

CHAPTER 6

THE NGATI AWA RAUPATU

6.1 INTRODUCTION

This chapter concludes that the Ngati Awa land was confiscated on the ground of a rebellion that is alleged to have occurred after steps were taken to arrest the murderers of Fulloon and others of the *Kate*. That the confiscation related to an assumed rebellion at the time is clear from official documents, which this chapter will describe. Conversely, it is plain that the land was not confiscated on account of the murders themselves or on account of any prior fighting, such as the fighting that occurred when certain tribes attempted to reach the war in Waikato or Tauranga. In a proclamation of peace, all such prior acts were expressly forgiven.

It is therefore necessary that this chapter should dwell on the crucial events relating to the arrests of the alleged murderers. The point is that the only acts that might amount to rebellion for the purposes of the confiscation of the land are those associated with the resistance given to the troops sent in to effect the arrests.

The question of whether there was in fact a rebellion is therefore considered first. The essential documents on the land confiscation are then reviewed, though our conclusions on the land confiscation itself are deferred to later. This is in order to maintain an overview of the confiscation, the land returns and purchases, the murder trials, and the impact of the confiscation as a whole. Those matters are also reviewed in subsequent chapters.

6.2 THE ISSUE OF REBELLION

The question is whether it was reasonable that the affected hapu of Ngati Awa resisted arrests to the extent that they did. Our finding is that such resistance as was given was reasonable, and was therefore not rebellion. To all appearances, those effecting the arrests were an invading army and constituted such a threat to the lives and property of the home people that they were justified in taking such action as was necessary to defend themselves and their property. This is to say not that the Crown had much other choice if the arrests were to be made but that the confiscation of the Ngati Awa land could not be justified on the basis of rebellion.

We will shortly set out the facts. In doing so, it is necessary to provide some detail, but that should not obscure the essential elements, which are as follows:

- (a) To effect the arrests, the Crown relied upon the military forces of certain hapu of Te Arawa.
- (b) As a result of prior warfare, there was enmity between Te Arawa and Ngati Awa hapu. This had resulted in deaths, for which the Ngati Awa hapu could reliably expect utu to be sought in the customary Maori manner.
- (c) The consequential eagerness of Te Arawa hapu to conquer Ngati Awa territory was well known to the Crown. As earlier discussed, the Crown also knew that the Ngati Awa hapu were equally eager to keep Te Arawa from entering their lands.
- (d) Since the Crown had also fought alongside Te Arawa in the earlier engagements, Ngati Awa could not expect neutrality from Crown officers. (Their lack of neutrality in fact is also evident in private communications between those officers.)
- (e) The Arawa forces that entered the Ngati Awa land under the command of officers of the Crown had in fact the appearance of an invading force.
- (f) While for a time it was proposed that the land be taken for any resistance to arrests, the land was in fact taken on the basis of rebellion.

Those are the essential elements as we see them. We now refer to the record in more detail.

6.3 THE RECORD OF EVENTS

On 9 March 1865, shortly after the death of Völkner but prior to the murder of Fulloon, the civil commissioner at Maketu, Thomas Henry Smith, reported to the Native Minister that the news of Völkner's murder had 'produced a deep sensation' amongst Te Arawa, and that they 'would readily assist' against the Hauhau movement.¹ The proposition had clear reference not only to Whakatohea but also to the Ngati Awa on their borders. Te Arawa had reacted with anger to the Ngati Awa aukati, with the Maketu chiefs writing that 'The sword will not spare Ngatiawa, not at all'.²

On 29 April 1865, as earlier discussed, the Governor issued a proclamation that allowed settlers and 'friendly' Maori to take action against neighbours said to be involved in the Hauhau movement and holding 'fanatical doctrine'.³ We have found no enactment that gave legal authority for this far-reaching proposal and none providing subsequent validation, but it appears not to have been acted on. As earlier noted, there is no record of any intervention in terms of that proclamation prior to the murder of Fulloon on 22 July 1865.

Smith first heard of the murders of Fulloon and the crew on 29 July, a week after the event. He was informed by two Te Arawa members of the *Mariner*, who had on that day managed to leave Whakatane. Before obtaining the sanction of his superiors, he

1. T H Smith to Native Minister, 9 March 1865, AJHR, 1865, E-5, no 4, p 7

2. 'He Tauira enei ki nga roto katoa o te Arawa ka Tukua i te 8 Mehe, 1865', 'Copy of a Letter Sent to the Arawa Living Inland, 8 March 1865', AJHR, 1865, E-5, no 6, encl 3, pp 12-13

3. Proclamation, 29 April 1865, *New Zealand Gazette*, 1865, no 14, p 129

decided to deploy an Arawa force at once to capture the accused. He wrote to William Gilbert Mair in Rotorua and advised him to abandon his proposed expedition to Te Whaiti, where it was believed the Pai Marire force was camped. This group had just beaten a Te Arawa force at Te Tapiri on the western edge of the Urewera Ranges.⁴ Smith instead advised Mair to proceed, 'the sooner the better', to Te Awa o te Atua (adjacent to Matata), and he told Mair that the Arawa at Maketu were there for an 'immediate attack' on Ngati Awa.

Smith then dispatched some Te Arawa to Tauranga to obtain arms. On 2 August 1865, he prepared a warrant to arrest Te Hura and 34 other named persons alleged to have taken part in the murder of Fulloon and three crew of the *Kate*.⁵ The warrant was issued to the police constable at Maketu, Retireti Tapsell, 'and all peace officers in the said colony'.⁶

The basis upon which Smith drew up the warrant is unclear, but it may well have been the information supplied by Te Puhi and Wi Maruki, the two Arawa sailors from the *Mariner*. Alternatively, it may have been simply a list of all the leading men of the three hapu said to have been principally involved: Ngai Te Rangihouhiri, Ngati Hikakino, and Patutatahi.⁷

Civil Commissioner Clarke told Smith from Tauranga on 5 August that 'Our Arawa friends have arrived safely' and would be supplied with arms. He also urged Smith 'Pray don't hold the Arawas back now . . . That some fearful scenes will be enacted we must expect'.⁸ It is clear that some sections of Te Arawa were itching for a fight. Mair, who was now raising an inland Te Arawa force, commented that his difficulty with Ngati Rangitihī (part of the Arawa force beaten at Te Tapiri) 'has been to keep them back'.⁹

