

9. PROTEST AND DISMEMBERMENT

9.1 BACKGROUND

Eight years went by before Moriori could get titles for their reserves. The main cause of the delay was that Maori objected to the surveys. Then, when they got their titles and successions were required, some Maori objected again. Did Moriori have life interests only, so that the land would return to Maori?

Meanwhile, immediately after Moriori had secured their paper titles, they launched a campaign to revisit the 1870 decision, which lasted for over seven years. It did not succeed. Instead, when the Native Land Court next sat on Rekohu, it was only to hear claims to the outer islands. This time, Moriori were less successful than before. They got nothing.

The reserves were inadequate for pastoral farming, which meant that Moriori chances of surviving in the new economy were slim. The new title system for the ownership of the reserves meant that most Moriori were disinherited in any event. Then the successors of those who did receive shares saw the shares fragment so that the reserves eventually became something of an illusory asset for all.

Consequentially, people left. The Moriori as a people became dismembered, and most moved to the mainland.

Historical researchers had various interpretations of the historical material. They are too numerous to detail them all, but we will consider some of the main arguments as we go along. We will examine:

- ▶ how Moriori sought titles for the reserves;
- ▶ the reserve titles or grants;
- ▶ problems of succession;
- ▶ the protests over the 1870 decision;
- ▶ the decision on the outer islands;
- ▶ the impact of tenure reform; and
- ▶ Moriori survival.

9.2 OBTAINING TITLES FOR THE RESERVES

Though the court made its awards in 1870, titles to the reserves were not obtained until 1878. First, Moriori had to find £100 for survey costs. They promptly set about raising the money.¹ They wrote in 1871 to say that they were doing this and reported early in the following year that they had £64 10s.² Later that year, a surveyor was sent to do the job but with instructions to get the £100 first.³

As survey lines were cut, however, certain Maori still living on the island objected.⁴ After all, they had had a clear steer from the Native Land Court in 1870 that Maori were in the right and Moriori should have only that which Maori allowed. Wi Naera Pomare returned to Rekohu when the surveying began. He wrote to the inspector of surveys inquiring whether the lines on the Owenga reserve were in accord with the court's decision. The inspector had no doubt that the court's intentions had been carried out 'as far as the local circumstances would admit'. In reporting to the Government, he thought it probable that the Maori would have objected to any reserves for Moriori.⁵

Chief Judge Fenton considered it unlikely that the surveyor would be in error. He proposed to the Government that the resident magistrate explain the position to Maori, adding, 'They cannot fail to understand it. In fact they are only forgetting or pretending to forget.'⁶ Samuel Deighton was directed to make oral explanations on the island.⁷

Deighton's reports suggest that he was somewhat perfunctory in attending to duties, but the report on this particular complaint indicates that the problem was that Maori had not appreciated how much the 2000-acre reserve would cut into 'Maori territory'.⁸ We think that Maori thought of blocks in terms of landmarks rather than the number of acres. However, Deighton could not see what Maori were complaining about, because no more than 2000 acres had been surveyed.⁹

Another complaint concerned the survey of the Kekerione reserve. From Deighton's reports, it is not possible to say what the problem was – certainly, the Native Minister would not have learnt much from them. The most we can ascertain is that in Deighton's opinion the complaints 'were vague and somewhat contradictory', that they amounted to 'the old scheme of repudiation in a small way', and that Maori did not have 'a leg to stand upon, even on their own showing'.¹⁰ Of course, none of that shed any light on what the actual problem was.

