CHAPTER 1

THE 1840s DEBATE ON THE 'WASTE' LANDS

The Treaty of Waitangi affirmed Maori customary tenure at 6 February 1840, but just what was Maori custom was not spelled out. Article 2 of the Treaty guaranteed to the chiefs and tribes of New Zealand 'full exclusive and undisturbed possession of their Lands and Estates Forests and Fisheries', and required that the chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as they might wish to alienate. These could only be lands surplus to their needs – 'waste lands'. In other words, customary tenure was recognised by the Crown, and could only be extinguished through sale to the Crown. Maori title to the soil and the sovereignty of New Zealand had in fact already been given a qualified recognition in 1835 when the Colonial Office acknowledged the Declaration of Independence and assured Maori the protection of the British Crown, so far as was consistent with the rights of others. The problem facing the Crown from that time on was to establish just what constituted customary Maori tenure.[1] Fifty years later the problem remained: 'Maori experts' were asked in 1890 to provide an explanation of their views on what constituted customary tenure. In the meantime the question had been addressed by commissions of inquiry, land purchase officers, and after 1865, by the Native Land Court. Once the court was in operation its judges took it upon themselves to determine what constituted Maori custom and this judge-made law then regulated the operations of the court.[2]

In the years leading up to Waitangi, considerable acreages of land, especially in the north, had passed from Maori to European hands and one of the ostensible purposes of the Treaty was to prevent such sales, both to protect Maori from the actions of land speculators, and to provide an 'orderly' system of land sale. Even before the Treaty was signed, Sir George Gipps, Governor of New South Wales, had issued a proclamation declaring that title to land in New Zealand would be considered valid only if it were either derived from or confirmed by a Crown grant, and that any purchases made after that date, 14 January 1840, would be deemed 'absolutely null and void'. Moreover, it was announced that commissioners would be appointed,[3] in accordance with Secretary of State Lord Normanby's instructions

1. See, for example, Geo Clarke to Colonial Secretary, 17 October and 1 November 1843, BPP, vol 2, pp 356–359, 360
2. New Zealand courts denied legal continuity of tribal title subsequent to British annexation; P G McHugh, 'The Legal Basis for Maori Claims Against the Crown', *Victoria University of Wellington Law Review*, no 18, 1988, p 5.

to Hobson of 14 August 1839, to investigate all past sales and advise which, if any, of them should be confirmed by Crown grant.[4]

The question of what land could have been legitimately bought from Maori depended, among other things, on whether or not Maori were deemed to have 'owned' all the land they had sold. The land guarantee in the Maori version of the Treaty was clear, but the English version just spoke of the lands 'which they may collectively or individually possess'. To Maori that was the whole of New Zealand, and this was well understood by those who drew up the Treaty. But to many in England, and especially to successive secretaries of state over the next few years, the Treaty guaranteed possession only of that land which Maori 'owned and occupied' – their kainga and cultivations. The rest of the land – the bulk of New Zealand's 66 million acres – which Maori did not occupy or did not cultivate was considered 'waste' or 'wild' land – the Crown demesne. The gulf in perception between these two views sparked an often bitter and acrimonious debate which lasted for years.[5] Twenty years after the Colonial Office had reluctantly agreed that the Treaty must be accepted as Maori understood it, there were still Europeans in New Zealand who would argue for a narrow interpretation of the Treaty's land guarantees.[6] The idea died hard, for it was deeply embedded in the European psyche and had been brought to New Zealand especially by the New Zealand Company and its settlers. They held strongly to the views of Emerich de Vattel, a Swiss jurist, who believed that cultivating the earth was an obligation which nature imposed on mankind. Thus, those who did not cultivate the land had no right to it, and those who took it to cultivate were obeying the laws of nature. This view was reinforced by Dr Thomas Arnold, headmaster of an English public school and a New Zealand Company supporter, who approved the taking by civilised nations of the lands of savages.[7]

