The Taranaki Report - Kaupapa Tuatahi

CHAPTER 1

OVERVIEW

1.1 PURPOSE

This overview introduces the main aspects of the Taranaki claims. They could be the largest in the country. There may be no others where as many Treaty breaches had equivalent force and effect over a comparable time.

For the Taranaki hapu, conflict and struggle have been present since the first European settlement in 1841. There has been continuing expropriation by various means from purchase assertions to confiscation after war. In this context, the war itself is not the main grievance. The pain of war can soften over time. Nor is land the sole concern. The real issue is the relationship between Maori and the Government. It is today, as it has been for 155 years, the central problem.

1.2 THE NEVER-ENDING WAR

Land conflict has continued in Taranaki, with little amelioration, for 155 years. On current estimates, some promises about land cannot be fulfilled for a further 63 years. We are unaware of another part of the country where a similar situation prevails.

Tension was evident from 1841, when the first settlers arrived. Though the fighting that resulted was mainly between Maori, the precipitate influx of settlers and their attempts to acquire land were still the cause. When war broke out in 1860, there had already been 19 years of preceding turmoil, attempts to constrain settlers, and fighting among Maori groups. This was all the result of a colonisation that had been programmed for Taranaki even before the Treaty of Waitangi was signed. In the other war districts, systematic settlement did not begin until after the confiscations had been made.

The nub of the Taranaki complaint is the land confiscations during the 1860s wars. In that respect, Taranaki stands with other places where lands were so taken after war: south Auckland, Hauraki, Waikato, Tauranga, Whakatane, Opotiki, Urewera, Gisborne, and the East Coast to Hawke's Bay. Of these, the Waikato claims have been settled, and were appropriately settled first in our view for, although the war began in Taranaki, it was the Kingitanga of Waikato that carried the burden of representing a common Maori position.

The essential feature of Taranaki, however, is that the wars began there before extending elsewhere, but they were over in south Auckland, Hauraki, and Waikato, gone from Tauranga, finished in Whakatane, completed in Opotiki, done in Urewera,

and ended throughout the East Coast, while during all this time the war in Taranaki carried on. Taranaki Maori suffered more as a result. In most districts, the fighting was over in months, but armed initiatives did not cease in Taranaki until after an unparalleled nine years.

Even then, the period of armed struggle was in fact much longer. History creates time slots to compartmentalise war, and 1860 to 1869 has been given for the Taranaki fighting; but just as conflict was apparent from 1841, so also did it continue after 1869. Military action on the Government's part did not end until the invasion of Parihaka in 1881. Thus, in Taranaki, conflict with the use of arms was spread not over a few months, as in most places, or even over a decade, but over a staggering 40 years. After British sovereignty was proclaimed, in no other part of New Zealand did a contest of that nature continue for so long or Maori suffer so much the deprivations of strife after British sovereignty was proclaimed.

The tension did not cease with the abandonment of arms. The confiscations came with an undertaking that lands necessary for hapu survival would be returned without delay, but the promise was not maintained. The same promise was also made in other districts, but we understand that in most cases land was promptly offered and given over for Maori possession. In Taranaki, however, many hapu were left with nothing of their own to live on and became squatters on Crown land. More than a decade after the war, they had not received anything more than promises of land. It was only after more conflict that some reserves were eventually defined, but they were given over to administrators to hold for Maori and 'the promotion of settlement'. They were then leased to settlers on perpetual terms, with the result that Taranaki Maori, and they alone, have still to receive the right to occupy the lands promised after the war.

Legislation is now proposed to terminate those leases within 63 years. Though competing equities now apply, it may none the less be observed that the promises of reserves made in the confiscations of the 1860s, limited though they may have been, have still to be given effect and on current projections will not have final effect for a further 63 years - over 180 years after they were made. It should be seen at once that this history is not a thing of the past.

