The Taranaki Report - Kaupapa Tuatahi

CHAPTER 7

PURCHASES 1872-81

These lands will not be given by us into the Governor's and your hands, lest we resemble the seabirds which perch upon a rock. When the tide flows the rock is covered by the sea, and the birds take flight for they have no resting place. Wiremu Kingi to Donald McLean, 1859

All dealings with the Aborigines for their Lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all. They must not be permitted to enter into any Contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any Territory the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of Land by the Crown for the future Settlement of British Subjects must be confined to such Districts as the Natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their official protector . . . From Lord Normanby's instructions to Lieutenant-Governor Hobson for the completion of a treaty, 1839

The system [of takoha] had three great evils: it demoralized the natives; it gave a vast personal power to the Commissioner; and at the Waimate Plains it has ended in pure waste. The West Coast Commission, 1880

7.1 CATEGORIES AND QUANTUM

Few things could so gainsay the integrity of the compensation plan as the immediate purchase of compensatory lands and the land outside the confiscation boundaries. These purchases mainly affected the hapu of the central coast, the south, and the interior, the interior hapu having received little attention to this point. In south Taranaki, Maori had secured some reserves on good land near the coast, but settlers, uncomfortable with the 'enemy' living with them, sought their removal. One aspect of the programme was to buy Maori out of these areas and settle them further inland. A much larger part of the programme was to use deeds of cession to purchase the whole of the Maori hinterland - an enormous area, comprising 369,046 acres. A third part of the purchase programme affected central Taranaki most of all. It followed doubts about the efficacy of the confiscations in those areas where lands had been taken but no settlements had been surveyed and laid out. The Government proposed to secure its position by buying those areas as well.

Map 13: 'Purchases', 1872-81

None of these purchases came near to satisfying the necessary standards of honesty and good faith that the Treaty of Waitangi required, and all of them must be discounted as valid acquisitions in Treaty terms. This chapter considers why. At the same time, it notes that the buying became sadly muddied by corruption and fraud, which appear to have been widespread.

Even more disconcerting are the doubts that the hapu of the interior ever intended to sell. In their concern to avoid the confiscations that had affected the hapu of the coast, those of the interior offered to place their lands under the Government. They sought to commit themselves to the Government, that the Government might commit itself to them, but the Government sought only to buy. It is the Government's integrity in buying that is this chapter's main concern.

The purchase programme covered a range of interests, including interests in reserves from pre-war 'sales'; land entitlements, awards, or grants from the Compensation Court; interests in the Governor's reserves; confiscated blocks acquired by deeds of cession; blocks outside the confiscation boundaries acquired by deeds of cession; and confiscated blocks acquired by gratuities. Buying in these categories continued during the war and in its aftermath, when a war mentality continued. We have taken the aftermath to extend to the invasion of Parihaka in 1881.

The largest purchases were made in the aftermath of the war. Leaving aside the continuing acquisition of individual interests in awards, grants, or reserves, 648,098 acres were claimed by purchase, by deed or gratuity, from 1872 to 1881. The blocks purchased by deeds of cession and gratuities are summarised in the table below and are depicted in figure 13. It is not possible to show the blocks acquired by gratuities in any detail because of the lack of associated deeds and plans. The given acreages for those blocks were assessed by the West Coast Commission.

7.2 POLICY

Policy to settle Taranaki and resolve the 'Maori question' changed materially in 1872, when a drive began to buy all the Maori land that could be acquired. Previously, the war-time proclamations had declared an intention to secure land for loyals and returned rebels. Very little was secured for them in north Taranaki, and the status of the land as Crown or Maori land was uncertain in central Taranaki, but there was room to provide adequately for Maori in the south. Any hope of doing so, however, fell prey to fiscal strategies from Wellington.

In 1870, a year after the main fighting in Taranaki had ended, Julius Vogel, a visionary treasurer in the Fox Ministry, persuaded the Government to borrow and

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Block	Ref in fig 12	Deeds		Date	Acres	Amount	Reserves	Sellers
		O	T					No Hapu

Kopua 1 14 91 1 August 1872 3140
£230 2 roods 23 Ngati Maru

Waitara-Taramo 2 19 50 27 February 12,800
£1600 231acres 23 Ngati Maru/Ngati Tu hapu
uku 1873
of Ngati Mutunga

20 51 19 February
£200 5
1874

Moa- 3 13 26 14 November 32,830
£3750 Nil 107 Puketapu/
Whakangerenger 1873
Pukerangiora
e

35 27 27 February
£1700 103 Puketapu
1874

63 28 19 May 1874
£50 40 Puketapu (at Waikawa)

64 29 25 May 1874
£150 38 Puketapu (at Nelson)

Pukemahoe 4 31 53 28 February 1000
£125 1 acre 7 Ngati Maru
1874

Ruapekapeka 5 18 52 28 February 400
£50 Nil 1 Ngati Maru
1874

Onaero-Urenui- 6 32 46 3 March 1874 36,000
£3530 700 acres 85 Ngati Uenuku, Ngati

Tupaewhenua, Ngati
Taramouku
Rangi, Ngati

Teuruwhakawai, Ngati

Maru

55 47 8 October 1874
£400 1 Mitiwai (of Nelson)

Waipuku 7 33 60 12 March 1874 7000
£875 Nil 31 Ahitahi

Waipuku-Patea 8 34 61 22 May 1874 20,700
£2500 700 acres 29 Ahitahi

62 62 20 November
£700 7 Residents of Nelson and
1874

Wellington

Block	Ref in fig 12	Deeds O	Deeds T	Date	Acres	Amount	Reserves	Sellers No	Hapu
Manganui	9	60	41	21 August 1874	11,200	£1350	397 acres 2 roods 28 perches	24	Pukerangiora
		60	45	20 November 1874		£500		6	Residents of Wellington
Te Wera	10	57	42	1 September 1874	6320	£787	50 acres	14	Ngati Maru
Huiroa	11	58	43	25 September 1874	25,300	£3100	1050 acres	3	Ngati Ruanui
		61	44	20 November 1874		£500		11	'Wellington aboriginal natives'
Ahuroa	12	80	54	24 February 1875	12,600	£1575	Nil	33	Ngati Ruanui
Otoia	13	79	55	16 March 1975	2660	£322 10s	Nil	45	Ngati Ruanui
Mangaehu	14	81		11 November 1875	560	£70	Nil	5	Natives of Taiporohenui
Pukekino	15	82		16 December 1875	11,870	£1482 10s	10 acres	12	Ngati Ruanui (Ngati Hine hapu)
Mangaotuku	16	83		16 December 1875	61,200	£7650	Nil	18	Ngati Ruanui and Ngati Maru
Kaharoa No 1	17	84		16 December	8750	£1093	Nil	3	Ngati Ruanui

			1875		15s		
Kaitangiwhenua	18	173	18 December 1880	92,186	£11,723 05s	Nil	6 As owners named by Native Land Court
Witinui	19	196	24 August 1881	2080	£260	Nil	12 Natives of Hawera district
Mangaere	20	174	25 August 1881	6250	£781 5s	Nil	7 Natives of Hawera
Mangamingi No 2	21	193	25 August 1881	8200	£1025	Nil	20 Natives of Patea district
Kaharoa No 2	22	176	9 September 1881	7300	£506 5s	Nil	11 Nga Rauru living at Whenuakura
				370,346	£48,586 10s	3140 acres 1 rood 28 perches	

