

CHAPTER 6

THE GOVERNMENT PURCHASE PROGRAMME

The Queen will not interfere with your native laws or customs.

Willoughby Shortland for Lieutenant-Governor Hobson, Treaty debate,
Kaitaia, 28 April 1840

These tribes are old friends of the Pakehas, and my determination to protect the Pakehas is fixed.

Wi Tana Papahia, during the debate on the New Zealand wars, Ahipara, 1863

6.1 OUTLINE OF ISSUES AND CONCLUSION

This chapter considers the Government's efforts to purchase the desirable Muriwhenua lands not acquired in the tidy-up of the old transactions. By 1865, the Government had acquired 280,177 acres (113,388 ha) of the remaining land, most of it in the preceding eight years. The chapter begins by tracing the 15 years from Godfrey's inquiry in 1843 to 1858, soon after Panakareao had died leaving a gap in the Maori leadership, when the Government launched its major land-buying programme. The transactions themselves are described in chapters 7 and 8, and to set them in context this chapter provides a broad overview examining four factors most likely to have influenced Maori in entering into the transactions: their desire for European settlement, their perception of an alliance with the Governor, their traditional beliefs, and their expectation of settlement benefits. The Government's policy of extinguishing native title, that is, of cancelling Maori land rights and traditional self-government, is then examined, along with the Government's responsibilities. The chapter concludes by considering the degree of mutuality involved and the sufficiency of the arrangements as a whole, before particularising the Government's purchase strategy.

Maori policy,
Government
policy, mutuality

Notwithstanding the European view of property, Maori understandings about property and the primacy of personal relationships remained as it had always been, so as to forge a distinctive Maori approach to the Government's buying programme. We conclude, as a result, that while the Government could see only a land sale, a land sale was least on Maori minds, for Maori saw only a plan for

The conclusion –
a plan for
settlement

settlement, where they would be partners with the Governor and substantial beneficiaries in a new economic regime. Maori hopes and policies for the future, and Government designs of extinguishment, were thus so divergent in concept and intent that the arrangements between them were marred by a lack of mutuality or common purpose. There were also flaws in the form of several deeds.

For this second stage of land alienation, however, where the Government was the buyer, the main issue in terms of the Treaty of Waitangi is not only the Maori intention in alienating the land but the integrity of the Government in buying. The relationship between Maori and the Government was much more than that of a buyer and seller under a simple agreement for sale and purchase. Our principal conclusion is that the Government was obliged to protect Maori interests but that protection was not given. As a result, no adequate provisions were made for Maori in the new settlement structure. Conflict, misunderstandings, and mistakes were inevitable. If there had been a proper protective plan, however, or simply if sufficient reserves had been made to ensure a place for Maori in this new future, old arguments over misunderstandings and mistakes would not have meant so much for today. Maori complaints about particular matters, while often sustainable in themselves, more broadly reflect the general state of comparative landlessness.

6.2 HISTORICAL BACKGROUND, 1843–58

Godfrey effected
no change on the
ground

No matter how important Commissioner Godfrey's inquiry may seem now, at the time it probably meant little or nothing to the many Maori of Muriwhenua, the only significant population in the area there. Whatever the changes on paper, nothing altered on the ground. No one vacated land as a result of Godfrey's decisions, and no one else came in. Panakareao's authority remained the only effective authority in Muriwhenua except for the continuing challenge from Pororua.

The years from
1843 to 1858

This section traces the 15 years from Godfrey's inquiry in 1843 up to 1858.¹ It was in the latter year, soon after Panakareao had died leaving a gap in the Maori leadership, that the Government began a major programme to secure the surplus lands, as has been seen, and to buy the lands unaffected by the pre-Treaty transactions. The Government programme was carried out by only three officials,

1. See B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850–1865', 14 April 1992 (doc F9); B Rigby, 'The Mangonui Area and the Taemaro Claim', July 1990 (doc A21); B Rigby, 'The Oruru Area and the Muriwhenua Claim', February 1991 (doc C1); R Boast, 'Muriwhenua South and Ahipara Purchases', March 1992 (doc D16); T Walzl, 'Report on the Historical Issues Relating to the Taemaro Mediation circa 1830–1925' (doc E2); P Wyatt, 'Crown Purchases in Muriwhenua, 1850–1865' (doc H9); F Sinclair, 'Crown Purchases in Muriwhenua to 1865' (doc J4(a)); A Gould, 'Crown Purchases in Muriwhenua to 1865' (doc J4(b)); F Sinclair, 'The Purchase of the Muriwhenua South Block' (doc J4(d)); C Geiringer and P Wyatt, 'Issues Arising from the Evidence . . . relating to Crown Purchases in Muriwhenua, 1850–1865' (doc L5)

each previously mentioned. The first was the politician, Francis Dillon Bell, acting as land claims commissioner, who had resolved to secure the surplus for the Government. The second, Henry Tacy Kemp, had formerly served with Godfrey, and was now district land purchase commissioner, charged with buying the remaining land. The third, William Bertram White, was the resident magistrate, and the only Government official living in Muriwhenua. With some enthusiasm for the goal of acquiring the Maori land, he presumed to act as both a commissioner for land claims and a commissioner for land purchase, even without legal authority, whenever he felt that was required.

The question here is as before: did Maori see the land transactions in the Government's purchase programme in the same way as Europeans? The assumption has been that they did, 18 years or more having passed since the last bout of buying. We remain unconvinced, however. There may have been changes on the surface, with the adoption of European forms, but the philosophies and policies of Maori remained fundamentally as they always had been. In Muriwhenua, at all material times, it was Maori who had the de facto power, for the Europeans, though significant as mediators for trade, were barely noticeable in terms of numbers. There was no contemporary reason to give the pens and papers of officials the weight that they were found to have much later, in about the 1890s, when the truth began to dawn. We now outline the situation in Muriwhenua, as we see it, at the same time the main purchases began.

Panakareao's authority had not diminished with the arrival of Europeans. If anything, it probably increased. From Panakareao's point of view, he had established an alliance with the missionaries at Kaitaia, with the settler Southey and with the traders of Mangonui through land allocations. He had done the same with Taylor, for the benefit of Aupouri and Ngati Kuri. Furthermore, he had secured the allegiance of the prestigious Dr Ford in arrangements for Okiore and the whole Oruru Valley. This had the effect of ousting Pororua and those traders who presumed rights under him. Panakareao had then secured an alliance with Lieutenant-Governor Hobson, who recognised his authority in the Treaty signing at Kaitaia in 1840, and at Mangonui, in the Mangonui transaction later that year, which was represented as a sale but which, for Panakareao, was an act of recognition of his authority in that area. Subsequently he had sought an arrangement with Governor FitzRoy, travelling south for that purpose. He was less successful in this, but when FitzRoy sent Godfrey to Muriwhenua to decide who had land rights there, Panakareao, from his point of view, soon put him in his place. He made it clear that the primary issues were for Panakareao, not Godfrey, to resolve. He thus prevented Godfrey from sitting at Mangonui to hear those cases he did not agree with. At Kaitaia, Panakareao prescribed the terms on which Pakeha land claims might be recognised. From a Maori view, the Old Land Claims Commissioner was not confirming transactions so much as ratifying Panakareao's authority.

Maori continue to predominate

Panakareao's mana grew from European recognition

The European population in Muriwhenua had barely grown and numbers alone gave Maori the control. The settlers could not have been seen as a threat at that time. The Maori population is not known, but there are indications of its size. In 1838 the Kaitaia Mission Station considered it was serving about 4000 Maori in that locality alone. By comparison, James Clendon counted the European population for all Muriwhenua in 1846, eight years later, at 69, being 41 at Mangonui, including 16 half-castes, and 28 at Kaitaia, including three half-castes.²

Moreover, from 1840 to 1848, apart from Godfrey's brief visit, there were no Government representatives or officials in Muriwhenua to show what British law or authority might mean. In the absence of anything else, Maori authority remained uppermost, and we should not have an exaggerated image of Godfrey's importance as seen at the time.

Alliance with Grey
and the northern
war

After Godfrey, Panakareao's next challenge was to secure an alliance with FitzRoy's successor, Governor Grey. That chance came in 1845 when Grey sought to end the war with Hone Heke of Nga Puhī. Panakareao stood with Grey at the main engagement at Ruapekapeka, along with other Nga Puhī chiefs, Tamati Waka Nene and Mohi Tawhai. It was a difficult situation for Panakareao, however. Heke had fought with Pororua at Taipa in 1843, but it was necessary to avoid an escalation of fighting. In the event Panakareao stood with Grey at Ruapekapeka but with a token force only, a dozen or so warriors. Thus his stance could not give Heke cause for later retaliation. The token force was jeered when it returned to Kaitaia, for it was hardly flattering of Te Rarawa, and the cause may not have been popular, but Panakareao's policy of friendship with Pakeha had been established with the new governor nevertheless.

Grey responded generously to Panakareao's initiatives, giving a schooner for Panakareao to take his goods to Mangonui, and granting pensions and assessor salaries for Panakareao and other rangatira.

Panakareao's
concern for
economic
development

Panakareao was concerned that too few settlers were entering Muriwhenua and the economy was in decline. He was losing his own people, to the logging of kauri forests at Hokianga and Whangaroa, or to trade in the Bay of Islands. Moreover, the Government had shifted further away, to Auckland. Prospective settlers left the north, taking scrip for Auckland land in exchange for their northern claims. Fewer ships came to Mangonui, Hokianga, and the Bay of Islands. At Mangonui, a single person, Captain Butler, appears to have established a monopoly over all trading activities. Panakareao disputed Butler's control, complaining to the Native Secretary:

A person whose name is Buttler will not permit our goods and the goods of some of the Europeans to be sold to the vessels that come hither to trade, he wants everything to go through his hands.³

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2. M Eyes, 'Maori and European Population Histories, 1810–1901', 1989; see doc A1; doc D2, pp 432–433
 3. Panakareao to Grey, 30 January 1847, MA 1/7 (quoted in doc J2, p 185)

Matters were sorted out with Butler, however, and in 1846 Governor Grey announced plans to develop a large town at Mangonui based on coal deposits behind Cooper's beach (the project did not proceed when the deposits turned out to be poor). For his part, Panakareao shifted to Oruru in 1846, to be closer to the traders in the likely centre of action. Claimants represented Grey's announcement as an actionable promise, but it is probably just as likely that the Governor did no more than express a political hope.