Again, it is necessary to note the enmity between hapu of the Ngati Awa and Te Arawa descent groups. They had only recently fought several significant battles at Rotoiti, Maketu, and Kaokaoroa, as earlier discussed. Although Te Arawa had prevailed in these fights, they had none the less suffered losses, and the events had further soured relations. Te Arawa also blamed Te Hura for the recent capture and impounding of their trading vessel, the *Mariner*, for breaching the Pai Marire aukati at Whakatane.¹⁰ Further, Te Arawa had been defeated themselves in the aforementioned fight with Pai Marire forces – which included some Ngati Awa – at Te

4. Document 15, pp 29–30; see also D M Stafford, *Te Arawa: A History of the Arawa People*, Auckland, Reed, 1991, pp 394–396; J C Andersen and G C Peterson, *The Mair Family*, Wellington, Reed, 1956, pp 130–133; James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1983, vol 2, pp 84–95

5. Smith to Mair, 30 July 1865, MS3330, T H Smith papers, ATL; Andersen and Peterson, pp 133–134 (cited in doc 15, p 30)

6. Document A18, p 82

7. T H Smith, 'Memorandum of a Statement Made to Me by Te Puhi and Wi Maruki, on the 30th July 1865', AJHR, 1866, A-1, p 37 (cited in doc 15, p 33)

8. Clarke to Smith, 5 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 112 (typescript), AIM (doc 15(a), p 43)

9. Mair to Smith, 9 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 112 (typescript), AIM (doc 15(a), p 55). However, Mair does continue that he wishes he could say the same about the rest.

10. Document A18, p 81; see also Stafford, p 400

Tapiri in June and July 1865. They were also undoubtedly interested in taking their neighbours' lands.

Government officials were well aware of the Arawa disposition, the Crown having fought with or having assisted Te Arawa in the engagements referred to. In May 1864, after the battle at Kaokaoroa, Smith had written that 'The Arawa, as may be supposed, are very whakahihi [arrogant] just now – and are going to swallow all the other tribes to the East in a twinkling – & of course *take their land*' (emphasis in original).¹¹ As noted, Smith reported to the Native Minister on 9 March 1865 that Te Arawa would readily assist the Government against the killers of Völkner, and he reiterated this in a further letter on 1 April.¹² And, as mentioned earlier, the Maketu chiefs rejected Ngati Awa's aukati, citing the 'hara nui ano mua' – a reference to the battles of 1864.¹³

In any event, on 5 August, with arms secured from Tauranga, a party of 70 Te Arawa proceeded from Maketu to Te Awa o te Atua. At this point, there appears to have been no particular authority from the Crown for them to have done so. There was at best a tacit approval. Clarke wrote again to Smith on 10 August saying:

I am glad to hear the Arawas have started. I hope the Arawas will take the matter up warmly when once they begin – I have not the least doubt but that they will be supported by Government. I feel particularly sanguinary against the Ngatiawa just now and . . . it would have a wonderful effect if a dozen or so were hung up in a very 'tall tree'.

I shall be anxious to hear how our friends get on – If the Ngatiawa get a *thundering* good thrashing it will have a good effect upon these fellows. [Emphasis in original.]¹⁴

One of the few Government officials in the Bay of Plenty, therefore, did not expect or even desire the orderly execution of warrants issued under civil authority. Rather, he expected 'fearful scenes' and hoped that Ngati Awa were to receive a sound 'thrashing'. Indeed, on 18 August Clarke went on to write to Smith that 'I hope the Arawa will not trifle. I want to hear that they the Ngatiawa get a thorough good hammering.'¹⁵

In addition, on 9 August Mair reported that he was about to leave his inland base and head for Te Awa o te Atua. A schedule prepared by Mair the following year indicates that he had with him some 83 men of Ngati Rangitihi, Ngati Manawa, Ngati Hinehua, and Tuhourangi.¹⁶ The principal leader of these men was Arama Karaka of Ngati Rangitihi, who had been at Te Tapiri.¹⁷ Mair's attitude to Ngati Awa and the execution of the warrant at this point is revealed in a letter to Smith:

-
11. Smith to McLean, 28 May 1864, ms McLean micro 0535 091, ATL (doc 15(b), p 257); see also doc 15, p 22
 12. Smith to Native Minister, 1 April 1865, AJHR, 1865, E-5, no 6, p 10
 13. 'He Taurira enei ki nga roto katoa o te Arawa ka Tukua i te 8 Mehe, 1865', 'Copy of a Letter Sent to the Arawa Living Inland, 8 March 1865', AJHR, 1865, E-5, no 6, encl 3, pp 12–13
 14. Clarke to Smith, 10 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 112 (typescript), AIM (cited in doc 15, p 34; doc 15(a), p 44)
 15. Smith to Clarke, 18 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 113 (typescript), AIM (doc 15(a), p 46)
 16. Mair to Smith, 9 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 38 (typescript), AIM (cited in doc 15, p 36; doc 15(a) p 55); 'Return Showing Number of Arawa Employed at Te Awa-o-te-Atua', LEI/1866/100 WARC (doc 15(b) p 306)
 17. Document 15, p 36; Stafford, pp 394, 429

Arama is keen for Matapihi & Te Hura, but I am of opinion that it will be necessary to clear out Te Teko as it is not advisable to leave an enemy in your rear . . .

Te Taniti says that the Teko people were all at the Tapahore affair, and though we do not know whether they were concerned in the Whakatane murders I question whether they deserve the benefit of the doubt! In any case they are Ngatiawa, however I will not advise, nor – if I can help it – permit anything unwarrantable. The natives are a good deal perplexed about the ‘wanati’ [warrant] it does not exactly square with their ideas. I expect there is but one way of serving them, ie wrapped round a bullet, and entre nous it will be the best way, for a bullet in Te Hura’s stomach will be confirmation stronger that he is wanted, than would be a slip of paper in his fist.¹⁸

The leader of the Government force charged with executing the warrant was therefore determined to work on the basis that anyone of Ngati Awa was to be considered guilty, notwithstanding that there may have been no evidence of this, and he was prepared to use excessive force to make his arrests. Similarly, Rotorua resident magistrate W K Nesbitt later remarked, with respect, it seems, to Ngati Awa generally, that ‘the entire of those people ought to be *crushed*. I believe they were more or less implicat[ed] in both the murders’ (emphasis in original).¹⁹

