

PART II

THE HISTORICAL EXPERIENCE (BY RANGAHAUA WHANUI DISTRICT)

These comments are drawn from an appraisal of the reports prepared on the various Rangahaua Whanui research districts and research prepared for claims before the Waitangi Tribunal. They are the author's assessment of the more prominent or unique impacts of Crown policies in respect of each district. Fuller summaries are provided in volume iii of this report.

Readers should consult the tables and maps at the front of this volume for an estimate of the acreages and percentages of land remaining in Maori hands at given dates.

ptii.1 District 1: Auckland

Except for the Hauraki district and the confiscation-affected districts of Waikato and Taranaki, the Auckland region, the most heavily populated of the Rangahaua Whanui research districts, has been left the least Maori freehold land available on a per capita basis in the North Island, exceeding even the landlessness of the South Island Maori.

The region was most affected by early settlement, over three-quarters of the old land claims being located in the region, which was much desired for its timber and its harbours. This is the district where aspects of the old land claims and surplus land question are felt most strongly. The location of the capital at Auckland put special pressure on the land in that vicinity. Approximately 82 percent of land granted to private individuals from pre-1840 transactions was granted in the Auckland district, along with 95 percent of the land claimed by the Crown as 'surplus'. By 1850, most of the accessible land of Tamaki-Makaurau and South Auckland had been purchased; with some doubts as to whether all Maori had grasped the European sense of sale until late in the period. Early undertakings to make generous reserves were subsequently overridden or neglected, and Grey sold the 'Crown tenths' that FitzRoy had reserved, mainly for Maori purposes, in the pre-emption waiver sales of 1845 and 1846.

By 1860, some 42 percent of the district had been alienated. Crown land purchase officers before 1865 acquired some 1.6 million acres of the district, including most of Kaipara and South Auckland – the greatest single period of land transfer in the district. An estimated further 100,000 acres were taken in confiscations in South Auckland under the New Zealand Settlements Act 1863.

Dr Michael Belgrave's analysis shows that, following the establishment of the Native Land Court in 1862, by 1890, 1,603,813 acres of land in Auckland and Northland had passed through the court and, by 1908, only 13 percent of that remained in Maori hands.¹ In the light of the 1891 census figures of 9542 for the Auckland district (three times greater than that of any other Rangahaua Whanui district then, as now), for the Liberal Government to launch a major land-buying campaign in the Auckland district was irresponsible. The Crown and private purchasers together acquired some 230,000 acres in the district between 1891 and 1910.

Even more serious, however, in a district where Maori were very short of good land, was the continuance of purchasing into the twentieth century. In consequence of extraordinarily short-sighted policies, about half a million acres of land were alienated in this district from 1910 to 1930, leaving only about 218,000 acres of Maori freehold land in 1939 – the lowest percentage remainder of any district in the North Island other than Hauraki and the confiscation districts of Waikato and Taranaki. With the 1936 census showing a Maori population in the district of about 22,400 (with few, as yet, living in Auckland city), there were at that date fewer than 10 acres per head remaining.

At the same time as governments were making gestures (largely ineffectual) about landless Maori in the South Island, up in the north they were pursuing policies that rendered about one-quarter of the whole Maori population equally landless. In terms of the Treaty duty of active protection, the fate of the Maori people of the Auckland region stands, perhaps, as the most glaring breach of all.

ptii.2 District 2: Hauraki

Hauraki also experienced the full range of impacts of colonisation. The investigation of pre-1840 transactions (old land claims) left one lasting grievance in particular; namely, McCaskill's claims at Hikutaia, which were inadequately investigated by Commissioner Bell before awarding the land to the purchaser in 1862.

Crown purchases before 1865 involved land purchase officials in buying individual interests or sectional interests in an effort to undermine wider tribal authority – a precursor in effect of the policy attempted at Waitara in 1859 and 1860. The purchases left few reserves.

Hauraki tribes were also affected by raupatu, in that they had interests in the Katikati and Te Puna forced purchases (of land confiscated and nominally returned) and in the eastern side of the Waikato confiscation (East Wairoa block). They were affected also by the Crown's assumption of control of the foreshores (the tidal flats being of major importance to the Hauraki tribes' ecology) and the dredging of rivers and drainage of wet-lands, for which they received minimal compensation.

