

The Taranaki Report - Kaupapa Tuatahi

CHAPTER 3

WAITARA, WAITOTARA, AND WAR

They say that to Teira only belongs that piece of land. No, it belongs to us all: to the orphan and to the widow, belongs that piece of land.

Wiremu Kingi, 1859

3.1 ISSUES

Judgement is not taxed to conclude that, whatever the causes of the war, high among them was the Governor's claim to have bought land when those with an interest had not agreed upon a sale. Nor is it necessary to labour the point that the Governor's action in that respect was contrary to the principles of the Treaty of Waitangi. These things have been generally admitted. More difficult to see today is the manner in which the Governor's process affected Maori autonomy. It is with that that this chapter is mainly concerned.

In that respect, while the Crown's attempted acquisition of the Pekapeka block at Waitara is generally seen as having started the war, it is rather to be viewed as the last straw in a purchase process that had been going on for 19 years (as described in chapter 2). It affected mainly the north of Taranaki and, to a lesser extent, the centre, but the underlying issue, the place of Maori authority, applied everywhere. As it turned out, that issue was to be raised as squarely as anywhere else in south Taranaki. This chapter considers that matter. Although it was suggested to us in one submission that the northerners started the war but the south carried the burden, that is not the position as we see it. Had the war not started with Te Atiawa over Waitara, it would likely have begun with Nga Rauru and Ngati Ruanui over Waitotara.

The Waitotara and Pekapeka blocks are depicted in figure 6 and the Waitotara block is shown in more detail in figure 8. The Waitotara block is located in the far south, while the Pekapeka block is in the north, where the town of Waitara now stands.

3.2 BACKGROUND

We now summarise the record before returning to particular parts.

3.2.1 Waitara and Waitotara as prize lands

Though it was untenable, the opinion was still maintained that the settlers had some right to Waitara through the Land Claims Commission's support for the New Zealand Company's purchase. That view was adhered to, even though the commission's

recommendations were rejected and the purchase was disallowed and even though, through buying on the western side of New Plymouth as well, the Government had acquired more land for the settlers than the commission had recommended the settlers should receive. The claim to Waitara was also insisted on, though much of the land then held was surplus to the settlers' needs and was not utilised. In addition, Waitara supported a burgeoning and progressive Maori population, and as Wiremu Kingi had made clear for 15 years, it was their ancestral land and was not for sale. Kingi was a rangatira of significance and his opinion could not have been lightly disregarded. From the settlers' viewpoint, however, the Waitara land was the best and they were entitled to it.

Similarly, in the south, Waitotara was choice land, not too distant from the township of Whanganui, which supported a large Maori population. It had formed part of the New Zealand Company's Whanganui purchase, but in that case, the Land Claims Commission had left it out of the area it had recommended.

3.2.2 Maori authority, pan-tribal policy, and land leagues

Increasingly, however, the issue was more than whether these lands had been formerly acquired. As one commentator put it, with reference to Waitara: 'We seem to be fast approaching a settlement of the point, whether Her Fair Majesty or His Dark Majesty shall reign in New Zealand.'

The issue, in our view, was not which of two groups should rule but how those groups should relate - but at least it was recognised that a question of authority was involved.

After the initial purchases of the Omata and Tataraimaka blocks, Maori in central Taranaki became strongly opposed to further sales. The same position applied in the south; at Taiporohenui, in April 1854, hapu from both central and southern Taranaki gathered in a tribal conclave and resolved to stop land sales. Then, when a three-year war involving sellers and non-sellers broke out in north Taranaki, southern tribes joined the non-selling faction. Finally, the Kingitanga also declared areas where no land sales would occur, and these areas included south Taranaki.

Such broadening collegiality led to settler charges that Maori had formed a 'land league', an illegal combination in restraint of trade. That contention raises questions fundamental to group authority concerning individual rights, group rights, and freedoms of association.

3.2.3 Waitotara

The right of Maori to develop common policy and to have that respected and maintained was an important issue in the Waitotara 'sale'. This was a substantial block, some 40,000 acres initially, bigger than any single block 'sold' in the north and well over half of all Te Atiawa land that the Government had acquired over 19 years. While the Government purported to buy this block from a group of sellers, others were opposed, including a group who were absent, assisting the non-sellers in the north. Given the policy decision at Taiporohenui, of which the Government was aware, the Government's action was provocative, challenging the right of Maori to decide matters relating to their land through processes of their own. Despite the

Taiporohenui resolution, the Government recognised the title of a handful of sellers but, because they were only a few, held off from claiming a final purchase in the expectation that more signatures would be secured later. More signatures were secured in 1863, during the course of the war, and the Government claimed to have purchased the land. Thus, as in the case of Waitara, the Government process was that the Government alone could decide who owned Maori land and that it could deal privately with a few, and not publicly with all.

3.2.4 Waitara and war

At about the same time that the Government first moved to buy Waitotara, a selling faction offered Waitara for sale and the Government's focus shifted there. The same questions arose: could the Government determine who in the hapu held the interests in Maori land or was that a matter for the hapu? Was the Governor entitled to deal with particular individuals or was he bound to treat openly with all?

In Waitara, the Government once more changed the rules. Previously, it had presumed to know who held what, and sellers were generally assumed to be the owners of the whole. On this occasion, that could not be done at first because Wiremu Kingi, a major rangatira, was opposed, so the Government declared it would simply buy the sellers' share. The issue of authority, however, was still the same: did the Government have the right to deal with individuals and not with the tribe? In the end, the new tactic did not apply. The Government came to the view, which was preposterous at that time, that the selling faction owned all or, conversely, that Wiremu Kingi had no interest; and on that basis, Waitara was considered to have been acquired.

To prevent the sale, Kingi obstructed the survey of the land. Troops were brought in, Kingi was attacked, and the war began. It must have been obvious that if Waitara could be taken that easily, despite the opposition of a major rangatira known as a former Government ally, Waitotara and other places could not be far behind. On that basis, the southern tribes could have had no option, if they wished to keep their land, but to oppose the Governor in the war. This, they did. For his part, Kingi adopted the politics of the southern tribes, calling upon a larger collectivity for support by placing his lands under the mana of the Maori King.

For each block, the outcome was the same, though different methods applied. Thus, when it was later admitted that Kingi did have an interest in the land, the claim to the Pekapeka block by purchase was abandoned, but it was then confiscated on account of the war. In the Waitotara case, the process was the reverse. The land was confiscated because the initial purchase was not seen to be complete and the confiscation was then abandoned when it was considered that a purchase had been made. Confiscation or purchase, the result was the same.

3.3 AUTHORITY AND UNLAWFUL COMBINATIONS

It was not Wiremu Kingi who brought the issue of Maori autonomy to a head. It was mainly the concerns of central and southern hapu to prevent further alienations and

settler allegations that the developing common policy was evidence of an unlawful combination.

