

CHAPTER 8

LAND RETURNS AND LAND PURCHASES

8.1 OVERVIEW

During the early months of 1866, while the Ngati Awa prisoners stood trial in Auckland, the Government began the process of providing for the return of land to those Maori with interests in the confiscated land who had not been implicated in the 'rebellion'. Imperial authorities had been concerned from the outset at the sweeping powers afforded by the confiscation legislation and the comparatively limited provision it made to ensure that the rights and interests of the 'loyal' were protected. The abuse of such powers could place the 'rebellious' at the 'mercy of their conquerors', and result in the 'innocent' being made to suffer along with the 'guilty'. Warfare and dissent would in turn be prolonged, thereby defeating the very object of the Act.

In approving the legislation, the Imperial Government demanded not only that the confiscation of land be limited to the purposes defined in the Act but that an impartial and independent investigation be undertaken so as to ensure that the rights of the 'innocent' were sufficiently protected. It further demanded that compensation be made with speed, honesty, and surety, and that 'rebels' be treated with clemency once the war was over.¹ The New Zealand Settlements Act 1863 accordingly provided for the establishment of a compensation court to be empowered to investigate and award compensation to any Maori with an interest in confiscated land who had not been in rebellion.

Had the Government allowed this intended protection of Maori interests to take place, the damaging effects of the confiscation undertaken in the Bay of Plenty would, we believe, have been greatly ameliorated. But it did not. By the time confiscation was effected in the Bay of Plenty, a new policy had been developed that was at direct variance with the stated intentions of the 1863 Act and the Government's obligations at law and under the Treaty. The military campaign was over, but the intended subjugation of Maori to British law and authority was only just beginning. The compensation scheme was to play a critical role in this process.

Through successive Government interventions in the scheme and a flagrant misuse of the 1863 Act, Ngati Awa were effectively deprived of the impartial and judicial investigation intended. They were given neither a fair hearing nor, in turn, an appropriate or just award of land. Worse still, the compensation scheme was used to destroy customary ownership and destabilise traditional structures in order to break

1. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, no 2, pp 20-22 (RDB, vol 17, pp 6684-6685)

tribal power and facilitate the subsequent alienation of what land remained. It largely succeeded.

What was intended as a judicial process to protect the rights of the ‘innocent’ accordingly became little more than a political tool to further the interests of the Government. The compensation scheme continued the campaign against Ngati Awa, albeit under a different guise.

8.2 CHANGING GOVERNMENT POLICY

The stated purpose of the New Zealand Settlements Act 1863 was to ‘preserve the peace of the Country’ through the establishment of military settlements on confiscated land. By 1865, however, the Government had come to view confiscation as a quite different means of achieving peace. Confiscation – and the granting of land back to Maori – was to be the means of enforcing that which was elsewhere being achieved under the auspices of the Native Land Court: namely, the individualisation of Maori title.

The Government’s objectives were clear. As elsewhere, the individualisation of title was intended to advance the settlement of a district by finalising the issue of Maori ownership and creating an individual – and more readily alienated – title to land. In the words of Henry Sewell (the Attorney-General in 1865 and Minister of Justice by 1870), individualisation could also facilitate the destruction of:

the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Maori race into our social and political system.²

Put another way, the individualisation of title could destroy the very cohesion and independence of Maori society and, in turn, the source of any future threat or resistance to British authority. It could thereby provide a means of achieving what military campaigns, the imprisonment of ‘rebels’, and other such punitive actions could never have: the final defeat of Maori through the acquisition of their land and the destruction of their customary tenure and society. As Native Minister Fitzgerald put it, confiscation, and the return of individualised land, could facilitate ‘a final settlement of the country . . . in such a permanent manner as alone can be consistent with a lasting peace’.³

In that sense, it was somewhat irrelevant to the Government whether Ngati Awa had been ‘loyal’ or ‘rebellious’. Maori society as a whole was now the object of the Government’s campaign, and individualisation was the means of finally enforcing Maori submission.

To achieve these objectives, the Government had to assume a level of control over the process of returning land that was never intended or permitted under the terms of

2. Henry Sewell, 29 August 1870, NZPD, 1870, vol 9, p 361

3. Fitzgerald to Pollen, 8 September 1865, AGG-A 1/1, NA Wellington (doc A2(1)(3), p 3)

the 1863 Act. The Government's intention to assume that control was made clear in Grey's peace proclamation of 5 September 1865, in which he announced the war to be 'at an end' and promised that the Government would at once restore 'considerable quantities of land' to loyal and surrendered rebels alike. The only requirements were that all Maori 'come in at once to claim the benefit of this arrangement' and that they agree to accept Crown grants for their land and to recognise and live peaceably under the 'laws of the Queen'.⁴

The Government's first step was to effect a blanket confiscation of the district; that is, to declare the entire eastern Bay of Plenty district required for the purposes of military settlement. While there was no proper and lawful basis upon which the Governor could confiscate all the land within the district, it was a necessary step to achieving the Government's objectives. In the first instance, it would ensure that any land returned by the Government would be in freehold as opposed to customary native title. Secondly, it would ensure effective Government control over the compensation process as a whole. This was because the return of any land taken for the purposes of military settlement required Government consent under the terms of the 1863 Act and its amendments. The intended investigation by the Compensation Court could thereby be circumvented, and the return of land made a matter of private negotiation with the Government as opposed to a court process.

The next step involved the appointment of a special commissioner for the district to undertake such negotiations on behalf of the Government. The special commissioner's role was outlined in instructions from Native Minister Fitzgerald. The commissioner was to restore to both 'rebel' and 'friendly' Maori alike areas they 'consent to occupy', 'only insisting that they shall take Crown grants for the land . . . and shall clearly understand that they are living under the laws of the Queen'. He was also to ensure that such awards were not:

more than is necessary for their wants, not only because to have them in possession of large tracts of country which they cannot use is no kindness, but because by the speedy sale and settlement of the remainder their own lands will become more valuable, and the settlement and occupation of the country will be effected.⁵

But as Fitzgerald repeatedly emphasised:

the Government feel that the matter of first importance in the permanent pacification of the country is to induce the Natives to finally accept the fact that the land is confiscated and to consent to hold what is now returned to them under Crown Grant. To attain this end the Government would sanction a far more liberal disposition of land to the Natives than would on other considerations be desirable. The one great thing which they desire to see done is to induce the Natives to accept their position as final and irrecoverable, and if by liberal concessions to them of blocks of land under Crown Grant you can bring about this result, the main object of the confiscations will have been attained.⁶

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

5. Fitzgerald to Pollen, 3 September 1865, AGG-A 1/1, NA Wellington (doc A2(1)(3), p 1)

6. *Ibid* (pp 1-2)

Earlier assurances to the Imperial Government that the innocent would not suffer with the guilty were forgotten: in neither Grey's peace proclamation nor Fitzgerald's instructions were distinctions drawn between the two. Nor were Ngati Awa to be afforded the benefit of an independent and judicial inquiry. The return of any land depended instead on their willingness finally to accept British law and authority, which included an individualised system of ownership.

