

The Taranaki Report - Kaupapa Tuatahi

CHAPTER 6

COMPENSATION

I have a few words to say with regard to our lands . . . which were awarded by the Compensation Court. I want to know where they are.

Wi te Arei to the West Coast Commission on lands promised by the court 14 years earlier but not provided

If we are all located upon this piece of land we shall be obliged to have recourse to infanticide to keep our numbers down.

Taurua to Richmond, 1867

6.1 THE FAILURE OF COMPENSATION POLICY

The Compensation Court made 518 determinations entitling loyal Maori to 79,238 acres by way of compensation, which represented about 6 percent of the confiscated area. Over a decade later, and after numerous complaints, it was found that at least 38 percent of the land promised by the Compensation Court had never been allocated. It was not until 15 to 20 years after the court had sat that many of those entitled to compensation received anything, and then only because a further body, the West Coast Commission, was established to give such effect as could then be given to the court's outstanding obligations. It was further found that nearly all the land that had been allocated had been given in the form of individually owned sections and that most of those sections had then been sold.

Far more Maori, however, were not entitled to compensation. Because most hapu had had all their land confiscated, they depended upon such reserves as the Governor thought fit to provide. Then, several years later, the commission found that promises to reserve land had been made throughout the length and breadth of Taranaki, but except in the south, virtually no reserves had actually been defined on the ground. Thus, most Maori were surviving as squatters on Crown land and were always liable to have the land sold from underneath them for the purposes of European settlement. Accordingly, as well as giving effect to the outstanding Compensation Court promises, the West Coast Commission was also directed to provide, to the extent that it could, for all the many reserves that had been promised but not delivered. The work of the commission is considered later. This chapter deals with the Compensation Court's function of compensating loyals and the duty of the Governor to reserve lands for rebels.

It put considerable pressure on the compensation scheme that, while the New Zealand Settlements Act and the Governor's undertakings to the Secretary of State in Britain had suggested that confiscation would be limited, in fact most of the Taranaki province was taken. As a result, every hapu of Taranaki was affected, whether or not they had been involved in the war. Similarly, of those responsible for enacting the New Zealand Settlements Act, none had denied that compensation for loyals should be swift, honest, and sure, or that rebels should be treated with clemency once the war ended. Contrary to consequential expectations and the principles of the Treaty of Waitangi requiring the fair and honest performance of responsibilities, the compensation scheme was not swift, honest, certain, or clement. Over a decade after the scheme had begun, most loyals were without compensation and most Maori were still without land; and although it had been thought that the work would be done mainly by an impartial and independent court, in the end, delivery came to depend entirely on executive action.

The compensation scheme was inconsistent with Treaty principles in that it failed to meet proper standards of honesty and fairness. It was also in breach of its terms when land was returned in other than customary tenure and when judicial officers determined who had rights in Maori land and how that land should be held. This, in fact, was Maori business. The Compensation Court, which showed no understanding of Maori values, grossly restructured traditional Maori systems, changing the whole way in which Maori had related to one another for centuries. Although this court was set up to make a proper inquiry and provide justly for Maori, it gave justice to no one, becoming lost in its own legal bureaucracy. It excluded hundreds of Maori from sharing in land, not just because they were rebels and were not entitled to compensation but mainly through rules of the court's own making. This was because it never inquired, relying entirely on whoever filed claims, then excluded hundreds of claimants for no reason other than their failure to appear in court or for having been absent from the land in the past. Those few who survived the bureaucratic hurdles were, in nearly every case, shunted out of the court and into a 'settlement', which of necessity required them to accept less than their due. It was unfortunate that, for most Maori, this was their introduction to 'the law'.

6.2 THE TRIBAL RIGHT

In this report, the Compensation Court process is assessed in its own terms, but with the qualification that the terms themselves were wrong. The process diminished the hapu, the authority by which Maori managed their lands. This point has been made before but needs to be emphasised. It was integral to the Treaty that hapu would be respected and would have authority over their land. The court process changed the tenure of that land to take that authority away. The land taken wrongly from loyal hapu should properly have been returned to the hapu in the condition in which it had always been. Instead, such land as was returned was returned to individuals. It needs to be appreciated that the return of land was no ordinary restitution; it was carried out within the framework of a larger plan of social control through the reformation of customary tenure. No matter how sincere the motives of some of the Ministers and officials involved, the scheme carried the germ for cultural genocide. A communal right was taken and not restored. Maori held their rights to land through loyalty to community and kin. The rights returned to them were based on loyalty only to oneself.

6.3 PROCESS AND WAR

It should not be overlooked that the Compensation Court sat during the war. Had it worked well, it may have facilitated an early peace. Instead, it worked against this. In political strategy, one might expect certain and expeditious restitution to convey to all the benefits of peace and the perception of a tolerant regime. This was the expectation of Weld, the Premier in 1865, who claimed that land confiscation would not be an irritant to Maori because the action would be clearly stated to them and implemented with expediency. The reality was to be very different.

In north Taranaki, rapid settlement of the cleared land and the failure to keep some land in reserve meant that there was insufficient to compensate the loyals, who should never have lost their land in the beginning. There was simply not enough land left for the court to do its job properly. In other confiscation districts, Maori were transferred to reserves, but in north Taranaki no reserves were made, the Compensation Court was tardy in producing results, and the people squatted where they could or remained in the hills.

The Governor's undertaking that the land returns would be just was but the beginning of a myriad of broken promises, which produced no larger harvest than suspicion and distrust. As some had predicted, Maori armed resistance increased in scale and desperation as the reality and extent of the confiscations were realised. Happily for the settlers, however, the more Maori who joined the war, the fewer there were entitled to relief. The compensation process came to be conducted in a climate of escalating war and bitterness. Nor did the struggle finish with the ending of the war - it merely took another shape.

6.4 THE COMPENSATION SCHEME

The compensation scheme involved a mixture of allocations to loyals through the Compensation Court and awards for 'friendlies' and 'surrendered rebels' and reserves for all the hapu through the Governor at his discretion. An interplay of judicial determination and executive discretion was thus provided for, but executive action came to dominate, and even displace, the court. Grants by the court and by the Governor are considered separately.

6.5 THE COMPENSATION COURT

The process of the Compensation Court was prescribed by the New Zealand Settlements Act 1863, its amendments (passed annually up to 1866), and its associated court rules. In practice, the process changed according to expedience, so the statutes and rules are not reliable indicators of what in fact happened. In essence, the purpose of the court was to hear and determine loyals' claims to a share of land (the original provision for cash only having been amended).

An explanation of the process is needed to explain the results, and the distinctions between 'certificates', 'entitlements', 'awards', and 'grants' has to be kept in mind, because these terms were later confusingly merged as 'awards'. The distinctions are

integral to any secure title scheme. More particularly, loyals claiming interests in any of the confiscated sites - Oakura, Waitara South, Ngati Awa Coast, and Ngati Ruanui Coast (the four 'eligible sites') - were to submit claims in order to recover land within them. When satisfied as to which claimants were 'loyal' and had customary rights, the court was to assess the total customary interests in order to calculate the admitted loyals' shares. 'Certificates' were then to issue, showing the admitted claimants' entitlement to a given quantum of land in the confiscation site. The precise location of the land was to be settled later with officials or, failing agreement, by the court, and the area was then to be surveyed and depicted on a plan. On production of a survey plan locating the land concerned, an 'award' defining the land, the persons entitled to it, and their shares was to be sealed by the court. The Governor was then to issue a title for the award in the form of a 'Crown grant'. Confusion arose because the court used the term 'award' for a mere 'entitlement' (the West Coast Commission did the same). The result was that the status of the work in progress was uncertain and it was never clear whether lands said to have been awarded had in fact been defined on the ground.

It was no small task to get before the court. Claims were to be filed with the Colonial Secretary in Wellington within a period set by the court, being not less than two months from notification of the first sitting. Claim forms were distributed for this purpose. Persons claiming compensation were meant to file separate claims, although in practice, individuals filed claims for themselves and their relatives. We have no way of knowing how many of those entitled did not file claims. These were war times and communications and written comprehension were not as they are today, but those who did not file claims were excluded from the start.