After the alienation of Omata and Tataraimaka in 1847, further efforts to acquire land in central Taranaki were stymied. In 1849, an advance payment for land between those blocks came to naught, because of the vehement opposition of Nga Mahanga, one of the central Taranaki hapu.

The same opposition was experienced in the south. There, Ngati Ruanui and others had actively seized market opportunities for their produce and had invested their takings in flour mills, horses, and cattle and were wary of selling land. Indeed, Ngati Ruanui would not even sell land to the missionary William Woon for a mission station.

Accordingly, when McLean and Cooper went to Patea in September 1852 seeking land, they found the people fully determined not to dispose of any of their lands, having made a 'solemn compact' not to sell to the Government.

Settler rumour-mongering, with some official support, converted this news of Ngati Ruanui opposition into the existence of a pan-tribal land league. In February 1854, McLean visited the Taranaki hapu and wrote:

a league . . . has been entered into by the Ngatiawa, Taranaki and Ngatiruanui tribes, by which they have solemnly bound themselves and each other to put a stop to all sales of land to the North of the Bell block, or South of Tataraimaka; and . . . in order to give greater solemnity to the covenant, and by way of rendering it as binding as possible on the parties, a copy of the Scripture was buried in the earth with many ceremonies, thereby, as it were, calling the Deity to witness the inviolability of their compact.

A hui in the great house of Taiporohenui, some 120 feet long, at Manawapou in April 1854 seemed to lend substance to the rumours. It was resolved not to sell any more land between Okurukuru on the southern border of the Omata block and Kai Iwi, a huge area taking in all Taranaki south of New Plymouth not previously alienated. Hosted by Ngati Ruanui, some 500 to 1000 people throughout Taranaki and beyond are said to have attended, though there is some opinion that Wiremu Kingi was absent.

The hui was seen as an attempt to unite the tribes against land selling. Cooper, who did not attend, wrote afterwards of an 'anti land selling league' having been ratified at several recent meetings, though he also claimed to have evidence that it was 'breaking up'.

Further, when fighting erupted in north Taranaki and Ngati Ruanui became involved, it was thought the so-called 'Taranaki Land League' had spread there. The fighting, mainly within Puketapu, lasted for three years from 1854, with Ngati Ruanui maintaining a presence throughout that time. As one prominent Taranaki settler and politician put it:

Of late there has been formed a League amongst various tribes on Cook's Straits for resisting further alienations of land to the Europeans. This is the great bond of union between Wiremu Kingi, Katatore and the Ngatiruanui. Rawiri was sacrificed because he had rebelled against the League. You will understand it is a Combination . . . not to protect the tribes in the exercise of their admitted right to retain their lands, but to coerce those who are desirous of selling.

Wiremu Kingi was regularly described as masterminding the matter, but we have found no record of his involvement. The evidence is rather that Kingi eschewed disputes not immediately affecting him.

The Puketapu feuding appears to have arisen from the sale of the Hua block in 1854, from subsequent advances on purchases and competing offers, and from personal animosities. At the beginning, Katatore invited Ngati Ruanui to assist him against his enemies. The engagement of others from a distance to do battle on one's behalf was common among Maori, the practice having as one of its purposes the limitation of the cycle of utu within kin. Prominent in the other camp was Ihaia Te Kirikumara, a former prisoner in Waikato, who sought to recover a leadership by selling land and aligning himself with the Government.

In 1858, however, after Ngati Ruanui had left, Katatore and his party were slain following a conciliatory feast hosted by Te Kirikumara. The subsequent outcome was indicative of the settlers' predisposition. Those Maori opposed to sales, including Kingi, were regularly portrayed as the instigators of trouble and as murderers, and it was often demanded that they should be arrested for their offences. Te Kirikumara, however, was a seller, and notwithstanding his apparent treachery in the murder of Katatore and his party, he was sheltered and treated at New Plymouth hospital. None the less, the image of Kingi as the leading figure in a murderous league determined to stop honest persons from exercising their right to sell was conveyed to a new Governor fresh from Britain and influenced his eventual decision to launch an attack on Kingi's pa.

There was further evidence of a combination of some sort in the selection of a Maori King. During the fighting in north Taranaki, a hui at Pukawa on Lake Taupo in 1856, called as part of the King selection process, marshalled opposition to the sale of land. The hui declared a large part of the central North Island as an area where land would not be sold, and presumably because of the tribal representation there, the prohibition was extended as far as southern Taranaki. Following the induction of a King in 1858, Kingitanga emissaries maintained visits to south Taranaki to keep this kaupapa. Inevitably, however, there were individuals who, in seeking to assert the authority they believed was their due, would prove their power by selling land. Thus, the crucial question was raised: could the Governor treat with individuals acting contrary to positions collectively resolved?

The perceived illegality of combinations in restraint of trade, and the imagining of a Taranaki land league in that category, flowed from an ideology then in vogue in Britain that elevated individual rights to trade above all else. This applied to the extent that even trade unions were then unlawful. A Taranaki land league was thus presumed to exist as an unlawful cartel preventing honest individuals from selling.

The existence of a cartel in that form, especially one that portrayed Wiremu Kingi as its principal founder, was a figment of the imagination. A policy against land sales did exist, however, and was apparent in tribal meetings from as early as the FitzRoy block sales. Support for the policy had spread geographically, and attempts were increasingly made to develop it at pan-tribal levels. The policy, as we see it, was antagonistic not to settlement as such but to the manner in which the Government was giving effect to it. It could only have seemed that, unless the Government were to regard the Maori groups as equal bodies, it would take, by whatever means it could, all that could be taken. It could also only have seemed that Maori would have to combine if they were to achieve the relationship with the Government that was sought.

Accordingly, the issue is not whether the rule against restraint of trade was right or wrong but whether it applied in the circumstances. For one thing, it assumed the land was the individual's to sell, when in Maori terms it was not. Maori were members of hapu, which, like other associations, had rules and policies binding on members, which rules and policies were reasonable and necessary. A rule constraining individuals from selling hapu land was reasonable in Maori terms. It did not abrogate a right, because no right of private alienation had ever existed. It was also needed to maintain the integrity of the hapu, because a hapu could be destroyed if even part of its land was sold without general agreement. This rule was consonant with custom. There was no restraint on trade as such, only a constraint on process.

Similarly, all peoples have the right to restrain land sales by their individual members. While individual liberties are important, it is the right of any State, for example, to prevent the sale of land to outsiders without State approval. There is still a statute to this effect in New Zealand.

It further appears to us that, although pan-tribal policy making had not previously been regular before the arrival of Europeans, that was only because it had not previously been needed. Moreover, there was no rule that could prevent Maori from forming large associations. Freedom of association and the freedom to form combinations at any level are the inherent rights of peoples. The settlers were exercising those rights all the time.

These things are comprehensible in terms of the Treaty of Waitangi. Rules constraining individual members, expectations that those rules will be respected by third parties, and rights of pan-tribal association are all aspects of the authority, autonomy, or rangatiratanga that the Treaty guaranteed.

