

CHAPTER 6

CONCLUSION

The Crown in its dealings with Maori, in regard to gold, precious metals, and latterly, oil and subsurface resources of ‘national importance’, has adopted as its theoretical starting point, the rules applying in England, at the time sovereignty was declared. At 1840, sovereignty carried with it the royal prerogatives including a right to gold and all ‘most excellent things’ which dated back to the Elizabethan period. Maori held the position of ‘owners of the soil’ only, in the framework of the common law. It was that assumption which ultimately set the position of Maori in relation to the Government when it came to mining on their land, at first for gold, and in the twentieth century, for other important subsurface resources. In practical terms, however, the right to ‘royal metals’ was of lesser importance in defining the relationship of the Crown to Maori, than were the other attributes of sovereignty – in particular, the right to make law, enabling Governments to bring other rights of mineral access and development within the compass of the Crown’s powers. It was through legislation that Maori rights to withhold lands from mining, and their rights to revenues generated by their lands when such permission was given, were delineated.

Maori had no reason to believe that gold found on their land did not belong to them. Although there is no evidence of pre-contact knowledge of precious metals per se, Maori clearly demonstrated interest in, and used other sorts of subsurface resource, while the concept of separating attributes of the land, inherent in the royal prerogative, ran counter to the grain of tikanga. British officials had not asserted any prerogative claim to gold and precious metals at the negotiations for the signing of the Treaty, and early transactions involving non-precious minerals suggested to Maori that they had every right to dispose of subsurface resources as they pleased. That view would seem to have been confirmed by the first negotiations for goldmining on Maori land. There is no evidence in the record that officials explained the niceties of the common law distinctions to Maori; that they were agreeing to access only, and were not capable of transferring the right to the gold itself. Maori readiness to allow mining on their land varied. Some readily gave their consent to Pakeha bringing their technological expertise to the land while others believed that they should have nothing to do with gold, that it was something valued only by Pakeha, and that Maori should stick to the traditional ways. But there is nothing to suggest that Maori thought that they did not own any gold which lay within their land. This came to be seen as ‘Maori gold’ to be kept or to be exchanged for the ‘Queen’s gold’.

While successive governments have assumed the existence, and have preserved the royal prerogative with reference to gold and valuable minerals, practice has been more ambivalent. Indeed, Maori were treated initially, as an autonomous people who, in all practical senses, owned the subsurface resources, and were entitled to withhold their lands from the Government's jurisdiction. Officials, in the 1850s, when the question of gold ownership was first at issue, were pragmatically conscious of the power of even small iwi and the significance of the Treaty as an inhibition on the prerogative. While they were not prepared to abandon the right to 'royal metals', they accepted that a blunt assertion of that prerogative would be strongly resisted by Maori, looking to the Treaty guarantees of rangatiratanga over the land and its attributes. It was decided, therefore, that an agreement should be negotiated whereby Maori would 'cede' the right to mine for gold on their land, to the Government, which would take responsibility for the management of the field and the miners on it. In exchange for their consent, Maori would receive a portion of the revenues generated by the field, in the form of fees for working claims. The rhetoric of negotiation which underlay this agreement was characterised by promises of partnership and mutual benefit.

This basic method of opening Maori land to mining was used throughout much of the nineteenth century, although the trend was for the Government to negotiate increasingly stringent terms of cession, or to hold out for the complete freehold in order to gain access to the gold. The rhetoric, too, remained unchanged, as the Coromandel, Taitapu, and Thames goldfields were opened on Maori land in the 1860s. Maori agreed to allow mining under Government management, in exchange for various fees, generally comprising payments for the miners' rights under which work on the field was authorised, township rents, and for the felling of valuable timber. The Government agreed to administer those revenues, to maintain law and order, and to respect areas reserved to Maori. For the Government, the model of negotiated cession had the early advantage of promoting Maori consent which would not have been gained otherwise, without directly infringing upon the 'royal right' since the question of actual ownership was by-passed. But in later discussion, the Government was able to argue that it had never negotiated for the gold itself, and had never paid royalties on it, only revenues for the use of the field.

