

PART I

1840 to 1865



## CHAPTER 1

# PRINCIPLES AND POLICIES

### 1.1 INITIAL APPROACHES TO RESERVING LAND BY THE CROWN

The following passages, from three British statesmen, are instructing the Crown's representatives in New Zealand in the mid-nineteenth century. It is standard to quote Lord Normanby in connection with the Treaty of Waitangi, as a basic statement of paternalism. A passage from Lord John Russell illustrates an approach to defining reserves which remained an ideal. Though less often cited than Normanby or Russell, the views expressed by Earl Grey in the third passage show what the Crown's principles had become by 1848. The principles which Normanby, Russell, and Grey set down in these early statements of policy continued to be invoked throughout the period under survey.

A policy for reserves was drawn up in Britain in 1839 by Lord Normanby, the Secretary of State for the Colonies. All dealings with Maori for their land should be by 'fair and equal contracts' conducted with 'sincerity, justice and good faith'. This can be taken to include arrangements for reserves. More specifically in relation to reserves, the Crown should act in a paternal or trustee role:

[Maori] must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this will be one of the first duties of their official protector.

As an expression of humanitarian concern for Maori, Normanby's ideas were theoretical. The basic question of how much land Maori owned had to be confronted by lawyers and politicians in Britain, and administrators in New Zealand. While the English text of the Treaty of Waitangi confirmed and guaranteed the ownership of their lands and other properties to the chiefs and tribes for as long as they wanted to retain them, British statesmen believed the Crown had guaranteed Maori rights only to those lands which they occupied and used.

Lord John Russell's instructions to Governor Hobson show that in 1841 he did not see 'the lands of the aborigines' as co-extensive with the whole of New

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1. Normanby to Hobson, 14 August 1839, BPP, vol 3, p 87

Zealand. But the point of the following passage is the sequence which it laid down. To protect Maori rights in land, it was essential to establish what land was required for their welfare before permitting purchases:

the lands of the aborigines should be defined, with all practicable and necessary precision on the general maps and surveys of the colony. The surveyor-general should also be required from time to time, to report what particular tract of land it would be desirable that the natives should permanently retain for their own use and occupation . . . the lands indicated in them [the surveyor's reports], or pointed out by the protector as essential to the well-being of the natives, should be regarded as inalienable, even in favour of local government, after the governor with the advice of the executive council, shall have ratified and approved the surveyor's reports, and the suggestions of the protector.

The practical implications of Russell's approach look very different if you believed, as he did at that point, that Maori did not own land on a very extensive scale. By 1847, not only Russell but also Earl Grey, 'the most ideologically committed of all the heads of the Colonial Office to a narrow interpretation of the land guarantee', had to concede that the Crown had recognised in the Treaty that Maori owned the whole of New Zealand. Grey's ideas, as expressed in a letter written by the Permanent Under-Secretary for the Colonies, Herman Melville, are important because they continued to be held by many Europeans:

It is true that in the absence of any such stipulations as those contained in the treaty the right to all the waste lands in New Zealand would have been claimed for the Crown from the moment British sovereignty was established. But it is only as trustee for the whole community that the Crown would have claimed this right, and acting in that capacity it would have been the first duty of the Crown's representative, to take care that the native inhabitants of New Zealand were secured in the enjoyment of an ample extent of land to meet all their real wants. In taking measures for this purpose their habits would have been considered; and though it would certainly not have been held that the cultivation and appropriation of tracts of land capable of supporting a large population must be forborne, because an inconsiderable number of natives had been accustomed to derive some part of their subsistence from hunting and fishing on them, on the other hand the settlement of such lands would not have been allowed to deprive the natives even of those resources, without providing for them in some other way advantages fully equal to those which they might lose.