Thus, the distinctive Taranaki circumstance. If war is the absence of peace, the war has never ended in Taranaki, because that essential prerequisite for peace among peoples, that each should be able to live with dignity on their own lands, is still absent and the protest over land rights continues to be made.

1.3 CONTINUING EXPROPRIATION

War and confiscation are not the only foundations for the claims. Although they are severable to time slots, with the confiscation period being the better known, such divisions should not obscure the record of continuing expropriation from first European settlement, the cumulative impact of the process as a whole, or the various rights that were expropriated in many ways. It needs to be appreciated that what was involved was a process, not a set of unconnected incidents.

One form of expropriation was that, at various times, absentees (ie, Taranaki Maori who were then living away) were excluded from having interests. We believe that those exclusions were not justified. Another form of expropriation, before the wars, were Crown purchases while customary rights and the process for alienation had not been agreed. In our view, for those reasons alone, in terms of the Treaty, those purchases should be vitiated.

More buying was done after the confiscations, but outside the confiscation district. The buying took in nearly all the area beyond the confiscations, but again, it was done on such conditions and by such arrangements that, in terms of the principles of the Treaty of Waitangi, it too should be set aside.

The confiscation of tribal interests by imposed tenure reform was probably the most destructive and demoralising of the forms of expropriation. All land that remained was individualised, even reserves and lands returned. No land was thus passed back in the condition in which it was taken; it came back like a gift with an incendiary device. This land reform, so clearly contrary to the Treaty when done without consent, made alienations more likely, undermined or destroyed the social order, jeopardised Maori authority and leadership, and expropriated the endowments to which hapu, as distinct from individuals, were entitled. The subsequent fragmentation of title and ownership was the inevitable consequence, making Maori land the illusory asset that it is for Maori today, and bequeathing to generations of Maori farmers frustration for their labours and divisions within their families.

The purchase of individual interests began as soon as individual interests were created. The practice continued even when the extent of Maori landlessness was plain, so that little Maori land now remains.

The mood to capture as much Maori land as possible permeated through to today. The targeting of Maori land for public works or Government-supported industrial schemes was apparent as late as the 1970s and 1980s with the acquisitions for the New Plymouth Airport and various major economic projects in north Taranaki. The Treaty principle that each hapu should possess sufficient land endowments had long ceased to exist in Government policy, if it had ever been part of that policy at all. There was no change of attitude until the land march of 1975, when the catch-cry 'Not one more acre . . .' drew attention to what had been happening continuously for over 100 years.

1.4 AUTONOMY

We see the claims as standing on two major foundations, land deprivation and disempowerment, with the latter being the main. By 'disempowerment', we mean the denigration and destruction of Maori autonomy or self-government. Extensive land loss and debilitating land reform would likely have been contained had Maori autonomy and authority been respected, as the Treaty required.

Maori autonomy is pivotal to the Treaty and to the partnership concept it entails. Its more particular recognition is article 2 of the Maori text. In our view, it is also the inherent right of peoples in their native territories. Further, it is the fundamental issue

in the Taranaki claims and appears to be the issue most central to the affairs of colonised indigenes throughout the world.

The international term of 'aboriginal autonomy' or 'aboriginal self-government' describes the right of indigenes to constitutional status as first peoples, and their rights to manage their own policy, resources, and affairs, within minimum parameters necessary for the proper operation of the State. Equivalent Maori words are 'tino rangatiratanga', as used in the Treaty, and 'mana motuhake', as used since the 1860s.

The acquisition of Maori land in the pre-war purchase era falls foul of the autonomy principle. Questions arose as to which Maori owned what and who could effect a sale. The problem is not only that the Government's answers were wrong but that the Government presumed to decide the questions at all, for it is the right of peoples to determine themselves such domestic matters as their own membership, leadership, and land entitlements. Remarkably, it was presumed that the Government could determine matters of Maori custom and polity better than Maori and that it should have the exclusive right to rule on what Maori custom meant.