1. M Belgrave, 'Auckland', report commissioned by the Waitangi Tribunal, ch 10

The distinctive issue in Hauraki, however, is the impact of the Crown's policy on gold-fields. Maori sought to accommodate mining by entering into agreements with the Crown in 1852, which allowed for miners' rights and the leasing of land. The Crown, however, under pressure from mining companies and unable (or unwilling) to control rushes on new strikes, pressed constantly for the freehold beyond the limits of the previous agreements and purchased minority interests at first. Crown officials did not disclose to Maori the value of the land for the gold and other sub-surface minerals. Mining legislation also overrode the spirit and terms of the early agreements.

There was heavy purchasing of land under the Public Works and Immigrations Acts of the 1870s, again under the Liberals in 1891 to 1899, and in 1911 to 1930 under the Reform Government. By 1910, only about 12 percent of the traditional rohe of the Hauraki tribes remained in Maori ownership, and by 1939 the figure was down to about one percent.

ptii.3 District 3: The Bay of Plenty

District 3, the Bay of Plenty, was heavily affected by the dual process of confiscation followed by the removal of restrictions on the alienation of land not confiscated or confiscated and returned.

In the western Bay of Plenty, about 214,000 acres of the best land around Tauranga was declared confiscated under the New Zealand Settlements Act 1863. Of this, a 50,000-acre block was retained and the Katikati–Te Puna block (93,188 acres) was acquired in what amounted to a compulsory purchase. In the eastern Bay of Plenty, following the killings of Volkner and Fulloon, some 480,000 acres were confiscated and about 100,000 acres returned.

The confiscations fell somewhat indiscriminately across a number of tribes in each area, and although land was supposed to be returned to 'loyal' Maori, there was considerable confusion about the allocations. (For example, land was returned to 'Ngaiterangi' as a collective name in the western Bay of Plenty, to the apparent disadvantage of groups who were not Ngaiterangi.)

Efforts were apparently made by the commissioners controlling the distribution of the confiscated land to ensure that all hapu had sufficient residential land and that reserves were made inalienable except by 21-year lease. Even so, the distribution was very uneven and some hapu were left with only a few acres per head. Moreover, from about 1880, restrictions on alienation began to be lifted (first by the Governor in Council and later by the Native Land Court). Under the Native Land Court Amendment Act 1888, restrictions could be removed by a simple majority vote of owners. Under the Native Land Act 1909, virtually all restrictions were removed, apart from a limited check on 'landlessness', and fair price, by a Maori land board. The issue of the removal of restrictions is a most serious one, affecting most Maori freehold land and raising the serious dilemma of how much paternalistic control to

introduce in the statute law to replace the tribal control that operated over customary land.

In the event, by 1900, several hundred Maori in the Tauranga district were defined as landless in an official return. In the central and eastern Bay of Plenty, too, reserved lands, and lands that had not been confiscated, were steadily alienated, including considerable areas taken under the Native Land Act 1909. For example, Te Arawa around Te Puke today retain only 6.4 percent of that district (12,500 acres out of 199,000 acres). Much of that was sold to the Crown in the nineteenth century and to private purchasers under the 1909 Act.

These later alienations were especially serious for those communities already land-short owing to confiscation; the continuance of land acquisitions at a time when the Maori population was again increasing sharply raises the questions of the Crown's Treaty obligation of protection.

ptii.4 District 4: Urewera

District 4, Urewera, illustrates the continued tendency of governments to deal with sectional interests for the purpose of purchasing land, rather than with multi-hapu authorities.

Tuhoe were still resisting surveys in their territory, with arms, in the early 1890s. Settlers, however, were pressing for the right to prospect for gold and governments were unhappy at the continued independence of Urewera from administrative control. Tuhoe were themselves willing to make a controlled engagement with the wider world, and James Carroll negotiated with them the Urewera District Native Reserves Act 1896.

By this Act, a general committee elected by some 33 hapu in the district, rather than the Native Land Court, was to determine hapu titles; land alienation, by lease, was to be done through the general committee. But defining discrete blocks hapu by hapu was not easy in the situation of intersecting hapu interests that existed throughout much of the region, and the Native Land Court was eventually brought in to hear appeals.

The general committee under Numia Keruru was persuaded by Ngata in 1908 to negotiate for the sale of some blocks to pay for survey costs. About the same time, however, the Government began to treat with Rua Kenana for the purchase of sectional interests, without going through the general committee. The Urewera Amendment Act 1909 (passed under Carroll) began the process of bypassing the committee, and the Native Land Amendment Act 1916 (passed under Herries) retrospectively validated the purchase of individual interests.

