as a result of the amalgamation); succession to incorporation shares was determined by legislation, not Maori custom (although Maori custom had become largely meaningless in Maori land law in any event); and the lands would still be subject to the statutory leases whether or not an incorporation were formed.<sup>58</sup> On the other hand, an incorporation would mean that the owners could now manage the leases themselves; it would dispense with the need for expensive meetings of owners, which might not reach the necessary quorum; it could more easily purchase the interests of anxious sellers for the benefit of Maori, not lessees; it could readily speak for the owners as a whole; and an incorporation could address the problem of share fractionation through more effective management of uneconomic interests.

Counsel for the advisory committee contended that, although it would be impossible to know whether a majority in share value supported its proposal, it had nevertheless obtained 2500 signatures in favour out of some 5000 traceable owners. On that basis, the commission recommended in favour of an incorporation.

As a result, the Parininihi-ki-Waitotara Incorporation ('the PKW Incorporation') was established by an Order in Council of 16 February 1976.<sup>59</sup> It was to receive 55,137 acres from the Maori Trustee to manage, being the balance lease land then remaining, and it would administer the leases and rents, subject to the provisions of

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57. 'Report of Commission of Inquiry into Maori Reserved Lands', 12 December 1974, AJHR, 1975, H-3, pp 61 et seq

58. Ibid, pp 27-28

59. The Parininihi-ki-Waitotara Order 1976 (1976 No 43)

Part IV of the Maori Affairs Amendment Act 1967. It was obliged, however, to carry as well a \$400,000 debt from the previous administration, although this could be represented in an arrangement for 25 percent of the incorporation's shares to be held by the Government. On 16 July 1976, the Maori Land Court appointed a committee of management of seven. The court rejected submissions that the committee include an appointee from each of the main hapu groupings on the ground that the committee should act in the interests of all beneficiaries irrespective of tribal affiliations.<sup>60</sup> It represented yet one further step away from any accountability to hapu.

The formation of the incorporation completed the process of divorcing the owners from their traditional lands, for the owners no longer had an interest in any land but they did have a right to receive a rent. It was an ever-diminishing rent as land interests fragmented by succession over time. The structure, the incorporation of amalgamated owners, gave rise to serious anomalies. For example, we were advised that, after a long struggle, the family of owners previously associated with one block was able to purchase the freehold of that block. After more than a century, there was the prospect that the land that had been promised to their forebears by the West Coast Commission might be regained for their descendants' own use and occupation. To their way of thinking, the leasehold and freehold interests had merged with the purchase and they had become, at long last, the absolute owners. In fact, they are only tenants. They are only tenants because the land is owned by the PKW Incorporation. They must pay rent to the incorporation or they must now purchase the freehold.

We have not investigated the particular case. We have not examined whether the shares in the incorporation could be offset against any purchase price. The incorporation, although a claimant, gave no submissions, response, or information on this and similar concerns. We understood from those making the claim that a practical solution has not been found, that there is now a tension between the incorporation and this group, and that, as far as the group is concerned, it is paying rent for its own land. There were several calls that the PKW Incorporation should be broken up for each hapu to administer the leases in its own area.

Accordingly, arguments still abound as to whether the decision to incorporate was good or bad, and accusations of error are still made against one or other person. We consider no person was to blame, only the system that took the control of land from Maori in the first place and vested it in courts, officials, and 'professionals'. The fault was with the Government – the enforced change of land tenure, the confiscation of control and possession, the imposed perpetual leases, the statutory direction for amalgamation, the vesting of uneconomic interests in a regional board, and the making of a situation where a regional incorporation, which was contrary to hapu interests, was the only viable option if Maori were to rescue the last vestiges of something to administer.

While it may have seemed the administration could do no more than supervise leases and collect rents, there was also the prospect that rents might be accumulated,

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60. Document M18, p 97

that the shares of missing owners might be pooled, that the income accruing to uneconomic shares might be retained, and that the whole might be utilised to buy up leaseholds. There was a good precedent for such an approach from the strategies adopted by the adjoining peoples of Atihau–Whanganui.

In fact, we understand the PKW Incorporation has embarked on a programme of selling land, about 20 percent having been sold between 1976 and 1990, representing 10,669 acres of the 55,137 acres vested in it at the time of incorporation.<sup>61</sup> Apparently, the policy was to:

increase the rate of return to the shareholders through investments in other areas and thereby to make the incorporation an attractive proposition not only to leave money in, but ultimately to attract shareholders to take up more shares.<sup>62</sup>

The option of buying out lessees was not supported by the incorporation because 'its return would only marginally improve'.

Again, it seems to us that things had progressed so far that certain other options were no longer available. It was too late to break the incorporation into several hapu units, for example. The amalgamation order had been made more than a decade previously, and because lands had since been sold, it could not be canceled. The lands were sold not because the former owners of the affected blocks had agreed but because an aggregate of sellers in the amalgamation had sufficient shares for the blocks excised. Accordingly, it may be too late to turn back the clock, but it must be noted none the less that several who appeared before us were incensed over the incorporation's sale of land, the inability of hapu groups to recover their ancestral land even after buying out the leases, and the inability of hapu to control their own lands in their areas.

Thus, it cannot be assumed that the interests of the shareholders are no different from those in any public company, where the only concern is to make the most money. Presumably the incorporation's shareholders are now in several categories. There could be some who joined to become investors. They may be satisfied with the incorporation's policy, but we were not informed that there was anyone in that category. There may be many who, following the sale of their traditional lands, would now prefer to have their money and not be locked into something that they might see as no more than an investment company. There could be others again, however, who would see in the incorporation a chance to re-establish tribal enterprises. That would require some major reconstruction. Then, we are informed there are those who want their land back. This last group and the incorporation appear to be in mortal conflict. On these matters, it seems to us, the incorporation's Maori policy is far more important than those dictated solely by commercial imperatives, but if the incorporation does have a Maori policy, it has not been made known to us.

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61. Per E Tamati, 1990, doc A17, p 87

62. Per E Tamati, 1988, evidence in Ngai Tahu claim, Wai 27 record of documents, doc N10, pp 8–9

### **9.3.7 Termination and the Waitangi Tribunal**

The movement to terminate the leases made no progress for another 15 years, when in 1991 the Waitangi Tribunal reported on the perpetual leases of some 5900 acres of reserved land on the West Coast of the South Island. These lands had also fallen under the Maori Reserved Land Act 1955.<sup>63</sup> As the issue was generic to several places, the PKW Incorporation made submissions on the perpetual leases under that Act to the Tribunal hearing the Ngai Tahu claims. The Tribunal found the legislation imposing a perpetual right of renewal to be in breach of rights of Maori to the protection of their property under article 2 of the Treaty. It recommended that the leases be converted to terminating leases after 42 years, but with market rents to apply and five-year rent reviews for rural land and with lessees to be compensated by the Government for their losses. The Government replied in September 1991 by appointing a review team under Steve Marshall to consider the position generally in light of the recommendations of both the Sheehan commission and the Waitangi Tribunal. The review team came to similar conclusions: that all leases under the Act should terminate on the expiry of their current terms plus 21 years, with compensation to be paid to lessees.<sup>64</sup>

In 1993, the Government published alternative proposals as a basis for negotiations between Maori and lessees. Among other things, it suggested that the leases should terminate on the expiry of their current terms plus 42 years, but without compensation being paid to lessees. This would allow existing lessees a further tenure of 42 to 63 years, according to the current status of the lease terms.<sup>65</sup> The Minister of Maori Affairs then established the Reserved Lands Panel 1993, under a former Waitangi Tribunal member, Judge Trapski, to consult with all interested persons and report upon their comments. The panel reported in January 1994.

In January 1995, the Minister of Maori Affairs announced by media release that:

The Government will end perpetually renewable Maori reserved land leases and move them to market rents . . . [and] compensation based on a percentage of the unimproved value of the land will be paid to lessees for the loss of perpetual rights of renewal.

The Government also announced that legislation would be passed and the rents would change to market rates in three years. It was also advised that compensation paid to lessees would not be offset against funds set aside for the settlement of Maori claims. It was added that the issue of any compensation to Maori for past losses would be considered through the Treaty of Waitangi claims process.<sup>66</sup>

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63. See the Waitangi Tribunal, *The Ngai Tahu Report 1991*, Wellington, Brooker and Friend Ltd, 1991, pp 731–796

64. *Report of the Review into Leases under the Maori Reserved Land Act 1955*, 1991

65. See Te Puni Kokiri, *A Framework for Negotiation: Toitu te Whenua, Proposals for a Solution to Maori Reserved Land Issues*, Wellington, Te Puni Kokiri, 1993

66. See Te Puni Kokiri, *Toitu te Mana, Toitu te Whenua: Maori Reserved Lands Government Policy Decisions 1994*, Wellington, Te Puni Kokiri, 1995

The Minister of Maori Affairs then established a consultative working group under George McMillan to advise on a number of technical issues to be resolved before the introduction of the necessary legislation. The group reported in August 1995 and a Maori Reserved Land Amendment Bill is currently being drafted.

### **9.3.8 Reserves administration: conclusions and settlement perspectives**

In general, at the time they were created, the Maori reserves were the least desirable lands for farming. They included a significant proportion of bush requiring clearing and grassing. Initially, the reserves totalled 214,675 acres. They were passed to the Public Trustee for administration, and by 1912, 138,510 acres had been leased to settlers, most on perpetually renewable terms. Only 24,800 acres were farmed by Maori. Many of the original reserves that were not leased were too small to be economic and were sold, or they became too small as a result of successions and partitions. Between 1911 and 1976, about 63 percent of the Maori reserves was purchased by the Crown, most of that being on-sold to lessees. In 1976, about 25 percent of the reserved land, being the whole of the leased land remaining, was passed to Maori management through the PKW Incorporation. Some 20 percent of that has since been sold by the incorporation. Less than 5 percent (itself a small part of the confiscated lands) is owned, without hindrance, by Maori people today as Maori freehold land.

Our preliminary opinions follow. By the terms of the Treaty, Maori were solemnly guaranteed not merely the ownership of their lands but the control and possession of them. Emphasis is given to this position when the English and Maori texts of article 2 are read concurrently. The transfer of the administration of the reserves to Government-appointed trustees, the imposition of lease terms, the regular and unilateral amendment of the terms, and leases in perpetuity were all contrary to the Treaty's terms and principles. They were also inconsistent with specific promises that Maori would be allowed to live in peace on their reserves, which would be theirs forever. They were contrary to the promises in the Crown grants that the lands could not be leased beyond 21 years. The principles of the Treaty of Waitangi were thus subsumed by alternative and racist assumptions that Maori were unable to manage their own lands and that Maori land could be given for European possession without Maori consent. The subservient relationship thus created is especially apparent when one considers that Maori had to apply for the trustee's consent and show their farming ability in order to occupy their own property.

The West Coast Settlement Reserves Act 1881 and its amendments and regulations, the West Coast Settlement Reserves Act 1892 and its amendments, and the Maori Reserved Land Act 1955, with those associated statutes earlier referred to, were all contrary to the principles of the Treaty of Waitangi by denying Maori that possession and control of their lands that the Treaty had guaranteed to them. The sales and leases, being made without effective Maori control of the situation or consent, were invalid in Treaty terms.

In the management regime that the Government created, Maori and the lessees were not treated equally. Not only were the initial lease terms set by the

Government, but the lease terms were changed regularly without Maori approval and dramatically to their detriment. The lessees' position was regularly improved and relief was readily given to obviate unexpected changes of circumstance. That was not so for Maori when rents were eroded by inflation and frequent rent reviews were needed.

Settlers had long-term leases. Maori had unbankable licences to occupy. Despite this insecure tenure, more frequent rent reviews meant Maori were liable for more rent for these licences than the lessees were bound to pay for their long-term leases.

Maori interests were not protected. Nearly every legislative measure was in favour of the lessees, and on no occasions were Maori consulted on the legislative proposals. There were no initiatives to promote Maori interests by accumulating and investing rents to buy out leaseholds, by assisting Maori into farming activities, or by providing development assistance for lands not subject to leases.

It was contrary to Treaty principles, and the promise in the preamble that Maori would have the protection of the law, when the Government passed special legislation that overrode court decisions unfavourable to the lessees, prevented Maori from continuing with court actions, or extended the terms of terminating leases. It was inconsistent with its Treaty obligations when the Government ignored those many commissions of inquiry that criticised Government policy and sought a better deal for Maori.

Once the Government transferred the management of the reserves to officials, there was no direct contractual relationship between Maori and the lessees. The lease terms were set, and amended, by the Government. No question arises of disturbing the sanctity of private agreements in seeking to amend those terms now. There is nothing sacred about those contracts. They are entirely profane. The position is rather that the Government has created not a contractual relationship, nor even a situation of private competing equities, but two groups, each with valid, mutually exclusive, and distinct claims against the Government. Both have suffered damage and each is as innocent as the other. It was recently expected that Maori and the lessees might settle matters between them, but neither has truck with the other and each is bound to look to the Government for satisfaction.

For most of this century it appears to have been assumed that Maori would eventually accept that their lands had passed from their control, use, and occupancy forever. The resilience of ancestral land associations was not, however, appreciated. Maori would have trespassed to have walked on their own properties and though many sold out when traditional constraints were made irrelevant, for others the relationship to their ancestral land is as significant today as it was formerly and might even be heightened through being threatened. The first steps to disassociate the people from their land began with the confiscation of most of it and the imposition of individual ownership for the balance. That in turn ushered in title and share fragmentation. Fragmentation and the countervailing constructs of amalgamation, incorporation, and the conversion of uneconomic interests are all the result of cultural impositions. Contrary to popular beliefs, the current Maori land problems were made by Europeans, not Maori. Amalgamation was forced upon the people by circumstance and statute and was not freely agreed to.

Today, those who administer the amalgamated reserves are unlikely to know most of the shareholders: who they are, where they live, or how they fit into any family of interests. Most entitled to succeed will know nothing of the kinship bonds that determined their inheritance. Amalgamation and associated laws encouraged yet further land sales. The significance of the land was diminished for all except those few who still lived in the district and were trained in ancestral history, and the ownership of land became almost entirely divorced from the value systems of the culture.

The Government now proposes to terminate the Maori reserved land leases in perpetuity by legislation. We are unaware of the legislative proposals but assume that, in accordance with the Government's 1994 published proposals, all such leases will terminate at the end of the current term plus two further periods of 21 years. This could mean that, in the case of a lease renewed within a year prior to the passage of the legislation, it might not terminate for some 62 years.

In all the circumstances, such a lengthy delay in termination can be only excessive and unacceptable. No less than the immediate termination of the leases would be just in light of the claimants' history. In view of the competing equities, however, we would endorse the proposal in the *Ngai Tahu Report 1991* that all such leases in perpetuity should convert to term leasehold over two 21-year lease periods so that no termination should take effect later than 42 years from the enactment of the necessary legislation. It also appears to us there should be rent reviews at least every five years.

The Government noted in its 1994 decision that the issue of compensating owners for past losses may be considered through the Treaty of Waitangi process. It is readily apparent that Maori are entitled to compensation for loss of possession, loss of control, loss of land, and loss of rents through disadvantageous perpetual lease terms. We have made no assessment of the rent loss. Although the PKW Incorporation is a claimant in this inquiry, and although members of its committee of management attended hearings in a personal capacity, the incorporation made no submissions. The 1975 commission of inquiry made it clear, however, that rents were unrealistically low and rests between rent reviews unduly long. The Government formula meant conservative rents at the beginning of the 21-year period and minuscule rents at the end of it. To compensate for loss of rents from the 1960s alone could require some millions of dollars.

The loss was larger, however, than the loss of rent, and to say there was a grave injustice would be an understatement. The reserve administration was an overt exercise in cultural displacement and racial subjugation. A vibrant Maori society was broken. People were deprived of farming opportunities and the chance to grow with and be a part of the local economy. Investment opportunities were lost as well, along with the chance to develop new ventures from borrowing against the land. The business expertise and infrastructure that might otherwise have grown did not develop. The social cost has also to be considered. Kin group structures based on ancestral land interests were set asunder. People were forced from their land and the district with only the prospect of labouring for a living. The control of the reserves and the perpetual lease programme were forms of confiscation, forced removal, and



social control by administrative stealth. The loss of rent is as nothing, too, when compared with the damage to race relations. Perpetual leasing was the unkindest blow, for it visited upon succeeding generations the pain of knowing the family lands were held by another people; and as parents were forced to send their children away for work, they did so knowing how their own lands were worked by others.

If, as we believe, compensation is due for loss of rents or loss of use of the greater part of the reserves, then the question is: to whom is the compensation due, the shareholders in the PKW Incorporation or the affected hapu or both? The answer, in Maori terms, can favour only the hapu. Had matters gone the Maori way from the beginning, nothing would have passed directly to the individual as of right, for by Maori law, the individual's benefit equates to the individual's value to the group. Had Maori law prevailed, as it should have, all reserves would have been held for the benefit of the hapu. How could individuals be further compensated now, when they were not directly entitled in the first instance?

In any event, it is group compensation that is most needed for future cultural survival, with compensation to be held for the general purposes of those who belong to the hapu. It is the group, not the individual, to whom the land belonged; it is the group, not the individual, that has been most deprived of benefit; and the Maori loss has been the loss of the society that the group represents. To dissipate such moneys that may be available for the settlement of these claims by benefiting anonymous shareholders now scattered to the world would merely add to past injustice. The money should stay where the land is, for the people belong to the land, not the land to the people.

As a supplementary point, were compensation for loss of rents paid to shareholders, on the principles of English law instead of those of Maori, one would still need to establish those who were owners at the time the losses occurred. They are not the current owners. It would be necessary to bring back in for their share those who are no longer owners but were owners at the relevant time. This could represent the greater number. It would also be necessary to exclude any who only recently came in.

## CHAPTER 10

# ‘REFORM’

It is the Europeans who beguile us, they are the only race that knows how to beguile people . . . [It was] thought that the Maoris and Europeans were united together with one mind and love, but [the] unity was only at the lips, not for the body . . . There is not a year passes by without the Europeans buying Maori lands . . . If we are sick in body the Europeans are sorry for us, but if there is sickness about the land, they are not sorry . . . Perhaps some might say that the land was paid for [by] money, that is right, but land is the father of money.

Tamati Ranapiri, Te Wananga, 24 September 1874

It is absolutely essential, not only for the sake of ourselves, but also for the benefit of the Natives, that the Native titles should be extinguished, the Native customs got rid of, and the Natives as far as possible placed under the same position as ourselves.

F A Whitaker, 1877<sup>1</sup>

The continual attempts to force upon the tribal ownership of Maori lands a more pronounced and exact system of individual and personal title than ever obtained under the feudal system of all English speaking peoples had been the evil of Native land dealings in New Zealand.

Native Land Laws Commission, 1891<sup>2</sup>

### 10.1 INTRODUCTION

Like the arrangements made for the administration of the reserves, land tenure reform was also integral to the process of reconstruction that the West Coast Commission began. Ancestral laws on how lands were held, allocated, and inherited were displaced by Government laws that brought Maori into the Government system. Through the Native Land Court and various commissions, Europeans determined which Maori owned what lands and how ownership, devolution, and administration should be organised. Increasingly, Maori land became unrelated to Maori society and culture. This chapter considers how the reform came about and the impact it had on land sales and the land rights of particular hapu.<sup>3</sup>

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1. NZPD, 1877, vol 24, pp 253–254

2. AJHR, 1891, G-1, p viii

3. This chapter draws on various research reports, including H Riseborough, ‘Background Papers for the Taranaki Raupatu Claim’ (doc A2); J Ford, ‘The Administration of the West Coast Settlement Reserves in Taranaki by the Public, Native and Maori Trustees, 1881–1976’ (doc M18); M Benson and M Hohaia, ‘Alienation of Land within the Pariahaka Block’ (doc I17); G Byrnes, ‘Ngati Tama Ancillary Claims’ (doc M21); E Stokes, ‘Mokau: Maori Cultural and Historical Perspectives’ (doc F20); and E Stokes, ‘Research Material Concerning Ngati Tama’ (doc H18); and submissions by Greg White (doc F19).

## **10.2 THE COMPENSATION COURT, WEST COAST COMMISSION, AND NATIVE LAND COURT**

The Native Land Court, established in 1865, or the Maori Land Court as it is now known, was the primary instrument for Maori land reform in New Zealand. It made three major changes to the way Maori land was managed. First, according to its understanding of Maori custom, it determined who had land interests. Secondly, it allocated the land in separate allotments to individuals of the group according to defined shares and it controlled the subsequent devolution of interests by transfer or succession. Finally, it supervised the land's use, management, and alienation. For centuries previously, of course, all three functions of determining, allocating, and managing were undertaken by the hapu, apparently without major complaints.

In Taranaki, however, most Maori land titles come from the West Coast Commission, being land returned from confiscation. Like the court, the commission changed the customary perception of these lands as hapu property, granting them to individuals in defined allotments and in prescribed shares. The Native Land Court managed devolution and alienation from then on. Accordingly, although the instrument first used was different, there was no difference in result between the West Coast Commission, the Compensation Court, and the Native Land Court. Each made changes and converted communal customary tenure to individual ownership, and everything fell under the power of the Native Land Court in the end.

## **10.3 NATIVE LAND COURT DETERMINATIONS OF OWNERSHIP**

The Native Land Court also determined the ownership of lands outside the Taranaki confiscation boundary. This affected the Ngati Tama lands to the north and, to the east, the lands of Ngati Maru, Nga Rauru, and, to a lesser extent, Ngati Ruanui, Tangahoe, Pakakohi, and Whanganui. The Native Land Court's operations in the east were described in chapter 2, which concerned the Crown's purchase of lands between 1872 and 1881. The lands purchased are shown in figure 3. As earlier described, the court's role was marginal. It did not so much determine ownership in those cases as confirm the title of certain owners, as pre-arranged by the Government. Alternatively, it partitioned severances for non-sellers.

Figure 3, however, also discloses a large territory not covered by those transactions, which could have only been Maori customary land at some time. Assuming the ranges that divide Taranaki from the Whanganui River catchment area also describe a reasonable boundary between the hapu of Taranaki and Atihau Whanganui, the area affected could have been some 360,000 acres. We have no particulars for the alienation of most of those lands at this stage. Should we produce a further volume to this report, those alienations would be covered there. We can say at this stage, however, that the customary interests in all those blocks were extinguished after 1865, when the lands passed through the Native Land Court to be awarded to individuals before being sold.

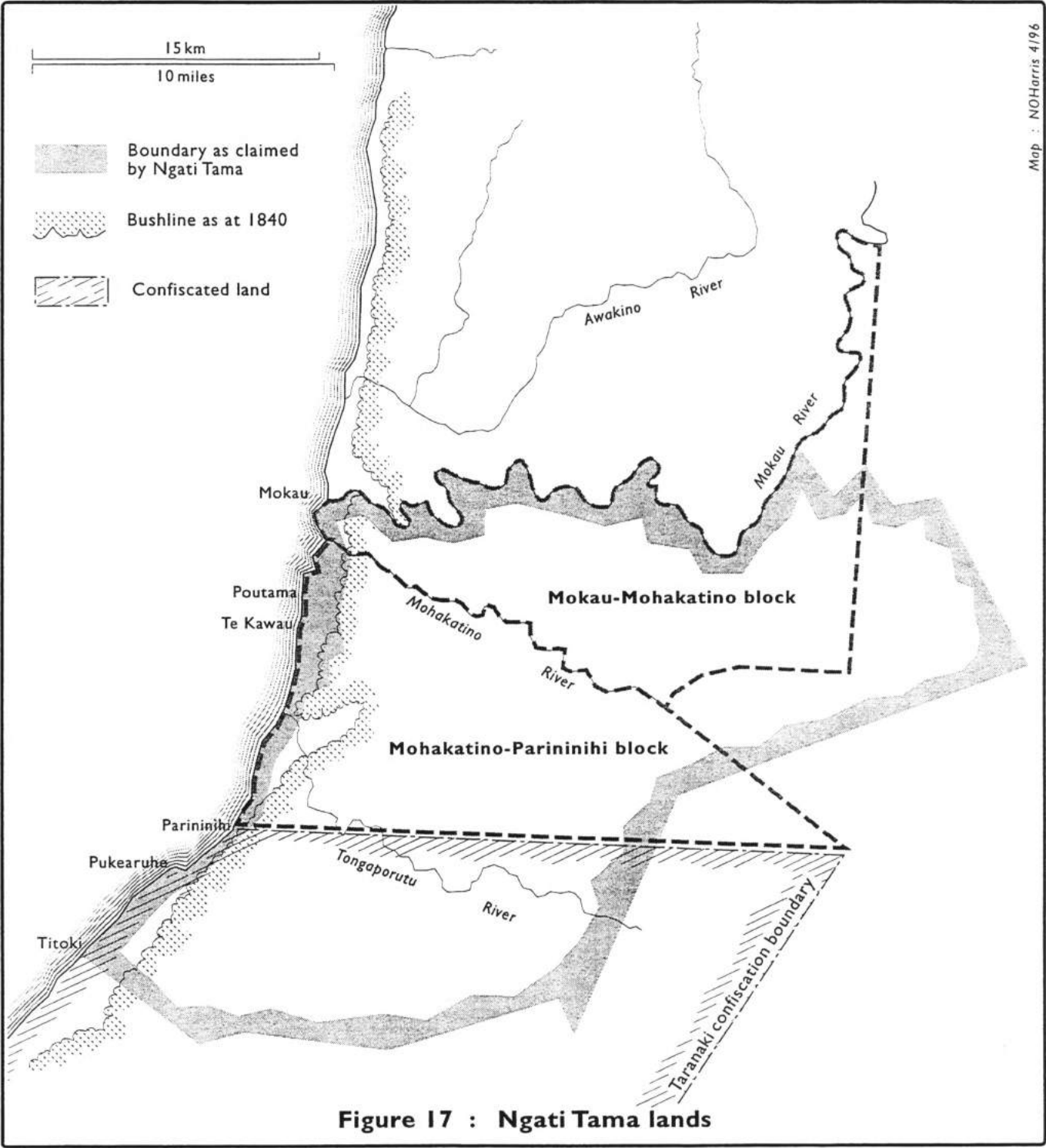
For the moment, we refer to the area to the north of the confiscation line that passed through the Native Land Court. The result there was astonishing, because the ancestral lands, which clearly belonged to Ngati Tama, were awarded to other hapu.

By descent from the original peoples and subsequent migrants of the Tokomaru waka, Ngati Tama were the ancient holders of a large territory from the far side of the Mokau River in the north to Titoki in the south. Subsequently, by war and marriage, Ngati Tama and Ngati Maniapoto had fused at Mokau. Ngati Rakei and other hapu emerged there with connections to both groups in the usual Maori way. Of course, while being connected with both Ngati Tama and Ngati Maniapoto, Ngati Rakei and the associated hapu also had an autonomy of their own.

