

CHAPTER 6

RAUPATU

6.1 THE NEW ZEALAND SETTLEMENTS ACT 1863

The New Zealand Government obtained authority to confiscate and dispose of Maori land by several Acts of Parliament. The most important of these instruments was the New Zealand Settlements Act 1863. The purpose of this legislation was set out in the preamble:

Whereas the Northern Island of the Colony of New Zealand has from time to time been subject to insurrections amongst the evil-disposed persons of the Native race to the great injury alarm and intimidation of Her Majesty's peaceable subjects of both races and involving great losses of life and expenditure of money in their suppression And Whereas many outrages upon lives and property have recently been committed and such outrages are still and of almost daily occurrence And Whereas a large number of the Inhabitants of several districts of the Colony have entered into combinations and taken up arms with the object of attempting the extermination or expulsion of the European settlers and are now engaged in open rebellion against Her Majesty's authority And Whereas it is necessary that some adequate provision should be made for the permanent protection and security of the well-disposed Inhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty's authority and of Law and Order throughout the Colony And Whereas the best and most effectual means of attaining those ends would be by the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country.

Section 2 provided for the proclamation of districts, wherein the Governor in Council was satisfied that any tribe or section of a tribe or 'any considerable number thereof' within these districts had been engaged in rebellion at any time since 1 January 1863. Section 3 provided for the establishment of military settlements on eligible sites within these districts. Section 4 provided that the Governor in Council might 'reserve or take' any land within a declared district, such land to be deemed 'Crown Land freed and discharged from all Title Interest or Claim of any person whomsoever'.

Since the focus of the legislation was on territorial districts, Maori within a district who had not fought against the Crown, and even those who had fought on behalf of the Crown, had their land confiscated as well. Section 5, however, provided for compensation to be made to those who had not rebelled, or engaged in any of a series of defined acts, to do with aiding rebels or promoting rebellion.

‘Compensation Courts’ were to be established to hear claims for compensation (to be lodged within six months) and to issue certificates entitling eligible persons to land ‘according to the nature of the[ir] title interest or claim’.

6.2 PARLIAMENTARY OPINION

Fox moved the second reading of the New Zealand Settlements Bill on 5 November 1863. The legislation, he said, was intended to promote peace and prosperity in the North Island. In the Government’s opinion:

What is required is a large population, practically outnumbering that of the Natives in those districts where rebellion exists, or may exist, to be permanently settled, with ownership of the land, so that they may not only have an interest, but the ability, to defend their homes from future aggression; and to effect this the Government looks to the lands of those tribes who have been in rebellion.¹

FitzGerald was the only member of the House to oppose the Bill. It was, he said:

a repeal . . . of every engagement of every kind whatsoever which has been made by the British Crown with the Natives from the first day when this was a colony of the Crown . . . I am as satisfied as I ever was of any future event that Her Majesty will never be advised to give her assent to this measure . . . This bill proposes that it shall be lawful for the Governor to declare any lands of the Native race whatsoever to be Crown lands . . . that is contrary to the Treaty of Waitangi, which has distinctly guaranteed and pledged the faith of the Crown that the lands of the Natives shall not be taken from them except by the ordinary process of law – that is, taken within the meaning of the Treaty.²

FitzGerald also observed that the power of confiscation was being used in such a sweeping manner that it was ‘repugnant to the spirit and the custom of the English law’ and as such was contrary to the Constitution Act 1852.³ In his opinion, the legislation was so severe that as soon as it became known to the Maori, ‘it will drive every single one of them in this Northern Island into a state of hopeless rebellion’.⁴

Fox offered to amend the Bill to take account of the criticisms made by FitzGerald. A new clause (section 6) was added, ‘closely analogous to what was done in the case of the Scottish rebellion’.⁵ This allowed rebels who surrendered by a certain date to become eligible for compensation. Section 2, which clarified the distinction between loyal and rebel Maori, was added to the Bill as well.

In the Legislative Council the Bill’s main opponent was Swainson. He objected because it ‘authorised the Government to take the land of Her Majesty’s Native

1. Fox, 5 November 1863, NZPD, 1863, p 783
2. Fitzgerald, 5 November 1863, NZPD, 1863, p 784
3. Ibid
4. Ibid, p 785
5. Fox, 10 November 1863, NZPD, 1863, p 863

subjects who were not in rebellion, but who were living quietly and in peace'. He also quoted the Secretary of State for the Colonies:

policy, not less than justice, requires that the course of the Government should be regulated with a view to the expectations which the Maoris have been allowed to base on the Treaty of Waitangi, and the apprehensions which they have been led to entertain respecting the observation of that treaty. I cannot doubt . . . that the proposed appropriation of land, if effected against the will of the owner, and justified on principles which, whether technically correct or not, are alike contrary to the principles of English or Native Law, would be considered as a violation of Native Rights, would be resisted on the spot, and would provoke throughout the Islands warm resentment and general distrust of British good faith.⁶

The only other speaker to criticise the Bill was Pollen, although he seems to have been in two minds. On one hand, he contended that the Bill was acceptable, provided the extent of confiscation was 'strictly limited'. Not 'an acre more than was required' for the military settlements should be taken. On the other hand, he condemned confiscation as a financially 'unsound' policy, which was contrary to the Treaty of Waitangi.⁷ In the end, however, he voted for the Bill.

6.3 NEW ZEALAND OPINION

Outside the General Assembly there was widespread support for the confiscation policy among the European community. Only a few, men like Sir William Martin, a former Chief Justice, spoke out in opposition.⁸ William Williams, then Bishop of Waiapu, seems to have favoured confiscation, but when the Government began to use his endorsement as an argument in favour of their policy, Williams made it clear he supported only a limited confiscation, not the extensive taking of land the Government seemed to have in mind.⁹

Fox responded that wholesale confiscation was not what the Government intended; as 'large a portion of the confiscated lands as would enable [Maori] to live in independence and comfort' would be returned to them.¹⁰

6.4 ENGLISH VIEWS: ABORIGINES PROTECTION SOCIETY

The Aborigines Protection Society was an influential English humanitarian group. They had objections to the New Zealand Government's proposals, which they sent

6. Swainson, 10 November 1863, NZPD, 1863, p 870

7. Pollen, 10 November 1863, NZPD, 1863, p 872

8. AJHR, 1864, E-2, app 1, encl 2

9. *Ibid*, p 77

10. *Ibid*, p 78

to Grey. They also arranged for their letter to be published in the *Times* and other newspapers.¹¹ The society's members were, they said:

alarmed by the pertinacity with which . . . it has been proposed to confiscate the Lands of all contumacious and rebellious natives. We can conceive of no surer means of adding fuel to the flame of War; of extending the area of disaffection; and of making the Natives fight with the madness of despair, than a policy of confiscation. It could not fail to produce in New Zealand the same bitter fruits of which it has yielded so plentiful a harvest in other countries, where the strife of races has perpetuated through successive generations; and that, too with a relentlessness and a cruelty which have made mankind blush for their species.¹²

The Colonial Government replied by way of memorandum to Grey, a copy of which was forwarded to the society. This document, and the covering letter, were printed in the *New Zealand Government Gazette*.¹³ In the letter Fox expressed the hope that the society, which had 'impugned the policy of confiscation' in the English press, would give the Government's response the same publicity.¹⁴ According to Fox, to terminate the war by negotiation, which was the policy advocated by the society, would be seen as a sign of European weakness. The only way of ensuring a lasting peace in New Zealand, and of saving 'a remnant of the Maori race' was to defeat them completely, and then to take steps to ensure that rebellion could not occur again. Arrangements for ending the rebellion must also be made on the basis that British sovereignty was accepted without qualification. Any notion that Maori were an independent people, able to take up the sword whenever they chose, had to be completely destroyed. The alternative to the Government's policy was a state of 'chronic hostility' and series of 'wars of extermination'.¹⁵

As for confiscation, Fox went on, this was a Maori custom; there was nothing about it 'abhorrent to the moral sense or previous habits of the Maori race . . . they never do consider themselves conquered until their lands are taken'. Despite the Maori (allegedly) having undertaken to drive the Europeans into the sea, the Government's objective, Fox claimed, was neither punishment nor retribution, but the obtaining of a guarantee that there would be no further uprisings. If the Maori retained their land, these might become annual occurrences. The guarantee was to take the form of military settlement, by introducing 'colonists chiefly direct from Great Britain into those districts now sparsely inhabited by the rebels, and from which they make their inroads into the settled districts'.¹⁶

The deliberate opinion of Ministers is that to terminate the present insurrection without confiscation of the lands of the rebels, making of course ample provision for their future, would be to surrender every advantage that has been gained, and practi-

11. AJHR, 1864, E-2, app 1, encl 2, p 25

12. Ibid, p 16

13. *New Zealand Government Gazette*, 21 May 1864

14. Fox to Chichester, 4 May 1864, *New Zealand Government Gazette*, 21 May 1864

15. Ibid, pp 234–235

16. Ibid, pp 235–236

cally to announce that British rule over the Maori race must cease, and the Northern Island be abandoned as a safe place of residence for Her Majesty's European subjects.¹⁷

But it was not the intention to take all of the land: 'a quantity much larger per head than the average occupation of Europeans in this Island, is proposed to be set apart for them, on a graduated scale, according to rank and other circumstances. These lands would no longer be held under the pernicious system of tribal right, but as individualised properties under the security of . . . a crown grant'. In the opinion of the New Zealand ministers, customary tenure had been 'the principal cause of the slow progress, and in some respects (particularly their physical condition) of the actual retrogression and decay of the race'.¹⁸ In short, confiscation was not only a measure that would ensure the peace; it was also (so the Government claimed) a culturally correct policy that would enable a benefit to be conferred on Maori.

6.5 ENGLISH VIEWS: THE COLONIAL OFFICE

Opposition within New Zealand to the confiscation policy could be ignored. The concerns of English bodies, like the Aborigines Protection Society, had to be addressed because of the connections they had at Westminster, and in an effort to get as good a press as possible in England. They could, however, be disregarded if necessary. But what could not be disregarded or ignored were the objections and misgivings of the British Colonial Office. The British Government retained the right to disallow the Act, provided this was done within two years. A British veto would completely undermine the Colonial Government's position; it was something to be avoided at all costs.

