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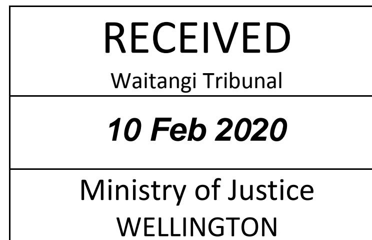
Report Summary

Crown Action and Māori Response: Land and Politics, 1840-1900

10 February 2020



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Mihi

1. He mihi ki a koutou. My name is Robyn Anderson. I, along with Dr Terence Green and Mr Lou Chase – and with the assistance of members of ARRK and many others – wrote the report: "Crown Action and Māori Response: Land and Politics, 1840-1900" commissioned by CFRT. This was one of a suite of reports. It is positioned as an overview offering an overall analysis but leaving more detailed discussion to the specialist and hapū-specific projects. I am presenting this summary on behalf of my colleagues.

2. We acknowledge at this point that one of the difficulties faced in undertaking research into these issues is the gathering of various hapū under the rubric of "Ngāti Raukawa" to describe a loose confederation of autonomous hapū/iwi who were linked by whakapapa, marriage and history. Often tūpuna referred to themselves, or were referred to, as "Ngāti Raukawa"; sometimes specific hapū/iwi names were utilised.

Overview of important themes

3. We begin by highlighting a number of themes that run throughout the report.

4. The first concerns the strategic objectives of the Crown in acquiring the area between the two established settlements of Port Nicholson and Whanganui and the tactics its officers employed. We include here the Crown's fostering of tribal discord while presenting itself, land purchase and the Native Land Court as the only peaceful option available to Ngāti Raukawa and the other Māori of the region. There is evidence of the Crown favouring certain tribal groups over others; of turning a blind eye to the armed transgressions of its "friends" despite protestations to the contrary; and the bullying and denigrating of those who opposed land sale.

5. A second theme concerns the assumption of the superiority of British institutions and of the supposed incapacity of Māori to resolve differences other than by force. We quote Richmond, as one among many officials, to the effect that the disputes over rights in the region were an 'insoluble quarrel between half civilized men whose titles all rest[ed] on violence', which was still then the 'ultimate appeal'.[1] The truth of the matter, of course, was that Māori were perfectly capable of resolving issues through debate and consensus. And the other truth was that the Crown was stirring up trouble by its purchase plans, playing one side off against the other. As Te Rangihaeata countered to Lt Governor Eyre at an earlier date, the 'only thing likely to interrupt [the peace] was the Govt purchasing Rangitīkei'.[2] [pp 129-30]

6. Of particular significance were the general attack on, and interpretation of ,custom as it suited the Crown's purpose. We can see aspects of that manipulation in how rangatira were characterised, especially as to whether they spoke on behalf of hapū and the wider collective. There was deliberate interference in the relationship between rangatira and hapū, and *between* hapū, and in any tribal "combination" deemed to be dangerous by the Crown, as threatening its strategic control or settlement plans.

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[1] Richmond memorandum, 20 July 1867, MA 13/73b.
[2] Richard Taylor Journals, vol 5, 12 January 1849, qms-1990.

7. There was also a calculated shift by the Crown from open negotiation with tribal collectives, with all hapū present, to individual dealing and, ultimately, an insistence that questions of right be decided within a land court that was far from impartial in its function or its operation. Nor was it equipped to make such decisions.

8. Another important theme is the failure of the Crown to respond meaningfully to sustained demands from Ngāti Raukawa and the tangata heke for the empowerment of their institutions within the governance of the colony; or failing that, or in combination with it, an equal place in the new structures being created. We see this at Kohimarama in 1860, in Grey's new institutions and the way the Native Land Court was developed. Later structures to do with the governance of Māori in particular, or the colony as a whole, also failed to give Māori of the region a meaningful role (although we propose leaving that discussion for the next stage of presentation).

9. An aspect of that seismic shift in power was the reliance of Māori on the advice of agents of dubious character, expertise, and motivation in the unequal (and unwanted) contest they had been forced into with the government; despite the fact that there had been a clear policy commitment to ensuring that Māori were fully informed and were not the unwitting authors of injury to themselves. Even friends of repute came under sustained attack from Crown agents and the local press when the Crown's interests were seen to be under threat.

10. There are two further themes we wish to highlight at this point:

    a. One is the changing characterisation of "Ngāti Raukawa" in Crown discourse from a numerous and powerful tribe whose leaders needed to agree and consent to actions affecting them to one which depicted them as a migrant, fractured people who held no collective standing and whose rights were derived from and were dependent on the sufferance of others. Even worse, there were many among them who were stigmatised as "Hau Haus".

    b. The other is the continuing agency of the tūpuna of the claimants as they struggled to engage with colonisation and the Crown in its many guises – Governors and increasingly powerful colonial and provincial administrations, government ministers, their officials and land purchase officers, local government, the Native Land Court and the "law" in general.

1st Crown purchases

Introduction

11. We begin by focusing on the three major purchases (all in the northern district) which were undertaken by the Crown in the years when Governor Grey and his successors, and McLean and the Native Land Purchase Department he headed, were in control of native policy and its application; and when they were in charge of all land purchase operations.