Panakareao
moves to Oruru

Joseph Matthews noted that Panakareao protested when the Government imposed restrictions on timber cutting in Oruru, as though the Government owned the land. Dr Ford having left the Church Missionary Society in 1844, Panakareao also took the opportunity to recover possession, moving onto the 'Ford block' at Pakautararua. Clearly, he did not see the land as sold, and significantly no one in the Government raised any objection.

To cover his position, Pororua then shifted to Oruru as well, in 1847. Panakareao's position would seem to have been much stronger, however, for it was he who had the alliance with the Governor.

Pororua moves to
Oruru

The position of the missionaries was secure by then, and Panakareao could set about protecting the occupation of the other settlers, especially those whose claims he had earlier opposed. Panakareao had no objection to their presence, of course, so long as it was clear that their rights of occupation came from him. He had also to dissuade them from taking scrip and leaving. Captain Butler in particular came under his protection as 'my' Pakeha, even though Panakareao had previously challenged his domination of the provisioning industry.⁴ The traders were most valuable, however, in providing a market for Maori produce. White was to write of the Maori productivity, noting that, while most lived in the west, there were:

Panakareao
supports traders

quantities of native produce being sent to Mangonui to supply the wants of the numerous whalers then visiting the port, besides wheat, corn and onions exported to Auckland and even Sydney.⁵

But all settlers had their value to Panakareao, so long as they acknowledged him. He wrote in support of Southee in 1845:

He was our first native European who supplied us with European things. It would indeed be well for you to be kind to him, our European, as we regard him ourselves. Do you honour his letter and allow him to have the land we gave him for ever and ever.⁶

In 1847 Panakareao wrote to the Native Secretary in support of Thomas Phillips:

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4. See B Rigby, 'Empire on the Cheap: Crown Policies and Purchases in Muriwhenua, 1840–1850' (doc F8), pp 15, 80–82, 87–88
 5. AJHR, 1868, A-4 p 36
 6. Panakareao to Governor, 15 April 1845, OLC 1/875–877; see doc D12(a), vol 3, pp 51–53

If you like to consent to his having a grant for his place, I agree because he is an old pakeha (settler). He has resided some time amongst us.⁷

Hotel-keeper Thomas Flavell also claimed Panakareao's backing.⁸ With regard to James Berghan, Panakareao wrote in 1846:

This is my letter the letter of Nopera to the Governor – A letter to you o Governor, that you may be pleased to give a grant or deed of land to James Berghan in Mangonui for his children. He paid for his land a very long time ago. He has lived a long time with us, his works are good, and he is kind to us natives, therefore I make this request that this piece of land may not be taken away. Sir the Governor, harken I pray you to this my request and give him a deed of land for himself and his children.⁹

Berghan later wrote that Panakareao would not allow him to leave the area or take scrip.¹⁰ Panakareao also supported the claims of George Thomas, as Clement Partridge acknowledged when writing to the Governor in 1848, after George Thomas had drowned, leaving two young daughters:

The whole of the Native Chiefs in that district including Noble are most anxious that the half caste children of George Thomas so nearly related to them shall obtain their land, and are willing to sign a memorial to His Excellency to that effect.¹¹

Accordingly, while Governor FitzRoy had proposed land scrip in support of the Government's plan to establish a settlement at Auckland, Panakareao was undoing the work, seeking to maintain the settlement at Mangonui. Moreover, he was acting as if he owned the place.

White's
appointment as
resident
magistrate

Looking back on matters from our vantage point of time, probably the most significant event in this intervening period was the appointment of Resident Magistrate White, in 1848, for his appointment marks the introduction of British rule to Muriwhenua. However, it is with hindsight only that the significance of the appointment could have been apparent to Maori. If White was important to anyone in Muriwhenua at the time, it was probably mainly to himself.

In 1848, as part of his policy of imposing British law through Government agents serving as judges, Governor Grey appointed William Bertram White as resident magistrate at Mangonui. It is a sign of the north's decline that White was the first official resident. He was also of low ranking. He had no previous experience as a Government administrator and had formerly worked as a New Zealand Company surveyor. It is a further sign of economic stagnation that he was the only official resident in Muriwhenua for the next 30 years, until 1878. In the result, all Government functions became aggregated in one person.

7. Panakareao to Grey, 20 June 1847, OLC 1/617–23; see doc D12(a), vol 2, p 62

8. Flavell to White, 20 September 1849, OLC 1–850, pp 13–15

9. Panakareao to Grey, 1847 (not dated), MA 7/1 (quoted in doc J2, p 183)

10. Berghan to White, 25 September 1848, OLC 1/558–66, p 16

11. Partridge to Grey, 7 July 1848, OLC 1/617–623 (quoted in doc J2, p 354)

Unofficially he was the law-maker, and officially the law manager, enforcer, and dispenser all at the same time. By so combining executive and judicial functions, English law was introduced to Muriwhenua without those safeguards that gave it respect. White presented to other Europeans as the effective governor of the north.

White's title, 'resident magistrate', does not fairly describe his role. Governor Grey used magistrates for a number of functions, to 'civilise' Maori and introduce British law through the courts. Such officers were really Government agents and administrators. White took the job a stage further, effecting an extraordinary economy by investing in himself the plenipotentiary powers of law-maker, judge, agent, and executor. Among other positions he was officially collector of customs, Government agent, land surveyor, inspector of police and postmaster; as he put it in his reminiscences, 'in fact I held all the Government offices'.¹² He had a sergeant and a small constabulary of three to assist him.

White's many
roles

White was not well qualified, however. He was not a lawyer and, sent to the north to uphold British law, he more regularly upheld a law of his own. He was not a qualified surveyor. His receptiveness to other cultures was not apparent, either. During his 30 years of residence, he avoided learning or speaking Maori. While the missionaries sought to change Maori by living with them, White sought to marginalise Maori while standing aloof.

White's
qualifications

The relationship between White and Panakareao was soon strained. After White had established himself at Mangonui with his small constabulary, Panakareao did the same, with a 'police force' of about 30 Ngati Kuri. They stationed themselves, and made a home, almost opposite White's police barracks. In 1850 Panakareao had 'authorised' the establishment of a town there (or he had sold the land for it, from a European view), providing 35 acres (14 ha) for that purpose, as is described in chapter 7. We consider that White manipulated the deed, however, and in doing so added more land to the town site than was apparent from the face of the document. For himself and for his own house in the town, White carved out more than an acre; but for Panakareao and his Ngati Kuri supporters, he set aside a mere 28 square yards, probably the bare outline of the house and front courtyard. It may be no coincidence that Panakareao never signed a further land deed with White. At most, he executed a receipt for money that was paid, and even then there are doubts about the veracity of the signature. The initialled 'P' for Panakareao does not have the form he regularly used; Panakareao's 'P' had a flourish, like Puckey's, suggesting that Puckey had been his teacher.

White versus
Panakareao

Panakareao also repudiated White's authority as collector of customs and presumed to conduct his trade with the ship captains direct. On 23 December 1851 Panakareao remonstrated with the resident magistrate, claiming he was restricting Maori access to the ships for trade. The resident magistrate said he explained the laws that he had passed, whereupon Panakareao, presumably to

12. Extracts from the reminiscences of William Bertram White, 1822–1910, MS, ATL; see docs A1, C1

show his own authority, turned to his people and passed several laws of his own. White alleged that Panakareao had then threatened to burn the police barracks, and claimed that the Ngati Kuri supporters performed a haka ‘just outside my house’.¹³

In January 1852 White sought a naval presence – the HMS *Calliope* under Wynyard. Panakareao does not appear to have been put out, perhaps because he had an alliance with White’s superior, the Governor, but he sent a message to Wynyard reminding him that ‘the marriage ring has not dropped from my finger’.¹⁴

In his reminiscences, White described how Panakareao, on another occasion, ‘went about the various settlements domineering and interfering in a very arbitrary manner’ and again, in another instance, was ‘haranguing a small mob of Maoris in a very revolutionary manner: he abolished the Customs and Governmental authority, abused me personally, the Governor and the Queen’. When reporting Panakareao’s death in 1856, White summed him up as:

a man of great energy and cunning, but too arbitrary to be much liked amongst the Natives, though he had very great influence over them.

White’s relationship with Pororua was no less equivocal, describing Pororua as ‘a violent, insolent Native’.¹⁵ White correctly identified that the key to Maori authority was the land, and that by relieving Maori of their land their authority was likely to go too. As will be seen, by the time Panakareao died the resident magistrate had a plan under way to relieve Maori of their land.

White’s mission
and assumptions

Though he was not a land claims commissioner, White presumed to finalise the outstanding old land claims that Godfrey had not touched, in order to assert the Government’s right to that which was regarded as ‘surplus’. Though he was not a land purchase commissioner, he was also to plan the purchase of the remainder, with native reserves to be individualised so as to rid the scourge of native title from every part of the area. His role in purchasing the remaining land will be described later. For the moment, adopting the position that the pre-Treaty transactions had extinguished native interests over all of the affected land, which then became the Government’s, White busied himself with mapping the ‘purchases’ where the buyers had left, taking scrip instead, so that the full extent of the Government’s windfall might be defined and any Maori reoccupation repulsed.