The result was not only the distortion of Maori custom by those who did not understand it but the introduction of a profoundly wrong process. The process, which still applies today, is one where decisions particular to Maori are made not by Maori but on their behalf, even in the administration of their land or in the application of their traditions. Administrators, for example, may be proposed by landowners but have still to be approved by a court, whether or not there is a dispute.

The Government also determined the protocols and terms whereby Maori land might be bought and sold, when these were also matters that ought to have been mutually agreed. The Government's presumption in unilaterally determining these matters led directly to war, with consequential property loss and personal suffering. The option, never pursued, was to support or develop customary institutions to provide a negotiating face. Not only was that not pursued but it was opposed. Maori collectivities were branded as unlawful combinations; for without collectivity, the Government could divide and rule and Maori could not be strong.

The rhetorical question in the Government's eyes was, 'whose authority should prevail, that of Maori or that of the Queen?' The question in Maori eyes, as evidenced from the leadership of Wiremu Kingi, Te Whiti, and the Maori King, was how the respective authorities of Maori and Pakeha were to be recognised and respected and the partnerships maintained. To the governors of the day, such a position was an invitation to war. To Maori, it was the only foundation for peace. It was peaceful purpose that the Maori leadership most consistently displayed.

This dichotomy of approach permeates all the claims. Through war, protest, and petition, the single thread that most illuminates the historical fabric of Maori and Pakeha contact has been the Maori determination to maintain Maori autonomy and the Government's desire to destroy it. The irony is that the need for mutual recognition had been seen at the very foundation of the State, when the Treaty of Waitangi was signed.

At no point of which we are aware, however, have Taranaki Maori retreated from their historical position on autonomous rights. Despite the vicissitudes of war and the damage caused by expropriation and tenure reform, their stand on autonomy has not changed. Nor can it, for it is that which all peoples in their native territories naturally possess. If the drive for autonomy is no longer there, then Maori have either ceased to exist as a people or ceased to be free.

1.5 MURU

Few Maori have been as inhumanely penalised for standing by their rights as the Taranaki hapu. Perhaps this was because the war was not only longer there but more intense and severe and because, despite the marshalling of several thousand Imperial troops, it was in Taranaki that a Maori ascendency was most maintained.

During its course, the war passed through stages of intensity characteristic of prolonged hostility. Chivalry gave way to attrition. Eventually, military expeditions traversed the length of Taranaki to destroy all homes and cultivations in the way. A cavalry charge on a party of boys, all under 13, that killed eight was indicative of the growing excesses perpetrated by both sides and the developing climate of fear.

Then, in the last year of the wars, Titokowaru emerged from the slopes of Taranaki mountain to clear the land of all soldiers and settlers for a distance of over 40 miles. With a taua of over 1000, larger than any that local leaders had assembled before, he pushed beyond Taranaki to establish a pa near Whanganui, where settlers and soldiers had taken refuge.

The anticipated attack on Whanganui never came. In 1869, while flushed with victory, and for reasons that have never been clear, Titokowaru and his forces packed up and left.

That is how Taranaki Maori ended their fighting. Never again did they raise arms in aggression; only in defence when pursued. They placed their faith instead in the pacifist prophets of Parihaka, Tohu, and Te Whiti, and even Titokowaru joined them. With more than 2000 adherents, the prophets developed new arts of cultivation and cultivated new arts of peace.

Accordingly, Taranaki Maori, unlike Maori of other places, do not use 'raupatu', or conquest, to describe confiscations resulting from war. They use 'raupatu' for their marginalisation by the organs of the State, for on this view, they were never conquered by the sword but were taken by the pen.

There was, however, no end to the dread and fear of Maori after such prolonged and indeterminate warfare. Even in such high places as the superior New Zealand courts, Maori were characterised as 'savages' and 'primitive barbarians'. Titokowaru was especially feared. Once all chance of overt war had passed, he was to be thrice imprisoned for long terms. Mainly, he was held for failing to produce sureties to keep the peace, for sums too large for any Maori to find; but in our view, his commitment to pacifism for the previous 12 years meant sureties were not required.

