IN THE WAITANGI TRIBUNAL

WAI 2200
WAI 113(A)

UNDER The Treaty of Waitangi Act 1975

AND IN THE MATTER of the Porirua ki Manawatu Inquiry

AND IN THE MATTER of a claim by Sir Edward Taihakurei Durie on behalf of Ngati Tahuriwakanui (Wai 113 A)

THE RANGIMARIE NARRATIVE

Emeritus Professor Sir Mason Durie, Hon Sir Edward Taihākurei Durie and Professor Meihana Durie

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TO CHAIR AND MEMBERS

Porirua ki Manawatū Inquiry

WAITANGI TRIBUNAL

The Rangimarie Narrative

A statement by Emeritus Professor Sir Mason Durie, Hon Sir Edward Taihākurei Durie and Professor Meihana Durie of Ngāti Kauwhata and Rangitāne.

PART A: INTRODUCTION

Qualifications

1. This statement is made for Ngāti Tahuriwakanui hapū of Ngāti Kauwhata, in support of the claim on their behalf under Wai 113A.[1] As will be shown, it is relevant to this statement that we are also members of Ngāti Te Rangitepaia, a hapū of Rangitāne.[2]

2. Our purpose is to give evidence and expert opinion in relation to two Native Land Court decisions of 1868 and 1869 respectively, by which various groups of Ngāti Raukawa (a confederation of hapū and iwi which includes Ngāti Kauwhata) were deprived of most of their Manawatū lands. This introduction has been compiled as Part A. Part B discusses the context for the decisions. Part C concerns the Courts' findings. Part D reviews the Rangitāne lands on the lower Manawatū river at the time of settlement and Part E is a conclusion.

3. The narrative involves issues of western and customary law. Our qualifications as pukenga in those areas are as follows.

[1] Ngāti Tahuriwakanui are based at Aorangi marae near Feilding. They are known also as Ngāti Tahuri.

[2] Ngāti Rangitepaia are based at Te Rangimarie marae at Rangiotu, on the Palmerston North to Hīmatangi Highway beside the Oroua river. Rangitāne is known as Rangitāne, Ngāti Rangitāne and as Tanenui-a-Rangi. Today the main branches of Rangitāne are in Manawatū, Tamakinui a Rua (Dannevirke district), Wairarapa and Te Tauihu. At 1840 the Rangitāne of the Manawatu and Tamakinui a Rua were seen as the same people. Te Hirawanui, the leading rangatira on the Manawatū side of Apiti (the Manawatū gorge) lived also on the Tamakinui a Rua side of the gorge.

Professor Sir Mason Durie, who resides in the home of his great-grandfather at Aorangi marae, graduated in medicine from Otago University and in psychiatry from McGill University, Canada. He has been a Director of Psychiatry at Palmerston North Hospital, a Commissioner of the Royal Commission on Social Policy, Chair of the Taskforce on Whānau Centred Initiatives that led to Whānau Ora, a Commissioner of the New Zealand Families Commission, a member of the Inquiry into Mental Health and Addictions, Professor of Maori Research and Development and Deputy Vice-Chancellor at Massey University. His book, Te Mana Te Kawanatanga the Politics of Māori Self-Determination remains a standard text for tertiary students.

4. From an early age he took a deep interest in Ngati Kauwhata, Ngati Raukawa and Rangitāne history and whakapapa and has written extensively on aspects of Māori history. He was the foundation Chair of Te Rūnanga o Raukawa, Deputy Chair of Te Wānanga o Raukawa and served on the Mana Whakahāere Council of the Wānanga for over 20 years. He is most known for his transformational work on Māori health and education based on Māori mātauranga, tikanga and kaupapa and for his extensive writing and lecturing in these areas which earnt him recognition from the Polynesian Society and led to his engagement on the Māori Advisory Committee of the New Zealand Law Commission which is responsible for the development of New Zealand law.

5. He helped to establish two new secondary schools in Palmerston North promoting high academic and sporting success for Māori students and which developed from out of Aorangi marae.

6. From 1964 Sir Edward (Taihākurei) Durie advised on Māori land issues as a lawyer and from 1974 as a Māori Land Court judge. He became Chief Judge of that Court and Chair of the Waitangi Tribunal in 1980. He has since worked with

government groups in Canada, the United States, Australia and South Africa on indigenous peoples claims and self-governance. In 1994 he produced a paper on custom law developed in association with the Tribunal kaumātua. He has also dealt with issues of tikanga and law as a commissioner of the New Zealand Law Commission. Since his retirement from the High Court, to which he was appointed in 2000, he has given evidence on tikanga Māori before the Waitangi Tribunal and in an arbitration on tribal entitlements in Te Arawa. As chair of the New Zealand Māori Council from 2012 until his retirement in November 2019, he dealt with issues of custom in Māori policy development. He has honorary doctorates from three universities for his work in the areas of both Māori and Western law.

7. Professor Meihana Kākatārau Durie is the head of Te Pūtahi ā Toi, the school of Māori Knowledge at Massey University. He was formerly the Hohua Tutengaehe Postdoctoral Fellow for the Health Research Council of New Zealand and Visiting Indigenous Scholar at the Native Hawaiian School of Health University of Hawaii, and has held the positions of Kaihautū/Academic Director for the Faculty of Te Reo Māori Studies, the Faculty of Māori Health Studies and Ngā Purapura of Te Wānanga o Raukawa, Ōtaki.