The Arawa force from Maketu arrived in the district of Te Awa o te Atua before Mair and his inland contingent. They shot and seriously wounded two Ngati Awa persons before he arrived. It was reported on 14 August that some Te Arawa had followed six women, four elderly men, and a boy who were on a corn-planting expedition at Rangitapu near the mouth of the Tarawera River. The group was surprised and captured, but two of the men, Hoera and Te Kahawai, were shot trying to escape. It seems that Hoera may have been the ‘Te Hora’ named in Smith’s warrant (not to be confused with Te Hura). In any event, the press announced that he was ‘the actual murderer of Captain Pringle’ (and commented further that the Arawa had erred in releasing the women, they being ‘the wives of the murderers’).²⁰ The two other men were taken prisoner and detained for a month without charge by Major Kirby, the commander of the Colville Redoubt in Maketu. Apparently, they were quite open about Te Hura’s people having murdered Fulloon, and they were released on 7 September.²¹ The *New Zealand Herald* commented that their release had ‘given rise to much unpleasantness amongst the friendlies, and I am very much afraid that there

18. Mair to Smith, 9 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, p 38 (typescript), AIM (doc 15(a), p 55). The comment about ‘the Tapahore affair’ is presumably a reference to the rumour reported by Smith on 11 July that a party of Ngati Awa were gathering for the purpose of attacking Arama Karaka’s Tapahoro Pa at Lake Tarawera: Smith to his brother, 11 July 1865, MS283, T H Smith papers, ‘Letters to Members of his Family, 1856–1877’, folders 4–5 (typescript), AIM (doc 15(a), p 12).

19. Nesbitt to Smith, 22 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 77)

20. *New Zealand Herald*, 21, 31 August 1865 (doc 15(b), pp 236–238, 242–245). The correspondent referred to the pa as ‘Rangatapu’, but we have used the spelling supplied by the claimants: doc A18, p 84. See also doc 15, p 35; doc 11(a), pp 46–47.

21. Nesbitt to Smith, 3 September 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, pp 71–72 (typescript), AIM (cited in doc 15, p 35; doc 15(a), pp 78–79); *New Zealand Herald*, 31 August 1865 (doc 15(b), pp 242–245)

will be no more “live” prisoners brought by them again to Maketu, to receive the hospitality of Major Kirby, commanding’.²²

We cannot see how the Rangitapu incident could have demonstrated to Ngati Awa a fair and even treatment from Te Arawa in the execution of warrants, even if it was then made known to Ngati Awa that the execution of the warrant was the Arawa troops’ purpose. Nor was the second contingent under Mair, moving across land to the same destination, likely to have given a better impression. As they passed Parawai Pa en route, they were, perhaps unsurprisingly, shot at. Mair informed Smith that he had in turn spent a day firing at the occupants and had taken ‘possession of everything outside the pa in the shape of food &c’.²³ Shortly after Parawai, Mair passed another pa, Te Umuhika, where he was followed by the occupants and again fired upon. However, his Tuhourangi contingent drove the Ngati Awa back, killing one of their number.²⁴ Here, Mair’s force ‘remained a few days, the men killing cattle and pigs, and the women under a covering party foraging the Maori plantations’.²⁵

Mair arrived at Te Awa o te Atua on 18 August and was followed by his inland Arawa the next day. With women and children, the Arawa present now numbered over 500.²⁶

At this point, we refer to one incident whereby it might be said that those named in the warrant should have been given up, but in the circumstances we discount it. On 18 August, the Arawa chief Henare Te Pukuatua visited Te Hura at Te Matapihi to explain to him the purpose of the Arawa expedition. Te Hura is reputed to have said that it was Hoera who had killed Fulloon but that ‘Kua hara katoa matou’, meaning they were all implicated. Henare asked him to separate out the murderers but Te Hura declined.²⁷

We do not have reliable details of what was said, but we think it unlikely that Te Hura or anyone else could have been expected to surrender to their enemy given the circumstances described or, in light of those same circumstances, that they could have been assured of a fair trial or fair treatment. At the very least, Te Hura would have had to have been assured of safe conduct by an independent person, that the Arawa would then leave, and that the balance of the people would not be further harmed or have their property taken.

Thereafter, according to the *New Zealand Herald* of 30 August, another fight took place at Matata on 25 August between the Arawa and the ‘rebels’, with the former suffering no losses but four men and three children of the latter being killed. Also on

22. 7 September 1865 report from correspondent at Camp Te Papa, *New Zealand Herald*, 12 September 1865, (doc 11(a)(10)); see also *New Zealand Herald*, 29 September 1865 (doc 15(b), pp 249, 251)

23. Mair to Smith, 23 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 57). Mair had told Smith several days earlier that his men had ‘had the pleasure of eating a good many tons of their grub’: Mair to Smith, 19 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 56); see also Cowan, *The New Zealand Wars*, vol 2, p 97, and Stafford, p 402 (cited in doc 11, pp 45–47).

24. This man named Hoete, or Hoeti, was apparently a son-in-law of Te Hura: *New Zealand Herald*, 30 August 1865 (doc 15(b), p 240); Mair to Smith, 23 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 57); see also Stafford, p 403.

25. *New Zealand Herald*, 30 August 1865 (doc 15(b), p 240)

26. Mair to Smith, 19, 23 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, pp 39–40 (typescript), AIM (cited in doc 15, p 37; doc 15(a), pp 56–57)

27. *Ibid*; doc A18, pp 83–85

30 August, the *Herald* reported that there were then 800 Arawa assembled. In keeping with a theme of looting common to the campaign, it was said that they had captured 54 horses ‘and a quantity of other plunder’. It was added, ominously, that they were ‘determined on revenge’.²⁸ Rotorua Resident Magistrate Nesbitt told Smith that he had ‘*not discouraged* them from obtaining food in the enemy’s territories as my private opinion is that they have every right to do so’ (emphasis in original).²⁹

Te Hura and his people then fortified themselves in strong positions on three islands in the swamps: Te Matapihi, Oheu, and Omarupotiki. However, they were garrisoned by no more than 50 or 60 men in total (with perhaps another 40 at Parawai up the Tarawera River).³⁰ Nesbitt understood that concealed in these three pa were ‘*all the Murderers*’ (emphasis in original). However, the pa were surrounded by water, and because it was seen as impossible to take them without artillery or canoes, the Arawa had to content themselves with firing shots from several hundred yards. Nesbitt also ran out of Government stores and the Arawa became disgruntled and threatened to return to their own cultivations.³¹