During the nineteenth-century musket wars, when Waikato and Ngati Maniapoto combined to take the fighting into Taranaki, Ngati Tama and others moved south at different times in search of arms from Cook Strait. After the fighting, and in the absence of Ngati Tama, Ngati Rakei occupied small pockets of Ngati Tama land along the coast. Disparate groups of returning Ngati Tama then settled at Tongaporutu and other places, but most Ngati Tama were still absent when the wars with the Government began. There is no evidence that Ngati Tama participated in those wars. Early in the fighting, however, and even before the formal confiscation of the Ngati Tama land had been effected, the military established a redoubt and settlement at Pukearuhe. The southern portion of the Ngati Tama lands was then confiscated in 1865. The area referred to is shown in figure 17. It has been estimated to comprise 74,000 acres.

Following a sitting of the Compensation Court at New Plymouth in 1866, an out-of-court arrangement was made for a handful of 12 persons to receive a mere 3458 acres in settlement of the 74,000 acres wrongly taken. The reasons for that settlement are not known. Because at that time many of Ngati Tama were at the Chatham Islands, and some were possibly at Parihaka, and because adherents of Te Whiti did not recognise that any court or commission had authority to determine Maori land allocations, it is likely that most either declined to or were unable to participate. Given that in our view the Ngati Tama land was not liable for any confiscation at all, we can only presume that the Government agreed to return such a small area because, as had happened throughout north Taranaki, nearly all the bush-free lands on the thin coastal strip had already been taken by Europeans, this was all the cleared land that remained, and it was only the cleared land that Maori were thinking of at the time. We likewise presume that only 12 persons were involved because no one else made claims and the Government agent thought all others would be disentitled as either absentees or rebels. In any event, of the 74,000 acres of Ngati Tama confiscated land, only 3458 acres returned and then to only 12 persons.

Between 1865 and 1868, more Ngati Tama returned home from the Chatham Islands concerned for their ancestral lands. They squatted on those lands, but some later went to Parihaka and became part of the protest movement. They participated in ploughing at Pukearuhe and other places, were arrested and imprisoned, and were not released until 1881. They then returned to Parihaka but soon after it was invaded. Subsequently, they were involved in Parihaka's restoration.



In 1882, soon after the invasion, the Native Land Court sat at Waitara to determine the ownership of the lands north of the confiscation line in two blocks: Mokau–Mohakatino of 55,837 acres and Mohakatino–Parininihi of 66,163 acres.<sup>4</sup> These blocks are also shown in figure 17. At this crucial time, Ngati Tama were at Parihaka and were not popular with either settlers or officials. They could not be excluded from the land as rebels because there was no evidence that they were and because those who had returned only after the war could not possibly have been involved in the fighting. Yet, in officials' eyes, their protests had been the cause of all the trouble. Followers of Te Whiti were further regarded as suffering from some form of dementia and were also unpopular as absentees. The rights of absentees had been rejected by both Spain's Land Claims Commission and the Compensation Court. Each absentee, if admitted to ownership, would reduce the land available to settlers, and yet no absentee could be excluded on the ground of some war complicity.

We consider that it was a foregone conclusion that the Native Land Court would find against Ngati Tama in respect of the lands north of the confiscation line. The Native Land Court judges were also the judges of the Compensation Court. The Compensation Court had earlier excluded absentees and it had further acquiesced in a settlement in respect of the lands south of the confiscation line whereby only 12 persons received compensation for the Ngati Tama confiscations. For the court to have admitted the whole of Ngati Tama to the lands north of the confiscation line would have made a mockery of that settlement and the Compensation Court's part in it. The Native Land Court was also very political at this time and sensitive to which groups were in the Government's favour. In addition, there is evidence that at that time the court was seeking to ingratiate itself with the Ngati Maniapoto side of Ngati Rakei in order to be accepted into the King Country.

In any event, in a brief judgment the Native Land Court determined that Ngati Tama had been expelled from their lands by Waikato–Maniapoto conquerors and that the conquerors had taken possession of the vacant land, which possession, though 'sparse', was none the less sufficient to show 'a domiciliary intention'. On the other hand, the Ngati Tama reoccupation was 'desultory' and 'trivial' in the court's view and it was insufficient to displace the conqueror's possessory title, obtained by Maori custom.

Though written with the precision and clarity one associates with the chief judge of that court, the decision none the less suffered the impediment of having nothing at all to do with Maori custom, despite its pretensions to the contrary. Like the Compensation Court, the Native Land Court elevated conquest according to European tradition, while Maori placed more weight on whakapapa (genealogy) and ancestral associations. These were Ngati Tama lands. They had been their lands for centuries, and by Maori custom, the Ngati Tama ancestral interests were not so readily extinguishable. An ancestral history is a fact that cannot be written out of existence. The only question was whether some adverse possession had intervened to prevent Ngati Tama reoccupying their ancestral lands. Clearly, none had, or at

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4. See the evidence of Greg White (doc F19), p 7, and AJHR, 1911, I-3A, p 218

least not for the whole of the land. Any adverse possession was confined to a few pockets and did not affect the greater part. Ngati Tama could not have been stopped from returning to their land, and they in fact did return. In any event, the possessors of those pockets were not in fact the so-called conquerors. The Waikato–Maniapoto invaders came and went. They did not perfect by occupation such rights of conquest as they may have claimed. Those who occupied the lands, in the absence of Ngati Tama, were Ngati Rakei, who were as much related to Ngati Tama as they were to Maniapoto. Their entry upon the land was limited in scope and concept. They settled in the absence of Ngati Tama, and their right to settle in their absence was not by conquest but by whakapapa.

In Treaty terms, however, the main concern is that the Native Land Court was authorised to determine such a question. It had no business to do so in this instance. The Treaty vested the authority of Maori lands in Maori, not in the Native Land Court, and that must have included the right of Maori to maintain their own way of reaching agreements. To the extent that it presumed to decide for Maori that which Maori should and could have decided for themselves, the Native Land Court encroached on Maori autonomy and was acting contrary to the Treaty of Waitangi. It follows that the legislation that permitted of that course was also inconsistent with Treaty principles.

It needs to be appreciated, then, that Maori dispute resolution was founded not upon finite rules, like those the Native Land Court imposed, where some won and others missed out, but upon the reaching of pragmatic solutions. Had the court permitted of a Maori process, a just and pragmatic solution was likely. The elements were there. Waikato made it clear that they supported the return of Ngati Tama. If, in the court's reckoning, these were the people who were supposed to have taken the land by conquest, then that fact, known to the court, deserved weight. In any event, a pragmatic solution was at all times feasible and the court need not have done more than record it. Ngati Rakei occupied only pockets of land. Nothing could prevent the hapu from fusing in the usual Maori way or keep Ngati Tama from the balance – nothing, that is, but the Native Land Court.

The real problem appears to have been that the Native Land Court was mainly concerned with promoting itself. During the course of the hearing, it had been contended, for example, that Ngati Tama had returned to the land at the invitation of Waikato and the Maori King. Here was the court's opportunity to elevate itself above the King, perhaps in retaliation for the King's earlier expulsion of judicial officers from Waikato, or to gain favour with Maniapoto, who were not entirely happy with the King at that time. The court wrote:

Whether [the Ngati Tama occupations] were made under the auspices of Tawhaio, chief of Ngati Mahuta, who is sometimes called the Maori King, does not appear; and if it was shown that they were made under such sanctions, that authority would be of no avail in this court; for we do not recognise in Tawhaio or any other man the right to dispose of another man's property.<sup>5</sup>

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5. Mokau–Waitara minute book, vol 1, pp 48–52, NA

The court overlooked that, at that time, Maori were willing to submit to the adjudication of the Maori King and that the King's invitation was probably a judgment. The judge also overlooked that he himself was presuming 'to dispose of another man's property'.

In the same vein, Ngati Tama were ridiculed by the court, along with Te Whiti and the Parihaka people. It was said that they were 'seduced by the fanatical influence of Te Whiti, or rendered miserable by the constant interference of Te Rerenga' and that those who had joined Te Whiti had done so in fits of 'temporary insanity'.

We do not, however, infer that Ngati Tama were solely entitled to the whole of the lands to the Mokau River. Though Ngati Tama claims that right, we have not heard from the adjoining interest groups at this stage. Current research material suggests that Ngati Rakei was an autonomous hapu at Mokau at this time, and accordingly, it may be doubtful that an exclusive Ngati Tama authority extended much or at all beyond the Mohakatino River.<sup>6</sup> Until such time as other groups are given notice and are heard, or otherwise agree, we are assuming the Ngati Tama loss through the Native Land Court was probably equivalent to the greater part of the Mohakatino-Parininihi block, say 66,000 acres. It may not be necessary to determine the matter more precisely, unless the Government proposes compensating every lost acre or unless it is crucial to assessing the apportionment of compensation between hapu.

The result for Ngati Tama was disastrous. We are not aware that other hapu were affected as seriously. Without any evidence that they had participated in the war, 74,000 acres of their land were confiscated, of which a mere 3458 acres were returned, and then to only 12 persons. The remainder of their lands, probably some 66,000 acres, was transferred to others, leaving the rest of Ngati Tama landless. The West Coast Commission noted their plight, however, and recovered a further 576 acres for them. The commission was critical of the Native Land Court, reporting on 26 April 1884:

The ancestral northern boundary of the Ngatitama tribe was the Mokau River, which was many years ago shifted to Mohakatino by the peace arrangements, after long hostilities. Subsequently the Northern tribes drove the Ngatitamas from the district, and they migrated to the South, where they remained until the arrival of European settlers, when they began to return, and settled in many places so far as Tongaporutu. During some of the meetings held in Waikato under the auspices of the Maori King movement the Ngatitamas were invited to attend, which they did, and were formally promised the restoration of their ancient rights to the land, and recommended to live on it, which they were doing (so far as Tongaporutu), when the Native Land Court sat and by its decision completely upset the understanding which had been arrived at. So far as I have been able to ascertain the facts, the Ngatitama failed to establish their case in consequence of a mistake in the manner in which it was brought before the Court, and if they had been allowed a rehearing, for which they applied, they would most probably have succeeded in establishing their right to the land between Tongaporutu and the Confiscated Block; but the Chief Judge of the Land Court positively refused a

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6. See doc F20, p 17



rehearing. The Ngatitama, being thus stripped of all the land they had, were thrown on the world, and appealed to the Government. The Hon the Native Minister, Mr Bryce, suggested to the Commissioner to locate them inside the confiscated boundary; and, there being a small block of about 576 acres near Pukearuhe available for this purpose, which they were willing to accept, it was surveyed for them, and they have been put in possession of it.

Some of them had previously been occupying a portion of town-belt on the south side of the Town of Pukearuhe, which is never likely to be more than a town on paper, and which had, by a former arrangement with the Crown Agent, been made available for settling Native claims. It has been thought desirable to add 71 acres of this belt to their award.<sup>7</sup>

The reserve of 576 acres, which was all in bush, was individualised and apportioned between 50 persons, giving some 12 acres each. For having lost some 134,000 acres, Ngati Tama received in all 4056 acres, even though they were not involved in the war. It is hardly surprising Ngati Tama are not a numerous tribe today, for there was no land to sustain them.

#### **10.4 LAND REFORM AND THE TREATY**

The process of individualisation begun by the West Coast Commission was finished by the Native Land Court. It will be recalled that less than 0.5 percent of the land that was reserved for Maori was held in the name of hapu. None of that 0.5 percent was development land, but even so, eventually all of it either was individualised by the Native Land Court or came under the Native Land Court's control. The same happened to all other Maori lands. Similarly, the court supervised all matters relating to the ownership, devolution, and transmission of land and the appointment and supervision of land management bodies.

Looking to a number of arrangements by Maori for the management of their lands last century, it is apparent that various land reforms were feasible to meet the twin needs of individual development and community cohesion. We refer, for example, to the proposals of Paora Tuhaere of Orakei (see the Waitangi Tribunal's *Orakei Report*), Te Rangihwinui Keepa (Major Kemp) for Atihau-Whanganui, or the Tuhoe people, as eventually recognised in the Urewera District Native Reserve Act 1896. Elements of such schemes are still apparent today in Maori proposals, such as those for papakainga housing. The examples illustrate that, if land reform was necessary for Maori development, Maori were still better able to propose those reforms themselves, for they based them on their own value systems.

Collectively, the early proposals show that Maori still saw the purpose of the remaining Maori land as being to maintain the social and cultural base of the associated traditional communities. This gave preference to those who lived on or by the land, while not disowning the associational interests of absentees, for the prosperity of the community depended upon the contributions of its residents. It also required such constraints on individual liberties as might be needed to uphold the

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7. West Coast Commission, AJHR, 1884, A-5A, p 7

social and cultural integrity of the group. In practice, this meant restrictions on individual land sales. In brief, the purpose was to give effect to the traditional ethic that the land supports those who support the local community, but no others.

The Government's system ensured that, as succession orders were made to pass lands to children and grandchildren, whether or not they continued to live locally, interests fragmented in geometric progression over the generations. The share of one owner when the land was first Crown granted could be held by over 100 today. Multiple ownership is now the usual characteristic of Maori land, and since this is usually regarded as being a consequence of Maori custom, we need to emphasise once more that custom had nothing to do with the title arrangements that the Government imposed. Fragmentation of title was the second consequence as competing sets of owners sought to partition an ever diminishing quantum of land. Title dispersal followed naturally, as lands, made unworkable through increasing ownership, were sold, leaving a scattering of Maori lands in small and dispersed titles. Absentee ownership became the norm, for only one of the many owners could live upon the land, and most Maori living upon the land were not owners of the freehold but tenants to the numerous absentees. No benefit from rents accruing to absentee shares passed to the local community. Rents followed after the increasingly scattered owners throughout New Zealand, Australia, or wherever else they might be, and the economic power of the land was dissipated. As ownership grew and shares became not worth pursuing, the rents of deceased or missing owners passed for the special purposes of the Maori Trustee. Rents accruing to uneconomic interests passed to the Taranaki Maori Trust Board for general educational purposes. Nothing passed to the hapu to which the land really belonged. The irony is that the court that first opposed admitting the interests of absentees introduced the system that made absentee ownership the norm.

The Native Land Court system imposed by the Native Land Act 1865 and subsequent legislation, or as imposed by the West Coast Commission, deprived Maori of the authority to make their own determinations on the ownership, devolution, management, and alienation of their land. As such, that legislation and those systems were contrary to the principles of the Treaty of Waitangi. The prejudice to Maori lay in the community's loss of traditional control of the lands in its area and the fact that the lands ceased to provide a benefit to the community that once depended upon them. A more particular prejudice was caused by the increased alienation of Maori land, multiple land ownership, fragmentation of title, title dispersal, absentee ownership, uneconomic interests, missing owners, unbankable titles, tenant farming, rent dispersal, and administrative control by the Maori Land Court, the Maori Trustee, and, later, the Maori Affairs Department. In social and cultural terms, Maori land had been made an illusory and a meaningless asset for the people and community it traditionally served. The Maori land structure that survives today bears no relationship to the customary tenure and values of ancestral law. Ironically, it also does not equate to the Western system it was meant to emulate: there is no general land in such a similar state of multiple ownership and fragmentation. These results would not have happened had the Government

acknowledged the right of Maori autonomy and had it allowed Maori to make their own decisions on how to manage their lands.

## **10.5 LAND REFORM, LAND ALIENATION, AND RESOURCE LOSS**

The proclivity of the Government has been to declare solemnly the reservation of Maori lands as a permanent estate for future generations and then, soon after, to purchase them. Chapter 2 disclosed how lands reserved from sales before the wars were individualised and leased or sold shortly afterwards, so that today only 9.6 percent of the lands that were reserved are still held in Maori ownership. The lands largely comprise sacred sites. In the case of the reserves created by the West Coast Commission in 1884, the lands were again individualised, but in most cases, restrictions on sale were incorporated into the Crown grants.

Title restrictions on the sale of land were removed, however, when memorials were not brought down on new titles following partition. Further, sales were progressively permitted by legislation from 1892. Section 109 of the Native Land Amendment Act 1913 permitted the Crown to purchase partitioned reserves either from the Public Trustee with the owners' consent or directly from the owners. Sections 155 and 156 of the Maori Affairs Amendment Act 1967 enabled the Maori Trustee to sell the freehold of reserves to lessees holding perpetual leases.

Eventually, 222,693 acres became vested in the Public Trustee, being 214,675 acres reserved by the West Coast Commission and the then balance of the lands reserved from purchases, 8018 acres. As at 1974, of that 222,693 acres, 141,394 acres, or 63 percent, had been purchased by the Crown or sold by the Public Trustee or the Maori Trustee to lessees. A further 56,993 acres, or 26 percent, was held for Maori under perpetual leases and was to pass to the PKW Incorporation for administration. The balance, 24,306 acres, or 11 percent, was released from reserve restrictions for the use and occupation of Maori, being some farms and a variety of scenic, marae, cemetery, or other reserves. Figure 18 illustrates the extent of loss in the various regions.

The Parihaka block is referred to as a case study.<sup>8</sup> The total area eventually returned in Crown grants was 21,760 acres out of an estimated block of 58,000 acres. The bulk of the reserve, about 19,976 acres, was located on the inland side of the coast road. Reserves on the seaward side, the most valuable for farming purposes and the site of the traditional cultivations, were earmarked for European settlers. The Maori reserves on the seaward side were small and isolated, comprising only 1509 acres and with seven of the allotments being made to fulfil promises to individuals.

From 1882 to today, at least 70 percent of the Parihaka reserves has been sold, mainly to the Crown. Today, 2062 acres are held by the PKW Incorporation subject to perpetual lease. Owing to the amalgamation earlier described, this land is owned by Maori from every hapu throughout Taranaki and is no longer held by the people customarily associated with it. Some 15 percent of the original reserves remains in the ownership of the Parihaka people as Maori land.

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8. See doc I17, p 10

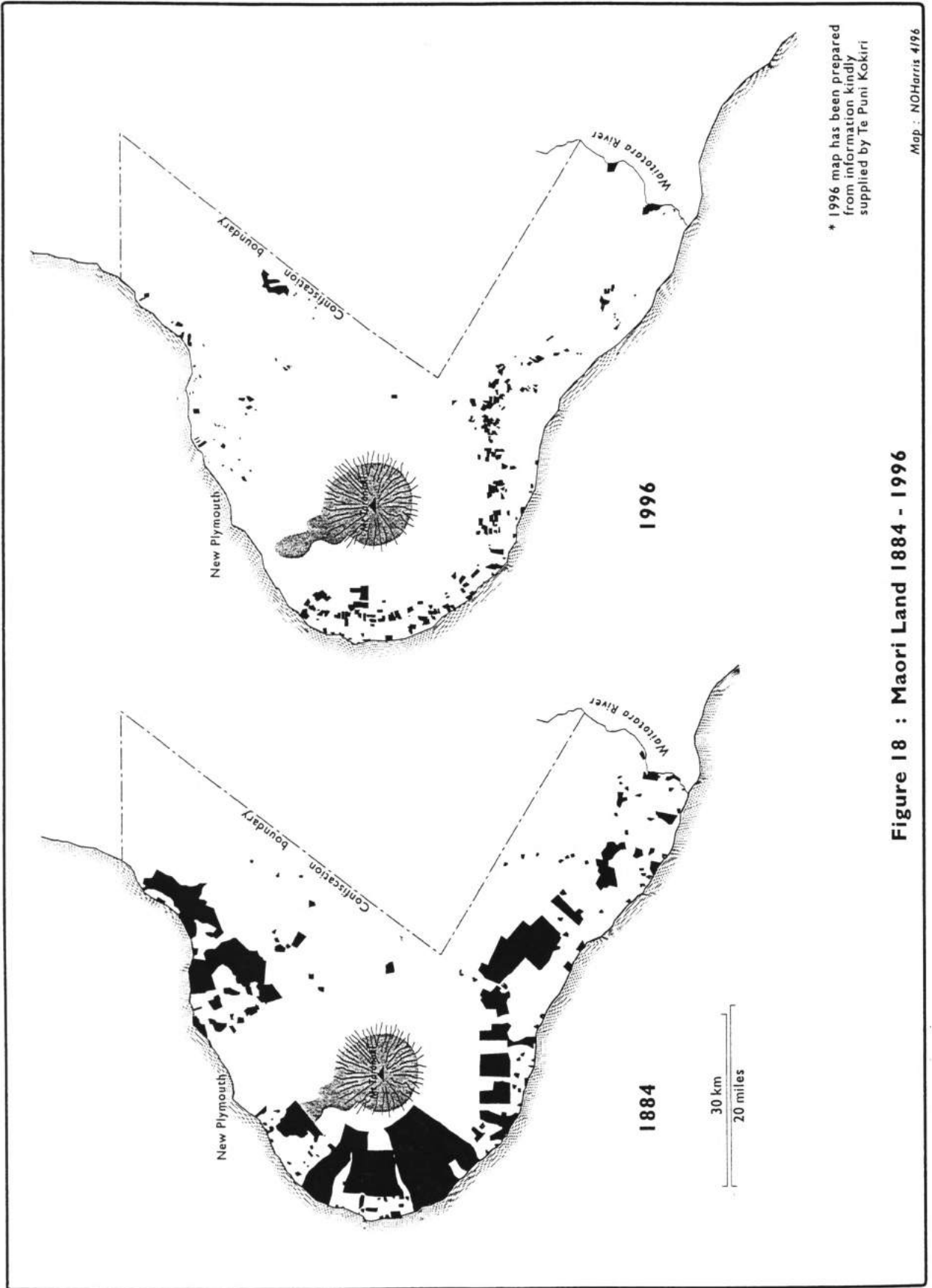


Figure 18 : Maori Land 1884 - 1996

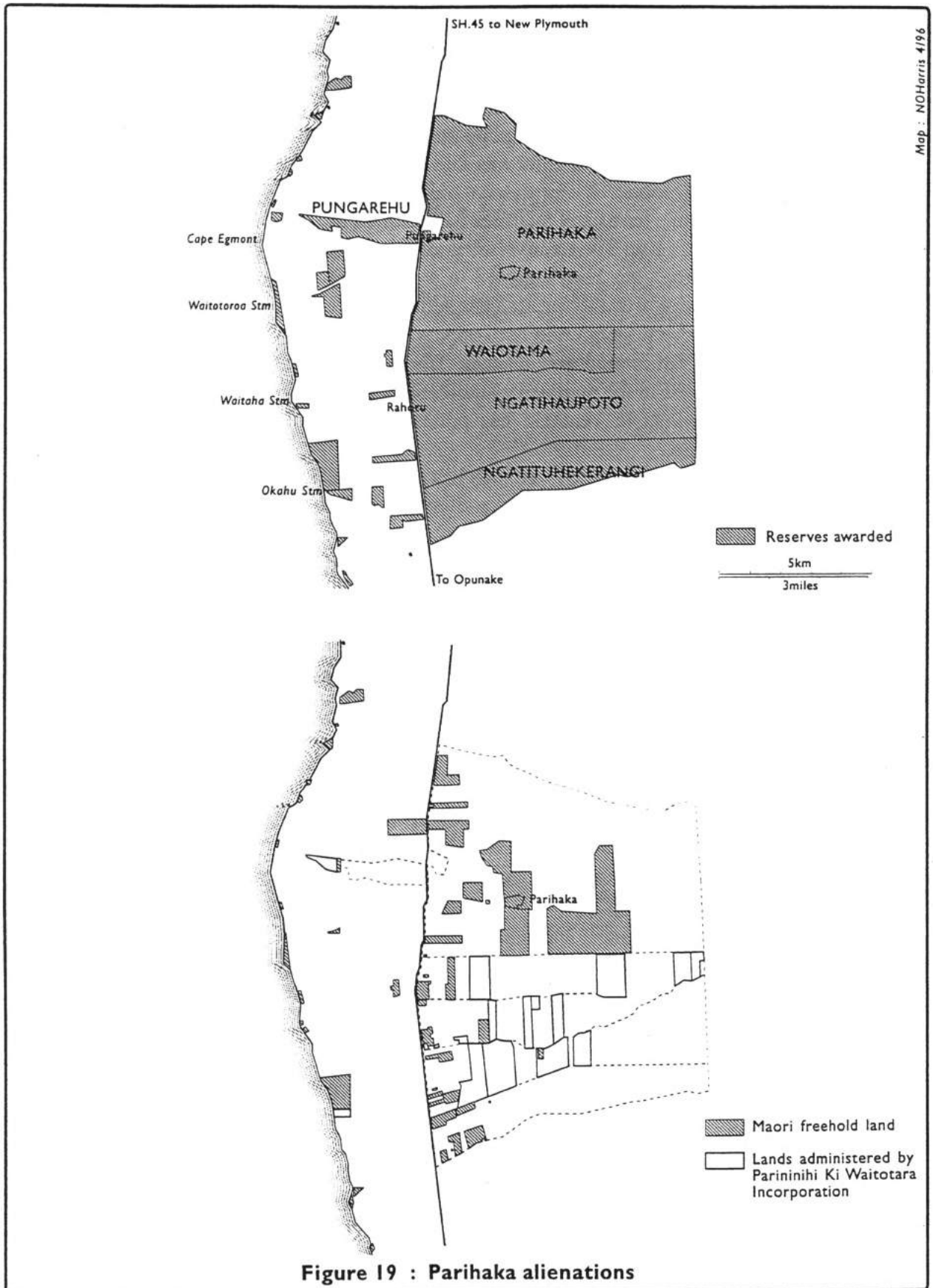
Figure 19 illustrates the Parihaka reserve alienations. The nature of the alienations is described in the table below.<sup>9</sup>

Method of alienation/ownership	Acres	Totals	Percent	Totals
Crown purchases	8531	15,248	39	70
Maori Trustee sales, 1967 to 1976	3102		14	
Sales by the PKW Incorporation	334		2	
Sales by Maori owners	3278		15	
Public works and other appropriations	3		0.01	
Converted to general lands	1238	1238	6	6
Held by the PKW Incorporation	2062	5272	9	24
Maori owned	3210		15	
Total	21,760	21,760	100.01	100

Construed in the light of the surrounding circumstances, and for reasons summarised in the *Orakei Report*,<sup>10</sup> the Treaty is to be read as imposing on the Government a duty to protect Maori in the ownership of their land and to ensure that the tribes maintain a sufficient endowment for their foreseeable needs. Successive governments paid lip service to these obligations while not maintaining policies and practices to ensure compliance. Throughout the century, there was little policy for keeping Maori land in Maori ownership before the Maori Affairs Amendment Act 1974. Prior policy was directed to Maori land alienation. It has also been claimed that Maori lands were targeted first for major industrial or public works: harbour works, environmental and scenic reserves, railways, State housing, recreational facilities, sewage works, rifle ranges, golf courses, and Government buildings. We were referred to the acquisition of Maori lands for New Plymouth Airport and, in the late 1970s, for certain petro-chemical industries in the Waitara Valley and at Motunui. Because those acquisitions were raised before us in illustration of a general grievance rather than as specific claims, we have not examined them further, but official attitudes towards the acquisition of Maori land do not appear to have changed until after the Maori land march from Cape Reinga to Wellington in 1975 and the entrenchment of its catch-cry 'Not one more acre . . . '.