O: Original deed number T: Turton deed number

Table of purchase deeds, 1872-81

Block	Date	Acres	Amount	Notes	Reserves (acres)
Opaku	by April 1877	24,160	£3118 6s		Uncertain
Okahutiria	by April 1877	14,592	£1909 17s		Uncertain
Waingongoro to Patea	1877-79	73,000	£7513 11s 7d		Uncertain
Moumahaki	1876-79	66,000	£4110 12 6d		Uncertain
Waimate Plains	1877-80	100,000	£8924 8s 5d	(payments incomplete at this	Nil

stage)

277,752 £25,576 15s 6d

Table of purchases by gratuities, as per the West Coast Commission, 1880. Source: AJHR (1880, G-2, p 31).

spend £10 million, more than the country had countenanced as possible, for roads, railways, immigration, and settlement. This courageous scheme was designed to lift the colony from a backwater of half a million settlers to a progressive, competitive state. The rapid acquisition of Maori land was part of the design, however, for roads, railways, and settlements would come to naught if there was no land to put them on. By 1873, Vogel was Premier. Between July 1873 and May 1874, 15,102 immigrants arrived in New Zealand, and in 1875, another 18,324 arrived.

Though many promises of land had been made to Maori in Taranaki, the mood for expansive acquisitions went there as well. From 1872, the Native Minister instructed the Civil Commissioner and various purchase agents that they should exert all influence to acquire such lands as they could, including the lands awarded or reserved (with titles to be individualised to assist that end); those confiscated lands where possession had not been taken or delivered; and the lands outside the confiscation boundaries.

7.3 MALPRACTICE

The purchase operations became characterised by laxness of supervision and corruption. To emphasise the goal they were expected to achieve, the Crown agents had been given carte blanche to do what was necessary, and several abused that power. In 1880, malpractice became transparent, but the Ministers and senior officials could not be excused on the ground that they were not informed of what was happening locally. 'The Government will leave you unfettered,' is how the Minister's instructions had read.

Purchase became patronage and advantage was taken of Maori circumstances. For example, Maori 'chiefs' signed blank vouchers that were to be filled in later for moneys (which were never given), yet notwithstanding overt evidence of misconduct, we are unaware of any case that led to the return of one acre. Maori were brought into the plan in various capacities from informers to road makers, patronage was the order of the day, and all was paid from one settlement account. In many or most instances, it could not have been clear to Maori whether the payments constituted development assistance or gifts to secure compliance, or whether they were for hospitality given, services rendered, or purchases made. Nor was the purpose of the allegedly made payments apparent to the auditors.

Reports of the Controller and Auditor-General in 1880 and 1881, although subdued, provide an indication of what was happening. It was noted that blank receipts had

been obtained from Maori and used to make up accounts. It was a practice, according to the report, 'long attained in the Native Land Purchase Department'. Further:

it is well known that Natives, and even Europeans, have been paid money, charged as the purchase of land, in which they had no proprietary interest which would be recognised in an ordinary Court of Law or by the Native Land Court. Europeans have often been paid for inchoate rights having no legal validity, because having commenced to buy the land, it could not practically be acquired by the Crown unless they were bought off.

The West Coast Commission could not avoid scrutiny, but because the chief commissioner was Premier when some of the purchases were effected, care was taken to place the blame at a local level:

There does not seem to have been the smallest control over the way in which the money was to be spent . . . We can find no trace of any principle laid down to guide him [the Civil Commissioner], of any safeguard against transactions being repudiated by the tribe, of the commonest precaution that at least the Government should know what was being done.

The practice needs to be exposed, and not only to assess the past. There are still perceptions of patronage when funds are distributed to Maori on the basis of favour and not on the impartial assessment of the facts against settled criteria.

Contemporary letters illustrate the pressure and scheming involved, the exhortations to purchase as many of the 'native claims' or other lands as possible, and the directions to exclude Maori from coastal settlements altogether. The tone of the agents' progress reports hints of their objectives and techniques:

The action of the Ngatimaru tribe in boldly coming forward to sell land is having an excellent effect [on others] and is likely to lead to most favourable results . . .

Native work is progressing favourably; the Natives are beginning to accept the situation, seeing pretty plainly that it is useless making any further direct opposition, but better to fall in with the views of the Government, and make the best terms they can under the circumstances.

They are a reckless and difficult lot of people to deal with, and in the meantime I think it is as well not to press the matter too urgently, but to let them discuss the question among themselves, but at the same time I think it advisable they should be told that the Government will negotiate with separate sections of Natives for their tribal rights to land in that district.

7.4 ENTITLEMENTS, AWARDS, GRANTS, AND RESERVES

The Government began buying in the pre-war reserves of north Taranaki as early as 1863. Earlier, we noted the rapid erosion of those reserve lands. Because reserves ceased to be customary land, private interests were buying into them as well, any

uncertainty on their right to do so having been removed by the Native Land Act 1865. The Government was also buying into those few reserves in the north arising from the compensation process. The last chapter noted the alienation of two such northern reserves. At the time of acquisition, neither had been defined by plan but one was 10,000 acres in area.

In a separate category were the compensation awards and grants. The grants were meagre and tardy, being issued after 1869 and comprising only 7485 acres in the Te Atiawa district and 1982 acres in Oakura. Held in uncustomary titles without traditional hapu controls, subjected to uncommon pressure, and with individuals placed on sections that were not their family lands, it was no surprise to find that by 1880 most of the grants had been sold.

The southern awards did not formally issue from the Compensation Court until 1874, but it is evident that surveying was done, sections were informally allocated, and most of the sections were sold before the court had even sat to award them formally. We concur with the view in the report of Heather Bauchop that the court was probably urged to sit in the district and make orders in 1874, not to assist Maori but in order for purchasers to gain title.

In 1880, the West Coast Commission reported that of the 17,280 acres awarded in the south, 14,192 acres had been sold. The Commissioner of Lands noted that even then the purchase figure was based upon only those transfers that had been registered with him at the time. A Crown agent, Charles Wray, advised the commission that virtually all the land had been bought by the Crown or by settlers and that 'Crown grants are only required in order to perfect the titles of the European purchasers'.

The court may have been unaware of the true position, for it made each award inalienable. The difficulty was overcome, according to the evidence of the Crown agent, by the simple expedient of striking out the restrictive clause. The Crown agent, presuming to stand above the court, thought this approach was reasonable because the restriction would not have given 'justice to the buyers who purchased in good faith'.

As mentioned, Government purchase activity accelerated from 1872. So did corruption. By then, fraud was already evident with regard to interests in awards, grants, and reserves. This materialised in the prosecution, conviction, and dismissal of Crown agent George Worgan. In that prosecution, however, the Government was primarily concerned with its own interests in the land in question. The agent purchased a 400-acre award for £400, on-sold it for £1000, kept the difference, and hid the transaction behind a manufactured agreement between the vendors and the ultimate buyer. The only outcome for Maori was a trespass summons for failing to deliver possession.

Before the West Coast Commission, however, it was admitted that Maori had made many further complaints regarding Worgan's nefarious activities. The commission could not investigate them all, finding that to untangle the mass of records known as 'the Worgan papers' would extend its inquiry interminably. It did, however, observe:

our scrutiny of the Worgan papers has since convinced us that there are things which, for the credit of the country, must be sifted and cleared up in connection with that

person's official acts during the time when (to the misfortune of everyone) he was allowed to represent the Government in that district.

