

CHAPTER 6

CONCLUSION

At the time the Treaty was signed there was an expectation in Britain that the Crown would be the beneficiary of the ‘waste’ lands in New Zealand, that Maori could not lay claim to lands they did not occupy and cultivate. When it was finally admitted that Maori ownership of all the land in the country was guaranteed by the Treaty of Waitangi, the Crown set out to create a royal demesne, extinguishing customary native title at first by purchase, and over the years by a variety of other means. It is clear that the Crown’s ultimate aim was to extinguish customary title to all the land in New Zealand – first cultivable land, then pastoral land, and finally land for small family farms.

In the early years of settlement, land purchase was effected through deeds of sale, and some care was taken to see that negotiations were carried out openly and on a tribal basis. But from the start Grey preferred that Maori hold land on Crown grants, rather than having land excepted from sale. Thus native title was extinguished and the land they held was on titles derived from the Crown. As immigration rapidly increased, the drive to separate Maori from their land intensified, and less care was taken to ensure tribal consensus over sale. Crown land purchase officers would buy from willing sellers, regardless of their right to sell. Those who resisted sale were treated as antagonistic, and the resulting tensions led to confrontations and finally war.

The establishment of settler government did not bode well for Maori society. Most of New Zealand’s early premiers, ministers, and members of Parliament were Wakefieldian settlers, and they had brought their values and beliefs with them. They had come to New Zealand in the 1840s to possess themselves of the soil, and they were now in a position to pass the legislation to ensure that they did. But the Crown’s single-minded determination to extinguish customary native title did not stem simply from a need for land for settlement. A more basic issue underlay the Crown’s actions: a widely-held belief that holding land communally was equivalent to living in a state of barbarism. Communal title was to be replaced with individual Crown grants and Maori were to be civilised through amalgamation with the European population.

After a year of war, and little more than two decades after the signing of the Treaty, the Colonial Office was prepared to allow the New Zealand Parliament to adopt any prudent plan it wished for the individualisation of native title. The Native Lands Acts of 1862 and 1865 abolished Crown pre-emption and allowed individualisation of title and direct sale to settlers. The Native Land Court was charged with

ascertaining title according to native custom, but it was the judges of the court, especially the first chief judge, F D Fenton, who took it upon themselves to decide what constituted native custom. But 'traditional' custom and court-defined custom were not the same thing; where traditional custom was uncertain or inapplicable, it was modified to suit (as in the law on succession), or it was extinguished. The result was confusion and injustice.

It was the kupapa tribes who bore the brunt of the operations of the Native Land Court; they were ill-rewarded for their service to the Crown. Those tribes who had resisted land sale to the point where they were deemed to be in rebellion, lost their land by confiscation and through the activities of the Compensation Court. The same judges reigned supreme in both courts, and in addition to deciding who owned the land according to Maori custom, they also decided who had been in rebellion, and how much land and what land each loyal Maori and returned rebel should have returned to them. In all events, land returned was Crown land; confiscation had extinguished native title. Even in the rare event that land was returned on a tribal basis, native title had been extinguished.

It was all supposedly in the Maori's own best interests; communally held land was a barrier to progress. But talk of it being the duty of colonists to relieve Maori of their wastelands and thus help preserve and civilise them was little more than greed and notions of white racial superiority cloaked in hypocritical rhetoric. There was no altruism in relieving Maori of land; it simply impoverished them and enriched Europeans. Clearly, destroying communal Maori life meant weakening the authority system, the power base, and ultimately rendering Maori landless. At times it was even admitted that this was the aim so they would be obliged to labour for a living. At best each man should hold just as much land as he required for his own and his family's needs, and it should be held on secure Crown title to give individual Maori a stake in society, a reason to abandon their traditional leaders, and cling to the laws and institutions of Britain.

The personalities of governors, ministers, and judges all played a crucial role in the Crown's treatment of customary tenure. There were those like ex-Chief Justice Martin who were truly humanitarian, and who spoke out for justice for the Maori people. But the thoughtful and erudite advice he tendered to various governments over the years went for nothing. Governor Gore Browne called various commissions and committees of inquiry and received abundant advice, but ignored it all when it came to the Waitara purchase. Wakefieldian settlers cast a long shadow in New Zealand, and in the end settler governments and speculator pressure prevailed. Judge Fenton was given a free hand to run the Native Land Court and the Compensation Court as he saw fit. His 1840 rule, his 10-owner system, and his rulings related to the question of succession, were a conscious attack on Maori society. He was out to create a landed class of chiefs and a host of landless labourers. In a 30-year period from 1865 Maori were stripped of their land, communities were divided, and leadership undermined. Ministers confiscated millions of acres of land, supposedly as punishment for rebellion. It is odd that in almost every case the land confiscated was some of the most fertile and highly desirable agricultural land

in the country. When confiscation under the New Zealand Settlements Act 1863 caused more problems than it was worth, other means of extinguishing native title were found. They were no less contentious. There were few means of redress available to the people of Tauranga and the East Coast against the rulings of commissioners appointed to deal with land in their areas.

Within 50 years of the signing of the Treaty of Waitangi, almost the only land remaining to Maori – and not all of that on native title – was marginal, largely remote, and mountainous. Clearly Maori were in no position to create competition for struggling white farmers. Extinguishing native title and facilitating alienation may have satisfied settler demand; but the grievances stacked up through forced purchases, disputed sales, and ‘voluntary’ cessions; and the operations of courts and land commissions were the subject of appeals and petitions and commissions of inquiry for years. To this day most of them remain to be required.

