He Whiritaunoka

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He Whiritaunoka

The Whanganui Land Report

Volume 1

WAI 903

WAITANGI TRIBUNAL REPORT 2015

The cover photograph shows knotted taunoka (native broom), against a backdrop of Ruapehu. The image references Hōri Kīngi Te Anaua's act of tying a knot in taunoka as an expression of his desire to see an end to the conflict caused by the New Zealand Wars of the nineteenth century. The photograph of the taunoka was taken by Carolyn Blackwell and the photograph of the mountain by James Shook. The montage of the two was created by Carolyn Blackwell.

National Library of New Zealand Cataloguing-in-Publication Data

New Zealand. Waitangi Tribunal.
He whiritaunoka: the Whanganui land report.
ISBN 978-1-86956-315-8 (pbk)—ISBN 978-1-86956-316-5 (PDF)
1. Maori (New Zealand people)—New Zealand—Wanganui District—Claims. 2. Maori (New Zealand people)—Land tenure—New Zealand—Wanganui District. [1. Kerēme (Tiriti o Waitangi). 2. Mana whenua. 3. Whenua tautohetohe.] 1. Title.
333.1—dc 23

www.waitangitribunal.govt.nz
Typeset by the Waitangi Tribunal
Published by Legislation Direct, Lower Hutt, New Zealand
Printed by Printlink, Lower Hutt, New Zealand
25 24 23 22 21 5 4 3 2
Set in Adobe Minion Pro and Cronos Pro Opticals

DEDICATION

Ka ngaro hoki, rā ē
Ngā waha kī, ngā hautū o te waka
I hoea ai te moana
Hei whakapuru atu rā, ē
Mō ngā tai kino, mō ngā tai marangai
Ka puta ki waho rā.
Tērā ia rātau ngā huruhuru
O ngā waewae o te Kāhui Maunga
I kiia ai te kōrero:
'I rere kau mai te awa nui
Mai i te Kāhui Maunga ki Tangaroa
Ko au te awa; ko te awa ko au'

They are lost to Whanganui and to the nation
The mouthpieces of the people, the captains of the canoe,
Which sailed upon the deep.
You, who were the barriers
Against the angry tides and the fierce gales
And enabled your people to venture without
They who served as the spirit of the sacred assemblage of mountains
Thus the aphorism
'The river flows from the mountain to the sea;
I am the river and the river is me.'

Far too many of those who made valuable contributions to this inquiry are, alas, no longer with us. We dedicate this report to their memory.

From the claimant communities, we remember Sir Archie John Te Atawhai Taiaroa, claimant and witness for Wai 167, leader of vision and determination; James (Hēmi) Wirihana Takarangi, claimant and witness for Wai 999, esteemed koroua of Pūtiki marae; Te Ngāhina Matthews, claimant for Wai 655, and witness for Ngā Waiariki; Rangitihi Rangiwaiata (John) Tahupārae, tohunga and matatau; Morvin Te Anatipa Simon, claimant and witness for Wai 1051, pou of Kaiwhaiki, and musical genius; Veronica Canterbury, witness for Wai 1097, kuia and pou tokomanawa of Wharauroa marae; Alexander (Alec, Alex) Phillips, claimant for Wai 37 and 933; Amelia Kereopa, witness for Ngāti Hari and Ngāti Hira, and lifelong advocate for tangata whenua of Tūwhenua; Bryan Joseph Wilson (aka Rangitauira Hōhepa Wiriana Te Marae), witness for claimants in Wai 1299; Carmen Kapea-Sutcliffe Te Maioro Kōnui, claimant for Wai 833, Wai 965, and Wai 1044; Charles Māreikura, friend of te taiao, and dedicated member and supporter of Ngāti Rangi; Dardanella Metekīngi-Mato (Aunty Dardie), beloved kuia of Ngāti Patutokotoko, Ngāti

Tūpoho, and Te Ātihaunui-ā-Pāpārangi; George William Marshall, claimant for Wai 180, witness for Ngāti Pāmoana; Hoani Wiremu Hīpango, witness for Ngāti Hau; Inuhaere (Lance) Rupe, claimant for Wai 1299, witness for Ngāti Hekeāwai; James Richard Akapita, claimant for Wai 151; James Kumeroa, claimant for Wai 1107; John Murray Tauri, claimant and witness for Wai 999; Manukāwhaki Taitoko Metekīngi, claimant for Wai 999 and posthumous witness; Margaret Mākariti Poinga, claimant for Wai 37 and 933; Lady Martha Taiaroa, wife of Sir Archie, and tireless supporter of the iwi in this inquiry; Maude Hauru (Bubs) Clarke, witness in support of Wai 1051; Michael Patrick Pōtaka, claimant and witness for Wai 167; Rangipō Mete-Kīngi, claimant for Wai 167; Richard Manuaute Pīrere, claimant for Wai 554, witness for Ngāti Rangi; Robert Waretini Tūkorehu Herbert, claimant for Wai 1064; Roger Pūhia Hāpeta (Herbert), witness in support of Wai 1064; Stella Te Aroha Mill-Arahanga, witness for Ngāti Rangi; Tahu Hāmuera Nēpia, witness in support of Wai 999; Taukahiramai Rupuha Green, a witness for Wai 1107 whose wife Rīpeka Green (now also deceased) presented his evidence; Taylor Solomon Wīari, claimant for Wai 2205; Te Hemopō Bryan Michael Kora, witness for Ngāti Hinearo and Ngāti Tuera; and Dr Tūhuatahi Tui Adams, claimant and witness for Wai 800.

We also remember Dr Donald Merwin Loveridge, witness and historian of integrity and insight; Campbell Duncan, co-counsel for Wai 764, Wai 998, Wai 1051, Wai 1147, Wai 1203, and Wai 1254, who represented his clients with distinction, and died too soon to fulfil his considerable promise; Jolene Patuawa-Tuilave, co-counsel for Wai 37, Wai 555, Wai 933, Wai 1196, Wai 1224, and Wai 1394, whose skill as a lawyer and attributes as a person were admired by all.

This page (from left): **Sir Archie Taiaroa, Morvin Simon, and Hemi (James) Takarangi**

Facing page (clockwise from top left): **Charles Māreikura, Rangiwaiata Rangitihi Tahupārae, Dr Don Loveridge, Inuhaere (Lance) Rupe, Veronica Canterbury, and Amelia Kereopa**

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Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Tākiri te haeata, ka ao, ka awatea, horahia mai ko te ao mārama

The Honourable Te Ururoa Flavell
Minister for Māori Development

The Honourable Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

The Honourable Maggie Barry
Minister of Conservation

Parliament Buildings
WELLINGTON

25 September 2015

E ngā Minita, ka whakatakotoria tēnei pūrongo, ki mua i ō koutou aroaro nā mātau nā Te Rōpū Whakamana i te Tiriti o Waitangi he mātai he wānanga hei whakatau mā te Karauna.

E tāpaetia ana nā mātau arā, nā te Taraipiunara tēnei pūrongo, ko ia ko te wāhanga wharaurarahi o ngā tūwhiringa kōrero a ngā uri a ngā ati o te hunga kua okoki ki te moengaroa o ngā mano tini o te pō. Ko tō mātau tūmanako kia 'utua te mamae ki te atawhai me te atawhai ki te atawhai.'

Nō konā, kia tau ki runga ki ngā iwi nā rātau ēnei īnoi, ēnei tūmanako, otirā, ki runga anō ki a koutou me te Kāwanatanga ngā tauwhiro ngā manaakitanga a Te Wāhi Ngaro.

Here is the Waitangi Tribunal's report on its inquiry into 83 claims submitted by Māori of the Whanganui inquiry district. These claims focused principally on the relationship between tangata whenua and their land. The report can be viewed as a companion to the Tribunal's Whanganui River report of 1999, on which the Crown concluded a settlement last year.

It should not come as a surprise that the process of colonisation in Whanganui did not evolve in a way that was consistent with the Treaty of Waitangi, and especially the guarantee of te tino rangatiratanga in the Māori text. But the Crown also fell short of the standards of justice

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MINISTRY OF JUSTICE
Tāhū o te Ture

and fair dealing that flowed from the Magna Carta, and which British officials acknowledged independently of the Treaty. The claims we considered and reported on in were largely well-founded. The Crown has – through a multitude of policies, laws, decisions, acts, and omissions – caused substantial harm to Māori in Whanganui.

The Crown's first substantive engagement with Whanganui Māori was in the 1840s, over the long and drawn-out purchase of the Whanganui block. The Crown deliberately deceived tangata whenua about the terms of purchase, surreptitiously acquiring twice as much land as it should have, with no corresponding increase in the price. Even as early as 1848, the Crown limited the number of reserves that would be set aside for ongoing Māori use.

Among the many later purchases of Māori land, the Crown's purchase of the Waimarino block stands out. Not only was it one of the largest single Crown acquisitions in the North Island in the nineteenth century, but it was a truly shoddy affair: hurried, penny-pinching, and involving the illegal purchase of children's interests.

By the turn of the century, Māori in Whanganui retained only a third of their land. Soon after, the Stout–Ngata commission warned against further purchases in many blocks. The Crown steamed on regardless, and also allowed extensive private purchasing. Today, just 237,000 acres remain in Māori ownership, which amounts to about eleven per cent of the district.

Being left with relatively little land, often in scattered parcels in remote areas, was particularly damaging for the Māori of this district, because most of the land here is ill-suited to farming. The pervasive colonial vision of smallholders achieving agricultural prosperity was never going to work in ninety per cent of the district: successful farming ventures involved large landholdings and access to capital. Whanganui Māori had neither. The Crown bought nearly all of the good land very early on.

Māori in Whanganui recovered to some extent in the early twentieth century, but even today their living conditions are deprived compared to non-Māori – and compared with their ancestors, many live a life of social and cultural deprivation.

Few of the Crown's actions were, like the Whanganui purchase, a matter of outright deception. Whanganui Māori suffered most because of their effective exclusion from political institutions that passed legislation and made decisions relating to them and their affairs. Māori continue to be frustrated by their lack of control over matters concerning them, and rightly so.

We ask that you and the Government act on our concerns that:

- *Whanganui Māori continue to live in a deprived state:* The census statistics we have to hand show that Māori in Whanganui fare poorly compared to non-Māori in areas of health, education, housing and employment. We also heard evidence that many live in a state of cultural deprivation, which can have equally deleterious effects. Our report relates how the Crown's acts created or influenced these circumstances in multiple ways over the 175 years since 1840. The best way for you and your government to address this situation is to enter into a settlement

with Māori of Whanganui that supports their aspirations for economic and cultural revitalisation. This would also have the effect of stimulating economic growth in the district. Generous settlements have achieved such feats in other parts of New Zealand. Your manaakitanga would echo that of tangata whenua here, when they welcomed settlers after 1840.

- *Whanganui Māori have little control over matters that affect them:* The Crown reposed power in local authorities to make decisions affecting Māori lives, but often with little or no involvement of Māori. We were encouraged to see the then mayor and chief executive of Ruapehu District Council attend our hearings, and later engage with tangata whenua in an attempt to address several local grievances. Other councils did not. We now encourage the Crown to seek ways to structure more appropriate Māori involvement in local government, that sees them exercising more control over matters that affect them. At a micro level, the 'local issues' focus of this report provides the Crown with an avenue to work locally with claimants and local authorities to solve problems that have festered for a long time. It will require resources and dedication, but the relationship-building that would result would be more than worth the effort.
- *Whanganui Māori have little say in the management of the Whanganui National Park:* We have found that the Crown acquired the land that makes up the park unjustly and in breach of Treaty principles. The park was created in 1987, when the Treaty of Waitangi was beginning to influence public policy. This led to the inclusion of the Treaty in the Conservation Act of that year, but not to a role for Māori in managing the park. This continues to be a source of grievance. We make specific recommendations about the return to tangata whenua of title to land in the park, and a substantial management role for them.
- *Whanganui Māori should control their own language:* Our report explains how the town near the river mouth was originally called Petre, then later – ironically, given recent conflict over the current name – renamed 'Wanganui', which the settlers thought was the original name. Wanganui was a simple misspelling of 'Whanganui' (meaning, in te reo Māori, 'Whanga' – harbour, and 'nui' – big), probably reflecting the aspirated 'wh' sound in the Whanganui dialect. Control over language is important to any people, but particularly to people whose language is struggling for survival. As regards Whanganui, we conclude that tangata whenua should control their own language, and specifically the spelling of names in their rohe (tribal area). They say the word is 'Whanganui'. We recommend the Crown overturns a recent decision that authorised both 'Wanganui' and 'Whanganui' as legitimate spellings. They are not equally legitimate. One is right and one is wrong.
- *Public works legislation remains unchanged:* As this report goes to print in the second half of 2015, we are disappointed that the comprehensive Public Works recommendations of the Wairarapa ki Tararua Tribunal, which included several members of the present Tribunal, remain unheeded. This *Whanganui Land Report* shows yet again that public works takings

of Māori land were among the most-resented acts of central and local authorities. That those authorities still have the power to do this remains an impediment to the Treaty relationship between Māori and the Crown.

These are all matters that will form part of the Treaty settlement negotiations with the claimants. We wish the parties well. The Māori of this district are due substantial redress for the harm caused to them.

Judge Wainwright
Presiding Officer

ACKNOWLEDGEMENTS

There are a number of people who played important roles in the production of this report to whom we would like to express our thanks. Chief among them is Sonya Wynne, who was involved with this inquiry for more than seven years. Her skill, commitment, and insight were simply invaluable at every stage. More recently, Michael Allen played a vital role in assisting us to complete the report. He worked tirelessly at difficult tasks to help us achieve the final phase. We have been fortunate indeed to have at our disposal the steadfastness and really outstanding talents of these two.

Other writers also contributed enormously: report writing staff Richard Towers, Helen Robinson, Carl Blackmun, Amy Davis, Franchesca Walker, Jonathan West, Paul Husbands, and Sonja Mitchell; and contract writers Eileen Barrett-Whitehead, Raeburn Lange, Paul Thomas, Vincent O'Malley, and Rose Daamen.

Our thanks also go to those who contributed their efforts and skills to the production of the report. Dominic Hurley, Richard Thomson, and Stephen Minchin typeset it; Barry Bradley made the maps; Carolyn Blackwell created the artwork, and others performed the myriad tasks of editing, checking, compilation, and research assistance, without which the report would not have come to fruition: Sarah Burgess, Harry Chapman, Jane Latchem, Bridget Hodgkinson, Kylee Katipo, Steven Oliver, Josie Reid, Keir Wotherspoon, Sarah Deeble, Jeff Abbott, Rebekah Palmer, Oliver O'Connell, Jamie Mitchell, Vaughan Wood, Suzanne Woodley, and Margot Schwass.

We also want to acknowledge all Waitangi Tribunal staff, past and present, who assisted us in the preparation and running of the Whanganui inquiry. Contributions we remember with appreciation include those of Kimiora McAllister, Lissa Chong, Debbie Stowe-Hunt, Francis Cooke, Tina Mihaere-Rees, Nicola-Kiri Smith, Fiona Small, Leanne Boulton, James Mitchell, Jenny Syme, Chappie Te Kani, Hemi Pou, and Sandra Edmonds. During the hearings, the Tribunal relied on the marvellous simultaneous interpretation of Rangi McGarvey and Alan Doyle's excellent sound recording.

Throughout, we have been surrounded by people who have done their utmost to make the process a success, and the report a good one. We have enjoyed their company, and we are so grateful for all that they did to help. The outcome – *He Whiritaunoka* – is in many ways the achievement of us all.

MACRONS

Throughout this report, we use Māori language correctly by deploying tohu tō or macrons to indicate vowel length. Macrons (as in the word Māori) are necessary for correct pronunciation and also for meaning. For example, the word 'kaka' is really four different words, with meaning depending on vowel length: kaka – clothing, fibre, line, tattoo, ancestry; kakā – red hot, inflammation; kāka – transliteration of the English word cork; kākā – native parrot.

Our use of macrons extends to personal names and place names. We have been as consistent and accurate as we can. Historically, vowel length was not noted in written text, either by macrons or double vowels, so it has been necessary for us to make inquiries and use the expertise in Māori language of panel members to do our best to get it right. There will be cases, though, where our understanding is wrong or differs from local usage, and for any such aberrations we apologise.

GLOSSARY

In this glossary, we list all the Māori words used in the English text of this report.

The first time in each chapter that we use a Māori word in the text, we give an English definition in brackets immediately afterwards. Subsequent uses of the same word in the same chapter require readers to remember the definition, if they did not know it before!

There are a few Māori words that we do not define in the text. These are words – like iwi, hapū, mana – which we think New Zealanders know. We define them all in the glossary, though.

Where the report contains a block of Māori text, we give a translation. The glossary does not contain the Māori words in the blocks of Māori text. If you want to check our translations, you will have to consult a dictionary.

Māori words are often open-textured as to their meaning, and can be understood in different ways depending on context. We do not attempt a comprehensive definition of the words used, but give their meaning in the context in which we used them in the text.

ahikā, ahi kā, ahi kā roa burning fire; continuous occupation; rights to land by occupation
ahikā mātao rights to land gone cold or lapsed
aho rua two lines of descent
aho rua hapū hapū (sub-tribe) in which the people have two principal lines of descent
ariki leader of the people, chief
aruhe fern root
atua god, deity, spirit, supernatural being
awa river or stream

e hoa salutation to a friend

hao type of eel (*Anguilla australis*)
hapū tribe, descent group, kin group wider than whānau
hāpuku groper (*Polyprion oxygeneios*)
heke migration, to migrate or descend
hīkoi step, walk
hīnaki eel trap
hīnau native tree (*Elaeocarpus dentatus*)
hoa friend
hoko exchange, barter, buy, sell
hui meeting, gathering, assembly
huia extinct native bird (*Heteralocha acutirostris*)

īnanga whitebait (*Galaxias maculates*)
ingoa name
iwi tribe, people

kahawai type of fish (*Arripis trutta*)
kahikatea white pine (*Dacrycarpus dacrydioides*)
kāhui cluster, family
kai food, to eat
kai whakarite a man to make peace and resolve disputes
kaimoana seafood
kāinga home, village, settlement
kāinga taniwha the lair of a mythical creature or spiritual familiar
kaitiaki guardian, trustee, protector, steward, controller, caretaker; spirit guardians
kaitiakitanga ethic of guardianship, protection, stewardship
kaiwhakaako teacher
kaiwhakawā judge or native assessor in the Native Land Court era
kākā large green native parrot (*Nestor meridionalis*)
kākahi freshwater mussel (*Echyridella menziesi*)
kākāpō large, flightless, nocturnal native parrot (*Strigops habroptilus*)
kākāriki native parakeet (*Cyanoramphus auriceps*)
kanohi ki te kanohi face to face, person to person
kapa haka traditional song and dance
karaka native tree bearing orange berries prized for food (*Corynocarpus laevigatus*)
karakia incantation, chant, prayer, ritual
karengo, kerengo an edible seaweed (*Porphyra columbina*)
kaumatua, kaumātua male or female tribal elder(s)
kaupapa subject, topic, agenda
kawa protocol
kāwana transliteration of 'governor'
kāwanatanga government
kawenata transliteration of 'covenant'
kererū native bush pigeon (*Hemiphaga novaeseelandiae*)
kiekie epiphytic plant (*Freycinetia banksii*)
kina sea urchin, sea egg
Kīngitanga Māori king movement founded in the 1850s
kiore Polynesian rat (*Rattus exulans*)
kiwi iconic flightless bird
koha present, gift
kōhanga reo Māori language pre-school
kōhatu rock, stone
kohekohe native tree (*Dysoxylum spectabile*)
kōiwi human remains, corpse

kōkako New Zealand crow (*Calleaeas cinerea*)
kōkopu native freshwater fish (*Galaxius*)
kōkoputuna type of very large eel
komiti transliteration of 'committee', council
kōpakopako native freshwater fish
kōrau turnip, beet, similar root crops
koreke extinct New Zealand quail (*Coturnix novaezealandiae*)
kōrero story, discussion, speech, to speak
koroua elders
kotahitanga oneness, unity
Kotahitanga Māori political development of the late nineteenth century
koukou morepork (*Ninox novaezealandiae*)
kōura crayfish (spiny lobster)
kuia female elder(s), senior female(s)
kuku green-lipped mussel (*Perna canaliculus*)
kūmara sweet potato
kura transliteration of 'school'
kura kaupapa primary school where education is delivered in te reo Māori
kurī dog
kūtai mussel

mahi work, activity
mahinga kai place for gathering food ; the activity of food gathering
mahinga mātaitai place for gathering seafood
maire native trees of several species
mākutu spell, incantation
mamae pain
mamaku black tree fern (*Cyathea medullaris*)
mana authority, control, influence, prestige, power, reputation
mana whenua, manawhenua customary rights and authority over land and resources
manaaki hospitality, generosity, compassion, respect, kindness
manaakitanga ethic of hospitality, generosity, care-giving
manu bird
manuhiri guests, visitors
mānuka tea tree (*Leptospermum scoparium*)
māra cultivation, garden
marae enclosed space in front of house, courtyard, community meeting place
mataī black pine (*Prumnopitys taxifolia*)
mātaitai fish or other foodstuff obtained from the sea
matatau to know well, to be proficient or expert at
mātauranga knowledge
mate atua sickness beyond human control

matua father, close male relative of the previous generation, also used in place of 'kaumatua' for 'elder'
mauri life force, life principle
miro brown pine (*Prumnopitys ferruginea*)
mita dialect
moa large extinct flightless bird
moana large body of water; lake, sea
mōki, mōkihi raft made of reeds
mokopuna, moko grandchild
muru retributive act of plunder

ngaio native tree (*Myoporum laetum*)
ngaore freshwater smelt (*Retropinna retropinna* or *Stokellia anisodon*)
Ngāti, Ngāi, Āti descendants of
nīkau native palm (*Rhopalostylis sapida*)
noa ordinary, free from tapu or restrictions, safe, touchable
nohoanga traditional camping area

ōhākī dying speech

pā fortified village, or more recently, any village
pā tuna weir for catching eels
Pākehā New Zealander of European (mainly British) descent
pakeke adult
papa kōhatu broad flat rock
papakāinga original home, home base, land reserved for a community
pātaka food store
pātiki flounder
pāua abalone
pepeha tribal saying
pingao now rare grassy coastal plant (*Desmoschoenus spiralis*) traditionally used for weaving and rope making
poi light ball with a string attached to it, swung rhythmically in dance
poroporoākī farewell, especially to deceased person
pou upright post, pole, support, to support a person or thing
pou tokomanawa main support post in a meeting house
pūhā sow thistle
pūpū shellfish, often called cat's eyes (*Turbo smaragdus*)
pure ceremony to lift tapu

rāhui temporary restriction on access or prohibition on use of land or resources; reserve, preserve

rākau whenua tree under which placenta are buried
rangatahi young people
rangatira chief
rangatiratanga chieftainship, leadership, self-determination
raupō a kind of bulrush (*Typha orientalis*)
rauriki pūhā or sow thistle (*Sonchus oleraceus*)
rimu red pine (*Dacrydium cupressinum*)
rohe boundary, territory, district, area, region
rohe moana tribal territory at sea
rongoā traditional cure, medicine, remedy, solution to problem, take care of
rūnanga assembly, council

tahakupu o te whenua high water mark
tai coast, shore; sea
taiao the world, environment
taiwhenua land, district
takahē large, rare flightless bird (*Porphyrio mantelli*)
take issue, grievance, cause, reason
take raupatu conquest as basis of claim to land
take taunaha rights to land through first naming, bespeaking it
take tupuna ancestral rights to land
take whenua basis of claim to land
takiwā territory
tamariki children
tangata heke migrating group, migrants
tangata kaitiaki persons in caretaking role (a term used in the customary fisheries regime)
tangata whenua people of the land, people of a given place, hosts, local people, or pre-canoe peoples
tangi cry, weep, grieve
tangi funeral ritual (abbreviation of tangihanga)
taonga treasured possession, property
taonga raranga materials for weaving
tapatapa naming the land and so claiming it
tapu religious or spiritual restriction, sacred, consecrated, prohibited
tatau pounamu enduring peace, sometimes sealed by visible symbol of a green door
taua war expedition
taua muru punitive raid or expedition
tauiwi foreigner, alien, outsider, non-Māori
taunoka native broom plant (*Carmichaelia australis*)
taura rope
taura here, taurahere link

tauranga ika traditional fishing ground
tauranga waka traditional waka landing site
tawa fruit-bearing tree (*Beilschmiedia tawa*)
te ao Māori the Māori world
Te Awa Tupua the sacred river
Te Kāhui Maunga the family of mountains on the central plateau of the North Island
te reo, te reo Māori the Māori language
Te Rohe Pōtae the King Country
Te Tai Hauāuru the West Coast of the North Island
te tino rangatiratanga full (chiefly) authority
tekoteko carved figure on a house
tī cabbage tree
tīeke saddleback bird (*Philesturnus carunculatus*)
tika correct, proper, fair, just, according to traditional ways
tikanga traditional rules for conducting life, custom, habit, rule, plan, method, rights, law
tino rangatiratanga autonomy, self-determination, independent chieftainship
tipua, tupua spirits (malign or benign)
tītī, tiitii muttonbird (young of sooty shearwater, *Puffinsus griseus*)
tītoki native tree (*Alectryon excelsus*)
tohi ritual for purification
tohu sign, portent
tohunga specialist, expert, wizard, priest
tomo marriage negotiation
tongi sites of significance
tōtara native tree (*Podocarpus totara, podocarpus cunninghamii*)
tūāhu altar
tuatara native reptile (*Sphenodon punctatus*)
tūī parson bird (*Prosthemadera novaeseelandiae*)
tuku let go, give up, gift
tuku taonga permission to use resources
tuku whenua gifting land, permission to settle or occupy, contingent on on-going use and some form of consideration
tuna eel
tuna heke twice yearly eel migration
tunariki eel fry
tupuna, tipuna ancestor, forebear
tūpuna, tīpuna ancestors, forebears
tūrangawaewae home turf, core habitation, ancestral home (literally 'place to stand')
tūturu real, genuine, proper

upokororo grayling, a freshwater fish (*Prototroctes ocyrhynchus*)

uri descendants
urupā burial site, cemetery, tomb
utu reciprocity, retribution, recompense, revenge, response, price, payment
utu pirahau lamprey weirs

wāhi tapu sacred place, repository of sacred objects
wāhi taonga treasured places
wahine woman
wai tōtā medicinal waters
waiata song
waiū milk, breast milk
waka canoe
wānanga debate, study session
weka woodhen (*Gallirallus australis*), a flightless bird about the same size as a chicken
whaikōrero traditional oratory on the marae
whakapapa ancestry, lineage, family connections, genealogy; to layer
whakataukī proverb, saying
whakawātea ritual for cleansing or clearing spirits
whānau family, extended family
whanaunga kin, family member
whanaungatanga ethic of connectedness by blood; relationships, kinship
whāngai adopted child
whare house, building
whare kura secondary school
whare wānanga school of learning, tertiary institution, university
wharenui meeting house
wharepaku toilet
whāriki woven flat floor mat
whenua land, ground, placenta, afterbirth
whio blue or whistling duck (*Hymenolaimus malacorhynchos*)
whiri plait, twist

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ABBREVIATIONS

ac	acre
AC	*Law Reports, Appeal Cases* (England)
AJHR	*Appendix to the Journals of the House of Representatives*
AJLC	*Appendix to the Journal of the Legislative Council*
app	appendix
App Cas	*Law Reports, Appeal Cases* (England)
ATL	Alexander Turnbull Library
BPP	*British Parliamentary Papers: Colonies New Zealand* (17 vols, Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
CD	compact disc
CFRT	Crown Forestry Rental Trust
ch	chapter
cl	clause
CLO	Crown Law Office
CNI	Central North Island
comp	compiler
d	penny, pence
div	division
doc	document
DOC	Department of Conservation
ed	edition, editor
ff	following
fn	footnote
fol	folio
ha	hectare
IT	information technology
J, JJ	justice, justices (when used after a surname or surnames)
LINZ	Land Information New Zealand
MCH	Ministry of Culture and Heritage
ltd	limited
n	note
NCEA	National Certificate in Educational Achievement
no	number
NZED	New Zealand Electricity Department
NZLJ	*New Zealand Law Journal*
NZLR	*New Zealand Law Reports*
NZPCC	*New Zealand Privy Council Cases*
NZPD	*New Zealand Parliamentary Debates*
NZSC	*New Zealand Supreme Court*
OIC	Order in Council
OTS	Office of Treaty Settlements
p	perch
p, pp	page, pages
para	paragraph
PC	Privy Council
pl	plate
pt	part
QBD	*Law Reports, Queen's Bench Division* (England)
r	rood
RMA	Resource Management Act 1991
ROI	record of inquiry
s	shilling
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
sch	schedule
SD	survey district
sec	section (of this report, a book, etc)
sess	session
sl	slide
tbl	table
TPD	Tongariro Power Development
UCOL	Universal College of Learning
UN	United Nations
v	and (in legal case names)
vol	volume
Wai	Waitangi Tribunal claim
WINZ	Work and Income New Zealand

Unless otherwise stated, endnote references to claims, documents, memoranda, papers, and transcripts are to the Wai 903 record of inquiry, a select copy of which is reproduced in appendix VIII. A full copy is available on request from the Waitangi Tribunal.

CHAPTER 1

INTRODUCTION

1.1 He Whiritaunoka

We have called this report *He Whiritaunoka* in the hope that it will mark the beginning of the next stage in the lives of Whanganui Māori, in which they will move beyond conflict with the Crown, and rarururu (difficulties) of their own, to fulfil their aspirations for a future full of harmony, unity, and cultural revival.

Where does the name *He Whiritaunoka* come from? Let us begin with the literal meaning of the Māori words: 'whiri' means to twist or plait and 'taunoka' is the name of the native broom, *Carmichaelia australis*. The stem of this shrub is pliable – as the image on the cover shows.

But *He Whiritaunoka* is layered with meaning that is historical, metaphorical, and symbolic. In 1865, just after fighting had ceased in Whanganui during the New Zealand wars, the Whanganui rangatira Hōri Kīngi Te Anaua set about diplomatic moves to secure peace and unity. Journeying up the river to see Te Pēhi Tūroa, who had fought against the Government, he stopped at Te Pēhi's pā Ōhinemutu, a Whanganui River settlement near Pīpīriki that was razed during military operations. He tied a knot in a taunoka, and said, 'I have made this knot that there may be peace inland of this place.'[1] His act of twisting the supple stalks together symbolised hope that conflict between Māori and Pākehā, and between Māori, would come to end. Māori invoked this act and what it signified for many years to come; 'whiritaunoka' became the word that referred to the long process of reconciliation and reunification in the wake of the wars.

We have the temerity to hope that our report might also be 'he whiritaunoka' – a symbol that peace and better times lie just ahead.

Kia tau te rangimārie i runga i a tātou katoa.

1.2 Preamble

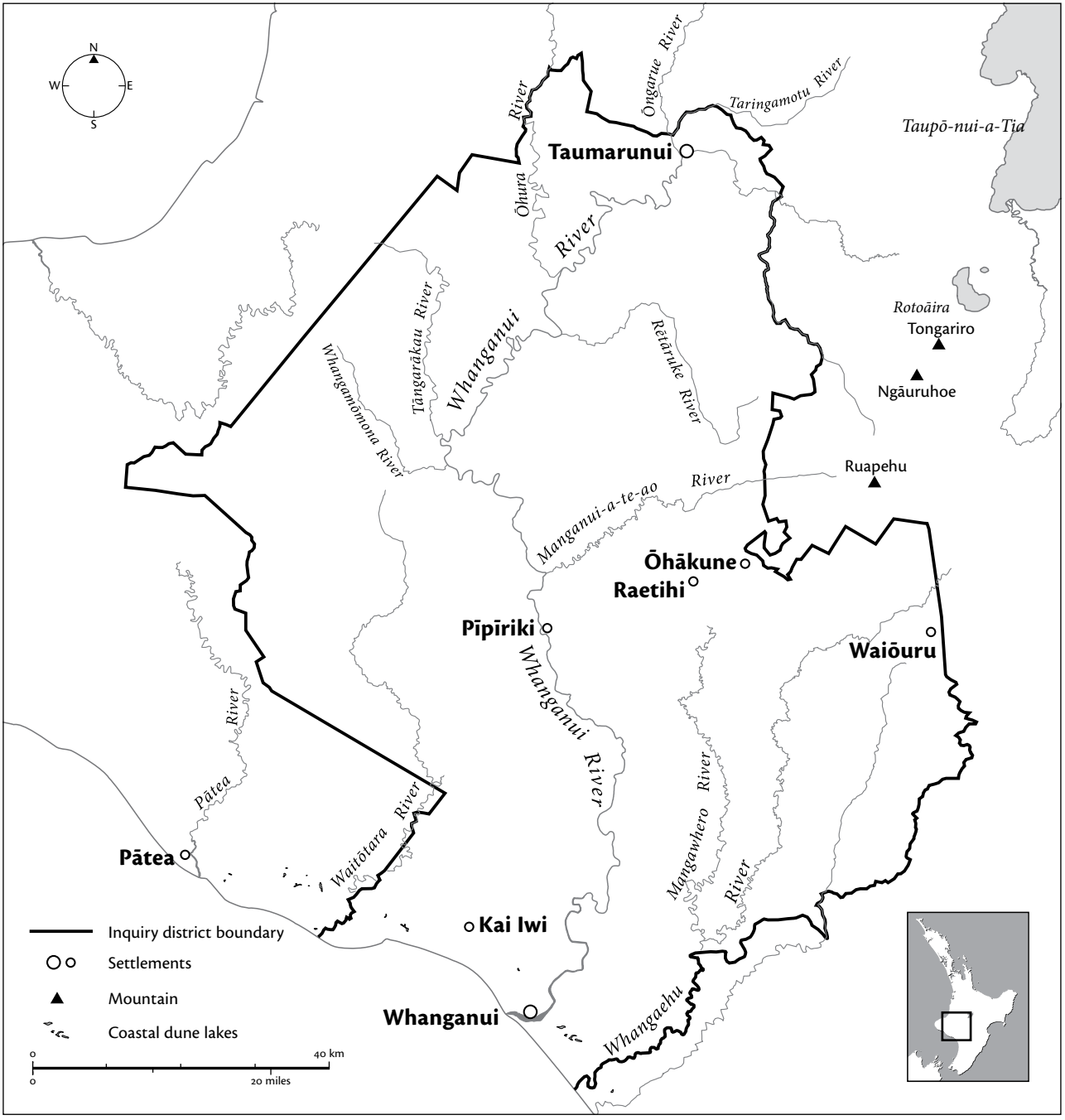
In this introduction, we cover three topics.

First, we explain who the claimants were and outline what their claims were about.

Secondly, we say what struck us most in this inquiry. We give a snapshot of evidence we found especially resonant and distinctively of this inquiry district.

Thirdly, in a section we call 'Housekeeping', we outline the history of this inquiry. This section is procedural, administrative, and legal in nature, rather than about the substance of the claims. We need to review some matters of process to give context for this report, and record some quite unusual steps that we took along the way. However,

◀ **Taunoka or native broom (*Carmichaelia australis*)**



Map 1.1: The Whanganui inquiry district

a reader concerned with only the claims themselves can skip 'Housekeeping' and go straight to chapter 2.

1.3 The Claimants

The many claimants in this inquiry are Māori men and women who devoted time, energy and resources over many years to an important cause: pursuing justice on behalf of their tūpuna, and the uri (descendants) of those tūpuna who are alive today.

The claims were variously brought on behalf of whānau, individual hapū and iwi, and groups of hapū and iwi. Some came to us in the name of particular tūpuna. Others came in the names of entities that reflect aspects of Māori life in the modern age – trusts, boards, societies, incorporations, and owners of particular land blocks.

1.3.1 He korowai – the ancestral cloak

When this Tribunal first came to the region to commence the process of inquiring into land claims, it was evident to us that, since the Waitangi Tribunal's inquiry into the Whanganui River, hapū and iwi had been involved in a process of redefinition. In the River inquiry, some groups had become unhappy about the representation of their interests through the Whanganui River Trust Board, and rejected what they saw as an undue emphasis on the ancestral river siblings Hinengākau, Tamaūpoko and Tūpoho. We saw a desire for other ancestors – Ruatipua, Paerangi o te Maungaroa, Tamahaki, Uenuku, and Tamakana – to come to the fore.

It was a period when groups needed to focus on the relationships between them, and to settle any differences. They needed to find ways of moving forward with a sense of common purpose, while still maintaining their separate identities and mana. We saw, over the years of working together with the hapū and iwi of this inquiry district, how their relationships steadily strengthened. This came about as a result of the work of many individuals – and also, we thought, as a result of the shared experience of tangata whenua participating in this district inquiry.

For all participants, the Waitangi Tribunal process, stretching over years, was both an experience and an education. We all became immersed in the rich tapestry of ancestral life. As the Tribunal sat at different marae and heard whakapapa and histories, tangata whenua from across the rohe listened too. We became acquainted with all the tūpuna, and learned how they responded to the many challenging experiences of the past. The lives that those old people led continued to speak to their uri, enhancing their mana, and reminding them of their connections through time and across strands of whakapapa. Through them, people made sense of their lives and their connection to land, and – in pursuing their claims – what they were seeking to re-establish in a modern context.

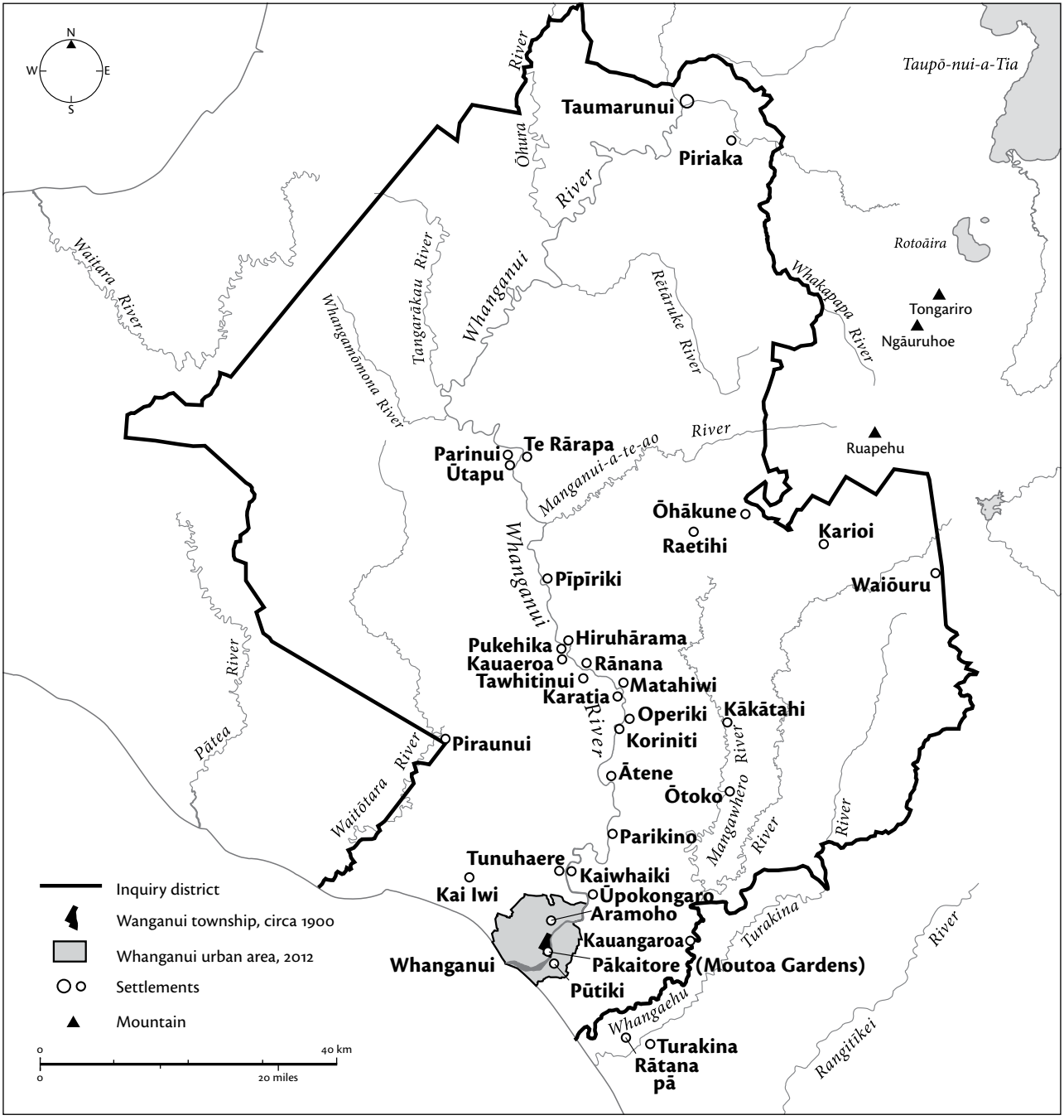
Exactly how and with whom iwi choose to identify will always be a matter for them, but we discerned in all the stories and images common threads: links between the present and the past; between individuals and their kin groups; and between kin groups. The English metaphor 'common threads' is very like 'te taura whiri a Hinengākau' (the plaited rope of Hinengākau). The image is one where many ties interweave to create a larger, stronger textile: this evokes how iwi and hapū interconnect, woven together, yet autonomous; related, but from different points of origin. Those unfamiliar with Māori society sometimes struggle to come to grips with how people experience community in this way. For the Māori who came before us in this district inquiry, it was fundamental to their existence as a people, and part of their everyday reality.

1.3.2 Ngā whenua, ngā awa – the land and rivers

When we speak of 'Whanganui', we refer to the broad expanse of land that stretches towards the source of the ancestral river and spreads out into the hinterland.

It is first and foremost an ancestral landscape, in which the Whanganui River is the dominant feature. This saying, heard time and again, expresses how the river really is the people who have lived there for generations:

I rere mai te awa nui
mai i te Kāhui Maunga ki Tangaroa
Ko au te awa,
Ko te awa ko au[2]



Map 1.2: The location of Māori communities in Whanganui

For as long as the great river
has run its course from the noble assemblage of ancestral mountains to the sea
I am the river,
and the river is me[3]

From the source of the river emerges another source of ancestry. The Kāhui Maunga – Tongariro, Ruapehu, and their companion mountains – are themselves tūpuna. There are other ancestral rivers besides Whanganui – Whakapapa, Whangaehu, Manganui-a-te-ao, Mangawhero, and Waitōtara, to name but five – as well as many wetlands and lakes.

Each part of the landscape is named for tūpuna and incidents of lore. It is land that has since colonisation been designated as blocks, many named after tūpuna. It is land that now features towns, farms, and conservation estate, including the great expanse of Whanganui National Park.

It is a landscape that gives identity and mana.

It is also a landscape that is the source of grievance.

1.3.3 Te ao hurihuri – Whanganui Māori of today

In 2006, Māori made up a quarter of the population of the Whanganui district.[4] Te Āti Haunui-ā-Pāpārangi was the iwi with whom people living in the district primarily identified, numbering 3,306. Ngāti Tūwharetoa was next, with just over 2,000 people. More than two thirds of Te Āti Haunui-ā-Pāpārangi, however, were living outside Whanganui. In total, there were 10,434 people who identified as Te Āti Haunui-ā-Pāpārangi. By 2013, that number had increased to 11,691.[5]

Although we address the social data about Whanganui Māori in chapters 21 and 27, and although we hesitate to recite facts about Māori disadvantage at the very beginning of a report that in many ways celebrates the uniqueness and splendour of Whanganuitanga, we nevertheless decided to put some sobering facts upfront. It is the task of the Waitangi Tribunal to shed light on the interactions that comprised the process of colonisation in New Zealand. In this report, we illuminate as never before what happened between the Crown and the Māori people of this region. We think it is important to acknowledge from the outset that, 175 years since the Treaty was signed, the construction of the New Zealand of the twenty-first century has not brought equal levels of prosperity and wellbeing to the Māori people of this region.

The data comes mostly from the 2006 census. At that time, Māori had lower incomes, were more likely to work in low-skilled jobs, and were more likely to be unemployed than non-Māori. While Māori and non-Māori were equally likely to be in receipt of a benefit, non-Māori beneficiaries were more likely to be on a pension or superannuation, whereas Māori beneficiaries tended to be on benefits that are not age-related, like the unemployment, domestic purposes, and sickness benefits.

Māori in Whanganui, as in all of New Zealand, were significantly less healthy than non-Māori. Mortality rates in 2006 were twice as high for Māori as for non-Māori. For some diseases the difference was much higher. Māori men died on average nearly nine years earlier than non-Māori men, while Māori women died nearly eight years earlier than non-Māori women.

Māori in Whanganui were less likely to achieve success in education than non-Māori. Both nationally and in our inquiry district, Māori in 2006 were significantly more likely to be expelled, stood down, or excluded from school. Non-Māori school leavers in our inquiry district were more than twice as likely as Māori to be qualified to enter university, and around a third more likely to have NCEA level 2 or above. Whanganui Māori aged 15 or older were significantly less likely than Whanganui non-Māori of the same age to hold tertiary, trade, or school qualifications.

Māori in Whanganui also had lower standards of housing than their non-Māori counterparts. Of Whanganui Māori households, 45 per cent were renting, compared to just 21 percent of non-Māori households, and Māori renters were nearly twice as likely to have as their landlord Housing New Zealand. Māori also seemed to experience more crowding than non-Māori: half of Māori households of five or more people had three or fewer bedrooms, compared to just under a third of non-Māori households of five or more.

In short, Māori were worse off than non-Māori.

Although Whanganui Māori have made considerable efforts to preserve and nurture their culture and language, the majority cannot speak or understand te reo Māori. Some (15.8 per cent) did not know their iwi.

This inquiry district comprises over 2 million acres. In 1840, Māori owned all of it. In 2004, they owned just over 237,000 acres, or about 11 per cent.[6]

Looking at all this data, the question naturally arises: how did Māori in this district come to be so badly off? And the next question – *the* question for this Waitangi Tribunal – is to what extent the Crown was responsible. This report seeks to provide answers.

1.4 The Claims

The claimants alleged that the Crown breached the principles of the Treaty from the outset. There were many claims, and most alleged a string of breaches across time. There were also many discrete claims that related to local areas and particular actions or events, some within living memory.

1.4.1 A Treaty exchange?

The claimants' starting point was their view of the meaning and effect of the Treaty of Waitangi and how it applied to them. They said that they did not cede te tino rangatiratanga through the Treaty, though the Crown continued to act as if they had done so. It assumed power to act on their behalf, and excluded them from the political institutions of the colony. This usurpation of Māori authority expanded in the twentieth century, as the Crown delegated to local authorities power to manage and control land, rivers and the environment.

1.4.2 Crown purchase and war

They said that the Crown unfairly acquired the land around the Wanganui township through a purchase that was finalised in 1848, many years (and with much confusion) after the New Zealand Company first tried to buy the land. The purchase was pushed through in an atmosphere of tension following a military clash between Whanganui Māori and imperial troops in 1847. The troops were maintaining a garrison in the town at the time. Then conflict erupted in the 1860s – this time with Māori sometimes fighting each other, most famously at Moutoa Island in 1864. This left a bitter legacy that was, the claimants maintained, of the Crown's making.

1.4.3 The Native Land Court and more land alienated

The claimants were unanimous as to the damage caused after the introduction to the district of the Native Land Court in the late 1860s. Large-scale alienation of land quickly followed (and in some cases coincided with) the court's sittings. More land alienation continued into the twentieth century, leaving Māori with the fraction of land that remains in their ownership today.

1.4.4 Land and rivers taken, used, or restricted

The twentieth century, they said, was when the Crown took actions that decisively undermined their tribal estate and te tino rangatiratanga. Foremost among these was the compulsory and unjust acquisition of land for scenic reserves and other public works. There was also, they said, the coercive and unfair creation of native townships at Taumarunui and Pīpīriki; the forcible and unfair vesting of their land in bodies in which they had little or no authority; and the unfortunate and unsuccessful implementation of various development schemes. On top of this, various Crown actions caused harmful environmental effects to land and waterways, and tangata whenua were unfairly excluded from management decisions about the Whanganui National Park from the time of its inception in the 1980s.

1.4.5 Social services and socio-economic outcomes

Finally, they believed that the Crown's provision of health, education, housing and other social services was inadequate and unequal, in both the nineteenth and twentieth centuries.

Through these actions and inactions, the claimants

considered that the Crown caused them to be marginalised in their ancestral rohe (territory), and was responsible for the deprived and scattered state in which many find themselves today.

1.5 What Struck Us Most

It is difficult to summarise the experience of being part of an inquiry of this dimension. We met so many people, went to so many places, heard so much evidence, in order to come to the findings set out in this report. We cannot capture it all, even in a report of this size. We shared so much: tears, laughter, disagreement, food, tangi, wisdom, and love. The hearings are a slice of life that will remain always in the memories of those who took part. We set out here the facts and our opinions in thousands of words, but many of the feelings we felt, the jokes we heard, the hands we clasped, and the hongi we shared, will remain only in the hearts and minds of those of us who were there.

As a Tribunal, we witnessed the ongoing commitment of these communities to their Whanganuitanga. We saw a core of dedicated young people – young to us anyway – whose knowledge and commitment will see them become the rangatira and tohunga of tomorrow. Even in the years when our hearings were happening, we were seeing the process of the old guard giving way to the new. We were grateful to them all, because their leadership enabled our hearing process to run smoothly and productively on the many marae that hosted us.

Many of the claims we heard about were about the experiences of communities in their localities. Accordingly, the report as a whole reflects local experiences as far as possible. Nevertheless, when we came to look back over the inquiry, there were two general impressions that we wanted to note.

1.5.1 First, that Māori remained optimistic and creative

While there were diverse responses to the arrival of Europeans in the Whanganui district, most rangatira were willing to accommodate – and some encouraged – settler communities. They looked to the benefits they could gain, and were curious to learn about the new ideas and new ways of doing things. It was rare to see chiefs completely opposed to settlers, even after their initial expectations of how Pākehā would live cooperatively with them were dashed. However, common to all the hapū was determination to retain authority over their land. Rangatira were keen to engage in transactions, but only so long as they were in control of the situation.

The changes that gathered around them were ineluctable, though, and they generally meant incremental diminution of Māori authority. Even so, the history of this region tells the story of people who never gave up looking for opportunities to benefit from the changes, and to turn them into a win for te tino rangatiratanga.

In the 1860s and 1870s, tangata whenua adapted their own institutions to new circumstances. Hui and komiti and rūnanga took on new roles under the leadership of men such as Metekīngi Paetahi, and enjoyed considerable support. Others preferred to work through the institutions of the Kīngitanga.

Even after the wars of the 1860s, Māori leaders continued to seek ways to assert authority in the political process as it directly affected them, especially deciding who owned the land and whether to sell it. Influential in this sphere was the famous military leader Te Keepa Te Rangihiwinui, known to Pākehā as Major Kemp. He did not speak for all hapū and iwi in the district, but he expressed a commonly-held desire when he asserted that Māori institutions ought to be given recognition in the political machinery of the colony. His brainchild, Kemp's Trust, was a classic instance of using Pākehā law (the law of trusts) to suit the Māori purpose of holding on to Māori land as a collective.

Whanganui support for the idea of land councils at the end of the nineteenth century was another instance of Māori reaching out to new concepts to find ways to exercise control over their land. Despite the experience of much of the foregoing period, when most of the land passed from their ownership, Māori seized every opportunity that colonial politics offered to take back some

authority. Another effort to manage their landholdings was their support for creating specially designated townships, a scheme which they hoped would yield an income and protect their land from sale. Whanganui Māori support for these initiatives demonstrated their belief that they would find a way not only to benefit from colonisation, but to have a say in how that would be achieved.

Such optimism was evident as recently as the 1980s, when Whanganui Māori engaged with the Crown in discussions about creating the new national park in their rohe as a Māori national park. Optimism notwithstanding, they carried on preparing their Waitangi Tribunal claims about how the Crown wrongfully acquired the land that eventually became Whanganui National Park.

1.5.2 Secondly, how the colonists refused to share power

We were equally struck – though perhaps not surprised – by the extent to which colonial authorities took advantage of the optimism Māori displayed.

The generosity and optimism of tangata whenua was perhaps even more evident in Whanganui than elsewhere, as they extended their customary manaaki to the newcomers from the outset. They employed the metaphor of marriage between Māori land and Pākehā settlers on formal occasions, and helped the new settlers to get established.

There was no answering generosity or integrity on the part of the authorities. Negotiating the final stages of the Whanganui purchase in the late 1840s, officials duped Māori about how much land was changing hands, paid them a poor price, and kept the military there to underscore the new power dynamic. Before long, colonial authorities assumed political power and created political institutions that did not include Māori. Those institutions passed legislation that established ways of acquiring Māori land and resources that minimised the means for opposition. It was by no means a continuous march of oppression and dispossession, for there were meanderings and movements back and forth with different governments, different policies, and different trends in legislation. In hindsight, though, it all has an air of inevitably that flowed from the colonists' adamant refusal to share power.

There were real opportunities to do so, especially around the turn of the twentieth century, with the dynamism of the Kotahitanga movement, and bicultural leaders such as Āpirana Ngata and James Carroll coming to the fore. The Crown created Māori land councils, in which Māori were well represented, and in Whanganui Māori responded with enthusiasm and vested a great deal of land in their council. The transformation of the land councils to land boards, in which Māori had little authority, must have been particularly galling for Whanganui Māori, who vested so much of their land in the council in the expectation that it would be an institution that they could influence. Instead, they lost control of their remaining land for long periods. Similarly, the native townships, for which tangata whenua at Pīpīriki and Taumarunui had high hopes, became sites of marginalisation.

The Crown moved right away from the idea that Māori would be protected in the use and ownership of their land. They viewed scenic Whanganui as a resource for everybody, not its owners, to enjoy, and bought even reserved land indiscriminately. Exploiting Māori and their resources in the Whanganui district was by this time a habit. Even in the 1980s, when the Treaty had attained a different status in our country, the Crown created Whanganui National Park without a significant role for Māori – even though 'a very "[M]aori" national park' seemed briefly to be a genuine prospect.[7]

Only now are Māori in Whanganui beginning to be able to exercise authority in their rohe. The Whanganui River settlement will provide more scope for them to influence the river environment than they have had since the nineteenth century. New leaders are emerging, and Whanganuitanga is revitalising. Soon, 175 years after it signed the Treaty, and after much water has flowed under the bridges that span the Whanganui and the other ancestral waterways of this region, the Crown will shortly sit down at the table with Whanganui Māori to work out with them – really for the first time – what Treaty partnership might look like in this whole region.

1.6 Housekeeping

In the following sections, we outline the history of this Tribunal's inquiry into the Whanganui land claims. We explain its relationship with the Whanganui River Inquiry, and how the inquiry into Whanganui land developed. We took a number of unusual steps along the way that need to be noted, and we also came to an understanding with the claimants about the scope of the report. This section provides background and concerns legal, procedural, and administrative matters. It is not about the substance of the claims.

1.6.1 Where the Waitangi Tribunal came in

By the mid-1990s, the Waitangi Tribunal had heard and reported on a handful of historical claims, following the expansion of the Tribunal's jurisdiction to inquire into Crown actions from 1840. The landmark *Ngai Tahu Report* was released in 1991, but the Tribunal was beginning to consider how historical claims could be heard together in whole districts, rather than proceeding claim by claim. Some claims, however, warranted exceptional consideration, and the Whanganui River claim was one of them.

1.6.2 The Whanganui River inquiry

Nine trustees of the Whanganui River Māori Trust Board, and kaumatua Hikaia Amohia, brought the Whanganui River claim on behalf of Te Āti Haunui-a-Pāpārangi as a whole, and it was registered in December 1990.[8] The Trust Board was established under the Whanganui River Trust Board Act 1988 following a commission of inquiry into how the Crown acquired ownership of the river – only the latest of many inquiries, petitions, and court cases on the same subject dating back to 1873. The Act empowered the Trust Board to

> deal with outstanding claims relating to the customary rights and usages of Te Iwi o Whanganui in respect of te Awa Whanganui River including the bed of the River, its minerals, its water and its fish.[9]

Though the claim raised matters concerning the land, the Tribunal decided to focus on the river in a dedicated urgent inquiry.[10] From March to July 1994, the Tribunal held hearings at marae up and down the river.

1.6.3 *The Whanganui River Report*

In its *Whanganui River Report*, issued in 1999, the Tribunal found that Te Āti Haunui-a-Pāpārangi were denied rightful ownership of the Whanganui River through Crown actions that breached Treaty principles. The people owned the whole river, and not simply its bed. That right of ownership was based on universal principles of law – principles that were further guaranteed in the Treaty of Waitangi. 'Contrary to some popular opinions, New Zealand was not colonised on the basis that rivers were publicly owned.'[11] The English law that was applied in New Zealand recognised the territorial possession of indigenous peoples and that riverbeds were owned by the riparian owners to the centre line, from the tidal reaches to the source. The Tribunal found that, following the establishment of responsible government in New Zealand, successive parliaments enacted statutes affecting rivers. One such statute, in 1903, vested the bed of all navigable rivers in the Crown: the interests of Māori were expropriated without consultation or compensation.[12]

In the opinion of the majority of the panel, it was important that any remedy acknowledged the unique aspects of the case. Because the Whanganui River is, from its source to the sea, central to the lives and identity of the river people, the Tribunal considered that exceptional consideration was warranted. They looked for a solution in the Resource Management Act 1991, but found none. Instead, they proposed recognition of the authority of Te Āti Haunui-a-Pāpārangi in appropriate legislation, which should include recognition of their right of ownership of the river. Existing use rights and public access should also be protected. Two options were proposed for implementing these provisions, both involving major roles for the Whanganui River Maori Trust Board in the management of the river. The Tribunal recommended that the parties enter into negotiations.[13]

In a dissenting opinion, one member was unable to

support any proposal involving Māori ownership of natural water:

> It is an unfortunate reality that the Whanganui River is both the tangible focus of Atihaunui spiritual and physical wellbeing and the main arterial trench of a very large drainage system in industrialised contemporary society.

The member recommended that the Crown give serious consideration to an equal sharing of the ownership of the riverbed and advocated that the Crown and claimants jointly establish a body through which all rights and responsibilities of legal ownership could be exercised.[14]

1.6.4 The Whanganui River settlement

The Whanganui River is the passion and lifeblood of most of the claimants in our area, so it was a huge milestone for them to settle their Whanganui River claim with the Crown. Terms of settlement were agreed in August 2012.[15] A deed of settlement was initialled in March 2014, and signed later that year.[16]

The settlement, called *Ruruku Whakatupua: Te Mana o te Awa Tupua*, sets out a framework for establishing the Whanganui River as a single, indivisible legal entity, from the mountains to the sea. The settlement will also allow for the creation of Te Pou Tupua, the 'human face' of Te Awa Tupua, which will act and speak for the river. Te Pou Tupua will comprise representatives of Whanganui Māori and the Crown, symbolic of the Treaty relationship. It will be supported by a strategy group consisting of representatives from iwi, local and central government, commercial and recreational users and environmental groups. Legislation, which will give effect to these terms, is expected to be introduced to parliament in 2016.

1.6.5 The Whanganui land inquiry

After the river inquiry was completed, plans for an inquiry into land claims commenced. In the intervening years, the Tribunal received many more claims concerning land issues.

(1) *Planning, research, and pleadings*

In 2002, planning began for the historical research that would be conducted in support of the inquiry.[17] Once Judge Wainwright was appointed presiding officer of the inquiry, she commissioned a series of research reports, as did the Crown Forestry Rental Trust (on behalf of the claimants) and the Crown. The Tribunal and Crown Forestry Rental Trust reports were filed in 2004, and the Crown reports followed in 2006. In total, 59 research reports were filed, many with voluminous supporting papers. Research reports from other inquiries were also placed on the Whanganui record of inquiry.

With substantial research now to hand, the Tribunal required counsel for the various claimant groups to cooperate in the production of a joint statement of claim on common issues and separate particularised statements of claim on behalf of each group.[18] The Crown's statement of response set out its position.[19] From these documents, the Tribunal produced a 'statement of issues' – a series of questions that would clear away the areas where the claimants and the Crown were in agreement, and focus on where they differed.[20]

(2) *Determining the inquiry boundary*

From 2002, the parties discussed with the Tribunal the boundary of the inquiry district. There were a number of issues to consider. Around the Whanganui inquiry district lay five others: Taranaki to the west, Te Rohe Pōtae to the north, National Park to the north-east, Taihape to the east, and Porirua ki Manawatu to the south-east. As usual, a careful process was needed to establish where the boundaries should be drawn, to ensure that the claims of groups with interests in the border areas would be fully heard.

The boundary first proposed in April 2002 covered the core Whanganui area, bounded by the Whangaehu River in the east and the Ōkehu Stream in the west, extending as far north as the Waimarino block.[21] Following discussions with the parties over some months, this boundary underwent a number of changes, with some additions and exclusions.[22] Ultimately,

- The western boundary was extended so as to include some blocks that were heard previously in the Taranaki inquiry (the Kaitangiwhenua and Waitōtara blocks, as well as some neighbouring blocks to the north). Issues relating to this land would be heard in so far as they related to Whanganui claims.
- The northern boundary was extended so as to include land where both Whanganui and Ngāti Maniapoto groups claimed interests, namely, the Kōiro, Ōpatu, and Ōhura South blocks, as well as Taumarunui township.
- The eastern boundary was extended to include land earmarked for the Taihape inquiry, in order to accommodate Ngāti Rangi's preference to have all their claim issues heard in the Whanganui inquiry, including those relating to the Murimotu and Rangiwaea blocks, and the Karioi Forest.

Finally, however, due to the extent of overlapping interests between Taupō and Whanganui groups, and issues of representation, it was decided that it was necessary to create a separate sub-district around the Tongariro National Park. The Whanganui and National Park Tribunals would sit together to hear evidence common to both, but Ngāti Rangi claims in respect of certain blocks would be heard in the National Park inquiry alone.

(3) *Appointing a panel*

Judge Carrie Wainwright was appointed presiding officer in 2001. Dr Angela Ballara was appointed a member of the panel in 2005, followed by Dr Ranginui Walker in 2006. In February 2007, Professor Wharehuia Milroy was appointed as the fourth and final member.

(4) *Hearings*

For the purposes of preparing and presenting evidence, and to facilitate funding from the Crown Forestry Rental Trust, the claimants organised themselves into regionally based 'clusters'. These became known as the southern, central, and northern clusters. Ngāti Rangi prepared and presented its evidence and its case as a separate entity.

At our first hearing, we sat together with the National Park Tribunal to hear traditional evidence at Raketāpāuma Marae on 20 February 2006.

Whanganui Tribunal hearings recommenced with the evidence of the southern cluster, presented over four weeks in August and September 2007. Central cluster evidence followed, over five weeks from March to May 2008; and the northern cluster presented evidence over three weeks in the months of October and November 2008. Ngāti Rangi gave its evidence in one week in March 2009. Hearings concluded with four weeks of Crown evidence from May to August 2009. The Tribunal heard the closing submissions of all parties in three weeks from October to December 2009.

In addition to appearances and briefs of evidence from witnesses presenting 59 research reports, we received 327 briefs of evidence from the claimants, 225 of whom appeared before us in person. (A full description of clusters and the claims brought, as well as the hearings and evidence presented, can be found in appendixes I and II.)

With a few exceptions, all hearings were held at marae across the district.

(5) *Discrete remedies*

During our hearings we attempted to engage parties on a number of issues that we hoped would result in the settlement of small, discrete claims well ahead of the major Treaty settlement for tribes of the area. We asked the claimants to identify any issues that were small-scale, self-contained, and relating only to one particular group. Also necessary was that the remedy would involve the return of assets that were owned by the Crown. The discrete claims process was to run alongside the Tribunal's main hearings, hopefully resulting in the Crown providing early remedies to the claimants. The claimants identified 19 claims that they considered met these criteria. Disappointingly, the Crown delivered only one discrete remedy before the end of hearings. However, it was a very considerable one: the return to tangata whenua of 23 hectares (56 acres) comprising the former Pūtiki Rifle Range. (The discrete remedies process is more fully described in chapter 23, and

a full list of discrete remedies applications is set out in appendix IV.)

(6) *Crown concessions*

The Crown made a number of concessions on major issues during the inquiry, but they tended to go only some of the way towards meeting the claimants' position. For example, the Crown said that, in the Whanganui purchase, it breached the Treaty and its principles by failing to inform Whanganui Māori that it was not in fact purchasing the area that the Spain commission had recommended, but was paying the same price for twice as much land.[23] This went only part of the way to meeting the claimants' position. Issues relating to the purchase remained live between the parties at the end of hearings. The Crown made similar, partial concessions on other issues, and many differences between the parties remained. These form the focus of our report.

(7) *Our earlier report on aspects of the Wai 655 claim*

While we were hearing the Crown's evidence in mid-2009, there was a development that prompted us into action. In May 2009, the Waitangi Tribunal declined an application to hold an urgent inquiry into a claim brought by the Wai 655 Ngā Wairiki claimants. They opposed the inclusion of Ngā Wairiki in the Ngāti Apa Treaty settlement on the ground that their inclusion prevented them from joining their Whanganui kin, to which some affiliated more, in a Whanganui settlement. We were told that it was only a matter of weeks before the Ngāti Apa settlement legislation was delivered to Parliament, which would bar us from further inquiry into the claim. Even though it was plain that we could not address their claims fully in the time available, we thought it necessary to say something about the Ngā Wairiki claims then, because the settlement legislation ruled out their inclusion in this report.

We issued a report that allowed the Wai 655 claimants to see some of our thinking on the evidence we received that related to their issues. Our focus was on how Ngā Wairiki identity was affected by Crown actions. This involved looking at the extent to which Ngā Wairiki were known to Crown officials who negotiated the Rangitīkei-Turakina purchase in 1849, their experience in the Native Land Court, and the effects of Crown actions on their identity into the twentieth century.[24]

We concluded that Ngā Wairiki was a separate iwi, though allied to and much intermarried with Ngāti Apa. The proximate causes of their decline as an independent group were Crown actions, particularly the negotiation of the Rangitīkei–Turakina purchase. Ngā Wairiki were not sufficiently compensated for that purchase, nor was land set aside for their use. These actions constituted a breach of the Treaty principles of good faith and active protection, and undermined the ability of Ngā Wairiki to survive as a group with separate identity.[25]

For completeness, in this report we discuss Ngā Wairiki where that group arises in the context of other people and events we look at, and we complete our account of how Ngā Wairiki related to those groups where necessary. However, we make no findings on the Wai 655 claim.

(8) *This report*

In early 2010, with hearings behind us, the claimants informed us that they hoped, within a year, to be able to enter into negotiations with the Crown to settle the claims in this inquiry. The Crown estimated that it would take more than a year for negotiations to get underway, but it still appeared then that they would commence long before we could complete our report on all the claims. It was generally agreed, though, that it was important for the parties to receive our report before they negotiated a settlement. We entered into discussions about what kind of report we could deliver in the time available.

We discussed the possibilities with the parties and their counsel.[26] In the end, it was agreed that we would limit coverage to the subject areas that all considered were particular to Whanganui, and would be most likely to influence the settlement quantum. The claimants put forward the matters that they wanted the report to cover as a matter of priority: the origins and identity of hapū and iwi, and the nature and extent of their customary interests; political engagement; the Whanganui and Waimarino

purchases; the vesting of land in the twentieth century; and the creation and management of the Whanganui National Park.[27] Those became our focus.

However, as is so often the way, events did not unfold as expected. Iwi in Whanganui became immersed in negotiations to settle the Whanganui River claim, which ebbed and flowed over a number of years before settling last year. This delayed the commencement of settlement negotiations on the land claims, and in fact these are only now, in mid-2015, getting underway. Meanwhile, on the Tribunal side, a period of unprecedented activity with urgent inquiries resulted in the allocation of staff to other work, and other human factors also intervened, so that writing this report took considerably longer than expected.

Once it became apparent that the immediate need for a quick report to inform negotiations had changed, we engaged once more with the parties, ascertained their views, and expanded coverage.

The only topics this report does not now address are these: the Emissions Trading Scheme and the foreshore and seabed – both of which were adjourned *sine die* in the course of the inquiry as they were affected by legislation and other inquiries; the Tongariro Power Development Scheme, on which the National Park Tribunal reported in 2013; the environment, although we do report on Whanganui National Park and issues there with te tino rangatiratanga and the Department of Conservation; and fisheries. We do not report on the Whanganui River because that was the subject of the previous major inquiry, and we have not reported on other rivers and waterways in the area which raised similar issues. We do report on a particular 'local issue' claim concerning the Whangaehu River. Some topics (the main trunk railway; public works; and local government and rating) do not have their own chapters, but we address them in the context of local issues (to which we devote four chapters), and as part of other large subject areas. For example, we discuss the main trunk railway in chapters on Crown purchasing, nineteenth and twentieth century Māori land policy, and in various examinations of public works takings for railway.

The report is in three volumes. We need say nothing about their content that is not easily ascertained from the index. A feature that demands a brief explanation, though, is what we have called 'matapihi' (windows). There are four, and each one is intended to cast a shaft of light on to a uniquely Whanganui topic that came out of claims. They are interpolations between chapters that we hope are accessible and of particular local interest.

In the introduction to the glossary, which precedes this chapter, we explain how we have used the Māori language in this report.

Notes

1. David Young, *Woven by Water: Histories from the Whanganui River* (Wellington: Huia, 1998), p 90; Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 154
2. Document A128 (Waitai), p 5
3. Translation by Waitangi Tribunal.
4. 'Ethnic Group by Age, 2006 Census', Statistics New Zealand, http://nzdotstat.stats.govt.nz/wbos/index.aspx, accessed 4 August 2015
5. Statistics New Zealand, 'Iwi (Total Responses) and Iwi Groupings, for the Maori Descent Census Usually Resident Population Count, 2001, 2006, and 2013 Censuses (RC, TA, AU)', http://nzdotstat.stats.govt.nz/wbos/index.aspx, accessed 2 September 2015
6. Document A66(e) (Mitchell and Innes), p 3
7. The commissioner of Crown lands used these words when he spoke to an Ātihaunui delegation about the proposed park in 1984: Waitangi Tribunal, *The Whanganui River Report*, 1999, p 242.
8. Hikaia Amohia, Archie Taiaroa, Raumatiki Henry, Kevin Amohia, Hoana Akapita, Te Turi Ranginui, Brendan Puketapu, Michael Potaka, John Maihi, and Rangipo Mete-Kingi, claim concerning the Whanganui River, 14 October 1990 (Wai 167 ROI, claim 1.1); Chief Judge Eddie Durie, memorandum directing claim be registered, 11 December 1990 (Wai 167 ROI, memo 2.1)
9. Hikaia Amohia, Archie Taiaroa, Raumatiki Henry, Kevin Amohia, Hoana Akapita, Te Turi Ranginui, Brendan Puketapu, Michael Potaka, John Maihi, and Rangipo Mete-Kingi, claim concerning the Whanganui River, 14 October 1990 (Wai 167 ROI, claim 1.1), p 2
10. Waitangi Tribunal, *The Whanganui River Report*, p 8
11. Ibid, p 335
12. Ibid, pp 335–337
13. Ibid, pp 341–344
14. Ibid, pp 345–347
15. Whanganui Iwi and the Crown, *Tutohu Whakatupua*, 30 August 2012

16. Whanganui Iwi and the Crown, *Ruruku Whakatupua: Te Mana o te Awa Tupua*, 5 August 2014
17. See document A30 (Phillipson)
18. Statement 1.5.5
19. Statement 1.3.2
20. Statement 1.4.2
21. Memorandum 2.3.17, pp 1–2
22. Memorandum 2.5.8; pp 5–14; memo 2.5.10, pp 2–3; memo 2.5.15, pp 2–10; memo 2.5.18, p 2
23. Paper 3.3.118, p 41
24. Waitangi Tribunal, *Report on Aspects of the Wai 655 Claim* (Wellington: Waitangi Tribunal, 2009), pp 12–25
25. Ibid, pp 29–30
26. Memoranda 2.3.104, 2.3.110, 2.3.112, 2.3.116, 2.3.117, 3.4.10, 3.4.20, 3.4.92, 3.4.93, 3.4.95, 3.4.96, 3.4.97, 3.4.98, 3.4.99, 3.4.100
27. Paper 3.4.10, p 4

FROM PETRE TO WANGANUI TO WHANGANUI

At its simplest level, this matapihi or interpolation explains how we deal in this report with the name changes of the town at the mouth of the Whanganui River, on which much of the action in this district inquiry centred.

At a deeper level, we see how names resonate culturally and emotionally. We reflect on the post-colonial discourse in New Zealand's public life about whether the town should be called Wanganui or Whanganui. We ask what it means about our society that we engage so avidly in this debate, and outline the factual and legal situation at the time of going to publication.

M1.1 Background

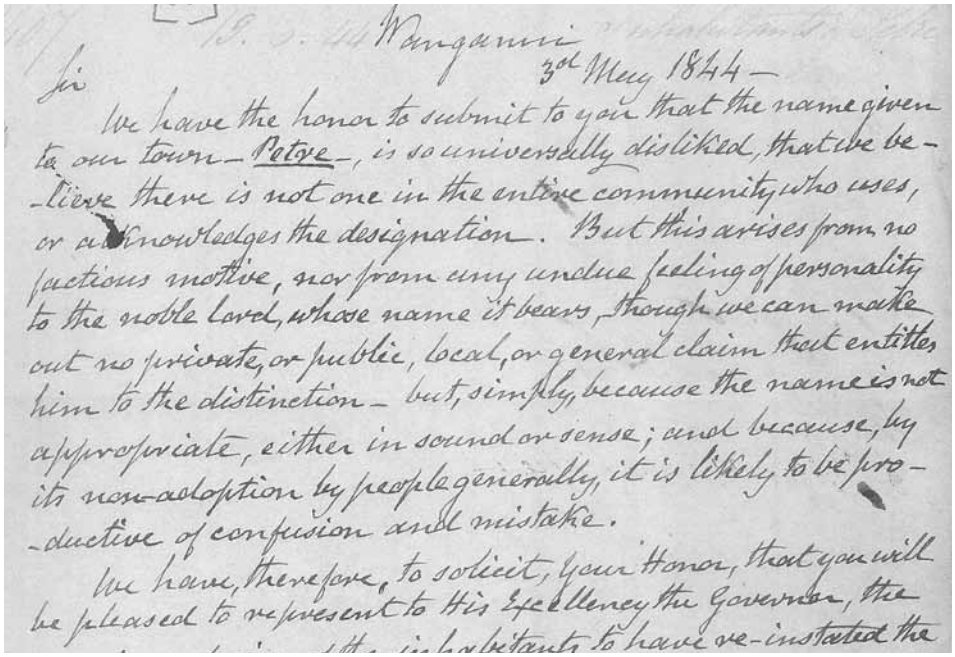
This is called the Whanganui district inquiry, and for that purpose the Waitangi Tribunal defined an area with precise boundaries. More colloquially, though, the Whanganui region is less delineated, extending along and around Te Awa o Whanganui (Whanganui River). The puna (source, origin) of the river is in the foothills of the maunga Tongariro, from where it flows north-west to Taumarunui, and then south-west to the sea. It was near the river's mouth that a settlement grew up in the late 1830s. As this report relates, the New Zealand Company planned a town there and in 1842 called it Petre (pronounced peter), after Lord Petre, a director of the company. In 1854, the name of the town changed from Petre to Wanganui – although, as it later emerged, this name change was not gazetted.

M1.1.1 From Petre to Wanganui

As early as 1844, settlers signed a petition asking for reinstatement of the name Wanganui. It said:

> the name given to our town – *Petre* – is so universally disliked, that we believe there is not one in the entire community who uses, or acknowledges the designation . . .
>
> We have, therefore, to solicit, Your Honor, that you will be pleased to represent to His Excellency the Governor, the anxious desire of the inhabitants to have re-instated the former, and now well known name *Wanganui*; or, if His Excellency should prefer an English appellation, that the patronymic be of someone entitled, by public beneficial acts, to such commemoration.[1]

The petition was under the hand of the Reverend Richard Taylor, and the signatures of about 30 persons – presumably local Pākehā – followed. Although the petition speaks of



Wanganui
30th May 1844—

Sir

We have the honor to submit to you that the name given to our town—Petre—, is so universally disliked, that we believe there is not one in the entire community who uses, or acknowledges the designation. But this arises from no factious motive, nor from any undue feeling of personality to the noble Lord, whose name it bears, though we can make out no private, or public, local, or general claim that entitles him to the distinction— but, simply, because the name is not appropriate, either in sound or sense; and because, by its non-adoption by people generally, it is likely to be productive of confusion and mistake.

We have, therefore, to solicit, Your Honor, that you will be pleased to represent to His Excellency the Governor, the

Excerpt from the 1844 Petre residents' petition to the Superintendent in Wellington asking that the town be renamed 'Wanganui'

reinstating the name Wanganui, in fact the settlement had only ever had the name Petre. Presumably, the petitioners were seeking to have the settlement called by the same name as the river and surrounds.

This was an interesting and unusual move, because of course it was much more common in the nineteenth century for Pākehā to superimpose English names on places that already had Māori names. Here, settlers preferred the original Māori name for the area to the new, English name. Now, the few years when the town was called Petre have almost passed from memory.

M1.1.2 Etymology

Of course, the name Wanganui was not exactly the original name of the place. More correctly, it was Whanganui, which means a great stretch of water or harbour. 'Whanga' is the Māori word for a stretch of water or harbour, and 'nui' means large or great.

When Pākehā came to Aotearoa, there was no written form of Māori. Early arrivals learned to speak the language, and wrote it down. The spelling that became standard used 'wh' for a sound that the authoritative Williams dictionary, first published in 1844, described like this:

> *Wh* represents the voiceless consonant corresponding with *w*, and is pronounced by emitting the breath sharply between the lips. It is a mistake to assimilate the sound to that of *f* in English, though this has become fashionable in recent years with some of the younger Maoris. In some words *wh* and *h* are interchangeable, as *kōhatu*, *kōwhatu*; *māhiti*, *māwhiti*. In a few words there is confusion between *wh* and *w*, but this may be due to the fact that in early works printed in Maori no distinction was made between the two, both being printed as *w*. *Wh* is never found in Maori followed by *o* or *u*.[2]

For the word 'whanga', Williams gave:

> **Whanga. 1**. n. *Bay, bight, nook*. Mana pea koe e whakahaere-ere atu nga whanga e rau o Tauranga (M. 63).

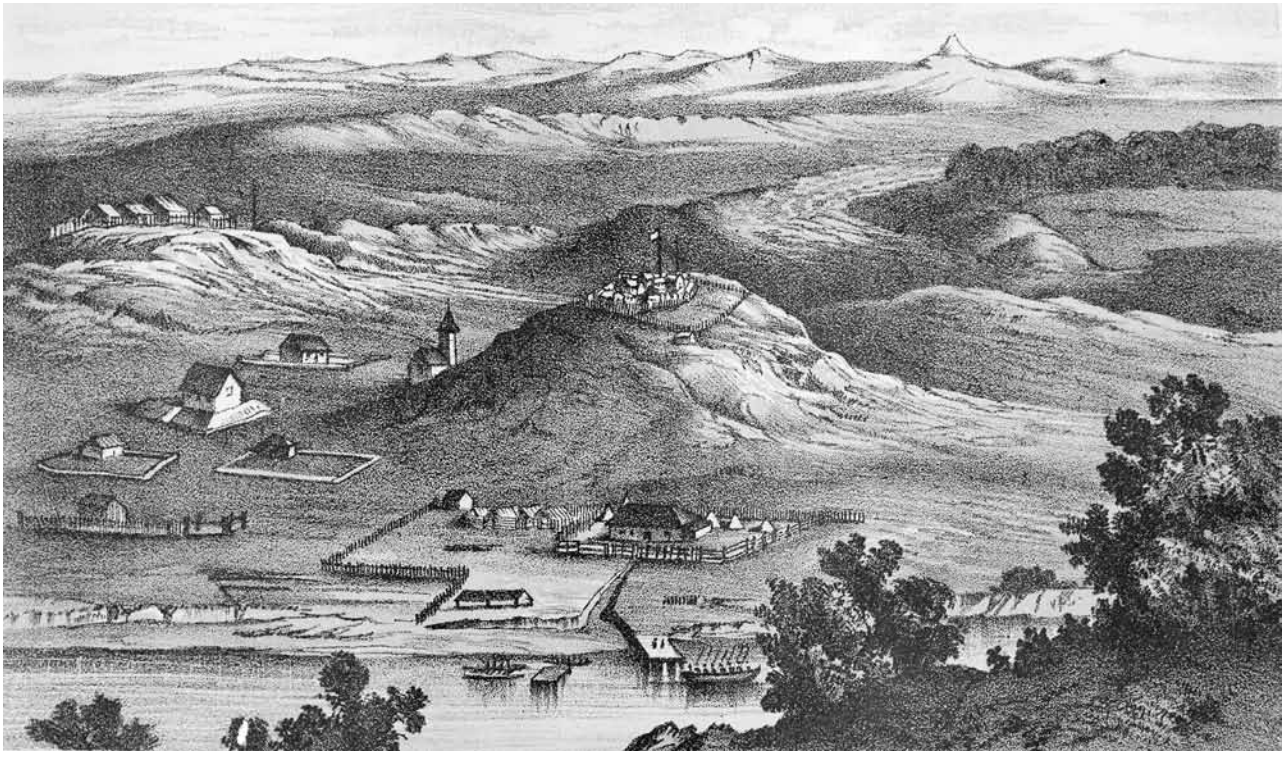
Wanganui, circa 1850s, after the town changed its name from Petre to Wanganui. Taupo Quay runs along the river, while the prominent storehouses near the main wharf attest to the importance of river transport. The two main streets and scattered houses show a town in its early development.

2. *Stretch of water*. Naku rawa i rere te whanga ki Kaiapohia, ki te motoi kahurangi (M. 151). So, probably, in the names of rivers: **Whanganui, Whangaehu**, etc.

When 'Whanganui' first began appearing in print, it was sometimes rendered with, and sometimes without, the 'h'. The tendency over time towards the spelling 'Wanganui' could have been influenced by the fact that the dialect of Māori in the Whanganui area has a less aspirated 'wh' than some others.

Addressing this topic, Mariana Waitai, named claimant for the Wai 999 (Te Poho o Matapihi Trust and others), told us:

> In written form our 'h' is acknowledged and included in our correct spelling of our words. In spoken form the 'h' is said like 'wh' in 'when', 'why', 'what'. It is not said as an 'f' as in other rohe. This uniqueness in speech and sound identifies us of the Whanganui River, from anywhere in Aotearoa and the world.[3]



Wanganui, 1847

The 'Wanganui' spelling is curious, though, because the spelling of 'whanga' as the word for harbour or stretch of water was in fact settled fairly early, and was seen in the names of a number of expanses of water and places connected with them around the country. Well-known examples are Whangarā, Whangaparāoa, and Whangamatā, but there are many more. Dropping the 'h' from the spelling of 'whanga' does not seem to have happened elsewhere, although Pākehā by no means routinely pronounce names that commence with 'whanga' with an aspirated 'wh'.

M1.1.3 Colonisation and naming

It would be wrong to regard the Wanganui/Whanganui debate as simply one of pedantry over spelling, however. It goes much deeper than that. It is about control and ownership of language, and of place.

Colonisation is a human behaviour that brings with it a sense of entitlement and cultural superiority. In New Zealand and elsewhere, the philosophy underlying it allowed newcomers to reinvent the place they now occupied, treating it as though others had not been there before, had not already formed relationships with the landscape, had not laid their own names upon it. In this country, settlers transformed the landscape utterly, repurposing it as pasture where cows and sheep grazed beneath trees brought from the northern hemisphere.

We should be in no doubt that this was a radical kind of takeover, and its legacy is everywhere.

In many places, English names supplanted the Māori

Wanganui, 1887. The 'great stretch of water (or harbour)' for which the river and area are named is visible in the distance.

names of landscape features, settlements, regions. Thus Whanganui a Tara became Wellington, and Tāmaki Makau Rau became Auckland. Sometimes, the pre-existing Māori names were reconfigured as neither Māori nor English: the new name simply reflected how the word sounded to Pākehā ears. Thus Otākou became Otago, and Pito One became Petone. Wanganui (rather than Whanganui) is probably an example of this phenomenon, because as we have noted Whanganui Māori do not aspirate the 'wh' sound. Pākehā unfamiliar with the Māori language did not know or understand the word 'whanga', and simply heard sounds that seemed correctly reproduced in the spelling 'wanga'.

In recent times, Pākehā resistance to restoring a standard Māori spelling of Whanganui has gone to the lengths of claiming that Whanganui is not a Māori word, making correct Māori spelling irrelevant. This is a view that was submitted to the *Otago Daily Times* on the issue:

> It's common for places of local interest to have a local 'nickname' which eventually becomes the 'official' name of the place. This has effectively happened to Wanganui. 'Wanganui' is no longer a Maori word meaning 'Great Bay', it is an English word referring to the place which has come to be known by that name.[4]

This kind of thinking led another commentator to promote the spelling Whanganui 'in Maori' and Wanganui 'in English'.[5]

Thus, in a case such as this, where Pākehā settlers did not superimpose an English name over a pre-existing Māori one, the mistaken rendering of te reo Māori was said to transform the Māori name into an English one, giving the Pākehā English speakers, who comprise a majority of the citizens of the town of Whanganui, ownership of the name. The irony is that early settlers rejected the English name Petre in favour of a Māori name.

M1.1.4 A political issue

The Whanganui/Wanganui debate has become a political one. Giving evidence to us on the issue, Ken Mair, claimant for Ngāti Tuera, Ngāti Hinearo, Ngāti Tūmango, and Te Rūnanga o Tūpoho, said:

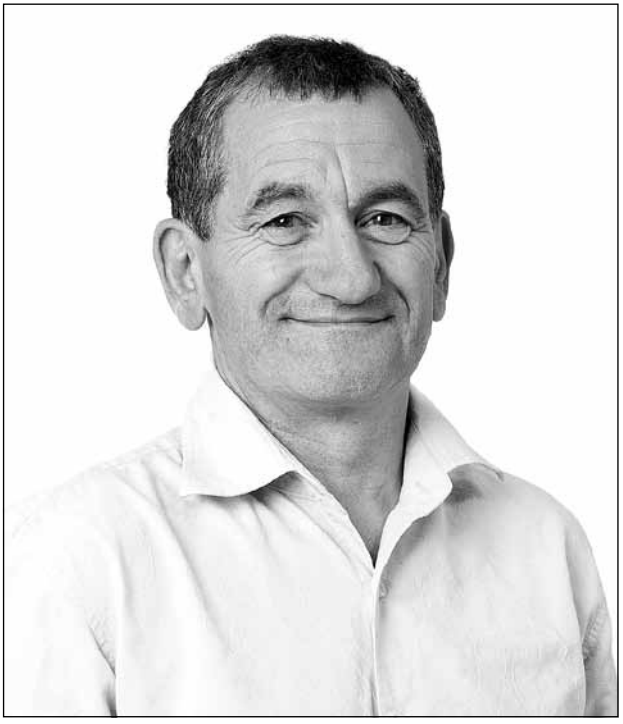
> To me it's critical in the understanding of the colonisation of our people. It is often said that the namer of names is in a powerful position. A coloniser is in an arrogant position where they dictate the names and identities of people.
>
> The name of our rohe, our Awa and our iwi is how we are identified and I reject the reference to it as a mere place name.[6]

Mr Mair explained how the wishes of tangata whenua concerning the spelling 'Whanganui' were long rejected, which 'fundamentally is what is wrong with this picture':

> As tangata whenua, we should have the right to determine our own identity and our own names. However, at the moment we have to go cap in hand to various authorities, committees and other entities and ask them to change the name [from Wanganui to Whanganui].[7]

Mr Mair acknowledged that this has sometimes succeeded. The Geographic Board was persuaded to change the name of the river from 'Wanganui' to 'Whanganui'; a submission to a select committee brought about a change to the Whanganui (rather than Wanganui) District Health Board; and the tertiary institution UCOL (Universal College of Learning) also began using the 'h' spelling for its Whanganui campus following representations from tangata whenua.[8] Critically, though, the Wanganui District Council could not be persuaded to replace 'Wanganui' with 'Whanganui' for the name of the town:

> We lobbied to have the name changed and there was substantial and ongoing community debate. Much of the debate of course was uninformed and not particularly intelligent which highlights a fundamental point: there is no intelligent or logical response to our position.[9]



Ken Mair, who gave evidence to the Tribunal about the spelling of 'Whanganui'

There was a march to the council buildings, where tangata whenua explained that the council's stance denigrated Whanganui name and identity. Mr Mair said:

> We were told that as this was a democracy, it was the right of the community to decide. Therefore, the matter was put to a referendum. While they say this was about democracy, my view of it was that it was simply to keep us in our place. We knew what the outcome would be given the community views. A referendum was really to remind us that we are only perceived as a small and insignificant part of this community . . . To make matters worse the Council then swayed opinion by asserting their own views on the issue. The result, unsurprisingly, was resounding support for the Council's preference for retaining the existing spelling.[10]

The 2006 referendum to which Mr Mair referred achieved a turnout of 55.4 per cent, and 82 per cent voted for Wanganui without an 'h'.[11]

Mariana Waitai expressed to us her view that

> Whanganui written without the 'h' identifies those manuhiri who refuse to acknowledge Tangata Whenua status, cultural beliefs and values. They continue to maintain the colonial assumption that the only history for this region began with the late arrival of their forebears and the only culture and values of importance are their own imposed beliefs and structures.[12]

M1.2 What Happened?

In February 2009, the New Zealand Geographic Board received a proposal from Te Rūnanga o Tūpoho that the city should be spelled 'Whanganui', and in late March found there was a valid case for such a change. It gave the public three months to comment, beginning in mid-May. Submissions for and against were about equal.[13] Then-mayor Michael Laws spoke strongly against the proposed change.

A second referendum in May 2009 achieved turnout of 61 per cent, and the voting went 77 to 22 per cent in favour of keeping the 'Wanganui' spelling.[14]

The New Zealand Geographic Board met on 16 September 2009, and issued its decision on the morning of 17 September 2009.

That afternoon, the *Dominion Post* reported that:

> the board had already concluded Wanganui – without the 'h' – was not an official place name as it had never been formally gazetted.
>
> Board chairman Don Grant said the board was referring the final determination to the minister because objections were received on the proposal, and they were not upheld.[15]

The New Zealand Geographic Board Act 2008, sections 19 and 20, provides for the board to determine proposals for name changes except in the situation where it receives objections to the name change, and it does not agree with the objections. In that scenario – the one that applied here – it reports its views to the Minister, who then determines the proposal. There is no doubt that the board was in favour of the change from 'Wanganui' to 'Whanganui':

> 'In the end we could not overlook the fact that Wanganui is not correctly spelt and it is a Maori name that is of significant cultural importance,' Dr Grant said.
>
> 'Historical evidence has shown that early settlers clearly intended the name of the city to be derived from the Maori name for the river, and consistent modern usage of the language showed the spelling should be Whanganui, not Wanganui.'[16]

Although the board did not make the decision itself and instead referred it to the Minister, this was not made clear in the reporting of the matter, nor in commentators' responses. The *Dominion Post* reported Mayor Michael Laws saying that the people of Wanganui were 'angry, upset and disappointed' by the New Zealand Geographic Board's 'ruling that the city's spelling must include an "h"':

> 'This council will fight for the democratic rights of its constituents,' Mr Laws said at a packed press conference this afternoon.
>
> He said Wanganui was not a Maori word, but had a culture, heritage and mana all of its own.
>
> The Geographic Board's decision was 'racist', biased and failed to take referendum results into account, he said.
>
> But he had always been confident in democracy and he would be petitioning Land Information Minister Maurice Williamson to uphold the wishes of the Wanganui community.[17]

The position was explained like this in the media release of the Honourable Maurice Williamson, then the Minister of Land Information, issued the same day:

> The determination of the New Zealand Geographic Board to accept a proposal by Te Rūnanga o Tupoho that Wanganui

Whanganui and the river, 2009

city be spelt 'Whanganui' will be referred to me as the Minister for Land Information for final decision.

The Board will provide me with its recommendation in the next two to three weeks.

It will report to me the reasons for its recommendation, as well as other options it considered.

The report will include a summary of the submission supporting and opposing the name change.

As Minister I may confirm, modify or reject the Board's decision.

I will be carefully considering the Board's report and the submissions, after which I will make a decision. Until then I will not be making any further comment.[18]

The board recommended to the Minister on 12 October 2009 that the name of Wanganui city should be changed to 'Whanganui'. It stated that the main reason for this was 'on the grounds of correct spelling and orthographic representation of te reo Māori.'[19] Another 12 supplementary reasons were listed, including the advice of Te Taura Whiri i Te Reo Māori (the Māori Language Commission) that the current spelling was incorrect; evidence of the 'h' spelling in historical records; the strong support of iwi in the region for the change; and the anomaly between the name of the river (confirmed as Whanganui in 1991) and the name of the city.[20]

On 18 December 2009, Williamson announced his

decision, which was that both 'Whanganui' and 'Wanganui' would be official names. Crown agencies would 'be expected to move to the name "Whanganui" over time'. Williamson justified his decision by stating:

> During extensive consultation it became clear to me that local iwi were seeking an acknowledgement of something that is very important to them. They wanted recognition and respect for their history and their language.
>
> It was equally clear that the majority of the city's residents did not want change forced on them.
>
> On balance I believe that alternative naming respectfully acknowledges the correct spelling of the Māori word 'Whanganui'. It also respects the views of those who have always known the city's name to be spelt 'Wanganui'.[21]

The same day, Land Information New Zealand released a statement by the chairperson of the New Zealand Geographic Board, Dr Don Grant, about the alternative names decision:

> 'The Minister's expectation that Crown agencies move to the Whanganui form of the name over time is welcomed,' Dr Grant says.
>
> 'I think the public can feel satisfied that Te Rūnanga o Tupoho's proposal went through a robust process, including public consultation, consideration by the Board and by the Minister.'[22]

However, the relevant legislation did not allow for alternative place names, although dual place names, such as Aoraki/Mount Cook, were permitted. Consequently, an amendment to the Act was required.[23]

M1.3 Developments after our District Inquiry

For reasons that are unclear, it was not until 6 December 2012 that Parliament passed an amendment to the Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, inserting the provision that, if a feature or area has more than one alternative official geographic name, official documents only had to use one of the names.[24] Williamson stated that this would 'clear up some confusion over alternative place names'. As a result, he said, either name, or both, could be used: 'An example of this is Wanganui and Whanganui – either of which can be used in official documentation following the passing of this legislation.'[25]

On 13 December 2012, Williamson issued a notice stating that either Whanganui or Wanganui 'may be used as the official geographic name' of the city.[26]

The position remains that the city's official name is both Whanganui and Wanganui. The rather anomalous situation is thus that while the spelling 'Whanganui' is firmly established as the river's name, the local district council adheres to 'Wanganui' for the town. Crown agencies are theoretically moving towards 'Whanganui' over time. Private businesses and entities are free to choose between the two spellings.

M1.4 In Conclusion

Even now, some time on from the heat of the Whanganui/Wanganui debate, it remains a touchstone for New Zealand's inadequacy in the intercultural realm.

In January 2015, social commentator and philanthropist (and sometime critic of the Waitangi Tribunal) Dr Gareth Morgan reflected publicly on the future of the Treaty, and challenged 'Pakeha New Zealand to do the right thing by the Treaty'. Talking about the past, he said of Māori:

> 'They bloody near got exterminated. Certainly their culture did, with their language not being allowed in schools. It's amazing it's been robust enough to survive to this point.
>
> 'We've inherited that and we have to live with the consequences of that . . .'
>
> He said small concessions were made, including using te reo place names. 'We resist every step of the way and, you bet, we end up having a row over it. Michael Laws [former mayor of Whanganui] nearly blew apart over the 'H' in Whanganui.
>
> 'I believe te reo should be compulsory in schools. We've begrudged every step of the way. I think Pakeha are very fearful, which is one thing, and they think it's race-related, which is rubbish.'[27]

The Whanganui/Wanganui issue is thus identified in public discourse as an extreme expression of the cultural fear of Pākehā, which runs so deep that it results in serious conflict over the spelling of a Māori place name.

If the Treaty is to mean anything in today's society, it should as a minimum inspire promotion of te reo Māori, which is the cornerstone of Māori culture. In the Wanganui/Whanganui situation, the New Zealand Geographic Board referred the determination to the Minister, who failed to uphold the plainly sensible view of the board. The Minister's decision effectively legitimated the idea that Wanganui and Whanganui are equally valid spellings, and the use of either is a matter of personal choice. This is plainly a political decision that pays far too little heed to upholding the integrity of the Māori language. Wanganui and Whanganui are not equally valid. One is right and one is wrong. The Minister's decision was no more than a sop to ignorant opinion.

This Tribunal considers that a unified spelling of river and town as Whanganui is the culturally correct and sensible way forward. Hopefully, it will not be long in coming.

M1.5 Findings

We found that Whanganui is a Māori word. To the extent that it is a word used in official contexts, as a name of a place used on maps, and for the names of government or local government entities, the spelling of that word is for tangata to determine, and for the Crown to ratify. The right of Māori to make decisions about Māori language and the names of places is part of the cultural property guaranteed in article 2 of the Treaty, under the rubric of te tino rangatiratanga. The Crown cannot prevent the expression of opinion and debate in the public sphere, but it should not engage in it, and should not allow it to influence how the word is spelled or used officially. Official spheres are under the purview of the Crown, and it should use its authority to uphold the right of tangata whenua to make decisions about their own language and thereby maintain its integrity. The Crown breached the Treaty principles of partnership and good government when it sanctioned a process that allowed people who were not tangata whenua of Whanganui to determine that 'Whanganui' and 'Wanganui' are equally valid spellings.

We recommend that as part of the Treaty settlement for this district, the Crown passes into law a measure that requires the official spelling of the name of the city to be consistent with the spelling of the river, the national park, and the district: Whanganui.

M1.6 Nomenclature in this Report

In this report, we decided to use the names for the town that prevailed in the period under discussion. Thus, we call the settlement Petre when discussing the period up to 1854, Wanganui from 1854 to 2009, and Whanganui in the period since. We did so to avoid confusion, and because we think that it is ahistorical to call the town Whanganui when referring to a period where it was called Petre or Wanganui. As a matter of fact, at certain points in time the town was known as Petre, and then Wanganui, and to write history as though it was always 'Whanganui' would, in our judgement, be misleading.

That said, however, let there be no doubt that we consider Whanganui the proper name for the town, and use it enthusiastically in all modern references.

Notes

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2. Herbert W Williams, *A Dictionary of the Maori Language*, 7th ed (Wellington: Government Printer, 1975), p 484
3. Document A128 (Waitai), p 31
4. Nwp, 'Allan is Absolutely', 2 October 2009, *Otago Daily Times*, http://www.odt.co.nz/polls/76040/do-you-think-wanganui-should-have-quothquot-it#comment-7781, accessed 17 February 2015. The comment was made in response to an online poll on the spelling of 'Whanganui'.
5. Allan, 'Wanganui/Whanganui', 1 October 2009, *Otago Daily Times*, http://www.odt.co.nz/polls/76040/do-you-think-wanganui-should-have-quothquot-it#comment-7762, accessed 17 February 2015
6. Document C9 (Mair), p 8
7. Ibid
8. Ibid, pp 8–9
9. Ibid, p 9

10. Ibid
11. New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, 'Place Name Proposal Report: Whanganui', 27 March 2009, doi GES-N15-07-09/114/01, p 1. For the referendum turnout, see Wanganui District Council, *Annual Report for the Year Ended 30 June 2007* (Whanganui: Wanganui District Council, 2007), p 80.
12. Document A128 (Waitai), pp 30–31
13. New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, 'Place Name Summary Report: Wanganui to Whanganui', 16 September 2009, doi GES-N15-07-09/114, pp 1–3
14. Ibid, p 4
15. 'Laws: Wanganui Upset over "h" Decision', *Dominion Post*, http://www.stuff.co.nz/national/2874203/Laws-Wanganui-upset-over-h-decision, last modified 17 September 2009
16. Ibid
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18. Maurice Williamson, 'NZ Geographic Board Determination', 17 September 2009, http://www.beehive.govt.nz/release/nz-geographic-board-determination, accessed 18 February 2015
19. New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, 'Summary of Submissions and the Board's Decision', 12 October 2009, p 3, http://www.linz.govt.nz/regulatory/place-names/place-name-consultation/7417, accessed 17 February 2015
20. Ibid
21. Maurice Williamson, 'Alternative Names Wanganui or Whanganui to Become Official', 18 December 2009, http://www.beehive.govt.nz/release/alternative-names-wanganui-or-whanganui-become-official, accessed 18 February 2015
22. 'Alternative Naming Decision Provides Certainty', 18 December 2009, Land Information New Zealand, http://www.linz.govt.nz/news/2009–12/alternative-naming-decision-provides-certainty, accessed 18 February 2015
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24. New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, s 1A
25. Maurice Williamson, 'Amendments Provide Clarity on Place Names', 6 December 2012, http://www.beehive.govt.nz/release/amendments-provide-clarity-place-names, accessed 18 February 2015
26. 'Notice of the Determination of the Minister for Land Information on Assigning Alternative Geographic Names', 13 December 2012, *New Zealand Gazette*, 2012, no 148, p 4416
27. David Fisher, 'Gareth Morgan: Get Radical on Race Issues', *New Zealand Herald*, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11389944, 22 January 2015

Downloaded from www.waitangitribunal.govt.nz

KIA UI UIA MAI

Kia ui uia mai, 'nāwai koe?'
Māu e kī atu, 'E tirohia atu
Ngā ngaru e aki ana ki
Waipuna ki Te Matapihi
Pūtiki-Wharanui, ko Ngāti Tūpoho

Ka pikipiki te hiwi Taumata
Karoro, kia ātea te titiro ki
Te Ao Hou

Ka waewae tatahi ki
Kaiwhaiki rā ko Te Kiritahi
Ko Ngā Paerangi

Pōhutuhutu ana taku haere
Ki Te Pungarehu, ki Parikino ko Ngāti
Tuera ko Ngāti Hine-aro

Kei uta ake te whare nekeneke i te pō,
Te Rangi Hekeiho ko Ngāti Hine-One-One
tē rā

Rukuruku au kia wawe taku tae ki Te
Waiherehere ki Pēpera ko Ngāti Pāmoana

Kei ko iti atu ko ngā one roa ki Matahiwi ko
Ngā Poutama Aue! Aue!

Kia tū ai au ki ngā tūranga riri ki Rānana ki
runga o Moutoa ko te rohe tēnā o Ngāti Ruakā

Ka haere au i te ara Patiarero e tū mai rā
Ūpoko Tauaki ko te whare wānanga o
Ngāti Hau ē!

Teretere te ia ki Paraweka ko Ngāti
Kurawhatīa ki Pīpīriki

Should you be asked, 'To whom do You belong?'
You should say, 'Well
Yonder at the waves surging
Waipuna and Te Matapihi at Pūtiki
Wharanui, the tribe is called Ngāti Tūpoho

Then climb the hill Taumata-Karoro
Where clearly one may view
Te Ao Hou

Now with long strides head towards
Kaiwhaiki, to Te Kiritahi and
Ngā Paerangi folk

I splash the waters as I stride to
Pungarehu and Parikino, to the folk of
Ngāti Tuera and Ngāti Hinearo

Above the shore line is the house that
shifted in the night, Te Rangi Hekeiho and
the folk of Ngāti Hine One-One there

Here I perform the rituals to speed me on
To Te Waiherehere to Pēpera at Ngāti Pāmoana

A little distance away are the long sands at
Matahiwi of Ngā Poutama. Alas! Alas!

Let me stand on the battlefields at Rānana
and at Moutoa, the tribal area of Ngāti Ruakā

I take the path-way leading to Patiarero
and yonder stands Ūpoko Tauaki the
house of learning of Ngāti Hau e!

The current flows quickly at Paraweka to
The Ngāti Kurawhatīa at Pīpīriki

Ka kau ngā ripo kia tau ngā wae ki te rohe o Rangitautahi
Ko Ngāti Ruru ki Parinui tērā

Ka mahue Whanganui kia rere tonu ia ki Te Puru-ki-tūhua ko Ngāti Hāua ko te rohe o Hine-Ngākau

Whaia e au Manganui-o-te-ao, kia tau au ki runga o Ruapehu ki Ngā Turi-o-Murimotu ko te ahikā o Paerangi-I-te-whare-toka I puta mai ai Rangituhia, Rangiteauria me Uenuku-Manawa-wiri e tū mai rā Tirorangi, Ngāmōkai, Te Maungārongo

Rere atu ki Te Puke ki Raetihi rā ka tere te awa Mangawhero
Kia whaia te puke ki Ōkapua ki ngā roto hoki ki Tauakirā ko Ngāti Hine-o-te-rā ko Ngāti Rūāwai o roto o Te Awaiti.
Ka mutu I konei ē! [1]

I swim the rapids to place my feet in the domain of Rangitautahi
that is Ngāti Ruru at Parinui

Now Whanganui is left to flow on towards Te Puru-ki-Tūhua within Ngāti Hāua the area of Hine-Ngākau

I now follow Manganui-o-te-Ao so that I may land upon Ruapehu and then at Ngā Turi-o-Murimotu;
the original fire of Paerangi -I-wharetoka, from whom descended Rangituhia, Rangiteauria, and Uenuku Manawa-wiri;
where stands Tirorangi, Ngāmōkai, and Te Maungārongo

From there to Te Puke at Raetihi and the Mangawhero flows on
Towards the hill at Ōkapua to the lakes and to Tauakirā of Ngāti Hine-o-te-rā and
Ngāti Rūāwai within Te Awaiti Territory.
So it ends here! [1]

Notes

1. Document C20, pp [3]-[4]. This waiata was sung many times to the Tribunal; it records many important places in the inquiry district, naming some iwi amd hapū and the famous houses on their marae. Macrons have been added.

CHAPTER 2

NGĀ WĀ O MUA: IWI, HAPŪ, AND THEIR COMMUNITIES IN THE WHANGANUI INQUIRY DISTRICT TO CIRCA 1845

2.1 Te Kaupapa: the Purpose of this Chapter

2.1.1 Summary

This chapter introduces the peoples of the Whanganui inquiry district, including their many iwi and hapū, and the kind of society they had evolved before 1840. We also introduce the customary tikanga of the Whanganui people which the elders and experts of the claimants have shared with us. We discuss the interaction of the claimants' ancestors with their environment, and provide an insight into the distribution of the peoples of the district by 1840.

Our intention is to provide a platform for understanding the claimants' identity as tangata whenua of the Whanganui rohe, and to highlight their communities' relationships with the land and with each other. Such an understanding is essential for the Tribunal to evaluate these groups' claims. It also helps us assess the effects of Crown interaction with Whanganui communities by providing a comparison between the pre- and post-Treaty periods.

This chapter:

- Introduces the sources, oral and written, provided by the claimants and other sources used in the chapter (see section 2.1.2).
- Describes the geographical layout of the inquiry district and the importance of its mountains, lakes, rivers, and resources to the claimants' identity and to their spiritual and material well-being (see section 2.2).
- Gives the ancestral origins of the Whanganui peoples, their whakapapa, and their kin links (see section 2.3).
- Describes Whanganui iwi and hapū from the early nineteenth century to about 1845 and the key inter-tribal events of the period. We have divided the district's iwi and hapū into 'northern', 'central', and 'southern' clusters. There is a separate section for Ngāti Rangi, who do not readily fit into any of these divisions, although they have the most affinity and strongest relationships with the central cluster group (see section 2.4).
- Describes the social organisation of the Whanganui peoples and Whanganui tikanga (or Whanganuitanga), including key concepts such as te tino rangatiratanga and rights to land and resources (see section 2.5).
- Identifies changes in settlement patterns and the Māori population close to 1840 (see section 2.6).

It is not the role of the Waitangi Tribunal to make findings on the extent of rohe (iwi or hapū areas of interest) nor on the distribution of customary rights as between iwi and hapū. Nor should we function as an authority choosing among the different versions of tradition. We do not do so here.

In this inquiry district as in many others, rohe claimed by the various groups of claimants tend to overlap, and some of the resulting differences, at first sight at least, are apparently incompatible. But many claimants have stated that their interests in the various rohe are non-exclusive, meaning that they accept that the rights and interests of different groups overlapped. Others, though, claim that their rights and interests were exclusive. Perhaps for this reason the claimants have asked the Tribunal for its 'advice on the origins and identity of iwi and hapu and the nature and extent of their customary interests'.[1] Without making findings on traditional evidence, our perspective, having heard and compared all the stories, is a unique one. For that reason, we do comment on the evidence presented, and we leave it to the claimants to make what use of those comments they think fit.

2.1.2 Sources and evidence

In the main, our sources for this chapter are briefs of evidence recording the input and knowledge of kaumātua (elders) and of younger, learned graduates of whare wānanga run by the various claimant communities. We have been greatly assisted by the wealth of traditional knowledge presented to us by the claimants. Also valuable have been the professionally compiled histories reflecting recorded oral traditions. We have also made use of primary sources cited in technical evidence, or presented to us in the form of document banks or appendices to briefs of evidence.

Many of the professional writers reporting 'oral and traditional' material have based their work on evidence found in Native Land Court minute books. We do not attempt to re-litigate claims made in the Native Land Court. We tend to prefer the first-hand evidence of kaumātua given in our hearings, together with accounts recorded for purposes other than land claims. However, we do not and cannot reject evidence based on Native Land Court materials, as they are by now one of the few sources of cultural information left to many claimants. But we agree with this caution expressed by counsel:

> Native Land Court records require particularly careful handling in evidential terms, particularly as they record the interests of tangata whenua in certain areas and the extent of interests. Applicants were self interested in getting a certain result. [Even] [t]he more reliable records will be contested accounts of customary interests. The fact that most minutes are in English means that where Maori was originally used by witnesses, which was in most cases, that original version has been lost and we are dealing with a translated summary. Nevertheless, the minutes [*sic*] books and judges' books etc can provide extremely valuable insights.[2]

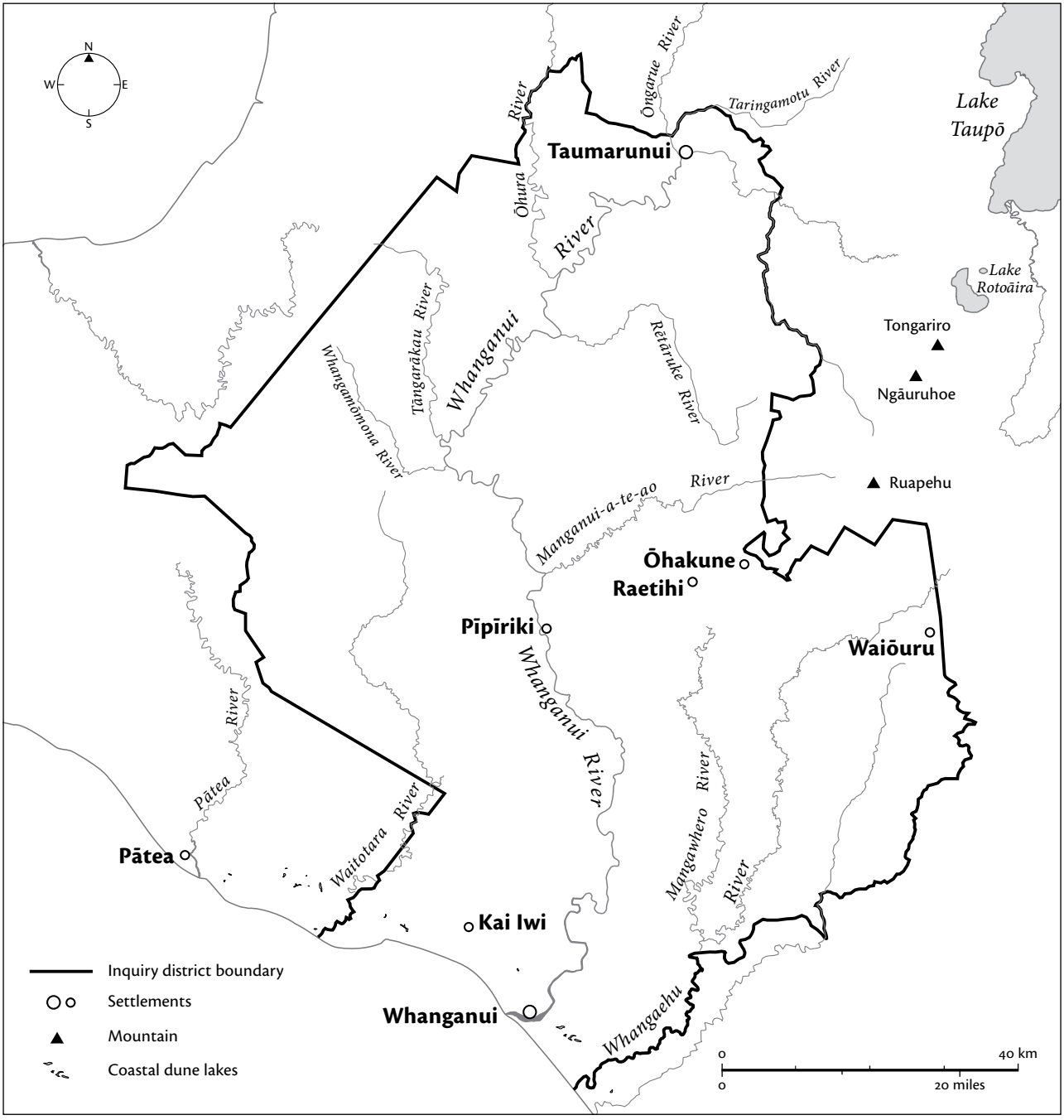
2.2 Mai i te Kāhui Maunga ki Tangaroa : Mountains, Land, Waterways, and the Coast

2.2.1 Te taiao: the environment and its resources

The Whanganui inquiry district stretches from the port and city of Whanganui[3] and their adjacent coastline,[4] then inland to Taumarunui and beyond in the north, and to the Whakapapa River to the north-east. It includes the Waimarino and Murimotu plains south-west and south of the maunga, Ruapehu, and stretches eastwards towards Waiōuru in the central North Island high country.[5] The south-eastern border is formed by the Whangaehu River; the north-western boundary extends inland from the Waitōtara River, following parent block boundaries[6] until it joins the southern Taranaki confiscation line.

One of the inquiry district's most noticeable physical features is the volcanic mountain chain on or just outside its north-eastern borders, including Tongariro and Ruapehu. This is also a defining feature of the greater geological district known as the Whanganui Basin, which encompasses the inquiry district. The mountains' western foothills define the inquiry district's north-eastern limits.[7]

The district's other main features are the high-country plateaux with their particular climate – flora and fauna surrounding the mountains; the rugged hills which make



Map 2.1: The Whanganui inquiry district

Tongariro, Ngāuruhoe, and Ruapehu maunga from the Waimarino Plains. The volcanic mountain chain runs along the eastern boundary of the inquiry district.

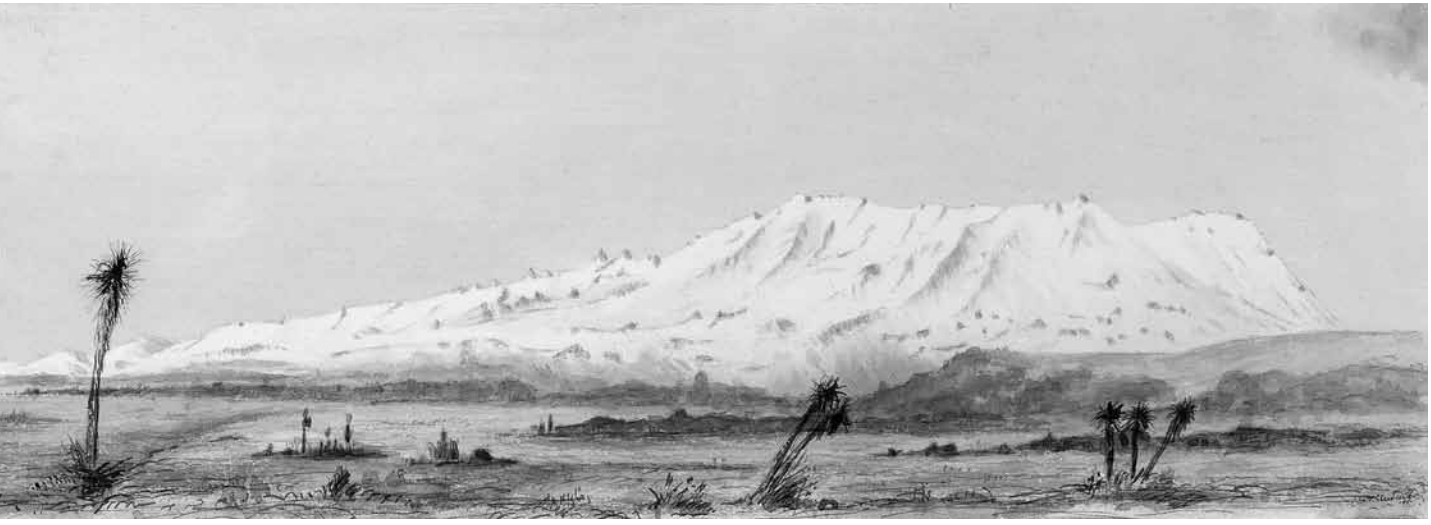
up most of the rest of the district inland; and the many rivers which rise in those mountains and hills. All, after many meanderings, flow south-westwards to the coast.

Another notable natural feature throughout much of the nineteenth century[8] was the dense forest that covered most of the hills. Indeed, forest covered nearly all the inquiry district except parts of the high country (where tussock and native grasses predominated), the river flats, the estuaries and coastal dunes.[9] The tree species varied according to the elevation and soil-type – beech forest on ridges; widespread podocarp and broadleaf forests with a dense under-storey of ferns, tree ferns, supplejack, and other species; tōtara in the Tūhua district; submontane species on the high plateaux such as horopito, kāmahi (or tawhero or tōwai), and tāwheowheo; and kahikatea in the swamps.[10] Kōwhai flowered along the cliffs and hills of the gorges.[11]

(1) *The Whanganui River*

The district's largest river, the Whanganui, was paramount for local peoples because of its food resources, its cultural importance, and its role as a canoe 'highway' for moving people and goods. A previous Waitangi Tribunal reported in 1999 on issues of ownership, river management, and control of the river resource and riverbed.[12] In this report, we endeavour to avoid revisiting the issues covered in the *Whanganui River Report*.[13]

In geographical terms, the Whanganui River and its tributaries drain a catchment area of mainly rugged, mountainous country extending across 7,382 square kilometres.[14] The river's source is high on the western flank of Tongariro.[15] It is fed by tributaries draining the central plateau and flows 290 kilometres to the Tasman Sea, dropping some 400 metres from its highest point (although in the lower 209 kilometres of its course it drops only 137 metres.) The river flows north-west and then south-west through the town of Taumarunui, continuing south through many bends and loops to the sea. Although it is punctuated by at least 90 rapids below Taumarunui (there are more than 240 named rapids on the river), it is navigable by small river boats or canoes for most of its length. The river is tidal at least as far as Raorikia, about 24 kilometres upriver. The last few kilometres before the sea are a broad estuary.[16]



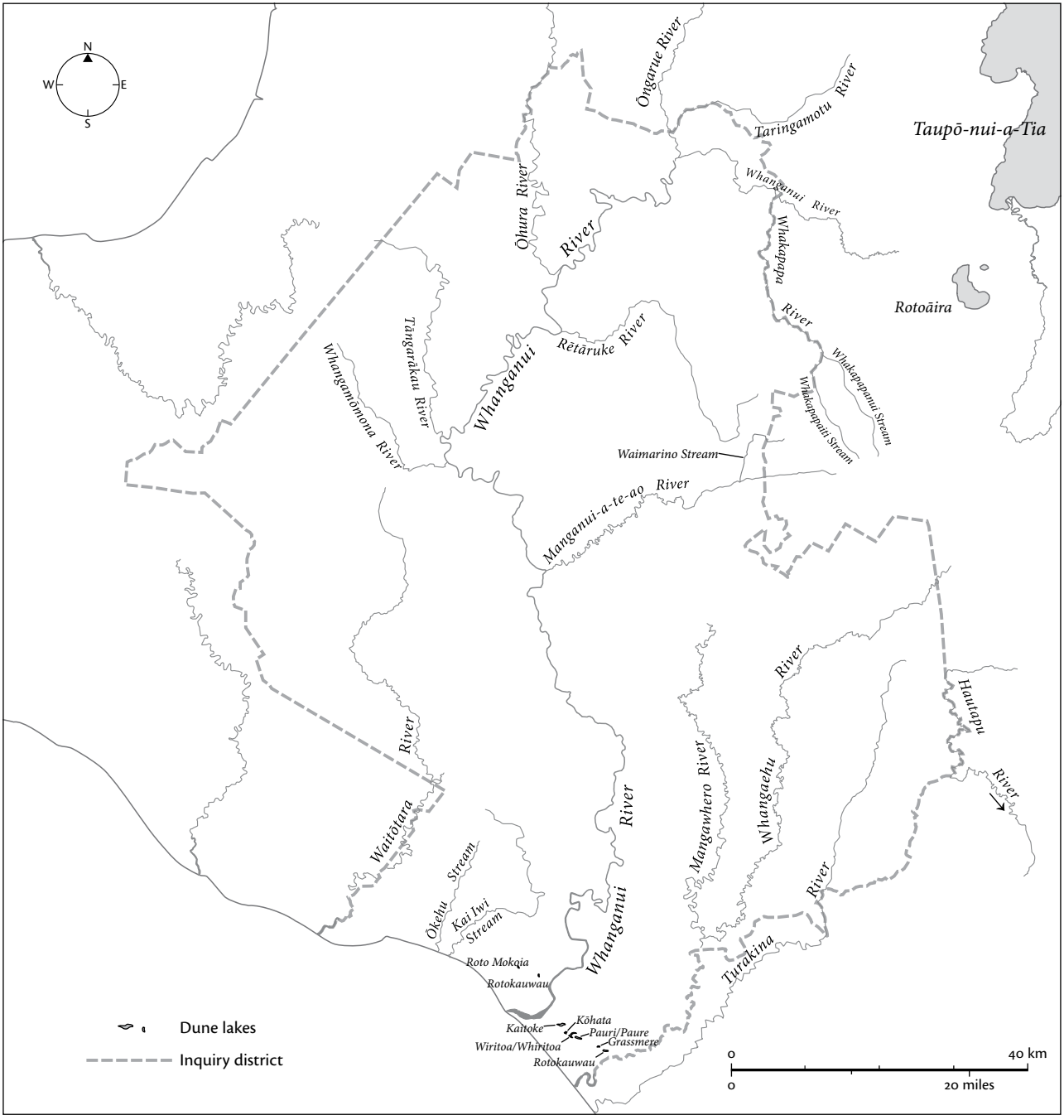
Along much of its length, the Whanganui River cuts through a deep, steep-walled gorge comprising soft, upper Tertiary-period sandstone and mudstone. The river flows through spectacular bush and fern scenery, much of it now regenerated second growth. In the early nineteenth century, parts of the banks and cliff tops were cleared for pā, kāinga (settlements), cultivations, and karaka groves.[17]

(2) *The main tributaries of the Whanganui River*

Along with a network of tracks, the river and its tributaries formed important lines of communication with the interior and other districts throughout the nineteenth century. The Whanganui River Māori Trust Board has identified some 344 main and secondary tributaries.[18] Important tributaries were prized both for their food resources and as 'highways' through the landscape. They include the Ōngarue (or Ōngaruhe) joining the Whanganui from the north at Ngāhuihuinga (Cherry Grove) in Taumarunui, and the Taringamotu (or Taringamutu) River, arising in the Hauhungaroa range west of Lake Taupō and joining the Ōngarue River at the important wāhi tapu (site of spiritual significance) known as Te Horangapai.[19]

The Ōhura River – running more or less parallel to, and to the west of the Ōngarue – joins the Whanganui River near a kāinga called Rauponga, just upriver from the site known as Maraekōwhai.[20] Canoes could navigate the Ōhura, although they often had to be carried around or across obstacles such as falls and rapids.[21] Further down the Whanganui River, the Tāngarākau and Whangamōmona Rivers flow in from the north-west, the Rētāruke River crosses the country from the Tongariro foothills to join the Whanganui River from the east, and the Manganui-a-te-ao River (arising from the western face of Ruapehu) also flows from the east. The Waimarino Stream is one of the many tributaries of the Manganui-a-te-ao.

The lower reaches of the Whanganui River below Pīpīriki flow through gradually widening river flats, eventually forming a valley plain about four kilometres wide.[22] In the early nineteenth century these fertile Whanganui River flats, and those of the Waitōtara and Whangaehu systems, were much used for crops, including kūmara and taro.[23] The river valleys were sheltered and fertile, and more easily defended from passing sea-borne taua (war expeditions).[24] By the 1820s, potatoes and pigs had



Map 2.2: The rivers of the Whanganui inquiry district

been introduced, probably by inter-Māori trade; by 1845, pumpkin, shallots, and 'Indian corn' (maize) were also cultivated.[25] Most crops were grown by the shifting-cultivation method; that is, when the soil was exhausted, a new māra (cultivation) was cleared by fire and the old one left fallow for many years. Before European weeds arrived, aruhe or fern root – a prized food staple – often took over the old cultivations.[26]

(3) *The Whakapapa River*

Other important rivers in the district include the Whakapapa River and, to the east of the district, the Whangaehu River and its major tributary, the Mangawhero River. The Waitōtara River flows on the north-western boundary of the inquiry district; roughly parallel to its south, the Ōkehu and Kai Iwi Streams reach the sea. There are many other waterways unconnected with the Whanganui River.[27]

The Whakapapa River flows north from its sources on Ruapehu, joining the Whanganui River at Whakapapa Island near Kākahi.[28] It was originally fed by many tributaries draining the western slopes of Ruapehu.[29] Two principal tributaries are the Whakapapaiti Stream flowing from the Whakapapa Glacier on the western side of Ruapehu, and the Whakapapanui Stream rising in a northern gorge of Ruapehu.

The Waitōtara River marks the north-western boundary of the inquiry district. It rises in the Matemateonga Range and flows generally southwards for more than 80 kilometres into the sea, 18 kilometres north-west of Kai Iwi. The Kai Iwi Stream, 15 kilometres north-west of the Whanganui River, rises in the hill country west of the Whanganui River and flows south-west to the Mōwhānau Beach. In 1841, these waterways were known for their supplies of piharau (lamprey).[30]

(4) *The Whangaehu River*

The Whangaehu River rises from the crater lake on Ruapehu's summit, Te Wai-a-Moe, its waters flowing down a defined course to join those from the Whangaehu Glacier on the eastern slopes of Ruapehu.[31] The Whangaehu initially flows east across the Rangipō Desert near Tangiwai, then turns south-westwards across the Murimotu plains. According to Jerningham Wakefield's account of crossing it in 1842, the river flowed through land that was heavily forested.[32] From Murimotu, the Whangaehu flows almost due south to the west coast, 15 kilometres south of the Whanganui River mouth. Its estuary was associated with nearby wetlands and lagoons that were rich in birdlife, freshwater fisheries, and wetland plants.[33]

Until the late twentieth century, the Whangaehu River was fed by many tributary streams.[34] Its waters were (and are) periodically sulphuric, cloudy, or milky and were known to local Māori as 'te waiū o te ika' (the milk of the Fish of Māui, or the North Island). The highly valued waters were used medicinally to treat skin diseases, especially at the confluence of the Wāhianoa Stream and the Whangaehu River.[35] The estuarine waters attracted marine mammals: the predators that pursued them, such as sharks, were hunted from canoes by the Whangaehu and Whanganui peoples.[36]

The river remains an important migratory pathway for many fish species coming inland to the various tributaries.[37] Wildlife including kōura (freshwater crayfish), kākahi (freshwater molluscs), and tuna (eel) is still relatively abundant in tributaries of the Whangaehu such as the Mangaehuehu Stream.[38] The occasional toxic lahars from the active Ruapehu crater lake, Te Wai-a-Moe, affect fish species only temporarily: the claimants told us that tuna and other fish simply migrate into clear tributaries after lahar.[39] Early European settlers observed that before the lahar of 1861, the river ran clear and supported many eels. Afterwards, fish stocks were depleted for a time, but later the river ran clear again and supported abundant whitebait.[40]

(5) *The Mangawhero River*

Another important waterway in the district, this river rises near what is now the Tūroa Ski Field on the south-western slopes of Ruapehu. The Mangawhero River flows through the borough of Ōhākune, then south through the Parapara Gorge (adjacent to State Highway 4) in hill country east of the Whanganui River, joining the Whangaehu River near Ngāturi.

Food from the River and the Coast

The Whanganui River Report describes the importance of resources provided by these waterways to the peoples of nearby settlements and more distant groups, both before and after 1840. These resources included 18 indigenous fish and tuna species that were regularly taken for food.[1] Some lower estuary species differed from those further up the river, or in tributaries, lakes, and swamps. Other species were found well inland as well as in the estuary.[2]

There were roughly 350 pā tuna (eel weirs) and 90 utu piharau (lamprey weirs) on the river in the nineteenth century. Up to half a ton of eels could be taken in a single night in one of these weirs and 8,000 lampreys are said to have been taken from the Parikino weir in one night.[3] Fishing kāinga (settlements) dotted the banks of the various rivers and their estuaries. Eels and other fish were dried for winter, and lampreys were eaten, or used as bait for tuna and out at sea.[4]

At the mouth of the Whanganui River, groups from throughout the district fished for kahawai in the summer. Early European observers saw a daily exodus from the river mouth by fleets of fishing canoes, and much drying of fish for winter supplies upriver.[5] They also fished for stingray and mullet.[6] The estuary provided two kinds of pātiki (flounder); the black variety could be taken the length of the river. Ngaore (smelt) were also taken the length of the river as far as Ōngarue. Tunariki or eel fry were taken as far up the Whanganui River as the mouth of the Ōhura River.[7]

Crayfish beds lay on the coasts between the Whanganui and the Whangaehu Rivers. Pāua were relatively rare, but groups gathered frostfish on the beaches and shellfish including pipi, tuatua, tipa (scallops) at many coastal sites and the estuaries.[8] Large kākahi (mussel) beds were at Paetawa, Corliss Island (near Pihaia or Landguard Bluff) and elsewhere.[9] Īnanga (whitebait and the fry of various species)

An eel or fish weir on the Whanganui River. Māori constructed weirs like fences, projecting them into the river. Fish were caught in nets placed at intervals along their length. Fish was a significant and regular part of the diet for Māori who lived near rivers.

Māori collecting shellfish near the mouth of the Whanganui River. They gathered tuatua and tipa, as well as pipi or cockles.

were mainly found in the lower reaches, although there is a report of their being taken as far inland as the Ōngarue River.[10] Shoals were once so large that one could see them from high cliff-pā lookouts as they travelled upriver.[11] Kōkopu, whose fry were often taken with īnanga, were among the indigenous fish species that made their way to the headwaters of the Manganui-a-te-ao River.[12]

A freshwater spring known as Wāhipuna or Waipuna was located near Landguard Bluff, and streams flowed through what is now Whanganui city. Landguard Bluff was also one of several shoreline cliffs where eggs of various gull species were collected.[13] Small dune lakes, Rotoiti and others, were known to early settlers as the Duck Ponds,[14] indicating at least one of their abundant resource species.

Large kākahi in river mud near the mouth of the Whanganui River

When the waters of the Mangawhero became sulphuric from volcanic activity at its source, they were referred to as wai tōtā and Ngāti Rangi people would bathe there to cure skin ailments.[41] Its tuna were (and are) carefully monitored by kaitiaki (guardians) living on its banks. Today they are concerned about the effects on their traditional fishery of reduced water flow associated with hydro-electric activities.[42]

(6) *Wetlands and lakes*

Rivers, streams, estuaries, and the coast were not the only sources of kai. Historically, wetlands and lakes abounded in the inquiry district. For example, Kokohuia (Balgownie Swamp), now part of Whanganui city, was once a vast wetland overflowing from the Whanganui River, rich in eels and raupō.[43] Other significant wetlands were the Parikino Swamp (a source of pupū mud used in dyeing); Karakia Swamp, south-west of Taumarunui; Mathieson near the Rētāruke River; another wetland near Fordell; and the Rotokohu wetlands in what became the Mangapapa block adjacent to the Waitōtara River.[44]

Lakes valued for cultural reasons (because they were associated with wāhi tapu or had spiritual healing waters, for example) included Rotokura in the Karioi bush;[45] Rangatauaiti and especially Rangatauanui at the base of Ruapehu (together now known as the Ōhākune Lakes Reserve); and lakes at Waipākura and Rotokawau.[46] The three lakes near Ōtoko were wāhi tapu; among other uses Ngāti Pāmoana used them for healing.[47] Kawautahi (Lake Hawke) in the Waimarino district was considered to have a taniwha: it was held as very tapu by Hinengākau and her descendants.[48] Other lakes were valued for their resources. Ngārongokāhui and its associated wetlands in the lower Taringamotu (or Taringamutu) Valley were important resource areas for Ngāti Urunumia and their neighbours.[49] This lake's resources included tuna (eels) caught in pā tuna or hīnaki (eel basket traps), piharau, kāeo (freshwater mussels), and kōura.[50]

There were other, lesser wetlands. All of them provided bird and fish species for food, and also the plants (including flax, rushes, and toetoe) needed for clothing, floor coverings, building, and tools: the claimants told us that

The top Rotokura Lake in the Karioi bush sacred to Ngāti Rangi for its healing waters

many of these resources were lost to them or destroyed by Crown purchasing and public works takings. These wetlands and streams were also valued for swamp timber such as kahikatea, for the plants that made up the cornucopia of rongoā (medicinal plants), and for spiritual healing.[51]

(7) *The coastal dune lakes*

The coastal area is characterised by dune lakes, wetlands or swamps, sand spits, tidal rivers, and creeks. The coastal dunes, punctuated by at least six river estuaries, were formed by rivers carrying volcanic sediments and sands from inland ranges, while wave-action propelled by the prevailing westerlies piled sand. In some places, the sand extends well inland. In former times some of the dune swamps supported kahikatea and rimu forests, and all of them provided plants essential to Whanganui Māori such as flax, toetoe, raupō, kānuka, and cabbage trees. Kai-moana collected there included mussels, pipi, some pāua,

The culturally significant site of the Ōhākune Lakes Reserve

toheroa, crabs, kōura, and kina, and fish species included tuna, hāpuku (snapper), gurnard, black flounder, tarakihi, and kahawai. Bird species used for food included various kinds of sea birds, including their eggs.[52]

The string of dune lakes once extended down the west coast from north of Whanganui to Horowhenua.[53] Many have disappeared due to a combination of fragility and human activity. Surviving dune lakes include Roto Mokoia (Lake Westmere) between the Mōwhānau Stream and the Whanganui River, Wiritoa or Whiritoa (Dutch Lagoon), Kaitoke, Kōhata (Medina), and Pauri or Paure (Widgeon Lake); the last four are between the Whanganui and Whangaehu Rivers.[54] Rotokauwau and Grassmere are relatively small and close to the Whangaehu River. Another lake, also called Rotokauwau (Virginia Lake), is now within Whanganui city.[55] All these dune lakes were important sources of birds, fish, and shellfish species for the people of the lower Whanganui River reaches, the

Phormium tenax **or New Zealand flax (harakeke). For Māori, harakeke was an important and versatile plant. They used its fibre to make clothing, baskets, mats, rope, fishing lines, and nets, and it was valued for its medicinal properties in the treatment of skin infections, constipation, and wounds.**

Karaka, a native tree that Māori planted in groves as a food source. The tree regularly produces distinctive orange fruit (drupes) with an edible outer fleshy layer but a poisonous kernel. To remove the poison, drupes were steamed then immersed in water before being dried and stored until needed.

Whangaehu people, and their various kin from upriver who regularly came down to fish and preserve winter supplies. Complementing these seasonal fishing expeditions to the coast were seasonal journeys back to the mountain ranges and bush for birds and kiore.[56]

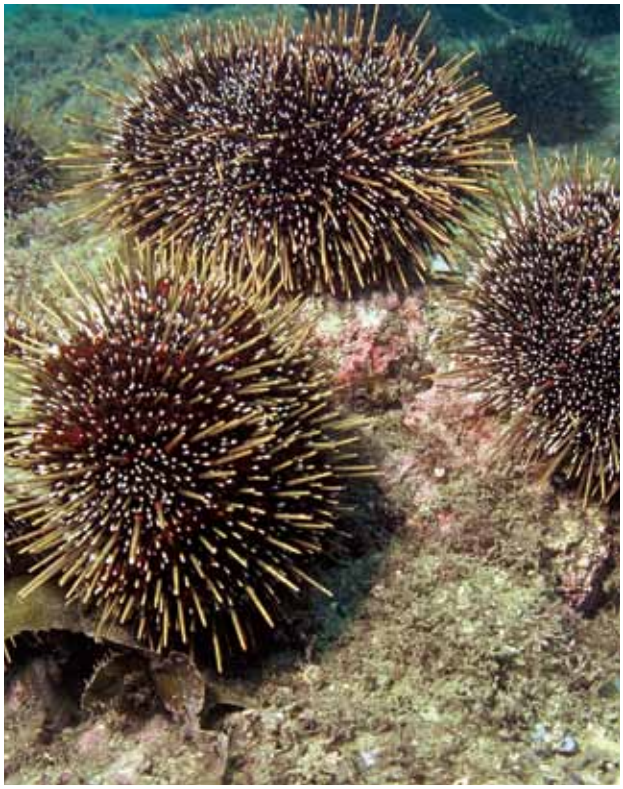
2.2.2 Te taha wairua: spiritual and cultural identity

In this section, we discuss some terms, beings, and places of spiritual significance to Whanganui Māori. Many of these places were later taken by the Crown; we discuss this in chapters 7 and 16.

Taniwha are spirits that manifest themselves in creatures or objects such as huge old eels or logs. Often, they act as kaitiaki of rivers, places, social groups, or resources. To Whanganui Māori, they manifest the inter-relationship of the material and spiritual worlds. The claimants told the Tribunal of many taniwha, patupaiarehe or tūrehu (malign or benign spirits), and other spiritual beings and

Food from the Forest

As stated, the Whanganui inquiry district was heavily forested except in the coastal strip. Forest and bushlands produced timber for all purposes, including tōtara for canoes and mānuka for many purposes. Different plants were important for their contribution to nutrition. Sources of starch included aruhe (fern root) and other edible plants, while tawa, hīnau, and karaka were valued for their berries. The forest also yielded game: kiore (rats) were hunted, and many species of birds. Kererū (native pigeons), tui, kiwi, weka, kōkako, whio and other ducks, tītī (mutton birds) and kākā (native parrots) were all taken for food in the appropriate season, and their feathers used for many purposes.[1] Tahā or huahua (calabashes) of preserved birds or kiore were highly valued as taonga and presented at feasts for political and social purposes. The rights to hunt birds or use the products of birding trees (where birds roosted in numbers and so were easily taken) were so precious their misuse was sometimes a cause of war.[2]



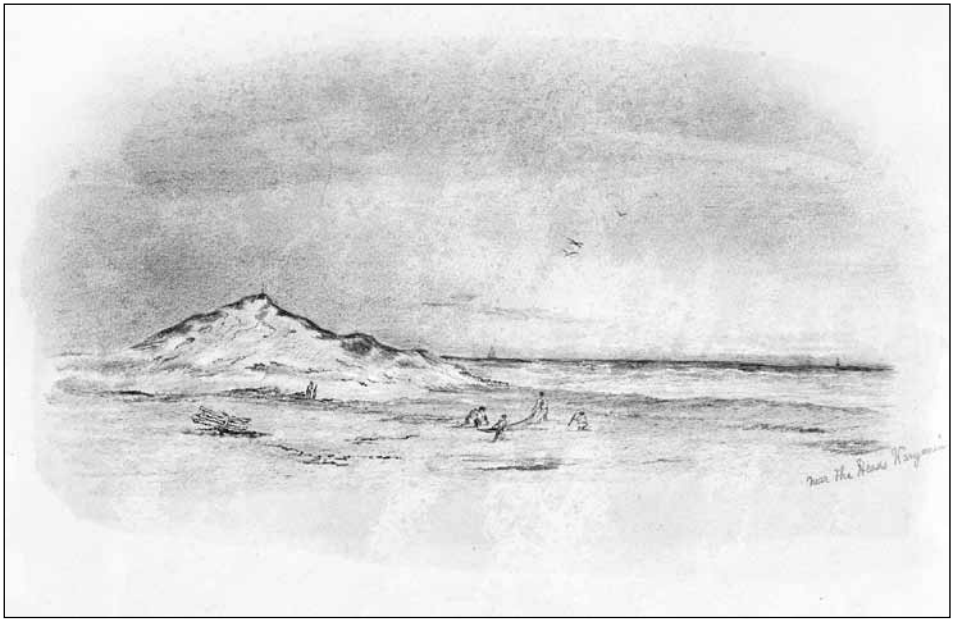
Kina (sea urchins or sea eggs). Commonly found in shallow water along the coastline and at river estuaries, kina were a delicacy to Māori and best eaten when kōwhai or mānuka were blooming.

manifestations throughout the inquiry district. These beings guarded and protected the different rivers, lakes, ponds, wetlands, and lands of the communities who had mana over them. Some taniwha were famous, such as Tūtaeporoporo, but others were known only to local hapū and whānau.[57] Hundreds of wāhi tapu and tongi (sites of spiritual significance) lie in different parts of the district and are listed in evidence. Some have been identified to local authorities, but information about others has been withheld for fear of interference or inadvertent desecration by tourists and fossickers.[58]

We also became familiar with the use of particular language to express the spiritual identity of Whanganui Māori and the importance to them of their awa (river) and maunga (mountains). We discuss some of it in the following pages.

(1) *Ko au te Awa, ko te Awa ko au / I am the River, the River is me*

The claimants told us that whakapapa and Whanganui lands (including waterways) go hand in hand. The people are the river; place names come from their whakapapa; the people of the past named in those whakapapa and their actions delineate both land and waterways. This happens 'mai i te Kāhui Maunga ki Tangaroa' (from the family of ancestor mountains to Tangaroa, ancestral god of the



A group of Māori handling a large fishing net on shore near the Whanganui Heads, 1848. Kahawai, flounder, stingray, and mullet were some of the species harvested in the inlet.

sea). Names and traditions from the past, and the mana and tapu they encapsulate, clothe the land as a protective covering.

Before 1840 (and, for some claimants, much later) the name 'Whanganui' applied only to the lower reaches of the Whanganui River. Other names applied to other parts, including Te Awanui a Rua, Te Awanui a Tarawera, Te Wainui a Rua, Te Wai-Tahu-parae, and others.[59] The early twentieth century ethnographer, Elsdon Best, believed that 'Ko te ingoa tuturu o Whanganui, ko Te Wai nui a Rua' ('the proper name of Whanganui is Te Wainui a Rua').[60] There are various versions of the origins of the 'Rua' in this term, including the opposing suggestions that it was an early twentieth century adoption and that it was the pre-Aotea name for the river.[61] John Tahupārae told the Whanganui River Tribunal that Ruapehu, originally alone, pleaded with the sky father, Ranginui, for companionship. As well as providing his companion mountains (Tongariro, Taranaki, Ngāuruhoe, and others), Ranginui caused two tear drops to fall at Ruapehu's feet, one of which became the Tongariro or upper Waikato River. The second tear drop became Te Awanui-a-rua or Wai Nui a Rua (the great waterway of Rua-pehu), later known as the Whanganui River.[62]

The Reverend Richard Taylor, who was a missionary at Pūtiki-wharanui in Whanganui from 1843, knew another name for the Whanganui River: 'Ngā keri keringa a Ruauoko' or the 'digging of Ruauoko'. He explained that Rū was the father of rivers; the name connotes admiration for the Whanganui River.[63]

The claimants consistently emphasised the ancestral centrality of the mountains and the Whanganui River. For example, Ken Clarke said:

> I have always had an affinity with the river. It is part of my soul. The saying, I am the river and the river is me, describes exactly how I feel. It has always been an important part of my life, my mother's life, my grandmother's life and my children's lives.[64]

Tracey Waitokia explained that, to her grandmother Ruiha Takarangi, whose whakapapa ran the length of the

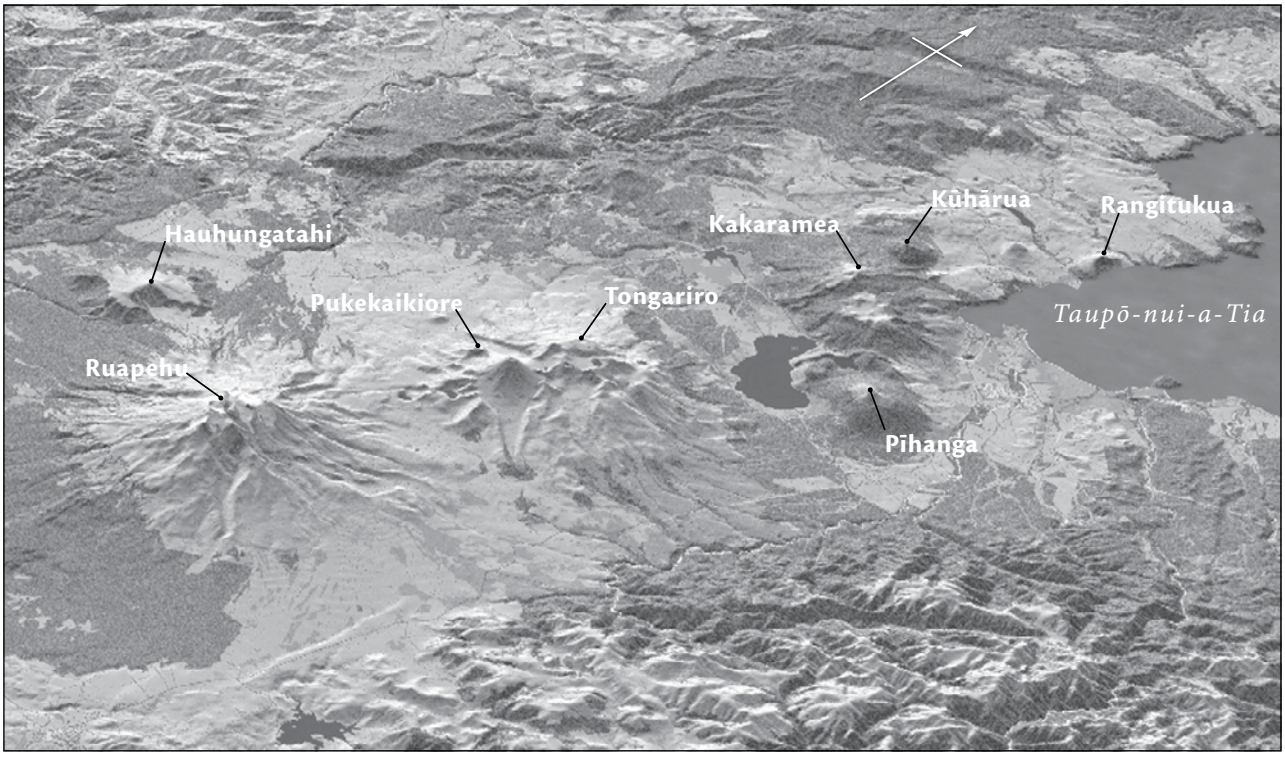
The sacred maunga Ruapehu stands majestically above dense native forest. The three volcanic mountains are the source of many of the rivers in the district and are visible for miles across the Waimarino Plains.

river, the river fed and nourished them all. Her grandmother, she said, 'was in tune with the mauri of the river.'[65] Christina Tapa told us that the river is 'our life-force and our spiritual waters. When [we] were sick we went to the water, to the Awa, and our prayers were down there, our karakia was down there.'[66] Veronica Baker and Carol Tyson-Rameka said:

> Our Awa was everything to us. It was our food basket and also a place for healing. But most of all it was our identity. Our old people always spoke to the Awa through waiata, [and] moteatea.[67]

(2) *Te Kāhui Maunga / the Family of Ancestor Mountains*

The Kāhui Maunga – Tongariro, Ruapehu, and their companion mountains – were recorded as tapu in many early accounts. They were personified as ancestors. Māori from Tūhua and Taupō spoke consistently in these terms to early European visitors and would-be climbers of the Tongariro chain: George Carne Bidwill in 1839, Ernst Dieffenbach and Jerningham Wakefield in 1841, George French Angas in 1844, Governor Grey in 1850, a Mr Dyson in 1851, and Ferdinand von Hochstetter in 1859.[68] Māori told these travellers that Tongariro was tapu; that 'he' was an ancestor and the backbone of the Tūwharetoa ariki,



Map 2.3: Te Kāhui Maunga (the Family of Ancestor Mountains) of the Whanganui region

Mananui and Iwikau Te Heuheu. Mananui Te Heuheu told Richard Taylor in January 1845 that Tongariro was his 'great progenitor'.[69] Tongariro and Ruapehu were the male giants, and the smaller mountains including Pīhanga, Kakaramea, Kūhārua, Pukekaikiore, and Rangitukua were their wives and children. Together, they were the kāhui maunga or family of ancestor mountains.[70]

Most rivers in the Whanganui Inquiry district had their sources among Te Kāhui Maunga and like them were imbued with tapu and wairua. On Ruapehu, the crater lake Te Wai-a-Moe is a wāhi tapu of special significance, a place where the bones of ancestors were deposited; it is the ultimate source of the Whangaehu and Mangawhero Rivers and many of their tributaries.[71] To many northern hapū the source of the Whanganui River, high on Tongariro, was known as Te Hokowhitu-a-Rākeipoho. It too is a very sacred place where Tūwharetoa's son, Rākeipoho, camped with his followers on his way west in taua (war expeditions) that helped form the identity of many upriver iwi and hapū.[72]

(3) *Te awa tupua / the river in which dwells supernatural power*

Many claimants call the Whanganui River 'te Awa Tupua' – literally, the river inhabited by spiritual or supernatural beings.

The Crown's principal witness on Māori culture around 1840, Dr Lyndsay Head, questions whether the Whanganui River was as significant in the pre-European past as it is to Whanganui Māori today. Referring to letters written by Māori to officials or each other between 1840 and 1865, she said:

The tūpuna maunga Tongariro and Ngāuruhoe. Seen from the west above foothills and native bush, they lie to the north of Ruapehu.

> there is nothing in the sources that expresses the relationship between Whanganui Maori and the Whanganui river. The river appears only incidentally in the letters as a highway to the interior, use of which may be challenged by chiefs living along its banks in times of war. However, as the sources run to hundreds of pages of Maori writing, we are confident that the study represents main streams of Maori political opinion.[73]

Dr Head says this lack of an expressed relationship between river and people is a 'gap' in the documentary Māori voice. She anticipates the likely objection to her conclusion – that Māori managed the information stream to Pākehā in a way that concealed tapu cultural matters – by comparing letters from Māori to Crown officials with letters from Maōri to other Māori. She found that there was no special voice for speaking to Pākehā, and concludes that the Māori-language evidence is a reliable representation of Māori thinking.[74]

Dr Head describes a 'modern orthodoxy' that now insists Māori had a spiritualised relationship with the

land, including mountains and waterways. She says that this idea has come to replace what she identifies as 'the old connotations', in which Māori considered mountains to be inimical to humans and saw land principally as a commodity or political bargaining chip. Dr Head concludes that contemporary reverence for spiritual and cultural beliefs (such as regarding the river as the awa tupua) is evidence of change in the modern era.[75]

The claimants and other technical witnesses disagree. Dr Suzanne Doig draws attention to the reluctance of Whanganui Māori to discuss spiritually significant associations openly or in public places such as the Native Land Court.[76] As far as the absence of such traditions from Māori correspondence goes, historian David Young considers that history is 'at the mercy of what remains – it is impossible to write about what is not held either in documentary evidence or in tribal history. To that extent history is inevitably partial.'[77]

The Power of Tapu

In 1873, a survey party met Te Keepa Te Rangihiwinui and 300 of his followers on the Ōhotu block, where there was an extremely tapu rock traditionally regarded as a medium of communication with spiritual forces. One of the men present, named Wiki, fired a shot at this rock. Te Keepa was so angry at this desecration that he twice tried to kill the culprit. An hour after the shot, a terrible thunderstorm began – the worst that Surveyor Reardon had ever experienced. The man Wiki was terrified at what he had done, and died soon afterwards.[1]

(4) *Spirituality and the landscape*

We agree with Dr Doig and Mr Young. If Whanganui Māori were reluctant to discuss spiritual matters in the Native Land Court after 1865, presumably they were equally reluctant to discuss them with Crown officials in business letters earlier. There is much oral and written evidence that Māori everywhere were reluctant to commit tapu material to paper. If it was written down, it was often buried with its owner after his or her death, or burnt.[78] If Māori did not canvass spiritual topics with other Māori in letters, this can hardly be surprising. Apart from the multi-faceted sensitivities of tapu, Māori would hardly need to remind each other of beliefs that underpinned their concept of reality.

Dr Head's views arise from her consideration of Māori correspondence. But Māori letters to officials are not the only contemporary primary sources. Early European visitors, settlers, and missionaries recorded the beliefs of Whanganui Māori, often discerned in settings in which they were more likely to discuss them (shown, for example, in our earlier discussion of te kāhui maunga). In his book published in 1855, missionary Richard Taylor discussed atua, patupaiarehe, and taniwha, recording:

> in every place there were other objects which were viewed with reverence, as being the peculiar abode of certain spirits: rocks, stones, trees, rivers, fountains, even large eels were reverenced, and prayed to, and had daily offerings made them.[79]

We agree with many of Dr Head's comments about the pre-European period, including:

> All nature had 'being': trees, plants, rocks, mountains, seas, sky and natural phenomena were all sentient, in the sense of capable of being animated by spirits into benign or malicious interaction with people.
>
> . . . . .
>
> *Wahi tapu* was a generic term applied to any places to which spiritual power was attributed . . . Through *tapu* the landscape was a repository of power. This power governed behaviour and expressed the history of the group in that land.
>
> . . . . .
>
> The river was incorporated into the religious life of the tribe, so that *tohunga* as well as *taniwha* and *tipua* might also have a particular relationship with the river.[80]

Dr Head also showed that tapu rocks – understood to be the embodiment of spirits, places where incidents had happened to ancestors with spiritual consequences,

or places with spiritual powers – were still to be found in the Whanganui River in 1873.[81] Writing in or before 1915, Thomas Downes (the historian of the Whanganui River and Dr Head's source for the 1873 tapu rock incident) noted many tapu places in the river that Māori still avoided in the early twentieth century.[82]

It is true that there is a modern orthodoxy of a spiritualised Māori past,[83] but we do not think that this is inauthentic. Rather, we see the present-day recognition as a re-spiritualisation or spiritual recovery in Māori society. Far from being new phenomenona, Whanganui Māori from the late twentieth century have been reaching back into the past to reassert beliefs that were concealed and forced into obscurity by the twin messages of Christianity and European colonisation, which condemned such beliefs as 'heathen darkness'.[84]

In 1857, Taylor noted that his Christian converts still feared the predictions of matakite (people embued with second sight, seeing auguries of the future), and were alarmed at 'witchcraft' (mākutu). He recorded their belief that when:

> their old boundary stones have been karakied [*sic*] over . . . no one can touch them without being killed, that many unwittingly doing so have lost their lives and that if any fragment of these formidable stones by any accident should be used in heating their ovens they would be sure to cause death.

Taylor was angry with his Māori converts for 'such childish nonsense.'[85] He observed that, by the time he was writing his book, *Te Ika a Maui* (in the early 1850s) the various spiritual manifestations he described were rapidly disappearing.[86] That may have been so but it may also have been the case that his Christian converts became reluctant to discuss them with him in the face of his disapproval.

2.3 Ngā Toi Whenua: Origins and Arrivals

2.3.1 Ngā tīpuna o mua: the early tangata whenua

Ancient tangata whenua peoples began spreading into various parts of the Whanganui district when Aotearoa was first settled. Sometimes they arrived in canoes, but often their presence is explained in symbolic terms or through supernatural events such as flights on birds, voyages on whales, or transmission by the power of atua. Some are said to have sprung from the earth itself.[87] Alternatively, they are characterised as the human descendants of the spiritual beings whose material manifestations are mountains, rivers, storms, winds, and waters.

The ancestors discussed in this section are some of the earliest tūpuna of Whanganui Māori the claimants told us about. They pre-date by many generations the famous waka, such as Tainui, Te Arawa, Aotea, and Kurahaupō. There are many differing traditions concerning their birthplaces, lives, kinship, places of occupation, and semi-supernatural activities. In his thesis on the origins of Ngā Rauru Kiitahi, Ruka Broughton, the tohunga and historian of Ngā Rauru, Te Kāhui Rere, and other tangata whenua, explained that this level of variation was 'because the history is so old that the actual details of the events have been lost and have been preserved in symbolic language.'[88]

(1) *Ruatipua*

Many claimants have directed our attention to Ruatipua (or Ruatupua), a very early 'tangata whenua'[89] ancestor important to numerous whakapapa, including those of central and northern Whanganui groups. He lived, according to some genealogies, up to 12 generations before Rauru, ancestor of Ngā Rauru; Rauru was himself a descendant of Toi-te-huatahi.

Ruatipua was an ancestor of Ngāti Hāua and their various hapū in the upper reaches of the river: in fact, Ngāti Hāua may once have been known as Ngāti Ruatipua.[90] His descendants intermarried with many groups, including those arriving much later in famous waka, especially Aotea, Tainui, and Te Arawa. Ruatipua is one name for the site where the Whanganui River rises on Tongariro.[91] Ruatipua was also an ancestor of Ngāti Hāua's western neighbours, Ngāti Maru of inland Taranaki, whose interests included parts of Taumatamāhoe and adjacent north-western blocks within the inquiry district.[92] Further downriver, he was also related to the groups associated with Tamakana and Tamahaki. (We discuss these groups below.)[93]

Ruatipua was among the ancestors of southern Taranaki and lower Whanganui people, including those concentrated west of the river such as Ngā Rauru, Ngā Pourua, Ngāi or Ngāti Tamareheroto, Ngāti Pūkeko, and Ngāti Iti. Ruatipua was also an ancestor of Haunui-a-Pāpārangi (who gave his name both to Te Āti Haunui-a-Pāpārangi – a collective name for the peoples of the whole district – and also to the particular hapū or iwi, Te Āti Hau or Ngāti Hau of Hiruhārama). Through his descendant Tamakehu, husband of Ruakā, Ruatipua was also an ancestor of Ruakā's descendants, the famous siblings, Hinengākau, Tamaūpoko, and Tūpoho, the selected guardian ancestors for the Whanganui River.[94]

(2) *Paerangi o te Maungaroa / Moungaroa*

This ancestor, also known as Paerangi i te wharetoka or Paerangi I, was the descendant of even earlier tangata whenua. They include, by different lines, Te Hā I (or Te Haa) and his descendant, Mōuruuru (or Mōuriouri). Mōuruuru's descendant was Whirotipua; Whirotipua's children included Taitearikī, a famous southern Taupō personage who pre-dated Tūwharetoa by many generations. Another ancestor of Paerangi I was Houmea, whose descendants killed Taitearikī at Te Roro o Taitearikī on Te Onetapu (the Desert Road area). Houmea was also descended from Te Hā I and Mōuruuru.[95]

Paerangi I is claimed as the eponymous ancestor (Pae-Rangi) of Ngāti Rangi iwi and their many hapū (now concentrated from Ōhākune to Waiōuru), and of Ngāti Hāua (now concentrated at Taumarunui).[96] Often through Paerangi II, a great grandchild of Paerangi I, Paerangi was also ancestral to many Whanganui peoples from the river's lower reaches.[97] Some of these include: Ngāti Ruakā and their many hapū; Ngā Poutama and their many hapū; Ngāti Pāmoana and hapū; Ngāti Hineoneone; Ngā Paerangi and their many hapū; Ngāti Tūmango; Ngāti Hinearo and Ngāti Tuera; Ngāti Hine-o-te-rā, Ngāti Rūwai, and Ngāti Waikārapu; Ngā Wairiki and their hapū; and Ngā Ariki.[98] These groups are each discussed separately later in this chapter.

Paerangi I was also an ancestor of Tamahaki through Tamahaki's mother, Tauira, and of Tauira's sister Ruakā (eponymous ancestor of Ngāti Ruakā) and her children, the three ancestors chosen to represent and guard the Whanganui River: Hinengākau, Tamaūpoko, and Tūpoho.[99]

The claimants from many parts of the inquiry district told us of the importance of this ancestor: the view has been expressed that Paerangi o te Maungaroa was the 'principal ancestor of the Whanganui River'.[100] However, the traditions concerning Paerangi's own origins – which predate the great waka migrations – are so old that they vary considerably. In some accounts, he arrived from Hawaiki not by canoe but by flying, because he possessed the power of flight. Kenneth Clarke told us: 'Some stories say that he changed himself into a bird and flew here; others say that he came on the back of a bird.'[101] This evidence agrees broadly with the early twentieth century account of the ethnographer Elsdon Best, who recounted that Kupe, the Polynesian discoverer of Aotearoa, found Paerangi's fires already alight. Best recorded that:

> Though all the Whanganui natives say that Kupe only found the tiwaiwaka and tieke or kokako here – yet when questioned closely the old men admit the existence of tangata whenua in the valley of the Whanganui. These were the Ngapaerangi, descendants of Paerangi-o-te-moungaroa, whose ancestors came from Hawaiki some 5 gens before Aotea, brought hither by his atua, he had no canoe.[102]

However, while some traditions have Paerangi arriving from Hawaiki by atua or bird, others gave his birthplace as in the foothills of Ruapehu,[103] and there are other places associated with his infancy. John Maihi explained that Paerangi was part of Te Kāhui Rere, the early tangata whenua credited in many traditions with the power of flight: 'just about everyone in W[h]anganui and probably the lower Taranaki and even the lower Rangitikei is of a descendant of Paerangi o te Maungaroa.'[104]

Paerangi o te Maungaroa's descendants, who eventually intermarried with descendants of Turi of the Aotea waka and others, occupied an extensive if discontinuous district from the mountain plateau to the coast, and from Kai Iwi to Rangitīkei.[105] Place names associated with Paerangi's

Waka

Besides these ancient 'tangata whenua' peoples, iwi and hapū in the Whanganui inquiry district also claim descent from the crews of the famous canoes voyaging from the ancient homeland – or successive homelands – known as Hawaiki.[1] Those waka most closely associated with Whanganui are Aotea and Kurahaupō, and, mainly in the north and east, Tainui and Te Arawa.

These waka were often associated with a period of multiple canoe arrivals here, many generations after the lifetimes of such figures as Paerangi o te Maungaroa and Ruatipua. This period, often attributed to the fourteenth century, led European writers of the early twentieth century to postulate that the main canoes arrived together in a 'fleet'.

This theory has been authoritatively discredited.[2] Nonetheless, many traditions support a period of concentrated migration. They hold that some canoes crossed paths on their way to Aotearoa, some travelled together, some replaced others wrecked en route; it is probable that at least some arrived together or were double-hulled canoes.[3] Many claimants call this time the great migration period.[4] The traditions of Whanganui Māori often distinguish between the 'great migration' groups that arrived in Aotearoa by the best-known waka voyaging from Hawaiki (Aotea, Te Arawa, Tainui, Kurahaupō and others) and earlier 'tangata whenua' arrivals.

Whanganui Māori have strong links to other tribes. Groups around the mountain chain connect to Te Arawa through links with Tūwharetoa; the Ngāti Maniapoto connections of Ngāti Hāua and their hapū, Ngāti Rangatahi, Ngāti Urunumia, Ngāti Hari and others link them to Tainui. Tākitimu connections come from the very early exploration up the river by Tamatea-pōkai-whenua, from the subsequent intermarriage of Kahungunu's descendants with those of Turi of the Aotea, and from intermarriage in the Rangipō-waiū and Murimotu areas between Ngāti Tama, Ngāti Whiti and Ngāti Rangi and their hapū. Kurahaupō links derive from intermarriage between Whanganui groups and Ngāti Apa, and from the incident in which the people of the Kurahaupō waka transferred to the Aotea after a mishap; the two canoe traditions appear to have fused from the outset.[5] The strongest links of all are with the Aotea canoe and its captain, Turi. One of his descendants was Haunui-a-Pāpārangi (see below).

Today, generations of intermarriage and social interchange up and down the Whanganui River (complemented by exchanges with other peoples via the Rangitīkei, Whangaehu, Waitōtara and other rivers, and many tracks) mean that most iwi, hapū, and individuals can trace their descent from multiple canoes. Ngāti Pāmoana, among other groups, trace their descent from eight waka: Aotea, Kurahaupō, Tainui, Te Arawa, Horouta, Mātaatua, Tākitimu, and Tokomaru.[6] Whanganui leader Sir Te Atawhai Archie Taiaroa was one of many claimants who trace their descent from all the famous waka.[7]

ancestors, including Whirotipua and Taitearikī, are to be found in many places south and east of Ruapehu.[106]

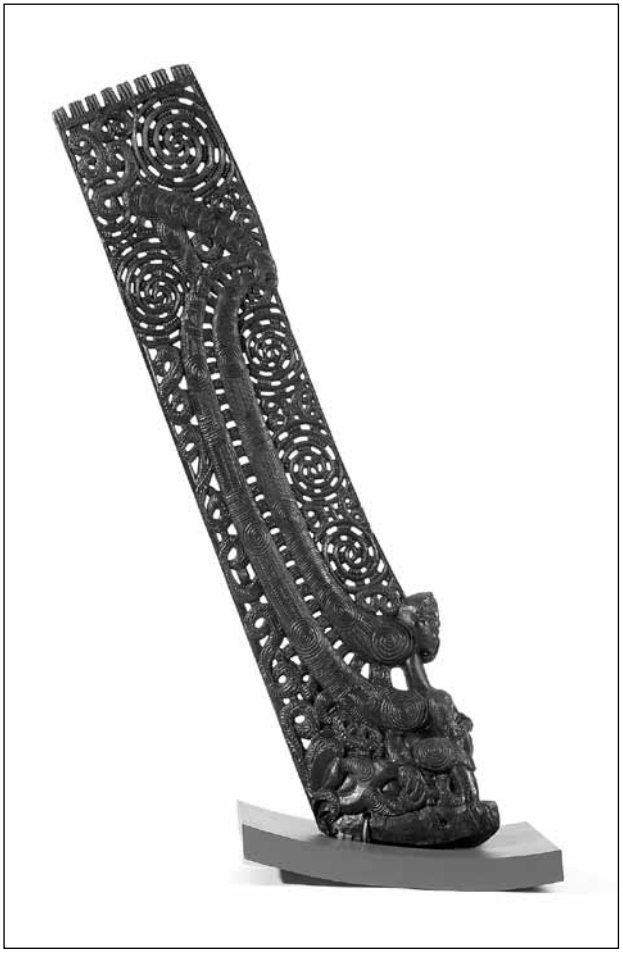
2.3.2 Ngā tīpuna rongonui o muri mai: later ancestors

(1) *Haunui-ā-Pāpārangi*

> Te uri o Hau-nui-a-Papa-rangi, nana i taotao te nuku roa o Hawaiki.[107]

The various iwi and hapū of the Whanganui inquiry district were often described (at least in early colonial times and into the twentieth century) as 'the Whanganui Tribe(s)'. Alternatively, they were sometimes designated, and often now call themselves, 'Te Āti Haunui-a-Pāpārangi', which derives from an ancestor, Haunui-a-Pāpārangi.

We have been told of various ancestors called



▲◄ A tatā (bailer), Te Āti Haunui-ā-Pāpārangi, circa 1250–1500. Found at Te Kaihau-a-Kupe (Castlecliff), the tatā is made from tōtara.

◄ The pūkāea (trumpet) of Wīkahi Tairapanga, Ngāti Pāmoana, circa 1700–1800. The pūkāea is called Te Ūpoko-o-Mairehau, after the name of a hill near Rānana.

▲ A taurapa (stern piece) of a waka (canoe), Te Āti Haunui-ā-Pāpārangi, circa 1500–1800. The taurapa was given to settler Major John Nixon by upper Whanganui River iwi.

▲► A hei (neck pendent) made from serpentine in a rare divided-sphere shape, circa 1100–1250

► A mau kakī (pendant) made from serpentine stone, from Whanganui, circa 1200–1500

Haunui-a-Pāpārangi in Taranaki and Whanganui tradition. One is said to have arrived with Turi on the Aotea waka from Hawaiki; his descendants settled among Ngā Paerangi.[108] The genealogical expert and claimant, Tūrama Hāwira, records a Haunui-a-Pāpārangi who lived two generations earlier than Turi. He descended from Rongoueroa and Toitehuatahi on one side of his whakapapa, and from Ruatipua on the other; this ancestry suggests 'tangata whenua' rather than 'waka' origins.[109] Another Haunui-a-Pāpārangi, a descendant of Turi of the Aotea canoe, was much more recent and probably a namesake; he lived only a few generations before people giving evidence in the Native Land Court.[110]

Another ancestor called Haupipi – whose name was sometimes held to have been part of the tribal name, Te Āti Hau – also travelled on the Aotea after his original canoe, Kurahaupō, was wrecked.[111] However, Haupipi is sometimes regarded as the more immediate ancestor of Ngāti Hau of Hiruhārama. They are also known as Te Āti Hau, Te Āti Haunui, or sometimes – confusingly – as Te Āti Haunui-a-Pāpārangi. Thus, the people of Hiruhārama (Jerusalem) and environs have often been confused with the Whanganui-wide entity.[112] Downes called this Hiruhārama group Te Āti Haupipi.[113]

The name Te Āti Hau or Te Āti Haunui-a-Pāpārangi as a term for all Whanganui iwi and hapū has gone through periods of relative obscurity. In 1873, Te Keepa Te Rangihiwinui's Native Land Court evidence about the Murimotu block mentioned various iwi and hapū including Ngāti Rangi, Ngāti Ruru, Ngāti Hekeāwai, and others; Te Keepa then said 'Te Ati hau is the name that includes all'.[114] At a later hearing in 1892, while discussing the rights of various Ngāti Rangi hapū in Raketapauma block, Te Keepa said 'but the old name of these people over all was N'Hauanui [*sic*] a Paparangi.'[115]

We can probably take it that 'Te Āti Hau' and 'Ngāti Haunui-a-Pāpārangi' were interchangeable terms used by at least some Whanganui Māori in the mid to late nineteenth century. Europeans in the mid-nineteenth century usually knew this Whanganui-wide entity (and also the people of Hiruhārama) as 'Ngatihau' or as 'the Wanganui tribes'.[116]

However, some claimant kaumātua born in the 1920s or before recalled that, in their youth, Whanganui Māori were called Te Wainui-a-Rua (although to others, 'Te Wainui a Rua' referred to a stretch of the upper river.[117]) For example, Maude Hauru Clarke of Ngā Paerangi of Kaiwhaiki said:

> The whole iwi was called Te Wainuiarua. Te Atihaunui a Paparangi is quite new to me. I don't know when and why it was changed to this. I never knew of the name Te Atihaunui a Paparangi as a youngster.[118]

Morvin Simon, the expert on Whanganui marae traditions, suggested the name 'Te Wainui-a-Rua' became popular in the 1920s because it was used by the local rugby sub-union at Rānana in 1923. It was later extended to other sports teams and the local branch of the Māori Women's Welfare League. The name became known as far as Karioi. But Mr Simon said that the 'all-embracing title still remains what the people of long ago termed it: Te Atihaunui-a-Paparangi!'[119]

It would seem that 'Te Āti Hau' in the nineteenth century was an abbreviation of the full version, 'Te Āti Haunui-a-Pāpārangi'. The full name would have been known to knowledgeable kaumātua and rangatira. But the use of 'Te Āti Haunui-a-Pāpārangi' as the name for the Whanganui collective probably revived in the mid-twentieth century. The claimants said:

> The tribal identity that emerged from the marriages with the descendants of Hau, who came on the Aotea canoe, became known as Ati Hau (and in recent times as Te Ati Haunui-a-Pāpārangi).[120]

As the Whanganui River Tribunal found, although the most regularly functioning political unit in that inquiry district was the hapū, the various hapū along the river also identified as Te Āti Haunui-a-Pāpārangi. This larger identity reminded the people of their common origins, so that they could work together when confronting an outside force. They saw themselves 'both as separate groups and as a collective whole'.[121]

(2) *The kaitiaki of the river: Hinengākau, Tamaūpoko, and Tūpoho*

> Tamaupoko, tumu whare.[122]

We have noted already how, over time, iwi and hapū relationships in the Whanganui inquiry district became complex through intermarriage. By the mid-nineteenth century, there were few people who could not claim lines of descent from multiple, ancient 'tangata whenua' groups of various origins, as well as from the captains and crews of famous waka.

Thus, the various iwi and hapū of the Whanganui inquiry district developed the multi-stranded human admixture that came to be referred to as 'te taura whiri a Hinengākau' (the plaited rope of Hinengākau).[123]

The Whanganui River Tribunal commented on how Whanganui Māori sometimes organised themselves regionally from the river's upper, middle, or lower reaches:

> when speaking of the river as a whole, three ancestors have been regularly invoked by the people . . . to show that, though the river flowed through many places, the river, like the people, was a single entity. The ancestors . . . were Hinengakau, who was associated with the river's upper reaches, Tama Upoko, who settled in the middle, and Tupoho, who was known for the lower part.[124]

The claimants in this inquiry endorsed the importance of these three siblings. They were selected as kaitiaki (guardians) representative of three sections of the river for the river claim in the early twentieth century.[125] However, those three tūpuna have a less immediate connection with claims relating to the land rather than to the river. In an interview with Tony Walzl, Manu Metekīngi explained that they represented the three sections of the *river*: 'in my reasoning that is the water, not the land.'[126]

The late Sir Archie Taiaroa, chairperson of the Whanganui River Trust Board, explained that:

> the selection of Tamaupoko, Hinengakau and Tupoho as tupuna for the river was not [a] product of the establishment of the Trust Board, but in fact had its origins in the Land Court litigation of the 1930s and even before that and it was intended to bind and unite Whanganui iwi. It was thought then that the best way to display such unity was through a single whanau and that is why the children of Tamakehu and Ruaka were chosen because it [was] felt that everyone within [the] Whanganui iwi could in some way whakapapa to them. It was to represent unity[,] not to include some and exclude others.[127]

The selection of Hinengākau and her brothers as representative of the whole river system caused some difficulties. In 1988, the Whanganui River Trust Board Act set up the Whanganui River Māori Trust Board, whose beneficiaries were to be 'the descendants of the hapu of Tama Upoko, Hinengakau, and Tupoho'.[128] The three ancestors were later selected as the names for the three administrative areas covered by the Whanganui River Māori Trust Board and its agencies.[129] However, section 6 of the 1988 Act was less prescriptive; it appointed the board to negotiate with the Crown concerning any claim related to the river on behalf of 'te iwi o Whanganui, or any particular hapu, whanau, or group'.[130]

Restricting beneficiaries of the trust board to descendants of Hinengākau and her two brothers posed problems for those Whanganui claimant groups that did not feel they could be described as descendants of the three siblings. These groups included Tamahaki[131] and Ngāti Rangi, who regard themselves as kin to the river people by marriage connections, not descent.[132] Uenuku also contend that the ancestor, Tamaūpoko 'hardly appears in the whakapapa of the people of the rohe assigned to him, and is virtually absent from the history and genealogies of Manganui o Te ao'. Their counsel observed:

> Paradoxically although the three river tupuna were established in 1938 on the grounds they were solely for the river, and not for the adjoining land, over time their rohe was extended to cover the whole Whanganui district.[133]

The statutory definition of beneficiaries of the Whanganui River Māori Trust Board also created difficulties for

the trust board itself. Its solution was to set up a rūnanga-ā-iwi, founded on Whanganui tikanga rather than statute and answerable to its constituents, the many iwi and hapū of the Whanganui River district. Te Rūnanga o Te Awa Tupua was set up in 1999 as the iwi authority for Whanganui iwi; its primary role is iwi governance, but it was not (at the time of our inquiry) incorporated as a legal entity.[134]

It seems to us that when the Whanganui River Tribunal found that Whanganui Māori owned the river, they meant *all* the iwi and hapū who live along it and along its tributaries – including those who do not whakapapa principally to Hinengākau, Tamaūpoko, and Tūpoho, but to Ruatipua, Paerangi, Maniapoto, Tūwharetoa, Uenuku, Tamahaki, or other ancestors. As described later in this chapter, claimant evidence suggests that *all* groups living along the river have significant lateral kin ties (intermarriage) with their Whanganui neighbours, even if their principal or most defining lines of descent are elsewhere. We do not consider that the Whanganui River Tribunal was in the business of using the three tūpuna names to exclude people. It stressed 'relationships', 'inclusion', and 'finding commonality'; it found that the three ancestors were set up as *symbolic* of a relationship rather than as the actual founding ancestors.[135]

2.3.3 Ingoa hurihuri: iwi and hapū name changes

As discussed above in relation to Haunui-a-Pāpārangi, at certain points in pre-contact and colonial Whanganui's history, subtle influences have inclined Māori communities to emphasise temporarily one set of their descent lines at the expense of others. For example, they have sometimes emphasised 'waka' people over 'tangata whenua' or people of earlier origins. At other times, memories and identities associated with ancient ancestors have been given new prominence.

At various times, Whanganui Māori have also emphasised a single tribal identity, Te Āti Haunui-a-Pāpārangi. At others, they have drawn more attention to the independence and strength of the different descent groups, variously called iwi or hapū, scattered along the Whanganui and other river valleys of the inquiry district. Such variations are typical of many (if not most) parts of the country, and are normal manifestations of a tribal or descent-and-kinship based society. As Dame Joan Metge famously wrote, hapū and iwi 'waxed and waned'.[136]

Iwi and hapū name changes were often related to cultural influences deriving from Māori events and the operation of tikanga. Larger, older hapū seem to have remained comparatively stable for generations, but even they sometimes combined with others in larger groupings under a new name. An example, discussed below, is Te Patutokotoko, who took this name in the early nineteenth century (see section 2.4.3(2)). Groups that were small, newly prospering, or migrating often separated from older, larger hapū or communities, and marked the change by new names – Ngāti Tānewai (or Ngāti Taanewai) is one such example (see section 2.4.3(1)). These changes happened as communities prospered under the leadership of particular ancestors or came to prominence after victories in war, or after intermarriage between groups from different iwi origins. Ngāti Pāmoana, also discussed below (see section 2.4.3(1)), took its name in circumstances like this.

Name shifts of descent groups were a normal result of the functioning of tikanga within Māori society. This phenomenon did not cease in 1840 or even three decades later – in spite of colonial map-makers and the Native Land Court, with its tendency to freeze identities at a point in time.

Even today, hapū continue to be lost from or reabsorbed into their parent iwi. Occasionally, they reemerge and assert their separate identity once more. Karl Te Puata Burrows gave us a list of 12 hapū of Ngāti Maru, and mentioned others discussed in Native Land Court hearings. He said:

> Ngati Maru hapu have become largely historical. Hapu over time do grow, divide, merge, re-emerge and sometimes disappear. Hapu were and are constantly in flux and responding to pressures in a way which suited the people at that particular time. Presently the strength of Ngati Maru lies with a number of whanau which are as large if not larger than our historical hapu. However, many Ngati Maru members are aware of the hapu from which they descend or affiliate and it may be that

hapu members decide to revive these hapu at some time in the future.[137]

During this inquiry, we have been told of relatively recent times when hapū – diminished by population loss or dispersed by urbanisation – were 'put to sleep'.[138] We were told that one hapū living in the Tawhitinui kāinga used the Ngāti Hinekōrako identity 'up until the last whānau [moved] across the river [to] Rānana in the 1950s.'[139]

The dynamism of hapū identity certainly slowed for a time due to colonial pressures, although possibly the confusion and variation in official tribal records are evidence that it did continue. But the selection of either older or more recent ancestors as a new focus for the identity of communities remained, and remains, a time-honoured cultural practice. It is also normal and proper for individuals to shift hapū identities for different purposes. Hekenui Whakarake in the River hearing in 1938 described his tribe as 'Whanganui', but added that the hapū he identified with depended 'on the location on the river.' He said, '[y]ou can live in one place under one hapu and [in] another place under another hapu.'[140]

The importance of these observations will become clear when we examine such 'new' groups as Tamahaki, Uenuku, and Tamakana in the next section. They emerged in the late twentieth century when various groups of Whanganui Māori recognised that they had new interests and purposes in common. Their leaders looked back along their various whakapapa lines to find ancient ancestors from whom all could trace descent, and who expressed most potently their kin links to each other. These groups revived those names to express their new focus and purpose.

2.4 Te Taura-whiri-a-Hinengākau i te Rau Tau 1800: Peoples of the Inquiry District in the Early Nineteenth Century

2.4.1 Introduction

In this section, we describe many of the iwi and hapū of the inquiry district as they developed, and in some cases re-located, after the warfare and migration that characterised the early nineteenth century.

2.4.2 A brief outline of inter-tribal events to 1845

In the early nineteenth century, many Whanganui Māori groups were migrating (either temporarily or permanently) in response to significant events that included:

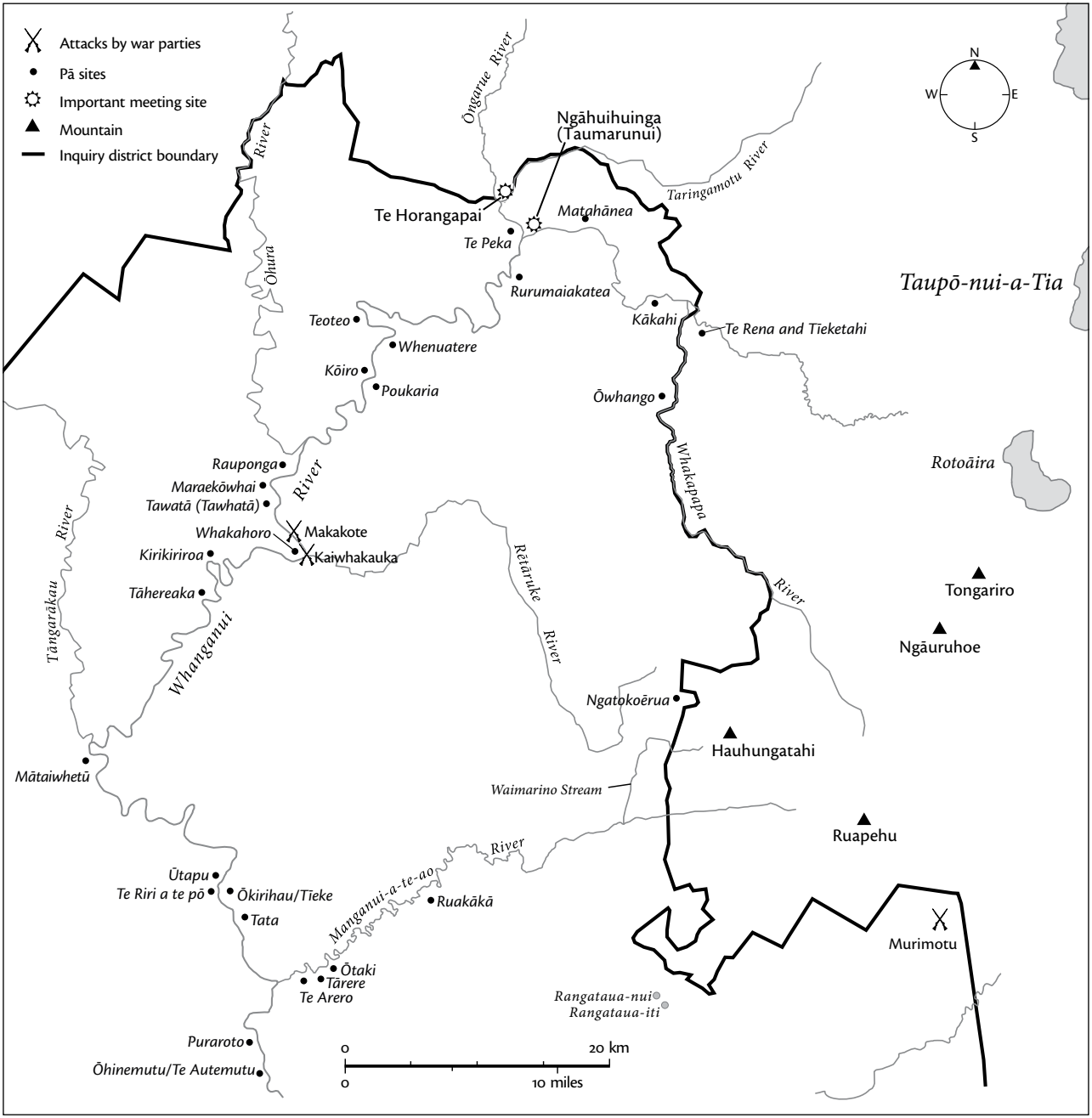
- the peace of Te Horangapai, its context and its aftermath
- the accord at Ngāhuihuinga, and the migration of Ngāti Hāua and Ngāti Rangatahi to Kapiti and Heretaunga
- attacks on Whanganui, 1819–29 (from Tūwhare to Te Rauparaha)
- the invasions of Ngāti Raukawa
- the settlement of Pūtiki and Waipākura by upriver groups
- taua (war parties) from Taupō in the early 1840s

We discuss each in turn.

(1) *Te Horangapai*

Te Horangapai was an immensely important act of peacemaking that occurred in the very early nineteenth century, at the confluence of the Taringamotu and Ōngarue Rivers. It marked the culmination of pre-musket wars around the Ōngarue and upper Whanganui Rivers. These wars and their aftermath were the background to the absence of Ngāti Rangatahi and some Ngāti Hāua from the Taumarunui area, and their presence in Heretaunga (the Hutt Valley in Wellington) about 1840. They would later return to Taumarunui in the mid-1840s. The same wars also formed the background to the late nineteenth century clashes in the Native Land Court between Ngāti Maniapoto, Ngāti Rangatahi, Ngāti Hāua, and other hapū. This dispute concerned the boundary between these groups in Ōhura South and other blocks just inside and outside the Whanganui inquiry district's north-eastern boundary. At issue was the extent of the area covered by the name Te Horangapai. At the time of the peacemaking – according to Ngāti Maniapoto, Ngāti Urunumia, and Ngāti Hari – it covered a much larger area than eventually became the block known as Ōhura South A1.

The events leading to Te Horangapai began with Tūtemahurangi of Ngāti Rangatahi (a hapū of Ngāti



Map 2.4: Important events in the northern Whanganui district in the period to 1845

Maniapoto), who lived eight or more generations before the present claimants. This chief seduced the wife of Nukuraerae of Ngāti Hāuaroa, a senior hapū of Ngāti Hāua; Tūtemahurangi later killed Nukuraerae. The killing sparked off wars between Ngāti Rangatahi (allied with various sections of Ngāti Maniapoto), and Ngāti Hāuaroa, led by Whakaneke and supported by various other upper Whanganui groups.[141]

The wars were complicated by the fact that the leaders on Tūtemahurangi's side – including Tūtemahurangi himself, Te Uhi, and Tānoa – were all of Ngāti Hāua as well as Ngāti Rangatahi and other Maniapoto groups. Kin were facing and fighting kin. Te Korota I of Ngāti Urunumia (eldest grandson of Urunumia and elder brother of Hari I, eponymous ancestor of Ngāti Hari) was killed, and his head was taken to Tāheke pā in Manganui-a-te-ao. Hari, no doubt moved by the death of his older brother, spoke provocatively. His words led one of his allies, Wheto of Ngāti Maru[142] (a small sub-hapū of Ngāti Ihingārangi[143]), to kill Tūtemahurangi at Ōtamahaki on the Ōngarue River. Hari, with Ngāti Urunumia and Ngāti Rōrā, then attacked Whakaneke of Ngāti Hāuaroa, only to be heavily defeated at Te Maire on the Whanganui River. Hari was killed, and his body placed on a rock that was afterwards called 'Te Patunga o Hari'. One of the escapees from this battle was the chief Ngarue of Ngāti Rōrā, a hapū of Ngāti Maniapoto; Ngarue's wife was the daughter of Korota I of Ngāti Urunumia.[144]

Te Porou, son of Tūtemahurangi, then took up his father's cause, and attacked Ngāti Rōrā in their pā, Paripari near Te Kūiti. The deadly wars continued and spread as more hapū allied to Ngāti Maniapoto or Whanganui, including Ngāti Hikairo of Kāwhia, were dragged into events on either side in a series of complicated and shifting alliances. Some time before 1820, Hikairo II (from Ngāti Hikairo of Kāwhia) succeeded in making the peace later called 'Te Horongapai-o-Hikairo.' A shortened version of the name, Te Horangapai, afterwards applied to the place; it referred to the symbolic laying out of Hikairo's cloak to create a haven of peace and neutrality where the two sides could safely meet and negotiate.[145]

On the Ngāti Hāuaroa side, the peace was negotiated by Whakaneke – a tohunga as well as a chief – and his son, Te Oro (or Te Horo). Whakaneke and Tāwhaki of Ngāti Urunumia (brother of Hari and also a tohunga) performed the extremely tapu ceremony called rongotaketake to bind the gods, Maru and Uenuku. The peace was also reinforced by a number of arranged marriages between the chiefly families, including that of Hari's daughter to a Whanganui chief, Tarona; their offspring became known as Ngāti Hari. Another marriage was that of Tūkeo of Ngāti Urunumia to Hira, a wahine rangatira (female chief) of Whanganui and eponymous ancestor of Ngāti Hira.[146]

Apart from some brief hostilities at Mōkau and elsewhere, peace reigned for at least a decade before war again prevailed (see next section). Expecting further attacks from Ngāti Rōrā, Ngāti Rangatahi and some Ngāti Hāuaroa decided to migrate south to Te Whanganui-a-Tara (Wellington). (Events in the 1840s in Heretaunga (the Hutt), as far as they affect Whanganui, are discussed in chapter 6.) For a while, Ngāti Rōrā moved into the Ōhura area, which migrating hapū had vacated. In later times, the wāhi tapu Te Horangapai became a sanctuary for those needing respite from war. Among those who sought shelter there in later years were Tāwhiao and Te Kooti.[147]

(2) *Ngāhuihuinga*

In spite of the peace at Te Horangapai, tribal relations in the north of the inquiry district remained very tense in the early nineteenth century. Eventually there was more conflict involving Ngāti Tū, Ngāti Hāua, Ngāti Rangatahi, Ngāti Urunumia, and Ngāti Rōrā. By this time, the wars in Kāwhia were raging between Te Rauparaha and Waikato (and their respective allies) eventually leading Te Rauparaha to go with his people to Kapiti in about 1821.

According to Ngāti Rangatahi oral tradition, a meeting took place with Te Rauparaha, probably in 1822, at Ngāhuihuinga (Cherry Grove, Taumarunui).[148] Ngāti Rangatahi had shifted their allegiance by this time, becoming allies of Ngāti Hāua. At Ngāhuihuinga, Ngāti Rangatahi agreed to accompany Ngāti Raukawa south

in the Tataramoa heke (migration), a decision reflecting whakapapa connections.[149]

Ngāti Rangatahi's decision to move south with the migration weakened their Ngāti Hāua allies, who were expecting further war with Ngāti Rōrā of Ngāti Maniapoto. Various groups associated with Ngāti Hāua or upper Whanganui – including Ngāti Tū, Ngāti Ruru, and Ngāti Rongonui and probably led by Te Mamaku – also decided to go south with the migration. Others followed later.[150] At the behest of Te Rangihaeata of Ngāti Toa, they eventually settled with Ngāti Tama at Heretaunga (Hutt Valley) under the chief, Kāparatehau. They were not to return until the mid-1840s, and were thus in the Kapiti region when the New Zealand Company ship *Tory* arrived and 'purchased' the Hutt Valley[151] – a coincidence which would have important consequences for Whanganui (see chapter 5 and see also chapter 6 for a discussion of events in Heretaunga).

Due to military action in the Hutt, Ngāti Rangatahi and those Ngāti Hāua with them were forced to leave their lands there in 1846. Some moved to Te Reureu and other places in the Rangitīkei region, where some Ngāti Rangatahi remained. The rest returned home to Ōhura and the upper river in the mid-1840s. Mātakitaki Ngarupiki of Ngāti Rangatahi and Ngāti Hāua remained at Taumarunui or nearby throughout all these events; he presented Taonui Hīkaka of Ngāti Rōrā with a cask of gunpowder in exchange for the right of his people to return.[152]

(3) *Attacks from 1819: from Tūwhare to Te Rauparaha*

> Te kōura puta roa.[153]

From about 1819, parts of the wider Whanganui district experienced a series of taua (war expeditions) and heke (migrations) as people from the north of the North Island came down both coasts or by inland routes. Some were removing themselves from the various theatres of war in the north; others were exploring the island for new homelands or sources of trade. Many of these adventurers, especially those from Northland or Hauraki, carried muskets. These were new to Whanganui. The musket-bearers invaded others' territories and met resistance with force. Casualties were the inevitable result, although in Whanganui they were not as many as they might have been. That was because Whanganui iwi from the lower reaches habitually retreated upriver when the odds were against them, taking refuge in their numerous ladder pā where it was difficult for the enemy to follow. This tactic earned Whanganui Māori the epithet 'te kōura puta roa': the crayfish that escapes among the stones. They did not always retreat, though, and there were some sharp engagements where Whanganui Māori made good use of their terrain to counter the marauders' muskets.

One such expedition was the taua of Tūwhare from Te Roroa of Northland. With other northern leaders and Te Rauparaha from Ngāti Toa of Kāwhia, Tūwhare led an expedition to Te Whanganui-a-Tara (Wellington) over 1819 and 1820. They were welcomed at Pūtiki on their way south, but, according to Richard Taylor, treacherously killed their hosts (mainly women) before continuing south. Taylor said that when people heard they were coming, most took 'care to remove themselves and their property inland.'[154]

Tūwhare's band approached Whanganui again on their return north. They attacked Pūrua pā, killing 10 men, and then unsuccessfully attempted to take the two pā called Patupō and Taumata-aute (Shakespeare Cliff). Unwisely leaving the undefeated forces of these pā in their rear, Tūwhare's followers moved up the river, attacking pā at Operiki and elsewhere, including Kaiwhakauka at the confluence of the Whanganui and Rētāruke Rivers. All the way, their canoes were bombarded with logs and stones from the cliffs. Eventually, they were caught in a pincer movement by Te Pēhi Tūroa's forces and allies coming downriver and Te Anaua's forces moving upriver. Hāmārama of Te Patutokotoko took a musket ball in the shoulder before mortally wounding Tūwhare, whose forces fled downstream with him. Tūwhare succumbed to his injuries in Taranaki.[155]

About 1821, the musket-armed taua known as Te Amiowhenua travelled down the east coast to Te Whanganui-a-Tara. It comprised fighting men from Kaipara, Hauraki, Waikato-Maniapoto, and the Bay of Plenty. Tūkorehu

of Ngāti Maniapoto was one of the leaders. From Te Whanganui-a-Tara, the armed men moved up the west coast to Whanganui. A woman there called Kōrako (the mother of Hakaraia Kōrako of Ngā Poutama) lured the taua upriver to Mangatoa near Koriniti (Corinth, formerly named Ōtūkōpiri), where Whanganui fighters led by Te Anaua surrounded them. Te Anaua and his men prevailed, trapping the invaders in a narrow gorge and inflicting heavy losses.[156]

Ngāti Toa also sometimes came off worst against Whanganui opponents.[157] After Te Pēhi Kupe and Ngāti Toa were defeated at Waimea on the Kapiti coast by Ngāti Apa and Muaūpoko, Te Pēhi Kupe's daughter (captured during the fighting) was killed and eaten in Whanganui. Later, as we discuss below, the great chief Te Ruamaioro of Ngāti Raukawa was killed at Makakote in upper Whanganui, and other chiefs were captured. After further hostilities, Te Pēhi Tūroa then gave Tūrangapito of Ngāti Apa a tapu weapon with which to kill Te Rauparaha; various allies, including Whanganui and Rangitīkei groups, then attacked Ngāti Toa on Kapiti in the famous battle called Waiōrua.

By this time, Ngāti Toa and Ngāti Raukawa had many take (reasons) to attack Whanganui.[158] The first time Te Rauparaha brought a taua against Whanganui, he retreated without fighting and attacked Ngāti Apa instead. Perhaps the worst attack, resulting in the greatest losses, came about 1829. This was the two-month siege by Te Rauparaha and Te Whatanui (Ngāti Raukawa) of Taumata-karoro pā. Located on the hill above Pūtiki-wharanui, it was defended by Whanganui groups and Ngā Rauru.[159] Downes thought that as many as 400 bodies were laid out after the battle.[160] Taylor collected the bones and buried them, probably in 1843.[161]

Warfare involving Whanganui and Taupō people continued into the 1830s – including the famous battle of Te Kūititanga, fought in 1839 while the New Zealand Company ship *Tory* was in Kapiti waters.[162]

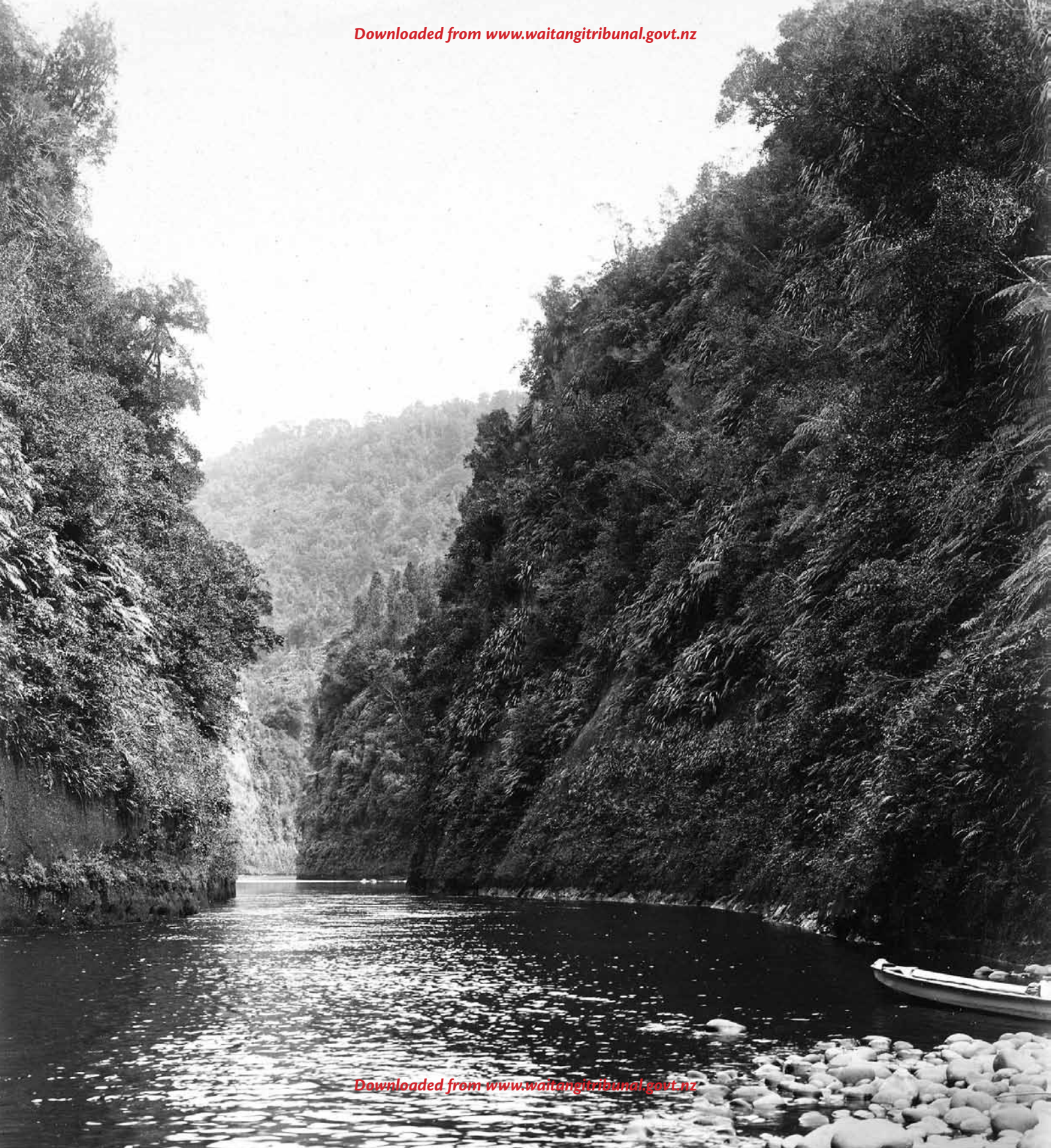
The attacks from musket-armed enemies affected Whanganui settlement patterns. Pūtiki-wharanui and surrounding villages and pā were virtually deserted between about 1829 and the late 1830s, although fishing expeditions continued regularly, especially in summer.[163] Earlier battles in the lifetime of Takarangi Atua at Pīhaia and Kaitoke near Pūtiki, and at Te Tuke-a-Māui pā near Parikino (in which Whanganui forces were defeated by Ngāti Apa and Ngā Wairiki), also contributed to this temporary departure from the Whanganui estuary.[164] The people moved upstream to more defensible locations where there was better soil for their cultivations and they were less vulnerable to passing taua.

(4) *The Ngāti Raukawa invasions*

Early in the 1820s, after several unsuccessful battles with Ngāti Maniapoto and others, Ngāti Raukawa and their relatives from Ngāti Whakatere and Ngāti Takihiku decided to withdraw from their Maungatautari homeland. Some found refuge with kin in the northern and north-western Taupō districts. Ngāti Raukawa wished to find new territory to occupy. They tried first in Hawke's Bay, and then began to explore the Rangitīkei, Murimotu, and Manganui-a-te-ao districts. All were en route to the Kapiti coast where their kin, Ngāti Toa, had already made a home.

The first nineteenth-century clash between Ngāti Raukawa and Whanganui Māori may have been when Ngāti Tamakana defeated Ngāti Whakatere, a hapū of Ngāti Raukawa, in the Manganui-a-te-ao district. This was probably before 1820. Subsequently, the chief Tāwhiri of Ngāti Raukawa applied to Mananui Te Heuheu to borrow one of the only known muskets at the time in the Taupō area, known as Kaumoana. Among his purposes was the need to extract utu. Although warned not to break a long-standing peace agreement, Tāwhiri proceeded, and he and his band were eventually defeated by local men under Te Rangihuatau of Ngāti Tamakana. Tāwhiri was wounded and then killed by Kākahi, father of Winiata Te Kākahi of Ngāti Tara and Ngāti Hinekoropango, and another man, Mānuka.[165]

Later, Ngāti Raukawa again invaded Whanganui, but this taua was eventually defeated after inflicting losses. One survivor of this campaign appealed for aid to Te Whatanui of Ngāti Raukawa, who raised a taua and fell suddenly on the people of Manganui-a-te-ao, killing



many.[166] This may have been about 1829.[167] One hapū that suffered severely was Ngāti Rangirotea.[168]

Some time after the fall of Motuopuhi pā at Rotoāira, where the great rangatira, Te Wharerangi was killed, Te Ruamaioro led a party of Ngāti Raukawa down the Whanganui River. These invaders attempted to settle at Makakote pā, at the junction of the Whanganui and Rētāruke Rivers. Whether they intended to settle permanently or whether this was a staging post on their way to Kapiti was debated at the time, as well as later.[169] They attacked the local people, possibly as utu for the deaths of two Ngāti Raukawa at the hands of Te Mamaku of Ngāti Hāua. The invaders were themselves attacked by a force led by Te Pēhi Tūroa I of Te Patutokotoko (who may have been seeking utu for the death of his kinsman Te Wharerangi at Rotoāira), and besieged until they were starving. Te Ruamaioro was killed, and other important Ngāti Raukawa chiefs were captured and held prisoner at Rānana by Te Anaua of Ngāti Ruakā. The death of Te Ruamaioro was one of the take that led Te Rauparaha and Te Whatanui to attack Taumata-karoro at Pūtiki, perhaps about 1829 or later (discussed above).[170]

Te Whatanui and Ngāti Raukawa came again to rescue these prisoners, who were released. In return, the Whanganui chiefs demanded that Te Whatanui should not return via the way he had come. Te Whatanui was offended. Returning north via Rangataua he again attacked the local people, and then went on to attack Ngāti Rangi at Murimotu or Awarua.[171]

These engagements meant that, for several decades from the late 1820s, no-one lived permanently at Murimotu or even Manganui-a-te-ao – save for various settlements close to the junction with the Whanganui River.[172] The clashes with Ngāti Raukawa were followed a decade later by large taua from Taupō, compounding the problem. Manganui-a-te-ao and Murimotu were regularly used by their customary owners as resource areas for hunting birds and kiore, but there were no permanently occcupied pā or kāinga further east than the two kāinga, Tārere and Ōtaki (close to the Whanganui River), or perhaps Ruakākā a little further east. People started to return in the 1860s with the advent of European and Māori squatting to farm stock (see chapter 12). Private agents were competing with each other and with the agents of the provincial government and the Crown to lease or purchase the land.[173] As leasing began, and the Native Land Court got underway, it became necessary to return to reassert claims.[174]

The result of these absences, too long to be called temporary, was that traditional knowledge about the land in the area faded or became confused. At the time they were making claims in the land court, most descendants of the customary owners of land in Murimotu and Manganui-a-te-ao were born in – and still lived in – settlements on the Whanganui River, such as Tawhitinui, Rānana, Pukehika, Hiruhārama, or Pīpīriki. The judges involved called their evidence 'unsatisfactory' and 'very conflicting',[175] but many of the younger land court witnesses had not themselves lived on these ancestral lands.[176] They were relying on memories of memories.

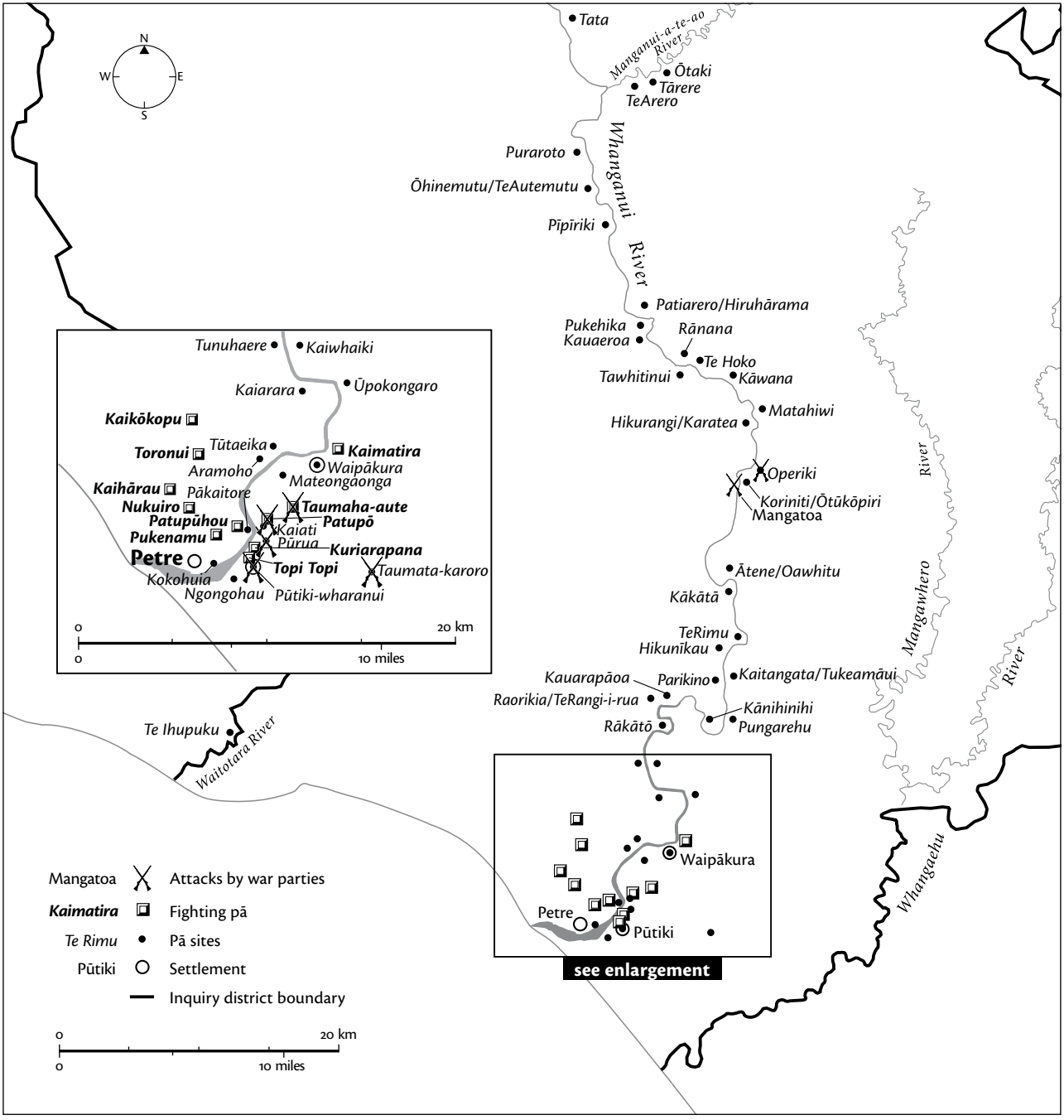
(5) *Waipākura and Pūtiki*

Te Patutokotoko, and their moves downriver to Waipākura, are discussed below.[177] One important result of their arrival (and of the attacks by various northern taua) was that Ngāti Tūmango chiefs invited Ngāti Ruakā and its hapū, Ngāti Tūpoho, to come from Rānana and Tawhitinui to help them defend Pūtiki-wharanui. Many of those who came remained at Pūtiki-wharanui permanently. We discuss these moves below in the sections on the central and southern clusters.

(6) *The 1840s: Taupō invasions into southern Taranaki*

A long-standing quarrel between Ngāti Pēhi of Taupō (one of Te Pēhi Tūroa's many hapū), and Ngā Rauru and Ngāti Ruanui of Waitōtara resulted in the latter cursing Te Pēhi Tūroa. This curse, a grave offence against Te Pēhi's mana, prompted him to call for aid from his Taupō kinsmen. They included Mananui Te Heuheu and Tauteka of Tokaanu – the latter also had an ongoing dispute with

◀ **The Manganui-a-te-ao River. The river's route across the Waimarino Plains provided Whanganui Māori with an important link between the maunga and the Whanganui River. Steep cliffs and native flora are typical along these rivers.**



Map 2.5: Important events in the southern Whanganui district in the period to 1845

Ngā Rauru and Ngāti Ruanui, and was willing to aid Te Pēhi. Tauteka's son, Te Herekiekie, was also kin (through his mother) to Te Kōtuku-raeroa, Tauteka's brother-in-law. So, despite Mananui Te Heuheu's attempts to dissuade them from going, Te Pēhi Tūroa was able to assemble a large combined taua. It came down the Whanganui River in 1840 and attacked Ngā Pourua (kin to Ngāti Ruanui and Ngā Rauru) and occupied the Pātoka pā. In response, Ngā Rauru and Ngāti Ruanui collected a force and occupied Te Ihupuku pā, earlier abandoned. In the ensuing battle in August 1840, many Taupō and Whanganui chiefs were killed, including Tauteka and Te Kōtuku-raeroa. John Mason, a missionary, tried in vain to make peace.[178]

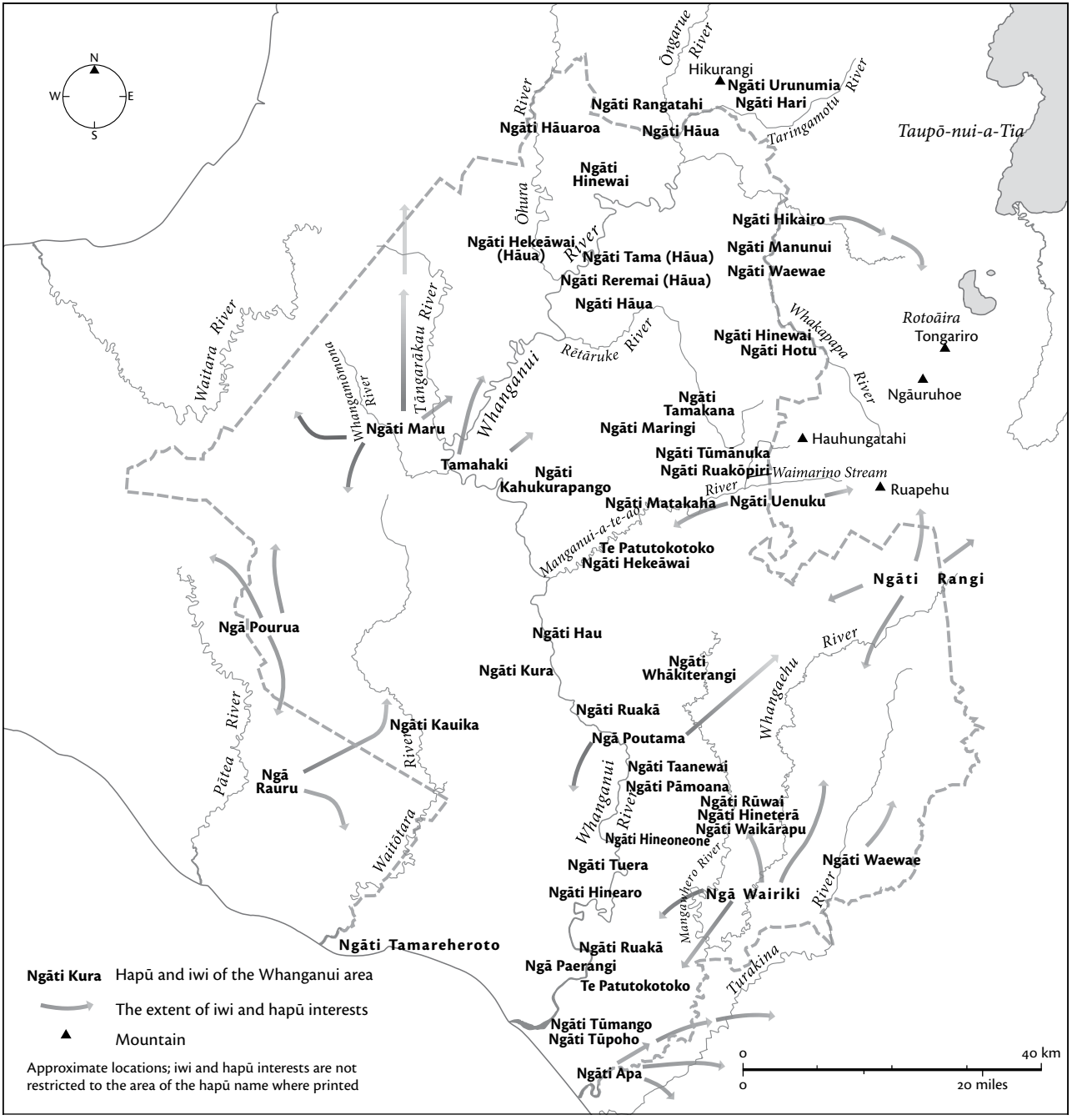
The Reverend John Skevington, appointed as Wesleyan missionary at Waimate in Taranaki in May 1842, gave a different origin for the quarrels between Tūwharetoa and upper Whanganui on the one hand, and Ngāti Ruanui and Ngā Rauru on the other. In his account to Donald McLean, written in February 1845, he gave the southern Taranaki perspective. Taranaki elders told Skevington that late in 1840, the taua from Taupō – having been defeated by another people[179] – came south via Whanganui to take utu from an unrelated people (as was often customary). This taua anticipated that there would be little resistance in southern Taranaki because Waikato groups had undertaken successful attacks there before. The Taupō taua came by night without warning and took a small Ngā Rauru pā a few miles up the Waitōtara River, not far from Te Ihupuku pā. Some of the defenders escaped to Te Ihupuku to give warning. Meanwhile the Tūwharetoa taua moved downriver and built the Pātoka pā, close to Te Ihupuku pā. From Te Ihupuku the inhabitants sent messengers around Taranaki requesting assistance, which soon arrived.[180]

Skevington was told that Ngāti Ruanui and Ngā Rauru attempted to negotiate the peaceful withdrawal of the Taupō force. But, after their messengers were taken prisoner, they built another pā from which to confront the Taupō pā, Pātoka. After a lull, Taranaki people foraging in the plantations were followed and attacked by the Taupō people. In the ensuing battle, the latter were driven back to their pā. The Taranaki allies at first besieged Pātoka but eventually gave up the siege and began foraging and hunting for food again – sometimes alongside Taupō people doing the same thing. Peace seemed imminent, but fighting suddenly recommenced. This time, the Taupō taua was severely defeated, losing up to 100 men, including the principal chief, Tauteka. Many slaves were taken, and only a few Taupō people escaped to take news of the disaster home.[181]

In February 1841, Mananui Te Heuheu headed another large force travelling down the Whanganui River to take utu for these losses. They encountered Te Pēhi Tūroa and his forces. According to Jerningham Wakefield, in March, Te Pēhi's people, Te Patutokotoko, were camped on an island in the river opposite Hikurangi; they were being visited by people from the Ngāti Pehi and Tūwharetoa taua from Taupō, camped six miles further upriver. Five hundred fighting men, including allies from many districts, armed with muskets, were on their way to Te Ikupuku to obtain utu for Tauteka and to bring back the bones of their kin. Jerningham Wakefield witnessed a kōrero (debate) between the two groups in which Te Patutokotoko chiefs, including Te Pēhi Tūroa, urged the Taupō people to return home lest they should all be killed at Waitōtara. Mananui Te Heuheu declared his intention of proceeding.[182]

Hearing Mananui was coming, the people of Te Ihupuku withdrew from the pā, leaving behind an old man and woman too feeble to travel. In Skevington's account, these two were killed by Te Heuheu's taua and the pā burnt.[183] In Wakefield's account, Te Heuheu merely fired off his muskets outside the two pā, Te Ihupuku and Pātoka, which had been abandoned, collected the bones of Tauteka, and then went on to Kapiti. There, he was unable to achieve the utu he wanted for losses in the Te Kūititanga battle in 1839 because missionary Octavius Hadfield persuaded Ngāti Raukawa not to fight.[184] Later in 1841, when Jerningham Wakefield travelled up the Whanganui River on his way to Taupō, he found Kauarapaoa pā (near the site of Kemp's pole, just above the tidal limit at Raorikia) in ruins, having been destroyed by the Taupō taua as they returned home. The people of Kauarapaoa had moved to Tunuhaere.[185]

Te Heuheu Tūkino was not satisfied with the events of 1841, and brought a further taua down the river late



Map 2.6: The approximate location of iwi and hapū interests in the Whanganui district

in 1844. This greatly alarmed the newly arrived New Zealand Company settlers, as well as many Whanganui Māori. Rumour had it that the taua included some 1,000 men, both Ngāti Maniapoto and Tūwharetoa. In fact the taua that arrived on 1 January 1845 seems to have numbered only 200, but it did include the Ngāti Maniapoto chief, Taonui, with a party of his supporters.[186] Te Heuheu Tūkino told Taylor he had come in response to an invitation by Te Pēhi Tūroa. He told Skevington that he had proposed that a piece of land should be given to him as payment for his dead. The missionaries went back and forth attempting to negotiate a peace, and the delay allowed time for the allies of the Ihupuku people to arrive. It became clear to Te Heuheu's taua that they could not take Te Ihupuku by surprise. Tūroa, already in his last illness, was angry, but Tūwharetoa and Ngāti Maniapoto seemed inclined to leave in peace. Meanwhile rumours continued to fly, various settlers' houses were robbed, and the taua dug up Te Māwae's potatoes. The Christian convert and son of the great Te Rauparaha, Tamihana Te Rauparaha, seems to have had the most success at intervening and persuading Te Heuheu to withdraw.[187]

This mainly inter-tribal event was complicated by a number of factors – the new European settlement at Petre, Whanganui; various belligerent statements by Te Heuheu concerning the Queen, sovereignty, and the land question at Whanganui; and fraught relations with the Crown. Police Magistrate King requested aid from the Government, and HMS *Hazard* was sent to overawe the taua on 16 January 1845. But the troops on board, commanded by Major Richmond, could not land because of bad weather, and the *Hazard* left. Rumours abounded that the taua would attack the town but Taylor, Police Inspector Donald McLean, and Major Richmond continued to negotiate a peaceful return upriver for the Tūwharetoa taua after the proper ceremonies had been performed. The *Hazard* later returned, but by then matters had been arranged with Mananui. There were ominous developments: Rangitauira (probably the old, senior chief of Ngā Paerangi) invited Te Heuheu to return to Whanganui and eat the settlers' stock, and peace-making letters sent upriver were stopped by Ngāpara, by now hostile to the Government.[188] These developments are discussed in chapter 5.

During these taua from Taupō, the settlement patterns of Whanganui Māori were once again affected. Many local groups rebuilt pā in safe locations and banded together for protection (see section 2.5).