September seems largely to have been marked by inactivity. The Arawa force remained stuck in Te Awa o te Atua subsisting on a biscuit and flour diet, while for Mair, the sight of three flags flying at Parawai showed at least that the occupants were ‘still alive’.³² A bigger problem for Mair seems to have been the preoccupation of his Arawa force with stealing local stock. He wrote to Smith on 4 October that ‘the horses are too great a temptation – I have tried in vain to stop horse looting but it is out of the question, nearly every man has got one, two, or more’.³³ He also wrote that the Ngati Raukawa amongst his force had brought in a lot of cattle and refused to accede to his demand that they be made available ‘for the use of the Ope [troops]’. He told Smith he understood that the Raukawa planned to sell them in Maketu.³⁴

Meanwhile, on 5 September 1865, the Governor issued a proclamation of peace to end the wars throughout the country.³⁵ This pardoned all those who had previously taken up arms against the Queen since 1863 (with the exception of those guilty of certain murders, including those of Völkner and Fulloon) and declared that no more land would be confiscated ‘on account of the present war’. Although we consider, for reasons earlier given, that Ngati Awa had not previously taken up arms against the Queen, this proclamation clarifies that Ngati Awa land was confiscated only for alleged acts of rebellion after 5 September 1865.

28. *New Zealand Herald* 30 August 1865 (doc 11(a)(10)); see also doc 15(b), pp 239–241

29. Nesbitt to Smith, 22 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 77)

30. Private letter of 23 August 1865, reproduced in *New Zealand Herald*, 21 September 1865 (doc 11(a)(10))

31. Nesbitt to Smith, 22 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, p 71 (typescript), AIM (cited in doc 15, p 38; doc 15(a), p 77)

32. Mair to Smith, 30 September 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 58)

33. Mair to Smith, 4 October 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, p 44 (typescript), AIM (cited in doc 15, p 40; doc 15(a), p 60); doc A18, p 85

34. Mair to Smith, 4 October 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, p 44 (typescript), AIM (cited in doc 15, p 40; doc 15(a), p 61)

35. Proclamation of peace, 5 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

The proclamation advised further on that which was already a fact, that an expedition would be sent to arrest the killers of Völkner and Fulloon and that, if they were not given up to justice:

the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.³⁶

Also on 5 September 1865, a further proclamation established martial law over the Opotiki and Whakatane districts to enable the killers of Völkner and Fulloon to be tried by courts-martial. The proclamation noted that ‘Military force has been employed to capture the Murderers’ and explained that ‘it is expedient that summary authority should be exercised by the Commander of the Military Forces’.³⁷ Here, two things may be noted. Though the proclamation suggests that the Arawa troops were no longer bound by civilian law and could act as a military force, in fact there is no evidence that the troops were recommissioned. Their authority in the area was still to effect arrests in terms of civil law warrants. They had not been recruited as an army for the purposes of war. Secondly, as shall be seen, Te Arawa had in fact been operating as a military force for two weeks previously.

On 9 October 1865, the Outlying Districts Police Act was enacted to give effect to the proclamation of 5 September 1865. This provided for the confiscation of land to meet the cost of policing the district if local Maori failed to bring the fugitives to justice. However, the Government did not utilise this provision. Later, the land was in fact taken under the New Zealand Settlements Act 1863, where the grounds for taking depended solely upon a finding that Maori were in rebellion.

In the meantime, it should be noted that a force of over 500 men under Major Willoughby Brassey had commenced landing in Opotiki on 8 September to arrest Völkner’s murderers. This was essentially a sister campaign to that of Te Arawa in Ngati Awa territory. The force was made up of volunteer irregular units comprised of military settlers and some Whanganui Maori under Major Kemp. No attempt had been made to communicate the purpose of the expedition to Whakatohea before landing, and the force was aggressive from the outset, bombarding the village and shooting at Maori indiscriminately, with no attempt made to ascertain who was involved in the missionary’s murder and who was not. At this time, Whakatohea could not have been aware of the recent publication of the proclamation of peace, with its indication of intent to use force against Völkner’s killers.³⁸

Once the landing had been safely completed, and Whakatohea had been driven from Opotiki, the soldiers proceeded to loot their crops and stock. It was not until nine days after the commencement of this invasion that an attempt was made to contact the tribe and request the surrender of those guilty of the murder.

36. Proclamation of peace, 5 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

37. Proclamation proclaiming martial law throughout the districts of Opotiki and Whakatane, 5 September 1865, *New Zealand Gazette*, 1865, no 35, pp 267–268

38. This and the following paragraphs on the campaign in Opotiki come from document c9, pp 64–86, 179–180. See also doc A18, p 88.

The major engagements of the campaign took place from early October, with the soldiers surrounding pa where a group of Whakatohea had taken refuge. In all, it is thought that 50 members of the tribe were killed in the campaign. At no stage did Whakatohea mount offensive operations against the soldiers. Rather, they continued to fall back on positions further inland and offered weak resistance, to the extent that there were virtually no casualties suffered by Brassey's force. The immediate results of the invasion were that Whakatohea villages, crops, vessels, and livestock were destroyed or looted; many lives were lost; and four individuals thought responsible for Völkner's death were taken prisoner.