1. Maori Affairs Maori register, MA2/42, no 66, 2 January 1872 (doc F4(a), vol 4.32, p 637)

2. Maori Affairs Maori register, MA2/42, no 220, 19 February 1872 (doc F4(a), vol 4.32, p 637)

3. Halse, Acting Native Secretary, to inspector of surveys, 19 August 1871, p605, letter 287 (doc F4(a), p 715)

4. Deighton, resident magistrate, Chatham Islands, to Colonel St John, 28 April 1873 (doc A16(a), vol 2.1) (cited in doc A16, p 27)

5. Fenton papers, BAIE4307/1A, NA, Auckland (doc F4(a), vol 4.36, p 766)

6. *Ibid* (p 768)

7. *Ibid*

8. Deighton, resident magistrate, Chatham Islands, to Colonel St John, 28 April 1873, letter 22, JCC1 1/1, resident magistrate record book, 20 April 1868–30 June 1883 (doc F4(a), vol 4.35, p 749)

9. *Ibid*

10. *Ibid* (cited in doc A16, p 28)

Feelings ran high on the survey question, however, which seem not to have been restricted to the Moriori reserves and to have extended to blocks that the settlers were leasing. Opinions abounded that violence could be expected, and there was a rumour that the Maori in Taranaki (for most were still there) would come back in force to teach someone a lesson. The new resident magistrate, R J Lanauze, who had replaced William Thomas, panicked about supposed plans for an attack, dashed off to New Zealand to seek police backup, and was promptly replaced. Deighton reported that the settlers' panic was absurd and that Lanauze was a bungler.¹¹

None the less, the Maori complaints continued.¹² Again, reports are so vague that it is difficult to get a proper picture. However, we ascertained that surveyors were again at work in the Moriori Kekerione reserve in 1874 and that Wiremu Wharepu wrote two letters to the Native Minister protesting that the surveys were not in accord with the court's directions.¹³ For their part, Moriori wrote to the Minister to apply pressure for the Crown grants. Soon after, Apitea Punga wrote to Fenton asking that 1000 acres of the Owenga reserve be returned to Maori owners of Otonga.¹⁴

Deighton made no reference to this unfinished business in his annual reports for 1875 and 1876, in which he offered bland commentaries on the state of affairs on the island, but in April 1875 he wrote that Moriori were 'continually asking' for their Crown grants.¹⁵ Finally, a letter of 1878 advised that 'the Crown grants have been issued'.¹⁶

9.3 THE CROWN GRANTS FOR THE MORIORI RESERVES

In terms of the Crown grants, the seven Moriori reserves became:

- ▶ Kekerione 2 (600 acres), in the names of Karaka Ngamunangapaoa and Wetini Tara;
- ▶ Te Awapatiki 2 (2000 acres), in the names of Tatana Torea, Hirawanu Tapu, Teretini Rehe, Te Karaka Marereira, Heta Namu, Hirawana Rehe, Te Tepene Tearoruitu, Apiata Kahuwai, and Hori Kerei Rangimariu;
- ▶ Te Matarae 2 (200 acres), in the names of Karaka Ngamunangapaoa and Roretana Rikipouri;

11. Deighton to McLean, 28 April 1873, McLean papers, MS copy micro 535/49, ATL (cited in doc A16, p 27)

12. Maori Affairs Maori register, MA2/12 (doc F4(a), vol 4.32, p 622) (cited in doc C6, p 28)

13. *Ibid*

14. *Ibid*

15. Deighton to Young, Waitangi, 17 April 1875, resident magistrate record book, NA (cited in doc A16, p 28)

16. Translation of Te Karaka to Sheehan and Clark, 10 October 1878 (doc A16(a), vol 2.2)

- ▶ Otonga 2 (600 acres), in the names of Hori Rangimariu, Henare Ngamapu, Hermaia Tau, Karaka Ngamunangapaoa, Numi Temuera, and Apiata Kahuwai;
- ▶ Otonga 3 (50 acres), in the names of Hori Rangimariu, Apimireke, Henare Ngamapu, Te Teira Pewa, Herenaia Tau, and Moko Wetini;
- ▶ Wharekauri 2 (600 acres), in the names of Hone Waiti Ruaea, Horomona Makao, Riwai Areatana, Areatana Rangikeno, and Nehemia Hare; and
- ▶ Wharekauri 3 (50 acres), in the names of Minarapa Tamahiwaki, Te Ropiha, and Hirawanu Tapu.