The blunder over
scrip

It was at this point that probably the most serious blunder was made. While Godfrey had been careful to show that the claims for which scrip was given were only ‘alleged’ and had not been proven, White treated each one as though the native title had been fully extinguished and the land had become the

13. White to Police Commissioner, Auckland, 2 January 1852, IA 52/85

14. The account is from D Armstrong and B Stirling, ‘Surplus Lands: Policy and Practice, 1840–1850’ (doc J2), pp 204–206

15. W B White to Colonial Secretary, 31 January 1856, IA 56/336; see doc A1; doc A4, p 13

Government's. His task as he saw it was to finalise the areas involved, and to provide for any outstanding grants that might be required.

Accordingly, White focused on Oruru and Muriwhenua East, the areas where land claims had been abandoned and scrip had been taken instead. His inquiries, and the associated land purchases, are detailed in chapter 7. It is sufficient to note here that there were no hearings as such: no minutes or records of consultations, if any, were kept. There was no need for a hearing, in White's view, for the land was the Government's and the only question was where the boundaries lay.

Although the boundaries of the lands were by no means certain, the resident magistrate then allocated sections to people who were willing to buy them or take them on account of their scrip. He thus placed Duffus and Lloyd in Mangonui East as satisfaction of their 'entitlements' on Muriwhenua Peninsula, assuming that the land was the Government's. He placed others, including himself, at Oruru, where homes were built. Only then did Panakareao raise questions – at the point when something happened on the ground.

White did more than investigate the 'scrip lands', however. He was asked by the Governor to investigate some claims to Mangonui township where the owners had not taken scrip but had remained. Again, as a matter of law, only land claims commissioners could do this, but White took it upon himself to do much more than he was asked: he set out to resolve those claims and determine grants – without notice of hearing, without conducting hearings, and without minutes or the like. Then, assuming the role of a land purchase commissioner, he purported to buy any land in the township not covered by the claims.

Eventually, Commissioner Bell was appointed to complete the washing-up of the old land claims other than those satisfied by scrip, but in White's opinion the laundry had already been done. He later reminisced, exaggerating his role, that Bell 'held a land commissioner's court at Mangonui and officially confirmed all I had done'. There was no Maori objection to the process this time, however, since in 1856 Panakareao had died, and it was not at all apparent what was going on since public hearings were not held.

6.3 OVERVIEW

6.3.1 The overall Maori policy or kaupapa

Undoubtedly, Maori did not see themselves as caught up in events beyond their control and were not wanting to discard their culture or their traditional independence in favour of some foreign authority. Nor were they without kaupapa (fundamental purpose or policy). Throughout history, important Maori action has been invariably deliberate, following the considerable public debate for which the culture is now well known, so that decisions had kaupapa, a clear line of action and a vision, preferably divinely inspired. Just as Maori ask today 'what is the kaupapa?' in order to assess a proposal, so also we think a search for

The search for a kaupapa

the kaupapa is the key to understanding Maori action in the past, and Maori intentions with regard to the transactions in this case.

We consider such an approach is needed here to produce a well-rounded history that overcomes the slant of the English documentary record, provided it is within the parameters of the anthropological and historical sciences. Crown counsel warned against speculation, but in our view the greater speculation and danger is to assume that Maori had no policy or aspirations, or must be deemed to have had none, on account of the overly strict application of an evidential court rule. It is not speculative, in our view, to assume that a course of action had regard to the social norm, unless the contrary be shown. We have thus adopted the approach of claimant historian Philippa Wyatt, who urged that the identification of Maori kaupapa and the expectation of settlement benefits were pivotal to understanding the period.¹⁶

The likely kaupapa

We think a likely Maori kaupapa is discernible by looking at Maori action in the light of their traditions. While, obviously, all Maori do not think the same, positions change over time, and it is not in the nature of Maori or anyone else consistently to follow a logical line, traditional characteristics may still be found. The kaupapa, we consider, though honoured sometimes in the breach, was one of partnership and participation, to maintain a partnership with the Governor so that the hapu might be full participants in and beneficiaries of the new economic regime projected.

This was a line of action Panakareao had begun. It does not appear to us, however, that this kaupapa had qualified two other goals essential in the past: that Maori status and authority would be maintained; and that their children and their children after them would keep their association with their ancestral land. The maintenance of status and ancestral links with land were matters so old, and so much in evidence throughout subsequent Maori debate, that it would be hazardous to assume they had been discarded for the period being discussed. It should be considered, too, that if an authority over the land was maintained, then the ancestral link with the land was continued, no matter who was in occupation.

6.3.2 The Maori support for European settlement

The pro-settlement policy

The first of the factors most influencing Maori action at this time, in our view, was the desire for European settlement. We found the historical opinion consistent in the view that, throughout the period now considered, from 1840 to 1865, Maori were seeking to bring more Europeans to their land. This was so even though, during this time, other Maori, especially in the central North Island, had taken arms to stem the flow of European settlers and to limit the Governor's authority.

The reasons for that policy

The support for European settlement in Muriwhenua was due to several reasons. Maori were the majority population and saw themselves as in control.

16. Document H9

No alternative regime was effectively asserted. Most Maori lived in the west, and the resident magistrate, with his tiny police force, was distanced to the east by a march of two days. It was not apparent then that land transactions meant a permanent loss of both land and authority. The situation was not like Auckland, New Plymouth, Wellington, Christchurch, or Dunedin, where large numbers of Europeans had taken possession of the land without paying homage or courtesies to local rangatira. Muriwhenua Maori did complain about settlers in possession of parts of Mangonui or Oruru, as will be seen, and that Maxwell took Southee's land without prior Maori agreement, but these were relatively minor matters. Far from showing that the situation had so changed as to enforce a new Maori awareness, they show rather how Maori saw their own rules as still applying. This view was reinforced when, as a result of their complaints, the Crown paid Maori again during the 1850s and 1860s, at Oruru and Mangonui.

Maori must have considered that such payments, and other tribute, confirmed their status and authority in the land. Governor Grey made various gifts, from horses to steel flour mills and a schooner, and provided stipends and assessor salaries. Others also gave services or contributions regularly or at some stage, including the missionaries, Dr Ford, Henry Southee, Joseph Berghan, William Butler and Samuel Yates, that we know of.

Historians appearing before the Tribunal were agreed also that, in the Maori view, European settlement would provide ready markets for Maori produce, and that the settlers would provide skilled services and goods. Maori were led to that view both by Europeans and by their customary perceptions.

In sum, then, the world was still a Maori world to Muriwhenua Maori, and the settlement of Europeans appeared to them to be beneficial. The only concern Muriwhenua Maori had, therefore, was that the number of Europeans was too few. The actions of the leadership are regularly consistent with the desire to hold on to those settlers who were already there, and to bring in more.

6.3.3 The Maori alliance with the Governor

The second factor that we consider most influenced Maori at this time was the belief in the existence of a haumi, or an alliance with the Crown as represented by the Governor. In evidence before the Court of Appeal in 1987, historian Claudia Orange characterised the perceived relationship as a partnership between Maori and the Crown, and considered that this perception applied generally.¹⁷ For practical purposes, a hono, a partnership or marriage, and a haumi, an alliance, can be seen as the same. The metaphor of an alliance is probably more apt for Muriwhenua, however, on account of the military arrangements made with the Governor in two significant wars, the northern wars of the 1840s and the general wars of the 1860s. Whether partnership or alliance, however, the Muriwhenua record supports the perception of a relationship of the

Partnership and
alliance

17. See *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA)

kind Dr Orange described. This point was particularly emphasised by Dr Margaret Mutu for the claimants.¹⁸

How the alliance matured

It has to be noted, then, that while there were troubles between Maori and the Governor to the south, in Muriwhenua the partnership or alliance not only survived but developed. In line with custom, Panakareao had sought an alliance first with Governor Hobson at Kaitaia and at Mangonui, then with his successor, Governor FitzRoy, at the beginning of the northern war, and again with Governor Grey at the battle of Ruapekapeka in 1846.

European view of an alliance

Clearly, Europeans did not see an alliance as existing at this time. They assumed Britain would rule. Historians have suggested that Grey himself, with his pensions and assessor salaries for chiefs, was simply manipulating the rangatira to advance his own rule, or was cultivating a Maori aristocracy that he could control. Here, however, we are concerned with the Maori view and how that view informed Maori actions at this time. In short, Maori believed they had an alliance, or a partnership in Dr Orange's terms, with the Crown.

The custom about an alliance

The concept of an alliance required only a small transition from the idea of incorporating individual Europeans. Incorporation and alliance both came from the same customary source and, in this instance, both were directed to Panakareao's objective of locating Europeans on the land. Moreover, both carried the same customary requirements. It was important, for an alliance to succeed, that the rangatira involved should be meticulously faithful to their word. Europeans often commented at this time on how rangatira would not abandon their word, once given, despite any consequences.

An alliance was seen to require also an absolute trust in the integrity of the other party and consistent homage, or the honouring of each other in speeches and the regular renewal of bonds, promises, or undertakings. Alliances did not exist on account of some document or in a vacuum, but rather they survived through an ongoing display of commitment, love, and trust. Hence Panakareao's wry observation to Wynyard that 'the marriage ring has not dropped from my finger'.

The alliance was with the Governor, not with officials or Europeans generally

The alliance was also personal to the monarch or the Governor. Far from extending this commitment to officials, or to Europeans generally, the rangatira saw themselves as in control of the home scene, and local officials were even considered to owe them some allegiance. Godfrey, for example, was not permitted to sit in Mangonui, where it did not suit Panakareao's pleasure, and the terms on which he might sit at Kaitaia were set out at the opening there.

The missionaries, of course, were seen as fulfilling customary obligations, providing numerous services. The traders, too, appeared to acknowledge Maori authority. After an initial conflict over access to shipping for trade, there was peace with Captain Butler. Other traders also came in under Panakareao's wing.