The New Zealand Company claimed to have bought 20 million acres on either side of Cook Strait.[8] The pre-emption clause of the Treaty, and Normanby's instruction that pre-Treaty sales were to be investigated, were of grave concern to a company reliant on the profits from resale of these lands to their settlers. The officers of the New Zealand Company spoke scathingly of 'Normanby's excessive view of Maori rights',[9] of the Treaty's 'tangled web of imbecility', of this 'blanket-bought missionary Magna Carta'.[10] The company had many prominent and influential supporters in Britain – in Parliament, in the business community, and in the

3. See, for example, Claudia Orange, *The Treaty of Waitangi*, Wellington, 1987, pp 33–34
4. BPP, vol 3, pp 85–90
5. A good analysis of this debate may be found in Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847*, Auckland, 1977, pp 176–191.
6. See, for example, NZPD, 1861–63, p 611
7. Patricia Burns, *Fatal Success: A History of the New Zealand Company*, Auckland, 1989, p 71
8. 'Possess yourself of the soil and you are secure.' E G Wakefield to the founders of the New Zealand Land Company, 20 March 1839 (cited in Burns, p 14).
9. Adams, p 184
10. David Williams, 'Te Tiriti o Waitangi: Unique Relationship Between Crown and Tangata Whenua?' in *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, I H Kawharu (ed), Auckland, 1989, p 73

press – and their views served to influence the views of the Colonial Office. On the other side of the world, the representatives of the Crown, especially William Hobson and Robert FitzRoy, the first two governors, were more influenced by locally-held views – and these were supported by Normanby's instructions that Maori title to the soil and to the sovereignty of New Zealand were indisputable and had been solemnly recognised by the British Government. Hobson was instructed to acquire as much 'waste land' as would be required for settlement, provided that he bought only land which Maori could alienate 'without distress or serious inconvenience to themselves'.[11] This obviously referred to land other than their pa and cultivations – surplus lands, 'waste lands' – and if they were to sell them to the Crown by 'fair and equal contracts', then Normanby, at least, was acknowledging Maori ownership of them and their right to sell them. The pre-emption clause then could refer only to lands surplus to Maori needs – to 'waste lands', which the Crown would buy from those who had the right to sell them; and in this sense there should have been no debate over the ownership of the 'waste' lands.

Normanby was replaced at the Colonial Office by Lord John Russell in September 1839 soon after Hobson left for New Zealand, and his view of indigenous rights to land was that of Vattel. In a House of Commons debate on New Zealand early in 1840 he maintained the Government had acted 'entirely in accordance' with Vattel's theory.[12] As Adams said, 'The Colonial Office did not understand the purport of a treaty which its own representative had signed and which it had solemnly accepted'.[13] However, a select committee of the House of Commons sitting in July 1840 was not content to leave the inquiry into pre-Treaty sales in the hands of New South Wales officials and, possibly, land speculators, and its members recommended that the Imperial Parliament pass the necessary legislation to appoint impartial commissioners with no 'pecuniary interest' in either colony.[14] They also required the law to confirm article 2 of the Treaty as regarded both preemption and Maori property rights. The committee's recommendations were high-minded and humanitarian – but they did not spell out just what was meant by 'the possessory rights of the natives to their lands'.[15]

The views held by Russell and others at the Colonial Office came through clearly in the Royal Charter of 16 November 1840 by which New Zealand became a colony in its own right, separate from New South Wales. Maori rights were limited to:

> the actual occupation or enjoyment in their own persons, or in the persons of their descendants of any Lands . . . now actually occupied or enjoyed by such natives.[16]

In further instructions to Hobson of 28 January 1841, Russell added that the 'lands of the aboriginies' were to be defined on the colony's maps and surveys, and the

11. BPP, vol 3, p 87
12. Cited in Adams, p 180
13. Ibid, p 176
14. BPP, vol 1, paper 582, p viii
15. Ibid, p ix
16. BPP, vol 3, p 154

Surveyor-General was to report on which land Maori should 'permanently retain for their own use and occupation'.[17] He obviously had no understanding of the reality of Maori landownership. As he later put it, he had not imagined that:

> any claim could be set up by the natives to the millions of acres of land which are to be found in New Zealand neither occupied nor cultivated, nor, in any fair sense, owned by any individual.[18]

Russell's own permanent under-secretary, James Stephen, saw things differently, believing the 'waste lands' – the Crown demesne – would consist only of those lands in excess of claims declared valid by the proposed land claims commission. All the rest of the land belonged to Maori and could only accrue to the Crown by purchase. Russell, in his turn, left the Colonial Office before he was required to reconcile his view of the Treaty with that of the people on the ground in New Zealand. This was left to Lord Stanley, who succeeded Russell in September 1841, and it was occasioned by continuing disagreements with the New Zealand Company.