The British Government could only proceed on the information it received from the Governor, and on this basis, Newcastle, then Secretary of State for the Colonies, conveyed to Governor Grey British acceptance in principle of the idea of confiscation. But Newcastle pointed out that it would be difficult to limit application of the policy, given settler pressure to obtain land. There was also the danger that friendly Maori would be alienated, which could lead to a 'general rising'.¹⁹ The New Zealand ministers, however, had no doubt that the confiscation policy could be confined within 'wise and just limits', and that in any case the General Assembly would not sanction confiscations that were excessive in nature. As for Maori reactions, every effort was being made to convey to them that the 'property of innocent persons and tribes will be strictly respected'.²⁰

A more substantial statement of Colonial Office concerns arrived from the new Secretary of State, Cardwell, in the winter of 1864. He observed that the extent of

17. *Ibid.*, p 236

18. *Ibid.*, p 236

19. Newcastle to Grey, 26 November 1863, AJHR, 1864, E-2, p 31

20. Whitaker to Grey, 24 February 1864, AJHR, 1864, E-2, p 31

the land to be confiscated had quadrupled since the original proposal was made, that the land of loyal, as well as disloyal, Maori was to be confiscated, and that compensation was to be 'jealously limited'. Moreover, the legislation was to be 'permanently embodied in the law of New Zealand; and to form a standing qualification of the Treaty of Waitangi'. As such, there were 'grave' objections that could be made to the legislation:

It renders permanently insecure the tenure of native property throughout the Islands, . . . it makes no difference between the leaders and contrivers . . . and their unwilling agents or allies . . . The proceedings by which unlimited confiscation of property is to take place may be secret, without argument and without appeal; and the provision for compensation is as rigidly confined as the provision for punishment is flexible and unlimited.²¹

Given the fact that Imperial Troops were defending the colony, Cardwell felt that he might be:

justified in recommending the disallowance of an Act couched in such sweeping terms, capable therefore of great abuse, unless its practical operation were restrained by a strong and resolute hand, and calculated, if abused, to frustrate its own objects, and to prolong, instead of terminate war. But not having received from you any expression of your disapproval, and being most unwilling to take any course of action which would weaken your hands . . . Her Majesty's Government have decided that the Act shall for the present remain in operation.²²

This was clearly a qualified approval, and Cardwell went on to spell out the circumstances that would need to apply if British acceptance of the New Zealand Settlements Act, 1863, was to continue.

First, it was desirable that confiscation should 'take the form of a cession imposed by yourself and General Cameron upon the conquered tribes'. If this was not possible, however, Grey was at liberty to bring the Act into operation, subject to various conditions and reservations:

A measure should be at once submitted to the Legislature to limit the duration of the Act to a definite period, not exceeding, I think, two years . . . a period long enough to allow the necessary inquiries respecting the extent, situation, and justice of the forfeiture, yet short enough to relieve the conquered party from any protracted suspense, and to assure those who have adhered to us there is no intention of suspending in their case the ordinary principles of the law.²³

The extent of the confiscations, and the exact locations of the land to be taken, should be made public as soon as possible. Cardwell suggested that a commission be constituted for the 'special purpose' of settling the extent of the confiscations,

21. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, app, p 20

22. Ibid, pp 21–22

23. Ibid, p 22

and that the members of this commission ‘should not be removable’. His (the Governor’s) concurrence in any particular act of confiscation was ‘not to be considered as a mere ministerial act’. He was instructed to withhold approval unless he was ‘personally satisfied that the confiscation is just and moderate’. Cardwell pointed out:

that if in the settlement of the forfeited districts all land which is capable of remunerative cultivation should be assigned to Colonists, and the original power, the Maori, be driven back to the forest and morass, the sense of injustice, combined with the pressure of want, would convert the native population into a desperate banditti, taking refuge in the solitudes of the interior from the pursuit of the police or military, and descending, when opportunity might occur, into the cultivated plain to destroy the peaceful fruits of industry. I rely on your wisdom and justice to avert a danger so serious in its bearing on the interests of the European not less than of the Native race.²⁴

Cardwell accepted that, given the tribal nature of Maori land tenure, the innocent might be dispossessed, along with the guilty. But this outcome should be accepted only when absolutely necessary. Moreover ‘every such case of supposed necessity should be examined with the greatest care, and admitted with the greatest caution and reserve’. He proposed that the section of the Act that limited the granting of compensation (presumably a reference to the time limit or to the actions deemed to associate claimants with rebellion) should be modified, so that the court was not ‘limited in any manner which would prevent its doing complete justice’. Grey was to retain in his own hands the power to override any decision of the court, to ensure ‘substantial justice to every class of claimant’.²⁵

In the end, Cardwell accepted the necessity to punish rebellion while at the same time warning against the dangers of overly severe treatment, and stressing the need to protect the innocent. The Act would be left to Grey to administer, subject to the ‘just and moderate limits’ Cardwell had outlined. In arriving at this determination, Cardwell had in front of him Grey’s assurance that a ‘generous policy’ was intended, and ministerial statements that this was the first and the last occasion on ‘which any aboriginal inhabitant of New Zealand would be deprived of land against his will.’²⁶

6.6 LEGAL OPINIONS OF THE NEW ZEALAND SETTLEMENTS ACT AND CONFISCATIONS

Cardwell had noted at an early place in his despatch that because the power to pass measures of the kind under discussion had been questioned in New Zealand, they had been sent to the Crown Law Office for an opinion.²⁷ The advice received was

24. Ibid, p 22

25. Ibid, p 22

26. Ibid, pp 22–23

that the legislation was within the power of the New Zealand General Assembly to pass and was not repugnant to the laws of England.²⁸

Attempts were made to question the legality of the confiscation legislation in 1880, during the sitting of the Royal Commission on the West Coast, and again in 1927, during the hearings of the Royal Commission on Confiscated Native Lands. Both attempts failed, the rulings being that the matter lay outside the terms of reference.

More recently, a legal opinion was commissioned by the Waitangi Tribunal. This opinion concluded that the New Zealand Settlements Act 1863 was not unlawful, which was the same advice tendered to Cardwell in 1864.²⁹

The Tribunal was also advised that the ‘conditions’ contained in Cardwell’s dispatch of 26 April 1864 were not binding, and the fact that they were very largely ignored thus has no bearing on the question of whether or not the confiscations were legally valid.³⁰

However, each act of confiscation had to follow the letter of the law. First, districts had to be defined, on the grounds that the Governor was satisfied that ‘any Native Tribe or Section of a Tribe or any considerable number thereof’ had been in a state of rebellion within the time frame specified by the Act (section 2). Then ‘eligible sites for settlement’ were to be set aside within these districts (section 3). Then the land necessary for settlement was to be taken (section 4). Arguably, this process was designed to progressively limit the area that would be finally confiscated.

In its report on the Taranaki confiscations, the Waitangi Tribunal concluded that there was no contemporary evidence that could have reasonably satisfied, in every case, the standard set out in section 2. In other words, the districts defined were not always part of the Taranaki war zones; nor did all districts contain ‘considerable’ numbers of rebels, as required by the New Zealand Settlements Act 1863. The legislation also required that the land confiscated must be of a kind suitable for settlement. In Taranaki, and in other districts as well, more land was taken than was necessary for settlement purposes, and land that was patently unsuitable for settlement purposes was also taken.³¹ These confiscations clearly failed the tests contained in sections 2 and 3 of the New Zealand Settlements Act 1863. On the face of it, they were illegal acts. At a later date, the New Zealand Settlements Acts Amendment Act 1866, legalised what had been done, and section 8 of the Confiscated Lands Act 1867, provided that any lands taken under the Settlements Acts could be declared Crown waste land.

27. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, app, p 21

28. Waitangi Tribunal, *The Taranaki Report: Te Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 127

29. F M Brookfield, ‘Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu (Particularly in Taranaki and the Bay of Plenty)’, 1996, Wai 143, ROD, doc M19(A), p 25

30. *Ibid*, pp 27–28

31. *The Taranaki Report*, pp 127–129

6.7 OTHER LEGISLATION

The New Zealand Settlements Act 1863, was amended in 1864, when a time limit (of 3 December 1865) was placed on the legislation, and in 1865, when the Act was made permanent, but the power of proclaiming districts was to cease from 3 December 1867. These amendments were intended to placate the Colonial Office, and avoid any possibility that the Act might be disallowed.

The Confiscated Lands Act 1867 allowed the Governor either to make or increase awards, and to provide reserves for both friendly tribes and surrendered rebels. This legislation appears to have been foreshadowed by Cardwell's instruction to Grey that he should retain in his own hands authority to make, or revise, compensation awards.

While the New Zealand Settlements Act 1863 was the principal measure underpinning the confiscation policy, it was just one of a number of acts, all supportive of each other, that formed the foundation of Government Maori policy after the 1850s. These acts included the Suppression of Rebellion Act 1863; the New Zealand Loan Act 1863; the New Zealand Loan Appropriation Act 1863; the Public Works Act 1864; the Native Rights Act 1865; the Native Lands Act 1865; the Outlying Districts Police Act 1865; the Friendly Natives Confirmation Act, 1866, as well as legislation passed to implement confiscations in the Bay of Plenty and along the East Coast.³²

6.8 THE WAIKATO RAUPATU 1864

The confiscation of the Waikato district was proclaimed in December 1864 as a statement of intention, no reference to the New Zealand Settlements Act 1863 being made. Orders in Council under that legislation were, however, made subsequently, declaring the East Wairoa, West Pukekohe, Central Waikato, Mangere, Pukaki, Ihumatao, Waiuku, and Kerikeri areas districts in terms of the Act.

The 1871 return of lands confiscated gives the area of the confiscation as 1,193,306 acres, of which 278,891 acres were set aside for 'natives, whether friendly or not'.³³ The balance, over 800,000 acres, was retained by the Crown. The Sim commission accepted that the final situation was that 1,202,172 acres had been confiscated, of which 314,364 had been returned, the Crown retaining the balance of 887,808 acres. Some deductions would have to be made, the commission thought, for an area of 13,974 acres which was then (1928) before the Native Land Court and to represent £22,987 which had already been paid in compensation. Nevertheless, the commission considered the Waikato confiscations to have been 'excessive, particularly so in the case of the Mangere, Ihumatu [sic] and Pukaki

32. See A Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, Auckland, Auckland University Press, 1995, chs 11 to 14 for a general discussion of policy and legislation in this period.