18. M Mutu, 'Muriwhenua: Crown Alliances as Described in the Maori Language Documents Relating to Crown Land Purchases in Muriwhenua in the Period from 1840-1865', 27 April 1993 (doc H10)

Panakareao wrote to the Governor to support their land claims, once they were prepared to recognise him.

With Resident Magistrate White, however, who presumed to act in an independent manner, Panakareao had regular trouble. White's presence was tolerated but his authority was not acknowledged.

Affirming the alliance was probably important after Panakareao's death in 1856; first, to confirm that the alliance had survived Panakareao, and second to establish the status of each of the hapu leaders for whom Panakareao had previously spoken. The chance to make this affirmation, and to be recognised, came when Kemp, the Government's land purchase agent, inaugurated a new Government purchase programme later the same year. An important part of the transactions that followed, we think, was that they were seen to affirm both the alliance between Maori and the Queen, or the Governor, and the authority of the various rangatira. The main issue for contemporary Maori leaders, we consider, was neither a sale, as such, nor the price, but the recognition given by their inclusion in the contract. 'I had not the selling of the land, and therefore my claim to it is not wrong', wrote Wi Tana Papahia (according to a translation by Kemp) concerning the alienation of lands where he had not been consulted. 'Had I even received a sixpence as an acknowledgement of my right', he added, 'then the claim I now make would be unjust.'¹⁹ Papahia thus claimed the land, but in his whole correspondence his primary concern was the failure to recognise his own interest and authority.

The alliance after
Panakareao's
death

The second opportunity to affirm the arrangement with the Governor, and more clear-cut from a European view, was the decision to stand with the Governor during the New Zealand wars. On 16 February 1861, Muriwhenua Maori affirmed their relationship with Governor Browne at a hui at Mangonui. There, with representatives from Hokianga and the Bay of Islands, and also with Waikato in attendance, Muriwhenua rangatira confirmed that, while they would not oppose the Maori King, they would support the Governor by keeping out of the war. They had placed 'their Pakeha' on the land and implied that they would protect them if need be.²⁰ Muriwhenua leaders affirmed that position again later, independently of the Government, at a meeting with Nga Puhi at Ahipara in 1863, when they were again urged to join the Maori forces against the Governor. Wi Tana Papahia replied: 'These tribes are old friends of the Pakehas, and my determination to protect the Pakehas is fixed.' It was a classic restatement of the Muriwhenua position. Panakareao may have died, but old policies had not given way to new.

The alliance as
affirmed in war

The Muriwhenua leaders rejected the views of central North Island Maori that those who gave over their lands would lose the control of their territories. When the latter went to war to protect their autonomy, Muriwhenua Maori assumed that

19. Wi Tana Papahia to the Governor, 19 September 1855, OLC 1/328, pp 23, 28–30 (doc D12(a)); translation by H T Kemp

20. Fuller particulars are in document F9, p 34, and the supporting documents there referred to.

6.3.4

their own autonomy remained safely in place. Many of the Government's land purchases in the north occurred during the wars, when other Maori were hoping to keep Pakeha out but Muriwhenua Maori were hoping to bring more in.

Once more it seemed to them that the Governor saw an alliance as well. He rewarded Muriwhenua loyalty during the New Zealand wars by dramatically increasing assessor salaries, and by establishing a native hospital at Mangonui in the aftermath of a further typhoid epidemic.

6.3.4 The prevalence of traditional values

The survival of tradition and the understanding of sales

The third factor we see as important in influencing Maori opinion at this time is that traditional Maori philosophy and policies continued to prevail. In our view, Maori lifestyles were still Maori, firmly embedded in custom. This point is contentious, since it relates directly to whether, by this time, Maori understood sales as Europeans did. Because there were so many sales, it could be argued that traditional philosophies and policies, especially those involving a close feeling for the land, were in abeyance. We do not accept that view. Rather, we believe that, in pursuit of the new social and economic goals, the traditional Maori views about their status and authority in the land, their relationship to the land, and the way people should relate to one another, continued to be important to Maori, just as they are important to Maori today.

Reason: population imbalance

Our reasons are as follows. First, Maori remained the predominant population and saw themselves as being in control. The European population, though important for trade and therefore to be looked after, was so small it could not present a challenge or force people to change on other than their own terms.

Also, change was superficial

Secondly, while accepting most historical evidence that major changes were occurring, we do not see those changes as affecting the fundamental Maori values and beliefs. As Dr Gould pointed out for the Crown in a thoroughly researched paper, there were significant alterations in terms of clothes, money, wage labour, barter, foodstuffs, agriculture, implements, stock, and so on; but, in our view, these mainly amended practice and procedure.²¹ There was a substantial shift in production and marketing, but we believe it was accommodated within a customary group structure. Similarly, a whole new religion may have been taken on, but it was in basic harmony with Maori values and beliefs.

The more likely scenario, we see, is that foreign practices were received with pleasure and alacrity, but did not replace Maori culture. They were incorporated to supplement, strengthen, or enrich that culture, adding a further dimension to existing views. In the result, practices might be taken on board without the associated value systems. Indeed, foreign forms could be used to assert independence from foreign control, as the religious leader Te Atua Wera shows. Maori culture was thus no different from English culture, or any other, in its

21. Document J4(b)

ability to receive foreign influences while remaining true to itself. We do not agree with Crown counsel's suggestions that, once a native culture has lost its perceived pristine form, it has somehow bent to some foreign sway.

Thus, even in receiving payment for land, old ways remained, as Kemp's recollection of his Muriwhenua purchasing activities shows:

A special feature connected with the old purchases is one, I think, that should not pass without recognition, viz, that the distribution of the money payments in the early days was always in cash, gold and silver. The claim of each member of the tribe, or section of a tribe, however small, was honourably recognised by the chiefs of the old school, who frequently left themselves minus the share to which they were equitably entitled. These traits in the character of comparatively uncivilised men were remarkable in their way, and warranted the impression that though without any written code to guide them, their common sense and observance of their national customs and traditions had by this means secured the loyalty and affection of their people.²²

Old practices continued and old values persisted. It will be recalled that Panakareao had eschewed participation in the somewhat tumultuous scramble for goods in the first-ever transactions in Muriwhenua, at Kaitaia in 1834. This indicated two things. What the rangatira did was for the people, not for themselves; and the rangatira were not interested in the immediate returns but the greater benefits over time.

Thirdly, unique customs remained. Although the resident magistrate was determined to stamp out muru, or property confiscation for offences, for example, the practice, with its essential messages about the priority of the group over the individual, continued. Although he was equally resolved to abolish the hakari, with its profound ethic that status lay not in accumulating wealth but in giving and in maintaining alliances, it continued on a lavish scale. A report on one hakari in 1863, involving 800 locals and 400 Nga Puhi guests, describes the gift of goods, including 2800 'blankets, gowns and shawls'. The value of the food and goods conveyed was probably equivalent to the amount that would have been received from the 'sale' of several thousands of acres of Maori land, according to prices at that time.²³

Further, unique
customs
remained

The resident magistrate's determination to abolish the hakari has parallels with the Canadian authorities' drive to ban the Indian potlatch, which was remarkably similar in structure and purpose. In both countries officials remarked despairingly on the extravagant displays and generous gifting of all that the people possessed, only to face poverty, penury, and starvation, they thought, next winter. In fact, the hakari was an insurance that, if crops failed locally or there was a war, full support must inevitably come from elsewhere, as honour would

22. H T Kemp, *Revised Narrative of Incidents and Events in the Early Colonizing History of New Zealand, from 1840 to 1880*, Auckland, Wilson and Horton, 1901, pp 10–11; see doc 14, app 1, pp 10–11

23. See 'Account of Meeting Held at Ahipara, May 1863', Grey papers, APL. Though it was described as the last hakari, we very much doubt that.

A stage erected for a hakari. From W Yate, *An Account of New Zealand*, London, Seeley and Burnside, 1835.

so require. In both countries, officials did not see that a much larger ‘recklessness’ in giving was taking place in relation to the land, and with a similar purpose in mind: to provide for other people.

The continuation of muru and hakari is evidence that traditional customs endured, along with the values they expressed: in this case, meeting obligations to one’s community and to other peoples, no matter what the cost. Further testimony to the survival of traditional values is the tenor of Maori opinion recorded, in letters and petitions from then to the present, which consistently express a distinctive Maori world-view, and in the repetition of those values in latter-day waiata. ‘Ehara i te Mea’ by Eru Ihaka of Te Kao, in the early 1900s, comes readily to mind, for it is now nationally known; and thus in the second verse:

Finally, Maori
values survived

<i>Te whenua, te whenua!</i>	<i>The land, the land!</i>
<i>Hei oranga mo te iwi,</i>	<i>The sustainer of the people,</i>
<i>No nga tupuna,</i>	<i>Belonging to the ancestors,</i>
<i>Tuku iho, tuku iho</i>	<i>Passed down, passed down</i>

Having listened to many ‘ordinary’ Maori in Muriwhenua over several years, it is clear that, in Muriwhenua, the traditional world-view remains part of everyday life. The evidence came especially on site visits, in such a natural and unassuming way that it was obvious old values exist – not because of some modern cultural renaissance, as was suggested at one point, but because they have always been there. Tradition, in Muriwhenua, lies less in the form than in the heart.

With regard to the survival of tradition, ancestral tenure deserves special mention. The Tribunal was introduced to the importance of ancestral tenure for the people today in the Ngati Kahu Mangonui sewerage claim, reported on by the Tribunal in 1988.²⁴ (The issue of ancestral land is also part of the current Ngati Kahu claim.²⁵) We were reminded that, as a result of submissions to a parliamentary select committee by the New Zealand Maori Council, under Sir Graham Latimer, who is one of the Ngati Kahu claimants, section 3(1)(g) was introduced to the Town and Country Planning Act 1977. This provided for ‘the relationship of the Maori people and their culture and traditions with their ancestral land’ to be recognised as a matter of national importance in the preparation of district schemes.