9. After doc H17

10. The Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claims*, Wellington, Department of Justice: Waitangi Tribunal Division, 1987, p 147



Related to the land loss has been a loss of access to natural resources, on which much of Maori culture depends. This has been a long outstanding Taranaki concern, which first came before this Tribunal in the Motunui–Waitara claim of 1983. In the current claims it was alleged that water abstraction had so reduced river flows as to compromise the integrity of fish populations or make them unviable. The majority of the Waiwhakaiho River flow was said to be taken for electricity generation and domestic water supply. It was said that pollution emanating from landfills, industrial plants, and dairy farms and factories has resulted in rivers being no longer able to support aquatic life. The removal of gravel from riverbeds, to the extent that the volcanic bedrock has been exposed in some cases, has resulted in scouring and erosion. In the Waitara River, this has seriously affected the reproduction cycle of the piharau fishery. Deforestation of upper catchment areas has caused erosion, with a build up of silt in the lower reaches. The introduction of exotic fish species has caused a decline in the numbers of indigenous fish. Finally, the enclosure of lands adjacent to rivers in Taranaki has prevented Maori from accessing traditional fisheries.

Similarly, the drainage of wetlands has resulted in the destruction of habitats for fish and waterfowl, and drainage and enclosure have reduced the availability of raupo and harakeke.

The sea has always been an important source of fin-fish and shellfish for Taranaki Maori. It is claimed the quality of many traditional fisheries has been seriously affected by over-fishing and the downstream effects of land-based activities. Specifically, problems exist as a result of dairy farm effluent causing a build up of scum on certain beaches and waste water from industries causing the contamination of shellfish beds, and there has been an unsustainable harvesting of certain species. Nga Rauru complain that no provision was made to secure their access to traditional sea fisheries. They detailed their concerns before the Sim commission, but nothing happened.

The significance of cultural harvest in northern Taranaki was set out in the *Motunui–Waitara Report*. Similar issues were raised at this hearing but in the context of the impact of land loss on access to rivers, lakes, forests, swamps, and foreshores.

## CHAPTER 11

# ‘REPARATION’

The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen’s sovereignty, but a struggle for house and home.

The Sim commission, 1927

### 11.1 ATONEMENT

The process of reconstruction begun by the West Coast Commission and continued by the Native Land Court eventually included a review of the taking of the land. The review was limited but at least it showed the need for reconciliation. In 1926, the Government established a royal commission to inquire into ‘confiscated land and other grievances’ under Justice Sir William Sim, Vernon Reed, a legislative councillor, and William Cooper, a Maori of Wairoa.<sup>1</sup> In 1927, the commission reported that the confiscation in Taranaki could not be justified and recommended an annual payment of £5000 in perpetuity. Since 1930, payments have been made to the Taranaki Maori Trust Board. This chapter reviews the efficacy of the Sim commission, the Taranaki Maori Trust Board, and the arrangements.<sup>2</sup>

### 11.2 THE PROTEST

Of more initial significance than the appointment of the commission was the time it took to agree that an inquiry was needed. No previous investigation had addressed the real grievance: the justice of the confiscations. It took 60 years of agitation to have that topic even touched upon, and as shall be seen, it could be touched on only lightly.

As earlier noted, the first commission, the West Coast Commission of 1880, was meant to do no more than implement such land promises as could be shown to have

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1. In the Sim commission’s report, William Cooper is described as being of Gisborne.
  2. This chapter draws on various research reports including H Riseborough, ‘Background Papers for the Taranaki Raupatu Claim’ (doc A2); C Marr, ‘An Overview History of the Taranaki Confiscation Claim, 1920–1980s: from the Sim Commission to the Submission of Taranaki Claims to the Waitangi Tribunal’ (doc 116); and C Marr, ‘Crown Policy towards Crown/Iwi Claim Agreements of the 1940s and 1950s’ (doc B1).



been made. It was not to consider the justice of the case or even the amount of land that Maori should fairly receive. It had merely to repair broken promises for Maori who had been squatting on land with nothing but promises for more than a decade since the war.

Once the West Coast Commission completed its task, the Maori protest continued just the same. At first, it followed the old form. Despite the cataclysm of Parihaka, Tohu, Te Whiti, and Titokowaru carried on as though nothing had happened. Each was imprisoned yet again, for three months, following a further ploughing protest in 1886.<sup>3</sup> Nor were they alone. The loyal Ngati Rahiri, who were never properly compensated for the loss of their land for a military settlement, staged a ploughmen's protest of their own in 1897. On that occasion, 94 were imprisoned for two months.<sup>4</sup>

The thrust was changing, however, from physical protest to assaults on the Parliamentary Petitions Committee or, later, the Native Affairs Committee. From 1870 to 1930, at least 262 petitions were filed, on average more than four per annum.<sup>5</sup> The focus was also broadening as new concerns arose. Some petitions continued to protest the confiscations but most concerned the administration of the reserves by the Public or Native Trustee and the way in which Maori lands were continually being whittled away. The need to fight for even the 'returned' land was fragmenting the challenge to the confiscations themselves.

In 1909, as earlier noted, Maui Pomare led 72 members of a Maori union in a protest to the Prime Minister complaining of leases in perpetuity and the Public Trustee's control. Later, as the representative for Western Maori and a member of the Reform cabinet, Sir Maui (as he became in 1922) and the union sought payment for the confiscations themselves. To deflect opinion that Maori protestors were intent on dividing the nation, a prejudice that still survives, throughout World War I Pomare also recruited for the Maori Pioneer Battalion. At that time, Maori of the confiscation districts had been so refusing to cooperate in the war effort that in Waikato (but not Taranaki) Maori conscription was introduced and several who refused to cooperate were imprisoned.<sup>6</sup> This Maori opposition challenged the emerging Pakeha idealisation of the nation's race relations, while Pomare's efforts were seen to give it grace. He was none the less insistent that Maori grievances must be inquired into once the war was over. Eventually, the Prime Minister, William Massey, promised the Maori members of the House that an inquiry would be instituted if Maori did not pursue their claims while the war was in progress.<sup>7</sup>

In fact, no inquiry was established until eight years after the war. At the war's end Pomare and Apirana Ngata (later Sir Apirana) of Eastern Maori campaigned for a settlement for the confiscations. There was then widespread support in both Maori

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3. AJHR, 1885, G8, G8A

4. 'Annual Report on Police Force, Colony', AJHR, 1894, H-14, pp 4-5; 1895, H-28, p 5

5. Most are included in 'List of Petitions Relating to the Taranaki Muru me te Raupatu, 1863-1947'; doc I12; RDB, vols 1-6; doc I16, p 3; and others.

6. Paul Baker, *King and Country Call: New Zealanders, Conscription and the Great War*, Auckland, Auckland University Press, 1988, pp 210-222

7. Memorandum from Massey to the Minister in Charge of the Public Trust Office concerning the Tikorangi block petition, 15 September 1915 (doc I16(a), p 33; doc I16, p 8)

and Pakeha communities for action on Maori grievances. A resolution was seen as necessary if the two races were to advance and if Maori from the confiscation districts were to join other tribes in land development schemes. Further impetus came from a new religious and political movement under Tahu Potiki Ratana, which sought the ratification and implementation of the Treaty of Waitangi. Coates, who replaced Herries as Native Minister in 1921 and became Prime Minister in 1925, was more sympathetic to Maori opinions. A native land commission chaired by Judge Robert N Jones was appointed in 1920 to investigate the Ngai Tahu and other grievances, while settlements were reached over Te Arawa claims to the Rotorua lakes in 1922 and with Tuwharetoa over Lake Taupo in 1926. These were all tribes that had not fought against the Government. Those with the largest grievance, arising from the war and the confiscation of the lands of the country's most populous tribes, continued to be avoided until the appointment of the Sim commission in 1926.

### 11.3 SIM COMMISSION RESTRICTIONS

#### 11.3.1 Restrictions

The Government's anxiety over the confiscations, even when it agreed to re-examine them, was apparent in the severe restrictions placed on the inquiry, the commission's terms of reference, and its reporting time. It seems to have been hoped the grievance would be briefly looked at then buried. The terms of reference were explicit that the commission was not to inquire into questions of lawfulness. On the contrary, it was obliged to accept that the confiscations were justified on account of a rebellion and the need to keep order. Further, the commission was not to consider whether the confiscation laws were *ultra vires* the Parliament. Nor could it consider the Treaty of Waitangi. By the terms of reference, the commission was required to assume that those who did not accept the Crown's authority could not claim the benefit of the Treaty. The Prime Minister was keen to assure Parliament the same: that Maori had repudiated the Treaty by entering into rebellion.<sup>8</sup> Thus, the major planks on which the Maori case was likely to have been made were swept out of the arena. The commission was simply to consider whether in all the circumstances the confiscations 'exceeded in quantity what was fair and just'. In case the commission should answer that question in the affirmative, it was then deterred from any major recommendation. It was required to consider the value of the land at the time of the confiscation and disregard any increment. The expectation was also clear, despite Maori pleas, that only cash could be looked at, not a land return.

The pitch was also queered against a finding in favour of tribal restoration. The focus was to be on individuals, particular groups, or the Maori of New Zealand generally, each class detracting from the primary need to re-establish the main Taranaki tribal groupings. The commission was directed to inquire into whether any particular lands should not have been confiscated because of their special nature,

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8. NZPD, 1925, vol 208, p 774; doc 116(a), p 488; doc 116, p 15

whether any particular persons should have compensation, whether an allocation should be made to any 'special person, tribe or hapu', and whether any general sum in compensation, 'should be appropriated . . . for the benefit of all the natives in the North Island of New Zealand', as though the land taken was really the land of everyone.

Moreover, the size of the task and the time allowed to do it in were unreal. The commission was required to report in eight months, and then not only on the Taranaki confiscations but on every other confiscation too (in Waikato, Tauranga, Whakatane, Opotiki, Urewera, Gisborne, and Hawke's Bay) and, for good measure, on 57 parliamentary petitions as well. These carried the commission yet further afield, to the grievances of north Auckland for example, and all was to be done in eight months. Consequently, the commission sat for just eight days in Taranaki, and the hearings as a whole took no more than three months. Its report was written in a mere six weeks and was submitted on time, on 29 June 1927, the day before it was due. The commission's chairman suffered ill health throughout. He died soon after the report was presented and before it was printed and published.

### **11.3.2 Sim commission findings**

Despite the constraints, the commission achieved a remarkable result. Though it was well supplied with documents, statistics, and maps from the Native and Lands Departments and had the benefit of able counsel, the task was still enormous. It was handled with alacrity. With regard to the Taranaki confiscations, the commission, obviously affected by the clear injustices, slid around the restrictions upon it in one fell swoop. Being obliged to consider whether in all the circumstances the confiscations 'exceeded in quantity what was fair and just', it simply found that in all the circumstances every acre that was taken in Taranaki exceeded in quantity what was fair and just. It was precisely the answer Maori had been seeking, and this was the first time in the history of the confiscations that a finding of wrongdoing had been made. More particularly, the commission concluded that, 'in the circumstances, [Taranaki Maori] ought not to have been punished by the confiscation of any of their lands'.<sup>9</sup> Of the several confiscations throughout New Zealand, it was only in Taranaki that such a finding was forthcoming. Based largely upon a reading of certain contemporary histories, the commission concluded that the Government wrongly declared war against the Maori in Taranaki in order to establish 'supposed rights' under the Waitara transactions. Then, through the armed occupation of Tataraimaka, the Government effectively declared war against Taranaki Maori once more. At all material times, it considered, Maori were forced into a position from which they could not retreat.

Having reached the conclusion that no lands should have been confiscated, it was unnecessary for the commission to comment on the remaining questions of whether any particular lands should have been excluded, whether any particular Maori were entitled to further compensation, or whether a further allocation should be made to any special person, tribe, or hapu. These questions were rather glossed over on

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9. RDB, vol 48, p 18,534

account of the main finding that none of the land should have been taken. There was also no time to do otherwise. In the result, however, Maori requests that particular properties and resources be protected were bypassed. These requests related to particular canoe landing sites, lands associated with sea, lake, and river fishing, the fishing grounds themselves on marine reefs or in certain rivers and lakes, and sacred sites, including Taranaki mountain. It remains a concern today that the opportunity to protect and restore certain essential cultural sites was not taken in 1927, when the chances of doing so were greater. Similarly, 14 associated petitions received scant attention.<sup>10</sup>

### **11.3.3 Sim commission recommendations**

The Sim commission's recommendations were restricted by the directions to consider solely monetary compensation and to have regard only to land values at the time of the taking. The commission was also particularly constrained by the evidence produced by officers of the Native and Lands Departments and the lack of time to challenge or examine it. This evidence was to the effect that 1,275,000 acres had been confiscated, of which the Government had purchased 557,000 acres and returned 256,000 acres, leaving a balance of only 462,000 acres. These figures were received uncritically. There was not the time to go into them. There was not the evidence that has now been put to us to show that those lands were not properly returned or fairly purchased, nor was the commission able to consider that other lands were wrongly acquired as well. The commission appears simply to have accepted that the loss was 462,000 acres.

Then, the figures submitted to the commission for the value of the 462,000 acres at the date of confiscation ranged enormously from £46,200 to £231,000, without taking into account injurious affection, interest, the lack of access to nearby traditional resources, the loss of timber, or the like.<sup>11</sup> An internal Government memorandum of 1863, which was put before the commission to assist with this calculation, if followed would have given a minimum value of £924,000.<sup>12</sup> Not surprisingly, the commission found it 'difficult, if not impossible, to arrive at any satisfactory conclusion as to the value of the land at the date of its confiscation'.

Once more, the commission adroitly obviated the restrictions upon it, while at the same time leaving a large opening for the future. Abandoning the problem of the value of the confiscated lands, it proposed that compensation should be paid for the wrong done and that, by making annual payments forever, the wrong should not be forgotten. More particularly, it considered, 'the wrong done by the confiscations should be compensated for by making a yearly payment of £5,000'.<sup>13</sup>

It has been suggested that the commission concentrated upon the 'wrong done' instead of the compensation for actual loss because of the amounts likely to be

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10. For an opinion on the attitudes underlying the commission's failure to recommend the return of cultural and sacred sites, see doc I16, pp 28–29.

11. RDB, vol 49, pp 19,113, 19,123

12. Ibid, p 19,120

13. AJHR, 1928, G-7, p 11

involved and because governments were unlikely to accept such findings.<sup>14</sup> It also appears to us, however, that the commission was actually leaving the compensation for the capital loss for another occasion. That is certainly how it appeared to Maori. While the Government came to see the annuity as a settlement for the land confiscation, Maori continued to see it as 'a permanent acknowledgment of a wrong'.<sup>15</sup> Indeed, Maori petitions for the capital loss began arriving at Parliament within a few years.

Of course, as compensation for a capital loss, the annuity was extremely low. Based on an annual interest rate of 5 percent, £5000 per annum implied a capital loss of only £100,000.<sup>16</sup> As Sir Apirana Ngata noted, it was equal to the subsidy approved for the National Museum in 1928.<sup>17</sup> Neither was it considered that the annual payments might need to be backdated with compound interest added.

The commission was unable to consider, or chose not to, certain other matters: the operations of the Compensation Court, the West Coast Commission, and the Native Land Court; the purchases; and the administration of the reserves and perpetual leases. The many petitions on those matters were not referred to the commission. The Government did, however, refer petition number 37 on the sacking of Parihaka. Although only a week was available to Taranaki Maori to present their numerous grievances, and although the confiscations were the main claim, Maori none the less set aside time to go into the Parihaka question, for it has always been a major grievance. Three survivors were called to give evidence, including a son of Te Whiti, but when the Crown admitted that Maori property at Parihaka had been taken or destroyed, the further testimony of other witnesses was not given. Those who gave evidence claimed that the troops 'assaulted and impregnated women', destroyed houses, stole heirlooms, confiscated stock, and destroyed crops.<sup>18</sup> Some documentary evidence was put in, but no inventory was made or value given for the goods stolen or destroyed. Again, no attempt was made to assess the monetary loss. The commission recommended a payment of £300 'as acknowledgment, at least, of the wrong that was done'. Even as acknowledgement of a wrong, Maori rejected it out of hand as inadequate and insulting.<sup>19</sup>

#### **11.3.4 Implementation of the Sim commission's recommendations**

There was no conclusive settlement or agreement between the Government and Maori on the relief to be provided from the confiscations, and the Government did not settle upon the regular payments to be made to Maori until 1944, 17 years after the Sim commission had reported.

At first the Government prevaricated with the report. It was not presented to Parliament until 28 September 1928 – over a year after it was written. Little time

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14. Document B1, p iv

15. Ibid, pp 35–36

16. Marr (doc I16, p 27) cites the Maori Land Court judgment of 30 April 1929 on the Aorangi blocks as an example of a more methodical approach to calculating compensation.

17. Parliamentary debate, 28 September 1928, NZPD, 1928, p 642 (doc B2, p 25)

18. Evidence of Rangi Matatoro Watene and Nohomairangi Te Whiti, RDB, vol 48, pp 18,825, 18,835

19. For some opinion thereon, see doc I16, p 31.

was then allowed for public comment, because a mere one week later a Bill was introduced that would take the debate out of the House. This became the Native Land Amendment and Native Land Claims Adjustment Act 1928. This Act left it to the Government to implement the recommendations as it saw fit, with power to modify, vary, or extend them, provided, however, that any annual payment finally agreed upon was not to be paid automatically to Maori but to be appropriated each year by Parliament. This would enable the Government to stop or vary the payments at any time without the need to change any statute. The compensation was to be paid to a board (which became the Taranaki Maori Trust Board). In turn, the board was to apply the funds to general purposes (education, health, farming, and the like) rather than simply distribute moneys to defined beneficiaries.

For their part, however, Maori had clearly expected that any compensation would be apportioned to the various aggrieved hapu. There was a concern that the Sim commission had not determined how compensation should be apportioned to the hapu and a further concern that compensation might pass to some centralist body and not to the hapu, which were the bodies most affected.

The Bill had the support, however, of Maori parliamentarians.<sup>20</sup> It was thought the sum proposed by the Sim commission was the most Maori could expect at that time, and it was also a relief that the Government had not done what it had been doing for years: insisting that everything should be divided out to individuals. The legislation added that a certificate signed by the Native Minister stating that a particular grievance had been settled was to be accepted as conclusive proof of that settlement, and no action was to be maintainable thereafter against the Crown.

Taranaki Maori would not accept the proposed annuity in full satisfaction. They claimed that land, not money, should be returned and that, if it had to be money, it should be more. For other reasons, Treasury was also opposed. It favoured a lump-sum settlement, not annual payments in perpetuity.<sup>21</sup>

A settlement was becoming more difficult to promote, however, because the country was falling into an economic depression. In May 1928, Sir Apirana and Sir Maui took the proposed annuity to a hui at Waitara, pointing out the growing economic difficulties. The hui agreed that £5000 should be accepted, but only as an interim measure until the national economy improved.<sup>22</sup> But the depression reduced the chances of securing the Government's agreement. At the end of 1928, the Reform Government lost the general election and the United Government took office, with Sir Apirana as Native Minister. The situation worsened when Sir Maui died in June 1930. Sir Apirana responded by foreboding that, unless the Government moved on the matter, it would lose the Western Maori by-election. To press his point, he then tendered his own resignation, threatening to force a by-election in Eastern Maori at the same time. The Government then reacted. It agreed to provide £5000 that year and to consider, in the following year, whether that should be an

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20. Memorandum from Maori members to the Prime Minister, 10 September 1928, MAI 5/13, pt 2, in RDB, vol 56, pp 21,228–21,229

21. See Coates, NZPD, 1928, p 643

22. See Marr's account of this meeting (doc I16, p 42) and see the 2 September 1935 petition for the Taranaki view that the 1930 agreement was only temporary (RDB, vol 137, pp 52,691–52,693, and doc I16, pp 50–51).

annual payment or whether it should be converted to a lump sum. Soon afterwards, the Government candidate, Taite Te Tomo, won the Western Maori by-election.

The subsequent arrangements were unsatisfactory. The Government did not in fact pay £5000 but only £2000. It did not address the question of whether the payments would be capitalised. It merely carried on as though any payment was at the discretion of the Government from year to year. For the next three years, while appearing to acknowledge that £5000 per annum was due, Government paid only £1000 per annum, saying that this was on account of the depression. Arrears were never recovered. Further, since payments were not automatic and did not arrive every 1 April as they did for other Maori trust boards, each year the Taranaki board had to press the Government for a payment, and payments were tardy in arriving. The board remained adamant that the Sim commission had never made an appraisal of the property loss. It continued to urge that Maori had never agreed to the annual sum, except as an acknowledgement of wrong, and that it was an interim measure pending economic recovery. The board regularly insisted that Maori sought land returns, not payments. Increasingly, however, the board was in a situation where it had to accept or it would receive nothing. In 1935, the board and others petitioned that the annual award be simply increased to £10,000 per annum and that this amount be paid automatically on a fixed day each year. When the Government rejected the petition on the ground that the Sim commission had already considered the matter,<sup>23</sup> it must have been obvious to the board that it had no choice but to accept what was offered or walk away from any arrangement altogether.

In May 1937 and again in February 1938, the Government revisited the question of the Parihaka award. Taranaki Maori argued that the amount offered was commensurate with neither the wrong done nor the damage suffered. Officials at a meeting with Maori made it clear, however, that £300 was the upper limit of any settlement the Government would consider.<sup>24</sup> Further negotiations were stonewalled by officials, especially those from Treasury, and several conferences ended in a stalemate.

From 1939, all negotiations were suspended on account of World War II. Nevertheless, the Taranaki Maori Trust Board continued to petition the Government.<sup>25</sup> Finally, after protracted negotiations, the Government passed the Taranaki Maori Claims Settlement Act in December 1944 – on the eve of a further by-election for the Western Maori seat. The Act provided simply for an annual payment of £5000 and a one-off payment of £300 for Parihaka. It also described the arrangement, however, as being with the full agreement of the Maori claimants and as ‘a full settlement and discharge’ of the claims. The evidence is against any such settlement having been freely and fairly agreed.<sup>26</sup>

During the debate on the Bill, H G R Mason, the Native Minister of the day, noted:

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23. See RDB, vol 68, pp 26,109, 26,113 (doc I16, p 67); RDB, vol 137, pp 52,691–52,693 (doc I16, pp 34, 51–53, 57–59); and ‘Petition of Rangihuna Pire and Others’, RDB, vol 68, p 26 (doc I16, p 68)

24. RDB, vol 68, pp 26,020–26,031 (doc I16, pp 60, 70)

25. See the petition from Maui Onehura, the chairman of the Taranaki Maori Trust Board, early 1944, RDB vol 68, p 25,995 (doc I16, p 54)

26. See doc I16, pp 60–64

### *'Reparation'*

It is important to the Maori, not merely financially but emotionally, as an acknowledgment of wrongs done, and it puts the relationship of the two races, in that respect, on a satisfactory basis. While there is a wrong not acknowledged, there is of necessity a barrier between the two peoples.<sup>27</sup>

Maori have never regarded the 'settlement' as other than an acknowledgement of wrongs done.<sup>28</sup> It was what the Native Minister said at the time. It was also the basis on which the Sim commission reached the sum of £5000 for an annuity, as earlier noted.

From 1944 to 1985, when the Government added historical claims to the Treaty grievance process, Maori continued to petition for a more adequate settlement of the Taranaki claims. The Government consistently replied that the 1944 'settlement' put the matter at an end. In rejoinder, Maori have stressed shortcomings in the Sim commission's inquiry (for example, the failure to consider the 5000-acre reduction of the continuous reserve), the imprisonment of the Te Whiti adherents, the full story of Parihaka, the dubious purchases, the administration of reserves, the inability to assess Government action against the Treaty of Waitangi,<sup>29</sup> and the failure to consider the pleas for the return and protection of canoe landing places, marine and freshwater fishing grounds, and sacred sites. These petitions caused no change of heart, however, save that the Government eventually considered the most significant of the sacred sites – Taranaki mountain.

Taranaki mountain has extraordinary significance for all Taranaki hapu, and pressure for its return had been maintained since it was taken, unlawfully, last century. By the Mount Egmont Vesting Act 1978, the mountain was returned to the people of Taranaki by vesting it in the Taranaki Maori Trust Board; and then, by the same Act, it was immediately passed back to the Government by the board as a gift to the nation. We are unaware of evidence that the hapu agreed to this arrangement. Many who made submissions to us were adamant that most knew nothing of it. Some named the mountain 'Magic Mountain' – 'now you have it, now you don't'. Mereana Hond submitted:

It appears unusual that the Trust Board should wish to forsake ownership of the mountain by Taranaki Maaori for no apparent return. It is submitted . . . that the political climate of 1975 was such that the Board felt it was necessary to perform a gesture of goodwill designed to create a more favourable environment within which a monetary settlement could be negotiated.<sup>30</sup>

In fact, at the time the board was seeking a sum of \$10 million and the return of the mountain. The Government agreed instead to increase the annuity from \$10,000 to \$15,000. We are not surprised that much dissatisfaction remains, the more so since we could find no valid legal basis for the mountain's confiscation in the first instance.

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27. NZPD, vol 267, p 750 (doc B2, p 30)

28. Document B1, p 36

29. See doc I16, p 68

30. See the submissions of Mereana Hond, 'Ko Taranaki Te Maunga' (doc J2), p 15. See also doc I16(a), pp 355–356, 368–369.



We add for the sake of completeness that the board was given representation on the Egmont National Park Board and that the New Zealand Geographic Board finally recognised that the mountain, officially called Mount Egmont, should also be known as 'Taranaki', its true name for more than a millenium.

#### **11.3.5 Sim commission: conclusions**

The constraints on the Sim commission were such that there was never the full inquiry needed for a settlement of the Taranaki grievances. The imposition of those constraints was inconsistent with the Government's Treaty obligations to treat openly and honestly with Maori. Consequently, there could not have been in principle, nor was there in fact, any full and final settlement of the Taranaki claims.

### **11.4 THE TARANAKI MAORI TRUST BOARD**

The Taranaki Maori Trust Board was established to receive and apply the confiscation annuities. This section concerns the board's service delivery. It considers how the Government and Maori had such different expectations that it was difficult for the board to satisfy either of them. Also, when inflation eroded the value of the annuities and the Government did little about it, the board was forced to change from a distribution agency for the hapu to a centralist tribal authority.