33. AJHR, 1871, C-4

Natives'. It recommended that an annual payment of £3000 be made 'for the benefit of the Natives of the tribes whose land had been confiscated'.³⁴

Several attempts were made during the 1930s to settle the question of an annual payment. According to Nash, speaking during the 1946 debate on the Waikato–Maniapoto Claims Settlement Bill, the main difficulty was that the Waikato tribes wished to receive £5000 a year, the amount the Sim commission had recommended as compensation for the Taranaki tribes.³⁵ The matter was not progressed during World War II, but in 1946 agreement was reached: a lump sum of £5000, £6000 a year for 45 years, and then £5000 a year. The legislation providing for these payments, and setting up a trust board to receive the money, passed through both House in an atmosphere of general goodwill and approval. The measure was, said Nash, 'one of justice but of tardy justice'.³⁶

In the 1980s, claims dealing with the grievances created by the Waikato raupatu were placed before the Waitangi Tribunal, and then, with some exceptions, settled by direct negotiation with the Crown. The preamble to the Waikato Raupatu Claims Settlement Act 1995 states that the Crown unjustly invaded the Waikato district, that the confiscations that followed were also unjust, and that these acts caused 'widespread suffering, distress, and deprivation'. The body of the Act contains the text, in both Maori and English, of the apology made by the Crown for these actions. Other sections deal with the compensation made. Section 30 says, with respect to the Waikato raupatu claims defined by the act, the deed of settlement, and the benefits provided to Waikato under that deed, that 'the [Waitangi] Tribunal shall not have jurisdiction to inquire or further inquire into, or to make any finding or recommendation in respect' of these matters.

6.9 CONFISCATION POLICY AND PRACTICE: TARANAKI, 1865

In January and September 1865 confiscations of over a million acres of Taranaki land were proclaimed.³⁷ A Compensation Court, as provided for by the New Zealand Settlements Act, sat in the district. Those wishing to make claims often had to travel long distances; information about hearings or adjournments was hard to obtain; delays were common; those who did not attend the court could make no claims; and arbitrary rules of procedure were applied that denied hearings to many who were entitled to receive compensation.³⁸ The Taranaki Compensation Court made 518 judgments, covering 79,238 acres of land, amounting to 6 percent of the confiscated area.³⁹ More than 10 years later it was found that at least 38 percent of

34. AJHR, 1928, G-7, p 17

35. Nash, 25 September 1946, NZPD, vol 275, p 181

36. Ibid, p 183

37. *New Zealand Government Gazette*, 30 January 1865; *New Zealand Government Gazette*, 2 September 1865

38. Hazel Riseborough, 'The Crown and Customary Tenure 1839–94', Waitangi Tribunal Rangahaua Whanui Series unpublished draft, 1996, p 84

39. *The Taranaki Report*, p 137

this land (about 30,000 acres) had never been allocated. It was this situation that led to the setting up of a commission of inquiry (the West Coast Commission)

It is a mistake, however, to imagine that the other 60 percent, that is to say, the balance of the land covered by the judgments of the Taranaki Compensation Court, around 49,000 acres, had been properly and speedily returned.

The Compensation Court issued certificates, which entitled the bearers to a certain quantity of land, at a location to be determined at some late date. Once the location was determined, the court would issue an award, and in due course a Crown grant would secure title. Land was returned on individual titles, but the land returned was not necessarily the customary land of the persons concerned. At every stage of this progression, contradictory regulations produced extraordinary complications and delays in implementation. Out-of-court settlements, which 'adjusted' compensation awards to available land, were common. The details of these 'adjustments' are obscure and their equity dubious.⁴⁰ By 1880, only 4 percent of the lands returned by way of the Compensation Court (or just over 3000 acres) were held on Crown grants.⁴¹

The Compensation Court certificates, in reality, were little more than IOUs, and in every respect they were an unfamiliar form of tenure. The awards seems to have been regarded in much the same light, although they at least defined where the land to be returned was located. In any event, the breakdown of hapu discipline, the awarding of land outside traditional boundaries, the difficulties of the times and Pakeha pressure soon saw the certificates and awards separated from their original owners: by 1880, in one area of Taranaki, at least 82 percent of the land awarded had been alienated.⁴² If this was the general pattern, then only a small proportion of the compensatory lands remained in Maori hands by that date.

The Compensation Court in Taranaki was a dismal failure. First, it operated in a way that prevented many Maori from obtaining land to which they were fully entitled. Then, those who did obtain entitlements had to endure long delays before they received secure titles. This delay seems to be directly and causally related to the subsequent alienations of much of the land in question.

Taranaki Maori deemed to have been rebels could not be recipients of Compensation Court certificates. The Confiscated Lands Act 1867, however, provided that the Governor, at his discretion, could make reserves for rebels and others, for example, absentees, not able to make a case to the Compensation Court. Many promises to set aside reserves were made, but few were carried into effect. In the south, reserves were made on less desirable land away from the coast. According to the Taranaki Report, reserves made totalled about 20,000 acres, but it is not clear if all of this land was granted under the Confiscated Lands Act 1867.⁴³

In the 1870s, the Crown, in a bid to obtain land for settlement, began to reacquire by purchase Taranaki reserves and Compensation Court certificates,

40. Riseborough, p 89

41. *The Taranaki Report*, p 142

42. *Ibid*, p 143

43. *Ibid*, p 180

awards, and grants. In addition, it made payments to acquire unreturned lands within the confiscation boundaries, the 369,000 acre Taranaki interior, and nominally confiscated blocks in central Taranaki. Many of these transactions involved takoha – the payment of gratuities. The West Coast Commission of 1880 considered that these payments were little more than bribes to chiefs to secure the Government peaceful possession. The Waitangi Tribunal has also strongly condemned this practice, and held that all or most of these Crown ‘purchases’ – totalling in excess of 640,098 acres – were improper and invalid.⁴⁴

In 1928 the Sim commission accepted the Crown’s submissions that the Crown had purchased 577,000 acres of the land within the confiscation boundaries, thus reducing the amount of land confiscated – after deduction had been made for land returned – to 462,000 acres.⁴⁵

However, it appears to be incorrect to describe those blocks lying within the confiscation boundaries as returned lands purchased by the Crown since, in point of fact, these districts had not been returned to their Maori owners. At the time of purchase, they were under Crown control and title. Then there is the issue of the methods that were used to effect purchase of these lands. Moreover, what would have been the Crown’s response had the Maori owners refused to sell? It is perhaps arguable that it was better that Maori got some payment for these lands rather than have their confiscation simply confirmed, but the expectations set up by the payments further confused the situation and led to the further loss of the land, before the claims to compensation or reserves had been heard.

On balance, the thousands of acres allegedly acquired by purchase have to be seen as part and parcel of a general expropriation of Maori land that occurred in and after 1865 in Taranaki.⁴⁶

By the end of the 1870s, the complaints of Taranaki Maori had become too numerous to ignore. In 1880, the West Coast Commission was set up to investigate these grievances and suggest remedies. The commission was very supportive of the need to ensure that land for European settlement be made available. It had no immediate solution to the difficulties faced by Maori in the north and south of the district, where land for reserves was in very short supply. Nonetheless, it did agree that reserves should be made, and recommended that a second commission be appointed to carry out this work. By 1884, when the second commission had finished its work, it had provided sufficient reserves to cover most of the awards made by the Compensation Court and, as well, the lands that had been promised under the Confiscated Lands Act 1867. In all, around 214,675 acres, spread unevenly around the province, were set aside for Maori.⁴⁷ This acreage has to be considered the bulk of the land returned. As usual, titles were individualised. Then, in a new departure, management of the lands was vested in the Public Trustee, under the terms of the West Coast Settlement Reserves Act 1881.

44. *The Taranaki Report*, pp 173–175, 193–195

45. AJHR, 1928, G-7, p 11

46. *The Taranaki Report*, p 312

47. *Ibid*, pp 245, 250–254

Most of this land was leased out to settlers on very favourable terms. By 1912, the reserves had shrunk to 193,966 acres, the result of alienations by the Public Trustee. Of this area, over 60 percent, or 120,110 acres were held on perpetual leases. Another 18,400 acres (9.5 percent) were held on 30 year leases. Maori held 24,800 acres on occupational licences, and another 25,798 acres were managed by the Trustee for Maori purposes. In all Maori had direct use of just over a quarter of the land, and no real control over any of it.⁴⁸ They had not consented to the leases in the first instances; nor were they consulted when these were altered to suit the needs of the Pakeha leaseholders. Rentals were kept low, well below market rates, and the costs of roading, surveys, and administration were deducted from the rent the Maori owners received. Maori opposition to the leasing arrangement was immediate and sustained, but the lessees too were clamouring for better terms: the Crown's response was the West Coast Settlement Reserves Act, 1892, which replaced terminating leases with perpetual leases. Maori protests, and appeals that the 1892 legislation be repealed, fell on deaf ears.

By 1974, the Maori estate tied up in the reserves had been reduced by over 60 percent, the result of Crown purchases or of sales to the lessees. By that date, the remaining areas of land – some 81,299 acres – was all that was left of the Maori share of the 1.2 million acres confiscated in 1865.⁴⁹

The Sim commission accepted Crown evidence concerning the extent of the expropriation of land in Taranaki, and the legitimacy of the purchases made: the effect was to greatly understate the loss that had occurred. None the less, the commission decided that the Taranaki confiscations had been totally unjustified. The only remedy permitted by the commission's brief was monetary compensation, based on the value of the land at the time of its taking. The commission, however, apparently found it quite impossible to determine what this amount might have been. Instead, it recommended an annual payment of £5000 – for the 'wrong' that had been done, leaving the question of compensation for the land to be settled at a later date. The depression of the 1930s, and then World War II prevented any progress on the question of the £5000 although some payments were made during this period. In any event, it was not until 1944 that final agreement was reached, and regular payments began.⁵⁰ The compensation for Parihaka was assessed at £300.⁵¹

6.10 CONFISCATION POLICY IN PRACTICE: TAURANGA, 1865

The Tauranga district was confiscated in mid-1865 under the provisions of the New Zealand Settlements Act, 1863. The proclamation named the district, gave an

48. Ibid, p 246

49. Ibid, p 286

50. Ibid, pp 294–299

51. Section 3(1) of the Taranaki Maori Claims Settlement Act 1944

estimate of the area involved, 214,000 acres, provided a set of boundaries, and described the confiscation district as comprising the lands of the 'Ngaiterangi'.

