

Report of the Waitangi Tribunal on the Orakei Claim

09 Pride and Protest 1977-1978

9.1 Pathway to Protest

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The Orakei Maori Committee Action Group was a product of the times. The change began with the move to the cities. A new awareness of things Maori developed. Maori studies were introduced to Universities and schools, not without a struggle, and the language was heard on radio and television, in a token way at first but later with greater earnest. Europeans rewrote history with new insights into a Maori past, while Maori pursued higher education, with new insights into a European present. The culture, rather than suffering a reverse, was born again in the hearts of many who had lost it, they adopting it at times with uncustomary fervour, but everywhere were the signs of loss, of language, family structure, tradition, land and status. A new weapon was added to Maori armaments - the art of protest.

At the other end of the spectrum Maori gangs emerging in the 1960's - Black Power, Mongrel Mob and Headhunters - were themselves a form of protest, given to some display of their position but not necessarily of their direction. Seen first as a threat to orderly society, they were later seen as symptomatic of social ills, and the malady was treated with social remedies and band aid. It took other groups to define the wider issues, and following the lead of other special interest campaigners in the 1970's to protest them. Nga Tamatoa led the way in the late 1960's and began the first protests at Waitangi in 1971. It was soon apparent that their youthful exuberance was more than matched by organisational abilities and (fortunately), responsibility. The Maori Organisation on Human Rights joined in about 1970, merging in 1974 with Te Ropu Matakite. The latter, taking their name from tohunga of old, made it clear the new movement did not involve a denial of the past or a breach with elders. They organised, and Whina Cooper (now Dame Whina) at age 82 led them in a Maori Land March the length of the North Island, from Cape Reinga to Wellington in 1974-1975, capturing on route those searching for their Maoritanga and those afraid of losing it. Whina added pride to protest. She captured too some Maori criticism but often the critics were from tribal areas less affected by land loss or social dislocation. The message was clear 'honour the Treaty', 'touch not one more acre of Maori land', and 'give it back'. The Land March was quickly followed with a sit in on Parliament Grounds, and the establishment of a 'Maori (tent) Embassy'.

Many non-Maori were sympathetic. If the cause was right the time was right too. There followed legislation, the making of Waitangi Day, the establishment of the Waitangi Tribunal, the return of Taupiri Mountain and changes to Maori

land laws to recognise kin structures, restrict alienations and appoint agents for owners with power to contest the compulsory acquisition of Maori land.

The protest turned then to specific issues. The status of the language was taken up by Te Reo Maori Society, and the loss of land at Raglan and Orakei by Rickard and Hawke. It was part of a world wide experience. In the United States the Blacks made an art of peaceful protest while in their stand at Wounded Knee the North American Indians drew world attention to the plight of indigenous peoples. The position of the Maori was not that of the Blacks or Indians in the States, but parallels were drawn and in New Zealand the stand was taken at Bastion Point, Orakei. In 1977 the flash point was near.

Waitangi Tribunal, Department of Justice, Wellington.

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9.2 The Bastion Point Protest

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The protesters camp at Bastion Point mushroomed in the spring of 1977. The Maori Action Committee had mobilised support from most of Ngati Whatua, trade unionists and the Matakite movement and about 150 persons took occupation in January 1977.

Dame Whina Cooper was amongst the first to visit the protestors. She was to acquire a large shed for their use, from engineering contractors in Penrose.

From a few tents and caravans the initial camp grew to a large meeting house ('Arohanui') with cooking, sleeping and office accommodation. Extra servicing buildings surrounded it and all on a 'marae' with gateway and watch tower. The untilled clay soil was laid in pasture or cropped to provide food. The group was supplemented by several hundred supporters, Maori from many tribes, Europeans from many disciplines, mainly young but including the old. Many groups especially tribal groups, visited the protestors' marae, if not to stay then at least to express sympathy and encouragement before leaving. There was a danger the protest would spread to other tribes (as indeed, it did).

Ten years after this spectacular event Maori views of it are still coloured by differing philosophies. It epitomised, in one opinion disoriented dissidents in search of a cause. In another view, it was the course of last recourse for a people who had tried every alternative for too long and had nothing left to lose. J P Hawke's submissions referred us to the long history of letters, petitions, pleas, Court hearings and enquiries - but for what? The people has lost the whole of their 700 acre reserve to end up as tenants on Crown Land. One did not have to investigate the details, he said, but to consider only the end result. The people had nothing and that spoke volumes in itself. For this they were branded 'willing sellers'. Well, a pile of petitions and Court cases didn't fit the brand, and what of the morality of the 'willing buyer'? He did not start the protest he claimed. For him his grandmother did. What grandson had any pride who could sit idly by, knowing of how his 'kuia' had travelled to Wellington (with Te Puea in 1950) filled with hope, to return, laden with despair, to die under the weight of an edict to vacate her home. Had he not made submissions too in the 'proper' way? They merely added weight to Government files, he said. What were the alternatives? Could any son love his family if he loved not honour too?

It was argued by some the action was fundamentally wrong, bound to fail for it was founded on a wrongful breach of the law. The trouble was, Hawke claimed, there was not one Court in the land that could consider the issue in a direct way. The Indian's treaties were at least upheld in American and

Canadian Courts. The Treaty of Waitangi was a lawyer's joke. The Indians had Claims Courts. The Maori could petition only a partisan Parliament.

