

CHAPTER 5

CROWN PURCHASES TO 1865

5.1 Early Crown Policy

As discussed in chapter 1, Normanby instructed Hobson in 1839 to buy land cheaply from Maori in order that profits of resale of land would be available for the cost of administration and to promote immigration and development. Russell's 1840 and 1841 Instructions, however, reflected his belief that Maori title should be recognised only in respect of land they 'now actually occupied or enjoyed'. Other statements by Russell show that by this he meant settlements and cultivations, not hunting and gathering land.

5.2 New Zealand Realities

Officials in New Zealand, however, knew that the theories developed in London would not hold in New Zealand. Busby and Clarke had known all along that Maori claimed all the uncultivated land – that it supplied mahinga kai, building materials, clothing, medicines, and personal adornments as well as having deep historical and spiritual associations.

It did not initially appear, however, as if the recognition of Maori land rights would be at all an obstacle to settlement, for Hobson reported within weeks of signing the treaty, that Maori were pestering him to buy land, just as they had showered offers upon settlers and speculators in the late 1830s.¹ He argued that if he did not promptly buy some land Maori would feel that he had betrayed the 'promise' made at Waitangi. (that is, the Crown's pre-emptive right to buy Maori land was being construed by some Maori as a promise to buy it).²

What lay behind this urgent Maori desire to sell? Firstly there was a lack of realisation among many Maori of the commodity view of land and the idea of permanent alienation in return for a one-off payment. Although Maori understanding of those European concepts was fast growing – certainly to the point of recognition that the alienation was permanent (as permanent that is, as anything ever was in the somewhat contingent world order of the Maori); but the tendency persisted for Maori not to see land rights in isolation from other aspects of social relations. Maori certainly expected ongoing benefits from the land sales, in the

1. Hobson to Gipps, 20 February 1840, BPP, vol 3, pp 134–135

2. Hobson to Gipps, 5 May 1840, g36/1, NA Wellington, cited in David Armstrong (Wai 45 rod, doc i4), p 6

form of association with powerful and wealthy Pakeha, with whom to trade and seek advancement of status. And what better associate than the Crown, whose representatives possessed and paraded all the panoply of military and naval power? Then there was competition with rival hapu; as Dr Ann Parsonson has shown, to be able to sell land – especially land where there were intersecting interests – demonstrated the sellers’ mana over the land. Maori leaders also seemed to see certain advantages in securing title to reserves of their most important lands, as a reasonable alternative to the web of competing claims over much larger areas of land. Moreover, for some Maori the frustrations and limitations of the traditional society probably became apparent once the prospect of individual wealth appeared before them; the temptation to cut away the web of kinship for at least part of one’s land, must have been strong. Hence the early interest in securing individual blocks as part of the payment. Selling land brought a flush of immediate wealth, albeit short-lived, but also the hope and expectation of further opportunities from engagement with the new system. If one was to enter the new commercial economy the former hunting and gathering land did not perhaps seem so important for traditional purposes or perhaps could still be used for those purposes even after it was sold; and Maori strongly resisted selling their more important areas of settlement and cultivation.

The evidence is clear that, at the outset, many Maori had not grasped that Crown pre-emption meant a Crown monopoly right, as distinct from a right of first offer. Crown pre-emption is a central principle of the treaty and there are limits, in a report based on the Treaty of Waitangi Act, to the argument that Crown pre-emption is a principle that should not have been observed. How the right was used is, however, another matter. Although they put their signatures to Crown pre-emption as part of the Treaty, it was not wholly favoured by Maori as compared with trading on the open market. What this means, in Treaty terms, is that the Crown, in taking the pre-emptive right, assumed the obligation to use its privilege responsibly and with due regard to Maori rights and to the duty of active protection. In short, a use of the pre-emptive right to beat the price down, taking advantage of Maori inexperience and ignorance of land values and how they increase, thus denying Maori the full value of their land, would seem to be a clear breach of the duty of active protection. At the very least if, following Normanby’s principles, Maori were to be paid low prices, the Crown was under obligation to ensure that they received other benefits from the sale, either through increased value for their remaining lands or being otherwise included in the developing economy and society.

5.3 Early Crown Purchases

The first significant Crown purchase from Maori was that of Waitemata, the 3000-acre site for central Auckland, the new capital. The deed of sale was signed on 20 October 1840, with Apihai Te Kawau, Tinana Te Tamaki and two others. The Ngati

Whatua Chiefs at Remu-wera (Remuera) had declined to sell that site, which had been Governor Hobson's first preference. Maori usage of the Waitemata land continued, in the sense of traversing freely, fishing on the foreshore, even still cultivating portions of it, as the streets were laid out, subdivision sales held and buildings and wharves sprang up.

Other purchases soon followed: the Kohimarama block, about 6000 acres, from Mission Bay to West Tamaki Head and south to modern Panmure, from Ngati Paoa chiefs on 28 May 1841; the initial deed for the 9500 acre Mahurangi block in April 1841; Waitemata to Manukau, about 8000 acres, between Orakei and One Tree Hill, on 29 June 1841, from Ngati Whatua chiefs; Manukau road, 200 acres, near Onehunga, on 14 September 1842. In 1842 also the Crown began buying in South Auckland: an agreement was made that year for a 9000-acre purchase at Papakura, the deed being signed by Ihaka Takanini and five others of Ngati Teata on 28 January 1842; and 16,000 acres called Pukekohe 1, from Ngati Teata, in August 1842 – a great strip of land running from the Manukau Harbour to the Waikato River. Some small purchases had also made in the Bay of Islands, overlaying Old Land Claims, and ill-fated purchase at Oruru from Nopera Panakareao and from Pororua. Various islands in the Hauraki Gulf were purchased in 1844.

The prices paid for these lands were low: an initial £28 of cash and goods for Waitemata with subsequent small additional payments; £100 for Kohimarama plus two horses, a large boat and other goods; £200, four horses and other goods for 'Waitemata to Manukau'; £400 and six horses for Papakura. There had been a substantial rise from 1840 to 1842, but even allowing for the importance of horses at that time, the prices were indeed low in relation of the resale value of the land. The first auction of subdivisions in downtown Auckland brought an average of £560 per acre in 1841; this should *not* be taken as typical, for in fact the development of the colony stagnated for the next few years. Even so resale prices for Auckland land in the period ranged from about £4 an acre to £7 an acre for suburban land and up to £30 an acre for prime sites in the 1840s.³

The Crown moved with some deliberation into intersecting tribal rights. To buy Waitemata from Ngati Whatua and Kohimarama from Ngati Paoa was one way – a rather rough way – of dealing with the situation where the interests of both tribes could be found in both blocks. In South Auckland tribal inter-connections and tribal land rights were extremely complex. The core interests of principal hapu might, with difficulty, have been located, but hapu interests were scattered across the region. The Pukekohe purchase was initially made with Ngati Teata chiefs who had offered the land. In forwarding the purchase deed Clarke noted:

the land in question appears to have belonged to several tribes. I considered the titles of two of the principal claimants, viz. the Ngati Teata and the Ngati Tamaoho, to be extinguished by the accompanying deed, but I question whether that of the Ngati Pou is so; as however the consideration given is considerably within the ratio that has been

3. For a fuller discussion of prices paid and resale prices see Alan Ward 'Supplementary Historical Report on Central Auckland lands', Crown/Congress Joint Working Party, Wellington, 1992, pp 27–55.

estimated as the cost of the land per acre, there will be ample funds in the hands of the Government to meet any other equitable demands that may be made.⁴

In fact the purchase was immediately opposed by Ngati Tamaoho, Ngati Mahanga and Ngati Haua, supporting Mohi and Te Akitai, who were regarded by the tribes as the principal right-holders. In 1844 Ngati Tamaoho were proposing to sell the 35,000 acre Ramarama block (another long strip from Manakau to Waikato) which Ngati Teata opposed and in the event Ngati Teata withdrew claims from Ramarama while the others withdrew claims from Pukekohe, a further £100 being paid on the latter, part of it going to Mohe. Te Akitai continued to negotiate its claim for a promised reserve with Crown agents until 1853. The Crown subsequently paid £50 to ‘quiet the claims’ of 11 other hapu in Ramarama.⁵

These proceedings established very early on the Crown’s policy of dealing with various Maori interests severally. Payments to the first vendor group at once evoked the irritation – or worse – of the others, but, at the same time, put them on the back foot. They tended to come in to accept a payment, and a recognition of their mana, but their ability to stop the sale altogether was limited, once it had been agreed between Crown agents and principal chiefs.

In South Auckland the Crown got away with having provoked no more than skirmishes between the competing parties. At Oruru, in Mangonui, however, the Crown blundered badly. Attempts to pay off in turn Pororua and Nopera Panakareao founder on the latter’s refusal to admit that Pororua had any right at all to initiate sales in Mangonui. Fighting erupted between the two parties.⁶

It was after this that Chief Protector Clarke began to write his 1843 memoranda pointing to the complexity of Maori tenure, the need to proceed very patiently and carefully if all Maori interests were to be extinguished, and to purchase only small areas at a time. Clarke also sought and received approval to have the Protectorate Department no longer involved in land purchase, because of the conflict of functions.

Other short-comings in the early Crown purchases were the signing of deeds on the basis of extremely loose boundary descriptions – usually a series of references to places such as ‘a stream called Hingaia’ or ‘the head of Papakura’. Crown agents were supposed to furnish a plan showing the extent, boundaries, and quality of the land and the estimated number of acres. But such plans were usually only rough sketches on the back of the deed, and estimates of acreages were very inadequate. It is perhaps unreasonable to have expected formal surveys to be done – a very expensive process – before the Crown agents actually had a deal with Maori. But the use of general place names as identification marks was not adequate to disclose to the Maori parties with interests in the area exactly which land was involved and whether they should express an interest. A walking of the boundaries and a marking

4. Clarke to Colonial Secretary, 9 December 1843, Turton *Compendium*, sec c, p 279

5. Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, pp 18–20

6. For Clarke’s effort to mediate, see D Armstrong, “‘The Most Healing Measure’; Crown Actions in Respect of Oruru/Mangonui, 1840–1843’ (Wai 45 rod, doc j3).

of the corners *with* the chiefs involved was, however, entirely practicable and should have been done to identify to Maori interest holders exactly what land was under negotiation. Even a cutting of boundary lines was possible, though very expensive in labour costs in heavy bush. As it was, surveys did not in fact take place till years after the deed's signing, at which point new right-holders came forward and new quarrels broke out.

The other weakness in the purchases was the very minimal allocation of reserves. No reserves were made in the first three Auckland purchases nor in Papakura. Reserves were made in Pukekohe and Ramarama but some appear not to have been marked out and others to have been purchased soon after. The state of reserves was very confused. Moreover some of them were landlocked (which Husbands and Riddell note in their report to be a weakness in respect of the people who relied very heavily on the Manukau Harbour and the Waikato River for fish and shellfish).⁷ Probably the Crown considered that Maori would have access to the foreshore along with all New Zealanders.

Under Governor FitzRoy, the Crown embarked on new strategies. One was to press ahead with issuing Crown grants for old land claims even though they had not been surveyed (see above, ch 2). The other strategy was to waive Crown pre-emption, starting with a proclamation of 26 March 1844, while having the Protectors make a check on whether the Maori vendors of land (to the private buyers) were the proprietors according to custom (see above, ch 4).

5.4 The Otakou Purchase

Perhaps the most striking success of the waiver purchase period was the Otakou purchase of 1844. This has been fully discussed in evidence submitted for the Ngai Tahu claim and in the Tribunal's Ngai Tahu report. The area purchased was estimated at 400,000 acres and was actually about 534,000 acres; the price was £2400; 150,000 acres was for the New Edinburgh settlement. It was in the lightly populated South Island and the customary owners were Ngai Tahu, led by their senior chiefs and with no cross claims. The purchase was by Company Agents supervised by sub-protector George Clarke Junior and other officials. The boundaries were publicly discussed and actually traversed with the chiefs (amidst snow and rain). Reserves were roughly one-tenth of the 150,000 acres of New Edinburgh, in locations the Maori requested; the vendors preferred to try to develop their own commercial venture at Otakou Heads, in association with the whalers, rather than accept 'company tenths', which were not working well in Wellington (see ch 3).

There was, however, as the Tribunal has found, a failure on the part of the Crown to set aside reserves in proportion to the balance of the 400,000 (or 534,000 acres) of the whole block; nor did the Crown take an endowment in these lands largely for

7. Husbands and Riddell, pp 27–32

Maori purposes, in line with FitzRoy's policy of creating 'Crown Tenths' in the waiver purchases in the north.

5.5 Governor Grey and the 1846 Constitution

Governor George Grey arrived in New Zealand in 1845 and began urgent tasks such as military operations against Heke in the north. His handling of pre-emption waiver claims is discussed in chapter 4, and in respect of the company's claims in Wellington, in chapter 3. Lord Stanley, Secretary of State when Governor Grey first took office, instructed Grey to 'honourably and scrupulously fulfil the conditions of the Treaty of Waitangi'. But Stanley did not believe that all lands in New Zealand were under Maori proprietorship and encouraged Grey, over a two to three year period, to press ahead with Russell's instruction to determine 'what portion of the unoccupied surface of New Zealand can justly, and without violation of previous engagements, be considered at the disposal of the Crown'.⁸

In March 1847, the despatches from London brought news of the New Zealand Constitution Act 1846. The Secretary of State, Earl Grey who, as Lord Howick, had considered the Treaty of Waitangi guarantee to have been a mistake and was an ardent supporter of the New Zealand Company, gave instructions for Grey to implement Russell's policy – that is to register all occupied Maori land (meaning cultivated land) and to treat the rest as Crown demesne. Governor Grey was aware by now of Maori attitudes to land and of Maori capacity for military resistance. He was also pressed strongly by eminent figures such as Chief Justice Martin and Bishop Selwyn, not to implement chapter 13 of the constitution, concerning 'the wastelands of the Crown'. Yet Grey was under strong pressure to get land for settlement. He had also been instructed to restore Crown pre-emption. Continued Maori interest in land selling offered him a way through his dilemma. He therefore proposed to his superiors in London a solution. He would not implement chapter 13 of the Constitution Act. Maori customary interests in land would be recognised; but Maori, he assured Earl Grey, 'will cheerfully recognize the Crown's right of pre-emption, and they will in nearly all – if not in all – instances dispose, for a merely nominal consideration, of all those lands which they do not already require for their own subsistence'. He even suggested that Maori would cheerfully give up land without payment 'if the compliment is only paid them of requesting their acquiescence in the occupation of those lands by European settlers'. In short Grey would recognise Maori customary claims, rather than impose Earl Grey's views, in order to buy them out. Grey's view was highly patronising and clearly took the most minimal view of the value of Maori equity in land. His main reason for asserting that Maori would be compliant was his belief that, even in the North Island, there were 'very large tracts' claimed by contending tribes 'to which neither of them had a strictly valid right', and that they would cheerfully relinquish their 'conflicting

8. Stanley to Grey, 17 June 1845, BPP, vol 5, p 230

and invalid claims' in favour of the Government, stipulating only small reserves for cultivation. He said that an instance of this kind had just occurred (he was possibly referring to recent purchases in South Auckland). He therefore proposed to modify chapter 13 of the Royal Instructions, extinguish 'for a trifling consideration' native title to large tracts ahead of settlement, reserve 'an adequate portion for the future wants of the Natives in that district', and register the reserves rather than register the Maori claim to the whole area, which was 'invalid' anyway. Note that Grey's phrase was 'extinguishing Native title' which avoided recognition of Maori rights in uncultivated lands as the equivalent of common law proprietorship. The real payment to Maori for their land, he argued, would be in the security they gained from Crown title to the reserves, the added value of the land which would come through development, and a market for their produce.⁹

This was a masterly dispatch, indicating as it did the Governor's recognition that Maori did generally want settlement among them, that they would go a long way to collaborating with officials if their mana was recognised and they were involved in the location of those settlements. Grey rightly identified also the tendency, which had been evident for some time, for Maori to sell their interests in contested land. But the despatch also indicated the Governor's dangerous tendency to be patronising and manipulative. His notion that Maori would willingly relinquish contested lands in large quantities, including in the North Island, was over-optimistic to say the least. It was a policy which was eventually to launch the Government on a course of buying land not only from chiefs with major interests, but also from claimants with lesser interests, in an attempt to influence those who had a stronger claim in the area and no intention initially of selling at all. His attitude to the value of Maori equity in land was also limited and rapidly became outdated, as runholders were informally leasing land from Maori in increasing quantities.