2.4.3 Iwi and hapū in the 1840s

This section focuses mainly on those iwi and/or hapū that have appeared before this Tribunal as named claimants. However, we also mention many other descent groups that were once recognised as separate entities, only to coalesce with other groups for a variety of reasons.

For the sake of simplicity, we describe Whanganui Māori under the four headings selected for this inquiry and observed by the claimants in their research: the southern cluster, the central cluster, Ngāti Rangi, and the northern cluster.

However, these headings are merely a convenient shorthand for complex relationships that cannot be so simply categorised. Interweaving whakapapa meant inclusive and flexible relationships spanned the entire inquiry district and beyond. Commonly, marriages were arranged between high-ranking men and women from the opposite ends of the district. Spouses were deliberately chosen from desirable allies in order to renew or enhance the inter-dependence of their communities. Nothing changed after 1840, and intermarriage continues unabated.

We are reporting the evidence as it was presented to us. As stated in the introduction to this chapter, we do not, and cannot, make findings on the extent or limits of customary rights among the many claimant groups in the inquiry district. Many of the claimant groups themselves stressed that the lands and resources said to belong to their rohe (area of interest) were shared or non-exclusive.

(1) *The southern cluster*

(a) *Ngāti Ruakā, Ngāti Tūpoho, and Ngāti Tūmango:* In the early 1830s, if any one iwi could have been nominated as the most powerful group on the Whanganui River, it would have been Ngāti Ruakā. Perhaps its only rival was the Te Patutokotoko group headed by Te Pēhi Tūroa. At

this time, Ngāti Ruakā lived mainly about Rānana and Tawhitinui, on both sides of the river.[189] From these locations, they and their many hapū protected many other iwi and hapū, including most of those from the Manganui-a-te-ao Valley (from the high country on the slopes of Ruapehu) and Murimotu. They hosted these groups during the winter's cold, and from the late 1820s, protected them from invaders such as Ngāti Raukawa whose expeditions are described above.

Ngāti Ruakā had been central to the politics of the river from the time of Ruakā herself. Ruakā was the child of Naumia, a descendant of Paerangi; her other parent was Hinekawau. Her sisters included Tuera and Tauira; Tauira was the wife of Tamatuna, and their child was Tamahaki.[190]

Ruakā and her husband Tamakehu were the parents of Hinengākau, Tamaūpoko, and Tūpoho, whose eventual selection as representatives of the different reaches of the Whanganui River derived from the marriages arranged to unite the various groups and prevent further war. Hinengākau was married to Tamahina, a descendant of Maniapoto and Tūwharetoa as well as Te Hoata of Taumarunui, and their marriage was designed to stem the flow of blood as war raged in the upriver regions in the pre-musket period. There were other such marriages. Such strategic unions were reflected in the phrase 'te puru ki Tūhua' (the plug at Tūhua), deriving from a whakataukī (saying) of Tōpine Te Mamaku, as descendants of such marriages, related to all sides in the deadly wars of that time, promoted peace.[191]

Tamaūpoko was killed by Rīkōrero of Waitōtara after a prolonged period of warfare,[192] but some of his descendants are also said to have made strategic marriages. Tamaūpoko's son was Rangiwhakaheke, whose wife was Whakaangi of Ngāti Uenuku-manawa-wiri; their child was Tuera, eponymous ancestor of Ngāti Tuera, now of Parikino.[193] Tamaūpoko had at least one other wife, and several more children.[194]

Tūpoho was Ruakā's youngest son. Wherever Ngāti Ruakā was, there too was Ngāti Tūpoho, especially in the lower reaches of the river. Ngāti Tūpoho became the name of the descendants of Ruakā at Pūtiki. In the twentieth century the name 'Ngāti Ruakā', while retained at Rānana, seems to some extent to have fallen into abeyance at Pūtiki.[195] However, claimant Chris Shenton told us that Ngāti Tūpoho still often refer to themselves by the Ngāti Ruakā iwi name.[196]

By at least the 1820s, Ngāti Tūmango had invited some Ngāti Ruakā to help them defend Pūtiki-wharanui from passing northern raids. Ngāti Ruakā may also have been attracted down river towards Pūtiki-wharanui, the developing window for Whanganui iwi on the wider world.[197] Settlements comprising both Ngāti Ruakā and Ngāti Tūpoho people were established at or near Pūtiki. Ngāti Ruakā's chiefs in the turbulent decades before (and after) 1840 included Te Anaua (later known as Hōri Kīngi) and his younger brother, Te Māwae, both renowned leaders and toa (warrior chiefs). They were leaders in almost every phase of the musket wars in the Whanganui district, as discussed above – in the lower reaches, upriver, and along the coast. Te Māwae was given land at Pungahāruru and took Tarete (Tareti) Te Papa as one of his wives; she was the sister of Hoani Wiremu Hīpango of Ngāti Tūmango.[198]

The last war was fought at Pūtiki in 1829. But even in the late 1830s, Ngāti Ruakā's protection continued to be necessary as Pūtiki and its environs began to be seen as desirable residences for various Whanganui groups. The lower reaches around Pūtiki and Pūrua were becoming 'the matapīhi' or window – the point of contact with visiting Europeans whose presence provided fascinating new stimuli from the wider world, in the form of literacy, a new religion, new resources, new weapons, and trade. Intermarriage took place between the ancestral proprietors of Pūtiki (discussed below), and the Ngāti Ruakā chiefs, and it was as a people with customary rights at Pūtiki (albeit gained originally by gift and the ringa kaha, or strong arm of defence) that they first encountered the Crown.

Later in the nineteenth century, the political heir of Te Anaua and Te Māwae was their nephew Te Keepa Te Rangihiwinui, the leader of Ngāti Ruakā and Ngāti Tūpoho. Te Keepa's mother was Rereōmaki, sister of Te Anaua and Te Māwae, and one of the few women to sign

the Treaty of Waitangi.[199] Other chiefs of Ngāti Ruakā included Tamati Wāka or Hopetiri; his kāinga about 1843 included Ūpokongaro.[200] Ngāpara of Te Patutokotoko may have also belonged to Ngāti Ruakā.[201]

Ngāti Tūmango derive from Tūmango, a descendant of Paerangi I and Paerangi II through his great grandfather, Tukarangatai and his mother, Tuketeiwi. They derived from the earliest remembered tangata whenua of the lower river area. Tūmango lived at Parikino about 17 generations ago before moving to Pūtiki. His two wives were Tūmarino from Parikino and Hinetutea. Tūmarino was associated with Parikino and her descendants' claims are in the Pukenui, Pukekōwhai, Patupā, and Parikino blocks. Hinetutea came from the Pūtiki area.[202] In the 1840s and later, Hoani Wiremu Hīpango of Ngāti Tūmango (one of the chief supporters of the missionary Richard Taylor) was widely recognised as having the principal mana over Pūtiki-wharanui.[203]

Hakaraia Kōrako of Ngā Poutama once said in the Native Land Court that 'Ngati Tumango were the owners of Putiki and the whole of the land that was sold [the Whanganui Block purchased in 1848]', and that 'The Mawae's proper residence was Ranana, he remained permanently on this land and brought his tribe Ngatiruakaha [sic, Ruaka] to reside here'.[204] Waata Wiremu Hīpango, son of Hoani Wiremu Hīpango, also once remarked that no lands belonging to Ngāti Tūpoho were included in the sale of Whanganui in 1848. He maintained that the lands sold belonged solely to Ngāti Tūmango and Ngā Paerangi. The claimant Chris Shenton felt that Waata Wiremu's statement was 'somewhat exclusive' and his position on the rights and status of Ngāti Ruakā was too absolute.[205]

We agree with Mr Shenton that this assessment of customary tenure was too prescriptive. Ngāti Tūmango and Ngā Paerangi were descendants of the original tangata whenua, but Ngāti Ruakā and Ngāti Tūpoho had been invited to come to Pūtiki as protectors. They had been given land well before 1840; they had been at Pūtiki long enough to establish ahi kā. Te Māwae of Ngāti Ruakā had Ngāti Tūmango wives, and there was much other intermarriage between the three groups. Nevertheless, as Donald McLean noted in his journal in May 1846, even in the mid-1840s some tension remained between Ngāti Ruakā and the earlier residents headed by Te Rangitauira of Mateongaonga.[206]

Ngāti Ruakā relate to marae at or near Rānana (including Te Pou o Rongo and Ruakā) and Pūtiki-wharanui. Ngāti Tūpoho and Ngāti Tūmango relate to Pūtiki-wharanui and the shared Te Ao Hou marae at Aramoho.[207]

(b) *Ngā Paerangi:* 'Ko Ngā Paerangi kei uta, ko Ngā Paerangi kei tā'.[208]

Ngā Paerangi of the lower reaches of the Whanganui River take their name from Paerangi II, great grandson of Paerangi o te Maungaroa (discussed above). This line of descent comes from ancient tangata whenua from the volcanic plains east and south of Tongariro and Ruapehu. It is in the whakapapa lines of many Whanganui peoples including their close relatives, Ngā Wairiki, and in those of Ngāti Rangi and many others.

Ngā Paerangi and its hapū dominated the area from Kaiwhaiki to the sea. Te Rangituawaru, living six generations later than Paerangi II, had five children, Tōmairangi, Rangitokona, Te Uira, Whārarakura, and Tūtamou, all eponymous ancestors of different hapū of Ngā Paerangi. Many of the 23 hapū of Ngā Paerangi living as separate groups in the mid-nineteenth century descend from these five.[209] Ngāti Rongomaitāwhiri, based around Kūaomoa in the mid-nineteenth century, was an important hapū approaching iwi status with several sub-hapū of its own.[210]

Until 1848, the rohe of Ngā Paerangi encompassed the settlements or pā of Aramoho, Kānihinihi, Tunuhaere, Tūtaeika, Kauarapaoa (later Raorikia), Maramaratōtara, Kaiwhaiki, Onetere, Kūaomoa, Ōpiu near Ūpokongaro, Rākātō, and many other significant sites scattered on both sides of the river from near its mouth to as far upriver as Parikino. Many of their settlements, cultivations, and resources were in the area of the 1848 Whanganui purchase, including the town site on the north bank. Others were in the huge Tokomaru and other blocks west of the Whanganui River, and the Kaiwhaiki, Ūpokongaro, Ōmaru, Ramahiku, Maramatōtara, Puketarata, and other

blocks bordering the river on the east side. Ngā Paerangi had non-exclusive interests in Pūtiki, Waikupa, and Waipākura, the latter shared with Te Patutokotoko, Ngāti Tūpoho, and Ngā Poutama.[211]

Ngā Paerangi chiefs in the nineteenth century included Te Oti Takarangi, Rangitauira, Taipō, Tāmati Puna, Kāwana Paipai, Koroheke, and others. Many of these descended from more than one Whanganui iwi:

- Rangitauira, later baptised Wiremu Kīngi, was originally from a kāinga near Pīpīriki. He moved to his interests at Mateongaonga, probably in the late 1830s. He was one of the few prominent chiefs to support the New Zealand Company claim, and received the payment for Ngā Paerangi in the 1848 purchase. Rangitauira's places of residence around 1840 included Mateongaonga, Te Karamu (at or near Pākaitore), Pukenamu, and Tunuhaere.[212]
- Kāwana Paipai (also of Ngāti Ruakā) lived at Rākātō before the New Zealand Company arrived, and later at Pūtiki. According to his son Hōri Kerei Paipai, it was Kāwana Paipai who asked McLean to reserve the Paure and Wiritoa eel lakes.[213]
- Koroheke was the senior Ngā Paerangi chief who gifted land to Te Patutokotoko at Waipākura about 1840 (see section 2.4.3(2) below). He opposed the New Zealand Company purchase. His daughter married with Te Pēhi Tūroa's son; from at least 1843 he was living at Pūtiki.[214]

Urupā and wāhi tapu of great significance to Ngā Paerangi and its many hapū were located at Manuriki, Namukura (near Kaiwhaiki), Tunuhaere, Tūtaeika (shared with Ngā Poutama and others), Aramoho, Mateongaonga, Kaimatira, and many other places.[215] The sacred maunga of Ngā Paerangi is Puketutu, which, to their concern, has been renamed Mount Featherston.[216]

Ngā Paerangi people had large, long-established eel weirs at Aramoho and a kōkopu fishery at Tūtaeika. They fished in the river mouth, at sea from waka based at Aramoho, and in small lakes on the Waipākura block and near the Mākirikiri Stream. Some of their best land for māra (cultivations) was on the west side of the river on the river flats from Aramoho to Te Korito, opposite Kaiwhaiki.[217]

Kūaomoa was an active Ngā Paerangi marae until the 1950s. Current Ngā Paerangi marae include Kaiwhaiki and Te Ao Hou at Aramoho. Ngā Paerangi people are concentrated at Kaiwhaiki and other small settlements nearby, such as Te Arakuhu. They consider themselves to be an autonomous hapū of Te Āti Haunui-a-Pāpārangi, and members insist that no other Whanganui group can speak for them.[218]

(c) *Ngāti Tuera and Ngāti Hinearo:* Ngāti Tuera[219] and Ngāti Hinearo are among the many groups with ancestry to Paerangi I and Paerangi II, and are now much intermarried with Ngāti Tūmango. Today, these two groups link to marae at Parikino and inland Pungarehu, downriver from Parikino. The Parikino kāinga was originally on the right bank or western side of the river, but has since been moved across to the other side on what became the Kaitangata block. Pungarehu, a Ngāti Tuera settlement, now has no permanent residents. There are many urupā in close proximity to both kāinga.[220]

There were various ancestors called Tuera or Tuwhera: one was the sister of Tauira (discussed above). Ngāti Tuera themselves say that 'their' Tuera was the daughter of Whakaangi of Ngāti Uenuku-manawa-wiri and Rangiwhakaheke, son of Tamaūpoko. This Tuera's nephew, Tūkino, married Tūmango's great grandchild, Ruamōkai. One of Tuera's namesakes (a child of Haukino and Tūmāhuki) married Kahutūmeke, a son of Pāmoana; their descendants are among Ngāti Pāmoana and Ngāti Uenuku-manawa-wiri.[221] However, Haimona Rzoska has confirmed that this third Tuera is not the Tuera of Ngāti Tuera of Pungarehu.[222]

Hinearo was the descendant of Paerangi II through Tūtekāhoki and his wife, Hinekauariki. Hinearo's brother was Marukohana, eponymous ancestor of Ngāti Marukohana. Hinearo's and Tuera's descendants included the nineteenth century rangatira of both groups, Rātana Te Urumingi and his wife Hēni, both also kin to Ngāti Tūmango and many other hapū.[223]

Hinearo lived in the pā, Hikunīkau, located on land now known as Te Tuhi 5, and in Te Arero o te Uru pā at Kaitangata. Both are on the east side of the river.[224] But

later, in the face of Ngāti Apa attacks, Ngāti Hinearo and Ngāti Tuera took refuge together at the original Parikino on the west side of the river. In 1839 and again in 1844–46, they took refuge there again from Ngāti Tūwharetoa taua, described above (see section 2.4.2(6)). After the attacks, in which many Ngāti Hinearo men were killed, there was much intermarriage between Ngāti Hinearo women and Ngāti Tuera men. In 1917 the Ngāti Tuera tupuna whare (meeting house) Wharewhiti was brought across the river to the present Parikino marae on Kaitangata to unite the two peoples. The Te Aroha meeting house (of Ngāti Hinearo) was also shifted close to the new Parikino marae.[225]

Ngāti Tuera marae now include Pungarehu and Hīona at Parikino, and for Ngāti Hinearo, Parikino.

(d) *Ngāti Kauika and Ngāti Tamareheroto:* These two hapū associated with the Aotea canoe lived in places from the western (Taranaki) side of the Whanganui River to the Waitōtara River. Ngāti Kauika were centred in the upper Waitōtara Valley, close to the Whanganui River at Tawhitinui. From their pā, Piraunui, they acted as tangata tiaki (protectors or caretakers) for such important wāhi tapu as Moerangi and Tīeke.[226]

Ngāti Kauika claimants describe themselves as a hapū of Ngā Rauru; Kauika himself was renowned as the tohunga on board the Aotea waka.[227] However, Ngāti Kauika include descendants of Kauika's wives, some of whom were from original tangata whenua groups such as Te Kāhui Rere.[228]

There was a history of conflict between Ngā Rauru and Whanganui, especially in such disputed areas as Manganuiotahu west of the river. But each round of take (reasons for war) was eventually resolved by peace-making marriages.[229] As a result, some Ngāti Kauika people derived land interests from important marriages between Kauika's descendants and Whanganui groups.[230] Hapū descended from Kauika include Ngā Pourua, Tamareheroto, and others. Whānau with Ngāti Kauika descent links still have interests extending as far as Tawhitinui, opposite Rānana.[231] Some sites of significance to Ngāti Kauika extend across the river.[232]

Tamareheroto was descended on one side of his whakapapa from Turi of the Aotea canoe and his descendants Pourua and Tahau. On the other side (through Pourua's spouse Tānemeha), he was descended from the ancient tangata whenua ancestor Ruatipua, and his descendant Haunui-a-Pāpārangi. Through another very early marriage, Tamareheroto was also descended from Rauru (Ngā Rauru). Tamareheroto was the father of Iti and Pūkeko, eponymous ancestors of two hapū of the Tamareheroto people, Ngāti Iti and Ngāti Pūkeko. Other hapū associated with Tamareheroto include Ngāti Pīrere, Ngāti Tahau, Ngāti Tūtāmaki, Ngāti Rongotea, Ngāti Tahinganui, and Ngāti Tūtemangarewa. The last two were also descendants of the early tangata whenua group, Te Kāhui Rere; Tahinganui and Tūtemangarewa were husband and wife.[233]

The non-exclusive rohe (area of interest) of Ngāti Tamareheroto stretches inland from Pungarehu (in this case, a fishing village at the Whanganui River mouth) to Kaiērau or Kaihērau (St John's Hill in Whanganui city), the original residence of Te Hururangi, grandfather of Tamareheroto. From there it extends north and west to Puatearapa inland, and from there to the coast north of Taipakē.[234]

The Kai Iwi and Ōkehu Streams were important sources of kai to these groups, which had cultivated areas nearby. Taikapē and Mowhānau or Kai Iwi beach were important fishing settlements, used not only by various Tamareheroto hapū, but also by Ngā Paerangi with whom there was much intermarriage.[235]

The marae of Ngāti Kauika and Ngāti Tamareheroto (and Ngāti Pūkeko and Ngāti Iti) include Piraunui, Taipakē (now at Kai Iwi), Te Aroha at Kai Iwi, and Kokohuia (now the site of a kura kaupapa school.) These two hapū also relate through the ancestor, Aokehu, to Pūtiki-wharanui and to the house called Te Mōrehu at Rānana.[236]

(e) *Ngā Wairiki:* Ngā Wairiki are another group descended from Paerangi I and the ancient people known as Te Kāhui Rere, who intermarried with the peoples from the Aotea and Kurahaupō canoes.[237] They include Ngā Ariki, a coastal people with kin links from Waitōtara to Turakina. On the east, Ngā Wairiki are much intermarried with

Kai Iwi Beach and coastline. The coastline forms part of the Whanganui district's western boundary.

Ngāti Apa, and their lands extend towards the rohe of Ngāti Hauiti and Ngāti Rangi inland, and with Whanganui and Ngā Rauru groups on the west. Ngā Wairiki's rohe extended from the Kaitoke Stream a few kilometres south-east of the Whanganui River to the Whangaehu, Mangawhero, and Turakina Valleys. Only part of their rohe lies within the Whanganui inquiry district. The chief Āperahama Tīpae, often mentioned in association with the Whanganui Purchase in 1846 and 1848, was of both Ngā Wairiki and Ngāti Apa.[238]

The Ngā Wairiki marae include Kauangaroa, Tini Waitara at Turakina, and Te Whānau a Kapua at Whangaehu.[239]

(f) *Ngā Poutama-nui-a-Awa:* Poutama was a tohunga (learned man, priest) and toa (fighting chief) whose origins lay in the Mōkau region on the border between Taranaki and Waikato. His ancestry there is not known to us, but three to four hundred years ago he left his original home for the Whanganui River. There he married a daughter of the chief, Ruamatatoa, the builder of Hikurangi pā. He became the leader of Ruamatatoa's people on the death of his father-in-law. Poutama's descendants married descendants of Paerangi II, Pāmoana, and other lower reaches groups, and his people, orginally belonging to several local hapū, came to be known as Ngā Poutama-nui-a-Awa.[240] In his paper on Matahiwi marae, Haimona Te Iki Rzoska explained that Ngā Poutama settled Hikurangi pā; it was located on the right (western) bank of the river in the area later called Karatia, 500 metres downstream from Matahiwi, the modern marae and centre for Ngā Poutama.[241]

Poutama's granddaughter, Tauira, became the wife of Pāmoana, and the Poutama and Pāmoana peoples were always closely allied neighbours. They fought together in numerous campaigns against Ngā Rauru, probably in the late eighteenth or very early nineteenth century, and against Ngāti Rangi from Karioi.[242] There were many military engagements in the early nineteenth century in which Ngā Poutama and Hikurangi pā were involved.

Important Ngā Poutama chiefs in the nineteenth century included Hakaraia Kōrako and Mete Kīngi Paetahi (also of Ngāti Tūmango).[243]

In the early twentieth century, people began to move away due to the lack of road access to Karatia, the absence of employment, and other issues. The marae at Hikurangi/Karatia was abandoned in the 1930s. The whare tupuna (meeting house), Poutama, became the target of thieves and tourists, and in the 1960s was moved for safety to the Ngāti Pāmoana marae at Koriniti. Meanwhile, Matahiwi marae, the home of the Ngā Poutama hapū, Ngāti

Taanewai, became and remains the spiritual heart of the Poutama iwi.[244]

Ngā Poutama-nui-a-Awa have many other affiliated hapū, including Ngāti Poutama (the hapū), Ngāi Tāne (Taane) or Ngāti Tānewai (Taanewai), Ngāti Hineoneone, Ngāti Hinekōrako, and others, some also affiliated to other lower reaches iwi. These groups are discussed below.

Ngā Poutama were recognised by others as having rights in the estuarine lands of the Whanganui River. As well as upriver places such as Hikurangi, some Ngā Poutama lived at Tūtaeika and Kaikōkopu.[245]

(g) *Ngāi Tāne (Taane)/Ngāti Tānewai (Taanewai):* Ngāti Tānewai (or Taanewai, the claimants' preferred spelling) are a hapū of Ngā Poutama-nui-a-Awa. They are now associated most strongly with Matahiwi marae, where the meeting house is called Taanewai.[246]

Ngāti or Ngāi Taane were the descendants of the ancestor, Taanewaihoro, but the name Ngāti Taanewai has overtaken this identity. This hapū was formed about the early 1900s when the rangatira Te Ranginui Maehe (also known as Maehe Ranginui) decided to break away from his former community. To form the new marae he had to swim backwards and forwards across the Whanganui River, carrying his possessions on his back. The name 'Taanewai' reflects his sorrow at this time.[247]

Ngāti Taanewai's interests (and those of Ngā Poutama), including hunting and gathering rights, lay in the Ahuahu, Ōhotu, Te Tuhi, Ngārākauwhakarara, and Tauakirā blocks and also in Moutere Island, in the river below Matahiwi.[248]

(h) *Ngāti Hineoneone:* Like many other lower river groups, Ngāti Hineoneone is descended from Paerangi o te Moungaroa and Paerangi II.[249] They are also kin to Ngāti Tūpoho, but regard themselves as a hapū of Ngā Poutama.[250] Ātene, originally known as Kākata, is their marae, and their sacred mountain is Puketapu. One family continues to sustain Ātene, which is beautifully maintained; its once resident whānau go there for tangihanga, hui, and other social and cultural events.[251] Ngāti Hineoneone's house at Ātene is Te Rangihekeiho. Their rohe includes the Pītangi Stream, a tributary of the Whanganui River and the site of the Ahuahu pā, which Ngāti Hineoneone share with Ngā Poutama.[252] As explained in a letter from Kireona Rupuha to the Minister for Public Works in April 1910, a large urupā important to Ngāti Hineoneone was on Tauakirā 2N.[253]

Ngāti Hineoneone's neighbours included Ngāti Tuera and Ngāti Hinearo, and the territory shared by Ngā Rauru groups and Ngāti Pāmoana west of the river. Despite Ngāti Hineoneone's interest in land west of the river, the Native Land Court did not award them a share in Manganui-o-Tahu,[254] but the hapū continues to assert its interests there. They also have interests in Kauarapaoa, Tauakirā, Ōhotu, Te Tuhi, and Ahuahu blocks.[255]

(i) *Ngāti Pāmoana:* The whakatāuaki 'Kotahi tui nā Pāmoana koko Pāmoana' commemorates a famous victory at Kokohuia (Balgownie) when Pāmoana's followers defeated those of Tūtemangarewa, an important ancestor associated with Ngāti Tamareheroto, Ngāti Iti, and Ngāti Pūkeko.[256] The proverb suggests that Pāmoana brought down only one 'tui' (he killed the chief, Tūtemangarewa), but that one was the one that scattered the rest.[257] This battle was not a conquest, but an act of utu (payment) for the killing of Tūkārangatai of Ngā Paerangi, whose death was in turn utu for a Ngā Rauru death in the time of Tāhau.[258]

Pāmoana himself was descended from Turi and his wife Rongorongo of the Aotea canoe. He was born near Pātea in the Taranaki district, but left for the Whanganui district, attracted by accounts of the rich bird life of the Mangawhero Valley. With his followers, Pāmoana attempted to establish a pā in the Maungakaretu district, but Ngāti Rangi drove them away. Pāmoana had many more adventures but eventually married Tauira, a granddaughter of Poutama. They settled at Operiki pā, on the east bank of the Whanganui River not far upstream from Koriniti.

Pāmoana had only one son, Kahutūmeke, but five grandsons – including the famed toa (war leader), Tarikōpeka. His son and grandsons fought ongoing battles with Ngāti Rangi and their allies, who eventually

killed Kahutūmeke at Kākātahi (up State Highway 4 from Ōtoko). This led to further retaliation against Ngāti Rangi. Meanwhile, Ngāti Pāmoana also waged wars against Ngā Rauru and captured, but did not hold, Heahea and other pā in the Waitōtara district.[259] These victories followed the battle at Kokohuia against Tūtemangarewa, outlined above.

The spiritual centre of Ngāti Pāmoana is now at Koriniti marae, where there are now three houses: Pēpara (originally the church or chapel house), Te Waiherehere, and Poutama.[260]

(j) *Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu:* These three hapū, known as the 'korowai o Te Awaiti',[261] are now based around Ōtoko and Kākātahi on the Parapara road (State Highway 4) above the lower Mangawhero River. They are among the many descendants of Paerangi o te Moungaroa.

Ngāti Hine-o-te-rā or Hineterā are also descendants of Paerangi II through Takotohau, and are acknowledged as a hapū of Ngā Paerangi. Hineterā herself was born at Parikino but lived at Kaiwhaiki. Her descendants are associated with Ōtoko, Rākātō and Kauangaroa marae. They are to be found among Ngāti Houmāhanga, Ngāti Huru-o-te-rā of Ngā Wairiki and other groups. Hineterā was eventually killed and her heart was roasted at Tunuhaere, an incident which gave the name to that place.[262]

Ngāti Rūwai (sometimes written Rūāwai or Rūai) are, like Ngāti Hineterā, also descendants of Paerangi I, Paerangi II, and Takotohau. Ngāti Rūwai are particularly associated with lands from Ōruakūkuru to Karioi, Whangaehu down to Mangamāhū, the junction of the Whangaehu and Mangawhero Rivers, Te Rimu, and Tauakirā. They also have connections with the Parapara area, the Mangawhero River to the Raukawa Falls, and Pungakawa in the east. Ōtoko marae is not far inside their southern boundary. Blocks in these areas include Ōtumauma, Ōhotu 6 and 7, Parapara, Tauakirā, Taonui, Wharepū, Maraetaua, and Ngāpukewhakapū.[263] Ngāti Rūwai were awarded shares in Ngāpukewhakapū as a hapū of Ngāti Pāmoana.[264]

Waikārapu, the eponymous ancestor of Ngāti Waikārapu, was one of two sibling descendants of Uenuku-manawawiri[265] and Hinepua through their son, Uepōkai. Many of the blocks in or surrounding the rohe of Ngāti Waikārapu and the other Te Awaiti hapū derived from Uenuku-manawawiri and Hinepua and their sons, both Uepōkai and Maruhikuata. There was much interaction and intermarriage with Ngāti Pāmoana; Waikārapu's spouse was descended from Pāmoana.[266]

Koriniti, Hikurangi, Matahiwi, Ātene, Kaiwhaiki, Rākātō (14 miles upriver from Kaiwhaiki), and Tunuhaere (downriver from Kaiwhaiki) were sometimes kāinga or places of refuge for these three hapū. The Mangawhero River was an important source of their food, as was the Taukoro Bush. There was a Ngāti Rūwai settlement at Kākātahi, now mostly gone, but the current marae of these three hapū is Ōtoko.[267]

(k) *Ngāti Hau:* Ngāti Hau are also known as Ngāti Haunui or Ngā Haunui-a-Pāpārangi. They have always been based at or near Patiarero, later known as Hiruhārama (Jerusalem), on the east side of the Whanganui River on the Morikau block; Patiarero was the site of the iwi's whare wānanga (school of learning), Te Ūpokotauaki.[268]

More than most iwi and hapū in the Whanganui inquiry district, Ngāti Hau relate to Turi and the Aotea canoe rather than to Paerangi. Among their ancestors is Pōrau, a descendant of Turi, who lived between the Waitōtara and Whanganui Rivers.[269]

There is some doubt about which Hau was the ancestor from whom the iwi takes its name. One name often mentioned is Haupipi, but other possibilities include Haunui-a-Pāpārangi (discussed in section 2.3.3). Even here, there is uncertainty: was it Haunui-a-Pāpārangi who lived in Hawaiki, Haunui-a-Pāpārangi who was a contemporary of Whātonga (brother of Rauru), or the Haunui-a-Pāpārangi who was a grandchild of Whātonga-i-mua? Perhaps they all contributed.[270]

After Haupipi or Haunui-a-Pāpārangi, Ngāti Hau regard their most important ancestor as Tamakehu. His marriage to Ruakā produced the three children regarded as the kaitiaki (protectors) of the river, Hinengākau, Tamaūpoko, and Tūpoho. Tamakehu's other marriage,

to Tauira, produced four children: Kuramate, Hinepuke, Tūwhataroa, and Tamangaupare. These four were regarded as kaitiaki of the land.[271]

In addition to Patiarero or Hiruhārama, Ngāti Hau had another very strong pā, Pukehika, on the west side of the river. It was often used as a shelter for many hapū from up and down the river when the region was under external attack. In 1843, it was the largest settlement on the river with 222 people, increasing to 349 in 1851. Other settlements included Kauaeroa, downriver from Pukehika.[272]

The Whanganui River bisected Ngāti Hau's rohe: half the blocks they were interested in were on the west side of the river.[273] Their territory extends well to the west. They were awarded the whole Mangapōrau block, although part of it, as far as the Mātaimoana watershed and Taumatarata, was claimed by Ngā Rauru.[274]

Ngāti Hau's current marae are Patiarero and Peterehema, both at Hiruhārama.[275]

(2) *The central cluster*

(a) *Ngāti Kurawhatīa/Ngāti Kura:* Long-established as the people of Pīpīriki and its environs on both sides of the river, Ngāti Kura are descended from Kurawhatīa (often written Kurawhatiia). This ancestor was not originally of Whanganui, but was descended through many generations from Te Arawa ancestors. His forebears were Hinemoa and Tūtānekai of Rotorua and Mokoia fame, who were descended in turn from Tūhourangi and ultimately from Tamatekapua of Te Arawa waka.[276] Kurawhatīa married Hinerua II, a descendant of Tamahaki's father Tamatuna by his marriage with Tainui.[277]

Ngāti Kura's neighbours (especially on the Whakaihuwaka or western side of the river) included Ngāti Rangitautahi, the descendants of Rangitautahi I, whose origins lie with Ruatipua.[278] Other neighbours were associated with Tamahaki, Tamakana, and Uenuku.

Ngāti Kura's marae at Pīpīriki is Paraweka; its meeting house is Pire Kiore (or 'Rat Bill').[279] We were given oral information suggesting that the house was named to mark local opposition to the Tohunga Suppression Bill (the word 'Bill' translates as 'pire') or Act of 1907.[280] But Te Whetūrere Bobby Grey gave evidence that the name was given when James Carroll (Timi Kara) and Māui Pōmare visited Pīpīriki when the new meeting house was being built. At the time, the two Government Ministers were promoting a new, unpopular Bill; the people told them to take their 'rat of a bill' elsewhere. The name, Pire Kiore, stuck.[281]

(b) *Ngāti Tamakana:* Tamakana was descended through his mother, Ruakaupō, from the ancient Whanganui ancestor, Ruatipua. This connection gave him and his descendants within Ngāti Tamakana their status as a Whanganui iwi. Tamakana also had connections to Ngāti Maru, to Ngāti Porou, and to Te Arawa. Through his father, Totokia, he was descended by five generations from Tūwharetoa through Tūwharetoa's son, Rākeipoho.[282]

Tamakana waged repeated battles over the Taurewa district west of the central mountains, many of them against Ngāti Hotu. Finally, he quarrelled with his cousin Pouroto in a dispute over the mountain, Taurewa, and killed him. He then established pā on Taurewa and nearby. Some time after Pouroto's death, Tamakana and some of his followers and descendants moved to the Manganui-a-te-ao Valley and made their principal home among kin there. Ngāti Tūwharetoa then sought utu for the death of Pouroto and sent a raid against the people of Manganui-a-te-ao. In response, Ngāti Tamakana (under Tohiora, Tūrāhui, and others), attacked Waitahanui and other pā at Taupō. Ngāti Tūwharetoa were seriously defeated and lost many famous ancestors in single combat with Tūrāhui, until Tūkino (an ancestor of the Te Heuheu whānau) managed to defeat and kill him. Tamakana himself was eventually killed near Rotoāira by Ngāti Tūwharetoa. Only his head remained: his kin brought it back for burial at Tīeketahi urupā (also known as Te Rena urupā) near the junction of the Whakapapa River with the Whanganui River on the Taurewa block.[283]

In spite of all these battles with Tūwharetoa's descendants, Ngāti Tamakana must have enjoyed times of peace. Tamakana married women from the Manganui-a-te-ao and the descendants of his three grandchildren (Tangowhara, Tūkiriwai, and Tuatapa) became established there and also west of Tongariro and Ruapehu on the

Hapū that Acknowledged Descent from Tamakana

Later-evolving hapū that acknowledged descent from Tamakana (although most also had other important lines of descent) include: Ngāti Ātamira; Ngāti Maringi; Ngāti Waikaramihi; Ngāti Tūmānuka; Ngāti Hinetaro; Ngāti Tūkaiora; Ngāti Tāwewe; Ngāti Kahukurapane; Ngāti Whā-ki-te-rangi; Ngāti Tara; Ngāti Kōwhaikura; Ngāti Hinekoropango; Ngāti Taipoto; and Ngāti Kahukurapango.[1]

Chiefs Descended from Tamakana

Nineteenth-century chiefs descended from Tamakana (although most also had other important lines of descent) include: Tūkaiora II and Te Pikikōtuku; Te Whetū Kākahi and his son, Winiata Te Kākahi; Te Whareraangi and his son, Matuaahu Te Whareraangi; Te Rangihuatau; Kaioroto; Te Riaki; Uenuku Tūwharetoa and his son, Taurerewa Tūwharetoa; and Te Hītaua, his son, Te Pēhi Tūroa, and Te Pēhi's descendants.[1]

Waimarino plains. Intermarriage took place with Ngāti Tamakana's allies and neighbours such as Ngāti Hikairo at Taurewa, and at Manganui-a-te-ao with Ngāti Uenuku, Te Patutokotoko, and their communities of smaller hapū (see sidebars).

Ngāti Tamakana's interests stretch across from Taurewa into Waimarino, where Te Rangihuatau claimed the whole block in the name of Tamakana. They included interests down to Manganui-a-te-ao. In the early 1880s, explorer James Kerry-Nicholls found them living at Ruakākā in the Manganui-a-te-ao Valley, under the chief Te Pare-o-te-rangi. They lived there alongside other hapū including Ngāti Maringi, Ngāti Ātamira, Ngāti Ruakōpiri, 'Ngāikewaia' (Ngāti Hekeāwai misspelt and with its 'h' elided), and Ngāti Tara. A sign of the degree of intermarriage by this time was that they told Kerry-Nicholls that their common ancestor was Uenuku.[284]

Ngāti Tamakana relate to the marae at Mangamingi, sometimes also described as a marae of Ngāti Uenuku.[285] The meeting house at Mangamingi is 'Tamakana'.[286]

(c) *Ngāti Maringi:* Māringi's ancestor was Tamakana, who (as we have seen) descended from Ruatipua and Rākeipoho, son of Tūwharetoa. Ngāti Maringi are also related to Ngāti Hekeāwai of Manganui-a-te-ao.[287] Chief Te Whareraangi of Lake Rotoāira and his son Matuaahu Te Whareraangi were recognised as chiefs of Ngati Maringi, and also of Ngāti Hikairo, Ngāti Tamakana, and other hapū with ancestral connections to both Ngāti Tūwharetoa and Whanganui.[288]

Ngāti Maringi were particularly closely associated with Ngāti Hikairo. A saying was 'Anywhere where there is Ngati Maringi that is Hikairo too'; they lived with Ngāti Hikairo throughout the Tongariro–Ruapehu districts and Waimarino.[289]

Te Rangihuatau, a Native Land Court claimant to interests in Taumatamāhoe and Waimarino, belonged to this hapū as well as to Tamahaki and Ngāti Tamakana.[290]

As Kerry-Nicholls found when he visited Ruakākā in the early 1880s, Ngāti Maringi were also intermarried with Ngāti Uenuku and other hapū descended from Uenuku.[291] They were also kin through intermarriage to Ngāti Taipoto, and often lived and worked together with Ngāti Kahukurapango. Their rohe included parts of what became the Waimarino block, and they also had interests in the Manganui-a-te-ao Valley.[292]

(d) *Ngāti Matakaha:* Ngāti Matakaha are the descendants of Taitemeha, himself a direct descendant of Tamakana.[293] It is probable that the name 'Matakaha' comes from an incident in Taitemeha's lifetime. Once described as a hapū of Ngāti Ruru of Parinui, Ngāti Matakaha in fact had multiple connections to other ancestors – not only Tamakana but also Tamahaki and Uenuku.[294] They were neighbours

of, and intermarried with, Ngāti Uenuku and Tamahaki groups. Ngāti Matakaha were also part of a group of several hapū descended from Tamakana, including Ngāti Kahukurapango, with interests centred on the Manganui-a-te-ao Valley.[295]

Te Rangihuatau said that the land interests of this hapū were at Mangatītī on the west side of the Waimarino block. The Mangatītī Stream was a tributary of the Whanganui River on what became the Waimarino 5 block. In the Waimarino partition hearing in 1887, the Crown witnesses, Te Rangihuatau and Tūtawa, said their permanent kāinga was Te Rārapa at the mouth of the Mangatītī Stream.[296] Among Ngāti Matakaha rangatira in the Mangatītī Valley was Uenuku Tūwharetoa, also often identified as a chief of Tamahaki and Ngāti Uenuku.[297] Fifty-four members of Ngāti Matakaha were eventually awarded interests in Waimarino B, and nine were awarded shares in the Waimarino 5 non-seller block, including the rangatira Te Moanapapaku (also a member of Ngāti Hikairo).[298] One of Ngāti Matakaha's marae was Tīeke (with several other hapū). At least one individual also received interests in Taumatamāhoe.[299]

(e) *Ngāti Tara:* Ngāti Tara are the descendants of Tātara, a grandchild of Tamakana. He or she[300] became one of two spouses of Hikairo, eponymous ancestor of Ngāti Hikairo. But Tātara's descendants took the name Ngāti Tara – probably to distinguish themselves from the descendants of Hikairo's other spouse Puapua (a descendant of Rākeipoho and Tūwharetoa), who became Ngāti Hikairo.[301]

Besides their connections to Tamakana, Ngāti Tara were also associated with Ngāti Uenuku. They lived in the Manganui-a-te-ao district, often in a smaller valley known as Tokitokirau or 'Ngāti Tara Valley'. During the migration and attacks of Ngāti Raukawa in the 1820s, they took refuge upriver at Autumutu.[302] Ngāti Tara were among the hapū Kerry-Nicholls found living with Ngāti Tamakana, Ngāti Maringi, and others at Ruakākā on the Manganui-a-te-ao River in the early 1880s.[303]

(f) *Ngāti Kōwhaikura and Ngāti Kahukurapango:* Te Kōwhaikura (Ngāti Kōwhaikura), her sister Hinekoropango (Ngāti Hinekoropango), and another sibling, Hineoro, were the children of Tātara (Ngāti Tara) and his or her spouse, Hikairo. Tātara was the grandchild of Tamakana. Te Kōwhaikura's grandchild was Kahukurapango (Ngāti Kahukurapango).[304]

Hinekoropango seems to have become dominant among the three siblings. Her interests (and theirs) were said to extend up the Mangawhero River to Ruapehu. Hinekoropango and Kōwhaikura seem to have inherited rights in Tamakana's rohe around Raetihi and the nearby Urewera (or Monawera) area. In the land court era, Winiata Te Kākahi, a descendant of Hinekoropango, defended the rights of Ngāti Hinekoropango, Ngāti Kōwhaikura, and Ngāti Kahukurapango in various blocks.[305]

(g) *Ngāti Ruakōpiri:* Originally, Ngāti Ruakōpiri were living at Matahina in the Bay of Plenty along with other early peoples such as Ngāti Hotu (see below). Their ancestors may have arrived in Aotearoa in ancient times with Waitaha-ariki-kore in a canoe called Te Paepae ki Rarotonga. They later moved inland and lived with or near Ngāti Hotu around the shores of Taupō. There, they eventually encountered the early ancestors of Ngāti Tūwharetoa as these people migrated inland from the eastern Bay of Plenty to Taupō.[306]

After many battles and wanderings Ngāti Ruakōpiri moved west to the Manganui-a-te-ao area and Waimarino proper, the plains through which the Waimarino Stream flows. In the early to mid-nineteenth century, after generations of intermarriage with Whanganui groups, they became part of the regional collective under the Tūroa whānau known as Te Patutokotoko.[307] In one version of the origin of the Patutokotoko name, Te Keepa Te Rangihiwinui told the land court that Patutokotoko was a new name given to Ngāti Ruakōpiri after a quarrel with Ngāti Atuaroa, who also received a new name, Ngāti Ruru.[308]

By the early 1880s, Ngāti Ruakōpiri were among the hapū Kerry-Nicholls found living at Ruakākā.[309]

(h) *Ngāti Tūmānuka:* Ngāti Tūmānuka were descended from Tamakana. Tūmānuka himself was the child of

Waikaramihi (Ngāti Waikaramihi) and the father of Tūkaiora I, ancestor of Hītaua, father of Te Pēhi Tūroa I) and Hītaua's half-brother, Te Pikikōtuku.[310] Tūmānuka's other children included Nene and Tāwewe; the latter was the eponymous ancestor of Ngāti Tāwewe.[311] Ngāti Tūmānuka were associated with the collective known as Te Patutokotoko.[312]

Tūmānuka's siblings included Hinetaro (Ngāti Hinetaro). There is some controversy about whether his children included Tamakaikino (Ngāti Tamakaikino) or whether Tamakaikino's father was Taura-o-te-rangi.[313] Ngāti Rangi regard Tamakaikino as a descendant of Ururangi, brother of Taiwiri.[314] Descendants of Tūmānuka include Ngāti Whā-ki-te-rangi (see below).

The land interests of Tūmānuka and his descendants were concentrated from Raetihi across Urewera to southern Waimarino. According to Te Rangihuatau of Ngāti Tamakana and Ngāti Maringi, Ngāti Tūmānuka shared interests in Waimarino with Ngāti Tūkaiora and Ngāti Kahukurapane.[315] While there is little evidence that Ngāti Tūmānuka lived in separate pā or settlements from other Te Patutokotoko hapū (or from Ngāti Tūkaiora, Ngāti Kahukurapane, or Ngāti Waikaramihi) it appears to have had a strong identity. When the owners of the Waimarino block were listed, 54 people were recorded as Ngāti Tūmānuka, either as sellers or non-sellers, making it one of the larger groups of owners.[316] Tūmānuka's children, Nene and Tāwewe, had lands at Ngāpākihi.[317] In the Native Land Court, Wiari Tūroa made claims to interests in Raketapauma as a descendant of Tūmānuka but both Ngāti Rangi and the court rejected those claims.[318]

(i) *Ngāti Whā-ki-te-rangi or Ngāti Wā-ki-te-rangi:* Ngāti Whā-ki-te-rangi are descended from Tamakana and his uri (descendant) Tūmānuka, but are also associated with Ngāti Uenuku. They are victims of Whanganui mita (the Whanganui dialect), combined with the imperfections of official recording. As a result, the 'h' in their name was typically omitted in official lists and often elided by the claimants themselves.

W(h)ā-ki-te-rangi was the daughter of Nene, a son of Tūmānuka, in turn a descendant of Tamakana. But Ngāti Whā-ki-te-rangi related to many other hapū. The ancestral pā was called Tikaranako near the Mākōtuku Stream, and another pā was at Manganui-a-te-ao. But they seem to have cultivated land and hunted birds, kiore, and tuna in various places from Raetihi and Ngāpākihi to the Mākōtuku Valley and across into Waimarino.[319]

Ngāti Whā-ki-te-rangi also had rights in Ōhotu. They were granted an owner-occupier reserve in Ōhotu 1 in 1905 called Ōruakūkuru, named after the pā site on a ridge at the boundary of the reserve. Insufficient evidence has been presented for us to know whether the ancient Ōruakūkuru pā was occupied in the nineteenth century by their ancestors or by others. But it was the place where they established their marae, also called Ōruakūkuru, probably in the late nineteenth or very early twentieth century. Generations of Ngāti Whā-ki-te-rangi lived there and buried their dead in the nearby urupā, until the land was taken over by the Ātihau-Whanganui Incorporation.[320] We discuss this matter in chapter 18.

(j) *Ngāti Uenuku:* The Ngāti Uenuku hapū was descended from Tūkaihoro's son, Uenuku.[321] This ancestor had complex relationships with the ancestors of many neighbouring iwi and hapū. He was the grandchild of Hinetoke, a half-sibling of Tamahaki (Ngāti Tamahaki).[322] He was the father of Tūpārua (Ngāti Tūpārua) and the ancestor of Kahukurapane (Ngāti Kahukurapane.) Uenuku's brother was Tuhurakia who, with his wife Parekitai (Ngāti Pare or Parekitai), was the parent of Hekeāwai and Puku (Ngāti Hekeāwai and Ngāti Puku).[323]

We do not know of any links (save through later intermarriage) between this Uenuku and Uenuku-manawawiri, child of Taiwiri. Ngāti Uenuku-manawa-wiri are discussed above (under Ngāti Tuera of the southern cluster) and below.

Ngāti Uenuku were based in the Mākōtuku (Raetihi) and Manganui-a-te-ao Valleys and in the Waimarino plains area. They hunted birds and other resources in these areas and on the slopes of Ruapehu. Their kāinga included Waikurekure and Papatupu, and they used many pā in the Manganui-a-te-ao Valley. During the Ngāti Raukawa raids of the late 1820s they moved to Whanganui River

settlements for safety, such as Pīpīriki and Autumutu, which were then on the western (Taranaki) side of the river.[324]

A wider Uenuku identity began to develop, probably in the nineteenth century. This was in place at least by 1883, when Uenuku was the common ancestor of the various hapū Kerry-Nicholls found living at Ruakākā in the Manganui-a-te-ao valley under the mana of the chief Te Pare-o-te-rangi and his mother, Hinepare-o-te-rangi.[325] Possibly this wider identity had its roots in the departure of Te Patutokotoko for Waipākura and other places in the south in the late 1830s, although it is likely that some Ngāti Uenuku went south as part that migration.[326]

In the early twentieth century, some local, smaller hapū increasingly affiliated themselves under the Uenuku banner, many coming from the Manganui-a-te-ao district and the middle reaches of the river. The name Uenuku became a korowai or cloak covering many groups.[327] This development partly derived from the concentration at Raetihi of many Māori who had moved up from Pīpīriki and other river communities in search of employment and housing.[328] The statement of claim for Te Iwi o Uenuku said:

> In European times the hapu moved from the River valley to local towns; most to Raetihi which was established in 1893. The people lost separate hapu identity over time and Ngati Uenuku became a generic hapu name to which most adhered. By the mid 20th century the Western Maori electoral rolls show Ngati Uenuku of Raetihi as the largest hapu within Whanganui Iwi.[329]

As the Uenuku iwi identity has developed, it has sometimes emphasised its wider connections with earlier ancestors also named Uenuku.[330] They include Uenuku-tūwhatu of the Tainui waka and his descendants, Uenuku-tūtea, Uenuku-popoti, or Uenuku-popotea; all were siblings of Tamakana's mother.[331] Another Uenuku closer to home was Uenuku-poroaki, an ancestor for the Whakaihuwaka block opposite Pīpīriki.[332] This Uenuku was the descendant of Ruapūtahanga, daughter of Turi of the Aotea canoe and Whatihua of Tainui.[333] Another Uenuku with whom the iwi identifies was the atua whose sign was the rainbow. The wider Uenuku iwi are often referred to as 'the children of the rainbow' or the 'Rainbow People'.[334]

The Iwi o Uenuku claimants (Wai 954, 1084, 1170) assert that they and their neighbours – including Te Patutokotoko, Ngāti Tūkaiora, Ngāti Ruakōpiri, Ngāti Tamakana, Ngāti Pare, Ngāti Maringi, Ngāti Hekeāwai, Ngāti Tara, Ngāti Kahukurapango, and Ngāti Ātamira – place no great importance on ancestral links with Paerangi.[335] The Wai 1202 claimants for Te Iwi o Uenuku informed us that they are not descendants of Hinengākau, Tamaūpoko, or Tūpoho.[336]

Ngāti Uenuku people currently relate to Mangamingi marae (also a Ngāti Tamakana marae), and others including Mō Te Katoa at Valley Road, Raetihi, and Raetihi marae (also known as Te Puke marae). The original meeting house at Raetihi was opened by the prophet and leader, Mere Rikiriki; the most prominent feature is the double-towered Rātana church, a replica of the temple at Rātana itself.[337]

(k) *Tamahaki:* Like Ngāti Uenuku, Ngāti Tamahaki were originally a relatively local hapū, but like Te Iwi o Uenuku discussed above, its identity has expanded in recent times.

Tamahaki was descended from ancient 'tangata whenua' ancestors including Ruatipua (or Ruatupua) and Paerangi. His father Tamatuna (descended from Ruatipua) took Tauira (descended from Paerangi) as one of his wives. Their child, Tamahaki, was the father of Rangitengaue (Ngāti Rangi or Ngāti Rangitengaue); Rangitengaue's child was Hinerua I (Ngāti Hinerua), and her children included Te Aomapuhia, Kahutuna, Tūhoro, Taongakorehu, Hae, and Rongotehengia. All six children were eponymous ancestors of recognised hapū. Tamahaki was also the father of Tukoio whose daughter was Hinekura (Ngāti Tukoio and Ngāti Hinekura).[338] These two hapū were important groups among the proprietors of the kāinga, Tīeke.[339] Many other hapū and individuals can trace their descent from Tamahaki, including the nineteenth century rangatira, Uenuku Tūwharetoa.[340]

The Tamahaki collective came to prominence in the 1990s during protests about Tiēke, a kāinga that was now inside the borders of the Whanganui National Park. At

The Whanganui River 'highway' at Tīeke. The kāinga is tucked into the native bush.

that time, the hapū's provenance was questioned. However, Tamahaki was a documented ancestor well before this, as shown in many Native Land Court records and in whakapapa. Downes, writing before 1915, records events in the life of Tamahaki's parents and tells how he allied with Tamakehu of Hiruhārama to seek utu for the death of his father Tamatuna, and later fought against Ngāti Ruakā. Downes provides a genealogy recording Tamahaki's descent from Tamatuna and earlier ancestors.[341]

The hapū Ngāti Tamahaki (as against the wider people or iwi) were of the Taumatamāhoe area on the right or north-western bank of the upper Whanganui River. Te Rangihuatau (who, as stated above, also gave his hapū as Ngāti Tamakana or Ngāti Maringi), claimed the Taumatamāhoe block as Ngāti Tamahaki.[342] Tamahaki's immediate descendants had interests in Whitianga, Taumatamāhoe, Whakaihuwaka (opposite Pīpīriki), Maraekōwhai, Ngāporo, and in the Tāngarākau Valley. Predominantly, their interests were on the west side of the river.[343]

Once its interests were defined in the land court and awarded to lists of individuals, the hapū faded from official

notice. The Tamahaki whakapapa was 'put to sleep.'[344] Meanwhile, the many hapū more distantly descended from Tamahaki occupied a wider range of lands on both sides of the Whanganui River, including Waimarino.[345]

But Tamahaki's descendants re-formed themselves as the Tamahaki Council of Hapū in February 1994, and the Tamahaki Incorporated Society was registered in April 1994; Larry Ponga and Mark Koro Cribb were two of the principal movers behind this development. It was undertaken in response to the many contemporary political and environmental challenges of that time, and came to provide wider institutional support to the many hapū of the middle reaches who could whakapapa to Tamahaki.[346] One reason for such a renewed ancestral focus was the establishment of the Whanganui River Māori Trust Board, whose beneficiaries had to be descendants of the three tūpuna, Tamaūpoko, Hinengākau, and Tūpoho (see section 2.3.2(2)). The people of the middle reaches could not all whakapapa back to these three ancestors.[347]

Tamahaki marae included Parinui, west of the river, also a Ngāti Ruru marae and once the home of Uenuku Tūwharetoa; it was abandoned in the 1950s after the school was closed. Mangapāpapa marae was the particular home of Ngāti Kaponga and Ngāti Taumatamāhoe, and Kirikiriroa marae (Ngāti Parekitai) was upriver from Tīeke. Many descendants of Tamahaki relate to Pīpīriki, and to Ngāti Tamakana and Ngāti Uenuku marae, but their spiritual home is now Tīeke.[348]

(l) *Uenuku Tūwharetoa:* This whānau is not an ancient group. Uenuku Tūwharetoa was a late nineteenth-century rangatira who advised witnesses and appeared himself in the Native Land Court; he was the great-great grandfather of several claimants.[349] One of his homes was at Parinui on the Whanganui River, upriver from Pīpīriki, but on the right bank. Another was in the Mangatītī Valley, where he was known as the kaumatua of Te Rārapa, the kāinga of Ngāti Matakaha.[350]

Because he was the descendant of many generations of intermarriage, Uenuku Tūwharetoa belonged to many descent groups. He was descended by different lines from the ancient ancestors Ruatipua and Paerangi, and from Tamahaki. He was also descended from Tamakana and his grandchild Tātara (Ngāti Tara) whose spouse was Hikairo (Ngāti Hikairo).[351] The children of Tātara and Hikairo included Kōwhaikura (Ngāti Kōwhaikura) while their grandchildren included Taipoto (Ngāti Taipoto). Later descendants of Tātara and Hikairo included Kahukurapango (Ngāti Kahukurapango). Both Tamakana and Hikairo had important lines of descent from Tūwharetoa of Taupō, which perhaps accounts for the name Uenuku Tūwharetoa was given.[352] They were also descended from the various ancient ancestors known by variants of the name Uenuku, including Uenuku Tūwhatu.[353] Apart from all these hapū, Uenuku Tūwharetoa could also relate to Ngāti Puku, Ngāti Pare, Ngāti Tauengaarero, Ngāti Ruru, and other hapū.[354]

Attempts to define Uenuku Tūwharetoa further – in terms of belonging to one iwi group or another – would be wasted effort. As Rangi Bristol put it (after tracing his own descent back to Uenuku Tūwharetoa and Te Onewa Taiaroa), '[i]f we go back before then, then we are only arguing with ourselves.'[355]

Uenuku Tūwharetoa's eldest son was Taurerewa Tūwharetoa, one of five children with his wife, Tarapounamu or Miriama.[356] Taurerewa had 10 children, the eldest being Tira Koroheke (whose shares as a minor in the Waimarino block became a matter of controversy).[357]

(m) *Te Patutokotoko:* 'Tēnā rā, me patu tēnei iwi ki te tokotoko.'

Te Patutokotoko was the name taken in the very early nineteenth century by a group of existing hapū led by their great chief, Te Pēhi Tūroa I, through many wars and changes. They were based in the Manganui-a-te-ao Valley and near the Waimarino Stream. Their settlements included Tākinikini, Ōtake pā, Te Arero, and Ngātokoērua (or Ngātokorua), near the site of Ērua.[358] In the early 1880s, Kerry-Nicholls described this pā – then occupied by Pēhi Hītaua Tūroa, a brother of Tōpia Tūroa,[359] and his whānau – as situated at the foot of the mountain 'Haurungatahi' (Hauhungatahi).[360]

Originally, Te Patutokotoko were known by such names as Ngāti Hekeāwai or Ngāti Ruakōpiri (both groups are

discussed elsewhere in this chapter). In the 1830s, the name Te Patutokotoko was used to cover Ngāti Hekeāwai, Ngāti Ruakōpiri, Ngāti Hinetaro, Ngāti Ātamira, and Ngāti Pare. From that time and into the 1870s, the name was also applied as a collective Manganui-a-te-ao identity embracing Ngāti Uenuku, Ngāti Tamakana, and other groups.[361]

The name Te Patutokotoko came from an incident in the lifetime of Te Pēhi Tūroa I (who died in 1845 as a very old man). He led a small force which, when attacking a Ngā Rauru pā, was mocked as a band of cultivators armed with weeding sticks. Te Pēhi said, 'Well then, we shall kill these people with sticks,' which was done with great success. An alternative version had Te Patutokotoko attacking Ngāti Atuaroa (later known as Ngāti Ruru) after similar mockery and threats.[362]

As a renowned fighting chief and strategist, Te Pēhi Tūroa took part in many battles in the early nineteenth century. He fought all over the central North Island, Hawke's Bay, and on the Kapiti coast, often as the ally of Mananui Te Heuheu and Tūwharetoa. The people he led comprised one of two principal groups which defended the wider Whanganui region from incursions from two sources.[363] One source included elements of Ngāti Whātua and their Ngāti Toa allies under Tūwhare. The other came 10 years later as people from Maungatautari and northern Taupō sought a new homeland, and included fighting men from Ngāti Raukawa and their allies. These invaders eventually made a new home on the Kapiti coast.[364]

In the late 1820s and 1830s, Te Patutokotoko began to emigrate downriver. At least one motive was to find a safer location from the incursions of Waikato and Ngāti Raukawa.[365] Another motive may have been the wish to be nearer to potential trade with Europeans.[366] They tried to settle at various places including Whakaihuwaka (opposite Pīpīriki), Patiarero (later Hiruhārama), Oawhitu or Ātene, Ōpapaku, Te Rakerake, Operiki, Ūpokongaro, Kaiwhaiki, and Whangaehu.[367] Everywhere they were opposed in turn or in concert by Ngāti Pāmoana, Ngāti Hineoneone, Ngā Paerangi, Ngāti Ruakā, and by Ngā Wairiki with Ngāti Apa and their Ngāti Raukawa allies.[368] Oawhitu or Ātene, a settlement some 12 miles downriver from Operiki, was still inhabited in 1841 by followers of Te Pēhi Tūroa I; Jerningham Wakefield reported they had extensive cultivations there.[369]

In the course of these moves downriver, Pēhi Pākoro, son of Te Pēhi Tūroa I, quarrelled with Te Oti Takarangi, the chief at Kaiwhaiki. The principal chief at Waipākura, Koroheke, feared there would be fighting among kin.[370] So he offered Te Pēhi Tūroa a gift of land there, which he accepted. Koroheke was an uncle of Te Oti Takarangi of Ngā Paerangi and Ngāti Hinekehu, and also related to Ngāti Ruakā, Ngāti Pāmoana, and many of their hapū. Te Pēhi took a daughter of Koroheke as another wife, and one of Koroheke's sons, Ēpiha Pātapu, married Te Pehi's daughter Tītī Tūroa. These marriages kept the peace in the area, and the Pātapu whānau and other descendents of Koroheke continued to live there alongside the Tūroa whānau and Te Patutokotoko.[371]

Other chiefs of Te Patutokotoko included Te Kiri Karamu, who signed the New Zealand Company's purchase deed in November 1839, and later gave evidence during Spain's inquiry in 1843 (see chapter 5). Ngāpara, prominent in opposing the company's land negotiations and a leader of the 1847 taua, was of Te Patutokotoko but may have also been associated with Ngāti Ruakā.[372] Maketū, who objected to the New Zealand Company transaction in 1840 and was killed in the war of 1847, was another Te Patutokotoko chief (see chapter 5).[373] There were many others.

Although many Te Patutokotoko people eventually returned to Manganui-a-te-ao, the Te Patutokotoko name seems to have fallen into some obscurity after the nineteenth century. Today the constituent hapū who formed part of Te Patutokotoko are claiming under the names Ngāti Ruakōpiri, Ngāti Tūmānuka, and others, or appear under the korowai (claoks) of Tamakana or Uenuku.

(n) *Ngāti Hekeāwai and Ngāti Tūkaiora:* As we have seen, Ngāti Hekeāwai, together with other groups from Manganui-a-te-ao, was part of the Te Patutokotoko collective.[374]

The central cluster claimants have demonstrated overwhelmingly that this Ngāti Hekeāwai (as against Ngāti Hekeāwai of Taumarunui discussed below) were the

descendants of Puku I's brother, Hekeāwai. Puku I and Hekeāwai were the children of Parekitai and Tuhurakia.[375] Tuhurakia, son of Tūkaihoro, was the fourth generation descendant of Tamatuna and his wife, Tainui; Pēhi Tūroa I was the great grandchild of Tuhurakia's child, Hekeāwai.[376] Hekeāwai had other lines of descent from Uenukutūwhata, Taiwiri, Tamakaikino, Tūmānuka, and other Whanganui ancestors.[377]

We were shown that Ngāti Hekeāwai and Ngāti Tūkaiora were connected when Hekeāwai's daughter, Weka, married Tūkaiora II. Their child was Te Hītaua, father (with his wife Tinana or Tinanga) of Te Pēhi Tūroa I.[378] Weka's mother was Te Wakatōtōpipi, a descendant of both Raukawa and Tūwharetoa.[379]

These whakapapa are complex and prone to anomalies, partly because of the extensive intermarriage of the groups concerned and the multiple marriages of both men and women of rank in the pre-Christian era. Other factors include the repetition of names by collateral kin, taken to complement each other. For example, there are at least two Puku.[380] There are also multiple Tūkaiora: besides Tūkaiora I and his grandson, Tūkaiora II, there is also a Tūkaiora who was the son of Tohiora II, a descendant of Tamakana and Maringi, and father of Te Wharerangi of Rotoāira.[381]

A claim (Wai 1505) has been made in the name of Te Patutokotoko and 'Ngāti Heke', but there was some initial doubt about the identity of this group. We were told that it was a separate hapū of Ngāti Hāua, but then that it was shorthand for Ngāti Hekeāwai, and that the two names may have referred to the same entity and that there was a strong inter-relationship with Ngāti Hāua.[382] We note that Douglas Bell later confirmed that Ngāti Hekeāwai (descended from Hekeāwai, son of Whakaneke) are also known as Ngāti Heke.[383]

As we discuss below, the northern Ngāti Hekeāwai are closely related to Ngāti Hāua and are the people of Ngātai Te Mamaku. They were the hapū at Te Peka pā, and its Taumarunui/Ōhura environs. Originally, at least, this Ngāti Hekeāwai was a separate hapū from the Ngāti Hekeāwai associated with Te Patutokotoko, although there were ties of intermarriage between them. The northern Ngāti Hekeāwai of Taumarunui were the descendants of Hekeāwai, son of Whakaneke. Whakaneke and this northern Hekeāwai were the descendants of Te Hoata and Hāuaroa, of Ruaroa, and of Tamahina and his wife Hinengākau.[384] It is possible that over time as people migrated to towns from the middle reaches of the river, this northern group retained its identity while the southern Ngāti Hekeāwai (the descendants of Hekeāwai, child of Parekitai and Tuhurukia) was overtaken by the Te Patutokotoko identity, and later perhaps by 'Ngāti Uenuku'.

(3) *Ngāti Rangi*

Ngāti Rangi derive their identity from the early people, Te Kāhui Maunga. One of Te Kāhui Maunga's descendants was the great tipuna Paerangi I (see section 2.3.1(2)). His descendants included the renowned tupuna, Taiwiri; her three most prominent children were Rangituhia, Rangiteauria, and Uenuku-manawa-wiri. Taiwiri's siblings were Ururangi and Tāmuringa.[385]

Ngāti Rangi's most sacred mountain, Ngā Turi o Murimotu, dominates the Karioi landscape where the descendants of Whiro Te Tupua (including Paerangi-i-te-wharetoka) first settled. Besides Ngā Turi o Murimotu, the mountain Ruapehu is also tapu for Ngāti Rangi; in former times, their dead were buried temporarily until the bones were ready to be gathered and deposited in caves adjoining the tapu crater lake, Te Wai-a-Moe. These caves have since collapsed. In the early Christian era in the Murimotu district, urupā were established as substitutes for the burial caves.[386]

Ngāti Rangi's landed interests lay around Ruapehu to the east, south, and west. They also extended southwards to the Maungakaretu district and part of Ōhotu, towards Taihape in the Rangitīkei district, and from east of Waiōuru to Raetihi and Ngāpākihi (an area shared with Ngāti Tamakana). The Raketapauma area was particularly the claim of Ngāti Piua, Ngāti Rangituhia, and Ngāti Rangiteauria. Rangiwaea, which includes Te Karioi o Whiro (from which the Karioi district and forest get their names) was particularly important to Ngāti Rangiteauria. Groups of people of Ngāti Rangi descent

had non-exclusive interests from Moawhango in the east to the Whanganui River in the west, and throughout all the lands to the south towards the northern parts of the Whanganui purchase.[387]

Ngāti Rangi claim that their interests extend into Waimarino through Ngāti Ruakōpiri. Intermarriage took place between these groups, but this hapū was not originally a Ngāti Rangi hapū.[388] Ngāti Rangi's claim to Waimarino was that Tōpia Tūroa's father was descended from Ururangi, the brother (or nephew) of Taiwiri.[389]

The descendants of Taura-o-te-rangi – including Ngāti Rangiahuta and Ngāti Rangirotea who claimed in Rangataua along with Ngāti Puku – were the intermarried neighbours of Ngāti Rangi. They were also the descendants of Ururangi (Taiwiri's brother or nephew) and so are of similar origins. They were hapū closely associated with the Tūroa whānau and formed part of Te Patutokotoko. While advancing claims to the Rangataua block in the Native Land Court, Tōpia Tūroa said that Te Patutokotoko and Ngāti Rangi were one people and lived together.[390] Undoubtedly this was true in the days when all took refuge in various pā around Rānana, and used Rangataua mainly as a hunting resource. But there was resistance to claims to Rangataua and nearby areas made on the basis of a united Te Patutokotoko/Ngāti Rangi identity.[391] There was also resistance to the idea that rights in Rangataua could be derived from any non-Ngāti Rangi ancestors, such as Tamakaikino, a son of Tūmānuka and descendant of Tamakana. However, Tamakaikino was otherwise recorded as the son of Ururangi, or Ōtauru-o-te-rangi; these were Ngāti Rangi ancestors.[392]

We consider that these difficulties were created by the processes of the Native Land Court. While the court's tendency was to divide, creating mutually exclusive groups with rigid boundaries, the purpose of whakapapa was to link people and bring them together.

By the mid-nineteenth century, Ngāti Rangi had developed a nomadic lifestyle. Most of their people used their whanaungatanga with riverside residents to reside in winter between Rānana and Hiruhārama, escaping from the cold of the mountains. They returned to the high country in the proper seasons to gather, cultivate, and hunt (especially birds such as kiwi, weka, and other species, and a variety of rat, the kiore). While residing beside the river they were able to take part in the early bartering or trading via canoe with Europeans in the township of Wanganui. Only a small cluster of whānau were delegated to reside in the mountain area to protect the mana of Ngāti Rangi.[393]

This nomadic pattern may have begun, or become more developed, when Te Whatanui and other Ngāti Raukawa swept through the area in various war expeditions and migrations in the 1820s and early 1830s, killing many local people in the Murimotu and adjoining districts (see section 2.4.2). Most Ngāti Rangi took refuge with their river kin, especially Ngāti Ruakā and Ngāti Hau. At that time and for some decades after, Ngāti Rangi's lands south and south-east of Ruapehu were used mainly for hunting trips when great quantities of birds were caught and preserved in calabashes. These hua manu were highly prized by other Whanganui Māori and were often presented by Ngāti Rangi as important gifts at feasts, including major hui such as that at Kōkako in 1860.[394]

Ngāti Rangi's sojourn with Ngāti Ruakā, Ngāti Hau, and other river communities was so prolonged that, by the early twentieth century, some individuals began to think of Ngāti Rangi as a hapū of Ngāti Ruakā, and the hapū was sometimes so named officially.[395] Ngāti Rangi's retreats to the river began to end in the Native Land Court era when Whanganui Māori began to realise that the court would rule in favour of groups that it considered had established evidence of ahi kā (permanent occupation), without giving the proper priority to mana through descent or whakapapa. Fearful of losing ancestral land in this way, the chief Pāora Poutini of Ngāti Rangi and of Ngāti Hau of Hiruhārama (Jerusalem)[396] directed in the 1870s:

> Haere hoki Ngāti Rangi, ki Ngā Turi o Murimotu. Kawea te wheua ora ki a koe. Waiho i murimai te wheua mate ki a au.
>
> (Go home, Ngāti Rangi, to [your sacred mountain] Ngā Turi o Murimotu. Take the living with you; leave the bones of the dead with me [to care for].)[397]

Settlers bartering tobacco for potatoes and pumpkin, circa 1845

The division in the river communities effected by Poutini meant that many Ngāti Rangi returned to secure their title to Murimotu, Raketapauma, and their environs, although some stayed to maintain their interests in the river settlements.[398]

Ngāti Rangi had many hapū, but the names of some have been 'put to sleep.'[399] This happened over the late nineteenth and twentieth centuries as the effects of individualising land titles through the land court took hold and lands were alienated. Ngāti Rangi people coalesced in various communities such as Ōhākune, Raetihi, or Waiōuru, or even further afield, in search of economic opportunities, housing, and education.[400] Some hapū names have been revived as old marae are restored or new leaders inspire their people.[401]

Some of the largest, earliest, and most important Ngāti Rangi hapū developed multiple sub-hapū as their people spread and established themselves in different locations. Among those early hapū were Ngāti Rangituhia and Ngāti Rangiteauria, named for the two eldest children of Taiwiri (these hapū are discussed separately below).

There were many Ngāti Rangi marae in the early twentieth century and before, but many have declined. Currently important marae include Maungārongo in Ōhākune (also the home of the Māramatanga movement), Raketapauma and Kuratahi (Ngāti Rangituhia), Tirorangi at Karioi

(Ngāti Rangiteauria), and Ngā Mōkai at Karioi (Ngāti Tongaiti, Ngāti Rangiteauria). A relatively newly revived marae, also associated with Ngāti Rangi, is Tuhiariki on the Parapara Road. Altogether, Ngāti Rangi now have some 16 affiliated marae.[402]

(a) *Ngāti Rangituhia:* The eldest son of Taiwiri, Rangituhia, is sometimes identified as the eponymous ancestor of Ngāti Rangi rather than Paerangi. In other words, Ngāti Rangituhia have sometimes been regarded as synonomous with Ngāti Rangi.[403] Rangituhia is sometimes credited with having laid down boundaries between his people and their eastern neighbours, Ngāti Whiti and Ngāti Hauiti.[404]

Ngāti Rangituhia were particularly associated with the Murimotu district; in the Native Land Court, the Murimotu block was awarded to them and Ngāti Rangipoutaka (discussed below). Their interests stretched from the slopes of Ruapehu (where once they hunted tītī or mutton birds) east to Motukawa which was originally part of the Awarua block (outside the inquiry district on the Moawhango side of the Hautapu River). They extended to the Rangipō and Rangipō-waiū districts, where their much-disputed boundaries were contested before and after 1840 with Ngāti Waewae, Ngāti Whiti, and Ngāti Tama.[405] The settlement (later a pā) and cultivations at Auahitōtara were to become a political flashpoint between these groups in 1880.[406] Ngāti Rangituhia interests also stretched south across Raketapauma, Ōkehu, Ngāurukehu, and Ruanui to Ōhotu, Maungakāretu (contested between themselves, Ngāti Rangiteauria, Ngāti Pāmoana, and others, and where they had a marae called Kōmihi) and the Poho-nui-a-Tāne block.[407]

Ngāti Rangituhia also claimed interests in lands associated with the upper Turakina River, such as Ōtairi. Here, they were competing with Ngāti Hauiti and hapū of Ngāti Apa, with whom there was much intermarriage. However, their claims in these districts were not recognised in the land court, which regarded the Ngāti Rangi boundary as the Mangapapa River. They were also marginally interested through conquest in Te Kapua, south of Ngāurukehu (outside the inquiry district).[408]

Ngāti Rangituhia's preeminent rangatira in the late nineteenth century included Winiata Te Pūhaki, Nika (Weronika) Waiata, Te Oti Pohe (also of Ngāti Tama), and others. Te Keepa Te Rangihiwinui adopted Ngāti Rangituhia's cause as his own, and Tōpia Tūroa also had lines of descent from Rangituhia.[409]

Many later-developing Ngāti Rangi hapū were the descendants of Rangituhia, including Ngāti Parenga, Ngāti Piua, Ngāti Te Paku, and Ngāti Hikawai, all associated with the Ruanui block.[410] Controversy concerning disputed whakapapa makes any relationship between Ngāti Hinekowhara, Ngāti Waikaramihi, and Ngāti Rangituhia uncertain.[411]

(b) *Ngāti Rangiteauria:* Descended from Taiwiri's second child, Ngāti Rangiteauria developed into an important division of Ngāti Rangi. At least six hapū branched off from Ngāti Rangiteauria, including Ngāti Rangihaereroa, Ngāti Hīoi, Ngāti Taukaitūroa (named for a son of Rangiteauria), Ngāti Tongaiti, Ngāti Tamarua, and Rāwhitiao. The relationships to Rangiteauria of several of the eponymous ancestors of these groups can be seen in the whakapapa supplied by the claimants.[412]

The Rangiwaea district and block were important to Ngāti Rangi generally and especially to Ngāti Rangiteauria. One of its own rangatira, Nika or Weronica Waiata, took this block into the land court amid great controversy.[413]

Ngāti Rangiteauria had interests as far south as Maungakāretu, where their neighbours were Ngāti Rangituhia, especially Ngāti Piua.[414]

(c) *Ngati Rangipoutaka:* This hapū was most closely associated with Murimotu, Rangiwaea, Raketapauma, Maungakaretu, and the southern slopes of Ruapehu, where their principal occupation was hunting and preserving birds for winter use and feasts.[415] Ngāti Rangipoutaka's preeminent leaders in the late nineteenth century included Hami Te Riaki and Te Aro or Aropeta Haeretūterangi. Te Aro's kāinga included Ōkahutupaku on Murimotu, and he also lived sometimes at Rānana. Winiata Te Pūhaki was descended from both Ngāti Rangipoutaka and, as noted earlier, Ngāti Rangituhia.[416] The two hapū were to become

bitterly divided in the land court era over Murimotu. (We discuss developments in Murimotu in chapter 12.)

The hapū's ancestor was Rangipoutaka I, who was descended from Ururangi rather than Paerangi. However, Rangipoutaka II married Rangiteauria's granddaughter Tūmāhuki (the daughter of Taukaitūroa), and his descendants through Rangihaereroa (Ngāti Rangihaereroa), Tamarua (Ngāti Tamarua), and (Ngāti Rāwhitiao) are Ngāti Rangi hapū. The descendants of Rangipoutaka I are also descended from Taura-o-te-rangi whose daughter, and Rangipoutaka's wife, was Hinekehu (Ngāti Hinekehu).[417] Ngāti Rangipoutaka were much intermarried with their neighbours in many areas, including Ngāti Rangituhia.

Ngāti Rangipoutaka were among those hapū which, having been attacked by Te Whatanui of Ngāti Raukawa in the later 1820s, took refuge at Rānana and other places on the river. They also sheltered there in the time of Te Kooti.[418] This continued to such an extent that officials began (mistakenly) to list them as a hapū of Ngāti Ruakā, with whom they had intermarried during their sojourn. They eventually received shares in the Ngārākauwhakarara block near Rānana and in Rānana itself.[419] Downes recorded that Ēpiha of Ngāti 'Angipotaka' received £50 for the Whanganui Purchase in 1848.[420]

(d) *Ngāti Uenuku-manawa-wiri:* Uenuku-manawa-wiri was the third of six children of Taiwiri and her husband, Ue-māhoenui (or Uenuku-māhoenui). Uenuku-manawa-wiri's elder brothers were Rangituhia and Rangiteauria, the most important of all the tūpuna of Ngāti Rangi after Paerangi.[421] But Uenuku-manawa-wiri's identity seems to have shifted over time: his or her descendants debate the gender of their eponymous ancestor, and after much intermarriage, Ngāti Uenuku-manawa-wiri relate as strongly to Ngāti Pāmoana as to Ngāti Rangi.[422]

Uenuku-manawa-wiri's spouse was Hinepua; their three children included Uepōkai, from whom Ngāti Uepōkai are descended. Ngāti Uepōkai were living in Aroaro pā on the Maungakaretu block when Pāmoana brought his people from Pātea in Taranaki and joined them in Aroaro pā. Pāmoana then married Poutama's granddaughter Tauira and settled in Operiki. Three of his grandsons married descendants of Uenuku-manawa-wiri.[423] Hapū who have descent from Uenuku-manawa-wiri include Ngāti Whitikai, Ngāti Urutaia, and Ngāti Waikārapu, the last of these discussed above.[424]

Taiwiri is said to have divided her lands amongst her offspring. Uenuku-manawa-wiri's share was all of Taiwiri's land north of Tokatapu. Genealogical expert, Tūrama Hāwira told us that Uenuku-manawa-wiri was the root of the title to many blocks between the Mangawhero and Whangaehu Rivers – including the Tauakirā, Taonui, Maraetaua, Wharepū, and Parapara blocks, all in the south of the Ngāti Rangi area of interest.[425] The descendants of one of Uenuku-manawa-wiri's sons, Maruhikuata, were granted the sole rights in the Ōtūmauma block south of Rangiwaea, and in Maungakāretu, south of Murimotu.[426] Some of Maruhikuata's descendants were known as Ngāti Tinirau.[427]

(4) *The northern cluster*

(a) *Introduction:* Many groups of the northern cluster are defined by themselves or others as Ngāti Maniapoto, as Ngāti Tūwharetoa, or as an admixture of these groups and Whanganui River groups. This arose through the complex intermarriages between the various lines of descent, as described in this section. Here, we divide the hapū of this northern area into 'the Whanganui groups', 'the Tūwharetoa groups', and 'the Maniapoto groups', but draw attention again to the fact that all three terms are artificial constructs used merely for convenience; they ignore the ties created by whakapapa and history.

(b) *The 'Whanganui' groups – Ngāti Hāua:* Ngāti Hāua (also known as Ngāti Hāua-te-rangi) is the iwi of the wide district called Tūhua. The district included not only the Tūhua range but the lands surrounding the headwaters and both sides of the northernmost reaches of the Whanganui River. Tūhua extends into what became the Waimarino block. The focal point of Ngāti Hāua's rohe is probably Ngāhuihuinga (or Ngā Huinga) (Cherry Grove) at the junction of the Whanganui and Ōngarue Rivers. Another name belonging to this area is Ngāpūwaiwaha,

now applied to the marae in Taumarunui Road. This is close to the site called 'Te Taumarunui a Te Pikikōtuku' (the place of shade for the chief, Te Pikikōtuku). Downes recorded that the name Taumarunui came from an incident in which Te Pikikōtuku asked for a shelter to be made for him as he lay dying. But other accounts suggest that 'Taumarunui' came from an early ancestor, or that it was a large cultivated area sheltered from frost.[428]

Descent lines from early 'tangata whenua' or original ancestors, including Ruatipua and Paerangi, are important to the identity of Ngāti Hāua. The iwi's rohe is also at the conjunction of the routes of exploration and settlement taken by the crews and their descendants from four of the famous waka of the great migration period – Aotea people spreading up the Whanganui River from southern Taranaki; Tokomaru people coming across from northern Taranaki to the Ōhura River; Tainui people coming from the headwaters of the Mōkau and Waipā Rivers; and Te Arawa descendants crossing the ranges from Taupō or Rotorua to Tūhua and Ōhura (via mountain passes or the Waimiha, Ongārue, Taringamotu, Whanganui, and Whakapapa Rivers).

Ancestors important to Ngāti Hāua and their principal hapū, Ngāti Hāuaroa, included Te Hoata I, father of Hāuaroa I. Te Hoata I came via Pureora from the Rotorua lake district, moving west by stages. He and Hāuaroa I were the ancestors by many generations of Te Hoata II, his son Te Ruaroa (Ngāti Ruaroa), and Te Ruaroa's grandson Tamahina. Te Hoata II was involved in prolonged warfare with Tamaaio of Kāwhia. When peace was made, he gave his daughter Hinemata to be Tamaaio's wife; a monument at the second site of Te Peka marae on the hill (Hospital Hill) above Taumarunui commemorates this peace-making marriage.

Tamahina's second wife was Hinengākau, daughter of Ruakā. This union was arranged as a peace-making marriage to ensure their offspring would combine the whakapapa of Whanganui, Rereahu, Maniapoto, and Tūwharetoa.[429] Hinengākau and Tamahina's child was Hāuaroa II, from whom the hapū Ngāti Hāuaroa takes its name.[430] As discussed above, Hinengākau was the unifying ancestor chosen to represent the upriver reaches of the river for the Whanganui River collective, and the phrase 'te taura whiri a Hinengākau' refers to her.[431]

Besides Ngāti Hāuaroa (sometimes treated as an alternative name for Ngāti Hāua), other hapū of Ngāti Hāua included Ngāti Ruaroa, Ngāti Reremai, Ngāti Onga, Ngāti Tama (a hapū of Ngāti Onga), Ngāti Rangi (but not the people of Murimotu), Ngāti Te Keo (or Keu), Ngāti Wera, Ngāti Ngātū, Ngāti Whati, Ngāti Hira (as far as it was a separate entity from Ngāti Hari), Ngāti Hekeāwai, and Ngāti Hinewai.[432] Some of these groups are discussed separately below. Some hapū names have fallen into disuse, especially from the early twentieth century.

Many of these hapū have lines of descent from Īhingarangi, who moved south from the upper Waikato or Waipā to Ōhura to avoid a quarrel with his elder brother, Maniapoto.[433] Ngāti Wera are the descendants of Hinengākau's daughter, Wera. Wera's daughter, Kimihia married Te Puru of Ngāti Rangatahi; some of their descendants, who are of both Ngāti Hāua and Ngāti Rangatahi, took the name Ngāti Whati. Kimihia's son was Tūtemahurangi, also of both Ngāti Hāua and Ngāti Rangatahi (see section 2.4.2). One of Tūtemahurangi's kāinga was at Te Kape, near Kākahi.[434]

An important Ngāti Hāua kāinga was Rurumaiakatea, across the Whanganui River from Te Peka and Taumarunui, within what became the Waimarino block. It was not reserved from the Crown portion of the block and is now the site of the Hikumutu Sewerage Treatment plant.[435] There were many other pā and settlements, some shared with hapū from other iwi.[436]

Places important to Ngāti Hāua (and Ngāti Hāuaroa) include Taumarunui itself, with its many marae including Mōrero and Ngāpūwaiwaha. These marae and others had to be moved several times through council land takings. Te Peka pā and marae was first situated on land taken under the Public Works Acts, now known as Hospital Hill. Its second site was on land opposite the hospital, overlooking the present town. The meeting house, called 'Te Kohaarua te Mutunga Tauiahi Na Mahuta', was opened there in 1923 by the Māori King, Te Rata, in the presence of Māui Pōmare and the King's cousin, Te Puea Hērangi. This marae was also lost to Ngāti Hāua, Ngāti Hāuaroa,

and Ngāti Hekeāwai; nothing remains but the monument instigated by Pei Te Hurinui Jones, Reu Hikaia, and other leaders of the time.[437]

Part of the urupā called Titipa on Hospital Hill remains in Māori possession, but during tangihanga, Ngāti Hāua, Ngāti Hāuaroa, and Ngāti Hekeāwai people have to ask permission to get vehicle access through locked gates. We pursue this matter in chapter 24.

Current marae of Ngāti Hāua, Ngāti Hāuaroa, and Ngāti Hekeāwai include Mōrero, Ngāpūwaiwaha, and Wharauaroa (also shared with Ngāti Rangatahi of Ngāti Maniapoto and others), all in Taumarunui.[438] Te Hīnau at Tawatā (where Ngāti Tū also hold sway) was important in the lifetime of the renowned elder and leader, Titi Tihu.[439] As stated above, other marae in Taumarunui such as Te Puru-ki-Tūhua have disappeared as a result of public works or local government activity.

(c) *The 'Whanganui' groups – Ngāti Hekeāwai:* Ngāti Hekeāwai of Te Peka pā and elsewhere in Ōhura are a branch of Ngāti Hāuaroa.[440] They are descended from Hekeāwai, the son of Whakaneke (who participated in the events of Te Horangapai: see section 2.4.2(1)). Hekeāwai's wife was Te Uruweherua, daughter of Tūtemahurangi. Their uri were, therefore, descended from Maniapoto and Rangatahi as well as the Ngāti Hāua ancestors, Wera and Kimihia.[441]

Whakaneke's son, Te Oro (or as Judge Gudgeon gave it, Te Horo[442]) was the father of Tōpine Te Mamaku. Ngātai Te Mamaku, a much younger cousin of Tōpine, was the great grandchild of Whakaneke; Ngātai's father was Te Oro II, son of Hekeāwai.[443] (Te Oro II was an important leader in the Hutt or Heretaunga wars of the 1840s.) Whakaneke's younger brother was Tūao, grandfather of Tūao Ihimaera or Tūao II. Tūao Ihimaera was a close kinsman of Taituha Te Uhi and an important spokesman for Ngāti Hāua in the Native Land Court and in negotiations with the Crown.[444]

Te Pikikōtuku I, elder brother of Hekeāwai, was a principal chief of Ngāti Hāuaroa and associated with Ngāti Hekeāwai (and many other northern hapū) in the early nineteenth century. Along with several other important chiefs, he died in the 1840 battle at Ihupuku, Waitōtara – one of the many take for the attack on this Ngā Rauru pā by the taua from Taupō and upper Whanganui.[445]

As we discussed above, Ngāti Hekeāwai of Taumarunui and Ngāti Hekeāwai of Manganui-a-te-ao have been discussed as though they were one hapū. Te Patutokotoko and Ngāti Tūkaiora have been protrayed as hapū of Ngāti Hāua, and this has been the position of some claimants.[446] For example, the named claimant for Ngāti Hāua, Kevin Amohia, supports this position, but also cites Pei Jones as follows:

> There are two main sections of Ngati Hāua: Ngati Hauaroa and Ngati Hekeawai. There are many other hapu but they are all aligned to these two hapu. Pei Jones stated: 'The Hauaroa section, from which the Hekeawai is a branch, have Tokomaru . . . and . . . Tainui blood in their veins, through . . . Rangatahi. The Hekeawai branch has many links with the Tuwharetoa tribe of Lake Taupo, especially with the sub-tribe of Ngati Manunui.'[447]

In evidence which agrees with this description, Dr Young and Professor Belgrave stated that the father of Hekeāwai of Taumarunui was Whakaneke of Ngāti Hāuaroa. Hekeāwai's elder brothers were Te Oro I and Te Pikikōtuku. Hekeāwai's wife was Te Uruweherua, daughter of Tūtemahurangi (a descendant of both Ngāti Hāua and Ngāti Rangatahi). The children of Hekeāwai and Te Uruweherua were Hapaira, Te Oro II, and Hona, and their grandson (and the son of Te Oro II), was Ngātai Te Mamaku.[448] This information is supported by evidence from Ngāti Hāua and Ngāti Hekeāwai claimants.[449]

But the parents of Hekeāwai of Manganui-a-te-ao were Tūhurakia and Parekitai, and this Hekeāwai's children were Wairaka, Kaipaka, Paengaroa, Hinekaihinu, and Weka. Weka was the grandmother of Te Pēhi Tūroa I.[450] Te Patutokotoko were a people who evolved as a collective from this southern Ngāti Hekeāwai and other hapū of Manganui-a-te-ao. It may well be that Hekeāwai of Taumarunui was a namesake of the southern Hekeāwai, who was of an earlier generation. We discuss these hapū above with the central cluster groups.

Without doubt there were close marriage ties between the original two groups in each generation.[451] By the nineteenth century the whakapapa lines were so interwoven that, as one witness put it, the house Hāuaroa at Ngāpūwaiwaha marae could just as easily have been named Hotunui, and the people could have regarded themselves as the descendants of Tainui ancestors Īhingārangi or Hiaroa. However, they honoured the past, and called themselves Ngāti Hāua and the new house, Hāuaroa.[452] The complexity of inter-relationships in relatively modern times was one of the reasons for adopting Hinengākau as the symbolic ancestor of all the people of the upper Whanganui reaches of the river.

The principal marae of the northern Ngāti Hekeāwai were Te Peka I and Te Peka II. Another shared with Ngāti Hinewai was Matuakore on the land of Taituha Te Uhi at Piriaka, now nearly derelict. Their current marae include Māniaiti on State Highway 41, shared with Ngāti Hāua and Ngāti Manunui, and the other marae associated with Ngāti Hāua listed above.[453]

(d) *The 'Whanganui' groups – two hapū called Ngāti Hinewai:* At least two hapū known as Ngāti Hinewai feature in the upriver part of Whanganui inquiry district.[454] The two Ngāti Hinewai discussed here were both awarded shares in the Waimarino block in the 1880s. To make them even harder to distinguish, the two are closely related.

One Ngāti Hinewai is now associated with Piriaka, although their rohe was originally much wider. They include the descendants of Tūao, Tānoa Te Uhi and Taituha Te Uhi, who were awarded Waimarino 6 (see chapter 20). These chiefs were also closely related to Ngāti Maniapoto and Ngāti Hāua, as the eponymous Hinewai is of Ngāti Maniapoto and Ngāti Hāua descent. She was the child of Ngarue of Ngāti Maniapoto, who was also of Ngāti Hāua.[455] When describing the boundaries of Ngāti Hinewai's claims in Waimarino, Taituha Te Uhi said that Ngāti Hāua and Ngāti Reremai shared interests in these lands. Ngāti Hinewai's marae until the 1930s, now nearly derelict, was Matuakore at Piriaka. These Ngāti Hinewai now relate to various Taumarunui marae, including Mōrero. Taituha Te Uhi, who gave land for the Taumarunui primary school, was buried on the school grounds close to Mōrero.[456]

The other Ngāti Hinewai were also awarded interests in Waimarino, but they are primarily descendants of Tūwharetoa. Hinewai, a direct descendant of Tūwharetoa, was the daughter of Tūroa and Waiaromea.[457] They are associated with Tīeketahi, Te Rena, and, across the Whakapapa River, with Kākahi. This is the Ngāti Hinewai whose members include people also descended from Ngāti Hotu.[458]

Ngāti Hinewai (of Ngāti Tūwharetoa) were closely associated with Ngāti Waewae at Pūāwai, located between Kākahi and Ōwhango. They were also associated (at Ōtamakehu, in Kākahi) with Ngāti Hikairo and Ngāti Waewae.[459] Ngāti Hinewai include the descendants of the daughter, Mihi-te-rina, of the great chief, Te Pikikōtuku. She was the spouse of Te Kāka Tamakeno, the Ngāti Hinewai chief at Tīeketahi. She and her people cared for Te Kooti after his injury at Te Pōrere in 1869.[460] Te Pikikōtuku's descendants are to be found in many hapū, including Ngāti Hāua, and the other Ngāti Hinewai (of Ngāti Hāua and Ngāti Maniapoto).

This Ngāti Hinewai have no separate marae. They now relate to Taumaiohiorongo at Kākahi, and to Tīeketahi. The Hinewai marae at Matapuna at the southern approaches of Taumarunui was removed when the land was taken for the bridge and railway in 1903.[461] Arin Mātāmua told us that attempts to establish a marae at Whakahou near Te Rena have been opposed by the Taurewa trustees.[462]

(e) *The 'Whanganui' groups – Ngāti Hotu:* Notionally, this group falls within the Whanganui group of the northern cluster. Its inclusion is notional because Ngāti Hotu lived in many places, and are usually regarded as a defeated or 'practically extinct' people in most primary or official sources, in Native Land Court records, and by historians and some other claimants.[463] Any survivors from a succession of military disasters were usually considered to have been absorbed into the peoples of their successive conquerors. But people appeared before us to assert their

The Whakapapa River near Ōwhango. A few kilometres north, near Kākahi, it flows into the Whanganui River.

Ngāti Hotu ancestry. People of Te Kāhui Maunga who demonstrate the characteristics of urukehu (persons with reddish hair, fair skin, and green eyes) are regarded as deriving these from Ngāti Hotu ancestors.[464]

Ngāti Hotu were one of the ancient tangata whenua peoples, possibly originally living in the Rangitāiki Valley and towards Whakatāne in the Bay of Plenty. Their origins are disputed; they may have taken their name from Tainui ancestors, but Whanganui tradition suggests they may have been the descendants of the tangata whenua ancestor, Houmea. Expert genealogist Tūrama Hāwira considers that they evolved from the earliest tangata whenua, including Toitehuatahi, Ruatipua, and Mōuruuru. Various traditions describe them being gradually driven westwards. All agree that they were living in lands bordering Taupō to Mōkai Pātea (between Taupō and Hawke's Bay) when Tūwharetoa's descendants first reached Taupō.[465]

Ngāti Hotu encountered Tūwharetoa when they were

living near the Rotoāira lake; their pā at the base of Tongariro was Tauwhare-papauma. At that time they were attacked by a taua of Ngāti Tūwharetoa chiefs led by Tamakana, his cousin Pouroto, and others. This was one of several defeats by Tūwharetoa leaders until peace was made on Taurewa with Te Aomiti of Ngāti Hotu; Ōtukohao, a relative of the taua's leader Rūwhenua, was given to him in marriage.[466]

In Ngāti Rangi tradition, the name Ngāti Hotu was taken by the supporters of Taitearikī (an ancestor of Paerangi) after he was slain by people descended from his kinsman, Houmea. These people continued to live in the Ngāti Rangi rohe at the same time as the ancestors of Ngāti Rangi. They were eventually heavily defeated by Taukaitūroa, son of Rangiteauria of Ngāti Rangi.[467] This defeat at Rotoāira was utu for a Ngāti Hotu attack on his people at the Kōkopu Stream in the Maungakāretu district.[468]

Traditions also exist of Ngāti Hotu being defeated and driven away in successive attacks – by Ngāti Tama of Mōkai-Pātea; by Ngāti Whiti on the western side of the Moawhango River; and by Tamahina (husband of Hinengākau) of Ngāti Hāua with other groups within the district of Tūhua (including the future site of Taumarunui), and again at Kākahi.[469]

Another tradition saw them being attacked by Ngāti Maru of Taranaki. From this attack they fled into the rugged hills around Te Rena, and lived on the lands now known as Taurewa and Whāngaipeke. Communities of Ngāti Hotu also lived across the Whakapapa River from Te Rena at Kākahi where they had five pā, including Takapuna and Mangakēkeke. This last pā belonged to the Ngāti Hotu chief, Kākahi, and was half way between Kākahi and Ōwhango.[470] The five pā were attacked and destroyed by a Whanganui-led taua in the famous battle known as Whataraparapa.[471] There were many Ngāti Hotu fatalities; oral tradition suggests that only five survivors escaped the battle at Takapuna.[472]

The survivors of Ngāti Hotu intermarried with the descendants of the great chief, Te Pikikōtuku, with Ngāti Hinewai of Ngāti Tūwharetoa, and with the communities at Tīeketahi, Kākahi, and Te Rena. Kākahi was once exclusively populated by Ngāti Hotu, who say it was named for a Ngāti Hotu chief. Their urupā is across the river at Hena.[473]

(f) *Other 'Tūwharetoa' groups – Ngāti Manunui*

Kei whea rā, ē, ngā whakaruruhau,
Ngā pā kai riri ki runga o Tuhua,
I te nui 'Ati Manu', kei ō tuākana, e rau o Matakore?

Where now is there a sheltering place,
For those on the entrenched hilltops of Tuhua,
Of the many of 'Ati Manu' and your seniors among the hundreds of Matakore?[474]

Ngāti Manunui are now mostly associated with Taumaihiorongo marae in Kākahi and with Te Rena.[475] But the hapū's origins were among Ngāti Tūwharetoa, and ultimately from Ngātoroirangi and Tia of the Arawa canoe. Their founding ancestor was Manunui-a-Ruakapanga, a child of Te Rangiita (eponymous ancestor of Ngāti Te Rangiita, a senior hapū of Ngāti Tūwharetoa.)[476] Te Rangiita's wife was Waitapu of Ngāti Raukawa. Manunui was descended through Te Rangiita from Tūwharetoa's son, Rākeihopukia.[477]

Manunui and his wife had three sons, Moetū, Tarapounamu, and Pūrākau. The youngest son founded a hapū known as Ngāti Pūrākau which was eventually subsumed into the greater Ngāti Manunui people.[478]

After wars in the time of Manunui himself, a marriage was arranged between his second son, Tarapounamu, and Kahuti. She was the daughter of a chief who accompanied the Whanganui taua who had fought against Manunui.[479] Tarapounamu had three wives besides Kahuti, at least two of whom were Whanganui women of rank. Their descendants occupied different settlements from the south-western shores of Lake Taupō at Pūkawa and Tokaanu, and across the mountains to Tūhua, Te Rena, and the headwaters of the Whanganui River.[480]

Tarapounamu arranged the marriage of his cousin, Wakatotopipi (the child of Manunui's sibling, Te Piungatai) to Hekeāwai.[481] Their descendants included Te Pēhi

Tūroa. Te Taruna, a daughter of Tarapounamu and Kahuti, was the wife of Te Pikikōtuku, a famous Whanganui chief of very high rank. Their descendants also included the upriver chief associated with Tīeke, Te Kurukaanga.[482]

In summary, Ngāti Manunui are a people with strong ties to Ngāti Tūwharetoa (and to their central North Island kin such as Ngāti Raukawa or Ngāti Matakore through intermarriage). But also through intermarriage, they are related to Whanganui groups with connections to Tūwharetoa and Maniapoto such as Ngāti Hāua, Ngāti Rangatahi, Ngāti Hinemihi, and other northern and central cluster groups. They have made one of their homes close to the Whanganui River, at Taumaiohiarongo marae at Kākahi. This marae is shared with other local hapū; another marae was at Ngārarahuarau in Ōhura South B. Ngāti Manunui are also strongly represented at Wharauroa in Taumarunui. There were many other kāinga, some shared with other hapū.[483] Other parts of their rohe extend into adjoining inquiry districts.

(g) *Other 'Tūwharetoa' groups – Ngāti Hinemihi:* Now associated with Kauriki marae, east of Taumarunui, and Petānia marae near the Taringamotu River, these people are descended from Tūwharetoa. Hinemihi herself was the wife of Tūtetawhā of Ngāti Tūwharetoa. These two ancestors were the parents of Te Rangiita, father of Manunui, so that Ngāti Hinemihi and Ngāti Manunui are closely related. Their rohe in the Whanganui district adjoin and overlap.[484] Through intermarriage Ngāti Hinemihi are also associated with Tūtemahurangi (discussed earlier in section 2.4.2), a great chief of mixed Ngāti Rangatahi (Maniapoto) and Ngāti Hāua (Whanganui) descent lines.[485]

Ngāti Hinemihi were originally associated with the Rotoāira basin, and with Pouaru and Pūkawa settlements at Taupō. Their interests extend westwards across the mountains to Taurewa mountain and block, a source for them and other hapū of birds and other food. Important kāinga included Te Wera (shared with Ngāti Manunui), Te Miro, and Te Umotahi (shared with Ngāti Manunui and Ngāti Hekeāwai, both near the Pungapunga Stream,) and Ngāpuke kāinga on Ngāpuketuarā and Te Ipu Whakatara. These lands are particularly associated with Te Rangiita and Hinemihi. A pā named Manunui-a-Pāpārangi stood near the present Manunui township, south-east of Taumarunui. A wharenui, Te Kopani, was on the Pukeweka or Rangitoto-Tūhua 2 block. At some period, the house was divided, half being relocated to Petānia and renamed Hinemihi, and half to Kauriki marae, where it was renamed Komatua Whare Te Ohaaki.[486]

(h) *Other 'Tūwharetoa' groups – Ngāti Hikairo and Ngāti Hikairo ki Tongariro:* Ngāti Hikairo and Ngāti Hikairo ki Tongariro have presented themselves to this inquiry as three separate claimant groups, each with slightly different concerns and sets of claims (described in chapter 1 and in section 2.5.2). The two sets of Ngāti Hikairo claimants (Wai 37, Wai 933, Wai 1196 and Wai 833, Wai 965, Wai 1044) both rely on the traditional and oral history report presented by Ngāti Hikairo ki Tongariro (Wai 1262).

Originally, however, Ngāti Hikairo were one people descended from their eponymous ancestor, Hikairo, and Hikairo's spouse Puapua.[487] All Ngāti Hikairo claimants agree that Puapua was a great-great grandchild of Rākeipoho, one of the sons of Tūwharetoa. Tūwharetoa was descended by many generations from Ngātoroirangi, who came to Aotearoa on the Arawa canoe.[488]

There is some doubt about the identity and gender of the eponymous ancestor, Hikairo. Some claimants believe that Hikairo came many generations ago from Kāwhia.[489] Others trace Hikairo's associations with Te Arawa and Te Whānau a Apanui.[490] The various sets of claimants are agreed that Hikairo came from beyond the Whanganui and Taupō rohe and married Puapua (descended from Rākeipoho and Tūwharetoa) in an arranged marriage, and that their descendants married into chiefly Whanganui lines.

All three claimant groups regard Te Wharerangi of Motuopuhi pā, Rotoāira, as an important and venerated rangatira of Ngāti Hikairo (as well of other related groups) in the early nineteenth century, together with his younger brother, Te Huri, and Te Huri's son, Wairehu.[491] Te Wharerangi was the grandson of the great chief Pākau or Pākaurangi, who lived six generations after Hikairo and

Puapua. Te Wharerangi's mother, Te Maari I, was the wife of Tūkaiora, an important chief of Ngāti Tamakana, Ngāti Uenuku of Manganui-a-te-ao, and other Whanganui groups.[492] (One group gives the name of Te Maari I's husband as Te Pikikōtuku; another as Tūkaiora Te Pikikōtuku.[493]) Te Maari's half sister, Te Marewa, was the wife of Te Waitākaro (or Waitākaroa) of Ngāti Pāmoana; their half-brother, Te Peau, was the spouse of Parekaahu, another woman of rank.[494]

Te Wharerangi is important in the whakapapa of many hapū in the border lands between Taupō and Whanganui. His descendants include his son, the well known chief, Matuaahu Te Wharerangi and his elder sister, Te Maari II. As youngsters these two were escorted by their uncle, Te Huri, to take refuge in the Manganui-a-te-ao district from the taua of Ngāti Maru of Hauraki. That taua killed their father at Motuopuhi pā, Rotoāira, in the late 1820s.[495] Matuaahu Te Wharerangi was one of the chiefs selected as owners of the various Tongariro and Ruapehu blocks which made up the National Park,[496] but he was not recognised as an owner on the other side of the mountains in Waimarino, even although the Ngāti Hikairo rohe spanned both sides of the mountains.[497]

Ngāti Hikairo customarily occupied territory at the border of Tūwharetoa and Whanganui interests, extending into both areas. Now expressed in terms of Native Land Court blocks, originally they extended from the Kaimanawa and Hautū areas south and south-east of Lake Taupō, across to Rotoāira.[498] They included the hill ranges west and south-west of Taupō. After various battles, many Ngāti Hikairo migrated west, as did other hapū who had similar, mixed Taupō/Whanganui whakapapa and came from a similar range of territory.[499] Ngāti Hikairo occupied interests extending from the Taurewa mountain and the sources of the Whanganui River, including Whakapapa Island at the confluence of the Whanganui and Whakapapa Rivers.[500] They had interests and settlements in what became the Waimarino block.[501] The Kētū whānau of Kaitīeke affiliate to Ngāti Hikairo through a cousin of Te Wharerangi. Their customary occupation of the Kaitīeke district long predated any land court division of the Waimarino block.[502]

All three Ngāti Hikairo groups relate to the marae of Papakai and Ōtūkou in the Rotoāira basin, and to Hikairo marae at Te Rena west of the mountains. This marae is a few miles east of Taumarunui; it replaced the old marae, Whakahau.[503] They have also been a strong presence at Kākahi and Kauriki with Ngāti Manunui and Ngāti Hinemihi.[504] The Rongomai marae near Kaitīeke in the Rētāruke Valley appears to have declined, and the Taitaia marae east of the central mountains was relocated to Papakai after quarry damage.[505]

(i) *Other 'Tūwharetoa' groups – Ngāti Waewae:* Ngāti Waewae were a hapū of Tūwharetoa. Waewae herself was the child of Tūkiriwai, descended from Tūwharetoa through his senior son, Rongomai-te-ngangana. Her mother, Huanga was descended from Rangituhia of Ngāti Rangi, but through another line, from Taniwha, another son of Tūwharetoa. Waewae's husband, Te Marangataua, was also descended from Taniwha and Tūwharetoa. This line of descent connected them both to Ngāti Rongomai, the hapū of Pouroto who was Tamakana's cousin. These two ancestors, Tamakana and Pouroto, were both closely connected to the settlement of the Ōkahukura and Taurewa districts, west of Tongariro, after battles with Ngāti Hotu.[506] The hapū that took Te Marangataua's name (Ngāti Te Marangataua) were so closely interwoven with Ngāti Waewae that they were said to be virtually one hapū.[507]

The turbulent history of Ngāti Waewae in the early nineteenth century came about because they were situated in the region south of Taupō, with their rohe extending as far south as the Waitangi Stream (near Tangiwai between Karioi and Waiōuru). Effectively, they were living in a corridor where many taua (war expeditions) travelled up and down the country by way of the Manganui-a-te-ao, Whanganui, and Rangitīkei Rivers.

Events in which Ngāti Waewae were involved included wars across southern Taupō and neighbouring districts. About 1829 or a little later, they became involved with the invasion of the Rotoāira area by Ngāti Maru of Hauraki, resulting in the death of the venerated rangatira, Te Wharerangi, descended from many prominent

Whakapapa Island lagoon. The Whakapapa and Whanganui Rivers meet at the island in the north east of the district near Kākahi.

Tūwharetoa and Whanganui ancestors (discussed above in relation to Ngāti Hikairo). There were clashes with their Ngāti Rangi, Ngāti Tama, or Ngāti Tamakana neighbours, often resolved by peace-making which included arranged marriages. There were many other wars, migrations, and invasions along these routes, which saw some Ngāti Waewae migrate for safety or policy to lands far to the north.[508]

In this way, Ngāti Waewae added to their ancestral interests. They accumulated new interests in various places spanning a vast area, sharing these interests with other hapū. Like many other hapū in the Whanganui inquiry, Ngāti Waewae's interests extend over multiple inquiry districts. Rather than permanent settlements (although there were at least two of these in the Rangipōwaiū district), their interests took the form of birding areas for seasonal use, such as those from Tongariro to the southern slopes of Ruapehu on the Rangipō side. Ngāti Waewae hunters took kererū (pigeons), weka, tītī (mutton birds), and tāiko (black petrels), making use of a network of tracks to, through, and around the forests and mountains. Traditional fishing, today all but destroyed with the depletion of species, took place in various waterways, including Rotoāira.[509]

Led by Te Oti Pohe, Ngāti Waewae migrated with Ngāti Pikiahu allies to Te Reureu on the Rangitīkei River

in the 1840s. Mananui Te Heuheu Tūkino instigated this migration to prevent eager land-sellers in the Manawatū-Rangitīkei district, such as Ngāti Apa of Parewanui, encroaching on the iwi's wider interests. Boundary posts, established at Pourewa and Te Houhou on the Rangitīkei River, were intended to indicate the permitted limit of the Rangitīkei-Turakina purchase of 1849. These boundaries were later discussed again at the Kōkako hui in 1860.[510]

Important chiefs of Ngāti Waewae in the nineteenth century included Te Huiatahi, Te Oti Pohe, Te Moana Papaku, Karamu Paurini, and Eruini and Wīneti Paranihi.[511] Some rangatira belonged as much to neighbouring peoples such as Ngāti Tama at Moawhango – including Retimana and Hiraka Te Rango, Tōpia Tūroa, Hēperi Pikirangi, and Te Oti Pohe.[512] Besides their Rangitīkei interests, several Ngāti Waewae chiefs were put into the titles for Tongariro and Ruapehu, for many of the blocks under the umbrella of Taupōnuiatia, and also for the Waimarino block.[513]

The principal marae of Ngāti Waewae is now Tokorangi near Te Reureu in the Manawatū-Rangitīkei district. The house there is Te Tikanga, a name sometimes used informally for the marae. Ngāti Waewae share it with Ngāti Pikiahu and others.[514]

(j) *The 'Maniapoto' groups – Ngāti Rangatahi:* Rangatahi was a granddaughter of Maniapoto. Her parents were Maniapoto's son Tūtakamoana and his wife Rangipare, daughter of Kinohaku, a younger sister of Maniapoto. Rangatahi's husband was Maniauruahu, a great grandson of Maniapoto. Rangatahi's descendants included her daughter Urunumia (Ngāti Urunumia) and Urunumia's grandchild, Hari (Ngāti Hari). Rangatahi was also an ancestor of the chief Tūtemahurangi (discussed at section 2.4.2).[515] These groups are also discussed below.

Through her children, Rangatahi was ancestral to many important Tainui (Waikato as well as Maniapoto) groups and great chiefs, including the Māori kings. Through intermarriage, she also had descendants among Ngāti Tūwharetoa and Whanganui.[516]

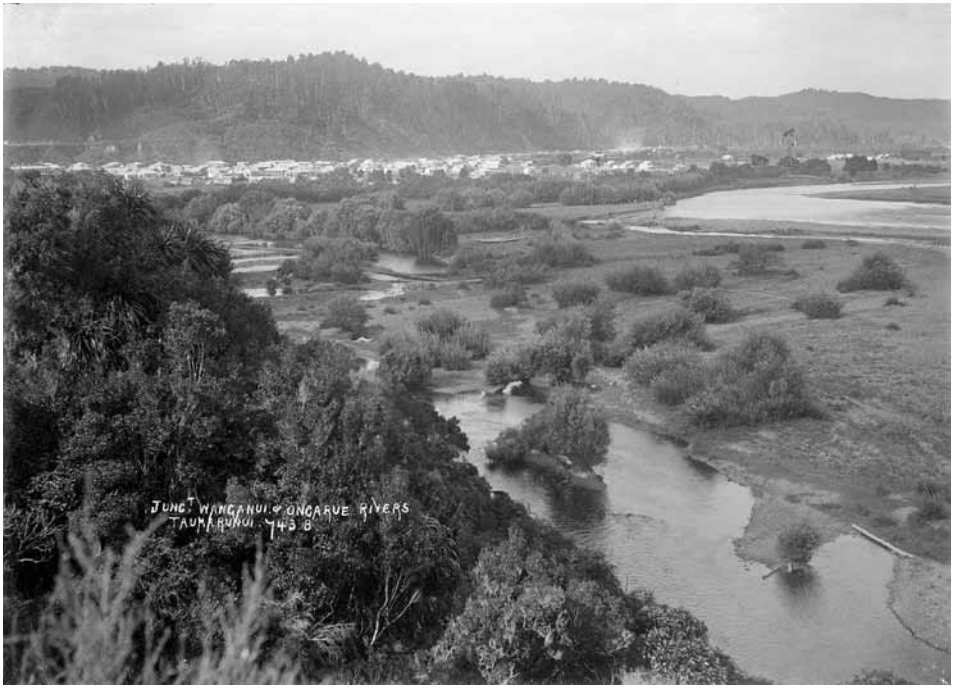
The area Rangatahi lived in ranged from around Rangitoto (the mountain range which is the source of the Waipā River) to Pirongia and Kakepuku mountains in the upper Waikato district. Four generations later, some of her descendants moved to the Ōhura and Ōngarue Valleys (north of Taumarunui), and became associated with and married into Ngāti Hāua. Te Puru, great grandson of Rangatahi, married Kimihia I, daughter of Wera of Ngāti Hāua; their son was Tūtemahurangi.[517]

Tūtemahurangi, who lived in the region from Ōhura to Piriaka, belonged to the generation of Ngāti Rangatahi leaders that came after those who led the people from around Ōtorohanga and Ōrahiri to Ōhura. He was also influential amongst his mother's people, Ngāti Hāua. As noted earlier in section 2.4.2, Tūtemahurangi caused great problems for his people by killing the chief Nukuraerae, an event which saw him withdraw from the area between Manunui and Piriaka to his pā, Ōruru on the Ōhura River.[518]

Tūtemahurangi was subsequently murdered by Wheto of Ngāti Te Ihingārangi and Ngāti Maru at Tarapuku near Ōtamakahi, a Ngāti Urunumia settlement. This event was the catalyst for much war between the Ngāti Hāua–Ngāti Rangatahi alliance and Ngāti Maniapoto. This alliance, led by Tūtemahurangi's son Te Porou, fought against people of Mōkau and various elements of Ngāti Maniapoto including Ngāti Urunumia. War ended (apart from some minor incidents) after the important peace-making called Te Horangapai (see section 2.4.2(1)).[519]

After these battles in the 1820s or early 1830s, many Ngāti Rangatahi left their battle-torn homes led by the chief Kāparatehau; they were joined by many Ngāti Hāua. At a great meeting at Ngāhuihuinga (Cherry Grove) – the site of an important kāinga and urupā at the confluence of the Whanganui and Ōngarue Rivers – they agreed to migrate to the Kapiti coast as allies of Te Rauparaha (see section 2.4.2).

Ngāti Rangatahi were living at Porirua or Pukerua Bay in the early 1830s, and then moved to the Hutt at the request of Te Rangihaeata of Ngāti Toa. They took part in the Heretaunga wars of the 1840s; one of their leaders at that time was Te Mamaku of Ngāti Hāua, also descended from Rangatahi. After the wars in the Hutt, pressured by the colonial government, some Ngāti Rangatahi moved to Rangitīkei.[520] Many others returned at that time to their



The confluence of the Whanganui and Ōngarue Rivers at Ngāhuihuinga (Cherry Grove), Taumarunui. As well as being valued for their food resources, tributaries like the Ōngarue River were transport routes that connected Whanganui Māori and enabled them to move goods.

homes around Taumarunui. Their return was negotiated with Taonui Hīkaka of Ngāti Rōrā (a hapū of Ngāti Maniapoto then occupying Taumarunui) by those Ngāti Rangatahi who had remained in the north, including Te Porou's grandson, Mātakitaki Ngarupiki.[521]

The heartland of Ngāti Rangatahi in Taumarunui was around the area now known as the Tuku Street Domain. They relate to Wharauroa and six other marae in Taumarunui or in the Taringamotu Valley, all located on what became the Ōhura South block.[522]

(k) *The 'Maniapoto' groups – Ngāti Urunumia:* Urunumia was a descendant of Maniapoto and the daughter of Rangatahi (Ngāti Rangatahi) and the grandparent of Hari (Ngāti Hari). She had a number of children, and some of her descendants branched off as important hapū within Ngāti Maniapoto, including Ngāti Paretekawa, Ngāti Te Kanawa, Ngāti Hari, Ngāti Ruahine (Hari and Ruahine were siblings), and Ngāti Tupuriri.[523] For many generations Ngāti Urunumia and Ngāti Hari have occupied the border area between Ngāti Maniapoto and Whanganui. This area was centred on the confluence of the Taringamotu (or Taringamutu) and Ōngarue Rivers, and in the Taringamotu Valley, at the top of which stands the mountain, Hikurangi.[524]

Because of the unfortunate fact that Tūtemahurangi of Ngāti Rangatahi and Ngāti Hāua was killed near a Ngāti Urunumia village (although by a Ngāti Te Ihingarangi and Ngāti Maru man, instigated to do this by Hari[525]), Ngāti Urunumia got caught up in the ensuing wars. They fought on the side of Ngāti Maniapoto against their Ngāti Rangatahi kin and Ngāti Rangatahi's Whanganui kin and allies.

Ngāti Urunumia's descent from Ngāti Maniapoto was relatively straightforward, and her husband was Te Kawairirangi II of Ngāti Maniapoto: intermarriage with Whanganui came *after* the lifetime of Urunumia's children. Ngāti Urunumia have always regarded themselves

as a Ngāti Maniapoto hapū. A number of reasons are likely: Ngāti Urunumia's rohe was further away from the Whanganui River and closer to Waipā and the upper Waikato; their descent from Maniapoto was relatively unmixed, and their historic alliances were consistent.[526] Their position is a little different from that of Ngāti Rangatahi; although they too acknowledge their descent from Maniapoto as primary. For two centuries, Ngāti Rangatahi have been closely allied with and intermarried with Ngāti Hāua and have shared several of the marae in Taumarunui.[527]

Ngāti Urunumia shares Ngāti Hari's marae, Hia Kaitūpeka, although this is primarily a Ngāti Hari marae. Ngāti Urunumia's marae and urupā, also shared with Ngāti Hari, were at Te Anapungapunga and Tūwhenua in the Taringamotu or Taringamutu Valley. (Tūwhenua was taken compulsorily for an airfield: see chapter 24.) Ngāti Urunumia retain urupā (burial grounds) with no or poor access at both places, although many bodies had to be exhumed and reburied when these areas were lost. Before the mid-nineteenth century their settlements and pā lined the Taringamotu Valley, and extended from the Ōngarue close to Taumarunui across to the Hauhungaroa range west of Taupō.[528]

(l) *The 'Maniapoto' groups – Ngāti Hari and Ngati Hira:* Ngāti Hari, who are the descendants of Urunumia's grandchild Hari, are really the same hapū as Ngāti Hira; the Ngāti Hira name has only limited application as a separate group.[529]

The female ancestor Hira (unrelated to Hari) was a descendant of Te Hoata, an important ancestor of Ngāti Hāua. Hira was the wife of Tukeo of Ngāti Urunumia. The 'Ngāti Hira' name was adopted in the Native Land Court by Ngāti Hari because the judge in the Ōhura South case in 1888 and the partition case in 1892 awarded almost the whole block to Ngāti Hāua.[530] Only 100 acres, including the kāinga (settlement) site and urupā of Te Anapungapunga, was awarded to Ngāti Urunumia. (This small 100-acre block became known as Te Horangapai or Ōhura South A1, although Ngāti Urunumia's claim extended very much further, to 5,000 acres: see section 2.4.2(1).) Moving to the Ngāti Hāua side of their whakapapa allowed Ngāti Hari – as Ngāti Hira, a hapū of Ngāti Hāua – to circumvent the fixed prejudices of Judge Gudgeon and to be awarded the Taringamotu block or Ōhura South A.[531]

Hari himself, together with his elder brother, Tāwhaki, settled at Tūhua, probably in the late eighteenth century. Hari was the leader of a junior branch of Ngāti Urunumia, forced to move further away from the Ngāti Maniapoto homelands to establish an independent rohe. The consequence was much intermarriage with Whanganui groups; Hari was a warrior who fought in many battles around the country, and died fighting against Ngāti Hāua at Te Maire on the upper Whanganui River. One pā, Pakingahau was in the Ngakonui Valley, three other pā were in the Mangakahu Valley, and one was in the Taringamotu Valley.[532] Tūwhenua marae was important to Ngāti Hari until taken for an airport, and many of their dead were buried at Te Anapungapunga where there is an issue of access (see chapter 24). Their marae now is Hia Kaitūpeka in the Taringamotu Valley; the house there is called Hari.[533]

2.5 Tikanga Whanganui: Social Organisation in the Whanganui Inquiry District

2.5.1 Introduction

In this section, we discuss tikanga Whanganui or the system of social organisation by which the peoples of the Whanganui inquiry district lived. Because our focus is solely on this rohe, we do not go into the matter of whether tikanga and ritenga (customary rules and practices) in the Whanganui district differed to any great extent from other regions or inquiry districts.

Tikanga Whanganui was based on tribally based communities, formed through whakapapa (descent), whanaungatanga (kinship), and reciprocity. The system included the institution of tino rangatiratanga (local autonomy), exercised by rangatira or chiefs, assisted by

tohunga (priests), kaumātua (tribal elders), and toa (leading warrior commanders). Their collective authority was expressed and wielded at inter-community events such as hui (meetings), kōrero (public debates), rūnanga (councils), tangihanga (funeral events), and others. The authority of rangatira was circumscribed by the fact that they too were bound by generally held community values, and bound to observe generally recognised rights of customary tenure over land and resources.

First, we examine the terminology used to describe the building blocks of pre-contact Whanganui Māori society – iwi, hapū, whānau, and the communities they formed. We then move on to discuss the various values, principles, and institutions what bound together. In particular, we look at te tino rangatiratanga (local authority) and take whenua (rights to lands and resources) – institutions which would subsequently be directly challenged by the introduction of European institutions of authority and the British legal system.

2.5.2 Iwi, hapū rānei: terminology for descent groups

While it is sometimes a mistake to make rigid distinctions between 'iwi' and 'hapū', at other times the distinction is meaningful.

In the past, the common (but distorted) view was that 'hapū' always belonged to one 'iwi' and were somehow subordinate to them; that view persists among some inexperienced observers today. In our view, this misperception is another example of cultures talking past each other, exacerbated by the different languages in which the concepts concerned were originally expressed.

Into the twentieth century, it was common for European officials and others to talk of 'tribes' (meaning 'iwi') and 'sub-tribes' (meaning 'hapū'). But the testimony of Māori themselves in this and other inquiry districts has shown this to be a false distinction: generally, the hapū with its recognised ruling chief(s) was the autonomous, decision-making, territory-defending corporate body. As Te Maioro Kōnui of Ngāti Hikairo commented to the Central North Island inquiry panel:

> problems arise when you start to categorise it [Māori social organisation] in terms of 'iwi' and 'hapu' . . . 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'.[534]

The iwi, however, existed on another level of human interaction and for a different purpose. Testimony to the Whanganui River Tribunal led it to state that the Māori term 'hapū' was in fact the nearest equivalent of the English term 'tribe'. However, sometimes Whanganui Māori brought into play wider identities such as iwi – or even regional identities, such as Te Āti Haunui – to remind themselves of their common origins and kin ties. This was especially useful in time of war when it was necessary to combine to defend the wider region.[535]

In practice in their evidence, Whanganui Māori claimants refer to their major descent groups by either term, depending on context. Powerful peoples such as Ngā Paerangi, Ngā Poutama, Ngāti Hāua, or Ngāti Rangi (each with many little sub-groups almost always called 'hapū') are identified as 'iwi' in some circumstances or on some occasions. But in other circumstances, the evidence identifies the same groups as 'hapū' of 'Whanganui' or of Te Āti Haunui-a-Pāpārangi. Context was and is everything.

An example of the pitfalls surrounding the prescriptive use of such terms is again provided by the Ngāti Hikairo claimants, who presented themselves to the Tribunal as three separate claimant groups. From the whakapapa presented to us, the various marae and kāinga to which each claimant group affiliates, the locations mentioned, and the rangatira important to each group, it is clear that all three groups calling themselves Ngāti Hikairo or Ngāti Hikairo ki Tongariro were originally the same hapū.

One of their reasons for identifying themselves as separate claimant groups was internal disagreement about whether Ngāti Hikairo is properly characterised as an iwi or a hapū. One group presented itself as a hapū of Ngāti Tūwharetoa.[536] Another, while acknowledging its kinship to Ngāti Tūwharetoa, maintained that it was a separate

iwi.[537] The third, however, had a different viewpoint; these people considered that the process of interacting with the Crown was pressuring descent groups to identify as iwi. They said:

> Another final small point of difference between these two sets of claims, is their view on whether Ngati Hikairo is an 'iwi'. Our clients have always voiced their frustration with the requirement to categorise groups as either 'iwi' or 'hapu' and the implications of those terms. This has caused division within Ngati Hikairo, as Government entities look to interact with and prioritise 'iwi' alone.[538]

2.5.3 Te hapori: the community

The evidence suggests that in the Whanganui inquiry district, hapū did not often reside alone. However, larger and more powerful hapū often dominated other hapū in their pā or kāinga so that early Pākehā visitors gained the impression that there was only one group in residence.[539] The communities over which rangatira presided often consisted of a number of closely related hapū. Alternatively, they could be a variety of different hapū bound together temporarily, or for a generation or two for defence or some other political or social reason. As the Tūranga Tribunal put it:

> Different hapu lived and continued to live in close proximity to one another, forming communities of common residence and interest. The connections by marriage among closely related hapu often meant that people within a community identified themselves by a variety of hapu names, so that the community encompassed a number of hapu.[540]

We have seen that this multiple-hapū community, in place long term or formed temporarily in a crisis, was a common arrangement in the Whanganui inquiry district. For example, the Pukehika settlement (between Rānana and Hiruhārama but on the west side of the river) was an important community when many hapū gathered there for protection for some decades before 1840. In March 1841, Pukehika was described as:

> a very extensive *pa*, or rather a collection of seven or eight detached ones, on a hill at a bend of the river to the westward. It is about seventy miles from the sea, and well chosen as a mustering-place for the *Wanganui* tribes living within that distance from the coast, in case of attack from *Waikato*, *Taupo*, or the Strait.[541]

When that exigency passed, Pukehika gradually diminished in importance.

The Pīpīriki district provides another example of a complex community of more than one hapū. The Reverend James Buller visited Pīpīriki in 1840 and found it consisted of 'several villages'. In June 1843, missionary Richard Taylor described it as consisting of eight pā, each with its own name. In October that year, he found that a large, new pā had been added.[542]

Taylor did not name the hapū in each of the pā at Pīpīriki, but from other evidence we can deduce that they probably included (besides Ngāti Kura) Ngāti Uenuku, Ngāti Tara, and Ngāti Ātamira at least. There were probably family groups from other hapū, including the various hapū of Ngāti Rangi. The groups named are recorded as coming to Pīpīriki from Manganui-a-te-ao for fear of successive Ngāti Raukawa war parties about 1829 or a year or two later. Tūwharetoa incursions in the late 1830s and in the 1840s later provoked a similar response. The various visiting hapū at Pīpīriki obviously stayed for some time, as people had time to die of natural causes and were buried there or at Waipuna, nearby. Had the sojourn been brief, it is likely they would have been taken home for burial.[543]

Hiruhārama, Waipākura, and Pūtiki-wharanui on the Whanganui River, Te Rena and Kākahi in the north-east of the inquiry district, and many other settlements (all discussed in later sections of this chapter) were also communities with multiple hapū components. Other examples claimants gave us were:

- *Rānana:* Ngāti Rangi and other groups from the high country traditionally took refuge from the cold and snow in the warmer micro-climate of Rānana, or sheltered there with Ngāti Ruakā and its many hapū for long periods during external invasions.[544]

- *Parikino:* many iwi and hapū used Parikino as a place of refuge for several years when Te Heuheu's taua was threatening the district in the early 1840s. Ngāti Hine, Ngāti Hinearo, Ngāti Tuera, Ngāti Tūmango, Ngā Poutama, and Ngā Wairiki from Mangawhero were all there from 1845 to at least 1849, having moved from Hikunīkau.[545]
- *Te Ranga:* Te Pēhi Tūroa I lived at Te Ranga for long periods after the death of Te Okahoroiwi (probably about the time Te Whatanui raided in Rangiwaea[546]) with Ngāti Hinetaro, Ngāti Ruakōpiri, Ngāti Pare, and Ngāti Hekeāwai; the name of Ngāti Hekeāwai encompassed the others.[547]

Whānau (multi-generational, extended families), the domestic units in these communities, were often virtually indistinguishable from small hapū. This was especially so in ngā wā o mua (former times) when they tended to reside together. Like hapū, the membership of whānau sometimes derived from multiple descent groups (the original parents of the whānau were from different hapū or iwi), so that members could in some circumstances identify themselves by different hapū or iwi names. Before the Crown's authority actually became effective, some decades after 1840, whānau depended on the protection of the wider group. Before 1840, and also in the period before effective Crown authority, whānau members were more likely to identify themselves by the name of their principal hapū, and abide by the authority of its rangatira.

The oral and traditional evidence presented to us suggests that what united such communities of disparate hapū and whānau was the network of relationships created by whakapapa. These relationships continued and were strengthened by ongoing marriage alliances in succeeding generations. Such links allowed a wider range of resources to be utilised reciprocally by calling on the ties of whanaungatanga. Communities were held together by the protection afforded them by the mana of some great chief or family of chiefs. In this region, successive leaders were provided at Manganui-a-te-ao and later Waipākura by the Tūroa dynasty; at Tūhua by Tōpine Te Mamaku and his successor and junior cousin Ngātai; and at Pūtiki by the whānau of brothers Te Anaua and Te Māwae and their successors. There were many other such examples.

2.5.4 Nga rangatira o ngā wā o mua

Before 1840, there was a system of chiefly authority over hapu (one or several) and over land and resources. Rangatira exercised mana or authority over people, land, and resources in recognised rohe (territory or territories). Essential balance was provided by community recognition of that authority and voluntary adherence to it. Chiefly authority incorporated a whole system of tikanga (customary laws or rules) by which the community of hapū, including their chiefs, combined to organise their affairs, bound together as they were by the ties of kinship. Well-defined protocols, values, and principles of customary law were known to all the community. Tikanga (or property rights, in the narrow sense) were also known to everyone in the community and all, including chiefs, were bound by them.

Of course, disputes often arose within or between communities about the interpretation of the rules in particular circumstances, or because of the impulsive actions of individuals. They were often resolved by exhaustive discussion in public meetings until consensus was reached. Rangatira then expressed the community's decision. Sometimes, especially between different hapū or kinship groups, these processes failed, and disputes were resolved by warfare. But all facets of inter-hapū and inter-community interaction were also strictly governed by tikanga Māori. As recorded by Taylor on 12 February 1848, a chief once said to a Whanganui peace-making meeting: 'All our wars were the result of deliberate consideration [–] we did nothing rashly; let it be so with us now.'[548]

This system of chiefly governance, conducted within the bounds of tikanga, was not part of a hierarchical system controlling or covering the whole Whanganui inquiry district. Rather, it was a local system with validity only within each relatively small community or set of interrelated communities in a limited area. As the Whanganui River Tribunal recorded, there was no single, recognised, paramount rangatira over the whole of the various Whanganui

hapū and iwi. But the Tribunal also found that in times of need, the wider community of Whanganui iwi (peoples) could come together not through 'tribal institutions of authority, and not because of the paramountcy of one rangatira but because of the paramountcy of several when acting in concert.'[549]

In the early nineteenth century, a small number of rangatira were paramount in their own rohe, and also exercised influence in other parts of the Whanganui River system where they had kinship ties. Perhaps most well known among them were Te Anaua of Ngāti Ruakā and Te Pēhi Tūroa of the group of hapū from the Manganui-a-te-ao River known as Te Patutokotoko. Te Anaua's mana was recognised from Pukehika (a little upriver of Rānana) to Pūtiki, and his influence was respected as far east as Murimotu. The mana of Te Anaua's younger brother Te Māwae was acknowledged, especially as a toa or commander in war, from Rānana to Pūtiki. The mana of Te Pēhi Tūroa was widely recognised, especially from Manganui-a-te-ao, over the central reaches of the river, and later to Waipākura in the lower reaches. It was sometimes said to reach from Tongariro to the sea.[550] Te Pēhi Tūroa and his successors – his sons Tāhana and Pākoro and their sons, especially Pākoro's son Tōpia Tūroa – also had kin relationships with Taupō and inland Pātea/upper Rangitīkei iwi. Te Mamaku of Ngāti Hāua and its hapū, Ngāti Rangi,[551] was perhaps the best known of the many powerful chiefs of the upper river. His most prominent, high-ranking, and politically important wife, Tahanga, was of the various hapū of Ngāti Maniapoto living closest to the Whanganui River, including Ngāti Urunumia.[552] Associated with Tōpine Te Mamaku was his cousin, Te Oro (or Te Horo), and Tōpine Te Mamaku's successor and cousin – from a generation junior to him – Ngātai Te Mamaku. All these chiefs have been discussed many times above.

But other equally high-ranking nineteenth century Whanganui ariki or rangatira and their successors (albeit less well-known to outsiders) were held in similarly high regard. The claimants often mentioned them in evidence, and proudly showed us their photographs. Important chiefs from the Tūhua area included Te Pikikōtuku and his successor and son, Himiona Te Pikikōtuku. Te Whareangi and his successor Matuaahu Te Whareangi held sway from Rotoāira to the Whakapapa River valley and across to the upper Whanganui River. Te Riaki, Te Pūhaki, and others dominated the Ngāti Rangi rohe. Winiata Te Kākahi followed his father, Te Whetū Kākahi, as the great man of the Raetihi area. All of these chiefs have been discussed above in this chapter.

Other recognised rangatira from the lower reaches included Takarangi-atua and his successor Te Oti Takarangi at or near Kaiwhaiki; the 'tangata whenua' ariki, Koroheke of Waipākura and his sons, Pōari Kuramate and Ēpiha Pātapu; and the families of Te Rangi Paetahi, and his son, Mete Kīngi Paetahi, Hakaraia Kōrako, Kāwana Paipai, Āperahama Tīpae at Whangaehu, Aropeta Tāmumu at Kai Iwi, and many others. All of these have been discussed above or are discussed in later chapters.

Some high-ranking rangatira wāhine (chiefly women) were accorded similar status and influence in the nineteenth century. They included Te Maari I, daughter of Pākaurangi; Te Maari II, daughter of Te Whareangi; and Te Maari III, daughter of Matuaahu Te Whareangi. All were associated with Ngāti Hikairo, Ngāti Maringi, Ngāti Tamakana, and other hapū with kin connections to Tūwharetoa as well as Whanganui. Rereōmaki (sister of Hōri Kīngi Te Anaua and mother of Te Keepa Taitoko Te Rangihiwinui or 'Major Kemp') was one of the few women to sign the Treaty of Waitangi. Later prominent women included Rīpeka Te Tauri (daughter of Te Māwae and wife of the Māori missionary at Pūtiki, Wiremu Te Tauri of Ngāti Te Rangiita from Taupō); Weronika Waiata of Ngāti Rangi and her sister Rāpera; and Wikitōria Tapukura of Kai Iwi. Later came Wikitōria Keepa or Taitoko, the daughter of Te Keepa Taitoko Te Rangihiwinui, for whom Victoria Avenue is named in the city of Whanganui.[553] As with the men, there were many other women of rank and influence known mostly to their communities.

The status of these leading ariki and rangatira was such that in ngā wā o mua (former times before Christian beliefs and European law competed with tikanga Māori) they inspired ihi and wehi (awe and dread) throughout the inquiry district. Their tapu was potent, their persons were

best avoided, and their personal whims and desires would be met wherever they were. Their mana or authority was strongest within their immediate communities, and it was there that they exercised the tino rangatiratanga (autonomous authority) which was to be retained by Māori after 1840 and protected by the Crown through the Treaty of Waitangi.

We have been given a great deal of evidence explaining how the system of chiefly authority worked in Whanganui Māori communities in the nineteenth century. Dr Lyndsay Head, for example, told us that a 'great chief' was one who 'secured and maintained a productive territory for the group'. His success in defending or retaining the group's land base was, therefore, 'evidence of the *mana* of the group, which was symbolised by the chief to whom all were related. Chiefs therefore had the say when decisions about land were required'.[554] According to Dr Head,

> the right expressed by chiefs in the negotiation of land sale was not a right of ownership . . . but a right of authority, or the ability to make decisions on behalf of the group. This right was more akin to sovereignty than to proprietorship.[555]

The chiefly decisions Dr Head cited as examples are not from Whanganui but demonstrate the kinds of decisions great chiefs made for their people. They included Te Rauparaha's decision around 1821 to take his people away from war in Kāwhia to re-settle on Kapiti, and Wiremu Kīngi Te Rangitāke's decision in 1848 to take his people back from Wellington and Waikanae to Taranaki.[556] These examples show that great chiefs made decisions not just about the land, but also to benefit their people politically.

As Dr Head has said, rangatira symbolised the mana of the group. When describing this role, Māori in many districts called it mana or authority over the land and over the people. It was a spiritually derived authority; great chiefs were descended from atua (gods) and, before Christianity, were regarded as atua themselves. As described by Tini Waata in the Taupo Native Land Court in 1886:

> Mana is in those who are strong to hold the land and also who are liberal to the people. When persons are found of that kind they generally have control of the lands as well as the people.[557]

The paramount chiefs inherited this mana from their ancestors through their immediate predecessors. At the Native Land Court hearing for Rangipō-waiū in April 1881, Te Keepa Taitoko Te Rangihiwinui (Major Kemp) said of his uncle, Hōri Kīngi Te Anaua:

> Hori Kingi was the principal chief of Whanganui. I am now. I inherited my chieftainship from my ancestors to myself. I have always exercised my authority over my people, and also over my land; – all the land of my people.[558]

The mana of Te Pēhi Tūroa I, whose prowess as a war leader over many decades enhanced his inherited mana, was described in the Native Land Court in February 1892 by Wīari Tūroa:

> The mana of my father extended all over this land . . . [it] extended over the whole of the Whanganui lands on both sides of the river.
>
> . . . . .
>
> My father had great mana, by birth right and he also had personal influence.
>
> . . . . .
>
> My father had a strong arm to defend these lands from all penalties.[559]

This kind of evidence, of which there are many instances in the documents supporting the evidence, reinforces Dr Head's analysis. The role of the great chiefs was to exercise authority over the people, to make decisions about them and their lands, and to defend them from all threats. They voiced decisions about war or peace with their neighbours; these decisions were usually made and announced at public meetings. Decisions were reached after debate among those chiefs, elders, and warriors within the group who had the recognised rank and authority to speak at such meetings. The rangatira expressed the consensus reached. His powers included those of gifting land to allies; settling outsiders on the

collective's land; initiating the stock-piling of food for feasts; or giving away resources, gifts, or land as rewards for services rendered. Even beyond their rohe, where they had decisive authority, rangatira could have great personal influence in the wider collective. In dictionaries of te reo Māori (the Māori language), both authority and influence are covered by the term mana.

In June 1849, Whanganui rangatira told Taylor that the signs of chieftainship were 'he whare whakairo, he kākahu tuitui, he mere pounamu' (a carved house, a woven cloak, and a greenstone mere).[560]

This was not just a frequently repeated truism: war nearly broke out over two large pieces of greenstone brought to Whanganui by a trader called Prophet in February 1845. Taylor recorded that the 'two tribes' – by which he meant the people of Pūtiki (Ngāti Ruakā, Ngāti Tūpoho, Ngāti Tūmango, and others) and the people of Waipākura (Te Patutokotoko) – 'are exceedingly jealous of each other having it.' They competed in offering exorbitant payment for one of the stones, but the trader would not sell. The Pūtiki people wanted Taylor to write to Wellington for two more greenstone boulders, saying: 'it is right my [Taylor's] chiefs also should have this token of authority and rank.' Eventually, one of the boulders was carried off forcibly by Te Pēhi Tūroa I and his son, Pākoro of Te Patutokotoko (they later offered to pay for it.) The settler Churton bought the other and presented it to Te Māwae of Pūtiki to assuage 'the other tribe' lest they 'should be inferior in not having this emblem of chieftainship.'[561]

Greenstone was an important symbol of authority and rank, but a carved house was the ultimate proof of it. Many times in the decades to follow, chiefs had a new carved house erected when they wanted to imbue with mana their new institutions of authority such as rūnanga, Māori parliaments, or the Whanganui Lands Trust. In such a way Te Paku-o-te-rangi was re-erected[562] and embellished at Pūtiki, 'court' houses were erected for rūnanga at various settlements up the river in the 1870s, and Huriwhenua was built at Rānana for Kemp's council in 1880. We discuss these developments in later chapters.

Such signs of chieftainship showed that a ruling rangatira was recognised as such; his community was willing to build, carve, and make such emblems to express the authority of their chief, manifesting at the same time the mana of the group.

2.5.5 Take whenua: rights to land and resources

In describing how rights to lands and resources worked before and after 1840, we refer to claimant evidence on their contemporary values and practices as well as to technical evidence about the past. This is because Whanganui tikanga and the associated community values continue to be practised into the present, however attenuated or modified by changing circumstances.

Before 1865 (when a new system for succession to land rights was introduced by the Native Land Court), the derivation and extent of rights to land or resources was complex. A web of ancestral rights could be passed on to chosen successors in the next generation by either men or women, individuals or whānau. However derived, such land and resource rights were not the absolute property of the inheriting individuals, but carried with them social and political obligations to the wider group, usually a hapū or community of hapū. The proprietory rights of hapū members, when they were ultimately derived from the hapū's ancestor through one of his or her descendants, were managed and defended by the hapū and its chiefs. But rights to land and resources also incurred spiritual, symbolic, material, and reciprocal duties towards the wider community.[563]

The most respected land rights derived from ancestral discovery followed by naming the desired parts of the land or the resources; these concepts were known as take taunaha (bespeaking the land) or tapatapa (naming the land). Discovery and naming needed to be followed by continuous occupation by descendants, expressed in the concept of ahi kā or ahi kā roa (burning fires or long-burning fires). Rights to land became increasingly validated the longer they were exercised.[564] To a large extent, they depended on the possession of current resident status within the hapū or community, and on continued use of the land over time. Long-term or permanent absence or abandonment by individuals caused land rights to lapse.

They could only be revived with the consent of the hapū or community and its leaders.[565]

It was a similar case for resources. Rights were established by the ancestral discoverers of or first claimants to a good place for an eel or lamprey weir and the first builders of such a weir, for example, or by the first ancestors to make clearings for cultivation. They could pass down these rights to their descendants, unless circumstances allowed the fires of occupation to die down – for example, if the protecting hapū were defeated in war or migrated long-term for some other reason to other homelands. Absence for two full generations meant the rights were still valid but had gone cold (ahikā matao).[566] The length of time it took for rights to lapse entirely was variously estimated at three to four generations.[567] But this was debated.[568] (After 1865, in matters of succession, the Native Land Court was to eliminate the ahi kā requirement, which meant that one way to limit the spread of rights according to tikanga was gone. The effects of this loss are discussed in chapter 11.)

Women had rights in land and resources equally with men. These rights could be inherited from ancestors, and confirmed through continuous occupation, or they could be through marriage or other gifts. Marriage gifts were made to ensure sufficient land and resources for a woman's children. A woman's husband who came to reside on his wife's land or used her resources had no share in the customary ownership of the land. Her rights would pass to her children or revert to the giver if the marriage ended without offspring. Women who moved away to another iwi's rohe, and whose children did not return to exercise rights on their mothers' lands, were often deemed to have lost their rights, usually, as stated, after three or four generations.[569]

Rights to land and resources could also derive from gifts given as utu (a return payment) to compensate other parties for damage or offence (such as adultery) and to ensure future peace. They could be given as inducements or payments to allies in war, or as rewards for services rendered.[570]

In addition, rights could derive from raupatu or conquest, although exchanges of land on this basis seem to have been relatively rare in the Whanganui district. Rights did not lapse when Māori left land voluntarily for some purpose, even if they stayed away for some generations. If the land remained unoccupied by other, non-kin groups, rights could be resumed. Alternatively, if the land had been occupied by non-kin, force could be used to renew an ancestral right which had been deemed to have lapsed through prolonged absence. Rights derived from take raupatu could also be challenged by customary owners, often through force but sometimes also by less lethal actions such as pulling up crops or burning houses. In Whanganui, take raupatu never gave such strong take (bases of claim) to the land as did take tupuna (ancestral right), which had priority over any other form of right, even ahi kā (rights through occupation).[571]

Many claimants spoke of layers of intersecting rights passing down through the generations: 'At certain points in time from the earliest ancestors, rights have been passed on to more recently formed hapu as the number of descendants increase in number.'[572] Successors to rights were often selected, and did not necessarily include all the descendants of the giver. For example, rights in an eel weir or particular plot of land could be left to one or two children out of a group of siblings or half-siblings.[573] But ancestry was never enough by itself as a take to land and resources. Similarly, occupation on its own, without any underlying take such as take tupuna, take tuku, or take raupatu, did not confer a customary right. Casual or temporary occupation without such an underlying and recognised basis of claim often occurred, and was described in terms such as 'he mahi noa iho', which implied squatting.[574]

Rights to resources such as waterways and fisheries were not always reliant on proprietory rights to adjacent land. People could have acknowledged rights in an eel weir, a bird-snaring tree, an eel cut or pond,[575] or other particular resources without belonging to the group acknowledged as owners of the surrounding land. Examples are the rights to take part in the tunariki (elvers) fishery at the mouth of the Ōhura River, or the kahawai fishery off the Whanganui estuary.[576] These rights may have been acquired by long-term, customary or permitted use through descent or whanaungatanga (kinship) with the groups living near the resource; by a marriage or

other gift; or as utu (compensation) for material or spiritual damage. The rights themselves might range from management and control, to a right to collect part of the harvest.[577]

As a result of the different ways of acquiring rights, individual, whānau, and hapū rights might be widely scattered from the mountains to the sea, and often overlapped areas also utilised by other groups. While the rights of hapū and their constituent whānau tended to be concentrated on lands recognised as those of the hapū – that is, in one area – they might also have rights derived from ancestry or reciprocal relationships far from the hapū's core territory – for example, in an inland forest for the purposes of bird-catching or rat-trapping, or in distant areas known for particular mud dyes, ochre, or medicinal plants. Rights were often not enclosed by lineal boundaries or in discrete areas of land.[578]

However, hapū – singly, or combined with other hapū that were close kin – usually oversaw land and resource rights in a particular area that was recognised as their territory. They were known as the kaitiaki of the area or resources. Ben Pōtaka of neighbouring hapū Ngāti Hinearo, Ngāti Tuera, and Ngāti Pāmoana explained how the kaitiaki role worked in the twentieth century:

> Fishing for our people was only ever about sustenance for our whanau and hapu and to manaaki manuhiri [exercise the required hospitality towards guests] on important occasions. We did not fish for recreational purposes or commercially. We were taught to exercise our kaitiaki role with respect for the Awa and the fisheries. We looked after the fishery resource and never over fished. My belief is that there was an intuitive management plan for our fisheries.[579]

Mr Pōtaka explained some of the rules of the kaitiaki role:

> We only took enough for a kai [meal] usually unless there was something on at our marae or we were going to a hui [meeting] elsewhere;
>
> We always protected the breeding stock. We would rotate our fishing areas to ensure that there was a balanced approach to the fishing; and,
>
> We fished by the maramataka [almanac] so that we were in harmony with the environment.[580]

These methods were demonstrated in the catching of kōura (freshwater crayfish), which were at one time very plentiful. But even these were taken only every second year to conserve the stocks, and retained only if a certain size. Females with eggs were put back.[581]

Ben Pōtaka explained how the sharing of resources between hapū along the Whanganui River worked. Mr Pōtaka reported that some hapū were specialist fishermen, who would share their catch more widely than just among their own hapū.

> We carried on the traditions and tikanga of our tupuna. Each hapu had their own fishing area on the Awa and if we wanted to fish in another hapu's area we would talk to them about it first. We could fish from all along the Awa because of the whanaungatanga links.[582]

Rangatira could make tuku (gifts) of land and resources, but it had to be done with the knowledge and consent of the people, if only by silent acquiescence. In Whanganui tikanga, deeds done in secret could never be valid. These gifts were not permanent alienations in the western legal sense; in customary tenure, chiefs did not have the authority to transfer an absolute right in perpetuity.[583] Tuku whenua or tuku taonga (gifts of land or [treasured] resources) were actually permissions granted to use certain lands or resources. They always carried with them the expectation that the recipient continued to have reciprocal obligations to the giver. These could be discharged by providing produce from the land or resource, or services such as support in war. If the land was abandoned by the recipient, it reverted to the giver. The tuku was always given with a specific purpose, reason, or intended use in mind. If the purpose, reason, or intended use of the land ceased, the land reverted to the donor.[584]

Importantly, there was no such concept as the

permanent alienation of land in customary land tenure generally. More importantly for present purposes, there was no such concept in Whanganui tikanga up to 1840, and for some time afterwards. It was generally inconceivable, but a total land exchange could occur if one group withdrew voluntarily and permanently from a region, perhaps in exchange for important gifts or as part of peacemaking. Alternatively, one group could conquer another and drive them away. But the conquest would need to be total. Any survivors of the vanquished group would need to have withdrawn permanently to other districts, and to have made no attempt to reclaim or even return to their ancestral lands. In any other situation, where some survivors remained and were tolerated by the 'conquerors', ancestral rights persisted. Intermarriage between the 'conquerors' and the defeated owners with ancestral rights meant that the descendants of the conquerors inherited ancestral rights.[585]

The concept of permanent alienation is discussed more extensively in relation to the Whanganui purchase (see chapter 7).

2.5.6 Tribal boundaries

It has been suggested that there were fixed boundaries between tribal interests before 1840. For example, Dr Head wrote: 'The naming and marking of land evolved over time into tribal territories, which could be expressed as a geographical area by the listing of boundaries.'[586]

While Dr Head agrees that tribal migrations and conquests redrew boundaries, she also writes of 'total tribal boundar[ies]' associated with the pre-contact era, and observes that land sales in the colonial period did not usually coincide with them.[587] But we think the situation in colonial times was more as described by the Crown when it submitted that 'Whanganui Maori recognised and accepted the need for boundaries and the inevitable compromises that this would require.'[588] In other words, Māori were pragmatic about some of the new concepts that colonisation brought.

Because of the degree of intermarriage and the numbers of hapū from mixed-iwi origins, we are also sceptical of accounts of rigid, permanent boundaries between major peoples or iwi such as Ngāti Maniapoto, Ngāti Tūwharetoa, the Whanganui collective, and others. For example, Steven Oliver told us of tribal boundaries separating Ngāti Maniapoto and Whanganui iwi. He noted that these boundaries were agreed at a tribal meeting in 1888, but fails to draw the conclusion that they were, in fact, political compromises made for the occasion.[589]

Most claimants did not assert that there had ever been rigid, permanent boundaries. If they did refer to boundaries, they acknowledged that the land within them was not owned exclusively by their group. For example, speaking of the major iwi of southern Taranaki, Ngāti Ruanui and Ngā Rauru, Tūrama Hāwira told us that:

> Over the generations, as the relative power of the neighbouring two tribes waxed and waned, the boundary between them varied between the Whenuakura and Patea rivers. Even to [the] present day this buffer zone lies between the rohe of Nga Rauru and Ngati Ruanui. There are also hapu who are recognized as belonging to both.[590]

We think that similar evidence presented to us by the different claimant groups shows that similar buffer zones – or cushioning zones where whanaungatanga eased relationships through hapū of mixed descent – existed between most major descent groups.[591]

Boundaries were renewed as political circumstances changed, and were often re-negotiated as the generations passed. We agree with Dr Young and Professor Belgrave that:

> Fixed boundaries are a recent development which emerged following contact as colonial authorities attempted to establish absolute boundaries for tribes as part of the process of individualizing Maori titles to land. The purpose was administrative convenience as Crown land purchase agents attempted to identify with whom they had to negotiate to acquire land. Boundaries did exist prior to contact but they were not fixed and were frequently renegotiated as circumstances and power relations changed.[592]

Of the boundary between Ngāti Hāua and Ngāti Maniapoto – which rangatira argued over during the Ōhura South, Rangitoto-Tūhua, and other block hearings in the Native Land Court – Dr Young and Professor Belgrave said:

> these boundaries, as customary boundaries, were political arrangements established at meetings, usually attended by all interested rangatira, and they had a purpose. They might be designed to prevent conflict, rebalance tribal power relations, or later, to protect land from acquisition by the Crown. They were flexible and subject to renegotiation, sometimes over generations.[593]

These authors argued that after Crown purchase or Native Land Court proceedings, tribal boundaries were divorced from their original context and purpose, and became a mechanism for inclusion or exclusion. The ebb and flow of whakapapa, and thus the network of rights and customary usages created by intermarriage across boundaries, was lost.[594]

Nevertheless, boundaries were agreed upon from time to time. They could range from the limits of a resource area, to the portion of a cultivation used by a particular whānau, to the extent of lands gifted to a particular child when a great rangatira divided his lands between competing offspring. They included the great political boundaries fixed or rearranged at times, especially in or after times of crisis such as war. Boundaries in these circumstances were a political tool, sometimes marked with pou (posts). Such boundaries retained their mana and legitimacy until consensus through a hui of rangatira, or the use of force, created a new arrangement.

2.6 Population Figures and Settlement Patterns, 1840–45

2.6.1 Population trends

About 1840, the European consensus was that Whanganui Māori numbered some 5,000. One count was as high as 5,600. But it was a consensus built on estimates of varying reliability. The counts were partial, the districts for counting purposes varied, settlements were omitted, entire river valleys were missed, temporary absentees were unaccounted for, and there were other variables.[595] Speculation as to how large the Whanganui population might have been in 1769 is of little value. The consensus of academics who study the problem is that the Māori population in the whole of New Zealand may have dropped by as much as two-thirds between 1769 and 1840, mainly as a result of epidemics of introduced diseases. Factors which played a lesser role were attrition in the increased warfare of the 1820s and 1830s, and deaths as a result of social and economic disruption following enforced migration in the same period.

Richard Taylor made the first relatively careful count in 32 named settlements of the Whanganui River valley in June and November 1843. His total was 3,243, but this count did not extend to Taumarunui, Ōhura, or Kākahi and other then remote areas. Nor did it include the Mangawhero/Whangaehu district. He counted the people of virtually the same areas again in 1846, arriving at a total of 3,240. This time there were still 32 settlements, but some were new, some had gone, while others had been renamed. In some cases in both counts various settlements had been combined under one name. Resident Magistrate Hamilton recorded the results of a census carried out from 1849 to 1851, which resulted in the figure of 3,374. Tūhua was included this time, but Hamilton himself considered the figures reflected under-counting, as only the principal settlements had been visited.[596]

If it is assumed that the estimates of just over 5,000 in 1840 were more or less correct, and the 3,000–4,000 indicated by early censuses from 1843–1851 were more nearly correct, at least for the areas counted, then either there is an observable drop in population in just three to eight years, or severe under-counting.

Both are speculative but both are likely. Given national trends, it is quite likely that the figures show an ongoing decrease in population that began with European contact. But an apparently severe decrease in the 1840s is more likely to reflect the contemporary difficulties of communication and shifting populations, although contributing factors may be the war of 1847 and the Whanganui

Purchase of 1848. The overwhelming cause of a gradual decrease would be epidemics of diseases from the late eighteenth century. These were spread either by visiting Europeans, by Māori visiting other countries, or by Māori travelling to other districts from areas of contact. To diseases such as measles or influenza, Māori had no natural immunity. There was also the unidentified illnesses known as ngerengere (a form of leprosy) or rewharewha, recorded in many Māori communities. Rewharewha may have referred to a respiratory disease such as influenza.[597]

No one can be blamed for these epidemics. The science of contagion was rudimentary in the nineteenth century. Most people, including governments across the world, knew nothing of how most such diseases were spread.[598] Māori could have been protected from these epidemics only by total and permanent isolation. But apart from European visitors to New Zealand from 1769 onwards, in the same period Māori themselves began choosing to travel the world via foreign vessels. Most returned home, potentially carrying communicable diseases with them.

Migration and/or attrition in warfare also contributed to population decrease, but to a much lesser extent. For example, Ngāti Rangatahi and Ngāti Hāua, under Te Mamaku and others, migrated to the Kapiti coast and the Hutt in the 1820s – although many of these migrants later returned and often established new settlements.[599] Ngāti Raukawa killed people in the Manganui-a-te-ao area and in the upper Rangitīkei district, but the numbers people could recall later were usually relatively small.[600]

Attacks on Pūtiki-wharanui and Taumatakaroro by Tūwhare, Te Rauparaha, and their allies in the 1820s undoubtedly produced numerous casualties – possibly hundreds, but not thousands.[601] Other deaths may not have been mentioned or may have resulted from wounds or privation after these attacks. If as many as 750 to 1,000 died from all causes in the wars of the 1820s to 1840s, it is unlikely that they would have come close to the numbers who died from the late eighteenth century in epidemics of newly introduced diseases.

In chapter 6, we discuss a poisoning episode in which settlers left rat poison mixed with flour to be consumed by the taua of 1847. Several claimants have referred to this, and one has asserted that 'thousands' of Whanganui Māori died as a result.[602] We share the abhorrence of Churton, Taylor, and the claimants at this incident, and the settler attitudes that made it possible. But we do not think that 'thousands' were killed by this poison, nor do we consider that 'widespread death' among Whanganui Māori resulted. It is possible that two Māori died, or that they and others were made ill.

We share Mr Stirling's view that if many – or even any – had died, it would have been widely reported by Taylor and other missionaries present at the time, by Pūtiki or other Whanganui Māori leaders, by the taua, or by the police magistrate at Whanganui. Any deaths, and even any suspicion of deaths resulting from poison, would have been documented.[603] Missionaries and Government agents reporting to Resident Magistrate Hamilton were counting the Whanganui Māori population between 1847 and 1851, as discussed above. They would have reported the loss of thousands and searched for a cause. But they did not. This incident, abhorrent as it was, did not contribute to population loss.

2.6.2 Settlement patterns

Settlement patterns were shifting during the late 1830s and early 1840s, affecting population counts in different settlements. As we have seen, there was considerable internal migration in the same period: for example, in times of war people left the Manganui-a-te-ao and Mangawhero Rivers for places of shelter on the Whanganui River, such as Pukehika or Parikino, mostly on the west or Taranaki side. When EJ Wakefield travelled up the Manganui-a-te-ao River on his way to Taupō in 1841, the first settlement he came across was Moeawatea, about two miles upriver. He saw the sites of many more settlements and pā, but was told that they had mostly been abandoned and the inhabitants had migrated to the Whanganui River valley.[604] At Hikurangi (later called Karatia), on the right bank upriver from Operiki, Wakefield reported extensive cultivations on the tablelands above the pā. By January 1842, they too had been temporarily abandoned by the inhabitants for fear of the Taupō taua.[605]

Variations in the population at various pā or places of

shelter can be partly explained by people returning home from such refuges. As peace was re-established, people would also spread out from pā to live near their cultivations in little hamlets on the river terraces. Missionaries often remarked on these observed changes.[606]

Another cause of internal migration was the arrival and spread of Christianity and literacy. People flocked from upriver locations to Pūtiki, Operiki, and other places where churches were erected. Communities of Christian converts sometimes split off from their old settlements and established new ones where they could practise their new religion in peace. Taylor, in a journal entry dated 23 July 1844, noted the case of a group of Māori who chose to leave Tunuhaere for a new settlement where missionary rules could be followed.[607] Pūtiki and other places in the lower reaches were increasingly valued because they gave access to exotic trade. Once European settlement commenced, the settlers provided markets for Māori-produced commodities such as horticultural produce including wheat, maize, and potatoes, flax, firewood, timber, pork, and fish.[608]

2.7 Concluding Reflection

Crown officials, Crown departments and agencies, and local bodies seek certainty. They need accepted, mandated tribal entitities with whom to negotiate and settle. But this chapter shows that, from the early nineteenth century, Whanganui Māori lived with constantly re-forming and re-locating communities, porous boundaries, fluid identities, and changing settlement patterns. Many communities and identities continued to shift into the twentieth century, with consequences still felt in the twenty-first century.

Intermarriage over generations up and down the river, and across the inquiry district, means that most Māori can now whakapapa to multiple descent groups in the Whanganui inquiry district and beyond. When individuals appear as claimants in different groups and under different Wai numbers, they are not 'double-dipping'; they are expressing their multiple lines of descent. Attempts to restrict Māori identity in the interests of administrative efficiency are misguided at best. Depending on the extent to which they are enforced, they are also incompatible with the Treaty principle of active protection and the Treaty guarantee of tino rangatiratanga. Tūrama Hāwira explained:

> As a father of eleven and the koro [grandfather] of six mokopuna I am not prepared for them to suffer the indignity of having to divide their 'rau kotahi' – multiplicity of identity. Crown processes of engagement often result in the dilemma that I refer to as 'King Solomon's Syndrome' whereby, in order to conform, boundaries are drawn like lines in the sand instead of recognising that . . . boundaries are carried in the bloodlines of the uri.[609]

Māori communities, old or re-formed, build on the traditions of the past. Māori people cannot abandon them. They have to reconcile their membership and their leadership to adapted conditions and situations, and to develop the kind of institutions that governments can deal and settle with. Whanganui Māori need time and space to achieve all this while retaining their Whanganuitanga – their essential identity and tikanga – through the exercise of tino rangatiratanga. As the *Tāmaki Makaurau Settlement Process Report* said:

> Article 11 [of the Treaty] guarantees te tino rangatiratanga . . . By that guarantee, the Crown recognised and confirmed Māori relationships and property that were in existence when the Treaty was signed. Confirmation of te tino rangatiratanga is about the maintenance of relationships . . . Whanaungatanga was therefore a value deeply embedded in the maintenance of rangatiratanga. It encompassed the myriad connections, obligations and privileges that were expressed in and through blood ties.[610]

Notes

1. Submission 3.4.10, p 3
2. Submission 3.3.56, p 4
3. The town, now city, of Whanganui was often spelt 'Wanganui'; this spelling probably derives from the mita (dialect) of Whanganui, which

tends to elide the 'h'. The most recent decision of the New Zealand Geographic Board allows either spelling for the city.

4. The 30-kilometre coastal part of the district stretches from the Ōkehu Stream to the Whangaehu estuary. It includes the area purchased in 1848.

5. Waiōuru and Tūrangarere themselves are just outside the eastern boundary.

6. The parent blocks inside the north-western boundary are, from south to north, the Kaitangiwhenua, Kaitīeke, Mangaotuku, and Mangaere blocks.

7. The mountains themselves fall mainly within the National Park inquiry district.

8. Timber milling began in the late nineteenth century but was not at its peak until the early twentieth century: doc A36 (Marr), p 122.

9. Ibid, pp 19–20

10. Ibid, p 20

11. Ibid, p 19. Wild kōwhai still flower profusely on the cliffs of State Highway 4.

12. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999)

13. In her memorandum of 13 March 2007, Judge Wainwright directed that all parties should draw a distinction between the Whanganui River system and other waterways; that no claims of Te Ātihaunui-a-Pāpārangi to the waterways comprising the Whanganui River system would be inquired into, since they have already been comprehensively reported on; that claims of groups not identifying as Te Ātihaunui-a-Pāpārangi, but nevertheless claiming mana in waterways comprising part of the Whanganui River system, and saying that they were prejudiced by the Crown's breaches identified in the *Whanganui River Report*, would be heard; that such claimants would need to lead evidence of their relationship with the river system, make submissions as to which breaches of the Crown affected them, and how, and lead evidence showing how and to what extent they have been prejudiced. Questions concerning other waterways were to be inserted in the statement of issues: memorandum 2.3.46, pp 6–7. Waterways have not been identified by the claimants as one of the priority issues for the purposes of the present report.

14. Document A104 (Doig), p 333

15. To many claimants, in cultural terms, the tributaries flowing from Ruapehu are regarded as the source of the Whanganui River: Waitangi Tribunal, *The Whanganui River Report*, p 76.

16. Document A104 (Doig), p 333; *Wises New Zealand Guide: A Gazetteer of New Zealand*, 8th ed (Auckland: Wises Publications, 1987), p 459

17. Document A104 (Doig), p 333

18. Memorandum 3.1.298, pp 4–10

19. Te Horangapai was the site of a tūāhu, and was an important pre-1840 peace-making site, discussed below.

20. Maraekōwhai, a kāinga, was to be the site of Te Kere Ngātaierua's flour mill in the 1860s and his war with Te Mamaku; a niu pole called Rongoniu was erected there in 1862. Hatrick & Co's houseboat was moored opposite Maraekōwhai: Arthur P Bates, *A Pictorial History of the Wanganui River* (Wanganui: Wanganui Newspapers, 1985), pp 120–127. The peace pou Riri-kore was also erected near there: Thomas W Downes, *History of and Guide to the Wanganui River*, 2nd ed (Wanganui: Wanganui Herald Newspaper Company, 1923), pp 20–21, 25–26.

21. Arthur P Bates and Phil Thomsen, eds, *Whanganui River Memories: Being a Selection of True Stories from the Whanganui River Area from the Archives of The Friends of the Whanganui River* (Auckland: Heritage Press Limited, 1999), p 9

22. *Wises New Zealand Guide*, p 459

23. Document A36 (Marr), pp 22–23

24. Ibid, p 33

25. Edward Jerningham Wakefield, *Adventure in New Zealand, from 1839 to 1844: With Some Account of the Beginning of the British Colonization of the Islands*, 2 vols (London: John Murray, Albemarle Street, 1845), vol 1, pp 381, 386. See also doc A36 (Marr), p 32; doc A65 (Stirling), p 30; David Young, *Woven By Water: Histories from the Whanganui River* (Wellington: Huia Publishers, 1998), p 18.

26. Janet Davidson, *The Prehistory of New Zealand* (Auckland: Longman Paul, 1984), pp 39, 128

27. For a full list, see memorandum 3.1.298, pp 11–15.

28. Whakapapa Island is known to some claimants as Moutere or Ōruarangi.

29. At least part of the flow of these streams has been diverted to the intake for the western diversion of the Tongariro Power Development Scheme: see doc A158 (Alexander), pp 48, 57–58, 70.

30. Wakefield, *Adventure in New Zealand*, vol 2, p 15

31. Document L20 (Severne), p 3. Before the arrival of Christianity in New Zealand, and sometimes after it, human remains were buried in caves near this lake. The site was very tapu. The caves eventually collapsed after an eruption.

32. Wakefield, *Adventure in New Zealand*, vol 2, p 123

33. Document A36 (Marr), p 14

34. The waters of at least 22 streams were diverted into the eastern diversion of the Tongariro Power Development Scheme: doc A162 (Bioresearches), p 66.

35. Document L10 (Māreikura) p 5; doc L16 (Wilson), p 9; doc L13 (Hāwira), p 4. Ferdinand von Hochstetter was told of the Whangaehu's milky appearance and astringent taste in 1859: Ferdinand von Hochstetter, *New Zealand: Its Physical Geography Geology and Natural History with Special Reference to the Results of Government Expeditions in the Provinces of Auckland and Nelson*, trans. Edward Sauter (Stuttgart: J G Cotta, 1867), p 379. Hochstetter was in the area in 1859.

36. Document L13 (Hāwira), pp 4–5

37. Document L20 (Severne), pp 5, 9–10, 14–15

38. Document A162 (Bioresearches), pp 64–66. Owing to the diversion of 100 per cent of the flow of many tributary streams the sulphuric content and toxic effects of lahar are less diluted than formerly: doc A126 (Bioresearches), p 66.

39. Document L20 (Severne), pp 10–11; doc A162 (Donovan), p 65

40. Document A36 (Marr), p 17

41. Document L5 (Wilson), p 17; doc L10 (Māreikura), p 5

42. Document L13 (Hāwira), p 6. The reduced water flow results from the downstream effects of the eastern diversion of the Tongariro Power Development Scheme.
43. Young, *Woven By Water*, p 1; doc A36 (Marr), p 13. The wetland was reclaimed by the council and turned into a rubbish dump; a small section is being restored with the assistance of the kura at Kokohuia. See doc D40 (Waitai), p 12.
44. Document A36 (Marr), p 112. The wetland was acquired by the Crown in spite of petitions of protest. It has been made into a scenic reserve managed by the Department of Conservation.
45. Document L10 (Māreikura), pp 6–7
46. Document L13 (Hāwira), p 7; doc L24 (Wilson), pp 21–22
47. Document A129(a) (Young supporting documents), sec 6, no 5, p 15; sec 7, no 1, p 8; doc B30 (Hāwira), pp 25–26
48. Document A36 (Marr), p 26
49. Document A158 (Alexander), pp 109–110; submission 3.3.68, p 37. The lake was on Ōhura South A4, and was probably drained after 1908 by the Taringamutu Totara Company to facilitate its logging tramway. The area is now farmland.
50. Document I5 (Tūwhāngai), p 22
51. See, for example, doc B2 (McRitchie), p 3; doc B3 (Ashford), p 6; doc B7 (Rzoska), p 16; doc D40 (Waitai), p 12; doc D42 (Hāwira), pp 17–18; doc L13 (Hāwira), pp 8–9.
52. Document A36 (Marr), pp 8–13
53. Ibid, p 11
54. Ibid
55. Ibid, pp 12–13
56. Document A129 (Young), p 42
57. Examples are found in doc B1 (Clarke), pp 18, 35; doc B7 (Rzoska) pp 5, 10–11; doc B33 (Mathews), pp 7–8; doc C1 (Pōtaka-Osborne), p 3; doc D6 (Piripi), p 7; doc D34 (Smith) p 5; doc K3 (Te Awhitu), pp 3–4; doc K4 (Fox), p 6.
58. As examples, the pages of wāhi tapu described to us as important to Ngāti Manunui (doc A115 (Ahikaa Research Ltd), pp 40–50), and the wāhi tapu on the map provided by John Rēweti for Ngāti Waewae (doc D24(a) (Rēweti)), the wāhi tapu shown on the map provided by Ngāti Hikairo ki Tongariro (doc A116(d) (Pākau)), the lists of wāhi tapu and other significant sites provided by Ken Clarke of Ngā Paerangi (doc B1 (Clarke), pp 12–36, 55). Lists and descriptions were provided by nearly every claimant group. Concerning the repression of information, see doc E3 (Taurerewa), pp 11–12.
59. Document A104 (Doig), pp 333–334
60. Document A129 (Young), p 15. The Tribunal's translation.
61. Ibid, pp 15–16
62. Waitangi Tribunal, *The Whanganui River Report*, p 76. The source for this version was John Tahupārae. Another popular account in many sources suggests that the mountain, Taranaki, formed the gorge of the Whanganui River when he left Pīhanga, the female mountain ancestor, to Tongariro, and departed to his present location. Among the many variants of this account is that of Ngāti Manunui of 'Te Wera o Tongariro' (their name for the Whanganui River): see doc A115 (Ahikaa Research Ltd), p 34.
63. Richard Taylor, *Te Ika a Maui, or New Zealand and its Inhabitants, Illustrating the Origin, Manners, Customs, Mythology, Religion, Rites, Songs, Proverbs, Fables, and Language of the Natives* (London: Wertheim and MacIntosh, 1855), p 146. 'Ruauoko' was probably a misprint for Ruamoko, the god of earthquakes.
64. Document B1 (Clarke), p 10
65. Document B38 (Waitokia), p 4
66. Document B54 (Tapa), p 15
67. Document C19 (Baker and Tyson-Rāmeka), p 3
68. John Carne Bidwill, *Rambles in New Zealand* (1841; repr Christchurch: Capper Press, 1974), pp 48–49, 57–58; Ernst Dieffenbach, *Travels in New Zealand: with Contributions to the Geography, Botany, and Natural History of that Country*, 2 vols (1843; repr Christchurch: Capper Press, 1974), vol 1, pp 345, 347; Hochstetter, *New Zealand*, pp 371–373; George French Angas, *Savage Life and Scenes in Australia and New Zealand: Being an Artist's Impression of Countries and People at the Antipodes, with Numerous Illustrations*, 2 vols (London: Smith, Elder, and Co, 1847), vol 2, pp 112–113; Wakefield, *Adventure in New Zealand*, vol 1, p 465, vol 2, pp 112–113
69. Document A65(l) (Stirling supporting documents), p 4292
70. Hochstetter, *New Zealand*, pp 363, 366–367
71. Document L7 (Waho), p 7; doc L13 (Hāwira), p 4
72. Document A116 (Ahikaa Research Ltd), p 37; doc A115 (Ahikaa Research Ltd), p 35
73. Document A113 (Head), p 8
74. Ibid, p 9
75. Ibid, pp 8, 17–19, 29–31; transcript 4.1.17, pp 40–41
76. Document A104 (Doig), pp 353–354
77. Document A129 (Young), p 12
78. Anne Salmond, *Hui: A Study of Māori Ceremonial Gatherings* (Wellington: A H and A W Reed, 1975), p 187; Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia, 2003), p 149
79. Taylor, *Te Ika a Maui*, p 53
80. Document A113 (Head), pp 17, 19, 20
81. Ibid, p 20. Head used this instance to show that respect for tapu was waning, but the incident as she recounted it demonstrated that several Māori in the party besides Te Rangihiwinui still believed in the power of tapu; they predicted (correctly) that a storm would follow the desecration of the rock.
82. Thomas W Downes, *Old Whanganui* (1915; repr Christchurch: Capper Press, 1976), pp 102–104
83. Document A113 (Head), p 24
84. Taylor, *Te Ika a Maui*, pp 289, 357, 358
85. Document A65(l) (Stirling supporting documents), p 4572
86. Taylor, *Te Ika a Maui*, p 54
87. An 1874 article in *Te Waka Maori o Niu Tirani* described how Tiki descended from the upper heavens and fashioned a wife for himself out of the clay of the earth: doc A129(a) (Young supporting documents), sec 2, no 5.
88. Document A129(a) (Young supporting documents), sec 9, no 1, p 24
89. 'Tangata whenua' in this context means groups living in Aotearoa

before the arrival of the Aotea, Tainui, Kurahaupō, and other famous canoes.

90. Document K11 (Hikaia), app KA01, pp 1–2

91. Document A108 (Young and Belgrave), p 11

92. Document N1 (Burrows), p 15; doc A42 (Oliver), p 7

93. Document E3 (Taurerewa), app D, fig 3 shows Ruatupua as the ancestor of Tamatuna, parent of Tamahaki. See also doc F11 (Hāwira), p 3. The connection to Ngāti Maru was queried by counsel for Wai 1072, 1073, 1189, 1191, and 1197 (memorandum 3.2.226), but responded to in document F11(a) (Hāwira).

94. Document D42 (Hāwira), p 4

95. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 9, 64. For a line of descent from Ruatipua to Te Hā II, parent of Taiwiri, mother of Rangituhia and his siblings (Ngāti Rangi), see doc E14 (Whitu), p 4; doc A152 (Hemara, Cribb, Haitana, and Gilbert), p 96.

96. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 6; doc A108 (Young and Belgrave), p 12

97. This is the conclusion reached by Robert Batley in his article: see Robert A L Batley, 'Ngati Rangi: Whiro's Family at Murimotu, North Island, New Zealand', *Journal of the Polynesian Society*, vol 82, no 4 (December 1973), p 353. Batley spent much of his life researching the whakapapa of the central North Island.

98. Document A129 (Young), pp 6, 7, 13–15, 18, 21, 79, 85, 88, 100, 118, 125, 128; doc A130 (Shenton), p 4; doc B30 (Hāwira), pp 9, 11–12, 14; doc B32 (Hāwira), p 3; doc B52 (Ngāti Hineoneone supporting documents), p 2; doc C5 (Harrison), p 4; claim 1.2.3(b), pp 3–4; doc A129(a) (Young supporting documents), sec 6, no 1, p 1. For the descent of Ngā Wairiki including Ngā Ariki, and for information on their marae, see Waitangi Tribunal, *Report on Aspects of the Wai 655 Claim* (Wellington: Legislation Direct, 2009), pp 7–8.

99. Document E5 (Hāwira), p 2; doc E14 (Whitu), pp 5–6; doc D42 (Hāwira), p 4

100. Quoted in document A130 (Shenton), p 4. Counsel for Uenuku have challenged the importance of Paerangi as an ancestor for the whole river, especially for the central cluster: memorandum 3.2.417, para 22A. However, apart from the testimony of claimants reviewed in this section, descent lines from Paerangi are included in White's *Ancient History of the Maori*, in Ruka Broughton's thesis on the origins of Ngaa Rauru Kiitahi, and in many other sources. One of White's informants was Hoani Meihana Te Rangiotū, who demonstrated that there were descendants of Paerangi not just among the Whanganui iwi, but also among Rangitāne and Muaūpoko in Manawatū, Wairarapa, and Horowhenua. See John White, *The Ancient History of the Maori, His Mythology and Traditions: Tai-Nui* (Wellington: Government Printer, 1890), vol 6, pp 228–231 and doc A129(a) (Young supporting documents), sec 9, no 1, p 62

101. Document B1 (Clarke), p 10

102. Document 129(a) (Young supporting documents), sec 4, no 2

103. Document B30 (Hāwira), p 6

104. Document A129(a) (Young supporting documents), sec 7, no 1, p 1. In his thesis on the origins of Ngā Rauru, Ruka Broughton discusses Te Kāhui Rere as ancestral to Ngā Rauru and Ngā Ariki of southern Taranaki, established as an iwi before the arrival of the Aotea waka: doc A129(a) (Young supporting documents), sec 9, no 1, pp 18–24.

105. Document B1 (Clarke), p 10

106. Document B30 (Hāwira), pp 5–6

107. An old proverb reproduced in 1926 in issue 63 of *Te Toa Takitini*. The translation given is: 'The descendants of Hau-nui-a-Papa-rangi who contrived to conquer the length and breath [*sic*] of Hawaiki.' See doc A129(a) (Young supporting documents), sec 2, no 14.

108. Document A129 (Young), p 22; Waitangi Tribunal, *The Whanganui River Report*, p 30

109. Document D42 (Hāwira), p 4. In this whakapapa Turi is a descendant of Rauru and Toitehuatahi, suggesting a tangata whenua origin for both lines.

110. Evidence of Uru te Angina re Rangitatau (Waitōtara) in Whanganui Native Land Court, minute book 2, 19 February 1879, fol 278.

111. Document A129 (Young), pp 21–22; doc A104 (Doig) p 338

112. S Percy Smith, 'History and Traditions of the Taranaki Coast: Ch XII. Tu-whare and Te Rau-paraha's Expedition', *Journal of the Polynesian Society*, vol 18, no 1 (1909), p 37; see also the Native Land Court evidence of Pauro Tūtawha and Rini Hemoata re the Parapara block: Whanganui Native Land Court, minute book 3, 2 September 1881, fols 380, 382. It seems clear these two were referring to Ngāti Hau of Hiruhārama, their place of residence.

113. Downes, *Old Whanganui*, p 163

114. Whanganui Native Land Court, minute book 1E, 10 July 1878, fol 647

115. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 881

116. For example, Arthur S Thomson, *The Story of New Zealand: Past and Present, Savage and Civilised*, 2 vols (London: John Murray, 1859), vol 1, p 91. However, officials in the 1870s regarded 'Ngati Haunui' or 'Hauapaparangi' as a hapu of Ngā Poutama or Whanganui residing at Te Taniwha, near Karatia, also known as Hikurangi; Ngāti Hau was the hapū at Hiruhārama: 'Approximate Census of the Maori Population', 1 June 1974, AJHR, 1874, G-7, p 16; 'Census of the Maori Population, 1878', AJHR, 1878, G-2, p 19; 'Census of the Maori Population, 1881', AJHR, 1881, G-3, p 17. In the notes for the census for 1878, 'Ngati Haunui-a-paparangi' was listed as the tribe at Pīpīriki, whose hapū was Ngāti Hinepuke, as the tribe at Hiruhārama, whose hapū was Ngāti Hau, and as the hapū at Te Taniwha, whose tribe was 'Ngapoutama': 'Notes for Maori Census, 1878', March 1874, AEDK 18743/1/2, Archives New Zealand, Wellington.

117. Document A104 (Doig), p 333

118. Document B18 (Clarke), p 6

119. Morvin T Simon, *Taku Whare E . . . My Home My Heart: He Mauri Tu the Spirit Dwells Still*, 2 vols (Whanganui: Wanganui Regional Community College, 1986), vol 1, p 86

120. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 6

121. Waitangi Tribunal, *The Whanganui River Report*, p 30

122. The meaning is 'Tamaūpoko, the foundation of the house'. It

appeared in an issue of *Te Waka Maori o Niu Tirani* on 24 December 1872. See also doc A129(a) (Young supporting documents), sec 2, no 4.

123. Hinengākau was the elder sister of two brothers, Tamaūpoko and Tūpoho, the children of Ruakā (the eponymous ancestor of Ngāti Ruakā) and her husband, Tamakehu.

124. Waitangi Tribunal, *The Whanganui River Report*, p 31

125. Ibid, pp 4, 195, 199–200

126. Document A129(a) (Young supporting documents), sec 7, no 2, p 11

127. Document C17 (Taiaroa), pp 6–7

128. Whanganui River Trust Board Act 1988, s 4(2)

129. Document A133 (McBurney), pp 40, 54

130. The Whanganui River Tribunal felt that Tamahaki was sufficiently covered by this formula and by their various lateral kin connections to the three river ancestors; it did not consider the position of any other iwi groups: Waitangi Tribunal, *The Whanganui River Report*, p 11.

131. Waitangi Tribunal, *The Whanganui River Report*, p 10

132. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 6–7

133. Memorandum 3.2.417, para 22(B)

134. Document A133 (McBurney), pp 158–160; doc C17 (Taiaroa), pp 5–6, 20–21

135. Waitangi Tribunal, *The Whanganui River Report*, pp 10–13, 30

136. Joan Metge, *The Maoris of New Zealand* (London: Routledge & Kegan Paul Ltd, 1967), p 6

137. Document N1 (Burrows), p 9

138. Document L24 (Wilson), p 34

139. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 49

140. Quoted in document A108 (Young and Belgrave), p 46

141. Document I5 (Tūwhāngai), app A

142. This is not the Taranaki group with interests in Taumatamāhoe mentioned above.

143. Ihingārangi was a sibling of Maniapoto: doc I5 (Tūwhāngai), app A.

144. Document I5 (Tūwhāngai), pp 6–7, app A

145. Ibid; doc A114 (Young and Belgrave), pp 23–24

146. Document I5 (Tūwhāngai), pp 9–10, app A; doc A114 (Young and Belgrave), p 31

147. Document I5 (Tūwhāngai), pp 10–13, app A; doc A114 (Young and Belgrave), p 33

148. Document A114 (Young and Belgrave), p 33. This probably occurred in the course of Te Rauparaha's recruiting trip, during which he attempted to persuade various groups to accompany him south: see Steven Oliver, 'Te Rauparaha', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Bridget Williams Books Ltd and the Department of Internal Affairs, 1990), p 506.

149. Document J6 (Herbert), p 8; doc A114 (Young and Belgrave), p 33

150. Document A108 (Young and Belgrave), pp 24, 33

151. Document A114 (Young and Belgrave), pp 33–34, 36–37, 42 (Ngāti 'Ronganui' is Ngāti Rongonui); Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 41.

152. Document A114 (Young and Belgrave), pp 40–42

153. The whakataukī above refers to the ability of the Whanganui people to resist enemies indefinitely in their wāhi pari, their cliff pā retreats. Richard Taylor's explanation was that it was a simile drawn from the crayfish, which 'though the legs may be pulled off, escapes amongst the stones; so the Whanganui natives cannot be taken': Taylor, *Te Ika a Maui*, p 146.

154. Taylor, *Te Ika a Maui*, p 324

155. Document A129 (Young), pp 66–67; Downes, *Old Whanganui*, pp 122–124

156. A T Ngata, *Ngā Mōteatea: The Songs*, trans Pei Te Hurinui Jones, 4 vols (Auckland: Auckland University Press, 2005), vol 3, pp 569, 571; doc A129 (Young), p 68; Downes, *Old Whanganui*, pp 126–128

157. Taylor, *Te Ika a Maui*, p 325

158. Ibid

159. Document A130 (Shenton), pp 2–3; Downes, *Old Whanganui*, pp 146–147; doc A129 (Young), pp 71–72. The two latter sources mistakenly say Pūtiki-wharanui was the pā attacked.

160. Downes, *Old Whanganui*, pp 146–147

161. Taylor, *Te Ika a Maui*, p 326

162. Waitangi Tribunal, *Te Whanganui-a-Tara Report*, p 29

163. Downes, *Old Whanganui*, pp 167–168

164. Document A130 (Shenton), pp 9–11

165. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 335–336; doc A40 (Ballara), pp 372–373

166. Ngata, *Ngā Mōteatea*, vol 1, p 299

167. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 48, 53

168. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 206, 215, 224, 254, 261, 268, 273

169. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 38–39

170. John Te H Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Auckland: Reed Books, 1959), pp 256, 258, 260; doc A152 (Hemara, Cribb, Haitana, and Gilbert), p 39

171. Downes, *Old Whanganui*, pp 130–132; doc A40 (Ballara), p 385

172. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 40–43, 45, 48

173. Document A48 (Bayley), pp 21–22

174. Rēnata Kawepō began sheep-farming efforts in Murimotu about 1862. We discuss these developments in chapter 12.

175. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app B, p 186

176. Ibid, app A, p 259

177. Under the headings of Te Patutokotoko and Ngāti Ruakā

178. Grace, *Tuwharetoa*, pp 360–365

179. This defeat may have been by Ngāti Raukawa at Te Kūititanga in 1839: Grace, *Tuwharetoa*, pp 356–359.

180. Document A65(j) (Stirling supporting documents), pp 3111–3112

181. Ibid, pp 3112–3113

182. Wakefield, *Adventure in New Zealand*, vol 1, pp 460–466

183. Document A65(j) (Stirling supporting documents), p 3113

184. Wakefield, *Adventure in New Zealand*, vol 2, p 13; doc A65(l) (Stirling supporting documents), p 4305

185. Wakefield, *Adventure in New Zealand*, vol 2, p 83. Wakefield regarded the inhabitants as related to Ngāti Ruanui. This could have applied to any of the lower river groups.
186. Document A65(l) (Stirling supporting documents), pp 4289, 4298
187. Document A65 (Stirling), pp 276–281; doc A65(j) (Stirling supporting documents), p 3114
188. Document A65 (Stirling), pp 281–286
189. Document C13 (Tinirau), p 3
190. Document E5 (Hāwira), p 2
191. Document A108 (Young and Belgrave), pp 12–14; doc K11 (Hikaia), pp 5–6, 11
192. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 224
193. Document C5 (Harrison), p 5. 'Tuera' was often written 'Tuwhera', but Ngāti Tuera have chosen the given spelling.
194. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 817
195. No claims were presented to the Tribunal in the name of Ngāti Ruakā but they are represented in Wai 167, under the mantle of the Whanganui River Māori Trust Board: doc C11 (Puketapu), p 4.
196. Document A129(a) (Young supporting documents), sec 6, no 12, p 9
197. Document A129 (Young), p 83
198. Ibid, pp 61–63, 87
199. Ibid, pp 84–85
200. Document A65 (Stirling), p 205
201. Ibid, p 204 n 563
202. Document A130 (Shenton), p 5; doc C5 (Harrison), pp 2–4; doc A129 (Young), p 82
203. Document A129 (Young), pp 84–87
204. Ibid, p 62
205. Document A130 (Shenton), pp 4, 6
206. Document A65(k) (Stirling supporting documents), pp 3901a, 3913a-3914a
207. Simon, *Taku Whare E*, vol 2, pp 15, 17, 50; doc N12 (Tamakehu), p 12
208. Document B1 (Clarke), p 10. This proverb refers to the extent of Ngā Paerangi territory, which stretches far inland from the sea.
209. Document B1 (Clarke), pp 7–9
210. Document A129 (Young), p 101
211. Document B1 (Clarke), pp 11–12, 14; doc A68 (Walzl), pp 49, 50; doc A140 (Southern Whanganui Cluster mapbook), pl 26, 27, 28
212. Document A65 (Stirling), pp 78, 81, 210, 233, 538–539; doc A100 (Macky), p 152
213. Document A129 (Young), p 86; doc A129(a) (Young supporting documents), sec 3, no 2; doc A68 (Walzl), p 66; doc A65(l) (Stirling supporting documents), p 4466
214. Submission 3.3.113, pp 4–5; doc A65 (Stirling), pp 200, 204; doc A129 (Young), pp 60–61
215. Document B1 (Clarke), pp 12–14, 22–36
216. Ibid, pp 20–21
217. Ibid, pp 12–15
218. Ibid, p 24; doc B19 (Ratana), p 4; Simon, *Taku Whare E*, vol 2, p 16
219. Other versions of 'Tuera' are 'Tuhera', 'Tuwera', and 'Tuwhera'; the hapū was sometimes recorded in these ways in the land court and in official documents: see, for example, 'Census of the Maori Population, 1878', AJHR, 1878, G-2, p 19; Waitangi Tribunal, *The Whanganui River Report*, p 213; doc A68 (Walzl), p 91.
220. Document C6 (Osborne), pp 3–6
221. Document C5 (Harrison), p 5; doc B30 (Hāwira), p 11
222. Document B7 (Rzoska), app A
223. Document C5 (Harrison), p 5
224. This pā belonged to Ngāti Hinearo and Ngā Poutama, but Ngāti Ruakā and Ngāti Tuera were also living there: see Whanganui Native Land Court, minute book 24, 15 March 1895, fol 16.
225. Document C6 (Osborne), pp 3, 5
226. Document D44 (Hāwira), p 15
227. Document D44 (Hāwira), p 6; doc D35 (Te Ngāruru), p 2
228. Document D35 (Te Ngāruru), pp 2–3; doc A129(a) (Young supporting documents), sec 6, no 4
229. Document A129(a) (Young supporting documents), sec 6, no 4
230. Document D35 (Te Ngāruru), pp 2–3
231. Ibid, p 5; doc D39 (Neilson), p 5; doc D44 (Hāwira), p 11
232. Document A140 (Southern Whanganui Cluster mapbook), pl 96
233. Document A129(a) (Young supporting documents), sec 6, no 4, whakapapa 1, see also sec 9, no 1, pp 32–40; doc D39 (Neilson), p 3
234. Document A129(a) (Young supporting documents), sec 6, no 4, para 4. These places can be seen in document A140 (Southern Whanganui Cluster mapbook), pl 98.
235. Document D40 (Waitai), pp 2–3
236. Document D43 (Waitai and Hāwira), p 1; doc D44 (Hāwira), p 15
237. This Tribunal has already reported on the evidence of Ngā Wairiki claimants, at their request, before the Ngāti Apa Settlement Bill was introduced into Parliament. For the completeness of this report, we draw on our earlier report to provide the following summary of Ngā Wairiki's identity and the extent of their rohe.
238. Waitangi Tribunal, *Report on Aspects of the Wai 655 Claim*, pp 6–7, 9–10, 12, 15
239. Ibid, p 20
240. Document B7 (Rzoska), pp 4, 7, app A; doc A129(a) (Young supporting documents), sec 6, no 11, pp 5–6
241. Document A129(a) (Young supporting documents), sec 6, no 11, pp 5–6
242. Ibid, sec 3, no 2, pp 8–12; sec 6, no 11, pp 5–6; Downes, *Old Whanganui*, pp 59, 71
243. Document A65 (Stirling), p 355; doc A100 (Macky), p 312
244. Document B7 (Rzoska), p 7
245. Document A130 (Shenton), p 6
246. Document N12 (Tamakehu), p 7
247. Document B7 (Rzoska), p 5
248. Document N12 (Tamakehu), p 9
249. Document A129 (Young), pp 105–106
250. Document B39 (Ranginui), p 5; doc A129 (Young), pp 21, 107, 130
251. Document B38 (Waitokia), pp 6, 9, 16

252. Document B52 (Ngāti Hineoneone supporting documents), pp 4–10, 13–17; doc B39 (Ranginui), p 14
253. Document B52 (Ngāti Hineoneone supporting documents), p 20
254. This large block west of the river was successfully claimed by the Waitōtara people (Ngā Rauru/Ngāti Ruanui) in the Native Land Court: doc A68 (Walzl), p 121.
255. Document A129 (Young), pp 107–108
256. Discussed above under the heading 'Ngāti Kauika and Ngāti Tamareheroto'.
257. Document A130 (Shenton), p 7
258. Document A129(a) (Young supporting documents), sec 6, no 4, para 6
259. Document A129(a) (Young supporting documents), sec 6, no 5
260. Simon, *Taku Whare E*, vol 1, pp 34–35
261. 'The cloak of Te Awaiti' : the term refers to the 'cloak' the claimants have laid over the Awaiti rohe in respect to their common land and other issues' : submission 3.3.7, pp 3–4.
262. Document B30 (Hāwira), pp 12–13
263. Ibid, pp 14–15
264. Document A37 (Berghan), p 433
265. Uenuku-manawawiri is discussed below as a descendant of Taiwiri in the Ngāti Rangi section, but is also related to Ngāti Pāmoana.
266. Document B30 (Hāwira), pp 8–9, 11, 15
267. Document B12 (Tangaroa), paras 81–90; doc B12(a) (Tangaroa addendum); doc B13 (Maihi), pp 2–4, 6, 12; doc B30 (Hāwira), pp 13, 21, 26, 30, 32, 34
268. Document A129 (Young), pp 21–22; submission 3.3.132, p 2; doc D44 (Hāwira), p 27; doc D46 (Hough), pp 2–3
269. Document D44 (Hāwira), pp 24–25, app A; doc A72 (O'Leary), p 26
270. Document A129 (Young), pp 125–127; doc D44 (Hāwira), p 27
271. Document D46 (Hough), pp 2–3
272. Document D51 (McDonnell), pp 5–7
273. Ibid, p 4
274. Document B44 (Hāwira), pp 24–28
275. Simon, *Taku Whare E*, vol 1, pp 39, 41
276. Document E5 (Hāwira), p 9
277. Ibid. In Turuhia Edmonds' brief of evidence, it is suggested that Kurawhatīa's wife Hinerua was a granddaughter of Tamahaki himself: doc E21 (Edmonds), p 2. But Tamahaki's granddaughter was Hinerua I, spouse of Te Ikahanu: doc E5 (Hāwira), p 8. The two Hinerua were near contemporaries and close kin.
278. Document E14 (Whitu) p 4; *Te Puke ki Hikurangi*, 13 Maehe 1906, p 5
279. Document E18 (Robinson), p 2; Simon, *Taku Whare E*, vol 1, p 43
280. The name Pire Kiore was sometimes given to the Maori Councils Act 1900 because controlling bubonic plague, and therefore rats, was to be one of the functions of the new Māori Councils: *Wairarapa Daily Times*, 21 April 1904, p 2. If the Tohunga Suppression Bill, later an Act, was also known by this name, it may have been a local term.
281. Document E19 (Grey), p 4
282. Document F11 (Hāwira), pp 3–4
283. Ibid, pp 5–8
284. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app B, p 378
285. 'Setting apart Maori Land as a Maori Reservation', 12 December 1951, *New Zealand Gazette*, 1951, no 91, p 1836
286. Simon, *Taku Whare E*, vol 2, p 52
287. Document A116 (Ahikaa Research Ltd), pp 9, 19
288. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 152–154
289. Document A116(b) (Ahikaa Research Ltd), pp 16, 19
290. Document A60 (Marr), p 285; doc A42 (Oliver), p 25; doc A72 (O'Leary), p 51
291. Document E5 (Hāwira), pp 7–8; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app B, p 378
292. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 152–154
293. Document F7 (Taiaroa), p 2, app, p 2; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 162–163
294. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 55
295. Submission 3.3.22, para 1.1
296. Document A60 (Marr), pp 472–473
297. Document A72 (O'Leary), p 25; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 55
298. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 162–164
299. Document A42 (Oliver), p 78; doc A152 (Hemara, Cribb, Haitana, and Gilbert), p 139
300. In Whanganui traditions, Tātara was a man who married Hikairo, a woman. But in some Tūwharetoa traditions Hikairo was the man. See document A152 (Hemara, Cribb, Haitana, and Gilbert), p 139.
301. Document A72(a) (O'Leary), item 7, p [251]; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 138–140
302. Document A72 (O'Leary), p 100; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 139–140
303. Document A152(k) (Hemara), p 1
304. Document G11(b) (Robinson), p 18
305. Document A152(h) (Haitana), para 4.12; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 335–359; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 87, 92
306. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 168; Grace, *Tuwharetoa*, pp 80, 84, 114, 117; Don Stafford, *Te Arawa* (Auckland: Reed Books, 1991), p 481
307. Document F8 (Haitana), p 7; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 27–28
308. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 28
309. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app B, p 378
310. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 88, 200, 219; doc H15(a) (Hāwira), pp 2–4

311. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 147–148; doc A101(b) (Horan supporting documents), p 290; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 383, 384, 388
312. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 77
313. Ibid, p 79
314. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 8, 10, 23
315. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 147–149
316. Document A55(i) (Clayworth supporting documents), p [73]; doc A99(k) (Joel supporting documents), p 40
317. Document A72 (O'Leary), pp 79–82
318. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 31–32; doc A99(d) (Joel supporting documents), pp 971–972
319. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 154–157. Forty-one individuals listed as 'Ngatiwakiterangi' were owners in Waimarino: doc A99(d) (Joel supporting documents), pp 971–972.
320. No assertions were made by the Ngāti Whā-ki-te-rangi claimants that Ōruakūkuru pā was built by their ancestors. The pā was barely mentioned in passing during those parts of the Ōhotu hearing evidence that have been presented to us: see doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 682–727. There is no information on who built the pā or who lived in it over time. The ancestor chosen for Ōhotu 1 was Tūtapu, although doubt was expressed during the hearing as to whether this Tūtapu was the descendant of Paerangi 1 or another individual. One suggestion was Tūtapu, child of Te Kāhuitara and Taramouku, put forward by Ngā Poutama–Ngāti Hau witness Āperaniko Taiāwhio: see doc L11 (Hāwira), p 13. One secondary source links Ōruakūkuru to the ancestors of Ngāti Rangi: see Merrilyn George, *Ohakune: Opening to a New World*, 2nd ed (Ohakune: Kapai Enterprises Ltd, 1993), p 8. These ancestors would include Tūtapu, grandson of Paerangi 1: see doc E5 (Hāwira), p 2.
321. Document E5 (Hāwira), p 7
322. Document A72 (O'Leary), pp 20–21
323. Document H15 (Hāwira), p 2
324. Document A72 (O'Leary), pp 99–101; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 31, 56, 75, 213, 218, 219; Young, *Woven By Water*, p 89; Downes, *History Of & Guide To The Wanganui River*, p 50
325. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app B, p 378
326. We note and agree with the Crown's assertion in paper 1.3.3, p 43, that 'most of the land interests of Ngāti Uenuku were not subject to an effective claim on the part of the New Zealand Company'. However, 'most' is not 'all'. We have little information about those individuals who travelled with Te Pēhi Tūroa who at that time was regarded as the paramount chief of all Te Patutokotoko, under which collective title Ngāti Uenuku was included, at least in the nineteenth century: see, for example, 'Census of the Maori Population, 1878', AJHR, 1878, G-2, p 19, where 'Ngatinenuku' [*sic*] is listed by officials as a hapū of the Patutokotoko tribe. The Crown's argument also ignores the extent to which upriver communities may have had interests in fishing villages near the mouth of the Whanganui River. For the interests of te Iwi o Uenuku at the river mouth see claim 1.2.29, pp 6, 27–28. Te Patutokotoko are discussed below.
327. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 212
328. Document A61 (Rose), pp 512–513, 516, 517, 520; doc A51 (Walzl), p 527
329. Claim 1.2.29, pp 6–7
330. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 212
331. Document F8 (Haitana), app 1
332. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 67
333. Ibid, pp 59, 134, 162; doc G11 (Robinson), pp 13–14
334. George, *Ohakune*, p 8; doc H8 (Hiroti), p 3
335. Claim 1.2.29, p 6
336. Claim 1.2.28, p 4. None of the genealogies we have seen established a descent link between Uenuku, son of Tūkaihoro, and Tamaūpoko or his siblings, Hinengākau and Tūpoho. However, Tamakehu, father of Tamaūpoko, was a *descendant* of the very early Uenuku ancestors, such as Uenuku-mua-whatihua and Uenuku-poroaki: see doc G11 (Robinson), pp 13–15. This line of *ancestry*, while a genealogical link, does not make Uenuku, son of Tūkaihoro a *descendant* of Tamakehu's children, Tamaūpoko and his siblings. It is also unclear to what extent the early Uenuku ancestors are essentially part of the identity of te Iwi o Uenuku of Manganui-a-te-ao and Raetihi. They are referred to by claimants as a 'korowai', or 'overarching metaphorical cloak of identity'. The claimants have also said, 'in more recent times, people have invoked and adopted the *mythical* Uenuku identities': doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 212, 216. The Tribunal's emphasis.
337. Simon, *Taku Whare E*, vol 1, p 46, vol 2, p 58; doc E15 (Huriwaka), p 3; doc H5 (Wana), pp 8–9
338. Tamahaki's other wife was Tainui; by this marriage Tamatuna was an ancestor of Tūkaihoro, father of Uenuku, and Tūhurakia, husband of Parekitai, parents of Hekeāwai and Puku: doc A152(b) (G Cribb, R Cribb, and Whitu), pp 7, 16, 18–21.
339. Document A15 (Gould), pp 6, 7; doc E8 (Ponga), pp 5, 11
340. Document E3 (Taurerewa), apps B, D; doc E14 (Whitu), pp 5–6. For lists of descendant hapū see doc A152(g) (Hemara, Cribb, Haitana, and Gilbert), p 2.
341. Downes, *Old Whanganui*, pp 40, 48, 64–65
342. Document A42 (Oliver), p 25; in Whanganui Native Land Court, minute book 9, 23 February 1886, fol 189, cited by Oliver, Te Rangihuatau mentioned Tamahaki only. Ngāti Maringi was presumably mentioned in a later hearing.
343. Document A152(b) (G Cribb, R Cribb, and Whitu), pp 6, 16, 65, 67, 68; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 581–582, 647, 649
344. Document E4 (Cribb), p 3
345. Document A152(g) (Hemara, Cribb, Haitana, and Gilbert), p 3
346. Document E4 (Cribb), pp 2–3, 7
347. Document E8 (Ponga), p 4. We note that Tamahaki's mother, Tauira, was the sister of Ruakā, the parent of Hinengākau and her

siblings, who were thus cousins to Tamahaki by intermarriage. However, cousins are not ancestors.

348. Claim 1.2.16, p 3; claim 1.2.16(b), pp 3–4

349. Document A72 (O'Leary), p 25; doc A152(b) (G Cribb, R Cribb, and Whitu), pp 8, 36–37. His descendants include Geraldine Taurerewa and Rufus Taiaroa, also known as Rufus Gilbert Bristol: see doc E3 (Taurerewa), app B; doc F5 (Bristol), p 2.

350. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 59

351. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 227; doc A152(b) (G Cribb, R Cribb, and Whitu), pp 31, 37; doc A152(c) (Hemara, Cribb, Haitana, and Gilbert), p 14; doc E3 (Taurerewa), whakapapa A, figs 3, 4

352. Document F7 (Taiaroa), p 2; doc F11 (Hāwira), p 4; doc G11 (Robinson), p 17

353. Document F8 (Haitana), app 1

354. Document A152(g) (Hemara, Cribb, Haitana, and Gilbert), p 1

355. Document E7 (Bristol), p 2

356. Document E3 (Taurerewa), app E, G

357. Ibid, app G; see also ch 13

358. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 26–30; doc 154 (Walton), p 154

359. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 82

360. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 384

361. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 26–31; see also 'Return Giving the Names, etc, of the Tribes of the North Island', 1870, AJHR, 1870, A-11, p 8. In a list made by R W Woon in 1878, the Te Patutokotoko 'tribe' includes Ngāti Uenuku living at Te Papatupu and Waikunekune kāinga, Ngāti Pare at Tārere, Ngāti Ruakōpiri at Te Ureiti, Ngāti Hekeāwai at Pārihi, and Ngāti Tamakana at Kawakawa: 'R W Woon's list of kainga, iwi, and hapu', 24 June 1878, AEDK 18743 MA-WANG 4/1/2, Archives New Zealand, Wellington.

362. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 27–28

363. The other set was the cluster of lower river hapū led by Te Anaua and Te Māwae, described above.

364. Downes, *Old Whanganui*, pp 104–109, 123, 130; Young, *Woven By Water*, p 38

365. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 29

366. Document A129 (Young), pp 58–59

367. Document A86 (Loveridge), pp 54, 60

368. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 31–34; doc A68 (Walzl), pp 114–115; doc A129 (Young), p 54; Waitangi Tribunal, *Report on Aspects of the Wai 655 Claim*, pp 10–11

369. Wakefield, *Adventure in New Zealand*, vol 1, p 458

370. Koroheke was the father of Poari Kuramate, a noted Whanganui leader in the later nineteenth century, as well as his younger brother, Ēpiha Pātapu: submission 3.3.113, p 4.

371. Document N15 (Tamehana), pp 2–3; doc A129 (Young), pp 59–61; submission 3.3.113, p 5

372. Document A65(l) (Stirling supporting documents), p 4350; doc A65 (Stirling), pp 204 n 563, 347; doc A100 (Macky), p 168

373. Document A65 (Stirling), pp 78–79

374. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 27–28

375. Ibid, pp 36, 55–56

376. Document H15 (Hāwira), p 2

377. Document F8 (Haitana), app 1; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 78, 89, 94, 96, 98, 149

378. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 65; Steven Oliver, 'Te Peehi Turoa', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Bridget Williams Books Ltd and the Department of Internal Affairs, 1990), pp 559–560

379. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 96, 102, 112; doc H15(a) (Hāwira), pp 2–3; see also Ngata, *Ngā Mōteatea*, vol 2, pp 206–207; this Te Pikikōtuku was the husband of Te Taruna and the father of Tangarākau and Poto; he lived at Manganui-a-te-ao; the informants of Pei Te Hurinui (the editor) were Tūkōrehu Te Ahipū and Maraea Ngāmihi Warahi. See also Ngata, *Ngā Moteatea*, vol 3, p 266 which includes a whakapapa attached to song 240 which was taken from Downes' work *Old Whanganui* and later extended by Pei Te Hurinui Jones.

380. Document A108(b) (Young and Belgrave), p 2

381. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 94–95, 154; doc F11 (Hāwira), app A

382. Document N18(a) (Bell), paras 2–4

383. Document J11 (Bell), pp 3–4

384. Document A114 (Young and Belgrave), pp 228–229; doc J9 (Rupe), pp 2–3; doc J13 (Wright), pp 2–3; doc K8 (Turner), p 2; doc K13 (Te Nana), p 2

385. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 6. That Paerangi is the eponymous ancestor of Ngāti Rangi rather than Taiwiri's sons Rangituhia and Rangiteauria has been disputed by counsel for Uenuku citing Whatahoro Jury (memorandum 3.2.417, para 8) as well as by various students of whakapapa, including Robert Batley: Batley, 'Ngati Rangi', pp 343–354. On pages 347 and 351, Batley asserted that Rangituhia is the eponymous ancestor, but the Ngāti Rangi whakapapa is confirmed in many other independent sources. Variations are inevitable given the ancient mātauranga concerned and the different schools of tohunga through whom it was passed down. It may be that the Ngāti Rangi identity has also been reinforced over the generations by the many important Ngāti Rangi ancestors whose names begin with 'Rangi', but we consider that Ngāti Rangi are the proper purveyors of their own tradition.

386. Document L7 (Waho), pp 5–7

387. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 7, 10–11, 28–31, 33, 35, 36. Very often, exclusive ownership of blocks was claimed as a necessary tactic in the Native Land Court: see p 51.

388. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 25–26

389. Whanganui Native Land Court, minute book 1E, 1 July 1878, fols 599–600; doc A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 25–26

390. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 25

391. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 82, 95–97
392. Ibid, pp 78–79
393. Document L7 (Waho), p 10; doc A72 (O'Leary), pp 48, 50, 89; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 86, 99
394. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 10–11, 23–25, 29; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 345
395. Mark Tūmanako Gray, brief of evidence, 10 February 2006 (Wai 1130 ROI, doc A68), pp 4–5; see also 'Return Giving the Names of the Tribes of the North Island, etc', AJHR, 1870, A-11, p 8; Alexander Mackay to Under-Secretary, Native Affairs, 27 May 1878, 'Papers Relating to the Census of the Maori Population, 1878', AJHR, 1878, G-2, p 8; see also p 19. In these census lists, Ngāti Rangipoutaka, a hapū of Ngāti Rangi discussed below, is listed as a hapū of Ngāti Ruakā.
396. Document L7 (Waho), p 11; doc A100 (Macky), p 30; doc A37 (Berghan), p 229
397. Document L7 (Waho), p 10, the Tribunal's translation; Pāora Poutini was offering to protect the graves of those Ngāti Rangi buried at Rānana or nearby.
398. Document L7 (Waho), p 14
399. Document L24 (Wilson), pp 34–35
400. Examples occur in doc L25 (N Richards, C Richards, and Dryden), pp 4–6.
401. Simon, *Taku Whare E*, vol 2, pp 79, 96
402. Document L24 (Wilson) p 34. At the time of writing, three of the 16 marae were not actively engaged with Te Kāhui o Paerangi. For their locations, see document A164(a) (Ngāti Rangi mapbook), pls 29–32.
403. Batley, 'Ngati Rangi', p 343; Downes, *Old Whanganui*, p 72
404. Document A69 (Walzl), p 8
405. Ibid, pp 8, 12, 23–61
406. Document A37 (Berghan), p 359
407. Document A69 (Walzl), pp 8–13, 18, 24–27, 40, 46–47, 56, 68, 70, 84–90; doc A149 (Waho, Wilson, Hāwira, and Tinirau), pp 14, 22–23, 25, 30–33; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 941, 952
408. Document A58 (Mitchell), pp 160–161; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 948
409. Document A69 (Walzl), pp 12, 14, 19, 20, 29, 38; doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 241
410. Document A69 (Walzl), p 40
411. The issue was whether Hinekowhara and Waikaramihi were or were not the daughters of Rangituhia, or were descendants of Tamakana: doc A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 6, 9; doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 30, 89, 94, 96, 155.
412. Document L7 (Waho), pp 11–12, 24. Neither Rāwhitiao nor Hīoi's connection is shown in this whānau's whakapapa.
413. Document L7 (Waho), p 11
414. Document A69 (Walzl), pp 68–70
415. Ibid, pp 9, 12–13, 27
416. Document L7 (Waho), pp 29–30; doc A149(a) (Waho, Wilson, Hāwira, and Tinirau), pp 16, 23, 24; doc A69 (Walzl), p 46; Whanganui Native Land Court, minute book 1E, 7 July 1873, fol 628, evidence of Winiata Te Puhaki
417. Document A37(j) (Berghan supporting documents), p 5367. Note that this is not the Ngāti Hinekehu associated with Kaiwhaiki.
418. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 50–54
419. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 12; doc A37 (Berghan), p 438; 'Return Giving the Names, etc, of the Tribes of the North Island', AJHR, 1870, A-11, p 8; 'Census of the Maori Population, 1878', AJHR, 1878, G-2, p 19
420. Downes, *Old Whanganui*, p 330
421. Document B30 (Hāwira), p 7
422. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 226; doc B30 (Hāwira), pp 8–11, 15, 17; doc A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 10; see also transcript 4.1.13, p 47
423. Document B30 (Hāwira), pp 8–11
424. Document A152 (Hemara, Cribb, Haitana, and Gilbert), p 225
425. Document A164(a) (amended Ngāti Rangi mapbook), pl 5; doc B30 (Hāwira), pp 7, 15; doc A152 (Hemara, Cribb, Haitana, and Gilbert), p 225
426. Document B30 (Hāwira), pp 16–17
427. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 37
428. Document K11 (Hikaia), app KA01, p 26
429. Document A108 (Young and Belgrave), p 14. We note that, compared with claimants' evidence, Drs Young and Belgrave appear to have conflated events in the lives of Te Hoata I (who accompanied Ngātoroirangi of Te Arawa in his explorations) and Te Hoata II: doc A108 (Young and Belgrave), pp 13–14. Te Hoata I lived at Pureora; his son was Hāuaroa I. Te Hoata II or Te Hoata-iti married Hinewhata, descendant of Hiaroa of Tainui, and built his pā, Whiritoa on the banks of the Ōngarue. It was Te Hoata II's daughter, Hinemata, who was the wife of Tamaaio of Kāwhia: doc K11 (Hikaia), p 5, app KA01, pp 4–5; Pei Te Hurinui Jones and Bruce Biggs, *Nga Iwi o Tainui / The Traditional History of the Tainui People: Nga Koorero Tuku Iho a nga Tuupuna* (Auckland: Auckland University Press, 2004), p 100. Jones and Biggs ascribe these people to Ngāti Haa rather than Ngāti Hāua, but their whakapapa give versions of the same names.
430. Document A108 (Young and Belgrave), p 13
431. Document K11 (Hikaia), app KA01, pp 6–7
432. Document A108 (Young and Belgrave), pp 13, 15, 17, 21, 71, 75
433. Document K11 (Hikaia), app KA01, p 5
434. Ibid, pp 11–12
435. Document K10 (Nīkora), p 11; doc A108 (Young and Belgrave), p 20; see also ch 13
436. Document A108 (Young and Belgrave), pp 18–21
437. Ibid, pp 18–20; see also ch 22
438. Document K11 (Hikaia), app KA01, pp 24, 26, 36; Simon, *Taku Whare E*, vol 2, p 69
439. Titi Tihu promoted the Whanganui River claim in the 1930s and before: Waitangi Tribunal, *The Whanganui River Report*, p 197.
440. Pei Te Hurinui Jones, *Ngapuwaiwaha Marae: Souvenir Booklet*

to Commemorate the Official Opening of the New Carved Meeting House, Te Taura-whiri A Hinengakau, Saturday 20th December, 1975 (Taumarunui : Ngapuwaiwaha Marae, 1975), pp 1–11

441. Document A108 (Young and Belgrave), p 11; doc A114 (Young and Belgrave), pp 227–229; doc J9 (Rupe), pp 2–3

442. W E Gudgeon, 'The Tangata Whenua : or, Aboriginal People of the Central Districts of the North Island of New Zealand', *Journal of the Polynesian Society*, vol 2, 1893, p 210. Gudgeon was the judge for the Ōhura South block : doc A59, Oliver and Shoebridge), p 108.

443. Document A114 (Young and Belgrave), p 236; Jones, *Ngapuwaiwaha Marae*, tbl 2, p 13

444. Document K11 (Hikaia), app KA01, p 39; doc A59 (Oliver and Shoebridge), pp 16, 19, 39–40, 89; see also ch 11

445. Document K11 (Hikaia), app KA01, p 14

446. Document A108 (Young and Belgrave), pp 15, 16

447. Document K11 (Hikaia), p 7

448. Document A114 (Young and Belgrave), pp 228–229, 234, 236

449. Document J9 (Rupe), pp 2–3; doc J13 (Wright), pp 2–3; doc K13 (Te Nana), p 2

450. This Hekeāwai's children by his wife Te Wakatotopipi, included Hinekaihunu and Weka. These two women became the wives of Tūkaiora, and had sons called Te Pikikōtuku and Te Hītaua ; Te Hītaua was the father of Te Pēhi Tūroa : doc H15(a) (Hāwira), pp 2, 3 ; see also doc A152 (Hemara, Cribb, Haitana, and Gilbert), pp 36, 55, 96, 102, 112

451. For example, Tūrama Hāwira showed the descent of Tōpine Te Mamaku as the great grandson of Hekeāwai of Manganui-a-te-ao and Te Wakatotopipi, but gave Te Mamaku's mother as Te Uta rather than Te Uruweherua : doc H15 (Hāwira), p 3.

452. Document K14 (Tūroa), p 4

453. Document J6 (Herbert), pp 5–6 ; doc K6 (Jones), pp 3–4 ; doc A108 (Young and Belgrave), p 19 ; doc A114 (Young and Belgrave), pp 8, 204, 227 ; doc A115 (Ahikaa Research Limited), p 10

454. 'Ngāti Hinewai' is a very common hapū name, although the various Hinewai are usually different women in each case ; there is a Ngāti Hinewai, hapū of Ngā Rauru, a Ngāti Hinewai associated with Ngāti Hau of Hiruhārama, a Ngāti Hinewai who are descendants of Tamahaki and so on ; some of these may be the same hapū as those discussed here, emphasising different lines of descent in different blocks. There was another Ngāti Hinewai of Tūwharetoa, closely associated with Ngāti Turumākina and Mananui Te Heuheu : Grace, *Tuwharetoa*, pp 258, 269, 291–292, 297, 328.

455. Document K11 (Hikaia), app KA01, p 12 ; doc A108 (Young and Belgrave), p 15

456. Jones, *Ngapuwaiwaha Marae*, pp 1–11 ; doc I2 (Le Gros), p 30

457. Document K11 (Hikaia), app KA01, p 12. This Tūroa is probably not Te Peehi Tūroa.

458. Document A138 (Ahikaa Research Ltd), p 13 ; doc I19 (Mātāmua), pp 4–5

459. Document A138 (Ahikaa Research Ltd), pp 13–14

460. Document I18 (Hōhepa), p 7 ; doc I19 (Mātāmua), pp 2, 6, 8 ; doc I19(a) (Mātāmua)

461. Document I19 (Mātāmua), p 5

462. Document I21 (Mātāmua), pp 3–4

463. See, for example, Downes, *Old Whanganui*, p 22, who said that 'the few that escaped were so diligently pursued that they were practically exterminated.' 'Extinct' or 'exterminated' in these accounts does not seem to mean literally non-existent – in other words, all deceased – but that they had not survived as a distinct people with their own pā, kāinga, and later marae, but lived with other iwi or hapū under their mana as a defeated remnant.

464. Document I23(a) (Hāwira), pp 9–10

465. Ibid, pp 3–4

466. Document F11 (Hāwira), pp 4–5 ; doc D24 (Rēweti), pp 15–16

467. Document A149(b) (Waho), p 4

468. Downes, *Old Whanganui*, pp 16–17

469. Ibid, pp 19–22

470. Document I19 (Mātāmua), pp 6–7

471. Document I23(a) (Hāwira), pp 7–8

472. Document I19 (Mātāmua), p 7

473. Ibid, pp 4–7

474. Lines from song 233, 'A Lament for Te Heuheu Tukino', by Tōpine Te Mamaku : Ngata, *Nga Moteatea*, vol 3, pp 215–217, 219. In note 28, it is explained that 'Ati Manu' are Ngāti Manunui and that Matakore was the younger brother of Maniapoto. In note 27, Tūhua is explained as a mountain range north of Taumarunui, and the name of the district on the head waters of the Whanganui River.

475. Document A115 (Ahikaa Research Ltd), pp 14, 16

476. Grace, *Tuwharetoa*, p 160

477. Ibid, pp 541, 545 ; doc A115 (Ahikaa Research Ltd), p 15

478. Document A115 (Ahikaa Research Ltd), pp 15, 32

479. Ibid, pp 15–16

480. Ibid, p 16

481. This is Hekeāwai, child of Tuhurakia and Parekitai, discussed above in the central cluster : doc A115 (Ahikaa Research Ltd), p 17.

482. Document A115 (Ahikaa Research Ltd), pp 15, 17, 18, 19

483. Ibid, pp 51–60

484. Ibid, pp 18, 24

485. Document D17 (Tūtemahurangi), p 2

486. Document A115 (Ahikaa Research Ltd), pp 54–58

487. Less emphasis is placed on Hikairo's other spouse, Tātara, a descendant of Tamakana, whose descendants are known as Ngāti Tara, discussed above in relation to the central cluster. There is some doubt about the gender of these ancestors.

488. Document A116 (Ahikaa Research Ltd), pp 9–10 ; Grace, *Tuwharetoa*, p 29

489. Document A116 (Ahikaa Research Ltd), p 9

490. Document D14 (Pākau), p 3

491. Document D1 (Ormsby, Pillot, and Ormsby), pp 3, 7 ; doc A116 (Ahikaa Research Ltd), pp 11–12

492. Document A116 (Ahikaa Research Ltd), pp 11–12, 23 ; doc D14 (Pākau), pp 9–10

493. Document K11 (Hikaia), app KA01, p 14. Combinations of these names were taken by several individuals of more than one generation.