If protest was not the Ngati Whatua way, the Ngati Whatua way seemed wrong. Where had reliance on the law got them? It is good to rely on the law, he said, provided the law is just, but a law where the Maori is always morally right but legally wrong is a law in disrepair, and protest was needed not to destroy but mend it. He went on to the Point, he claimed, not to invite an arrest but to arrest a wrong.

The protesters, others claimed, were spurred not by their principles but massive media coverage. That coverage, Hawke replied, was necessary to mobilise the widest possible support or at least to bring Maori claims to an otherwise disinterested public.

Some trenchant criticism revolved around the Action Group taking the claim to Maori outside Ngati Whatua ranks. The Action Group replied the broad issue was not limited to Ngati Whatua. It was a case example of Maori land issues throughout the country, a symbol of the plight of indigenous minorities throughout the world. They had a responsibility to a much wider group than the home tribe, and in any event, the past showed the need not just for a settlement of present claims, but a better law for the future. The latter was a national concern.

Many Maori groups flocked to Bastion Point to give encouragement and support. They could tell of similar cases 'at home' and if the stories differed in detail, the plot was still the same. Did they take the mana of the case from the people to whom it belonged? Some say they did but the Action Group said 'no'. They came to give support, and get support, reinforcement of their own views on their own issues and support for the Action Group seemed necessary for the Action Group was advocating a case example that illustrated others.

It needs to be said it was only after 'Bastion Point' that a new caution was apparent in the Crown's dealings with Maori land throughout the country and there was an awareness that something had to be done about old claims if only to properly research them before things got out of hand. It was appropriate that the lead came from Orakei for one hundred years earlier Orakei was the scene for the settlement of Maori issues of national concern. In that sense, Orakei belonged to many. It was the place where many forebears had gathered from all over, to plan a Maori strategy and as early as 1879, to call upon the Government to honour the Treaty. 1977 merely showed the failure of the Kohimarama conference, and the need for another. But others of Ngati Whatua considered the first need was to restore the mana of their own tribe. In their view that had to be done before the wider issues could be debated with the sort of direction that Tuhaere had given in 1879, and before 'all Maoris' could be invited to the camp.

Although the Maori issue was confused by the desire of many to retain as much as possible as open space, or for low cost housing, Hawke and the Action Group succeeded in opening to public gaze the Maori case and the

complicated and troubled history of Orakei. There is criticism that they took on board a number of students and others who had nothing to do with the matter. They reply without their help, in researching the past and exposing new interpretations on what had happened, in the claims and counter claims that were being made, a great deal of evidence may not have seen the light of day, or the Maori perspective given a wider debate.

The kaupapa (tribal policy) some say was wrong, for the whole tribe did not approve the action taken and later, elders distinctly disapproved. The kaupapa was fixed, said Michael Rameka, before the action was taken, on the basis that there would and could be no retreat. It was fixed by the Orakei Maori Committee, he said which included some elders and significantly, the residents, and which was the body most representative of Ngati Whatua at the time. Others changed the kaupapa later, it was argued, without prior consultation, and the elders 'on the outside' had by then as much responsibility to the group then encamped as they to them.

The protesters, some say, nearly jeopardized the 'handsome settlement' the Government eventually offered, with the result Ngati Whatua nearly got nothing. The protestors claim to have stimulated the move to a settlement, broadening the area for compromise making more moderate proposals, considered extreme only months earlier, appear quite tame. But they do not retreat from their view that the settlement was not nearly enough.

Trade unions and Churches came too, the former offering the weight in numbers the protestors lacked, the latter the weight of moral conscience. Officials had referred to the law, and the declared legality of past transactions by Courts and Commissions. Father Dibble referred to Galatians 3 v 11 which he paraphrased as 'the law will not justify anyone in the sight of God'.

The protestors included young and old, Maori and European, some trying to understand the present, others to understand the past. They came from many disciplines. One claim, most strenuously opposed by the Action Group, was that it was taken over. Michael Rameka insisted that throughout the Action Group was never comprised of other than members of Ngati Whatua and they alone set the rules and direction. The control, he said, never passed to 'communist infiltrators' or 'student activists' as was alleged.

The debate on the Bastion Point protest will no doubt continue, but the significance of the protest camp for some, transcends the immediate issues.

Many young people were there, knowing that they were Maori but not much more than that, seeking to discover what it was to be Maori and sensing in Hawke's protest, a picture of Maori pride, a pride they had not formerly known. Hilda Harawira described to us what this meant to her. Alcohol was not allowed in the protestors' camp. Drugs were forbidden. A strong sense of family and belonging made such things unnecessary and proved that young people could be held together without them. Classes were started, teaching things in both Maori and non-Maori and there was actually a joy in learning. Maori and European were there as one, learning from one another.

Language, custom and history were taught. Building, cleaning and catering for large crowds using open wood fires was learnt by both sexes. Children continued to go to school and additional instruction continued in what she thought were good homely conditions, one teenage protestor passing six subjects in school certificate. It was for her a new and better home and a turning point in her life.

For Emily Karaka it was a return home. She was one of Ngati Whatua lost to the city, her grandparents having left Okahu papakainga before her birth, carefully avoiding reference to it in her presence as though the pain would be too great for her to bear. She knew what it was to be rootless, to have a past withheld in whispers, but found her roots after reading of the protest and visiting the protest camp. There she found countless cousins, a large loving family, and not so much a mood of protest as of pride. Like Hilda, she stayed until eventually arrested.