Thus, there were six reserves of no more than 600 acres each and one of 2000 acres. Each reserve had two or up to nine owners. The ownership reflects the Native Land Court's supposed '10-owner rule', whereby no more than 10 names would be entered on any title.

9.4 SUCCESSIONS

Deighton was appointed a judge of the Native Land Court for the purpose of handling Chathams cases.¹⁷ Like many other Native Land Court judges, he was not a lawyer, and many of his judgments have sparse information on the facts. Successions presented some unique problems:

- ▶ *Problem 1:* Those put upon the title were probably meant to be trustees for their family groups. However, the statute made no provision for the nominated owners to stand only as trustees. Successions were allowed to them as though they were absolute owners, and effectively that is what they became. In the result, all others not mentioned on the title were disinherited. This outcome was not peculiar to the Moriori reserves: it also happened to the Maori land on Rekohu, and throughout New Zealand. We will deal with this more fully when we come to the Ngati Mutunga claims.
- ▶ *Problem 2:* Maori opposition to the Moriori reserves was renewed when successions were first sought, Maori challenging the right of Moriori to succeed. The persons put in were given life interests only, it was argued, and on their deaths the interests reverted to Maori.¹⁸ This argument was not accepted, and successions were allowed.
- ▶ *Problem 3:* Were the reserves only for full blooded Moriori? Deighton's answer, in his capacity as a special Native Land Court

17. Assistant secretary to RS Deighton, 1 May 1875, McLean papers, MS copy micro 535/49, ATL (cited in doc A16, p 34)

18. Document c3, vol 8.1, pp 7–75 (esp pp 47, 75)

judge for the Chathams alone, was 'Yes'. Heta Namu was a half-caste and he was excluded from succeeding. Other cases followed. We are aware that half-castes whose fathers were not Indian were excluded from Indian reservations in Canada, but the Rekohu reserve cases are the only ones that we know of where a similar principle was, for a time, applied in New Zealand.¹⁹ As we will see, this unusual principle continued to be applied even in the twentieth century.

9.5 THE MORIORI PROTEST CAMPAIGN

A Moriori protest campaign over seven years began in 1878 after the titles had issued for the reserves. We first refer briefly to such as is known of Moriori circumstances at that time.

9.5.1 Development and demography

In 1874, 43 Maori returned from Taranaki. They were described as being mostly younger people who had been born on Rekohu. One year later, Deighton reported that Moriori were establishing sheep flocks and building better houses and that they were 'well off'.²⁰ He recorded that Moriori had some 3000 sheep and some horses and cattle.²¹ But Deighton also reported disease and continued mortality, and recorded that there were 52 Moriori on the island with numbers declining.

We cannot say that Moriori suffered a general population decline, however, for, at some stage in the later nineteenth century, several Moriori are known to have shifted to the mainland. We are not sure when they left or how many went. Thomas recorded fairly detailed particulars of population movements, but, unfortunately for us at this point, Deighton did not. But we do know of two Moriori who were resident at Kaiapoi in 1870, possibly with others, and there are some suggestions that soon after the 1870 decision a small community of Moriori developed south of Christchurch, where they intermarried with Ngai Tahu.²²

9.5.2 The protests

The question is: How much weight should be given to evidence of subsequent Moriori protests? There was much debate on this.

19. *Ibid*, p 75

20. Deighton to under-secretary, 17 July 1875, letter 68, JCC1 1/1NA, resident magistrate record book, 20 April 1868–30 June 1883 (doc F4(a), vol 4.35, pp 752–754) (cited in doc A16, pp 28–29)

21. *Ibid* (p 754)

22. Michael King, *Moriori: A People Rediscovered*, Auckland, Viking, 1989 (doc c13), p 133

Crown counsel and researchers submitted that until 1878, when the Crown grants issued, Moriori had been basically content to accept the lands awarded them. They referred to the combination of reports to that effect, some diffidence in Moriori submissions to the court in 1870, their failure to appeal, the lack of protest before 1878, and the fact that their protest after that date coincided with other Maori protests on the mainland. The Crown submitted that the change to pastoral farming made the reserves uneconomic and that it was only then that Moriori complained.²³

