HE Maunga Rongo



HE MAUNGA RONGO

Report on Central North Island Claims

Stage One

Volume 1

WAI 1200

WAITANGI TRIBUNAL REPORT 2008



Downloaded from www.waitangitribunal.govt.nz

The cover photograph by Craig Potton shows Pohutu and 'The Prince of Wales' Feathers', two of Whakarewarewa's famous geysers, with the sun setting behind them. In Central North Island tradition, the presence of geothermal activity and energy is explained by stories of the ancestor Ngatoroirangi. Standing on the slopes of the snow-clad Tongariro, he called for fire from Hawaiki to warm himself. It arrived via Whakaari (White Island), surfacing at numerous points along the way.

National Library of New Zealand Cataloguing-in-Publication Data

He maunga rongo: report on Central North Island claims/
Waitangi Tribunal. 2nd ed.
Previous ed.: 2007 (limited release: pre-publication draft).
Includes bibliographical references.
ISBN 978-1-86956-293-9

1. Treaty of Waitangi (1840) 2. Maori (New Zealand people)—
Land tenure—New Zealand—Bay of Plenty (Region)—History.
3. Maori (New Zealand people)—New Zealand—Bay of Plenty (Region)—Claims. 4. Land tenure—New Zealand—Bay of Plenty (Region)—History. 5. Bay of Plenty (N.Z.: Region)—
Claims. [1. Tiriti o Waitangi. reo 2. Mana whenua. reo
3. Kaitiakitanga reo] I. New Zealand. Waitangi Tribunal.
333.208999442—dc 22

www.waitangitribunal.govt.nz
Cover design by Richard Thomson
Typeset by Ahi Text Solutions
This report was previously published in 2007 by
the Waitangi Tribunal, Wellington, New Zealand,
in photocopy spiral-bound format
This amended edition published 2008 by
Legislation Direct, Wellington, New Zealand
Printed by SecuraCopy, Wellington, New Zealand
12 11 10 09 08 5 4 3 2 1
Set in Adobe Minion Pro and Cronos Pro Opticals

Downloaded from www.waitangitribunal.govt.nz

CONTENTS

VOLUME 1
Letter of transmittal
Prefacexvi
Chapter 1: Nga Ahuatanga: The Inquiry
Part 1: Nga Tangata Whenua: The Peoples of the Central North Island
Chapter 2: Nga Tangata Whenua: The Peoples of the Central North Island
Part II: Rangatiratanga and Kawanatanga: Political Engagement
Chapter 3: Treaty Standards for the Political Relationship between the Crown and Central North Island Maori
Chapter 4: Kawanatanga and Maori Autonomy, 1840–1865
Chapter 5: War and Raupatu, 1863–187024
Chapter 6: Kawanatanga and Maori Autonomy: The Era of Committees and Komiti, 1870–1890
Chapter 7: Kawanatanga and Maori Autonomy: The Era of Kotahitanga and Councils, 1890–1920
Summary
VOLUME 2
Part III: Papatuanuku (Papaahurewa/Papauenoko) and Land Ownership: Maori Land Alienation, and Maori Land and Title Administration in the Central North Island 41
Chapter 8: Treaty Standards for the Crown's Dealings with Maori Land in the Central North Island
Chapter 9: Native Titles and the Native Land Court in the Central North Island, 1865–190044

CONTENTS

Chapter 10: Nineteenth-century Maori Land Purchasing in the Central North Island 552
Chapter 11: The Legacy of the Nineteenth Century: Maori Land, Titles, Alienation, and Retention in the Twentieth Century
Chapter 12: The Taking of Maori Land for Public Works
VOLUME 3
Part IV: Te Wahanga Tupunga o te Tiriti a Treaty Development Right
Chapter 13: Treaty Standards and Development
Chapter 14: Farming Opportunities
Chapter 15: Tourism and Indigenous Forestry1055
Chapter 16: Power Generation and Exotic Forestry
VOLUME 4
Part v: Te Taiao the Environment and Natural Resources
Chapter 17: Te Taiao: The Environment and Natural Resources Treaty Principles and Standards
Chapter 18: Lake Taupo-nui-a-tia: Taupo Moana
Chapter 19: Rangatiratanga – Kawanatanga: Environmental Management
Chapter 20: Ruaumoko/Ruaimoko and Ngatoroirangi: The Geothermal Resources of the Central North Island
Chapter 21: He Korero Whakamutunga

MAPS

1.1: The Central North Island inquiry region, also showing internal district boundaries :
1.2: Land blocks in the Rotorua district
1.3: Land blocks in the Taupo district
1.4: Land blocks in the Kaingaroa district
2.1: The journeys of two early explorers: Ngatoroirangi and Tia
2.2-2.46: Small maps to locate places referred to in text (underlined names
identify general areas rather than specific locations)
2.47: Named fishing grounds in Lake Rotorua98
2.48: The intricate network of waterways in the Central North Island region110
5.1: Confiscations affecting Central North Island iwi and hapu
5.2: War sites
5.3: The Central North Island inquiry region in relation to Eastern Bay of Plenty
Confiscation boundary
5.4: Lot 63, Parish of Matata (the Whakarewa block), which lies within both the Central
North Island inquiry region and the Eastern Bay of Plenty confiscation boundary 26
5.5: Land lying within the Eastern Bay of Plenty confiscation area, showing (on the
western edge) the overlap with the Central North Island inquiry region
5.6: Tauranga confiscation area
5.7: Mohaka–Waikare confiscation area
5.8: Blocks referred to as 'Kaingaroa blocks' in the Tribunal's Central North Island
inquiry, making up the Kaingaroa inquiry district
6.1: The Pukeroa–Oruawhata block
6.2: Areas proclaimed under the Thermal Springs Districts Act 1881 302
6.3: Te Rohe Potae
6.4: Tauponuiatia
6.5: Places visited by Native Minister John Ballance, 1885–1886
7.1: Kotahitanga Parliament sittings
9.1: Land title hearings by decade449
9.2: Locations of Native Land Court hearings 1867–1900512
9.3: Blocks where the '10-owner rule' applied, 1860s–1880s 524
10.1: An 1869 Lands & Survey map, showing leaseholdings554
10.2: Rotorua District: land still in Maori ownership, as at 1870, 1880, 1890, 1900 562
10.3: Kaingaroa District: land still in Maori ownership, as at 1870, 1880, 1890, 1900 56
10.4: Taupo District: land still in Maori ownership, as at 1870, 1880, 1890, 1900 562
11.1: Rotorua District: land still in Maori ownership, as at 1910, 1920, 1930, 1940 69

MAPS

11.2: Kaingaroa District: land still in Maori ownership, as at 1910, 1920, 1930, 1940 696
11.3: Taupo District: land still in Maori ownership, as at 1910, 1920, 1930, 1940
11.4: Land absorbed into Lake Okataina Scenic Reserve, including
Whakapoungakau 4K2E2 block
11.5: Land in Maori trusts and incorporations as at January 2000, as compared
with other Maori land
12.1: Taniwha Springs land taken under the Public Works Act 1928
12.2: Ngongotaha land taken in 1916 for a scenic reserve
15.1: Some early tourist sites in the Taupo district
16.1: Crown forestry licence land in and around the Central North Island
inquiry region1204
18.1: The 'Taupo waters' as defined in the proclamation of 7 October 1926 and
the Deed of Agreement of 28 August 1992
19.1: Waterways of the Rotorua inquiry district
19.2: Lake Taupo lakeshore reserves
19.3: Drainage in the Te Puke and Te Tumu–Kaituna areas, around 1920
19.4: Drainage in the Te Puke and Te Tumu–Kaituna areas, around 1960
20.1: The Taupo Volcanic Zone
20.2: Marae in relation to principal geothermal fields
20.3: Hot and cold springs in the Central North Island
20.4: Geothermal fields in relation to Maori land block boundaries
20.5: Tokaanu district: the Maori landscape
20.6: Taupo moana and the Horomatangi reef
20.7: Wairakei–Tauhara geothermal areas
20.8: Wairakei-Tauhara place names
20.9: Pouakani block: Maori settlement
20.10: Geothermal and other sites along the Waikato River
20.11: Ohaaki papakainga reserve circa 19301519
20.12: Remaining Maori freehold land in relation to geothermal fields in the ${\tt TVZ}\dots 1548$
20.13: Subsidence at Te Ohaaki
20.15: Geothermal bores in Rotorua, 1998
20.14: Geothermal bores in Rotorua, 1987

TABLES

1.1: Hearing timetable 8
2.1 Some natural resources used by Central North Island Maori
9.1: Number of Native Land Court hearings of different types by decade
for the Central North Island region, 1861–1900451
9.2: Proportion of Native Land Court hearings of different types by decade
for the Central North Island region, 1861–1900451
9.3: Locations of sittings of Native Land Court in relation to blocks
in the Central North Island by district, 1865–1900
9.4: Central North Island blocks first heard under the Native Lands Act 1865,
the Native Lands Act 1867, and the Native Lands Act 1869
10.1: Land retained by Maori as a percentage of the original area
in the Central North Island
10.2: Areas alienated by purpose and by district and by decade (ha)
11.1: Crown and private purchasing, in Rotorua, Kaingaroa and Taupo districts,
1900s-1920s
11.2: Alienations in the Waiariki Maori Land District, 1911–30
11.3: Alienations in Ngati Pikiao blocks, 1911–30
11.4: Rotorua leases, 1900s-1910s
11.5: Uses of Maori land listed in the Hunn report (1960)
12.1: Tangata whenua witnesses
12.2: Land taken compulsorily, by inquiry district, and decade (in hectares) $\dots 855$
12.3: Comparison of Crown acquisition of land by voluntary and compulsory means \dots 862
12.4: Compensatable public works takings in the Central North Island by category 869
18.1: Key levels for Lake Taupo and the Taupo Control Gates
19.1: Taupo Basin reserves scheme – land identified for inclusion
20.1: Geothermal sites close to the lake shore at Waihi
20.2: Potential electricity generation (with a high to medium probability
of proceeding by 2025) by geothermal field
20.3: Iwi consultation guidelines used by EBOP (extract), September 20021582
20.4: Named hot springs at Orakei Korako1610

FIGURES

9.1: Number of days of Native Land Court activity in relation to Central North Island
blocks, 1867–1900450
10.1: Land remaining in Maori hands in each inquiry district, 1840–2000 642
18.1: The cascade of hydro lakes along the Waikato River, from Lake Taupo to the sea1348
18.2: Lake Taupo water levels, showing the uncontrolled level since 1905 (simulated
after 1914); the controlled level since 1941; and the 'no consents' level since 1941 1350
18.3: Lake Taupo water levels, 1941 to 1947
18.4: The water table and zones of saturation and aeration in relation to
rivers and lakes1354
18.5: Changes in the amount of productive land. Waihaha 3B, 1910–1945–2002
18.6: Lake Taupo monthly mean lake levels: pre-control, post control and 1941–19471356
18.7: Lake Taupo actual water level record (1905–2000) and the original design
maximum and minimum control levels (in metres, Moturiki datum)1371
18.8: History of Lake Taupo water level control as presented by Freestone
20.1: Plate tectonics and volcanism in the Central North Island 1472
20.2: Flooding at Te Ohaaki, actual and projected as at 2003, 2010, 2020

CREDITS

The Waitangi Tribunal would like to thank the following claimants, institutions, and others for giving permission to use their images in this volume: p13, ATL, E-216-f-059; p25, ATL, PUBL-0033-1866-189; p31, Don Stafford, Te Arawa (Wellington: Reed, 1967); p34, ATL, E-216-f-059; p47, Auckland Museum; p48 (top), ATL, PUBL-0068-01; p48 (bottom), MONZTPT, C.010327; p51, ATL, PA1-f-179-52-2; p54, ATL, E-216-f-179; p55, ATL, ½-139861-F; p65, ATL, ½-019685-G; p67, ATL, PA1-f-179-41-3; p74 (top), MONZTPT, 0.000971; p74 (bottom), ATL, ½-022998-F; p76, MONZTPT, C.016318; p79, William Dansey (doc C48, p6); p85, ATL, PUBL-0014-56; p88, ATL, A-196-022; p91, ATL, A-032-005; p.96, Auckland Museum; p.96, Auckland Museum; p.96, Auckland Museum; p 96, Auckland Museum; p 96, Landcare Research New Zealand; p 97, Landcare Research New Zealand; p.97, Landcare Research New Zealand; p.97, Landcare Research New Zealand; p99, ATL, E-041-022; p100, ArchivesNZ, National Publicity Studios, AAQT6403/3525; p110, ATL, PA1-q-232-10-2; p114, ATL, PUBL-0033-1867-027; p161, ATL, A-196-012; p177, ATL, G-7362- $\frac{1}{1}$; p184, ATL, $\frac{1}{2}$ -070344-G; p186, ATL, 35mm-00147-b-F; p195, John Grace, Tuwharetoa (Wellington: Reed, 1959), pl2; p197, Jock Phillips, Te Ara - the Encyclopedia of New Zealand; p 222, Don Stafford, Te Arawa (Wellington: Reed, 1967), opposite p 320; p 223, ATL, PA2-0740; p 226, Auckland Art Gallery Toi o Tamaki, 1987/16/3; p229, ATL, PA1-q-250-17; p231, Auckland City Libraries, Special Collections, 4-8122; p 236, Don Stafford, *Te Arawa* (Wellington: Reed, 1967), opposite p 320; p 237, ATL, PA2-2876; p 249, ATL, A-196-012; p 253, ATL, ½-082343-F; p 258, ATL, PA1-0-141-82; p259, ATL, ½-041319-F; p291, Don Stafford, Te Arawa (Wellington: Reed, 1967) opposite p 305; p 292, ATL, PAColl-7489-01; p 295, Rotorua Museum of Art and History Te Whare Taonga o Te Arawa, CP-982; p 296, MONZTPT, C.013434; p 308, ATL, ½-022997-F; p309, ATL, ½-005166-G; p329, ATL, ¼-022227-G; p376, ATL, ½-005255-F; p377, ATL, PA1-f-179-73-3.





The Honourable Parekura Horomia Minister of Maori Affairs Parliament Buildings Wellington

16 June 2008

E te Minita o nga Take Maori

Tena koe e te rangatira e noho mai na i te tunga tiketike a whakatutuki nei i nga wawata o to iwi Maori. Kati tena tatou i runga i te ahuatanga o nga mate huhua puta noa i te motu mai Muriwhenua ki Murihiku whakawhiti atu ki Wharekauri. No reira nga mate haere atu ra, haere atu ra, oti atu. Tatou te hunga ora, tena koutou.

We have the honour of presenting you with our published report on the claims of iwi and hapu of the Central North Island region, following the release, in stages, of a prepublication version of the report during the latter part of 2007.

The Central North Island inquiry addresses concerns raised in over 120 claims from across three inquiry districts – Rotorua, Taupo, and Kaingaroa – which were brought together in the largest inquiry ever undertaken by the Tribunal. The region covered by the inquiry stretches from the coastal Bay of Plenty, inland to Lake Taupo and eastwards across the Kaingaroa Plains. It includes many substantial assets (including the Kaingaroa, Rotoehu, Horohoro, Whakarewarewa, Crater, Waimihia, Marotiri, Pureora, and Waituhi Crown forests).

Our hearings for this stage one inquiry, dealing with generic or big-picture issues which concerned hapu and iwi across the region, were held over 10 weeks between 1 February and 9 November 2005. We were privileged to hear a broad range of evidence from some 50 claimant communities. Over 270 claimant witnesses gave accounts of their histories, while over 100 reports were submitted by Crown and claimant counsel in evidence. We

Level 2, 141 The Terrace, Wellington, New Zealand. Postal: PO Box 5022 or DX SP22525
Caltex Tower, 141 The Terrace, Te Whanganui-ā-Tara, Aotearoa. Pouaka Poutāpeta: 5022/DX SP22525
Phone/Waea: 04 914 3000 Fax/Waea Whakaahua: 04 914 3001
Email/E-mēra: information@waitangitribunal.govt.nz Web/Ipurangi: www.waitangitribunal.govt.nz



also acknowledge the role of the Crown Forestry Rental Trust, which provided substantial assistance to claimants and the casebook research programme.

We draw to your attention in particular the importance in this inquiry of major twentieth-century issues raised by the claimants. Though these often have their roots in Crown Treaty breaches of the nineteenth century, issues such as reduced development opportunities – in farming, tourism, the indigenous and exotic timber industries, hydroelectricity, and geothermal power generation – have had major impacts on claimant communities. The extent of Crown recognition of hapu and iwi authority over their waterways, including Lake Taupo, and their geothermal resources has also been an important twentieth-century issue.

We uphold the claimants in their fundamental grievance that the root of all Treaty breaches in their rohe was the Crown's failure to give effect to the Treaty guarantee to Maori of tino rangatiratanga (autonomy), and their entitlement under article 3 to the same rights and powers of self-government as settlers. In our view, it was entirely practicable for the Crown to have given effect to those Treaty guarantees in the nineteenth century, since a range of examples of community, regional, and national forms of autonomy were available to it. Yet, Central North Island tribes have been deprived of their authority to manage their own affairs and their own taonga, in breach of the Treaty. This has resulted in economic, social, and cultural prejudice to all the Maori peoples of the region.

First, they have been refused the right to govern themselves and their own properties and affairs, although such a right was guaranteed in the Treaty. This occurred despite the constant efforts of Maori leaders to engage with the Crown in the nineteenth and twentieth centuries, seeking legal powers for their own institutions to govern their communities, decide titles to land and resources, and manage those assets collectively, as was their right under the Treaty. The Crown had many opportunities to meet these Maori requests constructively in the spirit of partnership, and often made public statements of an intention to do so. Ultimately, however, such opportunities were lost, circumvented, or actively repressed, in breach of Treaty principles. Although Central North Island Maori did not give up, their efforts were defeated.

Secondly, the tribes of the Central North Island have had a form of land titles imposed upon them that broke the tino rangatiratanga of their communities and led to real or virtual loss of much of their land. A Pakeha-led State court, the Native Land Court, decided their titles, creating a new form of 'virtual' individual ownership in which tribal authorities were deprived of their customary authority. Individuals, however, could do little with their paper titles save sell them. Much land was then alienated to the Crown through unfair purchase policies and practices, without full consent or a fair recompense. In the twentieth century, the long-term legacy of the Crown's title system was the fractionation of individual interests in every generation, to the point where the interests many Maori owners retained were seen by officials as an administrative nuisance. One Crown response in the mid-twentieth century was a sustained attempt to remove Maori owners

of small interests from the titles. At the same time, the Crown's new title system created serious and unnecessary barriers to the development of remaining land. It also facilitated the operation of a public works regime which discriminated against owners of Maori land, providing fewer rights and protections for them when land was taken for public purposes. All of these things were in breach of Treaty principles. Reforms in Te Ture Whenua Maori Act 1993, following earlier Crown provision for collective owner management through trusts and incorporations, while a positive improvement, have not removed the prejudice nor redressed its cumulative impact. It is still necessary to restore effective bases for iwi and hapu in the Central North Island.

Thirdly, the English common law and the statute law of the settler-controlled parliament deprived Central North Island iwi and hapu of authority over, and sometimes customary ownership of, the natural resources that were the key to economic development in their region. This includes their many waterways and geothermal taonga. We have recommended that these matters be redressed, that Maori autonomy be given effect, and that the Resource Management Act 1991 be amended to be made consistent with the Treaty.

Fourthly, Central North Island iwi and hapu have been denied their Treaty right to develop their properties and taonga, and to develop as a people. They have not been given the same State assistance or its equivalent, as was provided to settlers. At the same time, the Crown's title system has imposed barriers to Maori development that do not hinder other citizens. This Treaty breach has had serious prejudicial effects in the Central North Island. As requested by the Crown, we have suggested criteria for the parties to consider in any current application of the claimants' right of development.

All of these factors combined to deny Central North Island Maori the mutual benefit from the new society that had been promised by the Treaty. Instead, they have suffered economic, social, cultural, and political marginalisation. They have not been able to control or substantially mitigate the environmental and other effects of the development that has occurred. In our view, these Treaty breaches and resultant prejudice are serious and require swift and substantial redress.

We note the extensive nature of the Crown forests within the region, which have generated numerous claims before this Tribunal. No fewer than 40 applications for remedies hearings or binding recommendations formed the basis for many of the claims before us, which remain extant at the time of signing this letter.

We have made no general recommendations in respect of possible settlements. In our view, the Central North Island claims can now be settled without further inquiry by the Tribunal, should that be the wish of the parties.

Judge CL Fox

Presiding Officer

CR FUN

ACKNOWLEDGEMENTS

The Tribunal would like to acknowledge the staff and contract writers whose assistance was important to us in the preparation of this report: Grant Phillipson, Cathy Marr, Eileen Barrett-Whitehead, James Mitchell, and Garth Cant. Thanks also go to many others who have contributed their time and skills to its production: Noel Harris and Max Oulton (maps); Tim Shoebridge, Paul Christoffel, Keir Wotherspoon, Esther McGill, Andrew Mason, Oliver O'Connell, Anita Rossbach, Alexander Perov, Amy Howden-Chapman, Megan Cook, Megan Simpson, Sophie Rattanong, Perrine Gilchrist, Alice Miller, Hannah Boast, Narelle Gray, Isaac Hensman, Libby Major, and Bea Turner (reference and other assistance); and John Huria, Richard Thomson, and Sarah-Jane McCosh (editing and typesetting).

We also wish to acknowledge the large number of staff and contractors who contributed to the preparation and running of the Central North Island inquiry. Among them are: inquiry facilitators Jaime Meikle, Amy Bendall, Barry Rigby, Eileen Barrett-Whitehead, Chappie Te Kani, and Mark Derby; claims coordinators Turei Thompson, Pam Wiki, Greer Samuels, Lisa Hippolite, Alicia Matthews, Tina Mihaere, and Jenny Syme; registrarial staff Donna Flavell, Nathan Milner, Kare Wiki, and Francis Cooke; and Richard Moorsom for his support in many capacities.

During hearings, the Tribunal relied upon the particular assistance of: Richard Waiwai, cultural adviser to the panel; Rangi McGarvey, interpreter and translator; and Alan Doyle, sound technician.

PREFACE

In May 2007, the Tribunal announced its intention to release a pre-publication version of the Central North Island report, in order to ensure that the parties could receive the material well in advance of the Te Arawa Settlement Bill, which the Crown advised was to be introduced into Parliament. The report was released in parts in June, July, August, and November 2007. The decision was taken to release parts as and when they became available, despite the fact that the text had not been copy-edited.

The Tribunal indicated that the parties should expect that, in the published version of the report, the headings and formatting might be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. The process of editing and correcting these details has been extensive and, given the length of the report, time-consuming.

In all chapters, a number of amendments have been made, resulting in some changes of substance. These have not, however, altered the findings and conclusions of the Tribunal. Rather, they are intended to clarify further the Tribunal's intent. In some cases, chapter summaries have been refined, or added where they were previously lacking.

Photographs and additional illustrative material have been inserted, and some maps or their titles have been modified or replaced.

No party should now rely on the text of the pre-publication version of our report.

Judge Caren Fox Presiding Officer

LA TOX

ABBREVIATIONS

AC	Law Reports, Appeal Cases (England)	ltd	limited
AJHR	Appendix to the Journal of the House of Representatives	MCH	Ministry of Culture and Heritage
app	appendix	MONZTPT	Museum of New Zealand Te Papa Tongarewa
App Cas	Law Reports, Appeal Cases (England)	NIWA	National Institute of Water and Atmospheric Research
ArchivesNZ	Archives New Zealand	no	number
ATL	Alexander Turnbull Library	NZED	New Zealand Electricity Department
BPP	British Parliamentary Papers: Colonies New Zealand	NZLJ	New Zealand Law Journal
	(17 vols, Shannon: Irish University Press, 1968-69)	NZLR	New Zealand Law Reports
c	circa	NZPCC	New Zealand Privy Council Cases
CA	Court of Appeal	NZPD	New Zealand Parliamentary Debates
CD	compact disc	OTS	Office of Treaty Settlements
CFRT	Crown Forestry Rental Trust	p, pp	page, pages
ch	chapter	para	paragraph
cl	clause	PC	Privy Council
CLO	Crown Law Office	pl	plate
CNI	Central North Island	QBD	Law Reports, Queen's Bench Division (England)
div	division	RMA	Resource Management Act 1991
doc	document	ROI	record of inquiry
DSIR	Department of Scientific and Industrial Research	s, ss	section, sections (of an Act of Parliament)
ed	edition, editor	sec	section (of this report, a book, etc)
ERMA	Environmental Risk Management Authority	sch	schedule
fol	folio	sess	session
ff	following	sl	slide
fn	footnote	tbl	table
GNS	Institute of Geological and Nuclear Sciences	TPD	Tongariro Power Development
ha	hectare	TVZ	Taupo Volcanic Zone
ibid	ibidem	UN	United Nations
J, JJ	justice, justices (when used after a surname or	v	and
	surnames)	vol	volume
LHAD	Land History and Alienation Database		

^{&#}x27;Wai' is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, endnote references to claims, documents, papers, recordings, and statements are to the Wai 1200 record of inquiry, a copy of which is available on request from the Waitangi Tribunal.



NGA AHUATANGA: THE INQUIRY

The claimants of the Central North Island region put it to this Tribunal that, in essence, the root of all breaches of the Treaty in their rohe was the Crown's failure to give effect to the Treaty's guarantee of their autonomy and selfgovernment. Their tino rangatiratanga, they said, was set aside and actively repressed, rather than protected, by the Crown. They claimed that the effects of the Crown's failure were felt in many spheres: in the Crown's consequent failure to recognise and respect their political institutions; in the introduction of the Native Land Court and a policy of individualised title without consultation with Maori, or their consent; in the passing of legislation vesting the right of ownership or regulation of waterways and geothermal resources in the Crown or its delegates without Maori consent; and in the Crown's failure to give effect to the Treaty right of development, which left Central North Island hapu and iwi in a situation of long-term underdevelopment.

BACKGROUND TO THE INQUIRY

The Central North Island regional stage one inquiry owes its origins to the overarching Volcanic Interior Plateau (VIP) claim filed in August 1999 by:

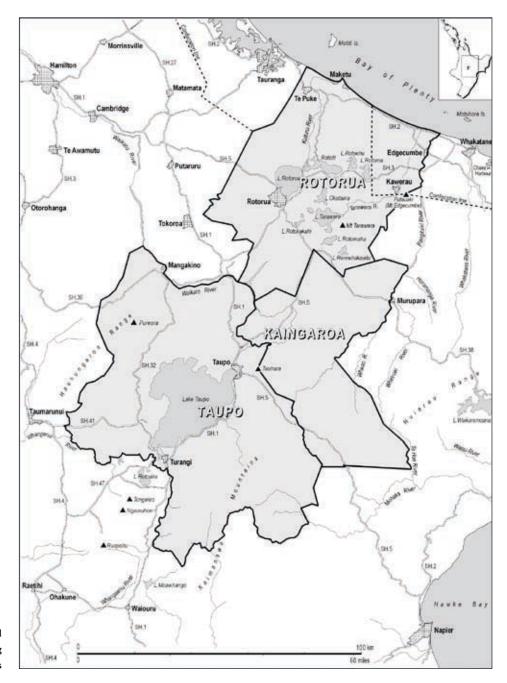
- ► The Right Reverend Manuhuia Bennett ONZ, CMG, of Te Arawa, Rotorua;
- ► Tumu Te Heuheu, Ariki of Ngati Tuwharetoa, Taupo; and
- ▶ Rangiuira Briggs, of Ngati Manawa.

The VIP claim was filed on behalf of the Te Arawa Confederation, Ngati Tuwharetoa, Ngati Raukawa, Ngati Tahu, Ngati Whaoa, Ngati Manawa, Ngati Whare, Ngati Haka Patuheuheu, and Ngati Rangi. The area outlined in this claim differed only slightly from the final boundaries settled on for the Central North Island regional inquiry. Along with the statement of claim, the claimants filed a memorandum outlining their vision for processing their claim. This indicated that they intended to seek urgency on the claim and proposed a process that sought to expedite the lengthy hearing stage. The VIP claimants envisaged a series of judicial conferences at four-monthly intervals, at which evidence and submissions would be progressively exchanged and responded to by claimants and the Crown. At preliminary conferences, held in Wellington on 24 July 2000 and in Rotorua on 29 August 2000, the VIP claimants outlined to the Tribunal and the Crown their proposed programme and the justification for priority.

In November 2000, the VIP claimants' application for priority was heard by Chief Judge Joe Williams (then deputy chairperson and now chairperson of the Waitangi Tribunal) and Ms Joanne Morris at Wahiao Marae in Rotorua.¹ The VIP claim was conceptualised as a forestry claim, at least in so far as remedy was concerned.² The claimants effectively sought a rearrangement of the Tribunal's forward programme to ensure that the three inquiry districts – Rotorua, Taupo, and Kaingaroa – were brought into an alternative form of inquiry process some years before the orthodox processes would have allowed.³

1

HE MAUNGA RONGO



Map 1.1: The Central North Island inquiry region, also showing internal district boundaries

NGA AHUATANGA: THE INQUIRY

On 5 September 2001, the Tribunal issued its decision on this application for priority. It decided to grant priority for the Rotorua, Taupo, and Kaingaroa district inquiries.⁴ The justifications for prioritising the VIP claim included the following:

- ▶ The 1989 deed of settlement between the Crown and Maori, whereby Maori consented to the transfer of Crown forestry assets to third party purchasers, provided that certain safeguards were put in place to protect the integrity of Treaty claims with respect to the lands underlying those forests.5 The Crown Forest Assets Act 1989 was the product of that settlement.⁶ Under the terms of the deed, the Crown and Maori agreed to jointly use their 'best endeavours' to enable the Waitangi Tribunal to identify and process all claims relating to forestry lands, and to make recommendations within the shortest reasonable period.⁷ Judge Williams and Ms Morris noted that the Tribunal was bound to give considerable weight to that settlement, because the Tribunal is charged with inquiring into the claims that are the subject of the agreement.8 It was explained that something like 60 per cent in value of claims in respect of Crown forestry lands nationwide would be inquired into by such a fast-track process.9
- ▶ Dealing with the VIP claim as quickly as possible was of importance to the national economy.¹⁰ While this claim remained unresolved, there would be uncertainty about the final ownership of the land underlying the forests.¹¹ Fast-tracking the process would provide commercial certainty by answering this question.¹²

Move to a regional inquiry

Over the years from 2001 to 2003, the Tribunal convened a number of judicial conferences to deal with research and claimant representation issues. By 25 March 2003, however, it was clear to the Tribunal that the preparatory research phase for the Rotorua district inquiry was not proceeding as rapidly as it should. Because the three district inquiries were to follow in sequence, delays in the Rotorua district risked a flow-on effect to the Taupo and Kaingaroa inquiries. The Tribunal proposed to the parties that it might prove advantageous to adopt a regional approach to research planning, while retaining the essentially district character of the casebook inquiry. The intention was for such research to provide a sufficient evidential base either for hearings, with a Tribunal report on the claim issues affecting all or most claimants in a district, or for the negotiation of a settlement of those issues.

The Tribunal determined that it would stage a series of judicial conferences to discuss the option of splitting the inquiry into a two-stage approach. The concept the Tribunal put forward outlined an inquiry schema that could be divided into two separate parts. The first stage would look into generic issues that were deemed to have affected hapu and iwi across the three inquiry districts that make up the Central North Island region. The second stage would look into the particular details of each claim. The key advantages of this approach were that it would give claimants a hand in deciding the scope of the Tribunal process and considerably reduce the time and expense associated with progressing each district in turn. It also meant that the limited Crown Forestry Rental Trust (CFRT) funding available could be effectively used across the region.

On 13 June 2003, the Tribunal released its final decision, noting that there was almost unanimous support in principle for the proposal for a two-stage inquiry. Satisfied that a broad consensus had been achieved, the Tribunal advised that at the conclusion of the first stage of the inquiry it would be in a position to report on generic issues in a manner designed to assist early settlement negotiations. Such a report was to be either final or interim in nature, depending on the Tribunal's view of the adequacy of the evidence presented. Set 2007.

HE MAUNGA RONGO



Map 1.2: Land blocks in the Rotorua district

NGA AHUATANGA: THE INQUIRY

Direct negotiation or Waitangi Tribunal inquiry?

What is now sometimes referred to as the 'two-stage modular new approach' was designed to facilitate an early entry into direct negotiations, by giving claimants several opportunities to opt out of the Tribunal inquiry process, should they so wish. The first stage deals with the generic or big-picture issues across an inquiry region. The first opportunity to opt out comes at the completion of the research casebook review, and before hearings commence. Claimants may also choose to opt out – and enter direct negotiations with the Crown – after stage one hearings, meaning that they have some independent research to assist them, or after a stage one Tribunal report. Stage two then proceeds, if necessary, after a stand-down period and allows for investigation of more specific issues.

Due to the generic nature of the stage one inquiry, claimants and the Crown were not obliged to prepare the particularised statements of claim and response to the level of detail otherwise required in Tribunal processes. They were asked instead to assist the Tribunal to identify the broad issues that concerned iwi and hapu in the Central North Island region. In October 2004, the Tribunal released its draft statement of generic issues for the stage one inquiry, divided into five broad categories. The deadline for any amended statements of claim was set for November 2004 and the final statement of issues from the Tribunal was issued in mid-December 2004. The process took a little over six weeks.

On 10 December 2004, the Tribunal asked claimants to submit their decisions as to whether they wished to proceed to the hearing stage of the inquiry process. The outcome of this roll-call signalled that an overwhelming majority of claimants wished to continue to stage one generic hearings. Some claimant groups chose to opt out of the process, as they had decided to enter into direct negotiations with the Crown. At this point, Nga Kaihautu o Te Arawa affiliate iwi and hapu, Ngati Manawa, and Ngati Whare formally withdrew.

The Central North Island inquiry was the first to proceed with a two-stage approach of this nature. The division

of the inquiry into generic and particular stages has shortened the length of time between the beginning of the inquiry process and the release of the stage one report. This would not have been possible without all those who participated making the commitment necessary to get through the gruelling hearing programme.

Mandate and representation

The Central North Island inquiry region encompasses an intricate network of hapu and iwi. In order to become fully acquainted with the different hapu and iwi, and to ensure that the full nature and extent of their claims were understood, the Tribunal took the novel step of conducting a claimant survey for each district.¹⁹ The surveys resulted in the production of two reports covering the iwi and hapu involved, their marae, and a number of other important matters. This material helped inform aspects of the Tribunal's approach to research, hearing, and report planning.

Under section 6(1) of the Treaty of Waitangi Act 1975, claims can be lodged by any Maori whether or not that person has the support of their community, iwi, or hapu. It is not legally necessary for a claimant to prove that they have a mandate from their community before bringing a claim before the Waitangi Tribunal. Given the size of the three inquiry districts that form the Central North Island region, and the number of hapu and iwi groups and their claims, the Tribunal determined that it should request that claimants cluster together in order to avoid duplication of research, reduce the repetition of evidence and submissions, and truncate the time spent in hearing.²⁰

Research Coordinating Committee

The Research Coordinating Committee (RCC) was proposed by the then Deputy Chairperson Judge Williams and Ms Morris in their 14 December 2001 direction, with the aim of enhancing a joint approach to research. The membership of the RCC included claimant representatives, senior historians familiar with the claims process, and

HE MAUNGA RONGO



Map 1.3: Land blocks in the Taupo district

NGA AHUATANGA: THE INQUIRY

the chief and deputy chief historians of the Tribunal. The RCC worked with the CFRT to commission and produce research reports.

The Crown expressed some reservations about taking an active role on the RCC. It did not believe that the coordination of claimant research should be a matter for the Crown's involvement, but eventually saw value in being involved in 'identifying issues important to it for both the hearing process and negotiations'. Both claimants and the Crown were able to produce research in advance of the commencement of hearings as a result of this integrated research approach.

Legal Coordinating Committee

The lawyers involved in the inquiry constituted a Legal Coordinating Committee that liaised with the Tribunal on research coordination, hearing preparation, timetabling, agenda setting, and submission and evidential requirements. The representatives of this committee, particularly Mr Aidan Warren, proved to be of invaluable assistance in facilitating communication between the Tribunal and all counsel.

Boundaries

The Central North Island regional inquiry is unique in the Tribunal's history, being the only inquiry that has investigated three districts simultaneously. In their direction dated 5 September 2001, the Deputy Chairperson Judge Williams and Ms Morris noted that the Tribunal needed to start defining the inquiry boundaries for the Central North Island districts of Rotorua, Kaingaroa, and Taupo. The Tribunal followed its standard guidelines when setting the boundaries of the inquiry, by taking into account:

- ▶ the extent of the commonalities amongst claims;
- ▶ the size of the districts;
- ▶ the number of claims; and
- ▶ the associations that tribes have with an area. ²²

The Tribunal acknowledged from the outset that the inquiry boundaries it delineated serve an administrative

function only and do not correspond to tribal boundaries. While an attempt was made to envelop core tribal boundaries, that was not always possible and it was therefore inevitable that some interests of some claimant groups would end up overlapping into other inquiry districts. Because the Urewera and Whanganui district boundaries were still being finalised, it was decided that the Rotorua district boundary should be tentatively fixed first.²³

On 14 December 2001, the Deputy Chairperson Judge Williams and Ms Morris made the first determination of boundaries. A provisional boundary was set for the Rotorua district, and the remaining boundaries of the Taupo and Kaingaroa districts were deferred to be dealt with during judicial conferences. The boundary between the Urewera and Rotorua districts was confirmed on 13 September 2002. Several judicial conferences followed, where iwi and hapu made submissions on the boundaries for the Rotorua, Taupo, and Kaingaroa districts.

Once planning for the regional inquiry had commenced, claimants were given numerous opportunities to ensure that the district and regional inquiry boundaries were broadly acceptable to them. The final boundaries of the inquiry were confirmed in September 2004. Boundary issues with adjacent inquiry districts were resolved in a number of ways. In relation to the shared boundary with the Urewera inquiry, both Tribunals agreed to accommodate a small overlap. As regards the more problematic overlap between the Taupo and Whanganui inquiries, it was decided to alter the boundaries of both to create a separate National Park district inquiry. In cases where the regional and district boundaries were not shared with other inquiries, they followed the boundaries of primary land blocks and major rivers. Boundaries of primary land blocks and major rivers.

HEARINGS

With a regional inquiry that stretched over three inquiry districts, the ability to focus upon generic issues tightened the hearing period and reduced repetition of evidence. Even so, and at the request of claimant counsel, the

HE MAUNGA RONGO

Week 1	1–4 February 2005	Te Papaiouru Marae, Ohinemutu			
Agenda: composite openings for the three Central North Island districts					
Week 2	14–18 February 2005	Rangiuru Sports Club, Te Puke			
Agenda: Ngati Puku o Hakoma, Tuwharetoa ki Kawerau Te Atua Reretahi Ngai Tamarangi, Ngati Makino, Ngai Te Rangi, Ngati Rongomai, Ngati Hinekura, Ngati Rangiunuora, Tutaki a Kooti/Tutaki a Haane, Ngati Rangitihi, Tapuika, Ngati Moko, Waitaha					
Week 3	7–11 March 2005	Taupo Yacht Club, Taupo			
Agenda: Ngati Manawa, Ngati Haka Patuheuheu, Nga Rauru o Nga Potiki, Te Takere o Nga Wai, Ngati Whaoa, Ngati Tahu, Ngati Rangitihi, Ngati Hineuru					
Week 4	14-18 March 2005	Taupo Yacht Club, Taupo			
Agenda: Ngati Tutemohuta, Tawiri Hakopa, Te Takere o Nga Wai, Raukawa, Hikuwai confederation, Tanirau					
Week 5	2–6 May 2005	Hirangi Marae, Turangi			
Agenda: Ngati Tuwharetoa, Ta	auhara, Ngati Hikairo				
Week 6	9-13 May 2005	Te Papaiouru Marae, Ohinemutu			
Agenda: Ngati Whakaue, Ngati Tamakari, Ngati Pukenga, Ngati Rangitihi, Ngati Rangiwewehi, Ngati Wahiao, Ngati Rangiteaorere, Ngati Tuteniu, Ngati Te Takinga, Te Arawa					
Week 7	30 May–3 June 2005	Park Heritage Hotel, Rotorua			
Agenda: Ngati Wahiao, Ngati Tamakari, Te Takinga, Ngati Rangiteaorere, Ngati Tuteniu, Ngati Karenga					
Week 8	11-15 July 2005	Rydges Hotel, Rotorua			
Agenda: Ngati Tuteniu, Tapuika, Ngati Awa					
Supplementary Day	8 August 2005	Wellesley Club, Wellington			
Agenda: Environment Waikato and Environment Bay of Plenty					
Week 9	12–16 September 2005	Rydges Hotel, Rotorua			
Agenda: Claimant closing submissions					
Week 10	7–9 November 2005	Waitahanui Community Hall, Taupo			
Agenda: Crown closing submissions					

Table 1.1: Hearing timetable

Source: Compiled from the Central North Island Record of Inquiry index.

NGA AHUATANGA: THE INQUIRY

hearing time stretched to 10 weeks from the original six. Nevertheless, the Tribunal managed to hear more than 120 claims at a generic level in that time.

The hearing weeks were held over a period of nine months. Venues were chosen throughout the region, some for their significance to iwi, others for their perceived neutrality. It has been common practice for Tribunals to select marae as venues for hearing weeks. In past inquiries, this process has been easier because of the smaller number of iwi within the inquiry district. To accommodate the situation in the Central North Island inquiry, the Tribunal asked claimants to select marae that held significance for a large number of claimants throughout the region. On the basis of its importance to Te Arawa, including Tuwharetoa, Te Papaiouru Marae in Ohinemutu was chosen as the venue for the first week of hearings. Six hearing weeks were held in the Rotorua region, and four were held in the Taupo region. The third week of hearings, allocated to Kaingaroa iwi and hapu groups, had initially been scheduled for hearing within that district. However, it did not prove possible to locate a suitable venue, compelling the Tribunal to move the venue to Taupo.

The nature of the evidence

During the course of the 10 hearing weeks, held between 1 February and 9 November 2005, the Tribunal heard evidence on the diverse challenges faced by iwi and hapu in the region. Of the 36 technical witnesses who appeared before the Tribunal, six appeared as Crown witnesses, 23 as claimant witnesses, and seven as Tribunal-commissioned witnesses. Prominent among the evidence of these witnesses were 16 large overview reports. These, along with two earlier commissioned reports, were envisaged in the planning stages of the inquiry to cover all the topics of relevance to the region. However, before the closure of the casebook, both the claimants and the Crown submitted additional technical evidence. The Tribunal also benefited from the expertise of further witnesses proposed by claimant groups. In addition, the Tribunal research staff filled

further gaps through the submission of a document bank and two commissioned reports. In total, the Central North Island Tribunal benefited from more than 100 reports and publications, although not all of the authors were cross-examined.

The evidence of witnesses from claimant communities formed a major part of the evidence heard before the Tribunal. In total, the Tribunal heard from 273 claimant witnesses from some 50 kin groups, in the form of both oral and written testimonies. Many of these testimonies were read from prepared briefs of evidence. Claimants also presented their evidence in the form of waiata and haka. Many witnesses gave detailed accounts of their hapu, iwi, and whanau, relating the ties between themselves and their land, their history, and customs. Claimants were also very helpful in elucidating the closeknit relationships between kin groups in this region. The claimants furnished us with detailed accounts of whakapapa that have aided us greatly in our discussion of the relationships between hapu and iwi in the second chapter. Claimants presented a rich body of material that drew upon their personal experiences. Although the inquiry was generic in nature, such evidence enabled the Tribunal to hear the views of tangata whenua on many of the issues discussed in the technical evidence.

While claimants were often familiar with the setting of the hearings, which sometimes took place on local marae, the forum of the Tribunal hearing was not so familiar. For its part, the Tribunal was mindful of this and tried to ensure that tikanga was followed throughout the hearings. Shortly before the first week of evidence, the Tribunal determined that as 'most tangata whenua evidence is a record of people's genuinely held understandings and beliefs', the Tribunal would not benefit from cross-examination of such evidence. ²⁹ Counsel were instead instructed to file written briefs where they felt it was necessary to bring a client's countering view to the attention of the Tribunal. Cross-examination was permitted on issues where the information was of a technical or contemporary nature.

HE MAUNGA RONGO

Other parties represented during the hearings

In addition to the claimants and the Crown, the Tribunal also heard submissions and evidence from Ngati Awa, who have reached a settlement with the Crown. They made an application to participate on a limited basis only by way of cross-examination and rebuttal of evidence on matters relating to Rotoehu and Otamarakau. A number of claimant counsel objected, but the Tribunal decided that Ngati Awa could assume a watching brief.³⁰ They later presented a limited amount of evidence. The Tribunal also heard evidence from Environment Waikato, Environment Bay of Plenty, and the Rotorua District Council.

JURISDICTION ISSUES

The Crown has contended that the Tribunal should not revisit issues previously settled by legislation or agreement. The Tribunal agrees with this in principle. But it will inquire into claims where there is some ambiguity as to informed consent, as was alleged, for example, by Pirihira Fenwick in relation to the 1993 Ngati Rangiteaorere (Wai 32) deed of settlement. The Tribunal is also prepared to review the facts pertinent to a settlement, where this can provide a context for understanding the nature and extent of the claims before us.

We refer to the example of Ngati Whakaue's 1993 agreement with the Crown regarding endowment lands (Wai 94). The subject of that agreement was the nineteenth-century Fenton Agreement, which laid the basis for Ngati Whakaue's early political engagement with the Crown. The Fenton Agreement also played a role in the introduction of the Native Land Court in the Rotorua district. These events form an important background to the analysis of the issues before this Tribunal. Other settlements impacting on natural resource claims are considered in detail in part v of this report.



Map 1.4: Land blocks in the Kaingaroa district

THE CENTRAL NORTH ISLAND REPORT

There are five main parts to this report and an appendix. Part I introduces hapu and iwi of the Central North Island region, their world views, and their society as it had evolved by the early nineteenth century. Part II considers the political relationship between Maori of the region and the Crown from the time of the Treaty to 1920. Part III examines the administration and alienation of Maori land in the region, and the lasting difficulties Maori owners faced because of the Crown's introduced title system. Part IV considers Treaty development rights in farming, tourism, indigenous forestry, exotic forestry, and power generation. Part V assesses Crown policies for

NGA AHUATANGA: THE INQUIRY

natural resources and the environment, and their impact on Maori in the inquiry region.

The issues that are canvassed in this report have been identified from the statement of issues and distilled in light of the evidence and submissions of the parties. The report draws on examples and case studies that are broadly representative of the experience of many or all Maori of the region. On occasion, the Tribunal has referred to secondary sources to provide context to its analysis of the issues.

The Tribunal's findings in this report are comprehensive, where possible, on generic issues. As a result of the Central North Island casebook being incomplete in some places, preliminary findings only have been made on some issues. No findings have been made regarding customary interests or on specific claims. Findings that are as particularised as possible have been made on generic issues, such as raupatu, so as to assist negotiations.

TRIBUNAL COMPOSITION

The Central North Island panel comprised Judge Caren Fox (formerly Wickliffe), Mrs Gloria Herbert, Mr John Baird, and Dr Ann Parsonson. Mr John Baird, as a director of Mighty River Power, was recused from discussions, report writing, and any findings and recommendations concerning rivers, waters, lakes (including Lake Taupo), geothermal resources or assets, and any other part of the inquiry in which Mighty River Power may have an interest.³¹ In practical terms, this means that he has not been involved with any of the chapters in part v of this report, nor the two chapters in part IV that deal with hydro and geothermal power generation.

Notes

- 1. Waitangi Tribunal, memorandum and directions, 5 September 2001 (paper 2.3.1), p 5
 - 2. Ibid, p1
 - **3.** Ibid, p 4
 - **4.** Ibid, p 14
 - 5. Ibid
 - 6. Ibid
 - 7. Ibid
 - 8. Ibid
 - 9. Ibid
 - 10. Ibid, p 15
 - 11. Ibid
 - **12.** Ibid
- 13. Waitangi Tribunal, memorandum and directions, 25 March 2003 (paper 2.3.12), p 3
 - **14.** Ibid
- 15. Waitangi Tribunal, memorandum and directions, 13 June 2003 (paper 2.3.18), p1
 - 16. Ibid, p1
 - 17. Ibid, p 2
 - **18.** Ibid
- 19. Waitangi Tribunal, memorandum and directions, 22 February 2002 (paper 2.3.3), p 1
- **20.** Waitangi Tribunal, memorandum and directions, 13 September 2002 (paper 2.3.6), p 4
- 21. Waitangi Tribunal, memorandum and directions, 13 June 2003 (paper 2.3.18), p 2
- 22. Waitangi Tribunal, memorandum and directions, 5 September 2001 (paper 2.3.1), p 23
 - 23. Ibid, p 24
- **24.** Waitangi Tribunal, memorandum and directions, 13 December 2001 (paper 2.3.2), p 21
 - **25.** Ibid, p 22
- **26.** Waitangi Tribunal, memorandum and directions, 13 September 2001 (paper 2.3,6), p 12
- 27. Waitangi Tribunal, memorandum and directions, 20 September 2004 (paper 2.3.38)
- 28. Waitangi Tribunal, memorandum and directions, 23 April 2004 (paper 2.3.28), pp 6-8
- 29. Waitangi Tribunal, memorandum and directions, 11 February 2005 (paper 2.3.57), p 3
- **30.** Waitangi Tribunal, memorandum and directions, 23 December 2002 (paper 2.3.9), p 5
- 31. Waitangi Tribunal, memorandum and directions, 9 February 2005 (paper 2.3.56), pp 2–5



PART I

NGA TANGATA WHENUA
THE PEOPLES OF THE CENTRAL NORTH ISLAND



Previous page: A speaker emphasises a point at a gathering beside Lake Rotorua. Detail from a drawing by Joseph Jenner Merrett, circa 1843. The full artwork is reproduced on page 34.

Downloaded from www.waitangitribunal.govt.nz

CHAPTER 2

NGA TANGATA WHENUA THE PEOPLES OF THE CENTRAL NORTH ISLAND

THE PURPOSE OF THIS CHAPTER

Our intention in this chapter is to introduce the peoples of the Central North Island, their world views, and their society as it had evolved by the early nineteenth century. This will provide a platform from which an evaluation of their Treaty of Waitangi claims can be made. It is not possible to gauge the true impact of the Crown's actions in the Central North Island region without an understanding of who the people are, and their relationships with their kainga, their whenua, and their taonga katoa (all their treasures).

During the course of our inquiry, hapu and iwi of Rotorua, Taupo, and Kaingaroa generously shared their knowledge, their traditions, and their history with us. Their kaumatua, matua, and rangatahi (elders and grandparents, parents, and young people) gave evidence to help us to understand their culture and identity. They explained how their whakapapa is embedded into the very land of which they are tangata whenua. They shared their histories of arrival in this region and traditions of how their tupuna created some of its natural treasures. They recounted their long relationships with the land, lakes, and geothermal taonga, and with one another. These histories are critical to our understanding of their Treaty claims, many of which relate to the Crown's alleged failure to actively protect them in respect of their ancestral lands and waters.

The chapter is divided into four sections:

- 1. Origins and arrival: Where did the peoples of the Central North Island region come from and who were the first Maori settlers?
- 2. Kin links and migration: What were the connections between the various kin groups? Where had they settled by 1840 and how did they get there?
- 3. Relationships with land and resources: How did Central North Island Maori relate to their environment? What resources did they use? What was the cultural, spiritual, and economic significance of the land and its resources?
- 4. Customary law and authority: What do we know about customary law? What were the social structures and authority mechanisms of Central North Island Maori? What systems of rights allocation were in place in the region at the time of the signing of the Treaty?

We stress that, in examining the above questions, it is not our aim to make findings on the extent or distribution of customary rights as between the iwi or hapu of the Central North Island. Our inquiry was a generic one, and the function of this report is not to make findings on such matters.

HE MAUNGA RONGO

SECTION 1: ORIGINS AND ARRIVAL

[I]t is appropriate that in the beginning we should return to the ancestors, and through that history you will see our history and customs and associations with the land that we refer to.

Timitepo Hohepa Te Puke, 14 February 2005

Relationships between many of the different iwi and hapu in the Central North Island stretch far back in time, well before their arrival in Aotearoa/New Zealand. The names of some, at least, of the principal voyaging waka or canoes that brought various groups of Polynesian migrants to this country are well known. Less well known, perhaps, are the identities and histories of those on board.

The waka associated with by far the most iwi and hapu in the Central North Island is Te Arawa, but there were close links between the migrants on Te Arawa and those on board Tainui. Both waka set sail from the same island at the same time, and in some accounts the two waka were even twin hulls of the same double canoe. Some, at least, of the leading figures on board the two waka were close kin to each other. For example, oral and written tradition record that Ohomairangi, on board Tainui, was the uncle of Tamatekapua, captain of Te Arawa, being Tamatekapua's mother's brother. And a number of those on board Te Arawa could claim a kin relationship with Hoturoa, captain of Tainui. It is said, too, that the tohunga Ngatoroirangi was initially to have sailed on Tainui, but was tricked by Tamatekapua into boarding Te Arawa.

Other traditions tell how Ngatoroirangi was closely related to Toroa, captain of Mataatua waka, and that the two were possibly even half-brothers. Witnesses in our inquiry also mentioned a family relationship between Toroa and Tamatekapua. 5

Going even further back in time, we were told of the genealogy that links the iwi of Tainui and Te Arawa as descendants of Ai-tua, the child of Hineahuone-the-earth-

formed and the deity Tumatauenga. Some traditions take the links beyond that again, to ancient times . . . and ultimately to the Godhead Io Matua. 7

All these links, we were told, form the intertwining strands of 'the rope that binds'. It is clearly seen as a long rope, stretching back across the Pacific and beyond, to other realms and on into the mists of time. Relationships between peoples of the Central North Island region are not of recent origin.

Early arrivals

Well before the arrival in Aotearoa of the major voyaging waka, there seem to have been a number of early migrants from across the ocean, from the homeland referred to in tradition as Hawaiki. The descendants of Tahumatua, for instance, who settled in the northern Taupo-southern Rotorua area and who are now generally known as Ngati Tahu, have traditions of their ancestor arriving on an earlier waka. In some versions it is the Horouta, in others the Tairoa. However, we were also told of other Ngati Tahu traditions which recount that Tahumatua arrived by an entirely different means, namely on the back of a giant bird called the Hokioi or Hokio. 9 Ngati Tahu do have later links to Te Arawa waka - through, for example, their close associations with Ngati Tuwharetoa and Ngati Whaoa and they also have links to Tainui groups such as Ngati Raukawa and to Ngati Manawa of the Kaingaroa area. Nevertheless, they have made it clear that they accord particular importance to their earlier, and separate, identity.10

Within the region there are also communities that have no traditions linking them to named waka. Notable among these are Kaingaroa iwi and hapu that affiliate to Te Tini o Toi and Nga Potiki, such as Ngati Haka and Ngati Patuheuheu (now closely interconnected and often referred to conjointly as Ngati Haka Patuheuheu). Although subsequent generations of such kin groups have intermarried with people of, for example, Mataatua descent, the principal ancestors Toi-kai-rakau (also known as Toi Te Huatahi) and Potiki-tiketike are regarded as pre-dating by several

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

generations the main period of Polynesian migration to Aotearoa. Sean Ellison, for example, describes Toi as having come by way of Rarotonga, following the path laid down by Kupe – although even he arrived to find that there were already 'people of the land'. Tamati Kruger refers to another early ancestor by the name of Hape-ki-tu-matangio-te-rangi (Hape) who landed at Ohiwa, bringing with him the mauri of the kumara from Owhakao in Hawaiki. This was, he says, 'well before we knew the tribal names of Tuhoe, Ngati Manawa, Whakatohea, Ngati Whare; those tribes were not known. In some versions of tribal histories, there is no arrival tradition at all and the earliest ancestors are simply regarded as being indigenous.

Ngati Manawa and Ngati Whare are other iwi that can claim descent from Toi-kai-rakau (through Manawakotokoto, an ancestor of both groups), and also from Potiki-tiketike.¹⁴ Leading up to the time of their more immediate ancestors (Tangiharuru and Wharepakau, respectively), the two kin groups appear to have migrated around the North Island for quite a long period, and Angela Ballara also remarks on Ngati Manawa having 'their Te Arawa side and their Mataatua side'. However, when Tangiharuru and Wharepakau led their migration into the Rangitaiki-Whirinaki area, they overcame and married into a much earlier people, the Marangaranga. Sir John Grace declines to ascribe any certain origins to the Marangaranga, but other evidence indicates that they, too, were descended from Toi.16 Either way, there is general agreement that they were an ancient people who predated the arrival of waka such as Te Arawa and Mataatua.

In other parts of the Central North Island region, too, there were earlier peoples whose origins are not entirely clear. Among these are Ngati Kahupungapunga, Ngati Ruakopiri, and Ngati Hotu.¹⁷ However, according to information recorded by historians such as Grace and Don Stafford, these populations all seem to have been displaced by later arrivals associated with known waka, with any remaining remnants being absorbed through intermarriage.¹⁸ We will discuss some of those interactions in more detail in later sections.

The main migration period

Te Arawa was one of a number of large waka associated with Polynesian migration to New Zealand, and it was from Te Arawa that the ancestors of most of the iwi and hapu of the Rotorua and Taupo districts first came ashore on the Bay of Plenty coast. The circumstances of its departure from Hawaiki, and its journey across Te Moana Nui a Kiwa (the Pacific Ocean) were given to us in a dramatic waiata. One verse recounts:

Mai i Rangiatea ki Tahiti From Rangiatea to Tahiti areare ki Rarotonga Thence to Rarotonga and thence to Whangaparaoa ki Whangaparaoa ahu tonu ki Rangitoto from there to Rangitoto and ki te whanga o te Waitemata to the harbour of Waitemata ka huri i Moehau round the point at Moehau ka u ki te Awa a te Atua to Te Awa a Te Atua at Matata ka huri mai ano te waka ka u ki Maketu and back to Maketu

ki te Kurae o te Ihu o known as the bridge of the nose of Tamatekapua tera Tamatekapua ka tau te waka ki te Awa i Akeake and so settled
Ka mihi ka tangi te iwi The people wept in joy ki te whenua ki a Aotearoa for this land Aotearoa

From Maketu, the descendants of these migrants spread out across the region and their influence soon stretched, in the words of a well-known saying, 'mai i Maketu ki Tongariro' (from Maketu to Tongariro), and beyond.²¹

There are also groups in the Central North Island region, especially around the edges of our inquiry districts, whose primary affiliation is, rather, to another of the major waka. Among these are Ngati Awa to the north-east, and Ngai Te Rangi and Ngati Pukenga to the north-west – these three being linked with Mataatua. From Tainui, and to the west of our region, come Ngati Raukawa, who derive their name from the tupuna Raukawa, first-born of Turongo who was a direct descendant of Hoturoa, captain of the Tainui waka.

There was also a smaller waka, the Pukateawainui, on which Ruaeo and his companions arrived in pursuit of Tamatekapua, who had abducted Ruaeo's wife, Whakaotirangi.²³ Te Arawa and Pukateawainui had clearly

HE MAUNGA RONGO

set sail from the same place, and Ruaeo is recorded as migrating inland with certain of those who arrived on Te Arawa. Various of the party settled in different places along the way, and Ruaeo is particularly associated with the areas of Tikitere and Awahou. Later, there is evidence of Ruaeo's descendants, Ngati Rua, living at Makatiti under a chief by the name of Rangiwhiu. However, we did not receive evidence of them having survived into the present as a distinct hapu.

Then there was the waka Te Paepae-o-Rarotonga, on which Waitaha-ariki-kore is said to have arrived – this tupuna being an early inhabitant of the Otamarakau area. According to evidence given to us, Waitaha-ariki-kore is an ancestor of Ngati Tuwharetoa. To Paepa e-o-Rarotonga, on which waitaha-ariki-kore is an ancestor of Ngati Tuwharetoa.

As with all migrants everywhere, these voyagers often sought to imprint their new landscape with familiar names from home.²⁸ We were told, for instance, that the name Maketu comes from the old name for the island of Mauke in the Cook Islands.²⁹ Similarly, Parawai, the site of an important fortification to the west of Lake Rotorua, was named to recall not only gardens that had been planted at Maketu soon after arrival, but also, before that, ancient gardens in Hawaiki.³⁰

Over time, kin groups descended from the different migrants continued to explore the new land, encountered each other, and mediated settlement of the various areas - sometimes peacefully, sometimes by war and conquest. As a result of these encounters (not to mention more recent ones), many Central North Island Maori can, as individuals, claim descent from more than one waka. In some cases, a hapu as a whole has important links to more than one canoe and makes a point of acknowledging these. Among such hapu are several in the Mokai area, north of Lake Taupo - namely Ngati Haa, Ngati Moekino, Ngati Parekawa, Ngati Tarakaiahi, Ngati Te Kohera, Ngati Wairangi, and Ngati Whaita - who trace their ancestry back both to the Tainui waka (through Ngati Raukawa) and to Te Arawa waka (through Ngati Tuwharetoa).31 In the east of our region, Ngati Hineuru claim ties to particular Hawke's Bay groups and to Tuhoe and others, as well as to Ngati Tuwharetoa hapu of the Taupo area.³² We could cite a number of other examples.

Te Arawa waka

We come now to those descended from the tupuna who arrived aboard Te Arawa. Here we note, in particular, the close genealogical links between tribes in the Rotorua district of our inquiry region and those associated with Ngati Tuwharetoa in the Taupo district.

These links existed from before the migration, and were to be maintained after settlement in the new land. According to tribal history, Ngatoroirangi and Tamatekapua were first cousins – offspring of two of the sons of the ariki Tuamatua. (The latter is called Atuamatua in some traditions, although others regard the two names as belonging to separate ancestors.)33 Ngatoroirangi is shown, at least in one genealogy, as being descended from Rakauri, the ariki's oldest son by his first wife, and Tamatekapua is shown as being descended from Houmaitawhiti, a son born to his second wife. Houmaitawhiti, according to this genealogy, had an older brother, Kurapoto, also born to Tuamatua's second wife, while Tuamatua's third wife had two sons, Tia and Hei.34 Other evidence suggests that Tia and Hei were priests of the kin group to which the migrants belonged, and that Kurapoto owned the forest in Hawaiki from which the two great trees were taken that were used to build the waka.35 Tamatekapua was to captain Te Arawa, and Ngatoroirangi was its principal tohunga, being a highranking priest and skilled navigator.

Both Tamatekapua and Ngatoroirangi, along with Hei, Tia, Kurapoto, and a number of others, initially settled on the Bay of Plenty coast around Maketu.³⁶

Ngatoroirangi

Ngatoroirangi is of considerable importance to Maori in inland North Island areas. Along with Tia, he is regarded as one of Te Arawa waka's earliest explorers of the central plateau region and is intimately linked, in the Maori view,

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

with the existence of the geothermal resource.³⁷ Although he later returned to the coast, his name is memorialised in place names such as Te Ohaaki-o-Ngatoroirangi (Ohaaki) on the Waikato River, and in some traditions Lake Taupo is so named because 'na te tau i te po o Ngatoroirangi' (Ngatoroirangi arrived there at night).³⁸ His name is also associated with several places in the Kaingaroa area, such as Te Puna Takatahi a Ngatoroirangi (near the south-west boundary of what is now the Kaingaroa 1 block).³⁹

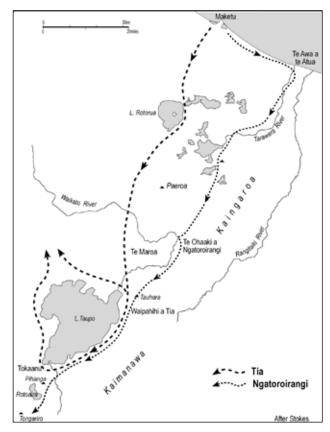
Ngatoroirangi is regarded as a significant ancestor of a number of iwi and hapu including Ngati Tarawhai, of the Okataina area, and Ngati Kea in the western Rotorua area (Kearoa being Ngatoroirangi's wife). 40 However, Ngatoroirangi's most well-known descendant is doubtless Tuwharetoa, or Tuwharetoa-i-te-Aupouri, born some eight generations later in the Otamarakau area and brought up at Kawerau. 41

While some of Tuwharetoa's many descendants remained at Kawerau (and are still there today as Ngati Tuwharetoa ki Kawerau or Ngati Tuwharetoa Te Atua Reretahi), a much greater number migrated further inland and spread out to make the central plateau their home. ⁴² It is this latter large iwi, now made up of numerous hapu, that are these days most often thought of when the name 'Ngati Tuwharetoa' is mentioned. Nevertheless, their strong connection with the Kawerau area must not be forgotten.

With the ancestor Tuwharetoa we also see a rejoining of the descent lines from Tamatekapua and Ngatoroirangi. Many people will be familiar with the love story that recounts how Hinemoa swam across Lake Rotorua to Mokoia Island to find Tutanekai, guided by the sound of his flute. We note here that Tutanekai was brought up by Whakaue (a descendant of Tamatekapua) and his wife Rangiuru, but was born of a liaison between the latter and Tuwharetoa. The kinship bonds created by that liaison have subsisted down through the generations.

Tamatekapua

Turning to the wider Rotorua area, it is Tamatekapua and his descendant Rangitihi who are key ancestors for many



Map 2.1: The journeys of two early explorers: Ngatoroirangi and Tia. (After figure 5 of Evelyn Stokes *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 27.)

iwi and hapu. Indeed, most of those who identify as Te Arawa today (as distinguished here from Ngati Tuwharetoa) can trace their descent from one or more of the eight children of Rangitihi – 'Nga pumanawa e waru o Te Arawa' (the eight beating hearts of Te Arawa). ⁴³ This extends to Ngati Rangitihi themselves who, according to evidence presented to us, likewise trace their origin as a kin group to certain offspring of Rangitihi rather than to Rangitihi himself. ⁴⁴

Stories about Tamatekapua are many, and it is clear that he was a resourceful, not to mention wily, leader. Not only did he succeed in luring Whakaotirangi, wife of

HE MAUNGA RONGO

Ruaeo, onto Te Arawa waka before it left Hawaiki, but he also managed to secure the presence on board of the great tohunga Ngatoroirangi and his wife Kearoa. 45 On arrival in Aotearoa, when Te Arawa waka still lay offshore on the Bay of Plenty coast, Tamatekapua was one of the first to stake his claim to land on the headland which juts out into the sea at Maketu. 46

But Tamatekapua did not remain long in the Bay of Plenty, choosing rather to travel north and settle at Moehau (Cape Colville), near the tip of the Coromandel Peninsula, and it was here that he finally died and was laid to rest.⁴⁷ It is, rather, through his sons Tuhoromatakaka and Kahumatamomoe, and more particularly their descendants, that many of Te Arawa claim an interest in the land and resources of the Central North Island region.

For example, it is Ihenga, the son of Tuhoromatakaka, who (thanks to his dog, Potakatawhiti) is credited with having discovered Rotoiti – the full name of which is Te Roto-whaiti-kite-a-Ihenga (the narrow lake seen by Ihenga). Ihenga was also one of the first explorers of the Rotorua area, naming many sites around the lake and naming the island in it Te Motutapu-a-Tinirau (later to be renamed Mokoia by Uenukukopako). He was eventually to settle in the inland lakes area with his family and followers, building a number of pa in different locations. Below the site of one of those pa, Whakaeketahuna, is still to be found a large block of stone that he (and countless others after him) used to sharpen adzes. It is said to have been brought from Hawaiki.

Kahumatamomoe, Tamatekapua's younger son, also explored in the Rotorua area, although for a long period he was to use Maketu as his primary base and eventually died there.⁵² One of the children of Kahumatamomoe, Hinetekakara, was to become the wife of Ihenga, their first-born son being Tamaihutoroa.⁵³ Another, Tawakemoetahanga, married the daughter of Hatupatu (also one of the founding population from Te Arawa waka), and they had Uenukumairarotonga.⁵⁴ In the next generation, the bloodlines of Tamatekapua would join again. Before Kahumatamomoe died, he travelled north to Kaipara to visit his nephew Taramainuku

(elder brother of Ihenga), who had settled there, and brought back with him Taramainuku's daughter as a wife for Uenukumairarotonga. In due course, the couple would have a son, Rangitihi.⁵⁵

Tia and Hei

The iwi of Tapuika and Waitaha, in the coastal area, descend from different tupuna – namely Tia and Hei respectively. Tia and Hei were brothers, and indeed are thought by many to have been twins. They arrived on board Te Arawa along with Ngatoroirangi and Tamatekapua. Tia, too, was a very early explorer inland, having set out soon after the waka's arrival with a small group that included his son, Tapuika, and also Oro, Maaka (the son - or in some traditions, brother - of Oro), and Hatupatu. Their travels took them across the Mamaku area and down towards Taupo. Maaka is said to have settled in the area around Paeroa and Waiotapu, but Tia and the others continued on down as far as the Waikato River, before moving northwest to the lands around Titiraupenga, where they settled (and where Tia subsequently died).⁵⁶ In some versions of the story, Tia made two journeys to Lake Taupo.⁵⁷ Whether one journey or two, the result of these explorations was that Tia's name is associated with numerous sites in the Taupo area and elsewhere, including Aratiatia, Atiamuri, Maroanuiatia, and Taupo nui a Tia (the cloak of Tia, a name deriving from one version of how Lake Taupo got its name).⁵⁸

Tapuika, Tia's son, later returned to the coast and was eventually to be buried in the ancient urupa of Koaretaia at the former mouth of the Kaituna River. Four of Tapuika's six children also chose to settle in the coastal area, and it is with that area that his descendants are now most associated. ⁵⁹ Nevertheless, the existence, in the interior of the island, of place names associated with Tapuika's father are another reminder of the shared heritage of many Central North Island groups.

Meanwhile, although Hei went to join Tamatekapua at Moehau (where both would finally be laid to rest), Hei's son, Waitaha, had remained on the coast, settling in the Tauranga area, and it is with the Bay of Plenty

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

coastal area that the Waitaha iwi is largely associated. Interestingly, however, it would appear that in the generation of Waitaha's offspring (of whom there were many, from three or more different wives), only a few may have actually stayed on the coast. Of his other offspring, some, including Tahuwera and Taunga, are said to have settled further inland around Matawhaura, Rotoiti, Rotoehu, and Rotoma; Mura is said to have gone to Hauraki; and Oueroa, we were told, went to the Taupo area to live with Tia's descendants. Kuri, for his part, is said to have migrated as far as the South Island. 60

Other tupuna of Te Arawa

Many others of those on board Te Arawa also ventured away from the Bay of Plenty on journeys of exploration. Indeed, a few, such as Marupunganui, Tuarotorua, Taunga, and Kawatutu are recorded as having preceded Tamatekapua, Tia, and Ngatoroirangi in this respect, having migrated inland after an early dispute between Tamatekapua and Ruaeo (who, as we noted earlier, arrived separately on his waka Pukateawainui, in pursuit of his wife whom Tamatekapua had abducted).⁶¹ Then, at around the same time as Tia was exploring, Kurapoto (a close relation to Ngatoroirangi, Tamatekapua, and Tia) also travelled inland, to the Taupo area, and resided there for some time with some of his family and followers. He finally returned to the coast, but his descendants remained inland, and sections of Ngati Kurapoto came to inhabit a wide area from northern and eastern Taupo across to Tarawera and Mohaka.62

Also named as explorers, though perhaps not well known as eponymous ancestors of kin groups, were Ika (father of Marupunganui, mentioned above), Tua, and Mawete who, for their part, headed for the Rotoehu, Rotoiti, and Rotorua lakes area. At some point, Kahumatamomoe linked up with Ika and they travelled on via Horohoro and Haparangi to Taupo and Titiraupenga. Here they visited Tia, Oro, and the others. Ika and Oro then went even further, journeying as far as Whanganui, although Kahumatamomoe returned to the coast, taking Tapuika with him.

In short, Maori of the Central North Island come from a range of differing backgrounds. Their ancestors were dynamic, mobile, and keen to explore. From the evidence presented to us, we cannot tell whether all of the explorers left behind settler populations as they moved from place to place, although many clearly did. What is abundantly obvious is that most were at pains to maintain contact with each other, showing the value that they placed on their kinship links.

As we shall see in the next section, their descendants interacted and intermarried and, as a result, iwi and hapu relationships became complex and multi-stranded.

SECTION 2: KIN LINKS AND MIGRATION Tikanga tangata: social organisation

Chris Winitana, in his evidence, comments about the ancestors' need to develop new technological skills, saying that 'when [they] arrived here to this new land . . . a new knowledge of living had to be worked through.'65 Angela Ballara's opinion is that there were parallels in the social sphere: 'the Maori political and social system was always dynamic, continuously modified like its technology in response to such phenomena as environmental change and population expansion.'66 Given the long period between Polynesian arrival in Aotearoa and the first Maori–European encounters, we agree that it is reasonable to assume a degree of change and adaptation in Maori social organisation before written records began. The full range of those changes cannot be known, but we can at least record the evidence available.

As we have just seen, leaders initially set out to explore the land, and groups settled, moved on, and resettled, often in smallish numbers and retaining links with kin in other places. As populations increased, however, the different communities became more autonomous. It is the view of Dr Ballara and other authorities that in this way the hapu became the primary unit of Maori political, economic, and social organisation, being 'the largest effective corporate

HE MAUNGA RONGO

group which defended a territory or worked together in peaceful enterprises'.67 While not ignoring that different hapu of an iwi would recognise themselves as part of a wider people descended from an original founder, she holds that iwi were not 'operative units' in terms of corporate function.⁶⁸ She bases these conclusions on her study of a wide range of material, much of it drawn directly from Maori sources (including information from the districts now included in our inquiry) and giving preference to Maori perspectives wherever possible. ⁶⁹ In our inquiry, Te Maioro Konui, of Ngati Hikairo, echoed this view of Maori social organisation when he commented that 'the problems arise when you start to categorise it in terms of "iwi" and "hapu". In his opinion 'this is not how we operate. In the old days, we never thought of ourselves in terms of being an "iwi"; we knew ourselves in terms of "hapu". At the same time, though, he was clear that there could be an overarching chief that everyone would recognise: 'We are never going to deny that Te Ariki is Te Heuheu. We all support the chief.⁷⁰

In her evidence to the Central North Island Tribunal, Dr Ballara does note, however, that: 'There are more similarities than differences between the terms [iwi and hapu], which is why Maori often referred to their own descent groups by either term.' Since kin groups vary enormously in size, a group which is described as an iwi in one context might therefore be seen as a hapu in another. As Dr Ballara comments, large, powerful, and long-established groups such as Ngati Whakaue, Tuhourangi, and Ngati Pikiao were as often termed hapu as iwi, yet they were themselves divided into many different branches also called hapu. In some cases 'even their subdivisions had smaller divisions of kin who regarded themselves as separate hapu.' She also notes that the units within a kin group were often geographically dispersed:

Very few hapu, even the smallest, lived all together all the time in any one village – they all had multiple residences and small cultivations near their various resources for sustenance during economic tasks.⁷³

Conversely, even moderately-sized communities might comprise closely related kin groups who identified themselves by a range of hapu names. As the Turanga Tribunal reminded us:

There is no such thing as an isolated hapu . . . different hapu often lived and continue to live in close proximity to one another, forming communities of common residence and interest.⁷⁴

Further, groups tended to divide (or sometimes amalgamate) in response to a variety of circumstances. For example, as a community grew in size, one or more sections might split off and identify as a separate group. Or a hapu descended from a strategic marriage between two different kin groups might, while still acknowledging both lineages, see the need to assert a new identity. Political events, too, could be a trigger for communities feeling the need to establish a new and separate identity from others of their kin.

Often this differentiation by a new name did not occur until several generations after the lifetime of the ancestor whose name was taken. For example, Dr Ballara draws attention to evidence given in the Native Land Court by Ngakuru Te Rangikaiwhiria, to the effect that Ngati Parekawa did not adopt that name until the time of Moeroro, five generations after the lifetime of Parekawa. Prior to that, it would appear, the descent group's main points of identity were as Ngati Raukawa and Ngati Tuwharetoa.75 In other evidence, we learned that Ngati Makino did not decide to identify themselves as such until the time of Te Ariki, six generations after Makino herself. Prior to that, they were known as Waitaha. At the time that they took their new name they had recently formed an alliance against other hapu who were, like themselves, descended from Waitaha.76 Similarly, taking together different pieces of evidence put before us, it seems that the iwi known as Ngati Rangitihi did not use that name until the time when they were living at Moura, on the shore of Lake Tarawera, some generations after the lifetime of Rangitihi.77

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Sometimes, rather than an ancestor, a group would name themselves after a specific incident of note. One such example is Ngati Haka, who apparently gained their name after their ancestor Te Hina performed a haka that was 'so powerful that it culminated in a marriage to the Ngai Tai Puhi, Te Muhuna'. Another example, from the borders of our inquiry region, is Te Tawera who, we were told, chose that name to commemorate the death of the rangatira Te Ramaapakura – although it is true that they had in fact already existed as a separate grouping known by the name of Ngati Irawharo. ⁷⁹

Another contributing factor to hapu dynamics was a kinship system by which descent was traced through all lines. Solomon Rutene observed that it was whakapapa that was the important thing. Although speaking of more recent times, he said: 'They all knew how each one's whakapapa fitted. In the whai korero and everything, the hapu would not be mentioned'. This link with whakapapa and ancestors in turn left open options with regard to interests in and associations with different areas of land and the resources on it. ⁸⁰ It even gave the individual the possibility of physically relocating to a different kin group, provided he or she had kept the connection 'warm'. As Sir Hugh Kawharu wrote:

there were a number of distinct groups (even allowing for a certain amount of overlap due to group endogamy) with which an individual might have reciprocal ties. Although he could live with only one group at a time, the remainder were always of special significance to him. Status and rights in these groups would lie dormant, but they could be revived at any moment merely by taking up residence.⁸¹

According to Te Awanuiarangi Black, although people usually had a primary tribal affiliation, there was 'often much fluidity'.⁸²

Alliances between hapu also shifted according to need: political events might mean that while a particular alliance was useful in one circumstance, a different alliance might be needed in another. Within Ngati Tuwharetoa,

for example, alliances between hapu formed and reformed depending on circumstance. 83

In short, the situation with regard to organisation into iwi and hapu is much less clear-cut than it is often perceived to be by outsiders and there is and was (as in many things Maori) considerable fluidity depending on circumstance.

There was also a dynamism in kin groups. They were not fixed forever: their fortunes could wax and wane. Some survived, some did not. New groups could form. Kin group membership was not definitive. People could emphasise different kin links at different times and even physically relocate to be part of another group to which they could whakapapa. Alliances between iwi and hapu shifted, too, as they responded to changing political and economic imperatives.

Dr Ballara notes in her book *Iwi*:

In emphasising the dynamics of Maori society both before and after 1769, it must not be forgotten that many patterns of local Maori behaviour, including the paramount importance of hapu in economic and social organisation, persisted relatively unchanged from at least the 18th to at least the mid 20th century. ⁸⁴

We would go further and say that, at least with regard to social organisation, many of those patterns appear to persist though to the present day. For instance, we note that much of the evidence presented to us was given from a hapu rather than a tribal basis.

HE MAUNGA RONGO

Settlement patterns by 1840

In my tour of France, England, Wales and Scotland I listened to the wonderful histories of these countries, I saw the castles, cemeteries, Coats of Arms[,] all the testimony and memorials to their history. So I struggle to understand why immigrants from these countries cannot value our history in the same way.

Tomairangi Fox brief of evidence, 7 February 2005 (doc B25), p 10

We have already discussed the early migrants and their explorations, and we have mentioned the movement and interaction of their immediate descendants. We now look at how settlement patterns had evolved by the middle of the nineteenth century. In some cases, where we have not been given much evidence on a kin group's movements or places of significance, we will at least endeavour to situate the group in terms of their kinship connections. Those connections in turn may help to give the reader some idea of the group's likely areas of interest in terms of land and resources. And as one witness said to us: 'it is a matter of tikanga that you acknowledge the relationship with others.'85 To readers unfamiliar with Maori whakapapa, this section may appear full of names. However, the names are those of important ancestors who stand as markers on the intricate web of interconnection between iwi and hapu. They are also markers by which events can be situated in time.

To give this discussion some structure, we break the Central North Island region down into a number of geographical areas and, for each, look at those iwi and hapu most associated with it at the time. However, as the reader will by now have gathered, settlement patterns were not static. Thus, to look at the situation in and around 1840 is only to take a snapshot in time. We therefore also include some discussion of prior (and in some cases, subsequent) associations with land and resources. Where a group's settlement pattern at 1840 spanned more than one of our

geographical areas, we have taken account of where the group chose to present the bulk of its evidence during our inquiry.

We stress that what follows is not intended as an exhaustive account of population movement and settlement patterns. It is but an attempt to piece together some of the information placed before the Tribunal, in order to introduce the reader to what the claimants say about their spheres of influence.

We also wish to emphasise that the boundaries of our inquiry region cannot be taken to encapsulate neatly all the interests of all the groups who have brought claims before us. There are, for instance, groups such as Ngati Rangitihi, Ngati Haka Patuheuheu, Ngati Hineuru, Ngati Tuwharetoa, and Ngati Hikairo who have been at pains to point out that their rohe have been divided up among more than one of the Tribunal's inquiries and that no one Tribunal therefore has a full picture of their interests. We acknowledge their concerns, but point out that because the rohe of adjacent groups nearly always intersect, it will rarely if ever be possible to find an inquiry boundary that suits every group.

Again, we say: this is but a summary overview. For a full picture of the intricacy of tribal relationships and the ebb and flow of settlement from arrival up to the early nineteenth century, we would urge consultation of the rich array of material that has been submitted in evidence. Without such an in-depth investigation, it is difficult to convey the full significance of any particular area, location, or resource to the kin groups associated with it.

We also wish again to make clear that in the context of this report, and particularly the present chapter, it is not our intention to make findings on manawhenua.

The coastal area

As will be evident from earlier sections of this chapter, a majority of groups in the Central North Island region have a connection of some sort with the Bay of Plenty coastal area. For many, it is the point where their ancestors first set foot in Aotearoa – even if they subsequently moved on to settle elsewhere.

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

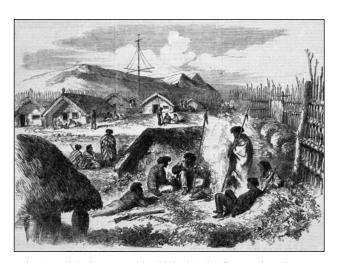
Maketu, in particular, still looms large in the consciousness of both Ngati Tuwharetoa and the Rotorua-based tribal groups. Don Stafford, in his oral evidence to the Tribunal, described it as 'te poho o Te Arawa' (the bosom or seat of affection of Te Arawa) and Tame McCausland told us: 'All of Te Arawa have rights to Maketu'. 86 In referring to Maketu, Raewyn Bennett said: 'No one denies how intense the emotions are for a place full of the history of their ancestors, where their ancestors walked and lived.'87 It is the site of Tokaparore/Takaparore, the rock (or possibly anchor stone) to which Te Arawa waka was tied when it first arrived.88 It is also the location of a little patch of land called Te Rokeroke (or Rokiroki) a Whakaotirangi, where that tupuna is said to have planted the only kumara that was left at the end of Te Arawa's long voyage.89 And Ngati Tuwharetoa, for their part, recall that Ngatoroirangi erected an altar named Koaretaia at Maketu, and also that he returned to live at Maketu after he had explored inland (although later settling on Motiti Island).90 Indeed, the estuary at Maketu, now known as Ngatoro or Ongatoro, is named after him, its full name being Te Awanui o Ngatoroirangi.91 It was at Maketu, as well, where Kahumatamomoe, Tawakemoetahanga, and Uenukumairarotonga (respectively the son, grandson, and great-grandson of Tamatekapua) would all end their days.92

In her book *Taua*, Dr Ballara devotes an entire chapter to Maketu and comments that 'competition for Maketu began before any Maori contact with the outside world, and continued through the late eighteenth century and the first decade of the nineteenth.'93 Indeed, the enthusiasm for securing a spot at Maketu went on even beyond that first decade. Mr Stafford notes that early in 1837, after peacemaking between the Tauranga and Rotorua people, Te Arawa groups again occupied Maketu. He specifically lists Ngati Pikiao, Tapuika, Tuhourangi, Ngati Tarawhai, and Ngati Pukenga, 'apart from odd members of other subtribes'. David Whata-Wickliffe, for his part, mentions that 'Ngati Tamakari, Ngati Makino, Umukaria of Tuhourangi,

Te Mutukuriana, Ngati Tarawhai and other Rangatira of Tuhourangi' were living there in 1837–38. 95

In Dr Ballara's evidence to this Tribunal, she notes the range of natural resources in the Maketu area, and makes clear its importance as a point where communications routes converged. The area's importance as a mahinga kai was also mentioned by a Waitaha witness, who commented on its use 'by different hapu of Te Arawa during the year', each having pa and nohonga there. These attributes, added to strong spiritual and emotional ties, make it small wonder that this particular piece of coastline should be so important to so many Central North Island groups, both through to the early nineteenth century and on to the present day.

Further to the east of Maketu lie Matata and, just beyond it, Te Awa o Te Atua (the Tarawera River in its lower reaches). It was here that, according to some traditions, the ancestor Waitaha-ariki-kore arrived on his waka Te Paepae o Rarotonga. Settling at Otamarakau, he met and married Hine Te Ariki, a descendant of Toi Kai Rakau, and they



A drawing of the 'Matata Pah' published in the *Illustrated London News* in 1866. Matata and Te Awa o Te Atua (the Tarawera River in its lower reaches) are important sites to those of both Te Arawa and Mataatua waka.

HE MAUNGA RONGO

had a daughter, Hahuru. Hahuru in turn married Mawake Taupo and they had Manaia, later known as Tuwharetoa.⁹⁸

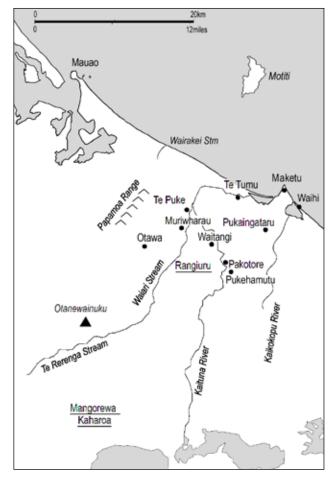
This area has further associations for Ngati Tuwharetoa. Te Awa o Te Atua was named, according to Ngati Tuwharetoa tradition, by Ngatoroirangi, and it was at the mouth of this river that the large shell was found which was subsequently made into the putatara (shell trumpet) of the same name. That trumpet – the same that was blown to announce the birth of Horonuku's offspring and whose missed call earned his son the name of Tureiti – is still in existence today and is a much-treasured taonga of Ngati Tuwharetoa, its name a perpetual reminder of the iwi's links with the coast.⁹⁹

We are also told that the river of Te Awa o Te Atua was designated by the ancestors Toroa and Tamatekapua as the boundary between their respective waka, Mataatua and Te Arawa. Thus, in time, it came to mark the meeting of rohe between Te Arawa, Tuwharetoa ki Kawerau, and Ngati Awa. Mgati Awa.

Clearly, then, the coastal area of our inquiry region was and is of significance to all of those descended from the tupuna who came on Te Arawa waka, and they can all claim some degree of interest there. There are, however, a number of iwi and hapu whose association with the area has remained more immediate.

We now look at some specific groups in turn.

Tapuika: For its part, Tapuika's occupation of the coastal region has been virtually constant, save for a period after the Nga Puhi invasion in the early nineteenth century when they retreated inland for a number years. While this period of withdrawal complicated their claims to the Native Land Court in respect of their traditional coastal lands, they assert a wide rohe that extends from the 'the Papamoa ranges inland of the Wairakei stream, and . . . east from there to include Rangiuru, Te Puke and all of Maketu as far as Waihi, and claim ongoing mana whenua and mana moana since the time of Te Arawa waka's first arrival. Witnesses from the iwi referred to the taumau (bespoken claim) pronounced by Tapuika's ancestor, Tia,



Map 2.2: Tapuika - places referred to

on his first arrival: 'Mai i nga pae maunga ki te toropuke e tu kau mai ra ki te awa e rere mai ana, waiho te whenua ko te takapu o taku tamaiti a Tapuika'. That area bespoken by Tia is still known as Te Takapu o Tapuika (the belly of Tapuika), and Tapuika witnesses confirmed to us that 'Tapuika tradition is clear that the taumau... commences at Wairakei.'

Some five generations after the arrival of Te Arawa waka, Marutehe, Whatukoro, and Hinemaru, the great-grandchildren of Tapuika, had settled the lands between the Kaikokopu Stream and Te Awanui o Tapuika. 106 Six

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

generations on beyond that, the leading chiefs of Tapuika were Ruangutu and Marukukere. The part of Te Takapu o Tapuika held by the former was known as Te Kaharoa o Ruangutu and was one of the main passages leading inland to Rotorua, starting at the Paraiti Stream and going on to Te Rerenga and then to Mangorewa Kaharoa. Marukukere, meanwhile, 'held mana whenua over the lands at Muriwharau and Waitangi, with large cultivations at Pukaingataru.' At around the same period, a powerful Tapuika tohunga, Kaiongaonga, held the pa of Te Hoe a Taunga, Matapara, and Pukehamutu, and had tuahu (altars) at Pakotore. The site of the altars, we were told, is regarded even today 'with much caution.'

Although Tapuika have not been in a position to finalise their mana whenua report, they were nevertheless able to provide much helpful information detailing their interactions with various groups in the coastal area and further inland, and were able to point to a number of blocks in which they know that their tupuna claimed interests. In so far as those interests relate to the Central North Island inquiry region, they include blocks along the coast from our western inquiry boundary, eastwards to the Maketu area, and inland as far as the large Mangorewa block bordering the northern shore of Lake Rotorua.109 In giving evidence, Rereamanu Wihapi further told us that, until the late nineteenth century, the iwi had had 'numerous kainga, mahinga kai, waahi tapu throughout Te Takapu o Tapuika'. Indeed, we were told: 'At the time of the Treaty Tapuika's mana whenua was intact." However, after that, their landholdings 'disappeared through the Native Land Court' and dwindled down to a handful of small areas."1

Research by Tapuika on the interrelationships of their different hapu is continuing, but we were told that all hapu fall within the main groupings of Ngati Tauana, Ngati Ruangutu, Ngati Te Kanawa, Ngati Kuri, Ngati Hinerangi, Ngati Ngaroto, and Ngati Moko.¹¹²

Waitaha: Waitaha are another iwi that can claim an ongoing relationship with the coastal area. Although most of the many offspring of the tupuna Waitaha (also known as

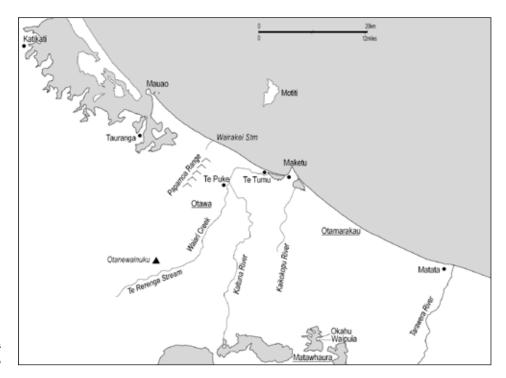
Waitaha-a-Hei) moved on to settle different parts of the Central North Island and beyond, some did remain and it is they who are the ancestors of the present-day Central North Island iwi known as Waitaha. According to evidence presented to us, they see their rohe as extending from Tauranga to the Waiari Creek - this being the area claimed by Waitaha's father, Hei, while Te Arawa waka yet stood offshore - and they see the Waiari Creek as being their natural boundary with Tapuika.¹¹³ However, Waitaha also assert interests in a wider area stretching 'from Katikati and beyond Otamarakau to Matawhaura.114 For example, Waitaha's son Tutauaroa, who is said to have been the first to occupy Mauao (Mount Maunganui), went to settle at Otamarakau, taking two sons with him and leaving two more behind at Mauao. 115 Waitaha state that they have 'always maintained mana whenua over all Otamarakau and stretching as far east as Matata', adding that they defended this area against Ngati Awa. 116 (Ngati Awa, for their part, say that Ngati Awa 'had mana and ahi kaa at Matata through to Putauaki and beyond', but acknowledge that there are overlapping claims.)117

Some eight generations after Hei, Waitaha's tupuna, came another tupuna, Takakopiri, who, we were told, returned to Hawaiki to collect sacred relics of the ancestors Atua Matua and Karika which he then buried at particular sites in the Papamoa hills. By this action he rendered the sites tapu and claimed mana for Waitaha over the hills and the surrounding district. The Papamoa Range, formerly referred to by Waitaha as Te Uku o Waitaha, thereafter became known as Te Uku o Takakopiri ('uku' being a type of clay). In giving his evidence, Tame McCausland said:

Spiritually, those hills are the papatupu (birthplace) of our people. For hundreds of years those hills have given birth to us, provided us with the sustenance necessary for daily life and sheltered us in times of war. ¹⁸

With Takakopiri, too, there came a subdivision within the rohe of Waitaha. Takakopiri conferred his mana on two of his grandsons, Te Iwikoroke and Kumaramaoa, offspring of

HE MAUNGA RONGO



Map 2.3: Waitaha – places referred to

his daughter Tuparahaki. We are told that the latter's mana extended across the whole rohe, but she divided the area so that the land on the eastern side of Te Uku o Takakopiri went to Te Iwikoroke and that on the western side went to Kumaramaoa. They, in turn, chose to share their allotted land with their siblings – Te Iwikoroke sharing with Hinepiri and Te Pukuohakoma, and Kumaramaoa sharing with Te Taomataiti and Te Taokahara (who each married women from Ngati Pukenga). This internal dividing line between the two sets of siblings, which Mr McCausland referred to as 'Te Aore o Kumaramaoa', is described as stretching inland to Otanewainuku, and up the Te Rerenga Stream.¹¹⁹

In relation to Te Iwikoroke, we were told that he first married Haraki (who, like her husband, could trace descent from Waitaha). They had only one child, Punohu, who married Te Rangikouruao, and they in turn had Te Kumikumi – from whom, according to one witness, 'all Waitaha descends'. Te

Iwikoroke then took a second wife, Te Aohakirangi (from whom Ngati Rereamanu are descended), while another wife, Taongamuka, was the daughter of Moko of Tapuika. 122

Taken together, the descendants of Te Iwikoroke are known as Te Whanau a Te Iwikoroke (the family of Te Iwikoroke). However, we were told that they use the tribal name of Ngati Haraki 'because Te Iwikoroke honoured his first wife Haraki in the tribal name.' One witness referred to Ngati Haraki as 'Waitaha tuturu.'

Hapu that are descended from Te Iwikoroke are: Ngati Te Moemiti, Ngati Ngauru, Ngati Rereamanu, Ngati Kahu, Ngati Hineata, Ngati Ngapareparenga, and Ngati Kapo. Of these, Ngati Ngauru are an offshoot from Ngati Te Moemiti, while Ngati Kahu and Ngati Hineara emerged from Ngati Rereamanu.¹²⁵

The hapu of Ngati Te Pukuohakoma, for their part, are descended from their eponymous ancestor Te Pukuohakoma, who was Te Iwikoroke's younger brother.¹²⁶

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

They also mentioned numerous whakapapa connections with Ngati Pukenga, and gave evidence of some of these.¹²⁷

The area to the east of Te Aore o Kumaramaoa was known as Te Korowai o Wai o Kehu ko Te Iwikoroke, in reference to the cloak or mana of Te Iwikoroke, and Mr McCausland has described it as 'the foundation area of Waitaha'. Within this area, we were told of an internal boundary along the Wairakei Stream, between the lands of Te Iwikoroke and his brother Te Pukuohakoma. According to Mr McCausland, the land conferred upon Te Pukuohakoma stretched from Te Repehunga to Wairakei and back to Otawa.

Turning now to the western side of Te Uku o Takakopiri, and to the descendants of Kumaramaoa, we note that they include the kin groups of Ngati Rehu, Ngati Rakei, Ngati Tama, Ngati Te Awhai, Ngati Taane, Ngati He, Ngati Hoko, Te Tawera o Waitaha, Ngati Matau, Ngati Rero, and Ngati Tahuwhakatiki. We were told, however, that these descent groups are still closely connected to Te Whanau a Iwikoroke and 'many . . . who descend from Te Iwikoroke are also descendants of Kumaramaoa: we descend from them both. 131

Waitaha also had an association with inland areas. Mr Stafford mentions 'the Waitaha people of Rotoehu' spreading 'westwards to Rotoiti', where they apparently had designs on the inanga. This was at the time when the Tuhourangi people were also living in the area. 132 We note, though, a comment made in the Native Land Court which suggests that the term 'Waitaha' could encompass a rather broader kin group: 'I heard that three hapus lived at Rotoehu, namely Ngati Makino, Ngati Tamakari and Ngati Tamateatutahi. They were known as Waitaha, that is, Waitaha-Turauta. ¹³³ In this connection, we note that Te Ra (of Waitaha a Hei) married Makino (whom we shall encounter again below) and that they settled at Okahu, on Lake Rotoehu. Nearby was a place called Waipuia, and it was here that Hinehopu (also descended from Waitaha), came to live with her husband, Pikiao 11.134

In the early nineteenth century, Waitaha, like Tapuika, retreated inland in response to the Nga Puhi invasion, and

while some groups settled around Rotorua there is also reference to Waitaha living at Matawhaura. However, most of Waitaha had returned to the coastal area by the 1840s, and Mary Gillingham notes that:

The available evidence suggests that the flat land between the Otawa range and the Waiari (which became known as Te Puke Block) was the major location of Waitaha settlement after 1845. ¹³⁶

She further notes that their interests extended westwards into the area that was subsequently to be included in the Tauranga Confiscation District, and also into the heavily forested bush area inland between Tauranga Moana and Rotorua, where they continued to maintain cultivations and to hunt.¹³⁷

Ngati Makino: We now turn to consider Ngati Makino, who are closely connected with Waitaha. Indeed, we were told that they originally went under the name of Waitaha, until in the time of the chief Te Ariki they changed their name to Ngati Makino. (This was six generations after Makino and some five generations before the mid-nineteenth century.)¹³⁸ As Neville Nepia explained, in giving evidence before us at Te Puke:

Hei is the tupuna of both Makino and the Waitaha people here. We live over that side, they live over this side. So we have a very close link that actually goes right along the coastline from Otamarakau, up through to Maketu, up through . . . to Mauao, Mount Maunganui. 139

However, as Dr Ballara notes, Ngati Makino have a complex genealogy. Evidence given to the Native Land Court in 1899 indicates that Makino's mother was Tutewha of Waitaha, and her father was Kawiti of Ngati Awa. Kawiti, in turn, had been born of a liaison between Te Awaakapua of Ngati Awa, and Rakeiti, wife of Pikiao I (and also mother of Tamakari). Hilda Sykes, giving evidence for Ngati Makino, noted in addition a link to Ngati Awa through the hapu of Ngati Hikakino. Peria clarified: 'that's

HE MAUNGA RONGO



Map 2.4: Ngati Makino - places referred to

because Hikakino's mother was Waitaha a Hei – Kahurere. Her husband was Irawharo, which is the Mataatua/Ngati Awa connection.' ¹⁴³

According to Dr Ballara, Makino was also a descendant of Waitaha Turauta (sometimes spelled Turauata). 144 At our hearing in Te Puke, one of the witnesses for Ngati Makino also mentioned Waitaha Turauta, and commented that he did not arrive on board Te Arawa but by a different waka. 145 It would seem that Waitaha Turautu may also have been known as Tahuwera, and descended from Uruika. In this case, he may have been a distant cousin of Waitaha-a-Hei – although Dr Ballara notes that traditions vary. She does say it seems clear that there was intermarriage between the descendants of the two ancestors named Waitaha. 146

Makino married Te Ra of Waitaha-a-Hei, and they settled at Okahu on Lake Rotoehu. Nearby was a place called Waipuia, and it was here that a relation, Hinehopu, came to live with her husband, Pikiao II – Hinehopu also being descended from Waitaha. Years passed, the two families produced children, and in time three daughters of Makino

and Te Ra became wives of a son of Hinehopu and Pikiao II. The son's name was Te Takinga, and his wives' names were Hineora, Hineui, and Hinekiri. Today, three hapu of Ngati Te Takinga are called Ngati Hineora, Ngati Hineui, and Ngati Hinekiri. 147

There was further intermarriage between Ngati Makino and Ngati Pikiao in subsequent generations. 148 Dr Ballara notes that Ngati Makino were often associated politically with Ngati Tamateatutahi (of Ngati Pikiao) and Ngati Tamakari, although she also states that 'if they were associated with any wider group, it was as often with Waitaha . . . as with Ngati Pikiao. 149 Mrs Sykes likewise stressed that Ngati Makino's principal link was to Waitaha, placing emphasis on the descent from Hei which Waitaha and Ngati Makino share. 150

In their evidence, Ngati Makino state: 'Matawhaura te maunga, Ngati Makino te iwi, Rotoehu te moana.151 Te Ariki Morehu told us: 'Ngati Makino resided at Otamarakau, and then they moved in their travels to Rotoehu, to Rotoiti, and lived at Matawhaura'. He also mentioned them residing at Maketu. 152 The maps they have submitted show their main area of interest as extending from the coast, roughly between Ohinepanea and Matata, inland through to Rotoma and Rotehu. Within this area are numerous sites of significance to Ngati Makino, but we note particularly dense clusters along the coastline and around Lake Rotoehu. The area in between is, for its part, especially notable for the number of mahinga kai (food gathering and cultivation) sites marked, especially along river and stream courses, and also as an area where rongoaa (medicinal plants) were collected. 153

Ngai Te Rangi: Another iwi claiming an association with Maketu (and subsequently with coastal land to the west) is Ngai Te Rangi, a people of the Mataatua canoe. According to Hauata Palmer, all the hapu of Ngai Te Rangi can trace their descent from Te Rangihouhiri I and his half-brother Tamapahore, who in turn descended from Toroa, captain of Mataatua waka. Those hapu are named as: Ngai Tukairangi, Ngai Tuwhiwhia, Ngati Tauaiti, Ngati

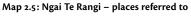
NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

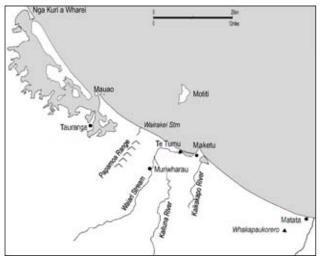
Tamawhariua, Ngati Tapu, Nga Potiki, Ngati He, and Te Whanau a Tauwhao.¹⁵⁵

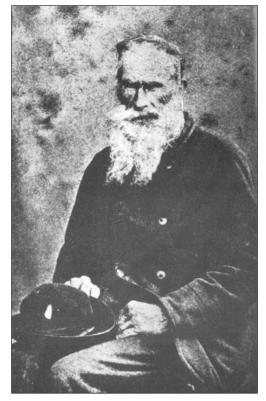
After disagreements with neighbouring iwi and hapu in the eastern Bay of Plenty, Te Rangihouhiri and his people (including Tukairangi and his father Tapuiti) moved westwards. For a time, Te Rangihouhiri lived at Matata, establishing and occupying the pa known as Whakapaukorero on the maunga of the same name. According to the evidence of Joe Mason of Ngati Pukeko, who gave evidence for Ngati Awa, that name was given to commemorate the dying words of Te Rangihouhiri – whakapau meaning to complete or finish. ¹⁵⁶

Then they moved on further and took Maketu. This conquest took place some eleven generations after the arrival of Te Arawa waka, and some seven to eleven generations before the Native Land Court hearings of the late nineteenth century. ¹⁵⁷ Mr Stafford places its likely timing as the second half of the sixteenth century. ¹⁵⁸

Although Ngai Te Rangi subsequently migrated on again to establish themselves in the Tauranga area, it seems that Te Rangihouhiri's grandson Kotorerua returned to Maketu. ¹⁵⁹ And there was still a strong Ngai Te Rangi presence in Maketu when Phillip Tapsell (also known as







Phillip Tapsell - a photograph taken in his old age.

Hans Tapsell) arrived there around 1830: according to Kihi Ngatai, it was a woman of high rank of Ngai Tukairangi, namely Te Aho-o-Te-Rangi, who gave permission for him to build his trading station there, and Ngati He and Nga Potiki were also involved in the discussions. ¹⁶⁰ Colin Reeder similarly stresses the role of Hori Tupaea, of Ngai Te Rangi, in the deal. ¹⁶¹

Dr Ballara contends that Ngai Te Rangi's 'many victories and the continuing presence of their kin in the coastal lands from Matata westwards ensured their continuing mana over much of the coastal lands'. She adds that this mana was 'acknowledged by most Arawa chiefs as having continued up to 1836, when it was deemed to have been lost as a result of the Te Tumu battle.' Tapuika go further and claim that 'it was only the pa under the mana

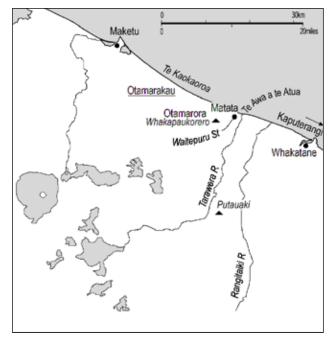
HE MAUNGA RONGO

of Tatahau that Ngaiterangi invaded and not the whole of Tapuika/Ngati Moko lands that were held under the mana of other hapu of Tapuika.' Ngai Te Rangi, for their part, claim that 'Te Tumu was not "the final battle" and assert ongoing interests in the coastal area, particularly at Te Tumu and Motiti, interests which they say they never relinquished. However, they do acknowledge a close relationship with Tapuika, and also that there 'appears to have been a sharing of the land and resources between the iwi' in the period leading up to the first Native Land Court hearings. 165

Ngai Te Rangi dispute the assertion that Wairakei marks a boundary between their interests and those of Te Arawa. Kihi Ngatai, giving evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, stated that their rohe is 'Mai Nga Kuri a Wharei ki Te Tumu' (from Nga Kuri a Wharei to Te Tumu). He believes that Wairakei has wrongly come to be identified as a boundary only because it marks the starting point of the Tauranga raupatu line.¹⁶⁶ It is a view that was endorsed by other Ngai Te Rangi witnesses.¹⁶⁷

Ngati Awa: On the north-eastern border of our Central North Island inquiry region are Ngati Awa. Having already participated in the Eastern Bay of Plenty inquiry and reached a settlement with the Crown, this iwi was not a full party to our inquiry. Nevertheless, just as it is important to acknowledge that the interests of central North Island iwi and hapu may extend beyond the boundaries of our inquiry, it is equally important to remember that iwi and hapu from other inquiries may have interests extending into our Central North Island region. Ngati Awa are one such group. Their principal representative in this inquiry was kaumatua Joe Mason, who was supported by Jeremy Gardiner.

According to Mr Mason, the iwi's interests in the Bay of Plenty coastal area pre-date the arrival of the main waka, and he explained how Ngati Awa are descended from Awanuiarangi I, the son of Toi (for whom Te Tini o Toi were named). While Awanuiarangi's principal pa was at Kaputerangi, above the township of Whakatane, the land and resource use of Awanuiarangi and his people extended



Map 2.6: Ngati Awa - places referred to

more widely. Mr Mason made mention, for example, of an area named Te Kohinga Kai a Awanuiarangi (the food-gathering place of Awanuiarangi), not far from Te Kaokaoroa at Matata. He also told us that it was Awanuiarangi who first named the maunga located within the area now known as the Matata Scenic Reserve. The name he gave was Otamarora. Later, it would become known as Whakapaukorero. He

Many generations after Awanuiarangi, descendants intermarried with new arrivals from Mataatua waka, so that Mr Mason stated Ngati Awa's origins as coming 'from Awanuiarangi I, then through Toroa and others of the Mataatua waka to Awanuiarangi II' – the latter being a great-grandson of Toroa. ¹⁷¹ Mr Mason also recounted to us some of the Ngati Awa traditions around places associated with that canoe, including a story of how Matata got its name. According to this particular tradition (one of a number relating to the naming of Matata), the name

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

derives from the time when the hull of Mataatua became split and dry from exposure to the sun, after the waka was drawn up on the shore ('ka matata te waka'). ¹⁷² Mr Mason also mentioned that Toroa, the captain of Mataatua, lived for a time at the base of Otamapiri, one of the Ngati Awa pa sites at Matata. ¹⁷³

Other iwi and hapu associated with Ngati Awa include Ngai Te Rangi (whom we have already discussed), Ngati Irawharo (later known as Te Tawera), Ngati Hikakino, Ngati Whakahemo, and Ngati Pukeko.¹⁷⁴ A map supplied by Ngati Awa indicates these various groups as being associated with a number of areas in the coastal region. 175 As an example, Mr Mason stated that, even after Ngai Te Rangi left Matata and Maketu and moved westwards, others of these groups 'arrived or continued to occupy the area around Matata and Otamarakau' so that Ngati Awa 'retained ties to the land right up to the raupatu and the Compensation Court hearings'. As part of Ngati Awa's traditional associations with the Matata to Otamarakau area, he noted that it was Irawharo who changed the name of Maungatia to Otamarakau, and also that Hikakino, Irawharo's son, was born at Matata at a place on the Waitepuru River. 176 In oral evidence, Mr Mason also gave information about other sites in the Matata area that are of importance to Ngati Awa.177

While for the purposes of our inquiry Mr Mason focused on the coastal area, we note that Ngati Awa also have associations with land and resources up-river along the Rangitaiki towards Kaingaroa.¹⁷⁸

Ngati Pukenga: Within our inquiry region, Ngati Pukenga claim land in various parts of the coastal area, particularly around Pukaingataru and Maketu.¹⁷⁹ Before moving into the central Bay of Plenty area, they lived around Opotiki and went under the name of Ngati Ha.¹⁸⁰ Although of Mataatua origin, they also have strong links to Te Arawa.¹⁸¹ According to Shane Ashby, their ancestral rights to lands in the Maketu area are though their Waitaha lineage.¹⁸² Te Awanuiarangi Black goes further, saying that all Ngati Pukenga are of the kin group Waitaha, being able to trace

their lines back through ancestors such as Kumaramaoa and Te Pukuohakoma.¹⁸³

In addition to ancestral rights, Mr Ashby stated a second source of entitlement, namely through 'te rau o te patu', or 'the various toa that occurred over the many generations that we have occupied these lands.184 In particular, he mentioned battles against Ngai Te Rangi and Tapuika.¹⁸⁵ It seems that at other times, though, Ngati Pukenga (or sections of Ngati Pukenga) were in alliance with these groups. Mr Stafford, for example, mentions a group of Ngati Pukenga fighting alongside Ngati Rangihouhiri (later Ngai Te Rangi) when they first took Maketu, and Buddy Mikaere described how Ngati Pukenga again combined with Ngai Te Rangi in the invasion of Tauranga moana.¹⁸⁶ Some time later, however, some of Ngati Pukenga fought with Tapuika against Ngai Te Rangi at Maungatawa, and moved back to Maketu. 187 Further, Mr Ashby pointed to strategic marriages that were concluded in recognition of Ngati Pukenga's assistance to Tapuika in a battle against Ngati Whakahinga, which took place in the mid-to-late eighteenth century. Mr Ashby went on to say that many Ngati Pukenga today descend from those marriages.

By the turn of the nineteenth century there were two main divisions of Ngati Pukenga – one at Tauranga and one at Maketu.¹⁸⁸ At about this time, they received a call

Mauao

Tauranga

Maketu

Pukaingataru

Opotiki

Map 2.7: Ngati Pukenga – places referred to

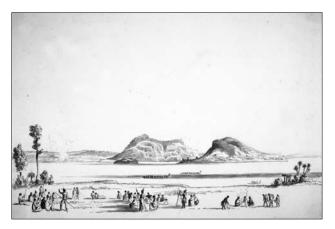
HE MAUNGA RONGO

from their relations in Hauraki who were at war with Ngati Raukawa, and this led to their involvement in campaigns in the Waikato. According to Mr Ashby, it was for this reason that the Waikato people and Ngati Maniapoto subsequently attacked at Maketu in 1836. The campaign also led to one part of Ngati Pukenga permanently relocating to Hauraki to stay with the Marutuahu people there.

In short, as they themselves acknowledge, the history of Ngati Pukenga has seen them at times in the role of 'mercenaries' for Ngai Te Rangi, and at other times forming alliances with Hauraki iwi and hapu. 191 They have also spent long periods living alongside, or in some cases as part of, Te Arawa groups such as Ngati Whakaue, Ngati Pikiao, Tapuika, and Waitaha. As a result, Ngati Pukenga as a group now claim interests in different geographic areas that include Hauraki, Tauranga, and even Whangarei, as well as the Maketu and Pukaingataru area. 192 For this reason, their situation within our inquiry appears somewhat different from that of other groups and, as they stated to us, they do not see themselves as able to be 'merged or grouped with larger iwi groupings'. 193 We accept that their issues need to be examined in the context of their rather unusual circumstances.

Coastal area summary: Interests in the coastal area are particularly complex and multi-layered, with numerous iwi and hapu having claims there. As Verity Smith observed in her section of 'Nga Mana o te Whenua o Te Arawa', a report on Te Arawa customary tenure:

some of these groups re-secured rights in the area shortly prior to the signing of the Treaty of Waitangi and after a long period of conflict. These acts did not necessarily displace all other groups who held rights in the area, with key kin-groups retaining mana o te whenua. The result was a situation of particularly complex and overlapping customary rights in the coastal region, with conflicting rights based on different take and different levels of occupation.¹⁹⁴



A scene at Lake Rotorua showing the island of Mokoia at right. Drawing by Joseph Jenner Merrett circa 1843.

The inland Rotorua area

With expanding settlement of the inland Rotorua area, three large iwi would come to dominate: Ngati Pikiao, Tuhourangi, and Ngati Whakaue. Paul Tapsell has described their relative spheres of influence as follows:

Ngati Pikiao were confined to the eastern end of Lake Rotoiti and around lakes Rotoehu and Rotoma; Tuhourangi occupied the upper reaches of the Kaituna River, the western end of Lake Rotoiti and the whole eastern side of Rotorua, including Ohinemutu; and Ngati Whakaue controlled the island of Mokoia and the western shores of Rotorua.

However, as Merata Kawharu observes, their descendants continued to multiply, new sub-groups formed, and competition over land and resources intensified. Over the generations, this resulted in changing occupation patterns and complex interconnections. We will endeavour to paint a broad-brush picture of some of this history in the paragraphs that follow, but we again urge consultation of the primary evidence for those who seek more detail.

Ngati Uenukukopako: We note that Ngati Uenukukopako as an iwi did not participate in our inquiry, although

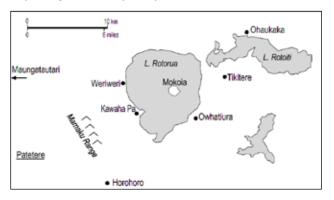
NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

individuals with whakapapa connections to them did. Further, Ngati Uenukukopako are closely related to a number of other Te Arawa iwi and hapu, so some understanding of those relationships provides helpful context.

The ancestor Uenukukopako was the son of Tuhourangi and grandson of Rangitihi. As a young man, Uenukukopako had been brought up along with his brother Taketakehikuroa at his father's pa at Ohoukaka on Lake Rotoiti. ¹⁹⁸ By his three wives, Uenukukopako had some 12 offspring, one of whom was Whakaue. ¹⁹⁹

In time, he came to have associations with a number of places in the wider Rotorua area, from Tikitere and Whakapoungakau down to Owhatiura nearer the southern end of the lake.200 Through one particular incident, he also came to have an interest in Mokoia Island. It came about that, on his way to visit the family of one of his wives, his dog was killed and eaten by some people who were then living on Mokoia under a chief named Kawaarero. In revenge, Uenukukopako staged a number of attacks on the island and finally (with the assistance of Rangiteaorere, who was another grandson of Rangitihi), he and his brother Taketakehikuroa succeeded in ousting Kawaarero's people and pushing them deep into the Mamaku area. As a result of this battle, Mokoia was divided among the victors - although Taketakehikuroa later withdrew back to Ohoukaka and his interests in Mokoia were divided amongst

Map 2.8: Ngati Uenukukopako - places referred to



Uenukukopako's wives, Rangiwhakapiri, Hinepoto, and Taoi (or Taoitekura). Rangiwhakapiri and her children (including Whakaue-Kaipapa) occupied Weriweri on the northwestern shores of Lake Rotorua, and Mokoia. Hinepoto and her children occupied Te Koutu Pa, and the children of Taoi lived at Kawaha Pa and Waiowhiro Pa. 2022

At the same time, Uenukukopako continued to travel widely, throughout the Patetere region and through Horohoro to Maungatautari, staying for a while in various places as he did so. Over the years, we are told, his children spread out over the district, 'some to Horohoro, others to Tikorangi and others again to Waihuka'. ²⁰³

Evidence was given that all except three of Uenukukopako's children retained interests in the wider Rotorua region. According to Hamuera Mitchell, a witness for Ngati Whakaue: 'Through the conquests of Uenukukopako and his descendants, his mana was established and maintained on the island of Mokoia and around Lake Rotorua from Kawaha to Weriweri. When he died, he is said to have been buried below Pukemaire, on the eastern side of Mokoia.

Uenukukopako's descendants from his marriage with Taoitekura would come to identify variously as Ngati Taoi and Ngati Kea, as well as Ngati Uenukukopako. We note that their daughter Hinemaru became the mother of Wahiao. And, as already noted, from his marriage with Rangiwhakapiri came Whakaue-Kaipapa, eponymous ancestor of Ngati Whakaue.

Dr Ballara states that:

Te Uri-o-Uenukukopako was at one time an umbrella title for all the groups associated with Mokoia and around the shores of the lake. Ngati Uenukukopako and Ngati Rangiteaorere intermarried over the generations and their land interests and their hapu became difficult to distinguish. Eventually Ngati Uenukukopako and Ngati Rangiteaorere were neighbours on the east side of the lake from Waikawau almost to the Ohau Channel; they also lived on their parts of Mokoia²⁰⁸

Dr Ballara and other witnesses also refer to Ngati Uenukukopako (along with Ngati Rangiwewehi) being

HE MAUNGA RONGO

in contest over Pukeroa at one point. However, following hostilities with Ngati Whakaue, Ngati Uenukukopako returned to their settlements on the eastern shores of Lake Rotorua.²⁰⁹

In the 1830s, Ngati Uenukukopako were among those Te Arawa groups in contest with Ngai Te Rangi over Maketu. 210 Following the hostilities, they had settlements there and in the surrounding area. 211

Ngati Rangiteaorere: As will be evident from the preceding section, the ancestor Rangiteaorere was contemporaneous with Uenukukopako. Born from a liaison between Rangiwhakaekeau (eldest son of Rangitihi) and a woman of Te Teko, he grew up with his mother's people and became a warrior of renown.²¹² In time, he set out to find his father, who was then living at Rangiwhakakapua, a pa that had been established by Rangitihi at Mourea, on the narrow neck of land between Lakes Rotorua and Rotoiti. 213 It was during this trip that he encountered Uenukukopako and became involved in the attack on Mokoia. He went back to Te Teko after the battle, but subsequently returned to the Rotorua area, married, and settled on Mokoia at a place named Arorangi on the eastern side, where a number of his children were born, including one named Tutewhaiwha.214

In time, two of Rangiteaorere's daughters became wives of Tumahaurangi (son of Uenukukopako and half-brother of Whakaue).²¹⁵

At some point, Rangiteaorere moved from Mokoia to Paetutu, a pa near Tikitere in what would become the Huataka block. However, after taking the life of Tumahaurangi (his daughters' husband) in revenge for a perceived insult, and anticipating reprisals from Tumahaurangi's family, he moved to Pukepoto on the slopes of Ngongotaha. Later, when no attack came, he returned to Paetutu.

There is also mention of Rangiteaorere having lived in the area between Tikitere and Owhatiura (which is on the south-eastern side of Lake Rotorua).²¹⁷ When he finally died, at Whakapoungakau, his body was taken to Mokoia for burial.²¹⁸



Map 2.9: Ngati Rangiteaorere - places referred to

Tuteniu (ancestor of Ngati Tuteniu, who also participated in our inquiry) seems to have been a son either of Tutewhaiwha or of Rangiteaorere himself. He, too, lived at Paetutu, and became known as a tohunga.²¹⁹

As already noted, Dr Ballara observes that over the generations there was significant intermarriage between Ngati Rangiteaorere and Ngati Uenukukopako. She goes on to say that:

Eventually Ngati Uenukukopako and Ngati Rangiteaorere were neighbours on the east side of the lake from Waikawau almost to the Ohau Channel; they also lived on their parts of Mokoia...²²⁰

In the 1830s, Ngati Rangiteaorere (like Ngati Uenuku-kopako) were among those Te Arawa groups that were in contest with Ngai Te Rangi over Maketu.²²¹ Following the hostilities, they too had settlements there and in the surrounding area.²²²

During our inquiry, Herbie Hapeta explained his understanding that the original name of Whakapoungakau was

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Kiwhare. He said: 'Kiwhare was the original name of the hapu whenua and the Waiohewa Pa and the Pa of Tuteniu. It was later called Whakapoungakau'.²²³

Places mentioned in evidence as being of particular significance to Ngati Rangiteaorere and Ngati Tuteniu include Lake Rotokawau, the Tikitere thermal springs, the Whakapoungakau range, and Rangitoto maunga.²²⁴

Ngati Whakaue: In endeavouring to summarise the interests of Ngati Whakaue in the area around Lake Rotorua, several witnesses described them as broadly extending from Waiomihia (also referred to in evidence as Waimihia and Waikimihia), a river outlet at Waiteti north of Ngongotaha, round to Waingaehe, a stream at Holdens Bay south-west of Rotorua airport. Their neighbours are Ngati Rangiwewehi to the north and Ngati Uenukukopako to the east.²²⁵ However, Ngati Whakaue are a large iwi embracing numerous different hapu. Further, they have been associated with different areas at different periods. A more detailed discussion is therefore necessary.

According to Paul Tapsell, the iwi that became known as Ngati Whakaue originally identified as Te Ure o Uenukukopako, but later took the name of Uenukukopako's son, Whakaue-Kaipapa. Whakaue was born to Rangiwhakapiri, the first of Uenukukopako's three wives, and was grandson of Tuhourangi and great-grandson of Rangitihi. ²²⁶ By the time of Whakaue, Uenukukopako and his cousin Rangiteaorere had taken control of Te Motutapu a Tinirau (Mokoia). ²²⁷ But while Whakaue was a young man, Uenukukopako moved with his family to 'Ongarahu on the Waikato River'. This may be somewhere near where the Ongarahu Stream flows into the river, west of Atiamuri, although we have no details as to an exact location. His sons Whakaue and Tumahaurangi later returned to the Rotorua area. ²²⁸

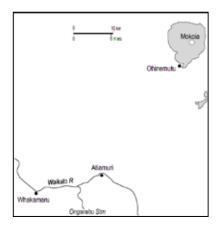
At some stage, Whakaue and his brothers attacked Ngati Raukawa at Whakamaru (also on the Waikato River, south-east of Mangakino) and, according to Mr Stafford, they had a pa there for a while. ²²⁹ He also mentions them living in the vicinity of Atiamuri. ²³⁰



Map 2.10: Ngati Whakaue and hapu – places referred to

Nevertheless, the ancestor Whakaue is principally associated with the Rotorua area and, as Mr Mitchell told us, Mokoia became his stronghold once his father Uenukukopako had gained it by conquest. Indeed, it was there that Whakaue's sons Tawakeheimoa, Ngararanui, and Tuteaiti were born and there, too, that Tutanekai, adopted by Whakaue, was born to his wife Rangiuru. When Tutanekai grew up, it was to him that Whakaue left Mokoia. Mokoia.

Whakaue's other main residence was Weriweri Pa, on the western side of Lake Rotorua just to the north of the Waiteti Stream. This pa had been established by Uenukukopako and then passed to his son (although the latter also occupied areas at Kawaha and Te Koutu, between Waiteti and Ohinemutu).²³⁴ Weriweri was the place where



Map 2.11: Ngati
Whakaue and hapu –
places referred to

HE MAUNGA RONGO

Whakaue finally ended his days, and it is just inland from there where he is said to be interred. His final resting place, like that of his son Tawakeheimoa and his later descendant Tunohopu, is said to be in the spring that feeds the Wai-oro-toki Stream, which in turn flows into the Waiteti Stream at a point inland from Weriweri and the lake. As a consequence, the spring came to be regarded as highly tapu and remains so to the present time.

Tawakeheimoa quarrelled with his older brothers and move further north to Awahou, but Tutanekai, Tuteaiti, and Ngararanui maintained interests in the Waiteti lands around Weriweri.²³⁷ In particular, Ngararanui became established at Weriweri Pa, while Tuteaiti moved a little further south to Ngongotaha.²³⁸ The latter, together with his son Rangihekewaho, also had a role in chasing Ngati Tua Rotorua from the district, driving them deep into the Patetere forests in the Mamaku Range.²³⁹

Tutanekai's marriage to Hinemoa may have taken place around the mid-sixteenth century. This event represents an important renewing of the link between Ngati Whakaue and the iwi of Tuhourangi, since Hinemoa was the daughter of Umukaria and Hinemaru, who were both descendants of Tuhourangi. In our inquiry, we were told that the people of Ngati Whakaue primarily descend from Tutanekai and Hinemoa – although it was not until later that they became commonly known as Ngati Whakaue. However, despite the link to Tuhourangi, two sons of Tutanekai, namely Tamakuri and Whatumairangi, were later slain by people of that iwi, and hostilities resulted. Tutanekai



Map 2.12: Ngati Whakaue and hapu – places referred to

himself, although so strongly associated with Mokoia, is said to have died and been buried at Weriweri.²⁴⁴

In the time of Tutanekai's son Whatumairangi, and the latter's son Taiwere (or Taiweri), the centre of Ngati Whakaue focus shifted from Weriweri to Parawai. Taiwere married Tamiuru, daughter of Te Takinga. This was a taumau or arranged marriage designed to seal the alliance of Ngati Pikiao and Ngati Whakaue during the hostilities against Tuhourangi, and it resulted in the birth of Pukaki. 245 Pukaki was born at Kaiweka, on the southern side of Mokoia. However, they later moved to Te Akau, the pa of Whatumairangi's wife, Parehina, on the western shore of the lake at the mouth of the Ngongotaha Stream. Later again, they moved to Parawai where Taiwere built a pa. 246 This new stronghold, slightly south of Weriweri, was located on the north bank of the Ngongotaha Stream, and from there Ngati Whakaue were able to keep surveillance of the western shores of the lake and of the areas further inland.247

When, later, Taiwere was killed in battle at Maketu along with two of his brothers, Tamiuru returned to her Ngati Pikiao people at Rotoehu. Pukaki, however, remained at Parawai where he was brought up by his paternal grandmother, Parehina, and grew to be a renowned warrior and leader.²⁴⁸

Taiwere's only surviving brother was Ariariterangi, who then gathered a considerable force and sought revenge. He led an attack across the Kaituna river mouth at Maraekura, but lost his life in the ensuing battle. According to Mr Tapsell, it would eventually be Ariariterangi's son, Te Rorooterangi, who 'negotiated a peace with Ngai Te Rangi and re-established Te Arawa's rights to Maketu'. Other sons of Ariariterangi were Tunohopu and Te Kata. The latter married Waoku and together they had Rangiiwaho, while Taeotu was a grandson of Tunohopu. Another grandson of Ariariterangi was Turipuku, from whom Ngati Turipuku are descended.

In time, hostilities between Ngati Whakaue and Tuhourangi escalated further. Tamamutu and his people from the Taupo area were drawn in, and there was a great battle that became known as Tawharakurupeti (or in some

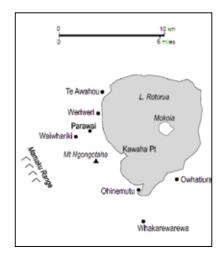
NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

sources Tahorakurupeti). As a result of this battle, Pukaki's cousins Te Rorooterangi, Kotoremomona, and Te Kata all lost their lives, leaving Tunohopu as Ariariterangi's only surviving son. ²⁵² Tunohopu and Pukaki, together with Rautao (a great-great-grandson of Whakaue through Tuteaiti), were thus left as the three main leaders of Ngati Whakaue. ²⁵³

At this time, Ngati Whakaue were living on the western side of the lake between Kawaha Point and Weriweri, and also on Mokoia, and Tuhourangi were round the southern end between Owhatiura and Kawaha, including Ohinemutu.²⁵⁴ To alleviate tensions, a strategic marriage was arranged between Pukaki and Ngapuia, granddaughter of Wahiao. In the peace that followed, the extended families of Rautao, Tunohopu, and Rangiiwaho (son of Te Kata) were able to reoccupy the south-western shores of the lake, and the descendants of Hurungaterangi (Pukaki's uncle) settled back down around the south-eastern side. Only the families of Te Rorooterangi remained on Mokoia at this time. As for Pukaki, he settled with Ngapuia at Parawai, where they had eight children.²⁵⁵ Strategic marriages were arranged for each of the daughters but the sons remained at Parawai, at Ngongotaha. According to Mr Tapsell, this was to assist their father in maintaining mana over the surrounding lands.256

In speaking of Parawai, Mr Stafford underlines its importance to Ngati Whakaue by saying: 'All those descendants of Tutanekai from Whatumairangi to Turi Te Atuaherangi (as well as many others) are said to have occupied here.' ²⁵⁷ Just to the west of Parawai is the urupa called Te Mataihi, where both Pukaki and Parehina are buried, and the area around Parawai was to become heavily cultivated to support the growing population. ²⁵⁸ It remained an important centre for Ngati Whakaue right through to the 1850s and 1860s, when the exodus to the northern gumfields and the effects of the land wars would leave it almost deserted. ²⁵⁹ Indeed, Mr Mitchell told us that the whole area around Ngongotaha maunga acquired great significance for Ngati Whakaue. ²⁶⁰

In the time when Pukaki's grandchildren had grown to be adults, further hostilities broke out, this time



Map 2.13: Ngati Whakaue and hapu – places referred to

involving Ngati Raukawa. After a series of encounters, Ngati Whakaue, under the leadership of the now-aged chief Pukaki, claim to have repulsed Ngati Raukawa, first at Waiwhariki and then at Weriweri, and forced them back over the Mamaku Range to Maungatautari. As a consequence, Ngati Whakaue, and particularly Ngati Pukaki, came to assert extensive land interests in the Mamaku area.²⁶¹

Following their war with Ngati Raukawa, attention turned to Tuhourangi again. Ngati Whakaue enlisted the help of Ngati Uenukukopako and Ngati Rangiwewehi to try to drive them from Ohinemutu. Ngati Wahiao soon took the decision to withdraw towards Whakarewarewa, but the main force of Tuhourangi prepared for battle. After several encounters, Ngati Whakaue and their allies finally prevailed, and Ngati Whakaue took possession of Ohinemutu.²⁶² According to Mr Stafford, this likely occurred around the middle of the seventeenth century.²⁶³

Ngati Rangiwewehi and Ngati Uenukukopako, for their parts, took Te Pukeroa but wanted Ohinemutu as well. They therefore attacked, but Ngati Whakaue prevailed and Ngati Rangiwewehi and Ngati Uenukukopako withdrew to Te Awahou, Mokoia, and the eastern shores of the lake. Thus Ngati Whakaue claimed Te Pukeroa as well as Ohinemutu. Shortly after this, Pukaki, who had not participated in the

HE MAUNGA RONGO

fighting, died at Parawai and, according to Mr Tapsell, his mana passed to his eldest son, Ngahina.²⁶⁴ In later times, however, Pukaki would be commemorated in the carving of a splendid gateway for the kainga of Ohinemutu, and his descendants would come to form the largest of the six koromatua hapu of Ngati Whakaue.²⁶⁵

Mention of the development of subgroups within or connected with Ngati Whakaue prompts us to note that over time various of these came to be associated with particular areas within the overall Ngati Whakaue rohe. For instance, Ngati Tuteaiti and Ngati Ngararanui (descended from their eponymous ancestors, who were sons of Whakaue), stayed largely on the western side of the lake where their ancestors had settled, in the area around Waiteti and over towards Mamaku.²⁶⁶ Mitai Rolleston specified that 'Ngati Ngararanui occupied the Waiteti region at Waikimihia, whilst Ngati Tuteaiti occupied the area at Parawai in Ngongotaha.²⁶⁷

As earlier mentioned, Ngati Pukaki came to have extensive interests in the Mamaku area, as did certain other iwi and hapu with strong Ngati Whakaue links whom we shall come to shortly.²⁶⁸

Ngati Taeotu, Ngati Hurungaterangi, and Ngati Te Kahu, for their part, became particularly associated with the Whakarewarewa area, although Ngati Taeotu and Ngati Hurungaterangi also came to have interests at Ngapuna.²⁶⁹ According to Ben Hona:

the mana of the three hapu to the Whakarewarewa lands derives from our *tipuna* Tuteata. Tuteata in turn is a descendant of Ratorua who . . . was the first born of Rangitihi. ²⁷⁰

Ratorua is buried at the urupa of Rangitauake, on the Owhatiura block next to Ngapuna. Tuteata had a daughter, Whaingarangi, who married Hurungaterangi (son of Whatumairangi) and, in Mr Hona's words, that important union between Whaingarangi and Hurunga Te Rangi is the only union that intertwines the lines of Ngati Taeotu, Ngati Hurunga Te Rangi and Ngati Te Kahu. Tu was also Hurungaterangi who killed Wahiao, in retribution for the latter's slaying of Whatumairangi. Thus, according to Mr

Hona, the take tipuna to Whakarewarewa was secured.²⁷³ Mr Mitchell, too, while not referring to the three hapu by name, noted that:

those places of the Whakarewarewa geothermal valley that were not actually occupied by Ngati Whakaue hapu were used as a staging place by Ngati Whakaue where food that was gathered beyond that land area from the south was brought back and dried in preparation for eating.

This was, he said, the situation that pertained up to the time of Ngati Whakaue's temporary abandonment of the lands around 1836, which resulted from the desecration of the birthplace of Te Pukuatua (an important Ngati Whakaue chief) by Ngati Haua.²⁷⁴

Still with reference to particular areas, a number of Ngati Whakaue hapu came to have associations with particular parts of Mokoia – as did other Te Arawa kin groups. Indeed, in this respect the island is perhaps second only to Maketu in being of significance to so many different tribal groups. Mr Stafford comments that:

Mokoia, always disputed land, was inhabited by all the tribes around the lake jointly, with the exception of Tuhourangi.²⁷⁵

This is reflected in its having become a Maori reservation, held in trust by Ngati Whakaue, Ngati Uenukukopako, Ngati Rangiwewehi, and Ngati Rangiteaorere together.²⁷⁶

Ngati Waoku, a hapu with strong Ngati Whakaue links, came (like Ngati Pukaki) to have extensive land interests in the Mamaku area and to the edge of Lake Rotorua. They are descended from Waoku, who had two Ngati Whakaue husbands, namely Te Kata (son of Ariariterangi) and Te O (grandson of Ariariterangi, through Te Rorooterangi). Waoku herself was a descendant of Uenukukopako but her grandfather was the great Ngati Raukawa warrior Maihi. According to the evidence of Mr Tapsell, Waoku's principal pa was at Kawaha Point. Her descendants, Ngati Waoku, have been 'recognised by wider Te Ure o Uenuku Kopako and Ngati Raukawa as the kin group of the Mamaku who have maintained the lands on the western boundary with

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Ngati Raukawa', and they have maintained the relationship with Ngati Raukawa through strategic marriages.²⁸⁰

Then there is Ngati Rautao, who are descended from Rautao, the great-grandson of Whakaue's eldest son Tuteaiti. Rautao's principal pa was at Waiteti. His wife was Ngariu, the daughter of Te Rorooterangi. According to Mr Tapsell, Ngati Rautao also intermarried with Ngati Raukawa (as did Ngati Pukaki) but to a lesser extent than Ngati Waoku 'as they were more distant (north and east) from the western Mamaku boundary with Ngati Raukawa.

In summing up the situation of the three main Ngati Whakaue-related hapu with interests in the Mamaku area (Ngati Pukaki, Ngati Waoku, and Ngati Rautao), Mr Tapsell noted that they still maintained a permanent residence beside Lake Rotorua, with Ngati Waoku's principal pa being at Kawaha Point, Ngati Pukaki's at Parawai (now the Ngongotaha township), and Ngati Rautao headquartered at Weriweri (to the north of Ngongotaha township). However, they frequently ventured into the Mamaku and often lived there for weeks or months at a time, and Mr Tapsell mentioned in particular the Lake Rotohokahoka basin and the upper reaches of the Ngongotaha and Waiteti Streams. ²⁸³

Other smaller hapu with interests in the Mamaku area are Ngati Te Hika, Ngati Karenga, and Ngati Te Ririu. As explained to us by Anaru Te Amo, the ancestors of these hapu are descended from various of Whakaue's



Map 2.14: Ngati Whakaue and hapu – places referred to

siblings rather than Whakaue himself – namely Taharangi, Tumahaurangi, and Hauora – and are thus, strictly speaking, part of Te Ure o Uenukukopako. However, Mr Tapsell explained that they 'splintered from their [Te Ure o Uenukukopako] relations two or more generations after the battle of Tawharakurupeti and came to live in the Mamaku foothills on the Rotorua side.' 284 Their resulting high degree of intermarriage with Ngati Whakaue hapu has meant that they have come to be regarded as associated with the wider Ngati Whakaue grouping. 285

Of the six hapu referred to above as having interests in the Mamaku area (Ngati Pukaki, Ngati Waoku, Ngati Rautao, Ngati Te Hika, Ngati Karenga, and Ngati Te Ririu), Mr Tapsell summed up by saying: 'Each of the hapu have whakapapa connections to each other, but have interests in these lands that are independent of the others.'

Ngati Whakaue were also to renew their ancestral links with the coastal area. At the time Phillip Tapsell arrived at Maketu, around 1830, Ngai Te Rangi appear to have been in control, but despite this, his decision to settle at Maketu appears to have been largely at the urging of a group of Te Arawa chiefs, including Korokai II (great-grandson of Pukaki) and others of Ngati Whakaue. 287 (We note here, however, Ngai Te Rangi-Ngai Tukairangi evidence that it was Te Aho-o-Te-Rangi, a woman of high rank of Ngai Tukairangi, who gave permission for Tapsell to build his trading station at Maketu, and that ultimate approval was given by a chief of Ngai Te Rangi.)²⁸⁸ Once he had set up his trading station, numerous inland Maori migrated back to the coast to scrape flax for trade, many settling at Maketu itself.²⁸⁹ They included a large contingent of Ngati Whakaue.²⁹⁰ According to Mr Stafford, the returnees also 'spread out across the Kawa swamp, Pukaingataru and up the Kaituna River as far as Pakotore'.291 To further secure the relationship with Tapsell, Te Arawa presented him with a puhi by the name of Hineiturama. This was after the death of his Nga Puhi wife, Karuhi.²⁹² According to Mr Tapsell, Hineiturama was of the Ngati Waoku hapu of Ngati Whakaue, although she also had close links to Ngati Raukawa.293

HE MAUNGA RONGO

Tensions developed in the wake of this return to the coast and the development of trading flax for muskets – including tensions within Ngati Whakaue itself. They involved Haerehuka, a Ngati Whakaue chief, whose descendants were represented in our inquiry. A series of circumstances led this chief to kill a Ngati Haua kinsman of the powerful Waikato leader Te Waharoa. The act led to retribution being exacted on Ngati Whakaue: some three months later Ngati Haua combined forces with Ngai Te Rangi and attacked Maketu, sacking the pa and the trading station.²⁹⁴ In return, the Ngati Whakaue chief Korokai ordered a muru (plundering raid) on Haerehuka's possessions and then, on 20 April 1836, led an attack on Ngai Te Rangi which saw Ngati Whakaue regain Maketu.²⁹⁵

This was swiftly followed, in early May, by the battle at Te Tumu between Ngai Te Rangi and a combined Te Arawa force (which included a large number of Ngati Whakaue). Ngai Te Rangi's losses were heavy and, according to Mr Mitchell, the battle would 'underpin Henare Te Pukuatua's claim that this victory gave Ngati Whakaue and others "take toa" over the lands from Maketu to Papamoa." A Ngai Te Rangi witness, however, gave us to understand that Ngai Te Rangi do not regard the battle as having been decisive; rather, it was the precursor to a further six years of fighting."

By the late 1870s, there were up to 36 distinct whanau and hapu affiliated to Ngati Whakaue, and Mr Mitchell told us it was this that led to the identification of six of them, termed the koromatua hapu, as being the most prominent. Those six are Ngati Hurungaterangi (being descended from Tutanekai's grandson of that name), Ngati Te Rorooterangi, Ngati Tunohopu, and Ngati Pukaki (each descended from great-grandsons of Tutanekai), Ngati Rangiiwaho (descended from a great-great-grandson), and Ngati Taeotu (from a great-great-grandson). 299

Ngati Tura and Ngati Te Ngakau: while these hapu did not appear before us, their interests and whakapapa are intertwined with those of the iwi and hapu who did.

According to Dr Kawharu, the ancestor Tura was an early arrival in the Rotorua district and one tradition states

that he came from Hawaiki. Te Ngakau, however, was of much later date, having lived some six generations before claimants appearing in the Native Land Court.³⁰⁰

To situate Ngati Tura and Ngati Te Ngakau in relation to other groups in the area, we note that a Ngati Whakaue witness to our inquiry, Mitai Rolleston, linked Ngati Te Ngakau with Ngati Whakaue and also with Ngati Raukawa and Tainui.³⁰¹ Counsel for Ngati Raukawa, in her closing submissions, listed Ngati Te Ngakau as a hapu of Ngati Raukawa.³⁰² Mr Tapsell added the information that Ngati Te Ngakau and the Ngati Whakaue hapu of Ngati Pukaki share a common ancestor in Parehina (wife of Whatumairangi), and that Te Ngakau's father had another line of descent from Uenukukopako.³⁰³ Dr Kawharu, for her part, mentioned Tutanekai's granddaughter Hinetai, and stated:

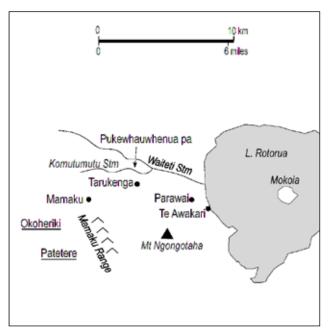
The ahi ka obtained through [her] occupation of Parawai while her brothers were away fighting continued through her son Kanoho, then his son Ngarimu and grandson Te Ngakau.³⁰⁴

As regards Ngati Tura, Mr Tapsell mentioned that hapu, too, as having links both to Ngati Whakaue and to Tainui.³⁰⁵

We were told of a significant amount of intermarriage between Ngati Tura and Ngati Te Ngakau over the generations, which led to them often being seen as one. Their land interests, from the evidence before us, were on the western side of Lake Rotorua, and particular mention was made of 'the deeper Mamaku lands including and beyond Tarukenga.' A Ngati Raukawa witness, Haki Thompson, mentioned Tarukenga as being one of the pou of the whare of Ngati Raukawa, but nevertheless said: 'The hapu here is Ngati Te Ngakau.' We take this to underline the close kinship between the two groups.

There is also reference to Ngati Tura and Ngati Te Ngakau working cultivations near Parawai Pa. And in the Native Land Court in the late nineteenth century, the main area claimed by Ngati Tura lay between Te Awakari, on the western edge of Lake Rotorua, over to Mamaku and

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



Map 2.15: Ngati Tura and Ngati Te Ngakau - places referred to

deep into the Patetere forests.³⁰⁸ In particular, Ngati Tura have been mentioned in association with several pa in the Okoheriki area.³⁰⁹ Along with Ngati Ngararanui, they are also noted as having held Pukewhauwhenua Pa on the Komutumutu Stream (a tributary of the Waiteti Stream), slightly further north.³¹⁰

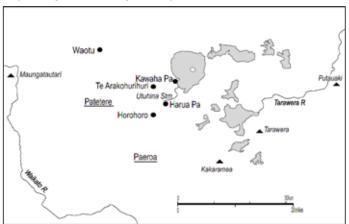
Ngati Tuara and Ngati Kea: Again, these are groups that did not participate in our inquiry, but they have interests and whakapapa entwined with those who did.

Ngati Kea are descended from Kearoa, the wife (and also cousin) of Ngatoroirangi.³¹¹ According to information given to the Native Land Court in 1883, Kearoa lived at Te Pokohu, an area between Putauaki and Tarawera.³¹² Some six generations later, her descendant Te Aokawhai moved from Te Pokohu to Horohoro.³¹³ The interests of Ngati Kea then spread out to cover the south-west and western part of what

became the Rotorua–Patetere–Paeroa block – although there is also reference to them occupying Kawaha Pa, near the lakeshore for a time. It would seem, though, that they left the latter location following hostilities with Ngati Whakaue, probably around the 1700s, and occupied new places much further west at Maungatautari and Te Waotu (near Putaruru). Nevertheless, as regards strongholds, there is reference to them having pa at Opupaka and Urewera in the Patetere area, and also at Te Arakohurihuri, in Rotohokahoka. The overall area that they drew on for resources appears to have centred largely on Horohoro, although we understand that they also travelled to Lake Rotorua and the Utuhina Stream to fish. The occupance of the stream to the stream to the stream to the stream to fish.

In the late 1800s, a witness to the Native Land Court referred to Ngati Kea as having close connections with Ngati Manawa – although Dr Kawharu identifies this Ngati Manawa as a hapu of Ngati Whakaue. 316 A section of Ngati Kea who lived in the Pukeroa Oruawhata area were also intermarried with Ngati Uenukukopako. 317 Another witness to the Native Land Court, Mita Taupopoki, stated it was during their period of intermarriage with Ngati Uenukukopako that they came to Te Koutu to live. And in connection with their occupation of the Patetere area, he said that it was from there that they intermarried with Ngati Raukawa people. 318

Map 2.16: Ngati Tuara and Ngati Kea - places referred to



HE MAUNGA RONGO

Ngati Kea's neighbours to the west and south-west were Ngati Raukawa. To the north were Ngati Tura and Ngati Te Ngakau and, to the north-east, Ngati Uenukukopako.³¹⁹

Ngati Tuara are descended from Tuara, a high-born woman who was a descendant of Tuarotorua – the latter being, in turn, a descendant of Ika who arrived on Te Arawa waka. Her brother was Tangaroamihi who, according to a manuscript given to Governor Grey in 1849, was an early chief of the Tikitapu and Okareka area. ³²⁰ Ngati Tuara have been particularly mentioned in connection with Harua Pa at Kaitao, to the south-west of Rotorua, although the period of their occupation there is not stated. ³²¹

According to Kipihana Te Wheua, a witness giving evidence in a Native Land Court case in 1887, Ngati Kea and Ngati Tuara became closely linked through living in close proximity and intermarrying.³²² In speaking of the period some five or six generations after the ancestor Uenukukopako, Mr Stafford refers to them as living 'in the high country – the Patetere plateau to the west of Rotorua.³²³

It was during this period that they allied with Tamamutu (a chief from the Taupo area) in an attack on Te Rorooterangi and his people – hostilities which also drew in Rangiteaorere's brother Tunohopu, and then Ngati Rangiwewehi.³²⁴ More generally, though, Mr Stafford describes Ngati Kea and Ngati Tuara as having been aligned at the time with the Tuhourangi people.³²⁵

Jointly, they are associated with the Horohoro area where they have close connections with Ngati Raukawa. In particular, they are connected with Papohatu Pa, although it appears that many left the area around the early 1830s to accompany a Ngati Raukawa group to Kapiti.³²⁶

In the mid-nineteenth century, some sections of Ngati Tuara and Ngati Kea then living in Patetere, Tokoroa, and northern Taupo moved to Tarewa, where they settled with Ngati Whakaue and Ngati Uenukukopako kin.³²⁷

Ngati Rangiwewehi: The direct line of descent from Rangitihi to Rangiwewehi comes down through

Tuhourangi to Uenukukopako, and then to Whakaue. Whakaue's wife, Rangiuru, was of Tapuika descent and together they had Tawakeheimoa, who was to become the father of Rangiwewehi. Rangiwewehi's own wife, Hinekura, was a daughter of Tamakari. From this we see that Ngati Rangiwewehi have multiple kinship connections. Dr Ballara even goes so far as to say that a number of Ngati Rangiwewehi hapu 'were as much Tapuika, Ngati Rangithi or Ngati Pikiao as they were Ngati Rangiwewehi'. 328

According to Te Ururoa Flavell, who gave evidence for Ngati Rangiwewehi, the seven hapu of Ngati Rangiwewehi are Ngati Kereru, Ngati Ngata, Ngati Te Purei, Ngati Rehu, Ngati Tawhaki, Ngati Whakakeu, and Ngati Whakaokorau. Dr Ballara also lists a number of others but says that she has included some 'associated... by descent. 330

In Dr Ballara's evidence, it was Tawakeheimoa, Rangiwewehi's father, who first became associated with the area on the north-western side of Lake Rotorua, having moved there after a disagreement with his younger brothers, Tuteaiti and Ngararanui.³³¹

Again in Dr Ballara's evidence we were told that Kereru (son of Rangiwewehi and Hinekura) became a great military leader and, under his leadership, Ngati Rangiwewehi challenged almost every surrounding iwi and hapu. Sometimes on their own and sometimes in conjunction with others, they fought against groups from the coast through to Taupo, including Ngai Tamarawaho, Tapuika and Waitaha, Ngati Kea and Ngati Tuara, Te Rorooterangi, Tuhourangi, and Ngati Tuwharetoa.³³²

For a time, Ngati Rangiwewehi and Ngati Uenukukopako had control over Pukeroa and, we were told, had designs on Ohinemutu. However, Ngati Whakaue attacked and defeated them in a battle that became known as Te Puta a Tongara, and Ngati Rangiwewehi withdrew to Te Awahou (on the north-western shore of Lake Rotorua) and Mokoia.³³³

By 1800, according to Dr Ballara, Ngati Rangiwewehi were established with their hapu from Waimihia (also known as Waiomihia) and Te Awahou, and on round the

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



Map 2.17: Ngati Rangiwewehi - places referred to

western and northern shores of Lake Rotorua.³³⁴ With the addition of Mokoia, this description accords roughly with the map presented to us during the inquiry as being the core rohe of 'Ngati Rangiwewehi ki Uta'.

However, given their wide kinship connections, and the ebb and flow resulting from their numerous historical clashes with other groups, it is perhaps not surprising that Ngati Rangiwewehi also claim interests in a much larger area. Apart from the area they describe as 'Ngati Rangiwewehi ki Uta', there is another area along the coast

west of Maketu which they refer to as 'Ngati Rangiwewehi ki Tai' and, in all, they claim ancestral land connections in an area stretching from the coast to south-west of Lake Rotorua.

Tuhourangi: Tuhourangi constitute a major tribal grouping of the Central North Island region. Dr Ballara describes them as 'one of the six or so major descent groups of the inland Bay of Plenty lakes district in the 18th century, and Mr Tapsell refers to them as one of three major kin groups descended from Rangitihi (the other two being Ngati Pikiao, and Nga Uri o Uneukukopako who became 'better known as Ngati Whakaue').335 Tuhourangi have also been described as 'a somewhat mobile kinship group' who 'moved around more than most Te Arawa groups', and we were told that 'their interests and mana have shifted over generations from Rotoiti to Rotorua and then south to Tikitapu, Rotokakahi and Tarawera'.336 It is therefore highly probable that their relationships and interactions have impacted on many other iwi and hapu in the region and, although they did not participate in hearings, we need to include some account of them for contextual purposes.

The tupuna Tuhourangi, son of Rangitihi, is said to have been born just to the east of Maungawhakamana, not far from Kawerau.³³⁷ However, he spent at least part of his youth at his father's home at Pakotore on the eastern bank of the Kaituna River, and then moved to Rotoiti.³³⁸ He settled first at Rangiwhakakapua and then at Ohoukaka on the northern shore of the lake, where he built a pa.³³⁹ He had two wives, Rakeitahaenui (or Rakeitaehinu) and Rongomaipapa. His offspring included Uenukukopako, the eldest, and a second son, Taketakehikuroa, who took over Ohoukaka from him.³⁴⁰

Mr Stafford notes an association with Mokoia Island, which he describes as being 'through relationship, not occupation.' This is perhaps because although Taketakehikuroa (who is regarded as the iwi's principal ancestor) lived there for a time, he later moved away and it was, rather, his older brother Uenukukopako who

HE MAUNGA RONGO



Map 2.18: Tuhourangi - places referred to

remained.³⁴² Nevertheless, Mr Stafford notes elsewhere that Tuhourangi himself is said to be buried below Pukemaire, on the eastern side of Mokoia.³⁴³

In the next generation, Tuteamutu (son of Taketakehikuroa and grandson of Tuhourangi) is said to have held mana over a large area, including land 'from Rotoiti to Motutawa Island at Rotokakahi.' 344

With the son of Tuteamutu, Te Umukaria, the descent lines through Uenukukopako and Taketakehikuroa

converged again: Te Umukaria, grandson of Taketakehikuroa, married Hinemaru, granddaughter of Uenukukopako.³⁴⁵ It was from this union that Hinemoa (who married Tutanekai) and Wahiao were born.³⁴⁶

During hostilities with Ngati Pikiao, Te Umukaria was killed in battle. According to Dr Ballara, his son Wahiao then combined with Tutanekai to lead a war party to exact revenge on Ngati Pikiao and their allies, 'in the process conquering a large extent of country around the Rotomahana and Tarawera lakes'. Although, as earlier noted, Tuteamutu (Te Umukaria's father) is said to have held mana down to Motutawa, it is from this time onwards that we note an increased mention of Tuhourangi activity in the Tarawera–Rotomahana–Rotokakahi area. Dr Ballara comments that, using Motutawa as a base, they spread out around the lakeshore of Rotokakahi, and also that they 'had other contemporary settlements centred around Te Wairoa (a village on the shore of the Tarawera lake), at Rotomahana, at Taumaihi and Okareka.'