Grey had already, as instructed, restored Crown pre-emption through the Native Land Purchase Ordinance of March 1846. Informal leasing between Maori and settlers had been continuing despite the 1840 proclamations. The 1846 ordinance prohibited all kinds of private land transactions with Maori, whether by sale or lease, or the taking of timber or minerals, or the pasturing of sheep or cattle, without a licence from the Crown. Apart from timber-cutting licences, which were granted, the ordinance effectively circumscribed a whole range of transactions which Maori had been entering into with settlers; though many in fact continued to do so in defiance of the ordinance. The restriction can be seen as an elaboration of Crown pre-emption, as agreed in Article 2 of the Treaty. The English language version of the Treaty establishes Crown pre-emption only over 'such *lands* as the proprietors thereof may be disposed *alienate*' (emphasis added). The 1846 ordinance therefore, to have Treaty justification, requires 'lands' to be read as including trees and sub-surface rights, and 'alienate' as including alienations other than by sale. This is certainly possible under common law usages of those terms. It does, however, involve much greater restrictions than were discussed at Waitangi or understood by

9. Grey to Earl Grey, 15 May 1848, BPP, vol 7, p 23

Maori at that time. The evidence suggests that many Maori came away from the Treaty debate with the idea that Crown pre-emption meant first offer only. Leases were probably not discussed at all. Whether the Maori term 'hokonga' conveyed the notion only of sales, being reserved to the Crown, or other kinds of alienation as well, is unclear: the term, while probably retaining a core of the Maori sense of reciprocal exchange, also appears to have gained connotations of commodity trading during fifty years of commerce with Europeans. But Maori did not regard trees – timber – as part of 'land' as English law did; so they would have considered themselves free to sell timber to someone other than the person to whom they had sold land, and cases quickly emerged of this. Crown purchase deeds therefore tended to become increasingly explicit about including things on the land and under the land. Of the Native Land Purchase Ordinance 1846 though, it can be said that it was enacted without serious consultation with Maori. The British Government and Grey wanted to secure the Crown monopoly via the colonial law and did so. If consulted, of course, Maori would very likely not have agreed, for they were enjoying a variety of engagements with the Pakeha over the land and its resources, other than selling it.

5.6 Early Land Purchases under Grey

Grey's first purchase in February 1847 was of the Porirua lands after his military invasion of the disputed Hutt Valley and Ngati Toa territory to the north, and after his seizure of Te Rauparaha and other Ngati Toa Chiefs. The deed was signed with eight paramount Ngati Toa Chiefs for an area, subsequently granted to the New Zealand Company, of nearly 69,000 acres. The price was £2000. Dr Robyn Anderson doubts that these signatures represented full and willing consent of the tribe, especially with Te Rauparaha under arrest, Rangihaeta in hiding, and Grey in the full flush of his military victories.¹⁰ Some 10,000 acres, about 40 acres per head, were reserved for Ngati Toa at their insistence, including Taupo pa and part of the land fringing Porirua Harbour.

The following month Grey negotiated again with three of the Porirua chiefs, this time for Ngati Toa land across Cook Strait – the disputed Wairau Valley but also the Kaikoura Coast as far as Kaiapoi – some 3,000,000 acres in all. Grey dealt with Ngati Toa chiefs in the North Island, ignoring the interests of others such as resident Ngati Rarua and Rangitane, although his surveyor general's report said that they had interests in the land. Three Ngati Toa Chiefs agreed to accept £3,000 and signed the deed. The money was paid over five years, not out of concern for its distribution and beneficial use, but because, as Grey said, the instalment system would 'give us an almost unlimited influence over a powerful and hitherto very treacherous and dangerous tribe'.¹¹ Reserves of over 117,000 acres were made, Grey explicitly

10. Dr Robyn Anderson and Keith Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, para 2.17.

recognising that people of a hunter–gatherer economy required large areas from which to collect flora and fauna. Phillipson notes, however, that the reserves were purchased by the Crown a few years later. According to Bishop Selwyn the first instalment of the Wairau purchase money was spent by the three signing chiefs for their own benefit, but Government continued to pay the next instalment to the three; distribution within the tribe was not seen by the Crown as its problem. The Ngati Toa chiefs in the South Island were only involved in boundary marking, not in the initial receipt of payment. Ngati Rarua and Rangitane occupants were refusing to quit the lands several years later. Ngai Tahu, who had interests in Kaiapoi and northward, were not consulted at all.

Grey also attempted to rectify the New Zealand Company purchases in Wanganui and Taranaki. In Wanganui, Commissioner William Spain in 1844 had made an award to the company within the area of its 1839 purchase deed, allowing some fifteen reserves for Maori, but Maori opposition continued. In May 1848 Donald McLean then negotiated a further deed of purchase for 86,200 acres (with 5450 acres of reserves) after considerable negotiations with interested parties and public surveying of all boundaries.

In Taranaki, Commissioner Spain had awarded 60,000 acres to the New Zealand Company for the New Plymouth settlement, within the vast, but illegal, Wakefield purchase of 15 February 1840 (occurring after Gipps' proclamation of Crown pre-emption of 14 January 1840 and Hobson's proclamation of 31 January). FitzRoy disallowed Spain's award on the grounds that the absentee Te Atiawa in Queen Charlotte Sound had not been consulted. FitzRoy secured from Maori a 'cession' of a block of 3500 acres which bears his name (though no formal deed appears to have been drawn up) on condition that settlement expanded no further. The Government, however, allowed more settlers to arrive, and Grey, in 1847 and 1848 sought to buy more land. Wiremu Kingi, leader of the northward returning group of Te Atiawa, objected, but Grey bought blocks to the north, south, and inland of the FitzRoy purchase: Tataraimaka, Omata, Cook's Farm and the Bell Block. Maori signed the deeds somewhat reluctantly and only when McLean offered payment in cattle and horses and agricultural equipment, for Te Atiawa were more interested in building up their own farming enterprises than in cash, which was soon dissipated. In August 1853, McLean purchased interests in the Waiwhakaiho block of 16,500 acres. The Tribunal has noted the lack of records about these purchases, and doubts whether all the right holders had been consulted; it notes that there were disputes and resistance to occupation on the Bell block and the Waiwhakaiho block some years after the sale.¹²

The story of the Ngai Tahu purchases is well known, including the vast Kemp purchase of 1848 which left Ngai Tahu with a bare ten acres per head of reserves. In 1849, purchases followed at Port Levy and Port Cooper on Banks Peninsula.

11. Grey to Earl Grey, 26 March 1847, Mackay, vol 1, p 202, cited Dr Grant Phillipson, *The Northern South Island*, Rangahaua Whanui Series (working paper: first release), 1995, p 91

12. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, pp 27–28, 29–50

The depth and persistence of the settler attitude that Maori were entitled to the proprietorship only of their cultivations is revealed by a remark of Rolleston, variously Superintendent of Canterbury, Native Secretary and Native Minister, before the 1879 Smith–Nairn commission, investigating the Kemp purchase. Referring to the small reserves he said, ‘that area represented all the land they had in cultivation – that is, that they bestowed labour upon, and really had any title to’.¹³

Similar attitudes underlay a blanket purchase known as Waipounamu, initiated by Grey and McLean in August 1853 with a payment to Ngati Toa chiefs in Wellington, intended to extinguish all Maori interests north of the Kemp purchase and west of the Wairau purchase. The payments included a £2000 instalment of the £5000 purchase price, and 200 acre individual grants to 38 of the interested chiefs (a promise not fulfilled) and £50 of scrip to 12 of those chiefs to buy back more Crown land at 10 shillings an acre (fulfilled probably in eight cases). The technique of buying support from the chiefs and making them part of the new middle-class was to become a regular feature of the Crown purchase processes, displacing Grey’s brief dalliance (in the Wairau purchase) with making large reserves for the continuance of the traditional Maori economy.

Purchases also resumed in the Auckland isthmus and in south Auckland with the completion of the Ramarama purchase (from 11 more hapu) and about 17 more blocks in 1847 to 1948. By the time Grey left New Zealand, most of central Auckland and much of south Auckland had been purchased or was under negotiation.

The ‘big purchase’ system was extended by Grey and McLean to new areas of the North Island:

- The Rangitikei–Turakina purchase of 1849, concluding six years of negotiation with Ngati Apa for a 225,000 acre block between those rivers, for £2500. The deal was accompanied by an arrangement with Ngati Raukawa and Ngati Toa to give up their interests northward of the Rangitikei river in return for Ngati Apa relinquishing theirs south of the Rangitikei.
- Three huge purchases by McLean in Hawke’s Bay in 1851: Waipukurau (279,000 acres), Ahuriri (265,000 acres) and Mohaka (85,700 acres).

The purchase of huge blocks was also extended to the grass lands and low ranges of the Wairarapa, where run-holders had been pasturing sheep and cattle on informal ‘grass-money’ payments to Maori since the mid-1840s. The negotiations had been pursued for some years without apparent success. In 1852, however, opinions among Wairarapa Maori changed, probably as a considered result of the example, and influence, of the Hawke’s Bay chiefs, and warnings from Government that the run-holders would be prosecuted for breach of the Land Purchase Ordinance. McLean contracted a surveyor to lay external boundaries in response to indications from Wairarapa Maori that they would be interested in selling. He understood that Maori wished to:

13. ‘Report of Joint Committee on Middle Island Native Claims’, AJHR, 1888, i-8, p 81, cited in Jenny Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1997, p 22

dispose of the whole of the coastline of country excepting reserves, lying between Whareumu and the Porongahau river extending inland as far as the Tararua ranges . . . Without appearing anxious or in any way urging them to dispose of more land than they seem perfectly willing to sell, at the same time it is most desirable that the whole of this district should be obtained subject to ample reservations for the limited number of natives that occupy the coastline.

Details were left to the surveyor to arrange with chiefs. In 1853 Grey and McLean landed at Palliser Bay and, in the words of Grey's biographer staged:

A semi-royal progress up the Wairarapa valley, accompanied by a multitude of excited Maori and two well guarded pack horses carrying the money bags. All the way up to Napier he addressed Native gatherings . . . and talked to them of the benefits of selling their land so that the government could settle Europeans amongst them. Nearly every night blocks of land were offered, and some more advances made on them.¹⁴

There is little doubt that the chiefs' rather competitive drive to enter into relations with the high Pakeha rangatira, the Queen's representative, was a motivation here. Details of the actual transactions took years to sort out and met with some resistance by right-holders.

Goldsmith's figures are that almost 1.5 million acres were transacted in the Wairarapa in 41 deeds between 27 June 1853 and January 1854, for £23,547, of which £14,690 was paid before or at the deed signing. This amounted to about three quarters of the Wairarapa district.¹⁵

5.7 The Nature of Crown Purchases under Grey

As indicated above, Grey's purchase policy proceeded on the assumption that Maori groups held overlapping claims to large area of land but cultivated only a small proportion of it. He regarded as 'invalid' Maori claims to *proprietorship* of the uncultivated areas. He would, however, purchase whatever Maori interests existed in the large areas, and register proprietorship only of the reserves defined for Maori within those areas. His usual method was to try to identify a powerful group or groups of right-holders, conclude a purchase with them, and then to pay off subsequent claimants in a sequence of additional payments. Specific payments to chiefs figured frequently in the process, or the marking off for them of specific reserves in individual title in their own names.

During his governorship Grey had secured deeds of purchase over some 30 million acres of land. Maori engaged in these transactions fairly readily, and

14. Rutherford, *Sir George Grey* (cited in Helen Walter, 'Land Purchase Policy and Administration, 1846–1856', Waitangi Tribunal Rangahaua Whanui Series unpublished draft, p 7); see also McLean to Pelichet, 20 February 1851, ma 24/16 (cited in Walter, p 8)

15. Paul Goldsmith, *Wairarapa*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 41

settlement was able to proceed on either side of Cook Strait, in Auckland, Hawke's Bay, Wairarapa, Canterbury, and even in Wanganui and Taranaki. On the face of it Grey's purchase policy was remarkably successful. But when measured against the Crown's Treaty obligations the deficiencies emerge – deficiencies which were to become even more apparent under McLean's regime as chief land purchase commissioner.

A most important issue concerns the intersecting interests of Maori groups in the various blocks and the absence of careful investigations of ownership *before* purchase agreements were signed and payments made. Government usually did seek a report from one of its officers before the purchase, but the investigation was often fairly cursory and aspects of it could be ignored (for example in the Wairau purchase of 1847). To be fair, to achieve a comprehensive and precise determination of Maori ownership before a purchase negotiation, was extremely difficult. Customarily, hapu, and whanau interests never were neatly aggregated in one block but scattered; although most were concentrated near principal kainga, other interests intersected with those of neighbouring and related hapu. For a group to define a distinctive piece of land with continuous boundaries as its exclusive property required a substantial modification of Maori tenure, probably involving the related hapu relinquishing interests to each other on either side of an agreed boundary line. Maori would have no cause to undertake this complicated operation unless there was a good and specific reason, such as making a farm or selling land. The very action of land purchasing thus precipitated a process of discussion, definition, and boundary marking, to an extent quite new to Maori society. It was not something that could easily be done in the abstract, or for the remote possibility of a land sale. Either the vendor or the purchaser would have to give some indication of which land was to form the basis of the transaction, and then the process could begin. The definition of interests could, however, become much more precise during a process of negotiation and before any deed was signed.