The only task remaining for the Government was to pass additional validating legislation to ensure that everything done could be put beyond judicial scrutiny. The New Zealand Settlements Amendment and Continuance Act 1865 accordingly provided for the return of land in lieu of money in compensation (a reflection mainly of the fact that monetary compensation, especially in Waikato, was costing too much). Section 6 of the New Zealand Settlements Acts Amendment Act 1866 declared all proceedings of the Governor and Compensation Court 'to be absolutely valid', irrespective of any 'omission or defect'. The Confiscated Lands Act 1867 further provided for the making of awards to 'surrendered rebels' and any others omitted from compensation under the terms of the 1863 Act. Further validating legislation was to be passed as difficulties arising from the implementation of the Government's policy were presented.⁷

8.3 THE PROCESS IN THE BAY OF PLENTY

8.3.1 Wilson's arrangements

Five months before the first sitting of the Compensation Court, the special commissioner appointed for the Bay of Plenty, John Wilson, began making arrangements to ensure that the settlement of the district proceeded in accordance with the Government's objectives.

Securing the Government's interests was Wilson's first priority. Arrangements to set aside sufficient confiscated land for military settlements began during the early months of 1866, at which time Wilson arranged for the survey of the Opotiki township and laid out military settlements at Opotiki, Ohiwa, and Waimana. He later laid out a settlement at Whakatane. By January 1867, Wilson had also reserved some 87,000 acres of land for Te Arawa in payment for their involvement in the campaign to arrest the killers of Fulloon. It was an easy solution for an already indebted Government, though it flew in the face of Grey's assurance that 'loyal' Maori would not be adversely affected. Making the award also inflicted on Ngati Awa what was an even greater punishment than the loss of land to military settlers: the loss of land to their traditional enemy. With negotiations with Ngati Awa about to begin, the message was clear: authority over the land now rested with the Government, as did the power to retain, return, or otherwise dispose of the land. Any claims for compensation were to depend not on the rule of law but on Government discretion

7. This included the Richmond Land Sales Act 1870 and the Whakatane Grants Validation Act 1878.

and expediency. Having made these arrangements, Wilson turned his attention to the provision of land for Ngati Awa.

From the outset, Ngati Awa were at an enormous disadvantage. Deprived of the independent and judicial process originally intended, they were forced into a situation of having to bargain with the Government for whatever land they could get; and few were in a position to bargain at all. It must be recalled that these events occurred during a period of profound economic and social dislocation for Ngati Awa. Many were at the time still experiencing the hardship caused by the previous warfare, as well as seeking to cope with the imprisonment of a number of their leaders and the removal of many others to safer areas of residence. There was also the fear and uncertainty created by the Government's activities in the district and the continued presence of a Te Arawa force. In short, at no time were Ngati Awa more in need of the promised rights and protection afforded under the Treaty.

They were denied both. There was no independent authority or advocate to assist Ngati Awa, and no laws or regulations to protect their rights or the rights of those then absent from the district. They were wholly at the mercy of Wilson. The vagaries of Wilson's determinations were revealed by his refusal to entertain any claims to land that he had already set aside for military settlement or Te Arawa. Similarly, Wilson told the wives of rebels that they were not entitled to receive compensation, whether or not they themselves had taken part in the rebellion. In the wake of a later Compensation Court finding in favour of just such a claimant, Wilson stated that there were over 200 married women who, 'under the impression they are implicated in their husbands rebellion have withdrawn or forborne to make claims which they would have been entitled to urge with a prospect of success'.⁸

The arbitrary power that Wilson possessed enabled him to reward or punish as he personally saw fit, and few questions were raised as to the veracity of his determinations. He was given a free hand and the power necessary to effect what retribution or reward he believed could best serve the Government's interests. The varying treatment afforded different hapu is testimony to the arbitrary nature of his determinations.

Wilson's first arrangements were with Ngati Awa in the Whakatane district. Having decided to put military settlers on the east side of the Whakatane River, Ngati Awa were simply turned off their land at Whakatane, and a string of reserves was arranged for them and Ngati Pukeko and Patuwai on the west bank. There was clearly little assessment made as to the extent of Ngati Awa's involvement in the 'rebellion'. In this instance, the 'sin' of a few was to be borne by Ngati Awa as a whole. There was equally little consideration given to their wishes or to the comparative extent of their customary interests, with Ngati Pukeko receiving a far more liberal reserve than the Ngati Awa hapu. The fact that Ngati Pukeko were at the time assisting the Government against Te Kooti was clearly of significance in this. As Hori Kawakura of Ngati Awa later observed, 'When Mr Wilson came, he always went to Ngatipukeko, never to us.

8. Wilson to Pollen, 26 October 1867, IA1 1867/3589, NA Wellington (RDB, vol 123, pp 47,475-47,478)

Therefore his coming always made trouble.⁹ Meihana Koata of Ngati Pukeko was personally also given land on the east bank of the Whakatane River for the assistance he rendered Wilson at this time.¹⁰

Wilson then went across to the pa of the loyalist Ngati Awa chief Rangitukehu on the Rangitaiki River. The objective was to secure for the Government the plain near Te Teko, which Wilson believed to be 'the natural site for a town that must some day command the traffic of the interior'. Irrespective of the fact that many hapu had interests in the area, Wilson secured an agreement from Rangitukehu alone to give up the desired 10,000 acres of land between the Rangitaiki and Tarawera Rivers. That cooperation was rewarded with two reserves, at Putauaki and Kokohinau, for Rangitukehu and his hapu, Te Pahipoto, and the neighbouring Nga Maihi. Rangitukehu was also allocated a reserve at Omataroa to the east of the Rangitaiki River, which was to be shared with Ngai Tamaoki, Nga Maihi, and other Ngati Awa hapu.¹¹

Wilson also made arrangements at this time for the Tawera people. He described them as 'extensive land owners' prior to 1865, but most of their land now formed part of the area given to Te Arawa. Despite the fact that they were 'surrendered rebels', Wilson arranged for a reserve of 1890 acres to be laid off for them between Te Arawa's military lots.¹²

Ngai Te Rangihouhiri and Ngati Hikakino were to be less fortunate. The two hapu most implicated in the Fulloon murder and the subsequent harbouring of suspects were most harshly dealt with. Wilson arranged for virtually all their land to be taken and awarded to Te Arawa, excepting the island pa of Omarupotiki and Te Matata. The area returned to them was a mere 278 acres, most of which was either coastal sandhills or swampy lowlands. Wilson did, however, allocate to these hapu highly prized eel weirs, which he had been able to prevent Te Arawa taking over. He later admitted that the lands were 'liable to an occasional flood; but that the Government cannot help; nor is it any gainer, the whole of the dry lands of these tribes having been given to the hapus of the Arawa, in reward for military service rendered in 1865'.¹³