Following the battle, however, Wahiao and his sons returned to the Rotorua area, living at Te Pukeroa, and also 'settling and utilising other places as far south as Te Whakarewarewa', which Taupopoki (one of the sons) occupied.³⁴⁹

But the alliance between Wahiao and Tutanekai did not last. As the result of a liaison between Tutanekai's son, Whatumairangi, and Wahiao's wife Uruhina, Wahiao arranged to have Whatumairangi killed. This led, in turn, to Ngati Whakaue attacking Tuhourangi as utu for Whatumairangi's death - an enterprise in which they enlisted the help of sections of Ngati Pikiao and Waitaha who were then living around Rotoehu. A series of skirmishes and battles ensued over a period of some years, which finally resulted in Te Rangipuawhe (another important chief of Tuhourangi who was at the time living at Lake Rotoiti) moving with his people to settle in the Tarawera and Rotokakahi area.350 Here, they lived side by side with a related iwi, Ngati Rangitihi, although according to Mr Stafford 'each occupied separate areas and operated as separated entities.'351 A later attack on a section of Tuhourangi

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

that had remained behind at Lake Rotoiti seems to have brought to a close Tuhourangi occupation of the Rotoiti area.³⁵²

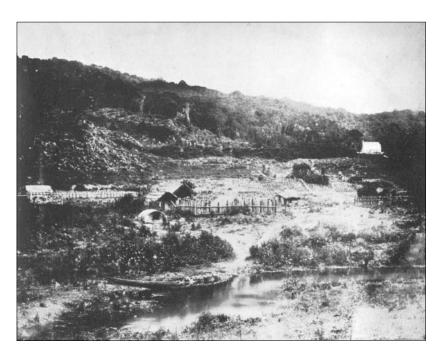
Despite the move south, the Tuhourangi people, in the time of Tunohopu (grandson of Whatumairangi), still appear to have been holding the area between 'Owhatiura in the east and Kawaha Point in the west', around the southern shores of Lake Rotorua. 353 This included Ohinemutu, where a section of Tuhourangi were living under Wahiao's son, Te Anumatao.³⁵⁴ Things were still not peaceful, however, and they aligned themselves with Ngati Raukawa and also Tamamutu of Ngati Tuwharetoa, against Ngati Pikiao and Ngati Whakaue. A major battle, named Tawharakurupeti, took place in what would later become the Rotorua township area, apparently resulting in a victory for Tuhourangi and their allies.³⁵⁵ The principal leaders at this time were Te Anumatao for Tuhourangi, and Rautao, Tunohopu, and Pukaki for Ngati Whakaue. At some point after the battle, Te Anumatao's daughter, Ngapuia, was given in marriage to Pukaki.356

Then, in the lifetime of Ngapuia and Pukaki's children and grandchildren, a series of battles culminating in the battle of Paitawa saw Tuhourangi finally vacate the Pukeroa–Ohinemutu area in favour of Tarawera.³⁵⁷

At around the same time (which Dr Ballara situates in the mid-to-late eighteenth century), one or more battles also took place at 'Te Puia.' Accounts vary, both as to the participants and as to the location of Te Puia, and the picture is somewhat confusing, but we go into some detail because it has a bearing on Tuhourangi's association with Whakarewarewa.

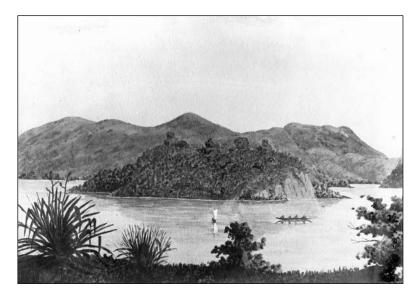
In some accounts, the battle principally features Ngati Taoi, who were attacked at Te Puia by Ngati Whakaue, Ngati Uenukukopako and others.³⁵⁹ Dr Ballara notes that:

Ngati Taoi were a hapu originally of Ngati Uenukukopako ... but over time had intermarried with and were usually allied to Tuhourangi and Ngati Wahiao in their struggles against Ngati Whakaue.³⁶⁰



The village of Te Wairoa on the shore of Lake Tarawera, before the 1886 Tarawera eruption

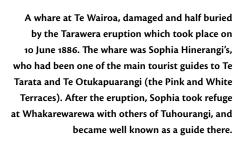
HE MAUNGA RONGO



'The famous Motutawa Island', circa 1880. In this artist's impression, a fortification can be seen on top of the island, and another habitation on its shore. Photolithograph of a watercolour by Henry Stratton Bates.

She clearly indicates this battle as having taken place at 'Te Puia pa at Whakarewarewa', situates it 'perhaps not long after the middle of the 18th century', and refers to the deaths of 'Ngati Taoi's chiefs, the father and son Tukutuku and Mokotiti'. She goes on to comment that the defeat of Ngati

Taoi 'did not directly affect Ngati Wahiao and its various hapu since they occupied a different pa at Whakarewarewa and were not attacked.' Mr Stafford, too, locates the battle at Whakarewarewa, with his maps showing the pa as being within the geothermal area and just slightly to the south of





NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

another pa named 'Te Whakarewarewa', which may have been the second pa referred to by Dr Ballara.³⁶² Mr Tapsell, for his part, describes a battle at this same location but names the defenders as Ngati Tama (whom he mentions as previously having lived at Ohinemutu with Ngati Taoi and Ngati Wahiao), and he describes Mokotiti as a 'Ngati Tama chief'.³⁶³

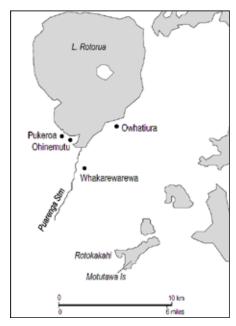
However, Mr Tapsell then goes on to discuss another battle, this time between Tuhourangi and Ngati Whakaue, at 'Te Puia . . . to the east of Ohinemutu'. This other battle is said to have been the first of a series of three which culminated in the battle of Paitawa (referred to earlier in connection with Tuhourangi vacating Pukeroa–Ohinemutu).³⁶⁴

To complicate matters further, another piece of evidence also refers to a battle at 'Te Puia . . . to the east of Ohinemutu', but describes the attack as being made by Ngati Whakaue against Tuhourangi and Ngati Taoi. 365

Irrespective of any connection with Whakarewarewa, however, the overall evidence points to Tuhourangi having a strong focus of habitation, at least from the late eighteenth century onwards (and probably earlier), in the area around Tarawera, Rotomahana, and Rotokakahi.

Ngati Wahiao: While the iwi of Tuhourangi did not participate in our inquiry, Ngati Wahiao did.

As the reader will recall from the preceding paragraphs, Ngati Wahiao are connected with the wider kin group of Tuhourangi in that Wahiao was a great-great-grandson of the ancestor Tuhourangi. The line of descent was from Tuhourangi to Taketakehikuroa (brother of Uenukukopako) to Tutea and then to Te Umukaria, Wahiao's father. The latter lived at Owhata on the south-eastern shore of Lake Rotorua. Wahiao's sister, as we have mentioned, was Hinemoa, who married Tutanekai. Wahiao, for his part, settled with his wife Uruhina at Pukeroa.³⁶⁶ We note that there is, however, mention of him using an area near the Puarenga Stream, just north of Whakarewarewa, to gather kokowai.³⁶⁷ We also note that, according to Mr Stafford, the full name of Whakarewarewa is 'Te Whakarewarewatanga-o-te-ope-



Map 2.19: Ngati Wahiao - places referred to

taua-a-Wahiao', a reference to Wahiao having once assembled a fighting force there.³⁶⁸

Dr Ballara observes that Wahiao could claim an interest in Pukeroa and Ohinemutu by right of descent from Uenukukopako (Wahiao's mother being Uenukukopako's granddaughter). We also note that several of his children, including his son Taupopoki, were born at Pukeroa.³⁶⁹ When Wahiao's father was killed at Motutawa Island on Lake Rotokakahi, Wahiao and his brother-in-law Tutanekai attacked the people then living there - Ngati Apumoana and others. (Apumoana had been a son of Rangitihi who settled first at Owhatiura, near Rotorua, but then moved on to Rotokakahi.) Successful in their attack, Wahiao and others of Tuhourangi established a base on Motutawa, but Wahiao himself subsequently returned to the Rotorua area, along with Taupopoki.³⁷⁰ Dr Ballara surmises that Wahiao's descendants might have begun to identify themselves as distinct from their Tuhourangi kin from this point in time.371

HE MAUNGA RONGO

Some time after Wahiao's marriage to Uruhina, Whatumairangi (Hinemoa and Tutanekai's son) committed adultery with her. Reluctant to attack his sister's son, Wahiao sought the assistance of his former enemies, Ngati Apumoana, then living at Makatiti near Tarawera, who attacked and killed Whatumairangi on his behalf.³⁷²

At some point, Wahiao gave two of his daughters as wives for Whatumairangi's son Ariariterangi. Whether this was related to the killing of Whatumairangi is not clear, but Ben Hona, who gave us the information in oral evidence, commented that such marriages were usually arranged to bring an end to fighting. Whatumairangi's people in turn attacked Wahiao and his people, who had now moved to Te Uenga Pa on the north-eastern shore of Lake Rotorua. During these hostilities Wahiao was killed by Te Hurungaterangi, another son of Whatumairangi, and those of his people who escaped fled to several parts of the district. Among the survivors was Wahiao's son Umuaroa who, with others, resumed residence at Pukeroa. According to Dr Ballara, this period saw the beginning of a political divide between Ngati Whakaue and Tuhourangi–Ngati Wahiao.

In the time of Whatumairangi's grandson, Pukaki, there is reference to Ngati Wahiao still living at Pukeroa–Ohinemutu and we note that Wahiao's granddaughter Ngapuia became Pukaki's wife.³⁷⁷ Two generations later, though, Ngati Whakaue threatened an attack and Ngati Wahiao took the decision to withdraw towards Whakarewarewa.³⁷⁸ This is estimated to have happened around the mid-seventeenth century.³⁷⁹ Clearly, however, they had not relinquished their Motutawa links because there is reference to them also living in the Rotokakahi–Tarawera area.³⁸⁰

A century later, from the 1860s, it appears that fighting at 'their traditional home of Rotokakahi' caused Ngati Wahiao to focus more on their interests at Whakarewarewa – and it was at this time that they also moved to an area below the Horohoro Bluffs in the Parekarangi block.³⁸¹

Despite these shifts of location, one hapu of Ngati Wahiao, namely Ngati Huarere, were described as still being in the Pukeroa area at the end of the nineteenth century – although they were also part of the settlement at Whakarewarewa. ³⁸²

Ngati Huarere, as we understand it, descend from Huarere, who was a grandson of Wahiao through Taupopoki.³⁸³

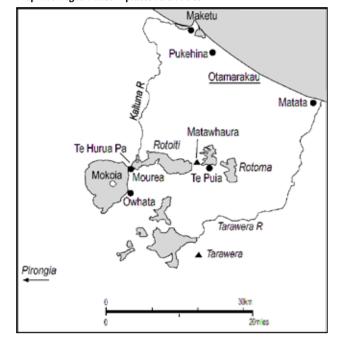
When Mount Tarawera erupted in 1886, those of Ngati Wahiao who were resident at Whakarewarewa invited the Tuhourangi people to come and take refuge with them.³⁸⁴

We were told by a Ngati Wahiao witness, Mihikore Heretaunga, that there are three Wahiao hapu – namely Huarere, Tukiterangi, and Hinganoa.³⁸⁵

Ngati Pikiao: We should note here that a number of branches of this major iwi did not participate in our inquiry and did not submit evidence. While we will need to discuss the kin group in a general way, our focus in this report will therefore be on those hapu of Ngati Pikiao who did appear before us.

The ancestor Pikiao I was the son of Kawatapuarangi and grandson of Rangitihi. His early years were spent around the southern shores of Lake Rotorua and in time he married Rakeiti.³⁸⁶ However, when she produced only daughters, he

Map 2.20: Ngati Pikiao - places referred to



NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

left and went to Pirongia where he met Rereiao with whom he had a son, Hekemaru. That son was to become an ancestor of the chiefly line that would descend to King Potatau and thus on down to the present king, Tuheitia.³⁸⁷ Returning to Rotorua, however, Pikiao resumed his relationship with Rakeiti and together they had a son, Tamakari.³⁸⁸ It is from this tupuna that Ngati Tamakari, who have participated in our inquiry, take their name. At least one other son followed, namely Tutaki a Koti, whose descendant Pakitai Raharuhi was also a party to our inquiry.³⁸⁹

From the evidence presented to us, it would seem that Tamakari and his family were, at least during the latter part of Tamakari's life, living at Owhata on the eastern side of Lake Rotorua. However, we note that at the northern end of Mokoia there is a rock named after him, which suggests a link with that island, and there is also definite mention of him having been at Mourea between Lake Rotorua and Lake Rotoiti, and at Te Hurua Pa near the western end of Lake Rotoiti. ³⁹⁰ It was at Te Hurua that his son, Pikiao II, was born. ³⁹¹ In addition, David Whata-Wickliffe gave evidence that Matawhaura maunga, at the north-east end of Lake Rotoiti, was given to Tamakari by his brother-in-law. ³⁹² Tamakari finally died at the hands of Tutanekai. ³⁹³

Tamakari's son, Pikiao II, married Hinehopu, the daughter of Tamateatutahi, and had Te Takinga.³⁹⁴ According to Mr Stafford, Pikiao II and his family lived for a time at the eastern end of Lake Tarawera, at a place called Te Puwha. However, when Ngati Whakaue, under Tutanekai, attacked nearby Moura Pa on the southern shore of Lake Tarawera (where another section of Ngati Pikiao, and others, were living), he moved with his family to Matata.³⁹⁵ After some time spent on the coast at Matata and then at Otamarakau and Pukehina, he was invited by Matarewha, a chief of Rotoehu, to move to that area and they settled at Te Puia Pa, the chief's home on the southern shore of Lake Rotoehu.³⁹⁶ It was at this time that the period of hostility between Ngati Pikiao and Tuhourangi began which, after many years, would see the former settling around Lake Rotoiti.³⁹⁷

Also at about this time, the descent lines of Ngati Pikiao become intertwined with those of Ngati Makino because



Carved doorway, meeting house, Mourea Pa, Lake Rotoiti circa 1908. The online information concerning this image (accessed via http://timeframes.natlib.govt.nz) notes: 'According to John Cresswell, Maori Meeting Houses of the North Island (Auckland: PCS Publications, 1977), the present meeting house at Mourea Pa was "reconstructed in 1914 from timbers of an older house of the Ngati Pikiao." This may be a photograph of a detail of that older house.'

HE MAUNGA RONGO

Pikiao II's son Te Takinga married three of the daughters of Makino and Te Ra.³⁹⁸ It was not until Te Takinga was in his old age that Ngati Pikiao gained control of the area around Rotoiti, and three of his sons lost their lives in the process during the battles with Tuhourangi.³⁹⁹

Ngati Tamakari: One description of Ngati Tamakari's traditional rohe is that it includes Matawhaura maunga, Lakes Rotoma, Rotoehu, and Rotoiti, the Okere and Ohau Rivers, and part of Lake Rotorua north of Mokoia Island. We also note that a significant number of Ngati Pikiao settled at Maketu when Phillip Tapsell set up his trading station there in the early 1800s, and it would seem that Ngati Te Takinga, Ngati Hinekura, and Ngati Rangiunuora were among the main defenders of Maketu when the settlement was attacked in 1839. 401

By 1840, we were told, the interests of Ngati Tamakari had become focused on the area around Lake Rotoiti, north along the Kaituna River towards Maketu and south-east again from there to Lake Rotoma – although according to Mr Whata-Wickliffe they also had shared rights around Maketu itself and in the area to the south of Lake Tarawera. The principal marae named by Mr Whata-Wickliffe are all around Lake Rotoiti. He states that the four hapu of Ngati Tamakari are Ngati Te Takinga, Ngati Moho, Ngati Hinekura, and Ngati Te Rangiunuora. Hot Pikiao II (and hence grandsons of Tamakari).

Ngati Te Takinga: According to Dr Ballara, Ngati Te Takinga as a hapu became particularly associated with the area around the Ohau channel between Lakes Rotorua and Rotoiti. She refers to them as 'a senior hapu of Ngati Pikiao'. There are also Ngati Te Takinga subgroups, descended from the offspring of Te Takinga's three marriages: Ngati Hineora, Ngati Hineui, and Ngati Hinekiri.

Ngati Hinekura: Ngati Hinekura, we were told, became particularly associated with the Haroharo area. Another witness told us that 'Ngati Hinekura's place at the lake [Rotoiti] is captured within the saying: Kotahi waewae ki Pounamunui, tetahi ki Te Wai iti' (One foot at Pounamunui, the other at Te Wai iti).

Ngati Rangiunuora: Regarding Ngati (Te) Rangiunuora, a witness said that the kin group:

are principally the descendants of Te Rangiunuora and his brother Moho but have descent from all of Pikiao and Hinehopu's children with direct descent through intermarriage from Rakeiao (Ngati Rongomai), Takinga (Ngati Te Takinga), Ngati Hinekura and Tarawhai.⁴¹¹

She told us that the chiefs Puhitaiki, Haukeka and Manuariki had 'occupied and protected many areas around the Rotoiti, Rotoehu, Okataina and Rotoma Lakes' as well as at Maketu. ⁴¹² The last of these three chiefs appears to have been a contemporary of Puwhakaoho, son of Te Rangiunuora's brother Hinekura. ⁴¹³

A Ngati Rangiunuora witness to the Native Land Court in the late nineteenth century said: 'Te Rangiunuora and his children settled down at Tapuaekura [on the southern shore of Lake Rotoiti], both Te Rangiunuora 1 and 2 lived there'. He then went on to say:



Map 2.21: Ngati Rangiunuora – places referred to

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Hinekura lived at Motuwha pa where her children would congregate. Hinekura's children laid their own rohe and Rangiunuora's children did the same. 414

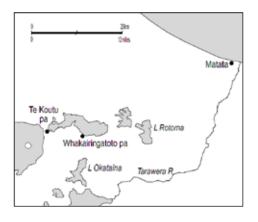
The principal marae of Ngati Rangiunuora, we were told, is Te Punawhakareia o Rakeiao, again on the southern shore of Lake Rotoiti. The whare, Uenuku mai Rarotonga, is said to have been carved about 300 years ago and used to stand at Maketu until transported to Rotoiti by Matene Te Huaki, a chief of Ngati Rangiunuora. The site where it was re-erected was adjacent to Komuhumuhu, an original pa of Ngati Rangiunuora. Other whare of Ngati Rangiunuora used to stand at Okataina (near the Makatiti dome), at Komuhumuhu, and on what became the Waitangi block.

Ngati Rongomai: Ngati Rongomai are named after their ancestor Rongomai who was five generations descended from Rakeiao (also spelled Rakeio). Rakeiao was the eldest son of Rangitihi and elder brother of Kawatapuarangi (from whom Ngati Pikiao are descended) and Apumoana. He lived for a while at Matata but moved to Rotoma, where he met his first wife Kiapare of Waitaha. The couple then moved back to Matata where their children were born, but afterwards settled at Okataina where his pa was Te Koutu – although at the time the area was known as Waione, not Okataina. 418

With Niniurangi, a great-grandson of Rongomai, the descent lines of Rakeiao and Kawatapuarangi again converged because Niniurangi married Hinekura, daughter of Pikiao II and Hinehopu.⁴¹⁹

We were also told of the link between Ngati Rongomai and Ngati Tarawhai. In most accounts, it came about through the marriage of Te Rangimaikuku (a granddaughter of Rakeiao) to Tarawhai 1.420 In one genealogy, however, Tarawhai appears as a direct descendant of Rakeiao.421

According to Mr Stafford, Ngati Rongomai occupied the pa of Whakairingatoto on the southern shore of Lake Rotoiti, along with other descendants of Rakeiao. However, when hostilities broke out between the Kahuupoko people of Okataina (also descendants of Rakeiao) and Ngati



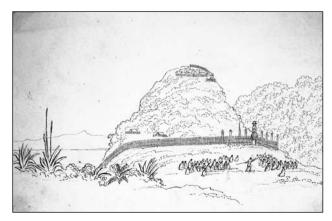
Map 2.22: Ngati Rongomai – places referred to

Rongomai, the latter made forays into the Okataina area and scored several victories over the Kahuupoko. ⁴²³ It may be at this time that they first came to claim interests in the Okataina area. At any event, during our inquiry Dennis Curtis described the area around Lake Okataina as being a 'strong hold' of Ngati Rongomai. ⁴²⁴ In the Native Land Court in the late nineteenth century, they were recognised as having interests in both the Paehinahina block on the southern shore of Lake Rotoiti, and in Waione which stretches down towards Okataina. ⁴²⁵

Their pictorial evidence includes sites around Lake Rotoiti as well as at Lake Okataina, and a map by Mr Stafford shows them as having interests (shared with Ngati Hinekura) on both the northern and southern shores of Rotoiti.⁴²⁶

Ngati Tarawhai: Between Lakes Rotoiti and Tarawera is Lake Okataina. It is here that some descendants of Rakeiao had settled (Rakeiao being a son of Rangitihi and half-brother to Tuhourangi). Under their chief Ngataketake, and then his son Kahuupoko, they increased and eventually became known as the Kahuupoko people. About the same time, Tarawhai, a descendant of Ngatoroirangi, married Rangimaikuku, a granddaughter of Rakeiao. The descendants of this marriage would become known as Ngati Tarawhai and they remained in the Okataina area

HE MAUNGA RONGO



Te Koutu Pa on the eastern side of Lake Okataina. The fortification stands on the summit of the hill with a further palisade and an imposing gateway lower down. The lake can just be made out beyond. Drawing by Joseph Jenner Merrett, early 1840s.

with the Kahuupoko people.⁴²⁹ We also note here the link between Ngati Tarawhai and Ngati Rongomai, mentioned above.

The ethnologist Roger Neich (on the information of Kepa Ehau of Ngati Tarawhai) states that one of the sons of Tarawhai, Te Rangitakaroro, took two Ngati Kahuupoko women as wives. However, in time Ngati Tarawhai assumed control of the south and east of Okataina, and Ngati Kahuupoko became confined to the north and west. Later still, Ngati Tarawhai fought with Ngati Kahuupoko and the latter moved away, leaving Ngati Tarawhai in control of the Okataina district. Ngati Tarawhai have not, however, participated in our inquiry or given evidence, so we will not comment further.

Ngati Rangitihi: Whaimutu Dewes described Ngati Rangitihi as 'the descendants of Rangitihi the man whom Te Arawa agree is the progenitor of Te Arawa', and he went on to give a well-known whakatauki:

Rangitihi whakahirahira, no Rangitihi upoko i takaia ki te akatea. Ehara ma te aitanga a Tiki. 431

Mr Stafford translates this as:

Rangitihi the proud and hard-headed one, whose head was bound with akatea. Well! He is a descendant of Tiki. 432

The ancestor Rangitihi was born at Maketu, but he later moved a little inland and built two pa – Pakotore, on the Kaituna River, and Matapara (or Matapura), not far from that. It was here that his eight children were all born. 433

Later again, he moved inland to the Rotorua lakes district with his family. He established a pa at Rangiwhakakapua on the narrow neck of land between Lakes Rotorua and Rotoiti, and brought up his family (with the exception of Tuhourangi who had already gone to Ohoukaka). ⁴³⁴ In time, they and their descendants began to spread out and take up other parts of the Rotorua area. ⁴³⁵

At some point, Rangitihi moved to Tarawera as did Rangiaohia, one of his sons. The latter settled there with his wife Rakauheketara, and their descendants would give rise to the iwi Ngati Rangitihi. And Rangitihi himself eventually returned to the coastal area and it was there that he died. However, his bones were subsequently moved and interred on the peak of Ruawahia (being part of the complex of three peaks often referred to simply as Mount Tarawera).

Dr Ballara comments:

there were many hapu of Ngati Rangitihi based around the eastern Tarawera Lake, toward Rotomahana and Rerewhakaaitu, and spreading toward Rotoiti in one direction and Putauaki, Paeroa East and Kaingaroa in the other. 438

A number of old Ngati Rangitihi burial sites were referred to in evidence, including two on the western slopes of Putauaki, one between Kawerau and Rotoma, and another on Makatiti (south-east of Rotoiti).⁴³⁹ We were also told of a seasonal kainga maintained on the north-eastern side of Lake Rotoma.⁴⁴⁰ Witnesses concurred, though, that the main pa of Ngati Rangitihi were at Moura and Tapahoro, at the southern and eastern ends of Lake Tarawera respectively.⁴⁴¹ In addition, Mr Stafford refers to Ngati Rangitihi being at Te Ariki, at the very end of the southern arm of

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



An unidentified Maori group on the shore of Lake Tarawera, in the 1870s. The village of Te Ariki can be seen in the background. It was subsequently destroyed by the eruption of 10 June 1886.

Lake Tarawera, and there was another Ngati Rangitihi pa at Waingongongo, on Lake Rotomakariri (now submerged under Lake Rotomahana).⁴⁴² Reference was also made to their use of the geothermal resources around the Pink and White Terraces (which before the eruption of Tarawera were in the area between that maunga and the Waimangu Valley).⁴⁴³

As noted earlier, Tarawera and Rotokakahi had also become the main area of habitation for Tuhourangi, and there appears to have been occasional friction between the two groups. Mr Stafford refers, for instance, to a period when the fishing rights in Lake Tarawera were clearly a matter of contention. This was at the time of the chiefs Te Rahui (of Ngati Rangitihi) and Mehameha (of Tuhourangi), and conflict escalated to the point where Tuhoe were drawn in on the Ngati Rangitihi side, and Ngati Tama (from the Waikato) on the Tuhourangi side.⁴⁴⁴ At other times, however,

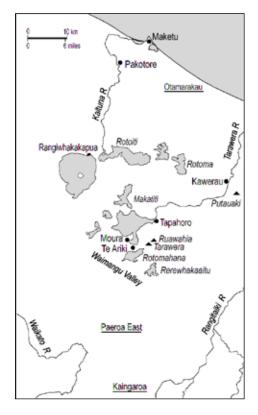
relations between Tuhourangi and Ngati Rangitihi appear to have been amicable, as evidenced by their fighting together against Te Ramaapakura of Ngati Awa. This particular battle occurred when Ngati Rangitihi were under the leadership of the chief Tionga, in the late eighteenth century.⁴⁴⁵

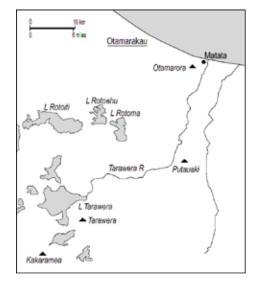
Ngati Rangitihi also refer in their evidence to interests in the Pokohu area, although they noted some confusion in historical documents between Pokohu and Matahina (which falls within the Tribunal's Urewera inquiry district).⁴⁴⁶

According to evidence presented, Ngati Rangitihi can also claim descent from Maaka, down through Hakopa Takapou who lived some 16 generations after Maaka. The same evidence states that it was Maaka's grandson Paengatu who had a hand in dividing the Kaingaroa lands 'between [the descendants of?] Maaka and Ngatoroirangi, the east being for Totaraihaua's descendants and the west for Maaka's.'

HE MAUNGA RONGO

Map 2.23: Ngati Rangitihi – places referred to





Map 2.24: Ngati Rangitihi – places referred to Ngati Rangitihi themselves noted that at the time of the Native Land Court hearing into the Kaingaroa 1 block, their kin group claimed interests there, along with Ngati Hape and Ngati Manawa. They commented that their connections with Ngati Hape and Ngati Manawa are very close, stating that 'while Ngati Hape is regarded as a Ngati Manawa hapu it is very closely linked to Ngati Rangitihi and can be said to belong to both iwi.' 448 It would also seem that Mahora, mother of the Ngati Rangitihi chief Tionga, was of Ngati Manawa descent, being some six generations descended from Tangiharuru.

Tarawera remained the principal area of habitation of Ngati Rangitihi for many generations but they also retained links with the coastal area. Heitia Raureti's list of blocks contested in the Native Land Court includes some on the coast, and David Potter gave evidence that around the turn of eighteenth century there were Ngati Tionga people living between Otamarakau and Otamarora. 450 He further noted that those two places had been important as seasonal kainga for Ngati Rangitihi, for fishing and the like. 451 Tipene Marr mentioned Ngati Rangitihi being the caretakers of Otaramuturangi, the ancient urupa situated at the mouth of the Tarawera River, where Rangitihi ancestors are buried along with many others from the various tribes who have occupied the area over the centuries.⁴⁵² Ngati Awa, however, stated that the urupa was associated with their pa of Omarupotiki at Matata. 453

In summing up Ngati Rangitihi's traditional interests, Mr Dewes told us:

our two principal settlements were at Matata in the north and Tarawera, or more particularly, Ruawahia in the south, and connected by the two rivers, namely Te Awa o Te Atua and the Rangitaiki.⁴⁵⁴

He then added that the iwi had other interests 'emanating out from those *papatupu*' and went on to say:

From a birds eye view, one appreciates the geographical diversity that those spheres of influence comprising the

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

tribal estate of the Ngati Rangitihi Iwi therefore took in. The interests include coastal resources, river resources, Ruawahia the mountain (being a significant and prominent [peak] for all of Te Arawa but under the kaitiakitanga of the Ngati Rangitihi Iwi), the two prominent rivers and access to geothermal features such as the Pink and White Terraces and the Crater Lake lands. 455

Around 18 Ngati Rangitihi subgroups have featured over time in Native Land Court records, but four of the principal hapu were identified to us as being Ngati Mahi, Ngati Ihu, Ngati Tionga, and Ngati Whareti.⁴⁵⁶

Ngati Tuwharetoa ki Kawerau: Ngatoroirangi and his wife, as earlier noted, settled on Motiti Island. However, eight generations later, their descendants had moved to Kawerau. Their chief at this time was Mawake Taupo, a direct descendant of Ngatoroirangi. 457

Mawake Taupo married Hahuru, who was a daughter of Waitaha-ariki-kore. As we saw in an earlier section, Waitaha-ariki-kore first settled at Otamarakau. However, he later moved inland and established a pa named Waitahanui, near Kawerau – this being the home area of his wife, Hine Te Ariki, who was descended from Toi Kai Rakau. Hine Te Ariki was the puhi of her people and held the mana whenua of the Kawerau area after her brothers moved away. Years later, Waitahanui would become the burial place of Waitaha-ariki-kore and Hine Te Ariki, of Hahuru and her husband Mawake Taupo, and eventually, too, of Tuwharetoa himself – although in the nineteenth century their bones would all be reinterred at Te Atua Reretahi, located in the vicinity of Te Maungawhakamana.

Hahuru and Mawake Taupo in time had a son, who was born at Te Pare-o-te-ra-wahirua at Otamarakau. He was first named Manaia, but was later given the name of Tuwharetoa – variously Tuwharetoa-Waewae-Rakau, Tuwharetoa-Kaitangata, and Tuwharetoa-i-te-Aupouri. He must have been taken to Waitahanui when he was still

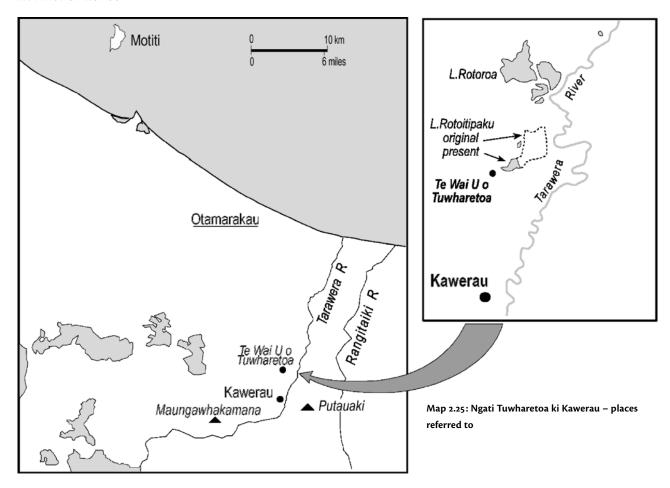
very young because the story is told of an occasion when, crying for milk during his mother's absence, he was comforted by the warm waters of a spring near Kawerau which thereafter became known as Te Wai U o Tuwharetoa. 463 As a result, the spring would become a wahi tapu nui for Ngati Tuwharetoa and, as Anthony Olsen described it, a 'keystone in the identity of us as a tribe'.

In his youth, Tuwharetoa received instruction at a whare wananga on Moturoa, a small island in the middle of Rotoitipaku. Later, he took at least three wives and had more than 15 children. His first-born was a daughter, Manaiawharepu (older sister of Rongomaitengangana), who was born to his wife Paekitawhiti, while his eldest son was Rakeimarama, born to Uira (sometimes called Uiraroa). In time, his sons established their own pa in the hills surrounding Waitahanui, effectively forming a protective 'basket' around Tuwharetoa's own pa – hence the naming of the area 'Te Kete Poutama'.

Then, in the time of Tuwharetoa's old age, a people by the name of Maruiwi migrated into the Kawerau area. His sons and grandsons and their people decided to attack. They were defeated and two sons, Rongomaitengangana and Taniwha, lost their lives. Also killed was a great-grandson, Matangikaiawha, despite his wife Paretuiri being related to one of the Maruiwi chiefs. Those who escaped, including Rongomaitengangana's son, headed on towards Taupo. 467 After an adverse encounter with a Ngati Kurapoto priestess near Rotongaio (adjacent to Lake Taupo), another two of Tuwharetoa's sons, Rakeiuekaha and Rakeihopukia, returned to Kawerau, only to find that their father had died during their absence. Rakeiuekaha was keen to assemble a war party from among the people still remaining at Kawerau to attack Ngati Kurapoto. However, he fell ill and it was therefore his sons, Rereao and Moepuia, who took on the role along with Taringa (another grandson of Tuwharetoa) and Rakeipoho. The latter was Rakeiuekaha's half-brother, and he acted as commander in chief.⁴⁶⁸

Arriving in the Taupo area, the force engaged in a series of encounters with both Ngati Hotu and Ngati Kurapoto,

HE MAUNGA RONGO



finally concluding a peace agreement with both these kin groups. Rereao and his followers then returned to Kawerau and, in later years, Rakeipoho followed.⁴⁶⁹

Meanwhile, before the arrival back in Kawerau of Rereao and his followers, Rakeihopukia set out with a force that included a section of Ngati Apa from the upper Rangitaiki district, and engaged the Maruiwi people on the banks of the Mohaka River. The Maruiwi were overcome, their remnants pursued, and most were killed. Among the few who escaped was Paretuiri, who had evidently returned to her people after the death of her husband Matangikaiawha. With her was Te Umuariki, her son (and, through Matangikaiawha, a great-great-grandson of

Tuwharetoa). She subsequently married a Ngati Kurapoto chief and settled at Mohaka-Tapapa, taking Te Umuariki with her.⁴⁷⁰ We will encounter them again when we discuss iwi and hapu in the Taupo district.

According to Sir John Grace, however, not all of Tuwharetoa's sons participated in the forays into the Taupo area. He states that Poutomuri, Tuwharetoa's youngest son by Hinemotu, stayed behind. In time, Poutomuri's people came to occupy the lands around Kawerau and Putauaki, and after his death they took the name of Ngati Pou. This tribe, Grace says, 'is referred to now under the general name of Ngati Tuwharetoa ki Kawerau'. Grace is not clear, however, on the later history of some of the sons and

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

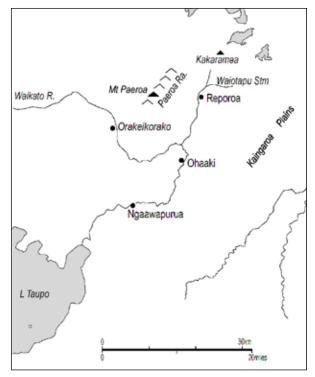
grandsons who returned from the Taupo excursions, so we do not know about their movements or those of their descendants, and how they may have interacted with each other. From the claimants, we received genealogical evidence relating to Tamarangi (who came some four generations after Tuwharetoa and who was a descendant of Rongomaitengangana) but not on the history of events in the intervening period. 472

As to the peace concluded with Ngati Hotu in the Taupo area, that lasted only a generation before Ngati Tuwharetoa again took the offensive. The hostilities would end in the final defeat of Ngati Hotu at the hands of forces led by chiefs such as Turangitukua, Waikari, Ruawehea, and Tutewero, whom we shall meet again later in this chapter.⁴⁷³

Ngati Whaoa: Ngati Whaoa take their name from the ancestor Whaoa, a descendant of Maaka who arrived on Te Arawa waka. Maaka, it will be recalled, was an early explorer of the central North Island, having travelled inland with Tia and others of Te Arawa. At Although the others continued further, Ngati Whaoa tradition records that Maaka stopped and settled north of the Waikato River, possibly first on the Kaingaroa Plains and then in the Paeroa and Waiotapu areas, and it is on Paeroa maunga that he is said to be buried. In this way, we were told, Maaka was the first to acquire mana o te whenua over the Paeroa area.

According to a genealogy given to us in evidence, Maaka's son Kauwhataroa had Paengatu, who married Hinewai (described as the eponymous ancestor of the Ngati Rangitihi hapu Ngati Hinewai). In other evidence we were told that it was Paengatu and another ancestor called Totaraihaua (about whom no information was given) who 'divided [the] Kaingaroa lands between Maaka and Ngatoroirangi', the east being for Totaraihaua's descendants and the west for Maaka's. 479

Paengatu and Hinewai in due course had Whaoa.⁴⁸⁰ In some traditions, the birth must have occurred before the migration to Aotearoa because Whaoa is recorded as arriving on Te Arawa waka with his tupuna Maaka and



Map 2.26: Ngati Whaoa - places referred to

subsequently accompanying him on his travels inland to Paeroa. In other traditions, the birth appears more likely to have occurred post-migration.⁴⁸¹ Irrespective of which tradition is followed, however, Whaoa appears to be associated with the area around the Paeroa Range west of what is now Reporoa and Waiotapu, and he is said to be buried, like Maaka, on Paeroa maunga.⁴⁸²

Whaoa had three sons and a daughter. His oldest son, Tamatewaro, is (like his father) associated with the Paeroa Range and Waiotapu, but also with Maungakakaramea (Rainbow Mountain). The second son, Te Aho-o-te-Rangi, likewise lived in the Paeroa hills, but also spent time at Te Ohaaki. Like his grandfather Paengatu, it seems he married a woman by the name of Hinewai. This Hinewai, we are told, was descended from Toroa and Tahumatua (and hence of Ngati Tahu). 483

HE MAUNGA RONGO

Whaoa's third child was named Poroporo, while his youngest son was Waihuka. The latter lived at the southern end of the Paeroa Range, closest to the Waikato River. 484

In the next generation, Haa the son of Waihuka married Ngairihanga the daughter of Te Aho-o-te-Rangi. Ngairihanga was of course of Ngati Tahu descent through her mother, as well as of Ngati Whaoa. Since that time, we gather, there have been a number of other marriages between descendants of the three brothers, and according to Mr Stafford both Ngati Whaoa and Ngati Tahu at one time shared a pa on the Waikato River. The pa was Ngaawapurua, and it was here that they were visited by Rahurahu, a Waikato chief, who then determined to capture the place. We learned from other evidence that Rahurahu was from Ngati Raukawa, being the son of Wairangi.⁴⁸⁵

Not long afterwards, Rahurahu returned with a war party and staged a surprise attack on Ngaawapurua, during which, it would appear, Waihuka of Ngati Whaoa was killed. The survivors from within the pa fled to the Paeroa Range and to Maungakakaramea. Rahurahu pursued them and attacked again at Paeroa. Again the attack was successful, and the escapees fled to join their kin at Maungakakaramea. However a third attack, this time at Purukorukoru near Maungakakaramea, failed, the defenders having called on Ngati Apumoana (descended from Apumoana, son of Rangitihi) to assist them. In this last attack it is possible that Rahurahu was killed, although accounts vary.⁴⁸⁶

A number of incidents are associated with the attacks by Rahurahu but it is not always clear to which battle they relate. In one such incident, Ngati Whaoa and Ngati Tahu defenders were apparently burnt in a cave called Ngatorowhakarei (perhaps near Ngaawapurua).⁴⁸⁷ Another incident mentions a cave or tomo in the Paeroa hills where 'the wounded were left to be gathered on the return journey home.'⁴⁸⁸

Following the hostilities, there was a peacemaking marriage between Te Aho-o-te-Rangi's granddaughter

Whakarongotaua (also variously written Whakaroataua, Whakarewataua, or Whakarawataua) and Tamamate the son of Rahurahu. ⁴⁸⁹ We note that through her grandmother Hinewai, Whakarongotaua could claim descent from Tahu as well as Whaoa.

Ngati Whaoa came to be particularly associated with the Reporoa area, east of the Paeroa Range, but there is also reference to them moving to Tarawera to live among the Tuhourangi people, and to the Kaingaroa Plains.⁴⁹⁰

During our inquiry, one Ngati Whaoa witness gave his pepeha as follows:

Ko Paeroa te Maunga, Ko Waiotapu me Waikato nga Awa, Ko Whaoa te Hapu me te Iwi, Ko Maaka te Tupuna, Ko Te Arawa te Waka.⁴⁹¹

Another Ngati Whaoa witness stated that the customary rohe of Ngati Whaoa 'included the areas which became known as the Kaingaroa 2, Paeroa East and Rotomahana Parekarangi 3A' blocks. ⁴⁹² By the end of the nineteenth century, they were certainly appearing in the Native Land Court in connection with cases relating to blocks in the Paeroa and Kaingaroa areas, and giving evidence about resource gathering and habitation in those areas (including Waiotapu and 'Lake Ngapori' [Opouri?]), and they also made reference to sites on the Waikato River. ⁴⁹³ Often, they appeared in opposition to Ngati Tahu, especially in connection with cases relating to southern parts of the Rotomahana Parekarangi and Paeroa areas – Ngati Tahu apparently identifying with Rahurahu. ⁴⁹⁴

Inland Rotorua area summary: The inland Rotorua area, with its lakes and geothermal resources, was a desirable area in which to settle and many parts were densely populated. Most iwi and hapu in the area can trace descent from the same ancestors and, with a high degree of intermarriage down through the centuries, interrelationships are complex. Certain groups may have become associated with certain areas, but nearly all can claim varying degrees of residual interest in other areas through their multiple kin links.

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

The Kaingaroa area

During our inquiry, Tamati Kruger expressed his understanding of tribal rights in the Kaingaroa Plains in the following terms:

No reira ko Kaingaroa he tapa whenua, he tapa whenua no Te Arawa, no Tuwharetoa, no Ngati-Manawa, no Ngati-Whare, no Tuhoe, kei kona katoa e whai wahi katoa ana matau ki konei. E whai mana ana matau ki Kaingaroa. E whai tika ana matau ki Kaingaroa. E whai ahua ana matau ki Kaingaroa.

So Kaingaroa is a frontier land, a frontier for Te Arawa, Tuwharetoa, Ngati Manawa, Ngati Whare, Tuhoe. It is there we all have a say to this place. We have mana at Kaingaroa, we have rights at Kaingaroa, we have a quintessential connection to Kaingaroa. 495

In early times, Hape-ki-tu-matangi-o-te-rangi, of Te Tini o Toi, travelled through the Kaingaroa area, as did his sons. According to the evidence of Mr Kruger, they together gave rise to a kin group by the name of Te Hapu-oneone. We have also mentioned that Ngatoroirangi and Maaka are associated with the area, having passed through on their journeys inland. And Kuiwai and Haungaroa, the sisters of Ngatoroirangi, are also said to have journeyed across the Kaingaroa Plains when they arrived from Hawaiki in search of their brother. 497

However, it seems that the first people to settle for any length of time may have been Te Marangaranga. Mr Kruger said that 'the original people to stay here first at Kaingaroa, at the river of Rangitaiki were Te Marangaranga.'498 Then in later times, he said, 'Te Marangaranga lost their authority to the land, it was taken by Ngati Manawa, Whare-pakau and others'. This was during the period when a group by the name of Ngati Hoto were living in the Taupo area and the ancestor Tuwharetoa was still living at the foot of Mount Putauaki near Kawerau.'

By the mid-eighteenth century, then, a number of iwi and hapu could claim association, in varying degrees, with the Kaingaroa area. We now look at some of them in more detail. **Ngai Tuhoe:** According to evidence presented in the Urewera inquiry and also in our own, all of Tuhoe are descendants of Potiki I, also known as Potiki-tiketike. Tuhoe tradition states that this ancestor was the offspring of the union of Te Maunga and Hinepukohurangi, and thus of the land itself. His descendants became known as Nga Potiki. In a later generation, Te Rangitiriao (a direct descendant of Potiki) married Rakeiora, daughter of Tamakihikurangi of Te Hapuoneone and a direct descendant of Toi. 500

We were also told of the line of descent from Tuhoe Potiki. This ancestor was a grandson of Wairaka who, in turn, was the daughter of Toroa, captain of the Mataatua canoe. Tuhoe Potiki settled in the Urewera and married three women: Paretaranui (sister of Tangiharuru, the tupuna of Ngati Manawa), Tomairangi, and Kokomukatarawhere. With Paretaranui he had two sons, Murakareke and Karetehe.⁵⁰¹

A whakatauki encapsulates the relationship between these various ancestors: 'Na Toi raua ko Potiki te whenua, na Tuhoe te mana me te rangatiratanga' (The land is from Toi and Potiki, the prestige and the rank from Tuhoe). ⁵⁰²

We were also told of whakapapa links to Hape-ki-tu-matangi-o-te-rangi (or Hape), the ancestor mentioned in the introduction to this section. His arrival at Ohiwa on his canoe Te Rangimatoru predated the main migration period, and he is credited with having first brought the kumara from Hawaiki. His early explorations took him inland to Kaingaroa and thence on down to the lower North Island and right down to Te Tai Poutini, the west coast of the South Island, where he died. There is a tradition that his sons, following in his footsteps, planted the first 'tamarau' kumara at Waiohau where they still grow today, and they were also responsible for naming a number of places. ⁵⁰³

Witnesses drew our attention to Tuhoe's traditional interests in land and resources in the Rangitaiki Valley, and extending across onto the Kaingaroa Plains where they had seasonal settlements.⁵⁰⁴ The settlements were

HE MAUNGA RONGO

only seasonal, said Mr Kruger, because of the area's associations with demons and spirits: 'Nobody stayed permanently at Kaingaroa because of the nature of the land, it is full of demons and fairies and underground monsters.' He told us of a Tuhoe expression relating to Kaingaroa: 'Ko tenei kainga a Kaingaroa, koina te kainga o te tira maaka'. (That place Kaingaroa, that is the dwelling place of the dreaded.) ⁵⁰⁶ In his description, it was an area to which people came at certain times of the year to look for food – a place of lean-to houses and shelters and camp fires. ⁵⁰⁷

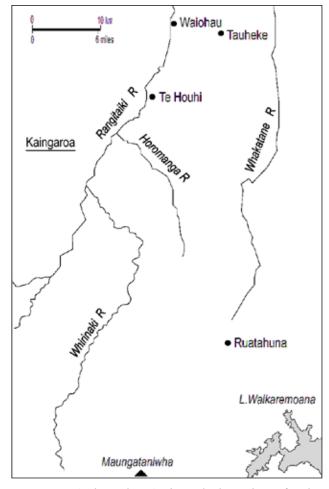
Witnesses also described a 'Tuhoe corridor' from 'Maungataniwha to Waiohau across the Kaingaroa plains to Tuwharetoa and Te Arawa districts'. That is, the plains were a communication route used for a range of reasons such as war, trade, or consultation.⁵⁰⁸

Tama Nikora said that the Rangitaiki Valley was 'largely abandoned by Tuhoe and others during the times of the Ngapuhi raids' (which took place in the early nineteenth century). Like other iwi and hapu who were attacked by Nga Puhi, however, it would seem that they largely returned to their home areas once the raids were over. There were also attacks on Tuhoe by others such as Ngati Awa and Ngati Pukeko. From Mr Nikora's discussion, however, it would appear that much of the area affected by these attacks lies outside our inquiry region. ⁵⁰⁹

Ngati Haka Patuheuheu: Tamati Kruger stated in his evidence that he is 'of Ngati Haka and Patuheuheu' and referred to the joint grouping in the context of its being one of the 'sub tribes of Tuhoe'. 510

Mr Nikora, in his report 'Tuhoe and the Rangitaiki', refers to Patuheuheu being 'descended from Toi through Maru, Te Waru-tua, Toatara-wahia and Te Hina'. The kin group is also, he says, descended 'from Rakei-Hakoa of Ngati Rakei and Nga Potiki', and closely related to Ngati Rongo through intermarriage. He goes on to say that their name derives from events that occurred during a battle with Ngati Awa.⁵¹¹

Ngati Haka apparently gained their name after their ancestor Te Hina performed a haka that was 'so powerful that it culminated in a marriage to the Ngai Tai Puhi, Te



Map 2.27: Ngai Tuhoe and Ngati Haka Patuheuheu - places referred to

Muhuna.⁵¹² Te Hina was of Te Tini o Toi, with direct links to Te Marangaranga, the original tribe who lived on the Rangitaiki River.⁵¹³ However, Ngati Haka also have a direct line of descent from the ancestor Tuhoe.⁵¹⁴ They likewise link to Ngati Rongo, also of Mataatua waka.⁵¹⁵

According to the evidence of Robert Pouwhare, Ngati Haka were originally named Ngati Rakei, and Patuheuheu is a Ngati Haka grouping. Of the relationship between the two, Mr Pouwhare said:

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

although there are clear distinctions between those who define themselves most closely with Ngati Haka and those who define themselves primarily as Patuheuheu, in terms of our relationship with the Crown it can be stated that we are one people and act as one people.⁵¹⁶

The kin group was originally associated with Ohauaterangi in the area of Ruatahuna, but subsequently moved to the Rangitaiki Valley. Mr Nikora states that 'Ngati Haka and Patuheuheu occupied land on both sides of the Rangitaiki river up to and including the middle-nineteenth century'. In that period, he estimates Patuheuheu as being 'a relatively large hapu of about the same size as Ngati Manawa'.⁵¹⁷

Ngati Haka and Patuheuheu are noted as having settled in the Waiohau–Horomanga area and particular mention is made of Tauheke, Hauraki, and Te Houhi. Their core customary interests are described as including what are now the Waiohau, Matahina, Kuhawaea, Horomanga–Hikurangi, and Kaingaroa blocks. Of these, we note that only the Kaingaroa blocks fall within the Tribunal's Central North Island inquiry region. By implication, Mr Pouwhare also points in his evidence to the kin group using the above-mentioned 'Tuhoe corridor' across the Kaingaroa Plains. 199

Mr Pouwhare acknowledged that Tuhoe, including Ngati Haka Patuheuheu, do not claim exclusive rights over Kaingaroa, Tarawera, and Rerewhakaaitu. Rather, he pointed to traditional 'understandings and arrangements' with Te Arawa (and particularly Ngati Rangitihi) and Ngati Tuwharetoa, with whom Ngati Haka Patuheuheu have whakapapa links, that allowed them to 'visit these areas, gather resources and co-exist with [their] whanaunga.'520 Mr Pouwhare said the areas were 'Whenua Roharohai', or 'frontier lands shared by neighbouring iwi and hapu.'521 We shall return to this concept in our section on customary law.

In sum, Mr Pouwhare described Ngati Haka Patuheuheu as a 'buffer people', with 'Ngati Awa to the North, Te Arawa to the West, Ngati Manawa and Ngati Whare to the South, Ngati Kahungunu to the East, and the majority of the Tuhoe people living in Te Urewera.⁵²²

Ngati Hineuru: It is clear from the evidence presented by Ngati Hineuru witnesses that the bulk of their interests fall in the area beyond our south-eastern boundary. Tuhuiao Kahukiwa said he had been 'taught to define the Ngati Hineuru land boundary by mountains and rivers, namely the Titiokura Mountain and the Mohaka and Waipunga River'. 523 Puawai Rahui gave his pepeha as follows:

Ko Titiokura te Maunga

Ko Mohaka te Awa

Ko te Rongopai me Piriwiritua nga Whare

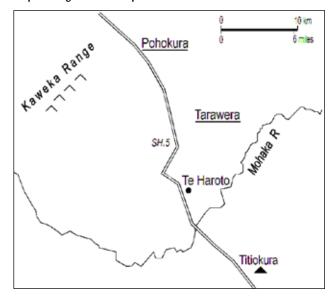
Ko Te Haroto te Marae

Ko Ngati Hineuru te Iwi

Ko te Rangihiroa te Tangata⁵²⁴

Nevertheless, virtually all Ngati Hineuru witnesses did mention a close association with the Pohokura area, which falls within our Kaingaroa hearing district. Hine Campbell also mentioned Hineuru people historically living and

Map 2.28: Ngati Hineuru - places referred to



HE MAUNGA RONGO

hunting in the Kaingaroa area, although she was not able to give details. She described Ngati Hineuru's lands as being 'out in the no mans land'. 525 We take this to mean borderlands which few groups used for permanent occupation.

Rere Puna explained to us that Ngati Hineuru were 'originally a section of an early descent group known as Ngati Apa, the descendants of Apa Hapaitaketake, and are therefore related to Ngati Manawa'. 526 Grace's book Tuwharetoa adds the clarification that sections of Ngati Apa moved into the Tarawera area and 'married into Ngati Kurapoto and other tribes, and a few generations later a new tribe called Ngati Hineuru came into being.'527 (From his preceding paragraph, we understand this 'Tarawera' to be the land block of that name - which came within the Waitangi Tribunal's Mohaka ki Ahuriri inquiry - rather than Lake or Mount Tarawera.) Grace then goes on to say that 'Ngati Hineuru traced from Ngati Apa through Miromiro, and from Ngati Maruahine and Ngati Kurapoto mainly through Mairehau' and closes with the comment that '[t]hey took charge of the district and their descendants are there today. 528

Mr Puna told us that 'by the 19th century Ngati Hineuru had a separate identity distinct from the groups surrounding them' – groups such as Ngati Manawa, Ngati Apa, Tuhoe, Ngati Kahungunu, and Ngati Tuwharetoa. He stressed that historically they had never been regarded as part of Ngati Tuwharetoa, although they did acknowledge their connections with that iwi. Rather, he stated his opinion that Tuhoe are 'the closest relatives we have, closer than Tuwharetoa or Kahungunu.' ⁵²⁹

A witness for a group of claimants in the Tauhara area likewise told us that he did not consider Ngati Hineuru as a hapu of Ngati Tuwharetoa. However, he said that a 'strong relationship' had grown up between Ngati Hineuru and the Ngati Tuwharetoa kin group Ngati Tutemohuta, as a result of intermarriage. 530

Ngati Manawa: Ngati Manawa are another iwi that claim descent from the early ancestor Toi. From Toi, their line comes down some nine generations to Manawatu, then

Map 2.29: Ngati Manawa – places referred to



Manawarere, then Manawaoho, then Manawakotokoto (who married Ue).⁵³¹ The iwi take their name from these last four ancestors, although they did not identify specifically as 'Ngati Manawa' until some generations later.⁵³²

Through Ue they can also claim links to Tainui waka, in that Ue was the great-great-grandchild of Hoturoa, Tainui's captain. ⁵³³ Additionally, they claim descent from Te Maranganga, who were early inhabitants of the lands around the Rangitaiki River (including the areas that were to become the Kaingaroa 1 and Pohokura blocks). ⁵³⁴

Another important ancestor for Ngati Manawa is Apa Hapaitaketake, who was either a son or grandson of Oro.⁵³⁵ As noted above, Apa Hapaitaketake, also known as Apa, gave rise to the kin group of Ngati Apa, whom Grace describes as originally being from the Bay of Plenty in the area around Putauaki (Mount Edgecumbe).⁵³⁶ Seven generations after Apa came Takuate, who married Tangiharuru.⁵³⁷ Also of Ngati Apa descent were three sisters named Kuranui, Kuraroa, and Kuraiti, who likewise

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

became wives of Tangiharuru – Tangiharuru being the great-great-grandson of Manawakotokoto and Ue. 538

According to the evidence presented to us, Tangiharuru lived at a number of different places before settling in the Rangitaiki area. He is first mentioned as spending time on Tuhua (Mayor Island) before moving to the Maungatautari area in the Waikato.⁵³⁹ At some point either before or after Maungatautari, it is probable that he also spent time at Horohoro, although the various pieces of evidence about Tangiharuru (and also 'Ngati Manawa') at this location do not give a very clear picture of circumstance and timing.⁵⁴⁰

Map 2.30: Ngati Manawa - places referred to





The wharenui of Ngati Manawa's marae Rangatahi, opened in 1930, was named for the tupuna Apa Hapaitaketake.

At Maungatautari, Tangiharuru was living with his kin group, 'Ngati Tuaru'. However, he had a disagreement with his sisters over the ownership of a kumara plantation named Otawa, and when a number of senior chiefs found against him in the matter, he decided to leave.⁵⁴¹ He was accompanied in this migration by his uncle (or in some versions, brother-in-law) Wharepakau, and some of his other kin.⁵⁴²

After a series of sojourns in various places, including Hauraki, Thames, Tauranga, and Maketu, he eventually arrived at Matata or Te Awa-o-te-Atua.⁵⁴³ While there, he formed the idea of attacking the Marangaranga people in the Rangitaiki Valley. To that end, he gave a stirring speech to his followers exhorting them to rise up and destroy the Marangaranga, so as to be able to take over their land. To commemorate the speech, the pa where it was delivered became known as Whakapaukorero.⁵⁴⁴ Grace also mentions that it was here that the sisters Kuranui, Kuraroa, and Kuraiti were given to Tangiharuru in marriage.⁵⁴⁵

Again Wharepakau and his kin travelled with them. Arriving at a certain point, the force split in two, with Wharepakau and his people travelling up the Whirinaki River and Tangiharuru taking the Rangitaiki Valley. Both groups were successful in their attacks and they divided

HE MAUNGA RONGO

the lands between them, with Tangiharuru and his group deciding to settle at Pukehinau. Although a remnant of the Marangaranga later managed to stage a revenge attack, during which Tangiharuru was killed, they thereafter 'ceased to exist as an entity' and were absorbed by the other tribes in the area. ⁵⁴⁶

In this way, the group that was beginning to identify as Ngati Manawa first arrived in the Kaingaroa area, and there they stayed. Estimates place the series of events around the late sixteenth or early seventeenth century.⁵⁴⁷ In the generations that followed, there were certainly conflicts with other kin groups in the area and nearby, but their period of migration was over.⁵⁴⁸

During our hearings, they described their traditional boundary markers as follows:

Ki Tawhiuau rere atu ki te whakate uru ki Ohui;

Ka huri ki te uru ki Kakaramea;

Ki te tonga ki Ngapuketurua;

Ki te whakate rawhiti ki Maungataniwha;

Ki te urunga o te ra ki Tarapounamu;

Ka hoki ki te raki ki te maunga whakahirahira o Ngati Manawa, a Tawhiuau.

From Tawhiuau we travel in a westerly direction to Ohui;

From there we turn to the west towards Kakaramea;

From there to the south is Ngapuketurua;

Extend there to the east to Maungataniwha;

And continue further to Tarapounamu;

Turning back to the south to the sacred mountain of Ngati Manawa, Tawhiuau.⁵⁴⁹

Ngati Manawa now sum up their identity in the following words:

Ko Tawhiuau te maunga

Ko Rangitaiki te awa

Ko Tangiharuru te tangata

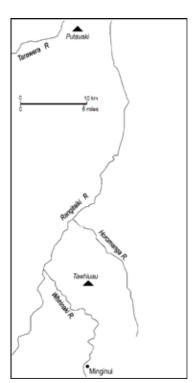
Ko Rangipo te wehenga o te tuna

Ko Ngati Manawa te iwi

Tawhiuau is the mountain
Rangitaiki is the river
Tangiharuru is the chief
Rangipo is the departure place of the eels
Ngati Manawa are the people⁵⁵⁰

Dr Ballara comments that as a result of their migrations Ngati Manawa and Ngati Whare have 'branches scattered from east of the Rangitaiki River to Tokoroa in southern Waikato.'⁵⁵¹

Ngati Whare: Ngati Whare are descended from Wharepakau, although they can also trace descent lines from Potiki-tiketike and Te Hapuoneone. Their arrival in the Kaingaroa area was coincidental with that of Ngati Manawa. Mr Nikora describes how Wharepakau and his nephew Tangiharuru led a force that overcame the Marangaranga people.⁵⁵² We have seen above how the



Map 2.31: Ngati Whare – places referred to

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

force split in two, with Wharepakau and his people travelling up the Whirinaki River and Tangiharuru taking the Rangitaiki Valley. After the campaign they divided the lands between them, with Wharepakau and his followers settling at Minginui in the Whirinaki Valley.⁵⁵³ According to other evidence, this was at the time when Tuwharetoa was still living at Putauaki and a kin group by the name of Ngati Hoto was living at Taupo.⁵⁵⁴ Ngati Whare did not participate in hearings, however, and we do not go into further detail.

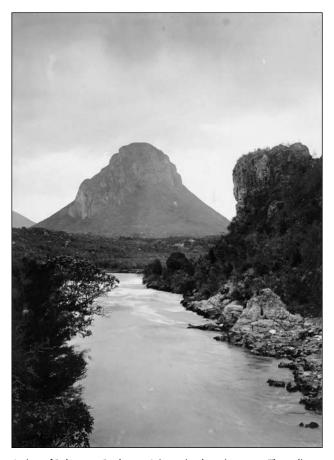
Kaingaroa area summary: Much of the Kaingaroa district was sparsely populated. It was an area where very early peoples, including some with no arrival traditions, encountered others of waka descent. Settlement was mostly beside the rivers that fringed the plains, including the Rangitaiki and Whirinaki Valleys (which lie partially outside our inquiry region) and the Waiotapu Valley (in the Paeroa area). However, there were small populations in other parts of the district such as the Pohokura area, and the plains themselves were frequently accessed for resources.

The Taupo district

According to archaeological evidence, Maori occupation of the area around Lake Taupo may have begun as early as the twelfth century and there is certainly evidence of human presence by the end of the fifteenth century – although sites from this early period of settlement are apparently rare. 555

From the oral evidence that has been handed down, some of the earliest inhabitants of the Taupo region were Ngati Kahupungapunga. There are traditions of them being 'a wide spread people with major settlements . . . following the Waikato river'. One of their strongholds, for example, was at Pohaturoa, near Atiamuri. 557

It appears that they were driven beyond the land bordering the lake by Ngati Hotu and Ngati Ruakopiri. The former, like the Maruiwi people and the Marangaranga, are said to have been descendants of Toi. Though information is patchy, different groups of Ngati Hotu seem to



A view of Pohaturoa Rock near Atiamuri, taken circa 1908. The online information concerning this image (accessed via http://timeframes. natlib.govt.nz) notes: 'The rock is a volcanic crag or "plug" of rhyolite rising 245m above the Waikato River. It figures in the tribal narratives of both the Arawa and Ngati Raukawa people, and was often used as a lookout post during intertribal wars.'

have established themselves in a wide area from western Taupo, around the northern and eastern sides of the lake and across towards Hawke's Bay. The origins of Ngati Ruakopiri are also not entirely clear but they appear to have been previously based around Matahina, east of the Kaingaroa Plains. Some traditions indicate them as partially descended from Ngati Hotu and partially from the

HE MAUNGA RONGO

early ancestors Waitaha-ariki-kore and Hine Te Ariki (who, as we noted in an earlier section, had lived in the coastal Bay of Plenty area). Whatever their origin, they too came to settle lands on the eastern side of the lake.⁵⁵⁸

Then, as we saw at the beginning of the chapter, the arrival of Te Arawa waka resulted in new explorers such as Ngatoroirangi and Tia venturing into the area. We will briefly recount some of the traditions associated with Ngatoroirangi, because they featured prominently in a number of claimant briefs and are clearly regarded as an important part of Ngati Tuwharetoa's association with the area.

Perhaps the most widely known tradition is that of how Ngatoroirangi brought the geothermal resource to the central North Island. Chris Winitana recounted the Tuwharetoa version best known to him:

When [our ancestor Ngatoroirangi] arrived at these parts he ascended Tongariro. He reached the summit and was overcome by a snow blizzard. Knowing that he would most certainly perish in the storm, he invoked his ancestors Te Pupu and Te Hoata, the elders of the fire clan of Hine-tapeka, to come to his aid. He implored Kautetetu to produce the fire born of friction that he needed to save his life. He called to his sisters Kuiwai and Haungaroa, who were still in the homeland Hawaiki, and they sent their fire ancestors to help their brother. Te Pupu and Te Hoata travelled underground with their precious gift and at different places along their route emerged to ensure they were travelling in the right direction. These places became geothermal or volcanic spots and include Whakaari, Tarawera, Paeroa, Orakei-korako, Wairakei, Taupo, Tuaropaki and Tokaanu. The fire emerged at the summit of Tongariro and the old priest was saved. 559

'These histories', said Mr Winitana, 'reaffirm our position that it is through the specific and deliberate acts of our blood ancestor Ngatoroirangi that the geothermal resources of this region came into existence.'

Ngatoroirangi, we were told, travelled to the Taupo area by way of Mount Tauhara. Arriving at the top of the maunga, he thrust his spear into the ground, causing a spring to appear which he called Karetu. He then built an altar to establish his claim to the area. Following this, he hurled his great spear (or, in some versions, a tree) towards the valley below, where it landed at a place now known as Wharewaka – and is said to be still visible there, beneath the waters of the lake. Then he descended down onto the flat and put up another altar which he named Taharepa. Stamping his foot on the ground, he brought forth a gush of water there – an action commemorated in the name 'Tapuwaiharuru' (often written Tapuaeharuru). In one version, the water filled the whole valley and created the lake itself.⁵⁶¹

Not content with these achievements, he introduced fish and shellfish to the lake by casting fragments of his cloak into the waters and calling on the atua Ikatere. Some of the fragments (or in some versions, feathers) turned into inanga, kokopu, koura, and kakahi, but another fragment turned into a tuna (eel) which died 'because the pumice in the lake was too fine and got in its gills' (thus explaining the absence of tuna in Lake Taupo).⁵⁶²

It would also seem that a number of ancestral gods were associated with Ngatoroirangi and his mana. Among them was Rongomai, his personal protector. When he departed from Taupo to return to the Bay of Plenty, he left the gods, with the exception of Rongomai, in the lake. A Ngati Tuwharetoa tradition associates four of the gods with a particular dark-coloured rock in the lake, a little to the north of Motutere.⁵⁶³

At about the same time as Ngatoroirangi came to Taupo, Kurapoto is also said to have explored part of the central plateau. And either then or later (traditions vary), Kurapoto's son Kawhea, together with two companions and a number of followers, also journeyed from the Bay of Plenty to the Taupo area. Here they encountered existing inhabitants such as Ngati Hotu.⁵⁶⁴

After an extended period of rivalry between the existing population and the new arrivals, in which neighbouring groups also became involved, a position was arrived at where Ngati Kurapoto were occupying territory around

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

the northern and eastern shores of the lake, and also over towards Runanga and Tarawera; Ngati Hotu still had land around the southern lakeshore towards Tokaanu and further inland around Tongariro; and Ngati Ha (the descendants of Tia and Hakuhanui) were over on the western side of the lake towards Titiraupenga. ⁵⁶⁵

It was at about this time that Ngati Tuwharetoa incursions began but, according to Sir John Grace, 'settlement in Taupo was sporadic until the time of Te Rangitautahanga, the son of Turangitukua'. At that time, too, Grace describes the iwi as 'settling into two divisions':

One, under the name of Te Aitanga a Huruao, occupied the southern half of Taupo, and the other under the name of Ngati Whanaurangi the northern portion. The respective leaders of these two sections were Te Rangitautahanga and Te Rangiita. Both were of ariki rank and descendants of Rongomaitengangana. 567

Then, a few generations later in the time of Wakaiti and Herea, a slightly different realignment took place, with the division this time being between western and eastern subtribes.⁵⁶⁸

As a whole Ngati Tuwharetoa came to have interests over a wide area. Tuatea Smallman told us that they are tangata whenua in:

a vast region stretching from Pohaturoa in the north, across to Kaimanawa in the east, and then south towards the Ruahine range, encompassing portions of Ngati Raukawa and then following the Rangitikei River back up to Ruapehu Maunga and westwards towards the Whanganui River and Manunui, and thus completing the journey back to Pohaturoa. 569

According to information reported on by the Pouakani Tribunal, Ngati Tuwharetoa hapu operated with a degree of independence, each under its own chief but mindful of the lineages that united them. Each chief needed to be a direct descendant in the senior male line from Tuwharetoa himself, and it was the senior chief's prerogative, on behalf of the people, to install a paramount chief

from among them.^{57°} In the time of Te Rangiita and Te Rangitautahanga, it was the former who became paramount chief and the latter who held the position of upoko ariki.⁵⁷¹ Then, around the turn of the eighteenth century, Te Heuheu Tukino I Hereara took over as paramount chief. We were told how at that time five chiefs were contenders for the position, each with support from various sections of Ngati Tuwharetoa, but Hereara prevailed.⁵⁷² From the genealogies given by Grace it would appear that all the recent paramount ariki of Ngati Tuwharetoa have traced descent both from the line of Te Rangiita and from the line of Te Rangitautahanga.

For the purposes of this historical consideration of the wider Taupo area, we believe that it will be helpful to give some account of the movements and activities of some individual Ngati Tuwharetoa hapu – as also of other kin groups in the area. We now look at different iwi and hapu in turn, beginning with those most associated with the northern Taupo area – noting as we do so that consideration of Ngati Tuwharetoa as a whole will not come until our section on southern Taupo, since that is where the iwi chose to give its evidence.

Northern Taupo

Included in this section are kin groups associated with the area extending from the northern boundary of our Taupo district down to about Karangahape on the western side of the lake and Motuoapa on the eastern side.

Within this area we find, among others, hapu who identify with what is known as the Hikuwai confederation of Ngati Tuwharetoa. As described in the evidence of Ngati Tutemohuta, the Hikuwai grouping comprises those hapu in the northern part of the Taupo area: 'The boundary line commences at Hatepe on the eastern shore of the lake, and proceeds to Karangahape, just north of Poukura on the western side of the lake.' Around the southern sides of the lake are the hapu known as the Matapuna confederation. We did not receive evidence on how and when the Hikuwai–Matapuna distinction arose and we note that

HE MAUNGA RONGO

most witnesses refer to the Matapuna and Hikuwai hapu simply as 'geographical groupings'. 574

Within the Hikuwai confederation, Peter Clarke then goes on to describe an additional subgrouping:

The southern part of the Hikuwai confederation is essentially the group of tribes descended from Tutemohuta I. He is the principal ancestor on our Tuwharetoa side. All the hapu . . . including Ngati Tutemohuta te Hapu whakapapa to this ancestor. ⁵⁷⁵

Some other kin groups within the northern Taupo area do not, either primarily or at all, identify as being of Ngati Tuwharetoa.

We now look at each group in turn.

Ngati Tahu: We note that Ngati Tahu participation in our inquiry was limited.

As noted near the beginning of this chapter, Ngati Tahu have a number of different traditions about the identity and provenance of their ancestor, Tahu. Several of these relate to Tahumatua and his brothers, said to be very early migrants to Aotearoa. Tahumatua was the eldest of the brothers, the other two being Tahu Potiki and Tahu Meremere. These last headed for the South Island and the Hokianga area respectively. Tahumatua, for his part, first settled at Putauaki (near Kawerau) with his wife Wairakewa. Tahu are descended from both Tahumatua and Tahu Potiki.

In other traditions, Tahu came from the East Coast and had links to Horouta waka or, alternatively, arrived on Te Arawa waka. The latter tradition has tended to be discounted, however, as being connected with one or more other people by the name of Tahu.⁵⁷⁸

There is reference to the descendants of Tahu having 'from earliest times' occupied places such as Mokau (Mokai?), the Kaingaroa and Tutukau areas, and the Waikato Valley near Orakei Korako.⁵⁷⁹

A genealogy given for the generations after Tahu shows his son as being Toroa, who in turn had Wairaka. Wairaka's



Map 2.32: Ngati Tahu - places referred to

offspring was Kuiatu, who had Hinewai. Na Hinewai who married Te Aho-o-te-Rangi, son of Whaoa, as already described in an earlier section of this chapter. Together they had Ngairihanga who, it will be recalled, married her cousin Haa (son of Waihuka and grandson of Whaoa). Ngairihanga and Haa then had Whakaroataua (also known as Whakarawataua or Whakarongotaua).

By the time of Whakaroataua, a group of Ngati Tahu and Ngati Whaoa were living together in an island pa on the Waikato River called Ngaawapurua. Attacked by a party from the Waikato under the leadership of Rahurahu of Ngati Raukawa, most of the survivors fled to the Paeroa mountain area, although some also went to Maungakakaramea. When those at Paeroa were attacked again by Rahurahu, they fled once more and joined their kin at Maungakakaramea. Here, a third attack by the same group was finally repulsed, thanks to the aid of Ngati Apumoana (descended from Apumoana, son of Rangitihi) who were then living in the same area. ⁵⁸³

In the aftermath of these hostilities, Whakaroataua was given in marriage to Rahurahu's son, Tamamate, as part of

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

the peacemaking.⁵⁸⁴ The pair appear to have settled back at Ngaawapurua since it was there, we were told, that their sons Mataarae and Te Rama were born.⁵⁸⁵

Another early story also links Ngati Tahu with the Waikato River area. In the time of a Ngati Tahu chief named Te Rangipatoto, a chief from a different kin group (Kereua, of Ngati Maru, Ngati Awa, and Ngati Tuwharetoa) happened to kill an old man who was partly of Ngati Tahu descent. In retribution, Te Rangipatoto slew Kereua and took his body to Ohaaki, where it was thrown into a hot spring. 586

In the early nineteenth century, there were still Ngati Tahu living on the river. We were told that a population of both Ngati Tahu and Ngati Whaoa had grown up around Orakei Korako and its hot springs and silica terraces, whose value to them increased because of the interest of early Pakeha visitors. ⁵⁸⁷ And Grace mentions 'sections of Ngati Tahu and Ngati Tuwharetoa' living at Orakei Korako in about 1819, when a marauding war party of Nga Puhi and Ngati Paoa passed through the area. ⁵⁸⁸

In Native Land Court hearings at the end of the nine-teenth century, Ngati Tahu and Ngati Whaoa witnesses were appearing as rivals in connection with cases relating to southern parts of the Rotomahana Parekarangi and Paeroa areas – Ngati Tahu apparently identifying with Rahurahu. And Ngati Tahu again appeared in relation to lands in Kaingaroa, Tahorakuri, and Tutukau (the latter two areas both being south of the Waikato River).

Dame Evelyn Stokes has noted Ngati Tahu's kin links with Ngati Tuwharetoa, Ngati Manawa, and Tainui, and also with Te Arawa. However, it was her belief that 'Ngati Tahu is not part of the confederation of Te Arawa tribes'. She said: 'The principal settlements of Ngati Tahu were located along the Waikato River' and she particularly mentioned the lands and resources along the stretch between Aratiatia and Atiamuri.⁵⁹¹

Ngati Kurapoto: Although Kurapoto himself is said to have explored inland in the Taupo area, most accounts of actual settlement seem to focus, rather, on his son Kawhea. We do

note, though, one account which claims that Kurapoto fled to Taupo 'in consequence of a murder he had committed'. In this account, 'he and his tribe' came and fought with Ngati Hotu, and conquered the area as far as Tauranga Taupo, after which the two groups 'made peace and resided together'. 592

As Tia and Ngatoroirangi had done before them, when Kawhea arrived in the central plateau area along with his followers – who would become known as Ngati Kurapoto – they found it occupied by Ngati Hotu and Ngati Ruakopiri.

Map 2.33: Ngati Kurapoto - places referred to



HE MAUNGA RONGO

Beginning in the region of Atiamuri, they staged a series of attacks, gradually working their way towards the lake. In the vicinity of Rangatira Point (just west of the present township of Taupo), they captured three pa: Ponui on the point itself, Te Kirikiri some three miles from Taupo, and Maunganui-a-Wawatai on the cliff at Whakaipo a little further west. Kawhea then continued on towards what would later become the Runanga and Tarawera blocks, pushing some Ngati Hotu out of that area.⁵⁹³

While Kawhea pushed south-east, two of his companions, Heimarama and Rongomaitutaeaka, remained on the shores of Lake Taupo and continued around the eastern side, taking two more pa – one at Rotongaio and one at Te Hatepe. From there, they moved further south again and took further strongholds at Motutere and in the area of Korohe. In the end, though, they and their followers settled mainly around the north-east side of the lake, in the area from Rangatira round to Rotongaio. ⁵⁹⁴

Meanwhile, a few Ngati Hotu had apparently survived the Ngati Kurapoto attacks. The arrival of a further new kin group, however – this time Ngati Ha, who were descended from Hakuhanui (sometimes Hahuhanui) and, further back, from Tia – soon changed the situation. Ngati Ha and Ngati Kurapoto combined forces to evict both Ngati Hotu and Ngati Ruakopiri from most of the lands around the lake (with the exception of an area around the southern end). 595

Thus, in time, Ngati Kurapoto came to extend their influence over much over the eastern side of the lake and across to Runanga (in the southern part of our Kaingaroa district).

This situation changed again with the arrival of Ngati Tuwharetoa. Ngati Kurapoto apparently won at least one victory, but in the end they were defeated. Tradition records, however, that they stayed in the area and intermarried with Ngati Tuwharetoa. One genealogy, for example, shows Maruwahine II (four generations down from Kawhea) as married to Tupoto (grandson of Rongomaitengangana and great-grandson of Tuwharetoa). This union would give rise to the line of Tutetawha and his

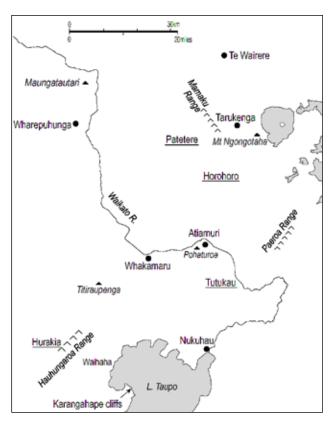
descendants, who included Tamamutu.⁵⁹⁶ From our section discussing Tuwharetoa ki Kawerau, the reader may also recall Paretuiri, widow of Tuwharetoa's great-grandson Matangikaiawha, who escaped with her young son Te Umuariki to the Mohaka area. In time, she married a Ngati Kurapoto chief by the name of Turiroa and settled at Mohaka–Tapapa. Te Umuariki, for his part, was to make his home on the shores of Lake Taupo.⁵⁹⁷

Despite the conquest and intermarriage, witnesses to the late-nineteenth-century Native Land Court would still speak of Tamamutu going to 'Rotongaio where the pas of Ngati Kurapoto were'. They described how Tamamutu then staged an attack and 'all the Kurapoto fled to Hawke's Bay.'598 Angela Ballara clarifies that it was only one section of Ngati Kurapoto that fled, and that it was to the upper Mohaka area rather than to Hawke's Bay. However, she does note that Ngati Kurapoto thereafter remained split into two sections: 'part lived north of Taupo and their descendants intermarried with the others there; part continued to live in Mohaka and Tarawera, and formed the basis of the population there.'599 There is also reference to Ngati Kurapoto having an association with land as far down as the Kaimanawa area.

Ngati Raukawa: The ancestor Raukawa was a direct descendant from Hoturoa, captain of the Tainui waka. His parents were Turongo, eight generations down from Hoturoa, and Mahinarangi of Ngati Kahungunu. He was born near the Omahina (or more properly Omahinarangi) Stream on the western side of the Kaimai Range, not far from Tirau, as Mahinarangi journeyed towards the Waikato to join her husband. However, he grew up at Rangiatea south of what is now Cambridge. In due course he married Turongoihi who was descended from Tia, of Te Arawa waka, and they had four children, Rereahu, Whakatere, Kurawari, and Takihiku. From these four are descended the iwi now known as Ngati Raukawa.

According to the evidence of Haki Thompson, the rohe of Ngati Raukawa is as follows:

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



Map 2.34: Ngati Raukawa - places referred to

It [begins] at Te Wairere, from Te Wairere to Tarukenga along Mount Ngongotaha, Tarukenga to Horohoro, from Horohoro to Nukuhau, Nukuhau to Karangahape . . . from here to Titiraupenga, Titiraupenga to Wharepuhunga, Wharepuhunga to Maungatautari and from Maungatautari back to Te Wairere. 604

Colin Amopiu explained that Te Wairere is 'on the boundary that separates Ngati Haua from Raukawa and Raukawa from Ngati Te Rangi and Te Arawa'. He went on to say that the area of Te Wairere is known as 'the beginning to the rohe of Te Kaokaoroa o Patetere, a part of Raukawa'. 605

Mr Thompson told us that their rohe was first occupied by an earlier people, Ngati Kahupungapunga. 606

In the generation of Raukawa's grandchildren, the daughter of Kurawari married Parahore, a chief of Ngati Kahupungapunga, but when she died at his hand Ngati Raukawa sought revenge. 607 Under the leadership of Whaita (Raukawa's grandson) and his cousins Tamatehura, Wairangi, Upokoiti, and Pipito, they staged an attack. 608 Victorious, they pursued the remnants of Ngati Kahupungapunga to Horohoro and beyond, killing as many as possible. When their pursuit took them as far as Rotorua, though, Te Arawa took up arms against them and they retreated back to Horohoro. We were told that the full name for Horohoro is Te Horohoroinga o nga ringa o Tia (the place where Tia washed his hands) and, from Mr Thompson's evidence, we gather that Ngati Raukawa regard Horohoro as the boundary between Te Kaokaoroa o Patetere and Te Pae o Raukawa. At Horohoro, Whaita, who was suffering from a boil and had remained behind, asked one of his men to kick him, to relieve the pain so that he could fight. The ploy was successful and Te Arawa were repulsed. To this day, the place is known as Te Whana o Whaita (the kicking of Whaita). The area is, he said, associated with Ngati Kearoa, Ngati Tuara, and also Ngati Huri, although he also said it 'remains a boundary between Raukawa and Te Arawa.'609 Counsel for Ngati Raukawa indicated that Ngati Huri are a hapu of Ngati Raukawa. She also said that it was through the conquest of Ngati Kahupungapunga that descendants of Raukawa have established rights in the Central North Island region. 610

Another early people encountered by Ngati Raukawa were Ngati Tuarotorua, a kin group descended from the ancestor Tuarotorua, who was a son of Marupunganui and grandson of Ika, all three of these having arrived on Te Arawa waka. Paul Tapsell mentions Ngati Tuarotorua being pushed from Mokoia and the Lake Rotorua area over into the Mamaku Range, where they intermarried with Ngati Raukawa.

Closer to the western shore of Lake Rotorua, Mr Thompson mentioned Tarukenga and Ngongotaha as being not only the boundary but also the connection between Ngati Raukawa and Te Arawa. 'This is', he said,

HE MAUNGA RONGO



The Horohoro Bluffs, a distinctive feature in the landscape between Taupo and Rotorua.

'one of the imaginary pou [house posts] of the Whare of Raukawa'. He particularly linked that marae with Ngati Te Ngakau. As to the other pou, he said: 'The tungaroa is at Waotu, the poutokomanawa is at Ngatira'.

At Tutukau, a maunga near Orakei Korako, there was an attack on Ngati Tahu and Ngati Whaoa led by the Ngati

The wharenui Rahurahu at Orakei Korako, Burton Brothers photograph circa 1900.



Raukawa chief Rahurahu (son of Wairangi and nephew of Tamatehura). Although initially successful, a later battle at Parukohukohu (sometimes Purukorukoru) in the Paeroa Range resulted in a defeat for Rahurahu. We note that a direct link with those times was provided when the taiaha used by Rahurahu in the engagement was brought to our hearing. It was through these incursions, and through their later kin links with groups such as Ngati Tahu, that Ngati Raukawa also came to have associations with western parts of the Kaingaroa area – in particular, with what would become the Paeroa South, Tahorakuri, and Tutukau blocks. 614

Further south in the Taupo area, there are more places of significance to Ngati Raukawa. As we have already mentioned, they have described their rohe as stretching 'from Horohoro to Nukuhau, Nukuhau to Karangahape . . . to Titiraupenga' – Nukuhau being at the north of Lake Taupo where the Waikato River flows out, and Karangahape being the large promontory that extends into the lake on its western side. We note, in particular, the reference to Te Pae o Raukawa going from Hatupatu rock (near Atiamuri, about a kilometre north of Pohaturoa) right to the lake itself. ⁶¹⁵ We also note Mr Thompson's comment about Karangahape where, he said, are to be found 'nga matimati hao o Tama te

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Hura' (the scratch marks left by Tamatehura) – Tamatehura being another grandson of Raukawa. ⁶¹⁶

Te Atainutai was the son of Tamatehura's brother Upokoiti (and thus a cousin of Rahurahu). His stronghold was at Wharepuhunga (north-west of Mangakino) but he left there with a war party, heading for Lake Taupo by way of Whakamaru. Continuing on down the eastern side of the lake, he arrived at a pa named Horotanuku (or Korotanuku), where he attacked and overcame the Ngati Tuwharetoa chief Waikari and his people. He then moved on and besieged Whakaangiangi, a pa of Te Rangiita between Motuoapa and Motutere, but was wounded. In the ensuing peace that was arranged between the two leaders, Te Atainutai offered his daughter Waitapu as a wife for Te Rangiita – this being part of a 'tatau pounamu', or solemn peace contract. Te Rangiita and Waitapu then settled at Maraekowhai, on the western side of the lake.

Huirama Te Hiko explained that the hapu of Te Pae o Raukawa are Ngati Whaita, Ngati Wairangi, Ngati Moekino, Ngati Haa, Ngati Te Kohera, Ngati Tarakaiahi, and Ngati Parekawa, and that they are located 'along the western side of lake Taupo from Hurakia to the south heading north'.

In the early 1820s, hostilities in the Waikato–Maniapoto area caused Ngati Raukawa to withdraw south and east into Patetere and towards Taupo. There, says Dr Ballara:

after battles and peace-making with northern hapu of Ngati Tuwharetoa such as Ngati Rauhoto, they were able to take refuge with the northern and north-western Taupo hapu kin to them, such as Ngati Parekawa and Ngati Te Kohera. 622

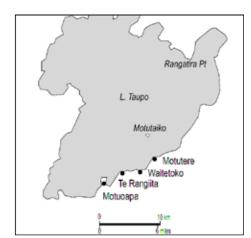
She later adds:

Many stayed with Ngati Wairangi in Pohaturoa, Waimahana and other places, and others with Ngati Te Kohera at Waihora, Titiraupenga, Waihaha and Whanganui Bay in north-west Taupo. 623

Some sections even went as far as Hawke's Bay in their search for a place to settle. However, they seem to have later returned to Taupo and 'took refuge with Te Heuheu, Te Pahi of Nukuhau and other chiefs'. Some later moved on again, this time to Kapiti. 624

Ngati Te Rangiita: The ancestor Te Rangiita was the son of Tutetawha I (a direct descendant of Tuwharetoa) and his wife Hinemihi. He was a warrior chief and was contemporaneous with Turangitukua, Waikari, Tuwharetoa-a-Turiroa, and Ruawehea. Tuwharetoa-a-Turiroa lived at Ponui Pa on Rangatira Point, while Te Rangiita built a stronghold called Whakaangiangi, directly south across the lake from there (near the present settlement called Te Rangiita). There are also references to him having strongholds at Motutaiko and Motutere. The pa of Waikari (another great Tuwharetoa chief) was also on the southern side of the lake.

As noted above, Te Atainutai of Ngati Raukawa arrived with a war party and attacked, but Te Rangiita prevailed and, as part of the ensuing peace agreement, he took Waitapu, daughter of Te Atainutai, in marriage. Their first child was a daughter, Parekawa. When their next three children also all proved to be daughters, he refused to live with her any more. However, her response was: 'He ahakoa, kei te tuhera te awa i Nukuhau' (Despite that, the river still flows/is open at Nukuhau), meaning that she was still capable of bearing children and might yet give him a son. Spurned, she left to return to her Ngati Raukawa people but then discovered she was pregnant. The child that was born was Tamamutu.



Map 2.35: Ngati Te Rangiita – places referred to

HE MAUNGA RONGO

Te Rangiita took her back, and three more sons followed: Mananui, Meremere, and Tutetawha II. 629

Grace records that: 'Following the death of Waikari, and with the assent of the chiefs of Taupo, Te Rangiita assumed the position of paramount chief', although 'the position of upoko ariki of the tribe . . . remained with his relative Te Rangitautahanga'. He also observes that, as the eldest son of Tutetawha I, Te Rangiita 'had mana over certain sections of the people on the western, northern and eastern shores of the lake'.

Te Rangiita's first child was Parekawa, but his oldest son was Tamamutu, born at Maraekowhai. It was to Tamamutu, we are told, that Te Rangiita gave responsibility for the lands around Motutere, Waitetoko, and Motuoapa. ⁶³¹ When Te Rangiita died, his chiefly role passed to Tamamutu who had established himself at Motutere. ⁶³²

According to Mataara Wall, giving evidence for claimants in the Tauhara area, the descendants of Te Rangiita largely resided on the northern side of Lake Taupo at

The shore of Lake Taupo near Motutere, looking south. An undated photograph, but probably late nineteenth century.



Nukuhau, Maroa, and Orua, although they also had kainga at Hatepe on the eastern side of the lake. ⁶³³

Ngati Parekawa, Ngati Te Kohera, Ngati Moekino, Ngati Nauatu, Ngati Te Maunga, Ngati Whaita, Ngati Wairangi, Ngati Ha, Ngati Tarakaiahi: In the Mokai area, north-west of Taupo, are a group of several hapu which Huirama Te Hiko referred to as 'the hapu of Te Pae o Raukawa'. They whakapapa both to Ngati Tuwharetoa and Ngati Raukawa, but Mr Te Hiko stated that 'Te Pae o Raukawa has always stood on its own mana'.

As noted above, the tupuna Parekawa was the eldest daughter of Te Rangiita and his wife Waitapu – Waitapu being the daughter of Te Atainutai who, in turn, was a greatgrandson of Raukawa. ⁶³⁵ Parekawa's husband Ngahiangi was also of Ngati Raukawa descent. Their first child was Te Kohera and he was followed by Nauatu, Kikoreka, and Hinepare. ⁶³⁶

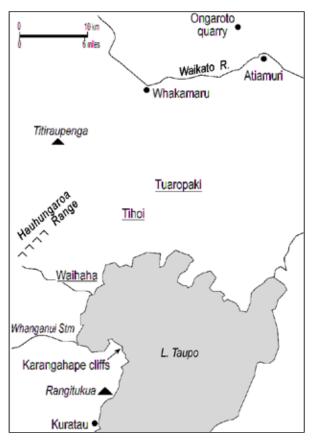
Parekawa's descendants say that her mana extended northwards to Pouakani and southwards to Kuratau and, together, the wider Ngati Parekawa kin group came to dominate the western and north-western borders of Lake

Taupo. 637 In his evidence to this inquiry, Howard Kahura told us:

Ngati Parekaawa extends as far as Mokai, which consists of seven Hapu. The boundary at the foot of Rangitukua Mountain was where Parekaawa and her people lived. The boundary extended further in land to the Hauhungaroa Ranges. 638

Ngati Te Kohera, descended from Parekawa and Ngahiangi's eldest son, lived in areas which included what would become the Waihaha and Tihoi blocks. Dr Ballara says that 'of all the hapu connected by descent to Tuwharetoa', they were the most closely aligned with Ngati Raukawa, at least in their earlier history. She then goes on to

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



Map 2.36: Hapu of the Mokai area - places referred to

describe them as 'also associated with Ngati Wairangi', whom we shall come to shortly. ⁶³⁹

Ngati Moekino, another group of descendants, were also living around Waihaha and in the western parts of Te Tatua. Ngati Nauatu and Ngati Te Maunga (descended respectively from Parekawa's second son and from her great-grandson through Kikoreka) came to settle an area to the north of the Whanganui Stream, which flows into Whanganui Bay on the western side of the lake. And 'Ngati Parekawa proper' came to settle the district south of the Whanganui Stream along with various offshoot hapu. 640

As to the ancestor Wairangi, he was a grandson of Raukawa and brother to Tamatehura, Upokoiti, and

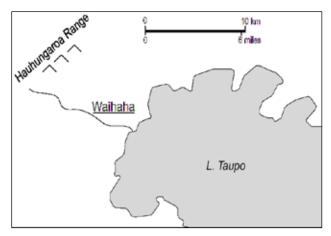
Pipito. 641 One of his wives, Parewhete, was of Te Arawa, being a descendant of Tia through Tapuika and Makahae. 642 After the fighting between Whaita and his allies (including Wairangi) and Ngati Kahupungapunga, mentioned in an earlier section, Wairangi and his people settled in the Whakamaru and Tuaropaki areas. 643 The descendants of Whaita, for their part, came to occupy lands along the Waikato River at Atiamuri. 644 Mr Te Hiko also mentioned a covenant between Ngati Whaita and Ngati Wairangi that was symbolised by two rocks, which used to be sited on what is now Ongaroto Road until a quarry was opened up there. These rocks were sometimes referred to as the 'kohatu hongihongi' because they had the appearance of two heads touching in a hongi. 645 He also said that the two kin groups were 'considered to be joined as one' because of the blood ties and whakapapa links shared by Wairangi and Whaita, and noted: 'Without Whaita then Wairangi would not have come into this area." According to another witness, however, Ngati Wairangi as a kin group descend from Parekawa and Ngahianga.647

Ngati Tarakaiahi are descended from the eponymous ancestor Tarakaiahi who was a grandson or great-grandson of Parekawa. According to evidence provided by David Chrystall, the ancestor Tarakaiahi moved from Tihoi southwards to Waihaha where he married Puia of Ngati Wheoro and also Ruawhanga of Ngati Kiri. However, we have little account of the kin group's movements, other than that by 1865 some of them were still living at Waihaha.

We have already mentioned Ngati Ha (descended from Hakuhanui/Hahuhanui and, through him, from Tia) who settled over on the western side of Lake Taupo towards Titiraupenga. Speaking of Ngati Ha, Ngati Parekawa, and Ngati Te Kohera, Mr Te Hiko told us 'it is acknowledged that there are strong Te Arawa and Tuwharetoa connections through Te Rangiita.

Ngati Wheoro: The ancestor Wheoro was a great-great-grandson of Oromaiterangi (Oro), who in turn was the son of Tia, of Te Arawa waka. ⁶⁵¹ According to the evidence of Stacey Hakaraia, Wheoro held rights in the area around

HE MAUNGA RONGO



Map 2.37: Ngati Wheoro - places referred to

Waihaha on the north-western shore of Lake Taupo, and the kin group has continued to live there ever since. ⁶⁵² He stated that their traditional cultivation sites stretched westward to the Hauhungaroa Range. ⁶⁵³ Over the years, they have acquired kinship links by marriage with Ngati Kiri, of Ngati Raukawa, and with Ngati Tarakaiahi. ⁶⁵⁴

Ngati Rauhoto-Ngati Rauhoto-a-Tia: The relationships and interests of those identifying as Ngati Rauhoto are difficult to tease out and traditions differ on a number of points. Werahiko Tahere, a witness to the late-nineteenth-century Native Land Court, claimed that there were three hapu by the name of Ngati Rauhoto. Dr Ballara has explored this assertion and seems to have identified at least two. She notes that there is one hapu 'particularly connected with and deriving mana from Tia', known as Ngati Rauhoto-nui-a-Tia, and another group who 'intermarried with others, particularly descendants of Tuwharetoa', known as Ngati Rauhoto.

The lack of clarity appears to stem to a great degree from the existence of more than one ancestor by the name of Rauhoto. We go into the evidence presented in some detail as there are many variations and the material does not lend itself to easy summary.

Dr Ballara identifies three different (or apparently different) ancestors of that name, of whom at least two may have been related. The first Rauhoto is said to have had a daughter named Urututu who married Ohomairangi (brother of Aokarere and son of Te Rangikaikaikapua). We have little or no information on the background of any of these people, other than that Te Rangikaikaikapua appears to have migrated from Hauraki to northern Taupo, where Ohomairangi's marriage to Urututu took place. This suggests that Urututu's family (including Rauhoto) may have already been resident in that area. The Native Land Court witness who was the source of this information also claimed that the Rangatira area 'belonged to Ohomairangi and Aokarere. 656 Another Native Land Court witness said that Ngati Rauhoto's mana at Rangatira derived from Ohomairangi.657

The second Rauhoto was directly descended from Tia and was likely the child of Waitanumi (sometimes Waitanumia). The siblings of this Rauhoto were Te Tapore, Hika, Parehinu, and Rua. 658 Again, there is little information to be gleaned from the sources available to us.

A third Rauhoto is possibly related to the second. This Rauhoto was (according to the minutes of Ihakara Kahuao's evidence to the Native Land Court) the daughter of 'Kotaku' and a granddaughter of the above-mentioned Rua. 659 That would largely accord with the evidence of Poihipi Tukairangi, also a witness to the Native Land Court and, like Kahuao, of Ngati Rauhoto descent. The genealogy submitted by Tukairangi apparently showed Rauhoto as the offspring of 'Taaku', who was in turn the offspring of 'Ruakakahi'. The latter is shown as being the sibling of Parehinu and Te Ika, and all three are shown as the children of Waitanumia. There is, however, no reference to Te Tapore or to another sibling who might correspond with the second Rauhoto, mentioned above. 660 Werahiko Tahere (who had made the statement about there being three different hapu) likewise referred to a 'Rauhoto descended from Taku', claiming that this was 'the real Rauhoto'. He further stated that 'the real Rauhoto is not the one Rangatira was awarded to. 661

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

In giving evidence in our inquiry, Winifred McKenzie (the great-great-granddaughter of Ihakara Kahuao) presented a genealogy that shows Rauhoto-a-Tia as the offspring of Taaku, who in turn was the son of Rua (the latter being shown as a son of Ruatiakiahi, who was in turn the son of Waitanumi). According to Mrs McKenzie, this Rauhoto had a sister, Numanga, and they both married Tutetawha II, younger brother of Tamamutu. It is the descendants of Rauhoto and Tutetawha II, she said, who are Ngati Rauhoto-a-Tia. (However, she also mentioned later that the kin group is made up of Ngati Hinerau, Ngati Kikopiri, Ngati Tutetawha, and Ngati Parehunuku.)⁶⁶² Another witness, Eraita Ann Clarke, told us that 'Rauhoto umbrellas the following tribes: Rauhoto a Tia, Tutetewha, Maroanui (Oruanui) and Te Kapa o Te Rangiita and Ruingarangi.⁶⁶³

Kim Te Tua also submitted genealogies. One of these shows Rauhotoatia (Rauhoto-a-Tia) as the offspring of Taku, with the line then going back through Ruatiakiahi, Waitanunui, Runuku, and Rangihoaia, to Tukekeru.



George Robert Dansey, a grandson of Ihakara Kahuao of Ngati Rauhoto, standing beside Te Kohatu o Hatupatu, near Atiamuri. According to tradition, this rock is where an early ancestor named Hatupatu hid from Kurangaituku, a fearsome bird-woman. The young George Dansey was taught by Ihakara to stop and place a piece of greenery there whenever he passed to ensure a safe journey.

Map 2.38: Ngati Rauhoto/Ngati Rauhoto-a-Tia - places referred to



Tukekeru is shown as coming six generations after Tia, and Ms Te Tua's information places him as contemporaneous with Uenukukopako of the Rotorua area (with whom he exchanged visits). Like Mrs McKenzie, she showed Rauhotoatia as the first wife of Tutetawha II.

Another witness, Geoffrey Rameka, presented information showing virtually the same descent line as Ms Te Tua. However, it shows Rauhoto as the wife of Tuwharetoa-a-Turiroa (rather than Tutetawha II). And a further genealogy presented by Mr Rameka shows three ancestors by the name of Rauhoto (including the Rauhoto just mentioned) as all descended from Kuiwai, sister of Ngatoroirangi. 665 Ms Te Tua likewise had a genealogy showing another Rauhoto – namely Rauhotomatua – descended from a sibling of Tukekeru. Interestingly, she showed Tuwharetoa-a-Turiroa as a distant cousin of this Rauhotomatua, being descended from Kahu, another sibling of Tukekeru.

HE MAUNGA RONGO

Traditions seem generally agreed, however, that there was indeed a Rauhoto (sometimes spelled Rauhato) who became the second wife of Tuwharetoa-a-Turiroa (sometimes Tuwharetoa-a-Tuhiroa), a chief of Ngati Kurapoto, and that their offspring was Te Urunga, an ancestor of Ngati Te Urunga (whom we will discuss below). 667 And the evidence presented to us includes the story of how, when Tuwharetoa-a-Turiroa's pa at Ponui was attacked by a war party from Ngati Raukawa, Rauhoto rescued her child, the young Te Urunga, by swimming across the lake with him to her mother's home at Wharewaka. 668

In the late nineteenth century, 'Ngati Rauhoto' witnesses were appearing in the Native Land Court in association with cases relating to land in the areas of Tatua, Tutukau, Otouhanga, Waipapa, Rangatira, 'Hiruharama Rangatira' (which Bruce Stirling identifies as being between Oruanui and Tapuaeharuru), and Wairakei, and also part of the Tauhara area. 669 However, there rarely seems to be any precision about which Ngati Rauhoto is being referred to. According to Mr Stirling, the Ngati Rauhoto claim to land in Tatua was partly on the basis of descent from 'Waitaurimi' and we note the similarity of this name with 'Waitanumi' mentioned above. 670 In our inquiry, Mrs McKenzie mentioned Te Tatua as being 'the cradle of the tribe. 671 Mr Rameka, for his part, indicated the close association of Ngati Rauhoto with the Wairakei area. 672 Ms Clarke supported a Ngati Rauhoto connection with these areas, saying: 'The principal land blocks for Rauhoto matua are the Rangatira blocks, Wairakei, Huka falls, Tatua and Tauhara Block. 673 Ms Te Tua said that 'sub-sections' of Ngati Rauhoto-a-Tia 're-established in Tapuaeharuru' whilst 'the remaining branch' remained in Maroanuiatia. 674

As to the relationship between Ngati Rauhoto and Ngati Parehunuku (and also Ngati Kikopiri), Ms Te Tua gave a genealogy that shows the ancestor Parehunuku as descended from Tukekeru but on a different branch from Rauhotoatia. She showed Parehunuku as married to Kikopiri, and mentioned a number of places in connection with her. Among them are Kiwitahi, which she described as one of the inland tohu of Tia' (and which apparently lies

on what was to become the boundary of Te Tatua East and Te Tatua West), Pohaturoa, and 'Ongarato – Whakamaru maunga iti'. 676

We note that, with the exception of Tauhara, all the areas referred to above seem to lie within the great curve of the Waikato River as it sweeps firstly north-east and then around to the west after leaving Lake Taupo.

Ngati Tutemohuta: Ngati Tutemohuta are a hapu of Ngati Tuwharetoa. An important ancestor for Ngati Tutemohuta is Pakira, who was the great-great-grandson of Tuwharetoa (from his third wife, Hinemotu) – although another genealogy also shows a descent line from Kurapoto. 677

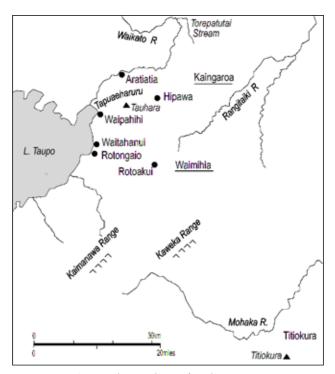
Pakira's main place of residence was Opepe at the foot of Tauhara maunga and, as noted earlier, it was here that he married Hinearo as part of a peace pact between Tuhoe and Ngati Tuwharetoa. Ngati Tutemohuta point to his inclusion in the peace negotiations as a sign of his authority in the north-east Taupo area. 99

Then, according to evidence presented to us, Pakira established his eastern boundary at Titiokura near the Mohaka River – a boundary which was, we were told, set in conjunction with Ngati Hineuru. 680

The first son of Pakira and Hinearo was Tutemohuta I, who in turn married Pareawa. Tutemohuta and Pareawa had four children: Kurakaiata, Rangikapipi, Tore, and Hinearo II. 681 We were told that: 'In line with local tikanga, the manawhenua was vested in Te Rangikapipi being the tuakana and his descendants'. Revertheless, the importance of Kurakaiata, a daughter but the eldest offspring, was also stressed to us. From these four offspring are descended the four karanga hapu of Ngati Tutemohuta, namely Ngati Hineure, Ngati Hinerau, Ngati Te Urunga, and Nga Uri o Kurakaiata.

In time, Rangikapipi married Hinepare and they had a son also named Tutemohuta. The kin group of Ngati Tutemohuta, we were told, takes its origins from Te Rangikapipi's father (Tutemohuta I) and his son of the same name (Tutemohuta II).⁶⁸⁵

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



Map 2.39: Ngati Tutemohuta - places referred to

Tutemohuta and his descendants established settlements at Tapuaeharuru, Hipawa, Waipahihi, Waitahanui, and Rotongaio, all of these being around the eastern side of Lake Taupo. Many of the settlements were on the lake shore, where they could take advantage of the lake's resources, but the people would move inland to forest areas during the winter. Thus there were also kainga at places such as Waimihia and Rotoakui, and in Kaingaroa. Rotoakui, and in Kaingaroa.

According to Mataara Wall, the takiwa of Ngati Tutemohuta is defined as being:

from the outlet of the Waikato River down river to the Aratiatia rapids following a straight line to Mount Titiokura (just east of the Mohaka River near Te Haroto) then along the ridge of the Kaweka Range and the Kaimanawa Range to the Tongariro River catchment area down the Tongariro River to Lake Taupo and back north to the outlet of the Waikato River.⁶⁸⁸

In their evidence, Ngati Tutemohuta mention the particular importance to them of Tauhara maunga, the Waikato River, and the Waitahanui River – the latter, they say, being named after Waitaha-ariki-kore, the grandfather of Tuwharetoa. They also refer to the Torepatutai Stream, near their northern boundary, which was named for the patupairehe (spirit person) who diverted the Waikato River westwards at that point. In addition to these areas, we note their mention of having had seasonal kainga in the Kaingaroa area, so as to take advantage of resources there, especially during the winter.

Ngati Hineure: As noted already, Ngati Hineure are one of the four karanga hapu of Ngati Tutemohuta. ⁶⁹²

Tore, the daughter of Tutemohuta I and Pareawa, had two husbands, the first being Poheua. From this marriage was born Hinewaka, who in turn became the mother of Hineure. ⁶⁹³

A witness to our inquiry, Pine Nicholls, told us: 'All members of Hineure are able to whakapapa and affiliate to Hinerau, but the reverse does not apply.'694

According to other evidence presented, Ngati Hineure and Ngati Hinerau became associated mainly with the area around Waipahihi. ⁶⁹⁵

Ngati Hinerau: Ngati Hinerau is another of the four karanga hapu of Ngati Tutemohuta, comprising descendants from the second marriage of Tore (daughter of Tutemohuta I and Pareawa). Tore's second husband was Kange, and from this marriage came Te Mata, who married Hinerau I. They in turn had Pareteko, who had Rore, who had Hinerau II.

As noted above, together with Ngati Hineure they became largely associated with the Waipahihi area. ⁶⁹⁷

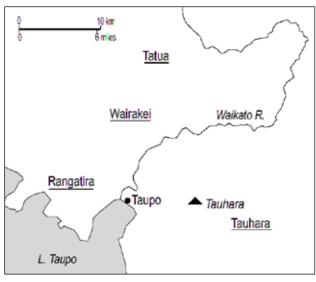
Ngati Te Urunga: We have already mentioned Te Urunga, who, as a child, was rescued by his mother Rauhoto when she swam across Lake Taupo supporting him on her shoulders. When he grew to manhood, he married Hinearo II, the daughter of Tutemohuta. Together they had four children: Okore, Piritoka, Hineiao, and Whenua.

HE MAUNGA RONGO

witness explained that three of these names were given to commemorate different aspects of Rauhoto's epic swim: Te Kore (Okore) because there was no moon, Piritoka after the rock to which she had clung, and Whenua for the land beneath her feet at the end of her crossing.⁷⁰⁰

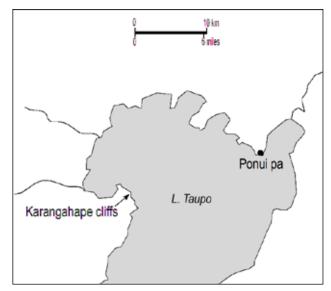
At the end of the nineteenth century, Ngati Te Urunga witnesses were appearing in the Native Land Court in relation to lands around the northern side of Lake Taupo, particularly in the Rangatira, Wairakei, Tatua, and Tauhara areas.⁷⁰¹

Ngati Te Urunga are another of the four karanga hapu of Ngati Tutemohuta.⁷⁰²



Map 2.41: Ngati Te Urunga - places referred to

Ngati Tutetawha: According to witnesses from the Tauhara area, the ancestor Tutetawha was the son of Te Rangiita and he married Hinemihi, who was a younger sister of Pakira's first wife Hinearo I (Pakira being the father of Tutemohuta). They note that the kin group also have another link to Ngati Tutemohuta in that Tutetawha's offspring Te Ranginohopuku married Okere, the grandchild of Tutemohuta through his youngest daughter, Hinearo II.⁷⁰³



Map 2.40: Ngati Tutetawha - places referred to

From Sir John Grace's book Tuwharetoa, however, it would seem that there were two chiefs by the name of Tutetawha. The Tutetawha who married Hinemihi was Tutetawha I, a son of Taringa (who was a grandson of Tuwharetoa), and he lived at Rotoaira with his brother Te Rapuhoro. Shortly after their marriage, the couple moved, along with Te Rapuhoro, to Motutara, a pa situated near the Karangahape cliffs on the western shore of Lake Taupo. They had four children, the oldest of whom was Te Rangiita, who in turn married Waitapu and had Tutetawha II.704 Grace does not record anything about the latter having a wife or family, but mentions him living for a time at Rangatira (and specifically at Hapuawai, not far from Ponui Pa on Rangatira Point).705 A witness in our inquiry, though, told us that Tutetawha II married two sisters, Rauhoto-a-Tia and Numanga, and said that it is the descendants of the latter union who are now known as Ngati Tutetawha.706

According to Grace, Tutetawha II died in battle near Karapiro, in the Waikato, although his head was later recovered and buried in a cave on the slopes of Maunganamu 'just southward of Tokaanu'. (We note, however, that

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

there is a second Maunganamu, with a cave, shown on a map submitted by Ngati Tutemohuta. This Maunganamu is about halfway between Tauhara and Waitahanui.)⁷⁰⁸

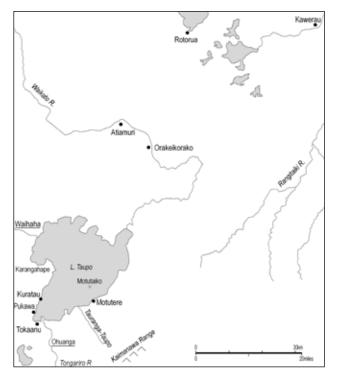
According to a Ngati Tutemohuta witness, Ngati Tutetawha split into two groups. One of these groups lived 'in the Rauhoto area', while the other 'established interests in the southern portion of Lake Taupo because this was the area where Tutetawha resided'.⁷⁰⁹ Another Ngati Tutemohuta witness also mentioned Ngati Rauhoto and Ngati Te Rangiita having 'close links' with Tutetawha 'from southern Taupo' but without being more precise as to any geographic location.⁷¹⁰

Southern Taupo

While information pertaining to Ngati Tuwharetoa clearly relates to the Taupo area as a whole, the ariki line is based at the southern end of the lake and it was there that the leadership chose to give its main evidence for Ngati Tuwharetoa as an iwi. There are, in addition, kin groups that identify more particularly with the southern part of the Taupo district.

Ngati Tuwharetoa: As already noted, the ancestor Tuwharetoa spent most of his life in the Kawerau area and had numerous offspring there by his three wives. By his first wife Paekitawhiti he had Manaiawharepu and Rongomaitengangana. It was from Manaiawharepu, his eldest daughter, that the ariki tapairu (senior first-born female) line subsequently descended – a line invested with a special tapu but which came to an end with Rangiamohia, of whom Arthur Grace spoke during our hearings.⁷¹¹ His eldest son, Rongomaitengangana, in turn had two sons of his own, Tutapiriao and Whakatihi.⁷¹² Tuwharetoa's other two wives were Te Uiraroa and Hinemotu. From Te Uiraroa he had five children, and some eight or nine from Hinemotu.⁷¹³

Some of the exploits of Tuwharetoa's children and grandchildren have already been discussed in our section on Ngati Tuwharetoa ki Kawerau and we will not repeat those here. In sum, though, and as recounted to us by a



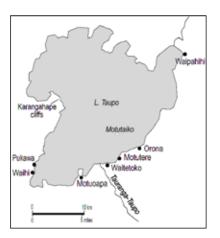
Map 2.42: Ngati Tuwharetoa - places referred to

number of witnesses, Ngati Tuwharetoa were beginning to move down into the central plateau area, in the footsteps of their ancestor Ngatoroirangi.⁷¹⁴

By the next generation after that, two great-grandsons of Tuwharetoa, Tutetawha and Te Rapuhoro, were living at Rotoaira – although they subsequently moved to Motutara, at Karangahape on the western shore of Lake Taupo.

At around the same time, Turangitukua, a great chief of Ngati Tuwharetoa, was engaged in fighting nearby in the Ohuanga area, having 'led a taua from Kawerau to settle an uprising by Ngati Hotu'. With him were the chiefs Waikari, Ruawehea, and Tutewero. Hinemihi, a daughter of Waikari, had meanwhile married Matangikaiawha II (son of Te Umuariki, mentioned earlier, and therefore partly of Ngati Tuwharetoa descent) who was living in the Rotoaira area. However, when he ill-treated her she fled to

HE MAUNGA RONGO



Map 2.43: Ngati Tuwharetoa – places referred to

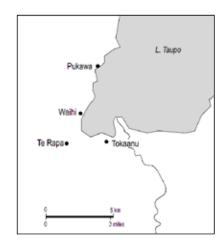
find her father who, along with the other Ngati Tuwharetoa chiefs, decided to seek revenge. The mission was successful and Matangikaiawha was killed, although Tutetawha and Te Rapuhoro, who became involved in separate but related action, lost their lives.⁷¹⁵

But the battles with Ngati Hotu were still not over, and Turangitukua sent to Ngati Tuwharetoa at Kawerau for reinforcements. A strong force arrived under the leadership of Tutewero, who brought with him the tribe's protecting atua Rongomai (which, as we have seen, had been the personal protector of Ngatoroirangi). A new pa was constructed at Te Hemo (near the site of the present Tongariro River bridge), and Rongomai was taken there for safekeeping. The chiefs staged a two-pronged attack on Ngati Hotu, with Turangitukua leading one force and Waikari the other. The strategy was successful and the end result was that Ngati Tuwharetoa 'completely conquered Ngati Hotu and established their mana in Taupo.716 Turangitukua settled in the lands around Tokaanu (and was entrusted with the guardianship of Rongomai), while Waikari had a stronghold named Horotanuku (or Korotanuku) on the lakeshore at Tauranga Taupo, and Ruawehea was associated with Pukawa.717

Then some people of Ngati Tama came to settle on the western shores of Lake Taupo, building three pa around Waihaha. By this time, Ruawehea was the paramount chief and he had strongholds at Karangahape, Pukawa, Tokaanu, and other places around the lake. Ngati Tama at first paid tribute to him but later rebelled against his authority and killed him. A Ngati Tuwharetoa taua set out under Rakeipoho and Taringa (Ruawehea's younger brother) to avenge Ruawehea's death. Waikari and the young Te Rangiita were also with them. Many of Ngati Tama were killed and most of the rest fled to Atiamuri and Orakei Korako, later to continue on to Rotorua.⁷¹⁸

Te Rangiita was to become one of the most renowned warriors of Ngati Tuwharetoa. He had pa at Whakaangiangi and Motutere on the eastern lakeshore, and on Motutaiko Island.⁷¹⁹ We note here that Motutaiko became a sacred burial place for Ngati Tuwharetoa, and that they have a tradition which says that it is connected with the Horomatangi Reef beneath the surface of the lake and not far from Motutaiko, and from there to 'the underworld, which links our lake with the volcanic passage from Hawaiki'.⁷²⁰ Ratana Wall described it as the resting place of chiefs.⁷²¹

We have already mentioned that when Te Rangiita became paramount chief of Ngati Tuwharetoa, the position of upoko ariki remained with his relative Te Rangitautahanga. In Sir John Grace's opinion, it was from around this time that Ngati Tuwharetoa 'began to feel itself evolving into two divisions: those people occupying the northern half of Taupo under Te Rangiita, and that



Map 2.44: Ngati Tuwharetoa – places referred to

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

section of the tribe living in the southern part under Te Rangitautahanga and his chiefs.'7²² Te Rangitautahanga, son of Turangitukua, was, we note, descended from Tutapiriao (Rongomaitengangana's older son), while Te Rangiita was descended from Whakatihi, the younger son.'7²³

When Te Rangiita died, his chiefly role passed to Tamamutu.⁷²⁴ Tamamutu was the oldest son of Te Rangiita and had been sent by his father down to the eastern shores of Lake Taupo, to hold Motutere, Waitetoko, and Whakaangiangi at Tauranga Taupo.⁷²⁵ He was renowned for his oratory and a number of his poetic phrases have survived to the present time. He is also remembered for his bravery, and fought many battles against tribes from Whanganui, Te Arawa, and Hawke's Bay.⁷²⁶ We were told during our inquiry that when he passed away, a major canoe belonging to him was sunk in the middle of Lake Taupo, midway between Waihi and Waipahihi.⁷²⁷

Tamamutu's chieftainship then passed to his son Kapawa. After that came Kapawa's son Meremere, and then Meremere's son Te Rangituamatatoru. It was in the time of Te Rangituamatatoru that Ngati Tuwharetoa were attacked by Tuhoe at Orona (Hallet's Bay), after which the tatau pounamu at Opepe was concluded.⁷²⁸ Te Rangituamatatoru was buried on Motutaiko.⁷²⁹

Meanwhile, two generations before Te Rangiita, Rongomaitengangana's great-great-grandson Tunono had become both upoko ariki (being on the senior male descent line down through Tutapiriao) and paramount chief. He married Te Rangihuruao, a woman of very high rank, and they had a son, Turangitukua. According to Sir John Grace: 'This son had four children whose descendants became the most senior of all Ngati Tuwharetoa lines in Taupo'. They were Hingaia, Te Mahaoterangi, Te Rangitautahanga, and Hinerangi. It was Te Rangitautahanga who would assume the chieftainship on the death of his father.'⁷³⁰

Te Rangitautahanga had three wives. By the first he had a son, Te Rangikahekeiwaho, and by the second a daughter, Te Waiparemo. The latter, Sir John Grace says, was his favourite and when she married Manunui, son of Te Rangiita, he gave her large tracts of land about Pukawa and presented



Te Heuheu Tukino II Mananui (seated) and his brother Iwikau who became Te Heuheu Tukino III. Detail of a watercolour by George French Angas, 1847.

Manunui with the war canoe Te Reporepo, 'flagship of the Ngati Tuwharetoa fleet of war canoes'. He also bestowed on Manunui 'the mana of Ngati Tuwharetoa', and gave him custody of the tribal atua, Rongomai. Sir John Grace goes on to say, however, that '[a]lthough the mana was given to Waiparemo and her husband, the position of senior or upoko ariki remained with the elder brother, Te Rangikahekeiwaho, and descended with the senior of his line'. The descendants on Te Rangikahekeiwaho's line would later become known as Ngati Kurauia and Ngati Turangi[tukua].⁷³¹

HE MAUNGA RONGO

Some four or so generations later, in the time of the chiefs Tauteka I, Wakaiti, and Hereara, the internal alignments of Ngati Tuwharetoa kin groups had apparently begun to shift from a north-south configuration to an east-west one. And although, as noted above, peace had been made with Tuhoe, pressures were being exerted from the north-west. It therefore became important to find a chief of high rank who could keep the various hapu of Ngati Tuwharetoa united.⁷³²

From the time of Turangitukua, it had become the custom of the senior chiefs of Ngati Tuwharetoa to choose from among the high-born men of the iwi a paramount chief and a war leader. They put forward five candidates for a single leader who could fulfil both roles and it was finally Hereara (sometimes shortened to Herea) who prevailed. He became Te Heuheu Tukino 1.⁷³³

In the next generation, the work was continued by Hereara's son Mananui, who made it his responsibility to 'end tribal hostilities to the south and build tribal alliances'. By a process of 'the exchanging of precious tribal heirlooms, realigning tribal boundaries, and the strengthening of bloodlines by arranged marriage over three generations', the objectives of Hereara and Mananui were achieved. 734 At the time of the signing of the Treaty of Waitangi, it was Mananui who was leader of Ngati Tuwharetoa. He lost his life in 1846 when his village of Te Rapa was engulfed in a landslide, and was succeeded by his brother Iwikau. 735 When Iwikau died in 1862, the mantle passed to Mananui's son Horonuku, and in due course to Horonuku's son Tureiti. The present-day ariki, Tumu Te Heuheu Tukino VIII, is the great-grandson of Tureiti. 736

Taking into account all the different hapu in both the northern and southern Taupo areas (and indeed beyond our inquiry boundaries), it will be appreciated that Ngati Tuwharetoa as a whole came to have interests over a vast area. Tuatea Smallman told us that they are tangata whenua in:

a vast area stretching from Pohaturoa in the north, across to Kaimanawa in the east, and then south towards the Ruahine range, encompassing portions of Ngati Raukawa and then following the Rangitikei River back up to Ruapehu Maunga and westwards towards the Whanganui River and Manunui, and thus completing the journey back to Pohaturoa.⁷³⁷

In Native Land Court hearings, they claimed a similarly vast area stretching out on all sides of Lake Taupo, which would become known as the Tauponuiatia Block. A map of that block is included in chapter 6.

Ngati Hine and Ngati Rongomai: According to the evidence presented to us, Ngati Hine and Ngati Rongomai are Tuwharetoa hapu who whakapapa to Tutemohuta – their ancestor, Rangataua, being four generations descended from Tutemohuta r's eldest son, Te Rangikapipi.⁷³⁸

The name Ngati Hine, we were told, derives from two different women, Hinekura and Hinewaka. However, when a dispute broke out between their descendants, the decision was taken simply to use the name Ngati Hine. The name Ngati Rongomai, on the other hand, is said to derive from the name of the atua Rongomai.

It was stressed to us that Ngati Hine and Ngati Rongomai are 'closely related to and descend from Tutemohuta' and we were told that they 'have interests in land blocks south of Waitahanui . . . mainly in the Hautu blocks'.⁷⁴¹

As we have seen above, Sir John Grace makes mention of the atua Rongomai – personal protector of the ancestor Ngatoroirangi – which was handed down into the safekeeping of various chiefly descendants, including Te Rangitautahanga and his son-in-law Manunui (son of Te Rangiita and brother of Tutetawha II).⁷⁴² He also refers to a 'Ngati Tuwharetoa sub-tribe' by the name of Ngati Rongomai. However, he mentions them living at 'a pa called Te Umukawau, situated on what is now known as the Okahukura block' (west of Tongariro) and does not give any information that would link them either with the atua Rongomai or with Ngati Rongomai as described by the witnesses in our inquiry.⁷⁴³ Mr Stirling likewise mentions a (Tuwharetoa) Ngati Rongomai only

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND



Map 2.45: Ngati Hine, Ngati Rongomai - places referred to

in connection with areas such as Okahukura, outside our southern boundary.⁷⁴⁴

Dr Ballara, for her part, links them with Ngati Rakeipoho and Ngati Hikairo, with whom, she says, they dominated an area stretching from Hautu down to the Rangipo Plains and across to Taurewa. She states that at the time of Rakeipoho they all went under the name of Ngati Rongomai, and thinks that it may have been used as a collective name for all the descendants of Tuwharetoa who moved inland to Taupo from the coastal Bay of Plenty. She notes the name may be related to that of Rakeipoho's elder brother, Rongomaitengangana, but thinks a more likely origin is from Rongomai, who was a descendant of Toi and an ancestor of Tuwharetoa.⁷⁴⁵

Ngati Hikairo: There appear to have been several different ancestors by the name of Hikairo.

Te Heuheu Tukino, giving evidence to the Native Land Court in 1904, described Hikairo as having come from the Waikato or Kawhia and having married two Ngati Tuwharetoa women, Puapua and Tatara, both descendants of Rakeipoho.⁷⁴⁶ There are those within Ngati Hikairo who adhere to a Waikato or Maniapoto origin.⁷⁴⁷

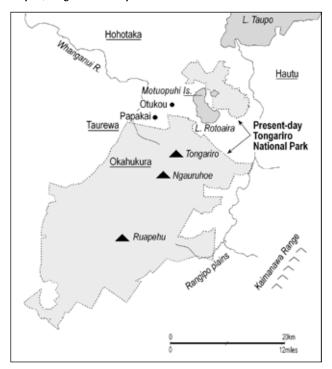
Alternative genealogies show Hikairo as being of Te Arawa, and descended from either Tamatekapua or Tia. Others of Ngati Hikairo adhere to this origin, and one witness added a reference to Hikairo also being a nickname for Ngatoroirangi. ⁷⁴⁸

The same witness also noted, but discounted, the possibility of Ngati Hikairo being descended from Hikairo of the Mahia Peninsula or Hikairo of Ngati Rangiwewehi.⁷⁴⁹

Mataara Wall, a witness for Ngati Tutemohuta, told us his understanding was that 'Hikairo, the ancestor, was from the Whanganui area and is not a Tuwharetoa tipuna'.

Most of the evidence appears agreed, however, on Hikairo having married Puapua, who was descended from Rakeipoho, oldest son of Tuwharetoa. ⁷⁵¹ Witnesses also agree that it was through Puapua that Hikairo and his

Map 2.46: Ngati Hikairo - places referred to



HE MAUNGA RONGO



This watercolour by George French Angas of 'Motupoi Pah', dated 1844, most likely depicts Marai-i-puka Pa on Motuopuhi Island, Lake Rotoaira.

descendants came to have interests in the Taupo area. Jock Barrett told us: 'Hikairo acquired his land through his wife Puapua', and Wiparaki Pakau also stated that: 'Hikairo did not have mana whenua within the Taupo nui a Tia rohe, only mana tangata. His wife held mana whenua and the descendants of this union held mana whenua.'

Traditions also differ about the whakapapa after Hikairo. About four or five generations down from Hikairo and Puapua came Pakau. Some Ngati Hikairo witnesses believe that this ancestor's full name was Pakaurangi; others say that Pakaurangi (or Pakau II) was in fact a grandson of Pakau. The next generation, genealogies generally show Te Maari as a daughter of Pakau I (or Pakaurangi), but in some versions she dies young and without issue, whereas other versions show her as marrying Tukaiora, a Whanganui chief with interests in the southern Okahukura area (in what was to become the Tongariro National Park). The southern Okahukura area (in what was to become the Tongariro National Park).

being a daughter of Te Wharerangi, whom we shall come to shortly.⁷⁵⁵ (This may be a different Te Maari.)

The whakapapa that mentions Te Maari being married to Tukaiora also mentions a brother, Te Peau, and a sister, Te Marawa, married to another Whanganui chief by the name of Te Waitakaroa, who had a pa on the Hautu block. This whakapapa refers to Te Wharerangi as the *son* of Te Maari and Tukaiora. ⁷⁵⁶

Again, some whakapapa versions show Te Rangihiroa (a fighting chief killed at Omaranui in 1866) as a brother of Te Maari; others do not mention him at all. Alec Phillips commented that 'Te Rangihiroa is the main Hikairo chiefly line for half of us of Ngati Hikairo. Other people follow the Te Wharerangi line as the chiefly line?"

There are also different traditions about Te Wharerangi. Most refer to him as a Ngati Hikairo chief, but one witness told us he was a chief of his father's hapu (who was, as mentioned above, from the Whanganui area).⁷⁵⁸ Be that as

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

it may, the evidence points to Te Wharerangi being closely associated with Lake Rotoaira, and particularly with Marae-i-puka pa on Motuopuhi island. This is reflected in the following pepeha, versions of which were given by more than one witness:

Ko Tongariro te maunga Ko Rotoaira te moana Ko te Wharerangi te tangata Ko Hikairo te iwi.⁷⁶⁰

We do note, though, a reference to him possibly living for a time at Motutaiko Island in Lake Taupo, and we also note that Sir John Grace refers to the people living in the 'Motuopuhi pa' as being 'of Ngati Waewae, Ngati Wi and Ngati Tama'.⁷⁶¹

Te Wharerangi married Rangikowaea (or Rangikoaea), a descendant of Te Rangitautahanga of Ngati Tuwharetoa, and together they had Matuaahu.⁷⁶² Te Wharerangi died in 1829 when Ngati Maru attacked the pa on Motuopuhi.⁷⁶³

Dr Ballara associates Ngati Hikairo (along with Ngati Rakeipoho and Ngati Rongomai) with the 'Hautu, Papakai, Taurewa and Okahukura districts west and south of Taupo to the Rangipo plains', most of which lie outside our inquiry region. This largely accords with other evidence presented, although one witness indicated an association with the Kaimanawa area as well, commenting that 'Ngati Hikairo have interest in the Hautu and Kaimanawa blocks through whakapapa, marriage and occupation.' Another witness summarised the area in which Ngati Hikairo came to have interests as being somewhat larger:

from Tongariro up towards the Kaimanawa Ranges. Then back up to somewhere behind Korohe and then back to the island in the middle of the Lake Taupo, the little island straight out from Waihi. The area then included Waihi and right down towards Hohotaka and Terena and back round through to National Park.⁷⁶⁶

Taupo area summary

Much of the Taupo district was occupied by early populations who subsequently mingled with, and became one with, those of waka descent. In some cases, the earlier populations moved on; in other cases they intermarried with the new arrivals. Many of those in the district can trace descent from Tuwharetoa. Kin groups that identify with Ngati Tuwharetoa tend to belong to one of two groupings: the Hikuwai hapu at the northern end of the lake or the Mataapuna grouping at the southern end.

SECTION 3: RELATIONSHIPS WITH LAND AND RESOURCES

The transmission of customary knowledge and traditions

The oral traditions of the central North Island form part of a particular customary landscape and intimately link the people of the area with their natural surroundings. This is doubtless why such stories have been handed down from generation to generation as treasures worthy of preserving.

During hearings, we learned something of the mana that was acquired by those of past generations who attained a reputation as skilled and learned tohunga. We were told, for instance, of Ngatoroirangi's renown as a 'priest of the highest order of learning', someone who 'knew the powerful rites of Tuamatua (or Atuamatua) in Hawaiki.'⁶⁷ We were told that, added to his ariki status as 'the first-born of the first born, that is to say, his father Rakauri was the first born of Tuamatua, the offspring of the Heketanga-rangi or "Descendant of Heaven", his knowledge, skill, and learning ensured that he was regarded with an awe that has plainly been transmitted down through the centuries.⁷⁶⁸

We were also told of a nationally and tribally significant whare wananga, Miringa Te Kakara, that was formerly located in the western Taupo area, at the foot of Pureora mountain. The knowledge taught here in the 1800s to those of Ngati Tuwharetoa, Ngati Raukawa, Ngati Rereahu, and Ngati Maniapoto had been passed down carefully for generations. ⁷⁶⁹ Similarly, evidence was given of another kura

HE MAUNGA RONGO

wananga at Moturoa, an island located in Lake Rotoiti Paku.⁷⁷⁰ There were doubtless others.

An interrelationship between the human, natural, and spiritual

In endeavouring to explain to us what might constitute 'a Maori world view', Chris Winitana grounded his discussion firmly in the spiritual and the divine:

Our worldview shows that mankind is descended from lo-the-supreme-being, though Rangi-the-sky and Papa-the-land, through their offspring and Hineahuone-the-earth-formed-woman, as well as Tikiahua and Tikiapoa spiritually advanced beings who chose to live in the Ultimate Reality Of Te-ao-i-tua-o-rangi-the-world-hereafter.⁷⁷¹

A Ngati Tuwharetoa perspective on creation describes how from Io came Hani and Puna, the male and female essences. Offspring of Hani and Puna include marine and freshwater creatures and some of the things that live upon the land. There also evolved Ranginui (Rangi), the sky father, and Papatuanuku (Papa), the earth mother. From these were born many beings, which Mr Winitana described as 'overlord caretakers of all the natural domains from land to forest to sea to air'. Some of their names are well known, others less so. Kepa Ehau, in his personal genealogical records, listed some of them, including: Tumatauenga, ancestor of humankind; Haumiatikitiki, ancestor of the fernroot; Tangaroa, ancestor of fish; Tanemahuta, ancestor of trees; and Tawhirimatea, ancestor of the wind. There were many others.

From the children of Rangi and Papa also came various forms of flora and fauna and other elements of the natural world. Thus, again in the words of Mr Winitana:

In our worldview framework, the natural elements of wind, air, water and fire along with the diverse forms of nature are our kith and kin; we were each born, as evidenced by our genealogy, of the same primal parents Rangi and Papa and through their children.⁷⁷⁵

For instance, Tanemahuta is regarded as having authority over the forests (and over birds), and trees are regarded as his children. Trees must therefore not be felled without first obtaining permission from Tane. A failure to do so is likely to be met by the rebuke: 'Kei te raweke koe i to tipuna i a Tane' (You are interfering with your ancestor Tane). This saying reminds the offender that Tane is ancestor of humans as well as trees, and that all life is inter-related.⁷⁷⁶

A similar sentiment was expressed by Sean Ellison, who said: 'We are the land and sea, and the land and sea is us.'⁷⁷⁷ Tamati Kruger put it like this: 'Ko te wai te toto o te whenua, a, ko te whenua te toto o te tangata' (The river is the blood of the land, the land is the blood of mankind).⁷⁷⁸

A traditional Maori belief in the living nature of the physical environment is conveyed in some measure by stories such as those attached to the various mountains and rivers of the North Island. We learned, for example, how Tongariro, Taranaki, Tauhara, and Putauaki are all said to have vied for the affections of the beautiful Pihanga, and that when the contest was won by Tongariro, the other mountains were forced to depart.⁷⁷⁹ (In the Ngati Tutemohuta version, they add the poignant detail that because Tauhara, their maunga, was Pihanga's first love, he continually looked back at her as he went and this slowed him down, so that he did not get very far. For that reason, he is still situated near Lake Taupo today. They also speak of Maunganamu, near Tokaanu, and Motutaiko Island as the children of Pihanga and Tauhara.)⁷⁸⁰

Other areas have their traditions, too. We learned of Maungapohatu disagreeing with her husband, Maungakakaramea, over which direction they should travel. Unable to resolve the matter, Maungakakaramea stayed put while Maungapohatu went off to the east. Then there is Moerangi, located between Lake Tikitapu and Whakarewarewa, who is said to be the wife of Ngongotaha on the western shore of Lake Rotorua.⁷⁸¹

Similarly, we learned of a race between the Waikato and Rangitaiki Rivers, where the intervention of Torepatutai, a spirit person, led to the Waikato being forced off course in a westerly direction.⁷⁸²

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

As Mr Kruger observed: 'My ancestors say in the time when mountains could roam, the waters would converse.' 783

Another witness likened the central North Island to the beating heart of the Fish of Maui, with the rivers as the circulatory system:

Those rivers that flow off our maunga are like the arteries of Papatuanuku, the earth is our body... If you put a dam on the river it interferes with the flow of the water, it is an obstacle that clots the flow of blood through the arteries of mother earth.⁷⁸⁴

There are many other intimate connections between the human and the natural worlds that were conveyed to us in evidence. Mention has already been made of how Ngatoroirangi is credited with having brought thermal energy to the central North Island. As the reader will recall, tradition recounts that he called on his sisters to send the sacred fire from Hawaiki, and its passage is marked by the line of volcanoes and geothermal areas running from Whakaari (White Island) to the mountains of the central plateau.⁷⁸⁵

We were also told how the same tupuna, Ngatoroirangi, introduced native fish to Lake Taupo by plucking feathers from his cloak and releasing them into the water. One of these took the form of a koaro which survived and multiplied. The other transformed into a tuna (eel), but it swam only for a brief moment before it died – thus explaining the absence of tuna in the lake.⁷⁸⁶

In a tradition about the Waikato River, a woman named Taupiri was sought in marriage by a chief from the Tainui people. When she fell ill, she sent a messenger to her old friend Tongariro, back in the Taupo area where she had grown up, and asked him to send her healing water from a secret spring there. His response was to use his powers to turn the spring into a rushing river that eventually found its way to Taupiri and on to the sea.⁷⁸⁷

The significance of the Waikato River is also reflected in a Ngati Tuwharetoa proverb that says: 'So long as the Waikato river flows from Nukuhau so will the life force



Maungakakaramea, or Te Tihi o Ruru, Waiotapu 1888. Charcoal sketch by Gilbert Mair.

flow from Chieftainesses of Tuwharetoa.⁷⁸⁸ This is a reference to the story, quoted earlier, about Waitapu's refusal to give up hope of producing a son.

Mr Ellison told us how 'every whanau, every hapu, and every iwi have their own stories', and he went on to explain how such traditions are transmitted in a more modern context:

Those stories lie within, and are retained by, the songs, the dances, the legends, the genealogies, the prayers, the lore and teachings, the land, the artwork, the carvings, the ornamental lattice work, the painted patterns, the houses, the marae, the customary practices, and the people.⁷⁸⁹

We also note the emphasis placed on the cultural role of resources. Cathy Dewes, for example, remarked on the loss of knowledge about rongoa: 'herbal remedies that our people used and the knowledge of which we have since lost.' Jim Biddle mentioned the loss of knowledge of tikanga associated with the taking of kereru, after that practice became illegal under New Zealand law – wryly observing in passing that no similar sanction was placed on the destruction of the kereru's habitat by companies involved in exotic forestry. Dennis Curtis likewise commented

HE MAUNGA RONGO

on how difficult it is to practise traditional carving when there are 'regulations which override and undermine [the] mana and kaitiakitanga which have regulated this practice for hundreds of years'.⁷⁹² Heitia Raureti, too, observed that alienation from traditional mahinga kai, ngahere, and so on meant that much traditional knowledge associated with them had been lost.⁷⁹³ And loss of knowledge is something that Ngati Tuwharetoa stressed in an issues statement they made in relation to a resource consent proposal in February 2001:

When the places we knew and understood were changed or lost . . . we lost the resources that we associated with that place. But more importantly, we lost our *karakia*, and the connection with our *tupuna* reflected in the *whakapapa* that underpin the *karakia*. The *karakia* are still known, but their special significance, their cultural context, has been lost.⁷⁹⁴

In an increasingly secular, postmodern, and individualistic world, it is perhaps difficult to apprehend how different the whole framework of Maori existence must once have been. We can still catch resonances of it, but much has changed. Mr Winitana's view was that 'the land and resource based practices have gone and with them the custom'. He estimated a loss of some 80 per cent of traditional knowledge as a result of land and resources having been alienated and went on to observe: 'We have a less than 20% understanding of our own worldview, which gives rise to our values, which gives rise to our customs'. Ms Dewes attributed the loss directly to colonisation, saying: 'our values, beliefs and way of life were incrementally replaced with those of the colonisers'.

Nevertheless, it is clear to this Tribunal that many Maori do retain a distinct perspective on a wide range of issues. Perhaps more importantly, we suspect this has often led to the Crown and Maori talking past each other.

Land and resources as part of identity

From the evidence before us it is obvious that, to Central North Island Maori, land and resources had (and have) a spiritual and metaphysical significance that often go to the essence of tribal and personal identity. They are also a link with the past that roots people in their environment. For example, speaking of the geothermal resource, Dame Evelyn Stokes commented that: 'Ancestral connotations of specific geothermal features reinforced the identity of people and the places where they lived.'⁷⁹⁷ Different evidence seems to show that the same was true of other features. Mr Winitana told us: 'Through our ancestors we connect to the physical places and spaces in the here and now.'⁷⁹⁸ And Hone Cassidy explained:

You begin to gain an appreciation of words like AHUA (feeling) and WAIRUA (spirit), and why we feel the strong ties that we do to the lands that our ancestors once lived on. The lands that our ancestors cared for and respected. The lands that have, for generations, sustained and nurtured our people.⁷⁹⁹

It is an attitude of mind that did not go unremarked by one nineteenth-century traveller in the central North Island:

When travelling with them [local Maori], another interesting fact was that they seemed to take a pride in being able to define thoroughly all the natural features of their country. Each mountain and hill had its special name, and every valley and plain and river down to the smallest stream, each being called after some characteristic feature or legendary tale connected with it; whilst every tree, plant, bird, and insect was known by a designation which betokened either its appearance or habits.

As is the custom for Maori generally, physical features such as mountains, hills, rivers, and lakes are named in pepeha that are recited to establish a speaker's credentials. The import of this was memorably expressed to us by Mr Winitana when he said:

'Ko Tongariro te maunga.' - 'Tongariro is the mountain.'

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

This is the first line of the famous saying of the Tuwharetoa people. You know what it means to you; understand what it means to us:-

My Mountain, beshouldered by Tarapikau in the time of Papa-tioioi-she-who-laboured-and-gave-birth; domain of the elfin king Ririo-the-unseen protector of the boundaries; the conjurer of the blizzard wind which tested our High Priest and found him equal to your zenith; the lava-spewing mouth of Ruaimoko-the-earthquake-god; the wind-carved treasure chest who holds forever our memories in the bones of our ancestors buried in your folds; the summit of our aspirations as the highest point of land closest to the sky; the anchorage of our enlightenment as your face is bathed in the sun; the pinnacle of refinement from broad base to top-knotted head; the capturer of our breath as the windgod cleanses our soul; my mountain, my elder, my permanence as I am not, I bow to you.⁸⁰¹

Others could no doubt have evoked similar images in relation to their own special peaks or bodies of water, and the Crown itself has acknowledged that the Maori relationship with an important resource such as water 'exists beyond mere ownership, use, or exclusive possession; it concerns personal and tribal identity.'

In this connection, while we acknowledge (and have earlier cited) instances where waterways featured as boundary markers, we note how often significant lakes and rivers are at the heart of tribal rohe rather than at their edges. In part, of course, this reflects the importance of waterways for transport and communication and for material sustenance. Merata Kawharu commented on this in her report for Ngati Manawa, saying: 'Waterways were the highways'. Tama Nikora similarly emphasised, with regard to Ngati Haka Patuheuheu and the Rangitaiki, that the river ran through the middle of their traditional area, and the European persistence in using it as a block boundary 'did not necessarily reflect how hapu lived and worked the land: across both sides of the river'. 804

Tuatea Smallman conveyed the spiritual importance of a river such as the Tongariro when he told the Tribunal:

Tongariro is our tupuna. The river is a physical and natural embodiment of that ancestor. Its wairua (spirit) flows continuously from its mataapuna (source), our maunga (mountain) Tongariro . . . to the river mouth, out through the lake, through the Waikato River and finally to the sea. 805

Healing and spiritual aspects

Water, in particular, was regarded as having a spiritual aspect and as being endowed with healing qualities. Mr Smallman mentioned how the Tongariro River had healing powers for curing different ailments, and then mourned how the water flow had become diminished and its wairua damaged in more recent times, since the advent of the hydroelectric power schemes. So And Anthony Olsen said of Te Wai U o Tuwharetoa: 'While nurturing our bodies, it also sustained our wairua and our hinengaro.'

As an extension of this spiritual aspect of water, we were given evidence of how it was integral to many important ceremonies, such as the blessing and purification of newborn infants⁸⁰⁸ – a concept not alien to Europeans when one considers the analogous use of water in Christian baptism. Water was also used for the ritual cleansing of warriors after battle.⁸⁰⁹ The north shore of Lake Rotokawa is one particular site associated with such activity.⁸¹⁰

Water could acquire additional tapu because of the particular use to which it was put. One such instance was where a spring or stream was used for water births. We were told of a small spring in the Papamoa Range which was very sacred because all Waitaha children of rank and authority were born there. Te Hirere hot pool at Whakarewarewa was traditionally reserved for the women of the village to use after giving birth or during menstruation. Another particularly tapu use of water was for washing tupapaku (bodies of the deceased), and the bones of the dead before reburial, and in this situation the spring or entire stretch of water where the activity took place would become tapu, and it would not be used for any other purpose. Sis

HE MAUNGA RONGO

As elsewhere in Aotearoa/New Zealand, many lakes and rivers in the Central North Island are also reported as being inhabited by taniwha. For example, Tapuika refer to a taniwha by the name of Te Mapu that lived in a bend of the Kaituna River before the drainage scheme was implemented and the river straightened, and another, Tamitami, that occupied the lower reaches of the Waiari River. Others are associated with the Parawhenuamea and Pakipaki Streams. Dame Evelyn mentions the several taniwha that are associated with the Waikato River upstream of Nihoroa, and also links one of them with a ngawha (hot pool), the Ohaaki Pool. The Waitana told us of the water guardians in Lake Taupo, the most well-known being Horomatangi. Such taniwha are clearly part of tribal heritage and form part of tribal and hapu identity.

Te Ariki Morehu also mentioned spiritual guardians, saying that they exist all around Aotearoa. In particular, he mentioned two Ngati Makino guardians of coastal resources that take the physical form of a stingray and a red shark, and said: 'These guardians came from Hawaiki when Te Arawa waka journeyed here.' He also referred to another atua, Mataura, as kaitiaki of Rotoiti, saying: 'It is he who protects our lake and the environs of those who have passed before us. It is his environment that we are obligated to protect.' ⁸¹⁸

What difference is this legend to those of other cultures, such as the Loch Ness Monster? How do you of Scottish descent feel about that? Or the culture of the Chinese Dragon, the Trolls of Norway, the legend of St George and the dragon... Where is the credibility in these[,] or are my ancestors of a lesser standing?

Geoffrey Rameka brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D28), pp 9–10

We note, too, that waterways and geothermal springs are each regarded as having their own mauri, or life force. However, that mauri can be damaged or destroyed by mistreatment. As a recent example of this, Miriama Douglas said of some dried-up hot pools at Ohinemutu: 'When I walk past those areas that I can remember as a child where the pools were still full. I am saddened that the mauri of those pools has died'. She also expressed her anxiety that the mauri of still-existing ngawha, puia, and waiariki was being threatened 'by the overuse and abuse of the geothermal resource'. In the Taupo area, Dulcie Gardiner had a similar message about the diversion of the Tokaanu Stream from its natural course, saying:

It now flows through an ugly manmade concrete aqueduct that takes it in a big horseshoe shape before it returns to the original stream at the back of my house. It has completely changed it into an alien concrete environment. That has degraded the mauri of the river. 820

But it was not only land and natural elements that had a spiritual dimension. Even exchanged goods were seen as being imbued with a hau or vital essence, so that an ongoing obligation attached to the good in question. Elsdon Best recorded the following explanation provided to him by Tamati Ranapiri of Ngati Raukawa:

Suppose that you possess a certain article and you give the article to me without price. We make no bargain over it. Now I give that article to a third person, who after some time has elapsed decides to make some return for it, and so he makes me a present of some article. Now that article he gives to me is the *hau* of the article I first received from you and then gave to him. The goods that I received for that item I must hand over to you... because they are a *hau* of the article you gave me. 822

That is, the article obtained in the latter exchange represents the hau or essence of the first gift, still unrepaid. This perhaps has a bearing on the concept of takoha, where, according to Te Keepa Marsh, 'the mana of the land remains with the donor.' We will return to takoha when we look at customary law, below.

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Summary

Dame Evelyn Stokes once observed:

The relationship of people with their land was not just the economic one of food and shelter, but also a spiritual and emotional identity with place and ancestry.⁸²⁴

Sir Hugh Kawharu, too, has described the Maori relationship with 'land and the life it carried' as all-embracing. The relationship was, he said, 'a multi-faceted reflection of the values of his culture'. He also went on to say:

Land and its resources impinged on every one of his social activities, from food garnering to fighting, from regaling his guests with hospitality to propitiating his gods.⁸²⁵

These opinions have been borne out in the evidence presented to us. It is clear that to Central North Island Maori, land and resources had (and continue to have) far more than just an economic value.

We now look a little more closely at the range of resources available.

Central North Island resources and their use

One factor in determining how suitable an area was for settlement was obviously the availability of resources, and settlement patterns themselves bear silent witness to the importance of resources such as water, food sources, and the geothermal resource. We note, for example, the number of pa and kainga that were sited around lakes, and around waterways such as the Kaituna River or the Hamurana Stream, and similarly the denser habitation around geothermal sites at, for instance, the southern end of Lake Rotorua. Evidence was also presented to us that gaining ascendancy in the Rotorua lakes district in the early days meant controlling Motutapu a Tinirau (Mokoia Island); in addition to being a good strategic location, the island 'teemed with bird-life, rich flora, geothermal and fishery resources. Central North Island Maori were

totally dependent on their environment. Te Ariki Morehu expressed his thoughts on the matter as follows:

Te oranga o Ngati Makino i tera wa tae noa mai ki tenei wa kei nga one, kei nga kohatu, kei nga rimurimu, kei nga awa nga kai katoa e kohia e Ngati Makino⁸²⁸

The wellbeing of Ngati Makino from that time right up to the present time is in the earth, the stones, the seaweeds, in the rivers, all the foodstuffs gathered by Ngati Makino

That said, the evidence indicates that Central North Island Maori were adaptable: what was considered an important resource in one area may have been less so in another if there were compensating factors. For example, the area north-west of Taupo, around Pouakani, was largely sterile pumice country with a relatively harsh climate. Although bordered by the Waikato River, where koura and ducks could be caught, the main settlements nevertheless do not seem to have been located near the waterway. Rather, they were associated with pockets of forest well away from the river, which yielded good supplies of native birds, and with swamps and hot springs that provided other benefits. 829 Kin groups who chose to settle around the shores of Lake Taupo, on the other hand, placed high importance on their access to fish and koura - the latter, particularly, being much prized because of their superior size compared with those found in other districts.830

As we have also seen from previous sections, many groups were very mobile and moved from site to site, often on a seasonal basis, to take advantage of different resources around their rohe or to organise exchanges. Makere Rangitoheriri described this to us, saying:

We were a mobile people because although we had our settlements we would still travel to different whare and wharepuni to base ourselves while hunting and gathering the different types of food depending on the seasons.⁸³¹

Overall, the list of food items, materials, and other resources relied on by Central North Island Maori to sustain themselves is substantial. (See table 2.1.)⁸³² We would

HE MAUNGA RONGO

Table 2.1

Some natural resources used by Central North Island Maori



Tuna: Short-finned Eel – Anguilla australis schmidtii



Koura: Freshwater Crayfish – Paranephrops planifrons



Kaka: Nestor meridionalis



Matuku: Australasian Bittern – Botaurus poiciloptilus



Fish and crustacea tuna (eels) of different kinds

koura (freshwater crayfish)

inanga (whitebait)

koaro (galaxias brevipinnis, somewhat akin to inanga)

kokopu (another galaxiad, sometimes known as native trout)

kakahi (freshwater mussels) karehe (freshwater pipi)* toitoi (common bully)

ngorungoru^T pahore

mataitai (foodstuff from the sea, generally)

Birds ducks

kaka kiwi kakapo

kukupa and kereru (pigeons)

tui

taiko (petrels) titi (mutton birds) matuku (bitterns)

kahu weka

Other fauna kerewai (a green beetle, found in manuka scrub)

kiore (rats)

pigs (a later introduction)

Plant Products harakeke

kakaho

raupo

paopao (another type of reed)

kiekie toetoe

aruhe (fern root),

putere (raupo root)**

manuka (used for medicine and also for constructing koneke and shelters)

tahara mingimingi kaponga bark (for medicine), ††

tutu and koromiko (for medicine),^{‡‡}

makaikai/maikaika tubers (a kind of potato) kohekohe, pukeatea, rewarewa, mangeao, puriri, wharangi, kotukutuku, makomako, kaponga-mamuka, tawhero, mawa, kawakawa,

piripiri (these 13 plants all having medicinal uses) 99

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Some natural resources used by Central North Island Maori

Plant products

ti kouka shoots

(continued)

tawa, hinau, titoki, makomako, kotukutuku, rohutu, poporo, karaka, miro, tutu (berries)

moku, paretao, and pikopiko (young fern fronds)

rarauhe (bracken)***

tawhara fruit and flowers (both used for food) †††

huahua tupakihi puha watercress

cultivated plants such as kumara, hue (gourds), and taro

Timber

totara puriri tanekaha

pohutukawa kahikatea

Other materials

paru (used for dyeing fibre)

kokowai (red ochre)

sulphur (used for medicinal purposes) ###

Other natural resources

For example water and geothermal resources, which both had multiple uses, including for

spiritual purposes

Notes to table 2.1

- * Colin Tawhi-Amopiu, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D12), p 10
- † Merata Kawharu, Ralph Johnson, V Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, p 721
- Evelyn Stokes, The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources (Hamilton: University of Waikato, 2000), p 126
- Angela Ballara, 'Tribal Landscape Overview, c1800-c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 254
- ** Evelyn Stokes, Rotokawa Geothermal Area: Some Historical Perspectives (Hamilton: University of Waikato, 1994), p3
- †† David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 37
- ^{‡‡} Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 127; Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), p 12
- 55 The Ngati Makino Claim Area', CD of maps, undated (doc 849), map showing 'Rongoaa Maori located throughout forested areas'
- *** David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), pp 36-37
- ††† Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 287; David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 34
- ### Evelyn Stokes, The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources (Hamilton: University of Waikato, 2000), p127

Animal drawings by AWB Powell, plant drawings by Nancy Adams.