#### **11.4.1 Different expectations**

In terms of the Maori Trust Boards Act 1955 and earlier legislation, the board's primary duty is to fund social and economic projects for the benefit of Taranaki Maori. Of necessity, however, it assumed from the start the wider function of representing Taranaki Maori generally. It became the corporate embodiment of the Taranaki people, the very thing that past governments had not wanted. In arguing the case for particular hapu, or the hapu as a whole, it served as a tribal representative institution, not waiting for the legal authority to undertake that role but, of necessity, assuming it.

We would not minimise the significance of the board's role in advancing and maintaining a collective hapu voice. Indeed, it may have been the most important function the board has undertaken. It maintained the historical perception that the strength of Taranaki was the people's ability to move as one, a capacity for concerted action that enabled them to sustain a war for nine years. No reader of history can fail to observe that, in the war, hapu under stress moved confidently from one place in the province to another and how, when one part of Taranaki was attacked at Waitara, the rest of Taranaki reacted immediately. Whether it was planning at Taiporohenui, defending at Waitara, attacking with Titokowaru, taking refuge with Ngati Maru, or restructuring at Parihaka, Taranaki became famous for its capacity to act concertedly under stress, even despite internal feuding. Such traditions of common history and purpose create an iwi, and the board was the embodiment of that iwi for most of this century.

Having said that, however, the riddle of Taranaki unity is that it lies in the autonomy of its segments. Traditionally, power has vested not in the centre but in each hapu. The strength of any central leaders has been that they have only that authority the hapu give them, so that such power as they have is well mandated and exercised with total accountability to hapu. The source of power is from neither the outside nor the top but the bottom. Accordingly, there was a tension from the start. While the Government established a central board to grant moneys for projects, Maori expected a distribution agency that would get the money to the hapu and a body that would represent the hapu only when asked to do so.

The Government also created a board with extraordinary responsibilities, then failed to ensure that its funding allowed it to perform to expectations. The governing statute shows how the Government expected the board to do enormous things: install water supplies, sanitation works, and drainage schemes for Maori settlements; provide papakainga housing, with all the attendant costs of subdivision, roading, kerbing, channelling, lighting, and sewerage reticulation; establish power schemes; build health centres and supply doctors, nurses, and dentists; and establish industries, hostels, churches, recreation centres, schools, other educational institutions, and so on.<sup>31</sup> These objectives were all good and necessary, but even before inflation, they were probably not achievable. It says nothing for the Government's honesty of purpose, however, that the annuities were not in fact updated so that those goals could remain in reach. Today, the annuity is hardly enough to keep two students at university. As a result, the board has been the target of criticism, but the real problem has been not the board as such but the Government's failure to maintain the spirit of its promises by indexing the funding. The Government simply allowed the board to topple over.

Again, in terms of the Maori Trust Boards Act 1955 and earlier legislation, the board's task was, and is, to fund projects; and again, the board was obliged to assume other functions. From the outset, Maori expected the board would be mainly an agency to distribute the money to the hapu. Initially it was, though of necessity its distributions were disguised as grants for marae renovations and hui. This task of distribution presented the board with its first major difficulties.

The Sim commission did not sit long enough to realise how important it was to get funds out to the communities. It failed to say how any compensation might be apportioned to the hapu. Nor did the Government do any better. It required the board to fund projects. Hapu became supplicants for funds, not managers of their own moneys. Whatever the statutory position, however, Maori expected the board would undertake a distribution function; the board was prepared to adopt that role and arguments followed naturally as to how hapu would be represented on the board for the purpose of voting.

The debate was not over which were the appropriate hapu groupings but over the numbers each would have to represent them. Until recently, few appear to have doubted that there were eight main hapu aggregations and that through these eight

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31. See now s 24 Maori Trust Boards Act 1955

every hapu of the district could be serviced.<sup>32</sup> These were the northern hapu of the Tokomaru waka: Ngati Tama, Ngati Mutunga, Ngati Maru, and Te Atiawa; the Taranaki hapu of the Kurahaupo waka in the centre; and, in the south, those of the Aotea waka: Nga Ruahine, Ngati Ruanui, and Nga Rauru. Although the initial regulations established a six-member board to represent four groups – Te Atiawa, Taranaki, Ngati Ruanui, and Nga Rauru – it was accepted by all that ‘Te Atiawa’ included all four of the Tokomaru groups and that the Sim commission’s reference to the northern and southern sections of Ngati Ruanui should properly have been a reference to Nga Ruahine and Ngati Ruanui respectively. This understanding was apparent from as early as 1937 at a large tribal hui at Parihaka, although it was not until many years later that the Act was amended to name each of the eight divisions.

Owing to the Maori propensity to connect by whakapapa rather than to stand divided by boundary lines, boundaries for these groups were uncertain, but for administrative purposes they were agreed on, apparently without much argument. They roughly accord with the Compensation Court divisions. It should also be explained that throughout this time the word ‘hapu’ was used for ‘tribe’, and in characteristic linguistic style, it could be used to mean any kin group from small families to large aggregations. Modernly, ‘iwi’ is used for the larger groups. We have avoided that term in this report until now, because in the papers we have perused, ‘iwi’ was not used for ‘tribe’ until the early 1980s. Previously, it meant only the ‘people’ of Taranaki, which included everybody.

At the time, however, the problem was not the identification of appropriate groupings but agreement on the number of representatives that each of the agreed eight groups would have, for this would determine the vote when the annuities were allocated. The total grants to tribal districts as at 1951 were summarised by the board as follows:<sup>33</sup>

Population (1936 census)	District	Total (£)
441	Nga Rauru	9074
563	Ngati Ruanui	9168
905	Nga Ruahine	9684
830	Taranaki	8115
577	Te Atiawa	16,498
74	Ngati Maru	2619
165	Ngati Tama–Ngati Mutunga	1479

32. In the 1950s, however, separate recognition was sought for Titahi and Kaitangata. Separate recognition is now sought by Tangahoe and Pakakohi.

33. NA, MAI, 26/5

### *'Reparation'*

The board explained the higher figure for Te Atiawa in terms of the costs of a new carved house and the associated opening celebrations, noting 'The Manukorihi Pa, although in the Te Atiawa district, is the national marae of the tribe and any expenditure on that marae should be debited against all the tribes'. Ngati Tama and Ngati Mutunga figured, however, that the low allocation to them was simply because they had only one representative between them on the board at the relevant times. As well, Ngati Maru had previously been bracketed with Ngati Mutunga. These hapu felt that their interests were not protected and urged that each should have full representation. An acrimonious debate continued from 1937 to 1969. If the groups of the Tokomaru waka had one representative each, it was thought, this would throw the voting weight to the north. If parity were to be maintained, the Kurahaupo hapu of Taranaki in the centre would need more representatives and had good grounds to argue for voting on waka lines. The problem was compounded by the erroneous view of some board members that payments could not be made to groups without a full representative on the board. Thus, Ngati Tama claimed to have been told by the board's chairman that they were entitled to nothing, because 'No member, no grant'.<sup>34</sup> The position was not in fact resolved until 1969, by which time the annuities were so devalued that the issue was no longer important. It was then agreed, and arranged by statutory amendment, that each of the eight groups would have one representative.

It also needs noting that the debate was not entirely about the representation of hapu on the board; it was also about the basis on which allocations should be made. In a letter to the Native Minister in 1941, Ngati Tama and Ngati Mutunga suggested that allocations should be adjusted not by populations but by comparative confiscations.<sup>35</sup> It was said that data before the Sim commission gave the figures in the middle column of the following table:

Hapu	Area confiscated (data before the Sim commission) (acres)	Area confiscated (discounting lands 'returned') (acres)
Ngati Tama	71,000	74,000
Ngati Mutunga	24,000	42,000
Ngati Maru	93,000	96,000
Te Atiawa	38,000	76,000
Taranaki	114,000	217,000
Ngati Ruanui	73,000	138,000
Nga Rauru	49,000	10,000

34. Notes of representations to the Minister of Maori Affairs, 11 April 1956, MA 26/5, vol 4 (doc 16A, p 187)

35. NA AAMK 869/789B 25/5/2. For the Sim commission's assessment, see RDB, vol 49, p 19,115.

As Ngati Ruanui claimed, however, if lands 'returned' were discounted, because they had not been returned to the hapu, the comparative confiscations would be those given in the last column.<sup>36</sup>

Yet a further result would follow if the purchase lands were also brought into the calculations.

This correspondence does not, however, settle the issue. Should distribution be based on population, as the board had generally assumed, or on the extent of property loss or some other criteria? This has been a long outstanding concern, and accordingly, when the claims were before us, the claimants argued that each group's losses should be separately assessed. It was, however, also argued that it was the impact of loss that mainly had to be calculated and this required consideration of many factors, in which land loss and population were only part of the equation.

#### **11.4.2 The impact of inadequate funding**

In recent years, there have been fears that traditional power structures may be reversed through the continued funding and maintenance of a central organisation wielding power over the hapu at the baseline. There is concern that any board should act only as a voluntary federation of hapu. In other words, it should not be a separate bureaucracy and should draw its power not from Government funding but only from the hapu themselves. In the minds of most Maori, the rationale for the board's existence was that it would service the hapu, but increasingly, some felt it was failing to do so.

The board itself can hardly be blamed. It simply did not have sufficient money, since at least the 1950s, to deliver to hapu the funds they needed. The eroding value of the annuities was making distributions meaningless, and the board was compelled to find ways to develop a capital base of its own as a hedge against inflation. Under the statute, however, Maori trust boards were at all times under the direct control of the Minister of Maori Affairs. As with most things relating to Maori affairs at the time, the board could barely sneeze without asking permission. To build up a capital base, the board sought from the early 1950s to buy a farm, but the Minister would not allow it until 1959.<sup>37</sup> In the interim, the board switched from making payments to districts to giving individual assistance in the form of education grants. District committees continued to receive annual grants but they were quite nominal, being set at about £200 each. Meanwhile, education grants rose from £2000 in the 1960s to \$12,000 in the late 1970s, \$18,000 in 1989, and \$46,650 in 1991.

After the purchase of the farm in 1959, when it borrowed just under half of the purchase price, the board gradually expanded its investments. To better service its beneficiaries, however, it also undertook the management of such Government social service programmes as MACCESS and matua whangai. In the result, the board's administration fees became a more significant source of income than its compensation annuity. Thus, while the compensation grant remained at £5000 (or

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36. Ibid

37. Thus, see the memo from the Department of Maori Affairs to the Minister, 21 May 1958, MA 26/5, pt 6 (doc 116(a), p 243).

its dollar equivalent) until 1977, and \$15,000 thereafter, the board's income for 1991, mainly as a result of Government programmes and returns on investments, was \$343,000. It was reduced to \$257,000 in 1992, when certain Government programmes were discontinued.

With the burden of running numerous programmes and maintaining property, administration and maintenance costs increased proportionately. During the 1930s and 1940s, approximately 12 percent of the board's income, between £523 and £653 per annum, was spent on administration and maintenance. The figure was £708 in 1952, £1141 in 1961, \$4600 in 1972, \$18,000 in 1982, and \$184,000 in 1992.

Accordingly, owing to both the reducing value of the compensation annuities and its statutory responsibilities, the board has been less and less a distribution agency for hapu and increasingly a centralist organisation, generating its own income to fund particular persons and projects on merit and having to maintain its own bureaucracy.

In addition, the board has continued to support or represent particular tribal concerns. For example, it makes submissions on the laws affecting Maori, such as those on the administration of Maori land. It has continued to voice its concerns about the inadequacy of the compensation and it has assisted with the funding of the current claims. On occasion, its authority to undertake such roles has been questioned by the Minister of Maori Affairs, but the board has persisted none the less.

Most especially, the board has maintained pressure for the indexation of the annuities, which have been seriously affected by post-war inflation. Until 1978, the annuity remained as set by the Sim commission in 1927. Following a petition in 1974,<sup>38</sup> the annual payment was increased in 1977 to \$15,000. In an estimate by Dr J L Robinson in 1990 (updated in 1992), based on the consumer price index, a £5000 payment in 1931 should have risen to \$56,858 in 1975.<sup>39</sup> There have been no other increases beyond that of 1977.

#### **11.4.3 Conclusions on the board's role**

The question of how funds should be distributed was not settled by the Sim commission or by anyone subsequently. Past board records suggest that, up until 1969, Ngati Tama, Ngati Mutunga, and also, it seems, Ngati Maru did not fare as well as others in funding distributions. There has never been agreement on the basis for distributions, be it by population, asset loss, or some other criteria. It certainly appears that basing matters on population alone has caused hardship, especially for Ngati Tama. Their land loss was so great, and such lands as were given were awarded to so few, that Ngati Tama were simply unable to become re-established. Population growth was impossible, and to measure their damages by reference to population would be to penalise them for the very thing they complain of. The basis for allocation now returns to the agenda in the context of the current claims

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38. See docs I16, p 79, I16(a), p 299

39. Dr J L Robinson, 'Paper on Indexation of Payments to Maori Trust Boards: Provisionally Updated to 1992', Treaty of Waitangi Policy Unit (doc I16(a), pp 633-635; doc I16, pp 79-80)

settlement. In addition, there are now other groups claiming to have been wrongly omitted altogether.

The Maori Trust Boards Act envisaged, and still envisages, that the Taranaki Maori Trust Board will fund projects by merit and will not act as a mere distribution agency. There is a question, however, of whether it should be mainly an allocation agency and whether any further settlements should be made directly with each of the main hapu aggregations. A further question is whether the Government should continue to control the board's direction or whether it should impose no more conditions than those necessary to ensure accountability or to protect the interests of minorities.

The board has fulfilled an important function in the past in representing the interests of all Maori in Taranaki, but there is now a question of whether the board should drive the hapu or whether the hapu should drive themselves. Much current criticism of the board reflects this tension, but criticism of the board for not servicing the hapu is unjustified. The problem has been not with the board but with the failure of the Government to provide the necessary legislation and, most of all, to index the compensation annuities. The Government's failures have been inconsistent with the standard expected of an honest and honourable partner in terms of the Treaty of Waitangi. The board thus had no option but to develop as a central agency, funding persons and projects on merit and competing for the delivery of services as a tribal bureaucracy. The resulting criticism from hapu fails to consider that the board really had no choice. It was bound to follow this course as a result of Government parsimony.

In so far as section 24 of the Maori Trust Boards Act describes the Government's expectations of the board in delivering relief to the sufferers of confiscation, it may be said that the Government's past settlement was based not on a fixed sum but on an expectation that the sum provided would be sufficient for the given statutory objectives. In a very short time, that amount was clearly insufficient. In our view, the Government had a duty to ensure that those objectives were reasonably capable of being met, but it did not do so. Instead, it allowed the board to fail and to founder under criticism from its own constituents.

The record shows that the board has made sound inquiries and submissions over many years on Maori land law, perpetual leases, indexation, resource management, and the like and has faithfully represented the people. The proper nature of any central agency and its accountability, control, structure, and function, however, are still live items to be determined in any settlement arrangement.

## CHAPTER 12

# CONCLUSIONS

Indigenous peoples have the right to maintain and develop their political, economic and social systems . . . and to engage freely in all their traditional and other economic activities . . . [They] have the right to own, develop, control and use [their traditional] lands and territories . . . This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources . . . [They] have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status . . .

as a specific form of exercising their rights to self-determination, [indigenous peoples] have the right to autonomy or self-government in matters relating to their internal and local affairs . . . as well as ways and means for financing these autonomous functions . . . [They] have the collective right to determine the responsibilities of individuals to their communities . . . Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights . . .

Extracts from articles 21 to 39,  
Draft Declaration on the Rights of Indigenous Peoples, August 1994

### 12.1 HOW PEOPLES RELATE

A century and a half after the Treaty of Waitangi was signed, the world's indigenous minorities sought a United Nations declaration to define their rights in relation to national states. Following 12 years of intensive study and discussions with indigenous peoples and governments, an independent and distinguished group of experts, the United Nations Working Group on Indigenous Populations under Mme Daes of Greece, produced the Draft Declaration on the Rights of Indigenous Peoples. It was introduced for consideration by various organs of the United Nations in 1994, when the General Assembly proclaimed the International Decade of Indigenous Peoples. The draft declaration expresses with particularity several principles that flow naturally from the Treaty of Waitangi.

In different ways, the draft declaration and the Treaty acknowledge that, on the colonisation of occupied lands, the indigenes must be adequately provided for in the life of the new nation. The respect that is due to all peoples is payable to each according to their circumstances. The special circumstances accruing to indigenes



require that they should be respected as founding peoples and not merely as another cultural minority.

## **12.2 THE RELATIONSHIP IN TARANAKI**

The whole history of Government dealings with Maori of Taranaki has been the antithesis to that envisaged by the Treaty of Waitangi. The Draft Declaration on the Rights of Indigenous Peoples affirms the relevance of the Treaty's principles for the global environment of today, defines the required relationship between governments and their indigenes, and emblazons in vivid relief the many respects in which the ability of Taranaki Maori to develop in their own country was removed from them. The relationship between peoples was in issue in Taranaki from the first contact with the New Zealand Company, before the Treaty was signed. Maori and Pakeha both assumed at that time that their own law and authority would govern whatever had been agreed, so that they were not contracts in the Western legal sense, for the understanding each had of the arrangements is unlikely to have been the same. The relationship between Maori and Pakeha law and authority has never been resolved, other than by force, to this day.

Taranaki Maori were confronted with Western methodologies for the occupation of land from 1839. Te Atiawa in particular were subjected to pressure to sell land for settlers who were on the land before arrangements were agreed. The tactics used to secure a show of acquiescence pitted one Maori against another, causing internecine warfare. Such were the circumstances surrounding the 'purchase' of most of the Te Atiawa land in the north, Waitotara in the south, and the land of the inland tribes in the east that, in our view, no distinction should now be made between the lands said to have been sold before, during, or after the 1860s wars and the lands confiscated as a result of them.

The protections promised Maori in the Treaty were gradually whittled away. The Native Protectorate was abolished and the offices of Native Secretary and native land purchase officer were combined in 1846. Matters worsened when representative institutions were introduced in New Zealand from 1853 without effective provision for Maori representation. At Waitara, the Governor was at once the purchaser, the judge of the title dispute, and the supreme commander of the troops. In the words of William Pember Reeves, adopted by the Sim commission and now us, the Waitara purchase would 'always remain for New Zealand the classic example of a blunder worse than a crime'. Maori custom, law, and institutions were judged by those who did not know them; and the judgments were wrong. The right of Maori to make their own decisions about who controlled the disposition of land and the nature of the interests held was negated, and the immediate result was war. The long-term consequence was that the Government enforced a plan to alter Maori land tenure and to destroy, by stealth and by arms, the capacity of Maori to manage their own properties and to determine rights within them. The relationship the Government imposed was that of dominance and subservience. The settler

## *Conclusions*

government was unable to see that the essence of peace is not the aggregation of power but its appropriate distribution.

Wiremu Kingi was unjustly attacked. No serious historian has disputed that. Though famous for honour and integrity, Kingi was none the less attacked and hounded until, years later, he died landless. It was the Government that spread the war. In the words of D S Smith, claimant counsel before the Sim commission in 1927:

The memories of the past are bitter memories still. Out of Waitara there sprang, and from Waitara there spread what to the native mind was a war of aggression. We say, in fact, that it was a war of aggression, and that an impartial tribunal will find it so.<sup>1</sup>

The Sim commission agreed, and we do too, that Kingi and his people never rebelled but were attacked by troops. It was a direct violation of the Treaty of Waitangi. After a truce, a second war began through the Governor's invasion of Omata and Tataraimaka. It was no less an act of aggression than the first. From that point, Maori could no longer expect the Governor's protection. They had good cause to consider that their lands and their survival must depend on their recourse to arms.

As for the confiscation plan, it was in fact not a scheme to secure peace by occupation, as the legislation claimed, but a strategy to take the territory for the benefit of settlers. Constantly expanding in proportion to the ambitions of its designers, the confiscation plan was immoral in concept and unlawful in implementation throughout the length and breadth of the land.

Since the whole of the lands of most hapu had been taken during the war, then by any standards of fairness and justice, the post-war relief had properly to be swift and clement. In fact, for over a decade Maori did not know what lands, if any, would be theirs, while that beneath their feet was continually being allocated to settlers. Even Maori who had not fought, or had fought with the Government, and whose lands should never have been touched in the first instance lost everything, were left not knowing what would be returned, and never recovered more than a fraction of that which was theirs. Many hapu with extensive customary lands were affected in that way, for land was taken ostensibly on account of the war in places that the war had never visited. The protests of the landless were protests of desperation, but for their actions they were imprisoned in their hundreds, at will, without trial, and with all civil rights suspended. The ultimate consequence, the invasion and sacking of Parihaka, must rank with the most heinous action of any government, in any country, in the last century. For decades, even to this day, it has had devastating effects on race relations. There was not a tribe in the country that did not learn of it, for Parihaka had been open to them all.

Throughout the post-war period to the Parihaka invasion of 1881, when Taranaki Maori had uncertain land rights, if any at all, and were under threat of extermination, the Government embarked on a macabre buying spree of lands both inside and outside the confiscation boundaries. Such were the post-war circumstances of those purchases, the materially different expectations of the parties, the lack of protection

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1. MA 85 85/1; RDB, vol 48, p 18,565

for Maori interests, and the accompanying fraud and corruption that none of those purchases met the required standards of sincerity, justice, and good faith to be valid in Treaty terms. As contracts they were nullities for lack of common understandings. Like the pre-war purchases, these too should be treated no differently from the land confiscations.

Between 1880 and 1884, long after the war, the West Coast Commission eventually returned various lands to some Maori. Even that necessary and long awaited result was, however, made secondary to the promotion of European settlement. The primary objective of the West Coast Commission was to relieve Maori of more land. The consequences were no less catastrophic than before. Much less was returned than could or should have been, and the lands returned were so individualised as to undermine the basis for Maori society and destroy the traditional bulwark against land alienation. The consequences were known and expected, and as anticipated, sales followed.

Where the commission did not personalise titles, the Native Land Court did. The court went further and in its arrogance deprived many of their ancestral lands. Ngati Tama lost all of their territory that had not already been confiscated through a decision of that court that was probably political and, in any event, wrong. It should not have been the business of the court to have decided the matter in any event, because the issues were fully capable of resolution within the Maori community. It ought not to be forgotten in this context that last century the Native Land Court was set up to perform the Government's purpose.

Further, and without Maori consent, the administration of such lands as were returned to Taranaki Maori was passed by the West Coast Commission to the Public and Native Trustees. By statutory direction, and again without agreement, the bulk of those lands were then tendered to Europeans on perpetually renewable leases. Loss of possession and control meant more sales, and over time, most of the lease lands were sold by the trustees. The remainder are still under perpetually renewable leases. Over 100 years have passed since the wars, but Maori have still to gain possession of the promised land, and in the interim, their society crumbled as development opportunities passed them by.

Among the machinations of the past, false promises of land may have lingered longest in memories, the most cruel being the promise of reserves and the delivery of leases in perpetuity. The perpetual leases ensured that the pain of dispossession, which prolonged the war and imprisoned the protestors, was formally passed down in succession orders through every generation to the present. It would have been kinder had the land been taken, for the rents were negligible and Maori were succeeding to little more than lands they could never walk on. Their inheritance was a certificate that they should never be allowed to forget the war, the imprisonments, and their suffering and dispossession. It lived with them as they hunted down jobs, knowing that others were working what should really have been theirs. As children, they learnt the Taranaki double talk: that Taranaki maunga was Mount Egmont, as though the past was no longer theirs, and that 'Maori reserved lands' means 'lands for Pakeha', for the future was not theirs either.

## *Conclusions*

We cannot begin to describe the resentment that welled up at every hearing, founded not on factual research but on the reality of inherited opinions. There is a conviction that from first settlement to the present there has been a concerted and unending programme to exclude Maori from land ownership throughout Taranaki. Law and order are not readily maintainable in that situation. Similar views are held by Australian Aboriginals and Canadian Indians, and it seems to be relevant that the three are the world's most imprisoned races. The prejudice must be overcome. The opinion that the world is no longer theirs to behold must stop with this generation.

We would expect any government seized of the consequences of the Taranaki legacy to have moved years ago to promote reconciliation through speedy and generous recompense. It took 60 years of agitation, however, before any inquiry was made, and then, as if to prevent proper public disclosure, that inquiry was so constrained by the Government that no full and proper investigation was possible. Nor was there ever a free and willing settlement. An annuity was offered on a take it or leave it basis. Any appearance of good intentions was destroyed when the annuities were allowed to erode through inflation. The only salve to conscience we can see is in now regarding those annuities as only token payments, in recognition of a wrong, as the Sim commission intended.

By the processes described, Taranaki Maori were plundered of their resources. The little left to them cannot sustain the cultural basis of their society for the future. This situation arose from the attitude of the Europeans in departing so entirely from the promises on which the government of the country was established. Generous reparation policies are needed to remove the prejudice to Maori, to restore the honour of the Government, to ensure cultural survival, and to re-establish effective interaction between the Treaty partners.

### **12.3 THE RELATIONSHIP IN FUTURE**

#### **12.3.1 Kaupapa tuarua**

This report has introduced the historical claims of the Taranaki hapu. It has shown the need for a settlement and will shortly conclude with some opinion on how settlements might be effected. A second report, unless matters are earlier resolved, will précis the history relevant to particular groups and associated ancillary claims that may need to be distinguished in any comprehensive settlement.

A separate accounting for particular groups was seen to be necessary because they are not the same, were affected differently, and have different aspirations for the future. In the meantime, further hearings will be considered if the claimants or the Crown can demonstrate that these are necessary to achieve a settlement.

#### **12.3.2 Settlement options**

This report concludes by marshalling some comments on how the claims might be settled, based upon the picture that has emerged and the representations and arguments made at various sittings over the last five years. We observed in prefacing

this report that further sittings would be needed, especially to hear the Crown, before findings and recommendations could be made, but that the parties had sought an early report in the hope that our preliminary opinion on the facts and our views on a settlement might expedite a resolution. Our thoughts for settlement relate to quantum, process, and structure.

### **12.3.3 Size of claims**

As to quantum, the gravamen of our report has been to say that the Taranaki claims are likely to be the largest in the country. The graphic *murū* of most of Taranaki and the *raupatu* without ending describe the holocaust of Taranaki history and the denigration of the founding peoples in a continuum from 1840 to the present.

### **12.3.4 Injurious affection**

The above assessment of the size of the Taranaki claims is based upon the extent of prejudice or injurious affection. In historical claims, as distinct from the actionable and recent losses of individuals, the long-term prejudice to people may be more important than the quantification of past loss. Section 6(3) of the Treaty of Waitangi Act 1975, which requires consideration of the steps necessary to remove prejudice, not simply the quantification of property losses in accordance with lawful damages criteria, suggests this approach is necessary for historical matters. The extent of property loss is of course relevant but is not solely determinative. It appears that compensation should reflect a combination of factors: land loss, social and economic destabilisation, affronts to the integrity of the culture and the people over time, and the consequential prejudice to social and economic outcomes, for example.