We think that it is enough that some Moriori did in fact protest. It was sufficient to remind the Government that Moriori had sought an examination of the full justice of the case and that, had the Government been of a mind to take a principled approach, it ought properly to have intervened. (This was examined in chapters 6 and 8.) It was also adequate to convey to the Government that Moriori remained discontented, even though the protestors' points were less than precise and even though we now question whether all the protestors were recognised Moriori leaders.

Equally, we do not consider that the lack of protest before the titles were received suggests that Moriori were basically content with the lands awarded to them. For a people in an extremely tenuous position for 45 years before the court decision, it was only natural that they should make no complaint until they had a title in their hands, even for such little as was awarded. Other Maori felt similarly at this time, including Ngati Mutunga, who waited 18 years for a title in Taranaki after one had been promised to them in 1866.

An appeal was problematic in any event. Not only were Moriori untutored in the court process, but shipping was too irregular to ensure that an appeal could be filed within the prescribed three months.

We accept that there had been diffidence in the Moriori submissions to the court. One can easily see some wavering between the hard line that by right they were entitled to all, the compromise point that they were only seeking half, and the fall-back position that they would take what they could get.²⁴ But, having regard to their circumstances, we think that some wavering was only natural. Moriori were in a totally alien environment, and it is unlikely that they had any real knowledge of the court's jurisdiction. They had virtually no financial resources, and legal counsel was not available to them. Ngati Mutunga, however, had had many years of experience in court processes in Taranaki. Nor can we accept that the failure to appeal suggests satisfaction with the awards.

23. Document G15, p 43

24. *Ibid*, pp 38–39

We also give no weight to the record of opinions at the time that Moriori were satisfied with the decision. Soon after the hearing, the judge, Judge Rogan, wrote personally to the Native Secretary to say ‘The Court at the Chathams passed off very well’.²⁵ The chief judge also wrote to him saying ‘Everything ended very satisfactorily. The Taranaki people told me they were well pleased, and Rogan says so were the Moriori.’²⁶ Of course, the chief judge did not hear personally from Moriori and Rogan’s opinion was self-serving. We also wonder about the propriety of judges reporting to the Executive in that way, especially on matters in which the Government was intensely interested. We further think that, if the parties appeared to have reached an overall agreement, it should have been recorded in the judgment and that any post-judgment opinions were not the judges’ business.

The protest began in 1878, when HK Taiaroa, a member of Parliament, presented a petition on behalf of two mainland Moriori, Te Karaka and Apiata.²⁷ At that time, Taiaroa was also representing Ngai Tahu in claims to the Crown. Possibly, the two mainland Moriori were so triggered by Ngai Tahu initiatives as to change from a previous point of view. But the Ngai Tahu link proves nothing. Equally, Moriori may simply have found a platform from which to broadcast previously held views.

Te Karaka and Apiata managed the protest through most of the seven years, but we doubt that their views were adequately representative of opinions of Moriori on the island. This is not to say that Moriori on the island would have disagreed with what they were doing, but the views that they advanced were not those that Hirawanu Tapu had put, for example, and they followed a cultural style that may have seemed overly elliptical to the European audience. Thus, they first contended that Maori lost rights through the attempted sale to the New Zealand Company in 1840. That appears to have been a reaction to the court’s 1870 decision to exclude Moriori from Pitt Island upon the ground that, when giving evidence, one of the Moriori claimants had deposed that his forebears had attempted to sell it. Also, they claimed that Moriori were ‘defeated’ in the Native Land Court because the Maori said ‘that they were our ancestors’. However, the court’s minutes show no evidence of that.²⁸ An accompanying letter gives the flavour of their approach:

Friends, let my lands, Wharekauri and also Rangiauria [Pitt Island], be adjudged again. I did not commit the wrongs, I did not kill the people

25. Rogan to McLean, 30 July 1870, MS papers 32/542, ATL, MS copy micro 0535 (cited in doc A10, p 94)

26. Fenton to McLean, not dated, MS papers 32/267, ATL, MS copy micro (cited in doc A10, p 94)

27. Te Karaka Kahukura to John Sheehan, Minister of Native Affairs, 29 May 1878 (doc F4(b), vol 5.39, p 791) (cited in doc G6, pp 29–30)

28. Ibid

by which they took the authority of my land. My fathers did not commit wrong, not one. My fathers are all dead, and their land, Wharekauri, all gone.²⁹

Te Karaka and Apiata then went to Wellington and met with the Premier and the Native Minister. Deighton considered that Moriori understood, as a result, that, upon application being made to Parliament, a re-hearing of the case would be instituted.³⁰ A letter was then sent to the Native Minister in February 1879 from ‘the entire Wharekauri committee’ requesting that ‘the Wharekauri ruling be reviewed when the Maori get there’.³¹ But the use of the phrase ‘Get there’ indicates that the letter was sent from the mainland. The first signature was that of Te Karaka.

Te Karaka and Apiata then went to Rekohu to inform Maori that a re-hearing was anticipated. Maori declined to attend a meeting at ‘a Moriori Kainga’, but they did meet at Waitangi in the presence of Deighton. Te Karaka advised that Moriori ‘intended to have the land back again’. Deighton reported that Moriori ‘were very insolent’ and that Apiata sang a song, to Maori disgust, suggesting that the Maori King (whom Te Whiti supported) was disappearing but not the English Queen (to Moriori, the font of justice). Deighton reported that he had difficulty in keeping order.³²

For Maori, Wiremu Wharepu wrote immediately to the Native Minister for clarification.³³ In reply, it was said that Moriori expectations were ‘without foundation’. There was no power for the claims to be reheard, the time for appeals had passed, and ‘the government does not intend to ask the Assembly to pass an Act for such a purpose’.³⁴

Taiaroa was behind all this, in the chief judge’s opinion. A commission on Ngai Tahu grievances had already been set up in response to Taiaroa’s Ngai Tahu petition. Demonstrating again the primacy he gave to conquest, the chief judge entered the political thicket once more. He advised the Government, in April 1880:

The Moriori were thoroughly conquered, as Taiaroa well knows, better beaten, in fact, than Taiaroa’s tribe was.

The Chatham Islands Lands have been properly dealt with by the court long since; and as much provision made for Moriori as they had a right to expect:—more indeed, for Ngatiawa [Ngati Mutunga] did not

29. Te Karaka Kahukura to Sheehan and Clark, 10 October 1878; Deighton to Native Minister, 18 April 1879 (doc A16(a), vol 2.2)

30. Document A16, p 3; doc A16(a), vol 2.3)

31. Te Karaka Kahukura, Solomon (sic) Rehe, Teretiu Rehe, Teira Rangipewa, and Heta Namu to John Sheehan, Minister of Native Affairs, 15 February 1879 (doc A16(a), vol 2.4)

32. Deighton to Native Minister, 18 April 1879 (doc A16(a), vol 2.3)

33. Wiremu Wharepu to Native Minister, 15 May 1879, MA2/17, 1779 (doc F4(a), vol 4.32, p 625); doc A16(a), vol 2.3

34. Native Secretary to Deighton, 12 August 1879 (doc A16(a), vol 2.5)

press hardly. I suppose Mr Taiaroa, having got his mischievous Commission for the Middle island wants [to] start another in the Chathams. I do hope that the Govt will sit upon him at once; and not let the thing grow to the mischievous dimensions of the Commission now dragging on its nomad existence.³⁵

We abstain from comment on the propriety of this gratuitous intervention by the chief judge. For its part, the Government did not let things grow. Within three months, the new Native Minister, J Bryce, well known for his hard-nosed approach to complaining Maori, brought the commission to an end by cutting off its funds.³⁶ In the following year, he sacked Parihaka, personally leading the cavalry charge. Nothing more was heard from Te Karaka and Apiata.