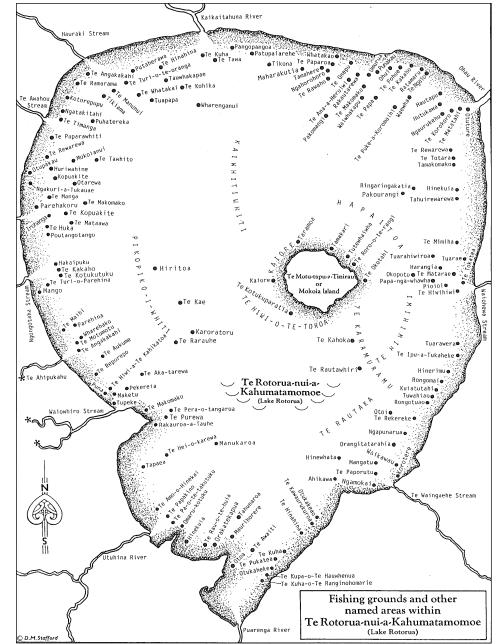


Totara: Podocarpus totara



Tawa: Beilschmiedia tawa

HE MAUNGA RONGO



Map 2.47: Named fishing grounds in Lake Rotorua. This map is reproduced with the kind permission of Don Stafford, from his book Landmarks of Te Arawa (Auckland: Reed, 1994), vol 1, where it appears as Map 40. Mr Stafford notes: 'This map has been compiled from an examination of several hand prepared originals, each of which purported to provide the same information. Each, in fact, varied somewhat in respect to certain locations, spelling and even in the number of actual sites. There will therefore be variations between this and others held in the community.'

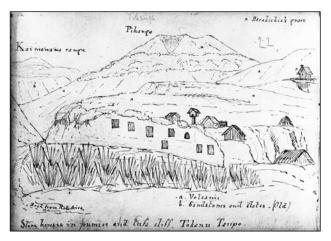
NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

observe that the list of resources in the table is doubtless far from exhaustive.

Different parts of the region became well-known for supplying prized resources. Tuna, for example, were abundant in the rivers of the Kaingaroa area and in the coastal wetlands and streams; the central North Island lakes were known for their inanga (whitebait) and koura (freshwater crayfish); while the forest around Opoutihi became renowned for the plumpness of its kiore (rats), a prized delicacy for chiefs. 833

Specific resource sites would often be given a name: this included naming individual cultivations and sometimes even particular trees. In Lake Okataina each of the best mussel beds had its own name, and in the forest adjacent to the lake, areas that were particularly prized for timber were also named. 834 In the Tuaropaki bush there were numerous named sites for catching birds, including particular trees.835 We were also told of named bird-snaring trees in the Tarawera and Parekarangi areas. 836 'Pekapekarau' was a specific eeling site belonging to Ngati Kea. 837 Numerous other examples could be cited throughout the region. Furthermore, particular sites were often species-specific. That is, people came to know precisely which locations were best for catching, say, kukupa (as opposed to any other kind of bird), or where to find particular berries such as hinau or tawa.

It is clear, too, that a detailed and sophisticated knowledge was developed over time with regard to what tools and techniques were best employed to harvest the various resources. Evidence to the Native Land Court, for example, shows that in the Tuaropaki bush, not only were important bird-catching sites named, but each was associated with a particular method of operation. Paiakapuru, for example, was the name of a particular rimu tree known as being a good location for catching birds by snaring. Mahanateahi, on the other hand, was a place where there were rata trees that attracted kaka, and here the birds were caught by spearing. Yet again, there were named sites which were waitahere – places where the birds were attracted by water and then



Methods of storing food at Tokaanu. Visible in this drawing are storehouses cut into the pumice cliff, as well as a freestanding pataka of wooden construction in the village on top of the cliff. The drawing was made by James Coutts Crawford, geologist for the Wellington Province, in the early 1860s.

snared. Sometimes, as at Kopuatahi, the water occurred naturally; in other places, as at Paengawhakarau, a bird trough would be specially carved and and then hoisted to a suitable position in a tree. Makere Rangitoheriri mentioned another such site in the bush around Mokai, named Hamutira, that had been used by her tupuna Werohia. Specially support to the support of the support

Similarly, Maori with access to lakes, rivers, and the sea developed a range of techniques for catching fish. For instance, methods employed around Lake Taupo for catching kokopu, which Suzanne Doig describes as the most important food species for people in the area, varied according to season, depth of water, and stage of life cycle:

In summer and early autumn basket nets baited with koura were set at favoured fishing grounds in deep water. In autumn and winter, bundles of fern were set and left, then lifted during the day and the kokopu gently shaken out. They could also be bobbed for in the rivers, or, most simply, gathered from the shores of the lake when cast there by westerly storms. 840

HE MAUNGA RONGO

During our hearings, Ian Kusabs and Mataara Wall added considerable extra detail about these and other methods of catching a number of different species in Lake Taupo. 841

As another example, Hapimana Higgins of Ngati Manawa gave us very detailed information about a number of different techniques developed to catch tuna, and about the range of skills and knowledge necessary – including knowledge about the influence of moon phases and weather conditions. And William Emery of Ngati Te Rangiunuora described their different methods of catching koura and freshwater fish in Lake Rotoiti (methods which are often now dying out as stocks deplete). An number of other examples were given to us.

Seasonal differences also existed from place to place. Observers have noted, for example, that in Taupo inanga fishing began in September, whereas in Rotorua it was from December onwards. ⁸⁴⁵ It is not clear whether this was to do with natural cycles, or a deliberate strategy to facilitate trading arrangements. However, the work activity was clearly planned and organised on this basis from year to year.

Caring for the cultivation or resource was also important. As but one example, we were told that in the forest around Lake Okataina, specific resource locations were cared for by different kin groups. For example, Te Rangiunuora had (and, they say, still have) kaitiakitanga of the trees in Te Haumingi, while Ngati Rongomai look after Awhiti-Reinga. The knowledge of where these places are is held by the carvers. 846

Ways were also developed of preserving foods. Dulcie Gardiner told us how pits were dug and lined with rarauhe (bracken fern) for storing vegetables. ⁸⁴⁷ Other evidence mentions tawa berries being dried on hot stones, using the warmth from hot springs beneath. ⁸⁴⁸ And pigeons or other birds preserved in their own fat were always a much-prized delicacy. ⁸⁴⁹

The development of specific knowledge included the use of natural resources for medicinal purposes. Plant materials such as kawakawa, koromiko, kotia mana, and pikopiko were prepared in particular ways for use as medicine. 850

Some geothermal resources were also used for their healing properties. The Waitangi Springs between Lakes Rotoma and Rotoehu were found to ease muscular and joint pains. The warm sand of a puna (spring) at Tikitere was used for healing scabs, and at Tikorangi the sulphur deposits were used to treat skin diseases.⁸⁵¹

The abundance of a particular resource could also enable particular hapu to develop 'value-adding' skills for which they then became renowned, adding to their mana and to their capacity to carry out exchanges with other groups. The forests between Lakes Rotoiti and Okataina,

An abundant supply of native timber such as totara and rimu fostered the development of carving and canoe-building skills. Here, a recently hewn waka lies in forest at an unidentified location somewhere near Rotorua. Undated.



100

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

for instance, have been an excellent source of totara and rimu trees, enabling Ngati Tarawhai to exercise and refine the carving skills for which they have become famous. State of the carving skills for which they have become famous. State of the carving skills for which they have become famous. State of the carving skills for which they have become famous. State of the Rangiunuora, Ngati Tamakari, Ngati Tamateatutahi, and Ngati Te Takinga, have likewise achieved status as much-respected carvers, and during the course of our hearings we were given a small but fascinating insight into the depth of knowledge and skill of such tohunga. State of total state of the carving stat

As an example from a different area of skill, we were told how the people in the Wairakei area took advantage of the different coloured paru (mud) in their thermal pools for dyeing fibre. 'Every ngawha was used for different colours', said Ms Rangitoheriri, and 'the flaxwork that was produced could be used for bartering.'

Summary

The Central North Island had an abundance of natural resources. Over the generations Maori built up very specific skills and knowledge associated with those resources, developing an intimate understanding of them.

In harvesting resources in their area, Central North Island Maori employed a detailed knowledge of locations, conditions, tools and techniques, preserving methods, and associated 'value-adding' skills. In other words, they exercised a considerable degree of planning and management.

In the next section we will, among other things, look at customary law as it related to the regulation of land and resource usage between different groups.

SECTION 4: CUSTOMARY LAW AND AUTHORITY Tikanga: the principles involved

Law is not adequately understood, Alex Frame reminds us, 'merely as a technical, stand-alone system: rather it is *part of culture*' [emphasis in original]. 855 We would agree. Law grows out of, and needs to be supported by, the culture

in which it operates. As Justice Edward Durie has commented, English common law 'began from recording local customs and practices seen as common to all England. It was in effect, a compilation of the values of that society as shown in practice.' If a body of law does not resonate with the culture of the community it is intended to regulate, it will carry little force in that community.

In another paper, Justice Durie has referred to 'Maori custom law' as the 'values, standards, principles or norms to which the Maori community generally subscribed for the determination of appropriate conduct. Hirini Mead, in discussing tikanga, has similarly stated that it 'embodies a set of beliefs and practices associated with procedures to be followed in conducting the affairs of a group or an individual. He goes on to say:

Tikanga are tools of thought and understanding. They are packages of ideas which help to organise behaviour and provide some predictability in how certain activities are carried out. 858

It has also been observed that: 'The Maori system of law was based on values, and being a values-based system Maori adhered to principles rather than rules.' ⁸⁵⁹ Practice grew out of the values that everyone subscribed to, and an adherence to principles rather than rules enabled change while maintaining cultural integrity. ⁸⁶⁰

The values underpinning tikanga Maori have been identified as including:

- ▶ whanaungatanga (relationships);
- ▶ mana (prestige and authority);
- ▶ utu (reciprocity);
- ▶ tapu (the sacred, spiritual, or set apart); and
- ▶ kaitiakitanga (stewardship or protection). 861

These are not terms that translate easily into English, but we have suggested rough approximations.

Of these, whan aungatanga and utu have been described as the two core values. 862

An understanding of these values, and their pervasiveness in Central North Island ways of life, will help to shed light on what Maori expectations might have

HE MAUNGA RONGO

been in later years, when faced with British settlers and a colonial government. We begin with whanaungatanga and utu, and then follow with comments on some of the other values.

Whanaungatanga: relationships

As the Muriwhenua Tribunal has explained: 'The fundamental purpose of Maori law was to maintain appropriate relationships of people to their environment, their history and each other.' We stated at the beginning of this chapter that an understanding of the relationships between people of the Central North Island is basic to being able to evaluate the claims that some of them have brought against the Crown. Forging and maintaining relationships were (and are) activities of prime concern, both for the intrinsic value placed on the relationships themselves, and for their role in achieving other desired outcomes. Family ties, economic activities, and social exchange all helped to cement relationships between Maori communities. We now look at some of the ways in which relationships were forged and maintained.

Intermarriage: Over the centuries intermarriage engendered a complex network of interconnections – particularly since all lines of descent were valued, not just the paternal line. ⁸⁶⁴ These interconnections were carefully committed to memory by tohunga skilled in genealogy and used for the benefit of the kin group. As Sean Ellison noted in his evidence:

One aspect then of the term 'whakapapa', is the vast number of layers that have been laid one upon the other by our ancestors over the years, the centuries and millennia. Such are the multitude of connections – connections to the people, connections to the environment, connections to the divine, to the atua. It may seem to be an entangled mess to an unaccustomed eye, but it was deliberately set out and laid down by our ancestors to strengthen relationships, to hold on to the land, and to maintain peace.⁸⁶⁵

In particular, strategic marriage alliances between high ranking people were an important way to cement relationships between tribes. As but one example of many, we were told in evidence of the marriage between Pikiao and Rereiao, a high-born woman of Tainui, which contributed to forging strong and ongoing links between those two kin groups – links that have lasted down to the present day. Robert Maori king, Potatau, was a descendant of that union.

Strategic marriages could also be used to secure or acknowledge the support of another kin group in times of hostility. Angela Ballara mentions in her book *Taua*, for example, how Waitaha married some of their women into other groups such as Marutuahu, Waikato, and Te Arawa to create new allies. Examples were also given to us in evidence for this inquiry. For instance, we learned from Tapuika how their tupuna Mokotangatakotahi gave his daughter, Taongamuka, as a wife for Iwikoroke of Waitaha, 'as payment for his assistance' in the battle of Punakauia. See

Marriage alliances were particularly important in peace-making situations, where they were used as a way of creating kin links between former adversaries. ⁸⁷⁰ We will look again at marriage in this context when we discuss the resolution of war, below.

Adoption: Other family links between kinship groups were created and maintained by social mechanisms such as the custom of whangai or adoption. As Dr Ballara notes, the particular descent system used by Maori means an individual can claim attachment to a hapu through any descent line, not just the patrilineal line. However, hapu associations have to be 'kept warm' through social interaction. In this context, Dr Ballara particularly mentions 'contact, visits and arranged marriages'. Another such mechanism, though, was where the child of one hapu or whanau would be entrusted permanently or semi-permanently to another as a whangai.

Often, the practice of whangai occurred in cases where there was already a close relationship from a previous

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

generation that needed to be 'kept warm'. Another form of adoption was where a child born to a woman outside wedlock was nevertheless accepted by the woman's husband and his hapu. As an example, Sir John Grace recounts how Whakaue recognised Tutanekai and brought him up as his son, even though Tutanekai's real father was Tuwharetoa. 873 Today, Tutanekai's descendants, as an overall descent group, refer to themselves as Ngati Whakaue. 874 Their mana, land, and resources in the Rotorua area derive from Rangiuru and Whakaue and other kin links in the area. However, as became clear to us during the course of our hearing, their bond with Ngati Tuwharetoa is acknowledged and important. This illustrates the principle that, in some kin groups at least, the adopted child or whangai could inherit from either its natural parents or its adoptive parents.⁸⁷⁵ Any future descendants would likewise be able to claim the same benefit.

Other forms of interaction and relationship building

a) Geographical 'zones of contact': In addition to family ties, interrelationships between kin groups were built up through other forms of interaction such as food gathering, trade, migration (whether temporary or permanent), and reciprocal visits. As Dr Ballara notes, Maori were an extremely mobile people, 'moving around their landed possessions in response to the inter-Maori politics of the day or to the economic cycle. 876 In this respect, some parts of the Central North Island region were quite clearly more prominent than others as 'zones of contact'. For instance, the coastal Bay of Plenty region was an area of considerable customary, economic and strategic significance and saw much activity and interaction, both within Central North Island iwi and hapu and between them and neighbouring tribal groups such as Ngai Te Rangi and Ngati Awa. We were told, for example, that Ngai Te Rangi 'often commuted back and forth to Ngati Awa' (whence they had originally come).877 The area had historical importance to many groups, being (among other things) their initial point of arrival in Aotearoa and in many cases their first site of settlement. It had numerous useful resources, not only on

land but also in its fresh and salt waters and wetlands. In addition, it was a much-used communications corridor and had key landing places for those arriving and departing by sea. ⁸⁷⁸ Dr Ballara comments on 'groups originating from the eastern Bay of Plenty . . . competing with groups from the inland lake region for control over access to the sea and its resources (including exotic trade). ⁸⁷⁹ The strategic significance of the region also saw it visited, invaded, or traversed by more distant groups such as Waikato and Nga Puhi.

The Kaingaroa Plains, by contrast, were a sparsely populated area in terms of permanent habitation, yet they too might be considered a 'zone of contact'. The plains were regularly visited by different groups for resource gathering and cultivation, and Robert Pouwhare commented that such visits were 'not a one or two day event'. On the contrary, they were 'something that would endure for days, sometimes months.⁸⁸¹ The plains were also traversed on a regular basis for a variety of reasons. Rere Puna, giving evidence for Ngati Hineuru, commented on 'the strong relationships that were built by our ancestors through trade so that they could journey throughout the central North Island', and particularly mentioned the 'system of conditional rights between all parties using the access way from Taupo to Napier via Te Haroto, Tarawera and Tataraakina area,882

The majority of kin groups using the plains were related to each other or had formed alliances with each other at various times and for various reasons. Tamati Kruger described many of the interconnections in his evidence. Such interconnections extended even to the 'sub tribes':

he karangamaha he karangarua enei hapu.

Ko ratau te tohu ki a koutou mo te ahua o Kaingaroa. He huihuinga no te toto tangata, he huihuinga no te korero, a, he huihuinga no te tauhokohoko.

there are many of them, they are inter-related these sub tribes.

They are an indication of what Kaingaroa is. They are a mixture of allegiances of mankind, they are a mixture of consultation, of trade. 883

HE MAUNGA RONGO

Speaking of the links across the Kaingaroa Plains, he said:

E kii ana ahau na enei whanaungatanga ka kumea te manea roa o Kaingaroa kia poto i runga i enei whakapapa, i runga i enei moe rangatira. Whakawhitiwhiti ai i enei tangata i te manea roa o Kaingaroa; ratau katoa.

I am saying because of these blood ties the long plains of Kaingaroa will be a bridge through all the unions, the marriage of chiefly lines. These people cross the long plains of Kaingaroa; all of them.⁸⁸⁴

Bruce Stirling records information from Kaingaroa witnesses in late nineteenth century Native Land Court hearings that clearly indicates their knowledge of where to find freshwater springs, caves for shelter, and other resting places where travellers could stop and sleep. 885 Similarly, he notes references to different kin groups undertaking expeditions to the Kaingaroa area, for shorter or longer periods, to catch birds, tuna, kiore, and, later, pigs, and also to gather aruhe (fern root), reeds, flax, and other natural resources such as kokowai (a clay prized for its reddish colour).886 While those resources would all have been subject to use rights by particular groups, the point to be taken here is the number of people frequenting the area on a regular basis, which led to the likelihood of encounter. Indeed, Mr Pouwhare refers to the Kaingaroa area as 'a place where relationships were formed and developed.⁸⁸⁷

In addition, a Ngati Rangitihi witness, Henry Pryor, told us how his people had been regular travellers 'mai ra ano' between Tarawera and Matata, 'for trade purposes and the like', along the Tarawera and Rangitaiki Rivers. He then went on to say:

In that way we are the *kaitiaki* of the Tarawera and Rangitaiki rivers for Te Arawa, in much the same way as we are the *kaitiaki* for Te Arawa at the Onuku land block, near Rerewhakaaitu, when we acted as the first point of contact as against Tuhoe.⁸⁸⁸

The point of noting this is not to agree or disagree that Ngati Rangitihi held status as kaitiaki, but rather to observe that the two rivers (and also the Onuku area) appear to have been zones of contact where different groups encountered each other.

There is also evidence to suggest Lake Taupo was a place of contact, with various groups accessing it for fishing and communications. One witness, for example, mentioned Kaiwaka Point being 'traditionally used as a landing and resting place by Te Arawa and Tuhoe'. Be We also note the reference to Opepe's strategic significance, being at 'a convenient stopping point on the track from Napier and confluence of tracks from Te Urewera, the Rangitaiki Valley as well as both ends of Lake Taupo'.

b) Economic exchanges: Another important way of building and maintaining relationships was through activities such as trade, exchange, and reciprocal gifting.

Although any given Maori kin group might range across a wide area to harvest resources, not all commodities would be plentiful, or even available, within its rohe or sphere of interest. Thus, exchange networks would be built up. Unlike the European concept of trade or barter, however, which generally involves finite deals, the Maori exchange network involved a complex interplay of relationship-building and reciprocity. For example, a presentation of goods might be made to another group, but the return presentation of something of equal (or sometimes greater) value might not occur till some time later, on a separate occasion.

Evidence of this occurring in the Central North Island region comes from William Colenso, writing in early post-contact times, who remarked on baskets of dried seaweed being carried to Taupo and elsewhere, in return for delicacies from the inland forest. During our inquiry, Hapimana Higgins described to us the importance of tuna in Ngati Manawa's trading networks, commenting: 'Ngati Manawa would trade tuna with hapu of Tuhoe for kereru. It would trade tuna with coastal iwi for fish.' And Dame Evelyn Stokes notes that: 'Kokowai [red ochre] was often used by inland tribes of the Taupo Volcanic Zone as items for gift exchange, to maintain relationships with their neighbours.' An example of this was provided to the nineteenth-century Native Land Court by Henare Te Rangi

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

of Ngati Rangitihi and Ngati Hinewai, who said they took kokowai to the coast to exchange for pounamu (greenstone) at Heretaunga (Napier) and shark oil at Whakatane. Or again, in our inquiry we were told of the 'circle of reciprocity' that operated between the hapu of Ngati Umutahi (a kin group with links to both Ngati Tuwharetoa and Ngati Awa) on the coast and Ngai Tamarangi at Kawerau.

We note that several of these examples demonstrate a particularly strong dynamic in Maori exchange arrangements, namely the trading of inland products for coastal ones. ⁸⁹⁷ It is a dynamic that has continued into the very recent past (and indeed to the present day). During our inquiry, Makere Rangitoheriri told us how her family would take 'berries, or fern, vegetables, or whatever they can that they had grown in the bush . . . and they would exchange it for seafood from, say, Maketu, Tauranga moana especially.' ⁸⁹⁸ She also mentioned trading inland resources for kiekie, 'the beautiful fine flax that grows on the sands of the sea.'

'Value added' items such as pieces of carving or weaving or other taonga might also form part of such exchanges, depending on the circumstances, and some kin groups became known as being skilled in particular crafts. A Ngati Rangitihi group living at Mimiha, for example, became known as toolmakers, trading over long distances to obtain the raw materials needed for their craft.⁹⁰⁰ And we have already mentioned the bartering of the flaxwork from the Wairakei area, dyed with the paru from the hot pools.⁹⁰¹

A transaction might involve exchanging rights to access or passage, rather than actual goods. We will return to this exchanging of rights later, in the section on customary law, but for the moment we note the importance of such activity in regard to the forming of connections between groups. Thus, for example, Tapuika and Waitaha for a long period visited Maketu to gather shellfish and other seafoods while, in return, Ngati Whakahinga were allowed access to Tapuika and Waitaha's forest areas to gather food and take birds. This obviously necessitated the maintenance of good relations between the groups concerned, so that economic interaction is another example of reciprocity and

relationship-building: it did not only serve an economic purpose at particular points in time.

c) Social exchanges: Dr Ballara comments a number of times that Maori were a very mobile people and refers to 'their system of messengers and heralds, trading and visiting parties'. She notes that 'visits between communities were constantly taking place'. Captain James Cook, an outside observer in the eighteenth century, noted that news travelled fast from one part of the country to another. Part of this network of social and economic exchange was the obligation of manaakitanga (hospitality and caring for people). As in other parts of the country, there were strong traditions of manaakitanga in the Central North Island which forged and maintained relationships between different groups.

Anthony Olsen of Ngai Tamarangi mentioned how: 'The warm waters of the Ngawha mixed with those of the puna and this was our gift to give those who passed through'. 906 Te Ariki Morehu described how, when Ngati Makino gathered for hui, those from the coast contributed the seafood while the inland people came with 'calabashes, freshwater crayfish and whitebait.907 People in the Tuaropaki area took pride in being able to provide quantities of birds at the feasts they gave for their visitors - a particular recorded example of this being a feast they gave for visiting Urewera people in the 1840s. 908 And in his oral evidence to the Tribunal, Colin Tawhi-Amopiu spoke of the manaakitanga and reciprocity between Ngati Raukawa and Ngati Tuwharetoa. 909 Indeed, there was an expectation and understanding that the hospitality would be reciprocal in nature. As Raymond Firth wrote in Economics of the New Zealand Maori:

Every feast given by one tribe to another imposed upon the recipients a stringent obligation to return this hospitality at some future time. No set term was fixed, but tribal honour required that as soon as sufficient supplies had been accumulated, a similar gathering should be convened, at the which the late hosts would be feasted royally.

HE MAUNGA RONGO

Thus, the manaakitanga was tied into the forming and maintaining of ongoing relationships.

d) Warfare and peace agreements: In addition to peaceful interactions, journeys were sometimes undertaken to wage war or for the purpose of utu – that is, to exact retribution from another group in order to right an earlier wrong, which was again a form of reciprocity. Over the centuries there were numerous skirmishes and campaigns fought between different kinship groups in the region. Attacks came, too, from outside the region, and on occasions Central North Island groups likewise sent taua off on long-distance missions.

Hostilities, however, could also involve the creation of alliances, whether for attack or defence. As but one example of conflict involving a number of different kin groups, we might cite some of the early battles for Maketu, where Tapuika combined with forces from Ngati Whakaue, Ngati Uenukukopako, Ngati Rangiteaorere, and Ngati Rangiwewehi, and indeed with others from as far afield as Ngati Raukawa, Ngati Toa, and Taranaki. On the other side of the conflict were Ngai Te Rangi (till then known as Ngati Rangihouhiri) and Ngati Pukenga. ⁹¹¹ At other times, however, the politics of the moment might dictate different alliances. This meant that relationships between different groups would rarely if ever go completely 'cold' as there was always the possibility that they might need to be called into play at some time in the future.

Taupo groups, most notably Ngati Tuwharetoa, were also clearly involved in alliances and conflicts across a significant part of the North Island. They are recorded as assisting Ngati Whiti and Ngati Tama in an attack against Ngati Apa at Rangitikei, and are described as being 'closely related' to the people of the Whanganui River area and 'much involved' in joint enterprises with them. ⁹¹² We know that they frequently interacted with Waikato kin groups, and that they sent taua into neighbouring districts such as the Urewera. ⁹¹³ Likewise, taua from the Urewera made incursions as far as Lake Taupo, and there is also reference

to Ngati Tamakari and others from the Rotoiti area attacking Ngati Tuwharetoa below the slopes of Tauhara. 914

According to Dr Ballara, in the wake of hostilities Maori evolved a wide range of peacemaking and peace-maintaining techniques, ranging from ritual plunder or the killing of taurekareka (to wipe out the offences of the party concerned) through to the exchange of gifts and women. Most such arrangements involved the use of designated peace-makers, who were usually senior chiefs. Women of rank, as well as men, could fill such a role. In the 1820s, for example, Te Rohu, daughter of Mananui Te Heuheu of Ngati Tuwharetoa, played a prominent part in concluding a number of peace agreements for her people.⁹¹⁵

One of the principal ways of sealing a peace was, as mentioned earlier, by the use of strategic marriages to create kin links between former adversaries. With the descendants of the union being descended from both tribes, then as Haki Thompson put it, 'if the two tribes fought each other in the future, you would be killing your own. 916 Hiraina Hona explained that 'important political marriages . . . [were] used to confirm an enduring link to lands'.917 Ms Hona's brief was first submitted to the Waitangi Tribunal's Urewera inquiry and discusses strategic marriage between Tuhoe, Ngati Manawa, and Ngati Whare. There are also numerous examples that could be cited from the Central North Island. Dr Ballara mentions kin links between Ngati Makino and Ngati Awa that she describes as being partially forged by peacemaking and intermarriages.⁹¹⁸ At various times, too, there have been attempts to use marriage alliances to address what has been called the 'fraught and fractured history' between Tuhourangi and Ngati Whakaue. We note, as examples, the post-battle union between Pukaki, of Ngati Whakaue, and Ngapuia, the daughter of a Tuhourangi chief, and a similar arrangement concluded with regard to Iwingaro's daughter (Ngati Whakaue) and Rangikatukua's son (Tuhourangi). 919

A more complex example comes from the coastal area, where, after the battle of Komataauahi involving Tapuika and Ngai Te Rangi, three strategic marriage alliances

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

were concluded between prominent parties to the conflict. First, a chief of Ngai Te Rangi (variously cited to us as Tamapahore or Tapuiti) gave his daughter Parewaitai (or Parawaitai) to Paruhiterangi (or Puruhi) of Tapuika. Secondly, Uretakaroa (sister of Tukairangi, another chief of Ngai Te Rangi) was given to Tahere of Tapuika. Thirdly, and reciprocally, Maruhingaata, the aunt of Moko, a chief of Tapuika, was given as wife to a man of Ngai Te Rangi. 920

Another example of such peacemaking alliances, this time from the late eighteenth century, comes from the eastern Taupo area, where after fighting between Ngati Tuwharetoa and Tuhoe a marriage was arranged between Pakira, of Ngati Tutemohuta, and Hinearo, who had connections with Ngati Awa and Tuhoe. This was at the time of a peace pact at Opepe (near the present Napier–Taupo road), after the battle of Orona at Hallet's Bay (south of Hatepe). In some accounts, Pakira also took a second wife by the name of Tawhirangi, Tawiririangi, or Taohurangi, from Ruatoki. ⁹²¹

Other aspects of peacemaking included exchanges of important taonga. In this context, and again in relation to the peace concluded at Opepe, we note the fine tokotoko, Te Mautaranui, shown to us by Mataara Wall during week four of our inquiry. Mr Wall explained how this taonga is still exchanged on important occasions, as an ongoing symbol of the relationship between Tuhoe and Ngati Tuwharetoa. We also have information about a toki pounamu named Kaitangata, given by Ngai Te Rangi to Te Rorooterangi as part of the peacemaking that finally brought an end to conflict over Maketu. State of the peacemaking that finally brought an end to conflict over Maketu.

To conclude the peacemaking there was often a formal ceremony. Kihi Ngatai told us of one such ceremony between Te Arawa and Ngai Te Rangi which took place at Otumoetai Pa in September 1845. It was held before a large gathering of people and was sealed by an exchange of stones. One stone was held by Ngai Te Rangi at Otumoetai and the other was taken to Maketu. Part of the former, Mr Ngatai told us, is now held at the Tauranga Museum. ⁹²⁴ The stone taken to Maketu is evidently the one seen by a visiting

naval officer in 1864 who, reporting on his attendance at a runanga there, wrote:

The presiding chief . . . went on to explain the signification of a slab of stone at the foot of the flagstaff, bearing an inscription in Maori, 'Let the peace be kept', deeply cut into the surface, with the date, Sept. 16, 1845. On that day peace was concluded, after long years of war, between the allied tribes of Maketu and Taupo on the one side, and the Tauranga and Waikato natives on the other; and this stone, to which they attach great value, is their treaty, a facsimile being kept by the men of Tauranga. 925

Some kin groups use the term 'tatau pounamu' to signify a formal peace pact of this kind, intended to bring a permanent end to conflict between the groups involved. According to the evidence presented, a tatau pounamu 'bars war and strife and is symbolical of a lasting peace.' 926

Some witnesses – particularly from Tuhoe groups – described the peace pact at Opepe as a tatau pounamu. As noted earlier, this peacemaking took place between Tuhoe and Ngati Tuwharetoa, and also seems to have involved Ngati Tahu. Other examples just outside the eastern border of our region were cited in relation to battles in the Rangitaiki Valley and in relation to hostilities between Ngati Awa and Tuhoe, while on our western side, Grace refers to the marriage between the Ngati Tuwharetoa chief Te Rangiita and Waitapu of Ngati Raukawa as also being part of a tatau pounamu.

From the northern part of our inquiry region, we have reference by Te Keepa Marsh and others to 'the peacemaking of Tatahipounamu' that enabled Tapuika and Rangihouhiri to live together along the Bay of Plenty coastline. This was apparently in the time of Tamapahore, some seven or eight generations after the ancestors Tapuika and Waitaha. Paparently in the coastal area, there is mention of the tatau pounamu of Tatarahika, between Ngati Awa on the one hand and Ngati Pikiao and Tapuika on the other. From the evidence given, this took place

HE MAUNGA RONGO

in the period when Te O and Rarunga were chiefs of Tapuika.⁹³⁰

e) Interaction through migration: As described in an earlier section, a number of the early ancestors set out to explore the land with their followers, and groups would settle in particular locations for longer or shorter periods. Where they chose to move on, the driving force may have been political or economic, or simply a desire to explore new areas. Even in the centuries that followed, migration around the Central North Island (and in and out of the region) still occurred and, by this time, generally involved contact with communities already in place. Such interactions might of course be hostile. However, some groups migrated as refugees, or as allies in war, and the nature of the ensuing relationship between the migrant group and the resident group varied accordingly.

Where a group migrated into an area and overcame the existing population, they tended to intermarry with any survivors so as to acquire rights in the land and resources. Such was the case, for example, with Ngati Manawa and Ngati Whare when they migrated into the Kaingaroa area and overcame an early people by the name of Te Marangaranga. ⁹³¹

A refugee population, however, would at least initially be in a dependent situation and would likely owe tribute of some sort to the chief whose mana lay over the land they were seeking to occupy. At one time, for example, Ngati Tama were defeated in battle and moved to the Waihaha area, at the northern end of Lake Taupo. These were lands under the mana of Ruawehea (a grandson of Tuwharetoa) who, in the evidence of Chris Winitana, Grace, and Dr Ballara, expected the new arrivals to work for him and pay a levy of food in return for being allowed to stay. If a migrant group was allowed to remain long-term, however, they might subsequently marry into the host community or acquire land by tuku, or gift.⁹³²

Groups that migrated in response to a call for assistance were in a different situation again and were often allocated land by tuku, over which they would gain stronger rights with the passage of time, while retaining their mana as an independent group. 933 In this context, we note the example of Te Iwikoroke who, following assistance to Tapuika in battle, was first given the daughter of the Tapuika chief in marriage and later, when he was dispossessed of his own land by Ngai Te Rangi, was 'able to return and request land within Te Takapu o Tapuika.'

These different forms of rights in land and resources will be examined in more detail later in the chapter. For the moment, we simply note that they came about in situations involving the negotiation of relationships.

Utu: the web of reciprocity

Utu is sometimes associated with revenge, and with retribution for a hostile act previously committed. In fact, it has the broader meaning of simply giving something in return for something else – hence its later use as a translation for the word 'price'. As earlier noted, the intention was not usually that the exchange should be a finite act but rather that it should contribute to maintaining an ongoing relationship. Indeed, the notion of reciprocity is, we believe, pivotal to an understanding of the Maori concept of relationship and Dr Ballara has described it as 'one of the imperatives that drove Maori society'.

An ongoing reciprocity is stressed by Firth, for example, in his discussion of gift exchanges:

The central point to be recognised is that every exchange was made after the manner of *gift and counter-gift*... William Colenso, a reliable observer in the early years of the [nineteenth] century, notes that buying and selling for a price was unknown to the Maori... On the other hand, to regard such affairs simply as a matter of giving and receiving presents is inadequate from the standpoint of sociological reality, since it fails to take account of the reciprocal obligations incurred.⁹³⁷

Or again, in relation to ceremonial exchanges of precious heirlooms:

These ceremonial exchanges were of great importance to the community life of the Maori. The gifts and counter-gifts

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

served to bind together more closely the different families or tribes concerned; the articles themselves acted as the *tohu*, the tokens or material symbols of the social ties which linked together the two groups. ⁹³⁸

We note, too, that the manaakitanga, pacts, agreements, and trading relations referred to above all generated ongoing debts of obligation, which ensured that peaceful interactions between groups were maximised. That is, they were mechanisms that served not just an immediate purpose, but created an ongoing relationship.

In relation to tatau pounamu, one Tuhoe witness spelled out both the positive and negative sides of reciprocity. 'Disrespecting a *tatau pounamu*', she said, 'resulted in extremely and often times fatal forms of *utu*'.'⁹³⁹ However, on the positive side, she described how these formal peace pacts could involve agreements about land and resource interests, as well as an exchange of women and the mutual promise of peace. ⁹⁴⁰

A less obvious form of reciprocity relates to the ability to identify with different kin groups. Descent was ambilineal so that even though a man would normally reside with his father's kin group, he could in fact claim membership of any kin group on either his mother's side or his father's side. To do so, however, the relationship had to be 'kept warm' and nurtured. It was, therefore, a system predicated on reciprocity. For it to work, hapu had to be mutually willing to absorb individuals from other kin groups that were not necessarily closely related, and there was indeed a sense of mutual obligation. As Paul Tapsell told us:

From one generation to the next individuals maintained a fluid identity – sometimes highlighting association to one particular ancestor according to perceived opportunities – especially in times of adversity like war. This fluidity of identity over the generations not only enabled home fires to be kept alight (ahi kaa) on both sides, but also facilitated peace and ongoing marriage alliances (taumau) so long as associated kin responsibilities were fulfilled to the satisfaction of each kin group.⁹⁴¹

In short, the securing of an ongoing reciprocal relationship as a result of all the previously mentioned types of interaction, whether explicit (as in a tatau pounamu) or implicit (as in the offering of hospitality), was as much a goal of the exercise as the immediate meeting of a need. As Merata Kawharu comments: 'Above all else, reciprocity enhances the social and political stamina of the kin group'. 942 An interaction was not a finite event, but part of a web of reciprocity.

Mana

As described by various writers, the rank of each individual within a hapu depended on the seniority of their descent from the founding ancestor of the group. Links to senior lines of other hapu also played a role. Thus, 'the rank of any one individual depended on the sum of his or her seniority links in a web of descent lines.' People of chiefly rank and position, both male and female, were often the product of a number of alliances over succeeding generations, which wove together the senior lines of different groups. Hablara explains it, ariki status, the highest of all, derives from 'the conjunction of a number of senior descent lines from founding ancestors, and ultimately from the gods.' From the gods.' People of their descent lines from founding ancestors, and ultimately from the gods.'

When Te Rangikaheke of Ngati Rangiwewehi discussed the nature of chieftainship in 1849, he stressed both ancestry and chiefly qualities:

The people of the land will enquire, 'What does the rangatiratanga of that man consist of?' Then the people who have seen will perhaps enumerate all the traits noted. The listener will say, 'There indeed is a true rangatira. Who were his parents? Who was his ancestor?' The people who heard this would then reply, 'According to what I heard So-and-so was the ancestor'. Who then were the parents? So-and-so was the father and the mother was the daughter of So-and-so. Then the people will say, 'No wonder! It is because of his chiefly birth! Such chieftainship will not lie dormant. That which was begun before must continue on down; that [line] is of So-and-so. His name is being heard. Never shall be found wanting the chiefly heritage, the capacity for courage, the

HE MAUNGA RONGO

Te Rangikaheke of Ngati Rangiwewehi, also known as Wiremu Maihi or William Marsh. Born in the early nineteenth century, he was not only a renowned leader and orator, but wrote extensively on a wide variety of subjects. This photographic portrait of him dates from circa 1865.



ability at battle speeches, the capacity to produce food, industry, feasts or celebrations, the urging against departure of travelling parties, council speeches, welcoming of guests and the kindness and also the liberality to travelling parties, large or small.

None of these qualities repose in the belly of the common man. They are possible only from the noble heritage. 946

The Orakei Tribunal interpreted his words as meaning that 'leadership in Maori terms requires both status proven by descent and a strong display of certain personal attributes'. They also cited the views of more recent Maori leaders. John Rangihau of Tuhoe, for instance, advised that even given noble descent and strong leadership ability, the title of chief still needed to be bestowed by the people: the authority embodied in the concept of chief is also the authority of the people.⁹⁴⁷

For priests, their influence and authority 'came primarily from their erudition and mediatory powers with the gods', but kinship and seniority could also be relevant to their status. Occasionally (as with Ngatoroirangi) the roles of chief and priest would be found combined in one

person. Such a person would then be of great renown, of great mana, and highly tapu. 948

In terms of tribal influence, much depended on having a strong chief, adept in the leadership of people and in political and military strategy, who could negotiate strategic alliances or inspire his people in battle. In this context, we recall the example cited earlier of how the ariki Mananui Te Heuheu made it his responsibility to end tribal hostilities in the south and build tribal alliances. He did this, we were told, by 'the exchanging of precious tribal heirlooms, realigning tribal boundaries, and the strengthening of bloodlines by arranged marriage over three generations.' His successors have each, in their turn and in different ways, worked to protect the interests and uphold the mana of Ngati Tuwharetoa.

My singular concern . . . is to ensure the protection and maintenance of the mauri of our Tuwharetoatanga. This is the enduring legacy of my forebears.

Te Ariki Tumu Te Heuheu Tukino VIII Hirangi, 6 May 2005

Ngati Tutemohuta witnesses summed up the traditional position of chiefs as follows:

These rangatira had all the necessary attributes to exercise chiefly authority. These attributes are mana whenua, mana tangata and ringa kaha. They had dominion over a tribal territory, they had personal mana derived from their ancestors, and their deeds, and they had the military command of a significant fighting force of about 50 – 100 fighting men. Lastly, they were able to negotiate alliances outside their main sphere of political influence, which they did. 951

The basis for the political autonomy and the cohesion of a kin group, then, was the mana of its chief.

Mana could wax and wane: 'individuals inherited an initial store of mana varying with the seniority of their descent, but they could increase or decrease it by their own actions'. For a chief to maintain and possibly enhance his

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

(or, more rarely, her) position, mana derived from blood-lines (mana tupuna, associated with mana atua) needed to be augmented by the mana that came from demonstrating traits such as bravery, hospitality, integrity, and persuasive oratory (mana tangata). And mana, by whatever means held or gained, had to be actively protected. Thus, both chief and hapu were constantly alert for insults, slights or any other attack on status.⁹⁵³

Mana and decision-making: As regards decision-making, a chief had significant say in who could use the land and resources over which he or she had mana. This applied both to usage by hapu members and to usage by those outside the immediate hapu. Rere Puna, a witness for Ngati Hineuru, described the situation as follows:

The Chief governed ownership, it was all decided under his or her authority, the boundaries, and who received which parcels of land. The Chief also made recommendations on rights of access and courtesy rights.⁹⁵⁴

As but one example, kokowai (red ochre) was an important resource for those kin groups who had access to it, because it is not widely found in most parts of the country. Information submitted to us states: 'Kokowai was . . . a valuable article of trade and was used in exchange of goods to cement tribal relations'. Dame Evelyn Stokes wrote that: 'The rights of extraction of kokowai were bound up with the mana of chiefs who controlled who was permitted access to this resource'.

That said, a chief could seldom act without the backing of the people. Sir Hugh Kawharu's view was that 'a chief who persistently flouted majority opinion committed political suicide. 957 Another writer has observed:

Rangatira continually were and are required to affirm the consensus of the people in public fora. Thus the institution of the hui and the runanga, when people gather to discuss issues of moment, were and remain the real seat of power and law-making. A leader taking the people in a direction which is not supported will quickly be corrected or, at length, abandoned

in favour of a contender more willing to lead to where the people wish to go. 958

This is echoed by Alan Ward, who comments that chiefs 'could not take independent decisions or persistently flout public opinion without risk of repudiation.' He goes on to say: 'Early observers... who believed the chiefs to be despotic, or capable of giving orders or taking decisions for their people without consultation, were mistaken.' 959

Where there was a dispute over land, the chief would call people together, hear what the parties had to say, and then give his decision. Dr Ballara comments: 'It was not his property to cede, but he was the recognized chief; the whenua or land lay under his mana or authority; it was for him to voice the final decision'.

Similarly, it was the chief's role to direct certain economic tasks or other enterprises requiring concerted hapu effort. Tasks of lesser import, on the other hand, could be carried out at the discretion of individuals or small groups – although still, ultimately, as members of their hapu. As Mita Taupopoki told the Native Land Court: 'They used to cultivate individually but under the name of the respective hapu.'

Dr Ballara summarises the situation as follows:

There were limits to [the chiefs'] authority. On the one hand, they depended on the co-operation of minor chiefs and all those of rangatira rank as well as tutua to accomplish their ends. On the other hand, Maori society was permeated by tikanga (customary rules and rights), and chiefs could not change the rules nor invade the rights, including the land rights, of individuals. Communities looking to them for direction were societies based on mutual consent and reciprocity. 962

The focus was communal, and there was an obligation on all members of the group to contribute to the group's overall well-being. If a hara, or transgression, was committed by a member of the group, it became the business of the whole community to address and resolve the shame attaching to it. ⁹⁶³ In short, mana attached to the kin group as a whole, as well as to the chiefs, and it was jealously guarded.

HE MAUNGA RONGO

Hapu autonomy: A number of observations made in evidence with respect to the ability of hapu to act independently sustain Dr Ballara's conclusions about the high degree of hapu autonomy. We note, for example, that there is evidence from earlier times of much independence of action even amongst the constituent hapu of Ngati Tuwharetoa, with occasional rivalries between eastern and western groups, and northern and southern groups, and alliances forming and reforming depending on circumstance.⁹⁶⁴ In particular, we were told by Ngati Tutemohuta witnesses that:

In Pakira's time [five generations after the ancestor Tuwharetoa] Tuwharetoa as an iwi only existed in the Kawerau – Eastern Bay of Plenty region. In Taupo, the people were organised according to hapu, or clusters of hapu. Geographical groupings like the Mataapuna and Hikuwai hapu groups also existed from time to time, but the norm was each hapu operated as an independent entity. In Pakira's case Ngati Tutemohuta and its four karanga hapu operated as an iwi ... ⁹⁶⁵

Dr Ballara goes further and maintains that such hapu autonomy has continued into much more recent times. She does not view the Ngati Tuwharetoa paramountcy as exerting 'tribal hegemony': rather, she portrays a picture where consultation and discussion have continued to be as important as ever, and the paramountcy operates rather by mana and influence.966 This view is borne out by the evidence of witnesses such as Te Maioro Konui, of Ngati Hikairo, who stressed the autonomy of his kin group but also said: 'We are never going to deny that Te Ariki is Te Heuheu. We all support the chief. Peter Clarke expressed a similar sentiment for those of the Hikuwai area, asserting the right of the Hikuwai hapu to 'make their own decisions on matters affecting themselves and their land' but at the same time acknowledging the ariki and the wider Tuwharetoa confederation. 968

There is no question about the value that hapu placed on the kinship links that bound them together as descendants of a common ancestor, but there were also pragmatic choices made about which of those links might be called into play at any given time. Thus, as the Pouakani Tribunal noted in its report: 'By 1840, the region around Lake Taupo was peopled by a number of different hapu led by chiefs who operated independently of one another'. At the same time, however, that Tribunal noted that the chiefs did not operate in total isolation from one another but rather: 'There was a form of confederation of the various hapu whose lineages could be traced back to Tuwharetoa.'

And while Tapuika witnesses who appeared before us stressed that it was 'not unusual for all of the hapu to come together as a unified group to discuss issues that affected the iwi as a whole', they nevertheless agreed that it was 'at the hapu level that rangatiratanga was exercised and each hapu essentially functioned as separate and sovereign entities'. Te Awanuiarangi Black, too, said that although Ngati Te Pukuohakoma were traditionally a hapu of Waitaha, they nevertheless 'maintained their own rangatiratanga as did the other hapu of Waitaha.'

With respect to the inland Te Arawa area, another witness, Beverley Hodge, told us of the saying 'Rotorua matangi rau' (Rotorua of a hundred winds), which she said underlined 'the numerous subtribes or war parties' in the area. ⁹⁷² We think it also carries a sense of those subtribes or groups having an independence of action. And Donna Hall, in her capacity as counsel for a number of Te Arawa claimants, emphasised that historically (and currently) it was 'the right of hapu to control their own affairs.⁹⁷³

How did this work in practice? As Dr Ballara has explained, all sections of a hapu did not necessarily live in the same location. Rather, a number of subgroups might be scattered across quite a wide area. Additionally, they often relocated in response to social, economic, or political circumstances. As a corollary, subgroups from different hapu might live alongside each other for shorter or longer periods, as part of the same community. We note, for example, that Ngati Wahiao and Tuhourangi subgroups (as well as other kin groups) would move to Motutawa at Lake Rotokakahi to cooperate on mutual defence in times of trouble, but when the need had passed they would go their

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

separate ways again.⁹⁷⁴ That is, each subgroup retained a degree of autonomy. In the late 1830s, groups from different hapu moved to occupy Maketu, participating in a joint enterprise in which each retained a certain autonomy. A fortification was built, with a number of named gates, and 'each hapu took possession of, lived on and cultivated the land nearest its own gate'.⁹⁷⁵

In general terms, as one speaker explained to the Native Land Court in the late nineteenth century: 'In times of peace, each family would look to its own head; in war all would look to the main Chief? Each subgroup would have a leader (usually, but not necessarily, male), who in turn would recognise the mana of the chief of the main kin group. If small groups joined together for military purposes (including defence), they generally each retained their own leader, even if recognising an overall chief (or chiefs) as leader of the whole endeavour.⁹⁷⁷ This also tended to happen when people from different hapu combined for any reason. We note, for example, Don Stafford's account of a combined action carried out by groups from Ngati Pikiao and Waitaha against the Tuhourangi people. A number of chiefs participated, each leading a band of his own men. At the end of the campaign, the various groups assembled and:

each chief stood up in turn and made a speech outlining his actions and those under his command during the day. Finally Te Takinga, the acknowledged leader of the whole army, stood up to speak.⁹⁷⁸

That is, the mana of each chief was acknowledged but Te Takinga was recognised by them as the overall leader of the enterprise.

From the observations of Thomas Chapman, the same situation still obtained in the mid-nineteenth century:

Take a pa of 200 male adults. Separate it into (perhaps) eight compounds. To each of these there is a principal Chief – and perhaps one of these Chiefs is a leading man – from age or valour, or resolute conduct and tact. ⁹⁷⁹

However, one should not assume that the same chiefs always took the role of 'leading man'. As we have noted,

alliances formed and reformed; mana could wax and wane.

Manaakitanga as an aspect of mana: We have already commented on the role of manaakitanga in maintaining relationships. Manaakitanga could also contribute significantly to a group's mana, including restoring mana perceived to have been damaged in some way. David Whata-Wickliffe, for instance, described how Ngati Tamakari patiently accumulated food over a period of five years in order to be able to put on the great feast known as Kaikiekie, given to restore their mana after a slight by other hapu. 980

A notable aspect of hospitality, in terms of mana, was the group's ability to provide particular food delicacies, or kai rangatira. The Tuaropaki bush area of Pouakani, for instance, was an important source of native birds for food, and in one of Dame Evelyn Stokes' reports she notes:

It was important to retain local mana by being able to produce quantities of birds at feasts provided for visitors. Birds were a highly valued special food, which were scarce in some areas and required a great deal of skill to catch.⁹⁸¹

Huirama Te Hiko commented not only on the land resources in the area but also the kai from the Waikato River, saying:

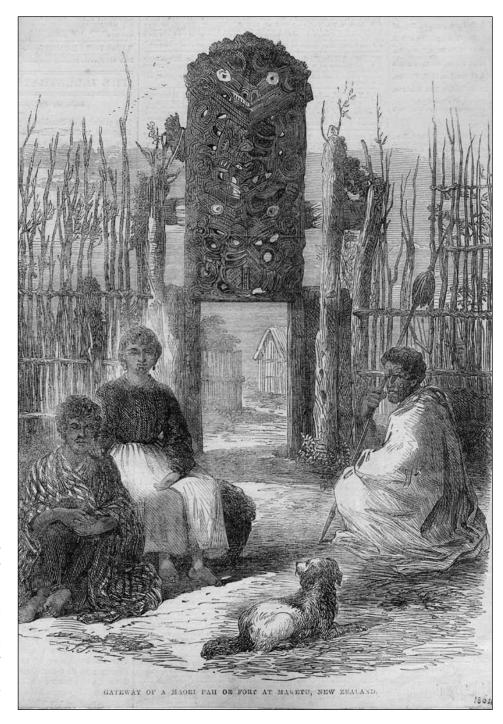
These foods because of their abundance were a taonga tuku iho and enhanced the mana of the people of the marae at Moaki and Ongaroto. They were famed for these foods. 982

Similarly, Hapimana Higgins explained to us the importance of tuna to maintaining the prestige of Ngati Manawa:

Ngati Manawa is famous for its tuna; and this reputation is expressed to us when we travel to other tribal groups. It is also important when other groups visit Ngati Manawa; and there is an expectation that we will manaaki those groups by providing tuna for them to eat. In this way it is important to the mana of Ngati Manawa.⁹⁸³

Te Heuheu's people, for their part, were renowned for being able to provide their guests with freshwater delicacies

HE MAUNGA RONGO



One of the carved gateways of Maketu Pa, circa 1864, as depicted by Horatio Gordon Robley. The online information concerning this image (accessed via http://timeframes.natlib.govt.nz) indicates that the seated woman in European dress may be Hineiturama, wife of Phillip Tapsell, while the man on the right is Hikaroa.

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

such as koura, kokopu, kakahi, and koaro. If, for whatever reason, it became no longer possible to provide that kai rangatira, then the tribe's mana was perceived to have been diminished.⁹⁸⁴

Kaitiakitanga

Kaitiakitanga is concerned with stewardship and protection. Sean Ellison explained to us that the ultimate agents of protection are atua or divine presences. 'It is the atua', he said, 'who are the true kaitiaki, the true custodians and guardians, not humankind'. Reference to many such atua is made in Maori cosmology. Tangaroa is associated with the ocean, Tane with the forest and with birds, Haumiatiketike with fern-root and uncultivated foods, and so on. We have also already mentioned, earlier in this chapter, a number of taniwha and spiritual guardians associated with particular places.

For Mr Ellison, the human role is, rather, 'to manaaki, to respect those things that the atua care for and protect'. Pr Kawharu expands on the human role in kaitiakitanga:

Kaitiakitanga is about a two-way relationship between the kaitiaki and the resource. That is, there are obligations to give, receive and repay. For example, in relation to natural resources, a kaitiaki has the responsibility to give care and management to them, receive the benefits of the resource (such as in the form of food, spiritual sustenance and political advantage), and protect the sustainability of the resource as a way of 'repayment' for what the resource gave. Reciprocity plays an essential role in maintaining relations between humans, their ancestors, the spirit world and the natural environment.⁹⁸⁸

Summary

The values of whanaungatanga, mana, tapu, utu, and kaitiakitanga permeated the ways of life of Central North Island Maori. Because behaviour was influenced and guided by principles rather than rules, they could respond flexibly as situations changed. Mana was important, both chiefly mana and the mana of the kin group, and much effort could be expended to ensure its maintenance. Core

understandings placed a premium on whanaungatanga and on the agency of the group.

Central North Island customary law relating to land and resources

The evidence presented to this inquiry suggests that the claimants perceive the customary law of Central North Island Maori as flexible, endowed with a high degree of subtlety, and able to respond pragmatically to a range of complex circumstances.

Underpinning customary law, they say, was the understanding that each community had authority and exercised customary control within its rohe. Mr Ellison used the analogy of a spider's web:

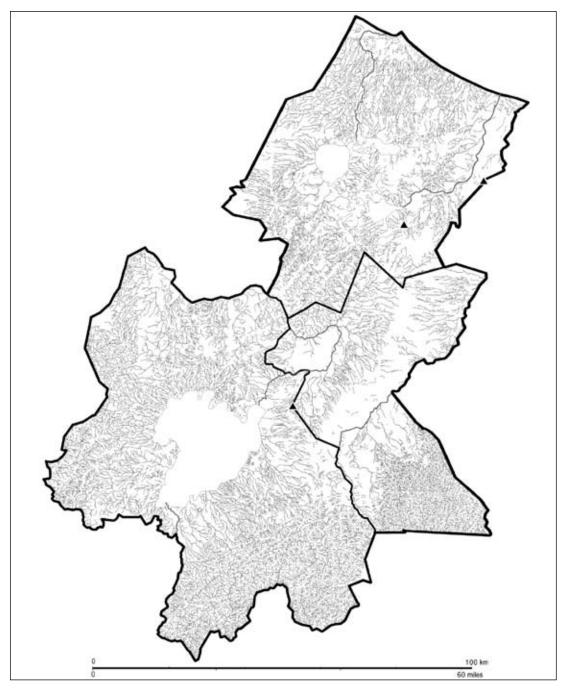
There are a vast number of hapu, each resident on their own strand, and each respectfully tending the gifts that have been placed within their own areas, that the atua themselves protect and nurture. Each hapu has its own area. Even though they are interrelated throughout the breadth of the spider's web, each one has its own strand. And just like a spider's web, if one is missing, the whole structure is weakened.⁹⁸⁹

Authority over land and resources

The exercise of customary authority by a kin group was sourced in a number of take (reasons, causes, or origins).

Take kite hou; take taunaha: One of the prime ways by which rights were initially established was by discovery – first sighting of the land or resource in question (take kite hou). Accompanying this could be take taunaha, or bespeaking, which might involve a taumau (binding proclamation), made by a chief. This would render an area sacred by identifying it with a part of his or his offspring's body. 990 Thus, when Te Arawa waka arrived off the coast near Papamoa, several leaders stood and pointed to different landmarks and claimed rights, and those proclamations have been passed down in oral tradition:

HE MAUNGA RONGO



Map 2.48: The intricate network of waterways in the Central North Island region

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Hei . . . called Tauranga Te Takapu o Waitaha [the belly of Waitaha] as far as Otawa. Then Tia . . . called Te Takapu o Tapuika [the belly of Tapuika] from Te Hoe to [O]tumatawhero. Then Tamatekapua . . . called Maketu Point Te Kuraetanga o te Ihu o Tamatekapua [the bridge of the nose of Tamatekapua]. 991

In this way, the various chiefs effectively reserved specific areas for themselves and their direct descendants, even before making landfall.

A person might be first to use a resource in a particular area. For instance, Te Iwikinakia, a son of Waikari (who in turn was descended from Tuwharetoa through Taniwha, brother to Rongomaitengangana), is said to have acquired rights to a particular fishing spot at Hautu (near Tokaanu) by virtue of being the first person ever to use a hinaki there.⁹⁹²

Later exploration led to new areas being investigated, and prominent features such as lakes and bluffs would become named by or for the explorer. This custom has been referred to as tapatapa whenua (naming of land), and was another way of staking an interest in an area or resource. Thus, for example, Ihenga asserted his mana over Lake Rotoiti by bestowing on it the name of Te Rotoiti Kite a Ihenga (the small lake seen by Ihenga) – or, in some versions, Te Roto Whaiti Kite a Ihenga (the narrow lake seen by Ihenga). ⁹⁹³ Similarly, Te Rere a Tutea, a waterfall in Paengaroa South, was named for Tutea, who asserted his mana over the area after the death of his father Taketakehikuroa. ⁹⁹⁴

Take tupuna: Take tupuna (rights acquired by ancestry or descent) was extremely important, especially if it went back to an early ancestor. As Dr Ballara says: 'Ancestral claims were the strongest claims to land, provided the descendants of the ancestors had continued to occupy.'995 Take tupuna was thus often accompanied by the take of ahi kaa, which we come to below. As Mr Ellison told us: 'it is through your whakapapa that you gain a footing on the land, and through your ability to keep your fires burning strongly that you attain mana whenua.'996 Tapuika told us how their tribal numbers increased over the generations,

but stressed that the hapu that formed as a result and which continued to live in the coastal area were 'all linked through whakapapa to the original ancestors who settled the lands'. Dr Ballara also notes that even conquered peoples retained their ancestral rights as long as they stayed on their land. She cites, among others, the example of Ruamano who, even after the death of his brothers Reretoi and Purakukina at the hand of Wahiao, was said to have maintained mana over their land in Rotomahana Parekarangi. 998

As was noted by Tame McCausland: 'Rights in land were not acquired by marriage, but the children of those marriages gained rights by ancestry'. This was of importance in conquest situations, as we shall see below.

Also in relation to take tupuna, we note in passing the voluminous amount of detailed information given in Native Land Court hearings, when representatives of different hapu explained their claim to a particular area and how it was derived. Where the claim was by descent it was not uncommon for a person to claim through more than one ancestor. As an example, there is the case of Rotomahana–Parekarangi, to the south of Rotorua, where in 1882 Hamuera Pango explained how rights existed through a complex web of interconnections over generations, and that there were several different areas or subregions of interests, each governed by different lines of descent.

Just as the exercise of authority over land was sourced in take tupuna, so too was the exercise of authority over resources. Many witnesses in the Native Land Court claimed rights in fisheries around Lake Taupo by virtue of their hapu having fished there 'always', 'from time immemorial', or 'from a very early period', and made it clear that they considered their rights to have come down from their ancestors. ¹⁰⁰¹ For instance, the right to fish with a hinaki at Hautu near Tokaanu was claimed by Hori Te Tauri by virtue of his descent from Te Iwikinakia who, as mentioned earlier, had first fished with a hinaki at that spot. ¹⁰⁰²

This example also illustrates the point that no distinction was made between the exercise of rights in resources

HE MAUNGA RONGO

associated with waterways and those associated with land. Tomairangi Whakaahua of Ngati Tiki (a hapu of Ngati Tunohopu) thus explained to the Native Land Court that work on the lake and work on the land were both regarded in the same light. This is perhaps not surprising when one considers the extent of waterways in the region, and how important they were to people and their way of life.

Ahi kaa: Once an area had been claimed and settled, rights needed to be maintained by noho tuturu (sustained occupation) and ahi kaa (keeping the fires warm). If the land was abandoned and the fires allowed to go out, then the validity of a claim would fade. ¹⁰⁰⁴ That said, Tamati Kruger gave evidence that there were, in effect, different levels of ahi kaa, and implied that even a cold fire was better than no fire at all. At an intermediate level, he said, there is the camp fire, or the fire intermittently stoked: 'Yes, you have some business there but you go there not under the authority of the long burning fires'. It is the latter, rather, that carry most weight in terms of customary rights. ¹⁰⁰⁵

The most widely accepted signs of permanent occupation were pa and urupa - the latter because a kin group would not normally lay their dead to rest except on land where they had long-term residence; if they moved to a new area they would generally take any ancestral remains with them. 1006 Another tohu (mark or sign) which would be respected as clear evidence of a kin group's legitimate and ongoing interests in an area was the existence of a tuahu, an altar or special place consecrated by them or their ancestors for the performance of sacred rites. Or a pouwhenua (carved post) might be erected to mark a group's close relationship with the land. Peraniko Te Hura, for example, in giving evidence to the Native Land Court in the nineteenth century, named a range of sites significant to Ngati Manawa including pa, rahui, pouwhenua, and food-gathering places to support the kin group's claims to rights in the area in question. 1008 And a witness in our inquiry, speaking for Ngati Raukawa, said of Pa Motai near Kuranui that it had been named by King Tawhiao and that: 'The pou is still standing today.' 1009

Cultivations and special resource-gathering places were additional signs of occupation. However, some witnesses said that 'cultivations were not enough on their own unless there had also been generations of settlement which would be evidenced by associated pa and urupa.' Recent occupation did not give rise to permanent rights in the land. It was only with the passing of the generations that the claim of ahi kaa could be upheld – and the greater the number of generations, the stronger the claim to community authority. One with the passing of the generations that the claim of ahi kaa could be upheld – and the greater the number of generations, the stronger the claim to community authority.

Take raupatu and take toa: Another way of acquiring an interest in land was by conquest. A Ngati Whakaue witness in our inquiry said that, in his understanding, where there was no relationship between the competing parties the correct term to use would be take raupatu. If there was a relationship then it would be take toa. Thus, he said, 'take toa would go hand in hand with take tupuna or ancestral connection to the land.' Other witnesses associate the term take toa with contests in the Native Land Court. Pat Hohepa and David Williams, in their working paper on te ao Maori and succession, refer briefly to take raupatu and take ringa kaha, but without any discussion of the terms, and they do not mention take toa at all. 1014

Whatever the circumstances of the conquest or the term used, the conquering group needed to maintain their position by occupation. As one group of witnesses from Tapuika told us:

Customary tenure requires noho tuturu following 'toa' in order for the new arrivals to claim mana whenua over the lands. Noho tuturu requires at least three generations of occupation upon the land and is evidenced by such signs as urupa, pa. ¹⁰¹⁶

The most strategic way of consolidating rights after conquest was to marry into the conquered community so that the offspring would have rights by both conquest and descent. As but one example, we were told how the sons and grandsons of Tuwharetoa 'had various skirmishes' in the Taupo area, overcoming the existing people and

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

marrying into their womenfolk. 'In doing so', the witness said, they 'came to hold mana whenua'. '1018

Tuku and takoha: As noted earlier, rights in land could be given by tuku. One example of this was when Whakaue and Tutanekai gifted Kawaha to Umukaria in exchange for the hand of his daughter, Hinemoa. There is also evidence to suggest that land could be gifted in return for assistance during wartime – as, for example, when an area in the north of what became the Rotohokahoka block was gifted by Rautao to Tunaeke, in recognition of support received from him. Another example cited is when Ngati Tutetawha and Te Urunga gave land to Te Rangikatukua for assistance rendered in war. Such evidence has been contested by other witnesses, however, who told us:

Land was never the traditional payment for support in warfare. The traditional payment was usually *taonga* (usually greenstone) and subsequent marriage alliances. This created whakapapa links between the two tribes and consolidated the peace. 1022

A variation on tuku was takoha. As explained by Te Keepa Marsh, takoha was similar to tuku whenua except that (at least according to Tapuika customary practice) 'the gifting of lands in this manner was not a permanent right to ownership of the lands'. Under takoha, 'the mana of the land remains with the donor'. According to other Tapuika witnesses, takoha also entailed reciprocal obligations on the part of the recipient of the land. Lakoha is that when the land is surplus to requirements it must be returned to the original owners', irrespective of the period of time that has elapsed since the original gift. This echoes a comment by Dr Ballara about gifting in general, when she noted a 'residual mana over the gift, which reverted to the giver if abandoned by the recipient.

The exercise of authority in relationship to use rights

Each community, then, exercised authority within its rohe, sourced through various take. In particular, the authority

of the community over land and resources was exercised under the mana of those whose senior whakapapa lines established the mana of the ancestral right.

In an earlier section, we described some of the complex interrelationships that developed between kin groups over the generations. This tended to result in interconnected genealogies which in turn meant that a number of kin groups might be able to claim use rights in all or part of any given area. Given the importance of reciprocity and the emphasis placed on building and maintaining relationships, arrangements were arrived at whereby different kin groups would use resources or locations under various conditions and at various times, sometimes on their own and sometimes in conjunction with other groups. Underpinning such arrangements were shared understandings about mana and about rights, obligations, and reciprocity. Thus a resource within a district would seldom be the exclusive preserve of one particular kin group, and a community's sphere of influence was not ringed by boundary lines.

Dame Evelyn Stokes expressed her understanding of customary rights in this way:

Customary Maori tenure was a complex system of overlapping and interlocking usufructuary rights. The land was not 'owned', for it was not a disposable commodity. People belonged to the land inherited from the ancestors and expected that it would be inherited by their descendants.

Land rights were thus inextricably bound up into networks of kinship, ancestry, and a social and political structure that acknowledged leadership in senior lines of descent, segmentation of kin groups and a decision-making process that emphasised consensus.¹⁰²⁸

Mediation of rights

Rohe in the Central North Island, as elsewhere in New Zealand/Aotearoa, were adjoining and intersecting zones of social and economic influence. As we have seen, the influence of kin groups could wax and wane according to events and circumstances, and also according to the mana

HE MAUNGA RONGO

of individual leaders. Factors such as numerical strength and fighting prowess also played their part, with each fluctuating over time.

Land and resources were not 'owned' as such. Rights in usage accrued from the community. Whanau within a community might use a particular area or resource, but the land or the resource itself remained in the control of the collective. As but one example, Mr Marsh noted that within Tapuika only certain families were allowed onto a particular island in the Pakipaki Stream to harvest the harakeke there. 1030

Despite our earlier comment that rohe are not exclusive and 'hard-edged', there do appear to have been mechanisms for designating boundaries if the need arose. We note the reference of Hamuera Mitchell to 'the old aukati of Te Houtaiki that once separated Ngati Whakaue and Tainui', although we were not given any detail as to the circumstances under which it was laid down and we did not hear evidence from Tainui regarding this. ¹⁰³¹ And Dr Ballara refers to a boundary called Te Rii a Kereru (the screen of Kereru), laid down by Kereru, eponymous ancestor of Ngati Kereru (but at the time, she says, leader of Ngati Rangiwewehi). The boundary was on the Rotorua side of the Mangorewa River and was designed to prevent incursions from Rotorua war parties. ¹⁰³²

We have already discussed the mechanisms used for community decision-making, in our section on hapu autonomy and the role of chiefs. As we noted there, a chief had a considerable say in decisions on land and resources, especially where use was being granted to other kin groups, but these were not usually decisions that he made alone: these were matters that concerned the kin group as a whole. From the material available to us, it would seem that the main factors influencing such decisions were whakapapa and relationships. At an individual level, use rights might be mediated within the whanau without senior hapu leaders becoming involved, but such rights came with a reciprocal obligation to contribute to the well-being of the wider hapu. 1034

There might sometimes be good reason, however, to grant use rights to others beyond the immediate kin group, for example to build or maintain a relationship with another hapu. Indeed, it has been said that:

The common feature of Maori law was that it was not in fact about property, but about arranging relationships between people. 1035

From the evidence, it is clear that there could be layers upon layers of adjoining and intersecting rights, for example between Ngati Whakaue and other kin groups, then within Ngati Whakaue between, say, Ngati Tunohopu and others, and then, within Ngati Tunohopu, between subgroups such as Ngati Taioperua and Ngati Te Tiwha. An area such as Okoheriki, for instance, on the south-west side of Lake Rotorua around Ngongotaha, appears to have been actively used by upwards of seven different subgroups of Ngati Whakaue, while further to the south-west again, some 13 subgroups of Ngati Whakaue and other iwi all gave evidence about their resource use in the Rotohokahoka area. ¹⁰³⁶

Generally speaking, the richer the area was in resources, the more dense its utilisation was likely to be. The area that became the Rotohokahoka block, to give but one example, was clearly a prime spot:

It was cloaked in bush, rich with bird life and other resources, had a lagoon and many streams of eels and other fish, and of course, it was close to the lake. There were dozens of cultivation sites, pa sites and wahi tapu that were located throughout, particularly on Ngongotaha. ¹⁰³⁷

Sir Hugh Kawharu has commented that when rights were granted for reasons other than for dwelling, 'they covered specific food-producing resources rather than just the land itself.' ¹⁰³⁸ In some cases, even a resource as particular as a single tree might be subject to multiple use rights, with different groups all agreeing on who should be allowed to set snares there. ¹⁰³⁹ Such rights could even be assigned to individual members of a kin group. ¹⁰⁴⁰

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Use rights could also be granted to non-resident groups, and in this case were often part of a reciprocal arrangement. In our section on relationship-building through economic exchanges, we have already noted how, for a long period, Tapuika and Waitaha visited Maketu to gather shellfish and other seafoods while, in return, Ngati Whakahinga were allowed access to Tapuika and Waitaha's forest areas to gather food and take birds. 1041 We also cited a range of other instances.

In other cases the reciprocity, while likely, is not explicit. Don Stafford mentions, for example, that Ngai Te Rangi 'travelled to Tapuika territory to obtain birds, berries and the like from the forests.' Even after Ngati Rangiwewehi had been ousted from Ohinemutu in battle, they were able to return there on a seasonal basis to gather and dry tawa berries. Then there is the example of a large and much-prized sharpening stone, located in a river near Matata. Gilbert Mair noted that, as a sign of its importance, it had been given a name and 'was of such general use that an honourable understanding existed under which even hostile tribes we[re] made welcome when they came there to use it'. He observed that: 'Such stones were not common, and were of great value'.

Shared use arrangements could, of course, be adapted to respond to new situations, and this continued to occur into the nineteenth century. As an example, new interhapu arrangements were reached about harvesting flax in some areas, once the possibilities of trade in that commodity with Pakeha were realised. In this context we heard evidence, derived from Native Land Court records, that people in the Paeroa East area had allowed certain others to come and scrape flax there 'to sell to Tapsell, to buy guns, to fight Rangihouhiri at Maketu.' 1045

Roha rohai: A slightly different situation pertained on the Kaingaroa Plains, which were described to us by Tuhoe and Ngati Haka Patuheuheu witnesses as 'roha rohai (or rohae)'. As we understand it, the term relates to an area that was traversed and used for resources but not permanently

occupied. That is, it was used on a seasonal and temporary basis for cultivation and hunting, with multiple groups having access. Hiraina Hona explained:

Kaingaroa was a seasonal settlement. Tuhoe had the ability to pass through those areas safely and confidently. You will not hear stories that Tuhoe had to seek permission or authority from anyone. It was a safe passage known in Tuhoe as 'rohe rohai'. The frontier lands were often shared territories, not marked by any permanent residence. The resources were shared likewise to accommodate all those who had a vested interest. The level of authority would normally fluctuate between your fortunes or misfortunes.

Mr Kruger said that roha rohai meant 'frontier border country, land shared in common, territory used as sanctuary, refuge, temporary settlement for travellers', and he described the Kaingaroa as:

a frontier land, a frontier for Te Arawa, Tuwharetoa, Ngati Manawa, Ngati Whare, Tuhoe. It is there we all have a say to this place. We have mana at Kaingaroa, we have rights at Kaingaroa, we have a quintessential connection to Kaingaroa.¹⁰⁴⁷

Robert Pouwhare said that roha rohai was a concept peculiar to the Tuhoe people, stating:

In essence it talks about frontier lands shared by neighbouring iwi and hapu. This land in times past was highly contested land but through time hapu and iwi have reached understandings with each other and these understandings include rights, obligations and privileges over He Whenua Roharohai. 1048

He went on to clarify what he saw as the difference between the terms 'whenua roha rohai' and 'whenua tautohetohe':

Hirini Moko Mead of Ngati Awa has a different concept for this land. He calls it He Whenua Tautohetohe. Tuhoe do not use the same word as Ngati Awa because Whenua Tautohetohe implies constant tension and fighting.¹⁰⁴⁹

HE MAUNGA RONGO

In this context, we also note Hine Campbell's description of Ngati Hineuru's lands – with interests which she described as extending into Kaingaroa – as being 'out in the no mans land." Although not tallying completely with the above explanation of roha rohai (in that she indicates Ngati Hineuru as being resident), we take her to have been implying something similar in so far as these were borderlands with few permanent inhabitants. On the other hand, Mr McCausland described, in his oral evidence, a situation in the coastal area that appears more akin to the above description of whenua tautohetohe, saying:

After the battle at Te Tumu, Ngai Te Rangi returned to their side and Te Arawa remained at Maketu, and in between there was an area that was not occupied permanently by people because it was constantly being raided by war parties from both sides.

.

People came and went, came and went, but no-one occupied permanently.¹⁰⁵¹

Rahui and kaitiakitanga: In situations where usage was exclusive rather than shared, a group might erect a rahui – a marker or warning sign, usually a post of some kind – to indicate that the resource or area was restricted. This applied to rivers and lakes just as much as forests and other land areas. David Whata-Wickliffe, for instance, mentioned an eeling place at Okere (near the western end of Lake Rotoiti), fished only by Ngati Tamakari, Ngati Hinekura, and Ngati Hinerangi. Ngati Tutemohuta witnesses likewise described how, traditionally, 'each whanau had its particular area of food gathering rights . . . and everybody knew the extent of their jurisdiction.' 1054

Rahui could also be used to protect a resource from overuse. The rahui 'would indicate by its shape, position, or material which particular set of food resources was covered'. We have been given numerous examples in evidence. In the Okataina area, Ngawaru, the daughter of Taranui of Ngati Tarawhai, put up rahui posts to protect the fern root and the berries claimed by Ngati Tarawhai. 1056

Similarly, Ngati Rangitihi put up a rahui at Te Kopiha, in the Rerewhakaaitu area, to protect the flax resource there. And few can have ignored a warning sign from Ngati Whaoa: when they killed a certain Korona, they cut off his head and stuck it on a *rahui* post to prevent people from digging fern-root at a certain place on the Paeroa block. Description

Rahui were used at Lake Rotokawa, too, which was well-known for its bird life. Evidence presented to the Native Land Court in the nineteenth century reveals that on the track leading from Otamarauhuru to the lake, a rahui post would be set up to indicate when the hunting season was closed so that the resource was not depleted. If birds were plentiful there might be three seasons for hunting; if not, only two. And hunting did not take place without the appropriate rites being observed at the tuahu, both before and after the hunt. These were, the informant revealed, practices that had been handed down from previous generations. 1059

As will be clear from preceding comments, therefore, rahui were a commonly used device to warn 'outsiders' away, for reasons that could include protection. In the evidence presented to this inquiry, witnesses frequently stressed the kaitiaki (caretaking and protection) aspect of resource use. There was not only a right to take but also a duty to protect. Ngati Tutemohuta witnesses, for example, said that in respect of resource usage 'whanau had responsibility also for the protection and sustainability of that resource.' And Miki Raana and Miriama Douglas both referred to the kaitiaki role of Ngati Whakaue with regard to the geothermal resource at Ohinemutu, and to traditional management methods that were employed to ensure its conservation.

Taonga tuku iho: As will be clear from previous sections, Central North Island Maori exercised full authority and control over their land and natural resources. We have also seen that rights to use were assigned within and by communities in accordance with tikanga. The question we examine here is whether such rights could descend from generation to generation within a whanau.

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

We have already noted that take tupuna is one of the ways by which rights were acquired. That is, in a general way, rights could be passed down from tupuna. We have also noted that individuals within a community could be assigned specific rights, for example to set bird snares in a particular tree. The evidence suggests that such rights could be passed down from one generation to the next, but that this could not occur without the sanction of the chief and, by extension, the community. 1062

Likewise, we have observed that descent was ambilineal, so that a person could draw on links to the kin groups of both mother and father. As an example of this from early times, it is recorded that Kahumatamomoe's cultivation plot, Parawai, came to him from his mother, not his father: 'Na Kahu te maara, ko Parawai, na toona whaea i tuku ki a ia' (emphasis added). 1063 Thus, a child might potentially acquire rights in a whole number of different locations, depending on the origins of his or her tupuna. However, anyone claiming rights through whakapapa would be expected to contribute to the kin group from whom the rights derived. Although use rights could be handed on from generation to generation, the kin group's chief (and by extension, the kin group itself) provided 'control and overall protection for which he could expect tributes and services of various kinds.'1064 As Sir Hugh Kawharu explains, 'rights to land for shelter, for cropping, and for food-gathering were contingent upon the acceptance of the obligations of membership in the particular community owning the land.1065 Or, to put it another way, rights 'were not isolated from membership of the hapu, participation in its activities, and acknowledgement of the mana of its rangatira.1066

In the case of a woman marrying into a different kin group, she would retain the rights she had acquired at birth and might also be given use rights of various kinds by her husband's kin group. However, if the husband died, or if the couple separated, then the rights she had acquired by marriage passed to the children of the marriage or reverted to the kin group. ¹⁰⁶⁷

That is, the right of an individual kin group member's inheritance was not absolute. Rather, it was tempered by

the rights of the group. Inheritance of rights, and hence the disposition of land and resources, was not a permanent arrangement. People were not 'locked in' or 'locked out' definitively. As with so many things, the system was based on the core values of whanaungatanga and utu.

Summary

Rights in land and resources were sourced in a range of ways. Rights of usage were exercised under the authority of the community. Some resource rights were exercised by the community as a whole, but particular resource rights might be allocated for the use of whanau and their members in accordance with tikanga. Nevertheless, rights were never isolated from obligations to the kin group from which they were derived. The areas used by different kin groups often overlapped, so there needed to be clear understandings about the exercise of use rights. Some areas might be sparsely populated but were still subject to shared usage. Rahui that were put in place to protect resources were also statements of authority over them. Within the community, rights could, with the sanction of the community, be inherited.

CHAPTER SUMMARY

The peoples of the Central North Island inquiry region have a rich history, with multiple and complex interrelationships between the many different kin groups. Appearing before us at hearings, many claimants stressed to us the depth and breadth of their relationship with their lands – and not only their lands but also the resources associated with them. They also stressed that the attachment was not just to 'the physical property of the land as an economic commodity', as one claimant put it. When land was lost, a group of claimants explained, it 'severed the connection between the people and their whenua, tikanga, wairuatanga, whakapapa and way of life'. What lies over the land', they said 'is the whakapapa, traditions, and history of the people'.

HE MAUNGA RONGO

The layered nature of Maori customary rights to land and resources has also been laid out, as have the ways in which those rights were mediated within and between communities. Rights were, as Shane Ashby commented, 'complex in nature and allowed for all kinds of dynamics to occur.' Such flexibility was possible because customary law was based not on rules but on values and principles.

The regular exercise of customary rights, and their protection, was crucial to maintaining community authority

over land and resources, while arrangements for shared use both reflected and strengthened relationships with neighbouring kin groups.

Such was the world into which Pakeha arrived, and with which 'a fledgling new government in a strange country' (to use Mr Ashby's phrase) would need to interact. From the evidence presented to us during this inquiry, it is clear that aspects of that world still exist and have ongoing implication for interactions between Maori and the Crown.

SUMMARY

Key Points

- ► Central North Island Maori have a range of traditions about their origins:
 - Many whakapapa back to those who arrived on waka such as Te Arawa, Tainui, or Mataatua. Many of those migrants were related to each other.
 - Some claim descent from very early ancestors with no arrival traditions.
 - Others have origins that reach into the mists of time.
- ▶ The approximately 50 Central North Island kin groups who have had claims lodged with the Waitangi Tribunal have complex interrelationships. We have outlined some of these, and given an indication of some of the areas and places with which each group has been associated over the generations.
- ▶ The salient characteristics of the relationship of Central North Island Maori with their land and resources were that the people belonged to the land and had responsibility for its well-being. Their histories are reflected in the names that cover the landscape.
- ► Central North Island Maori had an extensive knowledge of their land and resources, built up over generations. This included a knowledge of resource management and appropriate technologies, a range of resource-based skills such as carving and weaving, and knowledge of the medicinal properties of various natural resources.
- ▶ Customary law was values-based, rather than rules-based, which made it flexible. Two of the core values were whanaungatanga and utu (relationships and reciprocity).
- ▶ Authority over land and resources was centred in kin-based communities. The use rights of a community's constituent whanau and members derived from the community, and those rights were ultimately exercised for the well-being and security of the community.

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Notes

- 1. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 34–40, 54–56; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc c25(a)), p 19; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 11
- 2. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p18; Malcolm McKinnon (ed), New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei (Auckland: Bateman, 1997), plate 20: 'Te Arawa Waka'; Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), p7
- **3.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p14; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), pp19–20
- **4.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 6, 29
- 5. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), pp 20–21; Tame McCausland, brief of evidence of behalf of Waitaha, 16 February 2005 (doc B54), p4; That there was relationship between Toroa and both Ngatoroirangi and Tamatekapua accords with other evidence which points to the latter two being first cousins (see: John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p54; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), pp17–18).
- **6.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 5
- 7. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 6
 - 8. Ibid, p 6
- 9. Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), pp 3–4; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 274–276
- 10. Evelyn Stokes, *Rotokawa Geothermal Area: some historical perspectives* (Hamilton: University of Waikato, 1994), p 3; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 274–275, fn 145
- 11. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc c25), p14; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc c25(a)), pp15–16

- **12.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 13. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), pp 3–6; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p12; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p13; Angela Ballara, "Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 6–11; Tama Nikora, "Tuhoe and the Rangitaiki', March 2004 (doc 163), pp 9–11, 25
- **14.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 6–8, 17–20
- 15. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 85–89; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 18–23, 177; Wiremu Bird, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc C41(a)), pp 14–16
- **16.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 80; Wiremu Bird, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc c41(a)), p 15; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 17
- 17. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 23; John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), pp 80, 113; Don Stafford, Te Arawa: A History of the Arawa People (Wellington: Reed, 1967), p 488. We note, however, that in some traditions Ngati Hotu are related to Hoturoa, Hotuope, and others of the Tainui waka (see: Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 25).
- **18.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 75–81, 482, 486–488; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 83, 113–120
- 19. In one brief of evidence presented to us, it was explained that the name had originally been Te Ara o Te Wa, which had become shortened to Te Arawa (Kawana Nepia, in an attachment to Neville Nepia, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B12)).
- 20. Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), p 25

HE MAUNGA RONGO

- 21. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p34; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p37
- **22.** See, for example, Hauata Palmer, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B29), pp 3-4.
- 23. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp18–19; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p30
- **24.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 20
 - **25.** Ibid, p 75
- 26. Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p4; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p31; Joe Mason, oral evidence on behalf of Ngati Awa, eighth hearing, 11 July 2005 (recording 4.3.8, track 2)
- 27. Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p4; Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), p17
- **28.** We note here the parallels from other cultures: the conferring of names such as (Nieuw) Zeeland by the Dutch, for example, or Cambridge and (New) Plymouth by the English.
- 29. Annette Sykes and Jason Pou, closing submissions on behalf of Te Ahi Kaa Roa Maketu, 2 September 2005 (paper 3.3.75), p 6. We note here that the people of Tainui waka can also lay claim to Whakaotirangi, in that she later became the wife of Hoturoa: see Pei Te Hurinui Jones and Bruce Biggs, Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), pp 52–54; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 277.
- **30.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp30, 199
- 31. Waitangi Tribunal, *The Mokai School Report* (Wellington: Legislation Direct, 2000), p1; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 124, 127–131

- **32.** Rere Puna, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc C44), pp 2–3, 9; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), p 54; Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), pp 11–12
- 33. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p54; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p17
- 34. Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), p 9
- **35.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 29–30
- **36.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p31 fn 4; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p57
- 37. Te Kanawa Pitiroi and Paranapa Otimi, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 1); Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 22; Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), pp 24–38
- 38. Don Stafford, Te Arawa: A History of the Arawa People (Wellington: Reed, 1967), pp 52, 54; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), appendix B, p 2; Evelyn Stokes, The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources (Hamilton: University of Waikato, 2000), pp 27, 108; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Ratana Wall, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D16), p 3
- 39. Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 16, 136
- 40. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 72–74; Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), pp 44–45
- 41. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc c25(a)), pp 30–31; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p103; Office of Treaty Settlements, *Deed of Settlement of the Historical Claims of Ngati Tuwharetoa (Bay of Plenty)* (Wellington: Office of Treaty Settlements, 2003), pp 4, 10

- **42.** Te Kanawa Pitiroi and Paranapa Otimi, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 1)
- 43. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 57; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc 87), p 11
- **44.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 58, 164; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 11
- **45.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p14
- **46.** Ibid, p 18; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 20
- **47.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 17–18, 24–25
 - 48. Ibid, p 31
 - 49. Ibid, pp 33-36
 - **50.** Ibid, p 41
- **51.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 41; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 140, 190
- **52.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 22–24, 57
 - 53. Ibid, pp 30, 32
 - **54.** Ibid, pp 56-57, 471-472
 - **55.** Ibid, pp 37–38
- 56. Ibid, pp 20–21; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p35; Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 17–18; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 22; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 25; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 279
- **57.** Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), pp 21–22; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 24
- **58.** William Dansey, brief of evidence on behalf of Te Takere o Nga Wai, 1 March 2005 (doc C48), pp 9–10; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), pp 24–25; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), appendix B, p 2; Kim Te Tua, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D30), p 3
- **59.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 23; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), p 3

- **60.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 56; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 495–497; Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), pp 4–6. Stafford states categorically (pp 56, 83) that Naia also settled at Rotoehu. However, the manawhenua report cited here describes Naia as living at Papamoa Pa and having 'trusteeship responsibilities over Te Takapu o Waitaha'. Mr McCausland states that 'Naaia occupied the Papamoa Pa' but gives no indication of the length of time he stayed there.
- **61.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 18–20
- 62. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 75–78, 124; Kawana Nepia, in appendix to Neville Nepia, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B12), p 3; Lennie H Johns and Ira M E Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), p 9; Peter Clarke, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D13), p 4
- **63.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 65–66
- **64.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 22–23
- **65.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p16
- **66.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), p 21
 - 67. Ibid, pp 19, 21, 41, 43
 - 68. Ibid, p 124, 127
 - 69. Ibid, pp 19, 43
- **70.** Te Maioro Konui, brief of evidence on behalf of Ngati Hikairo in response to the evidence of Te Ngaehe Wanikau and to questions of clarification, 25 May 2005 (doc H₃), p12
- 71. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p177
 - 72. Ibid, p 185
 - 73. Ibid, p 185
- **74.** Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol.1, p.14
- **75.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 178–179

- **76.** Ibid, p100; Neville Nepia, oral evidence for Ngati Makino, second hearing, 15 February 2005 (recording 4.3.2, track 2)
- 77. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 164; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 11. Stafford describes a situation where certain descendants of Rangitihi were living in the Tarawera area in two separate groups. He calls them 'the Tuhourangi people', implying that they were two separate sections of the one descent line from Tuhourangi, Rangitihi's youngest son. However, the Ngati Rangitihi manawhenua report states that Ngati Rangitihi are descended from Rangiaohia, an older son of Rangitihi. Since Rangiaohia also moved to the Tarawera area, it is conceivable that the two descent lines, living in close proximity, reached a point where they wished to underline their separate identities. Irrespective of descent lines, however, it would appear that the naming of Ngati Rangitihi as a specific kin group may well date from this period of their habitation at Moura.
- **78.** Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p 3
- 79. Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), para 23
- **80.** Solomon Rutene, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hinerau, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, February 2005 (doc D17), p 3
- 81. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p 39
- 82. Te Awanuiarangi Black, brief of evidence on behalf of Ngati Te Pukuohakoma, 7 February 2005 (doc B30), para 10
- **83.** See, for example, the numerous accounts of independent action recounted in John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959).
- **84.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), p 219
- **85.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), p11
- **86.** Don Stafford, oral submission, sixth hearing, 11 May 2005 (recording 4.3.6, track 2); Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p 28
- 87. Raewyn Bennett, brief of evidence on behalf of Te Ahi Kaaroa o Maketu, 27 April 2005 (doc F24, attachment A), p 3
- **88.** Don Stafford, oral evidence, sixth hearing, 11 May 2005 (recording 4.3.6, track 2); Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 11, 18; Derek Te Ariki Morehu, evidence on behalf of Ngati Makino, 7 February 2005 (doc B20), p6; Raewyn Bennett, brief of evidence on behalf of Te Ahi Kaaroa o Maketu, 27 April 2005 (doc F24, attachment A), p8; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p19; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p21

- 89. Don Stafford, oral evidence, sixth hearing, 11 May 2005 (recording 4.3.6, track 2); Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 18–19; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 31; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 19; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai, 28 February 2005 (doc C25(a)), p 21
- 90. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 21; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 75–76, 78; Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), p 6
- 91. Raewyn Bennett, brief of evidence on behalf of Te Ahi Kaaroa o Maketu, 27 April 2005 (doc F24, attachment A), p 8
- 92. Te Keepa Marsh et al, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p 22
- 93. Angela Ballara, Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), p 276
- **94.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 257–259
- 95. David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 11
- **96.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 286–287
- 97. Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Tapuika, 29 July 2005 (doc H46), para13
- **98.** Robert Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B37), p8; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), pp4–5; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 99. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc c25(a)), p 23; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 477; Paul Tapsell, Ko Tawa: Maori Treasures of New Zealand (Auckland: David Bateman, in association with Auckland War Memorial Museum Tamaki Paenga Hira, 2006), pp 163–167
- 100. Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Makino (English version), 7 February 2005 (doc B20), p6; Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p4

- 101. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p 477
- 102. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 298–299
- 103. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 41, 299; Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p 4
- **104.** Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p 4; Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc H3(a)), p 3
- 105. Eru Te Paemoe in Maketu Native Land Court minute book 3, 15 July 1878, fol 114 (cited in Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p31); Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc H3(a)), p11
- **106.** Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), pp 4–5
 - **107.** Ibid, pp 6-7
 - 108. Ibid, p6
- 109. Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), pp11-25; Rereamanu Wihapi, brief of evidence on behalf of Tapuika, undated (doc B21), pp3-4. We received conflicting evidence about Tapuika's interests in inland areas. For example, Te Ururoa Flavell implied that their use of Kaikaitahuna (in the area now generally known as Hamurana) was through the goodwill of Ngati Rangiwewehi (see: Te Ururoa Flavell, brief of evidence on behalf of Ngati Rangiwewehi, April 2005 (doc F41), pp8-11). Tapuika disputed that implication, saying that 'Kaikaitahuna was a traditional place of refuge and utilised in the same way as Rangiuru, that is, to regather/regain [their] strength'. They stated that they had rights there through intermarriage (see Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc H3(a)), p13).
- 110. Rereamanu Wihapi, brief of evidence on behalf of Tapuika, undated (doc B21), p5; Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p41
- 111. Rereamanu Wihapi, brief of evidence on behalf of Tapuika, undated (doc B21), p5

- 112. Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), pp 8–11
- 113. Mary Gillingham, 'Waitaha and the Crown, 1864–1981', report commissioned by CFRT on behalf of the claimants, February 2001 (doc A35), p.9; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p495; Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), pp3, 15; Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Tapuika, 29 July 2005 (doc H46), paras 6–7. For most of its length, the Waiari Creek (or Waiari Stream) flows in a north-northeasterly direction, passing just to the east of present-day Te Puke before joining the Kaituna River near the coast.
- 114. Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Ngai Te Rangi, 3 June 2005 (doc н8(a)), рага 6
- 115. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 496
- 116. Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Ngai Te Rangi, 3 June 2005 (doc H8(a)), para 32
- 117. Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), para 24; Jeremy Gardiner, brief of evidence on behalf of Ngati Awa, 27 June 2005 (doc H20), pp 6–9
- 118. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), pp 6-8
- 119. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p8; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp498-499. We also note here the evidence of Colin Reeder, for Ngai Te Rangi, who asserted that Nga Potiki, Ngati He, and Ngai Tauwhao, as descendants of Kumaramaoa, have inherited any Waitaha interests at Papamoa and along the coast to Te Tumu. His evidence was that the Waitaha claimants are principally the descendants of Te Iwikoroke and their interests are east of Otawa and inland: see Colin Reeder, brief of evidence on behalf of Ngai Te Rangi, [May 2005] (doc F99), p3. In response, Whareoteriri Rahiri, for Waitaha, said that many of the descendants of Te Iwikoroke are also 'all part of Kumaramaoa'. Among those descendants he also included other kin groups such as Ngati Makino, Tuhourangi, Ngati Ranginui, Ngati Tunohopu (of Ngati Whakaue), and Ngati Haua: see Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Ngai Te Rangi, 3 June 2005 (doc H8(a), para 16. Mary Gillingham, for her part, states: 'Te Iwikoroke is the ancestor with whom the Wai 664 Waitaha claimants are most closely connected. They

HE MAUNGA RONGO

are also linked to Kumaramaoa, and some have interests in his land, although other tribes who also descend from Kumaramaoa now occupy those lands': see Mary Gillingham, 'Waitaha and the Crown 1864–1981', February 2001 (doc A35), p 3.

- 120. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p13
 - 121. Ibid, p10
- 122. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p10; Te Keepa Marsh, Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p16
- 123. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p10
- 124. Te Awanuiarangi Black, brief of evidence on behalf of Ngati Te Pukuohakoma, 7 February 2005 (doc в30), para 5
- 125. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p10
- 126. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp498–500; Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Ngai Te Rangi, 3 June 2005 (doc H8(a)), para13; Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), pp9–10
- 127. Te Awanuiarangi Black, brief of evidence on behalf of Ngati Te Pukuohakoma, 7 February 2005 (doc B30), paras 11–17, appendix I
- 128. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p12
- 129. Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Ngai Te Rangi, 3 June 2005 (doc H8(a)), para 65
- 130. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p10. Repehunga is the old name for the present-day Papamoa Domain: see Te Awanuiarangi Black, brief of evidence on behalf of Ngati Te Pukuohakoma, 7 February 2005 (doc B30), para 19.
- 131. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), pp 10-11
- 132. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 87. Of interest here are references to the ancestor Tuhourangi having kin links to Waitaha, both through his mother, Papawharanui, and through Rakeitaehinu, one of his wives: see Whareoteriri Rahiri, brief of evidence in response on behalf of Waitaha to Tapuika, 29 July 2005 (doc H46), para 44.
- 133. Matene Whakaawe, cited in Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, p 712
- 134. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report

- commissioned by CFRT, November 2004 (doc A65), pp100–101; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1996), vol 2, pp127–128
- 135. Mary Gillingham, 'Waitaha and the Crown 1864–1981', February 2001 (doc A35), pp 11–12; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, p 642
- 136. Mary Gillingham, 'Waitaha and the Crown 1864–1981', February 2001 (doc A35), pp 17, 22
 - 137. Ibid, p 22
- 138. Angela Ballara, 'Tribal Landscape Overview, c1800-c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p100; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report, report commissioned by CFRT, March 2005 (doc G3), pt 2, p 640. If 'Te Awhe', mentioned in the latter reference, was in fact Te Awhe o Te Rangi then, according to Dr Ballara's evidence, he was contemporaneous with Te Ariki. However, there appears to have been a later Te Awhe who lived only two generations prior to those giving evidence to the Native Land Court in 1871: see Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2. p 644. If this is the Te Awhe in question, then it would place the naming of Ngati Makino at a rather later date.
- **139.** Neville Nepia, oral evidence for Ngati Makino, second hearing, 15 February 2005 (recording 4.3.2, track 2)
- 140. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p100
- 141. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, pp 704–705
- 142. Hilda Sykes, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B31), pp 3-4
- **143.** Neville Nepia, oral evidence for Ngati Makino, second hearing, 15 February 2005 (recording 4.3.2, track 2)
- 144. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p101; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 490–492
- **145.** Neville Nepia, oral evidence for Ngati Makino, second hearing, 15 February 2005 (recording 4.3.2, track 2)
- **146.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 49–50

- 147. Ibid, pp100–101; Kawana Nepia, in an appendix to Neville Nepia, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B12), p14
- **148.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 101
- 149. Ibid, pp 101–102. Ngati Tamakari are also sometimes referred to as being part of Ngati Pikiao. However, Colleen Skerrett-White stated that they are 'a hapu of Waitaha closely aligned to Ngati Makino and Ngati Pikiao': see Colleen Skerrett-White, evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, Ngati Rongomail, Nga Uri o Te Tokotoru o Manawakotokoto and Ngati Rangiunuora, 29 July 2005 (doc 125), p 4.
- 150. Hilda Sykes, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B31), pp 3-4
- 151. Kawana Nepia, in an appendix to Neville Nepia, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B12), p 5
- **152.** Te Ariki Morehu, oral evidence for Ngati Makino, second hearing, 14 February 2005 (recording 4.3.2, track 2)
 - 153. 'The Ngati Makino Claim Area', CD of maps, undated (doc B49)
- **154.** Hauata Palmer, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B29), p3
 - 155. Ibid, p 2
- 156. Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), para13
- 157. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 287; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 502–503
- 158. Don Stafford, *The History and Placenames of Rotorua* (Auckland: Reed, 1999), p 54
- 159. Colin Reeder, brief of evidence on behalf of Ngai Te Rangi, [May 2005] (doc F99), p 4
- **160.** Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), p5; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 193–195
- **161.** Colin Reeder, brief of evidence on behalf of Ngai Te Rangi, [May 2005] (doc F99), pp 5–7
- **162.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 287–288
- 163. Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc н3(a)), p 9. Tatahau was from Tapuika on his father's side and Waitaha on his mother's side: see Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc н3(a), p 8; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 119.

- **164.** Hauata Palmer, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B29), pp 6–8; Spencer Webster and Steven Clark, closing submissions on behalf of Ngai Te Rangi and Ngai Tukairangi, [September 2005] (paper 3.3.68), pp 9–10
- **165.** Colin Reeder, brief of evidence on behalf of Ngai Te Rangi, [May 2005] (doc F99), p 5
- **166.** Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), p10
- **167.** Colin Reeder, brief of evidence on behalf of Ngai Te Rangi, [May 2005] (doc F99), p 12; Hauata Palmer, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B29), p 14
- **168.** Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), paras 4-5
 - 169. Ibid, para 6
 - 170. Ibid
 - 171. Ibid, paras 5, 10-11
- 172. Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), para 8; Joe Mason, oral evidence for Ngati Awa, eighth hearing week, 11 July 2005 (recording 4.3.8, track 2)
- 173. Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), para 9
 - 174. Ibid, paras 11-16, 23
- 175. Attachment to Jeremy Gardiner, brief of evidence on behalf of Ngati Awa, 27 June 2005 (doc H2O), map B
- 176. Joe Mason, brief of evidence for Ngati Awa, 27 June 2005 (doc H21), paras 11-19
- 177. Joe Mason, oral evidence on behalf of Ngati Awa, eighth hearing, 11 July 2005 (recording 4.3.8, track 2)
- 178. Waitangi Tribunal, Ngati Awa Settlement Cross-Claims Report (Wellington: Legislation Direct, 2002), p.56
- 179. Buddy Mikaere, 'Ngati Pukenga Ki Maketu, Ngati Pukenga and Pukaingataru', April 2005 (doc F18); Buddy Mikaere, evidence on behalf of Ngati Pukenga, 22 April 2005 (doc F30); Shane Ashby and Te Awanuiarangi Black, brief of evidence on behalf of Ngati Pukenga, 22 April 2005 (doc F23), paras 14–21
- **180.** Te Awanuiarangi Black, Nga Take o Ngati Pukenga ki roto o Te Waiariki, undated (doc F23(a)), p 4
- **181.** Ibid, p7; Buddy Mikaere, 'Ngati Pukenga Ki Maketu, Ngati Pukenga and Pukaingataru', April 2005 (doc F18), pp 2–3
- **182.** Shane Ashby, brief of evidence on behalf of Ngati Pukenga, 9 May 2005 (doc F23(b)), p 4
- 183. Te Awanuiarangi Black, brief of evidence on behalf of Ngati Te Pukuohakoma, 7 February 2005 (doc B30), paras 9–15; Te Awanuiarangi Black, Nga Take o Ngati Pukenga ki roto o Te Waiariki, undated (doc F23(a)), p 4
- **184.** Shane Ashby, brief of evidence on behalf of Ngati Pukenga, 9 May 2005 (doc F23(b)), p 4
 - 185. Ibid, pp 4, 5

- **186.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p121; Buddy Mikaere, 'Ngati Pukenga Ki Maketu, Ngati Pukenga and Pukaingataru', April 2005 (doc F18), p3
- **187.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 162
- **188.** Shane Ashby, brief of evidence on behalf of Ngati Pukenga, 9 May 2005 (doc F23(b)), pp 6-7
 - 189. Ibid, p7
 - 190. Ibid, p8
- 191. Buddy Mikaere, 'Ngati Pukenga Ki Maketu, Ngati Pukenga and Pukaingataru', April 2005 (doc F18), p7
- 192. Te Awanuiarangi Black, Nga Take o Ngati Pukenga ki roto o Te Waiariki, undated (doc F23(a)), p3; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt2, p585
- 193. Shane Ashby, brief of evidence on behalf of Ngati Pukenga, 9 May 2005 (doc F23(b)), p10
- 194. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p478
 - 195. Ibid, p 53
- 196. Paul Tapsell, 'Taonga: a Tribal Response to Museums', DPhil thesis, Oxford University, 1998, p 24, cited in Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 53
- 197. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p53
- **198.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 61
 - 199. Ibid, pp 64-65
- 200. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p42
- 201. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 61–65; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 3; Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p 5; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 54
- 202. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p3

- **203.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 54, 96–97
 - 204. Ibid, p44
- **205.** Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 5
- 206. Don Stafford, Landmarks of Te Arawa, 2 vols (Auckland: Reed, 1994), vol 1, pp 93, 194
- 207. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp54, 56
- **208.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 92
- 209. Ibid, p92; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 72–73
- 210. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp478, 524
 - 211. Ibid, p 535, 553
- **212.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 59–62
- **213.** Ibid, p 62; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 105–106, 177
- **214.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 61–65; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 17
- 215. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 65–66
- 216. Ibid, p 66; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p 43; Rangimahuta Easthope, brief of evidence on behalf of Ngati Tuteniu, [April 2005] (doc F97), p 2
- 217. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p42
- 218. Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 72
- 219. Ibid, pp 17, 72, 92, 111, 119; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 66; H Barney Meroiti, brief of evidence on behalf of Ngati Tuteniu, undated (doc F95), p 7; Herbie Hapeta, brief of evidence on behalf of Ngati Tuteniu, [June 2005] (doc F96), para 7. In genealogies: see Don Stafford, *Landmarks*

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

of Te Arawa, 2 vols (Auckland: Reed, 1994), vol 1. Tuteniu is sometimes shown as a son of Tutewhaiwha (pp 92, 119) and sometimes as a son of Rangiteaorere (pp 17, 111). Stafford gives no indication that there are two different people by the same name, so it is possible that the latter versions are simply abbreviated and do not show all generations.

220. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 92

221. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 478, 524

222. Ibid, pp 535, 542, 553

223. Herbie Hapeta, brief of evidence on behalf of Ngati Tuteniu, [June 2005] (doc F96), para 3

224. H Barney Meroiti, brief of evidence on behalf of Ngati Tuteniu, undated (doc F95), p 3; Pirihira Fenwick, brief of evidence on behalf of Ngati Rangiteaorere, 22 April 2005 (doc F21), pp7–8; John Ransfield, brief of evidence on behalf of Ngati Rangiteaorere, 22 April 2005 (doc F26), pp 2, 3

225. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 4; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 9; Anaru Te Amo, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F69), para 1.2; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 138

226. Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p5; Paul Tapsell, Pukaki: A Comet Returns (Auckland: Reed, 2000), p 24; Don Stafford, Te Arawa: A History of the Arawa People (Wellington: Reed, 1967), pp 65, 79, 86; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 53–54

227. Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 18, 34, 65, 81

228. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 91; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 66. Ballara says that the brothers returned to Kawaha and Te Koutu; Stafford says to Mokoia.

229. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp.75, 77

230. Ibid, p 66

231. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 8

232. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 66, 84; Angela Ballara, 'Tribal Landscape

Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p92

233. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 8

234. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 65; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 8; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 35, 82

235. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 41; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 140

236. Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 140

237. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 53; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 4

238. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), pp 3-4

239. Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 29

240. Don Stafford, *The History and Placenames of Rotorua* (Auckland: Reed, 1999), p54

241. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 56–57. Although Whakaue was himself a grandson of the ancestor Tuhourangi, the kin groups of Ngati Whakaue and Tuhourangi clearly saw themselves as having quite distinct identities by this stage.

242. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 7; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), para 89. Mitai Rolleston states: 'It is during the times of Tutanekai that the name Ngati Whakaue became both prominent and recognised as the umbrella title covering the independent entity of Whakaue's, and more particularly Tutanekai's descendants'. Mr Mitchell places the development rather later, in the early 1800s.

243. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp56–58; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp24–27

244. Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 46, 93

245. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te

HE MAUNGA RONGO

Arawa: Customary Tenure Report, report commissioned by CFRT, March 2005 (doc G2), pt1, p59; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 22, 27

- **246.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 28
- **247.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p 258; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 79–80, 168
- **248.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 29–30
- **249.** Ibid; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 122–123
- 250. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp60, 64, 68, 114, 173
- **251.** Eric Perenara Hodge, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D32), para 9; Hamuera Hodge, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D31), p 2
- **252.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 31; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 131–133
- 253. Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p32
- **254.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p135; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 47, 94
- **255.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), PP 33, 35
 - **256.** Ibid, p 33
- 257. Don Stafford, Landmarks of Te Arawa, 2 vols (Auckland: Reed, 1994), vol 1, p 80
- **258.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p33; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 80
- 259. Don Stafford, Landmarks of Te Arawa, 2 vols (Auckland: Reed, 1994), vol 1, p 80
- **260.** Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F10), pp 2–4. See also Rau Manahi, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F103), para 5.
- **261.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 39–41; Anaru Te Amo, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F32), p 4
- **262.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 42–43; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 49, 96

- **263.** Don Stafford, *The History and Placenames of Rotorua* (Auckland: Reed, 1999), p 54
- **264.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), P 44
- **265.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 58–59
- **266.** Quentin Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F35), p 4; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 36, 83
- **267.** Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), para 102
- **268.** Te Rauawa Manahi, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga, 28 April 2005 (doc F43), pp 3–5; Anaru Te Amo, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F32), p 4
- 269. Ben Hona, brief of evidence on behalf of Ngati Hurunga Te Rangi, Ngati Taeotu, Ngati Kahu o Ngati Whakaue, 22 April 2005 (doc F5), p 3; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 5
- 270. Ben Hona, brief of evidence on behalf of Ngati Hurunga Te Rangi, Ngati Taeotu, Ngati Kahu o Ngati Whakaue, 22 April 2005 (doc F5), p3
 - **271.** Ibid
 - **272.** Ibid
 - 273. Ibid
- **274.** Hamuera Mitchell, brief of evidence on behalf of Ngati Hurunga Te Rangi, Ngati Taeotu, and Ngati Kahu o Ngati Whakaue, 22 April 2005 (doc F8), p 2
- **275.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p135; 'Ngati Rangiteaorere: Rohe and Claim Related Maps', PowerPoint presentation of maps and photographs on CD, undated (doc F92), map 2
- **276.** Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker and Friend Ltd, 1993), pp 2, 13
- 277. Anaru Te Amo, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F32), p 5; Quentin Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Whakaue, 26 April 2005 (doc F35), pp 3–4; Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p 4

- 278. Anaru Te Amo, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F32), p5; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p40; Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p6
- **279.** Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p.4
 - **280.** Ibid, p 6
- 281. Anaru Te Amo, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F32), pp 5–6; Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p 4
- **282.** Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p 6
 - 283. Ibid, pp 7-8
 - **284.** Ibid, p7
- **285.** Anaru Te Amo, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F32), p 6; Quentin Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu, and Ngati Karenga Hapu of Ngati Whakaue, 26 April 2005 (doc F35), p 4
- **286.** Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p 5
- **287.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 193–194, 211; Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), p 5; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 53–54; Enid Tapsell, *Historic Maketu: Hui Hui Mai!* (Rotorua: Rotorua Morning Post, 1940), pp 40–41
- **288.** Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), p 5; Colin Reeder, brief of evidence on behalf of Ngai Te Rangi, [May 2005] (doc F99), pp 5-7
- **289.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 212
- **290.** Ibid, p 464; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 8
- **291.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 212
- **292.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p54; Enid Tapsell, *Historic Maketu: Hui Hui Mai!* (Rotorua: Rotorua Morning Post, 1940), pp53–54

- 293. Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p7
- **294.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 226–235; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 55–56; Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), p 7
- **295.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 226–235; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 55–56
- **296.** Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p.9; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 236–242
- **297.** Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), pp 7–8
- **298.** Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p5
- **299.** Ibid, pp 5–6; Anaru Te Amo, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F69), paras 1.4–1.5
- **300.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 99
- **301.** Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), para 6
- **302.** Kiriana Tan, closing submissions on behalf of Ngati Raukawa, 5 September 2005 (paper 3.3.80), pp14–15
- 303. Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p 9
- **304.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p206
- 305. Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc н9), pp 8–9
 - 306. Ibid, p10
- **307.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p 13
- **308.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp99, 106, 206; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 19, 166
- **309.** Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol1, pp 24, 28, 74; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana

- o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 104-105
- 310. Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 97, 190
- 311. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 76; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 88
- 312. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p87
 - 313. Ibid, p 89
- 314. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp60, 89–91; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol1, p16
- 315. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p92
 - 316. Ibid, pp 87-90
- 317. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p.73
 - 318. Ibid, p 74
- 319. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p90
- **320.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 71–74, 76; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 93
- 321. Don Stafford, Landmarks of Te Arawa, 2 vols (Auckland: Reed, 1994), vol 1, p 21
- 322. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p87
- **323.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 135
 - **324.** Ibid, pp 131-132
 - 325. Ibid, p 131
- **326.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp.73–74; Don

- Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p77; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p15
- **327.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p75; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p57
- **328.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp108–109; Te Ururoa Flavell, brief of evidence on behalf of Ngati Rangiwewehi, April 2005 (doc F41), p 4; Te Ururoa Flavell, 'Ngati Rangiwewehi Ancestral Connections', May 2005 (doc F41(c))
- **329.** Te Ururoa Flavell, brief of evidence on behalf of Ngati Rangiwewehi, April 2005 (doc F41), pp 4–5
- **330.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 108
 - **331.** Ibid, pp 91-92
 - 332. Ibid, p 110
- 333. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp73-74
- **334.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 108
- 335. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), p132; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p23
- 336. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p293
- **337.** Tipene Marr, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F15), p 5
- **338.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 58, map inside cover; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 294
- **339.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 59, map inside cover; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 294
- **340.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 59, 65, map inside cover; Merata Kawharu,

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p 292; Whareoteriri Rahiri, brief of evidence on behalf of Waitaha in response to the evidence of Tapuika, 29 July 2005 (doc H46), para 44

- **341.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 135
- **342.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p294; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p65
- **343.** Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 93, 194
- 344. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p294
 - 345. Ibid, pp 292-293
- **346.** Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 143; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 26; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 292
- **347.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 132–133, 209
- **348.** Ibid, pp 209–210. Dr Ballara's comments are based on evidence provided to the Native Land Court by Mita Taupopoki.
 - 349. Ibid, p 209
- **350.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 96–102; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 27
- 351. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 164. The rationale for Mr Stafford's observation that the 'Tuhourangi people had split into two sections known as Tuhourangi proper and Ngati Rangitihi' is not clear. Both groups are descended from the ancestor Rangitihi, but through different wives. The kin group of Tuhourangi come from the ancestor Tuhourangi who was Rangitihi's son by Rongomaiwahine and more particularly from Taketakehikuroa, who was a son of Tuhourangi. Ngati Rangitihi, for their part, have said that they identify principally with Rangiaohia (son of Rangitihi by Rakeitahaenui), an uncle to Taketakehikuroa (see: David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p11). We have not seen other evidence for 'Tuhourangi' being used as an umbrella name for both groups.
- **352.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 103–104

- **353.** Ibid, p135; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 47, 94
- **354.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 33, 35. Despite the difference in generations, Te Anumatao appears to be broadly contemporaneous with Tunohopu since the latter's first cousin, Pukaki, married Te Anumatao's daughter.
 - 355. Ibid, pp 30-31
 - 356. Ibid, pp 32-33
- **357.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 138–142; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 71–72
- **358.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 210; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p71
- **359.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 210; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 42–43
- **360.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), p 210
 - **361.** Ibid p 210-211
- **362.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p140; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol1, pp 90–91, 185, 186
- **363.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), pp 39, 41
 - **364.** Ibid, pp 42–43
- **365.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp71–72
- **366.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 84, 111; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 68, 183, 192; Dillard Paul, brief of evidence on behalf of Ngati Wahiao, 22 April 2005 (doc F22), p 2
- **367.** Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, pp 85, 184
 - **368.** Ibid, p 148
- 369. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p105; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary

HE MAUNGA RONGO

Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1), p56

- **370.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p106; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 58–59, 111
- **371.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 105–106
- 372. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 111–112; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 56–57
- **373.** Ben Hona, oral evidence for Ngati Hurunga Te Rangi, Ngati Taeotu, and Ngati Kahu o Ngati Whakaue, sixth hearing, 9 May 2005 (recording 4.3.6, track 3)
- 374. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 112; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 56–57; Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 43, 90
- 375. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p57
- **376.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 106–107
- **377.** Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 33; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 136
- 378. Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p42
- **379.** Don Stafford, *The History and Placenames of Rotorua* (Auckland: Reed, 1999), p 54
- **380.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 164
- **381.** Paora Maxwell, 'He Taonga i Tuku Iho: the Maori Use of the Geothermal Resource', April 1991 (doc A17), p 86
- **382.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 107–108
- **383.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p429

- **384.** Huia Te Hau, brief of evidence on behalf of Ngati Wahiao, 22 April 2005 (doc F77), p 3
- **385.** Mihikore Heretaunga, brief of evidence on behalf of Ngati Wahiao, 22 April 2005 (doc F79), p 2
- **386.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 82
- **387.** Ibid, p 82; Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), pp 108, 162
- **388.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 82
- **389.** Pakitai Raharuhi, brief of evidence on behalf of Tutaki a Koti, 7 February 2005 (doc в34), p 2
- **390.** Mitai Rolleston, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F81), paras 38, 85; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 90–91; David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), pp 2–5; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1996), vol 2, p 26
- **391.** Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1996), vol 2, p 26
- **392.** David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 5
- **393.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 90; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report,' report commissioned by CFRT, March 2005 (doc G2), pt1, p377
- **394.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 106; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, p 663
- **395.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 92–93, and map on inside cover
- **396.** Ibid, p 93, and map on inside cover; David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 16. Matarewha's tribal affiliations are not given, although the implication (Stafford, p 97) is that he was of Waitaha.
- **397.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 100–104
- **398.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 101
- **399.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 98, 101, 104
- **400.** David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p19
- **401.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 258, 464; Merata Kawharu, Ralph Johnson,

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p529; Enid Tapsell, *Historic Maketu: Hui Hui Mai!* (Rotorua: Rotorua Morning Post, 1940), pp39–44, 65

- 402. David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), pp 23, 24; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, pp 589, 683–695, 710–714, 730–731
- **403.** David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 23
 - 404. Ibid, p 22
- **405.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, p574; Colleen Skerrett-White, brief of evidence on behalf of Nga Uri o Nga Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc B10), p4
- **406.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 107
 - **407.** Ibid, p 101
 - **408.** Ibid, pp 98, 100-101
- **409.** Timitepo Hohepa, oral evidence for Ngati Rongomai, Nga Uri o Te Tokotoru o Manawakotokoto, and Ngati Rangiunuora, second hearing, 15 February 2005 (recording 4.3.2, track 1)
- 410. Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Hinekura, Ngati Rongomai, and Nga Uri o Nga Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc B52), D3
- 411. Colleen Skerrett-White, brief of evidence on behalf of Nga Uri o Nga Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc B10), p 4
 - 412. Ibid, pp 3-4
- **413.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 101, 149
- 414. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt 2, pp 683–684
- 415. Colleen Skerrett-White, brief of evidence on behalf of Nga Uri o Nga Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc B10), p5; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1996), vol 2, pp 95–96, 160
- 416. Colleen Skerrett-White, brief of evidence on behalf of Nga Uri o Nga Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc Β10), p 6; Hone Cassidy, brief of evidence on behalf of Nga

- Uri o Nga Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc в44), p 2
- 417. Kehu Keno, brief of evidence on behalf of Ngati Rongomai and Nga Uri o Nga Tokotoru Manawakotokoto, 7 February 2005 (doc B39), p 2; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p 40; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G3), pt2, p 742
- **418.** Timitepo Hohepa, oral evidence for Ngati Rongomai, Nga Uri o Te Tokotoru o Manawakotokoto, and Ngati Rangiunuora, second hearing, 15 February 2005 (recording 4.3.2, track 1)
- 419. Kehu Keno, brief of evidence on behalf of Ngati Rongomai and Nga Uri o Nga Tokotoru Manawakotokoto, 7 February 2005 (doc B39), P3
- **420.** Ibid; Don Stafford, Te Arawa: A History of the Arawa People (Wellington: Reed, 1967), p 107; Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), p4
- **421.** Toby Curtis, brief of evidence on behalf of Ngati Rongomai and Nga Uri o Nga Tokotoru o Manawakotokoto, 7 February 2005 (doc B43), p2
- **422.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 107; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1996), vol 2, pp 133–134, 161
- **423.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 107
- **424.** Dennis Curtis, brief of evidence on behalf of Ngati Rongomai and Nga Uri o Nga Tokotoru o Manawakotokoto, 7 February 2005 (doc 845), p 2
- **425.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G₃), pt 2, p 997
- **426.** 'Te Tokotoru o Manawakotokoto', PowerPoint presentation on CD, undated (doc B51), pp 3–6; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1996), vol 2, p 180
- **427.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 58, 83, 106–107
- **428.** Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), p4
- **429.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p.72
- **430.** Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), p4; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo,

HE MAUNGA RONGO

Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p.72

- **431.** Whaimutu Dewes, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F12), para 6
- **432.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 57
- **433.** David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p11–12; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp57–58; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), p11; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p81
- **434.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p58; Don Stafford, *Landmarks of Te Arawa*, 2 vols (Auckland: Reed, 1994), vol 1, p 105
- **435.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 58
- 436. Reuben Perenara, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B5), p 4; David Potter, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B3), pp 11–12; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 11–12; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 81–82
- **437.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 60. Mount Tarawera now has a line of three craters: Wahanga, Ruawahia and Tarawera.
- **438.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 82
- **439.** David Potter, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc в3), pp 19-20
- **440.** Reuben Perenara, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B5), p 4; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 20
- **441.** David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc β7), p 17; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 82
- **442.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 164–165; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 18
- **443.** David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc в7), p 20
- **444.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 164–165
 - 445. Ibid, pp 166-168
- **446.** David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), pp 35–38, 43–46

- 447. Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p17
- **448.** David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc b7), pp 53–54
- **449.** David Potter, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B₃), p₂5; Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p₂7
- **450.** David Potter, further brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B53), p 2; Heitia Raureti, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F14), pp 3-4
- 451. David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 17
- **452.** Tipene Marr, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F15), p5. Ngati Awa, however, stated that the urupa was associated with the Ngati Awa pa Omarupotiki, at Matata: see Jeremy Gardiner, brief of evidence on behalf of Ngati Awa, 27 June 2005 (doc H20), p5.
- **453.** Jeremy Gardiner, brief of evidence on behalf of Ngati Awa, 27 June 2005 (doc H20), p5
- **454.** Whaimutu Dewes, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F12), p 2
 - 455. Ibid, pp 2-4
- **456.** Whaimutu Dewes, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F12), p1; David Potter, 'Te Manawhenua o Ngati Rangitihi,' March 2004 (doc B7), p1; Heitia Raureti, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F14), p5
- **457.** Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 28; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 30
- **458.** Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), pp 4, 7; M Fox, brief of evidence, 7 February 2005 (doc B42), p5; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p103
- **459.** Robert Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B37), p 4; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p 7
- **460.** Robert Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B37), p 8; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p 8; 'Tohia o Te Rangi: Te Mahi Rangahau o Tohia-o-te-Rangi Marae', p 4, in 'Wai 21(a) Fox Whanau Archives' (doc B10(a)); Ian Lawlor and Mereheeni Fox, 'Historic Sites and Sacred Places: Waitahanui Urupa and Rotoitipaku Lake, Kawerau, Bay of Plenty', p 12, in 'Wai 21(a) Fox Whanau Archives' (doc B10(a))

- **461.** Office of Treaty Settlements, *Deed of Settlement of the Historical Claims of Ngati Tuwharetoa (Bay of Plenty)* (Wellington: Office of Treaty Settlements, 2003), pp 4, 10
- **462.** Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), pp 4–5; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), pp 4–5; Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), pp 12–13
- **463.** Robert Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B37), p 8; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p 6; M Fox, brief of evidence, 7 February 2005 (doc B42), pp 5–6
- **464.** Anthony Olsen, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B24), p 4; Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 8 February 2005 (doc B15), p 2
- **465.** Robert Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B37), p 6; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p 8; Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), pp7–8; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p13; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp105–106, 544
- **466.** Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p 8
- **467.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 124–126, 151; Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), pp 5–6
- **468.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 106, 127–129, 145
 - **469.** Ibid, pp 129–130
 - **470.** Ibid, pp 133–135, 151
 - 471. Ibid, p 132
- **472.** Anthony Olsen, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B24), p2; Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p5; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p159
- **473.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 118
- **474.** Peter Staite, brief of evidence on behalf of Ngati Whaoa, 28 February 2005 (doc c28), p1; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 469–470

- **475.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 20; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 22; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), pp 23, 25
- 476. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p279; Peter Staite, brief of evidence on behalf of Ngati Whaoa, 28 February 2005 (doc C28), p1
- 477. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 279
 - 478. Ibid, p 279
- **479.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p17
- **480.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 279
- **481.** Peter Staite, brief of evidence on behalf of Ngati Whaoa, 28 February 2005 (doc c28), p1; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p474
- **482.** Peter Staite, brief of evidence on behalf of Ngati Whaoa, 28 February 2005 (doc c28), p1; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp279, 281
- **483.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p281–282
 - 484. Ibid, p 281
- **485.** Ibid, pp 281–282; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 113–114; Susan Thompson, brief of evidence on behalf of Te Takere o Nga Wai, 1 March 2005 (doc C47), p 6; Kahurangi Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D11), p 3
- **486.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 58, 113–114; Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), p 9; Peter Staite, evidence on behalf of Ngati Whaoa in response to evidence of J Reihana and T Reihana, 29 April 2005 (doc G21), pp 1–2; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 30
- **487.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 29; Merata

HE MAUNGA RONGO

Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report,' report commissioned by CFRT, March 2005 (doc G2), pt1, p366

- **488.** Susan Thompson, brief of evidence on behalf of Te Takere o Nga Wai, 1 March 2005 (doc C47), p 6
- 489. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp388, 390–391; Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), p2; Peter Staite, brief of evidence on behalf of Ngati Whaoa in response to evidence of J Reihana and T Reihana, 29 April 2005 (doc G21), p4; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p473. Kawharu (p388) says the peacemaking marriage involved 'the daughter' of Te-Aho-o-Te-Rangi, but the genealogy at p390 clearly shows Whakarawataua as the daughter of Ngairihanga, which accords with the genealogy given by Stafford.
- 490. Evelyn Stokes, *Rotokawa Geothermal Area: some historical perspectives* (Hamilton: University of Waikato, 1994), p3; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 29–30
- 491. Peter Staite, brief of evidence on behalf of Ngati Whaoa, 28 February 2005 (doc C28), p1
- **492.** Walter Rika, brief of evidence on behalf of Ngati Whaoa, 1 March 2005 (doc c26), p2
- 493. See, for example, Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, November 2004 (doc A71), pp 45, 185, 297, 338, 347, 687–688; Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), pp 20, 63, 78, 82; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report,' report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 316–317, 336, 364–366, 385–390
- **494.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 30
- **495.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **496.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)–19
- **497.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p17; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 61, 63–64, 67, 75–76
- **498.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)

- **499.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **500.** Tuawhenua Research Team, 'Ruatahuna, Te Manawa o Te Ika: part one; A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown', October 2003 (doc 164), pp 3, 5–7, 23, 25
- **501.** Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc c49), pp 3–4; Tuawhenua Research Team, 'Ruatahuna, Te Manawa o Te Ika: part one; A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown', October 2003 (doc 164), pp 31–38; Tama Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163), p 4
- **502.** Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999), p 18
- **503.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **504.** See, for example, Hiraina Hona, brief of evidence on behalf of Tuhoe, 6 September 2004 (doc c18); Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), pp.7–8
- **505.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
 - **506.** Ibid
 - **507.** Ibid
- 508. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc c49), p7; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2), 47; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **509.** Tama Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163),
- 510. Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 511. Tama Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163), pp 10-11
- 512. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p3
- 513. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), pp 3–4; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **514.** Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc c49), pp 3-5
- **515.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)

- 516. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p 6
- $\bf 517. \ Tama$ Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163), p 25
- **518.** Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), pp 6–7; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 519. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), pp 7–8
 - 520. Ibid, pp 22-24
 - 521. Ibid, p 25
 - 522. Ibid, p 10
- 523. Tuhuiao Kahukiwa, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc c5), p 2
- **524.** Puawai Rahui, brief of evidence on behalf of Ngati Hineuru (Maori version), 28 February 2005 (doc C10), p10
- **525.** Gladys Hine Campbell, brief of evidence on behalf of Ngati Hineuru, 7 March 2005 (doc c58), p 4
- **526.** Rere Puna, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc C44), p 2
- **527.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 140, 190
- **528.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p190; Rere Puna, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc C44), p3
- **529.** Rere Puna, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc C44), pp 2, 9
- **530.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), pp 11–12
- **531.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 15–16; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 87
- **532.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24
- **533.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 87
- **534.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p19. Sir John Grace states that three Ngati Apa women, all sisters of a leading chief, were given to Tangiharuru in marriage, but he does not name them: see: John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p139.
- **535.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 17–18; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 139
- **536.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 17–18; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 139–140

- 537. Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 19
- **538.** Ibid, pp 17–18, p 23; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 87, 139; Te Runanga o Ngati Manawa, 'Ngati Manawa: Tona Mana Atua, Tona Mana Tangata, Tona Mana Whenua i roto i te Maania o Te Kaingaroa o Haungaroa', sl 3, genealogical table, undated (doc C31(a))
- **539.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24
- 540. Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 87 fn 41, pp 89–90; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p75.
- **541.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 85–86. Both references give 'Tuaru', not 'Tuara'.
- **542.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 86.
- **543.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 86; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **544.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 86; Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 24
- **545.** John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p 139
- **546.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 86–88; Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 26–29
- **547.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 27
- **548.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 44–52; Wiremu Bird, brief of evidence on behalf of Ngati Manawa, 15 April 2005 (doc G9), p 4
- **549.** Wiremu Bird, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc C41(a)), pp 2, 9
- 550. Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p 2

- **551.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p177
- **552.** Tama Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163), pp 4–5; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 8
- **553.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 86–88; Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp 26–29; Tama Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163), p 5
- **554.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **555.** Suzanne Doig, 'Customary Maori Freshwater Fishing Rights: An Exploration of Maori Evidence and Pakeha Interpretations', PhD thesis, University of Canterbury, 1996 (doc A51), p 279; Ann Williams and Tony Walton, 'Early Landuse Patterns in the Lake Taupo Area', *Science for Conservation*, no 222 (June 2003), p 5
- **556.** Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), p 9
 - 557. Ibid, pp 10-11
- **558.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 23–24; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 80, 84, 113–114
- **559.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 23
 - 560. Ibid, p 23
- 561. Ratana Wall, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D16), p 2;Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), p 5; Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), pp 4, 12; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), pp 11–12; Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 34
- 562. Suzanne Doig, 'Customary Maori Freshwater Fishing Rights: An Exploration of Maori Evidence and Pakeha Interpretations', PhD thesis, University of Canterbury, 1996 (doc A51), p 276;Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), pp 5–6; Ratana Wall, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D16), pp 2–3; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p12. Doig notes

- that modern scientific research supports the idea that Maori routinely stocked lakes with fish species not previously present.
- **563.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 67
- **564.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p75; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p117
- **565.** John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p118
 - 566. Ibid, pp 20-21
 - **567.** Ibid, p 21
 - **568.** Ibid, p 223
- **569.** Tuatea Smallman, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E31), p 2
- **570.** Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 26
- **571.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 160
- **572.** Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), p 6
- **573.** Lennie H Johns and Ira ME Johns, 'Pakira: Nga Moteatea', 2005 (doc D7), p.5
- 574. Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p14
- 575. Peter Clarke, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D13), p 4
- 576. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 274–277; Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), pp 3–4
- 577. Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), pp 2, 4
- **578.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 274–276
 - **579.** Ibid, p 276
- **580.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 473
- **581.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 281–282

- **582.** Ibid, p 390; Peter Staite, evidence on behalf of Ngati Whaoa in response to evidence of J Reihana and T Reihana, 29 April 2005 (doc G21), p 4; Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), p 2; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 473
- **583.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 113–114
- **584.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p391; Peter Staite, evidence on behalf of Ngati Whaoa in response to evidence of J Reihana and T Reihana, 29 April 2005 (doc G21), p4; Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), p2; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp113–114, 473
- **585.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p276
- **586.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 201–202
- **587.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p276
- **588.** John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p 286
- **589.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 30
- **590.** Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), pp 21, 36, 49–50, 60, 181, 211
- **591.** Evelyn Stokes, *Rotokawa Geothermal Area: some historical perspectives* (Hamilton: University of Waikato, 1994), p 3
- **592.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p.75
- **593.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 117
 - **594.** Ibid, A47, p117
- 595. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 118; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p124
- **596.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 75–77

- **597.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 135
- **598.** Evidence of Rawhiri Te Aramoana and Hori Te Tauri of Ngati Tuwharetoa, quoted by Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p.77
- **599.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 77–78
- **600.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 157; Solomon Rutene, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, February 2005 (doc D17), p 2
- **601.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), pp 4–7; Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), pp 72–73
- **602.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), pp7–8; Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), pp72–73
- **603.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p8; Leslie G Kelly, Tainui: the story of Hoturoa and his descendants (Wellington: Polynesian Society, 1949), p468, table 56
- **604.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), pp 8–9
- **605.** Colin Tawhi-Amopiu, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D12), p.4
- **606.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p9
 - **607.** Ibid, p9
- **608.** Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p9; Kahurangi Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D11), p4

HE MAUNGA RONGO

609. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), pp9–10; Colin Tawhi-Amopiu, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D12), p5. We note that Tainui tradition locates Te Whana o Whaita as being 'south of Whakamaru': see Pei te Hurunui Jones (comp), Bruce Biggs (ed), Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), p142.

610. Kiriana Tan, closing submissions on behalf of Ngati Raukawa, 5 September 2005 (paper 3.3.80), pp 14–15

611. Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc H9), p5; Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 212–213; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 20, 475–476, 488–489

612. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), pp13–14

613. Kahurangi Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D11), pp 4, 7–8; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 24–30; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp113–114; Peter Staite, evidence on behalf of Ngati Whaoa in response to evidence of J Reihana and T Reihana, 29 April 2005 (doc G21), p 3

614. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 231–232; Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), pp 6–10, 103, 212, 215

615. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), pp15, 16; Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), p21

616. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p16; Pei te Hurunui Jones (comp), Bruce Biggs (ed), Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), p143

617. Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), p 213

618. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p17

619. Pei te Hurunui Jones (comp), Bruce Biggs (ed), Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), p 204; John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p 156

620. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p17; Pei te Hurunui Jones (comp), Bruce Biggs (ed), Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), pp205–206; John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p157; Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p10

621. Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), pp 2-3

622. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 367–368

623. Ibid, p 386

624. Ibid, pp 387-388

625. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp145–146; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p77

626. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), pp 118, 156

627. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), p3

628. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 147, 156. Ruawehea, for his part, settled at Pukawa (Grace, p 130).

629. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), pp 3-4

630. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 160

631. Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p 8; Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), pp 206–209

632. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), p 4

633. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p14

- **634.** Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), pp 15, 18
- 635. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp127–128; Pei te Hurunui Jones (comp), Bruce Biggs (ed), Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), pp204–207, 213; Apirana Ngata (comp), Nga Moteatea: he Maramara Rere no nga Waka Maha; The Songs: Scattered Pieces from Many Canoe Areas, pt1 (Wellington: Reed, 1959, reprinted 1972), p246
- **636.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 127–129
 - 637. Ibid, p 128
- **638.** Howard Kahura, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E24), p 2
- **639.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p130
 - 640. Ibid, pp 130-131
- **641.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 25; Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), p 143
- **642.** Pei te Hurunui Jones (comp), Bruce Biggs (ed), *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), p148
 - 643. Ibid, p 144
- **644.** Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), p13
 - 645. Ibid, p19
 - **646.** Ibid, pp 19-20
- **647.** Tawiri o Te Rangi Hakopa, brief of evidence on behalf of Ngati Wairangi, February 2005 (doc D14), para 3
- **648.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 128–129; D Chrystall, brief of evidence on behalf of Ngati Tuwharetoa, [April 2005] (doc E44), p 8
- **649.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 118
- **650.** Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), p 16
- **651.** Papanui (Stacey) Hakaraia, brief of evidence on behalf of Ngati Wheoro, [2005] (doc E50), p 4
 - 652. Ibid, pp 4-5

- 653. Ngati Wheoro, 'Te Mana o Ngati Wheoro: Nga Whakapapa, Nga Mapi, Nga Whakahua, o Ngati Whaoro', undated (doc E51), pages unnumbered
- **654.** Papanui (Stacey) Hakaraia, brief of evidence on behalf of Ngati Wheoro, [2005] (doc E50), pp 8–9
- **655.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p125
 - **656.** Ibid, p 71
- **657.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', 2 vols, report commissioned by CFRT, 2004 (doc A71), p 944
- **658.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p125
 - **659.** Ibid, p 125
- **660.** Ibid, p 40. We note the similarity of the name Te Ika to that of Hika mentioned in the previous paragraph, and that Hika is likewise described as a sibling of an ancestor named Parehinu.
- **661.** Evidence of Werahiko Tahere (as quoted in Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p125)
- **662.** Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), pp 3, 6, 9
- **663.** Eraita Ann Clarke, brief of evidence on behalf of Ngati HineRau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D34), p 2
- **664.** Kim Te Tua, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D30), pp 2, 7–10
- **665.** Geoffrey Rameka, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D28), pp 6-8
- **666.** Kim Te Tua, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D30), p 9
- **667.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 177, 180; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 124–126; Geoffrey Rameka, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D28), pp 7–8; Eraita Ann Clarke, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hinerae, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D34), p 2
- **668.** Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), pp 7–8; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 179–180

- **669.** Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', 2 vols, report commissioned by CFRT, 2004 (doc A71), for example pp 31, 47, 81, 273, 384, 432, 552ff, 943; Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), pp 209–210; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p126 fn35.
- **670.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', 2 vols, report commissioned by CFRT, 2004 (doc A71), p 558
- **671.** Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), p 9
- **672.** Geoffrey Rameka, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D28), pp 10–11
- **673.** Eraita Ann Clarke, brief of evidence on behalf of Ngati HineRau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D34), p 2
- **674.** Kim Te Tua, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D30), p 10
 - 675. Ibid, p8
- 676. Kim Te Tua, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D30), p6; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p39
- **677.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p8; Peter Clarke, Whakapapa Ngati Hineure, undated (doc D13(c)), p3
- **678.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), pp 8–9, 18
- 679. Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc p39), p5
- **680.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p12
 - **681.** Ibid, pp 9-10
- **682.** Lennie H Johns, brief of evidence on behalf of Ngati Tutemohuta, undated (doc D5), p 6
- **683.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p10
- **684.** Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), cover page, pp 4, 18
- **685.** Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), pp13, 19;Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), p12
- **686.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), pp 8–9

- 687. Ibid, p19
- **688.** Ibid, p10
- **689.** Ibid, pp 16-17
- **690.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p17; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p9
- **691.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p 19
- **692.** Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), cover page, p 4
- 693. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p10; Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), p17; Peter Clarke, Whakapapa Ngati Hineure, undated (doc D13(c)), p1
- **694.** Pine Nicholls, brief of evidence on behalf of Ngati Tuwharetoa and others, February 2005 (doc D38), p 2
- **695.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p 9; Jocelyn Rameka, brief of evidence on behalf of Waipahihi Marae, Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, February 2005 (doc D25), p 3
- **696.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p10; Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), cover page, pp4, 17; Peter Clarke, Whakapapa Ngati Hineure, undated (doc D13(c)), p4
- **697.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p9; Jocelyn Rameka, brief of evidence on behalf of Waipahihi Marae, and Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, February 2005 (doc D25), p3
- **698.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p 10
- **699.** Peter Clarke, Whakapapa Ngati Hineure, undated (doc D13(c)), P5
- **700.** Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), pp 7–8
- 701. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p126; Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), p3; Peter Clarke, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 2 March 2005 (doc D13), pp6–7

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

702. Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), cover page, p 4

703. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), pp13–14; Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), pp15, 17

704. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 145–146, 158–159

705. Ibid, pp 156, 178, 182

706. Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), p 6

707. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 184–185

708. Mataara Wall and Heramana Johns, 'Pakira: Nga Tapuwae o Ngatoroirangi: Map Booklet of Ngati Tutemohuta Takiwa', 2005 (doc D23), map 2

709. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p14

710. Lennie H Johns, brief of evidence on behalf of Ngati Tutemohuta, and Karanga Hapu, undated (doc D5), p 6

711. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 105; Arthur Grace, brief of evidence on behalf of Ngati Tuwharetoa, 22 April 2005 (doc E26), p 4; Arthur Grace, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 3)

712. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p 540

713. Ibid, p106; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p13

714. See, for example, Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), pp 3–6

715. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 118, 147–149; Arthur Grace, brief of evidence on behalf of Ngati Tuwharetoa, 22 April 2005 (doc E26), p 3

716. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), pp 67, 131–132

717. Ibid, pp 130, 132; Pei te Hurunui Jones (comp), Bruce Biggs (ed), Nga Iwi o Tainui: The Traditional History of the Tainui People (Auckland: Auckland University Press, 1995), p 204

718. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), pp 152–155

719. Ibid, p 156; Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), p 3

720. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), pp 3, 6–7; Mataara Wall, oral evidence for Ngati Tutemohuta, fourth hearing, 14 March 2005 (recording 4.3.4, track 2)

721. Ratana Wall, oral evidence for Ngati Hinerau, Ngati Te Urunga, Ngati Tutemohuta, Ngati Hineure, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, fourth hearing, 15 March 2005 (recording 4.3.4, track 4)

722. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p 160

723. Ibid, pp 159, 540

724. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), p 4

725. Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), pp 8, 9–10

726. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), p 4

727. Trevor Hosking, brief of evidence on behalf of Waipahihi Marae, and Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa 28 February 2005 (doc D15), pp 2–3

728. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), pp 4–6; Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), pp 9–10

729. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), pp6-7; John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p247; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p377

730. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 222, 232

731. Ibid, pp 160, 222

732. Ibid, pp 221, 223

733. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 221; Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), p 6

734. Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), pp 7–8

735. Ibid, pp 8-9

736. Ibid, pp 12-19

737. Tuatea Smallman, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E31), p 2

738. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), pp12–13; Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), p19

739. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p13

740. Ibid, p 13

741. Ibid, p 12-13

HE MAUNGA RONGO

742. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 160, 222

743. Ibid, p 160

744. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', 2 vols, report commissioned by CFRT, 2004 (doc A71), pp 948, 1003, 1331–1332

745. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 132–136

746. Ibid, p 136

747. Jock Barrett, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E10), pp 2–3; Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 25 April 2005 (doc E49), p 9

748. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 137–138; Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), pp 4–5; Wiparaki Pakau, supporting documents (doc E11(a)), attachments 4, 7; Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), attachment 1; Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 22 July 2005 (doc 110), p3

749. Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), pp 4–5

750. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p13

751. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp136–138; Jock Barrett, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E10), pp3–4; Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), p8, attachment 1

752. Jock Barrett, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E10), p 3; Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p 6

753. Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), attachment 1; Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p 6; Wiparaki Pakau, supporting documents (doc E11(a)), attachments 7, 9

754. Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), p 6, attachment 1; Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p 6; Wiparaki Pakau, supporting documents (doc E11(a)), attachment 4

755. Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 22 July 2005 (doc 110), p3

756. Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), pp 6–7; Wiparaki Pakau, supporting documents (doc E11(a)), attachment 9

757. Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), pp 6–7, attachment 1; Wiparaki Pakau, supporting documents (doc E11(a)), attachments 4, 9

758. Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), p7; Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 22 July 2005 (doc 110), p3; Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p5

759. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 237, 256–258, 261–263, plate IV; Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p 5; Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 22 July 2005 (doc 110), pp 3–5

760. Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), p13; Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 22 July 2005 (doc 110), p3; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p237

761. Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p5; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 257

762. Merle Ormsby, second brief of evidence on behalf of Ngati Hikairo, 22 July 2005 (doc 110), p 3; Te Maioro Konui, evidence on behalf of Ngati Hikairo in response to the evidence of Te Ngaehe Wanikau and to questions of clarification, 25 May 2005 (doc H3), p 2; Paul Tapsell, Ko Tawa: Maori Treasures of New Zealand (Auckland: David Bateman, in association with Auckland War Memorial Museum Tamaki Paenga Hira, 2006), p 171

763. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p 237

764. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p132

765. Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), pp 7, 9–10

766. Alec Phillips, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E13), p 5

767. Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc £16), p3; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 63–64

768. Takaanui Tarakawa, 'Ko te Hoenga Mai o Te Arawa' pp 232, 238, cited in Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 64

769. Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 3; Paranapa Otimi, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 1); Chris Winitana, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 4)

- **770.** Tomairangi Fox, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B25), p 6
- 771. Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p $6\,$
 - 772. Ibid, p4
 - 773. Ibid, p5
- 774. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p8; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p8
- **775.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 7
- 776. Ministry of Justice, He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice (Wellington: Ministry of Justice, 2001), pp15–16
- 777. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 34; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 37
- **778.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 779. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 506–508; Lennie H Johns and Ira ME Johns, 'Te Whanau a Tauhara raua ko Pihanga' 2005 (doc D8), page unnumbered; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p 8
- **780.** Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu, undated (doc D1), pp 16, 19
- **781.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 270–271
- **782.** Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p 9; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Mataara Wall, brief of evidence on behalf of Ngati Tutemohuta and Karanga Hapu (English version), undated (doc D1), p 17
- **783.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **784.** James Biddle, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E33), pp 6–7
- **785.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 63-64
- **786.** Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p12

- **787.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), pp 17–18
- **788.** Winifred McKenzie, brief of evidence on behalf of Te Takere o Nga Wai, 9 March 2005 (doc D27), p10; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p158
- **789.** Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p5; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p6
- **790.** Cathy Dewes, transcript of oral evidence for Ngati Rangitihi given at sixth hearing (doc J₄), p₂₉
- **791.** James Biddle, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E33), p 4
- **792.** Dennis Curtis, brief of evidence on behalf of Ngati Rongomai, 15 April 2005 (doc G8), p7
- **793.** Heitia Raureti, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F14), p 4
- 794. 'Cultural Effects of Mighty River Power's Resource Consent Proposals: Issues Statement of Ngati Tuwharetoa', February 2001 (doc £5(a)), p 3
- **795.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 13
- **796.** Cathy Dewes, brief of evidence on behalf of Ngati Rangitihi, 22 April 2005 (doc F13), para 6
- **797.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 283
- **798.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 11
- **799.** Hone Cassidy, brief of evidence on behalf of Nga Uri o Te Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc B44), p 2
- **800.** Kerry-Nicholls, cited in Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 47
- **801.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 9
- **802.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), p 469
- **803.** Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p14
- **804.** Tama Nikora, 'Tuhoe and the Rangitaiki', March 2004 (doc 163), p 25
- **805.** Tuatea Smallman, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E31), p 2
 - **806.** Ibid, p 3
- **807.** Anthony Olsen, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, 7 February 2005 (doc B24), p 4

- **808.** David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc B7), p 20; Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), pp 20–21
- **809.** Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 20
- **810.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p127
- 811. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p 27
- 812. Paora Maxwell, 'He Taonga i Tuku Iho: the Maori Use of the Geothermal Resource', April 1991 (doc A17), pp 92-93
- 813. Colleen McMurchy-Pilkington, brief of evidence on behalf of Ngati Rongomai and Nga Uri o Nga Tokotoru o Manawakotokoto, 7 February 2005 (doc 840), p 4; David Potter, 'Te Manawhenua o Ngati Rangitihi', March 2004 (doc 87), app 2, para 9.2; Paora Maxwell, 'He Taonga i Tuku Iho: the Maori Use of the Geothermal Resource', April 1991 (doc A17), p 90; Tomairangi Fox, oral evidence for Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, second hearing, 14 February 2005 (recording 4.3.2, track 1)
- 814. Rereamanu Wihapi, brief of evidence on behalf of Tapuika, undated (doc B21), p7; Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p18; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), pp10–13
- **815.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p126
- 816. Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 20
- 817. Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Makino (English version), 7 February 2005 (doc B20), p 4; Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Makino (Maori version), 7 February 2005 (doc B20(a)), p 5
- **818.** Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Hinekura, Ngati Rongomai, Ngati Rangiunuora, and Nga Uri o Te Tokotoru o Manawakotokoto, 7 February 2005 (doc B52), p3
- 819. Miriama Douglas, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F63), pp 4–5. Ngawha (hot pools), puia (geysers or hot springs), and waiariki (warm pools) are discussed further in chapter 20.
- **820.** Dulcie Gardiner, brief of evidence on behalf of Ngati Tuwharetoa, 22 April 2005 (doc E25), p 6
- **821.** Alex Frame, *Grey and Iwikau: A Journey into Custom; Kerei raua ko Iwikau: te Haerenga me Nga Tikanga* (Wellington: Victoria University Press, 2002), pp 59–60, 87–88
- **822.** Tamati Ranapiri, as recorded by Elsdon Best and cited in Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 418
- **823.** Te Keepa Marsh, answers to questions of clarification, on behalf of Tapuika, undated (doc 140), p 3

- **824.** Evelyn Stokes, 'Tauponui a Tia: an Interpretation of Maori Landscape and Land Tenure', Asia Pacific Viewpoint, vol 40, no 2 (August 1999), p 150
- **825.** Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), pp 40-41
- **826.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p228; Russell Kirkpatrick, Kataraina Belshaw, and John Campbell, 'Land-based Cultural Resources and Waterways and Environmental Impacts (Rotorua, Taupo and Kaingaroa) 1840–2000', 17 December 2004 (doc E3), p85
- **827.** Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p36
- **828.** Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Makino (Maori version), 7 February 2005 (doc B20(a)), p7
- **829.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), pp 79,
- **830.** Suzanne Doig, 'Customary Maori Freshwater Fishing Rights: An Exploration of Maori Evidence and Pakeha Interpretations', PhD thesis, University of Canterbury, 1996 (doc A51), pp 275–278
- **831.** Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p 3
- **832.** References have not been supplied for every item, since multiple evidential sources could be cited for the majority of the resources listed.
- 833. Hapimana Higgins, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc C39), p 2; Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 405; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), pp 10, 12–14. Although Opoutihi appears to be just outside the boundary of the Central North Island inquiry region (see D Ambler, 'Tapuika Thematic and Block Mapbooks', (doc 137), pls 3 and 9), we include reference to it because the kiore clearly formed an important part of the food resources of Tapuika.
- **834.** Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), p 43; Dennis Curtis, brief of evidence on behalf of Ngati Rongomai, 15 April 2005 (doc 68), p 6
- **835.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), pp 85–89
- **836.** Joseph Reihana, brief of evidence on behalf of Ngati Tahu, 11 March 2005 (doc C14(a)), p 8

- 837. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report,' report commissioned by CFRT, March 2005 (doc G2), pt1, p92
- **838.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), pp 85–88
- **839.** Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p 4
- **840.** Suzanne Doig, 'Customary Maori Freshwater Fishing Rights: An Exploration of Maori Evidence and Pakeha Interpretations', PhD thesis, University of Canterbury, 1996 (doc A51), p 278
- **841.** Ian Kusabs, brief of evidence on behalf of Ngati Tuwharetoa, 22 April 2005 (doc E27), pp 4–7; Mataara Wall, in Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p 17, and appendix B, p 8
- **842.** Hapimana Higgins, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc c39), pp 3–9
- **843.** William Emery, brief of evidence on behalf of Ngati Rongomai, Nga Uri o Te Tokotoru o Manawakotokoto, and Ngati Rangiunuora, 7 February 2005 (doc B19), pp 3–4
- **844.** See, for example, David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p36–37; Grace Dorset, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F70), p5; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), pp13–14.
- **845.** Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 82
- **846.** Dennis Curtis, brief of evidence on behalf of Ngati Rongomai, 15 April 2005 (doc G8), p 6
- **847.** Dulcie Gardiner, brief of evidence on behalf of Ngati Tuwharetoa, 22 April 2005 (doc E25), p 5
- **848.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), pp 158, 160
- 849. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 32; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a), p 35; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 201 (fn 117), 378
- **850.** Hone Cassidy, brief of evidence on behalf of Nga Uri o Te Tokotoru o Manawakotokoto and Ngati Rangiunuora, 7 February 2005 (doc B44), p4
- **851.** Paora Maxwell, 'He Taonga i Tuku Iho: the Maori Use of the Geothermal Resource', April 1991 (doc A17), pp 31, 32, 34; H Barney Meroiti, brief of evidence on behalf of Ngati Tuteniu, undated (doc F95), p 4

- **852.** Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), pp7–8; Raymond Firth, Economics of the New Zealand Maori, 2nd ed (Wellington: Government Printer, 1972), p181
- **853.** Dennis Curtis, oral evidence for Ngati Rongomai, second hearing, 15 February 2005 (recording 4.3.2, track 1); Dennis Curtis, brief of evidence on behalf of Ngati Rongomai, 15 April 2005 (doc G8), pp1-9; David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 6; Roger Neich, *Carved Histories: Rotorua Ngati Tarawhai Woodcarving* (Auckland: Auckland University Press, 2001), pp7-8
- **854.** Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p 9
- **855.** Alex Frame, *Grey and Iwikau: A Journey into Custom; Kerei raua ko Iwikau: te Haerenga me Nga Tikanga* (Wellington: Victoria University Press, 2002), p 25
- **856.** Justice ET Durie (as cited in New Zealand Law Commission, 'Justice: the Experiences of Maori Women; Te Tikanga o te Ture; Te Matauranga o nga Wahine Maori e pa ana ki Tenei', Law Commission Report, no 53 (April 1999), p 2)
- **857.** Justice ET Durie, cited in Law Commission, *Maori Custom and Values in New Zealand Law*, Law Commission Study Paper 9 (Wellington: Law Commission, 2001), pp 15–16
- **858.** Hirini Moko Mead, cited in Law Commission, *Maori Custom and Values in New Zealand Law*, Law Commission Study Paper 9 (Wellington: Law Commission, 2001), p 16
- **859.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), p1
 - 860. Ibid, p5
- **861.** Law Commission, *Maori Custom and Values in New Zealand Law*, Law Commission Study Paper 9 (Wellington: Law Commission, 2001), p 28
 - 862. Ibid, pp 38, 44
- **863.** Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 21, 26
- **864.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p182
- **865.** Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 4; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a), p 5
- **866.** Timitepo Hohepa, oral evidence for Ngati Rongomai, Nga Uri o Te Tokotoru o Manawakotokoto, and Ngati Rangiunuora, second hearing, 15 February 2005 (recording 4.3.2, track 1)
- **867.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 82

- **868.** Angela Ballara, *Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century* (Auckland: Penguin Books, 2003), p 254
- **869.** Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), pp 13, 16
- **870.** Angela Ballara, Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), p157
- **871.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 183–185
- **872.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), p 29
- **873.** John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 107; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 84; Lennie H Johns and Ira M E Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p 13
- 874. Anaru Te Amo, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F69), paras 1.1–1.5; Paul Tapsell, *Ko Tawa: Maori Treasures of New Zealand* (Auckland: David Bateman in association with Auckland War Memorial Museum Tamaki Paenga Hira, 2006), p 96; Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 3
- 875. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p 58
- **876.** Angela Ballara, *Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century* (Auckland: Penguin Books, 2003), p 455
- **877.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 115; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report,' report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 506
- 878. See, for example, Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), pp7, 25, 31–32; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 286–287
- **879.** Angela Ballara, Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), p 276
- **880.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 292; Angela Ballara, *Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori*

- Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), pp 260-261
- 881. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p8
- **882.** Rere Puna, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc C44), p 6
- **883.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **884.** Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- **885.** Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), p 26
 - 886. Ibid, pp 19-22, 61, 73, 76, 78
- **887.** Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p 21
- **888.** Henry Pryor, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B17), p3
- **889.** Marewa Koko, brief of evidence on behalf of Waipahihi Marae, Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, February 2005 (doc D19), p 2
- **890.** Tony Nightingale, *Nga Korero Opepe: Collecting Stories about Opepe Scenic and Historic Reserve* (Wellington: Department of Conservation), July 2004 (doc 160), p 8; Ratana Wall, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hineure, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D16), p 3
- **891.** Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p52; Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), pp 409–416
- **892.** Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 403
- **893.** Hapimana Higgins, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc C39), p 2
- **894.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 96
- **895.** Whakatane Native Land Court minute book 2, 9 October 1882, fol 93
- 896. Anthony Olsen, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi, Ngai Tamarangi, 7 February 2005 (doc B24), p 3; Waitangi Tribunal, The Ngati Awa Raupatu Report (Wellington: Legislation Direct, 1999), pp 20–21
- **897.** Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 408; Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 52
- **898.** Makere Rangitoheriri, oral evidence for Ngati Tuwharetoa, fifth hearing, 6 May 2005 (recording 4.3.5, track 4)

- **899.** Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p.3
- **900.** David Potter, brief of evidence on behalf of Ngati Rangitihi, 7 February 2005 (doc B3), pp 29–30
- 901. Makere Rangitoheriri, brief of evidence on behalf of Ngati Tuwharetoa, 5 May 2005 (doc E51(a)), p 9
- 902. Don Stafford, Te Arawa: A History of the Arawa People (Wellington: Reed, 1967), p 157
- 903. Angela Ballara, Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), p 405
 - 904. Ibid, p 121
- **905.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 55
- **906.** Anthony Olsen, brief of evidence on behalf of Ngati Tuwharetoa Te Atua Reretahi, Ngai Tamarangi, 7 February 2005 (doc B24), p 5
- **907.** Derek Te Ariki Morehu, brief of evidence on behalf of Ngati Makino (English version), 7 February 2005 (doc B20), p 6
- **908.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p 88
- **909.** Colin Tawhi-Amopiu, oral evidence for Ngati Raukawa on behalf of Haki Thompson, fourth hearing, 15 March 2005 (recording 4.3.4, track 3)
- 910. Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 335
- 911. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 504
- 912. Angela Ballara, Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), pp 115, 449
- 913. Ibid, pp 340, 353; Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 294; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 914. John Te H Grace, Tuwharetoa: A History of the Maori People of the Taupo District (Wellington: Reed, 1959), p113ff; Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), p5; David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p14; Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)
- 915. Angela Ballara, Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Maori Society in the Early Nineteenth Century (Auckland: Penguin Books, 2003), pp 153–162
- 916. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson,

- brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p17
- 917. Hiraina Hona, brief of evidence on behalf of Tuhoe, 6 September 2004 (doc c18), p 3
- **918.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p101
- 919. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 62–64, 72
- 920. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 123–124; Hauata Palmer, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B29), p 10; Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p 14. While the details vary slightly between these different accounts, they are all agreed that the marriages were designed to seal the peace between the two groups, Ngai Te Rangi and Tapuika.
- 921. Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p15
- **922.** Mataara Wall, oral evidence for Ngati Tutemohuta and Karanga Hapu, fourth hearing, 14 March 2005 (recording 4.3.4, track 2)
- 923. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 506; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 123; Paul Tapsell, *Pukaki: A Comet Returns* (Auckland: Reed, 2000), p 31
- 924. Kihi Ngatai, brief of evidence on behalf of Ngai Te Rangi and Ngai Tukairangi, undated (doc B32), pp 8–9
- 925. Don Stafford, Te Arawa: A History of the Arawa People (Wellington: Reed, 1967), pp 385–386
- 926. Hupa (Jim) Maniapoto, brief of evidence on behalf of Ngati Tuwharetoa, 26 April 2005 (doc E34), pp5-6; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p216. Tamati Kruger translates 'tatau pounamu' as 'greenstone door of peace': see Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2).
- 927. Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2); Lennie H Johns and Ira ME Johns, 'Pakira: Whakapapa', genealogy of Ngati Tutemohuta and Karanga Hapu, [2005] (doc D6), p1; Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p15; Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), pp58–60; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua,

HE MAUNGA RONGO

Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 364

- **928.** Tony Nightingale, *Nga Korero Opepe: Collecting Stories about Opepe Scenic and Historic Reserve* (Wellington: Department of Conservation), July 2004 (doc 160), p 8; Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p 16; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 157
- **929.** Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc H3(a)), p10; Hinematau McNeill, Piatarihi Callaghan, and Kirsty Maxwell-Crawford, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H22), p18; Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp119–124
- 930. Kawana Nepia, in an appendix to Neville Nepia, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B12), p 22
- 931. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p18
- 932. Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32), p 16; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 152–154; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p186–187; Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 60
- 933. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p186
- **934.** Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc H₃(a)), p 8. This gift of land to Te Iwikoroke is described by Mr Marsh as being a takoha rather than a tuku.
- 935. Law Commission, *Maori Custom and Values in New Zealand Law*, Law Commission Study Paper 9 (Wellington: Law Commission, 2001), p 38
- 936. Angela Ballara, oral evidence, first hearing, 1 February 2005 (recording 4.3.1, track 1)
- 937. Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), pp 409–410
 - 938. Ibid, p 416
- **939.** Hiraina Hona, brief of evidence on behalf of Tuhoe, 6 September 2004 (doc C18), p 10
 - **940.** Ibid
- 941. Paul Tapsell, brief of evidence on behalf of Ngati Pukaki, Ngati Rautao, Ngati Waoku, Ngati Te Hika, Ngati Ririu and Ngati Karenga Hapu of Ngati Whakaue, 14 June 2005 (doc н9), p 6
- 942. Merata Kawharu, 'Dimensions of Kaitiakitanga: An Investigation of a Customary Maori Principle of Resource Management', Oxford University, unpublished DPhil thesis, 1998, p14 (as cited in Merata

- Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), p8)
- **943.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p182; Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), pp131–132
- **944.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 189
- 945. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), pp 204–205
- **946.** Translation of Te Rangikaheke, 'Te Tikanga o tenei Mea o te Rangatiratanga o te Tangata Maori' (as cited in Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), pp 186–187)
- **947.** Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), pp 187–188
- **948.** Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), pp 39-40
- 949. Paranapa Otimi, brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16), pp 7–8
 - 950. Ibid, pp 9-19
- 951. Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p18
- **952.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), pp 35, 55
- 953. Ibid, pp55-56; Law Commission, *Maori Custom and Values in New Zealand Law*, Law Commission Study Paper 9 (Wellington: Law Commission, 2001), pp 33-34
- 954. Rere Puna, brief of evidence on behalf of Ngati Hineuru, February 2005 (doc C44), p6
- 955. 'Pirorirori [Blue Lake]', booklet apparently linked to an appeal made to Contact Energy in relation to the lake, March 2004 (doc D28(a)), p 9
- **956.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p127
- 957. Sir Hugh Kawharu (as cited in Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim, 3rd ed (Wellington: GP Publications, 1996), p187)
- 958. JV Williams (as cited in Law Commission, *Maori Custom and Values in New Zealand Law*, Law Commission Study Paper 9 (Wellington: Law Commission, 2001), p 34)
- 959. Alan Ward, A Show of Justice: Racial Amalgamation in New Zealand (Auckland: Auckland University Press, 1973), p 6

- **960.** Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p134; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p190
- **961.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 178, 189
 - 962. Ibid, p 201
- **963.** Basil Johnson, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F65), pp 4–5; Maxine Rennie, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F67), pp 3, 7; Grace Dorset, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F70), p 2–3
- **964.** See, for example, the numerous accounts of independent action recounted in John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959).
- **965.** Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p14
- **966.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), pp 315–325
- **967.** Te Maioro Konui, brief of evidence on behalf of Ngati Hikairo in response to the evidence of Te Ngaehe Wanikau and to questions of clarification, 25 May 2005 (doc H3), p12
- **968.** Peter Clarke, brief of evidence on behalf of Ngati Hinerau, Ngati Te Urunga, Ngati Hinerae, Ngati Tutemohuta, and Ngati Rauhoto of the Hikuwai confederation of Ngati Tuwharetoa, 28 February 2005 (doc D13), p 4
- **969.** Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 26
- **970.** Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p 8
- 971. Te Awanuiarangi Black, brief of evidence on behalf of Ngati Te Pukuohakoma, 7 February 2005 (doc B30), para 12
- 972. Beverley Hodge, brief of evidence on behalf of Te Takere o Nga Wai, 12 March 2005 (doc D29), para 5
- 973. Donna Hall, oral presentation of opening submissions on behalf the Te Arawa Taumata, first hearing, 1–4 February 2005 (transcript 4.1.2), p 2
- 974. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 185–186; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), pp 211–214

- **975.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 324–325
- 976. Hakiaha Tawhiao, cited in Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 202
- **977.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 179–180
- **978.** Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), pp 100–101
- 979. Thomas Chapman in 1854 (as cited in Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 180)
- **980.** David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), pp 9–10; Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 133
- 981. Evelyn Stokes, The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources (Hamilton: University of Waikato, 2000), p 88
- **982.** Huirama Te Hiko, brief of evidence on behalf of Ngati Raukawa, 28 February 2005 (doc D10), p31
- 983. Hapimana Higgins, brief of evidence on behalf of Ngati Manawa, 28 February 2005 (doc C39), p 2
- **984.** Paranapa Otimi, third brief of evidence on behalf of Ngati Tuwharetoa, 27 April 2005 (doc E16(b)), pp 2-3
- 985. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc c25(a)), p 11
- **986.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), pp 15–19
- 987. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc c25(a)), p11
- 988. Merata Kawharu, 'Dimensions of Kaitiakitanga: An Investigation of a Customary Maori Principle of Resource Management', Oxford University, unpublished DPhil thesis, 1998, p14 (as cited in Merata Kawharu, 'Te Mana Whenua o Ngati Manawa', 26 July 2005 (doc 162), pp7–8)
- **989.** Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 37
- **990.** Te Keepa Marsh, brief of evidence re Tapuika, document B26(a), p 3; Te Keepa Marsh et al, evidence in response on behalf of Tapuika, 25 May 2005 (doc H3(a)), p 6; Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), p 2
- 991. Eru Te Paemoe in Maketu Native Land Court minute book 3, 15 July 1878, fol 114 (as cited in Merata Kawharu, Ralph Johnson, Verity

HE MAUNGA RONGO

Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt 1, p 31)

992. Suzanne Doig, 'Customary Maori Freshwater Fishing Rights: An Exploration of Maori Evidence and Pakeha Interpretations', PhD thesis, University of Canterbury, 1996 (doc A51), pp 294–295, 406; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 148–150, 156, 159; Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 59

993. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p33; David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), pp3-4

994. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p570

995. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 238

996. Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (Maori version), 28 February 2005 (doc C25), p 4; Sean Ellison, brief of evidence on behalf of Te Takere o Nga Wai (English version), 28 February 2005 (doc C25(a)), p 5

997. Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p7

998. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 244

999. Tame McCausland, brief of evidence on behalf of Waitaha, 16 February 2005 (doc B54), p15

1000. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp392–396

1001. Suzanne Doig, 'Customary Maori Freshwater Fishing Rights: An Exploration of Maori Evidence and Pakeha Interpretations', PhD thesis, University of Canterbury, 1996 (doc A51), pp 293–294

1002. Ibid, pp 294–295, 406; John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Wellington: Reed, 1959), pp 148–150, 156, 159; Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 59

1003. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p203

1004. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p 41

1005. Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)

1006. Hinematau McNeill, Piatarihi Callaghan, and Kirsty Maxwell-Crawford, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H22), p16; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 222

1007. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 221; Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), pp 44–45

1008. Peraniko Te Hura, cited in Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), p 26

1009. Haki Thompson, brief of evidence on behalf of Ngati Raukawa (English version), 28 February 2005 (doc D9), p13; Haki Thompson, brief of evidence on behalf of Ngati Raukawa (Maori version), 28 February 2005 (doc D9(a)), p7

1010. Hinematau McNeill, Piatarihi Callaghan, and Kirsty Maxwell-Crawford, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H22), p 16

1011. Ibid, p 16

1012. Ben Hona, brief of evidence on behalf of Ngati Hurunga Te Rangi, Ngati Taeotu, Ngati Kahu o Ngati Whakaue, 22 April 2005 (doc F5), p4

1013. See for example Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 245–248

1014. Pat Hohepa and David Williams, The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession: a Working Paper (Wellington: Law Commission, 1996), p 28

1015. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 241

1016. Hinematau McNeill, Piatarihi Callaghan, and Kirsty Maxwell-Crawford, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H22), p 20

1017. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 241; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp 533–534

1018. Wiparaki Pakau, brief of evidence on behalf of Ngati Hikairo, 22 April 2005 (doc E11), p 3

NGA TANGATA WHENUA: THE PEOPLES OF THE CENTRAL NORTH ISLAND

1019. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report,' report commissioned by CFRT, March 2005 (doc G2), pt 1, pp 159–160, 165

1020. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p56; Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p146

1021. Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), p145

1022. Te Keepa Marsh and Hinematau McNeill, 'Tapuika Mana Whenua Report: a preliminary report to the CNI Waitangi Tribunal hearings', April 2005 (doc 161), p 39

1023. Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), p7

1024. Te Keepa Marsh, answers to questions of clarification on behalf of Tapuika, undated (doc 140), p 3

1025. Hinematau McNeill, Piatarihi Callaghan, and Kirsty Maxwell-Crawford, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H22), p15

1026. Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), pp7–8; Piatarihi Callaghan, oral evidence for Tapuika, eighth hearing, 11 July 2005 (recording 4.3.8, track 2)

1027. Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc н23), p 262

1028. Evelyn Stokes, 'Tauponui a Tia: an Interpretation of Maori Landscape and Land Tenure', *Asia Pacific Viewpoint*, vol 40, no 2 (August 1999), p 150

1029. Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), p 47

1030. Te Keepa Marsh, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H23), p12

1031. Hamuera Mitchell, brief of evidence on behalf of Ngati Whakaue, 26 April 2005 (doc F68), p 10

1032. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), p 251

1033. Rere Puna, brief of evidence on behalf of Ngati Hineuru, 28 February 2005 (doc C44), p6; Ministry of Justice, He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice (Wellington: Ministry of Justice, 2001), p47

1034. Ministry of Justice, He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice (Wellington: Ministry of Justice, 2001), p 47

1035. Ibid, p 47

1036. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te

Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, pp124-140, 141-157

1037. Ibid, p142

1038. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p59

1039. Ibid, p 61

1040. Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), p 49

1041. Don Stafford, *Te Arawa: A History of the Arawa People* (Wellington: Reed, 1967), p 157

1042. Ibid, p 125

1043. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p76

1044. Extract from Gilbert Mair papers, MS papers 92, folder 53, diary 29, ATL, Wellington (appended to Peretini Te Whata, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B13)). Ngati Makino say that the stone was in the Whakarewa River and that its name was Papa Orooro, Papa Hoanga (Peretini Te Whata, brief of evidence on behalf of Ngati Makino, 7 February 2005 (doc B13), pp 6–7; Te Ariki Morehu, oral evidence for Ngati Makino, second hearing, 14 February 2005 (recording 4.3.2, track 2).