### **12.3.5 Compensation for the impact of land loss**

We consider that 1,199,622 acres (485,487 ha) were confiscated, that no distinction should be made in all the circumstances between that land and a further 296,578 acres (120,025 ha) said to have been purchased, and that a further 426,000 acres (172,402 ha) were expropriated by land reform and the Government's Native Land Court process, making some 1,922,200 acres (777,914 ha) in all. Even more important than the number of acres, however, is the fact that the whole of the lands of most hapu were confiscated, the whole of the lands of every other hapu were also deleteriously affected, and lands were not adequately returned to any hapu to provide the minimum relief that was vitally necessary. In other words, when determining injurious affection, the impact of loss by reference to the proportion of land taken and the amount retained, having regard to the size of group, is more important than the amount taken in absolute terms.

Considering the ways in which the alienation of Maori land was effected, including land reform as a device to remove tribal controls for land retention, and having regard to the Crown's Treaty duty to ensure a sufficiency of land for each hapu, it is useful to consider the land in Maori possession today and to relate that, if possible, to the circumstances of the people. Research on the amount of land in

Maori possession in Taranaki is still being undertaken through the Crown Forestry Rental Trust and is not yet available to us. We would assess the land left in Maori possession, however, to be less than 3 percent of the total area, and it may be that none of it will have a commercial benefit to hapu, as distinct from individuals. In commercial terms, the hapu loss would appear to be total. Relating that to the people is more difficult. The Taranaki Maori population cannot readily be assessed both because of Government policies from the 1840s to exclude Maori from the district and because of migration following land loss.

#### **12.3.6 Compensation for social and economic destabilisation**

The social and economic destabilisation of Taranaki Maori is a major compensation heading arising from the Government's circumvention of the traditional leadership, its disregard for Maori rights of autonomy, its levying of war, its land acquisition, and land reform through the Compensation Court, the Native Land Court, and the West Coast Commission. Some criticism of current arguments over tribal representation is properly directed not to the tribes but to the destruction of their society and institutions by the means described above. Based on the inquiry to date, we assess the question of autonomy to be most at issue in the Taranaki claims. We consider the principal losses to be the destruction of the culture and society of the people and of the resources that traditionally underpinned them. The result was the loss of both society and economic development opportunities, including the opportunity to participate in Government-assisted projects over the years; among them, the Department of Maori Affairs' farm development schemes. Reparation sufficient for the several hapu to establish a durable economic base appears to be essential for the reconciliation now needed.

#### **12.3.7 Compensation for personal injuries**

Personal injuries constitute a serious prejudice for which reparation is due. By personal injuries, we mean the present-day damage to the psyche and spirit of the people caused by deleterious and prejudicial action over generations. In our view, it is a significant item when considering historical claims and the steps necessary to remove prejudice. While time can soften hurt, the hurt in Taranaki has not been allowed to mend. The attack on Wiremu Kingi might well be seen as a thing of the past were it not for the fact that the rights of autonomy Kingi and others represented are still being denied. The military march through Taranaki and the bush scouring to destroy every village in the way, whether at peace or in arms, was one of the gravest scourges of the war, but it too might have been forgotten were it not for the fact that the process was repeated, long after the war, in the sacking and pillage of Parihaka and the forced dispersal of its citizens. It was indelibly emblazoned on our minds by witness after witness that Parihaka lives in the memory, and not as an isolated incident but as the exemplification of a pattern.

The history of Taranaki is not a set of unconnected incidents but a record of continual denial and repression, and that is the major problem to be addressed. Original prejudices have been resurrected and reinforced throughout each

generation. The manner in which land was taken; the way in which the so-called purchases were effected; the human rights abuses, including imprisonments without trial; the injury sustained; the continued denial of rights over generations; the resultant state of race relations and the bitterness to be ameliorated; cultural marginalisation; and demographic dispersal are all relevant considerations under this heading.

Included in this category is compensation for the perpetually renewable leases. While they may well constitute a separate, specific, and quantifiable item of damage for loss of use and rents, the main prejudice was the memorialisation of the confiscations and dispossessions. The perpetual leases ensured that the history of war and deprivation would be revisited by every generation of Taranaki Maori.

### **12.3.8 Social and economic performance**

Current social and economic performance may be a measure of past deprivation and poverty. We understand the Crown Forestry Rental Trust is funding a study in this area, but details of the work are not currently available to us.

### **12.3.9 Prior payments**

We would place little weight on moneys previously paid for these claims. At best, they served to save face for the Government's wrongs, but only fleetingly, for the sincerity of the Government's desire for atonement has depreciated in proportion to the growth of inflation.

We refer now to matters of structure and process.

### **12.3.10 Full and final settlement**

Just as generous reparation is needed to restore the Crown's honour and re-establish sound relations, so too is a broad and unquibbling approach required for the terms and conditions on which the settlement is made. Based on legal principles, the Taranaki claims may be assessed in billions of dollars, yet claimants appear to be required to settle for a fraction of that due. Some billions of dollars would probably result were loss based only upon the value of the land, when taken with compound interest to today, leaving aside exemplary damages or compensation for loss of rents and the devaluation of annuities. It may be necessary to have some constraints on account of economic exigencies. It could also be that the historical claims of peoples should not be treated as lawsuits for the recent losses of individuals, because historical variables have interposed. Whatever the case, it seems to us that a full reparation based on usual legal principles is unavailable to Maori as a matter of political policy, and if that is so, Maori should not be required to sign a full and final release for compensation as though legal principles applied. How tribes can legally sign for a fraction of their just entitlement when they have no other option is beyond us. To require Maori leaders to sign for a full and final settlement in these circumstances serves only to destabilise their authority. If a full pay-off for the past on legal lines is impractical, and a massive sum would be needed in this instance,

it is more honest to say so and to reconsider the jurisprudential basis for historical claims settlements.

A more arguable case would appear to be that the settlement of historical claims is not to pay off for the past, even were that possible, but to take those steps necessary to remove outstanding prejudice and prevent similar prejudice from arising; for the only practical settlement between peoples is one that achieves a reconciliation in fact. Accordingly, it appears to us that generous reparation is payable, and if the hapu are to waive further claims to the Waitangi Tribunal in future, it must be subject to the Government maintaining a commitment to the people's restoration and adhering thereafter to the principles of the Treaty of Waitangi.

#### **12.3.11 Hapu representation**

On the evidence to this point in time, the vast majority of those who appeared before us favour not a single Taranaki settlement but a settlement with the main hapu aggregations. Bearing in mind that over the history described more than 100 hapu can be counted and that the same number of hapu could well surface again, it is necessary to emphasise that we are here referring to the principal aggregations that have devolved to today. Most speakers before us presumed there were only eight such groupings, being the first eight named below, all of whom are currently represented on the Taranaki Maori Trust Board. It was considered these would cover the interests of all. Based upon their regular appearances and submissions at hearings spread over the last five years, however, 10 groups in fact demonstrated that they exist today as distinctive and viable entities deserving separate consideration. The groups are arranged by region and waka as follows:

North (Tokomaru)	Centre (Kurahaupo)	South (Aotea)
1. Ngati Tama	5. Taranaki	6. Nga Ruahine
2. Ngati Mutunga		7. Ngati Ruanui
3. Ngati Maru		8. Nga Rauru
4. Te Atiawa		9. Pakakohi
		10. Tangahoe

Other hapu appeared or filed claims, some only after four or five years of well-publicised hearings. Where these have particular ancillary claims relating to recent losses, as will be considered in any further report, those claims may need to be severed from the general settlement. Otherwise, these hapu appear to fall within the umbrella groups named.

#### **12.3.12 Hapu apportionment**

Because the hapu were affected in different ways, direct comparisons between them are not practicable. It is not enough to quantify the differences by comparing the amount of land that each lost by confiscation, purchase, or land reform or that each



had returned as reserves, because there was not one hectare of the land of any hapu that was not deleteriously affected in some way. A population basis is also of no help in this case, because population is conditioned by land loss.

The allocation is properly to be agreed between the hapu. In addition, the matter has not been fully argued before us. In the absence of some agreement, however, and based only upon our broad perception of matters over the last five years of research and hearings, we would consider the loss of the Taranaki people in the centre, including the destruction of Parihaka, to equate to one-seventh of the total, with the north and south losses to be equal between them at three-sevenths each. This also roughly approximates comparable tribal areas.

Hopefully, any apportionments within the three districts can be settled locally without further input from us. It may be useful if we state our view, however, that, although we recognise Pakakohi and Tangahoe as functioning entities of distinctive tradition, they have not had an exclusive occupation of territory nor have they established to our satisfaction that they have asserted such pre-eminence either formerly or today as might entitle them to share equally with Nga Ruahine, Ngati Ruanui, and Nga Rauru.

Further, subject to some contrary arrangement that might be locally agreed, it appears to us that separate settlements with the north, centre, and south would be appropriate, provided a body can be established for each that is fully accountable to the hapu in the area. To resolve overall quantum, however, a negotiating body of representatives from each of the northern, central, and southern parts may be required.

Those are our views at this stage, but as we have said, they are subject to any alternative arrangements settled locally.

#### **12.3.13 The Taranaki Maori Trust Board and the PKW Incorporation**

Conversely, while the Taranaki Maori Trust Board has had and should continue to have an important role in the life of Taranaki, compensation should be directed to the hapu, not the board, unless the hapu agree otherwise. Similarly, although the shareholders of the PKW Incorporation can point to historical losses of possession and rents, the main loss has again been with the hapu and it is with the hapu that a settlement must be made. If historical grievances are not to be compounded, or history repeated, limited funds should not be dissipated to individuals. It may need to be recalled that the Taranaki claims arose initially from the colonists' reordering of individual and group functions in Polynesian tradition.

None the less, the costs incurred by the trust board and the incorporation, which provided the main funding for the research and hearings over several years, should be acknowledged and reimbursed by the Crown.

DATED at Wellington this 30<sup>th</sup> day of April 1996

*Emarina Manuel*

*G S Orr* M.A. Bennett M.P.K. Sorrenson

Chief Judge E Taihakurei Durie presiding, Kuia Rangatira o Kahungunu ki Wairoa  
Emarina Manuel, Professor G S Orr, Te Pihopa Kaumatua the Right Reverend  
Manuhuia A Bennett, Professor M P K Sorrenson for

THE WAITANGI TRIBUNAL





## ADDENDUM

A report 'On the Readiness of Iwi of Taranaki to Negotiate a Settlement of the Taranaki Land Claim' was received on 30 April 1996 after Tribunal members had met to seal this report. The Tribunal decided to proceed with the printing of its report without reference to the further material received. All interested groups must have the opportunity to be heard on that material before it can be utilised and it was considered that the Taranaki report should not be delayed.

The further report arose from a Tribunal direction of 27 April 1995. It contends that Ngati Tama, Ngati Mutunga, Te Atiawa, and Ngati Maru have mandated iwi authorities in place and that each is represented on a claim progression team, so that a northern settlement is feasible. It is said that Taranaki, Nga Ruahine, Ngati Ruanui, and Nga Rauru are still working on their mandate and reporting processes, and it is hoped they will join the claim progression team when established.

Discussions between Pakakohi and Nga Rauru are said to be continuing.



APPENDIX I

**RECORD OF INQUIRY**

PART I

**PROCEEDINGS**

**HEARINGS**

*Members*

Chief Judge Edward Durie (presiding); the Right Reverend Manuhuia Bennett; Sir Monita Delamere;\* Mrs Emarina Manuel; Professor Gordon Orr; Professor Keith Sorrenson.

*Hearings*

The first hearing was held from 3 to 7 September 1990 at Owae Marae, Waitara; the second hearing was held on 26 November 1990 at Wellington; the third hearing was held on 12 and 13 February 1991 at Owae Marae; the fourth hearing was held from 8 to 12 April 1991 at Owae Marae; the fifth hearing was held on 10 and 11 June 1991 at Owae Marae; the sixth hearing was held from 14 to 17 October 1991 at Ihupuku Marae, Waitotara, and the Ngati Ruanui Runanga offices, Hawera (14 October), Aotearoa Marae, Okaiawa, and Te Upoko o te Whenua Marae, Tarata (15 October), Parihaka Pa, Parihaka (16 October), and Ruapekapeka Marae, Urenui (17 October); the seventh hearing was held on 17 February 1992 at the Patea Old People's Home, Patea, and Wharepuni Marae, Hawera; the eighth hearing was held on 22 and 23 June 1992 at Whakaahurangi Marae, Stratford; the ninth hearing was held from 20 to 22 October 1992 at Parihaka Pa, Parihaka (there was a site visit on 22 October 1992); the tenth hearing was held from 22 to 24 November 1993 at Pukearuhe Marae, Urenui; the eleventh hearing was held on 22 February 1994 at Wellington; the twelfth hearing was held from 12 to 15 June 1995 at Pakaraka Marae, Maxwell (12, 14, 15 June), the Avenue Motor Inn, Whanganui (13 June), and the Collegiate Motor Inn, Whanganui (15 June).

*Counsel*

P Green (for all claimants not separately represented); P Denee (for Te Pakakohi); K Horner (for Tangahoe); C Young (for the Crown); W Young QC (for the West Coast Lessees Association).

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\* Sir Monita Delamere died on 28 April 1993.

*Notices*

Public notices of the claim and of each hearing were given in newspapers at least 14 days prior to each hearing.

Individual notices were given to the Crown, claimants, Government departments, local authorities, and others who appeared to have an interest in the claim apart from any interest in common with the public. In addition, persons advising the registrar of an interest were notified of each sitting.

A record of all notices has been maintained by the registrar and is available for public inspection.

*Oral submissions*

Ariel Aranui; Tom Bailey; Olive Brooks; Julian Broughton; Rita Bublitz; Dianne Cameron; Miriama Campbell; Mate Carr; Hohipera Fox; Hoani Heremia; Martha Hohaia; Milton Hohaia; Ken Horner; Kathy Maraekura Horsfall; Aroha Houston; Cordry Huata; Ronald Hudson; Tamati Kirena; Tamawhero Kiriona; Phyllis Komene; Marjorie Rau Kupa; Te Ara Lake; Island Love; Sir Makere Rangiatea Ralph Love; Professor Ralph Heberley Ngatata Love; Hone Parata Luke; Richard Luke; David McCann; Donald McDonald; Louie MacDonald; Lyndsay McLeod; Dr Robert Te Kotahi Mahuta; Hori Manuirirangi; Tongawhiti Manuirirangi; Professor Hirini Moko Mead; Moeau Moeau; Garry Potonga Neilson; Thomas Tohe Pakanga Ngatai; Sue Nikora; Taika Nikorima; Bill Ohia; John Paki; Piki o Te Rauamo Parker; Dennis Patuwairua; Gordon Pihema; Raumati Rangihuna Pire; Hare Puke; Joe Purutene; Tihirua Putakarua; Whaiora Putu; Doris Rangi; Dianne Ratahi; Hamiora Raumati; Henry Rawiri; Brown Rewiti; Anthony Soul; Tom Spooner; Sonny Kauika Stephens; Eric Taha; Alex Taia; Pumi Taituha; Matiu Tarawa; Te Ropu Iti o Te Atiawa Watene Taungatara; Aila Taylor; Te Atau o Te Rangi II; Pateriki Te Rei; John Temaru; George Tito; Tainui Tokotaua; Hunanga Hohaia Tuwhakararo; Te Rangimatotoru Watene; Pono Whakaruru; Te Ru Koriri Wharehoka; Greg White; Moki White; Peter White; Stephen Taitoko White; Te Maihengia White; Tom Winitana; Tom Woods.

**CLAIMS**

- 1.1 Claim by Taranaki Maori Trust Board for Taranaki tribes generally, 31 March 1987 (Wai 131)
  - (a) Members claiming for board, H Raumati and others, 26 June 1987
  - (b) Application for State enterprise binding recommendations, 4 September 1991
- 1.2 Claim by P N T Tapuke for Kaipakopako 4A1B trustees concerning alienation of Kaipakopako lands, 20 July 1987 (Wai 133)
- 1.3 Claim by M Hohaia for Taranaki Iwi Katoa Trust and eight Taranaki tribes for ownership of Crown lands transferred to Government corporations and departments, 3 August 1987 (Wai 134)
- 1.4 Claim by S T White for Ngati Tama, 17 September 1987 (Wai 135)
- 1.5 Claim by T Kopu and others for Ngati Maru, 21 September 1987 (Wai 136)
- 1.6 Claim by G P Neilson for Nga Rauru Kitahi, 8 December 1987 (Wai 137)

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- 1.6(a) Further particulars of claim, 15 April 1987
- (b) Further particulars of claim, 22 June 1990
- 1.7 Claim by R H N Love and another for Nga Iwi o Taranaki, the Taranaki Maori Trust Board, the Wellington Tenth Trust, the Palmerston North Reserve Trust, and the corporations and trusts of Nga Iwi of Taranaki, 23 December 1987 (Wai 54)
  - (a) Further particulars of claim, 20 February 1993
  - (b) Further particulars of claim, 28 April 1995
  - (c) Further particulars of claim, 21 December 1995
- 1.8 Claim by T J Whana for Te Whana Whanau Trust, 23 June 1989 (Wai 138)
- 1.9 Claim by P R Parker for Te Pakakohi, 10 October 1989 (Wai 99)
  - (a) Further particulars of claim, 26 November 1989
  - (b) Further particulars of claim, 14 October 1991
  - (c) Further particulars of claim, 22 May 1995
  - (d) Further particulars of claim, 9 June 1995
  - (e) Further particulars of claim, 2 August 1995
  - (f) Further particulars of claim, 1 and 12 October 1993
- 1.10 Claim by J H Paki for Nga Mahanga and Ngati Haumiti hapu of Taranaki tribe, 28 May 1990 (Wai 126)
  - (a) Further particulars of claim, 21 June 1990
- 1.11 Claim by T Tamati and the Parininihi-ki-Waitotara Incorporation, 19 June 1990 (Wai 139)
- 1.12 Claim by M Horsfall and others for Nga Ruahine, 19 June 1990 (Wai 132)
- 1.13 Claim by H Waikerepuru for Ngati Ruanui, 20 June 1990 (Wai 140)
  - (a) Further particulars of claim, 29 August 1995
- 1.14 Claim by G Knuckey for Te Atiawa, 20 June 1990 (Wai 141)
- 1.15 Claim by D P Rangi and others for Tangahoe, 22 June 1990 (Wai 142)
  - (a) Further particulars of claim, 3 July 1990
  - (b) Further particulars of claim, 14 October 1991
  - (c) Further particulars of claim, 17 November 1995
- 1.16 Claim by Te A H Tito and others for Taranaki tribe, 21 July 1990 (Wai 152)
- 1.17 Claim by H H Tuwhakararo for Ngati Haumia, 16 February 1994 (Wai 456)
  - (a) Further particulars of claim, 21 February 1994
  - (b) Further particulars of claim, 4 April 1994
  - (c) Further particulars of claim, 7 April 1995
- 1.18 Claim by T Kiriona for Ngati Ruanui and Pakakohe, 10 February 1994 (Wai 419)



- 1.19 Claim by J H Te Katene-Hooker and another for Ngati Okahu and others, 12 June 1995 (Wai 559)
  - (a) Further particulars of claim, 27 October 1995
- 1.20 Claim by P Lake and another for Te Iwi o Mokau concerning the Mokau-Mohakatino block, noted for overlap purposes only, 18 July 1995 (Wai 529)
- 1.21 Claim by L Turahui for Ahitahi/Araukuku hapu, 4 October 1995 (Wai 552)
  - (a) Further particulars of claim, 21 November 1995
- 1.22 Claim by P L Te Rata and another of Maniapoto, noted for overlap purposes only, 30 January 1996 (Wai 577)
- 1.23 Claim by G Young for descendants of Rawiri te Ngaere and members of Jessie Wi Kingi Whanau Trust, 22 March 1996 (Wai 576)
- 1.24 Claim by R E Ogle for Ngati Maru (Taranaki) Incorporated, 16 April 1996 (Wai 583)

#### **PAPERS IN PROCEEDINGS**

- 2.1 Directions for notice of Maori Taranaki Trust Board claim, 30 April 1987
- 2.2 Certificate of notice of paper 2.1, 27 June 1987
- 2.2A Notice of interest, West Coast Settlement Reserve Leesees Association, 14 October 1988
- 2.3 Direction to join claims, 3 April 1989
- 2.4 Direction to register Pakakohi claim, 31 October 1989
- 2.5 Certificate of notice of paper 2.4
- 2.6 Directions for joinder, distribution of research reports, and conference, 31 May 1990
- 2.7 Certificate of notice of conference for Wellington on 22 June 1990
- 2.8 Direction to register Nga Mahanga claim, 31 May 1990
- 2.9 Certificate of notice of conference for New Plymouth on 22 June 1990
- 2.10 Tribunal memorandum following New Plymouth conference on 22 June 1990
- 2.11 Certificate of distribution of paper 2.10
- 2.12 Memorandum, J Paki concerning Petrocorp, 27 June 1990

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- 2.13 Direction constituting Tribunal, 28 June 1990
- 2.14 Crown counsel memorandum concerning notice, 28 June 1990
- 2.15 Tribunal memorandum to Ministers on disposal of Maui gas rights, 29 June 1990
- 2.16 Cabinet Committee response to paper 2.15, 2 July 1990
- 2.17 Memorandum Taranaki Maori Trust Board and the Parininihi-ki-Waitotara Incorporation on claim joinder, 2 July 1990
- 2.18 Certificate of notice of paper 2.17, 3 July 1990
- 2.19 Responses to joinder and hearing proposals
  - (a) P Adds, 9 July 1990
  - (b) J H Paki, 9 July 1990
  - (c) Nga Ruahine, Nga Rauru, Ngati Tama, Ngati Mutunga, 9 and 16 July 1990
  - (d) P N T Tapuke, 5 July 1990
  - (e) M Hohaia, 11 July 1990
  - (f) T J Whana, 14 July 1990
  - (g) P Rangi and others, 15 and 21 July 1990
  - (h) G White, 13 July 1990
  - (i) S Carr, 12 July 1990
  - (j) N Karena and others, 23 July 1990
- 2.20 Direction to distribute report, Dr A Parsonson (doc A3), 10 July 1990
- 2.21 Tribunal memorandum on process, 10 July 1990
- 2.22 Certificate of notice of paper 2.21 and further meeting for 12 July 1990
- 2.23 Certificate of distribution of Dr A Parsonson report
- 2.24 Tribunal memorandum following meeting of 12 July 1990
- 2.25 Certificate of distribution of paper 2.24
- 2.26 Tribunal memorandum on procedure for examining reports, 31 July 1990
- 2.27 Tribunal questions of Dr A Parsonson on reports, 31 July 1990
- 2.27A Notice of interest, Petrocorp Exploration and Production Company and others, 24 August 1990
- 2.27B Notice of interest, Taranaki Area Health Board, 28 August 1990
- 2.28 Certificate of public notice of first hearing
- 2.29 Certificate of individual notices for first hearing

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- 2.30 Crown counsel memorandum on process, 1 August 1990
- 2.31 Certificate of notice of Taranaki iwi claim (Wai 152), 3 August 1990
- 2.32 Claimant counsel on process, 8 August 1990
- 2.33 Tribunal memorandum on process, 8 August 1990
- 2.34 Crown counsel memorandum on process, 21 August 1990
- 2.35 Pakakohi counsel on notice, 28 August 1990
- 2.36 Counsel for Ngati Tama and Nga Ruahine on process, 4 September 1990
- 2.37 Vacant
- 2.38 Certificate of notice of second hearing
- 2.39 Claimant counsel motion that Crown acknowledge Sim commission findings, 26 October 1990
- 2.40 Crown counsel for adjournment of hearing of paper 2.39, 19 November 1990
- 2.41 Tribunal decision to proceed, 26 November 1990
- 2.42 Crown counsel memorandum on Crown's position on Sim Commission, 19 December 1990
- 2.43 Direction for hearing of paper 2.42
- 2.44 Certificate of notice of third hearing
- 2.45 Tribunal decision on motion that Crown acknowledge Sim commission findings, 19 December 1990
- 2.46 Certificate of notice of fourth hearing
- 2.47 Certificate of notice of fifth hearing
- 2.48 Direction to distribute report, J Ford (doc D19), 7 May 1991
- 2.49 Tribunal directions following fourth hearing
- 2.50 Directions authorising claimant counsel to commission A Watson to prepare research reports, 20 April 1991
- 2.51 Directions authorising claimant counsel to commission Dr A Parsonson and Dr H Bauchop to prepare research reports, 24 June 1991
- 2.52 Direction to distribute report, J Ford (doc E6), 2 August 1991

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- 2.53 Direction extending appointment of claimant counsel, 24 June 1991
- 2.54 Certificate of notice of sixth hearing
- 2.54A Notice of interest, South Taranaki District Council, 26 September 1991
- 2.55 Claimant counsel application for binding recommendations for Taranaki generally, 4 September 1991
- 2.56 Direction extending appointment of claimant counsel, 8 November 1991
- 2.57 Direction to distribute report, A Harris (doc F23), 19 December 1991
- 2.58 Direction to distribute reports, J Ford (docs F24–F26), 19 December 1991
- 2.59 Certificate of notice of seventh hearing
- 2.60 Nga Rauru application for binding recommendation for Waverley Post Office, 5 May 1992
- 2.61 Claimant counsel application for hearing of application for binding recommendations for Taranaki generally, 5 May 1992
- 2.62 Direction extending appointment of claimant counsel, 19 May 1992
- 2.63 Tribunal direction that Crown file schedule of State-owned enterprise lands, 25 May 1992
- 2.64 Certificate of notice of eighth hearing
- 2.65 Te Pakakohi application for binding recommendations for Patea Post Office and Patea Court House, 4 June 1992
- 2.66 Certificate of notice of ninth hearing
- 2.67 Direction to distribute report, K Barry (doc H19), 16 October 1992
- 2.67A Notice of interest, M and P Wells (west coast lessees), 28 January 1993
- 2.68 Direction adjusting terms of research commissions and for release of reports by Dr H Bauchop, 29 June 1993
- 2.69 Application by T K Maruera and another concerning Pakakohi claim of 28 May 1993 and direction thereon of 12 July 1993
- 2.70 Application by D Rangi and others for directions on Tangahoe claim (Wai 142), 16 July 1993
- 2.71 Te Atiawa application for urgent recommendation on Pukeariki reserve, 6 August 1993