Systematic purchasing of individual interests began in 1910. By the end of that year, the land agent Bowler had acquired interests amounting to approximately 252,000 acres, and by 1921 he had acquired 518,000 acres, the equivalent of two-thirds of the reserve. This included flat land near Ruatoki as well as valuable timber blocks.

The general committee was apparently not able to accommodate the normal rivalries between hapu and leaders, but the Government's resort to the old system of buying individual interests, rather than assisting corporate Maori development of the district, represented a continuation of the usual acquisitive and divisive processes launched in 1865. The opportunity was largely missed for a new approach in the last main area where tribal autonomy remained substantially intact and tribal development of tribal lands remained a real possibility.

A major consolidation scheme was launched in Urewera in 1921. The Crown wanted to consolidate its scattered interests into whole blocks. Tuhoe were asked to contribute £20,000 (in land) for roading to the interior villages. Tuhoe were quite divided on the consolidation scheme, but support was apparently given because of the prospect of individual, surveyed, small farms along the roads. In the event, the Crown veered the scheme towards the securing of title of the Waikaremoana block for conservation and scenic purposes, as well as the good timber blocks at Te Whaiti, eventually acquiring some 137,224 acres more than its 345,076 acres of interests, as given in official returns up to 1921. The interior roads were not in fact made. In 1958, Tuhoe accepted £100,000 compensation for this and for the faulty location of their blocks in the Whakatane and Waimana Valleys.

ptii.5 District 5: Poverty Bay and the East Coast

Maori of Turanganui-a-kiwa (Poverty Bay) and the East Coast fell victim to the Anglo-Maori wars. Almost none of their land had been alienated before 1865. They had made numerous transactions with traders, missionaries, and early settlers before and after 1840 but declined to regard these as sales and resisted the presence of the Queen's magistrates and land claims commissioners in order to maintain their own control.

In 1865, sections of the tribes aligned with the Pai Marire faith, whose emissaries had entered the district after the killing of the Reverend Carl Volkner at Opotiki. The Government exploited old tribal rivalries to strengthen its own position. Pressed by the Government to surrender arms (partly under the threat of bringing their former adversaries the Ngati Porou into the district), the Poverty Bay tribes fortified a pa at Waerenga-a-Hika. The pa was taken in a week, but the local tribes were treated as rebels. They were pressed to cede a large area of land under threat of confiscation, the Government meanwhile keeping Te Kooti and other local men prisoner on the Chatham Islands. 'Friendly' Maori and Pakeha alike suffered in Te Kooti's subsequent escape and raids on Poverty Bay in 1868 and Tolaga Bay in 1869.

Much land was then ceded in Poverty Bay, and although much was also returned, it was returned with great confusion as to who was rebel and who was loyal, with Ngati Porou and Ngati Kahungunu, allies of the Crown, receiving interests (eventually commuted for money). The Rongowhakaata tribe in particular appears

to have received poor recognition from the awards of the Poverty Bay commission in 1873, although the precise distribution of this land has yet to be determined.

There is no good ground for regarding the forced cession in Poverty Bay as fundamentally different in character from confiscations elsewhere, although it took place under different legislation.

The East Coast north of Poverty Bay was also disturbed and divided over Pai Marire in 1865. Although Ngati Porou had generally remained aligned with the Anglican Church and the Crown, their whole rohe was declared confiscated under the East Coast Land Titles Act 1866, and they were being pressed to cede land as late as October 1868; the Government withdrew the demand when it sought Ngati Porou help against Te Kooti after his November 1868 raid.

Amid the confusion, the early settlers secured titles to their lands from the Poverty Bay commission, or leases, which eventually became purchases, from the divided hapu. The Crown also bought significant areas, employing the usual methods of buying undivided interests (sometimes before the land passed the court) and removing restrictions on alienation when necessary. About 300,000 acres of Poverty Bay and East Coast land were caught up in the dealings of W L Rees's and Wi Pere's New Zealand Land Settlement Company. Legally flawed transactions of this company, and other large purchases in the area, were legalised by the Validation Court in the 1890s – a proceeding of doubtful equity, since many Maori right-holders were unaware of the sale or mortgage of the blocks concerned in the first place.

Almost all of Poverty Bay and about 325,000 acres of the Ngati Porou rohe, both populous districts, had been acquired by Crown and private purchase by 1908. It should be noted, however, that the East Coast trust lands and Mangatu blocks, taken under a statutory trust after the confusion of the Rees–Wi Pere dealings, were returned to Maori, debt-free and developed, after the Second World War.