Father Dibble, who joined the protestors, explained

In that meeting house I saw the flourishing of a vigorous Maori culture that I had never previously experienced. The people in occupation, led by Renee and Joe Hawke, demonstrated to the highest degree, ingenuity, skill, organisation and perseverance under adversity. I saw the development of a sense of pride, discipline and aroha. I saw young Maoris absorbing their language, their culture, their history and their customs. Many admitted to never having had real contact with anything specifically Maori before. Together, on Takaparawha, in the meeting house, which itself was a masterpiece of ingenuity, Maori people discovered a sense of purpose and identity.

Father Shirres had a similar view

Most of my life I have worked with young people. In the years that I worked with the Ponsonby Work Trust I came to some slight understanding of the plight of so many young Maoris - locked out of most of the opportunities for progress in European society, unsure of their identity, economically insecure, and with little access to the better things of either Maori or Pakeha culture. Here at Bastion Point, during the occupation of 1977-78 I saw those same young Maoris rediscovering themselves, their inheritance, their pride and their identity ...

Forty-six 'Young Maoris of Orakei' who were there, signed a submission in which they explained their involvement as follows

Many marched for many different reasons. And many were the reasons for the occupation of Bastion Point (Takaparawha) in 1977. Those of us who were young were ignorant of the politics, but felt in our hearts that this was what we had to do. As our lives we were told what was right and what was wrong. We felt that what we were doing was right. Then ignorance turned to understanding which affected our lives, the things we learned, heard, saw and felt were experiences of a life time.

Those things were fine but back amongst the Orakei people was a more pragmatic concern that the protestors would lose themselves in a host of

causes, and if the younger ones did not understand the politics, they need not, for the older people presumed to know them well enough. Their difference of view was not in reality a philosophical one, but one based on the reality of practical politics. In asking for the return of the parks, uncommitted lands and the homes the Action Group was seeking too much.

The question was not whether they were right, but what, having regard to the politics of the time, was the most that might be asked for. The political reality was too, what Government could negotiate with a large and many faceted group, for whom consultation was restricted by a confrontation stance and for whom loyalty to the group might be more compelling than loyalty to the case. Some of Ngati Whatua appreciated this. They felt the need to offer a more constrained negotiating front, as an alternative more in accord with the Ngati Whatua way, and due to the exigencies of the situation, as quickly as possible.

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9.3 Compromise and Conflict

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The former owners of the ten acre exchange block, or their successors, had a special interest in what was happening. They were mainly one family. They were also part of the 'non-sellers'. 'Their' block, taken for housing, was directly opposite Kitemoana Street and the marae. The people had sought housing on it without success. It was still vacant, and uncommitted. It seemed everyone was talking about it as though they had some right to it, but they in their view had a prior right for it had been taken from them. Many had sought the return of the papakainga, and other land too, but without success and there was no reason to believe official views had changed. Bastion Point itself was too much the 'prized possession' of Auckland for that to return, but the return of the ten acre block was a realistic possibility, and if the Crown had consistently denied the moral right of others to those lands that were sold, this was a block that had not been sold, but taken.

Thus the exchange block owners formulated a claim based on the principle that land taken, and not used for the purpose taken, should return, narrowing their claim to fit an established legal principle. Certainly at that time there was no general law requiring that such land return, but section 436 of the Maori Affairs Act 1953 had long provided a mechanism whereby Maori land taken for public works, and no longer needed, could be returned to the descendants of former owners. There was no obligation to use it, but still the provision was there and being there implied that it ought, on occasion, to be used. (In fact the provision was strengthened in 1975, land 'no longer required for any public work' being changed to land 'no longer required for the public work or other public purpose for which it was acquired or is held').

That immediately brought into account another block - the battery reserve - taken for defence and now used for park. That too should return, but since there was a substantial memorial on it, that would be impractical. Better to ask for other land, and what better than the houses that Ngati Whatua had long sought. With careful concern to limit their claim to established legal principles, for mere 'moral' claims had a singular record of failure, return of the papakainga would not be sought. It was taken for a park and used for a park. (It was in fact taken for recreation ground). In similar vein the roads and church site would be outside the claim, for roads had been provided and the Church provided for. It was important in their view to distinguish land taken and land sold, not just to fit the 'legal like' claim but also in case by asking for the return of the first as well as the second, Ngati Whatua should lose both.

If all this seemed as if the 'exchange owners' were merely trying to look after themselves, that was certainly not the case. The exchange owners' proposal was not that the land return to them, from whom it was taken, but to the

whole tribe - sellers and non-sellers, residents and non-residents, owners and non-owners, those mainly linked to Tainui and those to Kaipara or in a phrase - Ngati Whatua. It ought to be obvious - this was the family of Otene Paora!

The claim was formulated. The ten acre exchange block to be handed back, only this time to Ngati Whatua, and in exchange for the ten acre battery reserve, the Kitemoana Street properties of roughly equivalent acreage, but substantially lesser value as building sites. The whole it was claimed, should be vested in a tribal trust to house Ngati Whatua. The existing houses would be purchased from the Crown over a time less the difference in value between the Kitemoana and Bastion Point sites. The guiding principle was one of 'equivalence'.

On 5 January 1977 when the Action Group occupied Bastion Point the exchange block 'owners' had already thought through their proposals and were ready to act. They met privately on 9 January, gave final formulation to their claim, and arranged a meeting of the tribe (which included of course the Action Group).