The commission pursued the matter no further. Its task was to inquire into the promises allegedly made, not criminal activities; but no other inquiry was instituted. Wray, who replaced Worgan, also found great difficulty in understanding his predecessor's papers. He did, however, warn of the extent of purchase operations, advising the Under-Secretary of Crown Lands that, out of the total of 17,264 acres awarded in the south, as at 1873 only 3512 acres remained in the hands of Maori.

The circumstances - uncustomary allocations; the dismantling of hapu control; uncertain 'paper awards', which were much less than grants or titles; the dire circumstances of Maori; and doubts that the promised lands would ever be delivered because it took 11 years for the first awards to come through - encouraged the alienation of Maori interests in land. Our primary concern is to weigh the protection provided, which in this case was virtually non-existent, against the intentions of the Government in buying. The latter may be simply explained. In this case, the Government bought not just to advance European settlement but to keep Maori out of the land. The Government was especially concerned to keep Maori in the interior, away from the fertile coast, where Europeans were settled.

The main buying occurred after 1872, following the Native Minister's instructions pursuant to the Government's new fiscal plans. It is helpful to be reminded of the times. The war had barely ended. Settlers had resumed their farms on promises that Maori (or at least rebels) would be excluded from the district. Some 'locals' had returned, including Government allies in native contingents.'Rebels' were, however, 'loitering' in Ngati Maru territory and elsewhere or they had 'come in' and were 'hovering' on the nearby Waimate Plains. They pledged that they would reoccupy those lands south of the Waingongoro River that were not in the possession of settlers. Finally, there were serious doubts that anyone was really 'loyal'. The awards were made to persons who had been loyal when the court sat in 1866. There had since been a further 'insurrection', and it appeared then that loyals had either changed sides or not really been loyal at all.

The Native Minister's instructions were explicit. The Government:

had practically given a guarantee that the natives should not be allowed to return to the confiscated lands [and] . . . the only practical solution of the difficulty was to buy up as many of the Native claims as possible.

Maori were enticed back to the district in order to sell their court entitlements, and in return, reserves were made for them elsewhere, either removed from the coast, where the settler farms were, or closer to the Waingongoro River, where settler occupations were sparse or non-existent.

Thus, about 17,000 acres in awards were purchased, and some 20,000 acres in reserves were provided in a programme of relocation. The reserves were mainly in disparate patches and many, like that given to Taurua and the returned prisoners, were given to fulfil other obligations. None the less, they included the large, 10,000-acre Tirotiromoana reserve. The policy was also to discourage the hapu from reoccupying

their traditional areas by restricting them to prescribed localities. Accordingly, reserves came not from a generous heart but from the need to delimit the Maori settlement areas. Nor were reserves given easily. Umutahi were persuaded to keep out of the area altogether and remained north of the Waingongoro River. Ahitahi insisted on returning to their traditional district and a reserve was therefore finally agreed to, but 'care [was] taken to fix it as far inland as possible from Europeans' locations'. Thus, the policy was to buy awards, purchase the unsettled parts in order to induce Maori to accept limited reserves, and then create reserves in discrete patches and more remote localities.

7.5 PURCHASE BY DEEDS OF CESSION

In 1872, the rebels' occupation of the bushclad strongholds of Ngati Maru and their infiltration back to Parihaka, the Waimate Plains, and the south led to the decision that those lands not physically occupied by settlers and since reoccupied by Maori would have to be purchased. As the Government saw it, Maori did not regard the confiscation as binding except where it had been enforced by settler occupations. The result was that the Government would buy those lands not taken for European occupation, and this was first applied to northern interior lands within and outside the confiscation line. The lands comprised both rugged country and parts that were suitable for settlement. An overview of the situation is given by regions.

7.5.1 North

The Civil Commissioner brooked no delay in implementing the Native Minister's instructions. In the north, most of the usable land near the coast had been taken by settlement, but large tracts (a mixture of rugged terrain, rolling hills, and plains) remained in the bounds of the confiscated territory. By deeds of cession from August 1872 to September 1874, six blocks were sold, each involving Ngati Maru, mainly within the confiscation line and amounting to 59,660 acres in all. Although, in the words of the West Coast Commission, much of this country was 'rough and covered with forest, and useless without roads', the transactions were important 'as indicating not only friendly feelings on the part of the natives who had long been estranged, but the prospect of opening additional fields for settlement'.

There was another reason for proceeding: the transactions would relieve the Government of other obligations. Included in the sales were lands proposed for loyals of Ngati Mutunga in satisfaction of their compensation entitlements and it could be said that those entitlements had been extinguished by purchase. This also suggests that Ngati Mutunga had been placed in Ngati Maru territory, but we cannot be sure, because the Maori land boundaries fluctuated, the extent of tribal influence shifting according to the changing allegiances of the occupants. In any event, the land required for these loyals had not been formally set aside or identified by survey or sketch plan, but the Government presumed that the lands were included in the sale, probably with the loyals' consent, simply because they were meant to have been located somewhere within this territory.

It is not clear whether other entitlements were consumed by purchases in this way, because the location of many entitlements existed only in the minds of Crown agents.

The next group of sales, all within the confiscation line, were effected by Puketapu and other divisions of the Te Atiawa group in deeds of cession from November 1873 to May 1874. The land included rough land and some valuable flats. In terms of current places, they ranged from Inglewood to Stratford. They amounted in all to 71,730 acres. These sales were followed by the alienation of an adjoining 37,900 acres in two blocks by deeds of cession in September 1874 and February 1875, effected with persons of Ngati Ruanui.

By then, a mood for selling had been established. The next batch of northern sales went beyond the confiscation line, though it is unlikely that was known to Maori at the time. The confiscation line extended across rugged country without regard for natural contours and terrain, and it was to become obvious in later evidence before the Native Land Court that the Government itself could not tell how the line related to blocks sold until surveys were effected, well after the deeds were signed. Three blocks, amounting to 69,530 acres, were acquired by deeds of cession. The first, for 61,200 acres, was executed by 18 persons of Ngati Ruanui and Ngati Maru in December 1875. The identity of the 'owners' for the remaining two blocks is uncertain. They are simply described in the deeds as 'natives of Hawera'; there were 12 such 'natives' in one deed and seven in the other.

By then, the Government had acquired, among other things, a continuous tract of land from the sea at Urenui along the Waitara Valley to well beyond the confiscation boundary. In all, 238,820 acres were acquired in the north by deed. There were no purchases by gratuity in this district.

7.5.2 Centre

There were no deeds of cession for the central coast. Instead, about 100,000 acres were claimed by gratuities, as will be explained later.

7.5.3 South

The acquisitions made by deeds in the south, from the Waingongoro River to the Waitotara River, were mainly beyond the confiscation line. The exception was the Otoia block, which was inland from Patea and was acquired in March 1875 from 45 of Ngati Ruanui. This block contained 2660 acres. In the hills beyond the confiscation line, 36,680 acres were acquired in five blocks: 560 acres from five 'natives of Taiporohenui'; 8200 acres from 20 'natives of Patea district'; 7300 acres from 11 persons of Nga Rauru; and 20,620 acres (in two blocks) from 15 persons of Ngati Ruanui. Finally, though not last in time, the largest of the sales was effected. In December 1880, the Government acquired the Kaitangiwhenua block, comprising 92,186 acres. More will be said of this purchase later.