It is thus perfectly understandable that the Crown should make offers to purchase land and discussion would then ensue, usually under the leadership of paramount chiefs. Often there were months or years of discussion before chiefs announced themselves ready to sell.

The process was all the more complicated in situations of recent migration and conquest, where the earlier inhabitants had by no means entirely vacated the land or relinquished claims to it, and the later arrivals had not yet inter-married and had few children born on the land or dead buried there. In these circumstances it would be optimistic to expect a swift consensus among the various groups of Maori with interests in the land.

The important issue that arises from this is whether the Crown's purchase process did in fact enable the great majority of the Maori owners to develop a genuine consensus that they wished to alienate a portion of their land. Or whether, conversely, many right-holders were dragged along rather unwillingly in something which their leaders, or a dominant group, had embarked on, in collusion with Crown agents. An equally important and related issue is what was to be done about

a dissenting minority. Were they to be bound by the decision of the majority (or the leadership) or were their interests to be severed from the block sold? And, if so, what land would they get for their portion? It is with regard to these issues, rather than to utopian hopes of a precise determination of all interests prior to a sale, that the Crowns' regard for its treaty obligations can best be tested.

Closely related to the above questions is the issue of boundary marking. If the parties did not really know what land they were talking about, either as regards the outer purchase boundary or the boundaries of reserves within the purchase, Maori consent could scarcely be meaningful. Certainly Maori identified land by natural features and the names of the places with which they had close associations; but there were many specific locations – a swamp, a stand of trees for example – which Maori often wished to retain. In their own land demarcations they erected posts or built mounds to mark corners: this kind of definition was very necessary in land sales too.

A third area for consideration is what the vendor group received in the bargain. The benefits sought were usually of three kinds:

- (a) reserves, clearly defined as belonging to the vendor group. The evidence suggests that to secure reserves and have them backed by the Crown was a most important motivation in selling, especially where rights were insecurely held because of recent war or migration. So strongly was the security of title valued that in some areas Maori would actually buy back portions of the same land they had just sold, but this time on Crown title. Generally the reasons that Maori vendors sought such titles were for their own occupation and farming. Land which they still wished to retain, perhaps to lease (were the Government to allow it), was usually simply exempted from the sale. Sometimes (as in the Kemp purchase) Maori asked for very big reserves, which usually the land purchase officials did not grant.
- (b) Continued association with white settlement for trade and employment, together with other benefits that Crown agents led Maori to anticipate, such as schools and hospitals. Maori certainly did not sell land in order to become marginalised; they sold it in order to establish settlement in their vicinity and to have access to the modernity that settlement represented.
- (c) Payments in money, stock (horses, cattle, sheep), agricultural equipment, boats, and necessities for participation in the modern economy. Demands varied, but some mix of the above was typical.
- (d) Linked to all of the above, an on-going association with the Crown to enhance mana in a situation of inter-tribal rivalry and to secure the expected advantages of association with the Crown's evident wealth and power.

How then did Grey's purchases stand up against these various measures? The answer is that the record is very mixed. In respect of the issue of identifying overlapping interests and securing genuine consent:

- (a) The Porirua purchase involved a good deal of pressure, on a community on the defensive after the 1846 campaigns. The Wairau and the Waipounamu

purchases involved using the Ngati Toa leaders to achieve an initial alienation and then to put pressure on the other owners across Cook Strait.

- (b) The Kemp purchase did essentially involve the right people (although the Poutini coast hapu was probably under-represented) but Mantell's minuscule allocation of reserves was disgraceful. The Murihiku purchase of August 1853 transferred seven million acres of land to the Crown for £2600 and 4875 acres of reserves – marginally better for Maori than the Kemp purchase but still a staggering area for a derisory payment.
- (c) The re-purchase of Wanganui land was reasonably careful, thorough, and public – quite exceptional in the particularity of the deed of agreement and in the marking out of interests on the ground.
- (d) But the Taranaki purchases, especially of the Bell and Waiwhakaiho blocks, revealed the tendency to push forward into the face of disputes among Maori owners – not yet serious but an omen for the future.
- (e) Of the big block purchases of the North Island some, like Ahuriri, showed fairly considerable care to ensure public discussion and consensus and public boundary marking. But the boundaries of many of the blocks were very poorly described and caused problems subsequently. The Wairarapa and Hawke's Bay purchases had resulted in part from threats to remove the run-holders, the pakeha lessees contributing to the Maori economy, and involved a rather shameless use of chiefs like Te Hapuku to overcome resistance to sales.
- (f) (i) The Auckland and south Auckland purchases produced a number of anomalies. The practice of dealing with the chiefs most assertive about their rights, in a situation of very complex intersecting claims, together with a lack of boundary marking, left a sequence of ongoing disputes. Surveys were delayed for years, at which time new right-holders emerged and had to be paid. Precisely because the tribal interests were so diverse in areas such as south Auckland and the top of the South Island, the Crown officials could push and cajole and buy their way through, acquiring the interests piecemeal. But it was a provocative and dangerous practice and again it was of doubtful equity in Treaty terms: belatedly accepting a payment for one's interests after others had sold, largely because there did not seem to be much option left, is not the same as making a willing sale from a position of genuine choice. While some chiefs were very willing to 'play the game' with the Crown purchase agents (as they had been with private buyers in the 1830s) others felt compromised. Husbands and Riddell cite a letter to the Governor in 1852 from Waata Kukutai, who had opposed land selling but now offered land because of the concern that Ngati Te Ata were offering it anyway:

Therefore we are concerned about the stealthy work of Te Katipa regarding our land. We know that his work is wrong work, his work by stealth. Now we beg to inform you that we are willing to give up these large pieces of land to

you . . . Should the Ngatiteata arrive to speak with you concerning these lands, do not attend to them, to their speech. They are stealing our land.¹⁶

In the Wairarapa, Grey and McLean worked through the younger chiefs who, in this area, were willing to sell and only overcame, after sustained pressure, the resistance of older chiefs like Ngatuere.

(ii) In respect of Wairarapa, Goldsmith cites four examples where the pre-payment system – later called ‘groundbait’ – appears to have been used to induce Maori to sell.¹⁷ The tactic was to have disastrous consequences in due course. McLean himself considered that the Government got Wairarapa ‘at a wonderfully cheap rate.’¹⁸ Another feature of Wairarapa purchases was the promises by Grey to provide flour mills – then the current enthusiasm of many chiefs – in their expectation that the wheat boom would continue, and also for mana reasons; that is, competition with other chiefs. Grey generally did provide these mills but they were sometime more trouble than they were worth.¹⁹

- (g) Grey’s practice as described to Earl Grey was erected on the notion that Maori were very willing to sell disputed land. This was in part true. The Crown had many offers to sell land. The unfair part of the procedure was that Grey often accepted offers, signed deeds and made payments before investigating the area adequately and getting a genuine, not forced, consent from other interest-holders. The confusion was all the greater if the first vendor had very tenuous rights in an area (as in Ngati Toa’s inclusion of the Kaikoura Coast in the Wairau purchase) and the purchase left those with more substantial customary interests at a disadvantage.
- (h) The question of adequacy of consideration is a complex one, related to the issue of reserved lands and other factors. Maori who initiated land transactions did not usually regard the payment of money and goods, soon exhausted, as the full payment for their lands; the advent of a Pakeha settlement and the expectation of ongoing trade, employment opportunities and other benefits, were what many chiefs sold for; and/or there was an expectation of an ongoing relationship with the governor, who would be a powerful ally in inter-tribal rivalries and bring status and mutual benefits to the community. If they were selling contested land, in which their interests were tenuous, so much the better. For these reasons Maori were prepared to accept initial payments which were low in relation to the size of many of the purchases.

The officials, as we have seen, were under instruction to pay low prices in relation to the on-sale value of the land. The profits, making up the land fund, would pay for new immigration and development. Maori would benefit from this

16. Waata Kukutai to Lieutenant-Governor, 4 November 1852, Turton’s *Epitome*, cited in Husbands and Riddell, pp 20–21

17. Goldsmith, p 57

18. McLean to Colonial Secretary, 20 September 1853, AJHR, 1861/23, p 262.

19. Goldsmith, p 61

(so they were constantly told) through the enhanced value given to their remaining lands and through their 'advancement in civilisation'. This theory pre-supposed that they would *retain* a significant proportion of their land to lease or to develop and thereby to gain access to the increased capital value. It pre-supposed also that they would be assured of access to the means of 'advancement in civilisation' – education, assistance with farming, access to trade, medical care, social equality – that is both Maori and Pakeha were to advance together.

What in practice did Maori receive? Again the record under Grey is mixed. The actual cash payments included £2000 for the 69,000-acre Porirua purchase, £2500 for Rangitikei–Turakina (25,000 acres), £4800 for Waipukurau (279,000 acres) £1500 for Ahuriri (265,000 acres) and £800 for Mohaka (85,700 acres) a price which Colonel Wakefield called 'large'. The payment for Wairau, including the Kaikoura Coast (3 million acres) was £3000. The Kemp purchase (Canterbury–Westland) of 1848, involved payment of £2000 for some 20 million acres. The Kemp purchase provides the extreme low price per acre paid by the Crown, but all the big purchases show a very low – if not derisory – figure per acre. Grey's view was, of course, that the Maori vendors never had proprietary title or exclusive possession; such claims were 'invalid' except for settlements and cultivations. He was buying out rights of an undefined kind, contested with other tribes. Therefore it was not appropriate, from that stand-point, to talk of prices per acre.

Maori in fact usually asked for considerably more than they finally accepted. Sometimes asking prices began in the order of millions but quickly tended towards figures such as £5000 in the case of the Kemp purchase, £5000 for Wairau, £4000 for Ahuriri (including Te Taha and Mataruahau later purchased separately). The Crown therefore typically paid half or less than the owners' serious asking price.

But almost invariably the discussion would focus on the reservation of mahinga kai of various kinds – swamps, eel weirs, stands of forest, launching places for canoes and so on. As in the case of the Kemp purchases and the Ahuriri purchase, Maori signed on the understanding, either expressed verbally or in the deed or both, that they would have continued access to these in addition to specific reserves. They were given the usual assurance of benefits from the coming of settlement, particularly the increased value of their remaining lands. On these understandings Maori signed the deeds: they too did not closely weigh the initial purchase price in terms of value per acre.

However the ambiguities over mahinga kai are well known. In the Kemp purchase the term in the Maori deed was translated into English by Kemp as 'plantations'; Kemp did not see himself as reserving all the eel swamps and fishing streams forever. In the Ahuriri deed, access to the lagoon Whanganui-a-Orotu was reserved to Maori *along with others*. In all cases the wider public usage, or the drainage of swamps, fencing of the land and the felling, of the bush and hardening trespass laws gradually circumscribed Maori access to mahinga kai.

Grey, in 1847, indicated that he knew well that people involved in the hunting and gathering economy required very large areas of land at least before they made their transition to a more cultivating economy. In 1850 Grey directed that Gisborne,

the commissioner of Crown lands, be instructed 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' for periods up to 21 years.²⁰ Mistakes were made, however, in transcribing Grey's instruction, and Gisborne queried the sense of the direction he received. Unaware of the errors in question (corrected in subsequent correspondence) Grey minuted Sinclair that the instruction had been 'amply explicit' and added:

It is always here understood that the Natives in addition to any right they may at present have over reserved lands gain the additional privilege of leasing them under the conditions named and that not for any limited period of time and until an alteration on their own part from their present system of holding lands almost in common to a tenure by single individuals . . . gives them more complete titles.²¹

Thus the title to reserves was to be a qualification on an essentially customary tribal title and the reserves were in theory to provide both for the subsistence needs and revenue needs of Maori. There was, apparently, in Grey's 1850 thinking, to be a waiver of pre-emption to allow these Maori leases. But little more was to be heard of this (except some very short term leases in Wellington). The emphasis was certainly on closing off the leases on customary land, and reserves rarely got big enough to provide for leases. Indeed Grey's record in reserve-making generally was abysmal, (as illustrated in Kemp's purchase) and at best very patchy. Reserves in blocks sold were made in varying numbers and quantity. Mantell's reserves in the Kemp purchase amounted to 10 acres per head. In Hawke's Bay McLean allowed eight reserves totalling 4378 acres in the Waipukurau purchase, in Ahuriri three reserves totalling 2415 acres (and a landing place), in Mohaka only one reserve of a hundred acres. Where Maori did not press for reserves McLean did not provide them; where they pressed for large reserves McLean allowed lesser areas (for example reducing the request for a reserve amounting to several thousand acres of millable forests at Puketitiri to only 500 acres).²² Grey, mostly based in Auckland, took little notice of what his subordinates were doing, as he later admitted in respect of Kemp and Mantell's actions. The failure to survey reserves, or to see that titles were issued in respect of them, was characteristic of the period; a host of residual problems was the usual legacy of the dramatic 'big block' purchases.

At this stage the failure to make ample reserves did not necessarily bear hard on Maori as they still, in some areas at least, had a great deal of land in their possession, and, as has been mentioned, access to mahinga kai was not yet heavily circumscribed. But in respect of some iwi, such as Ngati Toa, and in some districts such as the north of the South Island and around the expanding towns of Auckland and Wellington, most land had already been purchased by the end of Grey's first

20. Grey to Colonial Secretary, 25 October 1850, ia 1/1851/509, NA Wellington

21. Grey to Colonial Secretary, 15 February 1851, ia 1/1851/509, NA Wellington

22. Dean Cowie, *Hawke's Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 34

governorship: the making and preservation of reserves both for subsistence and for leasing was becoming an urgent necessity in these areas, if Maori were to be given security and development opportunity in the colony.

In Auckland and south Auckland payments were greater on a per acre basis than in a big rural purchases, for obvious reasons. But they still varied widely. Thus £15 was paid for a 20-acre block called 'adjoining Tetiki' (Hobsons Bay), £30 for 1200 acres at Pukeatua, £200 for 4000 acres at Te Ngaio, £50 for 600 acres called Roto, £50 for 2000 acres named Wharau and £23 for 500 acres at the Whau portage – all Waitemata and Manukau land. There is no clear pattern to these prices at all; even high site value as at the Whau portage did not attract large prices. £38 was paid for 200 acres in Remuera in 1847 and £150 for 250 acres in 1851. In 1849 two chiefs, William Hobson and Temanea, sold about 250 acres at Mount Smart for £10 and in 1851 a further 200 acres for £15. In the big Fairburn block from Tamaki to the Wairoa river, one third of an estimated 75,000 acres (that is to say, 25,000 acres) was supposed to be reserved for Maori by the purchase agreement in early 1836 between Potatau Te Wherowhero and Henry Williams; but instead three groups of claimants were bought off for payments totalling £800. Other south Auckland prices such as four mares for the Parahika block of 1040 acres were derisory, even allowing for the high value of horses at that time. These are derisory prices also in relation to the re-sale values amongst settlers or the upset price of 10 shillings an acre charged for Crown land, rising to £1 an acre in the early 1850s.