While all claimants were required to establish both that they had an interest in the land and that they had been loyal, in practice the court relied on one or two informants to determine who had an interest and who was a loyal and who was a rebel. There never was a proper inquiry. Effectively, Maori collaborators became the judges. To make it clear that the onus was on claimants to prove their right, the rules required that the claimants proceed as plaintiffs, with the Crown as defendant. As to counsel, an agent was appointed for the Crown and a native agent, who was not a lawyer, was appointed for Maori. The native agent was also the district Civil Commissioner, who, in his capacity as commissioner, was also charged with buying the interests of those who would sell. It raised the prospect that the native agent might admit the claims of sellers but not others. His integrity was already in question. He had been party to secret payments in buying land before the war, which had led to internal conflict. It was his advice to the Governor on Pekapeka that had led to the outbreak of war. Further, when buying from those awarded land by the court, he was to buy for himself as well as for the Government.

Then, despite the obligation on Maori to comply with the court's process, and though many claims were thrown out for failure to do so, the court itself was not obliged to follow its own rules. All determinations of the court were deemed valid and beyond further judicial scrutiny, despite any such non-compliance.

The process presented many problems. It is known that some Maori who were entitled to claim never did, Wiremu Kingi among them for Waitara South, and it is likely that there were large numbers in that category. The statutory process was also muddled by

conflicting proclamations and, presumably, by the way in which they were relayed to Maori. The 'peace proclamation' of September 1865, for example, promised that the Governor would restore lands and commissioners would 'put the natives who may desire it upon their lands at once'. It was unclear whether this would come as a matter of course or whether claims were still required. Further, while the rules did not show that rebels might need to signify an interest, the loyals' shares could not be calculated unless the total shares of all were known. Evidence as to ownership was thus anecdotal and thin, and the court generally worked on the assumption, which it could not properly have drawn, that the admitted claimants and those whose claims were rejected represented the total hapu population.

How many were actually given notice and were able to file claims in Wellington must also be doubtful. In addition, although the fighting had abated when the court sat, it was war time none the less, and yet claimants were expected to attend sittings. This must have presented difficulties, because the court sat only at New Plymouth and twice at Whanganui. While it is therefore hardly surprising that many were unable to attend, hundreds of claims were dismissed for want of appearance. The claimant lists were unreliable in any event: names were duplicated, many of those listed had died (though it was customary to claim rights through deceased parents), and some had included their children. It appears claimants also made claims for pre-war purchase lands that were not confiscated, raising the question of whether they knew what was taken. In addition, of course, rebels in arms faced extra difficulties in attending to give evidence, so that there is every likelihood that accounts were one-sided. The process encouraged divisiveness and lasting enmities as claimants added some to their lists and excluded others and as court informers or collaborators declared some to be loyal and branded others as rebels.

The main problem, especially in the north, was that, because land had been allocated to military settlers or set apart to sell for the war and settlement loan, there was insufficient usable land to meet the admitted claims. Because the court could not award the proper entitlements, it developed the practice of not assessing entitlements at all, instead requiring the Crown agent to seek an agreement with those whose claims were admitted. This meant that Maori were to settle for whatever they could get, with the court specifically declining to inquire into the fairness or even the terms of the arrangement made. This practice, if it was justifiable anywhere, was relevant only to the north but was applied generally. Out of the 13 divisions into which the four eligible sites were divided, out-of-court settlements were arranged in all but one. Only in the thirteenth sector did certificates of entitlement issue based upon the court's own inquiry and assessment of that which was due. In all other areas, judicial duty gave way to executive expedience. It was probably no coincidence then that it was in the last sector that the largest acreage was designated for return to Maori, and it may also be significant that the claims in that district were heard by another judge. It is apparent that elsewhere Maori did not receive certificates of entitlement for the amount of land that was due to them.

The court cannot, in fact, be excused on the grounds that the necessary usable land was not there. At all times, the Act left it open to the court to assess the compensation to which persons were entitled and, if the land was unavailable, to award cash compensation or land scrip for the deficiency. The court's actions, however, were protected from judicial review.

It should also be noted that the Crown agents' agreements did not always amount to anything more than a promise to set aside a stated quantity of land when it could be found. In 1880, the West Coast Commission reported on Maori claims that the promised land had not been provided. Fourteen years after the agreements had been made, Crown grants had still not issued for 79,823 acres, or 96 percent of the land that had been promised. In many cases, land had been allocated even though it was not secured by a Crown grant, and its location was not always clear to Maori or it was situated in barren areas or remote hills or bush. Comparative values had not been used to augment the inferior land given. In addition, since Crown grants had not been issued for these lands, they were only tentatively allocated and could be changed if officials wished. Thus, the allocation of 700 acres of flat land by the upper Patea River was changed when a land board wished to lay out a town on the site.

The amount of land so at risk was extensive, titles having issued for only 4 percent of the land. It appears that officials were reluctant to finalise arrangements for Maori until they could be sure that all obligations to military settlers had been satisfied and that sufficient land had been set aside to repay war and settlement debts.

The process of holding back on Crown grants and individualising titles lent itself to the sale of Maori interests. Certificates of entitlement were like tradeable land scrip, entitling the bearer to a quantity of land from the Government. Awards were similar in that they entitled the bearer to a particular parcel of land, but they were not guaranteed and could be changed. In the most southern district, the court had issued awards for 17,280 acres, of which at least 14,192 acres, or 82 percent, had been sold by 1880. The court had placed alienation restrictions on its awards, but they were sold none the less, the restricting clause simply being struck out, although whether by the Crown agents or the selling or buying parties was never clear.

In 1880, the situation was explained by the Commissioner of Crown Lands. He had been asked by the West Coast Commission to report on the lands granted or awarded in Taranaki, whether by way of compensation or as pre-war purchase reserves or the like. He reported that:

I have furnished in the Schedules the particulars required by the Commission, so far as lies in my power. Return A will fully bear out the assertion I made before the Commission that the effect of Native title by Crown grant had been to alienate the land from the Aboriginal grantee; and it will be seen that Crown grants seem, as a rule, to be but little valued by the natives who generally allow them to remain in the Crown Land's Office without attempting to uplift them. The uplifting of a native grant is, in nearly every instance, a proof that the land included in it has become the property of a settler. As a rule, therefore, though I think it would be detrimental to the interests of settlement of civilization if large tracts of country were to be inalienably vested in Aboriginal natives tribally, yet, in cases of small and medium holdings individualized, every well-wisher of the Maori race must, I think, recognize the desirability of absolutely vesting the land comprised in the grant in the Aboriginal grantee and his descendants. Though I have endeavoured to give the name of the purchaser in each case where the land has been purchased from the Maori grantee by a European, yet I have not always been able to trace the alienation of the first purchaser. For some reason, first purchasers have in many instances carefully omitted to register, and dealings have only been registered after the land has passed through

two or more hands. The same omission to register prevents me from fully completing the return by showing the European purchaser in many cases. Sections of land comprised in the grants which, according to the returns, still vest in the aboriginal grantee, have actually been sold, but there is no record of the transaction in the Registration Office, and I have no means of verifying the alienation.

Accordingly, the land that was eventually Crown granted was not generally granted to Maori, because the Maori interest had previously been sold. Uncustomary titles, the dismantling of traditional hapu controls, settler and Crown pressure to buy (as considered in the next chapter), the possession of paper promises and not land, and the greater chance that settlers had of converting entitlements to grants all had an effect. These were also war times, when much of the Maori horticultural production had fallen or the crops had been destroyed and persons faced starvation.

Another factor contributing to sales was the placing of Maori on other than their family land. By their own laws, they would know the land was not really theirs to hold, and there were traditional constraints on using it in those circumstances.

A further category of Maori was resurrected from the past in the course of the court proceedings: the absentees. In determining who had customary interests and, as loyals, could make a claim, the court excluded those who were absent in 1840 and, making no allowances for the ravages of the war, those who had failed to maintain a sufficient residence thereafter. Set down in brilliantly learned and erudite tomes, these judgments shone rays of precedent to the Native Land Court, which followed, and the precedent thus established survived to influence modern Maori land law. The judgments suffered but one impediment: neither the reasoning nor the result had much at all to do with Maori custom.

In our view, the absentees' interests were confiscated by the court for the reasons we discussed in chapter 2. As was said at the time by Alexander Mackay, an adviser to the Government on Maori custom, the Compensation Court decisions were 'absurd'. There was also no need for the court to take away the right of hapu to determine customary entitlement themselves. If some of a hapu had taken part in a war, all that was needed was to take some of its land and leave the hapu with the balance. The consequence of excluding absentees was to increase the proportion of rebels to loyals and thus reduce the amount of land that the Government would have to find as compensation.

In practice, the absentee rule was inconsistently applied. An exception was made to accommodate absentees recognised by the Government. Absentees who had effected pre-war sales were thus included in the lands, because their exclusion would have cast doubts on the validity of the pre-war transactions they had purported to effect. In other words, the title of absentees was recognised when they were sellers, but was not recognised when they were not.