494. Submission 3.3.81, p 3
495. Document A116 (Ahikaa Research Ltd), p 26
496. Robyn Anderson, 'Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005) (Wai 1130 ROI, doc A9), pp 65–66
497. Matuaahu Te Whareraangi should have been recognised as a customary owner in Waimarino, but his name was not included in the title list. The 'Matuahu Wairehu' noted by Marr as included in the list as owner 103 was Matuaahu's junior cousin, the son of his uncle, Te Huri: doc A60 (Marr), p 297; doc A116 (Ahikaa Research Ltd), p 12.
498. Many of these blocks are now part of the Tongariro National Park, including Ōkahukura, Taurewa, Mahuia, Tāwhai, Pukepoto, Rangipō North, Waiunu, and Whāngaipeke: doc A116 (Ahikaa Research Ltd), p 13.
499. These hapū include various Ngāti Tūwharetoa who migrated west with Ngāti Hikairo, including Ngāti Marangataua, Ngāti Pouroto, Ngāti Mātangi, Ngāti Parehuia, and others; they were also closely associated with hapū with their own claims in the Whanganui inquiry district, such as Ngāti Manunui and Ngāti Hinewai, now located at Kākahi, Ngāti Māringi, Ngāti Tamakana, Ngāti Kahukurapango, Ngāti Hekeāwai, and were neighbours in Manganui-a-te-ao of the Te Patutokotoko group of hapū: doc A116 (Ahikaa Research Ltd), pp 9, 19.
500. Submission 3.3.74, p 7; submission 3.3.81, pp 2, 7–8, 18
501. Submission 3.3.81, p 4; doc A116 (Ahikaa Research Ltd), pp 23, 34–35
502. Submission 3.3.79(a), paras 4.1, 10.6
503. Document A116 (Ahikaa Research Ltd), p 14; doc D3 (Moana), p 2; doc D7 (Te Ahuru), p 4
504. Document A116 (Ahikaa Research Ltd), p 35
505. Document N2 (Kētū), p 2; doc D3 (Moana), pp 2, 4
506. Document D24 (Rēweti), pp 9–11, 15–16
507. Ibid, pp 9–10
508. Ibid, pp 3–4, 7
509. Document D25 (Karatea), pp 8–9; doc D26 (Rēweti), p 3
510. Document D24 (Rēweti), pp 24–25; doc A150 (Ahikaa Research Ltd), pp 245, 276, 282
511. Document D24 (Rēweti), pp 10, 12
512. Ibid, pp 13, 14; doc A37 (Berghan), pp 735, 737, 740, 741, 747, 749; Whanganui Native Land Court, minute book 10, 22 May 1886, fol 133
513. Document A60 (Marr), p 297
514. Young, *Woven By Water*, pp 156–157; David Alexander, 'The Rangitikei River, its Tributary Waterways, and Other Taihape Waterways Scoping Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2012) (Wai 2200 ROI, doc A10), p 142
515. Document I16(a) (Adams), apps A, B; doc J5 (Maniapoto-Anderson), pp 3, 5, 8; doc I5 (Tūwhāngai, app A, whakapapa II
516. Document J5 (Maniapoto-Anderson), pp 4–7
517. Document J6 (Herbert), attachment 1
518. Document A114 (Young and Belgrave), pp 17–18
519. Document J5 (Maniapoto-Anderson), p 9; doc A114 (Young and Belgrave), pp 21–31
520. Waitangi Tribunal, *Te Whanganui a Tara Report*, pp 32, 208–212, 215, 217
521. Document A114 (Young and Belgrave), p 42; doc A59 (Oliver), p 33
522. Document J6 (Herbert), pp 7–8; doc A114 (Young and Belgrave), p 13
523. Document A114 (Young and Belgrave), pp 91, 95–102; doc J5 (Maniapoto-Anderson), pp 5–6
524. Document I5 (Tūwhāngai), pp 2–4
525. Ibid, p 6; doc A114 (Young and Belgrave), p 101
526. Document A114 (Young and Belgrave), pp 87, 88, 90–91, 98
527. Ibid, p 102
528. Document A160 (Northern Whanganui Cluster mapbook), pls 24, 27, 31; doc A114 (Young and Belgrave), p 87. Ngāti Urunumia also claimed many places to the north and north-east outside the Whanganui inquiry district: doc A114 (Young and Belgrave), pp 95, 98.
529. Document I5 (Tūwhāngai), p 5
530. Document A59 (Oliver), pp 7, 41
531. Document A114 (Young and Belgrave), pp 87–88
532. Ibid, pp 99–101
533. Document J14 (Turu), pp 3–5, 7
534. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 22
535. Waitangi Tribunal, *The Whanganui River Report*, pp 29–30
536. Submission 3.3.74, p 3
537. Submission 3.3.81, pp 2–3
538. Submission 3.3.163, p 3
539. Not all visitors succumbed to this impression; see the Ngātaiērua community observed by Rochfort, discussed below.
540. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 14
541. Wakefield, *Adventure in New Zealand*, vol 1, p 467
542. Document A154 (Walton), p 148
543. Document A152 (Hemara, Cribb, Haitana, and Gilbert), pp 54, 75–76
544. Document A149(a) (Waho, Wilson, Hāwira, and Tinirau), p 10; doc L7 (Waho), pp 10–11
545. Document A68 (Walzl), pp 85–86
546. Te Okahoroiwi may be the same person as Ikahoroiwi, who negotiated with Te Whatanui about 1829: doc A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 434.
547. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 877
548. Document A65(l) (Stirling supporting documents), p 4480
549. Waitangi Tribunal, *The Whanganui River Report*, p 29
550. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 205
551. Not the major iwi of Murimotu/Waiōuru.
552. Document A59 (Oliver), pp 50–51
553. Document C12 (Wilson), p 4, app 1; M J G Smart and A P Bates, *The Wanganui Story* (Whanganui: Wanganui Newspapers Ltd, 1972), pp 173, 175, 249. Smart and Bates thought that 'Victoria Avenue' was named after Queen Victoria.

554. Document A113 (Head), p 21
555. Ibid, pp 119–120. We do not agree with Dr Head's conjoined proposition that it was 'ownership in the terms of the market' that was the only right confirmed by article 2 of the Treaty. Whatever the English translation of the Treaty said, the Māori version, which prevails, refers to 'tino rangatiratanga', not simply 'rangatiratanga' which can mean 'ownership'. The right of continuing authority to make decisions on behalf of the group was one of the rights confirmed by article 2. Since tino rangatiratanga was confirmed in the Treaty, it was not compromised by the sovereign power of the Government as representative of the Crown. This matter is discussed in chapter 3.
556. Document A113(e) (Head), p 21
557. Document A104 (Doig), p 324
558. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, p 832. Although Te Rangihiwinui spoke some English, presumably this evidence is a translation from Māori. Hōri Kīngi Te Anaua was the brother of Rere-o-maki, the mother of Te Keepa Te Rangihiwinui or Major Kemp: doc A65 (Stirling), p 104.
559. Ibid, pp 878, 880. Wiari Tūroa was a younger half brother of Pēhi Pākoro (Te Pēhi Tūroa II), Te Tāhana Tūroa, and Te Kaponga: see p 877.
560. Document A65(l) (Stirling supporting documents), p 4516
561. Ibid, pp 4310–4311, 4315–4316
562. This house originally stood at Karatia (Hikurangi marae) where it was known as Te Manu-o-te-rangi; it was re-erected at Pūtiki in 1877 by Mete Kīngi Paetahi in consultation with his elder, Te Māwae, as a neutral 'paku' or shelter for ngā hau e whā (for all), so was named Te Paku-o-Te-Rangi: Simon, *Taku Whare E*, vol 1, p 15; doc A73 (Macky), p 35.
563. Document A36 (Marr), p 92; Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whanui Series (Wellington: GP Publications, 1997), vol 2, pp 4–10
564. Document B30 (Hāwira), pp 2–3
565. Ward, *National Overview*, vol 2, p 7
566. Document B30 (Hāwira), p 3
567. Document A104 (Doig), pp 365–366
568. Richard Benton, Alex Frame, and Paul Meredith, *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Wellington: Victoria University Press, 2013), p 37
569. Document A104 (Doig), pp 360–362; Ward, *National Overview*, vol 2, p 8
570. An example of such a gift is given in document A104 (Doig), p 362.
571. Document L7 (Waho) p 10; doc B30 (Hāwira), p 3
572. Document A130 (Shenton), p 3
573. Document A104 (Doig), pp 372–373; Ward, *National Overview*, vol 2, pp 5–6
574. Document A104 (Doig), p 366
575. We were shown eel ponds and cuts on site visits. An eel pond is an artificial pond stocked with eels, which are often fed scraps to fatten them. An eel cut, which may lead from an eel pond, is an artificial channel constructed to allow eels easy access between bodies of water when migrating, and used to trap them.
576. Document A36 (Marr), p 93
577. Ibid, p 92; doc A104 (Doig), pp 236, 240, 263
578. Document A36 (Marr), pp 92–93
579. Document A132 (Pōtaka), p 3. No evidence has been presented to us suggesting that the kaitiaki role was any different in the nineteenth century or before.
580. Ibid
581. Ibid, p 6
582. Ibid, p 3
583. Richard Boast, Andrew Erueti, Doug McPhail, and Norman F Smith, *Maori Land Law* (Wellington: Butterworths, 1999), pp 29–30
584. Document B30 (Hāwira), pp 3–4
585. E T Durie, 'Custom Law', unpublished paper, January 1994, pp 81–82
586. Document A90 (Head), p 11
587. Ibid, pp 13–14
588. Submission 3.3.129, p 6
589. Document A59 (Oliver and Shoebridge), pp 41–42
590. Document D44 (Hāwira), pp 12–13
591. For example, see document B19 (Rātana), p 5, and document D39 (Neilson), p 6.
592. Document A108 (Young and Belgrave), p 9
593. Ibid
594. Ibid, pp 9–10
595. Document A154 (Walton), p 124
596. Ibid, pp 126–129
597. Document A36 (Marr), pp 31–32; doc D39 (Neilson), p 2. It seems unlikely that these terms could have referred to yellow fever, bubonic plague, cholera, smallpox, or malaria as these diseases did not reach New Zealand in the nineteenth century; there was a brief outbreak of typhoid in 1861, and others later: see Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present & Projected* (Auckland: Auckland University Press, 1991), pp 83–84.
598. There was some knowledge that explorers and sailors could spread syphilis: David Ian Pool, *The Maori Population* (Auckland: Auckland University Press, 1977), pp 93–95.
599. Document A154 (Walton), pp 144, 146
600. Document A152(j) (Hemara, Cribb, Haitana, and Gilbert supporting documents), app A, pp 224, 240, 241, 445, 449, 894
601. Downes, *Old Whanganui*, pp 120–121, 123–124, 128, 147, 150, 154
602. Document A128 (Waitai), p 12
603. Document A65 (Stirling), p 457
604. Wakefield, *Adventure in New Zealand*, vol 2, pp 93–94
605. Ibid, pp 123–124
606. Document A154 (Walton), pp 152, 154, 158
607. Document A65(l) (Stirling supporting documents), p 4279
608. Document A36 (Marr), pp 45, 77, 78, 181–182
609. Document B32 (Hāwira), p 6
610. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p 6

Food from the River and the Coast

1. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), p 59
2. Document A104 (Doig), pp 334–337
3. Document A104 (Doig), pp 335–336; doc A132 (Pōtaka), p 4. The eel and lamprey weirs were progressively cleared to assist steamboat navigation. By 1990 there were six surviving lamprey weirs while only two eel weirs remained in use in the 1980s.
4. Waitangi Tribunal, *The Whanganui River Report*, pp 59–67; doc A132 (Pōtaka), pp 4–5. Many claimants discuss former fishing resources only to emphasise their depletion as a result of commercial eel fishing and the lower flows after the introduction of the Tongariro Power Development Scheme: see doc B7 (Rzoska), pp 39–40; doc B12 (Tangaroa), paras 63–64; doc B13 (Maihi), pp 15–17; doc B24 (Allen), pp 7–8; doc E13 (Te Huia), pp 4–6.
5. Document A36 (Marr), p 21; doc A104 (Doig), p 337
6. Document A129(a) (Young supporting documents), sec 7, no 2, p 3; doc A36 (Marr), p 21
7. Document A104 (Doig), pp 154, 335–336; doc A132 (Pōtaka), p 6
8. Document A129(a) (Young supporting documents), sec 7, no 2, p 3
9. Document A132 (Pōtaka), pp 6–7
10. Document A132 (Pōtaka), p 7
11. Document B21 (Simon), p 8
12. Document A132 (Pōtaka), p 8
13. Document A129 (Young), p 48; doc A129(a) (Young supporting documents), sec 7, no 2, p 3; A129(a) (Young supporting documents), section 6, no 14, p 4; doc A36 (Marr), p 14
14. Document A36 (Marr), p 14

Food from the Forest

1. Document A36 (Marr), pp 20, 22–24
2. Document A72 (O'Leary), pp 78, 82; doc A129 (Young), pp 122–123

The Power of Tapu

1. Thomas W Downes, *Old Whanganui* (1915; repr Christchurch: Capper Press, 1976), p 101

Waka

1. We leave discussion about the locations of Hawaiki nui, Hawaiki roa, and Hawaiki pamamao to wānanga.
2. David R Simmons, *The Great New Zealand Myth: A Study of the Discovery and Origin Traditions of the Maori* (Wellington: A H & A W Reed, 1976). This was supported by the subsequent work of many archaeologists and anthropologists.
3. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 16, 18
4. The notion of a date for many arrivals around 1350 has been rehabilitated to some extent, most recently in Kerry R Howe, *The Quest for Origins: Who First Discovered and Settled New Zealand and the Pacific Islands?* (Auckland: Penguin Books, 2003), ch 8
5. Document A129 (Young), pp 24, 42, 128
6. Document A129 (Young), p 42
7. Sir Archie Te Atawhai Taiaroa gave evidence to this Tribunal, but sadly died while this report was being written: doc K12 (Taiaroa), p 2.

Hapū that Acknowledged Descent from Tamakana

1. Document A152 (Central Claims Charitable Trust), pp 92–95, 139–157, 166–167

Chiefs Descended from Tamakana

1. Document F8 (Haitana), app 1; doc F11 (Hāwira), p 9, app A, B; doc G11(b) (Robinson), p 16, ; doc A152 (Central Claims Charitable Trust), pp 151, 154, 166–167, 172–173, 176

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CHAPTER 3

THE TREATY COMES TO WHANGANUI

3.1 Introduction

In the previous chapter, we described the many iwi, hapū, communities and identities in the Whanganui district, and how these shifted and changed up to and into the nineteenth century. Many forces influenced this process, but one missing from Whanganui in the years immediately before the Treaty was the presence of Pākehā.

This situation changed in the wake of two key events. First, nine rangatira signed the Treaty of Waitangi at Pākaitore on 23 May 1840. Then, just five days later, thirty-two rangatira signed the land purchase deed by which the New Zealand Company purported to buy a vast tract that included all the land around Whanganui. Both events – but especially the second – shaped how Whanganui Māori and the Crown came to interact in the years immediately following.

Signing documents, and afterwards being bound by their contents, was of course a cultural norm of the Pākehā world with which, at this point, Whanganui Māori had almost no previous contact. And yet in May 1840, they were called on twice in the course of a few days to sign – or make their marks on – two documents that, according to Pākehā understanding and intention, would shape their future. One sought to change the disposition of power in the country, and the other the disposition of their land.

These two came together in that the Treaty reserved to the Crown alone the right to purchase Māori land, and the New Zealand Company's purchase deed transferred ownership of land directly from Māori to the company, and excluded the Crown entirely. They were thus irreconcilable: noone who understood the intention of either document, and who understood the tikanga or rules around signing documents, would have signed the other.

Many rangatira neither saw nor signed either document; some signed one but not the other; a few signed both.

Only two days before the Treaty signing at Pākaitore, the Crown – through its agent William Hobson – took what was, from a legal perspective, a decisive step in establishing its authority in New Zealand. On 21 May 1840, Hobson issued a proclamation declaring British sovereignty over the North Island by way of cession through the Treaty of Waitangi.[1] Following the signing at Waitangi on 6 February, Crown agents took multiple copies of the Treaty around the country for ratification, and this process continued for some time: Whanganui was by no means the only place where the Treaty was signed after the sovereignty declaration.[2]

3.1.1 The purpose of this chapter

In this chapter, we look closely at the unique circumstances of how and when the Treaty came to Whanganui. We ask what, if any, significance attaches to the timing of the Treaty signing at Pākaitore in relation to Hobson's sovereignty proclamation. The claimants say that it should be considered either as a nullity or as evidence that the Crown's intentions in proffering the Treaty were a 'farce'. What did Whanganui Māori make of the Treaty as presented to them on 23 May 1840? How did they relate it to the New Zealand Company deed, which some signed a few days later? Did what happened on the day the Treaty was signed lead to an agreement – and, if not, what was it?

We pose these questions – and endeavour to answer them – in order to set the factual underpinning for our determination of the Treaty standards that apply to our consideration of the claims in this Whanganui inquiry district. The Waitangi Tribunal has established as part of its jurisdiction under the Treaty of Waitangi Act 1975 the necessity to interpret the Treaty in light of its origins.[3] This chapter is all about those origins in this district. The next task, of determining the meaning and effect of the Treaty here in this district, we undertake in chapter 4.

3.1.2 The questions we ask

In order to understand how the Treaty was received in Whanganui, we ask:

- What experience did Whanganui Māori have of Pākehā prior to the Treaty signing at Pākaitore?
- Why and how did the Crown bring the Treaty to Whanganui in May 1840?
- Who were the Whanganui Māori who signed the Treaty?
- What was the Whanganui Māori understanding of the Treaty?

3.2 The Parties' Positions

3.2.1 What the claimants said

The claimants submitted that both the signatories and non-signatories to the Treaty wanted to protect their ability to set and determine their own destinies within their own territories, in accordance with their own values, norms, and laws. Whanganui Māori did not, they said, intend to cede sovereignty to the British Crown, nor to agree that English law would apply to them. According to the claimants, Whanganui Māori agreed that the Crown would have, at most, authority to regulate its own English subjects to ensure the ongoing safety and security of the indigenous population and their institutions.[4]

The claimants viewed the process surrounding the introduction of the Treaty to Whanganui Māori and its signing as inadequate and flawed. They submitted that Hobson's proclamation of Crown sovereignty two days prior to the Treaty signing at Pākaitore could not be valid for Whanganui Māori as they had yet to ratify the Treaty. Thus, they argued, the proclamation must be viewed as a nullity or as proof that the Treaty negotiations at Pākaitore were a farce that the Crown never intended to honour.[5]

Regarding the use of Henry Williams as an agent for the Crown, the claimants asserted that the Crown exploited the relationship of trust and confidence that had developed towards missionaries in order successfully to create a colony.[6] Further, they said that the willingness of Whanganui rangatira to sign the Treaty arose from a state of anxiety engineered by Henry Williams. Williams had warned Pūtiki rangatira that the 'white settlers would drive them to the hills'. The claimants submitted that this influenced the chiefs to sign the Treaty.[7]

3.2.2 What the Crown said

The Crown contended that, 'as a matter of law, and consistent with Treaty principles, the assertion of sovereignty was valid in relation to all Maori within Whanganui'. The Crown stated that its aim, in good faith, was to undertake Treaty obligations towards all Māori, as part of the process of securing a legitimate foundation for British sovereignty.[8] It pointed to the Tribunal's *Rekohu* report, which states:

> the Treaty was meant to apply to the whole of the indigenous people of such parts of New Zealand as might be annexed (for when it was drafted, no part had been annexed and there were doubts as to how much would be).

> . . . the Treaty must be taken to have applied in all places when sovereignty was assumed.[9]

The Crown submitted that the Treaty gave the Crown a kāwanatanga authority that extended over Māori and Māori communities. While the tino rangatiratanga of those communities was protected, its exercise could not be unfettered. Rather, the tino rangatiratanga of Māori communities had to be reconciled with the Crown's kāwanatanga, which included the right to make laws applying to all inhabitants of New Zealand.[10]

3.2.3 Our comment

The parties' arguments about the coming of the Treaty related mostly to what they said were the implications for its meaning and effect. In this chapter, we are looking into how the Treaty came to Whanganui, and its reception there. We examine the implications for our jurisdiction in chapter 4. However, we set out the parties' arguments here to make apparent the context for our examination of the history of the arrival of the Treaty in Whanganui, and for our discussion of what Māori there are likely to have understood by it.

Henry Williams, a missionary whose early success and status enabled him to settle conflicts between Māori. Williams translated the Treaty of Waitangi from English into Māori, but the differences between the two versions are a key feature of the Waitangi Tribunal's jurisdiction.

3.3 Whanganui Māori's Experience of Pākehā before the Treaty Signing at Pākaitore

Henry Williams brought the Treaty to Whanganui in May 1840. A missionary with the Church Missionary Society (CMS), he came to New Zealand in 1823. He was based in the Bay of Islands area, and travelled throughout New Zealand meeting Māori and establishing mission stations.[11] However, European missionaries were in New Zealand for two decades before any came to Whanganui. Williams was the first, when he visited in December 1839.

3.3.1 Early contact at Whanganui

Whanganui Māori in fact had little early contact with Pākehā compared with Māori in many other parts. The first recorded contact was in 1831, when Joe Rowe, a trader in dried human heads, came ashore with other members of his trading party not far from the mouth of the Whanganui River. Their visit ended violently when Māori, reportedly from the Taupō area, discovered in Rowe's collection the preserved heads of Taupō chiefs. They killed Rowe, and preserved his head.[12] Whether Whanganui Māori were there too is unclear. Later in 1831 a flax trader called Scott attempted to establish a flax trading station near the Whanganui River mouth. No more is known of this endeavour.[13] In 1834 another trader, John Nicol, traded gunpowder for pigs along the river and between Whanganui and Kapiti for about 12 months.[14]

After that, the next recorded European arrival was Henry Williams in December 1839. Māori at Pūtiki received him warmly, and he stayed there, and on the

lower reaches of the river, for six days. He visited Te Pēhi Tūroa, the great rangatira of the upper Whanganui River, probably at his lower river residence, Pūrua.[15] Williams then ventured far up the Whanganui River, calling at many pā and kāinga, before trekking overland from Hikurangi to Taupō.[16]

(1) *Exposure to Christianity*

Williams could see that, despite their lack of contact with Pākehā, Whanganui Māori had been exposed to Christian ideas. This was not unusual. Māori missionaries introduced Christianity to several areas where contact with Pākehā was limited. However, Christianity does seem to have come later to Whanganui than to other districts. The Tūranga Tribunal, for example, noted that Christianity was introduced to the East Coast from 1834, following the return of Māori captured during the Ngāpuhi raids of the 1820s.[17] Wiremu Te Tauri of Ngāti Tūwharetoa hapū Ngāti Te Rangiita appears to have brought Christianity to Whanganui in 1838. Williams noted that many Whanganui Māori were involved in Christian practices, had embraced literacy, and were keen to acquire books.[18]

(2) *Williams's fears about Europeans purchasing land*

Williams feared the effects on Māori of an influx of Pākehā settlers, and wanted to protect the landholdings of Whanganui Māori. He convinced five rangatira to sign a deed by which Whanganui land was conveyed to the CMS to be held in trust for 'Ngatiawa' (as Williams called Māori from the area between Taranaki and Wellington).[19] His trust deed came to nothing, because the CMS declined to be party to it.[20] Williams later noted that Māori at Whanganui were in 'considerable alarm lest the Europeans should take possession of the country', and he warned Pūtiki rangatira that the 'white settlers would drive them to the hills'.[21]

Given their very limited experience of Pākehā prior to Williams's arrival, it is unclear how Māori could have been alarmed in the way Williams claimed. Williams was certainly anxious, though, and perhaps he pressed his own fear on the rangatira gathered at Pūtiki.

3.3.2 The New Zealand Company's land purchase activity

It was the activities of the New Zealand Company that troubled Williams. He and the CMS became aware of the Company's intentions when, known at that time as the New Zealand Association, it sought official support from the British Government for the colonisation of New Zealand in accordance with a system formulated by Edward Gibbon Wakefield. This involved buying large areas of land from Māori for nominal sums, and on-selling to settlers at a price high enough to fund surveys, public works, and the immigration of labourers.[22] Williams, the CMS, and other New Zealand missionaries opposed the Association's plans. The Association effectively ceased operations upon failing to gain the official support they wanted. However, it re-emerged in 1839 as the New Zealand Company, which Edward Gibbon Wakefield founded with the intention of colonising New Zealand without official sanction.[23]

The Company's principal agent, Colonel William Wakefield, left London in May 1839 and arrived in the Kapiti area in the Company ship, *Tory*, in August of that year. The first Company ship transporting settlers departed Britain on 15 September 1839.[24] In October and early November 1839, the New Zealand Company signed deeds with rangatira of Ngāti Toa and Te Āti Awa. These deeds purported to convey some 20 million acres of land in total, stretching south from the central North Island to include the Whanganui and other districts and a large part of the South Island.

(1) *Whanganui rangatira sign a deed at Waikanae*

Some Whanganui Māori had dealings with the New Zealand Company outside the Whanganui district. On 16 November 1839, Whanganui Māori chiefs then living near Waikanae at Arapawaiti – Te Rangiwhakarurua, his son Te Kurukaanga, and Te Kirikaramu – visited the *Tory* while it was anchored off the Waikanae coast. Te Rangiwhakarurua and Te Kirikaramu signed a land purchase deed covering all the land (over one million acres) along the coast from Manawatū to Pātea (in Taranaki) and inland to Tongariro. These places, the only ones mentioned in the deed, were

said to have been pointed out to Wakefield, or described for him, from the deck of the *Tory*.[25]

Te Rangiwhakarurua and his son came from Tīeke, Tata and Ōkirihau, upriver from the conjunction of the Whanganui and Manganui-a-te-ao Rivers.[26] They were of Ngāti Maringi and probably other local hapū connected to Ngāti Uenuku and Ngāti Tamakana.[27]

Te Kirikaramu's identity is uncertain. In 1843, a Crown official, George Clarke junior, identified him as belonging to Te Patutokotoko, the people of Manganui-a-te-ao and Waipākura.[28] Historian Michael Macky suggested he was the same person as Te Karamu / Te Mamaku of Ngāti Hāua, but acknowledged uncertainty about this.[29] We discussed this possibility in chapter 2, and agree that we do not know, but think it unlikely. Te Mamaku of Ngāti Hāua of the district known as Tūhua (Taumarunui) was not of Te Patutokotoko of Manganuiateao, and in the Hutt was allied to Ngāti Rangatahi and Ngāti Raukawa, whereas Te Kirikaramu was allied to Te Āti Awa and lived near them at Waikanae.

The Events of May 1840

19 May: EJ Wakefield arrives with New Zealand Company deed
21 May: Hobson issues a proclamation declaring British sovereignty over the North Island by way of cession through the Treaty
23 May: Williams and Hadfield arrive at Pākaitore with the Treaty; nine Whanganui chiefs sign it that day
25 May: Williams and Hadfield leave Whanganui
27 May: Upriver Māori arrive; hui at Pākaitore to discuss New Zealand Company deed
28 May: New Zealand Company deed signed aboard Surprise
31 May: Five more Whanganui men sign the Treaty at Waikanae

(2) *Edward Jerningham Wakefield comes to Whanganui*

Colonel Wakefield promised to visit Whanganui with a cargo of goods to complete the purchase, but he was thwarted by bad weather.

In March 1840, Wakefield's 19-year-old nephew, Edward Jerningham Wakefield, visited Whanganui, apparently at Te Kurukaanga's instigation. Some 300 to 400 Māori gathered at Pūtiki to meet Wakefield. When introduced to rangatira Te Pēhi Tūroa I, Rangitauira and Te Anaua, he presented each with a red blanket, and gave fish hooks and tobacco to others. This was not payment for the land described in the deed signed aboard the *Tory*, though. Wakefield explained that he was there only to meet the people and assess the land, and that if those gathered wished to complete a deed with the company they would have to apply to Colonel Wakefield.[30]

3.3.3 The setting for the coming of the Treaty

This, then, was the setting for Williams's bringing the Treaty to Whanganui in May 1840: Whanganui Māori and Pākehā were virtually unknown to each other, Christianity and literacy were recent arrivals, and trade relationships had barely begun.

Yet, here was Henry Williams proffering for signature the foundation document for the new society. And the New Zealand Company was hard on his heels, pressing to complete the purchase of over one million acres of land, for which a deed had been signed at Waikanae the year before.

3.4 Why and How Did the Crown Bring the Treaty to Whanganui in May 1840?

3.4.1 Hobson and the Treaty

On 29 January 1840, Captain William Hobson arrived in New Zealand. He brought instructions from Lord Normanby, Secretary of State for the Colonies, to secure from Māori throughout New Zealand their 'free and intelligent consent' to a cession of sovereignty to the British Crown.[31]

British naval officer William Hobson. Hobson, who helped draft the Treaty of Waitangi, became New Zealand's first governor.

On 5 February 1840, Hobson presented the Treaty to Northland Māori, who signed it on 6 February. In proclamations issued three months later (gazetted in London in October 1840), Britain declared sovereignty over New Zealand.[32]

Hobson viewed the Treaty signed at Waitangi as the de facto Treaty but recognised that further signings were required to ratify and confirm it.

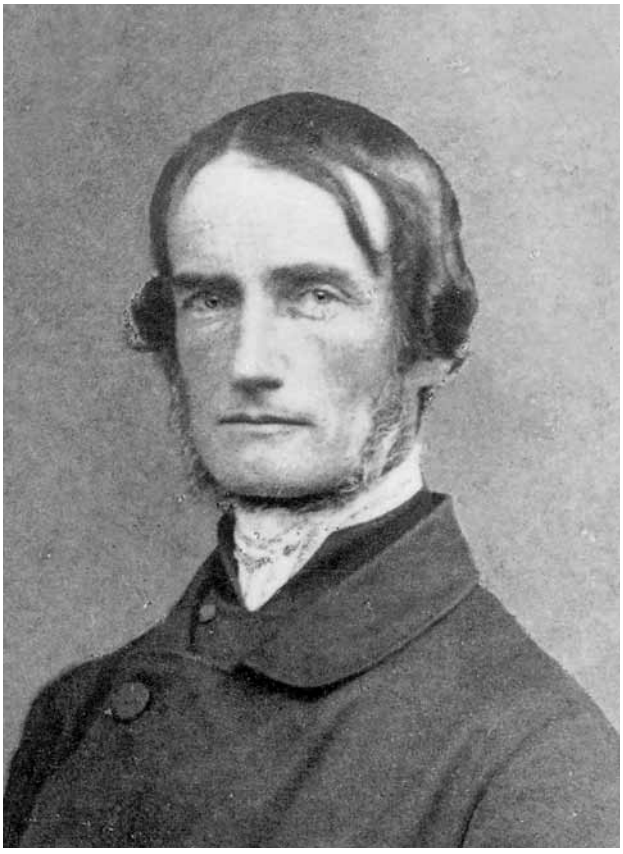
During February 1840, rangatira signed copies of the document first at other locations in Northland,[33] and then further afield. Hobson, at this time Lieutenant Governor of New Zealand, was too unwell to travel, so agents took the Treaty around for signing. Their instructions were to explain to Māori the principle and object of the Treaty, and to ensure they understood before they signed.[34] And sign they did. Between March and September 1840 hundreds of Māori all over the country put their names and their marks to copies of the Treaty.[35] This process was still underway when Hobson proclaimed British sovereignty over New Zealand on 21 May 1840 – two days before the Treaty was signed at Pākaitore. Hobson issued proclamations declaring sovereignty over the North Island by way of cession through the Treaty, and announced that full sovereignty vested in the Crown when the Treaty was signed at Waitangi on 6 February 1840.[36]

3.4.2 Henry Williams's Treaty tour

Hobson charged missionary Henry Williams with the task of bringing the Treaty to the Cook Strait region, which included the Whanganui district. To obtain as many signatures as possible, Williams visited Wellington, Queen Charlotte Sound, Waikanae, Kapiti, and Whanganui.[37] Hobson attached particular importance to securing the signature of Te Rauparaha, the famed Ngāti Toa rangatira. Hobson understood Te Rauparaha to exercise absolute authority over the southern North Island, and so believed that his signing was critical to the Crown's acquiring undisputed sovereignty here.[38]

Williams began in Wellington, where he spent 10 days securing the broad support of local rangatira. Williams attributed their initial reluctance to the New Zealand Company and its settlers having circulated their negative view of the Treaty. He won the Port Nicholson chiefs over, and they all signed on 29 April 1840.[39] Then between 4 and 21 May, he collected many more signatures travelling between Queen Charlotte Sound, Rangitoto (d'Urville Island), Waikanae, and Kapiti Island.[40] Te Rauparaha signed at Ōtaki on 14 May.[41]

Williams journeyed up to Pākaitore with Ōtaki-based missionary Octavius Hadfield. He arrived on 23 May 1840. Nine Whanganui rangatira signed the Treaty there that day. Another five rangatira signed at Waikanae on 31 May.[42] Only two (Te Rangiwhakarurua and Pākoro) or perhaps three (if Takaterangi was a Whanganui man) of those who signed at Waikanae were definitely Whanganui



Octavius Hadfield. The first priest ordained in New Zealand, Hadfield took a missionary post on the Kapiti Coast. His peacemaking role between Māori and settlers became difficult when Te Ati Awa land was sold to settlers at Waitara, an action he strongly opposed.

rangatira, while one was definitely not.[43] The total of Whanganui rangatira who signed is no more than 13, but may be as few as 11.

We do not know why the rangatira signed at Pākaitore on the day Williams arrived, when his visit lasted for a second day. Nor do we know how many Whanganui Māori were present either at Pākaitore or Waikanae, nor who they were (apart from the signatories), whether upriver Māori knew about it, nor to what extent the Treaty was discussed or debated.

3.4.3 Williams's two days in Whanganui

Why Williams spent comparatively little time at Pākaitore remains a mystery.

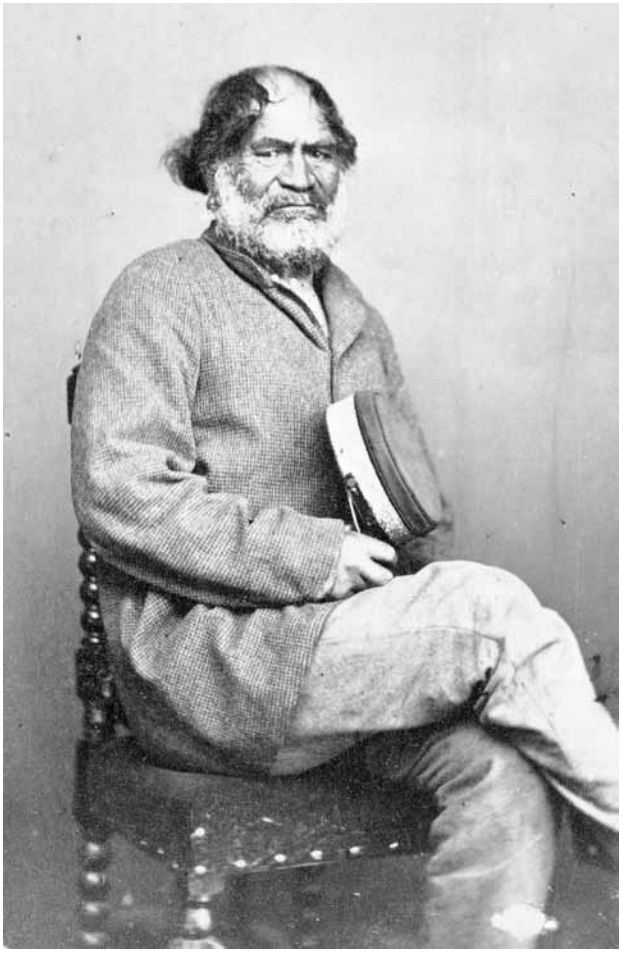
Historian Bruce Stirling suggested that Williams and Hadfield left there on 25 May 1840 in order to secure the signature of Te Rauparaha, which Stirling said happened at Kapiti on 26 May. But in fact Te Rauparaha signed at Ōtaki on 14 May 1840, more than a week before Williams got to Whanganui. (Te Rauparaha also signed another copy of the Treaty – presented to him on this occasion by Major Bunbury aboard the HMS *Herald* off Mana Island – but this did not occur until 19 June 1840.[44])

So if obtaining Te Rauparaha's signature did not speed Williams's departure from Whanganui, what did? There is no satisfactory answer to this question.

Williams must have heard the news that there would shortly be a big event at Pākaitore, where Māori were gathering to consider the New Zealand Company's land purchase deed. EJ Wakefield arrived four days before Williams, with the Company deed in hand. He awaited the arrival of Māori from the upper Whanganui River who claimed interests in the land the company proposed to purchase. Wakefield does not appear to have attended the meeting at which the Treaty was signed.[45] However, he recorded what Te Pēhi and Te Anaua told him about it. They said that when Williams presented the Treaty, he 'urged them not to sell their land, saying that, "all the goods in the vessel were light, and might be lifted with the hand, but that the *one-one*, or 'land', could not."'[46] But although Williams believed that the company posed a threat to Whanganui Māori, and although he must have known about the imminent arrival of many Māori from upriver who could potentially have added their signatures to the Treaty, he decided not to stay longer.

On 27 May 1840, two days after Williams and Hadfield departed, a hui of 400 to 800 people – including upper-river rangatira – met to discuss the company's deed. On the second day of the hui, EJ Wakefield succeeded in obtaining 32 signatures.

It seems very likely that, had he stayed on, Williams could have obtained more signatures for the Treaty, particularly those of upper-river chiefs. As it was, he



Hōri Kīngi Te Anaua, a Ngāti Ruakā leader from Pūtiki. Te Anaua took the name Hōri Kīngi on his baptism and signed the Treaty of Waitangi at Pākaitore in 1840. A mediator between tribes, he turned down nomination as Māori King in the 1850s.

obtained nine signatures at Pākaitore on 23 May and five in Waikanae on 31 May.

Following the collection of signatures at Waikanae, Williams travelled to a little island to the south of Kapiti, Motu Ngarara, where two more rangatira signed the Treaty.[47] All together, Williams secured the signatures of some 132 rangatira.[48]

3.4.4 The choice of Williams to take the Treaty south

The claimants question Williams's role as agent for the Crown in bringing the Treaty south. They argue that, because he was a missionary, Māori were likely to repose in him a greater level of trust and confidence.

Historian Claudia Orange said that Māori considered Williams to be a man of considerable mana.[49] She considered that Hobson's deployment of missionaries played on Māori trust in their good intentions, and 'added a religious aspect to Maori understanding of the agreement'.[50]

We accept Orange's assessment. However, when it came to choosing a man to take the Treaty to Whanganui, Williams was the logical choice. His knowledge of the area was based only on one trip, but that was one trip more than any other candidate. Was the Crown exploiting Williams's status as a missionary or his links with Whanganui Māori? By 1840, some Whanganui Māori had already adopted Christianity, and it is likely that they associated Williams with their new religion. But we doubt that Williams's earlier sojourn would have created a bond with Whanganui Māori that would have significantly advanced the Crown's interests. His being a missionary, and familiar, may have broken down initial apprehension, but would not, we think, have been enough to overcome serious opposition.

3.4.5 Mission accomplished?

One hundred and thirty-two signatures was a good many to obtain in a short time, and Williams must have been seen as having succeeded in implementing Hobson's instructions to secure broad acceptance of the Treaty.

His decision not to stay longer in Whanganui at the end of May 1840 is certainly puzzling – why did he forgo the opportunity to gain confirmation of the Treaty from Māori of the wider Whanganui district? – but this mystery will probably remain forever unresolved.

3.5 Whanganui Māori who Signed the Treaty

The nine Whanganui rangatira who signed the Treaty of Waitangi at Pākaitore were:

- Te Anaua of Ngāti Ruakā of Pūtiki.

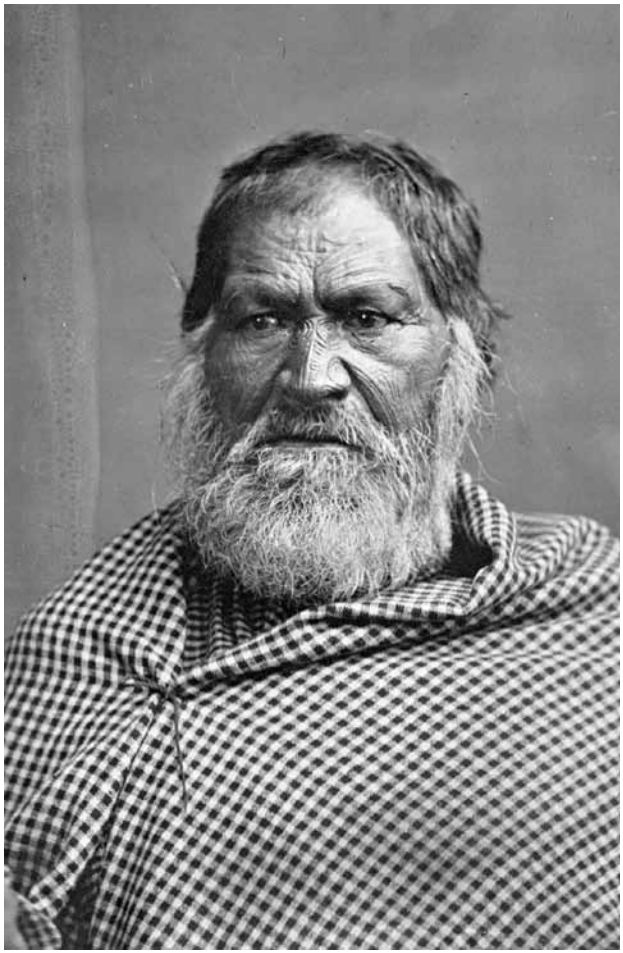
- Te Māwae (the brother of Te Anaua – he may have signed at Kapiti).
- Rere (Rereomaki, the sister of Te Anaua and Te Māwae and the mother of Te Keepa Te Rangihiwinui or Major Kemp, then a youth).
- Te Tauri (a Māori missionary from Taupō, married to the daughter of Te Māwae).
- 'Tawito' (probably Tawhito, the father of Kāwana Paipai, or perhaps Kāwana Paipai himself, sometimes known as Kāwana Paipai Tawhito-te-rangi). Tawhito (the father) died on 31 May 1847[51], so he is the more likely signatory.
- Rore (unidentified).
- Te Pēhi Tūroa of Te Patutokotoko (once based at Manganui-a-te-ao but at this time living at Pūrua and Waipākura).
- Taka: a man named Taka was a grandchild of Ngāpara of Te Patutokotoko; this may not be the same man; Te Patutokotoko were then based at Waipākura.
- Kurawatiia (Kurawhatiia? unidentified).

Te Pēhi Tūroa I and Te Anaua were two of the most prominent leaders in the Whanganui district. Others included members of Te Anaua's family.

All the signatories we can identify were then resident in the districts known as Pūtiki-wharanui, Pūrua, or Waipākura, all places in the lower reaches of the river. Originally, some had lived in Manganui-a-te-ao and Rānana.[52] Presumably they still had whanaunga (kin) and influence among the communities in those districts, such as those associated with Ngāti Ruakā and Te Patutokotoko around Rānana, Pukehika and the various Manganui-a-te-ao kāinga.

Another five Māori signed later, probably all at Waikanae, on 31 May 1840. The signatories at Waikanae were:

- Te Rangiwhakarurua (the father of Te Kurukaanga, both originally from Tata and Tīeke upriver from Pipiriki – Te Rangiwhakarurua had also signed the Company's November 1839 'Deed' on board the *Tory*, off Waikanae);
- Pākoro, the son of Te Pēhi Tūroa I of Te Patutokotoko, was later known as Te Pēhi Tūroa II); and
- Takaterangi (unidentified, but we consider this could have been a Whanganui name).



Te Māwae, a sibling of Rere-o-maki and Te Anaua. He and Te Anaua were among the leaders in early nineteenth-century tribal warfare.

The other two signatories were:

- Uripo (or Huripo?, unidentified); and
- Te Hiko (later on the sheet identified as Te Hiko of Mana Island; he was of Ngāti Toa).[53]

3.5.1 Whom did the signatories represent?

In 1840, Whanganui Māori were not part of a single confederated iwi identity. Many were descended principally from non-Whanganui ancestors. While terms like 'Te

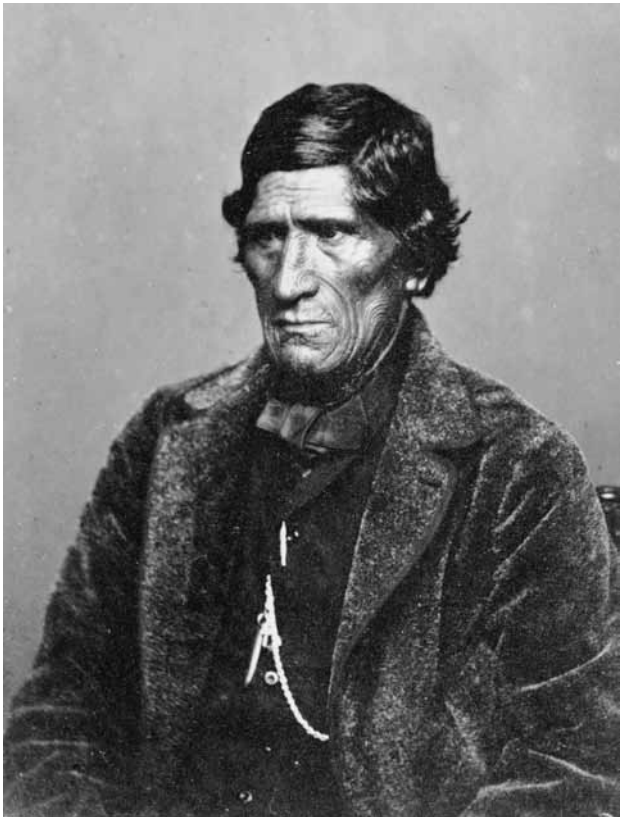
Āti Hau', 'Te Āti Haunui-a-Pāpārangi', or 'Whanganui' were sometimes used, these were broad identities that Whanganui Māori used to distinguish themselves from peoples of neighbouring geographic regions or waka. Certainly some of those who signed the Treaty at Pākaitore were important chiefs including Te Pēhi Tūroa, Te Anaua and his siblings, Kāwana Paipai Tawhito-te-rangi or more likely his father, Tawhito. They did not, however, have the authority to commit all Māori living on the Whanganui River or its tributaries to any action or agreement. Those who signed the Treaty were only representative of their local tribal groups or communities, and there were many others who were not represented.

3.5.2 Whanganui rangatira who did not sign the Treaty

There is no evidence that anyone present at any Treaty hui on 23 May 1840 came from further upriver than Waipākura. Those whose names were missing included, for example, Te Mamaku[54] and Te Oro of Ngāti Hāua; Matuaahu Te Wharerangi of Ngāti Hikairo, Ngāti Tamakana and other northern hapū; Te Riaki of Ngāti Rangi; and many other northern and eastern rangatira.

A number of rangatira who did not sign the Treaty lived within a day's walk of Pākaitore:

- Rangitauira and his four sons, of Ngā Paerangi of Mateongaonga;
- Koroheke or his sons, including Poari Kuramate and Ēpiha Pātapu, of various lower reaches hapū including Ngā Paerangi, of kāinga from Waipākura to Kaiwhaiki;
- Te Oti Takarangi of Ngāti Rongomaitāwhiri and other hapū, of Kaiwhaiki and other local kāinga;
- Te Heke or Whakakati (if alive[55]) or his son, Hoani Wiremu Hīpango of Ngāti Tūmango of Pūtiki; Hoani Wiremu, though a youngish man, was already influential in the 1840s;
- Hakaraia Kōrako of Ngā Poutama, of Parikino and Pūtiki;
- Mete Kīngi Paetahi of Ngā Poutama, Ngāti Tūmango, and other hapū, of Pūrua and Tautehe (a pā opposite Pūtiki), or his senior elder at the time;[56] Mete Kīngi was still young in the 1840s;



Kāwana Paipai, a tohunga and storyteller who fought in many campaigns. Paipai backed European settlement in Whanganui and was keenly interested in Māori politics. Either he or his father, Tawhito, signed the Treaty at Pākaitore.

- Tīpae and Te Munu of Ngāti Apa and Ngā Wairiki in the Mangawhero to Whangaehu district; and
- Tāmumu or his ariki wife, Tapukura of Ngāti Tamareheroto and other hapū at Kai Iwi.

We can only speculate as to why these rangatira did not sign. Some might have been temporarily absent for some reason, though it is unlikely that all of them were. Save for Koroheke (who died in 1846) and Poari Kuramate (who was absent), they all signed the Crown's Whanganui Deed of 1848 (see chapter 7).

Another possible reason for these and other absences from the Whanganui Treaty signing is political antagonism of various rangatira and their communities towards Pūtiki Māori. In 1840, this antagonism, if it existed, was probably based on former inter-tribal tension (such as the arrival of Ngāti Ruakā and Te Patutokotoko in the lower reaches, discussed in chapter 2). If this is the reason – or a reason – why so many significant chiefs did not sign, it underlines how, to achieve broader knowledge and acceptance of the Treaty, it would have been necessary to take the Treaty to communities and rangatira beyond those at Pūtiki and Pūrua.

It is more likely, though, that the absences were the result of time pressure: there would have been little opportunity to spread the word about Williams's presence at Pūtiki before the Treaty was signed and Williams departed.

3.5.3 The relevance of who signed the Treaty

Our discussion of who did and did not sign the Treaty proceeds on the basis of our understanding that the Treaty signing was in fact an important occasion and that the important rangatira of that time and place ought to have been there to signify their agreement with what was happening in their rohe and also – although they probably could not grasp the wider implications at the time – in the whole of New Zealand.

However, it is worth noting here that the Waitangi Tribunal has found that the Treaty of Waitangi applies even in areas to which it was not taken at all, and we discuss in the next chapter how Crown sovereignty is a fait accompli for the purposes of this Tribunal whether or not rangatira agreed to it. How many Whanganui rangatira did or did not sign, and why, is therefore primarily a matter of historical interest, although it could potentially affect the Treaty standards we apply in this inquiry district. But since we go on to find that those who were present at the Treaty-signing hui were agreeing to something much more limited than the Crown intended the Treaty to mean, the number involved is arguably of limited importance. We discuss this further in chapter 4.

3.6 Māori Understanding of the Treaty

What understanding of the Treaty did Whanganui Māori take away from their encounters with Henry Williams at Pākaitore and at Waikanae in May 1840? What can we know or infer about how well they grasped the Crown's intent, or understood what sovereignty might entail? Did the explanations and discussions when the Treaty was presented identify and explain the inherently difficult and potentially ambiguous elements of the Treaty – especially what te tino rangatiratanga meant in a context where the Crown intended the Treaty as a vehicle for asserting sovereignty? What was the nature of the encounter?

3.6.1 What we know about what was said

There is no record of the hui Williams convened on 23 May 1840 at Pākaitore, where rangatira signed the Treaty. Nor is there any account of the Treaty signing at Waikanae.

(1) *How exercised Māori were about land purchases*

On 11 June 1840, Williams wrote to Hobson, informing the Lieutenant Governor of his progress, and indicating what, in Williams's view, Whanganui Māori expected of their relationship with the Crown. Williams wrote that chiefs on both sides of Cook Strait:

> as far as Wanganui, signed the Treaty with much satisfaction and appeared much gratified that a check was put on the importunities of the Europeans to the purchase of their lands, and that protection was now afforded to them in common with Her Majesty's subjects.[57]

This report suggests that Whanganui Māori shared the concerns of Māori in other parts of the lower North Island and the upper South Island about Pākehā land purchase activities. It emphasises protection as a focus for Māori – especially from those seeking to buy too much land. It will be recalled that Williams stressed these same concerns when he reported on his first visit to Whanganui in December 1839.

It is impossible now to know whether this Māori concern about Europeans purchasing their land was really as

widespread as Williams's comments imply, or whether he was projecting his own unease. It does seem unaccountable that Whanganui Māori had European land purchase as a chief concern in 1839, when they were entirely removed from it. And if they were apprehensive, why did they immediately sign the New Zealand Company's purchase deed?

(2) *Māori understanding of Treaty signing scant*

EJ Wakefield, who was in Whanganui when Williams and Hadfield arrived with the Treaty but did not attend its signing, heard about it from Māori who visited him on board the *Surprise*.[58] This account described a situation where understanding was scant:

> Brooks heard from Turoa that he and Te Anaua had each received a blanket from Williams, but had neither signed nor consented to have their names put to any paper. They said he put their names to his paper without asking them, and said the Queen had sent the blankets out to be given the natives . . . I suppose he reckons the Sovereignty a very light thing as he gives a single blanket for it, and does not think it necessary for the Chiefs to put their hands to the pen. They do not understand the meaning of it, but offered to return the blankets, on Brooks telling them they would get nothing more; for they suppose it to be payment for the land.[59]

Referring to the Treaty signing at Pākaitore in his memoir *Adventure In New Zealand* (published in 1845), Wakefield recounted a conversation he had with Te Pēhi Tūroa about the Treaty, stating:

> When I explained to him that my Queen had become his also, and that she and her Governor were now chiefs over him as well as over me, he became very agitated, and repeatedly spoke of following Williams in order to return the blanket and upbraid him for the deception. . . . 'But' said he, 'a blanket is no payment for my name. I am still a chief.'[60]

Thus, according to Wakefield, Tūroa felt that Williams had deceived him because he did not know that after signing the Treaty he would be a subject of the Queen; Williams had put rangatira names on the Treaty without their consent; and some thought that Williams had given blankets as payment for land.

(3) *Reliability of Wakefield's comments*

How much credence should we give Wakefield's comments and recollections? He was not a disinterested commentator, as he and Williams were essentially competing to win the good opinion of Whanganui Māori. Williams was a harsh critic of the New Zealand Company and its land purchase activities, and had sought to convince Whanganui Māori not to deal with land purchasers like the Wakefields. Given these competing aims and animosity, Wakefield's version of events must be treated with caution – but not disregarded entirely. Although no doubt coloured by his prejudices, parts of his accounts ring true. Williams had earlier attempted to set up a trust deed (signed in December 1839) purporting to transfer to the CMS Māori land from Rangitīkei to Pātea to be held in trust for the benefit of the 'Ngatiawa tribes'. Against this background, the chiefs may well have understood Williams's gift of blankets at the Treaty signing as payment for this 'purchase'. In fact, Wakefield recorded that, in March 1840, Whanganui Māori complained to him that they had not yet received any payment from Williams.[61] Years later, Te Pōari Kuramate gave evidence in the Native Land Court that cast yet another light on the matter. He recalled that Williams gave a blanket to his father, Koroheke of Ngā Paerangi, who understood the gift as an inducement to refuse to sign the New Zealand Company Deed.[62] There was evidently considerable confusion about what Williams's blankets were for.

3.6.2 The Crown's view

The Crown submits that it is not possible to be certain about Whanganui Māori understandings of the Treaty because there is too little evidence, but the evidence about why Northland Māori came to sign applies also to Whanganui.

The Crown relies on the evidence of Dr Lyndsay Head,

who states that northern rangatira understood that the Governor would be 'the non-negotiable local peak of a hierarchy of authority'. Head argues that the Treaty 'was a symbol to Māori of a further step into modernity'; that it was 'not a document but a chiefly decision'; and that Māori thought that after the Treaty the future would be 'a unified governmental system to which all were subject'.[63]

Head considers that speeches at Waitangi and at other Treaty hui in the north showed that Māori present understood that the Governor's status stemmed from his position as the representative of Queen Victoria, who 'represented the *mana* of Western civilization'. This was 'an expression of the tapu (sacred power) of God' which clung to her. The chiefs in the north feared, and therefore understood, that this 'necessary system of government of the modern world' and the benefits that would flow from it, came at a price: the 'end of the independent authority encapsulated in *mana*'. She feels that the chiefs understood that there 'was no part of Māori political culture that would remain untouched by colonisation, because the Governor would have greater political power than any chiefs'. Government would be a system of sanctions that would apply to Māori: there was 'a clear awareness that a governor is an authority different in kind from the existing roles of Pākehā in Māori society'.[64]

According to Head, the northern chiefs' understandings suggest what Whanganui attitudes to the proposed colony might have been – moderated only by the relatively slender Whanganui experience of Pākehā settlement.[65] Head also argues (mistakenly) that the hui at which the Treaty was introduced to Whanganui Māori lasted days, suggesting that Whanganui concerns were well aired. In her view anti-Treaty speeches during this hui, if there were any, did not signify a determination against signing among Māori. Rather, attendance at Treaty hui suggested an intention to sign the Treaty.[66]

3.6.3 The claimants' view

The claimants reject Head's suggestion that Whanganui Māori would have shared the intentions of Māori elsewhere to cede sovereignty to the Crown by ratifying the Treaty.[67] They contend that Head was largely ignorant of the particular circumstances of Whanganui and that her views are based entirely on the supposition that the themes of the debate at Waitangi were similar to those at Pākaitore. Citing Head's acknowledgement that there is 'no contemporary record of the Whanganui debate preceding the signing of the Treaty,' the claimants submit that her views were simply speculative.[68]

3.6.4 Discussion and analysis

(1) *Not helpful to liken Northland to Whanganui in 1840*

We do not consider it valid to compare Northland and Whanganui in 1840; they were at decidedly different stages of contact.

From as early as 1814, Northern Māori had contact with missionaries, settlers, travellers, traders, American consuls, and the British Resident, imparting news of world events as well as teaching Christianity and literacy. Europeans established substantial settlements in Northland from the 1830s. In contrast, Whanganui Māori had almost no such experiences, and in 1840 had been exposed to little of the new thinking nor witnessed the new practices that were beginning to change the lives of their northern counterparts. Christianity was only recently adopted by some Whanganui Māori, there had been just one recorded visit by Pākehā missionaries to the area, and opportunities to trade with Pākehā were few and far between.

It is also important to record that we do not share Head's view of the understanding that northern Māori gained of the Treaty and its purpose at Waitangi. However, it is not necessary for us to go into this because we reject the proposition that what happened at Northland is a guide for Whanganui Māori understandings and we prefer to leave these and related matters for the Waitangi Tribunal's Te Paparahi o te Raki Inquiry. That Tribunal recently concluded, in its stage 1 report on the meaning and effect of the Treaty, that those rangatira who signed at Waitangi, Mangungu and Waimate did not cede their sovereignty. Rather, they agreed to share power and authority with the new Governor. This was an agreement that could be found

in the Māori text, which was signed by the rangatira and Hobson, and reinforced by the assurances Hobson and his missionary agents gave them at various hui.[69]

(2) *A culturally complex encounter*

Whanganui Māori did not benefit from the comparatively lengthy discussion of the Treaty that occurred at Waitangi, Hokianga and Kaitaia. They were reliant on Williams to explain the Treaty, its terms, and its significance. Doing that in Māori, a language that had no vocabulary for the major concepts like sovereignty and pre-emption, to people who had no experience of the Pākehā world to give them context for understanding either the concepts or their legal and political implications, was a task that verged on the impossible.

Did Whanganui rangatira even have a basis for apprehending that signing the Treaty was something of great importance? What would have conveyed that sense? It is possible that Williams's reputation was known to them, but he had no large entourage that would signify status. We do not know how many attended the Treaty-signing hui, but we do know – and the rangatira who signed the Treaty knew – that E J Wakefield was also in the locality, and he was awaiting the arrival of many more chiefs to attend his much larger hui for the signing of the New Zealand Company deed. This build-up would surely have indicated that Williams's Treaty signing was an occasion of less importance than E J Wakefield's event.

And did they have experience of tikanga Pākehā that let them know that the act of signing – of putting identifying marks on paper – connoted significance to Europeans? That by doing so, a signatory was agreeing with the contents of the paper? And would be bound by it?

There is no evidence of what Williams actually said at the Treaty-signing hui at Whanganui. However, from his brief, general description of Treaty signings from the top of the South Island to Whanganui, it appears that his emphasis was on the Crown protecting Māori from European land speculators, rather than on the transfer of sovereignty. There is no indication that Williams explained to Māori at Pākaitore or Pūtiki any of the difficult concepts in the Treaty – or even that they would now be subjects of the Queen. Indeed, Te Pēhi Tūroa's reaction to Wakefield's telling him later that he was the Queen's subject rather suggests that he did not.[70]

It may be that Williams, experienced as he was at communicating with Māori, did not try to communicate anything complex about the Treaty because he recognised that it was beyond him to convey such material to Māori like these, for whom it was all totally novel and essentially unimaginable. Moreover, he presumably knew from the outset that his stay in Whanganui would be brief. Any hope of conveying insights into the Treaty's meaning and effect would depend upon long explication and discussion – for which there would simply not be the opportunity. Or rather, for reasons into which we have no insight, Williams chose not to create the opportunity.

(3) *Possible perceptions*

We do not know, of course, what the Whanganui Māori who attended the Treaty-signing hui took away with them from that encounter, but it is fairly clear that they did not understand that the Treaty gave the Crown a pre-emptive right to purchase Māori land, which precluded sale of land directly from Māori to the New Zealand Company. At least, that is what we infer from the fact that some of those who signed the Treaty also signed the New Zealand Company's Whanganui deed. Both Te Pēhi Tūroa and Te Anaua were among them. But, as we discuss in the following chapter, the company's Whanganui deed was neither well explained nor well understood either. We can only speculate about how Māori saw the relationship between the two documents, and why it seemed appropriate to some to sign both the Treaty and the company's Whanganui deed.

It may be that the two documents were seen as similar, and offering similar opportunities. At a basic level this could have been the ability to secure the goods on offer from Williams and Wakefield: distribution of goods accompanied both the Treaty and deed signings.

Williams and Wakefield may simply have been received as emissaries from the Pākehā world, offering Whanganui

Māori the opportunity to signify their willingness to enter into a relationship with Pākehā. At the broadest level, a new level of engagement between Whanganui Māori and the world of the Pākehā was what both documents were about. And moreover, both Williams and Wakefield made it clear what it would take to please them: sign the document. As on the face of it this came at no cost, why would rangatira have hesitated to cement good relations from the outset? They were desirous of securing a relationship that would bring them goods, and also trading and learning opportunities.

For although their contact with Pākehā was thus far very limited, by May 1840 Whanganui Māori were aware of the benefits that establishing relations with Europeans could bring. Living at Waikanae brought some Whanganui rangatira into contact with missionaries and traders. When Williams visited Whanganui in late 1839, rangatira appealed to him to send a missionary to reside amongst them. Though we cannot be sure of the motivations of those who signed both the Treaty and the deed, it appears likely that they were endeavouring to secure a relationship with Europeans and the benefits that came with it. The presence of Europeans, be they missionaries, settlers, or Crown officials, offered access to goods Māori desired, to markets for the trade of their own goods and produce, and to other economic opportunities arising from the growth of European settlement. It also offered access to new forms of knowledge. Whanganui Māori had some access to these things through their bases in the lower North Island, but they were not available in their own district.

(4) *Claimants' views*

Te Kēnehi Mair and Gregory Rātana told us that they believed the desire for a relationship with the Crown, or Pākehā more generally, motivated those rangatira who signed the Treaty. Te Kēnehi Mair stated:

> In my view, Te Tiriti, to our rangatira, was about developing a relationship between two peoples consistent with our cultural values . . . I maintain that at all times our rangatira were clear that they were retaining their mana. I have no doubt that had mana been included in Article I of Te Tiriti, then our rangatira would not have signed . . . why would rangatira have given up their mana and rangatiratanga when they have had it for generations and were able to exercise that authority and those responsibilities.[71]

Gregory Rātana considers that:

> the Treaty of Waitangi was designed to allow the Queen's subjects to reside in New Zealand. It gave them a right to be here. It is also supposed to be a partnership between the Crown and Maori. Under the Treaty the Crown was supposed to protect our lands, villages, fisheries and taonga for as long as we wished.[72]

The claimants were clear that in signing the Treaty Whanganui rangatira were seeking to establish a relationship with the Crown on a mutually acceptable basis.

3.6.5 Our conclusion

We think it likely that those attending the Treaty-signing hui were engaged in a much more broad-brush exercise than engaging with the language of the Treaty, or with most of its political and legal concepts. It appears that Williams emphasised its protective capacity against importunate Pākehā land buyers, and he said much later that Māori were happy to have the protection of the Queen. From accounts of what happened at Pākaitore, though, we must doubt that he communicated the Queen's role, and there is no indication from what anyone said at the time or afterwards that he canvassed sovereignty or pre-emption. Even if he had, for the reasons already discussed we think understanding of those concepts would have been vague at best.

We consider that all one can say with any degree of confidence about what rangatira took from their attendance at the hui and signing the deed was that they had agreed to engage with Pākehā more than before, that they were open to the benefits such engagement would bring, and they expected the process of engagement to continue and advance as more Pākehā arrived.

While we can conjecture with some degree of confidence what Whanganui Māori sought to gain from entering into an arrangement with Pākehā like the Treaty, it is much more difficult to identify what, if anything, they thought they were giving up.

Notes

1. Claudia Orange, *The Treaty of Waitangi* (Wellington, Allen & Unwin and Port Nicholson Press, 1989), p 60
2. Ibid, pp 68–69
3. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington : Brooker and Friend Ltd, 1991), p 181
4. Submission 3.3.62, pp 12–13
5. Ibid, p 29
6. Ibid, p 16
7. Ibid, p 16
8. Submission 3.3.115, p 3
9. Ibid, p 2; Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 30
10. Submission 3.3.115, pp 3–4
11. Robyn Fisher, 'Henry Williams', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/1w22/williams-henry, last modified 30 October 2012
12. Thomas William Downes, *Old Whanganui* (Hawera: W A Parkinson and Company, 1915), pp 167–170
13. Ibid, p 170
14. Maxwell James Grant Smart and Arthur Palmer Bates, *The Wanganui Story* (Wanganui: Wanganui Newspapers Ltd, 1972), p 46; see also David Young, *Woven by Water: Histories from the Whanganui River* (Wellington: Huia Publishers, 1998), pp 17–18
15. Document A65 (Stirling), p 53
16. Ibid, pp 55–56
17. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 44
18. Document A65 (Stirling), pp 34–35
19. Document A100 (Macky), p 12
20. Hugh Carleton, *The Life of Henry Williams, Archdeacon of Waimate*, 2 vols (Auckland: Upton and Co and Wilson and Horton, 1874–77), vol 1, p 230
21. Submission 3.3.62, p 16
22. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 46
23. Carleton, *The Life of Henry Williams*, vol 1, pp 231–236; see also Orange, pp 25–26, 28
24. Waitangi Tribunal, *Te Whanganui a Tara*, p 84
25. Document A100 (Macky), pp 14–15; doc A65 (Stirling), pp 63–64
26. Document A65 (Stirling), pp 54–55,62–63
27. Ibid, pp 62–63; Edward Jerningham Wakefield, *Adventure in New Zealand, from 1839 to 1844; With Some Account of the Beginning of the British Colonization of the Islands*, 2 vols (London: John Murray, 1845), vol 1, pp 142, 217–218
28. Document A65 (Stirling) pp 179, 198
29. Document A100 (Macky), p 15
30. Document A65 (Stirling), pp 71–74
31. Orange, *The Treaty of Waitangi*, pp 30–31
32. Ibid, pp 60, 85
33. Ibid, pp 60–65
34. Ibid, pp 60, 67
35. Ibid, pp 62–63, 68–69
36. Ibid, p 60
37. Document A65 (Stirling), p 101
38. Waitangi Tribunal, *Te Whanganui a Tara*, pp 72–73
39. Orange, *The Treaty of Waitangi*, p 72
40. Mīria Simpson, *Ngā Tohu o Te Tiriti: Making a Mark* (Wellington: National Library of New Zealand, 1990), pp 89–108
41. Ibid, p 98; Waitangi Tribunal, *Te Whanganui a Tara*, p 73
42. Document A100 (Macky), p 36
43. *Facsimiles of the Declaration of Independence and the Treaty of Waitangi* (Wellington: Government Printer, 1976), Port Nicolson sheet witnessed by Henry Williams and Octavious Hadfield, 29 April 1840 – 4 June 1840
44. Simpson, *Ngā Tohou o Te Tiriti*, p 98
45. Document A65 (Stirling), p 101
46. Wakefield, vol 1, p 282; doc A65 (Stirling), p 102
47. Simpson, *Ngā Tohou o te Tiriti*, pp 114–115
48. Orange, *The Treaty of Waitangi*, p 72
49. Ibid, p 73
50. Ibid, p 90
51. Downes, *Old Whanganui*, p 303
52. Document A65 (Stirling) p 103
53. Ibid, p 104
54. There is some doubt as to whether Te Mamaku was in Heretaunga at this time.
55. 'Heke' signed the May 1840 New Zealand Company deed, but this is not necessarily the same man: doc A65 (Stirling), p 81.
56. Paetahi, Mete Kīngi's father, is said to have been killed in fighting with Ngā Rauru before 1840: Downes, *Old Whanganui*, p 154.
57. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 118
58. Document A65 (Stirling), p 101; Wakefield, *Adventure in New Zealand*, vol 1, p 282
59. Document A100(a) (Macky supporting papers), pp 71–72
60. Wakefield, *Adventure in New Zealand*, vol 1, p 283
61. Document A65 (Stirling), p 40
62. Downes, *Old Whanganui*, pp 179–180
63. Document A113(e) (Head), pp 127–128
64. Ibid, pp 128–129
65. Ibid, pp 127–128
66. Submission 3.3.115, p 9

67. Document A113(e) (Head), pp 143–144
68. Submission 3.3.62, pp 17–22
69. Waitangi Tribunal, *He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), pp 526–527
70. Wakefield, *Adventure in New Zealand*, vol 1, p 283
71. Document C9 (Mair), p 3
72. Document B19 (Ratana), p 11

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CHAPTER 4

THE MEANING AND EFFECT OF THE TREATY IN WHANGANUI

4.1 Introduction

In chapter 3, we talked about the coming of the Treaty to Whanganui in 1840. We concluded that there is no evidence that Māori engaged, or were given the opportunity to engage, with the meaning of the words in the Treaty at its signing in Whanganui. We found that Māori signed to exhibit their desire for a greater level of engagement with Pākehā, and their agreement to Pākehā arriving to take up residence on Māori land.

With this in mind, we now revisit the Waitangi Tribunal's jurisdictional task before moving on to consider the meaning and the effect of the Treaty, and the principles most relevant to this inquiry.

4.2 The Waitangi Tribunal's Jurisdiction

4.2.1 Forty years on

The Treaty of Waitangi Act 1975 established the Waitangi Tribunal and for that purpose imported the Treaty of Waitangi into New Zealand's law for the first time. The Act was predicated on the appreciation by 1975 that the process of colonisation had been a punishing one for te iwi Māori (although it was not until 1985 that the Tribunal's jurisdiction was extended back to 1840). The legislature made the Treaty of Waitangi the touchstone for a process of making amends that has now been underway for nearly 40 years. This Whanganui District Inquiry is one of the last historical inquiries in the country to be reported on.

Although the Waitangi Tribunal has been part of New Zealand's public life for a long time, and participants in its processes are very familiar with the provisions of the Treaty of Waitangi Act, we think that it is important to confirm our understanding of precisely what the Act says in order to ensure that we maintain our focus on the nature of our task.

4.2.2 The Treaty of Waitangi Act

The Act's preamble says:

> Whereas on 6 February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand:
>
> And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language:
>
> And whereas it is desirable that a Tribunal be established to make recommendations on claims

> relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles.

Section 5(2) says:

> In exercising any of its functions . . . the Tribunal shall have regard to the 2 texts of the Treaty set out in Schedule 1 and, for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them.

Section 6 provides for the Tribunal to inquire into claims submitted to it by any Māori or group of Māori alleging that they are prejudicially affected by acts or omissions of the Crown inconsistent with the principles of the Treaty of Waitangi. Under subsection (3),

> If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

The Tribunal's recommendations can be general or 'may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take'. Tribunal findings and recommendations are served on the claimants, the Minister for Māori Development, and any other Minister of the Crown that the Tribunal thinks has an interest in the claims. Amendments to section 6 in the years since 1975 preclude the Tribunal from inquiring into or making recommendations about matters already settled (subsections (7) and (8)), and from recommending that any private land should be returned to Māori ownership or acquired by the Crown (subsection (4A)).

To summarise: the Treaty of Waitangi is the centerpiece of our jurisdiction, and in exercising our functions we must determine its meaning and effect 'as embodied in the 2 texts'. In considering claims, we apply the principles of the Treaty practically, determine the meaning and effect of the Treaty, and decide issues raised by the differences between its two texts.

Two points emerge from this:

- *The Treaty is a fait accompli:* For the Tribunal, the Treaty is a fait accompli – in other words, a done deed. We cannot challenge its legitimacy or validity. It is our job to apply it to the claims brought before us and make recommendations accordingly. In doing so, we accept that the Treaty was entered into – or at least took force – on 6 February 1840. We cannot make findings and recommendations about the Crown's conduct before then, nor can we say that the Crown acted inconsistently with the principles of a document that had not yet come into being: Crown conduct that preceded 6 February 1840 is beyond our purview.
- *Our focus is first and foremost on the texts of the Treaty:* We are to determine the meaning and effect of the Treaty by reference to the two texts, one in Māori and one in English. Thus, our focus is on the words used and whatever we make of the differences between the two texts. The legislature does not direct us, for example, to ascertain the intentions of the parties to determine the Treaty's meaning and effects. Rather, we ascertain what it means from what it says. Context is not irrelevant, but it comes in only after the initial inquiry into what the words mean on their face. As we shall see, it does become necessary to go beyond the words to inquire into the intention of the parties, often inferred from context.

4.2.3 Conundrum

It will be recalled from chapter 3 that the coming of the Treaty to Whanganui had its own unique combination of circumstances: few rangatira signed the Treaty and many more had no opportunity; Williams presented it to Whanganui Māori over a very short timeframe in conditions not conducive of understanding; the New Zealand Company's purchase deed arrived at the same time and many more rangatira signed it; it is not clear that Māori were in a position to distinguish between the two

signings; and meanwhile the Crown had just proclaimed sovereignty over the North Island.

Bearing in mind the nature of our jurisdiction under the Act as just described, it will be apparent that there is a conundrum here.

We must determine the claims in Whanganui in accordance with our interpretation of what the Treaty says – but what we know is that, although some Whanganui Māori did sign the Treaty, they did not do it in light of what it said. For all the reasons we discussed in chapter 3, they did not know what it said, nor what the Crown intended it to mean.

Yet, it remains our job to determine its meaning and effect 'as embodied in the 2 texts' and to make recommendations on claims in the light of our determination.

4.2.4 The Orakei report on interpreting the Treaty

The approach described in the influential *Report on the Orakei Claim* (1987) remains instructive.

We have noted how the Treaty of Waitangi Act specifically provided for the Waitangi Tribunal to resolve the inevitable questions of interpretation raised by a treaty with two different texts in two languages. The Ōrākei Tribunal, consistently with the focus on the Treaty text rather than surrounding circumstances as the first priority, noted that 'when the meaning of a treaty is clear, it is applied, not interpreted'. Interpretation is required only 'when it is impossible to make sense of the plain terms of the treaty, or where they are susceptible of different meanings'.

The Ōrākei Tribunal found that the Treaty was ambiguous and did require interpretation:

> We believe that where there is a difference between the two versions considerable weight should be given the Maori text since this is the version assented to by virtually all the Maori signatories. Moreover, this is consistent with the contra proferentem rule that, in the event of ambiguity, a provision should be construed against the party which drafted or proposed that provision.[1]

It noted that this approach was also consistent with the 'indulgent rule' laid down by the American Supreme Court, which required treaties to be construed 'in the sense which they would naturally be understood by Indians'.[2]

The Ōrākei Tribunal also observed that context does come into play when interpreting treaties:

> We must also have regard to the principle that treaties should be interpreted in the spirit in which they were drawn taking into account the surrounding circumstances and any declared or apparent objects and purposes.[3]

Tribunals that followed the Ōrākei Tribunal's approach have interpreted the words of the Treaty in light of a range of factors, particularly Britain's intentions entering into the Treaty and the extent to which these were conveyed to rangatira, as well as the understandings and intentions of the rangatira who signed.

4.2.5 Crown Treaty duties apply irrespective of consent

When the Crown took the Treaty around the country for signing in the months following the event at Waitangi, the experience of Māori in different places varied. We have looked closely into the circumstances at Whanganui, but what happened there was not necessarily mirrored elsewhere. The extent of previous interaction with the Pākehā world, together with what the Crown's emissaries said to the gathered Māori about the Treaty, inevitably led to different understandings, and different levels of understanding. What does that mean for the application of the Treaty to different people, and to different regions?

The Waitangi Tribunal has rejected the suggestion that the Treaty should apply differently in different places, depending on how the Treaty was received there, or even whether the Treaty was received there.

In the *Rekohu Report*, for instance, the Tribunal considered the position of Moriori – who were not offered the Treaty and did not sign it – and concluded that the Crown's Treaty duties applied whether or not there was consent.[4]

More recently, the Urewera Tribunal considered that in Te Urewera, where certain Māori groups did not consent to the Treaty, the Crown nevertheless owed Treaty duties.[5]

We support this approach.

In the nineteenth century, Māori lost those things that were at stake in the Treaty. The Crown declared and assumed sovereignty, and although the Treaty guaranteed to Māori the right to withhold their tribally owned land from sale if they did not want to sell it, there is a real issue about whether in practice they retained authority to determine whether to sell.

If it were said now that the Treaty does not bind Māori because they did not consent to it, that would not advantage them. They would not regain sovereignty or the land they did not want to sell. Moreover, it is right that the Treaty should bind the Crown to its undertakings to all Māori in all regions, because it gained the benefits of the Treaty, and the rights and powers it acquired and assumed under it, everywhere.

4.2.6 Our synthesis

Thus we see that the Waitangi Tribunal does not determine the meaning and effect of the Treaty for different groups of Māori in light of their own experience of engaging with the Treaty and signing it. If we were to do that in the case of Whanganui, for example, we would probably say that there was no meeting of minds about any of the main provisions of the Treaty. But such an observation would not take away from the fact that the Treaty is the basis on which we determine the claims of Whanganui iwi.

For the Waitangi Tribunal, the Treaty is an artefact of the early colonial encounter in New Zealand around which we construct a process of interpretation and evidence-gathering that Parliament prescribed in statute. We focus first and foremost on the language in the Treaty. If there are questions of interpretation – and there are, because there are two texts in two languages, and what they say is different – the Māori text, as the version offered to most Māori, predominates. We then seek to understand what Māori would have made of the Treaty at the time when it was presented to them. Even though we know that most engaged with the text only to a limited extent, we construe the Treaty's words and concepts in light of contemporary Māori circumstances, understandings, and beliefs about the world.

As regards Whanganui Māori at least, the history of the coming of the Treaty makes it clear that ascertaining Māori understanding of the words of the Treaty at the time when it was presented to them is a hypothetical rather than forensic task. As far as we can determine, in May 1840 when the Treaty came to Whanganui, there was no endeavour by either the Crown or Māori (although for different reasons) to come to a common understanding of the words used.

We think there has never been a point in time when Whanganui Māori and the Crown together arrived at a clear consensus on the meaning and effect of the words of the Treaty. We have an imperfect record of how, when, or really whether Whanganui Māori sat down with the words of the Treaty to puzzle out what they really meant for te iwi Māori in their rohe – either in linguistic terms (because of the neologisms in the Treaty), or in terms of the new power dynamic it purported to usher in.

(1) *The Treaty debated*

The late nineteenth and early twentieth centuries saw considerable debate in the Māori world – and principally in the Māori language – about the meaning of the Treaty and about the nature of sovereignty and relations with the Crown. As far as the Whanganui district is concerned, we know that on a number of occasions in the 1880s and 1890s, political leaders John Ballance and Richard Seddon debated aspects of the Treaty with Whanganui chiefs at political hui. Another Whanganui locus of Treaty debate was the Rātana movement of the 1920s, the political emphasis of which was getting the Crown to honour the Treaty.

We also know of instances where Whanganui Māori invoked the Treaty and pointed the Crown to its duties to Māori under it. For example, in 1884, King Tāwhiao went with Hōri Rōpiha and Tōpia Tūroa to England to petition the British Government. According to Ballance, who spoke about it at Rānana on 7 January 1885, Tāwhiao told

Lord Derby, the Secretary of State for the Colonies, that the Treaty had been broken and asked him to 'exercise his power and authority and enforce the [Treaty's] provisions'.

Ballance went on to say that the British Government had no power to intervene, that anyway the provisions of the Treaty had been kept, and that 'not a single acre of land can be taken from the people unless they wish to sell it themselves'.[6] It was at the beginning of this meeting that Te Keepa Te Rangihiwinui (Kemp) said:

> Submission was made by the chiefs and all the hapus who assembled at Waitangi on the 6th of October [*sic*], 1840, as well as by all other chiefs of New Zealand, and by which submission we are still bound.[7]

(Ballance had just restored Kemp's sizeable salary after the demise of Kemp's Trust in 1884. Kemp had also moderated his position on boycotting the Native Land Court, and was promoting closer settlement.[8])

Another occasion for invoking the Treaty in debate with the Crown was when Whanganui Māori met with Minister Koro Wētere in 1985 on the topic of a national park at Whanganui.

However, invocation of the Treaty, and insistence on Crown performance under it, is different from a detailed construction of what it meant. We know of no engagement of that nature between Whanganui Māori and the Crown prior to their appearing before this Tribunal.

However, whatever discussions there may have been about the Treaty in the decades after its signing, our task, as the Tribunal inquiring into the claims that Māori in the Whanganui district have asked us to determine, is this: to reconstruct what, given what we know, it is reasonable to assume Whanganui Māori *would* have made of the Māori version of the Treaty if they had engaged in that task at the time when they first encountered it.

(2) *Māori and Crown sovereignty*

Largely as a result of the investigations of the Waitangi Tribunal, we now know that, although Māori did not agree to the provisions of the Treaty that were ultimately to their detriment – especially the Crown's assertion and assumption of sovereignty and the Crown's exclusive right to purchase Māori land – they were nevertheless affected by its consequences *as if* they had fully understood and consented to its terms. That is because the transfer of power and authority that the Crown intended happened anyway.

The Te Paparahi o Te Raki Tribunal recently found that the rangatira who signed the Treaty at Waitangi, Mangungu, and Waimate did not cede their sovereignty: 'That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor.'[9]

In Whanganui and elsewhere, there was no meeting of minds about what the Treaty meant or what its effect would be. But everywhere, including both Northland and Whanganui, rangatira had insufficient access to power in succeeding decades to enable them to insist that the regime that the Treaty ushered in was what they believed they had agreed to.

On any objective assessment of how power came to be exercised in New Zealand after 1840, sovereignty did pass to the Crown. Such an assessment is not simply based on the international law perspective that the transfer of sovereignty was legally effective from when the proclamations of May 1840 were gazetted in October 1840. After 1840, iwi Māori also came to accept the reality of the Queen's authority in New Zealand; many, if not most, accepted the acts of the Governor, her representative. Iwi were often not directly affected – or did not feel themselves to be directly affected – by the authority and acts of either the Queen or the Governor. Nevertheless, when they did resist the Governor's authority, that resistance was typically quelled by force.[10] Over the decades, as the colonial State grew and the Queen's and Governor's authority was transferred to an elected Parliament, the new dispensation was a fait accompli, particularly after the New Zealand Wars. That said, however, the Māori political movements that arose

after the wars were certainly a response to the Crown's wide-ranging assumption of power and its consequences. Those Māori who came to appreciate the significant limits on their ability to exercise authority did oppose the colonial polity as the only legitimate power broker. This was no less the case in Whanganui, as subsequent chapters of our report demonstrate.

4.3 The Meaning and Effect of the Treaty

4.3.1 Applying the Ōrākei Tribunal's approach

Earlier in this chapter, we outlined the approach of the Ōrākei Tribunal to interpreting the Treaty of Waitangi, which we adopt.[11] We analyse that approach as involving progression through these steps:

1. The terms of the Treaty of Waitangi are susceptible to different meanings, and for that reason it is not a document with a clear meaning.
2. The Treaty must therefore be interpreted rather than simply applied.
3. Because the Treaty exists in two texts in different languages, decisions must be made about the priority to be accorded to each.
4. Where there is difference between the two versions, 'considerable weight should be given the Maori text since this is the version assented to by virtually all the Maori signatories'.
5. This approach is consistent with the *contra proferentem* rule of treaty interpretation, which provides that, where there is ambiguity in a treaty, a provision should be construed against the party that drafted or proposed it.
6. This approach also accords with that of the United States Supreme Court to treaties with indigenous Americans, which is that they are to be construed 'in the sense which they would naturally be understood by Indians'.
7. To the same effect is the finding that treaties like the Treaty of Waitangi should be interpreted in light of their origins: 'We must also have regard to the principle that treaties should be interpreted in the spirit in which they were drawn taking into account the surrounding circumstances and any declared or apparent objects and purposes.'

Applying this approach, we must first establish the differences between the two texts and the consequent ambiguities. Then, we must endeavour to construe the Māori version as Whanganui Māori would naturally have understood it – that is, if and when they had the opportunity to engage with the text, and with the ideas expressed in the document, in a way that was meaningful to them.

The Treaty of Waitangi Act 1975 requires us to engage in an exercise of informed projection and hypothesis – perhaps better described as historical reconstruction. We must determine how Māori would have received and understood the words and concepts in the Māori version of the Treaty if they had engaged with it in that detailed and legalistic way at the time when they were called upon to sign it.

Where there is an advantage to be derived from interpreting an ambiguous word, phrase, or concept one way or another, our interpretation should privilege the natural understanding of Whanganui Māori rather than that of the Crown. Applying the *contra proferentem* rule, because the Crown drafted and proffered the Treaty to secure its own position, it should not benefit from Treaty provisions that were plainly capable of more than one meaning.

4.3.2 Ambiguities: interpreting the Treaty texts

We now set out the important differences between the English and Māori texts of the Treaty, our analysis of the ambiguities, and our hypotheses for how Whanganui Māori would have understood the key Treaty concepts as expressed in the Māori version.

(1) *Kāwanatanga*

In article 1 of the Māori text, Māori ceded kāwanatanga:

> Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu – te Kawanatanga katoa o o ratou wenua.

Kāwanatanga was a new word derived from the word 'kāwana'. 'Kāwana' transliterated the word 'governor', and missionaries used it as a title for Pontius Pilate in translations of the New Testament. Pontius Pilate was of course the Roman governor of the district of Judaea, and the Gospel of Luke, for instance, has 'i a Ponotia Pirato e kawana ana i Huria' for 'Pontius Pilate being governor of Judaea'.[12] The word 'kāwanatanga' was introduced into translations of other books of the Bible in 1833 to mean 'province' – that is, the area governed.[13]

Adding to 'kāwana' the suffix 'tanga', the Treaty's authors intended 'kāwanatanga' to mean 'sovereignty'. The same passage of article 1 said in the English text that Māori chiefs 'cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said . . . Chiefs respectively exercise or possess'.

Given that, in article 2, the Māori text reserved to rangatira 'te tino rangatiratanga', the level of power and authority connoted by 'kāwanatanga' would probably have been unclear to a Māori of the time. 'Kāwanatanga' was not an ordinary part of Māori vocabulary: because 'kāwana', the root of the word, simply mimicked the sound in te reo Māori of the word 'governor', the meaning it conveyed to a Māori speaker would depend on that person's familiarity with and understanding of the English word 'governor'.

What would Māori in Whanganui have known of governors? We do not know for sure of course, but we think it unlikely that more than a very few would have had direct experience of a governor, although they may have been told about others' exposure to governors and governorship. Māori visited New South Wales from the 1790s, and there was a governor there. Te Pahi and his sons visited Governor Philip Gidley King in 1805.[14] Such experiences may have introduced some Māori to the idea of a governor as a ruler of a specific and limited area.

We feel confident in asserting that, even to those who had been introduced to these new terms and ideas, 'kāwanatanga' was an open-textured word and concept. We can find no evidence that Māori in Whanganui would have had any basis for supposing that its use in the Treaty was intended to convey the full power and authority of the 'sovereignty' that Māori ceded in the English version.

In our view, it is unlikely that Whanganui Māori would have received the Crown's assertion of kāwanatanga in the Treaty as a significant check on their exercise of te tino rangatiratanga. The word 'kāwana' had biblical contexts with which they may have been familiar, and they may also have known about the Governor of New South Wales. They had no direct experience of British authority. The New Zealand kāwana was bound for the north and was thus far unknown and irrelevant in Whanganui. The idea of what 'kāwanatanga' connoted would develop over time, as land transactions were entered into and as the new society was established. At the time when the Treaty was signed, its meaning would have been opaque.

(2) *Te tino rangatiratanga*

Article 2 of the Māori text guaranteed to Māori 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa' (full authority and chieftainship over their land, settlements, and all the things that they prized). This was a more expansive guarantee than the 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties' in the English text.

It is hard to assess the extent to which the phrase 'te tino rangatiratanga' was in common parlance. We do not have a big enough sample of printed Māori to know whether or not this particular combination of words was a neologism.

The phrase 'te tino rangatiratanga' was not in print before 1840, although 'tino rangatira' was used in 1824 to translate the Governor-in-Chief of New South Wales.[15] The Declaration of Independence of 1835 used some of this language too. The phrase 'nga Tino Rangatira o nga Iwi o Nu Tireni i raro mai o Hauraki' (the absolute chiefs of the New Zealand tribes north of Hauraki) described the chiefs of the northern parts of New Zealand. It declared 'te Rangatiratanga o to matou wenua' (the chieftainship over our land) to connote their independence. This is a precedent for the use of 'tino' to expand or intensify 'rangatira', emphasising the plenitude and the essential nature of the chiefliness referred to. It is also an example of the use

of the word 'rangatiratanga' in relation to land to describe what the chiefs owned. It did not, however, put together the words 'tino' and 'rangatiratanga' to convey what Pākehā conceived as sovereignty.

Another contemporaneous example of 'rangatiratanga' being used to mean the kind of interest in land that belongs to chiefs was in the 20 January 1840 deed of sale of land in Muriwhenua to the missionary the Reverend Richard Taylor. The deed gives Taylor 'te rangatiratanga me te mana i runga i taua wenua'. This translated the English words 'the power and authority over that land'.[16]

Rangatira, of course, had an intrinsic understanding of what it meant to be a rangatira. In rendering the essence of being a rangatira as 'te tino rangatiratanga', the Treaty was conveying something like an unqualified or essential or supreme chieftainship – absolute or unfettered chieftainship, perhaps. 'Te tino rangatiratanga' has often been translated as absolute chieftainship – and we have no difficulty with that translation. However, we do not know whether a Māori of that time, seeing the phrase 'te tino rangatiratanga' used in the particular way it was deployed in the Māori version of the Treaty, would instantly or instinctively have grasped its intended meaning.

In order to understand the effect of the Treaty, it is necessary to know what power the Crown had and what power rangatira retained. This involves reaching a view on what was ceded to the Queen as kāwanatanga and what Māori retained as te tino rangatiratanga. The language used in the Māori version gave no insight into that balance. There was nothing to suggest the arrangement in the English version that gave absolute sovereignty to the Crown, and to rangatira the exclusive possession of certain properties for so long as they wished to retain them.

In summary, we do not know definitively whether the phrase 'te tino rangatiratanga' was in sufficiently common use in 1840 for it to have what might be called a natural meaning. Its component parts were of course entirely familiar. However, although the words were known, it is hard to imagine a pre-contact context in which Māori would have used the phrase to convey what English people understood as sovereignty. We doubt that it is possible now to say with any certainty what speakers of Māori may have extrapolated from the use of the word 'rangatiratanga' as used in the Māori version of the Bible to mean kingdom, or in the Declaration of Independence to connote independence, or in a deed of purchase of land to convey land ownership – or what 'tino' would have added.

However, we think it reasonable to infer that guaranteeing the role of rangatira would have signalled nothing less than a continuation of the status quo, including their authority over land.

On the other hand, the Treaty also introduced the notion of kāwanatanga as part of the disposition of authority, which had to be understood in relation to te tino rangatiratanga. A thoughtful Māori reader of the day would surely have emerged from a consideration of this combination with unanswered questions in mind.

(3) *Ka tuku ki te Kuini te hokonga . . .*

Article 2 of the Māori text also gave the Queen the right to purchase land from Māori:

> Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua – ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Our translation of these words is as follows:

> However the chiefs assembled here and all the chiefs wherever located give over to the Queen the buying and selling of those lands its owners wish to sell – with the setting of the price to be the subject of agreement between those willing sellers and the person buying it, who will be the person appointed by the Queen to buy land on her behalf.

We do not consider that the Māori text would have conveyed the implications in the English version of 'the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon'. Both the word 'pre-emption' and the idea it conveyed were entirely foreign to Whanganui Māori.

In fact, the meaning of language about setting land

prices and arranging for land purchases through a person whom the Queen appointed was comprehensible at all only if the buying and selling of land was a practice already familiar and understood. When the Treaty was signed, few Māori in Whanganui were in that situation.

Furthermore, recent scholarship suggests that the English words 'exclusive right of pre-emption' may not have had a settled meaning at the time. The phrase may have implied more a right of first refusal than an exclusive right to purchase land.[17] This makes it uncertain that even Pākehā would necessarily have understood from the English text that only the Crown could buy Māori land. Even if they did, it is certain that the matter of how or whether pre-emption applied to leases was controversial.[18] To make the picture even murkier, at various points, Crown pre-emption – meaning the exclusive right to purchase Māori land – was waived.

What were Māori to make of all this? Is it possible to identify a natural understanding of the Māori expression of the idea of pre-emption in the Treaty – especially when the exclusivity of the Crown's right is an element notably missing from the Māori text?

In our view, it is possible to go no further than to say that it would have been clear to a Māori engaging with the Māori text that the Queen had special rights as far as buying Māori land was concerned – but it was not clear what they were.

(4) *Nga tikanga katoa . . .*

A further ambiguity arose from article 3 of both texts. The Māori version says:

> Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini – Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

This language is not new or complex, and conveys more or less the same meaning as the English version: 'Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.'

The ambiguity arises because in neither text is it apparent what all the rights and privileges of a British citizen were – especially when the concept was transported from England to the new colony. We think that there was, as a result, uncertainty about the nature and extent of the benefits that the Queen was extending to Māori under article 3.

4.3.3 Contemporary understandings and expectations

(1) *The meaning of the signing for Whanganui rangatira*

Let us look at the circumstances that obtained when Henry Williams brought the Treaty to Whanganui for signing in May 1840, and what Māori may have inferred about what the occasion signified.

Williams appears to have confined his explanation of the Treaty to the relatively few Māori gathered at Pākaitore to outlining how the Governor woud protect them from importunate purchasers of their land. Given the New Zealand Company's imminent arrival at Whanganui, such an emphasis is understandable. The transfer of sovereignty does not appear to have been mentioned. When it was later explained to Whanganui rangatira, the only evidence we have suggests they reacted with shock and disbelief. There is nothing to indicate that Whanganui Māori had any idea how the British conceived of the document they signed.

Adding to the potential for confusion, the New Zealand Company representative bearing the company's land purchase deed arrived in Whanganui at the same time that Williams turned up with the Treaty. Tangata whenua would have been aware that, simultaneously with Williams's Treaty-signing event, another Pākehā, E J Wakefield, was in the wings awaiting the arrival of rangatira from further afield to attend his much larger hui. We infer that Wakefield's hui was larger from the fact that people travelled to attend it, so it was not simply a local event. Also, many fewer rangatira signed the Treaty than the company deed. Thus, although there are no attendance figures for the Treaty-signing hui, everything suggests that because it was smaller, it would have appeared the less significant occasion. It would be unsurprising if Whanganui Māori thought that signing the Treaty was

correspondingly less momentous than signing the company deed.

Whanganui Māori may also have regarded the two signings as very similar: both of them were opportunities to transmit to Pākehā their preparedness to commit to a new kind of society, with new people living in their midst. After all, the Treaty and the company's purchase deed conveyed the common message that Europeans would be arriving and that understandings needed to be arrived at about where and how they would live and how their leaders and rangatira would interact.

We know enough to say that there was considerable willingness, particularly among the rangatira of the lower river communities, to explore a future that involved Pākehā coming. But the Treaty signing would have represented no more than an occasion for them to sign up – and we do not know to what extent the tikanga of signing up was known or explained – to engage with the Pākehā world then and into the future in order to secure goods, trade, and new knowledge. We think that signing the Treaty as the Pākehā wanted was not an agreement to be bound by anything in particular. It was an expression of Māori appetite for working in partnership with the new people arriving – a partnership the terms of which would be worked out on the ground as the settlers arrived.

It is important to remember that only a small proportion of Whanganui rangatira were present; most had no opportunity to give even the broad-brush consent to engage that the attendees did.

We have found that, given the low level of experience of the Pākehā world that Whanganui Māori then had, it would have been extremely difficult for Williams to have communicated the meaning and effect of the Treaty as the Crown conceived it. It appears that he did not try, giving assurances only about the ability of the Crown to protect Māori from pushy Pākehā land buyers. There is little to be served by speculating about what he might have said that would have fully explained the Treaty. Clearly, though, to do that he would have needed to stay longer in Whanganui, not only to assay a proper explication and discussion but also to engage more of the hapū and iwi communities of the district.

(2) *The Treaty partners' contemporary expectations*

Although we cannot be certain of what Māori in Whanganui thought on signing the Treaty, we wanted to ensure that our consideration of Treaty principles captured contemporary expectations of the Crown under the Treaty in the years proximate to its signing. We wanted to do this from the points of view of both the Crown and Māori – accepting that at the time Whanganui Māori were not framing their expectations of the Crown in English legal terms and that those who were acting on behalf of the Crown were not framing their actions according to how Māori may have been engaging with the Māori text of the Treaty. The purpose of this exercise was to identify understandings about what the Treaty signified that would have been recognisable, realistic, and relevant to people of those times. Was there, in fact, a kernel of contemporary agreement on what the Crown was bound to do under the Treaty?

We begin by considering the context within which the first Crown representatives and colonists were operating, influenced as they were by:

- the values and norms of their time;
- the philosophical underpinning of colonisation in New Zealand, as set by the Colonial Office in London;
- their view of the Treaty as a means for the Crown to acquire sovereignty; and
- the material constraints of life on the ground in the new colony.

Against that backdrop, what expectations would those Crown representatives have agreed were reasonable in terms of their protecting Māori interests in the years immediately following the Treaty?

We compared these understandings with the expectations of Whanganui Māori in the wake of the Treaty. This involves positing answers to these questions:

- What did Māori in Whanganui think the Treaty said or meant?

- What did they take from how it was presented and represented to them?
- What did they know or understand about 'the coming of the Pākehā'?
- What were the cultural settings, norms, and imperatives within which they had to make sense of it?

In the table on pages 152 and 153, we provide brief answers to these questions. In the middle column, we set out the standards that we think those who acted on behalf of the Crown would have accepted as fair measures of their actions. In the right column, we hypothesise what Māori in Whanganui may have understood and expected of the new dispensation, as regards both their own authority and the Crown's. Unsurprisingly, given how relatively little the Crown and Māori knew about each other, and given their different perspectives and objectives at the time when the Treaty was signed and in the years immediately following, the gap is considerable.

If we are correct about the parties' likely understandings and expectations, there would have been some stark differences between them. We consider the importance of the Crown's expectations of its own behaviour below, when we come to discuss the principles of the Treaty.

4.3.4 The effect of the Treaty in Whanganui

We have found that the meaning of the words in the Treaty was inherently ambiguous but that Māori in Whanganui did not initially engage with their meaning in the sense of trying to construe them as the Waitangi Tribunal is bound to do. That is a formal and legal expression of English legal culture. It was not an ordinary activity for Māori at the outset of the Crown's interaction with them.

For Whanganui Māori, the Treaty was an emblem of their relationship with the incoming Pākehā population and, by signing it, they were agreeing to embark on that relationship. They did not know very much about what it was going to look like, but they were agreeing in good faith to venture into the future with these new people, hoping thereby to gain access to something new and advantageous. Intelligent people take up new opportunities when they are offered, and that is what Whanganui Māori did on that day in May 1840.

At the beginning, the Crown, too, would have seen the Treaty as describing an evolving relationship. Crown representatives did not know exactly how things would unfold either. Apart from the arrangement involving land transactions, where the Crown promised to recognise Māori authority to determine whether or not to sell to it, the Treaty deals mainly in large generalities. The primary undertaking was that a relationship would exist and that it would take form in circumstances that no one could describe or predict.

The central difference between the Treaty parties was their understandings about who would be in charge. The Crown put itself in a leadership role went it entered into the process of drafting and proffering and signing the Treaty, and it expected to remain in charge thereafter. In its view, Māori, by signing the Treaty, were agreeing that their own authority would be subject to that of the Queen. On the other hand, Whanganui Māori had absolutely no reason to suppose that, in agreeing to engage with Pākehā in an ongoing relationship, they were agreeing to forgo power and authority.

Because Whanganui Māori did not agree to the Crown's assumption of sovereignty but the Crown assumed it anyway, the Treaty's effect is to bind the Crown to use that appropriated power well as regards Māori. What that means in practice has come to be conceived of in terms of 'principles' of the Treaty. At section 4.4, we discuss the principles that we consider most relevant to the situation of Whanganui Māori.

4.3.5 The implications for the Crown

There is little doubt that Whanganui Māori and the Crown came away from the Treaty signing at Pākaitore on that day in May 1840 with different understandings of what had happened there and of the consequences that would follow. However, the Māori understanding was not predicated at that time on any different interpretation of what the Treaty said. As we have noted, for them the

Area of interaction	Crown expectations and understandings	Whanganui Māori expectations and understandings
The exercise of power	Under the Crown colony model, the Crown assumed absolute legal and political power, and in New Zealand Crown officials regarded this as a fait accompli once the Treaty was signed. It was confirmed by Hobson's proclamation in May 1840.	Rangatira would not have conceived of the Treaty as a means of transferring political control to the Crown. Rangatira did generally want Pākehā settlement and its benefits, and understood that the Treaty was a deal with the Crown in which they had yielded up something in order to secure that. They probably expected that elements of what they had always known would change, but it would have been difficult for them to predict precisely what and how. Rangatira did want the Crown to deal with Pākehā miscreants. It was plain from the outset that Crown officials would take charge of the land sale process, but rangatira would probably not have associated Crown control of the land market with diminution of their rangatiratanga.
The system of law	The Crown would import its legal system and would protect Māori from Pākehā lawlessness.	We do not know whether rangatira turned their minds to what the new legal system would do with Māori who transgressed in the Pākehā world, but in general we think they would have assumed that their own legal norms would continue to apply.
The rules that applied in land transactions	The legal principles underpinning English contract law and equity – that is, to be valid, purchases would require willing sellers, a clear definition of what was being sold, and the ability to negotiate over price – would apply to the Crown's property dealings.	Māori did not know the English standards, so could not insist on them. It is difficult to know what norms Māori saw applying to the sale of land, because the sale of land was alien. Utu – the ethic of reciprocity – would no doubt have had some application. It may have imported something approximating the idea of fairness, or seeking after relativity between that being given up and that being gained.

Relative authority of Crown and Māori in land transactions	The Crown intended that the right of pre-emption in article 2 would enable it to control the property market. It would manage – and to a large degree prescribe – how sales would be negotiated, how ownership would be transferred, and the price. However, land ownership gave rangatira de facto power at a time when Māori land was required in order to get the colony on its feet. Rangatira controlled the key commodity, and Māori were too numerous for their potential force to go unheeded. The article 2 guarantee of te tino rangatiratanga meant recognising and dealing with tribal leaders about land.	What rangatira made of the Crown's right of pre-emption is hard to know. The language in neither version of the Treaty conveys an unequivocal meaning, but the Māori version was particularly opaque. Because the notion of a market in land was alien, they could not have assessed what they gave up when they agreed to sell land only to the Crown, nor the degree of Crown influence that would inevitably follow from controlling the land market. Some may have known enough about potentially unscrupulous Pākehā practices to be reassured by the notion of operating under the maru (protection, shelter) of the Crown. Rangatira would have expected their power to continue in the new dispensation, although they might also have had a sense (because they knew about bargaining) that they would be called upon to yield something to the Crown. It was probably not apparent to them that Pākehā would focus primarily on acquiring their land, and that once that objective was substantially achieved, their position would weaken significantly because they no longer owned anything that Pākehā wanted.
The Crown's protective role	The Crown would protect Māori from exploitation by settlers, and especially from unconscionable land deals. The Governor's role was critical here in the initial years of the colony, when it was intended that he would play a protective, intermediary role. This was expected to be only temporary, continuing until a proper State was up and running. In due course, Māori would be incorporated into the fabric of society by means including inter-marriage, and ultimately through their status as citizens.	It is difficult to say what expectations rangatira would have had of the Crown's protective role. They certainly hoped that the Queen would protect them from unwanted or importunate solicitations for land. They may not have seen, at the outset, how much protection would be required. The conceptual bundle in which the Crown was seen as incorporating Queen Victoria as a motherly protective figure, and white people were associated with Christianity and a loving Christ, might initially have engendered a fairly unspecific expectation of benevolence.

Table 4.1: Crown and Māori understandings and expectations about the Treaty

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Treaty-signing dynamic at Whanganui was situational and relational rather than legal and political.

However, because the Crown:

- ran a process in which the Treaty signing was not conducted so as to enable agreement – that is, a meeting of minds – on anything expressed in the words of the Treaty; but
- nevertheless used it as part of a matrix that resulted in its assuming sovereignty in New Zealand; and
- expressed the key legal and political concepts in the Treaty ambiguously;

therefore, it

- cannot deny the centrality of the Treaty as framing the founding legal and political relations between it and te iwi Māori (and, to the extent of passing into law the Treaty of Waitangi Act 1975 and various other enactments, has not done so); and
- must accept the legal consequence that this Tribunal will interpret the words and expressions in the Treaty that are ambiguous by virtue of the two versions and two languages by giving priority to the Māori version and by construing the Māori version in the sense in which Whanganui Māori would naturally have understood it.

4.3.6 The transfer of sovereignty

The claimants would have us conclude that Hobson's proclamation of Crown sovereignty two days prior to the Treaty signing at Whanganui could not be valid in relation to Whanganui, for Whanganui Māori had yet to ratify the Treaty. Therefore, they argued, the proclamation must be viewed either as a nullity or as proof that the Treaty negotiations in Whanganui were a farce that the Crown never intended to honour.[19]

As we have already noted, we have no jurisdiction to question the Crown's sovereignty over New Zealand – the Court of Appeal has held that it was 'authoritatively established' (in the words of Justice Richardson) through the gazetting of Hobson's proclamations.[20] Our jurisdiction is to interpret the Crown's actions against the principles of the Treaty and to determine the Treaty's meaning and effect from which we derive those principles.

What we can say is that the Treaty was the basis for changing the power dynamic in New Zealand and its constitution. So far as the North Island is concerned, the Crown relied on the Treaty as an artefact that legitimated its sovereignty, which – as we explained above – did pass to the Crown (on any objective assessment) after 1840. This is why, as we have said, the Crown is bound to honour the natural Māori understanding of the Treaty's provisions.

4.4 The Principles of the Treaty

4.4.1 The Treaty of Waitangi Act and Treaty principles

Still focusing on the function and purpose of the Tribunal, we return to the preamble of the Treaty of Waitangi Act 1975 in order to understand the relationship between the meaning and effect of the Treaty and its principles.

We have seen already that the preamble says that the Tribunal was established to determine the meaning and effect of the Treaty and to 'make recommendations on claims relating to the practical application of the principles of the Treaty'. For that purpose, the Tribunal must determine whether 'certain matters are inconsistent with those principles'.

We also referred previously to section 6, which concerns the Tribunal's jurisdiction to consider claims. Paraphrasing the lengthy section, our role under it is to inquire into claims submitted to us that allege that a Māori or group of Māori is prejudicially affected by any act or omission of the Crown that 'was or is inconsistent with the principles of the Treaty'.

It follows that, in order to determine whether a claim that a Crown act or omission prejudicially affected Māori is well founded – which section 6(3) requires us to do – we must have squarely in view the principles of the Treaty against which we assess the Crown's conduct.

4.4.2 Relating meaning, effect, and principles

The Treaty of Waitangi Act, in its preamble and sections 5 and 6, articulates the Tribunal's analytical task in deciding on claims through a combination of practically applying the principles of the Treaty, determining its meaning

and effect, and deciding issues raised by the differences between its two texts.

Previous Tribunal reports have identified, explained, and applied various Treaty principles. The Act itself provides no guidance as to what they are or how they are to be derived; nor indeed why the Tribunal ought to be guided by Treaty principles rather than its terms.

The requirement to identify the Treaty's principles was perhaps the most effective way of defining a standard for assessing Crown conduct that responds to the power imbalance that developed and continued after 1840. Those who assumed power did not consider that there needed to be an ongoing application of the Treaty's provisions, because – from their perspective – the purpose of the Treaty was fulfilled once the Crown assumed sovereignty and land transactions progressed. In requiring the Tribunal to identify Treaty principles, the Act recognises that it was the Treaty that the newcomers relied on to gain the upper hand and set the agenda.

As such, it has long been accepted that the Treaty's principles are to be derived not only from its texts but also from the context and spirit in which the Treaty was entered into. For the Tribunal, the task of identifying relevant principles of the Treaty is therefore part of the broader task of determining its meaning and effect. That is why we want to connect our analysis of the meaning and effect of the Treaty in Whanganui with the principles that we apply to Whanganui claims.

We have found that:

- the key terms of the Treaty were unclear in the two versions;
- the *contra proferentem* rule and legal precedents concerning treaties with indigenous peoples direct us to ascertain the natural meaning of the Treaty to Whanganui Māori;
- as a matter of fact, Whanganui Māori did not engage in a word-by-word analysis of the Treaty at the time when it was introduced, and the Crown did not offer an explanation of what it intended the Treaty to signify; and
- if we look at what happened in 1840, the evidence as far as it goes indicates that Māori, in signing the Treaty, were saying yes to engaging in a forward-looking relationship with the Pākehā settlers and the Crown.

In this light, we consider that the Treaty principles most relevant to this inquiry are those that speak to the kind of relationship that Māori properly expected to be able to enter into.

4.4.3 Most relevant Treaty principles

One of the startling features of this inquiry is the extent to which, in the years in which the town called Petre and then Wanganui was becoming established, local hapū regarded themselves as responsible for looking after the settlers. Probably this was because they saw them as living in their rohe (tribal territory), so that manaakitanga (the Māori ethic of hosting and hospitality) strongly influenced the relationship. There may have been other factors that connected Māori and settlers that no one recorded at the time. We do know about – and the early chapters of this report recount – notable occasions when Whanganui hapū extended to local Pākehā their good will and physical protection. They helped and shielded them, sometimes to their own detriment, from threatening external influences. Instrumentally, they also saw that engaging positively with the Pākehā settlers and the goods and new knowledge that they brought provided an opportunity for them to advance their own interests.

Settlers and Crown officials, though, expected that this early period of engagement with, and reliance on, tangata whenua was a phase that would pass when full colonial authority asserted itself. Māori would be amalgamated gradually into a new dispensation in which tribal power would ideally play no part, and Māori would be subject to imported rules and values.

Māori had no basis for supposing that the cooperative, reciprocal interplay that existed between them and the newcomers was intended to be short-lived. Rather, the spirit of responsibility and mutuality they saw at play in the early years would have influenced how they understood the Treaty's terms. We could craft a new set of principles to describe this spirit as it relates to the Whanganui situation specifically, but we prefer to express it in terms of the set of principles that are core to the Tribunal's

jurisprudence: partnership, good faith, reciprocity, active protection, and autonomy. Inherent in these principles are the elements of responsibility and mutuality that make them apt for our Treaty analysis of the Whanganui situation.

(1) *Partnership*

Māori in Whanganui had every reason to believe that the new society would proceed on the basis of partnership between their leaders and the new arrivals. This included establishing settlers on the land and working cooperatively with them. It also involved maintaining Māori authority in their own spheres and cooperating in areas of intersecting interest.

Where there is an ethic of partnership, there is no room for one partner to impose changes on the other without participation and agreement.

(2) *Duty of good faith*

In order for partnership to work – which involved functioning in the interests of both Treaty partners – it was imperative for the Crown to deal openly and honestly with Māori leaders. The president of the Court of Appeal recognised this when he said 'the Treaty signified a partnership between races' with each acting towards the other 'with the utmost good faith which is the characteristic obligation of partnership'.[21]

About the Crown's obligation to act at all times in accordance with the Treaty principle of utmost good faith, the Tūranga Tribunal said:

> This is a high standard. It imposes an obligation to behave impeccably in dealings with Maori; a negative duty to avoid any appearance whatever of manipulation or sharp dealing; and a positive duty to look to the Maori interest at all times and to protect that interest to the extent reasonably practicable in the circumstances.[22]

We agree with this articulation of what good faith means and add that we consider that this duty or principle responds to the relational conception of the Treaty that Whanganui Māori had when they entered into it.

(3) *Reciprocity*

Reciprocity is also implicit in the ethic of partnership. The exchanges fundamental to being a partner must provide advantage that is mutual, with benefits flowing in both directions.

The Te Tau Ihu Tribunal, building on the thinking of the Ngāi Tahu Tribunal,[23] articulated the reciprocity inherent in the Treaty in these terms:

> Maori ceded to the Crown the kawanatanga (governance) of the country in return for a guarantee that their tino rangatiratanga (full authority) over their land, people, and taonga would be protected. Maori also ceded the right of pre-emption over their lands on the basis that this would be exercised in a protective manner and in their own interests, so that the settlement of the country could proceed in a fair and mutually advantageous manner.[24]

We agree that this is a fair characterisation of the ultimate effect of the Treaty, although not the nature of any bargain that Māori in Whanganui understood they were entering into at the outset. For them, as we have noted, the kind of reciprocity that they saw on the ground in the colony's early years in Whanganui was indicative of how things could and should proceed. That circumstance contributes to our concept of the Crown's responsibility under the principle of reciprocity.

(4) *Active protection*

In the present day, the Crown's Treaty duty of active protection arises under circumstances of power imbalance between the Treaty partners. Although the partnership and reciprocity inherent in the Treaty gave the parties mutual obligations, historically and currently, Māori rights and interests have tended not to prevail against the Crown's. There is thus an element of restoration in expressing active protection as a Crown duty.

The Court of Appeal said that the Crown's responsibilities are 'analogous to fiduciary duties', which puts the Crown in a similar relation of obligation to Māori as a trustee. As such, its duty 'is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable'.[25]

(5) *Autonomy*

The iwi of Whanganui did not agree to forgo their independence and autonomy, whether through signing the Treaty or otherwise.

The Tūranga Tribunal found that, when it guaranteed te tino rangatiratanga, the Crown undertook to protect

> 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.[26]

This articulation, with which we agree, is consistent with interpreting the Treaty provisions in accordance with a natural Māori understanding. The guarantee of te tino rangatiratanga would have conveyed to Whanganui Māori, if they had engaged with the language at the time of signing, that the role of rangatira, which they knew and understood, would continue as it had mai rā anō (since time immemorial).

4.4.4 The Treaty principle of good government

We see the principle of good government as having special relevance in this inquiry.

Earlier in this chapter, in our table of the Treaty partners' expectations, we set out the Crown's likely views on the exercise of power, the system of law, rules and authority in land transactions, and the Crown's protective role. We consider that the very minimum performance this Tribunal can require of the Crown is observance of standards that, in the years immediately following the Treaty, it would have acknowledged it ought to meet. This applies to standards of conduct that Māori were not in a position to articulate at the time. Probably the most basic and incontrovertible of these was that English legal norms and standards of fair and proper practices in land transactions would apply when dealing with Māori landowners.

In what follows, we amplify our understanding of that minimum performance in the light of Tribunal jurisprudence and our own views on what that minimum performance entailed.

(1) *The Tūranga Tribunal's analysis*

Our analysis of the parties' relative understandings, beliefs, and expectations leads us to concur with the Tūranga Tribunal's identification of the importance in the Treaty of three important ideals: the rule of law; just and good government; and the protection of Māori autonomy. The rule of law is especially important in our inquiry district as regards compliance with accepted contractual standards in land transactions. The importance of the Crown's failures here – yet to be related in this report – should not be underestimated. As Professor Alan Ward said in his renowned book *A Show of Justice*: 'It was the sordid, demoralising system of land-purchasing, not war and confiscation, which really brought the Maori people low.'[27]

The Tūranga Tribunal related how article 1 of the Treaty expressed the intention of the Queen to exercise 'all the rights and powers of sovereignty', which would involve ending the lawlessness that had characterised relations between Māori and Pākehā. She proposed to do this by introducing a settled form of civil government. But, the Tribunal said,

> these powers of Government were subject to two key constraints. First, they were subject to the promises made to Maori in articles 2 and 3. Secondly, and equally importantly, they were subject to the rules of the constitution brought with the Crown from Great Britain and introduced through article 1 of the Treaty. *Foremost among those constitutional rules was that the Crown, as the embodiment of executive government, is subject to the law and has no power to act outside it.*

> *That is, the Crown both rules in accordance with the law, and is itself ruled by the law*. [Emphasis added.][28]

The Central North Island and Te Urewera Tribunals also found that the principle of good government requires the Crown to keep its own laws and secures the right of citizens to go to court.[29]

After commenting on instances in the Tūranga inquiry district when the Crown grievously disregarded its own law where this was expedient, that Tribunal observed: 'the moral authority of the Crown to require its subjects to comply with a standard of conduct prescribed by law depends on the Crown itself adhering to that standard'.[30]

We agree. We also endorse that Tribunal's view that the language and spirit of the Treaty were imbued with the ideas of justice and fairness. We see this in the Treaty's opening words:

> Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, . . .
>
> Her Majesty Victoria . . . regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order . . .

Thus, the Treaty not only established a nation based on the rule of law but also stood for government that was just and fair.

(2) *The principle of good government in this inquiry*

We regard as particularly important the aspect of the principle of good government, which holds the Crown wholly responsible for complying with its own laws, rules, and standards. When it came to transacting land, there were some essential elements of fair dealing that no one would have contested as a matter of principle: willing buyer and willing seller; clear identification of the land to be sold and the persons whose interests were affected; and agreement on price. These are standards that we believe even representatives of the Crown in the 1840s, intent primarily on advancing the Crown's interests, would have agreed were fundamental, with or without the Treaty. We endorse them as standards that, even on the most reductive view of the Crown's undertakings in establishing the new colony, any honest observer would acknowledge as just, fair, and lawful.

These legal requirements grew out of an accretion of decisions in the English common law and reflected the importance of property to British citizens. Land was no less important in the New Zealand context, either to Māori or to settlers. For the Crown not to comply with the rules was a fundamental denial of the rights of Māori as citizens. As the Tūranga Tribunal observed, in a Treaty-based New Zealand,

> There ought to have been no room for laws or policies calculated to defeat Maori interests in order to favour settler interests. On the contrary, the Crown expressed the intention in the Treaty of protecting Maori rights.[31]

We would go so far as to say that compliance with these rules was such a basic element of just and fair dealing that, where there was serious non-compliance, it was in and of itself prejudicial to Māori. To breach such basic standards is to render property rights insecure, and that has a disabling effect. It denies essential rights and the respect owed to all human beings. The damage that flows is inevitable. Even if there is no ascertainable financial loss, there will be damage on an emotional, psychological, and spiritual level. People who are manipulated and cheated are humiliated and reduced. There is no room for such conduct in a nation founded on ideals of justice and fairness.

4.5 Conclusion

The assumption of sovereignty under the Treaty and the imposition of English law obliged the Crown to:

- recognise and uphold Māori ownership of all the land in New Zealand;

- protect Māori from Pākehā lawlessness and unconscionable land deals; and
- apply the legal principles underpinning English contract law to all transactions in land. Compliant purchases require willing sellers, a clear definition of what is being transferred and by whom, and the ability to negotiate the price.

We consider that no properly informed person would have denied that the Crown was obliged to observe at least these minimum standards. Nor would he or she deny that serious failure to observe them would be prejudicial to those whose rights were thus trampled upon. That is the approach we take in this inquiry in applying the principle of good government.

Finally, we have talked already about the preamble to the Treaty of Waitangi Act 1975, and how it expressed the purpose of the Tribunal in terms of determining the Treaty's meaning and effect and articulating its principles.

The preamble also says 'it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty'. The emphasis on practicality reflects the fact that recommendations are not decisions: the Tribunal sets out its findings and recommendations and they go forth to be evaluated in the political world. Governments decide whether or not to act on them. Because Parliament conceived the Waitangi Tribunal's jurisdiction as recommendatory and looked for a practical application of the Treaty principles, we strive for findings and recommendations – with supporting analysis – that are rational, reasonable, sensible, and down to earth.

The work of the Waitangi Tribunal has sometimes attracted criticism for ahistoricity and presentism. Determining the meaning and the effect of the Treaty of Waitangi in the present day, when the actions of the Crown that are the subject of claims very often took place a very long time ago, inevitably takes the Tribunal into a dynamic zone where the present and the past collide. The requirement to be practical is a useful touchstone here. Practicality is a crucible in which to bring together the compact embodied in the Treaty, the values and norms of colonial times, and the legal and ethical framework of this current era in which we are hearing and determining Treaty claims.

Notes

1. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Waitangi Tribunal, 1987), p 180
2. Ibid, pp 180–181
3. Ibid, p 181
4. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 30
5. Waitangi Tribunal, *Te Urewera: Pre-Publication Report*, *Part I* (Wellington: Waitangi Tribunal, 2009), p 141
6. 'Notes of Native Meetings', AJHR, 1885, G-1, p 5
7. Ibid, p 1
8. Document A73 (Macky), p 119
9. Waitangi Tribunal, *The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, 2 vols (Wellington: Legislation Direct, 2014), vol 1, p xxii
10. For example, the Crown exerted force against Hone Heke in the north in 1844 and 1845, and against Te Mamaku in the Hutt and in Whanganui in 1846 and 1847.
11. Waitangi Tribunal, *Report on the Orakei Claim*, pp 180–181
12. *Ko Te Paipera Tapu / The Holy Bible* (Cleve Barlow, comp and ed, Rotorua: Te Pihopatanga o Aotearoa, 1992), Ruka/Luka 3:1
13. Acts 23: 34 (first published in 1833); Daniel 2: 48–49, 3: 1, 3 (first published in 1840) (Phil Parkinson and Penny Griffith, comps, *Books in Maori, 1815–1900: An Annotated Bibliography / Ngā Tānga Reo Māori: Ngā Kohikohinga me ōna Whakamārama* (Auckland: Reed Books, 2004), pp 39, 72
14. Waitangi Tribunal, *Report on the Te Paparahi o Te Raki Inquiry*, vol 1, pp 72–73
15. Parkinson and Griffith, *Books in Maori, 1815–1900*, p 32
16. Richard Benton, Alex Frame and Paul Meredith, *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Tenure* (Wellington: Victoria University Press, 2013), p 183
17. Mark Hickford has recently suggested that pre-emption was undergoing a change in meaning at the time of the Treaty: Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire* (Oxford: Oxford University Press, 2011), p 108.
18. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 23
19. Submission 3.3.62, p 29
20. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 671 per Richardson J; submission 3.3.115, p 2
21. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664
22. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report*

on the Turanganui a Kiwa Claims, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 120
23. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 238–245
24. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 4
25. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664
26. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 113
27. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Canberra: Australian National University Press, 1974), p 267
28. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 736
29. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 429; Waitangi Tribunal, *Te Urewera, Part 1*, p 220
30. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 736–737
31. Ibid, p 737

CHAPTER 5

WHANGANUI AND THE NEW ZEALAND COMPANY

5.1 Introduction

From 1840 to 1846, the Crown's efforts to address the New Zealand Company's claim to the lands of Whanganui Māori were the dominant feature of engagement between the Treaty partners. Flowing from its signings of a deed with some Whanganui Māori, first onboard the *Tory* in November 1839 and then at Pākaitore in May 1840, the New Zealand Company claimed well over one million acres stretching from the Pātea River in the north and the Manawatū River in the south, and inland as far as Mount Tongariro. In this chapter, we examine the evolution of the deed as the focal point for interaction between Whanganui Māori and the Crown and its effect on the developing Treaty relationship.

The Crown played no part in the company's deed signings, but once it entered into the Treaty of Waitangi it was responsible for protecting te tino rangatiratanga of Whanganui Māori, both signatories and non-signatories, when it sought to address the company's claims. For the Crown, the resolution of the company's claims was a pressing political and social matter. Security of land tenure was a fundamental requirement for settlement of the colony. The Crown needed to settle all claims to Māori land stemming from pre-Treaty land transactions, and this of course included those of the New Zealand Company.

The Crown's commitments to both Māori and the New Zealand Company regarding the company's claims to land are central to our discussion. Shortly after the Treaty signing, the Crown publicly declared its intention to investigate the validity of Pākehā land claims arising from pre-Treaty transactions with Māori. It also indicated to the New Zealand Company that its investment in purchasing land from Māori and transporting settlers to New Zealand would probably result in an award of land. At the same time, the Crown had only just entered into a Treaty guaranteeing maintenance of te tino rangatiratanga of Māori. Reconciling these undertakings would prove to be a challenge.

New Zealand's first three governors and the British Government were all involved in attempts to resolve the company's land claims in Whanganui and elsewhere. Governor Hobson introduced a land claims commission to investigate claims to Māori land. To enable the New Zealand Company to complete its land purchases, he waived the Crown's Treaty right of pre-emption in the purchase of Māori land. The British Government came to an agreement with the company's London-based directors whereby the company would be awarded an amount of land based upon its proven expenditure in New Zealand, and appointed William Spain to investigate the company's claims. Governor FitzRoy endorsed a significant change to Hobson's land claims commission: the Crown continued

to investigate claimed purchases, but the company's claims would be settled through a system of arbitration, guaranteeing awards of land to the company. Governor Grey confirmed this approach, and directed Crown officials to negotiate the alienation of 40,000 acres of land from Whanganui Māori on the company's behalf. The claimants in our inquiry contend that the Crown's decision to commit to a process of securing land from Māori for the company was fatal to the integrity of the Crown's Treaty guarantees in the early colonial period.

In this chapter, we address two questions:

- What was the meaning and effect of the New Zealand Company's purchase deed and what initial steps did the Crown take to resolve the company's Whanganui claim?
- What was the effect of the Spain commission in confirming the New Zealand Company's purchase of Whanganui?

5.2 The Parties' Positions

The claimants and the Crown agreed that the New Zealand Company did not complete a land purchase from Whanganui Māori through its Whanganui deed. The Crown submitted that 'the New Zealand Company's deeds were not sufficient evidence that a proper sale or transaction of Whanganui land or resources occurred'.[1] The claimants and the Crown disagreed on the legitimacy of the Crown's attempts to settle the company's claims in this period and on the relevance of these attempts to the completion of the Whanganui purchase in 1848.

5.2.1 What the claimants said

The claimants submitted that, in seeking to settle the claims of the New Zealand Company to land at Whanganui, the Crown favoured the interests of the company over the rights of Whanganui Māori when:

- the British Government promised the company an award of land prior to validation of the company's claims;
- investigation of claims became instead arbitration of claims;
- Crown officials tasked with protecting the rights of Whanganui Māori were pressured to reach a result favourable to the company;
- the Crown waived its right of pre-emption in favour of the company without consulting Māori;
- it failed altogether to consult Whanganui Māori about the company's claims and how it proposed to deal with them;[2] and
- it used the process of investigating and arbitrating the company's claims to tie Whanganui Māori into a process that settled its dispute with the company by awarding the company as much land as possible.[3]

The claimants also submitted that, when Crown officials negotiated with Whanganui Māori in 1846, they sought to deceive them about the area of land to be purchased. The Crown should have informed Whanganui Māori how much land the Spain commission considered the company was entitled to. Knowing so little about what was going on, Whanganui Māori could not question the Crown's process nor properly negotiate the alienation of their land.[4]

5.2.2 What the Crown said

The Crown submitted that pre-1848 events concerning the Whanganui purchase were mainly relevant only as context and background. These events include the company's attempt to purchase land in 1839 and 1840, the British Government's preliminary award of land to the company of November 1840, the waiver of Crown pre-emption in favour of the New Zealand Company, the process of investigating and arbitrating the company's claim, and the negotiations in 1846. In the Crown's view, these events did not predetermine the purchase of the Whanganui block as it eventually occurred in 1848: that purchase was distinct from the New Zealand Company's attempted purchase.[5]

5.3 The Purchase Deed and Crown Attempts to Resolve the Company's Whanganui Claim

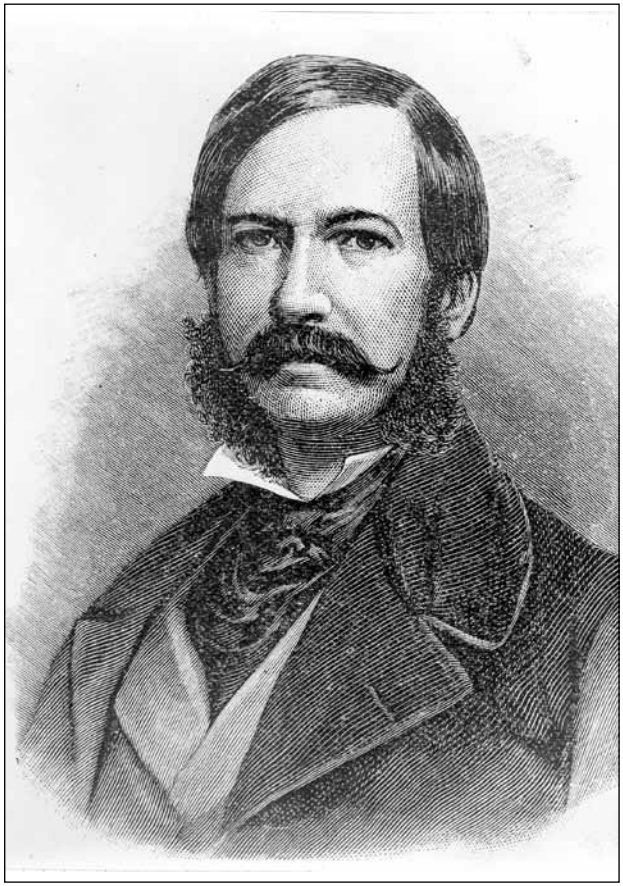
5.3.1 Introduction

In the previous chapter, we briefly discussed the signing, in May 1840, of a land purchase deed between the New

Zealand Company and over 30 Whanganui rangatira, and what this could tell us of Whanganui Māori understandings of the Treaty. In this chapter, we consider what those who signed the deed understood it to mean, and look at the steps the Crown took to resolve the company's claims to land in Whanganui.

First, though, we explain why we are inquiring into the New Zealand Company's land purchase deed, when the Tribunal's jurisdiction is limited to inquiring into Crown conduct. The New Zealand Company was not part of the Crown, and its actions cannot be considered Crown actions.

However, in the years after some Whanganui Māori signed the company's deed, the Crown became implicated in giving effect to it in various ways. As intimated already, it agreed that the company's land claims would be investigated for their legitimacy, and then before the investigation occurred, indicated that awards of land would result. It later sought to purchase land in Whanganui on the company's behalf. These developments brought together the actions of the company and the actions of the Crown, and put in issue before us the whole question of the relationship between the Crown, Whanganui Māori, the New Zealand Company, and its purchase deed.



Edward Jerningham Wakefield, adventurer, writer, and politician. In 1840, when he was only 19 years old, Wakefield played a key role in the New Zealand Company's land purchase in Whanganui.

5.3.2 Whanganui Māori's understanding of the deed

As discussed in the previous chapter, the Whanganui rangatira Te Rangiwhakarurua and Te Kirikaramu signed a company deed on 16 November 1839 aboard the company's ship *Tory*, while it was anchored off Waikanae. Six months later, Edward Jerningham Wakefield, nephew of the company's principal agent, Colonel Wakefield, brought the deed to Pākaitore. There, another 32 rangatira signed it on 28 May 1840, just five days after some of them had signed the Treaty.

In this section, we discuss what the company did to secure the signatures and how its approach shaped how Whanganui Māori understood the deed.

The parties agreed that the company did not obtain land or resources in the Whanganui inquiry district prior to 1840 whether under Whanganui tikanga, law, or customary law. In support of this, the Crown submitted that:

- the 'Company's Deeds were not sufficient evidence that a proper sale or transaction of Whanganui land or resources occurred';[6]
- 'Jerningham Wakefield's attempts to complete the purchase in May 1840 were done at the Company's [own] risk';[7]
- 'the boundaries of the purchase were "extremely imprecise"';[8]
- the 'evidence of Macky suggests that the translation [and interpretation] of the Deed was inadequate';[9]

- a 'majority of the individuals who had interests in the land did not sign the Deed' and 'the 34 signatories to the Company Deed would not have represented all the owners of the land that was deemed to have been purchased';[10]
- the 'Crown accepts that the Company failed to pay adequate consideration and that the consideration provided (goods valued at £700) was not properly and fairly distributed';[11] and
- 'a number of the Deed's signatories received little or no consideration'.[12]

(1) *The timing of the company's deed*

E J Wakefield arrived in Whanganui on 19 May 1840, before the Treaty was signed at Pākaitore, and before Hobson proclaimed British sovereignty over New Zealand. It was not until 28 May that Whanganui Māori signed the deed, because Wakefield had to wait for Te Kurukaanga, his primary contact, to travel upriver to gather those of his community prepared to sign. There was thus the extraordinary situation that between Wakefield's arrival on 19 May and the deed signing on 28 May, Hobson declared British sovereignty (on 21 May 1840) and nine Whanganui Māori signed the Treaty at Whanganui (on 23 May 1840). These events quite changed the nature of the transaction the company was entering into: now its deed was both inconsistent with the terms of the Treaty, and invalid in light of the proclamation of sovereignty.

In fact, the deed was also at odds with two earlier proclamations that sought to prevent Europeans buying land from Māori. On 14 January 1840, Governor Gipps of New South Wales issued three proclamations, drawn up in London at Hobson's request, which stated that all transactions made in New Zealand thereafter would be considered absolutely null and void. The Crown would not recognise any title to land purchased from that point on. Hobson re-issued these proclamations on 30 January 1840 upon arrival in New Zealand.[13]

(2) *How Whanganui Māori understood the deed*

What is it possible to say now about how Whanganui Māori understood the deed they signed in November 1839 and May 1840? There is no complete record of what was said when E J Wakefield presented the deed to a hui of between 400 and 800 people at Pākaitore on 27 May 1840, nor at the deed signing aboard the *Surprise* the following day. Wakefield made his own diary entry of what happened on 27 May:

> I went ashore at Waipari where all the chiefs were assembled. The principal ones were for having no speeches, saying that the talk was exhausted, and that there was nothing to do but to give up the land and take the payment. I encouraged discussion however saying I wished to hear any dissatisfied person enter his protest. Upon this several favourable speeches ensued: all the head chiefs telling me to take the land, as I had first brought E Kuru here in a big ship, and afterwards brought the little one in. They strongly insisted on the superiority of my claim to Mr Williams's or anybody else's, on that account, and also because I had, unlike him, sent for the natives from all parts of the river and country.[14]

Here, Wakefield referred to his visit to Whanganui in March 1840, when he met some of the rangatira who attended the hui two months later. He also mentioned missionary Henry Williams's attempts to purchase land at Whanganui and hold it in trust for Whanganui Māori. He asserted that the rangatira considered his deed superior to Williams's claim to their land.

There were, however, some rangatira who did not wish to sell to Wakefield. He wrote:

> Makatu, a chief who has been much at Kapiti, PN [Port Nicholson] &c, said he wished to keep his land, and give it to some other white man . . . Upon this Turoa waxed wrath, and flourishing his *mere* and leaping about, declared he *must* give it to me; that he had no choice about it. Upon my saying that he might reserve his claim, but in that case must not touch a bit of the payment, 'he said that he had done talking, that the *kau matua* had beaten him with his mere and he must give in.' I then had the deed fully explained to them, and told them to come on board and sign tomorrow morning. They one and all agreed upon E Kuru as the man who was to bring the payment ashore from the ship. [Emphasis in original.][15]

A camp oven, now in Whanganui Regional Museum. The oven is reputedly the last of the goods that Edward J Wakefield, on behalf of the New Zealand Company, distributed to Māori in May 1840 as payment for Whanganui land.

This account claims unanimous support for the transfer to him of the land described in the deed, the implication being that any opposition was overcome. The signatories included Te Pēhi Tūroa, Te Anaua of Pūtiki, Rangitauira of Mateongaonga, Para – perhaps Ngāpara – of Ūpokongaro, and others, most of whom cannot be identified.[16]

Wakefield was reliant on the services of his interpreter, John Brook, during his time in Whanganui. A few years later, when the company's claim was being investigated, Brook stated that Wakefield would read a line from the deed to him, and he would then translate the line into Māori. During the same investigation, the captain of the *Surprise*, John MacGregor, stated that 'he understood the Maori language well, and was confident that Brook had translated the deed accurately'.[17] This suggests that those Māori present should have been able to understand what Brook said.

However, most of those present at the discussion and signing of the deed later told a different story. They said either that the deed was not translated, that they could not hear the translation given, or that they could not understand what was said. Te Anaua said that no one explained the deed to him. Tāmati Wāka did not know who Brook was and did not hear any translation. Ngāpara saw Brook beside Wakefield when Māori were asked to sign the deed, but said that Brook did not translate the deed. Ngātāpapa also said that he saw Brook, but Brook did not speak to him. Te Pēhi Tūroa apparently did hear Brook speaking but stated that no one could understand him. Only Rangitauira averred that 'Brook had interpreted the deed adequately at the 27 May 1840 hui'.[18]

These accounts all suggest that if, as Wakefield said, he 'had the deed fully explained to them', that explanation was ineffective.

We do not think it surprising if explanation of what Wakefield intended by the sale did not resonate with the gathered Māori at Pākaitore or on board the *Surprise*. In that particular moment of cross-cultural foment, it is difficult even now to imagine exactly what could have been said, and how, that would have created in Whanganui

Māori minds a clear picture of what Wakefield thought was being transacted.

Certainly, what we know about the circumstances strongly indicates that there was no meeting of minds such as would constitute a contract.

(3) *A meeting of minds about what was being transacted?*

Directly after the signing on board the *Surprise*, Te Kurukaanga oversaw a distribution of goods. It began as an orderly process, but soon degenerated into a scramble. Some signatories – Te Kurukaanga's people in particular – got the lion's share, while others lost out. Wakefield later recounted that Te Pēhi Tūroa and Te Anaua were dissatisfied with their share of the goods. They wanted Wakefield to take back the goods, but Wakefield said no, 'the bargain was concluded'.[19] What would Te Pēhi Tūroa and Te Anaua have made of this? We can only speculate. They were senior rangatira. They were dissatisfied. As the process did not conform with their idea of what was tika (right, just), they might have thought that they were not bound by the deal – whatever they understood the deal to comprise.

What happened next lends support to the view that many of those who signed the deed did not view Wakefield's goods as a payment for land. The day after the deed was signed and the company's goods were distributed, Rangitauira, Te Kurukaanga, and others supplied Wakefield with pigs and tons of potatoes – all laid out in rows in the same spot where the company's goods had been.[20]

Wakefield later denied that the owners of the pigs and potatoes were offering them as trade for what the company had supplied. Simultaneously with purchasing land for the company, Wakefield was trading goods on his own account. Before the land transaction was concluded, he had traded his own goods for pigs.[21]

Of the pigs and potatoes the chiefs brought the day after the company handed over goods for the land, Wakefield wrote:

> I was now taken ashore to see a present, or *homai no homai*, literally a "gift for a gift, 'which had been prepared for me. It consisted of thirty pigs and about ten tons of potatoes, ranged in a row along the line which had been occupied two days before by the goods. Having counted them and got them on board, I gave *E Kuru* a blanket each for the pigs, and a pipe or a head of tobacco for every two baskets of potatoes. The baskets being small, this was reckoned a very liberal rate of payment. The chief divided it at once among the owners of the provisions, who were almost entirely his own people.
>
> I accepted and paid for this gift as a private speculation on my part. On the occasion of *E Kuru's* former present to me of his canoe-load, I had given him, in Port Nicholson, a blanket for each pig, and sold them to the settlers up the Hutt very readily. Both he and I had been so satisfied with our respective profits in the transaction, that I had at once accepted his offer to load the schooner on the same terms, and had provided myself with a private stock of goods for the purpose, and repaid to Colonel Wakefield a proportion of the charter-money equal to my proportion of the use of the vessel.[22]

This account indicates that Wakefield received a gift for a gift – in other words, Whanganui Māori viewed the goods he had supplied to them as a gift rather than a payment.

He states that he accepted the pigs and potatoes, and supplied further goods as a private trade on his own behalf. This, however, does not mean that Te Kurukaanga and others did not connect their gift with the company's 'gift' the day before. How were they to know that Wakefield saw as distinct the supply of goods on the company's behalf, and the trade on his own account?

Wakefield was aware of the confusion his private trading activities had caused his account stating:

> I have been thus particular in detailing this private pig-dealing adventure, because I was long afterwards accused by some 'repudiating' natives and some of their White protectors of having received the cargo of provisions as payment for the goods belonging to the Company (worth about 700*l*) which I had paid for the land.[23]

Wakefield's careful detailing of events years later serves only to confirm the confusion caused by his

private trading activities. While he went to some lengths to explain away this confusion to readers of his book, he does not say how he made these distinctions apparent to the Māori with whom he was dealing in 1840.

Indeed, would it have been possible to explain to Māori with almost no previous experience of Pākehā or European concepts (which Brook would have had to translate into the Māori language) like 'goods paid to you for my own private trade' in distinction from 'goods I am tendering on behalf of the company'? It is altogether unsurprising, then, that Whanganui Māori had another view of what had transpired.

In 1843, a number of rangatira told the Spain commission, when it investigated the company's claim, that the goods that Wakefield distributed following the deed signing were payment for the pigs and potatoes that Rangitauira and Te Kurukaanga's people supplied the following day. Te Anaua told Spain that Rangitauira had explained that this exchange was why Te Anaua and his people had not received a greater share of the company's goods. Te Pēhi Tūroa also said that he was told that the goods that Wakefield laid down after the deed signing were payment for the pigs and potatoes that Rangitauira and Te Kurukaanga supplied the next day, and this was why Tūroa and his people were prevented from obtaining a share. Te Karamu confirmed to Spain that he heard that Rangitauira and Te Kurukaanga's pigs and potatoes were payment for the goods distributed after the deed signing, indicating that one set of goods was traded for the other.[24] It thus appears that these important chiefs did not regard the goods that Wakefield laid down as payment for land.

(4) *The tenths policy*

A significant provision in the company's deed was the promise to set aside 'a portion of the land ceded by them suitable and sufficient for the residence and proper maintenance of the said chiefs and their families'.[25] The Whanganui deed did not say so in so many words, but the company's settlement philosophy required that one tenth of land purchased should be set aside for Māori. This became known as the tenths policy. By restricting the ownership of this land to 'chiefs and their families' the company hoped to recreate the class distinctions of English society.[26] In this model, most Māori would be landless members of the labouring class.

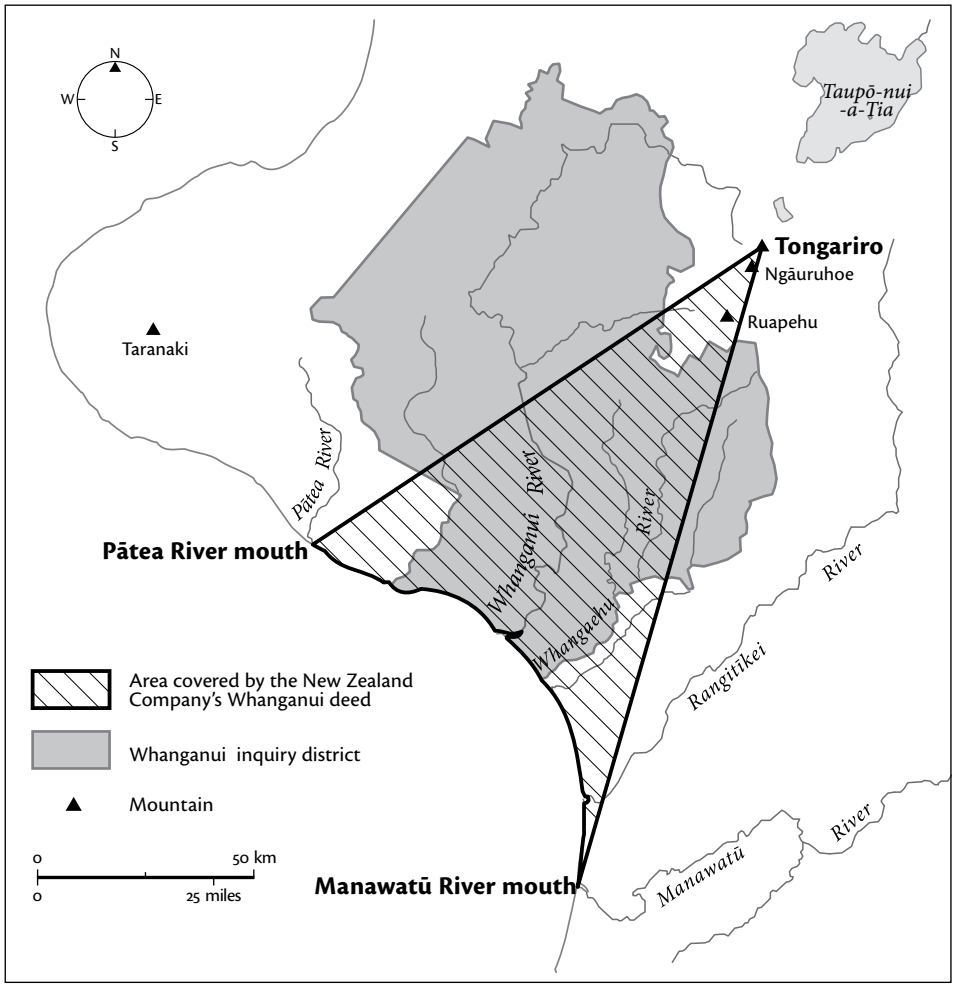
The company did not intend Māori to have a role in the selection of their tenths. The company would select them through the same ballot system used for the selection of settlers' land. The Māori-owned tenths would thus be scattered through the settler sections.[27] The company envisaged that chiefs and their families would earn income from leasing the tenths reserves. This income would grow as land values increased through settlement. Rather than as reserves for Māori to occupy, the company viewed the tenths as an endowment for the future and the real payment for the land.[28]

No one explained this policy to Whanganui Māori. Barrett, the company's translator at the deed signing on the *Tory*, said that he did not explain to Te Rangiwhakarurua, Te Kirikaramu, and Te Kurukaanga the proportion of land that would be reserved. He told them simply that there would be 'one part for the white people, and one for them'.[29] Te Kirikaramu told the Spain commission that nothing was said to him about reserves.[30] Rangitauira of Mateongaonga and Pīpīriki was the most staunch supporter of the company's claims, but even he understood only that there was to be one block for the Europeans and another for Māori.[31]

(5) *The representative capacity of the deed's signatories*

Those who signed the company's deed represented only some of those who had rights to the land. Wakefield knew this. Although he arrived in Whanganui on 19 May 1840 and waited until 27 May to discuss the deed with those who arrived from up river, Te Kurukaanga told Wakefield that many other owners were not present. Wakefield recorded in his diary that:

> E Kuru said that we should be a month waiting for all to collect from all the places, and that the people refused to come from Patea & Rangitiki [*sic*] with his messengers, unless he went himself, which he [could] not do, being lame: but he



Map 5.1: Land claimed by the New Zealand Company

answered for their signing afterwards and promised to reserve some payment for them.[32]

Te Kurukaanga's authority to commit Māori from Pātea and Rangitīkei to the sale is unclear. It appears that Wakefield simply accepted his assurances at face value, perhaps because he believed that Te Kurukaanga was the principal chief of Whanganui. Wakefield certainly claimed that this was the case, but various people challenged this view in the years that followed. The first Pākehā missionary at Whanganui, John Mason, considered Te Kurukaanga to be the second son, but not the heir, of his father, a chief living at Waikanae at the time.[33] Richard Taylor, the missionary stationed at Whanganui from 1843, considered Te Kurukaanga 'of no great note', and as 'of inferior rank'.[34] In 1846, Donald McLean described Te Kurukaanga as 'a young chief of Tuhua who had in reality nothing further than a nominal claim . . . set up above the real owners by Mr Wakefield'.[35] We do not know whether Wakefield had a factual basis for believing Te Kurukaanga to be a chief

of superior rights and status, or whether it simply suited him to proceed as if he were because Te Kurukaanga was amenable to assisting him.

More chiefs signed the company's deed than the Treaty, but many important leaders did not sign the deed and subsequently objected to it.

Te Māwae and Hoani Wiremu Hīpango of Pūtiki were not at Pākaitore for the deed signing. They told the Spain commission that the transaction vexed them because they had not consented to it. Hīpango also gave evidence that Ngāwaka, Pākoro (Te Pēhi Tūroa's son), Waingau, and Maketū were all at Waikanae with them during the deed signing. Other accounts suggest that Maketū took part in the hui at which the deed was discussed.[36] Whatever the case, there were clearly a number of rangatira with rights to the land who did not have a chance to consider the deed, let alone agree to any land sale.

We believe that the evidence relating to the signing of the company's deed shows that very few, if any, of those who signed the deed understood it; and those who signed represented just a small proportion of those who had rights to the land.

(6) *Land on the river's western bank near its mouth*

It does appear, however, that some of the signatories to the deed believed that an arrangement had been reached concerning land on the western bank of the river, near the river mouth. Wakefield recorded that when preparing to leave Whanganui he urged those Māori still present 'to build houses about this part of the river, for which the White people would be glad to pay them'.[37] John Mason, a missionary with the CMS, arrived at Pūtiki in June 1840. In September 1840, he wrote that Māori had 'constructed 30 whare near the mouth of the river on the west bank for the use of settlers who they thought would soon be coming'.[38]

One year later, the police magistrate at Whanganui, G F Dawson, reported that the land where these whare stood was part of a block that Māori agreed they had sold to the company. This block extended five miles up the river and 23 miles along the coast.[39] This was of course only a tiny proportion of the land described in the deed.

We do not how many Whanganui Māori believed that they had reached an agreement of some kind with the company, and that settlers would soon arrive.

5.3.3 Settlers arrive in Whanganui

In June 1840, Colonel Wakefield decided that there was too little land available for settlers at Wellington, and told his company's London directors that he was planning an agricultural settlement in Whanganui. A town at Pākaitore emerged as his favoured option, and on 24 December 1840 he dispatched E J Wakefield with a surveyor and assistants to survey sections for the town.

That August, E J Wakefield had been back to Whanganui to trade. He located himself on the Pūtiki side of the river, but Te Kurukaanga urged him to move to the Pākaitore side, where Māori had built him a house.[40] Rangitauira, Te Anaua, and Te Pēhi Tūroa visited him,[41] and Rangitauira, a senior Ngā Paerangi chief then living at Mateongaonga, took Wakefield and New Zealand Company surveyor, Park, up the river to Kauarapaoa. Wakefield recorded that Rangitauira:

> gave us the names of every settlement and tributary stream along the banks, and seemed to consider his presence, whenever Mr Park landed to complete a sketch of the river, as a thorough confirmation of the bargain, in which he had taken so earnest a part. He eagerly rejoiced in thinking that the use of the compass and pocket-sextant were measures indicative of the early arrival of settlers, and frequently repeated his former metaphor of covering the land with White people as he did with a handful of sand.[42]

This seemed to confirm that Te Kurukaanga and Rangitauira at least were on board with whatever bargain had been sealed between Whanganui Māori and the company earlier in the year.

(1) *The settlers come despite the Crown*

In early January 1841, Governor Gipps of New South Wales responded to the company's intentions to open up Whanganui to settlement. He issued a notice that prohibited holders of company land orders from settling at Whanganui and Taranaki. On 9 January 1841, Hobson, as

Petre on the Whanganui River, September 1841

Lieutenant Governor, issued his own notice cautioning the public against settling or occupying land at Taranaki and Whanganui, because the Crown had not granted the company any land at these places.[43]

The warnings from Gipps and Hobson came too late for the settlers aboard the *Jewess*, which arrived in Whanganui on 2 January 1841. More settlers arrived by land a few days later.[44] Nor did the warnings prevent the arrival, on 27 February 1841, of 13 more company settlers from Wellington on board the schooner *Elizabeth*.[45]

Missionaries and traders had come before them. The CMS missionary John Mason and his wife were settled at Pūtiki, and the CMS catechist Richard Matthews was living on the opposite side of the river.[46] Other non-company settlers were there, too. The previous year, MacGregor, the captain of the *Surprise*, had secured directly from Māori land at Pūrua where he established a trading station. He brought other settlers who situated themselves five miles up the river to cut timber for boat building. Te Kurukaanga explained these arrangements to Wakefield, who appears to have given his and the company's sanction after the fact.[47] Whanganui Māori clearly did not feel that signing the company's deed constrained them from negotiating agreements about their land with others, and this included entering into arrangements to settle Pākehā on land they had supposedly sold to the company.

Richard Taylor's Church Missionary Society station at Pūtiki as seen from Pūtiki-wharanui Pā, 1847

(2) *Māori opposition to Pākehā settlement*

The company called the new settlement Petre. As the number of Pākehā there grew, Whanganui Māori began to express opposition.

In its early stages, this opposition was often led by Māori based at Pūtiki who had not signed the company's deed. They allowed settlers to develop the settlement of Petre on land opposite Pūtiki, but no settlers were allowed to settle outside the township. Pūtiki Māori disrupted the company's surveyors as early as April 1841,[48] saying that the surveyors were asserting rights over land that had not been sold.[49]

Wakefield blamed the opposition on mihinari (missionary) Māori, who had fallen under the influence of Mason and Matthews. He said later that those who disrupted the surveys in April 1841 'always turned out to be missionary natives',[50] and of the missionaries wrote:

> Mr Matthews circulated very industriously among the settlers, that the whole purchase of the place had been a farce from beginning to end; that the natives who signed the deed and received the payment formed but a very insignificant and uninfluential proportion of the owners of the land; that the payment made was not more than one hundred pounds' worth of goods; and that *E Kuru*, who was said to have managed the whole transaction, and to have secured the largest share of the goods, was hardly a chief, and had not the slightest right to dispose of the country near the sea.[51]

Alarmed settlers challenged Wakefield about the purchase. He later recorded:

> So plausibly, however, did Mr Matthews tell his story to the settlers, that they consulted and held meetings, and questioned and cross-examined me as to the process which I had adopted, till I at length lost patience, and told them at a meeting (at which Mr Matthews had pointedly contradicted my assertions as to the negotiations at which I was present and he was not) that I was no longer Agent of the Company; and that I had reported my proceedings at the end of my temporary agency in buying the place to the principal Agent in Wellington; and I then left the room.[52]

Whatever the reason, many Whanganui Māori did not recognise the company's claims to land in Whanganui. Pūtiki rangatira informed Mason: 'This is the place of our ancestors, here we have fought our battles and here lie our dead. What payment will buy it? We will not sell it.'[53]

In October 1841, Wakefield returned to Whanganui and recorded that opponents of the company's land claims were 'more and more troublesome in their obstruction to the peaceable location of any of the sections selected'. He went on to note that 'new repudiators, who had been parties to the sale, daily sprang up, and, after vain remonstrance, were expunged from the list of my friends and guests'. Only Rangitauira, Te Kurukaanga, and those associated with them were sticking to the bargain.[54]

Although many Māori in Whanganui disputed that the company and its settlers had rights to land in Whanganui, they did seem to accept the establishment of the township – no doubt because if afforded them opportunities for trade with the local Pākehā population and with settlers at Port Nicholson. They traded pigs and potatoes, enabling Whanganui settlers to live cheaply on Māori-grown food, and also gain income or goods from trading with settlers at Port Nicholson. Trade in crops expanded to include corn, wheat, and other vegetables,[55] and sawn timber was

also exported to Nelson, though it is unclear what level of involvement Māori had in this venture.[56] Māori skills were also in demand, with settlers engaging them to thatch the roofs of their new homes.[57]

Broadly speaking, the reactions of Whanganui Māori to the arrival of settlers in Whanganui depended on whether they or their leaders had signed the company's deed. Te Kurukaanga and Rangitauira and their people acknowledged their involvement in signing the deed and supported the settlers and their efforts to settle in Whanganui. Others, like Te Māwae and other Pūtiki Māori, did not sign the deed and did not recognise any claim to their land.

The fact of the Pākehā settlement had broad acceptance and even support, but views on the extent of the township, and rights of settlers to develop rural sections outside of the township, differed.

5.3.4 The Pennington agreement

After the Treaty was signed, the Crown sought to resolve all Pākehā claims to land in New Zealand stemming from pre-Treaty transactions. Of the many hundreds of such claims, most were from individuals claiming to have bought modest acreages. The New Zealand Company's claims, though, were otherwise: it was a commercial enterprise claiming to have purchased fully one-third (or 20 million acres) of the country. The company had also brought to New Zealand hundreds of settlers who were clamouring for title to the land for which they had paid the company. Resolving the company's claims was both important and complex.

While New Zealand Company officials in New Zealand were planning to open Whanganui to their settlers, company officials in London were trying to negotiate with the British Government settlement of all its claims in New Zealand. In November 1840, the company agreed to withdraw its claim to 20 million acres in return for a total land allowance of four acres for every pound that the company had spent. This included expenditure on land deals, surveys, the cost of sending emigrants to New Zealand, and the provision of supplies. Accountant James Pennington had the job of determining the company's expenditure to date, and the agreement between the company and the British Government became known as the Pennington agreement.

In May 1841, Pennington made a provisional award to the company of 531,929 acres based on expenditure of £119,480 14s 1d.[58] In the years that followed, the British Government admitted further company expenditure: in January 1843, the award increased to 745,919 acres; and in November 1845, to 1.3 million acres.[59] The fifth clause of the Pennington agreement restricted the land that the company could select to areas where it had purportedly purchased and in which it had established settlements. No more than 160,000 acres of this area was to be located at Port Nicholson and New Plymouth. The clause also stipulated the size and shape of the blocks that the company could select. Up to six blocks of not fewer than 5,000 acres could be selected, with the remaining blocks having to cover at least 30,000 acres. As far as natural boundaries would allow, each block was to be in the shape of a 'solid parallelogram'.[60] By March 1841, company officials in England had made an initial selection based on Pennington's provisional award of 531,929 acres. They assigned 89,600 acres of the total allowance to Whanganui. There were to be reserves for Māori of 8,145 acres, leaving a balance of 81,455 acres for the company and its settlers.[61]

At this stage, the company's land selections were provisional. No land would actually be awarded to the company until all its claims were investigated and validated. This job fell to William Spain. In January 1841, Lord Russell appointed Spain to the role of land claims commissioner for New Zealand. Spain, a lawyer, was previously the private secretary of future Prime Minister Lord Palmerston. His warrant of office provided for him to exercise a judicial function, stating that he 'was to "investigate and determine" the outcome of any claims brought before him'.[62]

Neither colonial officials in New Zealand nor Māori had any involvement in the Pennington agreement or the appointment of Spain as land claims commissioner. Governor Hobson received news of the agreement and Spain's appointment in March 1841. He had by this time already introduced a system for testing claims to land

arising from pre-Treaty transactions. The Governor of New South Wales, Gipps, introduced the New Zealand Land Claims Act in August 1840, but the British Government disallowed it when New Zealand became a separate colony. Hobson introduced the very similar Land Claims Ordinance in June 1841. These measures established a commission to investigate settlers' land claims. Where it found that land had been validly purchased from Māori, it could make a grant based on the value of the money or goods used as payment, but could award no more than 2,560 acres (or four square miles).[63] By setting up this investigation process and limiting the maximum award, the Crown sought to control both the pace and scale of Pākehā settlement.

This restriction could have proved problematic for the New Zealand Company, which claimed approximately one million acres through its Whanganui deed alone. But in a letter dated 16 April 1841, the Colonial Secretary, Lord Russell, told Hobson he needed to alter the Land Claims Ordinance to accommodate the terms of the Pennington agreement. Hobson did just that, removing the limit of 2,560 acres in his Land Claims Ordinance of 1842, and replacing it with an award of four acres per pound of proven expenditure. The British Government disallowed this ordinance in December 1842, which left in place the 1841 ordinance with its acreage restriction. However, Gipps, who created the 2,560-acre limitation, was of the opinion that his Act and Hobson's ordinance could not 'limit Her Majesty's prerogative of granting more, should circumstances in any case require it'.[64]

When the Taranaki Tribunal looked into this sequence of events, it found that special legislation to validate the Pennington agreement was not required, because the 1841 ordinance, as suggested by Gipps, allowed the Governor discretionary power to grant more than 2,560 acres.[65]

5.3.5 Hobson waives pre-emption

Company officials in New Zealand continued to negotiate its claims with the Governor while details of the Pennington agreement and the investigation of the company's claims were being finalised in England.

In August and September 1841, Governor Hobson met with Colonel Wakefield to discuss a proposal to guarantee the titles of company settlers regardless of the outcome of Spain's investigation. The colonel proposed that, if the land claims commission found against the company's claims, the company would remedy this through additional payments to Māori. The amounts would be negotiated between the company and the protector of aborigines. If they could not agree, Colonel Wakefield was willing to submit the final decision to an umpire, who was to be chosen by agreement between the company and the protector.[66]

Hobson approved of the idea of allowing the company to make additional payments to Whanganui Māori. He went a step further by allowing the company to do this prior to any investigation of its claims. In October 1841, Hobson reported his decision to Colonial Secretary Lord Russell, and explained that he believed that allowing the company to complete purchases of the land it had surveyed (or partly surveyed) would relieve the plight of settlers arising from the uncertainty of their titles. Hobson also included a schedule of land subject to his waiver of pre-emption, including a 50,000-acre block at Whanganui on both sides of the river, which included Pūtiki.[67]

(1) *The significance of waiving pre-emption*

Allowing the company to deal directly with Māori was quite a step to take, because it necessitated waiving the Crown's article 2 right of pre-emption. Crown pre-emption was a plank of British imperial law. Under contemporary imperial conventions – imposed not just in New Zealand, but also in Canada, the American colonies, and Australia – only the Crown might extinguish native title. There could be no private ownership of land in new colonies by non-indigenous persons (including British land companies) without the Crown first interposing and extinguishing native title. Professor Richard Boast argues that if pre-emption had not been included in the Treaty, it would have been imposed by other means.[68]

The claimants submitted that 'the Crown's duties of active protection and good faith required it to consult with Whanganui Māori and obtain their consent before waiving its right of pre-emption'. They argued that the Crown

used pre-emption waivers to allow Whanganui Māori to be dispossessed of their land.[69] The Crown submitted that waiving the Crown's pre-emption right was consistent with the terms of the Treaty. Pre-emption was a protective measure, and the waiver sanctioned the company only to try to purchase land. No land could be granted to the company unless the Crown was satisfied that Māori consented to a sale.[70]

It is not clear to what extent Whanganui Māori understood pre-emption. Henry Williams seems to have characterised the pre-emption clause in article 2 as protection for Whanganui Māori against speculators – which of course it was, to some extent. But nowhere is there evidence that anyone explained how the concept would work, and its expression in the Māori version of the Treaty did not help, stating only that Māori would give over to the Governor the hokonga (buying and selling) of the land.

The Crown's decision to waive its pre-emption right did not commit Whanganui Māori to any course of action: the company was permitted to purchase land, but Whanganui Māori were under no obligation to sell. At the same time, the Crown's waiver in favour of the company was one of the first things it did that affected Whanganui Māori. It implicated the interests of many Whanganui Māori and potentially thousands of acres of their land, and changed a key aspect of the Treaty, signed only the year before. There is no doubt that the whole issue should have been canvassed with Whanganui Māori – but it was not. This was an inauspicious start to their Treaty relationship with the Crown.

(2) *Hobson's views on pā and cultivations*

On 5 September 1841 Hobson wrote to Colonel Wakefield outlining his views on the company's land purchase activities as they related to pā and cultivations:

> The local Government will sanction any equitable arrangement you may make, to induce those natives who reside within the limits referred to in the accompanying schedule, to yield up possession of their habitations; but I beg you clearly to understand, that no force or compulsory measure for their removal will be permitted.[71]

Hobson was happy for the company to publicise the Crown's pre-emption waiver.[72] However, he wanted kept secret his sanctioning the company's attempt to purchase pā and cultivations, 'lest if made public, disaffected persons might induce them [Māori] to make exorbitant or unreasonable demands'.[73]

Hobson's determination that Māori should not be dispossessed of pā and cultivations that they wished to retain constituted a major change to the company's proposed 'tenths'. As we have discussed, this scheme allowed the company to select the sections that would be reserved for the benefit of chiefs and their families. The company considered that it had purchased all pā and cultivations under their deed, but now Hobson was insisting that pā and cultivations were to be considered Māori property unless they agreed to part with them. George Clarke, Chief Protector of Aborigines, had advised Hobson that Māori would not sell their dwelling places or cultivations unless they had already quit such areas. Hobson relayed this information when he reported to Colonial Secretary Lord Russell on the pre-emption waiver arrangements.[74]

As it transpired, Colonel Wakefield chose not to utilise the pre-emption waiver, preferring to see whether the land claims commission, which began hearing the company's claims in 1842, would award it land.[75] Meanwhile, in Whanganui, it was becoming increasingly apparent that many Māori rejected the company's claim to their land.

5.3.6 Whanganui Māori oppose settlement expansion

The New Zealand Company encouraged settlers to go to Whanganui after the December 1840 surveying party laid out sections for the planned town, and they began arriving from 2 January 1841. At this stage, no one in New Zealand yet knew about the Pennington agreement. Nor could the company or its settlers have been aware of either Gipps's prohibition of settlement in Whanganui and Taranaki or Hobson's notice of caution to the same effect. Pākehā who settled in Whanganui without the permission of Whanganui Māori were actually squatters, but probably did not accept that that was the legal position.

Even after it knew about Gipps's and Hobson's warnings about settling in Whanganui, the company pressed ahead

with its planned settlement. The first selection of sections in Whanganui was advertised for 18 March 1841, but delays with the survey meant that sections were not ready until 23 September 1841. Just 80 of the first 150 offered were taken up. Further selections took place in December 1841 and June 1842.[76]

Whanganui Māori prevented company settlers from setting up on land outside the settlement. A settler named Wansey was one of those who selected land from the company's first offering in September 1841. His section was located on the western side of the river some 17 kilometres from Petre. He went there with three labourers to help him, and built a house. But soon, Māori arrived in numbers, asserting that they had not sold the land, and had never been paid. They threatened violence if Wansey did not remove himself. Acting on the advice of Colonel Wakefield, Wansey attempted to purchase the land directly from Māori. They refused, occupied his house, took most of his possessions, and built a pā close by.[77]

Wansey's case was symptomatic of widespread Māori resistance to the expansion of Pākehā settlement at Whanganui. In December 1841, Colonel Wakefield suggested that Whanganui settlers could overcome this by offering to purchase the land directly from Māori – which Hobson's waiver now allowed, he believed.[78] Some settlers attempted to follow his advice, but to no avail. One of them, P Wilson, told the company surveyor:

> Captain Campbell, a Mr Garden and myself, waited on Mr Missionary Mason today, who accompanied us to the pah, and assembled all the chiefs and people to hear our proposals. But they would listen to no terms, obstinately reiterating that they would not sell their lands to any body, for that they knew if any of the whites once got a footing behind them, they would not be satisfied till they had driven them up the country, or from their present habitations.[79]

Wilson reported that opposition to settlers came from 'a general confederacy of chiefs' and that there could be no piecemeal solution to the land question in Whanganui. He advocated a formal rearrangement of the company's claim to the land.[80]

(1) *A police magistrate and protector of aborigines*

The Crown responded to the growth of the settlement at Petre by appointing a police magistrate. G F Dawson arrived on 9 September 1841[81] to take up the role after his appointment as 'Itinerant Magistrate in charge of the Whaling Stations in Cook's Straits' lapsed.[82] Various justices of the peace were also appointed from among New Zealand Company settlers, including E J Wakefield.[83]

As the most senior Crown official at Petre, Dawson appears to have taken on the role of sub-protector of aborigines for Whanganui Māori. Whether this was an official role is unclear, because no record of an official appointment as sub-protector has been found. Historian Richard Hill suggested that Dawson was appointed to all 'police, judicial, and Maori (as Sub-Protector of Aborigines) duties'.[84] Whatever the case, the Governor appears to have instructed Dawson to protect the interests of Māori in the land that the company was claiming, particularly as regards making reserves for Māori in the township.[85] Dawson's protective role was no doubt complicated by the fact that he himself held a New Zealand Company land order. On that account, as he noted, he wanted the nascent settlement to succeed.[86]

Upon arrival at Petre, Dawson was quickly drawn into a dispute between some Whanganui Māori and the company's surveyors. The surveyors had plotted 143 sections by September 1841, but Māori had not allowed surveys on the Pūtiki side of the river. They then blocked the surveyors' progress altogether. Five days after he arrived, Dawson reported that he and missionary Mason had persuaded Māori to allow surveying to continue by explaining that surveying was not an assertion of ownership.[87]

Although Dawson supported the company's survey of the land it claimed, he opposed settlers' efforts to occupy land when Māori disputed its ownership. In September 1841, on the day of the first selection of surveyed sections, Dawson told the company surveyor (Smith) that he would attend and 'protest against the occupancy of that part which is claimed by the natives'. He would also warn company settlers 'not to intrude on any part of the land in dispute, until the Land Commissioners shall have decided what lands have been really alienated with the free

consent of the aborigines'. Dawson repeated this warning in December 1841 when the company held its second selection process.[88]

(2) *Māori continue to assert ownership of land*

That same month, another land dispute arose. A company settler claimed that Rangitauira had invited him to occupy land near his kāinga. The settler engaged a sawyer, Smith, to clear trees from the land. Te Māwae (of Ngāti Ruakā) and some 40 armed Māori arrived to stop them, wanting to take Smith's supplies back to Petre and end his occupation. Also present were Rangitauira, his brother, and one of his sons. They too were armed, and they sat by the hut that Smith and his men had built and opposed its removal. Rangitauira said to Te Māwae, 'Begin with my head for that must go first.' Te Māwae left, but these events sufficiently alarmed Mason that he reported them to Police Magistrate Dawson. Dawson told Smith to remove his goods and abandon the land.[89]

E J Wakefield wrote that many other settlers (or 'sectionists' as Wakefield called them) negotiated with Whanganui Māori for access to land in exchange for payment. Some Whanganui rangatira also came to the company offering to locate settlers on land in exchange for payment. Colonel Wakefield turned down this offer because, according to E J Wakefield, 'he thought such a course might be considered by the Land Commissioner as an acknowledgement that the original bargain was an incomplete one'.[90]

There can be little doubt that the situation regarding land ownership in Whanganui was very uncertain, calling into question E J Wakefield's early assertions about the efficacy of the deed signing. Whanganui Māori felt free to manage their land, and allocate it for different purposes – including to settlers operating independently of the New Zealand Company.

By January 1842, the company settlers were frustrated, and they were proposing to tell the Government that Māori were withholding their land from them. They sought the removal of the mission station because, like Wakefield, they blamed the missionaries for Māori opposition and obstruction.[91]

In fact, the company's surveyors had heightened Māori feeling by determinedly including Pūtiki pā and cultivations in the sections surveyed.

The company claimed to have altered its reserves policy to meet the requirements for reserving pā and cultivations that Hobson laid down in 1841. In February 1842, Colonel Wakefield reported that, while he was in Whanganui, he had 'directed some spots, which the natives were unwilling to quit, to be at once reserved for them to the extent of a tenth of the whole land given out, before selections amongst the purchasers commenced'.[92] However, in July 1842, Mason reported that the company had provoked Māori resistance by ignoring their requests to reserve pā and cultivations.[93] Mason said that Māori were not opposed to selling land to the company but required the reservation of their pā, cultivations, and an area of land that could be used to grow wheat.[94]

(3) *Negotiations with Pūtiki Māori*

From early 1842, Dawson negotiated with Pūtiki Māori about allowing settlers on to land that the company claimed. Colonel Wakefield had earlier attacked Dawson for preventing settlers from taking possession of sections that were surveyed, and which they had selected. Dawson responded that it was his duty as police magistrate to prevent settlers from taking possession of land 'which the natives declared they would defend with violence'. However, he also stated that as a company settler himself it was in his interest to 'facilitate the quiet possession of the land by the settlers'.[95]

On 24 February 1842, Dawson wrote to the Pūtiki chiefs Te Anaua, Te Māwae, and 'Turva' (probably Te Pēhi Tūroa) asking them to allow company settlers to cultivate the land in Whanganui 'the tenth part of which, in the most valuable and approved situations, are reserved for yourselves, and will rise in value according to the extent of cultivation near them'. He counselled that, 'as there are some among you who you say have not received sufficient payment, point out who they are, and I dare say they will receive more'.[96] Te Anaua, Te Māwae, and Te Wiremu said in reply:

> you wish us to consent to sell some land to the Europeans, to which we say, the Europeans shall have a part, and we will keep a part for ourselves. Now these are the places we wish to keep nigh our settlements, our (new made) cultivations, our (old) cultivations, our forests, and a piece of fern land for growing wheat at a future time; this has reference not only to [Pūtiki], but also to all our other places on this and the other side of our settlements; other places the Europeans may have.[97]

Pūtiki Māori were clear that they had not sold their land; they would decide what land would be sold and what would be reserved for them. The letter went on:

> For the piece of land we purpose for the Europeans must be settled by a small payment. When we see what the proposed payment is to be, we will see whether we approve of it; upon which approval we will let the Europeans have what they please.[98]

A separate letter from Te Anaua and Te Māwae to Dawson, E J Wakefield, and 'all the Europeans' stated that they required 'a larger payment than was before made' (probably a reference to the goods the company gave in May 1840), and sought:

> Some blankets, casks of tobacco, casks of double barrelled guns, some percussion guns, some casks of small axes, some casks of pistols, some large axes, some spades, some casks of trowsers, shirts, vests, some cloaks, some coats, some tin pots and some caps, and something of everything that the Europeans possess.[99]

These were the terms on which Te Anaua and Te Māwae were prepared to identify land in Whanganui where they would allow company settlers to remain.

It is not clear how much further this went. It appears that the company made some kind of offer, because in March 1843, Colonel Wakefield reported to company officials in London that Māori rejected an additional payment offered in 1842.

Dawson had little success in securing land for settlers in Whanganui. He did keep the surveys happening for a time. By May 1842, the company had surveyed 36,800 acres of land in Whanganui, made up of 368 rural sections and an area of 1,455 acres for the town. In August 1842, however, Māori opposition stopped surveys again, and Dawson could not persuade opponents to allow them to resume.[100] Company surveys of rural sections were effectively at an end.[101]

Some company settlers managed to secure Māori agreement to their occupying land. A settler named Bell, who claimed a right to a rural section of 100 acres, was reported to have secured the use of some 30 to 40 acres of land on the east bank of the river, close to Pūtiki, at some time prior to 1843. Bell was not allowed to fell any trees on the land, though.[102] Another settler, Jessie Campbell, was permitted to graze her cattle on land about a mile from Petre that she rented from Māori for £5 per year.[103] These settlers' right to use the land relied on agreements with Māori rather than on any claim through the company.

5.4 Did the Spain Commission Confirm the New Zealand Company's Purchase of Whanganui?

5.4.1 Spain appointed land claims commissioner

Colonial Secretary Lord Russell appointed William Spain as land claims commissioner for New Zealand in January 1841, and he arrived in December of that year. Governor Hobson did not give him his instructions until March 1842.[104]

Russell intended that, as commissioner, Spain would hear all claims to land arising from pre-Treaty land agreements, not just those of the New Zealand Company. He would not only investigate claims but also determine their outcome.[105]

By the time Spain arrived in New Zealand, Governor Hobson had appointed two other commissioners who began hearing claims in October 1841.[106] Hobson had restricted commissioners' powers to making recommendations to the Governor about how each claim should be resolved. Hobson limited Spain to investigating only New

Zealand Company claims,[107] and told him to investigate claims 'not by the strict laws of evidence but by the real justice and good conscience of the case without regard to legal forms and solemnities'.[108] He should ensure that a protector of aborigines was present at all hearings to represent Māori rights, protect their interests, and act for them in the conduct of their cases.[109]

Initially, Spain operated under the Land Claims Ordinance 1842, drafted with the Pennington agreement in mind. This ordinance provided that those who purchased land before 1840 were eligible for grants of four acres for every pound spent. Unlike the Land Claims Ordinance of June 1841, which limited grants to 2,560 acres, the 1842 ordinance did not set a limit. However, the British Government disallowed the 1842 ordinance in December 1842, making the Land Claims Ordinance of June 1841 the source of Spain's authority.

Strictly speaking, as the Whanganui River Tribunal noted, the 1841 ordinance did not give Spain authority to examine transactions made after Gipps's and Hobson's January 1840 proclamations. These stated that the Crown would not recognise as valid any land transaction completed after the proclamations were issued. There was nothing in the 1841 ordinance exempting the company from this provision.[110] In other words, Spain could not examine company purchases made after January 1840: all transactions after this date were null and void. The company's Whanganui deed was not signed until May 1840. Clearly, the ordinance might have been fatal to the company's Whanganui land claims. But Spain overcame this difficulty by taking the view that the purchase was initiated at the signing on board the *Tory* in November 1839. The further signing and payment in May 1840 was the final stage of the purchase commenced earlier. This approach ensured that Spain's examination of the company's Whanganui claim complied with the terms of the land claims ordinance.

5.4.2 The Crown opts to arbitrate the company's claims

Spain was initially based in Wellington, where Sub-Protector of Aborigines George Clarke junior assisted him.

Colonel Wakefield gave evidence in June 1842, producing the deed signed on board the *Tory* in November 1839 and describing the two signatories and Te Kurukaanga as 'three of the principal chiefs of Whanganui'. He said that translators Barrett and Brook explained the deed to these three chiefs. He could not testify as to the May 1840 payment and further deed signing, because he had sent his young nephew Edward (E J Wakefield) to Whanganui to complete the transaction.[111]

That same month, Brook gave evidence before Spain, who asked him to translate an English version of the deed into te reo Māori. Clarke then translated Brook's te reo Māori version into English for Spain. Clarke told Spain that translating Brook's Māori 'so as to make it intelligible' was a difficult task.[112] Spain would go on to report that Brook's translation was 'little calculated to convey to the natives a correct notion of the contents of the deed they had signed'.[113]

E J Wakefield gave evidence at Wellington in July 1842. He stated that, 'according to my own personal observation,' those who signed the company deed at Pākaitore in May 1840 included 'the principal chiefs of the tribes at Whanganui'.[114] He also brought Te Kurukaanga and others to give evidence, though Te Kurukaanga declined, saying that he preferred to give evidence in Whanganui.[115]

(1) *Wakefield seeks alternatives*

As Spain's investigation progressed, Colonel Wakefield grew less confident that he would recommend to the Governor a significant award for the company. In August 1842, he abandoned his plan of awaiting Spain's recommendations, opting instead to negotiate a settlement of the company's claims with the Crown. He approached Spain, suggesting that the commissioner must have become aware of instances where, in the interests of justice for Māori and settlers, the company should make additional payments to Māori. Wakefield said that the company would pay in accordance with the decisions of Spain and Halswell, the Protector of Aborigines, about what was owing.[116]

Spain forwarded Wakefield's proposal to the Governor, unaware that Hobson had died a few days earlier. Colonial Secretary Willoughby Shortland took over the

administration of the colonial government until the arrival of a new Governor. He met with Colonel Wakefield at Auckland in October 1842 to discuss the proposal. Shortland promised Wakefield

> every practicable aid and assistance to make good your purchases; which having been effected, and the land once declared the demesne of the Crown, Native interference will not be allowed.[117]

(2) *A turning point*

Shortland's promise to Wakefield was a turning point in the resolution of the company's land claims. It signalled that the Crown was now committed to ensuring that the company secured land as a result of its purported purchases. Settlers had already set up in Whanganui without title to land, and Spain was finding that the company's transactions were wholly inadequate. Nevertheless, the Crown would now resolve these problems as between it and the company.

The process agreed upon saw Spain continue in his role as investigator of the company's land claims, but he would now also arbitrate what extra payment the company might have to make to Māori to complete its purchases. Two 'referees' were appointed – a representative each from the Government and the company – to recommend to Spain what payment was required. The Government referee was George Clarke junior, who, though just 19 years old when appointed, had already assisted Spain in his investigations. Colonel Wakefield represented the company. In the event that Clarke and Wakefield could not agree on the amount, Spain would arbitrate.[118] All interested parties – except Māori whose land was affected – participated in the decision to adopt this process. Māori would be involved only when the arbitration began.

(3) *The new process gets underway*

To prepare Clarke for his role as referee in the new process, James Freeman, one of Shortland's officials, warned him 'against believing everything Maori told him about their transactions with the Company':

> It will be your particular duty to ascertain the lands alienated by the natives to the Company or to other Europeans, and in advocating their interests in the Court of Claims to be guided only by the equity of the case, and to afford every facility for eliciting the truth, even should it be contrary to the statements made to you by the natives whose cause you are supporting.[119]

By contrast, Clarke was to exercise 'great courtesy and forbearance' with the New Zealand Company. However, this should not preclude his maintaining 'every possible firmness' about the rights of Māori, who should keep 'such lands as would ensure their satisfaction' so that they would not oppose settlement of the land granted to the company.[120]

Spain's inquiries continued in Whanganui, but his role was different. Now, he was required to identify in reports to the Governor:

- land actually purchased from Māori;
- land partially purchased and which Māori agreed to abandon upon receiving further compensation;
- land not purchased from Māori and which they were unwilling to abandon, but which might be alienated at a later date without injury to their interests; and
- land that in the opinion of the referees ought to be retained by Māori for their future benefit.[121]

This was not the inquiry process Hobson had envisaged, prefigured in the Land Claims Ordinance and in the Pennington agreement. These required the company's claims to be judged on their merits, with investigators determining what land, if any, had been properly purchased. Hobson had announced during the Treaty debate at Waitangi that an inquiry of this type would be undertaken. But the new process was less about testing the company's claims, and more about identifying land that could be alienated from Whanganui Māori.

From May 1842, Pūtiki leaders made clear their enthusiasm for Spain to come to Whanganui to investigate the company's claims there. They wrote to him saying that they had heard good things of his work in Wellington, and invited him to hear in person what they had to say. In the same letter, they admitted that the company had paid

for the area known as Karamu on the west (Taranaki) side of the river, but denied that any land on the Pūtiki side (down to the river mouth, as far as the bush line and into the interior) had been sold.[122]

(4) *A 'manifest injustice'?*

Spain did eventually hold hearings in Whanganui, but although Māori could still give evidence to Spain, the Crown left it to Clarke in the first instance, and to Spain only in cases where the Crown and company could not agree, to recommend what land Māori were to alienate or retain. Māori could not participate in the arbitration process, nor select the land they were to keep or alienate.

Historian Michael Macky pointed out that Spain did not believe that Māori could, or should, be induced to part with any land that they did not consent to sell. This can be seen in Spain's interim report on the company's land claims. He suggested that it would be a 'manifest injustice' to Māori to induce them to receive compensation where a majority of Māori owners had not agreed to sell to the company, or where no sale was found to have been made even though the company had on-sold such land. Spain considered that, where Māori could not be persuaded to sell, such land must be excluded from awards to the company.[123]

But now, Spain was implicated in reporting on land in the third category: land that Māori had not sold, did not want to sell, but which he believed they could do without. Macky suggested, and we agree, that the purchase of such land was to be deferred to the future.[124] Nevertheless, an investigation into the validity of the company's claims had instead become a vehicle for identifying all land from which Māori might in the future be parted without injury to their interests – where that injury was assessed by an outsider, and without reference to them.

5.4.3 The evidence presented at Petre

Spain arrived in Whanganui on 25 March 1843 and quickly set about investigating the company's claim.[125] His initial inquiries were informal, as he was awaiting the arrival of a company representative. He held discussions with Māori at Pūtiki on 27 March. By 3 April, Spain knew enough to be able to advise Colonel Wakefield by letter that most Whanganui Māori denied that they had agreed to sell land to the company.[126]

Spain began hearing evidence at Petre on 12 April 1843. By this time the arbitration process had broken down. Colonel Wakefield and George Clarke junior clashed when negotiating settlement of the company's Port Nicholson claim. They were at odds about how much compensation should be paid to Māori, and Wakefield also rejected Clarke's demand that pā and cultivations be left out of areas awarded to the company.[127]

In the background, the company's England-based directors were beset by financial troubles, and refused to make any further payment for the land that the company claimed. They complained to Lord Stanley, Secretary of State for the Colonies, and demanded that the Crown award the company the land identified under the Pennington agreement.[128]

On 8 April 1843, Colonel Wakefield informed Spain that he could not engage in the arbitration process on the company's Whanganui claim,[129] but Spain carried on with his examination of the claim's validity.

(1) *Rangatira evidence*

First to give evidence were eight Whanganui chiefs and John MacGregor, the captain of the *Surprise*.

Te Kirikaramu confirmed that he had agreed to take payment for his kāinga, Whanganui; he signed the company's deed on board the *Tory* in November 1839; and, at that time, he intended to 'sell' Whanganui to Wakefield.[130] When asked to describe what he had sold he said he only mentioned Whanganui. He denied that the deed had been read over and interpreted to him or that anything was said to him about reserves. When asked what he thought the deed was intended to do he replied, 'I did not know. I was foolish. I thought to myself what is it? What can it be?' Regarding the events of May 1840, he recalled the chief Maketū saying that the people would not give up the land as there was not enough payment.[131]

Te Kirikaramu identified those in favour of the sale of land to Wakefield, mentioning Rangitauira, Te Kurukaanga, and Tiutiu. Many in this camp were

associated with people from Tīeke, Pīpīriki, and upriver locations. He listed numerous others who opposed the company's deal, including Maketū, Hōri Kīngi Te Anaua, Te Māwae, Pākoro Tūroa, Ngāwaka, Ngāpara, Hopetiri (later known as Tāmati Wāka), Hoani Wiremu Hīpango, the great chief Koroheke, Toarangitahi, and Rangiirunga.[132] These important leaders were mainly from Pūtiki, Pūrua, and Waipākura, and the lower reaches of the river. The pattern was for those associated with Tīeke, Pūrua, Waipākura, and other upriver places to support a deal with the company, while those associated with Pūtiki were not in favour. These preferences reflected who brought the New Zealand Company to Whanganui, and also who got most of the goods in the scramble on 27 May 1840. They might also have reflected a tendency for the views of Pūtiki Māori to differ from those of upriver groups.

Te Pēhi Tūroa I, a very high-ranking chief with influence in all parts of the river and renowned through central New Zealand, told Spain that he knew that by signing the deed he was selling his land, but he expected to be paid. However, the payment went to others.[133]

Te Anaua (head chief at Pūtiki and renowned further afield) denied he had consented to any sale to Wakefield, stating that he had placed his mark on the deed through 'foolishness' (ignorance). He stated that, at that time, the chiefs at Pūtiki besides himself were Kauwau, Koroheke, Te Māwae, and Hīpango. These five Pūtiki chiefs were said to have interests as far upriver as Pukehika, west to Kai Iwi, and from Whangaehu to Tongariro. Of these, Te Māwae and Hīpango were not present and did not participate in the deal. Te Anaua said that Te Kurukaanga, on the other hand, had interests only at Tīeke, far up the river. When asked if anyone objected to the sale, he named three men and then said 'and all the people'. When asked whether the chiefs present consented, he replied 'the greater part did not [consent], very few did'.[134]

Ngāpara of Te Patutokotoko stated that the deed was not explained to him, and that he too signed it out of 'foolishness' (ignorance). He said most people opposed the deal because the payment was insufficient, but after Te Pēhi Tūroa pointed out places for Wakefield, no one was prepared to go against him. He observed that many of those who signed were from Te Kurukaanga's kāinga. According to Ngāpara they had no rights to sell: Te Kurukaanga had 'fit' (fought?) them to sign (in modern parlance, had pressured them to sign.) Hopetiri (Tāmati Wāka) of Ūpokongaro and Ngātāpapa of Kaiati (between Pūtiki and Pūrua) gave similar evidence. Hīpango and Te Māwae both confirmed they were not there, did not sign the deed, and received no payment. They were against it, and were angry with those who did sign.[135]

Captain John MacGregor, captain of the *Surprise*. MacGregor gave evidence during William Spain's investigation of the New Zealand Company's purchase claim at Whanganui.

Spain asked MacGregor how well Whanganui Māori understood the boundaries of the company's claim. He replied that 'they seemed so anxious to get the goods as

not to care what they sold'. MacGregor appears to have made a distinction in this regard between those from the upper river and the lower river chiefs. He was of the view that some lower river chiefs, including Te Pēhi Tūroa, were keener on securing resident Pākehā and the opportunity for trade than actual goods.[136]

(2) *Spain reaches a view*

On 15 April 1843, Spain closed the court and addressed Whanganui Māori through his interpreter, Edward Meurant. He declared that Whanganui Māori had not been sufficiently paid and would need to be compensated.[137] He invited them to make representations on the amount of compensation to their protector, Clarke:

> I assured them that it had never been the intention of the Government that they should be disturbed in the possession of their Pas, Burying places and cultivated lands; and promised them that the Government would see that they were paid such compensation as I should award them.[138]

(3) *Evidence for the company*

Colonel Wakefield did not attend the hearings, and told Spain that it was more important that his nephew, EJ Wakefield, was there. The younger Wakefield did not arrive at Petre until 17 April 1843, two days after Spain completed his inquiry. Te Kurukaanga, who was to be the chief Māori witness for the company, was in Petre before the hearings but withdrew upriver before they opened. Spain considered that 'it was quite manifest that he left the neighbourhood to avoid being examined; and in fact, many of the other natives . . . told me that he had said he intended to absent himself'.[139]

At EJ Wakefield's behest, Spain reopened his investigation to hear from the company's Māori witnesses. Wakefield could produce only one: Rangitauira, a chief of Ngā Paerangi who formerly lived near Pīpīriki but had been at Mateongaonga since 1840. Rangitauira signed the deed and, according to Spain, took an active part in distributing the payment. Spain assessed him as 'a very infirm man, with faculties somewhat impaired'.[140]

Rangitauira gave evidence on 19 April 1843. He admitted that he originally resided far upriver, outside the block surveyed by the company, and took up his current abode at Mateongaonga, inside the company's claim, only after the arrival of the settlers. He said he had sold his land, including his pā and cultivations at Mateongaonga, to Wakefield, but continued to live there with his people. He contended that all Whanganui Māori could claim the land on both banks of the river, but when Spain questioned him he confirmed that he had not sold any land on the Pūtiki side, because 'I would not intrude upon their land'. Similarly, he agreed that the names Pātea, Manawatū, and Tongariro were mentioned, but said these were not 'places for Mr Wakefield'.[141]

Three days after Rangitauira gave evidence the investigation ended when Wakefield admitted that he could produce no other witnesses.[142]

5.4.4 Spain's interim report, 1843

On 12 September 1843, Spain issued his interim report on all the company's claims. He found that 'the greater portion of land claimed by the Company' in its various settlements, including Whanganui, 'has not been alienated by the natives to the New Zealand Company'. Other portions had been 'only partially alienated'. Some owners who signed conveyances to the company had received payment, 'whilst others, with as good a claim as those who joined in the transaction, were not parties to the deed, did not assent to the sale, and received no part of the payment'. Some of those who signed the deed and took payment 'had no right at all to convey the lands described in such deeds'. Others had 'only a right to a very small portion'. The company's dealings were made 'in a very loose and careless manner,' Spain said. The object of its agents had been:

> to procure the insertion in their deeds of an immense extent of territory, the descriptions of which were framed from maps, and by obtaining the names of ranges of mountains, headlands and rivers, and were not taken from the native vendors; and that such descriptions were generally written in the deeds before the bargain for the purchases was concluded. That these parcels contained millions of acres, and in some

> instances degrees of latitude and longitude. That the agents of the Company were satisfied with putting such descriptions in their deeds, without taking the trouble to inquire, either at the time or subsequently to the purchase, whether the thousands of aboriginal inhabitants occupying the surface of these vast tracts of country had been consenting parties to the sale.
>
> I am further of [the] opinion, that the natives did not consent to alienate their pahs, cultivations and burying-grounds. That the interpretation between the aborigines and the agents of the Company in the alleged purchases was exceedingly imperfect, and tended to convey in but a very slight degree any idea to the former of the extent of territory which the latter by those purchases pretended to have acquired, and that the explanation by the interpreters of the system of reserves was perfectly unintelligible to the natives.

Spain compared unfavourably the New Zealand Company purchases with other private purchases. In the latter, Māori generally admitted the sales; in the company's cases, they generally denied them. Spain went on to say that his observations applied to the company's claims in Whanganui, Port Nicholson, and to places in between the two settlements.[143]

With respect to Whanganui itself, Spain found that the company had 'failed to prove that they had bought the land described in the deed to the extent of millions of acres, and had only established a claim to land on one side of the river, where the town had been laid out'[144] but did not give details about its extent.[145] Spain was concerned that some Māori from the Pūtiki side of the river had received part of the payment, though he did not indicate whether he considered that they had been paid in lieu of the 'real' owners, or that they should have received more.

Spain's report made it clear that the faulty deed and inadequate purchase process in Whanganui meant that the company could not be awarded any land there without paying compensation. To secure its claim the company would have to engage in the arbitration process from which Colonel Wakefield had withdrawn.[146] By this point, Clarke had recommended that Whanganui Māori should receive compensation of £1,000, and Spain accepted the recommendation although he regarded it as too high a price. He promised to return to Whanganui with the compensation as soon as it was finally determined.[147]

5.4.5 Pūtiki Māori now willing to sell?

Pūtiki Māori were eager to progress the settlement of the company's claim but had their own ideas about what further payment was required. On 5 June 1843, the Pūtiki chiefs – Te Māwae, Hōri Kīngi Te Anaua, and Hoani Wiremu ('John') Hīpango – wrote to Spain, inviting Clarke to come and discuss payment for the land. They wanted to see the payment before they decided. Early in April 1844, the missionary, Richard Taylor met with Te Māwae and Hīpango to discuss these matters, and jotted down rough notes about the land he believed they were willing to convey, a list of those chiefs who still needed to be paid and those who had taken the earlier goods, a list of the boundaries they were willing to transact, and a list of the goods and money they wanted in exchange (mainly clothes and blankets, 'or a ship').[148] Taylor refined his rough notes and conveyed them to Spain on 15 April 1844.[149] Spain later estimated the payment that Pūtiki Māori sought, as reported in Taylor's notes, at £1,300.[150]

The boundaries of the land that the Pūtiki chiefs were reportedly willing to transact ran from Pūrua, north to Pikopiko opposite Kaiaraara, and on the north-west (Taranaki) side from the North Head to Kaiaraara. (The Pikopiko Stream and Kaiaraara are downstream from Kaiwhaiki, between Tunuhaere and Ūpokongaro.) The western boundary was to be at 'o Mapu'. From that territory they wanted to reserve various places, including land from Waitata to Kaimatiri, and 'Okue', a lake prized for its eels. On the west they stipulated reserves at Moutere, Kaikōkopu, Tūtaeika, Aramoho, and other places.[151] The area they described, and would apparently sell, amounted to roughly 40,000 acres.[152]

5.4.6 FitzRoy and Spain try to settle company claims

Robert FitzRoy replaced Hobson as Governor of New Zealand on 7 April 1843, just before Spain began his investigation in Whanganui. A month later, in May 1843, Crown officials in London agreed in principle to the possibility of 'conditional grants' to the New Zealand Company, subject

The Reverend Richard Taylor (seated), his son Basil (left), and Hoani Wiremu Hīpango. Richard Taylor regarded Hīpango as the most influential Whanganui leader from the 1840s until his death in 1865. A Christian and a teacher, Hīpango supported the Government and captured those responsible for killing the family of John Gilfillan.

to final reports from Commissioner Spain that their purchases were valid. The Crown was to assist the company, where necessary, to purchase additional land from Māori, or pay compensation when land was already occupied by settlers. The Crown's pre-emptive right was to be waived for this purpose.

On 15 June 1843, in London, FitzRoy wrote to Lord Stanley asking for further instructions. He said it was his understanding that the 'Government will assist the Company in making good their claims – so far as may be done with propriety'.[153] Stanley replied on 26 June 1843, while FitzRoy was still in London, confirming FitzRoy's understanding.[154] 'Conditional grants' to the company had become a distinct possibility (although FitzRoy in fact

Captain Robert Fitzroy. Fitzroy replaced William Hobson as governor in 1843 when New Zealand was experiencing financial difficulties and racial tensions. Many of his decisions antagonised settlers and the New Zealand Company, and he was recalled in 1845.

made no conditional grants, in Whanganui or anywhere else).[155] We note the Wellington Tribunal's earlier finding that Māori were never advised of these arrangements or consulted in any way: this was another unilateral Crown action.[156]

FitzRoy had to find some way of accommodating the company and its settlers while being fair to Māori. Compensating settlers for their losses inevitably required granting them alternative land. FitzRoy had few resources at his disposal, because the colony was virtually bankrupt in his time. He also had to work with the reality that many Māori wanted the town – their market – to remain, and that at least some Māori agreed that a transaction had taken place.

FitzRoy arrived in New Zealand in December 1843, and travelled to Wellington the following month. While there, he reached agreement with Colonel Wakefield that Māori were to be compensated for all the land the company had surveyed in its various settlements, including Whanganui. Pā, urupā, and cultivations were to be excluded. Cultivations were defined as those in use at any time from the commencement of the colony.[157]

(1) *Spain implements FitzRoy's plan*

It was up to Spain to put FitzRoy's plan into operation. Essentially, the existing arbitration process would be deployed to fix what compensation the company needed to pay Māori to secure its claims. Spain would recommend the amount to FitzRoy, who as Governor had final say.[158]

Spain returned to Whanganui in May 1844, having received Taylor's letter indicating that the Pūtiki leaders were willing to convey land to the company. With him went Clarke and Colonel Wakefield, and Thomas Forsaith, a Crown official acting as Spain's interpreter.[159] Upon arrival Spain was informed that those Māori who had indicated willingness to receive a compensation payment for their land had changed their mind. In fact, they had gone so far as to ask Taylor to destroy the letter he had sent to Spain.[160]

Spain asked Clarke to ascertain the views of Whanganui Māori. Clarke was under the impression that, apart from the site of the town, Pūtiki Māori were the sole owners of most of the surveyed block of nearly 40,000 acres.[161] He found Pūtiki Māori to be unwilling to sell any land. Spain went to meet with them on 9 May 1844, and told them that he would not accept their withdrawal of consent regarding the payment of compensation for their land. He would award land to Pākehā 'whether you take the payment or not'.[162] Such a payment would simply complete the company's earlier attempt to purchase the land.[163]

Spain knew that Pūtiki Māori had not participated in the earlier transaction, but he was now asserting to them that he had the power to take their land against their will.

Kaitoke, 1858. Kaitoke is one of only a few dune lakes that still exist south of Whanganui. Māori valued these lakes for the many resources they provided.

Spain held another meeting at Petre on 16 May 1844. Probably only Pūtiki-based Māori attended. Although invited to come to Petre to discuss the land issue, we know that Māori from upriver communities had not arrived by 13 May, and we have seen nothing indicating that they got there by the time Spain held this meeting.[164]

(2) *Spain overreaches himself*

Spain announced to those present that 40,000 acres – roughly the area that the company had surveyed – were to be awarded to the company. He maintained that the land was permanently alienated in the period from November 1839 to May 1840, defective only in that some owners were not paid. Those owners would now be compensated. Compensation was set at £1,000, and owners would also retain their pā, urupā, cultivations that had been in use since 1840, and one out of every 10 sections in the company's survey. They would also retain Kaitoke (St. Mary's Lake), Kōhata (Lake Medina), Whiritoa (Dutch Lagoon), and Paure (Widgeon Lake).[165]

The 40,000 acres that Spain announced comprised a much smaller area than the 89,600 acres that the Pennington agreement gave the company in Whanganui. His suggested reserves for Māori were also more generous than the company had proposed. After discussions with Hobson in 1841, Colonel Wakefield had agreed to include pā and cultivations in the tenths that the company would select for Māori. In Spain's version, Māori retained pā and cultivations *plus* a tenth of the land. The lakes were a further additional provision. He did, however, limit reserves of cultivations to those in use since 1840. Pūtiki Māori had said they wanted to keep all cultivation grounds, old and new.

Yet, in determining upon the 40,000-acre award to the company, Spain ignored the desire of Te Māwae, and Pūtiki Māori more generally, to retain their land. He construed Taylor's written advice to him that Pūtiki Māori had agreed to accept compensation as if they had made a binding undertaking. There is no evidence that Taylor had authority to communicate to Spain anything of the sort. Te Māwae said he was present when Taylor discussed the possibility of compensation, but denied ever having consented to a land sale.[166] And if indeed the agreement that Taylor conveyed to Spain was to have binding force, then at least the compensation should have been set at what Taylor told Spain Pūtiki Māori required: £1,300,

The Reverend Richard Taylor. A missionary, Taylor arrived at Pūtikiwharanui in May 1843 and was to play an influential role in the early years of Whanganui. He was close to developments in the Māori community and recorded his observations in copious journal entries.

according to Spain's estimate. Instead, Spain announced compensation of £1,000, which Clarke had recommended to him.

When the Crown required Spain to metamorphose from an investigator of company claims into an arbitrator of compensation to complete the company's purported purchases, it jeopardised his relationship with Whanganui Māori. They strongly resisted Spain's attempt to impose on them compensation for a purchase they did not want. Spain, no doubt under pressure himself to make a hopeless situation work, lost patience with Māori and resorted to intimidation. Historian Michael Macky told the Tribunal in cross-examination that Spain 'couched his award as a binding judicial decision and he told Māori that they had no choice but to go along with that award'.[167] But in fact Spain did not have that authority: he could only make recommendations to the Governor, whose final decision it was whether or not to act on them.

(3) *FitzRoy reassures Pūtiki Māori*

FitzRoy did reject Spain's threat to take land from Whanganui Māori if they would not accept the compensation. In September 1844, the Pūtiki chiefs invited FitzRoy to visit Whanganui. Two months later, the Governor responded that he could not visit, but promised that no land would be taken from them against their will. Crown officials Symonds and Forsaith relayed this message to Pūtiki Māori in person. They went to test reaction – both Māori and settler – to the idea that the Whanganui settlement might be abandoned. Taylor recorded in his diary that the settlers resolutely refused the proposal.[168] Symonds and Forsaith also tested the willingness of Whanganui chiefs to receive compensation. Forsaith reported that Pūtiki Māori accepted that land on the opposite side of the river was sold to the company, and conveyed his belief that Māori would accept payment for most of the area surveyed by the company.[169] Meanwhile, the company continued to survey land in Whanganui, and in November 1844 held another selection of sections for company settlers.

The Crown's pre-occupation with securing the rights of Pūtiki Māori reflected its belief that Pūtiki Māori held most of the rights to the land in question. However, a wider group of Whanganui Māori expected to receive part of any payment made. On 14 December 1844, the *New Zealand Spectator and Cook Strait Guardian* printed a letter from Te Karamu, Tūroa, Ngāpara, Rangitauira, Māku, Pākoro, and Maketū, rangatira of Te Patutokotoko and Ngā Paerangi, in which they stated their wish that the settlement in Whanganui remain. For this to occur they

required payment from the Government for their interests in the land.[170]

5.4.7 Spain's final report

Spain produced his final report on the company's Whanganui claim in March 1845, recommending to the Governor:

> that upon payment by the New Zealand Company of the sum of 1,000 *l.* sterling to the Protector of Aborigines, or to such person or persons as his Excellency the Governor may appoint to receive the same, on behalf of the natives of Wanganui resident within the block of land hereinafter awarded to the said New Zealand Company . . . the Directors of the New Zealand Company in London and their successors are entitled to a Crown grant of a block of forty thousand (40,000) acres of land, situate, lying and being in the district or settlement of Petre, otherwise called Wanganui . . .[171]

This was the same deal he had put to the hui at Petre in May 1844. He included a plan of the block to be awarded to the company, which excluded all pā, burial places, and 'grounds actually in cultivation by the natives'.[172]

Spain's 1843 report catalogued shortcomings with the company's purchase, leading him to conclude that most of the land claimed by the company was not alienated, while the remaining land was only partially alienated. He found that the company had established a claim only to land on one side of the Whanganui River, around the existing township. His final report repeated his earlier findings, but his criticisms were now all the more pertinent because the land around the company settlement and Pūtiki – where the tangata whenua had been most shabbily treated – was where the proposed award to the company would be centred.

Again, Spain observed that Brook's interpretation of the deed was inadequate and was 'little calculated to convey to the natives a correct notion of the contents of the deed they had signed, or of the boundaries of the land it purported to convey'.[173] He found that the goods used in payment had been improperly divided, and that some Māori (including some signatories) received no payment at all. He commented on chiefs of Pūtiki-wharanui 'whose claims I could not disregard, and whose land was sought to be alienated by a transaction to which they had not been parties, concluded in their absence, and without their knowledge'.[174] Some who were present at the proceedings had not consented.[175] He reported that most of those who consented to the sale were not local and had little, if any, claim to the land near the mouth of the river. They were people Te Kurukaanga brought from upriver to receive the goods.[176] Spain was highly critical of the young and inexperienced EJ Wakefield, whose mixing of private business with land purchasing on behalf of the company was 'a source of immense confusion' in the minds of Whanganui Māori, leading many of them to assert that they had paid for the company's goods with pigs and potatoes.[177]

Yet, for all these serious flaws, Spain was now responsible not only for identifying, but also for finding a solution to, the defects in the company's claim to land in Whanganui. Thus, his final report said nothing about disallowing the purchase – although his findings plainly supported that outcome. It is doubtful whether Spain now felt able to recommend that the purchase should not proceed. Instead, he found that there was a partial purchase that required only compensation to complete it.

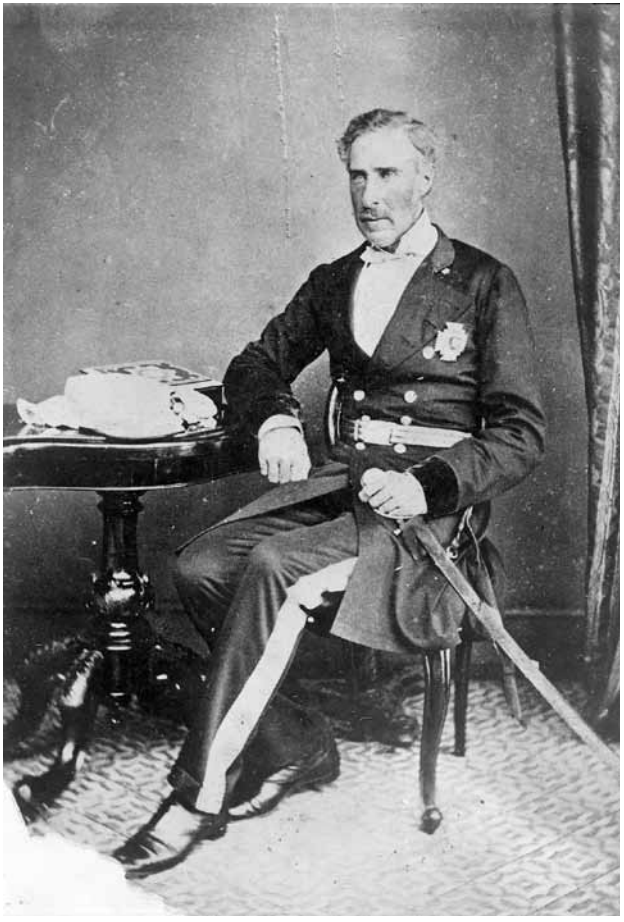
He noted both the eagerness of some to secure possession of the goods the company laid down, and the failure of those who dissented from the sale to take active steps to oppose it.[178] Of course, many of those who might have done so could not, because they were not there – which Spain knew. He also knew from the clear evidence he heard that even those who accepted the company's goods did not understand its intentions.

5.4.8 FitzRoy bows out

One month after Spain's final report, on 30 April 1845, a dispatch was sent from London relieving FitzRoy of his commission. It did not reach New Zealand until 1 October 1845.[179] FitzRoy took no action on Spain's Whanganui recommendation prior to his recall, but as early as January

1845, before receiving Spain's final report, he had indicated a willingness to pay the £1,000.[180] Then an event in early 1845 led him to think otherwise. As we discussed in chapter 2, on 1 January 1845, Te Heuheu of Ngāti Tūwharetoa and a taua of about 200 men arrived in Petre; one of their aims was to defend the rights of Tūroa, Te Heuheu's kinsman, to the land that the company was claiming.[181] Whanganui settlers and Crown officials alike were considerably alarmed, and the episode led FitzRoy to suggest to Whanganui settlers that they abandon the settlement.[182]

Sir George Grey, New Zealand's third governor



The settlers refused, but FitzRoy was convinced that there was little that the Government could do to support them, and made no attempt to act on Spain's recommendation. In September 1845, shortly before receiving the dispatch removing him from office, FitzRoy wrote to members of the Petre community advising them that, in his opinion, 'the settlement of Whanganui is not one which can now be duly protected by the local government of this colony'.[183]

5.4.9 Grey and the company's Whanganui claim

With FitzRoy now out of the picture, it fell to his successor, Governor George Grey, to finally settle the New Zealand Company's land claim in Whanganui.

In July 1845, before he left England, Grey received instructions from the colonial secretary, Lord Stanley. These made it clear that the British Government was committed to working with the New Zealand Company to fulfil the terms of the Pennington agreement. Grey was to cooperate with the company's New Zealand-based agent, Colonel Wakefield, to secure for the company the land it wished to select for its settlers – at the same time preventing Māori from making any 'extortionate demands' on the company.[184]

Grey arrived in New Zealand in November 1845. He brought with him funding and military support at a level that both Hobson and FitzRoy had lacked.[185] In particular, Stanley authorised Grey to spend £10,000 purchasing the land the company needed in order to fulfil its obligations to settlers who had purchased company sections. Grey was to pay out only as a last resort, if the company exhausted its means of delivering to settlers what they had purchased.[186] One of the ways in which Grey was to facilitate the company's obtaining land from Māori was to waive Crown pre-emption in the company's favour in the districts where the company claimed to have purchased land. This did not mean, though, that the company would be dealing with Māori about land. Crown officials would handle the negotiations. The company's only role was to pay. Grey waived pre-emption in the company districts in February 1846.[187]

(1) *Grey visits Whanganui*

Grey visited Whanganui in March 1846. He travelled upriver as far as Tunuhaere, the inland boundary of the company's claim, and was greeted kindly until the inhabitants of the pā noticed that he travelled with Colonel Wakefield. They inquired as to the purpose of Grey's visit and were told that he wanted simply to see the place. They did not believe it, and withdrew one by one.[188]

Grey met with Māori at Petre on 18 March 1846, seeking to gauge the willingness of leading rangatira to accept the £1,000 compensation that Spain had recommended. According to Taylor, Grey informed those in attendance that:

> if they did not wish to sell the land they need not, if they did he would take steps to see they were paid let them all assent and he would attend to their wishes and send persons to mark out what were to be sold and what reserved and then pay for the whole, the natives when requested to give their assent readily did so.[189]

Like FitzRoy before him, Grey appears to have rejected the ultimatum that Spain delivered to Whanganui Māori.

Mete Kīngi, Kāwana (Paipai), and others spoke of their wish to see Pākehā come and settle in Whanganui to provide a market for Māori goods. They wished to be paid for the land soon, as they had waited to be paid for a long time. Ngāpara and Te Pēhi Pākoro Tūroa indicated to Grey that they had agreed to the coming of Europeans, and they had been paid. It was, they said, for Te Māwae to decide, because his people had not been paid. Te Māwae asserted that he was sick of waiting for payment, and that this was the basis of his past opposition to settlement by Pākehā. He no longer opposed Pākehā settlement, but called again for the long promised payment to be made.[190]

(2) *Was payment now imminent?*

It seems that Whanganui rangatira were now sufficiently committed to Petre to want the company's claim to their land to be finalised. But payment, so long delayed, now seemed a chimera. Shortly after Grey departed, Ngāpara refused to allow a settler to plough some land, although he had allowed it the year before. Taylor warned Ngāpara that such an attitude could drive settlers away when payment for the land was imminent. Ngāpara replied that he was not certain payment would be made.[191]

Colonel Wakefield was buoyed by the meeting between the new Governor and Whanganui Māori. His account of the visit records that a

> satisfactory arrangement of the questions in dispute in the district, based on the payment of £1,000, which I had offered on the part of the Company, to place at the disposal of the local Government for the purpose of satisfying the natives, was proposed by the Governor and agreed to by all parties.

This payment was 'to effect the acquisition by the Company of the block of 40,000 acres awarded by the late Commissioner, Mr Spain'.[192]

5.4.10 Symonds and McLean survey the company's claim

On 17 April 1846, Grey instructed Symonds to proceed to Whanganui to complete the settlement of the company's land claim. Symonds was the Crown official whom FitzRoy had earlier sent to Petre to test settlers' commitment to the place, and Māori willingness to receive compensation. Now, Grey told him that the company was to make ready the £1,000 compensation that Spain had recommended,[193] and he should establish boundaries on the ground, including the reserves promised to the Māori owners. In his party were Donald McLean, and a surveyor each for the Crown (White) and the company (Wills). McLean had recently been relieved of his responsibilities as sub-protector of aborigines at New Plymouth when Grey abolished these protector roles in March of 1846, and appointed McLean instead as police inspector in Taranaki.[194] Symonds also took with him a copy of Spain's report, which included a plan showing the company's proposed award and reserves for Māori.[195]

From the outset, Symonds and his team embarked on surveying the 89,600 acres to which the Pennington agreement entitled the company rather than the 40,000 acres that Spain recommended. It is not clear why that was. Grey had told Whanganui Māori that the Government

would proceed on the basis of Spain's 40,000-acre award to the company. The officials were acting under Grey's direction.

Historian Michael Macky, wrestling with the question of how confusion could have arisen about whether the party was to survey a 40,000- or 89,600-acre block, commented:

> Whilst there is not absolute proof that Government officials did know that the block they were trying to survey in 1846 contained significantly more than 40,000, it is highly probable that they were aware of this.[196]

He went on to explain why it was likely that at least McLean, Wills (the company surveyor), and missionary Taylor would have realised that the block being surveyed was much larger than the 40,000 acres in Spain's award.[197]

Macky suggested that confusion may have arisen from the plan in Spain's report, which showed the rectangular boundary of the company's claim (89,600 acres) as well as a 'somewhat squiggly shaped block' of 40,000 acres that the company surveyed in 1842. This smaller, surveyed area was what became Spain's recommended award. It was the rectangular 'boundary line' that Symonds, McLean, and the surveyors started to survey in 1846.[198]

The surrounding circumstances suggest that McLean was probably being disingenuous when he later asserted that they had followed the large, rectangular boundary because they confused it with the boundary of Spain's 40,000-acre award to the company.[199]

On 19 June 1846, Symonds reported to Grey that he had endeavoured to persuade Māori to assent to the 'outer boundary as laid down in the original plan'.[200] The Crown conceded before us, and we agree, that Symonds, McLean, and the surveyors had a duty to point out to Māori the boundaries of Spain's 1844 award and to contrast them with the extent of the company's much larger claim.[201] They did not do so, and this led to Whanganui Māori losing tens of thousands of acres without compensation.

It is difficult to avoid the conclusion that the Government officials took advantage of the fact that Whanganui Māori were in no position to protest. They had no way of knowing what Symonds and his party were up to. They were in the dark about what Spain had recommended, and were anyway reliant on the officials' representations about what the boundaries were. All the confusion about the company's purported purchase must also have made it very difficult to have a clear notion of what was and was not now to be included in the transaction, and where the boundaries might be.

(1) *The part that Donald McLean played*

McLean's reports from this time confirm that Whanganui Māori knew little about where Spain's boundaries were, or the meaning and extent of 40,000 acres. McLean recorded that Hoani Wiremu Hīpango knew little of the company's Whanganui purchase, and was of the view that 'the Natives still held all and would part with what they wished to the Europeans'. Other Whanganui chiefs knew 'little or nothing of the real state of the land question nor are any of the boundaries known to them'. McLean expressed wonder as to what Protector Clarke had been doing in 1844 and found it astonishing that the claims of Māori living south of Whanganui from Whangaehu to Rangitīkei, and those of Ngā Rauru and associated hapū around Kai Iwi, had been ignored.[202]

It was McLean, rather than Symonds, who led the work of securing land for the company. He was a shrewd negotiator, and relished the opportunity to negotiate the company's claim. He wrote of using 'blarney', and playing on the vanity of chiefs to 'get on'. He assured Whanganui Māori that he was their protector and advisor, and that by living amongst them, Europeans were conferring on them an everlasting benefit. Their children after them would 'live in happiness amongst the English who could make them a great people'. He described the company as paying for 'their valueless tracts of land they so foolishly set such store on'. However, he also insisted 'that their young men should go out with the surveyors to point out the boundaries[;] that we did not wish to bind them to anything till they first saw openly what they were about'.[203]

McLean worked closely with many Whanganui Māori to identify interests and set the boundaries of the company's claim.

On 5 May 1846, Kāwana Paipai of Pūtiki and 20 'delegates from the several tribes' guided McLean and the surveyors in laying down a boundary between Māori of Whangaehu and of Whanganui. McLean recognised the claims of Āperahama Tīpae and his Ngā Wairiki and Ngāti Apa people of Whangaehu, against a background of past offence because officials before him had ignored their interests.[204] This was a wise move on McLean's part, because fully one-third of the company's sections were on land that the Whangaehu people said was theirs, leaving little doubt that if not included in the negotiations they would send the settlers packing.[205]

Other Whanganui Māori acknowledged the Ngāti Apa and Ngā Wairiki claims. On 14 May 1846 Rangitauira told McLean that he had no land as the Whangaehu people had claimed his, which he accepted. Rangitauira also confirmed that he had sold his land to E J Wakefield, and said he was planning to move inland to Tūhua (a district including Taumarunui). On 19 May, McLean noted that Te Māwae also recognised the Whangaehu claim and had promised them part of Spain's compensation.[206] The boundary on the Whangaehu side of the block was eventually settled on 2 and 3 June: it ran from Pukepoto near Rotokawa and from there to the sea. Āperahama Tīpae and Te Munu Te Rangiwerohia were both present, and would not allow the boundary to go further seawards than Pukepoto, as their land did not extend so far.[207]

McLean also had to consider the interests of various Ngā Rauru hapū. On 12 May 1846, he and the surveyors attempted to define the western boundary at Kai Iwi. Taylor advised them to fix the boundary at places called Hikapirau and Ōmapu to avoid contention with Ngā Rauru of Waitōtara. With the surveyors went Tāhana Tūroa, Hoani Wiremu Hīpango, and someone McLean called 'Te Mote' who all had interests in that area. The Kai Iwi people (Ngāti Tamareheroto, Ngāti Pūkeko, and Ngāti Iti)[208] were keen for settlers: they had vacated their lands for fear of various hostile taua from Taupō, and believed the presence of settlers would allow them to return.

The issue of reserves complicated McLean's attempts to complete the boundary survey. On 18 May 1846, McLean commented that the Pūtiki people opposed the survey running through their planned reserve:

> [The company surveyor] admits the justice of Mawais claim his candour Mawais and determination shew that he fully intends to hold by his bargain when once made that he will have this block sacred to himself and his people and will also hold his word good as to what he sells and expressed fully in his language and manner the first boundary stake he named Mawai and carried a wonderfully straight line that included all his cultivations the surveyor was surprised with his accuracy as much as with his open determination and resolute conduct in preventing him from carrying out his lines as laid on a map.[209]

McLean encountered the same concern about cultivations when he visited Tunuhaere, and on 20 May he took a note of seven cultivations – five or six acres each, and two to four years old – that he feared might interfere with surveyed sections.[210]

The settlers felt Te Māwae's demands were exorbitant. Symonds met with them on 22 May to explain that the reserves were not as extensive as they feared. Symonds then met with Te Māwae the following day, going with him and one of the surveyors to redraw the line. Te Māwae gave up some of the land he had wanted to reserve.[211]

When asked to scale back the areas they wanted as cultivation reserves, Whanganui Māori were surprisingly compliant – perhaps reflecting their desire for the negotiations to be over and payment made.

On 26 May, Symonds and McLean visited a number of reserves, including Waipākura, otherwise known as 'Turoa's reserve'. The next day, they reached an arrangement with the chief Maketū that he would give up his pā at Kaiaraara if the company required it.[212] McLean then visited Ūpokongaro, where Symonds refused to allow Tauteka, the chief, to reserve his cultivation. At Aramoho McLean recorded that there was a pā belonging to Ngā Paerangi, and that the chief, Tāmati, wanted a large reserve 'but Mr Symonds would not agree to it'. A few acres of cultivation were to be reserved at Tūtaeika.

McLean remarked how astonishing it was to find 'what vast tracts of cultivated land the natives are parting with. It cannot be without regret on their part'. He added that 'Mr Symonds is very firm with them'.[213]

(2) *Symonds ends the negotiations*

Symonds and McLean progressed well in their work of finalising boundaries and reserves, thanks to the cooperation of Whanganui Māori. However, events beyond Whanganui once more defeated efforts to conclude the company's Whanganui claim.

On 1 June 1846, Symonds brought the compensation money ashore at Petre. That same day news arrived that Te Mamaku, the Ngāti Hāua chief from upper Whanganui, had attacked Government forces at Boulcott's farm in the Hutt Valley.