The Ngaiterangi were certainly an important Tauranga tribe, but they were not the only tribe in the district; their close kin, Ngati Ranginui, and the smaller Ngati Pukenga, Ngati Tokototo and Ngati Hinerangi, among others, also being present. Ngati Raukawa and Ngati Haua had settlements in the Tauranga district as well. Moreover, lands to north and west was contested by tribes located in the Thames/Hauraki district: in the south and east, sections of Te Arawa disputed the Tauranga boundaries. Tauranga was in fact a district with an elaborate and fluid tribal geo-political structure: to simply call it Ngaiterangi land was a gross over-simplification.⁵²

The Government's assertion that all of the Tauranga land belonged to Ngaiterangi did appear to excluded consideration of claims or grievance not made by Ngaiterangi or under the banner of Ngaiterangi. In practice, however, this did not happen; investigation of various tribal claims did resulted in payments and or grants of land to extinguish non-Ngaiterangi rights.⁵³ The only exception seems to have been part of Pirirakau, and they were left out not because they were non-Ngaiterangi, but because they refused to come in. Those of them who did received land along with the other tribes and sub-tribes. However, there is little doubt that the general identification of Tauranga Maori in the 1860s as Ngaiterangi muddied the waters thereafter, making non-Ngaiterangi grievances almost impossible to pursue, as the fate of the Waitaha petition in the 1920s seems to indicate.⁵⁴ Part of the problem is the fact that Tauranga seems to have contained a particularly complex set of interlocking and overlapping tribal affiliations – obscured by the habit of 19th century officials of referring to all of the different Tauranga Maori as Ngaiterangi. Given that the Native Land Court was prevented from holding hearings in the district, and that the proceedings of the land commissioners have survived only in fragmentary form, it may now be very difficult to reach any firm conclusions about the pre-confiscation rights of particular Tauranga tribe or tribes.⁵⁵

As well as employing Ngaiterangi to describe all Tauranga Maori, the proclamation contained a mistaken set of boundaries, causing some doubts to arise about the legality of various arrangements that had been entered into post-proclamation. These doubts were sufficient to produce validating legislation – the Tauranga District Lands Acts, 1867 and 1868, which clarified the boundaries of the confiscation district, and extending this definition back to 1865. This legislation may also have been prompted by Fenton's 1865 attempt to hold a hearing of the Native Land Court at Tauranga, to determine tribal rights in the district, and particularly those of Ngaiterangi. The Crown blocked this move, on the grounds that by the act of

52. Evelyn Stokes, *Te Raupatu o Tauranga Moana: the Confiscation of Tauranga Land*, Hamilton, University of Waikato, 1990, pp 164–175

53. *Ibid*, pp 103–106

54. AJHR, G-7, 1928, pp 17–18

55. V O'Malley and A Ward, 'Draft Historical Report on Tauranga Moana Lands', Wellington, CCJWP, 1993, p 103

confiscation all native titles to land in the district had been extinguished. In effect, Tauranga was Crown land, outside the jurisdiction of the Native Land Court.

In 1867 Grey, Fox, and Whitaker held a meeting at Te Papa, to settle the details of the confiscation. The main outcomes of this meeting were, according to the official Government report, a promise that only a quarter of the land would be confiscated, a notification that all land returned would be secured by inalienable Crown grants, and a determination that land north of the Wairoa River (the Katikati/Te Puna districts) would be purchased rather than confiscated.⁵⁶

According to information provided to the Sim commission, 9200 acres were returned from land described as outside the settlement area. This has been assumed to mean from the Crown's confiscation block.⁵⁷ A further 136,191 acres, described as exclusive of the purchase and confiscation blocks, was returned after proceedings under the Tauranga District Land Acts.⁵⁸ These two figures give a total for returned land of 145,391 acres. Figures in the Sim commission report, however, give the area returned as 147,062 acres.⁵⁹ The difference is around 1600 acres, which may simply be a computational error of some kind. Alternatively, there may be returned land, reserves made when the Katikati/Te Puna blocks were purchased, to be considered as well.⁶⁰

The Tauranga District Land Acts provided the mechanism for the return – to loyal and former rebel Maori – of the three quarters of the land which the Crown had promised would be returned. The commissioners appointed under this legislation were not obliged to operate under the assumptions about customary land titles that provide a framework for the work of the Native Land Court, although in practice it does appear that they usually adopted a similar approach. Their brief also directed them to return land to members of the Ngaiterangi tribe but again, in practice, it seems that provision was made for all resident Maori – save for some unsurrendered rebels. In particular, all the villages still occupied in the 1860s were returned.

But while land was returned, with an eye to Maori needs, and with some regard to Maori customs, the process was a long-drawn-out one – the final commissioners' report was presented in 1886, 20 years after the Crown had promised to return the land. Moreover, the land was returned via Crown grants. Some of these were made to individuals for services rendered to the Government. Others were made to chiefs as trustees, although in law they became owners.

The total area confiscated was, according to the Sim commission, not 214,000 acres but 290,000 acres. The Katikati and Te Puna purchase amounted to 93,188 acres.⁶¹ Despite the suggestion that Maori consented to the alienation, there seems little doubt that this purchase was essentially compulsory in nature, and somewhat

56. AJHR, 1867, A-20, no 1, pp 5–6, no 11, p 12

57. O'Malley and Ward, pp 113–115

58. AJHR, 1886, G-10, p 4

59. AJHR, 1928, G-7, p 18. The total area returned or purchased was said to be 240,250 acres, the purchased area being 93,188 acres, leaving 147,062 acres as the total returned.

60. Stokes, p 253

61. AJHR, 1928, G-7, p 19

covert in execution, in that it appears that the deposit was paid over before all of the tribes resident in these districts had been informed of the sale.⁶² After all other deductions had been made, the area finally retained by the Crown contained 49,750 acres – close to a quarter of the land if the 214,000 acre figure is accepted: 17 percent if 290,000 acres was the true extent of the confiscation. If the purchased land is added to the equation, the total area of land taken becomes 142,938 acres: 67 percent of the lower estimate of 214,000 acres; 49 percent of the higher estimate of 290,000 acres.

The land returned was made inalienable, but applications for the lifting of restrictions appear to have been routinely granted.⁶³ Between 1879 and 1886 around 40 percent of this land was purchased, most of it by private buyers. The Crown had, by that date, purchased 4957 acres, and was negotiating the purchase of a further 13,936 acres. Private purchases totalled 49,243 acres.⁶⁴ By 1908, the Tauranga tribes possessed no more than one seventh (42,970 acres) of the land they had held pre-confiscation.⁶⁵

The Sim commission considered it clear that the Tauranga tribes had been engaged in rebellion, that the Katikati/Te Puna purchase had been above board, that it was no longer possible to distinguish who had been ‘loyal’ and who had not, that ‘substantial justice’ had been done at the time, and that in any event the settlement of the confiscated land had been agreed between Grey and the tribes. The confiscation was, on one hand, justified, and on the other not excessive. No recommendation concerning compensation were made.⁶⁶

Subsequently, petitions seeking redress, or asking for further investigation were rejected on the grounds that the Sim commission had already fully considered the Tauranga raupatu. However, in the early 1970s, the Government agreed to reopen the issue, and eventually a petition covering both the confiscation block and the Katikati–Te Puna purchase was received. The Maori Affairs Committee reported in favour of the petitioners with respect to the confiscation block: it made no recommendation concerning the Katikati–Te Puna purchase.⁶⁷

The Tauranga Moana Trust Board Act 1981 provided for the setting up of a trust board, and for the payment of a lump sum of \$250,000 in ‘full and final settlement’ of all claims arising from Crown confiscations or acquisitions in the Tauranga district.

Section 7 of the Act declared that those who had fought at Gate Pa and Te Ranga were not rebels. Section 11, Te Runanga o Ngati Awa Act 1988 restored the character, mana, and reputation of Ngati Awa similarly.

62. Stokes, p 146; O’Malley and Ward, pp 41–42

63. AJHR, 1886, G-11, p 2

64. AJHR, 1886, G-10, pp 4–5

65. O’Malley and Ward, p 91

66. AJHR, 1928, G-7, pp 19–20; O’Malley and Ward, p 96

67. O’Malley and Ward, pp 98–102

6.11 CONFISCATION POLICY IN PRACTICE: OPOTIKI, 1866

The Opotiki district was proclaimed in January 1866.⁶⁸ It was intended to include the lands of both Ngati Awa and Whakatohea, and in the manner of the time delineated this area in terms of straight lines running from point to point. This was a method virtually designed to ensure that the confiscation district did not equate with tribal boundaries which were usually defined by rivers, mountain ranges, and other natural features. Indeed, a strict interpretation of the proclamation boundaries would have excluded the Whakatohea rohe completely.⁶⁹ In any event, the boundaries were altered in September 1866. It was later discovered that the second set of boundaries also contained an error, reducing the area confiscated by 5000 acres.⁷⁰

Various reports dealing with the Opotiki confiscation were prepared during the 1860s and 1870s. The information contained in these reports is not consistent. For example, in 1867, it was reported that the confiscated block contained 440,000 acres, from which 5000 acres had to be deducted due to an error in mapping the district. An area of 87,000 acres had been claimed by Te Arawa, and returned to them, despite the objections of Ngati Awa. At the eastern end of the block 57,000 acres had been abandoned. To whom, and for what reason, is unstated. Another 38,000 acres were described as 'unarranged'. Lands given back to those defined as rebels totalled 96,000 acres, although a note in the report says that when the land was surveyed, it was found to contain 58,000 acres. This seems to indicate that a shortfall of some 38,000 acres had occurred. The land retained by the Crown, at this stage, amounted to 151,558 acres. The 1867 report classified the land returned by type, and examination of this data shows that only about 18,000 acres, around 19 percent, of the land returned, was suitable for agriculture.⁷¹

In 1873 a second tally of the land added up to 440,000 acres, the same total as in 1867, but contains no mention of the 57,000 acres that had been recorded as abandoned in 1867.⁷² Conversely, there is a reference to 40,832 acres of land 'surrendered' (by the Government). Possibly this was a revised estimate of the area of land to the east that in 1867 had been described as abandoned land. The 1921 Native Lands Commission seemed to believe that this was the case.⁷³ The lands returned, including the 87,000 acres returned to Te Arawa, totalled 288,213 acres.⁷⁴ If the 40,832 acres described as 'surrendered' is deducted as well, the land retained by the Government amounted to 110,955 acres, about 40,000 acres less than had been reported in 1867. This probably represented the additional lands returned between 1867 and 1873.