12. From the perspective of Ngāti Raukawa, the first two of these purchases constituted part of a wider territorial arrangement reflecting joint occupation and reached through

the customary process of gathering together, discussing the issue and coming to a consensus. The area north of the Rangitīkei River went to Ngāti Apa, Ahuaturanga (the area between the Tararua range and the Taonui Stream) was accepted as belonging to Rangitāne to do with as they wished. Between the Rangitīkei and Manawatū Rivers the authority lay with Ngāti Raukawa; it was Nepia Taratoa (Ngāti Parewahawaha) who held the overall say over the coastal plains (where some Ngāti Apa still lived); and it was not to be sold. In our opinion, there is much in the written record of the negotiations for Turakina Rangitīkei to support that view.

13. The purchase of Te Awahou occupies a slightly different space in the historical analysis. The Te Rangimarie submission refers to it as "controversial" and we agree with that assessment. In part, it was seen by those involved as a final stage of that wider territorial arrangement and as satisfying those within the general Ngāti Raukawa collective who were persuaded of the benefits of sale and having large reserves set aside. For rangatira fully convinced that Māori 'should adopt the good customs of the English people' and 'shake off the evil things of a by gone day' this was but the first "plank" in the ship of land holding.[3] For Nepia Taratoa, reluctantly agreeing to the sale, this was 'all' the sellers had 'any concern with' and the remainder was for 'Ngati Raukawa, Ngati Apa, Rangitane and Muaupoko … sitting at [his] feet.'[4]

14. We note that the focus of our discussion was not on the rights and wrongs of those different positions, but on what the government purchase officers were doing. In our view, the tactics being employed represented an interference in rangatiratanga and a deterioration in the standards exercised by officers of the Crown.

Overall Crown policy

15. The acquisition of land generally was intended to establish British control in the region; not only putting settlers in possession of landed properties, but enabling the construction of roads, and preventing the migration of hapū into so-called 'unoccupied' territories.

16. Of particular concern to Grey and McLean and other officials of the time was the prospect of large and powerful tribes uniting under the leadership of senior rangatira in their opposition to European settlement. This was a theme to which they returned often. It was imperative to acquire control over the strategic routes, create reserves for 'loyal natives' - those who were willing to accommodate the Crown's settlement plans – and establish a practical sovereignty through land purchase. Pursuing those goals, Grey and McLean practised a mix of diplomacy, the offering of incentives in various forms, hard talking, and deployment of rangatira who had been already won to their side to persuade others to join them.

17. Undermining the authority of Te Rangihaeata and Te Rauparaha who opposed the further spread of settlement – and persuading Ngāti Raukawa leaders not to support them in that opposition - was an important element within this strategy. And while Grey and McLean were busy trying to isolate those rangatira and undermine their prestige, they encouraged the Kurahaupo iwi to band together against the 'powerful Raukawas'.

[3] Letter of Ihakara Tukumaru, in *Te Karere Maori*, 16 August 1858, p 8Ōtaki minute book, 1C, p 265.
[4] *Wellington Independent*, 16 April 1868, p 2.

18. That was a practice that would be repeated by other officials. From the beginning Ngāti Apa were seen as a counterweight to Ngāti Raukawa, a tribe that was proving troublesome, and thus an important means of securing the safety of settlers on the frontier. The upper Rangitīkei River (where Fox would acquire land himself) was a crucial outpost safeguarding the route into the interior where forces hostile to the Crown might combine.

Rangitīkei-Turakina purchase

19. Grey and McLean would successfully position themselves as peace-makers between contending tribes even though the conflict was largely sparked by their own efforts to purchase land in the region (another pattern to be repeated over the decades that followed).

20. The issue for Ngāti Raukawa leaders was not whether Ngāti Apa had rights to the land to the north of the Rangitīkei River and even to utilise certain areas on the southern bank – that interest was acknowledged. There seems to have been no intention to interfere with their use or to expel them. What was largely at issue was how far Pākehā settlement should come. As Rangihaeata expressed it, letting Ngāti Apa stand had 'occasioned trouble in these days by selling land about the very doors of the Ngāti Raukawa tribe'.[5]

21. McLean and officials who followed latched onto the acknowledgement of Ngāti Apa "occupation" of land between the Rangitīkei and Manawatū Rivers that had been made during the course of tribal discussion at the important Te Awahou hui. The consensus reached at the time (1849-50), however, had been that this area was held under the authority of Taratoa for all and would not be sold.[6] That was confirmed in later land court testimony where it was admitted by Kāwana Hūnia himself. That consensus had been again affirmed 18 months later when the flamboyant Kāwana mounted another brief challenge to Ngāti Raukawa authority. All seemed to go quiet after that incident until the death of Taratoa over a decade later with increasing competition over the right to lease and to sell lands within the area (a subject to which we return later in the presentation).

22. The question of the inland boundary was far less clear as McLean set out to prevent any attempt by Māori to join in the occupation of land there by supporters of Rangihaeata, or by hapū acting under the authority of Te Heuheu. He wanted to secure the route into the interior, fix hapū in their occupation and ensure there were well-located reserves for friendly natives to ensure the safety of settlers who might be subject to (as McLean phrased it) 'annoyances from natives passing to and from Taupo and other parts of the interior'.[7]

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[5] McLean diary, 17 January 1849, MS-1224.

[6] We failed to note in our report and thus draw the Tribunal's attention to the fact that the evidence of McLean who had been called as a witness in the second Hīmatangi hearing undoubtedly damaged the case of the claimants. Ignoring the decision clearly recorded by him at the time of the Te Awahou meeting that the land south of the Rangitīkei River was held under the authority of Taratoa and could not be sold, he emphasised instead the acknowledgements that had been made of Ngāti Apa's interests down to Omarupāpaka. This is noted in Hearn, "One Past, many histories', p 473.