The use of compulsory powers to vest land in the Crown for native townships is also an issue on the East Coast, especially in respect of Te Puia Springs, which was eventually sold to the Crown under the assembled owners provision of the Native Land Act 1909.

ptii.6 District 6: Waikato

The main Treaty breach in the Waikato region was obviously the Government's attack on the Waikato in July 1863 and the raupatu that followed. There are, however, other issues exempt from the Waikato Raupatu Claims Settlement Act 1995.

Important land claims include the Crown purchases before 1865. The district defined as 'Waikato' for the Rangahaua Whanui programme includes about half of the region between the Waikato River and the Manukau Harbour (commonly called South Auckland). These purchases were made with a few chiefs in each instance. The boundaries were very loosely described and the prices were very low. Few

reserves were defined. Only on survey, years later, was the land defined with any clarity and more payments made to the right-holders. While this may have accorded quite well with the intentions of the small number of transacting chiefs in the 1840s who wanted to enter into relations with the Governor and his associates, other Maori were dragged along in their wake. Except for the bushclad ranges, most of 'South Auckland' had been sold by the early 1850s. The reaction of the middle Waikato tribes in 1854 to the transactions of lower Waikato kinsmen was to 'tapu' the land across the Mangatawhiri – an early manifestation of what became settled Kingitanga policy.

After the war and confiscations, the Native Land Court became very active in the eastern side of the district (from Piako towards the volcanic plateau) and notably in the Patetere block of about 290,000 acres, where the usual practice of piecemeal acquisition and partition ensued. The tribes outside the raupatu area were severely affected by these processes. According to the Stout–Ngata commission's 1909 report, only a tenth of the district remained in Maori ownership, with only about 28,000 acres that could be considered surplus to the owners' occupation requirements. Waikato claimants have also raised the issues of rights to the river itself and to the western harbours.

ptii.7 District 7: The Volcanic Plateau

This district shows the problems commonly associated with purchases under the Native Land Court, where the interests of a percentage of the owners were acquired and blocks purchased over time through a series of partitions.

Otherwise, the district gave rise to particular issues associated with its special features – the great mountains, lakes, and geothermal activity. The alienation of the Rotorua town land is a complicated story. The township land was leased initially under the Thermal Springs Act 1881 for good rents, then the lessees began to default on their payments during an economic downturn. The role of the Crown in what followed requires closer examination; Maori, having incurred debts against reasonably anticipated lease revenue, eventually sold to the Crown (which had established a pre-emptive right of purchase over the whole district). It is arguable that Maori should have been given greater protection in what was a Crown-initiated scheme, thereby enabling them to participate much more in the development of the thermal resource. Ngati Whakaue did, however, accept £16,500 compensation in 1954 by way of settlement.

Much land has been committed to the Tongariro National Park and other scenic reserves in the district. Much of this was gifted by Maori themselves. Other portions were acquired by compulsory process, with compensation being paid (at what levels is not known). The Wairakei purchase illustrates the baneful effect of conducting covert dealings with one group of claimants before the land went through the court – a typical feature of land purchase at the time.

The recognition of Maori rights to Lake Taupo and the Rotorua lakes proved highly controversial, with settlements being agreed in the 1920s and subsequently adjusted. Some issues apparently remained unresolved.

Some hapu in the district have very little land left, and the question of an equitable share for Maori in one of the most resource-rich areas of the country is at issue, with current focus on securing equity in exotic forests.

ptii.8 District 8: The King Country

The essence of the Treaty issue in the King Country or Rohe Potae is the effort made by the Maori leadership to undertake a cautious and controlled engagement with the Government and settlers, and the way that that process got out of control as a result of Crown policies.

Ngati Maniapoto, Ngati Tuwharetoa, and upper-Whanganui tribes were hosts to Waikato tribes from the Kingitanga after the British invasion of the Waikato until the early 1880s. But the bringing of applications to the Native Land Court by groups on the margins of the King Country made continued isolation hazardous. Encouraged by the Government to consider leasing rather than selling land, the tribal leadership, notably under Wahanui, Taonui, and other Ngati Maniapoto chiefs, agreed to admit surveys for the main trunk line. Ngati Maniapoto sought to group the five main iwi of the area in one external boundary survey, with the determination of title and the management of the land to be carried out by tribal committees. Various tribes, however, made separate applications to have their titles determined, which the Government accepted, in contradiction of its arrangements with Wahanui and the Ngati Maniapoto chiefs. The result was a series of hearings in respect of huge blocks such as Waimarino, Tauponuiatea, and Aotea. But Government agents, again in violation of assurances given to Wahanui and others, had already started dealing for individual, undivided interests in the block, followed by applications for partition made in the usual way. The King Country thereafter exhibits the familiar story of piecemeal alienation of the land, at a rate and at an extent that the tribal leaders did not initially desire. Even so, more land was retained in Maori ownership in this district than in any other until the early twentieth century (some 47 percent remained in 1910).