In brief, the depiction of a Taranaki land league both distorted the facts and invoked a wrong principle.

3.4 THE KINGITANGA

The Kingitanga was demonstrative of the Maori right to combine. No one understands the wars and confiscations who does not also see the centrality of the Kingitanga in the relevant events, the significance of the symbolism it evoked, or the burden that it bore for the Maori people.

The Kingitanga represented the right of hapu to retain their own land or to agree to its alienation only in accordance with their own rules. Alarm had arisen throughout the North Island over the extent of land loss among Maori at the forefront of settlement and the amount of land 'sold' without full approval, understanding, or agreement. It was proposed by Maori from throughout the north that lands could be placed under the King's mantle, in the same way that all the land in England is seen to come from the King, to prevent a recalcitrant few from alienating the patrimony of their people and to require alienations by tribal process. We understand this idea was not entirely new - the placing of lands under the mana of another to secure greater strength having previously been practised.

The Kingitanga also epitomised the need for a tribal land base: the retention of a turangawaewae sufficient for each hapu. The King's marae at Ngaruawahia, being named 'Turangawaewae', or a permanent place to stand, gave expression to this sentiment.

It was also apparent that, were settlement to continue as previously, Maori would be not only landless but outnumbered, as indeed they were by 1860, and their tribal authority would be subsumed. The Kingitanga also symbolised the maintenance of tribal authority. Accordingly, it appears to have represented not the authority of the King over others but the independent authority of the people, as symbolised by the King. The expression used at the time was 'te mana Maori motuhake', or the independent authority of Maori. These words were emblazoned on the King's crest.

Because of this threatened loss of land and power, Maori began a long process of discussions, which culminated in the selection in 1858 of one of their ariki, Potatau Te Wherowhero of Waikato, as King. The concepts appear to have come from Tamihana Te Rauparaha and Matene Te Whiwhi of Otaki in about 1853 and the drive from Wiremu Tamehana, 'the kingmaker' of Matamata. The discussions began at Taiporohenui in Taranaki. A decision in principle was made at Pukawa, Taupo, in 1856, and the mantle, or the burden as it might better be called, passed to Waikato. Certainly, not all the tribes were involved and some kept their distance, but the extent of concern is apparent in the fact that so many were involved and could agree, when earlier some had been arch-enemies (like Taranaki and Waikato).

Accordingly, the Kingitanga was at once a new innovation and an extension of old values, a necessary development to deal with new variables that the old order could not control. Of even greater significance was the essential symbolism. It was not just that the Kingitanga stood for the right of hapu to retain their land and authority. It presaged especially of a partnership between Pakeha and Maori, where both could have a place and be respected. The Kingitanga was not anti-Pakeha, as those threatened by the thought of power-sharing often said. Rather, it demonstrated an essential difference between Maori and colonial Pakeha thinking, the latter being that unity comes from conformity, the former, that it comes from acknowledging differences and respecting them. Thus, the image given by Maori of the time was of 'the [Maori] King on his piece; the Queen on her piece, God over both; and Love binding them to each other'. Likewise, a new meeting house was envisaged, the rafters on one side being Maori, those on the other Pakeha, with God as the ridge-pole supporting both in the middle, and the house being called New Zealand. Few things could so represent the consistent Maori position, as it was then and for the most part

has since been, that there must be a place for Pakeha and a place for Maori as well, but with a common commitment to the national wellbeing.

While the Kingitanga symbolised these things, the Treaty of Waitangi stated them. The right of Maori to retain their lands and authority was Treaty guaranteed; and although it took some time, it was eventually recognised in the New Zealand Court of Appeal that the Treaty foreshadowed a partnership. Thus was the Kingitanga an affirmation of the Treaty's terms.

At the time, however, there was no mood to understand the Kingitanga message. Anything that might restrict the ready acquisition of Maori land was likely to incur settler opposition; while, for contemporary administrators, like Governor Sir George Grey, the sharing of power was unthinkable.

3.5 THE ACQUISITION OF WAITOTARA

In the opinion of General Cameron during the wars, the acquisition of the Waitotara block was 'a more iniquitous job than that of the Waitara block'. The general had become increasingly disturbed by what he saw as the task expected of him: the defeating of Maori in order to satisfy the colony's 'profit and gratification'. When he was sent to recover Waitotara, and on becoming informed of the 'true history' of

Map 8: The Waitotara block

the purchase, as he put it, Cameron, the commander of the Imperial forces in New Zealand, finally resigned in protest. Several of his officers felt the same way. The land was acquired from Maori 'who had not the smallest title to the land', one officer claimed, adding, 'This is what we are here for, to eject the lawful owners from the land they did not wish to sell; and for this England is spilling her best blood!'

The difficulty for us is that, in the subsequent war of words, there is much assertion but little 'true history' to be found, whether on the part of General Cameron or his officers or on the part of the Governor. The details of the transaction are set out in a lengthy research report, with supporting documentation, which tells of substantial complications. From this, we have formed some opinions, which are set out below.

The first is that, irrespective of who had interests in the land, there had previously been a consensus at a general tribal hui at Manawapou in 1854 that this land, and the land extending beyond it to Kai Iwi, was not available for sale. In May 1859, however, Hare Tipene and 13 others, whose land interests could not have been exclusive, were paid £500 as a deposit on the land. The receipt for this instalment promised that the sellers would receive the balance, an unspecified amount, when the survey was complete. It was recorded in the receipt, however, that 'our having received this money is a guarantee of the cession of this land to the government'. Later, Tipene and some other sellers sought to avoid the transaction in the light of several objections. It was demanded that Tipene repay the deposit, which he was unable to do because he had dispersed the money, or that he proceed, which he was not willing to do. The receipt was then relied upon to claim that the transaction could not be set aside. It was added that those of the tribe who had imposed the restriction

on sales were not the owners of this land. To us, however, that is not the point, even assuming it were true. The question is whether those at the hui were competent to settle upon a tribal policy binding upon the 'owners' in the district and whether there was a general tribal interest in particular pieces of land.

Secondly, for various reasons, including the involvement of the local hapu in the war in the north and delays over surveying reserves, the completion of the transaction was deferred until 1863. In the interim, numerous other Maori claiming interests registered their opposition to the deal. Further, many of Nga Rauru who might have claimed an interest or tribal rights were away, having still to return from the fighting at Tataraimaka. None the less, another Crown agent resumed negotiations in 1862, trying to reduce the price and the size of reserves. Unable to come to an agreement with Tipene, the Crown agent dealt with another group, headed by Rio Haeaterangi and Piripi Rai Rauhata. They and 30 others signed an agreement to sell the block for an additional payment of £2000 on 4 July 1863. The sale was concluded despite the objections of Tipene and others; but the sale did not resolve matters because the objectors prevented the occupation of the land by the settlers. It was then that the army was brought in.