In those cases in which Wilson could not come to some agreement with the claimants or where he considered that the claim was weak or the demands excessive, he was prepared to let the claimants 'take their chance' in court rather than give them the land that they asked for.¹⁴ Wilson then organised witnesses to contest the claims that he did not support. It was an easy task. In the scramble for land created by Wilson's private negotiations, Maori became pitted against Maori as they sought both to distance themselves from any association with the 'rebellious' and, at the

9. 'Minutes of Proceedings of a Meeting Held at Whakatane', 9 November 1874, IA1 1867/3589, NA Wellington; see also evidence of Hori Kawakura, 9 November 1874, Whakatane, 1874-1894, MA13/100A, NA Wellington (RDB, pp 30,991-30,992); doc 11, p 133

10. Document 11, p 132

11. Document 15, pp 81-83; doc 11, pp 78-79

12. Document 15, pp 83-84

13. 'Report on Settlement of Confiscated Lands', 29 March 1872, AJHR, 1872, C-4A, p 6 (cited in doc 11, p 126); see also RDB, vol 25, pp 9989-10,001

14. Wilson to Whitaker, 14 November 1866, IA1 1866/3654, NA Wellington (cited in doc 15, p 87)

same time, to obtain the best possible outcome for their community. In some cases, it is clear that witnesses agreed to contest claims solely to secure their own interests.¹⁵

Having made his arrangements, Wilson then took them to the Compensation Court for approval.

8.3.2 The first Compensation Court sitting

The Compensation Court's first sitting was at Opotiki from 7 March to 8 April 1867. It dealt mainly with claims to the eastern portion of the confiscated district. In order to claim compensation, written application had to have been made to the Colonial Secretary, who then forwarded the claims to the court. We have no way of knowing exactly how many of those entitled to receive compensation did not file claims. Nor is it clear how many claims were dismissed because the claimant failed to appear in person before the court. It must be remembered, however, that the court sittings took place during a period of extreme dislocation resulting from the confiscation and war with Te Kooti. The court's first sittings at Opotiki and Maketu had to be adjourned in the absence of many claimants, who were either away fighting for the Government or busy harvesting crops. Many others were also at the time resident in different parts of the country. The short notice given of court sittings clearly also created difficulties, as did the hearing of claims in areas that, in some cases, were 'two days ride away from the land claimed'.¹⁶ Irrespective of the environment within which the sittings occurred, those who did not file claims, or who failed to attend the court, were from the outset excluded.

According to Wilson, of the 235 cases brought forward at the court's first sitting, 133 were disposed of, with the remainder being postponed to the next sitting.¹⁷ In achieving as much, Wilson was greatly assisted by the fact that he was not only the special commissioner for the district but also the Crown agent appointed to the court. This enabled him to exert a degree of control over the process that directly prejudiced both the claimants and the nature of the inquiry itself. Wilson was also much aided by the willingness of the court to rely on his testimony; a circumstance that had a great deal to do with the personnel appointed to the court. The two judges who heard most of the cases in the Bay of Plenty were none other than Major William Mair, who had led the Arawa expedition to arrest those implicated in Fulloon's murder, and T H Smith, the civil commissioner who had organised the expedition. Both held very firm ideas on how to handle Maori, particularly those branded as 'rebels'. Neither could be said to be impartial.

Many cases at the court's first sitting were simply dismissed when the Crown agent said that they had been settled out of court. In those cases in which no prior agreement had been reached, the very considerable weight given by the court to the

15. Document 11, pp 80–81

16. Wilson to Pollen, 23 July 1867, IA1 1867/2659, NA Wellington (cited in doc 15, p 87); awards of the Compensation Court, Maketu sitting, DOSLI Hamilton file 3/2

17. Wilson to Pollen, 15 April 1867, IA1 1867/1321, NA Wellington (cited in doc 11, p 97)

evidence brought by Wilson rendered the claimant's 'chance' of success very slim.¹⁸ Even when claimants were fortunate enough to have their claims upheld, the court's awards were often pitifully inadequate.¹⁹ In most cases, the court simply accepted Wilson's word as to who were 'rebels' and who were not and validated the arrangements he had made. There was no independent inquiry or judicial testing as to the fairness of his arrangements. Nor did the court issue judgments on each case or even explain the basis upon which the judgments were made. Most were concluded with a cursory 'case dismissed' or 'land to be decided'. It should also be noted that, though some claims were brought by individuals, many others were brought on behalf of groups. In neither case was any distinction drawn by the court, with award certificates simply listing the names of the individuals given in evidence. In short, the court singularly failed to undertake the investigation required of it.²⁰

The results of the court's first sitting were impressive for the Government. Wilson informed it that he had arranged for 87,000 acres to be awarded to Te Arawa; 151,558 acres to be retained by the Government; and 96,000 acres to be given back to Maori. Some 38,000 acres remained unassigned. Of the 134,000 acres that were to be given back or that remained unassigned, 18,000 acres were agricultural land, 54,000 acres swampland, and 62,000 acres 'mountainous country half of it very barren'.²¹ That is, out of the entire confiscation area, Wilson had arranged for the return of a mere 18,000 acres of agricultural land. There can be little question that it was wholly inadequate to provide for the present or future support of eastern Bay of Plenty Maori. Nor did the simplicity of Wilson's mathematical equations in any way attest to the degree of disruption his arrangements had caused. Customary rights of use and occupation had been completely distorted. Worse still, his arrangements had engendered a level of divisiveness and competition between groups that was to split Maori communities as effectively as the process of individualisation itself.

But the Government was not to have it all its own way. While the court had accepted a number of the arrangements Wilson had made, the illegality of the Government's blanket confiscation and subsequent actions had not gone unnoticed. Shortly before the close of the court's first sitting, the judges were forced to confront the Government on the matter. In the debate that followed, the primacy of securing the Government's objectives was made very clear, as was the Government's intention to use the court as little more than a rubber stamp.