68. *New Zealand Government Gazette*, 18 January 1866, p 17

69. B D Gilling, 'Te Raupatu of Te Whakatohea: The Confiscation of Whakatohea Land 1865–1866', Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994, p 123

70. Gilling, p 124

71. AJHR, 1867, A-18, p 1

72. AJHR, 1873, C-4B, pp 5–6

73. AJHR, 1921, G-5, p 27

74. 96,261 acres to 'loyal' Maori, 104,952 acres to 'surrendered rebels', 87,000 acres 'returned' to Te Arawa. AJHR, 1873, C-4B, p 5

Confusion and uncertainty about exactly how large the original confiscation block was, and what happened to the land, continued into the twentieth century. According to the Sim commission, for example, the Opotiki proclamation district contained 448,000 acres, of which 230,600 acres were returned. Excluding 6,340 acres of previously purchased land, the confiscated land amounted to 211,060 acres. Of this land 87,000 acres was returned to Arawa, leaving 124,060 acres, 24,000 acres more than the Government seems to have had in 1873. Three principal iwi – Ngati Awa, Tuhoe, and Whakatohea – were involved. The Sim commission report says that Ngati Awa owned 107,120 acres pre-confiscation. They were left with 77,870 acres, losing 29,250 acres, or 27 percent. Tuhoe owned 1,249,280 acres pre-confiscation and were left with 1,234,549 acres, a deficit of 14,731 acres or just over one percent. Whakatohea owned 491,000 acres. They lost 149,451 acres – 30 percent – leaving 341,549 acres. These losses, it should be noted, add up to a total of 193,432 acres, a considerably larger figure than the 124,040 acres stated in the report to be the full extent of the confiscation, and it is not at all clear how this discrepancy came about.

6.II.I Whakatohea

In the case of Whakatohea, the 1921 Native Land Claims Commission estimated the extent of the confiscated Whakatohea land at 173,000 acres – or half the tribe's land, including all of the flat and better land.⁷⁵ If 173,000 acres did amount to half the tribe's land, then the total area of the tribe's domain must have been considerably less than the figure of 491,000 acres contained in the later Sim commission report.⁷⁶ This report also indicates that the Whakatohea loss was 149,451 acres. The difference between the 1921 and 1928 figures is approximately 23,500 acres – quite close to the acreage of the confiscated land returned to Whakatohea. This suggests that the Sim commission may have been dealing in net figures while the 1921 commission worked with gross figures, from which the amount of land returned has to be deducted. The large gap between the two estimates of total tribal lands is, however, harder to explain.

Of the land taken, some 22,000 acres were returned – principally the 20,326 acre Opape Block. It does not appear that the Opape land was returned by the Compensation Court; rather it appears to have been by arrangement between the Crown and the tribe, similar to the reserves that were made in Taranaki for rebel Maori. However, the court would have been involved in the issuing of the title, in determining the names to go on the title, and the relative shares of each of the owners.

The Compensation Court set up by the New Zealand Settlements Act 1863 had been intended to provide a leavening of justice to the confiscation process. The research evidence shows, however, that in Taranaki the court became, intended or not, part of the apparatus for separating Maori from their land, and that it simply produced an additional measure of injustice. The court in the Bay of Plenty, on the

75. AJHR, 1921, G-5, p 27

76. AJHR, 1928, G-7, p 21

other hand, seems to have been possibly a different kind of animal. For one thing, Fenton, the Chief Judge tried to resist Government pressure to convene the court at the earliest possible date, pleading that no experienced judges were available. When the court did sit, it questioned whether the confiscations had been legal, and it seemed to believe that it had the power to examine and perhaps overturn the out-of-court settlements made by the Crown Agent, Wilson. It also talked of taking an independent line as far as the Government was concerned, and of giving those claimants who could prove their case their own land back, rather than simply accepting the Government's position that any land would do. It even went as far as to suggest that the wives of rebels might have a right to land.⁷⁷ Whether these sentiments were indicative of a more sensitive approach to Maori concerns, or simply evidence of manoeuvring by judges anxious to establish their superiority over Wilson, the Crown agent, or if they had other causes entirely, is unknown. There is no doubt, however, of the importance of the Compensation Court in the district: the return of 1873 shows that the court had been responsible, by that date, for the return of 96,216 acres. This may have included 2000 acres for Whakatohea judged to have been loyal.

The Stout–Ngata commission estimated in 1908 that Whakatohea possessed 35,449 acres, including the Opape block, the bulk of the returned land.⁷⁸ This last result can probably be attributed to the long delay in settling title to this block, which would have effectively prevented alienation. Of the unconfiscated territory of the tribe, however, almost all of it must have been sold by 1908 – approximately 328,100 acres – if the information in the Sim commission report on the extent of the tribe's pre-confiscation holdings is accepted. The confiscations of practically all of the tribe's good land in 1865, and the alienation of almost all of the remaining land over the next few decades cannot be entirely unrelated events.

When the Native Lands Commission considered the Whakatohea confiscation in 1921 it concluded that it represented a degree of 'punishment or retaliation' beyond anything that had been intended, according to Government policy statements made at the time, by the passing of the New Zealand Settlements Act 1863. It was suggested that the emotions aroused by the killing of Volkner and Fulloon must have overridden the judgment of those responsible for ordering the confiscation. The penalty imposed on Whakatohea was, the commission said, 'heavier than their deserts'.⁷⁹

The Sim commission agreed that the confiscation had been excessive, but by only a small amount. The amount of compensation recommended was £300 per annum. Little seems to have been done to implement this recommendation until 1946, when the Labour Government agreed to a lump sum of £20,000, to be used 'in the acquisition of land for settlement and development for members of the tribe and their descendants'.⁸⁰

77. Gillings, 'Te Raupatu', pp 1–2

78. Gillings, 'Te Raupatu', p 124; AJHR, 1908, G-1M, pp 1–2

79. AJHR, 1921, G-5, p 27

80. Nash, 11 October 1946, NZPD, vol 275, p 727

It was inevitable, given the complexity of the tribal geography of the Opotiki district, and the way in lands were confiscated simply by drawing lines on maps, that some Maori land was subsequently found to be located on the wrong side of the lines; this was the contemporary explanation for the return of the 87,000 acres to Te Arawa, for example. The area on the east of the district that was described as abandoned or surrendered may also have been lands that belong to Maori who were not the targets of the confiscations. When this was discovered, it appears that the Crown claim to this area was simply allowed to lapse. Tuwharetoa may have lost land because they were confused with Te Arawa.⁸¹ But there was no doubt that the lands of Ngati Awa were intended to be confiscated.

6.11.2 Ngati Awa

According to the Sim commission figures, Ngati Awa owned 107,120 acres pre-confiscation. They were left with 77,870 acres, losing 29,250 acres, or 27 percent of their land. However, the Sim commission accepted that the 87,000 acres returned to Te Arawa had been rightfully returned.⁸² If that assessment was incorrect, then Ngati Awa had owned 194,120 acres pre-confiscation, and had lost 116,250 acres, or close to 60 percent of the land.

Like Whakatohea, Ngati Awa were considered a rebel tribe, to be provided with reserves. This did not, of course, preclude Ngati Awa from making applications to the Compensation Court, but they appear to have been generally reluctant to do so.⁸³

The Ngati Awa reserves were arranged by John Wilson, who was appointed as the Crown's agent in the Bay of Plenty district in 1866. According to Mead and Gardiner, Wilson set aside 76,826 acres, an amount of land which is quite close to the figure of 77,870 acres contained in the Sim commission report.⁸⁴ It appears that Wilson worked to ensure that the best land went to the Government, and that Maori were generally left with the poor and hilly areas. As was the policy, the land was returned on individualised titles, where possible, which destroyed hapu control over it. Wilson also tended to ignore pre-confiscation patterns of occupation, which meant that hapu could be re-located onto the land of other hapu, a situation that could cause disharmony, and lasting problems in that it left some hapu on land to which they had no ties and, in Maori eyes, no claim.

The 87,000 acres claimed by Ngati Awa which had been returned or given to Te Arawa was broken up into a number of sections. A number of these, identified as awards made for military service, were purchased by the Government in 1874–1875. Another batch was acquired in the first half of the 1880s and the remaining sections were reported to be under negotiation.⁸⁵

81. C Marr, 'A Report Commissioned By the Waitangi Tribunal on the Background to the Tuwharetoa Ki Kawerau Raupatu Claim', Wai 46, ROD, doc A2, 1991

82. AJHR, 1928, G-7, p 21

83. H M Mead and J Gardiner, 'Ethnography of the Ngati Awa Experience of Raupatu', Wai 46, ROD, doc A18, pp 117–118

84. Ibid, p 115; AJHR, 1928, G-7, p 21

85. AJHR, 1884, C-2, pp 8, 16

As for the lands returned to Ngati Awa there were delays in issuing grants, and some at least of the land returned was held in trust, that is to say, it was not held on individualised titles. All of it, it seems, was made, or intended to be, inalienable, but this was not always apparent. The fact that the trustees were able to deal with the land when the other owners were not, and without consulting either the owners, or the elders, was also a cause of concern.⁸⁶

The Government was approached to remove restrictions preventing sale, so that advantage could be taken of the good prices that Pakeha were offering, and because money was need for development. Some Ngati Awa seem to think that there was more than enough land, and favoured sale. Others were opposed to land sale. The Native Department seemed to think it was not desirable to lift restrictions on sale. In 1883 some Ngati Awa petitioned Parliament, seeking, in effect, the right to dispose of their land as they saw fit. The problem, as the Native Affairs Committee saw it, was that the land was held in trust: it was not the sole property of the trustees, but in law the trustees were the owners. If restrictions were removed, the trustees could sell the land, and retain all the benefits of the sale for themselves.

Difficulties over the grants continued for the rest of the century, not just over the form of the grants, but over who had the right to be included among the owners, not to mention matters to do with inheritance and the division of rental monies.

Raupatu was intended to administer a short, sharp lesson. The compensation provisions were expected to quickly restore Maori onto land of their own. No one could have expected that more than 30 years later things as basic as the issuing of Crown grants for these compensatory lands would still be causing problems, or that something as fundamental as the ownership of these lands would still be a matter for debate. But that seems to have been the case in the Opotiki district, and elsewhere as well.

The Sim commission did not regard the Bay of Plenty confiscations (except in the case of Whakatohea) as excessive, and it made no recommendation concerning the Ngati Awa (or Tuhoe) confiscation, which indicates that it accepted the evidence placed before it concerning the involvement of these two tribes in the Opotiki 'rebellion'.⁸⁷

6.12 CONFISCATION POLICY IN PRACTICE: HAWKE'S BAY, 1867

In 1867, the New Zealand Settlements Act was used to confiscate an area of Hawke's Bay defined as the Mohaka and Waikare district. Although the boundaries of this district were described in the proclamation, there is considerable doubt as to the actual size of the area confiscated. In 1871, it was estimated to be 340,500 acres.⁸⁸ The 1951 royal commission thought that approximately 250,000 acres was the right answer.⁸⁹ The most recent assessment is around 270,000 acres.⁹⁰

86. T Bennion and A Miles, 'Ngati Awa and Other Claims', 1995, Wai 46, ROD, doc 11, pp 138ff

87. AJHR, 1928, G-7, p 22

88. AJHR, 1871, C-4, p 2

The Mohaka and Waikare confiscation had a number of unusual features about it. First it was occasioned by the involvement of an inland hapu or tribe, Ngati Hineuru, with Pai Marire. Ngati Hineuru lived in the Te Haroto and Tarawera districts. They were related to Ngati Tuwharetoa, and probably to Ngati Kahungunu as well. In 1867 Pai Marire members of Ngati Hineuru – it is not clear if it was the entire hapu or just part of it – moved into the Napier district. It was assumed at the time that they were preparing to attack Napier, and a mixed force of local Pakeha militia and Maori launched pre-emptive strikes against their camps. Ngati Hineuru were defeated, and the survivors sent to the Chathams. The subsequent confiscation of the Mohaka and Waikare district was justified on the basis of this ‘rebellion’ – although it seems indisputable that the Government forces fired the first shots.