Because of the independence Maori had shown in the war, the Government made efforts to deprive Maori not only of their land but of all by which their traditional autonomy had been sustained. Dialogue with established leaders was declined and they were ignored or imprisoned. Such land as was returned from confiscation was broken into discrete parts and allocated to individuals in prescribed shares.

Maori protested but, true to a new policy of peace, did not resort to arms. Despite every provocation and dire consequence, they maintained peaceful roles. Protest came after no less than 12 years, when, with the whole of their lands confiscated and their habitations given over to settlers, they were still waiting for promised reserves. The protest that then came took the form not of arms but of ploughing settler land. The weapon was the tool of peace - the ploughshare. Protest ploughing soon spread throughout Taranaki.

They were no ordinary ploughmen who first took the field but the leading Taranaki chiefs, 'loyal' and 'rebel' alike. They disdained all threats that they and their horses would be shot, and they gave no resistance when surrounded. As the ploughmen were arrested, Titokowaru among the first, others took their place, until over 400 Taranaki ploughmen swelled the gaols of Dunedin, Lyttelton, Hokitika, and Mount Cook in Wellington. The Government was confronting organised and disciplined passive resistance and the dogma of moral right.

Again, no resistance was offered when the Armed Constabulary took possession of the remaining Maori land to divide and sell it for European settlement. Included was the very land that Maori were cultivating or had planted in crops and on which whole communities depended in order to survive. When the army broke fences and the crops were exposed to destruction as a result, Maori simply re-erected them. As they were torn down, they were put up again. There was no violent response to the consequential cajoling and arrests. As happened with the ploughmen, new fencers replaced those who were incarcerated, until over 200 Taranaki fencers joined the ploughmen in the South Island gaols.

Throughout this period, the rule of law and the civil and political rights of Taranaki Maori were suspended. By special legislation, all rights of trial were denied in all but 40 cases. Several hundred were sent to gaol for indefinite periods at the Governor's pleasure. This was well after the 'end of the wars' in 1869.

At all times the Maori protest had been peaceful, when eventually a force of 1589 soldiers invaded and sacked Parihaka, the prophets' home, dispersed its population of some 2000, and introduced passes to control Maori movements. This large and prosperous Maori settlement, rumoured to have been preparing for war, had not one fortification, nor was there any serious show of arms. That was a fact the Government knew full well before the invasion began. There were official reports to say so.

When the cavalry approached, there were only two lines of defence; the first, a chorus of 200 boys, the second, a chanting of girls. On Te Whiti's clear orders, there was no recourse to arms, despite the rape of women, theft of heirlooms and household property, burning of homes and crops, taking of stock, and forced transportations that ensued. There was no resistance again when Tohu and Te Whiti were imprisoned and charged with sedition. The prophets had only one question of their accusers: 'Had the

people been shown their reserves?' To this, the answer could only have been 'no', for in truth none had been made. None had been made, though 19 years had by then elapsed since the whole of the Maori land had been confiscated and settled, with promises that reserves for Maori would be provided. A section of the dispersed people began marching the land, marching throughout Taranaki so that a home might be found.

Then, when it appeared the charges of sedition might not be sustained against the prophets and the actions of the Armed Constabulary might be questioned instead, legislation was passed to make any action the soldiers had taken legal and beyond review. By the same legislation, the trial of Te Whiti and Tohu was terminated in order to avoid an acquittal and ensure their incarceration for as long as the Government might wish.

Only then were reserves made, years after they were due, but as if to ensure that several hapu would be scattered to the winds, most reserves were held back from their possession, to be leased to settlers on perpetual terms. Thus, the conflict has not ended in Taranaki. To this day, Maori have still to receive the lands that were their minimal due in terms of the promises of that war.