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- 2.72 Tribunal direction for conference on Pukeariki application, 12 August 1993
- 2.73 Nga Rauru memorandum of opposition to negotiations with Taranaki Maori Trust Board, 2 August 1993
- 2.74 Direction for examination of report, C Marr, 'An Overview History of the Taranaki Confiscation . . .' (doc I16), 6 August 1993
- 2.75 Direction to distribute report, A Harris (doc I20), 12 July 1993
- 2.76 Direction to distribute report, M Benson and M Hohaia (doc I17), 12 July 1993
- 2.77 Notice of interest, New Plymouth District Council on Pukeariki proceedings, 26 August 1993
- 2.78 Memorandum for New Plymouth District Council on Pukeariki reserve, 2 September 1993
- 2.79 Tribunal preliminary determination on Pukeariki reserve, 6 October 1993
- 2.79A Notice of interest, Federated Mountain Clubs of New Zealand Incorporated, 13 October 1993
- 2.80 Application by P Rangi and others for Tangahoe for urgent hearing, 14 October 1993
- 2.81 Certificate of notice of tenth hearing
- 2.82 Claim by P Parker and another for Pakakohi for an urgent hearing, 1 October 1993
- 2.83 Tribunal directions on Pakakohi and Tangahoe claims, 19 November 1993
- 2.83A Pakakohi application for hearing , 24 November 1993
- 2.84 Tribunal directions following tenth hearing
- 2.85 Opposition to Taranaki Maori Trust Board negotiation of claims from Ngati Maru, Ngati Mutunga, Ngati Tama, Taranaki tribe, Nga Ruahine, Nga Rauru, and Ngati Te Whiti, 2 November 1993
- 2.86 Application by P Rangi and others for research assistance, 25 November 1993, and registrar's response, 8 December 1993
- 2.87 Tribunal direction on media report, 21 December 1993
- 2.88 Taranaki counsel on Pakakohi, 17 February 1994
- 2.89 Direction for further hearing for T Kiriona, 11 April 1994

*Record of Inquiry*

- 2.90 Direction to distribute reports, B Herlihy (docs I24, I25, J6, J7), 11 April 1994
- 2.90A Notice of interest, Ngati Te Whiti, 20 June 1994
- 2.91 Direction to register Ngati Haumia claim, 13 February 1995
- 2.92 Claimant counsel request for conference to review progress, 13 March 1995
- 2.92A Nga Rauru opposition to Taranaki Maori Trust Board, 13 March 1995
- 2.93 Application by Te Atiawa for urgent hearing on Waitara Harbour Board leases, 3 April 1995
- 2.94 Tribunal directions following conference on 3 April 1995
- 2.95 Tribunal direction for hearing of Ngati Hahua, 9 May 1995
- 2.96 Certificate of notice of twelfth hearing
- 2.97 Tangahoe request for further hearing, 8 June 1995
- 2.98 Tribunal memorandum following twelfth hearing and subsequent conference, 26 June 1995
- 2.99 Direction to distribute reports, S Woodley (docs M2–M7), 7 June 1995
- 2.100 Tribunal direction to register amendments to Nga Iwi o Taranaki claim, 26 June 1995
- 2.101 Direction to register Te Iwi o Mokau claim, 24 July 1995
- 2.102 Notice of interest, Taranaki Healthcare, 2 August 1995
- 2.103 Direction to register 9 June 1995 amendment to Pakakohi claim, 10 August 1995
- 2.104 Direction to register 2 August 1995 amendment to Pakakohi claim, 10 August 1995
- 2.105 Direction to distribute report, A Waetford (doc M13), 14 September 1995
- 2.106 Direction to register amendment to Ngati Ruanui claim, 4 October 1995
- 2.107 Certificate of notice of amendment to Ngati Ruanui claim, 11 October 1995
- 2.108 Interim response of Crown counsel to the claims, 29 November 1995
- 2.109 Direction to register Ahitahi/Araukuku claim, 25 November 1995
- 2.110 Certificate of notice of Ahitahi/Araukuku claim, 6 December 1995

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- 2.111 Direction to register further claim by A Erueti for Ahitahi/Araukuku, 8 December 1995
- 2.112 Certificate of notice of further Ahitahi/Araukuku claim, 11 December 1995
- 2.113 Direction to register amendment to Tangahoe claim, 12 December 1995
- 2.114 Certificate of notice of amendment to Tangahoe claim, 20 December 1995
- 2.115 Direction to distribute report, B White (doc M17), 17 November 1995
- 2.116 Direction to distribute report, J Ford (doc M18), 20 December 1995
- 2.117 Tribunal direction on Ahitahi/Araukuku claim, 8 January 1996
- 2.118 Certificate of notice of Ahitahi/Araukuku claim, 15 January 1996
- 2.119 Tribunal direction to register Ngati Okahu claim and amendment, 9 January 1996
- 2.120 Certificate of notice of Ngati Okahu claim, 16 January 1996
- 2.121 Direction to distribute report, B Bargh (doc M23), 25 January 1996
- 2.122 Direction to distribute report, B Bargh (doc M24), 9 February 1996
- 2.123 Direction to distribute report, Dr G Byrnes (docs M21, M21(a)–(d)), 20 December 1996
- 2.124 Direction to distribute report, A Waetford (doc M29), 8 March 1996
- 2.125 Direction to distribute report, B White (doc M20), 8 March 1996
- 2.126 Direction to register Rawiri Te Ngaere claim, 28 March 1996
- 2.127 Certificate of notice of Rawiri Te Ngaere claim, 29 March 1996
- 2.128 Direction to register Te Iwi o Mokau claim, 28 March 1996
- 2.129 Certificate of notice of Te Iwi o Mokau claim, 4 April 1996
- 2.130 Direction to register claim, 27 April 1996
- 2.131 Direction to distribute report, B White (doc M30), 30 April 1996

**RESEARCH COMMISSIONS AND AGREEMENTS**

- 3.1 Research commission, Dr A Parsonson, 14 April 1988
- 3.2 Research commission, Dr H Riseborough, 24 January 1989

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- 3.3 Research agreement, S Carr, S Karena, Sir M Love, N Love, M Rau-Kupa, S Raumati, P Whakaruru, T Tamati, and S White, 16 March 1989
- 3.4 Research commission for employment of two researchers by Taranaki Maori Trust Board, 3 August 1990
- 3.5 Authority for claimants to commission a research report from A Watson, 23 May 1991
- 3.6 Amendment to A Watson authorisation, 8 November 1991
- 3.7 Direction commissioning research, A Harris, J Ford on land purchases 1844 and 1860 and land confiscations and alienations, 1 August 1991
- 3.8 Direction commissioning research, K Barry on historico-jurisprudential basis for land confiscation, 8 June 1992
- 3.9 Direction commissioning research, B Herlihy on Maori land Pakakohi–Ngati Ruanui district and the Moturoa and Puketotara blocks, 16 June 1992
- 3.10 Authority for claimants to commission research reports from Dr A Parsonson (Waitara purchase, confiscation legislation), A Watson (resource management), Dr N Prickett (the war frontier, settler occupation, and confiscations), M Hond and V Sturme (legislation), N Love (reports by C Marr), S Locke (valuation issues), Dr H Bauchop (the Compensation Court, Crown labels, the West Coast Commission, west coast settlement reserves legislation), 14 June 1992
- 3.11 Direction commissioning research, B Herlihy on land south of the Mokau River, 14 June 1992
- 3.12 Direction commissioning research, C Marr on the Sim commission, 14 June 1992
- 3.13 Direction amending Herlihy research report, 7 September 1992
- 3.14 Direction commissioning research, L Head on Taranaki and Wairoa ki Wairarapa claims, 30 October 1992
- 3.15 Direction commissioning research, J Murray on Maori language documents 1840 to 1890, 12 November 1992
- 3.16 Direction commissioning research, M Benson and M Hohaia on the Parihaka block, 7 December 1992
- 3.17 Direction commissioning research, A Harris on Waitotara purchase, 14 October 1992
- 3.18 Direction amending J Murray commission, 21 April 1993
- 3.19 Direction commissioning research, J Murray on McLean papers, 30 June 1993



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- 3.20 Direction amending L Head commission, 20 August 1993
- 3.21 Direction commissioning research, S Woodley on ancillary claims and twentieth-century alienations, 20 August 1993
- 3.22 Direction amending L Head commission, 10 March 1995
- 3.23 Direction commissioning research, Dr G Byrnes on Ngati Tama lands, 26 May 1995
- 3.24 Direction commissioning research, A Waetford on Ngati Maru lands, 25 August 1995
- 3.25 Direction commissioning research, B Bargh on Ngati Mutunga, 29 September 1995
- 3.26 Direction amending Dr G Byrnes commission, 20 October 1995
- 3.27 Direction commissioning research, B Bargh on Okawanui and Rurupo papakainga lands, 25 November 1995
- 3.28 Direction commissioning research, A Waetford on Maraekura–Kaupokonui recreation reserve and Te Kauae urupa, 25 November 1995
- 3.29 Direction commissioning research, B White on the Puketapu E block, 25 November 1995
- 3.30 Direction commissioning research, B White on west coast settlement reserves, 25 November 1995
- 3.31 Direction commissioning research, B White on McKee oilfield, 13 December 1995
- 3.32 Direction commissioning research, M Stevens on Whitikau native reserve, 15 February 1996

## PART II

### RECORD OF DOCUMENTS

\* Document confidential and unavailable to the public without a Tribunal order

† Document held at the Waitangi Tribunal library, Waitangi Tribunal offices, second floor, 110 Featherston Street, Wellington

The name of the person or party that produced each document or set of documents in evidence appears in brackets after each reference, except where the source of the document is already clear.

#### **A DOCUMENTS TO END OF FIRST HEARING, 7 SEPTEMBER 1990**

- A1 Ann Parsonson, 'The Purchase of Maori Land in Taranaki, 1839–1859', report commissioned by the Waitangi Tribunal, February 1990 (claimant counsel)
- (a) Ann Parsonson, 'Land and Conflict in Taranaki, 1839–59', revised edition of document A1, November 1991
- (b) Document bank to document A1(a), 4 vols
- A2 Hazel Riseborough, 'Background Papers for the Taranaki Raupatu Claim', report commissioned by the Waitangi Tribunal, 1989 (claimant counsel)
- A3 Ann Parsonson, 'The Waitara Purchase and War in Taranaki', report commissioned by the Waitangi Tribunal, July 1990 (claimant counsel)
- A4† *Love v Attorney-General*, unreported, 17 March 1988, High Court, Wellington, CP135/88
- A5 'Law Reform (Miscellaneous Provisions) Bill: Proposed Amendments', Supplementary Order Paper, New Zealand House of Representatives, 26 June 1990 (D W Bain)
- A6† J D Henry, *Oil Fields of New Zealand*, London, 1911 (NZ edition, Thomas Avery, New Plymouth) (claimant counsel)
- A7† *New Zealand Parliamentary Debates*, 1937, vol 249, pp 1044–1064 (claimant counsel)
- A8† Affidavit of M R R Love in support of application for review, *Love v Attorney-General*, unreported, 17 March 1988, High Court Wellington CP135/88 (claimant counsel)

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- A9(a) Letter from law firm Kensington Swan to the Treasury concerning New Zealand Liquid Fuels Investment Ltd, 5 June 1990
- (b) Letter from Jeremy Doogue to the Treasury concerning the Motunui synthetic gasoline plant, 1 June 1990
- (c) Facsimile from law firm Kensington Swan to Jeremy Doogue in reply to document A9(b), 5 June 1990
- A10 Memorandum of understanding between Crown and Petrocorp, December 1989 (D W Bain)
- A11<sup>†</sup> Peter Cleave, *The Sovereignty Game: Power, Knowledge and Reading the Treaty*, Wellington, Victoria University Press, 1989
- A12<sup>†</sup> K Sinclair, *The Origins of the Maori Wars*, reprinted Auckland, University Press and Oxford University Press, 1984
- A13<sup>†</sup> J Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Penguin, 1988
- A14<sup>†</sup> Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Australian National University Press, 1974
- A15<sup>†</sup> *Raupatu Document Bank*, 139 vols, Wellington, Waitangi Tribunal, 1990
- A16 Phillip Green's opening and closing addresses, 3, 7 September 1990 (claimant counsel)
- A17 Submission on Taranaki Muru Raupatu produced at the Taranaki hearing, 3–7 September 1990 (claimant counsel)
- A18<sup>†</sup> Jane Reeves, 'Maori Prisoners in Dunedin, 1869–1872 and 1879–1881: Exiled for a Cause', BA (Hons) thesis in history, University of Otago, 1989 (claimant counsel)
- A19<sup>†</sup> Dick Scott, 'Ask that Mountain: The Story of Parihaka', Auckland, Heinemann and Southern Cross, 1975 (claimant counsel)
- A20<sup>†</sup> Edward Ellison, 'Sacred Stone Links Taranaki and Otago', *New Zealand Historic Places*, December 1987, pp 7–11 (claimant counsel)
- A21<sup>†</sup> 'Report of Commission of Inquiry into Maori Reserved Land', AJHR, 1975, H-3
- A22 Interpretation and translation of evidence presented by Raumati Rangihuna Pire (claimant counsel)
- A23 Papers submitted on 4 September 1990, consisting of
- (a) Statement of Sonny Waru, 30 November 1986
- (b) 'Distress and its Effect, Casualty Hotu House and Marae Rotahia, Discipline, Law and Order Honor and Credibility'

*Record of Inquiry*

- A24<sup>1</sup> G W Rusden, *History of New Zealand*, 2nd ed, vols 1–3, Melbourne, Melville, Mullen and Slack, 1895,
- A25<sup>1</sup> G W Rusden, *Aureretanga: Groans of the Maoris*, 1888 (reprinted Porirua, Hakaprint, 1974)
- A26 J G Bentinck Stokes, 'Report on Legal and Historical Aspects of the Taranaki Confiscations', report to the Secretary of Maori Affairs, 20 May 1981

**B DOCUMENTS TO END OF SECOND HEARING, 26 NOVEMBER 1990**

- B1 Cathy Marr, 'Crown Policy towards Major Crown–Iwi Claim Agreements of the 1940s and 1950s', preliminary report for the Treaty of Waitangi Policy Unit, Wellington, 1990
- B2 Claimants' submissions on the 1928 Sim commission, 26 October 1990
- B3 Annexe to document B2

**C DOCUMENTS TO END OF THIRD HEARING, 13 FEBRUARY 1991**

- C1 Crown counsel's submissions in reply to an interlocutory application concerning the Sim commission, 12 February 1991
- C2 Claimant counsel submissions in reply to document C1, 13 February 1991

**D DOCUMENTS TO END OF FOURTH HEARING, 12 APRIL 1991**

- D1 Claimant counsel's opening address, 8 April 1991
- D2 Submission of Rewiti Ritai Chalmers concerning traditional history and whakapapa of Te Atiawa, 8 April 1991 (claimant counsel)
- D3 Submission of Peter Addis and Alex Watene concerning general history of Te Atiawa people, 8 April 1991 (claimant counsel)
- D4 Alex Frame, 'Colonising Attitudes towards Maori Custom', *New Zealand Law Journal*, 17 March 1981, pp 105–110
- D5 Submission of Aila Taylor concerning the ongoing environmental impact of Raupatu, 9 April 1991 (claimant counsel)
- (a) Video recording in support of document D5
  - (b) *Soil and Water*, summer 1987, pp 22
  - (c) Missing shareholder register of Parininihi ki Waitotara Incorporation, 1990
  - (d) *Waitara Coast: Mussel Populations*, New Zealand Synthetic Fuels Corporation Ltd, pamphlet 85-3, April 1985

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- D5(e) *Waitara Coast: Marine Environment*, New Zealand Synthetic Fuels Corporation Ltd, pamphlet 85-1, April 1984
- D6 Augustus Hamilton, *The Art Workmanship of the Maori Race in New Zealand*, Dunedin, Fergusson and Mitchell, 1896 (claimant counsel)
- D7 Submission of Sir R Love on Taranaki confiscations, 9 April 1991 (claimant counsel)
- D8 Professor Hirini Moko Mead, 'The Art Heritage of Taranaki', 9 April 1991 (claimant counsel)
- (a) Slides supporting document D8
- D9 Moki White, 'Old Owae', submission concerning the site of Manukorihi, 9 April 1991 (claimant counsel)
- D10 'Statement by Te Atiawa Women in Support of Taranaki Raupatu Claims', submission of Hana Te Hemara, 9 April 1991 (claimant counsel)
- D11 Submission of Dr Ngatata Love on the Taranaki muru and raupatu, 10 April 1991 (claimant counsel)
- D12 'Otaraua Muru Mete Raupatu Presentation', submission of the Otaraau hapu of Te Atiawa by Alex Watson, Alice Doorbar, Jim O'Carroll, Shane Hunt, Tiri Nowell, and Peter Adds, 11 April 1991 (claimant counsel)
- D13 Submission of the Ngati Rahiri hapu of Te Atiawa by James Bailey and Mina Timutimu, 11 April 1991 (claimant counsel)
- (a)\* Video recording of oral evidence from Ngahina Okeroa
- D14 Submission of the Ngati Te Whiti hapu of Te Atiawa by Darcy Keenan, Danny Keenan, and Henly Sharland, 4 vols, 11 April 1991 (claimant counsel)
- D15 Submission of the Manukorihi hapu of Te Atiawa concerning traditional history, by Moki White, Morgan Watson, and Peter Adds for Ray Wattenbach, 11 April 1991 (claimant counsel)
- D16 Major Parris, *A Narrative of Some Native Troubles in Taranaki from 1854 to 1859*, Christchurch, Christchurch Press Company Ltd (article reprinted from the *Christchurch Press*, 1899), RR Parris Papers 1857-99 MSO51, item 25A, Taranaki Museum, New Plymouth
- D17 Submission concerning Pukerangiora hapu of Te Atiawa by Hip Fenton, 11 April 1991 (claimant counsel)
- (a) Video recording supporting document D17
- D18 Submission of Puketapu hapu of Te Atiawa concerning traditional history by Joe Ritai, Sophie Lawson-Watene, Ira Herangi, Peter Moeahu, John Niwa, Ted Tamati, Ted Nia, and Aila Taylor (claimant counsel)
- (a) Video recording of kuia

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- D18(b) Slides 1–20  
(c) *Seaside Erosion*, video recording

D19 Janine Ford, 'Schedule of Land Purchases and Native Reserves, Taranaki 1839–1860', report commissioned by the Waitangi Tribunal, 26 April 1991

**E DOCUMENTS TO END OF FIFTH HEARING, 11 JUNE 1991**

- E1<sup>†</sup> 1:125,000 topographical map showing approximate bushline at time of European contact  
(a)<sup>†</sup> Overlay showing confiscation boundaries, the Waitotara abandonment, and the Wellington–Taranaki provincial boundary  
(b)<sup>†</sup> Overlay showing the Te Atiawa rohe  
(c)<sup>†</sup> Overlay showing Crown purchases and native reserves from 1844 to 1860
- E2 Collection of A4 maps to accompany and convey the same information contained in documents E1(b) and (c)  
(a) Te Rohe o Te Atiawa  
(b) Crown purchases, 1844–1860  
(c) Native reserves within Crown purchases, Northern Taranaki, 1859  
(d) Waitotara Purchase 1863
- E3 'Aspects of Ngati Te Whiti History', submission of Ngati Te Whiti by Danny Keenan, 11 June 1991 (claimant counsel)
- E4 Introductory statement of Raymond Watembach, 11 June 1991
- E5 'Report on the Acquisition of Land Associated with the Manukorihi Marae', report received from the Crown Law Office, 2 July 1991
- E6 Janine Ford, 'The Decisions and Awards of the Compensation Court in Taranaki, 1866–1874', report commissioned by the Waitangi Tribunal, July 1991

**F DOCUMENTS TO END OF SIXTH HEARING, 17 OCTOBER 1991**

- F1 Submission of Nga Rauru iwi concerning traditional history, 14 October 1991 (claimant counsel)  
(a) Appendices to document F1
- F2 Submission of Ngati Ruanui iwi concerning traditional history by Hoani Heremaia, John Nyman, Maimo Maruera, and Spencer Carr, 14 October 1991 (claimant counsel)
- F3 Submission of Nga Ruahine iwi concerning traditional history and rohe, 15 October 1991 (claimant counsel)
- F4 Extract from Whanganui Maori Land Court minutes (6 Whanganui Appellate minute book, fols 29–31)

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- F5 Memorandum with accompanying maps and plans from David Rogers to the regional conservator in Whanganui concerning a customary title claim forwarded by Mrs Maraekura Horsfall, 29 May 1990 (claimant counsel)
- F6 Documents concerning the Ngatitu No 9 block (ML612), including correspondence from the Maori Land Court, extracts from minute books, and plans
- F7 'Census of the Native Population between the White Cliffs and Waitotara: Extracted from the Census of 1878', AJHR, 1880, G-2, app B, p 32
- F8(a) Aerial photographs showing the Otamere Reserve and the Otakeao and Kaupokonui Streams  
(b) Aerial photographs showing the mouth of the Kapunui Stream
- F9 Certificates of title listing those lands requested to be returned to Nga Hapu-o-Nga Ruahine
- F10 Submission of Ngati Maru iwi concerning Muru me te Raupatu, 15 October 1991 (claimant counsel)
- F11 Submission concerning the basis for the Taranaki Iwi claim presented by Lindsay Rihari Waitara MacLeod on behalf of Taranaki iwi, 16 October 1991 (claimant counsel)  
(a) 'Extract from *The Progress of New Zealand in the 19th Century*, pp 300–306 (American Edition), by O T J Alpers', *Christchurch Press*, 4 February 1903, p 8, cols 2–3
- F12 Submission concerning traditional history presented by Milton Hohaia on behalf of Taranaki iwi (claimant counsel)
- F13 'A Case Study of the Ngatihaupoto Hapu', submission of Ailsa Smith, 16 October 1991
- F14 'Waahi Tapu', submission (claimant counsel)
- F15 'Tauranga Waka', submission (claimant counsel)
- F16(a) Introduction to documents F16(b) to (e)  
(b) Roger Fyfe, 'Another Petroglyph at Omata, Taranaki', *Archaeology in New Zealand*, vol 32, no 4 (December 1989), pp 177–181  
(c) Nigel Prickett, 'A Recently Discovered Petroglyph at Omata, Taranaki', *New Zealand Archaeological Association Newsletter*, vol 24, no 3 (September 1981), pp 198–201  
(d) Kelvin Day, 'Petroglyphs in Coastal Taranaki', *New Zealand Archaeological Association Newsletter*, vol 23, no 2 (June 1980), pp 113–117  
(e) Series of photographs from the Taranaki Museum depicting Maori taonga

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- F17 Letter from the Minister of Justice to the iwi of Taranaki concerning the Taranaki claims, 16 October 1991
- (a) Letter to the Minister of Justice from Nga Kaumatua o Parihaka in reply to document F17(c), 14 August 1992
  - (b) Letter from Milton Hohaia to the Minister of Justice concerning an apology for Parihaka, 27 February 1992
  - (c) Letter from the Minister of Justice to Milton Hohaia in reply to document F17(b), 9 April 1992
- F18(a) Submission of Ngati Mutunga concerning traditional history and rohe, 17 October 1991 (claimant counsel)
- (b) The Kyngdon Land-grant Act 1893 (1893 No 28) and the Special Contracts Confirmation Act 1877 (1877 No 13) (claimant counsel)
- F19 Submission of Greg White concerning the basis for the Taranaki claim, 17 October 1991 (claimant counsel)
- F20<sup>†</sup> Evelyn Stokes, *Mokau: Maori Cultural and Historical Perspectives*, University of Waikato, 1988
- F21<sup>†</sup> *Ngaruahine Iwi Authority Structure*
- F21(a) *Ngaruahine Iwi Authority (Constitution)*
- (b) Document detailing the structure of the Nga Ruahine Iwi Authority
- F22<sup>†</sup> Series of Taranaki Maori Trust Board reports and balance sheets from 1932 to 1967
- (a) *Hui Whakamahara ki a Maui Pomare*, New Plymouth, McLeod and Slade Ltd, 1936
- F23 Aroha Harris, 'Title Histories of the Native Reserves made in the Bell Block, Tarurutangi, Hua, Cooke's Farm and Waiwakaiho Purchases in Taranaki, 1848–1859', report commissioned by the Waitangi Tribunal, November 1991 (claimant counsel)
- (a) Document bank to document F23
- F24 Janine Ford, 'Title Histories of the Native Reserves Made in the Fitzroy, Grey and Omata Purchases in Taranaki, 1844–1848', report commissioned by the Waitangi Tribunal, November 1991
- F25 Janine Ford, 'A Comparison between the Awards of the Compensation Court that were Intended to be Implemented and those that were Implemented in Taranaki, 1867–1885', report commissioned by the Waitangi Tribunal, November 1991
- F26 Janine Ford, 'A Comparison between the Crown Grants Recommended for Issue by the Fox–Bell Commission and those that were Issued in Taranaki, 1879–1885', report commissioned by the Waitangi Tribunal, November 1991



**G DOCUMENTS TO END OF SEVENTH HEARING, 17 FEBRUARY 1992**

- G1 'The Pakakohi Tribe', submission of Brian Herlihy on behalf of Te Pakakohi, 17 February 1992 (claimant counsel)
- G2 'Te Pakakohi Iwi', submission of Tupatea Kahukuranui concerning the origins of Te Pakakohi, 17 February 1992 (claimant counsel)
- G3 Submission of Piki o te Rauamo Parker concerning the boundaries, legislation, and resources of Te Pakakohi, 17 February 1992 (claimant counsel)
- G4 Copy of a Crown grant under the New Zealand Settlements Act 1863, the New Zealand Settlements Amendment and Continuance Act 1865, and the Waste Lands Administration Act 1876 showing a parcel of land in Carlyle (Patea), 8 March 1877
- G5 Copy of census form circulated by Te Pakakohi, 17 February 1992 (claimant counsel)
- G6 Preliminary submission presented by Rita Bublitz, Aroha Houston, and Barry O'Brien on behalf of the Tangahoe iwi, 17 February 1992 (claimant counsel)
- G7 Addendum to the submission of Barry O'Brien in document G6, 17 February 1992 (claimant counsel)
- G8 Addendum to the submission of Rita Bublitz in document G6, 17 February 1992 (claimant counsel)
- G9 Letter from the Ngati Ruanui Maori Committee to members of the Taranaki Tribunal, 16 February 1992 (claimant counsel)
- G10 Transcript of submission by Maraekura Horsfall concerning the claims of Ngati Tu hapu of Nga Ruahine, 19 February 1992 (claimant counsel)

**H DOCUMENTS TO END OF EIGHTH HEARING, 23 JUNE 1992**

- H1 Map of post-confiscation purchases in Taranaki
- H2 Tables entitled 'Summary of Lands Acquired 1872–1881 by Instructions of Native Minister to Civil Commissioners in Taranaki 1872 and 1876, and under Immigration and Public Works Act 1870' and 'Land Acquired by the Payment of Takoha by Charles Brown, Civil Commissioner, as Recorded by West Coast Commission'
- H3 Aroha Harris, 'Crown Acquisition of Confiscated and Maori Land in Taranaki, 1872–1881', report commissioned by the Waitangi Tribunal, January 1993