Then, in 1881, in this very last stage, Hirawanu Tapu wrote to the Native Minister. He raised the possibility of a rehearing or, that he, Tapu, might go to Wellington to 'represent the matter to you, that is the Parliament, if you approved of my so doing'.³⁷ There is no record of a reply. The point, however, is that Tapu was not a primary mover in the preceding protest. Moriori on the mainland may in fact have managed the protest to that point.

But we do not think that that matters. It was enough that the Government was made aware that Moriori did not accept the awards in full and final satisfaction of their old plea for justice, and that the plea was still outstanding.

Finally, we agree with Crown researchers that a change from subsistence to stock farming made the reserves uneconomic.³⁸ We do not accept, however, that this is evidence that Moriori became dissatisfied with the awards only after it became apparent that they would be unable to participate in the new economy. We think that the more important point is that Moriori held off complaining until after they had actual titles in their hands, and then complained promptly once they had received them.

9.6 THE OUTER ISLANDS

In 1885, the Native Land Court heard claims to two of the remaining offshore islands not previously considered, Te Rangitutahi ('the Sisters') and

35. Fenton, 19 April 1880 (doc F4(a), vol 4.36, p 764)

36. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 3, pp 1004–1007

37. Hirawanu Tapu to Rolleston, 11 June 1881 (doc A16(a), vol 2.7)

38. Document G15, p 43

Motuhara ('the Forty Fours'). Moriori and Maori both visited these islands during the birding season for albatross and mutton bird. Te Rangitutahi was a group of islands, about 14 acres in area, some 12 miles from the north coast of the Rekohu mainland. Motuhara lay on latitude 44, about 40 miles to the east of the main island.

Wi Naera Pomare claimed Te Rangitutahi for himself and Hamuera Koteriki on the ground of discovery. No opposition was filed, though five years earlier Te Karaka had claimed this island for Moriori.³⁹ However, that was in a letter to the Native Minister, not in a letter to the court.

The Government, as noted above, appointed the resident magistrate as a special Native Land Court judge, with his jurisdiction limited to Rekohu, rather than sending a court (ie, a judge, assessor, and clerk) from the mainland. Judge Deighton heard the claim in 1885 and awarded title to Pomare in terms of the application.⁴⁰

At the hearing, Hirawanu Tapu claimed Motuhara for Moriori on the ground of ancestry and the fact that the island had not become a Maori possession before 1840.⁴¹ Pomare opposed the claim on the ground that the 'Chatham Islands group' was taken by Maori in the conquest and that in 1870 the court's award to Maori included all other islands.⁴² Piripi Niho also opposed Tapu's claim, but on the ground that Wiremu Kingi Meremere, a Maori, had been the first to take birds from the island. However, he acknowledged that Meremere had been accompanied by three Moriori.

Judge Deighton again ruled in favour of Pomare, holding that the outer islands were included in the 1870 judgment.

We think it patently obvious that the outer islands were not included in the 1870 judgment and that Deighton was simply wrong. In 1870, the court was able to deal only with the lands on the survey plans before it, and the outer islands were not in the plans. There was no mention of Te Rangitutahi or Motuhara in any of the 1870 evidence.

At Pomare's request, title to Te Rangitutahi was vested in Pomare and Koteriki.