An important exception to the general mode of cession was provided by the case of Tokatea, a piece of land withheld by a section of Ngati Tamatera from the agreement at Coromandel, in an effort to retain and work gold resources for themselves. The issue of Maori control of the Tokatea block became increasingly politicised in the early 1860s. The mining community, and the Government, in the person of Grey, insisted on access to that land while one of the two principle right-holders in it, looked to the King movement. Pursuing 'divide and rule' tactics, Grey forced an opening over this opposition, allowing one group a yearly rental. This presented opponents with a *fait accompli* which they had to either accept or reject by resort to arms.

The willingness of the Government to use coercive tactics at Tokatea belied promises to respect Maori wishes with regard to keeping control of their lands, and suggested that its policy was predicated on the assumption that Maori had no choice, ultimately, but to agree to mining. Thus, Maori were told that not only

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would they benefit from mining, but they also would suffer if they tried to prevent it. On the one hand, the Government would be unable to prevent the white population from 'rushing' their lands; on the other, only the Government would be able to control that population once the area was duly opened.

It was highly unlikely that the Government could both satisfy the demands of mining interests and honour its promises of protection to Maori with regard to their right to keep land closed. Policy with regard to auriferous lands began to harden in the 1870s, taking greater account of settler and mining interests. There was considerable dissatisfaction in Government, and in the mining community, that ownership of goldfield lands should have been left in the hands of Maori, and decreasing patience with Maori aspirations, and with the need to gain full tribal consent to mining. Policy changed from the negotiation of cession of mining rights to one of outright purchase of the land, followed by incorporation into the existing goldfield. In complete disregard of its promise of mutual benefit in the development of minerals, the Government generally attempted to conceal the real value of subsurface resources from Maori during the course of negotiations. Purchase of the freehold of blocks outside the areas ceded by Maori in the 1860s was rapidly followed by the complete acquisition of blocks already opened to mining activity. While governments pursued the complete acquisition of the most valuable of the goldfield blocks, Maori ability to hold onto both land and resources, and to negotiate terms to their own satisfaction, was rapidly diminishing as a result of declining returns on their lands, native land court activity, and the deliberate undermining of tribal authority by Crown agents.

Decreasing respect for Maori rights, and increasing use of coercive tactics on the ground, was demonstrated in the negotiations for mining at Ohinemuri, Pakirarahi and Te Aroha where the Government effected openings without full Maori consent. That trend was confirmed by the legislative expansion of Crown powers at the expense of Maori rights. If the early colonial statutes preserved the 'royal prerogatives', they also assumed that Maori land could be brought within the compass of mining law only by agreement with the owners. Although the first colonial statute, the Gold Fields Act 1858, declared that the Governor in Council could proclaim any part of the colony to be a goldfield, that power was not assumed to apply to customary land. Later legislation, passed in 1866, redefined the terms used in the statute to include lands where Maori right holders had given their consent, within the Governor's powers to proclaim as a goldfield.

In the final quarter of the nineteenth century, legislative acknowledgement that Maori had the right to withhold their lands from mining was gradually abandoned. The Governor was empowered to bring reserves set up by the land court within the goldfield, then lands which has been specifically reserved from the original cession of mining rights, and finally, all types of lands. At the same time, the legislature moved to strengthen Government access to other types of minerals. This trend continued into the twentieth century, as on the one hand, mechanisms of establishing access to Maori land were simplified through the mechanism of the land court, and on the other, special legislation was passed, asserting the Crown's ownership of oil and uranium, or sole right of access to geothermal energy, iron sands, and bauxite.

The Government argued that these mining statutes represented an assertion of a royal prerogative which may have been let sleep for much of the nineteenth century, but which had never been abandoned, and justified the extension of its powers of access to include subsurface resources in Maori land, by maintaining that this represented the equal treatment of the two races. Maori, however, saw such legislation as innovative, and as contrary to both the Treaty of Waitangi and the spirit of early mining agreements.

In the meantime, Maori who had ceded their lands for goldmining purposes, in the 1850s to the 1870s, found themselves unable to withdraw from those agreements even after the terms of operation had been unilaterally altered to their disadvantage, and mining had long since ceased on their lands. The Government did not loosen its hold on the Hauraki goldfield, exercising powers over the surface, under general mining legislation, until the passage of the Mining Act 1971. Even then, perpetual leases of Maori land issued at small rentals, under mining legislation, remained untouched since the interests of third parties would be effected. A compromise was only reached after extensive negotiation, in the 1980s.