In all, 131,526 acres passed by deeds of cession in the south. In addition, 177,752 acres were claimed to have been acquired by gratuities, as will be considered later, so that the total claimed by purchase in the south was 309,278 acres. As mentioned above, the purchase areas are depicted in figure 13.

7.6 THE DEEDS AND THE NATIVE LAND COURT

In the Government's eyes, the cause of the war had been the uncertain Maori titles. Remedy was sought in the establishment of a native land court soon after the outbreak of the war to enable ownership to be determined judicially before acquisitions were attempted. Leaving aside the distortion of custom caused by individualisation and other doubts as to the court's efficacy, the policy of determining title in advance seemed sensible. It may also have worked had all titles issued tribally and with only such reforms as were agreed.

The first difficulty confronting the propriety of the deeds of cession referred to is that such protections as the Native Land Court might have given were negated. In broad terms, the effect of the Native Lands Act 1865 and its several amendments and the Native Land Act 1873, which applied at the relevant time, was, first, that land could not be bought until the court had settled the title but thereafter could be bought by the Crown or privately; secondly, that the court would have to be satisfied with the 'justice and fairness' of any sale; and, finally, that the process had to ensure 'to the natives without any doubt whatever a sufficiency of their land for their support and maintenance'.

The court had wide discretion as to what was sufficient, but some guidance lay in a statutory direction to officials that 50 acres were to be reserved in every district for each man, woman, and child.

To expedite its purchase policy in Taranaki, the Government sought to avoid the court. It saw no problem for lands within the confiscation line, because there the court could be avoided on the ground that the lands were not really Maori land but confiscated lands. Thus, the Government treated lands as 'confiscated' when it suited and as 'abandoned from confiscation' when it did not, and lands within the confiscation line had the distinction of being at once both confiscated and not confiscated. These lands were dealt with under the old land purchase system, as described in chapter 2, being the system that had led to the war.

In buying outside the line, the Government found refuge in section 42 of the Immigration and Public Works Amendment Act 1871, introduced to give effect to the immigration and settlement plans. It was there enacted that to establish the 'special settlements':

it shall be lawful for the Governor to enter into arrangements for such purpose previous to the land passing through the Native Land Court and a certificate of title of the person entering into such arrangement with the Governor obtained and on such certificate of title being obtained the arrangements entered into shall be as binding on both parties as if made after the order of the Court.

In brief, the Government considered that it could buy the land before ownership had been decided and then go to the court to issue a certificate of title in the vendors' names. It does not appear to have entered into the Government's consideration that it was relieved from going to the Native Land Court only for 'special settlements' and that most of the lands in this case could not be suitable for that purpose. In any event, all the lands were sold before the court sat to determine who owned them, subject to the court confirming later that the correct persons had sold them. There was also provision for the Governor to prevent any private purchaser from competing.

7.7 THE DEEDS, THE COURT, PRACTICE, AND MORE MALPRACTICE

To examine the detail of each deed of cession would overly extend this report. Moreover, there is no need to do so, because the process as a whole departed so much from the standards of good faith and honesty expected under the Treaty that a precise audit is unnecessary. For the record, further particulars of the purchases may be had from the report of Aroha Harris, a member of the Tribunal's staff commissioned to investigate them. A summary of some features follows.

The pre-war practice was followed, the Crown agents negotiating with those thought best, but in addition, the agents arranged for those willing to sell to complete claims for the land, which the agents then filed in the Native Land Court. To encourage sellers, purchase instalments were paid in advance. This was standard in all cases. When the deed was finalised, a title was sought from the court, and unless there were objectors, the court declared those named in the deed as the owners and the sale was complete. Objectors, on proof of customary interests, were either added to the title to share the sale proceeds or partitioned to a land severance.

The process favoured sellers, who were assisted in every way: their claims were filed for them, their interests were represented in court, and they alone received advances. Many objectors knew nothing of the sale or the court sitting and were left to seek a rehearing, provided, of course, that they knew how to do so. Ms Harris's report provides instances. In one case, a rehearing was declined, and it was obtained only after a petition to Parliament. The further hearing was then delayed for six years. It transpired that the boundaries were uncertain (casting doubts on the original decision) and further time was needed for surveys to be finalised. The hearings themselves were also protracted, but they did at least result in part of the land being excluded for the non-selling parties. Finally, at the solicitor's request and despite objections from non-sellers, the court vested the unsold severance in only three persons. It was then sold by those three the very same evening.

In this way were the non-sellers cheated out of their land. The ploy had been prearranged. The purchasers were three Europeans, who acted in a personal capacity, and though there were regulations against such activity, one of them was the Crown purchase agent who had organised the transactions as a whole.

In further illustration, we will refer to:

(a) The Kaitangiwhenua block in the south, the largest of the several alienations, which affected hapu of Nga Rauru and Ngati Ruanui and possibly others.

(b) The Ngati Maru alienations in the north, where the purchases began. There, a Maori desire to forge an alliance with the Government was most in evidence. This purpose appears to have permeated all subsequent sales, casting strong doubts on whether sales in Western terms were ever really meant.

7.7.1 Nga Rauru-Ngati Ruanui

The Kaitangiwhenua block of 92,186 acres was the largest of the sales and involved the biggest payment: £11,723. Initially, private buyers claimed to have bought this land; among them one William Williams. Naturally, the 'purchase' was dependent upon the vendors obtaining a court title.

In fact, this arrangement was contrary to the law, which forbade private persons from buying Maori land before title was ascertained. The difficulty was thought to have been overcome in this case by a simple arrangement whereby for £1000 the 'purchasers' assigned to the Government such interests as they may have had, with the provision that Williams be employed on salary as a Crown purchase agent. This was thought to be legitimate, because the Government claimed to be exempt from the rule against prior buying by section 24 of the Immigration and Public Works Amendment Act. How an honest government could sanction illegalities is hard to know. A further stimulus for Government action was some settler protest that the land, which they thought to be 200,000 acres, should pass to private hands. In their view, genuine settlers would be excluded or would be prevented from buying from the Government on cheap terms.

The Government thought it was necessary to commit more sellers to the sale, and Williams had the task of making more advances in exchange for more signatures. Based on Williams's advice, £5600 was passed to him for that purpose. A title was then sought from the court, but the application was dismissed because the boundaries were uncertain and irregular. When the Government applied for a rehearing, however, orders were made. Although these were the customary lands of two large tribal groups, the court vested the title in only seven persons, just as the Crown agents had asked.

By this means, the sale went through and the Crown obtained title. It is now clear, however, that a large number of Maori were in fact opposed but were not represented. Ngati Ruanui in particular were adherents of Te Whiti, a noted resistance leader at Parihaka. The Te Whiti supporters generally eschewed agents' meetings and court hearings, not recognising the rightness of either. In any event, those Te Whiti supporters who had attended meetings or hearings were simply disregarded, Te Whiti and his adherents being seen as affected by a peculiar lunacy, which allowed any of their opinions to be dismissed. On this occasion, many of Ngati Ruanui were in fact at Parihaka, well away from the locality.

In addition, Whanganui Maori claimed an interest and protested that they had no notice of the sale of the land. None other than Major Te Rangihiwinui Keepa (Major Kemp), whose support for the Government in many battles was legendary, threatened more than once to force an occupation if something was not done. Te Rangihiwinui was to take an entirely different view of the Government from that which he had held during the war. He was to become a significant opponent of Government land purchase operations, proclaiming an all-Maori territory from Whanganui to Mount Ruapehu.