The view that the Crown would naturally act as 'trustee for the whole community' was clearly stated. In that capacity, the Crown would protect Maori interests, regardless of the Treaty. Although Earl Grey still thought that policy in New Zealand had been misguided, he accepted that the only way for the Crown to acquire land was to buy it from Maori. The letter outlined what he thought should

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2. Russell to Hobson, 28 January 1841, BPP, vol 3, p 52
  3. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847*, Auckland University Press–Oxford University Press, Auckland, 1977, p 188
  4. Merivale (Under-Secretary for Colonial Affairs) to Beecham (Secretary of the Wesleyan Methodist Missionary Society), 13 April 1848, BPP, vol 6, pp 154–155

follow. Reserves should be 'ample', though confined to providing 'real wants'. Settlement and cultivation should have priority over hunting and gathering. But Maori were not to be deprived of land used for hunting and fishing without 'providing for them in some other way advantages fully equal to those they might lose'. Compared to Normanby and Russell, Earl Grey provided a more definite shape to policy although it was still being stated in general terms.

These principles remained current throughout the period. The idea that Maori should be secured in the ownership of land they needed before the rest was alienated persisted, though the Crown's commitment to this idea was uneven. Governments continued to claim that they were acting paternalistically, in the best interests of Maori. The question is how far this was in fact the case. As will emerge, the Crown's approach to reserving or restricting land from alienation was sensitive to changing political and economic circumstances.

## **1.2 RESERVES: CATEGORIES AND LEGAL STATUS**

From 1840 on, from the Crown's perspective, there were categories of reserves. In principle, there were two broad groups. The first group was for occupation and use by Maori. The second was intended to provide a fund for the benefit of Maori. Wording very generally used in later Acts implied that the first group was chosen by Maori and the second group was set apart for Maori. But Maori owners themselves placed lands in trust for churches and schools, as distinct from those lands which had been reserved for Maori purposes by other parties, for example, the New Zealand Company. Confusion over who had been responsible for bestowing lands for endowments was to some extent deliberate. Not only the New Zealand Company but also the Crown liked to give the impression of generosity.

Land for occupation and use generally contained, at the very least, dwellings, cultivations, and sacred places including burial grounds. In addition, there might be pieces of land and other resources that Maori wished to keep within blocks ceded to the Crown. This did not necessarily mean that all the land that sellers wanted to retain would end up as reserves. As with the price, reserves were in theory negotiable. Either party might refuse to go ahead with a sale if agreement could not be reached over reserves.

It is very difficult to make any unqualified generalisation about a standard reserve, even for occupation and use. Burial sites might be included in sales, sometimes after bones had been removed. In many cases scattered cultivations were 'rationalised' into blocks, as a requirement of the buyer. There was no generally accepted standard of what was sufficient land for present or future needs. How far particular transactions conformed to Normanby's 'fair and equal contracts'

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5. 'Grants of land were made to the principal industrial schools, so they might have farms both as a means of agricultural instruction and as a source of income, intended in time to make them self-supporting. It might appear from the despatches that these lands were Government contributions, but what in fact happened was that the Maoris were induced to give up portions of their own land as an educational endowment.' J Rutherford, *Sir George Grey: A Study in Colonial Government*, Cassell, London, 1961, p 219.

depended more on the relative strength of the parties at the time than to consistency of principle.

The neat distinction between land chosen by Maori and that chosen for Maori, noted above, did not hold in practice.<sup>6</sup> This has been recently examined in detail in relation to the Wellington ‘tenths’. Trust lands as a set percentage of a total transaction were not the Crown’s preferred option for funding institutions for Maori welfare, though Governor FitzRoy adopted this policy during the brief period of the pre-emption waiver. Nevertheless, the Crown succeeded to the New Zealand Company’s scheme of ‘tenths’, and was caught up in all its inconsistencies.

To give one example, Charles Heaphy, as Commissioner for Native Reserves, in 1870 noted with amazement the early history of land at Motueka. This case involved more than simply confusion over whether land was intended for residence or endowment, though this element was present. According to the New Zealand Company’s original undertaking, these reserves had not been intended:

merely for the maintenance of the Natives, but as an estate that should conduce to their improvement socially and materially. Owing, however, to its being discovered on investigation of the New Zealand Company’s title, that several of the Motueka Natives had received little or no payment for their lands, a series of sections at that place were awarded, in 1844, by Mr Commissioner Spain, to the local natives, thus making the payment to them for their land in *reserves which already belonged to their tribe*. [Emphasis in original.]

In this exercise both the company and the Crown officials appear to have been using reserves as a medium of exchange. The value would probably have been represented to Maori as the official award. As Heaphy pointed out, the land itself did not change hands, except by an illusion.