At this point, settler pressure for land and irritation about what was sometimes called 'Carroll's blot' (because of the Native Minister's 'taihoa' policy and support for leasing) led to a new round of legislation, crowned by the Native Land Act 1909, which facilitated alienation through the Maori land boards (themselves becoming synonymous with the Native Land Court judges and registrars after 1913) and through meetings of 'assembled owners'. There were, as always, willing sellers in Maori communities – especially those needing capital for development or to pay debts – and the legislation favoured dealings by individuals where there were fewer than 10 owners in the title and by bare majorities of assembled owners if there were more than 10. (Native Minister Herries acknowledged the abuses in the use of

proxies at meetings of assembled owners, although whether these occurred in the King Country cannot be determined from the current evidence.)

Another illustration of the Crown's undermining of Maori control was the way in which the Maori owners of land in native townships at Otorohanga, Te Kuiti, and Taumarunui, which were launched on the basis of fixed-term leases, were obliged, under amendments to the law in 1910 and 1919, to concede perpetual leases and, eventually, the freehold of the town sections.

By 1939, Maori retained only 13 percent of the King Country.

ptii.9 District 9: Whanganui

Settlement at Whanganui began on the basis of New Zealand Company purchase deeds of 1839 and 1840. In pursuance of the Crown's agreements with the company in 1840 (resulting in a charter issued in January 1841), the company began surveying the Whanganui block, but its claim was disputed by Maori. Commissioner Spain found in 1844 that 'a partial purchase' had been achieved, and he awarded 40,000 acres to the company on condition that an additional £1000 was paid to those who had not received a share of the payment in the first instance and that reserves were made to the tribes' satisfaction. Maori were still resisting the surveys in 1846. In 1848, however, Donald McLean succeeded, through very careful negotiations, in reaching agreement over the question of reserves, allowing Maori important eel and manga fisheries at Okui, near the Whanganui settlement. The £1000 was accepted, the reserves (within and without the original 40,000-acre zone) publicly marked, and the deed signed. The area acquired by and for the company was over 86,000 acres and increased to about 110,000 acres in 1850 when Maori accepted a back boundary marked by natural features (including the Whangaehu River) rather than surveyed boundaries. Although the sale proved much larger than the Spain award, the evidence indicates complete Maori agreement to the transfer of the larger area. Nothing was stated in the agreement about the river, however. In 1863, the chiefs of the hapu concerned relinquished the Okui fisheries for £35.

Crown purchases up-river began in 1868. They were made from particular groups of owners and continued despite an iwi-wide effort to control alienations, launched by a series of large hui held at Putiki in 1871 and involving tribes from the length of the river. The Crown's disinclination to accept a Whanganui runanganui contrasts with its policy towards Te Arawa. Similarly, Major Kemp's 'trust' in the 1880s to try to deal with the run-holders in the Murimotu and Waimarino districts was opposed by the Crown. The common Crown practice of making advances on land before it had gone through the court shaped the alienation of the upper Whanganui, including the 490,000-acre Waimarino block in 1886 (with 454,189 acres awarded to the Crown).

Meanwhile, the upper Whanganui lands that fell within the King Country were being surveyed for the main trunk railway. Initial participation by Whanganui with

the Ngati Maniapoto and other tribes on a general Rohe Potae boundary contrasted with separate applications made to the court by chiefs of Whanganui and other tribes. These applications were accepted by the Government, which was controlling the opening of the interior through restored Crown pre-emption under the Native Land Alienation Restriction Act 1884.

The Government also made use of public works and scenery preservation laws to acquire land along the Whanganui River. Pipiriki was acquired under the Native Townships Act 1895.

Whanganui therefore illustrates the tendency of the Crown to take advantage of, or indeed to promote, tribal divisions, in contrast to the tendency of Maori from the length of the river to try, from time to time at least, to act as one. Paradoxically, the 1848 purchase by McLean, a past-master at divide-and-rule tactics, appears almost a model purchase.

ptii.10 District 10: Taranaki

The purchases by the New Zealand Company, and succeeding efforts to ‘complete’ those purchases, were based on Commissioner Spain’s judgement that the *resident* Maori, still left at Ngamotu, gave genuine consent to at least some settlement at New Plymouth and the surrounding district. The extent of that district, and the entitlements of the absentee right-holders, have been discussed in the Waitangi Tribunal’s *Taranaki Report: Kaupapa Tuatahi*.²

The dominant issue in Taranaki was obviously the military attack on Te Atiawa and associated tribes in support of the Waitara purchase, which was attempted on the basis of a narrow and incorrect understanding of Maori customary land rights. This was followed by the confiscation or forced purchase or both of most of the district.