The meeting was doomed to failure. To the Action Group the more moderate proposal appeared to concede the moral claim was not a claim, assumed the sellers were willing sellers and took no account of what had happened in the papakainga. By limiting the claim to land taken and not used for the purpose, in the Action Group's opinion, it discounted any claim in respect of anything else. It made no allowance for the Action Group's view that the homes had been more than 'paid for' in rents and gave no satisfaction to residents like the Hawke and Rameka families. They would still be paying rent. Therefore while the proposal was acceptable to most elders, for it fitted legal concepts without reliance on moralities and reinstated the Ngati Whatua preference to work within the law, it was unacceptable to the Action Group.

But like many issues debated in the heat of conflict the matter was determined by extraneous factors and in this case by a most unfortunate incident. The "moderates' proposal" as it shall now be called was to be put, if approved, to the Commissioner of Crown Lands, and to aid clarity, had been typed. In the course of typing a copy came into the hands of the press and without the moderates' knowledge was printed in the Auckland Star on the evening of the meeting.

At the meeting itself, on 15 January, Piriniha Reweti outlined the moderates' claim, thanked the Action Group for drawing attention to the case and bade them leave the Point lest they compromise the integrity of the proposal; but it was learnt, at the meeting, that the 'decision' was already printed in the press. The Action Group was not called upon to discuss, in their view, but to accept as a *fait accompli* a 'decision' of one group only that contradicted the prior policy of the Maori Committee. They immediately withdrew in protest, according to their bent, returning to the protest camp.

The elders remained to ratify the moderates' proposal distancing themselves from the Action Group in the process. While the Action Group considered the proposal 'a sell out', for the reasons earlier given, it was, to others, a realistic assessment of how far any Government could go. The plan was intentionally limited to matters raised in the Crown's planning initiatives of 1976, and was not intended to cover the wider areas of Ngati Whatua concern.

Whatever the pros and cons of the various views the most unfortunate result of all, from the meeting of 15 January, was the division created. For the first time there was a breach of that bond between elders and their more fervent young for which Maori society was once renowned. Those whom the elders traditionally cajole and encourage were now cast into the role of dissatisfied youth in rebellion against elder opinion. The great skill of elders in reconciling the young to them, had not been allowed to work. Nor could the young re-open the door to them. They had not been weaned from the camp but required to leave and at a point when the route for retreat had narrowed.

So it was the parties pursued their separate paths. Joe Hawke became the folk hero of large numbers, pushed to a point from which retreat was increasingly impossible. The elder Piriniha Reweti led the moderates, bound to maintain the more moderate stance of wise counsel. The Government was caught in the middle, accused of creating the division by dealing only with the moderates and yet faced with the moderates' insistence that the Crown deal only with them.

Still the Action Group, by returning to Bastion Point and continuing their demand for the whole of the undeveloped lands, made the Reweti group appear more moderate still. In this way, that which had been unacceptable to past Governments, became increasingly attractive to that then in office.

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9.4 The Assessment of Competing Claims

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The moderates moved quickly, arranging a meeting with the Minister of Lands on 18 February 1977. The Minister moved quickly too establishing a few days later a joint Planning Study Group to consider how the competing claims might be accommodated within a land use planning strategy.

The Maori land claim should have been resolved first in our view. The determination of best land use was a distinct issue and acceptance of one ought not to have been contingent on support for the other.

Nonetheless, in an attempt to reconcile the two, provision was made for the Ngati Whatua community to elect a representative to the Group. At a community meeting at which all families were represented Professor Kawharu was chosen. He was appointed along with a representative for each the Crown, City Council and Regional Authority. The Group was backed by a planning team drawn from the central and local authorities.

The Study Group was required to respect 'the identity and possible requirements of the existing Ngati Whatua community' but had no authority to determine the claim itself. In the result while the Study Group heard evidence, the Government continued to receive submissions from each the marae trustees, Action Group and moderates for settlement of the Maori land claim. The Study Group itself heard fifty one groups, one on behalf of the Orakei and Ngati Whatua people.

It was then that a third 'Maori' claim was manifest. At a meeting with the Minister of Lands at Orakei Marae on 13 March, the moderates reiterated their claim to the ten acre exchange block and the housing estate. The Action Group repeated their claim to all the undeveloped Crown Lands and control of the marae. The latter presented three petitions, 59 signatories supporting the Action Group's action, 243 supporting the return of all Crown Land at Orakei to Ngati Whatua and 4800 signing a petition that could be read as supporting either the return of that land or its retention for Auckland. The marae trustees were there too. It was thought they would simply repeat their earlier claim for more land to be added to Orakei Marae. In fact they produced a massive research document in support of a claim to the existing homes and the ten acres sought by both other claimants; the latter to house "persons of any race involved in the activities on the marae" and the rents from both to support the marae to benefit, of course, all people. Needless to say Ngati Whatua were incensed. Once again they were expected to take second place to the interests of Maori generally and the concept of a multi-cultural marae.

The occasion marks a rapid decline in the fortunes of the marae trustees. The Government, not surprisingly, preferred increasingly to deal only with the Ngati Whatua moderates, to distance itself from the marae trustees, and to seek the removal of the Action Group from Bastion Point.

Removal of the protestors became a priority as more people gathered there and distant tribal groups made formal visits to display their support. On 28 April 1977 the New Zealand Herald reported the Minister of Lands as saying "if the squatters did not move soon, proposals he wanted to put to cabinet would be jeopardised". The same message was relayed at a further meeting with the moderates on 11 May. As reported in the Auckland Star on 18 May, the Minister was willing to recommend the vesting of land in Ngati Whatua provided the protestors vacated. Thereupon 18 elders went to the protest camp to plead with the Action Group to go lest an imminent settlement was upset.