8.3.3 Executive intervention in the court process

On 30 April 1867, Wilson informed the Government that 'the Judges of the Compensation Court are of opinion that the Bay of Plenty district has not been legally occupied by the Government, for the purpose of Military Settlement'.²² The issue had

18. Wilson to Pollen, 23 July 1867, IA1 1867/2659, NA Wellington (cited in doc 15, p 87)

19. See, for examples, doc 15, pp 90–91

20. See doc 11, pp 82–95

21. Wilson to Pollen, 12 June 1867, DOSLI Hamilton file 2/3, Opotiki confiscation (cited in doc 11, pp 98–99)

22. Wilson to Pollen, 30 April 1867, IA1 1867/2659, NA Wellington (cited in doc 11, p 106)

initially arisen in consequence of claims being brought before the court for land that Wilson had already allotted to military settlers. As Judge Smith commented:

The point was raised as to whether the fact of certain portions of the confiscated block having been surveyed & marked off for military settlers & other purposes would preclude any award by the Court of such land to claimants entitled to compensation in those cases . . .²³

Wilson had assumed that his arrangements fell outside the jurisdiction of the court. In Smith's view, however, the Government could only exercise such discretion if it could be shown that the land had in fact been appropriated for the purpose of military settlement. In his opinion, it was patently clear that the whole of the Bay of Plenty district could not be required for such a purpose.²⁴

Chief Judge Fenton agreed. Yet, while aware of the illegality of the Government's confiscation, Fenton appeared unwilling to confront it on the issue. He had instead merely impressed on Wilson the 'necessity' of ensuring that claimants were reserved 'their own lands'. Wilson's reply was to state that 'such is by no means the Government's view of the subject'.²⁵

To bring the matter to issue, Wilson asked for 'the rule of the Court on this question'. Though Smith appeared equally as unwilling to embarrass the Government by making such a ruling – informing Wilson that 'It is a point the Government ought not to raise for its own sake' – he was forced to do so at Wilson's insistence. He declared that Wilson's arrangements to date were illegal and would not be regarded by the court. He recommended that Wilson consult with claimants regarding the locality of land they wished to occupy, and further threatened to overturn Wilson's arrangements if no agreement could be reached within six months.²⁶

The Government's response was swift and emphatic. It called for the opinion of the Attorney-General, who stated:

I cannot imagine what the objection is to the sufficiencies of the Order in Council. The Order declares that the land is required for the purposes of the Act and are [sic] subject to the provisions thereof. The Act provides that upon such an Order being made the land is to be deemed Crown Land.²⁷

William Rolleston, the under-secretary of the Native Department, supported the Attorney-General's opinion. He declared that all the land had been taken for settlement 'as a matter of fact'. He further declared that, unless the Crown consented to such an award, the court had no jurisdiction to award land as compensation in areas that had been 'absolutely taken' for the purposes of settlement.²⁸ Since all the

23. Judge Smith, 29 June 1867, IA1 1867/2771, NA Wellington (cited in doc 11, p 109)

24. Ibid

25. Wilson to Pollen, 25 July 1867, IA1 1867/2771, NA Wellington (cited in doc 11, pp 107–108)

26. Ibid

27. Prendergast, 7 June 1867, IA1 1867/2771, NA Wellington (cited in doc 15, p 69)

28. Memorandum by Rolleston, 6 July 1867, IA1 1867/2771, NA Wellington (cited in doc 15, p 69)

land within the eastern Bay of Plenty had been ‘absolutely taken’, this in effect meant that the court could do little more than rubber-stamp the arrangements made by Wilson.

The Compensation Court judges accepted the Government’s interpretation. They further denied that they had meant that the confiscation was illegal. What they had required, it was argued, was proof that the confiscation was legal, such as a certified copy of the confiscation proclamation.²⁹ Thereafter, the court adhered to the Government’s decision. In the following hearing held at Maketu, Wilson was able to report that Judge Mackay had ruled that ‘lands allotted to Military Settlers could not be restored by the Court to the Claimants’.³⁰

It is difficult to imagine Government Ministers today being allowed to determine a court’s jurisdiction, let alone quash a court ruling. Such blatant interference in judicial matters was completely contrary to the rule of law and to the rights and protection afforded all citizens under the Treaty. That the judges accepted the Government’s decision is of equal note, though perhaps unsurprising given their evident unwillingness to raise the matter in the first place. It highlights the fact that the court was neither regarded as nor seen to be independent from the Executive. Indeed, it was quite clearly assumed that the Compensation Court – like its Native Land Court counterpart – was there simply to fulfil the interests and objectives of the Government. This was the very situation that the Imperial authorities had sought to protect against. Judicial process had become subservient to Executive whim, and Maori had in effect been left to the ‘mercy of their conquerors’.

8.3.4 Further court sittings

The court’s next sitting was at Maketu from 8 to 12 July, and most of the hearing was concerned with claims in the west of the confiscated block between Matata and Waitahanui. With many witnesses absent as a consequence of the unsettled state of the region, the court was adjourned before this inquiry was completed. The inquiry, along with claims to land at Rangitaiki and Whakatane, continued at Whakatane from 9 September to 1 October.

At the final sitting at Te Awa o te Atua in December 1867, the court was largely concerned with Ngati Pikiāo and Ngati Awa claims to the Waitahanui block at the western edge of the confiscation district. No less than 12 witnesses took the stand to repudiate Ngati Pikiāo’s claim. They included men from Ngai Te Rangihouhiri, Ngati Hikakino, and Ngati Irawharo, as well as prominent ‘loyal’ chiefs such as Rangitukehu of Pahipoto and Hori Kawakura of Ngati Awa. All were adamant that the land belonged to Ngai Te Rangihouhiri and Ngati Hikakino.

Judge Mair found in favour of Ngati Pikiāo: ‘Judgment for all the land West from a Puhuhukawa [sic] tree at the entrance of the Whakarewa River direct to Otitapu’.³¹ By

29. Judge Smith, 29 June 1867, IA1 1867/2772, NA Wellington (cited in doc 11, p 109)

30. Document 15, p 71

31. Minutes of Compensation Court, Te Awa o Te Atua sitting, 3–19 December 1867, DOSLI Hamilton file 1/6 (cited in doc 11, p 119)

that simple sentence, an area encompassing 36,320 acres was awarded to Ngati Pikiao without the slightest attempt to assess the copious evidence submitted by both sides. No reasons were given for the court's decision. The judgment comes as little surprise, however, when one considers that any other finding would have upset the existing arrangement to award the land to Te Arawa. That the presiding judge in the case was the same man who had led the Arawa force against Ngai Te Rangihouhiri and Ngati Hikakino was clearly also significant. There can be little doubt that Judge Mair had a personal interest in ensuring that Ngati Awa were punished and Te Arawa rewarded.

In the same way, the court simply rubber-stamped Wilson's arrangements for Ngati Tuwharetoa. Tuwharetoa were awarded what amounted to just under 20,000 acres of land. That they were entitled to receive the award is not questioned. What is at issue is the arbitrary nature of Wilson's determinations and the blatant inequality in treatment that resulted.

Tuwharetoa's award stood in marked contrast to the treatment afforded other claimants in the western part of the confiscation district. While Ngati Awa claims to land set aside for Te Arawa had been consistently denied, Tuwharetoa were awarded what amounted to a large area of their previous domain that fell within the area originally set aside for Te Arawa. This was unsurprising as, unlike Ngai Te Rangihouhiri, Tuwharetoa were not heavily implicated in the resistance and 'rebellion'. Their treatment was similar to that afforded Rangitukehu.