In November 1840, the Crown and the company had sunk their differences to the extent that they drew up an agreement by which the company was granted a charter of incorporation. The company would receive four acres of land for every pound sterling spent 'on colonization'. This land, which was to be granted at Port Nicholson, Nelson, and New Plymouth was not to exceed 160,000 acres. In return, the company would forgo its claim to the rest of the vast estate they claimed to have purchased. But as Burns said, in view of the care Russell had expended over the draft of the agreement, it was most unfortunate for New Zealand's future that he had to reach his decision before his officials had been long enough in New Zealand to investigate thoroughly and report on the company's exaggerated claims.[19] The company was now virtually the Crown's colonising arm. It was inevitable that the interests of the settlers would quickly come to outweigh those of Maori; that the Treaty's land guarantee would be subverted in settler interests.

But first the validity of the company's claims was to come under investigation in accordance with the proclamations of January 1840 issued by Gipps and Hobson. A commission was established by Governor Gipps under the New Zealand Claims to Land Act, passed on 3 August 1840. The debate on Gipps' Bill in the New South Wales Legislative Council had showed clearly where Gipps stood on the question of Maori rights to land. He understood, he said, as a political axiom he had never before heard disputed, 'that the uncivilized inhabitants of any country have but a qualified dominion over it, or a right of occupancy only', and as he read Normanby's instructions to Hobson, they confirmed his view. Gipps argued that as Maori had not subjugated the ground by cultivation they had no individual property in it, and thus could not 'grant to individuals, not of their own tribe, any portion of it'; that 'the right of pre-emption in the soil, or in other words, the right of

17. Ibid, p 174
18. Russell to Somes, 29 June 1844 (cited in Adams, p 181)
19. Burns, pp 165–166

extinguishing the native title', was exclusively in the government of any civilised power that chose to settle the country. He went on at length to show that this was the law of England and other European colonising powers and that it had been applied to settlement in the United States and become part of American law.[20]

The pre-emption clause of the Treaty has been widely debated over the years. It has been seen alternatively as a humanitarian move, as protection for Maori against land speculators, as an economic move – purely a means of creating an emigration fund, and even as a means of controlling Maori.[21] Most recently lawyers have put forth sophisticated arguments about the legal basis of pre-emption – that as radical title rested in the Crown, pre-emption was a necessary means of conveying legal title to individuals. But any reading of early Colonial Office documents reveals no evidence of a legal argument. Normanby's instructions spoke of protection for Maori – the humanitarian argument; and especially the creation of an emigration fund – the economic argument:

> The re-sale of the first purchases . . . will provide the funds necessary for future acquisitions; and, beyond the original investment of a comparatively small sum of money, no other resource will be necessary for this purpose. I thus assume that the price to be paid to the natives by the local government will bear an exceedingly small proportion of the price for which the same lands will be re-sold by the Government to the settlers.[22]

This reasoning was hardly consistent with his next exhortation to Hobson that 'All dealings with the aborigines for their lands must be conducted on . . . principles of sincerity, justice and good faith'.[23]

When Hobson finally went to Wellington in August 1841, the pressure on him from company officials and settlers to guarantee their land titles was such that he 'agreed' to waive the Crown's right of pre-emption to over 200,000 acres of land in Wellington, Porirua, Hutt, Wanganui, and New Plymouth.[24] This was the first of several decisions on the part of the Crown to waive its right of pre-emption.[25] It seems that pre-emption was, as Wards described it 'a matter of convenience to be modified at will'.[26]