Ancestral tenure

It was contended before this Tribunal in 1988 that, while Maori were supposed to have learnt early of the European tenure system, the Government was not so capable of comprehending the tenure of Maori. It had taken more than a century for Maori land values to be incorporated into the general law, and then, they

24. See Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1988

25. See *Report . . . on the Mangonui Sewerage Claim*, preamble, sec 2

contended, it took 10 years for the meaning of the section to be understood. The assumption was that ancestral land meant land currently owned by Maori people, whereas to Maori, as the Ngati Kahu claim made clear, it was the relationship with the land that was important, not the English concept of ownership of property.

The Waitangi Tribunal responded to the Ngati Kahu position, commenting:

The assessment of [the ancestral] relationships ought not to depend on the ownership of land, the more so when, as here, it cannot be assumed that the land was freely and willingly sold with appropriate tribal sanction.²⁶

By then, however, a new understanding of ancestral tenure was already apparent to the courts,²⁷ although Ngati Kahu had to pursue an action to the Court of Appeal in 1988 to have the principle of ancestral tenure ratified with regard to their district, in a case concerning a development project on the Karikari Peninsula.²⁸

Comprehension
of sales

Even though Maori values persisted, it does not follow that Maori could not have learnt the meaning of a land sale. Old values survive today, but obviously a sale in Western terms is now understood. Our concern, however, is that the common assumption that Maori learnt rapidly is in danger of assuming too much importance. First, that view may rely overly on official Crown purchase records, when it suited the purpose of the purchaser, official, or politician to show that land was freely and knowingly given. Second, cultural assumptions affected official thinking. Nineteenth-century colonial officials assumed that the natural movement for native peoples was from darkness to light, that Maori progress was to be measured by the rate of assimilation, that rapid acceptance of change was evidence of cultural collapse, that indigenous cultures must inevitably die, or that Maori would move from custom to law. Some elements of those views survive even today. Maori, on the other hand, see their post-contact history differently. They tell of a plethora of movements, secular and religious, to uphold their traditions and autonomy. For them, the evidence of cultural resilience is everywhere. Accordingly, their acceptance of rapid change speaks of cultural expansion, not decline; they measure progress by their pursuit of ancestral kaupapa in a modern world; and their objective may be to sustain custom within the law, not to phase it out.

Customary views
survived

Customary views on land tenure, contracts, and human relationships, as described in previous chapters, were part of such an entrenched social system that we do not consider its displacement can be assumed simply because of evidence of superficial changes, no matter how extensive those changes might have seemed. Old views on ancestral land rights continue to be applied today, despite the alternative provisions in statutory Maori land law. Maori contractual

26. *Report . . . on the Mangonui Sewerage Claim*, p 61, no 7

27. See *Royal Forest and Bird Protection Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76

28. See *Environmental Defence Society Inc v Mangonui County Council* [1989] NZLR 257 (CA)

modes operate even now outside the ubiquitous commercial norm. Tribunal members can also recall some elders who only recently could not accept that English sales applied to ancestral land, and who spoke as though land long sold was still theirs. A test for when Maori saw sales as Europeans did is the point at which they generally acted in this regard as Europeans normally did. In Western terms, as will be seen, Maori conduct over sales at this time was extraordinary.

Other actions show how the transactions described in the land deeds and the transactions as understood by Maori were not the same. Thus, in 1840, a land deed was signed with Panakareao, as we have seen, but later he acted as though the land had been retained. In 1854 a receipt was given for the sale of other land, but soon after, when settlers took possession, Panakareao complained once more. This reaction carried on into the Government purchase period. According to an 1840 deed, Pororua had agreed to a Mangonui sale, but, when settlers came onto the land, he objected. A further payment was then made and yet, in 1862, he objected again and 37 Maori petitioned that the land was being stolen by the Government. One response was to say, as White did, that the Maori were liars and cheats. Another would have been to consider whether they were simply acting out of their own laws and beliefs.

We think it likely that new understandings would have developed only slowly, over generations, unless something forced a different view. Accordingly, the answer to the question, ‘When did Maori understand land sales?’, may lie in another: ‘When would they have needed to know?’ Presumably, Maori understood the meaning of a land sale only at the hard edge of reality, when possession was taken and held without homage to Maori, and when Maori felt unable to effect a remedy. In other parts of New Zealand, the meaning of a sale would have been obvious, as settlers took possession soon after the transaction. But immediate, large-scale possession by settlers did not come in Muriwhenua during the nineteenth century. Occupation was regularly delayed after the execution of a deed, often for over a decade. Indeed, a third of the land the Government purchased it still owned in 1949. Thus ‘sale’ was a paper thing, without matching marks on the ground; and, when occupation was taken, it was believed to be on customary terms. Obviously a ‘sale’ in English terms was understood in time, but clearly this was substantially after the event.

Crown counsel contended that Maori had an understanding of sales by 1840 (and indeed much earlier). Claimant counsel acknowledged that a permanent alienation was probably understood by the 1850s, even though Maori continued to hold their customary expectations of reciprocal obligations and ongoing benefits, and sought to attach such conditions to the alienations. We therefore examine briefly the evidence on which these views rely.

H T Kemp apparently reported, shortly before Panakareao died in 1856, that Panakareao would not sell certain lands in Victoria Valley as ‘it was more than probable it would be required for the use of the Natives, whenever the

Evidence of misunderstanding at the time

The relevance of a shift in power and possession

Evidence to suggest sales were understood

surrounding districts shall have been purchased by the Government'.²⁹ Panakareao may have come to see the effect of a sale in Western terms. The fact that he signed only two Government purchase deeds after 1839 (one in 1840, for Mangonui, and the other in 1850, for 35 acres) possibly supports that view. We do not regard Kemp's report on its own, however, as authoritative evidence that Panakareao saw land sales as a European did. Like other reports which the Crown relied upon to contend for an understanding of sales before 1840 – the report of a 'leading' Maori on the settlement of the Kaitaia transaction in 1835, or that on the Hokianga 'combination' against land sales, for example – Kemp's report is a European interpretation of a Maori opinion, presumably given in the Maori language.

An opinion in Maori may be variously translated, especially in this case where, in the Tribunal's view, there was no Maori word for sale or purchase. Kemp's interpretation, that Maori knew what a conveyance meant, fitted what Kemp was officially obliged to show: that Maori knowingly sold their land. Panakareao could equally have said, however – in Maori – that Maori needed to keep part of the land for their own use over that given for the use of the settlers. Kemp may have taken him to be referring to an unconditional purchase, since that was on Kemp's mind. We think that such accounts left far too much to the interpreter's bias, and that assessment of the issue requires a broader contextual survey.

Payment or
deposit; transfer
or lease

Crown historians Gould and Sinclair argued that a Maori eagerness for money, for food, clothes, stock, machinery, debt clearance or the like, and some haggling over price, showed a shift from traditional beliefs about future rewards to a focus on immediate needs.³⁰ They also said that, if a long-term relationship and ongoing benefits were most desired, a lease option was known about and could have been tried. We agree that Maori probably shifted their focus to account for new needs. In that case, however, one would expect them to manoeuvre for a high down-payment. Similarly, if the deed was not in the form of a lease, Maori may still have seen the transaction to be like a lease.

The written or
spoken deed

As with the pre-Treaty transactions, we see the deeds as primarily evidencing the objectives of one party only: the Government. Traditionally, Maori valued the spoken word and relied upon the honour of the other party to observe its obligations in the spirit in which they were entered into. The decision to sign a deed was more likely to have been based on the preceding debate than on the deed's words, so that, while the signing of a deed was probably seen as pledging a troth, the deed was not seen as the troth itself.

Thus, Panakareao described the Government's payment of £100 for Mangonui in 1840 as 'an earnest' only, when he revisited the transaction in 1843. This had nothing to do with the wording of the deed, and everything to do with what Panakareao considered to be the unstated conditions of the contract.

29. Kemp to McLean, 11 April 1856, AJHR, 1861, C-1, pp 5-7

30. See doc J4(a), (b)

For these reasons, we doubt whether, even at this time, the Government purchase transactions described in the following chapters were seen as sales. We do not think that the transactions were seen to carry all the consequences that a person familiar with English land sales would have taken for granted, or that they were seen to omit those expectations that a Maori would assume when contracting.

Conclusion on
Maori
understanding

6.3.5 The expectation of a comprehensive settlement approach

For Maori, the discussion about land purchases would have been concerned, not with conveyancing and alienation, but with settling Europeans on the land in large numbers. The discussion would have been in terms of ancient kaupapa: that Maori status and authority in the land would still be enhanced, and their association with their ancestral land would still continue.³¹

This is the fourth factor most influencing Maori action at the time. As we see it, the main debate amongst Maori was not about sales, but settlement, for the following reasons.

- Maori could no longer deal directly with settlers. They were bound to deal only with the Governor, and he alone could allocate land to settlers. The alliance was therefore important. Maori and the Governor had to work together, with Maori giving land, the Governor effecting allocations.
- Furthermore, the Governor would allocate the land in question to both European and Maori. The Government's reserve policy was to reserve lands for Maori from out of the land under negotiation. There was nothing new in this policy: imperial officers had proposed, as had the New Zealand Company, even before the Treaty of Waitangi, that a proportion of all the land acquired should be reserved for Maori. Previously, land had been transferred to missionaries to hold for Maori. Now the Government would do the same, but would give Crown grants. This arrangement had been regularly put to Maori and, although they appear to have assumed that tribal holdings would remain, Maori too spoke of their desire for a Crown grant so that their lands might be made safe. The transfer of land was not a permanent alienation in fact.
- In so far as a Maori–Governor alliance was seen to apply, the transfer of land for the Governor's allocation could not have been seen as an unconditional cession of power either. Hapu would continue to have authority in the areas they traditionally occupied and, consequently, their association with their ancestral land would remain. They may have expected a continuing say in its use. For their own occupation, reserves were proposed, and from this they would have expected that special benefits would follow: access to local European markets, allowances from the Governor as before, and the sorts of services the missionaries had given.