Back at Te Awa o te Atua, the end of September brought an increase in military activity. On the night of 29 September, a group of Taupo Maori in Mair's force went down the beach to the east and had a fight with some Ngati Awa at Matata, apparently killing two of them.³⁹ On the same night, Mair reported that the Ngati Pikiāo contingent had taken Otamauru Pa, capturing three men, one of whom 'was so reduced by illness that they left him alone'. After that, the Ngati Pikiāo continued on to Whakatane 'but found no one there, the people being up the river & at Opotiki'.⁴⁰ The party apparently returned loaded down with looted maize, kumara, and other produce taken from the deserted villages and cultivations.⁴¹ Mair was thankful to one Maori named Mikaera for bringing in the Otamauru prisoners, 'who would have escaped I believe but for him' because the others 'were all after horses'.⁴²

Only one of the two prisoners taken at Otamauru, Tawhaki, was named in Smith's warrant, and his capture seems to have to been coincidental rather than planned.⁴³ By this time, however, Te Arawa had acquired canoes and were advancing on the rear of Omarupotiki Pa.⁴⁴ Te Matata Pa, also under pressure from Te Arawa, was evacuated by its occupants. On the night of 10 October, Te Hura and his people left all their remaining positions at Te Awa o te Atua and retreated inland to Te Teko. There, they fortified two positions in a large pa on the banks of the Rangitaiki River called Te Kupenga and a small pa on the opposite bank called Te Paharakeke. They were joined there shortly afterwards by the occupants of Parawai Pa.⁴⁵

The Arawa force learnt of Te Hura's whereabouts on 15 October, and a group of Tuhourangi set off immediately. At the village of Pokopoko, they captured two men named in Smith's warrant, Eria Te Hokono and Petera Moki.⁴⁶ Mair followed the day

39. Mair to Smith, 30 September 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2 (typescript), AIM (doc 15(a), p 58); see also Stafford, p 405

40. Mair to Smith, 2 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2 (typescript), AIM (doc 15(a), p 59)

41. Stafford, p 405

42. Mair to Smith, 2 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2 (typescript), AIM (doc 15(a), p 59)

43. Document A18, p 89; doc 15, p 41; doc 15(a), p 59

44. Mair to Smith, 4 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2, p 44 (typescript), AIM (cited in doc 15, p 41; doc 15(a), p 60)

45. Document 15, p 41; doc 15(b), p 271; Nesbitt to Smith, 16 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2, p 73 (typescript), AIM (cited in doc 15, p 41)

46. See Mair's 22 October 1865 report of events at Te Kupenga to Civil Commissioner Clarke at Tauranga, reproduced in Andersen and Petersen, *The Mair Family*, p 137 (cited in doc 15, p 41). Note that Andersen and Petersen's account has 'Eria Te Hakoro', rather than 'Hakono'.

after, with the entire force arriving at Te Kupenga on 17 October. The pa appeared impregnable, and five lines of sap were begun.⁴⁷ Mair quickly gained the surrender of the six defenders of Te Paharakeke, which protected Te Kupenga's rear, and on the morning of 18 October a truce was arranged, during which a small Tuhoë group and a larger party of 33 men and eight women of Ngati Tuwharetoa 'came over'. According to Mair, these people claimed that 'they had been misled by Te Hura and the Prophet, but were ready to take the oath of allegiance and fight on the side of the Arawa. On these conditions I permitted them to retain their arms.'⁴⁸ We presume, though it was not stated, that these people were local Tuwharetoa, of the Tawera hapu, and not Ngati Tuwharetoa from Taupo.⁴⁹

Te Hura, too, sought to make an agreement with Mair as the saps got nearer and his water supply was cut off, but the major would accept nothing less than unconditional surrender. The fighting continued on 19 October, and at 5 am the following day Te Hura once again attempted to negotiate a surrender, but Mair would not talk to him. An hour later, 86 men and their families filed out of Te Kupenga and laid down their arms. Thirty named in Smith's warrant were separated out and handed to the custody of Constable Tapsell, while the rest were given over to the Arawa force.⁵⁰ During the siege, the defenders had lost several men.⁵¹ Mair wrote in triumph that 'The Ngatiawa are fairly crushed and will never give any more trouble'.⁵² Smith, too, was jubilant, writing that 'The Arawa enterprise has thus proved a complete success' and, a few days later, that 'Natives are continually coming in to give themselves up & take the oath of allegiance'.⁵³

For Te Arawa, the matter was not quite at rest. Mair wrote on 22 October that 'The Teko was partially destroyed, some of the houses being spared at the request of Tikitu to afford shelter to the unfortunate women and children of whom there are a great number'.⁵⁴ The Arawa force then moved down the Whakatane River valley, according to Stafford, 'doing what damage it could; destroying cultivations, taking food and

47. Cowan, vol 2, p 100; Stafford, p 406; Andersen and Petersen, p 138

48. Andersen and Petersen, p 138; Stafford, p 407; doc 15, pp 41-42; see also doc A18, p 89

49. Document A17, p 87, states that those who gave themselves up at Te Kupenga were Te Tawera and Te Umutahi – hapu of Ngati Awa and Tuwharetoa:

it is well to focus upon the fact that the hapu described as being Tuwharetoa, namely Te Tawera and Te Umutahi, became separated from Ngati Awa at the battle of Te Kupenga in 1865. Tuwharetoa were asked to leave the scene of the battle and give themselves up. They did so and immediately swore allegiance to the British Queen. Ever since that time there has been a split in the hapu of Ngati Awa. Some Tuwharetoa related hapu and families want to exploit the split and remain outside the alliance of Ngati Awa and Ngati Pukeko. . . . The hapu are Ngati Awa by genealogy and by long association.

Mair, however, seems to have labelled this group 'Ngatituwharetoa (Taupo)': Anderson and Peterson, p 138 (cited in doc 15, p 42).

50. Andersen and Petersen, p 139; Stafford, p 407; Cowan, vol 2, p 103; doc 15, p 42

51. Cowan, vol 2, p 103

52. Anderson and Peterson, p 139; doc 15, p 42

53. Smith to his wife, 26 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856-1877', folders 4-5, p 149 (typescript), AIM (cited in doc 15, p 42; doc 15(a), p 15); Smith to his brother, 31 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856-1877', folders 4-5 (typescript), AIM (doc 15(a), p 16)

54. Anderson and Peterson, p 139; Stafford, p 408

capturing a good number of horses'.⁵⁵ Smith wrote on 29 October that Te Arawa were still 'scattered about the country, foraging'.⁵⁶ Some of the looted cattle were later sold, a matter that caused Resident Magistrate Nesbitt no apparent concern.⁵⁷ The prisoners were picked up by steamer from Te Awa o te Atua on 31 October, to Smith's relief, because he had been concerned that the Arawa were 'somewhat jealous' and might be unwilling to hand them over.⁵⁸

6.4 CONCLUSIONS ON REBELLION

The essential aspect of the Ngati Awa confiscations is that, unlike the events in Taranaki, Waikato, and Tauranga, there was no real war in the district, and no rebellion, though it was on the basis of rebellion that the Ngati Awa lands were confiscated.

As to the first point, that there was no real war in the district, we refer to the fact that there was resistance to arrests, and that certain of the Ngati Awa hapu took defensive positions in fortified pa, but there is no record of more than that. There is no record of a counterattack and no record that the Arawa forces suffered loss of life.