It remained unclear whether any change took place in the status of land set apart in deeds, other than having their boundaries defined and owners named. Governor Grey gave the impression that native title would be extinguished over all reserved land in blocks ceded to the Crown. Land purchase commissioners were instructed by the Government to provide plans for the local people as soon as reserves were surveyed. The registration of the reserves as the only lands that Maori owned was intended to serve as a form of Domesday Book. Copies of the deeds were meant to be available for Maori. Grey described<sup>8</sup> these documents were ‘somewhat in the nature of a Crown title to their lands’. Whatever this was intended to mean, it stopped short of granting Crown title. The Native Land Purchase Ordinance 1846, which prohibited the occupation of Maori land without a licence, made no exception for reserves. In practice the legal status of reserves remained unchanged until further steps were taken. Most reserves continued under customary title until the Native Land Court was established.

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6. D Moore, ‘The Origins of the Crown’s Demesne at Port Nicholson, 1839–1846’, report in the matter of the Wellington Tenths, August 1995 (Wai 145, docs E3, E4, E5)  
7. Heaphy to the Native Minister, 26 July 1870, ‘Report from the Commissioner of Native Reserves’, AJHR, 1870, D-16, p 37  
8. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6 [1120], pp 24-25

### **1.3 THE BROADER QUESTION OF TRUSTEESHIP – SOME EARLY PRESSURES**

The early governors, Hobson and FitzRoy, could be described as sympathetic to the principles of protection. An early test of these principles took place under circumstances which the Crown had not sought. Peter Adams has described a series of concessions made by administrators and officials to accommodate the New Zealand Company which are hard to reconcile with the promises of positive trusteeship. Hobson offered to sanction ‘any equitable agreement’ for persuading Maori to give up their pa and cultivations in Port Nicholson. Commissioner Spain beat down the ‘exorbitant demands’ made by local Maori to £1500 as compensation for their claims. Even George Clarke junior, officer for the Protectorate Department, told them, as Adams writes:

that they had no choice but to accept compensation, as they could not be allowed to resume lands built on by settlers, even though they had not been validly purchased. FitzRoy exerted considerable pressure on the Te Aro Maori to accept £300 for valuable land which they had never sold and which happened to be right in the middle of the town of Wellington, by stressing the valueless nature of Maori lands.

The experience at Port Nicholson and other settlements associated with the New Zealand Company contributed to a hardening in attitude of Government officials towards the location and size of reserves. Government agents in the later 1840s argued against Maori retaining sites which might interfere with the progress of European settlement. This applied not only to valued food gathering resources but also to scattered cultivations. But any particular outcome depended on the relative strength of the parties in negotiations. There is no single transaction which can be taken as typical, when looking at the history of reserves.

Governor Grey developed the Crown’s approach further in an important dispatch to Earl Grey in 1848. His policy was linked to an expectation that Maori would assimilate very rapidly with European society and economy. Maori would no doubt continue for some time to hold ill-defined regions but as settlement progressed traditional Maori in tribal society would be limited to well-defined reserves: ‘small portions of land, for the purposes of cultivation’ would be reserved for each tribe. Grey was aware that Maori traditionally needed wide land areas for hunting and gathering. Far less land was needed for the European-style farming which was envisaged by this policy.

### **1.4 CONCLUSION**

Later in the century, inconsistencies from the 1840s about the status and purpose of reserves were to re-emerge. Successive governments responded by attempting to define reserves systematically in legislation. As late as the 1880s the reports of the

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9. Adams, pp 191–192

10. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6 [1120], pp 24–25

## *Maori Reserved Lands*

reserves commissioner show confusion persisting. As well as confusion over the purpose of particular reserves, the outstanding question of how much land should properly be reserved was not satisfactorily settled.

Outside the concept of reserves created by sales was all the other land Maori still held on traditional title. It is not clear that Maori themselves made any distinction initially between lands reserved within a block and lands held back altogether from the sale process. It could be suggested that neither did the Crown. Some lands were, indeed, preserved for the sellers and their children for ever, according to the agreements. Other reserves were purchased by the Crown within a few years of the original transactions.

The impact of the Crown's policies in these early years was very uneven. It must be remembered that in the Crown colony period much of the North Island remained outside any sort of formal settlement.