Government doubt as to the effectiveness of the Waitotara purchase is apparent from its subsequent conduct. Not willing to rely on purchase alone, the Government confiscated the land in 1865, and the block was not excluded from the confiscations, as the Crown-purchased lands of central and northern Taranaki were. It was only later, when Whanganui allies of the Government contended that the land to the Waitotara River was theirs and was wrongly confiscated, that the confiscation was abandoned and the Government claimed the right to Waitotara by purchase.

We are of the opinion that the acquisition was contrary to the principles of the Treaty on the grounds of insufficient agreement and lack of tribal process. It is also apparent that those who signed the final deed could represent only a small proportion of Nga Rauru who had interests, quite apart from those of Ngati Ruanui and Whanganui who also appear to have had tribal associations that constituted interests at Maori law.

We see no reason to dwell at length on several other concerns mentioned in the research report other than to say that, in addition, the record implies that the area to be sold, the price to be paid, and the reserves to be set aside were not generally agreed upon, even by those who were in fact parties to the deal, but instead the final terms and conditions were largely imposed.

As to the reserves, once again the lack of adequate measures to ensure their protection is evident by the eventual result. Eight reserves, totalling 6713 acres, were created, but the Native Land Court then reshaped their terms of tenure so that group control was lost, and today only 1305 acres, less than 20 percent, remain.

3.6 WAITARA

No sooner had some peace been made to end the three years of Puketapu fighting in 1857 than one of the combatants, Ihaia Te Kirikumara, offered to sell lands at Waitara and at Turangi, further to the north. His relation Pokikake Te Teira did the same, but

owing to the opposition of Wiremu Kingi and even of Te Teira's father, Te Raru, those offers were not pursued at that time.

Responsibility for the Waitara problem (that is, the settlers' anxiety to 'recover' that which Kingi would retain) now rested with Colonel Thomas Gore Browne, who had replaced Grey as Governor in 1855. Browne lacked Grey's knowledge of Maori language and culture and was more reliant on the advice of his officials. His resolve to secure Taranaki lands for settlement was no different from Grey's policy, but his decision to challenge Kingi and to push the purchasing into Waitara was probably due more to bad advice than to his own assessment.

Settler opinion was undoubtedly influential. In their eyes, Kingi was the leader of a land league and was not only intransigent but acting unlawfully. Because deaths had resulted from the Puketapu feuding between sellers and non-sellers, by implication he was also an accessory to murder.

Initially, the Governor was cautious. In 1856, he appointed a board to inquire and report, inter alia, on the nature of customary tenure and the rights of individuals in relation to the group. Although today's scholars would refine some of the board's conclusions, its main advice on the interplay between the individual and the group was correct in substance, if not detail, and the real concern is that the Governor did not heed it.

In the board's view, it was the 'tribe' that had the only authority to dispose of land, and while the individual had certain possessory rights, 'there is no such thing as an individual claim, clear and independent of the tribal right'. The Governor's alternative policy of favouring individual sellers against tribal representatives went against this finding and led to war.

The Governor's first visit to Taranaki on 8 March 1859 was eventually to bring this issue to a head. Speaking to a mixed audience of settlers and Maori at New Plymouth, he announced a policy but then, within a few days and to Maori confusion, changed it. He initially announced that:

- (a) any person committing violence or outrage within 'European boundaries' would be dealt with under the criminal law; and
- (b) he would not buy land with a disputed title and 'would buy no man's land without his consent'; but
- (c) he would allow no one to interfere in the sale of land, 'unless he owned a part of it'.

Because of later events, it is the second item, that the Governor would not buy land that was in dispute, that has most to be remembered. Wiremu Kingi was later to remind the Governor of this undertaking when he proceeded to buy the Pekapeka block while a dispute was unresolved.

The reference to 'European boundaries' in the first item was also significant. It needs to be clear that, at the time, both Maori and the Government thought in these terms; that is, that some land was European land and some land was Maori land. Even in Britain, matters were seen that way, and by section 71 of the New Zealand

Constitution Act 1852 (UK), the Governor was authorised to declare Maori districts where Maori law would prevail. As shall be seen, this acceptance of distinctive areas was to become significant during the war. At the height of hostilities, and in demonstration of their 'right', Maori were cautious to ensure that their own attacks were conducted on Maori land, where soldiers were trespassers, and to take careful note when soldiers erected stockades or effected manoeuvres on other than the 'Europeans' land'. In Maori law, where aukati, or demarcation lines, were usual devices for the management of war, armed trespass across the line was an act of aggression that justified retaliation.

Soon after the Governor had spoken, Te Teira, a co-resident with Kingi on the Pekapeka block at Waitara, offered the block for sale. According to the translation in the *Taranaki Herald*, Te Teira said that:

he was anxious to sell land belonging to him, that he had heard with satisfaction the declaration of the Governor referring to individual claims, and the assurance of protection that would be afforded by his Excellency. He minutely defined the boundaries of his claim, repeated that he was anxious to sell, and that he was the owner of the land he offered for sale. He then repeatedly asked if the Governor would buy this land. Mr McLean on behalf of his Excellency replied that he would. Te Teira then placed a parawai (bordered mat), at the Governor's feet, which his Excellency accepted. This ceremony, according to Native custom, virtually places Teira's land at Waitara in the hands of the Governor.

It appears to us that Te Teira and the reporter of this conversation were not of one mind. There was no part that Te Teira could call his own, so the description he gave could not have been of his own land. It was more likely a description of the whole block (or larger, in the usual Maori way), in which he was one of many with an unpartitioned interest. We think it is actually doubtful that Te Teira intended to offer the whole block, but consider he was speaking only for his undivided interest. Three days later, he sent a letter to the Governor suggesting he was selling an undefined interest in the block and that it was not necessarily large. He wrote, with typical Maori imagery where the whole speaks for the part:

Friend, it is true I have given up Waitara to you; you were pleased with my words, I was pleased with your words. It is a piece of land belonging to Retimana and myself, if you are disposed to buy it never mind if it is only sufficient for three or four tents to stand upon, let your authority settle on it . . .

Later, the matter became distorted into an assumption that Te Teira and his followers were the owners of the whole block. At the time of the meeting, however, the Governor consulted his advisers and announced he would accept Te Teira's offer, provided that Te Teira could prove his title. Kingi was present and recorded a brief objection:

I will say only a few words and then we will depart . . . Listen, Governor. Notwithstanding Teira's offer I will not permit the sale of Waitara to the Pakeha. Waitara is in my hands, I will not give it up . . .

Kingi left, in the Governor's words, 'with some want of courtesy to myself'.

Te Teira's motives in selling are not clear. It has been conjectured that he sold from personal animosity. Archdeacon Williams, Archdeacon Hadfield, and E Shortland each considered that Kingi had sheltered a girl whom Te Teira had abducted to marry to a relative and that Te Teira had vowed revenge by selling the land of the hapu. J Cowan recorded Maori opinions that Te Teira sought revenge for his relative Ihaia Te Kirikumara, who had earlier endeavoured to sell Waitara and who had other unrequited grievances. Te Teira had returned to Waitara as an insignificant member of Kingi's heke in 1848. He supported Te Kirikumara in the Puketapu feuds. Domestic incidents may obscure deeper frustrations, however, and a hidden ambition to wrest the leadership from Kingi by aligning with Pakeha cannot be discounted.