1045. Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), p 82

1046. Hiraina Hona, brief of evidence on behalf of Tuhoe, 6 September 2004 (doc c18), pp 9–10

1047. Tamati Kruger, oral evidence for Ngati Haka Patuheuheu and Ngai Tuhoe, third hearing, 7 March 2005 (recording 4.3.3, track 2)

1048. Robert Pouwhare, brief of evidence on behalf of Ngati Haka Patuheuheu, 25 February 2005 (doc C49), p 25

1049. Ibid, p 25

1050. Gladys Hine Campbell, brief of evidence on behalf of Ngati Hineuru, 7 March 2005 (doc c58), p 4

1051. Tame McCausland, oral evidence for Waitaha, second hearing, 16 February 2005 (recording 4.3.2, track 3)

1052. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p 49

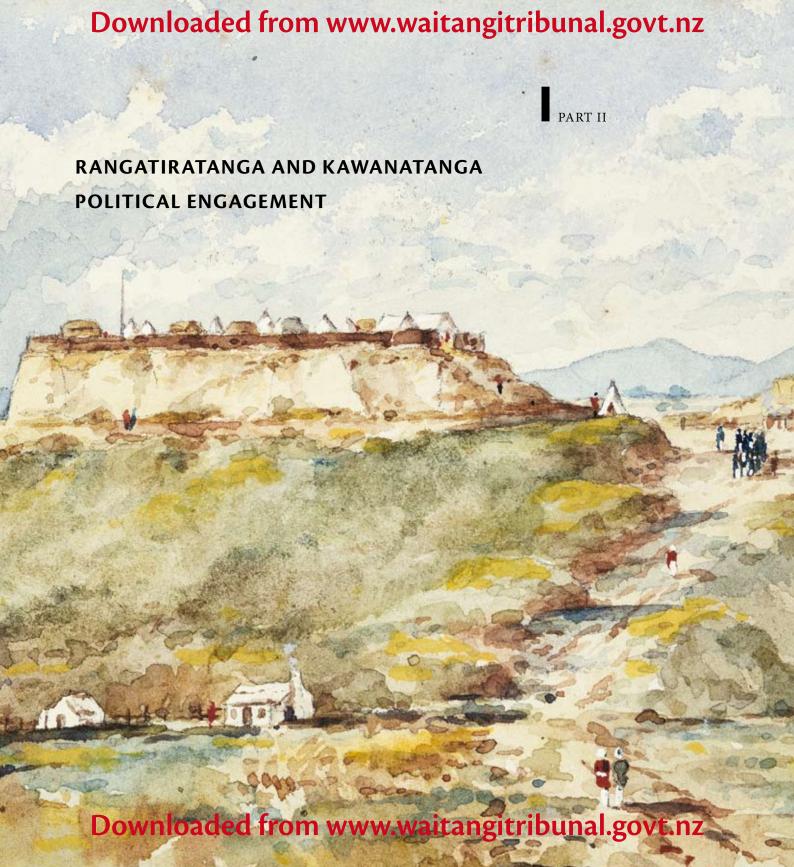
1053. David Whata-Wickliffe, brief of evidence on behalf of Ngati Tamakari, [April 2005] (doc F37), p 35

1054. Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p17

1055. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p59; Raymond Firth, Economics of the New Zealand Maori, 2nd ed (Wellington: Government Printer, 1972), pp 258–262

1056. Roger Neich, Carved Histories: Rotorua Ngati Tarawhai Woodcarving (Auckland: Auckland University Press, 2001), p18

- 1057. Merata Kawharu, Ralph Johnson, Verity Smith, Robert Wiri, David Armstrong, Vincent O'Malley, 'Nga Mana o te Whenua o Te Arawa: Customary Tenure Report', report commissioned by CFRT, March 2005 (doc G2), pt1, p356
- **1058.** Raymond Firth, *Economics of the New Zealand Maori*, 2nd ed (Wellington: Government Printer, 1972), p 260
- **1059.** Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: University of Waikato, 2000), pp 122–124
- 1060. Lennie H Johns and Ira ME Johns, 'Pakira: Manawhenua', manawhenua report for Ngati Tutemohuta and Karanga Hapu, 2005 (doc D39), p17
- **1061.** Miki Raana, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F62), pp 2–3; Miriama Douglas, brief of evidence on behalf of Ngati Whakaue, 22 April 2005 (doc F63), pp 2–3
- **1062.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), p 49
- **1063.** Pat Hohepa and David Williams, *The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession: a Working Paper* (Wellington: Law Commission, 1996), p 30
- **1064.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), p 49
- 1065. Hugh Kawharu, Maori Land Tenure: Studies of a Changing Institution (Oxford: Clarendon Press, 1977), p 39
- **1066.** Ministry of Justice, *He Hinatore ki te Ao Maori; A Glimpse into the Maori World: Maori Perspectives on Justice* (Wellington: Ministry of Justice, 2001), pp 47–48
- 1067. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, November 2004 (doc A65), pp 236–237; Pat Hohepa and David Williams, The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession: a Working Paper (Wellington: Law Commission, 1996), pp 29–30
- **1068.** Piatarihi Callaghan, oral evidence for Tapuika, eighth hearing, 11 July 2005 (recording 4.3.8, track 2)
- 1069. Hinematau McNeill, Piatarihi Callaghan, and Kirsty Maxwell-Crawford, brief of evidence on behalf of Tapuika, 27 June 2005 (doc H22), p 23
- 1070. Shane Ashby, brief of evidence on behalf of Ngati Pukenga, 9 May 2005 (doc F23(b)), p10



Previous page: Maketu redoubt, 1864. Detail of a watercolour by HML Atcherley, possibly of the 1st Waikato Regiment. The full image is reproduced in black and white on page 249.

Downloaded from www.waitangitribunal.govt.nz

INTRODUCTION

Fundamentally, the claimants argued that the root of all Treaty breaches in their rohe was the Crown's failure to give effect to its guarantee of their autonomy and self-government. The Crown argued that it was neither desirable nor practicable for it to have done so.

The Turanga Tribunal summarised the Maori entitlement to autonomy as follows:

By Maori autonomy, we mean no more than the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.¹

In chapter 3, we explore the Treaty standards by which we measure the Crown's treatment of the claimants' tino rangatiratanga in our Central North Island inquiry region. We examine the Treaty principles of autonomy, partnership, and reciprocity, and also the question of whether there was an article 3 right of self-government for British subjects in the nineteenth century. The Crown submitted that its Treaty obligations in that respect were governed by the circumstances of the time, and that the Tribunal must not apply present-day standards or expectations of what the Crown could reasonably have done in all the circumstances. We assess this argument and establish standards for measuring the Crown's actions, having regard to historical context and whether 'less penal alternatives' to the Crown's policies were known or practicable.

The claimants see their history as a series of opportunities for the Crown to have given effect to its Treaty guarantee of their autonomy and self-government – opportunities that were either lost or actively rejected. Throughout the nineteenth century and into the twentieth century, they sought to engage with the Crown on a political level, to secure their management of their own lands and affairs, and

to obtain legal powers of self-government. In their view, the Crown denied their repeated requests and demands, acting instead to promote settler interests at their expense. The Crown replied that the degree of 'self-management' promised by the Treaty is a matter of legitimate debate, that its officials genuinely thought assimilation was in the best interests of Maori, and that lost opportunities were either impracticable or too uncertain for the Tribunal to judge them.

In chapters 4 to 7, we explore the detail of the claimants' argument that the Crown missed or actively rejected feasible opportunities to give effect to their Treaty rights of autonomy and self-government. The key question for the Tribunal's consideration is: Did the Crown miss (or actively reject) opportunities and requests to give effect to its Treaty guarantees of Maori autonomy and self-government?

To address that question, we have divided the historical material into four periods (covered in chapters 4 to 7):

- ▶ the era of practical autonomy, 1840–65;
- ▶ the era of civil war and active repression, 1863–70;
- ▶ the era of committee and komiti, 1870-90; and
- ▶ the era of Kotahitanga and the councils, 1890–1920.

The evidence available in our inquiry does not allow us to address issues of political autonomy at a general level after 1920, although it is assessed in later parts of this report in regard to key issues – such as public works takings or management of the environment – where relevant to those issues.

Note

1. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113





TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

Tawhiao has also referred to self-government for the Maori race. He says, 'Why not give the people the right to manage their own affairs?' To a large extent I agree with that. We are now extending self-government to the Native race under the Parliament and Government and institutions of the Colony... The Treaty does not give the right to set up two Governments in New Zealand. The chiefs there bound themselves to accept the laws of the Queen, in exchange for which she guaranteed to them their lives, their liberty, and their property. We are prepared, under that Treaty, as I have said – under the laws which the Queen has given to the Colony, and under the Constitution of the colony – to give the Natives large powers of self-government. That is the meaning of the Treaty...¹

John Ballance, Native Minister, speech to Kingitanga representatives, 6 February 1885

The question of political engagement between the Crown and Central North Island Maori is central to the claimants' case that the Crown has breached the principles of the Treaty of Waitangi, to their serious prejudice. Ultimately, the claimants maintain that the Treaty's guarantee of their tino rangatiratanga, their authority and autonomy, has been set aside and actively repressed rather than fulfilled by the Crown. In reply, the Crown argues that it went as far as it could in the nineteenth century, but that it simply was not possible, practical, or desirable to give legal support and effect to Maori self-governing institutions. In this chapter, we consider the Treaty standards by which the Crown's actions should be judged. In chapters 4 to 7, we address the substantive issue of how and why Central North Island Maori sought to govern their internal affairs and decide their own destinies, and whether the Crown gave effect to their Treaty right to do so.

ISSUES

To establish the relevant Treaty standards and their parameters, the key question that we address is:

► What Treaty standards applied to the political relationship between the Crown and the Central North Island tribes?

Concerning that question, we consider the Treaty principles of autonomy, partnership and reciprocity, and address the following additional questions:

- ► Was there an article 3 right of self-government in the nineteenth century?
- ► How do we determine what was reasonable in the circumstances of the nineteenth century?

We then consider the issue of whether Treaty standards were different for those Central North Island tribes that did not sign the Treaty.

HE MAUNGA RONGO

In addressing that matter, we ask:

- ▶ Do the Treaty guarantees apply to non-signatory tribes?
- ► Have non-signatory tribes retained their sovereignty, as some claimed in this inquiry?
- ► Is the non-signatory claimants' position impractical? Finally, we consider the practical implications of the Treaty principle of autonomy and the article 3 right of self-government, by posing these questions:
 - ► What models of autonomy were reasonably available to, and considered by, the Crown and Maori in the nineteenth century?
 - ► What Treaty-compliant options could the Crown have adopted to recognise and give effect to Maori autonomy?

We turn now to discussion of our first key question.

TREATY STANDARDS

KEY QUESTION: WHAT TREATY STANDARDS APPLIED TO THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND THE CENTRAL NORTH ISLAND TRIBES?

Fundamentally, the Central North Island claims are about autonomy. Economic self-management and success, cultural health and survival, political self-government, social self-regulation – all flows from the ability of a people to remain autonomous and in control of their own destiny. The ability of the Rotorua, Taupo, and Kaingaroa tribes to govern themselves and decide their own destinies was unquestioned before 1840. After the proclamation of British sovereignty, that situation changed. There were two authorities, two systems of law, and two overlapping spheres of population and interest, as the settler State sought to establish itself alongside - and over the top of - Maori tribal polities. Within each of those two sides, there were complex areas of internal conflict and overlap in the nineteenth century. On the settler side, there were the British authorities, the colonial Parliament, the provincial governments, political factions and parties (both regional and national), and a plethora of local boards and interests. On the Maori side, there were hapu and alliances of closely related hapu; iwi and alliances of iwi; pan-tribal movements and organisations; and relationships with select settlers and officials. Self-government on both sides was located at local, regional, and (increasingly) national levels.

From the mid-1860s, the settler State was self-governing, with the exception of Imperial affairs and foreign policy. At precisely the same time, Maori self-government came under increasing repression in the Central North Island. A key question of the time was: what legal (as opposed to de facto) powers would Maori tribal groups exercise to govern themselves, their lands, their resources, and their destinies? Or would the settler State disempower the tribes at law and govern them in its own (and not Maori) interests? In the words of Paul McHugh, did 'lawfare' replace warfare as the means of subjugating Maori? And if it did so, was that in keeping with the Treaty?

To evaluate such questions, we must first establish the nature and parameters of the Treaty standards by which the Crown was bound in the nineteenth century. We begin with the claimant and Crown arguments both on that point and on how each thought the Crown could or should have treated the autonomous tribes of the Central North Island.

The claimants' case

The many tribal groups and alliances of the Central North Island presented the generic aspects of their claims in a variety of ways. They did not all agree on every point of detail. In this section, we rely mainly on the generic submissions of Martin Taylor and of Annette Sykes and Jason Pou for all claimants, and Karen Feint's submission for Ngati Tuwharetoa.

Ms Feint argued that the Ngati Tuwharetoa claim is about the 'consistent and unwavering assertion of the mana of Ngati Tuwharetoa' in the face of the Crown's consistent attempts to erode it.³ The tribe's practical ability to exercise its mana and tino rangatiratanga has been steadily and

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

deliberately diminished by the Crown. Ngati Tuwharetoa agree with the Taranaki Tribunal that Maori autonomy is the key issue in claims against the Crown, from which all other issues follow. The Crown did not merely fail to recognise or provide for the tino rangatiratanga and autonomy of Ngati Tuwharetoa, but actively crushed it, in serious breach of the Treaty of Waitangi. The claimants asked for the findings of the *Taranaki Report* in that respect to be accepted and applied in the Central North Island.⁴

This fundamental submission on behalf of Ngati Tuwharetoa was in broad agreement with Martin Taylor's submission, which was on behalf of all claimants but focused somewhat more on issues relevant to the Rotorua inquiry district. Mr Taylor argued that issues of political engagement are extremely important, underpinning many of the later issues arising in the claims. It was the Crown's repression of Maori autonomy and ability to control their own destiny that led to the prejudice of the 'development of underdevelopment'.⁵

Political engagement, argued the claimants, was the key to many other Treaty breaches as well. War and raupatu, an improperly constituted Native Land Court, unwanted individualisation of title, enforced absolute alienation of land (instead of leasing), and many other claims, 'are all fundamentally claims that the Crown's political engagement failed Maori'. The Treaty requires the Crown to engage with Maori tribes at the political level. The Treaty duty of consultation, and the guarantee of tino rangatiratanga, required the Crown to recognise and engage with Maori decision makers and whatever decision-making bodies Maori presented to the Crown as the expressions of their political will. Land and political authority were inseparable, in that respect. Maori wanted their committees and runanga to manage all their communities' affairs, including managing land and deciding land entitlements. The Crown was obligated to protect and give effect to Maori authority over all their internal affairs, including land. If Central North Island hapu wanted land to be managed by komiti, then under the Treaty the Crown had no choice but to respect and give effect to that desire.6

This was because, as the claimants cited from the Tribunal's Turanga Tangata Turanga Whenua report, the Treaty promised to respect both Maori title and Maori control over their own title. Those guarantees were absolute and non-negotiable. This required the Crown to do more than just consult Maori about the Native Land Court - it had to find out Maori customs and desires and respect them. It needed consent to change the fundamental basis on which land was held. In particular, the claimants argued that the autonomy of Central North Island tribes was based on their fundamental right to govern themselves by their own institutions, and to manage their own land as corporate bodies. Individualisation of land was the opposite of – and anathema to – Maori autonomy and their Treaty-guaranteed rangatiratanga. The Crown's Native Land Court and its destruction of community authority and title, therefore, which was imposed in knowing opposition to Maori preferences and aspirations, was a grievous breach of the Treaty (as the Turanga Tribunal concluded). Governments' efforts to destroy tribal control of land, and to press sales that would not have happened under tribal control, were in breach of the Treaty.7

In the claimants' view, the role of the Crown and the Government is to lead the nation and to uphold the values, duties, and rights of all its citizens. The Treaty is fundamental to that role, the Maori Magna Carta. There are many references in the historical research to failed Bills, or to settler opinion persuading the Crown against particular courses of action – in other words, to failed opportunities for the Crown to have done better, because it prioritised the interests of one group of citizens (settlers) over another (Maori). None of these political realities reduced the Crown's obligations to regulate its own conduct (and that of its citizens) in line with the promises it had made in the Treaty.⁸

There was a question, however, in the Crown's mind about whether Maori could govern themselves. In the claimants' view, there was a critical difference between the types of wars fought by Maori over land (for utu) before the mid-1850s, and the post-1855 title disputes of the kind

HE MAUNGA RONGO

involved in settling titles for desired economic outcomes. The Maketu Native Land Court sittings did not lead to traditional warfare, which shows that Maori land disputes had moved to a new, less-violent level. Maori self-government and title determination would have benefited from this tendency, and were the sort of thing that could have been trusted and engaged with by the Crown. The claimants dispute the Crown's proposition, therefore, that Maori bodies could not be trusted to determine titles without starting tribal wars. Angela Ballara and David Armstrong show that by the mid-1850s Te Arawa abandoned war and adopted non-violent dispute resolution for dealing both with Europeans and with each other. Further, in response to Crown cross-examination suggesting that the tenure reform initiated by the Native Land Acts was necessary, Dr Ballara and Mr Armstrong argued that Maori tikanga and tribal authority were compatible with the colonial economy and its need for settled titles. They also showed that the runanga of the 1850s and 1870s were evidence that Maori social and political organisation was not shattered by culture contact, but that tribal structures, authority, and vision could adapt in a quintessentially Maori way to the new situation.9

Mr Taylor submitted that the retention of tribal control of land, communal title to land, and land itself, were the key aspirations of all Maori political movements in the Central North Island; all three were guaranteed by the Treaty. From the late 1850s, Te Arawa tribes established runanga to regulate their own affairs and their relations with each other. These were re-established as komiti in the 1870s. One of their goals was kotahitanga, and they were capable of intertribal bases and actions. The Crown itself, however, damaged moves to peace and cooperation within Te Arawa when it commenced war against some Maori groups and polarised tribes in the region. There can be no doubt that the Crown was aware, through the reports of its own officials, that Central North Island Maori wanted to retain their land and their community authority over it. 10

In the claimants' view, the Fenton Agreement of 1880 (had it been honoured) provides a model for how the

Crown should have acted. It was negotiated with Maori and included an agreement on how title would be determined (with a role for komiti), specification of leasing instead of sales, agreement on the way in which valuable resources would be dealt with (such as geothermal sites), provision for medical treatment, and a unique and positive type of local administration for both Maori and Pakeha. This provides a template to judge the ways in which the Crown could have recognised Maori autonomy and given effect to its promise to protect it – what was possible, in other words, in the circumstances of the nineteenth century. This is what should have happened, though on a wider basis, instead of the unilateral imposition of the Native Land Court and the breaking of tribal management of land.¹¹

Another model for how the Crown could or should have acted was the provision to establish self-governing native districts in section 71 of the Constitution Act 1852. Aware of their large size and virtual independence, the Crown ought to have done this for the various tribal rohe of the Central North Island. Other models were available as well, and there were constant missed opportunities to recognise and work with these models as vehicles for Maori tino rangatiratanga throughout the century. Key missed opportunities included the Kingitanga, the runanga movement, the native council and native committee movements and Bills, the various Maori parliament initiatives (from Kohimarama in the 1860s to Kotahitanga in the 1890s), and many more. With all these missed chances to give effect to the Treaty guarantees of autonomy and self-government, and with the prejudicial effect of stripping Maori of their ability to develop and to control their own destiny, the claimants argued that the Crown breached the principles of the Treaty, with serious effects.12

Ms Sykes cautioned, however, that there were also dangers of cooption and subversion if the Crown imposed its own institutions and sought to control rather than to empower Maori. A 'distinction must be drawn,' she argued, 'between institutions of Maori origin and those that were Crown sponsored, which we reiterate, were designed

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

essentially to subordinate the authority of Tangata Whenua to that of the Crown.'13 In her view, the Tuhoe General Committee of the 1890s, the New Institutions of the 1860s, and the 1900 Maori Councils were examples of this cooption, in which original Maori institutions were replaced, and Maori subordinated through Crown-controlled, inferior bodies. The Crown was not giving effect to the Treaty if it coopted, watered down, and coerced Maori self-governing institutions.¹⁴

In addition, some claimants asserted their interpretation of tino rangatiratanga as not merely a Treaty-protected autonomy within the nation state of New Zealand, but a separate sovereign authority in which each iwi and hapu is an independent nation. In particular, they argued that those tribes which had not signed the Treaty had never ceded their sovereignty or recognised the kawanatanga of the Crown other than as an equal party also located in New Zealand and with which to negotiate on matters of mutual interest. Those tribes that might be argued to have accepted the Treaty and kawanatanga at the Kohimarama Conference, or made other practical submission to the Crown during or after the wars, never made a formal act of cession and so retain their sovereignty as a matter of international law.¹⁵

The Crown's case

The Crown's argument centred on the risks of hindsight and presentism, and the question of what was reasonable for the Crown to have done in the nineteenth century. Fundamentally, the Crown argued that in the prevailing philosophical context of amalgamationism, nineteenth-century officials believed that giving or recognising authority in Maori institutions was not in the best interests of Maori. Nor, it argued, could such institutions have reasonably been capable of carrying out the roles that Maori wanted them to. These two arguments mean that it was unreasonable to have expected the Crown to have protected tino rangatiratanga in ways that seem suitable in hindsight or by today's values.

In particular, the Crown argued that:

- ► Article 1 of the Treaty transfers absolute sovereignty to the Crown. The Treaty relationship is between sovereign and subject. Any conception of separate sovereignty or parallel governments does not fit within the Treaty. 16
- ▶ Article 2 guarantees more than just ownership of property. It guarantees a 'degree of Maori control and management over what Maori own'. It is not exactly the same as tino rangatiratanga before the Treaty chiefly control over people to the extent of executions or waging war was ended, for example. But it is more than just control and authority over property the Crown accepts that 'elements of self-management of non-material resources (people and culture)' were protected by the Treaty. How much self-management is consistent with the Treaty, and how this changes over time, are proper matters for debate. ¹⁷
- ► The claimants' suggestion that 'the Crown had a Treaty duty to actively develop and foster customary Maori institutions is a vexed and contentious one', risking 'uncritically projecting contemporary standards and understandings upon historical 19th century actors'.¹⁸

In terms of 'lost opportunities', the Crown argued that any such analysis is counterfactual because it is not possible to say whether or how (or for how long) they would have worked if adopted. And, being unable to say that, it is impossible to know whether they were really missed opportunities or not. 19 That said, the Crown acknowledged that it had policy alternatives and options available to it. The Crown accepted that it has to actively protect the Maori interests guaranteed by the Treaty. Such protection is not absolute, but it requires the Crown to do what is reasonable in the circumstances. 20 In judging how the Crown chose between policy alternatives, the Tribunal ought to have regard to both the standards and the practicalities of the time to measure what was reasonable.

In terms of practicalities, the considerations should be as follows:

HE MAUNGA RONGO

- ► What options were reasonably open to the Crown at the time, and what resources were available (to actually carry out policies) at the time?
- ► What was the nature of the state infrastructure in the district at the time?
- ► Were the medium- and long-term consequences of decisions reasonably known at the time they were made?

In terms of standards, the considerations should be as follows:

- ▶ What was the legitimate role of the State in society at the time?
- ▶ What were the prevailing world views and philosophies of the decision makers and their generation?
- ► What were the objectives of a policy at the time, as opposed to how it is seen now?²¹

Given that, in the Crown's view, any consideration of 'lost opportunities' is 'counterfactual', there would need to be a 'firm body of opinion' to justify a finding that any particular policy option was reasonably practicable and feasible at the time.²² The Tribunal must consider how far the alternative was visible to key decision makers, whether it could realistically have been implemented (its viability), and the probable consequences as considered at the time. It is only by considering policy alternatives in this framework, and consciously assessing their context, that the Tribunal can avoid the dangers of hindsight and presentism. The Crown submitted that the significance of context and the use of the standards of the time does not prevent the Crown from being held accountable. Nonetheless, the sufficiency of the Central North Island evidence on these matters, our distance from the events, and the counterfactual nature of the exercise, allow for 'tentative conclusions' only.²³

One such key matter of context is the prevailing nineteenth-century Pakeha worldview that amalgamation was in the best interests of both peoples. The Crown argued that it consistently pursued an amalgamation policy in the nineteenth century, humanitarian in nature but inconsistent with recognising separate Maori institutions. On the other hand, Crown officials and politicians expended a good deal of thought and effort on the question of how to provide Maori outside the settled districts with judicial and governmental systems that could operate for them inside a general colonial system.²⁴ The nature of constitutional arrangements for Pakeha was also much debated and in ferment from 1852 to the mid-1860s.²⁵

In the Crown's view, there is a difference between colonisation as a historical process (parts of which were outside its ability to control or to reasonably circumscribe), and the acts and omissions of the Crown for which it can be held responsible under a Treaty analysis. ²⁶ The Crown does not, however, simply blame colonisation as a process. In its view, its responsibility lies in both the modes and the consequences of land acquisition. Some form of colonisation was inevitable and the Crown's responsibility is limited to the ways in which it quite deliberately decided to act. The Crown submitted that there are two valid questions in this respect:

- ▶ Should the Crown have imposed the colonising policies it in fact adopted?
- ► In particular, were there less 'penal' alternatives available to the Government?²⁷

In terms of imposing policies (without consent), the Crown argued that it has a Treaty duty to make well-informed decisions (and that this principle is applicable to all governments at all times). But there is no general duty to consult Maori: consultation had to be practicable according to the state infrastructure of the time, and in any case, an obligation to consult is not an obligation to gain Maori consent – the Privy Council has said that the Treaty cannot unreasonably fetter a Government's ability to carry out its policies.²⁸

In terms of alternatives available to the Government, the Crown argued that Maori agency involved some people making choices to engage with the Native Land Court and to individualise their titles. The Tribunal has to beware of a modern orthodoxy that only collectivism would have worked, and that all Maori wanted it. In discussing the alternatives available of (and for) recognising Maori self-governing institutions, it argued that the decision not to

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

declare Native Districts was made because Crown officials believed that Maori development would not be fostered by doing so. Also, Crown officials were cautious about recognising komiti or runanga out of a concern that it might privilege particular groups and aggravate inter-hapu disputes 'rather than lessen them'. At the same time, officials were cautious about the ability of komiti or runanga to provide stable decision-making or to enforce their decisions. Claimants have downplayed or ignored the weakness and fallibility of these institutions, but the Crown, realistically, could not have expected them to work. On the control of the country o

In its submission on the Native Land Court, however, the Crown put these matters somewhat differently. There, it accepted that the Native Councils Bill 1872 is evidence that the Government recognised that Maori collectives should play a greater role in title adjudication. It also accepted that Maori were seeking greater control, and that the various komiti, the Putaiki (the council of Tuhourangi), and the Rohe Potae are examples of it. The difficulty for the Crown was not that these Maori aspirations were divisive or unworkable; the difficulty was in how to translate them into a bureaucracy. The Native Minister, John Ballance, tried to do so in the 1880s and failed, showing both the difficulty of doing it, and the range of Maori views on what should be done. 'To have been successful the Crown would have needed actively and closely to have promoted relevant Maori institutions'. A more measured and Maori-controlled process of colonisation was the likely outcome. This in turn would have carried an economic cost (meaning to the economy, the rate and extent of settlement, and economic development) that was ultimately unacceptable.³¹

In its submission on environmental matters, the Crown conceded that 'the extent of Maori participation in local Government processes has historically been low.' This was the situation, counsel submitted, until the 'significant innovations and improvements' of the 1980s which finally, in their view, 'increased the potential for the views of Maori and their concerns to be considered in local Government decision-making processes.' 32

The claimants' replies

The issues of presentism and the test of reasonableness, as raised by the Crown, were not fully anticipated by the claimants in their initial case. In their submissions in reply, the claimants argued that the Crown had construed the *Broadcasting Assets* case too widely. The Privy Council considered reasonableness in terms of what the Crown could afford at a time of recession, as opposed to when the economy was buoyant. This was quite a narrow test, qualified by the Privy Council's ruling that the principle of redress must also apply. That is, the Crown's responsibility was even greater by the time it had better funds, if it had taken no action to protect taonga in leaner times. This, the claimants argued, supports the usual dictum that the Treaty standards are constant and, after the signing of the Treaty, are themselves key standards of the time.³³

Ngati Makino referred to the finding of the Tribunal's *Te Roroa Report* that the mores of the settler public could not be preferred over the principles of the Treaty where the two were different. They also cited the Tribunal's *Muriwhenua Land Report*:

The Government policies and practices should be seen in light of the standards of the day, as Crown counsel contended. In terms of the Treaty of Waitangi Act 1975, however, they must also be assessed by the principles and standards for settlement established by the Treaty of Waitangi. A lower test cannot be sanctioned simply because it later became the norm. It was basic to the assumption of rights of settlement and governance that Maori interests would be protected, and Maori would be treated fairly, equitably, and in accordance with the high standard of justice that a fiduciary relationship entails. The canons of justice and protection apply to all ages.³⁴

Also, the claimants denied that the modern language used to describe the standards of the Treaty today means that they were unknown in the nineteenth century. Rather, they relied on the evidence of Dr Ballara that ministers and officials were well aware of the standards required of them,

HE MAUNGA RONGO

expressed these frequently and publicly, and can therefore be measured by them without any fear of 'presentism'. In the claimants' view, presentism is nothing more than a red herring. Their claims are not based on an expectation of modern behaviour and ideas from historical actors. Their claims are based on the failure of the Crown to do what was asked of it by Maori at the time to keep the Treaty. In particular, the claimants objected to any suggestion that settler norms or majority views excused the Crown from doing what Maori asked of it on matters so central to them and to the Treaty as their land, resources, culture, and autonomy. These were not things for which settler norms could ever have been the right test, and that was known to the Crown at the time.³⁵

The Tribunal's analysis

The Treaty principle of autonomy

Fundamentally, we agree with counsel for Ngati Tuwharetoa, who asked us to endorse the findings of the *Taranaki Report*. In that report, the Tribunal found that the Treaty guarantee of tino rangatiratanga was a promise of active protection for Maori autonomy. We agree also that the core issue (and grievance) in the Central North Island was the Crown's active repression of Maori autonomy and hapu structures, which then enabled the Crown to strip Maori of land, resources, culture, and authority, acting almost exclusively in the interests of its settler subjects. Although most Central North Island Maori did not suffer the kind of raupatu that followed the destruction of Taranaki Maori autonomy, the end results were broadly similar. We come to that conclusion in light of the material reviewed in the rest of the report (parts II to v).

In its *Taranaki Report*, the Tribunal found that the main Treaty breach was the disempowerment of Taranaki Maori through the denigration and destruction of their autonomy or self-government. Maori autonomy is central to the Treaty and the principle of partnership. It is guaranteed by article 2. Autonomy is also the inherent right of peoples in their native territories. 'If the drive for autonomy is no

longer there, then Maori have either ceased to exist as a people or have ceased to be free.'³⁶ Autonomy or self-government describes the right of indigenous peoples to 'constitutional status as first peoples';³⁷ and the rights to:

- ▶ 'manage their own policy, resources, and affairs, within [the] *minimum parameters necessary for the proper operation of the State*' (emphasis added);³⁸ and
- ▶ 'enjoy cooperation and dialogue with the Government'. 39

The Tribunal concluded:

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).⁴⁰ [Emphasis added.]

'State responsibility, not absolute power, is the more necessary prerequisite for governance in this context.' The legal paradigm of state sovereignty had to change when one people colonised the lands of another, and both Government authority and Maori authority were therefore recognised in the Maori text of the Treaty. Tino rangatiratanga, which is the term used in article 2 of the Treaty, and mana motuhake are equivalent terms for aboriginal autonomy and aboriginal self-government.

The manner in which Taranaki Maori land was acquired by the Government was in breach of the principle of autonomy – the Government should never have presumed to answer the questions of what and who could 'sell', because it is the right of peoples to determine for themselves such domestic matters as their own membership, leadership, and land entitlements. The result was answers that were wrong and a process so 'profoundly wrong' that it removed decision-making from Maori and vested it in the Government and Pakeha. Instead, the Crown should have supported or developed customary institutions to provide a 'negotiating face'. In our view, these findings are particularly applicable to analogous circumstances in the Central North Island, where there was a very long campaign to have the

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

Crown recognise and endorse Maori institutions to decide their own titles.

The Taranaki Tribunal also found that the Treaty envisaged two spheres of authority (the Crown and Maori) which inevitably overlapped. The interface between the two authorities required some negotiation and compromise on both sides. Maori leaders of the nineteenth century wanted the respective authorities of Maori and Pakeha to be recognised and respected, and partnerships and dialogue maintained. The Crown wanted to assert its own unconditional supremacy:

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.⁴³

The Tribunal added:

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 Mihingare, 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.⁴⁴

Finally, the Taranaki Tribunal considered the relevance of similar situations overseas. It noted that the issue of aboriginal autonomy has been addressed recently in the United States, Canada, and Australia. Experiences in those countries suggest that the recognition of aboriginal autonomy is not a barrier to national unity, but an aid. Conciliation requires empowerment, not suppression. In

this situation, arguing over words and prescriptions is not helpful. The need to respect other peoples is clearer today than formerly, and the Crown must appreciate now that the conciliation of indigenous peoples requires a process of re-empowerment.⁴⁵

We agree with these findings of the Taranaki Tribunal, which we consider to be of general force and application, having come to the same conclusions in our Central North Island inquiry.

The Treaty principles of partnership and reciprocity

The Crown's sovereignty was constrained in New Zealand by the need to respect Maori authority. Under the Treaty, the Crown had to respect and provide for the inherent right of Maori in their Central North Island territories to exercise their own autonomy or self-government. That right carried with it the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the proper operation of the State. It also carried the right to enjoy cooperation and dialogue with the Government. As noted above, the Treaty of Waitangi envisaged one system where two spheres of authority (the Crown and Maori) would inevitably overlap. The interface between these two authorities required negotiation and compromise on both sides, and was governed by the Treaty principles of partnership and reciprocity.

In the words of the president of the Court of Appeal, 'the Treaty signified a partnership between races', and each partner had to act towards the other 'with the utmost good faith which is the characteristic obligation of partnership'. ⁴⁶ In our view, the obligations of partnership included the duty to consult Maori on matters of importance to them, and to obtain their full, free, prior, and informed consent to anything which altered their possession of the land, resources, and taonga guaranteed to them in article 2. The Treaty partners were required to show mutual respect and to enter into dialogue to resolve issues where their respective authorities overlapped or affected each other.

HE MAUNGA RONGO

Above all, this partnership is a reciprocal one, involving fundamental exchanges for mutual advantage and benefits. Maori ceded to the Crown the kawanatanga (governance) of the country, and the right of pre-emption over their lands, in return for the guarantee and protection of their tino rangatiratanga (full authority) over their land, people, and taonga.⁴⁷ Both authorities must be respected. In the finding of the Turanga Tribunal, for example, Maori must obey the law, but the Crown is not free to exercise its powers of governance in such a way as to make laws that defeat or neutralise its Treaty guarantees to Maori.⁴⁸ Kawanatanga and Maori Treaty-guaranteed autonomy have the potential both for conflict and for its resolution under the Treaty.

An article 3 right of self-government

WAS THERE AN ARTICLE 3 TREATY RIGHT OF SELF-GOVERNMENT IN THE NINETEENTH CENTURY?

Claimants and the Crown debated Maori autonomy and self-government in terms of the promised protection and recognition of tino rangatiratanga (article 2), and its relationship with kawanatanga (article 1). The Taranaki Tribunal also considered Maori autonomy to arise from articles 1 and 2, the meaning of the Treaty as a whole, the Treaty principle of partnership, and international law. We agree, but we think that there is an added dimension to the Treaty right of self-government, as raised by Wi Te Wheoro in 1885. In discussing the Treaty and self-government with the Native Minister, Ballance, this leading rangatira argued:

Your statement that all power was given by the Treaty of Waitangi to the Europeans is not correct. It was given to both of us. It was given to you, and to me, too. The reason I say it was given to me as well as to you is because it states in the Treaty of Waitangi that the Maori chiefs should be treated in the same way as the people of England, and given the same power. It was understood that the Maoris would be allowed to govern themselves in the same way that the Europeans are allowed to govern themselves ... 49

This reliance on article 3 is, in our view, a telling one. To clarify what Maori were entitled to in this respect as British subjects, we have relied on the constitutional historian AH McLintock's *Crown Colony Government in New Zealand* for guidance on how such matters were viewed in the mid-nineteenth century. The Crown argues that this was a period of constitutional flux. In particular, the degree of federalism possible in New Zealand was hotly contested – both for the Pakeha provinces and for Maori provinces or 'native districts'. There were broadly agreed parameters all the same, especially after Lord Durham's report of 1839 recommended fully responsible government for the Canadian colonies.

In his chapter 'The Rights of Englishmen', McLintock notes Wakefield's idea that settlers would 'frame their own laws' in an assembly with ministers responsible to the people, but with a viceroy in the role of the monarch. Emigrants in the 1840s agreed with this ideal, determined to transplant their rights and liberties (and their constitution) from Britain to New Zealand and to 'assume as by natural right the full responsibility for the management of their own affairs.' The Colonial Office also expected this, although officials argued that it had to await favourable circumstances. There were two complications: the diffusion of settlement in widely separated and quite small centres; and the political rights and status of the Maori people. Unlike many settlers, the Colonial Office could see the need for a constitution for both peoples on terms of equality. ⁵²

Lord John Russell's instructions to Hobson in December 1840 noted that British emigrants carried with them as their birthright so much of the laws of England as applied to their altered circumstances.⁵³ For the meantime, a nominated council would suffice, but there would still need to be representative municipal and district institutions developing underneath it, 'none more consonant with the English character and habits' and dealing with the management of 'innumerable local petty details'.⁵⁴ In 1845, Alfred Domett published an indictment of this style of colonial government, appealing for the 'reasonable privileges' that were, as McLintock put it, the 'birthright of every Englishman',

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

for it is undeniable that the form of government they are placed under is a perfect despotism; that they have no vote, or voice, or influence whatever, direct or indirect, in the framing of any laws or ordinances they are bound to obey, even those which most materially affect them.⁵⁵

In the same year, the issue was debated in the British Parliament. Both sides of the House of Commons agreed that representative institutions and self-government should be provided, although the Government favoured beginning with municipalities and gradually broadening it from there. The Colonial Secretary, Lord Stanley, refused to give way, stating that Maori could not be subjected unjustly to the control of a body 'not only not representing their interests, but in many respects having interests altogether opposed to theirs'. He therefore encouraged municipalities with power to make bylaws.⁵⁶ Successive secretaries of state were satisfied that municipalities on the English model and seventeenth-century colonial precedents, with 'comprehensive powers', would meet the needs of settlers in the meantime and form a base for later self-government at a national level.⁵⁷ Gladstone, for example, noted that colonists of 'British blood and birth . . . should undertake, as early and with as little exception as may be, the administration of their own affairs'. Municipalities would form the basis of this, with inclusion of a representative element in the central government. But the 'just rights' of Maori had also to be protected. In keeping with its earlier emphasis on a Protectorate Department, the Colonial Office under Gladstone argued that the Crown would have to reserve to itself authority over Maori, no matter what constitutional powers were conferred on settlers. Governor Grey agreed. One means to this end, given the geographically dispersed nature of settlement in New Zealand at the time, was a division into separate provinces.⁵⁸

The Constitution Act 1846 was, in McLintock's view, 'reprehensible' to exclude Maori from the franchise by insisting on an ability to read and write English – many Maori could read and write their own language, but they would have been excluded.⁵⁹ There was a widespread

feeling at the time that the constitution involved racial discrimination. Earl Grey and the Colonial Office felt that Maori were not ready for English-style self-government, but drew on the longstanding Colonial Office doctrine that tribal areas or 'native districts' should be set apart, outside the operation of British law. Under-Secretary Labouchere explained to Parliament:

It was endeavoured to provide for that difficulty [Maori not being ready for inclusion] by securing the enjoyment of their own laws and customs to all that great portion of New Zealand not included within the municipal districts and taking care that the natives in those parts should be adequately secured, while the assemblies to be constituted should be prevented from interfering unduly with the rights, habits or customs of the aboriginal inhabitants.⁶⁰

The 1846 Constitution Act and its 1852 successor were quasi-federal in the sense that the Acts were envisaged as providing local self-government to widely scattered provincial centres that would gradually establish a meaningful central authority – although things developed differently in practice. Municipal institutions and local government were never going to be enough on their own to satisfy New Zealand settlers. Grey's proposal to set them up without a national parliament was rejected in the late 1840s. He alleged that it was because of political apathy, but McLintock suggests that the settlers seeking self-government were not prepared to settle for restricted local powers. Representative institutions were not in themselves sufficient either - the settlers wanted (and considered themselves entitled to) fully responsible self-government. McLintock argues that, after the Durham report on Canada in 1839, they were correct. Grey's attitude to self-government was that 'catastrophic consequences' would arise from placing Maori under the political control of representatives of the settlers, though he saw nothing incongruous in having them under the political control of a Governor and an appointed council. The solution canvassed at the time was to restrict the scope of legislation to matters of direct concern to settlers, though Grey's preference was to suspend the constitution in toto.⁶¹

HE MAUNGA RONGO

In 1848, Frederick Weld wrote:

Our new Constitution has been burked by Governor Grey, who represented to the authorities at home that the natives would never submit to a rule in which they had no part – a very frivolous argument, as they have now no part in his absolute sway, whereas in a representative government they would be admitted to a share of self-government as soon as they were sufficiently civilised to register a vote.⁶²

The British Parliament passed a Suspending Act to delay the introduction of constitutional self-government. In debating it, some peers favoured a repeal of the Constitution Act altogether and a reversion to the lesser powers of municipal and local self-government alone, which should, in the words of Sir Robert Peel, be granted to everyone, 'making in respect to them no distinction between European and native blood, but dealing with the population as on the footing of British subjects.' ⁶³

In 1849 there was a widely signed southern petition calling for self-government, the 'birth-right' of British subjects. In the same year, *The Times* stated that 'self-government with certain limitations is the just and proper inheritance of all Anglo-Saxon colonists.'64 In 1850, Clifford reported that sentiment in British political circles was fairly decided 'to give Englishmen in English colonies Englishmen's rights', that nominated legislatures were 'incompatible with the rights and privileges of Englishmen, and that nothing less than fully representative institutions could be accepted by the British House of Commons.⁶⁵ Similarly, in New Zealand, James Edward FitzGerald wrote an editorial in 1850 'to insist upon the introduction of a constitution such as that under which we and our fathers have lived.66 Grey continued to oppose representative self-government, and certainly the granting of Maori government to settlers - he enlisted the support of chiefs in a memorial which objected to any constitution placing power in the hands of persons with little or no regard for Maori and their interests.⁶⁷

According to McLintock, the British Parliament envisaged in the Constitution Act 1852 that the Crown would retain control of native policy, as argued for by Governor

Grey. Hence, the Act empowered the Governor to set aside districts in which the laws and customs of Maori would be preserved, exempting them from the laws of the settled parts of New Zealand. Sir William Molesworth was critical of section 71 of the Act in Parliament, noting that it divided New Zealand:

into two parts, an English part, and a native part. Within the English pale, English laws were to be enforced; without the pale, in the native part, native laws and customs were to be maintained by the Governor-in-Chief of New Zealand, notwithstanding the repugnancy of any such native laws to the laws of England, provided they were not repugnant to the laws of humanity.⁶⁸

We will return to the question of Native Districts in chapters 4 to 7, but here we note that Grey's successor as Governor, Thomas Gore Browne, accepted a government responsible to the settler Parliament in the mid-1850s (with the exception of Maori affairs).

It is clear, therefore, that by the mid-nineteenth century, British subjects in the colonies were entitled to a minimum of local self-government through municipal and other bodies, and to representative institutions at a national level. This entitlement was a minimum. New Zealand settlers refused to settle for local government institutions if they were not accompanied by fully responsible provincial and national self-government. In the wake of the Durham report, it became widely agreed that the Queen's subjects in settler colonies were in fact entitled to fully responsible self-government. The details of exactly how and when these rights would be accorded in Crown colonies were flexible and depended on the local situation. But by the 1850s, New Zealand settlers had secured them. Also, the degree of federalism appropriate to any particular colony, the self-government of 'native districts', and the proportional representation of 'natives' and settlers in the national Parliament were matters of debate.

This is an important context for the debate between Ballance and Central North Island Maori in the 1880s over local self-government and Treaty rights. When Te Wheoro

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

and others asserted that the Treaty entitled them to self-government, it was on the same basis as the settlers – that is, they sought fully responsible self-government. ⁶⁹ Article 3 of the Treaty required no less, either by full and fair incorporation in the franchise and representative institutions of the colony, or by their own institutions, or some mix of the two acceptable both to the Crown and to Maori. These rights of Central North Island Maori under article 3 should be borne in mind when considering the Crown's treatment of tino rangatiratanga – Maori autonomy – in the nineteenth century.

In 1858, the Taupo missionary, Reverend Thomas Samuel Grace, wrote that:

The constitution which has been given to the country has placed the natives in a worse position than they were, seeing they have no share in any way in the representation. Here we have about four-fifths of the population, *British* subjects and Lords of the Soil, and paying the greatest portion of the revenue. And yet cut off from all share in the representation of the country, either in person or by proxy. Surely this is a strange state of things to exist. If a separate house was formed for Native representations there is no doubt that with a few official leaders appointed direct from home as protectors, the Native Chiefs would soon be found quite able to take their full share in the representation. [Emphasis in original.]

If we deny them the rights of British subjects, and thereby ourselves break the Treaty of Waitangi we ought not to be surprised if they seek protection for themselves [through the Kingitanga].⁷⁰

We have addressed article 3 Treaty rights at some length because of the importance, which we discuss in the next section, of considering what was fair and reasonable in the circumstances of the time. To deny the Queen's Maori subjects the fundamental right to legal powers of self-government by representative institutions, a right that was afforded early to her settler subjects in New Zealand, was in clear violation of the constitutional norms and standards of nineteenth-century New Zealand. The historical evidence is overwhelmingly in support of such an interpretation, as



The Houses of Parliament, Wellington, circa 1907, with the wooden General Assembly building on the left. Although a settler Parliament was established in the 1850s, Maori were not represented until 1867. Central North Island Maori later campaigned unsuccessfully for additional seats, more proportionate to the representation of their fellow citizens in the general electorates.

we shall see in chapters 4 to 7. The Central North Island tribes repeatedly sought self-government by representative institutions in the nineteenth century. They sought it at local, regional, and national levels. Governments and officials frequently recognised their right to it. And yet this fundamental right of British subjects was denied them decade after decade, to their significant political, economic, and social prejudice.

At a minimum, therefore, article 3 of the Treaty required legal powers of self-government for Maori in the circumstances of the nineteenth century. We turn now to consider the Crown's arguments about what were reasonable constraints on, and parameters of, how it should have kept the Treaty in that century.

HE MAUNGA RONGO

Determining what was reasonable

HOW DO WE DETERMINE WHAT WAS REASONABLE IN THE CIRCUMSTANCES OF THE NINETEENTH CENTURY?

If the Treaty principles are to be a genuine constitutional guide to government rather than simply a means of condemning a past from the view of a more enlightened present, it must have been possible for the Crown to be Treaty compliant in the past – with its resources at hand, with the freedom of choosing between different policy options, and within the attitudes of the day.⁷¹

Closing submissions of the Crown, 14 October 2005

First, we accept the Crown's submission that we ought to avoid presentism, and that we cannot judge with absolute certainty, for example, what would have happened if the claimants' alleged 'missed opportunities' had been taken up. We also accept the Crown's submission that its Treaty obligations have to be interpreted according to what was reasonable in the circumstances, as established by the Privy Council in the Broadcasting Assets case. We note, however, that what was 'reasonable in the circumstances' is not equivalent to an uncritical acceptance of the majority standards of the time. New Zealand was subject to a constant influx of newcomers in the nineteenth century. Governor Gordon, for example, did not doubt the 'honest conviction' of a majority 'mainly composed of settlers absolutely unacquainted with the history of the Colony which they have made their home. He considered most of those who guided opinion, the country's legislators and press, 'not much better cognizant of past transactions than those whom they profess to instruct. There was no shame, in such circumstances, in belonging to a 'minority' that included men such as Octavius Hadfield, Bishop Selwyn, Sir William Martin, William Swainson, James Edward FitzGerald, Edward Cardwell, and others.⁷²

The standards proposed by the Crown for 'reasonableness' (see above) are a useful starting point. At their most

extreme, they could be used to justify the Crown in only keeping the Treaty where it would not interfere with any of the Government's policies, or where the Crown decided by any criteria that it chose that doing so was affordable. This would turn the Treaty guarantees on their head. In particular, the Crown's point that the Treaty should not unduly restrict the ability of an elected government to carry out its policies must not be taken out of context and construed unreasonably. The Crown did not intend its arguments to be taken to this logical extreme, but the need for caution is clear.

Infrastructure and costs

DID INFRASTRUCTURE AND COSTS LIMIT WHAT COULD REASON-ABLY BE ACCORDED TO MAORI IN TERMS OF SELF-GOVERNMENT?

We do not accept that there is a valid infrastructural and cost argument to be made in respect of a nineteenthcentury machinery of self-government, which is the key issue for part II. It is not plausible to argue, as the Crown does, that state consultation with Maori over something as crucial as the native land legislation, for example, was constrained by the infrastructure of the time. It was neither impracticable nor unaffordable for the Government to consult Maori leaders at the Kohimarama Conference in 1860. The settler Parliament had voted funds for the next meeting of this planned annual consultative forum, but Governor Grey preferred to discontinue it. His decision had nothing to do with funding or infrastructure (see chapter 4). It was clearly possible for the Government to assemble Maori leaders for such a purpose when it suited. As Gore Browne noted in 1860:

It might be asked why a meeting of Chiefs has not been called long ere this; but I can only reply that it would not be in my power to call such a meeting even now had not my responsible advisers, seeing the critical position of the country, agreed to incur the expense – which is estimated at £3000 – and to recommend the Assembly to sanction it. 73

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

This was an admission not that such conferences were unaffordable, but that an obvious option for Crown consultation with, and empowerment of, Maori leaders had been prevented by the Governor's retention of responsibility without finance.

The Crown adverted to financial constraints in its account of the New Institutions (see chapter 4), which it alleges were costing £50,000 per annum nationally. The Crown did not submit evidence to show whether this was unreasonable or how it compared to other government institutions. The Crown's implication is that it was too expensive and that this justified the Government's decision to scrap the New Institutions in 1865.74 Although we do not have full evidence on the point, we note Grey's assessment that in 1861, government of a smaller population of Europeans was costing £100,000 in salaries alone, compared to £777 for the salaries of 'native magistrates'. If 'the Native subjects of Her Majesty' were to be provided, in Grey's words, with 'equally expensive means of government, then the salaries alone would far exceed the £100,000 figure.⁷⁵ But most Maori self-government was in fact unpaid, before and after the New Institutions.

Whether the cost of the New Institutions could have been reduced, or Maori could have taken on some of the expenses in a Treaty-compliant manner, was not explored. The cost of the New Institutions was negligible compared to the millions of pounds devoted to war and development, or to the revenue derived ultimately from Maori land. In 1864, military settlers remained on full pay – that alone was costing £60,000 a month.⁷⁶ In any case, the British Government was (for the meantime) footing half the bill for the New Institutions.⁷⁷ This meant that the entire machinery of Maori self-government for a year would cost less than a month's wages for military settlers. The question was not one of affordability, but one of priority and policy.

The Crown argued that the resident magistrate system was all the government that was needed or affordable in Maori districts after the disestablishment of the New Institutions. If we are to take this argument seriously – that any machinery of self-government was too expensive in 'native districts'

– then we have to question the Crown's ability to provide government to settlers, and to provide institutions for Maori where it suited (such as the expensive Native Land Court). Broadly speaking, we cannot accept the infrastructure argument as a reasonable response to the claims addressed in part II of this report. The fact is that if the Crown had given Maori institutions legal powers (and perhaps relied on a degree of voluntarism in operating them), then its infrastructure costs could actually have been reduced. Maori self-government need not have been elaborate or unduly expensive. An external appeal or arbitration body may have been needed instead of the Native Land Court, but the Crown was accustomed to appointing many commissioners and paying for brief inquiries in the nineteenth century.

Ultimately, the right of British subjects to self-governing institutions was a point of consensus in New Zealand. Politicians, from the end of Donald McLean's era as Native Minister in 1876, tried hard to keep expenditure on the Native Department and Maori government (magistrates and assessors) as low as possible.⁷⁸ We accept that governments and the public value economies, but the operation of a system of Maori self-government was considered from time to time and its affordability was never really the issue. Cost needed to be considered (and provided for), and the system rendered as economic and self-sustaining as possible, but it was still a fundamental right for British subjects and needed to be provided.

Settler ideologies and politics

DID SETTLER IDEOLOGIES AND POLITICS REASONABLY CONSTRAIN WHAT THE CROWN COULD DO IN TERMS OF LEGAL POWERS OF SELF-GOVERNMENT FOR MAORI?

Apart from infrastructure and costs, the Crown's argument hinges on what was practicable in the political realities and prevailing ideologies of the times. There is some force to this – the Crown could not have done the impossible, and the Treaty did not require it to do so. But governments sometimes have to court electoral defeat by insisting on unpopular policies. It

HE MAUNGA RONGO

was certainly possible for governments to do so – as Ballance showed in the 1880s – and, indeed, it was sometimes required of a reasonable government charged with protecting the interests of all its citizens. Ultimately, British settlement was envisaged by the Treaty and intended to be in the best interests of both peoples. The Crown pointed out that there would have been negative consequences – in terms of development, economic growth, and the pace of settlement – for any process of colonisation that was slower, more careful, and more in accordance with Maori interests. Expert witnesses and counsel debated, for example, whether leasehold was a viable long-term prospect. The Crown acknowledged that it is proper for the Tribunal to decide whether the Crown should have adopted the colonising policies that it did, and whether less 'penal' alternatives were available.

In that respect, we agree with Dr Ballara that the historical evidence in the Central North Island shows:

that the inevitable upheaval of colonization and reasonable land alienation could have been managed relatively painlessly for Maori, and could have resulted in their increased prosperity, rather than excessive land-loss, impoverishment and cultural damage which occurred in the period 1865–1900. Had the Crown and its government put in place methods of land acquisition which respected Maori social organization, communal land tenure and tikanga, peaceful and uncontested Crown acquisition of sufficient lands to allow the colony to progress without damaging the interests of Maori could have been relatively easily accomplished.⁸⁰

Dr Ballara illustrates her point with a discussion of Crown purchasing methods, demonstrating that better, more appropriate methods were known to policy makers and used at the beginning of the colony, but then deliberately abandoned despite protest and criticism. We will return to this point in part III, but here we note Dr Ballara's conclusion that her analysis is not presentist and is tied to what was practicable and considered at the time, but ultimately rejected in favour of faster, cheaper colonisation.⁸¹

In that respect, we note one of the Crown's most important submissions in relation to what was reasonable, particularly in terms of the feasibility of the Crown choosing to act protectively and in a manner fair to both Maori and Pakeha – its submission on the Thermal Springs Districts Act 1881. The Crown accepted that Dr Donald Loveridge's evidence shows protective measures as a recurring political possibility in Parliament in the nineteenth century. The Thermal Springs Districts Act is, in its submission, an example of the Crown choosing to act protectively. The Crown also accepted, by implication, that the State was not laissez-faire in the classic sense, but was in fact trying to structure and control both development and colonisation. The Thermal Springs Districts Act was cited as an example of how the Crown intervened to do so, and in a manner consciously designed to promote the interests and welfare of both races. Along with other measures of the 1880s, such as the Native Committees Act, the Crown argued that it was making genuine attempts to engage with Maori concerns, remedy them, empower Maori institutions, and protect both Maori and Pakeha interests fairly and equally.⁸² By the Crown's own argument, it was possible to do so in settler parliaments dominated by settler interests and ideologies. The Crown, therefore, set up a standard against which its nineteenth-century actions can reasonably be judged, both in terms of the specific outcomes of the Thermal Springs Districts Act, and in more general terms.

Three additional criteria for standards of reasonableness

In any case, we think that there are three additional criteria of reasonable behaviour for a Treaty-compliant nine-teenth-century Crown, to be considered in conjunction with those proposed by Crown counsel.

Did the honour of the Crown oblige it to keep its promises and engagements with Maori? First, the Crown should reasonably have been expected to keep the promises and engagements that it made with Maori (over and above the Treaty engagements, which are the fundamental criteria

180

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

being measured by this Tribunal). This is why the parties put so much emphasis in our inquiry on what was really promised and agreed to in the Fenton Agreement and the Rohe Potae negotiations. The Crown can reasonably have been expected to keep the agreements that it made. A contrary argument – that the Crown only needed to keep promises made by its governors and officials where it could afford to or where it suited policy – is one where pragmatism would have dishonoured the Crown and rendered it too untrustworthy to be a credible government. Measures of what was practicable have to be balanced with what was honourable and fair by the standards of the time.

In terms of law, Dr McHugh notes that when the Crown makes promises to indigenous peoples, it has to be taken at its word. By entering into the Treaty and making associated promises of protection, the Crown became in part akin to a fiduciary. This important point was reiterated by Ms Ertel, quoting Dr McHugh:

the Crown's protestations and willing assertion of protective obligations to aboriginal peoples are taken at their word. The rationale is that if the Crown is to avow certain powers and duties over tribal societies and their resources, it will be held legally accountable for the performance of its self-assumed commitment.⁸³

Also, Ms Sykes referred us to the *Muriwhenua Land Report*, where the Tribunal accepted that it was reasonable to consider the standards of the time, but that ultimately the Treaty and its principles are the true tests for any Tribunal inquiry.⁸⁴ The Crown must be held accountable for the performance (or non-performance) of its promises and obligations.

Equally, in bargains and agreements between the Crown and Maori, the United States 'indulgent rule' suggests that the Government's promises have to be interpreted as understood by the indigenous beneficiaries of the 'trust' (in this case, Maori). The Tribunal, therefore, has to prioritise how Maori understood such arrangements as the Fenton Agreement, the Rohe Potae

compact, and the Tauponuiatia application (see chapter 6). We agree with the Crown that the Tribunal must have reasonable expectations of what it could or should have done. This includes the evaluation of the Crown's promises at face value, and as understood by those to whom the promises were made.

Was it reasonable for the Crown to act only in the best interests of settlers? Secondly, the Crown's submission that it could not act only in the best interests of Maori is certainly true in the corollary; a reasonable Crown, by the standards of the time, would not have acted only in the best interests of settlers. The evidence of Dr Loveridge, and the Crown's submission that the Thermal Springs Districts Act was adopted by the settler Assembly as something genuinely protective in nature, show that in the late-nineteenth century parliaments were capable of active protection of Maori interests, and of conceptualising a high ideal of protecting and reconciling the best interests of both peoples. This was both expected and considered practicable by the British Government of the 1880s:

Although, therefore, Her Majesty's Government cannot undertake to give you specific instructions as to the applicability at the present time of any particular stipulations of a Treaty which it no longer rests with them to carry into effect, they are confident, as I request that you will intimate to your Ministers, that the Government of New Zealand will not fail to protect and to promote the welfare of the Natives by just administration of the law and by a generous consideration of all their reasonable representations. I cannot doubt that means will be found of maintaining to a sufficient extent the rights and institutions of the Maoris, without injury to those other great interests which have grown up in the land, and of securing to them a fair share of that prosperity which has of necessity affected in many ways the conditions of their existence.⁸⁷ [Emphasis added.]

This is the type of idea and sentiment that caused Dr Ballara to observe, more widely, that:

HE MAUNGA RONGO

in the nineteenth century, the publicly acknowledged and promulgated standards of official behaviour in land purchasing and the conduct of Maori affairs, were much higher than is sometimes acknowledged by historians. That is, many of these publicly promulgated standards were in accord with the Treaty of Waitangi, and with Lord Normanby's instructions of 1839 to Lieutenant Governor Hobson out of which the terms of the Treaty were constructed. The problem was not that nineteenth-century standards of official behaviour were not based on the Treaty, but that these acknowledged Treaty-based standards were often knowingly breached or ignored by Crown officials.⁸⁸

When questioning the Crown's historian, Dr Loveridge, the Tribunal noted the prevalence of such sentiments in the parliamentary debates as quoted in his report. We asked him whether promises of fair play and justice should be taken at face value, leading to a conclusion that the Government did not live up to its own standards, or whether they were simply rhetoric and not to be taken seriously. Dr Loveridge replied that the official sentiments were two-parts genuine and one-part politician-speak, and referred to what he considered a schizophrenia in the nineteenth-century State. ⁸⁹

In 1899, the Prime Minister, Richard Seddon, met with Waikato and Taupo leaders in Auckland, including Tureiti Te Heuheu. At that meeting, he gave clear expression to the Treaty principles of reciprocity and active protection:

It was through the Treaty of Waitangi that the Native chiefs, on behalf of their people, marked their confidence in the Queen, and placed their lands – which mean life to them – under the care of the Government. They called upon the Queen their mother to succour them, and relied upon her to do justice to her children of the Native race. Your ancestors were far-seeing men. They foresaw that in this colony there would be a large European population; that the Europeans would almost be as numerous as the trees of the forest. They also foresaw that those of their race whom they loved so well, unless they had the protection of our gracious Queen, their

lands and lives would be in danger. It is with regret that I have to admit that that treaty, which at the time was so well considered, and which was drawn in such a manner as had it been maintained in its entirety the interests of both races would have been safeguarded, has been departed from.⁹⁰

Active protection was sometimes expressed in the language of paternalism. At an 1898 meeting with Te Arawa, Seddon expressed similar sentiments to that tribe, while consulting them about his draft Native Land Bill:

We are the sons and daughters of our mother Queen Victoria; she is your sovereign and the sovereign of the Europeans – we are all her children. For your protection your forefathers, by the Treaty of Waitangi, ceded the rights of their land, and acknowledged the sovereignty of Queen Victoria. That was a very far-seeing policy on the part of your ancestors. They saw that Europeans would come here in large numbers, and, led by the strong protection of the British Empire and the strong arm of the law, their children would be saved for all time. That sovereignty the Arawas have always loyally acknowledged, and when trouble did arise the Arawas helped those who desired to maintain that sovereignty. You have thus claims upon our consideration which must ever be acknowledged...⁹¹

Now, I give to one and all of you hearty greetings, and I again desire to inform you that the Government of which I have the honour to be the head desires to do what is just and right to the Native race, and promote their happiness and well-being. I desire that you may become more numerous than the race was when we first came to the colony; and as your ancestors showed to us, when we were few in number, the greatest hospitality and kindness, and as the position is now reversed, we in our turn show you every kindness and hospitality...⁹²

What makes me feel puzzled is the fact that there are persons of the Native race who sell all their land; then they say to the Government, 'Stop the sale of the Native lands.' Are they afraid that, if all the Maoris do the same as they have done, there will be nothing for them to live upon? Why did they not think of this before they sold the lands? They say, 'Stop

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

the Land Court,' as it is no use to them; they have no land to go through the Court, as it is all gone... All the lands in this district would have gone to the Europeans if it had not been that the Government stepped in and stopped the sale. The Government had to act the part of a parent to the Natives, who misbehaved like children by giving away that which really did not belong to them ... I speak to you as your friend - I speak to you with great responsibility resting upon me as Minister for the Native race. I will tell you another thing that we have had to do for you: Survey liens have been granted to private surveyors on the Native lands here and in other parts, equal to £20,000 in value, and to prevent these lands going from you for all time the Government had to pay that amount. I simply mention this to show you that we are earnest in our desire not to see the Maoris of this colony landless. The greatest trouble that can befall a race is to lose their land, because the land is life to them. Now, we have proposals in this Bill which would stop these evils; we have proposals in the Bill that will finish, for all time, the Native Land Courts... You will see that we [the Government] propose to leave it to you to say whether or not the sale of land shall be stopped, and whether or not there will be Land Courts. . . If you are prepared to accept them [the proposals in the Bill] I will ask Parliament to adopt them. When you have carefully considered them, write to me, giving me your mind on the subject.93

Here we have, in the words and promises of a nineteenth-century prime minister, the very essence of the Treaty standard of active protection. Te Arawa leaders at this hui asked Seddon to stop Crown purchases of land and individual sales of Maori land, and to abolish the Native Land Court. True active protection required the Crown to protect the interests of Maori not unilaterally, but in the manner in which they wanted them protected. Seddon undertook that he would do as the tribe requested in respect of land sales, the court, and his draft Bill. The protection that they were entitled to under the Treaty, it seemed, would take the form asked for and endorsed by themselves. Even so, it was disingenuous for the Prime Minister to ask Te Arawa why they wanted him to stop land sales, when they

were the ones doing the selling. But in referring to the Government as a 'parent' protecting Maori as 'children', Seddon was giving expression in the language of the day to the kind of trust created by the Treaty and its principle of active protection. It is an established point that the standards required of the Crown by the Treaty were akin to those of a fiduciary. It cannot be argued, therefore, that the norms of the majority justified setting aside this trust if it became inconvenient. The standards then required of trustees inform what was required of the Crown in its Treaty relationship with Maori.

These examples from 1898 and 1899 were not isolated ones. The historical evidence shows that the Treaty principle of active protection had force by the standards of the nineteenth century, long after the initial humanitarianism of the Crown colony era had faded. Naked (and principled) self-interest was still evident, of course. Settler land hunger and economic interests usually triumphed, but this was by choice rather than because fairer outcomes were not thought of and debated. The Crown accepts that we should examine whether 'less penal' alternatives were available to the policies actually adopted, even though we can never know exactly what the outcomes would have been. This is important to ensuring that criteria of 'reasonableness' are fair and balanced.

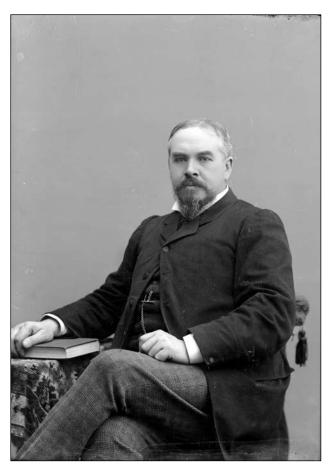
As a further example, we note the public undertakings of Native Minister Ballance in the 1880s, which show what was reasonable at that time. A sample of his statements to Maori sets parameters by which the Crown's actions may be judged in Treaty terms:

I know the Treaty of Waitangi was given to both races, and I accept it as binding on both races.⁹⁴

+**

The Treaty does not give the right to set up two Governments in New Zealand. The chiefs there bound themselves to accept the laws of the Queen, in exchange for which she guaranteed to them their lives, their liberty, and their property. We are prepared, under that Treaty, as I have said – under the laws which the Queen has given to the colony,

HE MAUNGA RONGO



John Ballance, 1839–1893. A colonial newspaper editor and politician, Ballance was Native Minister from 1884 to 1887. His speeches and promises during that time are important to interpreting Treaty standards in the nineteenth century. Photograph taken by Alfred Martin.

and under the Constitution of the colony – to give the Natives large powers of self-government. That is the meaning of the Treaty... 95

the provisions of the Treaty of Waitangi are being kept by the Government and the Parliament of the colony, for not a single acre of land can be taken from the people unless they wish to sell it themselves. Tawhiao asked that the people should have a Government of their own under that treaty, but there cannot be two powers and two authorities in the same country. When we give the Borough Councils in large towns power to do certain things, those Councils are not more powerful than the Parliament of the colony. In giving to the people, therefore, the powers, to which I have referred – the electing of their own Committees, and leasing their own lands – we are carrying out the provisions of the Treaty of Waitangi.³⁶

I bring from the Government their friendly wishes and statements to the Native people, and give you all my assurance that the Government, one and all, wish the Natives all prosperity and happiness, and are prepared by every means in their power to bring about that result. The Government represent the whole of the people of New Zealand. They desire to rise to that high position of responsibility which has been placed upon them. Their wish is to make just laws which will not favour one person or one party more than another, but take all within their embrace. Differences of opinion may arise between us, but after we have consulted together I am perfectly sure none will remain. We will arrive at those conclusions which will be best for both races. The Government of which I am a member do not favour one race more than another. All are equal in the eyes of the law.⁹⁷

The most important part of my speech is, that we shall consult with the chiefs and the people before we pass laws affecting their interests. I have given you my word that that shall be done in future ⁹⁸

What they [Maori] require above all things is justice and fairness in the consideration of their interests, and that I say Parliament and the Government are prepared to give them. When he [Te Wheoro] comes to see the disposition of the Parliament to extend local government among the people, and to do justice by them, he will come to accept what I have said to-day as true.⁹⁹

184

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

I quite concur in the opinion that the Native people are quite capable of conducting their own affairs under the laws of the colony. We are extending gradually to the Native people the powers which have long been given to Europeans. 100

+ * *

All the people have rights to the land who can prove their claims to it. Therefore I say that all the people shall have a voice in the government of the country. That is the principle upon which we have acted, and the principle upon which we intend to act in the future. You have all a voice in the election of your own Committee. We propose to give you great powers of self-government over these, and not to take from you any of the powers you now possess.¹⁰¹

In reply to that I say that it is the earnest desire of the Government to promote the prosperity of the Maori people. Our policy is not one of force and repression to be applied to the loyal [Rotorua] Natives of New Zealand, but of friendly discussion and assistance to enable them to work out their own destiny in a way that will secure the permanent prosperity and happiness of the race. When we, therefore, have any measure which we desire to establish by law for the good of the people, it is our intention to take the people into our confidence. Questions, therefore, of great importance must be settled by the consent of the people themselves. If I could not administer the affairs of the Native people in the way that I have said I should cease to be Native Minister... ¹⁰²

I should like to say this, too, for the Government, as a whole, that they are exceedingly anxious to establish good relations with the whole of the Native people. The Government feel that this can only be done by meeting the people and taking them into their confidence, for we feel that no one is so capable of understanding what is best for the people as the people themselves. It may be necessary, and is necessary, that in the enactment of laws for their welfare they should receive the assistance of Government, and the Government can often come to their assistance in administering the laws.¹⁰³

Finally, I would say that it is the intention of the Government to legislate only for the benefit of the whole people. The Government are not influenced by private individuals in those questions affecting the lands of the Native people. We are not a Government that is to be influenced by the land-shark; therefore, when we obtain the opinions of you with regard to questions affecting your lands, we shall act upon them solely for your own benefit. We shall consult you and ask your opinion in all parts of the Island with regard to these questions before we proceed to deal with them. It is my intention to visit the people in the various parts of the Island, when these subjects will be brought before them, seeing that our desire is to be guided largely by the opinion of the people themselves. 104

These statements of Native Minister Ballance in 1885 were very important, and so we have quoted them at length. They gave clear expression, in the language of the day, to the Treaty principles of partnership and active protection, the Treaty duty of consultation, and the Treaty rights of self-government and (to a large extent) autonomy and the determination of one's own destiny. These are standards, therefore, by which we judge the actions of his Government. In chapters 4 to 7, we will provide more detail on exactly what was considered conceivable or feasible by nineteenth-century governments at the time of key 'lost opportunities' or acts of repression.

The Crown concedes that its proposed standards of reasonable behaviour do not excuse it from having to keep the Treaty. Instead, they provide criteria for how it had to keep the Treaty. In our view, the historical evidence in the Central North Island inquiry shows that the Crown could have provided Maori with self-government and self-management of land and resources in the nineteenth century, and in particular with legal powers to decide their own land titles. There were many occasions on which this was actively proposed and considered, and sometimes (ineffectually) enacted. In 1858, the Native Districts Regulations Act and Native District Circuit Courts Act provided a machinery for Maori self-government, which was eventually given practical shape in the New Institutions of

HE MAUNGA RONGO

1861 (see chapter 4). Dr Loveridge, for the Crown, notes Attorney-General Henry Sewell's comment on the 1858 legislation: 'The strange thing is that men capable of contriving such machinery should have deliberately thrown it aside, and refused to put it in motion." This is exactly the point. It was neither inconceivable nor unreasonable by the standards of the time, nor unfeasible by the standards of practicability. It therefore meets the Crown's own test of what it could reasonably have been expected to do in compliance with the Treaty. The Crown's failure to do so, in part by rejecting opportunities to give effect to autonomy, in part by actively repressing Maori autonomy, is a serious breach of Treaty principles. We will address that matter in detail in chapters 4 to 7.

Further, we note that settler politicians did not act blindly or unknowingly when self-interest led them to subvert or set aside the publicly articulated promises and notions of fairness referred to above. Rather, standards of the time were not applied fairly and equally as between Maori and settlers. As one member of Parliament put it in 1882:

When he heard such a lot of talk about one law for the Natives and Europeans, he could hardly help laughing in the faces of the gentlemen who talked that way. Let a Maori go and buy a gun, let him try to lease or sell his land, then see whether there was one law for the Maori and European. There was a very distinct line of demarcation drawn between the two races. They all knew that. 106

Dr McHugh describes the views of colonial politician William Lee Rees, who called for equal legal treatment of Maori and settler corporate bodies. There was nothing simpler, he argued, than to make tribal land-owning communities into corporate bodies like companies or Pakeha owners of community property. If the Crown did not 'change the law, and enable them to act, as they have always used to act, tribally', then it was applying a vicious double standard to Maori and Pakeha:



William Lee Rees, 1836–1912. A successful colonial politician and lawyer, Rees was active in promoting Maori land title reform, and chaired the 1891 Native Land Laws Commission. Photograph taken circa 1878.

If not, then let Parliament if it desires to deal consistently with all, say that all shareholders in every joint-stock company shall hold the corporate lands in severalty in undivided interests – let it declare that the corporate property of our towns shall be the property not of the legal entity, the corporation, but of the individual burgesses; and lastly, let it enact that henceforth all the public lands of New Zealand shall not belong to the Crown in trust for the people, but that every man, woman, and child shall be an owner, and no

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

lease, no sale, no contract about one foot of land, owned by companies, or corporations, or Government shall be valid, until all have joined in the transaction, or the land has been subdivided.¹⁰⁷

When Rees pointed out this double standard, he was giving expression in the language of the time to what is today called the Treaty principle of equity. For our purposes, it is sufficient to note that standards (not double standards) as conceptualised at the time were fully capable of consistency with the Treaty. As Mr Taylor submitted for the claimants, relying on the historical evidence of Dr Ballara:

Professor Ballara comments (A65 p 640) that the historical actors know what they ought to have done in order to comply with the standards of the Treaty. This must be the principal rebuttal to any argument of presentism. The requisite standards were known but were chosen not to be adhered to.¹⁰⁸

We accept this submission.

In addition, the claimants argue that, when racism or settler self-interest won the day and subverted Treaty standards or imposed double standards, the Crown's duty under the Treaty was to protect them from the majority where necessary. Again, we agree. As Ballance promised Maori (see above):

it is the intention of the Government to legislate only for the benefit of the whole people. The Government are not influenced by private individuals in those questions affecting the lands of the Native people. We are not a Government that is to be influenced by the land-shark; therefore, when we obtain the opinions of you with regard to questions affecting your lands, we shall act upon them solely for your [Maori] benefit.¹¹⁰

The Treaty required nothing less. At the risk of labouring the point, this was clearly known and understood at the time. The Crown submits, however, that, had more Treaty-compliant policies been adopted at any particular time, there is no way of knowing whether they would have worked, or what unexpected effects they might have had on society or the economy. A 'firm body of opinion' is required to justify the view that a particular policy option was reasonably practicable and feasible at the time. The Tribunal must consider how far the alternative was 'visible' to key decision makers, whether it could realistically have been implemented (its viability), and the probable consequences as considered at the time. It is only by considering policy alternatives in this framework, and consciously assessing their context, that the Tribunal can avoid the dangers of hindsight and presentism.

In the mid-to-late nineteenth century, Rees (among others) placed the possibility - and likely consequences - of honouring the Treaty guarantee of tino rangatiratanga squarely in front of settler politicians. Ultimately, he argued that the Crown had correctly recognised Maori corporate ownership and authority from the 1840s until the 1860s, and that if it had stuck with the runanga experiment of the 1860s, 'the colony would have saved itself much trouble, expense and discredit.1111 Instead: 'A very gross act of cruelty and bad faith as well as folly was perpetrated by us when we compelled the Natives to hold their lands as individuals, in violation of the Treaty. 112 Although settlers wanted (and tried) to enforce their own system of individual ownership, Rees pointed out that they were in fact perfectly comfortable in dealing with all kinds of corporations and community-based titles in their own affairs. 113 Therefore, he asked:

Why should not the Maoris, by committees appointed by themselves, have the power to manage their own estates, just as the properties of companies are managed by directors? Why should not they, as well as all other of the Queen's subjects, be permitted to have sheep stations or cattle stations, or erect stores, or make reserves for schools or charitable or other purposes? What right have we as free men to make laws without their concurrence, which place them at a tremendous

HE MAUNGA RONGO

disadvantage as compared with ourselves, and deprive them, by an iniquitous and tyrannical series of enactments, of the power to manage their own property for their own happiness, in a manner at once consistent with the genius of their customs and the public good?¹¹⁴

Justice to Maori was, in Rees's view, entirely compatible with settlement, development, and the public good. It must rest on Maori consent, in terms of which he advocated calling a national Maori hui to consider and assent to proposed land laws. His prediction was that enabling Maori to control their own land and affairs through their own corporate structures would result in their endowing and supporting education, supporting public works, and becoming 'profitable customers, large producers and taxpayers of no inconsiderable amount'. Maori wealth, he argued, would become part of the settlement and prosperity of the whole colony.115 Counterfactual this may be, but what was lacking was not foresight and vision but the will and interest to bring it about. In the end, settler interests prevailed. That does not excuse the Crown from having to keep the Treaty.

Were Maori philosophies and aspirations also constraints on the Crown? Thirdly, settler world views, philosophies, and aspirations were only one set of competing constraints on what the Crown could reasonably have been expected to do. As counsel for Ngati Whakaue pointed out, it also had to consider what its Maori citizens wanted and thought should be done. One of the dangers of accepting the Crown's parameters for reasonableness is that they write Maori out of history. The Maori dimension of what was reasonable, which governments should (and sometimes did) take into account, is just as valid a context for the Crown's decision-making.

We cannot accept a monocultural view of what constrained governments in the nineteenth century. In 1886, for example, in discussing the use of committees for the collective management of Maori land, the Native Minister, Ballance, told Parliament:

But there is still another reason why this course should be adopted, and a more cogent reason than any other. It is that the Natives from one end of the colony to the other, are thoroughly in favour of the Committees. I say, in dealing with the lands of these people, we must not exclude from consideration what the views of the Native people are upon the question; and, if there is one thing more than another which has recommended this measure to the Native people, it is the principle contained in it that there shall be a body of elected Committees to consider how the lands shall be disposed of. Now, unless there can be shown some radical objection to this principle, we are bound to pay some deference to what may be considered the unanimous wish of the Natives on the subject.

.

We should never forget this fact: that the Natives are our fellow-citizens; and that being so, we ought to study their feelings and sentiments when proposing to pass legislation which must affect their most vital interests.¹¹⁷

It was an ever-broadening principle in nineteenth-century Britain that government must be by the consent of the governed. From the sixteenth century onwards, the fundamental tenet that there could be no taxation without consent was gradually extended to include the whole ongoing process of government. It was enshrined in the French and American Revolutions. It was extended from Britain to her colonies. By the mid-nineteenth century, as we have seen above, this tenet was bound up with a fundamental right to self-government by representative institutions. The Reform Acts extended the franchise in Britain, ever widening the concept of those whose consent was required literally as well as virtually. While not universally accepted, it was nonetheless enshrined in the Treaty. Lord Normanby instructed Captain Hobson:

The Queen... disclaims for herself and for her Subjects, every pretension to seize on the Islands of New Zealand, or to govern them as a part of the Dominion of Great Britain, unless

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

the free and intelligent consent of the Natives, expressed according to their established usages, shall be first obtained.¹¹⁸

Sometimes, settlers argued that the consent of their 'less civilised' Maori fellow-subjects to the ongoing process of government was not in fact required. Others, such as Rees, thought differently: 'What right have we as free men to make laws without their [Maori] concurrence . . ?'120 New Zealand's first chief justice, Sir William Martin, thought the same, arguing in 1865 that the New Zealand Parliament had yet to establish itself as a legitimate government for the Maori people:

We are all agreed that the General Assembly should become the one acknowledged Legislature for both races, but it would be a great error to assume (as it is sometimes done) that the Assembly has actually attained this position. Can we maintain that the Assembly possesses constitutional and rightful authority over these people? Rather, our business is to find some way by which it may be brought into possession and exercise of such an authority.¹²¹

It was not only lawyers who thought that way. In 1860, Parliament adopted a resolution that 'institutions [of self-government] for the Native people ought to be based upon their free assent, and to be committed to their guardianship.' Christopher William Richmond, then Native Minister, stated: 'We always declared that we must found their government upon the consent of the Native people.' This was not only the case at times when Maori were perceived to be a military threat. Native Minister Ballance assured Te Arawa in 1885:

When we, therefore, have any measure which we desire to establish by law for the good of the people, it is our intention to take the people into our confidence. *Questions, therefore, of great importance must be settled by the consent of the people themselves*. If I could not administer the affairs of the Native people in the way that I have said I should cease to be Native Minister...¹²⁴ [Emphasis added.]

This was true not just as a matter of nineteenth-century principle, but also as a pragmatic constraint on the ability of the Crown to act. There was always the alternative of governing by force. But unless the Crown was always willing to resort to force or intimidation, it could not, for example, simply do what settlers wanted in the Central North Island in the 1880s; hence the need for it to enter into the Rohe Potae negotiations. Similarly, the Kotahitanga movement of the 1890s became a powerful constraint on the Crown's Maori land policies and its ability to act. The existence of powerful, independent Maori polities in the Central North Island led both to the wars of the late 1860s (repression) and to the Fenton Agreement of 1880 (political engagement).

The Crown argues that it had to balance interests and that Maori agency was powerful, so it cannot therefore justify its actions by saying that settler views were the all-important constraint on the Crown. That settler views won out in the end is a question of relative power. The unfair exercise of power when alternatives were possible is at the heart of valid Treaty claims.

Maori capacity for self-government

WAS THE ABILITY OF MAORI TO GOVERN THEMSELVES AND TO DETERMINE THEIR OWN LAND TITLES A CONSTRAINT ON THE CROWN?

As for the suggestion that Maori title should be determined by a body of Maoris, the idea is utterly impracticable; decisions would be very rarely arrived at, and scarcely ever accepted. The determination of Native title would become entirely hopeless, and as the old men who could give evidence died off, the confusion, sufficiently great at the best, would become worse confounded. Moreover the dissatisfaction of the Natives interested would certainly be profound, partly with the inevitable delay, but principally with the suspected partiality; for however great may be the distrust felt by

HE MAUNGA RONGO

some of the Maoris of European management and decisions, the distrust entertained of their own countrymen is much stronger.¹²⁵

John Bryce, Native Minister, 1884

They [Maori] were themselves the best judges of questions of dispute existing among them. No English lawyer or Judge could so fully understand those questions as the Natives themselves, and they believed that they could arrive at an adjustment of the differences connected with the land in their own Council or Committee, very much better than it would be possible for Europeans to do. He hoped honorable members would accord to the Native race this amount of local self-government which they desired. He believed it would result in much good, and whatever Government might be in existence would find that such Committees, with Presidents at their head, would be a very great assistance in maintaining the peace of the country.¹²⁶

Donald McLean, Native Minister, 1872

In the Crown's submission, nineteenth-century Maori society was too divided and inherently warlike for institutions of self-government and title determination to have worked. We need to address this issue directly and in brief here, as it formed one of the cardinal points of the Crown's case, underpinning many of the detailed arguments that will be addressed in chapters 4 to 7. We accept the point, also acknowledged by the claimants, that Maori institutions (in common with all human institutions) were fallible and liable to failure from time to time. The Crown's evidence, as provided in Keith Pickens' report, is based on conflict between Tuhourangi and Ngati Whakaue (and therefore between the Putaiki of Tuhourangi and the Komiti Nui of Ngati Whakaue, Ngati Rangiwewehi, Ngati Rangiteaorere, and Ngati Uenukukopako), tribal conflict at Maketu, and other evidence of intertribal conflict over land. Examples were largely confined to the Rotorua district. Dr Pickens

conceded in his report and in cross-examination that komiti successfully made arrangements internal to hapu, but he maintained that an external power was required to settle inter-hapu contests. ¹²⁷ This was an important concession, as the Crown's historian acknowledged thereby that (internal) powers of self-government and self-regulation could reasonably have been entrusted to hapu communities.

There is evidence to support the Crown's position, to the extent that runanga were not perfect institutions with 'a clear unproblematic jurisdiction'. There were disputes, and the Crown could not simply accept any one runanga's definition of its own boundaries in isolation from (or in preference to) another's. It faced similar contests, we note, with squabbling provincial governments. None of these problems was unexpected in any human society, and none of them was insurmountable. The interpretation that the Crown draws from this evidence – that it could not and should not have empowered or worked through runanga – is not supported by the evidence. The historical evidence of Kathryn Rose, Angela Ballara, Mary Gillingham, David Armstrong, and others emphasises:

- ▶ the more pacific nature of intertribal relations after the mid-1840s, and before the Crown's wars of the 1860s, as Rotorua (and other) Maori deliberately turned away from violent forms of utu and dispute resolution;
- ▶ the successful development of mechanisms for interhapu and inter-iwi peace-making and dispute resolution in that period, building on customary and European models; and
- ▶ the alternative forms of external arbitration possible (that is, arbitration did not have to be done by a Pakeha court nor take the form of an individual, alienable title). 129

Most compelling, in our view, is the fact that the nine-teenth-century Crown did in fact agree to state-sanctioned and empowered komiti from time to time. The Crown's submission emphasised the 1858 legislation, the 1861 New Institutions, the 1880 Fenton Agreement (and the agreement with the Putaiki), the 1883 Native Committees

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

legislation, and Ballance's 1886 Native Land Administration Act, which are examples of this. These initiatives (explained in chapters 4 and 6) all involved working with multiple komiti operating in overlapping rohe. None of these initiatives was either prevented in the first place, nor abandoned in the second place, because of any view that komiti were unworkable, or might exacerbate divisions. The Crown's argument, therefore, cannot be accepted.

We should also consider the other side of the coin. Maori leaders in the nineteenth century were faced with unstable and rapidly changing ministries, Native Ministers, and policies. As the Crown noted, there was also a period of constitutional flux. Provincial governments were established and then disestablished. They fought one another and central government over their respective powers and spheres of authority, and were then replaced by a myriad of local boards with shifting responsibilities. It would be very misleading to suppose that there was constitutional or political order and consensus on the one side, and squabbling, divided komiti on the other. It was the judgement of Donald McLean that, no matter what government might be in power, Maori councils or committees 'would be a very great assistance in maintaining the peace of the country.'¹³¹

The Tribunal's findings

We find that articles 1 and 2 of the Treaty guaranteed Maori their tino rangatiratanga over their land, resources, and people, in return for a Maori recognition of Crown governance and the Crown's right of pre-emption. This was a guarantee of Maori authority which limited and circumscribed the Crown's right to govern. It also created a partnership between the two authorities, in which they had to act towards each other with the utmost good faith and cooperation. Maori authority was to be autonomous in terms of the full range of their affairs. Overlaps between the two authorities would be resolved by negotiation and agreement. At the same time, Maori had to recognise and obey the Crown's authority, within the minimum parameters necessary for the effective operation of the State. In

addition, article 3 gave Maori the rights of British subjects, which included both the right to self-government by appropriate representative institutions, and the principle that government must be by the consent of the governed. Altogether, the Treaty guaranteed Central North Island Maori their full authority over their own affairs, self-government by appropriate and agreed institutions, and their right to be consulted and to give consent to Crown policies and laws affecting the things of fundamental importance to them. Such guarantees could only be overridden in exceptional circumstances.

We further find that the manner in which the Crown gave effect to these Treaty guarantees and standards had to be reasonable in all the circumstances. According to the courts, the Treaty standards are the standards of the time. The Crown's obligation to keep the Treaty is a constant and enduring one. What changes is the question of exactly how the Crown should best keep the Treaty, which depends on the circumstances of the time. There is a test of reasonableness to be applied to that question. The Crown could not have been expected to do more (or less) than was reasonable in all the circumstances.

The Crown submitted that it could only do what was possible according to (a) the practicalities of the time, such as the infrastructure and finance available; and (b) the standards of the time, such as settler ideologies and the views of the majority.

We accept the first point (a), but find that there were no such infrastructural or financial constraints to the Crown giving effect to the Treaty guarantees of autonomy and self-government in the nineteenth century.

For the second point (b), we find that the Crown was equally constrained by its own honour (to keep its promises and undertakings to Maori) and also by what Maori wanted, believed, and sought from it. Further, we accept the historical evidence of Dr Ballara for the claimants and Dr Loveridge for the Crown that the Treaty standards were both known and articulated by settler politicians of the time. What happened, therefore, was that governments chose not to abide by them, not that the standards were

HE MAUNGA RONGO

unknown or inconceivable. We do not accept that party politics and the need to be re-elected justified setting aside the Crown's obligations to be fair and to protect Maori interests – obligations that were articulated time and again by nineteenth-century governments. In particular, the active protection promised by the Treaty was seen as a constant obligation in the public pronouncements (usually to Maori audiences) by leaders such as Ballance and Seddon. Although paternalistic language was sometimes used, the Crown's duty was akin to that of a fiduciary, with the standards of behaviour which that entailed at the time. Not all leaders and politicians saw it that way, of course, but enough did to establish a standard for the rest.

We agree with the Crown that where 'less penal' alternatives were available to its policies and actions, it should have chosen them. We also agree that such alternatives had to be 'visible' to policy-makers, and reasonably practicable, although this was an active, not a passive, requirement – that is, the Crown had to inform itself of Maori views and wishes where they were not known. In this case, there was no problem with 'visibility' in terms of what nineteenth-century Maori leaders wanted, and what at least some Pakeha politicians and commentators agreed that they should have.

We find that there were many known and practicable alternatives to the Crown's actions and policies regarding Maori autonomy and self-government in the nineteenth century, and that they were deliberately rejected by the Crown in violation of Treaty standards, a point to which we shall return in chapters 4 to 7. We do not accept, as a matter of principle, that the likely or possible outcomes of 'missed opportunities' were so obscure that we cannot judge their viability. In the strictest sense, such an analysis must be 'counterfactual' because the proposals were not carried out (and hence there are no facts), but the historical evidence is such that we can still evaluate them in their context. We have the benefit of hindsight, but we accept that policy-makers must make choices without it, and so we use the historical evidence to evaluate their choices in light of the circumstances of the time.

Finally, we reject the Crown's argument that Maori were not capable of exercising their Treaty rights to govern themselves and decide their own land entitlements. In our view, the historical evidence does not substantiate such an argument.

We turn next to the particular circumstances of the Central North Island, where tribal leaders did not sign the Treaty in 1840 and hence – in one interpretation – did not make the reciprocal bargain outlined above, and did not cede their sovereignty.

TREATY STANDARDS FOR THOSE WHO DID NOT SIGN THE TREATY

KEY QUESTION: WERE THE TREATY STANDARDS DIFFERENT FOR THOSE CENTRAL NORTH ISLAND TRIBES THAT DID NOT SIGN THE TREATY?

The claimants' case

The claimants presented various generic and particular submissions on this issue. We have relied on the generic submissions on behalf of all claimants, supplemented by the particular submissions where these added further or different views germane to the issue. Ms Feint submitted that Mananui Te Heuheu rejected the Treaty and the sovereignty of the Queen in 1840, and led both Tuwharetoa and Te Arawa to do likewise. As a result, Tuwharetoa did not and have not surrendered their sovereignty. The source of their power and authority is their mana, which is the word they prefer to tino rangatiratanga, but expressing much the same concept. From 1840 to 1860, the Treaty and Kawanatanga did not intrude on Taupo Maori, although they began to participate in the colonial economy. Iwikau Te Heuheu and Tuwharetoa were leaders in the establishment of the Kingitanga, which had as its goal the preservation of Maori mana and authority over the land, and the land itself. Taupo Maori sought an accommodation with settlement and to lease their lands to pastoralists, and did

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

not object to the Queen exercising authority over her own people. 132

For the Government, accommodation with the Kingitanga and meeting Maori aspirations to maintain their authority over their land and lease it was possible (via the Constitution Act 1852) and suggested by politicians of the time. The Crown deliberately chose a contrary and unnecessary course of action. Grey's New Institutions appeared to offer hope of real change in this respect, but instead they were designed to undermine the Kingitanga. A small number of northern Tuwharetoa leaders supported the Crown and the New Institutions. The Crown's policy failures led to war and the imposition of its authority (kawanatanga) as a reality for Taupo tribes by the end of the war. This is not the same, in the claimants' view, as a voluntary acceptance of kawanatanga or a cession of sovereignty. See Province 1864.

The claimants did not necessarily agree on when or how their Treaty relationship with the Crown commenced, but they all believe that they now have one. For the Rotorua district, Mr Taylor submitted that it began with the Kohimarama Conference of 1860. This was, in his view, the Crown's first significant political engagement with Central North Island iwi. It was flawed because of the exclusion of the Kingitanga, but the majority of Te Arawa were represented. It began the Treaty-based relationship between Te Arawa and the Crown. According to the historical evidence, Te Arawa reached the view that their mana and rangatiratanga were guaranteed, and that they would be joint and equal partners in the machinery of the State. This was the basis for their allegiance to, and military support of, the Crown. ¹³⁵

There were many differences of emphasis in the claimant submissions on whether sovereignty had been ceded. In his generic submission on behalf of all claimants, Mr Taylor argued that, in terms of constitutional law, the Treaty ceded sovereignty on behalf of all Maori, and its guarantees, rights, and obligations therefore applied to all Central North Island Maori. In their generic submission, and in their submissions on behalf of Ngati Makino and Nga Rauru o Nga Potiki, Ms Sykes and Mr Pou took a different

position. They were supported by submissions from Ngati Whakaue and others. These claimants argued that they did not (and have not) surrendered their sovereignty in their rohe, that they recognised the Crown as having authority outside their rohe, and that kawanatanga is an equal but external power. The Crown recognised Maori sovereignty before 1840, and the Treaty did not change that. Some Te Arawa groups, such as Ngati Makino, did not attend the Kohimarama Conference and have never accepted the authority of the Queen nor endorsed the Treaty. For groups which did (such as Ngati Whakaue), the effect is the same; they retain their sovereignty. The model for how the Crown should have acted in this situation is the Fenton Agreement, which is in the nature of an 'international agreement'. 137

The Tribunal (as a commission of inquiry, not a court) should not be bound by western law nor the outcome of the 1987 Lands case, but should instead return to the pre-1987 Tribunal reports, in particular the Motunui-Waitara Report, where the Tribunal recognised Maori sovereignty as still persisting. Later reports, such as the Ngai Tahu Report, which considered tino rangatiratanga as more limited (equivalent to local government), are incorrect. The claimants argue that the application of the Treaty to Ngati Makino without their consent is in itself a breach of the Treaty.¹³⁸

In light of these submissions, Ms Feint adopted their position for Ngati Tuwharetoa. This did not negate her earlier submission that Crown authority was a reality for Tuwharetoa at the end of the New Zealand Wars, with which it had to work and engage constructively if Maori mana (authority) was to be preserved. In an oral submission, Mr Taylor suggested that his generic submission was concerned with practical actions of the Crown, and that he had left 'philosophical' issues to Ms Sykes and Mr Pou, arguing that the two positions as set out in the submissions are not in conflict. The

In their submission for Nga Rauru, Ms Sykes and Mr Pou argued that the following rights form the parameters

HE MAUNGA RONGO

of self-determination and sovereignty for Maori (Tuhoe) as a nation:

- ▶ the right to be distinct peoples;
- ▶ the right to territorial integrity of their land base;
- ▶ the right to freely determine their destinies;
- ▶ the right to self-government; and
- ▶ the right to have previous injustices remedied. 141

The claimants rely on the Draft Declaration of the Rights of Indigenous Peoples and international law, as well as the Treaty, to support the concept of indigenous peoples as entitled to sovereignty in their own territories. They also rely on the evidence of Jane Kelsey and Moana Jackson, filed in the Urewera inquiry but not in our inquiry. Professor Kelsey argues that the Crown's recognition of tino rangatiratanga and other protections as embodied in the Treaty was a unilateral affirmation that applied to all Maori, whether they signed the Treaty or not, but that the correlative exchange (cession of kawanatanga) did not apply to tribes which did not sign the Treaty.¹⁴²

The Crown's case

The Crown rejected the submission that Maori retained and continue to retain their sovereignty. It relies on the *Muriwhenua Fishing Report*, which found that sovereignty had been ceded and that tribal self-management was akin to local government. The Crown also relies on the *Maori Electoral Option Report*, the *Orakei Report*, and the *Lands* case in the Court of Appeal. The Tribunal should not return to the earlier reports cited by the claimants, but should maintain the consistent line developed since then, and should keep the debate constructive and practical.¹⁴³

Article 1 of the Treaty transfers absolute sovereignty to the Crown. The Treaty relationship is between sovereign and subject. 'Any conception of separate sovereignty or parallel governments does not fit within the Treaty.'144 Article 2, on the other hand, does guarantee more than just ownership of property. It guarantees a 'degree of *Maori* control and management over what Maori own'

(emphasis added).¹⁴⁵ This is not the same as tino rangatiratanga before the Treaty – chiefly control over persons to the extent of executions or waging war was ended, for example. But it is more than just control and authority over property, because elements of 'self-management of non-material resources (people and culture)' were protected by the Treaty. How much self-management is consistent with the Treaty and how this changes over time are, in the Crown's view, proper matters for debate.¹⁴⁶

The Tribunal's analysis

Having set out the claimant and Crown arguments, we turn now to our analysis of them. The parties are not in conflict over whether the Treaty was signed by Central North Island tribes. Groups with interests in the Kaingaroa district, including Ngati Manawa, Tuhoe, and Ngati Haka Patuheuheu, had no opportunity to sign the Treaty as it was not brought to them for their approval. Iwikau Te Heuheu and another Tuwharetoa rangatira signed the Treaty at Waitangi on 9 February, although their hapu and iwi did not consider themselves committed by this action. ¹⁴⁷ A Te Arawa chief, Timoti, may also have signed the Treaty in the north, and this was later given some prominence by Te Amohau in rejection of the Kingitanga. ¹⁴⁸

Nonetheless, it is broadly the case that the Te Arawa and Tuwharetoa confederations did not sign the Treaty. Their opportunity to do so came at Ohinemutu in 1840, where the local missionaries Thomas Chapman and John Morgan sought the adherence of Te Arawa to the Treaty. The oral history of Tuwharetoa, as recorded by Tureiti Te Heuheu in 1913, is that the Tuwharetoa ariki, Mananui Te Heuheu, rejected the sovereignty of the Queen and requested the whole of Te Arawa waka not to sign the Treaty:

I will never agree to the authority [mana] of that woman and her people intruding on our islands, I am a chief of these islands, this is my response, stand up! and leave! Go! Te Arawa, listen! This is my word for the waka of Te Arawa, do not agree for we will be lost as slaves to that woman.¹⁴⁹

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI



A representation of Mananui Te Heuheu Tukino II, ?–1846, ariki of Ngati Tuwharetoa at the time of Captain William Hobson's arrival in 1840. He led Te Arawa waka in the decision not to sign the Treaty of Waitangi.

As we saw in chapter 2, there was a close relationship between Tuwharetoa and Te Arawa. Te Heuheu's words were decisive for both tribal confederations, neither of which signed the Treaty. Hamuera Mitchell recounted the Ngati Whakaue view of this occasion. The people assembled at Ohinemutu waited for the arrival of Te Heuheu, who came with 'an ope taua of 200 warriors where he vehemently rejected the Treaty. Ngati Whakaue followed the position of their relation and also rejected the Treaty. To Dr Ballara points out that there is no record of this meeting

in the missionary papers, but that neither missionary was especially regular in their journal entries. ¹⁵¹ Although the Whakaue and Tuwharetoa traditions disagree on the number in Te Heuheu's party (500 according to the Tuwharetoa account, 200 according to Whakaue), the substance of this tradition is otherwise the same. We accept the claimants' evidence that their rejection of the Treaty in 1840 was a deliberate act, led by Mananui Te Heuheu and endorsed by the respective tribes, which cannot therefore be considered to have made a formal cession of their sovereignty at that time.

Treaty guarantees and non-signatory tribes

DO THE TREATY GUARANTEES APPLY TO NON-SIGNATORY TRIBES?

The Rekohu (Chatham Islands) Tribunal addressed the question of whether the Treaty's protections applied to tribes that did not sign. 152 The issue was raised in New Zealand in the early 1840s when the Attorney-General stated that the Crown did not have sovereign authority over groups that did not sign. The issue arose because of armed conflict at Maketu, in our Rotorua inquiry district. Mr Armstrong has described the circumstances in his evidence. The exercise of Crown authority was challenged in 1842 during a coastal dispute between Ngai Te Rangi and the people of Maketu. The Maketu rangatira refused to accept any Crown interference. The Government considered sending troops, but the legality of doing so was queried by the Attorney-General, who argued that the 'free and intelligent' consent of Maori to the Treaty was required before British sovereignty could be said to apply. The Acting Governor, Willoughby Shortland, decided not to send troops, but instead to attempt mediation by protectors. On the other hand, he also decided not to seek a formal cession of sovereignty from those who had not signed the Treaty, as some had suggested, because this would in fact confirm that British sovereignty was incomplete. 153

Mr Armstrong does not, however, describe the outcome of this debate in London. The British authorities decided that the Queen's sovereignty applied legally to the whole

HE MAUNGA RONGO

of New Zealand. The Crown Law Office considered in the 1840s that, as a matter of law, enough chiefs had signed to cede sovereignty on behalf of all, and that, in any case, the Crown's proclamation of sovereignty was the decisive legal instrument. The Rekohu Tribunal found that the protections of the Treaty applied to all Maori in New Zealand:

Nor is anything to be made of the fact that Moriori were not signatories. Certainly, the Colonial Office took the view that the Treaty applied to all, whether they had signed it or not. The Treaty was primarily an honourable pledge on the part of the British to the people of such lands as might in fact be acquired or annexed. The consensual nature of its drafting, and to a large extent its completion, does not prevent its application as a unilateral undertaking where required, as much binding upon the honour of the Crown as a Treaty to which there was full consent. There appear to have been significant North Island rangatira who did not sign, and no signatories for the greater part of the South Island when sovereignty over that area was proclaimed, and yet the Treaty must be taken to have applied in all places when sovereignty was assumed. 154

The claimants in our inquiry agreed that the unilateral declarations of a Treaty signed by only one side were binding on that signatory: an affirmation of rights and protections to all Maori in New Zealand. The acquisition of sovereignty, on the other hand, they thought could not be unilateral. They did not address the strictly legal argument that the Queen's proclamation of sovereignty was decisive, but reminded the Tribunal that we are not a court nor charged with applying or interpreting the strict letter of the law. The submissions of parties that the protections of the Treaty applied to all tribes, whether they signed it or not.

Non-signatory tribes and sovereignty

HAVE NON-SIGNATORY TRIBES RETAINED THEIR SOVEREIGNTY, AS SOME CLAIMED IN THIS INQUIRY?

A key issue for us to consider, and one which has not been fully addressed by the Tribunal before, is the constitutional status of tribes that did not sign the Treaty. That is, if they did not cede their sovereignty voluntarily or at all, do they therefore retain it?

The Urewera Tribunal will have to consider the issue of cession in depth, as a result of more detailed argument and evidence having been presented in that inquiry. We are conscious that the matter was not fully argued before us, and we are satisfied to leave it to the Urewera Tribunal for full determination. In our preliminary view, we agree with the Ngati Awa Tribunal, which noted the opinion of the retired chief justice, Sir William Martin, made known to the New Zealand and British Governments in 1865.

Martin advised that:

It is now admitted that a large portion of the Native population has never intelligently, or at all, assented to our dominion, and therefore remains where Captain Hobson found it. Such portions of the population are still what the terms of our first national transaction with them admitted them to be, and what (as I showed on a former occasion) the Natives of North America have been uniformly recognised as being, that is to say – small communities entitled to the possession of their own soil, and to the management of their own internal affairs. This is for them an unsafe position, for they are subject to the risk of a war with their strong neighbour [the settler State]; for both it is an undesirable one. But it is their position at present. 157

In Martin's view, therefore, Maori non-signatories (and possibly signatories who had not given a fully informed or sustained consent) were domestic nations on the United States model. We will return to this model below, in our discussion of forms of autonomy in the nineteenth century.

Although we note the importance of the cession issue to claimants, we are in fact required to answer a different

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI



The Arawa Soldiers' Memorial stands in the Government Gardens in Rotorua. It is a tribute to the participation of Te Arawa in the First World War. It includes carvings of nga pumanawa e waru, the eight beating hearts of Te Arawa, as well as the figures of Queen Victoria, King Edward VII and King George V.

question. This is because of the position of Ngati Whakaue and other Te Arawa tribes who attended the Kohimarama Conference. The claimants' historical evidence is quite clear that these Te Arawa tribes accepted and affirmed kawanatanga and the Treaty at Kohimarama. Counsel for Ngati Whakaue's argument is that they nonetheless retain their sovereignty as fully as tribes which did not accept or sign the Treaty in a formal sense. The majority of Te Arawa witnesses, including Ngati Whakaue, gave evidence that they have supported the Crown, the Treaty, and their New Zealand citizenship with constancy and

devotion since 1860. Their armed service overseas means, as they put it, that they have signed the Treaty with their blood. 159

We do not doubt the strength and sincerity of these convictions. For us, therefore, the issue turns not on whether sovereignty was formally ceded as at 1840 (or 1860), but on the meaning of the tino rangatiratanga guaranteed by the Crown to all tribes in New Zealand, whether they signed the Treaty or not. We do not consider that, on the evidence available to us, there is a material difference in the status and rights of those tribes in our region which signed the Treaty in 1840 and those which did not. As Mr Taylor and Ms Feint have submitted, all tribes in the Central North Island ultimately accepted kawanatanga and New Zealand citizenship in some form, and their tino rangatiratanga should have been actively protected.

Drawing mainly on the evidence of Professor Kelsey, claimant counsel argued that the Tribunal had a view in the early 1980s that Maori had retained their sovereignty, which it then modified as a result of the Court of Appeal decision in the 1987 *Lands* case. We note, however, that there is no support in those early Tribunal reports for an idea that sovereignty was affected by whether the Maori claimants concerned had not signed the Treaty.

The Crown fundamentally agreed with the claimants that the Tribunal has changed its mind about sovereignty, but it argued that the Tribunal was right to do so. It cited Tribunal reports, mainly from the late 1980s, which, it argued, found that sovereignty had been ceded, and that tribal self-management was most akin to local government. This dichotomy, as set up both by claimants and by the Crown, is probably fair for the reports that they cite. We do not think, however, that the parties have relied (as they ought to have done) on the more recent reports of the Tribunal. In any case, as noted above, we agree with the key findings of the Taranaki Report on the Treaty principle of autonomy. These findings develop and enhance the position as found by previous Tribunals, and they were reiterated by the Ngati Awa Raupatu, Whanganui River, and Rekohu reports. 160 Later reports,

HE MAUNGA RONGO

such as *Turanga Tangata Turanga Whenua*, have built on this foundation and confirmed its soundness.¹⁶¹ We agree with the claimants that their tino rangatiratanga cannot correctly be characterised by reference to 'local' self-government alone, although that is a minimum of what was and is required by the Treaty.

The claimants' authority over their own affairs was inherent to them as a self-governing people before 1840. The essentials of that did not change with the Treaty. Central North Island Maori continued (and continue) to organise their society as marae-based hapu, governing themselves according to their own customary law as interpreted by the tribal institutions, leaders, and peoples of the time. Their authority was protected, not created, by the Treaty. Its parameters were certainly affected by the Treaty - killings could no longer be legal after 1840, for example, regardless of what had gone before - but their authority remained inherent to the tribal polity. That was not altered if it took on forms and trappings guaranteed by article 3 of the Treaty, such as elected committees, councils, boards, provincial governments, or other such bodies with legal powers derived from statute. Maori autonomy was not in any way reduced or limited to any legal powers derived from the State, though such powers could be a Treaty-compliant way for the Crown to give effect to it. We agree with the claimants, therefore, that their pre-1840 authority continued after 1840. We also agree with the Crown, however, that that authority had limits thereafter to allow for the proper operation of kawanatanga. The respective limits of kawanatanga and tino rangatiratanga had to be resolved after 1840 by agreement through partnership.

This brings us to the practical question of how the Crown could or should have given effect to its partnership with Central North Island Maori and to their Treaty rights of autonomy and self-government.

Is the claimants' position impractical?

There is a tendency for many New Zealanders, comfortable with their current political arrangements, to assume

that the model of a unitary nation-state was an inevitable development. This is clearly not the case. The constitutional and political arrangements in the British Empire of the nineteenth century, and also in the United States and Europe, were many and varied. Policy-makers in New Zealand were aware of the wide range of possibilities, as diverse as the different-nationality cantons of Switzerland, the semi-autonomous polities in the Hapsburg Empire, the tribal domestic nations inside the United States, the federal and state structures of Australia and Canada, Home Rule for Ireland, the tribal kingdoms and polities in the African colonies, and many more. Our own Constitution Acts envisaged a federal structure of provinces and a central Parliament, with self-governing Native Districts. The bewildering array of possibilities, however, can be assessed in light of some fundamental models, applicable both to the circumstances of the nineteenth century and to our changed circumstances today.

The Crown urged us to be practical in our approach to these matters. We have been assisted in our analysis by the oral submissions of counsel at our ninth hearing. In answer to questions from the Tribunal, Mr Pou cautioned that it was all very well for the Tribunal to accept in principle that there were two systems of law and authority in New Zealand in the nineteenth century, but if it turned from that analysis to the question of what was practical, then that could greatly reduce the significance of an acceptance in principle. The Tribunal could avoid the dilemma, he argued, by focusing on how Maori saw things in the nineteenth century, which could only lead to a conclusion that Maori sovereignty continued in a practical form in Te Arawa's territories. 162 Te Kani Williams maintained the view of his clients (Ngati Haka Patuheuheu) that their sovereignty still exists. But if the Crown is sovereign, then article 2 of the Treaty obliges it to return Maori land and taonga to Maori control in any case. Current law, he argued, can recognise tino rangatiratanga, and hapu can be joint managers with the Crown in their performance of kaitiakitanga. In effect, the Crown can and should treat tribes as having shared or joint authority with it on

198

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

various statutorily created or recognised bodies, such as in the Orakei Reserve. That would provide an effective and practical answer to the dilemma.¹⁶³

Aidan Warren submitted that there was no conflict at all between the claimants' aspirations for self-government and their desire to be on statutory boards and other institutions in partnership with the Crown. The thrust of these oral submissions is that there is nothing either inconceivable or impractical about recognising Maori authority, either in the nineteenth century, where counsel cited the Fenton Agreement, or in the current context, where there are many examples and mechanisms.

In light of these submissions, the Crown's position does not appear to be an entirely practical one. It asserts the absolute, exclusive, and undivided sovereignty of the nation state of New Zealand, as a matter of law. It reminds the Tribunal of the need to be practical and constructive in dealing with this issue. It cites Tribunal reports that find Maori powers of 'self-management' to be akin to the powers of local government. It does not itself, however, go so far as to recognise the principle of local self-government for Maori as a Treaty right. 165 Rather, it would limit tino rangatiratanga to a 'degree of Maori control and management over what Maori own' and elements of 'self-management of non-material resources (people and culture).166 What this actually means is unclear, since there is no elaboration of what such 'elements' might be. When questioned on this, and on the Crown's view of the Taranaki Report and Maori autonomy, Peter Andrew did not expand on the Crown's written submission.¹⁶⁷ In our view, the Crown's position is not entirely a practical one, as the Crown went (or contemplated going) beyond it in the nineteenth century, and clearly takes a more generous approach to power-sharing and recognition of Maori authority in its Treaty settlements today.

Nor is the claimants' position necessarily impractical. They do not reject the nation state of New Zealand, nor do they seek full separation from it. There are some tensions in their position, reflective of the complexity of the issues. Hence, Ngati Whakaue accepts that the Crown has

a right to regulate geothermal energy in the best interests of the nation, and can override Maori rights in the national interest. This right is not absolute, but is to be exercised in a manner properly limited by the rights of rangatiratanga. This is a standard position, although it is somewhat at odds with the argument advanced by Mr Armstrong for Ngati Hinekura, that the Crown can never override tino rangatiratanga in the national interest because Crown and Maori are fully and equally sovereign. Haso, in their submission in reply to the Crown, Ngati Whakaue maintain that they are an independent sovereign nation within the bounds of their rohe, but acknowledging that they have (by agreement) accepted certain Crown institutions and forms of authority. To

We do not accept Ngati Hinekura's and Ngati Whakaue's position in the exact terms in which they have presented it. We think that 'independence', in the sense that they have used it, is not really the point. In the words of Roger Maaka and Augie Fleras: 'Sovereignty debates are no longer about independence, but around accommodating equally valid yet mutually opposed notions of autonomy and belonging.' Each side has to recognise 'the autonomy of the other in some spheres': in other words, Maori should have (and should have had) the final say in some things affecting both, the Crown in others, while also 'sharing jurisdictions elsewhere?171 The Turanga Tribunal, for example, found that Maori had the right to decide their own land entitlements - in this respect, their autonomy was absolute and could never be justly or legitimately overridden by the Crown. Although Maori had to obey the law, the only laws the Crown could make legitimately were ones to facilitate Maori control.172

The Rekohu Tribunal, on the other hand, found that the Crown had the power to 'impose reasonable constraints' on all citizens to protect natural resources in the interests of all.¹⁷³ Dialogue, cooperation, and partnership were and are required to enable Maori and Crown autonomy to coexist.

The rights of a people to self-determination, as outlined by Ms Sykes and Mr Pou, have been broadly accepted

HE MAUNGA RONGO

and articulated by many Tribunals. Even Native Minister Ballance believed that the Crown's task was to assist Maori 'to enable them to work out their own destiny in a way that will secure the permanent prosperity and happiness of the race', as he told Rotorua Maori at Whakarewarewa in 1885. 174 We agree with the claimants that, in generic terms, tino rangatiratanga involves:

- ▶ the right to be distinct peoples;
- ▶ the right to territorial integrity of their land base;
- ▶ the right to freely determine their destinies;
- ▶ the right to self-government; and
- ▶ the right to have previous injustices remedied. 175

How are we to translate these rights, described as 'aspirational' by Crown counsel, into practicable matters for the Crown in the nineteenth century and today, having regard to the different circumstances of time and place?

We note first that we cannot depart from the Treaty, which is the foundation of our jurisdiction. Under the Treaty, the Crown does not have an absolute and exclusive sovereignty. Its powers of kawanatanga are constrained by the need for it to respect and give effect to Maori authority (tino rangatiratanga) in their respective and overlapping spheres. In other words, the Crown has the right to regulate on behalf of all citizens (article 1), while Maori have a right to autonomy and to determine their own destinies (article 2), and a right to self-government by their own representative institutions (article 3). The question for Maori, the Crown, and the New Zealand public is (as it has always been) how to balance and reconcile these sometimes opposing authorities. The Treaty principles of partnership, autonomy, and equity and the Treaty duties of good faith, active protection, and mutual respect show the way. The detail is a matter for negotiation between the Crown and the hapu and iwi concerned, as it was in the nineteenth century.

The Treaty claims of Central North Island Maori are not about separation or division or (in reality) independence from the State. They relate to the ability of hapu and iwi as political communities to govern themselves and determine their own destinies. They also relate to Kotahitanga,

to Maori aspirations to make their own rules and control their own destinies at a national level, where that is their preference. Maori claim to be sovereign in terms of their own communities. We note, of course, the standard legal orthodoxy, as accepted by the courts, that the proclamations of sovereignty in 1840 were decisive in law. We also note the countervailing fact that the Crown has had to recognise and negotiate with Maori authority and polities in the Central North Island for the past 167 years. As the Taranaki Tribunal noted, native peoples are entitled to autonomy in their territories, and this entitlement is not negated by British sovereignty. The right to self-government is inherent in indigenous peoples, even if that has not been formally recognised in domestic law. Professor FM Brookfield argues that it has been so recognised in international law.176 All that is needed, therefore, is for us to note that Maori claim to be sovereign, and that they are entitled to tino rangatiratanga (autonomy and self-determination) under the Treaty.

As we have noted above, there was a strong vein of practicality running through what the claimants want in terms of exercising their tino rangatiratanga. In response to questions from the Tribunal, David Rangitauira noted that 'whenua rangatira' is the Maori phrase which best describes Ngati Whakaue's view of itself as an 'independent sovereign nation'. It was, he reminded us, both the phrase used in the 1835 Declaration of Independence to translate 'independent state' and the term used to describe the jointly administered Maori reserve in the Orakei Act 1991.177 Whenua rangatira (chiefly land) is a concept explained by Charles Royal as key to Maori thinking, in which great ancestral chiefs named parts of the land for their own bodies, symbolising the link between tangata whenua and their land. The strength of the link is such that it goes beyond symbolism: the ancestor is the land and the land is the ancestor.¹⁷⁸ The links continue from generation to generation. Tureiti Te Heuheu recounted the words of his ancestor Mananui:

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

One time he considered his body to be similar to the land, one of his thighs on Titiokura, the other on Otairi, one of his arms on Pare te tai tonga, one on Tuhua mountains, his head on Tongariro, his body lying on Taupo. That his word made sacred the land, a region of his mana, a region where Pakeha were forbidden to enter, land never to be lost to the Pakeha.¹⁷⁹

Dr Royal suggests that the use of the term whenua rangatira in the Declaration of Independence captured the entire country as 'a single land entity', and meant that when Maori 'finally considered the notion of "nationhood", they felt compelled to define such an entity by direct reference to the land and the esteem they hold for it.' 180

In our view, Maori political thinking encompasses this link between rangatira, rangatiratanga, and land; the autonomy necessary for the survival of a people; and the very practical forms that that autonomy can take when agreed in partnership between the Crown and Maori. One example referred to us was the joint management board for the Orakei Reserve, where (as we have noted) two governance entities – the Auckland City Council and the Ngati Whatua o Orakei Trust Board – each have half of the seats on the board, with the trust board appointing the president. ¹⁸¹

In our own inquiry region, we heard how whakapapa (genealogy) and korero (traditions) are embedded in whenua rangatira. Sean Ellison and Te Keepa Marsh, for example, described the arrival of the Te Arawa waka and how great rangatira such as Tamatekapua, Hei, and Tia claimed places for their descendants by naming them for parts of their own bodies or those of their sons. Tamatekapua, seeing Maketu, named the promontory for the bridge of his nose. Tia set aside land by naming it the belly of his son Tapuika (Te Takapu o Tapuika), and Hei similarly claimed land which he named the belly of his son Waitaha. 182

Hamuera Mitchell explained that Ngati Whakaue held:

absolute sovereignty over their people, land and resources within the traditional structure of Mana Maori Motuhake. This mana is intertwined through whakapapa, and is deeply tied to the lands of Ngati Whakaue. It is asserted that Ngati

Whakaue has been in continuous occupation of its tribal rohe for over four hundred years. Our assertion of our mana has remained uninterrupted and has been prevalent throughout our contact with pakeha and the Crown since 1830. 183

In our view, the lands of Ngati Whakaue are whenua rangatira today, as they were in 1840. The mana motuhake or tino rangatiratanga of Ngati Whakaue is guaranteed the active protection of the Crown, and is entirely compatible with the latter's kawanatanga (governance) powers. The Treaty created a partnership between these two forms of authority. The Crown must respect Maori authority and give effect to it by law as necessary, and Maori authority must operate within the minimum parameters necessary for the due operation of the State.

We turn now to the question of what de facto and de jure models of autonomy were reasonably available to, and considered by, the Crown and Maori in the nineteenth century.

MODELS OF AUTONOMY

KEY QUESTION: WHAT MODELS OF AUTONOMY WERE REA-SONABLY AVAILABLE TO, AND CONSIDERED BY, THE CROWN AND MAORI IN THE NINETEENTH CENTURY?

It is helpful to consider four models of autonomy, all involving some degree of de facto sovereign powers:

- ▶ independent states, with full external and internal sovereign powers;
- ▶ regional states inside a nation state, such as domestic dependent nations (American Indian tribes) and state governments in the United States, with internal autonomy and relative independence;
- ► communities, with community-based autonomy, limited by interaction with similar bodies and higher political authorities (this would include marae-based hapu communities); and

HE MAUNGA RONGO

► institution-based autonomy, with inclusion in institutions that have decision-making power, and are sometimes parallel institutions. (This can include national 'assemblies'.)¹⁸⁴

As we shall see in chapters 4 to 7, the nineteenth-century Crown had a Treaty-based relationship with a variety of internal polities (mainly tribal), where the emphasis should have been on mutual recognition, political engagement, dialogue, negotiation, and settlement of issues by agreement. This situation had been evolving in the Central North Island since 1840. It combined elements of community and institutional autonomy with de facto (and possibly de jure) domestic nation status. The Kingitanga, the Fenton Agreement, the Kohimarama Conference, the Kotahitanga (Maori Parliament) movement, the runanga and komiti (committee) movements, the New Institutions of the 1860s, section 71 of the Constitution Act 1852 (Native Districts), the Native Councils Bills of the 1870s, and the Native Committees Bills and Act of the 1880s; all are nineteenth-century examples of it in varying degrees. The very recognition of a Treaty partner or partners carries with it some of the effective hallmarks of joint 'sovereignty', if not the title.

The first model in our list above is not appropriate for New Zealand, and neither the claimants nor the Crown want it. The second model has mainly been considered appropriate to states where indigenous peoples have retained a large and contiguous territory, which was the case in the Central North Island for much of the nineteenth century. A mix of the other two (community and institutional autonomy) has been considered appropriate and practicable in New Zealand from time to time since 1840, and has been used in part in modern Treaty settlements. Professor Brookfield notes that 'some form of limited self-government for the "many hundreds of traditional communities existing on land bases with marae as their institutional centrepieces" is still entirely possible in modern New Zealand.¹⁸⁵

Mr Warren submitted that there was no conceptual problem in the claimants seeking self-government through

joint authority with the Crown on various statutorily created bodies. This is part of an institution-based model of autonomy. Similarly, Te Arawa hapu welcomed the Fenton Agreement, the structures it was supposed to create, and its enactment in the Thermal Springs Districts Act. This statute, in the evidence of Don Stafford, was seen as their Magna Carta.¹⁸⁶ Mr Williams argued that the Crown gives effect to tino rangatiratanga through statutory institutions such as the Orakei Reserve, and that this provides an effective or practical answer to the sovereignty dilemma. The Foreshore and Seabed Tribunal reviewed evidence about the Orakei arrangements and agreed that they were an appropriate possible model for joint Crown-Maori authority and rights over the foreshore.¹⁸⁷ Institutional models of autonomy, therefore, such as the long-standing Te Arawa and Tuwharetoa trust boards, can be long lasting and evolve to meet the needs of succeeding generations.

In terms of practicalities, Dr McHugh argues that by the mid-to-late nineteenth century, domestic dependent nations as legal entities were peculiar to the United States, because it was 'legally impossible' for British lawyers to accept any kind of divided or dual sovereignty by that time. The common law could not recognise any kind of residual tribal sovereignty, as 'no government is sovereign and subject at once'. From 1891, British courts reversed this position and allowed for a split sovereignty in Pacific protectorates, with Britain having an 'external' sovereignty and Pacific nations remaining sovereign over their internal affairs. This was not so very different, in de facto terms, from the situation in the Central North Island for much of the nineteenth century, with the exception that the former was officially recognised by the courts.

We are not concerned so much with the common law, but with the possibilities of what the Crown could have done in New Zealand via statute law and political agreements. In nineteenth-century Canada, limited legal powers of self-government were accorded to First Nations bands through the hated Indian Act 1876. ¹⁹⁰ Much more generous arrangements were made in 1867 for the political autonomy and cultural distinctiveness of French Canadians and the

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

province of Quebec.¹⁹¹ Lord Watson of the Privy Council found, in 1892, that:

The object of the Act of Confederation was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy.¹⁹²

It was entirely possible for the New Zealand colonial state to reach similar political agreements with, and give similar statutory recognition to, Maori political institutions. Dr McHugh recognised that the common law view of sovereignty empowering tribal polities in the United States (although not, he argues, in New Zealand) could be matched or superseded by 'permissive settler-state legislation.' A variety of practical models were available and show what was at least conceivable at the time.

At the local community level, autonomy for Maori was possible through a variety of means, especially through committees to control land and direct economic activity. Central North Island hapu became early enthusiasts for committee structures and processes, adopting European-style systems and using them for traditional ends of self-government, and land and resource management. As Rees noted, there were various legal mechanisms for accommodating their communal title and the land-managing authority of the tribes. He described the link between community autonomy and land very clearly. Maori wanted an executive power over their lands through representatives chosen by themselves from among themselves; a Government, in fact, of the owners by the owners for the owners.

Rees saw no reason of principle why Maori could not have what they wanted:

The whole tendency of modern times is to modify extreme individualism by collective action. Why then should we not apply to the Maori owners of land the same principle of

government which we find to be indispensable amongst ourselves?¹⁹⁷

Elected tribal committees, with a legally enforceable responsibility to the community and legally binding power over its individuals, were the Maori preference for managing their lands and affairs. That much autonomy could certainly have been provided for by the Crown and there were several 'missed opportunities' and failed attempts to do so (see chapter 6). Also, wider powers of local self-government could have been provided at a community level through marae, district, and/or tribal committees, all of which were sought unsuccessfully (until the Maori Councils Act 1900).¹⁹⁸

Autonomy at a regional level was oft discussed and contemplated in nineteenth-century New Zealand. Officials and commentators referred, for example, to the domestic nation model of the American tribes, to the significant autonomy of the American states within the union, and to the various federal and power-sharing arrangements between ethnic groups and nations in the multinational states of Europe. 199 The Swiss cantons were cited as an example of a federal state that allowed Germans, French, and Italians to coexist.200 The French province of Quebec, with its own laws, culture, and ethnicity, coexisted with English-speaking Canadians, its political autonomy a bar to assimilation within the nation state of Canada.²⁰¹ In India, the original autonomy of the indigenous principalities was at first reduced at law and then revived in the later nineteenth century.202 Although New Zealand took a less federal direction with the abolition of the provinces in 1876, and their replacement by comparatively less autonomous institutions, James Belich argues that this was by no means inevitable in the circumstances of the nineteenth century.²⁰³ We are left, therefore, with an extensive range of examples - known to and cited by officials and Maori of regional autonomy in the nineteenth century. The task of deciding what would work in New Zealand was one for the Crown and Maori to negotiate in partnership.

HE MAUNGA RONGO

Perhaps the best-known model of legal pluralism, coexisting nations, and potential political pluralism was Britain itself. The relevant detail is contained in chapters 4 to 7, but here we note two general points. First, British legal pluralism was an obvious reason for why Maori could have state powers to make laws particular to (and binding on) themselves. In many ways, of course, Britain was a model of how one nation could successfully dominate and rule others. Governor Bowen, for example, pointed to similarities between the situation of Maori and the Jacobite clans of eighteenth-century Scotland, and emphasised that the former could be broken and controlled as the latter had been - by individualising tribal title.204 Even so, nineteenth-century Britain still lived with the legacy of multiple nations, polities, and legal systems, especially in the common law but also in a huge range of statute law particular to one nation or another. The state church of Scotland, for example, was Presbyterian, while the state church of England was Anglican, and Queen Victoria was the official head of both.

As a sample of the kind of thinking that was possible in the 1880s, we reproduce the following two extracts from speeches made in the New Zealand Parliament in 1882:

They had heard that night about one law for both races, but if he had read history aright he found that there were distinct laws in almost all countries where there were distinct races. What did they find in the Imperial Parliament in that country that they liked to refer to whenever they wished to find something to guide and encourage them? One hundred and seventy-five years ago the Scotch and the English people united. The Scotch people were a distinct race, and they were in many respects a distinct race still. They then had their own laws, and they still retained most of their laws even to the present day. Furthermore, was it not now usual for the Imperial Parliament to pass laws applying to Scotland only, to Ireland only, and to England only? And here they were now passing a law

which would apply to the Maoris only, a race distinct in almost all respects from the Europeans, with distinct thoughts, distinct minds, and distinct opinions, and therefore they required a distinct law in relation to their own internal affairs. If this law were passed he believed they would find the Natives administering it fairly. He hoped it would lead to their obtaining larger powers, and he would be glad to see many of the Native affairs at present dealt with in that House intrusted to the Natives themselves.²⁰⁵

Henry Dodson, member of Parliament for Wairau, 13 July 1882

It has been dwelt upon as a very good and desirable thing that there should be one law for all the people of the colony – never mind what their feelings are, or what their bringing-up and former habits have been. I dissent altogether from that. The whole legislation of England is the other way. In Scotland the criminal and civil law, the law of inheritance and the marriage laws, are entirely different from those of England, and every Scotchman and most Englishmen know that. In Canada a great many laws which the French people had before we went there were left to them. It is the same in India. In some counties of England, even, the law of inheritance is different from that of other counties. Go to the islands about England, and the same thing obtains. In Man, Guernsey, and Jersey different laws exist from those in operation in England. Do the people come into conflict and confusion in consequence? I recollect when the weights and measures were different in Scotland from those of England, and when different duties were actually imposed on spirits. They are gradually getting assimilated. There is no such thing as a grand jury, a coroner, or a pound in Scotland. But do the British people quarrel for all that? On the contrary, the laws they wish are left to them . . . I think, if the Natives wish this thing, if the Government want their good-will, they should agree to it. 206

> William Swanson, member of Parliament for Newton, 3 August 1882

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

Secondly, the Irish Home Rule movement, with its proposal of self-government and a national parliament for Ireland, compatible with the authority of the Crown and the Imperial Parliament, was a very significant model of political and national pluralism. New Zealand politicians were sympathetic to Irish aspirations and the good political sense of granting them, and chided the British authorities for not seeing it themselves (see chapter 7). In 1887, the Premier, Robert Stout, told Parliament:

Honourable members in this House know that years ago I expressed the opinion that the way to obtain good government in Ireland and true loyalty among the Irish people was to give them some form of self-government such as we ourselves at present possess... No one can look at the Irish question without feeling vexed, and ashamed, and annoyed: vexed that any portion of the British Empire should be in such a state that it should be suggested that the people are not to be trusted to govern themselves; ashamed that the people cannot even be trusted to vindicate the law, and that the trial of those who have offended against the law is proposed to be changed to a different country; annoyed that what seems to outsiders a way out of the difficulty [Home Rule] should not have been chosen by English statesmen before this. In fact, if they had given to Ireland, at the time of the disestablishment of the Irish Church [1869], a form of Home Rule I believe that Ireland would have been just as contented with that Government as this or any other colony is... I think Ireland has been misgoverned, and that if the English people were wise they would see it to be their duty to give the power of self-government to Ireland... I hope this House will show sympathy with the Irish nation and with those people in England, and especially in Scotland, who desire to see the Irish nation obtain some form of local government. I do not think that would inflict any injury on the British nation...²⁰⁷

'Home Rule' for Maori, however, was seen very differently.

The history of the Central North Island claimants, as presented to us, is one where hapu and iwi have sometimes sought to combine and exercise their tino rangatiratanga on a regional and a national level.²⁰⁸ There is nothing

threatening to the State or the public in such a combination, the goals of which have always been self-management, regulation of things Maori by Maori, and dialogue with the Crown from a position of unity and strength. Empowerment at a regional and national level has always been an appropriate matter for negotiation between the Crown and Maori.

Even so, the question of regional autonomy was different in degree from that of institutional autonomy at a national or central government level. The Crown, however, is wrong to suggest that parallel institutions (which it characterises incorrectly as separatist and divisive) were neither contemplated at that level under the Treaty nor possible in the circumstances of the nineteenth century.²⁰⁹ The Crown clearly could and did contemplate working with self-convened national Maori assemblies, as well as convening them itself and giving them legal powers. This is shown by:

- ▶ the convening of the Kohimarama Conference in 1860:
- ▶ the General Assembly's vote for further such conferences;
- ▶ the Government's native council proposals of 1859–1860;
- ► Government assistance to (and partial recognition of) the Orakei parliament of 1879;
- ▶ the submission of Government Bills to the Waipatu hui of 1886 and to the Kotahitanga Paremata of 1898 and 1900; and
- ▶ the convening of national conferences of the Maori Councils in the first decade of the twentieth century.

The question of whether such assemblies would have consultative or legislative functions, or some combination of the two, was a vital one, debated at the time (see chapters 4 to 7).

We do not underestimate the force on the side of those settler politicians who sought assimilation and to deny effective (or any) self-government to Maori. Edward Conolly, for example, opposed the Native Committees Empowering Bill in 1882 because, in his view, it 'establishes, as it were, a conviction that the Natives and ourselves are for ever to remain

HE MAUNGA RONGO

two separate nations living in the same land.210 He and others wanted 'one law' (settler law) for all, whereas many members of Parliament of the time recognised that Maori and Europeans were in fact two nations living in the same land, and that both should be self-governing. Nor do we underestimate the fear and determined opposition many politicians had towards empowering a Maori body at a national level. Though such views were sincerely held, other members of Parliament pointed out that there was a double standard at work – that all sorts of special arrangements and laws particular to Maori (and of benefit to settlers) were already on the statute book. Ultimately, the forces of assimilation won out - though, in our view, it was a closer battle than many have thought, as we will explain in chapters 6 and 7. The closer the Crown came to keeping the Treaty - the more it could have done so – the greater was its actual failure to do so.

Applying the test of reasonableness, therefore, to the Crown's ability to give effect to the Treaty principles of autonomy and self-government, we find that there were Treaty-compliant options known to and practicable for the Crown at the time. We set out these options next.

Treaty-compliant options for Maori autonomy

WHAT TREATY-COMPLIANT OPTIONS COULD THE CROWN HAVE ADOPTED TO RECOGNISE AND GIVE EFFECT TO MAORI AUTONOMY?

As we will discuss in chapters 4 to 7, the Crown could have given practical effect to the Treaty guarantee of autonomy and the Treaty right of self-government in the nineteenth century. The Crown has made a significant concession to the claimants in that respect. Counsel accepted that it was both reasonable and possible for the Crown to have adopted and empowered Maori self-governing bodies in the 1850s and 1860s. We note the political complexity of the motives behind the various experiments with empowering Maori self-government from 1858 to 1862, but the end result is that a number of ways of

allowing for Maori political power were tried or considered. Some of those options remained available for the rest of the century. We will explore them in some detail in chapter 4, as they are critical to our evaluation of the Crown's compliance with the Treaty. These options for Maori self-government in partnership with the Crown were not mutually exclusive – combinations of some or all were possible. As submitted by the Crown, there was not necessarily one correct or inevitable way of reaching the desired Treaty outcomes, but the Crown should be found in breach if it failed to carry out any of them at all.

In summary, there were five options:

- ▶ The first option: declaring Native Districts under section 71 of the Constitution Act 1852.
- ► The second option: declaring Native Districts under the Native Districts Regulations Act 1858 and Native Districts Circuit Courts Act 1858.
- ► The third option: providing meaningful power at the central government level, through full and fair representation in the New Zealand Parliament, and/or a national Maori assembly.
- ▶ The fourth option: including the Kingitanga in the machinery of the State.
- ▶ The fifth option: providing legal powers for regional and local self-government by Maori institutions in partnership with Government officials, through statesponsored runanga (or komiti). This included legal powers for Maori communities to determine their own land and resource entitlements, and to manage those lands and resources for themselves through their own corporate bodies.

The Tribunal's findings

We find that the standards of the Treaty were not affected if Central North Island tribes either refused or had no opportunity to sign the Treaty. The Crown's guarantees are binding on it as a unilateral declaration and promise of intent. Some tribes gave subsequent and formal affirmation to the

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

Treaty, as Ngati Whakaue did in 1860. Others did not, but all have a partnership with the Crown. Whether a formal act of cession took place or not, all iwi are in the same position. That is, their tino rangatiratanga was preserved, guaranteed, and protected by the Treaty. It was not created by the Treaty, but is inherent in their tribal polities.

The Treaty guaranteed all Central North Island tribes their autonomy and the right of self-government by representative institutions responsible to their communities. Even so, the tino rangatiratanga of all tribes is affected by their partnership with the kawanatanga, and is not exactly the same as it was before 1840. Both Treaty partners owe each other a duty of good faith and cooperation, dialogue, and negotiation of agreement on key issues. Where those issues are fundamental to Maori and their rights as guaranteed by the Treaty, and on the principles of good governance, the Crown must govern by consent. There may be times, however, when the authority of kawanatanga must prevail. The appropriate agreements and compromises between Crown and Maori spheres of authority must be decided in partnership. The political relationship between nineteenth-century governments and Central North Island tribes sometimes came close to achieving these Treaty standards. Many pronouncements by politicians and commentators showed, in the language of the day, that the Treaty standards were known and practicable. Governments' failure to abide by the Treaty was a matter of choice, since practicable, 'less penal' alternatives were available, and hence their actions failed the Treaty test of reasonableness.