Father MP Shirres, who spent much time with the protestors, referred to his article published in the New Zealand Herald on 23 May describing the event, and the discussion at the marae on 11 May before the elders went to the camp. The choice he thought, was that the protestors had to leave or the tribe would get nothing. He described as one of his saddest nights, that night "with the Orakei Maori Committee, and seeing the anguish they suffered over the choice the Cabinet and the Minister of Lands put to them. Would they reject the kaumatua and all the kaumatua stood for, or would they disown their people on Bastion Point?" "I was so sorry" said Michael Rameka, "but things had gone too far". The Action Group decided to stay but insisted, against his own wishes, that JP Hawke leave, to be a voice for the Group "on the outside".

The matter by now had political connotations. On 1 July, while the Minister for Maori Affairs held a meeting with JP Hawke at Orakei, along with Dame Whina Cooper and the President of the New Zealand Maori Council, the Opposition spokesperson on Maori Affairs introduced a Private Members Bill to transfer to a Ngati Whatua Board some 80 acres of the undeveloped Crown Lands, not including Okahu Domain, the Battery Reserve or Takaparawha Point.

The Bill was doomed to failure. Instead on 7 July the Minister of Lands announced that civil proceedings had been filed in the Supreme Court "to end the unlawful occupation of Crown Land at Bastion Point".

On 13 August the elders wrote to the Minister of Maori Affairs to distance themselves from the Action Group whom they could not persuade to leave. They wrote

We wish to state emphatically we give no support whatever to the various widely publicised proposals, claims and allegations made on our behalf. While we recognise the democratic right of individuals to express personal opinions, we deny anyone the right to speak for the Ngati Whatua of Orakei on any subject without our collective consent and the authority of the Kaumatua.

That stated their position clearly enough but left the Action Group with the rejoinder that the moderates revised tribal policy had itself been conveyed to the Commissioner of Crown Lands, in their opinion, without the prior collective consent of the tribe.

The elders then identified themselves by genealogy showing their connection to the blocks for which reparation was sought so underlining their prior right to speak. The pragmatic difficulty was that negated the traditional proposition that the land ought to have been held unpartitioned for all, and presumed the descendants of former owners in other blocks had no case. An owner in the papakainga block when it was compulsorily acquired was, for example, Te Mamae Hira Pateoro, a direct descendant of Te Kawau and grandmother of J P Hawke.

Nonetheless the elders referred to the 1898 partition which they said was illegal and resulted, it was claimed, in the eventual loss of the estate. Still they said, if their claim was accepted, Ngati Whatua would relinquish all claims against the Crown arising from the partition and support the balance of the Government's 1976 scheme. That at least left open the prospect of other claims not founded on the partition. Indeed we consider the real cause of Ngati Whatua's problem was not the partitions but the original Orakei Order and the Legislature's failure to provide for tribal ownership.

The letter was nonetheless impressive and effectively disowned the Action Group. It counteracts the popular view that the Government forced a division by dealing only with the elders. The letter stated in no uncertain terms that Government ought not to deal with anyone but them and it would have been hard for any Government not to heed it.

Meanwhile, though the Government was keen to effect a settlement with the moderates, the moderates preferred to await the report of the Joint Planning Study Group (on which Ngati Whatua had representation).

Amongst the Action Group an air of despondency followed the death of 9 year old Joanna Hawke in an accidental fire at the camp and the supporters in actual residence dwindled to their lowest number of about twenty.

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9.5 Settlement With The Moderates

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The Joint Planning Study Group reported in November 1977, recommending a smaller area for public housing, a bigger area for reserves, and for Ngati Whatua, the existing Kitemoana Street houses to be vested in a Ngati Whatua Trust Board along with two nearby areas for future housing (in all some 24.5 acres).

It was strictly a planning answer. It sought development within an overall strategy to maintain the open space character of the Point. The Action Group's claims for example, were not judged on their merit, but simply noted, offset by a portended public reaction against any wholesale return of lands, then quantified by Government's willingness to compensate the loss of specific blocks, aggregating about 24.5 acres, in broad accordance with the moderate's claim. Having fixed quantum by that pragmatic method, location was settled by standard environmental determinators - visual impact and the location of the existing Maori community. The Steering Committee stressed

although the opportunity is presented to resolve a long-standing grievance in respect of Ngati Whatua of Orakei, the report itself provides for the most appropriate use of the land on Bastion Point, irrespective of moral or legal issues relating to ownership.

Nonetheless the report lent credence to the view that there was a moral claim that ought to be met, provided it did not unduly constrain the open space character of Bastion Point for the benefit of Auckland. It was not determinative but provided guidance for a compromised solution.

It certainly provided what the moderates were seeking, a settlement within the ambit of the Crown's 1976 proposals and a return of land clothed in a statute that would make it their 'turangawaewae for ever', an inalienable trust for all of Ngati Whatua of Orakei. They had withheld a final decision on any settlement until the Study Group had reported. The next month, December 1977, Piriniha Reweti wrote to the Prime Minister, Minister of Lands and Minister of Maori Affairs for a meeting between the Ministers and the moderates, a meeting that in his view ought best be held in Wellington.

Piriniha's opinions in that letter are interesting, not just because he was a leading elder but because they show he was not too distanced from the Action Group at least insofar as he acknowledged the existence of other grievances.