Included within the Tuwharetoa award were also 50-acre reserves for a number of individuals, all of whom were designated 'rebels' (and were perhaps those Tuwharetoa who changed sides at Te Kupenga the day before Te Hura's surrender). Those individual awards exceeded the amount given to many claimants who had taken no part in the warfare, while on the same day, the claim of another individual was dismissed on the ground that he might have given aid to the very same 'rebels'.³² The vagaries of Wilson's determinations were very apparent. What was also clear was the subservient role played by the court. The concluding sentence of the court's judgment made it clear that it was merely a procedural matter to give effect to the arrangement already made by Wilson: 'All Tuwharetoa land on the east side of the Tarawera river within the confiscated block is the property of the Govt by virtue of agreement made between the Crown Agent and the Tuwharetoa natives.'³³

Through a direct encroachment on the court's jurisdiction and a direct intervention in the court's process, the Government had effectively secured its objectives. It did so at the cost of denying Ngati Awa the rights and protection afforded to them under the Treaty. Ngati Awa were deprived of the impartial and judicial investigation intended. They were given neither a fair hearing nor an appropriate or just award of land. Further still, they were not afforded any power of petition or redress. Despite the failure of the Government and court to comply with their obligations at law, under section 6 of the New Zealand Settlements Acts Amendment Act 1866 all proceedings of the Governor and court were deemed valid and beyond further judicial scrutiny.

32. Document 15, pp 95-98

33. Judgment in Rokokoro Tani Rau's claims for Hohepa Rokokoro and company claimants, 19 December 1867, minutes of Compensation Court, Te Awa o te Atua sitting, DOSLI Hamilton file 1/6 (cited in doc 11, p 121)

8.3.5 Finalising the court awards

The process of finalising the awards was to prove equally detrimental to the interests of Ngati Awa. The Imperial Government had demanded that compensation be made with speed, honesty, and surety. No part of the awards process fulfilled these requirements. By the end of 1867, it had been agreed that around 130,000 acres of land would be returned to eastern Bay of Plenty Maori. It was not until 1874, however, that some of the awards were finalised through the issue of a Crown grant. In many cases, it took up to 10 years before a Crown grant was issued. In the interim, the Maori owners were in effect left as squatters on Crown land, with little but promissory notes of entitlement to secure their ownership and occupation.

To be fair, some of the delay was caused by military disturbances, most notably Te Kooti's raids in the district in 1869, and the difficulty of completing surveys of the awards in those conditions. But there was more to the delays in issuing title than just the inability to complete surveys.

By the time Wilson was instructed to go back to the district and complete the awards, the entire process – both on the ground and in the Government – was in complete disarray. While some certificates of award had been prepared, no acreages had been stipulated. Nor had reserves been apportioned between groups or their owners listed. The position of 'surrendered rebels' at Whakatane and in the Rangitaiki region was particularly chaotic and had, according to Wilson, already caused 'a good deal of trouble'. Wilson noted that, for 'economical reasons', allocations in the area had remained 'unsurveyed and undivided and the complications that had arisen therefrom had become numerous, and were not to be easily settled'. To make matters worse, schedules of awards 'containing many hundred Native names' had been mislaid, though Wilson hoped he could recompile them from personal notes. In addition, since making the original arrangements, the Maori population in the district had increased, while some 150 rebels had since surrendered and needed to be provided for.³⁴

By the 1870s, therefore, an added problem had also arisen in that the original lists of owners compiled by Wilson had rapidly become obsolete. Nor was there any provision available to enable succession, the Native Land Court being unable to adjudicate on land awarded under the New Zealand Settlements Amendment and Continuance Act 1865. The confused situation was compounded by increasing disputes between Maori as they struggled to contend with the disruption and uncertainty caused by the awards process and the competition that it created over the remaining resources. The situation was such that Wilson decided to cancel all but the Arawa military awards and begin afresh.

Wilson arrived back in the district in December 1871. He reported back at the end of March 1872, claiming to have 'settled all the numerous matters having reference to the confiscated lands' except for a dispute over the location of reserves at Whakatane.

34. 'Report on Settlement of Confiscated Lands', 29 March 1872, AJHR, 1872, C-4A, pp 4-7 (cited in doc 11, pp 124-126); doc 15, p 105



Photo 4: The redoubt at Whakatane. From here, the relocated Ngati Awa hapu were within easy reach across the river. Photo courtesy Alexander Turnbull Library (F4128½)

Wilson also referred to having made various additional awards, all of which were made without any inquiry by or sanction from the court.³⁵

In November 1874, Wilson's revised schedules were finally published in the *New Zealand Gazette*. All that remained was to settle a dispute over reserves at Whakatane and issue Crown grants for all the awards. Neither task was to be completed with ease or alacrity. In no case were titles promptly issued, and the matter of outstanding grants was to remain a problem for both Maori and the Government well into the 1880s, and beyond. Conflict and continuing confusion over the Government's allocations was likewise to persist, necessitating further Government intervention and revision.³⁶ The cost of this administrative ineptitude was wholly borne by Ngati Awa.

8.4 RESULTS

In view of the confusion surrounding the finalising of the awards, it is difficult to work out how much land was awarded or retained by the Government. But, as we understand it, the final figures approximated to the following: of the 448,000 acres confiscated, 124,060 acres were retained by the Government; 87,000 acres were awarded to Te Arawa; 118,300 acres were restored to 'loyal' Maori; and 112,300 acres were restored to 'rebel' Maori.³⁷ Out of an original holding that has been estimated at

35. Ibid

36. Document 11, pp 130–159

37. The 6340-acre difference represents land sold privately before the confiscation. The figures given here are based upon those provided in the Sim commission's inquiry: AJHR, 1928, G-7, p 21.

194,000 acres, Ngati Awa received back 77,870 acres.³⁸ It may be noted that most of the Government land was described in 1873 as being ‘unfit for settlement at present’, and that, of the 24,000 acres specifically taken for military settlers, ‘fully 15,000 lie idle’.³⁹ There can be little doubt that the Government had completely lost sight of the original intention behind the confiscation policy.

However, such figures give little indication of the damaging results of the compensation process on Maori. They do not, for instance, in any way attest to the trauma caused by the dislocation of communities, or the uncertainty and divisiveness engendered by the Crown’s actions. Nor do they give any indication as to the actual capacity of the land to maintain either the people or their polity.

In the first instance, and as the claimants have pointed out, much of the land returned was either swampland or rugged hill country, and little was suitable for cultivation. The land awarded to Ngai Te Rangihouhiri and Ngati Hikakino was the most extreme example of this. As noted, the area returned to them was approximately 278 acres. Most was either coastal sandhills or swamps, and though Wilson secured them valuable eel weirs, the total area of land was probably inadequate for the immediate support of these groups, let alone their future prosperity. It clearly fell considerably short of the Government’s promise to ensure that Maori were left with the land ‘necessary for their wants’. Not surprisingly, when Wilson returned to the district in 1872 he found the people dispersed, living either with relations in the district or further afield at Tauranga and Hauraki.⁴⁰

Secondly, hapu often did not get back the land that they had traditionally occupied and cultivated, instead receiving land that belonged to other hapu. This applied particularly to the Whakatane reserves granted to Ngati Pukeko, Ngati Awa, and Patuwai. By their own laws, Maori would have known that the land was not their own to hold and use. Irrespective of the Government’s determinations, in those circumstances there were a number of constraints on using the land.