The land commission appointed by Gipps began its work in the north early in 1841, but New Zealand Company claims were to be investigated by William Spain, the 'impartial commissioner' appointed by the Secretary of State, Russell. Although he was appointed in January 1841, he did not arrive in New Zealand until December of that year. The Colonial Office had not perceived any great need for

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20. BPP, vol 3, pp 185–188
21. See, for example, Adams, pp 193–197
22. BPP, vol 3, p 87
23. Ibid
24. BPP, vol 2, pp 545–546
25. See, for example, Ann Parsonson, 'Nga Whenua Tautohetohe o Taranaki: Land and Confiscation in Taranaki, 1839–59', revised report no 1 to Waitangi Tribunal, claim Wai 143 record of documents, doc a1, November 1991, p 200
26. Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, 1968, p 28

hurry; they had 'no idea that every day's delay made the Company's grip on the homes of dispossessed Maori more secure'.[27] Spain was to deal with 116 cases referred to him by Hobson.[28] The November 1840 agreement had assumed the company's original purchases to be valid, but it was soon clear to Spain that the company's titles were decidedly 'imperfect', and also that he would get no cooperation from the company in his investigation. Indeed, he found that Colonel William Wakefield was prepared to do all in his power to 'embarrass and impugn' Spain and the commission.[29] The company had expected a superficial investigation; Spain intended an exceedingly thorough one, but he was obliged to walk a fine line between the guarantees of the Treaty and the Crown's 1840 agreement with the company.[30] He began his investigation on the basis of both the Treaty and the 1840 select committee's report that the 'possessory rights of the natives to their land should be retained in full . . . so long as it is their wish and desire to retain the same in their possession'.[31] He had to establish the bona fides of both the sellers and the buyers – to come to terms with native tenure and determine who had the right to sell, and then to judge the validity of the sale. It was clear to him that those who had sold the land had no intention of selling their pa, cultivations, and urupa, yet the company had no intention of reserving them from sale.[32] To complicate the issue Hobson had told Wakefield for his 'private guidance and information' that the Government would 'sanction any equitable arrangement' to induce Maori living within the company's districts 'to yield up possession of their habitations', provided 'force or compulsory measures for their removal' were not used.[33]

The Crown itself was in a bind. Under the Treaty, Maori were to have all the rights and privileges of British subjects, but the rights of Her Majesty's other British subjects in the Cook Strait area had also to be taken into account, and Spain felt he could not simply declare the company's titles defective and leave several thousand British emigrants stranded in their new country. His solution was 'to settle a most difficult question upon quiet and equitable grounds' by having the company pay 'compensation' to those owners in the Port Nicholson area who either disputed the sale or had received no payment for land claimed by the company. This would mean unwilling sellers would be 'persuaded' off their lands – but this was no problem to Spain, since Maori disputing the sale seemed to him 'to be more anxious to obtain payment for their land than to dispossess the settlers'.[34] Furthermore, continuing delay would increase both Maori disinclination to part with their lands and their exaggerated ideas of its value. He had great difficulty making them understand that it was nothing they had done, but simply 'the capital and labour

27. Burns, p 170. Admittedly his journey was extraordinarily long; he had sailed from England in April 1841.
28. Rosemarie Tonk, 'A Difficult and Complicated Question: The New Zealand Company's Wellington, Port Nicholson Claim', in *The Making of Wellington 1800–1914*, David Hamer and Roberta Nicholls (eds), Wellington, 1990, p 36
29. Spain report, 12 September 1843, BPP, vol 2, p 291
30. See, for example, Burns, pp 214–215, 224–225; Tonks, pp 38–39, 47–50
31. BPP, vol 2, p 292
32. Ibid, pp 293–294
33. Hobson to Wakefield, 6 September 1841, BPP, vol 2, p 546
34. BPP, vol 2, p 295

brought by the white man from Europe' which had made their land valuable, and that therefore they had no right to expect to profit from its increased value. Nor could they be allowed to rent their lands and live idly off the rent money.[35] These were sentiments expressed continually throughout the nineteenth century. What was good for the white man was certainly not good for Maori.