Direct dealings
prohibited

Part of land
acquired to be
reserved

Maori authority
seen as
continuing

31. See doc H9

Each of these expectations contributed to the overall assumption that Maori would be substantial beneficiaries in a new economic regime.

Most especially, Maori believed that their authority was secured. Their whole history supports the view that Maori never willingly ceded their traditional power. Mana was too integral to their culture, and Maori policy was not to give mana away but to enhance it.

Transactions as
the affirmation of
an alliance

- To affirm this alliance with the Governor, and to participate in the new deal, one had to give over land. This required some trust, but Maori traditionally placed an absolute trust in those with whom they transacted. A free giving to allies, as in the hakari, was part of the culture. There is also evidence of some hapu eagerness to give over land at this time. Giving on trust was the essence of manaki, the enhancement of mana.

Expectation of
continuing
benefits

- The expectation of continuing benefits and a bigger reward over time was no doubt due in part to customary understandings, as Crown counsel contended, but it was also fostered and encouraged by officials. In this respect, we adopt claimant counsel's argument and Professor Oliver's overview of the evidence. We consider that the supposed benefits of European settlement were advocated to Maori in a general way by missionaries, settlers, and officials, both before the Treaty and regularly thereafter, as an inducement to accept the Treaty of Waitangi and to cooperate over land alienation.

Promises and
inducements

These reasons combined compel the view that the arrangements for Maori and Europeans could not have been restricted to the sale of land but involved consideration of power, markets, services, and the mutual advantages. The promise of benefits was the subject of much debate, however. Part of the claimants' case was that promises of long-term benefits were so crucial as to form part of the implied contract, making the Government accountable for non-delivery.³² The Crown argued that Maori and the Government, in their separate understandings, both expected future benefits but that there were no binding promises.

Evidence of such promises assists in understanding why people acted as they did, but our jurisdiction is not honed to what might be actionable in a court of law. The question for us is whether Government policy was reasonably adapted to known circumstances and foreseeable consequences. If Maori and the Government were agreed that Maori should benefit from settlement, and if it appeared that Maori were transferring land with that expectation, we would have expected some form of plan to bring that about.

General evidence
of promises

Here, we are not so concerned with specific promises of prescribed benefits connected to particular transactions. They would be difficult to establish anyhow, since no records were kept of the meetings and discussions. Our concern is more with the broad promises of a political kind, of which there is abundant evidence. It begins with the missionaries, who promoted the advantages of British

32. See W H Oliver, 'The Crown and Muriwhenua Lands: An Overview' (doc L7), pp 24–26

government to Maori, and whose opinions were later ratified by the governors and officials. Indeed, until Governor Grey implemented the resident magistrate system nearly 10 years after the Treaty, the Government sought to achieve its objectives through the missionaries, who were effectively made Crown agents. The Treaty of Waitangi itself, moreover, was promoted on the assumption that settlement would provide long-term benefits to the Maori people. Why would Maori have signed the Treaty of Waitangi if they thought, for one moment, the position might be otherwise?

By their words and actions, subsequent governors consistently maintained that Maori would profit from settlement in due course, though Maori would need to give over their lands. Panakareao, for example, believed that Grey had 'promised' him a European settlement at Mangonui, and he wrote to the Governor 'that he was tired of waiting'.³³ No attempt was made to deny that such a promise had been given.

The same general understanding is conveyed in various reports to the Government, like that of Resident Magistrate White:

We have also for several years been leading the natives to acquiesce in the desirability of ceding their lands to the government.³⁴

This was reinforced by promises made in other districts, and in Muriwhenua reports from a later period. One purchase agent there in the 1870s reported that he had said:

If you sell land, true, you will have parted with it, but unlike other lands you have sold, you, yourselves, and your children after you will continue to reap a benefit from the White man who will occupy it and kindle his fires upon it.³⁵

At a national level, Governor Browne assessed in 1857:

I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial Government, have been held out to the Natives to induce them to part with their land.³⁶

A widespread practice of promising future benefits can reasonably be inferred. It is apparent, too, that Maori relied on these promises, that they believed the governors would adhere to their undertakings or those made on their behalf, and that the expectation of future and continuing benefits would have influenced them in entering into land transactions.

Custom on
adherence to
one's word

33. Cited by Nugent to Colonial Secretary, 2 January 1848, enclosed in Grey to Earl Grey, 17 March 1848, no 35, BPP, vol 6, pp 99–100

34. White to Native Minister, 29 November 1861, BAFO-A760/11, pp 100–104

35. McDonnell to McLean, Native Secretary, 27 September 1873, MA/MLP 1/1 1873/222, NA Wellington; see doc F10, p 57

36. Gore Brown to Labouchere, 9 February 1857, G1/43, NA Wellington

Maori expectation
of a wider strategy

An agreed plan for mutually beneficial settlement was therefore needed. Land allocation was but one of many matters, and for Maori not the most important, that needed resolution: provision for Maori law and authority, access to markets, the incidence of taxation (the debate at this time concerned customs duties), reserves, the availability of medical services, schooling, farm training, watering rights, anchorage dues, land development, and so on. The deeds of conveyance were but a first step in a larger design, or kaupapa.

New Zealand and
Canada

If it is considered that the matters mentioned above would not have been thought of at the time, it should be noted that each had been previously debated in Muriwhenua, and some had been in issue in the northern wars of the 1840s. By way of comparison as well, each item was in fact being discussed in Canada at this time. For Indians as for Maori, the focus was not upon a peculiarity of English law – the conveyance of land – which was unknown to their respective cultures. The focus was on the terms for the ultimate good, the settlement of Europeans.³⁷

In Canada, a different position was taken. We are aware of considerable criticism of the arrangements made there, and much of it appears to be justified. It must be noted, nevertheless, that while Maori were presented with deeds that simply conveyed land, the Canadian documents, read collectively, at least made some show of concern for each of the items mentioned.

Reliance upon the
Governor's
honour

At the time, however, it need not have mattered for Maori if these items were not resolved before the land was transferred. The Governor had indicated that Maori would benefit and their interests would be protected. He had the authority, knowledge, and ability to make that happen. Once Maori gave the land, it was for the Governor to do what honour required of him. There was no difference in principle between this approach and the contractual approach that had sustained Maori since time immemorial. It is thus not surprising that Maori gave over so much land, or believed that the more they gave, the greater would be the benefits in time. Some Europeans may have seen the position in the same way. Puckey reported on the 1859 Ahipara purchase, for example:

The Rarawa chiefs have shown the utmost liberality in giving so fine and large a proportion of ground – and they well deserve a good and kind class of settlers . . .³⁸

Generally, however, Maori were thinking in one world, and Europeans in another. The transactions that, for Maori, were a beginning were, for Europeans, contracts to put an end to a millennium of Maori history and tradition. They were talking of extinguishment.

37. For a general overview of the Canadian Indian position, see John J Burrows, 'Inherent Sovereignty and First Nations Self-Government', *Osgoode Hall Law Journal*, vol 30, no 2, 1992, p 321

38. Annual report, 31 December 1859, Puckey's journal, vol 2, pp 405, 408

6.3.6 Government policy of total extinguishment

Where Maori expected their authority to continue as before, the Government, in asserting British rule, assumed that Maori authority, law, and land tenure should be replaced. Further, while both sides assumed that Maori would benefit from European settlement, there was no drive to reserve the land that Maori needed for that purpose. The result was the virtual exclusion of Maori from the central Muriwhenua bowl, and their marginalisation on the rims – politically, socially, and economically.

Maori and Government assumptions

The Government managed settlement through a policy for the total extinguishment of native title. Once more, a definition is needed:

Extinguishment concerns both land and authority

Native title: Native title comprises the package of rights to which native peoples were accustomed by virtue of their prior occupation, encompassing both land usage *and* systems of government.

For the purposes of this claim, we need not refine the English legal notions of native title or pursue further the Government's related doctrine of tenure. It is sufficient to say that, by taking a cession of land, preferably by purchase, the Government deemed the native title – that is, both the native right to use it and the native authority over it – to have been extinguished. It was called a deed of cession rather than a simple land conveyance. Further, since it was expedient to erect one form of tenure and authority for the whole country, the Government referred to a general or '*total* extinguishment', to indicate the need for a cession of everything and the complete replacement of Maori tenure and control. It therefore wanted large purchases, with parts to be handed back as freehold grants to individual Maori in the same way as grants were made for settlers. Tribal ownership would end and Maori would hold lands as Europeans did, except that the Maori lands, or reserves, would be managed by Government agents for them, or would be held by a few chiefs.

The underlying assumption that a free society, good government and economic growth required the extinguishment of native title, and the general substitution of individual tenure, does not appear to us to be sustainable. We have come to see more clearly today that a variety of title systems, including tribal titles, can work in a modern political and economic system. It is also clearer today that the individualisation programme imposed on Maori led to the disinheritance of large numbers, title fragmentation, ownership splintering, the elevation of absentee interests, and the loss of group authority, social cohesion, and economic strength.

Associated colonial assumptions

It is arguable that the conversion policy was seen as beneficial for Maori at the time. It may be equally debated, however, that the policy arose primarily from a prejudice against tribal authority and the power of chiefs, from a desire to assert domination and to subjugate Maori to the British system, as much as from a wish to facilitate the sale of Maori land. Whatever the good and bad elements in the mixed motives of the time, it is clear from later actions that the new system was

not agreed. Maori never consented to the substitution of an alternative tenure system or the diminution of the laws of their ancestors. When a Native Land Court was established to change Maori land tenure generally, and the policy was thus obvious for the first time, Maori in various parts of the country immediately objected.