[7] McLean to Colonial Secretary, 6 August 1849, qms-1210.

23. There is much else of interest in the detailed diaries and correspondence of McLean during those negotiations:

    a. McLean had no doubt about who had authority over the region south of the Rangitīkei River, nor that it was absolutely necessary for Ngāti Raukawa to accept Ngāti Apa rights on the northern bank.

    b. He also revealed that he had been less than frank about what he told Ngāti Raukawa about what an acknowledgement of continuing Ngāti Apa "occupation" would mean for them. There was no discussion in his accounts of the nature of that occupation.

    c. He further revealed that if needs must and it proved too difficult to reach a wider tribal consensus on sale of further land, he would start dealing with individual rangatira and hapū.

    d. We also get a detailed account of the sorts of promises and assurances he was making to Māori of the region, eventually winning over important rangatira by emphasising 'the riches they would thereby acquire, the peace it would establish', along with the Crown's 'paternal interest in their welfare and desire to see them amply provided for, not only as regarded their present wants but with a view to futurity'. [8]

24. McLean along with all those engaged in the colonisation of Niu Tireni from Secretaries of State downwards and including the missionaries and settlers assumed that European laws would prevail, ultimately, and that Ngāti Raukawa resistance to sale would begin to break down. In the meantime, McLean advocated a cautious approach. He manipulated and obfuscated but he did not press, especially when there were easier deals to be struck in the Wairarapa and Hawke's Bay. Others would be less cautious, however - more ready to cut corners and apply pressure. And that pressure would increase as the Wellington Province became directly involved in acquiring further land in the region.

Ahuaturanga

25. As part of the wider territorial arrangements Ngāti Raukawa and Ngāti Kauwhata agreed that the area between the Tararuas and the Taonui Stream could be sold under the authority of Te Hiriwanu's branch of Rangitāne.

26. Again, the Crown agent largely responsible for the conduct of the purchase, surveyor James Grindell, played divide and rule tactics between Rangitāne and Ngāti Raukawa, and within Ngāti Raukawa and Ngāti Kauwhata between "non-sellers" and "sellers". He encouraged Rangitāne to "speak with one voice" – arguing that if they were 'disunited by internal dissension they would be laying themselves open to the attacks of the Ngātiraukawas from whom much opposition was to be expected, and that there would thus be much less chance of coming to an amicable understanding with that

[8] McLean diary, 10 January 1849, MS-1222.; McLean to Governor, 24 January 1849, qms-1210.

tribe.'[9] At the same time, he identified a vulnerability in the non-selling stance of Ngāti Raukawa- Ngāti Kauwhata; noting that the supporters of the Kawanatanga among them, 'looking upon Te Hiriwanu as one of their party, appear[ed] disposed to support him, whilst the non-sellers say that his intentions of acting independently of them [was] a piece of assumption.' He anticipated that 'judicious management' would undermine 'any strenuous opposition' and ultimately 'lead to the acquirement of all the lands in the hands of the Ngātiraukawas'.[10] In the short-term, however, Grindell found that he could not fix the western boundary of the purchase at the Oroua River as he had first intended because Ngāti Kauwhata and Ngāti Wehi Wehi had rights to its east and would not sell. As a result, the boundary was set at the Taonui Stream instead.[11] [pp 183-5]

Te Awahou

27. As we noted above, the report argues that, under pressure to acquire land for settlement at a faster pace, Crown purchase officers began to deviate from best practice. In contrast to McLean's former approach of detailed discussion and agreement reached at large scale hui where all endorsed the sale, Searancke pressed ahead, forcing the transaction through, promising to buy undefined lands against the expressed opposition of senior rangatira. This was accompanied by a sustained attack on the integrity of Taratoa, on his rights in the land, and far from veiled threats that if the opposition continued, he would be held to blame by the government. [pp 190-1]

28. In our view, Searancke is condemned by his own words. He argued that the 'opposition of Taratoa and his friends had no feasible grounds', that the rangatira's actions were 'deceitful', and that his opposition to sale had been tolerated for too long. It was not possible in the eyes of Searancke for Taratoa to both oppose the sale of land and yet be a friend to the Crown. This view was widely held by Crown officials with respect to all supporters of the Kīngitanga, despite repeated demonstrations by those communities that they were for peace and cooperation. It is a puzzle to us as to why Taratoa was perceived as "deceitful" – we can only presume that Searancke did not want to hear what he was saying. [p. 191] Crown officials characterised the rangatira as important, or of no account, as it suited.

29. Searancke described his refusal to recognise the authority of Taratoa as a 'bold stroke'. But later while defending the time it had taken to get any purchase through, Searancke accepted that Taratoa's opposition was based in customary rights. It is worth quoting Searancke in full:

> The Awahou purchase was disputed inch by inch and was only completed under considerable difficulty. I am well aware that individual natives have expressed their willingness to sell this land, that is to receive the payment for it, but could they give possession of an acre of it to the Crown – I deny it. It must also be borne in mind that the Manawatu is a conquered country and not inherited from their ancestors, by its present occupants – all therefore have a claim notwithstanding its being portioned off for different tribes or certain individual chiefs – all equally helped to conquer it, and require to be consulted in case of its being offered for sale.[12] [p 199]

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[9] Journal of James Grindell, 19 June 1858, *AJHR*, 1861, C-1, p 277.
[10] Journal of James Grindell, 19 June 1858, *AJHR*, 1861, C-1, p 278.
[11] Journal of James Grindell, 19 June 1858, *AJHR*, 1861, C-1, p 277.
[12] Searancke to Weld, 5 January 1861, Memorandum by Mr Searancke in vindication of his conduct as Land Purchase Commissioner, 5 July 1861, Le1/1861/229.