Spain was insistent that pa, cultivations, and burial grounds be exempt from purchase, and in his final report of 31 March 1845 he pointed out that in addition to these, Maori also had 6000 acres of native reserves, while the company only acquired 'waste land'.[36] It was clear that Spain accepted that other than kainga, cultivations, and urupa, Maori land was wasteland and it was right that it be alienated. This would deprive Maori of nothing, it would benefit the colony as a whole, and Maori would benefit from the civilisation brought by the Europeans.[37] Spain, in his eurocentrism, considered occupation the sine qua non of ownership. He even quoted Vattel at length to Te Rauparaha, in a letter translated by Bishop Hadfield who 'not only approved of its contents' but thought Spain's view would be fully understood by Te Rauparaha 'and calculated to make an impression upon him'; that Te Rauparaha would be 'quite prepared for the dictum . . . respecting the law of nations, in treating a country thinly populated like New Zealand which they may have determined to colonize'. To show he was speaking on good authority, he sent FitzRoy a long quote from 'Chitty's new edition of the Law of Nations, from the French of De Vattel'.[38] The Crown's impartial commissioner was firmly in the camp of those who believed Maori had but a qualified dominion over the land.

In the wake of the Wairau affray of 1843, and hard pressed over land titles and impending financial disaster, the New Zealand Company managed to get another select committee appointed to inquire into New Zealand's affairs and the company's proceedings. The committee, which was chaired by a company supporter, Lord Howick (who, as Earl Grey, became Secretary of State in 1846), argued that it would have been better if no formal treaty had been concluded with Maori, since the Treaty of Waitangi was ambiguous, little more than a legal fiction, and highly inconvenient because of the interpretation placed on its stipulations regarding Maori land rights. They believed Hobson's instructions ought to have laid down clearly that once sovereignty was established, 'all unoccupied lands would forthwith vest in the Crown'. This, they thought, 'would have been attended with no sort of injustice' to Maori and would have been in their own real interests, since their 'unoccupied land, previously to European settlement, was of no value to them', as land derived 'its only value from the application of European labour and capital'.[39]

The committee reminded the House of the principles laid down by Gipps in 1840, that 'the uncivilized inhabitants of any country have but a qualified dominion over it or a right of occupancy only'. The Secretary of State, Lord Stanley, refused

35. Ibid, p 296
36. BPP, vol 5, p 71
37. See, for example, BPP, vol 2, pp 296, 306
38. BPP, vol 5, p 135
39. BPP, vol 2, pp 5–8

to accept the committee's 'far from unanimous' recommendations. He would not, for instance, comply with their wish that the Crown forthwith establish its title to all unoccupied land – at least not until it could be safely accomplished. And while he believed that restricting native rights to land was 'wholly irreconcilable with the large words of the Treaty', and claiming unoccupied land was contrary to Normanby's instructions, he had still assumed FitzRoy would have found 'that there were considerable tracts of country to which no tribe could establish a bona fide title', and even larger tracts that could be obtained 'on easy terms and by amicable arrangements'. Stanley, moreover, was clearly willing to accept the committee's resolution that land 'not made use of' be taxed at the rate of twopence an acre. He spelled out clearly, as not even the select committee had done, that it was intended the tax should also apply 'to all lands claimed as the property of native tribes, and not in actual cultivation'; and he presumed that non-payment would be followed by confiscation of part of the land. As long as this could be 'peaceably effected', he said, it would be an easy way to obtain a large amount of 'disposable land'.[40] He apparently saw no conflict between such a course of action and the 'large words' of the Treaty.

Stanley's ambivalence was apparent in his correspondence with FitzRoy over the waiving of pre-emption.[41] While he appreciated FitzRoy's motives and was not prepared to condemn his actions, he nevertheless pointed out that since FitzRoy had so pointedly cautioned chiefs against 'disposing lightly of their property', Maori now might be encouraged to make exorbitant demands for their lands. How far, he asked, would it be 'to their real advantage to receive large money-payments for the mere sale of waste land?'[42]