Underlying our proposals made to you in January, was one basic principle, a principle of equivalence - between land that the Crown might return to our section of Ngati Whatua, and land taken from us by the Crown in the face of our protests and not

used for the purposes employed to justify its acquisition. We thus limited our claim: for we said nothing about the obliteration by the Crown of our marae in 1951 and the trampling on the tapu of our inalienable heritage in the 'public interest', because these acts were within pakeha law and in the end the land was used for the declared purposes. We were silent too, on the conniving by the Crown in its purchase of the four acres we gave to the Anglican Church to hold in trust for our children and our children's children. We simply felt obliged to confine our appeal in January to the former Battery Reserve and Orakei 4A2A blocks and to leave the remainder, not because they did not matter, but because the injustices they recalled to us were perhaps less evident to others.

Thus for the first time since 1950 you gave us hope that a measure of justice might be found in adapting your 1976 Plan to contain our proposals concerning the Battery Reserve and 4A2A blocks. The equivalence, we knew, would be meagre for the balance would remain heavily weighted in the Crown's favour. And so now to the new plan, which comes much closer to a true equivalence; and although we believe that on grounds of area and location alone the balance still favours the Crown, it is patently closer to a full measure of justice and to the means by which we may regain our identity as the tangata whenua of Tamaki. As it happens, we do not imagine that any other plan could be devised that would give us an exact equivalence and still meet with general approval.

Piriniha was not paving the way for further claims however, or tendering an olive branch to the children of his tribe still encamped on Bastion Point for he added

And finally, unless fresh evidence pertaining to the former Ngati Whatua ownership of the Orakei Block is unearthed and upheld in a New Zealand Court of law, we would forgo any further claims against the Crown at Orakei.

Gentlemen, these are our thoughts and our hopes for our people. We shall come to Wellington when you are free to see us.

The three Ministers agreed to a meeting, not in Wellington but still on neutral ground, at Auckland Town Hall, Saturday 25 February 1978. It is not known who said what to whom but only the result, announced by the Minister of Lands the following Monday (after consulting with the Council on Sunday). In short there would be allocated

for housing, low income variety, a mere..... 5 acres
for more reserves, for Auckland..... 22 acres
for Youthline, - an increase to..... 4 acres
and for a Ngati Whatua Trust Board, an increase to..... 29 acres

The Ngati Whatua award included the Kitemoana Street homes, adjoining land for more housing and land to be kept as open space. It carried a tag that payment for equivalence would be met, once thought to be \$257,000, later fixed on valuations at \$200,000. The details of the award are given later. For now the meeting itself is considered where the settlement is said to have been concluded.

One view of the meeting stresses that most elders were there with some 40 senior members of family groups and there was full accord after a long discussion. Another stresses it was not a tribal meeting, not at the marae and by invitation only, those not invited including the Chairman of the Orakei Maori Committee, the Action group, and elders or senior members for the Hawke and Rameka families. Others claim the families of the Action Group were not invited because they had absented themselves from prior community discussions.

Hapi Pihema's view is important for as he advised us, he was later chosen as chief spokesperson for Ngati Whatua of Orakei. He thought some who should have been there, were not. Of the meeting itself, most of the discussion was on the price, he thought, the elders not joining that debate, not wishing to haggle about the price so long as land returned. At the start, he recalled, one elder accepted the proposition put by the Crown but others present immediately objected. That had the effect of dropping the price but once that was settled the discussion did not return to the principle or the amount of land to be settled. Accord was not so much recorded as left in the eye of the beholder.

The more important question for this tribunal is whether the meeting accepted the settlement in full and final satisfaction of all claims, including the claim to the marae, or only in settlement of the exchange block and Battery Reserve. This question and the responses to it weighed heavily with us and are considered in Chapter 12 of this report.

The details of the arrangement were spelt out in the Orakei Block (Vesting and Use) Act 1978 described as an Act to implement the agreement reached between the Crown and representatives of the Taou, Ngaoho and Te Uringutu hapu of Ngati Whatua for the vesting, use and management of certain portions of the Orakei block situated in the City of Auckland.

It vested in the Ngati Whatua of Orakei Maori Trust Board, then constituted

- (a) 24 houses at Kitemoana Street and 3 at Watene Crescent. 6.75 acres (Nos 101 and 104, appendix III)..... (2.6816 ha)
 - (b) Two separate areas by Kitemoana Street for future housing 12 acres (Nos 103, 109, 113)..... (4.5404 ha)
 - (c) An adjoining area as private 'open space' (No 108)..... 10.25 acres (4.1817 ha)
- and by way of equalisation the Board was to pay to the Crown \$200,000.

In addition

- (a) An area was added to the Church Cemetery reservation (No 102) comprising some..... 0.50 acres (2012 m²)
- (b) Two areas were added to the Marae (No 107) comprising some..... 0.50 acres (1824 m²)
- (c) There was reserved for Youthline Trust Inc (No 110), as it turned out, about..... 1 acre

- (4304 m2)
 (d) Reserved for community facilities, off Kupe Street (No 31),
 was nearly..... 2 acres
 (7798 m2)
 (e) Added to the parks (Nos 29, 30) was about..... 30.25 acres
 (12.2356 ha)
 (f) And there was vested in the Housing Corporation for
 housing purposes (No 111) about..... 4.5 acres
 (1.7986 ha)

As earlier seen the basis of the arrangement was one of equivalence for two blocks taken under the Public Works Act that ought to have been returned. It did not in any way challenge the legal process whereby the Orakei block as a whole was alienated from Ngati Whatua or question the policies that led to acquisition.