When the Government met with the sellers after the court hearing to pay the balance due, according to its records only £5411 was outstanding. The sellers who were there protested the smallness of the balance, but the Government pointed out that the rest had been advanced by Williams prior to the sale in the form of cash, goods, various

types of assistance, and a deposit, said to have been paid by the original European purchasers. The sellers agreed to take the remainder, which the Government then paid to Williams to distribute.

It was not until 14 years later that the truth transpired. No money had ever been paid. The Government, having cause to doubt Williams's honesty, had set up a commission of inquiry. The commission found that Williams:

obtained the cheque for the balance of the purchase money - £5,411 0s 7d - from [Maori] by treachery, deceit, trickery; and that, having cashed it, he, in breach of the conditions upon which the cheque was handed to him, fraudulently appropriated the proceeds in the manner before mentioned [that is for his own purposes] and has never accounted to the natives, not only for that money, but for the sums received by him through [the Government] prior to final settlement.

Put more simply, Williams deposited the money in his own bank account. That put paid to Williams, but not a thing was done about returning any part of the land, when it was quite clear that Maori knew nothing about what was going on.

If Maori complaints were not as strong as they could have been, that may have been owing to their perception of the transaction, as indicated by the principal vendor and Nga Rauru leader, Te Uru te Angina. After the sale had been concluded, Te Uru wrote to the Government to protest Te Rangihiwinui's proposed occupation and happened to disclose his view of the transaction. It indicates to us that a sale, as understood in law, was not at all that which Te Uru had in mind. He wrote:

The land belongs to me and to the Government, that is to say, the Government claim it through me. This is what makes me angry. If he [Te Rangihiwinui] goes on to the land, I will go and turn him off. The reason is because I have given it over to the Government and I will not allow him to interfere in it. I will not allow him to go upon that block. I want the Government to hold that block in its own hands and in mine . . .

I am anxious also to become a friend of the Government to assist the Government; because you see I am the one who speaks to my people and the people obey my voice . . . I always remain firm for the Government. I wish you to have confidence in me and my people and to have for us a feeling of kindness and love . . . I do not wish the Government to forsake me, but to communicate to me.

If this statement is married with many similar ones from throughout the country, light is shed on the traditional Maori perspective on transactions between peoples, be they other hapu or the Government, especially following warfare. The objective is to retain one's land and position by securing an alliance and, if need be, to submit to another for that purpose. It will be recalled that, in the same way, Kingi had placed his lands under the mana of the Maori King on the occasion of the Waitara war, not to alienate his lands but to secure their protection. Since then, circumstances had changed. Those who had placed their land under the mana of the Maori King had lost the war and the Government was confiscating the land of every hapu. What else could one do to hold on to one's land but transfer the mana of the land to the Government in order to maintain one's position?

In our view, Te Uru's letter is more than consistent with that tradition. It is the evidence that an unconditional sale in Western terms was not intended. It is not a quaint recording of elderly Maori opinion. It indicates that there was no consensus *ad idem* between the parties and hence no valid contract. The difference between English and Maori contracts is briefly compared a little later. We say simply for now that the two are so different that any comprehension between Maori and the Government is extremely unlikely unless one fully and knowingly capitulated to the cultural mores of the other.

7.7.2 Ngati Maru

Passages in the report of the West Coast Commission suggest that initiatives to sell the Ngati Maru land came from Ngati Maru. If that were so, it would not be surprising in light of their precarious position, especially if they too had not intended a total alienation.

No clear record exists that Ngati Maru as a group were in the war. The war was mainly a coastal affair, but the remote northern lands of Ngati Maru provided a natural refuge for many people, from Wiremu Kingi to Titokowaru, and the evidence is that large numbers of well-armed forces had gathered there. In terms of the New Zealand Settlements Act, all else being equal, Ngati Maru lands could be confiscated on the grounds of providing 'succour' and 'comfort' to rebels. There were, however, four reasons for not doing that. First, the rebels in hiding were so armed and so many that there were unlikely to be any options for Ngati Maru. Secondly, custom dictated that hospitality be given. Thirdly, in terms of the Act the rebellion or succouring must have occurred before the land was proclaimed as taken, and in this case, the succouring of Titokowaru and others occurred much later. Finally, on account of the expensive roading needed, their lands were not 'eligible settlement sites', so it is doubtful that the confiscation of their lands would have been lawful. Still, lawful or not, confiscation had been effected, and whether anyone knew it, the confiscation line cut through Ngati Maru territory.

The legal position of Ngati Maru had become still more precarious. Perhaps because of their remoteness, they had not participated in the claims' hearings. As a result, they held no entitlements, awards, or reserves by way of compensation. Confiscation may have come home to them, however, if it was proposed, as seems to have been the case, to locate Ngati Mutunga entitlements in their area. Perhaps they knew then that their remoteness was no protection from Government edicts. They were at the Government's mercy - a situation the Colonial Office had hoped, when vetting the legislation, would never be visited on innocent persons.

Having regard to the paucity of contemporary statements from Ngati Maru, other evidence becomes significant. We think that Ngati Maru did not intend to divorce themselves from their lands when they purportedly sold them and that the Crown has never satisfactorily proved its right to Ngati Maru territory.

The year 1872 saw some startling events, quite apart from the Native Minister's purchase instructions. After 12 years' seclusion, Wiremu Kingi marched out of Ngati Maru land to present himself at New Plymouth and assure the Government of his wish for peace. It was seen by the Native Minister and others as 'the most significant

indication and the greatest assurance of future peace'. It is most unlikely that an event like that would have occurred without an intense prior discussion in the northern runanga. It was one of the last recorded acts of this rangatira and, typically, was one of his finest. We do not believe he went to New Plymouth simply to acknowledge the Government - there is every likelihood he went there to save Ngati Maru their land.

Immediately after Kingi's visit to New Plymouth, Ngati Maru offered their land to the Government. There is little conjecture in asserting that this would also have flowed from the same tribal debate. Certainly, officials saw it as a statement of political position. The Civil Commissioner considered it:

to be of far greater importance in a political point of view than the value of the land itself, in as much as it is the best proof we can have of the determination of the natives of this district to withdraw from the old land league, and the combination of the disaffected tribes who have so long been hostile to the Government of the country, to which they now wish to be allied.

The commissioner also recorded:

A tribe that has for years past allowed their district to be a refuge for the disaffected is now exerting itself to establish permanent allegiance to the Government.

Others made similar statements, but all the Government could see was the prospect of a purchase, and it neglected that which was most needed: a renewal of the promises of the Treaty. Symbolism is more significant to Maori than the words in deeds. It is apparent to us that, in Maori terms, Ngati Maru were ceding to the Government an authority in the land that their own interests and occupations might be respected. Again, had not Kingi previously placed the mana of his lands under Te Wherowhero, not to part with them but to secure his own occupation? Had his father not previously been defeated by the same Waikato people? In our view, no understanding of early intentions can ever be complete without reference to the Maori manner of behaving.

Next, we have to consider how Ngati Maru fared with their new friend. The main Ngati Maru lands passed without the benefit of such protections as the Native Land Court might have provided, leaving but one reserve of 230 acres. In this country, it was only enough for at most one family to farm.

There was other land where Ngati Maru had an interest outside the confiscation line to fall to the court's purview. Some 61,200 acres passed in one block, but there were no reserves. There were 6320 acres in a second block, with 50 acres reserved. Applying the test in the 1873 Act of 50 acres reserved for every man, woman, and child, it might be deduced that the strength of Ngati Maru had fallen to one person, were that so obviously not the case, because there were 14 Ngati Maru sellers.