Any good intentions that may once have existed, however, were soon devalued by the failure to secure Maori reserves. If the intention was, as Crown counsel contended, and as we understood it to be, to acquire large areas and then to hand back parts to Maori as reserves, but under a new tenure system, proof of good intent would lie in the amount thus passed back. Very little was. For one thing, there was no clear nineteenth-century policy on reserves. As Professor Oliver pointed out, Chief Land Purchase Commissioner Donald McLean envisaged reserves for all of the hapu at one point, and then, soon after, as providing only a small amount of land for a few chiefs, with the remainder to constitute a labouring class. For another, officials at the frontier saw in the policy the opportunity to remove Maori altogether from large areas. Maori had no view on this policy, of course, as at the time they did not know of it. Most still did not know of it when our inquiry began.

Dr Rigby opined that certain other assumptions influenced policy and action at this time; for example, that Maori would so want ‘civilisation’ and European commodities that they would readily give of their land. We think this view prevailed amongst officials. Related to it was another: that land was valueless in Maori hands, for only individual labour for personal gain gave it value. This meant that an overly meticulous determination of the proper owners or of a fair price was not needed, for by this ‘trickle-down’ process the larger reward would come eventually, and to everyone, from the spread of civilisation.

Government
policy in practice

These views would not have encouraged Maori to believe that land alienations could have serious, long-term consequences. Although McLean required full and open proceedings involving everyone, and that reserves be made, his instructions were neither rigorously enforced nor followed. While the Government was never so explicit as to state that its policy was to relieve Maori of as much land as possible, as quickly as practicable, and for the least cost, official statements and reports, combined with the outcome, show that that was the policy in fact. It is difficult not to form the impression, on reading through official documents, that Maori interventions or complaints were seen as having nuisance value only, standing in the way of a necessary objective.

Crown arguments

It is not practicable to review at length the submissions of Crown counsel, but we should briefly mention some at this point. The Crown argued that there was no specific policy or instruction to buy all the Maori land. While no such policy was formally proclaimed, the correspondence of Crown agents and the Government shows that such a policy was generally accepted, understood, or tacitly agreed, and later events would show that total extinguishment of native title, mainly by purchase, was effected in fact. There was regular talk of the need

to effect very large purchases, and as rapidly as possible, and many reports proudly related how everything in an area had been taken. Thus, at the local level, Resident Magistrate White wrote:

We have also for several years been leading the Natives to acquiesce in the desirability of ceding their lands to the Govt. There are many large districts which we are in actual negotiation for, and in the course of a few years confidently look forward to the total extinction of Native title.³⁹

At the central and regional level, in 1858 the Assistant Native Secretary urged Kemp 'to complete the purchases under negotiation in your district with the least possible delay, the quantity of land at the disposal of the Provincial Government being insufficient to meet the requirements of immigrants expected to arrive in the Colony within the next year'.⁴⁰ In response, Kemp reported (six weeks later) that he had recently completed a number of purchases and that these 'connected a long line of country North of Mangonui, over which the Native title will have been extinguished'.⁴¹ By September 1859, Kemp claimed, virtually all the land from Ahipara to Mangonui had been 'connected by survey lines . . . making with but little interruption, one continuous and complete block'.⁴² Finally, the Governor himself took the same position. He was critical of legislation which, he thought, would deter Maori 'from selling large blocks, the cession of which carries with it a recognition of Her Majesty's supremacy . . .', adding, 'it [is in] the interest of both races that the tribal title of the natives should be extinguished as rapidly as is consistent with honesty'.⁴³

During this time, the Government was doing more than merely buying the land to meet the needs of settlers. In Muriwhenua, it was buying with a distant future in mind, ahead of demand. One result was that market forces did not determine the sale price for Maori. Another was that some of the land purchased by the Government remained Crown land into the middle of the twentieth century. Crown counsel addressed this situation by submitting that the Government was merely responding to Maori offers to sell. We did not read the evidence that way. The point, however, is not about Maori intentions in offering the land, but the responsibility of the Government in buying. Lord Normanby had warned that a constraint on sales would be required and an interventionist policy was needed.

The Crown's position was further, as we understood it, that the policy of buying to amend the land-tenure system was beneficial, for Maori as for Europeans, or at least was seen to be beneficial at the time, giving Maori secure land rights.⁴⁴ Many Maori spoke of the advantages of a Crown grant as a result;

39. White to Native Minister, 29 November 1861, BAFO-A760/11, pp 100–104

40. Smith to Kemp, 29 November 1858, no 65, AJHR, 1861, C-1, p 32

41. Kemp to McLean, 18 January 1859, no 68, AJHR, 1861, C-1, pp 33–34

42. Kemp to McLean, 12 September 1859, no 80, AJHR, 1861, C-1, p 38

43. Browne to Bulwer Lytton, 15 October 1858, BPP 1860 (492), p 62

44. Crown's closing submissions (doc 01), pp 171–173

but the assumption of benefit too readily assumes the superiority of the Western system. The opinion of many commentators, for over a century, has been that some tribal title, with incorporation of the tribe, was needed far more than the individual tenure that was given. The argument of good intention is nevertheless thrown into jeopardy simply by reference to the parsimony with which land was in fact handed back to Maori, no matter what the form of amended tenure.

The Crown also maintained that Maori sold some of their land to meet the cost of obtaining stock and implements to develop their remaining land. This opinion also needs careful consideration. Maori, if anyone, were entitled to development assistance. It was well known at the time, and had even been predicted as necessary by Lord Normanby, that the cost of settling and developing the country was being met from the on-sale of Maori land. They were funding the country. The irony would later be, as Europeans took possession of the land and Maori were excluded, that it was the Europeans, not Maori, who received the State's land development assistance from the accumulated profit in the public revenue.

Finally, Crown historians Gould and Sinclair argued that the need to reserve land for Maori was not apparent at the time, for there was sufficient other Maori land in the district. In the period in question, before 1865, the whole trade out of Mangonui could have been supported from no more than 1000 acres; all other farming was subsistence, and gumdigging could be freely undertaken on Government land. There was no other industry. The problem with this position is that it was contrary to the need, previously foreseen, to secure reserves to Maori from out of the sold land, if Maori were not to be pushed from the centre of business to the outer areas and if all the hapu were to have a share in land. As time would show, the failure to insist on adequate Maori reserves from the beginning would later result in a failure to provide sufficient reserves at all.

Clearly, again, planning for a Maori future was required. Crown historians often stressed to us that things must be seen according to their own times, and little long-range planning would have been going on then. We do not accept that, however. The whole business of colonisation was about providing for the future. Thus the large land acquisitions, even before the settlers arrived. The entire scheme was future-driven and the problem was simply double standards: there was one standard in securing land for European settlers, and another in reserving land for Maori. Reserves were not created as they should have been, those that were created were not protected, and as a result Maori were denied the single most obvious opportunity they had to share in the economic development of the country.

6.3.7 Settlement arrangements generally

The extent of
alienation

So it was that, in an astonishing series of transactions before 1865, Muriwhenua Maori gave to the Governor, in our view on the initiative of Government agents,

nearly the whole of their best land; and the Government, despite this generosity and cooperation, made the most niggardly provision for Maori in return. Were Maori intentions not known, or their trust and faith not understood, their actions would count as reckless. The extent of the giving can be gauged as follows. Some 46,000 acres (18,616 ha) passed to either the settlers or the Government on account of the pre-Treaty transactions (this figure assumes that the transactions in Oruru, in the east and in the northern peninsula, were eventually subsumed by purchases). The extent of certain acquisitions was then debated at length. Government buying, on the other hand, effected as the pre-Treaty transactions were finalised, accounted for 280,177 acres (113,388 ha) in the period to 1865 alone, nearly all of it in less than eight years. And this passed with barely a murmur. The buying carried on after 1865, at a similar rate, until all hapu were either landless or virtually so, or their lands were infertile or of little commercial value.

To provide a succinct account of this extraordinary turn of events, we have condensed several volumes of submissions and research. We also felt it necessary to seek the bicultural view lacking in much of the primary material. Each party, we consider, was proceeding on a different basis. Maori, envisaging participation in a new economic regime, and understanding that they had a special arrangement with the Governor for their protection, made available for settlement virtually all the land that was asked for. Taking what they could get for the present, they still had cause to think that the main benefits would come later, that they would still be partners in the new development, and that their authority in the district, and their association with their ancestral land, would continue. Unbeknown to Maori, however, the Government would not bend from its own laws about land and society. Both encouraging and capitalising on a perceived willingness to sell, it embarked upon a programme of extinguishment that would remove Maori from the political, social, and economic equation.

If the Maori philosophy was hard for Europeans to understand, with its assumptions of an alliance and a continuing Maori authority in the land, it would have been as nothing compared with the novelty that the Government's policy would have had for Maori – had they known of it. Its concepts were not only unbelievable, in Maori terms, but were probably unknown to anyone at the time except lawyers, politicians, and officials. It should not be thought, either, that the Government was so shackled to contemporary legal theory that it could follow no other course. The Treaty had pointed to alternatives.

Our principal conclusion, then, is that the Government failed to devise and then debate an adequate – or any – plan for settlement to ensure that Maori would be substantial beneficiaries in the predicted economic regime, when in all the circumstances – the known Maori goal, the promises made and the perception of an alliance – the Government ought reasonably to have seen the need for such a plan.