The rule was also varied by the Governor. Such was the concern for the safety of Wellington during the war of Titokowaru, and such was the need to keep the local absentees 'friendly', that the Governor promised to provide for them.

A further anomaly was the exclusion of Maori from lands that were not seen as valuable at the time but are valuable now for production or conservation purposes. In assessing Maori entitlements in one case, about 8000 acres were deducted from the total acreage on the ground that they were 'worthless' or 'mountainous'. The apparent effect - to increase the Maori share in the productive land - was unimportant in this instance since there was insufficient productive land left to meet their claims anyway. The real effect was to reduce the areas that Maori could recover. The anomaly was that the land had been confiscated as an 'eligible site' for settlement, which assumed it had some productive capacity or could be settled, but was then excluded from return to Maori on the ground that it was hilly and worthless.

The quasi-judicial and mainly bureaucratic Compensation Court thus had the elements of a lottery. Its main effect was to exclude hundreds from land interests because they were absentees, did not attend court, were rebels, or did not complete claims. It then facilitated settlements out of court that ensured that Maori received less than their due. It proposed land entitlements that did not translate to hard dirt, and it introduced a land tenure that ensured the land was sold soon after it was received.

6.6 COMPENSATION COURT DECISIONS

To particularise the points above, a brief analysis of the Compensation Court decisions follows. The court heard claims in respect of the four 'eligible sites' (as depicted in figure 10) as detailed in the table below.

Site	Venue	Date
Oakura	New Plymouth	1 June to 12 July 1866 25 March 1869
Waitara South	New Plymouth	1 June to 12 July 1866
Ngati Awa Coast	New Plymouth	21 September to 25 October 1866 25 March 1869
Ngati Ruanui Coast	New Plymouth	15 to 25 October 1866
	Whanganui	12 December 1866 to 14 January 1867 18 February 1874

6.6.1 Oakura eligible site

(1) *Initial proceedings*

The Oakura eligible site was said to be owned by Ngati Tairi of the Taranaki group. In various claims, 872 names were submitted but 569 were then excluded as absentees. The site, assessed at 27,500 acres, was thus 'owned' by the remaining 303.

Of those, a further 188 were excluded as rebels on the evidence of a few informants, leaving just 115. Assuming 303 was the total number of owners and each owner had an equal share, and after deducting some 8000 acres because they were 'worthless' or 'mountainous', the court calculated that the balance of 115 persons was entitled to 7400 acres. Since the Crown agent advised that only 2500 acres remained that had not been taken by Europeans, there was nothing more that could be done, in the court's view, than to urge the parties to come to an arrangement. The senior judge of that court, aware of the 'serious embarrassment which would occur to the government' if the court awarded land occupied by military settlers, dispatched Judge Rogan to Wellington. The judge returned with the Native Minister, Colonel A H Russell, who effected an out-of-court settlement with the claimants. 'What the terms of Colonel Russell's arrangement were,' the chief judge added, 'the Court did not think it their duty to inquire.' In obiter comments, the court considered the settlers' titles to be of doubtful validity, principally on the ground that settlements had been laid out and contracts effected before the land had been legally confiscated.

(2) Outcome

The agreement was described in letters between the agents in June 1866. The Crown agent offered the whole of the remaining land in full satisfaction. The native agent presumed 'the whole of the remaining land' meant 'all the Government reserves and the whole of the land not allotted to the military settlers', adding, 'With this understanding I agree on behalf of the native claimants'. This appears to have been the only case where the native agent took active steps to protect Maori interests, but the matter does not appear to have been followed up, and as it turned out and despite the agent's insistence, Maori did not receive 'the whole of the land not allotted'. The court overlooked or disregarded the agent's addition and it also overlooked or disregarded the entitlements of the 115 persons. On 25 March 1869, the court simply issued a certificate that three persons, Robert Ngarongomate, Porika, and Komene, were entitled to 'all the unappropriated land inland of the Military Settlement'. This determination was categorised as standing in 'Division VII - Omata to Stoney River'.

We have been unable to discover the eventual result. According to the West Coast Commission, 8700 acres in 'Division VIII [it should read VII] Omata to Stoney River' were 'allocated to Ngarongomate and others'. We have examined the commission's record of Crown grants, sections allocated but not Crown granted, native reserves, and town, suburban, and rural sections for Okato and Oakura, but we could not find near to 8700 acres as given over. Crown grants, which provide the only certainty that titles actually returned, were represented in 17 allotments in the Okato district, each grant being vested in a single person, with 16 persons in all (not three) having from 50 to 371 acres, totalling 1982 acres. Of that, at least 810 acres had been sold.

It is not certain that the claimants received the 8700 acres, as described by the West Coast Commission. If they did, it was still not the whole of the residue of 8000 acres of 'worthless' land and 2500 acres of 'available' land.

(3) Comments

It is necessary to summarise our opinions. The full inquiry that the Act required was not carried out. In addition, the claimants were entitled to much more than the 7400

acres originally assessed by the court, because some 8000 acres of 'worthless' or 'mountainous' land had been wrongly omitted from the equation and comparative values were not applied. The 8700 acres said to have been given were not the whole of the balance, as had been agreed. We also note that the absentees should not have been excluded, there was no proper inquiry as to who were loyals and who were rebels, the basis for determining the unequal entitlements was not given, there is no explanation for the reduction of 115 persons entitled to land to 16, and there were no safeguards against the alienation of such lands as were Crown granted.

6.6.2 Waitara South eligible site

(1) Initial proceedings

In Waitara South, 238 claims were rejected as being from absentees, 149 were disallowed for the non-appearance of the claimants, and other claimants were divided into loyals and rebels on the evidence of one or two witnesses. The most prominent of these witnesses was described in the court's records as the Crown agent's witness. Matters had not progressed further when a settlement was announced to bring the proceedings to an end. The terms of that settlement were not given. The Crown agent simply announced that an agreement had been reached and that the claimants had asked the court not to adjudicate on their claims.

Waitara South included Pekapeka, where the wars began. Some historians have argued that an out-of-court settlement was reached to avoid embarrassing findings on the ownership of Pekapeka and thus on the cause of the war. In support, they have cited the senior judge of the Compensation Court, who admitted to the Native Land Laws Commission in 1890 that the court was 'so much struck with the facts elicited in evidence' that it adjourned and 'made a communication to mutual friends that some of the Ministers ought to be sent down and prevent judgment being given'. The Native Minister came, a further adjournment was allowed, a settlement was agreed, and at the end of the week there was, as the judge put it, 'no appearance of anybody, so there was no judgment'.

It is also of interest to note those who were not among the claimants. Like many others, Wiremu Kingi did not participate in the court's proceedings. Te Teira was present, but Kingi and his people remained in the upper Waitara Valley, where they had taken residence with Ngati Maru. He is not included among the names for Waitara South, where he lived, but his name appears as a rebel on the lists for Ngati Awa Coast. We are aware of no evidence that Kingi was involved in the second war or in any fighting on or after 1 January 1863, the date from which rebellion was deemed to have commenced. We also know of no evidence that Kingi received a piece of land. The line from Wiremu Kingi is not known, and no persons appearing before us claimed him as their forebear. His descendants were left landless.

(2) Outcome

The agreements of July 1866 were simply to the effect that the balance lands not taken up by settlers or proposed for them would return to Maori. This balance was called 'the Puketapu block', which stood in two divisions: Waitara East and Waitara West. Correspondence suggests that most of the fertile lands, amounting to about

25,000 acres, had been taken, leaving some 10,000 acres for Maori, though parts were coastal sand dunes or inland hills.

Many more meetings were needed to divide this balance among the numerous claimants, because 'some of the chiefs wanted the lion's share'. The division of 741 acres of the inland part could not be settled until 1875, for example, and another part, of 595 acres, had to be left undivided for eventual reference to the Native Land Court. More inquiry would be needed to establish the exact position, but from the returns of the West Coast Commission, it appears as follows:

- (a) The greater part of the balance was divided into 138 rural sections. While the majority of these sections were under 50 acres in area, some were larger, including the 595-acre section which was referred to the Native Land Court. The rural sections totalled 8680 acres.
- (b) In Waitara East and Waitara West, 125 town sections and 50 town sections were set aside respectively, for a total of 44 acres.
- (c) An area of 'barren sand' was not divided and was considered to belong to the 'Puketapu tribe'. It was approximately 1000 acres in area.
- (d) Four tribal reserves totalling 791 acres were created, including the Kaipakopako reserve of 594 acres for Tamihana Tuhaehe, Wi Karewa, and others.