The contemporary assertions of Crown officials and settlers that it was only their coming which gave security of tenure to Maori and a value to their land has slight validity. Te Ati Awa and Taranaki certainly did benefit from the removal of the Waikato threat, largely as a result of the British presence; Ngati Whatua benefited from the protections against Ngapuhi or (perhaps more to the point) the burgeoning influence of their Tainui kin and allies in Tamaki Makaurau. But the protection argument cuts both ways: the Wellington settlements received assistance from Te Ati Awa against Ngati Toa in 1843 to 1846 and Auckland secured protection from Waikato and from a number of northern tribes during Heke's rising. In a sense it was Maori support that gave the British settlements value, not the other way round, in this crucial time. In the calmer period from 1847, when both Maori and settlers were constructing a new society together, it was clearly anomalous that Maori should have been denied access to most of the increased capital value of their land.

Moreover the officials' claim that the land had little or no capital value was falsified by some of the payments offered by private buyers before 1840, by some of the payments made during FitzRoy's waiver of pre-emption, and by the run-holders paying illegal rents or 'grass-money' for running their stock. In 1847 £300 was paid for rentals in the Wairarapa.²³ By 1849 run-holders were moving north into Hawke's Bay, Thomas Guthrie paying an annual rental of £69 for a run at Castle Point (rising to £200 by 1851) and J H Northward £60 to £100 a year for a run at Porurere. Lease rentals are commonly reckoned at five percent of capital

23. Goldsmith, p 22

value, which would imply capital values of £4000 and £2000 respectively for these runs alone.²⁴ Of course the precise area of land is not known and the calculation is a generous one, leaving out a variety of complicating factors. All the same it is difficult to reconcile the value of rentals with the one off payments for very large areas of very high quality land given in the Crown purchases. Grey and McLean knew very well that they had to move quickly to block the leasing system (using the authority of the Native Land Purchase Ordinance 1846) and buy the land before Maori became so aware of its rising market value that the Crown would be unable to purchase.²⁵

This was effectively saying that Maori would be denied the opportunity to gain the rising value of their land – that the Crown first, and then the settlers, should get the increased value. That would appear to be a clear breach of article 2 rights of Maori, notwithstanding the Crown's Treaty right of pre-emption. Crown officials, however, repeatedly claimed a public interest basis for their monopoly and for their prohibition of leasing: if the colony was to progress the Crown had to have a land fund and settlers must have access to the freehold. Again there is some validity in this view: capital intensive and permanent development does normally require the freehold, or at least a very long lease with predictable levels of rent. Given that Maori were also to benefit from the capital investment and settlement – indeed they expected and encouraged it – it is reasonable to assume they should sell some land in freehold. A co-existence of freehold and leasehold systems should indeed have been quite adequate for settlement, although the terms and conditions of leases would have required careful consideration, balancing the interests of landlord and tenant. But for the Crown to have shut Maori out of leasing altogether except perhaps on reserves (which were frequently either not made or allowed to be retained) was another matter.

A further problematic aspect of purchases under Grey is the lack of care with regard to distribution of payments. Much has been made of the open distribution of the initial Wairarapa and Hawke's Bay payments, at public ceremonies where hundreds signed the deeds and participated in the distribution and the chiefs made a show of taking little or nothing. But this was not typical. Payments commonly went to a handful of chiefs and little was done to follow up what happened to them. According to Bishop Selwyn the first payment to the Ngati Toa chiefs resident in Porirua for the Wairau block was appropriated by them. The owners living on the block itself, in Phillipson's estimation, 'were neither consulted nor paid for their interests in the Wairau, Kaipara-Te-Hau, and Kaikoura districts'.²⁶ The Government officials generally declined to intervene in the distribution, saying it was a matter for the Maori themselves. But outcomes like that at Wairau cannot easily be reconciled with the Crown's Treaty responsibility of dealing equitably with Maori; paying off the chiefs and making them accomplices in divesting communities of their patrimony, without tangible return, is hardly equitable dealing.

24. Cowie, p 12

25. McLean to Colonial Secretary 29 December 1851, AJHR, 1862, c-1, pp 315–316, cited in Cowie, p 13

26. Phillipson, p 92

Maori were far from insensitive to the appreciating exchange value of their land and, in respect of the Wairarapa, Grey took steps to meet their demands. McLean subsequently wrote:

I should also state, that the Wairarapa to which these deeds refer was purchased under peculiarly difficult circumstances as there Natives repeatedly declined to alienate that Valley to the Government, while they were obtaining from the Europeans residing as Squatters on their lands rents to the extent of about £1300 a year, and the unsettled state of that district was a source of continued annoyance both to the New Zealand Company and to the Government.

The late Governor, Sir George Grey, feeling most anxious that the land should be acquired, dictated the terms in which the purchase would be made, authorising a clause to be included in the deeds of sale, by which the natives were to receive five percent, in addition to the gross sum of purchase money on all the lands alienated by them after such lands were resold by the Government.²⁷

The relevant clause in the deed read that 5 percent of the prices secured for the Crown for the on-sale of the land, after deduction of survey costs was:

to be paid to us for the forming of schools to teach our children for the construction of flour mills for us, for the construction of Hospitals and Medical attendance for us, and also for certain annuities to be paid to us for certain of our chiefs.²⁸

The flow of land sales continued in the Auckland district. Most of the remaining central Auckland lands were purchased. Prices rose somewhat from the previously derisory levels, and included in the sales in the Remuera district was a 10 percent clause similar to the Wairarapa 5 percent clause. The difficulty, in Treaty terms, about these clauses is that while Government could use the revenue from the on-sale of land for constructing schools, hospitals or flour mills it is no means clear that this would be in addition to the Civil List vote of £7000 secured by the Governor for Maori purposes on the introduction of the Constitution Act 1852, or whether the five and ten percent clauses helped relieve the Government of a liability they had in any case assumed at the time of Russell's January 1841 instructions.

5.8 The McLean Purchases

After Grey's departure a distinct Land Purchase Department was organised, with Donald McLean as Chief Land Purchase Officer. McLean brought to his task a strong sense of mission. He stated in 1854:

As yet, notwithstanding the exertions made by the Government, only four and a half million acres have been acquired out of the estimated area of thirty millions which this North Island contains leaving a residue in the undisputed possession of the

27. McLean memorandum, nd [1854], ia 3/1854/3632, NA Wellington, cited in Walter, p 21

28. Cited in Goldsmith, p 29

Natives of Twenty five and a half Millions of acres; the greater portion is lying waste and useless to them, while the Colonists and the influx of population expected into the Country, must be under these circumstances, miserably circumscribed; . . . unless indeed, some strenuous exertions are made during the present year, to acquire land from the Natives, and to have persons employed qualified to perform that complicated and arduous duty, general dissatisfaction with both races must be the inevitable result; and moreover I feel quite satisfied that nothing could be of greater importance to the Natives themselves, as well as to the European population, than to have those claims and territorial rights that are frequently creating war and bloodshed among the tribes equitably adjusted and rendered available for their own advancement, as well as for the progressive purposes of colonization.²⁹

The view that Maori would themselves benefit from the process was very genuinely held both by McLean and settler leaders. But the allegedly frequent ‘war and bloodshed’ among Maori over land rights was fanciful in 1854: the most serious feuding over land was in fact that in Taranaki in 1854, and later the war in Hawke’s Bay in 1857, both provoked by the Government’s own land purchasing. Yet in Taranaki McLean remained optimistic. The strategy was applied in the 1854 Hua block purchase of holding back one third of the £3000 payment for the vendors to make available to them to buy back surveyed sections at 10 shillings an acre. The expectations that individual titles of this kind could prove attractive, McLean thought, would:

lead without much difficulty to the purchase of the whole of the Native Lands in this Province, and to the adoption by the natives of exchanging their vast tracts of country at present lying waste and unproductive for a moderate consideration which would chiefly be expended by them in repurchasing land from the Crown.³⁰

McLean’s early instructions to district land purchase commissioners continued to emphasise Grey’s policy of buying all the land in large districts, save for reserves, which were to be confirmed to Maori under a form of Crown grant. Model purchase deeds in Maori were provided which by now included the explicit reference to timber and water on the land, and sub-surface rights, and phrases which indicated the total and permanent transfer of the land.³¹

McLean secured a more regular and substantial budget for his operations than before. In May 1855, he asked for £17,000 for a six-month period for purchases in various parts of Auckland Province. He wrote:

This sum may appear, at first sight extravagant; but it is highly important that the present disposition of the natives to alienate considerable portions of their waste land in this province should be taken advantage of, more especially as the land is in such great demand by the Europeans, and as it may be hereafter more expensive and too difficult to acquire even at greatly advanced prices, and on the whole I do not expect greatly advanced prices.³²

29. McLean to Colonial Secretary, 19 October 1854, ia3/1855/2618, NA Wellington (cited in Walter, p 12)

30. McLean to Colonial Secretary, 7 March 1854, AJHR, 1851, c-1, no 4 (cited in *The Taranaki Report*, p 50)

31. McLean to J G Johnston, 18 May 1854, ia3/1854/3631, NA Wellington (cited in Walter, p 12)

The policy of buying from Maori at low prices ahead of settlement continued.

McLean appeared to becoming more careful about surveys than previously. He instructed Commissioner Kemp:

You will take care, that before any sums are paid to the Natives, the lands offered for sale by them are in the first instance surveyed, and the Reserves they require for their own present and future welfare, carefully laid off; . . . in order to carry out these necessary details of a Purchase, Surveyors will be furnished for that duty, upon an application being made to the Government, under an arrangement already with the Surveyor General to that effect.³³

Surveyors of the Surveyor-General's Department were attached to work with the land purchase commissioners for the purpose.

McLean's instructions to his officers also suggested renewed care about reserves. His 1854 instructions called for locating reserves close to Pakeha settlements so that Maori could participate in commercial development.³⁴ He instructed Rogan at Kaipara 'to take care that ample reserves were made for the 'use' of the Maori, their location, number, and extent to 'be determined by the wishes of the vendors themselves, and at your own discretion'. In 1861 he reiterated the need to have reserves surveyed before completing payment.

McLean's purchase programme unfolded at a prodigious rate. The story of the southern South Island purchases has been told in detail in the Ngai Tahu report: in 1856 the Akaroa purchase of about 47,000 acres for a £150; in 1857 the North Canterbury purchase of over a million acres for £500 (and no reserves); in March 1859, the Kaikoura purchase estimated at 2.8 million acres for £300 and 5558 acres of reserves – extinguishing Ngai Tahu rights in land which Grey had bought from Ngati Toa in 1847; in May 1859 the Arahura block from Poutini Ngai Tahu who had not been adequately represented in the Kemp purchase negotiations of 1848 – rights in some 7 million acres for an additional £300, plus a quite unusually large area of reserves (6724 acres plus 3500 acres for educational reserves and 2000 acres for survey costs).

In the northern South Island, McLean 'completed' the Waipounamu purchase begun under Grey in 1853. He never did hold the promised meeting with the resident South Island hapu agreed when the initial deed was signed with Ngati Toa chiefs in Wellington, but a year later he paid another £2000 to Ngati Toa to join him on successive visits to local iwi – mostly in 1855 and 1856 – and press them into signing deeds and accepting reserves. Smaller blocks were acquired too, including reserves such as those made in the Wairau purchase in 1853. By 1861 the South Island had been completely transferred save for about 120,000 acres of reserves, very unevenly distributed.³⁵

32. McLean, Auckland, 10 May 1855, ia3/1855/1592, NA Wellington, cited in Walter, p 15

33. McLean to Kemp, 6 November 1854, ia3/1854/3631, NA Wellington, cited in Walter, p 18

34. McLean to Colonial Secretary, 29 July 1854, Turton, *Epitome*, d21; McLean to Rogan, 31 January 1857, Turton *Epitome*, c101; McLean to district land commissioners, 3 May 1861, AJHR, 1861, c-8, no 2, p 1. Cited in R Daamen, B Rigby, and P Hamer, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 203

In the North Island McLean continued the big purchase programme. Hawke's Bay continued to be acquired in large purchases such as the Ruahine Bush, an estimated 100,000 acres, and Porongahau, 145,000 acres. But smaller blocks were also acquired, including some reserves – 33 blocks in all totalling about 6000 acres. In Wairarapa, McLean's department made 143 purchases totalling about 1.2 million acres, leaving about 20 percent of that district in Maori hands. The other area of major concentration was Auckland, largely South Auckland and Hauraki Gulf at first then, later in the decade, Kaipara, Whangarei, and further north where Crown purchases were often laid over old land claims. The purchase officers also moved into Hauraki (36 purchase agreements affecting about 24,000 acres) and Waikato (27 purchase agreements affecting about 38,000 acres). In remote Poverty Bay, there were two purchases (57 acres for CMS Stations). It should be noted that these figures are by Rangahaua Whanui District, and acreages are minimal estimates, because published deeds do not always give acreages.

The Government also tried to push ahead in Taranaki against strong Maori resistance to selling. Deeds were signed for eleven purchases in respect of 31,500 acres, largely in the Hua and Waiwhakaiho blocks, and for additional claims brought in respect of earlier purchases.

By the time McLean fell from power after the Waitara war and the replacement of Governor Gore Browne, he and his department had acquired for the Crown about 5 million acres in the North Island and about 11 million acres in the South Island (some of it overlapping with earlier purchases from other right-holders).

In many of the purchases in the South Island and in Wellington there were anomalies – purchases from some tribes, leaving others (with little choice) to be paid later, perennial problems over boundaries of reserves, failure to make reserves and the subsequent sale of reserves. These are too many and too complex to enumerate in this report but it is undeniable that at the end of the McLean period the proud Ngati Toa, who had dominated Cook Strait 20 years before, were left with quite small reserves of good land and some grazing land around Porirua, some rights mixed with those of other tribes further up the Kapiti Coast, and virtually nothing in the South Island. The small tribes of the northern South Island, previously dominated by Ngati Toa, were pressed into selling most of their land by McLean and the Ngati Toa chiefs who were paid to support him. Some hapu, like Ngati Apa on the Arahura Coast, may not have been paid at all. Apart from the Taitapu and D'Urville Island, they were left with tiny, insufficient reserves.

5.9 Maori Motives and Government Tactics

As in previous years it is clear that almost all the purchases involved some willing Maori vendors, who offered the land to McLean and other Government agents. Their motives and intentions varied widely. Some were still making a considered

35. MacKay to Native Minister, 6 December 1865, Mackay, vol 2, p 342

decision to bring settlement into their district and benefit from the economic interaction that followed. Most of the 1850s were still years of prosperity, with growing markets for Maori produce. In areas such as Hauraki, where Maori retained much of the good forested land, selling timber tree by tree to nearby mills became a regular source of income. In agricultural districts Maori supplied meat, vegetables, and fruit to the growing settlements. Informal leasing – grass-money arrangements – continued in areas such as Hawke’s Bay on the bulk of the land still not sold to the Crown. For many Maori the threat of landlessness and marginalisation in their own land would have seemed very remote; on the contrary, at least up to about 1856, there were still indications of achieving growing prosperity through selling some land to the Government.