30. This was something that the government and the Native Land Court would work against over the next thirty years and more.

31. By 1860, there was such support for the anti-land selling views of the supposedly isolated Taratoa that Searancke recommended a halt to all purchase operations in the district. His overall assessment was that 'the natives [were] decidedly opposed from conflicting claims and indirect influences to a cession of any portion of it to the Crown'.[13]

32. The intense debates that were taking place among Ngāti Raukawa and the other tribes settled in the district as to whether to raise the King's flag and what this might mean in terms of their exercise of authority - and whether to join in the fighting - are described in the report at pp 199-209 & 229-36. There were communities identified as supporters of the King throughout the region including Waikanae, Ōtaki/Pukekaraka, Ōhau, Waikawa and Poroutāwhao with links into the Taranaki, Waikato and Wairarapa. This was a nightmare scenario for the Crown and for colonists in general. Given that Ngāti Raukawa included hapū who had supported Te Rangihaeata and who had attempted for the last 20 years to retain control of their lands and stop the spread of colonist power, they were not quite to be trusted; nor it seems were their advisers including Hadfield. Although the Queen's flag would fly from the schoolhouse at Ōtaki, Hadfield's support for Ngāti Raukawa (as for Wiremu Kīngi at Waitara) was increasingly suspect in the eyes of many officials including Fox.

33. We refer the Tribunal to pp 229-36 of the report for recurring themes being debated by Ngāti Raukawa in this period; the clear wishes expressed across the divide of Kāwanatanga and Kīngitanga were for peace and Māori authority over local matters of concern, including land title and law and order: "the substance for the shadow".[14]

Featherston negotiations for the Rangitīkei-Manawatū block

shift of responsibility into the hands of the Wellington Province

34. There is no doubt that the appointment of Featherston as land purchase commissioner and the shift of practical responsibility for land purchase into the hands of the Provincial Government marked a deterioration in Ngāti Raukawa's position and in that of those attempting to prevent further sale of land. Increasingly the whole financial future of the province was wrapped up in the successful purchase of the Rangitīkei-Manawatū block and the pressure was unrelenting. [171-5, 364 & 409]

purchase as the only solution?

35. Featherston, like his predecessors, positioned purchase by the Crown as the only way to solve an intractable problem that Māori were, supposedly, only capable of settling by violence. He was ostensibly brought in to arbitrate an outbreak of fighting in 1863-64. This was an idea that Ngāti Raukawa were willing to support – but which Ngāti Apa refused to countenance. He certainly did not try very hard to convince them of it as their

[13] Searancke to Weld, 5 January 1861, Memorandum by Mr Searancke in vindication of his conduct as Land Purchase Commissioner, 5 July 1861, Le1/1861/229.
[14] State of the Natives in the Wellington West Coast District', *Wellington Independent*, 12 August 1862, p 5.

proper option, and when Ngāti Apa offered to sell instead, he had accepted, provided that it was only for as far as they could prove their interests. There was a crucial exchange which we quote fully at p 268.

36. Featherston accepted Ngāti Apa's offer, disavowing any knowledge of the rights or wrongs of their claim:

> Neither tribe, until its interests have been ascertained, is in a position to hand over the lands in dispute to the Government, and I therefore tell you distinctly that I will not accept the lands. I will not buy a Waitara. All you can offer and all I can accept is the interest which you may be found to have in these lands. Do you clearly understand what I say?

37. He continued in his report of the meeting:

> They were evidently disappointed, and remained silent, consulting, however, among themselves. I repeated two or three times what I had just stated. Their intention in their offer to hand over the lands was simply to have their title to them confirmed, as it were, by the Government, and thus to make the Government the principal in the quarrel.

38. Yet that is exactly what would happen. And though Featherston said that he would accept 'only whatever interest [they] may hereafter be proved to possess in it', signatures began to be collected for the deed without any investigation of, or agreement on, the nature of those interests or where exactly they were located. At some point, what the non-sellers held would have to be defined. The inland boundary and the reserves would have to be surveyed off, but this was an obligation to which Featherston gave no priority at all. They would still be undefined at the point of supposed sale and even as land was on-sold and preparations made for settlers to move onto the block. [p 409]

39. Ngāti Apa were told to 'return to the other side of the river', though they could leave 'a sufficient number of their tribe to look after the disputed cultivations'.[15] At this point (February 1864), Ihakara and Hoani Meihana both expressed their determination not to sell the land themselves or let Ngāti Apa do so.

retention of rents to apply pressure

40. As part of that so-called peacekeeping (as Featherston abandoned arbitration and pursued purchase instead), the leases to which the Crown had been turning a blind eye became an important and effective lever. Featherston apparently won everybody's agreement that he hold the rents for distribution until they had agreed on a fair division. In fact, Taratoa had undertaken such a process on his deathbed, but in the eyes of Ngāti Raukawa, Ngāti Apa had become 'covetous'. [p 260] Be that as it may, the agreement as to division became synonymous with agreeing to sell outright. Withholding of the rents put considerable pressure on Māori to agree to the sale of their land as their usual income was cut off and their expenses mounted. Even after the deed was supposedly finalised and the Crown was trying to make Māori agree to its limited provision of reserves, rents had not been paid out. This was so, even though Featherston often represented the division of rent and purchase monies as an easy matter - far easier to put into effect than sorting out the allocation of land.