The approximate total of the above was 10,615 acres.

Of the rural and town sections, about 6000 acres were awarded to individuals for varying sized shares and Crown grants were issued for them. By 1880, about 3350 acres of the Crown grants had been sold. The balance appears to have been held by the Crown to satisfy any further claims.

The native agent was a major purchaser, buying several of the grants.

(3) *Comments*

In brief, there was not the full inquiry by the court that the New Zealand Settlements Act required; the amount of land to which the loyals were entitled, based upon the number of loyals, the owners as a whole, and the total area, was not assessed because it was simply settled that Maori would take what remained; comparative values were not used; the basis for determining the unequal entitlements was not given; there were no safeguards against the alienation of such lands as were Crown granted; it is not known whether the balance that was not Crown granted eventually reached Maori hands; the personal acquisition of interests by the native agent was contrary to regulations in that he also had the duty of buying for the Crown; and Wiremu Kingi and his followers were left out, but it is doubtful they were rebels in terms of the Act. No proper inquiry as to loyals or rebels was ever made.

6.6.3 Ngati Awa Coast eligible site

(1) *Initial proceedings*

With regard to the Ngati Awa Coast eligible site, 560 claimants were rejected as absentees. The remainder were divided into 403 rebels and 575 'admitted claimants'. The list of rebels included Wiremu Kingi Te Rangitaake. No further progress was, however, made; the court was again advised of a settlement and decided to forego its statutory responsibility to conduct an inquiry.

(2) Outcome

By various agreements, four during October 1866 and one of 15 March 1867, it was agreed that the Ngati Awa Coast site would be settled out of court. Because it was a very large district, it was also agreed that it should be settled in seven divisions. The following tables give a brief summary giving the eventual result in each division. A map of those divisions has not been found, but the place names in figure 11 indicate where they may have been.

Division I	
District	The Pukearuhe district from Waipingao (White Cliffs) to Titoki. It was the northernmost area confiscated.
Acreage	Not given.
Hapu affected	Not given, but presumably Ngati Tama.
Total customary interests	No assessment was made of the number with customary interests in this district owing to an out-of-court settlement.
Apportionment	No assessment was made of the amount of land to be returned by reference to the acreage of the district, the number of admitted claimants, and the total number of persons with customary interests.
Outcome	<p>(a) It appears to have been agreed that 12 persons should receive varying amounts between 200 and 500 acres, for a total of 3458 acres from out of the district.</p> <p>(b) Court determinations were made on 25 March 1869 and certificates issued that those 12 were entitled to receive lands from out of the district for the given amounts.</p> <p>© In 1880, the West Coast Commission noted that, as at that date (14 years after the agreements were made), no Crown grants had issued and in its view nothing had been returned.</p>

Division I-continued	
Comments	There was not the full inquiry that the Act

required; it was never determined if there were any rebels; the proportion of land proposed for return to the total district was not given, but it seems all the land should have returned because the local hapu was not in the war; the provision for 12 only may reflect that most of Ngati Tama were out of the district at the time; no basis was given for the unequal shares; and on such evidence as exists, the whole of this district should have been secured for the hapu as tribal land and no part of it was liable for confiscation.

Division II

District	From Titoki to Urenui.
Acreage	Not given.
Hapu affected	Not given, but probably Ngati Mutunga.
Total customary interests	No inquiry was made.
Apportionment	No assessment of the amount due for return was made.
Outcome	(a) It was settled that 35 persons should receive some 50 to 500 acres each, for a total of 6450 acres. (b) By a court determination of 25 March 1869, certificates issued that those 35 were entitled to receive such areas from out of the district. © The Government later claimed that some of those entitled had participated in the Onaero-Urenui block sale of 1874, affecting part of the land intended for them, and in its view they therefore had to be taken to have forfeited their entitlements. (d) As at 1880, no land had been returned.
Comments	No proper inquiry was made; it is doubtful that any land in this district should have been confiscated because there was no evidence or insufficient evidence that the local hapu had been involved in the war; the proportion of the district proposed for return is not known; most of Ngati Mutunga were not in the district at the time; if part of the land intended to be given was included in the so-called 'sale', then because the location of that sale is known, it can be established that the land intended to be given comprised rugged, interior hills; no basis was given for the unequal shares; and the validity of the alleged 'sale' is questionable, as is referred to in chapter 7.

Division III

District	From Urenui to Te Rau-o-te-Huia.
Acreage	Not given.
Hapu affected	Not given, but probably Ngati Mutunga.
Total customary interests	No inquiry was made.
Apportionment	No inquiry was made as to the amount due for return.

Division
III-continued

Outcome	<p>(a) It was settled that 52 persons should receive 50 to 200 acres, for a total of 3450 acres.</p> <p>(b) By a court determination of 25 March 1869, certificates issued that those 52 were entitled to receive such areas from out of the district.</p> <p>© The Government later claimed that most of those entitled had participated in the Onaero-Urenui block sale of 1874, affecting all but 2800 acres of the land that was intended for them, and that the 2800 acres would be for those who did not participate in that sale.</p> <p>(d) As at 1880, no land had been returned.</p>
Comments	<p>No proper inquiry was made; for lack of evidence of war complicity, it is doubtful that any of this land should have been confiscated; the proportion of the district proposed for return is not known; most of Ngati Mutunga were absent at the time; the so-called 'sale' indicated that the land proposed for return was in the hills; no basis was given for the unequal shares; and the validity of the sale was questionable, as is referred to in chapter 7.</p>

Division IV

District	From Te Rau-o-te Huia to Titirangi.
Acreage	Not given.

Hapu affected	Not given, but apparently Ngati Rahiri of the Te Atiawa group.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	<p>(a) An agreement of 19 October 1866 provided for 'all land owned by [the signatories] not taken for the Military Settlement' to be returned to the 150 signatories.</p> <p>(b) Despite some pressure and offers of gifts, the hapu resisted all attempts to impose individual shareholdings for that land.</p> <p>© Pursuant to a court determination of 25 March 1869, a certificate issued that the 'Ngatirahiri Tribe' was entitled to 'all the land owned by them [in the district] not taken for military settlement'.</p> <p>(d) After surveying the military settlement, the Turangi block of 13,100 acres was then given over for the occupation of the hapu. To ensure that no more of their land was taken, the hapu contributed to the survey costs and agreed to a road crossing the block but took no compensation for it. It was said they had become 'staunch Te Whiti-ites'. In 1879, a number were taken prisoner as a result of protest activity.</p> <p>(e) As at 1880, the land had not been formally returned. No Crown grant had issued for it, but according to the 1880 commission, the 'Ngatirahiri Block at Onaero', given there as '15,000 acres', had been allocated.</p>
Comments	No proper inquiry was made; no inquiry was made as to Ngati Rahiri's participation in the war (they were in fact a 'loyal' hapu); the proportion of the district confiscated is not known; and if Ngati Rahiri had contributed to the survey costs, there is no reason why a Crown grant could not have issued for that land (it would then be known whether Ngati Rahiri in fact received the whole of the residue or whether the Crown kept the 'worthless' land for itself).
Division V	
District	From Titirangi to Waitara.
Acreage	Not given.
Hapu affected	Not given, but presumably various hapu of Te Atiawa.
Total customary interests	No inquiry was made owing to an agreement.

Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) It was eventually settled that 152 persons should receive varying amounts of land, for a total of 1485 acres. (b) By a court determination of 25 March 1869, certificates issued that those 152 were entitled to receive such areas from out of the district. © Crown grants issued for 41 sections in the Titirangi block of between five and 100 acres, totalling 1485 acres. The 152 owners were spread over the sections, with shares equivalent to between five and 75 acres.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; the proportion of the district returned from confiscation is not known; and no basis was given for the unequal shares. This was the only case where, as at 1880, Maori had received titles to land in the Ngati Awa Coast confiscation site.

Division VI

District	'Land Between Waiongona and Mangonui.'
Acreage	Not given.
Hapu affected	Puketapu.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) By an agreement of 23 October 1866, 227 persons acknowledged that they had received a total of 10,000 acres and therefore abandoned all claims. (b) By a court determination of 25 March 1869, a certificate issued that the 'Puketapu Tribe' was entitled to 10,000 acres. © The 10,000 acres were included in the Moa block 'sale' of 1873-74, which was for 32,830 acres extending from the summit of Taranaki mountain to beyond present-day Inglewood. It can now be determined that the 10,000 acres referred to in the 1866 agreement was somewhere within that area.
Comments	No proper inquiry was made; no evidence was

given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; and the proportion of the district returned from confiscation is not known.