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- H4 Nigel Prickett, 'The Military Frontier in Taranaki, 1860–1881', report commissioned by the Waitangi Tribunal, 23 June 1992 (claimant counsel)
- H5 Diagram showing the organisation of military frontiers
- H6 Map showing the defences of New Plymouth, in the First Taranaki War
- H7 Map showing Maori and European fortifications, major engagements, and other aspects of the first Taranaki war (1860–61)
- H8 Map showing European fortifications, major engagements, and other aspects of the second Taranaki war (1863–66)
- H9 Map showing military sites established during the White Cliffs scare of 1869
- H10 Map showing military sites established during the Parihaka campaign of 1880 to 1881
- H11 Heather Bauchop, 'The Wars and Iwi Losses, Taranaki 1860–70: A Summary', report commissioned by the Waitangi Tribunal, June 1992 (claimant counsel)
- H12 Map showing places mentioned in document H11
- H13 Map showing places mentioned in document H11
- H14 Brief of topics for discussion between the Honourable Doug Kidd and the Nga Ruahine Tribal Trust
- H15 Letter from R A Johnston to the Honourable Doug Kidd concerning the Nga Ruahine Trust Farm, 27 November 1991
- H16 Facsimile from Professor R H N Love to P D Green concerning the Crown Minerals Act 1991, 25 June 1992 (claimant counsel)
- H17 Submission from Tangahoe iwi concerning standard of Tribunal research, 22 June 1992 (claimant counsel)
- H18 Research material concerning Ngati Tama assembled by Dr Evelyn Stokes, 1 July 1992 (claimant counsel)
- H19 Kieren Barry, untitled report commissioned by the Waitangi Tribunal on the historical and jurisprudential basis for land confiscation, October 1992 (claimant counsel)
  - (a) Document bank to document H19, vol 1
  - (b) Document bank to document H19, vol 2
  - (c) Document bank to document H19, vol 3

**I DOCUMENTS TO END OF NINTH HEARING, 22 OCTOBER 1992**

- I1 Introduction of Ailsa Smith, Hazel Reisborough, and Milton Hohaia by Lindsay Rihari Waitara MacLeod, 20 October 1992 (claimant counsel)
- I2 'Background to the Parihaka Movement', submission of Ailsa Smith, 20 October 1992 (claimant counsel)
- I3 Jane Reeves, 'Maori Prisoners in Dunedin, 1869–1872 and 1879–1881: Exiled for a Cause', BA (Hons) thesis in history, University of Otago, 1989 (claimant counsel)
- I4 Milton Hohaia and Marlene Benson, 'Summary of What Happened to the Land within the Parihaka Block – 1882 Onwards', report commissioned by the Waitangi Tribunal, 21 October 1992 (claimant counsel)
- I5 Map in support of document I4 (claimant counsel)
- I6<sup>†</sup> Cadastral map in support of document I4, 21 October 1992 (claimant counsel)
- I7 Map of field trip sites at the ninth hearing, 22 October 1992
- (a) Key to places marked on document I7
- (b) Details of sites visited on 22 October field trip
- (c) Document in Maori and English
- I8 Submission concerning the New Plymouth District Council (Land Vesting) Bill (as submitted to the Internal Affairs and Local Government Committee on 31 July 1992), 22 October 1992 (claimant counsel Knuckey)
- I9 Submission of Grant Knuckey concerning reserves within the Fitzroy purchase (claimant counsel)
- I10<sup>†</sup> Map depicting the history of the land in the New Plymouth District Council (Land Vesting) Bill prior to the issue of the first land transfer certificates of title
- I11 History of, and supporting documents concerning, the Cape Egmont Lighthouse reserve
- I12 List of petitions relating to the Taranaki muru and raupatu (1863–1947), 22 October 1992
- I13 'Report of the Royal Commission of Inquiry into the Alleged Usury on Loans to Maoris', AJHR, 1906, sess II, G-1, pp 1–10, referred to in evidence of John Hanita Paki, 22 October 1992
- I14 Extracts from Maori Land Court minutes referred to in evidence of John Hanita Paki, 22 October 1992: Taranaki minute book, vol 23, fols 288–292, of 8 July 1915 at Pungarehu before Judge J P Jack concerning Rangikiekie
- (a) Taranaki minute book, vol 23, fols 184–192, 274–275, 7 July 1915 concerning the Broughton grant at Patea

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- I14(b) Whanganui minute book, vol 19, 7 February 1891, concerning Ruatangata No 1 (panui no 26)
- I15 Richard Boast, 'Indigenous Claims to Petroleum Resources', unpublished paper, September 1991
- I16 Cathy Marr, 'An Overview History of the Taranaki Confiscation Claim, 1920s–1980s: From the Sim Commission to the Submission of Taranaki Claims to the Waitangi Tribunal', report commissioned by the Waitangi Tribunal, 15 April 1993 (claimant counsel)
- (a) Document bank to document I16
- I17 Marlene Benson and Milton Hohaia, 'Alienation of Land within the Parihaka Block', report commissioned by the Waitangi Tribunal, May 1993 (claimant counsel)
- (a) Document bank to document I17, vol 1
- (b) Document bank to document I17, vol 2
- (c) Document bank to document I17, vol 3
- (d) Document bank to document I17, vol 4
- (e) Document bank to document I17, vol 5
- (f) Document bank to document I17, vol 6
- (g) Untitled report summarising the alienation of land within the Parihaka block
- I18 Heather Bauchop, 'The Aftermath of Confiscation: Crown Allocation of Land to Iwi, Taranaki 1865–80', report commissioned by the Waitangi Tribunal, June 1993 (claimant counsel)
- I19 Heather Bauchop, 'Denigration and Denial: Crown Renaming of the Land, History and Undermining of Iwi in Taranaki', report commissioned by the Waitangi Tribunal, June 1993 (claimant counsel)
- I20 Aroha Harris, 'An "Iniquitous Job"?: Acquisition of the Waitotara Block by the Crown', report commissioned by the Waitangi Tribunal, July 1993
- (a) Document bank to document I20, vol 1
- (b) Document bank to document I20, vol 2
- I21 Documents filed by Grant Knuckey relating to the Pukeariki reserve, 4 August 1993 (claimant counsel)
- I22 Ann Parsonson, 'The New Zealand Settlements Act 1863', report commissioned by the Waitangi Tribunal, August 1993 (claimant counsel)
- (a) Document bank to document I22, vol 1
- (b) Document bank to document I22, vol 2
- I23 Supporting documents to paper 2.80, 14 October 1993 (claimant counsel)
- I24 Brian Herlihy, 'Mokau–Mohakatino and Mohakatino–Parininihi Blocks (Including Kohepotae Block)', report commissioned by the Waitangi Tribunal, November 1993 (claimant counsel)

- I25 Brian Herlihy, 'Moturoa and Puketatora Compensation', report commissioned by the Waitangi Tribunal, November 1993 (claimant counsel)
- I26<sup>†</sup> Overlay, Department of Conservation and State-owned enterprise lands, Taranaki region
- (a)<sup>†</sup> Enlargement diagrams of Department of Conservation and State-owned enterprise properties not plotted adequately on overlay
- (b)<sup>†</sup> Schedule of Department of Conservation and State-owned enterprise lands
- I27 Pakakohi request for urgent hearing and associated documents, 12 October 1993 (claimant counsel)

**J DOCUMENTS TO END OF TENTH HEARING, 24 NOVEMBER 1993**

- J1 Submission of Gary Neilson concerning traditional history, 22 November 1993 (claimant counsel)
- J2 'Ko Taranaki te Maunga', submission of Mereana Hond, 22 November 1993 (claimant counsel)
- J3 Submission of P D Green concerning New Plymouth *Daily News* report of 23 November 1993 (claimant counsel)
- J4<sup>†</sup> Map showing site of Pukeariki (central New Plymouth)
- J5 Application by Te Pakakohi claimants for further matters to be heard, 24 November 1993
- J6 Brian Herlihy, untitled report commissioned by the Waitangi Tribunal on the Maori Land Court's determination of land ownership in the Pakakohi and Ngati Ruanui rohe (claimant counsel)
- J7 Brian Herlihy, untitled report commissioned by the Waitangi Tribunal on the reserves set aside for Ngati Tama (claimant counsel)

**K DOCUMENTS TO END OF ELEVENTH HEARING, 22 FEBRUARY 1994**

- K1 'The Pakakohi Tribe', submission of Brian Herlihy, 22 February 1994 (claimant counsel)
- (a) Document bank to document K1
- K2 Submission of Rongo Tupatea Kahukuranui concerning traditional history, 22 February 1994 (claimant counsel)
- K3 'The Pakakohi Tribe', submission of Ronnie Te Aroha Kahukuranui, 22 February 1994 (claimant counsel)

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- K3(a) Maps showing Crown grant lands to Pakakohi maraes and pa sites, cultural artifacts recovered 1931 cave drawings (Kohi caves)
- K4 Submission of Waverly Broughton Stephens concerning the Taranaki Regional Council, 22 February 1994 (claimant counsel)
- K5 Submission of Piki Parker, 22 February 1994 (claimant counsel), introducing evidence concerning:
- (a)\* Whakapapa, Te Pakakohi tribe
  - (b) Documents submitted by Pakakohi claimants detailing the West Coast commission's recommendations for Crown grants
  - (c)\* Documents and maps concerning the Te Pakakohi claim
- K6 Document relating to compensation for all losses under the Treaty of Waitangi, 22 February 1994
- K7 Submission of the Taranaki Regional Council concerning Pakakohi input on Proposed Regional Policy Statement, 21 February 1994
- K8 Submission of Gary Neilson disputing Pakakohi claim, 14 February 1994 (claimant counsel)
- K9† Ruka Alan Broughton, 'Ngaa Mahi Whakaari a Tiitokowaru', Victoria University Press, Whakataainga Tuatahi, 1993
- K10 Submission of Piki Parker concerning memorial on land title, 28 February 1994 (claimant counsel)
- K11† Ian Church, 'Heartland of Aotea, Maori and European in South Taranaki before the Taranaki Wars'
- K12 Advertisement taken from Taranaki daily newspaper, 13 April 1994
- K13 Facsimile from Ngati te Whiti ki o Ngamotu to the Waitangi Tribunal stating their interest in any claims lodged over lands in the New Plymouth area, 20 June 1994
- K14 Further statement of Piki Parker concerning Te Pakakohi independence, 15 July 1994 (claimant counsel)

**L DOCUMENTS TO END OF TWELFTH HEARING, 15 JUNE 1995**

- L1 Letter from law firm Welsh McCarthy to Waitangi Tribunal concerning the West Coast Settlement Reserves Lessees Association, 28 April 1995
- L2 Submission of E D and F R Riddell concerning lease of their farm, 22 May 1995

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- L3 Submission of Aroha Houston concerning objection to Ngati Ruanui claim, 25 May 1995 (claimant counsel)
- L4 Submission of Ngati Ruanui Iwi Authority on behalf of the Patea Maori Committee concerning competing claims, 12 June 1995 (claimant counsel)
- L5 Submission of H Waikerepuru concerning traditional history, 12 June 1995 (claimant counsel)
- L6 'Ko Aotea te Waka: The History of Ngati Ruanui', submission of A T Soul, 12 June 1995 (claimant counsel)
- L7 Submission of H Maaruera, 1911 judgment, 12 June 1995 (claimant counsel)
- L8 Submission of Murray and Patricia Wells and Catherine Ellis concerning recreational reserve, 12 June 1995
- L9 Submission of Catherine Ellis concerning wish to purchase farm lease, 12 June 1995
- L10 Petition rejecting the representation of the Ngati Tama Iwi Authority and supporting the management of the Pukearuhe historic reserve, 12 June 1995
- L11 Submission of Dr W Young QC on behalf of the West Coast Settlement Reserves Lessees Association concerning termination of perpetual leases, 13 June 1995
- L12 Submission of Rex Brogden concerning history of West Coast leases, 13 June 1995
- L13 Submission of John Larmer concerning West Coast leases, 13 June 1995
- L14 Submission of Te Iwi o Ngaa Rauru concerning the effect of colonisation on Nga Rauru, 14 June 1995 (claimant counsel)
  - (a) Document bank to document L14
  - (b) Calendar for 1990 ('Ko Etehi o nga Tonga Tawhito o roto o Nga Rauru me nga Marama o te Tau 1990', Whanganui, Meteor Printers Ltd, 1990) illustrated with photographs of Nga Rauru pa sites
  - (c) Ron Bullock, 'We Shall Not Die', song (as sung for Nga Rauru)
- L15 'The Mururaupatu: A Contemporary View', submission of Potonga Neilson, 14 June 1995 (claimant counsel)
  - (a) Map showing the location of Taipake in the Kai Iwi recreation reserve and maps and details of various reserves
- L16 Submission of Waveney Stephens concerning the Tangahoe claims, 14 June 1995 (claimant counsel)
- L17 Submission of Melanie Luke concerning the Tangahoe claims, 14 June 1995 (claimant counsel)

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- L18 'Objection to Ngati Ruanui Placing Land Claims before the Waitangi Tribunal', submission of Aroha Houston, 14 June 1995 (claimant counsel)
- L19 Oral submission of John Watene, 14 June 1995 (claimant counsel)
- (a) Group photograph taken outside the house 'Whareroa', 18 May 1957
  - (b) Extract from *Ngaa Mahi Whakaari a Tiitokowaru*; J Belich, *I Shall Not Die*, pp 38–41
  - (c) 'Report of the Pokaikai Commission', AJHR, 1868, A-3, pp 8–9, 20–22
  - (d) 'Report of the Pokaikai Commission', AJHR, 1868, A-3, pp 18–19
  - (e) 'Report of the Pokaikai Commission', AJHR, 1868, A-3, pp 4–17
  - (f) Map showing Ohangai Farm in the Whareroa reserve
  - (g) Map showing the district of Hawera planning scheme
- L20 Submission of Rita Bublitz concerning the rohe of Tangahoe, 14 June 1995 (claimant counsel)
- L21 Submission of Ken Homer concerning Tangahoe research, 14 June 1995 (claimant counsel)
- L22 Submission of Piki Parker concerning Te Pakakohi claims, 14 June 1995 (claimant counsel)
- (a) Letter from Piki Parker to the director of the Waitangi Tribunal concerning grievance and injustice, 12 June 1995
- L23 Submission of Paora Broughton concerning Wheuakura Marae, 14 June 1995 (claimant counsel)
- L24 Submission of Dewayne Nui concerning the occupation of the Patea court house, 14 June 1995 (claimant counsel)
- L25 Submission of John Pullen concerning Te Pakakohi claims, 28 April 1995 (claimant counsel)
- L26 Submission of John Hoata concerning Maori reserve land and the destruction of property, flora, and fauna, 14 June 1995 (claimant counsel)
- L27 Submission of the president of the Federated Mountain Clubs of New Zealand Incorporated concerning the public conservation estate within the claim area, 15 June 1995
- (a) *Federated Mountain Clubs of New Zealand Bulletin*, no 116, May 1994
  - (b) 'Proposed Objectives and Approaches to Redress for the Ngai Tahu Negotiations', Cabinet paper, CAB(91) M38/27, September 1991
- L28 Statement of claim of Nga Uri Whanau o Ngatitu, 15 June 1995 (claimant counsel)
- (a) Document bank to document L28
- L29 Graham Butterworth, 'A Fearful Symmetry: Some Observations on the Funding of Iwi Development and Treaty Claims', report commissioned by the Waitangi Tribunal, 13 June 1995 (claimant counsel)



- L30 Susan Butterworth, 'Political Aspects of the Waitara Claim', report commissioned by the Waitangi Tribunal, 15 June 1995 (claimant counsel)
- M DOCUMENTS SINCE END OF TWELFTH HEARING, 15 JUNE 1995**
- M1 Letter from the president of the Federated Mountain Clubs of New Zealand Incorporated to the Waitangi Tribunal concerning Taranaki National Park, 21 June 1995
- M2 Suzanne Woodley, 'Rohutu', report commissioned by the Waitangi Tribunal, June 1995
- M3 Suzanne Woodley, 'Pukekohatu', report commissioned by the Waitangi Tribunal, June 1995
- M4 Suzanne Woodley, 'Mangati E', report commissioned by the Waitangi Tribunal, June 1995
- M5 Suzanne Woodley, 'Ngamotu (Katere Reserve)', report commissioned by the Waitangi Tribunal, June 1995
- M6 Suzanne Woodley, 'Rewarewa Rifle Range (Katere Reserve)', report commissioned by the Waitangi Tribunal, June 1995
- M7 Suzanne Woodley, 'Manukorihi', report commissioned by the Waitangi Tribunal, June 1995
- (a) Document bank to document M7
- M8 Submission of R Rei concerning Piki Parker's claim, 18 July 1995 (claimant counsel)
- M9 Letter from Piki Parker to the Minister in Charge of Treaty of Waitangi Negotiations, 16 July 1995; letter from the chief executive of Te Ohu Kai Moana to the chairperson of Te Runanganui o Te Pakakohi, 10 July 1995 (claimant counsel)
- M10 Letter from Waveney Stephens and Aroha Houston to the fisheries commissioners of Te Ohu Kai Moana, 19 July 1995
- M11 Letter from Piki Parker to the fisheries commissioners of Te Ohu Kai Moana, 19 July 1995 (claimant counsel)
- M12 'Evidence in Support of the Ngati Mutunga Muru me te Raupatu Claim to the Waitangi Tribunal', submission of the Ngati Mutunga Iwi Authority, July 1995 (claimant counsel)
- (a) Appendices 1 and 2 to document M12
- (b) Appendices 3 and 4 to document M12
- (c) Document bank to document M12, vol 1
- (d) Document bank to document M12, vol 2

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- M12(e) Document bank to document M12, vol 3  
(f) Document bank to document M12, vol 4  
(g) Document bank to document M12, vol 5
- M13 Aroha Waetford, 'Ngati Maru A to F Blocks', report commissioned by the Waitangi Tribunal, September 1995 (claimant counsel)
- M14 Keith Holswich, 'Ngati Rahiri: A Summary of the Events Affecting Ngati Rahiri Land in the Period 1859–1884', 19 September 1995 (claimant counsel)
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- M21 Dr Giselle Byrnes, 'Ngati Tama Ancillary Claims: The Mohakatino Parininihi Block and the Mokau Mohakatino No 1 Block', report commissioned by the Waitangi Tribunal, November 1995  
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- M25 Document bank to document A3
- M26 Huirangi Waikerepuru, 'Translations and Interpretations for Ann Parsonson, History Department, Canterbury University', February 1992
- M27 Dr Patricia Berwick, 'Land and Land Ownership in the Wellington Tenth and Taranaki: The Gap between Tangata Whenua and Crown Concepts in the 1840s', report commissioned by the Waitangi Tribunal, 4 February 1996
- M28 Brian Herlihy and Associates, 'Taranaki Lands: Interim Report', report commissioned by the Crown Forestry Rental Trust, February 1996
- M29 Aroha Waetford, 'The Kaupokonui Recreation Reserve', report commissioned by the Waitangi Tribunal, February 1996
- M30 Suzanne Woodley and Ben White, 'The Acquisition of the Puketapu Blocks for the New Plymouth Airport', report commissioned by the Waitangi Tribunal, April 1996
- M31 Taranaki Muru me te Raupatu Coordination Team, 'Report on the Readiness of the Iwi of Taranaki to Negotiate a Settlement of the Taranaki Land Claim', April 1996

## APPENDIX II

# CONFISCATION LEGISLATION

## THE NEW ZEALAND SETTLEMENTS ACT 1863

1863 No 8

### ANALYSIS

- |   |   |
|---|---|
| Title.  | 11. Extent of Jurisdiction.   |
| Preamble.   | 12. Power of Judges to compel attendance of witnesses &c.                                 |
| 1. Short Title.   | 13. Colonial Secretary to transmit claims and Judges to hear them.                        |
| 2. Governor in Council may proclaim Districts.  | 14. Certificates to be granted.   |
| 3. Governor in Council may set apart sites for settlement.                                | 15. Grantee of Certificate entitled to amount from Colonial Treasury.                     |
| 4. Governor in Council may take land for such settlements.                                | 16. Towns &c to be laid out on land subject to this Act for Military Settlers.            |
| 5. Compensation to be granted.  | 17. Governor in Council may cause remaining land to be laid out in Towns &c.              |
| Who not entitled thereto.   | 18. And to be disposed of according to regulations to be made by the Governor in Council. |
| 6. Persons not submitting deprived of compensation.                                       | 19. Disposal of proceeds of sale.   |
| 7. Compensation to be granted according to the nature of the Title of the party claiming. | 20. Act may apply to land obtained by purchase &c.  |
| 8. Compensation Courts to be established.   |   |
| 9. The Governor in Council to appoint Judges.   |   |
| 10. Judges to take oath.  |   |

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**AN ACT to enable the Governor to establish Settlements for Colonization in the Northern Island of New Zealand.**  
**[3rd December 1863.]**

WHEREAS the Northern Island of the Colony of New Zealand has from time to time been subject to insurrections amongst the evil-disposed persons of the Native race to the great injury alarm and intimidation of Her Majesty's peaceable subjects of both races and involving great losses of life and expenditure of money in their suppression And Whereas many outrages upon lives and property have recently been committed and such outrages are still threatened and of almost daily occurrence And Whereas a large number of the Inhabitants of several districts of the Colony have entered into combinations and taken up arms with the object of attempting the extermination or expulsion of the European settlers and are now engaged in open rebellion against Her Majesty's authority And Whereas it is necessary that some adequate provision should be made for the permanent protection and security of the well-disposed Inhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty's authority and of Law and Order throughout the Colony And Whereas the best and most

effectual means of attaining those ends would be by the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows:—

I. The Short Title of this Act shall be ‘The New Zealand Settlements Act 1863.’

II. Whenever the Governor in Council shall be satisfied that any Native Tribe or Section of a Tribe or any considerable number thereof has since the first day of January 1863 been engaged in rebellion against Her Majesty’s authority it shall be lawful for the Governor in Council to declare that the District within which any land being the property or in the possession of such Tribe or Section or considerable number thereof shall be situate shall be a District within the provisions of this Act and the boundaries of such District in like manner to define and vary as he shall think fit.

III. It shall be lawful for the Governor in Council from time to time to set apart within any such District eligible sites for settlements for colonization and the boundaries of such settlements to define and vary.

IV. For the purposes of such settlements the Governor in Council may from time to time reserve or take any Land within such District and such Land shall be deemed to be Crown Land freed and discharged from all Title Interest or Claim of any person whomsoever as soon as the Governor in Council shall have declared that such Land is required for the purposes of this Act and is subject to the provisions thereof.

V. Compensation shall be granted to all persons who shall have any title interest or claim to any Land taken under this Act provided always that no compensation shall be granted to any of the persons following that is to say to any person—

(1) Who shall since the 1st January 1863 have been engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty’s Forces in New Zealand or—

(2) Who shall have adhered to aided assisted or comforted any such persons as aforesaid or—

(3) Who shall have counselled advised induced enticed persuaded or conspired with any other person to make or levy war against Her Majesty or to carry arms against Her Majesty’s Forces in New Zealand or to join with or assist any such persons as are before mentioned in Sub-Sections (1) and (2) or—

(4) Who in furtherance or in execution of the designs of any such persons as aforesaid shall have been either as principal or accessory concerned in any outrage against person or property or—

(5) Who on being required by the Governor by proclamation to that effect in the *Government Gazette* to deliver up the arms in their possession shall refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.

VI. It shall be lawful for the Governor by proclamation to be published in the Maori as well as the English language to call upon any Native Tribes or individuals thereof who shall have been engaged in any of the offences specified in Section 5 of this Act to come in and submit to trial according to law on or before a certain day to be therein named and all who shall refuse or neglect to come in and submit themselves accordingly shall not be entitled to Compensation under this Act.

### *Confiscation Legislation*

VII. Compensation shall be granted according to the nature of the title interest or claim of the person requiring compensation and according to the value thereof. Provided always that no claim shall be entertained unless the same shall have been preferred in writing to the Colonial Secretary by the claimant if residing in the Colony within six months and if not residing in the Colony then within eighteen months after the land in respect of which the claim is made has been proclaimed under Section 4 as required for the purposes of this Act.

VIII. For the purpose of determining claims for compensation under this Act there shall be established Courts to be called 'Compensation Courts.'

IX. It shall be lawful for the Governor in Council from time to time by Letters Patent under the Public Seal of the Colony to appoint Judges of such Courts and at any time by warrant to remove any such Judge.

X. Any Judge before proceeding to act shall take and subscribe before a Judge of the Supreme Court an Oath that he will faithfully perform the duties of his Office.

XI. Every Compensation Court shall be held before one such Judge whose jurisdiction shall extend over a district to be specified in the Letters Patent by which he is appointed.

XII. Every Judge shall have the power as near as circumstances will permit of compelling the attendance of and examining witnesses and of regulating the proceedings of his Court as a Resident Magistrate in New Zealand has in reference to a cause of complaint over which he has summary jurisdiction and also power to make rules for the conduct of the business of his Court.

XIII. It shall be the duty of the Colonial Secretary to transmit every claim under this Act which shall be received by him to the Judge of a Court competent to hear the same and it shall be the duty of such Judge to hear the claim and determine the right of the claimant to compensation and the amount of compensation to which he is entitled. Provided always that it shall be competent for the person making a claim to require that the amount of Compensation shall be determined by the award of two indifferent Arbitrators – one to be appointed in writing by the Claimant at the time of making his claim and the other by the Colonial Secretary or in case of their not agreeing in an award within two months from the time of the question being referred to them by the Colonial Secretary in writing then by the award of their Umpire to be chosen before they enter on the question and if no award shall have been made within three months from the time of such reference by the Colonial Secretary the amount of compensation shall be determined by the Court.

XIV. The Judge shall grant to every Claimant who shall be entitled to compensation a Certificate specifying the amount thereof and describing the land in respect of which the same is granted and the nature of the Claimant's title interest or claim therein.

XV. Such Certificate shall entitle the person in whose favor the same was granted to receive from the Colonial Treasurer the amount named in such Certificate as payable to him.

XVI. On part of the Land subject to the provisions of this Act the Governor shall cause to be laid out a sufficient number of Towns and Farms around or as near as conveniently may be to the same to give full effect to the provisions of the several Contracts heretofore or hereafter to be entered into by or on behalf of the Government of New Zealand with

certain persons for the granting of land to them respectively in return for Military Service on the terms in and subject to the Conditions of the said Contracts respectively expressed and the several persons who shall have been enrolled under the said Contracts respectively shall be entitled to such Town and Farm Sections in conformity with the Provisions of the said Contracts Provided always that it shall be lawful for the Governor with the consent in writing of any person entitled under such Contracts to vary the Conditions thereof as regards such person as the Governor in Council may think fit.

