

RAUPATU: THE PUNITIVE CONFISCATION OF MAORI LAND IN THE 1860S

**A paper presented to 'Land and Freedom: the 18th Annual Conference of the
Australian and New Zealand Law and History Society', Newcastle, 10 July 1999**

**Dr Bryan Gilling
Senior Research Associate
Treaty of Waitangi Research Unit
Stout Research Centre
Victoria University of Wellington**

Other than in terms of actual physical harm and loss of life, greater harm was probably done to Maori in New Zealand by the confiscation of their land in the 1860s than by the wars that preceded it. Some 3.2 million acres of land were taken. This was about 5% of the country's land mass and more than 15% of the area then remaining in Maori customary ownership. Studies of the wars are well known, but the confiscations receive barely a mention in the historiography, apart from the dramatically-worded Taranaki report of the Waitangi Tribunal published in 1996.

Justification for Confiscation

Why were the confiscations undertaken? There were both official and unofficial reasons. Officially, the empowering legislation, the *New Zealand Settlements Act 1863* [NZSA], had a three-fold aim: to make 'adequate provision for the security of the well-disposed inhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty's authority and Law and Order throughout the Colony'. This would be achieved primarily through the settlement of 'a sufficient number of settlers able to protect themselves and to preserve the peace of the Colony', armed settlers who would promote peace between the warring races by being settled in buffer zones around European settlements.

Unofficially, there were other reasons. There was a deeply felt need to punish Maori who were in armed opposition to the government and thus the British Crown; there was a long history in the British mind and law of taking the land and possessions of rebels and traitors. There was a widespread feeling that since Maori had little personal property, and really enjoyed fighting anyway, the only way to make them really feel the punishment was to take away their turangawaewae, the land to which they were emotionally and spiritually attached. Apart from the military settlements, there was a great need for land on which to settle the ongoing influx of European immigrants. Then there was the need to pay for the wars, to be achieved by selling off the confiscated lands. The NZSA was part of a threesome: its colleagues were the *Suppression of Rebellion Act*, giving the military broad powers to crush the 'rebellion', and the *New Zealand Loans Act*, aiming to raise a loan secured against the expected proceeds of confiscated land sales. Clearly, from the beginning the NZSA was intended to take more land than merely the protective settlements of which it talked.

The Confiscation Model

The original proposal by the Domett ministry, dominated by the Auckland 'war party', was to take a great swathe of land from coast to coast across south Auckland, Waikato,

Hauraki and Coromandel, to create a buffer zone sheltering Auckland. Governor Sir George Grey objected, reserved the legislation to London for imperial approval, and was duly instructed to permit only confiscation that was 'just and moderate'.

The mechanism created was for a district to be proclaimed by the governor as suitable, then for settlements to be created within it. Clearly not all Maori in even the most troubled district would be active rebels, so innocents swept up in these districts were to be compensated. Compensation would, though, be allowed only to those who could prove that they were not rebels before a specially constituted court, which would then award them money. But as the areas confiscated expanded and the number of dispossessed Maori grew, compensation in land was also permitted. There were two catches: the first was that the land returned could be anywhere in the proclaimed district, and the second was that instead of being held under customary tenure it would come back as Crown grants. British sovereignty would have been asserted over the land and the basis of Maori ownership unilaterally changed forever. The most loyal of Maori could lose their ancestral lands both literally and legally if they were unlucky enough to have troublesome neighbours.

A Tale of 5 Districts: Raupatu in Practice

Having laid down a few basic principles for the confiscation process, the Crown then proceeded to break all of them in the way in which it went about putting the policy into practice. The confiscation policy was applied in five discrete regions and in each one the Crown failed to play by its own rules.

Taranaki

War had broken out in Taranaki first in 1860, stalemated in 1861 and then flared up again briefly in 1863. The settlement of New Plymouth was the centre for Pakeha settlers farming sections of the surrounding lands for some kilometres. But the district proclaimed in January and September 1865 included some 1.2 million acres, beginning in north Taranaki, going well behind Mt Taranaki and initially extending south to Wanganui. The straight lines drawn on a map cut through numerous tribes' lands and swallowed the whole of many. Despite the earlier fighting, the Waitangi Tribunal has effectively concluded that the governor could not have been satisfied that any tribes affected were actually in rebellion, and that the confiscation bore no relation to either tribal boundaries or current threats to peace.

The Compensation Court operated here and heard claims over large regions, enunciating doctrines such as the 1840 Rule that would have wide implications for dealings with general Maori land. However the Crown failed to occupy most of the confiscated area, leading to more disruption as Maori remained in situ for years, and even had Crown agents moving amongst them repurchasing confiscated areas. The confusion mounted until in 1880 a special royal commission was constituted to allocate definitively particular reserve areas. Even so, the reserves it created largely passed into the hands of Pakeha leaseholders, creating problems for today of Gordian knot intractability.

Waikato

After a few skirmishes here, war proper broke out in July 1863 when troops crossed the Mangatawhiri River, aiming particularly to crush the King movement, a form of Maori autonomy for which the British authorities would not stand, believing it directly opposed the Crown's sovereignty. The war was finished with the Maori defeat at the battle of Orakau in April 1864 and a mutually recognised boundary line established at

the Puniu River to the north, Lake Taupo to the east and through north Taranaki to the south.