There were no concurrent applications in respect of Rangatira and Mangere Islands. In 1900, these passed to Maori, following hearings in which Moriori took no part.⁴³

39. Te Karaka Kahukura to John Sheehan, Minister of Native Affairs, 15 February 1979 (doc A16(a), vol 2.4)

40. Chatham Islands minute book, 2 February 1885 (doc C3, vol 8.1, p 87)

41. *Ibid.*, 6 February 1885 (p 91)

42. *Ibid.* (p 92)

43. Maori Land Court claim to outlying islands, 2 March 1900 (doc C3, vol 8.4, p 180)

9.7 TENURE REFORM

9.7.1 Introduction

The impact of tenure reform constitutes the third leg to the Moriori claims. However, it is the main plank of the Ngati Mutunga case, and we will thus defer considering the reform in terms of Treaty principles and our jurisdiction until we come to that case. At this stage, we will simply describe its effect on Moriori. ‘Tenure reform’ describes the Crown’s conversion of tribal titles to individual ownership and an array of rules for the judicial administration of Maori land thereafter through the Native Land Court.

9.7.2 Ten-owner rule

We have already mentioned the 10-owner rule. Perhaps it goes too far to call it a rule, for not every judge applied it, but a rule is what it was called. The rule was that no more than 10 persons could be included as owners in any title. The rule was applied in this case, which implied that those taking the title were merely trustees for all the others. In fact, that was not the case, and those named became the only owners – all the others were disinherited.

We now have no way of knowing how many were left out or who they were, but they were clearly the majority. We think that the exclusion of most Moriori from owning land must have been a major factor in the movement of Moriori to the mainland from the late nineteenth century.

9.7.3 Exclusion of half-castes

Under the Crown’s tenure reform, the Native Land Court determined all succession rights. We have seen that Judge Deighton was minded to exclude half-castes from succeeding to the interests of a parent in a Moriori reserve. However, they were also later excluded from succeeding to their Maori parents in Maori land. In 1900, Judge Edgar allowed such a succession in the case of Rakete Tipene. However, the Native Appellate Court held against that in 1916, in a case on Reuma’s children. The court considered that ‘there is nothing more abhorrent to the Maori mind than the idea that children having taint of slavery in their blood should be classed as the equals of those who have no such blemish’.⁴⁴ It appears that Reuma’s children associated themselves with their Moriori side and had

44. Chief judge’s decision concerning Wharekauri 16, Maori Land Court, Christchurch, Chat 15 Wharekauri former papers (cited in doc A10, pp 105–106)

only lately learned of their Maori ancestry. That fact appears to have been given weight by the court, however, primary allegiance to the hapu of one or other parent was common throughout New Zealand, but we know of no other case where succession was disallowed to both parents. The extraordinary outcome in Rekohu, as a result of the cases mentioned, was that half-castes could now succeed to no land.

We do not know for how long this state of affairs continued, but the principle of excluding half-caste Moriori children from succeeding to anything, as though they were less than human, now had judicial affirmation. It is little wonder that Moriori dispersed to the mainland, where at least some show of justice might be found. For what could be more important for a so-called dying race than that they would want to provide for all their children, whether half-caste or not.

9.7.4 Fragmentation

As mentioned, successions to those named on the titles were managed through the Native Land Court, according (more or less) to the Crown's legislation. All children were entitled to succeed (except half-castes or unless a will provided differently), and over the years the ownership lists swelled in geometric progression. This led to a fragmented ownership divorced from the customary requirements of occupation and association, vesting ownership in those who were mainly absentees with little or no practical ability to be involved in the administration of the land or the island's affairs. The result was that, while ownership was at first limited to an elite, eventually the greater part of even that ownership became divorced from the land. There was no room for systematic planning on Moriori terms.

9.7.5 Alienations

Today, of the 4100 acres of the Moriori reserves, all but 2740 acres have been sold, though originally the reserves were declared to be inalienable. Between 1930 and 1940, there were major sales of land to private buyers. The lands sold include the whole of Te Matarae 2 (200 acres), Otanga 2 (600 acres), and Wharekauri 3 (50 acres) and 87 per cent of Kekerione 2. It appears that the vast majority of those involved were living on the mainland.

It was central to the Crown's tenure reform that individual shareholders had the right to sell their individual shares. This was a distinct departure from the customary position where individuals had no such right and a general tribal control could be maintained. A usual form of buying was to acquire individual shares until one had enough to partition out a reasonable piece of land, as in the Kekerione case.