The 'so-called' sale is considered in chapter 7.

Division VII

District	'Land Between Mangonui and Waitara (Pukerangiora claim).'
Acreage	Not given.
Hapu affected	Not given, but referred to later as the 'Pukerangiora Tribe'.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) By an agreement of 15 March 1867, as later refined, 63 persons were to receive 2000 acres in all from out of the district. The shares were not defined. (b) By a court determination of 25 March 1869, a certificate issued that the Pukerangiora tribe was entitled to 2000 acres from out of the district. © As at 1880, no land had been returned.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; and the proportion of the district returned from confiscation is not known.

(3) Comments

In about 1866, under agreements made directly with Maori, not through the native agent, it had been agreed to return 41,843 acres of the Ngati Awa Coast. By 1880, 14 years after those agreements were made, only 1485 acres had been returned as Crown grants in accordance with the confiscation scheme.

A block of 13,100 acres had been identified on the ground and given over for occupation but no title had issued, probably because the partitioning of that land had

been opposed (see under division IV above). Promises to provide a further four blocks totalling 15,358 acres had been made but these had been neither granted nor formally identified on the ground. It is, however, likely that they were informally known. It appears this was so in at least two cases where it was claimed that parts of the land had been sold.

The whole of the remaining block of 10,000 acres had been 'sold', though it had not been converted to a Crown grant. It appears many of the areas proposed for return were in the hills, and in no cases were comparative values brought into account.

Because the Crown agent had arranged all the agreements, the only practical effect of the court was the exclusion of 560 absentees and 403 rebels. This left it to the Crown agent to deal with the remaining 575 persons. Later, the court simply confirmed the arrangements finally made. Even the court's initial determination of those entitled to claim did not appear to have been seen as binding, because the agreements in fact admitted nearly 100 more.

Map 10: Compensation Court districts

Effectively, then, it was the Crown agent who was to determine the amount of land to which the admitted claimants in each claim area were entitled. He did not do this in any formal way, because there was no assessment of the total land in each division. Instead, it appears the claimants simply agreed to take a specified block of land in settlement of all matters, but in most cases the precise location of the block was not formally recorded and the lands were not formally granted. Technically, Maori were squatters on Crown land.

The Ngati Rahiri case was exceptional. They held out for the whole of the balance of their lands not settled. They then succeeded in retaining the land in tribal ownership, at least for a time, but they also failed to obtain a title, even after paying their share of the survey costs.

6.6.4 Ngati Ruanui Coast eligible site

The Ngati Ruanui Coast eligible site was divided into northern, middle, and southern sectors. Each is now referred to.

(1) *Northern section*

The Ngati Ruanui Coast northern section extended from Hangatahua, or Stoney River, to Kaupokonui (see fig 10). Matters had not proceeded far before the court when a settlement was announced by the Crown agent. The terms were not made known to the court other than that agreements had been reached with Maori in four divisions and, as a result, the claimants wished to abandon their claims. The divisions are given below.

Division VIII

District Stoney River (Hangatahua) to Waiweranui.

Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.
Outcome	(a) It was agreed to return 1675 acres to 24 persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the 24 persons were entitled to receive lands from out of the district for the amounts agreed. © As at 1880, 14 years after the agreement, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

Division IX

District	Waiwera to Te Hoe.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.
Outcome	(a) It was agreed to return 1250 acres to 18 persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the 18 persons were entitled to receive lands from out of the district for the amounts agreed. © As at 1880, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

Division X

District	Te Hoe to Omuturangi.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.
Outcome	(a) It was agreed to restore 8275 acres to 94 persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the 94 persons were entitled to receive lands from out of the district for the amounts agreed. © As at 1880, no Crown grants had issued and no land had been returned.
Comments	No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

Division XI

District	Omuturangi to Kaupokonui.
Acreage	Not given.
Hapu affected	Not given.
Total customary interests	Not assessed, settled out of court.
Apportionment	Not assessed.

Division
XI-continued

Outcome	(a) It was agreed to return 800 acres to eight persons in unequal amounts. (b) By a court determination of 25 March 1869, certificates issued that the eight persons were entitled to receive lands from out of the district for the amounts agreed. © As at 1880, no Crown grants had issued and no land had been returned.
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Comments

No proper inquiry was made and there was no assessment of entitlements, of participation in the war, of who were loyals and who were rebels, of the proportion of land kept or returned, or of the basis for the unequal shares.

(2) Southern section

The southern section of Ngati Ruanui Coast, south of the Waitotara River, was dealt with next. After repeated postponements of the sitting, the Crown agent announced on 25 January 1867 that the confiscation was abandoned in respect of that area. It will be recalled that this land was claimed by Whanganui hapu who fought with the Government, but the Crown also claimed part by purchase.

(3) Middle section

- (a) *Initial proceedings*: In the middle section of Ngati Ruanui Coast, from Kaupokonui to Waitotara, there were 630 claimants, of whom 365 were rejected, mainly for want of appearance, 146 were disallowed, and 119 were accepted. In a departure from previous practice, the court included 79 absentees in the 119 beneficiaries. The absentees had recently held residence or had near relatives in possession.
- There then followed some magic arithmetic founded on contrived logic. In the court's view, the interests of the admitted absentees:

must be held as subject to diminution in proportion to the extent to which the residents became dispossessed of or forfeited their right in the land. The interests of a loyal absentee claimant will thus bear that proportion to the interest of a loyal resident which the number of loyal residents bear to the number of resident rebels.

On that basis, the interest of a loyal absentee was found to be 4 percent of a loyal resident.

To calculate entitlements, the court divided the 420,000 acres of the confiscated land in the middle section into 131,720 acres of 'open land' and 296,280 acres of 'bush'. Those with valid customary interests by residence in that area were then assessed at 997, of whom 957 were thought to be rebels, leaving a mere 40 as resident loyals. Based upon the proportion of loyals to the total, each was determined as entitled to 120 acres of open land and 280 acres of bush. The loyal absentees, their interests discounted pro rata, were declared entitled to five acres of open country and 11 acres of bush. This would have given a total area of 17,264 acres, to be shared between 119 persons, 40 receiving 400 acres, 79 receiving 16 acres.

The Colonial Secretary and the successful claimants then had to settle upon locations before awards could issue, with Crown grants to follow.

- (b) *Outcome*: Sections for the prescribed amounts were then cut out, totalling 14,368 acres in the Waitotara district, 912 acres in the Whenuakura district, and 2000 acres in the Patea (Carlyle) district. This apparently took some time, for it was not until eight years later, on 18 February 1874, that the court was able to sit for the purpose of making final orders. These were to the effect that 40 named persons were entitled to 400 acres each and 80 persons (one absentee having been added) were entitled to 16 acres each, for a total of 17,280 acres (17,264 acres on final survey). These sections were described as standing in 'Division XII, Kaupokonui to Waitotara'.
- The 1880 report of the West Coast Commission discloses that, as at that date, none of the sections had been Crown granted. Many did not need to be, because the Government had acquired numerous section awards, amounting to 9032 acres. This left sections totalling 8248 acres requiring Crown grants. Of those, sections amounting to 5160 acres had been purchased privately. At that point, only 3088 acres remained in Maori hands, as ungranted awards.
- (c) *Comments*: The inquiry required by the Act appears to have been completed, although the arithmetical decision and method of determining entitlements were questionable. No protections were in place with regard to alienations, and the Government itself was the main purchaser.

6.6.5 Summary of district outcomes

The table opposite was adapted from the West Coast Commission and summarises the outcomes in the various districts. The total area 'promised' for Maori was 79,823 acres and the total area secured for Maori as Crown grants was approximately 3500 acres.

6.7 CONCLUSIONS ON THE COMPENSATION COURT

In 1880, some 14 years after the Compensation Court inquiries, the West Coast Commission assessed that the court had made 518 determinations for nearly 80,000 acres, representing some 6 percent of the 1,199,622 acres originally confiscated, but it noted that Crown grants had still not issued for other than a mere 3500 acres. It was observed that the Compensation Court had issued numerous awards as inalienable but the clause against alienation had been struck out of the award documents. In the Waitara East and West blocks, for example, the clause had been deleted in every single award, and three-quarters of the land had passed to settlers.