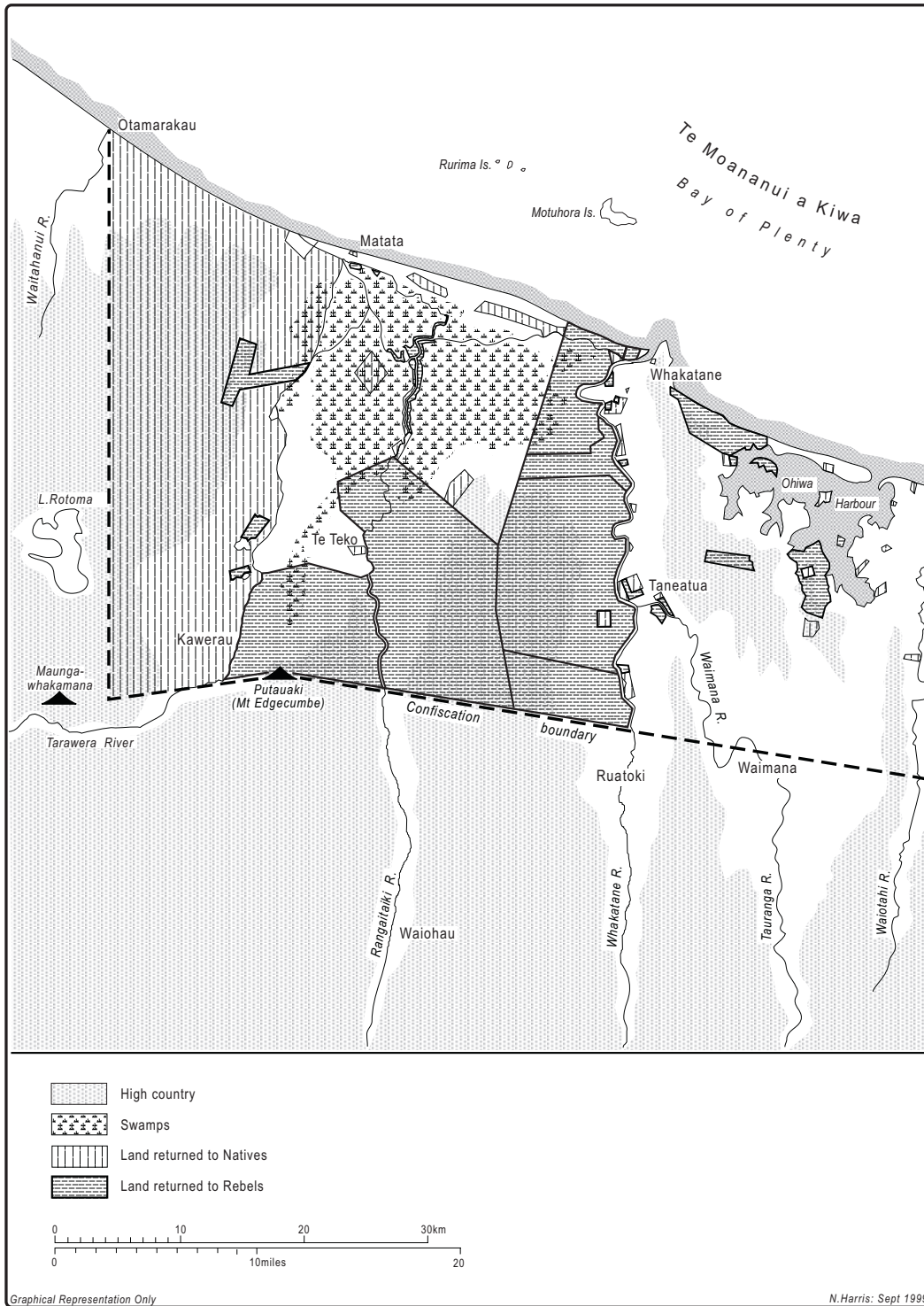
Thirdly, no land was returned in the condition in which it was taken. The compensation scheme instead facilitated the transformation from a communal to individual form of ownership in which the entitlement of many was reduced to the rights of a few. Though a number of the larger awards were returned to individuals as ‘trustees’, it was never more than a temporary arrangement until the land could be divided into shares.⁴¹ In many cases, the individuals listed in the awards also had the power to alienate the land without recourse to the wider community. Only in some cases were restrictions on alienation applied or enforced. Even when such restrictions were enforced (as in the case of the Whakatane awards), they merely served to delay – as opposed to prevent – the eventual alienation of the land, with all restrictions on

38. It may be noted that the Sim commission estimated Ngati Awa’s original holding to be 107,120 acres, but this figure took no account of the fact that Ngati Awa had considerable if not exclusive rights to the 87,000 acres awarded to Te Arawa.

39. J H H St John to Native Minister, 12 August 1873, AJHR, 1873, C-4B, pp 5–6 (cited in doc 11, p 127)

40. ‘Report on Settlement of Confiscated Lands’, 29 March 1872, AJHR, 1872, C-4A, p 4 (cited in doc 11, p 126)

41. In the case of those awards made under the Confiscated Lands Act 1867, the Governor could refer the subdivision of such land directly to the Native Land Court, whether or not a Crown grant had been issued: doc A2, p 42.



Map 6: Land returned to Maori

alienation being removed under section 207 of the Native Land Act 1909, subject to the provisions of that Act. In no case were the rights and protections afforded by a communal title adequately compensated for or replaced.

The combined effect of the awards process was to create a situation in which the subsequent alienation of the land was not only possible but likely. That many of the awards were of poor quality was itself an incentive to alienate, as was the fact that many did not coincide with traditionally occupied lands. The degree of uncertainty created by the delays in issuing title also lent itself to the sale of Maori interests, with many of the awards being sold or leased before title had been issued.⁴²

Of greater importance still was the dislocation caused to communities by the individualisation of customary tenure. Not only did it destabilise ownership and make land susceptible to alienation, but it destroyed the communal base of interests upon which the community depended for its unity, productivity, and very identity. The individualisation of land led to the separation and individualisation of the community itself.

In short, the Government's actions completely undermined Ngati Awa's status and future as a tribal people. It also created a situation that made the subsequent alienation of land almost inevitable. It is to the Government's role in facilitating land alienation that we now turn.

8.5 LAND PURCHASES

Few actions could so impugn the integrity of the compensation scheme than the purchase of the compensatory lands. Even before the compensation awards had been finalised and Crown grants issued, Government agents had been sent to the region charged with the task of acquiring as much land as possible. Henry Mitchell and Charles Davis commenced operations in the Taupo–Bay of Plenty area on behalf of the Government in June 1873. What followed was a sustained period of negotiations that effectively laid the basis for the subsequent partitioning and alienation of much of the compensatory land.