In our view, there were practical models of autonomy, self-government, and even of divided sovereignty, available to nineteenth-century New Zealand decision makers. These included:

- ▶ the United States, with its self-governing tribal domestic nations and its autonomous states, all consonant with a strong federal (central) government;
- ► Canada, which accommodated First Nation selfgovernment (though badly) through a statute called

- the Indian Act, and French Canadian law and culture through a federal structure of autonomous provinces;
- ▶ Britain, a multinational state with elements of legal pluralism, a strong tradition of local self-government, a variety of legal structures for corporate and community land ownership and asset management, and the burgeoning Irish Home Rule movement;
- ► Europe, with its 'civilised' multinational and multiethnic states, including, for example, the autonomous cantons of the Swiss federal state;
- ► India, with its indigenous principalities increasingly autonomous at law (though subject to indirect rule) as the nineteenth century wore on;
- ▶ the Pacific protectorates, where the British Crown recognised a divided 'external' and 'internal' sovereignty in the late nineteenth century;
- ► New Zealand's own British-made constitution, with its quasi-federal provision for autonomous Native Districts and provinces; and
- ▶ British elective bodies as adapted by Central North Island Maori, especially church (and other) committees, which they melded with their own traditional institutions, made use of at community, regional, and national levels, and put forward as their model of choice.

From these and other models, we conclude that the Crown had practical examples of community, regional, national, and institutional forms of autonomy applicable to the circumstances of Maori in New Zealand. Exactly how such models would or could have been adapted in this country was a matter to be debated and agreed between governments and Maori. We will explain this in detail in the rest of part II. Here, we find that the Crown had reasonable and practicable options for complying with the standards of the Treaty. Those options were known to the Crown, 'visible' to policy-makers, sought by Central North Island Maori, conceivable and justifiable to at least some settler politicians, affordable, and practical. They were not always, however, consistent with settler self-interest

HE MAUNGA RONGO

and some of the standards (and double standards) of the time. The honour of the Crown, however, pledged in the Treaty and by later undertakings and promises, required that at least one of the options be taken up. We find that the practical options available to the Crown for giving

effect to autonomy and self-government met the Treaty test of reasonableness. The Crown was perfectly capable of complying with the standards of the Treaty in the circumstances. The extent to which it did or did not do so will be the subject of the following chapters.

SUMMARY

- ▶ The Treaty of Waitangi guaranteed and protected the full authority (tino rangatiratanga) of Maori over their lands, people, treasures, and affairs. That authority was inherent to Maori polities, not created by the Treaty.
- ▶ In return for the active protection of their authority, Maori ceded kawanatanga (governance) to the Crown. Neither tino rangatiratanga nor kawanatanga is absolute. Each must respect the other. Maori authority must operate inside the minimum parameters necessary for the proper functioning of the State. There will, however, be occasions such as the definition of Maori land entitlements when the authority of Maori must prevail.
- ▶ Central North Island Maori who did not sign the Treaty have the same protections as those who did, and all tribes now have a partnership with the Crown. Indigenous 'sovereignty' is not about independence from the State, but rather about the proper exercise of Crown and Maori autonomy in their respective spheres, and managing the overlaps in partnership. The historical evidence suggests that this was always possible in the Central North Island from 1840 on.
- ▶ Article 3 of the Treaty of Waitangi guaranteed Maori the same rights as other British subjects, which included the right of self-government through representative institutions.
- ▶ Article 3 and the Treaty principles of autonomy and partnership required the Crown to give effect to Maori autonomy through such bodies and mechanisms as were known and were reasonably practicable at the time. At the local level, this could have included their own county or borough councils or tribal committees; at the regional level, their own provincial assemblies or Native Districts under section 71 of the Constitution Act 1852; and, at the national level, fair representation in the settler Parliament proportional to their population (as they requested), and/or a national Maori assembly.

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

Notes

- 1. 'Notes of Native Meetings', AJHR, 1885, G-1, p27 (doc A65(k), p1133)
- **2.** Paul McHugh, *Aboriginal Societies and the Common Law: a History of Sovereignty, Status, and Self-Determination* (New York: Oxford University Press, 2004), p 4
- 3. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), p 10
 - 4. Ibid, pp 24-26
- **5.** Professor Ian Pool (as quoted in Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p7)
- **6.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p19
 - 7. Ibid, p 20 and passim
 - 8. Ibid, pp 21-22
 - **9.** Ibid, pp 26–31
 - **10.** Ibid, pp 33-41
 - **11.** Ibid, pp 41–43
 - 12. Ibid, passim
- 13. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77), p 46
 - 14. Ibid, pp 46-49
- 15. Ibid, pp 5–29; see also Annette Sykes and Jason Pou, closing submissions on behalf of Ngati Makino, 2 September 2005 (paper 3.3.87), pp 22–23; David Rangitauira and Miharo Armstrong, submissions in reply to Crown closing submissions concerning Ngati Whakaue, Te Komiti Nui and Rangatiratanga, 31 October 2005 (paper 3.3.127), pp 2–3; David Rangitauira, Miharo Armstrong, and Louis Te Kani, submissions in reply to Crown closing submissions by counsel for Wai 317, 335, 268 and 384 for and on behalf of Ngati Whakaue, 31 October 2005 (paper 3.3.128), p 3
- **16.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 1, p 21
 - 17. Ibid, pp 21-22
 - 18. Ibid, pp 3-4
 - 19. Ibid, pp 47, 49
 - **20.** Ibid, p 25
 - 21. Ibid, pp 24, 48-50
 - 22. Ibid, pt 2, p 2
 - 23. Ibid, pt 1, pp 48-51
 - 24. Ibid, pt 2, p1
 - **25.** Ibid, p 10
 - 26. Ibid, pt1, p33
 - 27. Ibid, pt 2, p 170
 - 28. Ibid, pt 1, pp 28-29

- **29.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p1
 - **30.** Ibid, pp 1-2
 - 31. Ibid, pt 2, p 125 (and footnote 393)
 - 32. Ibid, p 468
- **33.** Martin Taylor, Central North Island claimant replies: political engagement, tourism, geothermal, claimant specific, 31 October 2005 (paper 3.3.141), pp 6, 12–29, especially p 14
- **34.** Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997) p 385 (as quoted in Annette Sykes and Jason Pou, submissions in reply to Crown closing submissions, 31 October 2005 (paper 3.3.133(a)), p 35)
- **35.** Martin Taylor, Central North Island claimant replies: political engagement, tourism, geothermal, claimant specific, 31 October 2005 (paper 3.3.141), pp 12–43, especially pp 15, 32–34
- **36.** Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 6
 - 37. Ibid, p 20
 - **38.** Ibid
 - **39.** Ibid
 - **40.** Ibid
 - **41.** Ibid
 - **42.** Ibid, p 5 **43.** Ibid, p 6
 - **44.** Ibid, p 19
 - 45. Ibid, pp 19-21
- **46.** New Zealand Maori Council v Attorney General [1987] 1 NZLR 641 (CA) at p 664
- **47.** Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 238–245
- **48.** Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 534–535
- **49.** 'Notes of Native Meetings', AJHR, 1885, G-1, p 27 (doc A65(k), p L133)
- **50.** AH McLintock, Crown Colony Government in New Zealand (Wellington: RE Owen, Government Printer, 1958)
 - 51. Ibid, p 260
 - **52.** Ibid, pp 261–262
 - 53. Ibid, p 267
- **54.** Lord Russell to Hobson, 9 December 1840 (as quoted in AH McLintock, *Crown Colony Government in New Zealand* (Wellington: RE Owen, Government Printer, 1958), p 267)
- **55.** Alfred Domett (as quoted in AH McLintock, *Crown Colony Government in New Zealand* (Wellington: RE Owen, Government Printer, 1958), p 274)

HE MAUNGA RONGO

- **56.** Lord Stanley (as quoted in AH McLintock, *Crown Colony Government in New Zealand* (Wellington: RE Owen, Government Printer, 1958), p 277)
- **57.** A H McLintock, *Crown Colony Government in New Zealand* (Wellington: RE Owen, Government Printer, 1958), p 278
 - 58. Ibid, pp 283-285
 - **59.** Ibid, p 287
 - **60.** Ibid, p 288, fn 1
 - 61. Ibid, pp 252, 254, 332-333
 - 62. Ibid, p 256, fn 2
 - 63. Ibid, p 293
 - 64. Ibid, pp 300-302
 - 65. Ibid, pp 304-305
 - **66.** Ibid, p 315
 - 67. Ibid, p 324
 - 68. Ibid, p 350, fn 2
- **69.** 'Notes of Native Meetings', AJHR, 1885, G-1, p 27 (doc A65(k), p L133)
- **70.** Grace to Reverend Venn, 24 March 1858 (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 21–22)
- **71.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 30
- **72.** Sir AH Gordon to Colonial Office, 31 March 1883, BPP, vol 17, p.68
- 73. Gore Browne to Newcastle, 27 April 1860, AJHR, 1860, E-3, p 38
- **74.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 25–26
- **75.** Grey to Newcastle, 6 December 1861, AJHR, 1862 (despatch 39), E-1, sec 2, p 36
- **76.** B J Dalton, War and Politics in New Zealand 1855–1870 (Sydney: Sydney University Press, 1967), p 206
- 77. Grey to Newcastle, 6 December 1861, AJHR, 1862 (despatch 38), E-1, sec 2, pp 35-36; see also BJ Dalton, *War and Politics in New Zealand 1855-1870* (Sydney: Sydney University Press, 1967), pp 146-147, 154-155. According to Dalton, the British Government agreed to pay half the costs until 1864, and then to re-evaluate its position.
- **78.** Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), pp 276–303
- **79.** See, for example, Donald Loveridge, evidence given under cross-examination, seventh hearing, 1 June 2005 (transcript 4.1.8, pp 62–172)
- **80.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), p 639
 - 81. Ibid, pp 639-646

- **82.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 90–96, 32, 35
- **83.** Kathy Ertel, closing submissions on behalf of Ngati Rangiunuora and Ngati Te Rongomai, 2 September 2005 (paper 3.3.71), p 42
- **84.** Annette Sykes and Jason Pou, submissions in reply to Crown closing submissions, 31 October 2005 (paper 3.3.133(a)), pp 35-36
- **85.** Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim (Wellington: Waitangi Tribunal, 1987), pp 180–181, 208
- **86.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 90–96; Donald Loveridge, evidence given under cross-examination, seventh hearing, 1 June 2005 (transcript 4.1.8, pp 150–151)
 - 87. Derby to Jervois, 23 June 1885, BPP, vol 17, p 179
- **88.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, 2004 (doc A65), pp 640–641
- **89.** Donald Loveridge, evidence given under cross-examination, seventh hearing, 1 June 2005 (transcript 4.1.8, pp 150–151)
- 90. 'Meeting between the Premier and Mahuta, and other Chiefs of the Waikato Tribe, at Government House, Auckland, 18th March 1899', in Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt. Hon. RJ Seddon, Premier and Native Minister, and the Hon. James Carroll, Member of the Executive Council representing the Native Race, and the Native Chiefs and People at Each Place, Assembled in Respect of the Proposed Native Land Legislation and Native Affairs Generally, during 1898 and 1899 (Wellington: Government Printer, 1899), p 84
- 91. 'Meeting between the Premier and the Chiefs and Others of the Arawa Tribe, at Rotorua, 9th April, 1898', in Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt. Hon. RJ Seddon, Premier and Native Minister, and the Hon. James Carroll, Member of the Executive Council representing the Native Race, and the Native Chiefs and People at Each Place, Assembled in Respect of the Proposed Native Land Legislation and Native Affairs Generally, during 1898 and 1899 (Wellington: Government Printer, 1899), p 25
 - 92. Ibid, p 26
 - 93. Ibid, p 27
- 94. 'Notes of Native Meetings', AJHR, 1885, G-1, p 28 (doc A65(k), p L134)
 - 95. Ibid, p 27 (p L133)
 - 96. Ibid, p5 (pL112)
 - **97.** Ibid, p 25 (p L131)
 - 98. Ibid, p 26 (p L132)
 - 99. Ibid, p 29 (p L135)
 - 100. Ibid, p 43 (p L138)
 - 101. Ibid, p 28 (p L134)
 - 102. Ibid, pp 50-51 (pp L143-144)

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

- 103. 'Notes of Native Meetings', AJHR, 1885, G-1, p 28 (doc A65(k), p 2 (p 1109)
 - 104. Ibid, pp 5-6 (pp L112-113)
- 105. H Sewell, Attorney General, 20 October 1861 (as quoted in Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand', report commissioned by CLO, 2000 (doc A72), p183 (fn 300)). Dr Loveridge suggests that this comment was made 'rather ingenuously'.
 - 106. W Swanson, 13 July 1882, NZPD, 1882, vol 42, p 304
- 107. WL Rees, 'Memorandum on the Native Land Laws', AJHR, 1884, sess 2, G-2 (as quoted in Paul McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination* (New York: Oxford University Press, 2004), p 269)
- **108.** Martin Taylor, Central North Island claimant replies: political engagement, tourism, geothermal, claimant specific, 31 October 2005 (paper 3.3.141), pp 32–33
 - 109. Ibid, pp 14-17
- 110. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 5-6 (doc A65(k), DL112-113)
- 111. WL Rees, 'Memorandum on the Native Land Laws', AJHR, 1884, sess 2, G-2, p 5
 - 112. Ibid, p4
 - 113. Ibid
 - 114. Ibid
 - 115. Ibid, pp 4-5
- 116. Matanuku Mahuika and Ebony Duff, closing submissions in reply on behalf of the Ngati Whakaue cluster (Te Kotahitanga o Ngati Tuwharetoa), 4 November 2005 (paper 3.3.146), pp 8–9
 - 117. J Ballance, 8 June 1886, NZPD, 1886, vol 54, pp 329-330, 331
- 118. Normanby to Hobson, 14 August 1839 (as quoted in the Report of the Waitangi Tribunal on the Orakei Claim, pp 194–195)
- 119. See, for example, 'Papers relative to the Right of Aboriginal Natives to the Elective Franchise', AJHR, 1860, E-7
- 120. WL Rees, 'Memorandum on the Native Land Laws', AJHR, 1884, G-2, p.4
- 121. Martin to Native Minister, 23 December 1865, AJHR, 1866, A-1, p70
 - 122. 14 September 1860, NZPD, 1858–1860, p 515
- 123. 9 August 1860, NZPD, 1858–1860, p 249. Richmond added that British law should nonetheless apply to everyone inside the limits of the then settlements.
- **124.** 'Notes of Native Meetings', AJHR, 1885, G-1, pp 50–51 (doc A65(k), pp L143–144)
- 125. J Bryce, Memorandum to Governor, 11 January 1884, BPP, vol 17, p 132
- 126. D McLean, 22 October 1872, NZPD, 1872, vol 13, p 895

- 127. See Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, 2004 (doc A78); and Keith Pickens, evidence given under cross-examination, third hearing, 10 March 2005 (transcript 4.1.4), p 202
- 128. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 31
- 129. This is a general conclusion from the evidence of Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70); Angela Ballara, 'Tribal Landscape Overview, c1800-c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65); David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45); Mary Gillingham, 'Waitaha and the Crown, 1864–1981', report commissioned by CFRT on behalf of the claimants, February 2001 (doc A35)
- 130. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 9–21, 23–26, 32, 35, 59–77, 124–125
 - 131. D McLean, 22 October 1872, NZPD, 1872, vol 13, p 895
- **132.** Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 10–26
- 133. Grey's plan was to divide Maori regions of the North Island into 20 districts, each with a district runanga chaired by a civil commissioner. Each district would be subdivided into about six hundreds, each with a runanga, which would recommend Maori officials for appointment (see chapter 4).
- **134.** Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 12–32
- **135.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 52–60
 - 136. Ibid, p 24
- 137. These arguments are expressed in the following submissions: Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77); David Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Whakaue, 6 September 2005 (paper 3.3.82); John Kahukiwa, closing submissions on behalf of Te Kotahitanga o Ngati Whakaue, 9 September 2005 (paper 3.3.109); John Kahukiwa, presentation summary for closing submissions on behalf of Kotahitanga o Ngati Whakaue, 13 September 2005 (paper 3.3.109(a)); Annette Sykes and Jason Pou, closing submissions on behalf of Ngati Makino, 2 September 2005 (paper 3.3.87); Annette Sykes and Jason Pou, closing submissions on behalf of Nga Rauru o Nga Potiki, 7 September 2005 (paper 3.3.97); Annette Sykes and Jason Pou, summary of closing submissions on behalf of Nga Rauru o Nga Potiki, 7 September 2005 (paper 3.3.97); Annette Sykes and Jason Pou, summary of closing submissions on behalf of Nga Rauru o Nga

HE MAUNGA RONGO

Potiki (paper 3.3.97(a)); David Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Hinekura, 2 September 2005 (paper 3.3.72)

- 138. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77); David Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Whakaue, 6 September 2005 (paper 3.3.82); John Kahukiwa, closing submissions on behalf of Te Kotahitanga o Ngati Whakaue, 9 September 2005 (paper 3.3.109); John Kahukiwa, presentation summary for closing submissions on behalf of Kotahitanga o Ngati Whakaue, 13 September 2005 (paper 3.3.109(a)); Annette Sykes and Jason Pou, closing submissions on behalf of Ngati Makino, 2 September 2005 (paper 3.3.87); Annette Sykes and Jason Pou, closing submissions on behalf of Nga Rauru o Nga Potiki, 7 September 2005 (paper 3.3.97); Annette Sykes and Jason Pou, summary of closing submissions on behalf of Nga Rauru o Nga Potiki (paper 3.3.97(a)); David Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Hinekura, 2 September 2005 (paper 3.3.72)
- **139.** Karen Feint, memorandum of counsel on behalf of Ngati Tuwharetoa, 30 September 2005 (paper 3.3.106(b))
- 140. Martin Taylor, oral submission, ninth hearing, 14 September 2005 (transcript 4.3.10)
- 141. Annette Sykes and Jason Pou, summary of closing submissions on behalf of Nga Rauru o Nga Potiki (paper 3.3.97(a)), pp 38–42
 - 142. Ibid, pp 19-42
- **143.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 1, pp 27–28
 - 144. Ibid, p 21
 - 145. Ibid, p 22
 - **146.** Ibid
- 147. Paranapa Rewi Otimi, translation of Te Heuheu Tukino (26 May 1913), 12 August 2005 (doc 157), pp 3-4
- **148.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), p 57
- 149. Paranapa Rewi Otimi, translation of Te Heuheu Tukino (26 May 1913), 12 August 2005 (doc 157), p 4
- **150.** Hamuera Walker Mitchell, brief of evidence on behalf of Ngati Whakaue, 19 May 2005 (doc H18), para 28
- 151. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), p 400
- **152.** Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 30–31
- **153.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), pp 12–13
- **154.** Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 30–31

- 155. Annette Sykes and Jason Pou, summary of closing submissions on behalf of Nga Rauru o Nga Potiki (paper 3.3.97(a)), pp 19–42
- **156.** Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 28
- 157. W Martin to Native Minister, 23 December 1865, AJHR, 1866, A-1, p70
- 158. See Matanuku Mahuika and Ebony Duff, closing submissions in reply on behalf of the Ngati Whakaue cluster (Te Kotahitanga o Ngati Tuwharetoa), 4 November 2005 (paper 3.3.146), pp 17–39; cf Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 52–60; David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), pp 61–68, especially p 62 (all the chiefs of Ngati Whakaue promised in writing to abide by the Treaty of Waitangi, in reply to the Governor's address).
- **159.** This was especially evident during our hearing of the Manahi Victoria Cross claim. See Waitangi Tribunal, *The Preliminary Report on the Haane Manahi Victoria Cross Claim* (Wellington: Legislation Direct, 2005).
- 160. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 5–6, 20; Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 26–33, 121–122; Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 172–173, 221–249, 258; Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), pp 50, 108–109, 158–164, 283–284
- **161.** Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 39–64, 112–122; vol 2, pp 424–425, 444–446, 735–739
- **162.** Jason Pou, oral submission, ninth hearing, 13 September 2005 (transcript 4.3.10)
- **163.** Te Kani Williams, oral submission, ninth hearing, 14 September 2005 (transcript 4.3.10)
- **164.** Aidan Warren, oral submission, ninth hearing, 15 September 2005 (transcript 4.3.10)
- **165.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 1, pp 21–28
 - **166.** Ibid, p 22
- **167.** Peter Andrew, oral submission, tenth hearing, 7 November 2005 (transcript 4.1.11)
- **168.** David Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Whakaue, 6 September 2005 (paper 3.3.82), pp 31–35
- **169.** David Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Hinekura, 2 September 2005 (paper 3.3.72), pp 13–16; cf also Matanuku Mahuika and Ebony Duff, closing submissions in reply on behalf of the Ngati Whakaue cluster (Te Kotahitanga o Ngati Tuwharetoa), 4 November 2005 (paper 3.3.146), p 70 in relation to David

TREATY STANDARDS FOR THE POLITICAL RELATIONSHIP BETWEEN THE CROWN AND CENTRAL NORTH ISLAND MAORI

Rangitauira and Miharo Armstrong, closing submissions on behalf of Ngati Whakaue, 6 September 2005 (paper 3.3.82), pp 31–35

- 170. Matanuku Mahuika and Ebony Duff, closing submissions in reply on behalf of the Ngati Whakaue cluster (Te Kotahitanga o Ngati Tuwharetoa), 4 November 2005 (paper 3.3.146), pp 2–4, 13–32
- 171. Roger Maaka and Augie Fleras, *The Politics of Indigeneity:* Challenging the State in Canada and Aotearoa New Zealand (Dunedin: University of Otago Press, 2005), p 59
- 172. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), pp 534–535
- 173. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 264
- **174.** 'Notes of Native Meetings', AJHR, 1885, G-1, pp 50–51 (doc A65(k), pp L143–144)
- 175. Annette Sykes and Jason Pou, summary of closing submissions on behalf of Nga Rauru o Nga Potiki (paper 3.3.97(a)), pp 38–42
- 176. F M Brookfield, Waitangi and Indigenous Rights: Revolution, Law, and Legitimation (Auckland: Auckland University Press, 1999), pp75-80, 169-170
- 177. David Rangitauira, oral submission, tenth hearing, 9 November 2005 (transcript 4.1.11)
- **178.** Charles Royal, *Indigenous Worldviews: a Comparative Study: a Report on Research in Progress* (Wellington: Winston Churchill Memorial Trust, 2002), pp 25–29
- 179. Paranapa Rewi Otimi, translation of Te Heuheu Tukino (26 May 1913), 12 August 2005 (doc 157), p3
- **180.** Charles Royal, *Indigenous Worldviews: a Comparative Study: a Report on Research in Progress* (Wellington: Winston Churchill Memorial Trust, 2002), pp 27
 - 181. See the Orakei Act 1991
- **182.** Sean Dansey Ellison, brief of evidence, 28 February 2005 (doc c25(a)); Te Keepa Stewart Marsh, brief of evidence, 27 June 2005 (doc H23), pp 2–3
- **183.** Hamuera Walker Mitchell, brief of evidence, 19 May 2005 (doc H18), para 18
- **184.** Roger Maaka and Augie Fleras, *The Politics of Indigeneity: Challenging the State in Canada and Aotearoa New Zealand* (Dunedin: University of Otago Press, 2005), pp 50–53, 56–63, and *passim*
- **185.** F M Brookfield, Waitangi and Indigenous Rights: Revolution, Law, and Legitimation (Auckland: Auckland University Press, 1999), p172
- **186.** Don Stafford, evidence given under cross-examination, 11 May 2005 (transcript 4.1.7), pp 50, 52–53
- 187. Waitangi Tribunal, Report on the Crown's Foreshore and Seabed Policy (Wellington: Legislation Direct, 2004), pp 142-143
- **188.** Paul McHugh, Aboriginal Societies and the Common Law: a History of Sovereignty, Status, and Self-Determination (New York: Oxford University Press, 2004), pp 178–206, 213–214

- **189.** Ibid, p 212; see also Tom Bennion, 'Treaty-Making in the Pacific in the Nineteenth Century and the Treaty of Waitangi', research paper for administrative law LLM (Laws 501), Victoria University of Wellington, 1987
- **190.** Paul McHugh, Aboriginal Societies and the Common Law: a History of Sovereignty, Status, and Self-Determination (New York: Oxford University Press, 2004), pp 255–264
- 191. J Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity (Cambridge: Cambridge University Press, 1995), pp 140–182
- 192. Lord Watson, Liquidators of the Maritime Bank v Receiver General of New Brunswick, [1892] AC 437 (as quoted in J Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity (Cambridge: Cambridge University Press, 1995), p144)
- 193. Paul McHugh, Aboriginal Societies and the Common Law: a History of Sovereignty, Status, and Self-Determination (New York: Oxford University Press, 2004), p 428
- **194.** Vincent O'Malley, 'Runanga and Komiti: Maori Institutions of Self-Government in the Nineteenth Century', PhD Thesis, Victoria University of Wellington, 2004 (doc H1(a)), pp 7–60, 99–175
- 195. W L Rees, 'Memorandum on the Native Land Laws', 1884, AJHR, 1884, sess 2, G-2, p 4
- **196.** WL Rees (as quoted in Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, 2004 (doc A71), pt 2, p 1457)
 - **197.** Ibid
- **198.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67)
- 199. See, for example, Martin's reference to the US tribes in W Martin to Native Minister, 23 December 1865, AJHR, 1866, A-1, p 70; and Grey's suggestion that the Kingitanga could have been given the same 'powers and rights as any State of the United States now has', in Grey to Granville, 27 October 1869, AJHR, 1870 A-1B, pp 81–82
- **200.** See, for example, Bishop Selwyn's suggestion to Governor Gore Browne that central North Island Maori could form provinces along the lines of the Swiss cantons, in 'Memorandum by the Bishop of New Zealand', 8 May 1860, AJHR, 1860, E-1, p 24
- 201. J Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity (Cambridge: Cambridge University Press, 1995), pp140–182. See, for example, the member of Parliament for Newton's suggestion that the accommodation of French Canadians and their laws was a relevant model, in his speech of 3 August 1882, NZPD, 1882, vol 43, p136
- 202. Paul McHugh, Aboriginal Societies and the Common Law: a History of Sovereignty, Status, and Self-Determination (New York: Oxford University Press, 2004), pp 204–214. See, for example, Governor Bowen's statement that Maori provinces had been contemplated in the 1860s like the 'territories of the semi-independent Rajahs of India', although he believed the opportunity had since passed, in Bowen to Buckingham, 30 June 1868, AJHR 1868, A-1, p.76.

HE MAUNGA RONGO

- **203.** James Belich, Making Peoples: a History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century (Auckland: Penguin Books, 1996), pp 437–446
 - 204. Bowen to Buckingham, 30 June 1868, AJHR, 1868, A-1
 - 205. H Dodson, 13 July 1882, NZPD, 1882, vol 42, p 305
 - 206. W Swanson, 3 August 1882, NZPD, 1882, vol 43, p 136
 - 207. R Stout, 11 May 1887, NZPD, 1887, vol 57, pp 207-208
- **208.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67)
- **209.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 1, pp 21–22; pt 2, pp 1–2, 34–35
 - 210. E Conolly, 3 August 1882, NZPD, 1882, vol 43, p 132
- 211. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 14–35

CHAPTER 4

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

In the previous chapter, we discussed the Treaty standards applicable to the political relationship between the Crown and the Central North Island tribes. Fundamentally, the claimants argue that the root of all Treaty breaches in their rohe was the Crown's failure to give effect to its guarantee of their autonomy and self-government. The Crown argues that it was neither desirable nor practicable for it to have done so.

We found that Maori had an article 3 Treaty right to self-government. This included a right to representative institutions at a community, regional, and national level. We also found that there is an article 2 right of autonomy. We agreed with the findings of the Tribunal in its *Taranaki Report*, which we reiterate briefly here:

- ▶ The principle of autonomy is central to the Treaty, and is the cardinal expression of the principle of partnership.
- ▶ Tino rangatiratanga and mana motuhake are equivalent terms for aboriginal autonomy and aboriginal self-government.
- ▶ The Treaty principle of autonomy or self-government includes the right of indigenous peoples to constitutional status as 'first peoples' (tangata whenua); the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the operation of the State; and the right to enjoy cooperation and dialogue with the Government.
- ▶ Sovereignty in New Zealand, in terms of absolute power, cannot be vested in only one Treaty partner, as the Crown's sovereignty is constrained by the need to respect Maori authority (tino rangatiratanga).
- ▶ It is more appropriate to talk about responsibility than power in New Zealand, as the Treaty envisaged two spheres of authority that inevitably overlapped. These overlaps require negotiation and compromise on both sides.
- ▶ Experiences overseas show that the recognition of aboriginal autonomy is not a barrier to national unity but an aid. Conciliation requires empowerment, not suppression. In this situation, arguing over words and prescriptions is not helpful. The need to respect other peoples is clearer today than formerly, and the Crown must appreciate that the conciliation of indigenous peoples requires a process of re-empowerment.¹

HE MAUNGA RONGO

For the nineteenth century, the Turanga Tribunal summarised the Maori entitlement to autonomy as follows:

By Maori autonomy, we mean no more than the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.²

The claimants see their history as a series of opportunities for the Crown to have given effect to its Treaty guarantee of their autonomy and self-government – opportunities that were either lost or actively rejected. Throughout the nineteenth century and into the twentieth century, they sought to engage with the Crown on a political level, to secure their management of their own affairs, and to obtain legal powers of self-government. The Crown denied their repeated requests and demands, acting instead to promote settler interests at their expense. The Crown replied that the degree of 'self-management' promised by the Treaty is a matter of legitimate debate, that its officials genuinely thought assimilation was in the best interests of Maori, and that lost opportunities were either impracticable or too uncertain for the Tribunal to judge them.

We have addressed some of those arguments in chapter 3, where we set out the Treaty standards that the Crown was required to meet, and how those standards could reasonably have been met in the circumstances of the nineteenth century. In this chapter, we explore the detail of the claimants' argument that the Crown missed or actively rejected feasible opportunities to give effect to their Treaty rights of autonomy and self-government.

The key question for the Tribunal's consideration is:

DID THE CROWN MISS (OR ACTIVELY REJECT) OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT?

In this chapter, we answer the question for the period from 1840 to 1865, which was an era of Maori autonomy and virtual independence from the Crown in the Central North

Island. The Kaingaroa tribes, such as Ngati Manawa and Ngati Haka Patuheuheu, were not given an opportunity to sign the Treaty. Te Arawa and Tuwharetoa had the opportunity in 1840 but chose not to do so, abiding by the wishes of Mananui Te Heuheu for the Te Arawa waka. The claimants argued that the first 22 years of the colony, a period when Maori were autonomous in the Central North Island, provided opportunities for the Crown to recognise, respect, and work with them as self-governing tribal bodies. They identified several 'missed opportunities' when doing so was both advocated and possible. Ultimately, the Crown chose to repress the tribes' autonomy by making war on them.

The Crown, in turn, accepted that Maori were, in a de facto sense, virtually independent during this period. It argued that Te Arawa sought British law and a closer relationship with the Crown, and that it did in fact attempt to provide for Maori self-government until circumstances forced it into war.

In this chapter, we will explore these claims and make findings on this critical early period of Maori autonomy.

MISSED OPPORTUNITIES

KEY QUESTION: DID THE CROWN MISS (OR ACTIVELY REJECT)
OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY
GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT?

As an introduction to the discussion in this chapter, we provide a brief account here of each of the alleged lost (or rejected) opportunities for the Crown to have given effect to the Treaty in this period.

What opportunities were there for the Crown to have given effect to its Treaty guarantees of autonomy and self-government?

► *The Constitution Act 1846*: This Act was passed for New Zealand by the British Parliament. It empowered the

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

- Governor to declare Native Districts in which Maori law and authority would apply and have the force of British law. This Act was never brought into force (for either settlers or Maori).
- ► The Constitution Act 1852: Section 71 of this Act empowered the Governor to declare self-governing Native Districts in which Maori law and authority would apply and have the force of British law. This provision was never used but it was requested repeatedly by Central North Island Maori throughout the nineteenth century. Under this Act, settlers received provincial and central self-government and a Parliament from the mid-1850s. Maori were not represented in that Parliament until 1867.
- ▶ The Kingitanga: After a series of hui in the North Island, the Waikato Tainui leader Te Wherowhero was established as King Potatau I in 1858. Ngati Tuwharetoa and Ngati Raukawa were founding tribes of the Kingitanga and had a complex relationship with the King and other Kingitanga iwi for the remainder of the century. The question of whether the Kingitanga could be recognised, accorded legal powers, and included in the political arrangements of the State was under active consideration throughout the nineteenth century.
- ▶ The New Institutions and the runanga movement of the 1850s and 1860s: Partly in association with the Kingitanga, a movement to establish formal committee-style runanga arose among Maori (including Central North Island Maori) in the 1850s and 1860s. The settler Parliament passed the Native Districts Regulations Act and Native Districts Circuit Courts Act in 1858, to give official powers to local runanga. Parliament's refusal of funding, however, and a struggle between Governor and Assembly left the legislation in abeyance. In the 1860s, Governor Grey succeeded in overcoming these problems and established the New Institutions official runanga with legal powers under the 1858 Acts, but the New Institutions were abandoned in 1865 when they proved unsuccessful in

- preventing war. Even so, the inclusion of the 1858 legislation in the Thermal Springs Districts Act of 1881 meant that they remained a live option for parts of the Central North Island.
- ▶ The Kohimarama Conference of 1860: Governor Gore Browne convened a hui of Maori leaders from around the country in 1860, which met at Kohimarama (Auckland) to debate and endorse the Treaty, debate the Governor's proposed policies, and offer him their collective advice. Gore Browne agreed to Maori requests that he call an annual Maori 'parliament' of this kind and the Assembly voted funds for it, but his successor (Grey) refused to set up such a national Maori body.
- ► The native council proposal of the 1860s: Gore Browne intended to create a national native council to provide an advisory body that would represent Maori views and interests to (and in) the central government. The British Parliament introduced a Bill to carry this out. Ultimately, the attempt foundered on the opposition of the settler government.
- ► The Native Lands Act 1862: The earliest incarnation of the native land legislation provided for a Maori body to decide title, with a Pakeha official as president, on a flexible commission-style basis. The Native Lands Act 1865 turned this into a British-style court with a Pakeha judge.
- ▶ The Native Provinces Bill 1865: This Bill provided for the establishment of a quasi-federal arrangement of Maori provinces in the North Island, with the Government represented in those provinces by a resident. The Bill's introduction was postponed for six months but the Government fell before that time had elapsed.

Having provided this brief background to the alleged lost opportunities, we turn now to address the era of practical autonomy in the Central North Island.

HE MAUNGA RONGO

The claimants' case

As we discussed in chapter 3, the claimants presented various generic and particular submissions on the issues. We have relied on the generic submissions on behalf of all claimants, supplemented by the particular submissions where these add further or different views germane to the issues. For the Taupo district, Karen Feint submitted that Mananui Te Heuheu rejected the Treaty and the sovereignty of the Queen in 1840, and led both Ngati Tuwharetoa and Te Arawa to do likewise. The source of the tribes' power and authority is their mana, which is the word they prefer to tino rangatiratanga, but expressing the same concept. From 1840 to 1860, the Treaty and Kawanatanga did not intrude on Taupo Maori, although they began to participate in the colonial economy. Iwikau Te Heuheu and Tuwharetoa were leaders in the establishment of the Kingitanga, which had as its goals the preservation of Maori mana and authority over the land, and the land itself. Taupo Maori sought an accommodation with settlement and to lease their lands to pastoralists, and did not object to the Queen exercising authority over her own people.3

In the claimants' view, Government accommodation with the Kingitanga and meeting Maori aspirations to maintain their authority over their land and lease it, was both possible (via the Constitution Act 1852) and suggested by politicians of the time. The Crown deliberately chose a contrary and unnecessary course of action. Grey's New Institutions appeared to offer hope of real change in this respect, but instead they were designed to undermine the Kingitanga. A small number of northern Tuwharetoa leaders supported the Crown and the New Institutions. The Crown's policy failures led to war, and the imposition of its authority (kawanatanga) was a reality for Taupo tribes by the end of the war.⁴

In his generic submission, Martin Taylor argued that Central North Island Maori accepted some settlers (especially traders) before 1860, and moved towards non-violent dispute resolution mechanisms and 'colonial justice' to take advantage of the colonial economy and its opportunities. They were self-governing as before, via tribal structures and such modifications of those structures as suited them. They made it clear to the Government that they wanted to keep their lands and determine matters of title themselves. They were willing to lease land and to have some kind of relationship with the Pakeha and their institutions (including their Government). By the 1850s, this included a small Government presence in the form of a resident magistrate at Maketu. Maori, in other words, were progressive, and ready and able to engage with the colonial Government and economy.⁵

There is a critical difference, the claimants argued, between the types of wars fought by Maori over land (for utu) before the mid-1850s, and post-1855 title disputes of the kind involved in settling titles for desired economic outcomes. The Maketu Native Land Court sittings did not lead to traditional warfare – this shows, in the claimants' view, that Maori land disputes had moved to a new, less violent level. Maori self-government and title determination would have benefited from this tendency and were the sort of thing that could have been trusted and engaged with by the Crown. Evidence presented by Angela Ballara and David Armstrong shows that by the mid-1850s Te Arawa hapu abandoned war and adopted non-violent dispute resolution for dealing both with Europeans and with one another.

In the claimants' submission, Dr Ballara and Mr Armstrong both argued that Maori tikanga and tribal authority were compatible with the colonial economy and its need for settled titles. They made this point in response to Crown cross-examination that suggested tenure reform, with its Native Land Court titles, was necessary. They also showed that the runanga of the 1850s and 1870s were evidence that Maori social and political organisation was not shattered by culture contact, but that tribal structures, authority, and vision could adapt in a quintessentially Maori way to the new situation.⁷

According to the claimants, the retention of tribal control of land, communal title to land, and land itself, were the key features of all Maori political movements in the Central North Island. From the late 1850s, Te Arawa tribes

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

established runanga to regulate their own affairs and their relations with one another. These were re-established as komiti in the 1870s. One of their goals was kotahitanga, and the komiti were capable of intertribal bases and actions. The Crown itself, however, damaged moves to Te Arawa cooperation and peaceful relations when it commenced war against some Maori groups and polarised tribes in the Central North Island.⁸

A model for how the Crown could or should have acted was the provision in the Constitution Act to declare Native Districts. Aware of their large size and virtual independence, the Crown ought to have done this for the regions of the Central North Island.9 It also ought to have worked with and protected the Kingitanga. Dr Ballara's evidence shows that the Kingitanga was rooted in the Maori desire to retain land but coexist with British enclaves and British sovereignty. She refutes suggestions that the Kingitanga wanted to evict Pakeha from New Zealand.10 At the same time, the runanga and komiti movement developed to restrain Maori sellers and control the rate and extent of settlement. The Crown chose to see these movements as threats to the Oueen's sovereignty. As a result, the claimants argued, an opportunity to engage with Maori and facilitate their rangatiratanga was lost. The Crown came closest to doing so in Grey's New Institutions.11

Another model for how the Crown could or should have acted was the Kohimarama Conference of 1860. This was the Crown's first significant political engagement with Central North Island iwi. It was flawed because of the exclusion of the Kingitanga, but the majority of Te Arawa were represented. It began the Treaty-based relationship between Te Arawa and the Crown. According to the historical evidence, Te Arawa reached the view that their mana and rangatiratanga were guaranteed, and that they would be joint and equal partners in the machinery of the State. This was the basis for their allegiance to, and military support for, the Crown.¹²

In the claimants' view, the Crown betrayed Te Arawa (and others) when it failed to keep the Treaty guarantees

after the wars. In particular, the Crown's establishment of the Native Land Court in 1865 did not reflect the views of Maori as expressed at Kohimarama. The Turanga Tribunal has rejected the notion that Maori were consulted about, or agreed to, individualisation of title, or the Native Land Court system, at Kohimarama. The Crown also failed to keep its agreement to have annual conferences and thereby maintain regular high-level political engagement. This was a critical lost opportunity for the Crown to have created a forum for consultation, debate, and consensus, through which a Treaty-compliant relationship could have been built.¹³

This opportunity was lost, argued the claimants, when Governor Grey rejected Gore Browne's proposals for a native council, Kohimarama conferences (a virtual Maori parliament), and Native Districts. All these might have been Treaty compliant. Instead, Grey introduced the New Institutions, but as an attempt to undermine the Kingitanga rather than share real power. The manner and timing of their introduction sowed the seeds of their failure. Almost the whole of Te Arawa agreed to unite under one Rotorua runanga (which is significant evidence against Keith Pickens' thesis, noted in chapter 3 above, that there was too much conflict for intertribal komiti in the Rotorua district). War intervened, however, and then the Native Lands Act 1865 supplanted the runanga. The New Institutions were potentially useful, but in the claimants' view they were much less than Gore Browne had envisaged and promised at Kohimarama. They failed to engage with existing Maori movements and institutions, and did not realise Maori aspirations.14

The Crown's case

We have already noted (in chapter 3) the Crown's general position on presentism, missed opportunities, and the criteria by which the reasonableness of the Crown's actions should be judged. Here, we summarise the Crown's arguments about the period of effective Maori autonomy, from 1840 to 1862.

HE MAUNGA RONGO

For the 1850s, the Crown argued that it was willing to consider various Maori or hybrid institutions for administration and law in 'native districts'. The Crown was willing, in Donald Loveridge's evidence, to provide for forms of Maori local self-government (which it considered consistent with Crown sovereignty at the time). There were a range of views. Some settlers and officials feared that the komiti and runanga would prevent Maori from participating in the new economy and society. Others wanted to foster chiefly authority and see a stable transition to greater civilisation. This debate took place during a period of uncertainty over what powers the settlers themselves would have, responsible government, the role of the British Government, and tussles for power between Governor and ministers. This rivalry shaped both the 1858 legislation and the support for Gore Browne's Native Council Bill in 1859–60. There was a general consensus, argued the Crown, that law and government had to be provided for Maori districts, but considerable disagreement on how to do so.¹⁵

The 1858 legislation, which consisted of the Native Districts Regulations Act and Native Districts Circuit Courts Act, provided for self-government in districts where land was still in Maori customary title. Runanga and courts would act in conjunction with the Governor and officials. Francis Dart Fenton, who was a resident magistrate at the time, experimented with this in the Waikato. Parliament again endorsed Maori local self-government in 1860, and Grey used the legislation to create his New Institutions in 1861. The Crown submitted that the various proposals and plans made under Gore Browne laid the groundwork for political and Pakeha public acceptance of Grey's New Institutions, while always remembering that the Crown viewed working with komiti and runanga as a way to ultimately extend its own authority and obtain peaceful settlement.16

On the other hand, the Crown argued that it was rightly cautious about recognising Maori komiti and runanga, because it feared to privilege one group over another or aggravate disputes. This was based on the evidence of Dr Pickens. There is too little evidence, in the Crown's view,

about how the somewhat later Komiti Nui, for example, worked in practice, and hints that the Komiti could not in fact make its decisions binding. Despite these concerns, the Crown admitted that it did in fact try to provide mechanisms for the committees in the 1858 legislation, the New Institutions, and other legislation. The Crown also accepted that, on particular occasions, iwi or larger hapu were able to reach agreements about cooperation on particular points. But this was a fluid political arrangement not a stable institutional foundation for the Crown to rely on, involving an overarching institution. Also, Maori society was changing, there were internal debates about polities and authority, and some desire to have Pakeha involved in assisting or carrying out administration and law. In the Crown's view, Maori cannot on the one hand maintain that their institutions were robust, and on the other hand maintain that Crown empowerment was needed. Claimant historians did not take sufficient account of the weaknesses of komiti and the conflict in Maori society.¹⁷

The Crown noted that although it did adopt and empower Maori committees in the 1850s and 1860s, this was not a long-term arrangement. If it had been, Alan Ward's evidence was that the likely economic outcomes were debatable. In other words, the Tribunal cannot be assured that these arrangements would have had good economic outcomes for Maori and Pakeha.¹⁸

The failure to declare Native Districts

On the more particular question of the Crown's failure to declare Native Districts under the Constitution Acts, the Crown argued that it did in fact recognise native districts de facto, even though the official power to declare Native Districts was not used. A number of different steps to support or protect Maori autonomy were possible, and the failure to take any one step is not by itself a Treaty breach. A breach may arise if the Crown fails to implement any policy at all that is consistent with Treaty principles. The formal proclamation of Native Districts was supported by the New Zealand Company, but was inconsistent with humanitarian goals of amalgamation. Nor were

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

such districts intended to be permanent, or to provide Maori autonomy or parallel governments, as Dr Ballara assumes. The Constitution Acts provided for the districts to maintain some Maori customs 'for the present', but they were not intended to create lasting, parallel mechanisms. Crown officials would have retained important powers under the 1846 Constitution Act in any case. The 1846 Act was suspended 'not for the purposes of denying Maori autonomy, but out of concerns over whether the constitution would allow stable government'. The Crown did not, however, discuss the potential of the 1852 Constitution Act or why section 71 of that Act was not used. It suggested that, in counterfactual terms, European settlement would still have had to happen in Native Districts (thus bringing them to an end), or else permanent settlement would have been driven elsewhere, resulting in economic harm to New Zealand.20

The Kohimarama Conference

The Crown submitted that many Te Arawa hapu had already rejected the Kingitanga and cooperated with Crown authority, so the conference did not mark the beginning of a Treaty relationship as the claimants argued. The Crown noted the findings of the *Turanga* report, but also noted that there was discussion of land-tenure reform at the conference. Many Te Arawa chiefs supported British sovereignty. The conference had limited outcomes. Gore Browne tried to establish a native council and a title tribunal, but failed. Grey felt that having a single 'native parliament' might prevent the Crown from being able to carry out its policies and precipitate conflict between the Crown and Maori, so he instead backed a more peaceful and less confrontational system – district runanga, which allowed for regional variation in the Crown–Maori relationship.²¹

The Kingitanga and the New Institutions

The Crown noted that there was a range of Pakeha views on the Kingitanga. Both Gore Browne and Grey tried to provide Maori with systems of law and government that were compatible with Crown authority and Maori aspirations. Such steps were taken in good faith, and were designed to avoid war. But the Kingitanga was not united and there was increasingly good reason to fear it by the early 1860s. The main evidence on this issue has been filed in the Hauraki inquiry and is not available in the Central North Island inquiry; therefore the Tribunal needs to be cautious.²²

On the particular solution of the New Institutions, the Crown suggested that these were an attempt to establish official runanga for local lawmaking and administration. It is not the Crown's fault, it submitted, if the Kingitanga groups in Taupo and elsewhere chose not to engage with the New Institutions. Grey and the settler Government created these institutions in good faith, and wanted to find an institutional framework compatible with Crown sovereignty that would allow peaceful coexistence of both Pakeha and Maori. Maori committees and Crown judicial officers would work together, but it was expensive (costing £50,000 a year). In 1865, for reasons of economy, the New Institutions were abolished. For the rest of the nineteenth century, the Crown's structures of government in Maori districts relied on resident magistrates and native assessors, karere, and funded medical services.23

The Tribunal's analysis

Practical autonomy in the Rotorua district

Practical autonomy in the Rotorua inquiry district was described in the evidence of Mr Armstrong. He noted:

Even though Te Arawa, with one possible exception, did not sign the Treaty in 1840, during the following decades they were nevertheless required to find some accommodation with the Crown and settlers, and like those who had signed, the major issue for them was to be the fraught relationship between the authority of the Crown and the exercise of their rangatiratanga.²⁴

As we have discussed in chapter 3, the exercise of Crown authority was challenged in 1842 during a coastal dispute between the peoples of Tauranga and Maketu. Although

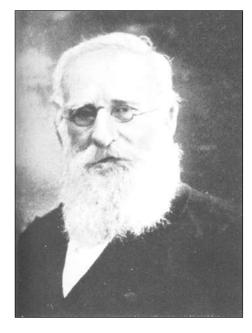
HE MAUNGA RONGO

Government contemplated using force, it lacked the troops (and, it feared, the right), so intervened by mediation. Protector George Clarke told the Maketu chiefs that the Governor would not interfere by force in their internal 'warlike quarrels' but would intervene in disputes with Europeans. In response, some Maketu rangatira invited a Crown official to come and live among them, partly to augment their trade, partly to mediate disputes. Edward Shortland thought this a useful opportunity: 'Great discretion is necessary to augment this influence and make permanent and secure what now exists only in name.²⁵

Protector Shortland was stationed at Maketu but, according to Mr Armstrong, was seldom there. He was replaced by Thomas Henry Smith in 1845. Both officials acted primarily as mediators. This role was valued by Rotorua Maori, who

sought peaceful relations with resident Pakeha and commercial development in the form of agriculture and trade. During the late 1840s, though, the missionaries reported constant discussion about the Government's wars in other districts, and a self-perception on the part of most Rotorua Maori that they were not British subjects nor in any way obliged to obey the Government. The Treaty remained, in their view, an affair between Nga Puhi and the Crown. Mr Armstrong noted Thomas Chapman's description of widely held' views in 1852:

That they have fully acknowledged our Queen as their sovereign is at variance with facts. As an instance of it ... it is only lately that I could read the prayers for the Governor without



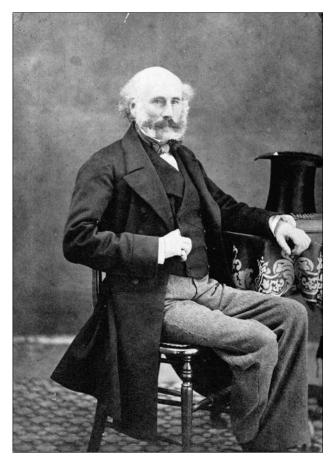
Thomas Henry Smith represented the Government at Maketu in the 1840s and 1850s, at first as protector of aborigines, and later as resident magistrate. He was appointed Civil Commissioner in 1861, responsible for leading Grey's 'New Institutions' in our Rotorua inquiry district.

severe remark and when read, the almost entire absence of 'amen'. So again in speaking of him – seldom indeed do you hear the definite article appended to his title – they say 'te kawana' as if it were his name and not ko te kawana, as if he were *their* chief. I have been asked who made him so! Is it that Pukapuka which the Nga Puhi signed? ... were we their slaves that they should give away us and our land to Queen Victoria? Do not call her our (to tatou) Queen – call her your (to matou) Queen.

After the abolition of the Protectorate Department, Governor Grey's policy of loans to Maori to assist trade (especially Maori shipping) became an important part of the developing relationship between Rotorua Maori and the Government. During Grey's visit to the area in 1849, the Ohinemutu community expressed a desire for British law as a means of settling

long-standing conflicts. Grey promised the Rotorua tribes a hospital, mills, and a resident magistrate. These magistrates had replaced protectors, and Thomas Henry Smith was appointed to Maketu in 1851. As before, Smith was expected to mediate disputes between Maori and between Maori and Pakeha: Mr Armstrong argues that this was his primary role. The Rotorua tribes selected four assessors themselves, whose appointment Smith then endorsed. Armstrong suggests that, as Te Arawa 'effectively controlled their own district and Pakeha settlers had made very few inroads', section 71 of the Constitution Act 1852 could have been used instead of the appointment of a magistrate and assessors.²⁸

KAWANATANGA AND MAORI AUTONOMY, 1840-1865



Sir Thomas Gore Browne, 1807–1887, soldier and colonial administrator, Governor of New Zealand from 1855 to 1861. Photograph circa 1860–1867.

During the 1850s, the Rotorua inland and coastal tribes continued to develop their agriculture and trade, to accept gifts and loans from the Governor, and to use the resident magistrate to facilitate and mediate where necessary. This had given the Government some real influence, but the region remained autonomous. Expressions of friendship and support for the Queen or Governor became common in the mid-1850s, and there was a desire to work with the Government, but the great majority remained largely

indifferent or hostile to any claimed authority on the part of the Crown. It was a different story in Auckland, however, where the Governor and Queen were admitted to have authority over a murder committed there.²⁹

The relationship with the governors continued to grow. Rotorua Maori became increasingly involved in trade with the British settlements, and there is evidence of changing attitudes by the time of Gore Browne's arrival in 1855. Smith had reported a growing friendliness towards the Government alongside a 'spirit of proud independence and impatience of control or restraint' in 1854.³⁰ The following year, after the establishment of a settler Parliament, some Rotorua chiefs who were in Auckland sent Gore Browne a memorial. They proposed that he:

elevate the words and wishes of the natives, that they may be as law: that there may be one system; that we may together exercise our authority and together assemble to enact laws in accordance with the authority which may be delegated to us by our Oueen.³¹

This was a request for the joint exercise of legislative and political authority by Maori and the Queen's representative, an early and significant request for the exercise of authority in partnership under the Treaty, and no doubt in response to the intensifying relationship with the Crown, its mediation role in their district, and the granting of a parliament to the settlers. It is not clear how representative this initiative was of Rotorua opinion, though we note the involvement of the prominent rangatira Wi Maihi.

Nonetheless, when the Supreme Court tried a murder case involving Te Arawa in 1856, to some satisfaction among the tribes, Wi Maihi objected to its unilateral proceedings:

There is no recognition of the authority of the native people, no uniting of the two authorities, even up to this murder. Suggestions have been made with a view to giving natives a share in the administration of affairs, but to what purpose? The reply is, the island has lost its independence, it is enslaved and the chiefs with it.³²

HE MAUNGA RONGO

He urged other Rotorua rangatira to either unite with other tribes in establishing their own, unified system throughout the island (the Kingitanga), or to uphold a 'separate Te Arawa dignity and independence'.³³ In 1856 and 1857, there were moves in the district to establish a runanga and a Rotorua 'Prime Minister'. The tribes also negotiated a substantive peace agreement between Tuhourangi, Ngati Pikiao, and Ngati Rangitihi. This agreement was facilitated by the missionaries and by Smith, the Crown's resident magistrate.³⁴

During the late 1850s, a majority of Te Arawa rejected alliance with the Kingitanga. Hamuera Mitchell told us that even though Te Arawa had made peace treaties with Ngai Te Rangi and Ngati Haua in the 1840s, old tensions and fresh insults required the rejection of Ngati Haua's choice of King, Potatau Te Wherowhero.35 In defining their position as a result, there appear to have been attempts to work in partnership with the Crown, as well as a greater acceptance of the Crown and that it had some authority. The inland tribes held a large hui at Ohinemutu in 1859, attended by Tuhourangi, Ngati Whakaue, and Ngati Uenukukopako. They resolved to 'adopt the laws of England, to be administered by their own runanga, working with the magistrate and assessors. Tohi Te Ururangi appears to have been the leading force behind this agreement. Mr Armstrong argues that this, and a letter from the Tuhourangi tribal committee to the Governor in 1860, were part of continuing attempts on the part of the Rotorua tribes at that time to seek equal partnership and a meaningful role for both the runanga and the Crown.³⁶ The Tuhourangi committee wrote:

our ears have now heard two ways; on the one hand we hear that you [the Governor] are the stay of all the Maori people, while others on the contrary say that they should manage their own affairs themselves. Our plan is to refer our undertakings to you and what our hearts desire is that you should arrange them. That which is in accordance with our views we will accept, and that which does not accord with our views we will beg of you to let rest ... Although you came as strangers

to this island yet we live in fellowship under the same laws and the kind protection of the same parent.³⁷

This was the situation when war broke out at Taranaki in 1860 and Governor Gore Browne called the Kohimarama Conference.

Practical autonomy in the Taupo and Kaingaroa districts:

Tribal groups in the Taupo and Kaingaroa districts did not have the kind of contact and growing relationship with the Crown that marked the peoples of the Rotorua district. In Kaingaroa, Ngati Manawa, Ngati Haka Patuheuheu, Tuhoe, and others had had no opportunity to sign the Treaty, and little contact with the Crown, except when they travelled to other districts.³⁸ Kathryn Rose notes that Tuhoe, Ngati Manawa (and, possibly, Ngati Haka Patuheuheu) received their first visit from a Crown representative in 1862.³⁹

In the Taupo district, Tuwharetoa and Ngati Raukawa became mainstays of the Kingitanga. Paranapa Otimi summarised for us the oral history of the great Pukawa hui of 1856, where Iwikau Te Heuheu summoned tribes from throughout the North Island. Their object was to consult and agree on the establishment of a King, the holding of the land and the mana, and the symbolic binding of all the tribal mountains to the land, sky, and one another in kotahitanga (unity). The tribes of the Kingitanga 'acted collectively to protect their lands, but they maintained their mana and autonomy over the land.' The hui is believed to have been the largest gathering of tribes in the district ever, and 'more significant than the signing of the Treaty of Waitangi.' Mr Otimi noted that:

The Pukawa hui was called by Maori for Maori, and the decisions entered into on that special occasion are binding on us today. We are bound to the Kingitanga and we will never ever break that.⁴²

In the view of Tureiti Te Heuheu in 1897, the Pukawa hui and the Kingitanga were intimately connected to the Treaty and its promises, which he saw as confirmed by sec-

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

tion 71 of the Constitution Act, and by the Kohimarama Conference, and again in the Kotahitanga of the 1890s:

What it [kotahitanga] means is [the] combining of all the Maori people in one common desire or end under the mana which was assured to them by the Treaty of Waitangi, and again confirmed by s.71 of the Act of 1852, and further confirmed by the words made use of at the meeting at Kohimarama in 1860. This word 'whakaputahitanga' is not a new creation of the present date. It commenced in the year 1840, when the 512 old men combined there and the other rangatira outside of these who I believe agreed to the proposal then made. Then we come down to the year 1856, when my grandfather called upon all the chiefs in the island, including Potatau, to come to Taupo, where a hui was held at Pukawa. It was then represented to the assembled chiefs that they should all combine to one common end under the provisions of the Treaty of Waitangi. Potatau was then set up as King. He was to be the post to which were to be tied the people and all the lands. He was to protect them under the provisions of the Treaty of Waitangi, and prevent sections of the people in different parts of the country from perhaps traversing or acting in contravention of the Treaty of Waitangi or a part of it, and the names of the principal mountains of importance in the particular districts whose representative chiefs were present there were mentioned as proof conclusive of the fact that they had agreed to these things that I am now mentioning. Also my grandfather took part in the setting up of Potatau to be King for that purpose and that end. These two whakaputahitanga which took place at that time are the same kotahitanga that I am now speaking of today.⁴³

In 1857, Governor Gore Browne visited the Taupo district. Iwikau Te Heuheu explained to him the purpose and aspirations of the Kingitanga:

the English were, by degrees, obtaining the best of their lands, and that they would soon be 'eaten up and cease to be'; that for these reasons they were determined to have a King of their own and assemblies of their own; that they would not interfere with the English in the settlements, but that the laws

they intended to make should be binding on all who chose to reside among the natives.⁴⁴

At a further meeting in Auckland, Te Heuheu and other Kingitanga leaders told the Governor that they 'insisted on the maintenance of a distinct nationality' and had a 'strong desire for an Assembly [parliament] of their own, while at the same time they profess the greatest friendliness to us as a race'. A King would work with the Governor to govern the people. Historian Bruce Stirling comments that these aspirations were nothing 'more nor less than the rangatiratanga' guaranteed in the Treaty, and a search for partnership with the Crown. For Potatau Te Wherowhero accepted the kingship in 1858. Kingitanga-based runanga emerged in the district in the late 1850s, holding formal meetings, enacting laws, and administering justice. This was the situation in Taupo when war broke out in Taranaki in 1860.

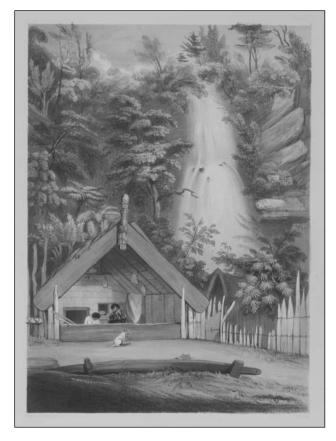
We turn now to consider the specific opportunities and requests for the Crown to give effect to its Treaty guarantees.

Treaty-compliant options for Maori autonomy

KEY QUESTION: DID THE CROWN MISS (OR ACTIVELY REJECT)
OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY
GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT
IN THIS ERA OF PRACTICAL AUTONOMY?

This period of practical, or perhaps we should say uncontested, Maori autonomy in the Central North Island was a critical one in which the Crown could have adopted a Treaty-compliant policy. Although hostile to land sales and the possibilities of dispossession, the tribes had some friendliness towards the Governor (especially in Rotorua) and a growing determination to participate in the Pakeha economy while governing themselves through adaptive institutions. These included the Kingitanga, runanga, and the possibility of a mediation role for the Queen's magistrates and their Maori assessors. In particular, Maori had to deal with a small minority of Pakeha living in their rohe.

HE MAUNGA RONGO



The house of Iwikau Te Heuheu, Tapeka, by the Waihi Falls. Lithograph by George Angas, 1844. Iwikau Te Heuheu Tukino III, ariki of Ngati Tuwharetoa, called the tribes of New Zealand to a hui at Pukawa in 1856, leading to the creation of the Kingitanga.

Someone had to make or enforce laws that applied to both peoples, and to facilitate matters when laws or peoples came into conflict. The Constitution Act 1852 provided a settler Parliament – in which Maori were not represented until 1867 – and the power to declare Native Districts in which Maori would govern themselves under their own laws. Ultimately, the fusion of these two systems in one biracial system of representative government was the goal of amalgamationists.

The Crown has made a significant concession to the claimants in respect of these issues. Counsel accepted that it was both reasonable and possible for the Crown to have adopted and empowered Maori self-governing bodies in the 1850s and 1860s. We note the political complexity of the motives behind the various experiments with empowering Maori self-government from 1858 to 1862, but the end result is that a number of ways of allowing for Maori political power were tried or considered. We described these options briefly at the end of chapter 3. We now explore them in some detail, as they are critical to our evaluation of the Crown's compliance with the Treaty. These options for Maori self-government in partnership with the Crown were not mutually exclusive - combinations of some or all were possible. As submitted by the Crown, there was not necessarily one correct or inevitable way of reaching the desired Treaty outcomes, but the Crown should be found in breach of the Treaty if it failed to carry out any of them.

The first option: Native Districts under the Constitution Act 1852: The first option was the Governor's power to declare Native Districts under the Constitution Act 1852. Section 71 of that Act provided:

And whereas it may be expedient that the Laws, Customs, and Usages of the aboriginal or native inhabitants of *New Zealand*, so far as they are not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves, in all their Relations to and Dealings with each other, and that particular Districts should be set apart within which such Laws, Customs, or Usages should be so observed:

It shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from Time to Time to make Provision for the Purposes aforesaid, any repugnancy of any such native Laws, Customs, or Usages to the Law of *England*, or any Law, Statute, or Usage in force in *New Zealand*, or in any Part thereof, in anywise notwithstanding.⁴⁷

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

This power was reserved to the Governor, acting under Letters Patent issued by the British Government in London. The New Zealand Parliament and ministers had no role to play, and would have no authority in a Native District. The power to act under section 71 was officially delegated to Governor Gore Browne in 1858, after which he could have proclaimed Native Districts. Mr Stirling suggests that the exercise of this power was contemplated by Gore Browne and could have met the objectives of Te Heuheu and the Kingitanga in the late 1850s. 48 Gore Browne took a very restrictive view of the Act, however, deciding that it only allowed the operation of Maori customary law and selfgovernment in pre-existing forms, and not the enactment of new laws by Maori in Native Districts. For that reason, he decided not to implement section 71, but to find some other way of providing for Maori law in Maori districts.⁴⁹ But it remained on his mind, and was urged by various advisers such as Bishop Selwyn and Sir William Martin. In 1860, he informed the Secretary of State that he had been 'long considering' limiting the jurisdiction of provincial governments to districts where Maori title had been extinguished (entirely or 'in great part'), but was not sure how government could then be funded in Native Districts.50 Finances were to prove one of his greatest bones of contention with the settler ministries.

According to Professor Brookfield, section 71 would, 'on a reasonable interpretation', have allowed for Maori self-government to develop beyond existing customary forms. This view was also expressed at the time. The chief justice advised in 1858:

The very term 'laws for the government of a people,' seemed to him to import the progress, development, and amelioration of those laws. It could hardly be meant that the Governor was by proclamation [of a Native District under section 71] to fetter the action of the chiefs, and of the Maories [sic] themselves in improving their own laws. If not, it was difficult to see what should prevent the Governor upon the application and by the consent of the ruling authority

in any native district, proclaimed for that purpose, to make provision for that improvement.⁵¹

Professor Brookfield argues that considerable autonomy was possible under this regime, although subject to the ultimate paramountcy of the Imperial Parliament. The language of the statute, according to Crown counsel, implied that Native Districts were envisaged as temporary expedients and not long-term arrangements. Professor Brookfield came to the same conclusion, but pointed out that there were no actual time limits in the legislation. Its implementation would have accorded domestic nation status to Maori districts, under the autonomy models discussed in chapter 3. Professor Brookfield's opinion was that this might have lasted long enough to help create a more 'Maori New Zealand'. In his view, however, the very existence of section 71 may mean that it had to be applied before tribes had the legal status of domestic nations. 52 We note also the contrary view of retired Chief Justice Martin, in 1865, cited in chapter 3.

The Crown conceded that, by 1861, Gore Browne had come around to considering Native Districts as an option on which both Governor and Parliament could agree, and that might provide 'great Maori local government in a way that was compatible with Crown sovereignty.'53 In examining a similar state of 'practical autonomy' in the Turanga district at this time, the Turanga Tribunal found that section 71 should have been implemented there to give legal effect to Maori autonomy within a constitutional and Treaty framework.⁵⁴ The Crown's failure to take advantage of this 'unique opportunity' to protect Maori autonomy within its own kawanatanga framework was, in the finding of that Tribunal, a breach of Treaty principles.⁵⁵

The second option: Native Districts and runanga under the 1858 legislation: As we have noted, Gore Browne hesitated to declare Native Districts under section 71, because he was concerned that the Act might not allow Maori to legislate for themselves, and was unsure how to pay for government in

HE MAUNGA RONGO

such districts. The settler Assembly stepped into the breach with local legislation in 1858. The Native District Regulations Act and Native Circuit Courts Act provided for runanga to become official institutions of local government, making bylaws to apply to both races in Native Districts. Maori assessors would have a small, independent jurisdiction, but serious cases would be heard by a Pakeha judge, assisted by Maori assessors and juries. The institutions were supposed to be sufficiently compatible with both Maori and Pakeha systems of government that they could suit both races but develop into an English-style local government.⁵⁶ Expert Pakeha evidence taken by the Waikato Committee in 1860 showed wide support for this kind of official adoption and empowerment of Maori self-government through runanga. Maori leaders, such as Wi Maihi of Rotorua, agreed.⁵⁷

Maori had no hand in designing this legislation, which was narrower and more prescriptive than what was possible under section 71 of the 1852 Act. The proposed system had some limitations in Treaty terms. Nonetheless, it was a significant advance and offered a degree of state recognition and empowerment of Maori self-government.

This legislation was not brought into effect, however, until it became the authorising statutes for Grey's New Institutions (see option five below) in 1861. There were three stings in the tail of these laws, which prevented their implementation. First, the legislation seemed to settle Gore Browne's concern about Maori being able to enact new laws for themselves. But the declaration of Native Districts and the operation of the legislation had to be done by the Governor in Council. In other words, it introduced responsible government in Maori affairs, which Gore Browne was not prepared to allow.⁵⁸ Secondly, the ministry only voted £2000 for a system which, Grey estimated in 1861, would cost about £45,000. Clearly, this was not a serious initiative on the part of the Assembly, and it could not be operated on such meagre funding.⁵⁹ Thirdly, the Assembly sought to have these judges and Maori juries award and individualise Maori title for direct land purchase through a third, related Act, which the Governor also refused to bring into operation. 60 The result was a deadlock on issues

of Maori self-government, not broken until the arrival of a new Governor in 1861. Maori runanga continued to operate without state sanction in the Central North Island.

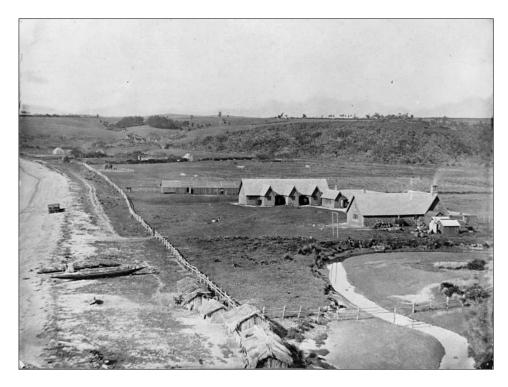
The third option: Maori representation in central government: Under the Constitution Act 1852, Maori found themselves effectively disenfranchised from the elected institutions of the New Zealand State. Native Districts were not declared, but nor did Maori have representation in the provincial and central assemblies that were set up. This poses obvious problems for the legitimacy of the State, which were clear at the time. In 1865, Sir William Martin stated:

We are all agreed that the General Assembly should become the one acknowledged Legislature for both races, but it would be a great error to assume (as it is sometimes done) that the Assembly has actually attained this position. Can we maintain that the General Assembly possesses constitutional and rightful authority over these people? Rather, our business is to find some way by which it may be brought into possession and exercise of such an authority. 61

Gore Browne was not so sure that the settler Assembly should become the legislature for both races. He argued that it had no right to 'govern and tax a race it does not represent, whose interests are not proved to be identical with those of its own constituents'. The British Crown was 'the rightful guardian of the Maori race', but without an independent source of funds the Governor could not act without money from the settler Parliament. This had already stymied the declaration of Native Districts and the formal empowerment of Maori runanga, as we have seen.

The claimants point to what they consider is the obvious solution to franchise questions of the time: the desirability of parallel institutions in which Maori could have played a full, but culturally appropriate, role in the State. At the district level, this was allowed for by the Constitution Act, as we have already found. At the central level, the claimants noted the importance of the Kohimarama Conference of 1860 and the possibility it raised of a central consultative

KAWANATANGA AND MAORI AUTONOMY, 1840-1865



The site of the
Kohimarama Conference of
1860, Mission Bay, Auckland.
Photograph taken circa 1860 by
John Nicol Crombie. Governor
Gore Browne told the assembled
chiefs that the conference was
the first step towards their
self-government, and he agreed
to their request for it to be held
annually. Governor Grey reversed
this decision in 1861.

forum with legislative and advisory powers. The conference itself was not without flaws, which limited its effectiveness as a tool to prevent war between the Crown and the Kingitanga. This was in part because Kingitanga leaders were not invited. As a result, there were no Taupo or Kaingaroa chiefs present. Rotorua tribes were well represented, including sixteen rangatira from Ngati Whakaue, five from Ngati Pikiao, two from Tuhourangi, and two from Tapuika. 63

Gore Browne told the assembled rangatira that the conference represented 'the first step towards that self-government which they will comprehend and enjoy.'64 Mr Armstrong describes the speeches of the Te Arawa leaders at the conference, in which they affirmed the Treaty, the authority of the Queen and the law, and their desire to make the law through their own local runanga and through either a Maori parliament or full participation in the settler one. At the end of the hui, the assembled

rangatira presented a petition to the Governor, asking that it be made an annual event for Maori leaders to debate and decide on matters of concern to Maori. Gore Browne assented to this, and the General Assembly voted funds for a second conference for the following year, to express the deliberate opinion of the Native chiefs and people on the issues raised at Kohimarama. The scene was set for such a body to become a 'parliament' with consultative and legislative functions. Such an outcome would have been an appropriate expression of institutional autonomy and therefore compliant with the Treaty.

In 1860, the Native Minister, CW Richmond, told Parliament what he envisaged for the 1861 conference:

The Native Conference of 1861 will have to determine many important matters. First, it will have to express the deliberate opinion of the Native chiefs and people as to whether such a periodical meeting shall become a part of the permanent

HE MAUNGA RONGO

institutions of the country. Secondly, it will have to give definite answers to several important propositions made by the Governor to the present meeting, particularly to the propositions of His Excellency respecting the ascertainment of tribal title, the ultimate individualization of Native title, and the constitution of tribunals for the determination of disputes between the Natives themselves on the subject of their territorial rights. The Governor's propositions on these subjects were very favourably received by the assembled chiefs; but they were unable to say how their respective tribes would receive the same propositions. They said, 'We will go back to our people and talk over these things, and next year we will bring you word what is agreed to.' Our plan, then, is to have another general meeting of chiefs in 1861. We shall not ask this House to commit itself any further than that...This meeting, then, although forced upon us by the circumstances of the country, is in entire accordance with the principles we have always held and expressed on the subject of the government of the Natives.68

Gore Browne appears to have envisaged genuine powersharing with an annual 'Native Conference'. Bishop Selwyn recorded the results of a long discussion with Gore Browne in 1861, in which they anticipated that a Maori title tribunal should be set up by the authorisation of the Crown, the Assembly, and the 'Native Conference'. Decisions on how to enforce its findings would have to be made by both the Assembly and the native conference. 69 The aspirations of the Rotorua chiefs for partnership with the Crown and a full and equal role in the central government of the State seemed capable of fulfilment. It was certainly conceivable and possible in the circumstances, and by the standards of the time. Politicians as diverse as Henry Sewell (in opposition) and CW Richmond envisaged according consultative and legislative powers to a Maori assembly in 1860. Dr Loveridge describes their competing resolutions, neither of which were accepted by the House. There was no barrier in principle, in the view of the Native Minister, so long as it could be shown to be 'safe and beneficial'.⁷⁰

Mr Stirling cites the support of humanitarians such as the Reverend Thomas Samuel Grace, the influential Taupo missionary, for such a move:

The constitution which has been given to the country has placed the natives in a worse position than they were, seeing they have no share in any way in the representation. Here we have about four-fifths of the population, *British* subjects and Lords of the Soil, and paying the greatest portion of the revenue. And yet cut off from all share in the representation of the country, either in person or by proxy. Surely this is a strange state of things to exist. If a separate house was formed for Native representations there is no doubt that with a few official leaders appointed direct from home as protectors, the Native Chiefs would soon be found quite able to take their full share in the representation.

If we deny them the rights of British subjects, and thereby ourselves break the Treaty of Waitangi we ought not to be surprised if they seek protection for themselves [through the Kingitanga].⁷¹

Governor Gore Browne's other attempt to break the deadlock in his relations with his ministers over Maori affairs was to suggest the creation of an independent council to administer land acquisition and make policy on Maori affairs for the Governor. It would include representatives of ministers, officials, and notable humanitarians. Maori membership was also a possibility. Martin argued that this council could assume legislative functions and be made responsible to (or make regulations for the assent of) Maori authorities in Native Districts under the 1858 legislation. This would, he thought, be a means to give effect to the intentions behind section 71 of the Constitution Act.⁷² The British Government supported the scheme and passed a Bill through the House of Lords, but decided ultimately that the matter was not appropriate for Imperial legislation or an Imperial Order in Council. A Bill was also passed by the settler Parliament. The Crown's historian, Dr Loveridge, considers that only the infrequency of communication between London and Auckland prevented this policy from becoming reality in 1859 and 1860. It represented a more

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

protective land-acquisition policy, so he doubts how long it could have lasted in the face of settler pressure, but he recognises it as a genuine and practicable opportunity.⁷³

When Grey became Governor he rejected this option and refused to bring Gore Browne's Native Council Act into operation. He would not, he said, have two governments in New Zealand, nor a 'special body between the Natives and the General Assembly as a protective power for the Natives against the presumed hostility of that body'. Such an arrangement, he argued, would only ensure that very hostility, and relieve the settlers of the need to act responsibly. The settlers could be trusted to act in the best interests of Maori, given the Governor as a watchdog and the cost of war as a deterrent.74 Dr Loveridge points out that the Colonial Office had no qualms about accepting responsible settler government at that time. The Under-Secretary, Frank Rogers, agreed that Maori interests would be safe, given the 'personal influ-

ence' of the Governor, and the supposed reluctance of the settlers to incur the costs of war.⁷⁵ These proved to be flimsy safeguards indeed.

Having rejected an independent native council, the new Governor also refused to honour Gore Browne's promise to reconvene the Kohimarama Conference.⁷⁶ Grey decided that it would not be possible to convene a truly representative body, given the hostility of many tribes towards the Government (and towards tribes such as Ngati Whakaue that had attended the previous conference). Any constitutional or legislative arrangements adopted by a Maori



Thomas Samuel Grace, 1815-79, Anglican missionary at Taupo from 1855 to 1863. Photograph taken in 1865. Grace was sympathetic to Ngati Tuwharetoa and their aspirations for self-government and economic development. His family developed close ties with the tribe and his sons were to become prominent in Crown-Maori relations in later decades.

parliament ran the risk of rejection by many tribes. At the same time, he did not see how 'semi-barbarous Natives' could frame a constitution for themselves. And if they could, then 'calling together in the same country a European Parliament to legislate on European affairs, and a Maori Parliament to legislate on Maori affairs' was likely to perpetuate 'the distinction so unhappily prevailing between the two races'. His plan was for local self-government by Maori councils 'instead of teaching them to look to one powerful Native Parliament as a means of legislating for the whole Native population of this island - a proceeding and machinery which might hereafter produce most embarrassing results'.77

Grey's position was in part a racist one fraught with illogic – if 'semi-barbarous Natives' could not frame a constitution for themselves at a national level, how could they legislate for themselves at a local level? In any case, his support of amalgamationist ideology, of 'one Parliament

for all', rings hollow in light of his grant of responsible government to the settler Parliament, leaving (as he called it) a 'European Parliament' to legislate for both races. Had Grey been serious on this point, he would have made efforts to secure meaningful Maori participation in the General Assembly, which he did not do. Instead, he claimed his system of Maori 'local self-government' would solve all problems and leave no reason for clashes between Maori and a settler Parliament.⁷⁸ The political realities of Grey's plan – to have Maori govern themselves in 'small portions' and avoid a powerful central Maori legislature that might

HE MAUNGA RONGO

embarrass the Government – were the real force behind his objection to a Maori parliament.⁷⁹

We accept, however, that there would have been tensions and difficulties in convening a truly and fully representative Maori parliament. We note countervailing evidence to the Waikato Committee in 1860, that tensions between Kingitanga and so-called Queenite Maori were not so great as to prevent the convening of a general meeting of Maori representatives. Nonetheless, a central body could have been operated on the same voluntary basis as the New Institutions; that is, it could have been made available for those Maori who chose to participate, and its decisions could have been restricted to constituent tribes. As Martin noted, in the circumstances of the 1860s any central legislature needed time to prove itself and acquire legitimacy.

In any event, the experiment was not tried, and the most promising opportunity for a Maori parliament in the history of this country, endorsed by Maori and by the settler Parliament of the time, was deliberately rejected on very inadequate grounds. We accept the submission of claimant counsel that this was a 'critical lost opportunity for a forum where the exact kind of consultation, debate and consensus necessary to build a relationship compliant with the Treaty could have occurred.'

The fourth option: inclusion of the Kingitanga in the machinery of the State: The Hauraki Tribunal has found that the only way to have avoided war in the 1860s was for the Crown to have negotiated with the Kingitanga and included it in the machinery of the State. (We explain the Hauraki Tribunal's views in detail below.) The options considered above – Native Districts under either section 71 of the 1852 Constitution Act or the 1858 legislation, a Maori parliament, or an independent council responsible to the Maori authorities of Native Districts – were all possibilities. As a prerequisite, the Crown and its advisers, which included the British Government, the Governor, the settler Parliament, 'experts' living and working among Maori, and Maori themselves, had to agree that the Kingitanga was

not ultimately a threat to the sovereignty of the Queen or to a mutually beneficial process of colonisation.

The Crown has submitted that we should take account of the view of humanitarians of the time, that amalgamation of the two races in non-racial districts and institutions was preferable to separate districts and institutions. It was not in the best interests of Maori, socially or economically, for them to remain separate and possibly unequal. ⁸² We agree that this was the view of some humanitarians, but we think that such ideas were challenged by the need to respond to the vitality and power of the Kingitanga and runanga movements. In 1862, Bishop Abraham argued that Maori must be represented in the 'Colonial Government':

the Colonists are not to govern the Maoris, nor the Maoris the Colonists, but that the Colonial Government should govern both and all alike, as equally British subjects, and as having equal rights of local self-government.⁸³

These equal rights of local self-government, which we take to be part of what was guaranteed in article 3 of the Treaty, were a cardinal point for many of the Crown's humanitarian advisers. Maori runanga would make the laws for both races in Maori districts.

What did this mean for the Kingitanga? In the same year, Bishop Selwyn told the great Kingitanga hui at Peria that the King and his runanga should have the same role as a provincial government, with the King like a Superintendent, sending their legislation to the Governor for the royal assent. This would be 'one law' for all. Pakeha living or travelling in the province would have to obey the King's laws:

I consent to there being one law, whether [made] by the Queen, by the Governor, or by Matutaera [the King]. Whether carried out by a Pakeha or Maori Runanga. I consent to there being one law for us all. ⁸⁴

Selwyn refused to commit himself on accepting the title of 'king', and was rebuked by a chief who agreed that there should be 'one law, but let the authority be divided in two'. Selwyn agreed, as the recognition of Maori authority

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

(mana) was the only way to reconcile, as he put it, the 'Unity of Law with the Duality of Mana'. This was an adaptation of the amalgamationist ideals to the challenges of the 1850s and 1860s. We do not accept, therefore, the Crown's submission that humanitarians of the time necessarily opposed separate districts and institutions for Maori as not being in their best interests. We think that, especially in light of the published evidence to the Waikato Committee, the weight of humanitarian opinion was in favour of Maori self-government, through their own runanga in their own districts, and through a meaningful share of state power. In our view, this is an important consideration in terms of the policy options available to the Crown by the standards of the time.

Opinion was more varied on the Kingitanga - whether the title of 'king' was a threat to the Queen, and whether the Kingitanga tribes would be satisfied with self-government under the ultimate authority of the Crown. Bishop Selwyn was hopeful that the solution of the Secretary of State, the Duke of Newcastle - inclusion of the Kingitanga as a self-governing native province under the ultimate authority of the Queen - would be acceptable to the Kingitanga tribes. But Newcastle's proposed solution was not tried by the Government. In October 1862, Grey had received Newcastle's instructions, authorising him to recognise the Kingitanga according to the terms Wiremu Tamihana had put to John Gorst in December 1861; that is, a Waikato native council would make local laws for the assent of both the King and the Governor. Similar solutions had been advocated earlier by Sir William Dennison, Martin, and others.⁸⁷ It was hardly an extreme or anachronistic solution, if proposed by the Colonial Office and judges of the day.

Indeed, the British Government still considered it feasible after the war, and pressed the settler Government to recognise the King's 'absolute dominion' within his borders in 1869 and 1870, and 'Maori Authority' in other 'Native Districts'. Governor Bowen favoured a 'separate principality' for King Tawhiao at that time, as did Martin. The settler administration made a conscious choice to reject

the suggestions of the British Government. The Crown rightly acknowledges that its policy choices – where less 'penal' alternatives were known to be available – are potential matters of Treaty breach. 90 This is a cardinal point for our analysis.

With regard to these issues, the Crown referred us to the Hauraki inquiry, advising that it had submitted documents to that Tribunal which it had not made available to us, and that the Hauraki inquiry had considered the precursors of war in more detail.91 In our brief discussion here, we give full weight to the findings of the Hauraki Tribunal. The Hauraki Report notes that the Crown's additional material did not alter the well-established interpretation available in published histories. Land-acquisition policies, alongside exclusion of Maori from the machinery of the State, had resulted in widespread Maori distrust and the aspirations that led to the creation of the Kingitanga. Some officials and settlers feared that this Maori 'proto-nationalism' would undermine the Queen's sovereignty and close much of the North Island to settlement. There were also fears about the military power of the Kingitanga and the exposed condition of the settlements. Hence, governors and ministries sought a decisive subjugation of the Kingitanga, ultimately by military means. The Colonial Office forestalled this by recalling Gore Browne and appointing Grey. Newcastle instructed Grey to consider bringing section 71 of the Constitution Act into operation, as the best way to promote the 'present harmony and future union of the two races'. The majority grouping within the Kingitanga was as ready to compromise as the Colonial Office. For a time, it seemed only a matter of negotiating agreement.92

Grey sent John Gorst to explain his New Institutions policy (see option five below) in 1861. Tamihana expressed a willingness to accept these official, state-sanctioned runanga, so long as the Waikato runanga submitted its legislation to the King as well as the Governor for assent. The Government, on the other hand, would have to accept the King and his flag. The Fox Ministry wavered and came close to compromising. The Premier, William Fox, still thought the title of King 'objectionable' and hoped that some other

HE MAUNGA RONGO

could be found, but nonetheless accepted that if Maori chose to recognise a 'Head' without whose assent no laws could be introduced, there was 'nothing in principle objectionable to such a Rule'. Similarly, if Maori wanted to make the appointment of magistrates and assessors dependent on the assent of that 'principal Chief', that was no threat to the Queen's authority either. Fox was prepared to recognise Tawhiao in various ways, and saw political utility in having 'some constant nucleus of organisation of the Native race'. Grey received this conciliatory advice too late, however, and had already told the Kingitanga that he disapproved of them, and that his New Institutions would instead create many kings. Nor did he take Newcastle's 1861 advice and proclaim Native Districts under the Constitution Act.⁹⁴

The Hauraki Tribunal accepted that the Government had genuine concerns about recognising the King, and some doubts as to how exactly authority would be enforced (and the warlike restrained) in the King's districts. But the determination on the part of the ministry not to create Maori provinces as they had been urged to do came from their fear that this would prevent settlement in those districts without actually creating 'law and order'. The Government did not seriously try to negotiate with the Kingitanga or include it in the machinery of State. This critical failure by the Crown was, in the Hauraki Tribunal's view, the main cause of the war that followed in 1863.95 Rather than acting on Newcastle's 1862 despatch, Grey instead met with the Kingitanga at a crucial hui in 1863, and told them that 'he would not wage war on the King party, but he would "dig around" it (by his Institutions etc.) till it fell.96 In doing so, we think that a crucial opportunity for the Crown to act in accordance with Treaty principles, and to find a constructive means to forestall war and subjugation, was not merely lost but actively rejected. We agree with the analysis of the Hauraki Tribunal, which is in accordance with the evidence available to us.

What would a Waikato province have meant for the tribes in our inquiry district? The Crown reminds us to take account of changes in the constitution of the time.⁹⁷ This period was one in which the provinces were particularly

powerful and independent, a system that persisted until the mid-1870s. But would a Waikato province have satisfied the aspirations of Kingitanga tribes outside the bounds of Waikato Tainui? Those, such as the Tuwharetoa and Ngati Raukawa hapu of southern and western Taupo, who had aligned themselves with the Kingitanga, retained their autonomy within the movement. The purposes of the Kingitanga included an alliance to protect and retain land, to enhance the mana of all involved, and to act in concert to achieve common goals. Not all groups agreed on all issues, and Kingitanga hui could be lively affairs that did not always reach universal consensus. The key here is that multiple Native Districts or provinces were suggested at the time. Gore Browne, for example, received advice that the Taupo and Rotorua districts (among others) could be formed into 'one or more Native Provinces' on the same principle as the New Provinces Act 1858:

The form of Government, as in the Swiss Cantons, need not be in all parts exactly the same, but might be adapted to the wishes and customs of particular tribes: provided that in all cases two fundamental points were adhered to, - that the Chief Magistrates and Councillors should be recommended by the tribe and confirmed by the Governor, and that all regulations made by them should require the Governor's assent. It would probably be found possible to bring together these Chief Magistrates in a general council [meaning a parliament], and any regulations made at such a meeting and assented to by the Governor, might be held to be binding upon all the tribes. This system ought to rest at first upon voluntary compact, and to be rather offered as a boon than enforced by authority, because while the Native people are thirsting for better government, they are not without fear of oppression. The tone of some of the English newspapers has given them sufficient reason to expect the usual fate of a race assumed to be inferior.98

If Maori provinces had been set up in the Central North Island, Premier Fox's comments (cited earlier) indicated that the Government could accept a Maori-selected 'principal chief' alongside the Governor, with the power to

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

approve the appointment of magistrates and assessors and give a 'royal assent' to runanga legislation. There was no reason why Te Heuheu could not have performed such a role in a Taupo province, just as the King would in a Waikato province, if that were the preference of Taupo Maori. This would have been a flexible system of Maori self-government 'adapted to the wishes and customs of particular tribes'. Similarly, if the Rotorua tribes preferred a different system, then that too could have been accommodated. The need was for Maori and the Crown to work in partnership to design a system with local flexibility that would meet the needs of both kawanatanga and tino rangatiratanga.

According to the Hauraki Tribunal, the main reason for the Government's failure to adopt a Maori province policy was its fear that settlement would be retarded or prevented. The Crown argues that this fear was a sound one. There would have been pressure to open the districts to settlement, with land sales and freehold as the goal. Failure to provide freehold might have reduced investment for development. European immigration might have been diverted to Australia or North America as a result of declaring Native Districts, with serious political and economic consequences.⁹⁹

We agree that the end points of 'roads not taken' cannot be known with certainty. The historical evidence available to us shows that Maori in the Central North Island were determined to participate in the colonial economy, and preferred to develop their land by leasing substantial areas to settlers. Though ministers and settlers would have had to live with leasehold instead of freehold for the time being, this was practicable according to the experience of Hawke's Bay and Wairarapa at the time. Dr Ballara suggests that economic development and colonisation would still have occurred but at a slower, safer pace, under the authority and to the mutual benefit of both races.100 There would have been economic and political consequences to slower settlement. Ultimately, some Pakeha would have obtained freehold land, since strategic sales at fair prices were the main way for Maori to accumulate development

capital in the nineteenth century. We will return to this issue in Parts III and IV. We do not accept, therefore, that settlement would have been barred from Maori provinces. There is no certainty that it would have been smooth or entirely to the benefit of all, but the possibility was there, and the canvassed option was not taken.

The fifth option: state runanga – the New Institutions: We turn now to the option which Governor Grey and the settler Assembly did agree to try in 1861, in preference to those outlined above. The Attorney-General, Henry Sewell, commented that, at first, Grey:

did not seem to have got further in his ideas, than to tame the natives by money – pensions to Chiefs and salaries to Policemen and to put a bit in their mouths, and reins on their necks, by local magistrates.¹⁰¹

But the truth of the matter was very evident to the Attorney-General by late 1861:

It is not merely *government* but *self government* which is to be instituted. They desire it, indeed demand it – and we cannot supply them with real Government in any other form. [Emphases in original.]¹⁰²

Dr Loveridge outlined the nature and scope of the New Institutions in his evidence. Grey's plan was to divide Maori regions of the North Island into 20 districts, each with a district runanga chaired by a civil commissioner. Each district would be subdivided into about six hundreds, each with a runanga, which would recommend Maori officials for appointment. Resident magistrates and circuit courts (on the 1858 model) would complete the institutions. In addition to the power to make bylaws, the district runanga would also monitor and approve land transactions jointly with the Governor, decide titles to disputed lands, and recommend Crown grants for Maori land. There would be an element of direct purchase, but the runanga would have to approve the purchaser (as would the Governor). Purchasers then had to live on the land full-time for at least three years before getting a Crown grant. This was

HE MAUNGA RONGO

designed to limit speculation and encourage settlers suitable to and approved by Maori. Maori could choose to lease their land after the district runanga had decided titles. Terms and conditions of leases would be set by the runanga and the Governor. Ministers were unhappy with some of these features, especially elements of the land alienation system, but Dr Loveridge argues that they accepted it with the intention of changing it later. ¹⁰³

Professor Ward's judgement was that the New Institutions 'envisaged the preservation of corporate tribal authority over land, during both the determination of title and alienation.' This was a victory over the alternative view, that Maori title should be individualised and then sold directly to settlers. Vincent O'Malley notes that the Fox Ministry introduced legislation in 1862 to confirm Grey's proposals, with runanga determining titles and controlling alienation of land – though in this Bill, bona fide settlers would have to wait

10 years for a title rather than three. Maori self-government through state-recognised institutions was, the Premier argued, the only way to make a proper connection between Maori and 'our own institutions' (that is, the Crown). 'We can nor [sic] more put it down,' he told the House, 'than we can stay the advancing waves of the rising tide.' ¹⁰⁵ But his Government fell without enacting this Bill, and the new ministry preferred what became the Native Lands Act 1862, which still envisaged Maori commissions deciding title, but took away their power over alienations. ¹⁰⁶

The New Institutions were designed to empower Maori self-government and remove some of the more



Sir George Grey, 1812–1898, army captain, colonial governor, politician and premier. Grey was Governor of New Zealand from 1845 to 1853, and again from 1861 to 1868. He was architect both of the New Institutions and of the war against the Kingitanga. His terms as Governor had crucial 'lost opportunities' to give effect to Treaty guarantees of Maori autonomy in the Central North Island.

objectionable features of land alienation, giving the runanga control in conjunction and cooperation with Pakeha officials. The 1858 legislation had always envisaged that Maori bodies would decide Maori titles to land. The price of genuine power sharing, however, would be the giving up of some power on both sides; this was especially so where both runanga and Governor had to agree on the terms of land transactions. The concentration of power at the district runanga level might not have been acceptable to all hapu. Much would have depended on the size and tribal make-up of each district. The system was not without flaws and potential problems, but it was one adopted by many Maori with avidity.

This was especially so in the Rotorua district, where Mr Armstrong has described Te Arawa's enthusiastic response. The New Institutions appeared to be 'a real expression of this new partnership and the views they had expressed at Kohimarama'. The claimants con-

clude, however, that the life span of the New Institutions was too short for them to have achieved much in Rotorua. They had barely been set up before war intervened, and were replaced by resident magistrates and the Native Land Court soon after; they were not, in effect, given a fair trial.¹⁰⁸

Charles Hunter Brown visited the Kaingaroa district in 1862 to offer the New Institutions to tribes of that region and the Urewera. He was supposed to sound out the degree of support for the Kingitanga, and undermine it if he could. Most communities were either sympathetic to the Kingitanga or 'neutral', suspicious of the Government

KAWANATANGA AND MAORI AUTONOMY, 1840-1865



Poihipi Tukairangi of Ngati Tuwharetoa (on the right), with Lieutenant Henry Stratton Bates of the 65th Regiment, taken at Rangiriri in the early 1860s. Tukairangi engaged with the Crown and led the people in northern Taupo who accepted the New Institutions as a vehicle for self-government.

and its intentions towards their land, but many eventually indicated 'cautious support' for the New Institutions proposal. That was as far as it went, however, since the local resident magistrate's jurisdiction did not extend that far, and the Crown did not follow up Hunter Brown's tour with an actual attempt to introduce the New Institutions. We have no evidence on how or why this did not happen. The result was that the Kaingaroa peoples did not get even the limited self-government that was offered at Rotorua and Taupo.

Mr Stirling's view of the New Institutions at Taupo is mainly negative. He emphasises the Governor's admitted intention to use them as a weapon against the Kingitanga by undermining support for it and attempting to create a 'Queenite' party. But it was up to Maori whether they adopted the machinery offered by the State, or remained with the already operating Kingitanga runanga. Iwikau Te Heuheu continued to support the Kingitanga and opposed

the New Institutions, which were only introduced among a 'loyal' minority in the north of the district led by Poihipi Tukairangi. In March 1862, the Government appointed a former mission teacher, George Law, as resident magistrate for the Taupo district. He was instructed that the Government 'looks to the machinery of the Runanga as a primary institution for accustoming the natives to the work of self-government. The south and west of the Taupo district remained outside Law's arrangements, but an official runanga and Maori officers were appointed in the north. Law apparently resisted working with the runanga, but Mr Stirling notes that it met and operated anyway.

Ngati Raukawa considered the possibility of cooperation with Law and the Governor. Maori authorities and interests overlapped in Taupo, as elsewhere. Hone Teri Te Paerata concluded a 'treaty' with Law, where he agreed to give Law jurisdiction over any offences committed by Ngati Raukawa against those who recognised Law's authority.

HE MAUNGA RONGO

Law, in turn, agreed to try jointly with Te Paerata any cases where the Kingitanga were injured by the 'Queenites'. Ngati Raukawa deprecated divisions and sought unity 'under the law', but differences and mana had to be respected. This was a promising arrangement (had it been carried out), and showed the kind of flexibility necessary to introduce the New Institutions in districts where Kingitanga and other tribes lived side by side or overlapped.

The New Institutions policy is very important to the Crown's case. The ability to set aside Native Districts with runanga, magistrates, and assessors - all part of the machinery of the State - had existed since the enactment of legislation in 1858. The Crown argues that officials of the time wanted to establish stable Maori local government in predominantly Maori districts, through institutions that were compatible with Crown sovereignty. There was a range of Pakeha views on how best to accomplish this goal. Broad consensus was reached by 1860, when Parliament endorsed the 1858 legislation and called for local self-government for Maori and the appointment of one or more chiefs in each district as organs of communication with the Government. The Crown acknowledges the variety of proposals and plans made during Gore Browne's governorship, including the 1858 legislation and Fenton's Waikato experiment which laid the groundwork of political and Pakeha public acceptance of the 1861 New Institutions. 115

The Crown further argues that the official runanga scheme was introduced in good faith by Grey and the settler ministers: 'Grey hoped to avoid war, and was eager to find an institutional framework compatible with Crown sovereignty that would allow peaceful co-existence of Maori and Pakeha.'¹¹⁶ The official runanga would not be 'inferior' to the Pakeha magistrates, but provided a system 'for Maori committee and Crown judicial officers to work in concert, and to have a regulated forum combining Maori and Crown rather than have one runanga in competition with another.'¹¹⁷ The Crown notes that the policy was a response to Maori political mood and opinion as communicated to the Government by Maori and Pakeha. It was largely rejected by the Kingitanga in Taupo, but

adopted enthusiastically in Rotorua. Ultimately, however, the Crown argues that it was rejected by the Kingitanga and then abolished by the Stafford Government in 1865 for reasons of financial retrenchment.¹¹⁸

We agree with the Crown that there was a broad Pakeha consensus behind the New Institutions policy in the early 1860s. We have already noted Grey's martial intentions – at the best, he intended to use his New Institutions to separate and isolate the Kingitanga, seduce 'Kingites' into becoming 'Queenites', and dig around the King until he fell. The Hauraki Tribunal concluded that his ultimate goal, and that of his ministers, was subjugation of the Kingitanga by whatever means necessary, including military conquest. But Grey's political motivations with regard to the Kingitanga are only one strand of this complex history. The New Institutions were offered throughout the North Island, in regions such as Northland where support for the Kingitanga was always unlikely. We accept the Crown's submission that the Governor and ministries of the day commenced a good faith endeavour to incorporate Maori local self-government in the State, through an institutional framework where officials and Maori could work in concert. Neither would be 'inferior' to the other. It was up to Maori communities to decide whether they would adopt this system. This was consistent with their tino rangatiratanga. We do not agree with the claimants that 'there was no intention to give Maori any real power, and the policy was undermined by an innate negativity towards Maori.119 The claimants' interpretation is not supported by the historical evidence.

Local self-government was the lowest of three tiers of self-government. Maori would have wielded much greater control over their land and destinies if the second tier – provincial legislatures and superintendencies – had also been created. Even more, the continuation and evolution of the Kohimarama Conference would have made Maori powerful at the heart of the State, the top tier of government. So while we accept that the New Institutions were offered to many tribes in good faith, and that they provided the means for creating a Treaty-compliant arrangement,

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

the potential was restricted by the deliberate rejection of options to empower Maori at the higher levels of selfgovernment.

As Professor Ward notes, Grey later claimed that he and his ministers were fully prepared to create Maori provinces:

I ... with the full assent of my Responsible Advisers, offered to constitute all the Waikato and Ngatimaniapoto country a separate province, which would have had the right of electing its own Superintendent, its own Legislature, and of choosing its own Executive Government, and in fact would have had practically the same powers and rights as any State of the United States now has. There could hardly have been a more ample and complete recognition of Maori authority, as the Waikato tribes would, within their own district, - a very large one, - have had the exclusive control and management of their own affairs. This offer was, however, after full discussion and consideration, resolutely and deliberately refused, on the ground that they would accept no offer that did not involve an absolute recognition of the Maori King, and his and their entire independence from the Crown of England, - terms which no subject had power to grant, and which could not have been granted without creating worse evils than those which their refusal involved.120

Professor Ward points out that there is not a shred of evidence that Grey made such an offer in 1863. The point here is that Grey's pretence in 1869 that he had made this offer, and that he expected to be believed, shows that it was not inconceivable or impracticable by the standards of the time. Worse evils' lay in store without such empowerment of Maori, and that made it not only conceivable but practicable in the circumstances. Had Grey really made such an offer, or had he made it in Taupo or Rotorua, there seems little doubt that it would have been accepted.

Two important points arise from our discussion. First, Maori self-government through runanga and komiti, in partnership with Crown officials, was accepted by governors, settler politicians, and many Maori, and was compliant with the Treaty. Politicians may not have considered

it a long-term or permanent proposition, but that is not relevant to what was actually created. As we have seen with the Maori seats in Parliament, institutional solutions can become entrenched until they are in fact no longer needed or appropriate. In terms of our models as discussed in chapter 3, the nineteenth-century Crown accepted that a mechanism for some community-based and institutional autonomy was necessary and practicable. The result was the 1858 Acts and the 1861 New Institutions. So, for the Crown to argue later that it could not have accepted or worked with such Maori bodies is patently untrue. We will return to this important point below. Here, we note that the political climate turned against state runanga after the wars, but that is a different matter from their being unworkable.

Secondly, the Crown deliberately chose not to work with or include Maori in provincial and central governments after 1861. This would, as described by Grey, Bowen, and others, have moved the Crown beyond accepting community and institutional autonomy to more federal-style arrangements and the legalisation of domestic nation status. Again, the political circumstances were less favourable to such arrangements after the wars. As Governor Bowen explained in 1868, a Maori province had been contemplated for the Kingitanga, like the 'territories of the semi-independent Rajahs in India', under the influence of a British Resident or commissioner. 'All, however, appear to be now agreed that the opportunity for any arrangement of this kind has been lost.'122

There was an official change of heart in 1865 but the Native Minister, JE FitzGerald, was unable to get a Native Provinces Bill through the House. He proposed to negotiate an agreement with Maori to set up three semi-autonomous provinces and provide state finance and legal powers for Maori self-government. The Crown would be represented by a Resident in each province, not by magistrates. Some members of Parliament voiced the usual complaints about perpetuating Maori communism, which were countered by arguments in favour of self-government. Ironically, the Bill was postponed by an alliance of

HE MAUNGA RONGO

provincial interests – Auckland made trade-offs with other provinces to get enough support to postpone the introduction of the Government's Bill, rather than lose so much Maori land from inside its own provincial boundaries.¹²³

In terms of the Crown's arguments about the visibility and practicability of policy alternatives, we note that the Government itself proposed the Native Provinces Bill. In defending it, the Attorney-General, Sewell, told the House:

The honourable gentleman [Stafford] had enlarged, in somewhat high-flown language, on the evils of communism, which the honourable gentleman charged his honourable friend [Native Minister FitzGerald] with endeavouring to perpetuate. All that his honourable friend [FitzGerald] had affirmed was, that you could not govern a people without their own consent; and his honourable friend also proposed that they should endeavour to lay the foundation of a system by which the Natives should be enabled to govern themselves ... The problem they had to solve was how to reconcile English institutions with the Native habits and customs. They had also to settle the Native territorial rights, and to organize the Natives into a self-governing people; and in order to do that his honourable friend had adopted the provincial system.¹²⁴

Clearly, Maori self-government at a provincial level was still conceivable in the mid-1860s. Auckland provincial interests succeeded in postponing the introduction of this Bill for six months, but the Government fell in the meantime and the proposed policy fell with it.

In any case, Governor Grey had already rejected earlier proposals for a native council, an annual 'parliament' of chiefs, and Maori provinces. Partnership, therefore, was to be confined to limited local self-government. This was, in the words of Governor Bowen, an 'opportunity lost'. We note that, when faced with a similar offer confined to limited local institutions in the 1840s, the Queen's European subjects refused to settle for it. We see no reason why the Queen's Maori subjects should have been expected to settle for it in the 1860s.

The Crown offered only a brief comment on the disestablishment of the New Institutions, which it had emphasised

as a Treaty-compliant means of empowering Maori selfgovernment. Neither Crown nor claimant historians have discussed the point in any detail. The Crown's assertion that it happened because of financial retrenchment in 1865 - cannot be accepted. A key blow had already been struck as early as 1862, when the Native Lands Act introduced direct private purchasing without the restrictions and joint control of the process by runanga and Governor that had been planned in 1861. Further, the Act removed the decision of titles, adjudication of land disputes, and making of Crown grants from the runanga and vested it in the Native Land Court. As Dr Ballara notes, the 1862 incarnation of the court preserved some of the principles of the New Institutions, but these were removed in 1865 with the creation of the Native Land Court in its classic shape. This will be considered further in chapter 9. Here, we note the disempowerment of the New Institutions by these means as early as 1862. There is no evidence to suggest that the official runanga set up in Rotorua and Taupo were consulted about or consented to this change in their powers and responsibilities.

We have already rejected the Crown's argument that the New Institutions were discontinued because of costs, in our discussion of infrastructure in chapter 3. We think the correct interpretation lies in the Crown's statement that 'Parliamentary opinion towards Kingitanga did harden as it became apparent many Kingite groups would not engage with the institutions. This hardening extended to the New Institutions themselves. Having failed to subvert the Kingitanga and prevent war, and with the expensive processes of colonisation and military conquest to pay for, the Assembly passed the Native Lands Act 1865 and pulled the plug on official runanga and Maori self-government. Also, Dr O'Malley suggests that the runanga had failed to work as a quick way of overcoming Maori reluctance to sell land, which 'discredited' the runanga system in settler eyes.¹²⁷ The Crown returned to the old system of Pakeha magistrates and Maori assessors - cheap, safe, flexible to a degree, and offering some Maori participation at a minimal and containable level. Given the Crown's submission

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

that governors and ministries tried very hard to find a mechanism that would provide for Maori self-government in cooperation with Crown officials, and that a consensus had emerged behind incorporating runanga and Maori leaders in local self-government, the disappearance of this system with barely a mention cannot have been compliant with the Treaty.

The scope of this missed opportunity for a patient development of partnership and autonomy is best summed up in Governor Grey's own statement, as published in *Te Karere* in 1861:

This, then, is what the Governor intends to do, to assist the Maori in the good work of establishing law and order. These are the first things: - the Runangas, the Assessors, the Policemen, the Schools, the Doctors, the Civil Commissioners to assist the Maoris to govern themselves, to make good laws, and to protect the weak against the strong. There will be many more things to be planned and to be decided; but about such things the Runangas and the Commissioners will consult. This work will be a work of time, like the growing of a large tree at first there is the seed, then there is one trunk, then there are branches innumerable, and very many leaves: by and by, perhaps, there will be fruit also. But the growth of the tree is slow - the branches, the leaves, and fruit did not appear all at once, when the seed was put in the ground: and so it will be with the good laws of the Runanga. This is the seed which the Governor desires to sow: - the Runangas, the Assessors, the Commissioners, and the rest. By and by, perhaps, this seed will grow into a very great tree, which will bear good fruit on all its branches. The Maoris, then, must assist in the planting of this tree, in the training of its branches, in cultivating the ground about its roots; and, as the tree grows, the children of the Maori, also, will grow to be a rich, wise, and prosperous people, like the English and those other nations which long ago began the work of making good laws and obeying them. This will be the work of peace, on which the blessing of Providence will rest, - which will make the storms to pass away from the sky, - and all things become light between the Maori and the Pakeha; and the heart of the Queen will then

be glad when she hears that the two races are living quietly together, as brothers, in the good and prosperous land of New Zealand. 128

The Tribunal's findings

The Crown submitted that there was no single Treaty-consistent policy option that it had to follow, but that it can justly be held to account for failing to adopt *any* policy that kept the Treaty. We have discussed the options available to it from 1840 to 1862, when Maori autonomy was a practical reality in the Central North Island. We have noted that five options were canvassed at the time, all commanding some degree of attention from policy-makers:

- ▶ First, the Crown could have implemented section 71 of the Constitution Act and set aside Native Districts. Governors Gore Browne and Grey were authorised to do so by the Colonial Office. Although it might not have ended up as a permanent arrangement, it would have accorded legal status to Maori tribes as domestic dependent nations, one of the many models of autonomy available in the nineteenth century.
- ▶ Secondly, the Crown could have implemented the 1858 legislation, which offered limited local self-government to Maori. This option was not taken up because it involved conceding responsible government to the settler Assembly, which had only voted a token sum of money for the operation of the system and wanted to introduce individualised titles and direct purchase. The legislation lay in abeyance until 1861.
- ▶ Thirdly, the Crown could have included Maori in the machinery of central and provincial government. Maori were left effectively without a vote for what became settler assemblies. This could have been rectified. Various options were considered, including an independent national council to advise the Governor and administer Maori affairs, an annual Maori parliament (promised by Gore Browne in response to Maori requests), or Maori provinces with their own

HE MAUNGA RONGO

- legislatures and superintendents. Grey rejected all these options. He also surrendered responsibility for Maori affairs to what he acknowledged to be a 'European Parliament'. Having done so, a proposed Native Provinces Bill in 1865 did not even make it into the House. Failing to provide Maori an effective, or indeed any, role in self-government at a central and provincial level was a serious breach of Treaty principles, even if more limited local self-government had been accorded.
- ▶ Fourthly, the Crown had an opportunity to prevent war and colonise the country in a fairer manner by negotiating with the Kingitanga, and including it in the machinery of the State. This was suggested at the time, authorised by the Colonial Office, but ultimately rejected in favour of digging around it till it fell and, when that did not work, military subjugation. In conjunction with the failure to declare Native Districts, create Maori provinces, or continue the Kohimarama Conference as an evolving Maori parliament, this failure was a serious breach of Treaty principles.
- ▶ Finally, the Crown conceded that it could have and in fact did include the runanga and komiti movement in the machinery of the State. There was great potential for the system adopted in the New Institutions. It provided Maori with local self-government, legislative and judicial authority, control of deciding land titles, and joint control of land transactions and settlement in partnership with the Governor and officials. This policy was, in our view, a Treaty-compliant one that showed great promise. The Crown dismantled this system after it had barely started, first with the Native Land Act of 1862 (not even a year into the operation of the New Institutions) and then altogether in 1865. The abandonment of the New Institutions so quickly and decisively, in conjunction with the rejection of the other options for Maori empowerment, was a serious breach of Treaty principles.

Like many other things, the New Institutions were casualties of war. It is to this war, and its impact on the Central North Island, that we now turn.

SUMMARY

FIVE REASONABLE AND PRACTICABLE OPTIONS FOR GIVING EFFECT TO MAORI AUTONOMY, 1840-1865

- ▶ The Crown could have declared self-governing Native Districts as provided for by section 71 of the Constitution Act 1852. Governors Gore Browne and Grey were both authorised to do so by the Colonial Office.
- ▶ The Crown could have provided more limited legal powers of self-government by bringing the Native Districts Regulations Act 1858 and the Native Districts Circuit Courts Act 1858 into operation. These Acts provided for official runanga to operate in partnership with British officials. They were not brought into operation until 1861, after the outbreak of civil war in New Zealand.
- ▶ The Crown could have provided for regional self-government through Maori provinces, as proposed by the Colonial Office and by the abortive Native Provinces Bill of 1865. It could also have provided for Maori representation and authority at a national level through a fair allocation of seats in the settler Parliament (rather than the four seats allocated from 1867), and through the proposals for a national Maori assembly.

continues on following page

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

continued from previous page

- ▶ The Crown could have negotiated the inclusion of the Kingitanga in the machinery of the State, as authorised by the Colonial Office and half-attempted by various politicians and officials.
- ▶ The Crown could and in fact did give official powers to Maori runanga. Grey's New Institutions (1861–1865) provided Maori with the potential for self-government in partnership with the Governor and officials.
- ▶ The abandonment of the New Institutions so quickly and decisively by 1865, in conjunction with the rejection of these other options for Maori empowerment, was a serious breach of Treaty principles.

Notes

- 1. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 5–6, 19–21
- **2.** Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113
- 3. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 10–26
 - 4. Ibid, pp 12-32
- 5. Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 23–27
 - 6. Ibid, pp 26-29
 - **7.** Ibid, pp 30–31
 - 8. Ibid, pp 33-36
 - **9.** Ibid, p 52
 - 10. Ibid, p 60
 - 11. Ibid, pp 60-63
 - 12. Ibid, pp 52-60
 - **13.** Ibid
 - 14. Ibid, pp 61-63
- **15.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 7–13
 - **16.** Ibid, pp 13–15
 - 17. Ibid, pp 14-21
 - 18. Ibid, pp 18-21
 - 19. Ibid, p 28
 - 20. Ibid, pp 26-29
 - 21. Ibid, pp 21-23
 - **22.** Ibid, p 43
 - 23. Ibid, pp 23-26
- **24.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), p 11
 - **25.** Ibid, pp 12-13
 - 26. Ibid, pp 13-27

- 27. Ibid, p 38
- **28.** Ibid, pp 30-37
- 29. Ibid, pp 38-45
- 30. Ibid, p 43
- **31.** Ibid, p 46
- **32.** Ibid, p 49
- 33. Ibid
- 34. Ibid, p51
- **35.** Hamuera Walker Mitchell, brief of evidence, 19 May 2005 (doc H18), paras 29–32
- **36.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), p 58
 - **37.** Ibid, p 59
- **38.** Peter McBurney, 'Ngati Manawa and The Crown 1840–1927', report commissioned by CFRT on behalf of the claimants, 2004 (doc A₃₇), pp 48–65
- **39.** Kathryn Rose, 'A People Dispossessed: Ngati Haka Patuheuheu and the Crown, 1864–1960', report commissioned by CFRT on behalf of the claimants, 2003 (doc A43), pp 18–21
- **40.** Paranapa Rewi Otimi, brief of evidence, 27 April 2005 (doc E16), p 12
 - **41.** Ibid, p 10
 - **42.** Ibid, p 12
- **43.** Tureiti Te Heuheu (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, 2004 (doc A71), p1607)
- **44.** Iwikau Te Heuheu (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 30)
- **45.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 36
 - **46.** Ibid, p 65
- **47.** Constitution Act 1852, s 71 (as quoted in FM Brookfield, *Waitangi and Indigenous Rights: Revolution, Law, and Legitimation* (Auckland: Auckland University Press, 1999), p 116)

HE MAUNGA RONGO

- **48.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 30–32
 - 49. Ibid, pp 30-31
 - 50. Gore Browne to Newcastle, 22 May 1860, BPP, vol 11, p 191
- 51. Chief Justice's speech in Legislative Council, 6 July 1858, BPP, vol 11, p 27
- **52.** FM Brookfield, Waitangi and Indigenous Rights: Revolution, Law, and Legitimation (Auckland: Auckland University Press, 1999), pp116–119
- **53.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 25
 - 54. Ibid, p 57
- 55. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report* on the *Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 60–62
- **56.** Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p107
- 57. See the minutes of the Waikato Committee, 3 November 1860, AJHR, 1860, F-3. Alan Ward has provided an extract from the evidence of Wi Maihi, in *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 327 (fn 14).
- **58.** Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p 108
 - 59. The vote of £2000 is recorded in BPP, vol 11, p 48
- **60.** Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), pp. 107–108
- 61. Martin to Native Minister, 23 December 1865, AJHR, 1866, A-1,
- **62.** Gore Browne (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 47)
- **63.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), pp 405–406
- **64.** Gore Browne (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 46)
- **65.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), pp 61–68
- **66.** C Richmond, 9 August 1860, NZPD, 1858–1860, pp 249, 283, 515, 79
- **67.** Grey to Newcastle, 30 November 1861, AJHR, 1862, E-1, sec II, P 34
- 68. C Richmond, 9 August 1860, NZPD, 1858-1860, p 249

- **69.** G A Selwyn, Memorandum to Gore Browne, 2 February 1861, AJHR, 1861, E-3F, p10
- **70.** Donald Loveridge, 'Origins of the Native Land Acts and the Native Land Court in New Zealand', report commissioned by CLO, 2000 (doc A72), pp119-120 (fn 233)
- **71.** T S Grace (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 21–22)
 - 72. W Martin to Gore Browne, 7 September 1859, BPP, vol 11, p 129
- 73. Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand', report commissioned by CLO, November 2000 (doc A72), pp 104–124, 234–235
- **74.** Grey to Newcastle, 30 November 1861, AJHR, 1862, E-1, sec II, p.35
- **75.** Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand', report commissioned by CLO, November 2000 (doc A72), pp 152–155
- **76.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 48
- 77. Grey to Newcastle, 30 November 1861, AJHR, 1862, E-1, sec II, P34
 - **78.** Ibid, p 35
 - 79. Ibid, p34
 - 80. Evidence to the Waikato Committee, AJHR, 1860, F-3, p 64
- **81.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p 60
- **82.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 1, 26–35
 - 83. C J Abraham to Newcastle, 13 September 1862, AJHR, 1863, E-3C
- 84. Papers relative to the Native Meeting at Peria, October 1862, AJHR, 1863, E-12, p 11
 - **85.** Ibid, pp 4–6, 11–12
- **86.** See the minutes of the Waikato Committee and its report, 3 November 1860, AJHR, 1860, F-3
- **87.** Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), pp 118–119, 156. Sir William Dennison was Governor of New South Wales at the time, and Gore Browne had asked him for troops.
- **88.** Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press and Bridget Williams Books, 1995), p179
 - 89. Ibid, p 595
- **90.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 7, 172
 - 91. Ibid, pp 36, 43

KAWANATANGA AND MAORI AUTONOMY, 1840-1865

- **92.** Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol.1, pp.191–197
- 93. W Fox, Memo, 7 December 1861 (as quoted in Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol1, p196)
- **94.** Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, pp 195–197
 - **95.** Ibid, p 197
- **96.** Grey (as quoted in Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p157)*
- **97.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt2, p10
- 98. Memorandum by the Bishop of New Zealand, 8 May 1860, AJHR, 1860, E-1, p 24
- **99.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 29
- 100. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), pp 639–646
- 101. H Sewell, Journal, vol 2, 20 October 1861, qMs-1786, ATL, Wellington, p 316
 - 102. Ibid, pp 316-317
- 103. Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand', report commissioned by CLO, November 2000 (doc A72), pp143-147
- 104. Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p.125
- 105. W Fox, 22 July 1862 (as quoted in Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 25)
- **106.** Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 25–28
- **107.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), pp 71–74, 77
- **108.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p 62
- 109. Kathryn Rose, 'A People Dispossessed: Ngati Haka Patuheuheu and the Crown, 1864–1960', report commissioned by CFRT on behalf of the claimants, February 2003 (doc A43), pp18–20; Peter McBurney, 'Ngati Manawa and the Crown 1840–1927', report commissioned by CFRT on behalf of the claimants, March 2004 (doc A37), p 61
- 110. Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 49–50

- 111. Ibid, p 72
- 112. Ibid, pp 72-73
- 113. Ibid, pp 48-53, 65, 73, 83-86
- 114. Kiriana Tan, closing submissions on behalf of Ngati Raukawa Wai 443, 5 September 2005 (paper 3.3.80), pp 76–78
- 115. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 9–10, 14
 - 116. Ibid, p 24
 - 117. Ibid
 - 118. Ibid, pp 23-26
- 119. Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p 62
 - 120. Grey to Granville, 27 October 1869, AJHR, 1870 A-1B, pp 81-82
- 121. Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p 157
 - 122. Bowen to Buckingham, 30 June 1868, AJHR, 1868 A-1, p 76
- 123. Waitangi Tribunal, Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 122; Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), pp 189–190
 - 124. H Sewell, 28 September 1865, NZPD, 1864-1866, p 624
 - 125. Bowen to Buckingham, 30 June 1868, AJHR, 1868 A-1, p 76
- 126. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 25
- 127. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 25
- 128. Government policy statement, 1861, reproduced in Henry William Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn*, *DD*, *Bishop of New Zealand*, 1841–1869, *Bishop of Lichfield*, 1867–1878, 2 vols (London: William Wells Gardner, 1879), vol 2, pp 179–180. The original version of this policy statement was published in the Government's Maori-language newspaper, *Te Karere/Maori Messenger*, vol 1, no 18, 16 December 1861

CHAPTER 5

WAR AND RAUPATU, 1863-1870

The decade from 1863 to 1872 was one of civil war in the Central North Island. Most of the fighting was outside our inquiry district, which was encircled by war zones and confiscation. Only the Eastern Bay of Plenty confiscation extended into the Rotorua district. The principal campaigns inside our inquiry region were the Tauranga Bush Campaign and the 'police action' against Te Kooti in the Taupo district. The claimants argued, however, that the impacts of war and raupatu were felt just as strongly by affected tribes in our district, no matter where the battles were actually fought or the land taken. In that sense, our inquiry boundaries should not be considered a straitjacket. In addition, the wars resulted in the Crown's conquest of the Central North Island and the forcible assertion of its authority over the autonomous tribal communities. Conquest and sovereignty, not partnership and mutual respect, dominated the Crown's agenda. The Crown replied that the wars and raupatu were not a major issue for stage one of our inquiry, that their impacts on the claimants were minimal, and that the issues should be negotiated on the basis of existing or forthcoming Tribunal findings in other districts.

By way of introduction, we note an important difference between the Central North Island and the Waikato, Taranaki, and coastal wars. Most of the fighting in the Taupo and inland Rotorua districts was done by Maori, whether in support or opposition to the Crown. Imperial and colonial troops were not as involved. Rather than the self-government guaranteed by the Treaty, the Crown

brought a kind of self-conquest to the Central North Island in this decade. With this theme in mind, we will provide a brief assessment of war and raupatu as they applied to our district.

THE TRIBUNAL'S APPROACH

Before proceeding with our substantive analysis of the claims, there are some matters of approach and of jurisdiction to resolve. These involve the inclusion of some Eastern Bay of Plenty raupatu claims in our inquiry, and the overlaps between our large inquiry region and other Tribunal inquiries, in particular with regard to findings made or about to be made on war and raupatu issues. The Crown argued that these issues have been heard in greater depth in other inquiries. In particular, Central North Island claimants have been heard in the Urewera, Tauranga Moana, and Eastern Bay of Plenty inquiries. The Crown considers that war and raupatu issues relating to those claimants, and particularly to Ngati Haka Patuheuheu, Tuhoe, and Ngati Manawa, are more properly reported on in the comprehensive inquiries where more evidence was heard. Also, the principal and detailed evidence about Te Kooti is to be found in the Urewera and Turanga inquiries. The only confiscation actually (partly) inside the Central North Island region has, the Crown submitted, been fully inquired into by the Eastern Bay of Plenty Tribunal. On the other hand, the Crown also submitted that its statutory

WAR AND RAUPATU, 1863-1870

acknowledgements of Treaty breach in raupatu settlements did not necessarily apply to tribes in our inquiry who were participants in the very same battles and confiscations. That would be a matter for negotiation. By refusing to concede this point, the Crown has required us to revisit the very issues it suggested could be left aside.¹

The claimants disagreed with the Crown's submission. First, Ngati Hineuru noted that they had been (as often) overlooked. They accepted that their raupatu claim has been heard and reported in the Mohaka ki Ahuriri inquiry, but argued that its impact extended into their lands in our inquiry region.2 Other claimants whose raupatu issues have been reported made similar submissions. Secondly, Ngati Makino's raupatu claim was heard in the Eastern Bay of Plenty inquiry but not covered in the resultant Ngati Awa Raupatu Report. Their raupatu claim was explicitly and intentionally transferred to the Central North Island inquiry, and they seek full findings on it. Thirdly, Tapuika was not involved in the Tauranga Moana inquiry, though affected by the war and raupatu covered in that report. The claimants noted that they had not been able to carry out sufficient research, and that the Tribunal should make what findings it could, but otherwise await a more detailed inquiry.3

Fourthly, Tuhoe, Ngati Rangitihi, and hapu of Ngati Pikiao were affected, but not in fact heard in the Eastern Bay of Plenty inquiry. Ngati Rangitihi submitted that additional evidence is required before their raupatu claim can be fully addressed. Of the Kaingaroa claimants involved in the Urewera inquiry, Tuhoe did not respond on this issue in reply submissions. Ngati Haka Patuheuheu argued:

Counsel accept that there is no need for a full discussion on those matters in this inquiry but nevertheless seek a very general discussion on war events that occurred within and relate to the CNI District which provide a context to the cumulative and other general prejudice suffered by groups such as Ngati Haka Patuheuheu as a consequence of other Crown Treaty breaches.⁵

THE TRIBUNAL'S FINDINGS ON JURISDICTION

We accept first that there is less evidence available in our inquiry on these particular issues than in neighbouring, comprehensive district inquiries. This is necessarily so, as the actual confiscations were mostly outside our boundaries. Also, other Tribunals have already reported on the battles and raupatu relevant to some Central North Island claimants. In particular, the Waitaha claim has been covered in the Te Raupatu o Tauranga Moana report, and the Ngati Hineuru claim has been covered in the Mohaka ki Ahuriri Report. Nonetheless, the impact of these issues inside our inquiry boundaries (and outside those covered by other Tribunals) will need to be considered. The circumstances are different in the Central North Island, as the Crown submits. Secondly, Tuhoe and Ngati Haka Patuheuheu have been heard on these issues in much greater depth in the Urewera inquiry, but that Tribunal has not yet reported. We accept the Crown's submission on this point and reserve the war and raupatu issues of the Kaingaroa claimants for the Urewera Tribunal to address. The effect of these issues, if any, inside our district, will still be addressed by this Tribunal.

Thirdly, Ngati Makino's claim was heard in the Eastern Bay of Plenty inquiry, but not reported on. That confiscation falls partly within our inquiry district, and also involves the claims of Ngati Rangitihi and those hapu of Ngati Pikiao which have chosen to pursue their claims in this forum. The Tuhoe claim has been pursued in the Urewera inquiry (which extends to Ohiwa Harbour). The Eastern Bay of Plenty raupatu was discussed at judicial conferences towards the beginning of the Central North Island inquiry process, where the Deputy Chairperson and Joanne Morris noted that the Eastern Bay of Plenty Tribunal would not be reconvening or completing its inquiry.⁶ As a result, the only way forward was the inclusion of outstanding raupatu claims in our inquiry. For Ngati Makino and the other claimants omitted from the Tribunal's report on the Eastern Bay of Plenty inquiry, we will address what issues we can on the basis of the evidence available to us.

HE MAUNGA RONGO

We will, of course, be guided by the findings of the *Ngati Awa Raupatu Report* on the generic issues common to claimants affected by this war and confiscation.

Fourthly, we note that Tapuika chose not to be involved in the Tauranga Moana raupatu inquiry, where comprehensive findings have been made on the relevant issues. The battles in the Tauranga war extended into our inquiry district, although the confiscation did not. We do not have detailed evidence on the Tapuika claims, although there is material in the *Te Raupatu o Tauranga Moana* report, John Koning's evidence on the Bush Campaign, Tapuika's tangata whenua evidence, Mary Gillingham's report on the Waitaha claims, and Angela Ballara's tribal landscape overview. The position of Tapuika is that the Tribunal should consider their war and raupatu issues as far as the evidence allows, and to otherwise deal with matters in depth if the inquiry proceeds to stage two. We accept this submission.

In sum, we will:

- take account of the findings of other Tribunals where relevant;
- ▶ leave the war and raupatu claims of Urewera tribes to that inquiry for detailed consideration and findings;
- ► consider the effects of war and raupatu in our inquiry region for tribes whose claims have already been the subject of Tribunal reports in other districts;
- ► consider the Eastern Bay of Plenty war and raupatu claims of Ngati Makino, Ngati Rangitihi, and those Ngati Pikiao hapu participating in our inquiry, to the depth permitted by the evidence; and
- ► consider the war and raupatu claim of Tapuika, to the depth permitted by the evidence.

We begin with general issues about the wars, as raised by the claimants in our inquiry.

GENERIC ISSUES: THE WARS

The Crown declared war on the tribes of the Kingitanga when it invaded Waikato in 1863, with the avowed intention

of toppling the King. The wars of the following decade exacerbated or caused fresh divisions among the tribes of the Central North Island. Many iwi, hapu, and even whanau were split by the need to choose between support of the Crown, degrees of armed neutrality, support of the Kingitanga, and support of kin. The people are still living with the bitter effects of those divisions today. The Waikato war was over by 1864, but it spawned campaigns in the Bay of Plenty and the East Coast, resulting in the confiscation of land and yet further battles and confiscations. The dominoes continued to fall throughout the decade: the Tauranga raupatu sparked the Bush Campaign; the Taranaki and Waikato wars created the conditions for Pai Marire, which in turn sparked the confiscation of Ngati Hineuru land in Hawke's Bay, and the East Coast war which exiled Te Kooti and the Whakarau to the Chatham Islands. This led in turn to the Urewera, Turanga, and Taupo campaigns against Te Kooti at the end of the decade. The wars were an interconnected whole, the effects of which can be traced in the various districts of the Central North Island. We turn now to a brief summary of the parties' cases on the wars, leaving matters of raupatu to a later section.

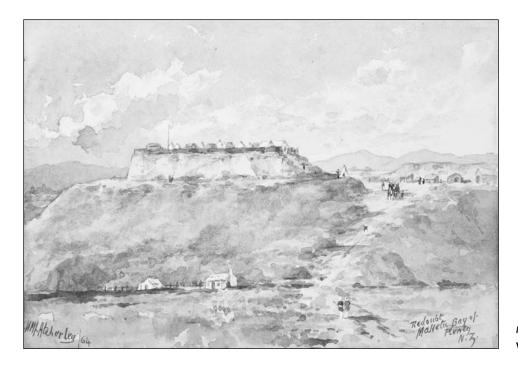
The claimants' case

In addition to a generic submission filed by Martin Taylor, the bulk of the claimants' case was found in the individual submissions of the claimant groups. We will consider the more particular war and raupatu claims below. Here, we are concerned with the general case about the wars, as presented for the Rotorua and Taupo districts. As noted above, we reserve the Kaingaroa claims to the Urewera Tribunal for decision. In particular, we summarise the main Taupo case in this section, as there was no raupatu in that part of our district.

Briefly, the claimants argued that in the 1850s, concerns about land, the growing tendency of Government officials to exercise authority rather than diplomacy, and the effects of these things on rangatiratanga, shaped Maori choices for or against the Crown in the 1860s. But neither side

248

WAR AND RAUPATU, 1863-1870



Maketu redoubt, 1864. Watercolour by HML Atcherley.

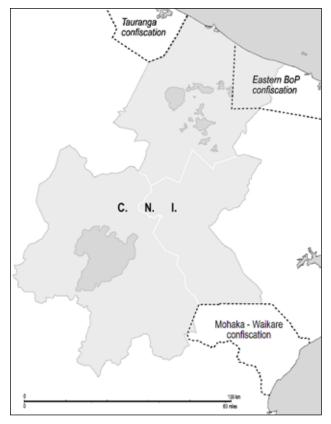
wanted to lose land or authority. Support or opposition to the Crown were both valid responses to the pressures facing Maori. And in both cases, the outcome was the same – whether through loyalty or defeat, both sides were faced with the Native Land Court. In any case, the Crown alone was responsible for starting the wars. It was the aggressor, and its intention was to open up lands by force (not just confiscation). Maori resistance to aggression and the opening of their land was valid.⁹

In terms of prejudicial impact, all three sides (those who fought for the Crown, those who fought against it, and those who tried to remain neutral) suffered severe harm. This included destruction of property, damage to the economy and trade, and loss of life. In addition to a decade's worth of economic harm, the divisions between and within tribes were deep and lasting, casting shadows still today. In terms of the Crown's supporters, Mr Taylor noted the more specific claim (relying on Dr Ballara's evidence) that loyalists were severely and discriminatorily underpaid, and that

their military land awards were not even equal in value to what they should have been paid. Ultimately, the war had the effect of forcibly opening up the Central North Island for settlement, and making people on both sides very vulnerable to having to accept advances from Crown purchase agents.¹⁰ The threat of confiscation, whether realistic or not, hung over the Central North Island for many years.¹¹

For the Taupo district, Ms Feint submitted that Grey's New Institutions appeared to offer hope of real change, but instead were designed to undermine the Kingitanga. A small number of northern Tuwharetoa leaders supported the Crown. Under the leadership of Te Heuheu, Tuwharetoa went to fight for the King in 1863, as they were bound to do by their alliance and their promises. The admissions of the Crown in the Waikato Raupatu Claims Settlement Act 1995 in this instance apply equally to those who went to fight in support of the King and defence of Tainui lands, as they do to Tainui themselves. Also, the attack was on the Kingitanga and the war was fought,

HE MAUNGA RONGO



Map 5.1: Confiscations affecting Central North Island iwi and hapu

therefore, in defence of all Kingitanga lands everywhere, which included Tuwharetoa lands (not just Waikato lands). Hence Tuwharetoa fought in self-defence and in defence of their own lands, and not as rebels or as people fighting solely in defence of Tainui lands. But the Crown's concessions, Ms Feint argued, do not go far enough in any case. The Crown accepts Treaty breach and 'unfairness', but no illegality, in its actions, maintaining that Maori were legally in rebellion. Tuwharetoa do not accept this, and request the Tribunal to make a contrary finding.¹²

After the end of the Waikato war, Tuwharetoa accepted refugees from Waikato, Pai Marire, and at the same time sought to enter into a relationship with the Crown. Given military defeat and the threat of confiscation, Te Heuheu gave himself up and sought accommodation. Uneasy peace prevailed until the arrival of Te Kooti, driven into the district by the Crown. Tuwharetoa do not accept the historical evidence that Te Heuheu was either a prisoner or unwilling in support of Te Kooti, maintaining that his support was strong and deliberate, although at a remove. Tuwharetoa supported Te Kooti because he was a great religious leader, and because they 'supported his kaupapa in preventing alienation of land and the marginalisation of a people.'¹³

In the claimants' view, the Crown was responsible for Te Kooti's actions, both because it created a situation of injustice that forced him to retaliate, and because it drove Te Kooti into the Taupo district. In pursuing Te Kooti, the Crown effectively invaded the lands of Tuwharetoa at a time when its authority did not in reality extend to those lands. Ngati Tuwharetoa were entitled to exercise their tino rangatiratanga. They did not authorise the entry of Crown troops, and so took up arms against them in defence of their people and their homes. Tuwharetoa were not, therefore, legally in rebellion. The resultant war prejudiced Tuwharetoa through destruction of property and life, and by deeply dividing them (for and against Te Kooti).¹⁴

The wars marked a turning point for Tuwharetoa. Ms Feint submitted that they were then forced to accept the reality of Crown authority, 'notwithstanding their rejection of its sovereignty.15 From this point on, they had to try to mitigate the effects of Crown domination, and to control the process of colonisation of their lands as much as possible on their own terms. Also, having been forced to accept the reality of kawanatanga, they were equally protected by the promises and guarantees in the Treaty. Instead of acting in accordance with the Treaty, the Crown breached the principle of partnership and duty of good faith by using its military victory to force Tuwharetoa to open their lands to roads and settlement, and to further undermine their mana and rangatiratanga.16 As a result, Tuwharetoa were forced into a series of 'twists and turns' in the 1870s and 1880s - from war, to supporting tribal committees that

WAR AND RAUPATU, 1863-1870

would compromise with the Crown, to renewed support for the Kingitanga and absolute rejection of the Native Land Court, to again engaging with the Crown – all to 'find a way to engage with the Crown without surrendering their birthright, their mana and the solemn Treaty guarantees made by the Crown.' The overriding theme is that Taupo Maori became willing to adapt to the new regime and constantly explored ways to do so, only to have the Crown reject them, one by one.

The Crown's case

As noted above, the Crown submitted that war and raupatu are not major issues for this inquiry. In particular, Peter Andrew argued that the question of 'rebellion' is not important in the Central North Island - it has been dealt with by other Tribunals, there was almost no confiscation in the inquiry region, and there was a relative lack of actual fighting and destruction of property.¹⁸ As a result of this position, the Crown has not made detailed submissions about whether any (or all) of the Central North Island groups were legally in rebellion. The Crown's position is that this would only need to be established if a state of 'rebellion' had resulted in actual confiscation. This was not the case in the Central North Island, and is therefore a moot point. 19 Although part of the Eastern Bay of Plenty raupatu is inside the inquiry district, the Crown submitted that the issues have been addressed fully by the Ngati Awa Raupatu Report. On the other hand, the Crown does not accept that the admissions of Treaty breach in its settlement legislation for Ngati Awa and Ngati Tuwharetoa ki Kawerau can be taken to apply to other Central North Island claimants.20

Equally, the Crown's statements in the Waikato Tainui settlement legislation are not to be considered of general application. First, Mr Andrew submitted that more detailed evidence about the causes of the Waikato war was available in the Hauraki inquiry, and should be left to that Tribunal to resolve. Secondly, he submitted that Tuwharetoa (and other Central North Island Maori)

were not fighting in defence of themselves or their homes when they went to fight at Waikato. Nor had Taupo been invaded, and there was no reasonable inference that it was about to be invaded. Later Crown military expeditions in the Tuwharetoa rohe were, he argued, a legitimate police action to arrest Te Kooti for his crimes, and not an unjustified military invasion.²³ Detailed evidence about Te Kooti has been made available to the Turanga and Urewera Tribunals, but not in this inquiry. The Crown also submitted that sufficient weight must be given to Maori agency in the coming of war to the Central North Island, and in the decision whether to fight for or against the Crown. Maori communities made these choices, or remained neutral, on the basis of traditional allegiances as well as more recent events in the 1850s. The Crown does not accept that the choice involved the same aspirations - choosing between the Kingitanga and the New Institutions, for example, was a genuine choice of fundamentally different paths.²⁴

In terms of prejudice, the Crown argued that war did not have a single, generic effect on Central North Island Maori. Mr Andrew conceded that the wars did disrupt social, political, and economic patterns of Maori life in the Central North Island.²⁵ Some cultivations and kainga were damaged. Economic resources in general were damaged and depleted. But, he argued, there is insufficient evidence to quantify this impact, or to specify how much (or how seriously) it affected different districts and groups. Detailed analysis would require additional research. On the specific allegation that the Crown did not pay its Te Arawa troops (or pay them enough), the Crown submitted that the military awards of land to that tribe more than made up for any alleged deficiency.²⁶ Overall, the Crown maintains that these are minor issues, less important here than elsewhere.

The Tribunal's analysis

The first domino falls: the Waikato war and the Central North Island

We have considered causes of the wars between the Crown and the Kingitanga in our discussion in chapter 4, where

HE MAUNGA RONGO

we described various governments' failure to include the Kingitanga in the machinery of the State. For our inquiry, the resultant Waikato war was the first of several against Kingitanga tribes, and it sparked campaigns not merely in Waikato, but also in Tauranga, the Eastern Bay of Plenty, the East Coast, and Hawke's Bay. As recommended by the Crown, we pause here to summarise the findings of the Hauraki Tribunal on the causes of war. We note that, in the event, the Hauraki Tribunal relied mainly on the well-established conclusions of the published historians, and that the evidence available to us is in accordance with the views of that Tribunal.

As described above, most professional historians agree that the cause of war in the 1860s was mounting conflict over land, and the exclusion of Maori from state power, 'even over their own affairs'. The runanga movement and the Kingitanga were responses to these problems. In answer to questions from the Tribunal, Dr Loveridge agreed that it was possible (and suggested at the time) for the Crown to have conciliated and worked with the Kingitanga. This view is widely held among historians. We found the Crown to have been in serious breach of Treaty principles in its failure to negotiate agreement or include the Kingitanga in the machinery of the State.

Here we note further the view of the Hauraki Tribunal, that there was reason to be wary of the military power of the Kingitanga, but that there was no conspiracy in existence to attack Auckland or other settlements. Moderate views were known to be prevailing at Ngaruawahia until the Governor's declaration of war on Waikato. War, in the Tribunal's view, was not inevitable. It was difficult for both sides to sort fact from rumour in June and July of 1863, but the crisis of those months was not the real cause of war in any case. The Hauraki Report states that there were still other options in July; a prudent Governor ought to have protected the safety of exposed out-settlers (or removed them), but equally an attempt to negotiate would have found the moderates and not Rewi Maniapoto in the ascendant at Ngaruawahia. What makes this argument redundant was the determination of Grey and his various ministries to repress the Kingitanga by force, from at least 1861. This was a 'failure of statecraft' that brought war to the Central North Island.²⁹

The claimants have described how members of various tribes, including Ngati Raukawa, Ngati Tuwharetoa, Ngati Rangiwewehi, and others, honoured their commitments to fight for the King at Waikato. The choice to do so was not taken lightly. Iwikau Te Heuheu, for example, led his people in the decision not to fight at Taranaki, but defence of the Kingitanga was a different question. As TS Grace recorded:

He [lwikau Te Heuheu] was opposed to the Taranaki war and frequently told me he would not go into it. He was anxious to avoid war, but considered, that if the Waikato were attacked by us, he would be compelled to help them. He was always against land selling from purely patriotic motives... notwithstanding this he was fond of Europeans.³⁰

As noted above, Tuwharetoa and the Crown both emphasised the question of whether Taupo and Rotorua Maori were 'rebels' in fighting at Waikato to support the King, in light of the Crown's statutory concession that it had 'unfairly' labelled Waikato people as rebels. In a broad sense, it is not necessary for us to determine this point. First, the Tauranga Tribunal considered it uncertain as a matter of law, but certain in Treaty terms. Whether or not a technical definition of 'rebellion' applied when Tauranga Maori went to fight for the King, the Crown's actions were clearly in serious breach of the Treaty.³¹

Secondly, it only becomes a practical question for us later when the war spread to Tauranga and the Eastern Bay of Plenty, and to the Taupo district itself by the end of the decade. Neither Taupo nor Rotorua Maori suffered confiscation as a result of the Waikato war. What mattered, therefore, was the Crown's identification of them as enemies of the State who needed to make an act of submission, and the Crown's determination to extend its absolute control over their lands and people. In the words of the Hauraki Tribunal, the Crown became intent on 'a decisive subjugation of Maori autonomists', when autonomy was

WAR AND RAUPATU, 1863-1870



The storehouse Hinana-ki-uta-Hinana-ki-tai, circa 1863–1872, which was built at Pukawa in 1855. In the following year 'it became one of the symbolic foundation pillars of the King Movement'.

promised and protected in the Treaty.³² Maori who fought for the Crown were little better off, with the abandonment of the New Institutions in 1865 and of the large promises of self-government that had been made, as much as if they had been its 'enemies'.

Were Tuwharetoa in 'rebellion' when they went to fight for the King?

Although we are not required to determine this point, both the claimants and the Crown emphasised it in their submissions. We offer some thoughts, therefore, for the assistance of parties in their negotiations. We note FM Brookfield's position, cited in the *Taranaki Report*, that it was not 'rebellion' to resist an unlawful attack and so to defend oneself and one's home. '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 of the New Zealand Settlements Act 1863 that anyone who carried arms against the Queen's forces was in rebellion.³³ This right of self-defence did not, on the surface, extend to counter-attacks, especially outside one's home territory.

Nonetheless, rebellion is not random – it has to have the purpose of the violent overthrow of the Queen's authority or her Government. The Crown disagreed with the extent of this proposition, preferring Hawkins' definition of rebels as anyone 'who in violent and forcible manner withstand his [the British King's] lawful authority, or endeavour to reform his government.'34

The Tauranga Tribunal found that the particular circumstances of Maori should be taken into account when considering the question of rebellion, especially the Treaty and its promises in article 2, and the nature of Maori society, with its strong tribal basis and whanaungatanga links between groups. The Tribunal's view was that if New Zealand law had been tested in court at that time, conceivably some kind of doctrine of justified self-defence might have resulted. Accordingly, where one Maori group helped defend another related group from unlawful attack, this might have been found to be not rebellion, but self-defence.³⁵

What does this mean for Central North Island Maori who went to fight at Waikato? First, we note that the

HE MAUNGA RONGO

Kingitanga had no option but to defend its people and its lands against invasion in 1863. The Waikato Raupatu Claims Settlement Act 1995 contains wording agreed between Tainui and the Crown on this point. In its apology, the Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kingitanga and Waikato in sending its forces across the Mangatawhiri in July 1863, and in unfairly labelling Waikato as rebels. Secondly, we note the kin relationships and whanaungatanga links between Tainui and Tuwharetoa, which required their support of the Waikato in these circumstances. Bruce Stirling notes the relationships between Te Heuheu, Ngati Tuwharetoa, and Waikato Tainui. It extended to support for Waikato refugees after Orakau, which was further evidence of this obligation to Waikato.36

Paranapa Otimi's evidence, however, stressed the depth of Tuwharetoa's commitment to the Kingitanga as an institution, an ideal, a symbol.³⁷ As the Taranaki Tribunal found, the Kingitanga was the living embodiment of te mana Maori motuhake, the legend which appeared on the King's flag.³⁸ Mr Otimi explained the significance of the Pukawa hui, which was called Hinana ki uta, Hinana ki tai (search the land, search the sea). It was, in the view of Tuwharetoa, more important than the signing of the Treaty. He also described the symbolic weaving of the flax strands to make one rope, representing the strength and unity of all the iwi involved. The haka recited by Mr Otimi, and the oral evidence of the tribe, show that the decisions made at the hui are still binding today. Tuwharetoa were and are bound to the Kingitanga.³⁹

So the decision to fight in the Waikato was not just about tribal relationships, although these were always important. It was about support for a new institution which was itself the embodiment and defence of their own mana or tino rangatiratanga. Maori could see the dominoes falling in 1863, but fighting at Waikato was not really self-defence of the Tuwharetoa rohe at a distance. Nor was it a hostile initiative by the tribe. Tuwharetoa went to assist a defence against invasion by the Crown. They did so because they

had an obligation to defend a shared commitment to a political initiative, to defend mana Maori motuhake. In other words, they went precisely because the Kingitanga was premised on kotahitanga – Waikato Tainui were the kaitiaki of this taonga, but they took that role with the support of other hapu and iwi.

The idea that 'self-defence' was legitimate, but that it did not apply outside one's home tribal lands, may be too narrow to be appropriate in this context. Those tribes which went outside their own lands to fight a defensive war in support of the Kingitanga, were fighting for their kin, their King, and their own futures. The Kingitanga was their response to settler land-hunger and the one-sidedness of a kawanatanga that was responsible only to the settlers. The Crown's determination to inflict a massive defeat on the Kingitanga was an attack on them and their tino rangatiratanga, just as surely as if it took place in their own rohe. Their political future was at stake, and they fought in defence of it, as well as of their relations. As we said above, however, there is no strict need for us to determine this point, and so we make no findings on it.

The other dominoes fall: from Tauranga to Te Porere

There is only space for a very brief description of the wars relevant to our inquiry. Most fighting happened outside our inquiry district. The Tauranga Bush Campaign, attempts by supporters of the Kingitanga to cross the Rotorua coast towards Waikato, the occasional raid on inland Rotorua, and the campaign to capture Te Kooti in the late 1860s, were the main exceptions. The historical detail in Mr Stirling's report, Dr Ballara's report, and Judith Binney's *Redemption Songs*, suggests that Imperial and colonial troops had little role in fighting in the Central North Island. Even Crown officials were not really involved in the Ohinemutu affrays. Otherwise, officials directed and encouraged Maori forces on when and where (if not always how) to attack, and provided military officers such as William Gilbert Mair to superintend campaigns in the name of the Government.

The result was a state of civil war in the Central North Island. The Crown failed to create a meaningful peace

WAR AND RAUPATU, 1863-1870

throughout the decade, and the dominoes continued to fall, one by one. The Government's role was to provide the justificatory legislation and proclamations, to arm and provision one of the sides, and then to direct Maori forces in campaigns against their kin and, on occasion, their traditional enemies. This ongoing state of civil war, conducted for the purpose of repressing Maori autonomy and forcing the pace of settlement, was a breach of the Treaty principles of good government and active protection, even if some form of police action was appropriate in certain cases. The Ngati Awa Raupatu Report explains how a justifiable police action could have been conducted in compliance with both the Treaty and the law of the time. The appropriate forms and legal protections of the civil law were not in fact applied.40 At a generic level, allowing this state of affairs to persist, and further taking advantage of it to obtain land and political domination, was a Treaty breach that affected all Central North Island tribes - whether 'loyal', 'rebel', or 'neutral' - to some degree.

The Western Bay of Plenty

The Crown's invasion of the Tauranga Moana district in 1864 followed immediately after the end of the war in Waikato, and was essentially a continuation of that war. The Tauranga Tribunal found the Crown's attacks on the people of that district to be in serious breach of the Treaty. As we will see below, this war drew in the coastal Rotorua peoples, Waitaha and Tapuika, in defence of their kin and their own lands. In particular for our inquiry district, resistance to surveying the confiscated lands led to the 'Bush Campaign' in the late 1860s, designed to intimidate and subjugate the opponents of confiscation by destroying their kainga and crops. The Tauranga Tribunal found this military action - designed not to arrest people who had threatened surveyors, but to punish communities opposed to the confiscation – to be in breach of the Treaty. 41 We will return to this below when we consider the Waitaha and Tapuika claims.

The Eastern Bay of Plenty

The next domino to fall, as the Ngati Awa Raupatu Report puts it, was the Eastern Bay of Plenty. 42 The Tribunal noted that the Taranaki and Waikato wars began with unjust invasions, arising from 'the Governor's failure to respect the autonomy of the tribes within their own spheres, an autonomy that the Crown had previously recognised in the Treaty of Waitangi. 43 The killing of the missionary Carl Völkner and the Crown agent James Fulloon by Pai Marire in 1865 had its origins in the 'war that the Governor started in Taranaki. The events in the causative chain flowed naturally from one to the other.'44 These killings brought some Te Arawa tribes down on the Eastern Bay of Plenty hapu, in the name of the Government, and drew in Ngati Makino and others in defence of their Ngati Awa kin. This 'war' supposedly a police action, but actually a war of subjugation - resulted in the confiscation of some 448,000 acres. The claims of Ngati Makino, Ngati Rangitihi, and Ngati Pikiao arising from this war and confiscation will be considered below.

Mohaka-Waikare

Pai Marire also spread to Ngati Hineuru, whose discontent over land transactions was, in the view of the Mohaka ki Ahuriri Tribunal, 'all too easily construed as rebellious and warlike behaviour'. Government and Ngati Kahungunu forces attacked and subdued these Pai Marire at Omarunui and Petane in 1866, and the Crown confiscated the Mohaka–Waikare district in punishment of their supposed 'rebellion'. 45

Rotorua

The movements of the supporters of the Kingitanga also brought the war into the Rotorua district. Te Arawa tribes opposed the passage of East Coast forces to the Waikato in 1864. They established an aukati, which was entirely within their rights as an autonomous people acting in partnership with the Crown. When the East Coast forces defied the aukati, there was a major battle at Kaokaoroa, which prevented Kingitanga reinforcements from crossing

HE MAUNGA RONGO

the Rotorua district. Later, there were retaliatory raids on Ohinemutu and inland Rotorua tribes.⁴⁶

Te Kooti and the Taupo district

Te Kooti's arrival in the Taupo district in 1869 tipped the final domino in the Central North Island wars. It resulted in the fall of the Taupo district under the authority of the Crown. This had not happened after the Waikato war and the submission of Horonuku Te Heuheu in 1866, as the Crown had more pressing and accessible 'prizes' to conquer and confiscate at the time. A number of factors created the conditions for the Crown to establish military roads and bases and to extend its effective control over Taupo at the end of the decade, including:

- ▶ the repression of the Kingitanga in Waikato;
- ▶ the rise of Pai Marire;
- ▶ the East Coast campaigns and the arrest and deportation to the Chatham Islands of Te Kooti and over 160 men captured after various battles;
- ▶ the escape of Te Kooti and the Whakarau to the mainland;
- ▶ their eventual attack on Turanga in which some 50 people (both Pakeha and Maori) were killed; and
- ▶ the long pursuit of Te Kooti into Te Urewera and across the Central North Island by Crown forces.

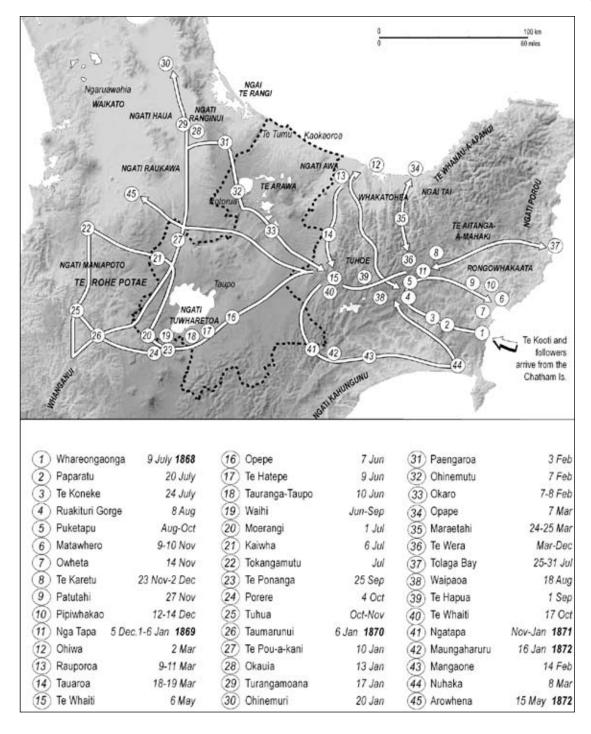
Te Kooti's actions in the Taupo district are not easy to interpret. He was a redoubtable spiritual leader, known to be unpredictable in attack and to be a prime target for Government forces. He arrived now in a new district, facing the authority of an ariki to the south and of a king to the north. He knew pursuers would not be too far behind, and he had also to protect the large party with him (including women and children). Certainly, he sought support for his Ringatu faith, and for his challenge to the Queen's government and possibly also to King Tawhiao, though he might have hoped for an alliance with the King.⁴⁷

Te Kooti's arrival in Taupo was not unexpected; only its exact timing. It had been discussed among the komiti and with Captain John St George, the temporarily appointed commander of the Taupo contingent. By April, the Government had sent Ngati Kahungunu forces to the region and had formed the Taupo Native Contingent (though Mr Stirling describes it as going into rapid recess). There was time, in other words, for the Government to have considered its relations with the Taupo chiefs and to have discussed Te Kooti's movements with them. St George had had contact and dialogue with Te Heuheu in the past. There was an opportunity between March and June 1869, when everyone knew that Te Kooti was on his way, for the Crown to have negotiated an agreement with Taupo leaders. 48

For Ngati Tuwharetoa, Te Kooti's arrival in June 1869 created immediate dilemmas. There were killings from the time of his arrival, but his long-time Taupo ally, the rangatira Te Rangitahau (who was among the Whakarau), intervened to prevent excesses. At the outset, there was a surprise attack on Opepe, resulting in the deaths of nine men of the Armed Constabulary. The village of Te Hatepe was burned, with conflicting accounts about whether one or more people were killed. Te Kooti then moved on to Waihi at the southern end of the lake and, according to Professor Binney, went in challenge to Horonuku Te Heuheu. The ariki and others with him left with Te Kooti, possibly not of their free will.⁴⁹

Te Kooti then moved to Tokangamutu (Te Kuiti) to see King Tawhiao, which was perhaps why he was anxious to secure the presence of Te Heuheu in his party. But after he failed to see the King, he returned to Taupo and, in September 1869, attacked Henare Tomoana's Ngati Kahungunu contingent of 120 men at the mouth of the Tauranga Taupo River. Tomoana's contingent was one of three columns that had arrived to reinforce the local constabulary and the Taupo Native Contingent, and which together formed a substantial, largely Maori force at the southern end of the lake. Te Kooti also mounted a preemptive attack on a constabulary and Ngati Kahungunu contingent at Te Ponanga, behind Tokaanu, in which Te Heuheu and his people were not involved, and built his own forts at Te Porere, west of Lake Rotoaira. 50

WAR AND RAUPATU, 1863-1870



Map 5.2: War sites [based on Judith Binney, Redemption Songs: a Life of Te Kooti Arikirangi Te Turuki (Auckland: Auckland University Press, 1995), map 4, pp 152–153]

HE MAUNGA RONGO



Opepe circa 1870. The military station is on the plateau and there is a hotel (the white building near the road under construction in the foreground).