Moreover, there was not a war from the Crown's point of view. The forces entered Ngati Awa territory for the civil law purpose of effecting arrests. This is clear from the warrant. It was also affirmed by subsequent proclamations declaring that the war was at an end and that there would be no more than an expedition to arrest those to be charged with murder.

The second point is that there was no rebellion. At most, there was an endeavour to resist arrests, but that is quite a separate matter from organised resistance to overthrow a government. But, given that recourse to arms to resist arrest could be considered rebellion in certain circumstances, we now review the circumstances in this case.

As indicated at the commencement of this chapter, we consider that it was reasonable that the affected hapu of Ngati Awa resisted arrests to the extent that they did. Here, it is relevant to consider the events from the point of view of those named in the warrant. Kirimangu, before being sentenced at the subsequent trials, said 'then the armed party of the Arawas came. Even then, no warrant came for us, but they made war against us.'⁵⁹

This point of view seems reasonable, given the deployment of the Arawa troops to effect arrests and the past history of fighting. To all appearances, the war begun in

55. Stafford, p 409, who in fact says 'up the valley' not 'down'; see also Andersen and Petersen, p 140; Cowan, vol 2, p 104; doc 15, p 42

56. Smith to his brother, 29 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856-1877', folders 4-5 (typescript), AIM (doc 15(a), p 16)

57. Nesbitt to Smith, 9 November 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2, p 74 (typescript), AIM (cited in doc 15, p 42)

58. Smith to his brother, 29, 31 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856-1877', folders 4-5 (typescript), AIM (doc 15(a), p 16)

59. Statement of Mikaere Kirimangu, Judge Arney's notes of proceedings and evidence of *R v Kirimangu and Others*, JC22-3B AG66/968, NA Wellington (doc C10(2))

Taranaki and continued at Rotoiti, Maketu, Kaokaoroa, and Te Tapiri was carrying on, no matter how much the Governor might declare that the war was at an end. Even the Governor's declaration was made after the Arawa troops had entered Ngati Awa territory.

Moreover, the 'invading force' came as a war party. Some were fresh from the fighting at Te Tapiri, and their initial action was not to declare their purpose but to return the fire from those in defensive positions at Parawai and Te Umuhika Pa and to take possession of crops and stock in the area. There was also the incident at Rangitapu and the convergence of 800 Arawa at Te Awa o te Atua, with the subsequent looting and theft of horses, before the purpose of the expedition was made known. Even then, the message was conveyed by those to whom the hapu could not realistically surrender.

In all the circumstances, those purporting to have no purpose other than that of effecting arrests according to the civil law constituted a de facto threat to the lives and property of the Ngati Awa people. That threat was real to the extent that Ngati Awa hapu involved were justified in taking such action as was necessary to defend themselves and their property. While the position may very well be that the Crown had no other choice but to deploy Te Arawa troops if the arrests were to be made and that the Arawa force had no option but to engage in some foraging for its own sustenance, it cannot alter the fact that Ngati Awa were justified in perceiving a real threat to their lives and property.

Opinions expressed by Clarke, Smith, Mair, and Nesbitt reinforce the accuracy of the Ngati Awa perception that they could not readily surrender to the contingent. Subsequent conduct of the Arawa forces in continuing their raids after the arrests had been made is further and more compelling evidence to the same effect, especially since the raids extended well beyond the areas where those arrested resided. They extended into the territory of those who clearly had no part in the murders and who in fact had a record of working with the Governor and his officials.

Finally, those who were involved in the murder of Fulloon and were eventually attacked by the arresting expedition belonged mainly to two hapu. It could not be said that the others were involved in any rebellion. It could especially not be said of those in the distant area from Whakatane to Ohiwa Harbour. None the less, their lands were also confiscated. It therefore becomes obvious that, for the Governor, the existence of any rebellion was secondary to the confiscation of land.

6.5 THE CONFISCATION

On 17 January 1866, the Governor confiscated most of the land of all the Ngati Awa hapu. With the surrender of Te Hura and others at Te Kupenga, all resistance was at an end, but the land was confiscated none the less. The date, said Dr Hirini Mead, 'should be etched into the memory of every Ngati Awa person'.⁶⁰

60. Document A24(a), p 16

The legislative authority for the confiscations was canvassed at some length in the Tribunal's *Taranaki Report: Kaupapa Tuatahi*.⁶¹ We adopt the overview given there. We see no need to repeat it at any length but provide a summary of the features that are salient to this case.

As already noted, the Governor purported to take the land under the provisions of the New Zealand Settlements Act 1863. Section 2 of that Act authorised the Governor to take land where he was 'satisfied that any Native Tribe or Section of a Tribe or any considerable number thereof has since the first day of January 1863 been engaged in rebellion against Her Majesty's authority'. However, that is to be read with the peace proclamation of 5 September 1865, which pardoned all prior acts of rebellion not already punished and advised that, in respect thereof, no more land would be taken. In the Ngati Awa case, as already noted, any acts of rebellion would need to relate to the period after then or, more particularly, to any acts that constituted rebellion during the process of effecting the arrests.

In the proclamation taking the Ngati Awa land, the particular acts of rebellion relied upon were not specified. The proclamation merely recited the terms of the Act – that the Governor was satisfied that there had been rebellion in the area.⁶²

The Act gave as its purpose the placement of a sufficient number of settlers on the land in order to maintain peace. To us, this means that the only land to be taken was that which was necessary to keep the peace by placing military settlers thereon.

Further, as was explained in the *Taranaki Report*, to achieve that purpose the Act set down a four-stage process. First, the Governor was to declare the district in which the land of those in rebellion was to be taken. This was not a taking but a notice of that intent and of the district in which lands were liable to be affected. Secondly, sites eligible for settlement were to be prescribed and set apart within those districts, with town and farm allotments laid out. Thirdly, the land so proposed for occupation or settlement was to be taken or reserved. Fourthly, those who had been loyal but whose land was taken nevertheless were to be compensated according to decisions to be made by a compensation court. Compensation was not to be given to those who had taken up arms against the Crown; those who had assisted, comforted, or counselled those in arms; or those who had declined to deliver up arms or submit to trial when required so to do.