But the motives of the sellers were very mixed. The Waitangi Tribunal has commented that in Taranaki:

Some, it seems, sought to increase their standing with Europeans, some sought to prove their right or authority [in contested land], while a few sought to sell the land of others as *utu* for some previous slight or wrong. Strangest of all to Western ears were sales to ‘whakahe’ ones own people (to put all the hapu at risk on account of some injury or slight to the seller).³⁶

These motivations, particularly the first two, occur frequently in the evidence from other districts. In the areas of strong inter-hapu rivalry, such as South Auckland, or where there was a real and genuine danger of attack from powerful former rival, to have an alliance with the British Crown could be very advantageous; increased mana, rivals frustrated, cash in hand and the opportunity to call on or write to Mr McLean again, were all hoped-for outcomes. Chiefs favoured by the Government, such as Te Hapuku in Hawke’s Bay or Ahipene Kaihau of Ngati Teata, regularly requested gifts of either a personal nature or of stock or machinery to assist their new farming and trading ventures; the officials in turn continued to work through them to secure new offers of land. The officials’ deliberate taking advantage of tribal rivalries did indeed commonly yield the results they were seeking. Once one chief or hapu had taken money for their interests, others tended to join, even though at first unwilling. But they were by no means all prepared to join and therein lay the danger of what the Crown was doing. For many Maori leaders and tribes did not want to sell: they were increasingly aware of what burgeoning numbers of sellers, or increasing Government power, implied for them: a loss of control, as well as a loss of land. For every Maori who thought that this was inevitable and that he or she might as well join with the Crown agents, as representatives of the powerful new order, there were more – increasingly more in the 1850s – who decided that the settlers and officials should be resisted and contained. In the hardening of attitudes and drawing of lines that then took place, those who persisted with land selling could stir powerful resentments.

36. *The Taranaki Report*, p 49

From the 1830s Maori communities had discovered the difficulties of resisting land selling by some of the hapu, especially rangatira, who clearly had rights in the land, though not exclusive rights. The sense of wider community interests in the land – among the whole iwi or hapu cluster – was offended, yet it was apparently difficult to prevent individual leaders with mana from selling. Maori leaders had tried very early on to organise their communities into agreeing not to sell land, as in Mohi Tawhai's runanga and compact at Hokianga in 1840 to 1843. The problem was evidently much discussed, for in 1853 to 1856, new forms of tribal and supra tribal organisation emerged to contain land selling. The most important of these, as is well known, is the Kingitanga. The recent outcome of Ngati Toa's war with Grey's forces, and of land-selling, probably contributed to the concern of the Ngati Toa leaders, Matini Te Whiwhi and Tamihana Te Rauparaha of Otaki, who in 1853 began to canvas the idea of a Maori king. Nor would their concern have been unconnected with the establishment of a settler parliament in Auckland and Provincial assemblies, from which Maori were excluded by the individual property qualification, that they also began to canvas the possibility of a Maori parliament (at a big meeting at Taupo in 1856 for example). There were several outcomes: the emergence of the goals of kotahitanga and mana motuhake Maori; the choice of Potatau Te Wherowhero as the first Maori king in 1858; the establishment of runanganui in various districts which did not wish to support the kingitanga but nevertheless wished to maintain autonomy in the face of colonisation. The central importance of land to these movements is described in many published histories. It is important perhaps to note too the resolutions of major hui such as that at Taiporohenui (Manawapou) in South Taranaki in April 1854 when hapu of southern and central Taranaki met and resolved to stop land sales. In 1854 also the tribes of middle Waikato, whose kin had been heavily involved in land selling between the Waikato river and the Manukau harbour resolved to 'tapu' the land south of the Waikato.³⁷ Some Hauraki iwi, irritated by the efforts to sell their land by chiefs who had some interests but not dominant interests, gave their support to the evolving Kingitanga. Over the greater part of the North Island, in fact, lines were hardening against further land selling. By the late 1850s, Commissioner Dillon Bell had to curtail his inquiries into the old land claims to Poverty Bay: the Rangatira there were denying that these were sales. Even the Resident Magistrate who came to Poverty Bay in 1858 had to leave it by 1860, so reluctant was the runanga to defer to the Queen's officers.

5.10 McLean in Hawke's Bay

There is no question that McLean's land purchase activities contributed to the tensions in Maori society and to the hardening of lines against selling in Hawke's Bay. It was not just that McLean and his staff sought to initiate negotiations with

37. Johnson to McLean, 6 October 1854, Turton, *Epitome*, p 384

particular chiefs: in a situation of complicated right holding they had to start somewhere. It was rather that they actually made purchase agreements with individual chiefs, and paid money over. Moreover they did this covertly. The Hawke's Bay purchase of Tautane (70,000 acres) and three other blocks in 1854, for example, was concluded by McLean with Te Hapuku and a number of chiefs whom he invited to Wellington. There is evidence that the chiefs made the marks of absent owners as well. The communities of those chiefs might, in theory, have repudiated the agreements and made the chiefs return the money. But that was difficult, in respect of men who had much traditional mana and were feeling confident of the Government's continued patronage. We cannot know for certain just how much dissatisfaction these deals caused between the hapu and their chiefs, but certainly Te Moananui of Ngati Kahungunu came under pressure from his people and tried to return some of the land he had sold in 1855. It was some years before G S Cooper could get him to accept the final payment.³⁸

Te Heuheu of Ngati Tuwharetoa became concerned about the inland boundary of the Hawke's Bay purchases and supported Ngati Hineuru tribe who claimed the inland part of the Ahuriri block. The meeting he convened at Taupo in 1856 to discuss a Maori parliament also resolved to support leasing, in order to fund the chiefs and enable them to reassert their authority over the land and the settlers occupying it. Te Heuheu was opposed in Hawke's Bay by Te Hapuku 'who warned him against interfering with him [Te Hapuku] and his land'. Reporting this, G S Cooper commented:

I believe that the necessities of Ngati Kahungunu will oblige them to sell more land in a very short time. The money they have to receive at present is insufficient to pay their existing debts, and they can no longer get goods upon credit, the late fall in the markets has a put a temporary stop to the production of grain and potatoes . . . they have no alternative but to continue selling their lands as a means of obtaining supplies which have now become necessary to their existence.³⁹

This is a classic statement of the debt trap which was assisting the land purchase officers as it was to assist buyers of Maori land for the next 150 years; there was no indication from Cooper of anything but satisfaction and certainly no slackening of the official opposition to leasing. Indeed Cooper indicated his intention to profit from 'internal jealousy' of the Hawke's Bay tribes to buy more land. McLean instructed him to threaten prosecution of the squatters on land not yet acquired by the Crown. McLean's attitude was expressed in his warning:

we shall soon have a repetition of the Wairarapa squatting with all the evil and expense it has entailed – a general scrambling for runs over unpurchased districts would ensue. The Natives would soon find it in their interests to coalesce with the settlers in opposing the sale of the land to the government; land purchasing would cease; those who had already sold to the government would say, what fools we have

38. Cowie, pp 36–41

39. Cooper to McLean, 29 November 1856, AJHR, 1862, c-1, no 20, p233 (cited in Cowie, p 42.)

been to sell, when our opponents to those sales have held out against the Government and are now reaping the fruits of their opposition by obtaining heavy annual payments for their runs, and are greater men than we are by having the English settlers at their mercy and altogether in their power and subject to their caprice, so that they can order any man off his run who does not comply with their present demands, not only for stipulated rent, but for anything additional they may caveat.⁴⁰

McLean and Cooper continued to deal with the man they had elevated to prominence, Te Hapuku, for the purchase of Heretaunga plains, against the wishes of Te Moananui and Tareha and their hapu, who had their principal interests in that block. Negotiations with Te Hapuku and payments to his Ngati Te Whatu-i-apiti community in early 1857 led to serious fighting, known as the Pakiaka war with Te Moananui, Tareha, and Ngati Kahungunu ki Heretaunga. Cooper acknowledged to McLean that Te Hapuku had 'robbed his enemy to an enormous extent' and tried to placate Ngati Kahungunu by payments of £1300; but despite mediation by McLean and Williams, Te Hapuku built a pa on the disputed land and war began. When the fighting was concluded in September 1858 the Hawke's Bay Maori proposed 'that the system of selling land through the Chiefs should be abandoned, and that anyone who should hereafter be guilty of selling another's property or of misappropriating any payment for land, should be punished with death'.⁴¹ Maori were putting their house in order in their own way but it was clear that the Government policy of buying through chiefs was the issue at hand.

McLean and Cooper nevertheless completed purchases of Porohangahau and Tautane in 1857, both involving land the subject of earlier purchases in Wellington that were supposed to have already extinguished Maori title. Six further purchases were completed in 1859, sometimes involving separate payments to different groups of claimants. Several of these were immediately repudiated in terms of the 1858 agreement ending the Pakiaka war. Kingitanga support developed quickly in the region in 1859 and the runanganui was also formed. The latter began levying rents more systematically upon the squatters and planning the future economic development of the area, including town expansion and trade, to the benefit of Maori. Cowie comments that three Crown objectives stood in the way of these plans: firstly McLean wanted to buy a further 500,000 to 600,000 acres in the district including the Heretaunga plains and other prime areas; secondly the Government was not yet prepared to accept Maori leasing directly to pastoralists or the runanga controlling them; thirdly it was not prepared to accept support for the Kingitanga that threatened the exercise of British sovereignty.⁴² Cowie concludes:

An uneasy tension existed throughout 1860 as the Runanga consolidated its support. Cooper became shut out of proceedings, and was unable to continue any new or major purchase negotiations. Calls for about 100,000 acres of the inland portion of the Ahuriri to be reoccupied and the settlers with runs on it to pay rents or be pushed off,

40. McLean memorandum, 25 March 1857, AJHR, 1862, c-1 p 30 (cited in Cowie, p 43)

41. Cooper to McLean, 30 September 1858, AJHR, 1862 c-1 no 47, p 40 (cited in Cowie, p 46)

42. McLean to T H Smith, 29 June 1859, AJHR, 1862, c-1, no 56, p 345

filtered through to Cooper. On 20 June 1861 Cooper admitted defeat and informed McLean that, given the rumours circulating that the Crown was preparing to 'obtain the forceable possession of their land', it would be advisable to 'suspend all operations of the Native Land Purchase Department'. If they were ever to resume, Cooper noted, deals would have to be negotiated in public, with published prior warning, and involving a commissioner who, along with a few chiefs, would inquire into the customary ownership of the block. This was an important recognition of the Crown's failure to adequately investigate the customary ownership of the blocks it had purchased.⁴³

5.11 Wairarapa

In Wairarapa, McLean continued to buy land in the 25 percent of the district remaining in Maori possession. By late 1853 he was buying reserves made in sales only a year or so earlier.⁴⁴ Paul Goldsmith has detailed the Crown purchases in Wairarapa from 1854 to 1865 – about a third of the land remaining to Maori at the end of 1853. He describes a host of problems experienced by the settlers trying to take up runs – problems over boundaries, resistance by Maori owners who had not shared in the distribution of payment and demands for payment for timber which Maori did not consider they had sold with the land. These problems were exacerbated by the Provincial Government selling the land before the boundaries were settled, including sales of reserves noted in deeds as still belonging to Maori but not defined on the ground.

McLean came to the area and made additional payments to individual Maori, sometimes for instalments on earlier purchases, sometimes as advances on future sales. Goldsmith notes a trend in the new purchases towards fewer and fewer signatures on the deeds, and fewer and usually smaller reserves.⁴⁵ Despite his instructions to his officers about surveying before completing purchases McLean's own purchases were typically in advance of surveys. G S Cooper continued the purchases from 1854 to 1857 and William Searancke from 1858. These officials continued to make regular advances to a small group of chiefs who were clearly becoming dependent on this source of income. The demoralising effects were evident in Searancke's comments.⁴⁶

Goldsmith notes a number of examples of Maori selling land then buying it back immediately, at a substantially more expensive rate, to get Crown grants. This may well have stemmed from a sense of insecurity of rights in customary tenure, and the desire to separate oneself out from one's kin on a small farm. But Goldsmith gives evidence of a quite different motivation: some chiefs had arranged individual reserves for themselves in the purchases, but Crown grants for these were slow to come and Goldsmith shows Maori waiting in irritation for them in 1860.⁴⁷ This was

43. Cowie, p 51

44. Goldsmith, pp 56–57

45. Ibid, p 60

46. Ibid, p 67

a likely reason for chiefs acquiescing in the buy-back arrangements which McLean had been encouraging since the Hua purchase in Taranaki.

Purchases continued at a steady rate until 1860, about 130 purchases in all totalling about one million acres. The system of buying relatively small blocks enabled McLean to proceed without needing to secure unanimity among a much bigger group of sellers necessary in large block purchases.

But the state of sales, including payment by instalments, had not brought prosperity to Wairarapa. Searancke reported Maori seeking food and employment by the late 1850s. In 1860 he complained that the chiefs had squandered their capital, become heavily indebted, and increasingly embittered (especially if he declined to making more payments on specious pretexts), with some inclining towards the Kingitanga. A runanga was set up in 1859. Searancke was of a view that two thirds of what he had paid out in 1859 to 1860 was devoted to the purchase of arms and ammunition to send to the Waikato.⁴⁸ Some Maori who had not shared in distribution of earlier payments began to repudiate the sales, or argued that only a portion of the land had been sold or that their rights at least had to be compensated. According to McLean, the Wairarapa people were inclined to blame their own chiefs though they were increasingly disinclined to regard the actions of the chiefs as binding on all parties with interests in the land but only on those portions of land where the chiefs themselves had family interests.⁴⁹ These developments were, as Goldsmith notes, comparable to and no doubt connected with events in Hawke's Bay which had led to the war in 1857 to 1858. By Ballara's analysis, small residential groups, whanau or hapu, would typically cluster under the mana of a chief of renown, connected to but not necessarily resident among them. These 'paramount' chiefs then had their own particular lineage and lands, but also had influence over a much wider area. Traditionally they had often made arrangements with rangatira or ariki of their own rank, not necessarily consulting the various subgroups in advance (though their active or tacit consent would be needed in the long run). Because the high chiefs were considered to have abused their authority in their land dealings their mana was now being rejected by the various subtribes, each of which was asserting their own authority over their particular lands. As Goldsmith puts it:

It appears therefore that the late 1850s and early 1860s was a time when the role of the powerful chiefs was being increasingly questioned. Smaller units of people were looking to splinter out of the paramount chiefs' control, or to unite in Runanga to control them. It is unlikely that this process was universal. A lot would depend on the actions of leading chiefs of an area and the traditional extent of their control.⁵⁰

47. Ibid, pp 77–78

48. Searancke to McLean, 20 May 1860 (cited in Goldsmith, p 71)

49. McLean, commissioner's report to McLean, 10 March 1862, AJHR, 1862, c-1, p 384 (cited in Goldsmith, p 74)

50. Goldsmith, p 76

This whole situation was of course brought about by the new experience of permanent alienation of land with which Maori society was gradually coming to grips. Goldsmith notes that the paramount chiefs did not readily accept the diminution of their authority, with resulting quarrels over reserves between high chiefs and resident hapu. The Government meanwhile continued to try to hold their allegiance; chiefs were given small payments out of the Wairarapa five percents – technically within the purpose of the fund, but arguably intended for the benefit of the whole community – and many prominent land sellers were recommended for the position of Assessors in the Resident Magistrates' courts, at salaries of £30 or £50 per year.