On 4 June, Symonds decided to break off negotiations, citing as the reason Ngāwaka, Tāreha, Rūpene, and Tauteka's 'exorbitant' demands for further reserves.[214] Before he left, Symonds told Te Māwae and the other principal chiefs of his intentions: he 'did not consider [himself] authorised to make the great concessions required' and wished to consult the Governor.[215]

It is likely that demands for reserves was not the reason Symonds left. He had begun to fear that once Whanganui Māori received the compensation, they would abandon the agreement and join whanaunga (kin) fighting against the Crown in the Hutt Valley.[216] On 4 June 1846, the same day that Symonds departed, Taylor recorded a hui of all the principal river chiefs concerning the war at the Hutt: they were there to decide what to do about Te Mamaku's letter asking for aid. Some chiefs at this meeting, including Ngāpara, declared their intention of joining Te Mamaku, but most declared peaceable intentions.[217] Nevertheless, Symonds heard a rumour that Maketū and several others were planning to wait until they had been paid their compensation, and then join Te Mamaku. The surveyor White had met a canoe coming downriver, laden with ammunition; he thought it was destined for Waikanae. These were the 'existing circumstances' that Symonds felt indicated Māori were 'little to be depended on', and he departed.[218]

(3) *Reactions to Symonds's departure*

McLean was surprised and disappointed by Symonds's abrupt decision to end negotiations and leave Whanganui. According to Taylor, at whose house McLean spent the night of 4 June, his house guest was so agitated by Symonds's decision that he did not sleep at all.[219] McLean surmised that the real reason for Symonds's departure was political.[220] He himself wished that he 'had never seen Wanganui to be treated in this foolish manner',[221] and he was generally confident about the situation in Whanganui. McLean thought that the sale would go through, because Whanganui Māori 'are moderate in the expectations of payment, and seem fully determined to stick to their bargain'.[222]

Taylor could not understand the reasons behind Symonds's actions and recorded that the majority of settlers were confused as to why Symonds had left.[223] On 4 June, Taylor attended a hui at Pūtiki at which he attempted to gauge the feelings of Māori regarding the conflict with the Crown in the Hutt Valley. Te Pēhi Pākoro Tūroa told him that 'he would live in peace with Pakeha' and that his brother Tāhana 'had gone to Wellington to persuade Te Mamaku to change his mind and come back'. He advised that he 'was sorry that Te Mamaku, Ngapara and Maketu had joined the war, and thought they ought to abide by the decision of the majority'.[224]

Pūtiki Māori were disappointed by Symonds's departure. They wrote to the Governor that they had advised Symonds to ignore the requests for reserves that had apparently led him to call off negotiations.[225] McLean feared that Symonds's departure had doomed the company's claim, doubting that Whanganui Māori would now come to an arrangement concerning the land or allow the settlers in Whanganui to live in peace.[226]

As to whether Symonds had grounds for his hurried departure, historians Stirling and Macky both saw merit in Ian Wards's assessment that Symonds panicked after hearing reports of the war in the Hutt and rumours of expanded Whanganui involvement in it.[227] It would not be surprising if Symonds feared he would be blamed if the compensation money ended up being used to support

Whanganui Māori in the Hutt. As McLean said, 'political motives' won the day.[228]

Colonial secretary Sinclair and Governor Grey told the company and the British Government respectively that negotiations had failed following the discovery of the hitherto unknown Whangaehu claim. Their story was that this could have led to Whangaehu people expelling company settlers, but this was blatantly untrue. On 4 June 1846, McLean had been lauding the arrangement he had come to about land at Whangaehu: Āperahama's demand of only nine acres was satisfactorily modest, and his people's expectations of payment equally moderate.

Whatever motivations drove Symonds, he left Whanganui with the long-promised compensation, and negotiations were once more suspended indefinitely. Three years since Spain's first arrival in Whanganui, and after the concerted efforts of three successive Governors, the New Zealand Company's claim to the land of Whanganui Māori remained unresolved.

5.5 Findings

The Crown's first opportunity to give effect to its new Treaty relationship with Whanganui Māori was when it came to address the New Zealand Company's claim to their land. Rather than upholding its guarantee in article 2 to protect Māori land ownership unless and until they wanted to sell it, the Crown substantially favoured the interests of the company and settlers.

The Crown chose to investigate the New Zealand Company's Whanganui claim by means of a land claims commissioner, William Spain, whose court-like process revealed that the company did not buy any land from Whanganui Māori. The Crown, in submissions to this Tribunal, essentially agreed with Spain's findings. The Māori parties did not understand the deed signing and the distribution of goods as conveying to the company or its settlers any absolute right to their land. There was no substantive basis for finding the purchase valid.

Moreover, treating the company's Whanganui purchase as valid was illegal under New Zealand law applying at the time. A proclamation on 14 January 1840 rendered land transactions completed after that date null and void. And yet Spain deployed sophistry to justify investigating the company's purported purchase in Whanganui, completed in May 1840.

Properly, both in terms of Treaty and law, the Crown should have found the company's Whanganui purchase null and void. It was thus proceeding on an unsound footing when it moved to arbitrate an agreement between Whanganui Māori and the company, the outcome of which would secure land for company settlers, and payment for Māori whose land was now to be more effectively alienated.

When it opted to recognise the New Zealand Company's claim to land in Whanganui, the Crown had to reconcile competing interests.

While it was clear that the company's attempt to purchase land had failed, it was also clear that many Whanganui Māori believed that some kind of arrangement had been reached which allowed for the establishment of a Pākehā settlement near the mouth of the Whanganui River. This settlement was in place by the time the Crown chose to recognise the company's claim in Whanganui and sought to secure land from Māori. In this sense the Crown's approach to settling the company's claim was pragmatic, and sought to balance the needs of settlers with the rights of Whanganui Māori.

However, under the rubric of the Treaty – and in terms of plain fairness – the Crown's performance was wanting in many important respects:

- Māori were not asked if they would participate in the arbitration of the company's claim to their land. Nor were they able to represent themselves and protect their interests, nominate who had rights to which land, or set the price they wanted for their land.
- The structural flaws in the arbitration process are exemplified in the appointment of George Clarke junior as referee for Māori. He was a teenager who had the irreconcilable responsibilities of protecting Māori interests and securing land for the company at a reasonable price. He also had to hold his ground against the much older and more experienced Colonel Wakefield and William Spain.[229]

- Spain's role was no longer merely inquiring into the validity of the company's land claims: he was now charged with making the arbitration process work – a process that proceeded on the basis that the company *was* entitled to land. Spain's difficulty in getting Māori to accept the arbitration process led to him informing a hui that even if they would not agree to accept compensation, they would still lose their land. This delivered the message to Māori that they had somehow lost the right to say no to the offered payment and retain their land. This is a telling illustration of how untenable Spain's position had become, and also how distorted the Crown's perception of Māori rights in Whanganui. (FitzRoy and Grey subsequently resiled from the position that Spain asserted.)

Ultimately, after long and demanding engagement with the Crown on the matter of the company's land claim in Whanganui, prejudice to tangata whenua did not crystallise because in 1846 Crown official Symonds abandoned the Whanganui land claim settlement process.

This left Whanganui Māori still owners of their land, and company settlers still dependent on their goodwill. The settlement of Petre remained because Whanganui Māori wanted it. Settlers made homes and cultivated land because Māori allowed them to do so.

Yet, the situation in Whanganui was inherently unstable, and could not last. Settlers there were angry because they saw Māori withholding land that they considered rightfully belonged to the company or to them. The Crown was contemplating abandoning the settlement because of war elsewhere in the colony. For their part, many Whanganui Māori accepted the need to resolve settler fears regarding their insecure tenure. For the settlement to remain – which Whanganui Māori wanted – the company's failed purchase needed to be resolved.

Notes

1. Submission 3.3.118, p 16
2. Submission 3.3.138, pp 11–13, 24
3. Submission 3.3.51(a), pp 57–58
4. Ibid, pp 57–59, 63–64
5. Submission 3.3.118, pp 1, 3
6. Ibid, p 16
7. Ibid, p 11
8. Ibid, p 10
9. Ibid, p 16
10. Ibid
11. Ibid
12. Ibid
13. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 119
14. Document A100(a) (Macky supporting documents), p 74
15. Ibid, p 75
16. Document A65 (Stirling), p 81
17. Document A100 (Macky), p 23
18. Ibid, pp 23–24
19. Edward Jerningham Wakefield, *Adventure in New Zealand, from 1839 to 1844; with Some Account of the Beginning of the British Colonization of the Islands*, 2 vols (London: John Murray, 1845), vol 1, p 289
20. Document A18 (Cross and Bargh), pp 14–15
21. Document A65(i) (Stirling supporting documents), p 2750
22. Wakefield, *Adventure in New Zealand*, vol 1, pp 291–292
23. Ibid, p 292
24. Document A100 (Macky), pp 29–30
25. Document A65 (Stirling), p 64; doc A100 (Macky), p 26
26. Document A100 (Macky), pp 24–26
27. Document A65 (Stirling), pp 58–59
28. Ibid; doc A100 (Macky), p 25
29. Document A65 (Stirling), p 64
30. Ibid, p 199
31. Ibid, p 210; doc A100 (Macky), p 26
32. Document A100(a) (Macky supporting documents), pp 73–74
33. Document A65(n) (Stirling supporting documents), p 5597; doc A65 (Stirling), p 98
34. Document A65 (Stirling), pp 67–68
35. Document A65(k) (Stirling supporting documents), p 3902a
36. Document A100 (Macky), p 22
37. Wakefield, *Adventure in New Zealand*, vol 1, p 292
38. Document A100 (Macky), p 33
39. Ibid
40. Wakefield, *Adventure in New Zealand*, vol 1, p 380
41. Ibid, p 388
42. Ibid, pp 388–389
43. Document A65 (Stirling), p 121
44. Ibid, p 126
45. Maxwell James Grant Smart and Arthur Palmer Bates, *The Wanganui Story* (Wanganui: Wanganui Newspapers Ltd, 1972), p 53
46. Document A100 (Macky), p 73
47. Wakefield, *Adventure in New Zealand*, vol 1, p 388
48. Ibid, pp 468–469
49. Document A65 (Stirling), pp 150–151
50. Wakefield, *Adventure in New Zealand*, vol 1, p 469

51. Ibid, vol 2, p 9
52. Ibid, p 10
53. Document A65 (Stirling), p 152
54. Wakefield, *Adventure in New Zealand*, vol 2, pp 81–82
55. Document A65 (Stirling), pp 129, 259
56. Smart and Bates, *The Wanganui Story*, pp 93–94
57. Document A65 (Stirling), pp 259–260
58. Ibid, p 117; doc A100 (Macky), p 41
59. Document A100 (Macky), p 41
60. Ibid, pp 41–43
61. Claim 1.3.3(b), p 14
62. Document A65 (Stirling), p 179; doc A100 (Macky), p 52
63. Document A65 (Stirling), pp 115–116; doc A100 (Macky), pp 43–44
64. Document A100 (Macky), pp 43–44
65. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington, GP Publications, 1996), pp 25, 37
66. Document A100 (Macky), p 45
67. Document A65 (Stirling), pp 123–124; doc A100 (Macky), p 48
68. Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island, 1865–1921* (Wellington: Victoria University Press, 2008), pp 20–22
69. Submission 3.3.51, p 20
70. Submission 3.3.118, p 18
71. Document A65 (Stirling), p 124; doc A100 (Macky), p 50
72. Document A100 (Macky), p 49
73. Document A65 (Stirling), p 124; doc A100 (Macky), p 50
74. Document A100 (Macky), pp 49–50
75. Ibid, p 54
76. Ibid, p 74
77. Document A65 (Stirling), pp 157–158
78. Document A100 (Macky), p 75
79. Ibid, pp 75–76
80. Ibid, p 76
81. Ibid, pp 70, 78
82. 'Colonial Secretary's Office', 3 May 1841, *New Zealand Gazette*, 1841, no 1, supp B, p 3
83. Document A65 (Stirling), p 130
84. Richard Hill, *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767–1867* (Wellington: Historical Publications Branch, Department of Internal Affairs, 1986), pt 1, p 163
85. Document A65(h) (Stirling supporting documents), pp 2308–2309
86. Document A65 (Stirling), pp 161, 169–170
87. Document A100 (Macky), p 80
88. Ibid, p 79
89. Document A65 (Stirling), pp 158–159
90. Wakefield, *Adventure in New Zealand*, vol 2, pp 228–229
91. Document A65 (Stirling), p 151
92. Document A100 (Macky), p 87
93. Ibid, p 86
94. Document A65 (Stirling), p 152
95. Document A100 (Macky), pp 81–83
96. Document A65 (Stirling), p 171
97. Document A100 (Macky), p 84; doc A65 (Stirling), p 173
98. Document A100 (Macky), p 85; doc A65 (Stirling), p 173
99. Document A100 (Macky), p 85; doc A65 (Stirling), pp 173–174
100. Document A100 (Macky), p 80
101. Ibid, p 81
102. Ibid, pp 76–77; doc A65 (Stirling), pp 154–157
103. Document A100 (Macky), p 77
104. Document A65 (Stirling), p 179
105. Document A100 (Macky), p 52
106. Claudia Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books, 1987), p 96
107. Document A100 (Macky), p 53
108. Document A65 (Stirling), p 181
109. Ibid
110. Waitangi Tribunal, *The Whanganui River Report*, pp 119–120
111. Document A65 (Stirling), p 185
112. Ibid, pp 189–191
113. Document A100 (Macky), p 55
114. Document A65 (Stirling), p 185
115. Ibid, p 183
116. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 114; see also doc A65 (Stirling), p 213; doc A100 (Macky), p 55
117. Document A100 (Macky), p 56
118. Waitangi Tribunal, *Te Whanganui a Tara*, pp 114–115; see also doc A65 (Stirling), pp 213–214
119. Document A100 (Macky), p 57
120. Ibid, p 58
121. Ibid, p 57
122. Document A65 (Stirling), pp 183–184; doc A100 (Macky), p 90
123. Document A100 (Macky), pp 58–59
124. Ibid, p 58
125. Document A65 (Stirling), p 194. Spain wrote to Colonel Wakefield from Whanganui on 3 April 1843 advising him that he had been waiting at Whanganui for Wakefield for nine days.
126. Document A100 (Macky), pp 92–93
127. Waitangi Tribunal, *Te Whanganui a Tara*, pp 117–118
128. Document A65 (Stirling), p 217
129. Ibid, pp 217–218; doc A100 (Macky), p 62
130. The word 'hoko' was translated as 'sell' in the minutes.
131. Document A65 (Stirling), p 199
132. Ibid, pp 200, 203, 205; doc A65(l) (Stirling supporting documents), p 4329; doc A42 (Oliver), p 31
133. Document A65 (Stirling), pp 202–203
134. Ibid, pp 203–204
135. Ibid, pp 204–206
136. Ibid, pp 200–202
137. Ibid, p 207
138. Document A65(i) (Stirling supporting documents), pp 2744–2745
139. Document A65 (Stirling), pp 195–197; doc A65(i) (Stirling supporting documents), p 2744

140. Document A65 (Stirling), p 209
141. Ibid, pp 209–210
142. Document A100 (Macky), pp 93–94
143. William Spain, 'Report of Mr Commissioner Spain', 12 September 1843, BPP, 1844, vol 13 [556], p 305 (IUP, vol 2)
144. Ibid, p 298
145. Document A65 (Stirling), p 212; doc A100 (Macky), pp 97–98
146. Document A100 (Macky), pp 97–98
147. Ibid, p 96
148. Document A65(i) (Stirling supporting documents), pp 2789–2790
149. Document A65 (Stirling), p 231; doc A65(i) (Stirling supporting documents), pp 2787–2790
150. Document A65 (Stirling), p 232; doc A100 (Macky), p 104
151. Document A65 (Stirling), pp 241–242; doc A65(i) (Stirling supporting documents), pp 2787–2789
152. Document A100 (Macky), pp 104–105. For the area then under negotiation, see doc A136 (district overview mapbook), pl 15.
153. Claim 1.3.3(b), pp 15–18
154. Document A94 (Loveridge), p 152
155. Waitangi Tribunal, *Te Whanganui a Tara*, pp 124–125
156. Ibid, p 125
157. Document A65 (Stirling), pp 221–222
158. Ibid, p 222
159. Ibid, pp 221, 228; doc A100 (Macky), pp 106–107
160. Document A100 (Macky), p 108
161. Ibid, p 112
162. Document A65 (Stirling), pp 236–237; doc A100 (Macky), pp 108–109
163. Document A65 (Stirling), p 235; doc A100 (Macky), p 109
164. Document A65 (Stirling), pp 228–229; doc A100 (Macky), p 112
165. Document A65(i) (Stirling supporting documents), pp 2806–2816
166. Document A65 (Stirling), p 236; doc A100 (Macky), p 106
167. Transcript 4.1.14, p 174
168. Document A65(l) (Stirling supporting documents), p 4286
169. Document A65 (Stirling), pp 248–250
170. Document A100 (Macky), pp 128–129
171. Reports by commissioner of land claims on titles to land in New Zealand, No 4 (Petre (Wanganui)), Spain to Governor, 31 March 1845, BPP, 1846, vol 30 [203], p 82 (IUP, vol 5, p 90)
172. Spain to Governor, 31 March 1845, BPP, 1846, vol 30 [203], p 82 (IUP, vol 5, p 90)
173. Document A65 (Stirling), p 253; doc A100 (Macky), p 24
174. Document A100 (Macky), p 118
175. Ibid
176. Spain to Governor, 31 March 1845, BPP, 1846, vol 30 [203], p 79 (IUP, vol 5, p 87)
177. Document A65 (Stirling), p 254
178. Document A18 (Cross and Bargh), p 14; doc A65(i) (Stirling supporting documents), pp 2707–2770; see also submission 3.3.118, p 37
179. Ian Wards, 'Robert FitzRoy', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Allen & Unwin and Department of Internal Affairs, 1990), p 132
180. Document A100 (Macky), p 121
181. Document A65 (Stirling), p 277
182. Ibid, pp 289–290; doc A100 (Macky), p 121
183. Document A65 (Stirling), p 296
184. Document A100 (Macky), p 140
185. Document A65 (Stirling), p 335; doc A100 (Macky), p 140
186. Document A100 (Macky), p 140
187. Ibid, p 141
188. Document A65 (Stirling), p 339; doc A100 (Macky), p 142
189. Document A65(l) (Stirling supporting documents), p 4340
190. Document A65 (Stirling), p 340; doc A100 (Macky), pp 143–144
191. Document A65 (Stirling), p 342; doc A100 (Macky), p 143
192. Document A65(i) (Stirling supporting documents), pp 2477–2478
193. Document A65 (Stirling), p 343; doc A100 (Macky), p 144
194. Alan Ward, 'Donald McLean', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Bridget Williams Books Ltd and the Department of Internal Affairs, 1990), p 255
195. Grey to Symonds, 17 April 1846, BPP, 1847, vol 38 [837], p 2 (IUP, vol 5, p 550)
196. Document A100 (Macky), p 151
197. Ibid, pp 151–152
198. Ibid, p 149
199. McLean to Colonial Secretary, September 1848, AJHR, 1861, C-1, pp 248–250
200. Document A100 (Macky), pp 148–149
201. Submission 3.3.118, p 41
202. Document A65(k) (Stirling supporting documents), pp 3898, 3902a, 3905a
203. Ibid, pp 3904a, 3905a-3906a
204. Waitangi Tribunal, *Report on Aspects of the Wai 655 Claim* (Wellington: Legislation Direct, 2009), pp 12–13
205. Document A100 (Macky), p 152. McLean referred to Ngā Wairiki as Maunga Whero.
206. Document A65(k) (Stirling supporting documents), pp 3917a, 3925a-3926a
207. Ibid, pp 3945a–3946a. Pukepoto, Rotokawa, and Mānia have not been found on maps; the Union Line is marked on plates 10 and 11 in doc A136.
208. Document A129(a) (Young), sec 9, p 37
209. Document A65(k) (Stirling supporting documents), pp 3924a–3925a
210. Ibid, pp 3926a–3928a
211. Ibid, p 3934a
212. Ibid, p 3939a
213. Ibid, pp 3941a–3942a
214. Symonds to Grey, 19 June 1846, BPP, 1847, vol 38 [837], pp 50–51 (IUP, vol 5, pp 598–599)
215. Ibid
216. Document A65 (Stirling), pp 371–372; doc A100 (Macky), p 164
217. Document A65(l) (Stirling supporting documents), pp 4354–4358
218. Document A100 (Macky), pp 164–165

219. Document A65 (Stirling), p 380; doc A65(l) (Stirling supporting documents), p 4358
220. Document A65 (Stirling), p 374; doc A100 (Macky), p 166
221. Document A100 (Macky), p 165
222. Ibid, p 166; doc A65 (Stirling), p 373
223. Document A100 (Macky), p 165
224. Ibid
225. Ibid, p 167
226. Document A65 (Stirling), p 374; doc A100 (Macky), p 167
227. Document A100 (Macky), p 167; doc A65 (Stirling), p 372
228. Document A65 (Stirling), p 374; doc A100 (Macky), p 166; doc A66(k) (Stirling supporting documents), p 3947a
229. Transcript 4.1.14, p 173; doc A100 (Macky), p 111

Map sources

Map 5.1: Document A100 (Macky), p 20; doc A65 (Stirling), pp 63–64; Malcom McKinnon, ed, *New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei* (Auckland: David Bateman in association with Historical Branch, Department of Internal Affairs, 1997), pl 31

CHAPTER 6

WAR IN WHANGANUI, 1846–48

6.1 Introduction

Efforts to resolve the New Zealand Company's claims to land dominated the early years of engagement between many Māori communities and the Crown.

In 1846, tensions grew between the Crown and Māori in and around Te Whanganui a Tara (Wellington). The Crown had reached an agreement with Māori under which land at Heretaunga (the Hutt Valley) was to be awarded to the company. In return, land would be set aside as reserves for Māori, and they would receive a cash payment. But the promised reserves were not made, and the Crown attempted to force Māori – including Ngāti Rangatahi from Taumarunui–Tūhua – off their land at Heretaunga. Martial law was declared and conflict erupted. In July 1846, Grey extended the area under martial law to Whanganui when a Whanganui taua embarked on a plan to travel to Heretaunga to escort Ngāti Rangatahi back to the Whanganui district.

Although martial law now prevailed in Whanganui, peace reigned as 1846 drew to a close – although the period was not without incident. One flashpoint was when the Crown court-martialled 10 Whanganui Māori arrested in the Porirua–Kapiti district. One was executed, while others were imprisoned or exiled to a penal colony in Tasmania. Their Whanganui kin reacted in October 1846, raising a taua and travelling downriver to attack and plunder the New Zealand Company settlement at Petre. The taua withdrew without attacking the settlers, but the Crown responded by sending in troops and constructing a stockade to defend the settlers. Peace ensued, but then in April 1847, a group of Māori youths attacked a family of settlers after a member of the military force shot (but did not kill) a Pūtiki chief. Most of those who attacked the settlers were caught, tried by court martial, and executed. Another taua moved towards Petre seeking utu (a reciprocal response). Reinforcements strengthened both the Crown's military force and the taua. The taua executed skirmishing raids, and then in July 1847 the two sides engaged in a pitched battle. After that, fighting ceased, but peace was not declared until the following year.

During our inquiry, the parties disagreed on the legitimacy of the Crown's actions when it imposed martial law and sent in troops to defend the settlers at Petre – in both cases without discussing its intentions with Whanganui Māori. A key question was whether the Crown's conduct was defensive or aggressive.

We now explore how Whanganui Māori became involved in the conflict in Heretaunga, and how the Crown responded. We look at how hostilities extended to Whanganui, including the Crown's declaration of martial law, and how the conflict affected relations between Whanganui Māori and the Crown. We examine the restoration of peace,

and assess the Crown's conduct against legal and Treaty principles.

We discuss events in Te Whanganui a Tara to the extent necessary to provide context for our discussion about what happened in Whanganui. We make no findings, though, about events that occurred outside our inquiry district.

6.2 The Parties' Positions

The parties agreed that, under the Treaty, it is the Crown's role to make laws for the peace and good order of the country. They also agreed that the conflict at Petre in 1847 resulted from the conflict in and near Heretaunga in 1846. They disagreed on the Crown's motivations for military intervention in Whanganui and on whether the Crown's conduct was consistent with its responsibilities as a Treaty partner.

6.2.1 What the claimants said

The Crown's military actions in the Whanganui district took place under martial law. The claimants submitted that the Crown breached the Treaty by declaring martial law, as the conditions legally required to declare and impose martial law – essentially rebellion against the Crown – were not fulfilled. The claimants also argued that the Crown breached the Treaty when it retrospectively passed law to indemnify the Government and its agents against prosecution for actions taken while martial law was in place.[1]

The claimants contended that the Crown unjustly levied war against Māori in the Whanganui district, resulting in death and destruction. They saw the Crown's military action of 1847 as forceful suppression of the authority of Whanganui Māori in breach of the Treaty guarantee of te tino rangatiratanga. They contended that the Crown did not act reasonably and with utmost good faith, destabilised peace, and therefore breached its Treaty duties of good government. The claimants argued that the Crown should have utilised military force in Whanganui only at the invitation of Whanganui Māori, who, under the Treaty, maintained their mana and tino rangatiratanga. The claimants denied that the Whanganui Māori who were attacked or punished were in rebellion against the Crown.[2]

6.2.2 What the Crown said

The Crown noted the absence of any settled doctrine to guide colonial governors in applying martial law in the mid-nineteenth century. It submitted, though, that the Crown had the power to resort to martial law and to take all measures necessary to respond to states of war or emergency.[3] Neither a state of rebellion nor a formal proclamation of martial law was necessary for these powers to be exercised.[4] The Crown also submitted that indemnifying its officials against prosecution for actions taken under martial law recognised the principle that, in the heat of war or emergency, things may have been done that a reasonable mind might later consider unnecessary.[5]

The Crown accepted that the deployment of soldiers in Whanganui may have sparked some of the subsequent events of 1847 but characterised their deployment as defensive rather than aggressive. Troops were at Petre to protect the settlers and to ensure that if conflict occurred any casualties would be sustained by the troops rather than settlers.[6] The Crown disagreed that it was required to seek the consent of Whanganui Māori before sending in troops or when seeking to make peace. It contended that the Treaty does not contemplate power sharing in this way.[7]

6.3 The Involvement of Whanganui Māori in Hostilities in the Hutt Valley in 1846 and the Crown's Response

6.3.1 Introduction

In 1839, Colonel Wakefield said he had purchased 160,000 acres in Te Whanganui a Tara (Wellington) for the New Zealand Company to sell to British settlers. The boundaries were inadequately described in the deed and not delineated on a map, but he said they included Heretaunga (the Hutt), where Ngāti Rangatahi (from Taumarunui–Tūhua)

were among the migrant Māori groups who had acquired interests there as a result of events in the 1830s.[8]

It fell to William Spain, as land claims commissioner, to investigate the New Zealand Company's claims at Te Whanganui a Tara as he had in Whanganui. He began in 1842, and here too the task was transformed from an inquiry into legitimacy into arbitrating what land the company would get and at what price. As a result, the company was to pay Māori compensation for some 67,000 acres, which included the Hutt Valley. However, the Crown refused to recognise the rights of Ngāti Rangatahi at Heretaunga as they were temporarily absent when Wakefield made his purchase. In 1845, Te Rangihaeata of Ngāti Toa agreed to accept payment and release Heretaunga to the company, but only if Ngāti Rangatahi got reserves. None was forthcoming. By this time, some Ngāti Hāua, many of whom like their leader Te Mamaku also belonged to Ngāti Rangatahi, had come from upper Whanganui to help their kin resist the Crown's pressure to leave the Hutt Valley. In February 1846, Governor Grey used military force to drive Ngāti Rangatahi and Ngāti Hāua from the Hutt. They received neither reserves nor compensation for their destroyed crops.

While this situation was evolving in the Hutt Valley, there was also tension in Whanganui. It arose from the fact that the settlers had no title to the land they were living on. This suited neither settlers nor Whanganui Māori, and both sought resolution. Whanganui Māori wanted a fair settlement, but this was complicated and took a long time to arrange. Settlers tended to blame Māori, seeing them as difficult and deliberately withholding land that rightfully belonged either to them or to the New Zealand Company. From 1845, the settlers also increasingly feared aggression from sympathisers of Te Mamaku, who included some of Te Patutokotoko and the Tūroa whānau. Fear grew with the arrival of a well-armed, powerful taua (war party) from Taupō led by Mananui Te Heuheu Tūkino II of Ngāti Tūwharetoa.

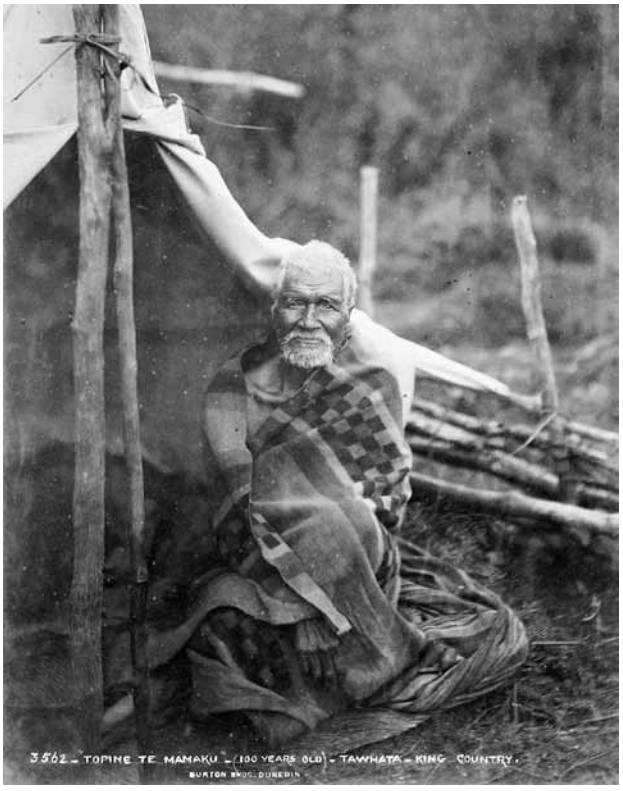
Te Pēhi Tūroa of Te Patutokotoko (and also of Ngāti Tūwharetoa) apparently invited the Taupō taua to Whanganui, and it arrived in January 1845. Mananui Te Heuheu Tūkino II asserted on one occasion that he came to settle the land question, and he discussed the Queen's sovereignty with Whanganui-based missionary the Reverend Richard Taylor. However, his taua was principally concerned with utu for the losses at Te Ihupuku pā in the Waitōtara region five years before (see section 2.4.2).

The Taupō taua was not overtly aggressive, but it greatly alarmed Whanganui settlers. Junior members of the taua did engage in petty thievery from settlers, but actually various Whanganui Māori communities suffered greater losses, as the taua foraged for pigs and potatoes.[9] Police Magistrate King sought assistance from Wellington and, by 16 January 1845, the man-of-war HMS *Hazard* hove to with Major Richmond and his soldiers on board. Taylor believed that it was only this arrival, and the 'determined language of Major Richmond', that prevented hostilities breaking out between the taua and Waitōtara Māori, which would have involved Whanganui Māori on both sides.[10] But many Taranaki allies of the Waitōtara people had also arrived – to help defend Te Ihupuku, missionaries Taylor and Skevington said – and it may be that this is what forced the Taupō taua to take ritual, rather than violent, utu.

6.3.2 Whanganui Māori in Heretaunga

(1) *Ngāti Rangatahi allocated resource rights in the Hutt*

We explained in chapter 2 how Ngāti Rangatahi from the Tūhua–Ōhura district joined Ngāti Toa on their heke (migration) to the Kapiti coast in the early 1820s. They helped Ngāti Toa conquer the upper Heretaunga valley north of Rotokākahi,[11] and Te Rangihaeata, one of the Ngāti Toa conquerors of the Kapiti coast, allocated Ngāti Rangatahi land and resource rights in the Hutt. When the first New Zealand Company ship, *Tory*, arrived in Cook's Strait late in 1839, the Hutt was deserted because of a rāhui (ban) that a Ngāti Toa chief put over the area two years previously.[12] Because there were no Māori living there when they arrived, company officials and settlers wrongly inferred that they could move into what they saw as an uninhabited area. But actually, several groups – including Ngāti Rangatahi – hunted and gathered there from the



Tōpine Te Mamaku, a long-lived Ngāti Hāua leader renowned for his intelligence and mana, who was involved in fighting in the Hutt in 1846 before leading a war party that blockaded Petre.

early 1830s and established cultivations from about 1841. Clashes between these Māori and the incoming Pākehā inevitably resulted.

(2) *Crown unwilling to recognise Ngāti Rangatahi's rights*

In 1845, Te Mamaku and Te Oro (or Te Horo) led a group of Ngāti Hāua, who were kin and neighbours of Ngāti Rangatahi in the Ōhura–Tūhua district, south to Heretaunga. They came by canoe to fetch their people who were planting in the Hutt; they believed them to be in danger from pro-government Te Āti Awa, as well as from company settlers. Once in Heretaunga, however, these Ngāti Hāua turned to helping Ngāti Rangatahi push back against the New Zealand Company and its Crown backers, who insisted that Ngāti Rangatahi should give up their interests in land at Heretaunga without compensation or reserves.

Ngāti Rangatahi acquired rights in the Hutt Valley originally from Te Rangihaeata, but these had consolidated over many seasons into more substantial, independent rights, and Ngāti Hāua derived its rights from Ngāti Rangatahi. Neither Te Rauparaha nor Te Rangihaeata could make decisions on behalf of Ngāti Rangatahi or Ngāti Hāua or sell their interests: they were not their chiefs.[13] Crown officials, including the Governor, would not recognise that Ngāti Rangatahi and Ngāti Hāua had rights in the Hutt Valley, although various influential Māori told them as much, and Spain's final recommendations confirmed Ngāti Rangatahi's interests. Spain recommended that all pā, urupā, and cultivations that Māori in Te Whanganui a Tara had used since 1840 should be reserved. Ngāti Rangatahi had used their cultivations since 1841. Yet, Crown officials and the company continued to treat Ngāti Rangatahi and their Ngāti Hāua allies as 'intruders' in Heretaunga.[14]

(3) *Taylor tries to calm the situation*

Taylor visited Wellington from 12 to 20 September 1845, carrying a letter from Ngāpara of Te Patutokotoko to Te Mamaku (known at this time as Te Karamu) in the Hutt. Ngāpara invited Te Mamaku to return home with all the Whanganui people. On 16 September, Te Mamaku told Taylor that he was only awaiting the arrival of Taiaroa (of South Island Ngāi Tahu), who was coming in December to take them home to Whanganui in his vessel.[15] This anticipated aid did not materialise.

Governor Grey was determined to enforce British authority in the Hutt, and he had at his disposal 500 regular troops, 55 armed police, and a militia of 200.[16] In February 1846, he asked Taylor to interpret for him in his dealings with Māori in Heretaunga. Taylor was visiting Wellington from Whanganui at the time, accompanied by Tāhana Tūroa. On 25 February 1846, Taylor visited Kāparatehau of Ngāti Rangatahi and Te Oro of Ngāti Hāua, who 'affirmed they had no desire to fight and if

paid for their crops would leave'. He met Te Mamaku and another chief, who 'were going to make peace if possible'. Governor Grey refused to pay Ngāti Rangatahi and Ngāti Hāua; he would not consider compensating them for their loss until they left.[17]

Taylor managed to persuade Ngāti Rangatahi and Ngāti Hāua to leave, after which settlers plundered their houses, livestock, and plantations and stole canoes. Then, on 27 February 1846, the military burnt the Ngāti Rangatahi and Ngāti Hāua pā. The fire spread and destroyed their church and cemetery. The Te Whanganui a Tara Tribunal was unable to conclude that Governor Grey had ordered the destruction of Ngāti Rangatahi and Ngāti Hāua property, but found that the Crown was ultimately responsible for the actions of its troops, including their failure to protect Ngāti Rangatahi and Ngāti Hāua property from the settlers' pillage. This is what led events to spiral out of control, because in retaliation, Ngāti Rangatahi looted the homes of nine settler families. They told Taylor that they felt justified because the Governor had wronged them.[18]

(4) *Governor Grey obdurate*

Grey was determined that Ngāti Rangatahi should quit Heretaunga, declaring to Taylor on 2 March 1846 that the natives 'must be put down'. Grey had by this stage prepared a declaration of martial law covering the Wellington district. However, R D Hanson, the Crown prosecutor in Wellington, advised Grey that FitzRoy had recognised Ngāti Rangatahi's rights in Heretaunga in the Crown grant awarded to the New Zealand Company. Grey was acting illegally in trying to force Ngati Rangatahi off their land: they were entitled to resist his efforts.[19] H S Chapman, judge of the Supreme Court, contradicted Hanson's opinion, and on 3 March 1846 Grey declared martial law.[20]

On 12 March, when Ngāti Rangatahi and Ngāti Hāua appeared to have left the Hutt, Grey lifted martial law. The following day, he set off to Petre.

At this stage, Te Mamaku wanted to withdraw from the Hutt and return to Whanganui. He wrote to the leading Whanganui chiefs asking them to come and escort him.[21] However, on 2 April in the Hutt Valley, Te Pāua, a Ngāti Rangatahi chief, led a party that killed a settler named Gillespie and his son. It was muru (a raid to punish wrongdoing) for the looting and burning of Ngāti Rangatahi and Ngāti Hāua property, and for the arrest of several Whanganui Māori for plundering settler farms. Grey was determined to bring Gillespie's killers to justice, and had a stockade built and garrisoned at Paremata. Te Rangihaeata built a pā at Pāuatahanui.

(5) *Hostilities in Heretaunga*

On 20 April 1846, Grey declared martial law over an area south of a line from the Wainui Stream on the Kapiti coast to Castlepoint on the Wairarapa coast. Now, the military could arrest those who sympathised with Te Rangihaeata and Te Mamaku, and dispense summary justice. Grey told the British government that this afforded the senior military officer 'the most ample means of repressing outrage'.[22] Fifty soldiers garrisoned Boulcott's farm in the Hutt, and on 16 May 1846, Te Mamaku and up to 200 men attacked.[23] Six soldiers were killed and several wounded. Skirmishes continued for about a month.[24]

Historian Ian Wards condemned Grey's activity in Heretaunga as 'irretrievably in the wrong'.[25] Heretaunga, or Hutt Valley, was not purchased until 1848. Until then, Ngāti Rangatahi, with their Ngāti Hāua allies, had both a customary and legal right to be there – but the only Crown official of the time who recognised this was Protector Kemp. The Wellington Tribunal found that 'Ngāti Rangatahi were forced out of the valley under threat of attack by Grey's troops', and 'the Crown must take responsibility for the unjustified destruction and desecration carried out by its military forces'.[26]

6.3.3 Martial law imposed in Whanganui

(1) *Te Mamaku tries to drum up allies*

Whanganui Māori were drawn into the developing conflict in Te Whanganui a Tara when, on 25 May 1846, Te Mamaku wrote to the Pūtiki chiefs urging them to allow Ngāpara,[27] Maketū, Hāmārama, and Te Kāwana to visit Te Rangihaeata and him, and learn about the war in the Hutt. He wrote that Te Rauparaha had given his consent and the coast road was open for them. The letter also asked that the Pūtiki chiefs permit the people of 'Tahua' (probably

Tūhua) to come, and asked Ngāpara and Te Pēhi Pākoro Tūroa II (Te Pēhi Pākoro) to send to Taupō for assistance.[28]

A hui at Pūtiki on 4 June 1846 debated Te Mamaku's letter. Te Pēhi Pākoro said he would live at peace with Pākehā, and most chiefs supported him. Te Pēhi Pākoro said that his brother, Tāhana Tūroa, had gone to Wellington to persuade Te Mamaku to return peacefully. Ngāpara declared he would go to Wellington for the same purpose, but predicted that Whanganui Māori would eventually be forced to take up arms like Hōne Heke in Northland for, like him, they would have no place to live once the Pākehā had taken all their land.[29]

Governor Grey received a copy of Te Mamaku's letter at some point in June 1846. Grey said that one of the chiefs to whom the letter was addressed had passed it to him. Years later, in the 1880s, a Wanganui man named Deighton claimed that he had also provided a copy of the letter to Grey.[30] In July of 1846, Maketū and Ngāpara, both of Te Patutokotoko, led a Whanganui taua of 50 south to visit Te Mamaku, who was then at Pāuatahanui with Te Rangihaeata. Taylor recorded in his journal that he suspected that the Whanganui party would not be able to resist joining in the fighting. On 9 July 1846, Maketū wrote to ask Te Rauparaha 'to allow us to pass through and pay a visit to your children'.[31]

Then, on 15 July, Governor Grey received a request for guns from Wī Kīngi Te Rangitāke of Te Āti Awa who wanted to prevent the Whanganui men from coming south. Grey did not comply with Wī Kīngi's request. Ngāpara, Maketū, and their party only got as far as Ōhau (south of Levin). They returned home without fighting by the end of July. Te Rangihaeata and Te Mamaku had by this time withdrawn from Pāuatahanui to the Horokiri (or Horokiwi) valley.

Te Rauparaha, renowned Ngāti Toa chief and warrior, whose arrest and imprisonment near Porirua by Governor Grey may have played a part in later hostilities at Whanganui.

(2) *Grey extends martial law to Whanganui*

We can safely say that when Grey extended martial law to Whanganui on 18 July 1846 he had seen Te Mamaku's letter to the Pūtiki chiefs and had heard that Ngāpara and his supporters were heading south to the Hutt Valley. We do not know what Grey was told about the intentions of the group heading south. Their intention expressed at the Pūtiki hui was to persuade Te Mamaku to return peacefully to Whanganui. However, at least Taylor and Wī Kīngi Te Rangitāke doubted either that the peaceful intention was real or that it would stick. Grey obviously feared that the situation was escalating, and he determined to attack or capture the Whanganui party before they could link up with Te Rangihaeata and Te Mamaku.[32] On 22 July, he ordered troops stationed on board the steamer *Driver* to engage the Whanganui men, but bad weather prevented their doing so.

The Crown's witness, Macky, suggested that Ngāpara intended to wage war against the Crown and that Grey's extension of martial law to the Whanganui district could be seen as a response. He went on to say that it was more

reasonable to see the involvement of Ngāpara 'in the context of the Government's aggression in the Hutt'.

To us, it makes sense to see Ngāpara's attempt to reach the Wellington district as a response to the Crown's hostile approach to Te Mamaku and his people in the Hutt Valley. However, the only indication that Ngāpara intended to wage war against the Crown was Taylor's comment expressing scepticism that the Whanganui party would be able to maintain its peaceful intention.[33]

Unable to defeat Te Rangihaeata or capture the Whanganui party, Grey instead seized Te Rauparaha on 23 July 1846, landing at dawn at Taupō Pā, north of Porirua.[34] Māori regarded this capture of a great chief as treacherous and contrary to tikanga. It reverberated ominously throughout the country, including in Whanganui. For Grey to capture Te Rauparaha without any formal process was contrary to ordinary civil law – but he had suspended that in favour of martial law.

6.3.4 The consequences of martial law in Porirua–Kapiti for Whanganui Māori

During July and August 1846, the Crown conducted military operations in the Porirua–Kapiti districts. These events occurred outside of our inquiry district, but many Whanganui Māori were involved in them and they provide context for our analysis of the conflict that took place in the Whanganui district. In particular, resentment and distrust of the Crown grew in some Māori communities because of how it treated Whanganui Māori captured during this period of conflict.

(1) *Whanganui Māori taken prisoner*

In August 1846, 10 Whanganui Māori were taken prisoner under martial law. On 1 August, two relatives of Te Mamaku were captured near Pāuatahanui, where there was fighting at Te Rangihaeata's Matataua pā. One was Te Rangiātea of Ngāti Hāua, an old man either too sick or confused to escape capture. The other was Mātene Ruta Te Whareaitu, a young half-brother of Te Mamaku. A party of Te Āti Awa fired upon Te Whareaitu, and he retaliated by striking one of his captors with his long-handled tomahawk.[35] On 13 August, eight other Whanganui men were captured while working in potato fields near Paripari, a small settlement between Paekākāriki and Pukerua Bay.[36] The Whanganui men did not resist arrest, shaking hands with their captors who shared their food with them. Only at Waikanae were they told they were prisoners.[37] They were eventually put on board the *Calliope* with Te Rauparaha.[38]

(2) *The court martial of Te Whareaitu and another*

On 14 September 1846 the commanding officer of military forces in the southern division, Major Last, convened the court martial of Te Rangiātea and Te Whareaitu at the Crown's military camp at Porirua.[39]

Te Rangiātea was charged with being found near Pāuatahanui armed with a spear; being in the service of the 'rebel chief Te Rangihaeata'; having 'aided and assisted the said rebellion'; and having fought in the Hutt on 16 June 1846. Four Māori witnesses gave evidence at the court martial. None had directly witnessed his taking part in any fighting; one had been told that he was 'mad'. His mental illness was corroborated by the *Calliope*'s surgeons who reported that he was 'of unsound mind and unfit to be at large'. He pleaded guilty to the first charge, but not guilty to the charge of aiding the rebellion. Te Rangiātea was found guilty and sentenced to life in prison as a lunatic. He died in captivity two months later.[40]

The charges against Te Whareaitu were:

> 1st charge: For having on or about the 1st August 1846 been taken in arms and in open rebellion against the Queen's sovereign authority and Government of New Zealand and resisting and assaulting Tamati Ngapuna one of the native allies at the time of his capture near Pautahanui the fortified pa of the rebel chief Te Rangihaeata in whose service he was engaged.
>
> 2nd charge: For aiding and assisting the said rebellion and for having unlawfully been present and taken part in an engagement with Her Majesty's troops stationed in the valley of the Hutt on or about the 16th of June 1846.[41]

There was little evidence. One witness stated she did not know whether Te Whareaitu was involved in fighting in the Hutt, and two witnesses claimed to have seen him

at Te Rangihaeata's pā. He was found guilty only on the first charge – assault – and hanged two days later, on 17 September 1846.[42] Historian witnesses Macky and Stirling told us that the primary purpose of the execution was to make an example of Te Whareaitu and discourage acts of opposition to Crown authority.[43]

Following Te Whareaitu's execution, Te Rauparaha apparently observed that 'the settlers at Wanganui were likely to suffer if further executions took place'. Interpreter Samuel Deighton reported this to Major Last, who sought the advice of Lieutenant Servantes, an officer who spoke te reo Māori and had more experience of Māori than he did. Servantes told him that Māori would regard the execution of prisoners held for a month as an act of cruelty,[44] and observed that legal uncertainties surrounded the court martial process as no real emergency existed to justify it.[45]

Te Whareaitu's execution also shocked the settler press. The *New Zealander* viewed it with 'mingled feelings of horror and surprise' and described it as 'a most sanguinary display of vengeance'. Another newspaper considered that further courts martial and executions 'would be a gross act of wanton barbarity'.[46]

Last determined that further executions would be ill-advised and favoured transporting the remaining eight prisoners to a penal colony. He feared, however, that the powers of a court martial did not extend to passing such a sentence, and he wanted the men tried in the civil courts. Grey sought the opinion of the Attorney General, William Swainson, who advised that courts martial could impose long penal sentences. Last was directed to proceed with the courts martial of the remaining Whanganui prisoners.[47]

(3) *The courts martial of seven 'rebels' from Whanganui*

The courts martial went ahead on 12 October 1846, although one man was released on account of his youth. The charges were rebellion; aiding and assisting Te Rangihaeata in rebellion; taking part in hostilities against the Crown; and possessing a firearm belonging to one of the Crown's soldiers shot at Boulcott's Farm.[48] The prosecutor's witnesses were three Te Āti Awa, two sergeants, and Whanganui woman Roka Pekatahi. She said she saw the prisoner Hōhepa Te Umuroa at Boulcott's Farm, and another prisoner, Te Kūmete, fighting Crown forces on an unspecified date; she saw the others at Pāuatahanui on 1 August but left before the assault began.[49]

All seven of the men admitted that they were rebels (in that they were of the people who had been defined as being in rebellion), and followers of Te Rangihaeata. They denied having killed anyone. Yet, lacking legal advice or representation, they pleaded guilty to each charge as it was read out. The verdict was guilty on all charges. Two were kept as possible witnesses against Te Rauparaha, and five were transported to a penal colony in Tasmania.[50]

At the courts martial, there was no evidence linking any of the Whanganui men to the deaths of the six soldiers at Boulcott's farm on 16 May 1846, or the death of Richard Rush, a Hutt settler, on 15 June 1846.[51] In fact, Rush's killer was known, and he returned to Whanganui.[52] There was fighting on 1 August near Pāuatahanui; some of the eight could have been involved, but there was no evidence of it, and no recorded deaths.

It is difficult to avoid the conclusion that these men were scapegoats, unjustly held responsible for all Māori resistance in Heretaunga and at Pāuatahanui.

(4) *Grey's deception*

Grey misled colonial officials in Tasmania about the prisoners they were to receive, telling them that the men had committed several murders and many robberies. He asked that they be subject to hard labour, and he wanted this treatment to become known, in order to deter Māori from rebellion.[53]

Colonial officials in Tasmania questioned whether the New Zealand officials could exile the Whanganui men, because they were political prisoners rather than criminals. They kept them apart from the convicts at the penal colony, and gave them a lot of freedom. The Colonial Secretary in London, Earl Grey, was inclined to give the men 'Tickets of Leave', or free passage, around Hobart, but felt that they could come into contact with 'persons disposed to lead them astray'. Nevertheless, he felt that they should be afforded all the freedoms conferred by tickets of leave, and approved their favourable treatment. A pardon arrived from London in February 1848, by which time

Hohepa Te Umuroa had died of tuberculosis.[54] The Crown showed regret for its acts against this man by helping his descendants bring his body back from Tasmania in 1988.[55]

Ngāti Rangatahi could not return to their land at Heretaunga. Their allies were no longer there. Te Rangihaeata and the bulk of his followers had withdrawn from Horokiri to Poroutāwhao, near the Manawatū River, and Te Mamaku and his followers had returned to Whanganui. Ngāti Rangatahi relocated to Rangitīkei.[56]

6.4 The Development of Hostilities and the Appropriateness of the Crown's Response

6.4.1 Introduction

Many Whanganui Māori were involved in the hostilities that erupted in the Hutt Valley, Porirua, and Kapiti districts in 1846, and these clashes were a catalyst for what unfolded in Whanganui in 1847. The parties accept this connection. The Crown submitted that 'it is likely that it was Te Mamaku's reaction to events in Heretaunga which influenced him in bringing the taua down the river arriving in Whanganui on 19 October 1846'.[57]

In this section, we examine how conflict developed in Whanganui and between whom, and whether the Crown responded appropriately. We test the claimants' contention that the Crown's actions amounted to suppression of the authority of Whanganui Māori in breach of the Treaty guarantee of te tino rangatiratanga.[58]

6.4.2 Te Mamaku's taua and the arrival of Crown troops

In late September 1846, Taylor recorded that, when he met Te Mamaku after he returned 'quietly up the river' to Whanganui, he seemed 'tired of war'. Taylor's record of this time showed the great majority of upriver Whanganui Māori wanting to live in peace with Pākehā. On 5 October, however, Taylor noted that at least one hostile taua was at Patiarero or Hiruhārama (Jerusalem), and was heading downriver. Its initial intention seems to have been to tangi (mourn) with Te Mamaku and Te Oro (Te Horo) of Ngāti Hāua and their taua over the death of Te Mamaku's half-brother, Te Whareaitu. The two taua met at Pukehika, from where they proceeded downriver. On 19 October they arrived near Petre where, according to Taylor's wife, they were intent on plunder and 'cutting off' the settlers.[59]

Taylor met Te Mamaku and the taua on 22 October 1846. Te Mamaku explained to him that:

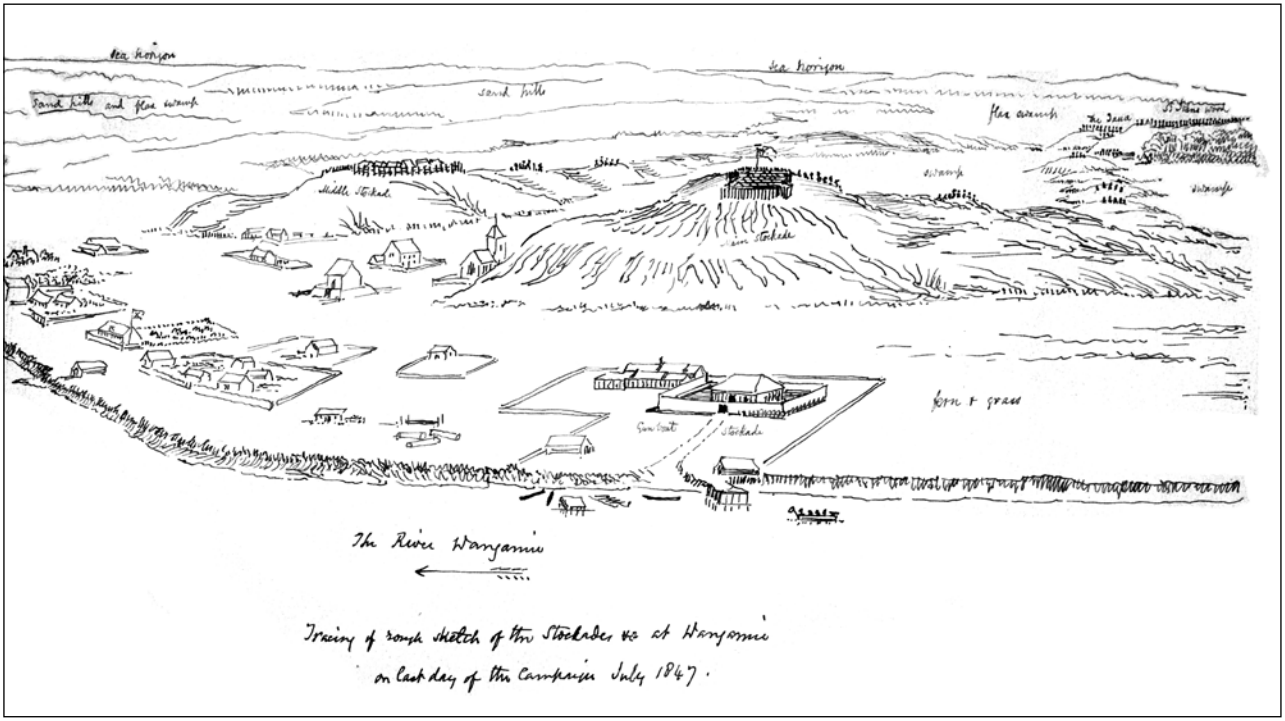
> he had no enmity to the Governor until his young relative [Te Whareaitu] was hung [and] that he [Te Whareaitu] had not fought but merely followed him [Te Mamaku], that he was taken prisoner and treated as a dog, that they might treat him the same for he should fight to the last, that some of them would fall and some of the Europeans; one would exterminate the other and the land would be left to the believers.[60]

Thus, for Te Mamaku the motivation for this October taua was Te Whareaitu's execution – a kōhuru or murder, according to tikanga Māori. Through utu (payment or restitution) and muru (expunging a wrong through retaliatory action), Te Mamaku and Te Oro sought to restore the balance in their relationships with Pākehā. Whanganui settlers would pay for the wrongs (executing and transporting their kin) committed by Pākehā (officials, soldiers, and settlers) elsewhere.

(1) *Pūtiki Māori to the rescue*

But Pūtiki Māori intervened to protect the settlers and maintain peace. On 24 October, Taylor wrote about how Wiremu Tauri, his head teacher, secured from the leaders of the taua a promise that they would not molest the settlers. Te Mamaku undertook to withdraw the taua the following Monday. Te Tauri ensured the safety of settlers' homes by billeting Pūtiki Māori in them, and Taylor observed Te Tauri and the principal Pūtiki chiefs walking up and down to contain turbulent youths in the hostile party. Taylor noted that parties from the taua surrounded the settlers' houses 'and watched every opportunity to plunder'.[61] Te Mamaku repeated his promise to Taylor: he would withdraw the taua and respect the Sabbath.

By 26 October, a week after its arrival, most of the taua had withdrawn upriver. Te Mamaku's parting shot was to threaten 'to burn the Police Magistrate's house when the next taua came declaring that this was a taua of boys but the next should be of men'. But then Te Mamaku was still



The stockades at Petre, which were completed in early 1847 to protect the town's settlers. York stockade is at left, Rutland (the main stockade) is in the centre, with the gun-boat stockade in front on the Moutoa Gardens site. Christ Church can be seen between the two stockades, and St John's Wood is at the back at far right.

in Whanganui the next day, and heard the Europeans practising their shooting. He seemed disconcerted, and inquired why they were doing that. The question seems extraordinary – but perhaps his surprise suggests that his threat was not serious.[62]

Pūtiki Māori, Taylor, and Whanganui settlers requested that the Government send troops to protect the town, Taylor warning the Governor that Te Mamaku planned to return with a larger taua in December. He feared this taua would be too strong for what he called his natives (the Pūtiki Christians) to resist unaided.[63]

(2) *Troops for Whanganui*

On 20 November, Grey sent a letter authorising Superintendent Richmond to send 200 troops to Whanganui if there was serious danger, with discretion to send more, and to provide a warship to remove any settlers who wished to leave. Grey ordered a stockade to be built at Petre, and troop numbers could be halved after its completion.[64]

Richmond, the Wellington superintendent, must have warned the Governor that some people thought the troops' presence might provoke an attack, since the Governor replied:

> [It] appears to me that this is a very bad argument, to say that the natives may whenever they please enter Wanganui and threaten the lives of its inhabitants there being at the same time every probability that they will soon carry their threats into execution and that we should not send troops there for

> fear of provoking an attack amounts in my mind to nothing less than an admission from a sense of weakness [that] we must abandon the settlers to the mercy of the turbulent tribes. I should rather myself be inclined to say that if these fellows really intend to commit outrages let them attack the troops in preference to the settlers, and take care if you anticipate such an event, to strengthen if possible the detachment to beyond what I have stated, and to give the enemy a good drubbing.[65]

However, Grey instructed Richmond that if arming settlers was provocative to Māori, the settlers' arms should be returned to storage in Wellington.[66]

Grey's letter of 20 November also set out his plan to secure Crown control over the entire region from Whanganui to Wellington. He envisaged that the stockade at Petre would be connected to Wellington by a chain of stations housing a mounted police force. Further troop deployments would be made at a point halfway between Wellington and Whanganui, with another force at Waikanae.[67] On 2 December 1846, in a letter to the commander of imperial troops Lieutenant Colonel Hulme, Grey explained that such an undertaking was necessitated by what he called a 'formidable and well organised conspiracy' against British settlement in New Zealand. Grey had received intelligence of a large meeting at Taupō at which 'most hostile sentiments had been uttered', and a plan existed for his own seizure. He expected a crisis in the coming summer.[68]

On 8 December, Grey directed Richmond to send troops to Whanganui, this time leaving him no discretion in the matter. It appears that Richmond had determined to do this already, as soldiers were preparing to proceed to Whanganui on 9 December. The first troops arrived on 13 December 1846.[69]

(3) *Conspiracy?*

Grey may have had some basis for fearing a conspiracy. On 26 November, Donald McLean, the Inspector of Police for Taranaki, received a letter from Pūtiki chiefs warning that Te Rangihaeata and Te Mamaku had sent five letters to different locations inland calling for new taua to be raised. These taua were to travel through three routes – through Whanganui, Rangitīkei, and Taranaki – attacking friendly Māori and Europeans. However, Grey did not receive a copy of the letter to McLean until 21 December, more than a week after troops arrived in Whanganui.[70]

Grey may have overstated what he knew of a conspiracy in an effort to secure the presence of imperial troops in New Zealand, because at the time Lieutenant Colonel Hulme's regiment was scheduled to leave New Zealand. Grey did not move against plotters in the conspiracy, if his intelligence vouchsafed who they were. It is also clear that McLean did not report what Pūtiki Māori told him about the new taua until after troops departed for Whanganui. We know that by this time Grey had formulated a plan of sorts for securing the Crown's authority over the district from Whanganui to Wellington, suggesting a determination to see troops deployed in the region.

(4) *A military force arrives in Whanganui*

By the time 180 troops arrived in Whanganui on 13 December 1846, the direct threat posed by the October taua had gone. But the soldiers' arrival responded to the level of settler alarm in late 1846; the marauding behaviour of the October taua; Te Mamaku's threat to return with a larger taua; and the fact that settlers, missionaries, and Pūtiki Māori had asked for them to come. Still, some of the military force were surprised when they got there to find no enemy and no crisis. They arrived on board the HMS *Calliope* – along with Te Rauparaha, who was still in Crown custody. Grey sought to humiliate Te Rauparaha by making a spectacle of him as a prisoner.[71] It is likely that treating Te Rauparaha in this way served to antagonise those Whanganui Māori who had opposed the Crown at Heretaunga.

Once in Whanganui, the military force started constructing a stockade. The soldiers did this, and camped, on land that still belonged to Whanganui Māori, although there is no record of discussions with them about it. Some accommodation may have been reached, however, as Te Anaua and Te Māwae of Pūtiki allowed the troops to use their timber. Later, Pūtiki men were contracted to cut timber for the stockade. By contrast, Te Pēhi Pākoro Tūroa was afraid that the soldiers might seize him, perhaps

The home and outbuildings of the King family in Wanganui with a whare in the foreground and, above right, the fenced site of Rutland stockade.

because of the activities of his Patutokotoko kin, Ngāpara and Maketū. Tāhana Tūroa expressed similar fears.[72]

6.4.3 Martial law in Whanganui

Martial law is a system of absolute military control over all military and civilian activities that states impose temporarily in a war zone, or when civil authority breaks down. Due process is suspended, and control measures such as curfews and censorship are often used. The actions that the military take are not subject to review by the civil courts once they begin operating again.[73]

(1) *Parties' positions*

In this inquiry, the claimants submitted that the Crown breached the Treaty when it imposed martial law over Whanganui because either it was illegal to do so or, if it was legal, it was unnecessary, and therefore unfairly and unnecessarily curtailed the rights of Whanganui Māori. In particular, claimants pointed to debate among Crown officials, including Governor Grey, about the legality of imposing martial law.[74] They argued that valid declaration of martial law required the existence of an emergency situation and, in particular, rebellion against the Crown. These requirements were not met.[75]

The Crown noted the limited evidence presented about the exact circumstances in which martial law was imposed in Whanganui, and also the absence of any settled doctrine that would have guided colonial governors in applying martial law in the mid-nineteenth century. In fact, none was developed until the late 1860s. The Crown

said that it is still unsettled in jurisprudence whether the power of using extraordinary measures is a prerogative of the Crown or an example of its common law duty to suppress disorder.[76]

Against this background, the Crown argued that it has the power to suspend ordinary criminal or civil law and resort to martial law to respond to states of war or emergency. In such states, the Crown said, it may take all measures necessary. The Crown also argued that neither rebellion nor a formal declaration of martial law was a necessary prerequisite for the application of martial law. Troops were sent to Whanganui for defensive purposes and proclaiming martial law was justified because the actions of some Whanganui Māori were a threat to the settlement.[77] The Crown said that the various taua led down the river were not defensive, but it did not go so far as to say that Whanganui Māori were in rebellion.[78]

(2) *Evidence on rebellion and emergency*

The evidence presented in our inquiry suggested that by the time troops arrived in Whanganui any reason for imposing martial law there had dissipated. As mentioned, troops arrived to find that the taua had withdrawn upriver some six weeks before. From early 1847, officials and the military at Petre occasionally labelled Te Mamaku, Maketū, Te Oro, Ngāpara, and their followers as 'rebels', presumably for their involvement in the taua of 1846.[79] But now the district was peaceful, with no sign of rebellion. On 11 February 1847, Dr Wilson (a company settler and justice of the peace) wrote to Donald McLean that 'We are all quiet as lambs here, no rumours even of war or rebels.' Te Mamaku had reportedly returned to his home 'some 200 miles from this'. Matthews, the CMS catechist, met Te Mamaku on a trip upriver and reported that he was 'very peaceably disposed, and would not listen to some recent overtures from Rangihaeata to join him'.[80]

On 23 February 1847, Governor Grey proclaimed that martial law would be lifted on 15 March. Police Magistrate King nailed a copy of this proclamation to a post in Petre. However, Captain Laye removed the notice. When King complained that this prejudiced his ability to administer the civil law, Laye posted a personal proclamation on 13 March 1847 stating that martial law would remain in force until notice was issued to the contrary – though in fact he had no power to countermand the Governor's proclamation. King objected, and Colonel McCleverty applied to the Governor to resolve the situation. He averred that martial law should continue because the stockade was not yet 'in a defensible position'. He thought that this would be achieved within a month.[81]

Grey then appointed Captain Laye as resident magistrate, presumably so that both his civil and military authority would exceed Police Magistrate King's, and reimposed martial law on Petre and the block that the New Zealand Company claimed until 1 May 1847.[82] McCleverty's letter to Grey made clear that the request to extend the period of martial law was not related to any emergency situation. It was a precautionary measure, to ensure that martial law was in place if an emergency arose before the stockade was complete.

(3) *The nature of martial law*

Past Tribunals have considered the issue of martial law. The Tūranga Tribunal drew on the work of famous English constitutional lawyer Professor Albert V Dicey, who noted:

> there is strictly speaking no such thing as martial law in the British constitution. There is, however, a clear recognition of the right vested in the sovereign to repel invasion and to put down riots or rebellion where these amount to a serious threat to the existing legal order (including the Crown's legal, if not substantive, sovereignty).

According to Dicey, the use of force in response to these threats and the degree of force necessary are determined by 'nothing else than the necessity of the case'. In summary, the Tūranga Tribunal considered that the Crown's actions must be judged not simply on whether they were reasonable but whether they were 'reasonably necessary'.[83]

Dicey's views on martial law are consistent with advice that the Colonial Office sent Governor Grey in May 1847. Earl Grey's missive said that a court established under martial law is:

> a Court established in obedience to some motive so urgent as to require that the law should be suspended. But strictly speaking it is illegal and unless some Act of Indemnity shall ratify the Acts of such a Court and give validity to its sentences they are void and of no effect.[84]

Here, we see that Earl Grey was at pains to impress on Governor Grey that in order to suspend ordinary law, special legislation was required.

In 1996, Professor Frederic M Brookfield, New Zealand's expert on the subject of rebellion, provided his legal opinion to the Taranaki and Ngāti Awa raupatu Tribunals. Professor Brookfield said that where Māori faced

> unlawful armed invasion by the forces of the Crown if and where that occurred, Maori were themselves entitled to meet force with force, by applicable standards of reasonableness (in self defence) or necessity (in defence of their dwellings).[85]

Drawing on the work of both Dicey and Brookfield, the Tūranga Tribunal found that when declaring martial law the Crown must 'reasonably apprehend that there is an intent to overturn the existing legal order, and that apprehension must be so clear as to render it necessary for the Crown to turn its guns on its own citizens'. The necessary corollary of this was that the right of Māori to bear arms against the Crown was also tightly circumscribed.[86]

(4) *The extension of martial law to Whanganui*

It is difficult to quibble with the Crown's December decision to send troops to Whanganui to defend the settlers and the town. The taua of October 1846 threatened the safety of Pākehā living at Petre, and when that taua left, Te Mamaku declared that another would come. Local officials, settlers, and Pūtiki Māori all asked the Government to send troops.

Governor Grey extended martial law to Whanganui on 18 July 1846 following his receipt of a copy of Te Mamaku's letter to Pūtiki chiefs and Wī Kīngi Te Rangitāke's report that Maketū and Ngāpara and their followers were heading south. This information suggested that there was a threat that the conflict between Māori and the Crown in the Heretaunga, Porirua, and Kāpiti districts might escalate. In that light we consider that it was not unreasonable for Grey to extend martial law to Whanganui. His subsequent excursion to confront Maketū's taua at Ōhau showed how seriously he viewed this threat.[87]

But what did Grey intend through the maintenance of martial after this apparent threat had subsided? The absence of any military force in Whanganui makes it difficult to see what maintaining martial law could achieve. It certainly did nothing to deter the taua of October 1846, and was of no use to Police Magistrate King while the taua was present outside Petre. Essentially, without soldiers to implement it, martial law was ineffectual, whether intended for offensive or defensive purposes.

Grey's inclination to establish a military presence at Petre seems to have stemmed from the request in late October 1846 from settlers, Taylor, and Pūtiki Māori for a protective military presence. Simply declaring martial law offered no protection without soldiers there. Did he think that the declaration alone was at least some response to the anxiety in Whanganui? Or was it intended as a kind of threat? If an intimidatory message was intended, then Whanganui Māori would have needed to know what martial law was, and that it had been declared in their rohe (territory). This appears not to have been the case, for Taylor dissuaded Captain Laye from publicising a translation of the martial law proclamation, arguing that Māori would misunderstand it. Even after soldiers were stationed at Petre, they do not appear to have enforced martial law. The rangatira Maketū, who fought against the Crown in the Hutt, was able to visit the township freely during the period of martial law without being apprehended.[88] This apparent lack of enforcement may have been a reflection of the generally peaceful situation at Petre which led Grey to announce the lifting of martial law in February 1847, two months after the military force arrived (see section 6.4.3).

If there was a sound basis for the imposition of martial law in July 1846, by February 1847 it should simply have been lifted, because:

What Was Going on When Grey Extended Martial Law to Whanganui?

May 1846

25 Te Mamaku writes a letter to Pūtiki chiefs.

June 1846

4 Chiefs meet at Pūtiki to consider Te Mamaku's letter. Ngāpara announces intention to travel south to get Te Mamaku to return home. The Reverend Richard Taylor expresses in his journal scepticism about Ngāpara and Maketū's party being able to maintain their peaceful intention in visiting Te Mamaku in the Hutt Valley. Whether and to what extent he circulated this view is unknown.

July 1846

14 Maketū and Ngāpara's party leaves Whanganui.

15 Wī Kīngi Te Rangitāke of Te Āti Awa asks Grey for guns to prevent Ngāpara and Maketū's party from passing Waikanae. The request goes unheeded.

18 Grey extends martial law to Whanganui.

19–20 Grey and soldiers plus Te Āti Awa attempt to capture Maketū and his party at Ōhau but are thwarted by bad weather. Maketū's party begins to travel back to Whanganui.

21 Te Rauparaha is captured at Taupō swamp near Porirua.

August 1846

1–14 Te Whareaitu, Te Rangiātea, and other Te Mamaku followers are captured near Pāuatahanui.

September 1846

8 Police Magistrate King requests arms for settlers at Petre and some for Pūtiki Māori; the Superintendant of Wellington sends them for settlers but not for Pūtiki Māori.

14–15 Courts martial of Te Rangiātea and Te Whareaitu.

17 Te Whareaitu hanged.

October 1846

20–21 Te Mamaku arrives at Petre with a hostile taua in response to the capture, court martial, imprisonment, execution, and exile of Whanganui Māori in Porirua. Hōri Kīngi Te Anaua of Pūtiki crosses the Whanganui River to defend settlers.

26 Te Mamaku tells Taylor that his taua has come to respond to Whareaitu's hanging. The taua begins to disperse. Te Mamaku threatens a larger taua: Taylor sends to Grey for immediate aid.

November 1846

1 The rest of the taua leaves.

December 1846

8 Grey instructs Richmond to send troops to Petre.

13 Troops arrive at Petre.

- the threat posed by the taua of October 1846 was gone when the military arrived in Whanganui in December 1846;
- by February 1847, it was evident even to bellicose Grey that Whanganui was at peace and martial law was no longer required;
- Colonel McCleverty persuaded Grey to change his mind about the need to maintain martial law *not* for legitimate reasons like the existence of a state of any emergency, rebellion, or threat to legal order, but for a precautionary reason: the stockade was not finished, which might leave Petre vulnerable *if* rebellion were to erupt.

Thus, the extension of martial law to Whanganui in July 1846 was ineffectual because there were no military there then, and from the time when they arrived, the perceived threat had come to nothing, and all was calm. The decision that Grey made in February 1847 to allow martial law to continue in the Whanganui region was unreasonable and unnecessary. And, most unfortunately, that decision meant that the Crown's representatives were able to exercise the summary power that martial law afforded when, in April 1847, they executed four young Māori men.

John Alexander Gilfillan

6.4.4 Ngārangi is shot and the Gilfillans attacked

Following the arrival of the Crown troops, a peaceful stalemate developed, with no aggressive acts on either side. Yet martial law, mistrust, and suspicion remained, and events unfolded in April 1847 that made this mix too volatile to contain.

First, on 16 April 1847, a junior naval officer shot the Pūtiki chief Hāpurona Ngārangi. One report suggested that the young man, Crozier by name, was playing with a handgun when it accidently discharged, and the bullet hit Ngārangi. According to another account, Crozier and a fellow officer were arguing with Ngārangi over the price to be paid for a raupō whare that Ngārangi had constructed for them. Crozier produced a pistol and pointed it at Ngārangi, a struggle ensued, and Ngārangi was shot. Whatever the case, the bullet hit Ngārangi in the cheek and passed through his face before becoming lodged in the opposite cheek bone. He recovered from his wound, but the bullet remained in the bone.[89]

Ngārangi's own testimony suggested that the shooting was accidental, but the incident raised tensions. Hōri Kīngi Te Anaua and his brother, Te Māwae, led a party of Pūtiki Māori to the stockade and asked the military authorities to release Crozier to them – but they kept Crozier safely inside the stockade. It seemed that officers did convince Te Anaua that the shooting was accidental, but unease lingered. Taylor later criticised the decision to protect Crozier in the stockade as only serving to demonstrate to Māori that there was more to the shooting than a simple accident.[90]

On 18 April 1847, two days after Ngārangi was shot, a group of six Māori youths aged from 12 to 18 attacked the Gilfillan family at their home in the Matarawa valley, some

The view over John Gilfillan's farm at Matarawa, where Māori youths killed four members of his family in 1847

five or six miles east of the town of Petre on the Pūtiki side of the river. The attackers killed Mrs Gilfillan and three children, and Mr Gilfillan and three other children were left severely wounded. The youngest, a four-month-old infant, would die a few months later 'from want of nourishment'.[91]

Taylor interpreted the killings as a deliberate declaration of war rather than as an act of utu for the shooting of Ngārangi. He considered the Gilfillan family had been selected at random, as easy targets, by people looking to foment conflict.[92] There was other evidence that utu was not behind the attack. The (Ngāti Ruakā) chiefs of Pūtiki told Captain Collinson (the military engineer who had been in charge of the construction of the stockade) that 'according to their own customs the murderers were not the men who had any right to take utu, being not the nearest relations [of Ngārangi]'.[93] This suggests that the attack on the Gilfillans was intended to heighten animosity.

(1) *The role of Pūtiki Māori*

A trail of looted goods from the Gilfillan homestead led towards Pūtiki – apparently a ploy designed to convince the settlers that Pūtiki people were responsible for the killings, and to destroy the alliance between Pūtiki and the township. Some settlers swallowed the deception, and for some days Pūtiki Māori feared to go into the

town. However, Te Anaua and the Pūtiki chiefs scotched any notion that they might have been responsible when they organised the pursuit and capture of the actual killers. Hoani Wiremu Hīpango led a group of seven men that surprised and captured all but one of those responsible, and handed them over to the military at Aramoho.[94] Taka, a grandchild of Ngāpara of Te Patutokotoko, was later named as the leader of the killers. It was believed that they came from Pukehika.[95] The five who were taken captive said that an elder called Te Hoko from Patiarero (Hiruhārama/Jerusalem) sent them to exact utu.[96]

The attack on the Gilfillan family appears to have crystallised the divide between those Whanganui Māori who supported the settlers and those who did not. On 22 April, the missionary Ronaldson recorded in his diary that chiefs who had been involved in the taua of October 1846 sent a message to Pūtiki asking if the people there would join in an attack on the settlement – if they did not, said the message, they would also be counted as enemies. The Pūtiki chiefs sent back a message saying that 'they and the Europeans were now one and as such would remain'.[97]

(2) *Inquest and courts martial*

On 20 April, the youths appeared before a coroner's inquest into the deaths of the Gilfillan family. The coroner determined that the deaths were 'from wounds inflicted by tomahawks, axes, or some such sharp instruments'. Four of the five were also found guilty of 'wilful murder'; there was insufficient evidence to convict the fifth.[98]

On 23 April the youths were tried by court martial – the first real manifestation of martial law at Petre. The charges were murder, wounding, breaking and entering, and robbery. They had no lawyer, and all pleaded guilty.

Hīpango gave evidence that three of the killers confessed immediately, and they caught the others with loot from the Gilfillan property. He said that Taka told him that the killing was for the shooting of Ngārangi.

On 23 April 1847 the five prisoners were found guilty, although the evidence against one was not strong (Gilfillan could not identify him as one of the killers). The four oldest were sentenced to death, but the youth of the boy called Wharehuki – he was between 12 and 14 years old – led to his being sentenced to transportation instead. The other four were executed on 26 April 1847.[99]

(3) *Executions lacked Governor's sanction*

The courts martial were held under the ninth clause of the Mutiny Act, and the Queen's 'Regulations and orders for the Army'. Rule 8 of the part concerning 'Command in the Colonies' provided:

> The Sentences of Courts-Martial will be carried into execution without the previous sanction of the Civil Governor, or Person administering the Civil Government, except only in cases where the Sentence of Death may be pronounced, in which case, execution of the sentence will be suspended, until the sentence shall have been approved on His Majesty's behalf, by such Civil Governor, or other Person or Persons administering the Civil Government.[100]

Governor Grey – the civil governor – did not sanction the death sentences here, though, because his approval was not sought. Captain Laye ordered the executions to be carried out under his own authority. We do not know whether he was aware that rule 8 required him to suspend a death sentence and seek the Governor's approval.

Captain Laye sent Grey a report about the coroner's inquest into the Gilfillian deaths on 21 April, and Grey received it on 11 May.[101]

Grey wrote to Earl Grey, the colonial secretary, on 11 May 1846, informing him of the attack on the Gilfillan family, the capture of most of those responsible, and Laye's intention to court martial the youths. Grey reported that he sent a messenger to Laye directing him to hold the prisoners until he could hand them over to the civil authorities in Wellington 'unless some most extraordinary necessity has arisen'. (The four youths had been executed on 26 April.) Grey wanted to avoid provoking a rebellion in a district where the security of the settlers was dependent on Māori good will. But whether the prisoners were held at Petre or transported to civil authorities in Wellington, Grey considered the situation a difficult one for Laye to manage. The prisoners' lengthy detention at Petre had the potential to cause 'much excitement', while their overland

transportation to Wellington would require a large armed force.[102]

On 6 July 1847, the Governor wrote to Earl Grey about the prisoners' execution. He defended Laye's actions, saying that he had followed the 'only course' open to him.'[103]

Governor Grey's impulses around dealing with the situation in Whanganui were obviously not straightforward. Initially, he seemed to prefer that the civil authorities in Wellington should handle the prisoners, but that preference is rather odd given that martial law was in force in Whanganui. Why have martial law, but want the civil authorities to play their ordinary part? Perhaps he later changed his mind, and that is why he backed Laye's actions. Alternatively, once Laye had ordered the executions, it was possibly just simpler to claim that this was the best – indeed only – alternative. Otherwise, what would have happened? A messy internal disciplinary matter concerning Laye's non-compliance with rule 8? Inquiry into the legality of martial law continuing in Whanganui when nothing rebellious was happening, calling Grey's own judgement into question? Any of these possibilities would have been most unappealing, especially when there was so much else to deal with.

(4) *The argument for martial law*

In our inquiry, the Crown submitted that, while there may not have been rebellion in Whanganui,

> the threats posed to the settlement at Whanganui and the actions of some Whanganui Maori justified the execution of martial law as a defensive mechanism to protect the settlement.[104]

We do not consider that the facts support this submission.

As already discussed in this chapter, the imposition of martial law in the Whanganui district on 18 July 1846 resulted from the threat perceived when the Whanganui taua headed off to Wellington to support Te Mamaku. This taua returned to Whanganui by 29 July 1846. It did not reach Wellington, took no part in fighting, nor in any way threatened settlers at Petre.

In October 1846, when Te Mamaku brought his taua downriver to Petre, martial law was still in place. Troops were sent to Petre from Wellington, but Te Mamaku and his men left several weeks before they arrived, so the soldiers turned up to find everything peaceful. Martial law was still theoretically in force. Actually, though, there had been no military to enforce it, so until soldiers got there it was martial law in name only. For example, Māori who had resisted the Crown at Heretaunga came and went from the township undeterred.

That martial law was in place when the Gilfillan family was attacked was the result of Colonel McCleverty's request for it to be extended until the stockade at Petre was completed. It was not related to any emergency or Māori aggression and came at a time when Governor Grey had decided that there was no longer a need to maintain martial law. The subsequent completion of a coroner's inquest into the deaths of members of the Gilfillan family and Grey's wish that the prisoners be dealt with by civil authorities suggest that the civil courts were capable of operating at this time. The inability of civil courts to function is of course one of the chief indicators of emergency that justifies declaring martial law.

None of these circumstances supports the Crown's contention that extending martial law in Whanganui was justified.

The trial by court martial and execution of four of the youths was a consequence of leaving martial law in place. Captain Laye and the military in Whanganui were exercising their powers under martial law – although executing the wrongdoers without the Governor's consent breached rule 8 of the 'Command in the colonies' regulation.

The irony is that the courts martial and executions carried out under martial law created a situation that might have justified its imposition. Although no hostile taua threatened Whanganui in the five months of military occupation that preceded the summary treatment of the Gilfillans' attackers, Te Mamaku quickly raised one now. Te Patutokotoko were its backbone, but there were men from Ūpokongaro in the lower reaches to Ūtapu in the upper reaches and beyond. Communities were divided: members of the taua were kin to Pūtiki people, and some were Christians. Tāhana Tūroa of Te Patutokotoko chose

not to join, opting instead to maintain a 'steadfast adherence to peace'.[105] Many months later, on 9 December 1847, Taylor made this interesting record of the feelings and motivations of those involved. He said that the men of the taua were

> exceedingly indignant with the Putiki natives for having taken so decided a part with the Europeans; they say that the murderers should not have been apprehended by their own countrymen; if the Europeans had taken them all would have been right and yet they had no other ostensible cause for this war than revenge for the death of those murderers.[106]

6.4.5 Military engagement in Whanganui

Following the attack on the Gilfillan family, the military force at Petre continued to strengthen defences, building more fences and stockades and preparing firing positions.

On 27 April 1847, Superintendent Richmond extended martial law for a further three months over an area from the Pātea River in the north to the Ōtaki River in the south and 50 miles inland. On 5 May, 100 troops, dispatched the day after the Gilfillan family was attacked, arrived at Petre.

By the time these troops arrived, the taua was within four miles of Petre; it destroyed a house and corn stacks owned by a settler named MacGregor. A day later, the taua was within two miles of the town.[107] On 19 May, a force of Māori – reported variously as between 60 to 70 or as many as 300 – plundered the settler houses. The troops stayed inside the stockade, but fired on the Māori force and killed two of its leaders, Maketū and Tutua.[108] Over several weeks, men steadily joined the taua until it numbered between 400 and 500. Then, on 24 May, 200 more Crown troops arrived in New Zealand on two ships.[109]

(1) *Why a taua now?*

Te Mamaku took an extreme view of the Crown's intentions, and told Taylor that he believed

> we [Pākehā] had taken the harbour of Wellington so that no native could go in or out without permission, [and] that we were doing the same at Waikanae, Porirua, Otaki, Ohau, Manawatu and Wanganui.[110]

For other groups of Whanganui Māori, the land question was a source of considerable anguish. Most were annoyed that the New Zealand Company purchase was not completed and the promised payment not made. Some realised that the proposed payment was inadequate. While he was at Patiarero (Hiruhārama) in December 1847, Taylor noted that land appeared to be 'the great root of their dissatisfaction' because 'there are so many claimants to it that they think there is no chance of their being remunerated according to their expectations'.[111] However, for most Whanganui Māori, these dissatisfactions were probably not, on their own, sufficient provocation for conflict.

It is likely that the burgeoning Crown military force at Petre motivated those who supported the taua. Collinson recorded that the Māori involved would 'receive the white settlers gladly, but the soldiers they will kill whenever they can'.[112] Some may have witnessed events in Heretaunga and apprehended that Māori with a legitimate claim to Whanganui land might similarly be driven out.

There were doubtless varying degrees of conviction, and more than one set of incentives.

(2) *Reinforcements and engagement*

Grey travelled to Whanganui with the 200 reinforcements that arrived on 24 May and immediately reoriented the military's focus from defence to attack.

Captain Laye had been content to keep the soldiers largely within the stockades. On 25 May, Grey led a large force of soldiers to within one and a half miles of where the taua were camped.[113] Two gun boats anchored in the river fired some shots, but to little effect.[114] The taua's defensive position was formidable, and Grey and his men withdrew to the stockade.[115] On 27 May, Grey left Whanganui for Wellington, determined to return with 'sufficient reinforcement to dislodge the enemy from the position they had taken up'.[116]

Grey returned on 4 June with another 200 men under Lieutenant Colonel McCleverty, and some Te Āti Awa.

The entry to St John's Wood, Wanganui, 1848. St John's Wood was the site of a large battle in July 1847.

This increased the size of the Government's force to almost 800 men.[117] The taua, meanwhile, had lost the support of people from Pukehika when it burnt the chapel at Aramoho.[118]

On 5 June, Grey again attempted to confront the taua, then encamped nine miles upriver. He marched his troops towards the taua's position while gunboats were rowed up the river. However, after marching for eight miles the troops were exhausted, and the Crown force returned to Petre without result.[119]

On 7 June, Pūtiki Māori offered their help to the Governor: Hōri Kīngi said that he had 400 armed men available, and they could blockade the river.[120] Grey did not accept this offer.

The next day saw the Crown troops once more advancing on the taua, but they succeeded only in firing rockets from such a distance that they fell far short.[121] On 12 June, Grey left Whanganui for Wellington.[122] At some point in June, Taonui of Ngāti Maniapoto arrived with some men to reinforce the taua.[123]

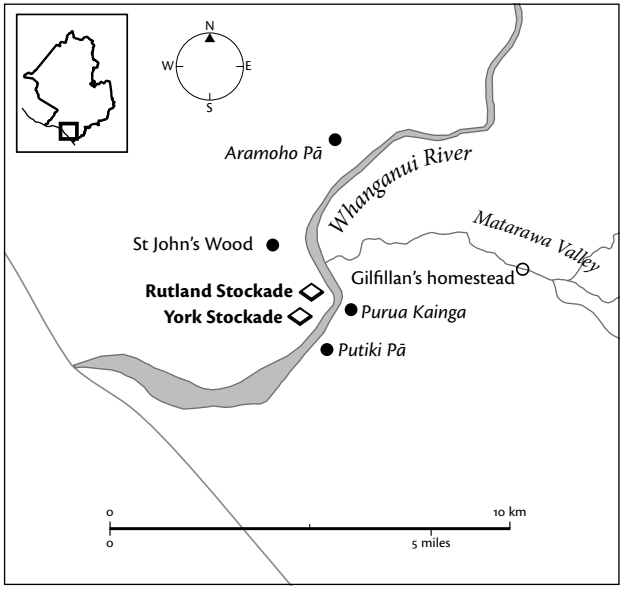
On 27 June, Lieutenant Colonel McCleverty told Taylor that the military would not come to the aid of Pūtiki Māori if the taua attacked their pā, even though Pūtiki Māori had offered to help defend the town. Taylor remonstrated, reminding McCleverty that Grey had refused to supply Pūtiki Māori with arms and ammunition on the grounds that the military force would defend them if attacked. McCleverty reportedly laughed. On 12 July 1847, following a request from Te Anaua, the military supplied Māori at Pūtiki with 10 rifles and 10 rounds of ammunition each.[124]

The largest battle took place on 19 July 1847, when Crown forces were drawn into fighting in St John's Wood, about one mile north of the stockade.

Members of the taua fired on two settlers who had left the stockade, and several parties of soldiers set off in pursuit towards St John's Wood where the taua had prepared defensive positions. Fighting took place over three to four hours until McCleverty ordered his men to retreat to the stockade. This left the taua in possession of the field of battle, which Taylor said allowed them to consider themselves the victors, and able to leave the town with mana intact.[125] Taylor also reported that deaths and casualties on each side were about the same – four dead, and eight or nine wounded.[126]

On 23 July, the taua told the Pūtiki people that they would now return inland to plant next year's crops, but they had no intention of making a permanent peace. They fired their guns and then dispersed. Some members of the taua were very angry with the Ngāti Hāua chief, Te Oro, who, they said, had led the Europeans to think they would make peace.[127]

Tāhana Tūroa, though, remained steadfastly committed to peace, although it came at considerable personal cost, because he was the brother of one of the leading chiefs of the taua (Te Pēhi Pākoro). The Europeans, including the military, suspected him of secretly supporting the Crown's enemies but nevertheless used him to further their plans. When the taua captured a young soldier who was out rounding up cattle, McCleverty sent Tāhana to negotiate his release. He returned unsuccessful but went back a few days later with a cask of tobacco as ransom. But the taua said that, if they agreed to the ransom, it would be the equivalent of making peace, which they would not do.[128]

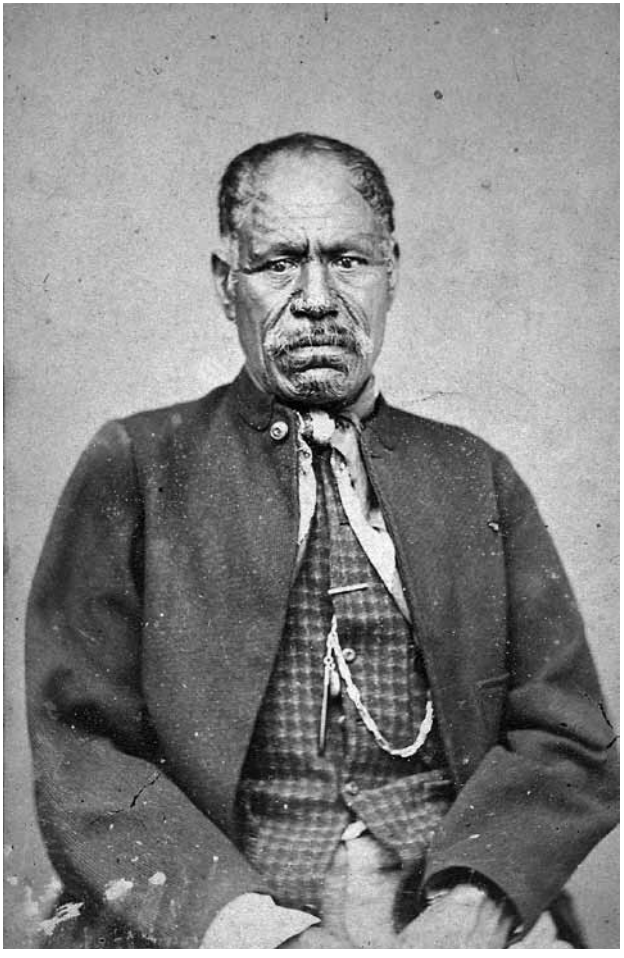


Map 6.1: Location of military stockades, St John's Wood (scene of fighting), and the Gilfillan homestead, 1847

By 4 August 1847, the taua had withdrawn upriver. Grey considered it pointless to pursue it 'as we have no settlers to protect in that direction, and we neither wish to conquer nor to occupy the country'.[129] It is possible that their lack of success led Grey to conclude that the job of suppression was harder than he had expected. His own attempt to confront the taua had certainly failed. Overall, perhaps four Māori were killed during the fighting and at least eight were wounded. Four soldiers were killed and nine wounded. The taua had burnt the houses of seven settlers, but the military had caused more damage, burning or pulling down five settlers' houses in the country and seven in the town to prevent the taua from using them as defensive positions.[130]

(3) *Retrospective indemnity for actions under martial law*

We referred earlier to the use of martial law in Whanganui and the wider Wellington district during 1846 and 1847.



Tāhana Tūroa, brother of Te Pēhi Pākoro Tūroa II. Tāhana, a committed Christian and a friend of Richard Taylor, took on the role of peacemaker with Māori involved in fighting at Heretaunga.

As mentioned, Earl Grey wrote to Governor Grey in May 1847 concerning the need to validate sentences passed by courts martial. On 14 October 1847, the Government passed an indemnity ordinance, which ensured that no action could be taken against military officers or others for their actions under martial law.[131] This included the summary execution of those found guilty of the attack on the Gilfillan family.

6.4.6 The poisoning of the taua

In May 1847, during the period of skirmishing between the taua and the military, there occurred what appears to have been an attempt by a group of settlers to poison members of the taua.

The attitude of many settlers to Whanganui Māori, already strained by their belief that Māori were unjustly withholding land from them, hardened after the taua destroyed property in 1847. On 29 May 1847, McLean received a report from Peter Wilson, a justice of the peace at Petre, that a settler named Campbell had left a quantity of flour mixed with sugar and laced with arsenic in his house. It was reported that the mixture was intended to kill rats, and Campbell left it in the house because there was no time to remove it. He hid it on top of a cupboard, where members of the taua discovered it and took it away. Wilson's report stated, 'We hope the rascals ate it, but no tidings of sudden deaths in the taua have reached us.'[132]

(1) *Deliberate poisoning?*

Governor Grey knew nothing about this until Taylor told him about it in August 1847. By this time, the characterisation of the incident as accidental had given way to settlers' boastful reports that it was a deliberate and orchestrated poison attempt. Taylor's informant was a Whanganui settler named Churton. Taylor's journal records that he had:

> learned for the first time of a most horrible proceeding at Wanganui that certain individuals had mixed arsenic with flour and sugar in large quantities and left it in the way of the hostile natives that one individual thus poisoned 50lbs of flour. Mr Churton . . . stated that this was no secret and mentioned the names of Capt Campbell JP and Mr Rich Mathews, late catechist, as individuals who boasted of having done it, and that Messrs King and Wilson both JP's openly approved of it, and laughed at the mistake the natives would find they had made that moreover the same was known to the military.[133]

Churton later informed Taylor that Peter Wilson, who made the initial report to McLean, not only approved the incident but was involved – although Wilson said nothing of this in his account to McLean. Another of the party,

Matthews, admitted to Churton that he had mixed poison with food intended for consumption by the taua. Wilson's wife confirmed that the poison attempt was deliberate. She deplored it, but said 'she knew that they should never have peace so long as a man, woman or child of them remained'.[134] A settler named Strode told Churton that Colonel McCleverty had informed the missionary Octavius Hadfield that 'he had heard that 2 natives had been poisoned by food prepared for rats'.[135]

Several Whanganui settlers apparently shared Churton's abhorrence for the poisoning attempt. As the climate of opinion changed, those responsible altered their story, maintaining that they had not left the arsenic with the intention of poisoning members of the taua.[136]

(2) *Allegations investigated?*

Although Churton's and Taylor's allegations were serious and two Māori may have been poisoned, no official investigation resulted, and it appears that Grey did not reply to Taylor's letter of August 1847.

It was a moment in history that reflected poorly on some of the Whanganui settlers. The evidence does not, however, suggest that the Crown or its officials were in any way involved – although neither did officials do anything once the story was out. This might have been because the account given to Grey was third- or fourth-hand, and reached him some months after the event. And no doubt the conflict of 1847 was not the right climate in which to carry out an investigation into the conduct of settlers who were obviously already feeling very insecure.

But once peace was made in 1848, the Crown should have made further inquiries to ascertain what really happened – if only to signal to the settler population that vigilante action of that kind would not be tolerated.

6.5 Peace is Re-established in the District

6.5.1 Early efforts to secure peace

By 23 July 1847, McCleverty recognised that the active fighting phase was over – at least until the return of finer weather and the traditional fighting season. There was, in fact, no more fighting. Grey declared that the Government would punish the 'murderers and ringleaders' of the taua, but he was prepared to allow the rest to disperse.[137] By 14 August, all but about 150 members of the taua had withdrawn upriver beyond Pukehika (opposite Rānana). Those who remained – under Te Mamaku, Ngāpara, Te Hāpua, and Pēhi Pākoro Tūroa – were probably cultivating at Kānihinihi at that time. Te Hāpua announced that there would be no more attacks on the town: they would fight only if the soldiers attacked them.[138]

The taua did not consider itself defeated; the soldiers had gained no advantage over them. In the only sustained battle, the taua had held the field while the soldiers retreated. For this very reason, Earl Grey doubted reports of a successful conclusion to military operations in Whanganui.[139] The leaders of the taua, including Te Hāpua and Te Oro, were not prepared to make peace until the soldiers withdrew. Lieutenant Governor Eyre reported that there was no possibility of the taua's supporters agreeing to peace if their chiefs were excluded from its terms. Both Grey and the taua were to relax these positions over the following months.[140]

By September 1847, Governor Grey had given Major Wyatt discretion to pardon even the chiefs of the taua if they wanted it. Some of the friendly chiefs went upriver in October and returned with some taua chiefs, who expressed willingness to make peace.[141] In December 1847, Wyatt accompanied Taylor upriver in an attempt to arrange a peace hui with the other chiefs; he met Ngāpara and Hāmārama on 6 December. Throughout, all parties, including military officers and the various allied taua of Whanganui, Mōkau, and Taupō, used Taylor as a go-between – or, as Kurī, eldest son of Taonui of Mōkau put it, 'as being a means of putting an end to war'.[142]

At this time, Te Pēhi Pākoro seemed anxious to make peace, and even Te Mamaku assured Taylor that they no longer harboured hostile feelings towards the Governor. Taonui and Kurī, leaders of the Ngāti Maniapoto allies of the taua, also wanted peace, and Taonui in particular seems to have been instrumental in Te Mamaku's announcement that those who supported the taua were ready to come down to Whanganui and make peace with the Governor.

Peace was briefly jeopardised when Collinson's men – who were burning fern for miles around Petre to facilitate surveying and 'examining the country' – burnt houses, a wharepuni belonging to the Tūroa whānau at Waipākura, and an extremely tapu monument to Te Pēhi Tūroa I. Wyatt, fearing another taua, offered to pay for the damage. The 'great chief of Wanganui & our grand ally' (probably Te Anaua) at first suggested £20 compensation, but then told Collinson four or five pounds would be enough.[143] They eventually paid £10 to Tāhana Tūroa, Te Pēhi Pākoro's brother.[144]

Taylor, reflecting on all that had happened, confided to his journal on 30 December 1847:

> If peace is restored it will teach the Government a lesson that will be long remembered that native rights and privileges must be respected, and that fairly ratified treaties cannot be trampled on with impunity.[145]

6.5.2 The peacemaking of 1848

By 1 January 1848, Whanganui was neither at peace nor at war. The town was still occupied by a military force and there was tension between soldiers, settlers, and Whanganui Māori. Māori and settlers were plagued with influenza, and Māori of Pūtiki and of the taua were suffering from hunger. War had disrupted the cultivation of crops, and surpluses from the previous season had been sold to the troops and settlers. Taylor and Wyatt (at Taylor's instigation) gave the taua large quantities of flour. This enabled them to stay in Whanganui until the Governor arrived and peace talks could commence. Lieutenant Governor Eyre arrived on 11 January, and Governor Grey on 14 January.[146]

Grey met with the principal chiefs at Taylor's house on 15 January 1848. Grey was full of promises. He promised that the settlers would not need to abandon Whanganui, and the land would be paid for. He promised Taylor that the Crown would construct a 'native hospital' on a site that Taylor could select, and Dr Rees would be appointed its doctor. He also promised Taylor £200 that year for a boarding school for Māori.

Grey crossed the river and met some of the taua chiefs, although not Te Mamaku. Newspapers reported that Grey received the 'submission' of Te Pēhi Pākoro and Ngāpara but, as Mr Macky says, it is doubtful that these chiefs saw their agreement to make peace as any kind of submission. Grey also confirmed Wyatt's promise of a pardon for the taua leaders, who in turn promised to return some of the settlers' cattle that they had looted.[147] Grey and Eyre departed on 15 January.

It was not clear what had been achieved. Taylor remarked sagely that 'whether their visit has done anything to effect a permanent peace time will show'.[148]

The Governor took Hōri Kīngi Te Anaua back to Wellington with him as his guest, and the chief returned to Whanganui on 5 February 1848. Next day, he went upriver at the Governor's request, 'to bring down Mamaku and the Ngati Ruaka [to Petre] to make peace'. He managed to convince the Pukehika people to come, but Te Mamaku refused – perhaps fearing that he would be arrested, like Te Rauparaha two years before, or hanged, like his relative Te Whareaitu. On 16 February, Taylor was able to convince Te Mamaku to come to Petre. On 17 February, 'Te Mamaku, Tinirau and most of the hostile chiefs' attended morning prayers with Taylor, who afterwards escorted them across the river to shake hands with Wyatt. Wyatt assured Te Mamaku that he could visit Petre without fear. The same day, Taylor hosted a meeting where officers met with both 'hostile' and 'friendly' chiefs, and all could 'speak calmly and quietly of all subjects affecting them'. Te Pēhi Pākoro and Ngāpara were 'unnecessarily absent,' but Te Mamaku announced that he now made peace with the Pākehā forever.[149] Credit for bringing the two sides together should go to Taylor rather than to any representative of the Crown, such as Wyatt.

Despite Te Mamaku's declaration, the Crown would maintain a military presence in Whanganui for decades to come. Suspicion between some groups of Whanganui Māori and the Government – including the military who were still occupying Whanganui – was not altogether allayed, and tension continued to simmer. Taylor was of the view that Whanganui Māori generally remained 'extremely jealous' of the soldiers' building new and more formidable blockhouses.[150] This is unsurprising, as in fact there was probably only limited resolution of the issues

between the Crown and the leaders of the taua. Māori were expected to show allegiance to Crown authority, but in reality they had been shown little in which to invest their trust.

6.6 Findings

Conflict developed between some Whanganui Māori and the Crown as a direct result of the Crown's actions in the Heretaunga and Porirua/Kapiti districts during 1846. One of the results of this conflict was the extension of martial law to Whanganui on 18 July 1846. We find that Governor Grey was justified in extending martial law from the Wellington region north to Whanganui in the face of what he probably understood as a military movement of men from Whanganui south to join forces with Te Mamaku. In fact, Maketū and Ngāpara's journey had a peaceful motivation but Grey was probably unaware of that. There must also have been uncertainty about what would have happened if the Whanganui men had reached the Hutt Valley.

The decision of Maketū, Ngāpara, and their party to return to Whanganui without making contact with Te Mamaku helped to avert further conflict with the Crown. The potential threat posed by their march south immediately disappeared. But Governor Grey chose to maintain martial law over Whanganui, and did so even though there were no soldiers there to enforce it. What Grey intended through the maintenance of martial law is unclear. The lack of a military force in Whanganui and the fact that Whanganui Māori remained largely unaware of its imposition rendered the maintenance of martial law from July to December 1846 largely ineffectual.

Events that occurred after martial law was imposed served only to heighten the tension between Te Mamaku's followers and the Crown. The arrest of 10 Whanganui Māori near Porirua, their trials by court martial, the execution of Te Whareaitu, and the transportation of others to a penal colony in Tasmania led Te Mamaku to bring a taua downriver to attack and plunder the settlers at Petre – although in fact no attack eventuated.

Although its actions were the springboard for Te Mamaku's taua, we have said that we consider that the Crown was justified in sending troops to Whanganui in December 1846 to defend the settlers. The Crown was legitimately exercising its kāwanatanga role, at the invitation of Te Anaua, Te Māwae, Tāhana Tūroa, Hoani Wiremu Hīpango, and others. We also find, though, that the Crown was at fault when it refused to extend its protection to Pūtiki Māori. These Māori people were also citizens and allies, and the Crown's kāwanatanga duty equally necessitated defending them.

Had the Crown's response to Te Mamaku's taua been limited to stationing troops in Whanganui to defend the

Chair carved by Pūtiki Māori and presented it to the Reverend Richard Taylor as a personal gift. Taylor's mediation skills and gifts of food helped foster more peaceful relations in the Whanganui area.

settlers and Pūtiki Māori, conflict might have been averted altogether. Grey chose, however, to maintain martial law in Whanganui and did so on dubious grounds. Prior to the attack on the Gilfillans – itself probably a response to the shooting of Hāpurona Ngārangi – Whanganui was at peace. The alarm caused by the arrival of Te Mamaku's taua of October 1846 had subsided. Te Mamaku and his men withdrew far upriver, and there was no other threat to the township. It was this calm situation that led Governor Grey to proclaim in February 1847 that martial law would be lifted on 15 March of that year. He was subsequently persuaded to extend martial law until 1 May 1847, but not in response to any threat from Māori, real or perceived. It was a precautionary move, allowing the military the time it needed to complete its stockade.

Grey made the wrong decision when he decided to delay the lifting of martial law. As he had already recognised, there was no longer any justification for its continuation. He could not have foreseen how his decision would affect how events would unfold after the Gilfillan family was attacked – that his military commander at Petre, Captain Laye, would court martial and execute those responsible, or that this would lead Te Mamaku to lead a taua downriver to menace the soldiers and settlers at Petre. Yet, the summary court martial and executions were a consequence of Grey's decision not to lift martial law. Ironically, these events led to a situation that might have justified a declaration of martial law. But martial law is intended to respond to the breakdown of civil order, not cause it.

War broke out in Whanganui as a result of the execution of those responsible for the attack on the Gilfillan family in late April 1847. No one questions the guilt of the youths taken prisoner, nor that their crime was horrific. Nor can their violence against the Gilfillans be justified as utu: the Gilfillans' attackers were not those whose mana was impugned by what happened to Ngārangi. However, their swift execution following a court martial incited the return of Te Mamaku and a hostile taua.

The war in Whanganui was not especially bloody, and neither side experienced many deaths or injuries. Nevertheless, the conflict hindered the growth of respect and mutual confidence that should have characterised a developing Treaty relationship between Whanganui Māori and the Crown. Peace was restored in 1848, but trust was not – and indeed perhaps the events of that time altered the relationship between the Treaty partners forever. The Crown's military presence in Whanganui in the years and decades that followed was evidence of the Crown's lack of trust in Whanganui Māori, and they in their turn must have felt the possibility that force would be used against them for at least as long as the soldiers remained.

We find that the Crown failed in its duty to provide good government when it

- maintained martial law over Whanganui as a threat when there were no soldiers on hand to enforce it;
- extended it when all acknowledged that there was no current state of rebellion or civil disorder, simply as a precautionary move pending the completion of the stockade;
- by extending martial law created the situation in which Captain Laye was able to deal with the Gilfillans' killers by court martial; and
- executed the Gilfillan murderers without first obtaining the Governor's sanction, which the law of the day required.

We also find that the declaration and maintenance of martial law constituted the unwarranted suspension of the civil rights of Māori in the district subject to martial law, regardless of whether they supported, opposed, or were indifferent to the Crown, or had any connection to events that led to the initial declaration. In suspending their rights in this way, the Crown failed in its duty actively to protect Māori, and breached the principle of good government.

Further, in seeking to assert Crown authority and establish substantive sovereignty over the Whanganui district through force of arms, the Crown breached the Treaty guarantee of te tino rangatiratanga.

We find that the prejudice that Whanganui Māori experienced as a result of these breaches was not limited to loss of life and damage to property. They had to live in a climate of fear and suspicion that the Crown created and fostered, leading to long-term rifts between settlers

and Māori in Whanganui, and also between Māori. The 'rebel' (upper river) versus 'friendly' (lower river) characterisation of tangata whenua had its genesis in this war, as Pūtiki Māori were forced to choose between protecting Pākehā at Petre and aligning themselves with their kin.

Notes

1. Submission 3.3.67, p 37
2. Ibid, pp 2–3
3. Submission 3.3.116, pp 9–10
4. Ibid, pp 12, 14
5. Ibid, pp 30–31
6. Ibid, pp 4–7
7. Ibid, p 35
8. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 32
9. Document A65 (Stirling), pp 277–280
10. Document A65(l) (Stirling supporting documents), pp 4289–4309
11. This place was a mile and a half inland from the Petone foreshore, was west of the river, and was where Ngāti Tama later cut a boundary, intended to show their understanding of the limits of the New Zealand Company purchase: Waitangi Tribunal, *Te Whanganui a Tara*, p 199.
12. Ibid, pp 189–191
13. Ibid, pp 189–190
14. Ibid, pp 209, 213–214
15. Document A65(l) (Stirling supporting documents), pp 4323, 4324, 4326
16. Document A100 (Macky), p 175
17. Waitangi Tribunal, *Te Whanganui a Tara*, p 211
18. Ibid, pp 211–212; Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852* (Wellington: Government Printer, 1968), p 246
19. Wards, *The Shadow of the Land*, p 246
20. Waitangi Tribunal, *Te Whanganui a Tara*, p 212
21. Document A100 (Macky), p 174
22. Ibid, p 176
23. Ibid. Macky considers this number may have been exaggerated in official reports.
24. Wards, *The Shadow of the Land*, pp 273–274
25. Ibid, p 245; Waitangi Tribunal, *Te Whanganui a Tara*, p 211
26. Waitangi Tribunal, *Te Whanganui a Tara*, pp xx–xxi, 205–206, 211, 212
27. According to Richard Taylor, Ngāpara was an uncle of Te Mamaku.
28. Document A100 (Macky), p 176
29. Ibid, p 177
30. Ibid, p 179; doc A65 (Stirling), pp 316–317; see also Wards, *The Shadow of the Land*, p 277
31. Document A100 (Macky), p 177
32. Ibid, p 178; Wards, *The Shadow of the Land*, p 277
33. Document A100 (Macky), pp 181–182
34. Ibid, p 178. Taupō pā was at the northern end of modern-day Plimmerton.
35. Ibid, pp 180, 185, 186
36. Wards, *The Shadow of the Land*, p 285
37. Document A65 (Stirling), p 320
38. Ruth Wilkie, 'Hohepa Te Umuroa', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, William H Oliver, ed (Wellington: Bridget Williams Books Ltd and the Department of Internal Affairs, 1990), pp 513–514. Wilkie says that there were seven captured on this occasion, but Macky says eight: doc A100 (Macky), p 187.
39. Document A65(o) (Stirling supporting documents), p 6148
40. Document A65 (Stirling), pp 320–321
41. Document A100 (Macky), p 186
42. Ibid, pp 186–187
43. Ibid, p 187; doc A65 (Stirling), p 322; Wards, *The Shadow of the Land*, pp 296–298
44. Document A100 (Macky), p 188
45. Document A65 (Stirling), p 323
46. Ibid, pp 322–323
47. Ibid, pp 323–324; doc A100 (Macky), p 188
48. Document A100 (Macky), p 189
49. Document A65 (Stirling), p 324
50. Ibid, p 326
51. Wards, *The Shadow of the Land*, p 273
52. Ibid, p 267 n 1
53. Document A100 (Macky), p 190
54. Document A65 (Stirling), pp 331–333; doc A100 (Macky), pp 190–191
55. Document A65 (Stirling), p 334
56. Waitangi Tribunal, *Te Whanganui a Tara*, p 217
57. Submission 3.3.116, p 3
58. Submission 3.3.67, p 3
59. Document A65(l) (Stirling supporting documents), pp 4368–4376
60. Ibid, p 4376
61. Ibid, p 4379
62. Document A65(l) (Stirling supporting documents), pp 4381–4382
63. Document A100 (Macky), p 203
64. Ibid, p 205
65. Ibid, pp 205–206
66. Ibid, pp 206–207
67. Ibid, p 209
68. Ibid, pp 209–210
69. Ibid, pp 208, 211
70. Ibid, p 211
71. Document A65 (Stirling), p 405
72. Document A65(l) (Stirling supporting documents), pp 4387–4389
73. Document A100 (Macky), pp 8, 170; submission 3.3.116, p 9
74. Submission 3.3.67, p 38

75. Ibid, p 39
76. Submission 3.3.116, p 10
77. Ibid, pp 14, 18–20, 24, 25
78. Ibid, p 12
79. Document A65(n) (Stirling supporting documents), p 5781
80. Document A100 (Macky), p 220
81. Ibid, p 228; see also doc A65 (Stirling), pp 411–412
82. Document A65 (Stirling), pp 411–412
83. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 116
84. Document A100 (Macky), p 181
85. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 117
86. Ibid, pp 117–118
87. Document A100 (Macky), p 178
88. Ibid, p 228
89. Document A65 (Stirling), pp 417–418
90. Document A100 (Macky), p 225
91. Document A65 (Stirling), pp 418–419; doc A100 (Macky), pp 225–226; T W Downes, *Old Whanganui* (Hawera: W A Parkinson & Company, 1915), p 260
92. Document A65(l) (Stirling supporting documents), p 4427
93. Document A65(j) (Stirling supporting documents), p 3038
94. Document A65 (Stirling), p 420; doc A100 (Macky), p 227
95. Document A65(l) (Stirling supporting documents), p 4509; doc A65 (Stirling), p 395
96. Document A65(l) (Stirling supporting documents), p 4509
97. Ibid, p 4507
98. Document A100 (Macky), pp 227–228
99. Document A65 (Stirling), pp 423–427
100. *The Queen's Regulations and Orders for the Army: Adjutant-General's Office, Horse Guards, First of July 1844*, 3rd ed (London: Parker, Furnivall, and Parker, 1844), p 388; see also Wards, *The Shadow of the Land*, p 332
101. Document A100 (Macky), p 232
102. Governor Grey to Earl Grey, 11 May 1847, BPP, 1847–48, vol 43 [892], pp 54–55 (IUP, vol 6)
103. Governor Grey to Earl Grey, 6 July 1847, BPP, 1847–48, vol 43 [892], p 71 (IUP, vol 6)
104. Submission 3.3.116, p 14
105. Document A65(l) (Stirling supporting documents), pp 4418, 4421, 4423–4429
106. Ibid, p 4463
107. Document A100 (Macky), p 235
108. Document A65(l) (Stirling supporting documents), pp 4409–4410
109. Ibid
110. Ibid, p 4402
111. Ibid, p 4463
112. Document A65(j) (Stirling supporting documents), p 3045
113. Document A100 (Macky), p 243
114. Document A65(j) (Stirling supporting documents), p 4411
115. Document A100 (Macky), p 243
116. Ibid, p 244
117. Document A65(l) (Stirling supporting documents), p 4417
118. Ibid, p 4416
119. Document A65 (Stirling), pp 439–440; doc A100 (Macky), p 244
120. Document A65(l) (Stirling supporting documents), p 4421
121. Document A65 (Stirling), p 440
122. Document A100 (Macky), p 244
123. Document A65(l) (Stirling supporting documents), p 4436
124. Document A100 (Macky), p 250
125. Document A65(l) (Stirling supporting documents), p 4452
126. Ibid, pp 4510–4512
127. Ibid, pp 4453–4454
128. Ibid, pp 4434–4435, 4441, 4445, 4446, 4454
129. Document A65 (Stirling), p 430
130. Document A65(l) (Stirling supporting documents), pp 4510–4512
131. Governor Grey to Earl Grey, 28 December 1847, encl 3 (*An Ordinance to Indemnify the Officers of Her Majesty's Forces and Others for All Acts Done by them under Certain Proclamations of Martial Law*), BPP, 1847–48, vol 43 [1002], p 68 (IUP, vol 6)
132. Document A65 (Stirling), p 455
133. Document K12(b) (Taiaroa supporting documents), pp 3–4
134. Document A65 (Stirling), p 456
135. Ibid
136. Ibid, p 457
137. Document A100 (Macky), pp 255–256
138. Ibid, pp 247–248
139. Wards, *The Shadow of the Land*, p 349
140. Document A100 (Macky), pp 255–256
141. Document A65(j) (Stirling supporting documents), p 3060
142. Document A65(l) (Stirling supporting documents), p 4467
143. Document A65(j) (Stirling supporting documents), p 3066. Stirling assumes that this was Tāhana Tūroa, but it is doubtful that this description could apply to him: see doc A65 (Stirling), p 477.
144. Document A65 (Stirling), p 477
145. Document A100 (Macky), p 261
146. Document A65(l) (Stirling supporting documents), pp 4470–4472
147. Document A100 (Macky), p 262
148. Document A65(l) (Stirling supporting documents), p 4473
149. Ibid, pp 4478–4481
150. Ibid, p 4483

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CHAPTER 7

THE WHANGANUI PURCHASE

7.1 Introduction

The first significant engagement between Whanganui Māori and the Crown following the establishment of peace in Whanganui in February 1848 came with the Crown's attempt to finalise the New Zealand Company's Whanganui purchase. Donald McLean, who had been the Crown's primary negotiator during its 1846 purchase process, was instructed to negotiate not only with the Government's allies, but also with the taua chiefs of the 1847 war 'as if they had never been in "rebellion"'.[1]

McLean returned to Whanganui in early May 1848 to reopen negotiations, survey the boundaries of the Whanganui block, set out reserves for Māori, and organise the payment of £1,000 compensation to Māori as recommended by Commissioner Spain.[2] Whanganui remained tense during these negotiations. Military were still garrisoned at Petre, and relations between groups of Whanganui Māori were affected by their different alliances. Nevertheless, in late May 1848, many Whanganui Māori signed a deed alienating over 89,000 acres (minus reserves). Spain had, of course, recommended that the Crown should facilitate the company's purchase of 40,000 acres, less reserves to be set aside for Māori.

The Crown, in its opening submissions, made the following concession:

> The Crown acknowledges that the Crown's 1848 Whanganui purchase was represented by the Crown to Whanganui Maori as the completion of Commissioner Spain's recommended award. In purchase negotiations, however, the Crown failed to inform Maori that the area they surveyed and purchased greatly exceeded Spain's 40,000 acre award. This did not meet the standard of good faith and fair dealing that found expression in the Treaty of Waitangi, and this was a breach of the Treaty of Waitangi in its principles.[3]

We welcome this concession. It conforms with our own view that the Crown hid from Whanganui Māori the fact that the 1848 purchase involved more than twice as much land as Spain had recommended. We discuss further below our observation that the Crown's broader submissions seemed to limit the scope of the concession quoted above: in particular, the Crown did not admit that its deception made the purchase invalid or unfair.

In this chapter, we consider the Crown's tactics for gaining Whanganui Māori support for its purchase deed of 1848. We scrutinise its bona fides, and ask what Māori understood they were consenting to. Did they comprehend the permanence of the land loss, and how much land they were losing? We analyse what they gave up in the purchase, and the adequacy of payment and reserves.

7.2 The Parties' Positions

Both the claimants and the Crown agreed that the Crown breached the Treaty when it misled Māori regarding the 1848 purchase. Both parties accepted that Māori were led to believe that the process in 1848 simply involved implementing Spain's recommendations – when, in reality, the land now to be acquired was more than twice the acreage that Spain recommended.

The parties disagreed, however, on most other aspects of the Whanganui purchase. The claimants viewed the Crown's not informing Whanganui Māori of the vast increase in area as only one of several serious shortcomings. The Crown also failed to:

- convey the true meaning of the permanent and complete alienation of land;
- obtain consent from all those with rights to the land;
- increase the compensation Spain recommended, even though the area was vastly larger; and
- reserve for Māori all the land they were entitled to keep.

The Crown considered that, its admitted failure aside, the Whanganui purchase of 1848 was conducted fairly and openly and that Whanganui Māori accepted the terms of the alienation.

7.2.1 What the claimants said

The claimants submitted that Whanganui Māori could not have understood the permanency of the alienation: rather, they saw the purchase in customary terms, believing that they were taking part in an exercise of manaaki (the ethic of hospitality). While some rangatira had some sense of the nature of the transaction, none would have understood that it entailed giving up rights absolutely. In the claimants' view, there were no tikanga for land alienation of the kind the Crown intended.[4]

The claimants submitted that the Crown's approach to the purchase in 1848 breached its Treaty obligations to Māori, including those of partnership, to protect them actively, and to act with the utmost good faith. The continued presence of Crown troops in Whanganui in 1848 was an aggressive form of diplomacy reflecting the recent precedent of Crown violence against non-sellers in the Hutt Valley. They asked us to consider whether the presence of these troops affected the purchase negotiations and whether the Crown was extending its authority by 'enforced' purchase.

The claimants contended that the price Whanganui Māori received for their land was low and this has been detrimental to their welfare. The land owners did not object to the £1,000 payment for the Whanganui block because they did not know that the area had expanded.[5] Also, Whanganui Māori placed huge importance on the supposed collateral benefits of the sale, such as the development of infrastructure and trade opportunities, but these were illusory because McLean used predictions and promises cynically to achieve his aims.[6]

As to reserves, the claimants submitted that the Crown denied Whanganui Māori the reserves in the Whanganui block to which they were entitled. It recognised that pā, cultivations, and other sites should not form part of any grant to the company, but there was no system for identifying these places.[7] This was made worse by efforts to reduce the amount of land reserved: Spain recommended reservation of one-tenth of the land, with Māori also retaining their cultivations, pā, and urupā. In practice, the acreage reserved was much less than a tenth, and tangata whenua were pressed to give up important areas. The Crown's approach breached its Treaty obligations of partnership, to act with utmost good faith, and actively to protect Whanganui hapū.[8]

7.2.2 What the Crown said

As already stated, the Crown conceded that it breached the Treaty and its principles when it told Whanganui Māori that the purchase implemented Spain's recommendations when really it was acquiring more than twice the amount of land that Spain recommended. The Crown accepted that, if it had told Māori that the area had more than doubled, they would have sought more money, but 'the prejudice that has arisen from the failure to inform Māori of the increase in the boundaries cannot be assessed today'.[9]

The Crown submitted that, apart from the deception about the expanded area, the purchase was reasonable and Treaty compliant.[10] In particular, 'despite having its genesis in the 1840 transaction', the 1848 purchase of the

Whanganui block 'should properly be viewed as an independent / stand-alone transaction to which Maori in 1848 gave fresh and valid consent'.[11] Thus, the terms of the 1848 deed, including the boundaries of the block, payment, and reserves, resulted from fresh negotiations that were conducted openly and fairly.[12]

As to whether Whanganui Māori fully comprehended the sale of land, the Crown contended that in 1848 they 'understood the nature of permanent alienation'.[13] The speeches of rangatira during the three-day hui preceding the deed signing demonstrated their mental grasp of the transfer of ownership of the block. Interactions with Europeans at Petre and exposure to events in the Hutt Valley would have furthered their understanding.[14]

The Crown also said that the 1848 purchase reflected the desire of Whanganui Māori to partake in the development of the colony and benefit from Pākehā settlement. Sale of their land – at a time when they had plenty of it – was a means of achieving this end.[15] Collateral benefits were the real payment for the land, the Crown argued.[16]

The Crown submitted that the reserves were adequate: they comprised nearly 10 per cent of the area purchased; Māori selected them; and they comprised quality land in strategic locations.[17] The Crown accepted that more land would have been reserved for Māori if Spain's recommendations had been followed. It argued, however, that as the 1848 transaction was a new transaction, the Crown and Māori were free to renegotiate the provision of reserves, which is what they did.[18]

Donald McLean, the negotiator of the Whanganui purchase in 1848

7.3 Final Negotiations in 1848

7.3.1 Lingering tensions from the 1847 conflict

When McLean returned to Whanganui in 1848 to negotiate the purchase of the Whanganui block, he soon encountered tensions left over from the political events of 1847. There was anger about how Pākehā 'justice' had dealt with wrongdoers: Ngāti Ruakā of Tawhitinui and Pukehika resented the treatment of their four rangatahi (youths) who had attacked the Gilfillans; Ngāti Hāua were still incensed about the execution of Te Whareaitu; and 'Ngaiariki' (Ngā Ariki or Ngā Wairiki?) wanted utu for earlier events, and would kill Pākehā to that end.[19] Māori distrusted the Crown and settlers, none more so than Te Mamaku, a leader of the 1847 taua, who was wary of approaching Petre without a European escort until at least 1851.[20]

The military maintained a significant presence in the town, and right up to November 1848 it searched every canoe coming down the river.[21] Soldiers began occupying newly completed blockhouses in January 1849. As late as July 1849 – 14 months after the purchase deed was signed – no settlers were willing to occupy their rural sections, despite the security supposedly provided by the presence of a garrison.[22] The garrison occupied Petre for many years.

Despite the tense atmosphere, many lower-river Māori were anxious to complete a transaction, and receive the long-promised payment.[23] Barter was the most common form of trading, and it is difficult to know how many knew the value of money, but some chiefs recognised that £1,000 was a token sum. For many, the main focus was the trading opportunity offered by a town full of European settlers. The people at Tunuhaere Pā, for example, told McLean that they wanted the land filled up with Europeans.[24] There was another collateral benefit of the purchase: the presence of a large settler population would pacify the district. McLean reported that many chiefs desired that 'troublesome and ill-disposed natives might from seeing a numerous body of Europeans be overawed and deterred from any attempt to disturb the future peace and tranquillity of the district'.[25]

7.3.2 McLean's approach to negotiations

McLean was 28 years old when he arrived in Whanganui to complete the transaction that Symonds abandoned two years before. Although young, he had already negotiated the purchase of Tataraimaka, Ōmata, and Waitara for Grey in Taranaki in 1847.

(1) *McLean's instructions*

McLean's direction to complete the Whanganui transaction came from Edward John Eyre, Lieutenant Governor of New Munster. The New Zealand Constitution Act 1846 saw the country divided into the provinces of New Ulster (comprising all of the North Island north of a line running west to east from the mouth of the Pātea River) and New Munster (comprising the remainder of the North Island and the South and Stewart Islands). Eyre made clear to McLean that he was not to conduct a wholly new purchase in Whanganui. Rather, he must 'complete the purchase of the land awarded to the company by Spain in 1844'.[26] Eyre told McLean that the instructions given to Symonds in 1846 must 'form the basis of any negotiation' and 'if possible should be strictly adhered to'. However, McLean should also ascertain 'as accurately as he can the exact arrangements the natives are willing to enter into', and he had latitude from the company to adjust 'minor details' so he could decide matters on the spot.[27] Thus, McLean's task in 1848 was not simply to carry out Spain's recommendations: he should test the limits of what Māori would accept.

McLean's brief was demanding: secure Māori agreement to the boundaries of the block, identify all those with interests in it, and gain their consent to alienate those interests, and all the while keep demands for payment inside Spain's £1,000 recommended compensation.

(2) *The circular*

McLean prepared the ground by sending around a circular Eyre had sent him, which invited recipients to

> talk to each other about the Land that has been declared for the Europeans, that is you should make known to Mr McLean the names of the people and of the tribes to whom the land really belonged originally that there may be no confusion or mistake in dividing the payment for the Land. Rather let the payment be given to those to whom the Land actually belongs. It is not right for those who have no Claim to the Land to bring forward or say they have any. No that will not be straight, the payment is not intended for those who have no right to it, neither is it intended for one person, but for all those who have real Claims to the Land . . . [description of boundaries follows]. Friends, let your thoughts and actions respecting this Land be straight, and distinctly made known to Mr McLean, the people to whom it really belongs. That is all my words to you, From your friend, The Governor.[28]

But when Alfred Wills, the New Zealand Company's surveyor, told Colonel Wakefield about this circular, he claimed that it

> called on all bona fide claimants to land within the New Zealand Company's Block to communicate with Mr McLean, – warned pretenders from putting forward invalid Claims, stated that the payments was [*sic*] not to be made to one or a few great chiefs but was to be divided amongst all – that it was a last payment and intended for those whose claims had not

> previously been extinguished, and that the amount of compensation money was £1000 – The outside boundaries of the land required for the Europeans were then described in the letter which concluded by calling on the natives 'to be straight' in their talk with Mr McLean and enjoining the natives of all the tribes to come in at once with their claims.[29]

Wills's account described a more predetermined process than the circular itself, and in fact closely forecast what happened.

(3) *McLean's theory of Māori land tenure and negotiations*

McLean was well informed about some aspects of Māori land tenure – he commented, for example, that the

> claims of natives to the forest are distinctly defined, and even the trees of the forest, are claimed by respective owners . . . The Kuku or pigeon the kaka and Tui have distinct owners to [the] trees on which they are ensnared.

McLean also knew about gifts of land, the tribute or 'first crop' owed to the giver, and the fact that, if abandoned, gifted land 'reverts to the original owner'.[30]

But, in Taranaki, McLean had really struggled to establish who owned what land and, by 1848, had come to the view that identifying the owner of a particular piece of land was just too time consuming.[31] Now, instead of 'ascertaining the exact claimants to a spot of land' he would make 'a general payment, to see that all the claimants are satisfied'.[32] Historian Michael Macky characterised this policy as 'a matter of expediency' to ensure secure possession for the settlers.[33]

McLean's understanding of land tenure emphasised the rights of individuals rather than collectives such as hapū. He also considered that

> the chief has no exclusive rights but what he claims in common with other males of the tribe and any prominent part he takes in disposing of land is entirely owing to the admission of superiority by his tribe of his right to take part in the disposal of it.

McLean said that chiefs did not arbitrate quarrels between individuals unless the quarrel became general; the chief might advise against quarrelling in such cases, but his advice might be ignored.[34]

In Whanganui, he resolved to 'let all who have claims freely participate without distinction of rank or race [iwi?] as both of these are too much overrated in land negotiations'.[35] He preferred to ignore iwi and hapū divisions, and told Whanganui Māori that he 'wished to see all the different tribes unite as one in giving up their land to the European'.

(4) *Negotiations get under way at Petre*

The first two weeks of May 1848 saw McLean contacting and meeting those with claims to the land in Whanganui. Māori near Petre were still divided into three parties, he noted: 'those of Putiki, Pehi & Mamaku's party, and the Aramoa [Aramoho] party'. It was these groups, McLean thought, along with Māori from Whangaehu and Kai Iwi, who 'must be paid to ensure any safety or secure possession to the unfortunate settlers'.[36]

On 3 May, McLean sent notices with the circular to Hōri Kīngi Te Anaua, Te Māwae, Hīpango, Kāwana Paipai and his relative, Iharaira, and 'all other claimants to the lands for the Europeans at Whanganui'. The same day, he distributed the same to Āperahama Tīpae at Whangaehu, and to Te Pēhi Tūroa II (Pākoro), Tāhana Tūroa, Ngāpara, Te Mamaku, and Hāmārama, all associated with Te Patutokotoko. On 4 May, he had a conference with some Ngāti Ruakā and sent a letter to Tunuhaere. On 5 May, he wrote to a list of six chiefs apparently living north of the river at Kai Iwi or among Ngāti Ruanui, and at Tunuhaere he wrote to 'Hakaria' (Hakaraia?) and Tarewa (Tauria?). He also wrote to Rangitauira of Pīpīriki and Mateongaonga. On 7 May he recorded that 'all notices to the natives [were] delivered this forenoon'.[37]

McLean met with those he considered the principal land claimants on 9 May. This included the Tunuhaere and Pūtiki chiefs, and Rangitauira, Tāmati Aramoho, Āperahama Tīpae, and others. Two days later, he met with two chiefs of Ngāti Pāmoana, Tarewa and Pāora or Paori

(also known as Mare or Muri), and also with 'Hakaria' (Hakaraia Kōrako?) of Ngā Poutama. McLean estimated the combined total of Ngā Poutama and Ngāti Pāmoana males at 200 and recorded their boundaries as extending from 'Karanui', the stream known as Churton's, to the Mangawhero River; they included Harrison's land, and extended to Kaikōkopu on the township side of Tūtaeika. He also identified the boundaries of the land that Te Anaua and Te Māwae claimed.[38] On 12 May, he reported to Eyre distribution of the circular to Ngāti Apa, Ngāti Ruakā, Te Patutokotoko, Ngāti Rongomaitāwhiri, Ngā Rauru, Ngā Poutama, and Ngā Paerangi.[39]

Thus, McLean spent the first three weeks of May 1848 informing Whanganui Māori of his intention to proceed with the purchase, and with establishing the western / Kai Iwi boundary of the block. In a copy of a draft report to Lieutenant-Governor Eyre that was among his personal papers, McLean wrote:

> Finding that the external boundaries of the block were now clearly understood by the natives & that from the several meetings and conversations I had with the greater number they had become familiar as to the mode of settlement to be pursued, I gave notice that I should hold my first public meeting on the next Friday when I expected all the natives to attend and that on the following Monday I intended to distribute the compensation money.[40]

(5) *The meeting of 25 May 1848*

McLean held his first, informal meeting on 25 May. He claimed that there were 600 Whanganui Māori present, most of whom had marked the solemnity of the occasion by wearing their finest cloaks or clothes. The Reverend Richard Taylor estimated the number at upwards of 300. McLean recorded that each hapū or iwi formed a group in the circle in front of the Commercial Hotel:

> When assembled I told them to give free expression to their sentiments regarding the final transfer of their land to the Europeans which I was aware the majority of them had agreed to part with now I wished to hear [illegible]. The speeches made by the several chiefs and natives who spoke were most favourable, they said they were satisfied with the arrangements made that they had cried, wept over and bade a final farewell to all the land for the Europeans and what they were now most anxious for to see was the Europeans to occupy the land that troublesome and ill disposed natives might from seeing a numerous body of Europeans be overawed and deterred from any attempt to disturb the future peace or tranquillity of the district.[41]

Taylor also attended this meeting. He was in Whanganui throughout May 1848. Eyre had asked him to help McLean, which he did by providing hospitality and secretarial services for McLean, hosting meetings, and vetting the final deed. Taylor recorded that each hapū consented to the deed unanimously, with some 80 Māori (including all the principal chiefs) signing on 25 May, and the rest expected to do likewise the following day. He wrote in his journal:

> I should doubt whether any purchase made by Govt has been so generally agreed to as this, Mr Maclean having given publicity and time for all those belonging to the land to assemble. Afterwards 9 bags of flour and one of sugar were given on Monday it is to be paid for the block now sold contains 80,000 acres for which £1000 are to be paid that is –/3d per acre. I fear when this is divided amongst so many individuals they will be disappointed.

Those Taylor considered 'the principal chiefs' gave speeches before the signing, and he recorded what they said. Hakaraia Kōrako twice asked, 'do you all consent to give up the land?' to which all replied, 'Yes'. Hoani Wiremu Hīpango asked if all consented to 'give up their sister? All agreed.' Like Te Māwae (whose speech is discussed below), Hīpango used the metaphor of marriage: he also said, 'now the land is married, before it was not, there was no sale because the parties were not agreed'. Kāwana Paipai, Tāhana Tūroa, and Pēhi (Pākoro) Tūroa

spoke as well. Interestingly, Tāhana said that it was 'for Geo. King [Hōri Kīngi Te Anaua] and Mawai [Te Māwae] to sell the land it rested solely with them'. Pēhi said 'listen you men of Waitotara, the land is sold, come and see the giving up of it'.[42]

McLean's report to Eyre on the meeting of 25 May recorded that he left with Taylor a map of the purchase for the information of the vendors. However, there is no clue as to which day he left it there. The map had the following inscription:

> E waiho ana tenei pukapuka ki a te Teira hei tirohanga mo Ngati Ruaka mo Nga pairangi mo Ngapoutama mo Te patutokotoko mo Ngati hau mo nga tangata katoa o Ngati apa; o Kai Iwi hoki hei pukapuka whakamahara tonu mo ratou i nga rohe o te whenua kia oti i a ratou te tuku mo nga pakeha[43]

> This document is left with Mr Taylor, for Ngāti Ruakā, Ngā Paerangi, Ngā Poutama, Te Patutokotoko, Ngāti Hau and all the people of Ngāti Apa and also of Kai Iwi to view as a permanent reminder to them of the boundaries of the land of which they have completed the gift (or cession) for Pākehā.

We particularly note McLean's use of the words we have translated as 'completed the gift or cession' for Pākehā. We discuss below the concepts of tuku and cessions of land as contemporary officials understood them.

(6) *Distribution of the purchase moneys*

Taylor also witnessed the handing over of McLean's payment of £1,000, first recommended by Spain in September 1843 as the compensation due to Whanganui Māori for the loss of their land. Taylor recorded that Hōri Kīngi Te Anaua apportioned the money to the different hapū, doing so 'most equitably' and with no confusion. He commented that 'Great praise is due to Mr Maclean for the kind and judicious way he has acted throughout this long pending affair.'[44]

McLean's wish to satisfy all claimants meant that the £1,000 had to be distributed among a greater number of chiefs than was planned in 1846. In 1848, the Pūtiki chiefs, plus the Waipākura/Pūrua chiefs of Te Patutokotoko (McLean designated both groups together as 'the Wanganui people'), 'considered that they were alone entitled to receive the amt publicly and expressly awarded to them [by Spain]'. McLean wrote to Eyre that they 'consider no doubt that injustice is done to them by not adhering to the Commissioner's award'. Historian Michael Macky made the very good point that Whanganui Māori may not have appreciated the extent to which 'Spain's award' incorporated the land of other iwi, especially since at the time and in 1848 they were still unaware of the boundaries of Spain's recommendation.[45] During May 1848, as the survey progressed, the chiefs would have gradually become aware of the boundaries – if not the acreage – of the land now being incorporated in the transaction.

The surveyor, Wills, recorded that by 26 May, the day that the deed was actually signed, Te Māwae and the other Pūtiki chiefs, and the chiefs of Te Patutokotoko, were pleased they had had sufficient opportunities to discuss their claims in meetings to decide relative interests. They agreed that McLean would make payments of between £140 and £20 to 12 hapū. By the next day, however, McLean had increased to 15 the number of hapū that required payment. This meant that the chiefs who signed on 26 May did not know and could have agreed to the sums they actually received in the distribution on 29 May.[46]

The payment was eventually distributed to 15 hapū groups, as shown in table 7.1 below.[47]

Although distribution of the purchase moneys seems to have gone smoothly on 29 May, there was some discontent afterwards. By 2 June, Te Patutokotoko were unhappy with Te Anaua's failure to announce publicly the amounts of their payments. Macky considered that Te Patutokotoko may have suspected that the Pūtiki chiefs had received more than their fair share. He noted that although Te Patutokotoko had been involved in McLean's process that determined the distribution of the payment, 'the method by which this process reached its conclusion was not transparent to them.'[48]

Iwi or hapū	Payee	Amount (£)
Ngāti Tūmango	H W Hīpango	40
	Hone (Tūmango?)	50
Ngāti Ruakā	Te Rangiirunga	50
	Te Māwae	90
	Keepa (Kemp)	10
Ngā Paerangi	Kāwana Paipai and Iharaira	50
	Toa	50
	Rangitauira	10
Ngāti Rongomaitāwhiri	Kātene	50
Te Opokotia	Takarangi	50
Ngāti Pā (Pāmoana)	Pāora Muri	50
Ngā Poutama	Hakaraia (Kōrako?)	50
	Mete (Kīngi?)	50
	Tawera Waka	50
Ngāti Tawera	Tāmati	50
Te Patutokotoko	Tāhana Tūroa	50
Mangawhero (Ngā Wairiki)	Anaru (Tūmanako?)	20
Whangaehu (Wairiki / Apa)	Āperahama (Tīpae)	80
Pātea (Ngā Rauru?)	Hōri Pori	20
Kai Iwi	Te Mumu (Tāmumu)	70
Ngāti Rangipotaka	Ēpiha (Pātapu?)	50
Ngāti Hāua	Hāmārama for Te Mamaku	10

Table 7.1: Distribution of McLean's £1,000 payment

(7) *Difficulties at Kai Iwi*

McLean drove a hard bargain with the peoples of Kai Iwi regarding their rights in the Whanganui block. He met with Ngāti Tamareheroto and other tangata whenua groups of the Kai Iwi district early in May, and reported to Eyre:

> The greatest trouble I have yet encountered has been with a petty body of Kai-iwi claimants who seem to have enlarged and extended ideas of their rights to the land on which whatever may have been their original claims they have only established themselves since Mr Symonds was here in 1846. I expect with the assistance of the Wanganui natives who appear indignant at the pretensions of this party to be enabled in a few days to reduce them to a proper understanding.[49]

McLean gave a different account of this meeting in a draft report (likely prepared in September 1848):

> The Kai Iwi claimants gave considerable trouble about their land and offered several objections to the Kai Iwi or northern boundary being cut according to the map, as the majority of the claimants had not been previously consulted as they had no desire to dispose of their land and as they did not consider the amt of compensation money formerly offered to the Wanganui natives, should be sufficient for their claims, also which were entirely distinct from those of the Wanganui people and that they did not consider themselves in any way bound to recognise imaginary boundaries on maps or papers which were never shewn or explained to them & respecting which they were never in any way consulted or their consent as owners of the land obtained.[50]

He continued:

> Having reasoned with them & told them that they were now duly consulted respecting the boundary[,] that I had sent a policeman to invite the [Te] Hapimana of Kaupukunui the most distant claimant among them to appear & that as I was aware of their distinct claim that it should be distinctly treated as regard to the payment of the compensation . . . that I should require them to attend at the meeting to be held with the Whanganui natives.[51]

According to Wills, the surveyor, McLean managed to moderate considerably the ideas of the Kai Iwi people as to the amount of compensation they would receive.[52]

Later, the same people crossed swords with McLean about the survey of their land, but he would not allow their objections to slow his progress. He told them that he could not delay cutting the boundary 'as laid down in Mr Spain's map', and that those who did not want the boundary cut should go to Petre, where he was to meet with all the claimants. Several of the Kai Iwi party, including 'Te Mumu' (Aropeta Tāmumu of Ngāti Tamareheroto

Tunuhaere Pā, 1849. Māori living at the pā, which was perched on the cliff tops above the Whanganui River, wanted European settlement for the trade that would result.

and Ngāti Iti[53]), Paturopo, and other chiefs, accompanied McLean during the boundary survey, warning him and the surveyors whenever they felt the survey was 'encroaching too much on [their] land'.[54] However, despite their care, the Kai Iwi boundary would be the cause of confusion and conflict in later years. Historian Michael Macky told us that the survey of this boundary was 'contentious' and that it is difficult to know now exactly what happened.[55]

In 1855, a dispute arose between Kai Iwi Māori and the Crown over the location of land claimed by a settler (Hewett), land relative to the Kai Iwi boundary. Kai Iwi Māori said that it was outside the purchase block and could not, therefore, be the settler's land. Crown officials contended that from Mōwhānau the boundary went straight inland to where it bisected the line cutting west from Tunuhaere. The Kai Iwi people agreed that the boundary commenced at Mōwhānau, but from there the line curved in at places, including around the settlers' claim. An entry in McLean's diary confirmed this as the boundary given by Kai Iwi Māori: he recorded that they watched the boundary for encroachment every step of the way. In addition, when McLean returned to sort out Hewett's claim in 1855, he felt constrained to pay out £10 for some land at Kai Iwi. A week later, he paid £47 for 300 acres there.[56] These payments acknowledged that the Kai Iwi people's objections were justified.

Macky thought that McLean probably took insufficient care in 1848 to ensure that the location of the Kai

Iwi boundary was agreed,[57] and the dispute of 1855 was a direct result. For his part, McLean blamed the boundary problems on the absence of a New Zealand Company surveyor during its survey – but in fact Wills, the New Zealand Company surveyor, was there in 1848.[58]

We think it likely that McLean's lack of care regarding the surveying of this boundary reflected the demands of the task he had been given. He had to establish interests and finalise boundaries concurrently and under intense time pressure. Delay was not an option. In such circumstances it was inevitable that he would make choices and cut corners, and that disputes would sometimes later arise. It was Whanganui Māori who bore the brunt of this.

(8) *Other aspects of McLean's approach*

McLean's meetings with Whanganui Māori made this one of the better examples of Crown purchasing practice of the time. However, his methods were far from perfect. He took a hard line with those who opposed aspects of the transaction, refused the requests of some, and just would not meet with others.

McLean's reluctance to accede to chiefly authority made his negotiating style very particular. Of course, he had to recognise rangatira to some extent, not least because the £1,000 had to be paid to chiefs as representatives of hapū, but he refused to negotiate with them exclusively. He dismissed chiefly rivalry and inter-iwi tensions as 'petty squabbles', 'troublesome dispositions', 'strong jealousy', or, in the case of Te Mamaku as 'a desire to make himself of importance'.[59]

By 22 May 1848, McLean and party had progressed with the boundary through rough country as far as Tunuhaere. There, he left the others cutting the boundary, 'having explained to them where the line we left off cutting would [go] from Tunuhaere, which they themselves perfectly understood'. After discussing reserves at Ngāture, he called at Waipākura where Te Pēhi Tūroa, Ngāpara, Hāmārama, and other Te Patutokotoko chiefs had arrived from upriver. He found them 'less decided about selling their land than those of Tunuhaere'.[60]

Te Patutokotoko chiefs agreed to attend a public meeting McLean had planned for the following Friday, but insisted that this meeting would be 'altogether distinct' from McLean's with the Pūtiki people. McLean said no, because he

> desired to see them and every tribe who were interested in the land meet together and unanimously agree in [the] presence of each other to give up their land for ever & that altogether a strong jealousy existed I would undertake to reconcile it to the satisfaction of both parties.[61]

McLean claimed to have accomplished this on the day before his Friday meeting.[62]

McLean's refusal to meet separately with Te Patutokotoko when he had met separately with the peoples of Kai Iwi, Tunuhaere, and Whangaehu seems quite unreasonable. He was probably hoping that Te Patutokotoko would not be able to maintain their resistance in a meeting where others supported the transaction:[63] public pressure and past rivalries would pressure the doubters into giving him the outcome he wanted.

The Crown submits that McLean was conducting a fresh transaction in which he hoped to gain the consent of all the interest holders to boundaries decided through open and honest negotiation. This was not the case. McLean was attempting to enforce the boundaries of a transaction already initiated in 1846: those were in fact his instructions. Many Whanganui Māori had been prepared to accept the terms of this deal in 1846, but others now involved had taken no part then. McLean needed them all to consent. He was also trying to discover what today we would call the Māori bottom line. His mission was to ensure that the Crown met its commitments to the New Zealand Company at the least possible cost. When claimant counsel cross-examined historian Michael Macky, he agreed that this was McLean's priority.

Ensuring that the interests of owners in the Whanganui block were properly identified and given effect was correspondingly a lesser priority.

7.3.3 Understandings of the extent of the block

In light of the Crown's characterisation of its deception about the actual size of the 1848 transaction as ultimately unimportant, we now explore more fully:

- what Whanganui Māori did understand about the area comprised in the 1848 transaction;
- how this informed their approach to the negotiations;
- what they consented to sell; and
- long-term consequences.

(1) *Evidence on the boundaries of the Whanganui block*

Evidence from 1848 does not clarify whether Māori were aware of either the extent of the block in Spain's recommendation or the doubling of the area transacted in the 1848 purchase.

The Reverend Richard Taylor, who assisted McLean, was certainly aware of both, recording that the delay in concluding the purchase had however 'been paid for with interest, instead of the original block of 40,000 acres, 80,000 [acres] are now secured, for which the natives have been paid at the rate of 3d per acre'.[64] Taylor apparently thought it was fair that Māori were now giving up more land, because he blamed them for the drawn-out purchase process. He made no comment on whether the Māori vendors understood that the Crown was purchasing twice as much land with no increase in price.

The Crown contends that McLean took reasonable care to ensure that the boundaries of the purchase were generally understood. The evidence of historian witnesses Stirling and Macky suggested, though, that this was not the case. They told us that McLean did not take sufficient care to ensure that Māori understood and consented to his survey of the western (or Kai Iwi) boundary, and tangata whenua later challenged it.[65]

Other boundaries were also unclear in 1848. Changes were made to the eastern (or Whangaehu) boundary after the deed signing, and the northern or inland boundary had not been surveyed at all when the deed was signed. When the Crown surveyed this boundary in 1850, it did not follow the deed description, which included some but not all natural features. McLean reported in July 1850 that 'Where practicable the boundary line has been directed along ridges and other prominent features of the country till it reached the Markiri Kiri stream which forms an excellent natural boundary for several miles.' McLean claimed that Māori

> sanctioned the running of the line along the most prominent natural features of the country, conceding without further remuneration a considerable enlargement of the purchase as indicated on the sketch herewith enclosed.[66]

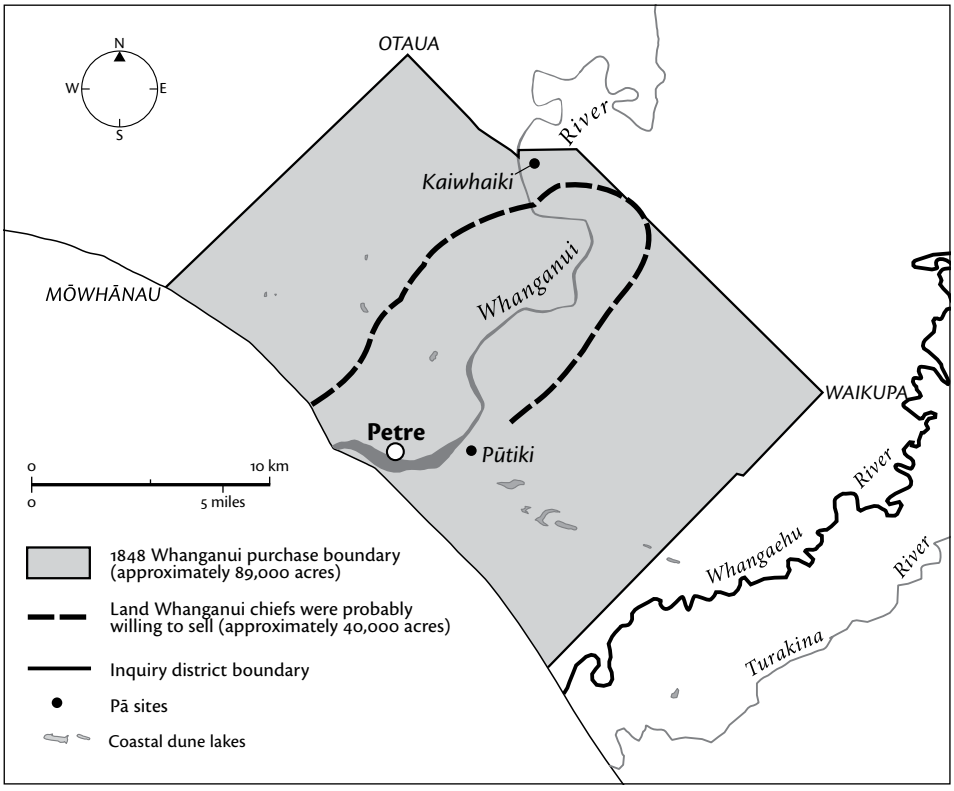
Why Māori landowners would have agreed to yield up what McLean called a considerable enlargement without further payment is unknown.

This evidence leads ineluctably to the inference that Whanganui Māori were not sure – indeed, could not have been sure – of all the boundaries of the Whanganui block in 1848.

(2) *No wholesale objection to boundaries afterwards*

At the same time, it must be noted that we saw no evidence of wholesale opposition to any of the boundaries. Portions of boundaries were subsequently disputed and changed, but it appears that Whanganui Māori broadly accepted the boundaries of the purchase. That broad acceptance came about because of this combination of factors:

- McLean initiated discussions about boundaries two years earlier, in 1846 (see section 5.4.10). He met with Whanganui Māori communities then, and secured their agreement to the location of boundaries.
- The purchase concluded in 1848 was not new: McLean was refining terms broadly laid out in 1846.
- This understanding of the 1848 purchase – that is, as a continuation of the one commenced two years earlier – was shared by Whanganui Māori and important Crown personages such as Lieutenant Governor Eyre[67] and Governor Grey,[68] who instructed McLean.
- In both 1846 and 1848, McLean invited Whanganui Māori to understand the process of agreeing boundaries



Map 7.2: Whanganui purchase boundaries

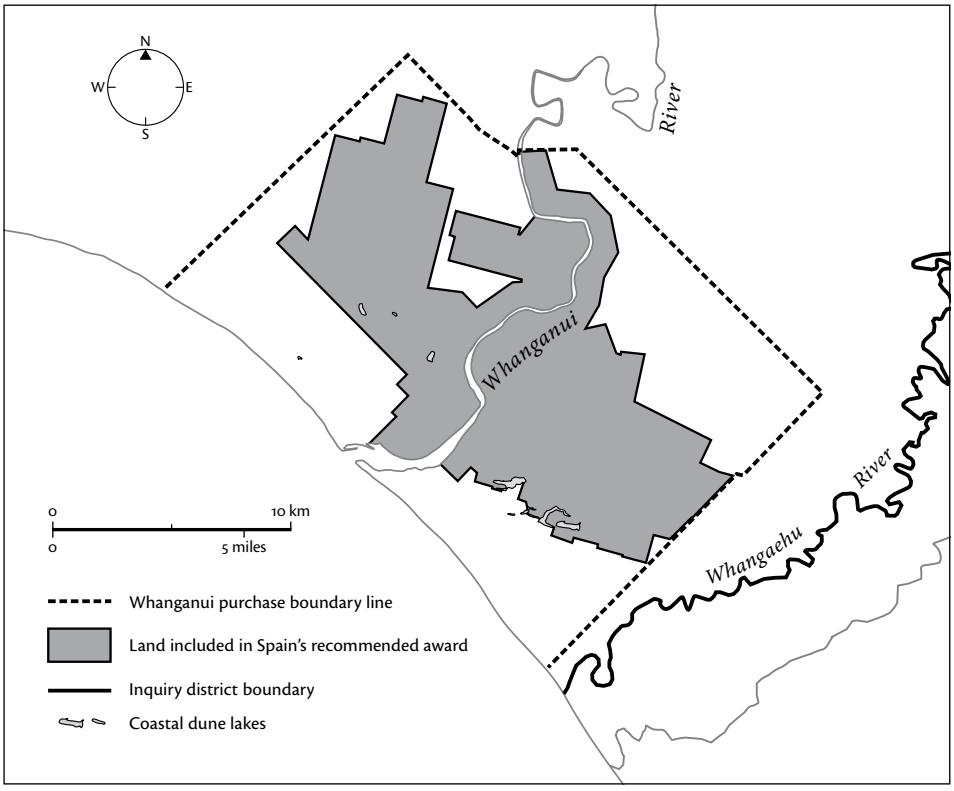
as implementation of Spain's recommendations. It was on this basis that they were willing, in 1846, to accept the boundaries that he laid out, and the £1,000 payment offered.

- It does not appear that Whanganui Māori were ever informed of the details of Spain's recommendation, and even if they were, they had no means of understanding what 40,000 acres – or indeed 89,000 acres – looked like on the ground.
- By 1846, many Whanganui Māori had been awaiting resolution of the company's claim to their land for three years, and by 1848 they were no doubt very anxious to get the whole thing settled once and for all.

A final point to note is that the 1848 deed itself obscured the fact that much more than 40,000 acres was being transacted, because neither the deed nor the associated plan stated the acreage involved. Macky told us that this was unusual, and 'it was very likely a deliberate choice by McLean who would not have wanted Māori to appreciate that the transaction involved more than double the amount of land' that Spain recommended.[69] We agree.

7.3.4 Whanganui Māori's understanding of deed signing

For the claimants, the key issue regarding the transaction of 1848 is whether their ancestors understood it to be a permanent sale of land in the European sense. The claimants consider that, given the relatively few dealings between Whanganui Māori and the Crown prior to the 1848 deed, Māori had limited understanding of the deed and did not fully understand the impact of the transaction. They do not accept that those who signed the deed agreed to 'sell' as that concept is understood today.



Map 7.3: Spain's recommended award to the New Zealand Company in Whanganui

In this section, we consider whether the Whanganui purchase was a political cession or a local treaty, a land sale in the European sense, or a tuku (gift or grant) to the Crown. As a gift or grant, it would be a valid transaction only as long as the terms under which the land was transacted were maintained by both parties.

(1) *Understanding of land alienation through lens of 'tuku'*

'Tuku whenua' was a traditional Māori practice that involved rangatira giving resources – which included gifts of land and permission to occupy land or use it for various purposes – to groups or people from outside their hapū. The term 'tuku whenua' is a modern version of the more common contemporary phrases 'tuku' or 'te tukunga o te whenua'. In the mid-nineteenth century, Europeans observed Māori customary tenure but referred to the institution of tuku as 'land given as a gift' or as 'gifts of land'. 'Tuku whenua' were common practice in the pre-European period and persisted in some areas into the 1840s and 1850s. After contact, the system was extended to some Europeans. Many Europeans, including McLean, either did not know the Māori language term or chose not to use it.[70]

In our inquiry, historian Dr Lindsay Head cast doubt on whether tuku whenua was really a traditional Māori concept. She said that the precise phrase 'tuku whenua' is absent from early Māori language records of land transactions. She told us that she regards this phrase as a modern extrapolation from the phrase '*take tuku*' (right of gift), meaning one of the bases of Māori land tenure listed by early twentieth century scholars.[71] She quoted various scholars who did not use the Māori term 'tuku whenua'

when describing tuku or gifts or grants of land. She may be right to the extent that the precise phrase 'tuku whenua' may be a modern name for the concept of 'take tuku' (although the fact that it is absent from the early written Māori-language sources means little, except that there are few such surviving sources that address the subject of land-gifting). The absence of 'tuku' for gift from the writings of various European anthropologists may mean only that they did not know the name in Māori or preferred to use an English term. We note that Professor Sir Hirini Mead, whose work the Crown quoted in relation to tikanga, refers to the institution of gifting land as 'tuku whenua', and to the land so gifted as 'whenua tuku'.[72]

Like all languages, te reo Māori develops and shifts over time. The fact that modern Māori prefer to say 'tuku whenua' or 'whenua tuku' rather than 'take tuku', or 'te tukunga o te whenua', and 'mana whenua' instead of 'te mana o te whenua', is not a difference to which we attach substantive importance. It is clear that the practice and its various tikanga were described in the 1840s and 1850s by contemporary Māori and early European settlers or officials.

(2) *Understanding of permanency of land sale*

Head suggested that by 1840 Whanganui Māori had adopted the Pākehā understanding of complete alienations of land:

> The change in the culture of land deals between Maori and Pakeha that took place in the north in the 1820s formed the basis of a country-wide tikanga, in part through the rapid communication system that existed between Maori groups. In 1840 Whanganui Maori wanted trade goods and Pakeha settlers, and were prepared to sell land to gain them. It is implausible to think that they did not know that the consequences of land transfer were the permanent presence of people of a foreign culture, who would expect to own their land under their own, foreign, terms of governance.[73]

It follows logically that if Whanganui Māori understood the ramifications of land transfers in 1840, they must have understood them in 1848.

The Crown drew our attention to an 1856 report of a board of inquiry regarding the system of purchasing land from Māori and, more broadly, Māori land tenure. The board comprised Crown officials and drew primarily upon evidence supplied to them by long-time settlers and other officials, including McLean, about the nature of Māori land tenure. Some Māori were also consulted. The report concluded that, although Māori initially adapted their practice of tuku to incorporate land deals with Pākehā, they soon abandoned this in favour of the complete alienation of land sought by settlers. On this point, the report stated that Māori:

> soon, however, ascertained, when a knowledge of their language had been sufficiently acquired by the Europeans, that this sort of Tenure was unsatisfactory; and in all subsequent transactions of the kind, gave written titles in perpetuity, with the right of Transfer.[74]

Drawing upon this conclusion, the Crown submits that in 1840 'Whanganui Maori knew and understood of the permanency of the transfer of land'.

(3) *Unwise to generalise about Māori understanding*

We reject the Crown's submission that Whanganui Māori understood the permanency of land transfers in 1840. We do not consider that either Head's evidence or the 1856 board of inquiry report provides a reliable basis for asserting that they did.

Head's analysis of the situation of Whanganui Māori in 1840 relies on attributing to them attitudes and understandings of land tenure and land transfer inferred from evidence of events in the Bay of Islands region in the two decades prior to 1840. This ignores the reality of the situation that existed in Whanganui at 1840 and for many years after. We agree with what the Hauraki Tribunal said about the unhelpfulness of generalising:

> We consider further attempts to generalise about what Maori intended in pre-1840 transactions to be speculative and unrewarding. There is indeed likely to have been considerable variation in what the Maori transactors understood

> by and intended in their dealings. Even if a customary 'tuku whenua' was intended, there could be considerable variations in the pattern. There are indications in the Maori evidence about customary society, still largely unexplored in scholarly literature, which suggest that the rights of the grantor and grantee varied considerably from case to case, and changed over time.[75]

Although the Hauraki Tribunal made this statement about pre-Treaty transactions, we believe it also applies to Whanganui in the 1840s. We noted in our discussion of the New Zealand Company's attempted purchase in Whanganui that Whanganui Māori involved in the transaction continued to deal with the land as if it were still theirs, placing settlers on it and organising lease arrangements over parts of the block (see section 5.3.3).

Nor can the board of inquiry report be taken as determinative of what Whanganui Māori did or did not understand in 1848. It is suspect for two reasons:

- First, its authors drew on limited and narrow evidence provided primarily by settlers and Crown officials. These people had an interest in upholding the validity of the Crown's extensive land purchases from Māori, and English law required that Māori understood what they were doing in order for those contracts to be valid.
- Secondly, the degree of contact, and the kind of contact, between Māori and Pākehā determined what they knew and understood about each other. This was particular to each part of the country. The evidence relevant to coming to an appreciation of what Whanganui Māori understood about the deed they signed in 1848 is evidence about them and their experience.

We have already concluded that Whanganui Māori did not take away from their signing the New Zealand Company's deed in 1840 the understanding that the company intended. Many Whanganui Māori did not know that a land deal had apparently been completed, because to them what had happened was a simple exchange of goods. All of the English norms of land transfer were entirely new to them, and they had no context within which to see signing a deed as connoting anything at all similar to the way Pākehā saw it. We found that the only probable understanding by Whanganui Māori of what they were doing when they signed was that they were registering their willingness to enter into a new arrangement that involved the coming into their midst of more Pākehā (see section 5.3.2).

So, to what extent had things changed by 1848?

(4) *Evidence about understandings in 1848 patchy*

The evidence about what Whanganui Māori really understood about the deed they signed in 1848 is only patchy. Critically, there is no record of what they said to each other about what was going on. We have snippets of evidence from a range of sources from which we must infer what they probably thought they had entered into.

(5) *General information and personal experience*

Head invited us to go along with the idea that what some Māori knew about the Pākehā's ways could be attributed to many who were not involved, because information travelled fast in the Māori world, then as now. We have rejected this notion as conferring on Whanganui Māori levels of understanding and experience at all commensurate with that of Northland Māori of the period.

Still, it is true that by 1848 some Whanganui Māori would have heard (from other Māori who had travelled) and would have seen (through interaction with Pākehā at Petre and by travelling themselves to Waikanae and Wellington) enough about the new dispensation to be tolerably certain that it all looked significantly different from how things had been in the past. What that knowledge would have amounted to in terms of processing particular events and particular changes in circumstances brought about by, for example, the land purchase of 1848, can be a matter only for speculation. Some would have seen and heard more of the new dispensation than others. Some would have been better at imagining a different future, a different way of being, than others. Our task is to try to get a sense of whether enough of the participants in the 1848 land deed would have had sufficient knowledge and experience of the new Pākehā way to understand that signing the deed meant handing over land ownership forever.

(6) *McLean's observations*

We begin by looking at evidence that comes from Donald McLean himself, who was of course in a better position than most to intuit the Māori mindset at the time of negotiating the 1848 purchase. At the same time, because he had a strong interest in claiming success for his efforts to bind Whanganui Māori to a valid purchase, we must approach cautiously his statements about how he managed the risk that the Māori parties did not comprehend permanent alienation.

The various observations that McLean made in writing about his Whanganui negotiations certainly do reveal that Māori were still coming to grips with the binding and complete nature of the Crown's proposed alienation. He recorded: 'I took every pain in instructing them as to the binding nature, on themselves and posterity, of the engagements they were entering into respecting the transfer of the land.'[76] McLean said that he wrote the deed 'in the most simplest and perspicuous, yet binding, terms that the native language would admit of'.[77]

These statements were primarily self-serving, because McLean was emphasising the lengths he went to in order to manage risks to the sale process. But they also clearly identify those risks: first, McLean's difficulty in using te reo Māori to convey clearly legal notions that were new and foreign but were intended to be binding; and secondly, his grasp that, for Whanganui Māori, 'the engagements they were entering into' were novel. He had to take 'pains' to instruct them as to the permanent and binding nature of the transaction.

We do not know, of course, how he instructed Whanganui Māori, nor to what extent he succeeded in overcoming these obstacles to comprehension.

McLean's comments also reveal another particular rangatira perspective. Some, he said, saw the proposed purchase in terms of mana. What his notes disclose is that the focus of some was not so much on how much land they were giving up, nor what the price was or should be, but on how the process of the purchase reflected on their mana. Proper recognition of mana required not simply that payment was made, but that it was made in a way that properly acknowledged mana. McLean recorded that Te Mamaku's dissatisfaction over his payment arose from the fact that Hāmārama had failed to present it to him formally. In April 1848 McLean warned Eyre of this possibility before negotiations commenced:

> if their share of compensation was not paid over into their own hands . . . that is, if an amount intended for them in satisfaction for their claims was given to any other chiefs to be paid to them, they might not receive it or if they did, they would not consider the money through such channels as binding them to any agreement with Europeans.[78]

Te Mamaku's complaint was not about the money itself, but about the failure to recognise his mana correctly in the process of paying him: he had been intending to return the money to Hāmārama to spend on his behalf. He was also offended because 'as he was a great chief he did not receive two bags of money instead of one, when others received so many'.[79] Again, his concern was that his great mana had been slighted, relative to that of the chiefs of the lower river. Te Patutokotoko chiefs responded similarly.

These concerns about the appearance and process of the payment raise a question about whether there was full understanding of what was actually being transacted. The concern must be that if the preoccupation of these chiefs was with known tikanga and practices – that is, proper recognition of their respective mana in the process of sharing spoils – did they see it at all through the Pākehā prism, in which it was about whether a chief had been paid enough for the interests in land that he was permanently giving up? These anecdotes suggest that at least some Whanganui rangatira were not viewing the transaction through a new prism at all.

(7) *What rangatira said at the signing*

What can we take from what rangatira said at the signing on 25 May 1848? Of course, all of those who were present and who spoke understood what they were doing there, and why they had signed. The question is whether what they understood and why they signed brought their perception to a place where there can be said to have been a meeting of minds between them and the Crown about

what was transacted. The chiefs' speeches, as recorded on the day, give a glimpse into what they might have been thinking.

We quoted earlier the speeches that the Reverend Richard Taylor recorded rangatira as having made at the signing. They signified unanimous consent to giving up the land.

Hoani Wiremu Hīpango's question to the gathering, though, was whether all consented to 'give up their sister' and continued 'now the land is married, before it was not, there was no sale because the parties were not agreed'.[80]

Te Māwae developed this marriage metaphor when he spoke:

> Although our canoe is large and has many in it, yet all are of the same mind so that he had not much to say. Let no-one hereafter infringe upon the lands now about to be sold to the Europeans; you have all heard the boundaries and you know the reserves they are quite sufficient for us, be content to live upon them. Men of Wangaehu [*sic*], men of Whanganui and Kaiiwa [*sic*], the boundary stakes have been driven in, each one bears a chiefs [*sic*] name, they are sacred; it will be a great crime to break through and trample upon this tapu. Men of England now the boundaries are cut don't let them be gone over again, let not the fern grow up over them, lest they again be obliterated, but let plenty of settlers come soon, that property may increase amongst us that we may buy and sell to one another. Remember the land is now married to the white man let them take their bride and let the natives remember if they now intrude it will be a break of the seventh commandment.[81]

These speeches sat squarely within the whaikōrero (formal speechmaking) tradition of expressing ideas through allegory and metaphor. Representing land transfer in terms of a Christian marriage – including reference to the seventh commandment, 'thou shalt not commit adultery' – was an interesting choice. Expressing themselves in terms familiar to Pākehā was certainly a handsome gesture to the European visitors – and, in the case of Te Māwae, it revealed that this chief knew about Christianity in some detail, although in 1848 he was not himself a Christian.[82]

What did Te Māwae mean by this metaphor? In it, the white man is the groom, and the land is the bride, and if natives were to 'intrude', they would break the commandment against adultery. Thus we see a marriage between the Whanganui block and the Pākehā – a marriage that Māori must accept and not interfere with.

The Crown submits that this use of marriage as an analogy for a land sale was clear evidence of Māori understanding that the land was permanently alienated. That seems to us to be an unusual interpretation of what Te Māwae said, because although a marriage does connote permanence, it does not connote alienation. Rather, it seems to us to indicate an expectation that a relationship had been established that was in the nature of marriage, signifying a long-term engagement and connection with Pākehā and with the land. We think it likely that Te Māwae – and Hīpango, who used the same image – had in mind securing a relationship with Pākehā by binding them to the land, thereby encouraging settlement and the trade and prosperity that came with it. Hīpango extended the idea of marriage to the idea of family when he urged the gathered Māori to 'give up their sister' – that is, their land. This language makes more explicit the idea that the land and tangata whenua were together the whānau with which Pākehā were forging a relationship. When Te Māwae invoked the commandment against adultery, he was correlating Māori trespass on the Whanganui block – that is, their insistence on their pre-existing land rights – with adultery, the theft of another man's 'spouse' (his land).

These speeches therefore say to us that at least Hīpango and Te Māwae understood that Whanganui Māori were entering into a permanent arrangement about the land – but it was not one where they would simply hand over to the settlers, and cease to have an involvement. On the contrary, they would be engaged and connected with the Pākehā, and with the land. It is of course impossible to know how many of the others in attendance understood and shared this view.

However, it does appear that other Māori expected that their involvement with settlers and the land would continue after they signed the deed. When settlers attempted to move onto 'their' rural sections outside the town after

1849, they found that they could only do this with the specific consent of the former Māori owners.[83] Why this occurred, and what it signified about the Māori conception of 'sale', is capable of multiple answers to do with retention of mana in the land, expectation of an ongoing relationship, and conflating 'sale' and 'tuku'. Certainly, however, their conduct was not consistent with an understanding that they had given up all their interests in the land they had 'sold'.

(8) *The tangi clause in the deed*

No doubt in an endeavour to communicate with Whanganui Māori in terms that would draw on their own cultural norms, McLean included in the deed a so-called 'tangi' clause, which stated that the vendors wept over and farewelled the land they were selling. The Crown contends that McLean inserted the tangi clause as a means of expressing the permanence of the transaction.[84] We agree, and note that there were no clauses like this in contracts for sale of land between the Crown and European settlers. McLean knew that Whanganui Māori had different cultural norms about land, and that he had to be careful to convey in the deed the novel idea of permanent alienation.

This is not the first time that a Waitangi Tribunal has considered a tangi clause. The *Mohaka River Report* described one as 'an attempt by McLean to create an absolute transfer of title to land that would be explicable to Māori in cultural terms using metaphors of the tangi'.[85] The Whanganui River Tribunal, discussing this very tangi clause, said:

> It cannot be assumed that Maori and Pakeha saw the 1848 transaction the same way. For example, the tangi clause may have more significance for Pakeha than for Maori. A Maori tangi, for many reasons, is not limited to farewelling. Though in the deed it is connected with farewelling, that is McLean's perception, not theirs.[86]

This is true of course: it was no doubt McLean's idea to link permanent alienation of land with a Māori concept that would convey the idea of being separated from something forever. Death, and mourning for one who has died, was what he alighted upon. No doubt the parallels were clear to him. But whether Māori of that time thought of death as a permanent separation, and whether likening weeping for land now sold to weeping for a deceased person would have helped to reinforce the idea that they were giving up their land forever, is something about which we can only speculate.

Because there is no evidence about whether Whanganui Māori attached significance to the tangi clause, nor what they understood by it, we do not know whether it assisted them to appreciate how Pākehā conceived land sale. Looking back, the only thing we can say for certain about the tangi clause in the 1848 deed is that it is further evidence of McLean's realisation that permanent alienation of land was a difficult concept to convey to Māori, and that he did his best to express it in the deed in terms that he thought would be meaningful to them.

(9) *Discussion*

We consider it is fair to infer from the available evidence that, in 1848, Whanganui Māori were still developing their understanding of Pākehā land transactions and the permanent alienation these could involve. While rangatira speeches at the signing reflected an understanding of the permanence of the arrangement they were entering into, the use of the marriage metaphor was not consistent with their expecting to quit their land interests altogether. Rather, the transfer of land to Pākehā established a relationship with them through which Māori would benefit materially, and maintain connections with them and with the land.

Evidence in our inquiry shows that the concept of tuku, in the sense of ongoing connection to and control over land transacted, had some application in the wider Whanganui region in 1848 and 1849. On 31 July 1849, McLean recorded that the Māori vendors of the Rangitīkei-Turakina block asserted that they 'still should have the right of placing Europeans on the spots they claimed on the land originally theirs'. He went on to record that 'This *feeling of ownership* is felt *by almost all the natives in the island* as they contend that no other natives have a right to work on the territory ceded by them' (emphasis added).[87]

Head agreed that this evidence showed that Māori still saw their mana as extending over land transacted with Pākehā and that they attempted to maintain control over which Māori could work upon the land. However, she viewed this situation as one confined to interactions between Māori.[88] But this does not account for why Māori also attempted to control the placement of Pākehā on the land. McLean's evidence speaks of a view current among Māori that they maintained a degree of control over land transacted with Pākehā. We think it likely that Whanganui Māori were operating at least partly through the paradigm of tuku.

As an early Crown purchase (made on behalf of the New Zealand Company), the 1848 deal had some of the characteristics of a political treaty of cession, as well as those of a traditional tuku. The Crown cites with approval Professor Richard Boast's book *Buying the Land, Selling the Land* in many of its closing submissions.[89] Writing about purchases after 1847, Professor Boast comments:

> The purchases often bore little resemblance to ordinary sale contracts, and the amount of consideration paid by the Government was often merely nominal, bearing little relation to the market price. The deeds negotiated by Donald McLean, Chief Land Purchase Commissioner, and his staff, should be seen more as political cessions for which the main payment was the reservation of settlements and cultivations coupled with a cash grant which bore little relation to the land's actual value. Significantly, New Zealand courts have always seen the pre-emptive deeds as political arrangements rather than as ordinary sale contracts enforceable in the courts.[90]

To similar effect, Dr Vincent O'Malley commented in an article that McLean's frequent use of the terms 'treaty' or 'cession' when describing early land purchase deeds negotiated with Māori 'appears to have been quite deliberate'. He quoted what McLean wrote in 1858:

> It is well ascertained that the New Zealand tribes regard their land as a National property, the cession of which when decided on, they prefer making as a National Act to Her Majesty, even while they are aware, that the sums to be realized by such cessions are inconsiderable. Nor do they generally attach so much importance to the pecuniary consideration received for land held by them in common, as to the future consequences resulting from its alienation.[91]

This characterisation of a land purchase deed as a political treaty of cession between Māori and the Crown fits aspects of the Whanganui transaction, particularly some leading chiefs' insistence that the money was less important than establishing a Pākehā town. Contemporary government officials also referred to the 1848 transaction as a cession rather than as a sale.

Perhaps the language of cession came into play because the engagement between the Crown and Māori for the purpose of transferring the ownership of enormous tracts was so little like any ordinary land sale. The language of cession also reinforces the view that Māori were yet to grasp fully the concept of sale.

The Tribunal for the Te Whanganui a Tara (Wellington) inquiry examined the analogous situation there, where the New Zealand Company attempted to buy land and the Crown later completed the purchase. Those Māori had much more exposure to European settlement than Whanganui Māori, but the Te Whanganui a Tara Tribunal found that 'the Maori of Te Whanganui a Tara had no familiarity with, or comprehension of, the very notion of a sale of land'.[92]

The Ahuriri purchase in Hawke's Bay was in 1851, but Ahuriri was like Whanganui in that there were few Europeans, and real doubts about whether Māori understood sale. In *Buying the Land, Selling the Land*, Professor Boast asked very similar questions to those we are now asking about the Whanganui purchase – engaging in fact in the very same process of imaginative reconstruction:

> What in fact did the parties, especially the Maori 'vendors' suppose they were doing? Did they actually expect that they were to abandon the entire vast acreage of the Ahuriri block, which stretched from the sea to the line of the Kaweka mountains miles inland, and concentrate themselves on a handful of small reserves? To what extent was the concept of permanent alienation, despite McLean's flowery language, or even of a

written deed and a survey map actually graspable by Hawke's Bay Maori in 1851 – this being the first occasion when they had ever entered into a land transaction with the Crown?[93]

The Mōhaka ki Ahuriri Tribunal rejected the idea that the Ahuriri purchase was in any way similar to a tuku whenua. Rather, it found that the transaction was a wholly new venture for Ahuriri Māori, who expected collateral benefits from the deal, and were entitled to feel aggrieved when these did not eventuate. They did not, however, have available to them the option of reclaiming the land, as they would have in a traditional tuku.[94]

Reflecting on all of this, we have arrived at the conclusion that what happened between Whanganui Māori and the Crown (acting on behalf of the New Zealand Company) in 1848 cannot properly be characterised as any of the usual things: a cession, a sale, or a tuku. It was none of these in any pure sense, but in the spirit of the times it was a combination of them all – a transitional transaction, combining many different elements and reflecting many different understandings. The deal was struck at a time when modernity was assailing Whanganuitanga at such a rate that all the novelty could not be processed, comprehended, or absorbed. Lindsay Head told us that transfers of land between Māori tribes created alliances or fulfilled obligations.[95] We suggest that, for Māori, the same applied to transfers of land between Māori and the Crown, at least in the 1840s. The New Zealand Company deed of 1840 created in the minds of chiefs who received goods an ongoing obligation to the company, to provide at least land at Petre. The 1848 deal confirmed that obligation, enlarged its scope, and now comprised also an alliance with, and obligations to and from the Crown.

7.3.5 The signatories to the deed

We know that between 300 and 600 attended the meeting with McLean on 25 May 1848. New Zealand Company surveyor Wills recorded that, for three days before 29 May, Whanganui was full of Māori from Kai Iwi, Waitōtara, Tunuhaere, and other places upriver.[96]

Two hundred and six people signed the 1848 Whanganui deed, either as individuals or on behalf of others.[97] The evidence from the period suggests that the total number who held interests in the Whanganui block exceeded 2,000. Given what we know about the land that the deed purported to transfer, and the Crown's intention – although formally acting on behalf of the New Zealand Company – to bind all the owners of the land to its sale, we need to try to understand who the signatories were, and whom they represented of the many who had interests in the land that was being transacted.

We address these questions:

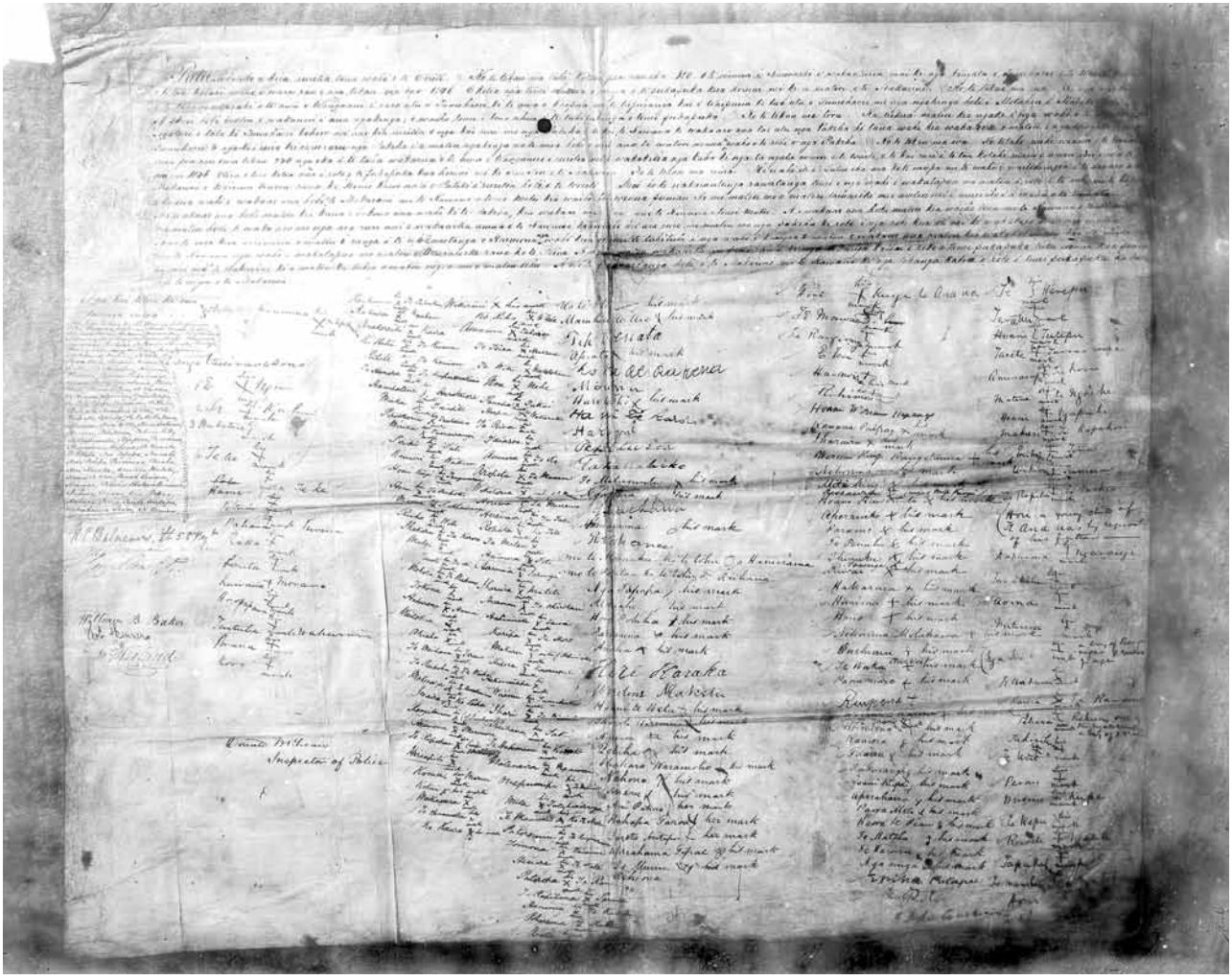
- Who had interests in the land that was being transacted? Here, we seek to identify both groups whose principal kāinga lay inside the boundaries of the purchase and those whose principal kāinga were elsewhere but who owned various kinds of resource-based interests inside the block boundaries.
- Who signed the deed, and whose interests did they represent?
- Who had interests but did not sign and were not represented?

The claimants say that many hapū claimed, at one level or another, an interest in the Whanganui block as transacted in 1848. Many did not reside permanently within the boundaries of the area described in the deed, but they had interests of various kinds there that gave them seasonal access to the abundance of resources near the mouth of the Whanganui River, and to high-quality land suitable for crop cultivation.[98]

We now look at what we know about first, the groups that were resident in the Whanganui block, and secondly, the groups who generally resided elsewhere, but had resource rights of various kinds in the block now sold.

(1) *Groups living within the block boundaries*

In 1849–51, it was calculated that a total of 411 Māori lived within the Whanganui purchase area. This census was taken at a time when some Whanganui Māori had already moved away after selling their land, such as the people at Tūtaeika or Mateongaonga. The census-takers, Resident Magistrate Hamilton and his interpreter, Deighton, failed for some reason to count the community of Kaiwhaiki, whose district lay partly within the purchase



The Whanganui purchase deed, with clauses and signatures in Māori and English

boundary. They also left out the people of Kai Iwi (at least 150 as counted by McLean in 1848[99]) and Whangaehu-Mangawhero (McLean calculated that the 'Mangawero' [Mangawhero] people numbered 170 in 1848[100]). Including these omissions, it is likely that those with resident land interests came to at least 750.

Thus, many more people than the 206 who signed the Whanganui deed lived permanently within the boundaries of the block. Many more again had other kinds of claims to the land (see section 7.3.5(2)).

It may have been assumed that those who signed the deed did so as representatives of all those groups with interests. Certainly, some of those counted in the various population estimates would have been children who would not be expected to sign in the presence of their elders. Although there were a few young boys brought in

to sign by their chiefly fathers, most children would have been represented by adults. Taylor in 1843 calculated that 21 per cent of the Whanganui population were children. Hamilton's later 1849 census estimated the children as 27 per cent.[101] Children may have accounted for 400 to 500 who did not sign.

Similarly, only about 24 women signed the 1848 document. This may be because their hapū were effectively represented by male chiefs, even if their wives had a more chiefly lineage. We cannot know. At least some of the signatories may have been invited to sign because (as was noted on the deed) they were wives or sisters of important chiefs. No women received any payment directly from the Crown.[102]

(2) *Groups living outside the block boundaries but with interests inside*

We have given our best estimate, based on contemporary data, of the number of Māori who resided inside the boundaries of the Whanganui block: at least 750.

As we have indicated, there was another population that lived outside the block boundaries but owned recognised rights to use resources inside the block. These were from upriver – hailing from Tūhua, Taupō, Manganui-a-te-ao, and Murimotu.

In the 1840s, these upriver groups did not come down the river just to fish for a day or so and then return home. Whole communities, save perhaps for a few left to guard and tend crops, would migrate downriver each year in multiple canoes for the fishing season, which might last for months. They would occupy and renew their various traditional fishing villages, spending days at sea over weeks or months, fishing for hāpuku, sharks, or whatever was available – whitebait, flounder, eels, shell-fish, sea birds, and more. Then the catch had to be preserved for winter by drying on wooden platforms. Only with all these tasks complete would communities return en masse to their upriver kāinga. (See chapter 2 for a discussion of resource interests.) The Whanganui purchase meant a virtual end to this economic cycle, since at least 18 of the sites of these traditional fishing village were within the purchase area and were not reserved.[103]

However, although the effect of the 1848 purchase would be to delete these important rights, McLean's day-to-day records and those of his surveyors make no mention of negotiations about either sites or interests. If there were any negotiations about them between iwi, they went unrecorded.

We have noted elsewhere that Te Heuheu's family were included in the Native Land Court title to Lake Kaitoke; possibly this gift was intended to recognise in some measure his people's loss of fishing rights.

It is even more difficult to estimate the number of people who owned these seasonal resource rights – of which fishing rights were probably the most significant – but it would have exceeded 2,000. Hoani Wiremu Hīpango calculated the population living on the river about this time at 5,000.[104]

(3) *The deed signatories and the interests they represented*

We are unable to identify all of the signatories.

A group of important Te Patutokotoko chiefs signed: Te Pēhi Pākoro Tūroa and his brother Tāhana Tūroa of Te Patutokotoko, and Ngāpara. Hāmārama, also of Te Patutokotoko,[105] signed on behalf of the Ngāti Hāua chief, Te Mamaku.

Of chiefs based at Pūtiki, Hōri Kīngi Te Anaua and Te Māwae of Ngāti Ruakā, signed, together with their highest-ranking adult nephew, Te Rangiirunga, and two seven-year-old boys who were sons of Te Anaua and Te Rangiirunga. Hoani Wiremu Hīpango of Ngāti Tūmango signed, as did Kāwana Paipai of Ngā Paerangi and his son or nephew Iharaira. Hāpurona Ngārangi – the chief that Midshipman Crozier wounded in 1847 – also signed.

Signatories who were not from either Pūtiki or Te Patutokotoko included Wiremu Kīngi Rangitauira of Mateongaonga and his four sons, who received part of the compensation money as Ngā Paerangi. 'Miti Kingi' was probably Mete Kīngi Paetahi of Ngā Poutama; he signed, as did 'Hakaraia', probably Hakaraia Kōrako, also of Ngā Poutama. Pāora Mare or Muri, a chief of Ngāti Pāmoana signed, as did 'Takarangi', probably Te Oti Takarangi representing Te Opokotia, a hapū of Ngā Paerangi of Tunuhaere and Kaiwhaiki. Ēpiha Pātapu signed; he was a son of the

great chief, Koroheke (by now deceased), originally of Waipākura, and connected to various hapū from the lower reaches including Ngāti Hinepango, Ngā Poutama, and Ngāti Pāmoana; he had other connections to Ngāti Ruakā and Ngāti Rangipoutaka. (He was probably the Ēpiha who was given £50 on behalf of Ngāti 'Angipotaka'.) Hāmārama, although of Te Patutokotoko himself, signed on behalf of his brother-in-law, Te Mamaku of Ngāti Hāua, the only Tūhua representative – although Te Mamaku had no prior knowledge of this representation. Āperahama Tīpae and Te Munu signed on behalf of Ngā Wairiki and Ngāti Apa of Whangaehu, and Aropeta Tāmumu ('Te Mumu') represented the people of Kai Iwi.

Stirling observed that the important Pūtiki chiefs and their wives signed (or made their mark) on 26 May, followed by 50 others, and then the Te Patutokotoko chiefs. Among the 114 names added to the deed on 27 May were about 20 women. Stirling considered that, with one or two exceptions, those who signed on 27 May were generally less important. In support of this opinion, he pointed to the fact that Taylor did not attend the signing on 27 May, probably because he thought that the important people had signed the day before.[106] On 29 May, 10 more men marked the deed.

We have thus identified 26 male rangatira. The 24 women who signed are identified in the deed, some by their relationships to male chiefs. They include Tārete, wife of Tūroa; Hineāuru, wife of Mete Kīngi; Mākuru, sister of Hakiwaireke; and Wikitōria, wife of 'Te Mumu' (Tāmumu). (Wikitōria Tapukura was probably the highest-ranking and most influential person at Kai Iwi.)

Many of the other names are only Christian names, or poorly spelt or abbreviated versions of Māori names, which are difficult now to be certain about. For example, 'Anaru' may have been Anaru Ngāmanāko, who received £20 on behalf of the people of Mangawhero (Ngā Wairiki). 'Hone' may have been Hone Tūmango who received £50 on behalf of Ngāti Tūmango, although he would have been quite young at this time. Another group of four who signed the deed with their own Christian names, rather than making their mark, were probably Christian teachers.

(4) *Those who had interests but did not sign and were not represented*

Although we cannot identify all who did sign, it is plain that a number of significant rangatira did not sign, or had no opportunity to sign.

Te Mamaku was a glaring omission. His kinsman and brother-in-law Hāmārama signed on his behalf without his prior knowledge and took his relatively token payment of £10, spending some of it himself on blankets and other articles. Hāmārama seems to have been the only signatory with any connection to Ngāti Hāua or any group further upstream than Rānana or Pīpīriki.

McLean believed Te Mamaku's claim was small, and told him in 1849 that his payment was a token gesture because he had received a quantity of the goods in E J Wakefield's distribution in May 1840. Te Mamaku (called Te Karamu at the time) denied that this was the case when he gave evidence to Spain in 1843, saying that he was absent from the 1840 negotiations with the New Zealand Company. In 1848, he felt that, as one of the river's great chiefs, he should have received a similar sum to others of the same rank. McLean claimed that Te Mamaku said that if the money had been formally presented to him, he would have returned it to Hāmārama, because he derived his own claim to land in the Whanganui purchase from Hāmārama.[107] However, Te Mamaku was deeply displeased about how he was treated, and McLean made amends by acceding to the chiefs's demand for a red blanket and some tobacco, and later gave him other gifts. By 1851, Te Mamaku was wishing some land had been reserved for him near the town of Petre.[108]

Te Pōari Kuramate, an important chief and son of the recently deceased great rangatira, Koroheke, did not sign either. He later complained to Taylor that he received no compensation for his continuing interest in Waipākura.[109]

McLean's and missionaries' records identified a number of other rangatira from the Whanganui district who did not sign the 1848 deed.[110] These included:

- Hapurona, chief of Tunuhaere in the mid-1840s (not the same as Hāpurona Ngārangi, who did sign);
- Te Kirikaramu of Te Patutokotoko who protected the settler Bell at Tōtarapuku in 1841;

- Ngāwaka, probably of Te Patutokotoko, who contested the taking of timber from a settler's selection in the early 1840s;
- Tāmati Wāka Hopetiri of Ūpokongaro, who gave evidence to Spain's commission;
- Te Mote of Kai Iwi;
- Wiremu Pātene of Ngā Paerangi, a chief at Kaiwhaiki and later a magistrate;
- Tohiora Pirato, a chief living at Parikino in 1846;
- Tāmati Puna of Ngā Paerangi of Aramoho;
- Tāmati Te Rehe, a chief living at Parikino about 1846;
- Tauteka of Ūpokongaro (a chief encountered by McLean in 1846 who asked for an extra reserve);
- Tarewa or Taurewa, a chief of over 200 men whom McLean identified as Ngā Poutama; and
- Taipō, Taru, Napea, and Ngārahu, chiefs at Tunuhaere.

Some of these may have died before 1848 and some may have been away or ill – but presumably not all.

Others who conceivably had interests but who did not sign included Uenuku Tūwharetoa of Parinui, Wiremu Te Kākahi and other chiefs of Manganui-o-te-ao, Te Kurukaanga's successors at Tīeke (he died in 1845), and the contemporary chiefs of Ngāti Rangi of the Murimotu district. Wiremu Kīngi, chief of Ūtapu in the 1840s, Rokina (chief at Te Rārapa near Ūtapu in 1847), Hōri Pātene, a chief of Pīpīriki, and Tinirau of Ngāti Ruakā of Pukehika and Rānana did not sign. Te Pikikōtuku should have signed, as should Matuaahu Te Wharerangi. It would have been appropriate for McLean to ensure that a representative of Tūwharetoa signed the deed. The various hapū and iwi they led were among those with seasonal fishing rights at the mouth of the river.

What can we take from the fact that these and others – many of whom were known to McLean – did not sign the deed? Does it suggest that McLean proceeded with too much haste? Does it indicate a level of opposition to the Whanganui purchase?

McLean does appear to have gone to some lengths to conduct comprehensive discussions. A large number of those with interests in the Whanganui block agreed to the transaction, signed the deed, and accepted payment. This indicates the large measure of Whanganui Māori support for settling the New Zealand Company's land claim and, in so doing, securing the presence of Pākehā settlers in Whanganui. The reality was that the settlers were there, had developed the township of Petre, and Māori saw this as beneficial to them.

Nevertheless, McLean did go into the region shortly after peace was restored. No doubt some Whanganui Māori communities still distrusted the Crown, possibly to the extent that they were unwilling to engage with McLean. Equally, as we have said, others viewed signing the deed as signifying their preparedness to continue to develop a relationship with the Crown and with Pākehā.

Clearly, chiefs who did not sign the 1848 deed did not consent to give up their land, nor their resources or other customary interests, in the Whanganui block.

7.3.6 The role of the military in the Whanganui purchase

The claimants before us argued that the purchase of the Whanganui block was conducted in a climate of coercion: the Crown was backed by its military presence in Whanganui, with the threat of a military response to any resistance. The Crown rejected any suggestion that Whanganui Māori were coerced.

We must consider what role, if any, the continued presence of the Crown's military force at Petre played in the 1848 transaction. Were Whanganui Māori 'forced' or constrained to agree to a Crown purchase whether they wanted it or not? Would the Crown have removed the settlers, the soldiers, and the blockhouses, and abandoned the settlement, as it sometimes threatened? Or would the effort and expenditure already expended on defending the town and supporting the settlers' land claims have motivated the Crown to use force if chiefs refused to sign?

Up to the end of FitzRoy's governorship, abandoning Petre and the Whanganui purchase was a genuine option. Governor Grey, however, was a horse of another colour. He took war to Heretaunga, using military coercion to oust Ngāti Tama, Ngāti Rangatahi, and Ngāti Hāua and enforce the company purchase. He also explicitly declared his intention to establish effective Crown control over the

west coast of the North Island, and seized Te Rauparaha. Force was also his means of managing Whanganui during 1846 and 1847, implementing military occupation and leading offensives upriver. Had Te Māwae and Pākoro Tūroa jointly refused the land transaction in 1848, as they looked ready to do in 1844, we think the 'fighting governor' might have responded militarily.

This is, of course, speculation. Another important factor in the mix was that the governors and other Crown agents knew that Pūtiki and Waipākura chiefs – two of the most powerful Whanganui groups in 1848 – favoured some sort of deal, at least for the site of the town, and did so from 1843. For these chiefs, the issue was the terms: who should receive the money, and the extent and location of reserves. Nevertheless, we agree with the Whanganui River Tribunal's view that Governor Grey was known to have provided 'coercive backing' for Crown-negotiated land purchases.[111]

It is impossible now to assess accurately whether Grey's 'fighting governor' reputation, and the continued presence of the military at Petre, influenced the decision of Whanganui Māori to sign the deed. However, on balance we think that it was probably not a decisive factor. The evidence from the time reveals that many Whanganui Māori engaged willingly with the Crown – because of their desire to see an end to the interminable New Zealand Company saga, to be paid, to secure the town, and to get on with making something of their relationship with the Crown and with Pākehā. This is reflected in the speeches at the deed signing, and in the use of the analogy of marriage. As we have said, Whanganui Māori had their own understanding of the transaction they were entering into, and it was different from the Crown's. It was their understanding that informed their choice to sign the deed and accept the payment offered.

7.4 A Fair Price?

7.4.1 Determining a fair price

Judging whether the payment that Whanganui Māori received for the Whanganui block was fair necessarily requires us to make an assessment of the land's contemporary value. This is a difficult task.

(1) *The Crown's approach to price*

The Crown argued that valuation science and practice was non-existent in the mid-nineteenth century. It also said that there was no such thing as a market price for land in 1848 because there was no market yet, and its land purchase officers were best placed to decide on prices to be paid to Whanganui Māori.[112]

The Crown is correct that there was no free market in Māori land in 1848: it was quintessentially a monopoly by virtue of the Crown's right of pre-emption secured through the Treaty. This was represented to Māori at Waitangi, and possibly also in Whanganui, as a protective measure. It would shield them from the importunate European land speculators like the New Zealand Company agents. Māori at Tauranga were told that Crown pre-emption was intended to ensure that Māori land was purchased at a 'juster valuation'.[113]

The Crown was certainly not in the business of mimicking the behaviour of a free market when it embarked upon the purchase of Māori land. It intended to fund the colonisation of New Zealand through the sale of land purchased from Māori at nominal prices. In its view, land held by Māori had scarcely any value; it would develop its potential only when sold to the Crown and developed by settlers. The Crown certainly did not see this as unfair. As Lord Normanby explained to Hobson:

> To the natives or the chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and settlers from this country. In the benefits of that increase the natives themselves will gradually participate.[114]

Although there was no free market in land, it is instructive to look at contemporary views and other purchases.

(2) *Contemporary evidence on price*

We examine first the opinion of William Spain, for in his role as commissioner he looked very closely at the Whanganui situation. The £1,000 'compensation' that he recommended to the Crown resulted from a process of negotiation between the Crown-appointed representative for Whanganui Māori, George Clarke junior, and Colonel Wakefield on behalf of the New Zealand Company. Wakefield was not happy with Clarke's insistence that the company pay £1,000 for 40,000 acres less reserves. Spain also thought £1,000 was on the high side, but it is what he put to the Crown as the amount due to Whanganui Māori.

How does it compare with prices the Crown paid in other land deals of the time? Spain's recommendation of £1,000 for (approximately) 40,000 acres equates to sixpence per acre. Taking into account the value of the goods that the New Zealand Company paid (£700), the figure rises to over 10 pence per acre. This compares favourably with the approximately 8.5 pence per acre that Māori received for the Port Nicholson block.[115] However, as we have seen, the acreage of the Whanganui purchase grew, so that in fact the deed conveyed 89,000 acres. This means that the return to Whanganui Māori was less than threepence per acre. If the acreage of the reserves is deducted, then the price was just about threepence per acre.

By comparison, those who sold the Rangitīkei–Turakina block, located to the south of the Whanganui block, received 2.7 pence per acre (£2,500 for a block of 225,500 acres) in 1849.[116] In Te Tau Ihu (the northern South Island) Captain Arthur Wakefield's 'presents' to Māori and Colonel William Wakefield's 'compensation' were together worth £1,780 15s. This was meant to pay for the 151,000 acres that Spain intended to award the company at Nelson, including the districts of Nelson itself, Waimea, Moutere, Motueka, and Massacre Bay. It would have amounted to 2.83 pence per acre. However, FitzRoy's 1845 grant of this land was rejected by the company since the grant reserved tenths, pā and burial sites, cultivations, and reserves for public and other purposes. The whole matter was re-negotiated with Grey in 1847, who vastly extended the previous award after his purchase of the Wairau.[117]

What we can safely say is that Whanganui Māori appear to have received a payment similar to those the Crown made for land elsewhere in the 1840s. We share the Whanganui River Tribunal's view that the amount was determined not by bargaining between McLean and Whanganui Māori, but as a result of the Wakefield transaction and the Spain award.[118] McLean conducted his negotiation on the basis that neither the acreage nor the £1,000 was open to negotiation. We have found that Whanganui Māori engaged with McLean in ignorance of how much land was being transacted, so they were never in a position to talk about concepts such as price per acre.

(3) *Factors other than price*

But how preoccupied were Whanganui Māori with the question of price? It is not clear to what extent they were engaged at this stage with a money economy. Moreover, we have found that they conceived the arrangement enshrined in the 1848 deed not as one where they were forgoing forever their rangatiratanga in the land that the Pākehā would occupy, but as one that was about the opening up to them of the opportunities that came with forming a relationship with resident Pākehā. They probably thought of the money as just one of the elements in the exchange. In fact, given the relatively small sums that each rangatira received, we think this must have been the case.

This was the Crown's view. As Lord Normanby advised Hobson, it was not the purchase price but the land development and increased numbers of settlers that would bring the real benefit to Māori.

We turn now to consider what other benefits, if any, Whanganui Māori were promised would flow to them following the alienation of the Whanganui block.

7.4.2 Promises of other benefits

From the New Zealand Company's first attempts to purchase land in Whanganui, Māori were the recipients of promises and predictions about how they would benefit from the sale of land.

In 1842, for example, police magistrate Dawson told the Pūtiki chiefs that if they allowed the settlers to occupy

the lands that the company allocated to them they would get 'money for the produce of the land' reserved for them, and would be able 'to buy all the comforts of life which would be brought here in ships'. In 1846 Symonds reminded Whanganui Māori of the advantages they would derive from the presence of settlers – 'it is in truth a benefit which the Governor confers on you' and 'without Europeans your land is of comparatively little value'.[119] The same year, McLean told them:

> We were conferring an everlasting benefit upon them by living amongst them that money of which they were now to receive a large portion was our greatest treasure . . . that I as their Protector and advisor should wish [them?] to take something that would increase and benefit them as payment for their valueless tracts of land they so foolishly set such store on[,] hoping that they would be an example to all unruly tribes in the Island and their children after them live in happiness amongst the English who would make them a great people.[120]

By early 1848, Grey had told Whanganui Māori they would receive a native hospital and a boarding school.[121] In 1848, McLean assured Kai Iwi Māori that he was there 'to promote their interests' and they would reap 'lasting benefits to themselves and their posterity'.[122] That same year, Lieutenant Governor Eyre told McLean to let Whanganui Māori know that he had ordered a native hospital at Petre.[123] In 1852, McLean promised a boarding school and a hostel.[124] These pledges and predictions ranged from the specific to the general.

Historians Stirling and Macky both expressed the view that it was likely that Whanganui Māori were promised other specific collateral benefits from the 1848 purchase. Officials usually told tangata whenua that they would benefit from the increased value of their reserves and land near settlements, a growing market for Māori produce, employment on public works, and infrastructural developments like roads, bridges, and ferries. They would also get schools and hospitals.[125]

The evidence of concrete undertakings to Whanganui Māori is limited to the provision of a hospital, school, and hostel. Yet, as Macky stated, McLean's reports suggested that 'ongoing collateral advantages arising from the transaction were crucial to his ability to persuade Māori to enter the transaction'.[126] Undertaking to provide specific benefits was standard negotiation practice. Governor Gore Browne said in 1857:

> I am satisfied that, from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial Government, have been held out to the natives to induce them to part with their land.[127]

It is also true that these promises were often not recorded. In 1848, the Crown was also attempting to purchase land in the South Island and its agent, Walter Mantell, was instructed to promise schools, hospitals, welfare, and general protection to induce Ngāi Tahu to cede their land for an 'almost nominal money payment'. He said that these promises were deliberately not written down, in part because it was deemed unwise to record promises of separate institutions for Māori, as this ran counter to the general desire for their assimilation into the mainstream of colonial life. He also felt no need to record the promises as he did not anticipate the Crown's failing to honour them.[128]

Thus, while the state of the evidence means that we cannot be certain, we think it very likely that Whanganui Māori were assured that a range of collateral benefits would accompany the sale of the Whanganui block. McLean did record his promise that Kai Iwi people would benefit from settlement, and there is no reason why, if he was saying those things at Kai Iwi, he was not saying them elsewhere. The likelihood is confirmed by the content of his reports.[129]

When Crown agents made promises like these to Whanganui Māori, the honour of the Crown was engaged. As the Whanganui River Tribunal put it, Whanganui Māori might well have taken those future benefits 'not as a pious hope but as a contractual undertaking'.[130]

7.4.3 The adequacy of price plus other benefits

(1) *Price*

The Tribunals that looked at the purchases in the Wellington and Te Tau Ihu districts found that the prices the Crown paid were inadequate: the purchase of so much land at so little cost prejudiced the Māori people who owned that land.[131]

In our inquiry, the Crown acknowledged that it breached the Treaty and its principles when it doubled the area of the Whanganui purchase without informing Whanganui Māori. The acknowledgement did not address the issue of payment directly.

The claimants suggested that those Pūtiki rangatira who were the main players in these negotiations might not have thought £1,000 compensation was unreasonable or insufficient, at least initially. After all, they expected (as did Spain) that they would receive most of the payment. Since they did not know about the expansion of the area being transacted in 1848, they did not ask for more. The claimants cited Macky's statement that Whanganui Māori would probably have sought a greater payment had they been aware of the increase in the size of the block.[132] The Crown accepted that this was so, but went on to submit that Māori accepted the £1,000 payment even after they knew the boundaries of the block because they viewed the collateral benefits of trade and infrastructure development as the real payment.[133]

Both Stirling and Macky considered that the price for the Whanganui block was low.[134] We agree, and consider that the Crown's acknowledged breach of the Treaty logically extends to its failure to increase the price in proportion to the expanded size of the block.

If the promised other benefits had eventuated, then criticism of the threepence per acre price would of course be less. So we now ask to what degree Whanganui Māori can be said to have received the promised benefits of the Whanganui purchase.

(2) *Health benefits*

By the time the Whanganui deed was signed, Whanganui Māori were already receiving some medical care. Governor Grey provided some limited financial assistance to Taylor so he could provide some medical services from 1846. Dr Rees, the colonial and native surgeon appointed in 1844, assisted Taylor voluntarily.[135] In the war period several 'friendly' and 'rebel' wounded Māori were treated in the military's hospital, which was rebuilt in 1849. The promised hospital, contemplated by Grey as early as 1847, was eventually opened in 1851. Its completion was delayed by difficulties with the tendering process for its construction, and earthquakes. The patients in this new 20-bed hospital were predominantly Māori.

Dr Rees wrote that the hospital was established principally for Māori, whereas both Grey and Eyre indicated that it would be a native hospital, and thus for Māori only.[136] Whatever the case, the hospital treated Māori and Pākehā, but the ratio of Pākehā increased over time. Macky's study went to 1865, and he said he was unaware of any Māori being refused entry to the hospital in that period.[137]

(3) *Trade*

The market for Māori produce expanded in the years following the 1848 deed, as settler numbers increased. But then Pākehā farmers began competing with Māori in the same market, and the Māori share declined. (See chapters 9 and 27 for a discussion of Māori economic marginalisation.)

(4) *Infrastructure*

Increased settlement also led, as predicted, to the development of roads and bridges and, in the last quarter of the nineteenth century, the telegraph, ferries, and rail. These were not, of course, for the exclusive benefit of Māori, but benefited them nonetheless. As Mete Kīngi Te Rangi Paetahi (Mete Kīngi) noted in 1874,

> the land is well populated by Europeans, and there are roads all through it, and we have got that new horse called the railway, and that spirit called the telegraph to give us quick notice.

Te Rangi went on to state, 'I never saw any roads in this part of the country or any telegraph . . . before the Europeans came.'[138]

Thus, as predicted by McLean and other officials, and as one would expect, some Whanganui Māori experienced these changes that came with the expansion of Pākehā settlement positively. It is hard to say how widely the benefits spread. We do know that Mete Kīngi was a commander of pro-government forces in the various wars, and was a paid assessor who later received a pension from the Government. He was the first member of Parliament for Western Māori, a committed supporter of the government of the day, and a wealthy sheep farmer.[139] In other words, he was one who was well placed to benefit.

We also note that Mete Kīngi was speaking in 1874, some 26 years after the Whanganui deed was signed, after other purchases of land had been completed in the Whanganui district, and while other purchases were under way. The benefits of which he spoke resulted not only from the 1848 deed, but from the broader settlement of the Whanganui district following further land alienation. In fact, the development of extensive road, rail, and telegraph systems depended on the acquisition of more land. It would need more than one purchase of 89,000 acres to bring about settlement and infrastructure development on this scale. It is hard to assess whether Whanganui Māori were compensated for the low purchase price paid in 1848 when so many of the collateral benefits accrued only as more land was alienated from Māori ownership and control. The question really becomes whether, over time, Whanganui Māori lost more than they had gained. This is a question to which we will return in the chapters that address Crown land purchasing and socio-economic issues.

(5) *Conclusion*

Even if Whanganui Māori benefited from settlement and accompanying infrastructure, there is nothing in the evidence to suggest that they were advantaged in any special way – that is, more than any other Māori. We would need evidence of special benefit to be satisfied that the price of £1,000 for 89,000 acres was fair. The reason is clear. The £1,000 was arrived at in a process of negotiation between Clark and Wakefield as part of Spain's commission of inquiry. Spain recommended that amount as proper compensation for 40,000 acres. If it was proper compensation for 40,000 acres – which seems to have been accepted by all concerned – then it was not proper compensation for 89,000 acres. By logical extension, it should have at least doubled – unless the Crown had introduced to the deal significant other benefits that would not otherwise have been available to Whanganui Māori. It did not. The 40,000 acres became 89,000 acres by sleight of hand, and the price deficit that resulted was deliberately glossed over.

We find that the Crown failed to meet the standards of good faith and fair dealing when it failed to pay Māori more than £1,000 in 1848 despite more than doubling the area of land alienated from their ownership and control. In doing so the Crown breached the Treaty and its principles.

7.5 Reserves

7.5.1 Introduction

In this section, we discuss the negotiations for reserves from the Whanganui block transacted in 1848, and the issues arising immediately after their creation. We deal elsewhere with issues that emerged after the Native Land Court determined their titles (see chapters 11, 12, and 15).

(1) *Whanganui purchase reserves originally 'tenths'*

The concept for the Whanganui purchase reserves came out of the New Zealand Company's plan for colonisation. We have already talked about the New Zealand Company policy to set aside one-tenth of an area it purchased for the benefit of the 'chief families of the tribe'.[140] According to company officials like E J Wakefield, the tenths were 'in lieu of the lands at present occupied by them' as an investment for the future.[141] The company theorised that as settlers developed land, the value of the tenths would increase, and Māori would derive income from leasing them. In this way, the tenths would comprise the real payment for the land.

However, the New Zealand Company's Whanganui deed of November 1839 promised not that tenths would be reserved, but 'a portion of the land ceded suitable and sufficient for their residence and proper maintenance of the said chiefs and their families'.[142]

In February 1842, Colonel Wakefield decided that pā and cultivations were to be reserved for Whanganui Māori 'to the extent of a tenth of the whole land given out, before selections amongst the purchasers commenced'. At this stage, only some of the tenths reserves had been selected, and they included no pā and only a small proportion of cultivations.[143] But Governor Hobson insisted that pā and cultivations should be reserved, so now the company resolved to reserve any pā and cultivations that Māori were unwilling to sell. The colonel found that this meant that 'the best portions of river frontage some miles higher up the river than the town' went into reserves – land that would have been much desired by settlers. Macky told us that Colonel Wakefield was so dismayed about this that he decided that he would make no reserves for Māori in the township.[144] And the tenths reserves, which according to the company policy would be leased to create income for Māori, were mainly the same land they already occupied and cultivated. This made it unlikely that they could be leased.

(2) *The Crown takes over responsibility for reserves*

Under clause 13 of the Pennington agreement, the Crown took over responsibility for reserves in land granted to the company wherever the company had promised reserves. That is, if the company's claim was found to be valid, the Crown would honour its promises of reserves. From May 1843, when it began negotiating purchases on behalf of the company, the Crown also took on the responsibility of creating reserves of pā, cultivations, and urupā. Rather than setting aside one-tenth of land purchased, the Crown's policy stated that it would make reserves that 'shall seem just and expedient for the benefit of the Natives'.[145]

(3) *Spain's conception of reserves*

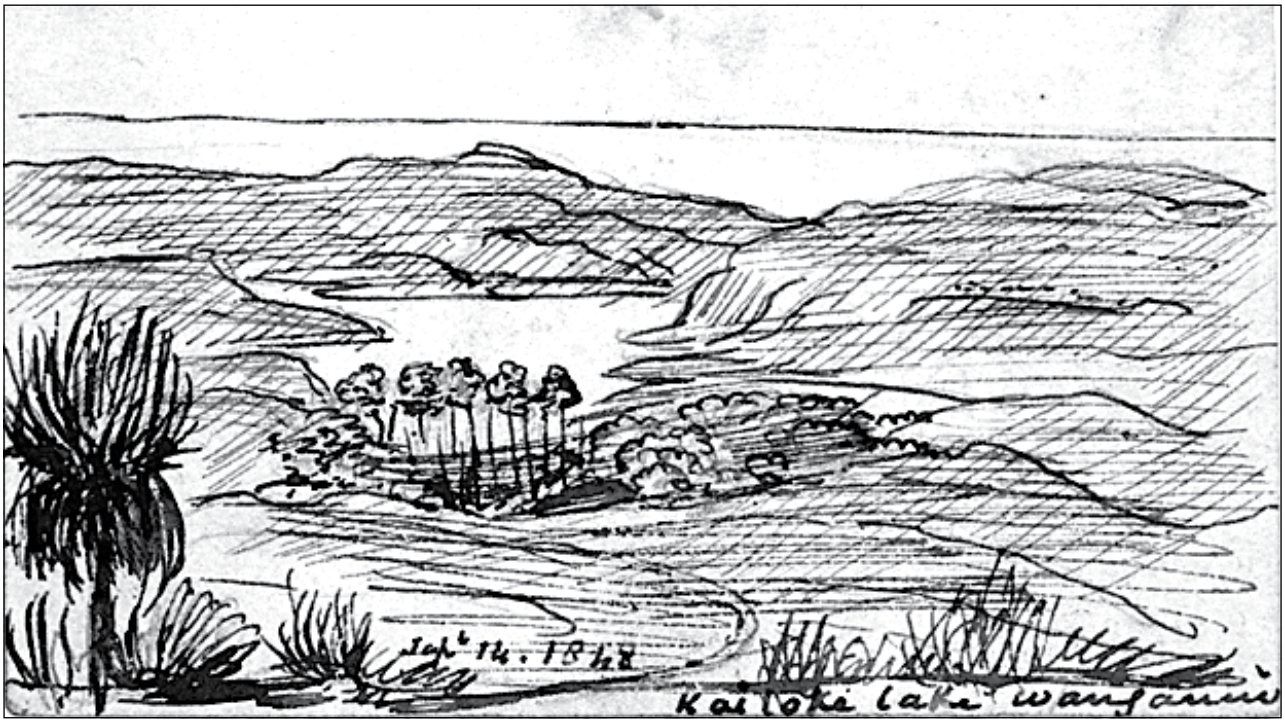
Spain arrived in Whanganui having first negotiated with the company on the question of reserves in Wellington. An ongoing issue still being debated was the question of whether to reserve to Māori in Te Whanganui-a-Tara their pā, cultivations, and urupā, in addition to the tenths.[146] Spain decided that the emerging Wellington formula of tenths plus pā, urupā, and cultivations would also apply in Whanganui.[147]

In his final report of 31 March 1845 Spain awarded three categories of reserves to Whanganui Māori. First, they were to retain all pā, urupā ('burying places'), and cultivations 'actually in cultivation' within any part of the 40,000 acre block. By 'pā', Spain presumably meant all settlements, villages, or pā, since not every 'pā' was heavily fortified for defence at this time. Cultivations meant 'those tracts of Country which are now used by the Natives for vegetable productions or which have been so used . . . since the establishment of the Colony'. This was a formula derived from Governor FitzRoy's negotiations with Colonel Wakefield in Wellington.[148] Spain's award did not specify any limits on urupā, so presumably this meant all burial grounds, pre-Christian and Christian.

Secondly, Spain recommended that Whanganui Māori be awarded 'all the Native Reserves equal to one tenth of the Forty Thousand Acres hereby awarded to the said Company, part of which said Native Reserves have already been chosen and are marked Yellow upon the said Plan'. The 'remainder of such Reserves are to be chosen according to the rate of one choice in ten'. Thirdly, Spain recommended the reservation of the dune lake, Kaitoke (St Mary's Lake), all their eel cuts, and the right of fishing in Kaitoke, Kowhata (Medina), Whiritoa (Dutch Lagoon), and Paure or Pauri (Widgeon Lake).[149]

By 1844, company officials had selected another 500 acres of the tenths reserves, and a few were surveyed. They included 300 acres at Waipākura, 100 acres at Kaiwhaiki, and 100 acres in section 54, all reserved at Clarke's insistence on 15 May 1844. On 16 May 1844 Spain, Clarke, and Wakefield signed a map indicating that the selected tenths were unchanged from 1842, save for the 1844 additions.[150] A total of 2,900 acres of reserves was shown in this plan, largely on the Pūtiki side of the river. There were only 700 acres on the right bank or town side of the river, and none in the town itself.[151]

However, if the Governor had confirmed Spain's recommendation, these 2,900 acres would have been only some of the reserves for Māori. The total area that Spain



Kaitoke Lake and surrounding area, 1848. Kaitoke was one of 15 reserves in the Whanganui deed.

recommended was 4,000 acres, so that 1,100 acres more would be selected – with pā, urupā, and cultivations on top of that.[152]

(4) *Grey signals a new tack*

In April 1846 Symonds and McLean became responsible for the completion of the Whanganui purchase, including the identification and confirmation of reserves. They told Whanganui Māori that they would act fairly towards them while 'completing the purchase'. Macky told us that,

> if these officials were to act in a manner consistent with their own statements, they would have ensured that the principles that underpinned the reserves Spain had awarded were only deviated from if Maori insisted upon this with a full understanding of what the principles were.[153]

However, Governor Grey instructed Symonds to induce Whanganui Māori to abandon any of their cultivations which, in Symonds's view, they did not really need and which 'may interfere with the pursuits and prosperity of the settlers'.[154] This instruction signalled a change in approach at the highest level of the colonial government. Now, the job of officials was to limit as far as possible the amount of land that Māori would own in the Whanganui block.

(5) *The notion of tenths abandoned*

Symonds, however, soon discovered that Whanganui Māori wanted their reserves in large blocks where their cultivations were most numerous. From the outset of the 1846 negotiations, he seems to have made this an excuse to abandon the idea of the tenths as recommended by Spain,

and to concentrate on reserving only occupied pā, urupā, and existing cultivations.

Macky expressed this view to us :

> even if Maori wanted their reserves consolidated, it should still have been possible for the Government to arrange with the Company to set aside tenths reserves to be administered for the benefit of Maori. Given Grey's statement that the Government was looking to implement Spain's 'decisions', and the statements to Maori by Government officials that they would act fairly, this would have been a more reasonable course of action than simply dropping the tenths reserves altogether.[155]

But dropping the tenths is what happened once the Government took over the purchase negotiations on behalf of the company.

We have talked about how the company considered the tenths to be the real payment for the land, its increased value over time ensuring a future income for Māori.[156] When it walked away from the 'tenths' aspect of the Whanganui purchase, the Crown fundamentally altered the outcome that Spain recommended, and took away from Māori this important avenue of future benefit from the deal.

(6) *How Symonds and McLean managed reserves*

Symonds and McLean did what they could to get Whanganui Māori to abandon their claims to various pā. They succeeded with Aramoho and Kaiarara pā, and Macky said that 'several other pa would have been included in the sale'.[157] Ngā Paerangi claimant, Ken Clarke, gave us a long list of pā and settlements that were not included in the Whanganui block reserves – and he was only talking about Ngā Paerangi.[158]

Māori desire to retain land conflicted with McLean's instructions to limit their reserves as much as he could. Inevitably, disputes resulted.

On 18 May 1846, Pūtiki Māori prevented the survey from passing through land they wanted to reserve, and Symonds had to intervene. Te Māwae said that he wanted a block for his people and another for Te Patutokotoko :

> [He] would not hear of their surveying the land as the Company had it laid down on the map saying he never agreed to part with his lands without at least reserving what he wished for himself that would include 700 acres more than was reserved on the Company's plan but all of it is cut up with plantations and native gardens that a single [section? – word missing] could not be chosen out of the Block without annoyance from the owners of such land.[159]

The next day, Te Māwae agreed to forgo part of his reserve.