It is a further consequence of this extraordinary record of expropriation and deprivation that there is not one hectare of Taranaki land that is now held entirely on Maori terms and by Maori rules. All that could have been done was done to destroy the land base for Maori autonomy and representation. In the governance of the Taranaki province, since the Treaty of Waitangi was signed, land has been reserved for the bush and the birds but not one acre could be guaranteed as a haven for Maori.

1.6 VALIDITY AND LEGALITY

The wars, in our view, were not of Maori making. The Governor was the aggressor, not Maori, and in Treaty terms it was the Governor who was in breach of the undertakings made in the name of the Queen.

Of the numerous Treaty breaches, we believe none was more serious than the Government's failure to respect Maori authority. While historians and previous commissions have generally concluded that the Governor caused the war through errors of fact on Maori customary tenure, a 'blunder worse than a crime' in the opinion of W Pember Reeves, we consider the larger error was one not of fact but of principle. The Governor assumed that his own authority must prevail and that of Maori be stamped out, when the principles of the Treaty required that each should respect the other. While the Governor would not recognise this principle, Maori placed their faith in it.

In terms of strict law, according to the legal advice we have taken and with which we concur, the initial military action against Maori was an unlawful attack by armed forces of the Government on Maori subjects who were not in rebellion and for which, at the time, the Governor and certain Crown officers were subject to criminal and civil liability. Subsequently, if Maori were in rebellion against the Crown, it was only because the Government itself had created a situation where that must inevitably have

been so, as a matter of fact, and had then passed legislation to ensure that it was so, as a matter of law. Even in the strict terms of the statute, however, it appears most hapu had not been in rebellion at all at the time their lands were taken.

In any event, were the Treaty the law, however, then as we see the Treaty today, the opposite situation would apply. The Governor was in rebellion against the authority of the Treaty and the Queen's word that it contained. Maori were not in rebellion, in Treaty terms, because they supported the Treaty position and the expectation of partnership that it implied. The written record is replete with Maori statements that demonstrate this approach; there was a place for Pakeha in their country, provided Pakeha could respect them.

It follows that, in Treaty terms, the confiscations were not valid either. While the norms of a Treaty, like those of an international covenant, may be suspended in an emergency, the emergency in this case was caused by the Governor and he could not reap the benefit of his own wrong.

In addition, however, it seems almost certainly the case that the confiscations in Taranaki were unlawful. We refer not to the larger question of whether the legislation was *ultra vires* the Parliament but to the clearer fact that the Governor did not follow the legislation, as he was required to do by law. A major difference would have resulted had the Governor kept to the strict terms of the New Zealand Settlements Act 1863. The statute required that the Governor declare districts where rebellion was occurring, that he define sites eligible for European settlement within those districts, and that he then take such land as might be necessary for those settlements. This, the Governor did not do. We are satisfied upon the facts that there was no rebellion or no sufficient evidence of rebellion in the greater parts of north, central, and southern Taranaki at the time that the confiscations were made. In addition, however, not only did the Governor declare districts larger than the theatre of the war but he declared the whole of those districts to be eligible settlement sites: mountain, hill, and vale. Some parts, the mountain for example, have not been settled to this day, and most could not have been readily settled at the time. There was simply no proper exercise of discretion. For Maori, the consequences were horrendous. There was nothing left for them to live on. Far from ending the war, the confiscations became the cause of its continuance and forced Maori to unaccustomed levels of desperation.