[15] Featherston Memorandum for Fox, 18 February 1864, *AJHR*, 1864, E-3, p 38.

use of war measures

41. Adding greatly to that pressure on Ngāti Raukawa as Featherston took over direct control of purchase operations, was the introduction of suppression of rebellion and confiscation measures with which Featherston was associated from the get-go. As he set about his supposed arbitration, he was asked many questions by the people gathered at Ihakara's pa about the recent instructions to resident magistrates regarding supporters of the Kīngitanga and 'how far they had in the eyes of the Government committed themselves, and to which of the three classes they properly belonged.' Were they, Ngāti Raukawa, loyalists, rebels or neutrals? This was followed by Resident Magistrate Buller administering the oath of allegiance and surrender of arms. [pp 270-5] This was too good an opportunity to be lost, Buller reporting that 'I have obtained from Ihakara and Hoani Meihana a distinct promise that they will make this a pretext for offering for sale the large block of land now in dispute between their tribes and the Ngātiapa.' Ihakara [he said] had long wished to sell, but had been 'deterred by the strong adverse feeling at Ōtaki.' However. 'the possibility of future confiscation through this participation in the war (by a section of the tribe) he considers a sufficient argument for his purpose'.[16] At the same time (April 1864), Governor Grey invited those who had remained loyal to send in descriptions of lands so they not be lost. [p 274] At a later date, as the Crown attempted to push its controversial purchase through, Parakaia Te Pouepa (Ngāti Tūranga, Ngāti Rākau, and Ngāti Te Au) alleged that Governor Grey had promised sympathetic consideration of their claims at Maungatautari, if only they would sign Featherston's deed of cession. [pp 307-310]

misrepresentation of rangatira agreement

42. The next significant step in the purchase was a letter written in September 1864. [pp p 275-7] At Wharangi nine so-called representative chiefs wrote to Featherston placing 'Our land between the Manawatū and Rangitīkei Rivers … in your hands, for sale to the Government, as the only means of finally settling our difficulty'.[17] There is no doubt that these were senior men;[18] but they could not speak for the collective without their presence and consent. The signatories said that very thing themselves: this was the 'individual act of a few, the leading men in the dispute, and threatened fight'.[19] The 'general consent of the tribe' was still required for: 'The final decision as to selling or refusing to sell rests of course with the whole tribe… It is only when both chiefs and people are agreed the land can be absolutely ceded'.[20] In a separate letter, Tapa Te Whata of Ngāti Kauwhata endorsed the proposal, Featherston thought, because the impounding of rents and the high price paid for Ahuaturanga had produced their desired effect.[21]

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[16] Buller to Colonial Secretary, 20 April 1864, enclosure 6 in Grey despatch to Duke of Newcastle, 7 May 1864, *BPP*, *Colonies: New Zealand*, 1865–68, Vol. 14, p 35.

[17] Ihakara Tukumaru and others to Featherston, 17 September 1864, *AJHR*, 1865, E-2, pp 4-5.

[17] Featherston memorandum for Colonial Secretary, nd, *AJHR*, 1865, E-2, p 3.

[18] Ihakara Tukumaru, Hoani Meihana Te Rangiotu, Wiremu Pukapuka, Noa Te Rauhīhī, Hori Kerei Te Waharoa, Āperahama Te Huruhuru and Te Rei Paehua

[19] Ihakara Tukumaru and others to Featherston, 17 September 1864, *AJHR*, 1865, E-2, pp 4-5.

[20] Ihakara Tukumaru and others to Featherston, 17 September 1864, *AJHR*, 1865, E-2, pp 4-5.

[21] Featherston memorandum for Colonial Secretary, nd, *AJHR*, 1865, E-2, p 3.

43. At a meeting shortly afterwards, Featherston later recalled, Ihakara had presented him with a 'carved club' named 'Rangitīkei', which had belonged to Taratoa, to symbolise the transfer of the land into the hands of the Crown.[22] He saw this as giving him entire permission, though Ihakara said there were still many matters outstanding; and as Hoani Meihana would later express it, they had been 'only commencing the matter'. They had thought it would be dealt with as the other blocks had been.[23] [p 413]

exclusion of the block from Native Land Court jurisdiction

44. Unknown to Ngāti Raukawa leadership, however, the whole of the Rangitīkei-Manawatū block had been excepted from the jurisdiction of the Native Land Court on the slimmest of pretexts - and beyond even what was pretended - in order to swing the Wellington provincialists behind the Native Lands Act 1862. In essence, the Provincial Government retained the pre-emptive right that was given up elsewhere in the country and this was carried over in the 1865 legislation. Discovery of that fact by Ihakara Tukumaru and the other supporters of the land being sold seriously threatened their relationship with the Crown. It was widely viewed as an offence to their mana. [pp 277-82] It was contrary to one of the main demands expressed at the Kohimarama Conference to be placed in a position of equality with Europeans. [pp 210-6]

45. Ultimately, the exclusion of the block from the Native Land Court's jurisdiction would mean that the Crown would be very heavily invested in it (and in supporting the claims of those whom they had paid) before any formal examination was made as to who, in fact, possessed rights.