It has first to be noted that, in the eastern Bay of Plenty, the Governor did not take those steps. A confiscation district was simply proclaimed, and in the same step the whole of the land in that district was taken, whether suitable for military settlement or not, and without plans for military settlements being prescribed. It is now clear that the greater part of the land was either unsuitable for settlement, being hill country or swampland, or was more than could have been settled by military personnel at the time. Large areas have not been settled to this day. A significant portion was given 20 years later for the purposes of a university endowment.

None the less, the confiscation proclamation announced that the land had been taken 'for the purposes of settlement'.

61. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, pp 118–121

62. Order in Council, 18 January 1866, *New Zealand Gazette*, 1866, no 3, p 17

Indeed, the proclamation was poorly conceived in other respects as well. There appears to have been no inquiry made as to the suitability of the land for the purposes of the Act. The area proclaimed simply encompassed a huge district predominantly prescribed by straight lines on a map, with vast areas of rugged bush and swamps. The confiscation line even bisected the mountain of Putauaki. Moreover, the land boundaries as described made no sense. They depended on the confluence of certain rivers that did not in fact join.

Because of this error, the boundaries were redefined on 1 September 1866. This proclamation also went further, slightly extending the boundaries. The final boundaries were:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecombe) Putanaki [sic], thence by a straight line in an easterly direction to a point eleven miles due south from the entrance to the Ohiwa Harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara River, and thence following the coast line to the point of commencement at Waitahanui.⁶³

There was also no inquiry made into the approximate location of the ‘offending’ tribes. Land Te Arawa had interests in was included, even though Te Arawa had fought with the Crown. The lands of several Ngati Awa hapu were also included, though they had clearly not participated. That is particularly significant in this case, and later we will refer to it again.

Because the confiscated area included lands associated with hapu aligned to the major descent groups of Ngati Awa, Whakatohea, and Tuhoe, and because the descent groups had no settled or agreed political boundaries, it is not possible to accurately determine how much Ngati Awa land was affected. In broad terms, however, we assess the amount of Ngati Awa land confiscated as approximately 245,000 acres. Adding to this the Whakatohea and Tuhoe lands taken in the same proclamation, the total was some 448,000 acres, or just over 181,000 hectares.⁶⁴

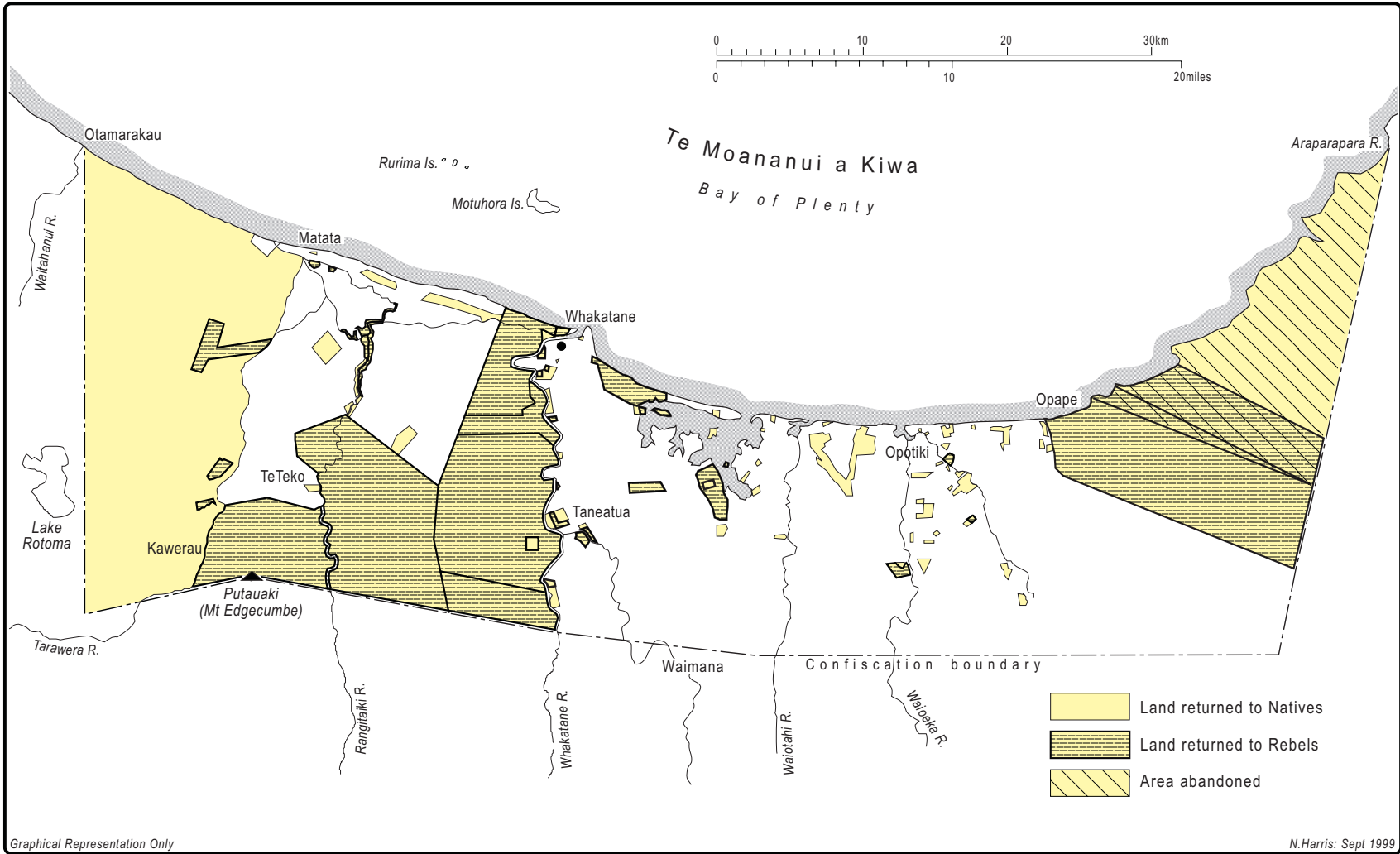
6.6 THE POLITICS OF CONFISCATION

The principles and politics of confiscation and the parliamentary debate that surrounded the passing of the New Zealand Settlements Act 1863 were canvassed at length in the *Taranaki Report*.⁶⁵ Again, we see no need to repeat the discussion in that report or to depart from the findings there made, but some comments are given in summary. On its face, the New Zealand Settlements Act was for the maintenance of law, order, and peace. It even avoided mention of the word ‘confiscation’ and focused instead on the provision of military settlements in troubled areas in order to enforce