We have formed these opinions of the general process:

District	Division	Entitlement/ settlement (acres)	Granted as at 1880 (acres)	Notes
Ngati Awa	I	3458	Nil	No record that land was allocated.

	II	6450	Nil	The Government claims to have purchased some entitlements.
	III	3450	Nil	The Government claims to have purchased some entitlements.
	IV	15,000	Nil	Area allocated but not awarded.
	V	1485	1485	
	VI	10,000	Nil	The Government claims to have purchased all the entitlements.
	VII	2000	Nil	
Oakura	-	8700	1982	The area not granted was said to have been allocated. About half the grants were sold.
Ngati Ruanui Coast	VIII	1675	Nil	
	IX	1250	Nil	
	X	8275	Nil	
	XI	800	Nil	
	XII	17,280	Nil	17,280 acres were awarded, of which 14,192 acres were sold.

Summaries of outcomes in the various districts

- (a) The loyals, especially in the north, never received the entitlements that were their lawful due.
- (b) The court did not make the full inquiry that it should have made, and in the end delivered not land but promissory paper - the illusion of compensation, not hard dirt. The tortuous calculation of interests is merely testimony to the extreme distortion of ancestral values. In our view, the extent and impact of this has rarely been understood or appreciated by governments in New Zealand.
- (c) The process was legalistic, was not adjusted to the clientele, and served to impress not the rule of law but the rule that might was right. Regard for form was mainly in display. Without the benefit of the court's assessment of their entitlements, Maori entered into agreements for what they could get. Evidence of total ownership was thin; it was not considered whether an individual's interest was larger or smaller than others; 'rebels' were excluded

on unreliable opinions; no review of the settlements was made; the settlements did not explain the basis for shareholding disparities; and when Maori were left with the less productive residue lands, comparative values were not brought into account to increase the area given. Several hundred persons were excluded simply for failing to appear, and several hundred more were wrongly excluded as absentees.

- (d) Judicial process became subservient to executive whim, with the main problem left to Crown agents to resolve. Three years after being criticised for failing to produce awards, the court reversed its 1866 decision to wash its hands of responsibility and to leave all to the politicians and agents. In 1869, it sat again to issue awards in all cases where it could. But this was no more than a formality. The court made no independent inquiry, merely giving its approval to arrangements the agents had already secured. The court called them 'awards', but in most cases, they were really only determinations of entitlement. Effectively, the amount of the entitlements was determined by the Crown agents, not by the court.
- In Oakura, where arrangements were not complete when the court sat the second time, the declaration that Maori were simply entitled to all land except that taken for settlement was voidable for vagueness and for being inconsistent with the Act, and was not effective in any event.
- The decision regarding the middle section of the Ngati Ruanui Coast site was exceptional. There the court, under another judge, followed the process more closely and produced the largest allocation to have been made. While this was marred by taking eight years to complete, still, entitlement was determined, locations were agreed and surveyed, and awards were issued to named persons for prescribed sections. Though grants did not issue to complete the process, that was a matter for the Governor, not the court. Here, however, the gravamen of complaint is the lack of protection against alienation and the action of the Government in buying the land. Nearly all the awards were sold; in fact, as shall be seen later, most had been sold before the court sat in 1874 to issue awards and the Government was the main purchaser.
- Of more general concern in the middle Ruanui Coast was the assessment of customary interests by contrived arithmetical equations. The 1880 West Coast Commission described this 'fantastic scheme' in these terms:

The Court decided that 'the interest of a loyal absentee was to bear the same proportion to the interest of a loyal resident, as the number of loyal residents bore to the number of resident rebels'. What a loyal native's right under the statute had to do with the number of the rebels, is hard to see: the effect, however, of this queer equation was that if there were only 40 loyal residents to 957 rebels, the loyal resident got 400 acres, while the absentee got 16. No wonder that the way this operated upon the chiefs failed to elicit their assent. Nothing, for instance, could be more grotesque than a solemn judgment by which the warrior Whanganui Chief Mete Kingi Paetahi, who had fought many a battle by our side, was to have 16 acres in 'extinguishment' of his tribal rights; especially as it was carefully provided (lest such munificence should be too much for him) that only five acres of it should be open land, and the other 11 acres be somewhere in the bush.

- (e) For the most part, the out-of-court arrangements were effected by the Crown agent without significant contribution from the native agent or other

Maori representative. The native agent appears to have been more preoccupied with purchasing entitlements, either for the Government or for himself.

- (f) In all, the court was a small player in the design. It was not meant to be. In approving the legislation, the Secretary of State for the Colonies had seen the court's role as pivotal in protecting Maori interests. In reality, most reparations were the result of executive decisions, both within and outside the court compensation system. This was the very situation that the Secretary of State had hoped would be avoided, so that Maori would not be left to the mercy of 'their conquerors'.
- (g) The relegation of customary interests to arithmetical calculations without the evaluation of the different types of interests that people had distorted Maori concepts of use rights and had long-term effects. Computed shareholding is still the basis for Maori land titles, the present fragmentation of shares resulting from the disastrous compounding of this system over years. Accordingly, the current complaint regarding the court's early methodology is not a matter of the past, because it has fully devolved to the present, making the little Maori land remaining today as illusory an asset as compensation was for Maori in 1863.
- Despite their learned erudition, the judgments are thus exemplars of no more than the disastrous results of applying the logic of one culture to another that proceeds from another set of norms.
- (h) Mention has been made of the intention to reform traditional tenure, which arose from both good and bad motives. All was individualised. Though some land returned initially to 'tribes', its return was never more than temporary until the land could be divided into shares. In the result, the whole of hapu lands was confiscated; no land was given to the hapu as a unit in return; and no land can be counted as having been returned in the condition in which it was taken. The loss of the tribal right was not compensated, wholly or in part, by one acre.
- (i) In the final analysis, the main consequence of the court had been to settle who could claim compensation and thereby to exclude hundreds of persons for failure to attend, for being absentees, for being rebels, or simply for not completing claims. The court's second task, the determination of the entitlement of admitted claimants, was generally not performed. In the main, the court simply did not do its job, but then, having regard to the result when it did, that may have been a blessing. The hapu that most succeeded, Ngati Rahiri, was one that avoided the court and held out for the whole of its remaining lands in tribal tenure, refusing to agree to any other terms. Ngati Rahiri thus recovered the entire Turangi block, despite pressure to have it individualised. It is true that the land was eventually divided, but only much later, after their protests and imprisonment had left them powerless.
- (j) There were no checks that sales were consistent with equity and good conscience or were not otherwise detrimental to the alienator. In our view, land returned for Maori benefit is not secured for Maori benefit, if having regard to the uncustomary tenure imposed and the people's circumstances, there are no adequate safeguards against alienation.
- (k) The conduct of the process as a whole was entirely inconsistent with the principles of the Treaty of Waitangi. There is nothing in the record to satisfy us of compliance with even minimal protective standards or the performance

of fiduciary obligations. Worse, the scheme was an engine for the destruction of the traditional values that the Treaty had guaranteed.

- (l) The scheme, as implemented, was probably also unlawful, though the court was protected from the scrutiny of a higher court by virtue of the privative clause in the Act.

The most serious problem for the immediate future was that entitlements, determined or agreed, were not given in land to live on or, if they were given, were not secured. Fourteen years after the event, Crown grants had issued for only 4.4 percent of the land 'returned', and at least 38 percent of the promised land had not been identified on the ground.

6.8 GOVERNMENT 'AWARDS'

From 1864, the Governor in Council had the discretionary power to increase awards to successful claimants; make awards for unsuccessful claimants (including absentees); provide reserves for 'friendly' natives (generally, those of other iwi providing military service); and make reserves for surrendered rebels (including those released from prisons in Dunedin and other places. The seeds of internal discord were thus sown for perennial harvesting as the remainder lands of once compact hapu were proposed for division to loyals, friendlies, absentees, and rebels (released or surrendered).

In essence, the Governor was empowered to adjust awards and provide reserves for rebels and others not covered by the Compensation Court scheme. Practice varied according to the different circumstances of the various land divisions that had been settled in the Compensation Court, and we now review each in turn.

6.8.1 Northern divisions

In the northern division of Ngati Awa Coast, Oakura, and Waitara South, virtually no 'Governor awards' were made, except to individual absentees who had become known to Ministers in Wellington. Very few reserves could be provided because of the shortage of spare land. Reserves for individual 'friendlies' and 'favourites' were limited to a scattering of rural and suburban allotments in European settlements and a peppering of sections in towns. The Otaraoa block of 2000 acres on the south bank of the Waitara River was, however, allocated to the 'Otaraoa tribe', although it is not clear whether this land was actually reserved or merely promised.