In a major engagement fought in early October at Te Porere, Te Kooti's force (over 300 men) suffered heavy casualties at the hands of the attacking force of over 500. Some 100 Ngati Tuwharetoa men were in the earthwork redoubt with Te Kooti's people, but there are unanswered questions about the extent of their participation in the fighting.⁵¹ Te Rangitahau's absence is telling – doubtless for the same reason that he had not wished to participate in the September fighting against his own kin in the Taupo contingent. Te Kooti, though wounded, then escaped from Te Porere and the Taupo district.⁵² Pursuing forces were unable to catch up with him.⁵³

Regarding the stance of southern Tuwharetoa, the historians in our inquiry have stressed the ambivalence of Horonuku Te Heuheu's position, according to the documentary evidence, and the likelihood that he was either Te Kooti's prisoner or an unwilling hostage for the good behaviour of his people. Mr Stirling notes that the only account recorded by a direct eyewitness, William Searancke, is that

Te Heuheu was a 'madman' in the passion of his support for Te Kooti, and fought willingly with him. The rest of the documentary evidence, in Mr Stirling's view, 'either confirms that he was a captive, or is exceedingly ambiguous as to his stance'. Te Heuheu himself, seeking to stave off confiscation and other possible punishment after Te Kooti's withdrawal, claimed to have been a captive and blamed the kawanatanga hapu of his tribe for not defending him. ⁵⁴ The tribe's oral evidence – as we heard from George Asher and others – is that Te Heuheu was a strong supporter of Te Kooti as a spiritual leader, and his aspirations to prevent land loss. ⁵⁵

It is clear in both the documentary and the oral history that Tuwharetoa were forced to defend themselves against invaders of their lands, sometimes against Te Kooti, sometimes the Government. Some hapu found their kainga raided for food, waka, and taonga first by Te Kooti and the Whakarau, then by the Crown's Taupo and Rotorua Maori troops, and a third time by the Government's Ngati

WAR AND RAUPATU, 1863-1870



Horonuku Te Heuheu Tukino IV, ? – 1888, ariki of Ngati Tuwharetoa at the time of the New Zealand wars. This photograph was taken by the Burton Brothers at Tokaanu between 1868 and 1888. Horonuku Te Heuheu's apparent support of Te Kooti was a major issue for Tuwharetoa and the Crown in the 1860s and also later.

Kahungunu troops.⁵⁶ Some Taupo Maori, it is clear, had little choice because they lacked the force to oppose either Te Kooti or the Government's troops. Others supported Te Kooti willingly, especially as a religious leader. The exact circumstances and proportions were never inquired into at the time, and cannot be settled with any finality now.⁵⁷

The Tribunal's preliminary findings on the 1869 war in Taupo

The 1869 war in Taupo was not punished by raupatu, so we pause to make findings on it here, before proceeding to examine the war and raupatu claims in more detail in the next section. We have not had the benefit of specific evidence or legal arguments about whether Te Kooti committed acts of rebellion in the Central North Island, or whether those who defended him against Crown attacks at Te Porere and elsewhere in the Central North Island were technically rebels as a result of doing so. In our view, we are not required to determine that matter. The key issue is the Crown's actions before the situation deteriorated to such a point.

In the absence of full evidence and submissions, our findings are preliminary in nature. In our view, the Crown, under the Treaty and the laws of the time, would have been justified in:

- ➤ seeking to obtain the arrest of Te Kooti and those who acted with him at Turanga;
- ▶ recognising that its authority was limited in the Central North Island, as it had recognised on other occasions, and that it could not simply compel the surrender of Te Kooti;
- sending in officials, protected by an armed force, to negotiate the surrender of Te Kooti with the local people or to negotiate their agreement not to shelter him;
- ▶ providing military assistance for defensive purposes, if requested, to those who agreed not to shelter Te Kooti; and
- ▶ pursuing Te Kooti with significant military force if negotiations failed and the agreement of the local people could not be obtained.

In coming to the above conclusion, we are persuaded in part by comparing the Crown's actions in Taupo with the very different way in which it acted when faced with pursuing Te Kooti in the Rohe Potae. In Taupo, the Government made no attempt to meet with the Tuwharetoa and Ngati

HE MAUNGA RONGO

Raukawa leaderships in the south and west of the district in 1869. Even direct contact with the northern Taupo leaders was limited to a local lessee, St George (who was appointed to head an armed constabulary during the crisis), and quick visits from Colonel Lambert and the civil commissioner. Poihipi Tukairangi observed:

they got such conflicting orders from the authorities. Mr McLean wrote to them to say that Te Kooti was to be stopped. Clarke immediately after that said that McLean had nothing to do with Taupo, after that Hon. Mr Richmond wrote to say, let Te Kooti pass, then C.C. [Civil Commissioner] Wilson came up saying let Te Kooti pass, and last of all Mr Clarke and I [St George] said don't let him pass, with all these orders they did not know what to do.⁵⁸

St George admitted: 'There is a great deal of truth in all this.'59

For the Rohe Potae, on the other hand, the Government did not presume to issue orders on such a matter. It was not prepared to pursue Te Kooti there; that was simply, in Ormond's words, 'out of the question', because the Government was not prepared to invade the King Country and reignite the war with the Kingitanga. In November 1869, the Native Minister met with senior Kingitanga leaders and formalised this situation. He negotiated an agreement that Government forces would not follow Te Kooti into the Rohe Potae, while the Kingitanga agreed in return to resist or capture Te Kooti if he entered their district. 60 The historical evidence recited by Mr Stirling, especially what is known of Te Heuheu's attitude before he actually met Te Kooti and heard him preach, suggests that a government minister or ministers could have secured the same outcome from meeting with Taupo leaders in a spirit of partnership. 61 The Treaty required no less.

In our view, the Crown was not justified (and therefore acted contrary to the Treaty) in:

➤ sending armed forces to capture Te Kooti, especially armed tribes acting outside their own rohe, without first negotiating the agreement of all the local leader-

- ships anything short of this in the circumstances of 1869 was an unjustified invasion of their lands;
- ▶ authorising attacks or plundering raids on those who had sheltered or might shelter Te Kooti, again without first attempting peaceful means to obtain their support for his expulsion from the district; and
- ▶ taking advantage of the arrival of Te Kooti in the southern Taupo district to establish its military supremacy over the area, thereby reducing Maori autonomy by force.

These conclusions are not altered in any way if some Tuwharetoa could legally be considered 'rebels' later when they resisted the Government forces that invaded their district in pursuit of Te Kooti (and also in pursuit of plunder, their lives, and possibly their land). In the event, the Crown did not install 'friendly' Ngati Kahungunu on Taupo lands because its objectives could be met with an Armed Constabulary base and the opening of the district by roads. After the southern Taupo chiefs surrendered in 1869, the northern and western Tuwharetoa and Ngati Raukawa leaders 'came in' from 1870 to 1871. The price of their submission was not land (directly), but roads, and the acceptance of the Government's authority. 62 But the possibility of confiscation or 'voluntary cession', and of military awards to outside Maori, was considered at the time and was a real one, although many in official circles were by then considering it an expensive mistake.

We do not consider that, in supporting Te Kooti, Taupo Maori were ever formally judged to be in 'rebellion' at the time. Some certainly had no choice but to support him. The proportion who did so willingly was not ascertained at the time. The Government rejected Native Minister McLean's proposal to hold an official inquiry into Te Heuheu's actions. ⁶³ This means that his actions (and those of his people) were never inquired into or judged by any form of due process. For the Government to eschew any inquiry or formal proceedings but still to maintain an accusation of rebellion would clearly have been unfair and unsustainable.

WAR AND RAUPATU, 1863-1870

We turn now to the raupatu claims in the various districts.

WAR AND RAUPATU CLAIMS: THE EASTERN BAY OF PLENTY

The Crown accepts that raupatu is a major grievance for coastal iwi, but argues that it has already been reported on by the Tribunal in Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims and the (misnamed) Eastern Bay of Plenty Report, and need not be inquired into by this Tribunal.⁶⁴ We do not accept this submission. This Tribunal needs to consider raupatu issues, especially for the Eastern Bay of Plenty raupatu, which falls partly inside our inquiry district, in so far as we have the evidence to do so. The history of Crown–Maori relations in the Central North Island, and of the application of the Treaty of Waitangi in that region, cannot be evaluated without considering the wars and the raupatu that so strongly affected it. Although we may not have detailed evidence on every battle, or on exactly how every tribal group was affected by war and raupatu, the evidence is sufficient to explore the issues at a generic level and to explore the experiences of some groups at a more particular level. It is especially incumbent on us to deal with the Eastern Bay of Plenty raupatu to the extent that we are able, given that the Eastern Bay of Plenty Tribunal cannot resume its inquiry.

The Ngati Makino war and raupatu claim

Ngati Makino pursued their war and raupatu claim in the Eastern Bay of Plenty inquiry, but were not covered in the Tribunal's interim report on the claims of Ngati Awa and Ngati Tuwharetoa ki Kawerau. As a result, they resubmitted their technical and some of their tangata whenua evidence in this inquiry, and made extensive closing submissions on these issues.

The claimants' case

The claimants seek the application of the findings of the Ngati Awa Raupatu Report to their raupatu claim, and also some of the findings of the Taranaki Report. Annette Sykes submitted that the Crown invaded the lands of Ngati Makino and attacked the people, doing great harm to their economic and social well-being and with loss of life, in gross and flagrant breach of the Treaty. Ngati Makino fought in defence of their lands, property, and persons, and were not in rebellion. Ngati Makino played no part in the 'execution' of Völkner and Fulloon, even if that had justified invasion (which it did not). Ms Sykes further submitted that the Crown's invasion caused lasting and harmful divisions within and between tribes. Also, the branding of some Ngati Makino as 'rebels' has had lasting and harmful effects. The New Zealand Settlements Act was in breach of the Treaty, and the Crown's confiscation of land in application of that Act was performed illegally as well as in breach of the Treaty. It established a Compensation Court process that was inequitable on many grounds, awarded Ngati Makino land to Ngati Pikiao and 'loyalists', and was in breach of the Treaty. Further, the Compensation Court process forced individualisation of title on those inequitably compensated, in additional breach of the Treaty.⁶⁵

Overall, in the submission of the claimants, the wars and raupatu did lasting harm to the mana, self-government, and physical and spiritual welfare of Ngati Makino. The Crown has never compensated Ngati Makino for these Treaty breaches – including the lost opportunity to do so through the Sim commission in the 1920s – and still refuses to negotiate with Ngati Makino today despite settling other Eastern Bay of Plenty raupatu claims. 66

The Crown's case

As noted, the Crown made no specific response to these arguments, and appears to take the position that they are covered in the *Ngati Awa Raupatu Report*.⁶⁷

HE MAUNGA RONGO

The relevant findings of the Ngati Awa Raupatu Report

For a full description of the war and raupatu, and the findings of the Tribunal, we rely on the *Ngati Awa Raupatu Report*, and we will not duplicate that detail here. The Tribunal found that Maori authority and law continued after the signing of the Treaty, but not absolutely unfettered. The Government had authority to make laws for the whole country for keeping 'peace and good order', as anticipated in the preamble of the Treaty, and those included laws against murder. Maori values (especially after conversion to Christianity) were in accordance with such laws. The aukati breached by Fulloon, however, which led to his death, was not a valid application of Maori law because the group which imposed it did not have the authority to do so.⁶⁸

The 'murderers' of Völkner and Fulloon, as identified in the historical evidence, did not include any Ngati Makino people. In the Tribunal's view, the Government was right to seek to arrest and punish individual murderers, and Maori should and did know that this would happen. But the Crown was not right to bring hapu of Te Arawa – who had been in past conflict with the local people – and use them to invade the district, forcing Ngati Awa (and others) to fight in self-defence. The confiscation that followed was not, in fact, a punishment for murder. Individuals who were accused of murder were captured, tried, and punished by the civil law. The New Zealand Settlements Act only permitted confiscation in punishment of rebellion, and for the purposes of pacification (that is, military settlement).

In any case, confiscation was a breach of the plain meaning of the Treaty, it was not carried out within the limitations suggested by the Colonial Office, and it was not carried out in accordance with the actual terms of the New Zealand Settlements Act. On the latter point:

- confiscation was contrary to law because there was no rebellion;
- ▶ land was not taken for (nor in the amounts appropriate for) military settlement, which was the only taking of land legally provided for; and

▶ the compensation provisions were not followed properly.

The confiscation included Te Arawa land in its inappropriately large district, and also the land of many Ngati Awa hapu who had either played no part in the fighting or were actively 'loyal'. Maori of the Eastern Bay of Plenty were not in rebellion, and no punishment for rebellion was legitimate, let alone one so extreme as confiscation. The situation in the Eastern Bay of Plenty clearly did not justify any reduction in the protections or application of the Treaty. ⁶⁹

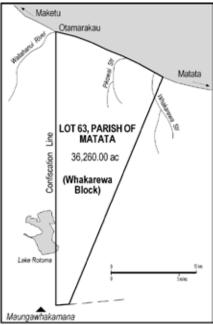
The Tribunal also criticised the Compensation Court process, and the individualised title that resulted from it. Te Arawa were awarded 87,000 acres – but the Tribunal made no judgement on the extent to which this was a recognition of their rights as opposed to a reward for military service. With regard to Ngati Makino, the Tribunal found that they (and Ngati Pikiao) have legitimate customary interests in the Rotoehu forest. Ngati Makino have a prima facie case based on the Crown's role in the management and alienation of their lands, but no findings were made because the Crown had not presented evidence.⁷⁰

A summary of the historical evidence

The principal historical report available to the Eastern Bay of Plenty Tribunal, and in our inquiry, is David Alexander's report on Ngati Makino lands, which deals with these issues briefly.⁷¹ We also heard oral evidence from Morris Meha, Hilda Sykes, Te Ariki Morehu, and others. Mr Alexander argued that Ngati Makino were a border hapu with strong whakapapa links into both Ngati Pikiao and Ngati Awa, and also to Waitaha. Hilda Sykes described the strong whakapapa links between these groups, and the distinct identity of Ngati Makino within those important relationships.⁷² In the 1860s, Ngati Makino had principal settlements at Otamarakau and Maketu on the coast, and inland at Lakes Rotoiti and Rotoehu. Some Ngati Makino were receptive to the Crown's offers of state-sponsored self-government, and supported the New Institutions at that time. The chief Te Mapu Te Amotu was appointed

WAR AND RAUPATU, 1863-1870





Map 5.3: (left) The Central North Island inquiry region in relation to Eastern Bay of Plenty Confiscation boundary

Map 5.4: (right) Lot 63, Parish of Matata (the Whakarewa block), which lies within both the Central North Island inquiry region and the Eastern Bay of Plenty confiscation boundary

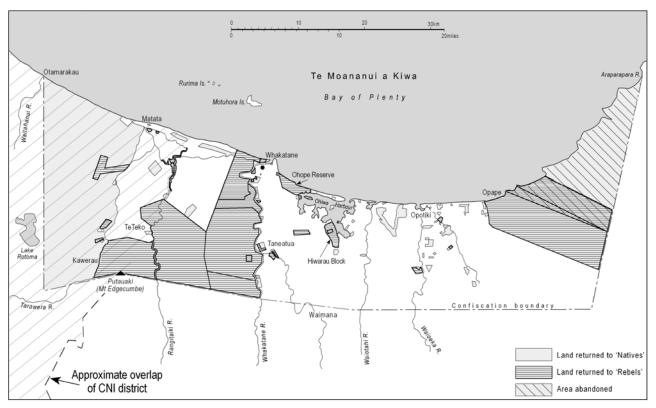
president of the runanga at Rotoiti. During the conflict in 1865 and 1866 after the murder of Fulloon, however, some Ngati Makino supported their Ngati Awa kin and were therefore considered 'rebels'. Others joined their Ngati Pikiao kin and were considered 'loyal'. The principal chief of Ngati Makino, Te Puehu, seems to have been 'neutral'. In 1864, Te Puehu sought permission for the East Coast heke to pass through Te Arawa lands to Waikato.⁷³

According to Mr Alexander, Te Puehu did not join his Pikiao kin in the battle against Tai Rawhiti in 1864, but the oral record of his tribe is that Te Puehu did in fact join the fight. In any case, the chief was later described as a 'rebel' during the post-Fulloon conflict, but his actions are unknown. One of his sons, closely related to Ngati Awa, was also called a 'rebel'. Other Ngati Makino leaders certainly fought with their Te Arawa kin to deny passage to the East Coast forces at the Battle of Te Kaokaoroa. To

Mr Alexander has no detailed information about the role of Ngati Makino in the post-Fulloon campaigns, except to say that some supported Ngati Awa and some fought for the Crown. The confiscation imposed as punishment and for pacification had an administrative boundary (ironically, drawn from the New Institutions' districts) and not a tribal one. Rotoiti Maori (including Ngati Makino) asked for the boundary to be moved back to the Te Awa o Te Atua River. The Crown refused, although it knew that the lands of many loyal Maori were included (as noted by an 1866 Select Committee). According to Mr Alexander, Ngati Makino lands were bisected by the confiscation boundary, whether they were 'rebel' or 'loyal' (and there had been some of each).⁷⁶

Ngati Pikiao (including loyalist Ngati Makino leaders) lodged a claim with the Compensation Court for the Whakarewa block. This is the land which, according to Mr Alexander and the claimants, Ngati Makino considered theirs inside the confiscation district. They argue that Te Puehu was the main rangatira for this land, but did not give evidence in court, probably because he was

HE MAUNGA RONGO



Map 5.5: Land lying within the Eastern Bay of Plenty confiscation area, showing (on the western edge) the overlap with the Central North Island inquiry region. The Waitangi Tribunal's Ngati Awa Raupatu Report (1999) explains the details of this confiscation.

regarded as a 'rebel'. Ngati Awa claims were rejected. In Mr Alexander's view, it was not clear whether the court granted this land on the basis of customary interests or as a reward for military service, like land further east. Officials at first characterised policy as the giving of land to loyal Te Arawa, which they later described as giving land back to loyal Te Arawa.⁷⁷ Judge Mair's decision is a single sentence: 'Judgement [in favour of Ngati Pikiao] for all the lands west of a line running from a Pohutukawa tree at the entrance of the Whakarewa river direct to Otitapu.'⁷⁸ The absence of any explanation in the Compensation Court decision is critical. Ngati Makino claim that other Ngati Pikiao hapu had no customary rights, that the joint application

was brought about by the Crown, and that the inclusion of people without rights led ultimately to the alienation of the land against their wishes.⁷⁹

Ngati Makino thus found their land confiscated, and were forced into a court process that was not at their initiative (they did not have any power of choice over whether the title to their land would be changed). The land was awarded to Ngati Pikiao, although Ngati Makino leaders claimed it as theirs in evidence. (Ngati Pikiao denied this evidence in the Eastern Bay of Plenty inquiry but only certain hapu of Ngati Pikiao participated in our Central North Island inquiry.) In 1872, a list was compiled of 153 owners, with seven chiefs as trustees. According to Ngati Makino

WAR AND RAUPATU, 1863-1870

evidence to the Native Land Court later in the century, Crown officials insisted on omitting all the names of those who were 'rebels', so that some Ngati Makino were left out of the title. Mr Alexander argues that there is no reason to doubt their testimony about this omission. Not only were right-holders thus disenfranchised, but people were put in the title without any customary rights (so Ngati Makino claimed). There were no provisions to make the trust legally effective, and the land was ultimately leased to and then purchased by the Crown. ⁸¹

The Tribunal's analysis

Ngati Makino was, as other tribes, divided by the wars of the 1860s. The invasion of the Eastern Bay of Plenty by the Crown and by their own Arawa kin left some with no choice but to support their Ngati Awa relations. They fought against the Crown and were labelled 'rebels'. Others fought for the Crown. 'Loyal' or 'rebel', land in which they claimed interests was included in the confiscation. It is not possible for us to say how much. On the face of it, Ngati Makino claimed the whole Whakarewa block as theirs, while admitting some Ngati Awa overlapping interests. Mr Alexander argues that we do not know whether or how far this land was awarded to Ngati Pikiao (including some Makino) because of customary rights, or as a reward for military service. Rotoiti Maori clearly felt that they had interests in the confiscated land, and they asked the Government to move the confiscation boundary. It refused, although Parliament clearly knew that the land of many 'loyal' Maori had been confiscated. We rely on the 1866 Select Committee findings on that point. 82

We also rely on the finding of the *Ngati Awa Raupatu Report* that some Te Arawa lands were included in the confiscation. We do not make our own findings on issues of 'mana whenua'. We have, however, reviewed the evidence presented to the Compensation Court for Whakarewa. The great bulk of it relates to the claimed ancestral connections and occupation rights of particular descent lines within Ngati Pikiao and Ngati Awa. ⁸³ Only one witness, Petera Te Pukuatua of Ngati Whakaue, reminded the judge that Te

Arawa had 'captured the murderers', and that the Governor had promised to give them 'the land of the murderers'. Even this witness, however, seemed convinced that a customary entitlement was at issue, and conceded that there would still be a great deal of land left to divide as rewards among the rest of Te Arawa. 84

Although Judge Mair did not provide any reasons in his decision, the evidence was entirely about customary entitlements. Our preliminary view is that this block is unlikely to have been awarded for military service, but rather marked a return of land to 'loyal' members of the particular tribe considered entitled by Mair. Whether he was biased, correct, or incorrect, the process was imposed on all those who asserted an interest. It resulted in an absolute winner-takes-all award, excluded 'rebels' of all the tribes, and took no account of the complexities of custom in this area of tribal overlaps. Without even a token Assessor, there was absolutely no Maori input to the decision-making. The process was so flawed that its outcome was inevitably in breach of the Treaty.

Ngati Makino had no choice but to participate in the Compensation Court process and accept that the title of their land was forever changed. 'Rebels' were excluded from these lands forever by the Compensation Court and then by the Crown official who compiled its list of owners in 1872. There were legitimate overlapping customary rights in this land, although we do not express a view on their extent and weighting. The Compensation Court did not reflect custom because it left out any right-holder accused (not proven by any due process) of 'rebellion'. The court was not set up to provide for custom, nor was it equipped to do so. Ngati Makino appear to us to have lost out twice in the Compensation Court process - some 'rebels' lost all their rights; and the 'loyalists' received an individual and alienable title, both of which rendered the land vulnerable to the Crown. There is no way to tell from the claimants' evidence what proportion of Ngati Makino fought in self-defence and in defence of their Ngati Awa kin, and were therefore excluded from the title.

HE MAUNGA RONGO

The Tribunal's findings

Because of insufficient evidence, the lack of a Crown response, and not having heard Ngati Pikiao, the Tribunal is not in a position to make findings on:

- whether the Crown acted illegally in terms of the New Zealand Settlements Act when it confiscated Ngati Makino land;
- ▶ the extent of Ngati Makino and Ngati Pikiao interests in the confiscated land, beyond the Eastern Bay of Plenty Tribunal's finding that they had some (undefined);
- ▶ the extent to which Ngati Makino right-holders were excluded from the title to Whakarewa as 'rebels', although some were clearly omitted;
- ▶ the extent to which Ngati Makino had interests in the confiscation block outside Whakarewa, which were not returned;
- ► the extent to which 'loyal' Ngati Makino benefited from the military awards in the confiscated block; and
- ▶ whether a legal trust was created for the Whakarewa block and why it patently failed.

On the basis of the evidence before us, and having regard to the findings of the *Ngati Awa Raupatu Report*, we find that the Crown breached the Treaty of Waitangi:

- ▶ by disempowering Maori self-government and abolishing the New Institutions, which some Ngati Makino had embraced;
- ▶ by forcing Ngati Makino into a position where they had to choose whether to defend their Ngati Awa kin and their lands;
- ▶ by making war on some Ngati Makino without the slightest justification, given that the Ngati Awa Tribunal correctly characterised it as an unwarranted invasion which did not in fact have the character of a police action;
- ▶ by confiscating Ngati Makino land per se;
- ▶ by confiscating Ngati Makino land without the slightest justification, given that Ngati Makino had had no involvement in the killings of Völkner and Fulloon;

- ▶ by returning land to 'loyal' Ngati Makino in a form foreign to the customary title in which it was taken, without their volition or consent to such a change;
- ▶ by branding some Ngati Makino as 'rebels' and excluding them from the new title;
- ▶ by establishing a Compensation Court which was not tasked with investigating customary title or awarding land to its former right-holders, but with granting land to 'loyalists' in compensation for taking their land; and
- ▶ by not providing even minimal redress in the twentieth century, via the Sim commission, when other tribes received at least something.

We are not in a position to judge the extent of prejudice suffered by Ngati Makino, but we expect the Crown to provide an appropriate settlement of what appears to us to be a serious Treaty breach.

The Ngati Te Rangiunuora and Ngati Rongomai raupatu claim

Ngati Te Rangiunuora and Ngati Rongomai submitted that the land concerned in the preceding section was in fact Ngati Pikiao's land (and therefore partly theirs), and that some of Ngati Rongomai supported Ngati Awa in the war. They suffered by raupatu, and by the Crown's purchase of the land 'returned' to Ngati Pikiao. 85

The Tribunal's findings

In the absence of detailed evidence, the Tribunal is unable to make findings on this matter. It follows from our discussion above that, to the extent that Ngati Rongomai supported their Ngati Awa kin and did in fact lose land by confiscation, the Treaty was also breached in respect of them. It is not possible, on the basis of the evidence before us, to say more than that.

WAR AND RAUPATU, 1863-1870

The Ngati Rangitihi war and raupatu claim

Ngati Rangitihi claimed that they had long-standing customary interests in the coastal land confiscated by the Crown in 1866, especially at Matata. This claim was based on the evidence of David Potter and of Dr Ballara. These interests were confiscated despite their avowed loyalty to the Crown and their military support of its campaign against Ngati Awa and elsewhere. Ngati Awa disputed this claim, arguing that Ngati Rangitihi interests (if any) were acquired after receipt of military awards in the 1860s. Richard Boast and Liz McPherson, on behalf of their Ngati Rangitihi clients (Wai 996), acknowledged that the Tribunal would not make 'mana whenua findings'. They sought the following findings:

- ▶ that there is evidence to suggest 'possible' Ngati Rangitihi customary interests at Matata and the coast before the military awards of the 1860s, but that further research is required;
- ▶ that after the military awards and the eruption of Mount Tarawera, Ngati Rangitihi customary rights at Matata were 'further developed and became indisputable';
- ▶ and that the Eastern Bay of Plenty confiscation affected more groups than Ngati Awa. 88

Mr Potter argued that Ngati Rangitihi supported the Crown as a result of the Kohimarama Conference and fought for the Crown in the Eastern Bay of Plenty war, only to have the raupatu 'dispossess us of most of our lands'. Some land was returned to Ngati Rangitihi as military awards, but some was awarded to other Arawa hapu, thus parting Rangitihi permanently from key sites. ⁸⁹ The exact interpretation of Dr Ballara's evidence on this point is disputed between Ngati Rangitihi and Ngati Awa. ⁹⁰ We accept that Ngati Rangitihi claim customary interests at Matata in particular, and west of Te Awa o Te Atua River in general, and that this is where Te Arawa hapu received their military awards. The evidence of Mr Potter is that Ngati Rangitihi fought for the Crown, which is not disputed, but that their interests were nonetheless confiscated.

The Tribunal's findings

Other than noting that these claims have been made, we are not in a position to evaluate them without further research. In particular, we are not in a position to endorse Professor Boast's submission, that Ngati Rangitihi enhanced pre-existing rights at Matata after the 1860s. It is certainly the case that all groups with customary interests in the confiscated block either lost them absolutely, or had them returned in a foreign tenure without their volition or consent. All groups suffered to a greater or lesser degree from that fundamental Treaty breach. The Tribunal is not in a position to say whether or how far Ngati Rangitihi was affected.

WAR AND RAUPATU CLAIMS: THE WESTERN BAY OF PLENTY

Waitaha and Tapuika argued that they had been drastically affected by the war in Tauranga, the confiscation of Tauranga land, and the punitive Bush Campaign which repressed those who had disrupted Crown attempts to survey the confiscated land. In addition to the direct harm suffered from these things, they also argued that the circumstances of the 1860s resulted in permanent separation from their Te Arawa kin, anguish and distress transmitted from generation to generation, the challenge of the 'toa' claims to their lands, and the vulnerability of their lands to alienation. Ngai Te Rangi claimed that they had been excluded from all coastal lands in our inquiry district, but based this claim on generic Native Land Court issues rather than the prejudicial effects of war and raupatu. We deal with the latter claim first.

The Ngai Te Rangi and Ngai Tukairangi war and raupatu claims

Ngai Te Rangi's and Ngai Tukairangi's war and raupatu claims have been covered fully in the Tribunal's report, *Te*

HE MAUNGA RONGO

Raupatu o Tauranga Moana. In the Central North Island inquiry region, these tribes claim to have been left out of the titles for all the coastal blocks in which they claimed customary interests, as a result of their non-attendance at court. Other than one hearing in 1868, defining the extent of the confiscation, they did not attend any hearings. The claimants argue that their non-attendance was due principally to non-notification, but also to their concentration on Tauranga hearings, and their dispirited and difficult circumstances after the war and raupatu. 91 We have no historical evidence on why these tribes did not attend the Native Land Court, and thereby had no opportunity to obtain a hearing or award of their claimed interests. We will return to this generic issue - that the court almost always confined itself to the claims and evidence of those able to attend, rather than inquiring fully about all interests – below in part III. Here, we note that the claimants' case is primarily about non-notification, rather than their alleged 'rebel' status.

The Tribunal's findings

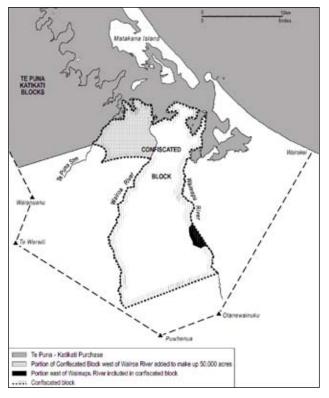
We make no findings on these claims.

The Waitaha war and raupatu claim

The Waitaha claimants' raupatu claim was determined by the Tauranga Moana Tribunal, the findings of which are accepted by the claimants. But, they argue, the effects of the war and the raupatu were as powerful in the Central North Island half of the Waitaha rohe as they were in Tauranga itself.

The claimants' case

Ms Feint argued that Waitaha were divided by war, allegiance to the Kingitanga and the Crown, and Te Kooti, and have remained divided ever since. Some supported the Kingitanga, some the Crown (the majority were probably neutral), but all suffered equally as 'rebels.' The Crown's attack on Waikato and Tauranga – which led the



Map 5.6: Tauranga confiscation area. The Waitangi Tribunal's report Te Raupatu o Tauranga Moana (2004) explains the details of this confiscation.

great Waitaha leader Hakaraia to fight in defence of the Kingitanga and the land – was unjustified and in breach of the Treaty. Waitaha were not in rebellion. There was no justification for the post-raupatu attack on them in the Bush Campaign. Hakaraia supported Te Kooti and this also contributed to the Crown's persecution of Waitaha. As a result of prolonged war, they were divided, moved off their land, lost a lot of land directly from raupatu, and were forever after mislabelled as 'rebels.'92

The claimants also argue that the wars led directly to the rapid alienation of Waitaha's Central North Island land in the 20 years following the raupatu. Te Arawa 'loyalists', in part to defend Arawa land, marginalised Waitaha, called

WAR AND RAUPATU, 1863-1870

them 'Waikatos', expelled them from the Arawa confederation (which remains the case today), and asserted toa claims over their lands. Waitaha were forced into selling their land unwillingly to try to defend themselves against the toa claims. These toa claims arose as a direct consequence of the Crown's war against the Kingitanga, and its determination to acquire land regardless of the interests of any Maori ('rebel' or 'loyalist'). The Crown in effect created the toa claims, which in their turn (along with unfair Crown tactics) forced the alienation of Waitaha lands on the Central North Island side of the confiscation boundary. The detailed history of the Te Puke block is a case study of this. The claimants do not accept Keith Pickens' evidence that there was a prior history of disputed land claims and toa claims between these groups, nor the tangata whenua evidence that bases to claims on the Battle of Te Tumu. They argue that the real determinant was the Crown's wars of the 1860s, the Native Land Court's misunderstanding of custom, and other Crown actions.93

Ms Feint submitted that the prejudice suffered by Waitaha was very significant: they were landless by the end of the nineteenth century; still treated badly and stigmatised as 'hauhaus' or 'rebels'; and are still marginalised today within the Arawa confederation, where they do not even have representation on the Arawa Trust Board.⁹⁴

The Crown's case

The Crown argued that matters of war and raupatu relevant to Waitaha have been fully addressed in the *Te Raupatu o Tauranga Moana* report. Land alienation within our inquiry district, however, is very much at issue between claimants and the Crown. In its submission, the Crown does not accept that the toa claims were 'significantly exacerbated' by the wars, nor that the Ngati Whakaue military occupation of the coast in the 1860s gave rise to the claims. The Crown conceded that it 'may have had some effect'. Nonetheless, the Crown argued that it provided an appropriate external umpire in the form of the Native Land Court, assisted (but not improperly influenced) by the Native Minister's intervention and 'judgement' in 1875.⁹⁵

The toa claims were reheard many times by the courts, which the Crown characterises as 'very genuine Crown efforts to try and resolve the Toa dispute'. The final outcome was, in the view of the Crown's historian, Dr Pickens, a 'realistic and humane solution'. The Crown conceded that the involvement of its agents led to some disturbances on the coast, and that the Native Land Court process involved was slow, cumbersome, and expensive. ⁹⁶ It also accepts the historical evidence of Ms Gillingham that Waitaha's sale of the Te Puke block was an assertion of mana by the tribe, brought about by their genuine concern that unless they engaged with the Crown, the land would be lost to them. ⁹⁷

The Ngati Te Pukuohakoma war and raupatu claim

Ngati Te Pukuohakoma, a Waitaha hapu, filed a claim (Wai 1178) alleging raupatu and toa grievances. 98 As we see it, the issues and arguments are substantially the same as those recited in the Waitaha claim.

The Tapuika war and raupatu claim

Tapuika rely on their tangata whenua evidence, Mr Koning's report on the Bush Campaign, Ms Gillingham's report, Dr Ballara's report, Ms Rose's reports, and the findings of the Tauranga Moana Tribunal, in support of their claim. 99 Mr Ambler submitted that further research would be necessary to support the details of the Tapuika claim, but that the Tribunal should make findings where it considers the evidence sufficient. 100

The claimants' case

Tapuika did not participate in the Tauranga inquiry, but argue that they had interests in the raupatu district, at and around Otawa mountain, and that this has been acknowledged by Dr Ballara. Those interests were confiscated by the Crown, wrongfully, and in breach of the Treaty. Tapuika supported the Kingitanga, their Ngai Te Rangi allies, and their Waitaha kin (they considered Hakaraia a spiritual leader of both tribes), fighting in defence of their Tauranga

HE MAUNGA RONGO

lands. They were not in rebellion. The Bush Campaign was a particularly wrongful and cruel response of the Crown to their opposition to the raupatu boundary and to surveying. As a result of the wars, Tapuika lost lives, property, economic opportunity, and their land – many took refuge with Pirirakau and others, and never returned. ¹⁰¹

The claimants assert that the wars had two other lasting legacies. First, Tapuika's relationships with their Arawa kin were severely damaged, they were divided internally, and virtually expelled from the Arawa confederation, and they have been permanently and wrongly stigmatised as rebels.¹⁰² Secondly, the disadvantages suffered by 'rebels' in the Native Land Court process, and the toa claims (as supported by the Crown when it suited it, in particular by Donald McLean), led to Tapuika losing the great majority of their land in the Native Land Court. This was by far the most important cause of their loss of almost all their land, and their most serious grievance against the Crown.¹⁰³

The Crown's case

The Crown notes that the Tribunal's report on Tauranga raupatu does not cover Tapuika, and that counsel for Tapuika has stated that there is no detailed evidence on the effects of war on that tribe. The Crown submits that the issue should be settled by negotiation, without the need for further Tribunal inquiry.104 With regard to issues inside the Central North Island inquiry district, the Crown argues (as above) that the toa claims were based on pre-1840 wars and not its wars of the 1860s, and that the Crown effort to deal with the issue was genuine and had a fair outcome. With regard to the Tapuika claim that their 'rebel' status disadvantaged them in the Native Land Court, the Crown disagreed with the claimants that Dr Ballara's evidence supports the claim. Rather, the Crown argues that Dr Ballara's evidence on the point is at best inconclusive, or in fact positive that rebels suffered no such discrimination.105

The Tribunal's analysis of the Waitaha and Tapuika claims

The Tribunal has already made findings on the Waitaha raupatu claim in its report, *Te Raupatu o Tauranga Moana*. Tapuika did not pursue a claim before that Tribunal. There is insufficient evidence for us to comment on the Tapuika raupatu claim, other than to note that, to the extent that Tapuika also had customary interests in the land confiscated by the Crown, our findings are likely to agree with those of the Tauranga Moana Tribunal. We turn now to the effects of the war and raupatu on Waitaha (including Ngati Te Pukuohakoma) and Tapuika inside our inquiry district. Issues with regard to land alienation and the Native Land Court will be considered below in part III, but we provide an introduction to our view of the toa claims, here, as they are vital to determining the prejudicial effects of war and raupatu for these tribes.

The historical evidence

With regard to Waitaha, the historical evidence of Ms Gillingham makes two key points. First, Waitaha wanted to submit the land claims (toa versus ancestral) to a Maori jury for decision, by which they would abide. This suggests that external arbitration may well have been necessary in this instance, as the Crown submits, but that it could have been conducted by Maori in a manner that both sides would accept, without needing the 'foreign' Native Land Court. 106 Secondly, the Native Land Court accepted the ancestral claims and rejected the toa ones in the Waitahaclaimed blocks, when Waitaha had already entered into sale transactions with the Crown. It seems clear that the toa claims were influential in making Waitaha sellers, as the Crown conceded in the case of Te Puke, even though the toa claimants were not successful in the later court hearings.107

The main historical evidence relied on by Tapuika is contained in Dr Ballara's report, and is summarised in her written answers to questions from counsel for Tapuika. Dr Ballara notes that witnesses in the Native Land Court tended to denigrate opponents as 'rebel' or 'Hauhau', but that judges ignored the issue and concentrated on pre-1840

WAR AND RAUPATU, 1863-1870

matters in their decisions. Judges did seem to take note of who was 'Hauhau' and who was not, but made no mention of it in their awards. In Dr Ballara's view, there is no definitive evidence that the status of Tapuika as 'rebels' or 'Hauhau' influenced the court's decisions. Rather, she notes that the Government's allies were the most opposed to land-selling, so that agents such as Henry Mitchell and Charles Davis supported the claims of Tapuika and Waitaha, who had accepted their advances. Where it mattered more, was that these tribes were perceived as rebels, feared confiscation, and feared loss of their land to the toa claims of the Government's allies, and so became land sellers as a pre-emptive act of self-defence. Government agents took advantage of their fears to pay advances and get lands through the Native Land Court. This 'vicious cycle' was the real impact of war and raupatu on these tribes and lands, not any overt discrimination in the Native Land Court. 109

The Tribunal's findings on the Waitaha and Tapuika claims

The historical evidence of Ms Gillingham and Dr Ballara establishes that both Waitaha and Tapuika became sellers in the 1870s for fear that they would otherwise lose their land to the Crown's wartime allies, or to possible confiscation. Waitaha sought the Crown's assistance to manage their lands, but instead suffered the Treaty breaches associated with purchase of individual interests, as outlined in more detail below in Part III. With regard to McLean's 'judgement' of 1875, it was clearly influential with the Native Land Court and with Maori, but there is no evidence of collusion or political interference in the findings of the court. We accept the Crown's submission on this point.

As we will find below in chapter 9, the Native Land Court was not an appropriate body to decide title in the very fraught circumstances of these overlapping claims. Its award of absolute, exclusive, and individual ownership was not an appropriate outcome. The historical evidence does not, however, support a claim that the Native Land Court punished 'rebels' or favoured 'loyalists' in its decisions for

or against the ancestral and toa claims. Nor does it support a claim that the events of the 1860s wars were the primary component of the toa claims, or the Native Land Court's acceptance of them. We rely on the evidence of Dr Ballara in this respect.¹¹⁰

We consider, however, that the toa claims and the atmosphere in which they were made, were transformed by the wars of the 1860s and the enmity that these created between kin and former close allies. The alleged disowning of Waitaha and Tapuika by the Arawa confederation in 1875, and their renaming as 'Waikato', was a particularly hurtful consequence of the Crown's wars and the atmosphere of fear and uncertainty about land that followed in their wake.111 The Native Land Court and purchase processes, which created 'winners' and 'losers', froze and cemented divisions that might otherwise have been adjusted between these kin according to customary norms. In response to questions from the Tribunal, David Rangitauira said on behalf of his Ngati Whakaue clients that the toa claims arose from the Battle of Te Tumu, and that the events of the wars of the 1860s (and after) were in defence of their mana and designed to ensure the continuation of the post-Te Tumu situation. He accepted, however, that take toa did not confer exclusive rights and was not the only tikanga that should have applied. Customary rights were complex - the claim against the Crown is, he argued, a shared one, in that the ignorance and mishandling of customary rights and law by the Crown and the Native Land Court is the real issue for both sides.112

We agree with counsel for Ngati Whakaue that, in Treaty terms, the claims of the ancestral and toa tribes are the same; that is, the complexity of customary law and tribal relations – especially in such a contested area – ought not to have been made the subject of a winner-takes-all individualisation by a Pakeha court. Maori law and Maori bodies ought to have decided these questions in such a way as to respect tikanga and still provide a secure enough title for those who wished to bring their lands into the colonial economy. These objects were not irreconcilable, and the Treaty had promised nothing less. The result was

HE MAUNGA RONGO

a serious breach of Treaty principles that had severe and lasting effects on tribal land entitlements, tribal land bases, and tribal relationships (whanaungatanga). Rather than making reasonable efforts to respect Maori autonomy and provide for a constructive solution, the Crown took advantage of the situation to acquire the lands at issue as rapidly as possible. We do not consider that repeated rehearings by the Native Land Court, while the Crown bought up interests in between that could not then be regranted, were genuine and well-motivated attempts at resolution. We will return to the question of prejudice below, but we note here that the Crown's actions in respect of Waitaha, Tapuika, and the toa claimants were serious ones.

WAR AND RAUPATU CLAIMS: NGATI HINEURU

The Crown's attack on Pai Marire Ngati Hineuru, imprisonment of some of them on the Chatham Islands, and confiscation of much of their land, has already been dealt with in the *Mohaka ki Ahuriri Report*. The claimants argue, however, that the effects of these Treaty breaches were also felt in the Central North Island. The harm to them in terms of loss of life, economic loss, and loss of mana, affected their whole rohe. They were weakened by these things, and by the Crown's continued hostility to them, greatly reducing their ability to resist the Native Land Court, land alienation, and further harm in the Central North Island. Their labelling as 'hauhau' and 'rebels' is a continuing source of grief and harm.¹¹³

The Tribunal's findings

We note the ongoing distress of the Ngati Hineuru people over this issue, as put to us in their oral evidence and submissions.¹¹⁴ There is not, however, a great deal of historical evidence available on the effects of war and raupatu on Ngati Hineuru land interests inside our inquiry district. We do not have detailed research on the tribe's lands and exactly how those were awarded, nor full evidence on the

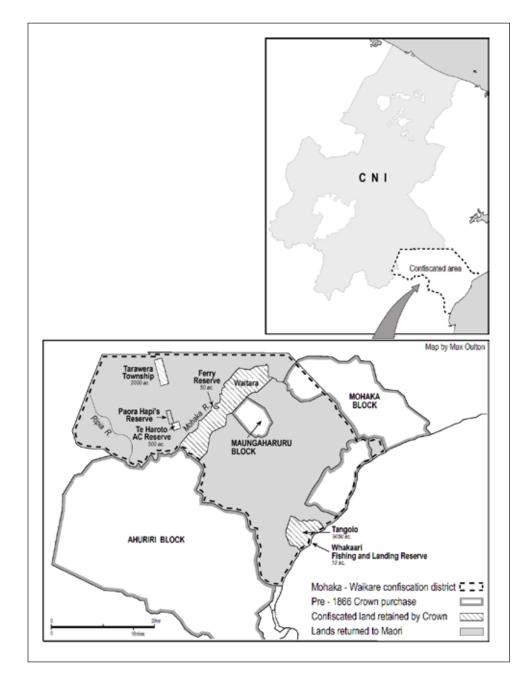
pace and consequences of their alienation. In common with other Taupo and Kaingaroa claimants, Ngati Hineuru share in the generic Treaty breaches (and prejudice) identified in this chapter and the chapters in part III on nineteenth-century Native Land Court and Crown purchasing issues. Noting the findings of the Mohaka ki Ahuriri Tribunal that serious Treaty breaches have occurred in respect of war and raupatu for Ngati Hineuru, we encourage the parties to obtain further research on the Central North Island specifics, if necessary for the successful negotiation and settlement of the grievances.

WAR AND RAUPATU CLAIMS: KAINGAROA LANDS

As provided above, we reserve the war and raupatu claims of the Urewera hapu with interests in Kaingaroa for the Urewera Tribunal to decide. We also note the claims of Ngati Hineuru, reported on by the Mohaka ki Ahuriri Tribunal. Here, we evaluate the impact of war and raupatu on these tribes, for lands in the Kaingaroa inquiry district. The evidence of Mr Stirling is that tribes that fought against the Crown tended to oppose or boycott the Native Land Court in the 1870s. Tuhoe and Ngati Haka Patuheuheu attempted to keep the court out of their rohe potae, while Ngati Hineuru turned to the Repudiation movement. These groups lost interests in the Kaingaroa lands as a result, through non-attendance at court.¹¹⁵

Ms Sykes asked Mr Stirling to comment on whether Tuhoe stayed away from the Native Land Court because of their knowledge that its judges and officials had fought against them during the war, and also because they had already been stigmatised and punished by the Compensation Court. Mr Stirling could not point to direct evidence, but agreed that these were strong possibilities. A perception that military officers (now judges or land agents) would favour the applicants who had fought under them, such as Ngati Manawa, was not unreasonable. Further, he argued, Tuhoe had lost substantial interests as 'rebels' in the Compensation Court. They had also lost out

WAR AND RAUPATU, 1863-1870



Map 5.7: Mohaka-Waikare confiscation area. The Waitangi Tribunal's *Mohaka ki Ahuriri* Report (2004) explains the details of this confiscation.

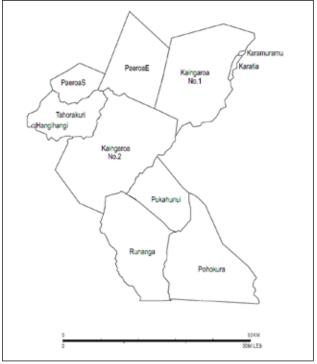
HE MAUNGA RONGO

in the Native Land Court's treatment of the 'confiscated' Waikaremoana lands, as recently as 1875. All these things, combined with their positive attempt to assert their tino rangatiratanga and exclude the Native Land Court from their rohe potae, must help explain their absence from the Kaingaroa hearings. The result, as Mr Stirling noted, was not that the court was stopped from sitting or from adjudicating on lands in which they were known to be interested, but instead that the process continued without them and their interests were forever lost. 116

The Tribunal's findings

In our view, there is no direct evidence that 'rebels' were treated in a discriminatory way by the Kaingaroa judges. Rather, they sometimes refused or were unable to attend the Native Land Court. Te Rangitahau and Petera Te Rangihiroa, for example, leading rangatira of Ngati Tutemohuta, supported Te Kooti and were sheltering at Ohinemuri as 'fugitives' when the court heard the Runanga 2 block in 1872. 117 As a result, they (with many others) were excluded from the title. Sometimes, groups made private arrangements to be included in the lists of those, such as Ngati Manawa, who pushed these blocks through the court. Such arrangements were vulnerable without legal protections, as will be seen in part III when we discuss the ownership lists for Kaingaroa 1. It is clear that the interests of Tuhoe, Ngati Haka Patuheuheu, and Ngati Hineuru were not properly recognised in the titles that resulted from the Native Land Court in the Kaingaroa district. This was not because the court discriminated against former 'rebels'. It had much to do, however, with the impact of war on these tribes' approach to their autonomy, to their willingness or ability to attend the Native Land Court, and how they sought to protect their lands.118

In the unsettled and suspicious atmosphere of the 1870s, a court process that continued regardless of whether all parties were adequately represented, made no effort to ascertain this question or accommodate the Crown's former 'enemies' fairly, and failed to cut out or protect the



Map 5.8: Blocks referred to as 'Kaingaroa blocks' in the Tribunal's Central North Island inquiry, making up the Kaingaroa inquiry district.

interests of parties who did not or could not attend, was clearly in breach of the Treaty principles of good faith and active protection. On the evidence available to us, significant numbers of Kaingaroa claimants were affected.

PREJUDICE ARISING FROM WAR AND RAUPATU The Tribunal's findings

The civil wars in the Central North Island were not a series of isolated incidents, but rather a continuous process triggered by the first Government attacks on Taranaki Maori and the Kingitanga. But for some tribes in the inquiry region, they were fortunate in the sense that the Crown had given up on raupatu as an 'expensive mistake' by the time the fighting

WAR AND RAUPATU, 1863-1870

reached most of the Central North Island. In this respect, as the claimants noted, it was better to have resisted the capture of Te Kooti than, for example, to have fought in defence of Tauranga. But although not all tribes suffered from confiscation, the social, political, and economic destinies of all were affected by the wars and their outcomes.

First, we note at this point that the Crown has conceded that Central North Island Maori suffered some degree of economic harm.120 In our view, such harm included or arose through loss of life, loss of manpower, the suspension of the pre-war trading economy, and destruction of some property inside the inquiry district. In particular, the coastal Rotorua tribes bore the brunt of the Bush Campaign. Even though much of the fighting was outside the Central North Island proper, its effects in terms of loss of life were the same as if the fighting had been inside the inquiry district. We consider this to have been serious for the communities affected. Similarly, there was economic dislocation even when campaigns were outside the district, as they had a great impact on the ability of the people to cultivate or trade. Inside the inquiry district, there was destruction of property and economic harm for different groups at different times. The Crown accepts that the wars had economic consequences for Central North Island tribes. We note and endorse the Crown's concession. We think it provides a starting point for negotiations, and consider it unnecessary to explore the detail of exactly who was affected economically and to what extent. The evidence currently available to us does not permit detailed assessment of this issue, as the Crown notes. 121

On the particular point of the hardships suffered by 'loyalist' forces fighting for the Crown, and the question of whether they were adequately recompensed, we make no findings at this stage. They certainly suffered from the forms of economic harm noted above, as did all the tribes involved on both sides. But Dr Ballara suggests that there was also discrimination against Te Arawa in terms of pay, as they received less than Pakeha troops. ¹²² Mr Stirling argues that northern Tuwharetoa hapu may not have been paid by the Crown at all, either in money or land. ¹²³ The

evidence is insufficient at present to allow us to evaluate these claims, or the Crown's contention that Te Arawa received generous payment in the form of land. We leave this matter for negotiations or later inquiry.

Secondly, all Central North Island tribes suffered long-term harm from being forced into a position where they had to choose sides, fight against their own kin, and continue that fighting later in the Native Land Court during title adjudication. Our hearings showed us that the division and bitterness lasts today, more so in the Te Arawa confederation, but also within Tuwharetoa and others. If, as the Crown submits, it was one of its objectives, in not supporting komiti, to prevent causing or exacerbating tribal conflict, then it did the opposite in the 1860s. It deliberately pitted tribe against tribe, hapu against hapu, and whanau against whanau in the Central North Island, needing Maori to do its fighting in the absence of the Imperial troops or a full treasury.

The Tribunal accepts that there was Maori agency - in the sense that they chose which side to support, and traditional enmities and rivalries were clearly important - but the wars were the unnecessary creation of a settler government bent on conquest. The evidence from Mr Armstrong, Dr Ballara, and others, is of peace agreements, negotiations, forging of relationships, and growing kotahitanga within Te Arawa from the mid-1850s onwards. Similarly, peace was made with traditional external 'enemies' such as Ngai Te Rangi. 124 Tribes came together, too, as part of the Kingitanga, although many Te Arawa aligned themselves in opposition to that kaupapa (agenda). The New Institutions and the work of the Government caused fresh glitches as the Crown sought to create or maintain 'Queenite' parties in opposition to the Kingitanga. But the promising initiatives of the 1850s were damaged by the wars, and then damaged further by the Native Land Court hearings and awards of title that followed. The fault, in our view, lies mainly with the Crown.

Also, the stigma attached to 'rebels' has done lasting harm, as claimants showed in their oral evidence. Tame McCausland offered the prayer that those such as the

HE MAUNGA RONGO

descendants of Hakaraia, who have had to bear the brunt of generations of shame and condemnation, will now have this burden lifted.¹²⁵ We echo this prayer.

Thirdly, some Central North Island hapu suffered confiscation of their land, with all the obvious prejudice that followed from that. This included spiritual harm from the loss of ancestral land, economic harm, and also social dislocation. Hilda Sykes, for example, described the consequences for Ngati Makino:

We must not forget that this Raupatu forced families to leave their whenua and relocate elsewhere and that it separated families as husbands were forced to look for work elsewhere while their wives were forced to look after their whanau on foreign lands often under the auspices of other kin, and that it plunged entire generations of Maori into economic hardship and poverty. Nor can we forget the effects that endure to this day, with many of the people of Ngati Makino being separated from their whanau and whenua and still feeling disconnected from their heritage.¹²⁶

Fourthly, the wars had direct (though not necessarily discriminatory) consequences during title adjudication. This was certainly the case in the Compensation Court, which is at issue for the Eastern Bay of Plenty raupatu claims. The Ngati Makino experience in the Compensation Court was that alleged rebels were left out of the titles and permanently disenfranchised. For the Native Land Court, the results are not so clear. In the Rotorua district, Dr Ballara found no explicit evidence of 'rebels' being disadvantaged in that court. But although the toa claims may not have arisen from the wars, they were transformed by them – the once-close allies became bitterly divided, and the inland tribes acted now as 'conquerors' rather than kin and allies. This had serious effects on both the title adjudication and the alienation of the Rotorua coastal lands (see above).

Taupo Maori may have suffered the least in this respect. Most of the Kingitanga lands went through the Native Land Court in the late 1880s in the Tauponuiatia block, and there is no evidence that 'rebels' were ascertained or excluded

in that process. Nor were Ngati Raukawa excluded from rights to Tauponuiatia on that ground.

In Kaingaroa, the post-war political opposition of Tuhoe, Ngati Haka Patuheuheu, and Ngati Hineuru kept many of them away from the court at crucial times. Whether through active boycotts, the Repudiation movement, and the declaration of a rohe potae, or through suspicion of bias and a preference to come in quietly on the lists of others, these tribes lost their Kaingaroa interests without consent or compensation. This loss was, for them, one of the most serious prejudicial effects of the wars.

Fifthly, we wish to note the particularly harmful effects experienced by Waitaha and Tapuika. Their experience was, in our view, the closest Central North Island parallel to Taranaki, in that they fought longest, were left divided, were alienated from their Te Arawa kin, and were rendered most vulnerable to the Crown's purchase agents. As a result, it is agreed by Crown and claimants that these tribes suffered very extensive land loss by the end of the nineteenth century. The Crown notes the findings of the Stout-Ngata commission in 1908 that Tapuika had 'very little land'. We note the history of close relations and mutual support before the war, where Tapuika and Waitaha had sheltered with their inland kin for decades, and were assisted and maintained by them in their return to the coast. For this history to be followed by war and bitter alienation is one of the prejudicial effects of the wars on Central North Island Maori.128

Finally, we note that the Central North Island tribes who were defeated in the wars lost some of their effective autonomy as a result, against their wishes and to their obvious detriment. Their social, political, and economic destinies were no longer under their own effective or complete control after the 1860s. Further, the Crown's growing confidence in its own victory, and in its ability to assert its authority unilaterally, led the settler Parliament to discontinue the New Institutions in 1865. As a result, the Crown's allies lost their state power and their Treaty-guaranteed right of self-government. All tribes alike, therefore, lost some of their autonomy in consequence of the wars of the 1860s. Maori institutions were not to be entrusted with

WAR AND RAUPATU, 1863-1870

government powers again for another 35 years, until the somewhat pale shadow of the Maori Councils Act 1900 was at last enacted.

In all, the prejudice suffered by Central North Island Maori as a result of the New Zealand Wars and the 'self-conquest' of the Central North Island was considerable and serious. Whether fighting for or against the Crown, or neutral, all tribes suffered:

- ▶ loss of life:
- ▶ economic harm:
- ▶ social disruption and divisions embittered by bloodshed that would not otherwise have occurred; and
- ▶ loss of autonomy.

Further, some tribes suffered:

- ▶ direct loss of land, resources, and their development potential, through confiscation;
- ▶ indirect loss of land, resources, and their development potential, through war-influenced opposition to the Native Land Court; and
- ▶ stigmatisation as 'rebels' (in the eyes of other tribes and the Crown) that has haunted them for generations.

We turn now to the endeavours of Central North Island tribes to preserve their remaining autonomy in the 1870s and 1880s.

SUMMARY

- ▶ War between Central North Island Maori and the Crown was avoidable in general and on the particular occasions in which the tribes were attacked. War might have been avoided:
 - first, had there been the political will and statescraft to negotiate a solution on the lines advocated by the Colonial Office and believed to have been acceptable to the Kingitanga; and,
 - secondly, had the Crown respected the authority and rights of Central North Island Maori when it entered their territory in pursuit of leaders such as Te Kooti or Kereopa.

From the beginning, therefore, the Crown's resort to war against Central North Island Maori communities was in breach of the Treaty.

- ▶ The Crown's military interventions in pursuit of Te Kooti and other leaders in Taupo and in the Eastern Bay of Plenty were not legitimate police actions. Civil law procedures were not followed or implemented. Rather, the Crown's interventions took the form of military attack (often by its Maori allies acting outside their own rohe) without first negotiating entry or attempting to negotiate an agreement not to shelter the persons concerned. That was in breach of the Treaty.
- ▶ Confiscation of land without consent or payment, and in punishment of alleged (but not proven) rebellion, was in breach of the Treaty.
- ▶ Iwi and hapu who had lands confiscated include Ngati Makino, Waitaha, Ngati Te Pukuohakoma, Ngai Te Rangi, Ngati Tukairangi, and Ngati Hineuru.
- ▶ To the extent that Tapuika have interests in the Western Bay of Plenty raupatu district, their land was also confiscated.

continues on following page

HE MAUNGA RONGO

continued from previous page

- ▶ Iwi and hapu for whom we have insufficient evidence to comment on raupatu claims include Ngati Te Rangiunuora, Ngati Rongomai, and Ngati Rangitihi.
- ▶ We reserve the Tuhoe and Ngati Haka Patuheuheu claims for the Urewera Tribunal.
- ▶ War and confiscation had devastating prejudicial effects, some of them casting shadows to the present day. These included loss of life, loss of land and resources, economic harm, social disruption, divisions among kin, indirect loss of land and resources (through war-influenced absence from the Native Land Court), and stigmatisation as 'rebels'.
- ▶ Ultimately, war and confiscation undermined the autonomy of all Central North Island Maori (including those allied to the Crown), in breach of Treaty principles.

Notes

- **1.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 36–47
- **2.** Richard Boast and Liz McPherson, submissions in reply on behalf of Ngati Hineuru, 31 October 2005 (paper 3.3.140), pp 3-4
- **3.** David Ambler, closing submissions on behalf of Tapuika, 5 September 2005 (paper 3.3.86), pp 2–4, 6–16, 37–38
- **4.** Richard Boast and Liz McPherson, reply submissions on behalf of Ngati Rangitihi, 31 October 2005 (paper 3.3.117), pp 36–37, 56–57
- 5. Te Kani Williams and Dominic Wilson, submissions in reply on behalf of Ngati Haka Patuheuheu, 31 October 2005 (paper 3.3.124), pp 7-8
- **6.** Memorandum and directions of Deputy Chairperson and Ms Morris, 13 December 2001 (paper 2.3.2), p 11; see also Waitangi Tribunal, memorandum and directions, 23 April 2004 (paper 2.3.28)
- **7.** Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999)
- **8.** The Whakarau refers to the 'exiles' or 'banished ones'; a term used within the Ringatu Church for those who shared detention with Te Kooti on Wharekauri (the Chathams), and escaped with him. They accepted his spiritual leadership. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p170
- **9.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 63–65
 - **10.** Ibid, pp 65-71
 - 11. Ibid, p 96

- 12. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 14–16, 26–31; Karen Feint, submissions in reply for Ngati Tuwharetoa, 1 November 2005 (paper 3.3.142), pp 16–17
- 13. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 15–16, 27
 - 14. Ibid, pp 27-32
 - **15.** Ibid, pp 15–16
 - **16.** Ibid, pp 24–25
 - 17. Ibid, p 25
- **18.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 36–38, 44, 47
 - 19. Ibid, p 47
 - **20.** Ibid, p 37
 - **21.** Ibid, p 45
 - **22.** Ibid, p 36
 - **23.** Ibid, p 46
 - **24.** Ibid, pp 36–47
 - **25.** Ibid, pp 36–37, 47
 - **26.** Ibid, pp 48-49
- **27.** Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol.1, pp.194–195
- **28.** Donald Loveridge, evidence given under cross-examination, seventh hearing, 1 June 2005 (transcript 4.1.8), pp 145–147
- **29.** Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, pp 199–248. The 'failure of statecraft' quotation is on p 204.

WAR AND RAUPATU, 1863-1870

- **30.** T S Grace (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 92–93, see also 111–112)
- 31. Waitangi Tribunal, Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims (Wellington: Legislation Direct, 2004), pp 108–119
- **32.** Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p 195
- **33.** Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p129
- **34.** Waitangi Tribunal, *Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 247
- 35. Waitangi Tribunal, Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims (Wellington: Legislation Direct, 2004),
- **36.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 114, 130–132
 - 37. Paranapa Rewi Otimi, brief of evidence, 27 April 2005 (doc E16)
- **38.** Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 63
- **39.** Paranapa Rewi Otimi, brief of evidence, 27 April 2005 (doc E16), pp 9–12
- **40.** Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 63–64, 69, 75–76, 122–128
- 41. Waitangi Tribunal, Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims (Wellington: Legislation Direct, 2004), pp 233–262
- **42.** Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 36, 51
 - **43.** Ibid, p 122
 - **44.** Ibid
- **45.** Waitangi Tribunal, *Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp xxix-xxxi
- **46.** Angela Ballara, 'Tribal Landscape Overview c1800–1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry District', report commissioned by CFRT, September 2004 (doc A65), pp 466–470, 488–491
- **47.** Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), pp165–181
- **48.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 195–230
- **49.** Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), pp 165–172
 - 50. Ibid, pp 172-187
- 51. Ibid, pp186–187; James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), p281
- **52.** Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), pp 187–191

- **53.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 245–248
 - 54. Ibid, pp 248-261
- 55. See in particular George Te Waaka Eruera Asher, brief of evidence, 29 April 2005 (doc E39); and Paranapa Rewi Otimi, brief of evidence, 27 April 2005 (doc E16), pp 12–13
- **56.** See, for example, Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 237–245
 - 57. Ibid, pp 195-267
- **58.** Poihipi Tukairangi (as quoted in Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 224)
- **59.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), p 224
 - 60. Ibid, p 263
 - 61. Ibid, pp 203-230
- **62.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), pp 526–527
- **63.** Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 248–261
- **64.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 1, p5; pt 2, pp 36–39
- **65.** Annette Sykes and Jason Pou, closing submissions on behalf of Ngati Makino, 2 September 2005 (paper 3.3.87), pp 5–6, 22–47
 - 66. Ibid, pp 5-6, 22-47
- **67.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 36–38
- **68.** Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 25–32, 41–51
 - 69. Ibid, pp 41-97
 - **70.** Ibid, pp 3-4, 77-97
- 71. David Alexander, '19th Century Crown Purchases of Ngati Makino Lands', report commissioned by CFRT on behalf of the claimants, June 1995 (doc A3)
- 72. Hilda Te Hirata Sykes, brief of evidence, 7 February 2005 (doc B31), pp 2-4
- 73. David Alexander, '19th Century Crown Purchases of Ngati Makino Lands', report commissioned by CFRT on behalf of the claimants, June 1995 (doc A3), pp 5-23
- **74.** Ibid, pp 19–24; Morris Apiata Meha, brief of evidence, 7 February 2005 (doc B8), p 3
- 75. David Alexander, '19th Century Crown Purchases of Ngati Makino Lands', report commissioned by CFRT on behalf of the claimants, June 1995 (doc A3), pp 19–23

HE MAUNGA RONGO

- **76.** David Alexander, '19th Century Crown Purchases of Ngati Makino Lands', report commissioned by CFRT on behalf of the claimants, June 1995 (doc A3), pp 23–29
 - 77. Ibid, pp 27-38
- **78.** Waitangi Tribunal, *Raupatu Document Bank* (Wellington: Waitangi Tribunal, 1990), vol 121, p 46,851
- **79.** David Alexander, '19th Century Crown Purchases of Ngati Makino Lands', report commissioned by CFRT on behalf of the claimants, June 1995 (doc A3), pp 29-43
- **80.** Those hapu of, or associated with, Ngati Pikiao who did appear in our inquiry included Ngati Tamakari, Ngati Te Takinga, Ngati Rangiunuora, Ngati Hinekura and Ngati Rongomai.
- 81. David Alexander, '19th Century Crown Purchases of Ngati Makino Lands', report commissioned by CFRT on behalf of the claimants, June 1995 (doc A3), pp 29-43 (see also pp 93-100, 191-222)
 - 82. Ibid, pp 23-43
- **83.** Waitangi Tribunal, *Raupatu Document Bank*, 139 vols (Wellington: Waitangi Tribunal, 1990), vol 121, pp 46,784–46,813
 - **84.** Ibid, pp 46,808-46,809
- **85.** Kathy Ertel, closing submissions on behalf of Ngati Rangiunuora and Ngati Te Rongomai, 2 September 2005 (paper 3.3.71), pp 54–55
- **86.** Richard Boast and Liz McPherson, closing submissions on behalf of Ngati Rangitihi, 2 September 2005 (paper 3.3.62), pp 70–76; Richard Boast and Liz McPherson, reply submissions on behalf of Ngati Rangitihi, 31 October 2005 (paper 3.3.117), pp 48–57
- 87. Spencer Webster, closing submissions on behalf of Ngati Awa, 14 October 2005 (paper 3.3.113), paras 20–23
- **88.** Richard Boast and Liz McPherson, reply submissions on behalf of Ngati Rangitihi, 31 October 2005 (paper 3.3.117), pp 56-57
- **89.** David Potter, 'Te Manawhenua o Ngati Rangitihi', report commissioned by Te Rangatiratanga o Ngati Rangatihi Incorporated, March 2004 (doc B7), pp 28–29
- **90.** See Spencer Webster, closing submissions on behalf of Ngati Awa, 14 October 2005 (paper 3.3.113), ss 16–23; and Richard Boast and Liz McPherson, closing submissions on behalf of Ngati Rangitihi, 2 September 2005 (paper 3.3.62) for the detailed arguments about Dr Ballara's evidence, which it is not necessary to reproduce here.
- 91. Spencer Webster and Stephen Clark, closing submissions on behalf of Ngai Te Rangi and Ngai Tukairangi, received 2 September 2005 (paper 3.3.68), pp 14–15
- **92.** Karen Feint, closing submissions on behalf of Waitaha, 5 September 2005 (paper 3.3.85), pp 4–8
 - 93. Ibid, pp 8-18
 - 94. Ibid, pp 18-21
- **95.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 130–132
 - 96. Ibid, pp 153-154
 - **97.** Ibid, pp 177-178

- 98. Te Kani Williams and Dominic Wilson, closing submissions on behalf of Ngati Te Pukuohakoma, 9 September 2005 (paper 3.3.105)
- **99.** David Ambler, closing submissions on behalf of Tapuika, 5 September 2005 (paper 3.3.86)
 - 100. Ibid, pp 2-4
 - **101.** Ibid, pp 6-16
 - **102.** Ibid, pp 6-16, 37-38
 - 103. Ibid, pp 16-32, 37-38
- **104.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 39
 - 105. Ibid, pp 131-132
- **106.** Mary Gillingham, 'Waitaha and the Crown, 1864–1981', report commissioned by CFRT on behalf of the claimants, February 2001 (doc A35), p122
- **107.** Ibid, pp 83–172; Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 178
- 108. Angela Ballara, responses to questions of clarification, 4 July 2005 (doc нз5)
 - 109. Ibid, pp 7-8
 - 110. Ibid
- 111. Mary Gillingham, 'Waitaha and the Crown, 1864–1981', report commissioned by CFRT on behalf of the claimants, February 2001 (doc A35), pp 102–103; Tame McCausland, brief of evidence, 16 February 2005 (doc B54), pp 22–23
- 112. David Rangitauira, oral submission, ninth hearing, 13 September 2005 (transcript 4.3.10)
- 113. Richard Boast and Liz McPherson, closing submissions on behalf of Ngati Hineuru, 2 September 2005 (paper 3.3.63), pp 57–60
- 114. See Tuhuiao Anaru Kahukiwa, brief of evidence, 28 February 2005 (doc c5); Puawai Rahui, brief of evidence (English version), 28 February 2005 (doc c10(a)); Rere Puna, brief of evidence, 28 February 2005 (doc c44); and Gladys Mori Hine Campbell, brief of evidence, 7 March 2005 (doc c58)
- 115. See Bruce Stirling, Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17) for a discussion of how these tribes' interests were dealt with by the Native Land Court, block by block.
- 116. Bruce Stirling, responses to written questions, 15 July 2005 (doc 16), pp $_3$ -6
- 117. Bruce Stirling, Bruce Stirling, 'Nineteenth Century Land Interests in Kaingaroa', report commissioned by CFRT, April 2005 (doc G17), pp 166–167
- **118.** Bruce Stirling, summary of 'Nineteenth Century Land Interests in Kaingaroa', May 2005 (doc G17(a)), pp 3–10, 12–14
- 119. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77), pp 40-41

WAR AND RAUPATU, 1863-1870

- 120. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 47–48
 - **121.** Ibid, pp 47-48
- 122. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), pp 475–478; see also Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 68–69, for the claimants' calculation of the extent of the discrimination.
- 123. Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s', report commissioned by CFRT, April 2005 (doc G18), pp 222–267
- 124. See David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45); and Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65)
- 125. Tame McCausland, brief of evidence, 16 February 2005 (doc B54), p 22
- 126. Hilda Te Hirata Sykes, brief of evidence, 7 February 2005 (doc B31), p 5
- 127. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 173
- **128.** Tame McCausland, brief of evidence, 16 February 2005 (doc B54), pp 14–25

CHAPTER 6

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870–1890

An exceptional opportunity now presents itself for introducing judicious legislation for enabling the Natives to deal intelligently and justly with the large areas of land now held by them in an unproductive or only partially-productive state. They themselves are willing to assist in carrying out the laws they ask to be passed, and thus, while promoting their own racial interests, feel that they are being dealt with as intelligent beings, willing to bear their proper share of the obligations of the State. By Parliament meeting the Natives now in the same spirit of frankness that the Natives have come before the Commissioners, much may be done to redeem the bitter recollection of the past, and a harmonious system be brought about whereby true settlement and genuine progress of the North Island, as well as the colony as a whole, may be largely promoted, to the advantage and prosperity alike of the European and Maori races.¹

James Carroll, 1891, Report of the Native Land Laws Commission

In this chapter, we return to our key generic issue:

DID THE CROWN MISS (OR ACTIVELY REJECT) OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT?

As we found in chapter 4, the Crown had several options available for empowering and entering into partnership with Maori self-government in the 1850s and 1860s. Those options were still available in the 1870s and 1880s, though some took slightly different forms. The period from 1840 to the mid-1860s, in which there was a relative balance of Maori–Pakeha power in New Zealand, along with a potent political role for governors and the Colonial Office, provided a context in which the 'missed opportunities' described in chapter 4 had a reasonable chance of being adopted and made to work.

As we move into the 1870s and beyond, the prospects for a Treaty-compliant outcome declined in the wake of

military conquest, settler population growth, responsible government for a settler Parliament, and a predominance of settler power. Nonetheless, it was still possible for governments to buck the trends. The Native Minister, John Ballance assured Maori in the 1880s that the Government and Parliament were 'strong', able to resist the pressure of land-hungry settlers, protect Maori interests, act in the genuine best interests of both races, and secure Maori the self-government and political power to which they were entitled.² Professor Alan Ward considered that it was still possible for Governments to resist 'settler prejudice' successfully in their Maori and land policies in the 1880s.³

We begin with a brief account of each of the alleged lost (or rejected) opportunities for the Crown to have given effect to the Treaty in the era of committees and komiti from 1870 to 1890.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

CROWN OPPORTUNITIES TO GIVE EFFECT TO TREATY GUARANTEES

KEY QUESTION: WHAT WERE THE OPPORTUNITIES FOR THE CROWN TO HAVE GIVEN EFFECT TO ITS TREATY GUARANTEES OF AUTONOMY AND SELF-GOVERNMENT IN THIS PERIOD?

- ▶ The Constitution Act 1852: Section 71 of this Act empowered the Governor to declare self-governing Native Districts in which Maori law and authority would apply and have the force of British law. This provision was never used, but it was requested repeatedly by Central North Island Maori throughout the nineteenth century. Under this Act, settlers received provincial and central self-government and a Parliament from the mid-1850s. Maori were not represented in that Parliament until 1867. Property qualifications were used to largely prevent them from voting in provincial elections. In the 1870s and 1880s, Rotorua and Taupo Maori sought increased representation in the central Parliament.
- ▶ The Kingitanga: After a series of hui in the North Island, the Waikato Tainui leader Te Wherowhero was established as King Potatau I in 1858. Ngati Tuwharetoa and Ngati Raukawa were founding tribes of the Kingitanga and had a complex relationship with the King and other Kingitanga iwi for the remainder of the century. The question of whether the Kingitanga could be recognised, accorded legal powers, and included in the political arrangements of the State was under active consideration throughout the nineteenth century.
- ► The Native Councils Bills of 1872 and 1873: The first Bill was introduced by the Government in 1872 and provided for native councils with some legally enforceable powers of self-government and title determination. This initiative was strongly supported by Central North Island Maori, but the Bill was withdrawn by the Native Minister. A second Bill was introduced,

- and similarly withdrawn in 1873. A third Bill was promised for 1874, but never introduced.
- ▶ The komiti movement of the 1870s and 1880s: In the 1870s and 1880s, Central North Island Maori (and others) sought to manage their lands, economic development, internal affairs, and relationship with the Government by elected komiti (committees). They sought official recognition of their komiti and legal powers from the State, so that their arrangements could be enforced at law. Maori members of Parliament introduced various bills to try to secure such powers for the komiti in the early 1880s. In 1883, the Government passed the Native Committees Act, with the avowed intent of providing District Committees with powers of self-government and a role in title determination. In 1886, the Native Minister, Ballance, gave powers of land management to smaller-scale block committees through the Native Lands Administration Act. The 1886 Act was repealed in 1888.
- ► The Fenton Agreement of 1880: In 1880, Chief Judge Fenton (for the Government) negotiated an agreement with the Rotorua Komiti Nui to establish a township and allow the Native Land Court to enter the district. The Fenton Agreement appeared to provide for joint local administration of Rotorua township and for the Komiti Nui to have a role in title determination.
- ▶ The Thermal Springs Districts Act 1881: This Act in theory the legislative enactment of the Fenton Agreement provided for Maori to be consulted quite extensively about how the land and, in particular, the geothermal resources should be managed. It also provided for Maori local self-government by the inclusion of the Native Districts Regulation Act 1858 among its provisions.
- ▶ The Rohe Potae negotiations of the 1880s: In the early to mid-1880s, the Crown sought to negotiate a high-level political agreement with the Kingitanga for access to the Rohe Potae, initially to establish the main trunk railway, but ultimately to secure Government

HE MAUNGA RONGO

authority and land for settlement. In our inquiry district, Ngati Tuwharetoa and Ngati Raukawa were among the Rohe Potae tribes that negotiated with Native Ministers, first with John Bryce and then Ballance. The result, in the claimants' view, was a political 'compact', the terms of which were best expressed by their 1883 petition, which called for surveying an external boundary, Maori komiti to decide titles within that boundary, and the leasing of land.

- ► The Tauponuiatia application: In 1885, Te Heuheu filed the Tauponuiatia application with the Native Land Court, seeking determination of title for the whole of Tuwharetoa's lands in the Taupo district.
- ► The Native land laws and Maori authority to determine their own titles: From the Haultain inquiry of 1871 to the Rees–Carroll commission of 1891, there was a series of Maori protests and complaints about the Native Land Court, appeals for its abolition and replacement with Maori komiti and runanga, and various government inquiries into this issue.

AUTONOMY IN THE ERA OF COMMITTEES AND KOMITI, 1870–1890: ROTORUA

With the end of the wars and the disestablishment of the New Institutions, Maori komiti and runanga continued to operate on an unofficial basis throughout the Rotorua district. They were handicapped in part by their lack of legally enforceable powers, and even more so by an alternative body that did come equipped with legal powers – the Native Land Court. For 20 years, from 1870 to 1890, there was a struggle to determine the extent and pace of colonisation at Rotorua. Would Maori be able to open their lands to a degree and in manner of their choosing, and in a way that allowed them to benefit equally with the settlers? More particularly, would the tribes be able to determine the land entitlements of their members, and to control and manage their lands? All these things were guaranteed by the Treaty, and practicable according to the circumstances of

the time. They did require, as Dr Ballara notes, the Crown and settlers to accept a different kind of settlement, one more geared to the interests and benefit of both races. In the end, this proved to be too much to ask of the Crown's settler constituency.

The decade of the 1870s saw a growing state of turmoil in parts of the Rotorua district, as Crown agents sought to purchase land and introduce the Native Land Court. Rotorua Maori wanted to engage with the colonial economy. This required some form of secure title for transfer to settlers - either by lease, the preference of all tribes, or by sale. Maori tribes wanted to decide their own land titles and have the Government give legal force to their decisions, after which they would lease and develop their tribal estates. The Government came close to meeting Maori demands in 1872 with the Native Councils Bill, which would have provided machinery for just such purposes. Settler interests won out, however, and the Native Land Act 1873 was passed instead. Rotorua Maori resisted the Native Land Court in this form for the rest of the decade, forcing its suspension on the coast, and preventing its entrance inland. The Government sought an alternative way forward in 1880, sending Chief Judge Fenton not to preside over a court but to negotiate an agreement with the Rotorua Komiti Nui.

The resultant agreement opened inland Rotorua to the Native Land Court, although at first it seemed as though this would be in cooperation with Maori institutions. The Fenton Agreement was given legislative force in the Thermal Springs Districts Act 1881. The way was now open not just for the court but also for further negotiated agreements on the model of the Fenton Agreement. None eventuated, however, and Rotorua lands became subject to the usual court and alienation processes in the 1880s. At the same time, pressure for a fairer system of land management and self-government produced the Native Committees Act of 1883 and Ballance's reforms of 1885–86. The success or otherwise of this legislation was crucial to Maori aspirations for self-government and land management, and was central to the claims presented to us.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

The claimants' case

The claimants' case was mainly contained in the generic submission of Martin Taylor, supplemented by other submissions. In particular, we have also noted additional points in the submissions of counsel acting for the cluster of Ngati Whakaue claimants.

Missed or rejected opportunities to give effect to Treaty guarantees

According to the claimants' submission, the Native Land Act 1873 was the key legislation under which the Native Land Court operated in the Central North Island. By that year, the Crown had about eight years' worth of Maori protest about the court to consider when it enacted new legislation. The Native Land Court's main period of impact in the Central North Island started in 1877. This means that the Crown had a further five years in which to develop a more Treaty-compliant engagement with the express desires and aspirations of Central North Island Maori to determine their own land titles. Through Donald McLean's visit to Maketu in 1871, and Maori evidence to the Haultain commission, the Government clearly knew that Central North Island Maori did not want the Native Land Court or individualisation of title. As very little Central North Island land had passed the court at this stage, there was an opportunity for the Crown to act in accordance with the Treaty (although noting the countervailing Pakeha desire to conquer the interior by swamping it with settlers, and to obtain as much Maori land as possible). This was reinforced by the reports of Commissioners Hikairo and Te Wheoro in the 1873 Hawke's Bay Land Alienation Commission.4

The key opportunity to fix matters in time for the Central North Island was the Native Councils Bill of 1872, which would have provided machinery for Maori self-government and determination of their own land titles (to be rubberstamped by the Native Land Court). This Bill was not perfect – its key weakness was that it still individualised title. Other than that, it provided much of what Maori had been seeking since the 1850s. Te Arawa were strong

supporters of the Bill. It was withdrawn because, in the end, the Government would not go against settler interests. Instead, the flawed Native Land Act 1873 was passed, which did the opposite of much of what the first Bill had intended. This was a key lost opportunity, and shows that the Crown could and should have acted differently.⁵

The claimants do not accept Keith Pickens' argument that the Native Land Court was a client-driven institution and that many Central North Island Maori wanted to use it. The historical evidence rather supports the opposite view, that out-of-court settlements were not sufficiently Maori-controlled, that Maori (especially those militarily defeated) were forced to use the court by a number of factors, and that 'forced consent' is in fact no consent at all. The need for certainty of title and clear boundaries for the colonial economy did not require a non-Maori institution outside their control. The evidence suggests that they would have 'got it right' more often and with better effect than the Pakeha-controlled and driven Native Land Court.

Nor do the claimants accept Dr Pickens' argument that intergroup conflict made Maori runanga an unrealistic alternative to the Native Land Court. Central North Island Maori had adapted to peaceful dispute resolution. Their institutions were capable of exercising tino rangatiratanga under the Treaty and of resolving titles in both intra- and intergroup situations. The Maketu situation relied on by Dr Pickens was atypical and, in any case, does not show that Maori bodies could not have resolved the conflict. Dr Pickens did at least accept that tribal institutions would be capable of deciding internal titles. Given the strong Maori aspiration to manage their affairs by their own communal institutions, and that runanga (for Kingitanga as well as 'loyalists') were their chosen vehicle, and given also the strong incentives to develop economically and to avoid the Native Land Court, there is every indication that Maori would have made these institutions work if allowed the opportunity.⁷

Despite the active opposition that forced the suspension of the Native Land Court in 1873 and the Fenton Agreement of 1880, the Crown did not take steps to consider a local

HE MAUNGA RONGO

variation which might facilitate the desires of the Central North Island tribal leaderships, as it did in the Urewera in the 1890s. Nor did it use other means already available, such as the provision to declare Native Districts. Ms Ertel points out that one alternative was actually allowed under the Native Land Act 1873 itself. Citing Professor Ward, she argued that the Act provided for an 'alternative system' of inquiry to that of the court. Tribal leaders could be appointed in conjunction with District Officers to assist the court, but the system did not work because Maori distrusted it, and because of disagreement between Maori and the officials.⁹

The native committees movement of the 1870s was an attempt to provide mechanisms for self-government and title determination. As such, it was either ignored or opposed by the Crown, depending on how threatening it appeared to settler interests. In 1880, Maori members of Parliament introduced a Bill to give committees legally enforceable powers. The Bill was opposed by the Government and replaced by a watered-down version in 1883. The Native Committees Act 1883 was another critical lost opportunity. There was still a lot of Central North Island land that had not passed the Native Land Court, due either to Maori resistance or Crown disinterest, and a proper, Maori-controlled mechanism for self-government and title determination would still have been beneficial to Maori and welcomed by them. But the Act, as acknowledged by politicians at the time, was mere lip service to Maori aspirations and totally incapable of meeting them.¹⁰

Ballance's Native Land Administration Act 1886 was similarly a failure. Richard Boast accepts that it was, in part, a response to Maori concerns, and that Ballance thought he was saving Maori from themselves. There was an element of genuine altruism involved. The Act established local committees under which Maori could place their land but it was rejected by Maori. This was because, argues Professor Boast, the committees had to place their lands under boards made up of a Pakeha commissioner and Maori representatives, which would dispose of the

land in the same way as if it were Crown land. The Act was a dead letter and it aroused Maori political opposition on the basis of their dislike of Crown control and their continuing preference to lease rather than sell land.¹¹

Central North Island Maori, argued Mr Taylor, were so clear in their expectations and so resolute in their aims, that the eventual imposition of the Native Land Court – with the attendant prejudice of land loss, too-low prices, and high process costs – was an extremely significant breach of the Treaty of Waitangi.¹²

The Komiti Nui and Fenton Agreement

In his generic submission, Mr Taylor argued that the Fenton Agreement followed a decade of opposition to the Native Land Court and Crown purchases by the inland Te Arawa tribes. Choosing Fenton as negotiator was an act of bad faith on the part of the Crown, given his past history of insisting on individualisation and his model of the court, and his view that getting Maori land into settler occupation was more important than the welfare of Maori. Ngati Whakaue, on the other hand, wanted to maintain their 'self-management, tribal ownership, and land retention.' ¹³

The tribes insisted on determination of title through the Komiti Nui. Even so, they were forced into compromise to get some economic benefit from their land. Given the Treaty guarantee of their right to determine title under their own systems, there was, in Treaty terms, nothing to negotiate. This should have been a given that the Crown respected, and a township should have been negotiated on those principles. Instead, the Fenton Agreement represented 'comparatively reduced prejudice' for them. The prejudice was still significant, as it provided for reference to the Native Land Court, individualisation of title, and disenfranchising Maori of their geothermal resources. Negotiations are essential to political interaction between Maori and the Crown, but they ought not to result in compromises that breach fundamental Maori rights. The Crown negotiated such rights away in the Fenton Agreement, which is therefore in breach of the Treaty.¹⁴

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Counsel for Ngati Whakaue made detailed submissions on the Fenton Agreement, as critical to their claims. The period from the 1850s to the 1870s, they argued, saw the development of runanga and komiti in the Rotorua district as a way of providing institutions that were based on tikanga and Maori authority with which the Crown and settlers could work. Te Arawa groups wanted to engage both with the economy and with the separate but equal sovereign authority of the Crown, by leasing (not selling) land and developing resources. Te Komiti Nui o Rotorua represented several groups, and showed itself capable of resolving boundary and other issues with other tribal committees, and of deciding Maori title to areas of land. The Komiti Nui wanted to continue its constituents' previous alliance with the Crown, and have their decisions ratified by the Native Land Court. The Crown was well aware of the Komiti's aspirations to retain land and to exercise political, social and economic authority. These aspirations were in direct conflict with those of the Crown: to impose its own sovereign authority and to obtain large amounts of land through absolute and very cheap sales.15

The claimants consider the Fenton Agreement as the means by which the Crown overcame Maori resistance to land sales and undermined Maori authority, prosperity, and values. The Crown negotiated in bad faith. It knew its intentions were the opposite of those of the Komiti Nui. Fenton deliberately failed to include in the written document his oral agreement with the Komiti Nui that the Native Land Court would merely ratify the Komiti's decisions. Having been deceived by Fenton, the Komiti Nui was overcome by the Native Land Court. The Fenton Agreement was (as the Crown had planned and expected) the thin end of the wedge by which the court was imposed on the whole of Te Arawa, and their opposition to land sales and Crown authority fatally compromised. The subsequent loss of land at unfair prices with insufficient capital for development, individualisation of title, and destruction of Maori social and political organisation, were the prejudice suffered as a result of the Fenton Agreement and the

Crown's failure to negotiate in good faith, or to honour its terms (including the oral ones), or to engage meaningfully and appropriately with the Komiti Nui.¹⁶

Finally, counsel for Ngati Whakaue do not accept Dr Pickens' arguments that tribal committees could not resolve boundary issues, that an independent Pakeha-controlled forum was needed, and that the Fenton Agreement, if it saw a role for the Komiti Nui, anticipated that it would be as a subservient adjunct.¹⁷

Thermal Springs Districts Act 1881

Mr Taylor submitted that the use of the Thermal Springs Districts Act was in breach of the Treaty, because it involved the whole of the inland Arawa region, and some Taupo lands, covering 646,000 acres, based solely on the 'agreement' of one komiti. The Crown used the Thermal Springs Districts Act to impose a monopoly, exclude private purchasers, and obtain all the geothermal features at the lowest possible price, in breach of the Treaty. ¹⁸ Ngati Whakaue agree that the Act was passed without the consent of the many communities affected, and assert that it did not give effect to the spirit or letter of the Fenton Agreement as negotiated with the Komiti Nui. ¹⁹

The Crown's case

In the Crown's submission, it can fairly be criticised for not providing effective 'corporate/communal governance mechanisms' to enable Maori to manage their own lands.²⁰ This concession was an appropriate one, in our view, and accepted the force of much of the claimants' case. The Crown, however, emphasised what it considered to be the genuine attempts to meet Maori aspirations for self-government and self-management, and the genuinely protective nature of key legislation in this period. In its view, the Crown did attempt to keep its Treaty obligations, and went as far as the circumstances permitted. It rejected much of the detail of the claimants' case, in particular with regard to the Fenton Agreement.

HE MAUNGA RONGO

Missed or rejected opportunities to give effect to Treaty guarantees

A key missed opportunity, in the claimants' submission, was the Native Councils Bill of 1872. The Crown accepts that this Bill showed 'official recognition that Maori collectives should play a greater role in the native title adjudication process, and that this was also significant because it came before the 1873 Act. The Crown also accepts that it can be 'fairly criticised for failing to provide for more effective corporate/communal governance mechanisms.²¹ These admissions are important and apply to the whole period under review. The Crown also emphasised that the Bill would have provided local self-government, with councils and resident magistrates enacting local legislation together. This has to be balanced, in the Crown's view, against the feeling of successive governments that separate legislative bodies on ethnic or racial lines were divisive. Nonetheless, the Crown points out that the Bill might not have worked, as it required parties to agree to the councils' decisions, and that it could not actually be enacted in any case. Native Minister McLean withdrew it from Parliament because it lacked settler support. He argued that the reforms to the Native Land Act (enacted in 1873) would achieve the Bill's policy aims anyway. The Crown did not offer a view on whether this assertion by McLean was correct.²²

Another key missed opportunity, in the claimants' submission, was the Native Committees Act 1883. The Crown argues that this Act was a response to Maori calls for further reform, especially regarding the Rohe Potae. A Bill supported by Maori members of Parliament, however, failed to get through both houses in 1881–1882. The Bill presented by Native Minister Bryce was different from the original proposal of the Maori members, but this was not evidence that the Minister 'subverted' it. There was no deliberate bad faith. Nor does the Crown accept that the Act was simply 'lip-service'. Rather, the Act failed because it was unduly bureaucratic, and because the Government's intention of having a very small number of committees covering vast districts was contrary to Maori wishes. The Crown notes

that Bryce reduced and retrenched Government spending in general, which may have contributed to his desire for a very restricted number of committees. The Native Committees Act was nonetheless one of a number of genuine attempts by the Crown to engage with Maori concerns in the 1880s.²³

With regard to Ballance's Native Lands Administration Act in 1886, the Crown submitted:

The Crown accepts that there is evidence of Maori agitating for and seeking greater Maori control over the native title adjudication process. This includes the rise of komiti, the Putaiki and the initiatives taken by the Rohe Potae group. The critical and difficult issue for the Crown in response to these aspirations was to specify in bureaucratic detail how this would have worked in practice. The Ballance experience of the 1880s demonstrates just how difficult this was to achieve and the range of Maori views on the issue. To have been successful the Crown would have needed actively and closely to have promoted relevant Maori institutions. There would likely have been an economic cost for a more measured and Maori controlled process.²⁴

The Komiti Nui and Fenton Agreement

The Crown accepts that there was strong opposition to the Native Land Court in the Rotorua area in the 1870s, that there was a 'considerable body of opinion' opposed to permanent alienation by sale, and that there was general agreement among Maori that land should be leased.²⁵ Thus far, the Crown and claimants agree on the context of the Fenton Agreement and the Thermal Springs Districts Act. The Crown argued that it was motivated also by a genuine desire to resolve disputes at Rotorua between Maori and Pakeha (including Robert Graham, who will be discussed in chapter 9), and by a desire to establish a township via either sale or lease. The Crown does not accept that the Fenton Agreement was a 'trojan horse'²⁶ for introducing the Native Land Court, but stated that there was no other way for the township title to be settled other than by

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

a direct sale to the Crown, if not by a Native Land Court investigation.²⁷

The particulars of what was agreed, especially relating to the Komiti Nui: Fenton was not, in the Crown's view, an inappropriate choice as negotiator. Part of his brief was to conduct an 'inquiry' into disputes between Maori and Pakeha, and his work resembled that of a commission of inquiry. Also, there is no evidence that Ngati Whakaue were unhappy with him as a negotiator. Criticism came later from non-Maori.²⁸

The Crown challenged the claimants' interpretation of the Fenton Agreement. First, it argued that there was no intention for the Agreement to be a constitutional document. The Crown does not accept that Rotorua Maori still had sovereignty. Secondly, it does not accept that there was an oral component - especially an oral agreement for the Native Land Court to 'rubberstamp' the decisions of the Komiti Nui. There is no written historical evidence of such an agreement, despite many opportunities for it to have been recorded. The internal evidence of the Fenton Agreement suggests that every role for the Komiti Nui was recorded in writing. The Crown was also negotiating with Tuhourangi and could not, in those circumstances, have given an exclusive title-determining role to the Komiti Nui in any case. The Native Land Court was to decide the boundary between Tuhourangi and the member groups of the Komiti Nui. There is no evidence of what Fenton discussed with Tuhourangi, but it is highly unlikely to have included the kind of role claimed by Ngati Whakaue for the Komiti Nui. The evidence does suggest that the Komiti Nui hoped to be granted standing by the Native Land Court, but it is not clear for what purpose. The Crown's view is that Maori must reasonably have known that it would not happen.29

Ngati Whakaue did not protest about the Native Land Court decision, but rather endorsed the Fenton Agreement and the Thermal Springs Districts Act in November 1881. The Crown accepts that the Agreement had details that would involve the continuation of the Komiti Nui's authority over the land and resources after the title was determined, but does not ascribe any particular significance to that.³⁰

Modification by the Clarke Agreement: The Crown argued that the subsequent 'Clarke Agreement' of 1883 altered the terms of the Fenton Agreement, with the consent of Ngati Whakaue. This was necessary partly because the Komiti Nui had had trouble carrying out its role. The Crown implied that this is further evidence of its contention that Maori institutions were not up to doing the work required of them.³¹

Thin end of the wedge? The Crown argued that no single explanation can account for the increased use of the Native Land Court outside the township block, in the wake of the Fenton Agreement. But two things would have been important: first, the court had settled a number of disputes at Maketu, and this may have made Rotorua Maori more favourable to it; and, secondly, the initial high rents for the township would have convinced Rotorua Maori that economic benefit followed from accepting the court.³²

The Thermal Springs Districts Act

The Thermal Springs Districts Act was mainly intended to give legislative effect to the Fenton Agreement, and to provide a protective mechanism to facilitate similar arrangements. It would allow European settlement and the development of geothermal resources on terms agreed between Maori and the Crown. One key goal was to prevent private speculators from benefiting at the expense of Maori and the Crown. The protective and joint benefit arguments of the Native Minister, William Rolleston, were sincere. Since the mid-1870s, moves had been made to establish a system for the Crown to act as agent for Maori in the sale or lease of their land (including a McLean Bill in 1876 and a Bryce Bill in 1880). Further efforts were made later in the century, including Ballance's 1886 Act, and

HE MAUNGA RONGO

the Maori Land Administration Act 1900. The evidence of Dr Loveridge shows that the desire to have the Crown act as an intermediary for Maori in the best interests of both races was a constant policy strand in the nineteenth century, competing for support in Parliament.³³

The proclamation of a very large area of land was entirely in keeping with the Act. It was supposed to provide a framework for future arrangements like the Fenton Agreement, not just Rotorua township as the subject of the first such agreement. Fenton, for example, hoped for the establishment of another township at Rotomahana.³⁴

Part of the protective mechanism was the exclusion of private purchase - the Crown submitted that the Act recognised a policy framework in which the Crown had a prominent role in the development of districts, and a role as intermediary in land transactions between Maori and Pakeha. Both objectives were consistent with the Treaty. The Crown argued that it was attempting to structure colonisation of the central North Island so as to try to minimise its negative impacts. It did not establish a total monopoly. The Crown feared unstructured development and private speculation, and wanted sustained, Crownmanaged development to benefit both Maori and Pakeha. The Crown monopoly was not a Treaty breach if used protectively, as intended. But in creating it, the Crown had an obligation to ensure that it did not misuse the advantage it had gained. The Crown's submission - in emphasising the protectiveness of the Act - explains that the mere act of placing so much land under it was not a problem. The Crown did not address how the monopoly worked in practice, and whether there was, therefore, a Treaty breach.³⁵

Maori reaction to the Act was mixed. Some sent petitions supporting it, and some petitioned against it. Rotorua Maori expressed strong initial support. An 1882 petition from 400 Te Arawa highlighted the protective nature of the Act and its prevention of hasty sales. In 1885, Ngati Whakaue asked Ballance to keep it in force, and Don Stafford's evidence considered the Act 'the most vital agreement' to Te Arawa, because the Crown set such a large area of land under its protection.³⁶

Agreement between claimants and the Crown

It appears to the Tribunal that there is some measure of agreement between claimants and the Crown on the following broad points:

- ▶ There was strong opposition to the Native Land Court in the Rotorua area in the 1870s; there was at least a 'considerable body of opinion' opposed to permanent alienation by sale; and there was general agreement among Maori that land should be leased.
- ▶ Governments were well aware that Maori sought to determine the titles of their own lands by their own institutions, such as the komiti. This would have required the Crown to actively foster, protect, and give legal powers to the appropriate institutions. The Crown accepts, in this context, that it can be fairly criticised for not providing effective 'corporate/communal governance mechanisms'.³⁷
- ▶ In particular, the 1872 Native Councils Bill was a recognition by the Crown that Maori wanted and should have the power to enact their own local laws and a greater role in determining their own titles, but it was dropped because of opposition in Parliament.
- ▶ State empowerment of Maori institutions would have required a different pace and kind of settlement (although the parties did not agree that this was a good thing).
- ▶ The Thermal Springs Districts Act was supposed to be protective in nature and involve consultation, and colonisation on an agreed basis. It also contained a monopoly procedure which (at a minimum) had the potential to be abused.

We accept these propositions. On these matters, the parties are not so far apart. Many elements of disagreement remain, however, especially with regard to the Fenton Agreement, and how far the Crown could realistically have relied on Maori institutions to achieve what the claimants wanted. We begin our more detailed analysis with the Fenton Agreement and its empowering legislation, before turning to the broader question of Maori autonomy and title-determination in this period.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

The Tribunal's analysis of the Fenton Agreement and the Thermal Springs Districts Acts

Were there insuperable obstacles to the Crown working with the Komiti Nui?

In the 1870s, Rotorua Maori resisted land sales and the Native Land Court, and sought settlement and economic development through leasing. As part of that, they appealed constantly for legal powers for their own komiti to decide land entitlements. Dr O'Malley, Dr Pickens, and Mr Macky have provided detailed evidence on the komiti in this district. The evidence of Dr Pickens is more nuanced than the claimants argued, and he concludes that komiti could certainly decide hapu titles, and that komiti could have been relied on instead of the Native Land Court to decide all titles for the inland Rotorua district. This would have involved some boundary definition and negotiation or arbitration between tribes, possibly through a district-wide komiti. Dr Pickens acknowledges efforts in this direction at the time, and their potential for success. He argues that the Native Land Court was the only body that could have worked for the contested coastal lands, but that is not directly relevant to his assessment of inland Rotorua.³⁸ Despite the possibilities inherent in the komiti, and the Treaty requirement that Maori should govern themselves and decide their own membership and land entitlements, the Komiti Nui, Putaiki, and other komiti were sidelined, and the Native Land Court proceeded in the usual manner.

There is agreement between the Crown and claimant historians, therefore, that Maori bodies could have decided their own land entitlements in the inland Rotorua district, and that they constantly sought Government legalisation of their doing so. This was because, as Fenton noted in a draft of his Agreement, settlers would not transact land unless there was legal certainty.³⁹ Such certainty involved the identity of the lessors and vendors, and the boundaries of the land to be leased or purchased. A land-titles system had to satisfy both Maori and settlers. This is the key context for the Fenton Agreement. The Komiti Nui, established as the successor to earlier komiti in the late 1870s, took on

Pakeha trappings, with officials, minutes, and elections. It exercised powers of self-government (passing bylaws), and undertook authority over the management and leasing of land and resources, as well as deciding their titles.⁴⁰

Crown officials at the time perceived the possibility of working with the komiti. We will discuss the Native Councils Bill below, but we also note here the views of the Tauranga resident magistrate, Herbert Brabant, about the Komiti Nui o Rotorua:

[The Komiti] consists of about sixty men, selected from the several hapus, having as its object the investigation of Native land titles, their prominent ideas being that if the committee holds a preliminary inquiry before a case comes into the Native Land Court, (1) money will not be wasted in over-lapping surveys; (2) litigious claimants will not be able to oblige the owners to pay for surveys against their will; (3) they think the committee will have the confidence of the Natives, and could settle intricate claims better than the Court. They do not ask that the Court should be abolished, but merely that the committee should send up claims for confirmation.

It has been the opinion of many Europeans, as well as Natives, that a Native committee would be best able to deal with native claims, and certainly if this committee could carry out what they propose they would deserve the thanks of the Government and the tribes, for nowhere are land titles so complicated as in this district.⁴¹

Herbert William Brabant,
resident magistrate of
Tauranga at the time of the
Fenton Agreement, which
he dubbed the 'thin end of
the wedge' for the Native
Land Court and settlers.
He took charge of Rotorua
land purchasing in 1880 and
chaired the Rotorua Town
Board (established under
the Fenton Agreement) from
1883 to 1885.



HE MAUNGA RONGO

By 'confirmation', argues Dr O'Malley, the Rotorua tribes meant ratification without further inquiry.⁴² Brabant was of the view that local settlers as well as Maori came under the Komiti's jurisdiction.⁴³

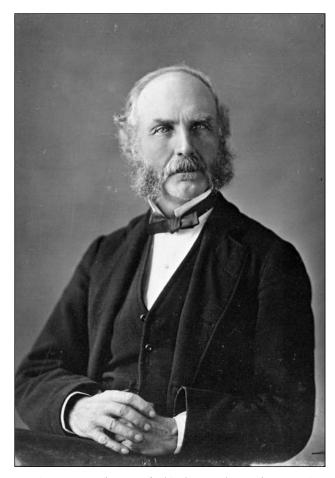
The Fenton Agreement and its outcomes

In the late 1870s, as tourism developed and accommodation became an issue, inland tribes favoured leasing their land and the establishment of towns. These things were discussed with Fenton at a hui in 1877, but opposition continued to sales and the Native Land Court. By 1880, as several historians agree, the Government was desperate to break the deadlock, establish a town, and get inland Rotorua lands through the court and colonised. The immediate cause of action was disputes between Pakeha with informal leases of Ohinemutu land. The Government decided to send Chief Judge Fenton as a royal commissioner to investigate, and drafted instructions referring to such a commission. But there is no historical evidence that Fenton ever actually acted as a commissioner or carried out an inquiry.44 Rather, he appears to have followed instructions for the task - suggested by himself in the first instance - of negotiating the establishment of a town, by sale if possible, by very long-term lease if necessary.⁴⁵

When Fenton arrived in Rotorua in 1880, he:

found in existence at Ohinemutu a regularly organised local body with Chairman Secretary and officers. It was constituted a Land League for the prime object of preventing alienations to the Crown, and in a secondary degree of obstructing or assisting as the case might be, private persons. But it subsequently assumed other powers and duties, and had acquired a position of some importance, being accepted by the tribe as the Witenagemot was accepted by our fathers with little more than its own influence and strength to enforce its decrees.⁴⁶

In many ways, this statement by Fenton epitomises the claim before this Tribunal. In a situation where kinship bonds and the customary social order remained intact, Maori self-governing bodies could operate without the assistance of the Government's law. But the settlement of



Francis Dart Fenton (182?–1898). This photograph was taken some time in the 1870s, after he had been made chief judge of the Native Land Court – the first person to hold the position. In 1880, the Government sent him to negotiate the establishment of a township at Rotorua. The resultant Fenton Agreement gave rise to claims in our inquiry.

'private persons' (Europeans) on the land for economic development required a title recognised by both Maori and settler authorities. The Government's abolition of the New Institutions, and its constant failure to recognise and provide legal powers for such bodies as the Komiti Nui by 1880, led to the individualisation of title, land sales on a

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

massive scale, and the virtual powerlessness of komiti, in the ensuing decade.

For the meantime, however, Fenton had to work with the Komiti. He reported to the Government that he had 'stressed this body and recognised it in the contract, relying upon it to do several things which it would be very difficult for the Land Court to do.'47 Although Fenton doubted the capacity of the Komiti to carry out its role, he nonetheless recognised and endorsed it in the Agreement. He had also to work with the Putaiki, the Tuhourangi komiti which claimed overlapping interests in the township lands.⁴⁸ Fenton's recognition of the Komiti Nui in the formal Agreement is crucial to the misunderstandings that followed, as the Komiti believed that it had achieved its goal: the Komiti, as Brabant put it in 1879, would 'send up claims for confirmation'. The absence of Fenton from the Native Land Court when this was tried in 1880, because of his dual role as negotiator of the agreement and chief judge of that court, was crucial to perpetuating the misunderstanding.

Fenton negotiated the Agreement with a committee of six rangatira, appointed on behalf of the Komiti Nui. Mr Mitchell explained that the Komiti represented Ngati Whakaue, Ngati Rangiwewehi, Ngati Uenukukopako, and Ngati Rangiteaorere, and was a 'vehicle through which the membership exercised their Tino Rangatiratanga.⁵⁰ The Agreement itself was signed by 47 people, identified by Andrew Te Amo as Ngati Whakaue (33), Ngati Rangiwewehi (8), and Ngati Uenukukopako (3). In addition, the local Maori vicar had signed on behalf of the church, and two signatories could not be identified by Mr Te Amo.⁵¹ This weighting of iwi signatures may reflect the Komiti Nui's award of interests in the township block. Ngati Rangiwewehi, for example, were recognised by the Komiti as having interests in part of the block, but were later excluded by the Native Land Court.

The key features of the written Agreement between Fenton and the Komiti Nui, drafted by Fenton, were:

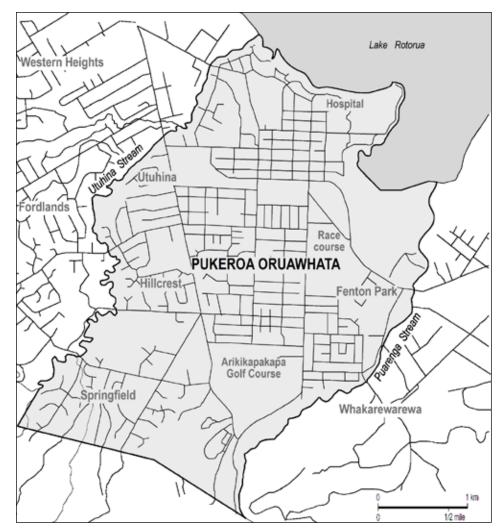
▶ the land would be surveyed and then investigated by the Native Land Court;

- ▶ the township lands would be leased for 99 years, with the Crown acting as agent for the Maori lessors, and the Komiti Nui distributing the rents;
- ▶ land was to be reserved for Maori at Ohinemutu, for the public at Pukeroa, and for streets and public buildings, and the thermal springs were to be reserved;
- ▶ the land was to be inalienable;
- ▶ the town would have a doctor, and Maori would be treated free of charge;
- ▶ only leased land would be rateable, and the lessees would pay the rates; and
- ▶ there would be special local government involving the Komiti Nui, including its representation on boards to administer the licensing laws, the Pukeroa reserve, geothermal spa, and the town itself.⁵²

Kathryn Rose notes Fenton's report that he had 'made a governing body which excludes the ordinary municipal authorities, at any rate for the present', because Maori would not allow their geothermal taonga to be 'handed over to such bodies as our City Boards or County Councils'. The significant and ongoing role accorded to the Komiti Nui was, in Ms Rose's view, an expectation that the town would be run in partnership by the Crown and Maori. The evidence of Mr Mitchell is that the Agreement was considered a recognition of the tribes' mana, and the establishment of a direct relationship with the Crown.

The outcomes of the Agreement are well known. The Komiti Nui investigated title and made an award, which it then took to the Native Land Court. At the opening of the court, however, the judge informed the Komiti Nui that it had no standing and could not be recognised. In terms of the law in force at the time, this was strictly correct. This exchange was not recorded in the minute book, but the local newspaper recorded the consternation produced by this unexpected development. Maori complained, as the Crown's historian notes, that Fenton should have been there to explain his arrangements with them.⁵⁵ This referred to their belief that Fenton had agreed to a formal role for them in the Native Land Court's decision-making. The court went on to award exclusive title to the

HE MAUNGA RONGO



Map 6.1: The Pukeroa-Oruawhata block

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Pukeroa-Oruawhata block, the site of the township, to Ngati Whakaue, which led to requests for rehearing from Ngati Rangiwewehi and Tuhourangi. These requests were turned down by Chief Judge Fenton, who reported to the Government that 'our people' had won in court. Ngati Whakaue's attempt to reinstate the excluded people by putting their names in the ownership list was also disallowed. Fenton instructed the judge to permit no names that were not of Ngati Whakaue, an instruction that the judge carried out.⁵⁶

Ultimately, there was an interminable court process of subdivision to follow. Dr Pickens notes that dissentients from the Komiti decisions took advantage of this to relitigate matters in the Native Land Court, but usually lost their cases. ⁵⁷ In 1883, the Native Department suggested that Judge Clarke could arrange interests to enable rent distribution in a month, if he worked 'with the assistance of the Rotorua Committee', instead of proceeding with a long, expensive, and unnecessary subdivision. The Government decided not to stop the court 'in Mid-course.' ⁵⁸

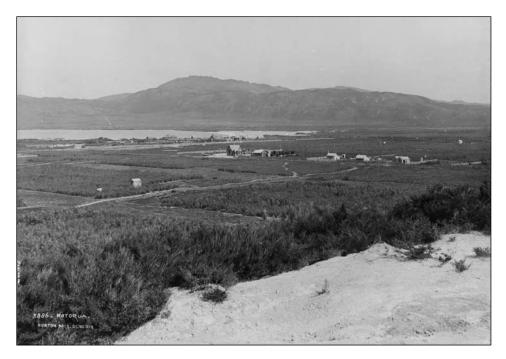
At the same time as the Native Land Court proceeded with its work, the Government queried the irregular arrangements that had been set up for municipal government. Basically, Fenton and the Komiti Nui had agreed for the Komiti to be represented on the various boards that would administer the town. The Native Minister, Bryce, objected that this 'establishes a new mode of municipality, and on a new principle. . . It recognises a local body which is irregular and indefinite in its elections and status.⁵⁹ The Government got around this difficulty in the Thermal Springs Districts Act, by simply empowering the Governor to appoint town boards, until such time (in indeterminate circumstances) towns should be brought under the 'ordinary municipal law of the colony.60 This provision meant that the Governor could appoint the resident magistrate, the local doctor, and a representative of the Komiti Nui, as agreed by Fenton and the Komiti. But Maori were rightly concerned that this took away their power to act as of right. There were no legislative constraints on who the Governor could appoint. Fenton, on the other hand, thought that



Rotohiko Haupapa, 1836?–1887, a prominent Ngati Whakaue leader and chair of the Komiti Nui at the time of the Fenton Agreement. He did not sign the Agreement and later said that he had been opposed to its haste but the 'tribe had over-ruled him' (Rose, doc A70, p75). He was Ngati Whakaue's representative from 1883 to 1887 on the Rotorua Town Board, established as one of the partnership arrangements of the Fenton Agreement.

the Act empowered the 'Village runanga' to administer 'licensing, public houses, fencing, trespass, and all municipal matters'. Fenton drafted the Act, which was adopted with little change, and he clearly intended it to give real powers of local self-government to komiti. We will return to this question below. Here, we note that the chief judge also confidently believed that the 'Village runangas will do

HE MAUNGA RONGO



Rotorua from Pukeroa Hill, 1885. Photograph by the Burton Brothers

what we tell them. 62 His confidence was misplaced in both respects.

The Native Minister, Rolleston, met with Ngati Whakaue in 1882. The tribe objected to the Governor having the sole right to appoint the Town Board, a change in the Fenton Agreement when it was enacted by the Thermal Springs Districts Act. Petera Te Pukuatua told the Minister that they did not want the Government to appoint their representative on the board, but that it should be 'left in our hands'. There was disagreement, however, on who should be chosen and how. This was in part because the Native Land Court had awarded title to just one of the tribes represented on the Komiti, and the Maori representative on the board had to represent the town owners, not the wider Komiti. Brabant reported that the majority of Ngati Whakaue chiefs wanted Rotohiko Haupapa as their representative on the board, but others wanted an election. Having bypassed the Maori institution set up to arrange these matters, there was some confusion about how to proceed. 63 While this issue was being raised, the Komiti Nui appealed to the Premier, arguing that Fenton had recognised them and that they should be given legal powers. The Premier, John Hall, saw the advantages of a body that could enforce regulations among Maori and ensure that the settlers were not disturbed in their occupation of the land, but nothing came of it.⁶⁴ The komiti remained without official sanction, increasingly powerless as the decade wore on.

The Komiti Nui's role was further reduced by the Clarke Agreement of 1883, which appointed select Ngati Whakaue rangatira to receive and distribute rents, and cancelled the arrangement to swap Pukeroa land for other sections within the block (both of which the Komiti was to have executed). The Crown suggests that these modifications were necessary because the Komiti could not do its job, but there is no support for this in the evidence of the Crown or claimant historians.⁶⁵

In 1883, the Government finally appointed the Town Board, with the doctor, resident magistrate, and a Maori

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

representative, Rotohiko Haupapa, as provided for in the Fenton Agreement. Haupapa was presumably chosen by the Ngati Whakaue owners, as discussed above, and not by the Komiti Nui. In 1885, Ballance agreed to Ngati Whakaue's request to formally elect a representative on the board, although that person would still require official appointment by the Governor. A deputation of Europeans asked that the ratepayers also be allowed to elect two representatives. No elections took place, however, and Haupapa remained on the board until he died in 1887. Two men -Hamuera Pango and Pirimi Mataiawhea - sought appointment to the board in Haupapa's place. Ms Rose could find nothing on file to suggest that Ngati Whakaue were consulted about this appointment, and there was no election. Pango applied – as he did for an Assessor's position – was considered suitable, and was appointed. At the same time, the agreed composition of the board (magistrate, doctor, and Komiti representative) was further modified, and two additional European members appointed. In response, Maori sought an increase in their representation, but were turned down. Pango remained on the board until 1891, after which there was no Maori representation at all. The board itself was replaced by an ordinary town council in 1900. A promising experiment of partnership in local selfgovernment was allowed to dissipate and die. By this time, of course, Ngati Whakaue were no longer owners of the township lands.66

The Tribunal's findings on the Fenton Agreement

The historical evidence does not support the claim that the Fenton Agreement was negotiated in bad faith by the Government or Fenton. Both sides had different agendas and had to compromise, as is the case in all negotiated agreements. The claimants are correct, however, that some matters ought not to have needed negotiation. ⁶⁷ Maori title to their own lands should have been decided by Maori according to their own laws, and should never have been the preserve of the Crown or its courts. This, according

to the Turanga and Taranaki Tribunals, is a fundamental breach of the Treaty. 68 We agree.

Even so, the Fenton Agreement had the potential to be a model in other ways for political engagement between the Crown and tribal leaderships in the Central North Island. As noted by the Crown, more such agreements (and townships) were envisaged, but did not eventuate. The failure to keep the spirit of the Thermal Springs Districts Act and negotiate subsequent agreements was also in breach of the Treaty.

Both during and after negotiations, Fenton was an agent of the Crown, and sometimes instructed other judges to play the same role. He accepted instructions from ministers, advised them, and issued orders to officials, all relating to the negotiation of the Agreement and the carrying out of its terms. The Crown's historians, Mr Macky and Dr Pickens, were critical of this role. Mr Macky cited John Sheehan, who told Parliament in 1883:

The Government asked the only officer in the whole service who ought not to have been called upon to perform that duty – namely, Francis Dart Fenton, Chief Judge of the Native Land Court, the controller of other Judges to a certain extent, and who might have been called upon to decide the merits of the case – to make the agreement. ⁶⁹

Dr Pickens concedes that with 'hindsight', Fenton was an inappropriate choice, because he supervised the Native Land Court, which had to play a judicial role in the title determination. In particular, Fenton, having taken a partisan view that title had been awarded to 'our people', ought not to have decided applications from other parties for rehearings, all of which he declined. The Crown historian argues that this could not have been anticipated because Fenton was not expected to succeed. We do not accept this argument as having any validity. Ngati Rangiwewehi's requests for rehearing, which were sent to Fenton personally, were not handled formally. Although they paid the fees, the applications were not gazetted. Tuhourangi's application was dealt with formally by Fenton, and he turned it down.⁷⁰ We think it was improper for the Crown to use a

HE MAUNGA RONGO

judge of an involved court to negotiate and supervise the execution of its political agreement. As soon as the agreement was signed, Chief Judge Fenton ought to have played no further role in the operations of the court relating to the agreement. The result was certainly prejudicial to Ngati Rangiwewehi and Tuhourangi, who were entitled to have their applications for rehearing decided by an impartial officer rather than one who was acting in the dual capacity of chief judge and Crown agent.

With regard to the Crown's argument that Fenton was acting also as a commissioner of inquiry and investigating disputes, the Crown's historian noted that there was no evidence of him actually doing so. Even if Fenton had carried out a quasi-judicial inquiry at the same time, that could not have made his negotiating an agreement on behalf of the Crown – without stepping aside from his role as chief judge of the Native Land Court – any less improper.

In terms of the role of the Komiti Nui vis-à-vis Fenton's court, there is no firm evidence that Fenton deliberately entered into oral arrangements which he then concealed. Contrary to the Crown's position that this was not raised at the time, Dr O'Malley refers to an explicit statement by Fenton in 1882: 'I have been told by Mr Bryce that Rotorua natives allege that I made them promises outside the written contract[.] this is absolutely untrue: 'The Premier, Hall, was also concerned, asking Fenton in the same year about the local Maori belief that the Komiti Nui was to 'carry on the views of the Govt', by which they meant the exercise of government powers.

But there is no direct evidence of an oral agreement that the Native Land Court would 'rubberstamp' the decisions of the Komiti Nui. As the Crown points out, this was impossible because more than one komiti claimed involvement in the land in question. All historians, however, agree that the Komiti Nui expected to be given standing at the hearing, and that this arose from their understanding of the Fenton Agreement. The Crown historian, Dr Pickens, concedes that the evidence shows 'that it was their belief that Fenton had promised or agreed that they would.'⁷³ The newspaper account, cited by all the historians, noted that it was raised

in court by Maori that Fenton should have been there to explain what he had agreed with them in respect of the Komiti. This underlines our point above that Fenton had not recused himself and instead continued as chief judge, when he should have appeared as a material witness.

Each party to the Fenton Agreement probably misunderstood the role that the other party thought that the Komiti Nui would play in Native Land Court hearings. The evidence shows that Fenton expected the Komiti to be useful to the court, and also to play a role in the administration of the township after the title was awarded to individuals. He recognised the Komiti, was explicit that he thought it had standing, and genuinely expected it to be part of the subsequent arrangements. This view must have been obvious to the Komiti members, and we think it gave rise to the misunderstanding involved. Fenton cannot, however, have expected that the court would simply rubberstamp the Komiti Nui's decision, since he knew that Tuhourangi claims had also to be considered. Further, he was unlikely to have accepted such a pro forma role for his court. We accept the Crown's submission on this point.

The Komiti Nui, however, clearly did expect that it would play an official role in title determination. This expectation was followed through to the court sitting, where the absence of Fenton - who could have explained what he believed had been agreed – allowed the law to take its course. The Komiti had been demanding such a role since its inception, and it was not an unreasonable expectation under the Treaty. Rotorua Maori, including the tribes represented by the Komiti Nui, had been agitating for such powers throughout the 1870s. The Crown's failure to provide for such an official role was part of its broader failure to allow for Maori determination of their own titles. This was part of a larger Treaty breach applying to all Maori of the Central North Island, and in particular here to the hapu which had set up the Komiti Nui to administer and guard their authority and determine their titles. It applies as much to the Putaiki of Tuhourangi as it does to the Komiti Nui of Ngati Whakaue, Ngati Rangiwewehi, Ngati Rangiteaorere, and Ngati Uenukukopako.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Nonetheless, the Komiti Nui continued to try to play a role in the hearings, and to get its decisions accepted. It had to do so as an unofficial 'adjunct' without legal power, able to play a limited role behind the scenes, and it was clearly disempowered by its lack of official standing.⁷⁴ Ngati Whakaue submitted a list of owners which reintroduced those excluded by the Native Land Court's initial decision (possibly reinstating the Komiti's original decision de facto), but the court forced them to delete anyone whom it had not decided was part of the 'owning' tribe. This was done on Chief Judge Fenton's insistence.

The Crown is, however, correct that Ngati Whakaue (as opposed to excluded groups) did not protest the outcome of the Native Land Court hearing, nor accuse the Crown of not allowing the Komiti Nui to play the agreed role. As we have seen, they did accuse Fenton of making oral promises that were left out of the document (which he drafted). They also tried to get around the court's decision by readmitting excluded owners through their list. When this failed, they accepted the outcome of the hearing as greatly favouring their interests – especially since the leases looked like they were going to give the hapu exactly what they wanted in terms of economic outcomes. They continued, however, to support and use their Komiti, and continued to ask the Crown to recognise and empower komiti, such as at their meeting with Native Minister Ballance in 1885.⁷⁵

The Crown is not correct that the Tuhourangi-Ngati Whakaue dispute required an external authority, especially the Native Land Court, to resolve it. The two komiti had shown that they could work together on occasion in the 1870s. This was clear in the evidence of both Dr O'Malley and Dr Pickens. In any case, it was up to Maori to decide how they would resolve such disputes. If they chose to bring in an arbitrator, then what was necessary was for the Crown to provide their arrangements with legal force. Overlaps in customary rights were extensive throughout New Zealand. Any system which sought the 'finality' required for leasing or sales was going to have to resolve how to recognise and allow for overlapping rights. This was true of both the komiti and the Native Land Court.

It was Dr Pickens' view that either could have done it at Ohinemutu, but that both were certainly not needed.⁷⁷ The Crown cannot, therefore, refer to this dispute as justification for imposing the court and its title system. We find that by imposing the Native Land Court, failing to provide for the determination of titles by Maori institutions as they had requested, and failing to give proper standing to either the Komiti Nui or the Putaiki, the Crown acted in serious breach of Treaty principles.

The Crown also failed to provide properly for Maori selfgovernment in the 1880s and 1890s, when the machinery of the Komiti Nui was already in existence to do so, and a basis for political partnership between the Komiti Nui and the Crown had been negotiated. The Fenton Agreement provided for 'exceptional' arrangements in terms of local government. There would be no town councils or the usual settler mechanisms, but instead joint administration by officials and Maori representatives selected by the Komiti Nui. Fenton defended these parts of the Agreement to a resistant Government, which officially signed and accepted the Agreement, but eventually undermined these proposed arrangements. Having deliberately accepted the Agreement, the Komiti Nui and its constituents were entitled to expect that the Crown would keep its word. The Crown did not do so, and did not in fact provide the joint Komiti Nui-Crown administration envisaged for Rotorua township.

First, the Crown legislated to give itself sole power to appoint boards and decide their functions, when it should have given fairer legislative effect to this part of the Agreement. Secondly, the Crown failed to address the conceptual problem that arose when the Native Land Court refused to give standing to the Komiti Nui, overturned its decision, and then awarded ownership to people different from the Agreement's signatories, requiring an adjustment in representation of the 'owners' on the board. Dr Pickens notes, for example, that when Rotohiko Haupapa wrote to introduce the owners' representatives for the auction of township leases, it was on behalf of the 'Committee of Ngati Whakaue', the words 'of Rotorua' having been written

HE MAUNGA RONGO

and then crossed out. This was not, as Dr Pickens argues, evidence of the wider Komiti losing support, but rather indicative that there were now legal owners who had to act in their own right.⁷⁸

In any case, the Government failed to meet the tribe's wishes to elect its representative, doubled the Pakeha majority on the board without consultation or agreement, and finally allowed the Maori membership to lapse after less than a decade. The special board was abolished altogether in 1900. There were many opportunities for the Crown to have recognised and empowered komiti, especially given the requests of Maori and the powers that it had given itself in the Thermal Springs Districts Act. The Crown's failure to provide a proper role for the Komiti Nui or the Ngati Whakaue 'owners' in local self-government was in breach of the Fenton Agreement (as both Maori and Fenton understood it), some of the literal terms of the written agreement, and of Treaty principles.

Prejudice

The hapu represented by the Komiti Nui understood that their Komiti would continue to act for them and administer their lands. This position was gradually, but inevitably, undermined in the 1880s by the individualisation of title created by the law. Also, the Crown's failure to keep to its commitment that the land would be leased by itself as trustee or agent, and its acquisition of the land cheaply in the interests of settlers, was to the serious prejudice of the claimants, which will be addressed in more detail in part III. More immediately, those excluded from the title thrice - first by the Native Land Court's refusal to take cognisance of the Komiti Nui's decision, secondly by its refusal to accept their reinclusion via Ngati Whakaue's ownership list, and thirdly by its refusal of rehearings - was to their obvious cultural, social and economic harm. The Government ought to have been aware of the chief judge's role in this, but did nothing to prevent it or remedy it.

Fundamentally, the tribes represented by the Komiti Nui were reduced from their exercise of tino rangatiratanga

over their lands and taonga, to having instead a township, but without the underlying partnership agreed to in 1880, without retaining the promised ownership, and without the promised economic benefits of leasing.

Thin end of the wedge?

The claimants are correct to cite officials of the time, who saw the Fenton Agreement as the 'thin end of the wedge' that would lead to further Native Land Court hearings and extensive land alienation.⁷⁹ This was also the view of the Crown's historian. Dr Pickens wrote:

A great deal depended on the Pukeroa Oruawhata case: the development of Rotorua tourism and of the Bay of Plenty in general; the prosperity of the Ohinemutu folk; the future of the Native Land Court in the district; public support for the Government; Fenton's own reputation. It was no ordinary case.⁸⁰

As Brabant and the chief surveyor, Percy Smith, anticipated at the time, the court had a domino effect, pulling various groups into pre-emptive applications that destroyed the prior boycott and saw most Rotorua land pass rapidly through the court in the next few years.81 This was in part, as the Crown says, because the leases at first appeared to be an economic success, providing the impetus for other groups to try to get a legally usable title. There is no evidence, however, to support the Crown's claim that Rotorua Maori had a better view of the court because of its supposed success at Maketu in the late 1870s. One objective of the Fenton Agreement was to overcome opposition to the court and get it started in the district. This was an explicit intention, and the evidence that it succeeded came from the boasts of Crown officials of the time. 82 The undermining of Maori autonomy by this means, and the loss of authority, land, social cohesiveness, and economic potential that followed, were of serious prejudice to the Rotorua tribes.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

The Tribunal's findings on the Thermal Springs Districts Acts

The enactment of the Thermal Springs Districts Act was not in breach of the Treaty. The Crown is correct that it was, at least in part, designed to protect Maori interests at the same time as furthering colonisation. It was supposed to be carried out with agreement, and to involve the Crown and Maori in jointly setting aside and protecting geothermal taonga. The Crown would protect Maori from speculators and act as their agent in leasing or selling their lands. Towns would be established by agreement, and governed by specially appointed town boards. This could have allowed for partnership in local self-government, as was originally planned for Rotorua under the Fenton Agreement.

The Crown's submission on this Act is a powerful statement of the missed-opportunity argument, both in respect of the Act itself and in respect of its failure to act on the feasible (and mooted) role of protective agent for Maori in the leasing and management of their lands. Many Central North Island Maori welcomed the Act and its protective features. There is some strength to the argument that it made the Crown a trustee for all Maori affected by it, and not just those who were party to the Fenton Agreement. We note, in this respect, Mr Stafford's evidence that his Te Arawa informants saw the Act as their 'Magna Carta'. 83

But if the Act itself was not inconsistent with the Treaty, the Crown acted in serious breach of Treaty principles in carrying it out. It was this which led David Armstrong, in his historical evidence on the Act, to conclude that it was 'cynical and manipulative'. First, the Government failed to consult Maori or obtain their agreement to proclaiming 646,000 acres as subject to the Act. Although the strict letter of the law might not have required such consultation, the Treaty did. Many members of Parliament and others at the time thought that this action was outrageous, but their objections were not heeded. The *Bay of Plenty Times* commented: 'Such an unwonted piece of autocratic proceedings was never heard of before.'

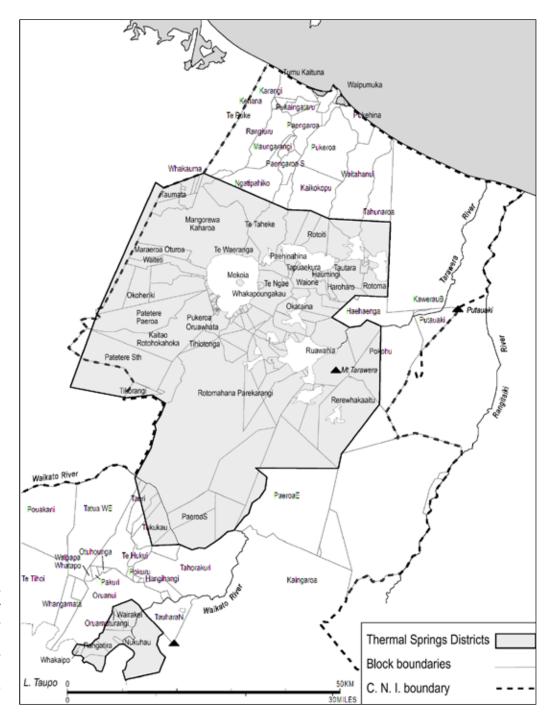
Secondly, the Crown failed to negotiate further Fentonstyle agreements, or indeed any of the kind of agreements that the Act had anticipated. Professor Ward's evidence is that it was certainly considered at the time – the model was discussed with the Kingitanga at Whatiwhatihoe in 1882, for example, and was attractive because of its apparently successful leases. ⁸⁶ The Fenton Agreement model was actively contemplated for other townships and areas. We accept, therefore, that this was a genuine intention on the part of the Crown, all the more disappointing in Treaty terms for its failure to follow through with it.

Thirdly, the Crown did not actually act protectively of Maori interests or their land. Instead, its programme of Crown purchase was conducted as if ordinary pre-emption was in place. Ms Rose notes that much of the land was already under proclamation as a result of the activities of Mitchell and Davis, so that in some ways the Act intensified rather than established the Crown's grip on the lands. The Crown accepts that it had an obligation not to misuse its monopoly powers to its own advantage and to the disadvantage of Maori. We will return to this point in part III below, where we consider Crown purchase policies. Here, we note that there was nothing different about the Crown's purchasing in the Thermal Springs District region, despite the good intentions as legislated by Parliament in the Thermal Springs Districts Acts.

Fourthly, the Crown actively tried to take geothermal features from Maori ownership wherever it could. This was in breach of the spirit of the Thermal Springs Districts Act, and of the Treaty. We foreshadow this issue here, but will return to it in part v, where we discuss the Crown's purchase and partitioning of land to acquire any and all geothermal taonga.

The Thermal Springs Districts Act, therefore, was a lost opportunity for the Crown to have acted in partner-ship with Maori communities, to have respected their tino rangatiratanga, and to have carried out the process of colonisation more genuinely in the interests of both peoples. The failure to apply the Act properly, initiate Fenton-style

HE MAUNGA RONGO



Map 6.2: Areas proclaimed under the Thermal Springs Districts Act 1881 [based on CFRT, 'Maps of the Central North Island Inquiry Districts, pt 2' (doc D35), plate 2]

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

arrangements, establish partnership with tribal communities, and empower Maori self-government, was in breach of Treaty principles.

We turn next to a more general analysis of our key question in respect of the 1870s and 1880s, relying on the claimant and Crown arguments as set out above.

MISSED OR REJECTED OPPORTUNITIES FOR MAORI AUTONOMY IN ROTORUA

KEY QUESTION: DID THE CROWN MISS (OR ACTIVELY REJECT)
OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY
GUARANTEES OF MAORI AUTONOMY AND SELF GOVERNMENT
IN THIS ERA OF COMMITTEES AND KOMITI?

Maori autonomy is integral to the Treaty of Waitangi. Without it, Maori are disempowered and the Treaty cannot be kept. In chapters 3 and 4, we identified five practicable options available to the Crown for it to have met its Treaty obligations in that respect. These were:

- ▶ the first option: declaring Native Districts under section 71 of the Constitution Act 1852;
- ▶ the second option: declaring Native Districts under the 1858 legislation;
- ▶ the third option: providing meaningful power at the central government level, through full representation in the settler Parliament and/or a national Maori assembly;
- ▶ the fourth option: incorporating the Kingitanga in the machinery of the State; and
- ▶ the fifth option: providing legal powers for local self-government by Maori institutions in partnership with Government officials, through state-sponsored runanga (or komiti). This included legal powers for Maori communities to determine their own land and resource entitlements, and to manage those lands and resources.

As we have seen, the Crown came closest to adopting the second and fifth options when it established the New Institutions, but disestablished them soon after its military conquest of the Central North Island. It came close to adopting the third option with the Kohimarama Conference of 1860, but abandoned Gore Browne's promise to make these an annual affair, without providing a fair proportional representation in the settler Parliament.

Fundamentally, the same five options remained available to (and practicable for) the Crown from 1870 to 1890. There were many key opportunities for the Crown to have adopted one or more of these options, to have acted in accordance with Treaty principles, and to have worked in partnership with Maori autonomy. This is not a presentist analysis, but based rather on the promises, ethics, and circumstances of the times. We explore these lost opportunities and the claimants' arguments about them in light of the five practicable options that we have found to have been available to the Crown in the circumstances of the time.

The first option: Native Districts under the Constitution Act

The option of declaring Native Districts under section 71 of the Constitution Act 1852 may have been one reserved to the British Government in London, as the only body competent to do so under the Act. Exercise of this option was increasingly unlikely after the grant of fully responsible government to the settler Parliament in 1865. Practically, however, it could have exercised the power if Her Majesty's New Zealand ministers had asked her to do so. We will not deal with this option further here, as it was one mainly sought by the Kingitanga in this period. We will return to it below in our section on Taupo for this period, where we consider the efforts of the Kingitanga to secure this measure of self-government for its constituents (including Ngati Raukawa and Ngati Tuwharetoa).

HE MAUNGA RONGO

The second option: Native Districts and runanga under the 1858 legislation

In theory, the 1858 legislation was a dead letter after the abolition of the New Institutions in 1865. Nonetheless, it remained on the statute book and was not repealed until 1891. It should be recalled that Chief Judge Fenton, negotiator of the Fenton Agreement, was the Waikato magistrate whose experiments in working with runanga did much to inspire the 1858 laws and Grey's New Institutions. When he arrived at Rotorua in 1880, Fenton was impressed to find a fully functioning komiti with European trappings, exercising powers of self-government. The claimant historians have stressed the degree to which Fenton recognised the Komiti Nui in his arrangements, and expected it to continue exercising authority after the establishment of a town. They also note his private reservations about whether the komiti was up to doing all the work needed. We think, however, that in concentrating on the judicial aspect of the komiti's powers, especially with regard to deciding titles, the claimants may have overlooked the potential of Fenton's arrangements to provide legal powers for Maori self-government.

We have already discussed the special arrangements anticipated by Fenton for town boards, with joint Komiti Nui and Crown representation. As the negotiator of the Agreement, the chief judge also anticipated that all the land would remain in Maori title, while being leased to settlers. This meant that it remained a 'Native District', and he referred to it as such. 'It will be essential in a Native District like Rotorua,' he wrote, 'that some special provisions be made for restraining the sale of intoxicating liquors and preventing cattle and pigs especially from roaming at large'. These were exactly the kinds of things that the Native Districts Regulations Act had anticipated Maori legislating about with the approval of the Governor. Fenton commented: 'Special circumstances special laws'.87 The Government, however, was concerned to limit Fenton and the Komiti Nui's special arrangements. The Premier wanted to 'get parts as to Trespass Laws & Licensing Acts struck out.88

Fenton drafted the Thermal Springs Districts Act 1881, which was to give legislative effect to his Agreement with the Komiti Nui. In it, he introduced two relevant provisions:

- ▶ First, the Governor was, if Maori consented, given wide powers of local management that could then be delegated to a town board under section 10, which the Governor would appoint and which would operate until the towns came under the 'ordinary municipal law of the colony'. No circumstances were specified about when or how such a change might take place. This allowed for the appointment of town boards with special representation and membership, as had been agreed with the Komiti Nui in 1880. 89
- ▶ Secondly, section 9 made the entirety of the Native Districts Regulation Act 1858 part of the Thermal Springs Districts Act. 90 This was no accident. The Circuit Courts Act of that year had given judicial powers to the runanga, and (again) Fenton was less likely to endorse any supposed competitors to the colony's courts. But the Native Districts Regulation Act empowered the Government to declare Native Districts in which special legislation could be enacted for local affairs (such as cattle trespass) with the 'assent' of the Maori communities. Although runanga were not mentioned in the Act, its provisions had been intended for them to be the legislative bodies working in partnership with the Governor. 91

Parliament enacted these parts of the Thermal Springs Districts Act without amendment. The clause bringing the 1858 Act into the Bill was not mentioned or debated. ⁹² Also, despite the Government's concerns in 1881, it did in fact carry out section 10 when it appointed what Hall termed an 'irresponsible triumvirate' as a town board in 1883. ⁹³ The same was possible, therefore, for section 9.

Fenton clearly intended that Native Districts would be declared and runanga given legal powers of local selfgovernment. When the Rotorua township lands were proclaimed under the Act, the chief judge considered that that itself was decisive in terms of section 9: 'This will be

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

a final proclamation because the land belongs to one tribe and can be managed by the Village runanga^{2,94} He also anticipated its extension to the other proclaimed lands. He wrote to Native Minister Rolleston:

This town is a great undertaking, and when I think of the power we have under the Act, I am struck with the splendid chance we have of doing a great thing. All other laws that conflict with those we shall make being excluded (what would Hall say if he completely saw this!?) what magnificent chances we have of showing what can be done with the licensing system, regulating public houses, fencing, trespass, and all municipal matters, for the Village runangas will do what we tell them. Then our growing body of [?] will have almost absolute power – subject to the Government – who, by the way, can do little without the consent of the local bodies. A sanguine man might say that our system will spread through the Colony, if it is well worked; but we have a great labour before us.⁹⁵

Fenton believed that Rolleston was on board with this plan. That he communicated his intentions to the Komiti Nui as well seems beyond doubt. Dr O'Malley refers to the Premier's visit to Rotorua in 1882, and his discovery of Fenton's promise that the Komiti should carry out the work of government. The Komiti asked Hall to recognise it and vest it with legal authority, and the Premier acknowledged that it could be useful for enforcing laws among Maori and smoothing relationships between local settlers and Maori. But, as Dr O'Malley notes, nothing came of this.96 No formal recognition or powers were given to komiti, despite the opportunity for this under section 9 of the Thermal Springs Districts Act 1881. The replacement of Rolleston by Bryce, who was hostile to Maori self-government and komiti, must have contributed to this outcome. Nonetheless, this Act was also available to Ballance when he promised Rotorua Maori self-government and legal powers for their komiti in 1885. He did not use it, and the opportunity was lost.97

The power to declare Native Districts in the Rotorua district remained available to the Government until 1908, when section 9 of the original Act was repealed.⁹⁸ By this

time, much of the land had passed out of Maori ownership in any case, and there were few 'Native Districts' left in that original sense. In the 1880s, however, there were many komiti that could have been given legal powers, which might have ameliorated such a fate had they been accorded them.

The Tribunal's findings on the second option

The Thermal Springs Districts Act was not a perfect solution. The original 1858 Act did not give powers of land management or title adjudication, and these were also necessary for Maori communities to have had genuine self-government in the 1880s, and to have had state-sanctioned power to manage their own social and economic destinies. Even so, the Act provided an opportunity for the Government to meet some of its Treaty obligations at the time, but this part of it was not carried out. This failure was a breach of the Treaty principles of autonomy, partnership, and reciprocity, and of the duty of active protection.

The third option: Maori representation in the central government

The failure to carry out the local self-government clauses of the Thermal Springs Districts Act was mirrored in the failure to grant Maori requests for full and proper representation in central government. Maori were not represented in Parliament at all until 1867, when four electorates were created with universal (male) Maori suffrage. Throughout the 1870s, Rotorua and Taupo Maori attempted to get the number of Maori seats in the House of Representatives placed on the same per capita principle as the European electorates. This goal was shared by Maori throughout the country, and a war of words was waged in Parliament and the press on the issue. 99 The settler view mainly fell in two camps: those who agreed that fairness required the same proportionality of population and electorates for both races; and those who saw the Maori seats as temporary expedients, and looked forward to the day when

HE MAUNGA RONGO

assimilated Maori with individualised title would vote in the Pakeha electorates. Both sides of the debate tended to agree that the four Maori members of Parliament could easily be swamped by the settler members on any Maori question, nineteenth-century party politics not being a tightly controlled affair where four members might hold the balance of power and use it to force through measures unacceptable to the rest. 100

Those opposed to making Maori representation proportional to their population won the debate, despite the petition of Te Arawa and Tuwharetoa in 1875, and the sympathy of politicians such as Ballance in the 1880s. ¹⁰¹ As a result, the Maori members of Parliament often considered themselves powerless in Parliament, a belief shared by their constituents and acknowledged by many of their settler colleagues. ¹⁰² Having provided an admitted token representation for Maori, successive governments refused Central North Island Maori requests for a fairer, more proportional representation. Indeed, the number of Maori seats was not tied to the size of electorates until 1993, except briefly in 1975. ¹⁰³

The Tribunal's findings on the third option

As we noted above, there were three levels at which Maori Treaty rights of autonomy and self-government needed to be given effect: at the local or community level; at the regional or provincial level; and at the central government level. The Crown deliberately refused the requests of Te Arawa and Tuwharetoa for fairer, more genuine representation in Parliament during this period. The refusal was on grounds that do not hold up in Treaty terms, and which were considered unfair by many at the time, both Maori and Pakeha. But although a politician such as Ballance might admit the justice of their cause and suggest a remedy, no government acted to provide proper relief. We find this failure to have been in breach of the Treaty principles of partnership, autonomy, and reciprocity, and of the Treaty duty of active protection. This Treaty breach was aggravated by the Crown's continued failure to provide for Maori autonomy and self-government at the other two levels as well, as we shall see below.

The fourth option: inclusion of the Kingitanga in the machinery of the State

This option was more relevant to the Taupo district, where Ngati Raukawa and Ngati Tuwharetoa included many hapu which remained part of the Kingitanga during this period, and continued to work with and support the King. We will consider it below in our section on Taupo for this period.

The fifth option: state runanga – 'native councils' and 'native committees'

As in the 1850s and 1860s, with the 1858 legislation and the 1861 New Institutions, it was this option which was most urged upon the Crown at the time, and which it came closest to adopting. As we have seen, one of the 1858 Acts was reintroduced in the Thermal Springs Districts Act of 1881, but the Crown did not carry it out or empower runanga under that Act. Nonetheless, governments were very conscious of the historical antecedents of state runanga, and the 1858 legislation was referred to in debates on successor proposals in the 1870s and 1880s.

The claimants have drawn our attention to two key opportunities for the Crown to have fostered Maori self-government, empowered Maori komiti with legislative and judicial functions, replaced or significantly fettered the Native Land Court, and thus to have fostered colonisation in a manner more beneficial to Maori and more in keeping with the Treaty. These two opportunities were the Native Councils Bills of 1872–73, and the Native Committee Bills of 1881–83. The Crown accepts part of the claimants' case with regard to the native councils initiative, but argues that the native committees legislation was a genuine attempt to meet Maori needs. The Crown admits that both initiatives failed. In its defence, it also argues that their success was not assured even had these initiatives been properly implemented, given the conflict between Maori tribes and the

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

possible slowing of settlement that could have occurred. The claimants, for their part, argued that the importance of these initiatives cannot be overstated, because there was still time to have prevented the prejudicial effects of the Native Land Court in the Central North Island, if only these initiatives had been adopted and empowered by the Crown.

Could the Crown have reasonably been expected to vest legal powers in tribal institutions in the circumstances of the 1870s and 1880s?

With regard to the proposition that intertribal conflict was a key restriction on the Crown's ability to adopt or work with komiti, we have already discussed this issue in chapter 3, and referred to it from time to time in other sections of this chapter. We summarise our views briefly here, for ease of reference, and because this was the Crown's main argument in defence of its failure to empower Maori institutions. The Crown posed the question of why, if Maori institutions were robust, their decisions were sometimes contested or relitigated, and why Maori wanted or needed Crown support for them. In our view, this submission begs the question. The historical evidence is clear that Maori institutions were not always able to make their decisions stick with all parties. Crown purchase agents deliberately used that fact to get people into the Native Land Court, as we shall see in part III. We accept the evidence of Dr O'Malley, that Maori needed the State to provide legal force for runanga decisions because otherwise, disgruntled parties could always find an alternative outlet in the body that the Crown did give legal powers to - the Native Land Court. And all parties needed the imprimatur of the court for leasable titles, unless the Crown would take formal notice of komiti awards.104

We note from the evidence of Dr Pickens and others, that the court forum, where winners took all, did not necessarily give finality either. Contested cases were relitigated in appeals, petitions, and special commissions of inquiry, sometimes for many decades after the initial court decision. It may be counterfactual to argue over whether Maori

institutions could have provided finality if given legal powers, but it is unarguable that the Crown's chosen institution, the Native Land Court, could not always do so. 105

In any event, the Crown did in fact seek to adopt and work with komiti in the 1850s and 1860s. Native Minister McLean tried to pass the Native Councils Bills in 1872–73, and Native Minister Bryce did pass the Native Committees Act in 1883. The Thermal Springs Districts Act 1881 reintroduced the 1858 legislation, and was itself the outcome of a negotiated agreement between the Crown and a komiti. All this makes very unclear the force of an argument that the committees could not be used or trusted. The Crown seems to be saying that while it could and did try to work with committees in general at times, it could never have been expected to recognise or deal with any one particular committee (using the Komiti Nui vis-à-vis the Putaiki as an example). We have no problem with the Crown's proposition that it could not necessarily take the stated boundaries of any one komiti at face value. The Treaty required the Crown to deal fairly with all Maori. But that the overlapping claims of tribal bodies, therefore, could only be decided by the Native Land Court does not follow, either in Treaty terms, or as a matter of historical fact.

The oral evidence of the claimants, and the historical reports of Dr Ballara, Mr Armstrong, Dr O'Malley, Mr Stirling, and others, is overwhelmingly in support of an interpretation that Maori society had the kin bonds and institutions by which tribes could negotiate peaceful arrangements with one another. The detail of the historical evidence from Mr Armstrong in particular is that Te Arawa komiti of the late 1850s were negotiating intertribal settlements with one another (and with outside groups such as Ngai Te Rangi), and finding mechanisms to resolve disputes peacefully. Sometimes, prominent rangatira were called in from outside to help arbitrate or negotiate. From the arrival of the first missionaries, Maori communities sometimes looked to them to fill such a role, and Crown officials were similarly called in and used from time to time after 1840. 106

The Crown's historical evidence focuses mainly on Maketu, where Dr Pickens argues that the situation in the

HE MAUNGA RONGO



An undated photograph of Maketu Pa

1870s was more violent, and more reflective of historical divisions within Te Arawa, than the claimants and their historians allow. He uses this example to contest the idea that Maori institutions of the time could adjust disputes, and that the Crown could therefore have relied on them or given them legal powers and status. But, at the same time, Dr Pickens accepts that Maori komiti could resolve intragroup disputes and rights, and that the various komiti could also have decided the intertribal titles of the inland Rotorua lands, perhaps by forming a district-wide komiti. His view is that either komiti or court could have done it equally well. Dr Pickens' evidence, therefore, contradicts the Crown's submission that the Native Land Court was necessary to decide a boundary between the Komiti Nui and the Putaiki, and takes away much of the force of its general argument.107

We agree with Dr Pickens that the conflict at Maketu was not created by the Native Land Court. But its

deterioration into violence was triggered by the court, overturning the Maori mechanisms that might have resolved it. Also, we note Ms Gillingham's evidence that Waitaha of the time were willing to have their rights investigated by an outside body in the shape of a Maori jury. 108 Outside arbitration or mediation by an appropriately qualified Maori body was clearly a possible and preferred option for Waitaha in the 1870s. This kind of 'outside' assistance was not uncommon in custom, and could involve missionaries or officials after contact. 109 It did not always work - in 1874, Horohoro was adjudicated by a group of Pakeha officials and 'seven or eight' Ngai Te Rangi chiefs at the invitation of Tuhourangi, who then refused to abide by the result.110 But Dr Pickens' argument that the Native Land Court had to be the external (impartial) body to resolve overlaps and title disputes is not correct. And, of course, the court did quite the oppo-

308

Downloaded from www.waitangitribunal.govt.nz

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

site – it sometimes triggered conflict instead of resolving it, and had to be suspended for several years.

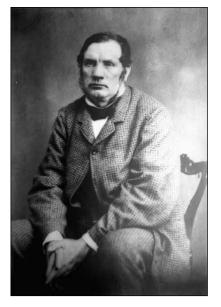
The Tribunal's finding

The balance of the evidence, in our view, is heavily in favour of the proposition that the Crown could reasonably have been expected to protect, foster, work with, and give legal powers to tribal institutions. Its failure to do so is the subject of the rest of this section.

The first key missed opportunity: the komiti movement and the Native Councils Bills

The claimants argued that the Crown was made very aware of their opposition to the Native Land Court, their preference to have komiti decide their land entitlements, their desire to engage with the colonial economy, and their demands for state-sanctioned self-government. Dr O'Malley's evidence is that Colonel Haultain's 1871 inquiry was the first time that Maori were consulted in any kind of meaningful way about the process of determining customary ownership of their land. Although Haultain reported that Maori were generally happy with the court, this was not borne out by the evidence most of the rangatira supplied to him. In particular, the Ngati Rangiwewehi rangatira, Wiremu Hikairo, presented detailed proposals for a new system in which runanga under the supervision of a Maori official would decide title questions, for ratification by the Native Land Court.111

Te Arawa leaders throughout the 1870s supported retaining the Native Land Court only as a mechanism for ratifying decisions reached by their own tribal and intertribal forums. This was probably because the court could issue a title recognised by the State, and therefore secure for settlers. The Native Minister, Donald McLean, was informed of these views in person in 1871, when he met with Rotorua chiefs at Maketu. In February 1872, a hui of 1000 Maori from throughout the Bay of Plenty met at Te Papaiouru Marae, Ohinemutu, for the opening of Tamatekapua wharenui. The civil commissioner reported to the Government that the hui proposed to elect a permanent runanga to judge



Sir Donald McLean, 1820–1877, colonial land purchase official and Native Minister (1869–1876). McLean was the architect of both the failed Native Council Bills of 1872–1873 and the Native Land Act 1873. It is thought that this photograph was taken some time during the 1870s.

and decide all land disputes. He asked the tribes whether they would bind themselves to accept the decision of the runanga, to which Ngati Whakaue, as the proposers of the system, affirmed unanimously that they would do so. There were no dissentients.¹¹²

The desire for runanga to decide titles and also to have powers of self-government, in partnership with Government officials, was also put forward in Taupo. It was so prevalent throughout the North Island in 1872 that the Premier, George Waterhouse, considered it as prominent as the Kingitanga had been in the 1850s. He put it to Parliament that it had a choice: the runanga movement 'may be now availed of beneficially, or, if it be allowed to be disregarded, this agitation may be attended with injurious consequences.' In accordance with 'public opinion amongst the Natives themselves', therefore, Native Minister McLean would, by 'directing this movement', endeavour to make it a 'source of strength' to the colony. ¹¹³ The result was McLean's Native Councils Bill.