Three days after the meeting with the Governor, a deputation of settlers persuaded the Governor to change his mind about buying disputed land and to prefer Te Teira on the basis that the individual right to sell was paramount. At heart were questions of representation and the relationship between the individual and the group, but if the Governor had begun well in having those issues impartially examined by the Native Affairs Board, he was now about to discard the board's opinion. The Governor was urged to individualise Maori titles generally in order to destroy the tribal system and break the land league that Kingi allegedly supported. Earlier, Taranaki and other settlers had promoted the Native Territorial Rights Bill to individualise Maori land. This had been enacted in 1858 but was later disallowed by the Imperial Government, and now the settlers were proposing the policy once more. The Governor was convinced. He considered 'the surest remedy for existing evils was to prevail upon the natives to individualise their claims and obtain crown grants for their lands', directed the survey of 'Teira's piece' as though it were legitimately severable, and ordered negotiations for the identification of each person's part. This was now a radical departure from the previous practice of total block buying. (b) As matters turned out, the whole of the Pekapeka block was to be surveyed and acquired.

Both in terms of Maori law and in terms of providing an economic unit for European settlement, 'Teira's piece' was a figment of the imagination. It was impossible to cut it out. The land was jointly occupied by Te Teira, Kingi, and others. Kingi had separate pa on the land surrounded by numerous kainga. Near to the pa was a patchwork pattern of cultivations, in which, in the usual Maori way, families held several small plots throughout a horticultural mosaic, none of which constituted a sizeable, sellable unit. Kingi's 'pieces' and Te Teira's 'pieces' were intertwined. Beyond the cultivations, all was held in common. So strange was this notion of individual pieces that there was no Maori word for it. Officials used 'pihi', a transliteration of 'pieces'.

McLean did not return to Taranaki before the outbreak of the Waitara war, more than a year later. Instead, he went to Queen Charlotte Sound, Nelson, Wellington, and the Kapiti coast to have the Taranaki Maori there sign a deed. It was now convenient to recognise the absentees in the expectation that their signatures to a deed would 'very much weaken the opposition of Wm King and others' to the sale. Once more, it was an attempt to divide and rule but no one signed the deed that was presented. Thereafter, McLean still did not return to Taranaki; he went to Hawke's Bay, where he sought to facilitate the Pekapeka purchase by correspondence. On 18 March, he wrote to Kingi, Wiremu Ngawaka Patukakariki, and 'nga tangata katoa o Waitara', asking them to point out:

your pieces of land which lie in the portion given up by Te Teira to the Governor. You are aware that with each individual lies the arrangement as regards his own piece; in like manner Te Teira has the arrangement of his piece.

With McLean absent, it was left to Robert Parris, the Crown purchase agent in Taranaki, to attempt to complete the Waitara purchase. Te Teira complained that Kingi and the others would not agree to mark out 'their own pieces of land without our line'. Parris was instructed to reassure him that:

The Governor consents to your word, that is, as regards your own individual piece, but be careful that your boundary does not encroach upon the land of any person who objects to sell . . . consent will be given to the purchase of land that belongs to yourself.

Another letter was addressed to Kingi:

The Governor has consented to his [Te Teira's] word, that is, as regards his own individual piece, not that which belongs to other persons. The governor's rule is, for each man to have the word (or say) as regards his own land; that of a man with no claim will not be listened to.

Te Teira and Kingi replied to these letters. Te Teira said:

The land that I and Richmond consented for you to have, belongs to myself, Richmond, Hemi Watakingi, Paranihi, Rawiri, my father Thomas, and Nopera. It belongs to all of us . . . the seven consent to our offering it to you . . . I am not rashly interfering with other people's land, the land is ours.

Te Teira urged the Governor to settle for the land at once.

Kingi, aware that Te Teira had asked for payment, wrote a few days later:

I will not agree to our bedroom being sold (I mean Waitara here), for this bed belongs to all of us; and do not you be in haste to give the money. If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it . . . All I have to say to you, O Governor, is that none of this land will be given to you, never, never, till I die. I have heard it is said that I am to be imprisoned because of this land. I am very sad because of this word. Why is it? You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.

The correspondence went to the core of the Waitara problem. The Governor would break tribal opposition to land sales by promoting the right of individuals or individual whanau to sell their 'piece' of land in defiance of rangatira responsible for the collective interests of all. Maori tenure recognised individual whanau rights of occupation and use centred on kainga, cultivations, and resource sites, but any admission of strangers that might prejudice the integrity of the group, as might occur on the sale of part, required communal sanction at a hapu or even wider level. This 'tribal right', as it was then called, was known at the time and had been spelled out in the 1856 report of the Board of Native Affairs.

The different views of Kingi and Te Teira became more evident as the crisis grew, which developed because the Governor forced the issue. Reporting to the Colonial Office after the March meeting at New Plymouth, he wrote:

progress has been made in ascertaining Teira's right to dispose of the land (of which there seems to be little doubt), and, if proved, the purchase will be completed. Should this be the case it will probably lead to the acquisition of all the land south of the Waitara river, which is essentially necessary for the consolidation of the province, as well as for the use of the settlers.

It is also most important to vindicate our right to purchase from those who have both the right and the desire to sell.

. . . I have, however, little fear that William King will venture to resort to violence to maintain his assumed right; but I have made every preparation to enforce obedience should he presume to do so.

By so gravely misinterpreting Maori law and Kingi's determination to uphold it, the Governor was expediting the crisis he would avert. Throughout, however, he was misadvised and misinformed. The Crown purchase agent, for example, purveyed the view that Kingi had no possessory interest in the land, omitting to advise the Governor that Kingi and some 200 of his followers lived there. It is clear that the agent knew of this, because he had earlier claimed that Kingi had returned to live at Waitara only with Te Teira's permission. This opinion was spuriously based on advice that, on his return from Cook Strait, Kingi had waited on Te Teira before occupying the land. In fact, however, Te Teira had accompanied Kingi. Kingi was returning to his father's pa and cultivations and had no need to seek Te Teira's permission to settle there. The point, however, is that the agent obviously knew of Kingi's residence on the land, but he reported only that Kingi was simply dictating 'authority over [the] land'. Accordingly, the Governor was to assume that the question was whether Kingi had the right to exercise a chiefly veto, when that was not the question because Kingi had an interest in possession.

Kingi refused to point out his 'piece'. He could not have done otherwise. It is helpful to understand the attributes of rangatira to appreciate why this should be so, but it is not practicable to explain that immediately. Suffice it to say for the moment that the rangatira were not merely the leaders of the people - they were the people. They were inclined to use 'I' where others would use 'the people' or 'we'. They owned everything and yet might claim nothing personally. They were entitled to be first and yet might put the least within the tribe ahead of themselves. They placed importance on honour and were keen to honour others but were most insistent on maintaining their own. As part of keeping honour, they would not demean themselves by doing less than was expected of them. As the name 'rangatira' implies, their primary function was to unite the people as one body. In our view, Wiremu Kingi was the epitome of a rangatira. It was not possible for him to countenance a division of the land or to accept that one person could take unilateral action to the detriment of any others.

