

INTRODUCTION

An outline of the survey

The scope of this report is wide, both in terms of its subject and the period it covers. It falls into two sections for the purposes of organisation. The first part discusses the nature of reserves from Crown purchases between 1840 and 1865, the way the Government defined reserves and the development of official thinking about their purpose and legal status. The second section deals with the period from 1865 to 1900. This involves a consideration of the policies of colonial governments as well as the conduct of the Native Land Court relating to restrictions on the alienation of Maori land.

The first section begins by examining the general principles British statesmen set down for governors to follow in New Zealand. The Crown accepted responsibility for ensuring Maori retained land they needed. Reserves were intended to be 'ample' or 'sufficient'. These terms were too vague to be practical guidelines. In the 1850s, the administration made an effort to define reserves more systematically. The question of how much land Maori needed was closely connected with ideas about how this land should be owned and used. The report discusses contemporary opinions on these questions, and briefly examines some new departures in Maori land-holding.

The focus of the report widens in the second section to include lands restricted from alienation. In the early 1860s, the British Government withdrew from responsibility for Maori affairs, Crown pre-emption was abolished, and the Native Land Court, under the Native Land Act 1865, took on its established form. It had been the Governor's duty to impose restrictions on the alienation of Maori land. By a series of Acts, from 1865 on, the Native Land Court was to award titles with restrictions placed on alienability. The standard wording withheld land from sale, from mortgage, or from leases longer than a specified period, usually 21 years. There were variations on this. Some land was absolutely restricted from alienation, for example, urupa (burial grounds). Lands excepted from sales to the Crown continued to be classed as reserves, as were lands set aside by a range of legislative measures, such as those dealing with confiscated districts. Many of the lands designated 'reserves' were also inalienable.

The report outlines the purpose of restrictions and how they were imposed. It then examines how governments responded to pressure for consent to the removal of restrictions. Although large areas of land became alienable, many individual requests were declined. Changes in legislation in the 1880s and 1890s moved the process into the sphere of the Native Land Court and facilitated the removal of restrictions.

A separate set of laws and Crown responsibilities developed for lands held in trust for Maori benefit. Trust lands form a topic of their own and are dealt with in a separate report.

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Other restrictions came into existence in the years when Crown pre-emption was not generally in force. Restrictions might be placed by the Native Land Court on the sale of sites required for public purposes, for example, for lighthouses. Governments also had the power to place special restrictions on blocks or districts to exclude private purchasers. This is a separate aspect of Crown policy from the one that is the subject of this report.

I was asked to do a brief survey for the first part, and to concentrate research on the period after 1865. My commission was initially for five months, some weeks of which were spent at National Archives, Wellington, going through the files of documents on the removal of restrictions. Sampling the Maori Land Court minute books, as my commission directed, gave too little information about why decisions were made to lead to any general conclusions. The material was useful, however, in reinforcing other evidence about differences in the approaches of the judges.

The major sources of printed information were the *Appendices to the Journals of the House of Representatives*. There is little secondary literature dealing directly with the subject, and none that is recent. Invaluable aid, however, in identifying legislation relevant to this topic has been given by the *Maori Land Legislation Manual*. The *Manual* lists key Acts to provide a legal framework, but it is not intended to be a connected narrative. The existence of the *Manual* has shaped my work. My object has been a complementary one, to write a historical survey of the principles and policies from which laws emerged.

The Treaty of Waitangi and reserved lands – some general points

The question of reserves belongs with the wider question of land rights because reserves were linked to sales. The Treaty required that Maori should be protected in the possession of their lands and other resources for as long as they wished to retain them. This was not a static thing. It envisaged Maori selling land they did not themselves require, though there should be no compulsion to sell. Under article 2 of the Treaty the Crown was required to act paternalistically. Initially, Crown pre-emption and, later, special laws were put in place to ensure that Maori did not become landless through the process of land transactions. In this respect there was conflict with article 3. Paternalism exercised by the Crown encroached on the full legal privileges to which Maori were entitled as British subjects.

Most Pakeha in the period under survey believed that the Maori's best hope for security and progress was rapid amalgamation with European civilisation. The basis for this appeared to be in reforming Maori land tenure. This meant replacing communal ownership with individual titles. This is in line with the usual

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1. A recent legal history draws attention to statutory restrictions on Maori land alienation, and suggests that these often meant, in effect, 'restricted to the Crown'. The writer gives as examples the Thermal Springs Districts Acts of 1881 and 1883, where the limitation was on other purchasers rather than on the titles. R Boast, 'The Law and the Maori', in P Spiller, J Finn, and R Boast, *A New Zealand Legal History*, Wellington, 1995, p 152. The form of restriction was quite different when, as here, the object was the partial reimposition of Crown pre-emption.
 2. Written and compiled by H Bassett, R Steel, and D W Williams, Crown Forestry Rental Trust, Wellington, 1994.

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construction of article 3 of the Treaty. The ‘rights and privileges of British subjects’ were generally considered as a conferring of rights on ‘the individual’.

The historical context changed, but there were tensions that were present throughout the period. Regardless of the Treaty, most Europeans believed that Maori had rights of ownership to lands in ‘occupation and use’, but ought to be ready to dispose of the remainder. Governments wanted land for development. However, the desire to be fair towards Maori was generally present. Accordingly, the Crown’s policies even at the centre were a mixture of principle and expediency. The Native Land Acts which were passed by Parliament in the second part of the period were awkward vehicles for these conflicting elements.

There never was a point in this period when restrictions were completely abandoned, though humanitarian ideals receded. Protection appeared increasingly inappropriate. The intention to preserve Maori self-sufficiency was balanced uneasily against pressure to use land productively. At the end of the period, the Liberal government pressed ahead with measures to promote the development and prosperity of the wider constituency while weakening the measures restricting the alienation of Maori land. This was a policy with serious limitations, in that the assistance offered to Pakeha farmers was not extended to Maori.

Though what follows is a primarily a study of Crown principles and practice, contemporary records used in this survey showed a wide diversity among Maori. The need, or wish, to retain land as a traditional base often had to be reconciled with the desire to participate in the cash economy. Maori spokesmen, both in and outside parliament, argued that Maori should have a greater degree of control over their lands, of which reserves and inalienable lands were a part. Beyond this general position, Maori opinion too was divided on how to make the best use of land. This inevitably complicated the issue.