On 27 May, Symonds sent for Maketū, who wanted his pā reserved until it was 'ratified' [requested?] by the Europeans. On 28 May Maketū gave McLean his consent to abandon his pā at Kaiarara in 12 months if the company required it.[160]

There were several instances of officials refusing requests for reserves. At Ūpokongaro (near the Mākirikiri and Kukutā Streams), Tauteka drove in a stake near one of his cultivations, indicating that he wished to retain it – but 'no assent was given'. In 1846, 'Tamati' (Tāmati Puna) wanted a large reserve at Aramoho, a Ngā Paerangi pā. Symonds said no. McLean said Tāmati contented himself with a section (perhaps a company section of 100 acres) and the right to cultivate on a hilly site, unsurveyed, and valueless for European purposes. McLean also recorded that a few acres were to be reserved at Tūtaeika.[161] (A reserve was made at Aramoho in 1848 : see section 7.5.3(4))

The selection of reserves was affected by the divergent goals of Whanganui Māori and Symonds. Where Whanganui Māori wanted to reserve all their pā, cultivations, and urupā, Symonds – consistently with Governor Grey's instructions – felt the need to minimise them. He aimed to make only two large reserves at Pūtiki and Waipākura, but by May 1846 had to modify his plans, and agreed to several additional small reserves. Then he acceded when Pūtiki chiefs (Te Māwae, Ngāpara, Te Anaua, Hoani Wiremu Hīpango, and Kāwana Paipai) demanded one large reserve, with Te Māwae and Ngāpara staking out the corners to indicate exactly where they wanted it.[162] He also agreed to enlarge the Waipākura reserve from 300 acres to 650 acres.[163] But he still tried to cut them back where he could.[164] When he and McLean

went around with Te Māwae, Maketū, and 'Tanana' (probably Tāhana Tūroa) to inspect sites for other potential reserves, Symonds said no to most of them. On 22 May 1846 McLean observed 'it is astonishing to find what vast tracts of cultivated land the natives are parting with. It cannot be without regret on their part.'[165]

When Symonds left Whanganui in June 1846, taking with him the compensation money that he had been about to pay to Māori for the land the company had purchased, he said he was going because Māori requests for reserves were excessive. We observed previously that his departure was more likely a reaction to reports that Whanganui Māori planned to go to the Hutt to support those resisting the Crown (see section 5.4.10(2)).

Then the completion of the company's Whanganui purchase, and making reserves for Whanganui Māori, went on hold during the conflicts of 1846 and 1847.

7.5.2 The 1848 negotiations

It will be recalled that the Crown stated in argument before us that the 1848 purchase was a stand-alone transaction, with both Crown and Māori free to depart from Spain's recommendations.[166] If that were so, it would follow that the reserves made in the process we have just related were revoked – but that was not what happened. When McLean and Wills returned to Whanganui in 1848 they retained unaltered many of the lines surveyed in 1846, reflecting their understanding that they were completing the existing negotiations, rather than starting afresh.[167] This is consistent with our view, already expressed, that the process undertaken in 1848 was the completion of the process undertaken in 1846. The Crown indeed conceded that the 1848 negotiations were presented to Whanganui Māori as the carrying out of Spain's recommendations.[168] On that basis, Whanganui Māori were entitled to expect that the reserves that Spain recommended would now be implemented.

(1) *McLean follows Symonds in restricting reserves*

McLean did not go back to Spain's recommendations, but instead continued the process that Symonds began – as Macky expressed it, 'amalgamating and reducing the reserves that Maori would have received if the terms of Spain's 1844 "award" had been followed'.[169] Wills, the surveyor, said this process involved McLean persuading Whanganui Māori to exchange 'old reserves' that the company had selected for the 'new reserves' that Symonds agreed to in 1846.[170]

Whanganui Māori who were dissatisfied with the reserves identified in 1846 tried to change them. They were mostly unsuccessful. On 12 May, McLean reported to Lieutenant Governor Eyre: 'Some demands have been made by the natives for additional cultivations and Reserves which I could not entertain as they are already so amply provided for.' In McLean's view, Māori requests for further cultivation reserves were not genuine: they did not require them but were just trying to extract the best bargain possible.[171] Thus, we see that McLean was intent on taking the same line as Symonds – paring back as far as possible any requests for reserved land.

McLean did not reserve some significant pā that tangata whenua sought as reserves in 1846. These included Pākaitore and others nearby, which according to Mathews, the missionary, upriver groups closely related to Ngāti Tūwharetoa traditionally occupied. Historian Bruce Stirling told us that Pākaitore was one of several pā on the riverfront that were now at the edge of the township: the others were Te Ahi Tuatini, Te Oneheke, Te Karamu, Pukenamu, Patupāhou, Nukuiro, and Kaiārau.[172] Why McLean did not put these places into reserves is unclear, but we speculate that the various groups that occupied them were not present, or for some other reason were not party to discussions, in 1848. Pākaitore was still noted as a pā on an 1850 map of the town.[173]

McLean did not reserve Kōkōhuia, a fishing village just inland of Castlecliff near wetlands that were particularly valuable for eels.[174] Neither did he reserve Kaimātira pā, half a mile north of Mateongaonga on a cliff near the eastern bank of the river.

When he listed the Ngā Paerangi sites that McLean did not reserve,[175] Kenneth Clarke also told us about rights in land from Kaiwhaiki to Ūpokongaro that Ngā Paerangi and their hapū owned.[176] McLean reserved none of this land from the Whanganui purchase.

Haimona Rzoska, a witness for Ngā Poutama, told us that their core lands included kāinga and seasonal fishing villages in and around the present-day city of Whanganui:

> Many of the key kāinga around what became the Whanganui Township were places where Ngā Poutama resided or occupied. These were places such as Tōtarapuku, Mahoenui, Heketara, Kawakawa and Taumataaute between modern Wanganui East and Pūtiki, as well as Tūtaeika and Kaikōkōpu situated opposite Tōtarapuku. These were places where Ngā Poutama and Ngāti Pāmoana tūpuna lived. Pākaitore, Te Wharekākaho, Te Ahi Tuatini, Te Karamu and Pukenamu in central Whanganui were places where Ngā Poutama resided or occupied, along with other hapū. Tōtarapuku covered a large area inland from modern Whanganui East shopping centre. Taumataaute was a pā situated on the hill above the section of Anzac Parade where the river protection works are currently going on.
>
> These were all old seasonal fishing kāinga extending down to Kōkōhuia at modern Castlecliff.[177]

McLean did not reserve these places, although tangata whenua continued to use at least Pākaitore and Kōkōhuia.[178]

McLean wrestled with various groups about giving up reserves, especially forested sections. He pushed hard especially when Māori sought to hold on to land that he thought the company and settlers would particularly want. This led him to 'firmly and consistently' oppose demands for reserves, including at Tūtaeika and Mataongaonga. Sometimes, he had to yield: Ngāpara and others of Te Patutokotoko retained 71 acres out of the 100 acres of Taylor and Watt's section, and the people of Aramoho refused to give up their reserve.[179]

(2) *Land interests McLean did not recognise in reserves*

We acknowledged that McLean went to some lengths to ensure that those with interests in the Whanganui block were recognised in the payment he made. He did not, though, secure reserves for all who owned interests.

He reserved no land for Ngāti Tuera and Ngāti Hinearo, although they were hapū of the lower reaches.[180] Likewise Ngāti Pāmoana, a group with fishing interests in Kaitoke and near the township, especially from the Karamu Stream in the middle of town to the Kaikōkopu Stream near Tūtaeika.[181]

McLean reserved no Ngāti Tamareheroto pā or urupā, and reserved only one cultivation. This was called Motuhou, and he put it aside for a branch of Ngāti Tamareheroto called Ngāti Iti. The Native Land Court later excluded from the title of this reserve another branch of Ngāti Tamareheroto called Ngāti Pūkeko. McLean ignored Ngāti Tamareheroto's interests in the fishing villages Pungarehu, Kokohuia, Te Whare Kakaho, Te Ahi Tuatini, and Te Oneheke; in the extensive Nukuiro pā; in the Kaihārau (or Kaiārau) settlement on St John's Hill; in Rotokawau (Virginia Lake); in Toronui, a pā at one end of Rotokawau; in wāhi tapu and various resource areas such as pā tuna in the streams and swamps; and in some older pā.[182]

The upriver (or northern and central cluster) groups did not fare well either.

Ngāti Hāua from the Tūhua/Taumarunui area had kin connections in the lower reaches, and used fishing kāinga at Pūrua, Rākātoa, Pukerimu, Waipākura, Pukeika, Kaitoke, Aramoho, and Kukutā. McLean made no reserves for them.[183]

Te Patutokotoko, who were originally from Manganui-a-te-ao, were well established in the lower reaches by 1840, and their seasonal interests there were of older origin. They received only a tiny portion of their traditional cultivation site at Pūrua, and they told us that they had gained interests in the reserve at Aramoho at the expense of interests in Waipākura.[184] The descendants of Tāhana Tūroa contended in this inquiry that, even though Waipākura was the largest 1848 reserve, it was insufficient to provide for the contemporary and future needs of Te Patutokotoko.[185]

McLean made no reserves for Ngāti Tūwharetoa, although the rights of Te Heuheu and his people to fish in Kaitoke, at the river mouth, and on the coast, dated from before 1840. Eventually, both Te Heuheu and the Tūwharetoa missionary, Te Tauri, and their descendants, were recognised among the owners of Kaitoke.[186]

(3) *Did McLean pare back reserves in the Whanganui purchase?*

Macky calculated that McLean induced Whanganui Māori to give up 1,530 acres from the reserves that Spain recommended. Much of it was riverfront land, including 280 acres near Petre.[187] However, Wills's report of June 1848 suggests that McLean added 1,186.5 acres to the various reserves. On these calculations, it appears that McLean put 344 fewer acres into reserves than Spain recommended.

Macky suggested that the loss in acreage might have been offset by the better quality of the land gained: McLean put into reserves areas adjacent to the river, better land than the hilly river bank areas forfeited.[188] This was what McLean claimed. He reported that he considerably reduced reserves as set out in the company's original plan or in Spain's scheme, but those he created were of better quality so Māori were not worse off.[189]

These comparisons do not get away from the fact that what Whanganui Māori got in the way of reserves was not what Spain recommended. Spain recommended that one of every 10 sections surveyed would be for Māori, and that in addition their pā, urupā, and cultivations would be reserved. The company tried to amalgamate them both, so that all pā, urupā, and cultivations lay within a tenth reserve.

The surveyors had made some progress in laying out sections for settlement by the time the 1848 deed was signed, and 2,700 acres of tenths reserve had been selected for Māori, some including pā and cultivations. All of these tenths sections returned to the New Zealand Company to compensate for the incorporation of other sections in expanded reserves for Māori at Pūtiki and elsewhere.[190] The deed recorded the return of these sections in a way that suggested a simple voluntary exchange:

> And forasmuch as we have consented . . . the Reserves written in this paper . . . We consent to give back to Mr McLean for the Governor the places which were made sacred for us by Colonel Wakefield and Mr Spain.[191]

The 'consent' language notwithstanding, we think it unlikely that Whanganui Māori willingly forwent any pā, cultivations, or urupā that were designated as reserve in the earlier process. What they ended up with was simply what McLean allowed them to reserve after a process of hard bargaining.

At the time when the deed was signed, McLean estimated that he had set aside 5,450 acres as reserves under the Whanganui deed.[192] This equated to about 6 per cent of the approximately 89,000-acre block. However, most of the reserves were not surveyed in 1848. When they eventually were surveyed, the combined area of the Whanganui reserves was found to be slightly more than 7,400 acres, or 8.3 per cent of the total purchase area.[193]

Had Spain's recommendation been followed much more land would have been reserved. We cannot now recapture exactly how much, because we do not know what land was then comprised in pā, urupā, and cultivations. Even if we exclude pā, urupā, and cultivations, tenths reserves alone would have comprised 8,900 acres. Although we cannot now calculate precisely the extent of pā, urupā, and cultivations, we can say with certainty that reserves according to Spain's recommendations would have exceeded 10,000 acres by a significant margin.

(4) *Why did Whanganui Māori make concessions on reserves?*

Why Whanganui Māori were willing to make significant concessions on the issue of reserves is not clear.

Stirling suggested that since they came in the wake of the conflict of 1847 and in the face of the Crown's continued military presence, military coercion was a factor.[194] We have explained why we do not consider that the military presence played a significant role (see section 7.3.6).

There may be some truth in Macky's suggestion that Whanganui Māori were prepared to make concessions because they believed that, if they did not, the settlers would leave. As recently as 1847 Richmond had threatened to withdraw settlers if Māori did not agree to sell land.[195]

However, we consider that the driving reason why Whanganui Māori did not press harder to retain areas of land valuable to them was because they did not know the true extent of the land that they were selling. Had they fully understood that Spain had recommended that they

part with only 40,000 acres and that they were entitled to reserves of 10 per cent plus all pā, cultivations, and urupā, and that the amount now surveyed for sale more than doubled the area that Spain recommended, their approach to the negotiations would have been otherwise. We think it most unlikely that they would have accepted the reserve situation as redefined by Symonds and then implemented by McLean. When they signed the 1848 deed, Whanganui Māori had no way of knowing how comprehensively it departed from the estimation of their entitlements enshrined in Spain's recommendations.

(5) *Conclusion*

We analysed the approach of Whanganui Māori to the 1848 purchase deed, and concluded that their chief concern was to establish Pākehā settlers in their midst so that they could derive the benefits of the new colonial dispensation. We ventured the view that the purchase price was probably not their overriding concern at this stage, because they wanted the negotiations brought to a conclusion, so that the situation was settled and they could get on with their shared future with the settlers.

However, it would have been possible – and should have been possible – for Whanganui Māori to derive all they wanted from the purchase in relationship terms *and* retain all their most valuable places. The reservation for them of one-tenth of the total area plus pā, urupā, and cultivations was by no means excessive, and would not have hampered the settlers in any significant way. There was no principled reason for paring back the reserves that Spain recommended – in fact, Spain was at pains to limit pā, urupā, and cultivations to areas 'in cultivation or occupation'. The Māori population was about 750. This meant that the land that would be reserved by his formula was not excessive. Spain did not provide for the inclusion of places no longer in use. This included Taumata-karoro near Pūtiki, which had been relatively recently the site of a great battle against Te Rauparaha where up to 400 may have died (see chapter 2). This significant wāhi tapu was lost as a result of the Whanganui purchase, but it would also have been lost had the Crown followed Spain's recommendations.

We make this point to emphasise the fact that what Spain recommended was not pie-in-the-sky liberality. It was a reasonable and moderate allocation to tangata whenua that would have allowed them to retain the foothold they needed in the new society into which the 1848 purchase ushered them. The steady movement away from that situation that Governor Grey initiated, and that Symonds and then McLean followed up, resulted in a significantly lesser bastion in which Whanganui Māori could keep safe their cultural integrity, and from which they could reach out to the world of the settlers that was now growing in their midst.

7.5.3 The reserves created under the 1848 purchase deed

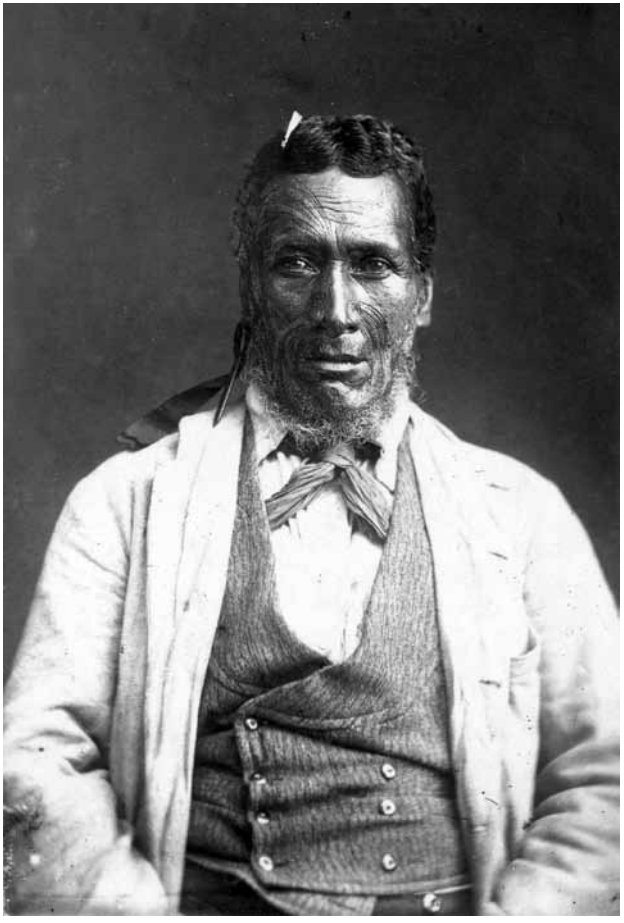
In total, the Whanganui deed created 15 reserves: a fisheries reserve and 14 land reserves. Altogether, the land reserves covered slightly more than 7,400 acres: 7,447 acres according to Macky; 7,421 acres by Bassett and Kay's calculations.[196] At the time the deed was signed, Waipākura was estimated at 650 acres, but there was no estimate of the area of seven other reserves.[197] Most of the other reserves were not surveyed before the deed was signed, although some had been 'marked on the ground' by or in the presence of Māori, as well as in front of McLean or the surveyors (or both). They were not finally defined until 1865.[198]

(1) *Fisheries reserves*

The first reserve involved not land but fisheries. The deed reserved to Māori all their eel and īnanga cuts at 'Wiritoa', at 'Paure', at 'Kaitoke', at 'Okiu', at 'Oakura', as well as at other streams for fishing eels described as having 'been given up by the Europeans'.[199]

(2) *Waipākura*

The largest reserve was Waipākura, estimated in 1848 as 650 acres. However, in 1850 a Government surveyor marked out an area of some 2,358 acres.[200] When the reserve came before the Native Land Court for title determination in 1867, district surveyor David Porter gave evidence about the difference in size. In a memorandum to the court, Porter wrote that in 1855 he and McLean had gone to Waipākura, 'where the Natives consented, if the block appeared on survey to be excessive, to reduce it to



Āperahama Tīpae, one of the main land claimants from Whangaehu and a signatory to the Whanganui deed. The large Waikupa reserve was created at Tīpae's request.

a reasonable size'. McLean then instructed Porter that the two principal owners, Tāmihana and Tāhana Tūroa, would assist him in laying out the reserve, and 'if the South Eastern extremity should prove too extensive', would consent to 'any reasonable reduction you may propose'. The two owners, however, did not agree to any reduction, and the area of the reserve remained as initially surveyed.[201]

The Native Land Court in 1867 accepted the boundaries of Waipākura as comprising the surveyed 2,358 acres, and awarded title to seven owners.[202] In subsequent hearings about the ownership of the reserve, which was contested, the court suggested that its jurisdiction was limited to the 650 acres set out in the original deed and that the remaining 1,700 acres were Crown land. The issue remained unresolved until 1891, when the court finally confirmed that the reserve did indeed comprise 2,358 acres.[203] The dispute that kept Waipākura before the court for almost a quarter of a century pitted Tāhana Tūroa and his successors against the descendants of Ēpiha Pātapu. As we shall see in chapter 11, disputes of this kind were a common outcome of the Native Land Court process.

(3) *Pūtiki*

The reserve at Pūtiki sat alongside another reserve that covered the Kaitoke dune lake. Together, these comprised 1,855 acres; Kaitoke lake accounted for about 85 of these acres. The owners wanted the land and lake comprised in Kaitoke reserve to be held under separate titles, but this was not allowed.

In June 1849, the Government surveyor Park laid out a village for the Pūtiki people. Following survey, McLean began arranging sections for individuals in the reserve.[204] This work was repeated in 1862 when John White, then commissioner of native reserves, worked with the rūnanga to partition the Pūtiki reserve.[205]

(4) *Aramoho*

McLean initially refused a request for the reserve at Aramoho (240 acres). At the time, Hōri Kīngi Te Anaua obligingly proposed that Aramoho people relocate to Pūtiki, that upriver people be accommodated at an enlarged Waipākura, and that Aramoho be given up for the Europeans. Tāmati Puna refused, and McLean eventually agreed to reserve land at Aramoho.[206]

(5) *Waikupa*

Another large reserve was Waikupa, found upon survey to cover 2,272 acres. It was created at the request of Āperahama Tīpae (of Ngāti Apa and Ngā Wairiki.)[207] Waikupa was encumbered by a right for settlers to cut firewood.[208]

(6) *Motuhou, Waipuna, Te Korito, and Mātakitaki*

The twelfth reserve provided for in the deed covered the four cultivations of Motuhou, Waipuna, Te Korito, and Mātakitaki. The deed gave no estimated area. No information has been located regarding the extent of Mātakitaki; a return of native reserves from 1862 states that Mātakitaki had been 'given up' by this time.[209] Why this happened is unclear, but its loss effectively reduced the area of land reserved for Whanganui Māori from the purchase.

When surveyed, the Motuhou, Waipuna, and Te Korito cultivations were shown to comprise 339 acres.[210]

(7) *Ngāturi*

Ngāturi (or Ngāture) was another cultivation reserve. The deed indicated that Māori might have to give up this reserve, noting that Māori were allowed to cultivate the land but that they might have to abandon the reserve 'lest the Europeans may be disturbed'. The deed implied that there would be no hardship to Māori if they were required to leave these cultivations as they had been 'provided with a large extent of land beyond the European boundary'. The Governor was to decide on whether Māori could maintain Ngāturi, and it appears that they were not required to quit it.[211]

(8) *Kaiwhaiki*

Situated on the eastern side of the Whanganui River, downstream from Tunuhaere, the 100-acre Kaiwhaiki reserve was just inside the original inland boundary of the 1848 purchase.[212] When this boundary was finally surveyed (in July and August 1850) McLean agreed to have it adjusted so that Kaiwhaiki would be outside the purchase area. According to McLean, this was done at the request of the chiefs who accompanied the survey in order to save the expense of laying out the reserve.[213] The new boundary, excluding Kaiwhaiki, is shown on the map 'of the settlement of Wanganui', which was subsequently drawn up to show the final extent of the Whanganui purchase.[214] A sketch of the adjusted boundary was also presented to the Native Land Court when it investigated the boundaries and ownership of the Kaiwhaiki block in April 1869.[215]

The 100-acre reserve was eventually surveyed as part of the much larger Kaiwhaiki block (1,945 acres).[216] This area was customary Māori land until 1869 when – following an application from Karehana Tahau – the Native Land Court issued a certificate of title for the block, vesting ownership in 10 individuals.[217]

(9) *Paure*

Paure reserve (108 acres) adjoined the dune lake named Paure. Nothing else is known about this reserve as no further mention of it was located in the documentary record.

(10) *Ōmanaia, Te Marangai, Pūrua, Mateongaonga, and Tūtaehika*

A series of five small reserves totalling 22.25 acres completed the areas reserved for Māori.

- Ōmanaia (5 acres) was described in the deed as a small wood 'close to the Eastern boundary line' and was located close to Lake Rotokauwau (Rotokawau?).[218]
- Te Marangai (14 acres) was also a small forested area.[219]
- The Pūrua reserve (two acres) was located at the base of what is now Durie Hill and included the Pūrua pā, the lower river residence of Te Pēhi Tūroa.[220]
- Mataongaonga (0.25 acres) was the urupā of Mateongaonga, village of the old chief Rangitauira of Ngā Paerangi.
- Tūtaehika (or Tūtaeika, one acre) was also an urupā reserve.[221]

7.5.4 Were the reserves intended to be inalienable?

The New Zealand Company's tenths scheme was intended to benefit Māori by creating permanent reserves that could be leased for profit but not sold. As we have seen, the Crown moved away from the tenths concept, but the language of the deed suggests that it intended that Whanganui Māori would own their reserves permanently.

(1) *What the deed said about alienability*

After listing the 15 areas set aside as reserves, the deed said:

> Heoi ko te wakamutunga rawatanga tenei o nga wahi e wakatapua mo matou i roto i te rohe mo te Pakeha. A ko aua

> wahi e wakaae ana hoki a te Makarini mo te Kawana o tenei motu kia waiho hei wenua pumau iho mo matou mo a matou tamariki me o matou uri i muri iho i a matou ake tonu atu.

Turton subsequently gave this translation:

> Now this assuredly is the last of the lands which shall be reserved or made sacred for us within the boundaries for the Europeans, and Mr McLean consents, on the part of the Governor of this Island, that these Reserves shall be surely and certainly for us, for our children, and for all our descendants and successors for ever.

The phrases 'e whakatapua mo matou' ('shall be reserved and made sacred') and 'kia waiho hei wenua pumau iho mo matou mo a matou tamariki me o matou uri i muri iho i a matou ake tonu atu' ('that these Reserves shall be surely and certainly for us, for our children, and for all our descendants and successors for ever') did not address the issue of whether or not the land could be sold or leased. They nevertheless conveyed the idea that Māori would own the reserves in perpetuity. Another passage that dealt with the laying out of roads – a task left to the Governor within the boundaries of reserves 'kua oti nei te wakatapu tonu mo matou' ('made sacred to us for ever') – also connoted permanence.

However, the deed also said 'A e wakaae ana hoki matou kia kaua e hokona aua wahi ki te Pakeha kia wakaae mai ra ano te Kawana o tenei motu' ('And we further agree that we shall not dispose of the said Reserves to the Europeans until the Governor of this Island has consented to our doing so.'). This is the only explicit reference to sale or disposal of reserved land.

(2) *The meaning of 'hokona' in the deed*

The Crown told us that it believes the term 'dispose of' meant to alienate, and that this covered the right to both lease and sell the reserves.[222] We do not agree with this approach. The language of Turton's later translation – which gives 'dispose of' as a translation for 'hokona' – is irrelevant. The deed was a Māori language document, and what matters is the meaning conveyed by the Māori words. 'Hoko' was a word connected with buying and selling. It is hard to know whether Māori would have understood the words 'kia kaua e hokona aua wahi ki te Pakeha' as precluding leases to Pākehā.

Accordingly, our interpretation of the deed is that it was silent on whether or not reserves could be leased; it prohibited their sale to the Pākehā unless the Governor consented, but this did not apply to leases.

(3) *Whanganui purchase reserves after 1848*

Looking at the deed in its historical context, however, it is worth noting that in 1848 the Crown's right of pre-emption was still in place, preventing Māori from selling land to anyone but the Crown. Also, the 1846 Native Land Purchase Ordinance prohibited Pākehā from leasing Māori land. This prohibition persisted until 1865. Thus, independently of the language of the 1848 deed, leases of Māori land of any kind were at that time prohibited. The deed prohibited Whanganui Māori from selling their reserves unless the Governor gave his consent, and even then they could sell only to the Crown.

(4) *The Whanganui Māori approach to leasing reserves*

It is likely that Whanganui Māori understood that the deed prohibited the sale of reserves. The language that the deed employed to talk about reserves – the use of the word tapu, and the repeated idea that they were 'mo matou mo a matou tamariki me o matou uri i muri iho i a matou ake tonu atu' – made it clear that the reserves were to be theirs forever. These words, together with the requirement that the Governor consent to any sale, would have confirmed that the reserves were the preserve of their Māori owners and their descendants in perpetuity.

It is apparent, though, that Whanganui Māori saw no contradiction in allowing Pākehā to use reserve land under lease. They informally leased land at Pūtiki and elsewhere in Whanganui from the arrival of settlers. In 1865 the Crown official Woon noted that informal leases were occurring and had occurred 'to a very large extent in this District'.[223] The ordinance prohibiting such leases apparently had little currency in Whanganui.

As we shall see in the coming chapters, much of the

land reserved for Māori in the Whanganui deed would be either leased or sold – often first leased, then sold – to the Crown and to private parties, after the Native Land Court individualised interests in Māori land and created titles that allowed sale.

7.5.5 The adequacy of the reserves

The Crown told us that the reserves were adequate for Māori needs, comprising nearly 10 per cent of the area purchased and comprising land in 'strategic and valuable locations' that Māori selected.[224]

It must first be pointed out that the actual extent of reserves was more than 1,000 acres short of 10 per cent of the block. Secondly, while it is true that Māori chose the areas reserved, that is testament only to the fact that the areas reserved were areas valuable to Māori. There is no dispute that the areas reserved were areas that Māori wanted. The controversy relates to the areas that Māori also wanted that were not reserved. Reports of the negotiations make it clear that McLean pushed hard to get Māori to forgo as many areas as he could. Ultimately, the areas reserved were those that McLean agreed to.

The question of adequacy is also more complicated than the Crown's submission suggests. We must consider for whom the reserves may have been adequate and for what purpose.

(1) *Those for whom no land was reserved*

On the first point, it is obvious that the reserves created from the Whanganui purchase could never be adequate for those hapū and whānau groups for whom no land was reserved. As discussed, many upriver, western, and eastern Whanganui hapū with resource or land interests in the Whanganui purchase area received no reserves at all. The failure to provide reserves for such groups ensured that, although they may have retained land elsewhere for their support, they lost seasonal use rights and land interests in the Whanganui block. We have discussed already the example of Pākaitore. This pā was not reserved, despite its importance, probably because the various iwi that occupied the area were not involved in the Whanganui purchase negotiations.

The Crown suggests that some Whanganui iwi did receive reserves despite claims to the contrary. In particular, it rejects Ngāti Hāua's assertion that no land in the block was reserved for them, saying that Te Patutokotoko got a reserve. The Crown's implication that reserving land for Te Patutokotoko was tantamount to reserving land for Ngāti Hāua perhaps relied on the fact that Hāmārama of Te Patutokotoko was the brother-in-law of Te Mamaku of Ngāti Hāua. If so, the Crown's thinking was fallacious. Ngāti Hāua was not Te Patutokotoko. Even if there had been 20 such concurrent marriages (and there probably were), hapū identity was still primarily a matter of descent. The immediate ancestors of Ngāti Hāua and Te Patutokotoko were different, even though both descent groups shared ancient lines of descent. Thus, there was no reserve for Ngāti Hāua, only an ability to use land reserved for Te Patutokotoko if that group gave their permission.

(2) *Those with land interests in the purchase boundaries*

For those groups for whom land was reserved, who lived primarily within the boundaries of the Whanganui purchase, an important question is whether their reserves allowed for economic development or simply for a subsistence lifestyle. It cannot be assumed that they all had land elsewhere that would provide a base for economic development. The tūrangawaewae of some lower reaches hapū was squarely within the purchase area. Their culture demanded that it remain there. Those hapū of Ngā Paerangi who had lived between Kaiwhaiki and Ūpokongaro, for example, might physically move to the lands of other Ngā Paerangi hapū upriver of the purchase boundary and be tolerated there for the sake of kinship, but their own tūrangawaewae was nevertheless lost. A similar situation affected various hapū of Ngā Poutama forced to move to Hikurangi. The Whanganui purchase reserves of such hapū were effectively all the land they had.

Other iwi and hapū may not have had land elsewhere to go to. We do not know, for example, whether tikanga would have permitted those Ngāti Ruakā or Te Patutokotoko living at Pūtiki and Waipākura to return en masse to the districts around Rānana or Manganui-a-te-ao. They had moved south many years before, and they

may not have been welcomed by kin or others who had taken over their former homes, resources, and cultivations. Here, we refer to the fact that the return of Ngāti Rangatahi to Taumarunui after their Heretaunga and Rangitīkei sojourns had to be negotiated: they could not just return freely. It may have been the same for Ngāti Ruakā and Te Patutokotoko. The Crown did not give examples to substantiate their contention that those living within the Whanganui purchase area had other landholdings elsewhere.[225]

(3) *Reserve provisions prefigured a subsistence lifestyle for Māori*

Tenths reserves were originally to provide for Māori communities an opportunity to develop economically, but the reserves made for them under the deed did not fulfil that prescription. It appears to us that the pā, cultivations, and urupā that the Crown allowed Whanganui Māori to reserve could only have furnished a subsistence lifestyle.

One has only to compare the amount of land reserved for Māori and the amount of land that the company would allocate to settlers to appreciate how differently the futures of the two groups were conceived. The company's settlement scheme called for the creation of rural sections of 100 acres. The Whanganui purchase vouchsafed over 80,000 acres of land for selection: 100-acre units for 800 settler families. On that premise, how many 100-acre units would tangata whenua have required? Of course, this is a hypothetical discussion because Māori did not live in separate 'family' units of this kind, but if they had wanted to take up that mode of existence, the land allocated to them in reserves would have been woefully deficient. Earlier in this chapter, we gave available census data for Whanganui Māori of the late 1840s, and concluded that it was likely that those with resident land interests in the Whanganui block numbered at least 750 (see section 7.3.5). If we assume family units of five people, then tangata whenua would have required at least 150 100-acre lots, or 15,000 acres – twice as much as was reserved for them. And we note again that 750+ was the Māori population then present in the Whanganui purchase area. There were far fewer than 800 settler families then ready to take up the company's sections. The total settler population in the wider Whanganui district (men, women, and children) did not exceed 1,000 until 1862.[226]

As it was, the 7,400 acres in reserves equated to a bit less than 10 acres per person.

(4) *Conclusion*

The limits of the land reserved for Whanganui Māori suggest that it was not intended they would engage in the economy of Whanganui in the same manner or to the same extent as Pākehā settlers. The dearth of land that they retained precluded any other possibility.

It will be seen later in this report that Whanganui Māori did indeed find the Whanganui purchase reserves insufficient for their future needs. It took less than a generation for this to be evident. For example, in 1876, and again in 1877, the chief Āperahama Tahunuiārangi of Ngā Wairiki and Ngāti Apa petitioned Parliament about the inadequacy of the reserves from the Whanganui purchase made for him and his people.[227]

7.6 Findings

We find that Whanganui Māori saw signing the Whanganui purchase deed as signifying their willingness to engage with Pākehā in a new dispensation where Pākehā would live on their land, would trade with them, would set up schools and hospitals, and they would be able to satisfy their curiosity about the new, modern ways that the settlers brought with them. At the deed-signing hui, two chiefs expressed Māori understanding of the relationship that would ensue in terms of a marriage. In this metaphor, Pākehā were marrying their land – and, by extension, them. It was to be an ongoing and mutual engagement between people.

The Crown, though, saw the purchase enshrined in the deed in the usual way that the English conceived sale: as the absolute transfer of property from one to another. The Pākehā settlers would take over ownership of the 89,000 acres transacted in the deed, and they would not be encumbered by the presence or expectations of Māori.

Leading up to the signing of the deed, Donald McLean

went to some lengths to ensure that all those with interests in the land within the purchase boundaries were party to the negotiations, especially those groups resident in that area. He was at pains to ensure that interest-holders received part of the purchase price.

However, he represented the purchase as the implementation of what commissioner William Spain recommended to the Governor in 1845. The key elements of Spain's recommendations were a purchase price of £1,000 for 40,000 acres, with Whanganui Māori to retain one-tenth of the area as reserves, plus their pā, urupā, and cultivations then in use.

We find that this representation was in effect a deliberate deception. McLean and the other officials must have known, as the negotiations unfolded and the survey advanced, that the deal with Whanganui Māori was no longer what Spain recommended, if it ever had been. Ultimately the only element that remained unchanged was the purchase price of £1,000. The area transacted grew from 40,000 to 89,000 acres, and McLean did his best – following Governor Grey's specific instructions to this effect – to whittle down the areas to be reserved.

We find that a fair purchase price would have been at least double the £1,000 paid, since that amount was arrived at as the proper price for 40,000 acres and 89,000 acres changed hands under the deed.

If McLean had implemented Spain's recommendations as regards reserves, many more pā, cultivations, and urupā would have been set aside, and we estimate that the total acreage would have exceeded 10,000 acres by a considerable margin. As it was, the figure was 7,400 acres. Some groups resident within the block boundaries were badly short-changed, and those with important seasonal resource rights or interests that carried entitlement to occupy land for various purposes were largely ignored. We find that the allocation of reserves under the deed limited tangata whenua to a subsistence lifestyle and denied them the opportunity to develop economically alongside Pākehā settlers.

That Whanganui Māori did not complain of these inequities was the result of the Crown's deception. Except for minor details Māori did not challenge the boundaries laid out by McLean, because they understood them as reflecting Spain's recommendations and as such non-negotiable.

In the end, the Whanganui purchase did not reflect the substance of Spain's recommendations, and nor was it an agreement reached through open and honest negotiation. Rather, McLean conducted the negotiations in a manipulative fashion that enabled him to gain acceptance of terms that strongly favoured the interests of the Crown.

The Crown conceded before us that it breached the Treaty when it told Māori that it was implementing Spain's recommendations when, in fact, it was securing the alienation of more than twice the area he recommended as the company's award.

In addition to the aspects of poor and deceptive Crown practice already summarised, it failed to:

- include in the negotiations all of those with rights and interests in the land and its resources;
- openly negotiate with Māori a fair purchase price under the changed circumstances of 1848;
- address the fact that Pūtiki Māori and others involved in the 1846 negotiations received a smaller share of the purchase price in 1848 as a result of the Crown's recognising many more vendors then than it did in 1846 without increasing the purchase price; and
- allow iwi, hapū, or whānau to retain rights in the land despite their opposition to its alienation.

Thus, the Crown's finalisation of the New Zealand Company's Whanganui purchase was an inauspicious beginning to their post-war relationship with Whanganui Māori. Rather than fulfilling its Treaty duties of partnership, honest dealing, and active protection, it obtained title to the Whanganui block through tactics that were mostly heavy-handed, manipulative, and self-serving.

The Crown's preparedness and ability to deal with Māori in this way was an augury of how it would exercise its resources and authority to the detriment of Whanganui Māori in the next period.

Notes

1. Document A100 (Macky), p 274
2. Ibid, p 270

3. Submission 3.3.118, p 1
4. Submission 3.3.51(a), pp 73–76; submission 3.3.138, p 8
5. Submission 3.3.51(a), pp 77–78
6. Ibid, pp 70–71
7. Ibid, p 89
8. Ibid, pp 87–95
9. Submission 3.3.118, pp 53–54
10. Ibid, p 3
11. Ibid, p 1
12. Ibid, pp 51–53
13. Ibid, p 3
14. Ibid
15. Ibid, p 44
16. Ibid, p 55
17. Ibid, p 64
18. Ibid, p 68
19. Document A65(k) (Stirling supporting documents), p 3976
20. Document A100 (Macky), p 323
21. Document A65(l) (Stirling supporting documents), p 4500
22. Document A100 (Macky), p 280
23. Taylor recorded on 18 March 1846 and 30 March 1847 that it would be 'good if they should be paid as soon as possible' and that 'the natives' were disappointed that Major Richmond had not come to pay for the land: doc A65(l) (Stirling supporting documents), pp 4339, 4393–4394; McLean found the same thing in March 1848: doc A65 (Stirling), p 511).
24. Document A65(k) (Stirling supporting documents), p 3815a
25. Ibid, p 3819a
26. Document A100 (Macky), p 266
27. Ibid, p 271
28. Document A65(j) (Stirling supporting documents), pp 3365–3366
29. Document A65(i) (Stirling supporting documents), pp 2621–2622
30. Document A65(k) (Stirling supporting documents), pp 3971–3972
31. Document A100 (Macky), p 308
32. Document A65(k) (Stirling supporting documents), pp 3799a, 3973
33. Document A100 (Macky), p 276
34. Document A65(k) (Stirling supporting documents), pp 3970–3971
35. Ibid, p 3794a
36. Ibid, p 3790a
37. Ibid, pp 3793a–3800a
38. Ibid, pp 3802a–3806a
39. Document A65(j) (Stirling supporting documents), p 3391
40. Document A65(k) (Stirling supporting documents), pp 3816a–3817a
41. Ibid, pp 3818a–3819a
42. Document A65(l) (Stirling supporting documents), p 4490
43. Document A65(k) (Stirling supporting documents), p 3819a (translation by Waitangi Tribunal)
44. Document A65(l) (Stirling supporting documents), p 4492
45. Document A100 (Macky), pp 309–310
46. Ibid, p 311
47. Ibid, p 312, tbl 6. Macky thinks there are 16 groups but may be considering 'Ngatitumungo' as separate from 'Ngatitumango'. One version of the original list is available in document A65(i) (Stirling supporting documents), p 2617. There, 'Ngatipa' is clearly Ngāti Pā (moana) and Ngāti Tūmango occurs twice.
48. Document A100 (Macky), p 313
49. Document A65(j) (Stirling supporting documents), p 3392
50. Document A65(k) (Stirling supporting documents), p 3812a; doc A100 (Macky), pp 275–276
51. Document A65(k) (Stirling supporting documents), p 3812a
52. Document A100 (Macky), p 279
53. Document A129(a) (Young supporting documents), sec 9, no 1, p 58
54. Document A65 (Stirling), pp 525, 528
55. Document A100 (Macky), p 286
56. Ibid, p 288
57. Ibid, p 289
58. Ibid, pp 288–289; doc A65 (Stirling), pp 510, 516
59. Document A100 (Macky), p 323; doc A65 (Stirling), p 542
60. Document A100 (Macky), p 275
61. Document A65(k) (Stirling supporting documents), p 3817a
62. Ibid, pp 3817a–3818a
63. Document A100 (Macky), p 280
64. Document A65 (Stirling), p 547
65. Ibid, pp 528–529; doc A100 (Macky), p 267
66. Document A100 (Macky), pp 291–292
67. Ibid, pp 272–273
68. Document A65(n) (Stirling supporting documents), p 5838
69. Document A100 (Macky), pp 313–314
70. Document A65(k) (Stirling supporting documents), p 3972
71. Document A113(e) (Head), pp 37–38
72. Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia Publishers, 2003), p 186
73. Document A113(e) (Head), p 34
74. Submission 3.3.118, p 14. For the full quotation, see 'Further Papers Relative to the Native Insurrection', AJHR, 1861, E–1, app A, p 6. It is repeated with slight variations in 'Opinions of Various Authorities on Native Tenure', AJHR, 1890, G–1, p 6.
75. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p 91
76. Document A100 (Macky), p 315
77. Document A65 (Stirling), p 535
78. Ibid, p 515
79. Document A100 (Macky), p 322
80. Document A65(l) (Stirling supporting documents), p 4490
81. Document A100 (Macky), p 316
82. It seems that in 1848, Te Māwae had three wives and no Christian name. It appears that he did not seek baptism until 1862, at which point he still had two wives. However, we have been given differing evidence on this point. Young names his three wives: doc A129 (Young) (confidential), p 87. Downes says that Taylor denied him baptism because he refused to give up one of his two wives: T W Downes, *Old Whanganui* (Hawera: W A Parkinson, 1915), p 267. Stirling says he was baptised on Christmas Day 1845. Stirling is citing Wards (Ian

Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832–1852* (Wellington: Government Printer, 1968), p 317), but Macky says that in August 1846 Te Māwae presented himself as a defender of Christianity but was not giving up any of his three wives. Macky is correct: see doc A65(l) (Stirling supporting documents), p 4672; doc A65 (Stirling), p 339; doc A100 (Macky), p 103.

83. Document A100 (Macky), p 281

84. Submission 3.3.118, p 47

85. Waitangi Tribunal, *The Mohaka River Report* (Wellington: Brooker and Friend Ltd, 1992), pp 27–30]

86. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 140

87. Transcript 4.1.17, p 55

88. Ibid

89. Submission 3.3.125, pp 7, 8, 24; submission 3.3.127, pp 4, 12; submission 3.3.129, pp 7–8; submission 3.3.130, pp 2, 20

90. Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Wellington: Victoria University Press, 2008), p 29

91. Vincent O'Malley, 'Treaty-Making in Early Colonial New Zealand', in *The Shaping of History*, ed Judith Binney (Wellington: Bridget Williams Books, 2001), p 139

92. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 69

93. Boast, *Buying the Land, Selling the Land*, pp 30–31

94. Waitangi Tribunal, *The Mohaka-ki-Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 128–129

95. Document A113(e) (Head), p 40

96. Document A100 (Macky), p 311

97. Document A109(c) (Stirling supporting documents). Macky says there are 207, but the first entry is not a signature and says 'Rangitauira's 4 sons'.

98. Submission 3.3.51(a), p 83; doc A65 (Stirling), p 540

99. Document A100 (Macky), p 286

100. Waitangi Tribunal, *Report on Aspects of the Wai 655 Claim* (Wellington: Legislation Direct, 2009), p 10. McLean's figures were 60 men, 60 women, and 50 children which in fact total 170 rather than 165.

101. Document A154 (Walton), p 132

102. Only 20 signatures on the 1848 deed have 'her mark' written after the name; many of these have an 'explanation' of their signing through their relationship to a male, such as 'wife of' or 'sister of'. Another three or four are doubtful (blurred) and could be women. For the list of recipients of the compensation, none of whom are women, see doc A109(c) (Stirling supporting documents), p [3]; Downes, *Old Whanganui*, p 330; doc A65(i) (Stirling supporting documents), p 2617.

103. They included Pungarehu, Kokohuia, Pātapu, Kaiwharawhara, Wāhupuna, Te Whare Kākaho, Te Ahi Tuatini, Otaawe, Ngongohau, Te One Heke, Paikatore, and many others; they can be seen in document A136 (district overview mapbook), pl 5.

104. Document A100 (Macky), p 319

105. Document A68 (Walzl), p 117

106. Document A65 (Stirling), p 538

107. Document A100 (Macky), pp 320–323

108. Document A65 (Stirling), pp 542–543

109. Ibid, p 538. It may have been Te Pōari Kuramate's half-brother, Ēpiha Pātapu, who received money on behalf of 'Ngatiangipotaka', but this would not have been for Pōari's interest.

110. Document A65(k) (Stirling supporting documents), pp 3874a, 3913a, 3919a, 3920a, 3933a, 3941a, 3944a, 4006; doc A65(l) (Stirling supporting documents), pp 4279, 4329; doc A65 (Stirling), pp 155, 186, 198, 200, 205; doc A100 (Macky), pp 164, 387; doc A68 (Walzl), p 85: doc A37 (Berghan), p 443

111. Waitangi Tribunal, *The Whanganui River Report*, p 140

112. Submission 3.3.118, p 55

113. Rose Daamen, *The Crown's Right of Pre-emption and FitzRoy's Waiver Purchases*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1998), p 22

114. Document A100 (Macky), pp 283–284

115. Waitangi Tribunal, *Te Whanganui a Tara*, pp 131–133. The return of 8.5 pence per acre is calculated from the £900 worth of goods and £1,500 'compensation' payment to Māori for the approximately 67,000 acres of the block. That Tribunal found that those Māori who released their customary interests in the Port Nicholson block for such payments were prejudiced thereby.

116. Document A100 (Macky), p 283; doc A66 (Mitchell and Innes), p 16

117. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims*, 2 vols (Wellington: Legislation Direct, 2008), vol 1, pp 209, 219, 285. The Tribunal found both presents and compensation to be inadequate.

118. Waitangi Tribunal, *The Whanganui River Report*, p 138

119. Document A100 (Macky), pp 83, 95, 147

120. Document A65(k) (Stirling supporting documents), p 3906a

121. Document A65(l) (Stirling supporting documents), p 4473; doc A100 (Macky), pp 285, 331

122. Document A100 (Macky), pp 278, 282

123. Ibid, p 285

124. Document A65 (Stirling), pp 640, 645

125. Ibid, p 555; doc A100 (Macky), p 284

126. Document A100 (Macky), p 284

127. Ibid

128. O'Malley, 'Treaty-Making', p 136

129. Document A100 (Macky), p 284

130. Waitangi Tribunal, *The Whanganui River Report*, p 140. We discuss further whether Whanganui Māori benefited from the sale of the Whanganui block and from settlement in chapters 9 and 27.

131. Waitangi Tribunal, *Te Whanganui a Tara*, pp 131–133; Waitangi Tribunal, *Te Tau Ihu*, p 272

132. Submission 3.3.51(a), pp 77–78

133. Submission 3.3.118, pp 53–54

134. Document A65 (Stirling), p 543; doc A100 (Macky), p 266

135. Document A65 (Stirling), pp 634–639

136. Document A100 (Macky) p 335

137. Ibid
138. Document A100 (Macky), p 285
139. Steven Oliver, 'Mete Kīngi Te Rangi Paetahi', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Bridget Williams Books Ltd and the Department of Internal Affairs, 1990), pp 487–488
140. Document A100 (Macky), pp 24–25
141. Document A65 (Stirling), p 185
142. Document A100 (Macky), pp 25–26
143. Ibid, p 88. By October 1842, 2,400 acres of tenths had been selected.
144. Document A100 (Macky), pp 87–89
145. Document A65 (Stirling), p 118
146. Waitangi Tribunal, *Te Whanganui a Tara*, pp 116–127, 131–132
147. Document A100 (Macky), p 52
148. Ibid, p 66
149. Document A65(i) (Stirling supporting documents), pp 2767–2770
150. Document A136, pl 10
151. Document A100 (Macky), pp 114–115
152. Ibid, p 115; doc A65 (Stirling), pp 257–258
153. Document A100 (Macky), p 156
154. Ibid, p 158
155. Ibid
156. Ibid, p 283
157. Ibid, p 158
158. Document B1 (Clarke), pp 11–19
159. Document A65(k) (Stirling supporting documents), p 3924a
160. Ibid, pp 3939a–3940a
161. Ibid, pp 3941a–3942a
162. Document A65(i) (Stirling supporting documents), pp 2507–2509
163. Document A100 (Macky), pp 159–160
164. Ibid, pp 160–161
165. Ibid, p 162
166. Submission 3.3.118, pp 71–73
167. Document A100 (Macky), p 273
168. Submission 3.3.118, p 1
169. Document A100 (Macky), p 267
170. Document A64 (Bassett and Kay), p 19
171. Document A65(j) (Stirling supporting documents), p 3393
172. Document A65 (Stirling), p 568
173. Document A100 (Macky), p 296
174. Document B7 (Rzoska), p 16
175. Document B1 (Clarke), pp 13–19
176. Document B21 (Simon), p 7
177. Document B7 (Rzoska), pp 13–14
178. Ibid, p 14
179. Document A100 (Macky), pp 298–299
180. Submission 3.3.103, p 9; doc C9 (Mair), p 5
181. Submission 3.3.90, p 22
182. Submission 3.3.106(a), pp 16–19
183. Submission 3.3.102, pp 14, 17
184. Submission 3.3.108, p 19
185. Submission 3.3.91(a), p 21
186. Submission 3.3.93, pp 9–10
187. Document A100 (Macky), pp 296–297
188. Ibid, p 297
189. Ibid, p 306
190. Document A65 (Stirling), pp 564, 570–571
191. Document A109(c) (Stirling supporting documents)
192. Document A65 (Stirling), p 560
193. Document A100 (Macky), p 305; doc A64 (Bassett and Kay), pp 179–181
194. Document A65 (Stirling), p 581
195. Document A100 (Macky), p 281
196. Ibid, p 305; doc A64 (Bassett and Kay), pp 179–181
197. Document A100 (Macky), pp 304–305
198. Document A64 (Bassett and Kay), p 22
199. Document A109(c) (Stirling supporting documents)
200. Document A64 (Bassett and Kay), p 261
201. Document A64 (Bassett and Kay), pp 23, 261–262
202. Document A64 (Bassett and Kay), p 263
203. Ibid, pp 270–271
204. Ibid, p 22
205. Ibid, pp 26–28
206. Ibid, p 35
207. Submission 3.3.118, p 66
208. Document A100 (Macky), p 299; doc A65 (Stirling), p 561
209. Document A64 (Bassett and Kay), p 24
210. Ibid, pp 236, 241, 243
211. Document A109(c) (Stirling supporting documents)
212. 'Whanganui [Wanganui] Block, Native Reserves', ABWN, 8102, W5279, box 43, WGN 221, Archives New Zealand
213. Donald McLean to Colonial Secretary, 12 August 1850, object #1016817, MS-papers-0032-0003A, McLean papers, ATL, Wellington
214. Document A140 (Southern Whanganui Cluster Mapbook), pl 5
215. Edwin Woon, memorandum, 26 April 1869, AEDK 18747 MA-WANG W2140/3, Wh 37 pt 1, 'Kaiwhaiki – 26 April 1869 to 15 September 1917', ANZ, Wellington
216. Document A140 (Southern Whanganui Cluster Mapbook), pl 31
217. Document A64 (Bassett and Kay), pp 55–55
218. Ibid, p 249
219. Ibid, p 234
220. Document A65 (Stirling), p 53
221. Document A109(c)
222. Memorandum 3.4.9, p 2
223. Document A64 (Bassett and Kay), p 30
224. Submission 3.3.118, p 64
225. Ibid, pp 44, 64
226. Document A100 (Macky), p 325
227. 'Report on Petition of Aperahama Tahunuirangi', 25 October 1876, AJHR, 1876, I–4, p 29; 'Report on Petition of Aperahama Tahunuiarangi', 6 September 1877, AJHR, 1877, I–3, p 15

PĀKAITORE

M2.1 Introduction

Pākaitore became famous – infamous in the eyes of some – when many Māori people occupied it, set up a makeshift village, and stayed there for 80 days from 29 February until 18 May 1995.

The official name of the place Māori called Pākaitore was (and is) Moutoa Gardens, a reserve under the management of the Wanganui District Council, located near the river in downtown Whanganui. The occupation was a political act intended to signal in a very palpable way Māori dissatisfaction with many Crown acts in Whanganui's colonial past. It was triggered by a Crown act of the present, though: a hui the Crown called to take place at Kaiwhaiki on 28 February 1995 to discuss its proposal to cap Treaty settlements at one billion dollars.

The council wanted the protestors to move. The city was teeming with opinions for and against the protestors' occupation, and meanwhile supporters came from all over, so that the occupiers numbered up to 300. The police were on standby. Everything was set for a showdown.

M2.2 Why We Tell the Story of Pākaitore

We explore the history of Pākaitore because it is a place that symbolises the kinds of injustices that litter our colonial past – a confused succession of wrong decisions that resulted in a very Māori place becoming a grassed public park in which stood various civic monuments. For 80 days in 1995, it was a place of protest, and the conspicuous presence in the city of many Māori people refusing to budge shook the complacency of Wanganui to its core. After a court decision in favour of the council, the occupiers departed peacefully. The city came to terms with the occupation and moved on – to the extent that there is an annual day of celebration each February to commemorate the assertion of mana motuhake Māori (Māori self-determination) that happened there in 1995. The reserve is still called Moutoa Gardens, though.

M2.3 Where It All Began

Pākaitore started life as a fishing kāinga near the mouth of the Whanganui River – a place that was included in the area that the Crown acquired in the Whanganui purchase in 1848.

◀ **Protesters at Moutoa Gardens, 31 March 1995. The protestors had been given until 5 pm that day to leave the gardens. When the deadline passed without any action being taken to remove them, they began singing. The protestors continued to occupy Pākaitore until 18 May 1995.**

We describe elsewhere how the Crown acquired about 89,000 acres in a broad swathe that covered much of the coastline in the inquiry district. The New Zealand Company had earlier purported to buy the land, and when William Spain was charged with looking into it, he recommended that the Crown should purchase 40,000 acres. He also recommended that one-tenth of the land should be reserved for Māori, plus pā, urupā, and areas of cultivation then in use. But not only did the Crown more than double the area it was supposed to acquire, its agents then persuaded Māori to give up many places that ought to have been reserved to them. Māori ended up with just over 7,400 acres in 15 locations; they mainly comprised existing pā and cultivations. If the Crown had followed Spain's recommendation, they would have got all those, plus another 8,900 acres.

M2.4 Pākaitore Not Set Aside as a Reserve

Pākaitore was not one of the places set aside as a reserve in the 1848 purchase. Pūtiki, located across the river, was one such place, but not Pākaitore. On the face of it, it should have been. Even contemporary European observers knew Pākaitore as a fishing village where people would stay on fishing trips. Mostly, people from elsewhere would stay there temporarily.[1] Ngāti Tūwharetoa, for example, stayed there when they came down the river to fish, but it was also, we were told, a place of Ngā Paerangi, Ngā Poutama, and Ngāti Pāmoana, who were local to the area.[2]

Pākaitore was also a gathering place. It was natural, then, that Edward Jerningham Wakefield took the New Zealand Company's deed there to present it to the people in May 1840. It was also to a hui at Pākaitore that Henry Williams brought the Treaty only a few days later, as Wakefield waited for rangatira from further inland to arrive to sign his deed. Williams quickly departed after gathering only nine signatures for the Treaty, but by the time the rangatira from up the river arrived to meet with Wakefield about the Company's deed, there were reportedly about 700 people gathered at Pākaitore. Wakefield commented at the time that the place was the 'fishing kainga of the upriver people'.[3]

This background explains why the claimants said in their statement of claim:

> The Crown . . . [d]id not meet Whanganui Māori requests for a reserve at Pakaitore (a place for landing, gathering and a place of sanctuary) to enable them to access a marketplace in Whanganui for trading purposes, causing economic marginalisation of Whanganui Māori.[4]

And in their closing submissions:

> The Crown also failed to ensure reserves were set aside for Māori in the Whanganui town as required by the spirit and intent of the tenths reserves, even though there were numerous pa and fishing kainga within the area selected for Whanganui town, including Pakaitore, the very spot where the New Zealand Company had signed its 1840 deed.[5]

M2.4.1 How Pākaitore was not included in a reserve

Although at first blush it is puzzling that Pākaitore was not included in a reserve, we think we can see how it probably came about.

The business of finalising the Whanganui purchase took years. In 1842, Colonel Wakefield decided to make no reserves in the town for Māori (see section 7.5.1(1)).[6] After the New Zealand Company came the Spain commission's investigation, and then the Crown's representatives (McLean and others) came in to work out what the Crown would do to implement the commission's recommendations – although in the event they departed completely from Spain's recommendations, but that's another story.

As the years rolled on, settlers became too impatient to wait for everything to be resolved legally, and began to occupy land that they expected would be included in the purchase. Pākaitore was land in that category. Well before McLean and his cohort came to sort out the boundaries of the purchase block and the reserves, a missionary, Matthews, and actually E J Wakefield himself, set themselves up with land and a house on the area that Māori used for a fishing kāinga. We think we do know the probable location of the area that was known as Pākaitore, but its dimension is less certain. It cannot have been a small

place, because it appears that tangata whenua might have sold part of it, at least, to the missionaries. Matthews claimed that he and another missionary, Mason, paid £5 for the land where the missionaries' house stood – although Mason said that the payment would have been for labour for building the house.[7] Anyway, Wakefield's house was there too, and Māori called it 'te whare Wikitoria' (Victoria's house).[8] Tangata whenua of this area, who largely rejected the purchase that the New Zealand Company claimed to have completed, later identified areas that they *had* agreed to sell. Pākaitore was within that general area.[9]

We think that there are reasons that explain why McLean did not reserve from the purchase the area where Pākaitore was located. First, Māori accepted that they had sold land there, and Pākehā had taken up residence. Even though Pākehā of the time knew of Pākaitore as a place that Māori used regularly, McLean was not in the business of ensuring all places important to Māori were reserved. Rather, he tended in the other direction: he was trying to minimise the area set aside in reserves. Michael Macky, the Crown's principal witness on the Whanganui purchase, pointed out another relevant factor. The absence of any record of discussion about reserving Pākaitore, which he called a 'noteworthy site', might have been because talks about reserves in 1846 and 1848 did not include Māori from the 'the highest reaches of the river', including the rangatira Te Mamaku.[10] It seems that it might have been those upriver people who had the strongest interest in ensuring that Pākaitore was among the reserves from the Whanganui purchase.

We do not consider that there is sufficient evidence to conclude that Māori accepted that Pākaitore was no longer their place, nor that they were not expecting to retain the right to occupy that and other key locations in and around the town. It is really impossible now to state definitively what the various groups of Māori concerned understood or expected.

Anyway, we know that in this period Pākaitore was not only a place where Pākehā were living, but it was also where Māori from around the region came to sell produce to the incoming settlers.[11]

M2.4.2 What happened once the purchase was finalised

Shortly after the finalisation of the purchase, part of the land adjacent to the foreshore was set aside as a public reserve. This reserve became the town marketplace, where Māori came to sell their produce.[12] The Government built a lodging house where Māori could stay when visiting the town – arguably Crown recognition of the legitimacy of Māori use and occupation of the site. By the late 1860s, the accommodation house had fallen into disrepair, and Māori asked for another in its place. Now, though, the town board was beginning to insist that the land should be put to public use.[13]

In 1865, the Wellington Provincial Government erected the first of many monuments on the land that was now a public reserve. The monument, featuring a weeping woman, commemorated the 'loyal' Māori who had fought against the 'fanatics and barbarians' – their kin – further up the river at Moutoa Island, earlier in 1864. The townsfolk presented a flag to Māori as a 'battle honour' in a ceremony at the market place; some months later the monument was unveiled in a further ceremony attended by many Māori and settlers.[14] The land came to be known as Moutoa Gardens.

The Crown delegated control of the area to the local authority, which began to parcel out rights to land, and access to the foreshore. In the 1870s, Donald McLean – by then Native Minister – proposed that the Crown should set aside an acre that it would hold for Māori to use.[15] This was his recognition of the need for Māori to retain the right to access the foreshore, and to occupy nearby land. The Wanganui River Foreshore Grant Act 1874 resulted, delegating more power over the river to the Wanganui Borough, but also granting the Crown power to decide whether and how much land would be reserved to Māori. The official report on Native Reserves for 1874 stated:

> The foreshore of the river abreast of the marketplace, and of sections 74, 75, and 76 in Taupo quay has been set aside for a Native market and landing-place for canoes, due provision being made for public access to the river.[16]

Administrative delays appear to have stymied this plan.

The 'Moutoa flag' commemorating the Moutoa battle was presented to Māori by Wanganui settlers in a ceremony at Pākaitore in 1865. The flag continued to be brought out on ceremonial occasions into the twentieth century. The occasion of this photograph is unknown but it was taken about 1900.

A new Act in 1876 preserved the power of the Crown to grant a reserve for Māori use but limited its location to a particular section of land on the waterfront some distance upriver from Pākaitore. Presumably, the sections identified earlier were no longer available. In 1877, the Native Department asked Resident Magistrate Woon to select a site for Māori use, but in the end, the Government decided against setting aside the land for Māori. The decision was confirmed in 1880, over the objections and pleas of Woon, who understood the local situation very well, and knew that the place was special to Māori. The new Native Minister, John Bryce, was having none of it. '[T]o establish the Natives in the middle of the Town', he considered, 'would be objectionable.'[17]

By the end of the nineteenth century, the marketplace having become a park, and buildings on the former pā area, Māori were staying in camps all along the riverbank. Then, in 1904, one of the largest floods in memory obliged them to abandon their encampment for the town's Drill Hall.[18] Afterwards, they returned and were still there in 1912.[19]

M2.5 The 1995 Occupation

We were told that the occupation of Moutoa Gardens in 1995 was not unplanned. In the eyes of the occupiers, the act symbolised the reclamation of Pākaitore, which was connected closely with what they saw as the illegal purchase of the Whanganui block in 1848.[20] Not all Whanganui Māori supported the occupation, with some preferring other ways of relating with the Crown. But it certainly galvanised a sector of the Māori community into engaging fervidly with their past.

At our hearings, Mariana Waitai told us that the occupation was part of an upsurge of Māori action that began in the 1970s, and came to fruition with the commencement

Ken Mair (centre) and Niko Tangaroa (right), with other Whanganui iwi members, holding the eviction notice that had just been served on them, 17 May 1995.

of the Waitangi Tribunal's hearings into the Whanganui River claim in the mid-1990s. She said Māori were learning about how history had affected them, and in 1993 and in early 1995, they occupied two local sites of significance (Tīeke and Mōrero) to protest Crown actions. One of the facts that the river hearings revealed was the existence of a standard chain mark located at Pākaitore. Many saw this as a symbol of oppression. In December 1994, the head of the statue of John Ballance – nineteenth-century Premier, Native Minister, and Wanganui local – was removed from Moutoa Gardens.[21]

The decision to occupy the site, however, was timed specifically to coincide with a Government-initiated regional hui at Kaiwhaiki to discuss the 'fiscal envelope' – the Crown's proposal to cap the cost of Treaty settlements at a billion dollars. The occupation commenced on 28 February 1995, the day before the hui was scheduled to take place. Ms Waitai told us that the number of people who stayed during the occupation fluctuated between 100–300, all of whom were housed and fed in the impromptu kāinga that arose.[22]

In response, the Wanganui District Council issued two eviction notices. The second notice followed a decision of the High Court, on 16 May 1995, in which the court held

▶ Taupo Quay and Pākaitore/Moutoa Gardens from Durie Hill, circa 1890s

▼ Māori encampment on the banks of the Whanganui River near the Victoria Avenue Bridge, looking towards Durie Tower on the south-eastern bank, late 1800s

that the council held legal title to the land. The occupiers left peacefully two days later.[23]

M2.6 Resolution?

Following their departure, and ahead of our hearings, the council and the occupiers entered into discussions about what ought to happen next. In 2001, the Crown, the council, and Whanganui Māori negotiated a tripartite agreement to administer the site, setting up a board that comprised representatives from each party.[24]

Then, in 2007, the Crown and Whanganui Māori entered into a deed of on-account settlement. Under it, the Crown transferred to Māori the local courthouse – which sits at one corner of the gardens – in advance of a full settlement of their land claims. A dedicated trust was established to hold the land for the people.[25]

Ms Waitai emphasised in her evidence to us that, while both the tripartite agreement and the transfer of the ownership of the courthouse represented progress, they did not amount to what the people were seeking – ownership of the Pākaitore land.

M2.7 The Court's Job Differs from Ours

When the Wanganui District Council went to court in 1995, it was seeking a declaration from the court that it owned the title to the site, and an injunction directing the occupiers to leave and remove the buildings. It succeeded.

We have two comments to make about that case. First, the court's task was quite different from our own. It needed to ascertain the situation as regards legal title to the reserve called Moutoa Gardens. In New Zealand, it is very difficult to displace registered legal title to land. Essentially, the defendants (the occupants) would have had to prove either that their customary title was never extinguished, or that the land had been reserved to them but had somehow mistakenly ended up under the control of the Crown and then the council. Neither of these was the case.

Our job, though, is to look into claims before us in light of the Treaty, not the law. It is available to us to find that yes, the council owns legal title to the land *but* that the process by which that came to pass breached the Treaty and its principles. The judge in the case specifically noted that although the site was not at that time the subject of any claim to the Waitangi Tribunal,

> There is no reason why the situation with regard to Moutoa Gardens cannot be further elaborated, and taken into account in any recommendation in respect of the land claim, stopping short it would seem of being the subject of a recommendation.[26]

The latter observation reflected the limitation on the Tribunal's ability to make recommendations about land in private ownership. Under our Act, land that local authorities own is land in private ownership.

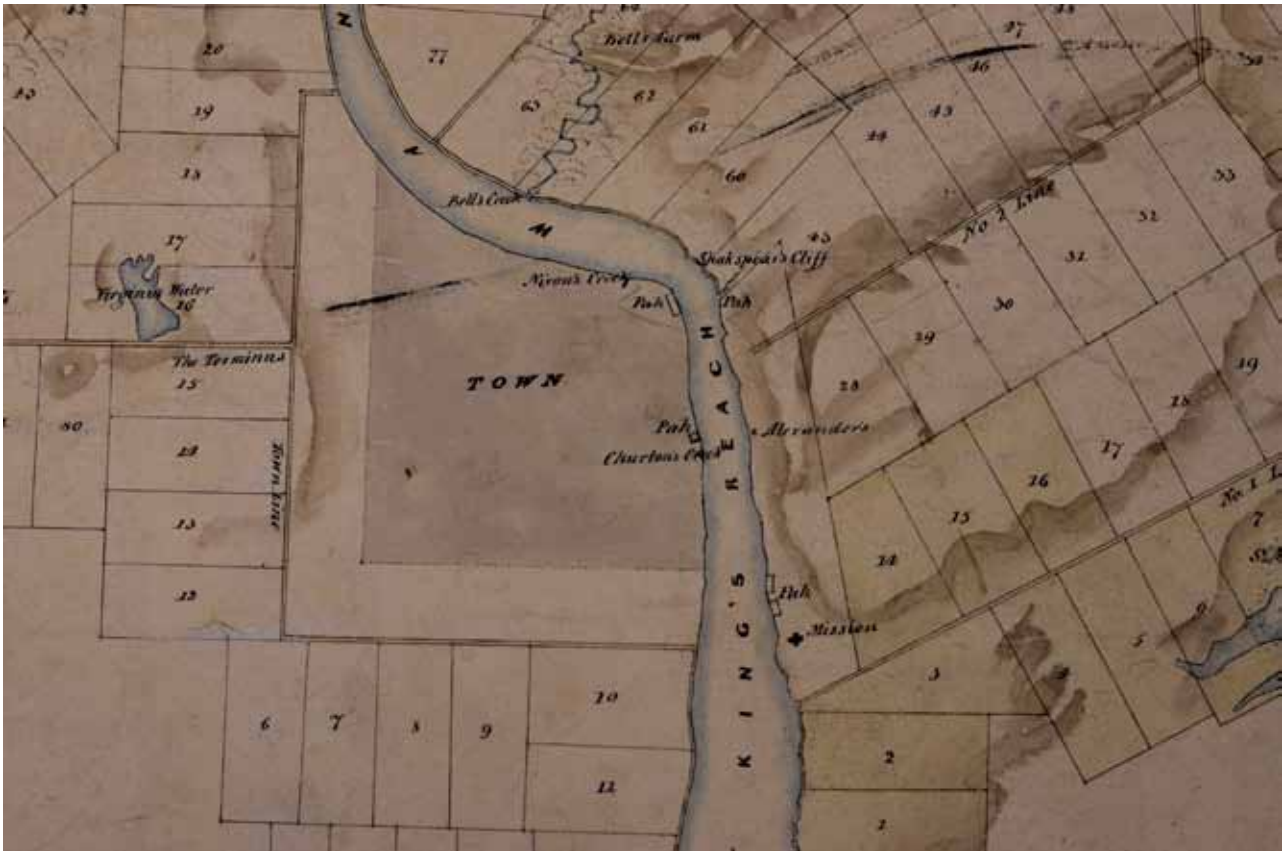
M2.8 Where Was Pākaitore?

His Honour Justice Heron came to the view that there was little evidence to suggest that Māori occupied the site that became Moutoa Gardens, and that Pākaitore was, if anything, a seasonal kāinga located on the riverbank adjacent to the land, which was washed away as a result of floods in the early 1840s. Although it was possible that Māori had occupied the site that became Moutoa Gardens before 1840, he saw no evidence as to this.[27]

We do not know whether the evidence that was before the High Court was the same evidence that we have seen. We have looked closely at a number of maps and photographs which, upon careful examination, have led us to a different view from the court's. We consider that it *is* possible to ascertain the likely location of Pākaitore, and to see how, over time, at least part of that area morphed into public space that became known as Moutoa Gardens, forcing Māori to take up residence on the riverbank instead.

M2.8.1 The 1842 map

The first map, reproduced below, is entitled 'Map of the Country Sections in the District of Wanganui'. It is dated 16 May 1842, and on it is the signature of Sam Chas. Brees, with the descriptor 'Principal Surveyor New Zealand



Detail of the New Zealand Company's map of the Whanganui district in 1842, showing two pā within the proposed town boundaries

Company'. The map shows many rectangular blocks, each of which was a country section in the New Zealand Company's plan for the settlement of Whanganui. In the bottom left quadrant of the map is a shaded area labelled 'TOWN'. That is the area within which the proposed quarter-acre town sections would be located, but the scale of this map was too small to show these. However, within the shaded town area, two 'Pah' are depicted. One is shown as a rectangle with another faint line demarcating a larger area around it. We take this to be the kāinga of Pākaitore. Important to note at this point is that this pā is located on a bend of the river, where the land almost forms a point. 'Shakspears Cliff', also a river landmark, is marked on the bank opposite. These permanent features enable us to track the location of this pā in relation to the area that became Moutoa Gardens, by looking at a succession of maps and photographs that begin with this map of 1842. Closer to the mouth of the river, but still within the shaded town area, is another 'Pah' with a small square demarcating its location beside 'Churton's Creek'. The proximity of this pā to Churton's Creek, another permanent feature, also enables us to follow it through subsequent images.

The scale is one inch to 40 chains, which is half a mile. We also know that each of the country sections in the New Zealand Company's plan was 100 acres. By February

Maori traders, Pākaitore Pa, 1880s. Shakespeare Cliff is visible on the opposite side of the Whanganui River.

1845, it had surveyed 368 of them (36,800 acres in total) in a grid stretching north, east, and west of the town.[28] It will be immediately apparent that if each of the country sections shown as numbered rectangles was 100 acres, then the area within the sketched boundary of the 'Pah' that we think was Pākaitore can safely be estimated at 10 acres at least, and possibly as many as 14 acres.[29] The faint line outlining the larger area around the rectangle might have been a fence; Wakefield described what he found in May 1840 as a place that was 'poorly built and badly fenced'. Stirling said Wakefield mistook the fishing kāinga for a permanent settlement. Certainly, the numbers that Wakefield observed were as many as would have occupied a village: he saw about 200 staying there, and about 50 out fishing on waka one morning. He was told that they were from 'Wahipari, the place of cliffs upriver', and came down to fish on a seasonal basis.[30]

We find it unsurprising that the pā area that we think was Pākaitore is shown as having been fairly extensive. At the time when this map was made, there was no competing pressure for land. It appears that multiple upriver groups used it sporadically as a fishing kāinga, and we were told that hapū who were more from the area – Ngā Paerangi, Ngā Poutama, and Ngāti Pāmoana – also exercised rights there. Located directly across the river from Pūtiki, and near the mouth of the river, it was clearly a place in the

Wanganui, circa 1870. The Moutoa monument is by the whare near the river, surrounded by logs. Taupo Quay runs along the river by the monument. Shakespeare Cliff is seen opposite.

centre of things, figuring in the maintenance of relationships right across the Whanganui district, from the lower river to groups as far afield as Ngāti Tūwharetoa. Different groups might sometimes have stayed there simultaneously, taking up temporary residence in different parts of a flat area near the river. Certainly, the depiction in this map of 1842 is consistent with such an hypothesis. And as we have seen, Māori gathered there to see what they made of both the Treaty and the Company's deed in May 1840 – in their hundreds for the hui about the deed. This indicates to us that this was an area where people gathered – a large flat space near where they beached waka, sat and talked, and could also stay over. Why would they have limited themselves to only a small area?

Also, it seems that a site still referred to as Pākaitore was used for a market at the same time that Pākehā had

Flooding at Wanganui, 1904

set up houses with land around them. These different uses seem to have been quite compatible, again suggesting that it was not a small site.

As for the High Court's view that Māori stayed only on a narrow riverside strip, we must observe that the evidence we have seen makes that unlikely. Moreover, we must ask why Māori would have stayed for long on land right beside the river that was vulnerable to inundation if they had available to them drier land nearby. They might not always have stayed in exactly the same place, but when flooding seemed at all likely – and of course the Whanganui River can flood at any time of year – they would surely have simply set themselves up more securely on land that was further from the water, and higher. Later, when land and access rights were allocated to others, these choices might well have been constrained, so that Māori were left to occupy what land they could on the riverbank, and to await the designation of a reserve.

'Plan of the town of Petre, in the district of Wanganui', 1850. There is a pā on the riverbank next to the town marketplace.

M2.8.2 The 1850 map

It appears that this had happened by 1850.

We refer now to the map labelled 'No 5 Plan of the Town of Petre filed in the Office of the Colonial Secretary, Wellington', and signed by Alfred Domett, the Colonial Secretary. Its scale is 10 inches to the mile, and it shows the quarter-acre town sections in the settlement known in 1850 as Petre. Taupo Quay runs along the river, and where the land forms that kind of point out into the river, there is a triangular space labelled Market Place. Situated on it are a 'Court House', 'Reading Room', and 'Exchange'. In the bottom corner of the triangle, near the river, is a long rectangular site labelled 'Pah'. It is to be noted that further along, where Taupo Quay meets Churton's Creek, there is no longer a pā shown. We take from this map that once the town sections were laid out, and settlers were occupying them, the 'pah' area was reduced and became concentrated in an area closer to the river. Māori no longer occupied the area beside Churton's Creek.

▶ **Wanganui city, including Moutoa Gardens and Queen's Gardens, 1958. The triangular grassed area in the foreground appears to have been the same place where a fenced 'pah' was shown on the 1842 New Zealand Company plan of Wanganui.**

M2.8.2

Leroy Matthews leading the pōwhiri for the twentieth anniversary of the occupation of Pākaitore / Moutoa Gardens on 28 February 2015

The triangular 'Market Place', with the court house, reading room, and exchange, is the area that became Moutoa Gardens, on the point and directly across from Shakespeare Cliff – in other words, the site that was formerly part of the larger area that Māori used as the fishing kāinga and gathering place known as Pākaitore.

M2.8.3 Photographs

Photographs confirm this. The photograph on page 284, which dates from the 1870s, shows the Moutoa monument down near the river, with Shakespeare Cliff in the background. This monument became a feature of Moutoa Gardens. It is seen in the next photograph, on page 285, of the flood of 1904, which shows the white monument near a flagstaff on the boundary of the park that is nearest the river. There is now a road along this boundary, and buildings across the road from the park along the riverbank, probably built on reclaimed land.

Nevertheless, it is apparent that the park is the same land, forming that point that juts into the river, where the larger 'Pah' area was located in the 1842 map. The aerial photograph of this promontory (on page 287), taken in 1958, shows the triangle of Moutoa Gardens in the foreground, with Queen's Park behind. This photograph makes it evident that Moutoa Gardens occupies space on the upriver side of the promontory, which appears to mirror exactly the area marked on the 1842 map as the rectangular 'Pah' and surrounding land.

M2.8.4 Conclusion

We do not claim that it is possible to prove that the area that is now Moutoa Gardens occupies precisely the site of the larger 'Pah' shown in the 1842 map, or that the larger 'Pah' was definitely Pākaitore. Our opinion derives from logical inferences and an assessment of probabilities. But it is clear from the evidence of observers of the time and the maps reproduced here that Māori occupied an area there or thereabouts, that the area was known as Pākaitore, and that they did not restrict themselves to staying on the riverbank until after settlers effectively excluded them from the wider area nearer the town. We consider it very likely that the 'Pah' shown in the same vicinity on both the maps of 1842 and 1850 was Pākaitore, and that the present-day Moutoa Gardens occupies the same place, at least in part. If not, it is very nearby. We do not consider that there is evidence to support the contention that Māori only ever occupied land along the riverbank.

Whether or not Moutoa Gardens and Pākaitore were co-extensive – that is, the same size and on the same spot – there is no doubt that Moutoa Gardens has come to symbolise both Pākaitore and Māori presence and mana in that place. It was a place that should have been, but was not, expressed in the reserve of land there for them.

M2.9 What We Say

We have found that the Whanganui purchase breached the principles of the Treaty in ways that were serious, and had far-reaching effects. One of its areas of particular weakness was the way the Crown's representatives handled reserves (see sections 7.5.2(1), 7.5.5). It is plain that Pākaitore was the very kind of place that should have been a Māori reserve. Moreover, Donald McLean as Native Minister later arranged for Māori to have the use of an acre in town near the river that would fulfil some of the functions that Pākaitore once fulfilled, and Māori would surely have expected the acre to be in the same place. But the Crown did not follow through.

The Crown recognised in 2007 that it had breached the Treaty, and it transferred ownership of the court house to Pākaitore Trust in an on-account settlement. Since then, the trust has received income of about $180,000 a year in rent for the court house. The trustees have used 'the rental money to aid Whanganui iwi nation building and presence', according to a report of a recent interview with chairwoman Miriama Cribb in the *Wanganui Chronicle*.[31]

Now, though, Pākaitore Trust is being wound up. A governance entity called Ngā Tāngata Tiaki came into being last year after the Whanganui River Claim was settled, and that body will now take over from the trust.[32]

It seems likely that the matter of Pākaitore will come up in the Treaty settlement negotiations that will follow this report. Beyond the question of ownership, Ms Waitai told us of ongoing disagreements between members of the tripartite board over whether the land should remain as Moutoa Gardens, or should be called as Pākaitore.[33]

We are confident that the parties will come to an arrangement that enables expression of both the history and symbolic character of the land. While it has come to be a place for all people, Pākaitore was first and foremost a place for Māori – one where Māori from all parts could feel welcome and exercise their customary rights. Only when this aspect of the past is sufficiently acknowledged will the Crown and Māori, and the people of the city of Whanganui, move forward together in the spirit of he whiritaunoka.

Notes

1. Document A128 (Waitai), p 24
2. Document B7 (Rzoska), p 14
3. Document A65 (Stirling), p 77
4. Claim 1.5.5, p 492
5. Submission 3.3.52(a), pp 33–34
6. Document A100 (Macky), pp 87–89
7. Document A65 (Stirling), p 111
8. Ibid, pp 112–113
9. Ibid, pp 210–211
10. Document A100 (Macky), p 296
11. Document A65 (Stirling), p 585
12. Document A36 (Marr), pp 148–149
13. Document A65 (Stirling), pp 585–586
14. Ibid, pp 811–812; doc A128 (Waitai), p 24
15. Document A36 (Marr), p 149
16. The Wanganui Harbour and River Conservators Board Act 1876 repealed the 1874 Act but continued the power of the Governor to

grant a reserve, not exceeding one acre, for Māori use, on lot E. This land was one of several thin strips of land along the waterfront: see 'The Wanganui Harbour & River Conservators Board Act 1876', map, ABVD 24480 W5528/7/[6], MD21A, Archives New Zealand, Wellington; 'Report of the Commissioner of Native Reserves', 29 May 1874, AJHR, 1874, G-5, p 3.

17. Document A36 (Marr), p 149; T W Lewis, Under-Secretary, to R W Woon, 19 April 1880, AEDK 18740 MA-WANG 1/3/11, Archives New Zealand, Wellington

18. 'The 1891 Flood Eclipsed', *Wanganui Chronicle*, 26 May 1904, p 5

19. 'Local and General', *Wanganui Herald*, 15 November 1912, p 4

20. Document A128 (Waitai), p 3

21. Ibid, pp 9–13

22. Ibid, pp 15–17

23. Ibid, pp 17–20

24. Ibid, pp 23, 26–28

25. Ibid, p 29

26. *Wanganui District Council v Tangaroa* [1995] 2 NZLR 706 at 707

27. Ibid at 708–712, 714–715. This view of events was supported by the historian Paul Moon: see Paul Moon, 'The History of Moutoa Gardens and Claims of Ownership', *The Journal of the Polynesian Society*, vol 105, no 3, September 1996, pp 347–365.

28. Document A65 (Stirling), p 248

29. This estimate has been produced using a combination of the original map and modern mapping software.

30. Document A65 (Stirling), p 74

31. 'Pakaitore Trust Reachs End of Era', *Wanganui Chronicle*, 15 August 2015

32. Ibid

33. Document A128 (Waitai), pp 23–24

CHAPTER 8

POLITICS AND WAR IN WHANGANUI, 1848–65

8.1 Introduction

From 1848, with peace restored and the Whanganui block purchase complete, the relationship between Whanganui Māori and the Crown entered a new phase. In the years between 1848 and 1865, Whanganui Māori adapted to the new realities in Whanganui, now home not only to them but also for increasing numbers of settlers. Locally, their traditional ways of working through rūnanga and hui evolved to meet the challenges of the new world they inhabited. At a national level the Kīngitanga (King movement), was established as a means of enabling Māori to engage with the Crown on an equal footing.

The Crown developed a number of measures for administering Māori affairs during this period. It attempted to modify the existing system of resident magistrates and Māori assessors; initiated what was intended to be an annual or biennial national hui of rangatira to consider Crown policies affecting Māori; and attempted the development of officially organised and sanctioned rūnanga as a form of Māori local government. By 1865, all of these schemes had been abandoned.

In this chapter we outline how Whanganui Māori managed their affairs through their own institutions and consider how the Crown responded. We assess the Crown's administrative regime for Māori and its impact on the ability of Whanganui Māori to govern their own affairs.

Of particular importance during this period was the development of the Kīngitanga and Pai Mārire movements. Both significantly affected the Treaty relationship in the Whanganui district. We look at how Whanganui Māori groups responded to the Kīngitanga and Pai Mārire, and how these responses strained relations between Whanganui Māori and affected the Crown's perceptions of them. We examine how conflict between these movements and the Crown in Waikato and Taranaki saw war spread to Whanganui, and the effect that had on the relationship between Whanganui Māori and the Crown.

8.2 The Parties' Positions

The claimants and the Crown agreed that Whanganui Māori exercised a considerable degree of autonomy in the management of their own affairs during this period. They disagreed on the nature of the Crown's attempts to extend its administrative system over Māori communities and the way that these attempts contributed to the conflict that developed between the Treaty partners.

Māori encampment with tents and waka extending along the Whanganui River bank, circa 1860s

8.2.1 What the claimants said

The claimants submitted that Crown–Māori relations after the Treaty were characterised by the progressive disempowerment of Māori institutions, whether tribal or pan-tribal, traditional or experimental. In their view, Whanganui Māori attempted to maintain their distinct identities in the face of a colonising system intent on assimilation and amalgamation.[1] The claimants regarded Māori resistance to Crown aggression as the root cause of renewed conflict with the Crown. They alleged that the Crown attempted to open up Māori land to settlement by force and submitted that the Crown stoked settler hostility and exploited settler paranoia to justify its military intervention. The wars resulted in divisions between and within iwi that were deep and lasting, casting shadows on Whanganui Māori relationships that linger today.[2]

8.2.2 What the Crown said

The Crown argued that, throughout the period to 1865, the British Government held fast to the principle that there could be only one source of law in the colony. Amalgamation of Māori was the key goal, and it was

believed that this would lead to peace.[3] The Crown also submitted that, although this was the overriding goal, successive administrations moved (as a matter of policy, rather than law) with considerable caution before seeking to increase the substantive exercise of Crown authority beyond Pākehā settlements in Whanganui and other districts.[4] In the Crown's view, this resulted in Whanganui Māori effectively governing themselves at a local level during this period.[5] The divisions that arose between the Crown and Whanganui Māori, it said, resulted from the Crown's hostility to any authority, including the Kīngitanga, that sought to veto sales of land when the owners of the land wished to sell.[6]

8.3 Māori Initiatives and Crown Responses

8.3.1 Introduction

During the 1850s and 1860s, Māori adapted their existing political institutions and adopted new ones. Whanganui rangatira, like those of neighbouring districts, sought to work together to reach region-wide consensus on issues confronting them all, rather than acting only in their traditional roles as chiefs of single communities, leading one or two iwi or hapū. Manifestations of this these developments included rūnanga and inter-tribal hui.

Meanwhile, the Crown was designing means of incorporating Māori into the political and legal systems of the colony. It denied Māori-initiated rūnanga and hui official recognition and support, but employed Māori as officials in its own system for administering law in predominantly Māori districts.

The claimants asserted that Whanganui Māori continually sought to engage with the Crown on a political level, to retain management of their affairs, and to obtain legal powers of self management.[7] In response, they said, the Crown actively manipulated and undermined Māori leadership structures, and acted counter to te tino rangatiratanga guaranteed in the Treaty by attacking indigenous, collective authority. The Crown allowed illusions of autonomy to sprout within Whanganui Māori communities, while superimposing its own institutions on Māori by inappropriately and exclusively applying western legal concepts.[8]

The Crown agreed that Māori-initiated rūnanga started to appear in the 1850s, and said that it did eventually recognise rūnanga as instruments of local government.[9] It accepted, though, that it recognised only Crown-initiated rūnanga.[10] The Crown denied that, in developing means of incorporating Māori into the legal and administrative systems of the colony, it demonstrated hostility to Whanganui Māori maintaining collective identity as hapū. Rather, it submitted that it was the responsibility of Whanganui Māori to maintain their own collective identities.[11]

In this section we examine the development of rūnanga and hui in Whanganui as Māori political institutions, and the involvement of Whanganui Māori in the Kīngitanga. We then consider the Crown's responses to these developments and the effect of those responses on the Crown's relationship with Whanganui Māori. Lastly, we address the Crown's attempts to incorporate Māori in its own political institutions.

8.3.2 Rūnanga and hui

Rūnanga (meetings where interested parties discussed and debated an issue or dispute) were a traditional forum for addressing important issues. From the early 1840s, Whanganui Māori began to develop rūnanga in response to new issues arising from colonisation. Historian Alan Ward expressed the view that this development reflected a growing concern among Māori 'that they were losing control of their own destinies, and being subordinated to the political and economic power of the settlers'.[12]

(1) *Komiti*

Missionaries referred to rūnanga as komiti, or committees of chiefs. Komiti were like the traditional rūnanga they sprang from, but modulated by literacy and ideas derived from Pākehā modes of governance. In 1849, for example, the Reverend Richard Taylor described how the house of Hōri Kīngi Te Anaua had been 'converted into a committee room'. It featured a long table covered with a cloth at which all the chiefs and teachers sat, dressed in

European clothing, while a secretary recorded events.[13] This new style of meeting contrasted with traditional hui, which were typically held outside, were entirely oral, and governed by tikanga. Te Anaua's committee was deciding a religious question on the occasion Taylor recounted, but others determined secular issues and acted as courts. In 1854, for example, a 'grand assemblage of all the Wanganui chiefs' congregated in Te Anaua's house to address an alleged murder.[14]

Komiti came to be utilised on such a scale, with such widespread attendance, and with such frequency, that they amounted to a new development. There was often a formal agenda, minutes were kept, and resolutions passed, and outcomes were sometimes published in Māori newspapers or reported in the colonial press. From the 1850s, however, there was a move to call these gatherings rūnanga rather than the Christian 'komiti'. Professor Ward suggested that this trend arose from Māori leaders' desire to reassert 'their own culture and their independence of the Pakeha'.[15]

(2) *Rūnanganui*

From the late 1850s, rūnanga in Whanganui were becoming larger and more formal than those of former times. These were rūnanganui (literally, great rūnanga), mass hui or meetings called for specific issues, rather than relatively small councils continuously in session. Single-issue hui included those held at Pūtiki in 1858 regarding the war between Māori at Waitara; one at Parikino in 1860 about the Kīngitanga; and one at Kānihinihi, a lower river kāinga, in September 1861 on whether the rights of local chiefs continued over land that had been made over to the Kīngitanga.[16]

(3) *Rūnanga grow in importance*

As the significance of rūnanga grew, their membership became more settled and continuous. This was an important part of their being accepted as institutions with power in the eyes of both Māori communities and Crown officials. In the 1850s and 1860s, the Pūtiki rūnanga grappled with problems generated by settlement in the town of Wanganui: land title, leasing, and law and order between settlers and Māori. Efforts to establish permanent, formalised rūnanga continued into the 1870s.

(4) *Large hui to fix inter-tribal boundaries*

As Pākehā settlement expanded, inter-tribal hui became increasingly important for Whanganui Māori as a forum for fixing tribal boundaries. Traditionally, boundaries were indefinite, overlapping, and shifting, but as the Crown sought to purchase ever more land to meet Pākehā demand, Māori had to delineate boundaries more precisely. This was especially the case as Crown officials preferred to deal with large groups they assumed to be tribes rather than small, independent hapū. Officials also tended to only define the exterior boundaries of their purchases and leave the interior boundaries of indefinite. This was initially the case in the Whanganui purchase, and occurred also in the Rangitīkei-Turakina purchase (from Ngāti Apa), the Whangaehu purchase (from Ngāti Apa and Ngā Wairiki), and later the Waitōtara purchase (from Ngā Rauru).[17] In all these cases the Crown ignored the interests of various iwi or hapū whose rohe overlapped that of the primary vendor. Whanganui Māori resorted to intertribal hui to resolve these problems – and continued to use them even after the advent of the Native Land Court which, from 1865, became the Crown's solution to boundary issues.

The first large hui convened to fix tribal boundaries were at Rangiwaea and Kōkako in 1860. The Kōkako hui was ground-breaking on account of its size and significance (see 'The Kōkako Hui of March 1860' opposite).

There were many other boundary-setting hui. For example, in May 1871 a large meeting was held at Parikino to decide boundaries for the lands between the Whanganui and Rangitīkei Rivers stretching towards the Tongariro region (including Ruapehu). It involved Whanganui iwi, Ngāti Apa, Ngāti Tama, and Ngāti Whiti, and other groups with rights there. A similar meeting was held at Koriniti in 1872, with the aim of setting apart a permanent reserve for Māori between the Whanganui and Turakina Rivers, upriver from Ātene.[18]

The Kōkako Hui of March 1860

What we know about the Kōkako hui of March 1860 comes from Māori attendees' recollections (given as evidence in the Native Land Court in subsequent decades) and the contemporary eye-witness account of the Reverend Richard Taylor (recorded in his journal).

Crown purchasing methods under scrutiny

The hui took place as war broke out in Taranaki between some Taranaki Māori and the Crown. The Crown's land purchasing methods were very much in the spotlight, because the hostilities in Taranaki arose out of the Crown's determination to force through a land purchase at Waitara that many interest-holders there opposed. Māori feared that the Crown was purchasing land too quickly and too carelessly to attend properly to difficult questions about what rights belonged to whom. This was manifested in the Whanganui district in a situation where it was suspected that Ngāti Apa was conceding to the Crown territory in which others had claims.[1] Also, the wrong owners, or only some of the owners with rights, were leasing land to potential runholders from Napier. Attendees wanted to clarify and confirm these situations, and also where the boundary of the Kīngitanga lay in relation to the land interests of Whanganui Māori.

The purpose of the hui

The kaupapa of the Kōkako hui was delineating boundaries between the tribal rohe of the great iwi of the central North Island, where those rohe overlapped in the Murimotu–Rangipō and upper Rangitīkei–Mōkai–Pātea districts.

Winiata Te Pūhaki of Ngāti Rangi was one of those who gave evidence to the Native Land Court in the 1870s and 1880s about the purpose of the hui:

> The meeting was to lay down the boundary line of the land belonging to the Whanganui people. The line was laid down because N'Apa were selling their lands – also N'Raukawa N'Te Upokoiri & N'Kahungunu & because some of the N'Whiti & N'Tama had intermingled with the N'Kahungunu & N'Te Upokoiri in agreeing to sell land and because the Tuwharetoa were joining to the King.[2]

Kaporere Te Patuwairua said this in the Native Land Court during the Whitianga rehearing in 1895:

> I know about meetings that have taken place about boundaries. The 1st was at Kokako, at Murimotu. All the chiefs of Whanganui were there: also of N'Tuwharetoa, N'Kahungunu, N'Raukawa. The Whanganui chiefs were Turoa, Hori Kingi [Te Anaua], [Rapata Te] Korowhiti, Te Rangiwhakarurua, Topine [Te Mamaku], Tamanako, Taitoko [Te Keepa Te Rangihiwinui]. I don't know the chiefs of the other tribes. The meeting was to settle the boundaries for Whanganui. An agreement was made. Ruapehu was to be one of the Boundaries, extending to Rangipō, Te Houhou [on the Rangitīkei River], Kaiwhaiki, Kauarapaoa, Kaihokahoka, Raurangapiupiu [sp?], Rakautiti (between Pipiriki and the Waitotara), Karikarirua, (a post was put there called Ikahanu). From there it went to Matemateongaonga west of the confiscation line, Rakau o te atua between Waitara & [illegible] a post was put there. This place is on the Taumatamahoe Block near the confiscation line. The post is called [illegible]. Then it goes to Motai which is between Tangarakau & Waitara about midway between the two. A post was put in there called . . . [four lines illegible] Whanganui and Pungapunga rivers. Thence to Whangapurotu between the same two rivers. Thence to Whakapapa stream. Thence to Ruapehu.[3]

Taylor reported the substance of the hui as follows:

> After words of welcome, they then proceeded to open the runanga for the land but instead of saying anything about their respective boundaries all they did was to advocate its being

tapued to the king. Mawai [Mawae] said he came to settle his boundaries and he did not want to have anything to do with their king. The speaking continued until sunset.[4]

The hui continued the next day, but Taylor was ill and did not attend.

A huge occasion

Taylor described setting out for Kōkako from the town of Wanganui on 9 March 1860. He embarked with 'almost all the natives of Pūtiki', whose chief, Hōri Kīngi Te Anaua, led the way, flying the Union Jack from his canoe. It was a major expedition, involving a flotilla of waka that grew as it called to collect people from kāinga all the way up the river.[5]

Taylor stopped to attend a smaller hui at Rangiwaea on 14 March 1860, where Whanganui Māori debated and settled local land boundaries.[6] The hui at Kōkako, though, was of another order of magnitude, attended not only by Whanganui people but by groups from Taupō, Manawatū, Rangitīkei, and other places. They were joined on 19 March by Rēnata Kawepō and a group of 40 from Hawke's Bay. Tūwharetoa was 'represented' by 'Puhipi', who was probably Poihipi Tūkairangi of Puketarata, northern Taupō.[7] According to Taylor, he was regarded by others of his iwi at the conference as a 'black sheep because he holds with the Govr.' Tūwharetoa witnesses told us they were not fully represented at Kōkako and the position taken there was not a final one.[8]

The scale of this hui was such that preparations had been going on for months to grow, gather, and preserve the necessary quantity of food. Besides two oxen and potatoes, Taylor saw 'dried eels, preserved pigeons and titi, etc all in ornamented dishes or tahas and brought forth with haka and ngeri [ritual chants].'[9] The large amounts of special food, and the ceremony with which it was offered, enhanced the mana of both the givers and the receivers of such bounty.

(5) *Hui and rūnanga arose from a Māori drive to manage their own affairs*

Large scale inter-iwi hui were not restricted to boundary fixing. Through the 1850s and into the 1860s, large multi-tribal political hui debated a number of critical issues. In 1854, for example, rangatira from Waitara to Wellington attended a large hui at Manawapou in southern Taranaki to discuss a proposal to unite against selling land to Pākehā.[19] Other hui in the 1850s discussed the proposal to establish a Māori king. In December 1857, rangatira convened at a large hui to mediate a long-running war between Te Kere Ngātaiērua of Ngāti Tū and Tōpine Te Mamaku of Ngāti Hāua over the site of a flour mill at Maraekōwhai.[20] Another large political hui at Manawapou in May 1863 was to decide nothing less than war or peace over Waitara.[21]

Historian Robyn Anderson expressed to us her view that these numerous rūnanga sittings and large decision-making hui expressed the conscious striving of Whanganui Māori to manage their own affairs.[22] The Kōkako hui and the many others like it were an entirely Māori initiative to meet changed circumstances. Māori needed new structures to manage and control their public lives at a time when the Crown wanted to make decisions for them rather than with them. It also enabled Māori to resolve conflicts within their communities that sprang from settlers' demand for land. Whanganui Māori were at the forefront in setting up and using these institutions, and the evidence shows that they had some success in settling actual or potential disputes about land boundaries.

(6) *A critique of the new institutions?*

The Crown submitted that the claimants failed to consider or inquire into the possible fallibility, contingency, or weakness of Māori institutions. The approach taken by claimant witnesses, the Crown said, was to emphasise the actual or assumed strengths of these institutions while minimising or not inquiring into their faults.[23]

We are not sure what the Crown has in mind by way of a critique of Māori institutions, but we think inquiry into their weakness or fallibility is unlikely to be a productive

direction for us to take. We simply note their existence, reflect on what they tried to do, and explain why they manifested in the way they did. Because they operated outside the bounds of official sanction, their activities and decisions remained ad hoc and informal, certainly as far as the wider polity was concerned. Despite their influence on Māori individuals and commmunities, they did not reach beyond them.

Whether Māori institutions would have succeeded or failed if given formal recognition by the Crown takes us into a hypothetical realm that raises many more questions than answers. The Crown never recognised them or gave them status, preferring to confer authority only on its own institutions. We do not think it is possible to see the Crown's conduct here as the result of a rational judgement that rūnanga and other Māori initiatives were unsuccessful. It was simply part of colonial thinking that British culture and the institutions of political and administrative control to which it gave rise were better. Colonists seldom imagined that indigenous people had anything to teach them: it was the colonists' job to improve and civilise. The notion that their own institutions, fashioned for other people and places, might work less well when applied to others' cultures was alien to the colonial mindset. That mindset generally did not comprehend the possibility that Māori institutions might be granted authority. To the extent that it was contemplated, it was with the ultimate goal of amalgamating Maori into settler society.

(7) *Why the Crown withheld recognition*

In our view, there were two main reasons why the Crown did not recognise Māori-initiated political institutions.

First, to do so flew in the face of Crown policy regarding Māori at that time which, as the Crown told us, sought to amalgamate Māori into Pākehā society.[24]

The Crown drew upon the evidence of historian Donald Loveridge, who stated in his report that the Crown believed that amalgamation was the best way of avoiding armed conflict with Māori as colonisation progressed.[25] Historian Lyndsay Head told us that the Crown saw chiefs 'as an emblem of the superseded past, rather than as the linchpin of a governing partnership in a biracial colony'.[26]

This set of attitudes meant that the Crown had no regard for the work of Whanganui rangatira to develop rūnanga and hui as institutions for managing Māori destiny in the changing world around them. It did not regard them as progress for Māori, but as a continuation of old ways and therefore an obstacle to Māori amalgamation into the political and legal systems of the colony. As Dr Head noted, much chiefly goodwill was wasted as a result.[27]

Secondly, and perhaps more significantly, rūnanga and hui represented continued Māori control over political and legal matters. This was inimical to the Crown's conviction that it alone must run the process of colonisation. It certainly did not want Māori to have a decisive voice in matters such as the nature and extent of land alienations or the pace of colonisation. Most Crown officials and politicians believed that any concession to Māori autonomy undermined British sovereignty. It is also likely that, if Māori institutions had been permitted to hold sway, they would have retained collective and tribal title in Māori land, enabling hapū to continue to manage their own land and resource interests. Many officials believed – probably rightly – that this would slow the pace of the Crown's land purchases.

The Crown's solution was to maintain control of political and governmental processes, and therefore determine how Māori could engage in the political life of the colony.

8.3.3 Resident magistrates and Māori assessors

(1) *New Zealand Government Act 1846*

How New Zealand was to be governed was a topic much debated by British and colonial officials in the early 1840s. Nobody doubted that settlers were entitled to some form of local governance, whether democratically elected or nominated. Nor was there any doubt that some kind of arrangement had to be made to protect Māori and their rights. Authority over Māori, though, was to be the province of the Crown, with settler governments playing no role. This view prevailed right through the 1840s.

The New Zealand Government Act 1846 created the

provinces of New Munster and New Ulster and allowed settlers to establish bodies for local government. Māori were largely excluded by a restrictive property qualification and a literacy test in English.[28] Some considered the exclusion of Māori to be racist, but Earl Grey explained that Māori mainly lived outside areas of Pākehā settlement where the Act would operate. They would be left to govern themselves, protected from undue interference from the settler local government. It turned out that the 1846 Act was largely inoperable. Settlers were dissatisfied with the kind of government it afforded them and demanded fully responsible self government.[29]

(2) *The Resident Magistrate's Ordinance 1846*

On the other hand, in 1846 Governor Grey introduced a system for administering justice in Māori communities that remained the mainstay of Crown policy regarding Māori right up to 1865. Resident magistrates and Māori assessors were appointed to Māori districts – a system, according to the ordinance through which it was introduced, designed to provide 'for the more simple and speedy administration of justice in the Colony of New Zealand, and for the adaptation of the law to the circumstances of both races'. Resident magistrates had jurisdiction in criminal and civil cases involving Māori. In cases where both parties were Māori, it was different: Māori assessors acted as judges, and resident magistrates became involved only where assessors were not unanimous. Assessors were 'men of the greatest authority and best repute in their respective tribes'. This system was operating in several parts of the North Island by the 1850s.[30]

(3) *Māori assessors at Whanganui*

At Whanganui, rangatira Te Anaua, Tāhana Tūroa, and Wiremu Ēruera Tahuri were appointed assessors in 1847. Āperahama Parea was appointed as assessor at Waitōtara in 1848.

In 1847, when the first assessors were appointed at Whanganui, Captain Laye was both the military commander at Whanganui and resident magistrate.[31] Major Wyatt succeeded him as resident magistrate when the fighting ended. According to historian Bruce Stirling, Wyatt was so impressed by the advice of the assessors that he asked the Crown to pay them a salary. He utilised their skills and advice when handling cases involving Māori and Pākehā, although assessors were supposed to be confined to cases involving only Māori. No salary was payable to assessors, Wyatt was told, although colonial officials allowed a payment of 10 shillings per day during important hearings. He was also reminded that assessors were supposed to take an active role only in purely Māori cases. Wyatt appears to have ignored this directive, continuing to deploy assessors as he saw fit.[32]

Wyatt's approach to rangatira as assessors appears to have improved the relationship between Whanganui Māori and the Crown. This was reflected in an increased workload for the magistrate and assessors. Mr Stirling suggested that by 1849, upriver communities were becoming less suspicious of Wyatt; in turn, Wyatt sought to have some upriver rangatira appointed as assessors.[33]

Whanganui Māori did not abandon their own judicial practice, though. Donald McLean reported when he visited Petre in July 1849 that Māori were operating their own justice system alongside the workings of the resident magistrate there. He said that cases involving pūremu (adultery, which was not a crime in the Pākehā court) were heard in Te Anaua's new house called Te Matangirei. Three pūremu offenders were fined £10 each, which they paid in a mix of waka, pigs, produce, and cash.[34]

(4) *Whanganui Māori apply and adapt new legal norms*

Whanganui Māori were not intent only on maintaining their existing legal norms. They reached out to the new ideas offered by the Pākehā world growing around them, and incorporated them into their administration of justice.

In 1848, Taylor noted that the people of Ūtapu had appointed their rangatira Wiremu Kīngi as 'judge of his tribe'. His mana and standing in the church were such that he was able to hear a case involving two Pākehā and a Māori woman who had lived with one of them.[35] According to Taylor, Māori saw Kīngi 'as a chief justice not inferior even to the resident magistrate himself in wisdom'.[36] Taylor also noted that upriver communities now

felt the need to have their own judge.[37] Following a hui at Pūtiki during Christmas 1848, Te Anaua was appointed judge of an area stretching from Pūtiki to Pukehika, some 80 miles away.[38]

Te Anaua was by this time an assessor in the resident magistrate system. Thus, he acted both in a Crown-sanctioned capacity as assessor and as a judge in his own right appointed by his people. The two systems were apparently not seen as being in competition with each other. The Crown demonstrated its acceptance of the situation by making Māori-appointed judges assessors in the resident magistrate system. Working with Taylor, McLean selected Te Pēhi Pākoro Tūroa (of Manganui-a-te-Ao), Wiremu Kīngi (of Ūtapu), and Hakaraia Kōrako (of Parikino) as assessors in 1849. At some later point Hoani Wiremu Hīpango and Ānaru Tinirau were also appointed.[39]

At times, the assessors were hampered in their work by their lack of knowledge about English law. In 1850, Te Pēhi was reportedly unhappy about having to make decisions without knowing what English law was. That same year, Māori at Matawera requested that a resident magistrate be appointed for upriver districts to help guide the assessors there in making decisions concerning English law. Crown officials recommended that pamphlets explaining English law be made available to Māori who wanted them.[40] All this suggests that Whanganui Māori communities were keen to adapt the Crown's judicial system to their needs.

This was also apparent in assessors' decisions. Historians Michael Macky and Mr Stirling both noted how assessors sought to moderate what Crown officials viewed as the excesses of Māori law. In 1850, for example, Te Pēhi imposed a fine and awarded damages in a case involving assault and adultery. Hamilton, the resident magistrate at this time, noted that if he had applied tikanga Māori the guilty man would have been killed.[41]

At other times the assessors imposed customary punishments. One such example was banishment 'to the hills . . . to eat grasshoppers'. Hamilton praised the fact that Crown-appointed assessors employed these customary norms in their work.[42] Assessors also co-operated to find solutions to particularly trying cases. In 1849, for example, Te Pēhi came down to Pūtiki to ask Te Anaua and other Pūtiki-based assessors to return with him to Pīpīriki to help settle a land dispute.[43]

(5) *The successes of the resident magistrate system*

The resident magistrate system offered both Whanganui Māori and the Crown an avenue through which to strengthen their relationship and move on from the conflict and hostility of 1847.

Hamilton noted that Te Pēhi proved to be an active and committed assessor despite the fact that he had previously fought against the Crown. Such was the improvement in the relationship between the former foes that, in 1851, Te Mamaku also sought appointment as assessor. Te Pēhi pursued this proposal on Te Mamaku's behalf, and it was agreed that it would be desirable for the Governor to appoint him formally at Whanganui.[44] However, his appointment did not go ahead – no doubt a lost opportunity to signal how Crown–Māori relations had advanced.

The Crown relied on the cooperation of Whanganui rangatira, acting as assessors, for the enforcement of its law. In 1852, a resident magistrate named Durie remarked that the assistance of the Whanganui assessors ensured that he was always able to enforce the law.[45] There was, after all, no significant administrative or judicial Crown presence at Whanganui to force compliance. By using rangatira as assessors, the Crown really co-opted their mana in support of a new regime that might otherwise have struggled to gain acceptance and respect in the Māori communities of Whanganui. Dr Loveridge commented on the important role that rangatira like Te Pēhi played in this regard.[46]

(6) *Divergent aspirations*

For all the enthusiastic reports of resident magistrates, the goals of Whanganui Māori communities and the Crown were divergent.

As Pākehā settlement grew, Whanganui Māori maintained their own practices and norms, but also learned and selectively adopted Pākehā ways and means, adapting as necessary and appropriate.

The Crown wanted to amalgamate Māori into its own systems and to supplant Māori institutions. As Governor Grey explained to his superiors in London, the aim of the resident magistrate system was to introduce Māori to English law and administration so that they could be induced to give up their own laws and customs.[47] For the Crown, the resident magistrate system was a transitory first step towards amalgamation.

Various resident magistrates did give glowing reports of how well the assessors contributed to justice. But in retrospect it is difficult to evaluate the system from a Māori point of view.

In 1853, the resident magistrate dealt with 19 civil cases involving Māori. There were 40 in 1855, and 32 the following year. In percentage terms, the resident magistrate's cases involving Māori declined from 42 per cent of all cases in 1853 to 23 per cent in 1856. This was at a time when the Māori population of the region considerably outnumbered Pākehā.[48] We agree with Mr Macky that Māori were willing to experiment with courts and assessors but that the Pākehā system still catered primarily for Pākehā.[49] Whanganui Māori continued to develop and adapt their own systems of rūnanga and hui and to appoint their own judges, but the Crown did not confer on them any state sanction or status.

8.3.4 New Zealand Constitution Act 1852

As Governor, Grey did not want settler governments to have any power over Māori. At the same time, he used his authority to pursue the Crown's policy of amalgamating Māori into the political and legal systems of the colony.

By 1850, Grey had devised a number of schemes for the administration of Māori affairs. His programmes for Māori health and education were to be financed through a compulsory levy of £7,000 per annum on the North Island revenues. He also wanted 15 per cent of the land fund revenue (proceeds from the sale of Crown lands) and surplus funds from the civil list to pay for Māori purposes. He thought, though, that the right to vote should be based on ownership of Crown-granted lands, which would have excluded most Māori.[50]

(1) *Fully responsible self-government for settlers*

The New Zealand Constitution Act 1852 provided for the fully responsible self-government that settlers demanded, but preserved to the Governor power over Māori affairs.

The Act established provincial assemblies in addition to a general assembly. Provincial assemblies were to operate in districts where native title had been largely extinguished. The plan was that when Māori in those areas were sufficiently 'advanced in civilisation', they too would participate in the representative bodies.[51] It was assumed that they would increasingly hold their lands under Crown title and in this way would become eligible to vote.

(2) *Native districts maintaining Māori laws, customs, and usages*

In the areas that did not have provincial assemblies, section 71 of the 1852 Act would apply. Under this section, the Governor could proclaim native districts, a power carried over from the New Zealand Government Act 1846. Native districts would maintain the 'laws, customs, and usages' of Māori 'in all their relations to and dealings with each other' – but only laws, customs, and usages deemed 'not repugnant to the general principles of humanity'.[52] The British Government envisaged a dual system of government, with most Māori removed from Parliament's jurisdiction, at least in the short term. The Act passed through the British Parliament with very little comment on the sections relating to Māori. In fact, Chichester Fortescue, Parliamentary Under Secretary of State for the Colonies, commented some years later that the 1852 constitution 'appeared to have been framed in forgetfulness of the existence of large native tribes within the dominions to which it was intended to apply'.[53]

(3) *Would the Governor proclaim native districts?*

Claimants submitted that there was never any possibility that section 71 would be invoked, because racist attitudes of the time cast Māori as semi-barbarian people who needed governing. These views precluded the Governor reposing in Māori responsibility for running their own separate territory either outside or alongside

Colonel Thomas Gore Browne. Appointed Governor in 1855, Thomas Gore Browne was instrumental in convening the Kohimārama conference of chiefs in 1860. The Government wanted chiefly support for its battle against the Kīngitanga and also backing for its policies.

the settler colony. Claimants also considered that the Governor would have seen Māori autonomy of this kind as an admission of weakness and a retreat from the claim of British supremacy.[54]

Māori self-management under section 71 of the 1852 Act never came to fruition, for neither Governor Browne nor Governor Grey (who returned to New Zealand for a second term as governor in 1861) proclaimed any native districts. Browne favoured an annual conference of chiefs to discuss policy on Māori affairs, and to that end he convened the Kohimārama conference in 1860 (see sec 8.4.3). However, it was the one and only such conference.

As far as Māori involvement in representative government went, Dr Loveridge told us that the 1852 Act did not offer any such potential. Rather, Māori were to be left on the sidelines, with no indication of how they might be accommodated. In his view, any of Grey's policies would have been preferable to the Act.[55]

8.3.5 Magistrates and assessors' roles confirmed and expanded

The only policy move in Māori affairs in the years from 1850 to 1856 was the expansion of the resident magistrates system first introduced in 1846.[56]

In 1856, Governor Browne instituted the Board of Native Affairs to advise him on Māori issues. The board's advice was that resident magistrates, assisted by Māori assessors, were the only answer to the 'present transition state of the natives'.[57]

Donald McLean, who was Native Secretary in 1856, also offered Governor Browne his views on Māori policy. He wrote that 'governing the tribes through the agency of their own chiefs' was 'evidently the most effective mode of keeping them in check and ensuring their confidence and co-operation'. He advocated inviting rangatira to act as judges, assisted by a small annuity.[58]

In 1857, the Crown conceived a modified system under which assessors would be appointed for each village, to facilitate the operation of circuit courts. F D Fenton, future chief judge of the Native Land Court, was to try it out in Waikato, going to Māori communities with a view to 'assisting the people to devise bye-laws for the better government of their villages, and of guiding their deliberations on public matters'. All bylaws and names of proposed assessors would be passed on to the colonial authorities. Appointment of assessors was subject to the Governor's approval, while final approval of all bylaws or regulations was subject to the assent of the General Assembly.[59]

The experiment was short-lived. McLean complained that Fenton was fomenting discord between Kīngitanga people and others. The trial was terminated, and Fenton was withdrawn from the Waikato region.[60]

Resident magistrates and Māori assessors continued as the Crown-sanctioned mode of administering Māori affairs at the local level.

In 1858, the Crown generated another plan for Māori justice, again based on the model of resident magistrates and Māori assessors. The Native Districts Regulation Act and Native Circuit Courts Act were to operate in districts where customary title continued – that is, where it had not been extinguished by Crown purchases. Itinerant European magistrates, assisted by Māori assessors, sat in circuit courts to deal with minor cases concerning Māori. Juries in the circuit courts could have a partly Māori membership. The Acts also allowed for regulations or bylaws to be made 'with the general assent of the persons affected thereby'. The Minister for Native Affairs, C W Richmond, envisaged that 'the irregular native meetings known as "Runangas", which are already being held in many parts of the country' would do this law-making.[61]

The Native Districts Regulation Act and Native Circuit Courts Act were promulgated in the Government newspaper, *The Maori Messenger/Te Karere Maori*. It was also announced that the Acts would operate only in districts where the Governor was satisfied that all Māori residents wanted them. By June 1858, Fenton and T H Smith had prepared and published a code of law, which was advertised and presented through *Te Karere Maori* and sent to officials, magistrates, and assessors. Twenty-four copies were sent to Whanganui, with an extra one for the assessor Hoani Wiremu Hīpango.[62]

Circuit courts were never introduced in Whanganui, although they were trialled elsewhere. Whanganui was among the majority of districts that remained under the resident magistrate system created in 1846.

Native Minister Richmond also introduced the Native Territorial Rights Bill, which was intended to reform customary land title by issuing certificates of title and Crown grants. The Bill provided that the Governor, at his discretion, was to issue certificates of title to the 'Tribe, Community, or Individuals'. Governor Browne did not support the Bill, and it was disallowed in London in 1859.[63]

THE MAORI MESSENGER.

TE KARERE MAORI.

VOL. VII.] AUCKLAND, JULY 14, 1860.—AKARANA, HURAE 14, 1860. [No. 13.

THE KOHIMARAMA CONFERENCE.

OUR readers will be glad of some information respecting the Conference of Native Chiefs now being held at Kohimarama. We shall, therefore, set aside all other matter in order to make room for a full report of the proceedings up to the date of our present issue.

We shall commence our account with a list of the Chiefs, with the names of their respective tribes, and their several places of abode. From this list it will appear that the principal sub-divisions of the Maori race in New Zealand are, on the whole, well represented in this Conference. One hundred and twelve Chiefs took their seat on the first day, and several more have arrived at intervals since. Others had been invited

TE HUI KI KOHIMARAMA.

TERA nga kai korero o te Nupepa nei te matonui ki te whakarongo korero mo te runanga o nga Rangatira Maori e noho nei i Kohimarama. Heoi, ka pana atu e matou nga korero noa o tenei takiwa, ka whakapuare nui i te Nupepa ki nga korero o tenei runanga, kia poto katoa ki roto taea noatia te ra o tenei perehitanga.

Hei timatanga tenei mo a matou korero, ko te tatau i nga rangatira; me whakaapiti hoki tona hapu, tona kainga, to tena rangatira to tena rangatira.

Ma konei ka kitea ai kua uru nui nga tino hapu katoa o Nui Tirani ki tenei runanga. Kotahi rau te kau ma rua nga rangatira i noho ki te runanga i te ra timatanga, na no muri nei kua tae mai ano etahi.

The bilingual newspaper *The Maori Messenger/Te Karere Maori*. The Government sponsored the publication of the newspaper in the mid-nineteenth century. The paper published the proceedings of the conference at Kohimārama in 1860.

8.3.6 The Kīngitanga

During the 1850s, many Whanganui communities were involved in the development of the Kīngitanga, or King movement. It grew out of the pressure generated from settlers' escalating demand for Māori land, the Crown's land purchase practices, and the lack of Māori institutions of

Tāmihana Te Rauparaha, son of the great Ngāti Toa leader Te Rauparaha. As a child, Tāmihana accompanied his father on war expeditions. After converting to Christianity, he took on a peacemaking role and was instrumental in bringing the missionary Octavius Hadfield to Kapiti. He helped establish the Kīngitanga.

authority to protect land. The movement aimed to transcend tribal rivalries by creating a national organisation capable of maintaining Māori control over Māori destinies, and of resisting increasing settler power.

Credit for the idea of establishing a supreme Māori chief of chiefs, or king, has gone to various Māori leaders, including Tamihana Te Rauparaha and Mātene Te Whiwhi.[64] Rangatira were influenced by their travels to England, where they met with royalty and saw something of how the British monarchy functioned. The title of king was eventually adopted for this new position in Māori society. Tamihana Te Rauparaha and Mātene Te Whiwhi travelled extensively, building support for the idea and seeking a suitable candidate for the role. The kingship was offered to two Whanganui rangatira of high rank, Te Anaua and Tōpia Tūroa, but, like many others, they declined.[65]

According to the claimants, the Kīngitanga was one of a number of constitutional mechanisms that Māori designed to facilitate the co-existence of settlers and tangata whenua. They said it was also a means of resisting excessive Crown land purchasing. Many iwi and hapū joined the Kīngitanga, placing themselves and their lands under the protection of a new, collective institution, while maintaining their own mana and autonomy. The intention was to establish overlapping tribal estates that would stand apart from the settler enclaves, yet co-exist with the British.[66] Several Whanganui groups aligned themselves with the Kīngitanga.[67]

(1) *The land retention movement*

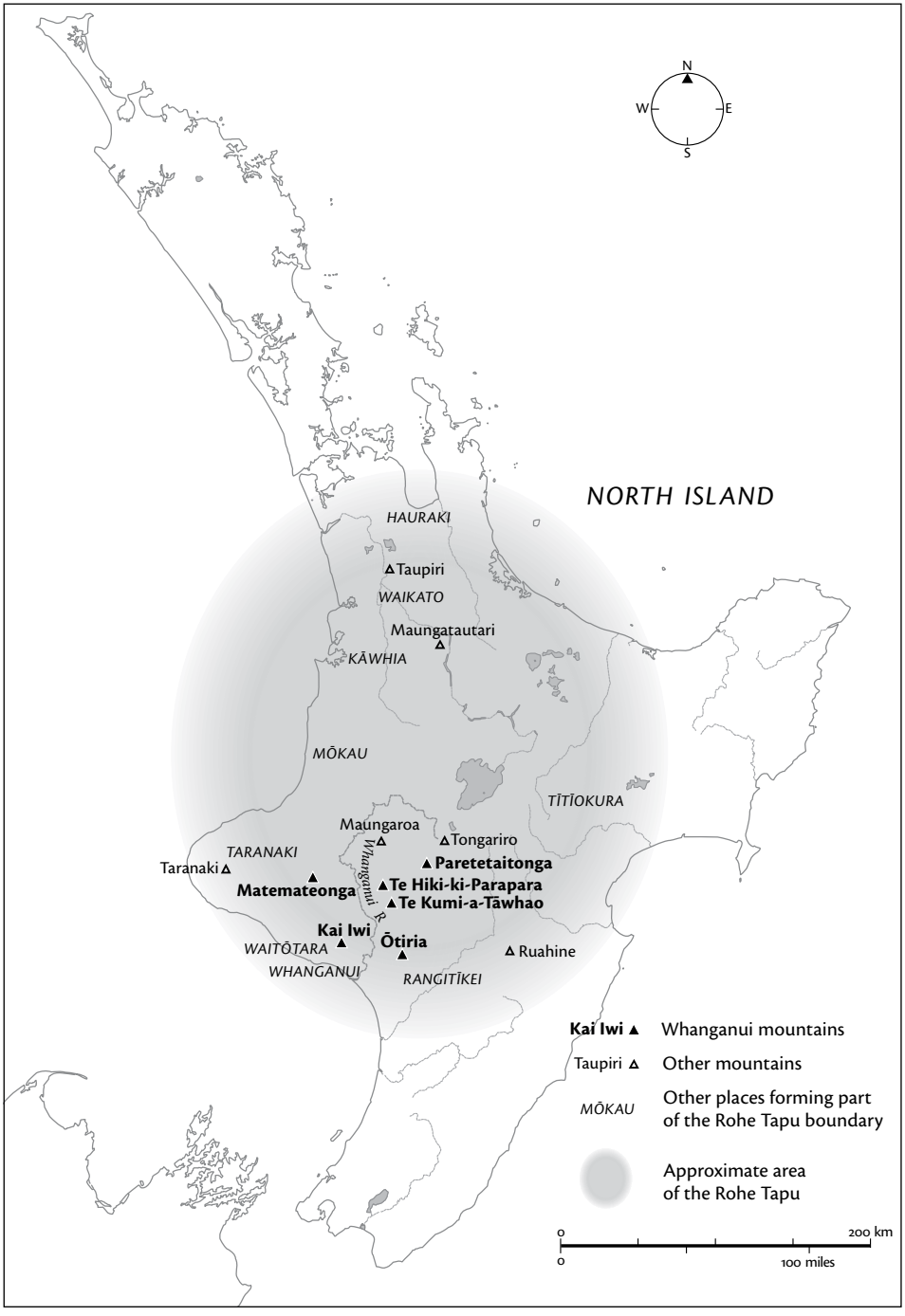
As the Kīngitanga gained momentum, iwi began restricting the sale of land to Pākehā. Ngāti Ruanui, an iwi of southern Taranaki, made a solemn compact to hold on to their land. By 1854, this practice had spread to other Taranaki iwi and to various Tainui iwi, all seeking to preserve their rohe as Māori enclaves where rangatiratanga Māori, mana Māori, and tikanga Māori would prevail.

This aim was confirmed at a great meeting at Manawapou, which many Whanganui people attended. The Reverend Richard Taylor recorded that the object was 'to get all the tribes to unite and sell no more land to the Europeans.'[68]

The land retention movement soon coalesced with the Kīngitanga.

(2) *Kīngitanga hui at Pūkawa*

In November 1856, Iwikau Te Heuheu of Tūwharetoa hosted a number of rangatira from throughout the



Map 8.1: The 'rohe tapu' (later called the Rohe Pōtae) established during the Kīngitanga hui at Pūkawa in November 1856

country at Pūkawa on Lake Taupō, to discuss the selection of a Māori king. Some Whanganui leaders, including Mete Kīngi and a chief called Iharaira, were there. The attendees did not select a king, but endorsed the idea. They also canvassed other topics.

Discussing the sale of land to the Crown, they agreed that they did not want to drive Pākehā out, but did want to exercise control over those residing in their rohe. They favoured leasing rather than selling land to settlers.[69] They established a 'rohe tapu' (later called the Rohe Pōtae) within which no land would be sold to Pākehā. Tongariro was at the centre of the rohe tapu. Its boundaries were marked by the mountains that were tapu to various iwi and included large parts of the Whanganui inquiry district, including Waitōtara, Whanganui, and Rangitīkei.[70]

They also discussed the Queen's sovereignty. A land purchase agent, Cooper, was told that 'no one was capable of explaining the subject to the satisfaction of the meeting, so the matter dropped'. Taylor was told that most refused to acknowledge the Queen's sovereignty, some were silent, and a few agreed to it. The prevailing opinion was that if they submitted to the Queen's sovereignty, she would eventually take their lands and the chiefs would lose all their dignity, so 'it was better that each chief should be a Queen over his own land'.[71] Notably, no one mentioned, or seemed to have heard of, the Treaty of Waitangi.

(3) *Pōtatau Te Wherowhero becomes the first Māori King*

In 1857, Pōtatau Te Wherowhero was selected as the first Māori King. He was an old man, and reluctant to take on a new role. His selection happened in the course of a series of meetings in 1857; he finally acquiesced in 1858 and moved to Ngāruawāhia to establish his seat of power. He was crowned and anointed there in June 1858. The title of king – rather than ariki, or other signifier of rank – emphasised his pre-eminence over all other chiefs, and the difference between his role and theirs.[72]

Although no longer young, Pōtatau's suitability for the role was plain. Of extremely high rank, he was a renowned chief and war leader with kin connections to all the most powerful iwi. With the rich resources of the Waikato behind him, he was well placed to sustain the kingship. He was also a staunch friend and protector of Pākehā, having spent many years living at Māngere near Auckland.

The claimants submitted that the Crown reacted to the Kīngitanga with hostility, wasting an opportunity to engage with Māori and to allow them to exercise te tino rangatiratanga. Rather than enjoying a relationship based on mutual respect, the Crown chose to impose an oppressive superiority which led to war. In the claimants' view, the Crown's attitude to and treatment of the Kīngitanga and its supporters drove a wedge through Māori society, which polarising labels like 'Kingite rebels' and 'Queenite loyalists' or 'friendlies' exacerbated.[73]

The Crown submitted that it had no Treaty duty to recognise the Kīngitanga, or any other non-tribal Māori group claiming some kind of sovereignty.[74]

(4) *What were the intentions of the Kīngitanga?*

Historical opinion is now well settled that Kīngitanga supporters saw the Governor ruling Pākehā and all the land they had purchased from Māori, and also adjudicating between Europeans and Māori. The Māori King would rule over the iwi and hapū who recognised him, and would be able to veto sale of their land. The Queen's power would protect around the whole country, and over all was God. As one put it: 'the King on his piece: the Queen on her piece, God over both; and love binding them to each other.' Another said: 'the rafters on one side being Maori, those on the other being Pakeha, with God as the ridgepole, supporting both in the middle, and the house being called New Zealand'.[75]

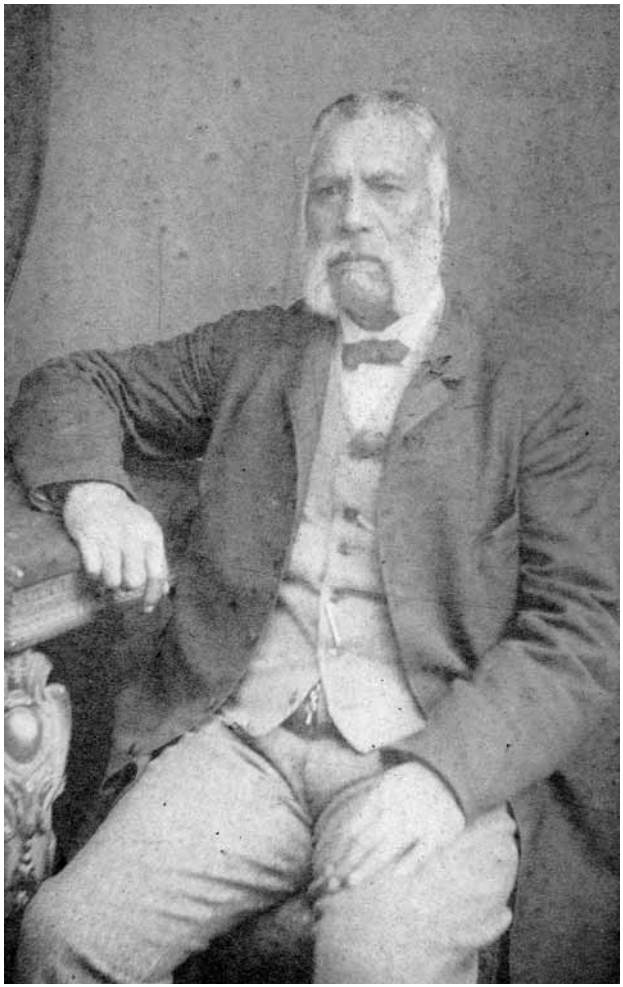
Wiremu Tāmihana Tarapīpipi Te Waharoa, the influential political and Christian leader of Ngāti Hauā of Waikato (as distinct from Ngāti Hāua of Whanganui), led the attempt to explain the Kīngitanga's true intentions to Pākehā. He maintained that for Māori to have a high chief called a king was not inconsistent with loyalty to the Queen. Māori had the right to administer their own affairs within their own boundaries. He explained that the purpose of the King was to put down land feuds among Māori, to hold the lands of freed slaves, and to adjudicate between chiefs. This was necessary because of tribal disunity and the failure of the Government to provide law and

order. His catchphrase was 'te whakapono, te aroha me te ture' (faith, love, and law).[76]

(5) *Were the Kīngitanga and British sovereignty inimical?*

The evidence presented to us did not disclose a situation where the Kīngitanga was claiming sovereignty. Other tribunals that examined the proposition have been of the same mind. The Whanganui River Tribunal, for example, stated that rather than being a challenge to British sovereignty the Kīngitanga sought 'to limit European expansion so that Maori authority over Maori land would remain'.[77] The Central North Island Tribunal found that Māori had an article 3 Treaty right to self-government, which included having representative institutions at a community, regional, and national level. The Kīngitanga was a national Māori organisation and had a Treaty right to exist.[78]

Initially, Crown officials and other Pākehā did not regard the Kīngitanga as a challenge to British sovereignty. Governor Browne, when he met important Kīngitanga leaders in 1857, reported that they 'constantly professed loyalty to the Queen, attachment to myself, and a desire for the amalgamation of the races'.[79] In 1860, a parliamentary select committee (set up to inquire into Fenton's short-lived experiment with the resident magistrate system) concluded that the rūnanga and King movements were part of the same Māori drive 'to assert the distinct nationality of the Maori race, and . . . to establish, by their own efforts, some organization on which to base a system of law and order'. The select committee did not think that these efforts were 'necessarily inconsistent with the recognition of the Queen's supreme authority, or antagonistic to the European race or the progress of colonization'.[80] Other influential Pākehā maintained a positive view of the Kīngitanga even after war broke out between the Crown and Kīngitanga supporters. In May 1861, the former chief justice Sir William Martin told the Governor that the King movement was one which 'the Government should rather welcome as a godsend than attempt to crush as an enemy'. He considered that separate institutions for Māori were needed and the Government should seek to guide the Kīngitanga.[81]



Tōpia Tūroa, circa 1884. An effective Kīngitanga leader, Tōpia was often credited with bringing the Kīngitanga to Whanganui.

Mr Macky stated in his report that Māori support for the Kīngitanga 'did not entail axiomatic hostility to the existing European presence in New Zealand even if it did signal a wish to control future European expansion'.[82] As we shall discuss later in the chapter, Whanganui Māori who supported the Kīngitanga went to some lengths to maintain a positive relationship with the Crown and settlers.

(6) *The Kīngitanga in Whanganui*

Tōpia Tūroa is often credited with introducing the Kīngitanga to Whanganui in 1858.[83] However, various Whanganui chiefs attended the hui at Pūkawa in 1856, and some went to the meetings at which Pōtatau Te Wherowhero was selected as King.[84]

In any case, the Kīngitanga appears to have been adopted by some Whanganui Māori by 24 December 1857. We know this because on that day a grand council of chiefs met at Pīpīriki to discuss a message from Te Heuheu urging people at Pīpīriki to support a Ngāti Kahungunu chief, Te Moananui, in his war against the land-selling chief Te Hāpuku. Taylor recorded the chiefs saying that 'as Te Wherowhero their Maori king was elected to keep peace which they said the Governor could not do[,] he had better be applied to in this matter'.[85]

In June 1858, Tōpia Tūroa was reported to have led 60 men from Ōhinemutu, near Pīpīriki, to Waikato to show his allegiance to Pōtatau.[86] James Booth, a missionary, and then resident magistrate at Pīpīriki in the late 1860s, was one author of a report written at that time recalling that Tōpia:

> went in 1858 to Waikato and after remaining there several months he returned to Whanganui accompanied by Hoani Papita and one or two other Waikato Chiefs. He went to Kauaeroa, a Roman Catholic Station [near Rānana, but on the opposite or western side of the river], was baptised by the Priest, and then induced the Natives of that neighbourhood to declare themselves Kingites.[87]

Tōpia Tūroa was the movement's most effective leader in Whanganui. The chiefs Te Pēhi Pākoro Tūroa and Tāhana Tūroa (respectively Tōpia's father and uncle), and also Te Mamaku, were other early Kīngitanga supporters.[88]

Support for the Kīngitanga appears to have spread through the district quickly. Taylor recorded that on 18 April 1859 he was told that all Māori between Wellington and Waitōtara had joined the King movement, except those at Pūtiki and Rangitīkei.[89] This was probably an exaggeration, but Taylor found the King's flag flying at Heriko in the Waitōtara district and at Karatia (just upriver from Koriniti and Operiki). On 24 February 1859, while in the Waitōtara district, Taylor recorded meeting 'a party from Waikato who professed to be emissaries of the Maori king who came to advocate his cause'. The King's flag was raised there.[90] In November of that year, Taylor attended a 'grand meeting for the king', which seems to have been an occasion for chiefs to announce their commitment or opposition to the Kīngitanga. 'One said he was for the Govr. and for the king', wrote Taylor, while a chief called Hakaraia (probably Hakaraia Kōrako of Ngā Poutama and other hapū) 'said he would not give up the management of his land to him [the King] or anyone else but would be his own master'.[91]

One of the first Kīngitanga pā was Rurumaiakatea, a Ngāti Hāua pā just downriver from Taumarunui.[92] Tāhana Tūroa had by this time, late 1859, raised the King's flag at Kaiwhaiki, and new whare rūnanga (meeting houses) had been built to conduct Kīngitanga business at various kāinga.[93] For example, Erueti Tūrangapito of Ngāti Tūmātau built a 'handsome house' at Rānana for Kīngitanga use, and Matiu Tūkaorangi of Ngāti Pāmoana built a 'King-Runanga-House', probably at a place called Tūmaire (or Ōtūmaire).[94] Taylor observed a large meeting of about 900 people at Karatia, with the King's flag flying. It was also a eucharist service attended by many Christians, which suggests that not all those attending necessarily supported the King.[95]

The Kīngitanga did not seek to impose its own authority on Whanganui Māori: the Māori King could command only to the extent that Whanganui Māori wanted him to. As such, the Māori King was perhaps best seen as the representative of his Whanganui adherents. His decisions had the weight not of his authority but of the Whanganui Māori who chose to vest their mana in him.

They had a right to make this choice, and to expect that the Crown would deal with the King as the singular representative of their collective mana and authority.

8.3.7 Conclusion

In the early phase of New Zealand colonial life, the Crown saw integrating Māori into the political and legal life of the colony as a key objective. As a first step, the Crown

sought their acceptance of any system of law or administration that it designed.

In Whanganui and elsewhere, the Crown could have achieved integration by recognising and supporting the modes and structures that Māori were adapting and developing to cope with the challenges of changed circumstances. This would have involved its sanctioning Māori institutions and incorporating them in a joint legitimacy, rather than insisting that Māori initiatives remain informal and marginal, without standing or sway in the new dispensation.

Thus, Māori institutions such as their expanded rūnanga and hui, and the Kīngitanga, were esteemed only in the Māori world. And while it denied these Māori endeavours recognition, the Crown established no viable means of including Whanganui Māori in the political and legal life of the colony. They were left out and distanced from decision-making processes affecting them, with Crown appointees responsible for imposing the policies that the Crown generated.

The Crown submitted that 'successive administrations moved . . . with considerable caution' in extending substantive Crown authority beyond the Pākehā settlement at Whanganui.[96] This is undoubtedly true and was, in fact, one of the factors behind Whanganui Māori communities, especially those upriver, developing their own initiatives. As we have said, these included rūnanga and kaiwhakawā (Māori judges or assessors appointed by Māori communities), which contemporary commentators often approved – and aspects of which the Crown copied when it introduced its own system of rūnanga.

There was no practical reason not to allow Māori a voice in their own government during this period. At various times the Crown adopted measures which could have achieved this, including moves to modify the resident magistrate scheme. The 1852 constitution provided for the creation of Māori provinces within a broader provincial system.

None of the Crown-generated options that would have affirmed Māori autonomy gained traction in a political environment that saw governors replaced, ministries rise and fall, and the responsibility for Māori affairs transferred from governor to settler government.

In the Central North Island inquiry the Crown conceded that it was both reasonable and possible for the Crown to have adopted and empowered self-governing Māori bodies in the 1850s and 1860s.[97] We agree, and consider that the Crown's failure to do so was, as the Central North Island Tribunal said, a missed opportunity for the Crown to give effect to its Treaty guarantees of Māori autonomy and self-government.

8.4 Kīngitanga, Pai Mārire, and the Crown

8.4.1 Introduction

In the previous section we discussed Whanganui Māori involvement in establishing the Kīngitanga, or King movement. They intended to place their land under the mana of a king who would hold them as trustee, and prevent their alienation. The hope was that the many independent iwi or hapū and their chiefs would unite politically in this new, pan-tribal institution.

Pai Mārire was a religion based on the teachings of Te Ua Haumēne of Taranaki. From 1862 it became an influential spiritual and political force in many Whanganui Māori communities, some of which were also aligned with the Kīngitanga.

During the 1860s, the Crown came into conflict with Whanganui Māori followers of the Kīngitanga and Pai Mārire.

(1) *What the claimants said*

The claimants submitted that the Crown's reaction to the Kīngitanga was hostile, leading ultimately to war between the Crown and some Whanganui Māori. They also submitted that this conflict drove a wedge through Māori society, creating polarised factions labelled 'Kingite rebels' and 'Queenite loyalists'.[98]

Regarding Pai Mārire, the claimants submitted that Whanganui Māori communities viewed the movement as a 'peace-oriented adjustment cult . . . strongly opposed to the alienation of land, and eager to strengthen Māori

identity'. The Crown therefore lacked a proper basis for opposing Pai Mārire from the outset.[99]

(2) *What the Crown said*

The Crown submitted that it was willing to accommodate the Kīngitanga 'under the Queen's Government'. It said that the division between the Crown and Kīngitanga arose in relation to land, because the Crown opposed any 'external authority', including the King movement, that sought to veto sales of land when its owners wished to sell.[100]

On the broader question of why the Crown engaged in fighting against Māori, the Crown submitted that the fighting in Whanganui was primarily defensive and protective in its aim. In the Crown's view, its right to govern included the use of force to respond to emergencies.[101]

The Crown made no submission regarding Pai Mārire.

(3) *Our focus in this section*

In this section we examine how the Crown responded in the Whanganui district to the emergence of the Kīngitanga and, later, Pai Mārire, and what part its response played in the conflicts of the 1860s.

A vital issue for the claimants was the damage that the conflict of the 1860s wreaked on long-term relations between Whanganui iwi. Thus, we inquire into how the conflicts affected inter-iwi and inter-hapū relations in Whanganui, and in particular the genesis and consequences of the 'Kingite rebel' and 'Queenite loyalist' labels.

8.4.2 The first Taranaki war

During the 1850s, groups of Taranaki Māori fought each other over the issue of selling land at Waitara to the Crown. Initially, Whanganui rangatira avoided becoming involved and supported neither side.

(1) *Whanganui Māori maintain peaceful relations with the Crown*

In 1855, Te Mamaku told Donald McLean 'we shall not go there to fight, we are on too intimate terms of friendship with the Europeans at Whanganui'.[102] He declined an invitation from the southern Taranaki iwi Ngāti Ruanui to join them in fighting against those who were in favour of land sales.

Whanganui Māori remained committed to peace when, in 1858, the Crown renewed its efforts to purchase land at Waitara and fighting between Māori reignited. This was when Whanganui Māori from Pūtiki and elsewhere joined Taranaki people at the large hui near Manawapou to which we referred earlier. It was held to discuss the conflict and the issues underpinning it. Those present resolved that any Whanganui fighters were to be withdrawn from Waitara, and this decision was reiterated at subsequent hui in the Whanganui district.[103]

(2) *Waitara situation a test case*

Up to this point Whanganui adherents to the Kīngitanga had succeeded in maintaining peaceful relations with the Crown. A Government report of 1858 regarding the Kīngitanga noted that its foremost Whanganui adherent, Hāre Tauteka, 'was one of the first in the district to join the King movement, yet [he is] always professing a desire to live in peace with the Europeans'.[104] However, the tensions between Taranaki Māori regarding land selling at Waitara began to sour relations between the Crown and the Kīngitanga. Taranaki Māori who opposed the Waitara purchase had become supporters of the Kīngitanga, and their leader, Wiremu Kīngi Te Rangitāke, placed the Waitara lands under the King's protection.[105] The Crown was determined to proceed with the purchase. It disregarded the opposition of Kīngi and his supporters, and pressed on to conclude a deal with a chief named Te Teira who had offered the land for sale. According to Professor Ward, the Waitara purchase served as a kind of test case for a new Crown policy of preferring the rights of junior chiefs, like Teira, over those of senior chiefs, like Kīngi, in situations where the junior chief lived on the land concerned. In such cases the Crown reckoned the junior chiefs to have a primary hereditary right to deal with the land without interference from senior non-resident chiefs.[106]

On 17 March 1860, war broke out between the Crown and those Taranaki Māori opposing the Waitara purchase

when the British army under Colonel Gold attacked Te Kohia pā.

(3) *What happened at the Kōkako hui*

A week later, a hui was held at Kōkako. It will be recalled from the earlier discussion of this hui that: 'The meeting was to settle the boundaries for Whanganui.'[107] However, discussion ranged over the war in Taranaki and what the Crown was doing to purchase land.

The Reverend Richard Taylor recounted how opinion about the Kīngitanga was divided. Many delegates – including groups from various Whanganui kāinga, and from Taupō, Rangitīkei, Manawatū, and Hawke's Bay – wanted to tapu all the Whanganui land they were discussing, placing it under the mana of the King. Māori from Taupō and Manawatū thought that 'making the land sacred to their king' was the only way to preserve 'their rank and nationality'. They wanted to avoid conflict with Pākehā and protect themselves from losing more land. In their view, the war at Waitara showed how desperate the Government was to acquire Māori land.[108] However, Te Māwae of Pūtiki declared he was at the hui to set boundaries between tribal rohe and wanted nothing to do with the King.[109] Hōri Kīngi Te Anaua also opposed the Kīngitanga bid to tapu the land for the King. He had his own coat tied to a post to signify a tapu Whanganui boundary.[110]

(4) *Kīngitanga aukati*

At about this time, Kīngitanga supporters established an aukati (a boundary line which could not be passed without permission from the chief or chiefs under whose mana it was established) at Maraekōwhai on the Whanganui River, not far downstream from the junction with the Ōhura River. Travellers going upriver had to seek permission to go any further, as they were entering the 'rohe tapu' or Rohe Pōtae (the King's domain).[111]

(5) *Settlers reassured at Pūtiki*

In April 1860, Whanganui Māori invited settlers to a meeting near Mete Kīngi's house at Pūtiki. Their aim was to allay settler fears by assuring them that Whanganui Māori desired to be one with them. Letters to this effect from Te Pēhi Pākoro Tūroa and Wiremu Kīngi Te Korowhiti were read out, and the chiefs present delivered the same message. They told settlers that all Whanganui was with them, and that Ngāti Ruanui, thought to be allied with the Kīngitanga supporters at Pīpīriki, would not dare to touch the settlers for this would be a declaration of war against Whanganui. Major Durie asked the chiefs if he should not build a stockade at Kai Iwi, but they said this would only demonstrate distrust. The Kai Iwi people said that they would be a stockade for the settlers.[112]

Taylor reported that Te Anaua, Hoani Wiremu Hīpango, and Te Māwae then brought out:

> a grand double parawai [a superior, ornamented flax cloak] beautifully ornamented giving one corner to Col. Wyatt, another to me and to Major Durie[,] Mawae and Hori holding the other. John Williams then placed a testament in the centre. George Kingi said this was a solemn covenant which they entered into with us, that Col. Wyatt myself and Major Durie represented the Queen, the gospel and law, that the parawai was a double one, one side represented the Europeans the other themselves and God in the centre, that they were one and both under the Queen therefore what concerned one concerned the other. They were interested in our welfare and we were in theirs, they were our taonga and we theirs, therefore let there be no division. If dangers threatened one they threatened another let this garment be sent to the Govr. and to the Queen as a token of their allegiance.[113]

Both sides shouted their agreement with the sentiments inherent in this highly symbolic moment, which ended with three cheers.

Despite this demonstration of Whanganui Māori goodwill, Taylor reported that some of the settlers were dissatisfied. They wanted stockades built, and rifle corps and militia to be called out. The settlers held their own meeting afterwards at which there was drinking and foul language directed indiscriminately at Māori.[114]

(6) *The Crown's attitude to the Kīngitanga hardens*

By May 1860, relations between the Crown and the Kīngitanga had completely broken down. Governor

Browne denounced the Kīngitanga as 'inconsistent with allegiance to the Queen, and in violation of the Treaty of Waitangi'. Referring to the war at Waitara, he declared that Kīngitanga fighting men had 'levied war against the Queen', who commanded him 'to suppress unlawful combinations, and to maintain Her Majesty's sovereignty in New Zealand'.[115]

Whanganui groups were not involved in the first battle in the Taranaki war, at Te Kohia pā at Waitara. Some Waitōtara and Whanganui Māori were said to have been among the allies of Taranaki Māori who fought at two pā near Waitara (Puke-takauere and Ōnuku-kaitara) where British troops were heavily defeated on 27 June 1860.[116] No other Whanganui involvement in the first Taranaki war was recorded.

8.4.3 The Kohimārama conference

One of the Crown's responses to the outbreak of war at Taranaki was to call a national conference of chiefs in order to garner the support of rangatira for its fight against the Kīngitanga. Governor Browne also conceived it as 'a sort of Maori Parliament' where attendees would be consulted about legislation and other matters pertaining to Māori and government.[117] To this extent, it was a belated attempt to afford Māori the kind of involvement in the governance and management of their affairs that they had long been seeking.

Held in July and August 1860 at Kohimārama near Auckland, it became known as the Kohimārama Conference. Browne intended it to become an annual event, and Parliament voted £2,500 towards the cost of the next one. Whanganui rangatira asked that it be held in Wanganui.[118]

Browne opened the conference on 10 July 1860. More than 200 chiefs from around the country attended. Many chiefs from Taranaki were either not invited or declined to attend, and chiefs from Waikato, where the Kīngitanga was strongest, also chose not to attend.

Whanganui was represented by eight chiefs from the lower river, most either current or former native assessors whom the Crown considered to be loyal. The group comprised Pūtiki chiefs Te Anaua, Te Māwae, and Hīpango, together with Mete Kīngi Te Rangipaetahi, Tāmati Wiremu, Kāwana Paipai, his son Hōri Kerei, and Tāhana Tūroa.[119] Prominent Whanganui chiefs absent from Kohimārama included Te Pēhi, his son Tōpia Tūroa, and Tōpine Te Mamaku. They were generally regarded as opponents of the Government, but Te Pēhi and Te Mamaku, both Kīngitanga chiefs, had been invited to attend.[120]

(1) *What was discussed?*

The Governor and his Native Secretary Donald McLean saw the conference as a means to obtain Māori support for a number of policies. The hui canvassed topics including the Crown's approach to the war in Taranaki; its stance on the Kīngitanga; the Treaty; the Queen's sovereignty; and land tenure reform. Chiefs were permitted to express their reactions to the Governor's policies and their dissatisfaction with the Government, although the Crown's aim was to reconcile Māori 'as much as possible to the existing state of government in the Colony'.[121]

During the conference various chiefs criticised the inequality of Māori and Pākehā under the law, especially as regarded the sale of liquor, the sale of arms, military service, parliamentary representation, participation in courts, and land ownership.

Hīpango expressed the desirability of a law common to Māori and Pākehā, so that 'the laws be made known in every place, that all men may honour them'. He wanted to see Māori and Pākehā 'united that their goodness may be mutual'.[122] Pēhimana Manakore of Ngā Rauru questioned the restrictions on selling gunpowder to Māori.[123] Ngāti Whatua chief Pāora Tūhaere complained that 'one law did not exist with the Europeans and Natives about land' and he demanded the admission of Māori to the institutions of state power.[124]

Some of the Whanganui rangatira spoke of their positive relationship with Pākehā and the Crown. Brandishing a taiaha, Te Māwae declared that he had always been at one with the Europeans, and if at any time he should cease to be so, his taiaha was a weapon to kill him with for having broken his word. Mete Kīngi confirmed his relationship with the Crown, declaring that his King was 'the Pakeha'.

Kāwana Paipai added that he had only one thing to say, 'love to the Pakeha'. Te Anaua endorsed these sentiments, declaring that: 'I gave my adherence to the Governor long ago, I have nothing to speak of but love and good works.'[125]

When Whanganui rangatira expressed goodwill towards Pākehā and the Crown, it did not equate to their seeing themselves as at all subordinate. Te Anaua told the conference why he rejected the Kīngitanga ban on land sales: 'should any tribe interfere with what is mine, it will be wrong'. But he rejected Crown interference in land issues for the same reason, and to this extent found common cause with the Kīngitanga. He told the Crown, 'I shall keep my land'. Te Māwae revealed that he still regarded Pākehā within his rohe as his Pākehā, declaring: 'Who dares attack my Pakeha on my river, Whanganui? They are under my charge. If you injure them, it is *my* affair; but let no one else attempt to do so' (emphasis in original).[126]

(2) *What was said about land tenure?*

The discussion of Māori land tenure at Kohimārama was of particular concern to claimants in our inquiry. They suggested that the hui produced a number of ideas for resolving competing Māori claims to land and for administering Māori land. For example, they said they were promised alternative means of determining title to that subsequently practised in what became the Native Land Court. Decision-making rūnanga were one alternative put forward.[127]

On 18 July, the Governor asked the chiefs at Kohimārama to 'consider the difficulties and complications attending the ownership of land' in the hope that they would 'be able to devise some plan for removing or simplifying them'. Browne wanted to see 'every Chief and every member of his tribe in possession of a Crown Grant for as much land as they could possibly desire to use'. This, he stated, would see appeal to the courts substituted for war or appeal to the Government in all land disputes. He suggested possible remedies or principles that the chiefs might adopt. One suggestion was that the possession of land from a fixed date be recognised as giving the possessor a good title. Browne also suggested that boundary disputes between Māori be referred 'to a committee of disinterested and influential Chiefs, selected at a Conference similar to the one now held at Kohimarama'. An alternative suggestion was to have two chiefs of each party work together to elect a neutral chief, and that these five chiefs would then decide the matter. Browne also assured the chiefs that he would put in place 'any system that they can recommend, provided it will readily attain the end desired'.[128]

There is little information about how Māori at the conference responded to the Governor's remarks. The reaction seems to have been muted. A handful of rangatira expressed support for the notion that Māori should receive Crown grants for their land, and Pāora Tūhaere of Ngāti Whātua indicated that he favoured the idea of tribal komiti deciding titles.[129] Such a plan might have been welcomed in Whanganui where, as we have seen, great hui were deployed to settle disputed or unclear boundaries both between and within iwi.

We do not agree with the claimants' contention that Māori were promised alternatives to the Native Land Court. At least, we know of no evidence that supports that argument. First, the Native Land Court resulted from discourse among Crown officials in the years following the Kohimārama conference. It was not introduced at all until 1862 and not substantially until 1864, and it was significantly reformed the following year.[130] Nothing promised at Kohimārama in 1860 could therefore be viewed as an alternative to the court, as the court was itself an idea yet to be realised. Secondly, the Governor did not promise any particular scheme at Kohimārama. Browne and McLean canvassed various options for determining land disputes, but the subject was left open for determination at a future hui once rangatira had discussed it with their various iwi and hapū.

Browne and McLean did promise that Māori would play an important role in devising any title reform. Both appeared to be of the view that Māori acceptance of any new system depended on their being part of the reform process. We will ask whether the Crown delivered on this promise when we address the establishment of the Native Land Court.

(3) *After Kohimārama*

Three months after the Kohimārama conference, in October 1860, more than 800 Whanganui Māori held a 'grand council' at Parikino. Many made speeches in support of the King, with the Pūtiki chiefs who had been at Kohimārama responding. Taylor described how sticks were set up representing the King and the Governor, with God in the middle, and reported that all present 'expressed their wish to be at unity with the Europeans'. However, they also declared that 'the king was the protector of their land', and that Pākehā should 'not interfere with our lands or with us unless we interfered with theirs, that they wished to be one with us'.[131] Support for the Kīngitanga was strong, despite the efforts of Taylor and the Kohimārama delegates to quell it. There was the same dynamic at a Pākaraka hui at Waitōtara later the same month, and at a hui in Turakina soon after.[132]

The following month, eight Whanganui rangatira who had attended the Kohimārama conference sent a letter to Governor Browne urging the creation of a common political community:

> The words we have spoken in the midst of this committee [the conference] are to the effect that the Maori and Pakeha races should be united as one people. There is no departing from this. It is known to you, O Governor, that Christianity is the main foundation of all things. If I understand and follow the precepts of Christianity, I shall find Salvation in Christianity, and if we understand the precepts of the Law, we shall find salvation in the laws. Christianity is able to save us, and the law is able to save us. It is useless to repeat these things. Our idea is that the law should be the ruler of man whilst he lives. Do you hearken! Christianity and law had only been tried by us for a short space, when the precepts of both were disregarded. It has also been said, 'He that putteth his hand to the plough and looketh back is not fit for the Kingdom of Heaven.' We have not yet attained to wisdom. The bridle is put to our mouths but we refuse to receive it. Our wish is union. Righteous and good works are the roots which will support unanimity. Another thing [is], humility and passive subjection to the Queen's authority.[133]

These calls for unity and partnership reiterated sentiments expressed at Kohimārama, where Browne had offered unity under the law and steps towards self-government. In this letter, Whanganui rangatira demonstrated their grasp of all that had been said, and called on the Governor to deliver on his undertakings.

Browne had intended to call a second national hui of rangatira in 1861, but it never eventuated. So rather than being the first in a series of annual meetings of rangatira and Crown officials, the Kohimārama conference was a one-off event.

In the wake of the war in Taranaki, Browne was recalled to England and George Grey returned to replace him as Governor. Grey rejected the idea of further national conferences in the Kohimārama style, questioning 'whether it would be wise to call a number of semi-barbarous Natives together to frame a Constitution for themselves'. Grey also regarded the existence of parallel European and Māori parliaments as potentially divisive and likely to 'perpetuate the distinction now so unhappily prevailing between the two races'.[134] He decided that it would be better if he were to frame a 'constitution' for Māori himself, and get them 'to adopt it as a boon conferred upon them'. Grey's 'boon' for Māori would become known as his 'new institutions'.[135]

8.4.4 Governor Grey's new institutions

(1) *The state of play when Grey returned*

Grey began his second term as Governor on 3 October 1861. Whanganui Māori communities were, at that time, trying to preserve their relationship with the settlers. This concern was very much to the fore at the hui convened at the upriver kāinga Ūtapu in May 1861. The Kīngitanga chief Wiremu Pākau told attendees that Māori from Waikato were aware of 'the friendly feeling of the Whanganui natives' towards the settlement at Whanganui and agreed with their stance. Te Mamaku and other chiefs wanted the King and Queen to co-exist peacefully. Mete Kīngi reported that attendees at the hui were still undecided about who was to blame for the Taranaki war, but they considered that whoever made war after that point would be in the wrong.[136]

Ūtapu, circa 1901. At a hui held here in May 1861, a number of Whanganui chiefs discussed the war in Taranaki and the importance of maintaining good relations with the settlers at Wanganui.

By the time Grey returned, the Crown had neither recognised Māori-initiated rūnanga and hui as official bodies for the management of Māori affairs, nor settled upon its own institutions for this purpose. The resident magistrate system, established in 1846, remained the means by which the Crown sought to administer Māori affairs and enforce the law at the local level. However, the settler administration led by William Fox from July 1861 until August 1862 was planning to provide political institutions, based on rūnanga, in which 'the Natives might be enabled to work out their own political destiny'.[137]

Ministers were also trying to find less confrontational ways of dealing with the Kīngitanga, and they suggested that Grey take a more conciliatory line.[138] Grey apparently agreed at first, and viewed the Kīngitanga as proof of Māori 'capacity for self-government' and of 'their desire to see law and order established'. He anticipated that his new institutions would weaken the King movement once 'the inferiority of their form of government is seen side by side with the superior one'.[139]

(2) *Grey's 'Plan of Native Government'*

Grey submitted a 'Plan of Native Government' to his Cabinet at the end of October 1861. He wanted 20 or more native districts, each with a civil commissioner, a clerk, an interpreter, and a district surgeon.

Each district would be sub-divided into 'Hundreds', ideally with six or so per district. Each hundred would have a local rūnanga, although it is not clear how its members were to be selected. The hundreds would also have a group of 'Native Officers' including two 'Assessors or Native Magistrates', a 'Warden or Police Officer', and five 'Constables'. The Governor would appoint each of these officials from a list of nominations put forward by the

local rūnanga. The nominees for the two native magistrate or assessor positions were to come from the membership of the local rūnanga.[140]

Local rūnanga would be responsible for schools, gaols, hospitals, and for building and maintaining roads. They would oversee land title reform and land settlement, decide land ownership and adjust boundaries, and recommend the issue of Crown grants. Land ownership was to be registered and, once this was done, land could be leased or individual farms sold. Justice in the districts would be administered in courts run by commissioners (who were also resident magistrates), and native magistrates or assessors.[141]

(3) *Getting the measure of Grey's new institutions*

The claimants contended that the aim of Grey's 'new institutions' was to exercise indirect rule over Māori by drawing existing tribal organisation into the Crown's ambit. In this way, the new institutions were less about the administration of justice and more about the expansion of Crown authority over Māori. They also submitted that there were promising aspects of the scheme, such as conferring on Māori authority to determine land boundaries and titles. But the new institutions were intended to last only so long as the Crown felt the need to conciliate Māori opinion. Once the Crown succeeded militarily in the Waikato, it no longer felt that need, and as a result it abolished the new institutions.[142]

The Crown argued that from 1861 to 1865 the Government came close to succeeding in amalgamating Māori into legal and governmental systems. In particular, it developed a workable template for introducing institutions for law and government into Māori communities.[143] It also cited Professor Ward's opinion that the new institutions were 'serving a useful purpose' and should not have been abolished.[144]

Grey's new institutions evolved from existing policies and required no new legislation. The 1858 Native Districts Regulation Act and Native Circuit Courts Act allowed for the establishment of the native districts and the hiring of the officials required. In 1862, the Fox administration financed the new plan by voting £26,000 a year for three years (including the existing £7,000 from the Native Civil List). The Governor could also divert additional funds from the yearly payment for British troops.[145]

Grey did not approve of the multi-tribal, multi-regional focus of initiatives like the Kohimārama conference, which brought Māori together to debate and formulate policy at a national level. His new institutions operated at the local level. This, he said, would:

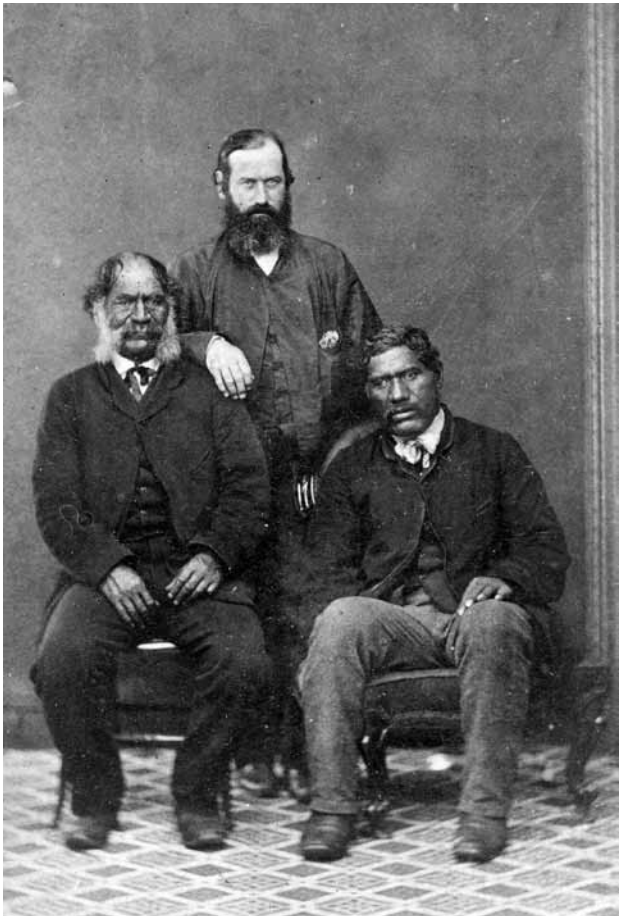
> break the Native population up into small portions, instead of teaching them to look to one powerful Native Parliament as a means of legislating for the whole Native population of this island – a proceeding and machinery which might hereafter produce most embarrassing results.[146]

(4) *A more settled political climate?*

If Grey expected that a more settled political climate would ensue after the introduction of his new institutions, he must have been disappointed. At Whanganui, certainly, things were far from settled.

From December 1861, we have a written account of the experience of J C Crawford, a settler who was attempting to travel upriver to the Tāngarākau River to explore for coal. He found that it was difficult, if not impossible, to proceed beyond Ūtapu owing to the current 'considerable excitement'. At Parikino, Crawford observed the same all-night political discussions that he had seen at every pā on the river, and noted that 'Sir George Grey's policy was approved of, except in the vital points of road-making and giving up the King movement'. He also reported that some Whanganui Māori were 'friendly, some positively hostile, and others neutral'. On reaching the Ngāporo rapid, Crawford was told that the Tāngarākau River was part of the land handed over to the King, whose permission he needed to venture further. Then at Ūtapu he encountered a royal taiepa (fence) or toll bar, where the fee to pass was 30 shillings. He gained permission to proceed, but then Te Pēhi sent him back.[147]

It was at about this time that Crown officials, and Pākehā more generally, were beginning to regard



John White (centre) with Hōri Kingi Te Anaua (left) and Te Ua Haumene, circa 1860–1865. John White was secretary and translator to Governor Grey. His later roles included assistant commissioner, land agent, government official, and interpreter. From 1862 he served for three years as resident magistrate for the Whanganui district.

Whanganui Māori as belonging to two categories: upriver Kingite supporters and downriver 'Queenite friendlies'.

In September 1861, Taylor reported to the Native Secretary in these terms:

> Upper Wanganui chiefs appear generally to side with the disaffected, and to sympathise with the King Movement. They openly say that in the case of the King being attacked at Waikato, they should go and join in his defence; but one and all express their kindly feelings to the settlers, and their unwillingness to have the war brought into this district. The lower Wanganui Natives are decidedly attached to the Government, though alarmed by the military preparations, and especially by the calling out of the militia.[148]

Thus Taylor considered that 'kindly feelings' towards settlers were universal in Whanganui, as was a desire to prevent the spread of war to the district.

The issue of land, or control over land and its alienation, was at the centre of the Crown–Kīngitanga relationship. It was also the issue that defined the relationship between Whanganui Māori and the Kīngitanga. In September 1861, nearly all the Whanganui chiefs and others from Waitōtara and Waikato attended a large rūnanga at Kānihinihi, a lower river kāinga. According to Taylor, the hui addressed the important question of whether chiefs 'having land outside the European block [the Whanganui purchase] should be allowed to exercise their rights over it independent of the king's Runanga'. The question 'was decided in favour of the landowners'.[149] From this brief summary, it appears that Whanganui Māori who supported the Kīngitanga continued to make their own decisions about their land.

The introduction of the new institutions was slow and uneven, partly due to a lack of standard instructions until March 1862. The institutions were launched in the Bay of Islands native district late in 1861, and in more districts early in 1862.[150] On 20 September 1862, Grey brought the new regime to Whanganui. His delegation included Wellington Superintendant Dr Isaac Featherston and John White, acting Assistant Native Secretary. At a hui at Pūtiki, White explained the new institutions. Although there is no evidence of what took place at the hui, it seems that the chiefs of the lower river accepted the new plan.[151]

Some Kīngitanga supporters were by this stage less receptive to Crown officials. When Grey's entourage moved on to Kaiwhaiki, their reception was cool, and tangata whenua warned that if they attempted to proceed upriver they would be turned back.

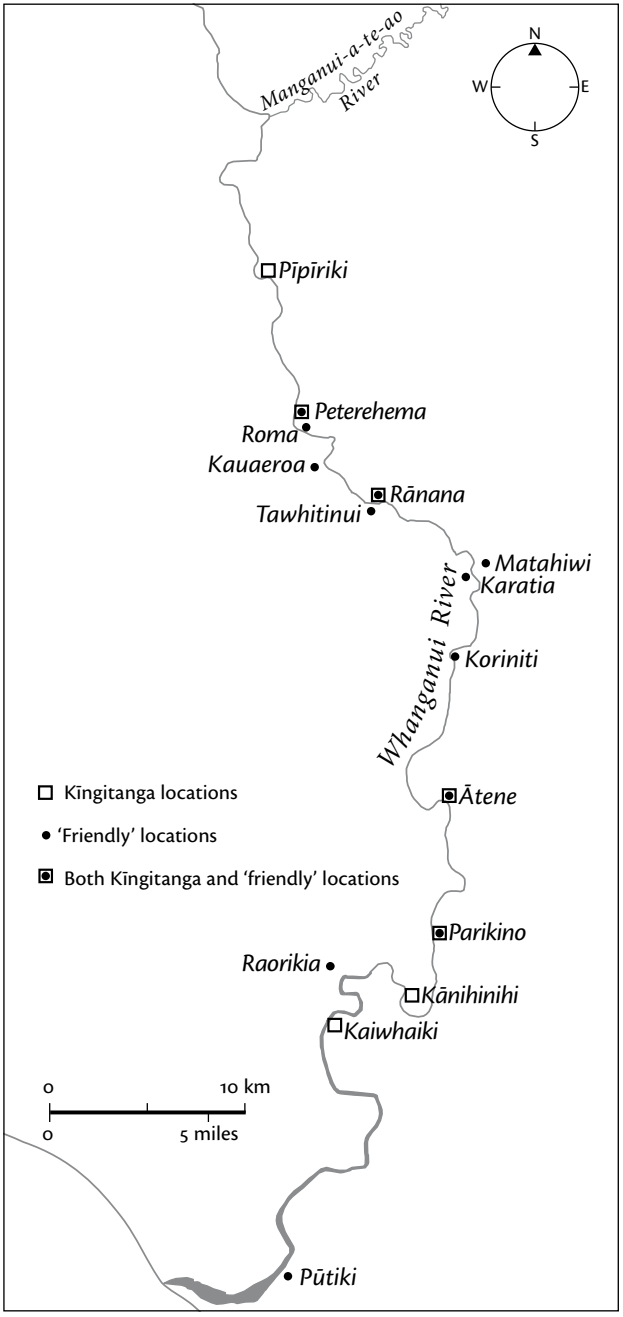
The village of Ātene, where one of eight government courthouses was established in 1862

When Taylor went to Ātene in October 1862, he commented that Hāmārama, the chief there, was a 'bitter king's man'.[152]

The possibility of further conflict was certainly in the air. On 6 August 1862, J E FitzGerald, the member of the House of Representatives for Ellesmere, issued a prescient warning in Parliament. He told the House and the Government that they had never yet offered Māori 'free institutions and equal laws with yourselves', and that these were the only things that Māori were likely to accept in lieu of their 'perilous and precarious independence'. In his view Māori were 'armed and suspicious' and if his listeners failed to 'absorb this king movement into your own government you will come into collision with it'.[153]

(5) *The new institutions are implemented at Whanganui*

John White was appointed the resident magistrate for Whanganui in September 1862. He made an extensive tour of the district, gauging Māori opinion and reporting to the Government. He also explained the still prospective Native Lands Act. By December 1862, White had appointed 23 assessors in 21 locations, 11 wardens, and 10



Map 8.2: The location of Kīngitanga and 'friendly' communities as described by resident magistrate John White in 1862

policemen, with salaries ranging from £50 per annum for Hīpango and Mete Kīngi, £25 for most assessors, down to £10 for police. Some of the great chiefs also received pensions. Eight government courthouses were established from Pūtiki to Ātene. White organised two trial 'land courts' at Parikino and Kauaeroa, with assessors as judges and White as civil commissioner. Kīngitanga courts were also operating at this time, and White told those involved that those courts were illegal and their decisions invalid.[154]

White's travels around the Whanganui district revealed to him how river communities differed in their support for the Kīngitanga. He reported that, working up the river from its mouth, there were 'friendlies' at Pūtiki, Kīngitanga supporters at Kaiwhaiki, and 'friendlies' at Raorikia. Kānihinihi was populated by 'kingites', but at Parikino and Ātene there were both 'friendlies' and 'kingites'. While 'friendlies' lived at Koriniti, Karatia, Matahiwi, and Tawhitinui, at Rānana there were both 'kingites' and 'friendlies'. Kauaeroa was 'friendly', but Pīpīriki was dominated by 'kingites'. Roma (between Kauaeroa and Pīpīriki) was 'friendly', and Peterehema (near Hiruhārama) both 'friendly' and 'Kingite'.[155]

(6) *The expansion of Crown authority resisted*

In January 1863, Grey met with Kīngitanga leaders at Taupiri, who told him that they intended to elect 'those who were most learned' among them 'to frame rules and laws for the good government of the people'. They would hand the laws thus drafted to the Governor for his sanction.[156] This did not meet with Grey's approval, and some years later he recalled that he had offered instead to make Waikato and Maniapoto a separate province with its own elected Māori superintendent, legislature, and executive government. Dr Loveridge suggested to us that the Domett government, rather than Grey, might have made this offer – Grey, he commented, was 'not always the most reliable of sources'. In any case, Grey claimed that the chiefs said no to his offer, because what they wanted was for him to recognise the Māori King and the independence of the Kīngitanga.[157]

Resident magistrate John White wrote to Walter Mantell, then a minister in the Domett government, about

a 'great meeting' at Raorikia on 12 May 1863. The kaupapa was whether Whanganui Māori wanted their land claims adjudicated before the civil commissioner. It is unclear how the hui answered this question, but land boundaries were discussed and 'settled'. Whanganui Māori wanted a recognised boundary between their land and that of Taranaki iwi; one of the chiefs at the hui raised concerns that the land of Taranaki Māori would be confiscated, presumably meaning by the Crown as punishment for participation in the war there.[158]

White saw his primary function as expanding the Government's authority over Whanganui Māori. Mr Macky gave us his view of what White was doing at the time, saying that his power 'was not being used for Maori interests'.[159]

White found his role very challenging and wrote that it was next to impossible to get agreement among the chiefs. He said that when working with Māori he deployed a 'double faced policy' – necessary, he claimed, to 'keep [his] ground' in the face of caution and distrust. '[P]urely European power is looked on by them,' he said, 'as the shadow of a reality of future oppression'.[160]

(7) *Pākehā sceptical about Grey's changes*

A number of contemporary Pākehā commentators criticised the new institutions or were sceptical about them.

Taylor was cynical about Māori who sought appointment as assessors during the period of the new institutions. In October 1862, at Karatia, he judged that the eagerness of people there to have Resident Magistrate White stationed among them arose from their belief that they 'shall be benefitted by him'. But 'in reality [they are] all king's men and look upon what one of their number may receive as an assessor as so much gain to the whole without the least intention of yielding obedience to the Govr'.[161]

J E FitzGerald, a former premier and a future native minister, labelled the new institutions 'feeble and artificial' and considered that they could not succeed, as they neither won the confidence of Māori nor conquered them.[162] John Gorst, the civil commissioner for Waikato when they were introduced, thought them 'everywhere a failure' and said Māori supported them only in hope of government salaries.[163] Premier Frederick Weld had been in office 'but a few days' when, on 28 November 1864, he declared that 'attempts to force political institutions upon the Natives' had failed. He viewed payments for assessors as inducements for Māori to accept the new institutions – an approach he rejected.[164]

In a climate of opinion like this, where both Māori and Pākehā were suspicious of the new institutions and the motivations behind them, it was difficult for Grey's initiative to make much impact.

(8) *The Government moves away from Grey's institutions*

Despite Māori suspicion and official scepticism, Grey's institutions – now not so new – bedded down in Whanganui through 1864 and into 1865.

John White recorded that 53 Māori officers were employed in 'central Whanganui' as assessors, wardens, or police during 1864 at an annual cost of £1,055.[165] White left Whanganui in March 1865. A new district of 'Upper Whanganui' was created, to which James Booth was appointed resident magistrate.[166]

In August 1865, however, the Government made a move that must have signalled to those who knew of it the demise of the new institutions: Native Minister FitzGerald imposed a freeze on appointments of Māori officials. He repeated this order the following month, and extended it by declaring that no vacancies would be filled 'which may commit the Government in any way to a continuation of the present system of administration'.[167]

FitzGerald was not wholly opposed either to the idea of Māori governing their own affairs, or to somehow accommodating the Kīngitanga in the Crown's operations. He attempted to resurrect the idea of native provinces and suggested that the Māori King could be superintendent of his own province, but his Bill to this effect never got beyond a draft. He then lost office when the Weld government fell and the Stafford government took over.[168]

The new administration cut back Grey's institutions further, drastically reducing the number of paid assessors and withdrawing support from the official rūnanga. The whole system implemented under the Native Circuit

Courts and Native Districts Regulations Acts was steadily unpicked. By July 1866, Native Minister A H Russell had all but abolished the office of civil commissioner, and he planned to do the same to a number of resident magistrate positions. The system of law and administration for Māori basically reverted to the former structure of resident magistrates, assisted by paid assessors, constables, and kārere or messengers.[169]

(9) *Why did Grey's institutions fail?*

The state of Crown–Māori relations in the years 1863 and 1864, which came to be dominated by war and land confiscation, militated strongly against the success of the new institutions. Māori affiliated to the Kīngitanga did not accept Grey's changes and were developing their own independent system of courts and rūnanga.[170] Even in districts like Whanganui, where the new institutions were functioning, Māori appear to have been suspicious of the Crown's motivations and engaged only for their own purposes. Both White and Taylor expressed this view. White said Whanganui Māori complied out of fear that the Crown might confiscate their land when seeking to punish Taranaki iwi; Taylor thought they sought office only so that they would be paid.

Dr Loveridge suggested that Grey's new institutions also suffered as a result of the absence 'of an element of Māori corporate representation at the higher levels of government'. We agree with this assessment, and with Dr Loveridge's view that the new institutions allowed only for Māori to be managed by the colonial government.[171] There was potential for Māori to exercise authority in their own localities but not more widely, nor at a higher level of government.

Had Grey continued Browne's initiative of annual conferences like the one at Kohimārama, he would have been more in touch with what Māori needed, and the appropriate means to provide it. It is ironic that Grey introduced his new institutions as a replacement for Browne's annual or biennial parliament – the very thing that might have seen his initiatives succeed because Māori would have had a high profile role in directing Māori affairs.

8.4.5 The second Taranaki war

From March 1863, tensions between Taranaki Māori and the Crown grew following Te Āti Awa's seizure of land at Tātaraimaka. The following month, Resident magistrate White of Whanganui observed that 30 Whanganui supporters of the Kīngitanga, including Tāhana Tūroa, had left for Taranaki. Several Whanganui Māori were in Taranaki when the second Taranaki war broke out on 4 May 1863, and in the months that followed Whanganui Māori were involved in the fighting against the Crown there. In June 1863, Hōri Pātene, a popular and influential chief of Pīpīriki, was killed in fighting at Katikara.[172] Aropeta Tāmumu II, son and heir apparent of the Ngāti Tamareheroto chief of the same name, was also killed. His whanaunga (kin) recovered his body and buried him at Ōkehu.[173]

When the report arrived on 9 June 1863 that Pātene and other Whanganui Māori had been killed at Katikara, some upper Whanganui Māori reacted by planning an expedition to exact utu (revenge).[174]

(1) *Deteriorating relations*

The Crown had maintained a military force at Wanganui following the conflict of 1847. Following the outbreak of war in Taranaki, relations between Kīngitanga supporters and the military at Wanganui rapidly worsened. On 29 July 1863, Major Hassard issued a notice that no Māori who had been involved in the war in Taranaki could enter the town.[175] According to Hassard, young Kīngitanga men 'bearing the king's badge' were in the habit of galloping their horses through town in parties of 20 or more, behaving towards Europeans in 'a most contemptuous manner'.[176] Perhaps in reaction to this conduct and wanting to avoid trouble in the town, Te Pēhi declared in September 1863 that any Māori travelling up out of his district to support the Kīngitanga had then to remain north of Pīpīriki.[177]

Though a dispute over land triggered the fighting in Taranaki, the issues generating conflict went wider. This was as true for those Whanganui Māori who engaged in or supported the fighting as it was for Taranaki Māori.

Taylor's report of his encounter with Tōpia Tūroa in October 1863 gives us a glimpse into the tenor of the times. Taylor tried to dissuade Tūroa from going to Taranaki to avenge the death of Hōri Pātene. Tōpia responded that they could not help becoming engaged in the war in Taranaki because the Governor was attempting 'to destroy the mana of the chiefs'.[178]

(2) *Whanganui Māori join the fray*

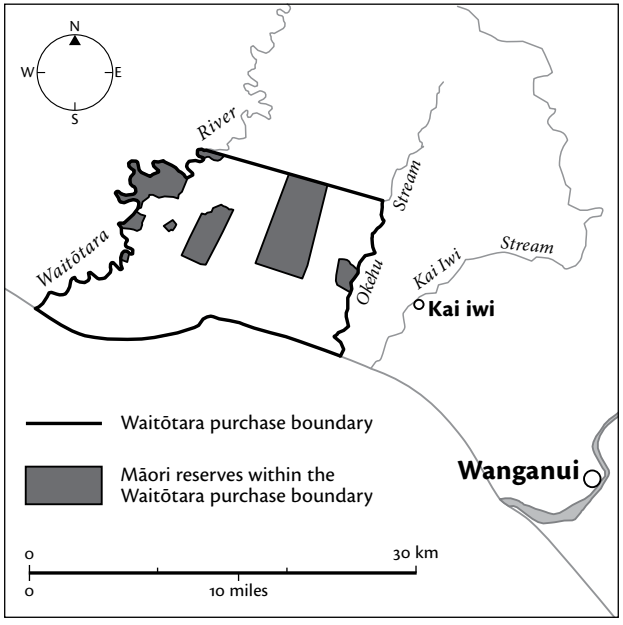
Unsurprisingly, then, in that very month Tōpia's father Te Pēhi raised a large force of Whanganui Māori, who fought beside Taranaki Māori against the Crown near Warea in Taranaki. Utu for Hōri Pātene was one of their motivations.[179]

Te Pēhi's supporters in the taua included Ngāti Ruru rangatira Rāpata Te Korowhiti of Ūtapu and Ngarupiki of Taumarunui, as well as Tāhana, Tōpia, and Wīari Tūroa, and many others. Te Mamaku brought another large force down the river to meet them at Kaiwhaiki.[180] They stayed at Kai Iwi, where a number of Ngāti Tamareheroto also joined.[181]

Te Pēhi, Te Mamaku, and about 400 supporters ran short of supplies after fighting at Tapuaeruru and Tāpuiwaewae, and were back in Pīpīriki by February 1864. Lieutenant Colonel Logan, military commander at Wanganui, sent this information about the Whanganui contingent through to the Assistant Military Secretary as soon as he received it.

After returning from the fighting, Te Pēhi seems to have had a change of heart. According to Resident Magistrate White, he was bitter about the lack of Taranaki support for his fighters, and blamed his own people for inducing him to join the Kīngitanga. White thought Te Pēhi's brother Tāhana felt the same way.[182]

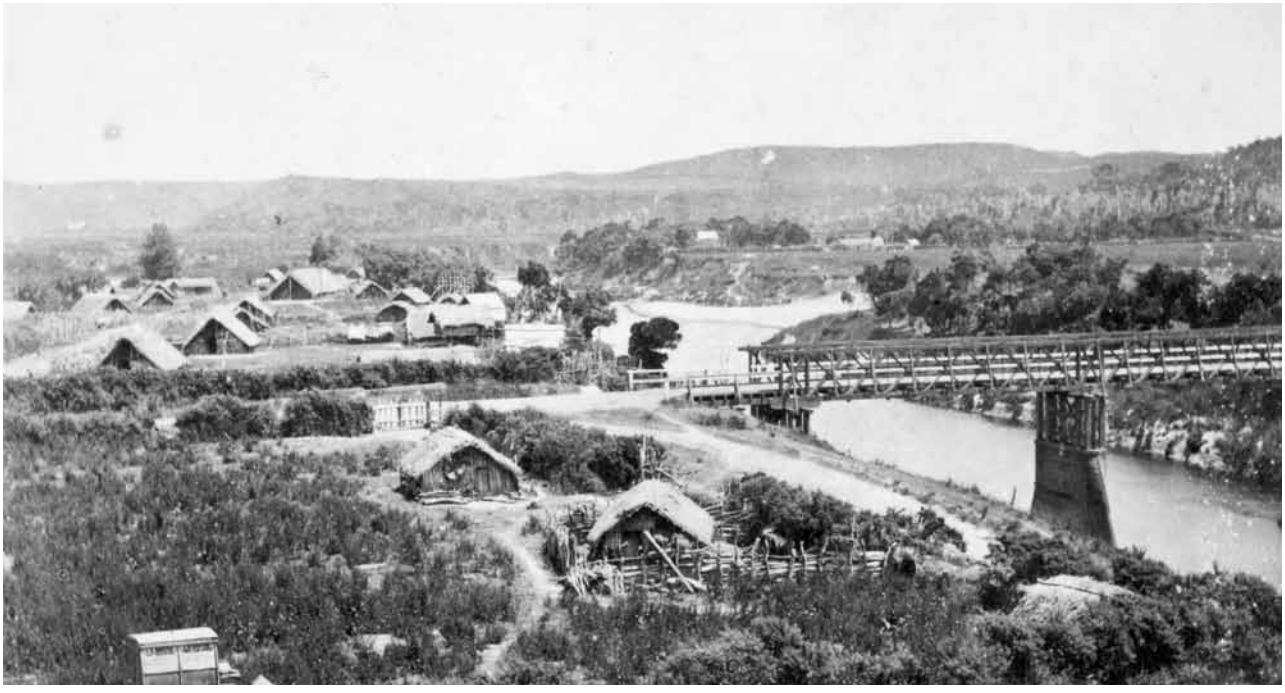
Whanganui supporters of the Kīngitanga also appear to have participated at some level in the war that took place in Waikato in 1863 and 1864. They took part in early skirmishes near Mercer and on the Maramarua hills, and the first major engagement at Meremere, in 1863. In early April 1864, Whanganui observers, including Rāpata Te Korowhiti of Ūtapu and Tāhana and Wīari Tūroa, were at Ōrākau, although they arrived too late to participate in the fighting there.[183] At this time Te Mamaku and his followers were at Haurua, near Hangatiki, to help defend the upper Waipā basin against a feared invasion by British troops. This invasion did not eventuate.[184]



Map 8.3: The Waitotara block, showing reserve locations. The purchase, completed in July 1863, was the subject of much controversy.

8.4.6 The Crown's purchase of the Waitōtara block

Another factor in the Taranaki conflict was the Crown's purchase of the Waitōtara block. This block lies within our inquiry district, north-west of Kai Iwi, but the Taranaki Tribunal reported on the Waitōtara purchase because the hapū involved were predominantly of the southern Taranaki iwi Ngā Rauru. The Crown addressed Ngā Rauru's claims in the Ngaa Rauru Kiitahi Claims Settlement Act 2005. Claimants in our inquiry endorsed the findings of the Taranaki Tribunal regarding the Waitōtara purchase and did not seek further inquiry into it. They did, however, ask to present evidence on their



A Māori settlement at Waitōtara beside the bridge over the Waitōtara River, circa 1880. The cart at bottom left is the photographer's mobile darkroom.

interests in the Waitōtara block that they said the Crown did not recognise when it purchased the block. For this reason, we briefly traverse the history of the Waitōtara purchase. Also, some of the Crown's later actions regarding the Waitōtara block affected events in Whanganui.

(1) *Māori did not want to sell land at Waitōtara*

The land between the Waitōtara and Whanganui Rivers was of interest to settlers and to the Crown for some years before the initiation of purchase negotiations in 1859. Māori of the district knew about this interest, and at the large hui at Manawapou in 1854 they reached a consensus that excluded the land from sale. Although cognisant of this, the Crown employed its purchase expert Donald McLean to initiate the purchase of the Waitōtara block (estimated at 40,000 acres) in 1859.[185] There are no records of McLean's negotiations, but on 11 May 1859 he paid a £500 advance to 14 Ngā Rauru chiefs. The 14 chiefs signed a receipt for the payment, but there was no deed and the receipt stated only that the block stretched from Kai Iwi to Waitōtara.[186] It also stated that the receipt of £500 was a 'guarantee of the cession of this land to the Government of New Zealand'.[187] A great many of those with interests in the block were not present.

McLean reported to the Government that he paid the advance because Ngāti Ruanui were resisting the sale and wanted to put the land under the authority of the Māori King. By October 1859, dissatisfaction among the owners was rife and there was talk of returning the money, but it was soon spent. Then ensued two years of bitter conflict over surveys, boundaries, reserves, and who had interests in the land. Some made allegations of secret dealings with the Crown, while others alleged that the deposit money was given to King Pōtatau.

Kai Iwi Māori moved to exclude their land from the proposed sale. Aropeta Tāmumu and Wikitōria Tapukura of Ngāti Tamareheroto, Ngāti Iti, and Ngāti Pūkeko opposed the sale. Tāmumu declared 'that the sale by the Ngarauru should be limited on this side by the Okehu stream.'[188] The Ōkehu Stream, north-west of Kai Iwi, was eventually adopted as the south-eastern boundary of the Waitōtara block.

The Waitōtara purchase was not completed until 4 July 1863. In all, 32 Māori signed the Waitōtara purchase deed, but this included just four of the 14 chiefs who signed the receipt in 1859. Prominent Whanganui chiefs allied to the Crown were among the signatories, including Te Anaua, Hōri Kerei (Paipai) of Ngāti Rongomaitāwhiri, and Hoani Mete (Kīngi).[189]

(2) *Controversy over the Waitōtara purchase*

Controversy surrounded the Waitōtara purchase. When the deed was signed, many Waitōtara Māori – perhaps as many as 400 of the owners – were away from the district, fighting against the Crown in northern Taranaki or taking refuge elsewhere.[190] Some owners who opposed the purchase sought the intervention of the Māori King. The judges of the King's 'Supreme Court' decided that the land belonged to the Queen and must be handed over. Te Pēhi, a vocal supporter of the Kīngitanga, agreed with this decision. He went to Waitōtara with Featherston, the Crown's agent in the Waitōtara purchase and superintendent of Wellington Province, to meet with some of the opponents. They steadfastly withheld their consent, however.[191]

Rio Te Repi Haeata-te-rangi was the principal chief involved in the sale of the Waitōtara block to the Crown. During the controversy that followed the signing of the deed, Pūtiki chiefs Te Anaua, Hīpango, and Te Keepa Te Rangihiwinui supported him. They wrote a letter that was published in the *Wanganui Chronicle* on 12 November 1863. In it, they insisted that the land conveyed in the deed belonged to Rio and Piripi Raikauhata, and that Āperahama Tāmaiparea and others who opposed the purchase had no rights there.[192]

Conflicts over the Waitōtara purchase meant that the Crown could not open the block for settlement during 1863. But in 1864 the Government laid a road across the block as far as the Nukumaru reserve, and in September of that year it announced that sections would be available for settlers' selection from October.

Tukaroto Pōtatau Matutaera Te Wherowhero Tāwhiao, the second Māori King, 1860–1894. King Tawhiao's reign was overshadowed by wars in Taranaki and the Waikato during the 1860s, and the impact of land confiscation. This photograph was taken in the 1880s.

Meanwhile, on 14 May 1864, Whanganui Māori allied to the Crown and Kīngitanga supporters united in battle against Pai Mārire followers at Moutoa, on the outskirts of Wanganui. The Pai Mārire contingent were also those opposing the Waitōtara purchase, and after their defeat in the battle at Moutoa they moved to fortify and occupy

Weraroa pā.[193] This pā was located on the Waitōtara block, so its occupation operated to further delay Pākehā settlement there.

(3) *The Taranaki Tribunal on the Waitōtara purchase*

The Taranaki Tribunal found that the Crown's acquisition of the Waitōtara block 'was contrary to the principles of the Treaty on the grounds of insufficient agreement and lack of tribal process'. Those who signed the Waitōtara deed represented 'only a small proportion of Nga Rauru who had interests'. Apart from the Ngā Rauru whose interests were disregarded, the Taranaki Tribunal noted that members of the Taranaki iwi Ngāti Ruanui and Whanganui Māori 'appear to have had tribal associations that constituted interests at Maori law'.[194] In our inquiry, Ngāti Kauika and Ngāti Tamareheroto claimed that they were among the hapū that were fighting in Taranaki or taking refuge in Whanganui or elsewhere when the Waitōtara purchase deed was signed. They returned from war or refuge to find that the Crown now owned or was about to own their interests in the Waitōtara block (save a small portion in the Tukituki reserve), in a sale to which they had not consented.[195]

8.4.7 The arrival of Pai Mārire in Whanganui

The Pai Mārire faith had its origins in the visions of Te Ua Haumēne of Taranaki. It emerged in 1862 as a syncretic belief system that drew on the Old Testament and Māori tradition. It appealed to Māori in many districts who were battling to protect their land from the encroachments of Crown purchasing, and who felt disillusioned because Christian missionaries seemed dedicated to supporting the Government's aims. In Whanganui in 1862, Taylor bemoaned the diminution in Christian commitment, with church buildings neglected and a general 'deadness and indifference to religion'.[196]

(1) *The claimants' position on Pai Mārire*

The claimants argued that Pai Mārire resulted from the efforts of Māori to manage the cultural change brought on by colonisation.[197] They characterised the alternatives that Te Ua offered Māori as rooted in 'pacifism and cultural syncretism, not rifles and reversion'. The Government, the claimants said, redefined Pai Mārire as a force that transformed Māori into violent fanatics. Crown officials opposed Māori attempts to organise themselves collectively and welcomed any chance to label movements such as the Kīngitanga and Pai Mārire as treasonous, vilifying their aims as challenges to British sovereignty.[198]

The Crown made no submissions on Pai Mārire.

(2) *Violence in the name of Pai Mārire*

Pai Mārire remained largely unknown to Pākehā until April 1864, when a group of Pai Mārire adherents ambushed a patrol of Crown troops near Ōakura in Taranaki. Captain Thomas Lloyd, the leader of the patrol, was killed, along with six of his men. Inspired by biblical precedents such as David's beheading of Goliath, as well as by pre-Christian Māori tikanga for diminishing the mana of the defeated, the Pai Mārire group decapitated the dead soldiers and preserved their heads. The heads were then taken around the North Island by emissaries for the new faith.[199]

This violence, rather than Te Ua's pacifist teachings, defined Pai Mārire for Pākehā society and for the Crown. In his study of Pai Mārire, historian Paul Clark commented that savage acts like these reflected the part of Pai Mārire that emphasised the need for struggle: although the God of peace offered salvation, there was also a time for war.[200]

Settlers regarded with horror the mutilation of corpses, and fear of Pai Mārire took hold. It was exacerbated by Pai Mārire chanting that used English transliterations and Māori in a special language that adherents regarded as spiritually powerful. A central symbol of worship for Pai Mārire followers was the niu, a tall pole or flag mast with yardarms. Adherents flew banners or Pai Mārire flags from them, and 'rigging' was suspended from the yardarms.[201] Rites and rituals were conducted around them. When Whanganui communities erected niu – 'niu' is a transliteration of the English 'news' – it signified that they had adopted Pai Mārire. All of this symbolism and ritual

against the backdrop of the 1864 decapitation of corpses alienated the Pākehā world from Pai Mārire far more than from the Kīngitanga.[202]

This was reflected in Pākehā calling followers of the Pai Mārire faith 'Hauhau', which referred in a derogatory way to adherents' ritualised and rapid repetition of the word hau. Clark wrote that, to believers, the practice was a means of summoning the divine force to effect miracles and cures. Other religions have similar repeated chants for these kinds of purposes. However, the settler press made unsubstantiated claims that Pai Mārire believed the chant made them invulnerable to weapons and guaranteed victory in war.[203]

(3) *Pai Mārire spreads to Whanganui and beyond*

Mātene Rangitauira introduced the Pai Mārire faith to Whanganui. Formerly resident at Pīpīriki, Mātene converted to Pai Mārire and became one of Te Ua's more militaristic lieutenants.

He arrived at Tawhitinui (opposite Rānana) from inland Waitōtara at the end of April 1864, bringing with him the head of Captain Lloyd. Mātene may have been bringing the head to Hōri Pātene's wife as part of the utu for the Pīpīriki chief's death in Taranaki the previous year.[204]

Mātene's message was eagerly received at Tawhitinui, where the chief Te Reimana soon became a convert to Pai Mārire and a niu pole was raised. Rangitauira's group moved on to Ōhoutahi, and then to Pīpīriki. At both places, communities erected niu poles. At Pīpīriki, tangata whenua were still mourning the loss of Hōri Pātene (senior) and other kinsmen in Taranaki the previous year, and were glad to join the new faith.[205]

Pai Mārire resonated with communities throughout the district. They embraced it at Ūtapu, Tīeke, and Rurumaiakatea, and in the Manganui-a-te-ao, raising niu poles in all but the first of these locations. The upriver kāinga that erected niu poles included Whakahoro, Arimatea, Kōiro, Ūpokoiri, and Maraekōwhai. A niu pole was prepared for Rānana, although the defeat of Pai Mārire forces at Moutoa in 1864 meant that it was never raised.[206]

(4) *Followers of Pai Mārire also supporters of the Kīngitanga?*

A register of 72 chiefs in a district covering southern Taupō, Whanganui, Waitōtara, Turakina, and Whangaehu described only nine as 'Hauhau'. They were Te Oti Takarangi of Ngāti Rongomaitāwhiri of Kānihinihi; Harawira Katau of Ngāti Tūmātau of Pīpīriki; Rāpata Te Korowhiti of Ngāti Ruru of Ūtapu; Ngarupiki of Taumarunui; Hōri Pātene (junior) of Pīpīriki; Tāhana, Tōpia, and Wīari Tūroa of Te Patutokotoko (who embraced Pai Mārire only after they returned from Waikato); and Hoani Te Whetū, a son of Te Pēhi.[207] Seven of these chiefs were also said to be supporters of the Kīngitanga.[208]

Not all Kīngitanga supporters were Pai Mārire. The following eleven chiefs were listed as 'Kingites' but not as followers of Pai Mārire: Kāwana Hūnia Te Hākeke of Ngāti Apa of Turakina who joined the Kīngitanga from 1861; Ēpiha Pātapu of Ngāti Ruakā; Wiremu Pātene of Ngā Paerangi of Kaiwhaiki; Roihi of Ngā Paerangi of Raorikia; Tōpine Te Mamaku, identified as 'Kingite' but not 'hostile'; Mōkena Maihi of Pīpīriki who joined the Kīngitanga only in 1861; Wiremu Pohe of Ngāti Taipoto of Ōkirihau, identified as 'hostile'; Rewi Raupō of Ngāti Tama of Hiruhārama who joined the Kīngitanga early but soon gave it up; Hare Tauteka who also joined the Kīngitanga early but remained friendly to Europeans; Matiu Tukaorangi of Ngāti Pāmoana of Tūmaire and a close relative of Tōpine Te Mamaku; and most importantly of all, Te Pēhi Pākoro Tūroa.[209]

Thus we see that Pai Mārire followers were sometimes, but not necessarily, supporters of the Kīngitanga: they were separate movements, with different aims. This was dramatically demonstrated in 1864, when Pai Mārire and Kīngitanga forces clashed at the battle of Moutoa.

8.4.8 War comes to Whanganui: the battle at Moutoa

By 1864 Whanganui Māori were divided by politics and by religious affiliation.

Some Whanganui Māori chose to embrace the Kīngitanga, and some adopted the new Pai Mārire faith. Some aligned themselves with both. The two were alike in

The village of Tawhitinui on the Whanganui River, which looks across Moutoa Island to Rānana. Pai Marire were accommodated at Tawhitinui the night before the Battle of Moutoa, their supporters watching from that village while pro-Government supporters looked on from Rānana.

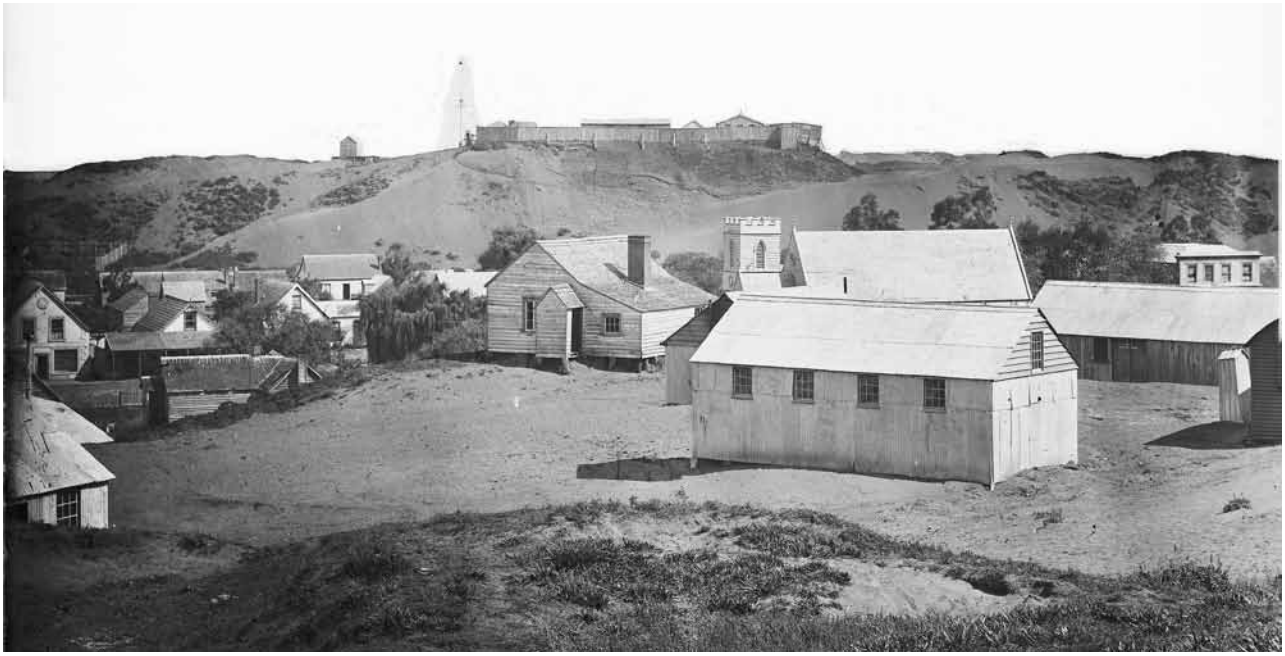
advocating freedom from Crown domination and retention of Māori authority, but they approached these kaupapa differently. Some found neither the Kīngitanga nor Pai Mārire appealing, and they opted instead to work within the political system established by the Crown.

War in both Taranaki and Waikato between Crown and Kīngitanga forces accentuated the divisions between Whanganui Māori, as now Crown officials and settlers categorised them as one thing or the other – either for or against the Crown. Of course, the situation was far more complex. All Whanganui Māori were kin to each other, and their political and religious affiliations played out in sometimes unpredictable ways. This was seen nowhere more vividly than in the battle at Moutoa.

(1) *Who was at Moutoa and why?*

At Moutoa, Mātene Rangitauira led Pai Mārire forces on one side; on the other were chiefs of Pūtiki and the lower reaches of the Whanganui River and their men. But then, in an unprecedented alliance, the Kīngitanga leaders Te Mamaku and Te Pēhi ranged themselves with their men on the side of the Pūtiki contingent. This was an inter-Māori battle, and they were contesting the right of 'Hauhau' forces to proceed down the river to attack Wanganui.

It will be recalled that Te Pēhi and Te Mamaku were pro-Kīngitanga leaders who fought against the Crown in Taranaki in 1863. They were bitter about how they had gone to fight alongside Taranaki and Waitōtara Māori, but received from them such poor military and logistical support that they were defeated. White later reported that Te Pēhi regretted having been dragged into the war against the Government.[210] It might have been Te Pēhi's experience in Taranaki that motivated him to oppose Pai Mārire in the Whanganui district. It was reported that in mid-1864 he travelled with the Catholic priest, Father Jean Lampila, to Hītaua on the Manganui-a-te-ao River to speak against Pai Mārire. It was apparently when Mātene heard of this attempt to block the spread of Pai Mārire that



York stockade, shown here with Christ Church below, was built in 1847. It was smaller than Rutland stockade which was located to the north.

he decided to attack Wanganui.[211] By this time, many Pai Mārire believers, including Mātene, were adapting Te Ua's message of peace to justify aggressive action against both soldiers and settlers.

Leaders like Te Pēhi and Te Mamaku epitomised the difficulty facing many Whanganui Māori. They supported the Kīngitanga and its aims, and were related to many others who supported the movement. Though they did not support Pai Mārire, again they had connections to many who did – and also to those who chose to support neither Kīngitanga nor Pai Mārire and preferred to work with the Crown. Te Pēhi and Te Mamaku also understood the value of the settlement at Wanganui, and the risk that war with the Crown posed to the relationship between Whanganui Māori and Pākehā. All these considerations played into their decision to act so as to prevent the spread of war.[212] Limiting conflict and asserting te tino rangatiratanga over the river were their primary aims. Opposing Pai Mārire was almost a by-product of this strategy.[213]

(2) *The lead-up to the battle*

Te Pēhi met with Mātene to dissuade him from attacking Wanganui. He told him of the agreement with the Governor not to breach the peace of the town, and also that from Peterehema down the river was tapu. The Pai Mārire force would not be allowed to pass down it to attack the township. Mātene reportedly replied: 'There are no chiefs in New Zealand now – Pehi is less than a common man – altogether beneath my feet – I and my God will act as we think fit.'[214]

On 8 May 1864, Te Pēhi visited Rānana and appealed to the chiefs there to stop Mātene and his followers from travelling downriver to Wanganui. On 11 May, they sent a message to Mātene asking his party to return to Waitōtara. Mātene refused, demanding to be allowed to travel down the river to the township. The following day at Tawhitinui, Mātene's group announced their intention to go to Wanganui and seize Resident Magistrate White. They intended to use his blood in a ritual as the focus of their

The Battle of Moutoa

A battle was fought on Moutoa Island on the Whanganui River in May 1864. Chiefs from Pūtiki and the lower Whanganui River, together with Kīngitanga supporters, clashed with Pai Marire adherents intent on proceeding downriver and attacking Wanganui.

On 13 May 1864, Mātene Rangitauira and his Pai Mārire following were at Tawhitinui pā on the west side of the Whanganui River, a few river rapids downriver from Pīpīriki. Tawhitinui overlooked the upper end of Moutoa, a mid-river island, the higher parts of which were covered with mānuka and fern; the rest was shingle. Moutoa was then

hostility. Unable to disuade Mātene, Te Pēhi responded by sending women to Pīpīriki to fetch what they could of the Booth's property and bring it to Ōhinemutu for safety.

By 13 May, Hēmi Nape and Mete Kīngi and their followers – called 'Government natives' or 'friendlies' in dispatches – had taken possession of Moutoa Island with a force of nearly 400 men, of whom 30 to 40 were said to be Kīngitanga supporters.[215] These allies challenged Mātene and his followers to meet them on Moutoa Island.

Tensions between the opposing sides were now at crisis point. The stakes were high, not just for relationships between Whanganui Māori, but also for the settlers and Crown officials at Wanganui. The Crown was obliged to take measures to ensure that its officials and the settlers were protected, raising the risk that fighting between the Crown's forces and Māori would spread to Whanganui. The military force that had occupied Wanganui since 1847 was on constant patrol, settlers from outlying areas

estimated at 300 yards long by 20 wide. Rānana was at the lower end on the east bank. The upriver end of the island, the way Mātene and his 120 to 150 men had to come, could only be approached by canoe, while the river at the lower end was at that time shallow enough to be waded. Haimona Hīroti and Mete Kīngi Paetahi had collected the 300 or so Pūtiki 'government allies' and the 30 to 40 Kīngitanga supporters near Rānana. Prolonged negotiations over the previous two months having failed, a messenger had been sent that day from the Pūtiki chiefs and Te Pēhi Pākoro Tūroa to Rangitauira, appointing dawn the following day as the time when the issue of the passage down the river to Wanganui would be tested. The Pūtiki and Kīngitanga chiefs had made the river tapu to prevent the Pai Mārire group from passing.

At dawn on 14 May 1846, Hēmi Nape and a chief called Rīwai led an advance party of about 10 Pūtiki men; Hīroti led another similar group. They were accompanied by Kereti Te Hiwitahi leading a group of about 10 Roman Catholic men from Pīpīriki. This advance party of just over 30 men waded to the lower end of the island. Mete Kīngi kept the reserves on the bank near Rānana. The Pai Mārire forces canoed in seven waka to the upper end. Hundreds of spectators lined the heights at Tawhitinui and Rānana, cheering on their respective parties. The 30 or so 'loyal' men spent the next two hours challenging the 'Hauhau', while the Pai Mārire men chanted prayers, including the incantation 'Hau, Hau'. The two sides gradually approached each other, shouting challenges all the way. The tension mounted, and a Pai Mārire supporter from Pīpīriki, Hoani Winihere, fired the first shot. Volleys were then exchanged, killing several men on either side. Te Hiwitahi was among the dead. The Pūtiki party began to retreat. Another volley was fired, and Hēmi and Rīwai were killed.

The advance party then began to panic and fled to their end of the island; many escaped across the river. But Hīroti stopped there and declared: 'I will go no further.' He rallied 20 men, and as the Pai Mārire men rushed towards them his men fired a volley at point blank range. The Pai Mārire group lost several leaders and began to lose heart. Mete Kīngi then crossed the river with a large party of the reserves and chased the Pai Mārire men up the island, where they took to their canoes or tried to swim to safety. Mātene was among those badly wounded while trying to swim. He got to the bank, but a government policeman, Te Moro, swam after him and tomahawked him to death. Many prisoners were taken; some were permitted to escape along the track from Tawhitinui to Waitōtara.

Forty of Mātene's men died on the island. Others died in the water and there were an unknown number of wounded. The Reverend Richard Taylor said their dead numbered 52. The Pai Mārire dead were buried on the island. The Pūtiki and Kīngitanga group lost 12 to 16 men, and between 20 and 25 were wounded. Among the dead was a French missionary priest, Father Euloge, who had been among the spectators and had failed to hide when some Pai Mārire crossed the river. Like Mātene, he was tomahawked to death.[1]

were brought into town, and a settler militia aided in the defence of the town.[216]

(3) *Battle commences*

On 14 May, Pai Mārire forces numbering between 120 and 150 came downriver in three canoes. The taua comprised men from Whanganui, Waitōtara, Ngāti Ruanui, and Taranaki. A battle took place on Moutoa between them and the Pūtiki-Kīngitanga allies occupying the island. Lasting just 15 minutes, the fighting claimed the lives of Mātene Rangitauira and about 50 of his followers, and 14 of the opposing force.[217] There is no record of how many Pai Mārire were wounded, but they were treated at the town's hospital alongside the nine wounded of the Pūtiki-Kīngitanga allies.[218]

After the battle on Moutoa, the Pūtiki-Kīngitanga allies moved to take three pā previously held by Mātene and his followers, taking prisoner 40 men, women, and children.

Dr Isaac Featherston thanking Pūtiki Māori and Mete Kīngi Te Rangi Paetahi, in particular, for their bravery at Moutoa, 1864. Mete Kīngi played a significant role in leading the reserve army of pro-government lower Whanganui Māori, defeating the Hauhau force.

They would have moved on to attack anti-government Māori forces in the Waitōtara district, but officials feared that an unsuccessful attack would provoke further hostilities and dissuaded them.[219] As already mentioned, some of the Pai Mārire force then went from Whanganui to the Waitōtara district where they occupied and fortified the Weraroa pā.

(4) *The problem of prisoners*

Prisoners taken at the three pā created a complex problem for Whanganui Māori. The detainees and their captors were closely related, so their fate was vitally important to the Pūtiki and Kīngitanga leaders. Crown officials, on the other hand, merely categorised the prisoners as 'hostile' Māori.

Mete Kīngi and Te Pēhi, allies at Moutoa, were not at one on the issue of the prisoners. Mete Kīngi took charge of the prisoners, and refused Te Pēhi's request to give them up to him. Te Pēhi wrote to Resident Magistrate White protesting that most of the prisoners were not chiefs, and therefore should not be held.[220]

The Pūtiki chief Te Anaua, who had worked with the Crown for many years, was a near relative of many of the prisoners. He was distressed about the whole situation of the battle, the prisoners, and their fate. The prisoners were held at a number of kāinga, and Te Anaua went upriver to collect them in the company of Superintendant Featherston. He confided to Featherston how difficult it was that he and his allies had 'killed in the battle of Moutoa many of our nearest relations and friends. We have taken others of them prisoners.' He went on to ask whether they had 'not done enough for the Queen and our friends the Pakeha? Must we surrender these prisoners to be sent to Auckland or Wellington, and there put

The Moutoa Monument, Moutoa Gardens, Wanganui, 1860s. The monument was erected in memory of pro-government Māori of the Whanganui River who fell defending Wanganui on the island of Moutoa. Rutland Stockade is on the hill behind.

into gaol?' Featherston promised that he would do 'all he could to ensure that Grey pardoned the prisoners, but he reminded Te Anaua that only Grey could issue the pardon.'[221] In fact, the prisoners were not released on parole and some were sent to Wellington.

In our inquiry, the claimants maintained that by forcing Te Anaua to give up the prisoners the Crown was requiring a display of submission from even the victors of Moutoa. In their view, the Crown's actions failed to respect te tino rangatiratanga of Te Anaua and ignored tikanga Māori (Māori customary law).[222]

Te Pēhi also asked Featherston to release the prisoners. Again Featherston refused.[223] Te Pēhi responded by travelling to Ātene and gathering about him a strong party of anti-government Kīngitanga supporters. They later returned to the Pīpīriki district to build a pā downriver at Ōhoutahi.[224]

When Te Pēhi allied with the Pūtiki or downriver contingent at Moutoa, he appeared to be fighting on the side of the Crown. Then, when Featherston refused to release the prisoners, he moved to gather around him anti-government Kīngitanga supporters, which looked like a change of heart. In fact, as we have already observed, the alliances at Moutoa had many drivers. Te Pēhi opposed Pai Mārire primarily to limit the spread of conflict to Whanganui and avoid the fallout that would result from

war with the Crown. Turning back the Pai Mārire force was an assertion of his tino rangatiratanga. At the same time, he would have been aware that the defeat of the Pai Mārire force served the Crown's interests. It was therefore reasonable for him to expect that the Crown would return the favour and release the prisoners when asked.

Featherston's view of things was otherwise. He was unconcerned about Te Pēhi's anger over his refusal to let the detainees go. Featherston simplistically divided Whanganui Māori into pro-Crown and anti-Crown forces, and on that basis thought that, after Moutoa, anti-Crown supporters of the Kīngitanga were no longer a threat in Whanganui. He gauged the chances of peace in the district as never better.[225] In reality, refusing Te Pēhi's request heightened tensions in Whanganui. Just as in 1847, a situation of relative peace and calm between the Crown and Māori in Whanganui descended into warfare.

8.4.9 The battle at Ōhoutahi, February 1865

In June 1864, against the wishes of Pai Mārire prophet Te Ua, the Pakakohe hapū of Waitōtara and a group of 100 or so Waikato people visited Pīpīriki. This visit served to reinforce the division between those Whanganui Māori who supported the settlers and worked with the Government, and those who supported the Kīngitanga following Moutoa. Tāhana Tūroa, a leader of the Kīngitanga supporters, warned those supporting the Government that there would be a battle at Hiruhārama.[226] No such battle eventuated but tensions remained.

(1) *The Crown tries to end hostilities*

On 2 November 1864, the *Wanganui Chronicle* published Governor Grey's proclamation proposing an end to hostilities. It declared an amnesty for anyone who came in before 10 December 1864 to take the oath of allegiance and agree to the cession of such territory as the Government decided.

Kīngitanga supporters could not accept these terms, but they were willing to make peace. They advised the Crown's Whanganui Māori allies that they would agree to peace with the Queen if they were allowed to retain their own King and their own laws.

It is not clear what response, if any, they received from the Crown, but on 17 December 1864 the Crown was confident enough to declare the cessation of hostilities.[227]

(2) *Te Pēhi and Tōpia Tūroa keep Wanganui safe*

About this time reports were rife that Rewi Maniapoto of Ngāti Maniapoto was planning an attack on Wanganui, but Te Pēhi and his son Tōpia were said to have prevented it. Te Pēhi reportedly heard of a plan to attack the settlement and travelled to Ōhinemutu to stop it. Tōpia declared that he would help to defend the town if Rewi was determined to attack it.[228] It appears from this that Tōpia, like Te Pēhi, was determined that the town of Wanganui would not become a new front in the battle between the Crown and the Kīngitanga that had been raging in Taranaki and Waikato.

(3) *Te Pēhi and Te Mamaku quell trouble at Ōhoutahi*

In January 1865, Rini Hemoata, a chief at Hiruhārama who was also an assessor, passed on important intelligence to the Government. A war party of men from Ūtapu and Pīpīriki had gone to Te Kiritahi, a 'rebel' pā about 12 miles from the town of Wanganui, and a Waikato group was at Ōhoutahi under the leadership of Raureti.[229]

At this time, Tōpia and Tāhana Tūroa joined Te Pēhi at Ōhoutahi with 200 men.[230] The Tūroa family was divided on whether or not to fight the Crown. Although Te Pēhi opposed the spread of Crown power and influence, and was angry when Featherston refused his request to release the prisoners, he still wanted to avoid war. By contrast, Tāhana and Tōpia were actively engaged in checking the spread of Crown hegemony.

On 11 January 1865, Resident Magistrate Booth reported that the Kīngitanga group at Ōhoutahi intended to erect the King's flag on the 'Queen's land' at Peterehema near Hiruhārama. However, on 12 January, Te Mamaku came to Ōhoutahi to intervene, probably at the request of Te Pēhi, who went with him. Te Mamaku threatened Tāhana, saying that he would become Te Mamaku's enemy if he planted the King's flag near Hiruhārama. He accused those from Waikato of spreading their war with the Crown to Whanganui, and told Waitōtara Māori present to leave the

district.[231] Te Pēhi declared he wanted peace with Pākehā. Tāhana and Tōpia acceded to Te Mamaku's wishes, and sent a messenger to Hiruhārama to say they were temporarily giving up their intention of flying the Kīngitanga flag out of deference to him.[232] Te Mamaku and Te Pēhi's actions ensured that trouble was averted, but only in the short term.

(4) *Forces converge on Ōhoutahi*

By mid-January 1865, Crown officials had received reports that anti-government groups from Taupō, Te Urewera, and the East Coast were coming to Ōhoutahi pā. Another communique disclosed that Te Pēhi had decided to resist any government attack there.

The Crown appears to have decided that these reports, together with those from earlier in January concerning Tāhana Tūroa's willingness to challenge the Crown, constituted evidence of a threat that needed to be addressed. The Crown determined to attack Ōhoutahi – a decision that brought its war against the Kīngitanga to the Whanganui district.[233]

The Crown could not launch military action itself as its troops had been sent north to secure the land between the Whanganui and Pātea Rivers, including the Waitōtara block. The troops had crossed the Waitōtara River, bypassing Weraroa pā, and were pressing on towards Pātea.[234] To meet the Ōhoutahi exigency, the Crown had to turn to its Whanganui Māori allies for help.

The Crown had armed its allies following the battle of Moutoa, and it also paid for the construction of pā for Māori allied to the Crown at Rānana, Kauaeroa, Koriniti, Hiruhārama, and Mairekura (also known as Tawhitinui).[235] On 28 January, Pūtiki chiefs led a 400-strong force to attack Ōhoutahi and seven surrounding pā. Te Anaua wrote to Resident Magistrate Durie that General Cameron had said, 'leave the campaign [in Waitōtara] to me, and do you proceed up the Wanganui River and fight there'.[236] Cameron reportedly warned Hīpango not to begin the war, but it is hard to see how it could have been avoided. Those at Ōhoutahi must have viewed the advance of a large armed force as an act of aggression. Te Pēhi's followers reacted to the advance of the Pūtiki-led force by initiating skirmishes that saw four of Te Pēhi's number killed.[237]

Skirmishing continued through February; reinforcements arrived to bolster Te Pēhi's forces; Hīpango, chief at Pūtiki and principal assessor, was devising a plan to capture Ōhoutahi.

(5) *The battle and its aftermath*

On 23 February 1865, Hīpango was seriously wounded when leading a reconnaissance mission. He died at Wanganui two days later. The next day, Mete Kīngi ordered an attack on Ōhoutahi and the pā was taken.[238]

Taylor was under the impression that, when Hīpango was wounded, it was 'Hakaraia' (possibly Hakaraia Kōrako of Ngā Poutama) took command rather than Mete Kīngi. Regardless, Hīpango's plans were successfully carried out. The pā was taken, and all the leaders captured, including Te Pēhi Pākoro, Tōpia, and Tāhana Tūroa. Twenty-seven were killed, while 60 men and 40 women and children were captured. Te Pēhi's allies dispersed. Te Anaua neglected to garrison the various captured pā, and was later criticised for allowing some of the prisoners to escape.[239] The captured chiefs Te Pēhi, Tōpia, Tāhana, Tāmati Wāka, Hōri Pātene, Wī Pātene, Wī Pākau, and Rōpata were reportedly told that they would be pardoned if they 'gave in their submission'. Te Anaua then released them, with some promising that they would make their own way to Wanganui to meet with the Governor.[240]

Neither the Crown's Māori allies nor the Governor were pleased that these chiefs were released, and Grey told General Cameron that he was dissatisfied with their terms of surrender.[241] At the tangi for Hoani Wiremu Hīpango at Pūtiki on 27 and 28 February, Te Māwae and Hakaraia voiced their chagrin that the Crown had not kept the chiefs captive.[242] Taylor was more relaxed about it, because the chiefs' agreement to give up the King and Pai Mārire meant the 'real object of the war' was accomplished without 'the head chiefs suffering this degradation'.[243]

Meanwhile, Pūtiki Māori and settlers celebrated the victory. Haka were performed, goods plundered from the captured pā were displayed, and the townspeople

presented Pūtiki Māori with gifts including a 'grand flag' that the 'ladies of Wanganui' had worked for them.[244]

(6) *Governor Grey visits Whanganui after the battle*

Governor Grey arrived at Wanganui on 5 March 1865. On 9 March, he and Native Minister Walter Mantell spoke with Te Pēhi and his son Tōpia. Te Pēhi maintained that the cause of the conflict was the Government's appetite for Māori land. When asked, he refused to say that he had given up the King, as others had claimed. He was, however, committed to restoring peace. He requested that the Governor make peace at Wanganui with all Māori in conflict with the Crown. The Governor pardoned Te Pēhi, but said that he did so only because he felt bound to honour the promises the Pūtiki chiefs had made at Ōhoutahi.[245] On 11 March, Te Pēhi made an oath of allegiance to the Crown.[246]

Tōpia Tūroa met the Governor on 15 March, but he refused to take the oath of allegiance. He wanted to return to his people and hear what his local rūnanga said on the subject. He also stated that Te Pēhi had been sent to take the oath as a token of their desire for peace.[247] Official notes of Tōpia and Grey's discussion indicate that Tōpia took responsibility for the actions of the Kīngitanga and Pai Mārire in Whanganui and Taranaki. It is likely that this was an acceptance of collective rather than personal responsibility for all the deeds of Kīngitanga and Pai Mārire followers. Such actions included starting the King movement and bringing Lloyd's head to Pīpīriki, and other activities in which he had no personal involvement such as the murder of missionary Carl Sylvius Völkner at Ōpōtiki. Tōpia was permitted to leave, but the following day he was proclaimed an outlaw and £1,000 was offered for his capture. Grey held Tōpia culpable in the Völkner murder. He claimed that, in allowing the head of Lloyd to pass through Whanganui and on towards the East Coast, Tōpia had been a party to the creation of the conditions that saw Völkner killed.[248]

Two days after reportedly posting the reward for Tōpia's capture, Grey dispatched James Booth upriver to Pīpīriki, instructing him to try to persuade some of Tōpia's followers and other chiefs to make peace. Booth addressed a letter to Tāhana Tūroa, Hōri Pātene, Te Mōkena, Īhaia, Kereopa, and all the men at Pīpīriki, inviting them to confirm the peace that they had made with Te Anaua and Mete Kīngi at Ōhoutahi and Pīpīriki. The chiefs refused, saying that any pledges made were made to Te Anaua: the peace at Ōhoutahi was between Māori and the Governor did not come into it. Tāhana was frustrated by their refusal to make peace, but refused to return to Wanganui to make peace formally.[249]

(7) *Was a battle at Ōhoutahi inevitable?*

We see support for the Kīngitanga as one factor behind the fighting at Ōhoutahi. But not all Whanganui Māori supporters of the Kīngitanga wanted a fight. We have referred to the evidence that shows the lengths to which Te Mamaku and Te Pēhi went to avoid conflict. Tāhana and Tōpia Tūroa were more belligerent, bent on proclaiming their allegiance to the King by raising a Kīngitanga flag on the land of those allied to the Crown. The Crown, already virulent in its opposition to the Kīngitanga, knew that anti-government Whanganui Māori were gathering at Ōhoutahi. Further reports suggested Kīngitanga supporters from other districts were coming, and that Te Pēhi had decided to fight against the Government. This constituted grounds for the belief that an active campaign against the Government was afoot. More importantly, however, the Crown was already aggressively engaged against the Kīngitanga and Pai Mārire in other districts, and was on the alert for other possible threats. These were fertile conditions for war.