It seems that these tactics applied particularly to the Crown's purchase of Te Arawa and Tuwharetoa blocks such as Tawhitinui and Otuhounga (lots 31 and 39, parish of Matata). By contrast, Ngati Awa (specifically Rangitukehu) retained Kokohinau (2527 acres) and Putauaki (12,710 acres) until well into this century, and they still retain much of that land, as well as most of Otamaroa (20,400 acres). Essentially, the Crown did not purchase much land east of the Rangitaiki River.

However, it should be said that the comparatively poor quality of much of the Ngati Awa reserves was probably a key reason for the Government's lack of interest at this time, as was, perhaps, the complicated issue of ownership. As we have said, the

42. This included most of Te Arawa's military awards (see doc 15, p 112; doc A34); much of the land awarded to Ngati Makino (see doc G4, pp 32–57); and Tuwharetoa's awards at Tawhitinui and Otuhounga (see doc 15, pp 118–132).

original lists of owners had rapidly become out of date and the Native Land Court could not declare successions to the land (a problem not overcome until the 1890s). These factors were probably more important than the restrictions on alienation applied to the awards (and enforced on the Whakatane awards up until the turn of the century, for example), such restrictions having failed to stop the Government elsewhere. That the land was not sold at this time may therefore have been more by default than design.

The full details of the alienations have been provided in claimant evidence and there is little need to reproduce all the particulars here.⁴³ Nor is a detailed review necessary, given that the process as a whole departed so markedly from the standards of good faith and honesty expected under the Treaty. Here, it is sufficient to confine our comments to some of the key issues and examples that have emerged from those analyses.

The acquisition of compensatory lands was in large part accomplished by exploiting the circumstances within which Maori had been placed as a result of the awards process. The land purchase officers worked directly off the poverty of many owners and the divisions that had been created between hapu (and individuals) to secure an initial foothold on the land. A policy was adopted of targeting and advancing money to select individuals once an agreement had been obtained to lease or purchase a block. As land purchase under-secretary Richard Gill later commented, 'frequent payments [had been] made as advances on the purchase of lands in the Taupo and Bay of Plenty districts, before the blocks have been before the Native Land Court, and in many cases before the lands are even surveyed'.⁴⁴ Added pressure was thereby placed on dissenting owners likewise to accept subsequent payments, with the result that little regard was paid to the entitlement of the recipients to the land under negotiation. As one objector later stated, the 'purchases were made, not openly, but by separate dealings with the individual grantees: of which the remainder knew nothing. It was not till all the money so received had been spent that this came out.'⁴⁵ That several deeds were often required to conclude the agreements is evidence enough of the fact that the process had little to do with collective decision-making.

Included in the agreements were also inalienation clauses prohibiting the Maori owners from selling or otherwise dealing with private purchasers. The practice effectively protected the Government from further competition, while at the same time enabling it to complete the purchase as the opportunity and appropriate terms arose.

In most instances, securing a lease was the first step towards the eventual acquisition of the land. As Mitchell and Davis commented when they began their purchase operations in Taupo in 1873:

43. With regard to the alienation of Ngati Tuwharetoa's awards, see document 15, pp 118–132. The alienation of Ngati Awa's awards is dealt with in the following reports: for Kokohinau, lot 72, see document M18, pp 187–196; for Patauaki, lot 59, see document A18, pp 130–133; for Omataroa, lot 60, see documents 11, pp 150–159, and M18, pp 172–181; for the Whakatane River reserves, see document M18; and for Ohope, see documents G7(j), p 3, and G7(f), pp 10–24.

44. Gill to Native Minister, 11 November 1879, MA-MLP1 79/525, NA Wellington (cited in doc M18, p 15)

45. Raimona Te Petera, Maketu minute book 5, fols 371–375 (cited in doc 15, p 128)

the lease of these lands to the Government will we consider render purchase hereafter if desirable comparatively easy, inasmuch as time and opportunity will thereby be afforded for the final adjustment of tribal and hapu claims which at present in the majority of cases, present an almost insuperable barrier in the way of extinguishing the Native title, while the inalienation clauses inserted in all the leases, together with the political and commercial relations arising out of these transactions, will, it seems to us, place the Government in a position to accomplish with comparative ease, whatever ends of public moment it may have in view relative to these waste lands.⁴⁶

The Native Land Court was used to overcome the problem of completing purchases in which there were numerous grantees. Under new legislation introduced in 1877, application could be made to the court to have the Crown's interest in any block declared and an order made directly vesting the extent of that interest in the Crown. The procedure, provided for in section 6 of the Native Land Act Amendment Act 1877, was particularly well suited to the Government's practice of advancing money to individuals. The Crown was thereby able to acquire land without having to gain all the signatures and consent of the owners, while the partitions that resulted only further destabilised ownership. The alienations and partitions that occurred at this time in turn laid the basis for the future acquisition of remaining lands.

The alienation of the aforementioned Otuhounga block was typical of the process and its efficacy in ensuring eventual alienation. The block had originally been awarded by the Compensation Court to Ngati Tuwharetoa in part confirmation of Wilson's out-of-court settlement. In November 1873, Mitchell and Davis negotiated a lease on the block for 25 years, with a clause included preventing the lessors from selling the land privately. By 1879, the Government was moving to convert the lease into a purchase and had ceased paying rent on the block. Repeated offers to purchase were consistently refused, however, at least until 1882. By October of that year, four grantees had finally agreed to sell in return for an advance payment. Two months later, an appeal was made by other of the grantees to the Minister of Native Affairs asking that the block be left 'hei orangea mo matou, mo matou wahine, me a matou tamariki' (as sustenance for us, for our women, and for our children). They complained that the interests in the land had been sold stealthily and offered to pay back the money that had already been advanced. The offer was ignored and an application instead made to the Native Land Court to have the Crown's interest in the block declared. The Crown claimed that it had paid over £1419 on the block, that five of the 10 grantees had signed a deed of sale, and that it should accordingly be awarded the southern half of the block – some 6839 acres. As it transpired, £259 of that sum had in fact been a rental payment. The court accepted the Government's application and awarded the Crown half of the Otuhounga block. Ngati Tuwharetoa now asked that the remainder of the block, known as 39A, be registered in the name of the tribe and made inalienable. That request was also ignored, and despite the fact that this was virtually the only land left in Tuwharetoa's possession, the Crown (along with private

46. Davis and Mitchell to Ormond, 13 August 1873, MA-MLP1/1 1873/159, NA Wellington (cited in doc 15, pp 132–133)

buyers) went on buying individual interests in the land, which in later years were also subdivided out.