Second, McLean claimed that about half of the confiscated lands belonged to Ngati Hineuru and that there were only a handful of other, non-Ngati Hineuru, owners. Since titles to the land were never investigated, it is unclear what claim, if any, Ngati Hineuru had to it. But there seems little doubt that Ngati Kahungunu hapu were resident on the land, and in number far larger than McLean suggested. Ngati Kahungunu were generally one of the Crown’s strong allies in the Hawke’s Bay East Coast districts. Yet both at Wairoa and in the Mohaka and Waikare districts hapu of Ngati Kahungunu had their land confiscated.

In 1870 agreement was reached between Donald McLean, acting for the Crown, and some leaders of the Hawke’s Bay Maori as to how the 1867 proclamation would be implemented.⁹¹ This agreement was given legal status by the Mohaka and Waikare District Act 1870. According to the Crown submission made to the Sim commission, it was this legislation, and not the New Zealand Settlements Act 1863, that provided the statutory authority for any confiscations that were made in the Mohaka–Waikare district. The Sim commission accepted this argument, and determined that the Mohaka–Waikare confiscation lay outside its New Zealand Settlements Act terms of reference. Consequently, it made no investigations concerning this district.⁹²

The 1870 arrangement was that the confiscated area would be divided into three portions. The first portion contained areas that the Crown claimed to have purchased previously. According to Boast, four blocks fell into this category.⁹³ Hippolite states that there were three blocks, totally some 18,156 acres.⁹⁴ The second division contained areas that the Crown retained. Boast gives the total of the five blocks involved as 45,623 acres; Cowie puts the acreage at around 52,000 acres.⁹⁵

89. AJHR, 1951, G-7, p 11

90. Dean Cowie, *Hawke’s Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 101

91. RDB, vol 60, pp 22932–22948

92. Boast, Wai 201, ROD, doc 11, p 62

93. Ibid, p 2

94. Joy Hippolite, ‘Raupatu in Hawke’s Bay’, Report commissioned by the Waitangi Tribunal, 1993, Wai 201, ROD, doc 117, p 47

95. Boast, Wai 201, ROD, doc 11, p 2; Cowie, p 112

The third and largest portion contained the land that was to be returned – 13 blocks according to Boast, 12 according to Cowie, containing some 200,000 acres.⁹⁶

The size of the area to be returned seems to be in accord with McLean's 1869 direction that the Government did not wish to profit from the Hawke's Bay confiscation.⁹⁷ Nonetheless, all subsequent difficulties flowed from this 1870 agreement. When the Native Land Court was given special powers in 1881 to determine the ownership of the blocks, it decided it could do nothing other than accept the lists of owners prepared in 1870, and legitimated by the Mohaka and Waikare District Act, 1870. These lists, however, were flawed and incomplete. The result was that the land was returned in a way that dispossessed some of its rightful owners. Second, it seems to have been the intention that the land was to be held in trust by the listed owners. However, this was not stated in a way that carried legal effect.⁹⁸ The result was that when a Crown grant was issued for Kaiwaka, the most desirable of the blocks, the sole listed owner was able to act as the absolute owner. Third, the theory was that once titles were settled, and surveys completed, Crown grants would be issued. But surveys were expensive, and the listed owners appear to have been unwilling or unable to fund them. Without surveys, Crown grants could not be issued. Without Crownbit had failed to ensure that the principle of trusteeship had legal effect; it had neglected to issue titles to those who were recognised, by statute, as owners. The result was a flood of petitions, decade after decades, concerning nearly all of the Mohaka Waikare blocks. It was, of course, never the intention of the Crown to restore the pre-confiscation *status quo* in Hawke's Bay: land was to be returned to certified loyal Maori, in areas determined by the Crown, and on the basis of a Crown grant, overturning and destroying traditional titles. But the Crown was apparently unable to effect either a speedy or successful transition to this new order.

While this unsatisfactory situation remained unresolved, the Crown began to reacquire the land by purchase. Between 1910 and 1931 the Crown obtained possession of a very substantial portion (92,735 acres) of the returned land, including most of the better areas.⁹⁹ In the end, it seems that only 3 of the original 12 or more returned blocks remained substantially in Maori hands. These blocks, and other small pockets of Maori land in the district, totalled, according to Boast's figures, around 107,000 acres of mostly steep and rugged land.¹⁰⁰

6.13 CONFISCATION POLICY IN PRACTICE: EAST COAST

The New Zealand Settlements Act had assumed that everyone in a given district was a rebel. Maori, if they wished to have land returned to them, had to prove that

96. Boast (Wai 201, ROD, doc J1), p 1; Cowie, p 112

97. AJHR, 1951, G-7, p 11

98. Boast (Wai 201, ROD, doc J1), p 16

99. Boast (Wai 201, ROD, doc J3), p 45

100. *Ibid*, p 43

they had either not rebelled, or were no longer in a state of rebellion. The East Coast Land Titles Investigation Act 1866, on the other hand, provided that within a given district, the land of certified rebels could be confiscated after investigation of titles by the Native Land Court. These investigations were initiated by the court; no applications by Maori were required. The essential change was that the East Coast legislation placed the burden of proof on the Government. It had to prove that the owners of any land investigated had been rebels; only if the Government's case was proven could land be confiscated. The Act was intended to make confiscation along the east coast seem a more reasonable and moderate policy, and to lessen any risk that the British Government might disallow the legislation.

An error in drafting, which included among those eligible to receive land under this legislation those who were excluded from receiving land under the New Zealand Settlements Act, obliged the Government to amend the Act in 1867, when the boundaries of the district covered by the legislation were further clarified as well. The East Coast Land Titles Investigation Act 1866, as amended in 1867, applied to over a million acres of East Coast land.

The legislation was soon found to be unworkable. To begin with, it depended on Maori willingness to provide the information necessary to determine ownership. Equally serious, from the Government's point of view, was the realisation that even if successful proceedings could be conducted under the Act, the likely end result would be that the Crown would acquire a collection of bits and pieces of land scattered far and wide around the district – expensive to survey, difficult to settle and impossible to defend.

The Government changed tack, and attempted to obtain from those considered to have been rebels the cessions of suitable blocks of land. In exchange, the Crown would waive any claims it might have on any other lands in the vicinity. Cession before confiscation was in fact the policy Cardwell had recommended in 1864. However, because Maori land was held in common, and because the troubles on the East Coast had resembled a civil war, it was in fact very hard to find any large areas of land that were exclusively owned by either 'loyal' or 'rebel' Maori, however the Government chose to use these terms. This was pointed out to McLean by Biggs, the Crown agent.¹⁰¹ The Government's response, at least in the case of Wairoa, was simply to insist that certain areas of land were rebel land which must be ceded, using threats, intimidation, and promises of compensation and reserves to overcome all objections.

6.13.1 Wairoa cession, 1867

In 1867, the Government demanded that land belonging to 'HauHaus' in the Wairoa district be ceded. Ignoring objections that there was in fact little such land at Wairoa, the Government negotiators created a general atmosphere of intimidation, insisting that the decision to take the land had already been made, and that if

101. V O'Malley, 'Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and Its Implementation', Wellington, 1994, p 83

the land was not ceded, it would be subjected to inquiry under the East Coast Land Titles Investigation Act. Faced with this pressure, and accepting Crown assurances that the rights of loyal Maori to land within the block would be respected, the Wairoa Maori (hapu of Ngati Kahungunu) agreed to cede the Kauhouroa block, less reserves of 1500 acres. A sum of £800 was paid as well, to extinguish any remaining loyalist claims. While the action was described as a cession, it was quite clear at the time that the land had been confiscated.¹⁰² The Kauhouroa block, initially estimated to contain 71,000 acres, was eventually found to contain 42,438 acres.¹⁰³ In return for Kauhouroa, the Crown withdrew its claims to any other lands in the Wairoa district. These lands, basically inland Wairoa, extending as far as the southern shores of Lake Waikaremoana, reverted to their customary owners.

The Crown had promised to provide reserves within the Kauhouroa block for loyalist Maori, but the Sim commission later decided this promise had only been partly honoured.¹⁰⁴ The owners of Kauhouroa, predominantly loyalist, also appear to have accepted Government assurances that any lands owned by rebels in the district over which the Government had waived claim would be given to them. This land was mainly the Ruakituri, Taramarama, Tukurangi, and Waiiau blocks, containing some 157,000 acres. But the Crown did not move expeditiously to obtain the necessary titles, and while agreement was reached with some Wairoa Maori in 1872 to return these four blocks other claimants complained about this agreement, and it was not executed. Subsequently, these claimants, Tuhoe, Ngati Ruapani and Ngati Kahungunu, took the land to the Native Land Court, to determine ownership. An out-of-court agreement resulted in the awarding of title to Ngati Kahungunu, and the subsequently purchase from them, and the other two tribes, of the 157,000 acres in question. The interests of Tuhoe and Ngati Ruapani in these blocks, were extinguished by the payment of £1250 and the granting of a 2500 acre reserve. Ngati Kahungunu interests were acquired, for £9700 and a reserve of 8400 acres. Early In 1876, a further payment of £1500 was made to 'loyal' Maori of Wairoa, Mohaka, Nukaka, and Mahia – individuals not included among the list of owners accepted by the Native Land Court – as compensations for their interests in the land.¹⁰⁵

Thus land which had been promised to the Wairoa Ngati Kahungunu, as a consideration for the cession of the Kauhouroa block, had been awarded to others, and from them the Crown had immediately acquired the land.

The Sim commission considered the grievance thus created, and decided that the Crown had not honoured its promise to the Wairoa Maori. It rejected evidence that the payment in 1876 had been in lieu, and recommended that the Wairoa Maori be paid an annual sum of £300 in compensation, to be used to provide higher

102. Hippolite, *Wairoa*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 37

103. O'Malley, 'East Coast Confiscation Legislation', p 86

104. The Sim commission was apparently able to investigate the Wairoa cession, despite the fact that the New Zealand Settlements Act did not apply, because petitions concerning Wairoa were included on the schedule of petitions that formed part of the commission's brief, and perhaps also because the Crown made no objections.