Ngati Maru interests in more than 120,000 acres were conveyed to the Government with total reserves of less than one percent - 1082 acres.

In 1907, the tribal plight was examined and the Ngati Maru Landless Natives Act was passed to provide them with some land. In 1915, pursuant to that Act, six blocks called Ngati Maru A to F were vested in individuals of Ngati Maru as owners. From

such of those blocks as the Tribunal could see from a distance when we visited there, we can at least say that the cliff faces have a certain majesty and charm.

If all that we have previously reported of Ngati Maru were disregarded, at least this much would stand. The Treaty of Waitangi, as entered into on the basis of Lord Normanby's instructions, made it plain that, no matter the terms of land alienation, at the end of the day a sufficiency for the hapu had to remain. In relation to Ngati Maru, there is no way in which the principles of the Treaty could have been maintained. We need to inquire, not only of the good faith of Ngati Maru in submitting to the Government but also of the good faith of the Government in buying the land and then, in so buying, leaving them landless.

7.8 ENGLISH CONSENSUS AND MAORI UTU

The Maori manner of contracting conditioned their search for a political alliance. When forming contracts, the protocols of Maori and Pakeha are not the same and represent a specialised sophistication unique to their own histories. It seems to us the different expectations and behaviour of Maori and English were such that, unless one side was thoroughly familiar with the mores of the other and freely and willingly adopted them, the mutual comprehension necessary for a valid contract by English law is likely to have been lacking.

More lego-anthropological research is needed in this area, but an introductory comparison must be attempted. A typical English contract involves the delivery of property or services on terms agreed in advance, and thus a personal relationship or affection between the parties is not a prerequisite to mutuality and may even be a hindrance. Most regularly, it is expected both parties will gain, and on the contract's performance, the relationship between them will end.

Maori contracts are more regularly the other way around. They are generally about building personal and lasting relationships over time. The delivery of property or services is secondary to the larger goal of an effective bonding. The terms of exchange were not generally fixed in advance, for the essence of the transaction was based upon the principle of reciprocity and was seen to require that each party should totally trust the other and would act generously, even lavishly, in their rejoinders. Thus, a generosity of spirit when transacting was part of the Maori way; to give freely and not to count the cost, but at the same time to give so as to oblige.

The distinction may be seen as the difference between Western consensus, that parties must be of one mind on essential matters before binding relationships ensue, and Polynesian utu, that harmony comes through reciprocity over time. Thus, Dr Dame Joan Metge recently described the utu or reciprocal giving in Maori transactions in these terms:

The operation of utu involves several important rules. First, the return should never match what has been received exactly but should ideally include an increment in value, placing the recipient under obligation to make a further return. Secondly, the return should not be made immediately (though a small acknowledgement is in order) but should be delayed until an appropriate occasion, months, years and even a

generation later. Thirdly, the return should preferably be different from what has been received in at least some respects: one kind of goods may be reciprocated by another kind, goods by services, services by a spouse. By making it difficult to calculate value, a difference in kind reduces the possibility of exact repayment which would bring the relationship to a premature end. Fourthly, the return does not have to be made directly to the giver but may be made to the group to which he or she belongs or to his or her descendants. In these ways, the principle of utu ensures an ongoing relationship between individuals and groups. It has the function of binding people together by the criss-crossing (tuitui) of reciprocal gifts and obligations.

Of the three best-known fundamental bases upon which the economy of the Maori was sustained, namely, koha, a reciprocal gift; maungaringa, a gift in support without any strings attached; and utu, compensation to clear a debt, utu carried the heaviest obligation. In the very early 'sales' of land by Maori, their concept of land transactions and their understanding of what was happening could have come only from their own experience of reciprocity, common usage, and bonding. The element most absent in Western conveyances of land was that of bonding - an element essential to all transactions within Maori culture and custom prior to the prevalence of Western law.

In this case, it appears various interior tribes sought an alliance with the Government, or with settlers, through land conveyances. Had they been asked if the conveyance was absolute, without strings attached, they would certainly have replied that it was, for one should not be chary with trust or cautious with generosity. Yet, in this Maori way, the more one insisted that the giving was total and free, the more one expected a generous future response once the conveyance had been accepted. A reasonable assumption by those who conveyed land to the Government would be that they could continue to live on the land and the Government would protect them. In the case of much of this remote territory, it must also have appeared that in any event there was no one else to take occupation.

It could be argued that, by the time these lands were 'sold', Maori should have known what English sales meant. We think the implicit assumptions should be challenged. The history of previous dealings had given confused and mixed messages; for example, it was regularly impressed on Maori that they would benefit in future from the sale of their land. This may have suggested that the English also understood utu. Moreover, it cannot be assumed that those Maori involved in war or in remote refuges readily jettisoned their own value systems or were no longer affected by traditional opinions. The resilience of minority values is regularly underestimated by power cultures. Utu transactions are still the most regular mode of business at hui and tangi. Similarly, those who ask when Maori came to understand Western sales are at risk of assuming that Maori would have wished to pursue Western notions. In fact, there was resistance to Western opinions, especially in war areas, and the question is not only as to when Maori were capable of understanding Western ways but when they chose to. We are aware that even in our times Maori were influenced by traditional value systems in cross-cultural situations, their giving being seen as generous when the purpose was to oblige.

The fact that many individuals of the hapu were opposed to sales could have meant many things: that they were opposed to the general tribal policy for example, which would not have been unusual, or that they suspected the Europeans were following

other rules. That would not be unexpected. In any society, however, evidence of alternative opinions does not mean that traditional values have ceased to be significant.

7.9 OVERVIEW OF THE DEEDS OF CESSION

For the reasons above and those now given below, we believe the deeds must be discounted, at least in Treaty terms.

The sales were arranged on the basis that the confiscated portions were returned. On that basis, all lands, in every case, were to be regarded as tribal lands. In our view, the Treaty required no less than a tribal decision, free and informed, with the Government position being clearly and honestly stated and with independent advice given to Maori on matters relevant to their interests. It was practicable to have required that at the time. When the Treaty was signed 40 years previously, the need for independent advice had been foreseen, the Colonial Office having required the appointment of a Protector for that purpose.

There was no transaction, of which we are aware, that met those minimum Treaty requirements. The sales proceeded on the same lines as marred the pre-war purchases. The selection of individuals to treat with; the favouring of persons with gifts of carts, bullocks, or clothing or cash gifts thinly disguised as bonuses, fees, or salaries; the conducting of private negotiations with key personnel; the giving of gratuities; and the drip feed of the purchase price by advances before a sale had been agreed to by all concerned were essentially pressure tactics to solicit sales and to take advantage of the short-term attractions of ready cash.

That several deeds were required to conclude the transactions, there being four such deeds in one case, is merely evidence that the process had nothing to do with collective decision-making.

It is also evident that the many who were opposed to sales were subjected to pressure or confronted with obstacles to minimise the airing of their opinions.

Various reasons for selling are evident from the record; from the desire to ally with the Government to domestic disaffections. In the circumstances of the Treaty, however, the vendors' motives are less significant than the Government's integrity in buying. Assessed in terms of policy, process, price, and land reserves, that integrity was far less than was required in these cases. Broadly viewed, there was nothing that came near to meeting Treaty expectations and standards.