At contention here, were the Government's obligations and rights under the cession agreements. Maori who had signed the original agreements had been willing to cooperate with the Government, but on terms which assumed their ultimate control of the land and what it contained. They were prepared to open their land to Europeans for mining, provided that they received payment for what was taken, were protected in their person and property, and retained ultimate authority over the land. They were led to believe that they would equally participate in the benefits of mining. The Government, however, tended to forget the commitments it had made to Maori once their consent to mining had been gained. Upon cession of mining rights, the land in question became subject to mining law which evolved in response to the needs of the industry rather than of Maori right-holders. The conflict between the terms and implications of the original agreements and changing statutory provisions which tampered with standing arrangements, soured relations between Maori and successive governments in the Hauraki district for over 100 years.

The transfer of control consequent upon cession was more extensive in nature than had been contemplated by Maori signatories. The balance of power, with the added weight of a huge influx of white population, shifted inexorably towards the Government which abandoned models of partnership without adopting commensurate measures of protection. Successive statutes enabled the Governor to introduce new regulations on the goldfield, delegate his powers to the Superintendent of the Province, and issue authorisation for a growing variety of uses and types of mining tenure within the goldfield. Whereas the original consents had been framed in simple terms, of an annual payment for each person working the land, based on individual miners' rights, the Government soon introduced new forms of authorisation for working a claim within the field – in particular, 'licenced holdings', which gave the licensee 15 to 21 years' tenure.

Maori protested that the innovations in mining tenure would result in a reduction in the revenues to which they were entitled under negotiated agreement. At first, the Government conceded that Maori should be compensated for losses consequent on

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the such changes, and should receive all forms of revenue generated in the forms of rents and fees for authorisation to occupy lands within their ownership. During the late 1870s and early 1880s, however, mining interests and Government bodies expressed considerable dissatisfaction that these moneys should be going to Maori rather than into Government coffers or to the relief of the industry. Despite Maori protest, the Mining Act 1886 reduced the requirements for persons working on the goldfield to hold the miners' rights, the fees for which comprised a large part of their revenues. Later legislation reinstated certain of those requirements, but at the same time, removed other revenues which had been conceded to Maori after the original deeds of cession had been signed.

There was no requirement for the Government to obtain Maori consent to any of these changes. Through out the last quarter of the nineteenth century, Maori had protested against the Government conduct with reference to mining on their lands; about the way in which it wielded legislative powers in furtherance of mining interests, chipping away at Maori revenues and their right to withhold lands from mining activity, either over their protest, or without informing them of the implications of those measures. The Government, however, tended to dismiss Maori complaint as deriving from causes over which it had no control – in particular, from the decline in their revenues reflecting a drop in the profitability of the field after the first boom years. It is clear, however, that legislative change, the increasingly tough Crown negotiating stance as new Maori lands were brought within the field, and its pursuit of the acquisition of the freehold of goldfield blocks, greatly contributed to the declining position of Maori.

By the time the mining industry underwent a revival at the turn of the century, Maori were in no position to enjoy any direct advantage from the resource. The descendants of the original signatories to the cession of the goldfield blocks could not understand why they should seem to have benefited so little from the development of mining, and should now retain so little of the land itself. The question of the Crown's conduct with reference to the Hauraki goldfield was submitted to the inquiry of the court, and defended by the Government in the 1930s. Various administrations, in the twentieth century, have been prepared to acknowledge the more obvious Maori grievances with regard to ceded lands – lapses in goldfield payments, and the continuing application of the warden's powers over lands on which mining had long-ceased – provided that the remedies did not infringe on private interests. But Government has been far less willing to admit any fault in the application of legislative powers, or to reopen query into the correctness of early transactions, and the equity of its bargains. It has been reluctant to acknowledge the principle of Maori rights to valuable sub-surface resources either as an aboriginal right or under the Treaty, or any trustee-like status with regard to customary lands under cession agreement.