There were other factors in the mix, too. One was the commitment of some Whanganui Māori to their cooperative relationship with the Crown, and to protecting the settlers. At Moutoa, Pūtiki and Kīngitanga Māori chose to become allies to oppose Pai Mārire forces. At Ōhoutahi, the Pūtiki contingent and others allied with the Government fought at the Crown's request against some of their former allies at Moutoa. These events reveal the complexity of Whanganui relationships at this time. As corrosive as the wartime atmosphere was for the relationship

Whanganui 's Alexander Cavalry Volunteers camped by a lake, 1877. After the outbreak of war in Taranaki in 1860, the Government employed special forces like these to help re-establish peace. Men aged 16 to 60 could serve in the militia. In peaceful times the men could return to their work.

between some Whanganui Māori and the Crown, it was at least as corrosive for relationships between Whanganui Māori. The Crown arguably fanned the flames when it armed its allies and paid for the construction of pā.

The truth of the matter was that the Crown was in war mode when it received news of Kīngitanga forces gathering at Ōhoutahi. It could have sought diplomatic or other solutions, but it was not disposed that way at that time, and the involvement of Whanganui Kīngitanga supporters in fighting at Taranaki painted them as enemies of the Crown. In this climate, the hopes of Te Pēhi for avoiding armed conflict had little chance of success.

The Crown did not appreciate the nuances of Te Pēhi's reasons for fighting at Moutoa, and did not believe that he was genuine in his hopes for peace with the Crown. Rather, Crown officials viewed his gathering of Kīngitanga forces at Ōhoutahi as a change of heart after Moutoa. Of course, the unashamedly anti-government stance of Tāhana and Tōpia Tūroa also informed the Crown's position.

Yet, the eagerness of some Whanganui Māori to affirm their allegiance to the Kīngitanga was not tantamount to a declaration of war. There was opportunity, in our view, to maintain the peace that existed. It was the Crown's determination to fight the Kīngitanga that resulted in war.

8.4.10 The siege at Pīpīriki, July 1865

When some of the Kīngitanga and Pai Mārire chiefs defeated at Ōhoutahi steadfastly refused to take the oath of allegiance, Governor Grey thought it necessary to force the issue.

(1) *Crown forces occupy Pīpīriki*

On 30 March 1865, Grey sent 200 militia and about 400 of the Whanganui Native Contingent under the leadership of Te Keepa Te Rangihiwinui to occupy Pīpīriki. General Cameron, the commander of the imperial military forces, was against it, but Grey believed that occupying Pīpīriki would help secure the route to the interior for the Government. He had four military redoubts built and manned on the west bank of the Whanganui River so that he could cut off communication from the river to Waitōtara.

It will be recalled that the Crown was at this time constructing military roads there so that it could sell the Waitōtara block to settlers. The native contingent was soon withdrawn from Pīpīriki to assist General Cameron at Weraroa pā, located on the Waitōtara block. That left 200 militia manning the garrison.

(2) *Te Pēhi rallies his allies*

Te Pēhi responded to the Pīpīriki occupation by abandoning the commitment to peace he had made with the Governor.[250] Tāhana Tūroa and others had already made it clear that the peace they made at Ōhoutahi was between Māori, and might have viewed the occupation of Pīpīriki as a new expression of Crown bellicosity.

The Tūroa chiefs summoned their allies, and over 1000 men from Ngāti Maniapoto, Ngāti Raukawa, and Taupō answered the call. From their nearby pā, Pukehīnau and Ōhinemutu, they mounted skirmishing attacks on the redoubts at Pīpīriki for 12 days in July 1865.

(3) *The Crown dispatches a relief force*

Late in July, an 800-strong relief force comprising men of the militia and the native contingent came to the assistance of the Pīpīriki garrison.[251] They went to attack Ōhinemutu pā but, finding it deserted, set fire to it and destroyed the nearby cultivations, as well as niu poles on both sides of the river.

The militia occupied the redoubts at Pīpīriki for the rest of 1865. Three soldiers were wounded during the fighting, and between six and 13 Māori were reportedly killed.[252]

(4) *Governor Grey proclaims peace*

Following the skirmishing at Pīpīriki, Grey backed away from further confrontation. In September 1865 he issued a 'proclamation of peace', in which the 'war which commenced at Oakura' was declared to be at an end. The proclamation included a general pardon for those who had fought against the Crown in the ensuing period. Te Pēhi was excluded from the pardon on the grounds that, by fighting at Pīpīriki, he had broken the oath of loyalty to the Queen that he had sworn in March 1865.[253] Tōpia Tūroa was also excluded, because Grey held him partly responsible for the murder of Völkner.

Te Pēhi was finally pardoned in 1867. Tōpia did not make peace with the Crown until 1869, when he agreed to join the Government's pursuit of Te Kooti.[254]

(5) *Assessment of the Pīpīriki occupation*

Historian Michael Macky pointed out to us that it was not unreasonable for Te Pēhi to engage in fighting at Pīpīriki. He had sworn allegiance and was within his rights to assume that, having done so, the Crown would not seize his pā: allegiances, after all, involve both parties.[255]

When the Crown occupied Pīpīriki, it put Te Pēhi in a situation where he would have felt compelled to fight against the Crown. The Whanganui River Tribunal took this view, saying that when the Government forces penetrated Te Pēhi's territory he would have seen it as a challenge to his autonomous authority.[256]

The occupation of Pīpīriki was an act of unnecessary provocation. Its only effect, as General Cameron noted, was to incite more opposition to the Crown.[257]

8.4.11 The confiscation of land at Waitōtara, Kai Iwi, and Whanganui

Following the war in Taranaki, the Crown confiscated land belonging to those who had fought against it.

On 2 September 1865, the Crown announced the confiscation, under the New Zealand Settlements Act 1863, of a vast area stretching from Tātaraimaka in northern Taranaki to Whanganui. The inland boundary ran from the summit of Taranaki (Mount Egmont) to Parikino on

The Waitōtara River with military camps on both sides and a township or Māori kāinga on the left bank, 1865. On the hill behind is the site of Weraroa Pā.

the Whanganui River. All the land between this boundary and the coast was declared to have been confiscated, including the Kai Iwi district and the whole of the Waitōtara block. It was not intended that those who had not fought against the Crown would lose their land. The Act provided that a compensation court would make grants of land to Māori deemed to have been loyal to the Crown. Even land held by Māori under a Crown grant could be confiscated, though the confiscation proclamation stated that this would be avoided unless deemed necessary for the security of the district.[258]

(1) *Whanganui Māori petition the Queen*

Whanganui Māori protested the confiscation of their land. In February 1867 Whanganui Māori allied to the Crown, headed by Hōri Kīngi Te Anaua, petitioned the Queen. They asked that their land not be confiscated as they had fought against the 'Hauhaus'.[259] By this time, the Crown had already decided to refine its confiscation, abandoning its intention to take the land between the Whanganui and Waitōtara Rivers. The alteration of the confiscation boundary was published in the *New Zealand Gazette* on 25 January 1867.[260]

(2) *Whanganui Māori in the Compensation Court*

Compensation Court hearings were convened at Wanganui from 12 December 1866 to 14 January 1867. For their war services, members of the Whanganui Native Contingent were awarded 6,980 acres in the reduced 'Ngati Ruanui Coast Block'. Donald McLean said later that Whanganui Māori who received these grants did not require the land for their own use, and that it should be purchased from them. Te Keepa Te Rangihiwinui's complaint was that there was little choice but to sell, as the land awarded to him had been occupied.

Whanganui Māori who had not fought for the Crown but who had proven their 'loyalty' were included in grants made to non-resident Māori. These grants, for 16 acres

Tents in serried rows at an army camp on Tyler's Flat, Wanganui, 1864. Tyler's Flat was possibly Tylee's Flat, the level area below York stockade that stretched between the stockade (now Cook's Gardens) and the river.

each, were made to Mete Kīngi and other prominent Whanganui leaders.[261]

(3) *Whanganui Māori paid for military assistance*

In April 1867, Whanganui Māori were persuaded to accept a sum of money for their military assistance. The payment was conditional upon their acceptance of the loss of any rights they may have had in the confiscated land.

The money was paid out in November 1867: £1,000 was paid to the people of Pīpīriki and Aramoho; £500 to Ngāti Apa; and £1,200 to various hapū up the river as far as Pīpīriki.[262]

(4) *Whanganui Māori bitter about land confiscation*

Though they accepted these payments, many Whanganui Māori remained bitter about the Crown's confiscation of land between Waitōtara and Whenuakura.

In 1868, as the first member of the House of Representatives for Western Māori, Mete Kīngi spoke in Parliament of the injustice of confiscating land as far south as Waitōtara. He said that Whanganui Māori had been forced to forgo their claims at Waitōtara: the money the Crown paid them was in satisfaction of their land claims as well as a consideration for their military services, which 'meant that our claims for land were not good'.[263]

In 1872, and again in 1876, Whanganui Māori petitioned Parliament for the return of confiscated land. In 1872, the Native Affairs Committee recommended that the Government should at once take steps to settle their differences with Māori on this issue. But in 1876 the committee's members stated that they had not had enough time to enable a proper inquiry or a full report on the subject. The 1876 petition was presented again in 1877. The committee reported that matters had been arranged to the satisfaction of the petitioner, Te Keepa Te Rangihiwinui.[264] We have no evidence on how this matter was resolved.

8.4.12 The consequences of the wars for Māori relationships locally

We have already discussed the Crown's tendency to categorise Whanganui Māori as either pro- or anti-Crown. Most often this reflected whether Māori rejected or supported the Kīngitanga: if they supported the Kīngitanga, that fact alone meant they were anti-Crown. This view became entrenched over the period of the 1860s wars.

We have talked about how, in reality, the situation was more complex than the Crown or Pākehā settlers apprehended – and this was true even at the level of individual rangatira. Their alliances were often dictated by hapū and kinship ties, and the choices they made often confounded Crown expectations.

For example, Crown agents classed Wiremu Pātene of Kaiwhaiki as 'a friend of the Europeans'. Yet, he felt constrained to follow his chief, Te Oti Takarangi, to fight against the Government in Taranaki.[265] We have already discussed the changing labels that attached to Te Pēhi. There were many others whose support for the Crown fluctuated for a host of reasons, and whose labels changed accordingly.

(1) *Booth's 1866 register of chiefs' affiliations*

We referred earlier to Resident Magistrate White's report of 1862, which indicated that there was roughly equal support for the Kīngitanga and for the Crown between Kaiwhaiki and Pīpīriki (see section 8.4.4(5)). In 1866, after four years of conflict, Booth, still resident magistrate of the upper Whanganui district, compiled a register of chiefs for the Government. He recorded that at Pūtiki and Aramoho, the chiefs were all 'friendly'. There were three friendly chiefs at Raorikia, though one was said to be formerly a 'Kingite', and another to have been of 'doubtful allegiance to the Queen'. At Kānihinihi, the chief was said to be neutral. The chiefs of Parikino, Ātene, Koriniti, Kauaeroa, Hiruhārama, Karatia, Tawhitinui, and Rānana were classed as friendly or neutral. The chiefs of Manganui-a-te-ao, Pīpīriki, Mangaio, Tūmaire, Ōkirihau, Ūtapu, Maraekōwhai, and Taumarunui were said to be supporters of the Kīngitanga, or 'Hauhau' adherents, or both.[266]

Thus, by about 1866, a divide seems to have developed between upriver and downriver communities regarding their relationship with the Crown.

(2) *Distinctions drawn between upriver and downriver*

The events of 1864 and 1865 polarised many of the groups who were claimants in our inquiry.

Chiefs who saw their interests as lying with the Crown had to protect that relationship, and this sometimes meant taking up arms against their kin. Those who fought against the Crown withdrew upriver, beyond the reach of the Crown's soldiers and allies. The people of Waipākura, for example, moved to Ōhinemutu, also known as Te Autemutu or Te Aomārama, upstream of Pīpīriki.[267]

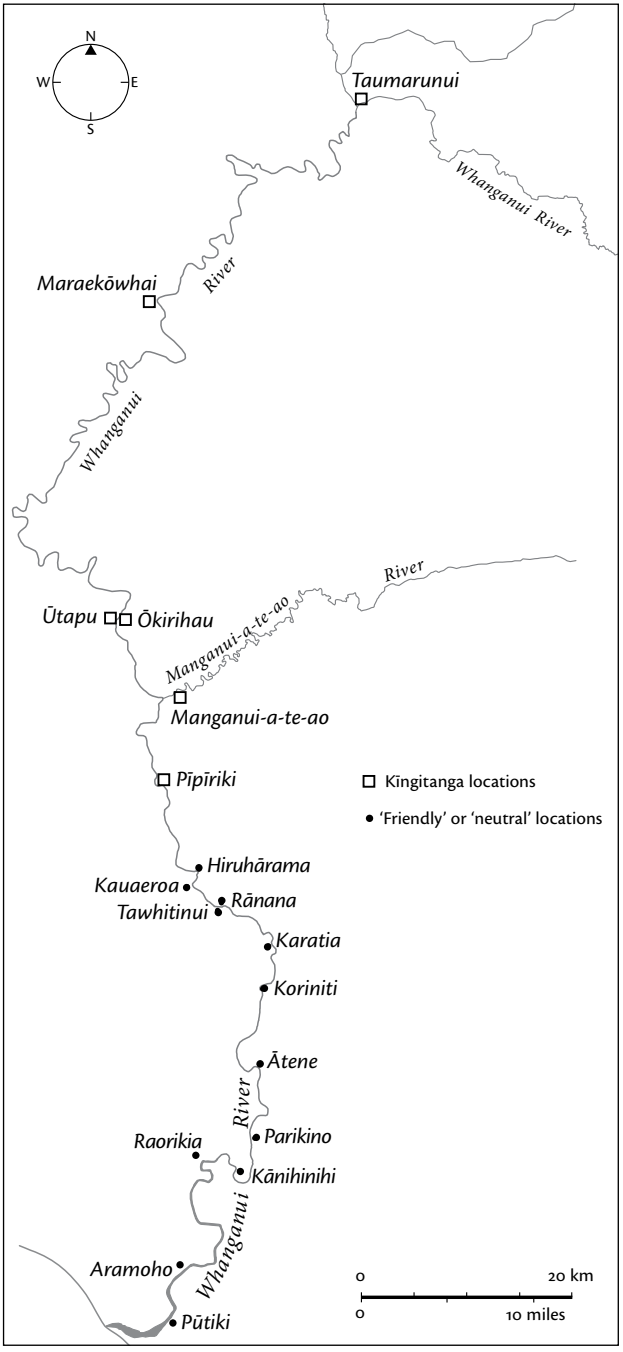
Mr Stirling and Mr Macky both told us that, after Moutoa, the Government effectively drew a line at Pīpīriki: areas south were in its jurisdiction, and communities north were the province of 'rebels' and 'fanatics'.[268] Che Wilson, witness for Ngāti Rangi, concurred, saying that the battle of Moutoa 'developed poisonous boundaries which sadly still exist today' and were 'tools used to ensure that we stayed divided'.[269]

The Crown did not simply observe this divide, but encouraged it.

On 19 October 1864, Featherston went to Kaiwhaiki. He told the people there that he had heard that they had:

> joined in the fanaticism of Te Ua – if so you must at once remove either to Pipiriki or beyond Waitotara – I have determined that all who hold the opinions taught by Te Ua shall not dwell among the friendly natives because from them has proceeded evil and bloodshed . . . you who hold these evil opinions must leave Kaiwhaiki with all your goods and property, and when the war is over you may come back again.

Wī Pātene told Featherston that he was willing to take the oath and renounce the symbol of 'Kingism', but that he was still a follower of Te Ua. Featherston refused to



Map 8.4: The location of Kīngitanga and 'friendly' communities as described by resident magistrate James Booth in 1866. Kīngitanga supporters had withdrawn from the lower reaches of the Whanganui River.

administer the oath to him, and all save Te Oti Takarangi left. Takarangi claimed that he was a Kingite only in name, and that he had never believed the religion of Te Ua to be anything but foolishness. Featherston administered the oath of allegiance to him.[270]

(3) *Labels invidious*

The physical divide between upriver and downriver communities was reinforced by the labels we have talked about – 'loyal' and 'friendly' on one side, and 'rebel', 'Kingite', and 'Hauhau' on the other. Applying such labels indiscriminately to whole iwi or districts helped reinforce tensions between closely related communities.

The labels could also distort the true meaning of terms like kūpapa, which traditionally applied to those who remained neutral in a quarrel. The Crown co-opted it as a term for those it considered to be pro-government, and so it came to be associated with 'loyal' military support of the Government – and with the idea of betraying those not so associated.

The claimants submitted that the labels the Crown applied to Whanganui Māori created a divide within and between their communities. Don Robinson told us that apart from the terms 'upriver' and 'lower river', the Crown divided Whanganui Māori by characterising them as sellers and non-sellers, hauhau and kūpapa, friendlies and unfriendlies. He stated:

> All these words are used to define us with reference to what the Crown wanted us to be. Perhaps most significantly the terms upper and lower Whanganui Māori which has divided us in two and set us as opposites to each other.[271]

Sir Te Atawhai Archie Taiaroa of the upriver iwi Ngāti Hāua stated:

> At no time in our engagement with the Crown has there been a relationship based on the terms or the spirit of Te Tiriti. There is no partnership and sometimes barely even a relationship. Where there has been a relationship we have been relegated to the role of rebels, Hauhau, petitioners, submitters and objectors rather than Tiriti partners.[272]

Sir Archie felt that, by trying to preserve their tino rangatiratanga, Ngāti Hāua had been 'cast into the role of villains and a stigma attached to our iwi which was still felt recently'. The stigma arose from 'the characterisation of Ngāti Hāua by the Crown as rebels, Hauhau and other derogatory and inflammatory labels'. Pai Mārire was 'dubbed by Colonial governments as a rebellious movement'. 'Even in my time,' Sir Archie said, 'people did not want to be known as Ngāti Hāua because we were referred to as Hauhau.'[273]

Te Poho o Matapihi, representing hapū of the lower reaches, told us that the Crown used the relationship built by Pūtiki people with the Crown as a weapon against other Whanganui people. As a result, the epithet kūpapa has been continuously and hurtfully applied to Te Poho o Matapihi ever since.[274]

Although the Crown's labels for Whanganui Māori were destructive of relationships between lower and upper river communities, we must also concur with Che Wilson's view that these communities probably also 'bought into this myth' and its 'false divisions'. In his view, the divide has continued to exist because Whanganui Māori 'have carried on the contrived history that a line existed amongst us'.[275] Thus, Whanganui Māori communities themselves must freely eschew labels. As Mr Wilson pointed out, most Whanganui Māori today can whakapapa to a mix of Pai Mārire, Kīngitanga, kūpapa, and 'friendly' lines of descent.[276]

(4) *Crown ignorance and misunderstanding*

We do not consider that the Crown's labelling of Māori was the result of a plan to divide and conquer as some claimants alleged. It came about not from calculation but from ignorance, and from the over-simplification of a complex web of relationships and alliances into which few Pākehā had real insight.

One of the key reasons why the Crown struggled and ultimately failed to understand this complexity was because it placed itself at the centre of the situation. It was unable to conceive why a trusted 'friendly' would choose to fight against the Crown, other than that chiefs had shifted their allegiance. The Crown also misconceived the actions of men like Te Pēhi, relabeling him and his followers as friendly or hostile based on how his latest action affected the Crown's interests.

In fact, the actions of Whanganui Māori leaders and communities were informed by a much broader range of factors than simply their relationship with the Crown. That the Crown's own aims might be advanced, or some other benefit might result, from situations such as Moutoa, was often a by-product of such actions not a motivation for them.

8.5 Findings

From 1848 to 1865, the Treaty relationship in Whanganui was defined by two broad processes.

In the first of these, Whanganui Māori developed institutions that they hoped would enable them to engage with the Crown on political and legal matters. Traditional modes and structures like rūnanga and hui were refined and expanded locally and regionally to address disputed land boundaries and debate important political issues. Māori-appointed judges administered justice. As well as devising such solutions, Whanganui Māori chose to support the Kīngitanga movement as a means of achieving the twin goals of safeguarding their own autonomy and engaging with the Crown on matters of national importance.

The second process was the Crown's parallel but separate efforts to develop institutions through which Māori might be incorporated into the political and legal institutions of the colony. The Crown floated a number of schemes, and then tinkered with them, but rarely sought to incorporate the strategies for self-management that

Māori were working on. When it did (through Grey's institutions), it was with the ultimate goal of disabling Maori authority. Except for the short-lived experiment of a national conference of chiefs (the Kohimārama conference), the Crown offered Māori limited involvement in governance and only at a local level.

It would have been bad enough if the Crown's failure to provide for Māori input into and management of their affairs was simply the result of negligence or the vagaries of colonial politics during this period. This was not the case. The Crown actively discouraged and undermined Māori initiatives for governance at the local, regional, and national levels as impediments to the Crown's own goal of amalgamating Māori. Local rūnanga and hui were ignored and the authority of the Kīngitanga was challenged. Governor Grey abolished the initiative of annual national hui of rangatira after the Kohimārama conference, as he did not want Māori to develop a unified multi-regional voice or strengthen their political collectives. Māori divided 'into small portions' were entirely more manageable.[277] Grey's conceptions consigned Māori to engaging with the Crown at a local level through Crown-designed mechanisms dominated by Crown-appointed officials. The Crown insisted that Māori should be subject to its governance at every level of authority, rather than partners in the governing endeavour.

We agree with the claimants and with Dr Loveridge: they maintained that the predominant theme of Crown–Māori relations in this period was disempowerment of Māori institutions, contrary to the guarantee of te tino rangatiratanga in article 2 of the Treaty. That disempowerment prejudiced Whanganui Māori. By 1865, far from being integrated into the political and legal systems of the colony, many Whanganui Māori stood apart from them. Those who supported the Kīngitanga found themselves in conflict with the Crown following clashes in Taranaki and Waikato.

We find that the Treaty guarantee of te tino rangatiratanga committed the Crown to finding ways of upholding Māori autonomy that were compatible with the interests of both Treaty partners.[278] Sometimes the Crown showed an ability or preparedness to do this, but usually only in an embryonic way. Much more often, it regarded itself as compelled to defeat Māori interests in favour of the interests of settlers and settlement. We think that both sets of interests could have been accommodated, and the Crown's approach was ignorant, monocultural, and unnecessary. It doomed New Zealanders to a conflict model of development that taints our nation to this day.

At a local level, the Crown could have recognised, promoted, and sanctioned the system of rūnanga and hui developed by Whanganui Māori. These were strong and effective structures for resolving issues like land boundaries, both within and between iwi, and Whanganui Māori used them throughout this period and beyond. They could have been expanded to apply more generally to resolving issues in a way that upheld Māori decision-making.

At a regional level, the Crown could have respected the preference of many Whanganui Māori to be represented by the Māori King. It was their right to join the Kīngitanga and to authorise the King to act on their behalf. The Kīngitanga was not inherently hostile to the Crown or the settler government and could have been accommodated in the Crown's systems – which some Crown officials recognised at the time.

At a national level, the Crown could have pursued its initiative to confer annually with rangatira, which actually occurred only once at Kohimārama in 1860.

Ultimately, the Crown's refusal to accept the legitimacy of the Kīngitanga and its control over the alienation of land resulted in war. This brought death, injury, and capture from fighting in which whānau went up against whānau.

The Crown put communities into simplistic categories depending on whether it considered them to be for or against the Crown, applying labels like 'friendly', 'kūpapa', and 'Hauhau'. It also loaded the terms 'upriver' and 'downriver' with connotations of allegiance to the Crown. Labels stigmatised groups and created divisions that endured until very recent times.

We find that the Crown:

- did not engage creatively with Whanganui Māori to understand their aspirations for self-management in

the new colonial environment, and did not seek ways to work with their communities to give those aspirations expression in State-recognised institutions;

- persisted in the characterisation of Māori initiatives for self-management as an undesirable continuation of old ways that it sought to end by permitting Māori to exercise authority only through Crown structures and processes;
- refused to engage with and recognise Māori-initiated rūnanga and hui;
- did not support its own system of rūnanga as a form of Māori self governance;
- refused to recognise the legitimacy of the Kīngitanga as the political representative of those Whanganui Māori who joined the movement;
- abandoned annual meetings of rangatira like that at Kohimārama; and
- attached derogatory and/or divisive labels to groups of Whanganui Māori according to its often simplistic assessment of their allegiance.

This was the period when the Crown, having accumulated power and resources to exercise more or less unfettered authority, chose to do so without reference to the interests of Māori. In so doing, it abandoned partnership and reciprocity as defining characteristics of Crown–Māori relations.

These failures led, directly and indirectly, to conflict and division.

These acts and omissions of the Crown breached the Treaty guarantee of te tino rangatiratanga, and the Treaty principles of autonomy and partnership.

Notes

1. Submission 3.3.62, p 2
2. Submission 3.3.67, p 8
3. Submission 3.3.115, p 16
4. Ibid, p 3
5. Ibid, p 10
6. Ibid, pp 16–17
7. Submission 3.3.178, pp 8–9
8. Submission 3.3.62, p 5
9. Submission 3.3.115, p 13
10. Ibid, p 14
11. Ibid, pp 13, 15
12. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 98
13. Richard Taylor, 24 December 1849, journal (typescript), 1849–1852, qMS-1991, ATL, Wellington
14. Richard Taylor, 27 October 1854, journal (typescript), 1852–1854, qMS-1992, ATL, Wellington
15. Ward, *A Show of Justice*, p 97
16. Document A18 (Cross and Bargh), p 25; doc A65 (Stirling), pp 708–709, 738–739
17. Document A65 (Stirling), pp 690–696
18. Document A70 (Anderson), pp 165–166
19. Document A40 (Ballara), pp 438–439; doc A65 (Stirling), pp 698–699
20. Ibid, pp 442–443
21. Ibid, p 446
22. Document A70 (Anderson), pp 164, 167
23. Submission 3.3.115, p 6
24. Ibid, pp 7–8
25. Document A143(b) (Loveridge summary), p 24
26. Submission 3.3.115, p 9
27. Ibid, p 9
28. Ward, *A Show of Justice*, pp 85, 90. The long title of the Act is 'An Act to make further provision for the Government of the New Zealand Islands'.
29. Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage One*, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 175
30. Document A143 (Loveridge), pp 14, 26
31. Document A100 (Macky), p 341
32. Document A65 (Stirling), pp 667–668
33. Ibid, pp 668–669
34. Document A65 (Stirling), p 669
35. Ibid, pp 669–670
36. Ibid, p 671
37. Ibid, p 670
38. Document A100 (Macky), p 341
39. Document A65 (Stirling), pp 670–671
40. Document A100 (Macky), p 343
41. Document A65, Stirling), p 672; doc A100 (Macky), p 344
42. Document A65 (Stirling), p 672
43. Ibid, p 671
44. Ibid, p 674
45. Document A100 (Macky), p 343
46. Transcript 4.1.14, p 114
47. George Grey to W E Gladstone, 14 November 1846, BPP, 1846–47, vol 38 [837], pp 79–81 (IUP, vol 5)
48. Macky states that 'about 1,800 Maori were thought to be regularly in contact with the settlement in 1852, and that the European

popularion of Whanganui had reached about 1,200 in 1857': see doc A100, p 346.
49. Document A100 (Macky), pp 345–346
50. Document A143 (Loveridge), pp 14–15
51. Ibid, p 15
52. 'The New Zealand Constitution Act 1852', New Zealand Electronic Text Collection, http://nzetc.victoria.ac.nz//tm/scholarly/tei-GovCons-t1-body-d1-d1.html, accessed 9 April 2015
53. Document A143 (Loveridge), pp 15–17
54. Submission 3.3.62, pp 44–45
55. Document A143 (Loveridge), p 19
56. Ibid, p 30
57. Ibid, p 31
58. Ibid, p 33
59. Ibid, pp 45–46
60. Ibid, pp 52–55, 59–60
61. Ibid, pp 61–63
62. Ibid, pp 73–75
63. Ibid, pp 71–72
64. Some historians have suggested that Pirikawau, Grey's informant, originated the idea in 1845: see, for example, Pei Te Hurinui Jones, 'Maori Kings', in *The Maori People in the Nineteen-Sixties*, ed Erik Schwimmer (Auckland: Longman Paul, 1968), pp 132–133.
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67. Submission 3.3.67, p 8
68. Document A65 (Stirling), pp 697–699; doc A65(l) (Stirling supporting documents), p 4535
69. Document A65 (Stirling), pp 701–702
70. Ibid, p 703
71. Ibid, p 702
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73. Submission 3.3.62, pp 44, 49
74. Submission 3.3.115, pp 16–17
75. Document A65 (Stirling), p 705
76. James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols (Wellington: R E Owen, 1955), vol 1, p 154. See also Evelyn Stokes, 'Te Waharoa, Wiremu Tamihana Tarapipipi', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/1t82/te-waharoa-wiremu-tamihana-tarapipipi, last modified 30 October 2012; Stokes, *Wiremu Tamihana*, pp 174–189, 529.
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78. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 215, 216, 233
79. Document A143 (Loveridge), p 40
80. Ibid, pp 54–55
81. Ibid, p 125
82. Document A100 (Macky), p 370
83. Document A65 (Stirling), p 706
84. Document A18 (Cross and Bargh), p 27; see also Ballara, 'Introduction', pp 6–7
85. Document A65(l) (Stirling supporting documents), p 4606
86. Ian Church, 'Turoa, Topia Peehi', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/2t55/turoa-topia-peehi, last modified 30 October 2012
87. Document A100 (Macky), p 369
88. Document A65 (Stirling), p 706
89. Document A65(l) (Stirling supporting documents), p 4628
90. Ibid, p 4626
91. Ibid, pp 4626, 4632, 4634
92. Document A65 (Stirling), p 778
93. Ibid, p 710; see also register of chiefs, MA 23/15/25, Archives New Zealand, Wellington. This register was compiled by Booth for upper Whanganui, and presumably by White, or his successor Richard Woon, for lower Whanganui
94. Register of chiefs, MA 23/15/25, Archives New Zealand, Wellington.
95. Richard Taylor, 18 and 21 November 1859, journal (typescript), 1859–1861, qMS-1995, ATL, Wellington
96. Submission 3.3.115, p 3
97. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 226
98. Submission 3.3.62, p 44
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100. Submission 3.3.115, pp 16–17
101. Submission 3.3.116, pp 44–45
102. Document A65 (Stirling), p 700
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109. Document A40 (Ballara), pp 443–444
110. Document A65(n) (Stirling supporting documents), pp 5563, 5565; doc A40 (Ballara), p 444
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112. Document A100 (Macky), pp 374–375
113. Document A65(l) (Stirling supporting documents), pp 4642–4643
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115. Document A143 (Loveridge), p 126

116. Cowan, *The New Zealand Wars*, vol 1, pp 183–189
117. Document A143 (Loveridge), p 94
118. Ibid, p 112
119. 'Minutes of Proceedings of the Kohimarama Conference of Native Chiefs', AJHR, 1860, E-9, p 3; doc A65 (Stirling), pp 721–722
120. Document A65 (Stirling), p 722
121. Document A143 (Loveridge), pp 93, 96
122. Document A65 (Stirling), p 725
123. Ibid, p 725
124. 'Minutes of Proceedings of the Kohimarama Conference of Native Chiefs', p 11; doc A65 (Stirling), p 725
125. Document A65 (Stirling), p 724
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127. Submission 3.3.62, pp 49, 51
128. 'Minutes of Proceedings of the Kohimarama Conference of Native Chiefs', p 10
129. Ibid, p 15; see also Waitangi Tribunal, *Raupatu Document Bank*, 139 vols (Wellington: Waitangi Tribunal, 1990), vol 88, p 33,793
130. Document A92 (Loveridge), pp 220–222
131. Document A65(l) (Stirling supporting documents), p 4647; doc A65 (Stirling), p 738
132. Document A65 (Stirling), pp 738–739
133. Document A143(b) (Loveridge), p 42
134. Document A143 (Loveridge), pp 158–159
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136. Document A100 (Macky), pp 378–379
137. Document A143 (Loveridge), p 138
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141. Ibid, pp 151–152
142. Submission 3.3.62, pp 45–46
143. Submission 3.3.115, p 7
144. Transcript 4.1.14, p 123
145. Document A143 (Loveridge), p 187
146. Document A143 (Loveridge), p 159
147. Document A18 (Cross and Bargh), p 28
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150. Document A143 (Loveridge), pp 165, 171
151. Ibid, pp 206–207
152. Document A65(l) (Stirling supporting documents), p 4667
153. Document A143 (Loveridge), p 195
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156. Document A143 (Loveridge), p 198
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158. Ibid, pp 211–214
159. Document A100 (Macky), p 388
160. Document A65(m) (Stirling supporting documents), p 5067
161. Document A65(l) (Stirling supporting documents), pp 4667–4668
162. Document A143 (Loveridge), p 195
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164. Document A143 (Loveridge), pp 218–219
165. 'Return of All Officers Employed in Native Districts in January, 1864', AJHR, 1864, E-7, pp 23–24
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170. Document A65 (Stirling), p 758
171. Document A143 (Loveridge), pp 160–161
172. Document A65 (Stirling), p 762
173. Submission 3.3.106(a), pp 23–24
174. Document A65(l) (Stirling supporting documents), p 4669
175. Ibid, p 4671
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178. Document A65(l) (Stirling supporting documents), pp 4673–4674
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180. Document A65 (Stirling), pp 767–768
181. Submission 3.3.106(a), pp 24–25
182. Document A65 (Stirling), pp 769–770
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185. Waitangi Tribunal, *The Taranaki Report*, p 66
186. Document A65(l) (Stirling supporting documents), p 4628; doc A80 (Harris), p 35; Waitangi Tribunal, *The Taranaki Report*, p 66
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200. Clark, *'Hauhau'*, p 81
201. Cowan, *The New Zealand Wars*, vol 2, p 6
202. Document A65 (Stirling), p 774

203. Clark, *'Hauhau'*, pp 85–86
204. Document A100 (Macky), p 399
205. Document A65 (Stirling), pp 777–779
206. Ibid, pp 777–778
207. Register of chiefs, MA 23/15/25, Archives New Zealand, Wellington. See endnote 93 for this register.
208. Register of chiefs, MA 23/15/25, Archives New Zealand, Wellington
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210. 'Further Papers relative to the Native Insurrection', AJHR, 1864, E-3, pp 3, 4
211. Document A65 (Stirling), p 779
212. Ibid, p 780
213. Document E20 (Robinson), pp 3, 4
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215. Ibid, pp 97–101; doc A100 (Macky), p 400
216. Young, *Woven by Water*, p 59
217. Document A65 (Stirling), pp 786–788; doc A65(d) (Stirling supporting documents), p 82–92
218. 'Papers relative to Native Policy', AJHR, 1864, E-2, p 71
219. Document A65(d) (Stirling supporting documents), pp 82–84
220. Ibid, pp 105–111
221. Document A65 (Stirling), p 790
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225. Document A100 (Macky), p 405
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228. Ibid, p 409
229. Document A65(m) (Stirling supporting documents), p 5338
230. Document A65 (Stirling), p 797
231. Document A65(f) (Stirling supporting documents), pp 1041–1045
232. Document A65(f) (Stirling supporting documents), pp 1045–1046
233. Ibid, pp 1047–1052
234. Document A80 (Harris), p 47
235. Document A100 (Macky), pp 405–406
236. 'Further Papers relative to the Spread of the Hau Hau Superstition among the Maoris', AJHR, 1865, E-4, p 36
237. Document A100 (Macky), pp 411–412
238. Document A65 (Stirling), pp 799–800
239. Document A65(l) (Stirling supporting documents), pp 4679–4680; doc A65 (Stirling), pp 799–800; doc A100 (Macky), p 412
240. Document A100 (Macky), p 412
241. Ibid, p 412
242. Document A65(l) (Stirling supporting documents), pp 4680–4681
243. Ibid, p 4681
244. Ibid, p 4682
245. Document A65(f) (Stirling supporting documents), pp 1056–1065; doc A65 (Stirling), pp 800–803
246. Document A100 (Macky), p 413
247. Richard Taylor, 15 March 1865, journal (typescript), 1862–1865, qMS-1996, ATL, Wellington
248. Document A65 (Stirling), pp 804–805
249. Ibid, pp 807–808. It is not clear if Booth was acting as resident magistrate by this time. He was appointed as an 'Officer to superintend the distribution of rations to the Government natives' in May 1864, before his appointment as resident magistrate sometime in mid-1865: see doc A100 (Macky), pp 405–406.
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253. Document A100 (Macky), p 418; 'Proclamation of Peace', 2 September 1865, *New Zealand Gazette*, 1865, no 35, p 267
254. Document A65 (Stirling), p 810
255. Document A100 (Macky), p 419
256. Waitangi Tribunal, *The Whanganui River Report*, p 154
257. Document A100 (Macky), pp 415–416
258. Document A70 (Anderson), p 21; 'Proclaiming Certain Lands under "The New Zealand Settlements Act, 1865"', 2 September 1865, *New Zealand Gazette*, 1865, no 35, p 266
259. Document A70 (Anderson), p 21
260. 25 January 1867, *New Zealand Gazette*, 1867, no 15, p 112
261. Document A70 (Anderson), pp 21–22
262. Ibid, pp 23–24
263. Ibid, pp 24–25
264. Ibid, pp 232–233
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266. Register of chiefs, MA 23/15/25, Archives New Zealand, Wellington
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268. Document A65 (Stirling), p 795; doc A100 (Macky), pp 383–384
269. Document L24 (Wilson), p 28
270. Document A65(m) (Stirling supporting documents), pp 5286–5288
271. Document E20 (Robinson), p 9
272. Document K12 (Taiaroa), p 3
273. Ibid, p 4; submission 3.3.102, p 16
274. Submission 3.3.78, pp 66–67
275. Document L24 (Wilson), p 28
276. Ibid, pp 28–29
277. Document A143 (Loveridge), p 159
278. Waitangi Tribunal, *The Taranaki Report*, p 5

The Kōkako Hui of March 1860

1. Document A40 (Ballara), pp 443–444; doc A72(a) (O'Leary supporting documents), item 12 pp [363]–[410]
2. Document A40 (Ballara), p 444, see also pp 444–446
3. Document A72(a) (O'Leary supporting documents), pp 78–79
4. Richard Taylor, 19 March 1860, journal (typescript), 1859–61, QMS-1995, ATL, Wellington
5. Document A65(l) (Stirling supporting documents), p 460
6. Richard Taylor, 14 March 1860, journal (typescript), 1859–61, QMS-1995, ATL, Wellington
7. Document A40 (Ballara), p 455
8. Tūwharetoa witnesses have stated that they were not fully represented at Kōkako and the position taken there was not a final one: see, for example, document D41 (Otimi), p 11.
9. Richard Taylor, 19 March 1860, journal (typescript), 1859–61, QMS-1995, ATL, Wellington

The Battle of Moutoa

1. Document A65 (Stirling), p 786; doc A65(d) (Stirling supporting documents), pp 82–92; Isaac Featherston, 'Report on the Battle of Moutoa', AJHR, 1864, E-3, pp 81–84; David Young, *Woven By Water: Histories from the Whanganui River* (Wellington: Huia Publishers, 1998), pp 61–64

Map sources

Map 8.2: Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), map 2; David Young, *Woven by Water: Histories from the Whanganui River* (Wellington: Huia, 1998), p vii; doc A154, p 14

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CHAPTER 9

PROVIDING FOR THE FUTURE NEEDS OF MĀORI

9.1 Introduction

In this chapter, we broach the vexed topic of 'sufficiency'. In Treaty jurisprudence, that word refers to an exercise of ascertaining the nature and extent of the Crown's obligation to ensure that Māori were left with enough land for their needs, not only at the time, but also for the future. This involves asking how much land was enough – 'sufficient' – and for what purposes.

We introduce the subject early in this report because we think it is important to set out the conceptual groundwork for our historical inquiry into how the Crown approached the transfer of land from Māori to settlers from the beginnings of the colony. And secondly, we want to signal that we are taking a fresh look at this issue, in light of the particular circumstances of this inquiry district.

Thus:

- We review the relevance of 'sufficiency' as it applies to land in this inquiry district, where much of the land is unsuited to agriculture. There are fertile parts, but they comprise only a small percentage of the land. Elsewhere, the problems include poor soil that does not cope well with the high rainfall; challenging topography, with terrain ranging from hilly to mountainous; and isolation, with distance from centres of significant population exacerbated by poor infrastructure and winding, narrow, unpaved roads. As a result, in Whanganui, family-sized farming ventures on land outside the fertile zones have not generally been the basis for the accumulation of significant farming wealth that was and is common in other parts of New Zealand.
- We engage with the Crown's argument that the Crown had little role in facilitating economic development in the nineteenth century; that there is not necessarily a connection between land ownership and positive economic outcomes; and that the claimants did not demonstrate in this district inquiry that land loss caused the low socio-economic status of Whanganui Māori.

Needless to say, this sets the stage for a much more complex investigation of 'sufficiency' than simply calculating how many acres the Crown should have left in Māori ownership.

Instead, we ask:

- If the Crown had protected Māori from excessive land alienation, would that have been enough to put them in a position to develop economically in this region?
- If not, what else, and what more, could, and should, the Crown have done?

- What was its responsibility for ensuring Māori well-being from a social and cultural point of view, and what role did land retention play in that?

This chapter sets the framework for our consideration of the colonial history of Whanganui recounted in subsequent chapters, where we address the parties' claims about land law, land purchasing, land retention, and the Crown's obligations.

9.2 The Parties' Positions

9.2.1 What the claimants said

The claimants submitted that the Crown has a duty to protect Māori lands and resources, including sites of cultural importance like wāhi tapu and mahinga kai.[1] Quoting previous Tribunals, the claimants submitted that 'sufficient land' meant enough land to engage in the new economy created by settlement and the Treaty, in particular through farming.[2] They stated that the Crown's narrower definition of sufficiency – enough land for subsistence – was 'contrary to the protections guaranteed to Whanganui Maori under the Treaty of Waitangi and the findings of various Waitangi Tribunals on sufficiency'.[3]

The claimants submitted that while land loss did not necessarily lead to poverty, their tūpuna were nevertheless dependent on land ownership to participate in the colonial economy.[4] They rejected the proposition that the Crown had no real power to intervene in the colonial economy in aid of Whanganui Māori, because the evidence demonstrated that it did intervene, and almost always in the interests of settlers.[5]

9.2.2 What the Crown said

The Crown agreed that it had a duty to protect Māori land and resources, including cultural sites.[6] It emphasised that Māori did sometimes want to sell land, and that the 'ability to alienate land is a fundamental right of ownership. It is inherent in the rights guaranteed Maori under Article III of the Treaty.'[7] Further, the Crown submitted, 'governments faced an extremely difficult balancing exercise between protecting Maori land on the one hand, and enabling Maori to use land for raising finance on the other'.[8] The Crown also argued that it did not owe a fiduciary duty to Māori when purchasing land from them, for 'Although the Treaty required the Crown to act fairly and reasonably, the Crown and Maori were not in the position of guardian and ward'.[9] In support of this submission, Crown counsel quoted from the High Court's 2008 decision in the *Paki v Attorney-General* case (reported in 2009).[10]

The Crown submitted that it was 'highly unlikely' that anyone in the nineteenth century would have seen 'sufficiency in terms of every Maori having sufficient lands to operate a successful farm as Claimants argue'.[11] Instead, the Crown argued, 'sufficiency' meant 'having sufficient land and resources to meet their primary needs, in the sense of having a place of residence and a plot to cultivate'.[12] The Crown concluded that its Treaty duty was to ensure only that the primary needs of Māori, as defined above, were met. It had no duty to give effect to Māori economic aspirations; 'or rather a present conception of what those aspirations should have been'.[13]

Drawing on the evidence of its witness Professor Gary Hawke, the Crown submitted that land ownership has never guaranteed prosperity, and nor is land ownership necessary to become prosperous.[14] It argued that economic development is inherently dependent on change, and that failure to adapt to change inevitably leads to disadvantage. Historically, the Crown could not control, direct, or prevent broad economic trends and changes, nor could it stop these changes from disadvantaging any groups who failed to adapt.[15]

9.3 What Did Land Mean to Māori?

In order to understand the Crown's obligations to Māori and to their tenure of land as the colony evolved, it is first necessary to have in clear focus the nature of the relationship between Māori and their land.

It is a truism to say that land was important to Māori; land is important to everybody. Māori were no different from other pre-industrial societies in their dependence

on the resources that the natural environment furnished in the way of food, medicines, and material for making things.

But land was embedded in Māori culture and spirituality in ways that were defining at every conceivable level. The connection between kin groups, and the land they related to, went far beyond the instrumental. Papatūānuku, mother earth, is the bringer of life. All things spring from her, and to her they return. She symbolises the land, and metaphorically humans come from her womb. Being born from the earth does not connote ownership, though. Every person is simply a child of the earth. The emotional, intellectual, and spiritual core of every person flows from the land – even thought is part of the flow of energy between people and the place where they stand – their tūrangawaewae. Tūrangawaewae is a particular place – literally, a standing place for the feet – defined by mountains, rivers, and other important elements, that connects every Māori with a foundational location. A person's marae (tribal forum for social life) is closely allied with the idea of tūrangawaewae.

Women were particularly aligned with Papatūānuku and with land in Māori culture, for women give birth to children as Papatūānuku gave birth to the world. Whenua means land, and also means placenta. Placenta were buried in significant places, again specifically connecting human birth with territory. Tangata whenua are the people of the land. The mana, or authority, that tangata whenua have over particular territory derives from their deep bond with place, through births and deaths reaching back over decades and centuries.

Tangata whenua defended their ancestral rights to land and resources when necessary. Rights were passed on to chosen people, who had obligations to the wider group, usually the hapū. Continuous occupation was usually necessary to sustain them. Rights could also derive from gifts as utu (reciprocal obligation), or through conquest, though (as with discovery) conquest had to be absolute and followed by occupation. Through generations, layers of intersecting rights would emerge. As a result, rights could be scattered and could overlap with areas of other groups. However, the requirement for continuous occupation allowed for some limitations on their spread through generations.

Hapū – either singly or in combination – oversaw land and resource rights in areas recognised as their territory. While there was no concept of permanent alienation, total land exchange could occur if groups withdrew voluntarily or were completely defeated. To lose one's land was a disaster culturally as well as economically; the landless suffered serious dislocation and loss of mana and identity as well as economic power.

In these ways, and more, land served as the focal point of Māori social, cultural, and political life. It was both the literal and metaphorical foundation of identity and community. Through the utilisation of resources, it sustained life. And in the way that rights were held and defended, it was also central to the formation and interaction of kin groups – whānau, hapū, and iwi.

9.4 The Treaty Context

Earlier we described the coming of the Treaty to Whanganui and what it meant for our inquiry. We set out our view of the meaning and effect of the Treaty as it applies to the Whanganui claims, and the relevant principles.

We explained how – through article 2 – Māori were guaranteed te tino rangatiratanga over their lands, villages, and all prized possessions. At the very least, Māori would have understood that guarantee as a promise that they could keep their land for so long as they chose to. However, they may not have comprehended the full meaning of land transactions envisaged in the Treaty – that land, once alienated, would be permanently lost, with no future rights of occupation. Pre-emption might have been understood as giving the Crown special rights as purchaser, but its wider implications were almost certainly unclear.

We also set out the basic standards to which the Crown would have been held accountable in the circumstances of the time. Even on the most reductive view of the Treaty,

any (European) observer would have agreed that the Crown was obliged to act in accordance with its own laws, and also fairly and justly. Those imperatives stemmed from the Magna Carta, and were embedded in the English notion of the rule of law. It meant that Māori property rights would be recognised, and standards of English law would apply to any transactions in Māori land. Fair contracts would be entered into between informed and willing sellers and those who wished to buy the land. The principle that the colonists would recognise Māori ownership of all land where they claimed rights was subject to heated debate particularly in the 1840s. It was eventually accepted, although not always honoured in practice.

But how much land would the colonists purchase from Māori? And for what purpose? The Treaty left these questions open, and also how much land was to be left in Māori ownership. Māori were guaranteed te tino rangatiratanga, but they were also expected to part with land. This was a fundamental tension. Could Māori continue exercising te tino rangatiratanga as their land was progressively transferred to incoming settlers?

It is likely that, initially at least, Māori would have considered that their exercise of te tino rangatiratanga would go on forever. Could they even have imagined an existence that was without the authority of chiefs over land and people? Settlers coming in and living on their land – settlers still comprising only a small minority of people in the area – might have fitted into the paradigm of tuku (cession) of land to migrating Māori groups. In a tuku, a rangatira gave permission to settle on and use land and resources in return for tribute, gifts, or other acknowledgement. The new concept of permanent land transfer as the basis of settler occupation would have dawned on them only gradually.

9.5 The Crown's 'Sufficiency' Policy

While the Treaty itself was silent on the matter, the Crown developed policies from the beginning of the colony that acknowledged an obligation to ensure that Māori retained 'sufficient' land, both so that their needs at the time were met, and so that they were not harmed in the future as a result of retaining too little land. However, the amount of land that was considered 'sufficient' – and for what purposes – changed over the course of the nineteenth century.

Here, we trace the development over time of Crown policy and practice, with reference to the thinking of various Waitangi Tribunals, and draw our own conclusions.

9.5.1 Normanby's instructions

Lord Normanby set out in his instructions to Hobson the first engagement with the question of how colonial authorities were expected to approach land transactions once Crown sovereignty was established.

Normanby instructed Hobson to obtain – 'by fair and equal contracts' – the cession of all 'waste lands' that may be 'progressively required for the occupation of settlers resorting to New Zealand'. 'The resales of the first purchases that may be made will provide the funds necessary for future acquisitions',[16] he wrote, giving expression to what became known as the 'land fund'. The land fund comprised the difference between the cost of buying Māori land, and the price at which it was on-sold to settlers – in other words, the profit. The land fund would fund the infrastructure and growth of the colony.[17]

The instructions introduced three further ideas that were to have a lasting effect on how the Crown went about purchasing Māori land: much of the land Māori possessed was of no actual use to them; land could therefore be purchased cheaply; and, once there was a market in land, prices would escalate and Māori would benefit from the increase in value of their remaining land. The instructions said:

> To the natives, or their chiefs, much of the land of the country is of no actual use, and in their hands it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased by the introduction of capital and of settlers from this country. In the benefits of that increase the natives themselves will gradually participate.[18]

The inherent tensions are palpable:

- The more land that the Crown bought cheaply and sold to settlers at a higher price, the more the land fund would grow, and the more money there would be for the development of the colony;
- Māori had to sell land cheaply (the Crown could fix the price, because there was no market in Māori land), but the disadvantage of the low price would theoretically be offset later when the value of the land they retained grew once settlement got underway;
- In order for Māori to benefit from the projected increase in the value of their land, they would need to hold on to enough of it to be able to participate advantageously in the economy later.

There would clearly need to be a careful balancing. On one side of the scale was the Crown's interest in buying up as much land as possible in order to swell the land fund when it sold the land to incoming settlers, and on the other the acknowledged need for Māori to retain enough land to be able to benefit from its later increase in value.

The instructions did identify the inherent conflict between the Crown's need to buy land and its duty to protect Māori interests. To manage this conflict, Normanby stipulated the appointment of a protector of aborigines.[19] However, this role was also inherently contradictory: the protector was chief agent in conducting purchases as well as chief protector of Māori interests. Further instructions set out how purchases would be conducted. The protector would conduct a preliminary inquiry into whether Māori 'concerned' were disposed to sell land the Crown wished to buy, and would make inquiries as to ownership if any counter-claimants emerged.[20]

Normanby's instructions also recognised explicitly that purchases should not be conducted to such an extent as to cause Māori harm:

> All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's sovereignty in the islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory the retention of which by them would be essential or highly conducive to their own comfort, safety, or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate without distress or serious inconvenience to themselves.[21]

Tribunals have reflected on Crown responsibilities arising out of Normanby's instructions.

The Ōrākei Tribunal said that the instructions assumed that Māori would 'be left in possession of sufficient land for them to benefit from the predicted increase in land values resulting from progressive colonisation'. If they were not, 'then the anticipated benefit occurring to them would be illusory'. The instructions gave added meaning to the specific assurance in the Treaty's preamble that the Crown would protect the just rights and property of Māori, and to the explanation given at Waitangi of how the right of pre-emption was needed to enable the Crown to prevent land speculation and to protect Māori.[22]

The Ngāi Tahu Tribunal considered that the part of the instructions that counselled the avoidance of conduct that would harm the Māori people 'heralded the need to protect Maori from the highly adverse effects of settlement'.[23]

On balance, the Kaipara Tribunal felt, the instructions meant that the Crown took on some responsibility for future Māori economic success – the question was how far it extended.[24] For the Hauraki Tribunal, the question was whether 'the Crown's land purchase plan allowed Maori *to gain access to the added value* of their reserves or remaining lands' (emphasis in original).[25]

9.5.2 Policy and practice in the early years of the colony

From the outset, purchasing Māori land was the chief preoccupation of the colony. Normanby's instructions were immediately put to the test. Under increasing pressure from settlers to open up land for settlement, Governor Fitzroy waived pre-emption in some areas. Meanwhile, the New Zealand Company increased pressure on the Crown not to recognise Māori rights in the 'waste' lands. However, Secretary of State for War and the Colonies Lord Stanley upheld these rights and instructed Fitzroy's

replacement, Governor George Grey, to 'honourably and scrupulously fulfil the conditions of the treaty of Waitangi'. This included restoring pre-emption.[26]

Stanley also confirmed in 1844 that, in investigating and implementing the New Zealand Company's claims to purchasing land, the Crown would ensure that it reserved to Māori one-tenth of all land. It had been unclear whether the company's policy was to reserve one-tenth or one-eleventh of the land. At the same time, the Government and officials were debating whether the land reserved to Māori would include their existing pā and cultivations. William Spain – who was sent to investigate the New Zealand Company's claims – recommended 10 per cent *plus* all currently used pā, urupā, and cultivations for both the Wellington and the Whanganui purchases.[27]

Governor Grey, responding initially to Stanley's instructions, began to make his own mark on how the Crown would deal with Māori land. In June 1846, he restored pre-emption, while promising to introduce another system of direct purchase in select areas.[28] He also formed the view that the role of protector of aborigines was no longer needed and abolished it. He proposed to spend the money on Māori health and education instead.[29] Later that year, Grey issued his Native Land Purchase Ordinance, which set out how the Crown would gain control of the land that others had purportedly purchased during the period when Crown pre-emption was waived – and introduced measures to punish any future attempts that private parties might make to purchase or lease Māori land.[30]

Just as the ordinance came into effect, however, the incoming Secretary of State for War and the Colonies, Earl Grey, issued Governor Grey with new instructions. In December 1846, he told the Governor to register as Crown land all land that Māori did not actually occupy and cultivate.[31] The Governor did not initially respond. He did, however, comment on a similar view that the New Zealand Company's agent voiced when negotiating the Wairau purchase. Governor Grey paraphrased it like this: 'that if tracts of land are not in actual occupation and cultivation by natives, that we have, therefore, a right to take possession of them'. This view, the Governor said, required 'one important limitation':

> The natives do not support themselves solely by cultivation, but from fern-root, – from fishing, – from eel ponds, – from taking ducks, – from hunting wild pigs, for which they require extensive runs, – and by such like pursuits. To deprive them of their wild lands, and to limit them to lands for the purpose of cultivation, is in fact, to cut off from them some of their most important means of subsistence, and they cannot be readily and abruptly forced into becoming a solely agricultural people.[32]

Earl Grey seemed to be persuaded that these usages had to be taken into account, but he stressed that they ought not prevent European settlement. He told the Governor that acquiring lands for settlement could not occur without providing to Māori 'in some other way advantages fully equal to those which they might lose'.[33] In the end, according to the Te Tau Ihu Tribunal, it was Governor Grey's view that prevailed in the Wairau purchase, which included a reserve of 117,000 acres for Māori (though most of this reserve was later acquired in the Waipounamu purchase).[34]

In May 1848, Governor Grey finally responded to Earl Grey's initial instructions. Māori, he said, would resist any blanket measures to seize their land. For this reason he proposed a 'nearly allied principle' of purchasing agreed areas of land at 'nominal' prices. He had begun to implement this strategy in several districts.[35] The Governor described how difficult it was to try and buy land where settlement had already commenced. In these places, Māori were

> becoming aware of the value that had been given to their lands, and actuated by motives of self-interest, refused to part with them for a nominal consideration, but insisted upon receiving a price bearing some slight relation to the actual value of the lands at the time the purchase was completed.

In order to navigate this problem, he proposed purchasing large tracts of land well ahead of European settlement, in order to 'be able to purchase the lands required by the Government for a trifling consideration'.

He explained that the purchases already completed

following this new approach involved setting aside 'an adequate portion for the future wants of the natives'. He added that, though Māori had insisted on full value of the land in places where European settlement had begun, they were generally becoming aware that:

> the real payment which they receive for their waste lands is not the sum given to them by the Government, but the security which is afforded, that themselves and their children shall for ever occupy the reserves assured to them, to which a great value is given by the vicinity of a dense European population. They are also gradually becoming aware that the Government spend[s] all the money realized by the sale of lands in introducing Europeans into the country, or in the execution of public works, which give employment to the natives, and a value to their property, whilst the payment they receive for their land enables them to purchase stock and agricultural implements.[36]

Governor Grey saw his proposed approach to the purchase of land as suited to 'the present circumstances of the country, and to the probable future wants of an agricultural population, such as the Maories are'. Elsewhere in the despatch, he commented that Māori would 'cheerfully relinquish their conflicting and invalid claims in favour of the Government, merely stipulating that small portions of land, for the purposes of cultivation, shall be reserved for each tribe'.[37] By the time Governor Grey sent his response, however, Earl Grey had officially resiled from his original instructions, stating that it had always been the Imperial Government's intention to 'recognize the Treaty of Waitangi'.[38]

Governor Grey's response did, however, signal that the tension inherent in Normanby's instructions was now taking the form of a contradiction that ran through Crown policy from the earliest years:

- Māori were to benefit from their land increasing in value;
- they were to be established as an agricultural people; *but*
- the land reserved from purchase would comprise only small amounts for the purposes of cultivation.

When Grey issued instructions to the commissioner of Crown lands in 1850, the message was to ensure that

> sufficient reserves are made for the present and future needs of the Natives, for which they will receive conditional titles authorising them to lease such portions of the land as the Government may not think necessary for their present wants.[39]

This indicated that Māori were to get enough land to be able to lease some of it and live on it too, but the use of the word 'sufficient' left open to interpretation exactly how much that meant. Here was that internal tension, so difficult to resolve, between wanting to buy as much land as possible, and yet reserve for Māori use an appropriate amount. Grey's actual performance in the area of making reserves was, according to Alan Ward, 'abysmal . . . and at best very patchy'.[40] We have already seen how Grey instructed Symonds in 1846 to 'induce' Māori in Whanganui to give up any 'cultivations as may not really be requisite for their own purposes' – instructions that were later repeated to McLean (see section 7.5.1(4)).[41] In our inquiry district, the outcome was that only 7,400 acres of reserves was set aside for Māori from the Whanganui purchase, which was much less than Spain recommended.

9.5.3 Reserves under the land purchase department

The creation of the Native Land Purchase Department in 1854 saw a continuation of this tension. McLean instructed his purchase officers to locate reserves close to Pākehā settlements, so that they could participate in commercial development. These reserves would be 'ample', to be 'determined by the wishes of the vendors themselves, and at your own discretion'.[42] However, there was also a push towards setting up reserves in a way that would encourage Māori to live together in one place and give up their practices of roaming far and wide to hunt and gather.[43]

During this period, the Governor's continued control of Native Affairs meant that Māori rights to their 'waste' lands were protected. However, they were effectively excluded from the institutions of representative government (the General Assembly and provincial councils)

established under the new constitution – and they were becoming increasingly distrustful of Crown purchasing practices.[44]

More and more, the colonial government advanced its own views on how to deal with Māori land. Under the Native Territorial Rights Bill 1858, land would be reserved to Māori ahead of purchase, and alienation restrictions would be placed on remaining land. Although the Bill was disallowed, it was an indication that colonial politicians had come to accept that significant problems would arise should Māori become entirely landless, and that – at the very least – the Crown had an obligation to prevent that from happening.[45]

While such debates intensified with the onset of the Waitara war, the Crown continued to insist that at least some land should be reserved from purchases for Māori. In 1861, McLean issued general instructions to district land purchase commissioners to mark and set aside reserves from purchases before final payment. However, he did not say what constituted 'ample' reserves, nor whether land was to be reserved only when Māori requested it.[46]

Shortly thereafter, the British Government instructed Grey – at the beginning of his second term – to transfer control of Native Affairs to the settler Ministers and to accept legislation authorising settlers to purchase land directly from Māori.[47]

9.5.4 'Sufficiency' in the era of the Native Land Court

In the latter part of the nineteenth century, legislation was passed authorising the Native Land Court to apply to titles restrictions on alienation, and to appoint trust commissioners to investigate the bona fides of transactions. The Native Land Act 1873 made provision for the appointment of district officers whose role it was to identify and set aside land for permanent reservation, before purchasing in those blocks began. The Act specified for the first time a minimum acreage to be reserved for Māori:

> no land reserved for the support and maintenance of the Natives, as also for endowments for their benefit, shall be considered a sufficiency for such purposes, unless the reserves so made for these objects added together shall be equal to an aggregate amount of not less than fifty acres per head for every Native man woman and child resident in the district.[48]

Then, in 1893, legislation specified 25 acres of first class land, 50 acres of second class land, and 100 acres of third class land.[49] Although legislation defined a minimum acreage for Māori, few provisions protected reserves from alienation.

Several Tribunals have commented on the general effect of these developing policies on the Crown's obligations to Māori and their retention of land. The Central North Island Tribunal considered that while the 1873 Act stated the intention of providing for tribal endowments, what this translated to in practice was reserves of 50 acres per person: 'The "sufficiency" of land set at a level of 50 acres a head was clearly meant for bare subsistence needs only.' That Tribunal endorsed the assessment of the Tūranga Tribunal that the figure of 50 acres per head 'took no account of the size of families, location, and quality of land needed for workable farms'. Neither did it take into account natural resources, such as geothermal springs, 'which were important for alternative opportunities when lands were otherwise marginal for farming'.[50]

The Central North Island Tribunal also observed that while the 50-acres-per-head standard introduced in 1873 became the yardstick for what constituted sufficient land for Māori for the rest of the nineteenth century, the fragmented nature of landholdings coupled with the practice of purchasing individual interests meant it that was virtually impossible to assess whether individuals did retain 50 acres. Purchase officers relied on the assumption that, 'as people often had interests over many blocks, they therefore always had "other" interests to spare'. In practice, it was left to individual purchase officers to determine whether Māori retained enough, based on their impressions of the state of landholdings at particular points in time. The Central North Island Tribunal considered that for a purchasing agent to theorise that an individual had land elsewhere, and therefore could safely alienate undefined paper interests in a block, overturned the Treaty's guarantees.[51]

The Wairarapa ki Tararua Tribunal considered that

these developments were indicative of a general inconsistency in Crown policy. 'Legislators and legislation spoke the language of protection, but in practice leaned towards flexibility.'[52] This meant that, while successive governments enacted formal requirements for Māori to retain sufficient land, 'their focus was largely on preventing absolute landlessness'. It was 'left to decision makers to determine the meaning of key concepts like sufficient land and maintenance'.[53]

By the end of the century, the meaning of a 'sufficiency' of land had fallen, in line with the Crown's assumption that Māori would be able to give up the vast acreages needed for a hunting and gathering mode of subsistence living. However, our study of the Crown's legislation and policies suggests that the concept of sufficiency remained less settled than the Crown argues. Policy tensions continued. On the one hand, 50 acres (or 25 acres of first class land) per person, including women and children, could in theory provide more land per family than was required to survive, if employing European-style agriculture. On the face of it, the legislation suggests that the Crown's concept of sufficiency (and its obligation to ensure the same), was about more than just a plot for cultivation. There was also an element of looking to the future, with the inclusion of minimum requirements for children. On the other hand, for the reasons cited above, any such thinking on the Crown's part remained largely in the realm of theory. It was undermined by the reality of the Crown's large-scale purchasing in the latter part of the nineteenth century and a title system that, as we shall see in later chapters, made farming the land very difficult.

9.5.5 The twentieth century – looming landlessness

By the turn of the century, it was increasingly accepted that more needed to be done to prevent remaining Māori land passing from their ownership. Richard Seddon was one politician who acknowledged that the diminution of Māori landholdings was a problem, and that action was required. He expressed this view at hui with Whanganui Māori (see section 14.2).

The Stout–Ngata commission – of particular importance to this inquiry – noted in 1907 the 'danger of the Maori, if unchecked, divesting himself completely of his interests in land'. The commission reported that this danger had 'long been recognised', but that little had been done to check it.[54] However, Māori were increasingly working for wages; major law changes were initiated in 1909 and 1913 that in effect did away with the policy that Māori must retain 'sufficient' land, even if that meant only for subsistence. Now the authorities could take into account other means of support when approving the sale of Māori land.

9.5.6 The 'sufficiency' policy: our conclusions

The Crown submitted in this inquiry that the concept of 'sufficiency' in the nineteenth century 'is most properly equated with Maori having sufficient land and resources to meet their primary needs, in the sense of having a place of residence and a plot to cultivate'. The Crown's 'intervention was essentially protective, rather than being concerned with enabling Maori to become leaders in the agricultural economy'.[55]

This twenty-first century articulation of the Crown's duty differed from how it was initially conceived in the mid-nineteenth century. We have identified the competing goals in Crown policy that meant it would be difficult to achieve them all, but nonetheless, early articulations of what the Crown ought to do when purchasing Māori land consistently recognised the need for it to protect *future* Māori landholdings. The implication of Normanby's instructions, taken as a whole, was that Māori should retain land enough for them to use it in the future, *and also* benefit from the increase in its value. A necessary inference is that land enough for bare subsistence would not meet these objectives.

The approach to purchasing land that Grey devised contained some of the same imperatives that Normanby articulated: the land to be set aside should comprise 'adequate' portions for their 'future wants' – but he also talked about 'small portions of land, for the purposes of cultivation'. This ambivalence made it inevitable that the actual amount set aside as reserves would end up being a matter of interpretation.

Both Governor Grey and Earl Grey acknowledged that

until Māori became an agricultural people – which would take some time – they needed to retain access to the land and resources that formed the basis of their customary economy. Earl Grey observed that if the Crown was going to alienate large tracts of land that Māori used as mahinga kai, Māori would need to be compensated with something of equal value. Both men grasped that there was an issue as to how Māori would adapt to their reduced landholdings at the time when the Crown purchased large areas from them – and also what they would be able to do with their remaining land in the future. This suggested that purchases would need to proceed with an assessment of circumstances, the economic needs of Māori at the time, and what they would require to develop alongside the new settlement.

There was one aspect of Governor Grey's approach to purchasing that deviated from the policy that his imperial masters laid out. Māori would not be allowed to decide how much and what land they would keep. When the Crown purchased large tracts from them, *it* would seek to control what land would be reserved to Māori. In practice, as the Whanganui purchase demonstrated, Māori did not 'cheerfully' relinquish their pā and cultivations to the incoming settlers. Rather, Crown officials – on Grey's instructions – wrangled with them, and forced their hand.

By the 1850s, the Crown's policy on what land Māori should retain was becoming more straightforward, because it was less concerned with conflicting objectives. Now, thinking was leaning towards ensuring that Māori were not landless: words like 'ample' faded from the lexicon, and instead officials focused on reserves enough for a place of residence and a plot to cultivate. This was in accordance with the policy of amalgamation: in order to emulate the lifestyle and habits of the Pākehā population, Māori should live in one place, and reduce their habits of hunting and gathering.

The new criteria for what Māori needed by way of land (less) also conveniently coincided with a period when the settler population was growing, and more land was required to satisfy their appetite for it (more). Did colonists genuinely believe that Māori needed to keep less land than was originally thought? Or was it more the case that they could foresee that there would not be enough land both to provide for Māori to enter into full-scale agriculture on their own land *and* to provide enough land for an ever-expanding settler population?

Following the creation of the Native Land Court, policy trended even more emphatically to defining Crown obligation as the prevention of landlessness, based on assessments of individuals' landholdings. This continued the transformation of Māori customary rights into separate individual interests, often held in numerous blocks. The system requiring assessment of individuals' landholdings soon became a dead letter, and in practice purchase officers made their own token assessments of vendors' other landholdings in the context of each purchase. The 50-acre minimum set down in the 1873 Act certainly signalled the shift towards protecting Māori only from landlessness – but in fact, even that minimum was not well policed.

From this time forward, the Crown departed from indicating in policy or legislation that it had an obligation to ensure that Māori kept enough land to benefit from increasing land values – but, inconsistently with this, it continued to hold out to Māori the prospect that, if they sold their land, they would reap benefits (including prosperity) from European settlement.

Thus, with the effluxion of time and events as the colony developed, the Crown drifted right away from its early expression of the principle that it was part of its duty as a conscientious coloniser to look after Māori interests when it purchased their land, and ensure that it did not – and that it did not allow them to – act to their disadvantage. However, though policy changed, the moral precepts that underlay the Crown's early intentions did not. They were just no longer heeded.

If the Crown had remained true to its early tenets – which had as their focus the need to protect Māori from economic disadvantage – there would have been an unintentional benefit to the well-being of Māori culture and identity. Because if Māori had retained more land, irrespective of what economic benefits more land might have delivered, it would have left them with more capacity for chiefly authority over people and land. They would have been in a position to maintain their kāinga, urupā, wāhi

tapu, tongi and mauri sites, which were essential to the continuance of mana and manaakitanga. The Crown was not in the business of setting out to protect these – rather, it was committed to the idea of amalgamation, which saw Māori cultural integrity as in many respects a bad thing, because it underlined their difference from Pākehā, and Pākehā culture. But if the Crown had left Māori more than a place of residence and plot to cultivate necessary to preclude landlessness, it would inadvertently also have made better provision for the health and vitality of Māori culture.

9.6 The Crown's Role in the Economy

There are factors other than land retention to consider when assessing the Crown's obligations to Māori, because land ownership by itself would not guarantee economic success.

In this section, we look at the Crown's economic arguments based on the evidence of Professor Gary Hawke – a noted historian of New Zealand's economic development. He gave similar evidence in the Tūranga and Hauraki inquiries, and we review the opinions of those and other Tribunals on his views.

9.6.1 What the Crown said

The Crown argued that although land underpinned New Zealand's economic development, economic success depended on knowledge, skills, and capital. Also, its role in influencing economic outcomes was limited. All of this was significant for the Whanganui district: the Crown was the purchaser of most of the land, but there was no direct correlation between land alienation and poor socio-economic outcomes for Whanganui Māori.

Drawing on the evidence of Professor Hawke, the Crown submitted that, in the nineteenth century, governments concerned themselves with setting the framework of economic activity rather than engaging directly in the economy. Economic development depended heavily on knowledge and skills, and was a mostly private endeavour – the role of the Government was a very limited one. It is a mistake, the Crown considered, to conceive of the Crown as having planned and directed the course of New Zealand's economic development; or to think that land ownership was a simple vehicle for Māori to achieve material prosperity. Nor did the Crown actively guide and determine the economic fortunes of particular groups within the economy, by handing out economic opportunities to some but not to others.[56]

We have seen that the Crown accepted that it had a basic obligation to leave Māori with enough land to meet 'primary needs, in the sense of having a place of residence and a plot to cultivate', but not to give effect to economic aspirations. The Crown acknowledged that Whanganui Māori continue to suffer socio-economic disadvantage, but argued that the evidence did not prove that Crown acts caused these outcomes. In particular, it did not show that land loss resulted in poverty. The Crown agreed that it did not monitor the extent of land alienation, but maintained that Māori in this district retained a significant amount of land in the district overall.[57] The amount of land retained was not necessarily all that significant, though, to their economic success.

The Crown's primary obligation was to provide a framework in which successful economic development could occur, and to alleviate any disparities that might have emerged, to the extent appropriate. Māori benefited from overall gains in the economy, with improved material living standards, but they did not benefit as much as others, which created disparities in wealth. The Crown considered that it did all that was appropriate to alleviate disparities that emerged between Whanganui Māori and settlers in the nineteenth and twentieth centuries. These disparities emerged due to factors beyond the Crown's control.[58]

9.6.2 The evidence of Professor Hawke

Professor Hawke outlined his theory of economic development, describing broad trends in the development of New Zealand's economy. His comments were not particular to the circumstances of the Whanganui district.

Professor Hawke's primary point was that economic development involves change. Drawing on the theories of economist Joseph Schumpeter, he argued that all economic growth is essentially the process of 'creative

destruction': 'the replacement of existing activities by new activities which generate higher standards of living'. Those who have difficulty adapting once existing activities are superseded are likely to lose in the process. He gave the example of the fate of handloom weavers, who were put out of work as mechanised factories revolutionised the textile industries during the British industrial revolution.[59]

Professor Hawke's second main point was that economic development cannot be considered only in relation to a paternalistic welfare state.[60] He acknowledged that governments and markets are interdependent to an extent. Governments are involved in setting some of the parameters within which markets operate: they determine tenure rights, set tariffs, and maintain a court system. Setting these parameters does have real economic implications, but governments do not (and did not) concern themselves with the operations within that framework.[61]

Professor Hawke then outlined the range of factors that went into successful economic ventures in the nineteenth century, in addition to ownership of land. Higher living standards, he said, 'were made available in New Zealand as local resources were used to provide goods which were in demand in the international economy'. Initially, this was through growing wool, followed by frozen meat, butter, and cheese. Gold and timber were also significant to the development of certain districts. While all of these activities involved the use of land, it is easy to exaggerate its significance. The natural resource of most importance, he said, was the combination of rain and sunshine which made the grass growing season in New Zealand longer. In addition, essential knowledge and skills were required. 'Raising sheep and cattle demanded husbandry knowledge that went beyond an instinctive management of animals.' Also needed was additional knowledge about what to produce or how to transport it to the appropriate market: shipping services, insurance, and financing skills were as important as skills in husbandry.[62]

Finally, Professor Hawke talked about financing economic activities, and obstacles to raising finance. He criticised previous Tribunals for using the terms capital, development capital, and finance interchangeably. Capital is a stock of assets with income earning potential, built up by refraining from consuming all available resources. Development capital or development finance is a term that combines what is sought with the objective for which it is sought. Neither capital nor finance is 'manna from heaven, which the Crown controls and guides to its friends rather than to Māori'. Finance is not something automatically in existence. In order to provide finance, somebody must sacrifice immediate consumption. Lenders need security: they do not simply provide finance and go away.[63]

All of these factors, Professor Hawke considered, have implications for how we ought to conceive of Māori economic success (or otherwise) in the nineteenth century, and the role of the Crown in ensuring Māori economic outcomes. Land ownership has great cultural significance for Māori. Professor Hawke considered it a mistake, however, to confound that observation with a belief that land ownership was ever a simple vehicle for Māori to achieve material prosperity. There is no simple economic logic connecting landlessness and poverty. Further, it has to be acknowledged that the overall result in the period was a gain in the material living standards of all New Zealanders, including Māori. Māori in Whanganui showed a ready adaptation to new opportunities, which originated in the integration of New Zealand into the international economy. However, they did not succeed to the same degree as others. Professor Hawke considered that, while it is possible now to conceptualise an 'adaptation path', in which Māori economic success could be tracked, it was not possible at the time.[64]

Under cross-examination and questioning from the Tribunal, Professor Hawke responded to suggestions that the Crown did intervene significantly in the economy, particularly by purchasing land from Māori and transferring it to settlers. Counsel for Ngā Poutama-nui-a-Awa asked whether it was possible to conceive of ways in which the Crown affected the 'adaptation path' of Māori within the colonial economy. He gave the example of the Crown purchasing land for the purposes of constructing the North Island main trunk railway. The point was that the Crown was not merely a passive bystander in the

significant economic activities of the day. The Crown also had the ability to determine educational opportunities.[65]

In response, Professor Hawke maintained that all of these actions were still examples of governments setting the framework in which economic activity occurred. While he acknowledged that land was 'indispensible' to the main successful economic activities in the nineteenth century, and that the Crown was the main agent in transferring Māori land to settlers, its purpose in doing so was to bring land into use in the international economy – an action determining the framework, rather than the economic activity itself.[66]

9.6.3 What previous Waitangi Tribunals said

Responding to similar evidence that Professor Hawke presented in other inquiries, Tribunals have maintained that:

- In nineteenth-century New Zealand, land underpinned anticipated economic activity, and the Crown involved itself heavily in the disposition of land as the chief purchaser of land from Māori; and
- The Crown regularly intervened in the economy, usually on behalf of European settlers.

(1) *Land underpinned anticipated economic activity*

Tribunals have acknowledged that more than land ownership was needed to participate in development opportunities that arose from colonisation. Other necessary factors included land tenure and governance, appropriate skills and knowledge, and reasonable access to finance.[67]

Control of land was nevertheless essential to take advantage of new economic opportunities that were expected to eventuate. The Wairarapa ki Tararua Tribunal concluded that:

> in nineteenth-century New Zealand, land ownership and control of the resources associated with it were widely perceived as important ways to derive wealth from the new opportunities expected to arise with settlement. From the beginnings of settlement, it was also understood that protecting the right amount of land for Māori would be important in ensuring their capacity to participate in these opportunities. This was a key message in the assurances which persuaded Māori to part with their land.[68]

Land was seen as essential to the future prosperity of all New Zealanders.

It was on the understanding that land would underpin the colony's economic development that the Crown proceeded to purchase land – and transfer it to settlers. The Central North Island Tribunal commented:

> when the Crown began purchasing Maori land in the Central North Island, from the 1870s, it could not have predicted the exact ways in which modern farming would develop from the 1890s. It is also clear that large parts of the interior of this region proved stubbornly difficult to develop for farming in the years before 1929. However, Governments remained convinced that some form of settled agricultural or farming development was going to be a major economic opportunity in New Zealand.[69]

Māori were encouraged to sell their land on the understanding that they would gain access to the increased value in their remaining lands:

> Colonisation was based on the assumption that Maori could rely to a large extent on accumulated funds from judicious land sales to engage in development opportunities such as farming. As their retained lands gained in value from settlement, further careful sales, profits from productive activities such as farming and agriculture, the sale of resources such as timber and flax, and income from leasing would allow the accumulation of profits for further opportunities as well as immediate needs. Increasingly valuable retained lands could also be used as security for borrowing and other commercial transactions directed towards land development. From 1870, Maori in our region were encouraged to alienate land on this assumption, and although motives for selling were varied and often difficult to precisely identify, some communities did attempt to use profits from land sales to invest in purchasing sheep flocks and other forms of farming investment . . .[70]

The Hauraki Tribunal concluded that even though there was 'clearly more to successful capital formation than the possession or transfer of land . . . land had to be the foundation of the process for most Maori':

> Unless they were able to raise finance by sale or lease of some land at good prices, and invest finance and labour on the remainder, it is difficult to see how they could readily have entered the new economy on anything like equal terms with settlers. . . . It was not the ownership of land per se but the *tenure* by which land was held, the *modes* by which it was transferred, and the *manner* in which finance so raised[.] [Emphasis in original.][71]

The successful adaptation of Māori into the new economy relied on their building a capital base around a core holding of retained land, just as the development of the new economy relied on Māori alienating land for its progressive growth.

(2) *The Crown regularly intervened in the economy*

Tribunals also observed in response to Professor Hawke's evidence that the Crown staged a range of interventions in the formation of the colonial economy. The question for the Hauraki and Central North Island Tribunals was not so much whether the Crown intervened in the economy – it did on regular occasions – but on whose behalf it intervened, and whether it ensured Māori benefited equally.[72]

The first form of intervention, the Hauraki Tribunal considered, was the British Government's decision to become involved in New Zealand. 'British policy in the 1830s was driven by economic theories which favoured free trade and the encouragement of private enterprise.' At the other end of the spectrum, humanitarians pushed for protection of Māori:

> There was a fundamental acceptance by the Crown that British colonisation of New Zealand was inevitable, and that there was a duty on the Crown to legitimise and assist orderly colonisation.[73]

In the 1850s, the Crown assisted Māori in some economic ventures. Governor Grey and the Native Department encouraged Māori wheat-growing and milling, by offering to purchase flour mills and trading ships for selected communities.[74] These initiatives showed that the Crown did 'consider and offer active assistance to Maori in areas thought to be significant for Maori'.[75]

More commonly, however, the Crown's involvement in the New Zealand economy consisted of encouraging activities aligned with the interests of settlers. Historian James Belich noted how governments tried to kick-start various industries by offering rewards for favoured activities like gold discoveries, flax processing, woollen cloth manufacture, dairy production, and preserving meat. The Government also owned businesses such as the State Life Insurance Office and the Post Office Savings Bank. From the 1870s, the State took a leading role (with support from private industry) in developing the national transport and communications infrastructure.[76]

Of particular importance was the action that provincial, local, and central government took to promote and encourage a variety of schemes of immigration and land settlement. This reflected a consistently held belief that farming of some kind would be a major source of economic development and prosperity. Private companies, with the support of various authorities 'mounted and funded the various military, public works, immigration and propaganda campaigns'.[77]

From the 1890s, the Liberal Government took a pragmatic and active role in supporting new farming developments when they emerged. Various forms of advice, encouragement, and assistance met the recognised needs of a new group of potential farmers, including infrastructure, funds for development, and finance. In particular, the Government's Advances to Settlers fund provided loans to new farmers but effectively excluded Māori:[78]

> A large part of this effort was directed at providing a supportive framework for those identified as most likely to be in need of encouragement, in order to create the kind of rurally-based economy governments and settlers regarded as ideal. Nevertheless, it involved more than simply providing advice or creating a framework. The Government actively identified

> a new form of farm enterprise that it believed would promote settlement and economic growth.[79]

In other words, the Crown selectively promoted various kinds of economic development in ways that advanced the interests of a particular part of the community.

The Central North Island Tribunal concluded that:

- the political and economic orthodoxy held that the role of governments was largely to establish frameworks in which entrepreneurs and businesses could flourish; but
- it was inaccurate to say that it was 'almost inconceivable' that governments would have contemplated any more active protection to Māori than providing advice; and
- governments took active steps to identify and promote what were believed to be likely economic opportunities, and offered assistance and encouragement to particular groups to participate in and grow those opportunities.[80]

The Hauraki Tribunal went further than this by saying that the Crown not only promoted the interests of settlers by providing assistance to engage in particular economic activities but also hindered Māori accumulation and investment of capital, including:

- purchasing land below the full market value;
- failing to institute a mechanism by which multiple owners on titles could make considered, collective decisions about the future of their land;
- not establishing trusts and management systems; and
- not protecting and developing reserves.[81]

The Hauraki Tribunal concluded that,

> while the Crown could not have guaranteed continued prosperity for Hauraki Maori, it chose to introduce laws and land purchase programmes which contributed to their economic marginalisation.'[82]

9.6.4 The Crown's role in the economy: our conclusions

In establishing an economic framework, the Crown fostered particular activities, and promoted conditions in which they would flourish. It is also clear that the Crown focused on the interests of a certain sector of the population – the newly settled – to achieve desired economic growth.

Economic growth in nineteenth-century New Zealand was closely associated with population growth. Successive governments considered it necessary to encourage more people to come to New Zealand, and to incentivise them to establish successful ventures. Māori were not seen as part of a growing population, an expanding market, or as agents for economic development. At best, they would amalgamate with the new arrivals and become more like them. At worst, they would just dwindle away. However we might regard these attitudes today, the Crown did not usually deliberately discriminate against the Māori population. At times, it also actively tried to discourage other sectors of society – especially speculators – in favour of the owner-occupier farmer on small- to medium-size farms who might not have much capital.

The Crown purchased land on the understanding that owning land would be the basis for future economic development. It encouraged Māori to sell on the premise that the increasing number of settlers would benefit them, yet at the same time it was moving further and further away from an approach to purchasing their land that would enable them to keep enough land themselves to make that at all possible.

While the Crown conducted its business on the premise that economic development and land ownership went hand in hand, it needed to make sure that its mode of land purchase did not preclude Māori also developing economically in this way. What was required was an understanding that land could be brought into the international economy *either* by transferring it to settlers *or* by means of Māori bringing their own land into production. Transfer to settlers was not the only option.

If Māori were to be part of economic expansion based on land, it was necessary for the activity of purchasing Māori land to have a twin activity: monitoring the quantity and quality of land still in Māori hands. Only then would it be possible to assess what they could afford to sell, and still remain players in the new economic order. The fact that the Crown embarked upon no such endeavour, and only vaguely tracked Māori landholdings to

avoid their becoming landless, indicates how it at no stage planned for Māori to become part of mainstream wealth creation.

9.7 Economic Prospects and Whanganui Land

We now turn to the situation in Whanganui: by the 1860s, how were Māori faring in the new economic conditions of the colony? What do we know, in fact, about what was going on here economically, in this period from the late 1860s, when the Native Land Court was coming in; and from the early 1870s, when the Crown was once more turning to purchasing Māori land in Whanganui? As the purchase of more land was contemplated, was the quality of the land a topic that was at all under consideration?

9.7.1 How Māori adapted to new economic conditions

Prior to the arrival of Europeans, the customary economy was based on the capacity of hapū to make things, grow food, and gather resources that existed in the environment. The Whanganui district was populated with interrelated hapū and iwi with rights to land and resources that they held both independently and in common. Māori lived in settlements, mostly up and down the river valleys, but were seasonally migratory. It was essentially a subsistence economy, but with some excess production of food and goods for trade and exchange. River valleys and lower river flats contained cultivations, with resource gathering areas elsewhere. The Whanganui River was not just a source of food, but also a means of connecting everybody both physically and spiritually. The hinterlands were less settled, but were used to source game, timber, and plant products, and as pathways between the resources and the places where people lived throughout the region.

The introduction of new crops and technologies on contact with Europeans stimulated Māori communities to produce crops such as wheat and potatoes, and to manage pigs for sale and exchange. New markets were established with the arrival of traders, and trade increased as the town grew. The hapū closest to the township benefited most, though hapū from further inland would also have participated.

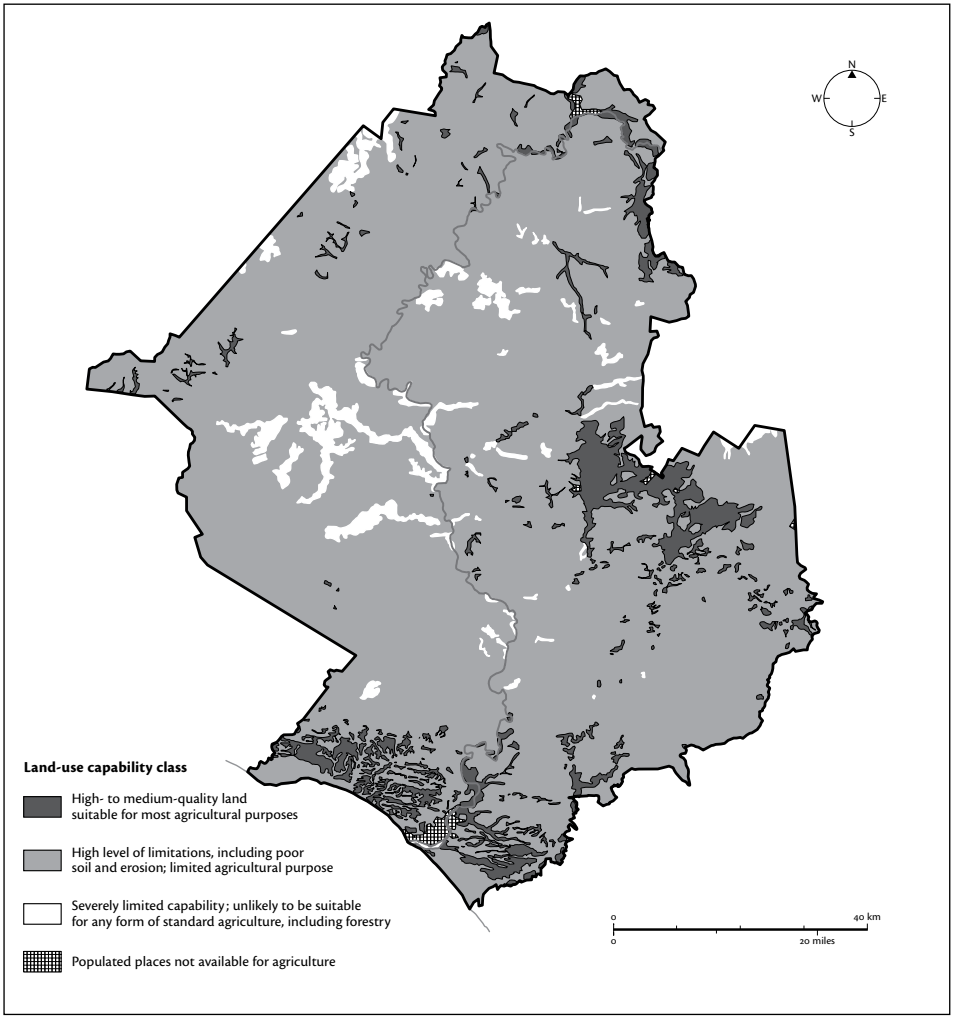
When the Whanganui purchase was finalised, owners received cash for their land interests. Approximately 7,400 acres was set aside for Māori from the purchase, which was significantly less than they were entitled to. The result was that many lower river hapū now only had small areas of land, and were forced to consolidate their production around existing cultivations. Others from further inland who had rights in the purchase area were granted no reserves, so had to look to developing the land they had elsewhere.

During the 1850s and 1860s, when hapū productive capacity was expanding, the local settler economy also grew, with the development of wheat farming, and the beginnings of pastoral farming. The township became the main supplier of meat to gold miners on the West Coast, facilitated by the establishment of the port at Wanganui.[83] These developments created opportunities for Māori, who invested in new technologies (particularly mills). However, their economic expansion did not follow an upward trajectory for long, as commodity prices suddenly declined in the 1850s. Then war arrived in the district in the mid-1860s, disrupting both trade and crop production in some river areas, although ongoing effects are difficult to measure. Those aligned to the Kīngitanga were probably affected for longer, but most resumed trading relationships with the township once the war was over. By now, though, settlers were more self-reliant, and no longer required Māori produce to the same extent. It was at about this point that the Māori population began to fall sharply, through susceptibility to imported diseases. The Māori population of the district had remained steady at around 3,500 from the 1840s through to the 1860s, before dramatically declining to about 1,332 in 1881.[84] By 1891, according to one account, the population had fallen to 1,252 people.[85]

Despite downturn and disruption, and the beginnings of population decline, the Māori economy was still growing, alongside their customary economy.

9.7.2 What was known about the quality of the land

One of the questions that arises in this district is how land quality affects our understanding of what constituted 'sufficient' land for Māori here.



Map 9.1: Whanganui inquiry district land-use classes. The land in the district has serious limitations for agricultural purposes.

We did not receive much evidence on the quality of the land in the district, or the extent to which its quality was understood in the nineteenth century. Historian Nicholas Bayley described the district as consisting of three primary areas: the volcanic plateau, the dissected hill country, and the elevated coastal lowland.[86] We reproduce here a map based on data from Landcare Research about land use capability, which involved identifying the land in the district that has agricultural potential. We do not know to what extent the land's potential is different now from what it was in previous times, because its productivity might have been affected by interventions over time – like the application of fertiliser or other chemicals, perhaps. However, we think it is a useful tool to give a general indication that the 'high to medium quality land suitable for most agricultural purposes' comprises a very small proportion of land in the region. That land is mainly concentrated around the coast, with some also around

Ōhākune and into Murimotu, and a narrow strip along the Whakapapa River. The remaining areas have serious limitations.[87]

Bayley outlined the consequences of these limitations for the long-term development of the region:

> While substantially transformed by Pakeha intervention, the environment was stubbornly resistant to the economic aspirations of Pakeha and still provides a major challenge for economic development. Or put another way, the attempts to radically alter this environment failed to appreciate the extent to which it was unsuited to the type of economic activity envisaged for it.[88]

In other words, it took considerable time and effort – and quite a lot of failure – before the land's limitations were understood. For the whole of the nineteenth century, there was little appreciation of how determinative the quality of the land would prove to be. People held fast to the idea that the vast area of land in the interior could, with sufficient people and industry, be turned into farmland.

It was not until the 1920s, when a number of farmers began to abandon their farms, that the problem came into focus: the high rainfalls and thin soils made most of the interior unsuitable for all farming; some areas could sustain pastoral farming, but only on stations or runs in the thousands or even tens of thousands of acres; only a limited amount of land was suitable for cropping or dairying. This was often in the main river valleys, but many of these were very remote and almost inaccessible. The application of large quantities of superphosphate fertilisers by aerial topdressing in the second half of the twentieth century increased production, but in the long run many hill country areas have had to be retired from farming. Drawing on research from the 1940s onwards, Bayley concluded that some parts of the district 'should never have had the forest cover removed since it was the only possible permanent vegetative cover' (see section 19.4.2(5)).[89]

All that said, though, there are and have always been some successful farming operations in the region. Critical factors were the availability of capital for improvements, and the ability to farm on an unusually large scale. It appears that scale and capital enabled farmers to manage the difficult attributes of the land by stock selection and rotation, and by engaging in a range of farm activities (see section 19.5.3).

9.7.3 Economic prospects and land: our conclusions

Whanganui Māori had made some strides towards adapting to the conditions of the emerging colonial economy by the mid-1860s. Then, when war in the district was substantially over, Māori were in a position to rebuild their economic potential. But the Native Land Court commenced its operations in the southern part of the district and, within a few years, the Crown came in to buy up Māori land. Crown officials did not know that much of the inquiry district was unsuited for settlement based on small-scale agriculture.

9.8 Calibrating Māori and Settler Needs

What should the Crown have done, when it engaged in the process of buying land from Whanganui Māori and transferring it to settlers, to ensure tangata whenua were left with enough land for their future needs? Here we set out our view of the situation, looking at the Crown's Treaty obligations in the circumstances of the times, and considering how it should have managed its responsibility both to protect Māori interests and promote economic growth.

9.8.1 What other Tribunals said

Tribunals before us set out their views of what the Crown should have done when it came to purchasing Māori land in order to ensure that they retained enough for their own purposes.

The Ngāi Tahu Tribunal was the first to ask the question of what might constitute a 'sufficient endowment' for Māori.[90] It said the Crown needed to take into account:

- the size of the tribal population;

- the land they were occupying or had rights in;
- the principal food sources and their location; and
- the extent to which they depended upon fishing of all kinds, and on seasonal hunting and food gathering.[91]

Having regard to this range of considerations meant that how much land a group would need would be particular to that group and might change over time.

When the Wairarapa ki Tararua Tribunal looked at these issues, it found that the Crown was obliged to go further. It had to ensure Māori retained land so that

> - they would be in a position to benefit from its increase in value to make up for what they sold at low prices;
> - it could be used in new commercial activities, either directly or as security for raising capital;
> - it would meet communities' ongoing cultural and resource needs; and
> - [they] retained or reserved land near new Pākehā settlements[, which] would provide Māori communities economic opportunities to trade and provide services to new settlements, along with opportunities to acquire new skills, new ideas and new technologies.
>
> In other words, the location and extent of retained land would be such that Māori communities could engage fully with the colonial economy if they so wished.[92]

9.8.2 The Crown's obligations to Whanganui Māori

We begin by considering how the Treaty speaks to the question of 'sufficiency'.

The Treaty required the Crown to protect te tino rangatiratanga and to protect Māori in land transactions.

When we interpret the Treaty's two texts, we see that it established that the Crown had core obligations to all Māori. In exchange for the rights and powers of kāwanatanga – the power to govern – the Crown would protect te tino rangatiratanga: the complete authority of chiefs over Māori land and people. The Crown would be the only purchaser of Māori land, and that would enable it to ensure that transactions were fair. In order to gain the protection of the Crown from unscrupulous 'land jobbers' or speculators, Māori agreed that they would sell land only to the Crown, and only such land as they chose to sell.

But the events of the early years of the colony showed that, in practice, the Crown was unwilling to recognise te tino rangatiratanga as a source of rights. At most, colonial and imperial authorities acknowledged a duty to ensure that land purchases were transacted with knowledgeable owners, and that the purchase of land involved engaging with rangatira. The Crown perceived no duty to protect the ability of rangatira to exercise ongoing authority on behalf of the tribal group whom they represented. Māori were to be amalgamated into the settler population, if they were to survive at all.

Nevertheless, the Crown did come to accept that Māori had rights in the land they claimed to hold under customary tenure, even if it was generally suspected that much of this land was inessential to their use. Fair and equal contracts would need to be entered into in order to establish and progressively expand a colony of settlement. Lord Normanby established these policies in his instructions, and Governor Grey confirmed them.

We noted above the Crown's argument that it did not owe a fiduciary duty to Māori when purchasing land from them.[93] This submission followed from litigation in which the Crown participated.[94] While a court may need to couch the Crown's duty to Māori in fiduciary terms in order to find a legal obligation of trust that made the Crown liable to protect Māori interests, we do not. Our jurisdiction is unlike that of the ordinary courts in that the Treaty of Waitangi Act requires us to apply the Treaty and its principles to our consideration of Crown conduct, whereas for the courts the Treaty is not part of the ordinary law. For us, consideration of whether or not the Crown was in a fiduciary relationship with Māori is neither necessary nor relevant. We can find that it is from its Treaty obligations that the Crown had a role – as indeed it recognised at the time – in ensuring that Māori did not divest themselves of the land that belonged to them, their tribe, and indeed their descendants. Stout and Ngata recorded the position

of descendants as a particular concern of Whanganui Māori.[95] We find that the Crown breached its duty of active protection whenever it engaged in conduct that was unfair or exploitative, or which resulted in Māori selling land that they could ill afford – culturally or economically – to lose.

The Crown adopted the principle that Māori ought to be left with enough land to benefit them both at the time and in the future.

At the level of stated principle, the Crown accepted that it had to ensure that Māori were left with enough land to sustain themselves at the time, and enough also to facilitate their transition to the circumstances of the new colony.

The principle was expressed in various ways: Māori ought to participate in the benefits of increasing land values; Māori ought to be equipped with the means of becoming an agricultural people. As a principle, however, there was a consistent element: the Crown could only legitimately acquire land from Māori if it also protected their ability to sustain themselves, both at the time and in the future. It was anticipated that economic development would centre on land assets, so the Crown needed to consider what 'sufficient' meant in the circumstances of each purchase.

In practice, however, although Grey ostensibly accepted that the Crown had these obligations, his approach to the purchase of Māori land ensured that the Crown decided what land Māori would retain. He claimed that Māori 'cheerfully' kept as reserves only enough land for cultivation. In the case of the Whanganui purchase, this was palpably not so, for the Crown used duress and false dealing to ensure that Māori did not get to keep the land they wanted to keep.

Generally, it was the officials on the ground who got to determine what was 'sufficient' for Māori purposes, and it was not long before that meant enough land for immediate subsistence. The concern to prevent landlessness was now motivated not so much by a desire to protect the interests of Māori as to avoid a situation where indigent Māori would become a burden on settlers.

By the mid-1860s, the Crown had purchased 7 per cent of land in Whanganui.

Whanganui was one of the districts where the Crown made or facilitated only a handful of purchases in the first two decades of the colony. By the mid-1860s, it had made only three purchases – Whanganui, Rangitīkei-Turakina, and Waitōtara – which involved just over 150,000 acres, or 7 per cent of the land in the district.

The Whanganui purchase in particular was characterised by poor practice. The Crown acquired twice as much land and made many fewer reserves than it should have under the circumstances, and Māori did not even get to dictate where their reserves were located. (The circumstances of the Whanganui purchase are detailed in chapter 7.) The immediate effect on Māori of the Crown's buying this much land was that the landowners had to concentrate their activities in the limited number of reserves set aside for them; those from further inland who previously exercised rights at the coast no longer had a place there at all. As it turned out, this was the best land in the district, though this was not known at the time.

These were certainly adversities for tangata whenua to overcome, like the crash in commodity prices in the 1850s, and the disruption caused by various conflicts. Nevertheless, by the mid-1860s, the overall economic capability of Whanganui Māori had generally expanded as a result of their taking up new technologies and crops, and thereby increasing production for consumption and trade. However, their economic future still lay in the balance. Population was one factor that limited their potential to expand economically. This was a time when the Māori population in the district, which had remained steady at about 3,500 people, was starting to fall – by the 1890s it had more than halved. At the same time, the Pākehā population reached that of Māori in the 1860s, then rapidly exceeded it. Settlers had become established throughout the area of the Whanganui purchase.

The Crown established a land court as the colony became self-governing.

The point when the Crown turned to establishing a process for determining title to all remaining Māori land

coincided with the moment when the colony became self-governing. By the early 1860s, the imperial and settler governments had agreed on terms for the transfer of the final aspects of government remaining in imperial control (defence and native affairs) to the settlers. The Governor's native affairs responsibility would now pass to the colonial government.

On the ground in New Zealand, it was apparent that the Crown's ad hoc and informal approach to purchasing land could not be sustained: Māori needed to be able to establish and define their land rights in an independent forum *before* those rights were bought and sold. What that new system would look like would be up to Parliament – where, of course, Māori were not yet represented.

It was not interest in recognising te tino rangatiratanga that motivated the Crown to design a methodology for determining Māori land rights. It had no such interest; it wanted to promote the prosperity of the colony. Prosperity was tied to economic growth, which in turn relied on the progressive expansion of the population. The Crown therefore had to consider how the twin goals of population and economic growth could be achieved. Agriculture was consistently viewed as the key to the economic future. Land was therefore a prerequisite to unlocking future prosperity. Land was also the main economic asset of Māori.

The Crown was under a duty to protect the ability of Māori to participate in anticipated economic opportunities.

The Crown said in our inquiry that it had a duty to monitor the extent of land alienation, and to ensure Māori were left with 'sufficient land and resources to meet their primary needs, in the sense of having a place of residence and a plot to cultivate'.[96] But why was its duty so limited? If land ownership was believed to be a prerequisite for wealth, did it not have a duty to Māori in that regard?

The Crown's wholesale transfer of Māori land assets to settlers was predicated on the idea that only transfer to settlers would enable the economic expansion that the colony needed. It did not see, and therefore did nothing to promote, the possibility of Māori contributing equally to that expansion. It was in that blinkered state that it conducted its purchase of land – and provision for Māori to retain land.

We consider, though, that for so long as the Crown was in the business of purchasing land on the assumption that land was needed to grow the economy and therefore the colony, it was duty bound – as a Treaty partner; because Māori were also citizens; and in the interests of good government – to conduct that business in a way that at the very least did not exclude Māori from participating in those land-related opportunities.

The Crown should have assessed and calibrated Māori need for land with that of settlers and the colony.

This does not mean that the Crown's duty was to protect a certain amount of land for specific purposes. Rather, it needed to monitor how much land remained in Māori ownership, so that it could properly address the question of how much land they would need to keep so as to participate in the economic activities that were anticipated. The ongoing assessments would respond to the location of the land, available opportunities, and population figures. They would also depend on the quality of the land. Data on how much land Māori retained would be much more useful if accompanied by information about the quality of that land. The assessments would change over time as circumstances changed.

It was not beyond the realms of possibility that the Crown might have engaged in this kind of endeavour. Surveyors often provided relevant commentary about land quality, but their views on the topic were neither sought nor recorded in any systematic way. Nor was it unheard of for the Crown to purchase Māori land with an eye to their future needs. Purchase officers were sometimes instructed to make such assessments, and it was a specific requirement of district officers under the Native Land Act 1873.

Because land transfers were permanent and could not be undone if assessments were wrong, the Crown needed to err on the side of caution, making sure that Māori continued to own more rather than less land.

Māori needed to be able to exercise agency as regards their own landholdings.

Implicit in the Crown's development of policy around

the whole question of how much land Māori should retain was the assumption that it was up to the Crown to decide these matters. And yet, the Crown's arrogation to itself of power to make unilateral decisions about Māori landholdings was quite at odds with the guarantee of te tino rangatiratanga in article 2, under which Māori had full authority to decide what to do with their land.

Officials did sometimes see Māori as having the right to determine the location and extent of reserves to be set aside for them. In the 1850s, McLean told his purchase officers that the size and whereabouts of reserves would be 'determined by the wishes of the vendors themselves', though he quickly added that the determination would be at the officers' 'own discretion'.[97] Typically, it was the officers' views that held sway.

Nor did Māori have a say in how title to their land would be decided; nor could they dictate what land would be sacrosanct and inalienable. In order for Māori to retain their cultural integrity, rangatira had to have the authority to determine which ancestral lands their communities needed to retain, and which they could afford to give up. This was implicit in the guarantee in the Treaty of te tino rangatiratanga, and the emphasis on Māori having a choice as to whether or what land they would sell.

In order to have any kind of agency, Māori also needed to be part of the monitoring of landholdings referred to above. Whole communities needed to access information about both quantity and quality, and purchases needed to be conducted at a speed that enabled everybody – Crown and Māori – to keep taking stock, and to make decisions accordingly. This would necessarily involve Māori always understanding what they were agreeing to, and not, through ignorance or inexperience, entering into agreements that were to their detriment.

The Crown proceeded on false assumptions.

Little was known about the suitability for farming of most of the land in the inquiry district. Because the land that was settled early was the best land, false assumptions were almost certainly made about the rest of the land. If it had been appreciated that the majority of the Whanganui district was unsuited for farming, perhaps less land would have been purchased.

As we have said, the prevailing notion was that farming was the key to economic development. Given this, and the Crown's focus on the economic expansion of the colony, it was duty bound – because of its obligations under the Treaty; because Māori were citizens too; and because a good government provides for all its citizens – to ensure that it acted with respect to Māori and their land in a way that incorporated them in, or at least did not exclude them from, its vision for the future.

To grow the economy, the Crown promoted only Pākehā endeavour.

We acknowledge that if the Crown had proceeded as we have suggested it should, it would have been swimming against the colonial tide. It was a time when the settler government was empowered to exclude Māori from decision-making, and – in the wake of the New Zealand wars – the settler population had gained both numerical dominance and actual power to determine what happened in most parts of New Zealand. These circumstances meant that, as a matter of realpolitik, the Crown no longer needed to take much account of the Māori view of the world. It therefore acted in accordance with its own view – the dominant settler view – that economic growth would be achieved principally by promoting Pākehā economic activity. Its policy objectives for Māori mainly centred on the idea implicit in amalgamation: they should become more like Pākehā, and exercise te tino rangatiratanga as little as possible.

Because those in charge saw no economic advantage to the colony from Māori retaining land, they bought up that land and transferred it to settlers right through the nineteenth and into the twentieth century. In Whanganui in the mid-1860s, approximately 3,500 Māori were the owners of some two million acres – about 600 acres per person. By 2006, when the Māori population of the district had grown to about 13,164, they owned 237,000 acres – 18 acres per person, or about 11 per cent of the inquiry district.[98] Just over half of this land was vested in incorporations, so was not available for Māori to occupy or use directly.[99]

The Crown nevertheless owed duties to Whanganui Māori.

The Crown conceded that it had a duty to monitor the extent of remaining Māori landholdings.[100] Where we go further is to say that this duty was tied to its duty to conduct fair purchases – purchases could not be fair if they were not conducted with full knowledge of the context.

This meant that the Crown had an obligation, when considering ways of encouraging the growth and development of the colony, to ensure that Māori could participate equally in any opportunities it was promoting. It acted properly to endeavour to secure the prosperity of the colony, but it had a duty to ensure that all groups could share in that prosperity. It was also obliged to respect any decisions that Māori landowners made not to sell their land, or to live according to their own cultural preferences.

9.8.3 How we approach these issues in our report

In the next set of chapters, we look at the basic parameters the Crown set for conducting the transfer of land to incoming settlers, and how the Crown conducted its activities in progressively acquiring most of the Whanganui inquiry district. In particular, we look at whether there were mechanisms that militated against Māori in the Whanganui district losing ownership of too much land. Chapter 10 sets out Māori land policy and legislation for the nineteenth century, and chapter 14 does the same for the twentieth century. Other chapters trace what happened – and did not happen – to protect Māori landholdings in Whanganui, both before and after purchasing.

Finally, in chapter 27, we look into the connections between changing Māori fortunes and the actions and inactions of the Crown. We explore whether, in light of what we know about those acts and omissions, it is possible to say that the Crown – taking into account intervening factors like disease, culture shock, and the poor quality of most of the land – probably caused the poor socio-economic situation of Māori today.

Notes

1. Submission 3.3.52, p 6
2. Ibid, pp 4–5
3. Submission 3.3.137, p 4
4. Ibid, pp 17–18; see also submission 3.3.141, p 9
5. Submission 3.3.181, pp 8–9
6. Submission 3.3.127, pp 1–2, 6
7. Ibid, pp 11–12
8. Submission 3.3.133, p 20
9. Submission 3.3.125, p 3
10. Ibid; see also *Paki v Attorney-General* [2009] 1 NZLR 72 at para 116
11. Submission 3.3.127, p 4
12. Ibid
13. Ibid, p 5
14. Ibid, p 3
15. Submission 3.3.133, pp 18–19
16. Marquess Normanby to Captain Hobson, 14 August 1839, in Robert McNab, ed, *Historical Records of New Zealand*, 2 vols (Wellington: Government Printer, 1908), vol 1, p 734
17. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 36
18. Normanby to Hobson, McNab, *Historical Records of New Zealand*, vol 1, p 734
19. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 211
20. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 292
21. Normanby to Hobson, McNab, *Historical Records of New Zealand*, vol 1, p 734
22. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Brooker & Friend Ltd, 1987), p 201
23. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: GP Publications, 1991), vol 1, xvii
24. Waitangi Tribunal, *The Kaipara Report* (Wellington: Legislation Direct, 2006), p 57
25. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 1210
26. Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 294; Lord Stanley to Lieutenant-Governor Grey, 13 June 1945, BPP, 1846–47, vol 5, p 230
27. Document A100 (Macky), p 52
28. Document A94 (Loveridge), pp 276–277
29. Waitangi Tribunal, *Muriwhenua Land Report*, p 211; Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 345; Waitangi Tribunal, *Wairarapa ki Tararua*, vol 1, p 332
30. Document A94 (Loveridge), pp 293–294; Waitangi Tribunal, *Wairarapa ki Tararua*, vol 1, pp 51–52
31. Document A94 (Loveridge), pp 306–315; Earl Grey to Governor Grey, 23 December 1846, BPP, 1846–47, vol 5, pp 64–72
32. Governor Grey to Earl Grey, 7 April 1847, BPP, 1847–50, vol 6 [892], pp 16–17
33. Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 302; H Merivale (for Earl Grey) to J Beecham, 13 April 1848, enclosed in Earl Grey to Governor Grey, 3 May 1848, BPP, 1847–50, vol 6 [1102], p 155
34. Waitangi Tribunal, *Te Tau Ihu*, vol 1, pp 300–301, 319–320

35. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6, 1847–50, vol 6 [1120], pp 22–26. This dispatch has been discussed in a number of reports: see Waitangi Tribunal, *Hauraki Report*, vol 3, p 1212; Waitangi Tribunal, *Wairarapa ki Tararua*, vol 1, p 55; Waitangi Tribunal, *Kaipara Report*, p 51; Waitangi Tribunal, *Te Tau Ihu*, vol 1, pp 297–304.
36. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6, 1847–50, vol 6 [1120], pp 24, 25
37. Ibid
38. Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 303; H Merivale (for Earl Grey) to J Beecham, 13 April 1848, enclosed in Earl Grey to Governor Grey, 3 May 1848, BPP, 1847–50, vol 6 [1102], p 154
39. Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whanui Series (Wellington: GP Publications, 1997), vol 2, pp 140–141; Waitangi Tribunal, *Kaipara Report*, p 56
40. Ward, *National Overview*, vol 2, p 141
41. Governor Grey to John Jermyn Symonds, 17 April 1846, enclosed in Governor Grey to Lord Stanley, 19 April 1846, BPP, 1846–47, vol 5, p 550
42. Ward, *National Overview*, vol 2, p 146; Waitangi Tribunal, *Kaipara Report*, pp 52–53, 54
43. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 562
44. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1212
45. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, pp 563–565
46. Waitangi Tribunal, *Kaipara Report*, p 56
47. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1212
48. Native Land Act 1873, s 24
49. Native Land Purchase and Acquisition Act 1893, s 15
50. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, rev ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 631; see also Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 457
51. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 630–631
52. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 564
53. Ibid, p 566
54. Ibid, p 568; Robert Stout and A T Ngata, 'Native Lands and Native Land Tenure (General Report on Lands Already Dealt with and Covered by Interim Reports)', 11 July 1907, AJHR, 1907, G-1C, p 8
55. Submission 3.3.127, p 4
56. Submission 3.3.133, pp 19–20
57. Submission 3.3.127, pp 1–5
58. Submission 3.3.133, p 20
59. Document A84 (Hawke), p 3
60. Ibid
61. Transcript 4.1.15, p 220
62. Document A84 (Hawke), pp 4–5
63. Ibid, pp 6–8
64. Ibid, pp 4, 5
65. Transcript 4.1.15, pp 221–222
66. Ibid, p 255
67. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 941
68. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, pp 592–593
69. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 931
70. Ibid, p 955
71. Waitangi Tribunal, *Hauraki Report*, vol 3, pp 1210–1211
72. Ibid, p 1208; Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 948
73. Waitangi Tribunal, *Hauraki Report*, vol 3, pp 1208–1209
74. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 944
75. Ibid
76. Ibid, p 943; Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 595; see also James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Penguin Books, 1996), p 350
77. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 943–944; Belich, *Making Peoples*, pp 349–350
78. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 945–946
79. Ibid, p 946
80. Ibid, pp 941–942
81. Waitangi Tribunal, *Hauraki Report*, vol 3, pp 1215–1218
82. Ibid, p 1228
83. Document A145 (Bayley), pp 31–32
84. Document A154 (Walton), pp 126, 129, 133, 134, 136, 137, 138. For a discussion of population estimates, see document A82 (Innes).
85. Document A154 (Walton), p 126; Statistics New Zealand, *Results of a Census of the Colony of New Zealand, 5th April 1891*, http://www3.stats.govt.nz/historic_publications//1891-census/1891-results-census/1891-results-census.html, app C, tbl 4
86. Document A145 (Bayley), pp 24–26
87. Document A136, pl 128
88. Document A145 (Bayley), p 24
89. Ibid, p 100
90. Waitangi Tribunal, *Ngai Tahu Report*, vol 2, p 239
91. Ibid, p 239
92. Waitangi Tribunal, *Wairarapa ki Tararua*, vol 2, p 561
93. Submission 3.3.125, p 3
94. *Paki v Attorney-General* [2009] 1 NZLR 72
95. Robert Stout and A T Ngata, 'Native Lands and Native-Land Tenure: Report of Native Land Commission on the Operation of Section 11 of "The Native Land Settlement Act, 1907"', 11 March 1908, AJHR, 1908, G-1F, p 2
96. Submission 3.3.127, p 4
97. Ward, *National Overview*, vol 2, p 146
98. Document A66 (Mitchell and Innes), p 61; doc A66(e) (Innes), p 3. We note that the Māori population of the Whanganui district in 2006 includes some people from non-Whanganui iwi, and over 70 per cent of the main Whanganui iwi Te Ātihaunui-ā-Pāpārangi were not living in the district by this time. In 2006, Te Ātihaunui-ā-Pāpārangi numbered 10,437 in total: see Statistics New Zealand, '2006Census-Excel-Tables.xls' Excel spreadsheet, 20 March 2007, http://www.stats.govt.nz/~/media/statistics/census/2006-reports/quickstats-subject/maori/2006census-excel-tables.xls CensusHomePage/QuickStats/quickstats-about-a-subject/maori.aspx, tbl 33. In 2013, the total population of the Te Ātihaunui-ā-Pāpārangi had grown to 11,961 people: '2013 Census Iwi Individual Profiles: Te Ati Haunui-a-Pāpārangi',

Statistics New Zealand, http://m.stats.govt.nz/census/2013-census/profile-and-summary-reports/iwi-profiles-individual.aspx?request_value=24611&parent_id=24609&tabname=#24611, accessed 11 September 2015.

99. Document A66(e) (Mitchell and Innes), p 3

100. Submission 3.3.127, p 2

Map sources

Map 9.1: Document A136 (District Overview Mapbook 1), pl 128, 'Land Use Capability Assessment'; Landcare Research database, 1979; LINZ topographic data

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CHAPTER 10

POLITICS AND MĀORI LAND LAW, 1865–1900

10.1 Introduction

In this, the first of four chapters on the Native Land Court and Crown purchasing in the nineteenth century, we look at how policy and legislation relating to Māori land developed, and the extent to which Whanganui Māori were involved. Many previous Tribunals have reported on how the introduction and operation of a system to determine titles to Māori land affected Māori of the North Island during this period. The Native Land Court commenced its proceedings in Whanganui during the uneasy peace that settled across the district following the conflicts of 1864 and 1865. By 1900, three and a half decades later, the court had heard and determined title to some 1.93 million acres, which comprised most of the land not included in the area of the Whanganui Purchase. The Crown purchased 58 per cent of this land (1.1 million acres) – just over 50 per cent of the inquiry district in total.

This chapter examines local political forces that brought about the creation of the Native Land Court and the plethora of laws relating to Māori land. We ask to what extent Māori were involved in determining the form and purpose of the court and laws, and how the Crown responded when Māori protested about them. We also look at Māori political movements in this period, paying particular attention to the Whanganui Lands Trust, better known as Kemp's Trust.

As well, it is important to bear in mind that the economic and political developments in New Zealand that saw radical land tenure changes mirrored similar trends elsewhere in the world. Nicholas Bayley's report to the Tribunal[1] described the international emergence of the nation state that gathered pace in the nineteenth century. This nation state

> found accommodating the extraordinary variety of customary land tenure wherever it existed virtually impossible. It always introduces a radically different system, typically individual freehold tenure. 'The fiscal or administrative goal toward which all modern states aspire is to measure, codify, and simplify land tenure'.[2]

In all developed and developing national states, the push to measure, codify, and simplify led to individual ownership, with the owner having broad power to use and dispose of the land, evidencing ownership in a uniform deed of title enforced through judicial and police institutions. The enclosure of the Commons in England, and the clearance of the Highlands in Scotland, were other examples of this drive towards individual freehold tenure.[3]

The local story we tell in this chapter shows colonial New Zealand playing its part in these worldwide trends. The Native Land Court was the means of reconceiving Māori land as an 'administrative landscape . . . blanketed with a uniform grid of homogeneous land, each parcel of which has a legal person as owner and hence taxpayer'.[4] Pākehā politicians passed legislation that enabled the Pākehā judges who presided in the court to convert Māori land estates with collective ownership into surveyed blocks with individualised interests that could be purchased. The colonial Government, which was just beginning to assume full authority for the direction of the colony, saw economic development in terms of an unrestricted private market in Māori land from which the Crown would soon exit.

This was the situation in Whanganui when, in 1866, the court began investigating title to land immediately to the north of the Whanganui purchase area.

However, the legislative regime for determining Māori land titles and the rules for alienating Māori land did not remain static, as opinions about the appropriate level of Crown involvement waxed and waned. From the early 1870s, successive governments led large, state-driven efforts to develop infrastructure, funded by new immigrants buying up Māori land. The Crown got back into purchasing Māori land, ultimately going as far as resuming pre-emption, and variously restricting or preventing private purchasing. Meanwhile, ideas about the type of title that the court should produce also shifted. Eventually, all individuals with ownership interests in land could be recorded on the title.

Bayley commented that conversion of common property into units that could be easily assessed and traded 'has never been easy, has often been violently resisted, and has not always been completely successful'.[5] Such was the case here. Māori in Whanganui and elsewhere protested their lack of control and authority over land title determination and land alienation. In particular, they remonstrated against individuals being able to initiate title determination, and sell interests in land, without recourse to the broader community. From the late 1860s, Māori in Whanganui and elsewhere proposed alternatives to the court, particularly their own rūnanga. Whanganui leader Te Keepa Te Rangihiwinui sought Māori control over alienation, and established a trust designed to hold and protect a significant proportion of Whanganui land. Māori pursuit of these kinds of alternatives dominated Crown–Māori engagement during this period. Some rangatira focussed on working with the Crown, hoping that their loyalty would be rewarded and their concerns listened to, while others preferred to disengage and set up their own processes. Some, like Te Keepa, used both approaches at various times.[6]

10.2 The Hot Tub

10.2.1 Seeking the agreement of a group of expert historians

The issue for this inquiry, as it has been in many others, is not just the process by which title to land in the Whanganui district was determined, but the connection between that process and the large-scale alienation of land that followed. Also central is the role of Māori in the process. Numerous Waitangi Tribunals before us have reported on these and other Native Land Court issues. In 2004, the Tūranga Tribunal expressed hope that its detailed coverage of Native Land Court issues 'might finally resolve one of the enduring subjects of debate between Crown and claimants in Treaty jurisprudence and historiography'.[7] Since 2004, however, the Kaipara, Hauraki, Te Tau Ihu, Central North Island, Wairarapa ki Tararua, Te Urewera, and National Park Tribunals have all reported extensively on Native Land Court matters.

Wanting to avoid reworking well-tilled ground, this Tribunal adopted a fresh approach. We sought to use the 'hot tub' method deployed in courts to bring together expert witnesses in a way that facilitates their agreeing on as much as possible of the evidence in dispute. We sought by these means to move the Crown and claimants to a position where issues regarding the Native Land Court no longer needed to be contested before the Waitangi Tribunal.

10.2.2 The process

Six historians with expertise in the Native Land Court took part in the process. They were Dr Robyn Anderson, now

Topic	Agreement	Disagreement
Origins	By the 1860s, there was a need for some kind of court, tribunal, or rūnanga to determine titles to customary Māori lands and a range of available options to choose from.	
Design of court	The Native Land Court was not a Māori-designed institution and did not operate in a Māori way.	Māori involvement in the establishment of the court and in its operations was adequate.
Use of court	Māori aspirations about land title changed over time. Māori views on the native land laws generally were diverse, ranging from those who supported the court to those who sought its abolition, and including those who suggested fundamental changes. However, they had no option but to use the Native Land Court if they wished to secure a legally recognised title to their lands. Māori usually needed to attend the court personally in order to protect their interests, whether they wished to participate or not.	Māori supported the court and the title options available to them, the options reflected Māori custom, and the court did not have much impact on customary political authority.
Community control	The Native Land Court system made community control of lands and resources more difficult in many cases. The Crown failed to provide a full community title option prior to 1894.	
Crown influence over court	The Crown employed various mechanisms to further its own purchases and was able to exercise a degree of control over where and when the court sat. However, it was relatively rare for the Crown to directly intervene in the court's operations.	The Crown had considerable influence and control over the court, and the court's awards helped to further the Crown's policy agenda.
Protection mechanisms and remedies	Overall, Crown policies and legislative measures to promote Māori land retention were minimal and had little impact on actual retention rates. Nor did the Crown intend those measures to establish a permanent barrier to alienation. Restrictions against alienation usually did not apply to the Crown's own purchase activities.	The Crown responded appropriately to Māori complaints and suggestions concerning the court.
Costs and impact	While any title system would have incurred costs, the Native Land Court regime imposed particularly heavy survey costs on Māori, and these were regularly paid for with land. Meeting the costs of the court system was made increasingly difficult as court rules on succession made effective land utilisation and management more difficult for communities of owners.	The Native Land Court regime overall had a great impact on the utilisation of land by Māori; the costs of the court process, both direct and indirect, were a major burden for Māori communities, and were unfair.

Table 10.1: Agreements and disagreements of the hot tub historians

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a Tribunal member but previously the author of a number of historical reports that the Crown Forestry Rental Trust commissioned; recognised historians Bruce Stirling, Tony Walzl, Robert Hayes, and Dr Donald Loveridge, all of whom have presented evidence on the Native Land Court in Tribunal inquiries; and Professor Richard Boast, an acknowledged expert in the field. Barrister Phillip Green facilitated.

The group met several times from March to May 2009 to consider 15 main questions about the establishment of the court; its purpose; Māori involvement in its creation and operations; the land title options available to Māori through the court; the impact of the court upon Māori control and utilisation of land and resources; Māori reactions to the court and its operations; the Crown's response to problems caused for Māori by the court; and the impact of the court on Māori society.[8]

The historians all signed an agreed position statement dated 8 May 2009. It recorded many points of agreement, though these were often qualified by points of disagreement and statements of clarification. There was in fact only one question that the historians answered unanimously without qualification.[9] The degree of dissent over the other 18 questions varied from minor points of clarification to fundamental disagreement.

Table 10.1 summarises the agreed position statement.

10.2.3 The parties' views on the hot tub

Claimant counsel cautioned against treating the agreed position statement as a comprehensive account of the court and its effects, given the relative absence of Whanganui-specific examples or comments in the statement, and the fact that the hot tub historians would not be available for cross-examination.[10] The Crown was more positive about the process and its outcome, notwithstanding some reservations.[11] Crown counsel urged us to proceed on the basis of the areas of agreement and disagreement among the historians to make our own assessment of the issues.[12]

Following the hot tub process, the Crown made a significant concession on the native land legislation as it was first enacted in 1865: specifically, that the so-called '10 owner rule' was an inadequate attempt to provide a form of communal title because it failed to allow the community to enforce the trustee role of the 10 specified owners, and this did not reflect the Crown's obligations to actively protect the interests of Māori in their land.[13] The Crown also noted 'the importance of previous Crown acknowledgements of Treaty breach related to the native land laws and Crown purchasing'.[14] In brief, the Crown accepted that it:[15]

- did not protect traditional tribal structures by providing communal governance mechanisms;
- enabled individuals to deal with land without reference to iwi and hapū, making land more susceptible to partition, fragmentation, and alienation, contributing to the erosion of tribal structures;
- enabled legislation which placed the Crown in the position of a privileged purchaser and, in turn, imposed significant Treaty obligations of good faith and fair dealing on the Crown;
- sometimes purchased interests in Māori land using a combination of aggressive techniques, including the unreasonable and unfair use of monopoly power, and the use of advance payments; and
- failed to ensure particular groups retained sufficient land for present and future generations, and in particular:
  - failed to monitor and assess the ongoing impact of land alienation;
  - failed to instigate and follow clear procedures to identify and exclude lands to be retained; and
  - failed to provide adequate reserves and ensure sufficient protection from alienation for the few reserves that were provided.

10.3 This Chapter

The hot tub process was a useful exercise in achieving general agreement on the lack of protections afforded to Māori in the native land legislation, and the detrimental consequences. There remained, however, significant areas of disagreement between the parties at the conclusion of our hearings on both general and specific matters, and particularly how they affected the Whanganui inquiry

district. Their most fundamental disagreement was around the extent to which the system establishing the determination of Māori land titles was designed to facilitate the Crown's large-scale acquisition of Māori land.

Our task in this chapter, therefore, is to establish whether the policy and legislation underpinning title determination and Crown purchasing was in breach of the Treaty, and the extent of Whanganui Māori involvement in how that policy and legislation was decided. Our conclusions on these matters provide the frame of reference for our consideration in the following chapters of how the Native Land Court and Crown purchasing system operated in Whanganui. In doing so, we draw on the evidence brought together in other inquiries, including relevant findings of other Tribunals. Although the Whanganui experience shares many of the characteristics of what happened in other districts, it featured a particular combination of factors which is unique. Our treatment, while resembling that of others, is shaped to describe this experience.

We will not discuss the operation or impact of the Court or land purchasing in this chapter, except where necessary to understand the political responses to it. These topics will instead be discussed in dedicated chapters following this one.

We will look at Government policy, Māori protest, and Crown response in six periods:

- 1865–69: The court is created and the Crown abandons pre-emption; Māori are not consulted
- 1869–77: The Crown resumes purchasing and reforms the court; Māori advocate rūnanga as an alternative
- 1877–84: Crown purchasing is extended then retrenched; Whanganui Māori form a lands trust
- 1884–92: Early liberal reforms and Atkinson's reversion; Māori continue to seek reform
- 1892–1900: Liberal reforms; ongoing Māori protest

10.4 The Parties' Positions

10.4.1 What the claimants said

(1) *The creation of the court*

The claimants approved of the Hauraki Tribunal's conclusions about Māori land tenure.[16] That Tribunal found that Māori land tenure could not remain static or 'frozen in 1840 modes'. To meet the needs of both Māori and the settler population these traditional modes needed

> to evolve in response to demographic change, population movements, the requirements of mining, commercial agriculture and other land uses, including its sale, lease or development, both in townships and rural districts.[17]

As such, the Hauraki Tribunal noted that Crown had good reasons to

> establish a tribunal, independent of the Executive, to determine intersecting and disputed claims to Maori customary land, and to administer legislative modifications to customary tenure to meet new needs.[18]

But in fact, the claimants said, the Crown established the Native Land Court to

- Convert customary ownership into a form of title that could be easily alienated by the Crown and private purchasers';
- Undermine customary Māori authority; and
- Promote colonisation and settlement on land made available by Native Land Court title investigation and subsequent sale.[19]

The Crown's overriding objective during the period was to 'expedite economic development'.[20] The claimants drew our attention to the Tūranga report, which found that the Crown imposed the court upon Māori without consultation or consent, contrary to the Crown's duty to respect Māori authority over Māori land.[21] The claimants argued that this also occurred in Whanganui.

(2) *How the court worked*

The Native Land Court was the only avenue through which Māori could secure a legally recognised title to their land that they could use in the colonial economy. In addition, the ability of any Māori individual to apply for a title determination hearing drew all of those who claimed interest in the land affected into the court, incurring

unwanted costs in the process. Non-attendance risked the loss of one's interests. For these reasons, the claimants said, Whanganui Māori were obliged to engage extensively with the court even if they opposed it.[22]

The claimants said it is wrong to view the court as 'a passive arm of the state'.[23] It served the Crown's overriding policy objective of the late nineteenth century: expediting economic development, which involved promoting settlement throughout the colony.[24]

(3) *Crown purchasing*

The claimants argued that the Crown's purchasing system, 'in its entirety, was coercive and unfair'.[25] It was based 'on an elaborate legal edifice developed by the Crown, and had as its primary objective facilitating the purchasing of as much Maori freehold land as possible as cheaply as possible'. An important aspect was the

> privileging of the Crown against private buyers of Maori land whenever that was necessary, ranging from proclaiming particular blocks to regional re-impositions of Crown pre-emption to the nationwide re-imposition of Crown pre-emption in 1894.[26]

The claimants highlighted the finding of the Mōhaka ki Ahuriri Tribunal that, contrary to its duty of active protection, the Crown 'was fixated on the acquisition of Maori land and was against assisting Maori to develop their land'.[27]

(4) *Māori aspirations*

Citing the conclusions of the hot tub historians, the claimants submitted that their tūpuna wanted to continue managing their land and resources at a community level.[28] The Crown was unwilling to provide the range of title options that would have facilitated this. In the claimants' view, attitudes towards Māori had hardened by 1865 and 'there was an unwillingness to create a system that would have appeared unduly controlled by Māori'.[29]

Whanganui Māori reacted to the Native Land Court and the Crown's land purchasing practices by seeking a greater role in both the title adjudication and land administration processes. The best example of this, the claimants submitted, was the Whanganui Lands Trust (or Kemp's Trust). The aim of the Trust was to enable Māori to engage in the settlement process 'in a controlled manner', 'and for Maori to have collective authority over the administration of their lands'.[30] The Crown 'actively sabotaged' the work of this Trust, and punished those who supported Te Keepa.[31]

10.4.2 What the Crown said

The Crown's concessions of Treaty breach relating to the nature of titles issued under the nineteenth-century native land legislation and its purchasing practices focused on the inadequacy of the land title options open to Māori, the inadequacy of the Crown's response to problems caused by its title adjudication regime, and the mismanagement of land purchasing. The Crown said that its concessions did not amount to a condemnation of the entire land court process, nor of the Crown's land purchasing practices.

(1) *The creation of the court*

The Crown submitted that facilitating the sale of Māori land was 'not the principle object' of the court or the land title system it administered.[32] It contended that 'the Treaty does not require consent to govern', and Māori consent to the introduction or application of Māori land laws was therefore not necessary.[33]

(2) *How the court worked*

The court was established to be an 'independent and competent' tribunal for determining the title of customary land, the Crown submitted.[34] It pointed to the finding of the Hauraki Tribunal that the establishment of such a tribunal did not of itself infringe Treaty principles.[35]

The Crown acknowledged that Whanganui Māori sought greater control over the title adjudication process, but said that Māori did have a measure of control over land tenure issues through the Native Land Court. The court generally left it to Māori to 'determine boundaries, complete lists of owners and settle other matters relating to their own titles'.[36]

The Crown accepted that Māori who used the Native

Land Court incurred a range of costs, including significant expenses related to surveys and residing in towns while awaiting court hearings. However, it maintained that the fairness of such costs can only be properly assessed on a case-by-case basis. Such costs might be considered inevitable problems of any process of tenure reform.[37]

(3) *Crown purchasing*

The Crown submitted that there 'can be no suggestion that purchasing land from Māori is itself a Treaty breach'.[38] Thus, the Crown did not breach the Treaty when it purchased land from Māori for the purpose of facilitating settlement. It accepted, though, that the Treaty imposed on the Crown a duty 'to act fairly and in good faith', and a duty 'to act reasonably so as to protect Maori interests'. It rejected the idea that the Treaty imposed a duty to consult in relation to purchasing land, as each purchase was a deal between the Crown and the owners of the land. Each owner, in the Crown's view, had a Treaty right to enter into such transactions. Further, the Crown had no duty to act exclusively in the interest of the landowners or to otherwise act in a paternalistic fashion towards Māori. 'The essence of the Treaty relationship . . . is respect for the other party's autonomy.'[39]

Regarding its approach to purchasing land, the Crown submitted that there was no comprehensive Crown purchasing plan or system designed to disadvantage Māori.[40] The lack of any such system means that each purchase has to be considered individually and 'assessed on its own terms'. Thus, while the Crown accepted that its actions might have fallen short of the required standards in some instances, such a finding does not apply to its purchasing as a whole.[41]

10.5 The Land Court's Early Years, 1862–69

10.5.1 Introduction

In this section we look at the first years of the Native Land Court, and how colonial politicians took quite different positions on how to deal with Māori land. Initially, the court's governing legislation allowed for Māori involvement in title determination, and for titles to be vested in tribal groups. By 1865, however, the court had become a body led by Pākehā judges, in a system that allowed a maximum of 10 owners to be recorded on the title. Alongside these changes, the Crown abandoned pre-emption in favour of free trade in Māori land. The enabling legislation was passed by a colonial Parliament with no Māori representatives, in a period when there was war between the Crown and Māori in many parts of the North Island, including Whanganui.

As we have noted, the parties disagreed on the Crown's underlying intentions in creating the court. The claimants submitted that the Crown established the Native Land Court in order to convert customary ownership into a form of title that could be easily alienated, undermining customary Māori authority and promoting colonisation.[42] The Crown disagreed, arguing that the court was established as

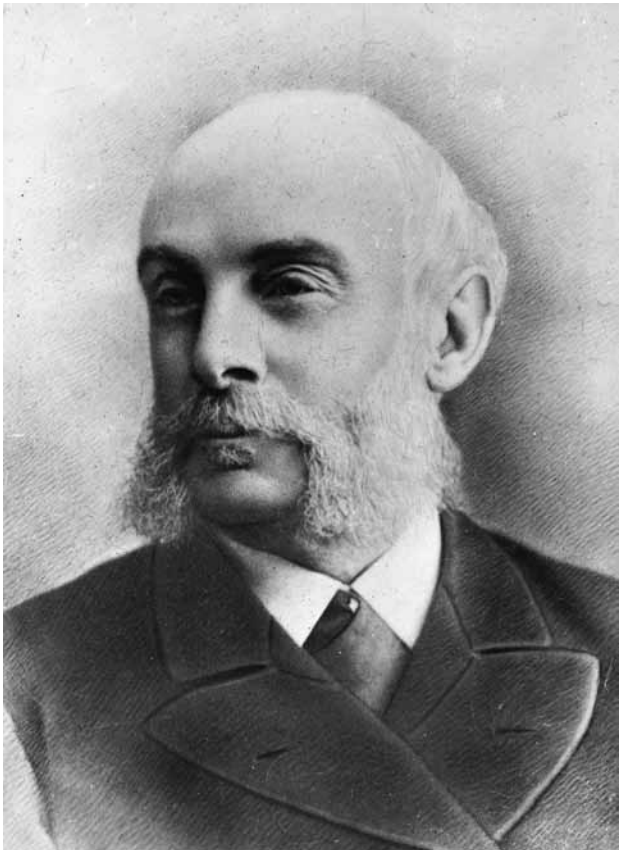
> an independent and competent tribunal [to] investigate claims, including competing claims, to customary land, declare who were the owners of that land, and clothe that determination with a certificate of title.[43]

The Crown denied that it needed Māori consent for the introduction of native land legislation.

We look now at how the initial native land legislation was developed, and the extent to which Whanganui Māori were involved, prior to the court's arrival in Whanganui in 1866.

10.5.2 The Native Lands Act 1862

The Native Lands Act 1862 emerged from a period of intense debate about how to deal with Māori land. We recounted in chapter 8 the kōrero (discussions) at Kohimārama about land tenure, and the role of the district rūnanga established under Grey's new institutions. The Fox ministry had introduced a different Native Lands Bill, which was to give district rūnanga a major role in determining land titles under the supervision of Crown officials. The collapse of the Fox ministry, however, saw these plans supplanted by those of Francis Dillon Bell, Native Minister in the Domett ministry.



Francis Dillon Bell, around 1881. Fluent in Māori, Bell negotiated land sales and held political office in administrations over 25 years. He was the architect of the Native Lands Act 1862 under which the Native Land Court investigated and determined who owned Māori land.

(1) *The Act's provisions*

Bell's Native Lands Act did away with some of the safeguards against excessive alienation contained in Fox's Bill, but retained a significant role for Māori in the process of determining titles. The Act allowed the Governor to establish local courts to determine, according to custom, the ownership of land. Each court would have a European magistrate acting as president. There was provision for the Governor to empanel a jury to hear cases, and the courts would issue certificates of title to a 'Tribe Community or Individuals' who could sell or lease to any party they chose (sections 4, 5, 6).[44] Bell's intention was that although they would be headed by a European magistrate, the courts would consist mainly of leading local chiefs.[45] Regulations of December 1864 clarified the composition of the court:

> A Court established under the said Act shall consist of one Chief Judge, being a European Magistrate, and such other Judges, being European Magistrates, and such Native Assessors as may be from time to time appointed by the Governor. Any one of the Judges sitting, with two Native Assessors, shall have the powers of the Court.[46]

Where tribal titles were issued, provision was made for the subsequent partition of the land. Bell explained that he envisaged a two-stage process. Tribal groups would receive titles from the court, and then individuals or families could pursue partition orders to enable them to sell or develop parts of the tribal estate, with the balance retained under a tribal title.[47] Thus, while the 1862 Act sought to promote individualised titles, it did so cautiously.

(2) *Removal of pre-emption*

Crucially, section 29 of the 1862 Act also removed penalties for the purchase, lease, and occupation of Māori land, as long as the land was held under a certificate of title. Crown pre-emption under article 2 of the Treaty had been in place for nearly all the time since the Treaty was signed. Its removal signalled a fundamental change in the Treaty relationship, for the Crown's exclusive right to purchase Māori land also protected Māori. In sections 9 and 10 of the new Act, the Crown did recognise an ongoing protective duty because it empowered the Governor to set aside inalienable reserves for Māori from any land that went through the court.

(3) *What lay behind the 1862 Act?*

There was a range of motives behind the 1862 Act, but we agree with the Hauraki Tribunal that the Native Land Acts' primary purpose was to facilitate the alienation of Māori land for settlement purposes.[48] That Tribunal pointed to

speeches and memoranda of senior politicians that made clear the intention 'to make huge inroads into the Maori customary estate, by purchase of the freehold'.[49]

Dr Loveridge put it to us that an important motivation for the Crown when introducing the court was the so-called 'civilising' effect that came with the converting of customary Māori lands into titles held under individual grant from the Crown, which many in settler society considered a crucial precursor to Māori advancement and assimilation.[50] The Hauraki Tribunal considered the civilising aspect no more than a secondary motivation, and one that

> exhibited an ethnocentric and paternalistic tendency to prescribe the kinds of tenure to which Maori customary land would be converted, rather than work closely with Maori to design forms of tenure which reflected Maori aspirations.[51]

We agree.

(4) *Māori input*

The establishment of the Native Land Court under the Native Lands Act 1862 was hugely important for the future of Māori land in Whanganui and elsewhere. Yet the decision to establish the court did not involve Māori to any significant degree. Māori were not represented in Parliament when the 1862 Act was passed, and Government engagement with Māori on the matter was minimal.

The Crown said that the 1856 Board of Inquiry into 'the State of Native Lands' and the 1860 Kohimārama conference were evidence of ongoing dialogue on tenure reform.[52] However, just nine Māori in total, none of whom appear to have been from Whanganui, gave evidence to the Board,[53] which concluded that in Māori customary land there was 'no such thing as an individual claim, clear and independent of, the tribal right'.[54]

Over the late 1850s and early 1860s, Ministers and officials struggled to work out how to adapt or transform customary Māori land title into something which would work with European modes of land ownership and commerce. One proposed solution was the Native Territorial Rights Bill 1858, which would have involved resident magistrates, assisted by Māori juries, investigating ownership to customary land and issuing titles, and the partial waiver of Crown pre-emption.[55] However this was disallowed by the British Government on the advice of Governor Browne,[56] sparking a three-year search for alternatives.

The Hauraki Tribunal observed that of 'the numerous draft Bills and paper schemes that passed between Governors, Ministers, officials, and the Colonial Office between 1859 and 1862', none were the subject of any formal discussion with Māori.[57]

(5) *Kohimārama conference the exception*

The exception was the Kohimārama conference of 1860. That occasion *was* an example of Crown engagement with Māori on important matters affecting them, as we have already observed (see section 8.4.3). Governor Browne urged the chiefs there 'to consider the difficulties and complications attending the ownership of land', with a view to devising some plan 'for removing or simplifying them'.[58] The Governor suggested that disputes could be resolved through a committee of 'disinterested and influential Chiefs', or a panel consisting of two tribal nominees from each party in disagreement, as well as a fifth independent person.[59] He also hoped that, while some land 'might be held in common for tribal purposes', every chief and every member of his tribe would secure a Crown grant for his own piece.[60]

However, the Kohimārama conference did not secure a mandate to introduce the Native Land Court or any other major change. The Tūranga Tribunal observed that at least some of the rangatira who attended the conference 'were interested in the possibility of a titles tribunal, but hardly committed one way or the other'.[61] As we saw in chapter 8, some Whanganui chiefs saw a need for change to the traditional land ownership system. Acceptance of the need for change did not, however, mean that they were in favour of the introduction of the Native Land Court. Whanganui Māori had previously indicated their preference to deal with land matters through their rūnanga; they were more likely to have agreed with the proposal of Ngāti Whātua chief Pāora Tūhaere, who said that title should be determined by tribal komiti. In our district,

some chiefs saw a need for a formalised title system and were open to the idea of Crown grants.

Attendees at the Kohimārama conference lacked details of the Crown's intentions. As we outlined in chapter 8, Grey's successor Browne intended to call a second conference the following year, but this never eventuated. Had the conference gone ahead, it seems likely that title reform would have been more fully discussed.

(6) *Grey in Whanganui*

When Grey travelled to Whanganui late in 1862 with his interpreter and private secretary John White, the Native Lands Act was in force. However, Grey's discussions with Māori focused on his plans for the 'new institutions' of Māori self-government, which we discussed in chapter 8. White, soon to become Whanganui resident magistrate, offered to introduce the new institutions in Whanganui, saying that

> If [Whanganui Māori] agreed to his terms they should seek out among themselves, men who have more knowledge than the rest, who are speakers, and appoint them to be magistrates, to whom the people may go and have their disputes settled by them.[62]

The assembled chiefs mostly responded positively, and asked about land issues. Grey then said that he was the 'preserver of lands (te Rou Rahui o nga whenua), and being the head in this country must be consulted on all land questions'.[63] He explained that land sellers needed to have good title to their land, and that boundary disputes should be settled by European and Māori commissioners, with the Governor having the final say.[64] It is not clear whether Grey talked at all about the 1862 Act.

(7) *The court begins, then changes*

Under the 1862 Act, the court was to be established on a district-by-district basis in order to avoid provoking Māori resistance. The first district to have a court was Kaipara in Northland, where in 1864 Resident Magistrate John Rogan presided over hearings in which four local rangatira were officially designated as Native Land Court judges. Juries were empanelled from those in attendance.[65] These first hearings were encouraging, and court districts were proclaimed elsewhere in the north and more Māori judges appointed.[66] This seemed to be a positive start, but drastic change was afoot.

From December 1864, before any further cases could be heard, a number of proclamations ushered in wholesale change. The five court districts proclaimed under the 1862 Act were abolished and replaced by one district covering the entire country. This established a single, centralised Native Land Court, and did away with the more localised regime.[67] Francis Dart Fenton was appointed as the first chief judge of the new court in January 1865, and other European officials became judges. The 11 Māori who previously held office as judges were now assessors.[68]

In summary, a flexible and local court system with a high degree of Māori input was abandoned in favour of a centralised, formal, and European-dominated regime. The chief judge himself drafted these changes into the Native Lands Act of 1865.[69]

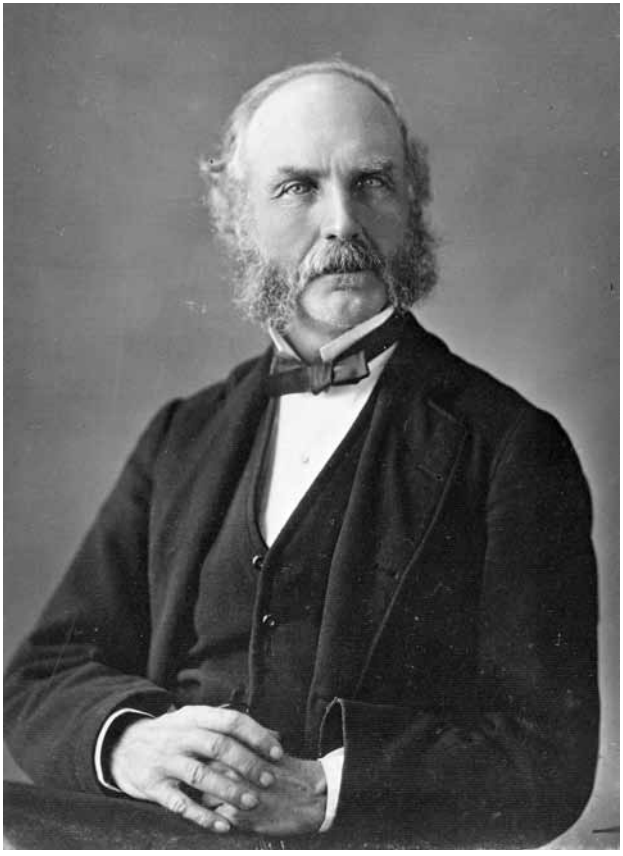
Māori played no part in any of this. They still had no parliamentary representation, and the 1865 Act was only translated into te reo and given limited circulation after it came into effect.[70] A number of senior chiefs told a later inquiry that they had never seen a translation of the Act, and remained completely unaware of its key features.[71]

10.5.3 The Native Lands Act 1865

Apart from this switch to a centralised and European-dominated system, the most important reforms that the 1865 Act brought in were:

- leading Māori had a reduced role in decision-making;
- individual Māori could initiate court proceedings; and
- the two-stage process where first, tribal titles were ascertained, and then individual interests were determined, was repealed.[72] Instead, title was usually granted to 10 individuals who in theory represented a larger group. Legally and practically, however, the 10 owners nominated took all the rights, and the other customary right holders were left with none.

Thus, the 1865 Act marked the beginning of a shift away from communal ownership based on Māori custom.



Francis Dart Fenton, 1870s. Appointed first chief judge of the Native Land Court in 1865, Fenton was responsible for drafting and administering the Native Lands Act 1865. This Act took Māori land legislation in a Eurocentric direction.

The Role of Assessors

1865: One judge and two assessors must sit. All three must agree on decision.
1867: One judge and one assessor must sit. Both must agree on decision.
1873: Assessors may sit at the discretion of the judge but their agreement is not necessary.
1874: One judge and one assessor must sit. Both must agree on any decision.
1894: Assessor to sit with judge but his agreement is not necessary.
1909: Assessor may sit but his agreement is not necessary.[1]

Individuals (rather than hapū and iwi) gained sway under subsequent law changes.

(1) *The role of Māori in court decisions*

Not only were Māori judges redesignated as assessors, but the 1865 Act also meant it was no longer possible for Māori to outvote European judges on any decision. Section 12 stipulated that presiding judges and two assessors must concur for a decision to be made. In effect, this gave the judges a right of veto.[73] The provision allowing the use of local Māori as juries was little used after 1865, and did not appear in the Native Land Act 1873.[74] Thus, Māori could now influence the court's decisions only in the role of assessor.

The legal powers of assessors changed several times in the period after 1865 (see sidebar). Before 1894 (apart from a brief period between 1873 and 1874), any judicial decision required the assent of at least one assessor. After 1894, the assessor role was advisory only, with no assent requirement.

Although assessors were often prominent rangatira, a rule established early in the court's operations allowed them to operate only outside their own districts.[75] Historian Keith Pickens suggested that this was considered necessary in order to avoid 'any suggestion of conflict of interest'.[76] Certainly, assessors should not have sat when they had particular ties to one side or another; the parties and the judge needed to be confident that the assessors' decisions were based on tikanga and fact, rather than family loyalty or personal feeling. However, the ban on assessors sitting in their own rohe inevitably meant that the bench had limited knowledge of local whakapapa and

tikanga (law) and, after 1865, local hapū and iwi had no direct input in the decision-making process.

The relationship between judges and assessors was inherently unequal. At various times, the Crown removed the requirement that judges secure the assent of assessors to decisions of the court. According to O'Malley, there was never any suggestion that assessors might make a decision without a judge's consent.[77] The inequality of their respective roles is evident in the disparities in tenure and remuneration. Judges of the Native Land Court were appointed by letters patent and had the same security of tenure as Supreme Court judges. They were generously paid: section 7 of the Native Lands Act 1865 set the chief judge's annual salary at £800 and that of the other judges at no more than £600. By contrast, assessors held their appointments at the Governor's pleasure and their dismissal was easy; their salaries were 'variable' and 'determined by the Governor at his discretion' (section 8). In practice, the assessors were seen as subordinate to the judges throughout the period.[78]

The actual role the assessors played in the court varied. We examine their influence on the court's operations at Whanganui in our next chapter.

(2) *The 10-owner regime*

The 1865 Act signalled an aggressive approach to the extinction of native title and its replacement with individualised titles. This can be seen in the nature of the titles that the court issued most commonly under the 1865 Act. Tribal title was theoretically possible, but judges ordered it so rarely that in practical terms it was a dead letter.[79] Instead, the court issued title to a maximum of 10 owners per block, pursuant to section 23 of the Act. What became known as the 10-owner rule was supposed to apply to blocks of 5,000 or fewer acres, but was actually applied much more widely. Limiting owners to 10 at a stroke dispossessed all other members of the community with customary interests in the land.[80]

Tribunals dating back as far as the Ōrākei Report have concluded that the 10-owner system was wholly inconsistent with Māori custom and a 'most flagrant violation of the Treaty'.[81] The naming of a rangatira as one of the 10 owners on the title enabled him or her to sell that share as if it were personal property, even though that is not what was intended. Nevertheless, named owners could and did sell interests without reference to whanaunga (kin), and because the Act for the first time allowed Māori land to be used as security for loans, individuals' debt did lead to sale.[82]

Regardless of how Māori custom was evolving by the 1860s, of one thing we can be sure: custom did not contemplate arbitrarily limiting the number of persons who could claim customary interests in a particular area. It was the 10-owner rule, conceived and implemented by the Crown, that introduced that distortion of tikanga (customary law).

In this inquiry, the Crown conceded that the 10-owner rule was 'an inadequate attempt to provide a form of communal title' and one which 'did not operate in a manner that reflected the Crown's obligations to actively protect the interests of Maori in land they may otherwise wished to have retained in communal ownership'. In particular, the 1865 Act lacked a provision 'to allow the community to enforce the trustee role of the 10 specified owners'.[83] We discuss the 10-owner rule in Whanganui in the next chapter.

(3) *Succession rules*

The 1865 Act determined how Māori land was to be passed from one generation to the next, a change which had significant implications for the ability of Māori to collectively manage their land and derive a living from it. The Native Land Court adopted rules of succession that gave rise to the fractionation and fragmentation of land interests. With each passing generation, titles became more crowded, resulting in ever-diminishing returns and an even more chronic inability to manage land collectively and coherently.

Initially, the Crown's rules of succession applied only to land held under Crown grant. The Intestate Native Succession Act 1861 provided that, in cases where Māori died without a will, succession to any land interests owned by them under Crown grant should be determined by a commissioner 'according to Native custom, or most nearly

in accordance therewith'.[84] Since little Māori land was held under Crown grant at this time, the provision would have had little practical effect. This Act was repealed by the Native Lands Act 1865, 'which required the court to determine succession to "hereditaments" (land subject to a court award) "according to law as nearly as can be reconciled with Native custom"'.[85]

Chief Judge Fenton's 1867 Papakura decision established the court's process for intestate succession. Fenton declared that:

> Instead of subordinating English tenures to Maori customs, it will be the duty of the Court, in administering this Act, to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of English rules of descent, as can be secured without violently shocking Maori prejudices.[86]

In practical terms, this decision meant that the estate of a deceased person was to be inherited by all of the children in equal shares, regardless of rank, residence, gender, or level of participation in the community. Children could succeed to the interests of both parents, regardless of where they lived, providing the basis for large numbers of absentee owners to be admitted into Māori land titles.[87] Despite Fenton's statement, this did not in any way reflect 'English rules of descent', which usually favoured primogeniture in the case of intestate estates, so as to maintain properties in one piece. More importantly, the approach also ignored customary principles such as ahi kā, under which land rights lapsed if they were not used for more than three generations.[88]

(4) *Attempts at protection*

The 1865 Act did give the court power to recommend the Governor place restrictions on the alienation of land by sale, lease or mortgage. In the nineteenth century, such restrictions usually comprised a ban on alienation except by lease, and a limitation of leases to a maximum of 21 years. Subsequent Acts of 1866, 1867, and 1870 amended the approach to restricting alienation, before Māori land law was substantially overhauled in 1873. Later legislation allowed the court itself to put restrictions in place, after it had inquired into whether owners sought their imposition. However, the effect of court-imposed restrictions reduced from the late 1880s, as legislation allowed for restrictions to be lifted in ever-increasing ways.[89]

From 1866, the court was required to report whether such restrictions were desirable in respect of all blocks for which a certificate of title was to be issued. At the same time, all formal reserves were automatically deemed to be inalienable, except by way of lease not exceeding 21 years (sections 5 and 11 of the Native Lands Act 1866).

By 1867, the Crown itself recognised that the 10-owner rule needed to be changed. When the 1865 Act was passed, the Crown had expected that groups of Māori would themselves seek to partition their land into parcels of less than 5,000 acres, each with no more than 10 legal owners. When it became apparent that the court was applying the 10-owner rule to much larger blocks where the limitation of owners to 10 was manifestly unfair, Native Minister James Richmond sought to address the problem.[90]

The Native Lands Act 1867 retained the 10-owner rule, but stipulated that, where the court found more than 10 people had rights to a block, and owners agreed to a certificate of title being issued to 10 named owners, the names of all other right-holders would be recorded in court. This was intended to make it clear that the 10 named owners were under an obligation of trust to all the named interest holders. However, judges were often reluctant to use section 17 because they associated recognising many owners with the communalism that the Native Land Court was intended to abolish.[91] The Central North Island Tribunal considered the failure to stipulate an explicit trust meant that the 1867 intervention was 'a very great missed opportunity'.[92]

The Native Lands Frauds Prevention Act 1870 was also intended to protect Māori land interests. The Act allowed for the appointment of trust commissioners whose job was to investigate any alienation of Māori land. They were to approve the transfer of the land only when satisfied that the proposed alienation was not 'contrary to equity and good conscience', did not breach any trusts, had not been paid for using firearms or liquor, and would not leave the vendors with inadequate lands for their own support.[93]

Minister of Justice Henry Sewell said that the purpose of the measure was to ensure 'a system of fair dealing' in land transactions with Māori.[94] However, the trust commissioners were informed that their 'inquiries need not, in ordinary cases, be too minute'.[95] It was expected that transactions would usually be approved unless there was some element of fraud or illegality. With just five part-time trust commissioners covering the whole of the country, they could not undertake detailed investigations, and some were notoriously lax in fulfilling their duties. In fact, it was unclear whether trust commissioners were supposed to inquire into Crown purchases as well as private purchases.[96] In 1883 and 1888, legislation was passed clarifying that the Crown was exempt from the trust commissioners' regime.[97]

(5) *Appeals and rehearings*

From the Native Lands Act 1865 onwards, native land legislation contained provisions enabling Māori dissatisfied with decisions of the Native Land Court to seek a rehearing. Under section 81 of the Native Lands Act 1865, the Governor in Council could grant a rehearing if the application was made within six months of the court's original decision. If granted, all matters relating to the original judgment would be annulled and the matter would be heard again from the start. The Act did not state the grounds for granting a rehearing.

The period for applying for a rehearing was shortened to three months in 1869, but restored to six months the following year and maintained in 1873.[98] In 1878, the period was again reduced to three months.[99] In 1880, responsibility for deciding whether a rehearing should be granted was transferred from the Governor in Council to the chief judge of the Native Land Court, and the rehearing was to be before two judges.[100] It was not until 1886 that legislation specified that the chief judge could not rehear his own cases.[101]

Until 1889, Māori who felt that a Land Court judge had made a mistake or omission could apply only for a rehearing – that is, for the decision to be cancelled and the entire case started afresh. As the Central North Island Tribunal pointed out, this meant that rehearings were not granted lightly.[102] The potential cost must also have put off some potential applicants. When applications for rehearing were dismissed, disgruntled claimants sometimes resorted to petitioning Parliament's Native Affairs Committee. However, the committee could only make recommendations to the Government: it could not overturn or inquire into the substance of disputed judgments. If the Government chose to accept the committee's recommendation, special legislation was usually required to refer the matter back to the Native Land Court. In 1876, and again in 1884, the Native Affairs Committee highlighted the lack of any appeal mechanism from the decisions of the Native Land Court.[103]

A small change was made under section 12 of the Native Land Court Acts Amendment Act 1889, which enabled the chief judge, while determining an application for rehearing, to investigate 'any alleged error or omission in the decision of the Court', and make a final order on the matter. Although this still took place within the application for rehearing system, it allowed some problems to be solved without the need for an entirely new hearing.

Appeals came in for the first time under the Native Land Court Act 1894, which established a Native Appellate Court to hear appeals 'by or on behalf of any person aggrieved by a decision of the Native Land Court, or a Judge thereof'.[104] The Appellate Court consisted of the chief judge of the Native Land Court and other Native Land Court judges whom the Governor chose to appoint.[105] In contrast to rehearings, which happened only if the Governor in Council or chief judge approved, appeals were heard as of right.[106] In addition, Appellate Court cases addressed only the specific matter under appeal, so the entire case did not have to be reheard.[107]

In our inquiry, the Crown acknowledged that 'the lack of a Native Land Appellate Court before 1894 reduced the options of those refused a re-hearing by the Governor-in-Council before 1880 or the Chief Judge after 1880'.[108]

(6) *Conclusion*

The Crown established the Native Land Court not in order to meet Māori aspirations or needs, but with a view to furthering its own policy objectives, of which opening

up Māori lands for settlement purposes was foremost. Advancing the interests of colonisation took priority over facilitating fuller or more secure forms of Māori engagement in the colonial economy.

Adequate input and agreement by nineteenth century standards would have entitled Māori to:

- the opportunity to review draft legislation that affected their land tenure before its passage through the General Assembly;
- address any concerns with Crown representatives; and
- see their views fairly reflected in the final legislation.

This happened neither with the Native Lands Act 1862 nor the Native Lands Act 1865. In denying Māori input into the design and makeup of the Native Land Court, the Crown ignored its side of the Treaty bargain.

The 1865 Act marked an even more abrupt departure from the Treaty's promises of 'undisturbed possession' and 'te tino rangatiratanga', and in doing so set the pattern of a Pākehā-controlled court that would mainly facilitate alienation. Māori were judges in the court under the 1862 Act only briefly: the 1865 Act reduced their role to assessors who were subordinate to Pākehā judges. It also introduced the 10-owner regime, which had the potential to dispossess many Māori owners in contravention of tikanga (customary law). In our inquiry district, this measure had less impact than elsewhere, because of the generally later passage of land through the court.

10.6 Purchasing, Reforms, and Reaction, 1869–77

10.6.1 Introduction

The Crown's withdrawal from land purchasing was short-lived. By the late 1860s, advocates of state control of the land market were beginning to reassert themselves. A number of colonial politicians feared that private speculators were purchasing the best land and driving up the prices for the remainder.[109] Supporting a new drive towards state-led infrastructure development, the Fox–Vogel ministry introduced new legislation that stopped short of restoring Crown pre-emption, but nevertheless abetted Crown purchasing.

As these reforms were beginning to take effect, the Government again reformed Māori land title. Donald McLean responded to protest from Māori throughout the North Island (including Whanganui) by introducing legislation to empower Māori councils with a significant role in the process. He then withdrew it, and instead, the Native Lands Act 1873 was passed, the main effect of which was to institute a new form of individualisation.

In this section we discuss the Crown's motivations for re-entering the land market, reforms to the title determination system, and Māori protest.

10.6.2 The Crown resumes land purchasing

After 1869, the Fox–Vogel Government embarked upon large-scale purchase of Māori land as part of an ambitious programme of state-directed immigration and infrastructure development.

The claimants considered that the Crown's approach to purchasing Māori land 'was inherently and *structurally* unfair' (emphasis in original), and that the Crown purchase system's primary objective was to purchase 'as much Maori freehold land as possible as cheaply as possible.'[110] The Crown may not have intended 'to ruin and impoverish Māori' as a result, but these negative effects 'cannot accurately be described as accidental.'[111]

The Crown rejected any suggestion that there was a Crown system for purchasing Māori land 'the aim or effect of which was to disadvantage Maori.'[112] Nor did it accept that there was a 'definitive purchasing plan':

> In truth, the real mischief is the lack of a comprehensive purchasing system. Had the Crown set about designing such a system, it may have been forced to confront directly the impact of its policies on Maori as a whole. As it was, it blundered ahead without clearly understanding what the consequences might be.[113]

In the Crown's view, each Crown purchase must be considered individually: purchase of each block was a legal transaction to be 'assessed on its own terms'. The Crown accepted that its conduct in individual transactions may have fallen short of the required standards.[114]

The Immigration and Public Works Act 1870 provided the legal platform for the Government's immigration and public works programme. Treasurer Julius Vogel's ambitious agenda for economic stimulus and expansion included setting aside large sums of money for purchasing lands from Māori. Section 35 of the Immigration and Public Works Loan Act 1870 enabled the Government to borrow £4 million for immigration and infrastructure development, of which £200,000 was ring-fenced for land purchases.[115]

An amending Act the following year, the Immigration and Public Works Act 1871, enabled the Governor to enter into negotiations for the purchase of customary Māori land – that is, land where the Native Land Court had not yet determined title – if required for the purposes of gold mining, railway construction, or special settlements. Once gazetted as being under negotiation, land was not allowed to be the subject of private dealings for up to two years (section 42). Introducing the Bill to the Legislative Council, George Waterhouse suggested that if private purchasers were allowed to 'rush in', it would be to the detriment of Māori and would push up land prices.[116] As we discuss below in our section on the repudiation movement, the unethical practices of private buyers in Hawke's Bay had attracted considerable attention, which may also have influenced the Government to restrict private purchasing. Cabinet Minister Henry Sewell later assured Parliament that the new law was not 'intended to place undue or improper restraint upon the Natives'.[117]

In fact, the Vogel scheme was not just an attempt to revive a colonial economy in a state of 'stagnation and depression'.[118] As the Colonial Treasurer explained to Parliament in 1870, it was part of an overall programme, designed in conjunction with Native Minister Donald McLean, to pacify the North Island after a long period of war and upheaval. The Colonial Treasurer predicted that

> the opening up of the country, and its occupation by settlers, which will result from the construction of roads; coupled with the balancing of the numbers of the two races by a large European immigration – will do more to put an end to hostilities and to confirm peaceful relations than an army of ten thousand men . . .

It would also close the gap between the relatively rich and well-resourced South Island and the much poorer and less well developed North Island.[119]

In his report for our inquiry, Loveridge observed that, in setting aside £200,000 for land purchasing, the Government may have given the impression that Crown purchasing under the new regime would be a 'modest exercise', targeted at lands of 'immediate utility'. McLean's subsequent actions, however, indicated 'that he had a much more ambitious scheme in mind':[120] a further £500,000 was allocated to land purchase under the Immigration and Public Works Act 1873. Of the total, £150,000 was allocated under sections 3 and 4 to purchases in the Wellington province (which incorporated most of the Whanganui inquiry district). Section 6 of the same Act retained the emphasis on the Crown turning a profit from its purchases, specifying that no lands were to be resold to settlers at less than one pound per acre, or 10 shillings per acre in the case of lands sold at auction. Legislation the following year also enabled the Crown to negotiate leases over approximately a million acres of customary land across several districts; private parties were excluded from dealing in this land.[121]

10.6.3 Māori begin to protest and the Crown responds

In 1871, six years after the Native Land Court began, Māori were formally consulted over the native land laws when the Crown initiated an inquiry into the working of the Native Lands Act. Colonel Haultain headed the inquiry, which was prompted by Māori opposition to the court's activities, especially in the Hawke's Bay district where a series of dubious land dealings had created a scandal.[122] The inquiry's engagement with Māori amounted to seeking views from about 15 rangatira, mostly from Auckland province or Hawke's Bay.[123] Nonetheless, it was sufficient to establish both that a diversity of Māori viewpoints existed, and that there was overwhelming support for more Māori involvement in the process of deciding titles. Rangatira made this point again and again, and lamented

Koriniti, 1885. Koriniti was the kāinga where Whanganui Māori held meetings to discuss issues involving their control of Māori land. In 1872, one such hui was about making a permanent reserve for Māori in the land between Ātene and Rānana.

the Crown's failure to consult them at the outset on measures affecting their land.[124]

(1) *Early Whanganui protest*

Whanganui Māori coordinated their responses to the impacts of the Native Land Court and Crown land purchasing through rūnanga and hui.

In February 1872, for example, Resident Magistrate Richard Woon reported to the Assistant Native Secretary that there was a large hui at Koriniti:

> The object of the meeting was to set apart a tract of country, some eighteen miles in length by twelve miles in breadth, situated between the Whanganui and Turakina Rivers, and extending from a point near Atene to the neighbourhood of Ranana (a strip of very rough and hilly country), as a reserve in perpetuity to their descendants.
>
> The reason assigned for adopting such a course is an apprehension which exists amongst the Natives here (one founded on reason), that unless some steps are taken to check the wholesale alienation of land by the Natives, a danger exists of the owners thereof eventually disposing of the whole of their lands, thereby rendering themselves homeless and poverty stricken. The meeting seemed to be unanimous in the matter; and upon adjustment of the boundaries, which were somewhat disputed, intend forwarding me letters on the subject for transmission to the Government.[125]

Woon encouraged the plan, and saw no bar to its implementation under current legislation:

> I see nothing myself to cause one to disapprove in any way of this proceeding on the part of the Natives, and I believe that an expression of approval thereat on the part of the Native Minister would gratify the Natives, and increase their confidence in the Government.[126]

Woon recommended that Māori be directed to have the land surveyed and mapped so that it might be brought under the provisions of the Native Lands Act,

> more particularly under the provisions as contained in section 17 of the Act of 1867 [barring alienations other than by lease of 21 years or less]; upon which being done, the Government could take such other steps as it might deem necessary to prevent the sale of the land at any time by the owners thereof.[127]

No such steps were taken. But these early moves in Whanganui marked the beginnings of broader opposition to the Native Land Court in which North Island iwi sought recognition of Māori institutions.

(2) *The Native Councils Bills*

Throughout the 1860s and into the 1870s, Māori continued to pressure the Government for an officially sanctioned means by which they could run their own affairs and manage their land. In 1872, Donald McLean responded to these requests by introducing to Parliament a Native Councils Bill to set up councils to manage local Māori affairs in any district where Māori were a majority of the population. The Governor would appoint a salaried Māori president of each council, which would comprise six to 12 elected Māori members plus the resident magistrate.[128] Councils would be active in the processes of the Native Land Court, with applications to the court to be submitted first to a council, and if contending parties agreed, the council's decision would be binding on the court. Councils would also have a broader local government function, and could pass bylaws on matters such as sanitation, drunkenness, adultery, and the control of dogs, wandering stock, and noxious weeds. Bylaws had to be approved by the Governor, but councils would enforce them with fines of up to £20. There was no provision for tribal control over land, but councils could recommend to the Governor general regulations relating to the 'use, occupation and receipt of the profits of lands and hereditaments'.[129]

Māori parliamentarians approved McLean's Bill, and Government officials in Māori districts also reported support.[130] In Whanganui, Resident Magistrate Woon said that Māori were pleased with the intent of the Bill as appearing to provide the power of local government that so many desired.[131] Most European members of the House, however, opposed the Bill on the grounds that it would undermine the Native Land Court, and subject Europeans living in 'native districts' to the bylaws of native councils. Some members argued there was no need for reform, and others that it would be difficult to persuade different iwi in 'native districts' to cooperate in one council.[132]

Following this criticism, McLean withdrew the Bill and introduced a toned down version in 1873. The new Bill applied only to Māori customary land, and required the Native Land Court only to be 'guided' by councils' decisions on land matters. Settlers could elect council members, and council presidents could be Pākehā. No regulations made by the councils were to have effect in any district where Europeans were in the majority. Then McLean withdrew this one too, citing further criticism and resistance from European members of the House. He later declared that the Native Lands Act 1873 achieved many of his objects.[133]

As the Central North Island Tribunal noted, it is not clear why McLean's council plans – which attracted such wide Māori support – were abandoned.[134] McLean's assertion that the Native Land Act 1873 fulfilled the same objectives as the Native Councils Bill does not withstand scrutiny. The 1872 Act did indeed include some of the same provisions, such as District Officers doing preliminary work for the Native Land Court. But, as the Central North Island Tribunal observed, the 1873 Act was 'part of a package' with a councils Bill, which Parliament was still expecting and which McLean initially said he would introduce in 1874.[135] Like that Tribunal, we are not convinced that parliamentary opposition was 'of such force and determination' that the Government could not have passed some kind of Māori councils Bill.[136] Whatever the reason, no further steps would be taken towards recognising any form of Māori self-government until the Native Committees Act was passed in 1883.

10.6.4 The Native Land Act 1873

The Native Land Act 1873 significantly changed the nature of the titles issued by the Native Land Court. The Act abolished the 10-owner rule and replaced the certificates

of title issued under the 1865 Act with memorials of ownership. The court was now required to include all customary owners on the titles it issued. Previous Tribunals have reported extensively on this new system, especially the Tūranga Tribunal. We agree with that Tribunal, and therefore keep our treatment brief.

(1) *Court hearings*

Section 20 of the new Act allowed the Crown to control Native Land Court hearings: the Governor or the Minister could stop a hearing, or prevent it from starting, simply by sending a notice in writing or by telegram to the chief judge or the presiding judge. Receipt of the notice ended the court's jurisdiction over the case in question, unless the Governor subsequently revoked it in writing.

(2) *Memorials of ownership*

Under section 47 of the Act, the memorial of ownership issued after a Native Land Court investigation was to include

> the names of all the persons who have been found to be the owners thereof . . . and of their respective hapu, and in each case (when so required by the majority in number of the owners), the amount of the proportionate share of each owner.

This meant that instead of a maximum of 10 named owners holding all the rights and responsibilities of ownership, all those judged to hold interests in a given block were identified.

The identification of all individual owners meant that legal responsibility for the block now belonged to an identified group of individuals. As we will show in the following chapters, the external forces that acted upon owners under the 10-owner system, and which often resulted in the alienation of whānau and hapū land, now acted upon all the listed individuals. They found that their titles were of no use except as a form of income from sale, because their interests were not tied to any particular parcel of land. Unable to point to any specific allotment, they had no security upon which to borrow to finance development. The Tūranga Tribunal observed that the 1873 Act 'individualised Maori title *only* for the purpose of alienation. For every other purpose, it was merely customary land outside English law and commerce' (emphasis in original).[137]

Section 80 of the 1873 Act allowed memorials of ownership to become a freehold title by way of a Crown grant on blocks with 10 or fewer owners.[138] As many large blocks could have many times that number listed on the memorials of ownership, freehold title could only be achieved after a process of subdivision amongst the owners. The Tūranga Tribunal concluded that 'the process of surveying out and subdividing blocks with dozens or even hundreds of owners was too time consuming and expensive'.[139] Facing further court hearings and costs in order to secure an individual grant, or even a grant for 10 or fewer owners, selling would have seemed an attractive option.

(3) *Pre-title dealings*

The 1873 Act also enabled purchase agents to make advance payments on interests ahead of title determination. Section 87 of the Act made pre-title dealings by private parties 'absolutely void', but did not ban them. This left it open to purchasers to risk their capital by purchasing individual interests prior to the court determining those interests. Would-be purchasers paid advances in the expectation that, once named, owners would not renege on their commitments to sell. Section 59 of the Act authorised deduction of advance payments from any final purchase price, thereby legitimating pre-title dealings in customary land.[140]

(4) *How land could be alienated*

Section 48 of the Native Land Act 1873 stipulated that land held under a memorial of ownership was inalienable except by way of lease, with a maximum term of 21 years.

However, under section 49, the Crown and private parties could purchase land held under a memorial of ownership if the owners were unanimously in favour, or if those in favour had subdivided out their interests from the interests of those opposed. The court had to inquire into

the proposed transaction and satisfy itself that the sale was fair, and that all the owners agreed. If it found that some owners were opposed, under sections 59 and 65 it was required to ensure that a majority agreed before cutting out the interests of those opposed.

Thus the Crown or other would-be purchasers could approach small groups of owners or individuals one by one until they had the agreement of the majority. Calling this the majority rule, the Hauraki Tribunal pointed out that it hardly equated with any kind of communal control, since the majority was only a collection of individual owners who each owned a legally transferable interest in the block.[141]

(5) *Protections*

The Act did, however, provide a new mechanism to enable Māori to retain specific land that might otherwise have been alienated. Under sections 21 to 32, district officers had powers to work with Māori leaders to select land to set aside as inalienable reserves. The court would then determine title to that land.

(6) *Succession*

Earlier in the chapter, we discussed the succession rules introduced in the Papakura decision: that all land would be inherited by all children in equal shares (see section 10.5.3(3)). The Native Land Act 1873 could have altered this approach, since section 57 stated simply that intestate succession should be 'according to Native custom'. The New Zealand Parliament attempted in 1881 to require something more closely resembling English principles, but in 1882 quickly recanted when it was found to be 'so repugnant to the ideas of the Natives, and so contrary to their customs'.[142] Section 4 of the Native Land Act Amendment 1882 restored the wording from the 1865 Act,[143] providing that succession would be determined 'according to the law of New Zealand as nearly as it can be reconciled with Native custom'. According to the Hauraki Tribunal, this reversal suggests that either Fenton had 'gauged Maori succession preferences relatively accurately', or Māori had come to prefer the Papakura rule to any narrower form of succession.[144]

Over time, the increasingly crowded titles highlighted the need for some legal mechanism through which owners could act communally.[145] In this respect, the Hauraki Tribunal considered that the real prejudice to Māori lay less in the succession rules per se than in the 'nature of the titles' issued.[146] The fractionation of these titles into ever smaller interests was also one of the factors behind the fragmentation of the Māori land into smaller and smaller parcels. Increasingly large numbers of Māori were squeezed into titles to blocks that steadily shrank in size as a result of partitioning.[147] It is not difficult to imagine the kind of economic paralysis resulting from such a process. The Hauraki Tribunal concluded that the tenure system introduced by the 1873 Act

> contributed greatly to Maori being caught up in a morass of dealings and legal complications, and divided amongst themselves. It was utterly destructive of efforts to develop the land, pauperising, socially damaging, and psychologically dispiriting.[148]

We agree.

10.6.5 Māori dissatisfaction and protest

(1) *Māori views on the individualisation of title*

The Native Land Act 1873 did away with the 10-owner regime, replacing it with a requirement that every individual member of the group (or groups) awarded title by the court be listed on a memorial of ownership. This allowed individual owners to lease or sell their interests.[149] During the 'hot tub' expert conferencing process, Hayes argued that many Māori favoured this individualisation and the right to deal with their lands unfettered by any wider collective responsibility. He also considered that this trend originated, at least partly, in broader social trends within Māori society.[150] Claimants took a different view, and cited these statements of the Tūranga Tribunal:

> The question of whether Maori wanted a new secure and certain title, and the question of what form it should take are related but not the same. Demand for the former should not be read automatically as demand for individualisation.[151]

As we will see, Whanganui Māori at times went to great lengths to secure communal control of the process for determining title as well as title that secured communal ownership.

(2) *The repudiation movement*

The so-called repudiation movement was a vehicle for Māori in Whanganui and elsewhere to express the frustration they felt about their inability to make the Government listen to their concerns about the Native Land Court and land purchasing. The idea was to repudiate – or cancel – agreements to sell land, especially where they considered them fraudulent. 'Repudiation' was a Pākehā term; Māori tended to refer to 'te Komiti', after the bodies set up as part of the movement.[152] We use the term repudiation movement so as to avoid confusion with the various other komiti established in the nineteenth century.

The repudiation movement originated in Hawke's Bay in response to unethical tactics that the Crown and private agents used to purchase land in the area. In the early 1870s, Hawke's Bay leader Hēnare Mātua encouraged his people to repudiate most Crown and private land deals on the basis that they were tainted with fraud.[153] Mātua's actions, along with petitions and other activism from Māori and concerned settlers, prompted the Government to set up the Hawke's Bay Native Land Alienation Commission in 1872.[154] With the assistance of sympathetic lawyers, Mātua and his allies took numerous cases to the Supreme Court, and a few succeeded, but no land was returned.[155] Māori across the country embraced the movement.

Hēnare Mātua, Hawke's Bay chief and leader in the repudiation movement. Te Keepa invited him and his followers to Kaiwhaiki in 1874 for a hui about repudiation.

In May 1874, Mātua and his followers came to a hui at Kaiwhaiki at Te Keepa's invitation to explain what their movement planned to do about the grievances of Hawke's Bay Māori.[156] Woon reported that about 800 people were there, including many Whanganui chiefs who generally supported the Government. The concerns attendees raised included the effects of the Native Land Court; rates; the inadequacy of Māori representation in Parliament; Crown grants, and their individualising effects; and public works takings. The repudiationists wanted an inquiry into all old land purchases, with a view to recovering land, or obtaining a fairer price. This was the 'repudiating' part of their agenda, and the part that most alarmed Government officials and settlers. Other goals were separate courts for Māori and Pākehā, the abolition of the Native Land Court, and increased Māori representation in Parliament.[157] Te Keepa told the hui that he was against any further sale of land: it should only be leased. Some chiefs still wanted to sell land, though. Tōpine Te Mamaku, for example, initiated the sale of the Rētāruke block at this time.[158] Others feared that the Crown would respond to the repudiation movement as it had to the Kīngitanga and Pai Mārire. Mete Kīngi Paetahi said he thought it best to stick with the

The kāinga of Kaiwhaiki, 1860s. This was where the hui about repudiation was held in 1874.

Government, which had brought roads, railways, and the telegraph.[159]

(3) *The repudiation movement in Whanganui*

Shortly after the hui, Woon reported that 323 Whanganui and Ngāti Apa Māori had joined the movement, including a number of chiefs previously considered Government supporters.[160]

Crown officials were very negative about the repudiation movement, seeing it as a precursor to rebellion. Reporting on the Kaiwhaiki hui, for example, Woon wrote that the movement was 'nothing more nor less than a fresh development of the Land League and King movement, only under another phase or garb'.[161] Woon and others saw Mātua as a troublemaker who created disaffection with Government policy and practice where none had previously existed.[162]

In 1876, the Whanganui branch of the repudiation movement joined in presenting a petition to Parliament, protesting their loyalty to Queen and law. But by then, both Whanganui resident magistrates, Woon and James Booth, considered that repudiation was dying out in Whanganui. Although Mete Kīngi Paetahi attended the movement's 1877 hui, Woon recorded that most of its influential supporters in Whanganui had moved on and were using the Resident Magistrates Court to conduct their civil business. Booth recorded that people from every part of the district were 'sending in applications to have surveys made of the whole of their waste lands, for the purpose of obtaining titles and disposing of them.'[163] The repudiation movement was rarely mentioned in official documents after 1878.

Woon's view of the repudiation movement – that it was unjustified and would lead to rebellion – was unfair. The movement consistently advocated legal avenues of protest like petitions, court cases, and lobbying Parliament. Moreover, Woon and others refused to see that the complaints of Māori in Whanganui and elsewhere about the land court and Crown purchasing were legitimate. By dismissing them as rebellious agitation, the Crown and its

Leading members of the Repudiation Party, 1876. The Hawke's Bay based movement that vetoed all land sales and leases grew out of a broad dissatisfaction with land transactions, and spread to Whanganui.

agents missed an opportunity to engage with Māori and address their just concerns.

(4) *Hui and rūnanga*

Large hui and rūnanga were another means by which Māori sought to address land issues generally.

In 1874, for example, Woon described two major hui to debate tribal boundaries in the Murimotu Plains, which involved Māori from Whanganui and Waitōtara:

> several local land disputes have been amicably settled by friendly discussion amongst the Natives themselves, whereby quarrelling has been prevented. I was present at two important meetings of this kind on the Whanganui River in November, 1873, and February, 1874, where very serious differences were arranged, and a breach of the peace prevented. The Government lent its support to these meetings . . .[164]

How the Government lent its support is not clear. What is clear is that at this point Woon viewed the hui as serving a useful and productive purpose. From 1875, he became more critical of hui and rūnanga. His view may have begun to change when it became apparent that the 1874 hui did not settle the Murimotu dispute, or he might have come to view hui and rūnanga as connected with the influence of the repudiation movement, to which he was opposed. It is likely that Woon resented the impact that hui and rūnanga had on his own role as resident magistrate, and regarded the activities of some rūnanga as unlawful. In May 1875, he reported that the rūnanga was 'constantly at work, settling land disputes, and trying offences amongst the disaffected and disappointed members of the Maori community'. At Parikino, Woon came upon a rūnanga sitting in the 'large assembly house' where he customarily held his court. Although the rūnanga offered to adjourn until he had completed his work, Woon preferred to hold his sittings in a local school house, not wanting to be seen to be either submitting to or countenancing the activities of the rūnanga.[165]

Woon did have some good things to say about the rūnanga. He observed that it was helping to settle land disputes to the satisfaction of local Māori – disputes that might otherwise have ended in conflict due to 'the tardy operation of the Land Court'.[166] He was less happy, though,

Te Paku-o-te-rangi, 1865–90. Te Paku-o-te-rangi was Mete Kīngi's purpose-built meeting house at Pūtiki, where Whanganui Māori met to discuss and debate issues of the day.

that rūnanga were not satisfied with 'merely settling the disputes'. They claimed to exercise 'the power of granting a certificate of title and taking fees, and profess[ed] to ignore entirely the operation of the Native Land Court'. He claimed that in many cases, Māori declined to accept awards issued by the court, and refused to take up Crown grants.[167]

We see in Woon's observations the desire of Whanganui Māori to settle land disputes and determine titles themselves. Historian Michael Macky told us that he considered it difficult to assess the level of support that rūnanga enjoyed, but assessed it as 'not inconsequential', but by no means universal. He characterised the 1877 sittings as evidence that some Māori preferred to have access to 'Maori operated judicial administration', and in 1878 Whanganui Māori were still searching for new ways to administer their affairs.[168]

But, like the rūnanga that operated in the 1850s and 1860s, these new rūnanga also lacked official sanction. Woon noted in 1877 what he called 'an increasing disposition' for Māori to settle disputes by official means, but he was at the same time reporting positively on rūnanga handling large, complex, and important land title conflicts, and wrote that large hui were 'continually being held' with a view to resolving 'ancient tribal land boundary disputes'.[169] By 1879 he was sufficiently persuaded of the success of the rūnanga that he advocated that the Crown utilise them to discuss pending land purchases so as to prevent conflict over disputed boundaries.[170] There is no evidence that this advice was heeded.

(5) *Te Paku-o-te-rangi*

So common were rūnanga that in 1877 Mete Kīngi Paetahi, Haimona Hīroti and other chiefs built what Woon described as 'a large runanga-house, or council-room' or 'quasi Parliament house' at Pūtiki. Named Te Paku-o-te-rangi, it was intended as a place 'wherein the Wanganui tribes might meet periodically for the discussion of all matters affecting' their interests.[171] Not restricted to land disputes, rūnanga canvassed political questions like the

Mete Kīngi Te Rangi Paetahi, who tried to put an end to tribal warfare over land sales. He spoke against the King Movement and opposed Pai Mārire, commanding the reserve at the battle of Moutoa, and helping defeat the Hauhau force. In 1868, he succeeded Te Anaua as leader of the lower Whanganui tribes, in which capacity he advised Grey on military strategies.

design of alternative native land laws and policies. In May 1878, Woon reported that a meeting at Te Paku-o-te-rangi had discussed securing better representation and status for Māori in Parliament, allowing Māori a greater say in the administration of their land including the investigation of titles, and the alteration of Crown grants pertaining to Māori reserves so that lineal descendants could hold on to them.[172]

In 1878, Woon reported on a second meeting held in Te Paku-o-te-rangi. It is clear that, by this time, there had been another unsuccessful attempt at establishing a land trust:

> At the first meeting in August [1877], an effort was made to 'tapu' several large tracts of country, and to forbid their being surveyed for lease or sale. The majority of the meeting agreed to this policy, being a last effort in opposition to the selling proclivities of an influential number of Natives. A short time has proved that such a determination could not be carried out, as, owing to the persistent acts of the land-sellers and others, Mete Kingi, Kemp, and other leading chiefs, who were asked to hold the interdicted land for the tribes, publicly, at last meeting, gave up their charge of same, and announced to the assembled Natives that for the future the Native landowners must use their own discretion, and hold or sell as they thought proper; that they were free to exercise their own right in the matter.[173]

Woon's report identified the central problem facing any collective effort of Māori to exercise control over their land. The law permitted individuals to sell their interests in land blocks after title was determined, and the chiefs were powerless to prevent it. Tapu was no longer a sufficiently compelling sanction to change individuals' behaviour. It was at this time that individuals were being drawn into a cash economy through the payment of advances.

The use that Whanganui Māori made of hui and rūnanga to meet their needs to resolve conflict over land illustrates their potential as an alternative to the Native Land Court. The Crown, though, was not looking for such grassroots alternatives, and never considered accommodating hui or rūnanga in Crown-sanctioned processes. It had created, and was entirely comfortable with, the European rules, approach, process, and personnel of the Native Land Court.

Ultimately, as the claimants before us argued, lack of recognition in the wider polity inevitably undermined the efficacy and authority of Whanganui rūnanga.[174]

(6) *Māori in Parliament*

Māori were not represented in Parliament until 1868 which was after the legislature created and then substantially

altered the Native Land Court. Māori were therefore not involved in the debates of the Native Lands Bills of 1862 and 1865, nor in the votes that passed those Bills into law.

In *A Show of Justice*, Professor Alan Ward maintained that the Native Department initially saw Māori enfranchisement as a matter of goodwill and public relations, so officials and other members were surprised and dismayed to find that the Māori members intended taking a full part in parliamentary debates. Most European members expected Māori members to be easily manipulated by Europeans.[175] Some Māori were also sceptical about Māori representation in Parliament, seeing their presence there as a token gesture intended to stave off criticism by the British Government and other Europeans.[176]

The first Māori members were chosen at meetings of chiefs in each electorate rather than through formal voting. Ward considered that many Māori treated the Act with indifference. With only four Māori seats, most tribal areas would have no representative, and few if any Māori 'had confidence in a representative from another tribe within the same vast electorate'.[177]

The Western Māori seat stretched from the Kapiti Coast through Taranaki and Waikato-Tainui to Hauraki, and so incorporated the Whanganui district. The first election for this seat was in 1868. Te Keepa Te Rangihiwinui nominated Mete Kīngi Paetahi, seconded by a chief identified as Pēhimana. Pōari Kuramate then nominated Te Keepa, but this motion was not seconded, and Mete Kīngi was elected.[178] Mete Kīngi had led men in battle at Moutoa in 1864, and at Ōhoutahi and Weraroa Pā in 1865, and campaigned with Government forces in Ōpōtiki and southern Taranaki. After Hōri Kīngi Te Anaua's death in 1868, he was regarded as the leading rangatira of the river's lower reaches.[179] A special Act had to be passed to validate his election, since, as an assessor in receipt of Government pay, he was technically disqualified from standing.[180]

Māori members of Parliament had a limited impact on Government policy. As we said, they initially numbered just four in a Parliament of 78 members, and four was an even smaller proportion once the total number of members increased to 88 in 1876.[181] The early Māori members struggled with English. Interpreters were provided eventually, and some Bills – especially those concerning Māori issues – were translated. The record of Parliamentary debates shows that when Māori members did speak in debates, they were often mocked, and European members left in droves to attend to business elsewhere, sometimes to the extent that a quorum was no longer present.[182] Yet, Māori members could be instrumental in bringing down a Government. Stafford's defeat in 1872, and that of the Fox Government a few months later, depended on the Māori vote.[183] This put them in a position where they could sometimes wring concessions out of politicians.

Māori members of Parliament took part in debates on legislation affecting Māori interests. They addressed the injustice of Parliament's not consulting Māori before passing legislation affecting them. Karaitiana Takamoana, member for Eastern Māori, spoke against what became the Native Land Act 1873, declaring:

> as they were considering the course of action to be pursued with regard to the lands of the Maoris, he considered the owners of the land particularly interested should have been consulted in the first place.[184]

Wī Pere (Eastern Māori) spoke to similar effect some 21 years later. In 1894, during the second reading of the Native Land Court Bill, Pere stated:

> the reading of the part of this Bill which has reference to Native lands should be postponed until the Government and the Maoris have talked the matter over. I have now been in this House a long time, and have not yet seen the Government taking any steps in this direction.[185]

Māori Parliamentarians also introduced Bills. In the early 1880s, Hone Mohi Tāwhai, member for Northern Māori, and Hēnare Tomoana of Eastern Māori each introduced Bills which they hoped would enable Māori communities to regulate social and community order by means of an adapted system of justice that was suitable for Māori communities. Both failed, as they did not win

the support of Pākehā members.[186] Four seats were too few to enable Māori members to block legislation injurious to Māori, or pass legislation for the benefit of their constituents.

(7) *Petitions to Parliament*

Māori also petitioned Parliament when seeking changes to native land laws. In 1872, the Native Affairs Committee was established to hear the numerous Māori petitions that had reached the Government. Typically, they were about Māori land. Some petitioners sought rehearings of cases about blocks that had been through the Native Land Court. Others alleged the wrongful sale of land, complained that purchase prices had either not been paid or distributed, or pointed to a lack of adequate (or any) reserves.

Professor Ward considers that the Native Affairs Committee became an important part of New Zealand's constitutional machinery. Although the committee normally had a Government majority, it also included the four Māori members of Parliament and some opposition representatives. Ward considered that petitioners were able to obtain redress through the committee on some small issues, especially if Government members happened to be absent, but not on larger questions such as confiscations, public policy, or land legislation. In Ward's view, the Native Affairs Committee 'was one institution which helped create just sufficient flexibility to prevent the Maori from quite despairing of the parliamentary system.'[187] In other evidence, Professor Ward concluded that appeal to the committee 'was hazardous, the outcome capricious.'[188]

Petitions could fail because the Native Affairs Committee decided that it was not competent to address issues raised, or because the committee ran out of time to do so. Whanganui Māori made 16 petitions to the Native Affairs Committee between 1872 and 1880. Four of these sought the restoration of confiscated land outside of the Whanganui inquiry district. The committee responded favourably to the first, but, in relation to one, did not have time to inquire sufficiently to justify a report, while the other two cases concerned decisions of the Compensation Court, which the Native Affairs Committee decided it was not competent to address.[189] Whanganui Māori petitions from 1877 to 1901 followed a similar pattern.[190]

Our expert panel of historians agreed that no general conclusions could be made about the committee's effectiveness as there are no substantial studies into its development and operations. Three of the historians considered that while the committee 'investigated and reported on many petitions' about individual blocks, 'it was more reluctant to report or make recommendations on more general matters of policy relating to Maori land and the Native Land Court, unless it was investigating a bill'.[191]

The Native Affairs Committee's limited powers of investigation and recommendation were perhaps its most serious flaw. In one case, where a petitioner claimed that a hearing had not been properly gazetted, the committee found that it had been gazetted but did not investigate the broader question of how effectively the *Gazette* notice had been distributed to remote communities. In another case, the committee refused to take evidence on alleged errors in the granting of title, as it did not rule on title issues, but commented obliquely on court processes and the accuracy of the court record. According to the chief judge, in cases where land that was the subject of a grievance had already been sold, the committee believed that it was 'too late to raise questions of ownership'. Mitchell suggested that an appellate body with wider powers might have served Māori better. No such body was established until 1894.[192]

The Native Affairs Committee had only recommendatory powers, and lacked the ability and resources required to address the grievances of Māori petitioners. Of the 19 petitions relating to Whanganui Māori lands from 1877 to 1901, only one resulted in the Crown taking any significant action: a partition was annulled and the case reheard after it was found that a subdivision had not been gazetted. In most instances, the committee refused to rule or made no recommendation, sometimes even after holding a hearing into the matter.[193]

We conclude that the Native Affairs Committee was an inadequate process for addressing and remedying Māori grievances.

10.7 Māori Respond to Crown Purchasing, 1877–84

10.7.1 Introduction

From 1877, the Crown sought to strengthen its position as a privileged purchaser of Māori land, mainly by excluding private purchasers from any land for which it had entered negotiation. This shift towards giving the Crown a monopoly in land purchase came with the formation of the ministry of Premier George Grey, the former Governor. The Grey ministry initially sought to finalise incomplete Crown purchases, which in many cases were said to have been complicated by private speculators. Once that had been done, the Crown would largely withdraw from the land market.[194] This was not what happened, however.

The claimants argued that these Crown moves destroyed the free market in Māori land and 'forced Maori to deal with the Crown alone'. As a result, 'Maori owners had to accept whatever price the Crown offered'. It was like the pre-1865 situation: they had to deal with the Crown, and make do with its artificially low price.[195]

Māori in Whanganui and elsewhere continued to search for alternatives to the Native Land Court and individualised title, some withdrawing entirely from contact with the Crown. One of the most significant developments of this period was the Whanganui Lands Trust, also known as Kemp's Trust, which aimed to keep Whanganui Māori land under Māori control and ownership. The Crown was ill-disposed, however, and its antagonism towards the Trust doomed it to failure.

The Crown conceded that, in certain situations – where monopoly proclamations 'were continually rolled over, the owners had manifested no wish to enter negotiations, and owners lost opportunities as a result' – the Crown did not act 'consistently with its duty to purchase reasonably and regulate processes appropriately'. Where it used its monopoly unreasonably and unfairly, it breached the Treaty principles of good faith and fair dealing.[196] The Crown does not go so far as to say that making itself a privileged purchaser of Māori land was in itself a breach of the Treaty. To do so, it says, would be to 'ignore the Crown's governance rights and obligations, including the need to balance the potentially conflicting objectives of developing settlement and protecting Māori land interests'.[197]

(1) *The Government Native Land Purchases Act 1877*

The Government Native Land Purchases Act 1877 extended the Crown's exclusive right of purchase to all lands for which it was in negotiation, while also doing away with the two-year time limits that applied to proclamations under section 42 of the Immigration and Public Works Act Amendment Act 1871.[198] Native Minister John Sheehan defended this approach in Parliament, saying there was

> a movement on foot throughout this Island, by offering high prices, and by statements not by any means based on facts, to induce the Natives to avoid completing the bargains they have entered into with the Crown.

As proof, he claimed that during his brief time in office he had received six applications from Māori asking him to take back money paid for land so as to enable them to sell to private purchasers.[199]

The preamble to the Government Native Land Purchases Act 1877 stated that it was 'expedient that provision should be made for the better protection of Her Majesty's interests in the purchase or acquisition of Native lands in certain cases'. Section 2 stated that:

> Where any money has been paid by or on behalf of Her Majesty the Queen for the purchase or acquisition of any Native lands in the North Island, or any estate or interests therein, or where any negotiations have been entered into for any such purchase or acquisition, whether the same lands have or have not been passed through the Native Land Court, then and in all such cases, and after the publication of a notification respecting such lands as hereinafter provided, it shall not be lawful for any other person to purchase or acquire from the Native owners any right, title, estate, or interest in any such land or any part thereof, or in any manner to contract for any such purchase or acquisition.

While the 1871 measure was directed at land held in customary title, powers under the new Act could be

brought into play whether or not the block had gone through the Native Land Court.[200] Section 3 stated that a notice from the Governor published in the *New Zealand Gazette* to the effect that the Crown had paid money or otherwise entered into negotiations for the purchase of particular lands was to be deemed sufficient warning to all persons of its assertion of prior rights in the lands. The Act remained in force until 1892, and was amended in 1878 to give 'the Crown the right to expel intruders from lands under negotiation'.[201]

Some doubts were raised over the interpretation of the Act. In particular, the past tense construction of section 2, and general wording of the preamble, suggested that it was intended to apply solely to blocks where payments had been made, or negotiations commenced, at the time of enactment. Yet the Crown utilised the Act in relation to negotiations initiated after 1877. This raised doubts about the legality of such proclamations. When this was brought to the Government's attention in 1889, Native Under-Secretary T W Lewis advised the Native Minister that some lawyers had concluded

> that notifications over land on which payments have been made or negotiations for purchase commenced since passing of the Government Native Land Purchase[s] Act 1877 are ultra vires as preamble of Act limits enacting clause to transactions of prior date.[202]

The relevant passage in the preamble was presumably where it said that it was 'expedient that that mode of purchasing Native lands should be forthwith discontinued, and other arrangements made for the completion of any such purchases now under negotiation'. In her report for our inquiry, Ms Edwards said that a legal opinion from Crown Law Office concurred with the advice that Lewis gave the Native Minister in 1889:

> the terms of the Government Native Land Purchases Act 1877 do not extend to new matters not included within the preamble – the language used in sections two and three also seems to apply only to transactions in existence at, or before, the passing of the Act.[203]

We agree. The Colonial Secretary George Whitmore told the Legislative Council, when introducing the Bill for its second reading, that as there 'were to be no fresh negotiations, this [Bill] would not be an interference in any way with private land purchases, nor prejudice what was called free trade in land'.[204]

Proclamations on blocks not properly within the terms of the legislation were invalid. After the Native Minister received Lewis's advice, a flurry of activity followed to validate them. For reasons that are unclear, the draft amendments to legislation were never passed.[205]

There was of course considerable delay between when the Act was introduced in 1877, and 1889, when the Crown received advice that many of the proclamations issued under it were probably invalid. From 1877 to 1889, Crown land purchase agents were freely exercising the power to control the purchase of Māori land through the use of advance payments. Once any payment was advanced to anyone, the block was under negotiation, a proclamation issued, and private purchasers were excluded. Thus for a small initial outlay, the Crown could keep competitors out, control the price, and take a long time to pay it. In 1879, Sheehan stated that 'in many instances payments have been made to the extent of only £10 or £15; and such payments have simply been made to enable the proclamation to issue'.[206] Effectively, this was a re-imposition of Crown pre-emption, block by block. We agree with the observation of Dr Loveridge that 'the new legislation had much sharper teeth than the old, and it appears that the 1877 Act was used much more extensively and systematically than its predecessor'.[207]

The Central North Island Tribunal summarised the situation when it said that although the Act was aimed primarily at private purchasers,

> it also severely curtailed the way Maori could utilise their properties and resources in the new economy. By just beginning negotiations with a few owners and making a tiny payment, the Crown could tie up all the land and resources over a large area, without time limitations. This placed the Crown in a position of considerable advantage in using its monopoly powers to not only drive prices down, but to coerce Maori to

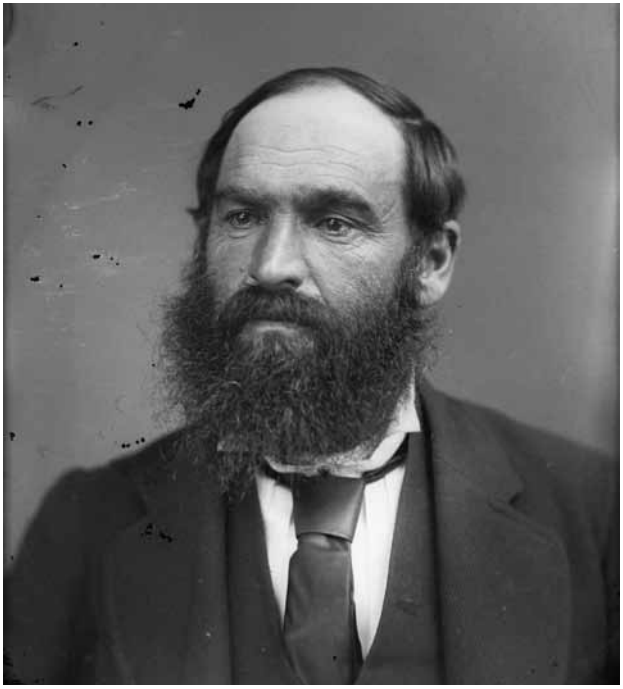
> sell the freehold, faced as they were with few other alternatives to earning an income from their properties.[208]

The Crown was also free, once it had made advances and secured signatures on agreements to sell, to disregard the views of rangatira or the hapū as a whole.[209]

(2) *Other 1877 land legislation*

The Native Land Act Amendment Act 1877 increased the potential for individual dealings to result in rapid land loss. Where the Crown purchased any individual interests in a block, the Native Minister could apply to the Native Land Court to determine the Crown's interests – that is, demarcate the part of the block that now belonged to the Crown. The court could also declare such land to be absolutely vested in the Crown.[210] That enabled it to bypass the provisions in the 1873 Act that required majority support from the owners for any partition application to proceed. All of this put the Crown in a privileged position as compared with private purchasers.

Another 1877 innovation was the creation of a central Lands Department, which meant that the Government now 'controlled not only the acquisition but also the disposition of Maori land'.[211] This came shortly after the abolition of the provinces in 1876, which had 'brought to an end the complicated and varied provincial ordinances relating to Crown grants'.[212]



John Bryce, 1880s–90s. Bryce was a farmer, soldier, and politician. As Native Minister during the 1880s, he was against making advance payments on purchases of Māori land, and he increased the power of the Native Land Court. In 1881, he led the invasion against the pacifist Te Whiti at Parihaka.

10.7.2 Retrenchment under the Hall Government

According to historian RCJ Stone, the exclusion of private speculators from the land market antagonised and alarmed powerful Auckland business interests to such an extent that it contributed to the downfall of the Grey Government in 1879.[213] The incoming administration of John Hall was more conservative. Its time in office coincided with severe economic downturn, and retrenchment of Government expenditure.[214] Hall's Native Minister, John Bryce, criticised what he viewed as indiscriminate Crown purchasing. He singled out the west coast of the North Island as a region where Crown agents had purchased numerous interests in rugged and inaccessible land that would not be fit for settlement for many years to come.[215] Bryce led a movement away from advance payments, directing that

> no further payments must be made to Natives on lands that have not been before the Native Land Court for investigation of title, and grantees duly appointed; and that in making payments in future for lands under purchase the payment must be a final one and a discharge in full of every claim the grantee may have on the land.[216]

Some negotiations were abandoned, and the business of his office was directed to consolidating existing negotiations, initiated in some cases in the time of McLean and Sheehan.[217]

The move away from advance payments signalled an important shift in the system of Crown purchasing – but the Hall Government took no steps to repeal or amend the Government Native Land Purchases Act.[218]

Legislation passed in 1880 consolidated existing Māori land law, and reserved certain rights to the Crown.[219] The Native Land Laws Amendment Act 1883 prohibited any dealings for the purchase, lease, occupation, or exchange of Māori land until 40 days after the court had determined title. The court had to issue a notice in the *Gazette* setting out what titles it had ascertained, and on each the date from which dealing could commence. Contravention of the 40-day period was punishable by a fine of up to £500[220] – but section 13 of the Act exempted the Crown and thereby reinforced its position as a privileged buyer of Māori land.

10.7.3 The Whanganui Lands Trust or 'Kemp's Trust'

Although the Government was scaling back its purchase of Māori land, disquiet about land purchase and the court's authorities was entering a new phase. The most significant manifestation of this disquiet in the Whanganui inquiry district was the Whanganui Lands Trust. Te Keepa Te Rangihiwinui (also known as Major Kemp) created the Trust in 1880, immediately after his armed stand-off over still unresolved disputes in the wider Murimotu district (discussed in chapter 12). His plan was to vest in his own name as trustee almost all the land in the interior of the Whanganui district, estimated at one and a half to two million acres. A large elected council of leading Māori owners would assist him; the land would be surveyed; Native Land Court titles would reflect the Trust council's decisions; annual reports would give information on audits, investments, and distribution of income. Officials called it 'Kemp's Trust'.

In the claimants' view, Kemp's Trust was an attempt to 'engage with settlement in a controlled manner', while allowing Māori to retain collective authority over the their land. They argued that the Crown could have championed Kemp's enlightened leadership, but instead actively sabotaged his work and punished his supporters. The Crown would not change land law to allow it to succeed, so the Trust had no legal way to prevent individuals from taking land through the Native Land Court without reference to the collective.[221] The Trust was also thwarted by the Crown's insistence on maintaining monopoly control over land-trading mechanisms.[222] All of this was consistent with the Crown's objective 'to acquire as much land as

Whanganui chief and leader Te Keepa Te Rangihiwinui, 1860s–70s. Known for his prowess as a fighter, Te Keepa was by 1862 one of the leading pro-Government Māori at Whanganui. Then, disillusioned by how the Government dealt with Māori and their land, he organised the Whanganui Land Trust (Kemp's Trust) in 1880 to restore some control for Māori over their land. Later, he was involved in setting up the Kotahitanga movement.

possible', without consideration for the cost to Whanganui Māori society.[223]

The Crown viewed the failure of the Trust as an example of the limitations of the native land laws and, in particular, of the absence of a mechanism or form of title to meet Kemp's objectives.[224] We have noted already the Crown's concession that its failure to take adequate or timely steps to provide for communal governance breached the Treaty. The Crown accepted that the Trust sought its cooperation, that it withheld that cooperation, and that its non-cooperation undermined the Trust. It denied that it took active steps to this end, or was hostile. It could not work with the Trust because of the lack of clarity as to whose interests Te Keepa and the Trust were representing.[225] The Crown also submitted that not all those Whanganui Māori whose land was to go into the Trust supported it.[226] Much of the land the Trust wanted to deal with was already subject to Crown negotiation pursuant to the Government Native Land Purchases Act 1877, making it illegal for the Trust or any other private party to deal with the land.[227]

(1) *The Trust is established*

In April 1880, having just clashed with the Government and other Māori over Rangipō-Waiū and the wider Murimotu district, Te Keepa Te Rangihiwinui returned to Whanganui. He intended to confer with those Liberal politicians who had supported his stance against the Government. In the six weeks after his return from Murimotu, Te Keepa promoted what became known as Kemp's Trust. He had the assistance and financial backing of the lawyer William Sievwright and the Liberal politician, lawyer, and future premier Sir Robert Stout, through their law firm Sievwright and Stout.[228]

On 18 May 1880, Sievwright attended a hui at Rānana with Te Keepa and his supporters, where Te Keepa's plan to become Trustee for all tribal lands within a specific boundary was mooted. There were similar meetings at other Whanganui settlements. At Koriniti on 30 May, the *Wanganui Herald* reported that the people were 'unanimous in accepting Major Kemp as their Trustee'. Over 400 people signed a deed vesting lands in Te Keepa, and signatures were collected in all the southern settlements, making his support 'unassailable'. Sievwright estimated that by 1881, 600 to 700 Whanganui Māori, including many chiefs, had signed the deed.[229]

Support for the Trust was not universal. Te Aropeta Haeretūterangi of Ngāti Rangi, one of Te Keepa's rivals for influence in Murimotu, and the influential ex-member of Parliament Mete Kīngi Paetahi, declined to sign. Similar opposition came from other chiefs,[230] and also from non-Whanganui iwi Ngāti Whiti and Ngāti Tama, rival claimants with Te Keepa and Ngāti Rangi in the Rangipō-Waiū block. The Ngāti Tama and Ngāti Whiti chief Īhakara Te Raro wrote to Bryce from Pātea, claiming that Te Keepa was attempting to steal land from Ngāti Tama and Ngāti Whiti.[231]

(2) *The Trust's boundaries*

The other vital step in establishing the Trust was the symbolic and ceremonial erection of pou (posts) at the 'four corners' of the Trust's rohe. They were intended to signpost the outer dimensions of the area to be vested in the Trust. The exact locations of the Trust's pou are unclear except for that at Raorikia (Kemp's Pole), which still remains.[232]

Although it is not now possible to establish conclusively where the other pou stood, the evidence we have indicates that the land to be vested in the Trust extended from Raorikia to a point on the Rangitīkei River near Tokorangi, from there to Moawhango, and across to a point on the upper Waitōtara River, and south from there on the west side of the Whanganui River to Raorikia. The acres involved may have been as many as one and a half to two million. As the map below illustrates, the area lies mainly within the boundary of our inquiry district. A number of the blocks destined for the Trust had already passed through the Native Land Court by the time the Trust was established. These include part of the Murimotu block, part of the Mākirikiri block, the whole of the Rānana, Hēao, Pikopiko 1, Te Maire blocks, and many other small blocks between the Whanganui and Whangaehu Rivers north of the Whanganui purchase.

The kāinga of Raorikia and te pou whenua a Te Keepa ki Raorikia (Kemp's Pole), 1880s. The pole marked one corner of an area known as the Whanganui Lands Trust, or Kemp's Trust, that Te Keepa Te Rangihiwinui (Major Kemp) wanted Māori to own in perpetuity.

(3) *The aims of the Trust*

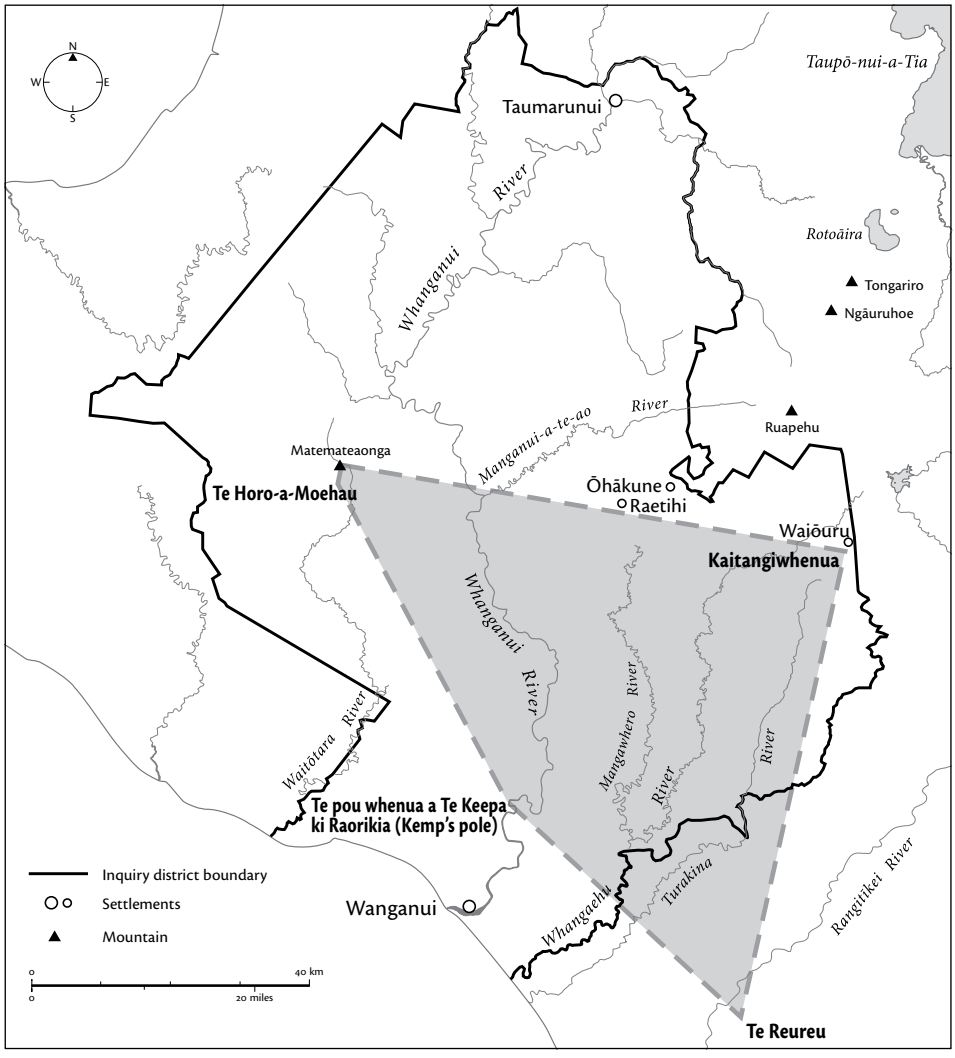
On 28 September 1880, Sievwright and Stout wrote to Native Minister Bryce outlining Te Keepa's plans for the Trust and its purpose. They stated that the Trust covered one and a half to two million acres and would:

- pass the land through the Native Land Court and obtain marketable titles;
- set aside inalienable reserves for the owners;
- borrow money, if necessary, for the execution of the Trust;
- make and contribute to the making of roads to open up the country;
- settle the land with European settlers by selling or leasing the land in suitable lots;
- apply funds from sales to pay off any loans, for division among the owners, and to invest for the benefit of owners; and
- provide an annual balance sheet, report, and audit.[233]

They claimed that the Trust would simplify negotiations for land, and would put an end to disputes between the owners and the Government.[234] It would be administered by a council of representative Māori owners whose general purpose was to 'aid and assist the Trustee in every way in their power', and to

> ascertain and fix the boundaries of all blocks of land embraced in the Trust, and to arrange and settle all disputes in relation thereto so as to facilitate the survey thereof – to ascertain and fix the rights and interests of all owners in such blocks of land – to obtain the consent in writing of all the native owners to the boundaries and to the rights and interests so ascertained in order to facilitate the work of the Native Land Court in investigating title – to lay down Rules for the guidance of the Trustee or Trustees in the sale and leasing of land . . . to receive from the Trustee all monies payable to the owners under the Trust, to give the Trustee discharges thereof, and to divide such monies among the owners according to their interests.[235]

Within its boundaries, the Trust would thus largely supplant the Native Land Court, calling on it only to confer



Map 10.1: The boundaries of Kemp's Trust

legal recognition on the titles that the Trust determined. It also sought to supplant the role of other Crown agents such as the Public Trustee by receiving and distributing monies paid for purchase and leasing of land.

The lawyers sought the Government's 'moral and practical support' to bring the Trust into effect. They mentioned the problem of blocks proclaimed under the 1877 and 1878 Acts, a solution to which they suggested could be 'amicably arranged' in a 'spirit of fairness', thus maintaining the peace of the country. They assured the Native Minister that they were writing frankly and of their own volition, and 'apart altogether from party or political considerations'.[236] Although they denied intention to repudiate Māori agreements to lease or sell land to the Crown, they did imply that they might embarrass the Crown by making public dubious activities in Murimotu.

No doubt this was to put pressure on the Government to agree to their requests. Macky suggested that Sievwright and Stout were wanting to 'test the legality' of some of the Government's transactions.[237]

In a later letter, Sievwright and Stout denied that the Trust had repudiationist aims, and said it would not 'seek to convey their lands away to another person [than the Govt]', as had been alleged. Rather, it aimed

> to save the Natives if possible from the nefarious and corrupting Land Purchase system, the operations and effects of which you [Bryce] described with such graphic power in the House of Reprs. last session.[238]

Professor Ward's view was that the Trust was 'an attempt to form a Rohe along the lines of the Kingitanga, to control the actions of land-selling chiefs, and engage, on more favourable terms, with the processes of settlement'. Te Keepa worked to have the land laws changed 'so that such efforts as his Trust could become more stable and effective'.[239]

Crown officials continued to view the Trust as part of the repudiation movement, and Te Keepa as opposed to Crown interests. Booth, for example, asserted that Te Keepa had 'no doubt been making most violent attacks on the Native Minister and the Govt generally', and claimed he had told Māori that

> he would take on himself the responsibility of repudiating all Land purchase payments to those natives who were willing to sign his Trust Deed and that they should have all their lands intact.

Booth was 'credibly informed' that Te Keepa was acting against the advice of Sievwright and Stout, which he believed would lead to Te Keepa's downfall.[240] Te Keepa, though, continued to work with Sievwright and Stout.