Perhaps not appreciating the cultural sensitivities, the Crown agent complained that Kingi, 'full of dogged obstinacy' and 'assuming the right to dictate authority over the land', would not or could not point to his part. The Governor replied:

If Mr Parris is satisfied that Teira and the others who offer to sell have an indisputable title to the land, an advance should be made to them at once in part payment for it. They should, however, be told that the purchase will not be completed until Mr McLean reaches Taranaki.

The agent was thus authorised to make an 'immediate advance' once he was satisfied that the 'parties offering it, have an indisputable title'. After waiting in vain for McLean to arrive, he eventually made a deposit on 29 November 1859, having duly announced it beforehand. The ceremony took place in New Plymouth, in the presence of both parties to the dispute and several settlers. The agent read out the boundaries of the block and promised that anyone who had land within it ('his own strip of cultivation ground') and did not want it to be sold would have it 'distinctly marked off and his portion left to him'. It was added that, when the boundary lines had been cut and the price fixed, the remainder of the payment would be handed over.

The agent then recorded his questions to Kingi and Kingi's responses:

Q: Does the land belong to Teira and party?

A: Yes, the land is theirs, but I will not let them sell it.

Q: Why will you oppose their selling that which is their own?

A: Because I do not wish for the land to be disturbed; and although they have floated it, I will not let them sell it.

Q: Shew me the justness or correctness of your opposition?

A: It is enough, Parris, their bellies are full with the sight of the money you have promised them, but don't give it to them; if you do, I won't let you have the land, but will take it and cultivate it myself.

Leaving aside the self-serving opportunities presented to the Crown agent, and assuming the faithfulness of his transcript and translations, in cultural terms the answers support Kingi's position. As a rangatira, he excluded no one. He included Te Teira and his party and he claimed nothing for himself, because, as rangatira, all that he had was the people's. It is instructive, then, to compare those responses with that which Kingi put in his own hand. His confusion and anger over the Governor's perspective, which could only have been incomprehensible to him, and his expectation that the Governor would adhere to his original undertaking not to buy disputed land are evident in his letter to Archdeacon Hadfield:

Father, hearken, this is to ask you to explain to me the new system of the Governor; I heard it from Mr Parris when I went to town to close (stop payment of) the money of the Governor, the payment for Waitara, one hundred pounds . . . I said to that Pakeha, 'Friend, keep away your money.' That Pakeha said, 'No' . . . I also said to Mr Parris, disputed land the Governor does not desire. That Pakeha replied, 'That was some time ago: now this is a new system of the Governor's.' From what I know (in my opinion) the Governor is seeking a quarrel for himself, for he has fully exhibited death. I therefore ask you to explain it to me, perhaps you have heard of the Governor's new

system . . . insisting upon disputed land and unwarrantably paying for disputed land, which has not been surveyed. Do you hearken. I will not give the ground. If the Governor strikes without cause, then death, then he will have no line of action (tikanga) for this is an old word, 'man first, the land next.' My word is therefore spoken, that you might distinctly hear what my offence is, and also the error of all the Pakehas, of Mr Parris, Mr Whitely, and the Governor.

He then emphasised, by metaphorical reference to the most needy of his hapu, the nature of communal ownership:

They say that to Teira only belongs that piece of land. No, it belongs to us all: to the orphan and to the widow, belongs that piece of land.

Feelings ran high as events moved to war. Even prominent settlers were expressing views that Kingi should be surrounded, deported, and, if he fired one shot, hanged. Te Teira insisted that the Governor 'consummate the marriage', writing on 19 January 1860: 'We are sad because our marriage with this woman [is] being deferred so long.' A week later, the Governor gave instructions that the survey proceed, that Kingi be informed 'indirectly, but not officially' when it would start, that the surveyors be protected by an adequate military force, and that the senior military officer be authorised to declare martial law. Once the survey was complete, the military were to keep possession of the land to prevent any occupation. The Native Minister instructed that, were the survey to be interrupted, the surveyors were to retire, the military were to occupy the land, and the survey was to then be completed under military protection. The Crown agent had discretion as to when to pay the balance purchase moneys.

The Crown agent kept Kingi informed, seeking again that he disclose the pieces in which he was interested. Kingi responded, 'I will not consent to divide the land, because my Father's dying words, and instructions were, to hold it.'

There is no evidence that Kingi wanted war. The evidence is rather that, while the Crown prepared for military operations, Kingi attempted to avert any fighting. On 20 February, three surveyors sought to survey the external boundaries of the block, but some 60 to 80 of Kingi's people, unarmed and mainly women, refused to let the survey proceed. Colonel Murray then sent an ultimatum:

William King, it has given me much pain to hear from Mr Parris that the Government surveyors sent down to survey the land purchased from Te Teira were stopped by your people. This is rebellion against the Queen. I am most anxious that no harm should come to any Maoris caused by your conduct; but I must tell you plainly that the Governor has ordered me to take possession of the land with the soldiers, and I must obey him if you continue in opposition. As I wish to keep everything peaceable between the Europeans and the natives, I will wait till 4 o'clock to-morrow afternoon, for your answer, whether I am to go or not.

Kingi replied:

Friend Colonel Murray, salutation to you in the love of our Lord Jesus Christ . . . You say that we have been guilty of rebellion against the Queen, but we consider we have not, because the Governor has said he will not entertain offers of land which are

disputed. The Governor has also said, that it is not right for one man to sell the land to the Europeans, but that all the people should consent. You are now disregarding the good law of the Governor, and adopting a bad law. This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and Maories. Listen; my love is this, you and Parris put a stop to your proceedings, that your love for the Europeans and the Maories may be true. I have heard that you are coming to Waitara with soldiers, and therefore I know that you are angry with me. Is this your love for me, to bring soldiers to Waitara? This is not love; it is anger. I do not wish for anger; all that I want is the land. All the Governors and the Europeans have heard my word, which is, that I will hold the land. That is all. Write to me. Peace be with you.

Colonel Murray then declared martial law. The Maori text of the proclamation read:

HE PANUITANGA. Na Te Kawana, Colonel Thomas Gore Browne, Tino Rangatira, aha, aha, na te Kawana o tenei Koroni o Niu Tireni tenei Panuitanga. Ko te mea, meake ka timata nga Hoia o Te Kuini ta ratou mahi ki nga Maori i Taranaki, e tutu ana, e whawhai ana ki te te Kuini mana - Na, ko ahau tenei ko Te Kawana, te panui te whakapuaki nui nei i tenei kupu, Ko te Ture whaw[h]ai kia puta inaianei ki Taranaki, hei Ture tuturu tae noa ki te wa ka panuitia te whakarenga.