This illegality may have been technically cured by a later amendment to the Act that made all illegalities legal, or at least beyond judicial review, but in our view this remarkable piece of legislative wit did nothing to save the unlawfulness of the confiscation of Parihaka lands, or the rest of central Taranaki. By the governing statute, all land was merely deemed to be confiscated, and then only for the purpose of the Act, namely, to promote peace by settlement; and no acre was actually taken until it was Crown granted for the purpose of a settlement. When the powers of acquisition under the Act expired, no part of central Taranaki had been taken and settled in that way. Twelve years of peace had elapsed and the Government had never taken possession of any part. Then, unexpectedly, after 12 years of inaction, the Government presumed to survey and sell the land as though it were the Crown's, which, in our view, it was not. It was merely deemed to be held for the purpose of the Act, but the purpose of the Act - to secure peace - had long been fulfilled, and the Act

itself had expired. That which had been deemed to be Crown land could no longer be so.

This matter may well have emerged at the trial of Te Whiti and Tohu, but it did not because legislation was passed to prevent that trial from proceeding. The same legislation legalised the actions of the military, but in this instance, nothing was done to legalise the Crown's unlawful assumption of the land. We believe that it was unlawful at the time, and although most lands will now have the protection of having passed to third parties, nothing has been done to this day to make the original acquisition lawful.

1.7 RAUPATU

The raupatu was effected through a reconstruction programme to make Taranaki Maori subservient to Government control. One of the few safeguards that Britain saw in the confiscation legislation was the provision for an independent and impartial Compensation Court to return land to those who had not rebelled. Instead, the court introduced the process of subjugation of the people as a whole. It excluded from land rights hundreds of Maori who were absent at some relevant time but whose ancestral interests in our view could not have been doubted. The court deprived hundreds more of their land for being rebels without an inquiry into their war complicity, and it then turned its back on compensating the remainder with land on the ground that, owing to the rate of English settlement, there was not enough land left for them. Instead, the court called for political solutions. It created the very situation the Secretary of State for the Colonies had warned against: Maori were left without the protection of a court and at the mercy of the Government.

The political solution came in the guise of the West Coast Commission, under a politician who was in the General Assembly for most of the time that he was also a commissioner. He had been the prime mover of the confiscation legislation. The commission's ostensible task was not to determine what lands Maori should fairly receive but, following the protest and imprisonment of the ploughmen, to give effect to what political promises may have been made, whether arising from the Compensation Court's operations or otherwise. In practice, the commission assumed another task: to secure central Taranaki for the Government. That area had not been

touched by European settlers and the confiscation of that part had been abandoned. Under the guise of making reserves for Maori, however, the commission expropriated the remainder, the bulk of the land, to assist a heavily indebted Government, of which the commissioner was a member, by selling it to settlers. There was thus the irony that, while some Maori were required to settle for less than their lawful due because, it was said, nearly all the land had been taken up by Europeans, the commission was in fact relieving Maori of huge areas to provide for settlers still to come. This was the Maori introduction to the raupatu: the subjection of Maori rights to the whim and caprice of politicians. The Compensation Court and the West Coast Commission, along with the ever-present Crown purchase agents, were vanguards to a process of conquest and subjugation by officials - legislative, administrative, and judicial.

The denial to Maori of land that could and should have returned to them was but the beginning. As noted earlier, such land as was returned was individualised to entrench the regime for cultural and social destruction. The same land was then handed to a Government functionary to administer, who, according to arrangements set in place by the West Coast Commission, then leased the greater part of the Maori reserved lands to settlers. As observed before, they were leased on terms that gave away the possession of those lands forever. In all, 214,675 acres returned. On average, this was 38 acres per head for those lucky enough to receive anything, but the blocks were generally larger with several owners in each. By 1912, the reserves comprised 193,666 acres, of which 138,510 acres were leased to Europeans, with a mere 24,800 acres for Maori farmers under occupational licences.