(4) *The Government's response*

On 29 September 1880, Bryce replied to Sievwright and Stout's letter of the previous day, praising their intentions but condemning the Trust. He pointed out that Māori could not convey their land to the Trust (or to anyone else) until the Native Land Court had established ownership. Moreover, Māori who had accepted advances or signed agreements to sell land could not now convey that land to another party; several of the blocks to be put into the Trust fell into this category. He then warned that if Sievwright and Stout advised Māori who disturbed the peace of the country, both they and Māori would incur 'a very grave responsibility'.[241]

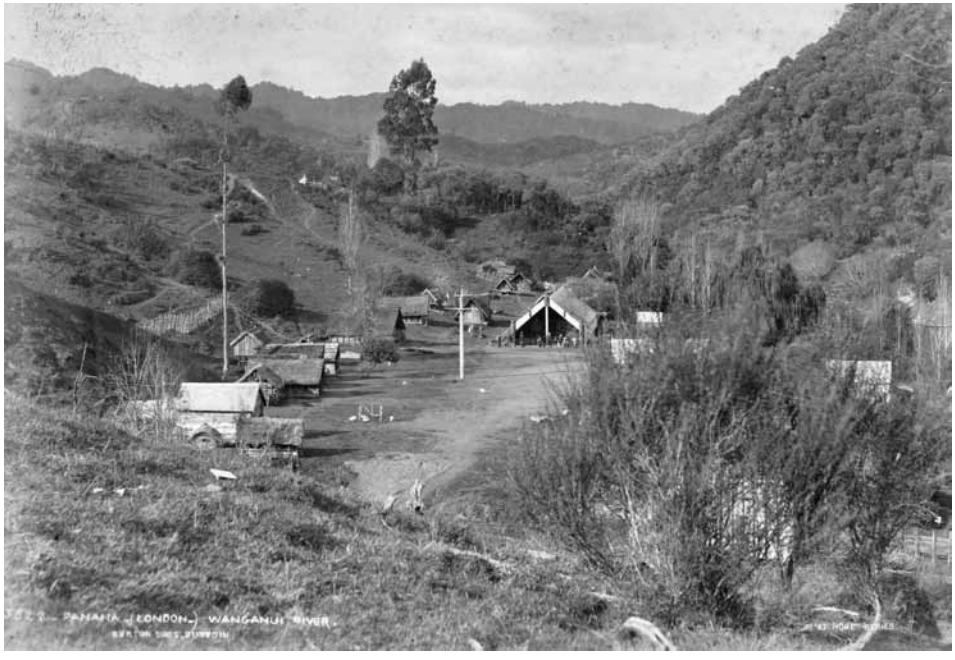
Sievwright and Stout wrote back the next day, refuting Bryce's arguments and outlining future Trust activity. They specifically denied that they had any repudiationist goals, and had 'nowhere given you cause to think or say that we shall advise repudiation of agreements with Government even though they may be challengeable on many grounds'.[242] They also requested copies of every agreement the Crown had made to acquire land in the Whanganui district, with details of advances or payments made to the Māori owners, so they could better understand the various transactions, and advise on a just basis for settling any problems. Māori had not been able to give them this information, suggesting they had no documentation of land transactions in which they were involved.[243]

(5) *The Trust's council is established*

While the lawyers negotiated with Bryce, Te Keepa was establishing the Trust's council. Said to number 180 people, the council was intended to include representatives of each hapū, appointed by a deed that was being executed simultaneously with the Trust Deed itself. Regional or local councils that would assist the main council may also have been intended.[244] Apart from the land administration tasks outlined above, the council was also intended to act as a form of local self-government, issuing and enforcing laws, and maintaining order. The council fined Te Keepa himself £5 when, at hearings in Ūpokongaro in 1881, he became involved in a fight with a settler.[245] Woon complained that:

> I as the Resident Magistrate of the District, am only allowed on sufferance to visit the upriver settlements; and am to take such business as Kemp and his Council may think fit to relegate to me for disposal.[246]

Huriwhenua, Te Keepa's council hall at Rānana, 1885



Rānana on the Whanganui River, with the Huriwhenua meeting house at centre, 1870s–80s

Te Keepa established a council house called Hurihwenua at Rānana; this was 60 feet long by 26 feet wide, and 20 feet high at the ridge pole. Te Keepa himself paid for the house, said to have cost £2,000.[247] It is still standing, but has been moved up from near the river to a new site and is now called Te Mōrehu.[248]

Of the 24 Whanganui Māori who were at this time working for the Government as agents or assessors, 11 signed the Trust's deed.[249] They included the chiefs Tōpine Te Mamaku, Pāora Poutini, Te Māwae of Pūtiki, and Haimona Hīroti, all of whom became members of the Trust's council.[250] Woon worried that if they were dismissed from their Government posts they would become embittered and 'commit themselves to acts of overt rebellion, and strife'.[251] Undeterred, Bryce instructed his officials to refuse the chiefs the Government pay if they were unable to explain their conduct.[252]

(6) *An assessor's pay is stopped*

This led, in May 1881, to the pay of Hīroti, an assessor, being stopped. Booth had sent for Hīroti

> and asked if it was true as had been reported to me, that he as one of Major Kemp's principal Councillors had threatened violence against me as a Govt officer if I presumed to go up the Whanganui River in the execution of my duties.[253]

Hīroti replied that 'as a member of Kemp's Council he was opposed to Courts being held on the River'. Hīroti later apologised for his conduct and Booth recommended that the Native Minister let him off with a caution. However, in April 1881, following the general instructions of Te Keepa to turn back all Europeans from going upriver on land matters, Hīroti turned back two Europeans who had purchased land in the Ōhoutahi Block. As it happened, Te Keepa had not wanted these two turned back: the land involved was Crown granted and validly purchased. Te Keepa subsequently telegraphed Pōari Kuramate to let them through. On 10 May 1881, Booth informed Hīroti that he was suspended from the Government's service. He was reinstated in 1885.[254]

Macky told us that Hīroti was the only Māori official and chief whose employment was suspended 'for any length of time between 1881 and 1887 for any reason other than death or mental health'.[255] However, Te Keepa Te Rangihiwinui was also suspended, in March 1881.[256] Anderson viewed these dismissals as the Government

> signifying its pleasure with some, by placing them on the civil list, and its displeasure with others, by dismissal from their posts, and the withdrawal of the 'mana' of the Crown represented by such positions . . .

Thereby, it encouraged support for its policies, the court, and its opposition to the Trust.[257]

(7) *Ongoing negotiations with the Government*

Te Keepa and the Trust ran into problems because, although they wanted to boycott the Native Land Court's title determinations, so long as claimants were asking the court to decide matters of customary entitlement, staying away was risky. The Native Land Court continued hearing claims to lands included in Te Keepa's deed of trust. Within a year, Te Keepa and other Trust supporters were back before the court, anxiously pursuing rehearings to lands from whose titles they had been excluded in their absence.[258]

The inability of those opposed to the court to avoid its operations without severe repercussions was key to the court's success. For all that Māori at Whanganui and elsewhere sought to resolve disputes through rūnanga and other mechanisms, all knew that it was the Native Land Court that ultimately had the power to decide matters of customary entitlement. Despite this, the Trust attempted for several years to carry out at least part of its programme. For example, in July 1881 it was reported that, after the conclusion of the Native Land Court hearings at Ūpokongaro, the Trust council would hold its own court at Matatera. The council apparently intended to lay down the Trust's eastern boundary at Te Houhou once its Matatera hearing was completed.[259]

Deprived of the expected support of the Government, the Trust council moved more actively to resist European

expansion into the interior. It obstructed the work of surveyors, at times preventing them from completing surveys.[260]

Te Keepa remained keen on economic development, as long as Māori benefited. In 1883, he met Bryce and agreed to a railway line crossing the Trust's rohe because, as he told his people, railways and roads through their land would make their 'poor bush' into a route to wealth.[261] In June 1883, he gave the surveyor Rochfort a letter asking upriver chiefs to allow him to explore routes for the railway; in 1884 he liaised with Māori in the interior to allow gold prospectors to travel to Taumarunui.[262] However, according to Macky, 'Europeans continued to regard Te Keepa's Council as an obstacle to settlement, not because the Council actively opposed settlement, but because the Council was opposed to settlement occurring on terms that were outside the Council's control'.[263]

The Crown entered no new negotiations for Whanganui blocks between 1881 and 1884, and no additional money was paid for any blocks between 1882 and 1884, except for the Murimotu and Rangipō-Waiū leases (we discuss these in chapter 12). This hiatus was partly due to Bryce's determination to scale back new negotiations, but also partly to the Trust council's resistance to surveys and alienation.[264] The Trust established an aukati (a boundary line that could not be crossed without permission) – an element not mentioned when the Trust's plan was described to Bryce in 1880.[265] In October 1882, Te Keepa wrote to the *Wanganui Herald* warning that anyone connected with the Murimotu Company who attempted to come within the Trust's boundaries would be 'violently turned back'.[266] In September 1883, when James Thorpe attempted to survey land in the Murimotu district, Te Aropeta Haeretūterangi obstructed him on the orders of the Trust's Council. Early in 1884, Te Keepa placed Pita Te Rāhui on land in the Rangahaua Block that Nika Waiata had sold, 'until satisfaction was had for the lost land'.[267] In February 1884, the *Wanganui Chronicle* reported that no Pākehā, unless 'especially licensed', was allowed within Te Keepa's territorial boundary.[268]

(8) *Why did the Trust fail?*

By 1884, Kemp's legal bills were colossal: in 1882 he owed Sievwright and Stout £976; by 1884 to 1885 he owed them £2,254.[269] Te Keepa looked to recoup some of his costs from Murimotu rents. Early in 1884, Morrin and Studholme were about to pay a large sum of rent to Māori there. The *Wanganui Chronicle* reported that Te Keepa wanted the money to be handed to him in the presence of all those with interests. He would deduct a portion from the individual shares in order to meet the heavy expenses he had incurred. Many owners reportedly objected, as they knew nothing about the legal expenses, had not authorised them, and refused to pay them.[270] This was probably the beginning of the end for the Trust.

By late 1884, various hapū were pressing ahead with the sale of Maungakāretu, which Winiata Pūhaki and Āperahama Tahunuiārangi were arranging. Both had been supporters of the Trust. The annual reports of Robert Ward, who had succeeded James Booth as resident magistrate in 1883, did not mention the Trust in 1884 or 1885.[271] In 1885, he wrote that 'the barriers of isolation have ceased to exist, and our people are not discouraged from going far up the Wanganui River to the interior of this island'.[272]

Perhaps the advent of the Liberal Government, including some of Te Keepa Te Rangihiwinui's erstwhile supporters against Bryce, helped to turn his thoughts in new directions. It may have helped that Ballance had reinstated Te Keepa's Government salary by November 1884.[273] Perhaps Te Keepa believed that with the coming of the Liberals, his broader aims for the Trust – land development and prosperity for his people – would be achieved. In January 1885, Te Keepa was the first to welcome the Liberal Native Minister, John Ballance, to Rānana. His speech indicated that he had moved on from some of the Trust's objectives, as he expressed allegiance to the Liberal Party and advocated subdivision of land, ascertainment of individual Māori titles, and closer settlement:

> I have always taught the people of Wanganui to aim at the ends sought by rich Europeans, but now I have changed my

> opinions, and I think it is best that the people should only act in accordance with law. I think that all the lands should be subdivided, and the title of each person ascertained; not that I wish to prevent sales or leases of land, but I think that if it is intended to sell the land it should be cut into small blocks and sold to private individuals, because it is population that will bring prosperity to this Island. Previous Governments have assisted the speculators to obtain large blocks of land, ten or even twenty thousand acres each . . . Companies have done the same thing . . . we should avoid companies altogether, and negotiate with the Government: they are the most responsible power in New Zealand, and the guardians of great and small.[274]

Professor Alan Ward considered that the main reason the Trust failed was that the conservative governments of the early 1880s (in which Bryce was the Native Minister) distrusted any scheme supported by 'radical' Liberal politicians such as Stout and Ballance.[275] Ward thought that the strong traditional tribal divisions in the Whanganui district stood in the way of universal Māori support for the Trust:

> Without a major change in the land laws, and while the purchase of individual interests in land went on, it was impossible for organisations attempting to straddle tribal lines to retain control for long.[276]

In his view, these same processes eventually eroded the Kīngitanga.[277]

10.7.4 Other responses to the court and native land law

In this section we briefly canvass other ways that Whanganui Māori responded to the impacts of the court and the native land laws. Throughout the late 1870s and early 1880s, many Whanganui Māori attempted to change the laws through official channels such as Māori members of Parliament, petitions, and district committees created through legislation. At the same time, they continued to develop their own alternatives to the Native Land Court, hoping that positive results would lead to official recognition. Meanwhile, other Whanganui Māori attempted to avoid engagement with the Crown and the court.

(1) *District native committees*

For much of the late nineteenth century, Māori leaders in Whanganui and elsewhere campaigned for Māori-initiated rūnanga and komiti to be officially recognised so that their decisions had legal force. Such bodies were needed, the rangatira believed, to investigate land titles in lieu of, or in tandem with, the Native Land Court. They would enable iwi and hapū to collectively veto harmful land dealings. If Māori committees were ratified, they could maintain social and community order, adapting the wider justice system to Māori needs.

The Government passed the Native Committees Act 1883, to respond to the call for Māori committees to be recognised – and perhaps also to provide an alternative to Kemp's Trust. It was an amended version of the two failed bills of Hone Mohi Tāwhai and Hēnare Tomoana discussed earlier.[278] As we have noted, Native Minister Bryce vigorously opposed Kemp's Trust, but he reluctantly agreed to this Act, which provided for the Government to proclaim districts in which committees of up to twelve members would be elected. The members would elect one of their number as chairman, and he would take the oath of allegiance to the Crown. The committees' only powers were to investigate petty disputes if the people or parties involved agreed, and to advise the Native Land Court of their views on land cases.[279] The court was free to accept or reject the committees' findings. As the Rees–Carroll commission observed in 1891, the Native Committees Act had been a 'hollow shell' that 'mocked and still mocks the Natives with a semblance of authority'.[280]

Bryce initially wanted only six committees for the whole North Island, but eventually twelve committees were permitted. Even so, each served a wide area and a great number of hapū. The committee for Whanganui Māori covered a district that stretched as far south as Ōtaki, and Whanganui locals doubted that their particular concerns

could be met by a committee catering to such a large district.[281] It appears that initial enthusiasm for the committees around the motu (North Island) soon declined when Māori realised their limitations.

A Native Committee district that included Whanganui was declared just as 1884 began, and Robert Ward, the new resident magistrate, conducted its election on 28 January. He reported that Whanganui Māori showed less interest than he had expected, and the most senior chiefs were not elected to the committee. Some of the younger men of influence were elected though; they included Hoani Mete from Pourewa, Pōari Kuramate, Takarangi Mete Kīngi, Rēneti Tapa, and Porokoru Pātapu.[282] They first met in October 1884, and Pōari Kuramate was elected chair. Immediately concerned about their meagre powers, the members requested that the Government empower the committee to hear civil and criminal cases, and to pay their travel costs.[283]

(2) *The Rohe Pōtae and Parihaka*

Some Whanganui Māori attempted to deal with the impacts of colonisation, including the Native Land Court, native land law, and ongoing purchase of their land, by avoiding engagement with the agencies involved. Nationally, the most significant disengagement was the Kīngitanga, which maintained an autonomous area north of Whanganui known as the Rohe Pōtae or King Country. During the 1880s the Government began negotiations to open up the Rohe Pōtae to the main trunk railroad and European settlement. This strongly affected Māori in the north of the Whanganui inquiry district, many of whom were followers of or allied with the Kīngitanga and had land in the Rohe Pōtae. We discuss the opening of the Rohe Pōtae, and the role of the Kīngitanga, when we discuss the purchase of the Waimarino block in chapter 13.

A key instance of Whanganui Māori disengagement was when many Whanganui Māori travelled to Parihaka in Taranaki to join the prophetic movement started there by Te Whiti o Rongomai and Tohu Kākahi. We defer to the full history set out in the Taranaki Report,[284] and here relate the history of Parihaka and its violent suppression by the Crown only briefly, concentrating on Whanganui Māori involvement in the events that unfolded.

Te Whiti and Tohu had established their settlement at Parihaka in the mid-1860s.[285] It became a haven for dispossessed Māori from Mōkau to Whanganui. The two prophets preached a message of peaceful co-existence with Pākehā, and promoted the welfare of their followers through economic development and extensive cropping. The prosperity of the settlement, the quality of its housing, and its horticultural success were much admired by visiting Pākehā. By the end of the 1870s, the permanent population of Parihaka was about 1,500 people.[286]

The Whanganui resident magistrate, Woon, recorded that 150 Whanganui Māori, mainly from Kaiwhaiki, were living at Parihaka in 1879.[287] By 1881, 175 lived there.[288] Deputations from Whanganui hapū attended annual hui there. Woon also noted that many Whanganui Māori

> neglected attending the late sittings of the Native Land Court here, on matters in which they were interested, having handed over all their worldly possessions to their relatives, as being of small value to them now.[289]

David Young reported that Parihaka also attracted Ngāti Hāua from the upper river.[290] It is likely that these Whanganui people – like other Parihaka residents – were reacting to repressive Crown actions by isolating themselves.

Parihaka was established on land in central Taranaki that the Crown had confiscated in 1865. Following the confiscation, the Crown made no attempt to secure the land; the Taranaki Tribunal found that this meant the land reverted to Māori customary tenure.[291] In 1878, without first speaking to tangata whenua, the Government initiated surveys with a view to selling the land to settlers.[292] Te Whiti and Tohu began a programme of passive resistance, ploughing up the land of settlers, and mending fences that troops broke to lay out the whole area for settlers. The arrests of peaceful ploughmen began in 1879.[293]

In mid-September 1881, the Governor, Sir Arthur Hamilton-Gordon, left for Fiji, delegating his powers to

Chief Justice James Prendergast.[294] (It was Prendergast who, four years earlier, ruled that the Treaty of Waitangi was 'a simple nullity' because in 1840 Māori were 'primitive barbarians', 'incapable of performing the duties, and therefore of assuming the rights, of a civilised community'.[295]) On 17 September, Te Whiti made a speech at Parihaka which, according to native agent R Parris, could mean 'a declaration of war' if literally interpreted.[296] Parris accepted that Te Whiti had not intended for his words to be taken literally, as did Native Minister William Rolleston, who visited the area around this time and noted that the community was busy with agriculture and clearly not preparing for war.[297] Nevertheless, it was widely reported in the colonial press that Te Whiti and his followers were planning an armed uprising. On 19 October, just before the return of the Governor, Prendergast issued a proclamation ordering Māori to disperse from Parihaka or face unspecified consequences. He also reinstated Bryce as Native Minister.[298]

On 5 November 1881, Bryce marched into Parihaka at the head of a force of 1,589 armed constabulary. Te Whiti's people did not resist when their houses were burned and looted, crops destroyed, livestock driven away, taonga stolen, and women molested or raped. Te Whiti, Tohu, and others were arrested, held without proper trial, and deported to the South Island. Repressive legislation was passed to allow the Crown to undertake these acts, including a retrospective Indemnity Act in 1882.[299]

Mete Kīngi Paetahi was subsequently sent for by the Crown to identify the Whanganui residents. He called to the assembled people, 'The canoe is broken up; I have come hither to collect the pieces. Come home with me, O, my children!' There was no response other than a voice that called out, 'Te Whiti is our lord (*ariki*) for ever, for ever.'[300] However, the young chief Ūtiku Pōtaka managed to gather up the women and children and bring them home. Young recorded that, in all, 47 Whanganui Māori were arrested.[301] They had no inclination to leave voluntarily, so they were separated out and escorted long distances back to Whanganui.[302] Many of those dispersed by the attack suffered 'great privations' as their crops were all at Parihaka.[303] The Taranaki Tribunal condemned these gross and flagrant breaches of civil and human rights as unlawful and contrary to the principles of the Treaty.[304]

10.7.5 Conclusion

In the period from 1877 to 1884, Whanganui Māori continued their search for an effective means of dealing with the impacts of the native land laws. The Whanganui Lands Trust was the most significant development of this kind. It had the potential to benefit not only Whanganui Māori, but also settlers. Most of the Trust's aims and objectives were compatible with settlement and development of the land for Europeans as well as Māori. It sought to use existing native land law to examine former transactions and execute new ones, by these means engaging with settlement in a controlled manner. This was plainly preferable to what was happening: land alienation at a frenetic pace; individuals dispersing or consuming the price paid; and the Māori communities that originally owned the lands benefiting not at all.

No doubt the Trust scheme had its weaknesses. Its deed has not survived, so we do not know how it provided for those whose land interests were vested in the Trust without their agreement.[305] Certainly, it did not win the unanimous favour of Whanganui Māori, as the Crown observed. Ngāti Rangi leaders were divided in their support, and Mete Kīngi Paetahi was a prominent Māori leader and long-term Government supporter who genuinely feared that Kemp's Trust and the repudiation movement risked renewing political and military conflict between Whanganui Māori and the Government. However, it must be borne in mind that the differences that the Trust brought to the fore about whose interests prevailed in disputed land would have been an inevitable part of any process of tenure transformation in this area. The intense conflicts in Murimotu were another such manifestation.

Although the Trust scheme ultimately failed, there can be no doubt that it grew out of widespread frustration that Māori in Whanganui felt about their inability to govern their own affairs and manage their own land. The Crown was not responsible for all of the factors that brought

down the Whanganui Lands Trust and other Māori-devised responses, but its unwillingness to accommodate them was more crippling than any divisions within and between iwi and hapū.

The Central North Island Tribunal asked itself whether it was reasonable, or even desirable, for the state of the 1870s and 1880s to allow the development of separate Māori institutions that exercised local Māori autonomy. It concluded that:

> the Crown breached the Treaty . . . 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.[306]

This comment applies equally to the Crown's failure to act in a balanced way towards the Whanganui Lands Trust. 'Amalgamation', with its supposed benefits for Māori, was often the Crown's contemporary justification for blocking autonomous institutions like Kemp's Trust. But other points of view were also articulated in parliamentary debates and elsewhere by influential and respected European politicians of the day, as well as by Māori.

The Crown's intransigence undoubtedly prejudiced Whanganui Māori, because it denied tangata whenua the promising opportunity to manage their own land and affairs largely within the existing legal framework and through the English legal mechanism of a trust. The Trust's focus on ensuring Whanganui Māori prosperity in the new economy and into the future had no parallel elsewhere in the locality, and its potential was lost. In chapter 12, we look at whether, after the Trust failed, the uncontrolled land loss that Te Keepa Te Rangihiwinui and the Trust council predicted did in fact ensue.

Robert Stout, 1880s. A Scottish teacher, surveyor, and lawyer, Stout served as Minister for Lands and Immigration and Attorney-General in Grey's Government. As chief justice from 1899 until 1926, he was held in high esteem.

10.8 Railways and Reform, 1884–92

10.8.1 Introduction

In 1884, Robert Stout led a new government into office. Stout and his Treasurer, Julius Vogel, used increased state spending and infrastructure development in an attempt to bring the country out of a long recession.[307] For Vogel, this was a continuation of his work in the Fox Government from 1869. As we saw, this involved Crown purchasing resuming, and restricting private purchase of Māori land. As part of Vogel's new plan, the Government decided on a route for the North Island main trunk railway through the Whanganui district, which meant the Crown had to acquire Māori land there. Now, large areas were declared off limits to private purchasers. Law governing Native Committees was also changed, but still failed to deliver the greater autonomy that Māori in Whanganui and elsewhere requested. Most of the Stout Government's land policies were reversed when the Government was defeated in the 1887 election, but restrictions on private purchase of land wanted for railway persisted.

10.8.2 The Stout–Vogel Government's land policies

John Ballance, Native Minister in the Stout–Vogel Government, was an avowed proponent of interventionist measures in the land market, especially where Crown investments were at stake. In 1884, he moved to protect the Crown's interests in the North Island main trunk railway following the final determination of its route. The Native Land Alienation Restriction Act 1884 prohibited all private dealings in lands described in an attached schedule. They covered an area of more than four million acres in the central North Island, including a substantial interior portion of the Whanganui inquiry district.[308] Under section 3 of the Native Land Alienation Restriction Act 1884, any person found in breach of the provision was liable to a fine of up to £500 and faced a prison term of up to 12 months. The severe penalty was a measure of the Crown's determination to see the provision enforced.

Section 5 of the Act went on to state that every contract or agreement entered into in respect of the restricted area was to be deemed void, and no money paid was to be 'recoverable at law or in equity'. The final section of the Act, section 7, stated:

> Nothing in this Act contained shall be held to preclude the Governor from negotiating with the Native owners of any land within the territory aforesaid for the purchase or other acquisition by Her Majesty of any such land they may wish to dispose of, upon such terms and conditions as may be agreed upon between the Governor and such owners.

As the Pouakani Tribunal found, the 1884 Act 'effectively reimposed a Crown right of pre-emption' over much of the central North Island.[309]

Defending this sweeping measure, Ballance told Parliament that, at first, the Government had intended to prohibit alienation to private parties of land in the immediate vicinity of the designated rail route. It later determined to enlarge the scope. In order to do justice to both the colony and Māori, all land served and benefitted by the railway should be subject to the same restrictions.[310] Ballance believed that the exclusion of private speculators would afford a breathing space in which Māori in Te Rohe Pōtae could discuss the land administration aspects of the Bill, to be dealt with later.[311]

Some members of Parliament were critical. Richard Hobb, the member for the Bay of Islands, stated his belief that 'the Natives have just as much right to sell their land to the highest bidder as any member of this House has'. Instead, Hobb said, the Government was proclaiming blocks with

> the object of securing the land at a very small price – at any rate, for much less than what private individuals would give the Natives. That is most unfair, and is a cause of irritation amongst the Maoris, and the Government should set their faces against it.[312]

Perhaps partly as a concession to this view, the long title described the Act as intended 'temporarily to prevent Dealings in Native Land by Private Persons within a defined District of the North Island'. Meanwhile, the Colonial Secretary Patrick Buckley assured the Legislative Council that it was 'not intended by the Government to take possession of or to purchase the whole of the land within this area. No doubt the land will be limited within a short time.'[313]

In many cases, however, Māori landowners in the region were doubly affected – first their land was proclaimed under the Government Native Land Purchases Act 1877, and then listed in the schedule to the 1884 Act. There were a number of cases where land was proclaimed under the 1877 Act, the proclamation was removed by *Gazette* notice, and then private dealing was again prohibited when the land was listed in the schedule under the 1884 legislation.[314]

The Native Land Alienation Restriction Act 1884 proved short-lived. It was repealed in 1886 by section 47 of Ballance's flagship legislation, the Native Land Administration Act. This Act prohibited direct private purchases of Māori land. Under section 33, persons attempting to buy land this way were liable to a prison sentence of between three and 12 months, or a fine of up to £500. Under sections 4 to 27, the Act also introduced a scheme of Māori land administration via a Crown-appointed

commissioner, operating in conjunction with block committees. However, the Act proved to be largely inoperative, because it did little to meet Māori concerns about the lack of owner involvement in the decision-making process.[315]

A change of Government in 1887 marked a shift in Government policy. The Native Land Act 1888 restored free trade in Māori land. Section 4 of the Act declared that, subject to the requirements of the Native Lands Frauds Prevention Act, 'Natives may alienate and dispose of land or of any share or interest therein as they think fit'. The one exception to the restoration of free trade in Māori land was the 'Rohe-Potae'. By 1886, this area was considerably smaller, contiguous with the Aotea block, but still included the northern part of our inquiry district. Section 15 of the Native Land Court Act 1886 Amendment Act 1888 declared that no part of the 'Rohe-Potae' was to be dealt with for a period of three years. The prohibition did not apply to the Crown.[316] A further restriction on Māori land purchases was imposed in 1889. The North Island Main Trunk Railway Loan Application Act Amendment Act 1889 saw Crown pre-emption imposed over the railway zone for a two-year period, after which it was reimposed in 1891 and 1892.[317]

John Ballance, around 1885. Ballance established the *Evening Herald* newspaper in Wanganui. He joined the Wanganui Cavalry Volunteers, entered politics in 1875, and, as colonial treasurer under Grey, introduced a land tax in 1878. In the Stout–Vogel administration he held the important portfolios of lands and immigration, native affairs, and defence. He formed the first Liberal Government in 1891. In the 1990s, his statue at Moutoa Gardens became an emblem of colonial power in political protests there.

10.8.3 Ballance's tour

In 1885, John Ballance, Native Minister in the Stout–Vogel administration, toured Māori communities to present his government's policies and listen to their concerns. He also aimed to gain Māori agreement to 'opening up' parts of the North Island, particularly the King Country or Rohe Pōtae, but also the upper Whanganui area.[318]

Many Māori in Whanganui and elsewhere remained opposed to the Crown's native land regime, and wanted more control over land alienation. On 7 January 1885, Te Keepa Te Rangihiwinui welcomed Ballance at Rānana. Pōari Kuramate, chairman of the Whanganui Native Committee, asked that his committee should be allowed to confine itself to the Whanganui district. He wanted 'the Committees' to deal with activities on Māori land, be they surveys, sales, leases, or the railway, and also the steamer on the river, which the Whanganui people had agreed to.[319] Ballance agreed that it was absurd that the Whanganui committee should operate as far away as Ōtaki, and promised a truly Whanganui district, with Māori determining its boundaries. As to the committee's power he was more circumspect, calling it 'a very large question' that would 'have to be very carefully considered by the Government'.[320] However he did observe that giving Māori the power to elect committees and lease their own lands would be 'carrying out the provisions of the Treaty of Waitangi'.[321]

On 4 February 1885, at a meeting at Kihikihi, Ballance said he would introduce a Bill to Parliament to give Native

Committees the power to hear cases ('up to a certain amount') like a court. He also mooted that a dog tax could provide the committees with revenue and that chairmen could be paid. He talked now of giving committees

> 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 . . .[322]

He conveyed the same messages at Rānana.[323]

10.8.4 Ballance's reforms

Following his tour, Ballance followed through by getting approval for an annual payment of £50 to each chairman of a Native Committee,[324] and by directing that all applications to survey Māori land be sent to the chairmen of the committees. Advance warning that a survey was in prospect alerted committees to the fact that an application had been made for the Native Land Court to determine title, as a survey was required for any hearing to proceed.[325]

Ballance also tried to increase Māori power to administer their land through the Native Land Disposition Bill. In January 1886, he told a hui in Hawke's Bay that the intention of the Bill was 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'.[326] Professor Ward concluded that there were 'copious submissions on [the Bill] in the Native Affairs Committee, with amendments being proposed by Wahanui and by the member for Eastern Maori, Wi Pere'.[327]

Whanganui Māori gave Ballance their views on the Bill in March 1886 at a hui at Aramoho. Reports indicate that Māori there were primarily concerned with the power and roles of the Native Committees. In particular, they asked Ballance to replace the commissioners appointed under the Bill with the Whanganui Native Committee to be set up under the 1883 Act. They also wanted block committees to work with the Native Committee, and all existing leases to be brought under it. They expressed dissatisfaction with the Native Land Court, and asked Ballance whether the Native Committee could replace it. Ballance fended off these suggestions by saying that the proposed structures were so dense that they would have to involve all Māori, but he did promise to consider whether they should have larger powers in any other respect.[328]

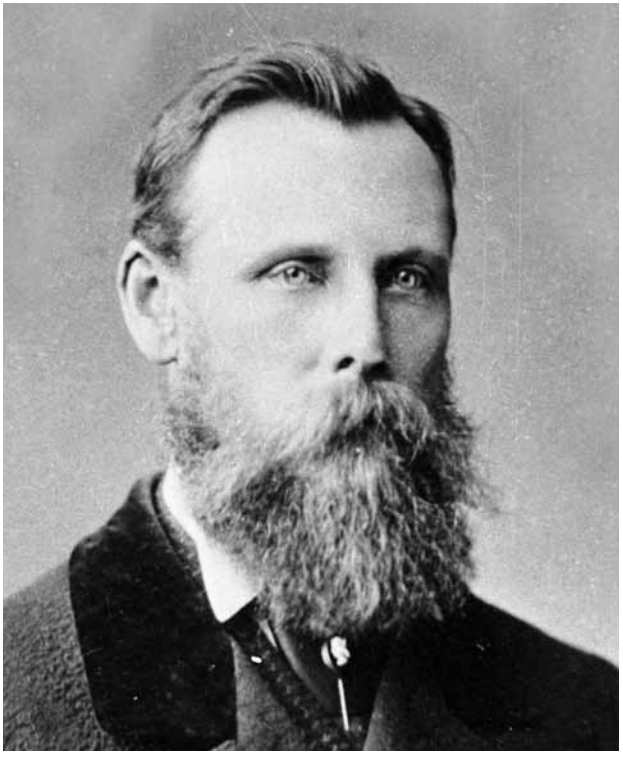
Ballance's responses and reiteration of promises to expand both the number and power of Native Committees probably led Māori to expect much when he reintroduced the Bill to the House. Some aspects of the Bill responded to requests made at the Hawke's Bay hui, such as the replacement of the proposed land boards with a single commissioner. The Bill allowed a majority of owners to direct the commissioner appointed for each district to lease or sell land on their behalf. Alternatively, both owners and block committees could deal directly with the Crown, rather than through the commissioner.[329]

The Native Land Administration Act 1886 did not give either Native Committees or block committees power to take cases to the Native Land Court, and Native Committees gained no role in land administration. Instead, the commissioners were to act alone and the Native Land Court would decide disputes and allocate shares. Nor did the Act include any provision requiring the block committees to act only on the written instructions of landowners. This had the effect of creating block committees and commissioners who were not responsible to owners.[330] And despite his promises, Ballance does not appear to have taken steps to establish a Whanganui district Native Committee.

10.8.5 The reversion to free trade

The Stout–Vogel Government was defeated in the 1887 election, partly, Professor Ward believed, because of the unpopularity of the 1886 Act with both Māori and settlers.[331]

In 1888, a large hui at Pūtiki, attended by Māori delegates from all around the country, called for the repeal of the Native Land Administration Act 1886 and for Māori to have 'full authority to deal with their own lands as to sale, lease, or otherwise'. The same hui wanted Native Committees under the 1883 Act to be 'empowered to act as the Native Land Court', to 'be released from the control of the Government', and to deal with cases according to



William Lee Rees, around 1878. With James Carroll, Rees contributed to Māori land policy as chairman of the 1891 Native Land Laws Commission. He supported Crown pre-emption to open up the North Island.

tikanga ('Native Custom').[332] Later in 1888, the Atkinson Government did repeal the Native Land Administration Act 1886 and replaced it with the Native Land Act 1888, which allowed private parties to purchase directly from Māori, but did not otherwise respond to their concerns.[333]

10.9 The Liberals and Māori Land, 1892–1900

10.9.1 Introduction

In 1891, John Ballance returned to power as leader of the Liberal Party with a renewed commitment to state-centred solutions to the colony's perceived ills. Getting more small settlers on the land – or 'closer settlement' – became the policy priority. To this end, the Government was prepared to strengthen or renew measures to give the Crown a free hand in the land market – despite Māori criticism of the land laws, and of Crown interference in the Native Land Court.

10.9.2 The Rees–Carroll commission

One of the Liberal Government's early moves was to establish a Royal Commission to investigate the operation of the land laws, the Native Land Court, and how Māori land should be acquired in the future. The commission comprised James Carroll, Thomas Mackay, and William Lee Rees as chair, and got underway in 1891.[334] It travelled the North Island to hear evidence from many former and current land court judges, Māori assessors, and others, much of it condemning the existing legislation.[335] Because Thomas Mackay dissented from many of Rees and Carroll's conclusions and produced his own minority report, it became known as the Rees–Carroll commission.[336] Most Whanganui Māori were absent upriver when the commission arrived in their district, and three chiefs addressed them only briefly.[337]

(1) *The commission's findings*

The report of the Rees–Carroll commission was highly critical of native land legislation, stating that it was impossible 'within reasonable limits, to follow the windings and intricacies of those laws by which the Legislature from the outset has been vainly attempting to continue an unsatisfactory system'. Māori, they stated, had been 'surrounded with innumerable safeguards and restrictions, all of which have been unavailing to protect them'.[338] On the effect of the individualisation of title on alienation of Māori land, the commission declared:

> The old public and tribal method of purchase was finally discarded for private and individual dealings. Secrecy, which is ever a badge of fraud, was observed. All the power of the natural leaders of the Maori people was undermined. A slave or a child was in reality placed on an equality with the noblest rangatira (chief) or the boldest warrior of the tribe. An easy entrance into the title of every block could be found

for some paltry bribe. The charmed circle once broken, the European gradually pushed the Maori out and took possession. Sometimes the means used were fair, sometimes they were not.

The alienation of Native land under this law took its very worst form and its most disastrous tendency. It was obtained from a helpless people. The crowds of owners in a memorial of ownership were like a flock of sheep without a shepherd, a watch-dog, or a leader.[339]

Individualisation also rendered impossible the effective occupation and utilisation of Māori land, with multiple owners having an equal right to occupy and utilise decreasing areas of land.[340] According to the report, the Crown had succeeded only in the creation of a confused mass of land laws that created titles useful only as items for sale.

What Māori wanted, Rees and Carroll said, was the creation and empowerment of committees of owners to work with the Government officer to organise leases. They sought 'liberal reserves for the education of their children and the establishment of industrial schools', and for willing groups of owners to 'receive a fair share of the tribal land in severalty for farming or other purposes'.[341]

Pākehā as well as Māori witnesses complained to the commission about how the Native Department and its staff interfered with the court and its operations.[342] Wellington lawyer and conveyancer Martin Chapman explained:

James Carroll, around 1887. Of European and Māori (Ngāti Kahungunu) parentage, he wanted Māori to be able to participate in the economic life of New Zealand. His position on land questions led to his appointment to a commission of inquiry into Māori land laws, the Rees–Carroll commission.

If a suggestion comes from the Government the Native Land Court Judge cannot fail to feel that probably it would be better for him to comply with that suggestion. He may yield almost unconsciously to that feeling. There would be a tendency to comply with it rather than to refuse to comply with it. The same thing applies to a case in which there has been a Government purchase. The Government purchases, we will say, a number of shares in a block of Native land. The rest of the owners do not sell, and the Government wishes to get the land individualised so as to secure a portion of the land corresponding to the shares which it has acquired. The Judge would not be human if he did not give some favour to the Government, and so give a share to every Native who had sold, notwithstanding that perhaps those who sold, as very often would be the case, were those of the smallest consideration—men who felt the smallest amount of responsibility and exercised the smallest amount of ownership. The Native Land Court Judge would not be human if he did not give way to his feeling that it would be better to allot something to all these people.[343]

By contrast, Thomas William Lewis, the longstanding Native Under-Secretary, assured the commission that

the Native Land Court was 'absolutely independent of Government interference'.[344]

(2) *The commission's recommendations*

The report of the Rees–Carroll commission probably raised hopes that changes to the native land laws and the Native Land Court system would ensue. Regarding the administration of Māori land, the commission recommended setting up a system like that which Ballance had tried to implement in 1886. It involved land boards with six members: three Crown appointees, and three elected by tribal committees. The boards would act on the instructions of block committees elected by owners. The block committees would choose which land to reserve for Māori occupation, and which to lease or sell. If owners did not form committees, boards would carry out the work. The lease terms that applied to Crown land would apply.[345] Loveridge told us that, had the plan been fully implemented,

> the result would have been a rather draconian regime – and probably an unpopular one. It is by no means certain that the provisions for representation would have been considered adequate by landowners: for one thing, the Maori members of the board were to be appointed by the 'Tribal Committees' rather than being elected by owners themselves. Similarly, it seems certain that the provisions for the board to make decisions about alienation (where committees failed to act) would have been seen as a breach of the owners' Treaty rights under article 2.[346]

Hayes agrees that there 'was much that was rotten about the model', especially its removal of owners' control.[347]

10.9.3 Liberal reforms

(1) *The Crown boosts its purchase of Māori land*

Rather than giving Māori more control over the fate of their land, the Liberal Government chose instead to enhance the Crown's power to buy Māori land on its own terms. The Native Land Purchases Act 1892 once more enabled the Crown to ban private dealings in specific areas by publishing a *Gazette* notice announcing that it had entered into negotiations. The prohibition had effect for up to two years from the date of publication (section 16). Section 3 authorised the Crown to borrow up to £50,000 per annum for the purposes of purchasing land from Māori.

(2) *Te Kotahitanga*

By the 1890s, Te Keepa Te Rangihiwinui had become a leading member of Te Kotahitanga, a new Māori unity movement, which he and others formed in 1892 after meetings at Parikino on the Whanganui River and Waitangi in the north. Te Kotahitanga sought Government recognition for a Māori Pāremata (Parliament) which would have the power to make laws concerning Māori land. The Pāremata met annually in the 1890s and drafted a number of Bills aimed at promoting a system of Māori committees to determine titles and administer land. These were mostly ignored in Wellington.[348]

The Kotahitanga movement also called for Māori to boycott the Native Land Court, which once again Te Keepa supported. In January 1893 he attempted to lead a boycott of the court over the Rangiwaea hearing, urging the judge in the court not to proceed. In response, the judge said that this 'was only a part of the tactics pursued by Kemp and his people for the last four years or more, i.e., to oppose the Court and to stop all claims to land up the Wanganui River from being investigated'. The judge carried on with the case.[349]

In May 1893, Te Keepa and 55 others petitioned Parliament. They complained that the native land laws were destroying Māori leaders' authority in their communities, and asked that the right of Māori to administer their own lands be recognised by passing the Federated Maori Assembly Empowering Bill recently drawn up at the second annual meeting of the Pāremata.[350]

(3) *Government engagement with Māori*

In 1894, Whanganui Māori were again given an opportunity to advise the Government of their views on native land legislation. James Carroll, now a member of the Government's Executive Council, accompanied Premier Richard Seddon on a tour of the North Island to promote

their policies for Pākehā settlement to Māori.[351] Their main message was that they were there to listen to Māori requests regarding any new legislation, but that development must be undertaken and land could no longer lie idle. Seddon explained how he had resolved to consult them on how they wished to deal with their land, and he would then devise legislation so that both Europeans and Māori could use the surplus land, and Māori children would be protected from want for all time.[352] From Pīpīriki the party went upriver with Tōpia Tūroa, to the Māori settlement of Tīeke. Seddon spoke again of the Government's desire to help Māori with education and with managing their land. He was, he said,

> Travelling through the country meeting the Natives face to face, so that they might open their minds to him, and so that they might freely state their wants and wishes. When he had ascertained their minds he would be able to decide what remedy to apply.[353]

However, despite the Rees–Carroll commission's earlier warnings about Māori dislike of the Public Trustee, the Government believed it could convince Māori to use the Public Trustee to manage their land. Seddon wished he could take Whanganui Māori in a balloon over Taranaki so that he could show them 'what good had been achieved already' by the Public Trustee there; the Trustee had doubled the rentals achieved in the West Coast Settlement Reserves since taking them over.[354] There is no record of what Māori said in response.

After the tour, on 27 August 1894, Te Keepa addressed a meeting of Māori leaders in Wellington. They met to discuss two Bills sponsored by Te Kotahitanga – the Native Rights Bill and the Native Lands Administration Bill – introduced to Parliament by Hone Heke and Wī Pere respectively. The latter Bill involved dealing with land via Māori committees. It was pointed out at the meeting that Pere's Bill was 'the first complete and distinct scheme for dealing with native lands which had emanated from the natives themselves'. Since Parliament 'had for many years been attempting to legislate on the subject, with very unsatisfactory results', the Māori leaders thought the Bill should be given favourable consideration. Parliament ignored both Bills.[355]

(4) *Full return to pre-emption*

Instead, the Government passed the Native Land Court Act 1894, which effectively re-imposed Crown pre-emption. It did, however, allow 'bona fide' purchasers to complete transactions under certain conditions and, after 1895, the Governor was able to exempt blocks from the pre-emption regime (section 118).[356] The Crown had now assumed complete control over the purchase of Māori land. Private purchasers required Crown consent to complete purchases or to enter into new deals. The 1894 Act was the highest expression of the interventionism that many Liberals favoured. Even James Carroll, who spoke out against a return to pre-emption when he was a member of the 1891 Royal Commission on Native Land Laws, now changed his mind or was required to fall into line as a member of the Executive Council, declaring that Māori had never profited from free trade in their land.[357]

Premier Richard Seddon claimed that the Act would save Māori and their land from the clutches of 'the land-grabber, the land-shark, the pakeha-Maori'.[358] That claim is difficult to reconcile with Seddon's boast in another context about how much land the Liberal Government managed to purchase from Māori.[359]

However, the practical effect of the 1894 re-imposition of pre-emption may not have been much. Richard Boast assessed it as 'probably minimal', given that the Crown had various mechanisms available to it since at least 1877 onwards by which to exclude private competition from lands targeted by it for purchase.[360] Perhaps more significant was the Liberal Government's renewed commitment to resourcing Crown purchasing after a lengthy period of depression and retrenchment.

(5) *The new incorporation initiative*

The Native Land Court Act 1894 did contain a significant change to Māori land administration. Section 122 enabled a majority of owners in any Māori land block or multiple adjoining blocks to apply to the court to have a body corporate constituted. Upon incorporation, the owners could

then choose a committee to administer the land (section 123). The committee could also sell, although further provisions prevented dealings with private parties (sections 117, 126). The proceeds of any alienation were to be paid to the Public Trustee, who would be responsible for distributing payments to the owners, less his own expenses and those of the committee (sections 128, 129).

The Native Land Court Act 1894 offered Māori a level of communal control that they had not previously had, but it was far from what they had been asking for. The Central North Island Tribunal summarised the situation:

> 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.[361]

Regulations made under the 1894 Act the following year enabled the committees to mortgage, lease, or sell land – as well as to raise capital funds through the Public Trustee to either settle the land or stock and farm it. The regulations also gave the committee 'full power' to 'withhold any land from sale' for the purpose of farming it on behalf of the owners.[362] Importantly, the regulations also required the elected committees to act in accordance with the directions of owners ascertained at annual general meetings. The committee and Public Trustee were required to keep full accounts (to be held at the committee's registered office), which would be audited once a year. For contracts above £50, the committee required the Public Trustee's consent. Leases required the agreement of the Minister, the Public Trustee, and the commissioner of Crown lands. The Public Trustee assumed all the powers of the lessor after a lease was signed. He also handled all money from sales and leases. He was required to pay expenses, set aside money for sinking funds, reduce mortgages, and invest remaining proceeds 'for the benefit of the corporation', and distribute any net income from leases to the owners according to their relative shares. However, the regulations also allowed the Crown to purchase undivided individual interests, bypassing incorporations and their committees.[363]

The Crown conceded that it breached the Treaty by failing to provide a satisfactory title option for communal land management prior to 1894.[364] The Native Land Court Act 1894 did finally provide a much-needed mechanism of this kind, and as we will see, there was some interest in Whanganui in forming incorporations to develop land. However, for incorporations to become a popular method of land management would have required considerable promotion and Government input. Moreover, the use of the Public Trustee to manage the finances, particularly in relation to sales and leases, might well have made incorporations less attractive to Māori. The Rees–Carroll commission had commented on how Māori disliked and distrusted the Public Trustee's operations.

In the end, the Act was not satisfactory. The Crown and the Public Trustee had too much control over the land, and the committees too little.

10.9.4 Conclusions

The Liberal Government enacted significant changes to the native land laws, often claiming to do so for the benefit of Māori. However, the actual benefit was minimal. The empowerment of committees under the regulations of 1895 was a step in the right direction, but they left too much power with the Crown and the Public Trustee, and facilitated the Crown's ongoing purchase of undivided individual interests in the blocks concerned by allowing it to bypass the committees and incorporation altogether if they opposed selling land.[365] The Liberals' reforms also failed to address long-standing problems plaguing Māori landowners, such as individualised interests in shared titles, succession rules that led to overcrowded titles, and the ability of a minority to drag an unwilling majority to court and into land sales.

By the late 1890s, ongoing Māori land loss was a cause of deep concern for both the Crown and Māori. The Crown began to contemplate alternatives to purchase,

going so far as to pass legislation in 1899 that prevented it from entering into new purchases.

10.10 Findings

The Treaty conferred upon the Crown the right to exercise kāwanatanga, from which the Crown assumed power to legislate for dealings in Māori customary land in the early years of the colony. At the same time, the Treaty conferred upon Māori full rights of land ownership, which included the right to keep their land until they wished to sell it. This meant that when the Crown came to devise how to determine ownership of customary land for the purpose of creating titles, it would first need to talk with Māori about it. Some form of consent to any proposed scheme was required if the transformation of customary tenure was to comply with the Treaty.

10.10.1 Māori input into the title system

In Whanganui, Māori had previously said that institutions of political leadership and decision-making (tribal rūnanga) should be given authority to conduct land dealings, and some in the district had aligned themselves with the Kīngitanga. However, the Crown considered that land could be transacted without concluding the question of who owned it, provided that only the Crown was permitted to conduct such transactions.

By the early 1860s, colonial authorities rightly considered it was necessary to find some means to give legal protection to Māori rights in customary land. Māori in general supported this, and recognised that in order to achieve it, their existing tenure would need to change. Increasing Māori protest about the Crown's land purchases in the 1850s indicated that Māori continued to believe that they had a right to be included in decisions about how their land would be dealt with.

But when the Crown came to introduce and then almost immediately revise a comprehensive new system for Māori land, establishing an independent court to determine titles that could be traded on the free market, it did not seek Māori input or agreement.

For the most part, successive governments saw no need to put proposed policy changes to Māori for their consideration: the only condition on their exercise of power was parliamentary support. The main exception – Ballance's consultation on the 1886 Act – did not alter colonial politicians' general view that they did not require Māori support for legislation affecting their land. Though promising, the block committees enabled by the 1886 Act did not reflect what Māori told Ballance they needed, and what Ballance had seemed to promise during his tour. They proved unsuccessful, and were quickly replaced with a familiar system again instituted without Māori input.

The Government's disregard, and non-involvement in critical decisions affecting Māori futures, disempowered rangatira. Engagement between the Crown and Māori was channelled into unconnected interactions about land. Individual Māori participated in Native Land Court processes, and Crown purchase agents engaged with those individuals to purchase their land interests. It was these interactions, which affected people directly and locally, that became the focus of protest.

Those involved in the rūnanga and komiti may have had informal influence locally, but they were really always on the sidelines, because politicians concentrated on the Crown's overall agenda for the country.

The most coherent opposition was Kemp's Trust. It sought to work within the system rather than go up against it, but it was rejected – primarily on the grounds that it was not provided for by legislation. The only way for Māori to be involved in the legislative process was through the Māori members of Parliament, but these were few, and their influence small. It was not until the end of the century that Māori, frustrated by their exclusion, began to voice more collective opposition through the Kotahitanga, in which at least one Whanganui Māori leader featured prominently.

The Crown used legislation to acquire de facto sovereignty in the Whanganui district. In subsequent chapters we show how the systems enabled by legislation were implemented on the ground. At no point can it be said that Whanganui Māori stopped trying to deter the Crown from exercising this authority in their territories. Protest

was ongoing, because the Crown assumed control without properly accommodating the fundamental entitlement of Māori to decide how their land rights would be brought into the legal framework. This was a breach of article 2 – te tino rangatiratanga, and the principles of partnership and active protection.

Having been so thoroughly excluded from this natural province of authority – that is, deciding how their land interests would be recognised – it was unsurprising that Māori did not like the system imposed on them. It was antithetical to the nature of Māori customary rights to land, and its transformatory objectives went beyond what they were willing to accommodate.

Māori everywhere, and particularly in Whanganui, opposed the new system on two grounds: the court did not include provision for Māori communal decision-making in the titles that were issued; and the form of these titles did not enable communal decision-making about the future disposition of land.

10.10.2 The court's processes

The court – from the 1865 Act onwards – disabled Māori communal decision-making. Right through the period, individual Māori could initiate court proceedings, which meant other interest-holders (both from their own hapū and iwi, and from others) had to join in to secure rights. Hapū and iwi could not influence when and how their land would come before the court. And when the court sat, leaders were limited to presenting claims to ownership: Māori participated in formal decision-making only as assessors, who assisted judges presiding in districts outside their own rohe. This was a circumscribed role, and reserved for a select few.

Hapū and iwi were left to exert their collective influence beyond the formal proceedings. Outside of court, they settled boundary disputes, formulated lists of owners, and determined relative interests, in an effort to control what the court was doing, and to lessen the likelihood of its determining their respective interests incorrectly.

Māori who advocated alternatives envisaged a system in which they could adjudicate title themselves. But with no means of influencing the political process, they sought to administer their land within a reformed court process (Kemp's Trust), or to augment the powers of the few official forms of local Māori governance that were established (the Native Committees). However, the court process continued within the basic parameters described for the duration of the nineteenth century.

The exclusion of Māori from the formal aspects of the court's process was made worse by the fact that there was no right of appeal from the court's decisions before 1894. Theoretically, rehearings were available, but in practice the decision to grant them was highly discretionary, and occurred rarely. We agree with the Central North Island Tribunal that denying Māori the opportunity to have important decisions affecting them reconsidered meant that the system for title determination was neither fair, transparent, nor robust.[366] The fact that it took the Crown three decades from the time the Native Land Court was established – and the better part of two decades from the time the Native Affairs Committee first highlighted the anomaly – to enable appeals as of right was contrary to its duty to actively protect Māori interests. It was also contrary to its obligation (partly stemming from its undertakings in article 3 of the Treaty) to enable Māori to seek reasonable redress for grievances.

Whanganui Māori rights in land ought to have been determined by their tribal leadership, even if within the framework of new institutions. The Treaty led them to expect no less, given article 2's confirmation of te tino rangatiratanga combined with guaranteed ownership until they wanted to sell. But the Crown set in place an entirely different system where leaders had no formal role. This breached the principles of partnership and active protection.

10.10.3 The form of title

At no point did Māori seek or support land titles that favoured the right of the individual over the collective. It is generally accepted that Māori wanted a form of title that was recognisable at law, and we infer from their reaction to the kind of title that the Crown delivered to them that they were looking for something quite different from that. What would probably have worked was a compromise

between existing forms of customary rights to land and resources, which were carefully balanced and distributed within and between hapū and iwi, and legal guarantee of exclusive ownership. Title that granted primary ownership to individuals, though, was not that compromise.

Other Tribunals have condemned the 10-owner rule established under the 1865 Act, which disenfranchised customary owners in many districts. However, only a small fraction of the land in this inquiry district came before the court when that Act was in force. It was the memorial of ownership introduced in 1873 that was to affect Māori landowners most in our inquiry district.

Memorials of ownership did at least identify all individuals with interests as owners, but it also allowed those individuals to sell their interests without reference to other owners. There was as usual no provision for collective action, and once individuals sold interests, partitioning them out was costly. In fact, memorials of ownership provided a form of title that was useful primarily for the purpose of selling.

Māori in Whanganui, as elsewhere, considered that their land ought to be managed collectively. Kemp's Trust was an attempt to work within the existing system, holding land in trust so as to direct the pace of settlement.

The kind of title that the 1873 Act ushered in ran entirely counter to Māori preferences, and breached the Crown's obligations in article 2. The Crown rightly conceded during our inquiry that it 'did not operate in a manner that reflected the Crown's obligations to actively protect the interests of Maori in land they may otherwise wished to have retained in communal ownership'.[367]

10.10.4 Crown motives

Broadly, the land tenure system that the Crown introduced and developed was intended to advance the economic position of the colony and consolidate its own authority. The court originated from colonial politicians' view that, before land could be safely transacted, it would be necessary to arrive at a sound means of identifying its owners.

This could have involved conferring on tribal groups a legal personality that would enable them to be recognised as corporate landowners. But giving tribes new authority was not the direction in which colonial opinion was heading. The titles that the court produced proved an awkward halfway house between collective and individual title, but they were a step on the way to disabling tribal institutions and progressing Māori towards individualism as early as possible. At no point did those in power see a need to take into account Māori views in any substantive way: to do so would be a concession to Māori authority, which colonial politicians were seeking to erode.

It was not just that the court's process and the titles it issued were intended to enable the transfer of Māori land. In many ways more startling was how the Crown positioned itself at the centre of the land market at several critical points, consolidating its control and authority. Legislation enabled it to exclude private parties so as to operate from a near-monopoly position to buy up the land interests of individual owners with scattered interests. The motivation here was to ensure swift passage for its policies of infrastructure development and increased immigration; protecting Māori in their landholdings did not feature on the policy agenda. Some ministries pulled back the level of Crown intervention, but the overwhelming trend during the period was towards more, against a founding principle that the court would enable a free market in land. The combination put the Crown in a powerful position to choose when and how it acquired land from Māori.

We acknowledge that this path mirrored trends occurring elsewhere in the world at the time: tenure reform was not unique to colonial New Zealand. Nevertheless, the Crown assumed its authority to govern here from a founding agreement that acknowledged Māori rights to land. In that the Crown established a system in which Māori had no influence on how their customary rights would be brought into the legal system, it breached the principles of partnership, autonomy, and active protection. In that the Crown did so to advance its own position, the Crown breached the principle of good government.

In our next chapters we look at how the introduction and development of this system played out in the Whanganui district.

Notes

1. Document A145 (Bayley)
2. Ibid, p 9. The quotation is from James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, Connecticut: Yale University Press, 1998), p 36
3. Document A145 (Bayley), p 9
4. Ibid
5. Ibid
6. Document A70 (Anderson), pp 153–155, 178
7. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 397
8. The Crown submitted a list of 74 questions, which were reduced to 11 by the Tribunal's historian group: see memo 3.2.388, p 1, app 2. A further four questions were then added: see memos 3.2.416, 3.2.452. Some of the questions were further split into sub-questions in the final discussion. For the full list of questions, see paper 6.2.5, annexure A, pp 7–74.
9. Paper 6.2.5, pp 34, 57. There was a further question that the hot tub participants agreed had been answered elsewhere.
10. Memorandum 3.2.621, pp 3–4
11. The Crown noted that there were 'necessarily, some limitations on the statement given the relatively broad and generic nature of the questions, and the time constraints the participants were operating within'. The Crown further noted that '[i]n some cases it is difficult to ascertain what may have been "agreed" by the participants, particularly in situations where comments are attributed to three of the six participants'. (Submission 3.3.130, p 4.)
12. Memorandum 3.2.586, p 1
13. Submission 3.3.130, pp 2–3
14. Ibid, p 3
15. Ibid, pp 2–3
16. Submission 3.3.49, pp 10–11
17. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 777
18. Ibid
19. Submission 3.3.49, p 9
20. Ibid, p 14
21. Ibid, p 12
22. Ibid, pp 24–25
23. Submission 3.3.55, p 48
24. Submission 3.3.49, p 14
25. Submission 3.3.55, p 1
26. Ibid, p 20
27. Ibid, p 23; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 307
28. Submission 3.3.49, p 42
29. Ibid, p 38
30. Submission 3.3.48, p 1
31. Ibid, pp 1–2
32. Submission 3.3.43, p 16
33. Submission 3.3.130, p 8
34. Submission 1.3.3, p 76
35. Submission 3.3.129, p 21
36. Ibid, p 29
37. Submission 3.3.130, pp 23–27
38. Submission 3.3.125, p 3
39. Ibid
40. Ibid, p 4
41. Ibid, p 5
42. Submission 3.3.49, p 9
43. Claim 1.3.3, p 76
44. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 675
45. Document A92 (Loveridge), p 190
46. 'A Warrant Making Rules for Regulating the Sitting of Courts under the "Native Lands Act 1862"', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 467
47. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 674–677
48. Ibid, p 778
49. Ibid, p 678
50. Document A92 (Loveridge), p 20
51. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 778
52. Submission 3.3.129, p 21
53. Document A92 (Loveridge), p 46
54. 'Report of a Board Appointed by his Excellency the Governor to Enquire Into and Report upon the State of Native Lands', 9 July 1856, *Votes and Proceedings of the House of Representatives*, 1856, B-3, p 4
55. Document A92 (Loveridge), pp 72–83
56. Ibid, p 87
57. Waitangi Tribunal, *The Hauraki Report*, p 674
58. Document A92 (Loveridge), p 126; 'Minutes of Proceedings of the Kohimarama Conference', 18 July 1860, AJHR, 1860, E-9, p 10
59. Ibid
60. Ibid
61. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, p 411
62. Document A143 (Loveridge), p 207
63. Ibid
64. Ibid
65. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, p 412; doc A92 (Loveridge), p 214
66. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 678; doc A92 (Loveridge), p 219
67. Document A92 (Loveridge), pp 221–222
68. Waitangi Tribunal, *The Kaipara Report* (Wellington: Legislation Direct, 2006), p 61
69. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 684
70. Ibid
71. Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia Publishers, 1998), pp 41, 44
72. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 684
73. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, p 414

74. David V Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), p 155
75. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, p 404
76. Document A83 (Pickens), p 136
77. Williams, *'Te Kooti Tango Whenua'*, pp 151–152
78. Ibid
79. Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, 3 vols (Wellington: GP Publications, 1997), vol 2, p 223
80. Ibid, p 220
81. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Brooker and Friend Ltd, 1987), p 213
82. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 697; doc A70 (Anderson), p 86
83. Submission 3.3.130, pp 2–3
84. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 688
85. Ibid
86. Native Land Court, *Important Judgments Delivered in the Compensation Court and Native Land Court, 1866–1879* (Auckland: Henry Brett, 1879), p 19
87. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 689
88. Ibid, pp 689–690
89. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed (Wellington: Legislation Direct, 2008), vol 2, pp 634–635
90. Alan Ward, *National Overview*, vol 2, pp 229–230
91. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 698–699
92. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 523
93. Williams, *'Te Kooti Tango Whenua'*, p 213
94. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 435
95. 'Instructions to Trust Commissioners under the Native Lands Frauds Prevention Act 1870', *Appendix to the Journal of the Legislative Council*, 1871, no 23, p 162
96. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 705; doc A155 (Hayes), p 45
97. Document A155 (Hayes), p 45, fn 159
98. Native Lands Act 1869, s 20; The Native Lands Acts Amendment Act 1870, ss 2–3; Native Land Act 1873, s 58
99. The Native Land Act Amendment Act 1878, s 10
100. Native Land Court Act 1880, s 47
101. Native Land Court Act 1886, s 76
102. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 498
103. Ibid, pp 498–500
104. Native Land Court Act 1894, ss 79, 82
105. Ibid, s 79
106. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 498
107. Native Land Court Act 1894, s 87
108. Claim 1.3.3, p 169
109. Document A87 (Loveridge), p 77
110. Submission 3.3.55, p 20
111. Ibid, p 53
112. Submission 3.3.125, p 4
113. Ibid, p 5
114. Ibid
115. Document A110 (Hearn), pp 20–21
116. George M Waterhouse, 13 November 1871, NZPD, 1871, vol 11, p 1022
117. Henry Sewell, 19 September 1872, NZPD, 1872, vol 13, p 258; see also doc A87 (Loveridge), p 95
118. Document A87 (Loveridge), p 72
119. Ibid, pp 72–74
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121. Ibid, pp 99–106; Immigration and Public Works Act 1874
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123. 'Papers Relative to the Working of the Native Land Court Acts and Appendices Relating Thereto', *Appendix to the Journal of the House of Representatives*, 1871, A-2A, pp 3–52
124. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, pp 414–415; O'Malley, *Agents of Autonomy*, p 45
125. Richard Woon to Assistant Native Secretary, 21 February 1872, AJHR, 1872, F-3A, pp 18–19
126. Ibid
127. Ibid
128. Document A73 (Macky), p 22; O'Malley, *Agents of Autonomy*, p 53
129. O'Malley, *Agents of Autonomy*, pp 53, 55
130. Ibid, pp 54–55
131. Richard Woon, resident magistrate, upper Whanganui, to under-secretary, Native Department, 10 May 1873, AJHR, 1873, G-1, p 17
132. O'Malley, *Agents of Autonomy*, p 55; see also doc A73 (Macky), pp 23–24
133. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, 2nd ed (Auckland: Auckland University Press, 1995), p 248; doc A73 (Macky), pp 25–26
134. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 311–312
135. Ibid, p 311
136. Ibid, p 312
137. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, p 443
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139. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, pp 440–441
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141. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 728–729
142. *Willoughby v Panapa Waihopi* [1910] 29 NZLR, 1123 (CA), 1128; Tom Bennion and Judi Boyd, *Succession to Māori Land, 1900–52*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 7; Waitangi Tribunal, *The Hauraki Report*, vol 2, p 691
143. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 688
144. Ibid, p 691
145. Ibid, p 782
146. Ibid, p 693
147. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, pp 499–500

148. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 785
149. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, pp 445–446
150. Paper 6.2.5, pp 28–29, 67–69
151. Waitangi Tribunal, *Turanga Tangata Turanga Whenua Report*, vol 2, p 444
152. Ormond to McLean, 10 June 1872, MS-papers-0032–0485, ATL, Wellington; S Locke to Native Minister, 30 May 1874, AJHR, 1874, G-2, p 18
153. Document A70 (Anderson), p 169
154. 'Petition of Renata Kawepo and 553 others', AJHR, 1872, I-2; Samuel Locke to McLean, 10 July 1872, MS-papers-00320394, 1012150, ATL, Wellington; 'Report of the Hawke's Bay Native Lands Alienation Commission', AJHR, 1873, G-7, passim; Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Wellington: Victoria University Press, 2008), pp 137–138
155. Mary Boyd, 'Henry Robert Russell', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/2r32/russell-henry-robert, last modified 28 January 2014; Angela Ballara, 'Henare Matua', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/1m27/matua-henare, last modified 7 March 2013; doc A73 (Macky), p 27
156. Document A73 (Macky), p 26
157. Richard Woon, resident magistrate, upper Whanganui, to under-secretary, Native Department, 16 June 1874, AJHR, 1874, G-2, p 15; see also doc A73 (Macky), pp 27, 29–30
158. Document A73 (Macky), pp 28–29
159. Document A100 (Macky), p 285; 'The Native Meeting at Kaiwaike', *Wanganui Chronicle*, 19 May 1874, p 2
160. Richard Woon, resident magistrate, upper Whanganui, to under-secretary, Native Department, 16 June 1874, AJHR, 1874, G-2, p 16
161. Ibid, p 15
162. Ibid; Ormond to McLean, 1 June 1874, MS-0032, folder 486, ATL, Wellington; Richard Woon, resident magistrate, upper Whanganui, to under-secretary, Native Department, 21 May 1875, AJHR, 1875, G-1, pp 11–12
163. Richard Woon, resident magistrate, upper Whanganui, to under-secretary, Native Department, 26 May 1876; J Booth, resident magistrate, to under-secretary, Native Department, 31 May 1876, AJHR, 1876, G-1, pp 34–35
164. Richard Woon, resident magistrate, upper Whanganui, to under-secretary, Native Department, 16 June 1874, AJHR, 1874, G-2, p 14
165. Richard Woon, resident magistrate, upper Wanganui, to under-secretary, Native Department, 21 May 1875, AJHR, G-1, pp 11–12
166. Ibid, p 12
167. Ibid
168. Document A73 (Macky), pp 33–35
169. Richard Woon, resident magistrate, upper Wanganui, to under-secretary, Native Department, 22 May 1877, AJHR, G-1, p 16
170. Richard Woon, resident magistrate, upper Wanganui, to under-secretary, Native Department, 24 May 1879, AJHR, G-1, p 9
171. Document A73 (Macky), p 35; Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 28 May 1878, AJHR, G-1, p 13
172. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 28 May 1878, AJHR, G-1, p 13; doc A73 (Macky), p 36
173. Document A11 (Ward), p 28; Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 28 May 1878, AJHR, G-1, p 13
174. Submission 3.3.62, p 53
175. Ward, *A Show of Justice*, pp 209–210
176. O'Malley, *Agents of Autonomy*, p 73
177. Ward, *A Show of Justice*, p 209
178. Document A70 (Anderson), pp 155–156. Pēhimana may have been Pēhimana Manakore of Ngā Pourua/Te Ati Hau descent, resident at Pūtiki.
179. Steven Oliver, 'Mete Kingi Te Rangi Paetahi', in the *Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand*, updated 30 October 2012, http://www.teara.govt.nz/en/biographies/1t62/te-rangi-paetahi-mete-kingi, accessed 20 May 2015
180. Document A70 (Anderson), p 156
181. John Oakley Wilson, *New Zealand Parliamentary Record* (Wellington: Government Printer, 1985), pp 172–173
182. Ward, *A Show of Justice*, p 210
183. Document A70 (Anderson), pp 158–159
184. Karaitiana Takamoana, 25 August 1873, NZPD, 1873, vol 14, p 611
185. Wiremu Pere, 28 September 1894, NZPD, 1894, vol 86, p 375
186. Document A73 (Macky), pp 112–116
187. Ward, *A Show of Justice*, p 271
188. Document A11 (Ward), p 76
189. Document A70 (Anderson), pp 232–235
190. Document A58 (Mitchell), pp 157–159
191. Paper 6.2.5, p 51
192. Document A58 (Mitchell), pp 159–161
193. Ibid, pp 157–159
194. Document A102 (Edwards), p 273; doc A87 (Loveridge), pp 118–119
195. Submission 3.3.49, p 111
196. Submission 3.3.130, p 19
197. Ibid, pp 19–20
198. Document A102 (Edwards), pp 273–274
199. Document A87 (Loveridge), p 118
200. Document A102 (Edwards), pp 268, 274
201. Ibid, p 275
202. Ibid
203. Ibid
204. George Whitmore, 4 December 1877, NZPD, 1877, vol 27, p 671
205. Document A102 (Edwards), pp 276–278
206. John Sheehan, 7 November 1879, *Appendices to the Journals of the Legislative Council*, 1879, app, no 6, p 3; see also doc A110 (Hearn), p 163

207. Document A87 (Loveridge), p 99
208. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 587
209. Document A110 (Hearn), p 164
210. Ibid, p 24; Native Land Act Amendment Act 1877, s 6
211. Richard Boast, *Buying the Land, Selling the Land*, p 151
212. Ibid
213. R C J Stone, 'The Maori Lands Question and the Fall of the Grey Government', *New Zealand Journal of History*, vol 1, no 1 (1967), p 66
214. Document A87 (Loveridge), p 126
215. Ibid, p 122
216. 'Papers Relative to Transactions of Messrs Young and Warbrick, as Officers of the Land Purchase Department', 31 May 1880, AJHR, 1880, G-5, p 14; see also Boast, *Buying the Land, Selling the Land*, p 315
217. Document A87 (Loveridge), pp 125–128
218. Ibid, pp 125–126
219. Native Land Court Act 1880
220. Native Land Laws Amendment Act 1883, ss 7–8
221. Submission 3.3.48, p 1
222. Ibid, p 2
223. Ibid, p 4
224. Submission 3.3.129, p 1; submission 3.3.130, p 16
225. Claim 1.3.3, pp 88–89, 175–176; submission 3.3.129, p 24
226. Claim 1.3.3, pp 88–89
227. Ibid, p 89
228. Document A73 (Macky), pp 79–80
229. Ibid, pp 80–81
230. Ibid, p 81
231. Claim 1.3.3(b) (Crown Law Office supporting documents), p 124
232. Historian David Young recorded in his history of the Whanganui River that the other three pou were located 'on the banks of the Waitōtara River (Ngā Rauru were involved)', 'at Te Horoamoehau and the Rangitīkei (near Tokorangi marae)', and 'close to the Moawhango River at Kaitangiwhenua' respectively (David Young, *Woven By Water: Histories from the Whanganui River* (Wellington: Huia Press, 1998), p 113). Macky suggested there were five pou with those at Matemateonga, Te Reureu (on the Rangitīkei River), and Kaitangiwhenua joining those at Raorikia (Kemp's Pole, 16 miles up the Whanganui River) and Te Horo-a-Moehau (doc A73 (Macky), p 82; see also Maxwell James Grant Smart and Arthur Palmer Bates, *The Wanganui Story* (Wanganui: Wanganui Newspapers Ltd), 1972), p 222). It seems likely that there were four pou rather than five as they were placed to mark 'the four corners' of the Trust's Rohe. It is also likely that two of the other three were close to Moawhango, and at Te Reureu which is close to Te Tikanga, a marae of Ngāti Waewae (and Ngāti Pikiahu and other groups) at Tokorangi on the Rangitīkei River. The Te Reureu pou was possibly established or re-established in 1881 at Te Houhou, a couple of miles upriver (see document A73 (Macky), p 107). The proximity of Te Reureu and Te Tikanga Marae at Tokorangi is shown in document A144 (Ngāti Tūwharetoa Mapbook), plate 41. Kaitangiwhenua and Te Horo-a-Moehau have not survived as place names on modern maps nor on any maps presented to us as evidence. We note that there is a place called Te Horo near Moawhango on the Key Map in 'Department of Lands: Scenery Preservation, Report for the Year Ended 31st March, 1906', AJHR, sess 2, 1906, C-6. Kaitangiwhenua is the name of a block next to the western boundary of the inquiry district, near the Waitōtara River. Smart and Bates state that Te Horo-a-Moehau was 'on the Matemateaonga'; this could mean the western end of the Matemateāonga track between the Whanganui and Waitōtara Rivers, or the Matemateāonga Range, a source of the headwaters of the Waitōtara and Whenuakura Rivers. One of the peaks on the range is called Matemateāonga: G Smart and A Bates, *The Wanganui Story*, p 222.
233. Claim 1.3.3(b) (Crown Law Office supporting documents), pp 112–113
234. Ibid, p 112
235. Ibid, pp 113–114
236. Ibid, pp 112–114
237. Document A73 (Macky), p 87
238. Claim 1.3.3(b) (Crown Law Office supporting documents), pp 117–122
239. Document A11 (Ward), pp 29–30
240. Claim 1.3.3(b) (Crown Law Office supporting documents), pp 129–130
241. Document A73 (Macky), pp 90–91
242. Claim 1.3.3(b) (Crown Law Office supporting documents), p 116
243. Ibid, p 121
244. Document A73 (Macky), pp 85–86; doc A18 (Cross and Bargh), p 54
245. Document A73 (Macky), p 86
246. Ibid
247. W J Phillips, *Carved Māori Houses of Western and Northern Areas of New Zealand* (Wellington: Government Printer, 1955), pp 102–104
248. Morvin T Simon, *Taku Whare E/My Home My Heart* (Wanganui: Wanganui Regional Community College, 1986), vol 1, pp 50–51
249. Document A73 (Macky), p 96
250. Ibid, p 81
251. Document A18 (Cross and Bargh), p 54
252. Document A73 (Macky), p 96
253. Ibid, pp 96–97
254. Ibid, pp 97–98
255. Ibid, p 98
256. Document A70 (Anderson), p 196
257. Ibid, pp 206–208
258. Document A73 (Macky), pp 102–104
259. Ibid, p 107
260. Ibid, pp 62–69, 108
261. Ibid, p 109
262. Ibid, pp 109–110
263. Ibid, p 109
264. Document A73 (Macky), pp 107–108
265. Document A70 (Anderson), pp 208–209
266. Ibid, p 108
267. Ibid
268. Ibid, p 107

269. Ibid, p 111
270. Document A73 (Macky), p 110; *Wanganui Chronicle and Patea-Rangitikei Advertiser*, 18 February 1884, p 2. Eventually these debts were settled following Te Keepa's sale of Horowhenua in 1886.
271. Document A73 (Macky), pp 109–111
272. R Ward, resident magistrate, to under-secretary, Native Department, 27 April 1885, AJHR, 1885, G-2, p 19
273. Document A73 (Macky), p 119
274. 'Notes of a Meeting between the Hon Mr Ballance and the Wanganui Natives on the 7th January, 1885', AJHR, 1885, G-1, p 1; doc A9(a) (Laurenson supporting documents), p 23
275. Ward, *A Show of Justice*, p 291
276. Document A11 (Ward), pp 29–30
277. Ibid, p 30
278. Document A73 (Macky), pp 116–118
279. Document A71 (Anderson), p 29
280. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 318
281. Document A71 (Anderson), p 29; 'Notes of a Meeting between the Hon Mr Ballance and the Wanganui Natives at Ranana on the 7th January 1885', AJHR, 1885, G-1, p 2
282. Document A73 (Macky), p 118
283. Ibid, p 119
284. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), ch 8
285. Ibid, pp 212–214
286. Ibid, pp 199–202, 213–215
287. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 24 May 1879, AJHR, 1879, sess 1, G-1, p 12
288. Young, *Woven by Water*, p 111
289. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 24 May 1879, AJHR, 1879, sess 1, G-1, p 12
290. Young, *Woven by Water*, p 111
291. Waitangi Tribunal, *The Taranaki Report*, pp 218–219
292. Ibid, p 220
293. Ibid, pp 225–227
294. Ibid, p 205
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297. R Parris, to under-secretary, Native Department, 15 May 1882, AJHR, 1882, G-1, p 10; Waitangi Tribunal, *The Taranaki Report*, p 205
298. Waitangi Tribunal, *The Taranaki Report*, p 205
299. Ibid, pp 206, 236–238, 243
300. 'The Late Native Chief, Mete Kingi Paetahi: Memo by the Native Minister', 18 October 1883, AJHR, 1884, sess 1, G-3, p 2
301. Young, *Woven by Water*, p 112
302. R Parris to under-secretary, Native Department, 15 May 1882, AJHR, 1882, G-1, p 11
303. Waitangi Tribunal, *The Taranaki Report*, pp 237–238
304. Ibid, pp 241–243
305. Document A73 (Macky), p 82
306. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 332
307. Raewyn Dalziel. 'Julius Vogel', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, last modified 19 March 2014
308. Document A102 (Edwards), p 290
309. Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 112
310. Document A60 (Marr), p 153
311. Ibid, p 156
312. Document A102 (Edwards), p 290
313. Ibid, p 291
314. Document A102 (Edwards), pp 284–285, 289
315. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 355–356
316. Cathy Marr, *The Alienation of Māori Land in the Rohe Potae (Aotea Block), 1840–1920*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), pp 45–6. Edwards questioned whether the boundaries of the Rohe Potae in the 1888 Act were the same as listed in the schedule to the Native Lands Alienation Restriction Act 1884. However, the boundaries described in the 1884 Act's schedule preceded the breaking up of the large 'Rohe Potae' territory into a number of different parts, including Waimarino and Taupōnuiatia: doc A102 (Edwards), p 292.
317. Document A102 (Edwards), p 293; doc A110 (Hearn), p 51
318. Document A60 (Marr), pp 167–168
319. Document A11 (Ward), p 53; 'Notes of a Meeting between the Hon Mr Ballance and the Wanganui Natives at Ranana on the 7th January, 1885', AJHR, 1885, G-1, p 2
320. 'Notes of a Meeting between the Hon Mr Ballance and the Wanganui Natives at Ranana on the 7th January 1885', AJHR, 1885, G-1, p 2
321. Ibid, p 5
322. 'Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February 1885', AJHR, 1885, G-1, p 17
323. 'Notes of a Meeting between the Hon Mr Ballance and the Wanganui Natives at Ranana on the 7th January 1885', AJHR, 1885, G-1, pp 2–3
324. O'Malley, *Agents of Autonomy*, p 176
325. 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2, p 11
326. Ibid, p 3
327. Document A11 (Ward), p 64; 'Notes of Native Meeting at Hastings', AJHR, 1886, G-2, pp 2–3
328. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 353
329. Document A11 (Ward), p 64
330. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 352
331. Ward, *A Show of Justice*, p 297
332. Document A73 (Macky), p 123
333. Ward, *A Show of Justice*, p 298
334. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, sess 2, G-1, p iii

335. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 418
336. Ibid, p xxvii
337. 'Minutes of Meetings with Natives and others', AJHR, 1891, G-1, p 43; doc A71 (Anderson), p 97
338. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, sess 2, G-1, p xii
339. Ibid, p x
340. Ibid, pp x–xi
341. Ibid, p xix
342. Ibid, p xiii; 'Minutes of Evidence', AJHR, 1891, sess 2, G-1, p 143
343. 'Minutes of Evidence', AJHR, 1891, sess 2, G-1, p 143
344. Ibid, p 155
345. Document A166 (Loveridge), pp 10–11
346. Ibid, p 11
347. Document A155 (Hayes), pp 239–240
348. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 366; doc A71 (Anderson), pp 109–113
349. Ibid, pp 115–117
350. Ibid, pp 110–111
351. 'Pakeha and Maori: A Narrative of the Premier's Trip through the Native Districts of the North Island', AJHR, 1895, G-1, pp 1–2
352. Ibid, pp 45–46
353. Ibid, p 8
354. Ibid, pp 7–8
355. 'Native Legislation', Hawera and Normanby Star, 30 August 1894, p 2; Alan Ward, 'Wiremu Pere', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/2p11/pere-wiremu, last modified 30 Oct 2012 ; John A Williams, *Politics of the New Zealand Maori* (Auckland: Oxford University Press for the University of Auckland, 1969), p 56
356. Document A110 (Hearn), pp 57–58
357. Document A87 (Loveridge), p 173
358. Ibid, pp 172, 176
359. Tom Brooking, '"Busting Up" The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History*, vol 26, no 1 (1992), p 82
360. Boast, *Buying the Land, Selling the Land*, pp 194–195
361. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 380
362. Ibid, vol 2, p 778
363. Ibid, vol 3, pp 978–979
364. Submission 3.3.130, pp 3–5
365. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 380
366. Ibid, vol 2, p 499
367. Submission 3.3.130, pp 2–3

The Role of Assessors

1. David V Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), pp 325–328

Map 11.1: Land blocks in the Whanganui inquiry district

CHAPTER 11

THE OPERATION OF THE NATIVE LAND COURT IN THE WHANGANUI DISTRICT, 1866–1900

11.1 Introduction

Chapter 10 concerned the political and legal context for the Native Land Court's creation and development, and its frequent amendment. We now examine its operation in Whanganui between 1866 and 1900.

The Native Lands Act 1862 provided for a court that would issue tribal titles, working on a district-by-district basis with a high degree of Māori involvement. Few Māori got to experience such a court, for the Crown quickly moved to institute a more centralised, formal, and European-dominated regime. Through the use of proclamations and then the passage of the Native Lands Act 1865, the Crown reduced the role of Māori leadership in decision-making in the court, and established a system where title would be granted to no more than 10 individuals. Law changes over the next three decades consolidated individuals' power in the court, especially as regards land sale. This was the court that would operate in Whanganui.

The Native Land Court began in Whanganui in 1866 under the 10-owner regime. As its activity increased over the next three decades, and as the Crown ramped up purchasing in the area, Whanganui Māori protested its operations and effects in ways that included formal and informal complaints, protests, and boycott attempts. Counting title investigations, partition cases, succession cases, and confirmations of alienation, 468 cases passed through the court at Whanganui before 1900.[1] In just over 30 years, the court investigated and determined title to 1,820,466 acres – 84 per cent of the inquiry district. In the process, customary titles were extinguished and replaced with titles derived from the Crown. That was not all: from 1860 to 1900, nearly two-thirds of the Whanganui district passed out of Māori ownership. It went mostly to the Crown, though there were also some private purchases, and the Native Land Court issued titles to all of it.[2]

This chapter addresses five issues:

- How was land brought before the court, and how willingly did Māori engage?
- How extensive was Māori involvement in the court's general operations and in its deliberative process?
- What avenues were there for seeking redress for the court's shortcomings?
- How fair were the costs of the court, and the costs associated with it?
- How extensive was fractionation?

Constitutional principle precludes the Tribunal from looking at specific court decisions, but we can comment on the extent to which the court's activities reflected flaws in the native land legislation. First, though, we turn briefly to what the parties argued before us.

11.2 The Parties' Positions

11.2.1 What the claimants said

The claimants submitted that the Native Land Court imposed a system on Whanganui Māori that was completely incompatible with tradition, undermining and eroding rights, tribal structures, and tikanga.[3] They said that the establishment and operation of the court in Whanganui led, amongst other things, to the alienation of 'a vast quantity of Whanganui Maori land'; division within and between Whanganui whānau, hapū, and iwi; and the partition and fragmentation of Whanganui Māori land.[4] Acknowledging that their tūpuna engaged 'extensively' with the court, the claimants argued that this was essentially because they had no choice.[5] Whanganui Māori consistently opposed its operations, complaining formally and informally, protesting, boycotting, and trying to set up alternatives, particularly trusts and tribal rūnanga.[6]

11.2.2 What the Crown said

The Crown acknowledged that there were 'significant flaws' in the Native Land Court system, but submitted that 'the whole system as such, and the Native Land Court as an institution, should not be condemned as breaches of the Treaty'.[7] The Crown submitted that 'the Court only operated in districts because (at least some) Maori allowed it to do so. Whanganui is no exception'.[8] In Whanganui during the nineteenth century, the Native Land Court 'generally left it to the Maori participants to determine boundaries, complete lists of owners and settle other matters relating to their own titles to land'.[9]

11.3 Overview of Court Activities, 1866–1900

We begin by outlining briefly the Native Land Court's activities in Whanganui from 1866 to 1900. Its primary business – title determinations – happened in five reasonably distinct phases.

Period	Number of blocks	Total area (acres)	Average size (acres)	Percentage of inquiry district
1866–73	32	113,174	3,537	5.2
1876–80	55	334,575	6,083	15.5
1881–84	16	243,804	15,238	11.3
1886–90	14	845,106	60,365	39.0
1891–99	17	283,807	16,695	13.1
Total	134	1,820,466	13,586	84.1

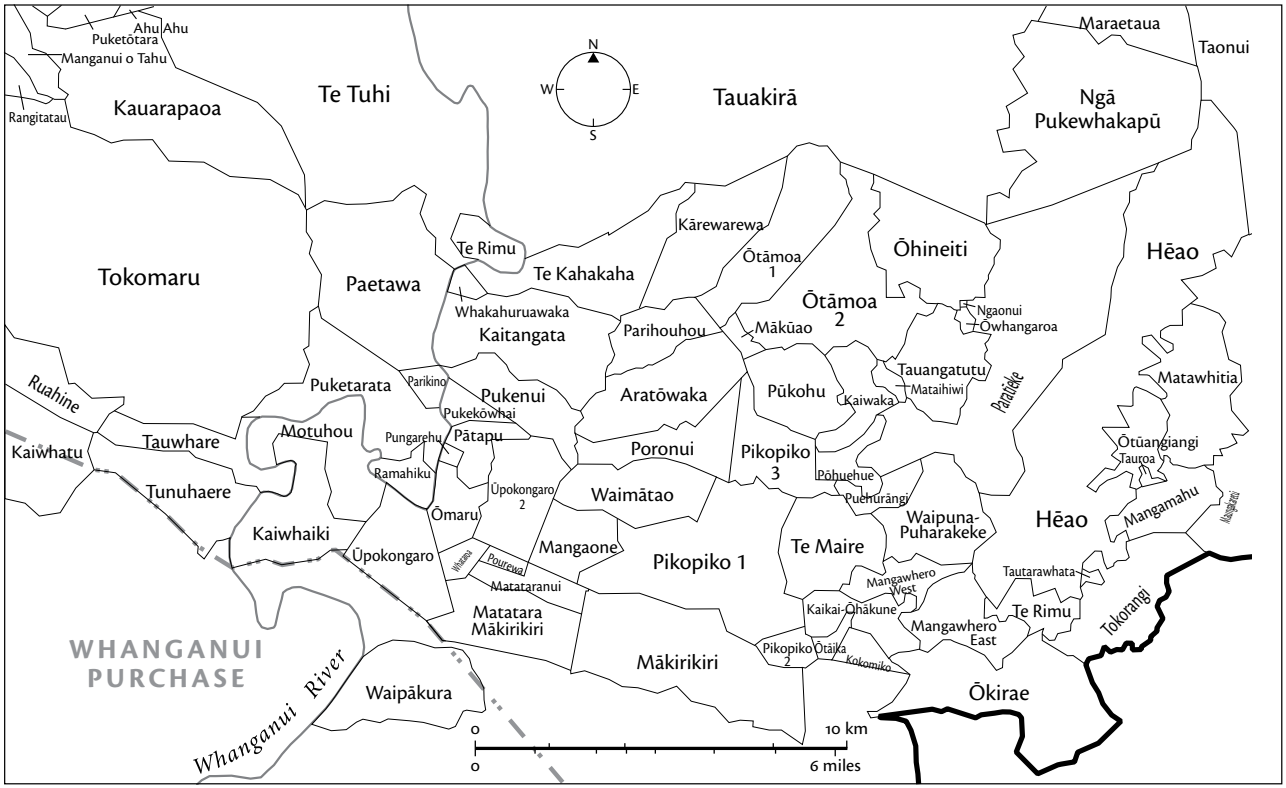
Table 11.1: Title determinations from 1866 to 1900

11.3.1 1866–73

The Native Land Court began in the southern portion of the district. Its first sitting at Wanganui lasted just three days, from 12 to 14 July 1866. It considered nine applications for investigation of title, of which six were within the Whanganui inquiry district. Two of the six cases were dismissed; of the other four, just one, the Mākirikiri block (3,610 acres), was completed during the sitting, with title issued to eight owners.[10] The court did not sit at Wanganui again until early the following year. The period until 1873 saw intermittent hearings that sometimes lasted as long as 30 days. It was not typical for cases to be as few as in the first sitting. Applications for title investigations proliferated and remained high until 1869, when there was a significant decline.

We calculate that from 1866 to 1873 the court issued certificates of title for 32 blocks, comprising an area of approximately 113,174 acres. If we exclude Murimotu (46,403 acres), the average block for which title was issued was just over 2,000 acres, with some less than an acre. The land was mostly inside, or on the fringes of, the original Whanganui purchase boundary, and included land like the reserve for Māori at Pūtiki.[11]

A title in the name of 10 owners was all that was available during this period. Many titles in fact listed fewer



Map 11.2: Detail of Whanganui land blocks

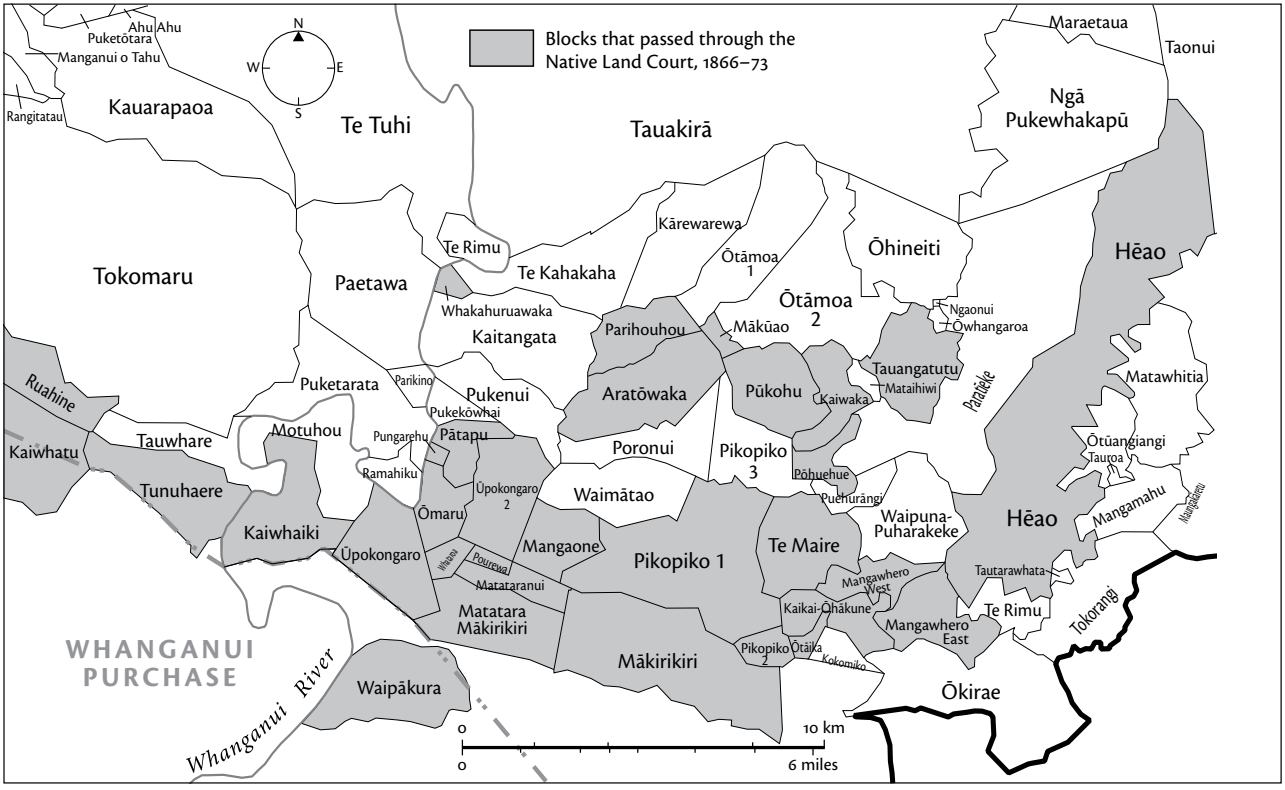
than 10 owners: only seven of the 41 titles issued under the 1865 Act had the maximum 10 names; half had five or fewer grantees.[12] It is not clear what can be inferred from this pattern. The evidence is that there were more than 10 persons interested in nearly all blocks that came before the Whanganui Native Land Court in the period to 1873.[13] In some instances, it appears that the named owners were intended to act as trustees for a wider community of owners.[14] It may have also been that fewer owners were placed on the title in order to facilitate sale of the land. Whatever the intentions of the owners at the time, blocks determined under the 1865 Act seem to have been particularly susceptible to sale. By 1886, only 20 per cent of the land put through the court under the 1865 Act remained in Māori ownership.[15]

11.3.2 1876–80

Following a hearing that concluded in July 1873, the Native Land Court did not sit in the Whanganui district for nearly three years. Why is unclear. The Government does not appear to have suspended the operation of the Native Land Court in the Whanganui district during this period, although it did in the neighbouring Central North Island area.[16] The reports of the resident magistrate, Richard Woon, suggest that proceedings might have halted because rūnanga stepped up their activity, and because of the increasing influence of the repudiation movement more broadly, though he did on one occasion refer to 'the tardy operation of the Land Court'.[17]

Sittings in Wanganui resumed in March 1876.[18] Four years later, when this second phase of court activity was

Map 11.3: Whanganui land blocks that passed through the Native land Court, 1866–73



Map 11.4: Detail of Whanganui land blocks that passed through the Native land Court, 1866–73

drawing to a close, the court faced stiff opposition from Kemp's Trust.

Between 1874 and 1880, the court issued titles for 55 blocks, covering an area of 334,575 acres.[19] Although the average size of these blocks was larger, 39 of the total 55 were less than 5,000 acres. Some of the larger blocks that went through the court were Mangaotuku (47,400 acres), Rangitatau (41,676 acres), Puketōtara (22,524 acres), and Rangataua (22,964 acres).

11.3.3 1881–84

Between July and September 1881, the Native Land Court sat at Ūpokongaro, a settlement 13 kilometres upriver from the town of Wanganui – the first time the court sat in the district outside the town. The sitting was notable also for the large number of cases set down for rehearing. Te Keepa Te Rangihiwinui and his party brought many of these to the court, for they had recently ended their boycott.[20] The court convened again in 1884. During this period, it determined title to 243,804 acres in 16 blocks.

11.3.4 1886–90

The court resumed hearing title applications in the Whanganui district in 1886. The massive Waimarino block (452,196 acres) passed through the court in double-quick time in March 1886. The Crown purchased most of the block, and another speedy hearing to subdivide it followed just over a year later. During this period, a total of 845,106 acres passed through the court in 14 blocks. Excluding the Waimarino block, these averaged just over 30,000 acres.

11.3.5 1891–1900

By the late 1880s, the nature of the court's work was changing. Applications for investigation of title, at one time the court's bread and butter, took up much less of its time, and applications for succession or partition instead dominated its work.[21] It determined title to only 17 blocks in this period, totalling 283,807 acres.

11.4 Engagement with the Court

11.4.1 Introduction

If Māori were as opposed to the court as some historians have suggested, why did they make such heavy use of it? For Whanganui Māori, counsel contended that their extensive engagement with the Native Land Court needs to be seen in the context of their 'protest, opposition and the fact that the Court was "virtually obligatory"'.[22] The Crown, however, posited that the court only operated in Whanganui because Māori allowed it to.[23] Historian Dr Keith Pickens made the point that the court only looked into blocks of land when an individual Māori applied for it to do so. This made it a 'client driven' institution: 'if Māori wanted the Native Land Court to operate in the district they would make applications. If not, they would not.'[24]

On its face, this seems incontrovertible. However, like every other question, a full answer needs context. For that fuller perspective we ask whether the individuals who applied to the court were acting alone or with the endorsement of their communities. Did the hapū whose names were invoked in court properly consent to its determining title to their land? And did those who participated in the title hearings do so by choice, or did circumstances compel them to take part?

11.4.2 Did communities consent to title applications?

At no time in the nineteenth century was there a statutory requirement that an application for title investigation should be tribally sanctioned. Under the Native Lands Act 1862, any tribe, community, or individual could apply to the court to ascertain and determine ownership of specified lands in accordance with native custom. In the 1865 legislation, there was no longer provision for tribes or communities to apply. Instead, any 'native' could initiate a title investigation. The 1873 Act modified this requirement slightly, requiring applications brought by more than two claimants to be signed by at least three individuals. The Native Land Court Act 1880 imposed a blanket requirement for at least three claimants to sign any application for investigation of title. But this was dropped in 1883, and an individual Māori could once more initiate proceedings.[25]

(1) *Applications brought by individuals for communities*

The initial applications to the court in Whanganui immediately after its introduction in 1866 – in the southern part of the district – appear to have been made by named individuals, rather than tribes or communities. However, the court quickly developed a practice in which the primary applicant became the first witness, and the court required that person to set out a case on behalf of a particular tribal group. Dr Pickens surveyed court activities in Whanganui, and relied on that information when he told us that the court generally 'expected people to come before it and identify as descent groups, hapū or iwi'.[26] He gave five examples from Whanganui Native Land Court minute books between 1867 and 1869 which, he said, showed that applications were pursued 'by a collective, not by an individual':[27]

> Hapūs upward of 30 individuals. Names proposed grantees as assented to by persons interested (Kaiwhatu and Atanui).[28]
>
> I understand that all persons interested have agreed to make over their interest in the land (Kaikai Ohakune) absolutely to the persons named as grantees . . . witness names hapūs represented by grantees.[29]
>
> There are about 30 persons including women and children who are interested in this land (Kaiwhaiki) . . . they are the only persons interested. They have agreed to vest the land in the 10 persons named by me.[30]
>
> There are a number of persons interested . . . we have agreed to persons as grantees. Witness named 8 persons as grantees (Pourewa).[31]

> We had a meeting of persons interested at Parakino [Parikino] a short time before the application was sent in and then agreed on the grantees named by me. They all assented to the grantees I have named (Upokongaro No 2).[32]

The collectives were 'usually identified by hapū labels, of various sizes',[33] and because the court required individuals to sustain their claim on behalf of tribal groups, individuals would have found it difficult to apply successfully without community support.

Other cases we have seen – drawn from the full range of court activity from 1866 to 1900 – confirm Dr Pickens's assessment of the court's practice in Whanganui.[34] Individuals made the initial application, but the court required them to identify their tribal affiliations and the source of their rights in the block, which were then subject to the court's scrutiny.

(2) *The effects on process*

This practice meant that in the initial period of court activity in Whanganui, the absence of a formal requirement to secure hapū endorsement in order to apply for title had no real significance. Most of the land that the court dealt with was in blocks averaging 2,000 acres, located in the area immediately to the north of the Whanganui purchase block. The leaders who applied to the court appear to have done so with the knowledge of their communities. At this stage, they were probably testing the new institution.

(3) *Outcomes for Whanganui land*

When the court came to hear and determine title to larger areas of land in the northern parts of the district, it continued its practice of requiring applicants to identify their affiliations. Generally, those who applied did so with the endorsement of the group they claimed to represent.

Thus, although the native land legislation that the court was applying did not require it to ensure that relevant kin groups endorsed the cases before it, the court in Whanganui (and elsewhere) designed its own process that effectively ensured that communities did know and consent. However, sound process as an exercise of judicial discretion is not as reliable as legislation that requires it.

11.4.3 Were Māori forced to engage?

The situation became murky when individuals applied for title to large areas in which groups other than their own kin group owned interests. In that case, the initial applicant could draw into the court process groups who had not decided, and did not want, to bring their land before the court.

It was in title investigations like these, involving multiple tribal groups, that the absence of a requirement for applications to be brought on behalf of specific tribal groups with their prior agreement was potentially more detrimental. Did groups whose rights to land were brought into question by an applicant from another tribal group come before the court as willing participants? Or were they compelled to take part because otherwise they would lose forever the opportunity to be granted a share in the title?

In general, the native land legislation did not require a preliminary inquiry into the range of potential interests in a block before a title determination hearing. A brief window of opportunity for a more robust process opened in the mid-1870s. The 1873 Act provided for judges to hold preliminary inquiries into the bona fides of all applications for investigation of title, with reports prepared by the district officers to be created under the new legislation. However, it seems that this requirement proved largely inoperative; no preliminary inquiries appear to have been undertaken in the Whanganui inquiry district.[35] Probably this was at least partly because the court sat for only a small portion of the period in which the legislation had effect. In 1878, the requirement was amended with retrospective effect to make such inquiries merely discretionary.

Again, the fact that the legislation did not require the court to undertake a proper inquiry into the full range of interests in blocks does not appear to have had a detrimental effect in the early period. Dr Pickens observed that the pattern that emerged in the first 'eight or so years'

of the court's operation in Whanganui was 'a tendency for adjacent blocks to go through, or attempt to go through, the Court in domino fashion'. Māori in the southern parts of the district in particular, he argued, saw benefit in engaging with the court, though he acknowledged that it was also possible that 'once one application to the Native Land Court was made, those in adjacent districts may have felt encouraged or constrained to apply to the Court as well, since this is what . . . their neighbours had done'.[36]

(1) *The Kokomiko block*

However, there were instances when counter-claimants did not want their land before the court, but felt compelled to appear in order to defend their rights. When the Kokomiko block came before the court, for example, several objectors challenged not just the applicant's claim but the land going through the court at all. On the first attempt in 1869, the objections succeeded and no order was made.[37] On the second attempt in 1873, however, Judge Smith directed the claimant and two counter-claimants to enter discussions and create a list of those with interests in the block. They could not agree, and after hearing evidence the court found in favour of the original claimant.[38] Only one counter-claimant was included on the list of owners.[39]

(2) *Increasing opposition*

Whanganui Native Land Court sittings entered a new, tense phase in the early 1880s. The court's work, which resumed in 1876, was undoubtedly affected by the marked increase in Crown purchasing activities from early 1878. Leaders such as Te Keepa Te Rangihiwinui particularly criticised the widespread practice of purchase officers paying Māori for their interests in a block before it had come before the court.[40] Advances were paid in respect of 17 blocks (totalling some 450,000 acres) in 1878 and 1879, most of which came before the court within a year or two of the first payment.[41] While it is unclear how this practice affected the way that Māori engaged with the court, it incentivised them to either initiate court action or engage with Crown purchase agents sooner rather than later if they wanted their rights recognised.

Opposition came to a head following survey disputes in the Murimotu area, culminating in the formation of Te Keepa's Whanganui Lands Trust in May 1880. At this stage, Te Keepa advocated reforming the court rather than abolishing it.[42] He established the Whanganui Lands Trust partly with a view to putting land vested in it through the court to obtain marketable titles, and the deed stated this aim. But he still sought to withhold land from the court under certain circumstances, particularly when land was being brought before the court as a result of advance payments to other Māori.

With the court sitting of June 1880 in prospect, he was reportedly 'advising his people to withdraw their lands from the Native Land Court, and rest satisfied with Maori tenure as derived from their ancestors'.[43] When the court convened for the hearing of the Puketōtara block, supporters of Kemp's Trust stayed away, on the grounds that those who had applied to the court had received advances from the Crown. In their absence, the court issued title, naming as owners those who were present, and excluding the boycotters. When a rehearing was held the following year, Te Keepa and his supporters participated, but sought to include as many names as possible in the title. It appears that they wanted to make it more difficult for the Crown to buy up interests in the block easily: if there were more interest-holders on the title, the Crown would have to deal with more owners if it wanted to purchase more interests, and potentially the proportion of the block that it had already bought from individual owners whose names the court had put on the title the year before would be reduced. The court, apprehending these motives, resisted. However, Māori were determined that all the names should go on the owners' list. Booth appears to have accepted the inevitability that new names would be added, and suggested that the Crown's purchases should be cut out in proportion to the amount it had advanced on the block. The Crown had earlier agreed a rate of seven shillings and sixpence per acre with those willing to sell. By 1881, the Crown had paid £2,041 out of the £8,446 it estimated for the whole block. The court adjourned to allow Māori to discuss the matter. When it reconvened, Hōri Pukehika spoke in favour of a portion of the block being awarded to the Crown, the

acreage to be determined by agreement between Mete Kīngi, Te Keepa, and Booth. It is not clear whether Booth then arrived at a genuine agreement with the owners, but after further discussion in court, the judge awarded the Crown a quarter of the block. According to the court minutes this was 'the part of the block acknowledged by the Natives to have been sold by them'.[44]

The end of the boycott was an acknowledgement that non-attendance at court would lead to exclusion from titles. Te Keepa and his followers regularly attended hearings after 1881.[45]

The Rangataua block is another example of a block that went through the court in circumstances of disputed advance payments. One group of potential owners initiated sale and court proceedings simultaneously. When another group became aware of this, they protested to the Government. Different Crown purchase agents engaged in separate negotiations without the knowledge of the various groups. In such cases, attendance at court was necessary in order to address the confusion created by negotiations in advance of hearing, though Māori often directed their frustration at survey of the block prior to the hearing. Rangataua went to a rehearing in 1881. The court awarded title to a range of groups, and confirmed the Crown's purchase of several areas.[46]

Dr Pickens was correct that the court could not easily deal with situations where interest-holders chose not to attend hearings. Even where the court knew that people with rights were refusing to engage,

> it is not clear what it could have done. It could not compel people to attend if they were unwilling to do so. Nor could it reasonably hold up the legitimate claims of others. This was one of the dilemmas inherent in the Native Land Court process. Where there was a difference of opinion among hapū about whether or not a particular block should be taken through the Court, the opinions of those who opposed the Court could only be upheld by denying those who wanted the Court to hear their application access to it.[47]

Of the examples of title investigations heard in the face of considerable opposition, perhaps the most significant – both in terms of its political significance, and the large area involved – was the Waimarino block. Chapter 13 investigates what happened when this block came before the court in 1886.

(3) *The Rangiwaea block*

With memories of the long history of disputes over the Murimotu block still fresh, the neighbouring Rangiwaea block came before the court in January 1893. In this case, an application was pursued by a small number of individuals from Ngāti Rangi and opposed by many other potential claimants.[48] Months before this, and before the claim had even been gazetted, the Government had fielded letters of complaint from several Māori declaring their opposition to the survey and investigation of Rangiwaea. When the case was called on 16 January, Te Keepa, who was by this time heavily involved with the Kotahitanga movement, stood up and asked the court not to investigate title to Rangiwaea 'on the grounds that the Treaty of Waitangi promised that Māori could do what they liked with their land and he claimed the right to keep this land out of the Court'.[49] But the court pressed on, viewing Te Keepa's request as political. The final Rangiwaea judgment stated:

> it was abundantly clear to the Court that this was only a part of the tactics pursued by Kemp and his people for the last four years or more, ie, to oppose the Court and stop all new claims to land up the Wanganui River from being investigated.[50]

Dr Pickens cited this case as evidence of 'a concerted and successful effort to boycott the Native Land Court'.[51] It is unclear from whose point of view the boycott could have been seen as a success. In fact, in the absence of counter-claimants the block was awarded to those who applied for title. Then, on the day that a list of owners was to be finalised, followers of Te Keepa 'flooded back into the Court' to seek inclusion.[52] It is plain that the boycott folded only when owners faced the reality of their exclusion from the legal title. Under circumstances like these, their participation was not willing. Their situation worsened when, at a rehearing in 1893, the court would

not entertain the claims advanced partly on the grounds that Te Keepa and his followers had deliberately boycotted the earlier hearing.[53]

11.4.4 Conclusion

The evidence suggests that applications to the court were generally made on behalf of wider communities. The volume of business that went through the court cannot simply be attributed to a domino effect. However, we accept the claimants' argument that engagement with the Whanganui Native Land Court should be seen in the context of growing local opposition in the late nineteenth century, as well as the absence of any other avenue for securing legal title to land. There is clear evidence that groups actively opposed the court at different times, and for different reasons.

As we have seen, in the period 1866 to 1900, Māori in the Whanganui region deployed rūnanga, kōmiti, boycotts, the Repudiation movement, and Kemp's Trust as different expressions of their dissatisfaction with, and sometimes outright opposition to, the Native Land Court. Early negativity was partly inspired by Crown purchasing practices, which Māori associated with the court. As a result, certain groups – particularly those associated with Kemp's Trust and the Kīngitanga – voiced their preference not to participate in the court's process, but to wait to have title determined by an alternative process in which they had a greater role. Increasing aversion to the court coincided with its introduction to the northern parts of the district, where opposition was strongest.

Those who sought to avoid the court could still eventually find themselves forced to respond to the claims of others in order to avoid exclusion from the titles. This happened because the court did not require a broad consensus in favour of title investigation before it proceeded to hear a case. The law permitted individual title applications, or applications by a small minority of the owners, which introduced an element of compulsion to participate for those whose only other option was to lose out altogether. For such people, it is certainly inaccurate to describe the Native Land Court as a client-driven institution.

Richard Watson Woon, around 1856–1889. A long-time resident of Wanganui, Woon was resident magistrate of the Upper Wanganui District for many years, and frequent commentator on Māori life and opinion in Whanganui.

Moreover, we concur with the Hauraki Tribunal's finding that Māori use of the court, even when voluntary, did not logically indicate satisfaction with its processes or the forms of legal title that it generated.[54]

11.5 Involvement in the Court's Process

In this section, we consider whether the court's process was fair for Māori who held – or claimed to hold – interests in land whose title the court was determining. We look into:

- the suitability of the timing of hearings, taking into account seasonal demands and concurrent sittings in other districts;
- the extent to which Māori were made aware of upcoming hearings, and the amount of time they were given to appear;
- whether hearings were long enough to allow adequate opportunity to participate; and
- whether hearings were held at places where those with interests could easily attend.

11.5.1 The timing of hearings

It does not appear that the Whanganui Native Land Court scheduled its hearings with much regard to the needs and commitments of its clients. Between 1866 and 1900, there was at some stage a court sitting in every month of the year.

Hearings held in the coldest months of June, July, and August were not uncommon, and could prove challenging for Māori required to spend long periods camped out in cold and damp conditions while away from home. It was reported that those attending the court in 1880 were given permission to stay in 'Mete's large meeting-house' at Pūtiki, to shelter them from the winter's cold and rain.[55] Hearings at other times of the year disrupted planting and harvesting of crops. Resident Magistrate Richard Woon reported in 1879 that pā and cultivations had been abandoned 'during the prolonged stay in town of the Natives this summer', leaving their crops 'to the tender mercies of the cattle and swine, who have made sad havoc therewith'.[56]

There were also issues with concurrent court sittings in adjacent districts where many had interests in both areas, particularly as the court's workload increased in the 1880s. Māori had to decide at which court to appear and which land interests to defend, to the detriment of their claims in the second district. Claimants suggested that the Waimarino and Taupōnuiatia blocks were heard concurrently, which the Crown said was largely incorrect. We seek the truth of that matter in our Waimarino chapter. Of course, hearings did not have to occur at precisely the same time for these problems to occur, for journeys were slow and arduous for much of the nineteenth century. By way of example, historian Cathy Marr recounted how photographer Alfred Burton's upriver trip from Wanganui to Taumarunui in 1885 took him 13 days, excluding rest days and enforced stops for bad weather.[57] The journey on horseback from Taumarunui to Taupō typically took four days.[58]

Hearings that ran over time in one district might delay sittings scheduled to follow in another. For example, the 1880 sitting of the court at Wanganui was advertised to begin on 2 June, but because of an unexpectedly long hearing at Marton, it did not get underway until 30 July. Claimants to the Raoraomouku block who travelled to Wanganui in time to be there on 2 June wrote to the Government:

> we have experienced much hardship during the last two months and a half and suffered much loss, our tents having been injured by the wind and the rain, and much food consumed[;] four or five times have supplies of food been brought for our use while here . . . Besides all this four of our children and two of our old people have died in consequence of the hardship we have suffered in watching the Court dealing with the lands lest by being absent we should lose our rights.[59]

Dr Pickens contended that there was no legal requirement for the entire Raoraomouku block community to attend the court. Doing so was a 'Māori cultural preference' rather than a demand of the system. Why they did not simply send a few leading men to represent the interests of the owners was 'something of a mystery' to him.[60] We see the matter differently. Māori would certainly have felt compelled to stay close to a process that would determine the future of their rights to their ancestral land – and to influence that process if it was not going their way. In this vein, one of the claimants to the Raoraomouku block explained that no one was prepared to remain at home 'lest by being absent we should lose our rights'.[61]

Many Native Land Court hearings around the country had to be scheduled, so it was not always going to

Starting date	*New Zealand Gazette*	*Kahiti o Niu Tireni*
1 March 1876	No notice located	7 February 1876
17 January 1877	16 December 1876	21 December 1876
18 July 1877	4 June 1877	No extant *Kahiti*
10 April 1878	16 March 1878	21 March 1878
13 January 1879 (*scheduled for 3 January 1879*)	9 December 1878	30 November 1878
30 July 1880 (*scheduled for 2 June 1880*)	19 May 1880	13 May 1880

Table 11.2: Notification of Native Land Court sittings in the Whanganui District, 1876–80

be possible for the timing to maximise convenience to applicants in any particular district. There was no easy solution. The court could only avoid all interference with Māori agricultural activity by scheduling its sittings during winter, which Dr Pickens commented 'may not have been a very humane solution to the problem'.[62]

The problem was structural. In its 1862 incarnation, the Native Land Court was to be a local instrument of title adjudication, with the presiding officer, usually the resident magistrate, and local rangatira (some of them sitting as judges on the court's benches) overseeing proceedings. A local institution like this would have naturally been in tune with hapū and iwi of the district – certainly much more so than a body operating out of Auckland and run by Pākehā judges and officials.

We have no doubt that a title adjudication process that allowed for a high level of Māori input into key programming decisions would have found ways of working around the imperatives of people's lives and communities.

11.5.2 Notice of hearings

In the latter part of the nineteenth century, some Whanganui Māori complained about inadequate notice of forthcoming Native Land Court hearings. The claimants submitted that 'the timing and notification of hearings of the Native Land Court in Whanganui did not allow for proper (and on occasion *any*) participation by the relevant parties'.[63]

The 1873 Act required the chief judge of the Native Land Court to distribute notices of claims, along with notices of court sittings and a schedule of cases to be heard, to various Crown officials, the claimant, counter-claimant, and objector (if any). Such notices were also to be published in both the English and te reo Māori versions of the *Gazette*.

We reproduce above Dr Pickens's table setting out the dates when notice was given of Whanganui Native Land Court sittings in the period from 1876 to 1880.

Notice was thus often gazetted no more than a few weeks before the hearing was to start. Factoring in the time it could take for news to reach Whanganui Māori communities, the preparations required for an often extended absence from home, and the time it took to travel to hearings, it is plain that notice was usually too late. Fenton acknowledged in 1878 that notice in 'remote areas of the country' was 'imperfect' and likely to remain so for the foreseeable future.[64] This inadequacy meant that at particular sittings in the late 1870s, 'people either did not appear or their arrival was delayed'.[65] The potential for Whanganui Māori to suffer prejudice is obvious. In a number of instances, they applied for a rehearing on the basis that they had not received notice. Pikopiko No 3 came before the court for investigation of its title on 25 April 1878. Because no objectors came forward during the hearing, the block was awarded to Āperahama Tahunuiārangi and two others. Shortly after, Te Rau Karahi and Rio Te Kou sought a rehearing because they were not properly notified. Granting the rehearing, Fenton noted that he was

> informed by Mr R Woon, Resident Magistrate for the Wanganui upriver District that the notice given was too short, and

> sufficient time had not been afforded to admit of the natives living at a distance being appraised of the sitting of the Court.[66]

Others applied for a rehearing on the same basis, but few were granted. Dr Pickens observed that the court generally 'took a hard line' on such applications because 'if a simple assertion that someone had not received notification was enough to trigger the expense of a rehearing, then in all probability most blocks would have been reheard as a matter of course'.[67] Māori even mounted petitions to complain of inadequate notice. Hoani Rupe petitioned the Native Affairs Committee in 1886 that he had not been aware of the hearing of the Tauwhare title investigation. The committee noted simply that the hearing had been gazetted, and took no further action.[68]

The court sometimes adjourned cases to a future date to accommodate claimants who did not turn up, or who were late.[69] Often, though, the court embarked on hearings in ignorance of the fact that interested parties had not received notice and were not present for that reason.

Problems with notice were well known. More should have been done to ensure that it was better and earlier. Simply publishing dates in organs like the *New Zealand Gazette* and *Kahiti o Niu Tireni* was unlikely to deliver information speedily to remote locations. Experimenting with more modes of communication, and longer timeframes, would have demonstrated a real commitment to ensure that all those who were entitled to be present in court at least knew when the hearing would take place, and in time for them to arrange to be there. We can only infer that making sure everyone had the chance to be present every time was not a sufficiently high priority for the Crown.

11.5.3 The length of hearings

As we said, the first sittings of the Native Land Court at Wanganui tended to be relatively brief, with titles to mostly quite small blocks typically decided over a matter of days rather than weeks. That began to change after 1873, as much larger blocks with more complex customary histories went through the court. These resulted in hearings that in the 1880s and 1890s sometimes lasted for the best part of a year. In the 1860s, the longest Wanganui sitting lasted 17 days, and 47 days in the 1870s. But on 14 January 1886 a sitting began that continued until 15 November. At 306 days, this was the longest sitting of that decade – although the court focused mostly on a block outside our inquiry district between May and September. Whanganui blocks took up about 184 of the 306 days. A sitting at Wanganui between December 1896 and October 1897 was slightly longer at 315 days, the longest hearing in the nineteenth century.

Counting both sitting days and non-sitting days, and including blocks located in our inquiry district but heard outside it, we estimate that court hearings occupied 2,882 days in the period 1866 to 1900. That is about 82 days per year – but in the 1880s and 1890s, when the court sat much more often, court sittings consumed considerably more days.

In the 1880s, the volume of court business, and the dysfunction that resulted, was such that the court itself tried to institute reform.[70] In 1883, James Macdonald, then recently appointed as chief judge, wrote to the Government in these terms:

> A fruitful source of loss of time and money has consisted in this: that a Court has only been held in a district when a large accumulation of business has accrued, the entire mass of which it has been the custom to *Gazette* for the same Court for the first day of its sitting, with the result that the Natives congregated at the opening of the Court have to remain weeks or months even without a chance of their business being earlier reached.[71]

Macdonald wanted the court to gazette only as many cases as could be dealt with in a reasonable time. He also suggested that the presiding judge could, at his discretion, arrange that certain cases would not be heard before a fixed future date, in order to temporarily release some of those in attendance. This approach would still require all of those with interests in the blocks listed to attend the opening day, or until such time as it had been arranged when particular blocks would be heard.

Victoria Avenue, Wanganui, ca 1890, shows a well established and prosperous town that benefited from the location there of the Native Land Court.

This approach was quickly instituted at Wanganui. Although the court's minutes record a 10-month sitting at Wanganui between January and November 1886, this was officially four separate and consecutive sittings, each planned to last between one and two months.[72] This would have mitigated to some extent the problems of lengthy sittings, but it did not do away with them altogether. It seems likely, for example, that at least some Māori attending the 1886 court had interests in multiple blocks, requiring attendance at more than one of the four sessions. And all claimants had to attend the opening session, which for most would have required at least two trips into town.

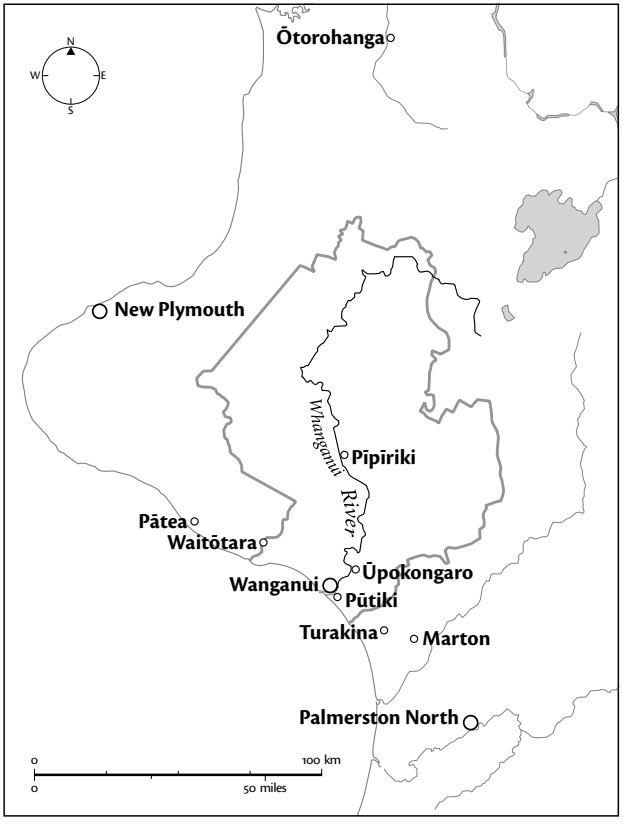
The fact is that Whanganui Māori were forced to spend lengthy periods of time attending the court and waiting for cases to be heard. It is true that a number of factors contributed to the duration of a sitting, and duration of cases was to some extent in Māori hands. Hearings were shorter, for instance, if they settled outside the court, or restricted the number of witnesses or the evidence.[73] However, it was not a Māori process. Its adversarial nature, and the way it incentivised speculative or exaggerated claims, was not of their making. A local rūnanga-based mechanism for determining titles would probably have been much more efficient, with natural checks on the kind of evidence likely to be offered, and conducted on a smaller scale in the same locale as the land in question.

11.5.4 Where hearings were held

The Native Land Court almost always heard cases concerning Whanganui land at Wanganui, although occasionally it sat across the river at Pūtiki, upriver at Ūpokongaro and Pīpīriki, or in the more distant settlements of Palmerston North, Marton, Turakina, Pātea, Waitōtara, New Plymouth, and Ōtorohanga.

Claimants argued that Whanganui Māori had to travel to court sittings often far distant from the land the court was dealing with.

Crown counsel submitted that the location of court hearings was a vexed and complex issue. Regardless of where the court sat, there would have been problems, such as securing accommodation and provisions.[74] Dr Pickens observed that the Native Land Court could not please



Map 11.5: Location of Native Land Court hearings for Whanganui land blocks

everyone all of the time: 'If the Court did try to meet the wishes of one set of applicants by shifting a case elsewhere, others would complain that they were disadvantaged by the new choice of venue.'[75] The court simply could not win, and it had to sit somewhere.[76]

Between 1866 and 1873, the court always sat at Wanganui, with the exception of an 1871 hearing in the Rangitīkei district that briefly dealt with some blocks inside our inquiry district. Given that many of the blocks adjudicated upon at this time were either Whanganui purchase reserves or located close to it, Wanganui appeared a 'sensible location' for the court.[77] Not so when the large Murimotu block went through the court, for it was located a long way inland. Some of the parties interested in that case travelled from as far away as Taupō, while others applied unsuccessfully for it to be adjourned to Rangitīkei. Te Keepa Te Rangihiwinui opposed that application, because it was 'as inconvenient for him to go to Rangitikei as for them to come here'.[78]

After 1873, there were more cases like Murimotu, with large blocks a long way from Wanganui coming before the court. Distance was not the only issue. The many hotels of the township proved a temptation for some of those forced to spend extended periods at court. Mete Kīngi Te Rangi Paetahi and others appear to have played a key role in persuading the court to hold its hearings in January and February 1879 across the river at Pūtiki, where interested parties from elsewhere were encouraged to stay, partly in order to keep them away from the town. It did not cure the problem though,[79] as Resident Magistrate Woon reported in 1880:

> With reference to the sittings of the Native Land Court at Wanganui, the up-river tribes are most desirous that they should be held at some settlement on the river, away from the town and the public-houses. As far as the local tribes are concerned, it would add much to their convenience and comfort were the Court to sit in their midst, where they could more easily and more cheaply procure food, and obtain house accommodation.[80]

The settlement of Parikino, 28 miles upriver from Wanganui, was a possible venue, but it was rejected because there was no accommodation there suitable for the Pākehā judges, lawyers, and officials.[81]

In 1881, the court sitting was at a new venue for the first time. After opening the hearing in town, the court quickly decided to sit instead at Ūpokongaro, five or six miles upriver from Wanganui. It was concerned about 'the social and health risks for Māori associated with a sitting in a major European town'.[82] Moving the court out of Wanganui was quite controversial. Pākehā in the town bemoaned the loss of business,[83] and there were also Māori who opposed the move, some asking the court to move instead to sit closer to their own homes near Marton.

Ūpokongaro, 1880s. Beginning in 1881, several court hearings were held here, on the banks of the Whanganui.

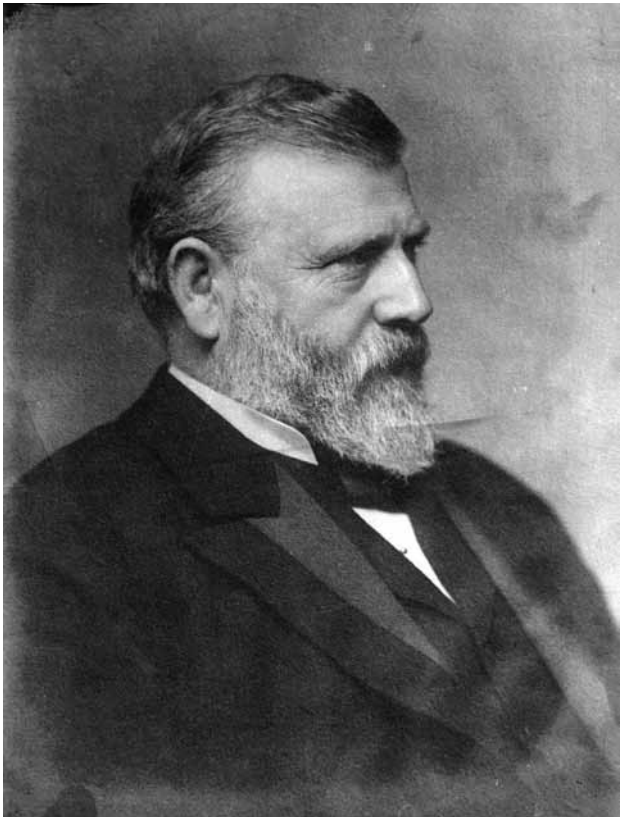
After sitting at Ūpokongaro again in 1882, the court sat only at Wanganui until 1898, when the first of several sessions opened at Pīpīriki. Cases involving land in this inquiry district were also heard at Waitōtara and Marton. Large interior blocks (including Waimarino) continued to be heard at Wanganui, although Te Keepa Te Rangihiwinui complained in 1884 that he had been 'dragged over all parts of the island' in defence of his land claims, with the ultimate aim being to starve him out of his lands.[84]

In the late 1890s a number of petitioners called on the court to return to Ūpokongaro in order to avert the social and health problems associated with hearings held in the township.[85] The court appears to have decided to remain at Wanganui.[86] However, when the Premier, Richard Seddon, met with the assembled Whanganui tribes at Pūtiki in May 1898, Īhaka Rerekura told him that Whanganui Māori had hardly anything to eat in town while attending the court, and wanted it to sit at Pīpīriki and Hiruhārama instead.[87] Seddon told the gathering:

> Nearly two years ago I distinctly told the Courts that they must go to the *kaingas* – that they must take the Courts to the Natives – and not drag the Natives to the towns to have their cases settled. On my return to Wellington I shall want to know the reason why what is practically a decision of Parliament has not been given effect to, for the matter was mentioned in Parliament on more than one occasion by me. If the Judges cannot go to Pipiriki, then I say that we must get other Judges; we must suit the convenience of the Natives, as the convenience of the Europeans is suited. It is nothing less than a scandal to keep you in these large centres.[88]

Just months later the first ever Native Land Court hearing took place at the settlement of Pīpīriki. Once again, some Māori petitioned against having their lands heard at this new location, while others lodged petitions in favour of it.[89]

What Whanganui Māori most wanted when it came to location was a more nimble and responsive approach. A first priority was to avoid the wretched conditions at Wanganui when they were obliged to attend court there. Dr Pickens told us that it would have been difficult to hold court on or near more isolated blocks, and maintained that there is little contemporary evidence that anyone



Richard John Seddon, around 1890, who succeeded John Ballance as Premier in 1893. Constantly touring, he identified with the common man. He frequently visited Māori tribes as Native Minister, and employed his persuasive powers to gain their consent to sell Māori land.

wanted the court to sit at such locations.[90] Pākehā of the day were fully sensible of the issues surrounding the question of where the court should sit. While Wanganui was generally not considered suitable for reasons of health and social order, there were also difficulties in the way of holding the Native Land Court in upriver settlements or other places further afield.[91] Dr Pickens summarised the situation thus:

> The problem of venue had dogged the Native Land Court right from its inception and, as these petitions of the late 1890s demonstrated, there was no solution that would satisfy everybody. No matter where the Court sat, there would always be those who had to cope with poor accommodation, the expense of travel, difficulties with the food supplies and possibly also any difficulties associated with having to live side-by-side with rival hapū for the duration of a sitting. These problems of assembly however, were not unique to the Native Land Court process. They would have existed even if the entire process of tenure reform had been managed by Māori committees or rūnanga, and carried on entirely in Māori settlements.[92]

We question Dr Pickens's last statement. A rūnanga-based model would have been able to move through the district to hear different claims. Rūnanga would not have been restricted to places where there was accommodation deemed suitable for Europeans. Shorter hearings in more venues, with fewer blocks scheduled, would have been better for Māori. Tikanga would have regulated the behaviour of visitors. No doubt there would have been hiccoughs, but the institutional, long-term problems that the Native Land Court caused for Māori communities would probably have been avoided.

11.5.5 Conclusions

Claimants contended that hearings in the middle of winter or during planting or harvesting disrupted communities and caused social problems. The Crown argued that the court had to sit some time, and it was not always going to be possible to suit claimants in one district without causing inconvenience to those in the next. In our view, the bigger problem was that those key decisions around timing were not made locally by people aware of and sympathetic to local needs and requirements.

Inadequate notice of hearings was also a problem for interest-holders in Māori land, although the system did not generally regard failure of notice as grounds for a rehearing. Sittings that plodded on for months on end could impose a heavy burden on Māori, who had to wait around lest their block should be called. By the 1880s, the court began to take steps to mitigate this problem – for example, by staggering the gazettal process so that not all

blocks were called at the same time – but the solutions were only partial.

Most hearings within our inquiry district took place at Wanganui, with only a few elsewhere. The Crown maintained that wherever the court sat, there would be problems. While it is true that any process to reform the title of community-owned assets would have caused some disruption, the lumbering and increasingly bureaucratic Native Land Court was neither well placed nor well disposed to respond to the needs of its clients. Rather, it responded to its own imperatives, such as European hotels for the judges, who also increasingly insisted on having access to the telegraph. A rūnanga-based method of title adjudication would have carried less baggage, both literal and metaphorical. Its hearings could have been shorter, involved fewer blocks, and could have been held on or near the lands in question.

Māori were marginalised in the process of deciding titles to their own lands. The court was not a client-driven institution, as Dr Pickens put it. Rather, the court furthered Crown policy objectives – especially the eradication of native title and promotion of European settlement of Māori lands – and Māori were substantially driven to do its bidding. They complied with its timetable, and attended its hearings, notwithstanding the expense, hardship, uncertainty, and anxiety involved: they needed to attend court to preserve their interests whatever the cost to their communities and culture.

11.6 Māori Input in the Court's Deliberations

11.6.1 Introduction

In this section we examine the role that Whanganui Māori played in the decision-making of the court in their district. There were two possible avenues for such involvement: first, through arrangements that they arrived at out of court for the court's later ratification; and, secondly, through the legal requirement over much of this period for assessors to agree with any decision of the court. The Crown suggested that these avenues afforded Māori considerable agency in the workings of the court. We assess this argument.

11.6.2 Out-of-court settlements

The Crown submitted that, in Whanganui, the Native Land Court 'generally left it to the Maori participants to determine boundaries, complete lists of owners and settle other matters relating to their own titles to land'.[93] The court was driven to make unilateral determinations about custom only when Māori could not agree: mainly, they decided matters of custom themselves.

Dr Pickens gave evidence in support of this argument:

> the Whanganui district Native Land Court generally strove to avoid confrontation or adversarial proceedings. The Court was always ready to defer a decision to a later date. It was always ready to adjourn, in the hope parties could settle any disputes that they might have outside the Court. It accepted readily evidence of Māori adjudications. Other than formally asking in open Court if there were any objections, it rarely questioned any arrangement placed before it. If Māori wanted to exercise agency, the Native Land Court was always willing to accommodate them.[94]

The legislation did sanction a positive approach to out-of-court settlements: section 46 of the Native Land Act 1873 explicitly empowered the court to adopt 'any arrangements voluntarily come to amongst themselves by the claimants and counter-claimants'. Claimants could make these arrangements both before and after the court made any decision. They usually related to who was on the list of owners. After 1873, the court typically determined which hapū had interests in a block, then the groups arranged inclusion on ownership lists.

It is not entirely clear how many cases were settled between the parties out of court. Negotiated settlements were routinely attempted in partition cases where all parties were present in court.[95] Once a decision had been reached as to the correct ancestor, in most cases the successful party would be encouraged to go away and prepare a list of owners. Although that list might sometimes be challenged by other claimants, it was rare for the court itself to do so. There were numerous instances of successful parties achieving agreement on ownership lists outside of court.

The frequency of out-of-court settlements negotiated before court hearings began or before the court had made any decisions is a more vexed question. Under the 10-owner regime in place prior to 1873, agreements were necessary in cases involving more than 10 customary owners, since the court would not allow more than that number into the legal title. During this period, the court mainly dealt with a number of small reserves and other land in and around Wanganui township. Thomas Henry Smith presided over the court during all the Wanganui sittings to 1873. He seems to have been reasonably sympathetic towards Māori, taking care to explain the impact of the Native Lands Acts to those attending court, and generally seeking to encourage out-of-court settlements where possible. In the case of the Pūtiki reserves, for example, the court simply ratified rūnanga decisions.[96] A number of out-of-court agreements were also reached in the late 1890s, due in part to a sympathetic judge who encouraged the parties to settle matters themselves as much as possible.[97]

Dr James Mitchell identified fewer than a dozen out-of-court agreements at Whanganui over the period from 1866 to 1900 out of a total of 189 title investigations, one of which (Whitianga) was later overturned on appeal.[98] However, there is evidence that there were a number of attempts to agree on tribal boundaries and other matters through mechanisms such as hui and rūnanga.[99] Those efforts were not always tied directly to a court hearing, and nor were their outcomes necessarily well documented. As a result, it is difficult to trace to what extent any agreements were carried over into individual cases before the Native Land Court. The Crown pointed out that the generally brief minutes of undisputed cases make it hard to distinguish between claims to land that were so widely accepted that no one would try to dispute them, and those where there had been a Māori process before the case came to court.[100]

In a number of cases involving counter-claimants or objectors, the judge decided in favour of one claimant or another.[101] In Kai Iwi, for instance, an initial hearing in 1868 was adjourned after a counter-claim was made. By the time the case came back to court nearly a year later, there were several more counter-claimants, indicating that the adjournment had done nothing to resolve the dispute. The judge eventually made a ruling in favour of the original claimants.[102]

In some of these cases it is not clear whether the court afforded parties the opportunity to negotiate. In Atuahae, for instance, heard in 1880, the judge dismissed two objectors the day after they appeared before the court, and found in favour of the original claimants.[103] A rehearing for this block was held the following year.

In other cases, the court found it difficult to decide how to convert customary interests into the form of title that the court produced. The Murimotu region produced some of the most intractable situations. Hui in the 1860s and 1870s revealed that 'several hundreds' of Murimotu/Whanganui Māori had interests in the land in question, all kin to each other through multiple intermarriages. There was little agreement on how these rights might be translated into discrete blocks of land with settled ownership.[104] When the court did eventually hear the Murimotu block, Judge Smith made a general finding in favour of the claimants (Ngāti Rangituhia and Ngāti Rangipoutaka), but because of 'imperfect and conflicting' evidence postponed the naming of individual owners to another day.[105] But there was no agreement on the 10 names to go on the title at hearings in 1877 and 1878.[106] It took until 1882 before the matter was settled.

The court was not well placed to resolve disputes over complex customary interests. Determining title to communal land required a more nuanced process than people standing up in court to press competing stances. In the hands of Māori matatau (learned persons), whose expertise and wisdom was acknowledged and respected, there would have been more community acceptance of decisions about conflicting claims. In only one case we have seen – the Rangataua block – did the court call on Whanganui leaders who were not directly involved in the proceedings at hand to give their views on the nature of rights and how they might be translated into title.[107]

Māori arrangements made out of court might be described as a form of agency, but it was limited. Certainly, many Māori of the period did not regard it as adequate to

satisfy their aspirations for a meaningful say on their own customary entitlements – or why would they have struggled as they did to get the Crown to recognise institutions like rūnanga and Kemp's Trust?

11.6.3 The role of assessors in the Whanganui court

Māori could potentially exercise more direct influence over outcomes in the Native Land Court via assessors appointed to hear cases alongside the judges. As we saw in the previous chapter, assessors were generally from other districts. The number of assessors on each bench and their formal input into the decisions of the court varied over time. But in general, at least one assessor (and sometimes two) had to concur with all judicial decisions between 1865 and 1894, apart from a brief period between 1873 and 1874. After 1894, the assessors had only an advisory role.

Claimant counsel submitted that the contribution of assessors to the decisions of the court was a 'murky' question. They said that the appointment of assessors from outside the district gave an appearance of impartiality but robbed the court of built-in expertise on Whanganuitanga, whakapapa, and kawa — the very things that assessors were supposed to bring to the court process. They argued that, in the period when two assessors were required, it would have been perfectly possible to avoid bias without going outside the district altogether. After 1867, having only one assessor 'must have both weakened that [Māori] input and made it easier for the judge to dominate proceedings and decision making'.[108]

Crown counsel submitted that assessors played a more important role than suggested by the claimants. For all but a brief period between 1873 and 1874, decisions of the Native Land Court required the concurrence of assessors. The influential rangatira from Wellington and elsewhere who sat as assessors in Whanganui were not the kind of people to have been mere 'bookends' in the court's process.[109]

We look at three issues concerning the role that assessors played in the court in Whanganui: first, their status in legislation and in practice; secondly, the extent of their involvement in the court process; and thirdly, the extent to which contemporary Pākehā and Māori regarded them as influential.

(1) *Status of assessors*

There were marked differences in the remuneration of European judges and assessors, and in their tenure. In the mid-1880s, four of the five assessors from the Whanganui region received between £20 and £30 per annum, while the fifth, Te Keepa Te Rangihiwinui, received £100.[110] Judges, by contrast, received at least £600 per annum, precisely the same rate as the Native Under-Secretary.[111] Between 1865 and 1873, judges held office during 'good behaviour', while the assessors remained in office at the pleasure of the Crown.[112] Judges could be removed from office only in the most exceptional circumstances, whereas 'the pleasure of the Crown' made assessors' continuation in office highly discretionary.

However, Dr Pickens pointed out that because the assessor had to agree before there could be a decision of the court, he was not subordinate:

> If an assessor did not agree with any proposed decision, he could withhold his agreement. Without the agreement of the Assessor, no decision could be issued. Assessors may not have been able to overrule a Judge, that is to say, they could not impose a decision upon him. But neither could a Judge overrule an Assessor. Given this legal framework, it makes little sense to describe the Assessors as 'effectively subordinate' to the Judges or to talk of 'a formal Court operating under European rules, and controlled by European appointees.'[113]

Assessors who sat on the Whanganui court were prominent men of standing within their own communities whose abilities were acknowledged more widely.[114] They included Wī Tako Ngātata, Wiremu Hikairo, and Hoani Taipua. Te Keepa Te Rangihiwinui and Hemi Tōpine Te Mamaku also sat as assessors in Whanganui on occasion.[115]

Dr Pickens characterised the different remuneration of assessors and judges as a reflection of the times.[116] That is no doubt correct. However, the discrepancy was marked, and must indicate the different value and importance

placed on judges' and assessors' contributions: assessors informed and advised, but judges decided.

(2) *Extent of assessor involvement in court process*

Between 1866 and 1899, 468 cases came before the Whanganui court.[117] Of those cases, there is evidence of assessors' involvement in court proceedings in just 18.[118] Dr Mitchell, drawing on the Whanganui block narratives, provided an example of what assessors did in court proceedings at Whanganui:

> In the Rawhitiroa title investigation, the assessor cross examined one witness on a question of boundaries. In the Ngaurukehu title investigation, it was noted that the assessor had inspected the land on the ground to verify claims that some claimants had cultivations there. In Rangataua, the opinion of the assessor was sought when the judge perceived the arguments for and against one group of claimants as being finely balanced. Finally in relation to a petition to alter a partition order in Taumatamahoe block in 1897, Judge Ward noted that the assessor concurred with his decision.[119]

Of course, when cases presented as undisputed claims or were resolved out of court, there was no need for either the judge or assessor to cogitate or cross-examine. But in disputed cases, there was often a delay between the closing of evidence and the court's judgment so that the judge and assessor could go over the evidence in private.[120]

(3) *Contemporary views of the influence of assessors*

Dr Pickens maintained that the contemporary Māori view of assessors was that they 'were in fact important and influential members of the Court'.[121] The assessors who sat in Whanganui during the nineteenth century were usually from outside the district.[122] This was to avoid conflicts of interest that might arise if assessors sat in their home districts.[123] However, both Te Keepa Te Rangihiwinui and Takarangi Mete Kīngi did sit in Wanganui, Te Keepa very briefly covering for the absence of an external assessor on some succession cases, and Mete Kīngi sitting on a case concerning land to the south of the Whanganui inquiry district.[124]

There is evidence of Māori blocking potential assessors from sitting in cases where they had links to interested parties. In one instance the assessor at the Whanganui court was challenged and the judge stood him down for the remainder of the hearing. In a second case, the sitting was delayed while assessors more acceptable to those in attendance were brought in, and on yet another occasion an applicant declined to go on with his case when the assessor could not be replaced.[125] Dr Pickens also described how the Murimotu case was delayed for a day in 1882 so that the newly arrived assessor could familiarise himself with the evidence. He also recounted an incident where an assessor involved in the Rangipō-Waiū rehearing that same year was accused of accepting a bribe. This allegation was taken seriously, and an official inquiry conducted, which demonstrated that people at the time understood that the assessor's role was critical in the deliberations of the court. Otherwise it would have made no sense to offer an assessor a bribe.[126]

11.6.4 Conclusions

Out-of-court settlements and Māori assessors did provide scope for some Māori input into decisions about the customary rights of Whanganui Māori. We know that local people arranged lists of owners, but there is no consensus about the prevalence and importance of settlements made out of court.

We can say, though, that the combination of out-of-court arrangements and Māori assessors did not satisfy Whanganui Māori aspirations for meaningful involvement in deciding their own entitlements. This is clear from the repeated calls from Whanganui rangatira throughout the late nineteenth century to be permitted such a role. While these protests were also motivated by the lack of control Māori had over alienation, it is clear that Whanganui Māori were not satisfied with their level of involvement in deciding cases.

In the case of the assessors, the requirement that Whanganui rangatira not sit on Whanganui cases meant that the assessors who were brought in from Wairarapa, Ōtaki, Waikato, Tauranga, Taranaki, and elsewhere were not usually able to provide knowledgeable input

on Whanganui tikanga and resource use. Even the most senior of rangatira would hesitate to pronounce on matters involving the detailed customs and whakapapa of hapū and iwi beyond their own rohe.[127] Although there were a handful of cases where claimants before the Native Land Court objected to an assessor because of his ties to one party or another, this is not a basis for concluding that Whanganui Māori wanted only external assessors. Whanganui communities' comfort with kōmiti and rūnanga suggests that they were generally happy for their leaders to decide local issues.

We find ourselves concurring with claimant counsel that it is difficult to gauge the role of assessors in the Whanganui Native Land Court. Eighteen or so cases of confirmed involvement is a small fraction of the 468 cases that passed through that court before 1900. The extent to which the assessors were actively engaged in those many other cases in which they were not mentioned in the minutes is a matter of speculation.

11.7 The Costs

11.7.1 Introduction

In this section we examine the direct and indirect costs that the Native Land Court system imposed on Māori, and ask whether those costs were fair, having regard to all the circumstances. The costs were not only financial, they were also social. Social costs, however, are difficult to quantify, and cause and effect can be hard to establish.

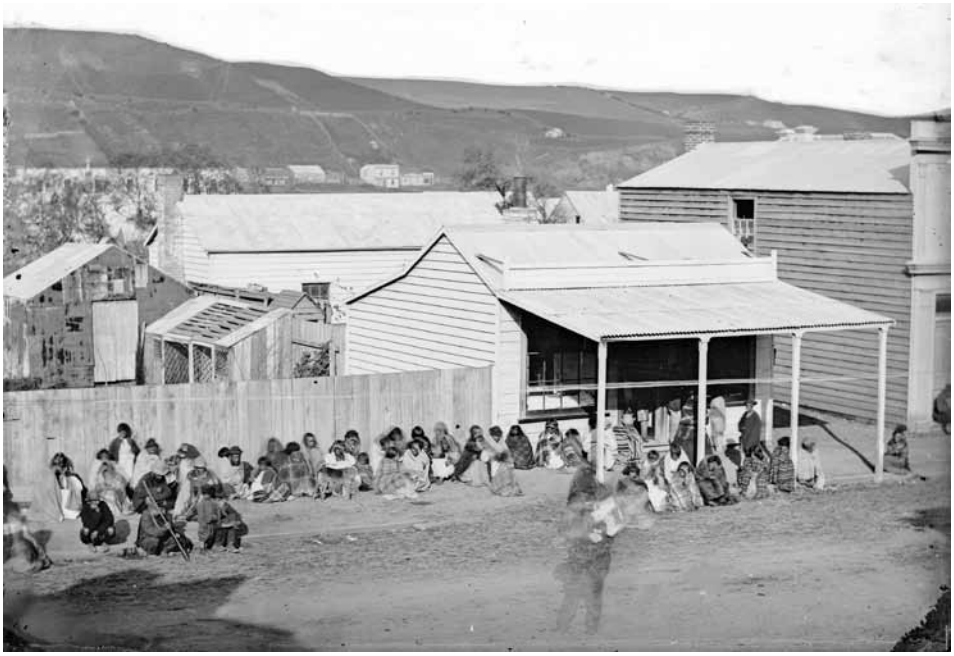
The claimants considered that the costs of taking land through the court were excessive. This particularly applied to survey costs, in some cases amounting to 20 per cent of a block's value. This cost should have been borne by all those who stood to benefit from the creation of title.[128] The Crown, however, did not consider the costs to be excessive in general terms. It cautioned against assuming a link between survey costs and land alienation. It advocated drawing a distinction between those who engaged willingly with the court, and those who did not. It was appropriate for those who engaged with the court in order to sell, lease, or mortgage land to be 'primarily responsible' for paying survey costs, but for those who only wanted to obtain secure title to land, the Crown acknowledged that it could have done more to 'ease the burden' of survey costs.[129]

11.7.2 Court fees

Although the actual fees charged by the Native Land Court changed over time, claimant counsel advanced these as typical:

- £1 per day for every party appearing in court;
- £1 for the investigation of any claim;
- £3–£5 for rehearing a claim, to be paid before a case could be heard;
- 10 shillings to £1 for certification of documents;
- 10 shillings witness fee for each witness appearing;
- £10 per day for those with legal representation, £5 per day general expenses without;
- surveyors' fees of £2 2s per day; and
- interpreters' fees of around £1 1s for translating a deed and a further £2 2s per day while attending court.[130]

Dr Mitchell estimated total court fees of around £2,700 for all Whanganui land blocks that passed through the court between 1866 and 1900.[131] This figure is based on a number of assumed costs for blocks where full records are not available.[132] Most of the blocks that went through the court between 1866 and 1873 incurred the minimum fee of £3 (consisting of £1 for the investigation of title, £1 for examination of the plan, and £1 for the issue of certificate of title). Many of these blocks passed through the court quickly, in a day or less, and so avoided the additional charge of £1 for every day of hearing after the first. Murimotu, which was heard over seven days in 1873, was an exception to this trend, and incurred charges of £13 16s.[133] The block was back before the court in 1882 for confirmation of lists of owners and subdivision, and was the subject of rehearing in 1892, along with appearances when the court gave judgment, and many subsequent partitions and succession hearings for those parts of the block that remained in Māori ownership.[134] Each of those events triggered further fees, plus other expenses. When, like Murimotu, a block had many owners, the expenses can look relatively modest when expressed on a per-person basis. But it is important to consider their cumulative



A group of Māori in Wanganui, possibly waiting for a Native Land Court hearing, late 1860s. It could be costly, inconvenient, and difficult for Māori living in rural areas to attend court hearings in town. Sometimes land was given in payment for expenses incurred.

impact over time for people who tended to have land assets but not income.

After 1873, when the Native Land Court at Whanganui tended to hear larger, more complex, and more contested cases, the hearings were longer, and would often trigger rehearing applications. Court fees of £1 per day per party could quickly mount, and were payable regardless of whether the party was successful in its efforts to be included in the legal title. Potential claimants began to tell the court that they could not pay the fees demanded. Customary owners opposed to the sale of the land in question were more likely to complain about fees. The Rāwhitiroa block, heard in 1884, was a case in point. Te Pikikōtuku told the court that he had no money to pay the fees on the block, opposed its sale, and wanted the case withdrawn. When Te Kaioroto, who was one of the counter-claimants, told the court that he also had no money to pay the fees, he was told that the court would not extend him credit and that he must either produce the money or withdraw his claim. The court proceeded to hear the case, Te Kaioroto evidently finding the money to pursue his unsuccessful claim to a share of the block.[135]

Whanganui Māori certainly sometimes found it 'a real hardship to pay fees and survey costs'.[136] A return of fees charged to the end of 1870 revealed that of the £6,086 in fees charged across the country, more than half remained as unpaid charges against the land.[137] This suggests that even in the early years participants could not meet the costs of the court process.[138] Furthermore, Whanganui Māori were seldom owners in just one block, and might therefore incur fees and other expenses over several blocks.[139] However, the problem should not be overstated. It is likely that fees payable directly to the court were usually the least of the expenses incurred in taking blocks through the court, and did not invariably place a heavy burden on Whanganui Māori.

11.7.3 Survey costs

Of all of the costs involved in securing title to lands through the Native Land Court, survey expenses were

nearly always among the highest. Crown counsel conceded that the costs for those who did not willingly engage with the court were a legitimate area of concern. Counsel also argued that it was difficult to determine what might be considered an excessive cost in relation to survey, but that 10 to 20 per cent of the land value appears to have been 'the norm for the day', and in Whanganui survey costs were within that range.[140] In order for the land court to issue a title on a new block or a partitioned block, a survey had to be conducted to ascertain its exact boundaries.[141] The legislative requirements varied: sometimes the court had to make sure the survey was completed before title investigations began, but at other times it could proceed on the basis of a sketch plan (see also section 13.4.4).[142]

The native land laws provided that surveys for blocks would ordinarily be paid for by the Māori owners, and there were a number of provisions to ensure they did pay. For instance, from 1865, the court could order the certificate of title to be withheld until the charges were paid.[143] The Crown, from 1862 onwards, at times gave itself legislative authority to pay for the survey charges up front and recover the money from owners. It could do this by way of a mortgage over the land. From 1886, the Crown could also charge interest on the mortgage.[144]

The usual way that surveyors and the Crown recovered costs from Māori landowners was by applying to the Native Land Court for a lien to be registered against the title.[145] Professor Ward concluded that we do not have much information about this process; we do not know for instance whether the court always acceded to the applications, nor whether Māori objected.[146] Under the Native Land Act 1873, Māori were required to satisfy the inspector-general of surveys that they would pay the survey charges either in cash or land, and the Native Land Court was permitted to order land to be transferred to the Crown in payment of advances the Crown had made for survey costs. From 1878, the court could award land to private surveyors in the same manner.[147]

The Crown did take some steps to manage aspects of the surveying process. The Native Lands Act 1865 required all surveyors to have a Government licence. From 1867, all survey plans to be produced in the Native Land Court required the prior approval of the inspector of surveys. The Native Land Act 1873 enabled the Government to undertake surveys at the request of Māori, while also requiring all surveys to be completed in strict conformity with survey regulations and approved by the inspector of surveys. The 1873 Act resulted in improved professional standards. Also, if there was a dispute between Māori and surveyors over work done, the court could inquire and make a binding decision. Professor Ward cites one example where the court dramatically reduced survey costs after Māori objected to them, but says that it is not known whether this was a common occurrence.[148] However, Ward also concludes that there was little Crown regulation of survey fees until an official scale was set, around the late 1880s. The introduction of the scale may have given more certainty, but did not mean that Māori found survey charges easy to pay.[149]

If a block was being surveyed for a partition, the survey costs were split between the owners of the new subdivisions, relative to their share of the parent block. As the Central North Island Tribunal pointed out, this meant that, if a block was being partitioned for partial sale, the non-sellers had to pay a share of a partition that they did not want and which did not benefit them.[150]

Witnesses before the 1891 Rees–Carroll commission on native land law generally agreed on the necessity of surveys, but criticised how they worked in practice. The views expressed included: subdivisional surveys tended to be unnecessary; they often cost more than the value of the land being subdivided;[151] fees could be inflated when surveyors paid 'kick backs' to the owner who commissioned the survey or to an agent who persuaded the owners to hire the surveyor; and generally fees were too high. There were also explanations for high costs, including surveyors saying that they had to charge extra when there was uncertainty about when – or even if – they would be paid for the work.[152]

We have no full and reliable record of the survey costs for the Whanganui blocks that passed through the Native Land Court in the nineteenth century. We do have information about some of the blocks, and enough, we think, to enable us to reach some conclusions. In the tables attached

as appendix III, we summarise that information, arranged according to the date upon which title for the blocks was first awarded. Our tables build upon the valuable work of Dr Pickens, supplemented by the block narratives of Paula Berghan and Craig Innes, and other sources including the minute books of the Native Land Court in Whanganui. We outline the information for each period here:

(1) *1866–74*

In the period to 1874, the prices paid for surveys varied considerably, both in terms of the total sum, but also (and even more strikingly) when expressed in terms of the price per acre. It is sometimes difficult, when comparing survey charges, to ensure that like is compared with like. The length of the boundary was a basic cost factor, but there was not necessarily a straightforward relationship between boundary length and the size of a block. Terrain, weather conditions, and other factors could influence the duration and therefore cost of any survey. Upriver blocks like Rānana cost more. Likewise, very small blocks could attract very high rates on a per acre basis, even if the price was no more than a few pounds.[153] This might be why the survey charges for Wharepapa (1 rood 18 perches) and Waikupa (2,272 acres) were so different: Wharepapa cost nearly £6 per acre, and Waikupa less than a halfpenny per acre.

(2) *1875–80*

A relatively small number of blocks passed through the court between 1875 and 1880, but they tended to be larger so the survey cost per acre was lower.[154] Most of the blocks went on to be sold soon after the title investigations. The timing of the sales suggests that survey charges were not the primary reason for sale.[155]

The following serve to demonstrate the wide range of survey costs relative to land value (as measured by sale price). For Rāwhitiroa A, 35,300 acres, the cost of the survey was four per cent of the sale price; for Mangapōrau, 16,062 acres, it was 13 per cent; and for Paratīeke, 6,000 acres, it was 24 per cent.[156]

In this period, the arrangements to pay for surveys seem to have been variable. Where the Crown or private purchasers were negotiating to buy a block before the Native Land Court awarded title, the purchaser sometimes agreed to pay the survey costs (and the court fees) in addition to the sale price. Sometimes the purchaser advanced the survey fee, and later recovered it from the Māori owners.[157] In other cases, Māori paid for the survey either in cash or land. Māori sometimes arranged to supply the labour for the survey in order to reduce costs.[158] Precisely how these different arrangements were factored into the price paid for the land is not clear.[159] Another scenario that enabled owners to pay costs was for them to sell land in one block to cover money owing on a number of blocks.

(3) *1881–86*

In the period between 1881 and 1886, the court again dealt with a number of mostly quite large blocks. The larger ones do seem to have been less expensive, and later surveys could also be cheaper if the surrounding blocks had already been surveyed. The 146,000-acre Taumatamāhoe block survey cost just £76: the survey plan was compiled on the basis of prior surveys (and the Taranaki confiscation line), which kept overall costs down.[160] Over half of Taumatamāhoe was subsequently sold to the Crown.[161] The survey of the Maungakāretu block (63,000 acres) cost £767, or threepence per acre. Parts of the block were afterwards sold to the Crown for an average of three shillings and sixpence per acre. In such cases the survey costs were relatively insignificant in relation to the price paid for the block.[162] On the other hand, there were also blocks like Mangapapa 1: the surveyor, G F Allen, took his fee in land. The 4,700 acres he was paid amounted to almost 20 per cent of the block of 23,760 acres.[163] Many of the blocks that went through the court at this time were alienated soon afterwards and survey costs were probably not the only reason for the sales.[164] However, we note that part of the Popotea block was later vested in the Crown in satisfaction of survey charges.[165]

(4) *1887–1900*

In the final part of the nineteenth century, large blocks continued to be surveyed as part of the process of securing

title in the Native Land Court. Survey costs in the case of smaller blocks continued to be high. The survey cost £20 in the case of the 57-acre Ōwhangaroa block, which was reserved out of the adjacent Ōhineiti block.[166] Later blocks typically continued to attract lower survey charges on a per acre basis, though the total cost could be significant. In addition to surveys triggered by original title investigations, this period also started to see surveys of subdivisions. The Ōhotu block, which went through the court in 1897, was subdivided as part of the original title investigation, but as survey costs are available for only some subdivisions, it is not listed in appendix III. However, Ōhotu 1, 46,533 acres, was surveyed for £669 3s, or a little over threepence per acre. Each of the 1,054 owners paid about 13 shillings.[167]

(5) *Overall impact of survey charges*

Surveys were necessary for any title system, but they could be expensive. Dr Mitchell's evidence on a limited sample of 10 blocks suggested that from the late 1860s to the 1880s, costs ranged from about one per cent to as much as a third of a block's land value as measured by its sale price.[168]

The Government did little to introduce measures that might have mitigated the burden of survey costs for Māori, and the recovery of survey costs remained a vexed issue over the remainder of the nineteenth century.[169] The cost of survey was likely to have been at least part of the impetus to sell,[170] though it is usually possible neither to be sure of the role that survey costs played, nor to say how often it was a pressing factor.

In a number of blocks, especially in the 1870s and early 1880s, paying survey costs became part of the sale process. When the Crown or private parties began negotiating to buy the land before survey and title determination, who would pay survey costs was of interest to both sellers and buyers. Māori could negotiate terms with the buyers, and there is some evidence that they did. However, as we investigate further in chapter 12, the impact of survey (and other) costs on the final price for the land was not always clear when sale agreements were struck.

The obligation on individual title-holders to pay survey costs on land that went through the court was a consequence of the absence of a corporate title option. If it had been possible for Māori communities to continue to hold and manage their land in a communal title, it would have been easier for them to manage survey debt as a liability against the total value of their land. Kemp's Trust was an attempt to manage land in this way, but as we have seen it foundered, because holding Māori land in a corpus was not approved at the time.

It was inevitable that survey costs were hardest to bear for owners who had no intention to sell, because the surveyor had to be paid from sources other than the proceeds of sale. In these cases, the debt became a charge against the block, secured by registering a lien. This occasionally resulted in later land loss. Portions of the Kai Iwi block, for example, were taken in the early twentieth century for unpaid survey liens.[171]

The Crown noted that it would acknowledge a failure in the title regime if it could be shown that there were excessive and disproportionate costs that directly resulted in land alienation, particularly where Māori did not willingly participate in the court's process and wanted to retain land.[172] We have certainly seen cases where survey costs were high relative to land value, to an extent likely to have raised concerns for owners, but we do not have evidence that establishes the prevalence or severity of this problem.

11.7.4 Related costs

Survey charges and court fees were direct expenses of going to court to seek legal title to land. But there were also other unavoidable costs: travel, food, and accommodation; fees for lawyers, interpreters, and conductors; and expenses that the host community was expected to bear in providing customary forms of hospitality to visitors.

There is no doubt that there were cases where the cumulative effect was crushing. Referring to the Rangiwaea block, Sir Robert Stout and Āpirana Ngata said this in their royal commission interim report on Whanganui lands in 1907:

> After sitting nearly four months and taking voluminous evidence the Court determined the title to Rangiwaea, originally

containing 56,000-odd acres, awarding the land to 331 owners by order dated 19th April, 1893. These proceedings cost the Maoris in Court fees £70, in solicitor and agents' costs over £1,200, and in living-expenses attending the Court, not allowing for waste and estimating the figures very low, about £800. So that, apart from cost of survey, the original investigation cost the Natives over £2,000. Immediately after ascertainment of title the Crown purchased 22,000 acres, which were partitioned in 1896, entailing further expense to the non-sellers in partition and survey charges. In 1898 the Maoris took the first step towards individualising their interests, and made seven subdivisions, six into individual and family holdings, the balance in one large block of 25,000 acres held by 210 owners. It is quite usual for a partition to be made for the benefit of a few owners – thirty in the present case – who obtain their holdings while the rest of the owners are left to their own devices to carry on among themselves in the future the necessary partitions. In the twelve months following this partition the Crown had purchased another 6,000 acres, which necessitated further partitions of four blocks in June, 1899. On this occasion the communal owners of the residue availed themselves of the opportunity to make thirty subdivisions. This by no means reduced all the holdings into compact family interests, so that in 1900 and again in 1901 further partitions were made. At each step costs were incurred in Court fees, agents' fees, and expenses of attendance. We find that Court costs on partition amounted to nearly £100, costs on succession orders £20, and survey charges borne by the Maoris who have not sold their interests about £600, while agents' fees and expenses of attending Courts may be estimated at £750. We think that at a low estimate the cost to the Maoris of obtaining their titles to this block since 1893 may be put down at £4,200.[173]

They went on to say that yet more surveys and subdivisions were required. They calculated that the owners, lacking any alternative source of capital, had already been compelled to sell more than one-third of the block to secure titles to the rest. They added that Rangiwaea was hardly atypical, with Raetihi, Maungakaretū, Raketāpāuma, Murimotu, and other blocks going through the same process, with the same costs and the same results.[174]

A scale of fees that the Native Land Court issued in 1890 indicates the potential for significant costs to be incurred. Expert witnesses might claim between one and two guineas a day (a guinea was £1 1s). Other witnesses might claim 10 shillings per day, while the daily rate for interpreters was £2 2s, and for lawyers £10 10s, with additional charges for translation of deeds and other specified tasks.[175] It would take no time at all to accrue a very substantial bill at those rates.

Food and lodgings were another unavoidable cost for many claimants, who sometimes had to spend months in town waiting for their case to be called. There was no fixed schedule of costs here. However, in 1881, Te Keepa Te Rangihiwinui's party in the Waiākake case was required to compensate the other group for their expenses when Te Keepa's group was granted an adjournment to allow time for their witnesses to arrive. They had to pay 10 shillings per day for the upkeep of witnesses in town.[176]

However, Dr Pickens challenged the argument that Māori participants in the Native Land Court process had to purchase food only while they were in town, and would otherwise have lived entirely on traditional food, which was cost-free. He argued that, from the beginning of the 1880s, if not earlier, many Māori were either supplementing or substituting European foodstuffs for their traditional foods. If they were buying their food whether or not they were attending court, their involvement with the court process might have had no or little impact overall on their food costs. Indeed, food prices in the Whanganui township were probably lower than those charged in more distant interior locations.[177] The claimants, though, maintained that when Māori communities purchased food, it was largely because they could not cultivate crops when they were attending court hearings.

In our view, although by this time some Māori might have been buying foods such as sugar and flour on a regular basis (and even though these commodities *might* have been cheaper in town than in the interior), it is very likely that Māori would have had to purchase much more of their food when they were obliged to remain in town for any length of time. It is therefore reasonable to conclude that land court sittings added considerably to their food costs.

In considering the living costs associated with attendance at the court, a telling piece of evidence was the 1881 petition from the storekeepers and publicans of Wanganui township against the court's removal to Ūpokongaro.[178] The court's presence in the town was simply too valuable to them because of the level of expenditure by Māori who attended. Indeed, a 'bidding war' later broke out between the rival Rangitīkei settlements of Marton and Bulls for the Native Land Court,[179] so its presence was clearly a boon to local hoteliers and shop owners. To take another example, in 1897 Whanganui Māori informed the chief judge that they had spent £1,500 in town in one month on the purchase of bread, sugar, tea, meat, clothing, and other items they required during a court hearing.[180] Less well documented was the impact of frequent Native Land Court sittings at Wanganui on the people of Pūtiki pā, who shouldered the burden of manaaki (hospitality) to their upriver kin. The preference for court attendees to stay at Pūtiki so they would be less drawn into undesirable behaviours in town must have encumbered resident hapū, especially during times of scarcity or illness.

11.7.5 The social costs of the court process

Claimants alleged that there was a wide range of indirect social costs associated with the Native Land Court process, including ill effects on the health and wellbeing of those attending long hearings in town. Historians told us the conditions in Wanganui for visiting Māori were 'squalid' and 'deplorable', sometimes resulting in 'illness and death among those who attended'.[181] The Crown accepted in its statement of response that this issue deserved attention.[182]

The 1880 Raoraomouku case coincided with the period when reports of the dire impact of the Native Land Court on Whanganui Māori communities were becoming common. The court was now sitting for much longer periods and more frequently, providing little respite for those needing to attend. We noted earlier how the claimants in that case reported to Parliament that four children and two old people from among their group died from the hardships they suffered living in town. Many court attendees were forced to camp outdoors, often in poor tents that gave little shelter in bad weather.[183] Dr Pickens told us that officials repeatedly described as unsatisfactory the tent camps along the riverbank.[184] Cramped, damp, and unsanitary living conditions were a breeding ground for illness and disease. In 1879, Woon reported that cholera or severe dysentery had broken out at Wanganui, originating in the crowded Māori campgrounds there that lacked sanitary arrangements. Some of the children had also died as a result of whooping cough.[185] Many Māori had flocked to Wanganui for the Native Land Court sitting that began in January 1879, and the Crown had recently been concluding purchases. Woon reported that

> the greater portion of their money has been spent in town on food, clothing and, alas, *drink!* and a rich harvest has been reaped by the traders and publicans. The Maoris think it is the correct thing and quite in the fashion to frequent the hotels in which Wanganui abounds, and free access has been given to them to those hotels contiguous to their quarters, where they spend their time from early morning to midnight in eating, drinking and carousing.[186]

He noted that this scenario was to the consternation of many rangatira, and the court had been moved to Pūtiki in an unsuccessful effort to remove Māori from harm's way. Measures aimed at restricting the supply of alcohol to Māori communities appear to have had at best a limited impact. In 1885, the member of Parliament for Rangitīkei, Robert Bruce, told the House:

> we could not devise a more ingenious method of destroying the whole of the Maori race than by these Courts. The Natives come from their villages in the interior, and have to hang about sometimes for months in our centres of population, where they are exposed to many demoralizing influences. They are brought into contact with the lowest class of society, and are exposed to temptation, and the result is that a great number contract diseases and die . . . Some little time ago I was taking a ride through the interior, and I was perfectly astonished at hearing that a subject of conversation at

A Māori encampment near Pākaitore and Moutoa Gardens in 1902. Alexander Hatrick's riverboat, *Manuwai*, is moored alongside waka pulled up on the banks of the Whanganui River. A camp developed here where Māori stayed when they came down the river to sell goods and to attend Native Land Court sittings. Behind the tents is the Wanganui brewery. Debts could build up for necessities like food and providing hospitality, as well as from buying alcohol.

> each hapu I visited was the number of Natives who had died in consequence of attendance at the Native Land Court at Wanganui.[187]

This, he said, was a 'disgrace' to the colony. In the same year, the native medical officer at Wanganui, Dr Earle, reported that:

> After each Native Land Court, I notice that, from the crowding together of so many in a limited space, and the assumption of some of the European habits and many of the vices, that severe illness and some deaths usually follow.[188]

It appears that conditions at Ūpokongaro, though not ideal, were an improvement on those in the town.[189] Nevertheless, the court resumed sitting at Wanganui after 1882. In 1895, the Government finally constructed a shelter on reclaimed land under the control of the Wanganui River Board. However, it accommodated only about one-tenth of those attending court. The remainder continued camping by the river, which one local newspaper called 'a menace to the public health and a disgrace to the borough'.[190] When Richard Seddon, the Premier, met with the assembled Whanganui tribes at Pūtiki in May 1898, he commented on the 'great privations' Māori could experience attending court at Wanganui.[191]

There is little doubt that 'appalling deprivation' was the lot of some Māori attending the Native Land Court at Wanganui, and this must have taken its toll on their communities. Quantifying the extent and impact of illness, drunkenness, and long absence from home with crops neglected and people separated is in most cases impossible.

The Crown suggested that customary obligations and unaccustomed wealth combined to promote expenditure associated with the court process. In his 1873 report, Wanganui Resident Magistrate Woon observed that:

Pūtiki church and Mete Kīngi's house, 1858. Mete Kīngi's large meeting house accommodated Māori attending court sittings in 1880, sheltering them from the winter weather.

> It is not an uncommon occurrence for a young chief to spend £50 £60 in giving a dinner, with beer, champagne, &c., to his friends, and this to be particularly noted after a sitting of the Native Land Court. If judgment has been given on a long-disputed question, both parties (claimants and counter-claimants) vie with each other as to who can give the most expensive entertainment, in order to prove to each other that no ill-feeling exists between them.[192]

Woon was commenting on Māori improvidence, lamenting that they had 'squandered away' hundreds of pounds in just a few short months. The customary perspective offers a different lens, though. Hākari (feasts) were part of the ongoing cycle of reciprocity that sustained traditional relationships within and between groups. In this context, they were a means of repairing and renewing ties between people who were at odds in the adversarial environment of the Native Land Court. As such, they are legitimately regarded as a true cost of the process, for without them whanaungatanga (kinship ties) would have been further damaged.

11.7.6 Conclusion

The costs of the Native Land Court system were many and varied. A few we can quantify; most not. It fell to Māori to pay nearly all of them. Any transformation of customary land and resource rights into Crown-granted titles was likely to be traumatic and expensive. But were the costs associated with the Native Land Court system higher than they should have been, and was the share that Māori paid fair?

We perceive a consensus that the different kinds of costs we have discussed – court, survey, travel, accommodation, food, social disruption, hākari – were often steep, and resulted sometimes in real hardship. There are a few cases where the facts are sufficiently clear for us to say

that the costs do seem to have been excessive. Sometimes, survey costs were probably a factor in the decision to sell land. On the facts available, we can be no more definitive than that.

Serious social and health consequences resulted from many Māori spending months in Wanganui attending court, forced to live in temporary, cramped, unsanitary conditions, and prey to grogsellers. Contemporary observers were clear about the correlation between attendance at the court, illness, disease, and mortality. We join their condemnation of circumstances that required Māori to endure that situation over the decades when their land was going through the court.

We consider that the share of the costs of title transformation that fell to Māori was too high. Some steps were taken to ameliorate this situation. For instance, although the law provided for Māori landowners to pay for surveys, in practice there seems to have been a variety of arrangements in the 1870s and early 1880s, with the Crown paying up front on numerous occasions. Unfortunately, there is too little evidence for us to be sure in most cases who ultimately paid. It does appear that sometimes it was the Crown. Nevertheless, many costs were generated unnecessarily by the particular nature of the Native Land Court and its rules and practices. It conducted itself as though it were providing a service to Māori, and using that mindset, it was fair for Māori and their communities to shoulder the burden of inconvenience and expense. But actually, it is fairly clear that, certainly in the long run, Māori were not the parties that benefited, although they were the parties that usually paid.

Other modes of title transformation should have been tried – including greater inclusion of Māori determination of customary interests, and local decision-making near the land in question. By these means, less dislocation and less expense would probably have been achievable.

11.8 Avenues for Seeking Redress

We spoke in the last chapter about how there were no appeals from Native Land Court decisions before 1894. Until then, Māori dissatisfied with court outcomes were limited to applications for rehearing or petitions to Parliament. In this section, we inquire into how Māori used the pre-1894 provision for rehearing, and what happened when they expressed their dissatisfaction to the court directly.

Claimant counsel submitted that the Crown's duty of active protection obliged it to provide recourse to Whanganui Māori who claimed to have been prejudiced by Native Land Court decisions. The means to have any decision of the court reconsidered was far too limited for its first three decades. The Crown accepted that the absence of a Native Appellate Court prior to 1894 reduced the options of those refused a rehearing by the Governor in Council before 1880 or the chief judge after that date.[193]

11.8.1 Applications for rehearings

Dr Pickens pointed out to us that the native land laws provided no guidelines on the grounds for obtaining a rehearing of court decisions, and nor did the rules under which the court operated. Applicants had to make the best case they could to Ministers, who would then decide whether the grievance was sufficiently serious to justify the trouble and expense of a rehearing. They usually thought not. It is unsurprising then that

> In 1884 Fenton told the Native Affairs Committee that he had always regarded the lack of an Appellate Court as an imperfection in the native land laws. He explained that the clause about rehearings in the 1865 legislation 'was to provide for nothing but unforeseen difficulties – a swollen river, for instance or a failure of proper notice.' It was never intended to apply in situations where it was alleged the Native Land Court had misunderstood the evidence or made some error with respect to the law.[194]

In the period to 1880, when the Governor in Council was formally responsible for deciding whether to grant a rehearing, he typically referred the matter to the chief judge for a recommendation, who in turn passed it to the judge or judges who heard the case for comment. The judge's report remained confidential and nor were applicants for rehearing able to put their case in open court

until an 1888 amendment provided for this. Thus it seems that the judge whose decision was under attack advised the chief judge on whether there should be a rehearing, and then that judge ultimately heard the case again in the unlikely event that a rehearing was granted.[195] To call this procedurally flawed is an understatement.

In all, some 22 applications for rehearing were granted in Whanganui between 1866 and 1900; 17 were refused. Of those refused, six were for Waimarino, five for Rangiwaea, and six for other blocks. The applications alleged either problems with process, such as lack of notice or problems with surveys, or with the court's substantive decision, where Māori believed the court had overlooked or undervalued their interests in a block. Another type of application for rehearing was made under the Native Equitable Owners Act 1886. This Act provided for owners left out of titles under earlier legislation (the 10-owner titles of 1865 to 1967) to apply to have their names added to the title.

Table 11.3 summarises the outcomes of the applications that were granted rehearings, as well as details of the applications that were refused. The starred block names involved applications under the Native Equitable Owners Act 1886. The table does not include the applications for rehearings in Waimarino, which we discuss in chapter 13.

We now discuss some of these applications and rehearings in more depth, and in the same year brackets that the chapter opened with.

(1) *1866–73*

Rehearing applications were lodged with respect to three of the 32 certificates of title issued at Wanganui between 1866 and 1873, and only one was granted. Dissatisfaction continued about the court's decision in the two other cases, Waipākura and Kaiwhaiki.[196]

It was the case of the Waikupa block that went to a rehearing. Tāmati Puna came to court on the day after the title was issued in 1867, saying that he did not know about the hearing and asking to be admitted into the list of owners. At the rehearing the following year, the case was dismissed when objections were raised to the assessors appointed to hear the case. Consequently, the original title lapsed, and after a further hearing in 1869 the court awarded title to Āperahama Tīpae solely.[197]

An application for rehearing in respect of the Parihouhou block, which passed through the court in 1871, was referred to the judge who heard the case – standard practice at the time. Perhaps not surprisingly, Judge Smith advised that there were no grounds to overturn his decision. No rehearing was granted.[198]

The Native Land Court investigated the Mangaone block in 1873. Afterwards, Te Rātana Te Urumingi went to the Resident Magistrate's Court to sue for a share of the purchase money. Woon advised him to apply for a rehearing in the Native Land Court. He recommended that a rehearing should be granted, since the applicant had lost out on his share in the land due to an act of 'duplicity'. Even so, the Government rejected the application for a rehearing.[199]

(2) *1873–79*

In the period to 1879, two of 41 titles that the Native Land Court issued at Wanganui went to rehearings. The grounds for rehearing in the case of Pikopiko 3 were insufficient notice of the original hearing, but when the day arrived for rehearing in 1879 no one appeared to pursue the application, so the original order was confirmed.[200] In the case of Mangaotuku, though, the rehearing resulted in expansion of the ownership list and creation of a new block, Huiakamā. In that instance, Māori alleged that the survey of the block was invalid. A rehearing was initially declined, but Māori successfully applied to the Native Affairs Committee.[201]

There were another three cases where discontent with the court's decision was expressed in other ways.[202] There were some immediate complaints about the court's decision in Paratīeke, which was heard in 1876 and sold shortly afterwards. However, despite two groups telling Chief Judge Francis Dart Fenton that they intended to make new applications for Paratīeke to be brought before the court, nothing further seems to have happened.[203] In two

Block name	Year	Outcome of application
Waikupa	1868	Reheard but objections to assessors. Fresh title investigation later held.
Parihouhou	1871	Rehearing refused.
Mangaone	1873	Rehearing refused.
Mangaotuku	1875	Rehearing refused but granted in 1881 after petition to Parliament. Ownership list expanded and new block (Huiakamā) created.
Kaikai–Ōhākune	1876	Rehearing refused.
Pikopiko	1878	Rehearing granted then application withdrawn.
Atuahae	1881	Reheard. List of owners revised.
Kārewarewa 1 and 2	1881	Reheard. No change to title.
Mangapapa 1 and 2	1881	Reheard. New subdivisions created. List of owners revised.
Mangapukatea	1881	Rehearing granted but no appearance by appellants. Original title order confirmed.
Maramatōtara	1881	Rehearing granted but no appearance by appellants. Minor alterations to partitions made.
Ōtāmoa 2	1881	Reheard. One name removed from title.
Ōtaupari	1881	No appearance by applicants at rehearing. Original order confirmed.
Ōtūangiangi	1881	No appearance by applicants at rehearing. Original order substantially confirmed.
Puketōtara	1881	Reheard. Number of grantees increased from 17 to 237.
Pungahāruru	1881	Reheard. No change to title.
Rangataua	1881	Reheard. Groups admitted to title changed.
Raoraomouku	1881	Rehearing refused.
Rāwhitiroa	1885	Rehearing refused.
Waimarino	1886 and later	Six applications for rehearing refused.
Rānana*	1888	Reheard. More owners added to title.
Kai Iwi*	1888, 1891	Reheard. More owners added to title. Reheard partition case in 1891. Amicable settlement to distribution discussions.
Kaiwhaiki*	1889	Reheard. More owners added to title.
Te Maire*	1889	Reheard. More owners added to title. New title cancelled on discovery that part of block was sold prior to 1889.
Murimotu 5	1892	Reheard. More owners added to title.
Rangiwaea	1893	Five applications for rehearing refused.
Raketāpāuma	1894	Reheard. More owners added to title.
Whitianga	1895	Reheard. Allocation of shares changed.
Tūpapanui	1896	Appeal for rehearing dismissed.
Puketarata	1897	Reheard. More owners added to title.
Kaiwaka	1898	Reheard as to whether or not one owner's interests had been sold in 1876. Unsuccessful.
Ōtiranui	1898	Two appellants failed to appear. Third appeal dismissed.
Ōhotu 1 and 8	1898	Reheard. More owners added to Ōhotu 1 title. Ōhotu 8 title unchanged.

Table 11.3: Whanganui applications for rehearing, 1866–1900

other instances, discontent was expressed several years after the relevant decisions. Kirikau was heard in 1876. In 1889, Tūpare Putitahi wrote to the Native Minister noting that he and his people had interests in the block. Because of the time that had passed, the Government would have had to pass enabling legislation to allow a rehearing. The Minister refused to do so because officials had been informed that Putitahi had been notified of the original hearing but chose to stay away.[204] Mangapōrau, meanwhile, was originally heard in 1877 and sold the following year. There is no evidence of any complaints at the time, but between 1938 and 1943 Māori lodged several petitions disputing the boundaries of the block. In each instance, however, the Native Affairs Committee made no recommendation, noting that the land had been sold in 1878.[205]

(3) *1880–93*

At the 1880 sitting of the Native Land Court at Wanganui, matters took a dramatic turn when Te Keepa Te Rangihiwinui and his followers boycotted the court. Of the 14 blocks for which the court issued title at that sitting, all but one were reheard – although whether the rehearings were granted because of the boycott is not known.[206] The original decision was upheld in just over half of the rehearings, though in a number of cases no one came to court.[207] In other cases there were significant changes. The 1880 list of 17 owners for the Puketōtara block swelled to 237 by the time of its rehearing the following year.[208] The court recognised additional owners in five other cases, and removed one name from the list of owners of Ōtāmoa 2.[209]

Following the large number of rehearings in 1881, there were fewer applications for rehearing over the next period. Three applications for rehearing were filed in respect of Rāwhitiroa, all of them rejected by the chief judge in 1885.[210] One of the unsuccessful applicants petitioned Parliament, alleging shortcomings in the conduct of the case, including a failure to properly gazette the hearing of the block. Struggling with its workload, the Native Affairs Committee admitted at the end of the 1885 parliamentary session that it had been unable to inquire into the merits of the petition. Its report the following year simply noted that the Native Land Court Bill then before the House provided for rehearings. Legislation since 1865 had allowed rehearings, but once an application for rehearing was rejected, the only resort was to petition Parliament, since there was no automatic right of appeal. The Native Affairs Committee was apparently unaware that multiple rehearing applications had already been lodged and rejected in respect of Rāwhitiroa, and it did not inquire into the petition at all.

Title to the Rangiwaea block was subject to five applications for rehearing, all of which the court rejected in 1893. Some applicants complained that the court had overlooked evidence of their customary rights, or sought a larger share of the block, while Poma Haunui protested that he had arrived after the court had made its decision, and it would not re-open the case and look into his claim. It had earlier rejected his whanaunga's (relative's) efforts to have the hearing postponed pending his arrival.[211] Two further applications emanated from Te Keepa Te Rangihiwinui's boycott of the original title investigation. The court essentially said that any prejudice to the boycotters was their own doing: the fact that they now 'repented' was not sufficient reason to grant a rehearing.[212]

(4) *1894–1900*

The Native Land Court Act 1894 finally gave an automatic right of appeal and created the Native Appellate Court to hear them. The time for lodging an appeal was reduced to 30 days.

At Wanganui, Raketāpāuma was the first appeal to be heard under these new provisions. The appeal added a few names to the list of owners of Raketāpāuma 2.[213]

The Whitianga appeal also proceeded in 1894.[214] It concerned the respective rights of Whanganui and Ngāti Maru. The court heard that Ngāti Maru had not known about the 1886 title investigation of the neighbouring Taumatamāhoe block. Ngāti Maru were rightful owners in that block, but because it was too late to appeal that title decision, the court gave Ngāti Maru 1,200 acres in Whitianga in compensation. This represented less than 1 per cent of the Taumatamāhoe block.[215]

The Ōtiranui appeal of 1898 illustrates how expensive appeals could be. Two of the three appellants failed

to appear at the hearing, evidently because they could not deposit the required security with the court to cover costs. The third applicant, Raihania Takapa, did come up with the £25 required, and of this £19 was later returned. Obtaining £25 was no mean feat in those days, and it appears that the case itself cost £6. This was more than the per acre cost of most land at the time.[216] Adding insult to injury, the court rejected Takapa's appeal.

It became increasingly common for appellants to fail to appear in court, and the reasons are not clear. It may have become routine to file an appeal or rehearing application as a matter of course, before properly deciding whether to go ahead with it.[217] Cost may also have been a factor.[218] Section 40 of the Native Land Laws Amendment Act 1895 empowered the court to dismiss any appeal in the event that the required deposits and fees were not paid.

11.8.2 Conclusion

The Crown accepted that Māori who could not obtain a rehearing had reduced options until the Native Appellate Court was created in 1894, but did not concede that this breached Treaty principles.

The Crown's concession does not go far enough. We saw when we looked into the notice before hearings, their location, their duration, and the associated costs, that all of these factors made the Native Land Court procedurally dicey – especially considering the practical impossibility of owners of interests in Māori land avoiding its processes. There would have been many occasions when any of a number of procedural flaws could have been cited as compromising natural justice to an extent that would have warranted appeal or rehearing. There was also the very complex nature of the conflicting land claims, in which there was endless potential for substantive error. This was appreciated at the time. Whanganui Resident Magistrate Richard Woon told the Government in 1877 that 'there should be a Court of Appeal, to which dissatisfied Maori litigants could have recourse for a final and exhaustive inquiry into the nature of their conflicting land claims'.[219]

The situation before 1894 was such that, for practical purposes, the vast majority could not get Native Land Court decisions that affected them reconsidered. Dissatisfied claimants had to ask either the Governor in Council or (after 1880) the chief judge for a rehearing within a specified time. In neither case was it clear on what basis a fresh hearing would be granted, and there was no right to argue for one in open court, at least until 1888. Applicants were often not even told why a rehearing had been granted or denied. To make matters worse, the original judge or judges sometimes played a crucial role in recommending whether or not a rehearing should be granted, and some applications were rejected after the original judge reacted negatively. Overall, though, there is scant information about how rehearing applications were handled.

Although the Native Affairs Committee provided a limited fall-back option, particularly for those who had missed the deadline to apply for a rehearing, it was often overworked, reluctant to intervene in all but the most egregious cases, and by its own admission was no substitute for an appeal process. Nor were its recommendations to the Government binding.

The provision of an automatic right of appeal and the establishment of the Native Appellate Court in 1894 brought the native land jurisdiction into line with other courts. Appeals were expensive, though, and would have deterred some. Moreover, by 1894 most of the land in Whanganui had already passed through the court, so it is difficult to assess how much the new appeal court improved the situation for Whanganui Māori.

The Crown's fault in failing to provide accessible means of obtaining redress in the critical years of the court's business in Whanganui was serious, especially given what we know about the court's shortcomings, both procedurally and substantively. There was much at stake for Māori in that court. As citizens of New Zealand, they were entitled to a fair process by which decisions that profoundly affected them were easily and regularly subjected to proper reconsideration.

11.9 How Extensive was Fractionation?

Lastly, we turn to consider fractionation, one of the outcomes of the type of title that the court produced.

Fractionation is to be distinguished from fragmentation. Fragmentation is the term for land blocks becoming smaller over time through repeated partitions. Fractionation is the word for individuals' interests getting smaller over time as more owners are crowded into titles as a consequence of the rules of succession. Here we are talking about fractionation.

The claimants argued that the Crown introduced a succession regime that worked to the detriment of Whanganui Māori landowners. It awarded interests equally to all descendants, without any communal oversight. Whanganui Māori lost the means to run their land communally, and were severely hampered in their efforts to use their individual interests. Many ended up with no real option but to sell the shares to which they succeeded.[220] Customarily, inheritance worked differently. Descent alone was not enough. Before uri (offspring) could succeed, they had to fulfil obligations of kaitiakitanga (caretaking) and ahi kā roa (continued occupation).[221] The Crown imposed its rules of succession contrary to the wishes of Whanganui Māori, and in breach of its Treaty obligation to actively protect their land and te tino rangatiratanga.[222]

As we have said, the Crown acknowledged that its failure to provide for communal governance 'meant that Maori land in the Whanganui Inquiry District was more susceptible to partition, fragmentation and alienation and that this contributed to the erosion of traditional tribal structures'.[223] It also acknowledged that the 10-owner rule had the potential to cause Māori prejudice where '[t]here was a subsequent succession of interests where there was no allowance for wider community interests'. Counsel pointed out, though, that 'fragmentation of interests following succession was not just caused by native land laws or rules of succession, but the significant population growth that occurred in the 20th Century'.[224]

11.9.1 Succession

The Crown's succession regime awarded interests to all children of the deceased, without considering where they lived, or their rank. English succession laws favoured primogeniture in the interests of keeping estates intact, but these were not implemented here. Customary limitations like ahi kā were also rejected. Consequently, with each passing generation, titles to Māori land became more crowded. That said, however, it must be acknowledged that there were 231 blocks in the inquiry district, and no one has analysed the process by which the number of owners has expanded from the original lists of owners. It is also likely that many owners had interests in more than one block. Needless to say, such analysis would be difficult given that blocks have been extensively partitioned, and bear little resemblance now to their original state. Nevertheless we can say with confidence that increasing numbers of people owning shares in ever smaller blocks is a phenomenon in this inquiry district as elsewhere.

The effects of succession laws in the Whanganui district were especially magnified in the case of smaller blocks. The court awarded Ōruaanga, 300 acres, to 145 owners at the time of its creation in 1881. By 1898, the owners numbered 235, but the block then comprised 46 acres in eight subdivisions.[225] Ken Clarke of Ngā Paerangi told us about Kūaomoa, a block where, at the time of our hearings, 689 people were owners. It comprised 19 acres, with nearly a third in rough hill country.[226] In the case of Rākātō, 54 acres of mostly mountainous and uninhabitable land had 467 owners.[227] Title was originally granted to 21 owners in 1876, and their number expanded notwithstanding the Government's efforts in the 1960s to purchase 'uneconomic' interests – that is, very small shareholdings.[228] By the early decades of the twentieth century, the expanding ownership of ever-shrinking blocks created a situation where owners could do little with their land, and benefited from them even less. Land sales to mainly private purchasers in the wake of the Native Land Act 1909 reflected that grim reality.[229] Attempts to ameliorate fractionation – like the compulsory acquisition of 'uneconomic' interests referred to – produced more grievances.

Although the succession rules caused problems over time, the underlying issue was the nature of the titles: each individual named on a title, or inheriting an interest, was its absolute owner and manager. A communal title would have enabled interest-holders to act as a community in relation to the land and resources they held in common.[230]

11.9.2 Conclusion

More than anything, it was the nature of the titles issued that ensured that the Native Land Court would do major and irreparable damage to Whanganui Māori communities after 1866. The Crown properly conceded that neither the titles issued under the 10-owner regime nor those of the quite different post-1873 title system allowed Māori to manage their lands communally. Individuals named on the titles of communally-owned land could sell the interests allotted them but otherwise had no power to do much else with their nominal and undefined allocation.

Land remaining in Māori ownership was vulnerable to the twin processes of fragmentation and fractionation. Succession laws enabled children to succeed equally to the interests of their parents, regardless of residency or other customary considerations, which over time rendered much land effectively unmanageable. Although the issues involved are complex, the Crown ought to have foreseen the likelihood of such a problem and taken measures to prevent it.

11.10 Findings

Our findings on the court's operations in Whanganui in the nineteenth century should be read alongside those on generic Native Land Court issues in the previous chapter.

11.10.1 Engagement with the court

Like other Tribunals before us, we were presented with the paradox of heavy Māori use of the Native Land Court often by the same people who called for its reform or even abolition. Why did people who opposed the court continue to frequent it? Why did Whanganui Māori not stop applying for title to be investigated, thereby bringing the court's work to a halt?

The answer is that Māori wanted legally recognised title to their land, and the Native Land Court was their only option. To turn one's back on the court 'risked losing jealously guarded rights to a competitor willing to file a claim'.[231] One to three individuals could apply for title, and there was no requirement to secure community sanction. Officials deliberately eschewed the role of the collective – what C W Richmond in 1860 famously called the 'beastly communism of the Pah'.[232]

We saw clearly illustrated in our inquiry district how difficult it was for Māori to stay out of the Native Land Court, even when they deliberately boycotted it. Confronted with the reality that land would be awarded to others if they remained absent, they nearly always returned to the court eventually. This was de facto compulsion. As the Hauraki Tribunal concluded, in real terms the court was 'virtually obligatory' in many respects, and even those Māori who went to the court of their own accord were not necessarily thereby signalling their satisfaction with it.[233]

The Crown did not convince us that the Native Land Court was a client-driven institution. It was apparent that its ongoing activity in the Whanganui region came despite the wishes of many Whanganui Māori and not in response to them.

The imposition of the court on Whanganui hapū breached Treaty principles. The Crown undertook to protect Māori in the ownership of their land unless and until they wished to sell. Logically, this should have extended to Māori choosing when and how to transform its title.

11.10.2 Involvement in the court's process

The timing of hearings, notice, location, and hearing length were all aspects of the court's process that profoundly affected Māori who needed to attend. We saw that they had very little influence over how the court went about its business in the Whanganui district. Rather, judges and officials in Auckland made the decisions, and they were neither accountable to Māori nor often responsive to their needs.

If the system had been one in which Whanganui Māori had a significant say, it would have calibrated its process to respond to communities' imperatives. It would not have scheduled long hearings in winter, far from the land in question, and at short notice. Instead, it would have contrived shorter hearings involving fewer blocks, held them at more locations nearer the land concerned, and timed them to minimise inconvenience to local hapū. Certainly, these would have been its aims, and it would have been under pressure to keep trying to achieve them.

As it was, Māori participants bore the brunt of inconvenience and hardship as a result of the court's imperviousness to their needs. The court's preference for hearings at Wanganui, where the accommodation was considered suitable for European judges and their retinue, almost always trumped any convenience to Māori of hearings at kāinga. Hearings during the coldest part of the year, or during periods of planting or harvesting; protracted hearings that strained finances, social bonds, and health; and inadequate notice were factors so common that they were rarely considered grounds for a rehearing. The court acknowledged the problems caused by lengthy hearings and took steps to hear blocks in stages, but this produced only a partial solution.

The Crown's failure to ensure that the Native Land Court's operation was procedurally sound breached its duty of active protection and the principle of good government.

11.10.3 Involvement in the court's deliberations

The Crown contended that out-of-court settlements and the participation of assessors provided for a high level of Whanganui Māori input into the court's decision-making processes. We have scant evidence about how assessors affected court decisions, but even if they were more influential than the record suggests, theirs was not the influence of Whanganui Māori, because assessors had to come from outside the district in which they sat.

There is no doubt that out-of-court settlements were a feature of Whanganui cases. They usually involved arranging who was to be on the list of owners. This sometimes reduced the court's role to rubber stamping Māori decisions concerning who would be on lists. But it was judges who decided on the lists, in the sense of determining which ancestors had rights in the block, and therefore which groups of descendants should have their names on a list so as to entitle them to interests. This was in many respects the primary decision. In any event, it was plain that for Māori their level of input was insufficient, or was accomplished in a culturally unsatisfactory way, because they continued to demand the right to decide land titles through rūnanga or kōmiti.

11.10.4 The fairness of Māori's share of the costs

The Crown relied on the evidence of Dr Pickens, who agreed with the claimants' position to the extent of saying that the costs of the system could sometimes be a burden for Whanganui Māori, although in his view this was not always the case. There was thus concurrence with the proposition that costs were a burden for Māori some of the time. We agree with Dr Pickens from the point of view that the evidence is not sufficiently extensive or detailed for us to be certain about the impact of the costs on Māori and their communities, and the directness of the relationship between the costs, debt, and sale of Māori land.

Court costs were usually lower than survey costs. We have no doubt that survey charges were sometimes excessive. The Crown did not do enough to control, spread, or shift the cost of surveys. Had Māori been supported in community tenure of land, they would have been in a better position to manage debt incurred in the process of transforming title, and it would have figured less in decisions to sell land.

We have discussed how, in the 1870s and early 1880s, there was a move to a variety of means of paying for survey costs, even though the legal obligation remained with Māori owners. The evidence is not such as to enable us to evaluate the extent to which the Crown ended up paying for survey costs, but it does appear to have paid sometimes. If it did, that would have been entirely more appropriate than Māori shouldering the entire burden of survey costs, because the benefits of survey flowed to the community at large.[234] It was especially onerous and unfair when non-sellers had to pay for subdivisional surveys as a result of Crown or private purchase activity.

Court and survey costs were the direct expenses of going to court to seek legal title to land, but there were numerous other expenses that were usually unavoidable. They included travel, food, accommodation, lawyers' and interpreters' fees, and the costs of manaaki (hospitality) to visitors. Māori were also obliged to use the proceeds of sale to host hākari as a means of restoring cordial relations after the adversarial engagement of the court.

Social costs were also hefty. Evidence shows that Māori obliged to stay in Wanganui for protracted hearings

suffered increased disease, deprivation, drunkenness, and even deaths. Again, the social costs were experienced variably. But as Dr Pickens acknowledged, some people did suffer, and such human misery should not have been a corollary of reforming land title.

Most unfortunate of all is the fact that the titles that Māori obtained through the land court system usually did not afford them the benefits that they looked for, and which the Crown implicitly promised when it required them to pay most of the costs. The titles, and the rules that created them and determined their use, made it easy for Māori to sell their land, but much harder to use it, or to develop it as an asset for their own long-term prosperity.

Contemporary commentary reveals that the problem of the costs and their consequences was well known in the nineteenth century, and the Crown's failure to work with Māori to ameliorate the process and to lessen both the costs and their adverse effects breached the principles of active protection and good government.

11.10.5 Availability of redress

For those who found themselves excluded from titles as a result of the court's decisions, there was no automatic right of appeal prior to 1894. Rehearing was theoretically available before then, but in practice was rarely available. There were no guidelines as to the basis on which rehearings were granted; applicants were usually not told why their request was accepted or rejected; and the judge in the original decision advised on whether or not a rehearing should be granted. All of this was procedurally flawed. The Native Affairs Committee, overwhelmed with petitions from parties seeking to have their cases reopened, advised the Government of the need for an appeal process.

Although the Crown conceded that the lack of an appellate body reduced Māori options in the nineteenth century, it did not accept that this breached the Treaty principles. We do not agree. The Native Land Court's decisions affected Māori profoundly, and their inability to have those important decisions reconsidered breached their most fundamental rights as citizens under article 3. There remain questions about whether, even after the Native Appellate Court was established, it was too expensive to be an adequate means of seeking recourse.

11.10.6 Extent of fractionation in the Whanganui district

The form of title awarded by the Native Land Court left Māori vulnerable in many ways and limited their opportunities to develop their land for their benefit in the new colonial economy. Succession laws, which resulted in titles that were increasingly crowded with each passing generation, often made Māori land unmanageable and unusable, and diminished its value relative to other land. The signs that this was happening were evident early on, and the Crown should have worked with Māori to make the necessary changes to prevent it. The corporate title offered from 1894 onwards proved, for a number of reasons, not to be an adequate remedy for this situation. The Crown's failure to step in early to amend the succession regime it created was to the detriment of Māori land tenure right up to the present day. This breached the guarantee of te tino rangatiratanga, and the principle of good government.

Notes

1. Document A58 (Mitchell), pp 27–28
2. Document A66 (Mitchell and Innes), p 61
3. Submission 3.3.49, pp 70–72, 107, 113–114
4. Ibid, p 16
5. Ibid, p 22; submission 3.3.85, p 22
6. Submission 3.3.49, pp 25, 45–49
7. Submission 3.3.130, p 5
8. Ibid, p 8
9. Submission 3.3.129, p 29
10. Document A83 (Pickens), pp 7–8, 10; doc A37 (Berghan), p 188, states that title was issued to seven owners.
11. Document A83(a) (Pickens), p 4
12. Document A83 (Pickens), p 105. These figures exclude the Pūtiki subdivisions.
13. Ibid, pp 105–106
14. Document A58 (Mitchell), p 31
15. Document A70 (Anderson), p 73
16. Document A88 (Macky), p 51
17. Document A83 (Pickens), pp 148–149; Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 'Reports from Officers in Native Districts', AJHR, 1875, G-1, p 12

18. Document A83 (Pickens), p 150
19. Ibid, p 276
20. Ibid, pp 281–282
21. Ibid, p 529
22. Submission 3.3.49
23. Submission 3.3.130, p 8
24. Document A83 (Pickens), p 83
25. David Williams, '*Te Kooti Tango Whenua*': *The Native Land Court 1864–1909* (Wellington: Huia Publishers, 1999), app 5, pp 265–266
26. Document A83 (Pickens), p 637
27. Ibid, p 103
28. Wanganui Native Land Court, minute book 1, 30 July 1867, fol 211; Wanganui Native Land Court, minute book 1A, 30 July 1867, fol 84
29. Wanganui Native Land Court, minute book 1C, 13 August 1869, fols 257–258
30. Wanganui Native Land Court, minute book 1C, 16 August 1869, fol 270
31. Wanganui Native Land Court, minute book 1C, 19 August 1869, fols 290–291
32. Wanganui Native Land Court, minute book 1C, 11 January 1869, fols 213–214
33. Document A83 (Pickens), p 85
34. Ibid, p 103; doc A37 (Berghan), pp 84–85, 112–113, 128, 620, 1008
35. Document A83 (Pickens), p 250
36. Ibid, p 87
37. Document A37 (Berghan), p 166
38. Ibid, p 167
39. Document A83 (Pickens), p 70
40. Document A70 (Anderson), p 204
41. The 17 blocks for which advances were recorded are: Kaitangiwhenua, Kārewarewa, Ōpatu, Maungakaretū, Puketōtara, Parapara, Taumatamāhoe, Rangataua South, Raoraomouku, Tāruamouku, Atuahae, Ahuahu, Rangiwaea, Ōtaranoho, Aratawa, Huikumu, and Mangapukatea: doc A102 (Edwards), pp 79, 95, 99, 109, 111, 114, 129, 134, 135, 159; doc A37 (Berghan), pp 238, 311, 511, 535, 553, 802, 820, 889.
42. Document A70 (Anderson), p 198
43. Document A83 (Pickens), p 209
44. Ibid, pp 216–220; doc A37 (Berghan), pp 663–665
45. Document A73 (Mackay), p 107
46. Document A37 (Berghan), pp 712–729; doc A70 (Anderson), pp 126–128
47. Document A83 (Pickens), p 165, 219
48. Ibid, p 596
49. Ibid, p 583
50. Ibid, p 584
51. Ibid
52. Ibid, p 585
53. Ibid, p 593
54. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 779
55. Document A61 (Rose), p 83
56. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 'Reports from Officers in Native Districts', AJHR, 1879, G-1, p 10
57. Document A60(e) (Marr), p 3
58. Ibid, p 4
59. Document A37(x) (Berghan supporting documents), p 13414
60. Document A83(f) (Pickens), p 47
61. Document A83 (Pickens), p 231
62. Ibid, p 640
63. Submission 3.3.49, p 126
64. Document A83 (Pickens), p 252
65. Document A83(a) (Pickens), p 10
66. Document A37 (Berghan), pp 590–591. The rehearing application was subsequently withdrawn. Pickens records that this is because the land, originally intended for sale to the Crown, was to be sold privately instead: see doc A83 (Pickens), p 185.
67. Document A83 (Pickens), p 254
68. Document A58 (Mitchell), p 43; doc A83 (Pickens), p 198
69. Document A83 (Pickens), p 641
70. Document A83(f) (Pickens), p 48
71. Chief judge, Native Land Court, to Native Minister, 22 June 1883, AJHR, 1883, G-5, p 2
72. Document A83 (Pickens), p 432
73. Ibid, p 274
74. Submission 3.3.129, p 33
75. Document A83(a) (Pickens), p 10
76. Document A83 (Pickens), p 640
77. Ibid, p 89
78. Ibid, p 62
79. Ibid, pp 209–210
80. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 22 May 1880, AJHR, 1880, G-4, p 15
81. Document A83 (Pickens), p 213
82. Ibid, p 279
83. Ibid, pp 416–418
84. Ibid, p 426
85. Ibid, p 538
86. Ibid, p 540
87. *Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt. Hon. R. J. 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 34
88. Ibid, p 37
89. Document A83 (Pickens), p 542
90. Ibid, p 430
91. Ibid, pp 538–543
92. Ibid, pp 542–543

93. Submission 3.3.129, p 29
94. Document A83 (Pickens), p 144
95. Document A58 (Mitchell), p 44
96. Document A70 (Anderson), p 66
97. Document A58 (Mitchell), pp 45–46
98. Ibid
99. Ibid, pp 47–51
100. Submission 3.3.129, p 30
101. Such cases include: Kai Iwi (1869), Kokomiko (1869), Kaiwhaiki (1869), Kirikau (1876), Mangapōrau (1877), Atuahae (1880), Maungakaretū (1884), Pohonuiatāne (1886), Kahakaha (1887), and Kaitangata (1895).
102. Document A37 (Berghan), pp 49–50
103. Ibid, p 36
104. Document A40 (Ballara), pp 443–446; doc A69 (Walzl), pp 24–25; resident magistrate, upper Whanganui, to under-secretary, Native Department, 16 June 1874, AJHR, 1874, G-2, p 14
105. Document A37 (Berghan), pp 358–359
106. Document A56(a) (Bayley), pp 85–89
107. Document A37 (Berghan), pp 723–724
108. Submission 3.3.49, p 125
109. Submission 3.3.129, p 36
110. Document A83 (Pickens), p 145
111. Document A83(b) (Pickens), p 19
112. Native Lands Act 1865, s 6
113. Document A83 (Pickens), pp 134–135
114. Submission 3.3.129, p 36; doc A83 (Pickens), p 135
115. Submission 3.3.129, p 37
116. Document A83 (Pickens), p 145
117. Document A58 (Mitchell), p 23
118. Ibid; doc A83 (Pickens), pp 138–139
119. Document A58 (Mitchell), p 23
120. Document A83 (Pickens), p 140
121. Ibid, p 137
122. Ibid, p 136
123. Ibid
124. Document A83(b) (Pickens), pp 17–18
125. Document A83 (Pickens), p 137
126. Ibid, p 138
127. Document A40 (Ballara), p 612
128. Submission 3.3.135, p 42; submission 3.3.49, pp 145–146
129. Submission 3.3.130, pp 24–27
130. Submission 3.3.49, pp 133–134
131. Document A58 (Mitchell), p 66
132. Ibid, pp 191–192
133. Document A83 (Pickens), p 92
134. Document A37 (Berghan), pp 355–400
135. Document A83 (Pickens), p 378; doc A54 (Innes), pp 52, 56
136. Transcript 4.1.14, p 242
137. Document A58 (Mitchell), p 66
138. Ibid
139. Transcript 4.1.14, p 243
140. Submission 3.3.130, pp 25–26
141. Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), vol 2, p 323
142. Ibid; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 509
143. Ward, *National Overview*, vol 2, p 323
144. Ibid, p 324
145. Ibid
146. Ibid
147. Ibid, p 325; Native Land Act 1873, s 39
148. Ward, *National Overview*, vol 2, pp 327–328; Native Lands Act 1865, s 69
149. Ward, *National Overview*, vol 2, p 328
150. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 511. This report addresses the impact of costs on non-sellers in chapter 12.
151. Ward, *National Overview*, vol 2, p 326
152. Ibid
153. Document A83 (Pickens), p 94
154. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 511; Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Wellington: Victoria University Press, 2008), p 413
155. Document A83 (Pickens), p 267
156. Figures calculated from the following information: Rāwhitiroa (36,800 acres), survey cost of 0.1 shillings per acre (£233), compared to purchase price of 3.1 shillings per acre, Crown pays £5,442 for Rāwhitiroa A (35,300 acres); Mangapōrau (16,062 acres), survey cost of ninepence per acre (£610), compared to purchase price of six shillings per acre, private buyers pay £4,818; Paratīeke (6,006 acres), survey cost of one shilling per acre (£285) compared to purchase price of four shillings per acre, Crown purchases entire block for £1,200: see doc A102 (Edwards), pp 29, 66–67, 178–179; doc A54 (Innes), p 51; doc A37 (Berghan), p 565.
157. Document A102 (Edwards), pp 34, 56–57, 71, 72–73. Blocks where the Crown agreed to pay the charges were Kirikau, Rētāruke, Tokomaru, and Kauautahi. The last sale was never completed and the block became part of the Waimarino block. In one block, Tawhitoariki, the deal seemed to be that the Crown would pay for the survey, including hiring Māori labour, as well as a price for land: see doc A102 (Edwards), p 109.
158. Document A102 (Edwards), p 20
159. Ibid. In the case of the Heāo block, Māori wanted to arrange the survey and supply the labour to reduce the cost.
160. Document A83 (Pickens), p 443
161. Ibid, p 376; doc A102 (Edwards), pp 191, 195–196
162. Document A83 (Pickens), p 376; doc A102 (Edwards), pp 181–182
163. Document A37 (Berghan), pp 202–203
164. Document A83 (Pickens), p 443

165. Document A37 (Berghan), p 617
166. Document A83 (Pickens), p 573
167. Ibid, p 622; doc A37 (Berghan), pp 479–480
168. Document A58 (Mitchell), p 57. Mitchell's table of costs for a number of the blocks relied on Crown expense accounts. There is some doubt as to how much of the cost recorded in Crown expense accounts was charged to Māori. Sometimes we have figures for both the expense accounts and the survey liens put on the blocks. In almost all the blocks presented in Mitchell's evidence the lien is significantly lower than the charges recorded in the expense accounts, though one is higher. It has not been possible to account for the difference. The blocks for which two sets of figures are available are: Aratawa (expense account £18 4s, but lien of £105); Huikumu (expense account £91 3s 2d plus £39 6s for costs of obstructed survey, lien of £30); Karewarewa (expense account £151 plus £30 for obstruction of survey, lien of £92); and Ōtaranoho (expense account £139 4s, lien of £34): doc A37 (Berghan), pp 31–32, 41–42, 130, 136, 535–536.
169. Waitangi Tribunal, *Hauraki Report*, vol 2, p 738
170. Document A83 (Pickens), p 643
171. Document A37 (Berghan), p 61
172. Submission 3.3.130, p 27
173. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report On)', AJHR, 1907, G-1A, p 10
174. Ibid
175. Document A83 (Pickens), pp 292–293
176. Document A58 (Mitchell), p 65
177. Document A83 (Pickens), pp 551–552
178. Ibid, pp 416–417
179. Ibid, p 420
180. Document A58 (Mitchell), p 70
181. Ibid, pp 71–72; doc A83(a) (Pickens), p 10
182. Claim 1.3.3, p 166
183. Document A61 (Rose), p 125
184. Document A83 (Pickens), p 533; doc A61 (Rose), p 126
185. Document A32 (Stevens), p 21
186. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Department, 24 May 1879, AJHR, 1879, G-1, p 9
187. Robert Bruce, 5 August 1885, NZPD, 1885, vol 52, p 515
188. Dr Earle to under-secretary, Native Department, 25 April 1885, AJHR, 1885, G-2A, p 10
189. Document A83 (Pickens), pp 423–424, 428
190. Document A61 (Rose), pp 127–128
191. *Notes of Meetings*, p 34
192. Resident magistrate, Wanganui Native District, to under-secretary, Native Department, 7 June 1873, AJHR, 1873, G-1, p 16
193. Claim 1.3.3, p 169
194. Document A83 (Pickens), p 121
195. Ibid
196. Ibid, p 123
197. Document A64 (Bassett and Kay), pp 256–257
198. Document A37 (Berghan), p 568
199. Document A83 (Pickens), pp 126–127
200. Ibid, pp 184–185
201. Ibid, p 269
202. Ibid, pp 268–269
203. Document A37 (Berghan), p 566; doc A83 (Pickens), p 156
204. Document A37 (Berghan), pp 149–150; doc A83 (Pickens), p 164
205. Document A37 (Berghan), pp 231–234
206. Document A83 (Pickens), p 270
207. Ibid, p 271
208. Document A37 (Berghan), p 662; doc A83 (Pickens), p 218
209. Document A83 (Pickens), p 270
210. Document A54 (Innes), p 61
211. Document A83 (Pickens), pp 590–591
212. Ibid, p 593
213. Ibid, p 579
214. Ibid, pp 598–605. Pickens incorrectly dates the Whitianga appeal as taking place in 1894.
215. Ibid, p 604
216. Ibid, p 615
217. Ibid, p 271
218. Another example is the Pukehika block. Although an appeal was lodged, the required £20 deposit was not paid, and the appeal was dismissed in 1908: doc A37 (Berghan), p 629.
219. Richard Woon, resident magistrate, Wanganui, to under-secretary, Native Affairs, 22 May 1877, AJHR, 1877, G-1, p 16
220. Submission 3.3.49, p 102
221. Ibid, p 104
222. Ibid, pp 102, 107
223. Submission 3.3.129, p 1
224. Submission 3.3.130, p 16
225. Document A58 (Mitchell), p 40
226. Document B1 (Clarke), p 46
227. Ibid, pp 46–47
228. Document A37 (Berghan), p 687
229. Document A51 (Walzl), pp 221–223
230. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 693
231. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 424
232. Vincent O'Malley, Bruce Stirling, and Wally Penetito, eds, *The Treaty of Waitangi Companion: Māori and Pākehā from Tasman to Today* (Auckland: Auckland University Press, 2010), p 97
233. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 779
234. Ibid, pp 779–780; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 520

Table sources

Table 11.2: Document A83 (Pickens), p 253
Table 11.3: Documents A37 (Berghan); A58 (Mitchell); A83 (Pickens)

CHAPTER 12

CROWN PURCHASING IN WHANGANUI, 1870–1900

12.1 Introduction

In the last three decades of the nineteenth century, around 1,301,820 acres – more than half the land in our inquiry district – passed out of Māori ownership. Of the land alienated between 1870 and 1900, about 86 per cent was purchased by the Crown.[1]

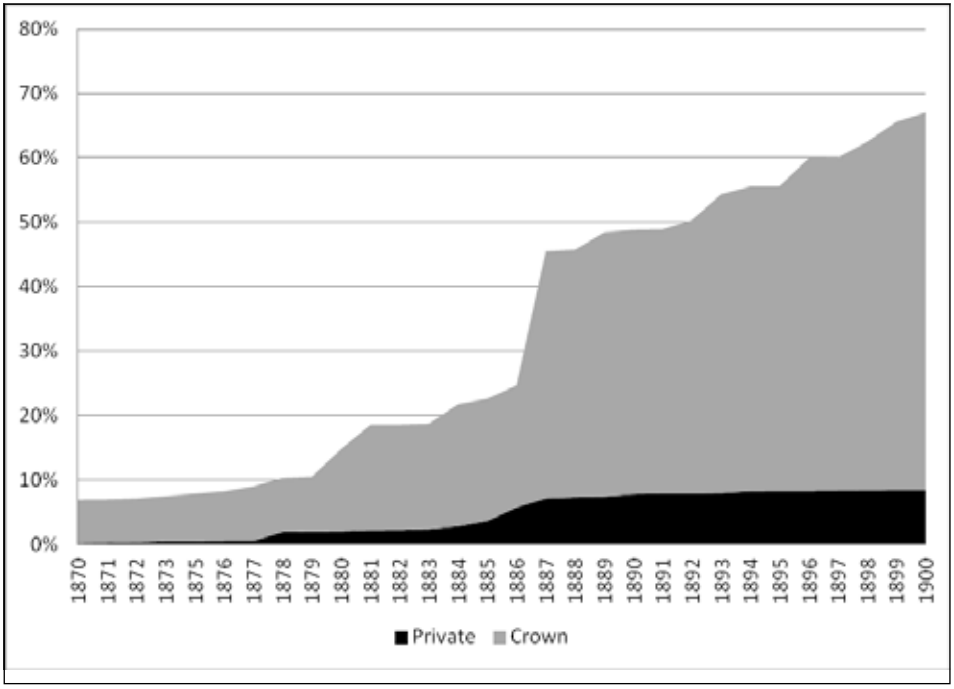
In chapter 10, we outlined the parties' positions on Crown purchasing, and set out the fluctuations in Crown policy and practice between extensive purchasing and withdrawal from the land market, and between tight and loose restriction on private and Crown purchasing. We now see how this worked in our inquiry district. We describe the Crown's monopoly purchasing powers, how Crown agents went about purchasing interests in Whanganui Māori land, and how they bypassed community opposition to sales. We move then to inquire into prices, and whether they were fair. We traverse the distinctive history of the Murimotu area, and the leasing arrangements that the Crown organised there, before looking at measures to retain land in Māori ownership, including the creation of reserves, and finally ask why Whanganui Māori agreed to sell land to the Crown.

12.2 Who Bought Māori Land in Whanganui?

During the 1860s the Crown largely withdrew from purchasing Māori land, in Whanganui and elsewhere. In our inquiry district it made a single purchase: 40,000 acres of the Waitōtara block, in 1863.[2] It took up purchasing again in 1869, when Colonial Treasurer Julius Vogel began to implement policies designed to stimulate economic growth.[3] The Immigration and Public Works Loan Act 1870 enabled the Crown to borrow four million pounds for these purposes, with £200,000 set aside specifically for Māori land purchases. Three years later, the Immigration and Public Works Loan Act 1873 allocated half a million pounds for Māori land.

The Whanganui district, though, saw only eight completed Crown purchases in the 1870s, comprising just under 40,000 acres.[4] Following a period of retrenchment in the early 1880s, the Crown went on to complete many of the purchases it began in the late 1870s. In the middle of the decade, the Stout–Vogel administration embarked on a campaign to purchase land for the North Island main trunk railway, including large areas in the north and east of the Whanganui district.[5] In all, it purchased 703,814 acres in our inquiry district during the 1880s.[6] Subtracting the Waimarino block, it still purchased 325,733 acres in the 1880s, eight times more than in the 1870s. Then it purchased another 350,575 acres in the 1890s. By this time the Crown was becoming aware that some iwi

Wanganui, 1880s. The now-established Pākehā town, with Rutland Stockade still in place on the hill, contrasts with the Māori presence on the town's margin, with tents and waka along the river's edge. Lines of washing are visible in the foreground, as well as a couple of people who are possibly collecting shellfish.



Graph 12.1: Percentage of land in the Whanganui inquiry district purchased between 1870 and 1900

and hapū were running out of land. It restricted its own power to purchase in 1899, banning new negotiations. Negotiations that were already underway continued though, so the years 1900 and 1901 saw the Crown complete 35 purchases in 11 blocks of Whanganui Māori land, comprising 97,144 acres.[7]

Private interests purchased much less land: from 1870 to 1900, 177,521 acres, or 14 per cent.[8] Most took place in the 1880s, with twice as much purchased privately in that decade as in the 1870s and 1890s combined. This occurred despite a range of restrictions on alienation of Māori land to private parties.

12.3 Monopoly Purchasing Powers

We saw in chapter 10 that the end of the nineteenth century saw continual debate over the extent to which the State should control the development of the colony. Governments changed, and with them the philosophies of the men in office. Policy and practice vacillated accordingly, especially as regards private purchasers of Māori land, who were allowed to purchase one minute, prohibited the next, then back again.

Claimants said that the Crown routinely used monopoly purchasing practices, constraining what Whanganui Māori could do with their own land.[9] However, they acknowledged that a more open regime, with more private purchasing, may not have benefited them either.[10]

The Crown contended that putting itself in a privileged position in relation to private land buyers was not, in itself, a breach of the Treaty. It had 'governance rights and obligations, including the need to balance the potentially conflicting objectives of . . . settlement and protecting Maori land interests'.[11] However it acknowledged that its privileged position imposed 'significant Treaty obligations on the Crown to apply high standards of good faith and fair dealing', which it did not always live up to.[12] It used monopoly powers unreasonably and unfairly. Particularly

in instances where it 'continually rolled over' restrictive proclamations, owners lost opportunities and the Crown did not uphold its duties of good faith and fairness.[13]

We identify four phases of Crown purchasing, in each of which there were different measures to limit private purchasing:

- from 1871, under the Fox–Vogel ministry's first public works legislation;
- from 1877, under the Grey ministry's attempt to expand Crown purchasing into new areas;
- from 1884, under the Stout–Vogel ministry's public works expansion; and
- from 1892, under the Liberal reimpositions of pre-emption.

12.3.1 Proclaiming land under the 1871 Act

During the early phase of its resumed purchasing programme in the 1870s, the Crown deployed the Immigration and Public Works Act Amendment Act 1871 to exclude private purchasers in designated areas. Under the Act, if the Crown was in negotiations to buy Māori land for gold mining, railways, or special settlement, it could publish a notice in the *Gazette* proclaiming that any private dealings in that land were banned for up to two years. This prevented not only sales to private parties but also private leasing and any loan that used the land as security. Negotiations could begin before the land went through the Native Land Court and did not have to be with a majority of owners. The Crown could proclaim a block after advancing only a small payment to a single owner.

This power to proclaim blocks under the 1871 Act affected our inquiry district only slightly. A proclamation in February 1872 covered most of the Wellington province, including part of our inquiry district, but was cancelled a few months later in response to the petition of a group of 100 Whanganui Māori wanting to secure a fair market price for their land.[14] After this, proclamations were applied to specific blocks rather than entire areas.

There were at least 24 blocks in our inquiry district under Crown negotiation between 1871 and 1877, when the proclamation laws were changed.[15] Of these, the Crown purchased 10 in the 1870s or 1880s, and three that became part of the Waimarino block, while private parties purchased three others in 1878 and 1889.[16] Of the 24 blocks, only three were proclaimed under the 1871 Act: Rētāruke (which was also proclaimed under the Government Native Land Purchases Act 1877), Tawhitoariki, and Tokomaru. The Crown bought all three.[17] It made no advance payments for Tawhitoariki, but in the case of the other two blocks there was a gap of at least a year between the first advance payment and the gazette notice.[18] This gave the owners ample time, theoretically, to get private purchasers involved to raise the sale price.

It is not clear to us why the Crown proclaimed so few blocks under the 1871 Act, nor why, in the cases of Rētāruke and Tokomaru, it waited so long to do so. The Act provided for land to be proclaimed only if it was needed for gold mining, railways, or 'special settlement', so it is possible that just those few blocks fitted these criteria. Nor did the Crown impose restrictions as soon as the first advance payments were made. Perhaps it was not driven to oust private purchasers from this district, given that between 1871 and 1877 private parties purchased only about 7,500 acres there, compared with the Crown's 37,000.[19] Or perhaps it was simply that buying land in this district was not a high priority for the Crown in this period.