Of some interest is the use of 'tino rangatira' for 'governor', an awkward slip of the pen, because 'tino rangatiratanga' was precisely that which the Treaty of Waitangi had guaranteed to Maori.

The English translation of the operative clause was:

. . . Whereas Active Military operations are about to be undertaken by the Queen's Force against Natives in the Province of Taranaki, in arms against Her Majesty's Sovereign Authority, Now I, the Governor, do hereby PROCLAIM and DECLARE that MARTIAL LAW will be exercised throughout the said Province from publication hereof . . . until the relief of the said district from Martial Law by public Proclamation.

It should be noted that, as a matter of law, a formal proclamation of martial law is not necessary for the exercise of martial law powers. The exercise of power by the military may be undertaken whenever a state of war in fact exists. In this case, the proclamation has more the character of a notice of Crown attack. The statement that Maori were 'in arms against Her Majesty's Sovereign Authority' is singularly unsupported by the evidence.

The Maori text, however, especially reads as a declaration of war. Maori were accustomed to settling the rules of war prior to battle, and 'martial law' had been rendered as 'Ko te Ture whawhai kia puta inaianei ki Taranaki', so that the document proclaimed 'the law of fighting now introduced to Taranaki'. Indicative of Maori expectations was the consequential withdrawal of women and children from the disputed area.

A deed of purchase for the Pekapeka block was executed on 24 February with 20 Maori signatories of Te Teira's family. It appears that, because no one else identified their 'pieces', Te Teira and the other signatories were accepted as owners of the whole.

Boundaries were listed but no reserves were mentioned. A payment was made, the deed reciting the price as £600, and the Crown assumed that title had passed hands. Three years later, a new Governor was to admit the error, declaring the Government was unaware that Kingi was a part-owner and lived upon the land, but by then the war, which had lasted a year, had just been resumed. Te Teira was later to claim that full payment was never made and that reserves had been promised but not given.

The Governor arrived from Auckland with some 200 men of the 65th Regiment to reinforce the troops already there and the settler militia, who had been called to arms. He sought a conference with Kingi at New Plymouth and offered him safe conduct. Kingi proposed a council at Kaipakopako, midway between Waitara and New Plymouth, but the Governor regarded this as a subterfuge while Kingi waited for reinforcements and thus no meeting took place. The Governor, however, spoke to a gathering of Maori in New Plymouth, and in a mixture of blandishments and bluster, he told them that the Treaty of Waitangi secured their rights and property and assured them of the Queen's disinterested love for them and of her power and many soldiers. He continued:

Yet William King presumes to say that he will not respect the Queen's promise to her subjects. The Queen says each man shall keep his property if he pleases, and sell his property if he pleases. William King says, Teira shall not sell his property as he pleases. Is this wise? Is it right? . . . Teira's title to the land is a good title, and William King and you all know that it is so . . . I desire peace and hate war. It is with William King to choose between peace and war. If he chooses war the blood will be required at his hands, and not at mine, and it is for him to consider the consequences while there is yet time.

The Governor then circulated a manifesto asserting the correctness of his position and that the mana of the land was not with Kingi, that Browne had accepted Te Teira's title on the condition that it was undisputed, that an investigation showed it was 'not disputed by anyone', and that, since Te Teira had received payment, the land was now Crown land and Kingi would not be permitted to interfere with it.

3.7 WAR

On 4 March, the Governor instructed Colonel Gold, who was in command of the troops, to occupy the land. The approach was by sea. Some 400 men landed at Waitara the next day to fortify a position. The Governor then arrived with the blue jackets and marines to occupy what was described as 'Kingi's pa' near the river mouth. On 6 March, it was discovered that Hapurona and others of Kingi's supporters had thrown up a stockade. They were given 20 minutes to evacuate, which they did, and the pa was taken. That same day, Te Teira's people destroyed Kingi's pa at Kuhikuhi on the Pekapeka block.

The survey of the block began on 13 March and there was no resistance. On the night of 15 March, however, Kingi's people constructed an L-shaped pa at Te Kohia, at the south-west extremity of the block, commanding the road access. On 16 March, they uprooted the surveyor's boundary markers. On 17 March, Gold marched his troops to Te Kohia Pa and demanded that Kingi and his people surrender. When they refused to

do so, the troops opened fire. The long war had begun. It was only 12 months after the new Governor had visited New Plymouth for the first time and promised those present that disputed lands would not be acquired.

Some 500 troops effected the artillery bombardment of Te Kohia Pa, but in the night the defenders quietly disappeared, without loss of life, and the next day all that was captured was an empty pa. If the Governor had anticipated a quick, decisive victory to bring Kingi to heel and to deter others from joining him, he had miscalculated. In Maori terms, however, the engagement had other significance. By Maori law, Kingi's action was a necessary stratagem. Outnumbered and outgunned, he needed allies to fight from several places, but by Maori tikanga, support is not regularly available to an aggressor or to someone in the wrong. Te Kohia Pa, at the extremity of the disputed block and with a ready escape route by road and into the bush, had been hastily constructed with an apparent view to its abandonment if attacked. It appears to have had no other purpose than to evidence the Governor's 'wrong'.

Strangely, the Governor was sensitive to this tactic but still ordered an attack. This is apparent from an initial caution to Colonel Gold:

The first blood shed is a matter to which the natives attach great weight, and other tribes would join William King in a demand for utu if he could satisfy them that he had not been the first aggressor.

The aggressor having been identified in accordance with Kingi's ploy, others were then free to launch reprisals under Maori utu laws. In a sense, they were obliged to. The popular rendition of utu as revenge is a misconception. Utu concerns the maintenance of balance as a mechanism for harmony and peace. This includes punishment for wrongdoing, which, to remove any connotation of revenge, was regularly exacted by other than those directly aggrieved and, for the same reason, was effected against other than the immediate offender. The strength of utu in personal affairs lay not in giving effect to it but in the certainty of it happening if a wrong were perpetrated. Accordingly, those who responded in this case were able to claim, in their terms, not only that they were justified in attacking but that they were obliged to do so, for by such means is tikanga, a proper line of action, maintained.

By this strategy, the war against Kingi became a Taranaki war and that was the more important factor in securing a measure of Maori success.

3.8 CONCLUSIONS

It is tempting to generalise matters to conclude that the war was a result of a desperate shortage of land for European settlement, as settlers were forever claiming. In reality, there was no shortage of land in Government hands in 1859. The most compelling evidence for saying so is the number of settlers the Government had to introduce later to fill the available territory. The Tararutangi purchase, completed in January 1859, was made over for selection soon afterwards, and added some 14,000 acres for settlement. There was much other unoccupied Crown land nearer to New Plymouth. In comparison, the landholdings of many Maori hapu had been reduced to small reserves.