The situation was made worse by the Government's simultaneous acquisition of land outside the confiscation boundary. While claims in respect of such land fall outside the scope of this report, claimant evidence indicates that a similar process of alienation was occurring outside the boundary. The mechanism this time was the Native Land Court, though the similarities between the Native Land Court and its Compensation Court counterpart are striking. Indeed, in operation and effect they were fundamentally the same institution. Both were presided over by Chief Judge Fenton. Both facilitated the alienation of land through the individualisation of title, and both depended on a degree of collusion with Government agents that was wholly improper. Both showed an equal disregard for the present or future interests of Maori.⁴⁷

In all this, it is difficult to detect any recognition by the Government of its responsibility to protect Maori interests. On the contrary, the interests of Maori were apparently to be looked after by the very people that the Crown sent out to purchase as much land as possible, and by Maori themselves. In the circumstances, it was remarkable that Rangitukehu and his hapu kept most of the land awarded to them. When questioned as to the justice and, indeed, appropriateness of Mitchell's and Davis's purchases, one Government official responded:

I presume Messrs Davis & Mitchell are the best judges of what & how much land it is proper & prudent for them to buy, and that the native owners are sufficiently alive to their own interests not to sell more than they can safely spare.⁴⁸

Such an attitude openly disclaimed any responsibility on the part of the Government to provide the protection required of it under the Treaty. It also ignored the fact that, once the process of alienation and partition had got under way, it was virtually impossible to stop.

The Crown's role in the acquisition of land by private purchasers was neither as aggressive nor as explicit. In general, it acted more as a facilitator than an agent, using legislation to free up land as required and then standing by while Pakeha settlers privately purchased it.

The fate of the Whakatane reserves provides a case in point. A considerable area of the reserves had been leased by the end of the nineteenth century, and pressure soon arose from the lessees for an extension or renewal of the lease or the right to purchase

47. Claimant evidence regarding the award and alienation of interests in areas outside the confiscation boundary can be found in the following reports: for the Waitahanui block, see documents G4, pp 71–82, 101–159, 227–229; I1, pp 189–206; and M1, pp 9–10; for Tahunaroa, see documents M1, pp 6–12; G4, pp 3, 71–90; and I1, p 211; for the Putauaki block, see documents B14(a), pp 4–8, and M18, pp 20–31; for Matahina, see documents B14(a), p 12; C22, pp 34–35; and M18, p 42; for Pokohu, see documents I1, p 236; M18, pp 61–66; and B14(a), pp 16–17; for Tuararangaia, see documents B14(a), p 18; I1, p 239; and M18, pp 67–68; for Kaingaroa 1, see document I1, p 219; for Te Haehaenga, see document I1, pp 219–222; for Waiohau, see document I1, pp 222–223; for Rotoma, see document I1, pp 239–242; and for Te Riu o te Papa see document I1, p 242.

48. Enclosed in Huta Tangihia to McLean, 2 October 1873, MA-MLP1/2 1874/31, WARC (cited in doc 15, p 140)

the freehold. A direct impediment to this was the problematic nature of the titles, given that, as mentioned previously, the original lists of trustees and beneficial owners devised by Wilson had rapidly become out of date and the Native Land Court was unable to partition and declare successions in the awards. The problem was effectively overcome by the passing of the Native Land Claims and Boundaries Adjustment and Titles Empowering Act 1894, whereby the Native Land Court was able to declare successions and carry out partitions – as it began to do in 1894 and rapidly thereafter.

Some blocks were partitioned just about every year for some years as the ownership was gradually broken down from hapu to whanau to individuals. Lot 28 – a Ngati Awa coastal reserve – was originally partitioned in 1909. Having cut off the coastal portion (comprising sandhills), the rest of the reserve, known as 28B, was divided into 23 lots, varying in size from 11 to 697 acres, with the number of owners varying from one to 228. Over the next 10 years, the 23 lots were divided into 52, varying in size from two acres to just over 209 acres. By 1919, 15 of the lots had single owners. Partitions continued at a similar pace over subsequent years, with the lots forever diminishing in size, until by the 1940s a substantial number of the blocks were owned by individual owners, whose holdings amounted to little more than an acre at most – enough only for a house and garden.⁴⁹ At the same time as this process was occurring, the Government removed the restrictions on alienation originally placed on all the Whakatane reserves. A steady stream of purchases followed, often by former lessees, which resulted in much of the fertile land in the Whakatane valley being finally snapped up by Pakeha settlers.⁵⁰

While no exact figures have been provided in claimant evidence regarding the total amount of land alienated, as we understand the situation, much of the land awarded in compensation to Te Arawa, Ngati Pikiao, and Ngati Tuwharetoa was sold during the 1870s and throughout the remainder of the nineteenth century.⁵¹ What land they retained has been gradually whittled away during the course of this century. Te Arawa now possess little more than a few of the smaller blocks in and around Matata, and Ngati Pikiao retain a mere 50 acres from the 36,260 acres originally awarded to them, while Ngati Tuwharetoa's rights have been reduced to a handful of interests in one block. Though Ngati Awa managed to hold on to most of the land awarded to them during the later decades of the nineteenth century, the process of individualising and partitioning interests accelerated from the turn of the century and likewise had its effect. In a number of cases, blocks were partitioned and fragmented to the point that they were no longer economically viable, and by 1970 around 20,000 acres of land had accordingly been sold. Most were small blocks, 30 percent of which were owned by individual owners. Just under 60 percent were owned by five or fewer owners. What land remains continues to be afflicted by the consequences of the individualisation of

49. See doc M18, pp 76–87

50. See doc M18

51. Claimant evidence regarding the sale of this land may be found in documents 15, pp 112–115; A34, pp 54–89 (Te Arawa's awards); G4; M1, pp 3–5, apps 1, 2 (Ngati Pikiao's award); and 15, pp 118–132 (Tuwharetoa's awards).

title, and by the difficulties that it presents in seeking to resume or maintain a workable system of communal ownership.

In this way, land purchases, and the individualisation of remaining interests, served to finish the process started by confiscation and continued through the compensation scheme. The Government's objective had been to destroy customary ownership and destabilise traditional structures in order to break Ngati Awa's tribal power and facilitate the subsequent alienation of remaining land. It in large measure succeeded. As we find below, the loss of land and the customary system of tenure in turn laid the basis for the economic and cultural impoverishment of Ngati Awa. Any collective or sustained form of resistance to British law and authority was at an end. The Government had won the campaign against Ngati Awa, but only by denying them their future as a tribal people.

8.6 CONCLUSIONS

The operation of the compensation process as a whole was entirely inconsistent with the principles of the Treaty of Waitangi. Ngati Awa could have expected no less from the Treaty than the benefits of a regime competent to ensure justice and maintain principle. There was no part of the compensation scheme that delivered that expectation. Ngati Awa could also have expected no less than that they would at least retain their own polity and sufficient land for their future survival as a people. Through tenurial reform, their structures and organisation were instead destroyed and made susceptible to alienation. There is nothing in the record to satisfy us of the Government's compliance with even minimal protective standards or the performance of fiduciary obligations.