12.3.2 Proclaiming land under the 1877 Act

In 1877, the Crown broadened its powers to exclude private purchasers with the passage of the Government Native Land Purchases Act 1877. It made much greater use of this than the 1871 Act, proclaiming many Whanganui blocks under negotiation. The 1877 Act abolished the two-year limit on restrictions and the requirement that the land was for gold mining, railways, or special settlement. As we saw in chapter 10, the Crown's legal power to proclaim blocks not already under negotiation in 1877 was controversial (see section 10.7.1(1)). The Crown interpreted the provision in its favour, and as a consequence the number of proclaimed blocks in Whanganui increased dramatically. This corresponded with an increase in purchasing activity: in September 1878, the Native Minister instructed the Crown's land purchase officer, James Booth,

to purchase as much land as possible 'in this district for a Public Estate'.[20]

It was difficult to work out exactly how much land was proclaimed in our inquiry district, but both Edwards and Hearn estimated that there were around 50 proclamations covering a total of about a million acres.[21] Thus, by advancing just over £46,000, the Crown locked up around half of the Whanganui inquiry district by March 1880.[22] The first purchases of land proclaimed under the 1877 Act took place in 1879. Between then and 1881, when economic recession interrupted the Crown's purchasing programme, the Crown completed purchases of 161,940 acres from 11 blocks proclaimed under the 1877 Act – more than four times the amount it purchased between 1871 and 1877.[23]

The Crown retained power to proclaim land until 1892, but almost all proclamations in our inquiry district happened in 1878 or 1879, suggesting that most applied to blocks already under negotiation when the new law was passed.[24] Even in those years, the Crown did not always use proclamations. There were at least 13 blocks, about 175,000 acres, for which the Crown negotiated without proclamation.[25] As in the earlier period, reasons might have included doubts about whether proclaiming blocks not under negotiation by 1877 was legal, lack of competition from private buyers, or simply oversight.[26]

Though Crown proclamations were extensive, there were some areas to the west of the Whanganui River, including Manganuiotahu, Mangaone, Mangapōrou, and Pikopiko 3 blocks, where private purchasers were able to buy up nearly 30,000 acres in 1878. The Government had its eye on what the private parties were doing, though. In March 1879, Booth informed the Native Minister that a private 'land ring' was interfering in blocks from which they were legally barred – apparently in the belief that a future Government would abolish proclamations and retrospectively legalise their activities.[27]

12.3.3 Land law changes of the 1880s

We related in chapter 10 how John Bryce, who became Native Minister in 1879, felt that the Crown had been wasting money on Māori land that would not be fit for settlement for many years (see section 10.7.2). Bryce represented the Whanganui and Waitōtara electorates, so he knew the area. Some of the Crown's purchases on the west coast of the North Island he thought particularly inadvisable, because the land was too rugged and inaccessible.[28] He had land under negotiation divided into three categories: continue acquiring interests; get the interests the Crown had already purchased defined and partitioned out; and give up on the block and try to get the purchase money back.[29]

From 1879 to 1881, the Crown completed purchases of 161,940 acres proclaimed under the 1877 Act. Applying Bryce's categories led to the removal of restrictions from 20 blocks in our inquiry district, generally after the Crown's interests were partitioned out.[30] Although 20 blocks sounds like a lot, in fact blocks from which restrictions were removed accounted for only a small percentage of the acreage proclaimed under the 1877 Act. Two blocks on which restrictions remained – Ōwhango (later part of Waimarino) and Murimotu – together comprised 600,000 acres. Proclamations remained on other blocks right up into the twentieth century.

No sooner had Bryce's intervention pegged back the practice of proclaiming land than the Crown's monopoly powers were further extended. The Native Land Laws Amendment Act 1883 went so far as to criminalise private dealings in Māori land that had not been through the Native Land Court. Of particular significance in this district was the Native Land Alienation Restriction Act 1884, which forbade private dealings and voided existing agreements in a large area of the North Island through which the main trunk railway would run. Of the four million acres in this zone, about a million were in our inquiry district, mostly in the north-east.[31] Under the 1883 and 1884 Acts, those flouting the prohibitions faced a fine of up to £500 and, under the second Act, up to a year in prison. One way or another, the Crown's monopoly in the railway zone remained in place continuously from 1884.[32] Between them, the 1877 and 1884 Acts banned the private purchase of around 1.5 million acres of Whanganui Māori land.[33] There were cases where prohibition of private dealing in a block was lifted by *Gazette* notice under the 1877 Act, then imposed again under the 1884 legislation.[34]

Veteran politician Harry Atkinson led a new Government into office in 1887. As he had in his previous three terms as premier, Atkinson aimed to keep Crown borrowing and spending down.[35] Consequently, private parties gained a bigger role in Māori land purchase, with restriction on their involvement lifted in 1881. Crown pre-emption remained only on land in the railway area until 1891.

12.3.4 Purchasing under the 1890s restrictions

The 1890s saw further changes to the Crown's monopoly. The Native Land Purchases Act 1892 once more authorised the Crown to use proclamations to ban private dealing in specific blocks for up to two years. In our district, the Crown did this in relation to at least 26 blocks covering 433,065 acres.[36] From 1893 to the end of 1900, the Crown bought 252,976 acres from these blocks.[37]

The Native Land Court Act 1894 prohibited private purchases altogether, although the governor could lift restrictions on specific blocks, and permit private purchasers to complete transactions they had already begun. The data on the effect of this measure is equivocal. The number of acres sold reduced significantly: private interests purchased only 4,434 acres of Māori land in our district from 1895 to 1900, compared with 17,774 between 1890 and 1894. However the number of purchases per year seems to have gone up. In the period 1870 to 1900, private purchases per year averaged 2.6, but in 1895 there were four; in 1898, five; and, in 1900, four.[38]

Whanganui Māori did not like the restrictions on private purchasers. In 1897, when the Act had been in force for three years, Whanganui leaders joined with rangatira from Ngāti Maniapoto, Ngāti Raukawa, Ngāti Hikairo, and Ngāti Tūwharetoa to ask that the monopoly provisions be removed so that they could lease or sell their lands to whomever they wished.[39]

12.4 How Did the Crown Buy Māori Land?

We have seen how the Crown excluded private buyers to become the major land purchaser in the district. We now examine how the Crown went about the business of buying land in the Whanganui district. We look at the extent to which it used its agents to make advance payments ahead of title determination; acted to bypass collective negotiations in favour of dealing with individuals; and acquired land in successive waves (sometimes referred to as serial partitioning). Finally, we look at the role of the trust commissioner in vetting purchases.

The claimants criticised the Crown's purchase methods as 'coercive and unfair', facilitating the purchase of large areas of land for low prices.[40] During the period covered by this chapter, Whanganui Māori were unable to manage and make collective decisions about their land.[41]

The Crown accepted that when it purchased Māori land, it had a duty to act fairly, reasonably, in good faith, and to protect the interests of Māori. However it denied that there was a land purchasing system designed to disadvantage Māori, or that land sales were necessarily in breach of the Treaty. It conceded that there may have been problems, but these concerned individual purchases rather than Crown purchasing in general. It emphasised the right of individual Māori to sell their land, and argued that it was under no Treaty obligation to limit this autonomy.[42]

12.4.1 Pre-title advance payments

In the 1870s, it was common practice for the Crown to pay Māori money for interests in land that had yet to go through the Native Land Court. Advance payments, sometimes known to Māori as tāmana, were distributed haphazardly, sometimes secretly, and sometimes to people who would not in the end be recognised as owners of the land. In 1880, arguing that the Crown right of pre-emption should never have been waived, Native Minister John Bryce told Parliament that:

> In 1871, when the Crown commenced that system of purchase in competition with private individuals, there commenced also a course of conduct on the part of agents, both of the Crown and private individuals, which, I think has done more to demoralize and degrade the Maori race than all our efforts at colonization can ever redeem . . . when you see agents, both on the part of the Government and on the part of private individuals, continually pestering them to sell their land, when you see these agents scattering money among

> them like dirt, when you see them bribing these people in all directions, supplying them with rum and spirits of all kinds– I say it is no wonder that the signs of demoralization made themselves apparent . . .[43]

Here we see Bryce attributing to the Crown culpability for the consequences of competition between the Crown and private land agents. The claimants characterised paying tāmana as inherently problematic because it undermined the ability of owners to deal with land collectively, and privileged those owners who accepted the payments. It also caused confusion and division.[44] The Crown countered that there was no evidence that payments led to blocks going through the court; advance payments did not, in themselves, undermine collective decision-making; the payments might have brought divisions out into the open, but did not create them.[45]

We saw in chapter 10 how the Native Land Act 1873 enabled Crown (but not private) purchase agents to make advance payments on land that had not yet been through the Native Land Court for title determination, and how they deducted advance payments from purchase prices (section 10.6.4(3)). Later legislation also allowed the Crown to bar private parties from dealings in any block on which it had made advance payments, and so it adopted the practice of making small advance payments specifically to 'lock up' the block for the Crown (section 10.7.1(1)). We now examine how these practices played out in Whanganui.

James Booth, a land purchase officer. Booth worked with Thomas McDonnell in the 1870s, when Donald McLean was Native Minister.

(1) *Advance payments in Whanganui*

When they took advance payments from the Crown, recipients signed an agreement to sell their shares in a particular block of land once it had been through the Native Land Court. When title was issued, the agreement – which usually named a price – would take immediate and binding effect.[46] This arrangement was risky for both parties. The land had not been surveyed nor taken through the land court, so the size of the block and its ownership frequently turned out to be different from what was assumed. The Crown could have advanced money to the wrong people, or paid for a block that was either larger or smaller than predicted.

We described in chapter 10 how the Government Native Land Purchases Act 1877 barred private parties from any involvement in a block if the Crown had already purchased interests in it (section 10.7.1(1)). This motivated a frenzy of advance payments: in the 12 months from May 1878, Crown agents made payments on 49 blocks within our inquiry district. These comprised nearly 75 per cent of all advance payments made in Whanganui.[47] Resident Magistrate Richard Woon reported during the summer of 1878–1879 that 'Mr Booth . . . has been most successful in his negotiations, and has, by advances made, secured

the pre-emptive right of purchase by the government over hundreds of thousands of acres of the interior'.[48] But others questioned whether this was 'success' in a real sense. Native Under-Secretary Richard Gill considered that making advance payments 'rather delays than quickens the completion of the purchase'.[49] Bryce agreed, and put a stop to them once he became Native Minister in 1879. He took a dim view of what the Crown was doing in Whanganui:

> Great pressure was put upon the Wanganui agent of the Government to acquire a public estate, and, so far as I can see, I suppose he went heartily into the subject himself. The system did not work well. He had, of course, to go largely into the system of advances, and he made advances upon the land which are certain to result in loss to the colony. For instance, he would agree upon the price for land which he had never seen and which no white man to whom he could apply had ever seen, and all he knew about it was simply what he learned from the Maoris. The consequence was that he has made agreements for land which is now reported to be of a very broken character, so much so that, according to the surveyors' report, they could not find sufficient level ground to pitch a tent upon.[50]

Such concerns sparked changes that meant that only two advance payments were initiated after 1880.[51] Restrictions on private purchasing in this period meant that the Crown no longer needed to use advance payments to oust private parties.[52]

The years 1880 to 1884 saw the Crown completing or abandoning purchases initiated before 1879. In practice, abandonment might mean withdrawing claims on a block altogether upon repayment of any advances, or it could simply mean deciding to purchase some but not all interests in a block. The Crown completed 12 purchases in Whanganui in 1881. The number of blocks under negotiation fell away after that, then rose again in 1885 under the influence of the Native Land Alienation Restriction Act 1884 and Ballance's more expansive approach as Native Minister.[53] Although purchasing after 1880 took place under quite a different system, advances from the 1870s remained on record and were a factor in later purchases. In particular, several blocks on which advances had been made were rolled into the Waimarino block, allowing the advances to be charged against the owners of Waimarino.

(2) *The effects of pre-title payments on Whanganui Māori*

Tāmana, or pre-title advance payments, undermined the ability of iwi, hapū, and whānau to make collective decisions. The Crown dealt with individuals, whose decision to accept a down payment set in motion the whole ineluctable process of title determination leading to sale. Advance payments provided funds to enable prospective sellers to put a block through an often expensive process. The trouble was, non-sellers – who had no ready money for the purpose – were drawn into it too, for they had to ensure that their interests were also recognised on the title. The advance payment to would-be sellers thus put those who wanted to sell in a stronger position.

A second negative consequence was that once advance payment signalled that the Crown was in negotiation, a block stayed in limbo. Sometimes the process – which included negotiation, title determination, and eventual alienation of some or all of the land – took several years. During that time, owners who had not accepted advances and wished to do something else with their share of the block could not do so.[54]

Former Native Minister John Sheehan admitted in 1879 that 'in many instances payments have been made to the extent of only £10 or £15; and such payments have simply been made to enable the proclamation to issue'.[55] The Crown thus excluded private competition that might push up the price.

In 1881, Te Keepa Te Rangihiwinui told the Native Minister that he respected the Queen's laws, but 'scattering money upon lands that have not been brought within the operation of the law', and making advances to people not formally recognised as owners, was not the Queen's law but simply a means to take possession of Māori land.[56]

Rangatira told Booth that they would accept sales that they did not personally agree with, as long as they had community assent. They did not like secret advance

payments to individuals like that on the Maungakāretu block, made in Wellington without the knowledge of other owners.[57] Payments seem to have been made secretly so as to exclude owners who did not want to sell.[58] In February 1879, for example, four claimants to the Mangapukatea block informed the Native Minister that, while they had applied to Booth to have the land surveyed, they had not agreed to sell the block. Booth, though, advanced money to six other claimants to the same land, one of whom was described as the 'principal owner'. He was Pāora Toho (also known as Paire Tane Nui), later the sole witness in the title investigation, with the court order in favour of his party going unopposed and allowing the Crown to wrap up the sale soon after.[59]

The payment of advances had a detrimental effect on whanaungatanga (kinship). It set up a potentially divisive situation where those who received money could be seen as staking a prior claim, and of course they had the use of the money when others equally entitled did not. And yet, those who objected to advance payments were often dismissed as trouble-makers. After Toma Haunui and 12 others protested in 1879 about tāmana of about £1,100 on the Ahuahu block, for example, Booth alleged that Haunui had threatened to withdraw the land from negotiation unless he was given a large payment. Another group of objectors petitioned the Native Minister, asking that the balance of money due on Ahuahu (which they estimated at £450) be paid to them. RJ Gill of the Native Land Purchase Department dismissed them as 'jealous', while Booth described their petition as 'simply a try on to get more money'.[60] But might their grievances not have been genuine? Many more petitions and complaints about the Ahuahu process followed.[61] A few small reserves were set aside when title to the block was investigated in 1886. The advances made on the block in 1879 were deducted from payments when the Crown resumed purchasing in the block in the 1890s.[62]

We agree with the Crown that under the Treaty, Whanganui Māori individuals had autonomy to decide whether or not to sell land. The point is, though, that Māori owned land communally, and the effect of advance payments, which involved dealing severally with individuals, was to remove from the collective the power to decide not to sell land they all owned. When payments were made secretly, the Crown could acquire the right to purchase land before other owners had any chance to discuss the matter or even assert their co-ownership.[63] From the time when they first learned of it, those other owners were stuck with a situation where, inevitably, at least some hapū land would be sold to the Crown.

(3) *Could advance payments be reversed?*

The payment of tāmana usually committed recipients to selling their land. The Crown sometimes refused to allow recipients who changed their minds to repay advances.[64] In 1885, for example, some of the owners of the Ōpatu block asked to return their advances and lease out the block privately (other parties asked that the Crown ignore this request). Crown officials refused: the pre-purchase agreements would be 'instantly binding on the Natives who are parties to it' the moment that title was issued for the block. The Crown warned private parties that any involvement with the block was illegal.[65]

However, it was different when the Crown wanted to change course. In cases where the Native Land Court did not recognise recipients' interests in the blocks for which they had taken payment, or where the Crown later decided to abandon its purchase, the Crown would generally try to get its money back.

It seems to have been relatively rare in Whanganui that the Crown found it had paid advances to people whom the Native Land Court later left out of its list of owners. We saw evidence of four blocks where the Crown was in this position.[66] In three of them, the Crown apparently could not recover the money from the individuals concerned and tried to recoup it in other ways.

In Karewarewa 1 and 2, Crown land purchase agents paid advances to two owners who did not get on to the title. They then insisted that Rēneti Tapa, whom the court recognised as the principal owner, pay the £143 that they wrongly disbursed to the two excluded from the list. He seems to have complied in order to complete the sale of

the block to the Crown. This case led to a disagreement between Crown officials: Booth's advice was for the Crown to accept the loss, but Gill, Under-Secretary of the Native Land Purchase Department, apparently thought that the Native Land Court would grant the Crown an interest in the land on the basis of the advance to a non-owner.[67] It was pointed out to Gill that there was no legal basis for the court to do this, and in fact it did not – or at least, not in this case. In the case of the Rangitatau block, though, the court put a £253 lien on the title for advances paid to individuals it did not recognise as owners. The evidence does not reveal what the Crown told the court about this money, or why the court ordered the lien. The Crown seems to have been motivated to seek the lien to get the private purchasers of the block to pay for the advances, but we do not understand why the court would have agreed to that. Anyway, it appears that the Crown strategy worked, for the private buyers seem to have paid the debt to get the lien lifted when the sale was completed in 1887.[68]

In the final case, the Tāngarākau block (later incorporated into Taumatamāhoe), the Crown paid just over £2,000 to 24 people, but only 10 of them were named on the title. The Crown apparently intended to recoup all of this money, potentially by simply lowering the price it paid the remaining owners. However, we cannot tell from the evidence precisely how the Crown eventually dealt with this issue.[69]

(4) *Advances sometimes not recovered*

In some cases the Crown seems to have abandoned negotiations without seeking a refund of advances. An example was Parikawau (559 acres). In 1879, the Crown made two substantial advance payments, £200 to Te Aropeta Haeretūterangi and £500 to Tīmoti Tamaikuku. Negotiations broke down after disagreement between owners. The Native Minister agreed with Booth's recommendation that the Crown should seek to have its interests in the block defined, but there is no indication that it ever did. A later note on the payments ledger said that payments on the block 'were made before the title to the land was investigated by the NLC and were not recovered'.[70] Haeretūterangi was not included on the title, but Tamaikuku was, and why the Crown did not recoup its £500 from him is unclear.[71] It might have been an oversight on the part of Crown officials.

(5) *Advance recipients could get free use of Crown money*

Where for any reason the sale to the Crown did not proceed and the Crown later recouped the advance payment, the recipients of the advance benefited by having an interest-free loan until they had to repay the Crown.

In a few cases, they sold to a private buyer at a price higher than the Crown's. This is how it worked for the five owners of the 16,062-acre Mangapōrau block, who repaid the Crown's £920 from the proceeds of sale to another party.[72] Similarly, in 1878 the owners of Pikopiko 3 refunded the Government £170 in full satisfaction of advances and survey liens, from sale to a private purchaser.[73] Another block on which owners refunded advances and costs and sold to private purchasers was Manganui-o-Tahu (also called Kai Iwi Waitōtara).[74] Where small sums were involved, the owners could sometimes return the Crown's money without selling land, as appears to have been the case with the £25 advanced on the Ōhineiti block.[75] When owners could not repay advances, the Crown generally tried to get its interests in the block defined and cut out.[76]

12.4.2 Crown purchase officers and the land court

In this section, we look at the involvement of Crown purchase officers in land court processes, and the extent to which they influenced those processes or took advantage of them. We have seen that in some cases, those who received advance payments from the Crown did not become owners, which was consistent with the claimants' description of the court as 'a reasonably independent body [that] did not necessarily dance to the tune of the executive government'.[77] However, they also claimed that Crown agents interfered with the court process in order to facilitate land sales, for example by manipulating the distribution of interests.[78] The Crown rejected these contentions, and emphasised the court's independence from the Crown's land purchasing programme.[79]

(1) *Did purchase officers influence the number of owners?*

Under the Native Land Act 1873, the Native Land Court was required to put the names of everyone with a customary interest in a block on the memorial of ownership. An exception was where the owners themselves wanted to limit the number of owners. It was generally accepted that fewer owners meant the sale would be easier for both buyer and sellers, so a small list of owners was regarded as a precursor to imminent sale.[80] Examples of this included the 16,547-acre Tokomaru block, which its 14 owners sold to the Crown in 1877, days after the title was certified; the 6,250-acre Mangaere block, which its six owners sold to the Crown in 1881, the year after title determination; and the 4,207-acre Aratawa block, which its seven owners sold to the Crown in 1881, days after title determination.[81] After an 1881 land court sitting in which title was determined for numerous blocks, Booth reported that Whanganui Māori had 'behaved well . . . and have put in very few names for [the] purpose of completing sales'.[82]

To issue a title with a limited number of owners, the court was supposed to have proof that everyone with interests in the block consented to the arrangement. This may not always have happened, though. For example, in 1877 owners of the Mangapōrau block (16,000 acres) submitted to the court a list of 14 names. When one person objected to his exclusion from the title, Rīni Hemoata responded 'we want to sell this land to the Government. It will greatly increase the difficulties of transfer to the Crown if we put in the names of all our tribe.'[83] Ultimately, there were only five names on the list, apparently with the consent of all present. There is no evidence as to how this came about, nor why the sale to the Crown did not go ahead. Owners sold the block to a private buyer the following year.[84]

It is usually hard to tell whether Crown land officers got involved in putting together ownership lists. We do know of instances when land agent William Butler did this, although not necessarily successfully. He made advance payments on the Ōpatu block in 1878, and when it came to court in 1886, he helped the recipients with their case.[85] The owners put 67 names on the list. Although this included the tāmana recipients, which Butler would have wanted, 67 names was too many.[86] He tried but failed to persuade the group to leave out 'the Tuhua people', who were absent. He was reluctant to push too hard in case this caused problems for other blocks.[87]

Another case where Butler got involved was the 67,210-acre Whakaihuwaka block.[88] When the court sat in 1897 to determine relative interests, Te Keepa Te Rangihiwinui stated that many owners had been omitted at the original hearing, in 1886.[89] Te Keepa Tahu Kumutia later said, referring to the first hearing,

> We were Hau Hau's then and we were told by the Commissioner not to set up too many 'takes' and so we just set up the two whose names were placed before the Court. We acted under the advice of Mr Butler the Land Purchase Commissioner. He told us [that] after the survey we could put in additional people, now we find we cannot put in the other ancestors and people.[90]

In 1897, Te Keepa Te Rangihiwinui received confirmation that the court had no power to change the original decision.[91]

These cases show that Butler tried to reduce the number of owners on titles. He did not break the law, nor did he cause the court to act unlawfully. We do not know whether his superiors specifically sanctioned his conduct. But whether or not they did, we doubt that Crown agents were under much pressure to be scrupulous about safeguarding customary interests. The whole practice of advance payments was an endeavour to avoid the Māori cultural preference for collective decision-making: acting to reduce the number of owners on titles to facilitate the sale process was a natural next step for a Crown agent to take.

(2) *Crown purchasing challenged*

The effect of advance payments to a few owners was to give the Crown a foothold in a block, so that when title was determined, it already owned a portion of the land. However, on some occasions, when the land went through the court, other claimants to interests insisted that their names were added; the proportion of the land that the Crown had purchased might be correspondingly less,

and the Crown would certainly find it more difficult to purchase the whole block. This happened in Puketōtara, which we discussed in chapter 11, and in Waimarino.

Sometimes the judge in the Native Land Court regarded the addition of extra names at the time when title was determined as a ploy on the part of the owners to foil the Crown's purchase plans. On the face of it, the judges' response seems cynical, but it is really impossible now to know what motives influenced owners to insert more names in ownership lists.

(3) *Purchase prior to determination of relative interests*

Under the 1873 Act, the Native Land Court's role was not only to list on the memorial of ownership all the owners of a block but also to determine their relative interests. In this way, the legislation went some way towards recognising the customary reality of varying levels of interest in land. For example, absentee owners might be included in titles but with a smaller share, and a still smaller share might go to distantly related kin included 'out of aroha', as the court's minutes often described it. There was often a long period between the determination of ownership and the determination of relative interests. Wanting to purchase interests quickly, the Crown would sometimes purchase interests before owners' relative shares were fixed and proceed as though everyone's shares were the same.[92] The evidence indicates that the Crown had stopped doing this by about 1895.

There is evidence of Crown officials influencing owners' relative shares, particularly when they were absent or in disagreement.

In the case of the Whakaihuwaka block, conflict between owners following title determination in 1886 meant that their relative shares had not been fixed in 1895. By then, about 100 of the 523 owners wanted to sell to the Crown, but the Crown's policy was now to begin purchasing only after shares had been determined. Impatient, Crown land officers Patrick Sheridan and W Edward Goffe threatened in 1897 to ask the court to declare all the interests equal if the owners did not get on with it. Apparently regarding this as a credible threat, owners quickly took action. By the time everything was finalised in 1898, however, the moratorium on Crown purchasing had begun, and the block was not purchased until the early twentieth century.[93]

Another instance was when the Crown purchased interests in Tāngarākau block (which later became part of Taumatamāhoe) in 1879.[94] The new block went through the Native Land Court in 1886 and was awarded to 474 descendants of Tamahaki, from various hapū.[95] The Crown continued purchasing, and in 1893 applied to the court to have its interests cut out. By this time the non-seller owners were boycotting the court, and the only witness was Butler, the Crown land officer.[96] Judge Ward divided the block on the basis that 'this was tribal land, and that the relative interests of all the owners of the Block were equal'.[97] Three years later, perhaps prompted by further subdivision of the block, Rīwai Te Pōkaitara and 43 other owners petitioned Parliament, saying:

> We strongly objected when we found that the land purchase Commissioner had decided the definition of interests of each owner in the Taumatamahoe Block, it was not right that this should have been done because when this land was put through the Court in the first place no shares were allotted to each or any person, but when the Government purchase was started all kinds of persons sold, such as half-castes, and those who had virtually no claim. [T]he reason that these persons sold was because they knew perfectly well if the relative interests were heard by the Court their shares would be very small indeed, but now we the persons who continued to occupy and kept the fires burning on the land feel very much aggrieved.
>
> . . . . .
>
> We do not understand how it was that the [Government Land Purchase] Commissioner and the Court had the power to decide the shares of each person, because no application was made by us for that purpose; some of us applied to the Court to have the subdivisions first decided, but the Court would not agree to this course being taken.[98]

Butler (by then a judge of the Native Land Court) responded that in 1893 he had talked to as many of the owners as he could find, including their chosen representative Walter Hīpango who led him 'to understand

that the owners had not all equal rights'.[99] He apparently did not convey this information to the judge at the time. In response to Rīwai's petition, Judge Ward told the chief judge that he had already told Rīwai that 'he should have been present [during the 1893 hearing] and not have stayed away',[100] and he could not redefine interests after the block was partitioned.[101]

We do not have sufficient evidence to conclude that Crown agents regularly tried either to limit the number of owners, or to influence the definition of relative interests. Assuming that all owners held equal interests in a block could advance the Crown's interests, and we can say only that sometimes Crown officials tried to influence court proceedings to this end – particularly in the 1880s and 1890s, and in respect of some of the larger northern blocks (including Waimarino, as we see in chapter 13).

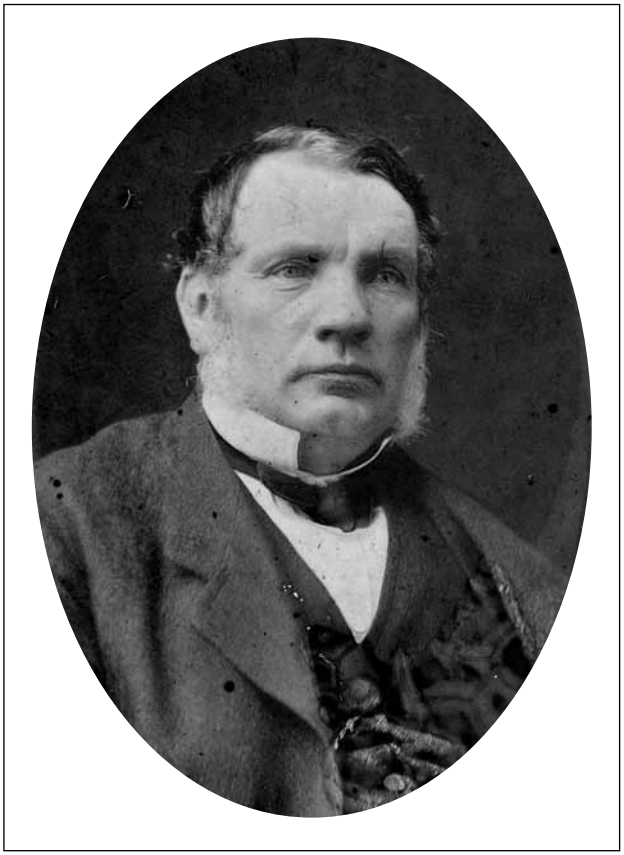
12.4.3 Acquiring interests after title determination

The Crown acquired most of its interests in land in this inquiry district after the Native Land Court determined title and relative interests. The main concerns about the Crown's conduct in this stage of the process are its dealing with individuals rather than groups; how it encouraged owners to sell; and paying its land agents on commission.

(1) *The shift to purchasing individual interests*

When Crown purchasing resumed in the early 1870s, Native Minister Donald McLean emphasised that land should be purchased only from willing sellers, and advised purchase agents that careful inquiry was needed to avoid future trouble or disagreement.[102] In 1875, he told all Crown land buyers that

> all land transactions in [*sic*] behalf of the Government must be conducted as openly as possible and that in all cases the leading chiefs must be consulted, and they are strictly to avoid making payments to individuals who stealthily offer to part with their interests; such a course is decidedly objectionable as leading in some instances to Natives receiving money without due inquiry as to their right to dispose of land, thereby causing much discontent among the real owners and prejudicing the native mind against the action of Government officials.[103]



Sir Donald McLean. A Highland Scot, McLean had an early role as protector of aborigines thanks to his skills in the Māori language. He then moved to negotiating the purchase of Māori land, occupying roles as chief land purchase commissioner, native secretary, and Native Minister. Prior to his death in 1877, McLean drafted the Native Land Act 1873, which ensured that all grantees were named on certificates of title, thus curbing at the least outright cheating.

Whanganui Crown land agent James Booth also reported on his process for ensuring that people had interests in the land they were claiming to sell. He wrote in 1879 that:

> Application to sell a block of land must be in writing giving the name of the block, estimated area, and boundaries of the block offered for sale, upon receiving the written offer, I called an open meeting of natives interested at which I read the written offer. The natives then discussed the ownership, if those that offer the land make good their claim I entered into treaty with them, on the other hand if the claim were not sustained the application was destroyed.[104]

When owners were divided, he seems to have aimed for majority, rather than universal, support for sales.[105] We have noted how he also used pre-title advance payments to selected individuals to secure a Crown foothold in specific blocks. In some cases, he gave rangatira large advance payments in the expectation that they would distribute them amongst their followers – which they did not always do.[106]

The mid-1880s saw a shift to more widespread dealings with individuals. In this period, the Crown was no longer making advance payments, for legislation now excluded private competition from much of the Whanganui district.[107] The Crown could safely wait until the Native Land Court confirmed blocks' legal ownership before commencing negotiations. Once the court process generated the list of owners for each block, Crown agents could approach them one by one to buy their interests, and avoid engaging with the wider community.[108] When agents had obtained every signature, or exhausted the pool of willing sellers, the Crown applied to the Native Land Court to have its interests defined. Legislation in 1892 simplified this process, making all deeds pre-printed forms.[109] In this period – from the commencement of purchasing under the Stout–Vogel ministry in 1884 to the completion of remaining purchases in the early twentieth century – the Crown acquired some 602,955 acres of Whanganui land (excluding Waimarino).[110]

Whanganui Māori complained bitterly when Crown land agents bought interests from their co-owners before they knew what was happening. In some cases, sellers travelled to Wellington to take payment so that other owners would not know.[111] This happened when four sellers in the Rāwhitiroa, Kaimānuka, Te Ngaue, and Kaitīeke blocks went to Wellington to get their £500 in circumstances where it was known that owners were deeply divided about selling.[112]

Like the payment of advances to individuals, the purchase of individual interests undermined the capacity of hapū and whānau to manage their land collectively.[113]

(2) *Special payments to individuals*

One of the expenses of land purchase that the Crown commonly incurred was payments to individual Māori who had helped with sales. The payments were either to chiefs for encouraging their people to sell land, or to chiefs and others who assisted with prosaic tasks like drawing up ownership lists and identifying willing sellers. The claimants said that payments to chiefs trod

> a fine line between recognition of chiefly authority, bribery, and a cynical failure to properly protect the interests of those not wanting to sell . . . Those doubtful about the wisdom of selling could have found it difficult to resist the pressure of a community leader who was now working from [*sic*] the Crown.[114]

The Crown denied that there is evidence that it 'set out to bribe certain individuals'.[115]

The Native Land Purchase Department periodically employed influential rangatira, including Te Keepa Te Rangihiwinui and Mete Kīngi Paetahi, to assist with purchases.[116] Sometimes rangatira received only one-off payments, like the £50 each that went to Te Aropeta and Hēnare Haeretūterangi for their 'considerable' influence in the Crown's purchase of the Maungakāretu block.[117] Remuneration was mostly so that chiefs would lend mana to the land purchasing programme, and reduce resistance to sales. Salaries could be as much as £300 or more.[118] Dr Mitchell stated that

> Their employment could be seen as an attempt to bribe men of influence to encourage their people to part with their lands in a way which undermined Maori leadership and

> relations with the land. From this perspective, the Crown was paying those who should have been counselling their people over the respective merits of selling or not selling, to encourage them to choose the latter path.[119]

Drs Mitchell and Hearn both noted the chiefs' conflict of interest.[120]

The Crown also paid rangatira and other Māori for help with tasks incidental to purchasing that included identifying grantees and willing sellers, appointing suitable trustees for minors, drawing up ownership lists, and supporting the Crown's applications for partitions.[121] Booth justified paying Te Aropeta Haeretūterangi for his help with surveys on the basis that private parties were doing it, and the Crown needed to do the same to compete for land.[122]

Rather than salaries, some influential men just received more than they were entitled to for their interests in a block. For example, when purchasing Pohonuiatāne, Butler told the Land Purchase Department that, although each share was worth £78 11s 6d:

> Hakaraia Korako, Major Kemp's brother in law, who is also one of the most influential members of the Ngati Marukohana asks £100 for his interest and I think that by acceding to his request we would secure his influence and valuable assistance and thereby acquire the interests of nearly if not all the members of his hapu.[123]

The payment was approved.

Such discretionary payments tended to be counted as an expense of purchasing a block.[124] Arguably, it was legitimate for the Crown to account for this as an expense on its own account. But sometimes, the Crown deducted the expense from the price it paid for the land, which was quite different in nature. In that event, there was unfairness first in the Crown's paying an owner more for his interest because he agreed to do the Crown's bidding; and secondly, the Crown obtained the benefit from the successful persuasion of owners to sell, and then forced the owners who reluctantly sold to pay for the services to the Crown of the person whom the Crown retained to persuade them.

(3) *Paying Crown land agents on commission*

In Whanganui in this period, the person whom the Crown employed to purchase land on its behalf was James Booth. It retained other land agents on commission, though.[125] Their income depended on the amount of land they acquired. To take the example of land agent Thomas McDonnell, his income in 1878 comprised daily payments to cover travelling and other expenses, a payment per acre acquired, and a flat fee of £200.[126] This mode of remuneration encouraged him to buy as much land as possible, whether or not owners wanted to sell, and whether or not the land would be of value to the Crown. On the face of it, he would also have been better off to conclude sales quickly so that he could move on to the next one – but against that, the daily payment was to continue for a year or until the purchases were completed, whichever was earlier, and regardless of actual expenses.

Commission agents' indiscriminate purchasing led in 1877 to legislation that authorised discontinuing their use, after which their role diminished. Nevertheless, significant payment was made to Crown agent Stevens in respect of the purchase of the Waimarino block (see section 13.6.6(1)).

12.4.4 Partitions generated by successive Crown purchases

We now look at how the Crown moved to purchasing portions of blocks over time and in waves, rather than purchasing at once all the interests it wanted. This is sometimes called serial partitioning, a process which obliged owners to pay for multiple surveys and partitions. We look at the fairness of the process, and the cost, and consider the effects particularly on Māori who did not want to sell their land.

(1) *How Crown purchases triggered partitions*

Once the Crown acquired interests in a block, it could apply to have its share partitioned out. The block would be split in two: the Crown now owned a new block comprising the part it had bought, and the balance went into a block owned by the Māori owners who had not sold.[127] The Native Land Act 1873 permitted such a partition only

where the majority of owners consented – although if the Crown was negotiating to buy the land concerned when the 1873 Act came into force at the start of 1874, the Native Land Court could intervene to finalise terms between the parties or to partition the Crown's and Māori interests. The Government Native Land Purchases Act 1877 removed the requirement for majority consent. The Crown could now apply to the court to determine its interest, and the Native Land Court would vest its share in a new Crown-owned block.

(2) *Partition costs*

The Crown's application to partition out its interests generally prompted a new survey and another court hearing, both of which cost money. Owners of each new block that the court created incurred costs according to their share of the original block. So, if the Crown purchased a quarter of a block, it would pay a quarter of the costs, while the owners of the balance block would have to pay the other three-quarters. Survey and partition costs were not subtracted from the purchase price, so sellers received the full purchase price for their land.[128] Those who were not selling usually lacked the means to pay high amounts, so the Crown would pay the costs and recover them by obtaining a lien, or charge, on the land. Where interest was charged (typically at 5 per cent per annum), the debt increased over time. There were occasions when non-sellers could clear the debt only by selling land, which required another partition, and so on, in a continuing process.

Claimants in this inquiry, relying on the evidence of Mitchell and Anderson, pointed to blocks from which the Crown purchased land and then partitioned out its interests on a serial basis, with the Crown eventually owning most of the land.[129] They contended that owners who did not sell bore an unreasonable burden of survey costs, which created an 'artificial incentive to sell'.[130] The Crown's rejoinder was that partitioning was inevitable when only some owners of multiply owned land sold their interests.[131]

We identified eight blocks in which the Crown appears to have engaged in serial purchasing in the period up to 1901, with 25 purchases totalling 210,938.5 acres – just over half from Taumatamāhoe.[132]

The block was partitioned in March 1893, with the Crown getting Taumatamāhoe 1 and 232 Māori owners retaining Taumatamāhoe 2.[133] The Crown began buying land in Taumatamāhoe 2 six months later. When the block was partitioned in June 1896, the Crown got Taumatamāhoe 2A, and 175 owners kept 2B.[134] By October the following year, the Crown had purchased nearly a quarter of 2B. When 2B was petitioned in 1897, the Crown got 2B1.[135] In all, the Crown purchased 114,596 acres of Taumatamāhoe over three purchases, leaving the owners with 40,704 acres: less than a third of the original block.

In another example, the 17,200-acre Raetihi block was partitioned in February 1889, with one of the five divisions going to the Crown.[136] Shortly afterwards, Sheridan advised against surveying the new partitions as the block was 'still under purchase' and that 'subdivision surveys will be largely obviated by the sale of further interests'.[137] In 1896, each of the remaining four Raetihi blocks was partitioned into A and B blocks, with the A blocks going to the Crown.[138] Altogether, the Crown purchased 7,485 acres of Raetihi: 3,400 in its initial purchase and 4,085 acres subsequently.

Our assessment of the evidence was that serial purchasing was probably less common than the claimants contended, but the evidence was by no means complete.

There were a number of instances in which a block was partitioned between owners, and then the Crown purchased from each part, leading to numerous partitions from the same parent block in a short space of time.[139] This did not come under the definition of serial purchasing, since the original partition occurred before the Crown's purchasing activities began.

(3) *Impact of costs on non-sellers*

Non-sellers who could not pay for their share of the partition and survey costs had two options: raise the money by selling land, or have the debt charged as a lien on the land title, sometimes with 5 per cent interest. In effect, a diminishing number of acres had to carry the costs – survey and court – of the Crown's purchasing.[140]

In the case of Popotea, the Crown purchased 247 acres in 1896, leaving the non-sellers with 388 acres and a lien

of £30 for the cost of survey. In 1912, the lien was still unpaid, and the Crown took 44 acres to satisfy the debt.[141] Partitioning these 44 acres then left the remaining owners with a new lien of £3 3s.[142]

Taiawa Te Ope and other owners of Maungakāretu 4 wrote to Hoani Taipua, the member for Western Maori, in 1891 to complain about a similar situation, where the owners owed £90 after reserving land from the parent block:

> We object to this charge because the greater part of the Block has been acquired by the Government and the survey was made by them so as to have the portion that they bought finally settled. What benefit do we derive in asking us to pay such a large amount for such a small piece.[143]

A fair question – and was there a good answer? It was important for non-sellers to be able to identify the land that remained to them following the Crown's purchase. But developing land encumbered by debt was difficult. And the advantage to owners of knowing which land they were keeping diminished where the Crown continued to purchase land in the non-sellers' block, and more partitions resulted. This happened in the Rangiwaea block, where there were partitions after Crown purchases in 1896, 1899, 1907, and 1912.[144] Crown purchases led to partitions of Taumatamāhoe in 1893, 1896, 1899, and 1907.[145] Part of the Maungakāretu block went through seven rounds of partition between 1889 and 1912, although not all were due to Crown purchases.[146]

Landowners with partition costs to pay had few options but to sell land. In 1893, after another round of partitioning, the owners of Maungakāretu 4B again appealed to the Government:

> We have heard that this land cannot be leased. We ask you to allow it to be leased in order to afford us the means of support because we are in straitened circumstance through having to pay Government the cost of the survey. We have had to sell one of our lands to help pay the cost of the survey.[147]

The Crown would not allow private dealings in the block until the existing restrictions lapsed, and meanwhile continued to purchase interests. By 1912, it had acquired 57,516 acres, or just over 90 per cent of the original block.[148]

The case of the large Ōhura South block was also egregious. In addition to 3,353 acres awarded to the Crown in payment of survey liens, a further area of 19,730 acres was sold at least partly for the same purpose. Thus, the Māori owners lost a substantial proportion of that block to pay for costs associated with the Crown's purchases.[149] Non-sellers then owned a block called Ōhura South B, from which the Crown went on to purchase one of 52 shares, amounting to about 27 acres. By the time the owners of the block had paid for the costs of the survey in acres (the effect of the lien), the Crown acquired not 27 but just over 216 acres.[150]

Crown purchases did not trigger every partition in our inquiry district. Sometimes the boundaries of blocks as surveyed did not reflect hapū interests; in other cases, communities wanted to allocate to whānau viable farming units. Yet the examples we have given of frequent partitions resulting from Crown purchases were by no means atypical. Indeed, owners of nearly every block in the district had to pay for partitions necessitated by sale of land in the block. Non-sellers in approximately a quarter of the blocks paid for partition costs more than once in the nineteenth century. These costs were foisted on them as a result of others deciding to sell their interests.

(4) *Conclusion*

Partitions and surveys were required when part-owners of blocks sold their interests – and the system that facilitated part-owners selling land willy-nilly had other negative consequences, which we have discussed. These were exacerbated in blocks where the Crown made piecemeal purchases that required a number of partitions. We saw no evidence of a deliberate strategy to load landowners with debt and compel them to sell. However, requiring non-sellers to pay partition and survey fees was unjust and unreasonable. They had chosen not to be party to selling land, and were least able to afford the costs of creating new legal parcels. Even if the Crown did not design the system as a means of forcing non-sellers to release land that they had decided not to sell, it should have been

apparent that this could be its effect, and that the effect was unfair.

12.4.5 Trust commissioners' role in vetting purchases

We have inquired into practices that Crown land purchase officers employed when they acquired land for the Crown. Now we look into the role that trust commissioners played.

We saw in chapter 10 how trust commissioners were appointed under the Native Lands Frauds Prevention Act 1870 to investigate the alienation of Māori land. They were to approve the transfer of the land only if satisfied that the proposed alienation was not contrary to equity and good conscience; not in breach of any trusts; not paid for using firearms or liquor; and would not leave the vendors with inadequate lands for their own support.[151] To begin with, there was uncertainty about whether the trust commissioners would also investigate the Crown's purchases, but legislation passed in the 1880s made it clear that they would not.

Claimant counsel observed that, apart from restrictions on alienation that the Native Land Court imposed, the trust commissioners were the chief mechanism for protecting Māori from excessive land alienation. Crown counsel observed that the role of trust commissioners did not feature much in the Whanganui inquiry, and evidence as to their effectiveness or otherwise was scant.[152]

This was certainly the case. Even if it was because the Crown bought most of the land in Whanganui, the trust commissioners still played little role when it came to vetting private purchases.[153]

Before the legislation was amended in 1883 to clarify that the Crown was not subject to the trust commissioner regime, trust commissioners investigated a handful of Crown purchases. Historian Cecilia Edwards found 10 Crown purchases that were subject to trust commissioner approval: Waikupa, Pikopiko 1, Paratīeke, Kirikau, Tokomaru, Mangaere, Kaitangiwhenua, Tawhitoariki, Umumore, and Koraenui.[154] Six of these transactions were completed between 1872 and 1879; one (Kaitangiwhenua) in 1880; two (Mangaere and Umumore) in 1881; and one (Koraenui) in 1885.[155]

We do not know how the commissioners investigated these transactions. Hēao and Pikopiko are the only two blocks about which we have evidence, and although by no means comprehensive, we set it out here.

The Hēao block passed the Native Land Court in June 1873. Crown Land Purchase Officer James Booth had previously identified it as a block that was of interest to the Crown, and he paid a substantial advance (£500) before the court awarded title. He made more payments after the court hearing, and a deed was signed in July 1873. Just over two years later, in August 1875, the trust commissioner, Charles Heaphy, investigated this purchase. Resident Magistrate Richard Woon testified that it was bona fide. The deed was endorsed, and subsequently the block was declared waste lands of the Crown.[156]

The Pikopiko block followed a similar course. The Crown purchased it in July 1873. In August 1875, Trust Commissioner Heaphy certified that he had made the inquiries as to bona fides required of him under the Native Lands Frauds Prevention Act, and he was satisfied that the transaction met the standard.[157]

The Crown's purchase in Koraenui was the only transaction that appears to have been subject to the trust commissioner regime after the 1883 amendment exempting the Crown from this process.[158] Whether this was an oversight is not clear. Nor is it clear why the trust commissioner investigated some Crown purchases completed before 1883, but not others (such as Mangaotuku, Kārewarewa, Huikumu, Aratawa, and Puketōtara). The trust commissioner rejected no Crown transactions in the district.

Native Minister John Ballance told Parliament in 1886 that it was 'notorious that the Frauds Commissioners in the past have performed their duties in the most perfunctory manner, and passed transactions when the consideration was a mere bagatelle'.[159] Even so, it appears that some of the Crown's purchases before 1883 escaped the commissioner's scrutiny, and then the Government legislated to avoid it altogether.

The Central North Island Tribunal concluded that it was 'not consistent with the Crown's honour that its purchase officials should be held to a lesser standard than private buyers'.[160] We agree.

12.4.6 Our conclusions on Crown purchase practices

In February 1881, Te Keepa Te Rangihiwinui wrote to the Minister of Native Affairs:

> We will not acknowledge this reptile James Booth as we have already had enough of his misdoings. Now we find him forced into this district again . . . This is to tell you positively that we will not permit him to put his foot within any part of the Whanganui River District.[161]

The *Wanganui Herald* commented that Whanganui Māori disliked Booth because of his land purchase activities, but perhaps gaining their respect was 'impossible under the circumstances'.[162] We take this as acknowledgement that the Crown's purchase methods were very likely to make those that deployed them deeply unpopular – and our inquiry would tend to confirm that assessment.

The worst aspect of how the Crown purchased land was that it undermined communal decision-making. The second worst was that it advantaged those who wished to sell. Crown land agents might also have interfered in the Native Land Court process, but we had little evidence of this.

The Crown's methods of purchase, and the legislation that underpinned them, underwent significant change between 1870 and 1900. Constant, though, was its avoidance of negotiating with Whanganui Māori as hapū or whānau with overlapping and complex rights, preferring to deal with groups of willing sellers, and individuals, and frequently without the knowledge of the wider group. As the Tūranga Tribunal found, communities often had no control over decisions to sell land.[163]

The Crown emphasised that land ownership gave Māori the right to choose to sell. We agree that its duties as a Treaty partner included honouring that right, but in doing so it should have ensured that Māori could exercise their choice free of influence one way or the other. Instead, the Crown constructed a system that at several critical points skewed the decision in favour of selling.

In the 1870s, Whanganui Māori who wanted to sell their land could access a lump sum to help them through the expensive process of taking their land through the court. If they changed their minds, the Crown would not let them back out and repay the advance. Owners unsure whether to sell might be swayed by rangatira whom the Crown was paying to facilitate sales. While they were deliberating about whether or not to sell, it was often illegal for owners to lease or sell their land to anyone other than the Crown, or to use the land as security for a loan. Once the sale was confirmed, the Crown bore the costs of surveying and going to court for those who were selling, but those who were not had to foot their own bill. Successive surveys and partitioning-out of the Crown's interests also left those not selling with a growing debt. These circumstances conspired to make selling not just the best way out of a bad situation: it was often the only way.

12.5 Did the Crown Pay a Fair Price?

How much did the Crown pay for Whanganui Māori land? The trend was for prices to decrease over time. The average price per acre of the six Crown purchases completed between 1871 and 1875 was 4.3 shillings,[164] but the five purchases between 1875 and 1880 dragged the average for the 1870s down to 3.9 shillings an acre.[165] Prices fell further from 1884.[166]

Were these prices fair? How do we approach the question of price, when there was no independent valuation system in the nineteenth century – and when for most of the time it was not a free market, for the Crown either shut private purchasers out of the market, or created other advantages for itself? Against what do we assess what was fair? Was it in keeping with the Treaty for the Crown to pay as little as possible for Whanganui Māori land?

Claimants remarked that, because there was no effective independent valuation system before 1905, the Crown was both purchaser – often a monopoly purchaser – and valuer, and therefore had a conflict of interest. Once the Crown targeted a block for purchase, the owners' only options were to sell their interests on the Crown's terms, or not at all.[167] The claimants said that prices were often below market value and were fixed on an ad hoc basis with the twin objectives of tempting owners and also keeping prices down. Making advance payments to

individuals also enabled the Crown to manage the price, because it thereby avoided dealing with the owners collectively. Claimants noted that prices increased after 1905, when minimum prices based on independent valuation were finally introduced.[168]

The Crown accepted that, 'as a privileged purchaser, it had a duty to pay fair prices for Māori land', but this 'does not equate to an obligation to ensure competitive valuation'.[169] Because there was often no competition for particular pieces of land, and because the Crown sometimes purchased blocks that no one else was interested in, it 'would have been difficult, if not impossible' to establish an objective value.[170] Nevertheless, nineteenth century land purchase officers tried to set a price that reflected the quality of the land.[171] The Crown maintained that, even though Dr Hearn's evidence showed that its monopoly reduced land prices by about 10 per cent, that did not mean that Crown prices were generally unfair, for a '10% variation would be regarded as an acceptable variation between valuers today'.[172] It acknowledged that there might be cases where it did not pay a fair price. It conceded that the Waimarino block was such a case.[173]

John Sheehan. A lawyer with close links to Māori, Sheehan became involved in politics acting as legal counsel for the Repudiation movement in the 1870s. He later became Native Minister, which took him into the field of purchasing Māori land for the Government.

12.5.1 What influenced the price?

It was not until 1905 that an independent land valuation system came in. Before that, the Crown usually controlled the price. Its objective was to pay as little as possible, with some adjustment for the quality of the land. Assessment of land quality was not particularly thorough or scientific, nor necessarily carried out by people with expertise.

(1) *Prices paid for land in Whanganui*

During an 1878 commission of inquiry into James Booth's land purchasing practices, multiple witnesses testified that the standard price range for Māori land was up to five shillings an acre for good land, declining to one shilling and sixpence for 'mountainous country'.[174] Booth gave this range for his land purchases in Whanganui earlier in the decade: rates had 'been fairly established on the West Coast, [so] there will be no difficulty in completing the purchases of the remaining blocks at the same rates'.[175]

The price for a block within that range was arrived at between the Crown land purchase officer and surveyors in the field.[176] It was based

> simply on what the native land purchase officer or Lands Department staff believed that the land was worth, although sometimes land purchase staff did obtain somewhat rough-and-ready valuations from private surveyors or land agents.[177]

Former Native Minister John Sheehan said in 1879 that prices were set after discussion with local land purchase

officers, surveyors, and 'people who have been through the country'.[178] He also admitted that land purchase officers were in no position to discern the actual commercial value of the land they were purchasing.[179] Nor did they take into account the value of timber and other resources on the land, even when they were aware of its existence.[180] For example, the Crown was aware that the Tāngarākau block included rich coal deposits, and had heard rumours that there was gold.[181] Neither was taken into account when setting prices.

(2) *The Crown actively avoided valuations*

A local example suggests that it was no accident that Māori land was not subject to independent valuation. During negotiations for Ōhura South in 1892, the owners' agent wanted the price set by independent valuation. Crown buyer George Wilkinson told the Native Under-Secretary that this would be a damaging precedent: 'if the price is to be fixed by valuation in this case that course will have to be adopted in all govt purchases in this district in the future'.[182] The Crown said no – but, tellingly, did raise its offer by a shilling an acre.[183] It dismissed an 1895 claim from one of the Ōhura South owners that the price was still too low.[184]

Even when land was recognised as high quality, there was no guarantee that the Crown would pay top prices. Officials were usually not allowed to offer more than five shillings, and were encouraged to make lower offers.[185] The Crown's desire to pay as little as possible was driven at least partly by the desire to make a profit when on-selling to settlers. Under the Immigration and Public Works Act 1870, the Crown was required to take profit into account before purchasing land. In effect, this meant that Crown agents could not pay Māori landowners what private purchasers were willing to pay; the Crown had to sell the land for more than it had paid, and if prices were above market value then settlers would not buy it.

(3) *The Crown's resistance to upward price pressure*

Anything that might push up prices was a source of concern. In Ōhura South, for example, Wilkinson was alarmed at the work of the Ōhura Settlement Association, which in 1892 was producing 'almost daily publicity' about the block. Wilkinson warned that the 'native owners are sure to hear of what is being said & done & the result will be they will think that a block of land which europeans [*sic*] are so eager to acquire & settle upon is valuable & they will ask an increased price accordingly'.[186] Boosterism was all well and good after land had been purchased from Māori, but timed wrongly it could push up the price for the Crown. Wilkinson suggested a quiet word to association officials.[187]

When Māori did seek higher prices for their land, the Crown often refused to pay them. For example, in 1872 the owners of the Hēao block, which was mostly under grass, offered their land to the Crown at 16 shillings an acre. Booth counter-offered four shillings an acre, but the owners said that they would go no lower than 7s 6d. Booth accurately predicted that by the time the land had passed through the Native Land Court they would be willing to accept his price.[188]

Prices for the Tāngarākau block, later incorporated in Taumatamāhoe, also declined during its complicated negotiation and sale process. Negotiations began early in 1879 with the odd spectacle of two private agents competing with each other to secure the block for the Crown. After one had offered six shillings an acre, plus an advance of £1,000, the other countered with eight shillings plus an £1,800 advance.[189] Writing to the Native Minister, Booth described the situation as a 'mess', and noted that the higher offer could 'ruin' the price of Māori land 'all through the district'.[190] The Crown then proclaimed the land under the Government Native Land Purchases Act 1877, shutting out private parties. A few months later, Booth and the owners agreed on a price of seven shillings an acre, plus a £2,000 advance.[191] In the end, the purchase was cancelled after disputes about surveys and distribution of payment. As we noted above, the Crown intended to recoup the £2,000 advance if the land was later sold. Tāngarākau was later partly absorbed into the larger Taumatamāhoe block, which was sold in 1893 for two shillings an acre – a quarter of the highest price offered for Tāngarākau. Meanwhile, the Crown valued Taumatamāhoe for property tax purposes at five shillings

per acre.[192] While the complicated block history makes it difficult to draw firm conclusions, we think it highly likely that the decrease in private competition between 1879 and 1893 played a role in bringing down the price.

12.5.2 Did the Crown always pay the agreed price?

It can be difficult to pinpoint when parties agreed to a price for a particular block. Especially in the 1870s, Crown purchase agreements did not always include a price, sometimes because the parties agreed to set it only after survey.[193] In other cases, however, a price was agreed, but the Crown was careless about recording it, and the sellers later had to remind the Crown of the price that was agreed.[194]

When prices were set in advance of surveys, the block could turn out to be smaller than expected. Sometimes, the sellers had to accept a smaller price,[195] but not always. The Crown agreed to pay £7,650 for the Mangaotuku block, estimated at 61,200 acres. That equated to 2s 6d per acre. The Crown still paid £7,650 when the block turned out to be just 38,860 acres, so owners received just over four shillings per acre.[196]

Matters were sometimes complicated by advance payments, which might be made before an overall price had been finalised. Dr Mitchell suggested that the Crown used advance payments to set low prices that would later bind other owners.[197] Dr Hearn disagreed. He saw no reason why agreements with some owners should bind others. Indeed, owners who agreed to a price early ran the risk that their co-owners would later sell at a higher rate.[198]

One case where the Crown did not pay the price it agreed to pay involved the Maungakāretu block. In 1878, it set eight shillings an acre as the price, but when it began purchases in 1886, it paid three to four shillings an acre.[199] Not surprisingly, the owners were confused and angry, and demanded to know why the Crown had not stuck to its word.[200] The *Wanganui Chronicle* swung in behind them, declaring that the Crown was paying below the market.[201] The Crown was unmoved, and the prices stayed the same.

In the case of Pikopiko 2 (Moetahanga), though, the Crown bought in 1873 at eight shillings per acre, then increased its price to 20 shillings in the face of counter-offers from private parties.[202] These circumstances were unlikely to be repeated in later years, as the Crown slowly ousted private buyers from the district.

12.5.3 The impact of monopoly provisions

Did the Crown affect prices when it controlled the participation of private purchasers in the Whanganui Māori land market for much of the period from 1870 to 1900?

(1) *Shutting out private purchasers*

When the Crown re-entered the Māori land market in 1869, contemporary politicians talked about the link between competition and the price the Crown would have to pay for Māori land.[203] John Hall said it was not realistic to expect that the Crown could get lower prices than private buyers, who in any case could afford to pay more than the Crown.[204] Seven years later, Native Affairs Minister John Sheehan justified restricting private purchase on the grounds that 'private persons were endeavouring to interfere with the Government purchases, and were offering higher prices, and picking out the eyes of country which was supposed to be in the possession of the Government'.[205] Booth claimed that it was 'absolutely necessary' to shut out private purchasers, as their counter offers had forced him to raise the price he offered for good land to 7s 6d, 'and in a few instances to 10/- an acre'.[206] In 1891, commenting on several years of effective Crown monopoly, James Carroll stated that it forced Māori to accept whatever low prices the Crown was offering, even if private buyers would pay more (although he also said that 'if the Natives cannot sell to the purchaser prepared to give them a larger sum than the Government, they will not sell at all').[207] In summary, there was a widespread view that competition raised the price of Māori land, while Crown monopoly lowered it.

(2) *Comparing Crown and private buyers' prices*

Is it possible to compare the prices that private buyers paid with the Crown's prices? It is not straightforward.

For one thing, the Crown and private buyers were not necessarily interested in the same land. Private buyers

were usually after smaller blocks that could readily be converted into individual farms, while the Crown had the resources to target much larger and less developed blocks, with a view to longer term development or building infrastructure. In the Whanganui inquiry district between 1870 and 1900, the Crown purchased more than six times as much land as private parties.[208]

Another problem is the scarcity of information about private purchases. Records on some blocks do not capture the price paid, nor the extent or quality of the land. Nonetheless, Dr Hearn calculated that private parties paid on average just over 5s 3d per acre between 1871 and 1883, with rates ranging from 2s 3d to nearly 25 shillings an acre. The Crown paid an average of 4s 8d an acre – approximately 10 per cent less than private purchasers in the same period.[209] Information on private purchases between 1883 and 1899 is too sparse to calculate an average, but prices ranged from 10 shillings to 50 shillings an acre, with all recorded sales fetching at least 10 shillings per acre.[210]

There are few recorded examples of the Crown and private parties competing for the same block. We noted how the price that the Crown paid for Pikopiko 2 rose from eight to 20 shillings as a result of private offers; and competition between buyers working on commission for the Crown pushed the price of Tāngarākau from six to seven shillings, although the owners did not receive this in the end. In the late 1870s, the Crown abandoned its purchase of Rangitatau after private buyers offered 12s 6d, beating the Crown's offer by 2s 6d per acre.[211] When the Crown purchased part of the remaining land in 1901, it paid just 7s 6d per acre.[212]

Dr Hearn and Ms Edwards both compared prices paid for land gazetted under the Government Native Land Purchases Act 1877 and those with no restrictions, and found that average prices were higher for gazetted land.[213] Dr Hearn pointed out, though, that the Crown had to have made payments on a block in order to gazette it, and those payments would have been made in competition with private purchasers.[214]

At the start of this section, we saw that the prices the Crown paid for land decreased between 1870 and 1900. Some of this can probably be explained by the Crown purchasing better quality land earlier, but considering the evidence as a whole, we consider it likely that regulating competition reduced prices.

12.5.4 Our conclusions on prices

When the Crown resumed purchasing in the early twentieth century, legislation required it to purchase Māori land at its capital value, set by the Government's market valuation.[215] Prices increased sharply. Dr Loveridge told us that, nationally, the Crown paid on average 50 per cent more per acre between 1900 and 1910 than before 1900. He thought that some of this increase may have been due to inflation, but it was mostly attributable to the introduction of a valuation requirement.[216] In combination with the other evidence we examined in this section, this leads us to conclude that the Crown did not pay a market price for Whanganui Māori land in the nineteenth century.

Several factors made it possible for the Crown to pay low prices. Most importantly, it progressively excluded private purchasers from the land market, first by the imposition of restrictions over specific blocks and later with more sweeping restrictions that covered the main trunk railway area and then the entire country. While this may have given Māori landowners some protection from unscrupulous private dealers, the main effect, and indeed the main intent, of these restrictions was to drive down the price of Māori land. With no competition, Whanganui Māori could either accept the Crown's price or not sell at all.

The Crown's main motivation was to keep prices low, and this precluded engaging deeply with market value, or properly assessing the land's quality, resources, and potential. Price did reflect quality to a limited extent, based on the largely inexpert opinion of land purchasers and surveyors, who were often not even familiar with the land in question. Assessing the value of the land, setting the price, and paying the price were all in the hands of the Crown, so objectivity – the hallmark of fairness – was entirely lacking.

A point that might be tendered in mitigation of the

Crown's consistent payment of low prices is the professed intention that, once settlement and development had occurred, the land remaining in Māori hands would be worth more. This trend did not really eventuate in this district, though. Māori retained very little of the best quality land, and poor rural land has appreciated only slowly. It is fair to say that Māori who have achieved a windfall gain from selling Māori land would be few.

12.6 What Happened in the Murimotu Area

12.6.1 Introduction

We begin by defining terms.

(1) *The Murimotu region*

When we refer to the Murimotu area or the Murimotu region, we are talking about an expanse of high country lying south and south-east of Ruapehu. It is a substantial area suitable for pastoral agriculture – not land of the first quality, but second only in our inquiry district to the coastal area largely covered by the Whanganui purchase. The Murimotu region's southern and western parts lie inside the Whanganui District Inquiry boundary; its eastern part straddles that boundary.[217]

(2) *The Murimotu block*

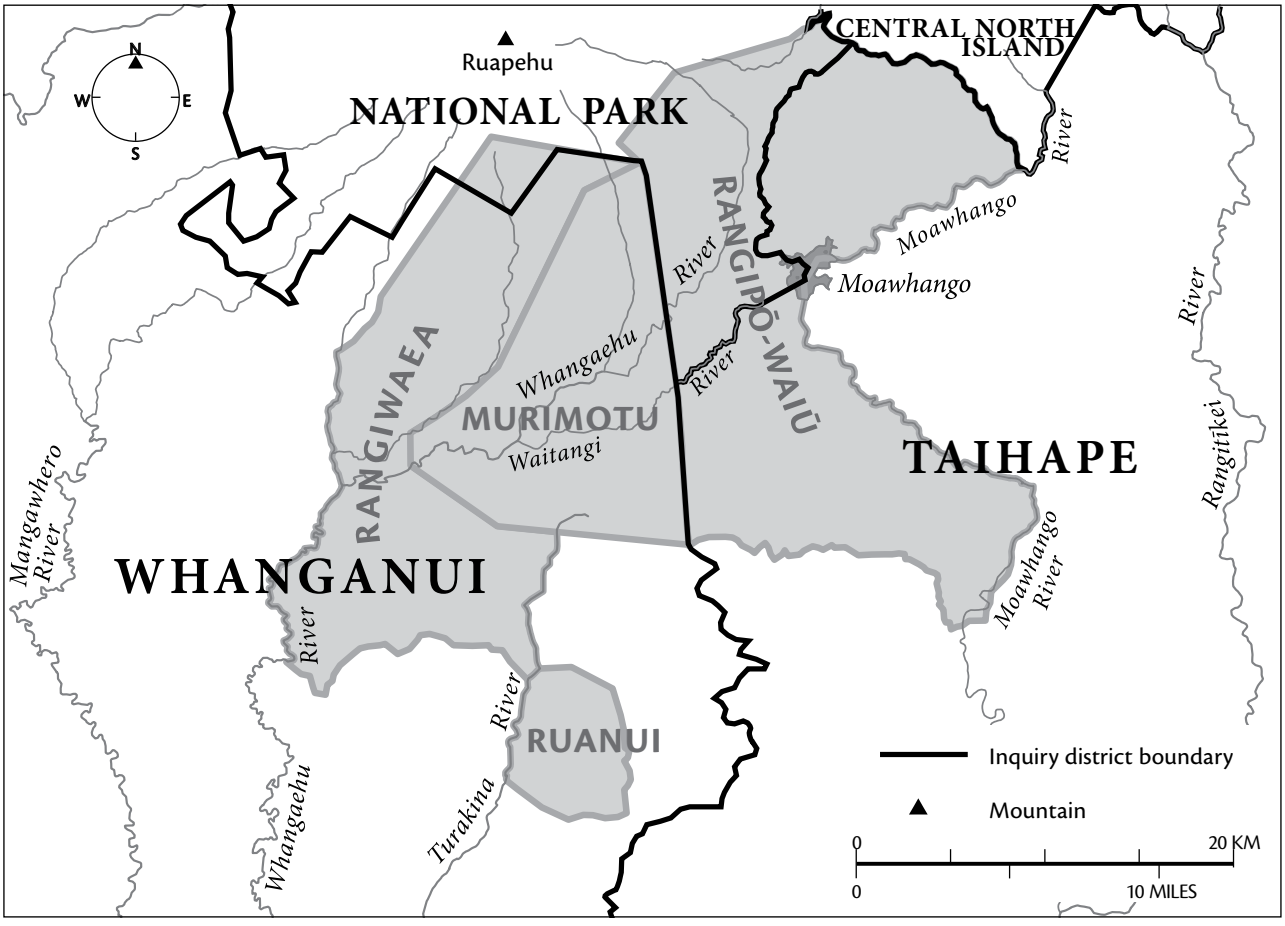
The term 'the Murimotu block', on the other hand, refers to one of four Māori land blocks that covered the area. The others were the Ruanui, Rangipō–Waiū, and Rangiwaea blocks. These four blocks were estimated at 300,000 acres, but actually comprised 212,961 acres.[218] All of Murimotu and Ruanui, and nearly all of Rangiwaea, are in our inquiry district; a small part of Rangiwaea and part of Rangipō–Waiū are in the National Park inquiry district; and the rest of Rangipō–Waiū is in the Taihape inquiry district.[219] Much of our discussion covers the whole area, both inside and outside our inquiry boundary, because of course events played out without regard to where the Native Land Court and then the Waitangi Tribunal drew lines on a map. However, our findings apply only to land within our inquiry district.

(3) *Atypical because the Crown gained control by leasing*

In some respects, the Crown approached buying land in the Murimotu area in the usual way, deploying tactics like excluding private parties through proclamation, and purchasing individual interests. However, it stands out as the only area in the Whanganui district where the Crown gained control of Māori land through leasing. By the end of 1900, the Crown had purchased 136,100 acres in the Murimotu region.[220] These events were closely linked to the origins and history of Te Keepa's Whanganui Lands Trust and Māori resistance to Crown land purchase.

It was an area where a number of groups held traditional interests, and they generally viewed it as land that would provide a future income, either by leasing it out, or by farming it themselves. They recognised the need to define their interests by seeking title through the Native Land Court. Leasing began in the early 1870s, sparking disagreement between groups of customary owners about who had rights in the leased land, and who should receive rent. The Crown came to an agreement with the private leaseholders that it would rent large areas, and sublet to the pastoralists. Only some of the owners went along with this. Disagreements over surveys, rent money, land ownership, and tribal boundaries almost became violent in 1879 and 1880. As soon as blocks went through the Native Land Court, the Crown started purchasing.

The Crown made no specific submissions on the Murimotu region, nor did it comment on nineteenth century leasing. The Ngāti Waewae and Ngāti Hikairo ki Tongariro claimants submitted that the Native Land Court failed properly to inquire into the customary ownership of the Murimotu block; the Ngāti Hikairo claimants did not go into detail, but the Ngāti Waewae claimants stated that their tūpuna were not given adequate opportunity to defend their rights in court.[221] The Ngāti Rangi claimants, whose tūpuna gained title to part of the area, submitted that those tūpuna sought to retain Murimotu land in their ownership and control, and to derive economic opportunities from it. However, the Crown 'actively worked against Ngati Rangi efforts to implement their own strategies for self-determination and self-development'.[222] The Crown's



Map 12.1: Murimotu blocks intersected by inquiry district boundaries

takeover of the Murimotu leases was, they submitted, not simply a breach of the duty to act in good faith, but 'a blatant act of deceit'.[223] Because of it, Ngāti Rangi could not use their lands as they saw fit, explore options with parties other than the Crown, or get the best possible deal.[224]

We now look into the Crown's actions in the Murimotu area in the late nineteenth century to see whether it excluded competition from the land market there, and to explore the relationship between the leases and its later purchase of the blocks.

12.6.2 Customary ownership

The interests of many hapū and iwi converged in the Murimotu area. Most traditional owners derived their rights from a mix of ancestors from different iwi and hapū, with the ancestors' importance depending on the locale.[225] Some chiefs, such as Ngāi Te Ūpokoiri chief Rēnata Kawepō, claimed ancestral rights, and also interests acquired through running sheep on the land.[226] The Waitangi River, which flows though Murimotu, was often cited as a boundary, but people also crossed it to hunt and

catch birds, and asserted that they had rights on both sides of the river.[227]

(1) *The hui at Kōkako*

Partly in response to Crown purchasing elsewhere, groups came together at a hui at Kōkako, in the Murimotu area, in March 1860. Attendees included representatives from Tūwharetoa, Ngāti Whiti, Ngāti Tama, Ngāti Kahungunu, Ngāi Te Ūpokoiri, Ngāti Apa, and Whanganui. They explored the possibility of putting the land under the mana of the Māori King, and discussed boundaries. Later, some – including Te Keepa – said that the hui agreed on iwi boundaries.[228] Certainly, it wrestled with how to reconcile customary ownership, with its fluid and overlapping interests, with the new, rigid system that the Crown was starting to impose.

(2) *The Murimotu block comes to court*

Once the Native Land Court came in, traditional landholding gave way to a 'winner takes all' system that had no place for overlapping rights. Māori could not bypass this system, as we have seen: to gain legal recognition of ancestral rights, they had to go to court.

Te Aropeta Haeretūterangi and others of Ngāti Rangi brought the Murimotu block before the court in December 1871. Surveyor D H Munro guessed that it comprised at least a million acres – a vast overestimate, because all four blocks in the Murimotu district together amounted to less than 300,000 acres. Te Retimana Te Rango of Ngāti Whiti and Ngāti Tūwharetoa disputed the Ngāti Rangi claim, and said his people had not been told the block was coming before the court. The court declined to proceed with a hearing, as there was no survey and only the vaguest idea of the block boundaries.[229]

Another hui was convened to settle ownership. It took place at Tūrangarere, south-east of Waiōuru, on 6 March 1872. Afterwards, Crown land purchase officer Thomas McDonnell told Munro that the hui settled the boundary, and he could go ahead with the survey.[230] However, Ngāti Tama, Ngāti Tūwharetoa, Ngāti Whiti, and possibly others continued to oppose the survey. Meanwhile, private parties had begun informally and outside the law to lease land in the area from different groups of traditional owners, thereby intensifying their differences.

The Murimotu block, now surveyed and reduced to just 46,365 acres, was before the court at Wanganui again in June 1873. Te Aropeta's claim on behalf of Ngāti Rangi was now disputed more widely. Hēperi Pikirangi of Ngāti Tama, Te Retimana Te Rango of both Ngāti Tama and Ngāti Whiti (but also with a line of descent from Tūwharetoa and Waewae), Paranihi Te Tau of Ngāti Tūwharetoa, Hataraka Te Whetū of Ngāti Te Ika, Te Rangitoea of another Ngāti Rangi hapū, and Paurini Karamu of Ngāti Tūroa all appeared as counter-claimants, and requested that the hearing take place at Rangitīkei where their witnesses resided.[231] Hēperi said that his people could not afford the tolls for the turnpike and bridge between there and Wanganui. Te Rango told the court that he had witnesses at Taupō.[232] Te Keepa pointed out that it would be 'as inconvenient for him to go to Rangitikei as for them to come here'.[233] The court adjourned the case for seven days, to give the counter-claimants time to bring their witnesses to Wanganui.[234]

There was probably enough time during the adjournment for witnesses to come from Rangitīkei, but not from Taupō.[235] When the court recommenced, some of the witnesses had still not arrived, but the hearing proceeded after an extended lunch break.[236] Judge Smith queried both sides' evidence, but concluded that the block belonged to Ngāti Rangi.[237] Ngāti Hikairo ki Tongariro and Ngāti Waewae claimants told us that the court failed to inquire properly into customary ownership, and Ngāti Waewae claimants criticised the court's failure to adjourn to Rangitīkei.[238] As we explained, we make no findings on alleged errors of judgement on the part of the Native Land Court.

(3) *Murimotu block owners not determined until 1882*

At the end of the land court hearing, 209 people were recorded as having customary interests in the Murimotu block, but the list of owners was not determined at this time.[239] Ngāti Rangi could not agree whose names should

go on the title. After another unsuccessful attempt to finalise the list in 1877, Te Keepa proposed in 1878 that there should be one legal owner who would be trustee for the iwi, with power to lease but not sell the land. He suggested Te Aropeta, but others disagreed.[240] Ownership was finally determined in May 1882, with the hapū of Ngāti Rangituhia, Ngāti Rāwhitiao, Ngāti Rangihaereroa, and Ngāti Tamarua getting around 11,000 acres each, and 'persons who are stated by the principal parties in case to have little or no claim' getting a total of 500 acres.[241]

The other three blocks gradually went through the court as well: Ruanui in 1877, Rangipō–Waiū in 1881 and reheard in 1882, and Rangiwaea in 1893.[242] But before ownership was determined, various runholders began leasing. Inevitably, this caused conflict. In 1875, for example, ex-parliamentarian Mete Kīngi Paetahi complained that sheep and cattle were being farmed on the Murimotu block, and he was receiving nothing. He threatened to confiscate the stock and drive away their owner.[243] He was told to wait until Booth or another official had time to sort it out.[244] Mete Kīngi probably should have been receiving rent, because his was one of the names on the Murimotu owners' list finalised in 1882.[245]

12.6.3 Leasing to private parties

Pākehā pastoralists of the nineteenth century were attracted to this area, and J W A Marchant's description of the Murimotu plains explains why: they were 'open grassy plains, of no great fertility, but yet suited to pastoral pursuits'.[246] Here was immediate potential for Māori to generate an income by leasing to settlers, for, unlike most of the district, it did not require the slow and expensive work of clearing dense forest first.

Māori struggled to agree on who owned the land, for as we know, their traditional patterns of occupation did not translate well to the clear-cut entitlements that the Native Land Court demanded. Tangata whenua were, however, fairly united in the view that they should retain enough of it to secure future prosperity, and to exercise rangatiratanga.[247] Most preferred leases to outright sale, because it allowed them to keep owning the land, to exercise some control, and to generate income. Also, by working for European leaseholders, they could gain experience and learn to farm.[248] They generally preferred to lease to private parties rather than to the Crown. Mainly this was about getting a better return, but they also feared they would have less control if the Crown was the lessee.[249]

By at least 1872 and possibly earlier, Māori interest-holders began negotiating leases to private parties.[250] As legal title had not yet been finalised, the leases were unenforceable.

Politicians Thomas Morrin and John Studholme, along with Thomas Russell and Edward Moorhouse, formed a company that eventually leased parts of Murimotu and Rangipō–Waiū. Joseph Howard and James Russell (Thomas's brother) formed another company that occupied parts of Ruanui and Rangiwaea.[251] Both companies worked with private agents Neville Walker and William McDonnell – and with Edward Moorhouse's brother and Studholme's brother-in-law, the lawyer and politician William Sefton Moorhouse, who later also worked for Te Keepa and other customary owners.[252] Though closely connected, the different enterprises still sometimes bid against each other with groups of owners, and undermined each other in correspondence with Crown officials.[253]

12.6.4 The Crown is involved in the Murimotu lease

When the Crown took up land purchase again in the 1870s, both central and provincial government were pushing to 'open up' the interior of the North Island to European settlement. There was a particular focus on the Ruanui block, which Booth regarded as the 'key to the whole of the interior'.[254] In 1872, Booth reported that he and Te Keepa were negotiating the sale of a large block of land in the Murimotu area.[255] Probably, though, Te Keepa was just exploring options and testing what the Crown might be prepared to pay.

Central government generally preferred to purchase rather than lease, but the Crown knew that multiple hapū and iwi claimed interests in the Murimotu area, and this might have deterred it from attempting purchase before the land went through the court – especially given the delicate political situation in the aftermath of the wars. The Government was certainly not averse to leasing Māori

John Studholme, one of a group of politicians and businessmen who entered into an unlawful lease of Māori land in the Murimotu area. Studholme and his partners later agreed to sub-lease the land from the Crown, which would lease it from the Māori owners.

land in this period, at least in the short term, because figures for 1874–75 indicate that the Crown was negotiating for leases for over one million acres nationally.[256]

(1) *The legal situation*

It must be borne in mind, though, that the ability to deal determinatively with land in the area awaited the Native Land Court's investigation of title and determination of relative interests. In this regard, the Crown and private parties were in the same position: no purchase or lease of Māori land could be finalised until its ownership was confirmed.

Section 47 of the Native Land Act 1873 provided for the court investigating title to produce a memorial of ownership that described the land, listed all the owners, stated their respective shares, and appended a plan. Sections 48 and 49 then described the curious situation where (under section 48) each memorial of ownership would have attached to it the condition that the owners listed could not sell or otherwise dispose of the land other than by a lease, which was not to exceed 21 years. The following section, though, provided that the condition would not preclude sale where all the owners agreed.

Section 62 amplified the requirements for a lease to be valid. The court had to satisfy itself 'in every case of lease of the fairness and justice of the transaction, of the rents to be paid, and of the assent of all the owners to such lease'. But then section 65 provided that, where there were dissentients to a lease or a sale, the court would ascertain whether the majority of owners wanted the land to be subdivided as between 'the interests of those who wish to sell or lease, and of those who dissent'. If so, the court would divide the land into two allotments, to enable the sale or lease of one of them.

While nothing definitive could happen to the land until the court had been through this process, various enactments[257] did authorise the Crown to make forward-looking agreements about the land that would come to fruition when the court determined the owners and their relative interests. The Crown also had the power to commence negotiations to buy land, and having done so, to exclude private parties from acquiring any interests there.[258]

(2) *Waters muddy*

This was quite a complicated situation, because although the Native Land Court needed to determine title before any contracts could confer legal interests in Māori land on other parties, the water was muddied by various mechanisms that enabled the Crown to take steps to secure its position despite this legal constraint.

The Crown's practice of making advance payments of the purchase price of land to parties whom they hoped

the court would recognise as owners was one such step. In practice, the Native Land Court tended to give effect to the Crown's prospective arrangements when it determined title, so the distinction between pre-title contracts and post-title contracts was blurred. It is difficult retrospectively really to know why, but the evidence suggests that many of those involved lost sight of – or perhaps ignored – the fact that it was not possible to buy (or lease) land before the court confirmed who its owners were.

As well as advance payments that sought to bind parties to sell land in the future, the Crown used the device of an agreement to enter into a lease or purchase at a later date. As we discuss below, the Crown and Māori parties would sign an agreement to lease. This was not a deed of lease as such; its intention was to bind the parties to sign up to a deed of lease once the Native Land Court had confirmed who owned the land and therefore now had the legal capacity to grant a lease. Such an agreement suffered from the same inherent defects as advance payments of a purchase price. It could only be binding if the people who were parties to the deed were ultimately recognised as owners, and the court recognised that a right to lease had been acquired. Difficulties might also arise if the parties changed their minds in the meantime.

The other main mechanism for putting the Crown in a position where it could confirm its position as purchaser of land for which the owners were unknown was its ability to commence negotiations for purchase, and use that as a basis for excluding private parties from acquiring interests in the land in question. Section 42 of the Immigration and Public Works Act Amendment Act 1871 enabled the Crown to keep out other potential purchasers (or lessees) for a period of two years, as long as the land in question was proclaimed as being the subject of purchase negotiations. More than that, as Dr Loveridge told us, section 42 allowed the Crown to enter into purchase agreements (or agreements to lease) before land went before the court, provided that 'such agreements could not be finalised until the titles had been ascertained'. Section 3 of the amending Act of 1874 states that 'during the currency of such leases or agreements . . . all persons should be prohibited from purchasing or acquiring any right title or interest in such lands except from Her Majesty'.[259] This meant that private lessors were in a different position from the Crown as regards entering into legal arrangements before land went before the court – although in the case of both private parties and the Crown, finalisation could not happen until title was determined.

We come back to the issue of what the legal situation was – and, as importantly, what various actors in the events concerning the Murimotu district believed it to be – later in this section.

(3) *Wellington provincial government sends Buller in*

The Wellington provincial government was keen to lease land in the Murimotu district. Because of the legal situation described, any lease arrangements would of necessity be informal in nature.

In late 1873, provincial Land Purchase Commissioner William Fitzherbert made an agreement with former private land agent John Buller, whereby Buller would try to lease the area that would later become the Ruanui block 'not acting openly for the Govt but apparently for himself'.[260] Buller would be competing with private land agents Walker and McDonnell, who were working for Howard and Russell.[261] At the same time, Booth was negotiating for the purchase of a large adjoining block, but Buller's instructions were to continue negotiations despite the ever-increasing price.[262]

To this end, Buller went to a hui at Karatia in January 1874, where he explicitly denied accusations that he was working for the central or provincial government. The real private land agents were also at the hui, and offered a lower price than Buller.[263] Buller nevertheless failed to secure a lease, probably because Te Keepa suspected what he was doing. Engaging in this kind of subterfuge was clearly unethical, but we do not know whether the Crown was complicit in it. Booth knew about it, but it is not clear who else knew or approved. In any case, the plan failed. At the same hui, Te Keepa made clear both his support for leasing all the available territory to James Russell, with whom he had been in negotiations, and his opposition to

leasing to the Government. He had already spoken with the Government about leasing and had declined to enter into any arrangement with them.[264]

At about the same time, Studholme and his partners successfully negotiated an agreement with Tōpia Tūroa for a lease in Rangipō–Waiū (and possibly also Murimotu). Tūroa received some of the rent money, and moved stock on to the land. Te Keepa does not appear to have known about this arrangement.[265]

(4) *Central government does a deal with private lessees*

Studholme and the others involved in the private leasing were becoming concerned that, as their leases were unenforceable before the court had determined title, if Government agents succeeded in persuading Māori to sell to the Crown, they could miss out entirely.[266]

Moorhouse, acting for Studholme, approached the Government. Over February and March 1874, he worked out a deal with Native Minister Donald McLean. It provided for the Crown to continue to negotiate to acquire the land for settlement, either through purchase or lease. While it was doing that, Studholme and his cohorts would relinquish their interests and clear the stage. In return, the Crown would protect their position once title came through. If the Crown or provincial government succeeded in buying the land, 25 per cent would go for settlement, but they would lease 75 per cent to Studholme and his partners for 14 years. If the Crown secured only a lease from Māori, it would sub-lease all of the land to Morrin and Studholme, but 'whenever' the provincial government would 'require' a part of the land for settlement, the lessees would vacate on reasonable notice.[267] The Crown would not take a cut of the rent money.[268] Wellington Superintendent William Fitzherbert and Colonial Secretary Daniel Pollen (on behalf of McLean) gave their approval in late March.[269]

Russell and Howard, who had informally leased and put stock on land in Ruanui and Rangiwaea, were later included in the agreement, on the same terms.[270]

There is nothing in the evidence that clearly articulates the benefits for the private leaseholders of entering into this arrangement with the Crown. They plainly saw a benefit, or they would not have entered into it. It appears that they did expect to gain a Government-backed lease of Māori land that had no legal title.[271] Actually, though, it is difficult to see that this was really what was on the table. Like the private leaseholder, the Crown could not enter into leases with Māori until the Native Land Court determined title, because only then were the owners known. Any legally binding lease with the Māori owners must therefore await that event – exactly the same situation that the private leaseholders were in. It might not even have been strictly legal for the Crown to agree to sub-lease Māori land to private parties. Land regulations allowed this only in the Auckland province. That difficulty was supposedly covered by the Government's undertaking to pass 'such measures of legislation as may be necessary for giving effect to this agreement'.[272] Whatever the actual legal position, however, the private leaseholders did expect that, by entering into this arrangement with the Government, their position – such as it was – would be protected.

There are two advantages the Crown had over private parties that might have motivated the private leaseholders to enter into this arrangement with the Crown. The Crown could enter into legal arrangements with Māori affecting pre-title land, and then look to the Native Land Court to give them effect when it came to investigate title.[273] Any legal agreements that private parties entered into concerning pre-title land were 'absolutely void'.[274] Secondly, by entering into this agreement with the Crown, the private leaseholders staved off the possibility that the Crown might otherwise have embarked upon purchase negotiations, and cut them out completely. The Crown had the power, under section 42 of the Immigration and Public Works Act Amendment Act 1871 to shut others out of securing interests in any land that was the subject of the Crown's negotiation. It is difficult to assess whether this was a real possibility here at this time, given that the Pākehā who had taken up the informal leases in the area were influential people with good connections. More importantly, probably, Māori of this district were not keen

to sell at this stage, and there was still uncertainty and even dissent about who the owners were in many parts of the Murimotu. The delicate situation in the years following the land wars would have made the Crown mindful of the need to tread warily.

The Crown did not keep its arrangements with the private leaseholders secret from Māori, but neither did it seek their agreement to it beforehand. Still, the deal would only work if Māori consented to enter into lease agreements with the Crown. Otherwise, the Crown would have nothing to sub-lease.

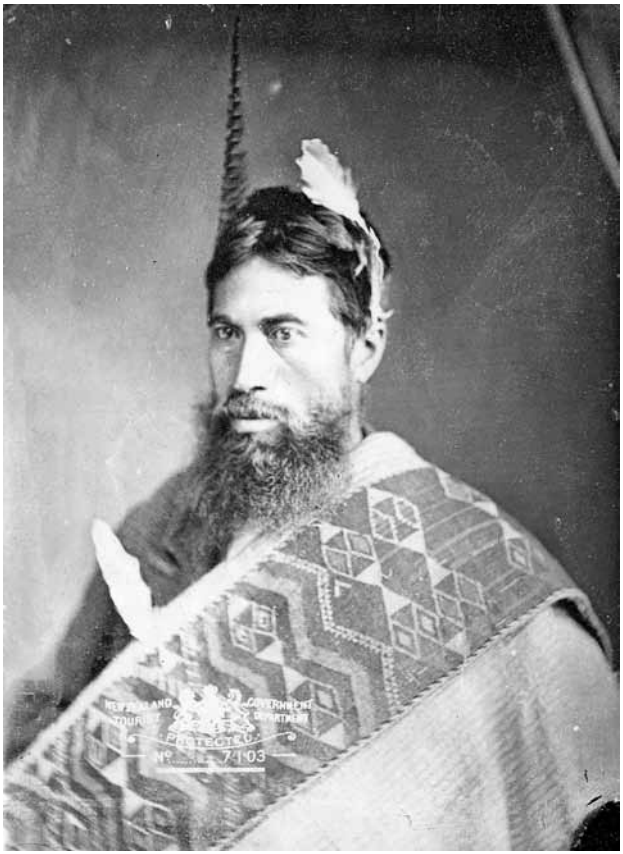
(5) *Te Keepa's position on leasing to the Crown*

In May 1874, Booth met with Māori to explain the deal, and to persuade them to go along with it. The first meeting, on 20 May, concerned the Murimotu block. The McDonnells, interpreting for Booth, 'explained that Morrin and Co had made terms with Govt and that in all dealings with said Co rent must be paid to Natives by Govt'. Booth offered £500 for the first year's rent if all the claimants to the block would sign an agreement to lease. But Te Keepa and some of the other owners did not want to lease to the Crown, saying it would undermine their mana over the land. The meeting on the following day was about the Ruanui block. Booth was reluctant to go until Māori made up their minds about the first offer, but Te Keepa insisted. Again there was opposition to the idea of leasing to the Government, and Booth left with 'nothing having been arranged'.[275]

A week or so later, in early June, after talking with Booth, Te Keepa had changed tack. The following year, he outlined to a group of Māori how this had come about:

> Mr Booth, who was sent by the Govt. shewed us that we could not execute a legal lease to these Europeans. That the proper course according to law was to lease to Govt. and Govt. could arrange leases with the Europeans. I was at first strongly opposed to leasing to Govt. We talked the matter over and some of us determined to go to Wellington.[276]

On 4 June 1874, Te Keepa published a notice in a Whanganui newspaper stating that his tribe would agree



Te Keepa Te Rangihiwinui, 1880s. Te Keepa was heavily involved with the events in Murimotu, and his position on the Crown's role in leasing land changed in ways that are hard to understand without more complete information.

to a Crown lease 'on condition that the provisions of the lease are to be supplied by us only, and that the laws in force are not to have effect over our land' – but also that they would consent to lease to 'private Europeans' if they agreed to Te Keepa's terms. The same notice warned Europeans who had put stock on 'Murimotu' that if they did not come and discuss it with him, he would take legal action. Te Keepa was determined to control what was happening on this land.[277]

To do this, Te Keepa had to understand all the

complexities. That same month, he said in a letter to one of the leaseholders, James Russell, 'we are endeavouring to ascertain what restrictions we are liable to according to Law', and would go to Wellington to find out. Te Keepa appears to have preferred Russell over other would-be lessees, because Te Keepa assured Russell that he would not break their agreements (they had been negotiating), and 'will consent to no other person than you'.[278]

12.6.5 Did the Crown mislead Māori?

At the time when the Crown negotiated with the private leaseholders to become the lessee of the land in Murimotu, the legal position as Booth stated it to Te Keepa was in fact correct: leases directly from the Māori owners to Pākehā farmers were not legal before the court determined title. Of the four blocks, only the Murimotu block had been through the court, and even that did not have a certificate of title, for there was as yet no agreement on the 10 owners to be entered on it. Ruanui was the first to be finalised, and that was not until 1877.

However, as we observed above – and as Booth evidently did not explain – the Crown could not enter into a binding lease before the court determined title either. The Crown *could* make arrangements with Māori pending determination of title, and then look to the court to give them effect. This was not the same as being able to enter into deeds of lease with Māori then and there, though, and the discussion about what was going to happen at Murimotu seems to have proceeded on the basis that the Crown *could* immediately lease from Māori and sub-lease to the private leaseholders. This was not a correct statement of the position. Whether that was due to misunderstanding is unclear.

There was therefore not really such a thorough distinction between the legal positions of the Crown and the private leaseholders. Both could enter into legally-enforceable leases only *after* title was determined. It seems that Booth may not have made these two things clear at any stage – that is, that the Crown could not enter into leases then and there, and that both the Crown *and* the private leaseholders could enter into legal leases only once the title of the land was determined.

The National Park Tribunal left open the question whether Booth deliberately misled the Māori owners about the legal situation.[279] We do have evidence of what Crown representatives told Te Keepa and the private leaseholders. Records of meetings held in the mid-1880s reveal clearly that the Crown was telling everybody that legal agreements concerning the land were the province of the Crown. These are examples of what was said:

- Native Minister McLean at a meeting at the Government buildings in Wellington on 2 September 1874, attended by Te Keepa and many others including his lawyer, Moorhouse:

> **Hon Sir D McLean:** You can lease the land to Govt who will again lease a portion to the Gentlemen you mention [Russell and others].
> **Major Kemp:** Has this arrangement got the sanction of Mr Russell and the ors [?]
> **Mr Moorhouse:** Yes.[280]

- Moorhouse to a meeting that Te Keepa called at Te Aomārama on 17 March 1875, attended by Buller, Booth, and many rangatira:

> The Gentlemen I refer to are Messrs Studholme, Morrin, Moorhouse, Howard, Russell, Walker and McDonnell. In consequence of the alteration in the Land laws by the Parliament these Gentlemen could not legally lease these lands excepting through Govt; So they came to me and asked me to get the Govt to guarantee the Country to them as they had spent much time and money over it.[281]

- Booth to a meeting on 19 March 1975 at Rānana attended by Te Keepa and many other rangatira:

> I was sent by the Govt to Wanganui to inform the Native claimants to the land that they could not legally lease the land unless it was done through the Govt.[282]

We cannot determine the issue without further evidence, because we do not think that it is possible to infer from what happened either that Booth (or McLean for that

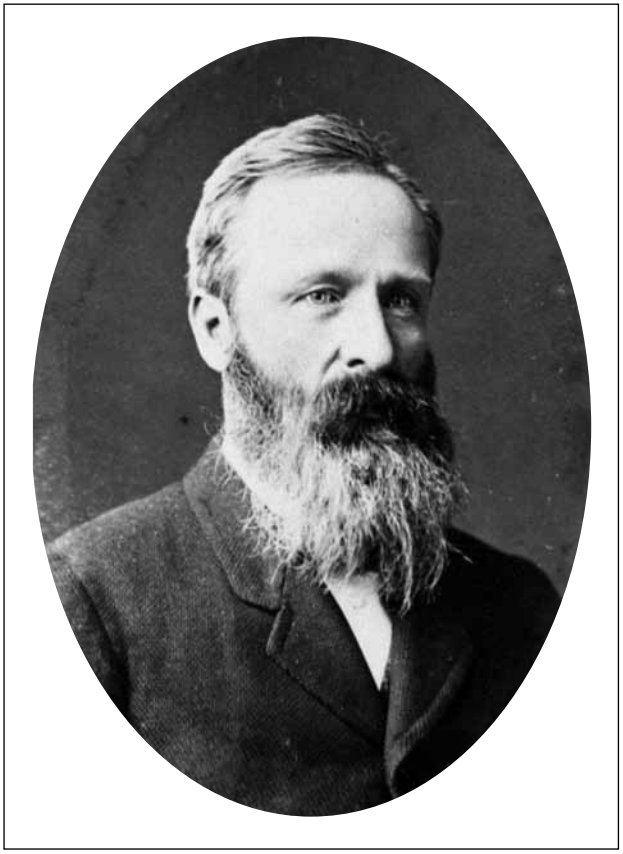
matter) definitely did mislead Te Keepa, or that Te Keepa was actually misled. It is possible that they all – including Moorhouse, the lawyer – believed that the law allowed only the Crown to make legal commitments prior to the court's determining title. This was approximately true. The Crown *was* in a different position from the private parties, as Dr Loveridge explained, because the Crown permitted itself by legislation to enter into legal commitments in advance of the court's determining title. But what nobody made clear – possibly because they did not appreciate it themselves – was that neither the Crown *nor* the private parties could enforce any arrangement until such time as the court determined title, and in doing so listed the owners. There are possible explanations for Te Keepa's acting as he did that are consistent with his understanding the situation at least as fully as the Crown's representatives and Moorhouse.

Possible scenarios number at least three.

The first is that Te Keepa and the other Māori owners did not appreciate – as perhaps no one appreciated, or alternatively it suited the Crown not to say – that although the Crown could enter into legal arrangements with them concerning the land, those arrangements were not enforceable and could not be finalised until the court determined title. If they had known, they might have taken the option of expediting the court process rather than agreeing to lease to the Crown, because once the court had done its job, the Crown and the private parties would be in the same position as regards entering into leases. We cannot say definitely whether the Crown's representatives really believed that everybody's interests would be advanced if they worked through the Crown, or whether they were just trying to advance the Crown's interests by putting it in the position where it would most easily be able to purchase the land later. We can infer only that the Crown did not give Te Keepa this information, and that may have meant that he remained of the (incorrect) view that the Māori parties could make binding deals with the Crown, but not with the private leaseholders.

Alternatively, though, it might have been that Te Keepa and the other owners *did* realise that they could lease to private lessees once title was determined, but thought that it would take too long. The long-running disagreement about who would be on the certificate of title for the Murimotu block, and the fact that the other blocks had yet to come to court, might have made waiting for the court's determination too distant an option. It was the case, though, that Te Keepa *told* the other Māori chiefs that going through the Crown was the only way. This was evident from Booth's minutes of the meeting Te Keepa called at Te Aomārama on 17 March 1875, attended by Buller, Moorhouse, and many important Māori. We quote extensively from the minutes, because they capture fully Te Keepa's position on that occasion:

> Major Kemp called together the Natives. He said 'I have called this meeting for the purpose of discussing the Agreement to lease the Murimotu Block to Govt.
>
> He said You are all aware that certain Europeans have for some years past been trying to lease that land from us[.] Two of those Europeans Mr Buller & Mr McDonnell are now present. These men began the work of negociating with us[.] Others then joined McDonnell[,] namely Russell, Howard, Morrin, Walker, Moorhouse and others – I in common with others of our tribe wished to lease this land to the above named Gentlemen. We wished to lease it privately not to the Government. Mr Booth who was sent by Govt Shewed us that we could not execute a legal lease to these Europeans, that the proper course according to law was to lease to Govt and Govt could arrange leases with the Europeans – I was at first strongly opposed to leasing to Govt. We talked the matter over and some of us determined to go to Wellington.
>
> We went there[.] We saw Sir Donald McLean. Mr Moorhouse Solicitor went with us to Sir Donald McLean – I found with reference to this matter that we all both Maories and Europeans were to work only according to the law and that if I leased my lands to private individuals, I could only do so in strict accordance with the law. Taking these matters into consideration and after consultation with My Lawyer (Moorhouse) I determined for myself and tribe to lease only to Govt subject to the approval of the tribe whom I have represented – and I feel sure that when the matter is fairly and carefully explained the tribe will think with me in this matter. I have brought Mr Moorhouse from Wellington to attend this



William Sefton Moorhouse. At various times, Moorhouse was the lawyer for most of the parties involved in the Murimotu area in the 1870s, including his brother, Edward, and his brother-in-law, John Studholme. His closeness to those leasing land did not prevent him from also representing Te Keepa and other Māori landowners.

> Meeting that we may have the benefit of His advice. Kemp here introduced Mr Moorhouse to Topia and his Friends from Murimotu and Taupo.[283]

A third scenario is that Te Keepa did know that the Māori owners would be able to lease privately once the court had determined title, but that at or after the meeting that took place in Wellington in September 1874, he was persuaded to the view that dealing with the Crown was the better option – or possibly the more realistic option, given that the Crown and the runholders had agreed that leasing would be through the Crown. Both Te Keepa and the private leaseholders had the benefit of Moorhouse's advice, but Moorhouse was saying the same as the Crown, at least in public – that is, that only the Crown could make legal arrangements about the land. There is therefore a question as to whether Moorhouse (of whom more below) correctly advised any of his clients – Te Keepa or the private leaseholders – as to the legal situation. It may be that he said what he did because he did not understand the effect of the legislation, or because it suited him for some reason to take the Crown's line.

12.6.6 The September 1874 meeting in Wellington

Te Keepa and others with interests in land in the Murimotu area found out more about the Crown's plans in September 1874 when they met with McLean and Booth in Wellington. The contingent from Whanganui consisted of Te Keepa ('as representing the Wanganui claimants to the Murimotu Country'), Winiata Te Pūhaki, Nehanara Te Kahu, and Te Aropeta Haeretūterangi (all representing various Ngāti Rangi hapū), and six other Māori, almost all with connections to Ngāti Rangi.[284] Tōpia Tūroa, who often opposed Te Keepa, was not there to represent Ngāti Tama. Neither was Rēnata Kawepō from Hawkes Bay present, but he sent the Government a telegraph message on 17 September 1874 warning it that Te Keepa did not have the right to hand over Murimotu.[285]

(1) *Legal representation*

Moorhouse was also there and, according to the official notes of the meeting, represented all the private leaseholders as well as the Māori attendees.[286]

Te Keepa had asked Moorhouse to act as their lawyer before the meeting, and he acted for Māori afterwards.[287] Te Keepa, Moorhouse, and Booth all later spoke about this meeting as though Moorhouse was representing only the Māori attendees. However, the position was not so clear cut.[288]

The official notes indicate that Moorhouse was in fact representing multiple clients with different interests in the

matter, which breached legal ethics.[289] Under these circumstances, we regard the Māori persons present as being without independent legal representation, although they probably did have access to legal advice. This is a nice distinction to make, but an important one. It is difficult to say for sure without a fuller picture of what happened at the meeting, but we surmise that the Māori parties present were not as badly off as they would have been if there was no one there to tell them about the law. But neither were they as well off as they would have been if they had counsel representing their interests solely.

It is possible that Moorhouse himself was wrong about the legal situation, if the private leaseholders' view of the law came from him. There is evidence to suggest that Studholme et al believed that the 1873 Native Land Act meant that private parties could not lease land. It may be that everyone who attended the meeting in Wellington – including Booth – laboured under the same misconception.

(2) *Te Keepa concerned about compliance with the law*

With maps of the blocks on the table, Te Keepa began by describing the land for lease:

> One block of 46,000 acres has been surveyed and passed through the Native Land Court. There is a block at Ruanui, containing by estimation 40,000 acres; also a block adjoining the Patea country, estimated to contain 100,000 acres, in which Topia Turoa has an interest; there is also another block containing 15,000 acres.[290]

The 46,000 acres would have been the Murimotu block; the 15,000 acres was Rangiwaea; and the 100,000 acres Rangipō–Waiū.

Te Keepa said that he was aware that leases must be within the law and, describing his earlier 'verbal agreement' with Russell, asked McLean to allow him and other 'Wanganui Natives' to lease the whole Murimotu area to Russell.[291] McLean told Te Keepa that he could lease to the Government, which would lease a part of the land to Russell and, answering a question from Te Keepa, said that Russell had agreed to this.

It was at this point that McLean – if he was concerned to ensure that the Māori parties were fully informed – might have explained the legal situation. He could have informed Māori that neither the private parties *nor* the Crown could enter into valid leases with claimants to land in the Murimotu district until the court had determined title. There is no record of Crown representatives ever telling Māori these facts. Indeed, McLean's telling the Māori parties that they could lease to the Government was not strictly correct, and neither were Te Keepa's statements that it was lawful for Māori to enter into leases with the Crown, but not with the private leaseholders.

(3) *The agreement to lease is negotiated*

The Māori representatives at the meeting stayed in Wellington several more days, during which Moorhouse, acting as their lawyer, drew up a deed of agreement to lease between McLean and the customary owners. Moorhouse negotiated clauses that protected any timber on the land, and provided for all permanent improvements to revert to Māori on expiry.[292] Te Keepa, Winiata Te Pūhaki, and Te Aropeta then negotiated the rents and reserves clauses with McLean. He agreed terms with Te Keepa and Winiata, but Te Aropeta initially rejected McLean's offer to lease land in the Murimotu block for £10 a year per thousand acres. McLean did not budge.[293]

(a) *The terms:* The agreement provided for Māori to lease the four blocks to the Government, which would then lease the land on to the pastoralists Morrin, Studholme, and others, and to Russell and Howard, who were already occupying some of the land. The term would be 21 years. The Māori parties promised to survey the four blocks; reserves were to be created; no timber was to be taken except for buildings, fences, and firewood; and rent was agreed.

But these terms were not themselves terms of a lease. The Māori parties were agreeing 'to execute good and valid leases according to the terms of this agreement of the lands the subject of these presents whenever called upon by the Government of New Zealand so to do'. That is, they undertook to enter into lease agreements in the

future. Meanwhile, they were not to mortgage or otherwise 'encumber the land' without Government consent.[294]

(b) *Payments 'sweeteners' or rent?:* The Crown also undertook to make certain payments. Strictly speaking, no rents should have been payable under this agreement, because the court had not confirmed who the owners were, and so those yet-to-be-confirmed owners had not executed leases. Nevertheless, there had been informal leasing going on for some time, and at least some of the parties that the Crown was dealing with would inevitably be named as owners. Moreover, although called an agreement to lease, this was an agreement about more than that. It reconfigured the relationships between the tangata whenua, their whenua (ancestral land), the Crown, and the private leaseholders. The Crown wanted this reconfiguration. It is very likely that its representatives saw it as necessary to create a financial incentive for the Māori parties to cooperate by paying them money up front.

The deed said:

> And Whereas on the 3rd day of September instant it was also agreed by and between the parties hereto in consideration of the faithful observance of the hereinbefore recited conditions by the Natives parties hereto, that the sum of three thousand five hundred (£3,500) pounds should be paid to the said Natives partly in payment of rent already due and the balance as rent in advance, immediately after the completed execution of this agreement.[295]

These words identify the payment as being 'in consideration of the faithful observance of the . . . conditions', which conveys the sense that the payment was not just rent: it related at least in part to the Māori parties' consenting to enter into, and abide by, the arrangement. Payments of that nature would today be identified as a 'sweetener' – a payment made to incentivise entry into the contract.

However, if that was what was going on, the agreement does not acknowledge it. It calls the payments 'rent already due' and 'rent in advance'. But what did that mean, really? Why was the Crown paying 'rent already due' when it had not been party to any leases up to this point? Apparently Moorhouse, who drafted the agreement, admitted that his clients, the Pākehā leaseholders, owed rent on land in the Murimotu district. According to Booth's account in his 'Notes of a meeting held at the Government buildings on the 2nd September 1874, re Murimotu', Moorhouse ended the meeting by suggesting

> that the first years rent now overdue from His clients to the natives, should now be paid by Government, or at any rate, that a sum of £500 be now paid to them on account of Rent for past year, on receipt of which he would suggest that the Natives should sign an agreement to lease the land on the terms now agreed to.[296]

Booth reported that, on the next day, Moorhouse said 'that his clients are indebted to the Native owners of Murimotu in the sum of £1000.0.0 for Rent due'. Māori present wanted large sums of money immediately, with Te Keepa looking to the Government to hand over £3,500 for the Murimotu land. There was talk then of Moorhouse paying over the £1,000 'immediately', with the other money that Te Keepa requested to be an advance on rent. There is no evidence as to whether Moorhouse paid the £1,000. McLean agreed to the requested advances when 'proper leases and security' were in place, and comments that he and H T Clarke, Native Department Under-Secretary, made on Booth's memo indicated that they both believed that such leases might quickly be made.[297]

In September and October 1874, the Crown made payments as follows: £500 to Te Keepa; £11 to Te Aropeta Haeretūterangi; and £10 to Wīari Tūroa.[298] It is not clear exactly to what the money related.

The discussion about payments is notable for a number of things. It seems that it was expected both that the Crown would pay money that the private leaseholders owed on their informal leases, and that it would immediately commence paying rent itself as if the leases between the Crown and Māori were already in place, or shortly would be. The implication throughout is that getting it all underway was just a matter of getting Māori to sign the leases. Nowhere is there reference to what everyone surely

knew: until the Native Land Court had confirmed who the owners were, nothing formal could happen. The fact that the document was an agreement to lease rather than a lease was itself recognition that lease agreements could not then be executed. And yet the discussion – at least as Booth recorded it – did not seem to engage with the reality that the Native Land Court process had been, and would probably continue to be, slow in declaring landowners in this district, and that formal leases could not precede its determination.

12.6.7 The Crown advances its agreement to lease

Following the Wellington meeting, the Crown quickly moved to proclaim the entire Murimotu area as off limits to private land dealing, including leases, for the duration of its agreement to lease.[299] The Immigration and Public Works Act 1874 – which had just been passed – authorised this proclamation, and the Government Native Land Purchases Act 1877 authorised a further proclamation in January 1878.[300] Precluded from dealing with parties other than the Crown, the owners had only three options: consent to lease to the Crown, sell to the Crown, or use the land themselves.[301]

(1) *Te Keepa promotes the Crown lease*

The Crown began seeking signatures to the agreement to lease – not easy, because the court had yet to confirm ownership lists for any of the land in question. In March 1875, Booth took a deed of agreement to lease about 300,000 acres along to meetings that Te Keepa called at Te Aomārama and Rānana. With Moorhouse still acting as his lawyer, and Booth outlining the Crown's position, Te Keepa explained to those assembled the events of the previous months, his role in negotiations with the Government, and his current support for a lease to the Government. He told Māori that, at the meeting in Wellington,

> I found with reference to this matter that we all both Maories and Europeans were to work only according to the law and that if I leased my lands to private individuals I could only do so in strict accordance with the law. Taking these matters into consideration and after consultation with my lawyer (Moorhouse), I determined for myself and tribe to lease only to Govt. Subject to the approval of the tribe.[302]

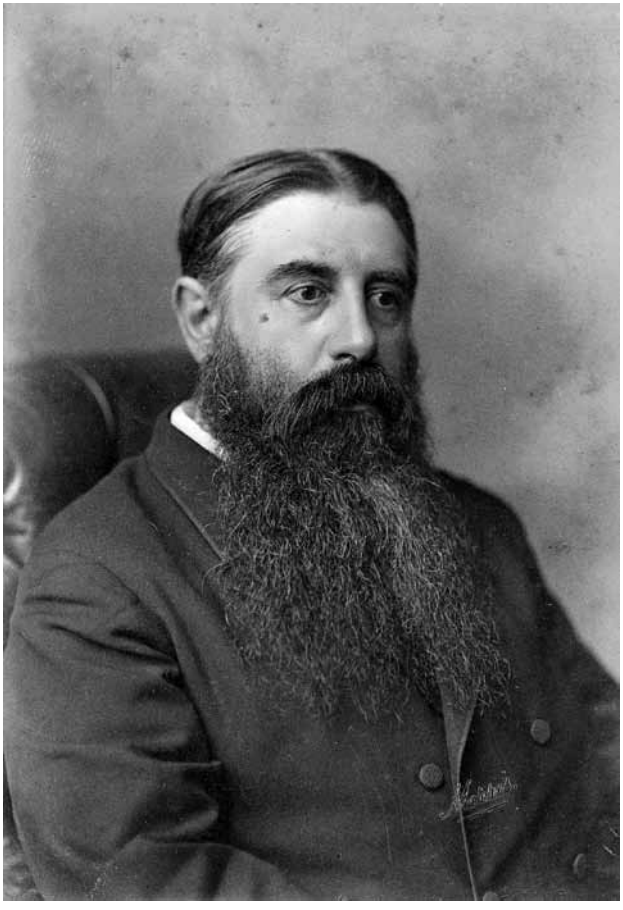
A lease to the Government, Te Keepa urged, would give both Pākehā and Māori security against losses and other difficulties in enforcing the lease terms. The lessees would spend more on improving the land, and all improvements would revert to Māori after 21 years: 'therefore the more secure the lease, and the greater the improvements in consequence, the better will it be for the owners in the long run.'[303]

(2) *Leasing opposed before title determination*

However, there was still a lot of opposition. Eventually, 106 attendees with interests in the land signed the deed of agreement to lease.[304] Tōpia Tūroa of Ngāti Tama and Hōhepa Tamamutu of Ngāti Tūwharetoa were among a number who refused to sign until title for the entire lease area had been settled and the land surveyed. Tōpia also wanted Booth to remove signatures of younger relatives who had signed without his permission; Booth replied only that the matter would 'have to go to the Government', but also that he would 'urge on the survey of the country as quickly as possible'.[305] This was not the end of the matter: further agreements to lease Rangipō–Waiū block were signed in subsequent years, as we discuss below.

(3) *Crown involvement in lease arrangements*

Leasing land from Māori, at least in the short term, was a major plank of Government policy at this time, albeit one that it was reluctant to advertise openly. By September 1874, the Government had been negotiating lease agreements with Māori for the past year over many thousands of acres, using its powers to acquire Māori land under the Immigration and Public Works Acts 1870 and 1871.[306] In July and August 1874, the Government was challenged in Parliament about whether these leases were legal. The Government justified them as a precursor to purchasing and as a means of defeating wealthy land speculators or 'land sharks', whose activities were not in the interests of settlement.[307]



Sir Julius Vogel, premier from 1873 to 1875 and again in 1876. Vogel was the architect of an ambitious plan to reinvigorate the colonial economy by rapidly developing road, rail, and telegraph services and by attracting new immigrants. A crucial part of this plan was the large-scale purchasing of Māori land for the expected influx of new settlers.

To rectify any irregularities in its leasing agreements, the Government passed an amending Act in 1874. On 14 August, Vogel told the House that an amendment was necessary because:

> The House was aware that, in acquiring lands from the Natives, it was sometimes first necessary to obtain a lease; but it occasionally happened that although the Natives granted a lease, they disposed of the land to other parties, in entire opposition to the agreement. The clause [s 3] therefore declared that, when the Natives have shown their willingness to part with their land by leasing it, there shall be no interference from parties outside, who might attempt to upset the lease. After the lease had been obtained, the Governor had a pre-emptive right to purchase the land whenever the Natives felt disposed to sell.[308]

There was criticism in Parliament that these leases would entrap Māori into sale, but Vogel maintained that the Bill did not compel Māori to sell, and ensured that Māori followed through on arrangements they had signed with the Government.[309] The amendment Act was passed on 31 August 1874, just before the meeting in Wellington with Whanganui Māori.

McLean left no record of why he pursued a lease of Murimotu for the Crown. But later, in 1882, several commentators gave their opinion that he wanted to stop the tension between the various groups of owners caused by their competing efforts to lease land.[310] There could well have been some truth in this. Private parties were seeking informal leases, and tangata whenua were disputing who had rights to lease what land.

On the other hand, an anonymous memorandum in Government papers, written some time after 1875, suggested that really, it was a case of using leasing as a pathway to purchase. The memorandum said that McLean came to the conclusion that

> the readiest, and cheapest way, to acquire the land for the Government (and thus open the way to getting more) was by offering a compromise with the parties who had been in negotiation, and who could throw a great deal of obstruction in the way of the government getting it.[311]

In general, the Crown's preference for purchase over lease led it to break through antipathy to land sales by locating a few willing sellers and then proclaiming the block, preventing the other owners from leasing or selling to private parties. Why did it not do this here? It is unlikely that there were no willing sellers, given the number of

owners. It was probably more a case of the Crown treading cautiously. These Māori had chosen to lease informally. If the Crown had moved to cut across that preference in these years after the New Zealand Wars, in an area where there was already conflict over land interests, hostility might have resulted. The Kīngitanga was still in exile in what amounted to an independent state in the nearby Rohe Pōtae (King Country). Both Government- and Kīngitanga-allied iwi claimed the Murimotu district, and the Government would not have wanted to do anything to unite them against the Crown. It might also have wanted to avoid displeasing the Pākehā leaseholders, two of whom were sitting members of the House of Representatives, and all of whom had influential connections. Finally, the Crown might consciously have positioned itself as broker of the lease in order to secure a central and strategic role in the area. As it turned out, this worked to its benefit.

12.6.8 Ruanui and Rangiwaea

Although the agreements to lease were supposed to give benefits to Māori in the form of secure leases and incomes, this did not really eventuate, partly because the blocks did not have confirmed title, and partly because there was no legal mechanism to enforce the Crown's subleasing arrangements. By the time title was confirmed, differing understandings of earlier agreements had begun to emerge.

In 1877, the Native Land Court awarded the Ruanui block to four hapū descended from the ancestor Rangituhia: Ngāti Parenga, Ngāti Piua, Ngāti Te Paku, and Ngāti Hikawai.[312] Its owners then entered into a new lease with James Russell, even though some of them had signed the agreement to lease to the Goverment.[313] Officials would not let Russell register his lease due to the previous agreements with the Government, but as far as we can tell the Government took no steps to sign a lease with Māori and sub-lease to Russell, as the 1874 agreement envisaged.[314] Russell carried on with his informal lease and went into partnership with one of Studholme's sons, Joseph Studholme. In 1894, the proclamation restricting private dealings was briefly lifted and Studholme quickly registered a lease of 9,000 acres of Ruanui. This lease expired in about 1915. Most of Ruanui was sold in the twentieth century.[315]

It is also unclear what happened to the Crown's agreement to lease as it related to Rangiwaea. It seems that, as with Ruanui, the Government lost interest.[316]

12.6.9 Conflict over Rangipō–Waiū

In the late 1870s and early 1880s, the Crown survey of the Rangipō–Waiū block precipitated conflict between groups of Māori with traditional interests in the area, and also between some of those groups and the Crown and its leaseholders. Although Rangipō–Waiū is not in our inquiry district, we discuss these events because they cast light on the Crown's conduct in the area, and they involved Whanganui chiefs.

One of the most sought-after areas in the Murimotu region was the 98,000-acre Rangipō–Waiū block, east of the Murimotu block (split between the Tribunal's National Park and Taihape inquiry districts). Ngāti Rangi claimed its western flank; Ngāti Tama and Ngāti Whiti, Ngāti Kahungunu, and Ngāti Hinemanu its eastern flank; while Ngāti Waewae claimed interests in the north. It did not come before the land court until 1881. Before then, squatters were paying Tōpia Tūroa large sums of rent and grass money, sometimes in secret. In this area, he acted on behalf of his mother's people, who included Ngāti Tama. Land Purchase Agent Charles Nelson alleged in his report to the Under-Secretary of the Native Land Purchase Department that Tōpia did not always distribute the rent money to Ngāti Tama.[317]

Although some Ngāti Tama signed the 5 September 1874 agreement to lease to the Government, they later desired separate agreements. The Government signed an agreement dated 27 July 1875, which was superceded by a second agreement on 10 March 1877. Tōpia Tūroa signed them both.[318] Tōpia then arranged a private lease of Rangipō–Waiū in 1877 with Morrin and Studholme, but Booth blocked it on the grounds that the land was already included in the September 1874 agreement to lease to the Government.[319] As Bayley noted, Morrin and Studholme's

involvement 'indicates a considerable degree of confusion on behalf of the Pākehā private parties' about the lease agreement with the Government.[320] We think it likely that the Māori parties were at least as uncertain.

(1) *Te Keepa opposes the survey of Rangipō–Waiū*

The survey of Rangipō–Waiū began in 1877, in preparation for its passage through the land court.[321] Te Keepa and Tōpia began to argue over who would direct the survey, stalling its progress.[322] In 1879, Tōpia and others of Ngāti Tama agreed to a survey, and Native Minister John Bryce asked Te Keepa to assist in his capacity as a paid assistant land purchase officer. Te Keepa reacted angrily, and led a group of armed men to occupy the Waipuna run that Studholme, Morrin, and Thomas Russell leased.[323]

There were a number of factors that might have turned Te Keepa against the survey of Rangipō–Waiū. He might have felt his mana slighted when the Crown worked closely with Tōpia on the survey. Te Keepa was after all a longstanding ally of the Crown, whereas Tōpia fought against it until 1869.[324] Te Keepa also claimed that the Crown had misinformed him about a number of things. He had been led to believe that the survey was going to confirm the tribal boundary that he said was 'fixed' at the Kōkako hui in 1860,[325] but the Rangipō–Waiū survey threatened to extend the Ngāti Tama boundary further into Ngāti Rangi-claimed territory.[326] He might have seen the 1874 agreement to lease as officially recognising his rights in Rangipō–Waiū, and he might therefore have expected to be in charge of the survey.

(2) *Resistance spreads*

Over the summer of 1879–1880, Te Keepa and others led attacks on the property of surveyors and pastoralists, not only in Rangipō–Waiū but in the Murimotu block as well. The antagonism seems to have been directed primarily against Tōpia Tūroa, Ngāti Tama, and the Crown, and to a lesser extent against the Pākehā involved in the lease agreements. Edward McDonnell, who at various times had been an agent for both the Crown and for the leaseholders, was a particular target.[327]

Te Aropeta Haeretūterangi's group of Ngāti Rangi stopped the shearing at Karioi station in the Murimotu block late in 1879. Early the next year, Te Keepa's Ngāti Rangi and other supporters closed roads, and destroyed trig stations (symbols of survey) and a bridge. Te Keepa threatened to drive sheep belonging to other Māori and pastoralists off Rangipō–Waiū, and might actually have done so.[328] Another faction of Ngāti Rangi seem to have been opposed to the attacks, or at least wanted to minimise them.[329] In March, Te Aropeta and Te Keepa joined together to drive sheep off the Murimotu block, but young Ngāti Rangi chief Tinirau Te Riaki opposed them, saying that the trouble should be confined to Rangipō–Waiū.[330]

In March 1880, Te Keepa and his supporters built and manned a pā at Auahitōtara, a kāinga on the Rangipō–Waiū block that Ngāti Rangi claimed was theirs. Eighty armed men from Ngāti Ruakā later joined them. Te Keepa was reported as having as many as 400 men. The pā was a few miles from Waiū where his opponents, Ngāti Whiti and others, were also entrenched. Tūwharetoa chiefs attempted to make peace, but Te Keepa told them he had been robbed of his land. When he got it back, he said, he would go on to win back all the land that his people had sold on the Whanganui River. He was dismissed from his Government post early in March, but Woon reported that this had no effect on him.[331]

Te Keepa was now threatening to get his people to boycott future sittings of the Native Land Court. There was no actual fighting, however, and in late April Bryce agreed to halt the survey. By this time the survey of Rangipō–Waiū, while incomplete, was sufficiently advanced for the court hearing.[332] Te Keepa announced that the traditional owners should use the court to settle the boundary dispute. Tensions abated, and he sent some of his allies home.[333] It is not clear why Te Keepa now wanted to end the dispute. Perhaps he now thought that the court would recognise his people as the owners of Rangipō–Waiū.

(3) *Te Keepa establishes the Whanganui Lands Trust*

Around this time, Te Keepa set up the Whanganui Lands Trust, often known as Kemp's Trust. Lawyers Sievwright

and Stout supported and assisted him in this work. We explained previously how the purpose of the trust was to manage Māori land in Whanganui with a view to keeping it in Māori ownership, while also encouraging land development and close European settlement. The trust enjoyed significant support from Māori, but was ultimately unsuccessful because the laws of the day did not support such objectives for Māori land. In particular, there was no scope to restrain individual shareholders in Māori land from dealing atomistically with their shares without regard for the collective. Most Pākehā politicians opposed the trust, resenting its interference with land purchasing; and other iwi opposed it too, probably suspecting that Te Keepa would use the trust to advance Whanganui and Ngāti Rangi interests, especially in the wider Murimotu area.[334] People also objected when Te Keepa sought to use Murimotu rent money to pay the trust's legal bills, and this was a factor in the trust's decline.[335] (See also chapter 10.)

(4) *Disputes about rent*

Te Keepa and others were meanwhile involved in conflicts over rental payments that they claimed were owed for ongoing use of land in the Murimotu district. The Government paid owners rent in advance, but at the same time Studholme and others were also paying them rent under informal leases. The private lessees sometimes paid Māori directly, and sometimes through Booth. In early 1881, it emerged that Booth was holding on to some of the money, pending the court's determination of ownership. However, he had no authority to do this. Officials reprimanded him, and told him the Public Trustee should hold the money.[336] Te Keepa, Pāora Tūtāwha, and Hiraka Te Rango all complained that they had not received rent money, and that some of it had been paid out in secret to a handful of owners.[337] Te Keepa threatened to drive stock off the land if he did not receive what he was owed, and early in 1881 he impounded wool and stock from Murimotu and Rangipō–Waiū, demanding £12,000 in back rent. The pastoralists agreed that rent was owed, but they had rented Rangipō–Waiū from Tōpia and Ngāti Tama, not from Te Keepa and Ngāti Rangi.[338] The next summer it was Tōpia impounding the wool, in protest at the rent backlog and the Rangipō–Waiū determination of title, which he considered had not fully recognised Ngāti Tama rights. He relented after Bryce promised to investigate the back rent issue.[339]

In May 1883, Te Keepa's lawyer William Sievwright sued Morrin and Studholme for £3,276 in unpaid rent, on behalf of Te Keepa's Trust. The Supreme Court found for the leaseholders.[340] We do not know why. It might have determined either that the pre-title leases were unenforceable, or that the trust lacked standing in the case because it was not an owner in the leased land.

The problem was that as the land did not have an official title, the Crown had not carried through its agreements to lease the land formally from Māori and sub-lease to Studholme and Company. Informal arrangements had continued, but now with an added complication: Te Keepa believed he should get a share of the rent, and Booth was acting as a middleman, holding rent but not releasing it.[341]

12.6.10 The Crown moves from lease to purchase

Rangipō–Waiū came before the Native Land Court in 1881. It awarded the northern part (in the National Park inquiry district) to Ngāti Waewae, and the rest (in the Taihape inquiry district), equally and undivided, to Ngāti Rangituhia and Ngāti Tama. The Murimotu block was also finally settled, with partition and lists of owners determined in May 1882.[342] Official lists of owners enabled Crown officials to begin negotiating actual leases for the blocks. The Government drew up and circulated seven leases: three in Rangipō–Waiū, and four in Murimotu. Some 129,000 acres eventually came under Crown lease. The leases took several years to be signed, before the Native Land Court formalised them in 1884. They were then backdated by some years. Leases in Rangipō–Waiū ran from May 1881, and those in Murimotu from August 1882. The rents amounted to £1,655 per annum.[343]

By August 1882, 36 of the 42 Ngāti Waewae owners and 45 of the 50 Ngāti Rangituhia owners had signed the lease for the Rangipō–Waiū block, and 98 of the 170 Ngāti Rangi owners had signed the lease for the Murimotu block. Led by Tōpia, many Ngāti Tama owners were refusing to sign, protesting the land court's ruling, which did

not properly recognise what they saw as their superior claim to Rangipō–Waiū.[344]

The next month, on 15 September 1882, the Government passed special legislation: the Rangipo–Murimotu Agreement Validation Act, which gave effect to the March 1874 agreement with Studholme and Company on the two blocks. Eight years after doing the deal in Wellington, the Government seemed to regret ever signing the agreements to lease. Nevertheless, it put through legislation to support the agreement because it had started gathering signatures for the leases.[345]

(1) *The Crown pressures Māori to sign the leases*

In late 1882, the Crown set about the process of getting Māori to sign actual leases, following which it would sublease to the Pākehā runholders. According to the evidence of historian Marian Horan, the situation on the ground up to this point was that in fact the runholders had continued to manage the lease arrangements.[346]

The Crown wanted to ascertain the position as to rents, making sure that they had all been paid – right back to the period before the 1870s, when the arrangements were all informal. This was not just a case of ensuring that all amounts owing were paid. The Native Land Court had yet to confirm the Crown's leases. It is likely that the Crown's main motive for establishing exactly who among the Māori owners had received payments after signing the agreements to lease in the 1870s was its plan to persuade the court that all those who had received payments should be deemed to have agreed to the new leases, whether they had actually agreed or not.

Investigations of the accounts complete, Bryce held two meetings. The first was with runholders on 7 December 1882, when no Māori were present. Everyone at that meeting agreed that, if Māori 'had not compromised themselves by the taking of money' when the agreements to lease were signed, 'the Crown could not claim any right to include their share in the Crowns Block'. On the other hand, if Māori had taken money, the Crown would claim that their interest was included in any lease block.[347] Bryce was to tell Māori this at a meeting in Taupō on 12 December. There is no evidence of what happened at that meeting, but Horan concluded that Richard Gill, the under-secretary of the Native Land Purchase Department, appears to have put pressure on Māori by making the payment of some of the back rents conditional on their signing the new leases. At least, this was what some Māori complained to Bryce about. The evidence does not show how the situation was resolved, but by 1884 most owners had signed the new leases.[348]

The Crown went to the Native Land Court in 1884, asking it to determine the Crown's leasehold interests and cut out the interests of those who had not signed. Gill argued for the Crown that six of the owners who had refused to sign the leases for Rangipō–Waiū had earlier signed the 1877 agreement to lease, and were therefore bound to sign the new lease – even though, as Gill conceded, the six had received no rent. The following day, after consulting the chief judge, the court decided that the Crown had acquired 'an equitable right' that bound those who had signed the earlier agreements to the new leases.[349] After further argument about the location of the land for those who were accepted as non-leasers, the Native Land Court cut out their interests from the parent blocks.[350]

There do not seem to have been any reserves for the lessors, even though this was something that McLean agreed to in 1874.

(2) *A 'favourable opportunity' to commence purchase*

In November 1884, Gill told the new Native Minister, John Ballance, that there was a 'favourable opportunity now offers to commence the purchase of the Rangipo Murimotu blocks'.[351] Dr Bayley identified for us the nature of this opportunity:

> Put simply, money was available for certain land purchases, the blocks were within those boundaries, the Government had lost money on these blocks before but now they were affordable, therefore purchasing seemed a solid opportunity to be pursued.[352]

The new Government's legislation (the Native Land Alienation Restriction Act 1884) had recently been enacted, restricting private purchasing across a large

area of the central North Island. This area included the Murimotu region, although proclamations issued under the 1874 and 1877 Acts had already imposed restrictions of this nature. Much of the land was located near the future railway, which made it even more valuable to the Crown.

Indeed, as it bought up the Māori owners' land interests, the Crown also gained the rentals that they had derived from the sub-leases with private parties. As long as the rentals covered the price of the land, the Crown's purchases in the area would be self-funding – especially likely since it was paying Māori owners relatively low prices. It proceeded to exploit this position by excluding private parties and persuading Māori to sell.[353] At this time, the leases still had between 17 and 18 years to run.

Perhaps also precipitating the Crown's move towards purchasing was the announcement by Nika Waiata of Ngāti Rangituhia and 15 others that they were willing to sell their interests in Rangipō–Waiū and Rangipō–Waiū 2.[354] Nika was a high-ranking relative of Winiata Te Pūhaki, a regular land seller, and opponent of Te Keepa.[355] Gill suggested that a 'fair price' for the Murimotu, Rangipō–Waiū, and Rangipō–Waiū 2 blocks would be six shillings an acre.[356] At this price, Gill calculated that the blocks' 129,148 acres would cost the Crown a bit over £35,000. The blocks were earning £1,654 a year in rents that would continue to be paid for the term of the leases. These receipts would largely fund the purchase.[357]

(3) *The Crown pays low prices for the land*

In February 1885, Gill instructed Thomas McDonnell to begin purchasing interests, telling him to pay three shillings an acre for the Murimotu block – half the 'fair price' he had suggested the previous year – and 3s 6d an acre for Rangipō–Waiū.[358]

Early in 1893, shortly after the Rangiwaea block went through the court, several owners offered the Crown their interests there, including Nika Waiata, who asked for an advance in order to put other land through the court.[359] Another offer came from S H Manson, who was married to owner Hohe Mātene. Manson wrote that he and his wife were prepared to sell to the Government at 12 shillings an acre, even though they 'think the land is well worth 20/- and we could get that price if we were allowed to sell to other than the Government'.[360] He added that he was 'well aware of the injustice on the part of the government, but we are at your mercy'.[361] But the surveyor general settled on an average price of five shillings an acre, which 'would allow our selling it at a profit'.[362] In February 1894, Hēnare Haeretūterangi wrote to the Native Minister saying that five shillings was too little: 'this land is better and richer than the Awarua block for which the Government paid a pound per acre, there is but a small portion of it that is not rich land, there is no better land in New Zealand'.[363] Crown land officer Patrick Sheridan told the Minister of Lands that the Crown's price was already 'on the whole rather high'.[364]

Dr Bayley told us that there is little evidence on how sales were conducted or why Māori chose to sell their interests. He highlighted one instance of a man who 'was too ill to be able to control his hand to write his name', yet consented to sell his land.[365] By the end of 1886, the Crown had bought over half of Murimotu 2, including part of the route for the main trunk rail line – 'land that the Crown had argued would be valuable in the future because of the railway'. Why would Māori have chosen to sell this land when they held on to the land closest to the railway in Murimotu 3 for much longer?[366] We do not know. However, it is worth noting that the purchase of the Murimotu block took place during the period when land purchase officers began the practice of approaching one by one the individuals on the owners' list, rather than canvassing purchase with the whole community.

In June 1896, the Native Land Court issued orders granting the Crown a total of 21,897 acres in various parts of the Rangiwaea block, and by May 1899 it had purchased another 6,406 acres there.[367] The following year, the court issued orders granting the Crown 77,866 acres in three Rangipō–Waiū blocks, and 29,939 acres in Murimotu blocks 2 to 5.[368]

12.6.11 Our conclusions on these events

Several tribal rohe (territories) intersect in the Murimotu district, and Māori contested interests there well before the signing of the Treaty of Waitangi. Once the Crown

introduced systems to transform customary title, tangata whenua engaged with those systems to resolve the conflicts about ownership of Murimotu.

The Crown negotiated its agreement to lease with the private leaseholders. Then the small group of rangatira who attended the Wellington meeting were presented with a difficult choice. It was evident that the private leaseholders had retreated from making private arrangements to leave the field open for the Crown. The Māori parties were also ill-equipped to take issue with the Crown's position, lacking legal expertise or strictly independent legal advice. Key rangatira were absent: the Crown knew that Tōpia Tūroa had claims in the Murimotu district, yet proceeded without him.

Many with interests in the land preferred, quite reasonably, to wait until title and boundaries were determined before signing any lease. Others, including Te Keepa, were not prepared to wait, probably preferring to activate an income flow sooner rather than later. In retrospect, it is plain that waiting would have been the better option. There seems to have been genuine confusion about what the legal situation was as regards leasing. Broadly, it seems that the Crown's capacity to deal definitively with the land before the court determined title was less than everybody seemed to suppose, and the situation of the private leaseholders was not so different from the Crown's, in that neither could enter into binding contracts concerning the land until the court determined the owners and their relative interests. The evidence is too equivocal to enable us to conclude that the Crown deliberately misled the Māori parties to its agreement to lease.

The Crown's conduct was complicated and confusing. It did not do what the agreement to lease gave the Māori parties to believe. The murky informal situation continued, rather than the straightforward leases with the Crown that guaranteed rentals. There were heightened expectations about customary interests in land that had yet to go before the court, and confusion about the whole rent situation: who should receive payments, and who should pay.

It is likely that, if the private leaseholders had persisted with their informal arrangements without Crown intervention, problems about who had rights in the land would have persisted until title was determined. But the Crown's interposition of itself as middleman through its agreement to lease of 1874 did not give certainty to anybody. It did not get on and negotiate leases with the Māori interest-holders in many places, so that they remained dependent on the informal leases with private parties if they wanted an income from rent. When it did enter into sub-leases with the private parties, it appears that neither the Māori concerned nor the private parties had much clarity about the situation. Private parties continued to deal directly with Māori, and when the Crown received money from sub-lessees, it did not know to which Māori interest-holders to pay it. Probably only an expedited court process that settled the question of who had rights where would have calmed the situation quickly.

We do not know whether Māori knew that it would be legal for them to deal directly with the private leaseholders once title was determined, but a significant number did articulate their preference to await the outcome of the court's process before deciding on a course of action. We have speculated about the possible reasons why others preferred to press on to lease their land immediately, before the court determined ownership. There were many factors they had to juggle: the possible length of the court process; the uncertainty of the outcome of that process, in which interests might be confirmed or rejected; the need for money sooner rather than later, and the likelihood that the Crown could be relied on to pay; the expectation or at least hope that the Crown's involvement would take uncertainty out of the situation, and lessen tensions. The combination of these considerations – together with a couple of coercive interventions by the Crown – seemed to dispose most to accede to the sub-leasing situation that the agreement to lease of 1874 envisaged. Many would have been disappointed, though, when the muddle continued, and the Crown lost interest in pursuing sub-leases in several parts of the district.

In these circumstances, the Crown should not have proceeded before there was a definitive list of owners for the land in question. Only interest-holders who gave explicit, informed consent to the agreement to lease should have been bound by it. It was wrong of the Crown to use its

authority to ride roughshod over interest-holders' preferences to impose on them an arrangement that suited the Crown but was not acceptable to many of them. In fact we do not know, and it is difficult now to assess, how many of those affected did not want to be party to the agreement to lease, but any who did not should just have been excluded.

The Crown justified its actions by pointing to the inter-Māori conflict over the land, but at least some of it – impossible to know for certain how much – stemmed from what the Crown was doing. It might well be that, by driving through the agreement to lease before the land had been through the court, it exacerbated tensions rather than quelled them.

The various leases were actually short lived. While they still had many years to run, Crown agents set about purchasing most of the Murimotu region, deploying their usual tactic of targeting individual owners one by one. It also used proclamations to hamstring owners' dealings with their land.

Through the device of the agreement to lease, the Crown put itself front and centre in land dealings in the Murimotu region. Then proclamations further hampered the ability of tangata whenua to do business with private parties. This combination ensured the Crown's primacy as the buyer of Māori land.

12.7 Restricting Land from Alienation

Having outlined some of the main aspects of Crown purchasing practices we now turn to consider to what extent the Crown assisted Māori to retain land through the use of restrictions on alienation, and the process for creating reserves for Māori.

The claimants submitted that, although the Crown took steps to restrict the alienation of Whanganui Māori land, they 'all proved largely ineffective'. The Crown made it progressively easier for potential purchasers, especially itself, to get around restrictions.[369]

The Crown acknowledged that large areas of Whanganui Māori land were alienated by 1900, but submitted that it does not follow that the restrictions on alienation were inadequate. That would be 'too simplistic', and would not take into account the purpose and scope of the alienation, and Māori agency in the sale process.[370] According to the Crown, the 'ability to alienate land is a fundamental right of ownership' and one inherent in the rights guaranteed to Māori under article 3 of the Treaty. Many Māori opposed restrictions on their right to deal freely in their own lands, and the ability to alienate was important in terms of land development and its financing.[371]

12.7.1 Alienation restrictions in Whanganui

The Native Lands Act 1865 allowed the court to recommend alienation restrictions to the Governor, and then in 1880 gave it power to impose restrictions itself. After this, however, successive legislative amendments made it ever easier to remove alienation restrictions.

Only a small proportion of blocks that passed through the Whanganui Native Land Court in the late nineteenth century were declared inalienable. In many cases, those restrictions were later removed and the land sold.[372]

Not counting reserves from the 1848 purchase, at least 26 blocks comprising nearly a quarter of a million acres had bans on alienation placed on their titles between 1865 and 1900.[373] On average, the restrictions lasted 18 years.[374] Although any sale of these blocks was theoretically prohibited, 12 of the 27 were at least partially alienated by 1900, and a further nine by 1921.[375] About 40 per cent of the 'inalienable' land was thus still in Māori hands at the end of the nineteenth century – a figure actually only marginally higher than that for all Māori land in the district for this period.[376]

(1) *How restrictions were imposed and lifted*

Both the Governor and the court placed restrictions on titles, seemingly only when asked to do so by the owners.[377] The restrictions specified that owners could not sell, mortgage, or lease for a term of more than 21 years without the assent of the Governor. Alienations to the Crown were thus also caught. However, owners had only to ask and the court would remove the restriction from the title, unless it considered that those owners did not retain sufficient land elsewhere. Under the Native Land Act 1873, 'sufficient' was defined as 50 acres per person. In a number of

cases, however, the court removed restrictions even after hearing that the owners did not have this much land.[378] If owners had already received purchase money for the land in question, the court could not really decline their request to lift the restriction if they could not repay it.[379]

Owners were often divided over whether to remove restrictions, and in those cases the court almost always removed them. Judge Heale observed in 1879 that the restriction system was 'demonstrated to be quite useless' since the consent of the governor in council 'has always . . . been obtained' when an owner wanted to sell.[380]

(2) *The sale of 'inalienable' blocks*

By acreage, about 65 per cent of the land that Māori intended would be inalienable was in the Taumatamāhoe block. When the 155,300-acre block came before the Native Land Court in 1886 for investigation of title, the court declared it inalienable other than by way of lease not exceeding 21 years, except with the assent of the Governor.[381] The owners almost certainly requested this restriction, but there seems to have been some disagreement about whether the block was a permanent reserve for the owners and their heirs, or whether the restriction was a temporary measure while the block was divided between hapū.[382] In any case, a *Gazette* notice lifting the restriction was published in June 1886, less than four months after the certificate of title was issued.[383] This was done pursuant to section 16 of the Native Land Laws Amendment Act 1883, which stated that restrictions on alienation could be removed 60 days after notice was given in the *Gazette* and *Kahiti*.

Three years after the restrictions were lifted, the Crown began purchasing land in Taumatamāhoe. Over the next few years, various owners wrote to and petitioned the Native Minister, asking why the Crown was purchasing land that was inalienable.[384] In March 1889, for instance, Te Rangihuatau – who earlier instigated the block's title determination – wrote to the Native Minister asking:

> why or for what reason it is that you did not let me know that Taumatamahoe throughout its boundaries has been opened for sale. I am very pouri [upset]. Had you informed me I would not have felt as I do, because Matewhitu and myself were the chiefs who effected the hearing of the Waimarino and Taumatamahoe Blocks. I am very pouri to hear of this 'mate' [calamity]. I was under the impression that we have had enough [Crown purchasing] in Waimarino, as Taumatamahoe was given to be understood before the court as land to be reserved for the benefit of the future Maori race.[385]

In chapter 13, we look into Te Rangihuatau's motives for initiating the Waimarino purchase – and his understanding that Taumatamāhoe would be reserved.

Even those who believed that the restriction on alienation was supposed to be only temporary opposed the Crown buying up land interests there, because the block had not yet been subdivided.[386] It is hard to see why the court would have seen fit to lift the restriction before hapū interests had crystallised. If owners requested it, the evidence is now lost. The majority of owners clearly did not want restriction removed when it was. By 1900, the Crown had bought nearly 80 per cent of the block.[387]

In at least one case, the Crown appears to have purchased interests in blocks that were still under restriction. Four subdivisions of the Ōhura South block were declared inalienable in 1892, but by 1898 they were opened for sale.[388] By 1900, nearly two-thirds of the block had passed out of Māori ownership, 80 per cent had gone by 1920.[389]

(3) *The effect of alienation restrictions*

Overall, restrictions on alienation appear to have slowed but not stopped alienation. Between 1865 and 1900, a total of 27 blocks comprising 252,893 acres had restrictions placed on them barring alienation to both the Crown and private parties. By the end of 1890, only 3,396 acres, or 1.3 per cent, had been sold, from five of the 27 blocks.[390] By comparison, 45 per cent of all land in Whanganui Māori ownership in 1870 was alienated by 1890.[391]

During the 1890s, however, sale of Māori land with alienation restrictions on the title accelerated dramatically. Of the 249,497 acres of land which had been restricted, 69 per cent of the restricted land, or 172,479 acres, was sold, most of it in the Taumatamāhoe and Maraekōwhai blocks. Even excluding those two blocks, however, more formerly

restricted land (3,883 acres) was sold in the 1890s than in the previous two decades.[392] By comparison, only 18.5 per cent of all land in Māori ownership in 1870 was sold in the 1890s.[393] These figures show that in this decade, formerly restricted lands comprised nearly half the acreage of Whanganui Māori land sold.

It is from these statistics that we infer that while restrictions initially preserved Māori land from alienation, once the Crown had bought most of the good land, pressure went on the supposedly inalienable land, and it was inalienable no longer.

12.7.2 Reserves

Here we consider the Crown's approach to reserving land for Māori in Whanganui in the later nineteenth century. We note that in many instances land described loosely as reserve carried no particular legal status. Rather, it was simply land reserved from – in the sense of kept out of – Crown purchases, so that Māori retained it. In the words of Commissioner of Native Reserves Charles Heaphy, land like this was 'clothed with no responsibility on the part of the Crown'.[394] We consider below whether this characterisation was consistent with the Crown's stated intentions.

(1) *The Crown's approach to reserves in the late 1800s*

In 1871, McLean indicated the Crown's approach when he told Crown agents looking at land between the Mangawhero and Whangaehu Rivers to identify how many acres would be required for reserves.[395] Crown policy seemed to be moving towards reserving land for Māori ahead of purchase, as the Native Land Act 1873 then introduced a new and potentially powerful mechanism to ensure that Māori held on to land. This Act required the Crown to appoint district officers who, with the aid of 'the most reliable chiefs of the district', would estimate and record the acreage each iwi still owned, as well as any reserves already made. The officer would then set aside at least 50 acres for every Māori man, woman, and child in the district. These areas would be surveyed, title to them would be determined, and they would be gazetted. They would be inalienable by sale, lease, or mortgage, except with the consent of the governor in council.[396]

Donald McLean explained that this law responded to the need to

> settle upon the Natives themselves, in the first instance, a certain sufficient quantity of land which would be a permanent home for them, on which they would feel safe and secure against subsequent changes or removal; land, in fact, to be held as an ancestral patrimony, accessible for occupation to the different hapus of the tribe: to give them places which they could not dispose of, and upon which they would settle down and live peaceably side by side with the Europeans.[397]

This was novel, in that it looked to secure land for Māori 'in the first instance' – that is before any process of buying up their land commenced.

It was in this period – the 1870s, when the Crown was taking up the purchase of land in the district again, and the Repudiation movement was getting underway – that Māori for the first time contemplated the awful possibility that they might end up without enough land. Woon observed in 1874:

> The land question has again become of paramount importance to the Native mind, and agitates and perplexes them in an inordinate manner. Owing to the enhanced value of lands in these districts, in consequence of the extension of European settlement and Government expenditure, and an increased demand resulting therefrom for further acquisition of territory, either by purchase or lease, the Natives are becoming every day more alive to the value and importance of their landed estates, and an evident anxiety exists as to how they can best administer the same, so that they may secure in perpetuity a large portion of their landed property for the benefit of themselves and their descendants.[398]

And again in 1875, Woon reported the wish of Whanganui Māori to 'make provision for future generations, by securing an ample portion of the Maori lands as an inheritance for their children'. He urged the Government to 'take care that ample provision is made for the Native population in this respect, and a paternal regard shown for their interests by setting apart large

reserves out of purchased blocks as an estate in perpetuity for the Maori race.'[399]

McLean also entirely grasped these points: land sales posed no risk to Māori as long as 'sufficient inalienable reserves are made for their support, and this should always be a fundamental part of a system.'[400]

(2) *Purchase agent as district officer*

Despite the noted concerns of Māori, officials, and politicians alike, the Crown did little to ensure they were addressed. Instead, it was left to the Crown's purchase officer, James Booth, to implement the provisions of the 1873 Act. Booth was appointed as the district officer charged with planning and monitoring the amount of land to be left in Māori ownership.[401]

In 1875, Booth stated that 'In all cases in which blocks of land have been offered for sale, care has been taken that the proper reserves, in accordance with the requirements of the Native Land Act, 1873, should be made.' According to Booth, the making of reserves under the Act was accepted by Māori as a good reason to sell to the Crown rather than private purchasers for a higher price.[402] However, in 1877, Booth reported that in the past three years, the Crown set aside just 1,732 acres as reserves – under 3 per cent of the 59,237 acres he reported that the Crown had purchased in that period.[403] The 1,583-acre reserve from the Rētāruke block comprised most of the 1,732 acres – and when the Rētāruke block purchase was completed in 1881, the reserve was reduced to 785 acres.[404] Moreover, all of these were reserves from Crown purchases; no reserves were created under the provisions of the Native Land Act 1873.[405] As such, there was 'nothing to prevent them [Māori], on receiving their certificates of title, from disposing of this property to the highest bidder.'[406]

According to Booth, the reason why so few reserves were being set aside in the Whanganui district under the 1873 Act was because for the most part Māori refused to have their land designated as such when they took land through the court. Booth claimed that 'in cases where the Government has not direct interest in way of advances or otherwise, the Natives are jealous of interference, and prefer to manage their property independently of Government aid, if possible.'[407] And so, in most of the blocks that the Crown purchased, there were no reserves.

As the Crown's purchase officer, Booth's primary motive was in securing the best land for the Crown, not to convince Māori to keep it. It was Booth who offered Māori incentives such as advance payments to get them to sell.

The district officers varied markedly in their application of the 1873 Act and their success in creating reserves under it, but by the late 1870s the district officer scheme was becoming a dead letter.[408] Legislation passed in 1877 and 1878 enabled the Crown to set aside reserves out of purchases it had made, but there was no requirement for an assessment of Māori landholdings before purchasing.[409]

In 1879, a private agent wrote to the Native Minister to persuade him to lift the proclamation prohibiting private purchasing on the Rangitatau block. One of his arguments was that the buyers, in negotiating to buy a block of 41,676 acres, had agreed to set aside 18,000 acres as reserves for owners. This, he said, was

> a proof that the true interests of this section of the Maori race have not been overlooked or forgotten, and the action of the persons concerned in it will in this respect bear a very favourable comparison with that of the Crown Agents in this district who apparently are activated more by the desire to acquire unlimited territory for the Government than to carefully attend to the important duty of making ample reserves within the blocks purchased by them.[410]

The evidence about Crown agents in Whanganui bears out this description.

Some officials such as Woon continued to see the Government as responsible for protecting Whanganui Māori against land loss.[411] In 1879, Woon warned the Government that 'it will yet become the duty of the Government to step in and prevent many [Whanganui Māori] from parting with every inch of soil, and thus becoming paupers and a burden to the country.'[412] Into the 1890s, Crown officials continued to caution against allowing Māori to render themselves landless by selling too much land.[413]

Despite such warnings, the Crown made very few

further reserves of any kind in Whanganui in the remainder of the nineteenth century, as detailed below.

(3) *The Crown is unwilling to make the wanted reserves*

In 1879, the Ngā Paerangi owners of the 16,547-acre Tokomaru block asked for a 500-acre reserve when the Crown bought their land, but Assistant Land Purchase Officer Gilbert Mair agreed to set aside only 13 acres, spread over three reserves. The owners pressed for the 500 acres, but to no avail.[414] In 1881, one of the owners of Rangataua wanted a 250-acre reserve, both as a place of residence and because his relatives were buried there. Native Minister John Bryce said the request was 'out of the question and unreasonable', and would reserve only 'a small burial place'.[415] In 1886, some of the owners of the 6,357-acre Ōpatu block refused to sign the deed of sale unless 500 acres were reserved.[416] The native under-secretary told Butler that he could reserve 10 acres for each owner who accepted a £5 payment for their interests, but that 'those who do not require a reserve you can pay seven pounds ten each. The reserve to be taken in one block in a locality to be agreed upon and to be absolutely inalienable.'[417] The Crown reserved only 60 acres, which it had purchased by 1930, and a five-acre burial reserve.[418]

In other areas the Crown and tangata whenua disputed the size of promised reserves, or whether reserves had been promised at all. For example, the owners of Kirikau claimed that they were promised a 2,000-acre reserve, but the 1876 deed of sale specified only 133 acres at Te Ruawhakaonga, along with a five-acre burial reserve at Takapouopuhi. The Kirikau owners continued to raise the issue of promised reserves, but the Government was unmoved.[419] The owners of the 9,250-acre Pohonuiatāne 2 block also claimed that a 2,000-acre reserve was to have been protected from alienation, but the Crown ignored this when it purchased the entire block except for 573 acres that belonged to those who did not sell.[420]

(4) *Large blocks with no reserves*

The Crown made some of its biggest purchases in our inquiry district without setting aside a single reserve. As we noted, when the title of Taumatamāhoe was determined in 1886, the block was declared inalienable, apparently at the request of the owners. These restrictions were lifted just months later, however, and the Crown began purchasing land in the block in 1889.[421] Some of the owners were concerned that there were no reserves for sellers. Heremaia Te Wheoro, representing a number of owners, wrote to the Native Minister in August 1889 to inquire into the price per acre the Government was paying for the land. He told the Minister:

> They are afraid to take their shares in case if they take them now the block will be dealt with in the same way as the Waimarino Block[,] some of the owners of which received £35 for their interests while others were paid larger amounts for their interests, but in the case of Waimarino reserves were provided for the persons who sold their interests, while in the Taumatamahoe Block there are no reserves set apart for the sellers. This is why they are afraid to take their shares in that Block lest there should not be any reserves for their maintenance and that of their heirs after them.[422]

Crown officials brushed aside these concerns. To their way of thinking, individuals should be free to dispose of their property.[423] The Crown acquired just over half of the block when it completed its first purchase in 1893. Subsequent purchases meant that just over one-fifth of the block remained in Māori ownership by 1900, and this had fallen to one-tenth by 1910.[424]

12.7.3 Our conclusions

Restrictions on alienation on land titles in the Whanganui inquiry district had little effect when it came to preventing Crown purchase activity. Blocks declared inalienable were generally sold later than blocks without such restrictions but ultimately were just as likely to be sold. The laws governing alienation restrictions changed frequently. On the ground in Whanganui, though, the changes mattered less than the Crown's constant push to purchase Māori land for as little as possible without regard for the preferences of owner communities.

The Crown's approach to setting aside reserves left much to be desired. Apart from the Waimarino reserves,

we found evidence of only 13 reserves being earmarked for Māori from Crown purchases in the period from 1870 to 1900, most being urupā. These reserves were in just seven blocks, and totalled 1,011 acres. Even then there is some doubt as to whether all of them were set aside from Crown purchases.[425] In 13 blocks, totalling around 131,668 acres, the Crown acquired the entire block in a single purchase without setting aside any reserves.[426] Furthermore, Crown officials sometimes minimised or rejected Māori requests for reserves. As noted above, even an area as substantial as the Crown's acquisitions in the Taumatamāhoe block was purchased without reserves, although owners demurred.

Although the system of district officers appeared fine in theory, the appointment of the Crown's purchase officer to the position undercut any promise. Through the 1870s, the Crown's priorities remained with maximising the Crown's purchasing power – a fact that only strengthened as the decade went on. As far as we can tell from the evidence, the Crown did nothing to ensure that Booth took the duties of the district officer seriously. Once the district officer scheme fell into abeyance, there was no requirement for purchase officers to ensure that Māori were left with land. Those few reserves that *were* made in response to specific Māori requests often lacked legal standing or protection, making them vulnerable to future alienation.

We conclude that the Crown's argument that it had an overriding obligation to protect the rights of owners to sell their land did not engage with its contemporary recognition of the need systematically to set aside secure reserves for Māori occupation and use. The Crown even put in place a legislative regime in 1873 that might have achieved that aim, but it did not carry it into practice. In Whanganui, the Crown conveniently forgot about identifying land to be retained in long-term Māori ownership in favour of a policy of buying as much as it possibly could.

12.8 Why Whanganui Māori Sold their Land

In the 1870s and 1880s, land sales involved communities meeting to discuss issues, and rangatira taking a leading role in negotiations with Crown agents. But purchasing practices varied. Some Crown agents sought the consent of one group and excluded others, and there were complaints of secret dealings in some blocks.

As time went on, the Crown moved towards dealing with individual owners, and motivations for sale were correspondingly more related to individual or whānau circumstances. The parties disagreed on whether poverty and debt were major causes of sale in the nineteenth century, and if they were, whether a Treaty breach on the part of the Crown could be established.

12.8.1 What the parties said

Claimants and the Crown focused on individuals' reasons for sale. Most of the claimants in this inquiry accepted that, in most cases, Māori were willing sellers in the sense that they understood what they were doing and chose to do it: they were not tricked or forced into selling land.[427] Although the parties concurred that there is usually no information on why individuals sold,[428] the claimants submitted that 'Maori sold land for two main reasons: (a) they were desperately poor, indeed starving; and (b) they sold land . . . in order to accumulate cash to develop interests elsewhere'.[429] The Crown responded that neither case establishes a Treaty breach.[430] It acknowledged the possibility that poverty motivated some Māori to sell, but 'this is not the picture painted by many claimants in their evidence'.[431] Furthermore, if land sale was motivated by poverty, then this 'would indicate that the land was not able to support the owners' and selling was a rational choice.[432] The Crown also cited Hayes's view that Whanganui Māori had a great deal of surplus land.[433]

The Crown and claimants agreed that it was a rational decision to sell some land in order to finance the development of other land.[434] However, the claimants emphasised that this did not result in prosperity for Whanganui Māori. The decision to sell might be rational for an individual or a family, but overall the landholdings of hapū and iwi diminished to their detriment.[435] Whanganui Māori land remained largely undeveloped at the end of the century, at least partly because of the inaccessibility of credit, and because income from land sales was not enough to fund comprehensive development.[436] Claimants criticised the

system for making individuals rather than tribal groupings the decision-makers on selling.[437]

Using the claimants' submission that the two key reasons for land sales were debt and poverty on the one hand, and the need to raise capital for development on the other, we now assess the role that these two factors played in decisions to sell land.

12.8.2 Encouraging settlement for economic benefits

Throughout the nineteenth century, hapū leaders in Whanganui took a prominent role in land dealings, although their authority was greatly undermined by the title system and Crown purchasing methods.[438] One of the early motivations for Māori to encourage sales was to bring settlers to the district. At least until experience proved otherwise, some leaders believed that land sales and European settlement would bring prosperity to their people. Most politicians and officials in this period attempted to convince Māori that this prosperity was best achieved through dealing with the Crown. As we have noted above, in 1875 Booth persuaded Whanganui Māori to accept a Crown offer rather than the higher price offered by private purchasers because 'the advantages derivable from dealing directly with Government in the shape of roads, bridges, and available reserves would more than compensate for the difference in price'.[439] In 1885, as we have seen in chapter 10, Ballance told Māori at Rānana that, if they were to sell land for the North Island main trunk railway, it would increase the value of their remaining land.[440] Te Keepa was one influential leader who saw benefits accruing to Māori from an increase in settlement if Māori sold some land to the Crown (see section 10.8).

In the late nineteenth century, such strategic reasons for sale by a hapū are likely to have become rarer. It was difficult to maintain wider group decisions about land dealings in the face of the individualised title system and the Crown's methods of buying individual shares. For instance, in Ōhura South in the 1890s, hapū leaders came to an agreement on how they would deal with their land before taking it through the court. They identified 'sale blocks' that would be sold to cover costs and raise money, and blocks they would keep. However, the subsequent selling of interests was more extensive than they wanted, leading to requests for the Crown to cease purchasing.[441]

12.8.3 Poverty and debt

Over the course of the nineteenth century, Whanganui Māori went from being landowners who dominated the regional economy to a marginalised and impoverished minority with almost no economic clout. However, it is still difficult to determine the role that poverty played in Whanganui land sales; indeed, it is hard to work out how poor Māori were. Our socio-economic chapter talks about the paucity of reliable information about this, and the perplexities involved in defining poverty in different cultural contexts. For Pākehā, earthen floors signified poverty, for example, but for Māori might indicate the persistence of traditional housing. There is no doubt that some wanted money for short-sighted or selfish goals. There was certainly hardship. Speaking about the population of Māori nationwide, Richard Boast observed that there were occasions when they sold land 'because they were literally starving'. He remarked on how it was 'sobering to consider that well into the twentieth century Maori wellbeing could still turn on successful harvests and the cost of the most basic foodstuffs'.[442]

We know that the failure of the potato crop caused near starvation for Whanganui Māori in late 1905, but did such events occur in the nineteenth century? The answer is probably yes, but we do not know for sure. Thus while it seems plausible that poverty contributed to land sales in our inquiry district before 1900, solid evidence is scant.

We know more about the role that debt played in land alienation in the late nineteenth century.[443] We saw how the expense of Native Land Court hearings, surveys, and partitions forced Māori landowners to choose between debt and selling land.[444]

In the 1890s, owners in the north of the district wrote to the Crown about their situation. As this example shows, a combination of factors, including survey debts, could transform ancestral land into a liability rather than an asset. In this case, the owners wanted the Crown to release the land from alienation restrictions to allow leasing.

> We have no desire to sell these lands; we have already sold large areas to the Government and these lands we wish to keep for ourselves and our children. We are now badly off, and much in want and we wish to make these lands produce something for us. Then, too, we have heavy survey charges on the lands which we must pay. We therefore ask you to give us the necessary power to lease so that we may derive benefit from our lands instead of them being a burden upon us for the future as has been the case in the past.[445]

Whanganui Māori also owed money for reasons unconnected with the court process. For example, in 1885 the Parihaka prophets Te Whiti and Tohu, along with Tītokowaru and several thousand other people, visited Waitōtara. Obliged by custom to host these guests as befitted their mana, Wiremu Kauika and others borrowed £2,000 from the Crown, which was charged against Rāwhitiroa and other blocks.[446] They also borrowed from private lenders, including Thomas McDonnell, speculator and sometime Crown land agent.[447] McDonnell later sued the owners, and the Supreme Court awarded him and two other Europeans a substantial sum. Although the debt could not legally be charged against the land, it appears that the Crown improperly colluded with private parties at the expense of the owners.[448] When Rāwhitiroa was partitioned in 1887, the Crown was awarded 35,300 acres. The owners got just 1,500 acres, most of which the Crown later purchased.[449]

Colonel Thomas McDonnell. After serving as a soldier in various military campaigns during the 1860s, McDonnell spent five years as an agent purchasing Māori land in the 1870s. Later, his ability to speak Māori saw him set up as a Native Land Court interpreter and land purchase agent in Wanganui.

12.8.4 Financing development

Both the Crown and claimants noted that Whanganui Māori sometimes sold land to raise money for reinvestment elsewhere, particularly to develop other land. Donald McLean remarked that land sale money 'is frequently expended in the purchase of a vessel or a mill'.[450] Most of the time, land sales were the only practical way to raise money, for Māori could not generally access credit, and, when they did, bad debts could lead to land alienation anyway.[451] Selling land to raise development money could therefore be a sensible step towards long-term prosperity.

Richard Boast observed that individuals might choose to sell selected land interests, perhaps in blocks far away from where they lived or to which their ties were marginal – for example, in places where they were listed as an owner 'out of aroha'. They could use the receipts to develop their core land:

> Owners would sell in one block to develop their interests in another. Or they might sell only part of their interest and keep the balance, provided the Native Department would agree (part-selling was regarded by officials as an indulgence).

> Sometimes the shares of only one spouse and the interests of some or all of the children would be sold: in this way a family could at the same time remain as owners while raising a bit of capital to pay off debts or to purchase seed or stock.[452]

The trouble with this strategy was that one person's distant and unimportant landholding was usually someone else's core land. Sale of shares by distant part-owners could potentially diminish holdings in a block to a point where it ceased to be viable for the balance of owners.[453]

Apart from the problems it caused for other landowners, selling land to fund development was a strategy that worked only if the relationship between sale prices and development costs was favourable. The Crown generally did not pay high prices for land in Whanganui; it paid as little as it could, which was no more than a few shillings an acre. This meant, as the Tribunal found in Tūranga, that sellers simply did not receive enough to invest or develop other land.[454]

Actually, the reasons why Whanganui Māori were generally unable to make their land into profitable economic units were many, and they tended to build on and intensify each other. In addition to factors discussed in this chapter – low prices for land; the disruption caused by partitions and other court processes; and title uncertainty – there was also little credit available; the land was of poor quality; and men were often away from their own land working for wages on the farms of Europeans. All of this made developing Māori land difficult and unrewarding.

Sadly, Whanganui Māori had very little to show for their extensive sale of land in the 1880s and 1890s – to the extent that by 1900 they were living so precariously that potato crop failure took them to the brink of starvation.

12.8.5 Our conclusions on why Māori sold land

In this inquiry, the Crown argued that, if the land could not support its owners, it was rational for them to decide to sell.[455] As a bald statement this is true, but it skates over the influence on Whanganui Māori prosperity of both the disruptive and expensive process of gaining title to their land and the unsatisfactory nature of the title that resulted.

Unable to access finance, Māori raised capital by selling some land in order to develop other land. These endeavours were usually frustrated by a combination of factors that were very difficult to overcome. Chief among them were the nature of title to Māori land; poor land; inexperience; and uncontrolled diminution of landholdings as individual owners progressively sold. Ultimately, whether owners sold land out of desperation or for economically rational aims, the end result was usually the same.

The low prices that the Crown paid meant that, whether owners sold because they needed the money to live or because they needed it to reinvest, they received less than they should have. We cannot prove that it would have made a quantum difference if the Crown had paid a few more shillings an acre, but logically it should have been the case that, if owners had received more per acre, they would have needed to sell less. As it was, Māori in this district became a marginalised remnant, eking out a precarious existence on small, underdeveloped, and usually poor quality parcels of land.

12.9 Land Still in Māori Ownership by 1900

Here, we set out the results of Crown purchasing in Whanganui up to 1900, in order to inform our findings that follow (see table 12.1).

By the end of 1900, Māori retained only about 32.9 per cent of our inquiry district. Of the 67.1 per cent purchased, the Crown was the main buyer, and mostly between 1870 and 1900.[456] In those three decades, the Crown purchased just over half of the entire inquiry district.

Of the 213 land blocks in our inquiry district, 61 were bought in their entirety either by the Crown, private buyers, or both. Another 46 blocks were sold in part: of these, only 14 had more than 50 per cent Māori ownership by 1900, and 22 had less than 10 per cent Māori ownership. On average, Māori retained 35 per cent of the land in blocks that the Crown purchased in part. As we have seen, this piecemeal purchasing frequently left the owners unable to deal with parties other than the Crown, and carrying debts for surveys and partitions.

Years	Crown purchases*	Per cent	Private purchases	Per cent	Total alienations	Per cent	Land remaining in Māori ownership	Per cent
By 1869	145,150	6.7	5,890	0.3	151,040	7.0	2,013,907	93.0
1870 to 1900†	1,124,299	51.9	177,534	8.2	1,301,820	60.1		
By the end of 1900	1,269,449	58.6	183,411	8.5	1,452,860	67.1	712,087	32.9

* Include 128.5 acres taken for roads and a school in the 1870s and 1890s

† These figures are inclusive of both 1870 and 1900

Table 12.1: Land alienations in Whanganui to 1900

12.10 Findings

In this chapter, we have examined the Crown's purchase of over half of our inquiry district between 1870 and 1900. We have looked into policies and trends: how the Crown used monopoly powers to make it a privileged purchaser; how its agents went about purchasing Māori land; the effects of serial partitioning-out of the Crown's purchases; the prices it paid; the paltry efforts to reserve land to Māori; and why Whanganui Māori sold to the Crown. We also examined the strange and complicated history of the Murimotu region, and the agreement to lease that the Crown negotiated. These are our findings:

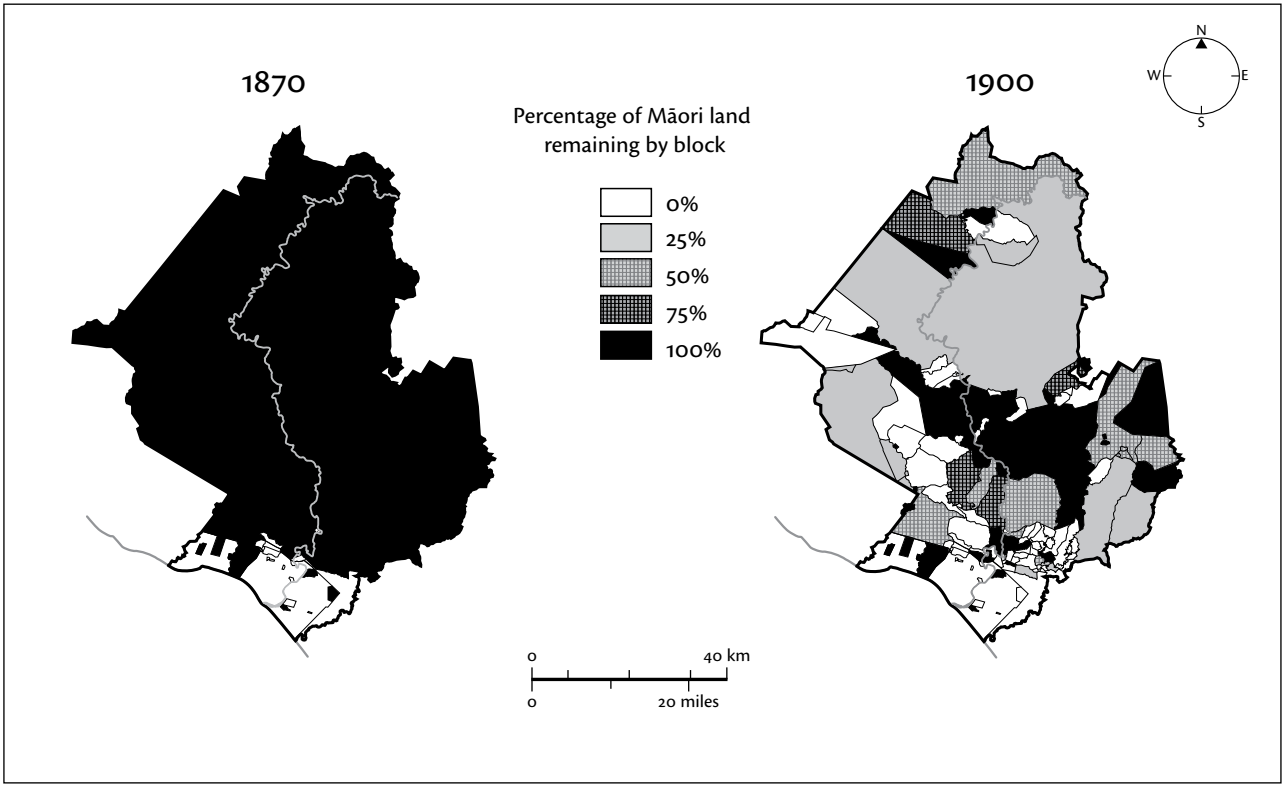
- The nature and extent of the Crown's land purchases, happening at the same time as the disruptive and expensive process of title determination, reduced Māori from customary owners in control of most of our district to a marginalised people who had lost most of their land and had little to show for it.
- The Crown's systems for determining title and purchasing land emphasised the individual in a way that took away from Whanganui Māori the ability to deal with their land collectively, and intentionally diminished their capacity to make meaningful choices.
- The Crown manipulated the land market to give itself primacy as a dealer in Māori land – in the Murimotu region it contrived a lease arrangement that put the Crown rather than private parties in a central and controlling role – and then paid consistently low prices.
- In these ways, the Crown deliberately undermined te tino rangatiratanga of Whanganui iwi and hapū, and breached its duties of good government and good faith.

The Crown and claimants in this inquiry debated whether these policies and practices constituted a 'system' designed to separate Māori from their land.[457] We consider that the Crown's nineteenth century activities were insufficiently coherent to be described as a system, but we do agree that discernible in its native land laws, and in its policy and practice for buying Māori land, was the consistent objective of buying as much land as possible for the lowest achievable price. Although policies and priorities fluctuated, there was a repeating pattern. Governments, convinced of the need to acquire land for economic development, introduced legislation that strengthened the Crown's arm as the sole purchasing power. Each time this occurred, there was a corresponding push to acquire the land remaining in Māori ownership, moving ever further into the interior of the Whanganui district by 1900.

12.10.1 Destruction of collective agency

Traditionally, Māori in Whanganui and elsewhere occupied and used land on the basis of rights shared by the collective. Whānau might have particular rights in a particular area, but it all still belonged to the wider group: no small groups or individuals could trade it, or give it away.

The Whanganui purchase and other early land alienations were certainly flawed, as we have found, but the



Map 12.2: Proportion of Māori land remaining by block in 1870 and 1900

purchasers did then recognise that Māori land ownership was communal. The Crown wanted to eradicate the intractable 'tribalism' of traditional Māori society, though, and steadily moved to subject Māori and their land tenure to English norms. However, in English law land titles could be in corporate ownership – a concept that could have been adapted to land ownership by hapū. But this would have facilitated the continuation of 'tribalism', so the Crown instead chose to impose a system premised on the fiction that individual Māori owned a specific and defined portion of hapū land.

As the Te Roroa, Ngāti Awa Raupatu, Hauraki, and Central North Island Tribunals found, the payment of tāmana to individuals breached the Treaty: it created division within communities, damaged traditional leadership, and undermined collective decision-making.[458] In Whanganui, during the 1870s, the Crown paid advances before land had been through the Native Land Court, to people whom the court might or might not ultimately recognise as owners. If the Crown paid a person whose claim was not recognised, the advance payment became a debt. If the person could not pay the debt, the Crown might attempt to recover it nevertheless, either deducting it from the price paid to the legal owners, and in one case apparently registering a lien against the land in which the court had found the person not to be an owner. Those whom the court determined *were* the land's owners thus could potentially be liable to pay for the Crown's mistake. This is difficult indeed to justify. After 1880, the Crown tended to wait until the court had determined title, but it continued

the practice of buying interests from individuals. This rendered impossible the communal management of land, because once a few people sold, the owners of the balance were drawn into uncertainty and expense. To begin with, and until the land went to court, no one knew what land the hapū no longer owned, for the interests were undivided. Then those not selling had to compete with the Crown to retain the best land, and pay to have their interests cut out. Sometimes, it was so expensive that selling was unavoidable. Piecemeal purchase from individuals made hapū and whānau prey to the whims of the weakest: land agents only had to approach those who had reasons of their own for selling to undermine instantly any well thought out communal arrangement for holding on to land.

When it created such a system, the Crown breached its duty to respect and to give effect to te tino rangatiratanga of Whanganui Māori.

We adopt the Central North Island Tribunal's finding that the Crown's system of purchasing individual interests

> was profoundly wrong. It disempowered the iwi and hapu of the Central North Island, took the 'strength which lies in union' from them, and turned their tino rangatiratanga into a virtual, saleable, individual interest. This was a very serious breach of the terms of the Treaty and of the principles of partnership, autonomy, and active protection.[459]

Article 2 of the Treaty guaranteed te tino rangatiratanga, and undertook that Māori would be undisturbed in the possession of their land 'so long as it is their wish and desire to retain the same'. As a minimum, then, the Crown should have acceded to any Māori request for land to be reserved from sale. It should also have accommodated the communal nature of Māori culture – actually a concomitant of tino rangatiratanga, because without tribes there are no chiefs – and acceded to the preference for hapū to manage and control land. This of course included the critical decision as to whether or not to sell. Instead, the thrust of the Native Land Court regime and allied Crown purchase programme was to promote a form of individualisation that undermined any form of hapū control.[460]

12.10.2 Limited choices

The Hauraki and Tūranga Tribunals both found that Māori rarely had a real choice about whether or not to sell land. The Hauraki Tribunal said that, in the context of the Crown's purchasing undivided interests, 'it is idle to talk of Maori volition'.[461] Selling land could be rational and contribute to long-term economic prosperity but, the Tūranga Tribunal said, 'no community would choose to sell land to the point of self-destruction':

> If, on the facts, land sales occurred at a level that undermined community existence or well-being, then this cannot have been the result of rational community choice. The explanation for divestment on this scale must lie elsewhere.[462]
>
> In the end . . . it in fact became easier for most [Māori] landowners to sell up than it was for them to retain their lands. . . . there cannot be any question that a system of this nature breached both the spirit and intent of the Treaty's title guarantees.[463]

We see this pattern in our district inquiry. Whanganui Māori sold land for many reasons, but in the period under review in this chapter, they rarely made the decision freely and collectively. Even those who genuinely wanted to sell land, for example, to finance the development of another block, could not usually do it on an open market. Legislation essentially banned private purchase of Māori land in 1894, but by then about three-quarters of our inquiry district was already off limits to private purchasers. These restrictions also prevented Māori from using their land as security on a loan, and from leasing to any party but the Crown – although in practice the Crown was willing to lease land only in Murimotu. Leasing could have been beneficial to tangata whenua there, but the Crown, intent upon furthering its own ends, purchased the land while the leases to pastoralists still had nearly two decades to run, and then derived the rental income itself.

The nature of the title that the Native Land Court awarded also restricted choices: they were virtually useless for anything other than sale.[464] A person might own 50 acres of a particular block, but could not say which 50 acres they were; he or she could not fence them off

and turn them to use, nor pledge them as security for a mortgage. Selling was relatively easy; developing it was almost impossible given the many barriers. The Crown thus designed and persisted with a form of title that benefited it and not Māori, because it primarily facilitated the purchase of individuals' land interests. This breached the principles of partnership and options.

Owners who did not want to sell were forced to pay to have the sellers' portions cut out of their block; often the only way to pay for this was to sell land, necessitating another survey, another partition, and more expense. In the worst cases, the costs of survey and title were such that they consumed the entire price of the land, and the former owners were left with nothing.

Nor could communities choose to opt out of the system. We found above that the Crown's title and purchasing system undermined the collective agency of Māori communities, which were at the mercy of any member who needed money. Sometimes the land could be dragged into a sale by someone who lived outside the community, and was included on the title 'out of aroha'. If the scope for decision-making was limited on the personal level, it was practically impossible at the community level. This was fatal to a communal culture.

We find that the Crown had a right to shut private parties out of the Whanganui Māori land market. Crown pre-emption was, after all, specifically provided for in the Treaty of Waitangi, and the exclusion of speculators and land sharks was arguably in the interests of both Māori and the nation as a whole. Inquiries in regions where there was large scale private purchasing showed that free trade in Māori land delivered little benefit to Māori landowners, and caused significant hardship.[465] However, because restrictions on private parties affected te tino rangatiratanga and Māori property rights, the Crown had a duty to engage with Māori before implementing these policies and practices and, as Crown counsel conceded in this inquiry, to ensure that the Crown did not use its privileged position against Māori interests.[466]

By and large, the Crown did not fulfil this obligation. The Central North Island Tribunal found that 'the Crown reimposed pre-emption selectively and without consent, in the interests of obtaining the freehold of as much Maori land as possible, as cheaply as possible'.[467] In that district, like this one, restrictions on dealing with private parties protected not Māori but the Crown. With private competition partly or completely blocked, Māori still often needed to sell to defray costs of going through the Native Land Court, but now had little scope to negotiate a better price or more reserves because the Crown was the only buyer.

The Stout–Ngata commission entirely captured the situation when it wrote in 1907 that 'a vast estate passed from the Maori owners for the purposes of general settlement in the Whanganui and Rohe-Potae districts at a price which seems inadequate'.[468] They explained that

> Theoretically the Crown does not buy unless the owners are willing to sell. But the experience of half a century shows — (1) that in the absence of competition produced by restrictive legislation, and in the face of encumbrances due to litigation and survey costs, circumstances are created which practically compel the Maori people to sell at any price; (2) that the individualisation of titles to the extent of ascertaining and defining the share of each individual owner in a tribal block owned by a large number gives to each owner the right of bargaining with the Crown and selling his interest; it gives scope to secret dealing, and practically renders impossible concerted action on the part of a tribe or hapu in the consideration of the fairness or otherwise of the price offered, or in the consideration of the advisability of parting at all with the tribal lands . . .[469]

We find that when the Crown deprived Whanganui Māori of real choices about their land, it negated te tino rangatiratanga, and breached the principles of active protection and good government.

12.10.3 Breach of duty to act in good faith

The obligation to act in good faith is fundamental to any partnership. In its dealings with Whanganui Māori and their land, however, the Crown repeatedly breached it when it acted to undermine te tino rangatiratanga and the ability of communities to act collectively, and when it restricted the options available to Whanganui Māori to

the point where they had to sell to the Crown. Good faith was lacking because the Crown abused its position as a monopoly purchaser, paying low prices and using restrictions on private dealing to prevent Māori from entering into arrangements like leases. It exempted itself from most restrictions, so did not limit the quantity of Māori land alienated in the period. Rather, it used money as an enticement to sell, both through tāmana, and though payments to rangatira to enlist their support for sales to the Crown. This subverted traditional leadership. The Crown also made too few reserves.

Another bad faith element of the Crown's policies and practices was how it managed the costs of survey and partition. The system unfairly loaded them on Māori who wished to retain their land, rather than allocating them according to benefit.

Survey costs should have been borne by the whole of the community, since the tenure transformation that demanded survey was primarily for the benefit of the Pākehā society that the colonists were forging. Māori should have been required to contribute to the cost only where survey was required after communities exercised genuine choice to define and sell their interests in land.

Instead, when part-owners sold their interests in a block, usually without reference to the wishes of the wider community of owners, those who elected not to sell bore the costs of the surveys and partitions that selling necessitated. Partition costs should have been borne by the party seeking to buy, sell, or lease. In particular, the Crown alone should have borne the cost of its piecemeal purchase of blocks, and the more frequent surveys and partitions that resulted.

We saw no evidence of a deliberate strategy to load landowners with debt to compel them to sell, but it must have been apparent at least from the time when the Crown sought liens to secure the debts of non-selling landowners, and then took land in lieu of cash, that their situation was inequitable and contrary to their wishes. Even if the Crown did not design the system as a means of forcing non-sellers to release land that they had decided not to sell, this was its effect, and that effect was unfair, unreasonable, and breached the Treaty.

In the Treaty, the Crown took on the obligation to act in the interests of Māori by stating in article 3 that they were British citizens. In Whanganui from 1870 to 1900, virtually every policy and practice concerning Māori land was designed to advance the interests of the Crown and Pākehā. Māori interests featured in Governments' agenda hardly at all. Waves of purchase activity flowed from changing economic policy. This was perhaps most vividly exemplified by the Stout–Vogel Government's enthusiastic reactivation of Crown interest in acquiring land – for example, in the Murimotu district from 1884. Although earlier Crown ministries had entered into leasing arrangements that would have delivered rental income to Māori landowners in the Murimotu region for 21 years, these commitments were swept aside in favour of fulfilling the new Government's policy objective of large-scale purchase for the railway. The Crown was at best indifferent to the consequences of these measures for Whanganui Māori. Such actions, and such an attitude, breached not only its duty to act with the utmost good faith, but also the principle of partnership.

12.10.4 Good government

All of these – destruction of collective agency, the failure to provide options, and the failure to act in good faith – return us to fundamental questions about the Crown's obligations to Māori in the process of transferring land to settlers.

Earlier in this report, we explained how – even on the most reductive view of the Crown's obligations to Māori in the nineteenth century – there was a basic set of standards with which any observer would have agreed the Crown was obliged to comply. These standards were founded in the rule of law. This is the idea (in the words of the Tūranga Tribunal) that the Crown is 'subject to the law and has no power to act outside it' – 'the Crown both rules in accordance with the law, and is itself ruled by the law'.[470] This was not simply a matter of compliance. Government also had to be just and fair – an idea that was imported to New Zealand in the language of the Treaty.

We concluded that these basic standards applied particularly in the area of land transactions, which was to

be the key point of engagement between Māori and the Crown in the early years of the colony, and indeed for so long as opening up land for settlement was the centrepiece of economic policy. A fair land deal has essential elements apparent to all: clear identification of the land to be sold; identification of all the persons to whom the ownership interests belong; willing buyer(s) and willing seller(s); and agreement on price and other essential terms.

While it can be said that the regime for dealing with Māori land provided for certain aspects of fair process, one obvious flaw was that transactions could be concluded without the full knowledge and consent of all the owners. The Crown created a system that enabled it to purchase ownership interests ahead of the court's determining title, and to purchase individuals' undivided interests before the court determined relative interests and partitioned them out. When Māori entered such transactions, they did not – and could not – know the size and location of the interests they were selling. The Crown conducted many of its land purchases in Whanganui in this way. Individuals may or may not have understood the risks of transacting on these terms, but communities, in whom the ownership and use of land had always reposed, were deliberately sidelined and rendered incapable of determining what land the collective would sell and what land it would retain. The fact that the Crown deployed often exploitative practices when it contracted to buy an individual's interests was made worse by the fact that it did not monitor the overall progress and effects of its purchasing operations in a district.

By the end of the nineteenth century, Māori owned just under a third of the land in the Whanganui district – and held that land in increasingly fragmented blocks that had many owners. As the twentieth century unfolded, this percentage steadily reduced further.

In chapters 9 and 27, we look at the question of whether this amount – or indeed, any amount of land – was enough to sustain Māori in the process of colonisation, and in the process of economic transformation that occurred in the nineteenth and twentieth centuries.

Here we return to the essential point that alienation of land – no matter how much – in the absence of basic elements of just and fair dealing, was in and of itself prejudicial to Māori. Breaching such basic standards renders property rights insecure, which in turn denies essential human rights and a basic level of respect owed to all. Denial of those rights and that respect inevitably causes damage.

In that this was a regime enabled by legislation, we cannot say that the Crown acted outside of the law. Usually, it did not. However, we can say that it was not good government, because it was neither just nor fair.

No Crown action in the Whanganui district illustrates these points better than its purchase of the Waimarino block, which becomes the focus of our report in the next chapter.

Notes

1. These figures have been calculated from appendix 1 of doc A66 (Mitchell and Innes). As alienation records are incomplete, they are only approximate and may under-represent the true extent of alienation.
2. Ibid, pp 63, A229. The 40,000 acres was part of a much larger block which was mostly outside our inquiry district.
3. Raewyn Dalziel, 'Julius Vogel', in *Dictionary of New Zealand: Te Ara The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, http://www.TeAra.govt.nz/en/biographies/1v4/vogel-julius, last modified 19 March 2014
4. Document A66 (Mitchell and Innes), p 63, app 1. The purchases were from Heao, Paratīeke, Pikopiko 1, Pikopiko 2, Tawhitoariki, Tokomaru, Waikupa, and Pungarehu.
5. Document A58 (Mitchell), p 25
6. Document A66 (Mitchell and Innes), p 63
7. Ibid, app 1. The blocks were Murimotu (4 purchases, totalling 29,939 acres), Ahuahu (2 purchases, 6,595 acres), Maraetaua (4 purchases, 4,122.9 acres), Ngāpukewhakapū (3 purchases, 2,837 acres), Ohura South (10 purchases, 12,965.9 acres), Parapara 2 (2 purchases, 788.2 acres), Puketōtara 2 (5 purchases, 11,127 acres), Rangitatau (1 purchase, 11,230 acres), Taonui (2 purchases, 5,949 acres), Te Tuhi (2 purchases, 8,916 acres), and Tūpapanui (1 purchase, 2,674 acres).
8. Figures derived from doc A66 (Mitchell and Innes), app 1, and include both 1870 and 1900.
9. Submission 3.3.49, pp 110–111; submission 3.3.55, pp 34–37, 89
10. Submission 3.3.55, p 34
11. Submission 3.3.130, pp 19–20
12. Ibid, p 3

13. Ibid, p 4
14. Document A70 (Anderson), pp 115–116; doc A87 (Loveridge), pp 97–98
15. Document A102 (Edwards), p 269 n. Edwards stated 21, but left out Tawhitoariki for reasons which are not clear.
16. The blocks were Heao, Kirikau, Mangaotuku, Mangaere, Paratīeke, Pikopiko 1 and 2, Rētāruke, Tawhitoariki, Tokomaru, and Waikupa reserve (sold to Crown); Mangapōrau, Ōhineiti, and Pikopiko 3 (private sales); Hauhungatahi, Kawautahi (incorporated into Waimarino), and Maketū (incorporated into Rangiwaea); Ōkākā (incorporated into Ōtairi 2 (see doc A102 (Edwards), p 282); Kai Iwi, Ngāpukewhakapū, Ngārākauwhakarara, and Taonui (unsold by 1890); Ōteka and Te Kopanga (unknown): doc A102 (Edwards), p 269 n. For the fate of each block, see each block entry in doc A66 (Mitchell and Innes), appendix 1. Ōkākā, Ōtairi, Ōteka, and Te Kopanga are not listed.
17. Document A102 (Edwards), p 269; doc A66 (Mitchell and Innes), pp A183, A201, A216
18. Document A110 (Hearn), p 89; doc A102 (Edwards), pp 269–270; doc A37 (Berghan), pp 940–942, 988–989
19. Document A66 (Mitchell and Innes), app 1
20. Document A60 (Marr), p 58
21. Document A102 (Edwards), p 278; doc A110 (Hearn), pp 32–34
22. Document A110 (Hearn), p 34
23. Blocks proclaimed under the 1877 Act taken from doc A102 (Edwards), pp 279–281. Alienation statistics derived from doc A66 (Mitchell and Innes), app 1. The blocks were Kaitangiwhenua (92,186 acres), Atuahae 1 (4,152 acres), Huikumu (1,204 acres), Kārewarewa 1 (3,243 acres), Kārewarewa 2 (436 acres), Kirikau (17,491 acres), Mangaere (6,250 acres), Puketōtara (5,178 acres), Rangataua (22,261 acres), Raoraomouku (8,697 acres), and Umumore (842 acres).
24. Document A110 (Hearn), pp 32–34, 141
25. Document A102 (Edwards), pp 279, 282
26. Ibid, pp 281–282
27. Ibid, pp 102, 281
28. Document A102 (Edwards), p 283; doc A87 (Loveridge), p 122
29. Document A102 (Edwards), pp 282–283
30. Ibid, pp 283–285
31. Document A58 (Mitchell), p 127
32. Document A71 (Anderson), p 38
33. Document A110 (Hearn), p 136
34. Document A102 (Edwards), pp 284–285, 289
35. Judith Bassett, 'Atkinson, Harry Albert', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.TeAra.govt.nz/en/biographies/1a10/atkinson-harry-albert, last modified 4 June 2013
36. Document A102 (Edwards), pp 293–294
37. Using Edwards' list of blocks, and alienation figures from doc A66 (Mitchell and Innes), app 1
38. Document A66 (Mitchell and Innes), app 1
39. Document A110 (Hearn), pp 145–146
40. Submission 3.3.55, pp 1, 20
41. Ibid, p 65
42. Submission 3.3.125, pp 3–5
43. John Bryce, 15 June 1880, NZPD, 1880, vol 35, p 267
44. Submission 3.3.55, pp 69–70
45. Submission 3.3.125, pp 31–32
46. Document A110 (Hearn), p 164
47. Document A102 (Edwards), pp 317–319
48. Document A58 (Mitchell), pp 87–88
49. Document A88 (Macky), p 82
50. John Bryce, 15 June 1880, NZPD, 1880, vol 35, p 272; see also doc A110 (Hearn), p 163.
51. Document A102 (Edwards), pp 319–320
52. Document A71 (Anderson), p 78
53. Document A110 (Hearn), pp 55–56
54. Ibid, p 171
55. Ibid, p 163
56. Document A70 (Anderson), p 204
57. Ibid, pp 125–126
58. Document A58 (Mitchell), p 86
59. Document A37 (Berghan), pp 237–238; doc A58 (Mitchell), pp 86–87
60. Document A102 (Edwards), pp 109–110; doc A60 (Marr), p 61. Marr gives Toma's second name as 'Haumu'. It is not clear which is correct.
61. Document A60 (Marr), pp 61–62
62. Document A110 (Hearn), pp 97–98; doc A37 (Berghan), p 16. For a time, Crown officials wrongly assumed they had advanced £2,000 on the block (including £291 in survey expenses) owing to a £500 cost that was never clearly recorded in departmental vouchers: see doc A37 (Berghan), p 15.
63. Document A58 (Mitchell), p 83
64. Document A110 (Hearn), p 167
65. Document A37 (Berghan), pp 519–521
66. Document A58 (Mitchell), pp 93–94. The other block mentioned by Dr Mitchell is Ōkehu, but he stated that no evidence has been found about the recovery of advances in this block. According to Dr Hearn, there is some evidence that the Crown viewed these payments as costs it could recover as a charge on the land: see doc A110 (Hearn), p 164. However, the evidence on this is very unclear. From 1877, the Crown could apply to the court to award costs, and to define its interest in the land. The court's award of costs was recoverable as a debt to the Crown, but there was no provision to make them a charge on the land. It also seems very unlikely that the court would consider that the Crown had acquired an interest in land if the payments had been made to people not on the title: see Native Land Amendment Act 1877, ss 2–4, 6.
67. Document A37 (Berghan), pp 130–134; doc A102 (Edwards), p 80; doc A110 (Hearn), pp 74–75
68. Document A110 (Hearn), pp 69–73
69. Ibid, p 114; doc A37 (Berghan), p 892; doc A102 (Edwards), pp 191–192; transcript 4.1.6, p 66

70. Document A37 (Berghan), pp 571–572; doc A102 (Edwards), pp 133–134
71. Whanganui Native Land Court, minute book 10, 11 May 1886, fol 105
72. Document A37 (Berghan), pp 231–233
73. Ibid, p 591
74. Document A110 (Hearn), p 166. According to Land Purchase Officer Booth, the private buyers may have paid over the money for the survey to Māori: see doc A102 (Edwards), pp 24–29.
75. Document A37 (Berghan), p 474
76. Document A58 (Mitchell), p 95
77. Submission 3.3.160, p 9
78. Submission 3.3.55, pp 85–86
79. Submission 3.3.125, p 27
80. Document A110 (Hearn), p 55
81. Document A102 (Edwards), pp 72–73, 134; doc A54 (Innes), pp 31–32
82. Document A110 (Hearn), p 55
83. Document A37 (Berghan), p 230
84. Ibid, pp 230–231; doc A102 (Edwards), p 66
85. Document A37 (Berghan), p 521; doc A102 (Edwards), p 318
86. Document A37 (Berghan), p 521
87. Ibid
88. Ibid, p 1071
89. Ibid, pp 1071–1072
90. Ibid, p 1072
91. Ibid, pp 1071–1072
92. Document A110 (Hearn), p 176
93. Document A102 (Edwards), pp 257–259
94. Document A42 (Oliver), pp 13–17
95. Ibid, pp 23–27
96. Ibid, p 44
97. Document A110(d) (Hearn supporting documents), p [203]
98. Ibid, pp [206], [208]; see also doc A110 (Hearn), p 175
99. Document A110(d) (Hearn supporting documents), p [210]
100. Document A110 (Hearn), pp 175–176
101. Document A42 (Oliver), p 52
102. Document A110 (Hearn), p 177
103. Document A88 (Macky), p 71; doc A110 (Hearn), p 169
104. Document A110 (Hearn), p 177
105. Ibid, p 178
106. Document A102 (Edwards), p 321; doc A110 (Hearn), pp 178–179
107. Document A71 (Anderson), p 78
108. Document A102 (Edwards), pp 322–323
109. Ibid
110. Document A66 (Mitchell and Innes), app 1
111. Document A70 (Anderson), pp 125–126
112. Document A54 (Innes), pp 59–61
113. Document A110 (Hearn), pp 179–180
114. Submission 3.3.55, p 67
115. Submission 3.3.125, p 30
116. Document A58 (Mitchell), p 102
117. Document A110 (Hearn), p 76
118. Document A58 (Mitchell), pp 103–104; doc A60 (Marr), pp 54–55; doc A37 (Berghan), p 553
119. Document A58 (Mitchell), p 102
120. Document A110 (Hearn), p 173; doc A58 (Mitchell), p 102
121. Document A110 (Hearn), p 173
122. Document A58 (Mitchell), p 104
123. Document A37 (Berghan), pp 602, 603
124. Document A110 (Hearn), p 173
125. Document A102 (Edwards), p 16
126. Document A37 (Berghan), p 302
127. Document A58 (Mitchell), p 98
128. Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island, 1865–1921* (Wellington: Victoria University Press, 2008), p 338
129. Submission 3.3.55, pp 48–51; doc A58 (Mitchell), pp 98–99
130. Submission 3.3.55, p 57
131. Submission 3.3.125, pp 27–29
132. Data derived from alienation statistics in appendix 1 of doc A66 (Mitchell and Innes) and information in doc A37 (Berghan), and doc A59 (Oliver and Shoebridge), p 78. The blocks were Ahuahu (10,351 acres over two purchases), Maungakāretu (734.5 acres over two purchases), Ōhura South (44,656.5 acres over six purchases), Raetihi (7,458 acres over five purchases), Rangataua (477 acres over two purchases), Rāwhitiroa (1,458 acres over two purchases), Tauakirā (31,180.5 acres over three purchases), and Taumatamāhoe (114,596 acres over three purchases).
133. Document A37 (Berghan), p 897
134. Ibid, p 899
135. Ibid, p 905
136. Ibid, p 684
137. Ibid, p 685
138. Ibid, pp 685–686
139. One example was Rangiwaea, where the Crown made 12 separate purchases in the 1890s. All of these, however, were from blocks which appear to have been partitioned independently of the Crown's purchasing activities: doc A37 (Berghan), pp 801–811. Similarly, in 1892 Raketāpāuma was partitioned into 19 smaller blocks, most of which the Crown then purchased from: doc A37 (Berghan), pp 689–694
140. Document A110 (Hearn), p 129
141. Section 399 of the Native Land Act 1909 empowered the Crown to take land in satisfaction of survey debt.
142. Document A58 (Mitchell), p 61; doc A66 (Mitchell and Innes), app 1, p A150; doc A37 (Berghan), p 616
143. Document A37 (Berghan), pp 325–326; doc A37(h) (Berghan supporting documents), pp 4657–4659
144. Document A110 (Hearn), pp 111–112; doc A37 (Berghan), pp 809–814
145. Document A110 (Hearn), pp 116–118; doc A37 (Berghan), pp 897–908

146. Document A37 (Berghan), pp 323–344. Reasons included Crown purchasing, private purchasing, private leasing, a mortgage, and scenic reserves takings.
147. Ibid, p 327
148. Document A110 (Hearn), p 84
149. Document A59 (Oliver and Shoebridge), p 106
150. Ibid
151. David V Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), p 213
152. Submission 3.3.125, p 35
153. Submission 3.3.55, p 84
154. Document A102(i) (Edwards), p 9
155. Document A102 (Edwards), pp 19, 30, 31, 35, 72, 77, 96, 108, 131, 174. It is not certain that Koraenui is in the Whanganui inquiry district, as other technical reports do not mention this block.
156. Document A37 (Berghan), pp 38–40
157. Document A102 (Edwards), pp 18–19
158. Ibid, pp 174–175
159. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1995), p 252
160. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 436
161. Document A70 (Anderson), p 204
162. 'The Up-River Magistrates', *Wanganui Herald*, 4 January 1881, p 2
163. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 513
164. Document A110 (Hearn), p 28
165. Ibid, p 40
166. Document A102 (Edwards), pp 305, 308
167. Submission 3.3.55, pp 42–43
168. Ibid, pp 45–47
169. Submission 3.3.125, p 25
170. Ibid
171. Ibid, p 26
172. Ibid
173. Ibid
174. Document A110 (Hearn), p 147; doc A102 (Edwards), pp 298–299
175. James Booth to under-secretary, Native Department, 18 July 1875, AJHR, 1875, C–4A, p 1
176. Document A110 (Hearn), p 147
177. Boast, *Buying the Land, Selling the Land*, p 322
178. Document A110 (Hearn), pp 147–148
179. Ibid, p 148
180. Ibid, p 152; Boast, *Buying the Land, Selling the Land*, p 323
181. Document A42 (Oliver), p 15. Tāngarākau later became part of the Taumatamāhoe block.
182. Document A59 (Oliver and Shoebridge), pp 103–104
183. Document A110 (Hearn), p 104
184. Document A59 (Oliver and Shoebridge), p 104
185. Document A110 (Hearn), pp 149–150
186. Document A59 (Oliver and Shoebridge), p 104
187. Ibid
188. Document A37 (Berghan), p 38; doc A110 (Hearn), pp 26–27
189. Document A42 (Oliver), pp 13–14
190. Document A102 (Edwards), p 122
191. Document A42 (Oliver), p 14
192. Document A110 (Hearn), p 160; doc A42 (Oliver), pp 14–17
193. Document A110 (Hearn), pp 131, 150; doc A102 (Edwards), p 299
194. Document A110 (Hearn), p 150
195. Ibid, p 170
196. Document A102 (Edwards), p 50
197. Document A58 (Mitchell), p 96
198. Document A110 (Hearn), p 171
199. Ibid, pp 53, 79–80; doc A102 (Edwards), pp 83–85, 180–183. Although the deeds were finalised in 1886, it was not until 1889 that the court awarded title to the Crown.
200. Document A37 (Berghan), p 319
201. *Wanganui Chronicle*, 28 April 1885, p 2; doc A110 (Hearn), p 83
202. Document A102 (Edwards), pp 18–19
203. Document A87 (Loveridge), p 77; doc A70 (Anderson), p 111
204. Document A87 (Loveridge), p 78
205. Ibid, p 98
206. Document A102 (Edwards), p 302; doc A110 (Hearn), pp 36–37
207. Document A110 (Hearn), p 151, graph 4.1
208. Document A66 (Mitchell and Innes), p 62
209. Document A110 (Hearn), p 157
210. Ibid, p 154; doc A63 (McCormack), pp 21–22
211. Document A37 (Berghan), pp 763, 771
212. Document A110 (Hearn), p 155
213. Document A102 (Edwards), p 305; doc A110 (Hearn), pp 157–158
214. Document A110 (Hearn), p 157
215. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 582
216. Document A87 (Loveridge), p 192
217. The eastern boundary of the inquiry district follows State Highway 1 in this area.
218. Document A37 (Berghan), p 370; doc A110 (Hearn), pp 32, 35; doc A66 (Mitchell and Innes), pp A81, A177, A211, B16
219. Note that, in Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), that Tribunal incorrectly states that all of Rangiwaea is in their district and part of Rangipō–Waiū is in our district: vol 1, p 200.
220. Document A66 (Mitchell and Innes), pp A81, A177, A211, B16
221. Submission 3.3.74, p 13; submission 3.3.75, pp 49–53
222. Submission 3.3.105, p 28
223. Ibid, p 29
224. Ibid, p 31
225. Document A40 (Ballara), pp 161–171
226. Document A56(a) (Bayley), p 21; doc A37(j) (Berghan supporting documents), p 5500

227. Document A40 (Ballara), pp 170–171
228. Document A70 (Anderson), p 195; doc A40 (Ballara), pp 421, 443–444
229. Document A37 (Berghan), p 355
230. Document A69 (Walzl), pp 24–25
231. Document A37(j) (Berghan supporting documents), pp 5287–5288
232. Ibid, pp 5289–5290
233. Ibid, p 5290
234. Document A83 (Pickens), p 62
235. Document A60(e) (Marr), pp 3–5
236. Document A83 (Pickens), p 62
237. Document A37 (Berghan), pp 358–359
238. Submission 3.3.74, p 13; submission 3.3.75, pp 49–50
239. Document A37 (Berghan), p 379
240. Ibid, pp 374–375, 377–378
241. Ibid, pp 380–381
242. Ibid, pp 735, 743, 798, 956; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 202
243. Document A56(a) (Bayley), p 76
244. Document A37(j) (Berghan supporting documents), p 5525
245. Ibid, p 5398
246. J W A Marchant, 'The Wellington Land District', in *The New Zealand Official Year-Book 1897* (Wellington: John Mackay, Government Printer, 1897), p 492
247. Document A56(a) (Bayley), p 30
248. Ibid
249. Document A37 (Berghan), pp 366–367
250. Buller was negotiating in the area by 1872, and Tōpia told McLean that W S Moorhouse made his first approach to Hataraka Te Whetū that year: doc A37(j) (Berghan supporting documents), p 5499.
251. Document A75 (Horan), pp 32–35; doc A37(j) (Berghan supporting documents), pp 5480–5482. William McDonnell was the brother of Lieutenant Colonel Thomas McDonnell, Crown land officer, who negotiated unsuccessfully on behalf of the provincial government for a lease in Murimotu in April 1872. Thomas McDonnell was no longer negotiating in the area by 1873 (although he seems to have returned later): see doc A56 (Bayley), p 40; doc A75 (Horan), p 32.
252. Document A75 (Horan), p 33, tbl 2
253. Document A37(j) (Berghan supporting documents), p 5450
254. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 201
255. McLean to Booth, 7 September 1871, AJHR, 1873, G-8, p 27; Booth to under-secretary, Public Works, 12 July 1872, AJHR, 1873, G-8, p 27
256. Document A87 (Loveridge), pp 104–106
257. Immigration and Public Works Act 1870, s 34; Immigration and Public Works Act Amendment Act 1871, s 42; Immigration and Public Works Act 1874, s 3
258. Immigration and Public Works Act Amendment Act 1871, s 42
259. Immigration and Public Works Act 1874, s 3; doc A87 (Loveridge), p 101
260. Document A37(j) (Berghan supporting documents), p 5596
261. Document A75 (Horan), p 40
262. Ibid, pp 41–42
263. Document A37 (Berghan), pp 361–363
264. Document A56 (Bayley), pp 45–46
265. Document A75 (Horan), p 39 n
266. Document A37(j) (Berghan supporting documents), p 5482
267. Moorhouse to Native Minister, 25 March 1874, AJHR, 1875, C-6, p 2. The term was later extended to 21 years.
268. Document A75 (Horan), p 187
269. Moorhouse to Native Minister, 25 March 1874, AJHR, 1875, C-6, p 2
270. Moorhouse to Native Minister, 13 May 1874, and McLean to Moorhouse, 11 September 1874, AJHR, 1875, C-6, pp 2–3
271. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 202
272. Moorhouse to Native Minister, 25 March 1874, AJHR, 1875, C-6, p 2; doc A75 (Horan), p 59
273. Native Lands Act 1865, s 83; Native Land Act 1873, s 107
274. Native Lands Act 1865, s 75; Native Land Act 1873, s 87
275. Document A37 (Berghan), pp 366–367
276. Document A37(j) (Berghan supporting documents), p 5481
277. Document A56 (Bayley), pp 57–58
278. Ibid, p 58
279. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 202
280. Document A37(j) (Berghan supporting documents), p 5466
281. Ibid, p 5482
282. Ibid, p 5485
283. Ibid, pp 5480–5481
284. Nehanara is spelt 'Nehanera' in the minutes, but there are other letters spelt as given. Te Kahu was of Ngāti Rangi and Ngā Wairiki. Besides Te Keepa, Aropeta, and Nehanara they were Rio Te Repi [probably Ngāti Rangi (doc A69 (Walzl), pp 36–37, 45); not the same man as Rio Te Repi Haeataterangi discussed in relation to Waitōtara]; Āperaniko Taiāwhio [Ngāti Rangi (on list 3A for Murimotu no 3), as well as Ngā Poutama, Ngāti Ruakā, Ngā Rauru]; Hēnare Haeretūterangi [Ngāti Rangi], son of Te Aropeta; Wirihana Puna [Ngāti Rangi, Ngāti Ruakā, Ngā Paerangi, and other hapū]; Takarangi Mete Kīngi [his father, Mete Kīngi Paetahi, was on list 3A for Murimotu no 3]; Āperahama Tahunuiārangi [Ngāti Tūkōrero, Ngā Wairiki, and other iwi/hapū, possibly including connections to Ngāti Rangituhia; however, he was interested in the adjoining Hēao block as Ngā Wairiki]. The names of those attending can be seen in the signatures they gave to the agreement: doc A37(j) (Berghan supporting documents), pp 5465–5468.
285. Document A37(j) (Berghan supporting documents), p 5469
286. 'Notes of a Meeting held at the Government Buildings on the 2nd September, 1874, re Murimotu', AJHR, 1875, C-6, p 3
287. Document A37(j) (Berghan supporting documents), pp 5480–5483
288. Ibid, pp 5481, 5483–5486
289. For a brief explanation of this type of conflict of interest, see Charles Hollander and Simon Salzedo, *Conflicts of Interest*, 4th ed (London: Sweet and Maxwell, 2011), pp 1–5. The principle was in effect

in the late nineteenth century (see *Halsbury's Laws of England: Agency*, vol 1 (2008), 5th ed, 5(2)(v)89: Conflict of interest, accessed 6 August 2014 via LexisNexis).

290. 'Notes of a Meeting held at the Government Buildings on the 2nd September, 1874, re Murimotu', AJHR, 1875, C-6, p 3

291. Ibid

292. Document A75(c) (Horan supporting documents), pp 469–477

293. 'Notes of a Meeting held at the Government Buildings on the 2nd September, 1874, re Murimotu', AJHR, 1875, C-6, pp 3–4

294. Document A75 (Horan), pp 82–83

295. Document A75(c) (Horan supporting documents), p 471

296. Document A75 (Horan), p 80, n 211

297. Ibid, pp 80–81

298. Ibid, p 85

299. 'Lands Leased under the Immigration and Public Works Acts', 10 September 1874, *New Zealand Gazette*, 1874, no 50, pp 633–636; doc A75 (Horan), p 83. Horan considered that the proclamation affected all four Murimotu blocks (three of which had no legal existence at this time) and some of the surrounding area: doc A75 (Horan), p 106, n 281.

300. Immigration and Public Works Act 1874, s 3

301. Document A75 (Horan), p 110; doc A110 (Hearn), pp 32–33

302. Document A37(j) (Berghan supporting documents), p 5481

303. Ibid, pp 5487–5488

304. Document A37 (Berghan), p 370; doc A56(a) (Bayley), pp 69–70; doc A37(j) (Berghan supporting documents), pp 5484–5492

305. Document A56(a) (Bayley), pp 71–72; doc A37(j) (Berghan supporting documents), pp 5496–5497

306. Document A75 (Horan), p 26; doc A87 (Loveridge), pp 99–100. Government arrangements to acquire land under these Acts still had to be finalised by taking the land through the Native Land Court. It was at this point any arrangements would become binding.

307. Document A87 (Loveridge), pp 100–103

308. Vogel, 14 August 1874, NZPD, 1874, vol 16, p 633; doc A87 (Loveridge), p 103

309. Document A87 (Loveridge), pp 103–104

310. Document A75 (Horan), pp 60–61

311. Document A37(j) (Berghan supporting documents), p 5597. This official memo is discussed in document A75 (Horan), p 60. See also doc A56(a) (Bayley), pp 43–44.

312. Document A37 (Berghan), pp 956–957

313. Ibid, pp 375–377; doc A56(a) (Bayley), p 86

314. Document A75 (Horan), pp 107–119

315. Ibid, pp 116–118; doc A37 (Berghan), p 967

316. Document A75 (Horan), p 118

317. Document A37(j) (Berghan supporting documents), pp 5831, 5834. Nelson provided no proof of this assertion.

318. Document A75 (Horan), pp 97–99

319. Document A56(a) (Bayley), pp 82–84; doc A75 (Horan), p 99

320. Document A56(a) (Bayley), p 83

321. Document A75 (Horan), p 100

322. Ibid, p 96

323. Document A70 (Anderson), p 194; doc A75 (Horan), p 120

324. Document A75 (Horan), pp 121–122; Ian Church, 'Turoa, Topia Peehi', in *The Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, http://www.TeAra.govt.nz/en/biographies/2t55/turoa-topia-peehi, last modified 30 October 2012

325. Document A70 (Anderson), p 195

326. Document A73 (Macky), pp 68–69; doc A75 (Horan), pp 122–124; doc A70 (Anderson), p 194

327. Document A75 (Horan), pp 120, 125, 126

328. Ibid, pp 124–125; see especially note 335.

329. Ibid, p 125

330. Ibid, p 127; doc A56(a) (Bayley), pp 104–107

331. Document A75 (Horan), pp 128–130; doc A56(a) (Bayley), p 106

332. Document A75 (Horan), pp 130–131

333. Ibid, pp 129–130

334. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 212–217

335. Document A73 (Macky), p 110

336. Document A75 (Horan), pp 135–138

337. Ibid, pp 131, 170–171

338. Ibid, pp 131–135

339. Ibid, pp 144–145

340. Document A73 (Macky), p 108

341. Document A75 (Horan), pp 135–137

342. Ibid, pp 138–140, 162

343. Ibid, pp 163–164

344. Ibid, pp 160–162

345. Ibid, pp 152–157

346. Ibid, pp 164–166

347. Ibid, pp 167–169

348. Ibid, pp 169–170

349. Ibid, pp 173–174

350. Ibid, pp 171–174; doc A69 (Walzl), pp 57–58. The leases having been confirmed by the Native Land Court, the Crown then negotiated sub-leases to Studholme and Morrin in 1885: see doc A75 (Horan), pp 177–181.

351. Document A37(j) (Berghan supporting documents), p 5624

352. Document A56(a) (Bayley), pp 184–186

353. Ibid, p 166

354. Document A37(j) (Berghan supporting documents), p 5621

355. Document A58 (Mitchell), p 42; doc A37 (Berghan), p 798. Nika was the daughter of Winiata's older brother, so although she was his niece she outranked him.

356. Document A37(j) (Berghan supporting documents), p 5624

357. Ibid, p 5626

358. Ibid, pp 5630–5631

359. Document A37 (Berghan), pp 800–803

360. Document A37(w) (Berghan supporting documents), p 13096

361. Ibid

362. Document A37 (Berghan), p 802

363. Ibid, pp 805–806

364. Ibid, p 806

365. Document A56(a) (Bayley), p 161
366. Ibid, pp 162–163
367. Document A37 (Berghan), pp 809, 811
368. Document A69 (Walzl), pp 60–61
369. Submission 3.3.52(a), pp 21, 61
370. Submission 3.3.127, p 11
371. Ibid, pp 11–12
372. Document A83(f) (Pickens), pp 6–7; doc A58 (Mitchell), p 143
373. Document A70 (Anderson), pp 104–105. Mitchell names 24 blocks: doc A58 (Mitchell), pp 139–142.
374. Document A58 (Mitchell), p 143
375. Document A70 (Anderson), pp 104–105; doc A66 (Mitchell and Innes), p A196
376. Document A58 (Mitchell), p 142; see also doc A70 (Anderson), pp 104–105
377. Document A83 (Pickens), p 120; doc A58 (Mitchell), pp 143–144
378. Document A58 (Mitchell), p 144
379. Ibid, p 145
380. Document A70 (Anderson), p 104
381. Document A42 (Oliver), p 26
382. Ibid
383. 'Notice under "Native Land Laws Amendment Act, 1883"', 10 June 1886, *New Zealand Gazette*, 1886, no 35, p 768; doc A42 (Oliver), p 26
384. Document A37 (Berghan), pp 893, 900–901; doc A110 (Hearn), pp 115, 175
385. Document A37 (Berghan), p 893; doc A110 (Hearn), p 115; doc A37(z) (Berghan supporting documents), p 14665
386. Document A37 (Berghan), p 894
387. Document A66 (Mitchell and Innes), p A196
388. Document A59 (Oliver and Shoebridge), pp 100, 106–107
389. Document A66 (Mitchell and Innes), p A102
390. Document A70 (Anderson), pp 104–105
391. Figures derived from appendix 1 of doc A66 (Mitchell and Innes). There were about 2,013,900 acres remaining in Māori ownership in the inquiry district at the start of 1870; by the end of 1890, approximately 907,137 acres had been alienated.
392. The entire 54,000-acre Maraekōwhai block was purchased by the Crown in 1896, while 114,596 acres of Taumatamāhoe was purchased in the 1890s. The remainder, 3,883 acres, came from seven smaller blocks. Figures include Taumatamāhoe figures and the 1890s alienations from Maungakāretu 4: see doc A66 (Mitchell and Innes), p A77.
393. Based on figures derived from app 1 of doc A66 (Mitchell and Innes); about 372,143 acres of Māori land was alienated in our district from 1890 to 1899.
394. Document A110 (Hearn), p 184
395. Donald McLean to Thomas McDonnell, 30 November 1871, AJHR, 1873, G-8, p 17
396. Native Land Act 1873, ss 21–30
397. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 630–631
398. Richard Woon to under-secretary, Native Department, 16 June 1874, AJHR, 1874, G-2, p 14
399. Richard Woon to under-secretary, Native Department, 21 May 1875, AJHR, 1875, G-1, p 11
400. Document A61 (Rose), pp 77–78
401. James Booth to under-secretary, Native Department, 'Return of Land Reserved in Western Portion of Wellington and Wanganui Districts from 1874', 24 October 1877, AJLC, 1877, app 19, pp 5–6
402. Document A110 (Hearn), p 29
403. James Booth to under-secretary, Native Department, 'Return of Land Reserved in Western Portion of Wellington and Wanganui Districts from 1874', 24 October 1877, AJLC, 1877, app 19, pp 5–6
404. Document A102 (Edwards), p 63; James Booth to under-secretary, Native Department, 'Return of Land Reserved in Western Portion of Wellington and Wanganui Districts from 1874', 24 October 1877, AJLC, 1877, app 19, pp 5–6
405. Document A110 (Hearn), p 185
406. James Booth to under-secretary, Native Department, 24 October 1877, AJLC, 1877, app 19, p 5; see also doc A110 (Hearn), p 184
407. Ibid
408. Jenny E Murray, *Crown Policy on Maori Reserved Lands, 1840–65, and Lands Restricted from Alienation, 1865–1900*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 49–51
409. Volunteers and Others Lands Act 1877, s 5; Government Native Land Purchases Act Amendment Act 1878, s 4
410. Document A37 (Berghan), pp 768, 771–772
411. James Booth to under-secretary, Native Department, 24 October 1877, AJLC, 1877, app 19, p 5
412. Richard Woon to under-secretary, Native Department, 24 May 1879, AJHR, 1879, G-1, p 9; see also doc A110 (Hearn), p 34.
413. 'Report of the Commission Appointed to Inquire Into the Subject of the Native Land Laws', minutes of evidence, 13 May 1891, AJHR, 1891, G-1, p 158
414. Document A37 (Berghan), pp 988, 990
415. Document A37 (Berghan), p 728; Boast, *Buying the Land, Selling the Land*, p 338
416. Document A37 (Berghan), p 521
417. Ibid, p 522
418. Document A102 (Edwards), p 92; doc A66 (Mitchell and Innes), p A112
419. Document A37 (Berghan), pp 148–149; doc A102 (Edwards), pp 35, 40, 45
420. Document A110 (Hearn), p 109; doc A37 (Berghan), pp 604–606
421. Document A110 (Hearn), pp 114–115; doc A42 (Oliver), p 26
422. Document A110 (Hearn), p 116; doc A110(d) (Hearn supporting documents), [p 214]
423. Document A110 (Hearn), pp 115–116
424. Document A66 (Mitchell and Innes), p A196
425. These blocks were Paratīeke, Tokamaru, Kirikau, Huikumu, Retaruke, Opatu, and Rangitatau: doc A102 (Edwards), pp 29–30, 35–48, 57–58, 72–73, 92, 136–138, 238; doc A37 (Berghan), pp 42, 149, 843, 988–990.

426. Data derived from doc A66 (Mitchell and Innes), appendix 1. The blocks were Aratawa, Haeo, Huikumu, Kaitangiwhenua, Mangaere, Mangapukatea, Ōtaranoho, Parapara, Paratīeke, Purangarehu, Raoraomouku, Tawhitoariki, Umumore, and Waikupa.
427. Submission 3.3.55, pp 64–65. Some claimants did submit that their tūpuna did not understand the concept of land sale: for example, see submission 3.3.104, p 9.
428. Submission 3.3.55, p 31; submission 3.3.125, p 22
429. Submission 3.3.55, p 31; see also submission 3.3.85, p 46
430. Submission 3.3.125, p 22
431. Ibid
432. Ibid
433. Ibid
434. Submission 3.3.55, p 33; submission 3.3.125, p 22
435. Submission 3.3.55, p 33
436. Ibid, pp 32–33
437. Ibid, p 31
438. Document A102 (Edwards), pp 320–321
439. James Booth to under-secretary, Native Department, 18 July 1875, AJHR, 1875, C-4A, p 1
440. Document A110 (Hearn), p 192
441. Document A59 (Shoebridge), pp 86, 93, 97
442. Boast, *Buying the Land, Selling the Land*, pp 407–408
443. For example, see doc A58 (Mitchell), pp 75–76.
444. For example, see Boast, *Buying the Land, Selling the Land*, pp 408–412.
445. Document A59 (Shoebridge), p 98
446. Document A54 (Innes), p 60
447. Ibid, p 68
448. Document A58 (Mitchell), pp 76–77
449. Document A54 (Innes), pp 72, 79
450. Document A61 (Rose), pp 77–78
451. Boast, *Buying the Land, Selling the Land*, pp 413–414
452. Ibid, p 401
453. Ibid, pp 420–421
454. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 514
455. Submission 3.3.125, p 22
456. Data in this and the following paragraph derived from doc A66 (Mitchell and Innes), app 1.
457. Submission 3.3.55, pp 20–24; submission 3.3.125, pp 4–5; submission 3.3.160, pp 2–4
458. Summarised in Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 590, 598.
459. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 625
460. Ibid, p 631; Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 457
461. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 843
462. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, p 511
463. Ibid, p 536
464. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 625
465. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 2, pp 405, 469–533
466. Submission 3.3.130, p 3
467. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 580
468. Stout and Ngata, 'General Report on Native Lands and Native Land Tenure', 11 July 1907, AJHR, 1907, G-1C, p 8
469. Document A110 (Hearn), pp 152–153
470. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 736

Table sources

Table 12.1: Document A66 (Mitchell and Innes), app 1. The figures used here are slightly different from those in Mitchell and Innes' summary. They have been calculated from the alienation figures for each block in appendix 1, excluding any in which the year is not known, but including those for which Mitchell and Innes were uncertain as to the type of alienation. Because some records are incomplete, the alienation figures used in this chapter are approximate only, and may underestimate actual land alienation.

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