What was wasteland was still not entirely clear to Stanley, although he now conceded that 'much more land than was supposed is owned in New Zealand according to titles well understood, either by some individuals, or at all events by some tribes'.[43] By mid-1845, the Colonial Office was coming under powerful political pressure to review its policies with regard to New Zealand. It was decided to replace FitzRoy with Captain George Grey, then Governor of South Australia. Grey was to operate under quite different instructions, ones that would put the rights and welfare of settlers before those of Maori.[44] Grey was to be provided with double the salary and three times the funding allowed to FitzRoy.[45] Five months before he even arrived in New Zealand, Grey was instructed to direct his earliest attention to registering titles to all land, Maori or European. Since the Treaty had recognised Maori title to their lands, Stanley wanted the limits of those lands defined. The rest would be considered Crown land – and it could then be decided

40. Stanley to FitzRoy, 13 August 1844, BPP, vol 4, pp 145–149; Stanley to Grey, 27 June 1845, BPP, vol 5, p 233
41. FitzRoy to Stanley, 15 April 1844, BPP, vol 4, pp 172–179; Stanley to FitzRoy, 30 November 1844, BPP, vol 4, pp 203–210
42. BPP, vol 4, pp 197
43. Ibid, p 205
44. See, for example, Wards, pp 168–172
45. Stanley to Grey, 28 June 1845, BPP, vol 5, p 235

whether or not the pre-emption clause should stand. Stanley again expressed his approval of the idea of taxing wastelands to compel their cultivation or abandonment to the Crown. The provision was to apply equally to land recognised as Maori land; Stanley could see no reason why Maori should not carry their share 'of the common burthens'.[46]

About this time Stanley was obliged to define publicly the Colonial Office's attitude to the Treaty's land guarantee. He told the House of Lords that defining the limits and rights of tribes was 'a matter on which Maori law and custom would have to be consulted'.[47] The possibility of such a policy being pursued was sharply interrupted. When Earl Grey succeeded to the office of Secretary of State towards the end of 1846 he was in a position to put into practice the recommendations of the 1844 select committee. He told Governor Grey that he did not subscribe to the view:

> that the aboriginal inhabitants of any country are the proprietors of every part of its soil of which they have been accustomed to make any use or to which they have been accustomed to assert any title.

Instead he agreed with Arnold that 'Men were to subdue the earth . . . and with the labour so bestowed upon it came the right of property in it'. This reasoning was applicable to New Zealand, and 'fatal to the right which has been claimed for the aboriginal inhabitants . . . to the exclusive possession of the vast extent of fertile but unoccupied lands'. The Queen, he said, was 'entitled in right of her Crown to any waste lands in the colony'. But he did recognise that Maori had a clear and undoubted claim to lands which they really occupied, and attempting to deprive them of their potato patches or of room to move their cultivations 'would have been in the highest degree unjust'. The rest of the land, though, from the moment the Treaty was signed, 'ought to have been considered as the property of the Crown in its capacity of trustee for the whole community'.[48]

Earl Grey realised it was too late now to impose these principles, but for all that the Governor's policies were to be based on them. He was to avoid, as much as possible, 'any further surrender of the property of the Crown'; he was strictly to maintain pre-emption, since to set it aside 'would be to acquiesce in the ruin of the colony'; and, as a first step, he was to 'ascertain distinctly the ownership of all land in the colony'. Having registered the titles, the remainder of the land was to 'be declared to be the royal demesne', surveyed, and sold at auction, and the proceeds used in the main as an immigration fund.[49]

When news of the recommendations of the 1844 committee had reached New Zealand, there was reaction from the northern tribes. When news of Earl Grey's 'Royal Instructions' of 1846 arrived, the reaction came from settlers and prominent citizens in the north. Grey, feigning disapproval of their reaction, nevertheless

46. Stanley to Grey, 27 June 1845, BPP, vol 5, p 233
47. Cited in Adams, p 186
48. Earl Grey to Grey, 23 December 1846, BPP, vol 5, pp 523–525
49. Ibid, pp 523–526

forwarded to the Colonial Office a petition with 410 signatures, among them Bishop Selwyn, Chief Justice Martin, and Attorney-General Swainson, fearful for the safety of the colony in the face of such a change to native land policy, and praying that the instructions be revoked and the letter and spirit of the Treaty 'most religiously maintained'.[50]