Collection of signatures without assessment of rights

46. The pressure on the non-sellers to give into the Crown's demands mounted. As Resident Magistrate Buller touted the deed around and collected signatures–individually, in twos and threes, and some in larger groupings - so did the pressure on the non-sellers increase to do likewise, because this was the only option, they were told - and the only way to retain the friendship of the Crown. All signatures were accepted, beginning mostly with those located furthest away, and all without any discernible discussion of rights and while Featherston continued to hold onto the rents. Buller later told the Native Court, 'I allowed any one belonging to the tribes named in the deed to sign … if they alleged a claim'.[24] Nor did he think that the presence of signatures belonging to those who did not, in fact, have legitimate rights, 'invalidate[d] the deed'.[25] He asked for signatures but it was not his 'practice to investigate claims'.[26] There were allegations, too, of bribery and fraud. [pp 356-8]

lack of real consent

[22] Featherston to Colonial Secretary, 21 August 1865, *AJHR*, 1865, E-2B, p 3.
[23] Notes of meeting, Oroua, 18 November 1870, MA 13.72a.
[24] Ōtaki minute book, 1C, 13 March 1868, p 217. See also 'Native Land Court, Otaki', *Evening Post*, 16 March 1868, p 2.
[25] Ibid.
[26] Ōtaki minute book, 1C, 13 March 1868, p 219.

47. There had continued to be clear opposition to the purchase when the General Government decided to 'clear' Māori from the planned road between Taranaki and Whanganui. Featherston broke off from land purchasing to join the campaign at the head of a combined force of fighters drawn from Muaūpoko, Ngāti Apa and Te Awe Awe's branch of Rangitāne. [pp 284-5]

48. Shortly afterwards (in April 1866), another key meeting took place – this one at Takapu [pp 285-293] As usual, Featherston and Buller under-reported the degree and legitimacy of the opposition while misrepresenting the nature of consent. For those resisting the sale, there was now the added difficulty of facing an armed and emboldened opposition in good standing with the Crown and with Featherston personally.

49. After meeting with Ngāti Apa, Featherston accompanied eight of his nine 'representative chiefs' from Wharangi to Takapu, where Māori had already gathered for preliminary discussions.[27] According to the superintendent, Ihakara and the principal supporters of the sale declined to enter into any debate, but the leading anti-sellers 'availed themselves of the interval … to foment discontent among the people and to create a feeling adverse to the sale'.[28] It was his view that, 'As often happens on such occasions, those who were most zealous in opposing the sale and proposing other modes of adjustment were amongst those who had least claim to the land.'[29] This, he said, had been frequently admitted by the speakers themselves, commencing their kōrero by saying that they only had a claim 'on sufferance'.[30] In fact, as the hui went on, Ihakara Tukumaru had plenty to say and this was fully reported and approved by Featherston. [pp 288-91]

50. Featherston's response? He had been 'dragged into' the matter.[31] He stressed repeatedly that his role was one of mediator only. He had not asked for the job; both the quarrel and the land in dispute had been 'forced' upon him by the three tribes (Ngāti Apa, Rangitāne and Ngāti Raukawa) after other avenues of conciliation had failed.[32] As to the idea of submitting the matter to the Native Land Court, as increasingly the non-sellers demanded, Featherston was scathing of its chances of success – but 'let them say that they will submit their claims to the decision of Judge Parakaia, and he would declare his concurrence in it', he told the gathering.[33] [pp 293-4] Nor was the consent of all required, despite earlier statements to this effect; it would be a 'manifest injustice' if the minority possessing, as he insisted, 'little or no interest in the land' prevented the majority from selling it especially when this was 'the only means of avoiding an inter-tribal war'.[34] He was, he said, 'so confident that the deed would ultimately be executed by all the *real* claimants, that he had no difficulty in publicly announcing his acceptance of the block, and in congratulating them upon this long-standing feud being thus amicably settled and finally adjusted'.[35] [p293] When the deed was supposedly

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[27] Te Huruhuru was not present, however, having declared himself a non-seller at this stage; Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 24. Attendees are listed on p 287 of the report.
[28] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 24.
[29] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 24.
[30] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 24.
[31] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 24.
[32] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 28.
[33] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 28.
[34] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 28.
[35] Notes of various meetings … March and April 1866, *AJHR*, 1866, A-4, p 29. Emphasis added.

completed (in December 1866) a portion of the final payment was set aside for non-sellers to be held on their behalf but which the government took no responsibility for ensuring was distributed. [pp 310-8]

51. An immediate stream of letters, statements and delegations from rangatira protesting what had happened at Takapu undermined the credibility of Featherston's version. [pp 294-301] There were senior leaders (Parakaia Te Pouepa, Te Herekau. Te Huruhuru, Paranihi Te Tau and Hare Hemi Taharape among others) who continued to oppose the sale. Some serious allegations were also made about Featherston, namely, that he was using the numbers of Ngāti Apa's allies and their recent armed support for the Crown to bully Ngāti Raukawa into acquiescence. They alleged that he had announced:

> There are eight hundred of Whanganui, there are two hundred of Ngatiapa, Rangitane and Muaupoko are one hundred, but you O Ngatiraukawa are a half – a small portion. Another word of Dr Featherston's was – "We went together with these tribes to fight against the rebel tribes upon the authority of the Queen; they have consented to the sale. I have agreed to their (proposal). This land is in my hand." [36]

52. We note that there would be other claims that Featherston, although he often spoke of the need for obedience to the law, was, in fact, turning a blind eye to – even encouraging - Ngāti Apa to take armed action against Ngāti Raukawa over contested surveys, leases and court sittings. In this context we note, in particular, the incident over Gotty's sheep in July 1868 described at p 363 of the report. We have looked more closely at these allegations in a separate gap-filling exercise and intend to give further evidence on the matter in the second stage of hearings.