The Bill's preamble referred to 'reiterated applications' for 'some simple machinery of local self-government',

HE MAUNGA RONGO

and Parliament intended to authorise and encourage such 'laudable desires', which would contribute to the 'civilization and contentment of the Natives'. On application from Maori, the Governor could declare any district with a majority Maori population to be subject to the Act. A native council of six to twelve members, in conjunction with the resident magistrate, would be elected to:

- ▶ pass bylaws on local matters (such as sanitation, alcohol, crop damage and trespass);
- ▶ decide on all applications to the Native Land Court, with their decisions binding on the court if agreed to by the parties; and
- ► recommend regulations to the Governor for the use, occupation, and receipt of profits from land. 114

McLean's introduction of the Bill – in which he affirmed that Maori had requested and were entitled to self-government and the assistance of the central government, and were in fact the most appropriately qualified people to decide their own titles – has been quoted at length in chapter 3. It was an important speech from the architect of the Native Land Act 1873, so we repeat an excerpt from it here:

They [Maori] were themselves the best judges of questions of dispute existing among them. No English lawyer or Judge could so fully understand those questions as the Natives themselves, and they believed that they could arrive at an adjustment of the differences connected with their land in their own Council or Committee, very much better than it would be possible for Europeans to do. He hoped honorable members would accord to the Native race this amount of local self-government which they desired. He believed it would result in much good, and whatever Government might be in existence would find that such Committees, with Presidents at their head, would be a very great assistance in maintaining the peace of the country.¹¹⁵

In our inquiry, the Crown conceded that the Bill showed 'official recognition that Maori collectives should play a greater role in the native title adjudication process', and that this was also significant because it came before

the 1873 Act. ¹¹⁶ There was some support among European members of Parliament (who emphasised the risks of not meeting Maori aspirations), and also strong support from the Maori members. Dr O'Malley notes that the Bill gave Maori power over title determination and local concerns, but not over land management and alienation, other than the power of each council to recommend a 'general plan' to the Governor. ¹¹⁷ Claimant counsel submitted that a further weakness was the end product: an individualised title under the Native Land Acts. ¹¹⁸ Even so, the limited powers on offer sparked resistance from some members of Parliament, who objected that the work of the Native Land Court would in fact be stopped or subverted, settlement retarded, and that Pakeha living in 'native' districts ought not to be subject to Maori-made laws. ¹¹⁹

We note that there was little discussion or condemnation of separate institutions for Maori in the debate. The Maori members pointed out that their people did receive special and separate treatment of a disadvantageous kind, in the oppressive workings of the Native Land Acts, and that they lacked power. The direction of Maori affairs must not, they argued, remain as it was with Europeans. One member of the House, Major Atkinson, advocated going further than the local self-government offered in the Bill. In a return to the province arguments of the 1860s, he suggested:

If anything were to be done in this direction, it should be done on a larger scale. The Government should divide the Natives into large districts, and form them into Provinces, with reasonable powers of legislation, and give them a capitation grant, the same as the Europeans. As soon as [the Bill's] Councils were established, they would have the Natives saying that they were treated differently from the white people; they would complain that they contributed towards the revenue and got none of the money.¹²¹

Members were suspicious that McLean and his Native Department would use the councils as a system of patronage to pension their supporters, but they focused primarily

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

on how late the Bill had been introduced in the session, involving a major change to Maori policy without time for full consideration. This latter point was the view of some even of its supporters. McLean withdrew the Bill and promised to reintroduce it in the next session.¹²²

The civil commissioner, Henry Tacy Clarke, reported the response of Rotorua Maori:

The principal matter which has occupied the attention of the Arawa is the Native Councils Bill. I need not say that they are warm advocates for it, inasmuch as it embodies most of their well-known views. There are several important land disputes being held over till the proposed measure has become law. Some few disputes have already been partially inquired into on the principles of the Bill, with favourable results. The serious consequences at one time imminent have been averted, and the causes for irritation in most cases have been removed.¹²³

Ngati Whakaue went so far as to lay out proposed boundaries for a district and selected council members for nomination. Tuhourangi were holding frequent meetings to discuss boundary lines. 'They will watch with some interest the proceedings of Parliament in regard to this measure, noted Clarke, 'and I devoutly hope they will not be disappointed."24 He also reported that Ngati Whakaue 'looked upon the measure as their own', Ngati Uenukukopako and Ngati Rangiteaorere 'expressed themselves highly satisfied', Ngati Pikiao gave the same expressions of support, and Tuhourangi were also in support.¹²⁵ In light of this evidence, we accept the claimants' proposition that this initiative was of key concern to them, and its outcome vital to their ability to exercise their autonomy and control of their political, social, and economic destinies, as guaranteed to them in the Treaty.

In Dr O'Malley's view, McLean introduced a 'significantly watered down' Bill in 1873 to appease the critics. ¹²⁶ Under the new Bill:

▶ the Act would only be brought into operation if a majority of Maori in a district signed a petition for it;

- ▶ the councils would lose their jurisdiction as soon as customary title was extinguished in their districts;
- settlers living in the districts would have the choice of whether to come under the laws and jurisdiction of the councils; and
- ▶ it would no longer be mandatory for all applications to the Native Land Court to pass first through the councils.¹²⁷

McLean reiterated his view that many matters of Maori custom could not be dealt with adequately by British law, and that the councils would greatly assist the Native Land Court by resolving the numerous intertribal land disputes before they reached the court. There was still opposition in Parliament – Edward Jerningham Wakefield, for example, condemned the idea that Maori land titles should be decided by 'a set of outside Republics' instead of the colonial courts. McLean withdrew the Bill on what Dr O'Malley calls the 'dubious grounds' that the new Native Land Act (1873) had rendered many of its provisions redundant.¹²⁸

The historical evidence is not clear, however, that McLean was forced to withdraw the Bill by settler opposition, as alleged. It was not even debated before he withdrew it late in the session, announcing that it needed a major revision in light of the Native Land Act that had passed earlier in the year. He suggested that many of the provisions were no longer necessary, which was presumably a reference to the 1873 Act's provision for District Officers to do preliminary work for the Native Land Court. Nonetheless, Parliament had enacted the Native Land Act in the knowledge that it was part of a package with the Councils Bill and was still expecting it. McLean had clearly changed his mind about parts of the Bill, and that was the real reason for the Government withdrawing it. But the Bill was not supposed to be abandoned. McLean announced his intention of introducing another one in 1874. The Government still thought it necessary, he said, to meet the express wish of Maori that they be enabled 'to take part in the management of their own affairs." But this intention was not

HE MAUNGA RONGO

carried out, and McLean did not introduce a further Bill in 1874. We have no evidence on why the Government finally abandoned this promising initiative. We are not entirely convinced that opposition in Parliament at the time was of such force and determination that the Government could not have persevered. The matter was not put to the test.

Dr O'Malley concluded that the outcome of the 1872 to 1874 native councils proposal meant that Parliament was unwilling to grant 'even limited powers to Maori to determine land titles and administer local affairs themselves'. The Crown submitted that it was reasonable for Parliament to be concerned at the possible effects of the measure on the pace of settlement. Even if that were so, Dr O'Malley notes a 'plausible counter-argument' at the time to those who feared that legally empowered Maori institutions might slow settlement: the Native Land Court had yet to penetrate some districts in which tribal cohesion remained strong and opposed to it, and giving legal standing to komiti or runanga might well have led to controlled settlement of those districts earlier than was the case, yet in a manner more in the interests of both races. 130

The Tribunal's findings on the first key missed opportunity

The Government's failure to pass the 1872 Bill, or even the 'watered-down' Bill of 1873, was a disaster for Central North Island Maori. As the claimants point out, much of their land had yet to pass through the Native Land Court, including almost the whole of the Rotorua district. The native councils could have empowered tribal communities to avert many of the worst aspects of the court and colonisation to come. Autonomous tribal councils, with statesanctioned powers of self-government, could have made a significant difference. This would have been even more so if they had been used - in conjunction with local komiti - as a tool for corporate tribal management of land. The Crown accepts that it can be fairly criticised for not providing such mechanisms for Maori. We go further, and find that the failure of the Crown to provide for Maori autonomy, self-government, and corporate land management both at the district and at the community level was in serious breach of Treaty principles. Each time it happened – in the 1850s, in the 1860s, and now, again, in the 1870s – the effects grew cumulatively worse.

The second key missed opportunity: the komiti movement and the Native Committees Bills and Act

For our discussion of this key issue, we rely mainly on the valuable evidence of Dr O'Malley, who has researched it in detail. He describes how the komiti movement was particularly successful in the Rotorua district in the 1870s - where Maori strove to retain their autonomy through structures aimed at resisting uncontrolled land sales, and the activities of agencies such as the Native Land Court that were likely to expedite them. The fundamental problem for Maori committees in their attempts to defend autonomy or fight a rearguard action against its loss continued to be the lack of any legal authority to enforce their decisions. In Dr O'Malley's view, Te Arawa probably knew that they could not keep the court out forever. Hence the willingness of the Komiti Nui to send quarterly reports to the chief judge and to seek to act in association with it, with the court to sit later and confirm the komiti's decisions. Officials rightly saw, and were worried, that a fundamental purpose of the komiti was to retain a tribal control over Maori lands. Most officials, in Dr O'Malley's view, were willing to encourage komiti if they looked like defusing conflict and making the Native Land Court's task easier and quicker. 131 The Native Affairs Committee recommended that the Government empower elected Maori councils in 1872 and again in 1876. But the Government's usual response was simply that there was no legislative authority to do so. 132

According to Dr O'Malley, the stonewalling of Maori requests from 1873 to 1880 led the Maori members of Parliament to try introducing their own legislation to empower Maori komiti to decide land titles, govern surveying and land transactions, and pass local legislation. Native Minister Bryce opposed their Bill in 1880, and Native Minister Rolleston appears to have blocked it in 1881. Henare Tomoana advised Parliament in 1881:

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

it was desired by all the Natives in the colony. When former Governments were in power the Native tribes were in the habit of sending petitions to them to bring into force such a measure as this. Being of opinion that the Government had control over all the affairs of the colony – over all the land and everything else – the Natives considered it wise to apply to the Government to give them some sort of power by which they could carry on a system of local government amongst themselves... Each year the Natives had petitioned Parliament for an Act such as this, by which they could control their own local affairs. 134

Bryce resumed office in 1882 and opposed a third Bill in that year. In 1882, however, the Maori members' Bill was supported by many Pakeha members in the hope that it would expedite the work of the Native Land Court, resolve Maori disputes by arbitration before the court did its work of individualisation, and bring Maori into the administration of (British) law and the machinery of government. As one member pointed out, it was safe to give the Bill a second reading as there were only four Maori members and they could easily be swamped in committee should their Bill prove objectionable. Bryce, however, opposed the Bill on the grounds that although there were many laws which 'have a different application to Maoris and to Europeans', Maori should in fact be assimilated. Hone Mohi Tawhai objected in response to Bryce therefore calling himself 'Native Minister', and pointed out on the subject of treating Maori and Pakeha alike: 'we must also consider what the Treaty of Waitangi says – namely, that the Maoris were to have as many powers and privileges as are given to British subjects.135

Walter Buchanan pointed out the hypocrisy of a Government objecting to the Bill on these grounds, at the same time as giving the Public Trustee large and special powers over Maori land. Hori Taiaroa, the member for Southern Maori, added that the effect was to keep in European hands, 'the sole management of affairs affecting the Native race'. Cecil De Lautour also queried the philosophical grounds on which separate institutions were

being denied legal authority. He argued that amalgamation of Maori and Pakeha would not in fact be prevented by such institutions, since Maori already informally made laws for themselves and had their own courts. British courts could not in fact do justice to a people with a different language and different laws. There was no harm, in such circumstances, to formalise matters and have colonial courts 'enforce the decrees of their own Native tribunals'. The cause of amalgamation and civilisation would not in fact be hindered – if, from a nineteenth-century perspective, civilisation it was. 'I am not sure theirs is not on a level with ours in many respects, De Lautour stated. This kind of thinking was met with racism (although not unrebuked by other members). Colonel Trimble declared that civilisation would be dealt a 'death-blow' because Maori were not fit to conduct their own affairs, Native Land Court judges were experts in Maori language and custom, and it was beneath such a court to have to take notice of decisions by Maori committees.136

In the Crown's submission, it is important to consider what was reasonable by the standards of the time, and, on this particular issue, the humanitarian impetus for amalgamation of the races on the basis of one law for all. Separate institutions, the Crown argued, were genuinely seen by the ethics of the time as wrong and not in the best interests of Maori. This was a key constraint on the ability of the settler Parliament to meet Maori aspirations for autonomy, selfgovernment, and the power to decide their own land entitlements in the nineteenth century. Much of the Crown's submission depended on this key proposition, so we pause here to consider it in some detail in light of the debate in Parliament on the 1882 Native Committees Bill. This Bill is particularly important, because it almost passed the House despite Bryce's opposition, and the Minister's own Act of the following year was not debated.

We accept that the amalgamation argument, as put by the Crown, was one theme in the minds of both settler and Maori members of Parliament. As we noted above, it was hardly discussed in the 1872 debates, which focused on other issues. But it was a dominant issue in 1882, alongside

HE MAUNGA RONGO

very practical fears for the Native Land Court's work and the effects that empowered committees might have on it. The members' speeches made a variety of points, but most fell into two camps. First, there were those who opposed the Bill on the grounds that both races should be subject to British law, that there should be no exceptional arrangements for Maori, and that this was for the civilisation and prosperity of Maori themselves. They were also against the idea of elected committees having any judicial authority as this idea was opposed to the principles on which government should be conducted in New Zealand. There was a mixture of self-interest and genuine feeling behind these sentiments, as indeed there was on the other side. The second group was made up of many members - both Maori and Pakeha - who supported the Bill and disagreed with the philosophical position of the first (pro-Bryce) group. Many reasons were advanced by the latter group, and we give a selection of them here to illustrate the variety of thinking on the point.

In introducing the Bill, Tomoana pointed out that Maori self-government by their own institutions and according to their own laws was already a reality. The problem - and the need for the Act - was the inability of Maori institutions to enforce all their decisions without legal powers. This was a powerful point for many. Some members advanced theories of legal and cultural pluralism in support of the Bill. They noted that Maori law was in force, that Maori and Pakeha cultures were different, and that British law simply did not provide for legitimate Maori needs. In addition to De Lautour, cited above, Sheehan pointed out that 'the proposals contained in the Bill had been Maori law for the last forty or fifty years – for the last eight or ten generations.¹³⁷ Richard Turnbull noted that Maori had a different view of justice that was based on their different culture, and therefore needed different laws and their own judicial decisionmaking. Maori committees would be guided by Maori law, and this was no more than they had a right to. On that view, there was nothing in the Bill to which the 'House could reasonably object.' Thomas Weston agreed, stating that Maori

had the right to decide their own cases by their own laws: 'It could not make any difference whether these Natives settled their differences by Maori custom or by the laws of the land, seeing that they enter into an agreement for the purpose'. If 'native tribunals' sought the aid of the State to enforce their decrees, then the two court systems would walk 'side by side' and not in opposition to each other.¹³⁹

Buchanan expressed the same view, noting that the Bill would place Maori affairs in the hands of those 'most competent to deal with them'. Maori and Pakeha had different views of justice and different cultural standpoints:

Much that they [Pakeha] did under the semblance of justice, under the pretence that it was justice, was to the Native mind the rankest injustice. They did not view things from the same standpoint as that from which we viewed them...

In common with other members, though, he expected Maori to see the benefit of British law eventually. At Matthew Green made the same point, and argued that it was not 'reasonable' that Maori and Europeans must have exactly the same law. One of the longest-standing ideas in the nineteenth century, often given voice, was that there were universal principles of morality that could not be compromised – such as a law against murder – but that on other matters, Maori and European law could justly diverge. Green was of this view, and he added that the same principle and rights must be applied to Maori and Europeans – that there should be self-government – but that the exact same laws were not required for people of different cultures to govern themselves.

In addition to this view – that Maori and settlers had different laws and cultures, and that this justified Maori committees to administer Maori law – two members of Parliament pointed out the legal pluralism prevalent in Britain, her empire, and other parts of the 'civilised' world. Henry Dodson reminded the House:

They had heard that night about one law for both races, but if he had read history aright he found that there were distinct

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

laws in almost all countries where there were distinct races. What did they find in the Imperial Parliament in that country that they liked to refer to whenever they wished to find something to guide and encourage them? One hundred and seventy-five years ago the Scotch and the English people united. The Scotch people were a distinct race, and they were in many respects a distinct race still. They then had their own laws, and they still retained most of their laws even to the present day. Furthermore, was it not now usual for the Imperial Parliament to pass laws applying to Scotland only, to Ireland only, and to England only? And here they were now passing a law which would apply to the Maoris only, a race distinct in almost all respects from the Europeans, with distinct thoughts, distinct minds, and distinct opinions, and therefore they required a distinct law in relation to their own internal affairs. . . . He hoped it would lead to their obtaining larger powers, and he would be glad to see many of the Native affairs at present dealt with in that House intrusted to the Natives themselves. 142

William Swanson made a similar point during a later debate on the Bill, stating:

It has been dwelt upon as a very good and desirable thing that there should be one law for all the people of the colony never mind what their feelings are, or what their bringing-up and former habits have been. I dissent altogether from that. The whole legislation of England is the other way. In Scotland the criminal and civil law, the law of inheritance and the marriage laws, are entirely different from those of England, and every Scotchman and most Englishmen know that. In Canada a great many laws which the French people had before we went there were left to them. It is the same in India. In some counties of England, even, the law of inheritance is different from that of other counties. Go to the islands about England, and the same thing obtains. In Man, Guernsey, and Jersey different laws exist from those in operation in England. Do the people come into conflict and confusion in consequence? I recollect when the weights and measures were different in Scotland from those of England, and when different duties

were actually imposed on spirits. They are gradually getting assimilated. There is no such thing as a grand jury, a coroner, or a pound in Scotland. But do the British people quarrel for all that? On the contrary, the laws they wish are left to them... I think if the Natives wish this thing, if the Government want their good-will, they should agree to it. 143

Some members thus advanced arguments - specific to New Zealand, and from examples elsewhere - about legal and cultural pluralism. In particular, it was pointed out that 'British' law and systems of government were not as monolithic as claimed. Frederick Moss and William Barron even argued that the arbitration and local government principles of the Bill were superior to settler arrangements, and the system could 'with advantage be given to ourselves.144 Thomas Duncan feared, somewhat gloomily, that the Government was just opposed to all local self-government, be it Maori or settler.¹⁴⁵ In Moss's view, pluralism must extend to land management, to allow tribes to deal with their lands as corporate bodies. He hoped the Bill would '[g]ive the Natives power as corporations to deal with their lands', so that the pernicious secret purchasing of individual interests would stop. 146

Another strong theme was the conviction that the opposition to Maori law and separate institutions was nothing more than hypocrisy. Many members pointed out that Parliament was perfectly happy to have 'exceptional' arrangements for Maori where it suited settler interests. If, as a Taranaki member put it, he was happy to profit from something like the West Coast Peace Preservation Bill, then he had no choice but to 'pass an exceptional Bill on the other side, to give the Natives a little advantage as well as to affect them in the other way." Wanson agreed:

When he heard such a lot of talk about one law for the Natives and the Europeans, he could hardly help laughing in the faces of the gentlemen who talked that way. Let a Maori go and buy a gun, let him try to lease or sell his land, then see whether there was one law for Maori and European. There was

HE MAUNGA RONGO

a very distinct line of demarcation drawn between the two races. They all knew that. 148

Swanson argued strongly in favour of Maori self-government and self-management. So did many others. Sheehan was particularly blunt about the power relationships in Parliament's past and present attitude to recognising Maori institutions:

It had been said over and over again that the Natives should have equal laws, an equal voice in Parliament, and proper treatment by the Europeans; and it had been rejoined, 'Yes – while they are strong enough to demand it.' Refuse to pass this Bill, and the cynical retort would receive confirmation strong as Holy Writ. 149

The view that Maori had to live with exceptional laws and separate institutions disadvantageous to them, and therefore should also be permitted the same where it was of advantage to them, was practically a majority view in the House in 1882. The Maori members were advocates of it, and promoted their Treaty rights to self-government and to determine the titles of their own lands. Tawhai argued:

If the honorable gentlemen thought this would be conferring upon the Maoris a totally separate power, and that they would be in a different position from ordinary loyal subjects, he said No. Whose House was that? That Parliament was under the authority of the Queen, and it was as possible for the Committee to be under the same authority.¹⁵⁰

He tried to sell it as a 'Europeanizing of the Maoris', and told the Native Minister:

If he considers this Bill will put too much power into the hands of the Natives, we must also consider what the Treaty of Waitangi says – namely, that the Maoris were to have as many powers and privileges as are given to British subjects.

The Bill, rather than leading to separation, would lead to the joining together of the two peoples.¹⁵¹ Others, such as Barron, agreed, arguing that rather than creating separation it was actually breaking down a pre-existing

separation, because it would bring current Maori institutions into the machinery of the State. 152

The Tribunal's findings on what was reasonable

In terms of what was reasonable in the circumstances of the time, there were several perspectives on the desirability of 'separate' Maori institutions exercising state powers. Whilst some members of Parliament espoused the 'one law for all' philosophy of amalgamation, ideas and models of legal and cultural pluralism were also discussed and had some purchase in Parliament. After reviewing the debates, we cannot agree with the Crown that opposition to separate institutions, Maori law, or 'exceptional arrangements' was so overriding that it compelled Government policy. Indeed, the Native Minister faced the prospect of losing this debate. As Dr O'Malley points out, the Maori members' Bill had almost enough support to pass, despite the Native Minister, and the Minister had to bring in his own measure the following year, despite his vehement disbelief in it.153

The Native Committees Act 1883

Dr O'Malley suggests that there was some real pressure on the Government, which was embarrassed by Parihaka and by the complaints of Maori leaders to the Queen in London, to meet Maori demands. Most importantly, perhaps, there was a need to win the cooperation of Kingitanga leaders in the opening of the central North Island to the main trunk railway. Bryce continued to maintain that Maori were incapable of deciding their own land titles, and that Maori self-government was an 'absurdity' in light of their numbers. Rather than providing a system of local government for such a small population, Maori simply had to 'accept European institutions and laws.'154 Nonetheless, in light of the very public and overwhelming Maori support for committees, the apparent willingness of many parliamentarians to endorse them, and the severe criticism of the Government in the wake of Parihaka, Native Minister Bryce had to give in. More particularly, the Government was anxious not to derail negotiations with the Rohe Potae

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

leaders, and had to respond in some way to their petition. We will consider that further below in relation to the Taupo district. Here, we note that Bryce introduced a much modified Native Committees Bill in 1883 which, in Dr O'Malley's view, provided the 'shell', but not the 'substance', of Maori local self-government.¹⁵⁵

The Maori members' Bill had provided for the committees to take control of surveys, land sales, and title investigations. The printed version omitted surveys and land sales, however, and made title decisions binding only with the consent of all parties. Bryce's Bill, in Dr O'Malley's view, watered this down further by providing for the committees to investigate title merely 'for the information of the Court'. They were to have no powers to pass local bylaws, no jurisdiction over theft or assault, no jurisdiction over civil disputes worth more than £20, no power over disputes worth less than that without the consent of all parties, and no power to levy fines. The Bill left a committee the power merely to arbitrate very small disputes, and to report to a Native Land Court in no way obliged to take any notice of it. Bryce, Dr O'Malley argues, had not therefore departed from any of his expressed views, since he knew the 1883 Act to have created committees powerless in title determination and local government. 156 The Crown argues that Bryce had not 'subverted' the Maori members' intentions, but we cannot agree with that submission.

The Bill passed the House without debate. Bryce explained that Maori had long wanted committees 'in some form', and these ones would be empowered to 'discuss matters of interest connected with their land, and to report the decisions they might arrive at to the Native Land Court, for the information of the Court'. He noted specifically that the 1882 Bill had gone too far and given the committees a jurisdiction and power that would, in his view, have caused disputes and conflict between Maori and Pakeha. Oddly, it was the idea of elected courts that disturbed Bryce most in 1882, and yet this was the aspect of the Bill he came closest to retaining, as his committees would keep a small civil jurisdiction and power to advise the Native Land Court on titles, but lost all legislative functions.

In the Legislative Council, Sir George Whitmore pointed out the same thing. The powers for the committees under the previous Bill - in which they would have decided titles and virtually replaced the Native Land Court - were now removed. He stigmatised the new Bill as 'ridiculous', because it created an elaborate county council-style machinery of election to exercise the sole power of deciding cases worth less than £20, and even then only if all parties agreed to it. 'That was all that came out of this immense mass of legislation.' Whitmore argued that the Maori members had been deceived by the similarity of the Bills' titles, but were now aware that it 'gave them nothing but a sort of sop to keep their mouths shut.' 158 Whitmore suggested that Maori should be given real power to decide their own titles. The Premier, Frederick Whitaker, replied that it was virtually the same as the 1882 Bill, though with some 'alteration as to the jurisdiction, it being better to 'begin by degrees, and not make it too wide as to jurisdiction." It was a 'tentative measure, 'innocent in itself', and no harm could result. Accepting it as such, the Legislative Council passed the Bill in the hope that it might make Maori more satisfied with the Native Land Court. 160 While we accept Dr O'Malley's criticisms of this 'watering down' of the original measure, we note the significance of this official recognition and acceptance of komiti in the 1880s. In our view, that this was possible in 1882 and 1883, but carried out in such a grudging and ineffective way, provides the standard by which we find the Crown to have failed in its Treaty responsibilities.

The Native Committees Act then fell to Native Minister Bryce to carry out. The historical evidence before us is that the resultant committees failed because they were created in such a way that they were unworkable. Brabant reported to the Government in 1884 on the election of the Rotorua Committee:

The district for which the Committee was elected comprised those of Tauranga, Maketu, Rotorua, and Taupo. Very few Natives voted, and very little interest was taken in the matter. This the Natives account for by saying that the district

HE MAUNGA RONGO

was too large, and what they want is a Committee for each tribe. 161

They soon discovered as well, argues Dr O'Malley, that the committees had no powers in any case. Bryce had removed most of their self-government powers in his rewritten Act. It was also Bryce who insisted that the districts be as large as possible. He refused to listen to Maori suggestions or complaints about this, and was unwilling to give them funding either. 162 Further, in the evidence of Professor Ward, the Native Land Court took no notice of the committees' title 'information', as indeed it was not obliged to under the law. 163 The committees were soon seen to be powerless, almost before the ink was dry on the Governor's signature. Dr O'Malley argues that the consensus of historians is overwhelmingly in favour of the conclusion of the 1891 Native Land Laws Commission, which was that the Act was a 'hollow shell' that 'mocked and still mocks the Natives with a semblance of authority.164

Perhaps the most telling assessment of all came from Bryce himself in 1885, two years after passing the Act, in response to Native Minister Ballance's undertakings to increase the powers of the committees. The Premier stated in the House that they served as the basis of a system of 'local self-government', with 'enormous powers.' Bryce replied categorically that it was 'absurd' to call the committees a system of local self-government. His committees were never intended to have local government powers at all. Rather, they were boards of arbitration for small cases where Maori voluntarily agreed to submit to them. In that sense they were 'courts', but not for investigation of title:

It is true that the Native Committees are allowed, as is stated in the Act, to inquire into titles to land, as they may into other things; but they could have done that just the same, and with just the same effect, if it were not mentioned in the Act at all. They have no power in that way to determine Native title, nor is the Native Land Court bound to be guided by the opinions which they may forward to it. Where those large powers

which the Premier stated belonged to the Native Committees exist I am at a loss to see, and he failed to show. 166

For the Premier to say that the committees provided Maori with self-government was, in Bryce's conclusion, 'a most astounding thing to say, and was a strong call on the credulity of the House.' These statements by the architect of the Act appear to us to be accurate.

The Tribunal's findings on the Native Committees Act 1883

In our view, the Native Committees Act 1883 was a very serious missed opportunity. Instead of incorporating Maori aspirations as represented by the Maori members' Bills, the Crown created committees for districts that were too large to be workable or acceptable to Maori, and gave them no power in any case. Central North Island Maori objected vociferously to the flaws in this Act, and tried to get it amended. The historical evidence does not support the Crown's contention that the tiny number of toosmall committees for too-large districts was just for financial reasons. Ultimately, the failings of the Act made it, as the 1891 Native Land Laws Commission found, a 'hollow shell' which actively 'mocked' Maori aspirations. We agree with this conclusion, and with the view of the Pouakani Tribunal that the Act 'gave Maori no effective power to manage their lands.168

There was a promise of change with Ballance from 1884 to 1886, who made some adjustments to reduce the size of committee districts, and promised to give them 'slightly larger powers than they have', such as investigating land titles as a lower court, with the Native Land Court as a court of appeal. He promised to introduce legislation to increase their other judicial powers as well, to provide them a source of revenue, and to give them larger, real powers of self-government. He made these promises to many Maori communities, including Rotorua ones, meeting with Ngati Whakaue, Ngati Wahiao, and Tuhourangi in 1885. We will consider Ballance's promises and policies below in the next section, but here we note in brief that he did not follow through with any changes to the

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Native Committees Act. He did not provide the committees with increased powers, judicial or otherwise. As the Native Land Laws Commission found in 1891, Maori were still waiting for the Act to be 'turned into a living Act, giving them power to do something for themselves'. The failure to provide meaningful autonomy and self-government to Maori communities in the 1880s, therefore, was a wilful and deliberate one, despite the opportunities available to governments of the day. As such, it was a serious breach of Treaty principles.

The Tribunal's findings on prejudice

The early 1870s and the early-to-mid 1880s were critical periods in which a more Treaty-compliant policy and outcome were feasible, but did not happen. The Crown's failure to legislate properly (if at all) for what it admitted to be legitimate Maori aspirations was in serious breach of the Treaty. The prejudice arising from this Treaty breach was:

- ▶ the continued subjection of Central North Island Maori to individualisation of title through the Native Land Court, and continued land loss or paralysis of land management;
- ▶ the inability of Central North Island Maori to govern themselves on the same basis as their fellow-subjects (the settlers), or to enforce their own customs and laws; and
- ▶ the continued subjection of Central North Island Maori to laws enacted by a Parliament in which they had only token representation.

AUTONOMY IN THE ERA OF COMMITTEES AND KOMITI, 1870-1890: TAUPO AND KAINGAROA

The wars of the 1860s had done much to repress the practical independence of the Taupo and Kaingaroa tribes. Officially recognised self-government had been swept away with the demise of the New Institutions by 1865. By 1872, Tuwharetoa, Ngati Raukawa, and others had formally surrendered and accepted the kawanatanga of the Crown

after the battles in pursuit of Te Kooti. From then on, the tribes had to seek Government support and cooperation if they were to achieve their goals of maintaining their mana, their authority, their self-government, and their land and resource bases. Without such support and cooperation, the Taupo and Kaingaroa peoples faced the perils and opportunities of the colonial economy within a legal framework of individualised title. Central North Island Maori struggled to get governments to give legal powers to their self-governing committees. They sought, in the words of WL Rees in 1893, 'an executive power over their lands through representatives chosen by themselves from among themselves; a Government, in fact, of the owners by the owners for the owners.¹⁷¹ Reviewing the many corporate bodies that existed in Pakeha society, Rees saw no reason of principle why Maori could not have what they wanted:

The whole tendency of modern times is to modify extreme individualism by collective action. Why then should we not apply to the Maori owners of land the same principle of government which we find to be indispensable amongst ourselves?¹⁷²

The answer to this question determined the fate of Central North Island Maori in the 1870s, 1880s, and 1890s.

The claimants' case

The principal submissions on these issues came from counsel for Ngati Tuwharetoa and for Ngati Raukawa. Counsel for Nga Rauru o Nga Potiki also made submissions, but these concentrated almost exclusively on political engagement within the Urewera inquiry district. Accordingly, we leave the issue of Tuhoe autonomy and the Crown's actions with regard to Tuhoe for the Urewera Tribunal to determine. We note further that Tuwharetoa and Raukawa made claims about the generic issue of runanga, komiti, and title-determination, similar to those of the Rotorua claimants, and that we do not repeat the detail of those claims here.

HE MAUNGA RONGO

The Ngati Tuwharetoa case

Karen Feint submitted that there was a key Taupo hui in the mid-1870s, to discuss political issues and settlement. This hui of September 1875 was attended by both Kingitanga and Kawanatanga Maori. It affirmed the desire of Tuwharetoa to maintain their independence and autonomy. Northern hapu had entered leases that needed to be confirmed by the court. The hui requested reform of the court, the settling of leases by the court after its reform, and the making of inalienable reserves. The Government failed to reform the court, however, so Tuwharetoa supported the Repudiation movement of the 1870s. The tribe also established its own komiti in 1876, which accepted the law and authority of the Government, and requested that the Government reciprocate by recognising the mana of a runanga to govern Tuwharetoa. This Taupo Komiti tried to investigate land titles, but the Government refused to recognise it or give it legal powers, thereby defeating it. The Crown, in the claimants' view, could and should have followed a different policy.¹⁷³ In this respect, the Tuwharetoa claim is the same as that advanced for the Rotorua tribes.

After the Crown's failure to give legal powers to the Taupo Komiti, and seeing the devastating effects of the Native Land Court on northern Taupo lands, Tuwharetoa turned to a strategy of rejecting the Native Land Court. They asserted their tino rangatiratanga through the Rohe Potae alliance of the early 1880s. The Crown, in seeking to open up the King Country and Central North Island for the main trunk railway, bypassed the King and negotiated with Wahanui and other leaders. The Rohe Potae petition of 1883 sets out their objectives - to exclude the Native Land Court and to prevent absolute alienations – in return for agreeing to controlled colonisation via railways, roads, and leasing. The Government's concessions in 1883 – the Native Committees Act, and the Native Land Laws Amendment Act - were ineffective. Tuwharetoa's attempt to set up a Taupo Committee was frustrated by the Crown's refusal to recognise the committee for a second time. The claimants argued that the Rohe Potae aspirations were entirely reasonable in terms of the Treaty. In their view, the Crown was doubly bound (by the original Treaty guarantees, and by having already breached them when it forced the Native Land Court on Maori) to work with iwi in providing reasonable remedies for their concerns. Because iwi had some leverage arising from the Crown's desire to put the railway through, they were successful in obtaining some initial but ultimately token concessions.¹⁷⁴

The Rohe Potae 'compact' was agreed in 1883. Its main features are clear in documentation of the time, but the Crown undermined it by continuing with a trig survey, and convincing other tribes that it was a Maniapoto attempt to claim their lands. In addition, Tuwharetoa support was further undermined by the advice of the Graces, and by continuing support for the King, who considered the Rohe Potae compact too great a compromise. Kingitanga opposition to the Rohe Potae culminated in a huge hui at Poutu in September 1885. But the deathblow was the Government's starting of work on the railway in April 1885, without the promised prior consultation. It looked like the Crown was favouring Wahanui and at the same time not keeping its bargain. As a result, Horonuku Te Heuheu made his famous speech at the Poutu hui, 'seeking to have his "kiwi egg" – his boundary – to be hatched safely. 175 He had determined that Tuwharetoa lands must be protected separately from the rest of the Rohe Potae, but he nonetheless supported the Kingitanga's line that the Native Land Court must be kept out at all costs. But with the Rohe Potae alliance crumbling, and the fact of 108 applications lodged already for Taupo lands (which were being held over Te Heuheu's head by the Government), it was already clear that the Native Land Court could not be kept out unless the Crown relented.¹⁷⁶

The Government (via Lawrence Grace) persuaded Te Heuheu to lodge the Tauponuiatia application a month later, in the sure and certain knowledge that it would do the opposite of what he intended – that is, rather than protecting his external boundary and keeping control over the land, it would inevitably lead to its breaking up into

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

smaller blocks and the absolute alienation of at least some of them to the Crown and settlers. In doing so, the Crown also broke the Rohe Potae alliance and the Compact. Thus the Crown deliberately undermined the tino rangatiratanga of Taupo Maori, first by undermining and destroying the Rohe Potae Compact, and secondly, by engineering the Tauponuiatia application in the knowledge (and with the intention) that it would do the opposite of what Tuwharetoa wanted. In doing so, the Crown breached the Treaty by negotiating in bad faith, agreeing to things it either did not intend to do or did not do, and by actively defeating the Treaty guarantees and protections offered to Maori. Furthermore, it failed to remedy the just and reasonable concerns of Maori, and it manipulated the situation so as to force an unreformed Native Land Court on them in pursuit of cheap land for settlement.177

Of particular concern is the manner in which the Tuwharetoa leadership's intention of a single tribal title which they would manage collectively, and divide between hapu as appropriate, was transformed into individual undivided ownership of 163 blocks. This was a betrayal of the Tuwharetoa leaders, and a key undermining of their authority and of tino rangatiratanga over land and people. The claimants argued that the Crown achieved this betrayal and undermining because the Native Land Court did not have the legal power to do what Tuwharetoa wanted (which Tuwharetoa did not realise and which the Crown did not change), and because the Crown brought on the 108 applications for hearing and manipulated the court's process to bring about the subdivision. The key to defeating Tuwharetoa's objectives and forcing the sale of land was to bring in the Native Land Court, let it subdivide and individualise, and then prey on the individual owners. The Taupo Komiti accepted and tried to control the subdivision - it having become apparent that only the court would and could legally divide the land between hapu - but the komiti's objectives were largely defeated (apart from controlling somewhat the composition of the lists of names). By failing to provide for what Tuwharetoa actually

wanted, and by forcing something on them that they did not want – leading to the Crown's acquisition of cheap land in the interests of Pakeha only – the Crown was in serious breach of the Treaty.¹⁷⁸

The Ngati Raukawa case

The Ngati Raukawa submission agrees with that of Tuwharetoa in many respects, but Kiriana Tan submitted in addition:

- ▶ Ngati Raukawa did not wish to break up the Rohe Potae, but to keep the agreement with the Crown to survey the external boundary and leave the five Rohe Potae tribes to subdivide and allocate the land among themselves.
- ▶ Te Heuheu had a right to seek title determination for the lands of his people, and he had 'noble' motives in filing the Tauponuiatia claim. Ngati Raukawa understood this to be a definition of Tuwharetoa's external boundaries.
- ▶ The Crown should not have permitted Ngati Raukawaclaimed lands to be included in Tauponuiatia, because Ngati Raukawa had not broken with the Rohe Potae and still wished the original arrangements to be kept.
- ▶ The Native Land Court process disadvantaged Ngati Raukawa. The court refused to delay the hearing when Hitiri Te Paerata could not get there in time, or to permit the withdrawal of Tauponuiatia West when Tuwharetoa, Raukawa, and Maniapoto all agreed to withdraw it from the court. As a result, all Ngati Raukawa interests in Tauponuiatia were extinguished by the Native Land Court. Some hapu members obtained individual interests through their whakapapa to the hapu included by Te Heuheu. 179

The Ngati Hineuru case

Ngati Hineuru submitted that they supported the Repudiation movement of the 1870s and tried to prevent surveys, the Native Land Court, and land alienation. They see this as an attempt to engage positively with the Crown

HE MAUNGA RONGO

and negotiate the protection of their authority and tino rangatiratanga. The Crown either ignored the movement or actively undermined it, in the interests of its Pakeha subjects. Ultimately, Ngati Hineuru were not able to prevent the Native Land Court or land loss, despite their corporate, tribal efforts to do so. Political engagement implies two groups engaging with each other for their mutual benefit. This never once happened for Ngati Hineuru. 180

The Crown's case

The Crown's submission did not respond to the Ngati Hineuru case, nor did it mention the Repudiation movement. Also, the Crown did not respond to the Ngati Raukawa case, other than to say that their complaints were not upheld by the Tauponuiatia commission. The Crown did, however, respond in detail to parts of the Ngati Tuwharetoa case.

As noted, the Crown did not address issues about the Repudiation movement, and nor did it mention the 1870s Taupo komiti specifically. Presumably, the general arguments about the unsuitability of komiti apply (as outlined above), although the Crown's witness, Dr Pickens, focused mainly on Maketu and the problems he considered arose with coastal Rotorua komiti. 182

The Crown's submission focused on the Rohe Potae 'compact' and the introduction of the Native Land Court to southern Taupo via the Tauponuiatia case. It highlighted Maori agency, disputed the detail of any 'agreement' or promises made to Rohe Potae leaders, and submitted that the filing of the Tauponuiatia application was a legitimate act of tino rangatiratanga. There was no 'divide and rule' on the part of the Crown, but rather legitimate dealing with several tribal leaderships. Ultimately, Tuwharetoa made a free choice to use the Native Land Court, and then to subdivide their land in the court.¹⁸³

The Crown cautioned the Tribunal that we have not heard from Ngati Maniapoto in our inquiry, and must be careful how we address matters of concern to that iwi. It also disclosed that it was doing research on Rohe Potae issues for the National Park inquiry. These two points, the Crown argued, limit the evidence available to the Tribunal, and therefore 'may' affect the extent to which it can reach conclusions.¹⁸⁴

With those caveats, the Crown argued that the Rohe Potae 'Alliance' was a grouping of tribes that wanted to reach agreement with the Crown, and were dissatisfied with the Kingitanga. Iwi and hapu in the Kingitanga retained autonomy within the movement. They had a variety of views. The coalition waxed and waned in consensus and strength. Because the Kingitanga was not in fact a united monolith, there were no 'divide and rule' tactics on the part of the Crown, which appropriately dealt with the various tribal leaderships. ¹⁸⁵

In 1878, there was a series of meetings between Government and Kingitanga leaders. At Hikurangi, the Premier, Sir George Grey, offered powers of local self-government to the Kingitanga, but confiscation remained a stumbling block that prevented agreement. After 1879, and the failure to reach agreement, many Maori turned away from the King. They did not support isolation as the best long-term prospect. As part of a new strategy of engaging with the Crown, many Kingitanga Maori (including Taupo Maori) were willing to lease land and accept the Native Land Court. At the same time, the Crown genuinely believed that opening up the King Country was in the best interests of Maori as well as settlers.

The following parameters shaped Crown policy in the 1880s:

- ▶ The Government was 'eager' to develop the railway as a possible remedy to the economic crisis of the time.
- ▶ Bryce and leading politicians were hostile to direct private purchase of Maori land, and wanted the Crown to act as agent for Maori, and to auction land.
- ► The Crown was willing to reach local agreements with tribes to secure the peaceful entry of the Native Land Court, and to promote leasing instead of selling as part of the price for that, as at Kihikihi (for Taupo and

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

the Kingitanga), and as with the Fenton Agreement and Thermal Springs Districts Act, which were all part of the same policy era.¹⁸⁷

Within those parameters, the Crown negotiated with the Rohe Potae tribes in the early 1880s. There was, however, no single Rohe Potae compact. The Crown reached a series of agreements, or rather 'understandings', on specific issues: 'The evidence does not support treating this group of agreements or understandings as forming a single compact that was agreed to by both Crown and Maori.¹⁸⁸ In March 1883, the first agreement was reached with Wahanui and others for a survey. This was followed by the Rohe Potae petition of 1883, but the claimants' historian, Mr Stirling, could not say which Tuwharetoa leaders signed it (nor if Horonuku Te Heuheu signed). Wahanui was allowed to address Parliament – a signal honour that indicated the seriousness of the Crown's good faith attempts to consult Maori leaders. The Crown denies that there was a later agreement in 1883, either at Wellington (as in the evidence of Dr Ballara) or Kihikihi (as stated by Mr Stirling). There was agreement on certain points at Kihikihi, such as an external trig survey, but not a general agreement or 'compact'. If there had been such a compact, there would have been a written and signed document as with the Fenton Agreement.189

As part of its good-faith negotiations in the 1880s, the Crown took the following steps to address Maori concerns:

- ► In 1882 the Amnesty Act was passed, to pardon Te Kooti and others.
- ▶ In 1883 the Native Committees Act was passed.
- ▶ In 1884 the Native Land Amendment Bill was revised, in part because of Wahanui's lobbying, into the Native Land Alienation Restriction Act 1884. The Act covered the Rohe Potae lands, prohibited direct private purchase, and proposed to set up land boards. 190
- ▶ In 1885 Ballance consulted Maori leaders, saying that he was keeping Bryce's promise to do so. He offered them a komiti system for the administration of

Maori land. This was a genuine attempt at consultation and reform, although there was no meeting with Tuwharetoa and their position on his proposals was not known.¹⁹¹

The Tauponuiatia application and court case

The Crown submitted that it did not hold back applications or manipulate the Native Land Court, nor use prior court applications to blackmail Rohe Potae leaders. If it had done so, then such leaders would surely have complained, and no such complaints have been recorded. The Crown does accept that Bryce himself stated he was holding back the court, but that he would no longer do so. The Government took steps to encourage a unified Tuwharetoa claim to the court, and this was a proper thing for it to do. Subdivision was not an inevitable consequence. Dr Pickens' evidence shows that the court gave Tuwharetoa a choice to hand in names for the whole block or to subdivide, and Tuwharetoa decided to proceed with subdivision. The court adjourned so that the tribe could arrange the details themselves. This led to out-of-court voluntary arrangements. In the evidence of Dr Ballara, subdivision along hapu lines was both expected and appropriate. 192

Given the independence and authority of Tuwharetoa, it was always likely that they would seek their own title adjudication separate from the rest of the Rohe Potae. Maori tensions predated the mid-1880s, iwi and hapu within the Kingitanga retained their own authority, and communication was such that Wahanui could easily have dispelled any suspicions had the Crown been fomenting them (which it was not). The Crown does not have a view on the 'intrigues' of the Graces – it was not responsible for what Tuwharetoa chose to do on the advice of 'private subjects'. 193

Te Heuheu's 'kiwi's egg' speech affirmed his right to define his own boundary. The Crown agrees with Mr Stirling that Tuwharetoa's intention was to take their lands out of the Rohe Potae and create their own Rohe Potae, especially because the Rohe Potae boundary bisected the Tuwharetoa rohe (although Mr Stirling notes that the

HE MAUNGA RONGO

original boundary included all the customary land remaining in Taupo). The *Pouakani Report* notes that Te Heuheu rejected the Rohe Potae boundary in 1883 and again in January 1885. The Crown questions, therefore, whether Tuwharetoa ever intended to be part of defining a single Rohe Potae boundary. The tribe's action was consistent with remaining committed to the broader political ideals of the Kingitanga (at Poutu), but also to seek a land title that would enable Tuwharetoa to engage with the Crown and the economy.¹⁹⁴

The Tribunal's analysis of the Rohe Potae alliance and Tauponuiatia

The Crown is correct that the Tribunal has not heard submissions or evidence from Ngati Maniapoto. Nor have we heard from Whanganui iwi. This Tribunal is hearing the claims of Ngati Raukawa and Ngati Tuwharetoa in the Taupo inquiry district. The Rohe Potae alliance and negotiations will need to be canvassed by several Tribunals (and have already been considered in part by the Pouakani Tribunal). The Crown intends to lead evidence on the issue in the National Park inquiry. So be it. This Tribunal has extensive and detailed evidence from Mr Stirling, Ms Marr (two reports), Dr Ballara, Dr Pickens, and tangata whenua witnesses. The Crown chose not to present evidence in this inquiry, other than the coverage in Dr Pickens' report, though it had opportunity to do so. The available evidence is sufficient for the Tribunal to reach conclusions on all the key issues for our stage one report, insofar as they relate to the Taupo claims. We do so without prejudice to Ngati Maniapoto and other parties to the Rohe Potae negotiations who were not part of our inquiry. Not having heard from those claimants, our findings are preliminary.

In terms of Ngati Tuwharetoa and Ngati Raukawa, we think that the Rohe Potae compact consists of a relationship and dialogue commenced in 1883, involving various promises and undertakings made during the years 1883 to 1885. As the Treaty envisaged, negotiation and a high-level

relationship between Crown and Maori leaders was appropriate. Such a relationship was forged by this dialogue, which resulted in various promises and an agreement to continue working together to find common solutions. The Rohe Potae petition itself is the best account of the aspirations of Tuwharetoa and Raukawa in 1883. The Crown is correct that we can no longer identify the signatories, but there is no reason whatsoever to doubt the involvement of Tuwharetoa (as stated in the petition). Te Heuheu himself was probably not a signatory, and both King Tawhiao and Te Heuheu filed their own petitions in the same year.¹⁹⁵

The Rohe Potae petition

The content and aspirations of the petition were reasonable in terms of the Treaty, and some at least were entirely feasible even on a conservative view of what the Crown could have done at the time. The petitioners noted:

We have carefully watched the tendency of the laws which you have enacted from the beginning up to the present day; they all tend to deprive us of the privileges secured to us by the second and third Articles of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands. We do not see any good in any of the laws which you have enacted affecting our lands, when they are brought into operation, in adjudicating upon lands before the Native Land Court at Cambridge and other places; and the practices carried on at the Land Courts have become a source of anxiety to us and a burden upon us.¹⁹⁶

Seeking to have their lands 'secured' to them through the Native Land Court, the tribes found instead that Maori got only the shadow of the land (a certificate), while 'speculators (land-swallowers)' got the substance through its enormous expenses. The petitioners sought a law to 'suppress these evils,' in response to being constantly told that their 'only remedy is to go to the Court ourselves'. The Government's desire to open their country by surveys, roads and railways would also open the way for 'all these evils to be practised in connection with our

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

lands before we have made satisfactory arrangements for the future. Maori would not benefit from roads, railways, and the Native Land Court if they became the 'means of depriving us of our lands'. Though 'fully alive' to the advantages of roads, railways, and 'other desirable works of the Europeans', Maori could live without them if that was the only way to keep their lands, which 'are preferable to them all'.

That being the case, the hapu chose representatives to mark out the boundaries of lands still free from any 'legal claim' by Europeans. In respect of those lands, the petitioners requested Parliament:

- It is our wish that we may be relieved from the entanglements incidental to employing the Native Land
 Court to determine our titles to the land, also to prevent fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land
 Court.
- That Parliament will pass a law to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale.
- 3. That we may ourselves be allowed to fix the boundaries of the four tribes before mentioned, the hapu boundaries in each tribe, and the proportionate claim of each individual within the boundaries set forth in this petition...
- 4. When these arrangements relating to land claims are completed, let the Government appoint some persons vested with powers to confirm our arrangements and decisions in accordance with law.¹⁹⁸

In addition, the petitioners wanted to lease land by public auction. They reassured the Government that they had absolutely no desire to keep their lands 'locked up from Europeans, or to prevent leasing, or roads from being made therein, or other public works being constructed'. If their requests were granted, they promised to 'strenuously endeavour to follow such a course as will conduce to the welfare of this island'. 199

The Rohe Potae 'alliance' and the Kingitanga

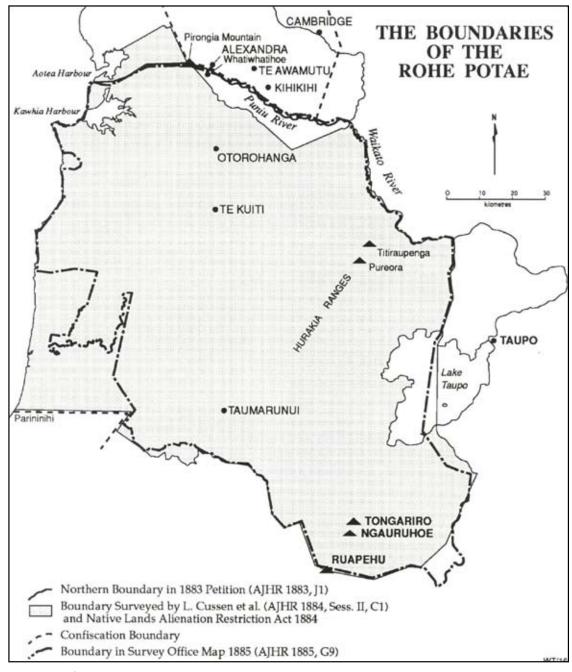
The Crown and claimants agree that iwi and hapu within the Rohe Potae 'alliance' and the Kingitanga retained their authority and independence. The tangata whenua evidence and historical reports confirm that this was so. There were tensions between groups, and temporary splits within the Kingitanga from time to time. We do not, however, agree with Duncan Moore's conclusion that 'Kingism was well and truly broken' by the early 1880s.200 In our view, the historical evidence shows tensions within the Kingitanga, but a remarkable unanimity of underlying purpose and aspirations. The strongest problem, perhaps, was the raupatu that bedevilled relations between the King and the Government on the one hand, and the King and his Ngati Maniapoto hosts on the other. It prevented the kind of agreement that might have brought the Kingitanga into the machinery of the State in the 1870s, and it led to different strategies about land and autonomy for Maniapoto and their Waikato manuhiri. 201 Autonomous decisions to engage with the Government from time to time and to transact land did not break the Kingitanga, as the Poutu hui of 1885 demonstrates.202

We will return to the former point below in our section on the five options. Here, we note that Tawhiao and many of his supporters insisted on the Government formalising their political autonomy and reforming the whole process of title decision and land management, as prerequisites to opening Kingitanga lands to the railway and economic development. Tawhiao wrote to Bryce:

You grant the Maoris local self-government and control of their own lands and we will grant you a railway and also throw open the greater portion of our lands under the leasing system.²⁰³

Wahanui, Hitiri Te Paerata, Kingi Herekiekie and other Kingitanga leaders, faced with the full pressure of the Crown's desire to enter their lands, and their people's aspirations for prosperity and peace, had the same goals but came up with more concessionary tactics. We accept the

HE MAUNGA RONGO



Map 6.3: Te Rohe Potae

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

evidence of Ms Marr on this point, that 'splits' within the Kingitanga were often differences in tactics, and that their significance has been exaggerated.204 Led by Wahanui in particular, but excluding some of the highest leaders, such as Tawhiao and Te Heuheu, the Rohe Potae tribes agreed to the Government's survey of a railway route and the outer boundary of the Kingitanga lands. One of the King's last public announcements before going to England in 1884 was his acceptance of the protective outer boundary for the district, which helped to ease opposition to any kind of deal with the Government.205 Conversely, the split appeared wider in 1885, after Tawhiao returned from England, and the Government refused to negotiate with him. Having decided that Wahanui and other Maniapoto leaders were more 'progressive', the Government started to deal mainly with them and to put less emphasis on reaching agreement with Tawhiao.

According to Mr Stirling, the Rohe Potae boundary included all the customary land remaining in the Taupo district, and had been agreed as still within the Kingitanga aukati by Taupo Maori at extensive hui in 1881. 206 Lands in northern and eastern Taupo, leased or sold by Kawanatanga tribes and clothed with a court title, were left outside the boundary. The Rohe Potae alliance wanted the Government to survey this external boundary, after which their own komiti would allocate the lands inside it to the correct hapu and individuals. The Government would legalise these titles, and then some lands would be available for lease to settlers, but not for sale.

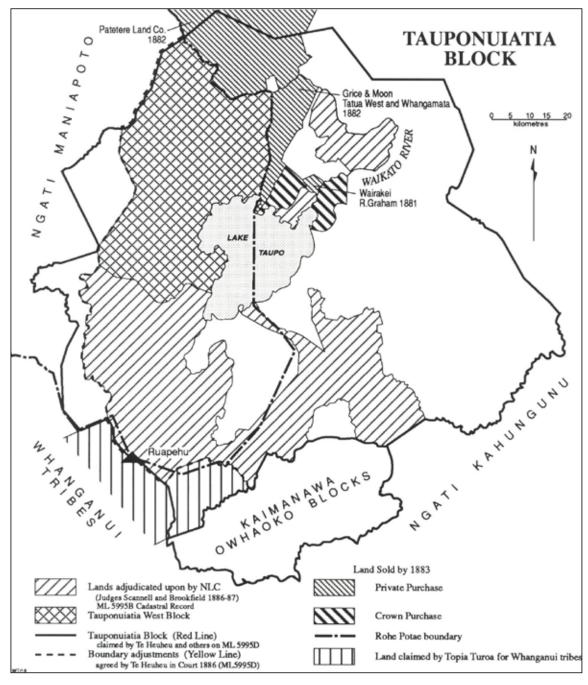
This is part of the context of events in Taupo in the critical years from 1882 to 1887. An important part of the context was kotahitanga – attempts by the Central North Island and other tribes to maintain a united front against the Government and thereby force concessions in return for their agreement to a controlled opening of their lands on their own terms. The conciliatory policy of the Rohe Potae leaders provided the Crown with an important opportunity to extend settlement and economic development in a manner consistent with the Treaty.

The Tauponuiatia application

Ultimately, the Crown wanted the Native Land Court to enter the Rohe Potae and award individual titles under its normal processes. The Native Committees Act allowed for District Committees to investigate and report on titles 'for the information of' the court. This was as far as the Government was willing to go in 1883. Even so, Bryce set up the committees in such a way as to make them unworkable. Taupo Maori were not willing to come under a tiny committee at Tauranga that included the whole of the Rotorua and western Bay of Plenty districts as well as their own. Tuwharetoa set up their own committee to decide titles, but it had neither legal powers nor Government support. A petition for its recognition in 1884 was not granted.²⁰⁷ This context makes it unlikely, therefore, that the Crown ever intended to allow the Rohe Potae committees to decide their own titles inside a single surveyed boundary. From the beginning, it encouraged applications for normal court hearings, when people approached it with concerns about the possibility of other tribes claiming their lands. At the same time as it encouraged applications, however, it held back from gazetting them for the meantime.²⁰⁸

This was because Maori agreement was still crucial to pushing through the railway, and the surveying had provoked opposition that needed to be carefully and gradually overcome. Parliament made it clear that it would not open the Kingitanga lands by force. 209 As the survey proceeded, concern mounted among Tuwharetoa and others that the Rohe Potae was Ngati Maniapoto's (and more particularly Wahanui's) attempt to claim their lands. Te Heuheu thought this from the very beginning, although he shared the imperative that the Native Land Court must be reformed before it could be allowed to sit.²¹⁰ The historical evidence, however, does not support a contention that the Crown conducted a misinformation campaign, characterising the Rohe Potae boundary survey as 'Wahanui's block' and as a Maniapoto land claim. There is evidence that Tuwharetoa perceived the survey that way, and that that was influential in Te Heuheu's application to the Native

HE MAUNGA RONGO



Map 6.4: Tauponuiatia

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Land Court, but there is no direct evidence of Government responsibility for these fears.

The evidence from 1885 indicates little communication and consultation between Wahanui and Tuwharetoa, but greater involvement of Ngati Raukawa with Wahanui and the other Rohe Potae leaders.²¹¹ Even so, such concerns were expressed among Ngati Raukawa as well. Hitiri Te Paerata wrote to the Government in 1884, inquiring whether the Native Land Court could define the boundary between Ngati Maniapoto and Ngati Raukawa. 212 This was not an application for the court to decide and award title to lands. It was an exploration of whether the court could make a boundary decision - a very different thing. It is evidence of the depth of suspicion already aroused about Maniapoto by 1884, but we note that in fact the Taupo hapu of Ngati Raukawa largely remained with the Rohe Potae and continued to seek the definition of a single external boundary for all Kingitanga lands, despite this letter.

The evidence cited by Mr Stirling and Ms Marr that the Government actively promoted Maori fears of a Maniapoto land-grab is mainly circumstantial. We know, for example, that Bryce was reported in the newspapers as referring to the external boundary as the 'boundary of the Ngatimaniapoto' at a key hui with the four tribes in November 1883. But the newspapers also reported that the request for an external survey was on behalf of the 'four tribes.²¹³ The Government characterised the survey as for 'Wahanui's block' in its internal files, but this is not evidence that the survey was publicised in those terms. What we do not have is any direct evidence of officials meeting with Tuwharetoa and Raukawa on their own, and telling them that the survey was in support of a Maniapoto-only land claim. Ms Marr considers it 'likely' and Mr Stirling argues that it 'may' have happened. While there is no evidence of the Crown promoting such fears, there is also no evidence of it seeking to clarify the truth and allay such fears. Rather, the Crown gave these fears tacit credence by its constant response: the Native Land Court will decide.²¹⁴

The Crown is correct that it had to respect the tino rangatiratanga of Tuwharetoa and deal with their lands



Horonuku Te Heuheu Tukino IV, ?–1888, ariki of Ngati Tuwharetoa at the time of the Tauponuiatia hearings. On behalf of the whole tribe, Te Heuheu filed the Tauponuiatia application in 1885. His intentions in doing so, and the aspirations of the tribe, were contested issues in this inquiry. This image was a portrait for a visiting card, taken in the 1880s by Samuel Carnell.

as they wished, when Te Heuheu filed the Tauponuiatia application in 1885. The Crown, however, had earlier held back other Native Land Court applications (including a major one from Te Heuheu) so it was certainly possible for it to have continued to do so. What was different in 1885 was that the Crown itself – if it was working through the Graces – had sought this application.

HE MAUNGA RONGO

In terms of Ngati Raukawa, we note the complex history of their responses to post war pressures in their widely scattered areas of interest. Here, we concentrate on those hapu with interests in the Taupo and Kaingaroa districts. Having fought for the King in Waikato, and with some tribal members also having supported Te Kooti and Pai Marire, there was much interest in leasing Kaingaroa and northern Taupo lands at the end of the 1860s. This inevitably led to the Native Land Court, as the only body capable of giving legal security to settler lessees, although the Ngati Raukawa desire for leasing found them drawn into more court battles and winner-takes-all situations than they wanted. We do not accept the evidence of Mr Moore that this led to a long-term and permanent withdrawal from the Kingitanga.²¹⁵ Rather, Rewi Maniapoto reasserted the aukati and won widespread support from Taupo Raukawa in the late 1870s and early 1880s. 216 These hapu, as their counsel submitted, having observed and participated in some of the court processes in Kaingaroa and northern Taupo, supported the Rohe Potae petition and the total exclusion of the court from their remaining lands.²¹⁷

The Government did not meet the Rohe Potae petition's requests for reform of the Native Land Court, leasing, and powers of title decision. It could have done for the constituent iwi, regardless of whether the lands remained protected behind a single boundary. In other words, even if the Crown had a duty to accept the Tauponuiatia application, it could still have reasonably met the substance of the other Rohe Potae requests. Similarly, the Taupo Komiti's requests to decide titles and have legal powers of self-government were not met. Nor did the Government keep Ballance's promises in these respects, as we will see below. This is a damning record, none of it consistent with a claim that the Crown was seeking to respect the rangatiratanga of Ngati Tuwharetoa.

It is clear from the evidence of Ms Marr that Maori understood the Crown to have made a commitment to an external survey of the whole Rohe Potae, followed by internal subdivision by Maori through legislatively empowered komiti. The survey was allowed to proceed on the basis of this understanding, which arose from the November 1883 hui with the Native Minister, Bryce, and was believed confirmed by the surveyor Percy Smith. ²¹⁸ The newspaper evidence of Bryce's undertakings was that, although he preferred to characterise the land as Maniapoto land with other interests on the borders, and he expected the Native Land Court to play a role, he gave an undertaking at Kihikihi:

- ▶ to survey a single outer boundary for all four tribes; and
- ▶ that Native Committees had been given the means to inquire into titles, and that they could have such a Native Committee for the district as soon as it was needed.

These undertakings were very clear in reports published in the *Waikato Times* and *New Zealand Herald*, despite the newspapers' preference that the Native Land Court would play a primary role.²¹⁹ Professor Ward adds that Bryce himself minuted having agreed to tribal and hapu titles, without individualisation.²²⁰

It was certainly within the power of the Crown to have honoured this commitment. The machinery was already available in the Native Committees Act, which could have been amended to give the necessary powers. A District Committee representing all the Rohe Potae tribes could have been created under that Act. It could have made the initial boundary determinations.²²¹ After that, assuming Bryce or Ballance would relax restrictions on having smaller District Committees (as Ballance promised in 1885), tribal komiti could then proceed to decide hapu titles. Tensions between iwi could have been resolved by this means, rather than sending in the Native Land Court. The Crown showed itself willing and able to suppress applications to the court when it suited, and did so from 1883 to 1885. Instead of continuing this policy, the Crown allowed the Tauponuiatia application to proceed, and the unreformed Native Land Court to intrude into the Taupo part of the Rohe Potae.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

We received no evidence, however, that the 108 earlier applications were used by the Crown to pressure Te Heuheu to file the tribal claim, which the whole of the southern tribe eventually came in behind. The Tauponuiatia application was in part the result of tribal tensions, fear that others were trying to obtain the lands of Tuwharetoa, and Te Heuheu's concern that the Rohe Potae boundaries bisected the Tuwharetoa rohe. Equally, Tuwharetoa were persuaded to file this application by the Graces, acting unofficially in concert with the Government. There were frequent exchanges between Ballance and Lawrence Grace, member of Parliament, over the matter. The extent to which the Graces were actual agents of the Crown is unclear. There are suggestions that the Graces facilitated the filing of the application on the basis that, if successful, one of the brothers would be appointed a land purchase agent for the very lands at issue. The evidence is clear that the Graces were instrumental in getting the application filed in the form that it took, although Te Heuheu and other Taupo leaders had filed earlier applications (some for large areas of land).222

Unless the Government or the Rohe Potae leaders could demonstrate that the Rohe Potae was not a Maniapoto land claim, it was only a matter of time before Te Heuheu filed a claim with the only body empowered to give his tribe legal rights – the Native Land Court. Both the Crown and the claimants submitted that Te Heuheu wanted Tuwharetoa to have its own rohe potae defined, and that this was a matter of mana. Both are correct, and this was the main reason for the filing of the Tauponuiatia application. There is no other explanation for including in the application – by the tribe and as gazetted by the Native Land Court and Crown – so much land that the court actually could not inquire into at all, as it already had legal titles.

Te Heuheu may have believed that the Native Land Court was (or would be) reformed. Also, the advice of the Graces was to the effect that a tribal claim should be filed, covering the whole of the land claimed by Tuwharetoa. The smaller applications of Te Heuheu himself and others were to be

set aside in favour of one large tribal claim. This evidence supports Mr Stirling's contention that Te Heuheu, and the tribe when it came in behind him, thought that they could have one external boundary for all their lands - their own rohe potae, in other words. The evidence also supports the claimants' contention that the tribe wanted to subdivide the tribal rohe for the appropriate hapu through their own komiti. The failure of the Government to give real powers to the official komiti, however, had been brought home to Tuwharetoa very clearly. They must have known in late 1885 that the Crown had not provided a legal means for them to award their own titles. The Taupo Komiti had been set up in expectation of doing so but (as the claimants note) it was not recognised by the Government or given any powers.²²⁴ Instead, the evidence appears to be that Tuwharetoa expected to subdivide the land between hapu themselves in the Native Land Court, and that this is exactly what happened. Hitiri Te Paerata of Ngati Raukawa and Tuwharetoa certainly believed that: 'We were one body, one mind, one tribe. This day I find he [Te Heuheu] wants to sub-divide the land. Whilst listening to this I though[t] his proposal was a robbery."225

There is no evidence available to this Tribunal that the 108 applications were used to pressure Tuwharetoa to subdivide Tauponuiatia during the hearing. The judge gave those present in court the option of either putting in a list of all individual owners for the whole of Tauponuiatia, or subdividing the block. Turning the tribal estate into a single list of saleable unlocated individual interests was not what anyone wanted. With this as the alternative, Tuwharetoa chose to proceed with subdivision, which would at least ensure the hapu received their own lands and in shorter, perhaps more controllable lists.

The pre-existing applications were gazetted in February 1886 (after this decision in court to subdivide), and then withdrawn by order of the chief judge, as they were not supposed to have been gazetted. The evidence available to this Tribunal is that ministers and officials did manipulate the Native Land Court process before Tauponuiatia by

HE MAUNGA RONGO

holding back the applications, but that they were unable to do so after the hearing started because the court stopped them. Some of the subdivided blocks do seem to have block names arising from earlier applications, but the evidence is largely that a Tuwharetoa komiti chaired by Te Heuheu arranged the case and the subdivisions. The hapu came up with their lists of owners mainly out of court. Dr Pickens is correct that Tuwharetoa had considerable control of the initial court process. Mr Stirling is also correct, however, that the rapid out-of-court process makes it unclear that people's rights were properly safeguarded, as they would have been in a formal komiti process or even by more due process in the Native Land Court itself. There were many casualties along the way.

The biggest casualty, however, was the tribe itself. It seems certain that Tuwharetoa entered the Native Land Court process on the strength of undertakings made by the Native Minister, Ballance, in 1885 and 1886, that individualisation would be abolished in favour of collective dealings. He promised Maori a committee structure to manage blocks at two levels - committees representing the owners at a block level, and tribal District Committees. We will return to these promises and their significance in our section below dealing with the 'five options'. Here, we note that Tauponuiatia was subdivided, and the lists decided, largely by a tribal committee, except for the contested Tauponuiatia West blocks. The expectation was that the land would then be managed by block and tribal committees, as promised by Ballance in 1885 and 1886. During the process of title allocation, however, the Crown purchased individual interests. By the time the process was completed, the Native Lands Administration Act and other legislation of 1886 did not in fact provide committees with the powers sought by Maori, and there was a return to untrammelled individual dealings. The 1885 and 1886 understandings, on the basis of which the application was made and pursued, were overthrown.

The Tribunal's preliminary findings

Without having heard from Ngati Maniapoto, our findings on these issues are preliminary. In our view, the Crown acted consistently with the Treaty in negotiating with the Rohe Potae leaders and beginning an ongoing dialogue with them to arrange controlled settlement in Taupo and the King Country, on terms satisfactory to both Maori and the Crown. Conversely, the Crown breached the Treaty both when it failed to keep either the spirit or the letter of its undertakings, and also when it undermined Maori attempts to maintain a united front on controlled settlement, self-government, and the Native Land Court. A balance was required of the Crown. If Maori chose to combine and act in a pan-tribal manner, then that was entirely consistent with their tino rangatiratanga. The Crown had to respect tino rangatiratanga, and not use it as an excuse for deciding to withhold, delay, and then progress court applications according to its own interests.

From the beginning, Te Heuheu made it clear that he feared the Rohe Potae petition was a Ngati Maniapoto land claim, requiring him to make a claim of his own to the only body the Crown had empowered - the Native Land Court. At the least, the Government did nothing to allay those fears. Rather, it encouraged rangatira to apply to the court, and it kept their applications in reserve while it furthered the survey of the Rohe Potae. The Government may even have arranged (via the Graces) for the overwhelmingly sized Tauponuiatia claim to breach the Rohe Potae. Against the combined application of Tuwharetoa, the other tribes could do nothing. Conversely, on the evidence available to us, the tribes themselves did not do enough to resolve this issue by their own traditional mechanisms.²²⁹ It was the entire issue of dissentients writ very large. Being the only ones with the law behind them, Tuwharetoa forced the other tribes into the Native Land Court. In the circumstances of the time, these tribes would not - or could not – resolve the matter any other way when a group

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

insisted on going to the court. We accept that the tribes share responsibility with the Crown for this, on the basis of the evidence available to us.

In our view, the Crown could and should have met the reasonable demands of the Rohe Potae leaders. It should have surveyed the external boundary of the Kingitanga lands, and then given legal powers for the tribes to decide their own titles inside the rohe. Had it done so, and made it clear that it was doing so, then Te Heuheu's application to the Native Land Court would not have been necessary. Also, the Taupo interests of Ngati Raukawa and Ngati Maniapoto would have been properly protected, and the tribes would have negotiated and decided boundaries for the new purpose of leasing land. Such hard-and-fast boundary lines had not been needed, we note, in the traditional resource-use and tikanga of the Rohe Potae iwi. The only 'hard' boundary had been the aukati to keep the Crown and unapproved settlers out.

Once decided, the hapu titles should have been registered and given legal effect by the Crown. A legislative restriction on sales (in favour of leasing) may not have been needed, if komiti, as bodies representing the owners, had been given real powers to manage the process of land alienation and settlement. None of these things were inconceivable - indeed, they had been proposed and debated in Parliament at the time, suggested many times before, and continued to be suggested afterwards. In particular, Native Minister Ballance undertook to empower block and District Committees for the management of land, and to end the process of individual dealings. On the strength of these undertakings in 1885 and 1886, Ngati Tuwharetoa filed and persisted with their Tauponuiatia application. The result, however, was that District Committees received none of the promised powers in 1885 and 1886, that the legislation setting up block committees did not provide what Maori wanted and was therefore inoperative, and that the Crown returned to untrammelled individual dealings in 1887 and 1888. The Crown concedes that it can be fairly criticised for not empowering bodies for the collective management of Maori land. It was entirely possible for the Crown to have acted consistently with the Treaty in 1885 and 1886 (and after), having regard to all of these circumstances. Its failure to do so was a serious breach of Treaty principles.

Prejudice

For Tuwharetoa, the outcome was exactly what could have been predicted from the unreformed Native Land Court system. Title was individualised without the komiti getting powers to enable collective and communal control of hapu blocks (Ballance's promised 1886 Act was a dead letter by the time the court completed the first round of titles for Tauponuiatia in 1887.) Land loss inevitably followed on a significant scale. ²³⁰ We will return to these prejudicial outcomes in part III.

The consequences for Ngati Raukawa were also serious. The Crown failed to ensure that land claimed by Ngati Raukawa was dealt with as part of the single Rohe Potae claim, in accordance with its negotiated agreements with the Rohe Potae leaders. This failure was compounded by the manner in which Ngati Raukawa were seriously disadvantaged by the Native Land Court process and its outcomes. We will outline the prejudice for Ngati Raukawa in more detail, when we consider Tauponuiatia hearings (especially for Tauponuiatia West) below in chapter 9.

For both tribes, their autonomy and the power to manage their own social and economic destinies were significantly compromised.

HE MAUNGA RONGO

MISSED OR REJECTED OPPORTUNITIES FOR MAORI AUTONOMY

KEY QUESTION: DID THE CROWN MISS (OR ACTIVELY REJECT)
OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY
GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT
IN THIS ERA OF COMMITTEES AND KOMITI?

The Rohe Potae alliance, the aspirations of the Kingitanga, and the filing of the Tauponuiatia application, were all legitimate expressions of tino rangatiratanga – the autonomy and self-government of the Taupo tribes. We need to place this exercise of tino rangatiratanga in the wider context of the Crown's policies towards Maori polities and their powers. As above, the Crown had at least five options for recognising, protecting, and empowering nineteenth-century models of autonomy. We outlined these models in chapters 3 to 4, including:

- ▶ the legal recognition and empowerment of institutional autonomy (including at the central government level):
- ▶ the official recognition of domestic nation status, as with the North American tribes; and
- ▶ the legal empowerment (by statute) of Maori communities to exercise their autonomy.

In respect of these models and the options available to the Crown at the time, much of our earlier discussion of generic issues for this era in Rotorua applies to the whole of the Central North Island, and not just the Rotorua district. We will refer back to that discussion as necessary.

The first and fourth options: Native Districts under the Constitution Act and inclusion of the Kingitanga in the machinery of the State

These two options became so closely connected in the 1870s and 1880s that we deal with them together here. We have already described the claimants' view that section 71 of the Constitution Act 1852 was an option available to the Crown in the nineteenth century, by which it

could and should have given effect to tino rangatiratanga under the Treaty.²³¹ This option was actively considered by governments in the 1850s and 1860s, as we saw in chapter 4. After the grant of fully responsible government in 1865, it appeared to become something of an anomaly. In other words, the powers of the New Zealand Parliament were derived from the Constitution Act, which also provided for Maori to exercise power independently of that Parliament on declaration of a Native District by the Queen. Until 1892, when the British Parliament amended the Act, the British Government could advise the Queen to issue Letters Patent establishing a Native District, or to delegate such a power to the Governor of New Zealand. After 1892, when the section authorising delegation to the Governor was removed, the New Zealand Government could still recommend the Secretary of State to exercise this power. Constitutionally, in the view of FM Brookfield, responsible government in New Zealand did not end the ability of the British authorities to carry out section 71. This section provided for the recognition of Maori as domestic nations with their own self-government and internal laws, responsible to the Queen in London but not to the New Zealand Parliament, which would have no direct authority in Native Districts. 232

Professor Brookfield notes that Maori wanted the use of section 71, and that it could have been an appropriate legal vehicle for recognising the Kingitanga in the 1870s. In 1875 and 1878, the Government twice offered local self-government for the tribes of the King's districts. These offers, argues Professor Brookfield, would have required section 71 or a local legislative alternative to carry them out. The offers stalled on the Tainui insistence that all confiscated land be returned.²³³ We do not have detailed evidence on these Crown initiatives. In brief, the Native Minister, Donald McLean, offered the Kingitanga tribes regional self-government in 1875, in the form of a council (headed by the King), to which the Government would provide active assistance.²³⁴

Grey and Sheehan made a similar offer in 1878–1879. As noted by Mr Stirling, the majority of Taupo rangatira

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

still supported the King and considered themselves part of such possible arrangements, although maintaining their full tribal autonomy. Te Heuheu spoke in strong support of the King and his proposal for a national Kingitanga council at the 1879 hui with Grey. Another Tuwharetoa chief, however, reminded the hui that the tribe was working with the Government now and its independent mana must be maintained in its own district. The Kingitanga and Kawanatanga Maori of the Taupo district showed themselves able to put aside their differences and form a united committee in the 1870s. We expect that the spirit of conciliation evinced in this decade would have assisted any implementation of self-government under Kingitanga auspices, had the Government made offers that could be accepted.235 In any case, the offers lapsed because, according to Professor Ward, agreement could not be reached on the return of confiscated lands. 236 Assuming that a proper balance of tribal autonomy and regional kotahitanga could have been provided for under these offers, the failure of the Crown to make meaningful concessions about the raupatu land was a disaster in Treaty terms.

The Government's position hardened in the early 1880s under Bryce. Tawhiao was made flattering personal offers of property, money, and a seat in the Legislative Council, but there were no more offers of self-government. The King would have to accept Bryce's offer at the price of his claims to 'sovereignty' and authority. Wahanui, considered the King's 'prime minister' at the time, turned Bryce down.²³⁷ By 1883, the Government preferred to bypass the King altogether and deal with the 'progressive' Rohe Potae leaders. Tawhiao then took his demands for Maori selfgovernment directly to London in 1884, with a petition to that effect signed (among others) by Topia Turoa, one of the leading chiefs of southern Taupo and upper Whanganui. We need to keep in mind, when considering these events, that the King was acting not just in the name of Waikato and Maniapoto peoples, but also the tribes of southern and western Taupo. Mr Stirling, for example, notes strong southern Taupo support for the King.²³⁸ It appeared, however, that the British authorities were powerless to help him, except in so far as they retained the ability to declare Native Districts under the Constitution Act. The Secretary of State, Lord Derby, asked the New Zealand Government to advise on whether section 71 should be carried out in favour of the Kingitanga.²³⁹

That the Act was still in force, and the powers still capable of being exercised, was not in doubt. The New Zealand Government argued, however, that the wording of section 71 showed that the 'Imperial Parliament contemplated that that section should only be used for a short time and under the then special circumstances of the Colony'. It also advanced the rather remarkable argument that the intentions of the provision were being carried out by the Native Land Acts, which allowed Maori law 'in all their relations to and dealings with each other to be maintained'. Maori, the Government also argued, could be given local government by county institutions, and that Maori committees - 'local bodies recognised by the Government' - managed all their local affairs in any case. What was really at issue, therefore, was a Maori Parliament, independent of the New Zealand Parliament, which would be created if large districts were set apart (but acted in concert) under section 71. Since Maori were already fully represented in the New Zealand Parliament, and had local self-government through their committees, there was no need for section 71 to be carried out.240

In our view, the Government's advice to the Secretary of State was a mix of half-truths and obfuscation. The Native Committees Act did not in fact give self-government to Maori communities, and nor were they given their own county councils. The purpose of the Native Land Acts was to destroy the 'communist' basis of Maori society by turning collective customary title into individual titles operating under British law. Rather than allowing for Maori law 'in all their relations to and dealings with each other to be maintained', it did the exact opposite.

Section 71 did have language which implied impermanence, but, as Professor Brookfield notes, no actual time limits were written into it. On the question of whether the circumstances of the colony still justified its use, that was

HE MAUNGA RONGO

surely a matter on which the Kingitanga (including the Taupo Kingitanga), with their de facto independence, had a right to be heard. When their memorial was debated in the British Parliament, there were 'many expressions of sympathy for the Maori race, and of belief that their interests and their customs would be guarded and respected by the Government of New Zealand.241 In other words, the continued existence of Maori customary law was an obvious fact in the 1880s, and recognised as such by the House of Commons. Surely, in that circumstance, the supposed self-limiting section 71 was just as relevant as it had been in 1852. What had changed was not the existence of Maori living by their own laws, nor the need for section 71, but rather the British Government's ability to act. All it could do, said the Secretary of State, was to 'use its good offices with the Colonial Government with the view to obtaining for the Natives all the consideration which can be given to them. Under the present constitution, with Maori represented in the New Zealand Parliament, it was no longer possible for the Queen to interfere in Maori affairs any more than in any other 'internal' affairs. 242

Despite what in our view are grave deficiencies in the Government's response, the British Secretary of State had to act on its advice and decline to implement section 71. Lord Derby welcomed proposals to increase Maori representation in Parliament, and he urged the Government to find ways to maintain Maori institutions and secure them a fair share of the prosperous society now impinging on them. There were, of course, other options for empowering Maori at the community, regional, and central levels, but the refusal to carry out section 71 in the 1870s and 1880s was certainly a lost opportunity to recognise Maori autonomy as 'domestic nations' in a meaningful way.

The Kingitanga did not accept this rebuff immediately. Major Te Wheoro reported a hui in March 1885, attended by Ngati Raukawa, Ngati Tuwharetoa, Te Arawa, and many other tribes, calling on the Crown to carry out the Treaty and section 71 of the 'Law for the Maori people of 1852.'²⁴³ Similarly, at Ballance's hui with North Island Maori at Waipatu near Hastings in 1886, there were calls

for the Government to pass a law enabling section 71 to be implemented. ²⁴⁴ During the parliamentary debate on the Native Lands Administration Bill in June 1886 – which was designed to set up Maori block committees and legislate for collective management of Maori land – Te Puke Te Ao tried to write section 71 into the Bill on behalf of his constituents and the King. ²⁴⁵

King Tawhiao made a formal appeal to the New Zealand Government in 1886 to carry out section 71. He requested the establishment of a national council, with himself at its head, to administer '[a]ll the rights and lands confirmed by the Treaty of Waitangi'. All tribes and districts would maintain their autonomy through their own committees, working in association with the national body.²⁴⁶ The Government replied that the power to act under section 71 had passed from the Queen to the New Zealand Parliament, and that it had only been intended as a temporary expedient in any case. To introduce it after the 'lapse of 34 years, would be acting directly contrary to the spirit of the Constitution Act itself'. Two independent governments could not coexist in New Zealand, and the Government having to consider the best interests of both races - could not agree to the request.²⁴⁷ The Maori view, however, as put by Paora Tuhaere to the Legislative Council in 1888, was that the passage of time was immaterial: the Treaty and the Constitution Act had both provided for Maori to manage their own lands, and both were being overridden by the Government.²⁴⁸ Nonetheless, the option of carrying out section 71 was actively rejected by the Government in the 1880s.249

The Tribunal's findings

In sum, in the 1880s the Kingitanga put directly to the British Government the question of whether it could still implement section 71 of the Constitution Act. Some of the circumstances of 1852 remained. Many central North Island Maori were still living under their own laws, and sought the implementation of the Treaty and its promised protection of their authority. Other circumstances had

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

changed. The Secretary of State noted that Maori were now represented in the New Zealand Parliament, and that the Government intended to increase their number of representatives. Fundamentally, the British Government could only act if advised to do so by the very Government that would cease to have authority over Maori districts if the recommendation were carried out.

That being the case, we have examined and found wanting the reasons advanced by the New Zealand Government against implementing section 71. In particular, Maori were not provided with local self-government by either the Native Committees Act or the mooted creation of Maori counties. The Native Land Acts did not preserve their system of law, government and self-management. Quite the reverse. And Maori representation in Parliament was not increased to make it fairer. None of the conditions that supposedly made section 71 unnecessary were, therefore, carried out. At the same time, the Government's own offers of self-government to the Kingitanga foundered first on its raupatu policy, and were then abandoned in the early 1880s. Although the possibility was revisited by Ballance in 1885, when further promises were made, the Kingitanga was never included in the machinery of the State. This exclusion - which allowed the arrival of the Native Land Court, land alienation, and settlement - brought the Kingitanga's political independence and the people's ability to control their own social and economic affairs to an end in the following decade.²⁵⁰

The second option: Native Districts and runanga under the 1858 legislation

As noted above, one of the two 1858 Acts was incorporated in the Thermal Springs Districts Act 1881. We do not intend to repeat our observations here, other than to note that part of the Taupo district was included in the lands proclaimed under this Act. As for Rotorua Maori, this Act could have been used to recognise Maori self-government through runanga, as Chief Judge Fenton anticipated for Ohinemutu. The Crown failed to empower runanga

for Taupo lands under section 9 of this Act, thus nullifying one of its own legislative provisions for Maori self-government.

The third option: Maori representation in the central government

Taupo and Rotorua Maori joined in a petition to Parliament in 1875, requesting the increase of Maori seats from four to twenty-six, and threatening that otherwise they would withdraw altogether and leave it as 'the Parliament of the Europeans only.251 In the same year, at a district hui, the Taupo tribes called for a Maori member of Parliament to represent their district directly, and one also for Te Arawa. As Central North Island groups came to support the Hawke's Bay-based Repudiation movement, they added their voices to those seeking representation of the Maori population in the same proportions as the European electorates. They also held massive intertribal hui and called for the establishment of a Maori Parliament, as a successor to the Kohimarama Conference of 1860, to submit their considered views to the settler Parliament for enactment. This remained a theme of the Repudiation movement hui and petitions, which drew support not just from Tuwharetoa and Ngati Hineuru, but also Ngati Rangitihi and Ngati Whakaue in the Rotorua district. A petition of 1876, for example, signed by 394 representatives of seven tribes, including Ngati Rangitihi, Ngati Whakaue, and Tuwharetoa, sought the establishment of a national Maori assembly to advise Parliament, permanent representation of Maori in the settler Parliament 'in the same proportion as the representation is of the European race by the European members', and a redrawing of Maori electorates along tribal lines.252

The many petitions were considered by the Native Affairs Committee and referred to the Government, but no action was taken. The tribes then convened their own 'national assembly' in 1877 at Omahu, which passed resolutions in favour of an annual national komiti and proportional representation of both races in Parliament on

HE MAUNGA RONGO

an equal footing. Rather than 'one law for all' (exactly the same laws), Maori called for 'equal laws' for the races. This hui, which included Taupo Maori representatives, sent a further petition to that effect in 1877. As with the earlier petitions, no action was taken.²⁵³

The Repudiation movement had attempted to lobby, advise, and contribute to the proceedings of the settler Parliament. In the absence of any Government engagement with it or action on its pleas, it largely disappeared in the late 1870s. Taupo Maori established their own district komiti instead, with Kawanatanga and Kingitanga hapu working together to try to engage with the Crown and open Taupo lands to settlement (by leasing). At first, Rewi released the Kingitanga tribes to do as they wished with their lands, but, as we noted above, there was a resurgence of the Kingitanga aukati at the end of the decade. The King movement was still a vital political force in the 1880s, and it engaged with the Crown at two levels. King Tawhiao, the Waikato people, and many among the Taupo and King Country tribes, sought reform and the return of confiscated lands before opening the district to settlement and the main trunk railway. The depth of support for this position was shown at the Poutu hui of 1885. Wahanui, Kingi Herekiekie, and many among the Taupo and King Country tribes, sought to survey an outer boundary for the Kingitanga lands and then to decide their own titles and lease lands via tribal komiti. For these people, return of the Waikato lands was not such an issue. But both strategies involved an appeal for increased power at the central government level.

The 1884 petition of Tawhiao, Topia Turoa, and other Kingitanga leaders sought a national Maori assembly, as well as representation proportionate with that of Europeans in the settler Parliament. All four Maori members of Parliament had written in support of these proposals, and the British Government appears to have considered increased representation appropriate. Indeed, somewhat misled (we suspect) by Ballance's promises at his 1885 hui, the Secretary of State expressed his 'satisfaction that it is in contemplation to increase the number of

the Native representatives.²⁵⁴ Derby's response was noted and quoted to Ballance at the Waipatu hui of 1886, continuing the appeals for increased representation.²⁵⁵ In the same year, having been referred back to the New Zealand Government, the King put his position directly to the Native Minister. Again, he requested parliamentary representation proportionate to that of Europeans, and a national council to govern Maori under the Queen and in partnership with the New Zealand Government. The Native Minister did not respond on the question of parliamentary representation, but continued to maintain that Maori could not have a separate national assembly, especially one under section 71 and therefore independent of the New Zealand Parliament.²⁵⁶

At their hui with Ballance in 1885, Central North Island Maori renewed their 1870s appeals for increased representation in Parliament. Ballance told Taupo, Rotorua, and other Maori that he supported a fairer, more proportionate representation, and that he would see whether it could be brought about. We do not have evidence on whether the Native Minister did try to carry out this promise, but by 1886 he was telling Maori that, in his opinion, Parliament would not increase the number of their members. See Neither Ballance, his predecessors, nor his successors, acted on this reasonable Maori appeal. Maori representation remained at a relatively powerless and token level, much lower (per capita) than in the European electorates.

The Tribunal's findings

Having refused Maori high-level input to their deliberations in the form of a regular national assembly, Parliament was even more bound to ensure that Maori had effective direct input to its decision-making by a reasonable level of parliamentary representation. This was, in effect, denied Central North Island tribes, in common with all Maori. Governments refused to accept the necessity of section 71, partly on the grounds that Maori had representation in Parliament, but also refused to make that representation a reasonable or meaningful one. These two things

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

together were in violation of the constitutional rights of Maori under the Constitution Act, and also of their article 2 and article 3 rights under the Treaty of Waitangi. Keeping Maori powerless at the central government level, while continuing to deny or repress their autonomy at the regional and community levels, compounded this breach of Treaty principles.

The fourth option: inclusion of the Kingitanga in the machinery of the State

We have dealt with this option above, in conjunction with the first one.

The fifth option: state runanga – 'native councils' and 'native committees'

As with Rotorua in this era, it was this option that the Crown came closest to adopting, and its failure to do so was therefore even more disappointing in Treaty terms. In this section, we consider claims (described above) about the komiti movement associated with Native Minister Ballance's policies of the mid-1880s. Bryce had enacted the Native Committees Act in 1883, which the 1891 royal commission had condemned as a 'hollow shell' and a 'mockery', but Ballance's administration promised major reforms to Maori.

These promised reforms included real powers of self-government for the 1883 tribal District Committees and also powers of community land management for block committees. The Government undertook to do nothing without the consent of the Maori people and consulted widely (in the Central North Island and elsewhere) in 1885. This consultation culminated in the national Waipatu hui of 1886, to which Ballance submitted a draft Bill for discussion and proposed amendment by tribal leaders. This was followed by a second, more local hui at Aramoho, attended by southern Taupo leaders (among others). The result was the Native Lands Administration Act, accompanied by a Native Land Court Act, in 1886. We assess whether Ballance

made definite undertakings to provide greater legal powers of self-government to Maori during his consultation, and whether his legislation carried out those promises. We do so in light of the context and circumstances of the time.

Komiti in the 1870s

We have already discussed the Native Councils Bills of the early 1870s, and will not repeat that discussion here. We note that Taupo and Kaingaroa Maori formed their own komiti around that time, which could have been empowered under the Bill. Ngati Tahu and Ngati Whaoa at Orakei Korako formed Tekau Ma Rua, a komiti of 12, while Urewera hapu set up Te Whitu Tekau, a komiti of 70. Mr Stirling notes that the more eastern Kaingaroa peoples aligned themselves with Te Whitu Tekau. Evidence on that komiti and the Crown's responses to it was mainly presented in the Urewera inquiry and has not been made available to us, so we leave that part of the Kaingaroa claims for determination by the Urewera Tribunal. Ngati Manawa did not participate in our inquiry, other than to maintain a watching brief. Mr Stirling argues that the more westerly of the Kaingaroa claimants were connected to the Rotorua komiti movement, which has been addressed above. Ngati Tahu and Ngati Whaoa sometimes participated in both Rotorua and Taupo komiti hui, and set up their own 'office of the Whakakotahitanga. We have no detail, however, of how that office operated or what it sought to do.259

The Taupo tribes gradually came together at hui in the early to mid-1870s, and formed a united Kingitanga–Kawanatanga Committee in 1877. This committee recognised the Government and its laws, and tried to work in concert with it. The Taupo Committee sought to control land alienation and settlement, to investigate land disputes and award leasable titles, to exercise judicial authority in place of the resident magistrate, to carry out Maori law (especially with regard to puremu or adultery), and to exercise powers of self-government. Crown agents saw some potential in the committee. When the northern 'loyalists' sought to turn their committee into a Taupo-wide one, Henry Mitchell told the hui that their 'proposed runanga' could 'do good by

HE MAUNGA RONGO

inquiring into and arranging their local land disputes, which sometimes threatened to disturb the generally peaceful state of affairs at Taupo. He warned them, however, against trespassing on the legislative prerogatives of Parliament.²⁶¹

The Taupo Committee's title investigations and awards were eventually relitigated in the Native Land Court, as the only body able to provide a legal title. In Mr Stirling's view, the lack of official recognition or legally enforceable powers sabotaged the committee:

The committee's efforts were, unfortunately, largely for naught. Mitchell had initially supported a role for the Taupo Committee in land matters, but the Native Land Court undermined any responsibilities the Committee might assume for itself as a body with a meaningful role in the investigation or administration of Taupo lands. They were legally powerless and remained so, being marginalised by a government that failed to see the potential good that could be achieved by active engagement with such Maori initiatives. This official neglect [that] was an insurmountable obstacle to the efficacy of any Maori committee, runanga, or pan-iwi movement remained a feature of Maori efforts to manage their lands and lives for the rest of the century.²⁶²

This Committee could have been empowered under McLean's Native Councils Bills, but these were not enacted by the Government in the early 1870s.

The Native Committees Act 1883

The next attempt to provide official status and legal powers for komiti came in the early 1880s, with Bills from Maori members of Parliament and Bryce's Native Committees Act 1883. The main points have been discussed above in our analysis of this era for Rotorua, and will not be repeated here. Ngati Tahu and Ngati Whaoa applied to the Government for their own Committee under the Act, not wanting to be part of either a Taupo or Rotorua Committee. Although their application was received in 1886, after Ballance had promised more komiti and smaller

districts, the Government replied that their district was too small for consideration. In Taupo, a hui requested a District Committee, but the Government replied that they would have to join a Rotorua–Taupo–Tauranga committee. Unwilling to accept this, Tuwharetoa convened a hui at Rotoaira in November 1883 and elected a Taupo Committee of 12. The Government did not consider or reply to their letter on the matter, as districts had not been formally constituted at the time. ²⁶³ As noted above, the eventual committee elections in 1884 were virtually ignored, because Central North Island tribes rejected the Government's proposed district. The committees were powerless in any case.

Having passed the Native Committees Act, governments made sweeping statements about the self-government which it supposedly accorded the Queen's Maori citizens. Native Minister Bryce appears to have promised the Rohe Potae leaders of Ngati Maniapoto, Ngati Tuwharetoa, Ngati Raukawa, and Whanganui that the native committees could investigate land titles inside their outer boundary.²⁶⁴ In January 1884, in response to an appeal from the Maori members of Parliament to the Aborigines Protection Society, he reiterated that the Native Land Court 'will in future be assisted by Native committees elected for the purpose by the Maoris'. In actuality, however, Bryce rejected emphatically that the Committees would have decision-making powers with regard to titles: 'As for the suggestion that Maori title should be determined by a body of Maoris, the idea is utterly impracticable.265 In response to the British Government's inquiry about section 71, the New Zealand Government asserted in 1885 that Maori 'have practically no local affairs to look after that cannot be done by their committees, local bodies recognised by the Government.266 The truth, as we have seen, was far otherwise. The Committees had no powers, either as titledetermination bodies (or even advisers), or as organs of self-government. The 1891 Native Land Laws Commission determined that the Act was a 'mockery' that provided no more than a 'hollow shell'.267

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Ballance's initiative, 1885-1886

The promise to reform this situation came in 1885, when the Native Minister, Ballance, toured the North Island. His hui with Central North Island Maori (among others) were instrumental in confirming what Maori believed to be a Rohe Potae 'compact', and therefore helping the Government to get the main trunk railway started in the Kingitanga districts. In his meetings with King Tawhiao and others, the Native Minister accepted that self-government was a Treaty right and entitlement of Maori, and promised to give effect to it. There were lively debates between the Minister and Central North Island Maori about the meaning of self-government, how it would operate at local and central levels, and the degree to which it would involve tribal control of land titles and land management. It is not possible to describe the detail of these extensive discussions, but we summarise the salient points here.²⁶⁸

First, we note that Ballance did not meet with Tuwharetoa or some of the Rotorua and Kaingaroa tribes. There were upper Whanganui and southern Taupo rangatira at some of his hui, as well as representatives from Ngati Raukawa, Ngati Whakaue, Tuhourangi, and Ngati Wahiao. Ballance met with Kingitanga leaders, including Tawhiao, Wahanui, Rewi Maniapoto, and Topia Turoa. He also met with Te Kooti, pardoned under the Amnesty Act of 1882.²⁶⁹ Mr Stirling points out that although many Taupo rangatira were not at these hui, the information and promises were conveyed to them. He cites Matuahu Te Wharerangi's letter to Ballance, approving of the komiti proposals at the Whanganui hui and seeking similar arrangements for Taupo.²⁷⁰ Many of Ballance's promises were reiterated at his general hui with North Island Maori at Hastings in January 1886.271

At his meeting with King Tawhiao, Ballance said:

Tawhiao has also referred to self-government for the Maori race. He says, 'Why not give the people the right to manage their own affairs?' To a large extent I agree with that. We are now extending self-government to the Native race under the



Map 6.5: Places visited by Native Minister John Ballance, 1885-1886

Parliament and Government and institutions of the colony . . . The Treaty does not give the right to set up two Governments in New Zealand. The chiefs there bound themselves to accept the laws of the Queen, in exchange for which she guaranteed to them their lives, their liberty, and their property. We are prepared, under that Treaty, as I have said – under the laws which the Queen has given to the colony, and under the Constitution of the colony – to give the Natives large powers of self-government. That is the meaning of the Treaty 2772

Replying on behalf of the Kingitanga, Major Te Wheoro argued:

HE MAUNGA RONGO

Your statement that all power was given by the Treaty of Waitangi to the Europeans is not correct. It was given to both of us. It was given to you, and to me, too. The reason I say it was given to me as well as to you is because it states in the Treaty of Waitangi that the Maori chiefs should be treated in the same way as the people of England, and given the same power. It was understood that the Maoris would be allowed to govern themselves in the same way that the Europeans are allowed to govern themselves . . . I am willing to accept the Queen as our head, and we shall be responsible to her for the management of our affairs in the same way as you are responsible to her. Give the government of the Maori race to the Maori chiefs. What harm is there in it? Has it ever been tried yet, to see whether evil will come of it or not? This has been the cause of all the trouble during past years: that the Maoris have not been allowed to try and govern themselves. That is the way all the people here look at it.²⁷³

One of the key planks of Ballance's policy was that Maori were entitled to local self-government, at the equivalent of the British borough or municipal level, under the ultimate authority of a Parliament in which they would be more fairly and properly represented. So what exact form would these 'large powers of self-government' take, that Ballance accepted as Maori entitlement under the Treaty?²⁷⁴ In the course of his discussions with Maori, he promised:

- ▶ to give district komiti the power to decide land titles as a court, with the Native Land Court acting as an appeal court;
- ▶ to give komiti judicial powers for the administration of local justice;
- ▶ to have komiti manage local affairs as official local government bodies, and to give them sources of funding; and
- ▶ to reduce the size of the current komiti districts according to Maori wishes. ²⁷⁵

In addition to these district komiti, Ballance proposed a new system of communal land management, promising:

▶ to create elected block komiti to manage lands on behalf of the owners, providing a communal and

- corporate mechanism to replace unstructured lists of individual titles:
- ▶ to have Government commissioners and elected Maori boards act as agents for the block komiti in the leasing or selling of land; and
- ▶ to prioritise leasing instead of sales. 276

In addition to district and block komiti and to elected boards, Ballance also promised to try to improve Maori self-government at the central level. He undertook to try to bring the number of Maori members of Parliament into the same per capita proportions as the number of European members. Although he opposed a 'separate' national body for Maori, he agreed that laws affecting Maori should be determined in consultation with them. As Native Minister, he promised to continue a process of meeting Maori at hui throughout the country to consult them on proposed legislation, 277 and to be 'guided largely by the opinion of the people themselves'. Overall, Ballance assured Maori of the Government's intention to keep the Treaty, and argued that his komiti arrangements were the way for it to do so.

Together, these promises amounted to quite a substantial offer of self-government and self-management, although they did not give Maori full power over their own affairs. In particular, the Native Minister opposed the idea of a national Maori body to advise and submit legislation to Parliament, and he wanted to retain the Native Land Court as the senior body to decide Maori land titles. Despite his offer to make komiti the primary investigators of title - keeping the Native Land Court to an appellate role – Ballance defended the court at some of his meetings. If Maori applied for it to sit, he argued, why should they be denied? This ignored the general opposition to the court in principle, which was conveyed very clearly to him, and the lack of choice in practical terms if people wanted to use their resources in the colonial economy. Nonetheless, he promised to give the komiti greater title-decision powers, regardless of his general defence of the court.²⁷⁹ In our view, Ballance's 1885 initiative was a major opportunity for the Crown to have acted more consistently with the Treaty.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

The Tribunal's findings

The Crown's opportunity to have acted consistently with the Treaty, 1884–1888

Fundamentally, to have kept its Treaty obligations to Central North Island Maori, the Crown would have acted on Native Minister's Ballance's promises and proposals. It was not too late for many Central North Island lands to have been dealt with under a more Treaty-compliant system, involving Maori komiti in a meaningful title-decision role, komiti administration of the community's common assets, and the controlled development of land through community decisions to lease or (when appropriate) sell for a fair return. The obligation on the Crown became ever greater, having already failed to adopt such policies:

- ▶ in the 1860s, when it abolished the New Institutions and established the Native Land Court;
- ▶ in the 1870s, when it failed to pass the Native Councils Bills and instead enacted the Native Land Act 1873;
- ▶ and again in the early 1880s, when it subverted the Maori members' Bill and enacted the 'mockery' of the Native Committees Act 1883.

Self-government through komiti

In brief, the Crown failed to carry out Ballance's promises about self-governing komiti. The Native Committees Act was not amended to give komiti powers of title investigation, judicial or administrative powers of local government, or sources of revenue. The Native Land Court Act of 1886 did not provide for a first investigation by komiti, with the court to provide a legal ratification and to act as a final or appellate body. Some minor administrative adjustments were made to increase the number of committees and districts, although not (from the evidence available to us) in our inquiry districts. Also, Ballance obtained a vote of £600 to pay each chairman £50 a year. Committee chairs could now frank letters and receive stationery. Dr O'Malley and Ms Marr dismiss these adjustments as minor ones, not involving the meaningful fulfilment of Ballance's promises of 1885 and 1886.280 The 'large share of self-government' to which he said Maori were entitled under the Treaty did not

eventuate. The committees were left without legal powers of title investigation or self-government. This was, in our view, a serious breach of Treaty principles.

Did Ballance make definite undertakings?

The clearest evidence of whether Ballance had made definite undertakings comes from his hui with Rohe Potae leaders at Kihikihi on 4 February 1885. Hitiri Te Paerata and Ngati Raukawa were present, and also Herekiekie (although he spoke for the Whanganui end of the Rohe Potae). The Native Minister said that he would bring in a Bill in the next session to amend the Native Committees Act, giving District Committees:

- ▶ increased judicial powers;
- ▶ sources of revenue;
- ▶ fees for the chairmen; and
- ▶ 'larger powers on preparing cases for the Native Land Court, so that all cases will come before the Native Committee in the first instance, and then go on to the Native Land Court, which will finally deal with the matter.' ²⁸¹

Committees were the subject of extensive discussion in light of these statements. John Ormsby put to the Minister the question of what they could be sure he had agreed to. Should he not write it down and sign it? Ballance replied that his statements were being taken down word-for-word in shorthand, and would be published. He had made:

long explanations. I hope you will take them exactly as I have given them, and, if you think there is any point still obscure, I am quite prepared to explain it; but I think I have put it beyond the possibility of even misinterpretation...

The 'official report of my speeches' was a sufficient record, without him needing to sign a document. ²⁸² Central North Island Maori were entitled to rely on this assurance from the Minister. Although the Crown, in its submission, argued that 'compacts' between Government and Maori required written and signed documents such as the Fenton Agreement, we think Ballance's 1885 statements show a contrary position.

HE MAUNGA RONGO

Ballance's undertakings at Kihikihi were amplified at other hui. At Ranana, the Minister said:

As to the power to be given to the [District] Native Committees, that is a very large question, and is a question that will have to be very carefully considered by the Government. I think the Committees may do a great deal of good in the ascertainment of title to land... As to the relations between the Committee and the Land Court, I should like to make these as clear as possible. It may sometimes happen that the Committee, in ascertaining the title to land, may themselves the members of the Committee – be interested in having the title ascertained in a given direction. It is right, therefore, that there should be appeal to a body above suspicion, who will have no interest in the question of title. Therefore, I think that, after the Committee has ascertained the title, there should always be an appeal to the Land Court; and then it will be necessary, of course, that the Court should give legal sanction to the decisions of the Committee. You ought therefore to recognize that the Land Court still remains to decide ultimately the question of title amongst you.²⁸³

This view was not only expressed to a Maori audience. In 1884, the Minister had told the House that he supported the committees 'to act as a Court of first instance, allowing the Native Land Court to act as a Court of Appeal.' The Government knew this to be his view, therefore, before he went out to consult with Maori in 1885. Nor had he changed his mind in 1886, restating his view that 'the committees should have the power to investigate titles with a right of appeal to the Land Court' at the national hui near Hastings in January of that year. His 1885 undertakings were fresh in people's minds, but he had not introduced an amending Bill that year as promised. It was put to him specifically: 'Will you introduce a measure empowering District Native Committees to investigate hapu or individual rights, with appeal to the Native Land Court?' 1886

Ballance replied:

Mr Harris asks whether I approve of the district Committees having power to investigate titles, with an appeal to the Native

Land Court. Yes, I am in favour of that; and I hope to be able to introduce some measure which will give larger powers to the district Committees...²⁸⁷

Not content to leave it there, various rangatira handed in their proposed amendments to the 1883 Act in writing. The Native Minister did not, however, introduce the promised Bill to amend the Native Committees Act in 1885 or 1886, nor did he give the committees expanded jurisdiction or powers through other means. The goodwill and expectations generated by his statements, however, facilitated the main trunk railway line and applications to the Native Land Court.

The Native Minister's statements at Kihikihi, at which he undertook to amend the Native Committees Act, were read out to him in the House in 1885. Ballance did not respond, but the Premier did so, arguing that Maori had a right to 'local self-government' through their committees, which he said already had 'enormous powers'. This response was challenged by Bryce and Wi Pere, both of whom pointed out that the committees as they stood had no real powers at all.²⁸⁸ The point, as Bryce put it, was that the Government intended to extend the powers of the District Committees, or 'at any rate, that the Maoris have been led to believe that they will be extended.289 Bryce was correct - the Government had led Maori to believe that the powers of the District Committees would be increased substantially, and that the committees would form the basis of a system of title investigation and self-government.

What was reasonable in the circumstances of the time?

We have already discussed the degree to which Maori self-government by their own institutions, to be recognised and given legal powers by the State, was considered reasonable in the early 1880s. Here, as we found above in chapter 3, we note that a reasonable Crown would have kept its promises and undertakings to the Maori people. Ballance made definite undertakings that should have resulted in greatly enhanced Maori self-government, through district and block komiti, and through increased representation in

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

Parliament. None of these undertakings were honoured. We will return to the question of block komiti below.

Further, Ballance's recognition of Maori rights goes far towards showing what was reasonable in the circumstances. In 1885, he told the House:

Any Bill which is brought into the House must proceed according to the Treaty of Waitangi. It has only lately been laid down in the British Parliament that the Treaty of Waitangi is still binding, and we must proceed on its lines. But we have gone beyond the Treaty. We offer the Natives better terms [meaning market prices instead of pre-emption].²⁹⁰

The Native Minister of the day perceived that the Treaty required Maori self-government, and he considered it appropriate to vest greater power in District Committees and to increase Maori parliamentary representation. These things were surely (at the very least) a bottom line for what could reasonably have been expected of the Crown.

Native Minister Ballance himself, therefore, established the standard by which the Government's actions should be judged. First, he relied on the Treaty, promised to keep it, and acknowledged that Maori were entitled to 'large powers of self-government' under its terms. Secondly, he assured Maori that the Government wanted them to lease rather than sell land, to recognise hapu control of land, to consult them on all major issues, and to facilitate them making their own decisions about those issues. A sample of his statements to Maori sets parameters by which the Crown's actions should be judged in Treaty terms, as we found above in chapter 3:

I know the Treaty of Waitangi was given to both races, and I accept it as binding on both races.291

The Treaty does not give the right to set up two Governments in New Zealand. The chiefs there bound themselves to accept the laws of the Queen, in exchange for which she guaranteed to them their lives, their liberty, and their property. We are prepared, under that Treaty, as I have said - under the laws which the Queen has given to the colony, and under the Constitution of the colony - to give the Natives large powers of self-government. That is the meaning of the Treaty...²⁹²

the provisions of the Treaty of Waitangi are being kept by the

Government and the Parliament of the colony, for not a single acre of land can be taken from the people unless they wish to sell it themselves. Tawhiao asked that the people should have a Government of their own under that treaty, but there cannot be two powers and two authorities in the same country. When we give the Borough Councils in large towns power to do certain things, those Councils are not more powerful thanthe [sic] Parliament of the colony. In giving to the people, therefore, the powers, to which I have referred - the electing of their own Committees, and leasing their own lands - we are carrying out the provisions of the Treaty of Waitangi.²⁹³

I bring from the Government their friendly wishes and statements to the Native people, and give you all my assurance that the Government, one and all, wish the Natives all prosperity and happiness, and are prepared by every means in their power to bring about that result. The Government represent the whole people of New Zealand. They desire to rise to that high position of responsibility which has been placed upon them. Their wish is to make just laws which will not favour one person or one party more than another, but take all within their embrace. Differences of opinion may arise between us, but after we have consulted together I am perfectly sure none will remain. We will arrive at those conclusions which will be best for both races. The Government of which I am a member do not favour one race more than another. All are equal in the eyes of the law. 294

The most important part of my speech is, that we shall consult with the chiefs and the people before we pass laws affecting their interests. I have given you my word that that shall be done in future.295

HE MAUNGA RONGO

What they [Maori] require above all things is justice and fairness in the consideration of their interests, and that I say Parliament and the Government are prepared to give them. When he [Te Wheoro] comes to see the disposition of the Parliament to extend local government among the people, and to do justice by them, he will come to accept what I have said to-day as true.²⁹⁶

I quite concur in the opinion that the Native people are quite capable of conducting their own affairs under the laws of the colony. We are extending gradually to the Native people the powers which have long been given to Europeans.²⁹⁷

All the people have rights to the land who can prove their claims to it. Therefore I say that all the people shall have a voice in the government of the country. That is the principle upon which we have acted, and the principle upon which we intend to act in the future. You have all a voice in the election of your own Committees. We propose to give you great powers of self-government over these, and not to take from you any of the powers you now possess.²⁹⁸

In reply to that I say that it is the earnest desire of the Government to promote the prosperity of the Maori people. Our policy is not one of force and repression to be applied to the loyal [Rotorua] Natives of New Zealand, but of friendly discussion and assistance to enable them to work out their own destiny in a way that will secure the permanent prosperity and happiness of the race. When we, therefore, have any measure which we desire to establish by law for the good of the people, it is our intention to take the people into our confidence. Questions, therefore, of great importance must be settled by the consent of the people themselves. If I could not administer the affairs of the Native people in the way that I have said I should cease to be Native Minister... 299

I should like to say this, too, for the Government, as a whole, that they are exceedingly anxious to establish good relations with the whole of the Native people. The Government feel that this can only be done by meeting the people and taking

them into their confidence, for we feel that no one is so capable of understanding what is best for the people as the people themselves. It may be necessary, and is necessary, that in the enactment of laws for their welfare they should receive the assistance of Government, and the Government can often come to their assistance in administering the laws.³⁰⁰

Finally, I would say that it is the intention of the Government to legislate only for the benefit of the whole people. The Government are not influenced by private individuals in those questions affecting the lands of the Native people. We are not a Government that is to be influenced by the land-shark; therefore, when we obtain the opinions of you with regard to questions affecting your lands, we shall act upon them solely for your benefit. We shall consult you and ask your opinion in all parts of the Island with regard to these questions before we proceed to deal with them. It is my intention to visit the people in the various parts of the Island, when these subjects will be brought before them, seeing that our desire is to be guided largely by the opinion of the people themselves.³⁰¹

The above quotations are a sample of many in a similar vein. As we noted in chapter 3, we agree with Dr Ballara that:

in the nineteenth century, the publicly acknowledged and promulgated standards of official behaviour in land purchasing and the conduct of Maori affairs, were much 'higher' than is sometimes acknowledged by historians. That is, many of these publicly promulgated standards were in accord with the Treaty of Waitangi, and with Lord Normanby's instructions of 1839 to Lieutenant Governor Hobson out of which the terms of the Treaty were constructed. The problem was not that nineteenth-century standards of official behaviour were not based on the Treaty, but that these acknowledged Treaty-based standards were often knowingly breached or ignored by Crown officials.³⁰²

The statements of Native Minister Ballance in 1885 gave clear expression, in the language of the day, to the Treaty principles of partnership and active protection, the Treaty

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

duty of consultation, and the Treaty rights of self-government and (to a large extent) autonomy and the determination of one's own destiny. These are the standards by which we judge the actions of governments of the time.

Ballance's 1886 Act and community autonomy: community management of land by block komiti and elected boards

As we will discuss in part III, the transformation of customary title into individual, paper titles, without any mechanism for the community to manage what was properly its joint property, had disastrous effects on Maori society, culture, and land base. As Native Minister, Ballance was the first to draw back from this official policy since 1867, and actually pass legislation restoring a community mechanism of land management. Central North Island Maori had been appealing for some such mechanism for many years. Ballance's 1885 proposals involved a two-tier system. At the flax roots, each block would elect a komiti to decide what to do with the land - either to lease, sell, farm, or use it in some other way. If the komiti wanted to lease or sell the land, then an elected board with a Maori majority, chaired by a Government commissioner, would act as their agent. If, as seemed likely at the time, Maori brought very large blocks (such as Tauponuiatia and Waimarino) to be investigated by the district komiti, with titles confirmed by the Native Land Court, then this would have enabled hapu komiti to manage the lands after title was awarded. It was not entirely clear, however, that Ballance was offering an ongoing management role to the block komiti. After the initial decision was made, who would make ongoing decisions, distribute purchase or lease money, and manage remaining land?

It is to the credit of the Government that, unlike the promises about District Committees, it did pass legislation to create block committees and end decades of untrammelled individualisation in Maori land dealings. The result was the Native Lands Administration Act 1886. This Act allowed Maori on a voluntary basis to place their land under it, by electing block committees which would decide

whether to lease, sell or occupy the land. If the owners' committee decided to lease or sell the land, they would hand it over to a Government commissioner for that purpose. The commissioner was supposed to dispose of the land by auction and pay the proceeds to the owners, but had no power to do other than lease or sell it at the owners' direction. The block committee had no role at all after making the initial decision. After consulting with Maori at his 1885 hui, Ballance introduced a Bill in that year which was further discussed at the Waipatu hui near Hastings in 1886. An amended Bill was enacted in 1886, but to almost universal dissent from Maori: no land was placed under its operations, the Government fell in 1887, and the Act was repealed the following year.

The Crown historian's evidence: The claimant and Crown historians differ strongly on the degree to which the Government's consultation of Maori was reflected in the Act, and the reasons for its failure. According to Donald Loveridge, Ballance 'largely accepted' Maori changes to the Bill, as suggested at Waipatu in 1886. The most important change was the elimination of boards acting in association with the commissioner. Maori, Ballance told the House, had asked for this representative element to be removed.³⁰³ We note, however, that in his original proposals to Central North Island Maori in 1885, the boards were going to have a majority of Maori members - one being the chairman of the District Committee, the other being elected - who would, he explicitly stated, be able to outvote the Government commissioner.³⁰⁴ The 1885 Bill, however, removed the elected element and also the Maori majority, by giving the commissioner a casting vote. Nominated boards with an inbuilt Government majority must have seemed much less attractive to Maori. James Carroll, as Dr Loveridge notes, considered that Maori wanted the block committees to have greater status and a 'more direct control over their land, by removing the boards. Other than the removal of the Public Trustee from having any role, the other changes made by Ballance in response to Maori input were 'minor'. Ballance believed that he had full Maori

HE MAUNGA RONGO

support for his Bill, and three of the four Maori members voted for it.³⁰⁵

What followed was the 'rapid and complete failure' of the commissioner system and the fall of the Government responsible. Three of the four Maori seats were won by people who campaigned against the Act. Dr Loveridge offers no explanation for the failure of the Act, other than to report:

- ► Hoani Taipua's view that, like the 10-owner rule of 1865, it deprived Maori of control of their lands (which Ballance rejected); and
- ► Ballance's view that he had been betrayed by Maori, who had changed their minds without even giving the legislation a try.

Ballance's interpretation, of course, was based on the proposition that the Act reflected Maori views accurately.³⁰⁶

The claimant historian's evidence: Dr O'Malley, on the other hand, argues that the refusal of Maori to bring land under the Act was inevitable because it had somewhat draconian provisions. Like the 10-owner rule, the Act placed the land absolutely into the hands of, first, an elected committee, and then, a Government official. In 1885, Carroll had pointed out that Maori wanted owners to be able to control the committees. The 1886 Act, however, did not require the committees to gain the consent of the community to their decisions on how to deal with the land. The only safeguard was for dissenting owners to have their interests partitioned out, or for two-thirds of the owners to apply for the dissolution of the committee. Also, it did not include a requirement for District Committees to investigate titles. Dr O'Malley's assessment of the Waipatu hui is that, rather than incorporating Maori suggestions as Dr Loveridge would have it, the meeting very clearly insisted that:

▶ Maori were in favour of elected block committees to administer their lands, provided that security was given for the committees having to act according to the wishes of the owners; and

▶ native committees should investigate titles instead of the Native Land Court.³⁰⁷

And Ballance agreed to these stipulations: he replied that he was in favour of the committees investigating titles, so long as a right of appeal to the Native Land Court was retained; and assured Maori that the committees would be directly accountable to the owners. The 1886 Act, containing neither of these provisions, therefore 'barely reflected the extensive consultation that had preceded its passage through Parliament', and the Maori response to it was universally hostile. The commissioners were flooded – not with land to sell or lease, but with letters objecting to the mana of land being handed over to the Government in this way.³⁰⁸ Dr O'Malley cites the verdict of the 1891 Native Land Laws Commission:

The Native Land Administration Act of 1886 was inoperative owing to two reasons, the first of these being that the total control of their lands was taken away from the Maoris and placed in the hands of persons not in any way responsible to them; the second, that the Act was made optional and not imperative. The Natives objected to being totally deprived of all authority and management of their ancestral lands, and therefore they refused to bring those lands under the Administration Act.³⁰⁹

Professor Ward's evidence: Professor Ward considers that Maori had expected to control their lands under the new block committee system, but that the unaccountable Government commissioners had been given too much authority. Maori distrust was too great to place their lands under the Government without greater safeguards than provided in the Act. Even so, Ward considers the Act a very promising alternative to what had gone before (and came after). Its failure was, therefore, a major lost opportunity: 'not withstanding Maori suspicions, Ballance had in fact fought hard against settler prejudice to secure Maori the right to manage their land'. The Government's support for leasing instead of sales was a major factor in its 1887 electoral defeat. The policy that followed in 1888 – a

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

return to direct purchase of individual Maori signatures – was a disaster in Treaty terms and soundly condemned by Maori.³¹¹

The Crown's submission: We have already summarised the Crown's submission above, but we repeat it here, as it makes a number of helpful points in assessing these historical arguments:

It is clear from the evidence that CNI Maori differed in the relative valuations they placed on their membership of various collectives, and on their individual discretion. What the British believed settlement offered Maori was significant opportunity to individuals to pursue opportunities for advancement independent of particular manifestations of the tribal collective or particular sorts of obligations to the group. Because individuals had the law for protection, they did not need the tribal collective in the same way as previously. This placed an enormous strain on traditional collective institutions. The Crown accepts, however, that the native land laws can fairly be criticised for failing to provide for more effective corporate/communal governance mechanisms.

The Crown accepts that there is evidence of Maori agitating for and seeking greater Maori control over the native title adjudication process. This includes the rise of komiti, the Putaiki and the initiatives taken by the Rohe Potae group. The critical and difficult issue for the Crown in response to these aspirations was to specify in bureaucratic detail how this would have worked in practice. The Ballance experience of the 1880s demonstrates just how difficult this was to achieve and the range of Maori views on the issue. To have been successful the Crown would have needed actively and closely to have promoted relevant Maori institutions. There would likely have been an economic cost for a more measured and Maori controlled process.³¹²

The Tribunal's analysis of Ballance's 1886 Act

It appears to us that the success or failure of the 1886 Act rested on the fact that it was a voluntary one. Since Maori had freedom to bring their lands under it, the question

turns on why they refused to do so. Was the Act sound in its principles and in its detail? Did the Act reflect Ballance's consultation with Maori? Dr Loveridge says that it did; Dr O'Malley says that it did not. If Dr O'Malley is correct, then the reason for Maori refusal to use the Act is plain. As we noted, Dr Loveridge's explanation of the Act's failure comes from two opinions contemporary to it: that of Taipua, who said Maori saw it as taking away owners' rights as thoroughly as the 10-owner rule had done; and that of Ballance, who felt that Maori changed their minds without even trying the Act. Dr Loveridge agrees with Ballance.

Consultation at the Waipatu hui

Since the question turns mainly on the consultation of January 1886, we have reviewed the minutes of the Waipatu hui. This intertribal forum was attended by Te Arawa leaders, including representatives of Ngati Pikiao, Ngati Whakaue, and Tuhourangi. The hui organisers claimed that only Waikato (Kingitanga) and Taranaki people were absent, but we do not have a record of attendance. In greeting the Native Minister, Henare Tomoana listed the tribes that had sent representatives, including Tuhoe, Ngati Raukawa (both from the Central North Island and from Otaki), and Te Arawa, but Tuwharetoa were not mentioned. It does not appear that any Taupo or Kaingaroa representatives spoke at the hui. The Government considered the hui to be widely representative, and it was the main forum at which Ballance presented his Bill for consultation.

Ballance introduced the Bill with the following statement:

In one word, the intention of the Bill is to place in the hands of the owners of the land, through their Committees, absolute power to control the disposition of the land by sale or lease. It does not place in the hands of the Committee absolute power...

The owners had a 'veto' because two-thirds of them could vote to dissolve the committee, or dissentients could partition their share out.³¹⁵ After discussion, the

HE MAUNGA RONGO

hui presented their first set of resolutions to the Minister. These included an objection that the 'large powers given to the Commissioner and to the Governor in Council should be expunged', and the removal of boards and the Public Trustee. The main concern at this stage of the hui, though, was the fear – already anticipated by Ballance in his opening remarks – that the law would allow (even require) the committees to act as absolutely as the 1865 'ten owners.' Carroll reported:

The one point that the Natives insist upon is to have the absolute disposal of their lands. If the Board is done away with, the Natives will then have a more direct control over their land. Now, with regard to the Committee, the Natives have many reasons for being extremely cautious about the powers they give to the [block] Committees. There should be some very clear provision inserted in the Bill, which would enable the owners to direct the Committees what to do, lest the Committee should act like the ten trustees in the grant acted,

who pay no heed whatever to the desires of the owners.³¹⁷

Wi Pere also noted that 'the wish of the meeting is that the only duty of the Committees shall be to give effect to the written wishes of the people – that the Committees should only act on the written instructions of the owners.' This was to avoid a return to the situation of the 1865 and 1867 Acts, 'when the bulk of the owners were not in a position to state how the land should be managed.' At the same time, there was a unanimous view that individual dealings in land must be stopped, and the power put in the hands of the people. The proposed block committees were a good means of doing so, so long as they acted by direction of the people.³¹⁸

One of the cardinal points to emerge from the consultation, therefore, was the wish that provisions be inserted in the Bill – over and above the recourse of dissolving the Committee – requiring the committees to carry out the (written) directions of the owners. The hui made it very clear to Ballance that without such provisions, Maori would consider the Bill no better than the hated 10-owner rule of the 1860s. In our view, such a provision would have

been sensible, and would not have affected the Minister's objectives for the Bill in any way. In other words, it would have given the owners the security they sought for collective control of their lands, without affecting anything else in the Act. The Minister's decision not to include such a provision was one of the main reasons for its failure.

After discussion of these interim resolutions, the meeting presented the Minister with a second set of 'principal resolutions':

- ▶ the name to be changed to 'A Bill to bring Prosperity to the Native Race';
- ▶ abolition of the boards;
- ▶ the commissioners to work with the 1883 Act's district native committees instead of with the boards or on their own;
- ▶ removal of the Public Trustee and the 5 per cent administration charges; and
- ► replacement of the Native Land Court by the District Committees. 319

After discussion with the Minister, the hui agreed to drop their request about the 5 per cent charges, in return for Ballance's promise to look into getting rating and other land charges removed or reduced.³²⁰ In his reply to these resolutions, Ballance said that he had tried to strengthen the powers of the District Committees, but that they still needed to have 'further powers'. He also said that the Government would increase the number of committees and districts so that they could be tribal committees. He agreed to change the title (but said a different short title would be needed). He agreed to abolish the boards and remove any role for the Public Trustee.

With regard to the commissioners having to work with the District Committees, he said:

With regard to the Commissioners, I understand that the meeting wishes the district Committees to be brought in. I do not at present know whether they can be brought in, except, perhaps, in connection with proposition No. 6. [replacing the Land Court]. However, if I can bring them in and make them useful, of course I shall do so. I have not studied the various

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

ways in which they can be brought in. They had the power to select one member on the Board, but now that the Boards are abolished I must have time to consider how they can be made useful.³²¹

He did agree to insert a clause giving the commissioner and the committees joint authority to decide how much of the proceeds should be paid for surveys and roads, and to have the District Committees decide money disputes in the first instance (instead of the Native Land Court as originally), with a right of appeal to the court. He added that the suggestion to have the commissioners work with the District Committees, or perhaps just the chairmen, was a 'very excellent one' to which he would give a lot of thought, and then include it in the Bill. Carroll reminded him, however, that the commissioners and District Committees must act in accordance with the wishes of the owners, as expressed through their block committees. Ballance agreed.

Much of the subsequent discussion then focused on the role of District Committees and their lack of any real power under the 1883 Act, something which Ballance had promised to address the previous year. This included a request from Ngati Whakaue that he 'empower their Committee of Ngatiwhakaue. The tribe elected a Committee, and now ask that it should be endowed with the proper legal authority.'³²⁵ Various written amendments to the 1883 Act were handed to the Minister, along with direct appeals that he should correct matters.³²⁶

The Tribunal's findings on the Waipatu hui

Ballance made a very important statement at this hui in respect of the Treaty. He described the Crown's Treaty obligation in respect of the District Committees, as duly constituted representative bodies recognised by the Crown:

He [Hirini Taiwhanga of Nga Puhi] states that the Treaty of Waitangi guarantees to the Native people all the rights and privileges of British subjects. That is quite true; but how would he carry it out? He says, stop the prospecting in the King Country. I hold in my hand a telegram from the Chairman of

the Native Committee, which has unanimously agreed to send out prospectors. Now, whether are we, the Government, carrying out the Treaty of Waitangi by listening to the representations of the Native people, or by listening to Hirini Taiwhanga? I know that the Committee is elected by every Maori in that district, and I listened to its wishes, and gave effect to them. I do not know that Taiwhanga represents a single man in the Waikato. I have shown you clearly that the Government are carrying out the principles of the Treaty of Waitangi in carrying out the wishes of the Committee.³²⁷

This appears to us to be a clear and correct nineteenth-century representation of the Treaty principles of autonomy and self-government, and a correct description of the Crown's Treaty obligations.³²⁸ First, the Crown was obliged to recognise the bodies through which Maori tribes made their collective will known to the Crown. Secondly, the Crown was obliged to give those bodies such legal powers as were required for them to exercise their institutional and community autonomy in partnership with the State. Thirdly, the Crown was obliged to carry out the wishes of those bodies on matters to do with their internal affairs, and their relations with settlers. All these things were, as Ballance clearly understood, 'carrying out the principles of the Treaty of Waitangi in carrying out the wishes of the Committee'.

Having set this standard for the Crown, Ballance was required to live up to it. We note that he promised more than once at this hui, as at his 1885 hui, to give the committees real powers and to provide for Maori self-government by this means. Discussion encompassed the question not just of what role District Committees would play vis-à-vis the commissioners and block committees, but also (yet again) the Maori demand that they be made the bodies for investigating title to land. As we noted above, Ballance was confronted in a very direct way on this issue, and made a clear assurance in response:

Will you introduce a measure empowering District Native Committees to investigate hapu or individual rights, with appeal to the Native Land Court?³²⁹

HE MAUNGA RONGO

Mr Harris asks whether I approve of the district Committees having power to investigate titles, with an appeal to the Native Land Court. Yes, I am in favour of that; and I hope to be able to introduce some measure which will give larger powers to the district Committees...³³⁰

Emerging from the consultation at the Waipatu hui, therefore, are these fundamental points:

- ▶ Maori agreed unanimously that individuals should no longer have the power to alienate land, that block committees should be elected to carry out the wishes of the owners, and that a Government commissioner should undertake to lease or sell land at their direction.
- ▶ Ballance agreed to change the name of the Bill, to ensure that the block committee was responsible in a way that the 'ten owners' had not been, and to drop the boards and the Public Trustee.
- ► Maori agreed to accept the 5 per cent administration fee.
- ▶ Maori asked that the Government commissioners should not act alone, but only in tandem with the District Committees or their chairmen, to which Ballance agreed in part, with the proviso that he would have to consider the matter further.
- ▶ Ballance agreed to give the District Committees certain powers in the Act, and to consider further how to involve them instead of boards in the carrying out of the Act.
- ▶ Ballance promised to give the District Committees greater powers in general, and also agreed to consider the written amendments to the 1883 Act as handed in at the meeting. In particular, he gave an explicit endorsement to the proposal that the committees should investigate title, though keeping the Native Land Court as an appeal body. He told the meeting that, under the Treaty, the Government was obliged to carry out the wishes of duly constituted District Committees.
- ▶ Maori, not satisfied with the provision to dissolve the block committee or partition the interests of

dissentients, asked for clauses requiring the block committees to act only on the direction of the owners, as put in writing. This was their first and possibly most important request, but Ballance did not respond to it or agree to it.

To what extent was the Waipatu consultation reflected in the Act?

The Native Land Administration Act was passed in 1886, some months after the Waipatu hui. As promised, the boards and Public Trustee were dropped, and the name of the Bill was changed. Key features, in terms of the agreements noted above, were not given effect:

- ▶ The District Committees were given no powers or role. Ballance's agreement that the Government commissioners should not act alone but with the committees instead of the boards, that the committees should decide disputes about money with a right of appeal to the Native Land Court, and to use them in other ways, was not included in the Act. Instead, the commissioners were to act alone and the court would decide disputes and allocate shares. After the initial decision to sell or lease, a small role was allowed to block committees the commissioner and committee had to agree on how much of the proceeds would be spent on roading and surveys. Also, the owners could provide a written statement of how the money should be divided among them.³³¹
- ▶ No clause was inserted to require the block committees to act only at the direction of the owners. The clauses allowing dissolution (on a two-thirds instead of simple majority) and partition remained. The Native Land Court would partition the land, instead of acting as an appellate authority for an investigation and decision by a District Committee. ³³²

Together, these two points meant that neither the block committees nor the Government commissioner would be responsible to the owners, either directly (as a community), or at the tribal level (District Committee). These were the things that would, Maori had told Ballance, prevent them

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

from risking placing their land under the Government. That being the case, we agree with Dr O'Malley that some key requirements of Maori were not included in the Act, hence their refusal to risk using it.

We note further that this arose from Ballance himself, or his Government, and not from any opposition in Parliament. In introducing the Bill, the Native Minister never mentioned District Committees at all. In fact, he told the House:

A conclusion which I did not expect was arrived at by the Natives: they said they would prefer to have no Boards appointed, but would desire to have the land administered only by Commissioners. They objected to the proposed Boards, on which they were themselves to be largely represented, and said they would be satisfied with simply a Commissioner. The Boards are therefore withdrawn from this Bill, and the Commissioners are retained... 333

This was such a misrepresentation of his consultation at Waipatu that it can only have misled Parliament on this major sticking point for Maori.

The significance of the follow-up hui at Aramoho

Ms Marr notes that there was a second consultation hui in March 1886. This was much less national in its coverage than the Waipatu one, involving mainly Whanganui people with some southern Taupo rangatira, including Topia Turoa as well as Maori members of Parliament. At this hui, Ballance announced that he had accepted the majority of the amendments proposed at Waipatu, including the abolition of boards, the joint distribution of the proceeds by the Commissioner and the District Committees, and joint decision-making about survey and other charges by the Commissioner and the block committees. This was the starting point for his further consultation on the Bill. Unfortunately, as Ms Marr notes, the minutes of the hui were not published and she was unable to locate them, other than a brief summary of speeches in the newspapers on the days that Ballance attended. In particular, the account of the substitute Bill requested by Maori came from Ballance's description of its contents while refuting it.

Having considered the newspaper accounts and Ms Marr's analysis, it appears to us that Maori were mainly concerned with the power and roles of the Government Commissioner and the (1883) District Committees. They wanted to replace the Commissioner with the District Committee altogether, in leasing or selling land as well as administering the proceeds, and for each block committee to act with the District Committee in performing both functions for their particular block. As part of such a revised system, they also wanted to bring all current leases under the committees.³³⁴ Ballance's response was that the structure was too elaborate and unworkable, that practically the whole Maori population would be on committees as a result of it, and that their best interests required instead an impartial official responsible to the Government as the only guarantee of a fair outcome for all. The reply from Te Keepa Te Rangihiwinui [Major Kemp] indicates that part of the concern was that both block and district levels of committee - presumably as representing layers of customary rights and authority - needed to be involved in decision-making about the land. Ballance responded: 'As to Major Kemp's proposal that some natives should be associated with the Commissioner he considered it only fair, and had already agreed to something of the kind.' The 'something' was that District Committees would 'assist' the commissioner in distributing money and, as at Waipatu, he promised to 'consider whether in any other respect the district committees should not have larger powers'.335

Apart from discussing the Bill, there was also widespread objection at the hui to the Native Land Court, and discussion of whether native committees could replace the court in deciding titles. This time, the Minister suggested that the real problem was that someone had to lose no matter who made the decisions. Who, he asked, should have decided the title to Tauponuiatia: the Ngati Maniapoto Committee, the Ngati Raukawa Committee, or the Tuwharetoa Committee?³³⁶ Ms Marr considers that this response was a resiling from 'his earlier willingness to consider having

HE MAUNGA RONGO

committees conduct the initial inquiry with the Court as an appeal body.³³⁷ We are unable to accept this inference, however, in the absence of a direct statement to that effect, given Ballance's repeated statements at previous hui and in the House. The obvious response to the Minister's question about Tauponuiatia, of course, was that Bryce had promised in 1883 a Rohe Potae-wide District Committee to decide the tribal boundaries, after which the tribal committees were to give titles to hapu.³³⁸ If Ms Marr is correct, then the Minister's change of mind did not excuse him from keeping his earlier undertakings, or carrying out the Crown's Treaty responsibilities. It may explain, however, his critical failure to act with the Native Land Court Act of 1886.

There were further consultation hui on the draft Bill proposed for the East Coast and Northland, but we do not have evidence on those district hui. 339 The views of Central North Island Maori, in so far as they were consulted, were expressed mainly at the Waipatu hui. The Aramoho hui appears to have wanted more fundamental changes than the national hui at Waipatu - in particular, the total replacement of the Government commissioner by Maori committees - but Ballance did not agree to such fundamental changes. He did, however, renew his Waipatu undertakings to include the District Committees in various ways, and to consider how to further increase their powers. As noted, he did not include them at all in the Act as passed in 1886, nor in the Native Land Court Act of the same year. Given his recognition in his Administration Bill (and generally) of the validity of Maori concerns and the need to give their District Committees greater powers, his Government's failure was inconsistent with the principles of the Treaty of Waitangi.

The Tribunal's findings on Ballance's 1886 legislation

We find that some of the principles of the 1886 Act were more consistent with the Treaty than anything that had gone before. These include some of the content of the Act, and also the process by which the Act was arrived at, involving consultation with Maori on the draft Bill.

Some of the Native Lands Administration Act's principles were consistent with the Treaty: Proposals for hapu communities to make considered decisions about their economic future and the management of their lands had been around for decades, as had the thought that the Government could act as their agent in auctioning land for lease or sale, ensuring the highest market returns. These proposals were at last acted on in the 1886 legislation. Had they been translated into a system in which Maori had confidence, which we think could have easily been managed by giving powers to District Committees and requiring block committees to act only on direction, as stipulated at the Waipatu hui, then the Act would likely have been a success. A key opportunity for the Crown to have acted consistently with the Treaty was thus lost.

The Crown's Treaty duty of consultation: Further, we note that Ballance was the first Native Minister to conduct extensive consultation on proposed legislation. This was, as he noted, a duty on the Crown incumbent on all governments. We agree. Dr O'Malley does not criticise the process of consultation, which made Maori views very evident, but rather the failure to incorporate their main resolutions in the legislation. The Crown argues that Ballance's 'visits and hui in the district show a genuine attempt to consult Maori opinion and to reach agreements through such processes', and warns us not to 'project modern notions of consultation onto the processes of the 1880s.' As noted above, we judge the Minister by his own public statements to Maori:

Our policy is not one of force and repression to be applied to the loyal [Rotorua] Natives of New Zealand, but of friendly discussion and assistance to enable them to work out their own destiny in a way that will secure the permanent prosperity and happiness of the race. When we, therefore, have any measure which we desire to establish by law for the good of the people, it is our intention to take the people into our confidence. Questions, therefore, of great importance must be settled by the consent of the people themselves. If I could not

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

administer the affairs of the Native people in the way that I have said I should cease to be Native Minister...³⁴¹

+ * *

... when we obtain the opinions of you with regard to questions affecting your lands, we shall act upon them solely for your benefit. We shall consult you and ask your opinion in all parts of the Island with regard to these questions before we proceed to deal with them. It is my intention to visit the people in the various parts of the Island, when these subjects will be brought before them, seeing that our desire is to be guided largely by the opinion of the people themselves.³⁴²

+ * *

The Government feel that this can only be done by meeting the people and taking them into their confidence, for we feel that no one is so capable of understanding what is best for the people as the people themselves.³⁴³

Given these statements, Maori were entitled to expect that the content of the Bill would be 'guided largely by the opinion of the people themselves, because 'no one is so capable of understanding what is best for the people as the people themselves'. Further, they were entitled to expect that the Bill's content would be finalised 'by the consent of the people themselves'. In other words, Ballance told Maori that the Crown must govern in the best interests of both races, but that decisions about the management of Maori land must be made by Maori themselves. It was the Government's duty to find out what Maori wanted and help them to carry it out. The Crown had to assist Maori to 'enable them to work out their own destiny in a way that will secure the permanent prosperity and happiness of the race'. We agree. These propositions, if acted on, would have enabled the Crown to keep the Treaty in the nineteenth century.

The consent of the Maori people at the Waipatu hui was conditional on certain agreements being incorporated in the Act (and other Acts, such as amendments to the Native Committees Act 1883). Any comparison of the results of the Waipatu (and Aramoho) hui with the content of the Native Land Administration Act 1886 and the other legislation of

that year must result in the conclusion that Ballance's publicly expressed high standards were not met. The failure to meet these standards was inconsistent with the Crown's Treaty duty of consultation, and the Treaty principles of partnership, autonomy, and active protection.

Other breaches of Treaty principle: In the Crown's submission, it can fairly be criticised for failing to provide for more effective corporate and communal governance mechanisms. We agree. But the 'critical and difficult issue for the Crown in response to these aspirations was to specify in bureaucratic detail how this would have worked in practice. The Ballance experience of the 1880s, the Crown argued, 'demonstrates just how difficult this was to achieve and the range of Maori views on the issue'.344 We do not agree with this submission. There was a range of Maori views, to be sure, but these were resolved into key, agreed points at the Waipatu hui. No one at the hui wanted individual dealings in land. The closest they came to it was in accepting that the rights of minorities were to be recognised and provided for by partition, if groups could not agree. There was no great bureaucratic difficulty to what Maori wanted. All that was needed was a clause controlling block committees and directing them to act according to the written resolutions of the owners. Further, powers had to be given to the District Committees. Government commissioners would have had to act jointly with committees. Committees would have been given powers to investigate title, with a right of appeal to the Native Land Court. None of this should have been particularly difficult to translate into bureaucratic procedures where necessary.

We think the Crown's final points are more telling: 'To have been successful the Crown would have needed actively and closely to have promoted relevant Maori institutions'. We agree, and consider that it was obliged under the Treaty to have done so. 'There would likely,' adds the Crown, 'have been an economic cost for a more measured and Maori controlled process.' Again, this was possible. But the whole concept of the Act was defeated by not giving proper effect to the tino rangatiratanga of Maori communities. Hence, no

HE MAUNGA RONGO

land was brought under the Act and, while it was in force, colonisation could not proceed. Maori, Ballance argued, had to make land available for colonisation, and the best way to ensure this was to create trust in the Government and show Maori that they would benefit from it equally with settlers. A return to free trade in individual signatures was hardly a Treaty-compliant solution.

Further, we emphasise the enormous importance to Central North Island Maori of their repeated requests for empowerment of their komiti. Just as important as the flaws in the 1886 Administration Act itself, there were equal problems with the Native Land Court Act of that year. That Act made no provision for the District Committees to investigate title, with the technical work and appeals to be managed by the court. At the same time, the Native Committees Act was not amended. Ballance failed entirely, therefore, to act on the very clear requests of Maori, and his own undertakings to meet – as far as he could – these reasonable requests. We note the Minister's many statements to Maori, some of them cited above, that he would:

▶ consult with the people to carry out their wishes, as the ones best qualified to manage themselves and their lands:

- ▶ recognise and empower their self-management and their self-government;
- ▶ carry out the Treaty and its principles;
- give real legal powers to their committees (including for title investigation); and
- ▶ that he would act fairly and in their best interests.

By this standard, we find the Crown to have acted in serious breach of Treaty principles when it failed to give Maori what they sought from it: their fundamental rights to decide their own customary land entitlements and to govern themselves through their own laws and institutions. The Treaty breaches of the 1860s and 1870s were thus compounded in 1883 with the Native Committees Act, and further compounded in 1884 to 1886 by the Government's failure to amend the Act and carry out Ballance's undertakings. The cumulative nature of these Treaty breaches was very significant, as more and more Central North Island land came under the Native Land Court with every year that passed.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

SUMMARY

- ▶ Under the Treaty, Maori were entitled to the same rights and powers of self-government as settlers. Also, their inherent political authority to manage their own lands, people, and affairs (their tino rangatiratanga) was guaranteed and protected by the Treaty.
- ▶ There were a series of missed (or actively rejected) opportunities in the 1870s and 1880s when the Crown could have complied with the Treaty, essentially by meeting Central North Island Maori requests for legal powers for their komiti and runanga, for fair representation in Parliament proportional to their population size, and for a national assembly.
- ▶ To have met these Maori aspirations was both reasonable and practicable in the circumstances.
- ▶ The Native Councils Bills of the 1870s and the Native Committees Act and Native Lands Administration Act of the 1880s show that the Crown could have engaged constructively with Central North Island Maori and given their komiti legal powers of self-government, title determination, and community land management. The Crown failed to do so, or to deliver on Ballance's promise of 'large powers of self-government'. This was in breach of the Treaty.
- ▶ The Fenton Agreement, the Thermal Springs Districts Act 1881, the Rohe Potae negotiations of the 1880s, and the Tauponuiatia application were all practicable opportunities for:
 - partnership;
 - consultation;
 - joint management and the leasing of Central North Island Maori land and resources; and
 - Maori autonomy, self-government, and determination of their own land entitlements by their own laws and institutions.

These opportunities were either not taken or were actively undermined and rejected by the Crown. This was in breach of the Treaty.

► Central North Island Maori requests for a representative national body and a fairer representation in the New Zealand Parliament were rejected by the Crown in the 1870s and 1880s. This was in breach of the Treaty. Keeping Maori powerless at the central government level, while continuing to deny or repress their autonomy at the regional and community levels, compounded the above Treaty breaches.