5.12 Alienations in the Auckland Area

About 150 Crown purchases were completed in the Auckland district between 1854 and 1861, largely in Auckland and south Auckland, Kaipara, and Whangarei. Purchases were also made at Mangonui and the Bay of Islands, and in the lower Waikato. The tendency for purchases to continue in this district well into the 1850s and early 1860s, contrasts with the hardening of attitudes in other districts. The reasons are not altogether clear but probably have to do with the continued prosperity associated with the growth of Auckland and with the complex rivalries and intersecting rights among local tribes.

F D Fenton, at the 1856 board of inquiry into native affairs, reported that:

The Kaipara Natives are willing to sell their lands, and they complained that the Treaty of Waitangi is infringed by the Government not purchasing their lands when offered for sale. Their argument is, that if they are precluded from selling to any but Government, the Government are bound to purchase when the offer is made, otherwise to release them from the restriction [of pre-emption].

Notwithstanding this eagerness, Fenton noted the importance of securing tribal consent because he had 'never heard of a Native holding a strictly individual title to land'.⁵¹

In fact the Crown purchase agents generally continued to work through favourite chiefs such as Apihai Te Kawau, and Te Keene Tangaroa (mainly of Ngati Whatua allegiance) who, it appears, had become increasingly dependent upon the favour of Government and upon land sales for a flow of income. Many of these men were appointed as Assessors under the Resident Magistrates Act and the Native Circuit Courts Act 1858 and secured small salaries. They generally assisted the officials in land purchases, though not necessarily in respect of their own core land.

Dr Barry Rigby, who has examined the Kaipara purchases in some detail, has noted that the mana of Tauroa Tirarau, the elderly chief of Te Parawhau hapu (connected with Ngapuhi) spread over both Whangarei and Kaipara. G J Johnston, land purchase commissioner at Whangarei, regularly consulted him prior to making

51. Cited in Rigby et al, p 168

approaches to ‘the more immediate owners.’⁵² The support of Tirarau and the officials was reciprocal, Johnston setting in train the securing of an individual grant for him of 1000 acres.

Dr Rigby’s analysis shows that for Kaipara, as for other districts further north, Crown purchases overlapped with old land claims. On appointment to the district, John Rogan found himself mediating between rival Maori groups (under Paikea of Te Uri O Hau, and Tirarau, in respect of the upper Kaipara) in relation to various old land claims and Crown purchases. The Crown purchase at Waikeakea for example, overlaid an old land claim (with a Crown surplus), the extent of which was disputed. Mangakahea, northward of Waikeakea, had been the subject of a purchase by the CMS missionary Charles Baker; Baker was unable to occupy due to the rivalry between Paikea and Tirarau and the Government’s attempt to resolve the dispute by purchasing the land did not prevent violence erupting in 1862. Despite the intersecting Maori interests Crown officials often concluded purchases with only one or two of the major hapu.⁵³

Prices paid for Kaipara land averaged 14.3 pence per acre, but varied widely according to Maori determination in bargaining and to size and quality of the land. Sometimes the prices were ‘ridiculously low’ even by Rogan’s own estimation, recoverable from the timber alone.⁵⁴ The officials generally resisted Maori asking prices but payments became more liberal after the 1860 Kohimarama conference (where the Kaipara chiefs had complained); this presumably reflected the Government’s concern to secure their loyalty as war had begun in Taranaki. Rigby has noted the sharp contrast with the on-sale price of the land (often shortly after the purchase from Maori, with no evidence of improvements), and with the price of 10 shillings an acre paid to Kaipara Maori by Rogan as a private purchaser in late 1865.⁵⁵ It is clear that the Crown did take advantage of pre-emption to pay low prices to Maori, in continuance of Normanby’s 1839 policy.

Although Rogan made 15 reserves in Kaipara, according to McLean’s instructions, most of them were purchased within 18 months of their being created. In other words ‘reserved’ meant little more than land held back from initial purchases; there seemed to be no determined policy by the Crown either to see that the land remained in Maori hands, or to enlarge the endowment held by the Crown for Maori purposes (which was by now mostly under the Native Reserves Acts 1856 and 1862).

5.13 Hauraki

Land sales in the Hauraki district were uniformly resisted by the local chiefs until the late 1850s, although the Government purchases in south Auckland began to

52. Johnston to Colonial Secretary, 12 December 1853, Turton, *Epitome*, c53, cited in Rigby et al, p 174)

53. Rigby et al, pp 174–191

54. *Ibid*, p 194

55. *Ibid*, p 199

touch on areas where Marutuahu tribes claimed interests. Negotiations with local chiefs for access to gold resulted in agreement over licence fees in 1852; these negotiations and the resulting revenue led the Coromandel chiefs to affirm even more strongly their lack of interest in selling the land.

The creation of the Native Land Purchase Department in 1854 saw a more determined effort by McLean to acquire land in the area. Dr Robyn Anderson is of the view that, contrary to McLean's policy in Hawke's Bay and Wairarapa, officials in Hauraki approached local family heads and rebutted the authority of senior chiefs who, in that district, were inclined to veto sales.⁵⁶ In 1853 to 1858 McLean purchased Ngatipaoa interests in Waiheke Island and some small blocks on Coromandel, then interests on the Waihou and Piako rivers. James Preece continued to buy land around Mercury Bay, Cabbage Bay, Waiau, and Whangapoua. Drummond Hay purchased interests, in the Thames and Piako areas. By the late 1850s most Marutuahu tribes, except Ngati Tamatera had been drawn into sales. The officials were well aware they needed to buy ahead of further gold discoveries, when land prices would soar.

The move to individual purchases intensified in the district. In 1858 Preece reported:

I know that the natives as a body are convinced that the time is at hand when each individual Native will do as he pleases with his own land. The conduct of Maihi and Horepeta, in selling the Waiau block in spite of all opposition, has operated well. Taniwha told me lately that he was convinced that the Government would soon make a purchase of all the spare land, for he had found that he and the other chiefs could not prevent other Natives from parting with their own land.⁵⁷

In Piako, McLean, a little unusually, did attempt a prior definition of interests before making payments:

I held a meeting with the whole of the claimants, who agreed to proceed with Mr Hay to point the boundaries of their land and settle their conflicting claims and differences respecting such portions as were claimed by other tribes. This being completed, Mr Hay was instructed (a copy of which is herewith enclosed) to furnish the plan of the district about to be ceded – estimated at about 140,000 acres – and a date was to be fixed on which all the claimants should be assembled at Auckland to effect a final settlement of that long-pending question.⁵⁸

But this effort was spoiled when officials in Auckland made a payment to Ngatai and Hongi of Te Uri Karaka without first ascertaining their rights vis-à-vis other claimants. These two had been selling in South Auckland for a decade and overreached themselves in Hauraki, precipitating distrust of the Crown and a general reaction against selling.

56. Dr Robyn Anderson, 'Hauraki Historical Overview Report', Confidential draft for Crown Forestry Rental Trust, Wellington, July 1996, p 13

57. Preece to Chief Commissioner, 6 May 1858, Turton *Epitome* c304, cited in Anderson, p 15

58. McLean to Governor Brown, 5 June 1857, Turton *Epitome*, c299 (cited in Anderson, p 16)

Kate Riddell has shown that the usual problems of vague boundary descriptions, few signatures on deeds, and their formulaic nature, obtained in Hauraki too.⁵⁹ Only one deed, that for Piako in November 1853, contained a '10 percent' clause.

Anderson notes that few formal reserves were made, the officials' perception probably being that Hauraki Maori still had ample land left. They were aware, however, of social malaise and liquor consumption among Hauraki communities and of growing indebtedness.

Among Maori there was a growing awareness and regret that the land had been sold for very low prices in relation to its subsequent value and that they had little or nothing to show for it. Here too, in consequence, there was growing support for the Kingitanga. Drummond Hay, however, persisted determinedly with buying from small groups against tribal opposition:

The Natives were told distinctly that if any Natives, however few, could prove a sound title to land that they wished to sell, the offer would be entertained; and if opposed by the tribe on no better grounds than that the land should not be sold, such opposition would carry no weight with it; also in the case of the whole tribe being concerned in the offer, some few individuals alone demurring, their title would be fairly investigated, and their rights respected, however much the tribe might insist otherwise.⁶⁰

Hay maintained the right of the hapu, including diminishing hapu, to sell rather than be 'tyrannized over by the rest of the tribe'.

5.14 Wellington

Negotiations were pursued by Land Purchase Commissioner Searancke in the Horowhenua (Waikanae) and Manawatu districts but the complex intersecting interests of Ngati Raukawa, Rangitane, Ngati Kauwhata, Ngati Apa and Te Atiawa, prevented any sales from being concluded except for about 34,000 acres known at Whareroa or Matuhuka, in 1858. Searancke apparently paid £800 for the land, mainly to Te Atiawa. There seems to be some doubt as to the existence of a deed.⁶¹

Searancke also made a payment of £400 in November 1858 to Ihakara and the Ngati Whakaterere hapu for a 37,000 acre block at Te Awahau on the north bank of the Manawatu river. Ihakara was, by his own later account, deliberately acting against the 'anti-selling league' by which he meant the Ngati Raukawa nonsellers led by Nepia Taratoa. Searancke pushed ahead determinedly with the selling party and agreement was eventually reached in late 1858, with payments to Ngati Toa for take raupatu and Ngati Apa and Muaupoko for take tupuna. Reserves were marked including small fenced settlements for Teratoa, and another chief bought land from

59. K Riddell, 'Pre-1865 Crown Purchases – Hauraki/Coromandel', Waitangi Tribunal Rangahaua Whanui Series unpublished draft, pp 5–9, 11

60. Hay to Chief Commissioner, 4 July 1861, Turton, *Epitome* c, p 338 (cited in Anderson, p 21)

61. Anderson and Pickens, pp 79–80

the Crown at £5 per quarter-acre.⁶² This outcome probably emboldened McLean in the dangerous policy of pushing forward with purchases from some right-holders against opposition. Searancke thought he had achieved another purchase called Wainui, near Paekakariki, but this was unconfirmed until the 1870s.

In early 1860 Searancke rather reluctantly suggested surveying or clearing boundaries first (apparently this was not being done) and buying smaller areas; but with the crisis developing in Taranaki, and Searancke's efforts being known to cause 'dissatisfaction' among the Maori of the area, he was ordered to stop his operations.⁶³ He made an interesting final comment though, on the attitudes of the selling parties in relation to land at Te Awahou:

the Natives themselves are most anxious to see settlers among them and are disappointed at the delay and openly state that as the Crown is not making use of the land they will resume possession.⁶⁴

5.15 The 1856 Board of Inquiry

It is appropriate, before returning to the Taranaki story, to comment on the 1856 board of inquiry into the state of native affairs convened by Governor Browne. Chaired by the Surveyor General, C W Ligar, the board heard evidence on selected questions from 24 pakeha and nine Maori, including McLean, Fenton, and Rogan. Its reports and minutes are printed in *British Parliamentary Papers*, volume 10, pages 509 to 611, and summarised in Helen Walter's report 'Land Purchase Policy and Administration 1846–1856'.

The first two questions concerned land: whether Maori should be required to mark out land before survey and sale; whether public notice should be given requiring all claimants to appear within a given time or forfeit their claims; whether the selling party should be made responsible for paying off subsequent claims; whether Maori should be given Crown titles over land not yet sold to the Crown, and if so whether under restrictions on alienation. Those questions clearly reflect concern about how to manage intersecting Maori rights and the difficulty of extinguishing Maori title.

The board's summary of evidence and opinion showed that the officials generally had a reasonable grasp of the complexity of Maori tenure:

It will . . . be seen that no tribe has in all instances a well-defined boundary to its land and that the members of several other tribes are likely to have claims within its limits.

62. Anderson and Pickens, pp 80–83

63. Ibid, pp 85–87

64. Searancke to McLean, 1 February 1861, AJHR, 1861, c-1, no 79, p 302 (cited in Anderson and Pickens, p 87)

The members noted that individual Maori had rights to regularly use areas for 'cultivations, dwellings, or food gathering etc' but not a right 'clear and independent of the tribal right'. Chiefs had an 'influence' on the disposal of tribal land but individual rights in particular portions like everybody else. Walter points out that the board made no criticism of McLean and his department for buying huge areas on the basis of a few signatures despite these intersecting interests.⁶⁵

The board noted the growing reluctance of Maori to sell land in large quantities. This they said, was because of Maori 'cupidity' and awareness of the rising value of remaining land. They advocated stepping up the offers of Crown grants to individual chiefs and heads of families after Crown purchases, but *not* inalienable titles.

They advocated registration of all Maori claims, greater publicity of purchases under negotiation and cessation of paying instalments before completion of the purchase. An elaborate scheme was advanced for stationing assistant commissioners (with surveyors) in 'conveniently sized districts' and securing the cooperation of Maori to sketch the boundaries of all claims – another version of the *Domesday Book* that George Clarke had advocated in 1843. The walking of boundaries and setting up of poles at corner points was also recommended. Much of this advice made quite good sense, although of doubtful practicality.

In the event McLean acted on very little of it. He supported paying by instalments, asserting that the first and largest instalment was distributed among the more general and remote claimants with 'the real owners of the soil' waiting for later payments. This seems to be an attempt at a justification of the way he proceeded in earlier purchases in the northern South Island. On the question of the relationship between chiefs and individual occupiers McLean hedged his bets. Though appearing to acknowledge tribal rights he added:

The rule which applies to the purchase of one portion of land does not apply to another; each piece of land has its own history. A great deal must be left to the discretion of the person purchasing.

Asked in 1860 to explain why he apparently supported a tribal over-right in 1856 but rejected it in the Waitara purchase, McLean said:

It varies so much in different parts of the country, I should wish to know what part of the country you refer to – as the custom which prevails in one place does not in another . . . in some tribes the different hapus must be consulted, in others chiefs; much depends upon the personal character of the latter . . . the various hapus or families which compose a tribe most frequently have the right of disposal, but not always; the custom varies.⁶⁶

McLean could hardly say anything else; in Hawke's Bay, Wairarapa, and South Auckland he had been buying determinedly from compliant paramount chiefs; in

65. Walter, p 28

66. Opinions on Native Land Tenure, attached in Browne to Newcastle, 4 December 1860, AJHR, a, p 3, cited in Rigby et al, p 169

Hauraki and Taranaki, where senior chiefs were opposed to selling, he and his officers tried to ignore them and weasel their way into purchases by payments to small-group leaders. He reported a month after giving his evidence to the board that he had instructed local officers to investigate history, genealogy, and tenure in their areas, to formulate boundaries and use natural features where possible to mark reserves. Despite this, the actuality of purchases from 1856 to 1861 suggests that McLean's practice and that of his officers remained as pragmatic as ever: payments in advance to compliant Maori and attempts to promote offers of sale over what area one could, promising reserves to chiefs as inducements and doing very little about seeing them Crown-granted.