While (contrary to some historical interpretations) it seems that Te Whiti (to his credit) was challenging the whole confiscation by systematic non-violent protest rather than merely passively protesting about reserves, the wholesale arrests and deportations, suspension of habeus corpus, and forced dispersal of the Parihaka community were also a massive breach of Maori Treaty rights. Some 51,000 acres were reserved for Maori occupation within the west coast settlement reserves, but most of the fertile and important district – some 120,000 acres – was granted to settlers for peppercorn rents under a system of perpetual leases. To then sell the freehold of some 50,000 acres of it was truly rubbing salt into the wounds of Taranaki. Belatedly, the Government is now arranging to wind down the perpetual-lease system.

2. Waitangi Tribunal, *Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996

ptii.11 District 11: Hawke's Bay–Wairarapa

A notable feature of the early colonial history of the Hawke's Bay–Wairarapa district was the Crown's refusal to permit or encourage Maori leases being given to pastoralists. Payments of rent or 'grass-money' to Wairarapa chiefs by early run-holders began in the mid-1840s, but the Land Purchase Ordinance 1846 interpreted the Crown's pre-emptive right under the Treaty narrowly: the ordinance made all kinds of dealings in relation to land between Maori and private settlers not only void but illegal. The threat of prosecution of the Wairarapa run-holders was used by Governor Grey and Donald McLean to induce Maori to sell the freehold to the Crown for very low prices. Before 1862, despite the obvious advantages of leasing when compared with the Crown's low purchase prices, Maori could not begin to think seriously of further developing a leasehold system on customary land because such a system had been made illegal.

Crown purchases in Wairarapa and Hawke's Bay before 1865 were at first conducted with open and public discussion, and the boundaries of the purchase and reserves were clearly marked. Very soon, however, the purchases degenerated into covert arrangements made with the chiefs, often in Wellington, with very loose descriptions of boundaries and no surveys or permanent physical boundary marking occurring. Neglect to make reserves, and the subsequent purchase of supposedly inalienable reserves soon after the main purchase, were features of the Crown officials' proceedings. Purchases made from sections of the customary right-holders in an effort to undermine the resistance of the non-sellers created extreme tensions in Maori communities and led to fighting in Hawke's Bay in 1857.

After 1865, Hawke's Bay and parts of Wairarapa not yet sold were the scene of some of the worst of the scramble for Maori lands under the pseudo-individualisation of title through the Native Lands Act 1865. Full advantage was taken by purchase agents of the indebtedness of chiefs named in the titles, and the Crown was slow to respond by limiting the alienability of the lands. The conversion of customary tenure into fully negotiable paper titles (with each owner's signature a marketable commodity), the manipulation of the inexperienced chiefs, and the acquisition of the tribal patrimony were a kind of legalised spoliation, conducted under a system introduced by, and dishonourable to, the Crown.

About 75 percent of Wairarapa had been acquired by 1865 and some 82 percent by 1886. The Maori population was relatively small, but its losses are comparable to those of the South Island tribes in that very few individuals had sufficient land left to engage seriously in commercial farming.

In Hawke's Bay, the tribes were able to lease legally after 1865, and some 460,000 acres were still under lease in 1891. But the system of awarding absolute and fully negotiable title to only 10 owners in each block led to the serial purchase of each owner's signature and the loss of much of the tribal patrimony. The open scandal that arose, followed by the Hawke's Bay commission of inquiry, resulted in the Native Land Act 1873, under which all the owners' names were listed in titles. But pressures of debt (whether incurred for development purposes or for basic

subsistence needs), together with land agents' constant pestering for the signatures of individual title-holders (followed by the partition of the blocks) undermined Maori efforts at farming. The drive to secure the freehold from 1892 to 1899 (under the Liberal Government) and from 1910 to 1928 (under the Liberal and Reform Governments) left Hawke's Bay Maori confined to limited reserves by 1930. The Government's periodic efforts to make larger reserves (as reflected in the Native Land Act 1873) were not pursued with determination and invariably broke down.