The confiscation, initially some 1.2 million acres, was of all the lush Waikato farmland and areas of swamp that were drained in the succeeding decades. This was another exercise in taking all the land within lines on maps or convenient landmarks such as rivers. Tribal involvement in rebellion was virtually ignored as loyal tribes lost land and some of the most truculent, especially Ngati Maniapoto, remained largely unaffected. About one-third of the area taken was returned in some form, but not necessarily to those whose traditional lands it was. The Compensation Court held its earliest sittings in this region, but most of the reserves were handled by Crown agent H.H. Turton. So keen were settlers to get at this land that sections at Ngaruawahia, the Maori king's own home, were surveyed and sold before the land had even been formally confiscated.

Tauranga

Tauranga, in the western Bay of Plenty, was a major staging post for supplies and reinforcements coming from the East Coast for the Waikato 'rebels'. Confiscation was planned before November 1863 and troops landed in January 1864 to plug the supply pipeline and secure the area. In response, Maori built the Gate Pa within sight of the soldiers' redoubts and in April General Cameron assaulted with 1700 men and artillery. This force was repulsed with heavy losses, but Maori were soundly beaten several weeks later at Te Ranga. In July, some made an apparent formal surrender. The two experienced senior civilian officials present complained that the Maori did not understand that they were admitting having been rebels, liable to lose their lands. Their complaints fell on deaf ears; the officer in charge arrested one for "interfering".

Within two weeks, Governor Grey, Premier Frederick Whitaker and Colonial Secretary William Fox arrived. Grey personally conducted some negotiations, promising that although some land would be taken as punishment, the total would not exceed one-quarter of their total lands, while loyalists' rights would be scrupulously respected. The two politicians then arranged with a few chiefs for the land to be confiscated from the territory of just one tribe and for the 90,000-acre block Katikati-Te Puna block to be purchased from a few chiefs who had slender rights in the area. A storm of protest meant a largely unchanged deal was not signed until November 1866. This led to further outrage, but troops conducted a scorched-earth campaign in early 1867 to suppress the dissidents and special legislation was required to validate retrospectively all that had gone on. The Compensation Court was never employed in this region; the raupatu was conducted by executive negotiation and enforced by military action.

Eastern Bay of Plenty

Confiscation in this region resulted from two killings, that of Rev. Carl Volkner at Opotiki in March 1865 and that of James Fulloon at Whakatane in July. Government retribution was ostensibly in two police actions to apprehend the murderers but hundreds of troops set out deliberately to crush the tribes involved. Large troop numbers might have been necessary to be effective, but indiscriminate naval bombardment, pitched battles and cavalry charges, all without attempts to parley and explain their purpose, argue against simple focus on a dozen 'criminals'. A scorched-earth policy starved the Whakatohea tribe into submission.

All of Whakatohea's and Ngati Awa's useful lands were confiscated as one block in January 1866. No tribal differentiation was made; a line 11 miles from the coast was merely drawn on a map. Cartographic and surveying mistakes and rewards to loyal Maori have confused the exact area ultimately taken. Whakatohea apparently lost some

151,000 acres and Ngati Awa either 29,000 or 116,000. Much of the land claimed by Ngati Awa was given to their enemies, Te Arawa, who had provided most of the fighting force deployed against them. Further, the mere 20,000 acres returned to Whakatohea was on just one block, so all six sub-tribes were forced off their ancestral lands to live on what was New Zealand's closest equivalent to a North America reservation.

The Compensation Court did sit in this region. One judge here had the temerity to question that the entire region had been taken for settlement, arguing that the confiscation was therefore not in accordance with the NZSA. Although the Court eventually awarded some 96,000 acres, nearly all to Ngati Awa, reserves were not finalised in this district either and through the 1870s Crown commissioners laboured at sorting out the mess. In 1921, a royal commission concluded that Whakatohea had done nothing to warrant the government's treatment of them, their sole act of 'rebellion' being resisting the soldiers' invasion.

Mohaka-Waikare

This area, in northern Hawke's Bay, was subjected to an entirely different process from those applied in the other raupatu areas. Consequently, it has been completely overlooked in the discussion and investigations of the confiscations.

The battle of Oamaru in October 1866 took place outside Napier, but the 'rebels' were mostly Ngati Hineuru attacked pre-emptively by government forces. Those captured were exiled to the Chatham Islands and exactly three months after the battle some 270,000 acres of their land were confiscated, conveniently comprising all of the region the government had not purchased before the wars.

The Compensation Court never sat here either. Instead, Provincial Superintendent Donald McLean struck a personal deal with 50 Maori to return to them 50,000 acres and a small sum of money, provided they ceded all the land rights in the area already confiscated. A second deal in 1870 between McLean and 30 Maori ignored the first agreement, kept only some 50,000 acres for the Crown, but allocated the ownership of the 200,000 acres returned to only a few Maori. Seventy thousand acres of the most valuable land was given to McLean's ally, Tareha, although his traditional rights there were negligible. For 30 years, the traditional owners fought this deal right through to the Privy Council but were defeated because the confiscation proclamation had destroyed in law all precedent Native title. The block partitions were similarly shambolic and litigated, resulting in many loyalists losing their land while 'rebels' often kept theirs.