5.16 Waitara and War

The onset of the central tragedy of modern New Zealand history, the war that began at Waitara in 1860, is too well known to require further detailed analysis here. Keith Sinclair's *Origins of the Maori Wars* remains a masterly study and the Waitangi Tribunal's interim report on Taranaki has thrown new light on the complex tribal situation relating to the land dealings.

The Tribunal has also set out the complex history of the area following the arrival of the New Zealand Company and Colonel Wakefield's purported purchases, the return of large numbers of Te Atiawa from the south under the leadership of Wiremu Kingi, Maori efforts to limit the spread of white settlement, and the Taiporohenui (Manawapou) resolution of April 1854. Government attempts to buy land from a minority of right-holders at Waitotara too were subsequently seen as iniquitous. Attempts to buy land in north Taranaki led to a three-year feud between selling and non-selling factions of Puketapu in 1854 to 1857.

McLean's attitude towards the Taranaki 'Land League' as he and other officials called it, and the Kingitanga, was contemptuous and hostile. Despite the fighting that had occurred in Taranaki and Hawke's Bay between land selling factions and their opponents, and the evidence of increasing Maori opposition to selling in many districts, McLean and the settler ministry continued to try to push through land purchases. In 1858 there was a strong settler thrust towards individualisation of Maori tenure and direct dealing between Maori and settlers, which was given expression in the Native Territorial Rights Act 1858 – disallowed in London because the Government there still wanted to keep control of the land trade and of 'Native Affairs'.

But Governor Browne, with McLean as his closest friend and advisor, was moving increasingly away from the 1856 findings and towards recognising the rights of individual hapu and families, including the right of these to sell to an outsider, notwithstanding the wider tribal right as expressed through the paramount chiefs which was not now to be allowed to supervene. At New Plymouth on 8 March 1859 Browne announced publicly that he would not buy land with a disputed title and 'would buy no man's land without his consent' but he would

allow no one to interfere in the sale of land ‘unless he owned a part of it’. The nub of the matter was the phrase ‘owned a part of it’. Typically, as we have seen, hapu would recognise the mana of senior chiefs connected with them but not necessarily of their core lineage or residential group. Conversely senior chiefs had their lands in their own core lineage and residential group, but their mana over the wider tribal community gave them a voice in the disposition of land in the whole of that group. So said the 1856 board and so says the modern research of scholars such as Dr Angela Ballara. Indeed McLean said so too, when it was convenient to buy from Te Hapuku or Ahipene Kaihau or others selling well beyond their own residential area. But now, in New Plymouth, Browne and behind him McLean, threw the emphasis the other way – the paramount chiefs were not counted among the ‘owner’ group and were to have no say. This was seen as a new policy by many. A settler at the meeting wrote in his diary that night that His Excellency ‘declares his intention of not allowing any native to interfere in the of sale but such as have a claim in the land in question ie not to allow the rights of chieftainship’.⁶⁷ Professor Keith Sinclair argued that it was a new policy; Professor Brian Dalton thought not.⁶⁸ In view of the practices developed by the land purchase commissioners in Hauraki it was not entirely new. But it was new to Taranaki where (much as they disliked it) McLean and successive governors had previously allowed Wiremu Kingi’s view on land selling some influence. Now that influence was being set aside and Browne’s public announcement made what had merely been McLean’s pragmatism into official ideology. It is no wonder that senior chiefs throughout New Zealand became concerned, as was revealed at the Kohimarama conference in 1860.⁶⁹

Te Teira offered to sell ‘his piece’ and Kingi resisted, both as spokesman for a general Te Ati Awa determination not to sell the south bank of the Waitara, and because he had family interests in the land. The war that Browne and McLean began went on for nearly 12 years.

5.17 Crown Purchases, 1861–65

With the advent of the Fox Ministry in July 1861, McLean was required to take leave. He remained nominally the chief land purchase officer until early 1863, but John Rogan ran the office and McLean performed various roving commissions at the behest of Sir George Grey, returning for his second governorship. Effective running of the Native Department fell to F D Bell (who was still completing his report on old land claims and pre-emption waiver purchases), W Fox, and Walter Mantell (who had been responsible for the minimal awards in the Ngai Tahu purchase). It is perhaps therefore unsurprising that nothing substantial appears to

67. A S Atkinson, Journal, 12 March 1859, *Richmond Atkinson Papers*, ed. G H Scholefield, Wellington, 1860, vol 1, p 452

68. K Sinclair, *The Origins of the Maori Wars*, Wellington, New Zealand University Press, 1957, p 139; B J Dalton, *War and Politics in New Zealand, 1855–1870*, Sydney, Sydney University Press, 1967, p 99

69. Minutes of the Kohimarama conference, ma 23/10, NA Wellington

have changed in the policies and practice of the Land Purchase Department, most land purchase commissioners remaining in their posts in various districts.

Land purchasing slowed in some areas because of the preoccupation of both Maori and Pakeha with the Taranaki war and the tense relations between Government and Kingitanga. Grey launched his 'new institutions' in 1861 – official local Runanga with salaried Assessors and Karere (village constables in effect) – using the District Circuit Courts Act 1858 for authority. It was intended that the Runanga, under Pakeha resident magistrates or Civil Commissioners might, among other things, define customary land ownership and regulate the informal lease arrangements which continued to flourish in districts such as Hawke's Bay. But the Hawke's Bay chiefs were uncooperative. They had tried before to get the courts to adjust disputes with squatters and been rebuffed on the grounds that their customary titles did not establish a proprietary interest in land that the courts could recognise. The chiefs therefore kept matters in their own hands, as before, seizing settlers' stock when they wanted to claim payments or damages. There was also a widespread anxiety among Maori that their land would be seized to pay for debts; indebtedness was widespread after the land sales of the 1850s, which had encouraged spending habits, and the agricultural depression after 1856, which left Maori without regular income from the sale of produce.

Between 1862 and 1865 the land purchase commissioners continued to make a number of purchases. Kaipara, Whangarei, the Bay of Islands and Muriwhenua were targeted by the Crown, resulting in 58 purchases, some of 20,000 to 30,000 acres – a total of about 382,000 acres, some overlaying old land claims. There were 13 purchases totalling about 14,000 acres in Hauraki and three in the lower Waikato from chiefs who considered the Kingitanga a backward development and land-selling a means of securing alliance with the British.

In 1864 the Crown purchased Rakiura from Ngai Tahu. Relatively, the terms were better than previous purchases in the South Island; a price of £6000 and a smattering of small but important reserves such as the Titi Islands. A feature of some significance was that one third of the purchase price was set aside to be invested for an educational endowment. Suitable land was in fact purchased in 1870 and is still in trust for educational purposes though under perpetually renewable lease. This by no means covered the needs of Rakiura Maori but it was an indication of what might have been done more systematically with Crown land purchases, had anyone had the will.

Another area where Crown purchasing was significant during the early war period was Wairarapa. McLean returned to Wairarapa in 1862 and completed some purchases he and Searancke had begun years before. The same old features re-occurred: in the 8000-acre Makara block only three signatories, a 100-acre reserve and boundaries indicated vaguely by place names. In 1863, Isaac Featherston, Superintendent of the Wellington Province, was appointed Special Commissioner; he made some 20 purchases in all totalling about 50,000 acres. About 220,000 acres were sold in Wairarapa between 1854 and 1865, leaving less than 20 percent of the district in Maori hands.

Featherston acted as special commissioner also in the highly significant Rangitikei–Manawatu purchase in Wellington district. This large and fertile block of some 250,000 acres had been the scene of rivalry between Rangitane (old occupants), Ngati Raukawa (coming into the area in the 1830s) and Ngati Apa (another older group who also had sold Rangitikei–Turakina to the Government in 1847 to 1849). The zones of occupation of the land were indistinct after the heke and fighting of the 1830s; now the confusion was exacerbated by quarrels and threatened fighting over the distribution of grass money. In 1849 to 1850 the Government had taken the view that Ngati Raukawa had the predominant interests, as conquerors, Ngati Apa confining their interests north of the Rangitikei. Now it was convenient to recognise Ngati Apa, who were offering to sell the block. Featherston had the Rangitikei–Manawatu block excluded by special clause from the operation of the 1862 and 1865 Native Land Acts and Ngati Raukawa had not the benefit (albeit a doubtful benefit) of a Native Land Court hearing before a purchase agreement was concluded.

5.18 The Crown Purchasing Period: An Assessment

It is to the credit of the Crown that, after some seven years of hesitation, it recognised Maori property rights under the Treaty to uncultivated or so-called ‘waste’ lands, as well as to cultivated and settled land. This was partly the result of understanding by local officials (starting with Busby at the Treaty negotiations), of New Zealand realities, and their defence of them against the self-interested and ideological position taken by the New Zealand Company and its powerful political backers in England. It should be recognised though, that Governor Grey and his colleagues in New Zealand might not have so readily resisted chapter 13 of the Constitution Act 1846 (which required that ‘waste’ land be registered as Crown demesne) without their sharp appreciation of Maori strength on the ground. Moreover, Grey’s rejection of the ‘waste land’ theory was heavily qualified by his assertion of the view that Maori rights in land were so intersecting, confused or inchoate as not to be really ‘valid’. In consequence, although Maori interests in land had to be extinguished by purchase before the Crown could assert beneficial title, Grey’s land purchase policy (like that of his chief land purchase commissioner Donald McLean) was characterised by sweeping ‘blanket’ purchases, purporting to extinguish Maori interests across vast areas.

The truly damning evidence of Crown purchase methods before 1865 is the war which began at Waitara and spread to most of the North Island. The Government’s policy in Taranaki in 1859 and early 1860 was not wholly new, however. During Grey’s first governorship and during McLean’s management of the Native Land Purchase Department, Government officers in all districts had taken advantage systematically of the complexity in Maori land tenure, as between various hapu whose interests intermingled or between the smaller groups in residence and the great chiefs whose mana extended across a number of hapu. The relative ease with

which they could do this arose in part from the fact that Maori themselves were uncertain as to the authority of rangatira in this new activity called selling land. Chiefs were expected to speak for their communities. But Maori witnesses before Commissioner Spain in 1843 were themselves divided on whether the consent of ‘overlord’ chiefs bound the lesser or ‘resident’ chiefs in the various villages within New Zealand Company purchases.⁷⁰ Officials in fact worked through whatever grouping or level seemed most likely to lead to a purchase. There were usually some chiefs willing to sell, for a variety of reasons. Sometimes they represented wider community opinion but very often they did not, and by negotiating with them, and above all by making advance payments to them, the Crown officials set up very strong tensions in the society or exacerbated existing ones. The 1856 board of inquiry was well aware of Maori *reluctance* to sell for a variety of reasons: Te Heuheu and the interior chiefs because of fear of their loss of ‘nationality’; Arawa because they did not consider they had a surplus anyway; Poverty Bay because they were doing well out of growing wheat and trading it to Auckland and had no need or wish to sell land. The board was also aware of the hazards and injustices in the Native Land Purchase Department’s methods and recommended a series of improvements to the procedures. There is little evidence to show that these were carried out. Serious fighting occurred among Maori in Taranaki and Hawke’s Bay in the 1850s. The land purchase commissioners would sometimes leave highly sensitive areas for a time but keep negotiating in other areas, quite explicitly hoping that pressure and working through client chiefs, would cause resistance to crumble. Once they were confident that they had a deal with some influential leaders they would try to push through a survey or make an announcement of the deal as a completed purchase, immediately throwing the still resisting groups into a disadvantage. The resisters then felt obliged to participate for fear the land would be sold from under them.

Maori had a sharp awareness of what was happening and began, in tribal runanga or supra-tribal arrangements, to resist the sellers, especially the complaint chiefs who had used the mana they had acquired in traditional ways to sell land absolutely (where previously they had authority only to make conditional transfers of rights over it). Maori were generally restrained in their methods of opposition to sales with which they had not fully concurred but interruptions to surveys were very common. The officials’ normal response was to halt the survey, negotiate further, perhaps make an additional payment, alter a boundary or mark out a reserve. Almost never did they accept that the sale had not occurred once one section of the owners had taken a payment and signed a deed. The difference in Waitara was that instead of negotiating further the Governor sent soldiers to support the survey, after Te Atiawa had non-violently resisted it. The other new aspect of policy at Waitara was the deliberate decision to set aside the authority of the senior chiefs like Kingi to express the views of the wider tribal community – an authority which McLean had found very useful to support at other times and places. For the use of elderly

70. See analysis of evidence of Te Atiawa chiefs in Duncan Moore, ‘The Origins of the Crown’s Demesne at Port Nicholson, 1839–1846’ (Wai 145 rod, doc e4), pp 206–217, 246–268

and senior chiefs in Hawke's Bay and South Auckland was blatant. On this point the private correspondence of McLean and his staff makes unpleasant reading: they knew they had many of these chiefs dependent on them for a succession of payments or gifts and despised them even as they were using them. Chiefs like Wiremu Kingi of Te Atiawa, a friend of the British and supporter of settlement within limited confines, would not be bought when it came to the essential tribal lands. So in the end he was attacked.

It has been commonly asserted, both contemporaneously and since, that the officials should have made a thorough prior investigation of customary ownership before they secured deeds of sale and made payments. Otherwise, all interested parties could not have been identified or consulted and their prior agreement to the purchase secured. The criticism is essentially a valid one: advance payments and public announcement of a purchase should have not have been made without investigation and marking of the land. That too was part of the fault at Waitara. But Maori land tenure was so complex in many areas that officials, with the best will in the world, would not have always been sure that they had identified all owners, even if they spent months at prior investigation. This is largely because the concept of being an 'owner', amidst the whole complex of kinship ties and different kinds of rights and interests, could not become real and meaningful to Maori until the land at issue was defined – in the act of purchase itself. This is what was wrong with all proposals for *Domesday Books* and the like in advance of purchase. In Fiji today, although almost the entire country has been covered by a land commission and the land awarded to *mataqali* (roughly equivalent to Maori hapu), when development actually takes place on the ground officials virtually have to start again, and investigate title: they cannot rely simply upon the group names or genealogies collected by the commissioners, although these are helpful. The people did not tell the commissioners everything and anyway the balance of rights has evolved over time.

What might have been practicable was to say that a specific area was 'under negotiation'; that was in fact commonly done and it did bring forward many interested parties. But until the land was physically marked upon the ground Maori themselves could not be sure whether they were entitled to be involved. The physical boundary marking would have been expensive, especially if lines had to be cut, and it would have taken time, but it would have been a much more genuine way of buying or of bringing forward interested parties and getting their prior agreement to a contract of sale. Many persons involved in the 1856 board of inquiry recognised this. But it was almost never done: it was too expensive, and too time consuming and both Government and settlers were hungry for huge areas of land, where even physical walking of the boundaries was difficult. So officials generally relied on a 'good sketch plan': they got their sales in many cases but they created a host of problems about boundaries and reserves and protests from owners of rights who had not been aware in advance of the sale. This is somewhat short of the full and free consent that Normanby's initial instructions to Hobson required.