It was then observed in July 1867 that, while the court had included absentees in the middle Ngati Ruanui Coast, this had not been done in any consistent way in the other divisions. Bowing to some pressure from the absentees, many of whom had lived in the district for some time, it was decided to admit them in these other places too, but on the basis of the magic arithmetic of the middle Ngati Ruanui Coast. There, the court had produced a diminished entitlement for absentee loyals of five acres of open country and 11 acres of bush, but since that formula was based on the particular proportion of loyals to absentees in that area, it was even more illogical to apply the result of that formula to other parts. None the less, because 755 excluded absentees were seen to be entitled to 16 acres each, 12,080 acres were required, and since they

were unavailable in the north, except in the bush, the figure was upgraded to 12,200 acres and bush locations were proposed for all. An additional 500 acres were then added for four 'Wellington chiefs', whose protests at their exclusion had been as loud as their record of faithful service had been long.

When applied to the northern divisions, the following entitlements emerged:

District	Acres	Beneficiaries
White Cliffs to Titoki	1300	Ngati Tama absentees
Titoki to Rau-o-te-Huia	3000	Ngati Mutunga absentees
Titirangi to Onatiki	2700	Te Atiawa absentees
Onatiki to Waitara	2100	Puketapu absentees
Not stated	500	Four 'Wellington chiefs'
	9600	

In fact, the Government need hardly have bothered. Though they were called 'awards', they were no more than declarations of entitlement. Being called 'awards', however, they helped to keep the much-needed support of loyalists during the war. It was a sham. The entitlements were never defined on the ground, and had they been in the hills and bush as was proposed, the outrage could have been only the louder. As at 1880, they were still undefined - a mere addition to the mounting record of outstanding promises.

A further category of promise was no more efficacious. A proclamation of November 1867 declared that, before any further sales could be made, 5 percent of the value of every rural and suburban block to be sold in each of the districts would be reserved for such tribes of Ngati Awa, Taranaki, Ngati Ruanui, and Nga Rauru as the Governor might appoint. Though the proclamation was repeated in 1870 and 1871, it appears to have been no more than a puff to secure peace or solicit support in the war. Reference to Nga Ruahine and Pakakohi, from whom Titokowaru drew support, was conspicuously omitted. It could also mean nothing for the north, where the lands had already been sold. The proclamation has significance today only as further evidence of the trail of broken promises. As the 1880 commission noted, it 'had always been a dead letter'.

The proclamation contained a further promise to provide 16 acres for every absentee, but again this was mere words. It added to the allocation promised to absentees in July 1867, but no land was in fact set aside under this provision.

The problem was further compounded the following year. The absentee 'awards' were for only those absentees who had appeared before the court and had then been excluded. In 1868, however, two further shiploads of absentees arrived. These were 270 of Ngati Tama and Ngati Mutunga, who were returning from their occupation of the Chatham Islands, fearful for their interests 'at home'. They could not be located in the earlier absentee 'awards' because they were not beneficiaries in those awards, and in any event, the awards were only on paper. The new arrivals took residence on Crown land at Mimi and Urenui as tenants on sufferance, and the proclamation of November 1867 was disregarded. In 1880, the West Coast Commission considered that 10,000 acres would be needed for them, but there were not 10,000 acres of useable land to give.

There were no other reserves or 'awards' in the north.

6.8.2 Central Taranaki from Hangatahua (Stoney River) to the Waingongoro River

In central Taranaki, from Hangatahua (Stoney River) to the Waingongoro River, the fictional 'award' to absentees amounted to 3100 acres for the 'Taranaki Tribe', but the area was never defined. The 5 percent declaration was also never applied. There were no other Government 'awards'.

There are circumstances peculiar to this district, however, that need to be brought into account. This was the only part of Taranaki untouched by European settlement. No doubt its remoteness from the military centres of New Plymouth and Whanganui was one reason and the density of the bush on the complex terrain of the lower mountain reaches was another. It was here, at Te Ngutu o te Manu, that the Government's military fortunes were reversed and it was from here that Titokowaru came down to clear the south of settlers.

Because there were no European settlements in central Taranaki, there were considerable areas that could have been reserved, in addition to such small amounts as the Compensation Court had proposed. In fact, it was unnecessary for the court to have sat here at all, for a solution to end all grievances was entirely feasible by defining 'Maori' and 'settler' areas at the beginning with genuine clemency.

That was, however, not to be. After the war, the Government sought to expand settlement to the centre entirely on its own terms. Accordingly, reserves were not proposed except for some for hapu whose loyalty had never been in question. There was ample space to treat generously with them, and in two cases, the Government did. The problem was that it was never really clear whether these reserves were in fact made or were merely promised.

In 1880, the West Coast Commission described two large areas which it said had been 'restored to natives' in this district. There is no record that they were formally 'restored' at all, but none the less, the areas, as depicted in figure 12, were the Stoney River block and the Opunake block:

- (a) The Stoney River block, from the Hangatahua River to the Waiweranui River, was estimated at 18,000 acres and extended from the rivers' mouths to

their sources on Taranaki mountain. This was the customary land of the Nga Mahanga hapu, which, it was said, surrendered in 1865 and came in under the Governor's proclamation of peace. 'Informal restitution' was said to have been made by the Government or the Governor in 1866, at about the time the court sat.

- (b) The Opunake block was defined by the Moutoti and Taungatara Rivers from their mountain sources to their mouths and was assessed at 44,000 acres. This was the customary land of the Ngati Haumiti hapu under Wi Kingi Matakatea and Arama Karaka, who had 'remained loyal to the Queen all through the war' and were well known for 'kindness to Europeans'. 'Informal restitution' was said to have been effected by the Government or the Governor in 1866, except for 1400 acres, being land surveyed, but not settled, for the Opunake township. Matakatea, it was said, had agreed to cede the 1400 acres, though no deed of cession had been taken. Whether there was in fact an agreement for the township is not clear. At a meeting in 1867, Maori protested the building of a town, which, they thought, might become like the military settlement at Warea (where the adjoining Maori kainga were bombarded and destroyed). They threatened to burn any buildings put there. In reply, it was said that, if that were done, the land would be taken, and the objections apparently then ceased.

As with many Maori awards, reserves, or allocations, the position was unclear. Were the lands in fact 'returned'? In terms of the Act, a 'return' required a formal abandonment, but no formal abandonment had been proclaimed. A reserve also required a formal proclamation for it to be 'set aside', but no proclamation was recorded. Technically, it was still Crown land by confiscation, as was later evident when, without a formal taking, a public reserve of nine miles radius was placed around Taranaki mountain and parts of these lands were subsumed.

Was it clear to the hapu that the lands were meant to be 'returned'? The answer would appear to be 'no'. Later, Matakatea was to be arrested and imprisoned for joining Te Whiti's protests on the ground that, despite the promises, no reserves had been made. The trouble was that, as was the case with many allocations for Maori, officials would say that such and such an area had been awarded, set apart, reserved, or the like, but when it came to finding a certificate, award, proclamation, or title for the land, one could rarely be found; and the Government, having said the land had been awarded, could later sell it because there was no record of it being Maori land.

Still, we have included these areas as though they were reserves for the following reasons: the location was certain, though not surveyed; the evidence is clear that the areas were meant to be reserved at the time; and the areas were recorded as 'lands restored to natives' in the *Domesday Book* of the West Coast Commission. The

Map 12: The Stoney River and Opunake blocks

commission further considered that the court 'awards' for these areas became 'merged' with the 'return'. Whether the 'reserves' were in fact to be protected to the hapu over time is another question.

There were no other 'awards' or 'reserves' made in this part of central Taranaki, but promises were rife. These promises, which never became as concrete as those for the Stoney River and Opunake blocks, were the cause of much future strife, as is considered in chapter 8.

The promises related particularly to the districts of Parihaka and the Waimate Plains (see fig 12). These localities must now be fixed firmly in the mind, because just as the focus of history had shifted from the north to the south, the action was about to transfer to these areas. It was on this centre stage, beneath the mountain, that the final scenes in the tragedy of Taranaki were to be played out.

6.8.3 South Taranaki: from the Waingongoro River to the Waitotara River

In south Taranaki from the Waingongoro River to the Waitotara River, there were no Government awards. The absentees had been captured in the court's computation and the 5 percent declaration was not applied. As the 1880 commission reported, it had been 'a dead letter'.