63. Order in Council, 11 September 1866, *New Zealand Gazette*, 1866, no 51, p 347

64. See AJHR, 1928, G-7, p 21

65. *The Taranaki Report*, pp 108–118



Map 5: The eastern Bay of Plenty confiscation

the peace. In reality, however, the parliamentary debate suggests that Ministers saw the main purpose as the acceleration and financing of colonisation.⁶⁶

The Colonial Office took a different position on the Bill when it was forwarded to England for approval. The Secretary of State for the Colonies noted several objections, including that the Act allowed for unlimited confiscation; that decisions could be made in secret and with no right of appeal; that those who had never been in rebellion could be dispossessed of their land; that, although the provision for punishment was ‘flexible and unlimited’, the provision for compensation was ‘rigidly confined’; and that the powers would be ‘a standing qualification to the Treaty of Waitangi’. With a few proposed amendments, however, the secretary agreed to the necessity of confiscation, being persuaded of the exigencies in accompanying communications from New Zealand. He none the less cautioned that the Governor should take land only when he was satisfied that it was ‘just and moderate’.⁶⁷

6.7 THE MAIN POINTS

Set out below are the main points on the ‘rebellion’ and confiscation as we see them.

- In terms of the proclamation, the land was taken for rebellion. Conversely, the land was not confiscated for the murder of Fulloon. Murder is not rebellion but a public offence. Fulloon was killed not by Ngati Awa but by particular persons, and that is how it was seen at the time. The persons concerned were punished under the ordinary criminal law. There was no mention of murder in the confiscation proclamation.

This needs emphasis. In 1868, the Premier, E W Stafford, informed the General Assembly of his view that the confiscation was justified on account of the murders of Fulloon and Völkner.⁶⁸ The opinion that the land was taken for that reason then appears in several histories, and the same was assumed in some submissions before us.⁶⁹ However, that was not the case and in terms of the New Zealand Settlements Act 1863 it could not have been. The most that can be said is that the murder gave rise to other events that led to the confiscation.

Similarly, the land was not taken for resisting arrests or for harbouring fugitives from justice. Again, these were ordinary offences at criminal law, and the offenders could have been charged. It is only in respect of war or rebellion that a general class of persons might be punished on the basis of some corporate responsibility. It had in fact been contemplated that land might be taken for

66. Ibid, p 130

67. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, no 2, pp 20–22

68. NZPD, 1868, vol 2, p 521 (cited in the report of the native land claims commission, AJHR, 1921–22, G-5, p 27)

69. For example, one petition considered by the 1928 royal commission to inquire into confiscations of native lands and other grievances (the ‘Sim commission’) was that of Pouawha Meihana and 23 others praying ‘that the lands confiscated from them at Whakatane owing to the murder of James Fulloon be returned to them’: see petition 169/22, AJHR, 1928, G-7, p 3. For claimant perceptions, see document A42, p 3, and Judith Binney, *Redemption Songs*, Auckland, Auckland University Press, 1995, p 154.

resisting arrests and the Outlying Districts Police Act 1865 had been passed for that purpose, but in the end, that legislation was not used.

- The land could not have been taken for any alleged acts of rebellion prior to 5 September 1865. The proclamation of peace of that date pardoned all prior acts of rebellion not already punished. It did not excuse the murder of Fulloon, but as we have said, murder is not rebellion.

Even were that not the case, the only possible acts of rebellion before then related to the attempt to cross Te Arawa land to join the war to the west and, possibly, the imposition of the Pai Marire aukati. The aukati of the Ngati Awa runanga was to keep the peace. As to the attempt to cross the land of Te Arawa, only some of Ngati Awa at the western extremity were involved and the immediate action was only against Te Arawa, who were not acting for the Crown at that time. As for the Pai Marire aukati, it might best be described as hostile to the Government, being intended to keep out a Government that for all practical purposes had still to enter, but not directed to the overthrow of the Government itself.

- In terms of the authorising legislation, the New Zealand Settlements Act 1863, the land was confiscated for the purpose of installing military settlers in order to keep the peace. In reality, only a comparatively small part of the land taken was used for that purpose.

This also needs emphasis. There were a number of statements made in the General Assembly at the time suggesting that the Government's goals were to punish the Maori and to acquire land, but those purposes are not apparent from the Act.

Indeed, were punishment the purpose, there were a number of options to punish the particular persons involved in the acts complained of. These included charges of harbouring fugitives and of treason under the Treason Act 1351, which was then in force. The possibility that defendants might plead that they were not under a duty of allegiance to the Queen had been taken care of by the Native Rights Act 1865. This clarified that Maori could be charged, the Act deeming them to be natural-born subjects of the Crown.

- We have left for last the fourth point, though it is a major concern in this case. In reviewing the history, it has been apparent to us that, if any hapu were involved in the acts complained of, they were certain hapu at the western edge. These appear to have been caught up in the thrust of the East Coast tribes to reach the Waikato and Tauranga wars. They were most implicated in the Pai Marire aukati and the murder of Fulloon. They were directly affected by the attempts to effect arrests, and the arrests were effected in their area.

By way of contrast, the hapu around Whakatane, and from there to Ohiwa, had a record of cooperation with the Governor and his officials, limited only by the fact that official activity was restrained in this part of the Bay of Plenty. The runanga there operated in liason with civil commissioners. The leaders there protested the murder of Fulloon, and Fulloon himself was a close relative of the leading rangatira, Wepiha. Wepiha in turn welcomed the Governor's move to

arrest Te Hura. It was Wepiha who recovered Fulloon's body that it might be buried with his ancestors and, as we shall see, it was Wepiha who gave evidence against each of the accused.

The wrong of the Ngati Awa confiscation is particularly highlighted by the fact that the lands of these hapu were confiscated as well. It is highlighted even further by the fact that military settlers were placed not on the lands of Te Hura and others most involved in the acts complained of but at Whakatane, on the lands of the most innocent. Further, the hapu most involved were to be relocated on the lands of the Whakatane people.

The impact of the confiscation is considered in subsequent chapters. For the moment, we review the outcome for those charged with murder, and the claims made to us in respect of the trials.