The assessment of the debt owing was explained in a letter to the tribunal from the Commissioner of Crown Lands, Auckland of 29 October 1985. Valuations were supplied as follows by the Valuation Department in July 1978

- (a) Lands vested in Ngati Whatua Trust Board
 Residential properties..... \$1,094,000
 future housing areas..... 518,0003

 \$1,612,000

- (b) Lands taken under Public Works Act
 Battery Reserve..... \$1,000,000
 Exchange block..... 412,000

 \$1,412,000

- (c) Difference payable..... \$200,000

Within the parameters of the moderates' claim, a claim limited to two blocks taken, the settlement was generous. The Battery Reserve was valued at its worth for residential subdivision though it was to be kept as open space. As a park reserve it was valued at only \$105,000. More significantly

- (a) Neither the 4.1817 ha 'open space' vested in Ngati Whatua, nor the land added to the urupa or marae were brought into account. (The 4.1817 ha was valued at \$560,000 as a block for residential development, and at \$52,000 with the open space restriction.)

- (b) Effectively the Crown paid twice for the Battery Reserve and exchange block for no account was taken of the compensation earlier paid, \$3000 in 1889 for the former, and \$16,000 in 1951 for the latter.

It remains to be added that Ngati Whatua did not have the funds necessary to fulfill their side of the settlement. In consequence the Maori Trustee came to their help and provided a loan of \$200,561 for a term of 40 years at 7.5% not

reviewable. The Maori Trustee advised us that the money was advanced in good faith

that is to say... there was a danger that concessions might be lost if the Ngati Whatua people were unable to raise the required sum of money. The terms on which the loan was made available were concessionary in recognition of the particular circumstances applying.

The Maori Trustee added

What should be recognised is that the loan money granted by the Maori Trustee was made with what in effect is Maori money, that is to say, it was not appropriated to the Maori Trustee by the Government. The Maori Trustee's loan finance originates from rent moneys collected by him from Maori land.

Still the settlement continued to pose problems. For the Ngati Whatua residents there had simply been a change in landlord. The homes had been built in the 1950's for a total cost of \$144,153. Rental actually paid to 31 March 1977 was \$327,256. At March 1978 the combined value of land and buildings was \$1,094,000 but as the Housing Corporation pointed out in a letter to the Tribunal of 1 November 1985, the properties would have been more than paid for had rental payments been mortgage installments. Looking at a case approved in 1952, as an example, it was noted the sale price was \$5,500, weekly installments \$4.22, and over a 40 year mortgage term (the then standard term) total payments would have been \$8,778. Interest was not reviewable and installments would not have changed. Rental payments however were reviewable and from about 1968 averaged \$13.50 per week (the tenants however being relieved from rates, insurance, maintenance and other outgoings).

Whether the Ngati Whatua residents had or were denied a right to buy their homes is reviewed later (12.21), but in the view of the Action Group, which included two prominent 'resident families', the homes had been paid for and \$1,094,000 should not have been debited against them. They were better off in their view, in 1912. The settlement gave to the Board 27 state homes, 35 years old, nearing the end of their useful lives, subject to a debt of \$200,000, located in the gullies, and 4.1817 ha for future expansion. In 1912 they had more homes, debt free, rent free, on the flat and 700 acres besides. Certainly they now had roading and servicing but some servicing they would have been entitled to anyway as ratepayers.

09 Pride and Protest 1977-1978

9.6 Expulsion and Convictions

9.6 Expulsion and Convictions

An argument between the Crown and City Council as to who should remove the protestors may have been resolved simply by the Crown's responsibility for the maintenance of order. The Minister of Lands had several times announced a settlement was unlikely as long as the protestors remained but they did remain and it seemed the protest could spread to other tribes. In April 1977 the Commissioner of Crown Lands delivered a letter ordering the protestors to vacate. On 27 June Maori groups protested at Parliament grounds. On 30 June 111 groups unsuccessfully sought a meeting with the Minister. In the meantime another argument was developing concerning certain land at Raglan, leased to a golf club, and there were threats of another protest camp being established there.

The Crown formulated a strategy. It could have settled on a simple action for eviction in the Magistrate's Court but chose instead to put the contest directly to the Supreme Court, on application for an injunction, in much the same way as it had bypassed the Supreme Court for the Court of Appeal in *Solicitor-General v Tokerau District Maori Land Board* (supra). The thought, it seems, was to enable matters of title and equitable relief, and thus the history of the land, to be fully aired and debated. Brookfield (1978:383) considers the same matters may have been relevant to proceedings in the Magistrates' Court but doubted the full issues could have been properly debated in either Court, in any event.

Nonetheless, on 7 July 1977 application for an injunction was filed against J P Hawke, J Rameka, G P Hawke and R P Rameka to restrain them from continuing in occupation. The defendants contended they were disadvantaged from the start. The Crown had access to a stockpile of relevant files, staff to research them, some 506 days to prepare, and senior counsel to lead. The defendants were without counsel. During the occupation they were without employment and had accumulated debts.

Legal aid was declined. They appealed to the Legal Aid Appeal Authority, obtained a hearing in September 1977 and in November an unfavourable decision. Although they qualified on financial grounds, other provisions of the Legal Aid Act 1969 disqualified them, and in particular, that which required the likely cost to be commensurate with the chance of success. In this case, the estimated cost was \$ 10,000 and in the Authority's view, the prospects of success insufficient to justify the grant of such an amount. In addition "if the defence is successful then at best there remains only the possibility of a political settlement" while legal aid "is directed to achieving results by legal means".

Both F M Brookfield and the Legal Aid Appeal Authority were therefore of similar mind but for the defendants it meant they had to sift through a morass of legal and historical background without the help they had hoped for, and the data, Hawke claimed, was made available only one month beforehand. It has taken us some years to study, check and augment the same material.