The Governor managed to avoid implementing the Secretary of State's instructions regarding the registration of land titles and the confiscation of 'waste lands' by making it 'a work of much time'. But at the end of 1846, he reimposed pre-emption,[51] and by using it to devastating effect he substantially realised Earl Grey's goal of creating a royal demesne. What is more, by keeping Government land purchase far in advance of settlers' needs he was able to purchase all the land he required 'for a trifling consideration'. He even professed to believe that there were large areas in the country, including the densely populated north, claimed by contending tribes who would be happy to cede them to the Government in return for small reserves they could cultivate.[52] At the same time he was busy assuring Maori that he 'had always been instructed most scrupulously to fulfil the conditions of the Treaty of Waitangi'.[53]

Earl Grey, faced with the reality of the situation in New Zealand, reluctantly abandoned his attempt to take the 'waste lands' and agreed to Grey's purchase policy. The letter, if not the spirit, of the Treaty would be adhered to. Outwardly, it appeared that officials on both sides of the world had accepted that Maori owned the whole of New Zealand and not just those parts they occupied and cultivated. But Vattel's and Arnold's theories did not just go away; they were too deeply rooted. Official recognition of Maori rights to the 'waste lands' caused resentment among settlers and created barriers to colonisation which successive governors and later settler governments sought to overcome. By one means or another, Maori lost not just their so-called wastelands, but in some cases even their pa and cultivations where these stood in the way of European settlement. Many of the New Zealand Company's purchases were of dubious validity – but Hobson was prepared to 'sanction any equitable arrangement' to get Maori to abandon their pa and cultivations to the company, and Maori were told they had no choice but to accept compensation, since they would not be permitted to resume land already built on by settlers, even though the purchase might not have been valid. FitzRoy put pressure on Te Aro Maori to accept £300 'for valuable land which they had never sold and which happened to be right in the middle of Wellington'. The Colonial Office did its bit, by promising 'cordial assistance' to the company in its efforts to gain Maori land not already awarded to it by Commissioner Spain;[54] and, in addition, Stanley decreed that lands in excess of the 2560 acres Spain could award to settlers should be 'vested in the Sovereign, as representing and protecting the interests of society

50. Enclosed with Grey to Earl Grey, 9 March 1848, BPP, vol 6, pp 79–80
51. Through the Native Land Purchase Ordinance. See, for example, Orange, pp 105–106.
52. Grey to Earl Grey, 15 May 1848, BPP, vol 6, pp 23–25
53. Grey to Earl Grey, 13 November 1847, BPP, vol 6, p 15
54. Adams, pp 191–192

at large'. In other words, surplus land would belong to neither the seller nor the buyer but would become Crown lands, available for sale and settlement – a ruling which created resentment among both settlers and Maori.[55]

It became increasingly obvious that it was not just a question of land for settlement. A more basic issue underlay the drive to part Maori from their land: they were to be civilised through amalgamation, their reserves interspersed among the properties of European settlers. Allowing them to maintain their isolation from Europeans was considered tantamount to preserving them in a state of barbarism.[56] Those who had been obliged to accept the view that Maori owned all the land in New Zealand were determined, 'in the Maori's own interests', to relieve them of their so-called wastelands guaranteed them by the Treaty. They found a handy tool for their schemes in the pre-emption clause by which the Crown would monopolise land transactions. Maori who wished to sell land could sell only on such a scale and at such prices as the Crown would agree to. And both FitzRoy and Grey soon found:

> that there was no better way of controlling the Maoris than by refusing to buy land from those who opposed the Government; to them, pre-emption had possibilities as a political weapon to subdue recalcitrant Maoris.[57]

55. Stanley to FitzRoy, 26 June 1843, BPP, vol 2, p 390
56. 'Evidence of E G Wakefield to House of Commons Select Committee on New Zealand', July 1840, quoted in Kenneth N Bell and W P Morrell (eds), *Select Documents on British Colonial Policy 1830–1860*, Oxford, 1928, p 564
57. Adams, pp 187, 197