Bicultural view
needed of
different
objectives

A plan for
settlement was
required

Figure 37: Crown purchases, 1850–65

6.3.8 Mutuality

Our second major conclusion is that there was no contractual mutuality. Behind the question, ‘When did Maori understand land sales?’, is another, more important: ‘When did the parties understand each other?’ The evidence is that Maori generally did not wish to abandon their own legal system and, assuming Muriwhenua were no different, we must ask whether the parties sufficiently understood each other’s laws, processes, and expectations as to reach common ground. Clearly they did not. What was reckless in European eyes was for Maori proper and honourable conduct. Each also had different expectations that were fundamental to the terms of the contracts, the one bargaining for a continuing social contract, the other for an unencumbered property transfer. The transactions as a whole, whether viewed as contracts or as political arrangements between peoples, were seriously lacking in common purpose and design.

We are mindful that in those early days there was no science of legal anthropology. The Government did try to ascertain the Maori tenure system, and between 1856 and 1890 collated and published a range of opinions on the topic. These opinions noted in detail the things Maori do – those things that can be seen on the surface – but lacked appreciation of why or when they were done in that way, of the underlying value system. It is like trying to assess Christianity by what Christians do, without reference to what they believe in or aspire to. The popular conception that Maori soon came to understand Western legal concepts, at a time when Maori were the majority, must be weighed against the settlers' inability to comprehend the legal concepts of Maori. If one could not, how can it be assumed the other could? To adopt the trappings of the Western trading style is not evidence of comprehension.

6.3.9 Protection

Even if mutuality were not an issue, what was the appropriate Government conduct? If Maori were unaware of the likely consequences of their action in terms of English law, or if, through unfamiliarity with that law, they were likely to be the unwitting authors of injuries to themselves, to use Lord Normanby's words, then, as Lord Normanby had implied, the Government's responsibility to safeguard their interests was so much greater. To overcome the inherent conflict between the Government's interest in buying lands for settlement and its duty to protect Maori interests at the same time, Lord Normanby had stipulated for the appointment of a Protector of Aborigines. The Protectorate was abolished by Governor Grey in 1846, however, and at all times during the Government purchase programme in Muriwhenua, there were no provisions for an independent audit of the Government's policy and practice, or for the judicial supervision of individual transactions. No one was responsible for checking that title and representation matters were adequately looked into or that sufficient reserves were maintained.

6.4 THE GOVERNMENT PURCHASE PROGRAMME

6.4.1 The strategy

By 25 deeds from 1850 to 1865, all but one after 1856, the Government claimed the whole of the more fertile Muriwhenua lands not already taken by pre-Treaty transactions, save for the Victoria Valley lands south of Kaitaia and a scattering of proposed reserves. The effect was to deprive Maori of the productive areas within the central band where they had formerly aggregated, and to exclude them from the greater part of the most valuable agricultural land in nineteenth-century Muriwhenua.

Figure 38: Muriwhenua ‘reserves’, 1840–65

The transactions are summarised in table E and located on figure 37. A comparison with the pre-Treaty transactions in figure 16 shows that the Government purchases took all the land remaining in the area, leaving no sections of Maori land in between, while the table reveals that most the buying was done over only six years, 1858 to 1864. The reserves remaining to Maori at the end of this process are shown in figure 38. Further particulars of the transactions are provided by Professor Stokes.⁴⁵

Although ad hoc purchases occurred everywhere, the effort was concentrated in three stages.

45. See Professor Evelyn Stokes, ‘Muriwhenua: Review of the Evidence’, May 1996 (doc p2), chs 14–18

(1) *Central band*

Until 1859, buying was focused on a narrow band from Ahipara through Kaitaia, Awanui, and Taipa, to Mangonui. Here the main buying was delayed until after 1856 and Bell's determination of the grants to individuals and the surplus remaining to the Government. The object was to buy all the lands around these. Managed by Resident Magistrate White, this part of the buying was finished as soon as Commissioner Bell's inquiries were complete. By grant, surplus definition and purchase, the Government secured a connected tract of land from Ahipara in the west to Mangonui in the east, free of native title. Bell's purpose was to settle a title situation which was so confused that it was unlikely Maori were fully aware, or as aware as officials, of the extent of land that had passed from them by the time buying began.

(2) *The main valleys*

The second thrust, from 1859 to 1865, was to extend outwards from the central line by a series of connected block purchases, leaving only the extremities and a scattering of small reserves. A major goal was to acquire the Victoria, Oruru, and Kohumaru Valleys, which were linked in the south. As H T Kemp, the District Land Purchase Commissioner, put it:

Mr White now states that the Natives have fallen in with our views with regard to the boundaries, the object having been to buy up the whole of the available land between the Oruru and Victoria plains, and by this means to connect the Blocks as soon as possible. Having explored the country at the head of the Oruru valley, I am able to report that a junction with the Victoria could be made with but little difficulty, thereby bringing the whole of that fertile district into connection with the Port of Mangonui.⁴⁶

It was essential, according to Kemp, that the land should be 'connected by survey'd lines with Government purchases, or with private lands, making, with but little interruption, one continuous and complete block'.⁴⁷

Initially, the Government directed Kemp to concentrate on the Bay of Islands, but White's insistence that he had willing sellers for large areas in Muriwhenua, and at low prices, served to hold the Government's interest. The goal was not fully achieved, however. Most of Kohumaru and nearly all of Oruru was acquired, but Maori retained most parts of Victoria Valley.

(3) *Remainders and extremities*

The third stage is described in chapter 9. There was a lull while the Native Land Court investigated titles to the remaining blocks from 1865, but policies under the Immigration and Public Works Acts of 1870 and 1873 – to acquire as much of the remaining Maori land as possible for European settlement – saw a drive to

46. Kemp to McLean, 22 September 1858, AJHR, 1861, C-1, p 29

47. Kemp to McLean, 12 Sept 1859, AJHR, 1861, C-1, p 38

Turton's deed no	Date	Block	Payment (£ s d)	Area (acres)		Price per acre (£ s d)
				Deed plan	Later survey	
2	3 May 1850	Waikiekie	£5	32	Not known	3s
3	17 September 1856	Oruru	£350	Not given	14,700*	5d
31	22 December 1856	Whakapaku	£200	2688	12,332	4d
36	3 February 1858	Otengi	£230	Not given	2722	1s 3d
34	3 February 1858	Muriwhenua South	£1100	Not given	86,885	3d
35	3 February 1858	Wharemaru	£400	Not given	13,555	7d
4	29 August 1859	Upper Kohumaru	£400	11,062	11,062	9d
5	30 August 1859	Waiake	£220	Not given	6952	8d
6	7 September 1859	Kaiawe	£58	1375	1375	10d
7	7 September 1859	Puheke	£300	Not given	16,000	4d
DR2	7 October 1859	Ohinu	£100	2703	2703	3s 11d
8	13 December 1859	Ahipara	£800	9470	9470	1s 8d
44	25 January 1861	Kokohuia	£50	800	800	1s 3d
11	15 March 1861	Hikurangi	£250	4705	4705	1s 1d
12	2 August 1862	Maungataniwha East	£388 3s 3d	8469	8469	11d

Turton's deed no	Date	Block	Payment (£ s d)	Area Deed plan
13	2 August 1862	Mangatete	£509 17s 11d	5649
14	14 January 1863	Maungataniwha West no 1	£647	12,940
15	14 January 1863	Maungataniwha West no 2	£560 2s	11,002
16	19 May 1863	Mangonui	£100	Not given
17	8 October 1863	Pupuke	£1273 16s 3d	19,592
18	27 September 1864	Taunoke	£5 10s	44
19	21 October 1864	Waimutu	£39 10s	79
20	11 November 1864	Poneke	£43 2s 6d	345
21	30 May 1865	Toatoa	£386 6s	3863
22	30 May 1865	Kaiaka	£1114 1s	7367

* Estimate

Table E: Crown purchases, 1850–65

6.4.2

buy the balance of Maori lands: the few reserves from earlier purchases, Victoria Valley, and the lands at the extremities, especially from Kaitaia south to Whangape. By 1900 Maori retained only a few residual pockets of land, most of poor quality.

6.4.2 The approach to the particular transactions

The distinction between pre- and post-Treaty arrangements

The next two chapters describe the particular transactions up to 1865. They are the main concern for many people and must therefore be addressed. In examining them, however, we must distinguish between those areas affected by pre-Treaty transactions and those untouched until the Government buying began. The circumstances for each were different.

In this and other Tribunal inquiries, we have found evidence of a regular Maori insistence upon adherence to one's word, perhaps indicative of old ways where customary contracts depended on trust and honour. Objections might be continued over decades if it were felt that agreements had not been honoured. In the result, Muriwhenua Maori held doggedly to their view of the pre-Treaty arrangements, insisting upon their rights to share the land, or to resume it all where the settler had broken faith and departed, while at the same time they were freely passing land to the Government in extraordinary quantities, several times the extent of the pre-Treaty land under debate.

There was no inconsistency from the Maori point of view. The essential thing was that tikanga, a proper course of conduct, should be maintained. The pre-Treaty lands had to be dealt with according to what had been agreed at the time. Those lands untouched by pre-Treaty arrangements could be handled differently. The former were based on personal relationships with individual Europeans, mainly through Panakareao; the latter on an alliance between the Governor and each of the various hapu. This new course of action, and the disposal of 'untouched' lands, began in earnest in 1858, when in a single day Maori gave more than 100,000 acres (40,470 ha) – far more than all the pre-Treaty lands put together. We see it as important, in now recording the final arrangements, to keep this perspective.

Bicultural understanding of particular contentions

Further, in examining the particular Maori claims, the truth in Maori assertions depends once more on looking at issues through their eyes. In answer to Maori claims, it was sometimes said, and not dishonestly so, that the claims were so preposterous that Maori were fabricating, lying, or cheating. In rejoinder, Maori would accuse the Government of theft or stealing. On examination, it often appears to us, Maori were not cheating, nor was the Government stealing, but each was acting honestly and truthfully according to their own law. In this case, the Government was claiming land on account of a particular view of land tenure, while Maori were claiming the same land and for the same reasons.