The district also experienced confiscation (at Mohaka–Waikare and at Wairoa) and the forced cession of land (as in Poverty Bay). Most of the river flats in northern Hawke's Bay (Wairoa) had been acquired by purchase or confiscation or cession by 1870. Considerable areas of the Wairoa district were caught up in the activities of the New Zealand Land Settlement Company of W L Rees and Wi Pere and in the tangled web of Maori land law created by governments after 1865. In the 1890s, some of these acquisitions, which were legally flawed, were legalised by the Validation Court set up by the Liberal Government. It is unlikely that all Maori right-holders were aware of, or willing parties to, the alleged alienations in the first place.

ptii.12 District 12: Wellington

At the heart of the Treaty issues in the Wellington district are the New Zealand Company purchases. The concern is that Colonel Wakefield signed the deeds in 1839 with chiefs of Ngati Toa and Te Atiawa, whom he regarded as 'over-lord' chiefs, and then proceeded, after 1840, to 'complete' the purchases with 'resident' groups considered to be bound by the agreement with Ngati Toa and Te Atiawa and by the settlers' possession of some land. The Crown essentially supported this arrangement, Commissioner Spain and Acting-Governor Shortland in 1843 shifting the nature of their proceedings in the Land Claims Court from a process of inquiring as to whether Maori title had been extinguished to one of arbitration, to which they considered Maori were bound by their consent to the Crown's intervention in their disputes with the company. The subsequent 'releases' of 1844 (for limited additional 'compensation') and the McCleverty awards of 1847 saw the tribes relinquishing important lands in Wellington and the Crown giving to the company many of the 'tenths' promised in 1839 for the benefit of Maori. A process of marginalisation, rather than full inclusion, of Maori in the growing settlement had been commenced. In 1841, and again in fulfilment of the Loan Act 1847, the Crown waived pre-emption in favour of the company over much larger areas than Spain's arbitrated award, resulting in Grey extinguishing Maori title over some 209,000 acres in Wellington and the Hutt Valley (using force of arms to overcome resistance by Ngati Toa and their allies) and repurchasing (for the company) the Porirua and Wairau districts while Te Rauparaha and others were under arrest and Te Rangihaeata was in refuge.

Crown purchases to 1865, and later purchases under the Native Land Court, show the familiar themes of taking advantage of divisions between ‘sellers’ and ‘non-sellers’, of creating inadequate reserves and subsequently purchasing supposedly inalienable land, and of constantly eroding hapu control by the purchase of individual interests followed by partition under the Crown’s pseudo-individualisation of Maori customary land rights. By 1910, some 23 percent of the district remained in Maori freehold title, and by 1939 the figure was only 7 percent.

A particular feature of the Rangitikei–Manawatu and Horowhenua purchases in the central part of the district is that, in deciding the balance of customary right-holding in those blocks, the Native Land Court vacillated as to whether its determination should be based on the situation as at 1840 or as at the time the case was heard. There was also the question of the relative rights of tribes that had occupied the area for hundreds of years and those that had been there only since the musket wars (and sometimes since only shortly before 1840). Depending upon the stance taken in regard to these issues, some or others of the tribes concerned had their rights diminished by the Native Land Court proceedings.

ptii.13 District 13: The Northern South Island

The northern South Island, a district of nearly 3.4 million acres, had entirely passed out of Maori hands by 1865, except for about 7000 acres of reserves (plus Taitapu and Rangitoto–D’Urville Island, which were subsequently sold). The scale of the loss and the minimal reserves left make the alienation of the district comparable with that of the southern South Island.

The means of alienation were also comparable. The New Zealand Company’s 1839 deeds (with the ‘over-lord’ chiefs) were accepted by the Crown as ‘partial purchases’, to be completed by additional ‘payments upon settling’ made to the ‘resident’ chiefs by Captain Wakefield and then ‘compensation’ payments awarded by Commissioner Spain. Some resident groups accepted these reluctantly and under considerable pressure. The Crown did regard the Wairau district as having to be purchased afresh, but while Te Raurapaha and others were under arrest and Te Rangihaeata was in refuge, Grey purchased the district from Ngati Toa chiefs with scant regard for the interests of several other tribes in the three million acres concerned. McLean followed this with other ‘blanket purchases’ from 1848 to 1860, including the eight million acre Waipounamu purchase (which extended down to Kaiapoi). Reserves in the purchases were but a tiny proportion of the whole, and some of these were purchased soon after they had been made. The Taitapu reserve, the only large reserve to survive after 1865, was acquired in the aftermath of the discovery of gold; while at first making a genuine attempt to protect Maori from the consequences of a gold rush and give them a share in the revenue, the Crown subsequently exercised its powers under the Goldfields Act, putting the land effectively beyond Maori control and leading to its eventual sale.