Fraud was established on one occasion with regard to the deeds of cession. On another, the Crown agent was also buying in a personal capacity. Those single instances, when coupled with the size of the fraud, Maori inexperience with Western systems, and other evidence of misfeasance at the time, point to a laxness of supervision that provided every prospect for malpractice.

There was no protection for Maori on sales inside the confiscation line. Outside it, the protective mechanisms of the court were barely operable.

Land purchased inside the confiscation line cannot be counted as land returned. No land was returned, and no purchase can count as such when the vendor has no title and is not secure in knowing that, if a sale were resisted, a title would be given. If the Government thereby threw its money away, it is the Government's problem, because a transaction fundamentally flawed cannot be cured by the fact of payment, to give to those paying the benefit of their own misdoings.

Though in our view the Native Land Court was a wrongful imposition, promoting individual caprice and judges' preference above traditional decision-making, it ought none the less to have provided some protection. It failed to do so. With the Crown assisting sellers, the non-sellers were disadvantaged and the process was usable by some but not the majority. The mere notification of an objection presented a problem, as was illustrated in one case when a group sought to give notice of its position not by filing in court at New Plymouth, as it was bound to do, but by placing a letter in a notch cut into a tree on the survey line.

From such cases as we delved into, it was apparent that in determining title there was not the full inquiry that was needed. Judgment was by default or was on such evidence as was arranged. The practice of buying before an award of title severely prejudiced both objectors and the hearings themselves. With 'owners' being settled by Crown agents according to who would sell, and with sellers being assisted to bring claims for a title from the court, non-sellers were cast as objectors, without any help and, generally, without legal representation.

The cases that went to court to determine the ownership of the land could not be divorced from the fact that the land had already been sold. Prepayments put a pressure on the court that ought never to have been there, and rather than a free and impartial investigation of the title, the issues centred on whether those who had been paid were rightful recipients and whether others should share in the payment or have part of the land severed. The 'justice and fairness' of the alienations was not considered, nor whether 'sales' were intended at all. The merest reference to the reserves made is evidence enough that in no case was consideration given by the Government or the court to the retention of sufficient land for the people.

It should also be noted that by 1880 none of the reserves had been defined or gazetted. They joined the myriad of promises awaiting fulfilment. A further inquiry would be needed to see if they were ever made.

We saw no need to examine each transaction in detail. When the foundations are bad, the policy wrong, and the process in error, the whole edifice crumbles.

7.10 TAKOHA (GRATUITIES)

Purchases by gratuities, more regularly called 'takoha', were introduced to extinguish such Maori possessory rights as had been assumed or were claimed in the Waimate Plains or in the south. In the south, takoha was used to pay for confiscated blocks and possibly also for awards, grants, and promised reserves. At least that appears to have been the presumption of the West Coast Commission, as evidenced by its attitude to

Taurua's claims. In theory, however, takoha was to apply only to confiscated lands where settler possession had not in fact been taken.

The precise location of the blocks acquired by takoha in the south is not known. Takoha payments were effected without accompanying deeds, surveys, or sketch plans for the blocks concerned. In figure 13, however, we have indicated approximately the lands for which takoha was paid, and we have shown the locality of certain blocks that were named.

In practice, takoha was payment in cash to those Maori who, in the agents' opinions, had an interest in the land or could most influence the delivery of quiet possession. As the word 'gratuity' implies, it was a method of purchasing land rights without admitting that the vendor had any. The concept was taken up by the Native Minister, who had a lot of experience in making similar payments to seduce 'chiefs' under the old land purchase system. That system had been discredited and was meant to have been phased out.

The West Coast Commission was scathing of takoha, calling it 'simply make-believe' and 'nothing but secret bribery'. It was a method of buying off 'chiefs' and ensuring compliance so that quiet possession of land could be taken without protests from 'tribes'.

It arose this way:

- (a) Maori had resumed possession of their ancestral habitations throughout central Taranaki, where no European settlement had been effected. From Maori customary perspective, confiscation was abandoned because war had not been followed by possession. There were no reserves for Maori in central Taranaki, nor were there defined court awards.
- Maori were also resuming or threatening the resumption of the unsettled land in the south. Many had left their Ngati Maru camps and were said to be 'hovering' about the Waimate Plains.
- (b) In various statements and actions, the Government itself, keen to keep the peace, had tacitly acquiesced in the reoccupations and had then sent clear signals, well evidenced in correspondence, that the central Taranaki confiscations were abandoned. That view was well known among both officials and Maori. It led to south Taranaki protests that the leniency given to the centre had not been extended to them.
- (c) The new national policy of 1871 for rapid and extensive acquisitions and settlement was seen to require the purchase of the Waimate Plains and any other lands where confiscation had not been perfected by possession. This led to acquisitions by deeds of cession, a practice that was commenced in the north, where Maori were seen as adopting a policy of cooperation.
- (d) Far from encouraging like-minded action among those of the plains and the south, purchase by deed was seen to reinforce convictions that the confiscation of unsettled lands had been abandoned. As one leader put it:

he did not recognize the confiscation; for had not Mr Parris and Major Brown paid money to the Whenuakura natives for their land, and if that was right, what was the confiscation worth?

- (e) The Native Minister thus instituted takoha, to impress upon Maori that any payments to them were not an acknowledgement that the land was theirs.

It remains to be added that, first, 'takoha', not 'gratuity', became the coinage of the day among both Maori and Europeans. Secondly, there is difficulty in using words as cultural equivalents. Takoha did not mean to Maori what it meant to Europeans. It was not a purchase but a gift, token, or pledge. It carried obligations of respect and support in return but was not a payment for the release of land. It cannot, therefore, be assumed that takoha was given and received with the same understanding. Finally, in law, takoha was ineffective in buying land interests in the court awards and grants or in the Governor's formal grants of reserves. The conveyance of legal land interests requires a deed.

7.11 TAKOHA IN THE SOUTH

The payment of takoha in the south appears to have been as follows. Four blocks were identified, as shown in figure 12, being unsettled lands close to the confiscation line. The acreages of those blocks were then assessed and a total value was calculated, having regard to the maximum rate per acre that the Native Minister had imposed. This was much less than a commercial rate. The total 'purchase price' so conceived was then paid from time to time in such amounts and to such persons as the agents thought best. It was not clear whether the blocks included or excluded associated lands proposed as awards or reserves. Payments began in 1876. By the end of that year, the Government was to claim the purchase of the four blocks, altogether covering an estimated 177,752 acres, for a total price of £16,652.

There does not seem to have been any Maori opposition. In 1877, the Civil Commissioner reported:

The natives are gradually but steadily improving in their feeling of submission to the state of things resulting from their defeat by us: so much so, that they have accepted the carrying-out of the confiscation of the remaining land between Patea and Waingongoro without any serious demur. I propose, after I have finished south of the Waingongoro, to cross that river and settle the question of the Waimate Plains.

A vast difference existed, however, between takoha on the plains and in the south. The southern process was accompanied by the purchase of awards and arrangements for reserves. The record of the reserves proposed from time to time gives a confused picture, plans being regularly changed, owing mainly to the concerns of settlers, Maori, and officials as to where the reserves should be and how the boundaries should be defined. Certain reserves of 1873 were cancelled, relocated, or incorporated into others, and some proposed in 1866 may have been acquired. We have been unable to untangle the record to compare promise with delivery, and we have therefore relied upon the West Coast Commission's report for the record of the reserves that had eventuated by 1880 (see ch 6). Some reserves named by the commission cannot be found on survey plans or title records, however, so their location and eventual alienation is uncertain, assuming they were ever 'set aside' at all.