To complicate matters the defendants were not privy to the Crown's settlement proposals, a settlement that was to weigh heavily in the eventual judgment. The case was scheduled for late 1977. At that point, the Joint Study Group had only just reported and there had not been a settlement. The hearing was adjourned to the beginning of March 1978 but it was not until 27 February that a settlement was announced and was only broadly outlined. On that basis a further adjournment was sought but the Crown was increasingly anxious to conclude the matter. Confrontation was spreading. In February 1978, another group of protestors encamped on Raglan Golf Course to bring to a head another Maori land claim. The case was adjourned another month but Hawke claimed to have only a 'newspaper' knowledge of the Orakei settlement when the seven day hearing began on 3 April.

Jjudgment was given for the Crown on 20 April. The Court reviewed the history of the block at length, circumscribed by this finding on the equitable issue

The defendants have naturally embraced with some relish the proposition that a plaintiff in equity must approach the Court 'with clean hands', and a wide variety of transactions over the last century or more have been subject to close scrutiny. Merely to speak glibly of the requirement of clean hands, however, is misleading if it is taken as suggesting that one must embark upon an abstract moral examination of all the actions of a plaintiff. It must be shown in order to justify the refusal of relief that there is an immediate and necessary relationship between the relief sought and the delinquent behaviour alleged ...

... though the whole history win be regarded, it is necessary to bear in mind that we are concerned with the relationship of the plaintiff to the defendant in respect

of the immediate area and that other dealings between the parties or their antecedents may have lesser relevance.

The immediate area occupied was former farm land that had been sold in 1913. The Court found

Despite every sinister innuendo which the defendants have attempted to cast upon actions of the Crown agents, I cannot see evidence to substantiate allegations of chicanery in relation to the acquisition of the Bastion Point site. It was a Government enacted policy to acquire this land. It was carried out by what appears to have been open-handed negotiation. No Court could declare such conduct to be unconscionable.

The Court nonetheless considered the acquisition of the papakainga. It referred to the findings of the Kennedy Commission on the papakainga

purchase and concluded the purchases gave no impression of policies undertaken to disadvantage the native owners,

rather they were the historical result, partly unforeseen in the early days, where social developments persuaded the Government of the day to decide, from time to time, that certain steps were desirable for the benefit of the community at large and of the Maori people in particular.

The subsequent evictions were not seen as done

other than in good faith and because of a belief generally held by the authorities that this was the best solution for the benefit of the people.

Did that determine the moral claim? In the opinion of F M Brookfield (1978:392) it did not and could not. The claim was

the culmination of grievances caused by the policies of legislatures and governments, many of the grievances not justiciable and unlikely to have been concluded by a legal judgment which, however sympathetic, simply could not extend sufficiently to the issues of policy involved.

The defendants had opened their case with these words.

The starting point for all Maori people in their dealings with the Crown is always the Treaty of Waitangi ... In considering the equities in this case the Court must compare the solemn statement (in Article 2 of the Treaty) with the history of legislation which follows.

The decision made no reference to the Treaty, and quite properly so for apart from the provisions in the Treaty of Waitangi Act 1975, the Treaty was not incorporated into law or equity.

The defendants were unconvinced the equities were against them and resolved to continue the occupation. When the Department of Lands and Survey published the Supreme Court judgment in glossy booklet form, the Action Group published a booklet in reply Takaparawha Bastion Point - 506 days on Ancestral Maori Land.

But eviction was now only a matter of time. With considerable emotion large numbers rallied at Bastion Point. The Action Group strove (successfully) to maintain control and prevent what could have been an ugly scene. It issued instruction sheets to each person

The Action Committee has decided on a policy of non-violence. Remember, be passive, and passive, and passive ...

The eviction came on 25 May 1978 when some 600 policemen, army personnel in a fleet of army vehicles, buses, bulldozers and overhead helicopters arrived at Bastion Point. The protestors were surrounded. In the glare of full media coverage 222 people (108 Maori, 104 European and 10 Polynesian)

were spectacularly but passively arrested, escorted to vans and buses and charged with wilful trespass under section 3 of the Trespass Act 1968. Included was J P Hawke, his parents, wife and children.

It was 506 days since the occupation began. It was 26 years since the families of the Action Group had been evicted from the papakainga, the original marae and village destroyed and only the cemetery left. Once more the marae buildings were quickly demolished and all that remained was the memorial to Joanna Hawke.

Those arrested had then to be tried. Some pleaded guilty and were convicted and discharged. Others pleaded not guilty and elected to be individually tried with the result that the Attorney-General stayed the remaining prosecutions, a decision favourably reviewed by Black (1978:321) and Brookfield (1978:467).

Twenty one of those convicted appealed to the High Court where their convictions were upheld (see Chisholm v Police [1978] NZLR 612 and commentary Brookfield (1979:131) but some of those went further again to the Court of Appeal where their convictions were quashed (see Ilolahia v Police [1980] 2 NZLR 477). It was held any finding that the land was Crown land in the civil proceedings (the application for injunction), could not be relied upon to prove title in criminal proceedings, as it had been.

So it was some were convicted and discharged, some were not charged at all and others had their convictions quashed. It may have seemed to the casual observer a confused end to a confused situation but for Ngati Whatua of Orakei, for whom things could not have been worse, the period marked a new beginning on a pathway to a better future.

Waitangi Tribunal, Department of Justice, Wellington.