105. Hippolite, *Wairoa*, p 42

education for the Maori children of the district. From the Maori point of view, the amount suggested was far too low, and the benefit not restricted to those who had suffered as a result of the Crown's actions. One problem, from the Crown's perspective, was that while the Sim commission had not tagged its award, the compensation was intended for the descendants of those who had been judged 'loyalists' in 1867. But no certain way of determining who these people might be seemed to exist.¹⁰⁶ Eventually it was agreed to pay £20,000 to the Wairoa Maori Trust, in settlement of any claims in respect to or arising from the cession of the Kauhoroa block, the beneficiaries being those Ngati Kahungunu resident in Wairoa county.¹⁰⁷

The Wairoa Ngati Kahungunu were not rendered completely landless by the loss of the Kauhoroa block, or by the sale of the Ruakituri, Taramarama, Tukurangi, and Waiiau blocks: it has been estimated that in the mid-1880s there was at least 300,000 acres of land in the Wairoa district still in Maori hands.¹⁰⁸ By 1897, however, the Maori holding had been reduced to around 110,930 acres.¹⁰⁹ Currently, it is said to amount to around 37,000 acres.¹¹⁰

6.13.2 Tuhoe–Ruapani

The manner in which the Government purchased the Ruakituri, Taramarama, Tukurangi, and Waiiau blocks appears to have created a grievance for Tuhoe and the section of Tuhoe known as Ngati Ruapani as well. Tuhoe–Ruapani had a substantial claim to the inland Wairoa district, as the need to make payments and provide reserves for them when the land was purchased indicates. However, Tuhoe had supported the Maori King, and Te Kooti had been given shelter in their territory. While Tuhoe–Ruapani opposed Ngati Kahungunu's claim at the Native Land Court hearing in November 1875, they were in a weak position since if they took their opposition to the bitter end, and succeeded in proving their title, they would undoubtedly, under the East Coast Act 1868, be judged rebels, and their land would be confiscated. It appears that the presiding judge, Rogan, adjourned the court after a few days, to allow time for the Crown agents to persuade Tuhoe–Ruapani into withdrawing in favour of Ngati Kahungunu, with whom negotiations for sale of the land were by that stage well advanced. O'Malley believes that Ngati Ruapani were denied a fair hearing of their claims, and that their land on the southern shores of Lake Waikaremoana was effectively confiscated, in as far as it was awarded, in suspicious circumstances, to another tribe, and then, by pre-arrangement, purchased by the Crown.¹¹¹ In any event, by the early twentieth century the inland Ngati Ruapani were virtually landless.¹¹²

106. O'Malley, 'East Coast Confiscation Legislation', p 174

107. Ibid, pp 174–175

108. Hippolite, *Wairoa*, p 64

109. Ibid, p 68

110. Ibid, p 75

111. V O'Malley, 'The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa–Waikaremoana Area, 1865–1875', 1994, Wai 144, ROD, doc A3

112. Ibid, p 172

6.13.3 East Coast Act 1868

The Crown had obtained land at Wairoa, but efforts to obtain cessions elsewhere on the East Coast were bitterly resisted. This situation was at least partly responsible for the passage of the East Coast Act 1868, which repealed the East Coast Land Titles Investigation Act. By this new legislation the Native Land Court was empowered, if it found that land was jointly owned by both rebel and loyal Maori, to issue certificates dividing the land between the Crown and the loyal owners or, if it wished to do so, to convey all of the land to the loyal owners. By this fine tuning of the role expected of the Native Land Court, the Government was hopeful of better achieving its two objectives on the East Coast: the punishment of rebels, and the obtaining of land. The East Coast Act 1868, was to provide an improved legal framework. At the same time, the extra-legal approach of obtaining land via voluntary cession was still to be pursued, despite the fact of strong and resolute Maori opposition to any further ‘voluntary’ cessions of the Wairoa type.

6.13.4 Poverty Bay cession 1868

The background to the Poverty Bay cession lay in the Government’s treatment of some local Maori after the Pai Marire disturbances of 1865. They were detained on the Chatham Islands while the Government endeavoured to secure from ‘loyalist’ members of the tribe a deed of cession covering the land of the Chatham Island internees.¹¹³ The exiles included Te Kooti. He and some followers escaped to Poverty Bay in 1868, where they were promptly attacked by local government forces. Te Kooti responded with a series of counter-attacks during the latter part of 1868. These raids focused attention on Poverty Bay as a district where the punishment of rebellion needed to be put in hand. Te Kooti had not restricted his attacks to Pakeha – indeed, more Maori than Pakeha suffered at his hands. It seems that the Poverty Bay tribes, in the aftermath of Te Kooti’s forays, were anxious to obtain Government protection, and consequently were more amenable to the suggestion that they give up land. In any event, in December 1868, a deed of cession for the whole Poverty Bay district was signed – the whole district being ceded, apparently at Maori request, to simplify the transaction. No payment was made, but land that was found on investigation to be the property of loyal Maori was to be returned.

The Government justified its actions on the grounds that land was needed to reward the Government’s Maori allies, and to provide for the security of the district by the establishment of military settlements.

Elsewhere, the New Zealand Settlements Act, with all its ensuing complications, had had to be used to effect the confiscation of entire districts. Not so in Poverty Bay. Nor did the Government have to look to the courts, operating under the various East Coast Acts, to prove its title to the lands it had obtained at Poverty Bay. That

113. O’Malley, ‘East Coast Confiscation Legislation’, p 111

was a matter of legal fact. All that needed to be done was to decide what areas would be returned, to whom, and under what conditions.

The district ceded to the Crown in December 1868 was thought to contain at least 300,000 acres.¹¹⁴ In fact, the actual total was probably closer to one million acres. In 1869, at the first sitting of the Poverty Bay Commission, which had the task of investigating applications for the return of land, it was agreed that the Government would retain three blocks, and return the rest of the land to the principal claimants: Rongowhakaata, Te Aitanga-a-Mahaki, and Ngaitahupo.

The Maori perspective appears to have been that 15,000 acres, in three equal sections, had been given to the Crown. The Government's position was that the three blocks concerned – Te Muhunga, Patutahi, and Te Arai – had been acquired, irrespective of acreage. Certainly the three blocks contained far more than 15,000 acres – contemporary estimates ranging from 50,000 to 67,735 acres, the actual figure being around 56,000 acres. In 1921 the Native Lands Commission decided that the Government had in fact acquired 20,337 acres in excess of the 1869 agreement in the (largest) Patutahi block, and it recommended compensation. Eventually the sum of £38,000 was agreed.¹¹⁵

The rest of the 1869 sitting of the Poverty Bay Commission was given over to hearing applications for the return of land lying outside the three Crown blocks. In total, Maori claims amounting to 101,000 acres were decided; the rest of the land was unsurveyed and could not be dealt with.¹¹⁶

According to O'Malley, many of the awards were based on out-of-court agreements among the claimants – the commission, in short, merely ratified Maori arrangements about the land.¹¹⁷ Nor were rebels, as a rule, excluded. The Crown agent – once the Crown blocks had been obtained – took little interest in the loyalty or otherwise of the various claimants, and the commissioners likewise. Of course, it is possible that those who might have had considerable difficulty persuading the commission of their loyalty did not apply for their land, and so lost it by default.

While the Poverty Bay Commission was returning the land, the Crown's military allies, Ngati Porou and Ngati Kahungunu, were making a case to the Government for compensation for military services rendered. Both were annoyed that they had not been advised of the sitting of the Poverty Bay Commission, and that consequently their claims to land in the Poverty Bay district were not being heard. It was agreed that they would receive 10,000 acres each from the ceded blocks, but in the end they received money instead. Some Ngati Kahungunu objections to this were settled in 1882, with a grant of 435 acres at Poverty Bay.¹¹⁸

When the Crown grants were issued following the awards made by the Poverty Bay Commission, the form of these grants caused great discontent among the grantees. First, the grants conferred equal shares, setting aside the unequal rights

114. O'Malley, 'East Coast Confiscation Legislation', p 119

115. *Ibid.*, p 171

116. *Ibid.*, p 128

117. *Ibid.*, pp 128–129

118. *Ibid.*, p 136

based on ancestry and customary title, and so dispossessing owners in some cases of part of their land. Second, they also set up joint tenancy, which prevented inheritance in the usual way, thus ensuring that even the portion returned could not be passed on to descendants. Understandably, when the Poverty Bay Commission sat again in 1870, it was more or less boycotted, Maori attending only to state their objections to what had been done. Finally, in 1873 attempts to return the rest of the land via a further sitting of the Poverty Bay Commission were abandoned in the face of deep-seated Maori reluctance to cooperate in any way with the commission, and the balance of the land was simply returned to the three tribes – Aitanga-a-Mahaki, Ngaitahupo, and Rongowhakaata – who had signed the original cession agreement.

Since traditional titles over the returned lands were considered to have been extinguished at the time of the cession, it was necessary for further legislation (the Poverty Bay Lands Titles Act 1874), to be passed, allowing these lands to come under the jurisdiction of the Native Land Court – otherwise individual interests would not have been ascertainable and partitioning impossible. One of the schedules to the Act described the boundaries of the lands returned, the area, and to whom the land had been returned. Aitanga-a-Mahaki were said to have received 400,000 acres, Ngaitahupo about 51,600 acres and Rongowhakaata 5000 acres. Additionally, a further area of 185,000 acres had been returned to Rongowhakaata and Ngati Kahungunu jointly. It is not known why the last tribe was given land. According to O'Malley, they had not been a party to the original cession, or involved in any of the subsequent agreements.

These returned lands must have comprised all or most of the balance of the land ceded in 1868, thus allowing a rough tally of returned land to be made. The exact area of the original cession is unknown, since the land was unsurveyed, but it was in the vicinity of 800,000 to one million acres.¹¹⁹ Of this area, the Crown retained some 56,000 acres, including 20,000 acres to which it was later found to have no right, and for which compensation was awarded. About 1200 acres were granted to European claimants (who had arranged land transactions before 1840, or soon after) by the first sitting of the Poverty Bay Commission. Between 140,000 and 150,000 acres were returned to Maori before 1873, and another 640,000 acres were returned in 1873, the final total (of returned land) being somewhere in the vicinity of 800,000 acres.

Of the land that had been taken or ceded in Poverty Bay around 80 percent was eventually returned. However, the manner in which this land was returned was highly prejudicial. In the end different legislation, different methods of taking land, and different kinds of compensation arrangements had nonetheless produced outcomes for Poverty Bay Maori similar to those apparent in other raupatu districts.