Underlying the officials' rough and ready methods lay their conviction, articulated in London and essentially accepted by Governor Grey and other senior officials in New Zealand, that Maori did not really have 'valid' proprietary title to the uncultivated lands. The very fact of intersecting Maori interests reinforced the officials' view that they were buying Maori *rights*, inchoate and precariously held, not proprietary *titles*. They commonly said so even in negotiation with Maori, and offered them, in return for relinquishment of all their vague claims, clear proprietary titles under Crown grant, together with the prospect of employment, trade, and development associated with the settlement.

Moreover Maori, to a degree, accepted this reasoning. Maori law did emphasise relationships between gods and chiefs, chiefs and people, and all of them with the land, rather than the European-style property titles. These values were modified but not wholly displaced, but new perceptions deriving from the money economy. There were obvious attractions to a group in having a clear title to a reserve, or to a chief in having an individual farm, especially as Maori were constantly told that increased value and a host of commercial advantages would flow from it. But not all Maori by any means considered that their customary rights were inchoate and precarious: that depended very much on the local state of power and politics. Often it was the tribes relatively small in number in relation to a vast rohe who were most inclined to sell – Ngai Tahu for example, and sections of Ngati Kahungunu in Hawke's Bay and Wairarapa, recently returned from an exile to which they had been forced by the musket wars and perhaps still feeling insecure. Ngati Whatua in Auckland and Kaipara too were inclined to sell, welcoming the British alliance against powerful old adversaries among the Waikato and Ngapuhi. Settlers and officials took this to be an indication that the more association with settlement the Maori had the more content they were; it was the remote interior people who were organising against selling. Thus the 1856 board of inquiry asserted:

The price with them is a secondary consideration. If they can make up their minds to sell, it is a proof that they are impressed with the necessity of the new order of things which has been introduced, and to which they know they will ultimately have to conform; or, that seeing advantages to be derived, they, by the sale of land, court its influence. More or less, every transfer of land may be looked upon as a national compact, and regarded as binding both parties to mutual good offices.⁷¹

This summary, while not wholly wrong, is simplistic and complacent. Certainly Te Hapuku and others had sold largely for the motives suggested, but Maori were not wholly oblivious to price. By the mid 1850s price was becoming less and less a 'secondary consideration'. More importantly though, the 1856 board was correct in suggesting that Maori saw land sale as a national compact binding both parties to mutual good offices. The officials were thus exposed in their own terms, to the Maori dissatisfaction (to say the least) if the mutual good offices were not in fact demonstrated to Maori by the Government.

71. BPP, 1860, p 514

Disillusionment among Maori land sellers was indeed widespread by the 1860s and this was partly because the British did not honour their undertakings to survey out reserves and issue Crown grants. Very little of this detailed administrative work was in fact done during the scramble to make the bulk of Maori land available for settlement. In this respect the Crown very markedly failed to honour its undertakings. There was indeed a persistent fundamental ambivalence about what the reserves were for in the first place. Many had no restrictions on alienation at all, and were bought within a few years of the initial purchases. Reserves then, were secure neither for Maori themselves to farm, nor as an endowment for fixed-term leasing by which Maori could gain access to increased capital value.

The percentages of land reserved from sale (whether or not Crown granted) varied widely but were not high. Nor was the slight proportion of reserves necessarily related to a sense of Maori retaining ample other land still in customary title. About 99 percent of the South Island had been alienated by 1865, the remaining one percent being divided between reserves for Maori residence and trust administration. Over 75 percent of the Wairarapa district had been alienated, about 3 percent of that being reserved. About 55 percent of South Auckland was alienated, and 3 percent of that reserved. Of course when very large areas are concerned, as in the South Island and Wairarapa, one to three percent could represent a considerable number of acres. Given that the Maori populations were often quite small (numbering at most 1000 in Wairarapa and probably between 750 and 900 according to Goldsmith)⁷² that meant that in terms of acres per head Maori were deemed still to have a considerable patrimony. Even in a relatively populous districts like Kaipara, where an estimated 57.45 percent of land was alienated by 1865, the reserves plus land unsold amounted to 375.57 acres per head.⁷³ But this says nothing about the quality of the land remaining nor about the distribution of it among the various hapu. For example, although 45 percent of South Auckland lands were still in Maori ownership at 1865, much of that was in the Hunua and Kaimai Ranges, not readily suited to farming; much of the land remaining in Maori hands in Taitokerau (Northland) was of poor quality, still difficult to farm today.

As is well known, when the British Government had intervened in New Zealand they were aware that the Maori people were already suffering demographic decline from European contact and were firmly convinced that the continued decline and extinction of Maori was likely if not inevitable. By the early 20th century (and in some cases well before then) officials became aware that this was not so, but in fairness to the officials before 1865 the evidence available, such as Fenton's 1859 census, confirmed the Maori population decline. In that context the officials could well have assumed, without seriously examining the situation, that Maori had ample land yet available to them for their 'present and future needs'. In that Maori themselves, in asking for reserves tended to insist most strongly on reserves giving access to mahinga kai – especially inland and coastal waters – officials often assumed that they had done the essential thing for Maori needs. Maori also re-

72. Goldsmith, p viii

73. Rigby et al, pp 207, 213

requested reservation of stands of timber and this was sometimes granted. The forests in their unsold lands were also still important to Maori as sources of birds, pigs, and plant material and while alienated lands remained uncleared, unfenced, and undrained they too offered some facility for the hunting and gathering side of the Maori economy.

But none of this seriously involved Maori in the emerging modern economy, as was at least implicitly part of the duty of active protection assumed by the Crown in the Treaty, and explicitly and repeatedly offered to the Maori by officials negotiating for land purchases. The primary reason for this is that the Crown still saw the Maori as competitors, and the immediate focus of the competition was the leasing of land for stock pasturage. From the mid-1840s, Maori began to do well out of grass-money (rentals) from the pastoralists. But the Crown had opposed direct leasing as it had opposed direct purchase from the outset: it was intended to be covered within the 1840 proclamation of the Crown's pre-emptive rights along with other forms of land alienation because:

- (a) the Crown wanted to give the settlers the freehold they so passionately desired; and
- (b) the Crown needed the revenue from the on-sale of land purchased from Maori.

Hobson took steps in the Native Land Commission Ordinance 1841 to ensure that leases were included in the forms of alienation declared void unless confirmed by Crown grant: Grey ensured that the 1846 Native Land Purchase Ordinance debarred private leasing of customary land, and he and McLean launched prosecutions against the run-holders in order to pressure the Maori in Hawke's Bay and Wairarapa to sell. A huge avenue of potential development through leasing or (in modern terminology) joint venture arrangements, was simply closed off.

According to proposals by Grey in 1850, Maori were supposed to be able to lease reserves for which they had Crown-granted titles. But they were not, in fact, allowed to retain very large reserves where leasing could be developed: Ngai Tahu requested after the Kemp purchase a coast to coast reserve along the Waimakariri valley but this was denied by Mantell; Canterbury Ngai Tahu got only their miserable 10 acres per head and Wairarapa not much more in the blocks sold.

McLean promised many reserves, but they were usually at best modest in size, and the promises were often unfulfilled; Maori rarely got Crown-granted reserves. Early reserves, such as the New Zealand Company 'tenths' in Wellington and Nelson, were mostly administered (or maladministered) by trustees.

Yet even in respect of the South Island the evidence shows that the settler politicians and officials never doubted that Maori still had ample land left and never questioned their own assumptions or examined the evidence of what Maori actually had. In 1864 for example, William Fox, trying to allay concerns of the Aborigines Protection Society about the confiscation policy, asserted that 'a quantity [of land] much larger per head than the average occupation of Europeans in this [North] island, is proposed to be set apart for them, on a graduated scale according to rank and other circumstances'.⁷⁴ During the debate on the 1862 Native Lands Act the

official speakers frequently asserted that of 29.6 million acres in the North Island 22.6 million remained in Maori hands. They put it this way rather than that 7 million acres had been acquired. Other speakers reiterated the persistent belief that Maori did not have valid title to land other than their cultivations and settlements. In short the settlers were still envious, jealous of Maori land owners, still seeing them as having a dog-in-the-manger attitude over land from which settlers could benefit and use more productively. This attitude in fact persisted well into the 20th century.

Nor did the Crown take a substantial percentage either of land or funds from resale to endow Maori development. Grey sold the 10 percent that FitzRoy had reserved from the pre-emption waiver purchases. The 'Auckland 10 percents' and 'Wairarapa 5 percents', from the profits of resale of the Crown purchases in the districts, supposed to be for schools, hospitals, and general development, petered out, and some was used for footling payments to chiefs to keep them compliant. The 1856 Native Reserves Act represented a belated attempt to make productive the formal reserves, mainly in Wellington, Greymouth, and Nelson, but these were not added to. Maori got a little help with medical care and flour mills from the £7000 civil list arranged in 1852 plus a similar amount voted by Parliament, but this mostly went to salaries of Maori assessors and police; it did not contribute to general development. One might ask whether it is reasonable to expect the Crown to have done more, in an age of *laissez faire* and self-help, to promote Maori economic development, but measured against the spirit, if not the letter of Russell's 1840 and 1841 instructions (requiring a substantial endowment for Maori purposes) it all fell pathetically short. It was not only that the Crown did not actively assist Maori in these respects but, if Maori tried to help themselves, by organising their own runanga or the Kingitanga or through direct leasing or other economic ventures, they were angrily and ruthlessly undermined rather than be allowed to stand in the way of the Crown and the settlers securing the freehold to the great bulk of the land. The £2000 educational fund from the Stewart Island purchase, or GS Cooper's suggestion that reserves be entailed for a generation least the chiefs sell them, were belated and feeble recognitions that a problem existed. The show that ideas about helping Maori were not lacking, but they were not systematically and generally applied.

Why did Maori not bargain harder? Why did they continue to sell, at often for very low prices? The various motivations for selling had been discussed, along with the customary reasons why non-sellers had difficulty in controlling sellers. Prominent among the reasons for selling was the on-going aspiration among many Maori to engage with modernity – to leave behind or substantially curtail the traditional constraints of kinship and common property rights and develop land for themselves and their specific families or communities. Some chiefs articulated this as their reason for not joining the Kingitanga.⁷⁵ The staggering non-success of such mod-

74. Fox to Bishop of Waiapu, 4 July 1864, AJHR, 1864, e-2, p 78 (cited in B Gilling, 'The Policy and Practice of Raupatu in New Zealand', pt a, p 29)

75. Alan Ward, *A Show of Justice*, Auckland, 4th ed, Auckland University Press, 1995, p 88

ernising endeavours in other parts of New Zealand did not deter others, elsewhere, from trying as well. H T Kemp, when Native Secretary of the New Munster, took a census of his district in 1850 to 1851 and reported the disarray and decline of the village of the chief Ngairo in the Wairarapa within a year of selling, but soon all the Wairarapa chiefs were offering land.⁷⁶

Another reason for selling was that many Maori had still not realised that 'sale' meant total loss of association with, or control over the land. They knew by now that the Pakeha were there to stay, often in considerable numbers. But chiefs often hoped still to be associated with the clusters of settlers they invited in to their rohe by selling land and to have some say in the developments that took place. Officials indeed encouraged this and land selling chiefs often did have roles as Assessors, and were given agricultural equipment or breeding stock to start farming. The line between 'selling' in the European sense, and bringing in some Pakeha friends and allies in the Maori sense, was still a blurry one.

Part of the reason for accepting low prices, minimal reserves and little else was the lack of counter-vailing advice. Grey had got rid of the Protectorate Department in 1846, just at a time when it was showing a real understanding of emerging problems and some vigour, sometimes, in defending Maori interests. The contrast between the Otakou purchase of 1844, with the Protectorate present, and later purchases such as Porirua, Wairau, and the Kemp purchase, is striking. Goldsmith has drawn attention to the way the missionary Colenso acted as some constraint on the Wairarapa land sellers until he 'sinned' and fell from influence.⁷⁷ And Cowie has referred to the restraining influence of the Reverend Samuel Williams in Hawke's Bay, although McLean eventually ignored him.

The pressures of the money economy were very difficult for chiefs to resist. Mana depended, to a large extent, on having modern lifestyles and this required cash. Moreover, by the end of the 1850s Maori up and down the country were caught in debt traps; threatened with prosecution to pay debts, they were then inclined to take more advances from Government officers on the remaining land. A cycle of dependency was developing. By 1858, as plans for direct purchase developed in the settler assembly, Maori began to accept advances from private traders and store keepers against their land.

Government made no serious effort to ensure that Maori invested part of the monies paid over for land. They may have resisted compulsory measures to this effect but there is little or no evidence of proposals being made by land purchase officers to create trust funds to assist Maori farming, for example. As a Mr Crawford put it in debate on the Native Lands Act 1862, Maori had 'no means of investment'.⁷⁸

This whole network of economic dependency, together with the growing realisation among Maori that 'sales' meant loss of control over the land, caused a wave of repudiation by the late 1850s – repudiation not only of land transactions but of the

76. H T Kemp, statistical return, 1 January 1850, BPP, [1420], pp 238–239

77. Goldsmith, pp 33–34

78. NZPD, 1862, p 716

authority of British officials and legal structures which directly impinged upon Maori rangatiratanga or autonomy. The Kingitanga and Runanga movements did not yet reject the Queen's sovereignty (or at least that was a minority view within them) but disillusionment with the promise of Waitangi, of an alliance with the Crown which would see Maori as mutual beneficiaries with the settlers of land development, was widespread. A policy of reserving land more generously, giving it clear titles and developing lease terms which were fair to both landlord and tenant would have given Maori a very different image of the Crown's role. The surprise is not that Maori in many parts of the country resisted land sales and encroaching Government authority but that others still hoped that alliance with the Crown would yet be fruitful and continued to sell. In 1862, F D Bell in parliament, referring to the growing disaffection among Maori, stated:

this arises simply and naturally from the one great mistake we have made, in always trying to give them the least price they would accept for their land, in order that we might ourselves get the greatest profit we could by sale. If you had said at the commencement that the Crown would obtain the Native land on a plan to secure the advancement of the race, as was specially done by the United States in one case a few years ago where a large sum – if I remember right more than £100,000 – was obtained and invested for the benefit of a particular tribe – you would have no distrust or dissatisfaction in the Native mind; but by always buying from them on the pretence that you wanted land for the purpose of colonization, without making provision – at least in the North Island – for their own improvement, you have at last brought the Natives to believe that your real object is to impoverish and degrade them.⁷⁹

Although he had ulterior motives for making his statement Bell had fairly accurately summed up the outcome of 22 years of Crown purchasing.

79. Ibid, p 611