The causes of war are many. In this case, however, they point generally to the conclusion that the Governor started it. Most especially, he disregarded Maori law and authority. Contrary to Maori law, and in disregard for Maori authority, he presumed to buy from one group, though to do so would affect all and when, by their own collective process, not all affected had agreed. Maori law and authority with regard to the ownership and possession of land were Treaty guaranteed, and thus the Governor's actions, which caused the war, were contrary to the Treaty.

The disregard of customary tenure, institutions, and process occurred despite the advice of the Board of Native Affairs. In that respect, the Governor's actions were contrary not only to the Treaty but also to principles of law. That Maori ownership should be determined in accordance with Maori custom had been recognised by the New Zealand courts in a celebrated case of 1847, still quoted internationally in indigenous rights fora, *R v Symonds*, with Chief Justice Martin presiding. It had been subsequently noted by the Board of Native Affairs. Commenting on the board's review later, Martin noted:

Among the questions put by the Board to the witnesses was the following:

Has a native a strictly individual right to any particular portion of land, independent and clear of the tribal right over it?

This question was answered in the negative by 27 witnesses, including Mr Commissioner McLean; and by two only in the affirmative.

The determination of ownership in accordance with custom was further recognised in the Native Land Act 1862, even though that Act proceeded to change that tenure once ownership was ascertained. Previous Crown purchase policy had also recognised the same principle, though it was imperfectly observed. As for some recent statements of the same position, reference may be made to Justice Brennan in *Mabo v Queensland No 2*:

Native title . . . has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory. The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs.

It is clear that at all material times the Governor was obliged to negotiate for Maori land on the basis of the incidents ordinarily accruing to native title, but he did not do so, despite being informed of them.

The matter was confused when officials debated whether Kingi had 'a chiefly power of veto'. In our view, this was the wrong question. First, Kingi had an interest in possession and his consent was required in that capacity. Secondly, as a rangatira, Kingi was expressing not a personal veto but the majority view. The question was whether individuals could presume to alienate land or whether a collective decision was required, as expressed through the rangatira, which would bind individual members.

In this way, the 'rangatiratanga' guaranteed by the Treaty was very much in issue, because the question was one not of ownership but of the customary process for managing land and its disposal. We have no doubt of the appropriate custom law principle. Any disposition that could introduce outsiders to the community, as in this case, affected everyone, and accordingly a community decision, as expressed through the rangatira, was required. If there were two rangatira, no disposition could be made if they did not agree.

Consequently, Te Teira was acting contrary to custom law principle in selling a part when not all were agreed. We suspect he was using the novelty of a sale to make a new law and to claim at the same time that he held more mana than Kingi, in that Kingi could not stop him. Kingi, on the other hand, was asserting the customary value, in our opinion, and was acting strictly in accordance with Maori law.

For his part, the Governor was also creating a new law. He presumed to deal with individuals, when, by English law and the doctrine of aboriginal title, he was obliged to follow Maori law when buying land, which required that he deal with the collective interests through their representatives.

In any event, the land having been acquired unlawfully, that is, without proper regard for Maori custom as required by English law, the Governor's violent seizure of the block was also unlawful.

With regard to the war itself, it is further apparent that Wiremu Kingi was unjustly attacked. We have obtained the opinion of a senior constitutional lawyer in the matter, and we concur with his view that the opening of the war at Waitara was represented in an unlawful attack by the armed forces of the Crown on Maori not at that time in rebellion and that there was no justification for the Governor's use of force. We note further his view that, at the time, the Governor and certain officers were liable for criminal and civil charges for their actions.

The evidence for the view that the Governor was willing to go to war to settle the question of authority but that Maori were keen for peace is compelling. What was not apparent to the Governor, however, was that, in opposing Maori authority in this way, he was in 'rebellion' against the Queen's word in the Treaty.

Given the background described, when the war began in the north, southern hapu had little practical option but to join in. The Governor's policy and intention were clear. They would not be able to retain their own homes or the status to which they were entitled under his policy and laws, and had thus to defend their own positions once Kingi was attacked.

Support for these conclusions is to be found in independent opinions. The 1927 royal commission to inquire into the confiscations was emphatic in its views that Te Teira could not have sold without Kingi's consent, that Maori had no alternative but to fight in self-defence, and that:

When martial law was proclaimed in Taranaki . . . Wiremu Kingi and his people were not in rebellion against the Queen's sovereignty; and when they were driven from the

land, their pas destroyed, their houses set fire to, and their cultivations laid waste they were not rebels, and they had not committed any crime.

The commission placed weight on the views of William Pember Reeves, who considered that the Waitara affair 'would always remain for New Zealand a blunder worse than a crime'. More particularly, the commission stated:

The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home . . . The government was wrong in declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under that purchase.

Subsequent historians have identified wider causes of the war than the royal commission perceived but without demur from the commission's basic findings. We concur with James Belich's view that what was most at stake was a question of authority and the colonists' desire to assert their own rules that Maori land could be acquired and affairs arranged on the colonists' terms. Governor Browne, who forced the Waitara issue to war, believed that more than a piece of land was involved. As he put it, 'I must either have purchased this land or recognised a right which would have made William King virtual sovereign of this part of New Zealand.' We believe that his depiction of the issue as one of 'sovereignty' and not 'autonomy' was mistaken, especially considering that the Governor later regarded the Kingitanga as a greater threat to the sovereignty of the Queen and declared it an unlawful combination. We do not see that Maori were in fact in opposition to the authority of the Queen. It is rather that they understood the position in different terms, consistent with their culture; that is, that respective authorities are to be respected or that there must be, in a word, 'co-existence'. That is also our understanding of the Treaty's terms, and that Maori retained autonomy of the kind that Kingi was exercising at Waitara. Belich thought that 'Perhaps the Taranaki and Waikato conflicts were more akin to classic wars of conquest than we would like to believe.'

A Maori rejoinder was impossible to constrain. In our view, it is a truism that conflict, even war, is inevitable when the freedom of a people is denied. Denied in this case was the freedom of hapu to make their own decisions, form their own policy, manage their lands and affairs in their own manner, and form pan-tribal associations. More particularly denied at the time was the right of rangatira to control recalcitrant individuals in alienating community land.

The lessons of Waitara and Waitotara are seen as these:

- (a) While the focus was on the land question alone, at heart was a people's right to autonomy and their right to have their most important lands clearly reserved, as a turangawaewae, before any acquisitions began.
- (b) The positing of the issue as a question of whose authority would prevail was an error. When peoples meet, the authority of each is to be respected, and the question is how, in the interests of peace, respective authorities are to be reconciled.

- (c) The issue was not solely the maintenance of custom, be it that of the British or Maori, because the modification of the customs of both may be necessary for effective conciliation.
- (d) The separate authority of governance and rangatiratanga was acknowledged in the Treaty of Waitangi, and the need to develop protocols for their mediation should have been foreseen.
- (e) Fundamental to the Crown's assumption of the right to govern was its concomitant undertaking to protect Maori interests. The lesson of Waitara and Waitotara would appear to be that, without clear constitutional or other legal requirements, promises are too easily forgotten.