The position with regard to reserves once more reflected the circumstances unique to the area. The land had not been settled with the intensity of the north, and because there was more vacant land, especially near to the Waingongoro River, the formal reserves were more generous. There were also more reserves here, owing to the developments in the war, which we now describe.

Though parties of southern hapu had joined the war in the north, there had been little fighting in the south until the Government sold and settled the Waitotara block and a massive invasion by Imperial and colonial forces had destroyed pa, kainga, and cultivations in 1865. Maori saw themselves as being in the right, and it was not clear to them that this southern area would be confiscated, although on paper it already had been.

When the court sat in 1866, and as settlers moved north of the Waitotara River, it became apparent that these lands had indeed also been taken. Though Titokowaru declared 1867 as a year of peace, the prospect of conflagration was seen as real. To allay fears, the Government moved, rather swiftly it would seem in this case, to demonstrate that confiscation would be humane. Even as the court was sitting, the Government was making reserves. By the end of 1867, 23 reserves had been surveyed and defined on the ground, for a total of 22,364 acres, with sacred sites delineated and protected. Of these reserves, the largest blocks were at Whareroa (10,500 acres), Mokoia (4800 acres), Taumata (2800 acres), and Otoia (1200 acres).

There was conflict between Maori and settlers, however, and war resumed in 1868. Titokowaru utilised taua mainly from Nga Ruahine, Nga Rauru, and Pakakohi, all of whom had interests in the area, and moved all the settlers to Whanganui, clearing the subject land and beyond for a distance of 40 miles.

The war ended in 1869. By then, the settlers' homes and stockades had been destroyed. During the pursuit of Titokowaru, the pa, kainga, and cultivations of Maori had been burnt in retaliation, and by the end of that year, or by early 1870, the land

was denuded of all but the soldiers. The settlers were in Whanganui stockades. Nga Ruahine had taken refuge in the remote fastnesses of Ngati Maru in the north, Nga Rauru were among sympathisers at the upper Whanganui River, and Pakakohi, who had surrendered, were in Dunedin gaol or Mount Cook Prison in Wellington.

Some settlers sought recompense from the Government for its failure to deliver quiet titles, but most were persuaded to return to their farms early in 1870, when £10,000 was voted to assist their re-establishment and a promise was made that no rebel would be allowed south of the Waingongoro River. In the settlers' view, the Government had promised to keep out all Maori, but the Government did not agree that that was so. In any event, returned rebels were in fact to be provided for when it seemed that the peace of the country could not otherwise be achieved.

The settlers' opinion may none the less explain the eight-year delay in formally completing the Compensation Court awards for loyals and may also explain the Government's enthusiasm, from 1872 on, to purchase these entitlements once their location had been resolved. Some of these loyals, it was suspected, had proven not to be loyal at all but to have taken part in the 1868 'insurrection'.

The Waingongoro River was also seen by Maori as an important divide. To their minds, it had become the new northern limit to settler expansion.

Maori began to return to their lands from 1872, although their cultivations and homes had all been destroyed by soldiers and settlers. The returnees included rebels and loyals alike, for such had been the nature of the war that sanctuary had been sought by all. In fact, there now appeared to be little difference between loyals and rebels. It was the 'loyal' hapu who in fact clamoured the most for the 'rebel' Pakakohi to be released from gaol and given land. The Government seemed powerless to stop Maori from returning, if peace was to be maintained. In any case, it was more dangerous to have Maori in the hills, though to the settlers' chagrin, at meetings with Maori, the Ministers appeared to be inviting them to peacefully reoccupy their land.

To secure that end, 7320 acres in 22 reserves were surveyed and formally proclaimed for various groups in January 1873. Of this, 2000 acres were for Taurua and his Pakakohi people, now released from confinement. The Pakakohi reserve was extraordinarily small for the number of persons involved.

As shall be seen later, the creation of the reserves was part of a larger plan of relocation; the reserves were provided in order to keep the peace, but they also caused Maori to move inland, away from the main settlement areas. A start was made with Pakakohi, because having recently returned from prison, 'they were more subdued and could be more easily dealt with than other Natives'.

Soon after, another eight reserves were added, for a total of 13,213 acres, including the 10,000-acre Tirotiromoana reserve and a 1500-acre reserve at Waitotara. The former lay inland behind Normanby (Ketemarae) and Hawera, not too distant from the Waingongoro River. To some extent, it was bait for others. The Crown agent considered that such a display of largesse was needed to encourage those on the other side of the river to accept settlers on the Waimate Plains.

There was, however, some disquiet. The reserves were all to be divided and individualised. Tirotiromoana had first been settled by being marked out on the ground, and it was assessed at 10,000 acres. On survey, it was shown to be 16,000 acres and the reserve was then reduced to the amount first assessed. (By way of comparison, in every case where land was purchased from Maori and survey showed the area to be more, the Government kept the difference.)

Taurua, who was connected to both Pakakohi and Nga Rauru, had compelling evidence that two senior Ministers had promised Nga Rauru the land between the Patea and Whenuakura Rivers, except for the township of Patea (Carlyle). In 1880, the West Coast Commission agreed that such promises had been made and had not been delivered, but it declined a recommendation to provide more land until certain payments for Taurua were inquired into. There is no record that the inquiry was made.

Major Te Rangihwinui (Kemp), who had fought with distinction for the Government in Taranaki and elsewhere, claimed 1600 acres between the Waitotara and Wairoa Rivers. With difficulty, he had been induced to accept 400 acres after a royal commission had failed to satisfy his demands.

After all the fuss about loyals and rebels, it mattered little, in the end, which side of the war one had been on. In a touch of irony, the former famous ally Major Te Rangihwinui was to become a significant opponent of the Government over its purchase of Maori land. In the end, the major's position was to become the same as that which Wiremu Kingi had taken, a fate that was to await many other loyals.

6.8.4 The Waitotara block

To complete the terrier of Maori lands following the wars, regard must be had to the area south of the Waitotara River. There, the Government had formally abandoned confiscation when the area was claimed by Maori of Whanganui who had assisted the Government in the wars. The Government none the less contended, and assumed, that it had the right to the Waitotara block by purchase.

The so-called Waitotara purchase was discussed in chapter 3. We seriously doubt the efficacy of that purchase. The reserves were also described in chapter 3. They were, however, hardly 'reserved'. Much buying accompanied the settlement of the Waitotara block, and by the end of the war, most of the interests in the reserves had been acquired.

6.8.5 Conclusions on Treaty compliance

Maori could have expected no less from the Treaty of Waitangi than the benefits of a regime competent to ensure justice and maintain principle. There was no part of the compensation scheme that delivered that expectation. Compensation was reordered to suit Western, not Maori, plans. Maori were excluded without good reason and the award of land depended not on principle but on expedience. The effect was to impress not the rule of law but the rule that might was right.

Maori could also have expected no less from the Treaty than that they would retain their own polity and sufficient land for their survival as a people and that they would

contribute as a people to New Zealand as a whole. Instead, they were denied lands, and through land reform, their representation structures were destroyed. The record of the delivery of compensation and the award of clement reserves fails to comply with even minimal Treaty standards for the protection of hapu.

As a result of ad hoc circumstance - nothing to do with a managed plan - some hapu received more than others. To assess losses by reference to the area confiscated and the land returned is, however, to miss the point. Given the uncertainty of title and recording, an exact assessment of the land given and returned is impracticable anyway. How does one regard land as returned when, through alteration of tenure, none was returned in the condition in which it was taken? Can one regard land as returned when it was returned without protection against future alienation and when the circumstances of the time and the imposed tenure system made alienation likely? Can it be counted as returned when it was sold even before a title was given? The point is rather that every hapu lost, not one hapu was left with its traditional structures intact, and the prejudice cannot be assessed simply by calculating land acreages.

A more viable approach to the assessment of loss and prejudice is to examine the land that now remains in Maori ownership and to assess the extent to which that land is in fact an asset, not for individuals but for the people. If that approach is followed, it then becomes clear that each hapu, as a hapu, has nothing, while formerly they held all.

The following chapter demonstrates the importance of considering the tribal asset base that now remains, rather than the land taken or the method used to take it. Although the Government had awarded lands as entitlements or reserves, any intention to maintain those benefits for future generations was negated by concurrent policies to buy them. The Government developed proposals for massive immigration and settlement, which in Taranaki, despite the exigencies then confronting Maori people, resulted in a concerted campaign to acquire the lands possessed by Maori inside the confiscation line and such lands as they owned outside it. In brief, most of the lands not confiscated, and most of the lands returned, were purchased almost immediately.