XVII. After setting apart sufficient land for all the persons who shall be entitled thereto under the said Contracts it shall be lawful for the Governor in Council to cause towns to be surveyed and laid out and also Suburban and Rural allotments.

XVIII. All such Town Suburban and Rural Land shall be let sold occupied and disposed of for such prices in such manner and for such purposes upon such terms and subject to such Regulations as the Governor in Council shall from time to time prescribe for that purpose.

XIX. Money to arise from the sale and disposal of any Land under this Act shall be disposed of as the General Assembly shall direct in or towards the repayment of the expenses of suppressing the present insurrection and the formation and colonization of the Settlements including the payment of any Compensation which shall be payable under this Act and subject thereto to the payment of any Compensation which may be awarded by law to individuals for losses by the said rebellion Provided always that all such money shall for the purposes of 'The New Zealand Loan Act 1856' be deemed and taken to be Revenue arising from the disposal of Waste Lands of the Crown in the Colony of New Zealand and shall be chargeable with the sum of money borrowed or raised under the authority of the said Act and with interest thereon.

XX. The several powers vested in the Governor and in the Governor in Council by this Act authorizing the formation of Settlements for colonization shall so far as the same are applicable thereto apply to any land which shall be obtained by cession or purchase or shall be set apart by the Superintendent of any Province with the advice and consent of the Provincial Council thereof for the purpose of such settlements although such land shall not be situate within the limits of a District to be declared under the second Section of this Act.

# THE NEW ZEALAND SETTLEMENTS AMENDMENT ACT 1864

1864 No 4

## ANALYSIS

- |                 |   |
|-----------------|---|
| Title.          | 2. Governor in Council may in certain cases |
| Preamble.       | award compensation or increased             |
| 1. Short Title. | compensation.                               |
|                 | 3. Duration of Act.                         |

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### AN ACT to Alter and Amend 'The New Zealand Settlements Act 1863.'

[13th December 1864.]

WHEREAS an Act was passed by the General Assembly of New Zealand called 'The New Settlements Act 1863' and it is expedient to limit the duration thereof and that the same should be altered and amended as hereafter provided

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

I. The Short Title of this Act shall be 'The New Zealand Settlements Amendment Act 1864.'

II. In any case in which under the said Act the Compensation Court shall have refused to award compensation or shall have awarded less compensation than may have been claimed or in any other case if the Governor in Council shall be of opinion that the circumstances of the case would render it expedient that compensation or larger compensation should be awarded it shall be lawful for the Governor in Council to award and direct that compensation or increased compensation shall be paid to any person or persons who in the judgment of the Governor in Council shall be reasonably entitled thereto.

III. The said Act and this Act shall respectively continue in operation until the third day of December 1865.



# THE NEW ZEALAND SETTLEMENTS AMENDMENT AND CONTINUANCE ACT 1865

1865 No 66

## ANALYSIS

- |   |   |
|---|---|
| Title.  | 10. The Crown may elect to give compensation in land.                             |
| Preamble.   | 11. Power of appeal.  |
| 1. Short Title.   | 12. Form of order and award.  |
| 2. Continuance of former Acts. Power of Governor to proclaim districts not to be exercised. | 13. Payment or transfer not to be required till after a lapse of three months.    |
| 3. Power of Governor to make regulations for proceedings of Compensation Court.             | 14. Repeal of 14th and 15th clauses of the Act 1863                               |
| 4. Regulations to be published in the <i>Government Gazette</i> .                           | Provision in lieu thereof.  |
| 5. Claims to specify particulars.   | 15. Payment or transfer to be made to persons specifically named.                 |
| 6. The Crown may abandon land in respect of which compensation is claimed.                  | 16. Governor to have the power of laying out land for sale.                       |
| 7. Power of Compensation Court.   | 17. Governor may grant land subject to conditions of military and other services. |
| 8. Bills of costs &c To be taxed by any officer appointed by the Compensation Court.        | 18. Application of proceeds of sale.  |
| 9. Parties may agree that compensation shall be in land.                                    |   |

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### AN ACT to Alter Amend and Continue 'The New Zealand Settlements Act 1863.'

[30th October 1865.]

WHEREAS by 'The New Zealand Settlements Act Amendment Act 1864' (herein referred to as the Act of 1864) it was enacted that 'The New Zealand Settlements Act 1863' (herein referred to as the Act of 1863) and the said Act of 1864 should respectively continue in operation until the third day of December 1865 and it is expedient to alter and amend the said Act of 1863 as amended by the said Act of 1864 and to prolong the continuance thereof as so amended

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

I. The Short Title of this Act shall be 'The New Zealand Settlements Amendment and Continuance Act 1865.'

II. The said Act of 1863 as amended by the said Act of 1864 and by this Act is hereby made perpetual Provided that the powers vested by the said Act of 1863 in the Governor in Council of proclaiming Districts and of reserving and taking land for settlement under the said Act shall not be exercised after the third day of December 1867.

### *Confiscation Legislation*

III. The Governor in Council shall have power from time to time to make regulations for the practice and procedure of the Compensation Courts and of arbitrations umpirages and appeals under the said Acts and under this Act and for establishing scales of fees in relation to all such proceedings and may from time to time rescind alter and amend such regulations.

IV. All such regulations and all rescindings alterations and amendments thereof shall be from time to time notified in the *Government Gazette* of the Colony and shall take effect from the publication of such notice or at such other day as shall be therein fixed not being prior to the publication thereof.

V. Every claim for compensation under the said Act of 1863 shall specify the name or names of the claimant or claimants the interest in respect whereof the claim is made and as nearly as may be the extent and particulars of land affected thereby and the amount claimed as compensation.

VI. In every case of claim for compensation the Colonial Secretary on behalf of the Crown may if he shall think fit at any time before judgment or award by notice in writing to the claimant delivered to or addressed by post to him or her or delivered to his or her agent or attorney abandon the right of the Crown to take the land in respect of which compensation is claimed and after such notice of abandonment such land shall be excluded from the operation of the said Acts and of this Act Provided that if the Crown shall abandon its right after the claim shall have been referred to the Compensation Court such abandonment shall be subject to such conditions as to payment of costs as the Court shall think fit.

VII. It is hereby declared and enacted that the Compensation Court has and since the passing of 'The New Zealand Settlements Act 1863' always has had full power and authority to determine for the purposes of the said Act of 1863 and the said Act of 1864 and this Act whether any person or persons claiming compensation under the said Acts have committed any of the offences or have committed any of the acts specified in the five sub-sections of the fifth section of the said Act of 1863.

VIII. All bills of costs and charges of attorneys solicitors agents and other persons engaged in prosecuting compensation claims whether in the Compensation Courts or by arbitration shall before payment be taxed by some officer to be appointed in that behalf by the Compensation Court and such sum only as shall be allowed on such taxation shall be paid or allowed and any money paid without or in excess of such taxation may be recovered from the person to whom the same shall have been paid.

IX. In any case of claim for compensation the Colonial Secretary on behalf of the Crown and the claimant may agree that land shall be given either wholly or in part by way of compensation for such claim in lieu of money and land may be so granted accordingly out of any land within the same Province subject to the provisions of the said Acts.

X. In every case of claim for compensation the Colonial Secretary may at any time before judgment or award elect to give the claimant land in lieu of money out of any land within the Province subject to the provisions of the said Acts and in every such case the Compensation Court or the arbitrators or umpire as the case may be shall determine the extent of land so to be given as compensation and land may in such case be granted accordingly.

XI. Instead of the periods of six months and eighteen months prescribed by the seventh section of the said Act of 1863 for preferring claims for compensation the period for such purpose shall be a period not less than three months nor more than six months to be prescribed by the Compensation Court in each case and the Court shall not proceed to hear or adjudicate upon claims so preferred till the expiration of the period so prescribed and due notice of such period for preferring claims shall be given by direction of the Court by advertisement in public newspapers or otherwise by public notice in the Maori and English language. Provided that if any person shall after the expiration of such prescribed period but within the period of twelve months thereafter prefer to the Colonial Secretary a claim for compensation it shall be lawful for the Colonial Secretary if he shall think fit but not otherwise to refer such claim to the Court for adjudication and in such case the Court shall hear and determine such claim accordingly.

XII. Every order of the Compensation Court and every award shall be made in writing and shall be transmitted to the Colonial Secretary and shall be in such form and shall specify and be accompanied with such plans and particulars as shall be from time to time prescribed by regulations to be made as aforesaid.

XIII. No claimant shall be entitled to require payment or transfer of compensation whether in money or land until the expiration of three months after the judgment or award shall have been transmitted to the Colonial Secretary.

XIV. The 14th and 15th clauses of the Act of 1863 are hereby repealed in lieu thereof it is hereby enacted as follows—

Judgments or awards of compensation in money or land made under or in pursuance of the said Acts or of this Act may be satisfied by the Governor in the case of money by payment out of the general ordinary revenue of the Colony subject to the provisions hereinafter contained for making Treasury Bills payable as cash and in case of land by grant of such land in accordance with the provisions of this Act.

XV. Compensation in money shall be paid and in land shall be granted to some person or persons to be specifically named in the order or award and such payment or transfer shall be an effectual discharge to the Crown in respect of all claims in respect of which such compensation shall be made or granted. Provided that the Governor may direct that money or land awarded as compensation shall be invested for the benefit of the parties entitled upon such trusts and in such manner and subject to such conditions as he shall think fit.

XVI. The 17th and 18th sections of the said Act of 1863 are hereby repealed and in lieu thereof it is enacted as follows—

The order and manner in which land shall be laid out for sale and sold under the provisions of the said Act shall be in the discretion of the Governor who shall have power to cause such land or any part thereof to be laid out for sale and sold from time to time in such manner for such consideration in such allotments whether town suburban or rural or otherwise as he shall think fit and subject to such regulations as he shall with the advice of his Executive Council from time to time prescribe in that behalf. Provided that no land shall be sold except for cash nor at a less rate than ten shillings per acre.

XVII. If the Governor shall think it expedient to grant land taken under the Act of 1863 to persons subject to conditions for the performance of Military or Police services it shall be lawful for him with such advice as aforesaid to grant to any person or persons

### *Confiscation Legislation*

whomsoever any land out of the land taken as aforesaid accordingly and either with or without consideration in money subject to conditions for the performance of Military or Police services and the land so granted shall be held dealt with and disposed of subject to such conditions for the performance of such services as shall be so fixed by the Governor and agreed to by the grantees And such conditions shall be binding on the grantees and all lessees sub-lessees sub-grantees and occupants of the land granted and may be enforced according to the terms thereof and according to the provisions of this Act and shall bind and oblige the grantees lessees sub-grantees and occupants of such land to the performance of such Military or Police service for such period and in such manner as shall be specified in such conditions And the Governor may by such conditions provide that in addition to all liabilities incurred by way of contract the grantees lessees sub-lessees sub-grantees and occupants of such land shall be liable to penalties for breach or non-performance of such conditions but no penalty shall exceed one hundred pounds and all such penalties shall be recoverable in a summary way before two or more Justices of the Peace.

XVIII. The nineteenth section of the said Act of 1863 is hereby repealed and in lieu thereof it is enacted as follows—

Money to arise from the sale and disposal of land in each Province under the said Acts of 1863 and 1864 and this Act shall be paid to the Colonial Treasurer and shall be applied in such manner as the General Assembly shall from time to time by any Act passed in that behalf direct.

# THE NEW ZEALAND SETTLEMENTS ACTS AMENDMENT ACT 1866

1866 No 31

## ANALYSIS

- |   |   |
|---|---|
| 1. Title.   | 5. Governor may make reserves.  |
| 2. Short Title.   | 6. All proceedings under New Zealand Settlements Acts to be deemed valid.   |
| 3. Governor may authorize land to be sold under New Zealand Settlements Acts for such price or consideration as he may think fit. | 7. Governor's proclamation published second day of September not to relieve persons who by terms of said Acts were excluded from compensation under Acts. |
| 4. Colonial Secretary may before or after award elect to pay compensation in land.  | 8. Lands sold &c to be under regulations issued by the Governor in Council.   |
| 5. Colonial Secretary may grant land scrip.   |   |

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**AN ACT to amend 'The New Zealand Settlements Amendment and Continuance Act 1865' and to confirm certain Acts done under 'The New Zealand Settlements Act 1863' 'The New Zealand Settlements Amendment Act 1864' and 'The New Zealand Settlements Amendment and Continuance Act 1865.'** [8th October 1866.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

I. The Short Title of this Act shall be 'The New Zealand Settlements Acts Amendment Act 1866'

II. So much of the sixteenth section of 'The New Zealand Settlements Amendment and Continuance Act 1866' as provides that the land therein referred to shall not be sold thereunder except for cash nor at a less rate than ten shillings per acre is hereby repealed And it is hereby expressly declared and provided that the land in the said section referred to shall be sold for such consideration or at such price and whether for cash or otherwise as the Governor shall from time to time prescribe.

III. It shall be lawful for the Colonial Secretary under section ten of the said 'New Zealand Settlements Amendment and Continuance Act 1865' to elect either before or after judgment or award to satisfy such award wholly or in part by land in lieu of money.

IV. It shall be lawful for the Colonial Secretary to give land scrip in lieu of compensation in money for any land taken under the said 'New Zealand Settlements Act 1863' and such scrip shall be available at any time to be prescribed thereon for the purchase of land taken under the said Act within the districts therein named Provided that any scrip heretofore

### *Confiscation Legislation*

granted by any Agent of the General Government shall be deemed to have been granted under this Act and to have been and to be valid from the issue thereof accordingly.

V. The Governor may reserve portions of any of the land taken under the said 'New Zealand Settlements Act 1863' for the several purposes for which reserves may be made under the twelfth section of 'The Waste Lands Act 1858' and may make grants thereof under 'The Public Reserves Act 1854' or otherwise as the case may require.

VI. All orders proclamations and regulations and all grants awards and other proceedings of the Governor or of any Court of Compensation or any Judge thereof heretofore made done or taken under authority of the said Acts or either of them are hereby declared to have been and to be absolutely valid and none of them shall be called in question by reason of any omission or defect of or in any of the forms or things provided in the said Acts or either of them.

VII. None of the persons who under the provisions of the said Acts or any or either of the said Acts would have been excluded from compensation in respect of any of the lands taken under the said Acts or either of them or purporting to have been so taken shall be relieved from such exclusion by anything in the proclamation made by the Governor bearing date the second day of September one thousand eight hundred and sixty-five published in the *New Zealand Gazette* on the fifth day of September aforesaid.

VIII. Provided always and it is hereby enacted and declared that all lands sold or otherwise disposed of and all scrip issued under this Act shall be sold or disposed of or issued under regulations to be made by the Governor in Council which regulations shall be published in the *New Zealand Gazette*.

# THE NEW ZEALAND LOAN ACT 1863

1863 No 11

## ANALYSIS

- |  |  |
|--|--|
| Title.   | 6. Principal and Interest charged on the Ordinary Revenue of the Colony of New Zealand.                  |
| Preamble.  | 7. Money raised to be applied to purposes set forth in Schedule.   |
| 1. Short Title.  | 8. Principal to be repaid at the expiration of fifty years.  |
| 2. The Governor may appoint Agents to raise and manage a Loan.                       | 9. Percentage to be paid annually to pay interest and provide a Sinking Fund.                            |
| 3. Such Agent or Agents shall have power to raise any sums not exceeding £3,000,000. | 10. This Act not in any way to prejudice vary or affect 'The Loan Act 1856' or 'Imperial Guarantee Act'. |
| 4. Bonds &c to be for sums and in form and to be negotiable as prescribed by Agents. | Schedule.  |
| 5. Interest payable at such times and places as shall be fixed and named.            |  |

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### **AN ACT for raising a Loan of Three Million Pounds sterling for the Public Service of the Colony of New Zealand.** **[14th December 1863.]**

WE Her Majesty's most dutiful and loyal subjects the House of Representatives in Parliament assembled being desirous to raise the necessary supplies which we have cheerfully voted to Her Majesty in this Session of Parliament have resolved that a sum not exceeding Three Millions shall be raised in manner hereinafter mentioned:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by authority of the same as follows:—

I. The Short Title of this Act shall be 'The New Zealand Loan Act 1863.'

II. It shall be lawful for the Governor of New Zealand to appoint one or more person or persons to be an Agent or Agents for the purpose of raising and managing the Loan or Loans proposed to be raised under and by virtue of this Act.

III. Such Agent or Agents shall have full power and authority to borrow and raise in Great Britain or elsewhere by Bonds Debentures or otherwise such sums not exceeding in the whole the sum of Three Million Pounds sterling as the Governor of the Colony shall from time to time determine and direct Provided always that if the whole or any portion of the Loan authorised to be raised under an Act of the General Assembly of New Zealand intituled 'The Loan Act 1862' shall be raised the amount so raised shall be deducted from the amount authorised to be raised under this Act.

## *Confiscation Legislation*

IV. Every Bond Debenture or other security granted under this Act shall bear interest after a rate not exceeding Five Pounds for every One Hundred Pounds by the year shall be for such sum and in such form shall be signed on behalf of the said Colony and shall be transferable and negotiable in such manner as such Agent or Agents shall prescribe Provided always if Her Majesty's Imperial Government shall guarantee the Loan authorised to be raised under this Act or any part thereof it shall be lawful for the Commissioners of Her Majesty's Imperial Treasury to reduce the rate of interest on the said Loan or on so much thereof as shall be so guaranteed and in respect of which securities shall not have been issued to such a rate as the said Commissioners shall direct and the rate of interest on the securities unissued shall be altered accordingly.

V. The interest on every such Bond Debenture or other security shall be payable at such times and places as shall be fixed and named for that purpose in such Bond Debenture or other security.

VI. All sums of money borrowed and raised under the authority of this Act and interest thereon shall be a charge upon the Ordinary Revenue of New Zealand as defined by the 'Ordinary Revenue Act 1858.'

VII. The money to be borrowed under the authority of this Act shall be applied as the General Assembly shall from time to time direct and appoint to the several purposes specified and set forth in the Schedule to this Act.

VIII. The principal sums so to be borrowed and raised as aforesaid shall be made payable and repaid at the expiration of Fifty years from the several days on which they shall respectively be borrowed and raised as aforesaid.

IX. For the purpose of paying the said interest and providing a Sinking Fund for the liquidation of the principal there shall be paid yearly out of the Ordinary Revenue of the Colony to such persons as the Governor shall appoint such sum as shall be equal to the aforesaid interest and one per centum per annum on the total of the principal from time to time borrowed and after paying the interest thereon as the same shall from time to time become due the balance thereof shall be set apart as a Sinking Fund and shall be invested by such person or persons in such manner as the Governor shall from time to time direct and shall be increased by accumulation in the way of compound interest or otherwise.

X. Nothing in this Act contained shall prejudice vary or affect any security granted under or by virtue of 'The New Zealand Loan Act 1856' and an Act of the Imperial Parliament passed in the twentieth and twenty-first years of the Reign of Her present Majesty intituled 'An Act to guarantee a Loan for the service of New Zealand' or either of them and 'The New Zealand Loan Act 1860.'

## SCHEDULE

For defraying the cost of suppressing the present rebellion  
For the introduction into the Northern Island of settlers from Australia Great Britain and elsewhere  
For the cost of Surveys and other expenses incident to the location of settlers  
For the purposes specified in the 'Loan Act 1862'  
And for other Public purposes



# THE SUPPRESSION OF REBELLION ACT 1863

1863 No 7

## ANALYSIS

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|--|--|
| Title.   | 6. Governor or General or other Officer empowered by the Governor may authorise the holding of Courts Martial. |
| Preamble reciting existence of Rebellion.  | 7. Constitution of such Courts.  |
| 1. Short Title.  | 8. Powers of such Courts.  |
| 2. Governor to issue orders for the suppression of the Rebellion.                                  | 9. Act not to abridge power of proclaiming Martial Law.  |
| 3. Acts done in pursuance of such orders not to be questioned in Supreme Court.                    | 10. Indemnity for acts already done.   |
| 4. Officers, &c, acting under such Orders responsible only to Courts Martial.                      | 11. Duration of Act.   |
| 5. Return to <i>Habeas Corpus</i> that person is detained under warrant under this Act sufficient. |  |
| Proviso.   |  |

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**AN ACT for the suppression of the Rebellion which unhappily exists in this Colony and for the protection of the Persons and Property of Her Majesty's Loyal Subjects within the same (Temporary).** [3rd December, 1863.]

WHEREAS a combination for the subversion of the authority of Her Majesty and Her Majesty's Government has for some time existed amongst certain Aboriginal tribes of this Colony and has now manifested itself in acts of open Rebellion And Whereas persons in prosecution of the said Rebellion have committed murders on some of Her Majesty's subjects engaged in their peaceful occupations have pillaged their homesteads and burnt and destroyed their property And Whereas the ordinary course of law is wholly inadequate for the suppression of the said Rebellion and the prompt and effectual punishment of those who are guilty of such atrocity and outrage:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows:—

I. The Short Title of this Act shall be 'The Suppression of Rebellion Act 1863.'

II. It shall be lawful for the Governor in Council from time to time during the continuance of the said Rebellion to issue his Orders to all persons whom he shall think fit to authorize in that behalf to take the most vigorous and effectual measures for suppressing the said Rebellion in any part of this Colony which shall appear to be necessary for the public safety and for the safety and protection of the persons and properties of Her Majesty's peaceable and loyal subjects and to punish all persons acting aiding or in any manner assisting in the said Rebellion or maliciously attacking or injuring the persons or properties of Her

## Confiscation Legislation

Majesty's loyal subjects in furtherance of the same according to Martial Law either by death penal servitude or otherwise as to them shall seem expedient and to arrest and detain in custody all persons engaged or concerned in such Rebellion or suspected thereof and to cause all persons so arrested or detained in custody to be brought to trial in a summary manner by Courts Martial at the earliest possible period for all offences committed in furtherance of the said Rebellion whether such persons shall have been taken in open arms against Her Majesty or shall have been otherwise concerned in the said Rebellion or in aiding or in any manner assisting in the same and to execute the Sentences of all Courts Martial whether of death penal servitude or otherwise and to do all other acts necessary to such several purposes.

III. No act which shall be done in pursuance of any order issued as aforesaid shall be questioned in Her Majesty's Supreme Court of New Zealand or in any other Court And in order to prevent any doubt which might arise whether any act alleged to have been done in conformity to any Orders so issued as aforesaid was so done it shall be lawful for the Governor to declare such acts to have been done in conformity to such Orders and such declaration signified by any writing under the hand of the Governor shall be a sufficient discharge and indemnity to all such persons concerned in any such acts and shall in all cases be conclusive evidence that such acts were done in conformity to such Orders.

IV. All Officers Non-Commissioned Officers Soldiers and Militiamen who shall act under any such orders as aforesaid shall be responsible for all things which shall be done under such orders to Courts Martial only by which they shall be liable to be tried for any offence against the Articles of War under any Act then in force for any such purposes and Courts Martial shall have full and exclusive cognizance of all matters and things which shall be objected against such Officers Non-Commissioned Officers Soldiers and Militiamen respectively and all proceedings shall be had thereon in the same manner as for Offences against the Articles of War and not otherwise and the Supreme Court or any other Court of Justice civil or criminal shall not take cognizance of any act matter or thing which shall be done by any such Officer Non-Commissioned Officer Soldier or Militiaman in pursuance of this Act and if any proceeding shall be had in any such Court against any such Officer Non-Commissioned Officer Soldier or Militiaman for any such act matter or thing by indictment action or otherwise all such proceedings shall be stayed by summary order on application to the Court wherein they shall be had.

V. If any person who shall be detained in custody under the Powers created by this Act shall sue forth a Writ of *Habeas Corpus* it shall be good and sufficient return to such Writ that the party suing forth the same is detained by virtue of a warrant under the hand and seal of some person duly authorized by the Governor in Council for the time being to issue such warrant under the authority of this Act Provided that at the time such return is made the name of such person so authorized as aforesaid to issue such warrants shall have been or shall be notified by the Governor to the Supreme Court by writing signed by him signifying to the said Court that such person was so authorised as aforesaid to exercise the powers specified by this Act and when such return shall be made it shall not be necessary to bring up the body of the person who is so detained.

VI. For the trial of offences under this Act it shall be lawful for the Governor or the General or other Officer Commanding Her Majesty's forces in New Zealand or for any other Officer of Her Majesty's Forces not under the Rank of a Field Officer who shall be authorised by a Commission from the Governor in Her Majesty's name in that behalf from

time to time by warrant under his hand to authorise and empower any Officer in Her Majesty's Regular or Militia Forces in New Zealand not under the Rank of a Field Officer to convene assemble and hold Courts Martial for the trial of such persons under this Act as the Governor or General or other Officer as aforesaid shall direct.

VII. Every such Court Martial shall consist of not less than three nor more than nine Commissioned Officers of Her Majesty's Regular or Militia forces in New Zealand or partly of Commissioned Officers of each such Force And when the defendant shall be a person of the Maori or Half-Caste race a sworn Interpreter shall be appointed by the Governor or in default of such appointment by the Officer convening such Court to interpret in the said Court on behalf of the defendant Provided always that no Court which shall consist of less than seven Members four of whom at least shall be Commissioned Officers of Her Majesty's Regular Forces shall pass sentence of Death and that on every Court there shall be at least two such Commissioned Officers.

VIII. Every such Court shall have all powers privileges and authorities appertaining or incident to and shall conduct all proceedings according to the manner of Courts Martial held under the Provisions of the Act for the time being in force in New Zealand for punishing mutiny and desertion and the sentence of any such Court when confirmed by the Governor or the General or other Officer Commanding Her Majesty's Forces in New Zealand may be carried into execution.

IX. Nothing in this Act contained shall be construed to take away abridge or diminish the acknowledged prerogative of Her Majesty for the public safety to resort to the exercise of Martial Law against open enemies or Traitors or any powers by law vested in the said Governor of this Colony with or without the advice of the Executive Council or of any other person or persons whomsoever to suppress Treason and Rebellion and to do any act warranted by law for that purpose in the same manner as if this Act had never been made but such prerogative is hereby declared to be in full force in this Colony in Her Majesty the Queen and in the Governor as Her Majesty's Representative in that behalf.

X. Every person shall be and is hereby freed indemnified and discharged of and from all actions and prosecutions which he may have been or may become liable or subject to for or by reason or by means of or in relation to any act matter or thing done by him before the passing of this Act which would have been lawful if done in pursuance of any order duly issued under the authority of this Act And no such act matter or thing shall be questioned in the Supreme Court or in any Court whatsoever within the Colony of New Zealand.

XI. This Act shall come into operation on the day of the passing hereof and shall continue and be in force until the end of the next session of the General Assembly only and no longer.

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