53. Given the lack of proper investigation into ownership, it is far from clear how many right-holders had refused to sign or had been ignored by the time Featherston paid out the final purchase monies at Parewanui in December 1866 - an event described to Judge Rogan as the 'climax of all land purchases' when 'Mr Buller and Dr Featherston drove in a dog cart to Rangitīkei, spilled £25,000 out to be scrambled for, and left the settlement.'[37] The figures varied widely. Featherston maintained that they were few and their rights negligible. Hadfield suggested that there were nearly 400.[38] A relatively disinterested observer, EW Puckey, also reckoned (in November) that as many as 392 persons remained opposed to the purchase.[39] [p 301]

54. On the other hand, it is equally unclear who the 1,700 signatures on the deed represented; essentially the deed was a mass of signatures of individuals collected at different places and dates and cannot be seen as representing hapū consent reached in the open light of day with the consensus of all that held rights.

Fair-play in the Native Land Court?

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[36] Underneath this statement were listed the names of Ngāti Raukawa, Ngāti Whakatere, Ngāti Huia, Ngāti Parewahawaha, 'NgāttieTangi', CTūranga, Ngāti Kauwhata, Te Mateawa, Ngāti Pikiahu, Ngāti Kahoro, Ngāti Rākau, Parakaia Te Pouepa and Henare Te Herekau; Letter to Assembly, 14 April 1866, *AJHR*, 1866, A-15, pp 4-5.

[37] Rogan to Chief Judge, 26 June 1871, Papers relative to the working of the Native Land Court Acts, *AJHR* 1871, A2A, p 13.

[38] *Wellington Independent*, 30 May 1868, p 4

[39] Memorandum of Puckey, 13 November 1866, MA 13/70c.

55. In light of the storm of protests and petitions, continuing trouble on the ground, and serious doubts about the integrity and effectiveness of Featherston's procedures, the Crown agreed to submit the question of ownership to the Native Land Court. Native Minister Richmond commented that

> The Government have never yet recognised the right of a majority in a tribe to override the minority…. Whilst refusing to countenance a small section in pressing their communistic claim in mere obstruction of all dealings by the rest of the tribe, they have at all times been consistent in recognising to the fullest extent the proprietary claims of every bona fide owner.[40]

56. But was the Native Land Court capable of making an impartial determination of bona fide ownership when so much was at stake for the Crown and for the Wellington Province?

57. We do not intend to detail here the extensive and often contradictory evidence that was heard [see pp 343-55 & 373-9] nor the Court's two findings which we see as contorted, as based on political convenience, contrary to custom, and as inherently illogical and unjust to the Ngāti Raukawa collective whose interests were reduced first to a half share and ultimately, to those small patches of land on which the "non-sellers" could demonstrate cultivation and residence. The whole notion of authority deriving from "conquest" in which all equally participated followed by occupation of allocated portions was disregarded. Instead, such rights as Ngāti Raukawa enjoyed were seen as those of individual hapū living on the land on the sufferance of Ngāti Apa who were represented in the second finding as the firm allies of Ngāti Toa. We argue that the many earlier observations (including from Te Rauparaha himself) suggest that they were far from that. [pp 119-31]

58. We focus instead on the role played by the Crown and whether we think that it was possible for the Native Land Court to reach an impartial decision in the circumstances we have outlined above. Our firm conclusion is "no".[41]

59. The first major point is that this was an unequal contest weighted against Parakaia Te Pouepa and the other non-sellers by the thousands of pounds that had been paid down.

60. Further, the Crown threw its weight directly behind the counter-claimants, acting in the capacity of "opponent". There had been nothing in Ngāti Raukawa's first engagement with the Court at Ōtaki to prepare them for the ferocity of a Crown-assisted opposition; indeed, an early counter-claim by Kurahaupo to land around Ōtaki had been rejected out of hand. [pp 513-4] Nor were they prepared for the virulence of personal attack by the Crown lawyer and former Premier William Fox, especially when the conductor of their own case (T C Williams), though passionate and articulate, was not himself a lawyer.

61. But why was the Crown involved at all? The second wave of applicants (after the first Hīmatangi decision) objected to the presence of the Crown at the next session, held at Rangitīkei rather than Ōtaki, after some successful manoeuvring on Fox's part. Their objection that the Crown had derived its right from sellers and the Native Land Act 1867 section 40, which provided for the entire Manawatū block to be heard again, also

[40] Richmond to Featherston, 11 November 1866, MA 13/70c.
[41] In this context we also refer the Tribunal to the gap-filling report recently filed.

stated that 'no claim by and no question relating to the title or interest of any Native who shall have signed the said deed of sale shall be so referred…' was overruled.[42] A petition headed by Henare Te Herekau summed up the inequitable situation they were in:

> [T]hey found their claims opposed by all the power, prestige and influence of the Crown represented by the Superintendent of the Province, the Resident Magistrate of the District [Buller], an official Interpreter of the Resident magistrate's Court at Wanganui, and an English barrister recently Prime Minister of the Colony.[43]

62. Arguably they were in a better position when the second hearing got under way in mid-1869, being represented by a lawyer of some repute (W T Travers), but still with Attorney General Prendergast conducting the Ngāti Apa case.