HE MAUNGA RONGO

Notes

- 1. 'Report of the Native Land Laws Commission', 23 May 1891, AJHR, 1891, sess 2, G-1, p xxx
- 2. See his speeches in 'Notes of Native Meetings', AJHR, 1885, G-1, p1-29, 41-66 (doc A65(k), pp L108-159)
- 3. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 245
- **4.** Martin Taylor, generic closing submission on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 72–73, 80–86
 - 5. Ibid, pp 86-89
 - 6. Ibid, pp 94-103
 - 7. Ibid, pp 117-125
 - 8. Ibid, pp 94-103
- 9. Kathy Ertel, closing submissions on behalf of Ngati Te Rangiunuora and Ngati Rongomai, 2 September 2005 (paper 3.3.71), pp 9–24
- **10.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 113–115
- 11. Richard Boast, generic closing submissions on nineteenth-century land alienation, 1 September 2005 (paper 3.3.58), pp 42–43
- 12. Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p127
 - **13.** Ibid, p 111
 - 14. Ibid, pp 109-112
- **15.** John Kahukiwa, closing submissions on behalf of Te Kotahitanga o Ngati Whakaue, 9 September 2005 (paper 3.3.109), pp 36–55
 - **16.** Ibid, pp 55-94, 103-144
 - 17. Ibid, pp 67-91
- **18.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p.113
- 19. John Kahukiwa, closing submissions on behalf of Te Kotahitanga o Ngati Whakaue, 9 September 2005 (paper 3.3.109), pp 115–128
- **20.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 125
 - **21.** Ibid
 - **22.** Ibid, pp 31–32, 35
 - 23. Ibid, pp 32, 35
 - **24.** Ibid, p 125
 - 25. Ibid, p 59
 - 26. Ibid, p 61
 - 27. Ibid, pp 51, 59-62
 - 28. Ibid, pp 59-60
 - 29. Ibid, pp 61-69

- **30.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pp 67–69
 - 31. Ibid, pp 76-77
 - **32.** Ibid, p 71
 - 33. Ibid, pp 90-91
 - 34. Ibid, p 92
 - 35. Ibid, pp 92-94
 - **36.** Ibid, pp 95-96
 - 37. Ibid, p 143
- **38.** Keith Pickens, 'Introduction of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp 69–75, 148–150
- **39.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), p 77
- **40.** Vincent O'Malley, 'Runanga and Komiti: Maori institutions of self-government in the nineteenth century', PhD thesis, Victoria University of Wellington, 2004 (doc H1(a)), pp 126–165; see also Vincent O'Malley, evidence in response to questions, 20 May 2005 (doc H1)
- 41. Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p 143
- 42. Vincent O'Malley, evidence in response to questions, 20 May 2005 (doc н1), p 155
- **43.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), p 64
- 44. Michael Macky, 'Crown Purchasing in the Central North Island Inquiry District, 1870–1890', report commissioned by CLO, November 2004 (doc A81), p 235
- **45.** Ibid, pp 234–236; Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 70–73
- **46.** Fenton to Bryce, 18 December 1880 (as quoted in Vincent O'Malley, 'The Crown and Te Arawa, c1840–1910', report commissioned by CFRT, November 1995 (doc A49), p129)
 - 47. Ibid, p 133
- **48.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 73–83
- **49.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p 143
- **50.** Hamuera Walker Mitchell, brief of evidence, 19 May 2005 (doc H18), pp 11–13; Hamuera Walker Mitchell, evidence given under cross-examination, sixth hearing, 9 May 2005 (transcript 4.1.7), p 16
- 51. Andrew Te Amo, brief of evidence, 15 June 2005 (doc H10), pp3-5

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

- **52.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 76–81
 - 53. Ibid, p81
- 54. Hamuera Walker Mitchell, brief of evidence, 19 May 2005 (doc H18), para 48
- 55. Michael Macky, 'Crown Purchasing in the Central North Island Inquiry District, 1870–1890', report commissioned by CLO, November 2004 (doc A81), p 241
- **56.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 87–91; Vincent O'Malley, 'The Crown and Te Arawa, c1840–1910', report commissioned by CFRT, November 1995 (doc A49), pp 140–149
- 57. Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp 159–166
- **58.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), p 114
 - **59.** Ibid, p 93
- **60.** Draft of Thermal Springs Act 1881, dated 24 September 1881 (doc A49(b), p 313)
- **61.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), p 98
 - 62. Ibid, pp 95, 98
 - 63. Ibid, pp 107-109
- **64.** Vincent O'Malley, evidence in response to questions, 20 May 2005 (doc H1), pp166, 171
- **65.** Michael Macky, 'Crown Purchasing in the Central North Island Inquiry District, 1870–1890', report commissioned by CLO, November 2004 (doc A81), pp 248–251; Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 109–111
- **66.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 334–336
- **67.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p.112
- **68.** Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 534–535
- **69.** Michael Macky, 'Crown Purchasing in the Central North Island Inquiry District, 1870–1890', report commissioned by CLO, November 2004 (doc A81), p 236
- **70.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp156–157

- 71. Vincent O'Malley, evidence in response to questions, 20 May 2005 (doc H1), p 166
 - **72.** Ibid, pp 168
- 73. Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p 151
- **74.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p 163
- 75. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 178-179
- **76.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp 69–75, 145–149; Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), pp 85–127
- 77. Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p.75
 - 78. Ibid, p 150
- 79. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 83, 115–116
- **80.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p 158
- 81. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 83, 115–116
- **82.** John Kahukiwa, closing submissions on behalf of Te Kotahitanga o Ngati Whakaue, 9 September 2005 (paper 3.3.109), p 122
- **83.** Don Stafford, evidence given under cross-examination, 11 May 2005 (transcript 4.1.7), pp 50, 52-55
- **84.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), p149
- **85.** Bay of Plenty Times, 19 November 1881 (as quoted in Vincent O'Malley, 'The Crown and Te Arawa, c1840–1910', report commissioned by CFRT, November 1995 (doc A49), p156)
- **86.** Alan Ward, 'Whanganui ki Maniapoto', report commissioned by the Waitangi Tribunal, 1992, p 33
- 87. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), p 93
 - 88. Ibid, p 94
- **89.** Draft of Thermal Springs Act 1881, dated 24 September 1881 (doc A49(b), p 313)
 - **90.** Ibid
- 91. Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p 107

HE MAUNGA RONGO

- 92. Vincent O'Malley (comp), supporting documents to 'The Crown and Te Arawa, c1840-1910', vol 1, (doc A49(a)), pp 276-287
- 93. Vincent O'Malley (comp), supporting documents to 'The Crown and Te Arawa, c1840-1910', vol 3 (doc A49(c)), p 840
- **94.** Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), p 98
- **95.** Fenton to Rolleston, undated (in Kathryn Rose (comp), supporting documents to 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', vol 2, A70(b), pp 6, 9)
- **96.** Vincent O'Malley, evidence in response to questions, 20 May 2005 (doc H1), pp166, 171
- 97. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 170-192
 - 98. Thermal Springs Districts Act 1908
- 99. Lyn Waymouth, 'Parliamentary Representation for Maori: Debate and Ideology in *Te Wananga* and *Te Waka Maori o Niu Tirani*, 1874–8', in Jenifer Curnow, Ngapare Hopa, and Jane McRae (eds), *Rere Atu, Taku Manu!*: Discovering History, Language and Politics in the Maori-Language Newspapers (Auckland: Auckland University Press, 2002), pp 140–141
- **100.** See, for example, Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), p141
- 101. For Ballance's response to Maori requests for equitable representation in the mid-1880s, see below, section on Taupo and Kaingaroa issues.
- 102. See, for example, Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p141; and Maori MPs to Aborigines Protection Society, 16 July 1883, BPP vol 17, p129
- **103.** Waitangi Tribunal, *Maori Electoral Option Report* (Wellington: Brooker's Ltd, 1994), pp 7–9
- 104. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 63-64; and Vincent O'Malley, summary of Agents of Autonomy, September 2005 (doc A63(a)), p 5
- **105.** See, for example, Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp 110–134
- **106.** David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), pp17, 37–45, 51–53, 58–59, 66, 71–77, 94–95, 98–100, 113, 125–128, 136
- **107.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp 19–56, 67–75, 91–96, 116–118, 135–166, especially pp 75, 148–150
- **108.** Mary Gillingham, 'Waitaha and the Crown, 1864–1981', report commissioned by CFRT on behalf of the claimants, 2001 (doc A35), p122
- 109. See, for example, David Armstrong, 'Te Arawa Land and Politics', report commissioned by CFRT, November 2002 (doc A45), p66. Himiona of Tarawera proposed that the chiefs assembled at

- Kohimarama mediate and settle the dispute between the Governor and Wiremu Kingi at Taranaki.
- 110. Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), pp.72–73
- 111. Vincent O'Malley, summary of *Agents of Autonomy*, September 2005 (doc A63(a)), pp 2-3
- 112. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 49-51
 - 113. Ibid, p 53
 - 114. Ibid
 - 115. D McLean, 22 October 1872, NZPD, 1872, vol 13, p 895
- 116. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3,3,111), pt 2, p 125
- 117. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 54-55
- 118. Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), p 88
- 119. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p55
- 120. Debate concerning the Native Councils Bill, 22 October 1872, NZPD, 1872, vol 13, pp 896–898
 - 121. H Atkinson, 22 October 1872, NZPD, 1872, vol 13, p 898
 - 122. D McLean, 22 October 1872, NZPD, 1872, vol 13, pp 895-900
- 123. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p55
 - 124. Ibid, p 56
 - 125. Ibid, p 271
- 126. Vincent O'Malley, summary of *Agents of Autonomy*, September 2005 (doc A63(a)), p 4
- 127. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 56
 - 128. Ibid, pp 56-57
 - 129. D McLean, 30 September 1873, NZPD, 1873, vol 15, p 1514
- 130. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 63
 - 131. Ibid, pp 129-137
 - 132. Ibid
 - **133.** Ibid, pp 137–139
- 134. H Tomoana, 15 September 1881 (as quoted in Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 139)
- 135. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 139-141
 - **136.** Ibid, pp 142–143
 - 137. J Sheehan, 13 July 1882, NZPD, 1882, vol 42, p 298
 - 138. R Turnbull, 13 July 1882, NZPD, 1882, vol 42, p 297
 - 139. T Weston, 13 July 1882, NZPD, 1882, vol 42, p 300

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

- 140. W Buchanan, 13 July 1882, NZPD, 1882, vol 42, p 301
- 141. M Green, 13 July 1882, NZPD, 1882, vol 42, p 306
- 142. H Dodson, 13 July 1882, NZPD, 1882, vol 42, p 305
- 143. W Swanson, 3 August 1882, NZPD, 1882, vol 43, p 136
- **144.** W Barron, 3 August 1882, NZPD, 1882, vol 43, p 130; F Moss, 13 July 1882, NZPD, 1882, vol 42, p 298
 - 145. T Duncan, 3 August 1882, NZPD, 1882, vol 43, p130
 - 146. F Moss, 13 July 1882, NZPD, 1882, vol 42, p 298
 - 147. W Smith, 13 July 1882, NZPD, 1882, vol 42, p 304
 - 148. W Swanson, 13 July 1882, NZPD, 1882, vol 42, p 304
 - 149. J Sheehan, 13 July 1882, NZPD, 1882, vol 42, p 299
 - 150. H Tawhai, 13 July 1882, NZPD, 1882, vol 42, p 300
 - 151. H Tawhai, 3 August 1882, NZPD, 1882, vol 43, p 128
 - 152. W Barron, 3 August 1882, NZPD, 1882, vol 43, p130
 - 152. W Barron, 3 August 1882, NZFD, 1882, V0143, p130
- 153. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 148
 - 154. Ibid, p147
 - 155. Ibid, pp 143-148
 - 156. Ibid, pp 150-151
 - 157. Ibid, p 151
 - 158. Ibid, p 153
 - 159. Ibid, p 154
 - 160. Ibid, p 155
 - 161. Ibid, pp 168-169
 - 162. Ibid, pp 170-171
- **163.** Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p 290
- **164.** 'Report of the Native Land Laws Committee', AJHR, 1891, sess II, G-1, p xvi (as quoted in Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), pp 163–166
 - 165. R Stout, 3 August 1885, NZPD, 1885, vol 52, pp 407-408
 - 166. J Bryce, 3 August 1885, NZPD, 1885, vol 52, p 411
 - 167. Ibid, p 411
- **168.** Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 306
- **169.** Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), pp 171–179; 'Notes of Native Meetings', AJHR, 1885, G-1, pp 171–179 (doc A65(k), pp L108–159); Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), p 209
- 170. 'Report of the Native Land Laws Commission', AJHR, 1891, sess 2, G-1, p xvi
- 171. 'Report of the Native Land Laws Commission', AJHR, 1891, sess 2, G-1, p1989 (as quoted in Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p1457)

- 172. Ibid
- 173. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 16–18
 - 174. Ibid, pp 33-36
 - 175. Ibid, p 41
 - 176. Ibid, pp 36-42, 44-48, 52
 - 177. Ibid, pp 36-48, 51-64
 - 178. Ibid, pp 51-80
- 179. Kiriana Tan, closing submissions on behalf of Ngati Raukawa Wai 443, 5 September 2005 (paper 3.3.80), pp 71–84
- **180.** Richard Boast and Liz McPherson, closing submissions on behalf of Ngati Hineuru, 2 September 2005 (paper 3.3.63), pp 14–15, 29, 33, 39, 54–57, 61
- **181.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 165–167
- **182.** See Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78)
- **183.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 97–116
 - 184. Ibid, pp 97-99
 - **185.** Ibid, pp 97-100
- **186.** Ibid, pp 100–101
- 187. Ibid, pp 102, 105
- **188.** Ibid, p 97
- 189. Ibid, pp 102-105
- 190. Ibid, p 103
- 191. Ibid, p 112
- **192.** Ibid, pp 108–110 **193.** Ibid, pp 110–111
- 194. Ibid, pp 113-116
- **195.** 'Report of the Native Affairs Committee', AJHR, 1883, I-2, p 20; 'Petition of Manuhiri and 488 others of the Maniapoto and Waikato Tribes', AJHR, 1883, J-1A, pp1-2
- **196.** Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes, 1883 (as reproduced in Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 347)
 - **197.** Ibid, pp 347–348
 - 198. Ibid, pp 348-349
 - 199. Ibid, p 349
- **200.** Duncan Moore, 'Explanatory Information in Support of the Ngati Raukawa Land Alienation Maps and Database', report commissioned by the Waitangi Tribunal, 2000 (doc A34), p 209
- 201. Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), pp 233–35, 273, 277–278, 306–307
- **202.** For Tuwharetoa and the Kingitanga, and the significance of the Poutu hui, see Karen Feint, closing submissions on behalf of Ngati

HE MAUNGA RONGO

Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 19, 39–41, 54–59, 76; see also the Crown submission that autonomy regarding tribal lands was expected, alongside support of Kingitanga: Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 110, 113, 115; see also Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 107–108

- 203. Tawhiao (as quoted in Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), p 287)
- 204. Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp101–108, 115–116, 145, 170
 - 205. Ibid, p145
- **206.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 795–797
 - 207. Ibid, pp 804-807
- **208.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 131–132, 138, 213, 222, 224–228
 - **209.** Ibid, pp 131–132, 138, 161, 213, 222, 224–228
 - 210. 'Report of the Native Affairs Committee', AJHR, 1883, 1-2, p 20
- 211. Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 162–163, 179, 188–189, 208
- 212. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 836
- 213. Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 135–140
- 214. Ibid, pp 219–228; Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 818, 820–821, 837–41, 857–61
- 215. Duncan Moore, 'Explanatory Information in Support of the Ngati Raukawa Land Alienation Maps and Database', report commissioned by the Waitangi Tribunal, 2000 (doc A34), pp 71–130, 159–162, 187, 208–210
- 216. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 1, pp 211–229; pt 2, 795–797
- 217. Kiriana Tan, closing submissions on behalf of Ngati Raukawa Wai 443, 5 September 2005 (paper 3.3.80), pp 71–72

- 218. Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 131–143
 - 219. Ibid, pp 131-137
- 220. Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), pp 287, 347
- **221.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 129–141
- **222.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 880–892, 894, 898–903, 917
- **223.** Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 48, 54–56, 59–62; Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 110–116
- **224.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 804–807
 - 225. Ibid, p 956
- **226.** Keith Pickens, 'Introduction and Operation of the Native Land Court in the Central North Island', report commissioned by CLO, October 2004 (doc A78), p 281
- 227. Ibid, pp 277–303; Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 883–902, 906–927, 937–954, 937–954; Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 131–132, 138, 213, 222 (pp 132, 138 for Bryce 'holding the Court back' by not gazetting applications)
- **228.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 948–954
 - **229.** Ibid, pp 840-841
 - 230. Ibid, pp 922-1370
- **231.** Martin Taylor, generic closing submissions on political engagement, tourism, and geothermal issues, 2 September 2005 (paper 3.3.67), pp 41–42, 52, 61, 103
- 232. F M Brookfield, Waitangi and Indigenous Rights: Revolution, Law, and Legitimation (Auckland: Auckland University Press, 1999), pp 116–118
 - **233.** Ibid
- 234. 'The Hon. Minister's Meeting with Tawhio; and Rewi Maniapoto's Visit to Bay of Plenty (Papers Relating Thereto)', AJHR, 1875, G-4, pp 3–12

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

- 235. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt1, pp171–187, 207–223, 234–247
- **236.** Alan Ward, A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand (Auckland: Auckland University Press, 1973), pp 232–235, 277–278
 - 237. BPP, vol 17, pp 47-51
- 238. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1559
- 239. Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 197–202; FM Brookfield, Waitangi and Indigenous Rights: Revolution, Law, and Legitimation (Auckland: Auckland University Press, 1999), pp 116–118
 - 240. R Stout to Governor Jervois, 12 March 1885, BPP, vol 17, p 115
 - 241. Derby to Jervois, 23 June 1885, BPP, vol 17, p 179
 - **242.** Ibid
- **243.** Wi Te Wheoro to J.E. Gorst, 27 March 1885, BPP, vol.17, pp.139–140
- **244.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), p 211
 - 245. T P Te Ao, 11 June 1886, NZPD, 1886, vol 54, p 453
- **246.** Tawhiao to Native Minister, 17 May 1886, AJHR, 1886, G-14,
- **247.** Native Minister to Tawhiao, 8 June 1886, AJHR, 1886, G-14, PP 3-5
 - 248. P Tuhaere, 21 August 1888, NZPD, 1888, vol 63, p 209
- **249.** Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), pp 198–201
- **250.** MPK Sorrenson, 'The Maori King Movement, 1858–1885', in *Studies of a Small Democracy: Essays in Honour of Willis Airey* (Hamilton: Paul's Book Arcade for the University of Auckland, 1963), pp 53–55
- **251.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt1, p178
 - 252. Ibid, pp 189-200, quote is on p 200
 - 253. Ibid, pp 202-206
- **254.** Derby to Jervois, BPP, vol 17, p 179, see also, pp 109–112 for the petition of Tawhiao, Topia Turoa, and others, and pp 128–129 for the Maori members of Parliament's letter
 - 255. 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2, p19
- **256.** Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp199–200; 'Maori Council (Correspondence Between Tawhiao and the Hon. The Native Minister Relating hereto)', AJHR, 1886, G-14
- **257.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal,

- September 2004 (doc E4), pp 186–187; 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18, 28 (doc A65(k), pp L124, L134)
 - 258. 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2, p7
- **259.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 1, pp 156, 188, 244
 - 260. Ibid, pp 234-247
 - 261. Ibid, p 238
 - 262. Ibid, p 247
 - 263. Ibid, pt 2, pp 804-807
- **264.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp129–140, especially pp129, 131, 134, 137
 - 265. J Bryce to Governor, 11 January 1884, BPP, vol 17, p 132
 - 266. R Stout to Governor, 12 March 1885, BPP, vol 17, p 115
- 267. 'Report of the Native Land Laws Commission', AJHR, 1891, sess 2, G-1, p xvi (as quoted in Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), p 164)
- **268.** Dr Ballara has reproduced the minutes of the relevant hui in her supporting documents: 'Notes of Native Meetings', AJHR, 1885, G-1, pp 1–29, 41–66 (doc A65(k), pp L108–L159).
- **269.** See 'Notes of Native Meetings', AJHR, 1885, G-1, pp1-29, 41-66 (doc A65(k), ppL108-L159); also Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 850-856
 - 270. Ibid, p 850
- **271.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 208–212
- 272. 'Notes of Native Meetings', AJHR, 1885, G-1, p 27 (doc A65(k), p L133)
 - 273. Ibid
 - **274.** Ibid
- 275. Ibid, pp1-29, 41-66 (doc A65(k), pp L108-159); Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp197-212
- 276. 'Notes of Native Meetings', AJHR, 1885, G-1, pp1-29, 41-66 (doc A65(k), ppL108-159); Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp197-212

HE MAUNGA RONGO

- 277. 'Notes of Native Meetings', AJHR, 1885, G-1, pp1-29, 41-66 (doc A65(k), ppL108-159); Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp197-212
- **278.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), p 205
- 279. 'Notes of Native Meetings', AJHR, 1885, G-1, p1-29, 41-66 (doc A65(k), ppL108-159); Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp197-212
- **280.** Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), p174; Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp209–210
- **281.** 'Notes of Native Meetings', AJHR, 1885, G-1, p17 (doc A65(k), pL123)
 - 282. Ibid, p19, 20-21 (pL125, 126-127)
 - 283. Ibid, p 2-3 (p L109-110)
- **284.** Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp 156, 203
 - 285. Ibid, p 210
 - 286. 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2, p 15
 - **287.** Ibid, p 17
- **288.** 3 to 5 August 1885, NZPD, 1885, vol 52, pp 400-401, 407-408, 411, 490-492
 - 289. J Bryce, 3 August 1885, NZPD, 1885, vol 52, p 411
 - 290. J Ballance, 3 August 1885, NZPD, 1885, vol 52, p 396
- 291. 'Notes of Native Meetings', AJHR, 1885, G-1, p28 (doc A65(k), pL134)
 - **292.** Ibid, p 27 (doc A65(k), p L133)
 - 293. Ibid, p 5 (doc A65(k), p L112)
 - 294. Ibid, p 25 (doc A65(k), p L131)
 - **295.** Ibid, p 26 (doc A65(k), p L132)
 - **296.** Ibid, p 29 (doc A65(k), p L135)
 - **297.** Ibid, p 43 (doc A65(k), p L138)
 - 298. Ibid, p 28 (doc A65(k), p L134)
 - **299.** Ibid, pp 50–51 (doc A65(k), pp L143–144)
 - **300.** Ibid, p 2 (doc A65(k), p L109)
- **301.** Ibid, pp 5–6 (doc A65(k), p L112–113)
- **302.** Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', report commissioned by CFRT, September 2004 (doc A65), pp 640–641

- **303.** Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey', report commissioned by CLO, October 2004 (doc A77), pp 139, 143–144
- **304.** 'Notes of Native Meetings', AJHR, 1885, G-1, pp1-29, 41-66 (doc A65(k), ppL108-159)
- **305.** Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey', report commissioned by CLO, October 2004 (doc A77), pp 139–145
 - 306. Ibid, pp 148-154
- **307.** Vincent O'Malley, Agents of Autonomy: Maori Committees in the Nineteenth Century (Wellington: Huia, 1998), pp 202–204
 - **308.** Ibid, pp 203-204
- **309.** 'Report of the Native Land Laws Committee', AJHR, 1891, sess 2, G-1, p xvi (as quoted in Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), p 204)
- **310.** Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 245
 - 311. Ibid, pp 244-245
- 312. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 124–125
 - 313. 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2
 - 314. Ibid. The speeches of the Rotorua representatives are on p 19
 - **315.** Ibid, p 3
 - **316.** Ibid, pp 4-5
 - **317.** Ibid, p 5
- **318.** Ibid, p 6
- 319. Ibid, p10
- 320. Ibid, p14
- 321. Ibid, p 12
- **322.** Ibid, pp 12-13
- **323.** Ibid, p 14
- 324. Ibid, pp 15, 16
- 325. Ibid, p 19
- 326. Ibid, pp 10-19
- 327. Ibid, p 18
- **328.** We have no view on the particulars of this Committee or the prospecting issue, which are not matters for us to determine.
 - 329. 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2, p 15
 - 330. Ibid, p17
 - 331. Native Land Administration Act 1886
 - **332.** Ibid
 - 333. J Ballance, 8 June 1886, NZPD, 1886, vol 54, p 328
- 334. Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), pp322–337; 'Important Native Meeting at Aramoho', Wanganui Herald, 27 March, 29 March 1886; and 'Native Meeting at Aramoho', Wanganui Chronicle, 29 March 1886
 - 335. Wanganui Herald, 27 March 1886, p 2

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF COMMITTEES AND KOMITI, 1870-1890

```
336. Ibid
```

337. Cathy Marr, 'The Waimarino Purchase Report: The Investigation, Purchase and Creation of Reserves in the Waimarino Block, and Associated Issues', report commissioned by the Waitangi Tribunal, September 2004 (doc E4), p 325

338. Ibid, pp 131-137

339. Ibid, p 336

340. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 112

341. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 50–51 (doc A65(k), p L143–144)

342. Ibid, pp 5-6 (pp L112-113)

343. Ibid, p 2 (p L109)

344. Hardy Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 124–125

345. Ibid, p 125

346. Ibid

CHAPTER 7

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890–1920

With the repeal of the Native Lands Administration Act in 1888, the possibility of block committees and market prices for leasing and selling (via public auction) was replaced once again by 'free trade' in individual interests. Maori throughout the country came together in hui to oppose this backward step, meeting from the late 1880s through to 1892, when the Kotahitanga movement and a formal Maori Paremata (Parliament) were established. Central North Island Maori were strong supporters of this movement, which captured many of their aspirations for autonomy, self-government, and full management of their lands and destinies. Kathryn Rose and Bruce Stirling describe their support and involvement in the movement. The only dissentients in our inquiry district appear to have been Ngati Wahiao, whom Ms Rose notes sought to emphasise their loyalty to the Government and their dissent from Kotahitanga.² Eastern Kaingaroa claimants, suggests Mr Stirling, were at first more interested in the setting up of the Urewera District Native Reserve, although Urewera tribes became fully involved in Kotahitanga from the mid-1890s.3

From 1892 to 1902, tribes from the Rotorua, Taupo, and Kaingaroa districts sent representatives to the Maori Paremata, seeking:

- ▶ the abolition of the Native Land Court;
- ▶ its replacement by Maori committees;
- ▶ total and independent self-management of their lands and resources through block and district committees;

- local self-government through district committees;
 and
- ► central self-government through a Parliament to act either independently (directly responsible to the Queen in London) or in association with the settler Parliament.⁴

In response, governments returned to Ballance's principles of 1885 and 1886, creating provisions for incorporations in 1894, consulting Maori and the Paremata in the mid-to-late 1890s, and finally enacting the Maori Councils legislation of 1900. What was possible, as opposed to impracticable, can be seen in the Urewera District Native Reserve Act in 1896, which (for some Kaingaroa Maori) replaced the Native Land Court with Maori-controlled commissions, and provided for self-government and self-management through block and district committees.

The political force of Kotahitanga compelled concessions from the Liberal Government, and there were promising opportunities for Treaty-compliant policies. Richard Seddon spoke of extending the Urewera District Native Reserve Act provisions to other districts. Liberal policies, however, repeated both the promise and the flaws of Ballance's 1880s approach, which appears to have been duplicated by Seddon in the 1890s. Maori won an apparent victory in the years 1898 to 1900, with an end to Crown purchasing of Maori land, the establishment of Maori land councils to manage lands and decide titles, and of Maori Councils to carry out limited local government functions.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

Soon after Kotahitanga dissolved itself, however, there was a rapid reversal of policy in the years 1905 to 1913. The potentially Treaty-compliant system of 1900 was abandoned before it barely got started.

As in previous chapters, the key question for the Tribunal's consideration is:

► Did the Crown miss (or actively reject) opportunities and requests to give effect to its Treaty guarantees of Maori autonomy and self-government?

As background for this discussion, we provide a brief summary here of each of the alleged lost (or rejected) opportunities for the Crown to have given effect to the Treaty in this period.

CROWN OPPORTUNITIES TO GIVE EFFECT TO TREATY GUARANTEES

What were the opportunities for the Crown to have given effect to its Treaty guarantees of autonomy and self-government?

- ► The Constitution Act 1852: Section 71 of this Act empowered the Governor to declare self-governing Native Districts in which Maori law and authority would apply and have the force of British law. This provision was never used, but it continued to be requested by Maori in the 1890s.
- ▶ The Kingitanga: After a series of hui in the North Island, the Waikato Tainui leader Te Wherowhero was raised up as King Potatau I in 1858. Ngati Tuwharetoa and Ngati Raukawa were founding tribes of the Kingitanga and had a complex relationship with the King and other Kingitanga iwi for the remainder of the century. The question of whether the Kingitanga could be recognised, accorded legal powers, and included in the political arrangements of the State, was under active consideration throughout the nineteenth century.



Map 7.1: Kotahitanga Parliament sittings

► The Kotahitanga movement of the 1890s: Maori wanted major reforms of the native land laws, a Maori-controlled process for determining title instead of the Native Land Court, local Maori self-government, and a Maori Parliament in conjunction with the settler Parliament. A self-convened Maori Parliament (Paremata), in which the Central North Island tribes were well represented, met from 1892 to 1902.

In response to this powerful political movement, the Crown made some concessions:

- provisions for block (not tribal) incorporations (1894);
- the Urewera District Native Reserve Act (1896), which purported to give the Urewera tribes a

HE MAUNGA RONGO

general committee and a Maori-controlled commission to decide titles (instead of the Native Land Court);

- the taihoa policy a temporary halt to Crown purchase of land;
- Maori land councils with a majority of Maori members (some elected) and a Pakeha president to lease land voluntarily vested in the councils (1900);
- introduction of Maori bodies into the titledetermination process (1900); and
- Maori councils to provide some legally enforceable powers of local government to Maori communities (1900).
- ▶ The Maori Councils: The Maori Councils Act 1900 provided an opportunity for Maori self-government at both a local and a central level. The yearly General Conferences of the councils were supposed to be a replacement for the Kotahitanga Paremata at a national, central government level. They were discontinued, however, from 1911. At a local level, the councils appear to have faded by the second decade of the twentieth century. Native Ministers and Maori members of Parliament of the time agreed that the councils failed because they had insufficient powers and were starved of funding.

Having provided this brief background to the alleged lost opportunities, we turn now to address the parties' submissions on these issues.

The claimants' case

In the prioritising of issues and material for closing submission, the parties paid brief attention to the issues of Kotahitanga, autonomy, and land (self-) management in the 1890s. Karen Feint argued that Tuwharetoa were at a low point 'demographically, psychologically, and socially', having lost control of their lands through the Tauponuiatia hearings. Rather than giving up, the tribe supported the Kotahitanga movement as a response to the continuing erosion of their efforts to exercise mana over their land, resources, and taonga. Tureiti Te Heuheu was a leader of the 'Home Rule' group, which sought autonomy (separate law-making powers for a Maori parliament), while others sought to reform Pakeha laws.⁵

As with the Rohe Potae compact, the Crown made enough limited concessions to undermine Maori opposition from 1898 to 1900, but stopped short of what Maori were really seeking. The Maori Lands Administration Act and Maori Councils Act of 1900 provided for some of the aspirations of Kotahitanga, but failed to provide either a separate Paremata or real power. Tureiti Te Heuheu took a strong stand on the Treaty of Waitangi and its guarantees to Maori, but the Crown did not provide a Treaty-compliant response.⁶

In terms of legislative remedies provided by the Crown, Michael Sharp and Jolene Patuawa have assessed the incorporation provisions of the Native Land Court Act 1894, and also the Maori land legislation of 1900 to 1909, in their generic submission on land issues. Annette Sykes and Jason Pou have assessed the Maori Councils Act 1900 in their generic submission on political engagement. Mr Sharp and Ms Patuawa argue that the 1894 Act provided an incorporation mechanism tailored to facilitate the alienation of Maori land. As a result, there was only one year in which Central North Island Maori used the provision (1898), to alienate several thousand hectares of Kaingaroa land. Otherwise, no incorporations were created under the 1894 Act.⁷

The reforms of 1900 were, in the claimants' view, based on the 1899 legislation that brought a halt to new Crown purchases of land. In response to Maori pressure, the Seddon Government returned to the idea of boards that would lease land on behalf of Maori owners. Maori opposed the possibility that such boards would be European-controlled. The 1900 Act, however, while allowing for Maori representation, kept the land councils controlled by Pakeha. The land councils set up under the Act had majority Pakeha membership, and Central North Island Maori did not support them, only vesting a very small amount of land. By 1905, the legislation had failed because, in the evidence of

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

Vincent O'Malley, Maori were reluctant to place their land under the control of a European-dominated administrative structure.⁸

Mr Sharp and Ms Patuawa argue that another weakness of the 1900 legislation was that it kept the Native Land Court, despite earlier proposals that it would be abolished. The papatupu block committees established by the 1900 Act were nonetheless a success, deciding the titles to much more land than was actually vested in the councils. In 1905, the Government dismantled the aspects of the 1900 Act that had tried 'to promote self-governance amongst Maori.9 Partially elected councils were replaced with wholly appointed boards, still with a Pakeha majority. The Crown also resumed purchasing, and moved to introduce compulsion in the vesting of land in the new boards. No account was to be taken of owners' wishes in deciding whether to sell or lease compulsorily vested land. Finally, the Crown returned to direct alienation instead of vesting altogether in 1909, as well as restoring the Native Land Court to full power.10

Ms Sykes and Mr Pou addressed the Maori Councils Act 1900. They argued that Crown-sponsored councils were designed to subordinate Maori authority to that of the Crown. The Te Arawa runanga had been usurped by Grey's New Institutions, the Arawa and Tuwharetoa Committees were broken by the Native Land Court in the 1880s, and the Maori Councils Act of 1900 was part of this same pattern. The Act offered modest powers of 'self-management' in return for Maori leaders accelerating the pace of assimilation. The Crown wanted to try implementing a cultural revolution via Maori leaders instead of imposing it directly. The Act required councils to suppress 'injurious' customs, promote education via native schools, promote changes in health, and supply the kind of information to the Government (such as population statistics) that the old resident magistrates used to do. Councils were empowered to make bylaws to carry out this revolution, and to impose fines. The Prime Minister, Seddon, stated in 1900 that the purpose of the legislation was to make Maori land productive by ending Maori communal life and communal titles.

The main difference between settler politicians was the amount of time they were willing to allow for the process to work. Ultimately, if the councils could not move Maori in this direction, then compulsion would be resorted to. The Crown wanted, in effect, to destroy the whole Maori way of life."

The Crown's case

The Crown argues that there were three streams of Maori political thought in the late nineteenth century: the Kotahitanga movement; the Kingitanga council (Kauhanganui) movement; and the assimilationist aspirations of a small minority of Maori. The goals of these movements were diverse and (in some ways) conflicting. The Crown, therefore, could not easily provide for all Maori aspirations, even were it appropriate to have done so by the standards of the time. The Crown was by no means opposed to Maori meeting at national hui, and it provided a shorthand writer and food for the Orakei Parliament in 1879.12 It had also gone some way to meet the reasonable aspirations of the 1880s, including the Native Committees Act 1883, which was a genuine attempt to engage with Maori concerns by the Crown. But successive governments felt that having separate legislative bodies on ethnic or racial lines would be divisive and risk increasing conflict and tension, rather than addressing it. However such views might be seen today - now, as then, there is a range of opinion - these were deep and genuine views shared by many in nineteenth-century New Zealand society. In these circumstances, it was not realistic or reasonable to expect the Crown to have established a Maori parliament.¹³

In Treaty terms, the Crown argues that article 1 transferred absolute sovereignty to it. The Treaty relationship is between sovereign and subject. Any conception of separate sovereignty or parallel governments does not fit within the Treaty. Article 2, on the other hand, guarantees more than just ownership of property. It guarantees a 'degree of Maori control and management over what Maori own'. Tino rangatiratanga is not the same thing before and after the

HE MAUNGA RONGO

Treaty – chiefly control over people to the extent of executions or waging war was ended, for example. But it is more than just control and authority over property – elements of 'self-management of non-material resources (people and culture)' were protected by the Treaty. How much self-management is consistent with the Treaty, and how this changes over time, are proper matters for debate in the Crown's view. A Maori 'parliament', however, was never going to be appropriate.

At the same time, the Crown argues that:

- ▶ it ought to have provided mechanisms for collective management of Maori land by Maori communities;
- ▶ it finally did so in 1894, by empowering the Native Land Court to create Maori incorporations;
- ▶ there was official recognition that Maori collectives should play a greater role in title determination processes as far back as 1872, and there was ongoing Maori agitation for it throughout the period; and
- ▶ local self-government like that envisaged in the Native Councils Bill of 1872 or the Native Committees Act 1883 was appropriate, but the difficulty for the Crown was in how to translate these things into bureaucratic institutions that would work in practice. Despite this recognition, and the reality of the 1883 Committees Act, successive governments considered separate legislative bodies on ethnic lines to be divisive and dangerous.¹⁵

In terms of its legislative solutions to these issues, the Crown submits that the Native Land Court Act 1894 provided for incorporations, which were a mechanism for Maori to manage their land collectively. The Tribunal's historians, Nicholas Bayley, Adam Heinz, and Leanne Boulton, suggest that the Act only allowed for incorporation as a way to facilitate land alienation. The Crown argues that these historians overlooked the regulations published under the Act in 1895, which allowed incorporations to borrow money for land development, among other things. From 1894, therefore, the Crown argues that there was a proper mechanism available for the collective governance of land. It was not widely used in the Central North Island,

however, until the twentieth century. The Crown makes no submission about why this provision of the 1894 Act was not used.¹⁶

The consultation of the late 1890s, and the resultant 1900 legislation – the Maori Land Administration Act and the Maori Councils Act – has not been the subject of submission by the Crown. It offers no comment on how far or why the Government met Maori views, the significance of the mechanisms created in these 1900 Acts, or the significance of dismantling them from 1905 to 1909.

The Tribunal's analysis

Neither the claimants nor the Crown have covered in their submissions all the issues of Kotahitanga and political engagement for the 1890s, but the evidence in front of the Tribunal is sufficient for us to identify and make findings on the key generic issues for the Central North Island. The Kotahitanga 'home rule' movement was an outgrowth of Maori aspirations of the 1880s, influenced in a small way by the Irish question, but was very much a continuation of the attempts to retain and then regain autonomy from the 1860s to the 1880s. Many of the same options were canvassed and remained available to the Crown as before, with models of institutional, community, and domestic-nation autonomy available throughout Europe, North America, and the Empire.

As we noted in chapter 3, this was the decade in which British courts recognised a divided sovereignty in the Pacific islands. It was also the decade of the second Irish Home Rule Bill, which passed the House of Commons in 1894, but was defeated in the House of Lords. We examine the New Zealand Liberal Government's attitudes to Home Rule, as one of the key contexts for Maori aspirations to self-government at a national level. We also explore Liberal concessions to the Kotahitanga movement, including the provision for Maori land incorporations in 1894, consultation on draft bills in the late 1890s, and the Maori land councils and Maori Councils set up in 1900.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

We return to our key question as the basis for our analysis.

MISSED OR REJECTED OPPORTUNITIES FOR MAORI AUTONOMY

KEY QUESTION: DID THE CROWN MISS (OR ACTIVELY REJECT)
OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY
GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT
IN THIS ERA OF KOTAHITANGA AND THE COUNCILS?

The first option: Native Districts under the Constitution Act

Section 71 of the Constitution Act 1852 remained a live issue for Maori in the 1890s. It was one of the starting points of Kotahitanga - that the Act provided for fundamental rights under the Treaty. At its first formal hui at Waitangi in April 1892, attended by representatives from Rotorua, Taupo, and Kaingaroa, Maori leaders discussed the source of authority for them to form their own parliament. They agreed that authority for Kotahitanga and a Maori parliament arose from the 1835 Declaration of Independence, the Treaty of Waitangi, and section 71 of the Constitution Act. Having failed to obtain actual authority from either the British or New Zealand Governments in the 1880s, Maori proceeded to act as if in fact authorised under section 71 in the 1890s. This was their assertion of their tino rangatiratanga in the face of the Government's refusal to carry out section 71. The formation of a Maori parliament, covering both 'Native' and settled districts, was an adaptation of tino rangatiratanga and of the principles of section 71 to the new circumstances of the 1890s.¹⁷

Maori leaders continued to seek the cooperation and authorisation of governments (both British and New Zealand). Thus, Hone Heke brought the Kotahitanga's Native Rights Bill to the New Zealand Parliament, explaining in 1894 that Maori should have 'the sole right of enacting laws for themselves. There was not the slightest doubt

that the intention of section 71 of the Constitution Act of 1852 was to give them that right.' This was, he argued, the opportunity for the Government to carry out the spirit of the Constitution Act.18 Carroll replied for the Government that the spirit of the Act was embodied in the Maori seats, and the power they gave to represent Maori views and interests within the New Zealand Parliament. 19 Throughout the debates of the 1890s, Maori continued to assert that section 71 should be carried out, by according legislative powers to the Maori Parliament. When accused in 1898 of advocating two different systems of law for Maori and Europeans, Te Heuheu replied that he was not doing so - two systems had already been created by the Treaty of Waitangi and the Constitution Act. What was required, he argued, was to give honest effect to these fundamental embodiments of Maori rights.20

FM Brookfield points out that the Queen could still have set apart Native Districts, if advised to do so by her New Zealand ministers.²¹ The complete independence of Maori districts from the New Zealand Parliament was practically impossible, however, in the political context of the 1890s. Section 71 was no longer the real option it had been earlier. It required adaptation to new circumstances. The true answer to the dilemmas facing the Crown and Maori lay in other options by this time. Maori saw this clearly. In 1894, Kotahitanga introduced their Federated Maori Assembly Empowering Bill into the New Zealand Parliament. Its purpose, as Hoani Whatahoro explained, was for 'the authority of the law to administer Maori land and of Section 71 of the Constitution of 1852 to be given to the Maori people themselves.'²²

The second option: Native Districts and runanga under the 1858 legislation

The Government finally closed off this option in 1891, with the passage of the Repeal Act. This statute repealed a multitude of Imperial, national, and provincial legislation that was considered inoperative or redundant. The Native Districts Regulation Act 1858 and the Native Circuit

HE MAUNGA RONGO

Courts Act 1858 were both repealed. Nonetheless, the power to provide Maori local self-government through the Districts Regulation Act remained for parts of the Central North Island, as it had been incorporated in its entirety in the Thermal Springs Districts Act 1881.²³ It was still possible for the Crown to give legislative and administrative powers to Maori runanga in those parts of the Rotorua and Taupo districts proclaimed under this Act. As in the 1880s, however, the Government chose not to do so. This plan of Fenton's and Rolleston's was quietly dropped. The Government retained the technical power to declare Native Districts until 1908, when this section of the Thermal Springs Districts Act was repealed.²⁴

The third and fifth options: Maori empowerment at the central government level, and legal powers for state runanga (Maori committees)

These options were the key ones available to the Crown in the 1890s. Having lost the battle to get more Maori seats in the settler Parliament, Central North Island Maori turned to another strand of their struggle for autonomy from the 1860s to the 1880s: a Maori national assembly to legislate for Maori in things Maori. As we have noted, the Crown argued in its submissions that this form of 'separatism' was never possible in the political context of the colony at the time, and it was not reasonable to have expected the Crown to meet this 'aspiration' in the circumstances of the time. We consider this argument in depth here, because it was the lynchpin of the Crown's case; if it fails, then the claims are well-founded in Treaty terms.

What was reasonable in the circumstances of the time? Parallels with Irish Home Rule were obvious and made at the time. How, asked some members of Parliament, could the New Zealand Government condemn Irish coercion Bills, having passed its own coercion legislation in Taranaki?²⁵ The idea of nationhood in New Zealand was hotly debated. Some considered that the Irish in New Zealand would eventually give up their separate school system and assimilate to the majority.²⁶ Others, such as

Ballance's Wanganui Herald, pointed out that Germans, Scots, and the Irish retained their 'national patriotism' in a melting pot like the United States, and that such national identity was 'one of the strongest guarantees of a good citizen.27 Irish Home Rule, and the many models of autonomy available throughout the world at the time, were widely discussed in Britain and New Zealand. Many politicians, especially Ballance and the Liberals, supported selfgovernment for Ireland in the 1880s and 1890s. They also debated self-government for Pacific islands such as Fiji, Imperial federation, the appropriateness of a 'provincial' parliament for Ireland alongside continued participation in a federal British Parliament, the entitlement of British subjects to local self-government, and other such ideas.²⁸ In Britain, there was a fairly broad consensus that, no matter what, the Irish must at least be provided with institutions of local self-government.²⁹ The language of Irish Home Rule, so acceptable to New Zealand governments in the 1890s, was adopted by Maori and thrown back in the faces of settler politicians.³⁰

Although many viewpoints were expressed, we may take this 1887 pronouncement by the Prime Minister, Sir Robert Stout, as typical of majority Liberal thinking of the time:

Honourable members in this House know that years ago I expressed the opinion that the way to obtain good government in Ireland and true loyalty among the Irish people was to give them some form of self-government such as we ourselves at present possess... No one can look at the Irish question without feeling vexed, and ashamed, and annoyed: vexed that any portion of the British Empire should be in such a state that it should be considered that the people are not to be trusted to govern themselves; ashamed that the people cannot even be trusted to vindicate the law, and that the trial of those who have offended against the law is proposed to be changed to a different country; annoyed that what seems to outsiders a way out of the difficulty [Home Rule] should not have been chosen by English statesmen before this. In fact, if they had given to Ireland, at the time of the disestablishment of the Irish Church [1869], a form of Home Rule I believe that Ireland

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

would have been just as contented with that Government as this or any other colony is... I think Ireland has been misgoverned, and that if the English people were wise they would see it to be their duty to give the power of self-government to Ireland... I hope this House will show sympathy with the Irish nation and with those people in England, and especially in Scotland, who desire to see the Irish nation obtain some form of local government. I do not think that would inflict any injury on the British nation...³¹

What New Zealand politicians could conceptualise for Ireland, getting 'annoyed' when English statesmen failed to adopt obvious solutions, applied equally in their own backyard. It is no accident that Maori adopted the language of Home Rule to express their aspirations to Pakeha in the 1890s. Ballance had already assured Central North Island Maori that they were entitled to 'large powers of selfgovernment' under the Treaty; 'that is the meaning of the Treaty.32 But his Government had failed to deliver on his promises in the 1880s. It remained to be seen whether the Liberals could make good on Maori Treaty rights to selfgovernment and autonomy in the 1890s. And in the meantime, while Maori continuously asked for powers to decide their own titles to their lands through their committees, the Native Land Court continued to provide the only legal means of dealing with tribal lands throughout the decade. More and more land passed through the system. It was not too late for significant parts of Taupo and Rotorua as at 1891, but it was certainly so by the time of the Maori 'victory' of 1900. The failure, year by year in the 1890s, to provide Central North Island Maori with meaningful selfgovernment and powers of self-management, was a decisive turning point for the claimants in our inquiry.

The Crown is correct that there were divisions and divergences in what Maori sought from it. Even so, a remarkable degree of unity was achieved by Kotahitanga, and many of its bottom-line aspirations were common to all Maori movements of the 1890s. When the Young Maori Party allied itself with the moderates in the Kotahitanga, the only real difference between the aspirations of all parties was

a matter of degree. Fundamentally, Kotahitanga and the Kingitanga both wanted the self-government that Ballance had promised them in the 1880s. They wanted Maori titles to be determined by Maori committees and not the Native Land Court. They also wanted a national Maori body to make laws for Maori lands and resources, and local committees to govern Maori communities. They called this 'home rule'.³³ It applied to a distinct people living under their own customs and laws, rather than a separate geographical territory or 'state' such as Ireland. But that does not excuse New Zealand politicians from granting Home Rule to Maori, on the same basis as they advocated it for Ireland.

In response to the Kotahitanga's Native Rights Bill, Dr Newman stated in Parliament: 'Home Rule might be a fair claim in Ireland or Norway, but it was idle to talk of giving it to a mere handful of Natives scattered about in all directions.'³⁴ A separate territorial state was not, however, a conceptual requirement for Home Rule. The Government's Maori Councils Bill of 1900 stated that:

reiterated applications have been made by the Maori inhabitants of those parts of the colony where the Maoris are more or less domiciled and settled, forming what is known as Maori centres and surroundings, for the establishment within those districts of some simple machinery of local self-government, by means of which such Maori inhabitants may be enabled to frame for themselves such rules and regulations on matters of local concernment or relating to their social economy as may appear best adapted to their own special wants...³⁵

We can see no reason of logic, principle, or theory, either at the time or now, that would preclude a national tier of law-making for the land and internal affairs of 'districts' so defined, reflective of a distinct people living on their own lands, centred around their own kainga and marae. As Wi Pere put it, while there was Maori land left in New Zealand, then Home Rule meant Maori making their own laws about their own lands. His fear was that the Kotahitanga Bill calling 'for authority will not be granted, and perhaps for up to 30 years – like the Irish seeking home rule for

HE MAUNGA RONGO

themselves. . . this Bill will not be granted until all the land has been given up, because then there will be no place to apply it.³⁶

Kotahitanga sought a national Maori body to provide institutional autonomy at a central level, in conjunction with district bodies to provide institutional autonomy at a community level, and block committees to provide communities of owners with collective authority over their lands and other taonga. In essence, it was very similar to the demands of the 1870s and 1880s. What was different was the degree to which Maori had united behind a single institution – their self-constituted parliament – and the degree to which the Government felt it necessary to compromise so as to defuse and defeat this unprecedented political combination.

The greatest debate within Kotahitanga was over whether a Maori 'parliament' should be equal with the settler Parliament and answerable to the Queen alone, or whether it should draft laws to be enacted by the New Zealand Parliament. The failure of successive governments to give Maori fair and equal representation in the settler Parliament remained a burning issue for both sides. The Crown argues that a separate Maori parliament of either type was impossible. But its submissions do not address the systematic exclusion of Maori from representation in local and central government at the time, or the willingness to provide a separate court, separate land laws, and a host of other distinct Maori arrangements. Also, the Crown was prepared to set up a national Native Lands Board to purchase Maori land, and all kinds of specialised boards and authorities. The difference here was that they would not permit a Maori-elected body to make the rules about Maori land. It was as simple – and devastating – as that.

Kotahitanga Maori were willing to dispense with the name of 'parliament', so that need not have been a sticking point. Te Heuheu, for example, thought it could be called by the innocuous name of 'board':

what I understand by such a board is a federation of the 37,000 people of whom I spoke [who had signed the Kotahitanga

petition], for whom the board should act, who should frame the laws under which the land is to be surveyed and subdivided, and provide the necessities of those persons who are without land, while at the same time it would provide the means by which those who possess land might have their interests conserved.³⁷

As a conceptualisation of Home Rule for Maori, this was entirely practicable. The very existence of a Maori parliament, meeting year by year for a decade, ought to have proved by the end of that decade that it would not in fact cause racial division or disharmony. Further, Ballance's submission of his draft lands Bill at the national Waipatu hui in 1886, and Seddon's submission of his Bills to the Maori Paremata in 1898 and 1900, indicates that the Crown could and did work with such meetings of representative Maori leaders to make the will of Maori known to the Government. Putting this on a more permanent and official footing would have been no great leap of principle or practice. To have worked, two things were required. First, the Government would have had to give Maori the power to shape legislation in a motive and meaningful way. There were many points of compromise possible between the parties, but (at a minimum) real power would have had to be shared over Maori land, its development, and its 'closer settlement'. Secondly, a basis had to be agreed for dealing with matters of overlap between Maori 'internal affairs' and those of the settler communities. This would have meant both sides working at and giving meaningful expression to the Treaty principle of partnership.

In this context, it seems clear that the more 'extreme' views in Kotahitanga were not feasible politically. A Maori parliament with independent authority, with its legislation submitted directly to the Queen or Governor for the royal assent, was never going to be acceptable to settler politicians. The political reality was that the British Government could do nothing, and that Maori who sought to exercise their tino rangatiratanga on a national level could only do so in partnership with the (settler-controlled) Crown. As Mr Stirling put it, there was:

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

an apparent contradiction in seeking independence, while calling on the institution from which you wish to gain independence to authorise it, but that is the conundrum confronting those who seek change through peaceful means.³⁸

Yet full independence from the New Zealand Government was not required by the Treaty. Rather, meaningful power-sharing at a central level, with a partnership between the Crown and the duly constituted representatives of Maori, was incumbent on both parties to the Treaty. This was exactly what the great majority of Central North Island Maori sought through Kotahitanga. It was a cardinal opportunity for the Crown to have acted consistently with the Treaty, and the movement's fundamental goals were clearly deliverable at the time. In 1895 and 1896, having rejected the Kotahitanga Bills seeking legislative authority for a national Maori body, Parliament passed the Urewera District Native Reserve Act. We make no findings on how that Act worked in practice, but it appeared on paper to give the Urewera tribes local self-government through hapu block committees and a district-wide General Committee, the power to manage their own lands collectively through those committees, and a special Maori-controlled commission to decide land titles instead of the Native Land Court.39

Such a measure for the Central North Island tribes would have gone a long way towards meeting their Kotahitanga aspirations. Reviewing the parliamentary debates surrounding this Act in 1896, we note in particular the statements of the Prime Minister, Seddon, setting a standard by which we assess what was conceivable and practicable in the circumstances:

I am satisfied that there are exceptional circumstances in connection with the Tuhoe, and that those circumstances are favourable to the attempt being made, as provided by this Bill, to give them, in respect to the several matters mentioned in this Bill, self-government. In my opinion, the greatest evil that overtook the Natives arose from the fact that they were essentially a people governing themselves. They have

governed themselves for ages, and yet by our coming here, and by our civilisation, we took away from them all control and administration of their own affairs. They have not had any responsibilities cast on them, and the changed circumstances have been such that they - a people who are essentially a self-governing and self-contained people - where our civilisation has overtaken them, have been set aside, and this fact of having no responsibility and no government, in my opinion, has helped to destroy the former favourable attributes of the Native race. The Natives have from time to time come to respective Governments and respective Parliaments and said, 'Give us something to do; allow us to have some responsibility; allow us to take some part in the work of colonisation.' What is asked for by this Bill is not at all unknown; it has been pressed upon Parliament time after time. As far back as 1883 an attempt was made - Mr. Bryce being then Native Minister - to give the Maoris some responsibility, something in the way of having committees of management, especially in respect of Native affairs. But they were not looked upon as being trustworthy, and there were surrounding circumstances which debarred Parliament at that time from giving effect to what was proposed. However, the longer the experience I have had with the Natives the more forcibly it has come to my mind that we ought, at all events, to try what the result will be... of allowing them to elect Committees, and giving the Committees power to deal with their affairs as mentioned in this Bill ... 40

I never was so gratified at anything that has arisen as at seeing a prospect under this Bill – and under what has been done – of preserving a large slice of country, which is essentially a Native country, to the Natives, keeping them clear as far as we possibly can, of the dark side of our civilisation, and having positive proof, as I think we shall have if this Bill becomes law, that they are able to look after themselves, and to manage their own affairs in such a way as will reflect credit upon themselves and upon the Parliament that has granted them the powers which, I say, they ask for, and which, in my opinion, they are entitled to receive. An honourable member representing the Native race said this afternoon that if this is granted to the Tuhoe Natives it will be asked for by the

HE MAUNGA RONGO



Sir Richard Seddon, Prime Minister of New Zealand from 1893 to 1906.

Natives in other parts of the colony. If it proves a success with the Natives in the Urewera Country, then, I say, by all means grant the request alluded to. At the Native meetings – which they call Parliaments – we know they discuss measures which affect their race, and, after reading the reports of the discussions which take place at those meetings, I can assure honourable members that I am not saying anything at all discreditable to the European members of this House if I tell them that in respect of some of the measures discussed they can and do show us the way. . . as I have said, the Natives have been asking for a long time for more power to be given them. Let us give them that power. And by granting that concession I have no hesitation in saying that it will give us the opportunity of

seeing how far they are able to manage their own affairs, and in so doing promote the well-being of the race.⁴¹

A Prime Minister thinking in these terms was perfectly capable of keeping the Treaty in the nineteenth and early twentieth centuries. It remained to be seen whether and how far these sentiments – based as they were on a knowledge of the long history behind Maori efforts to govern themselves and their lands – would be translated into action.

As we have noted, the Rotorua, Taupo, and Kaingaroa tribes were strong supporters of Kotahitanga and its goals. In the evidence of Dr Ballara, the Kahui Wananga o Te Arawa ('the great learned assembly of Te Arawa') took the lead in the confederation's 1891 petition, Te Karoro Tipihau. The petition was first planned at a meeting of Te Arawa churches in 1888. It was signed by 4988 Maori in 1889 and 1890, and was presented to Queen Victoria through the Governor in 1891. It sought a representative council to be elected by Maori, which would make policy and law for the approval of the Queen and the New Zealand Parliament. If 'found productive of peace and good order', then the Crown and Parliament would be expected to 'give final effect' to the council's measures. There was no intention to:

separate the two races, but rather that the members of the Native race may become still more united under you our Queen; as your Majesty has already concluded with us a glorious bond of union in the Treaty of Waitangi, the terms of which, however, have not been given full effect to by the different Governments of New Zealand. This has filled the minds of your Maori people with misgiving lest the conditions embodied in that treaty should be altogether lost sight of. It is therefore on that account that your Maori people are steadfastly looking to you to afford them relief.⁴³

The Rotorua petitioners stressed that this was not seeking a separate or territorial state, but a council for Maori wherever they lived – those living among settlers 'being still more burdened by the laws.'44 This was a fairly typical request for 'home rule' from the Central North Island,

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920



Bust of Queen Victoria, Te
Papaiouru Marae, Ohinemutu,
Rotorua, circa 1908. In 1891, Te
Arawa took their aspirations for
autonomy under the Treaty to
the Queen, no doubt mindful
of this bust, presented to them
in 1870, and housed under a
carved and painted canopy at Te
Papaiouru Marae. Photograph by
Thomas Pringle.

envisaging a Maori body to decide things Maori but in partnership with the Queen and the settler Parliament, and not conceptualised as (or limited to) any territorial 'state within a state'.

In March 1894, the Kahui Wananga o Te Arawa called a huge hui at Otawa near Te Puke to discuss issues like the Native Land Court and taxation. The hui decided that Te Arawa should boycott the court and also parliamentary elections. One of their goals was for rates to be used by the Kahui, not the Government, for its people's benefit. The Kahui would also replace the courts, administer all Maori land, and become the institutional expression of Rotorua autonomy. This was an attempt to set up an 'all-powerful authority to administer all the affairs of Te Arawa'. Maori self-government, therefore, was envisaged at two levels, the central (a council for all Maori) and the regional (a council for Te Arawa). Petera Te Pukuatua, a very prominent Ngati Whakaue rangatira, was its tumuaki in 1895, when it hosted the Kotahitanga Parliament at Rotorua. At that

sitting, the whole of Te Arawa adopted the Kotahitanga's objectives as their own.⁴⁵

In the Taupo district, Te Heuheu became a leader of the Home Rule 'party', seeking full legislative powers for a Maori assembly rather than the submission of legislation to the settler Parliament for approval. In the late 1890s, however, he came to support compromise with the Government, so long as it delivered fundamental power for Maori to control their own lands and destinies. In 1898, he made a statement that looked back to the reforms of the 1880s, but was also remarkably prescient about Seddon's 1900 legislation:

The cry of the Maori has been that they should be allowed to make the law themselves under the rights conferred upon them by the Treaty of Waitangi, but the Crown holds on to all these privileges, and refuses to surrender them, and only gives little trifling concessions to the natives. From then up to the present, the government has continued to act in the

HE MAUNGA RONGO

same way towards the Maori. So now all we say is this: You people have had control and disposal of these lands for a long time, and you have proved that you cannot use them for our benefit; they have slipped away from us continually. Give us the control ourselves; we ought to be considered.⁴⁶

The key point which prevented the Crown accepting a national Maori body to draft laws (or regulations) for Maori lands was not that it was inconceivable, impracticable, or unreasonable by the standards of the time. Rather, it came down to economic self-interest. Settlers considered they had an equal or predominant interest in Maori lands, that those lands must in fact be transferred to them, and that ultimate power over them must be retained by the settler Government. (These points emerge very clearly in the parliamentary debates and other documentation of the time.) This was the reason why Home Rule was acceptable for the Irish but not for Maori.

Statement to the Waitangi Tribunal on behalf of Ngati Tuwharetoa

We have come to the conclusion of our hearings both here in Turangi and Taupo.

While this has been a moving and sometimes painful process, it was important for us to appear before the Tribunal to share the memories and the knowledge of our koroua, kuia and kaikorero.

This has been a story of how our whanau and hapu have challenged and fought against the overwhelming force of a Crown imposed regime that was oblivious to the unique values and attributes that were the mainstay of our survival and our identity as Ngati Tuwharetoa.

We have heard stories from all our various hapu and whanau. Each story has breathed 'life' into the wairua of our tupuna. We have heard how they all faced Crown adversity with dignity and pride and we have marvelled at their resourcefulness and endurance.

My singular concern in continuing this claim of my late father Sir Hepi, is to ensure the protection and maintenance of the mauri of our Tuwharetoatanga. This is the enduring legacy of my forebears.

HEREARA who forewarned us of the threat of colonialism

MANANUI who rejected Kawanatanga because it defiled our tikanga and mana ariki

IWIKAU who fought for unity so that we could control our own destiny

HORONUKU who stood up for justice and consolidated our mana whenua

TUREITI who witnessed the erosion of our mana and challenged the Crown to return our self-autonomy and self-respect

HOANI who pursued justice through the Crown's highest constitutional and legislative institutions

AND MY LATE FATHER HEPI who challenged the Crown to return our taonga and our rights to our taonga

So this has not been a personal choice for me. This has been a legacy, an inherent duty thrust upon me by my forebears.

I am reassured that this is not my legacy alone nor is it my journey alone. The involvement of Tuwharetoa at these hearings has demonstrated a simple and irrefutable fact – this is an inherent duty for all Ngati Tuwharetoa. It is derived from our tupuna **NGATOROIRANGI** and handed down to us all by way of our rarangi tupuna to the present day and forever into the future.

Tumu Te Heuheu, 6 May 2005 (doc E53)

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

Crown reforms of the 1890s in response to Kotahitanga – were they sufficient?

In 1891, the Native Land Laws Commission condemned:

- the principle of individualisation as both unnecessary and in breach of the Treaty; and
- ▶ the Native Land Acts (including the 1880s legislation discussed above)

It recommended various reforms.

Had something been done at that point, within parameters consulted and agreed with Maori, much Maori land in the Rotorua and Taupo inquiry districts could well have been preserved and developed by the tangata whenua. It was already too late for Kaingaroa, although not perhaps in terms of managing the small land base that remained in that district. Nonetheless, the Government was impressed with the political strength and unity of Maori, and had to make some concessions to their wishes. This, as we noted in chapter 3, was a powerful constraint on the Crown in this period. Ms Feint submitted that the Crown did just enough to get Kotahitanga to disband, but fell short of providing Maori with their real aim - power at the central government level. It follows from our discussion above that we must accept this submission. The Government, while prepared in practice to submit legislation to the Paremata for discussion and amendment, was not prepared to give it official recognition, or any official role or powers. This failure to provide for institutional autonomy at the central level - in circumstances where Maori sought it and the Crown could readily have met their wishes - is a serious breach of Treaty principles. Ultimately, refusal to share power in this way was a betrayal of the principles of partnership and Maori autonomy. But it does not follow from this that the Crown's other concessions were meaningless or ineffective.

Incorporations under the Native Land Court Act 1894

In response to the political pressure of Maori and the fundamental reasonableness of collective land management for Maori communities, Parliament returned to many of Ballance's 1886 principles in 1894. The case for collective management of tribal lands had been before Parliament for decades. In 1884, for example, W L Rees put the situation very clearly:

a very gross act of cruelty and bad faith as well as folly was perpetrated by us when we compelled the Natives to hold their lands as individuals. The Treaty of Waitangi assured them of 'all of their rights in their lands'. The chief right of all was the right of tribal ownership – but a tribe of 500 persons is totally different from 500 distinct and opposing claimants. It is the tribe which owns the land, and it is the tribe which, in justice, ought to have sole power to use it or deal with it.⁴⁷

The Native Land Court Act 1894 provided for Maori block owners to be incorporated by the Native Land Court. The details of this Act will be considered in later chapters. Here, we note briefly that the Act provided for the collective management of Maori land by elected committees, equivalent to Ballance's block committees of 1886. The principal activity authorised under the Act was to alienate land. From the evidence available to us, there appear to have been two possibilities: incorporations could lease or sell land in a manner to be prescribed by regulation, so long as they had the consent of the commissioner of Crown lands; or they could hand their land over to district (settler) land boards, on which Maori had no representation, to sell or lease it as if it were Crown land.⁴⁸

It appears to have been the Government's intention to give control to these boards, which was explained in terms of active protection:

But all these things [dealing with property by incorporation and committees] must be done through the Land Board . . . and that will protect the Natives, and prevent injustice from being done. 49

The legislation stated that the legal estate was vested in the Crown from the point at which the land board got involved, and it is not clear to us whether owners could repudiate the results of the board's auctions. Before alienation, the Government could impose conditions by Order

HE MAUNGA RONGO

in Council, or forbid alienation if the owners did not have enough other land for their support. As far as we are aware, there was only one incorporation created in our inquiry district under the Native Land Court Act 1894, and it did not hand its land to the board for alienation. Kaingaroa owners of the Pohokura block incorporated to facilitate the sale of about 40,000 acres to the Crown. All the Government had to do was use section 126 of the Act to issue an Order in Council, stating that the terms of its deed with the owners were the terms and conditions under which this land could be alienated. We think it likely that, other than for Crown purchases that could be covered by such tailored Orders in Council, the Government intended incorporations to use the boards.

Under the 1886 Act, owners could partition their land or dissolve the committee if they did not agree with what it proposed. In the 1894 Act, owners were not given any express power or recourse vis-à-vis the committee at all (although this was later provided by regulation). After the land was leased or sold, any money was to be paid to the hated Public Trustee for distribution to owners, or for any other use prescribed by the Governor in Council. The owners or committee played no role whatsoever in applying or deciding how to apply the proceeds of their land. This point alone militated against widespread adoption of these incorporations in the Central North Island in this period (see chapter 11).⁵³

The ability to manage land collectively by incorporations under the 1894 Act, therefore, had the same flaws condemned by Maori in 1886, but with even fewer of their requested changes. Fundamentally, Maori wanted their lands managed by committees at two levels – at the immediate block level, and at a wider (hapu or iwi) 'district' level. If a Government commissioner or board was to auction their land, then they wanted officials to act jointly with Maori committees, and they wanted their own committees to manage the proceeds. Most of all, they feared and distrusted Pakeha boards and the Public Trustee. They also wanted to be able to manage their lands per se, and not be able to act collectively only to alienate them. Given

these clearly expressed reasons why Maori refused to use the 1886 Act (see chapter 6), it is hardly surprising that the 1894 Act was not used extensively in the Central North Island before 1900.

The Crown submitted that 1895 regulations, which it filed with the Tribunal, clarified and extended the legal powers available to owners and committees, and enabled incorporations to do much more than just alienate their land.⁵⁴ On reviewing these regulations, we agree that they required committees to act in accordance with the directions set down by owners at annual general meetings. They also empowered incorporations to make decisions enabling them to farm or develop the lands, and the Public Trustee to borrow money for development. Unfortunately, they also enabled the Crown to buy undivided individual interests as before, bypassing the committee and the incorporation altogether. The role and powers of the Public Trustee were extended by the regulations. In terms of leasing, the regulations required the agreement of the Minister, Public Trustee, and commissioner to any particular lease. Leasing had to be by tender or public auction, to follow the same rules for Crown land, to give all the powers of the lessor over to the Public Trustee after the lease was signed, and to have all proceeds administered by the trustee and spent for purposes prescribed by the Government. Selling land was easier - with the consent of the commissioner, it could be on any terms agreed by the parties. The proceeds, however, still went to the Public Trustee to be spent on purposes and in a manner set down by the Government, not owners.⁵⁵ As Ballance had noted in 1886, use of the Public Trustee was a deal breaker for Maori.

The Tribunal's findings on incorporations under the Native Land Court Act 1894

We agree that these regulations provided for additional activities and responsibilities, especially development for farming. Potentially, they allowed for collective management of retained land by a community of 'owners'. The heavy and controlling role of the Government, however,

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

and especially the Public Trustee, accounts in part for Central North Island Maori not actually choosing to use it. They were seeking full control of their own lands by block and district committees, the replacement of the Native Land Court by committees, and full regulatory powers for a national Maori body. In those circumstances, the incorporation provisions of the 1894 Act were so deficient as to render them useless as a vehicle for the collective tribal management of tribal lands. We do not accept the Crown's suggestion that this Act met its Treaty obligation in the 1890s to provide collective management mechanisms.

detail of consultation from 1899 to 1900, the promises and undertakings of the Prime Minister and the Native Minister at those hui, nor the extent to which the substance of the 1900 legislation reflected what Maori had requested during this consultation, or what the Government had promised them. In the absence of such evidence, we are not able to make findings on how the 1900 legislation reflected on the Crown's Treaty duty to consult. We do note that there was a Treaty-consistent attempt to consult Maori generally, and also through their chosen representatives, the Kotahitanga Paremata.

Seddon's legislative proposals for reform, 1897–1900

From 1897 to 1899, the Seddon Government consulted the Kotahitanga leaders and negotiated the package of 1900 Acts which led at last to the enactment of fundamental reforms (similar to those recommended in 1891), and also facilitated the end of the Maori parliaments. By 1900, however, it was largely too late in terms of empowering Maori to carry out initial title investigations – most Maori land in the Central North Island inquiry region had already been adjudicated by the Native Land Court.

In 1899, however, the Crown did stop its decade-long campaign of very aggressive Maori land purchase, and agreed to the idea that Maori would make land available to settlers through leasing. The result of consultation with, and compromise with (and within) Kotahitanga was two key pieces of legislation. First, the Maori Lands Administration Act provided a new system of joint Crown-Maori management and leasing of Maori land. Secondly, the Maori Councils Act provided bodies for local Maori self-government. As part of the latter Act, there was provision for Maori to assemble and have policy input at a national level, at proposed general conferences of the district councils.⁵⁶ It seemed, therefore, that the key aspirations of Kotahitanga had been met, and this view was sold successfully to Maori leaders by a combination of settler and Maori politicians, especially Seddon himself, assisted by Carroll and Ngata.⁵⁷ We do not have evidence on the

Maori land councils as possible vehicles of autonomy and self-management

In the next section of this chapter, we will consider the Maori Councils as a vehicle for local self-government, and General Conferences as a means for Maori input to central government. Here, we concentrate on the provisions for Maori self-management of land and resources in the Maori Lands Administration Act 1900, which provided:

- ▶ Maori land councils with a majority of Maori members (mostly elected), which would manage the alienation of Maori land in conjunction with the Crown, and perform some of the functions of the Native Land Court; and
- ▶ block committees elected by owners to vest land in these councils, to direct the councils to either lease or sell it, and to carry out some of the functions of the Native Land Court.

This Act gave Maori much of what they had been seeking since the failure of the Native Councils Bills in the early 1870s – 30 years late, but still of much potential use to Central North Island Maori. The cardinal principle of the reforms was the virtual relegation of the Native Land Court to an appeal authority. Maori 'claiming to be the owners' of land could elect a committee to investigate its title, allocate it between whanau, and individualise it within whanau. The block committee's report would then be confirmed (or investigated in the case of disputes) by the land council.

HE MAUNGA RONGO

This district council consisted of a Pakeha president, two to three appointed members (one of whom had to be Maori), and two to three elected Maori members. It was to exercise all the powers of the court, including title investigation (or confirmation of the block committees' reports), partitioning, and successions. A final appeal to the Native Appellate Court was still allowed.⁵⁸ The real question was whether this type of council, covering a much wider area than tribal districts, and with a strong Government component, would provide sufficiently meaningful Maori representation and be acceptable to Maori as a body for title investigation, partitioning, and successions.

Also, Donald Loveridge notes a fundamental uncertainty in the new law – the chief judge had to agree in each case to the council exercising its jurisdiction, and the circumstances in which he would or would not do so were not specified in the legislation. The Native Land Court continued as a parallel institution with, in the words of John Salmond, 'concurrent and discordant powers and duties in respect of the same matters'.⁵⁹

In terms of land self-management, the councils could now exercise the Native Land Court's incorporation powers, as provided for in the 1894 Act (which has been discussed above). Now, however, the incorporation committees would work to the councils instead of commissioners of Crown lands and the Public Trustee. The councils would lease or sell land (as instructed), and could borrow money from the Government for development. If Maori chose not to incorporate, all owners had to meet and agree to vest land in the council. Unlike the later 1909 provisions, there had to be a genuine majority of owners voting for the decision to vest their land in the council, and directing the council how to deal with it.⁶⁰

These provisions – as with the ones replacing the Native Land Court – were compromises between Kotahitanga's demand that Maori committees have full and total power and responsibility for title investigation and land management, and the Government's desire to control both processes. That desire arose in part from the active protection of Maori interests – as was clearly stated in Parliament in

the 1890s – and in part to ensure the protection of settler 'interests' in Maori land. It remained to be seen whether the degree of Government control – significantly less than in 1886 and 1894 – would facilitate or stifle Maori self-management. This lay at the heart of Maori fears about handing over their lands to any kind of Government-influenced (and likely, controlled) body. Te Heuheu and other Kotahitanga leaders petitioned about it in 1898, fearing that the proposed land boards would be 'absolutely controlled by the government, which will probably exercise its powers of control rather for the advantage of settlement in general than for the advantage of the Maori owners'. This was and would always be 'contrary to the letter and spirit of the Treaty of Waitangi, and to the rights of the natives as British subjects.'61

We will address this Act further in chapter 11, where we consider its significance to Maori titles and land administration in more depth. Here, we are concerned solely with the extent to which the Act replaced the Native Land Court, provided a means for collective Maori decision-making about community assets, and enabled Maori communities to lease land and accumulate capital for development. Dr Loveridge argues that the Act took a while to get off the ground, but that by 1905, Maori were starting to gain confidence in it and to vest their lands for leasing. Almost no land was vested in the Rotorua district, but, as we will see in chapter 11, some was vested in the Taupo–Maniapoto district (we have no information on whether it was Taupo or Maniapoto land). 62

Placed alongside 'what seemed to be the exciting "home rule" development of the Maori Councils, it [the land council system] was deemed to be progress along a route towards rangatiratanga. It 'seemed' to meet some requirements for Maori self-management of their lands. Historians have interpreted it positively as a measure that gave 'real autonomy' for Maori control over their own lands, the ability to preserve them, capitalise, and develop them. But while Maori now operated the processes of investigation and decision-making, they could be overridden by the Crown and its agencies. In Richard Hill's view,

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

Maori feared that this was simply another means for the Crown to take their lands, so there was initial reluctance to place land under what was essentially a government body on which they were represented. This defeated the councils' potential to be 'self-determinationist mechanisms'. But the potential was there, so some groups observed them for a while and then moved towards opting in. Dr Hill argues that the councils did not start out as vehicles of autonomy but that Maori began to consider that they *could be*. Whatever the difficulties, Kotahitanga had negotiated a system in which the Native Land Court's power was significantly modified, and in which Maori could retain some control over their lands. ⁶⁴

But the settler Government was not satisfied with the rate of vesting, and dismantled the legislation from 1905 to 1907. The councils were turned into boards in 1905, with one nominated Maori member and no elected Maori representatives, and were controlled instead by Pakeha appointed by the Government. The Crown resumed active purchasing of interests. In 1909, the whole idea of vesting land in the boards was abandoned in favour of resuming direct purchase, and the Native Land Court was restored to full power over Maori land. The victory of 1900 was swept away. Maori land boards retained administrative powers but by 1913 they had become the Native Land Court in another name, consisting of the local judge and court registrar. 65 In Dr Hill's view, these changes disempowered what there was of Maori authority in controlling and administering land. Pretences that these mechanisms were to provide a degree of Maori self-government were abandoned. 'Land had remained the base for most of the [Maori] autonomy aspirations at the turn of the century, but 'even the small degree of jurisdiction granted in 1900 to Maori to control its rate and mode of disposition had quickly disappeared.66

Dr Loveridge's analysis supports this view, and he argues that (unlike the 1886 Act, which Maori did not support) Maori were starting to use the 1900 legislation and it was not *their* disuse of it that led to its dismantling. ⁶⁷ Kotahitanga had won an apparent victory for Maori self-

management of land from 1899 to 1904, but it was very short-lived indeed.

The Tribunal's findings

What were Central North Island Maori entitled to under the Treaty?

Under articles 2 and 3 of the Treaty of Waitangi, and the principles of partnership, autonomy, and equity, Maori were entitled to self-government, in whatever form chosen by their duly constituted representatives, and agreed with the Crown. We have already discussed the long history of Central North Island Maori seeking to assert their tino rangatiratanga in this way, through:

- ▶ the Kohimarama Conference (and the petition for it to become regular);
- ▶ the runanga and komiti movement of the 1870s and 1880s;
- ▶ petitions and appeals for proportionate representation in the New Zealand Parliament;
- ▶ the Kingitanga;
- ▶ appeals to the Queen and the New Zealand Government for a national Maori assembly in the 1880s; and
- ► Kotahitanga and the Kingitanga in the 1890s.

From time to time, the Government had made concessions. Throughout the period, Maori rights to govern themselves through their own komiti or runanga were recognised, experimented with, and occasionally legislated for. But komiti and runanga were not provided with proper legal powers. At the national level, Governor Gore Browne promised to reassemble the chiefs for national consultation at Kohimarama, and the settler Assembly voted funds for it. Ballance rejected a 'separate' parliament or assembly for Maori but promised to consult and act at the will of the people. He agreed with Ngati Whakaue that this could involve an (informal) national Maori body. He consulted such a hui at Waipatu in 1886. Similarly, the Liberals of the 1890s rejected the name of 'parliament' but submitted draft legislation to the Paremata for consultation, and agreed in

HE MAUNGA RONGO

1900 to delegates from the Maori Councils having a consultative general conference at a national level.

Underlying these concessions, we think, was some degree of recognition of Maori rights to self-government. We have discussed the extent to which Europeans would not settle for just local self-government in chapter 3. Many settler politicians recognised that Maori were entitled to at least this level of power. The actual granting of local selfgovernment to Maori - as to the Irish, and even to the New Zealand settlers in the 1840s - was seen in the 1890s as a panacea that might defuse requests for empowerment at the central level. Under article 3 of the Treaty, Maori were entitled to equal self-government with their settler fellow citizens. Constant recourse in the 1880s and 1890s to an explanation that the four Maori seats in Parliament (and the 1883 District Committees) were a sufficient provision for this right, was clearly untrue in the circumstances of the time and the principles of the Treaty.

The principle of partnership arises from the reciprocity in the Treaty, whereby Maori agreed to the Queen's kawanatanga in return for the recognition and active protection of their tino rangatiratanga. The principle of autonomy arises from the full expression of that tino rangatiratanga. Wherever Maori have genuine autonomy, including selfgovernment and control of their social and economic destinies, then the Treaty is being carried out. Finally, the principle of equity arises from the promise in article 3 of the rights and privileges of British citizenship. This principle does not require that laws be the same for settler and Maori, but rather that they be equal. This was expressed variously by Maori and Pakeha in the nineteenth century. In 1877, the national Omahu hui called for 'equal laws' for the races, which would, in their view, mean an annual national komiti for Maori, and proportional representation of both races in Parliament. ⁶⁹ In 1882, John Sheehan told Parliament:

It had been said over and over again that the Natives should have equal laws, an equal voice in Parliament, and proper treatment by the Europeans; and it had been rejoined, 'Yes – while they are strong enough to demand it.'⁷⁰

The question was: were Maori strong enough to insist on it in the 1890s, and would the settler Parliament agree to equal rights of self-government for Maori?

Under the plain meaning and the principles of the Treaty, Maori were entitled to legal powers of self-government. This must necessarily have included the exclusive power to define their own membership, and manage their own lands and resources. These key incidents of self-government were recognised at the time, and given effect for the Queen's Pakeha citizens. Maori, however, were denied the fundamental rights of self-government from 1840 to 1900, with prejudicial effects for the ability of Central North Island hapu and iwi to manage their resources or control their destinies according to their cultural preferences and best interests. To give effect to the Treaty principles of partnership, autonomy, and equity, the Crown and duly constituted Maori leaders and representatives should have discussed and agreed the manner and institutional form in which Maori were to have equal powers, rights, and privileges to those of settlers, and the ways in which kawanatanga and tino rangatiratanga would be given effect. Opportunities existed for such discussion and agreement throughout the nineteenth century, none more so perhaps than with Kotahitanga in the 1890s. We turn now to our findings on whether this opportunity was taken.

The Tribunal's findings on the third and fifth options

We find that:

- ▶ The Crown's failure to act on the findings of the 1891 Native Land Laws Commission, while there was still time for it to have made a significant difference in the Central North Island inquiry district, was a critical missed opportunity. While the Tribunal does not consider that the recommendations of that commission were *necessarily* sufficient or appropriate remedies, a crucial decade was lost before something similar was tried in 1900.
- ► For Maori to seek 'home rule' and a national body to make laws or regulations for their own lands and resources was entirely consistent with the Crown's

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

- kawanatanga, and compliant with the Treaty guarantee of their tino rangatiratanga. The willingness of many to compromise with the Government was also in the spirit of the Treaty.
- ▶ The Kotahitanga movement was a positive development, easily compatible with loyalty to the Queen, the rule of law, Maori self-management, and 'closer settlement' (by settlers and Maori) through the leasing or development of the remaining Maori land base. When Maori set up their own elected body self-funded and with an elaborate electoral system, rules, and a very large degree of popular support - the Crown should have worked with it, encouraged it, and empowered it. Seddon's submission of his draft legislation to the Paremata shows the correct attitude, and an approach that could easily have become permanent and institutionalised. The title of 'parliament' need not have been a sticking point, given the Maori willingness to use another title, to seek legislative authority from the New Zealand Parliament, and to work with the Government if possible. The Crown's failure here was another critical missed opportunity. The Crown's submission about separatism, in respect of this particular movement, misses the point and also the political context of how Maori affairs were administered at the time. In failing to incorporate Kotahitanga into the machinery of the State, and share power with Maori in a meaningful way at the central level, the Crown acted in serious breach of the principles of the Treaty.
- ▶ In failing to, at the very least, make the same degree of self-determination available to Central North Island Maori that it made available to Urewera Maori (regardless of how that turned out in the end), the Crown acted in breach of the Treaty.
- ▶ In failing to meet any of the Kotahitanga aspirations until as late as 1900, the Crown compounded its earlier breaches of the Treaty in respect of Maori self-government and autonomy, with compounding prejudicial effects for Central North Island Maori.

- The 1894 provision for incorporations was not a sufficient or appropriate means of meeting the Crown's Treaty obligations. Given the stated Maori objectives of the time, and their particular fear and distrust of the Public Trustee, this ought to have been obvious to the Liberal Government.
- ▶ The Crown's 1900 land reforms, as negotiated with Maori leaderships through the Kotahitanga parliament, were broadly consistent with the Treaty. It was a serious Treaty breach, however, when they were dismantled so soon after 1900, restoring effective Pakeha and Government control of Maori land, the full powers of the Native Land Court, and Crown purchasing of Maori land and of individual interests. This dismantling of much that Maori had been seeking since 1870, without giving it a real chance to work, and in combination with the resumption of active purchasing, was a very serious breach of Treaty principles. The disempowering of Central North Island Maori so soon after their potential empowering in 1900 had serious consequences for their social and economic destinies in the twentieth century.
- ▶ Above all else, the Crown rejected one of the most important and crucial opportunities for Treaty partnership in the history of this country. Kotahitanga (and Kingitanga) leaders were willing to make compromises, to act in partnership with the settler Parliament, but to do so from a basis of mana Maori motuhake. The opportunity to institutionalise Maori autonomy at the central level, to provide meaningful power and partnership between Maori and settler leaders, was a unique one. Maori themselves created the machinery. Year after year, they elected their representatives and sent them (with plenty of relatives to observe and keep them honest) to deliberate and express the Maori will - tino rangatiratanga - to the people of New Zealand. In response, there was a failure of vision and of aroha, and a triumph of settler self-interest, that subverted and defeated this Maori endeavour. We consider this to be a very serious

HE MAUNGA RONGO

breach of Treaty principles, with enormous prejudice for Central North Island Maori.

The fourth option: inclusion of the Kingitanga in the machinery of the State

The Kingitanga did not disappear, as many settlers hoped, with the end of the aukati, the intrusion of the Native Land Court, and the death of King Tawhiao. By the 1890s, the aspirations of all North Island tribes were so closely aligned that Hone Heke used King Tawhiao's petition of 1884, and his 1886 correspondence with Ballance, as primary articulations of Kotahitanga's goals. 71 In the mid-1890s, Kotahitanga leaders made overtures to the Kingitanga, which started sending representatives to the Maori Parliament. The two movements, however, remained separate in a formal sense and pursued their goals on a parallel path. In 1898, a major divergence of views developed between the Kotahitanga 'moderates', who sought to amend Seddon's draft legislation and settle for something less than an independent parliament, and those who wanted to keep pushing for full legislative powers.⁷² Te Heuheu was a leader of the latter group, which included Tuwharetoa, Ngati Raukawa, and Te Arawa.⁷³

At the same time, the Kingitanga submitted Bills to the New Zealand Parliament similar to Heke's earlier ones, to establish a national Kaunihera (council) to manage Maori affairs, with committees to replace the Native Land Court and provide Maori local self-government. The Kaunihera was to be elected, with some members also nominated by the King. Before the 'split' of 1898, this was in fact considered by some a Kotahitanga Bill and supported as such in 1897, as well as in 1898. Te Heuheu and Ngati Tuwharetoa petitioned in support of the Kingitanga Bill in that year.⁷⁴ Addressing the Native Affairs Committee, the ariki explained that the meaning and purpose of the Kingitanga was, and had always been, identical to that of Kotahitanga. Both movements would accept a national Maori body to manage their own internal affairs, if the Government could be brought to empower one. 75 Mr Stirling argues that the split in Kotahitanga has been exaggerated, and points as well to the Taupo support of Kingitanga initiatives in the 1890s, and the links and common goals between Kotahitanga and the Kingitanga. His evidence on these points is useful, but further research is required before we can be sure of the exact relationship between the movements. We accept the Crown's submission that many tribes did not want to come 'under' the King, but the Kotahitanga support of the Kingitanga Bill in 1897 to 1898 suggests that compromise and even union between the movements was possible.

There was argument and debate from 1898 to 1899, with Taupo and other Kingitanga increasingly coming in to support the moderate Kotahitanga position in 1899. And finally in 1900 there was unity: Kingitanga, Home Rule Kotahitanga, and 'moderate' Kotahitanga agreed that the proposed legislation (the Land Administration Bill and Maori Councils Bill) was the best that could be obtained.⁷⁷

The Tribunal's findings on the fourth option

What was the Crown's Treaty obligation to those of its Maori citizens who continued to entrust their destinies to the Kingitanga? We think the evidence of the 1890s is that the Kingitanga remained a vital political force, capable of working with Kotahitanga and reconciling many of its fundamental goals with that movement. The constitutional rights provided for in section 71 required adaptation in the circumstances of the time. If some among Kotahitanga were, as Mr Stirling shows, willing to support a council involving a formal role for the King, then this was a vital opportunity for the Crown to have facilitated the political empowerment of, and peaceful relations between, its Maori citizens. Further evidence would be required before we could be certain of the point.

Formal recognition of the King and his council probably required regional rather than national arrangements. Relationships were complex, but it does appear that there was an enormous potential for common action. Maori were trying to govern themselves voluntarily on a national basis in the 1890s. What divided people most, according to Te Heuheu, was not knowing which way the Crown

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

would jump. Once some form of national 'board', 'council', 'runanga' or whatever was endorsed by the Government, he argued that both Kingitanga and Kotahitanga would come in behind it – only Te Whiti and Tohu's people would remain outside. This was the opportunity articulated to the Crown by Te Heuheu and other Kotahitanga leaders.⁷⁸ It was, in our view, a unique opportunity with potential for great benefit to Maori and the people of New Zealand. The Crown's failure to act on it was unreasonable in the circumstances, and inconsistent with the principles of the Treaty.

We turn now to the question of whether the Maori Councils set up in 1900 gave effect to the Crown's Treaty guarantees of autonomy and self-government.

MAORI COUNCILS AND THE TREATY GUARANTEE OF AUTONOMY

DID THE MAORI COUNCILS GIVE EFFECT TO THE CROWN'S TREATY GUARANTEES OF AUTONOMY AND SELF-GOVERNMENT?

The Seddon Government passed the Maori Councils Act in 1900. It was drafted jointly by the Government and representatives of the Paremata and the 'Young Maori Party'. It had the potential to empower Maori local self-government after a delay of 60 years, and to provide a meaningful voice in central government through its annual conferences. The Government persuaded the Kotahitanga movement to disband on the strength of it.

We did not receive specific historical evidence on the Act or how it operated in our inquiry districts in the twentieth century. It is of such critical importance to the claims, however, that we have relied on published historical accounts to reach preliminary conclusions. In particular, we have consulted the parliamentary debates and the recent historical analyses of Ranginui Walker, Richard Hill, and Raeburn Lange. Their work has enabled us to draw conclusions at a generic level, but we note the absence of evidence on the particulars of our inquiry districts. Also, the Crown has

not made submissions on the relevant issues. Our findings, therefore, are constrained by the limited evidence on the one hand, and by the limited positions taken by the parties on the other. Having relied on evidence not presented formally to the Tribunal, we summarise it relatively fully in the next sections.

The historical arguments of Richard Hill

Dr Hill, citing Dr Ballara, observes:

Just as the search for autonomy by Maori had been fundamental to Maoridom in the nineteenth century, it remained at the heart of Maori aspirations in the twentieth. For decade after decade, 'Maori people in each district constantly endeavoured to find ways to control their own affairs, proclaim their group identity whether as tribe or hapu, and enrich their lives; they aimed at enhancing the mana of the hapu in their inner affairs, and sometimes that of the tribe as they looked outward, striving to control their land and membership and take their affairs out of the hands of government.'⁷⁹

The Young Maori Party and the Maori Councils Act

According to Dr Hill, a new generation of Pakeha-educated Maori leaders believed that full tribally based autonomy was no longer the answer. They mediated between the Crown and Kotahitanga, obtaining compromises that 'were deemed to be measures of self-government'. In 1900, the Crown made 'what seemed to be' two significant concessions to autonomy – legislating for Maori organisations of land management and self-government. Dr Hill points out that the timing is significant – most Pakeha still wanted assimilation and believed Maori were dying out, but the concessions were in fact compelled by pressure from Kotahitanga and its semi-ally, the Kingitanga. ⁸¹

Dr Hill's interpretation of the Young Maori Party is that educated leaders willing to cooperate with the State can often achieve the most in terms of real gains for their people, and be the most subtle at undermining the settler majority's domination. He disagrees that they were

HE MAUNGA RONGO

supporters of assimilation, wanting rather to combine the best of Pakeha 'civilisation' with the best of Maori culture, thereby saving Maori as a people and race. Well aware of Pakeha military and political power, the 'party' leaders were pragmatists who accepted that they should work within the boundaries of settlement and Pakeha politics. But their pragmatism also led them to work within the parameters of Maori tribal politics as well, despite their rhetoric about primitive tribal isolation. Ngata, their most influential leader, was particularly skilled at working with tribal leaders, and in economic terms his land policies were in effect a form of separate development for Maori communities. Maori would learn from and, in the words of Te Rangihiroa, bring 'his equal contribution to the partnership with the Pakeha'.

The Young Maori Party called for race pride, race consciousness, self-respect, and self-reorganisation. Setting tensions about 'tribalism' aside, there was sufficient common ground for it to work with Kotahitanga. Even more importantly, the Government needed Maori leaders as intermediaries to defuse the political pressure and strength of Kotahitanga and the Kingitanga. The result was the 1900 Acts, which were portrayed at the time, and have sometimes been interpreted since, as 'large concessions' to the Maori demand for self-government. Dr Hill does not accept this interpretation. He argues, rather, that the Government was worried about the apparent mass Maori support for Kotahitanga, and wanted some kind of safety valve.⁸⁴

Through Carroll – who rejected autonomy but wanted Maori to retain some customs and land – the Government turned to 'moderate' Maori for advice. This advice came in the context of nineteenth-century Crown willingness, 'however desultory', to use native committees. Ngata, Heke, and Tureiti Te Heuheu, for example, came to the view that such committees were a more attainable solution than a Maori parliament. The Young Maori Party supported calls for Maori local self-government and for Maori to control their own lands. It took this (with the rest of its agenda) to many hui and sought the support of 'traditional leaders'.

Many Maori were suspicious of this watering down of Kotahitanga's goals, but others came to accept it. At the same time, Carroll and the Young Maori Party influenced the Government to accept that limited self-government and land management committees might be controllable enough (and cheap enough) to work.⁸⁵

By 1898 the Prime Minister, Seddon, was willing, as Dr Hill puts it, to universalise the principles underpinning the Urewera legislation. Full assimilation was the aim, but it would be slowed or even suspended in political and land matters, though encouraged via health measures that would undermine aspects of contemporary Maori communal living and lifestyles. On the other side, the Ohinemutu Parliament in 1900 appointed a subcommittee to draft a Bill for the new committees, chaired by Heke and assisted by Ngata. The Parliament endorsed the Bill, thereby rescinding its former minimum demand for a standing national Maori representative body. The suggested institutions drew on nineteenth-century experiments – the 1860s official runanga, the native committees of the 1880s, and also Maori unofficial komiti. The committees would be supervised by the Crown, so that made them palatable to the Government. The result was the Maori Councils Act 1900.⁸⁶

The results of the Maori Councils Act

Dr Hill argues that 'on the surface the legislation provided for devolved local government powers which approached those of boroughs and town boards'. But the councils were to be 'heavily constrained and guided' by the Crown. Dr Hill's examples of this are the model bylaws prepared by the Young Maori Party for the councils to rubberstamp, the appointment of an organising inspector (Ngata) and later sanitary inspectors, and the appointment of a Pakeha superintendent. On the other hand, Dr Hill notes Maori agency and emphasises that the councils were supposed to do at least one meaningful thing in the eyes of the Government – health reform – and they were designedly to draw on Maori tribal energies at a flax-roots level to do so. The Crown accepted that the councils would 'broadly

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

reflect tribal configurations and operate accordingly, while Maori considered that the councils marked a break from the exclusion of Maori from New Zealand political processes. Dr Hill considers this to be an achievement for Maori, but also a deliberate design on the part of the Government to appropriate Maori aspirations and steer them into safe channels.⁸⁹

The third option: from Maori Parliaments to General Conferences

Part of this strategy included the necessity of having a national Maori body – but a safe one instead of the Maori Parliaments. The 1900 Act therefore allowed for general conferences of Maori Council representatives, but it was not to have any powers – Dr Hill calls it an anodyne solution. With this in place, the Government pressed for Kotahitanga to disband, a message preached by Carroll and Ngata in 1902 at the joint Kotahitanga–Maori Councils meeting at Waiomatatini. The decision to merge with the Maori Council general conferences marked the end of the political threat, as the Crown saw it. Dr Hill argues that while the conferences were 'an occasional pan-tribal forum of some value, they did not represent any significant advance for autonomy'.

The fifth option: local self-government at district and kainga levels

At first, the Maori Councils and komiti marae did 'reflect and give effect to some of the aspirations of iwi, hapu and whanau.'91 Maori tried to reappropriate them – that is, to use them for unintended purposes with unintended powers. Also, Maori broadly shared some aims with the Government, especially meaningful health reform. Maori often experimented with whatever could be extracted from the Crown instead of boycotting it in the twentieth century.

But Dr Hill rejects strenuously the idea that Maori ability to get some use and advantage from the system in its early days made it a genuine compromise between Crown and Maori, giving some official recognition of rangatiratanga. This was not an opportunity that was lost because

the Crown had the will or potential to meet some key Maori aspirations but failed in execution. The Maori aspirations for autonomy and partnership were 'mostly' on the Maori side alone, and the Crown never really intended to allow Maori autonomy or anything short of full assimilation, whatever appearances might have been in the late 1890s and early 1900s. In support of this, Dr Hill stresses the determined Maori land grab of the Liberals which was, he argues, their real purpose and intention. Ngata backed the system as the only way to get any devolved power for Maori at all, but feared that, by its very nature, it 'doomed Maori self-government'. Even so, Dr Hill concedes a certain amount of what he calls flexible realism to the Crown, in setting up a system that could in fact, even if in limited ways, be used by and acceptable to Maori at all.⁹²

In exploring this paradigm, Dr Hill suggests that the Crown was determined to centralise and control the councils via the Native Department, inspectors, and superintendent. But in fact (after Ngata and Gilbert Mair), his evidence shows that the Department took little interest and the means of control were minimal - partly because the system was no longer seen as important by the second decade of the century. In terms of appropriation, some councils tried to control Pakeha living among Maori or doing things which affected Maori communities, and to exercise powers not actually allowed to them. The councils were prevented from doing so. Similarly, when the councils did not act against tohunga in the way expected, the Crown took back control and gave it to the police in 1907. But Maori did gain some benefits, including via health and sanitation reform. The Young Maori Party genuinely believed that the councils, along with greater legal equality, ensured that Maori had a greater degree of actual or potential control over their own destinies.93

The first general conference asked for greater powers. They wanted to regulate Europeans living in Maori kainga, to have the authority to deal with assaults, thefts, and other crimes, and to have full local government powers in wholly Maori areas. Carroll tried to get this extra authority for the councils in 1901 and 1903, but got only a minor increase of

HE MAUNGA RONGO

powers. Because the Government was fearful of the councils and of devolving power to Maori, it kept them so short of powers and resources that they could do neither what they wanted, nor even what the Government wanted in terms of health reform, prohibition, and social control. As a result of their relative powerlessness, Maori enthusiasm waned and only six general conferences were ever held. Ngata resigned in 1904, despairing (says Dr Hill) at the lack of state support. When Mair left in 1907, central administration languished. Pr Hill concludes: Denied meaningful rangatiratanga, the Councils declined; they therefore became of decreasing significance as agencies of government instrumentalism, and were even further starved of funding and authority.

Some councils stopped operating or continued only in name. Marae komiti flourished despite the state of the district bodies in some areas, while in others Maori simply reverted to customary structures untainted by Crown supervision or the unpopularity of the dog tax. Within a few years of their establishment, the resource-starved councils were obviously unable to deal with the concerns of either Maori or the Government. Ngata tried to revive them when he became Native Minister - especially through the conference of 1911 – but did not succeed. 96 But Dr Hill stresses that the Crown's refusal to resource the councils adequately was not the only reason for their collapse. He points out that many Maori organisations not funded by the State have nonetheless been very successful. The councils had no power over land, an essential ingredient of self-government, and the Maori land councils (later boards) had failed to provide any means of autonomy or self-management.⁹⁷ 'In essence,' he concludes,

the Councils languished because their primary purpose was not to effect but to contain, even to restrain, rangatiratanga. Maori who had sought to make use of them in pursuit of autonomy found the state's parameters too constraining to do so effectively.⁹⁸

This was even more the case after 1916, when the Massey Government took away the power of Maori communities to elect the councils, providing instead for them to be appointed by the Crown. This was fatal to any pretence that the councils were vehicles of autonomy. Some survived in various limited ways over the next couple of decades.⁹⁹

The historical arguments of Ranginui Walker

In his biography of Sir Apirana Ngata, Professor Walker argues that the idea of devolving 'municipal type of power' to Maori committees was 'timely, because it was less radical' than a separate Maori Parliament, and therefore could be stomached by the Government. The 1900 legislation 'mollified, but at the same time finessed Kotahitanga and the Kauhanganui'. The Maori Councils Act 'conferred a limited measure of self-government on Maori communities, which tended to be in isolated rural areas away from main centres of Pakeha settlement'. Professor Walker notes, that although Maori communities were able to make 'useful reforms' under the Act, it 'blunted the radical thrust of Kotahitanga and the Kauhanganui for mana motuhake by redirecting Maori energies into tasks paralleling those of local bodies.'

Carroll appointed Ngata Organising Inspector of Maori Councils in 1902. His job was to promote the establishment of councils and assist them with their administration and management of finances. At the outset, the councils identified the 'fundamental weakness' of their empowering legislation, which was the lack of funding to do the work required of them, especially in upgrading marae facilities, sanitation, and improving Maori health. The councils also took seriously their obligation to try to control noxious weeds on Maori land. They debated lots of ways to generate income, including donations, having the dog tax paid by lessees of Maori land come to them instead of Pakeha local bodies, and state revenue for Maori areas not actually serviced by the Pakeha local bodies. But local bodies would not share revenue and the Crown would not give more. This failure on the part of the central government, concludes Walker, was the 'Achilles heel of the councils for the next ten years.102

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

In the meantime, Kotahitanga was losing support. Parliament's rejection of the Native Rights Bill, the failure to complete unification by merging with the Kingitanga and, to an extent, growing discontent at the costs of the enormous hui, had caused it to lose momentum. Walker suggests that it was 'ripe for a takeover bid'. In March 1902, a large combined hui of 1500 leaders from the Maori Councils and Kotahitanga was held at Waiomatatini. Ngata and Wi Pere argued that Kotahitanga should cease because it had achieved what it wanted. The alienation of Maori land had stopped, the Maori land councils and Maori Councils were in place, and these were the embodiment of Kotahitanga's principle of self-government. The councils were watchdogs that would warn Parliament if something was going wrong - there was nothing left for Kotahitanga to do. Ru Rewiti suggested that the Maori Council annual general meeting replace it.103

The Native Minister, Carroll, argued that the Treaty would continue independently of the Kotahitanga o Te Tiriti o Waitangi:

The Treaty will never cease. That is our salvation. We are now joining them together, the adult and the yearling, and uniting them in the kotahitanga of the councils. The people of Kotahitanga have abandoned their treasure, because they are not here. Therefore the only Kotahitanga for you is the General Assembly of the councils. [Emphasis added.] 104

The hui resolved to merge Kotahitanga with the annual general meeting of the councils.

Professor Walker suggests that this decision to replace Kotahitanga with the Maori Councils was 'premature'. Ngata resigned in 1904, symptomatic of a malaise described by Mair. The latter had started out with great enthusiasm but 'discovered a lack of commitment and support from the Government'. He did not even have an office. There was a general conference in 1903, and three more after it. A report from the first conference was tabled in Parliament, but the rest were not even recorded because there was no administrative support. Mair tried to resign in frustration, and the councils 'drifted on with some losing interest and

others struggling to meet the objectives of the Act." In 1906, Mair wrote that much progress had been made in sanitation, dog registration, and temperance without any assistance from the Government 'worthy of the name'. Professor Walker concludes:

This is not what Apirana and Carroll had in mind when they drafted the Maori Councils Act. They were genuine in their belief that the annual general meetings of the Maori Councils would lift the burden from the tribes hosting the large hui of Kotahitanga. Unwittingly they had served the Government's purpose of laying to rest an authentic Maori political movement, in the belief that cooperation with the Government through a statutory body implied a reciprocal relationship of mutual respect and guaranteed support. In the meantime the Councils were left to struggle on unsupervised and without support for the next five years.¹⁰⁷

Ngata's failure to save the councils in 1911

In his capacity as Minister in Charge of Maori Councils, Ngata called a General Conference on 29 August 1911. He could not afford to invite more than one delegate from each of the 21 councils. 'The Government's neglect of the councils,' argues Professor Walker, 'to the point of their becoming almost moribund, was reflected in Ngata's proposal that the first order of business was to draw up reasons for the councils' continuance.' Chief among these was the steady increase of population, reflecting in part the health improvements made in the preceding decade. The conference recommended that the Minister protect the Act and its amendments in the interests of the Maori people.

Funding remained a key constraint. The conference explored most of the options considered back in 1903, when this problem was first identified, including a tenement tax, voluntary contributions from rents, and a tax on stock. But the proposals were no more feasible in 1911 than in 1903. Professor Walker concludes that the decline of the Maori Councils was clearly a result of the Government not funding them adequately. Equally, however, it was also bound up with the Government's determination to maintain

HE MAUNGA RONGO

settler control of Maori institutions. The 1911 conference passed a resolution deploring the replacement of Maori sanitary inspectors with European ones. ¹⁰⁹ According to Professor Walker, Peter Buck and Maui Pomare had seen Maori sanitary inspectors as 'extensions to Maori of their own empowerment within the state to improve Maori health'. ¹¹⁰ The Crown, according to Professor Walker, had now reclaimed that power and reasserted the structural domination of Pakeha over Maori.

Professor Walker concludes:

There is no question that in the first decade of the century, the Maori Councils played an important role in the cultural adaptation of tribes to modernity in isolated rural areas. Although it was likely that the councils became moribund because of Government failure to commit resources to support them, some of their initiatives were not entirely lost. The marae tribal committees maintained what they had started, keeping the marae functioning and in good order. The irony is that the Government let the Maori Councils lapse only to revive them in 1945 under the Maori Social and Economic Advancement Act, when Ngata's political career had ended.¹¹¹

Professor Walker notes that Ngata did his best for the councils in 1911 but failed to get the Government support necessary to empower them as genuine vehicles of autonomy.

The historical arguments of Raeburn Lange

Dr Lange's evidence relates to health reforms, a task for which the Government of the day intended the councils to play a meaningful role. We have already noted the evidence of Dr Hill, that the Crown's intentions in terms of public health were genuine, but stymied by its equal fear of giving Maori real power. Dr Lange notes that proposals for local Maori health boards had been turned down by the Government in the late nineteenth century. '[E] ven health committees might become the thin end of the wedge' for Maori to have real local self-government. But Government opposition had not 'quenched the Maori

desire for the kind of autonomy and revitalised social control that could be achieved by officially recognised local boards and committees. By the late 1890s the force of Maori opinion had brought the government to a realisation that it could not deny these aspirations completely."¹³

Dr Lange suggests that credit for securing eventual agreement to the 1900 Bills goes to Ngata. The Government was prepared to enact 'self-government legislation' (as Dr Lange calls it) because of the particular shape given to it by the Te Aute Association. Although Kotahitanga had set the aims, it was the association's participation that secured Government agreement.¹¹⁴ From the late 1890s, the association had supported the idea of local Maori committees as vehicles for health reform, to capture and preserve existing Maori social control and authority and bring about the kinds of changes necessary. Native Minister Carroll announced at Papawai that the intention was to set up marae committees to control and improve kainga. Both Carroll and Seddon emphasised that the Bill was to have a focus on community health and, as Carroll put it, to "preserve the race as far as can be done".115

The Act itself referred to the intention of conferring a 'Limited Measure of Local Self-Government upon Her Majesty's Subjects of the Maori Race'. But Dr Lange adds that the emphasis on health and welfare was misleading because it allowed the Government to pass an Act 'without too many misgivings' that was in fact much more of a political innovation than it appeared to be. ¹¹⁶ The preamble acknowledged that it:

originated in the 'reiterated applications' of Maori communities for a system that would enable them to frame for themselves such rules and regulations on matters of local concernment or relating to their social economy as may appear best adapted to their own special wants.¹¹⁷

In introducing the Bill, Carroll emphasised that it was an effort to help Maori organise themselves for control of domestic and sanitary matters. Heke said that the Bill had strong Maori support for the dual purpose of putting their informal committees on a proper footing while at the same

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

time promoting better health. Dr Lange concludes that the Bill 'defused' Kotahitanga's campaign because it conceded a 'limited measure' of self-government whilst retaining state control over the new committees. At the same time, the Act was a social welfare measure and also approved by Maori as such. For the Government, it was closely connected to public health legislation and a Crown and public awareness of the need for state action on public health.¹¹⁸

Unlike Dr Hill, Dr Lange suggests that 'wide-ranging responsibilities' were in fact conferred on the councils by the Act. New Zealand was divided into districts administered by councils elected triennially. As well as elected members, there was an official member (Governmentappointed) and an advisory counsellor (a chief). Under the councils, village or marae komiti had the responsibility of acting in each kainga. The councils were to promote the health, welfare, and well-being of their constituents by making bylaws to regulate sanitation, water supplies, alcohol, tohunga, meeting houses, urupa, eel weirs, oyster beds, hawkers, noxious weeds, domestic animals, and registration of births, deaths, and marriages. Finance was to come from the Crown, in the form of government grants and subsidies, and from local revenues - rates, fines, and the dog tax. General conferences would be held to review the system and discuss Maori health generally. Many rangatira and communities had great hopes for how it would all work in practice.119

Did the Government truly empower the councils?

Unlike Dr Hill, Dr Lange emphasises the weakness of Government involvement rather than the heaviness of state control. He notes the appointment of Gilbert Mair as Superintendent of Maori Councils (1903 to 1907), who was supposed to liaise between the councils and the Native Department. Mair was active and toured the North Island periodically, met with councils, and corresponded with them. When he retired in 1907, James Cowan and Maui Pomare were considered as successors but instead it was made one of the responsibilities of the Records Clerk (till 1919). He was much less active in the role, and did not

go out and meet with councils. There was also Ngata's appointment as Organising Inspector, 1902 to 1904, which involved his visiting the councils, advising them, and making sanitary inspections. He was replaced in 1904 by Pirimi Mataiawhea of Rotorua, but his health was poor and he was able to do very little. He was not replaced when he died in 1907. The Young Maori Party tried to get Wi Repa appointed in 1911 but nothing happened.¹²⁰

The councils' patron in Government was Carroll, Native Minister till 1912. Carroll's view was that the prediction of Maori extinction was a mistake, that problems were temporary results of the Maori wars, and that the supposed decline could be stopped by economic self-development assisted by the Government. He believed deeply in the councils 'experiment'. According to Dr Lange, he saw its main aim as a separate Maori system to promote grassroots health reform, to ensure the survival and progress of the Maori race. He travelled around New Zealand explaining the new Act and encouraging the new councils. He told council leaders at their 1908 'congress' that the advent of the Pakeha had caused the Maori canoe to drift, but by the councils they could take the drifting canoe and turn it around to stem the torrent. After his election in 1905, Ngata was also an advocate for the councils in Parliament. In 1909 he took on many of the Native Minister's health responsibilities, and toured all the newly elected councils in that year.121

The key problem, according to Dr Lange, was that neither Carroll nor Ngata could secure for the system:

the practical government backing it needed. In this respect it was handicapped from the start. The appointments of Mair and Ngata were the biggest contributions the government ever made, but both men eventually resigned in disillusionment.¹²²

The only sources of revenue were fines, dog tax, donations, and Government subsidies. The dog tax was very unpopular and hard to collect. There were lots of voluntary donations from enthusiastic Maori in the first few years but this source dried up. Government grants and subsidies (especially to help sanitary works) were tiny, and there were

HE MAUNGA RONGO

no subsidies at all after the first two years. Government money barely covered administration costs and left almost nothing for sanitation works. Even worse, no Government money was provided at all after 1909, except for part of the salary of the clerk who acted as superintendent. This was also stopped from 1913.¹²³

As early as 1902, Ngata thought it 'absurd' to expect the councils to attain their aims with so little support. Pomare emphasised this problem in his official reports from 1902 to 1904. The first General Conference and the Maori members of Parliament also pressed the point. Tame Parata and Heke asked in Parliament why the councils were denied the powers and funds to do their work, and predicted that they would 'come to nothing' with their 'hands tied' in such a way. Dr Lange says that Carroll could never answer the charge of insufficient funding. The Arawa and Horouta councils pointed out the impossibility of obeying Government sanitary injunctions with so small a budget. The General Conferences of 1908 and 1911 considered all sorts of taxes and rates but decided they were impracticable. The superintendent, JB Hackworth, agreed privately that the Government's attitude was very disappointing, but all he could do was urge the councils to try harder to raise voluntary donations.124

Dr Lange concludes that the early achievements of the councils were mainly due to their own efforts. Once their first 'extraordinary enthusiasm' subsided, the lack of Government backing began to tell. Carroll promised in 1908 to do all he could to get money, but warned that only self-reliant and energetic councils would be supported. In 1909, Ngata also emphasised that councils would have to show that they could use money effectively. Dr Lange suggests that both Carroll and Ngata were embarrassed, aware as they were that it was the lack of Government assistance that had produced the inadequacies of which it then complained, and not the other way around. 125

After 1912, under Herries as Native Minister, few if any references were made to the councils or Maori health. The Native Department lost all interest in them. When

Buck took up his position in 1919, he was told that most of the councils only existed in name any more. Dr Lange concludes:

The story of the rise and fall of the Maori Councils in the two decades after 1900 is a sad commentary on the political priorities of the time. The achievements of the councils movement might well have been enormous throughout this period if the enthusiasm of 1900 had been nurtured through the years by generous official finance and support. 126

Most councils became fairly inactive when, despite the advocacy of Ngata, Carroll and others, the Government withdrew its meagre financial support and the guidance and encouragement of its field staff. At the same time, Maori enthusiasm cooled because health reform was the only activity the Government really let them undertake. Dr Lange argues: 'It is true that Maori leaders were disappointed when it became clear that the government was not prepared to grant any local self-government beyond the regulation of local health matters.¹²⁷ But even health reform languished because the Government provided so little support. Te Heuheu recognised this when, in the dark days after the influenza epidemic, he told the Legislative Council that the disastrous Maori death toll would have been much smaller if the councils had been better supported by the Government. 128 This was despite Government statements such as that of Seddon, who told Whanganui Maori in 1902 that the success of the councils delighted him, and vindicated the Government's faith in the ability of Maori communities to govern themselves. Some Pakeha opinion was sceptical – leaving health laws to be administered by 'natives' was 'futile' and the whole idea of Maori self-government was considered by some to be a 'farce', a 'travesty', an 'absurdity'. There was also criticism of the legislation as perpetuating Maori communalism and separation instead of assimilation.129

Even without any official support or funding, some councils survived the First World War and still existed on paper in 1919, when they were put under the Health Department.

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

Buck then tried to revive them with some success in the 1920s, but not as organs of local self-government so much as health agencies. After he departed in 1927, some councils continued to operate until the Second World War, although again without any Government assistance or funding. The Division of Maori Hygiene was abolished in 1930, and after Buck's departure there was no longer any recognition of a need to involve Maori and their leaders in the development and implementation of health policy as it affected them. 130

The operation of the councils in our inquiry districts: the evidence of Tureiti Te Heuheu

As we noted above, there is insufficient evidence available to the Tribunal on how exactly the councils operated in the Central North Island. Nonetheless, we note the views of Tureiti Te Heuheu Tukino, as presented to the Government in the Legislative Council. Three things were of overriding concern to him: first, that the Treaty of Waitangi and the personal relationship between Crown and Maori must be kept; secondly, that Maori and Pakeha had fought and bled together in the First World War, and that Maori soldiers must be resettled on Maori land among their kin and communities; and thirdly, that the Maori Councils had become a dead letter in the 1910s and must be given real power and funding.

In terms of the first point, we note his speech to the Legislative Council in 1918, where he reminded Parliament of the principles of the Treaty, in the language of the day. He described the operation of two forms of mana under the Treaty – that of the British Government, and that of Maori – and of the need to keep the Treaty:

By the second clause of the Treaty of Waitangi, Queen Victoria allowed us the mana which we held as chiefs. First of all, she granted us her protection; secondly, she allowed us the privilege of conducting our own business; thirdly, she granted our mana as chiefs; and, fourthly, she endowed us with the mantle of her protection and graciousness

– kindness. Unfortunately, one or two of our tribes reading this clause 2 of the Treaty of Waitangi took the view that our youths should not go forward to the war – that the Queen of England, or the present King, was to protect them. But clause 3 of the Treaty of Waitangi provides that we shall conduct our own arrangements – 'Her Majesty the Queen extends to you the privileges of being British subjects' – just the same as your British people. In the face of that provision how could any of us, either chiefs or tribes, attempt to keep out of the war.¹³¹

The Treaty retained living form in the twentieth century, in the relationship between Maori and the Crown:

the graciousness of Queen Victoria was not confined to the terms and provisions of the Treaty of Waitangi. She sent along her son, the Duke of Edinburgh, to personally converse with the Maori people. Later, King Edward the Seventh sat on the throne of his ancestors, and he in his turn did not forget his Maori subjects. He sent his son here, the Duke of York, in 1901. The Duke subsequently became our King. But before he became our King he sat with us, ate with us, spoke with us, and enjoyed himself with us. All of these, I want you to understand, are points which we considered before we sent our youths forward to the war. 132

Although the mana of the British Government was guaranteed by the Treaty, Te Heuheu stressed the existence of a Maori nation as at 1918, and asked for a representative of that nation to go as one of the New Zealand envoys to the post-war peace conference.¹³³

Central North Island Maori aspirations, in the view of this great leader, remained as they had always been: keeping the Treaty; partnership with the Crown; and Maori autonomy. In respect of the councils by the 1910s, he told Parliament:

During the Seddon Government the Maori Council Acts were introduced, providing for the sanitation of Maori settlements and dwellinghouses generally; but I am sorry to say

HE MAUNGA RONGO

that during the Massey Government those Acts have been so treated that they are now practically a dead-letter. I say that if those Maori Councils had had the encouragement that they should have had, and, indeed, which they did have prior to the present Government coming into power, the scourge which has just lately passed over the country would not have carried off so many of my Maori people. Had those Maori Councils been encouraged, the mothers and daughters of our people would have been rapidly taught to act as nurses for our Maori patients. I do hope that the Council will support me in my appeal that the full authority of the Maori Councils should be restored to them, so that they will continue the work they have done in the past. I think, also, that those Councils should be supported out of the public funds. I quite approve of the [Public Health Amendment] Bill, and if it is passed, I hope the Maori Councils will be invited to co-operate in the working of the Bill. 134

Tureiti Te Heuheu had served as advisory counsellor of the Tongariro Maori Council, so must have been fully aware of these matters.

THE TRIBUNAL'S PRELIMINARY FINDINGS

The most recent historical scholarship on the councils, as recited above, enables us to make the following preliminary findings.

The third option: empowering Maori at the central government level

The historical evidence seems clear that the General Conferences did not provide a representative national Maori body in replacement of the Paremata. The Government's assurances in this respect, given to the Maori Paremata in 1902, were not honoured. The conferences met regularly from 1902 to 1906, but only twice after that. They had no powers, and only a minimal consultative role. According to the evidence available to the Tribunal, their advice appears

to have gone largely unheeded, even on the relatively restricted matters they were permitted to discuss. The main exception was some tightening up of the councils' powers (especially to regulate alcohol) in 1903. The Government's expectation of the general conferences was that they might revise bylaws, so long as the Native Minister approved, and power was provided for that in the 1903 Amendment Act. 135 This fell far short of a consultative or legislative role in Maori affairs at the central government level. The 1908 'congress' seemed promising, with ministers in attendance, but it proved the final conference (apart from Ngata's 1911 one).136 Tame Parata challenged the Government in the House, asking when it would introduce legislation to give effect to the 1908 conference's recommendations. Carroll replied that the matter would have to stand over till 1909, and that appears to have been the end of it. 137

General conferences did not, therefore, substitute for the Paremata in either a formal or an informal manner. The Liberal Government of the 1890s had submitted draft legislation to the Paremata, and had submitted jointly drafted legislation to the New Zealand Parliament. As far as we are aware, no such function was accorded to the General Conferences in the following decade. Although we do not have detailed historical evidence on the conferences, the available material suggests that further research is unlikely to uncover a different interpretation of this question. Nonetheless, additional research would be useful. On the basis of the evidence available to us, we find that the Crown's continuing failure to empower Maori at the central government level after 1900 was a serious breach of Treaty principles, with ongoing, cumulative prejudicial effects.

The fifth option: Maori local self-government through Maori Councils

The historical evidence suggests that the Maori Councils Act 1900 was intended to provide genuine local self-government for Maori communities at a district and kainga level. This was certainly the intention of the authors of the

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

Act, the Paremata which endorsed it, and the New Zealand Parliament which enacted it. On the basis of the evidence available to us, successive governments failed to deliver the reality of self-government to Central North Island Maori because:

- ▶ The councils had no power to manage lands, and the potential of the parallel Maori land councils as vehicles of autonomy and self-management was taken away from 1905. There was a strong nexus between Maori self-government and ability to control their own destinies on the one hand, and the ability to control and manage the community's principal assets, especially land, on the other. The failure to give the councils and komiti power over land was a very significant inbuilt weakness.
- ► The councils had inadequate powers for self-government, except in health reform. This appears to have been the view at the time of the General Conferences, Maori members of Parliament, and even of Native Ministers, such as Carroll in 1901 and 1903.
- ▶ The councils had inadequate Government finance and support, and this was the main reason for their virtual inactivity after 1910. This proposition was agreed by all the scholars whose work we consulted, and also by the main historical players, including officials such as Mair and Hackworth, the Government's ministers (Carroll and Ngata), and Maori leaders such as Te Heuheu. Government assurances of 'plenty of assistance' and funding were not carried out. Although we do not have specific research on the Central North Island councils, we see no reason to doubt such a generally agreed proposition.

And yet Government subsidies had been a normal part of assisting local authorities since the 1870s.¹³⁸ Road boards, river boards, hospital boards and many others had a mix of local funding subsidised by the Government, often pound for pound. Hospitals, for example, received just under 40 per cent of their funding from Government subsidies between 1886 and 1910.¹³⁹ There was nothing unusual in principle,

therefore, when both the Public Health Act and the Maori Councils Act of 1900 provided for the payment of subsidies to Maori Councils for the health and sanitation works that the Government wanted carried out. ¹⁴⁰ Government and Maori agreed in principle, therefore, that the work of the councils needed to be subsidised. What was unusual, perhaps, was the way in which the Government avoided actually paying subsidies in this instance.

Native Minister Carroll promised the 1908 General Conference that councils would get 'plenty of assistance' from the Government, including funding, in return for which they were to promise to 'go on improving and becoming more self-reliant year by year." Ngata and Parata questioned the Native Minister in Parliament a month later, about the vital necessity of Government funding for the councils, which had not had any subsidies since 1903, and were getting Government assistance of less than £17 each. Carroll dodged the question, and his undertaking to the general conference was not carried out. To the contrary, all Government funding ceased from 1909.

We agree with the Tribunal in its *Napier Hospital* and *Health Services Report*, which found that:

having launched the Maori council scheme and induced Maori, including Ahuriri Maori through the Tamatea Maori Council, to rely upon it for improving the health of their communities, the Crown breached the principle of *partnership* by failing to resource the councils adequately or, for some years after 1911, at all... [Emphasis in original.]¹⁴³

- ► Governments of the day did not provide adequate (or any) remedies for these deficiencies.
- ▶ Further, the Crown removed the whole basis of the councils as organs of self-government in 1916, when it took away the power of Maori communities to elect their members, making them appointed by the Government instead. From that point on, the coun-

HE MAUNGA RONGO

cils lost any surviving potential to become vehicles of tino rangatiratanga.

We also note that Maori and the Crown agreed that health reform was necessary, should be sponsored by community leaders and the State, and should be carried out by Maori komiti in Maori districts. Although the language of assimilation was much used, it appears from the evidence of Dr Hill, Professor Walker, and Dr Lange that Maori, including the Young Maori Party, were to be the instruments of reform, and that they did not serve assimilationist goals in the sense advocated by some Pakeha of the time. As a result, the councils did not fall into line behind non-agreed culture change. They wanted, for example, to enforce community standards by licensing tohunga, rather than banning them (as sought by the Government). This policy led the Crown to take power away from the councils, passing the Tohunga Suppression Act of 1907. It follows, therefore, that we do not accept the claimant submission that the Crown used Maori Councils as instruments to impose a cultural revolution on Maori communities. 144 We do, however, accept that the Crown sought to control the councils, to appropriate and redirect the political strength of Kotahitanga into safer, more acceptable channels.¹⁴⁵ In doing so, while starving the councils of real power and funds, it succeeded in repressing rather than empowering Maori autonomy.

Given the nature of these generic findings and the evidence on which they are based, specific evidence on the operations of the Central North Island councils on the ground is unlikely to disagree with them in any fundamental way. One exception is likely in health reform, where councils possessed some real powers (though lacked funds). We do not know the extent to which they were able to direct and assist their communities in the important business of public health in our inquiry districts. With that proviso, we make a preliminary finding that the Crown failed to honour its undertakings to Kotahitanga, failed to provide meaningful self-government to Central North Island Maori through the Maori Councils Act, and

in doing so breached the Treaty principles of partnership, autonomy, active protection, and equity.

In 1918, Tureiti Te Heuheu gave Parliament a timely reminder of the principles of the Treaty, in the language of the day (see above). The Queen had guaranteed Maori her protection, the privilege of 'conducting our own business', their 'mana as chiefs', and (a second time) the mantle of her most gracious protection and utmost kindness. In return, Maori recognised the mana of the British Government. The Queen had also granted Maori the privileges of British subjects, which included equality with the British and (stating it a second time) the privilege of conducting their own affairs. The reciprocity and permanence of the Treaty relationship was embodied and renewed in ongoing, personal ties with the Queen and her descendants, and the sending of Maori soldiers to spend their blood in the First World War. The Treaty principles of partnership, autonomy, active protection, and equity, as interpreted and explained by the Tribunal in its reports, can be clearly discerned in Te Heuheu's explanation of the Treaty to Parliament in 1918.¹⁴⁶

The Treaty principle of partnership required the Crown to consult the General Conferences at least to the same degree that it showed itself willing to work with the Paremata in the late 1890s. Instead, it left the conferences powerless, even in an advisory capacity. No Treaty partnership was possible on such a basis, and the conferences (irregular anyway) were discontinued from 1911. The Treaty principle of autonomy required the Crown to give full powers of local self-government to the councils and committees (including a role in managing the community's lands and resources). It also required the Crown to ensure that the councils were adequately resourced to do their work, rather than knowingly starving them of funds in the face of contrary appeals from Maori and its own Native Ministers.

The principle of active protection required the Crown to support and promote constructive Maori endeavours, not to starve them of funds until they became, in the

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

words of Te Heuheu, a 'dead-letter'. It also required the Crown to support and promote tino rangatiratanga, both at the central and local government levels. The principle of equity required the Crown to provide equal (not necessarily the same) powers and funding for local self-government, and equal (meaningful) representation at the central

government level, for all its citizens. In failing to carry out these obligations, despite the best efforts and representations of Maori and its own Native Ministers, the Crown committed a serious breach of the principles of the Treaty of Waitangi.

SUMMARY

- ▶ For Maori to seek 'home rule' and a national body to make laws or regulations for their own lands and resources was entirely consistent with the Crown's kawanatanga, and compliant with the Treaty guarantee of their tino rangatiratanga. The willingness of many Central North Island Maori, including Te Heuheu, to compromise with the Government was also in the spirit of the Treaty.
- ▶ The Kotahitanga movement was a positive development, easily compatible with loyalty to the Queen, the rule of law, Maori self-management, and 'closer settlement'. When Maori set up their own parliament, self-funded and with an elaborate electoral system, rules, and a very large degree of popular support, the Crown should have worked with it, encouraged it, and empowered it. Seddon's submission of his draft legislation to it shows the correct attitude, and an approach that could easily have become permanent and institutionalised. The Kohimarama Conference in the 1860s and the Waipatu hui in the 1880s were useful precedents.
- ▶ The title of 'parliament' need not have been a sticking point, given the Maori willingness to use another title, to seek legislative authority from the New Zealand Parliament, and to work with the Government if possible.
- ▶ The Crown's suggestion that this movement was 'separatist' is based on a fundamental misunderstanding of Kotahitanga and also of the political context of the times.
- ▶ In failing to incorporate Kotahitanga into the machinery of the State, and share power with Maori in a meaningful way at the central level, the Crown acted in breach of the principles of the Treaty.
- ▶ Above all else, the Crown rejected one of the most important and crucial opportunities for Treaty partnership in the history of this country. Kotahitanga and Kingitanga leaders were willing to make compromises, to act in partnership with the settler Parliament, but to do so from a basis of mana Maori motuhake. The opportunity to institutionalise Maori autonomy at the central level, to provide meaningful power and partnership between Maori and settler leaders, was a unique one. Maori themselves created the machinery. Year after year, they elected their representatives and sent them (with plenty of relatives to observe and keep them honest) to deliberate and express the Maori will tino rangatiratanga to the people of New Zealand. In response, there was

continues on following page

HE MAUNGA RONGO

continued from previous page

- a failure of vision and of aroha, and a triumph of settler self-interest, that subverted and defeated this Maori endeavour. We consider this to be a serious breach of Treaty principles, with great prejudice for Central North Island Maori.
- ▶ The 1900 reforms were inadequate because so many of them were dismantled within less than a decade. The annual General Conferences were the basis of persuading Kotahitanga to disband, but they did not provide a genuine alternative for Maori autonomy at a central level and were discontinued anyway from 1911. The Maori Councils were a more promising initiative for self-government, but officials, Ministers, and Maori of the time agreed that the Government's refusal to fund them properly was fatal to their success. This was in breach of the Treaty.
- ▶ By 1920, Central North Island Maori had still not achieved the full legal powers of local or regional self-government that their settler fellow-subjects had possessed since the 1850s, nor had they secured their right to tino rangatiratanga at the central level. The management of their own lands, people, and internal affairs had been promised and guaranteed by the Treaty. The Crown's ongoing refusal to honour the Treaty in this respect was a serious one.

Notes

- 1. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 240–248; Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1556–1614
- 2. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 244–245
- **3.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1569–1570, 1586
 - **4.** Ibid, pp 1556–1614
- 5. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 19–20
 - 6. Ibid, pp 20, 216
- 7. Michael Sharp and Jolene Patuawa, generic closing submission on twentieth century land administration, 6 September 2005 (paper 3.3.81), pp 51–53
 - 8. Ibid, p 11
 - 9. Ibid, p 12
 - 10. Ibid, pp 12, 15-17
- 11. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77), pp 46-49

- **12.** Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 32–34
 - 13. Ibid, pp 34-35
 - 14. Ibid, pt 1, pp 21-22
 - 15. Ibid, pt 2, pp 32-35, 125
 - 16. Ibid, pp 313-327
- 17. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 242–243
 - **18.** H Heke, 10 September 1894, NZPD, 1894, vol 85, p 553
 - 19. J Carroll, 10 September 1894, NZPD, 1894, vol 85, p 555
- 20. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a), p.14
- 21. F M Brookfield, Waitangi and Indigenous Rights: Revolution, Law, and Legitimation (Auckland: Auckland University Press, 1999), p 117
- 22. Hoani Whatahoro (as quoted in Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p1576). Whatahoro was the tiamana (chairman) of the Paremata.
- 23. Thermal Springs Districts Act 1881, s 9; Interpretation Act 1888, s 21(2)

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890-1920

- 24. Thermal Springs Districts Act 1908
- 25. 11 May 1887, NZPD, 1887, vol 57, pp 201-210
- 26. 11 May 1887, NZPD,1887, vol 57, pp 209-210
- **27.** R P Davis, *Irish Issues in New Zealand Politics*, 1868–1912 (Dunedin: University of Otago Press, 1974), p 102
- **28.** See, for example, ibid, pp148–149, and the newspapers and parliamentary debates of the era.
- **29.** A O'Day, *Irish Home Rule 1867–1921* (Manchester: Manchester University Press, 1998), pp 124, 186–187, 194–195, 198–199
- 30. See, for example, Wi Pere's speech, 25 September 1896, NZPD, vol 96, p192
 - 31. R Stout, 11 May 1887, NZPD, 1887, vol 57, pp 207-208
- **32.** 'Notes of Native Meetings', AJHR, 1885, G-1, p27 (doc A65(k), pL133)
- **33.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1558–1614, especially pp 1584–1614
 - 34. A Newman, 10 September 1894, NZPD, 1894, vol 85, p 559
 - 35. J Carroll, 12 October 1900, NZPD, 1900, vol 115, p 201
- **36.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1586
- 37. Te Heuheu (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1603)
- **38.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1585
 - 39. Urewera District Native Reserve Act, 1896
 - 40. Native Committees Act 1883
 - 41. R Seddon, 24 September 1896, NZPD, 1896, vol 96, pp 167-168
- **42.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation* from c1769 to c1945 (Wellington: Victoria University Press, 1998), pp 307–308
- **43.** 'Despatches from the Governor of New Zealand to the Secretary of State', AJHR, 1892, A-1, p 9
 - 44 Ibid
- **45.** Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 308-309
- **46.** Te Heuheu (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1605)
- **47.** WL Rees (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1561–1562)
 - 48. Native Land Court Act 1894, ss 126, 130, 131
- **49.** Sir P A Buckley's explanation of the Bill in the Council, 11 October 1894, NZPD, 1894, vol 86, p 653
- **50.** Native Land Court Act 1894, ss 122–134; see also our discussion of the 1886 Act in chapter 6.

- 51. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p1297
- **52.** 'Prescribing Terms and Mode upon which the Alienation of Certain Lands Known Collectively by the Name of Pohokura may be Effected', 13 April 1899, *New Zealand Gazette*, 1899, no 32, p 755
 - 53. Native Land Court Act 1894, ss 122-134
- **54.** 'Rules and Regulations under Division II., Part II., of "The Native Land Court Act, 1894", 1 April 1895, *New Zealand Gazette*, 1895, n 25, pp 610–614 (doc H42)
 - 55. Ibid
 - 56. Maori Councils Act 1900, s 29
- **57.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1591–1613
 - 58. Maori Lands Administration Act 1900
- **59.** Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952*, Waitangi Tribunal Rangahaua Whanui Series, 1996 (doc A60), pp 24–25
 - 60. Maori Lands Administration Act 1900
- **61.** Te Heuheu and others (as quoted in Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1599)
- **62.** Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910', report commissioned by CLO, October 2004 (doc A77), p 185; Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952*, Waitangi Tribunal Rangahaua Whanui Series, 1996 (doc A60), pp 35–40
- **63.** Richard Hill, State Authority, Indigenous Autonomy: Crown–Maori Relations in New Zealand/Aotearoa 1900–1950 (Wellington: Victoria University Press, 2004), p 70
 - 64. Ibid, pp 70-75
 - **65.** Ibid, pp 76–79, 84, 102
 - **66.** Ibid, p 79
- 67. Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey', report commissioned by CLO, October 2004 (doc A77), pp185–198; Donald Loveridge, Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952, Waitangi Tribunal Rangahaua Whanui Series, 1996 (doc A60), pp35–75
 - 68. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 44, 46
- **69.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 202–206
 - 70. J Sheehan, 13 July 1882, NZPD, 1882, vol 42, p 299
 - 71. H Heke, 10 September 1894, NZPD, 1894, vol 85, pp 551-552
- **72.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p1585

HE MAUNGA RONGO

- 73. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a)
- **74.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1597
- 75. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a), pp.7, 15-16, 28-30
- **76.** Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1584–1613
 - 77. Ibid, pp 1592-1613
- **78.** 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a), pp14-31, 52
- **79.** Richard Hill, *State Authority, Indigenous Autonomy: Crown–Maori Relations in New Zealand/Aotearoa 1900–1950* (Wellington: Victoria University Press, 2004), p 43
 - 80. Ibid, p 43
 - 81. Ibid, pp 43-44
 - 82. Ibid, pp 43-46
 - 83. Ibid, p 47
 - 84. Ibid, pp 47-48
 - 85. Ibid, p 48
 - 86. Ibid, p 49
 - 87. Ibid, p 50
 - 88. Ibid, p 57
 - 89. Ibid, pp 50-52
 - 90. Ibid, pp 50-53
 - 91. Ibid, p 53
 - 92. Ibid, pp 53-58
 - 93. Ibid, pp 54-61
 - 94. Ibid, pp 58-62
 - **95.** Ibid, p 62
 - **96.** Ibid
 - 97. Ibid, pp 62, 68-79
 - 98. Ibid, p 63
 - **99.** Ibid
- 100. Ranginui Walker, He Tipua: the Life and Times of Sir Apirana Ngata (Auckland: Viking, 2001), p89
 - 101. Ibid, p 90
 - 102. Ibid, pp 95-96
 - 103. Ibid, p 98
 - 104. Ibid
 - **105.** Ibid
 - 106. Ibid, p99
 - **107.** Ibid
 - 108. Ibid, p 162
 - 109. Ibid
 - 110. Ibid, p 163

- 111. Ibid
- 112. Raeburn Lange, May the People Live: a History of Maori Health Development 1900–1920 (Auckland: Auckland University Press, 1999), p141
 - **113.** Ibid
 - 114. Ibid, pp 141-142
 - 115. Ibid
 - 116. Ibid, p 143
 - 117. Ibid, pp 143-144
 - 118. Ibid, p 144
 - 119. Ibid, pp 144-146
 - 120. Ibid, pp 191-192
 - 121. Ibid, pp 193-194
 - 122. Ibid, pp 194-195
 - 123. Ibid, pp 195-196
 - 124. Ibid, p196
 - **125.** Ibid
 - **126.** Ibid, p 197
 - 127. Ibid, p 228
 - **128.** Ibid
 - 129. Ibid, p 230
 - 130. Ibid, p 258
 - 131. T Tukino, 26 November 1918, NZPD, 1918, vol 183, p 386
 - 132. Ibid, p 387
 - 133. Ibid
 - 134. T Tukino, 10 December 1918, NZPD, 1918, vol 183, p 1054
 - 135. Maori Councils Amendment Act 1903, section 9
- **136.** David Williams, Crown Policy Affecting Maori Knowledge Systems and Cultural Practices (Wellington: Waitangi Tribunal, 2001), pp 40–43
- 137. J Carroll, 7 October 1908, NZPD, 1908, vol145, p986; see also NZPD for 1909, p943.
- **138.** Waitangi Tribunal, *Te Roroa Report* (Wellington: Brooker and Friend Ltd, 1992), pp 184–185; Michael Bassett, *The State in New Zealand 1840–1984: Socialism Without Doctrines* (Auckland: Auckland University Press, 1998), p 328
- **139.** Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p122
 - 140. Public Health Act 1900, s 65; Maori Councils Act 1900, s 19
- 141. David Williams, Crown Policy Affecting Maori Knowledge Systems and Cultural Practices (Wellington: Waitangi Tribunal, 2001), pp 40–41
 - 142. 20 August 1908, NZPD, vol 144, pp 275-276
- 143. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 170–171
- 144. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77), pp 46-49
 - 145. Ibid, pp 46-49
 - 146. T Tukino, 26 November 1918, NZPD, 1918, vol 183, pp 386-387

SUMMARY

In part 11 of our report, we posed the key questions:

- ► What Treaty standards applied to the political relationship between the Crown and the Central North Island tribes?
- ► Did the Crown miss (or actively reject) opportunities and requests to give effect to its Treaty guarantees of Maori autonomy and self-government?

In this section, we summarise our answers to those core questions and come to an overall conclusion.

The Turanga Tribunal summarised the Maori entitlement to autonomy as follows:

By Maori autonomy, we mean no more than the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.¹

We agree with that summation. We also agree with the findings of the Tribunal in its *Taranaki Report*, as follows:

- ▶ The principle of autonomy is central to the Treaty, and is the cardinal expression of the principle of partnership.
- ► Tino rangatiratanga and mana motuhake are equivalent terms for aboriginal autonomy and aboriginal self-government.
- ► The Treaty principle of autonomy or self-government includes the right of indigenous peoples to constitutional status as 'first peoples' (tangata whenua); the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the operation of the State; and the right to enjoy cooperation and dialogue with the Government.
- ► Sovereignty in New Zealand, in terms of absolute power, cannot be vested in only one Treaty partner, as

- the Crown's sovereignty is constrained by the need to respect Maori authority (tino rangatiratanga).
- ► It is more appropriate to talk about responsibility than power in New Zealand, as the Treaty envisaged two spheres of authority that inevitably overlapped. These overlaps require negotiation and compromise on both sides.²

Further, we find that Maori had an article 3 Treaty right to self-government through representative institutions at a community, regional, and national level. This was very important to the way in which nineteenth-century governments perceived the need for legitimate government to be by consent. It provides the key context for how we judge the reasonableness of the Crown's actions from 1840 to 1920. Settlers obtained full and responsible self-government at regional and national levels, having refused to settle for anything less. Maori were quick to point this out and to demand the same.

The Crown submitted that its Treaty obligations in that respect were governed by the circumstances of the time, and that the Tribunal must not apply present-day standards or expectations of what the Crown could reasonably have done in those circumstances. The claimants, on the other hand, see their history as a series of opportunities for the Crown to have given effect to its Treaty guarantee of their autonomy and self-government - opportunities that were either lost or actively rejected. Throughout the nineteenth century, and into the twentieth century, they sought to engage with the Crown on a political level, to secure their management of their own lands and affairs, and to obtain legal powers of self-government. In their view, the Crown denied their repeated requests and demands, acting instead to promote settler interests at their expense. The Crown replied that the degree of 'self-management'

HE MAUNGA RONGO

promised by the Treaty was a matter of legitimate debate, that its officials genuinely thought assimilation was in the best interests of Maori, and that lost opportunities were either impracticable or too uncertain for the Tribunal to judge them.

In our view, giving effect to the Treaty guarantees of autonomy and self-government was entirely practicable in the nineteenth century. Key to Maori autonomy and tino rangatiratanga was the right and ability of communities to manage their lands and resources. At this community level, colonial politician WL Rees pointed out that Maori wanted 'an executive power over their lands through representatives chosen by themselves from among themselves; a Government, in fact, of the owners by the owners for the owners.' Rhetoric about the evils of communalism aside, he saw no reason of principle why they could not, in fact, have what they wanted:

The whole tendency of modern times is to modify extreme individualism by collective action. Why then should we not apply to the Maori owners of land the same principle of government which we find to be indispensable amongst ourselves?⁴

Community autonomy was practicable through a variety of committee and corporate structures, which British law could easily have accommodated.

At the regional and national levels, there were also many models of autonomy. Mostly, these took either a geographical or an institutional form. Provinces, states, and all sorts of federal models abounded. Home Rule for Ireland, for example, meant a parliament to pass laws for and to govern a territory, in conjunction with wider citizenship and a federal–imperial Parliament. For Maori, as Wi Pere put it, while there was Maori land left in New Zealand, Home Rule meant Maori making their own laws about their own lands. The Te Arawa petition of 1891 emphasised that there was nothing about a Maori parliament to divide the races or undermine the authority of the Queen or the New Zealand Parliament.

Models included:

- ▶ the United States, with its self-governing tribal domestic nations and its autonomous states, all consonant with a strong federal (central) government;
- ▶ the Canadian federal system, which accommodated First Nation self-government (though badly) by a statute called the Indian Act, and French Canadian law and culture by a federal structure of autonomous provinces;
- ▶ Britain, a multinational state with elements of legal pluralism, a strong tradition of local self-government, a variety of legal structures for corporate and community land ownership and asset management, and the burgeoning Irish Home Rule movement;
- ► Europe, with its 'civilised' multinational and multiethnic states, including, for example, the autonomous cantons of the Swiss federal State;
- ► India, with its indigenous principalities, autonomous increasingly at law (though subject to indirect rule) as the nineteenth century wore on;
- ▶ the Pacific protectorates, where the British Crown recognised a divided 'external' and 'internal' sovereignty in the late nineteenth century;
- ► New Zealand's own British-made constitution, with its quasi-federal provision for autonomous Native Districts and provinces; and
- ▶ British elective bodies as adapted by Central North Island Maori, especially church (and other) committees, which they melded with their own traditional institutions, made use of at community, regional, and national levels, and put forward as their model of choice.

From these and other models, we conclude that the Crown had practical examples of community, regional, national, and institutional forms of autonomy applicable to the circumstances of Maori in New Zealand. Exactly how such models would, or could, have been adapted in this country was a matter to be debated and agreed between governments and Maori. We note, of course, that the models were of mixed significance – in Britain, for example, legal and national pluralism and the Home Rule

SUMMARY

movement sat uneasily alongside attempts at assimilation and domination.

Nonetheless, we find that the Crown had reasonable and practicable options for complying with the standards of the Treaty. Those options were known to the Crown, 'visible' to policy-makers, sought by Central North Island Maori, conceivable and justifiable to at least some settler politicians, affordable, and practicable. They were not always, however, consistent with settler self-interest and some British standards of the time. The honour of the Crown, however, pledged in the Treaty and by later undertakings and promises, required that at least one of the options be taken up. We find that the practical options available to the Crown for giving effect to autonomy and self-government met the Treaty test of reasonableness. The Crown was perfectly capable of complying with the standards of the Treaty in the circumstances.

We think that the Crown, in the Treaty, Lord Normanby's instructions, and various policy statements during Crown colony government, envisaged that both Maori and settlers would benefit from the colonisation of New Zealand, and that Maori could effectively govern themselves under their own laws for the foreseeable future. The epitome of this was the ability to declare self-governing Native Districts provided in the 1846 and 1852 Constitution Acts.

Starting from this base, there are three threads running through the history of the Central North Island in the nineteenth century:

- ▶ the Crown's determination to colonise New Zealand and to repress Maori autonomy where it appeared to be an obstacle to colonisation:
- ► Maori determination to maintain their autonomy, and to develop new mechanisms for exercising their authority in a manner compatible with the settler State; and
- ▶ a series of missed opportunities where the Crown envisaged recognising and working with Maori autonomy, and could (and should) have done so. The Crown could – and did – conceive of recognising and working with Maori institutions but chose not

to do so. This is not a presentist interpretation, judging nineteenth-century actors by impossibly modern standards, but one reached on a balanced evaluation of the evidence, aspirations, and ethics of the times.

The Crown's active repression of Maori autonomy, and its conscious and deliberate failure to develop or utilise the missed opportunities, are together a breach of the Treaty guarantee of tino rangatiratanga. They form a principal breach of the Treaty of Waitangi in the Central North Island inquiry, from which other Treaty breaches and prejudice follow.

In particular, we find that, in meeting opportunities and Maori requests to give effect to its Treaty guarantees, the Crown had five practicable options available to it:

- ▶ The first option: declaring self-governing Native Districts under section 71 of the Constitution Act 1852.
- ► The second option: declaring Native Districts under the Native Districts Regulations Act 1858 and the Native Districts Circuit Courts Act 1858.
- ► The third option: providing meaningful power at the central government level, through full and fair representation in the New Zealand Parliament or a national Maori assembly or both.
- ► The fourth option: including the Kingitanga in the machinery of the State.
- ▶ The fifth option: providing legal powers for regional and local self-government by Maori institutions in partnership with Government officials, through Statesponsored runanga (or komiti). This included legal powers for Maori communities to determine their own land and resource entitlements, and to manage those lands and resources for themselves through their own corporate bodies.

We find that the Crown failed to act effectively on any of these options until it enacted the Maori Councils Act in 1900. We also find that the intentions of that Act, in our preliminary view, were defeated so that it did not actually give effect to the Crown's Treaty guarantees.

The detail of how the Crown lost or actively rejected opportunities to take up these five options was as follows.

HE MAUNGA RONGO

THE CONSTITUTION ACT 1852

Section 71 of the Constitution Act empowered the Governor to declare self-governing Native Districts in which Maori law and authority would apply and have the force of British law. This provision was never used. Settlers, however, received provincial and central self-government and a Parliament under this Act. Maori were not represented in that Parliament until 1867. Property qualifications were used to largely prevent them from voting in provincial elections. In the 1870s and 1880s, Rotorua and Taupo Maori sought increased representation in Parliament, more equal to their proportion of the population (which entitled them to many more than four seats). The governments of the 1870s and 1880s refused to give Maori a fairer (and more powerful) presence in central government. The Kingitanga and Kotahitanga continued to press for section 71 to be adapted for and carried out in the 1890s but the New Zealand Government refused to comply with their requests.

THE KINGITANGA

A series of politicians and commentators, from Sir William Martin and Bishop Selwyn to the Secretary of State for the Colonies, thought that an accommodation with the Kingitanga was possible. They urged the Government to adopt and give legal authority to the Kingitanga as a provincial government or a Native District, or at the least to tolerate and work with it. Models such as the United States or the Swiss cantons were put forward as possible ways to reconcile Maori and Pakeha authority within a federal framework of autonomy. The settler Government seriously considered this advice, but ultimately rejected it. Various governors failed to take this advice, until their authority was fully replaced by settler responsible government.

After responsible government was instituted, recognising and working with the Kingitanga was still an option. It was considered from time to time (especially at the time of the Rohe Potae compact) but ultimately rejected by the

Government. Crown counsel, for example, identified a lost opportunity not noted by the claimants. There were negotiations between the Government and Kingitanga in 1878–79, and the Premier, Sir George Grey, offered powers of local self-government, but no agreement was reached because of the Government's refusal to return confiscated land.⁵ The question of whether the Kingitanga could be recognised, accorded legal powers, and included in the political arrangements of the State, was under active consideration throughout the nineteenth century.

THE RUNANGA MOVEMENT OF THE 1850S AND 1860S

A series of politicians and commentators also recommended giving legally enforceable authority to the runanga. The settler Parliament accepted this idea and passed the Native Districts Regulations Act and Native Districts Circuit Courts Act, but refused the Governor funding to make the legislation work. This refusal undermined the Acts, and it limited Maori cooperation. Later, Grey introduced the New Institutions - official runanga with legal powers – under these Acts, but they were abandoned in 1865 after they proved unsuccessful in preventing war. The swift abandonment of Grey's New Institutions, without giving them a chance to work properly or obtain legitimacy, was a critical missed opportunity for Statesanctioned Maori self-government. Ngati Raukawa, for example, thought that they had negotiated an agreement with George Law and would be able to work in partnership with the Crown, but these hopes were dashed.

In the words of historian BJ Dalton, the wars led to 'an end to the projects of native welfare and self-government which had filled the Governor's despatches and the pages of the colonial Hansard for years.' Even so, the deliberate inclusion of the 1858 legislation in the Thermal Springs District Act of 1881 meant that they remained a live option for parts of the Central North Island.

406

SUMMARY

THE KOHIMARAMA CONFERENCE OF 1860

Governor Gore Browne agreed to Maori requests that he call an annual Maori 'parliament' of this kind, but his successor (Grey) failed to keep the promise. This was a critical missed opportunity for meaningful Maori participation and power in central government.

THE NATIVE COUNCIL PROPOSAL OF THE 1860S

Gore Browne intended to create a native council to provide an advisory body that would represent Maori views and interests in the central government. The British Parliament introduced a Bill to carry this out. Ultimately, the attempt foundered on the opposition of the settler Government.

THE NATIVE LANDS ACT 1862

The earliest incarnation of the native land legislation provided for a Maori body to decide title, with a Pakeha president, on a flexible, commission-style basis. The Native Lands Act 1865 turned this into a British-style court with a dominant Pakeha judge.

THE NATIVE PROVINCES BILL 1865

This Bill provided for the establishment of a quasi-federal arrangement of Maori provinces in the North Island, with the Government represented in those provinces by a Resident. The Bill's introduction was postponed for six months, but the Government fell before that time had elapsed.

TRANSITION

By the end of the 1860s, the Crown had deliberately chosen not to empower Maori authority at either a tribal/district/

provincial level or at a national/central government level, despite the clearly articulated requests and aspirations of Maori, and the view of at least some politicians and settlers of the time that it was both feasible and desirable to do so.

The presentist debate hinges on an expectation of unreasonably 'modern' behaviour from nineteenth-century governments. The period from 1840 to the mid-1860s, in which there was a relative balance of Maori–Pakeha power in New Zealand, and a potent political role for governors and the Colonial Office, provided a context in which the 'missed opportunities' described above had a reasonable chance of being adopted and made to work.

In the 1870s and beyond, the prospects for a Treaty-compliant outcome declined in the wake of military conquest, settler population growth, responsible government for a settler parliament, and a predominance of settler power. Nonetheless, it was still possible for governments to buck the trends. Ballance assured Maori in the 1880s that the Government and Parliament were 'strong', able to resist the pressure of land-hungry settlers, to protect Maori interests, to act in the genuine best interests of both races, and to secure to Maori the self-government and political power to which they were entitled. Professor Ward considered that it was still possible for governments to resist 'settler prejudice' successfully in their Maori and land policies in the 1880s.

THE NATIVE COUNCILS BILLS OF 1872-73

The first Bill was introduced by the Government in 1872 and provided for native councils with some legally enforceable powers of self-government and of title determination. This initiative was strongly supported by Central North Island Maori, but the Bill was withdrawn by the Native Minister. A second Bill was introduced and similarly withdrawn in 1873. Instead, the extremely unsatisfactory Native Lands Act 1873 was enacted. A third Bill was promised for 1874 but never introduced.

HE MAUNGA RONGO

THE KOMITI MOVEMENT OF THE 1870S AND 1880S

In the 1870s and 1880s, Central North Island Maori (and others) sought to manage their lands, economic development, internal affairs, and relationship with the Government by means of elected komiti (committees). They sought official recognition of their komiti and legal powers from the State, so that their arrangements could be enforced at law. Maori members introduced various Bills to try to secure such powers for the komiti in the early 1880s. In 1883, the Government passed the Native Committees Act, with the avowed intent of providing District Committees with powers of self-government and a role in title determination. In 1886, Native Minister Ballance gave powers of land management to smaller-scale block committees through the Native Lands Administration Act. The 1886 Act was repealed in 1888.

The Native Committees Act 1883 and the Native Lands Administration Act 1886 show that the Crown could have engaged constructively with the komiti movement and given it legally enforceable powers. Ballance promised Maori that his measures would give them 'large powers of self-government', as guaranteed by the Treaty, and he specifically promised to increase the powers of the District Committees.

Both Acts, however, were weak and inherently flawed, resulting in no real change. The Rees-Carroll commission of 1891 called the Native Committees Act a 'hollow shell' which actively 'mocked' Maori aspirations. The 1886 Act was more promising, but Maori refused to use it. This was because Ballance did not include the key prerequisites that they had specified at their national hui at Waipatu: the commissioners to work jointly with (tribal) District Committees; and the block committees to be directly responsible to their communities and to act only as directed. A period at which it was politically possible to meet at least some Maori aspirations, therefore, became yet another missed opportunity (partly by deliberate choice, partly by accident).

THE FENTON AGREEMENT OF 1880

In 1880, Chief Judge Fenton (for the Government) negotiated an agreement with the Rotorua Komiti Nui to establish a township and allow the Native Land Court to enter the district. The Fenton Agreement could have been a model for how the Crown would engage with Maori at a district level of political partnership. It appeared also to provide for joint local administration of Rotorua township, and for the Komiti Nui to have a legally enforceable role in title determination. Its actual outcomes were very different. Nor did the Crown extend this model by entering into other such agreements with tribal leaderships, which it was clearly capable of doing with sufficient incentive.

THE THERMAL SPRINGS DISTRICTS ACT 1881

The Thermal Springs Districts Act 1881, in theory the legislative enactment of the Fenton Agreement, provided for Maori to be consulted quite extensively about how the land and, in particular, the geothermal resources should be managed. In some ways, it appeared to be a protective measure and even vested the Crown, according to Gilbert Mair, with the role of trustee. The historical evidence suggests that this opportunity to give Central North Island Maori meaningful input into the management of their lands and geothermal resources, and to have the Crown act as their agent for leasing lands, was not in fact implemented by the Crown. Instead, the Crown introduced the Native Land Court and targeted all thermal sites for purchase, against the known wishes of their owners. (These points will be explored further in parts III to V.)

Section 9 of the Act provided for Maori local self-government by the inclusion of the Native Districts Regulation Act 1858 as a provision. Native Minister Rolleston and Fenton appear to have intended giving legal powers to 'Village Runanga' alongside the special Maori–Crown Rotorua town board, but this section of the Act was never brought into force. Also, Maori representation on the town board was non-elective (despite promises) and reduced in

408

SUMMARY

proportion until the board itself was replaced by ordinary municipal government in 1900. A promising experiment of partnership in local self-government was allowed to dissipate and die. process of subdivision and lists to a very large extent, the outcome of individualised title was still a destructive one. In part, the tribe acted on the strength of Ballance's proposed reforms but these did not eventuate – District Committees were not given real powers, and block committees disappeared with the repeal of the 1886 Act.

THE ROHE POTAE NEGOTIATIONS OF THE 1880S

In the early to mid-1880s, the Crown sought to negotiate a high-level political agreement with the Kingitanga for access to the Rohe Potae, initially to establish the main trunk railway, but ultimately to secure Government authority and land for settlement. In our inquiry district, Ngati Tuwharetoa and Ngati Raukawa were among the Rohe Potae tribes that negotiated first with Bryce and then with Ballance. The result, in the claimants' view, was a political 'compact', the terms of which were best expressed by their 1883 petition, which called for surveying an external boundary, Maori komiti to decide titles within that boundary, and the leasing of land.

At a time when Home Rule for Ireland was a genuine political possibility in Britain, and the settler Government wanted and needed an accommodation with the Kingitanga to get the railway through and open up the interior, there was potential for a genuine recognition and empowering (in the legal sense) of Maori authority in the Central North Island. It did not happen.

THE TAUPONUIATIA APPLICATION

In 1885, Te Heuheu broke the Rohe Potae and filed the Tauponuiatia application with the Native Land Court, seeking determination of title for the whole of Tuwharetoa's lands in the Taupo district. Te Heuheu and Tuwharetoa believed that the Crown intended to permit their authority to be recognised and enforced inside their outer boundary (their own rohe potae). This belief was ultimately defeated in the Native Land Court, with disastrous results for Taupo Maori. Although the Tuwharetoa komiti controlled the

THE NATIVE LAND LAWS AND MAORI AUTHORITY TO MANAGE THEIR COMMUNITY ASSETS AND DETERMINE THEIR OWN ENTITLEMENTS

From the Haultain inquiry of 1871 to the Rees-Carroll commission of 1891, there was a series of Maori protests and complaints about the Native Land Court, appeals for its abolition and replacement with Maori komiti and runanga, and various Government inquiries into this issue. The Crown's rejection of almost every request or recommendation for abolition or fundamental reform, with the problems clearly known and solutions clearly articulated at the time, was a vital missed opportunity for the Crown to have acted more consistently with the Treaty and to have provided for Maori authority over their own land and resources. In particular, the undertakings of Native Minister Ballance to Maori in 1885-86, and the findings and recommendations of the Rees-Carroll commission, were still in time to have empowered Central North Island Maori self-determination and authority over their remaining lands. The 'exceptional opportunity', as James Carroll put it in 1891, was not taken up by the governments of the day.

THE KOTAHITANGA MOVEMENT OF THE 1890S

Maori wanted major reforms of the native land laws, a Maori-controlled process for determining title instead of the Native Land Court, local Maori self-government, and a Maori Parliament in conjunction with the settler Parliament. A self-convened Maori Parliament (Paremata),

HE MAUNGA RONGO

in which the Central North Island tribes were well represented, met from 1892 to 1902.

In response to this powerful political movement, the Crown made some concessions:

- ▶ provisions for block (not tribal) incorporations (1894);
- ▶ the Urewera District Native Reserve Act (1896), which purported to give the Urewera tribes a General Committee and a Maori-controlled commission to decide titles (instead of the Native Land Court):
- ▶ the taihoa policy a temporary halt to Crown purchase of land;
- ► Maori land councils with a majority of Maori members and a Pakeha president to lease land voluntarily vested in the councils (1900);
- ▶ introduction of Maori bodies into the title determination process (1900); and
- ▶ Maori Councils to provide some legally enforceable powers of local government to Maori communities (1900).

The rapid reversal of most of these concessions in the first five years of the twentieth century, after Kotahitanga had lost much of its political force, was a betrayal of Maori leaders, and another tragic lost opportunity. In particular, the abandonment of the taihoa policy, the transformation of the land councils into Pakeha-controlled boards, and the removal of Maori bodies from the title-determination process, was a major violation of both the spirit of the 1900 reforms and the Treaty of Waitangi.

THE MAORI COUNCILS

The Maori Councils Act 1900 provided an opportunity for Maori self-government at both a local and central level. The annual general conferences of the councils were supposed to be a replacement for the Kotahitanga Paremata at a national, central government level. They were discontinued, however, from 1911. At a local level, the councils appear to have faded by the second decade of the

twentieth century. Native Ministers and Maori members of Parliament of the time agreed that the councils failed because they had insufficient powers and were starved of funding. Despite this perception and promises of remedy, neither Carroll nor Ngata were able to secure adequate powers or (any) funding for the councils.

Conclusion

Given the sheer breadth and number of lost opportunities between 1840 and 1920 – many of which were not so much lost as defeated or actively rejected – the historical evidence is overwhelmingly in support of a conclusion that the Crown committed a sustained breach of the Treaty of Waitangi. We find the Central North Island claims to be well founded in that respect.

Notes

- 1. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113
- 2. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 5–6, 19–21
- **3.** WL Rees (as quoted in Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p1457)
 - 4. Ibid
- 5. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, p 100
- **6.** BJ Dalton, *War and Politics in New Zealand*, 1855–1870 (Sydney: Sydney University Press, 1967), p 179
- **7.** See his speeches in 1885, reproduced in Angela Ballara (comp), supporting documents for 'Tribal Landscape Overview, c1800–c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts', various dates (doc A65(k)), pp 108–160.
- 8. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 245
- 9. Vincent O'Malley, 'The Crown and Te Arawa, c1840–1910', report commissioned by CFRT, November 1995 (doc A49), p 271