Maori lost almost all their land in this district in a very short span of years and for prices that were nominal in relation to the harbours, valleys, resources, and huge area of the region. By the 1890s, many Maori there were officially regarded as landless.

ptii.14 District 14: The Southern South Island

The southern South Island has been discussed comprehensively in the Waitangi Tribunal's *Ngai Tahu Report 1991*,³ which this report has not had occasion to review. However, evidence of penetration of the area by settler claimants (such as Wentworth and others from New South Wales, as well as the French) possessing the capacity and the will to back their claims with force suggests that Ngai Tahu's 'exclusive possession' of all lands and offshore waters in the tribal rohe had become problematic by 1840. Alliance with the Crown was a sensible strategy for the Ngai Tahu chiefs, but as is well known, the Crown abused its opportunity by making huge 'blanket purchases', which were as loose in some cases as the pre-1840 private claims it had caused to lapse. The failure to make adequate reserves was a breach of instructions to governors from London and of Governor Grey's and Lieutenant-Governor Eyre's instructions to subordinate officials.

Perhaps most seriously, however (and this is true also for other parts of New Zealand), was the Crown's failure adequately to convey to the transacting chiefs exactly what was being transferred in the purchases and what was being retained. The contrasting interpretations of the 'mahinga kai' clause in the Kemp purchase are a particular case in point, but the issue goes beyond that.

Serious too (and also relevant in other parts of the country) was the Crown's continued payment of derisory prices and its refusal to allow South Island Maori the opportunity to develop a leasehold system on much of their land from the informal grass-money payments beginning to be made to run-holders.

ptii.15 District 15: The Chatham Islands

The central issue in the Chatham Islands is 'the 1840 rule'; that is, whether the Native Land Court should have awarded the bulk of the land to Ngati Tama, Ngati Mutunga, and Te Kekerewai Maori, who arrived from 1831 and overlaid the Moriori, who had occupied the islands for hundreds of years. In this instance, as in others elsewhere in New Zealand, the rights of conquerors were considered paramount (that is to say, worth 97 percent of the land in this case) and the rights of previous occupiers were worth very little (3 percent of the land in terms of the court's awards in 1870).

3. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991

This view involves an interpretation of Maori and Moriori custom that gives little weight to a long association with the land and great weight to a short occupation, powerful and dominant though the later arrivals were. The marks of long occupancy and the requirements of *ahi ka roa* (rather than *ahi ka as such*) will no doubt be considered by the Waitangi Tribunal in the claim currently before it (Wai 64).

The evidence has shown that the Native Land Court was not entirely consistent in its practice. In the Himatangi judgment, for example, the court tended to be guided by the situation obtaining at the time the case was heard, rather than by the situation at 1840, a situation later reversed in a judgment on a small portion of Ngati Raukawa land.

These are clearly matters of the greatest importance throughout New Zealand, as is the Crown's responsibility in creating a court properly able to assess Maori custom. Maori criticisms of the court after 1865 (as an essentially Pakeha institution not able to assess adequately the complexity and subtlety of custom) are well known. Nevertheless, whether any panel of Maori judges would have found differently in respect of the Moriori claims had they, not Judge Rogan, been sitting in 1870 is another matter.

The question of the kinds of title the court could award is very much the responsibility of the Crown. The titles awarded to Ngati Tama and Ngati Mutunga in 1870 were highly negotiable and most of the land was leased then sold.

In Treaty terms, the Crown also had some responsibility in respect of meeting the socio-economic needs of remote peoples, like those of the Chatham Islands. This concerns less the question of freeing Moriori from 'slavery' than the question of ensuring the Queen's new subjects minimum liberties when the Crown was finally in a position to intervene. (In the writer's view, 'slavery' is a poor translation of the traditional Maori treatment of conquered peoples. Maori apparently used terms like 'mokai', or simply 'nga tangata', a nice irony on the careless usages of the term 'tangata whenua' that have sprung up around the country in recent years, almost always in exaggeration of one's own claims and diminution of someone else's. The English term 'slavery' has rather different connotations from those of Maori institutions, being no less brutal in the short term but rather different in the longer term.) Certainly, after about 1865, when the Crown had the capacity to impose its will on most of New Zealand (except for the mountainous interior) it might have done more for the Moriori than see them relieved of most of their land.