For over 100 years, Maori protested the Government's assumed right to administer the lands reserved for Maori, lease those lands without Maori consent, and make those leases perpetual. The first protests involved yet further ploughing and imprisonments but changed to parliamentary petitions and the representations of the Maori members of Parliament. None the less, there were further legislative changes, without consultation let alone consent, to give more advantage still to the lessees and to worsen the Maori position. Rents were reduced. In the depression and at other times, rent arrears were remitted. For Maori, inflation and share fragmentation arising from the imposed land tenure system meant that the rents themselves became meaningless. Based on rent formulas favouring tenants and with reviews only every 21 years, the rents were conservative at the start of the lease terms and minuscule for most of the remainder, particularly following inflation in the 1960s. Provisions were also made to help the lessees buy the freehold. By 1976, 63 percent of the Maori reserves had been sold by the officials administering them.

Thus, land was said to have 'returned' to Maori, when in fact they were denied the control and possession of it. It was a sleight of hand, a show of justice while denying the substance. Maori had at best the right to apply to use their own land, if they could show some farming capability. As earlier noted, very little passed to them. Today, Maori hold without hindrance less than 5 percent of the area reserved for them following the confiscation. Maori who gained land still had to pay rent to the administrator because the land was severally owned. Then, while Europeans received long-term leases and were able to attract development loans and stock and other subsidies, Maori were allowed only short-term, unbankable licences to occupy. The short-term licences also meant regular rent reviews. Maori were thus liable to pay more rent for mere licences to occupy their own land than Europeans, who were paying for leases that were perpetual.

The leases in perpetuity were the unkindest cut of all, the twist to the blade of the raupatu. It was not only that Maori lost a century of development experience. It was not only that with inflation and fragmentation the rents became as nothing. It was also that, as each generation of Maori succeeded to lands they could never walk on, they inherited the history of war, protest, imprisonment, and dispossession. They succeeded not only to lands under perpetual leases but to the perpetual reminder of forced alienation. As many witnesses and whole families protested at our hearings, they were denied even the right to forget. How could they forget when they saw their children leave home to seek work while they knew that the family land down the road would always be worked by strangers? How could they ask their children to respect

the law and the property of others when they knew, and their children knew, that by the same law their own property had been permanently taken from them?

The perpetual leases have been the subject of protest for a century. They are not past history but are a live issue in the present. They describe a part of what raupatu means for Taranaki Maori. It means the conquest so arranged as to inflict the pain of the past on every generation of their people.

1.8 PREJUDICE

The prejudice to claimants cannot be assessed simply by quantifying the land expropriations; but quantification is, none the less, a relevant consideration.

Taranaki Maori were dispossessed of their land, leadership, means of livelihood, personal freedom, and social structure and values. As Maori, they were denied their rights of autonomy, and as British subjects, their civil rights were removed. For decades, they were subjected to sustained attacks on their property and persons.

All were affected, even non-combatants, because everyone's land was taken, people were relocated, land tenure was changed, and a whole new social order was imposed. The losses were physical, cultural, and spiritual. In assessing the extent of consequential prejudice today, it cannot be assumed that past injuries have been forgotten over time. The dispossessed have cause for longer recall. For Maori, every nook and cranny of the land is redolent with meaning in histories passed down orally and a litany of landmarks serves as a daily reminder of their dispossession. This outcome had been foretold. As Sir William Martin, our first chief justice, said, when opposing confiscation in 1864:

The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; . . . how the claim of the dispossessed owner is remembered from generation to generation and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.

In fact, grievances compound over time. As their economic performance is criticised, Maori have cause to reflect on their progress before their land was taken and on the opportunities lost in experience and infrastructure. When the harvesting of natural resources is curtailed, they have cause to consider that they had taken from them not only arable land but their interest in the bush, rivers, lakes, and sea. While they live with massive uncertainties as to their institutional structures and representation for their groups, they live also with the knowledge that their leaders were imprisoned and their institutions destroyed.

The nature and extent of prejudice is thus not defined by the quantum of land wrongly acquired by the Crown. Quite rightly, it was not the quantum of loss but the impact of loss over time that the claimants most stressed. It is instructive, however, to consider the total taken, especially as a proportion of the district and with regard to the numbers that the balance had to sustain.