The position is clearer on the plains, for the simple reason that there were no awards or reserves there at all.

7.12 TAKOHA ON THE WAIMATE PLAINS

By the provision of a generous reserve close to the southern banks of the Waingongoro River, it was expected that the recalcitrant Nga Ruahine would relent from their high claim that the centre and the plains, which were uninhabited by settlers, would remain Maori land. Takoha payments for the Waimate Plains began in 1877.

The process was much the same as for the south. The land was perceived as standing in two divisions and £4000 was regarded as an appropriate amount for one part, with £2000 for the balance. To this was added an amount for 'chiefs', and it was then agreed that the total to be paid out should not exceed £15,000. Because of the protests described in the next chapter, payment was much spread out in time. By March 1880, £8924 had been expended, for which it was estimated 100,000 acres had been acquired. The basis for that estimation has not been explained. In the course of distributing takoha, promises were made of 'large reserves', and it was also promised that 'burial grounds, cultivations and fishing places' would be respected, but there was nothing more specific.

The Civil Commissioner gave some description of how takoha worked. He categorised Maori into three groups: those admitting the confiscation and willing to sign for compensation; the 'lax disciples of Te Whiti', who would take the money but sign nothing; and those who would not participate, claiming that what the Civil Commissioner did, 'he did by might and not by right'. The commissioner wrote later that he was 'guided by the position and influence of the individual to assist [him] in obtaining peaceable possession of the land'. In 1880, he also appeared before the West Coast Commission and added:

I awarded the takoha in two shapes. One was to cover the former tribal rights, which was publicly paid to the natives interested: and the other to cover the mana of the chiefs, which was privately paid, only Europeans being present. The reason for the latter was this: the chiefs said they must oppose my action if all the money was paid publicly, because they would then be obliged to hand it over to the tribe and they would lose their land without getting anything for it.

The West Coast Commission then commented:

But it was a mistake to suppose that such a secret could ever be kept. The records we have examined teem with evidence that the tribe knew money was being secretly received by their chiefs; but they did not know, and were not allowed to know, what sums were really paid.

The commission then had this to say of the practice:

The system had three great evils: it demoralized the natives; it gave a vast personal power to the Commissioner; and at the Waimate Plains it has ended in pure waste.

There does not seem to have been the smallest control over the way in which the money was to be spent. The Commissioner could choose at will who should be the recipients of his bounty: he could divide the money as he pleased among the tribe, or withhold it from any but the chiefs. We can find no trace of any principle laid down to guide him . . .

The chief commissioner was to write in 1883:

[Takoha] was a thing which varied with circumstances. Sometimes it was a legitimate payment in the nature of purchase money, and which gave the Crown quiet possession of the land in respect of which it was paid. Sometimes it was in the nature of 'ground bait' scattered here and there to incite an appetite which might lead to a future sale, but for which at the time no specific return was made. Sometimes it was mere 'black mail' intended to prevent obstruction, physical or otherwise, on the part of individual chiefs with whose tribes it was desired to negotiate for the cession of land. And sometimes it was merely a convenient method of obtaining money for some purpose for which none had been appropriated by the signature and which bore no relation, or only the most remote, towards the extinction of Native Title in the districts against which it was improperly charged in the accounts of the Land Purchase Department.

Accordingly, the West Coast Commission decided to examine the vouchers for the £8924 paid up to 31 March 1880, the end of the financial accounting period for the year in which the commission was sitting. After what appears to have been a close scrutiny, the commission found that £4357 was for 'contingent expenses' and only £4567 had actually passed to Maori. On examining further as to a sum of £2500 'for chiefs', the commission was 'surprised to learn that none of the money had reached the tribe at all'.

A large part of the money was said to have been paid for various purposes to Te Teira, the same man who offered Waitara for sale at the start of the war but who had nothing to do with the Waimate Plains. Then, by 'merest accident', the commission found that the money had not actually reached Te Teira at all, though he appears to have had some benefit from a feast at Waitara. Next, it was found that another £1000 had not reached Maori hands either, and the commission decided to require the production of sub-vouchers. The commission was to be treated to evidence of a grand array of 'secret squandering' on a range of miscellany - fine foods and drink, chemises, skirts, French merinos and velvets, perfumery, riding habits, reserved seats at the Star Pantomime, and so on and so on - all hidden in the sub-voucher system. There, the commission stayed its hand. It was wandering beyond its terms of reference and this aspect of the inquiry was taken no further. If anyone was prosecuted, we have found no evidence of it.

More serious for us, and telling of the times, is that Maori had signed vouchers for this money, though, as with Kaitangiwhenua, no money had ever been received. What would have been the result had the vouchers for the south been examined as well or had there been a similar audit of all payments on the deeds of cession? If Maori signed vouchers for money not received, can any more weight be attached to the signatures on the land transfer documents?

When the Civil Commissioner was asked if the Government was any the better for all the money that had been paid in buying the Waimate Plains, he answered simply 'no: and that is the reason why I have recommended in my report that takoha should cease'. And cease it eventually did, on the urgings of the West Coast Commission.

7.13 CONCLUSIONS ON TAKOHA

The payment of takoha was thoroughly bad and meaningless in law. It had all the evils of the old land purchase system and more. Crown agents defined the lands, set the price, decided who the owners were and what their shares were, paid secretly, and made advances on account of the purchase price to those whom they preferred and in amounts they chose. They kept no record of the 'transactions' other than vouchers for purchase moneys, and expenses incurred, and they then fabricated accounts and were otherwise involved in fraud. As with the deeds of cession, the evidence of fraud and misconduct colours the integrity of the whole scheme.

It makes no difference that Maori accepted some money. Why anyone save the pure should refuse money for land that had already been taken from them is extremely hard to imagine. Settlers in the south had been awarded £10,000 for rehabilitation after the war, and they had the benefit, unavailable to Maori, of cheap loans and help to develop their lands. Why should Maori not have taken money to do the same on their reserves?

Leaving aside all questions of fraud and undue influence, we cannot see that any valid purchase could have been effected by the takoha expedient, nor can we see any basis for saying that those lands were returned. For the purposes of settling this claim, however, our main concern is with the historical opinion that thousands of acres were returned to Maori, which, though re-acquired, is none the less paraded as having reduced the amount of land confiscated. These lands were not in fact returned. They were purchased while title was held by the Crown and without the slightest intention of passing them over to Maori if payment were refused.

Some comment is needed on the payments made to 'chiefs', for few people appreciate how destructive of indigenous society this practice has been. The authority of rangatira comes from the people they embody, and it is through the councils of the people that the rangatira should be approached. We have been struck by historical accounts of the distribution of goods delivered to Maori by early colonists. Regularly, the rangatira disdained participation in the scramble. It was with much the same principle that Wiremu Kingi had placed even 'the widows and the orphans' before himself when claiming land rights. It was the mark of a rangatira to demonstrate that the people came first. Direct payments to 'chiefs' amended the ancient ratio, putting rangatira over people, when the converse formula was true, and abrogating to the colonist the people's right to determine their own leadership. Protocol describes the Maori perception. Takoha is placed on marae for all to see, and the person uplifting the pledge is not necessarily the most senior. The inequity of chiefly favours may be seen more clearly by reference to other places. The manufacture of compliant 'chiefs' by the payment of gratituties was the method by which the first apartheid relocations were effected in South Africa in 1913.