East Coast

A sixth region is included although the process applied there was rather different. After several years of sporadic violence on the East Coast, mostly between Maori themselves, there was a separate regime instituted in 1867 in which any 'rebellious' tribes were threatened with the confiscation of their land. This did not come to pass, but instead, with this threat hanging over them and brandished periodically by Crown officials, a number of tribes in this region were bullied into making sales and cessions against their will. There was no Compensation Court here, but the Native Land Court was to be used in much the same way, determining not just land ownership but also loyalty to the Crown.

Although it was not raupatu per se, and has not been recognised as such by the Crown, nevertheless it was clearly a display of naked Crown power, using the threat of force to part Maori from their land, and may therefore arguably be included as a form of 'raupatu'.

Conclusion

The confiscation of Maori land was conducted under legislation that was ill-conceived in itself. But then even the provisions of the initial Act were set aside as the process varied in each region in which it was applied.

The procedure itself was arguably in breach of the Treaty, although being brought under British law in 1840 would have meant that the full extent of the law could be applied, including its traditional penalties for treason

All Maori within the proclaimed districts ultimately suffered loss of ownership of their land. Even if they remained on it physically, they lost it legally through the foundational change of the basis of title from Maori customary ownership to a Crown-derived title. In this the British Crown asserted its sovereignty as effectively as if it had done so militarily.

The compensation procedures provided were inadequate and flawed. From the outset, the negative definition of those entitled required innocent people to prove their loyalty. Then, when some provision had been made, in no district were Maori actually given this meagre entitlement in a timely and appropriate manner and decades were need to sort out the mess.

The inconsistent application of the confiscation legislation, itself dubious, was at best unfair and at worst plain illegal. As the Waitangi Tribunal has said, 'Maori were excluded without good reason and the award of land depended not on principle but on expedience. The effect was to impress not the rule of law but the rule that might was right.'

RAUPATU: THE PUNITIVE CONFISCATION OF MAORI LAND IN THE 1860S

Justification for Confiscation

- New Zealand Settlements Act 1863 (security, peace, law and order)
- Unofficial: punishment of warrior race, land for settlement

The Confiscation Model

- district proclaimed for settlement
- compensation for non-rebels

A Tale of 5 Districts: Raupatu in Practice

- Taranaki
- Waikato
- Tauranga
- Eastern Bay of Plenty
- Mohaka-Waikare
- + East Coast Land Titles Investigation Act 1866

Conclusion

- Problematic procedure
- Change of foundation of tenure
- Compensation procedures flawed
- Inconsistent application, different in each district (— illegal?)

REFERENCES

Belich, James

1986. *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*. Auckland: Penguin.
1989. *I Shall Not Die: Titokowaru's War in New Zealand 1868–9*. Wellington: Allen & Unwin/Port Nicholson Press.

Clark, Paul

1975. *'Hauhau': The Pai Marire Search for Maori Identity*. Auckland: Auckland University Press/Oxford University Press.

Cowan, James

1983. *The New Zealand Wars and the Pioneering Period*. Wellington: Government Printer, reprint edn.

Dalton, B.J.

1967. *War and Politics in New Zealand 1855–1870*. Sydney: Sydney University Press.

Fenton, F.D.

1994. *Important Judgments Delivered in the Compensation Court and the Native Land Court 1866–1879*. Christchurch: Southern Reprints, reprint edn.

Gilling, Bryan D.

1994. 'The Queen's Sovereignty Must Be Vindicated': The 1840 Rule in the Maori Land Court. *New Zealand Universities Law Review* 16 (2):136–174.

Hammond, Kiwa

1998. Pai Marire: The Misunderstood Religion. *Stimulus: The New Zealand Journal of Christian Thought and Practice*. 6 (2):18–22.

Litchfield, Michael

1985. Confiscation of Maori Land. *Victoria University of Wellington Law Review*. 15 (4):335–360.

Riseborough, Hazel

1989. *Days of Darkness: Taranaki 1878–1884*. Wellington: Allen & Unwin/Port Nicholson Press.
1994. The Crown and Tauranga Moana 1864–1868. Unpublished report, Crown Forestry Rental Trust, Wellington.

Stokes, Evelyn

1990. *Te Raupatu o Tauranga Moana: the Confiscation of Tauranga Land*. Hamilton: University of Waikato.
1997. Pai Marire and Raupatu at Tauranga 1864–1867. *New Zealand Journal of History* 31 (1):58–84.

Waitangi Tribunal

1996. *The Taranaki Report: Te Kaupapa Tuatahi*. Wellington: Waitangi Tribunal & GP Publications.

Ward, Alan

1995. *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*. Auckland: Auckland University Press, reprint edn.

1997. *National Overview Volume II Waitangi Tribunal Rangahaua Whanui Series*. Wellington: Waitangi Tribunal & GP Publications.