In this respect, for the past 68 years reliance has been placed on figures that we would question. In 1927, the Government submitted to the Sim commission of inquiry that the total Taranaki confiscation was 1,275,000 acres, of which the Government purchased 557,000 and returned 256,000, leaving only 462,000 acres as taken. The Sim commission did not question these figures. It considered that an annuity should be paid for the wrong done. This prestigious commission, which brought relief to Maori for the first time, was unfortunately constrained by the chairman's ill-health and the size of the task. It was given eight months to report on not only all the New Zealand confiscations but also the north Auckland surplus land question and 57 Maori parliamentary petitions.

The Government compiled the expropriation figures itself, and owing to the exigencies confronting the commission, they were uncritically received. Had circumstances permitted a full inquiry, it would necessarily have been found that the so-called purchased area had not been properly purchased at all. To all appearances the land had been confiscated, but some Maori were offered money in return for signing a deed or receipt. It was a gross distortion of reality, a camouflage for a fiction perfumed with a whiff of legality. How could the Government claim to have bought that which it insisted it had already taken away? It would also have been observed, as the Government's own records showed, that about half of the so-called purchase area had been the subject of an inquiry by a commission at the time the 'purchases' were being made. That commission had two main observations, the first relating to the extensive fraud and corruption of certain Crown agents involved; the second relating to the process itself, which in the commission's view was nothing but 'secret bribery'.

With regard to the so-called 'returned' land, there were at least three major impediments. It was returned not to the hapu from which it was taken but to selected individuals, who may or may not have been of that group. It was returned not in the condition in which it was taken but under a new tenure system, by which the autonomy and integrity of the hapu would be destroyed. Finally, most of the land was not returned to Maori possession; it was leased to Europeans and is held by Europeans to this day. The amount that we would discount for lands 'purchased' and 'returned' is nil.

Further, to the confiscated area we would add the land acquired in a climate of tension and hostility both before and after the war proper, the land of Ngati Tama beyond the confiscation boundaries that was wrongly awarded by the Native Land Court, and the land, also beyond the confiscation boundaries, that was expropriated from hapu through court awards to individuals. Assuming the ranges prescribing water catchment areas make fair tribal divides, then as shown in figure 3, we would assess as follows the areas affected by various expropriations that were inconsistent with the principles of the Treaty:

Confiscated lands (per Sim commission, less north Taranaki pre-war purchases)	1,199,622 acres
Early purchases (north Taranaki and Waitotara)	107,578 acres
Estimated post-war purchases outside	189,000 acres

confiscation line	
Ngati Tama expropriation, Native Land Court, north Taranaki	66,000 acres
Balance where native tenure expropriated	approx 360,000 acres
Expropriation in Treaty terms	approx 1,922,200 acres

In effect, the whole of the Taranaki land was affected by processes prejudicial to Maori and inconsistent with the principles of the Treaty, and the tribal rights in respect of the whole of that land were wrongly taken away.

1.9 REMEDY

The principles for the resolution of historical claims, where factual issues are beyond living memory and new variables have intervened with time, may call for other than a strictly legal approach to rectification. We observe in that respect that the Tribunal's jurisdiction in making recommendations does not include criteria that are usual for compensation in the courts.

The quantification of property loss, personal injury, social impairment, and forfeited development opportunities may assist the consideration of comparative equities between claimant groups, but it is not necessarily determinative of the measures appropriate for relief in any one case today. As we consider further at the end of this report, in resolving historical claims a pay-off for the past, even if that were possible, may not be as important as the strategies required to ensure a better future. Similarly, an endowment that provides adequately for tribal autonomy in the future is important, not payments for individual benefit.

The proper approach to take would need to be fully debated if we were to progress this inquiry further. The most careful deliberations would be required. At this stage, however, we can observe that, having regard to the historical record and the suffering to which the Taranaki people have been exposed, we could be dealing with the country's largest claims.