119. The lands retained/returned or otherwise dealt with totalled 837,200 acres.

6.14 CONCLUSIONS

While the passing of the New Zealand Settlements Act 1863 seems to have been a lawful exercise of the powers of the Crown, the confiscations based on it appear in all respects to have been unlawful, in that they did not conform to the requirements set out in the legislation.¹²⁰ In the late 1860s, when different legislation was put in place, to allow for confiscations along the East Coast, it was used not to effect confiscations directly, but as a way of forcing Maori to agree to extra-legal ‘cessions’ of land, to the same effect. In any case, the confiscations via ‘cessions’ involved clear breaches of the Treaty.

Confiscation was originally advocated as a way of ensuring peace and security, by military settlement, and of paying for the war, by selling off surplus confiscated land. Initially, it was proposed to confiscate only limited areas in pursuit of these objectives, but the extent of the confiscations grew, and the reasons for confiscation multiplied as well. It was a logical extension of the original proposal to argue that large scale confiscation was a necessary requirement if the Crown authority was to be extended over, and accepted by, Maori everywhere. Then confiscation became a way of effecting a tenurial and social reform, by obliging Maori to accept individualised Crown grants in place of customary tribal titles. This also required very extensive confiscations. Provincial rivalries, and private advantage, also influenced the way in which the confiscations were implemented.¹²¹

A key element in all of the confiscation legislation and proceedings was the way in which Maori were divided into either loyal or rebel categories, at the Government’s discretion. In effect, rebels were those who could not prove to the Crown’s satisfaction that they were loyal, and the word could thus mean those who had simply resisted the Crown’s aggressive and illegal acts, and those – like Te Kooti – who had more actively engaged the Crown’s forces. But it could also mean the relatives, hapu or tribe of anyone who was not loyal as well. In Taranaki, the Waikato and elsewhere, it meant primarily supporters of the Maori King. At Opotiki, Hawke’s Bay and along the East Coast generally, it often meant supporters of Pai Marire. In some places, it seems that it simply meant people who owned land the Government wanted. Very few of the many who were defined as rebels during the 1860s were, in the strict sense of the word, rebels, and the word has become, for historians, a convenient way of identifying Maori who, for one reason or another, were the subject of confiscation proceedings. By the same token, loyal did not necessarily mean unqualified support for the Crown; indeed, it seldom seems to have done so. Nor, in any event, did loyalty, however defined, confer immunity from confiscation.

The early idea was that confiscation would be a mild form of punishment after lawful proceedings; in Taranaki and some other places the extent of the confiscations was excessive to the point of vindictiveness. Along the East Coast there seems

120. *The Taranaki Report*, pp 128ff

121. H Mead and J Gardiner, ‘Ethnography of the Ngati Awa Experience of Raupatu’, Wai 46, ROD, A18, p 107; O’Malley, ‘East Coast Confiscation Legislation’, pp 63ff

to have been, even by the standards of the day, little real excuse for the confiscations that occurred. Nor is there any sound basis for distinguishing between the East Coast raupatu and the others in Treaty terms, simply because they were carried out under different legislation and involved (at Wairoa and Poverty Bay) an act of cession by the tribes. In both cases threats were made, and a great deal of pressure was brought to bear. The keeping prisoner, in the Chathams, of Te Kooti and other Pai Marire from the Wairoa and Poverty Bay while the Government pressed for cession of land was to prove utterly disastrous to the district. Maori efforts to cooperate with the Government by agreeing to the cession after Te Kooti's escape and attacks were ill-rewarded. The confusion over the return of most of the ceded land (as in other confiscation areas) led to on-going discontent and demoralisation. It seems certain that this contributed to the sales of lands in the 1880s. Again, in this respect there is no essential difference between the 'cessions' and the 'confiscations' although it is true that the actual area retained by the Government on the East Coast was much smaller than in Taranaki, the Waikato and Bay of Plenty.

6.15 SUMMARY OF THE RAUPATU

A numerical summary of the raupatu follows. Bear in mind that precise acreages were often not determined at the time, and have sometimes remained in dispute to the present day. Some figures have had to be based on partial returns of one kind or another. Where alternative calculations are possible, they have been provided. If compensatory payments were made pursuant to the recommendations of the Sim or any other commissions, this fact has been noted. An attempt has also been made to identify the amount of returned land that was alienated within a short period of its return.

Waikato*	
Proclaimed:	1,202,172 acres
Retained by Crown:	887,808 acres [†]
Returned:	314,364 acres
Compensation:	£22,987 [‡] Waikato–Maniapoto Claims Settlement Act 1946; Waikato Raupatu Claims Settlement Act 1995

* AJHR, 1928, G-7, p 17

† The Sim commission thought that deductions would eventually have to be made to this figure for an area of 13,974 acres that was before the Native Land Court in 1928 and also to represent the £22,987 that had already been paid in compensation: AJHR, 1928, G-7, p 17.

‡ Reported by the Sim commission as having been previously paid: AJHR, 1928, G-7, p 17. This was possibly compensation made by the Compensation Court.

Taranaki	
Proclaimed:	1,199,622 acres*
Retained by Crown:	984,947 acres†
Returned:	214,675 acres‡
Re-acquired by lease (in 1912):	138,510 acres§
Re-acquired by purchase (Crown and private by 1974):	141,394 acres¶
Left by 1974:	81,299 acres ^l
Compensation:	Taranaki Maori Claims Settlement Act 1944

* Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 107

† Includes all land acquired by purchase or confiscation. Proclaimed area less area returned by West Coast Commission.

‡ Land returned by West Coast Commission: *The Taranaki Report*, p 12. This may need to be adjusted upwards to include lands reserved from blocks said to have been purchased. The Sim commission reported that 256,000 acres were returned: AJHR, 1928, G-7, p 11.

§ This was the land that while owned by Maori was under the control of the Public Trustee and was leased to Europeans. Market rents were not charged, and Maori owners consequently received a much reduced benefit. Reacquired by lease appears to be a substantially accurate description of the status of the land in question: *The Taranaki Report*, p 12.

¶ *The Taranaki Report*, p 286

^l *The Taranaki Report*, p 286. This total represents the balance of the reserves made by the West Coast Commission and the residual of the lands reserved from purchased blocks.

Tauranga*	
Proclaimed:	290,000 acres
Compulsory sale:	93,188 acres†
Confiscated:	196,812 acres
Retained by Crown:	49,750 acres
Returned:	147,062 acres‡
Re-acquired by purchase (private, by 1886):	49,243 acres§
Re-acquired by purchase (Crown, by 1886):	4957 acres¶

Tauranga*	
Left by 1908:	42,970 acres [†]
Compensation:	Tauranga Moana Trust Board Act 1981

* AJHR, 1928, G-7, p 19

† Stokes, 'Te Raupatu o Tauranga Moana', p 146; O'Malley and Ward, p 41

‡ AJHR, 1886, G-10, p 1; O'Malley and Ward, p 41

§ AJHR, 1886, G-10, p 1

¶ Ibid, p 7

| O'Malley and Ward, p 91

Eastern Bay of Plenty–Opotiki*	
Proclaimed:	448,000 acres
Retained by Crown:	211,060 acres
Returned:	230,600 acres
European claims:	6340 acres

* AJHR, 1928, G-7, p 21

Eastern Bay of Plenty–Opotiki (Whakatohea)	
Rohe:	491,000 acres*
Confiscated:	173,000 acres [†]
Retained by Crown:	151,000 acres
Returned:	22,000 acres
Left by 1908 (returned):	20,290 acres [‡]
Left by 1908 (other):	15,159 acres [§]
Total left by 1908:	35,449 acres [¶]
Compensation:	Finance Act (No 2) 1946

* AJHR, 1928, G-7, p 21

† AJHR, 1921, G-5, p 27

‡ AJHR, 1908, G-1M, p 1

§ The Stout–Ngata commission reported a total holding for Whakatohea, including the 20,290-acre Opape reserve, of 35,449 acres. Other lands held apparently totalled 11,959 acres, leaving a shortfall of some 3200 acres, if the total holding of 35,449 was correct.

¶ AJHR, 1908, G-1M, p 1; 1921, G-5, p 27

Eastern Bay of Plenty–Opotiki (Ngati Awa)			
Rohe:	107,120 acres [*]	Rohe:	194,120 acres [†]
Confiscated:	107,120 acres	Confiscated:	194,120 acres [†]
Retained by Crown:	29,250 acres	Retained by Crown:	29,250 acres [†]
		Returned to Arawa:	87,000 acres [†]
Returned:	50,321 acres	Returned:	50,321 acres [†]
Granted:	27,549 acres	Granted:	27,549 acres [†]

* AJHR, 1928, G-7, p 21

† Alternative figures counting the disputed 87,000 acres as Ngati Awa land.

Hawke's Bay (Mohaka–Waikare)	
Proclaimed:	270,000 acres [*]
Previous Crown purchases:	18,156 acres [†]
Retained:	52,050 acres [‡]
Returned:	199,794 acres
Re-acquired by purchase (Crown by 1931):	92,735 acres [§]
Left (by 1931):	107,059 acres

* D Cowie, *Hawke's Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 101. One contemporary estimate was 340,500 acres: see AJHR, 1871, C-4, p 2.

† J Hippolite, 'Raupatu in Hawke's Bay', p 46. Boast says that a block called Mangaharuru, area unknown, had also been previously acquired: Boast, 'Esk Forest Claim', doc J1, p 2.

‡ Cowie, p 112. Boast, p 2, gives 45,623 acres.

§ Boast, p 45

Hawke's Bay (Wairoa)	
Cession block:	250,000 acres [*]
Retained by Crown:	42,738 acres [†]
Returned:	157,000 acres [‡]
Re-acquired by purchase:	146,080 acres [§]
Compensation:	Section 29 of the Maori Purposes Act 1949

* AJHR, 1871, C-4, p 2

† Hippolite, *Wairoa*, pp 37, 39

‡ Ibid, p 42

§ Ibid, p 44

Poverty Bay [*]	
Cession block:	1,000,000 acres [†]
Retained by Crown:	56,000 acres [‡]
European claims:	1200 acres [§]
Returned:	780,000 acres
Compensation:	Section 58 of the Maori Purposes Act 1950 [¶]

* V O'Malley, 'The East Coast Confiscation Legislation and its Implementation', report commissioned by the Crown Forestry Rental Trust, 1994

† A rough estimate. A tally of the lands retained or returned gives 837,200 acres.

‡ O'Malley, p 168

§ Ibid, p 128

¶ Ibid, p 171