Later, with fragmentation, the system was that buyers could call a meeting of owners and buy if a majority of the owners present voted for a sale, all voting according to their shares. It was not necessary for a majority of owners in terms of either numbers or share holdings to attend the meeting or to approve the sale – the quorums for the meeting were very low, and a majority vote on the day was all that was required. Moreover, a buyer could acquire shares privately before calling a meeting of owners, then use those shares to outvote others who attended the meeting.

Under those circumstances, Moriori as a people had little hope of controlling the alienation of their land. Further, since most owners were on the mainland, the court directed that meetings be held there. There was even less hope for those on the island, in actual occupation, to exercise some influence. The absentees had the control, while in custom they would have had no say.

With a lack of addresses for many owners, meetings were often not well attended and land was sold without people knowing. Of course, it was also sold without reference to the people as a whole. Ihaka Tuanui, for example, complained to us about how the 'Ocean Mail' block, including the Waitua block, in the Owenga reserve was sold unbeknown to Kaweau and her immediate family.⁴⁵

9.7.6 Partition

As western standards became influential and communal practices waned, individual shareholders more frequently sought their own piece of land. The court attended also to partitions. Lines were simply drawn on maps, and in short order there were unworkable lots.

9.7.7 Individual control

The enforced change from tribal to individual identity was not empowering of individuals, for there were also other laws. Judges sitting with land

45. Document c18, p2

boards could restrict individual access to sale proceeds or rents in order to prevent profligacy. But on Rekohu this was done in a general way, not by looking to the individual. To illustrate, Wharekauri 3 was sold in 1932 for £600.⁴⁶ The board kept the proceeds and paid the former owners by quarterly instalments over two years. In other cases, mainland beneficiaries pressed the board for their share, pointing to a wish to buy or improve homes or to pay rent or rates arrears. Desperate pleas are recorded of claimed ill-health or job loss through injury. The board usually resisted such pleas unless real exigencies were proven. The intentions may have been good but the assumption appears to have been that Moriori as a class could not manage their own affairs or handle their own money.

9.7.8 Absenteeism

In the result, the absentees had the greater say – a complete reversal of custom. Worse, many of the absentees could not be found. The share of missing owners, in sale proceeds or rents would pass to the Maori Trustee. In custom, that which comes from the land stays with the land. Even rents due to owners whose addresses are known would not, in custom, pass out. It was the tribal base that was cared for first, and absentees benefited from finding a strong cultural base when they returned ‘home’.

Even successions were done abroad. When Tapu himself was succeeded to in 1900, and Rohana Hirawanu in 1902, the successions were done on the mainland in ignorance of the fact that the descendants on the island were holding their wills.

9.7.9 Corporate identity

Notwithstanding what we have said, we think that the main loss was in the loss of corporate identity and all that goes with the management of tribal lands by a tribe. Discrete housing areas and such large-scale pastoral farming on the balance land (to the extent that that allowed) were feasible under a tribal system. The cultural imperative of retaining land as an estate for posterity was also more likely to have been achieved.

We accept that Moriori would still have dispersed. The reserves were too small. But a strong cultural base, with a number of families still on the

46. Document c6, p71

island, would have meant an identifiable cultural base that those on the mainland could forever refer to.

9.8 THE DYING RACE?

Too much policy appears to have been based on an assumption that Moriori were a dying race. In the 1850s, officials often assumed that that was so. But there was much less talk of that in the 1860s, after emancipation, and in the early 1870s Moriori were clearly a people of vigour, courage, and resolve.

But, in the mid-1870s, the old official view crept back in as a self-fulfilling wish. Looking back, we can see more clearly now that the headcounts in the crucial period after the land awards were only of those on the island. If the Moriori were disappearing then, it was not through natural causes. The life or death of the Moriori as a people had become entirely dependent on the outcome of Crown policies.