63. Ngāti Raukawa had to 'prove a perfect title'.[44] The Crown, despite the concerns expressed by Richmond, did not have to prove anything with respect to itself – it just had to show that Ngāti Raukawa rights were not exclusive. In fact, the Native Land Court reached a preliminary view in very short order. When the Attorney General had finished his opening address, Chief Judge Fenton indicated that 'it would not be necessary to examine the witnesses for the Crown on the alleged subjection of the Ngatiapa to a condition of slavery and dependence, as it appeared to the Court from the evidence before it that the case for the claimants had entirely failed on that point'.[45] Nor did the Crown have to show that those signing the deed had done so with the consent of the hapū to which they belonged.

64. After six weeks of evidence, the Court reached its decision within an hour: Ngāti Raukawa had not acquired 'dominion'through conquest; nor had they acquired rights as a 'tribe' through occupation – only Ngāti Kahoro, Ngāti Parewahawaha, and Ngāti Kauwhata had done so. Of the more than 500 claimants before it, the Court ended up admitting only 65 persons entitled to a grand total of 6,500 acres. [pp 376-85] The Court ignored the fact the Crown's alleged purchase had been made possible by gaining signatures from individuals of Ngāti Apa, Whanganui, Kahungunu and Ngāti Raukawa, many of whom were non-residents.

65. We note that while the various non-sellers had been attempting to protect their rights in the Rangitīkei-Manawatū, the Native Land Court was ruling against them in their original homelands in South Waikato and Maungatautari. There, they were deemed to have been "conquered" and to have lost all rights, despite acknowledgement by the Māori King that this was not so and attempts to show that they had left people on the ground and went back and forth. An effort by Ngāti Kauwhata and Ngāti Wehi Wehi to gain redress through a lengthy commission of inquiry established in response to their earlier petition proved expensive but ineffective. [pp 365-73 &735-40]

The purchase still incomplete

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[42] The legal advice from Attorney General Prendergast was that the Crown had been 'properly admitted as an opponent but not a counter-claimant' in the case and that he saw nothing in the course adopted as offering any 'impediment to full and fair hearing and impartial decision of the claims'. 16 November 1868, MA 13/73b. See gap-filling report.

[43] Petition of Te Herekau and others, 13 November 1868, MA 13/73b.

[44] Petition of Te Herekau and others, 13 November 1868, MA 13/73b.

[45] *Wellington Independent*, 7 August 1869, p 2.

66. Once the court's judgment was delivered to the applause of Featherston, he moved quickly to have the native title extinguished. The General Government complied on his assurances that the boundaries of the lands awarded by the court had been defined. [pp 389-90] This was clearly premature. The boundaries had not been established on the ground and the opposition to the survey was such that McLean had to be called in to negotiate a settlement. [pp 393-406]

67. Dissatisfaction was shared by sellers and non-sellers alike. All were in a state of "affliction" and there was growing distrust of McLean as well. They had been "humbugged" about the reserves which had failed to materialise or were extremely limited; hapū based at Te Reureu had been rendered landless by the court on the grounds that they had settled there after 1840;[46] and the monies had not been properly distributed. Concerned about the threat to the peace of the colony, the possibility of aggrieved and dispossessed hapū making common cause with existing enemies of the Crown, and the growing possibility that the whole purchase might be repudiated, McLean sought to patch up Featherston's questionable and undoubtedly sloppy purchase. Ultimately a mixture of expanded reserves, monetary compensation and modified boundaries[47] was negotiated. [pp 410-35] The grievances of Parakaia Te Pouepa's people at Hīmatangi were dealt with separately in a struggle that lasted over a thirty-year period as described at pp 450-88 of the report.

68. Although there were numerous acknowledgements that the conduct of the Rangitīkei-Manawatū purchase had fallen well short of good practice, that the reserves had been inadequate, and that the Native Land Court award had dispossessed some groups entirely, redress was offered only as an 'act of grace' not as an admission of government wrong-doing. The vast bulk of the land was gone and that would not change; and any land that was offered back would be under a transformed tenure.

69. The impact of that transformation on the few areas that Māori had retained north of the Manawatū River – the undermining of hapū control, fragmentation of title and vulnerability to alienation – is discussed with reference to Aorangi block at pp 606-14 of our report while the subsequent loss of the reserves has been detailed by Dr Husbands.

70. We end by returning to one of the themes noted in our introductory remarks. By this stage, many of the hapū concerned were heavily in debt and reliant on the services of European advisors in both business and government matters. The role played by McDonald and Buller over the course of the purchase of Rangitīkei-Manawatū and the subsequent loss of land and autonomy is quite remarkable. In the case of McDonald, championship of rights in the Native Land Court was trammelled with costs, and eventually corrupted into an abuse of business arrangements over the land; a betrayal of trust and friendship. His capacity to do this exposes a system of mortgaging that disguised the extent of the alienation that had actually occurred in the lands remaining. [pp 435-41] Buller, on the other hand, a Crown agent complicit in the way Rangitīkei-Manawatū had been acquired by the Provincial Government against the wishes of Parakaia and his hapū, ended up supposedly championing their cause, but acting very much in his own self-interest. After much campaigning they received a circumscribed

[46] Ngāti Pikiahu, Ngāti Waewae, Ngāti Matakore and Ngāti Rangatahi were identified as such.
[47] At Taonui Ahuaturanga; see pp 443-50

measure of redress but at considerable cost in financial terms and in terms of their rangatiratanga.