8. Professor Meihana is a kaikorero, cultural advisor, kaiako, kaiāwhina or tutor for a range of Māori institutions, is a judge for the Ngā Manu Kōrero Competitions and is the current chair of the Aorangi marae trustees. He has been or is involved in several research projects, his areas of research expertise being in Mātauranga Māori, Te Reo Māori, Māori and Iwi Narratives (Kōrero Pūrakau), Hauora, Māori Education, Māori potential and development and Māori creative arts.

9. We claim to present as pukenga in Māori land law and practice, custom and traditional history. In claiming to present as pukenga we acknowledge that we are also members of the

claimant community and declare our conflicts in that respect.

10. Part C includes a recounting of Ngāti Tahuriwakanui oral tradition. Our qualifications as pūkenga in this tradition derive from our direct descent from the primary actors involved in those traditions, from the tuku of those traditions to us, from our subsequent experience in the field as given above. and from the studies we have undertaken which corroborate those traditions from written sources.

11. The essential evidence is that our forebears were involved in an 1830's agreement to settle a battle between Ngāti Tahuriwakanui of Ngāti Kauwhata and Ngāti Rangitepaia of Rangitāne which led to a marriage to settle the peace. The peace drew together Ngāti Kauwhata, Ngāti Raukawa and Rangitāne and led to joint living arrangements along the rivers that were the gateway to the Manawatū heartland.

12. The marriage was of the grandparents of Sir Mason and Sir Edward's grandfather and Meihana's great grandfather. There are many descendants but of those identifying as Ngāti Tahuriwakanui, Sir Mason and Sir Edward's grandfather, Hoani Meihana Te Rama Apakura (JM Durie) was the primary source for that part of the tradition that is now in writing.

13. To appreciate the strategic significance of the peace arrangement the land should be envisaged as it was at the time. Central Manawatū was so heavily wooded and intersected by swamps, that the interior was almost impenetrable. The only easy access was by the Manawatū and Oroua rivers. Ngāti Rangitepaia and Ngāti Hineaute hapū of Rangitāne controlled the route along the Manawatū river to the Oroua valley while Ngāti Kauwhata had the control of the Oroua river. The peace saw Ngāti Raukawa and Rangitāne communities living side by side along much of the Manawatū and Oroua waterways, with equal access for all.

Why this statement is made:

14. In 1868 and 1869 the Native Land Court gave different decisions about the ownership of the 240,000 acre, Rangitikei-Manawatū block. The first, which we call the "Hīmatangi decision", found that Ngāti Raukawa groups owned equally with Ngāti Apa. While Ngāti Raukawa thought that was bad, worse was to come. The second decision, which we call the "Rangitikei-Manawatū decision" found that the whole of the land was owned by Ngāti Apa, apart from some small occupations to which Ngāti Apa had purportedly consented. These were occupations of Ngāti Kahoro and Ngāti Parewahawaha on the coastal flats of the Rangitikei river, and some larger occupations by Ngāti Kauwhata in the Oroua valley.

15. The underlying context is that Ngāti Raukawa as a whole were strongly opposed to land sales but Ngāti Apa were willing sellers so long as they got reserves. The decisions rejected the claims of the Ngāti Raukawa hapū to the exclusive ownership of Manawatū, notwithstanding that the Ngāti Raukawa hapū were by far the more numerous on the ground. The decisions took away their political status and their vision of a permanent reserve for their descendants. Government later appeared to retreat from its support for the second decision by allowing some concessions, but it was still the second decision that caused the vast land loss and the denial of customary status. The view of the Ngāti Raukawa confederation has been and still is that the decisions were demonstrably wrong in fact, and that the Courts were biased to the Government.

16. As much as Ngāti Raukawa protested the decisions, the Government and the settlers applauded them as a resounding

victory.[3] For the central government they proved that the colony's slender funds had not been wasted and the government could remain solvent. For the provincial government it meant that the Manawatū province would be settled by Europeans. For the scrip holders it meant they were about to get the land they had been promised for years. For the many new settlers pouring in or eager to do so, it meant a new life and an escape from countries facing the consequences or prospect of political or social upheaval. Ngāti Raukawa would not sell the land but now it was official, that Ngāti Raukawa did not own it. On the other hand, Ngāti Apa, as if to whakahē Ngāti Raukawa, as utu for their invasion, had purported to sell it; and now it was official that they were right to have done so.

17. Ngāti Raukawa have consistently protested that both decisions were patently wrong. We now contend that the decisions were fraught with errors of process, fact and omission. That conclusion is supported by the independent witnesses, Professor Boast and the "Anderson team", of Dr Anderson, Dr Green and Mr Chase.

18. This is the first time that Ngāti Raukawa has been able to make an official challenge. There was no right of appeal in the day without the Government's agreement and it could be presumed that that agreement would not be forthcoming given that the Government opposed the Ngāti Raukawa claims before the Court.[4]

19. In addition, Ngāti Raukawa were not included in the Sim Commission Inquiry of 1926. The Commission considered the confiscations and excessive acquisitions throughout the country.

[3] Technically, the second decision replaced the first and it was only the second that the government applauded. However, we see the second decision as having built upon a principle established in the first and for current purposes, we include both of them.

[4] Under s 81 Native Land Act 1865, an appeal could be made only by the Governor in Council. In this instance the government had an interest in the outcome that was adverse to Ngāti Raukawa. In addition, Ngāti Raukawa were not a party to the decisions. Only certain individuals claiming to be non-sellers were parties and were able to appeal.

Following its report, Māori Trust Boards were established to manage annuities for the benefit of the associated tribe. Those other tribes have had the benefit of those funds and administrative capacity building for over 100 years. Ngāti Raukawa had lost most of Manawatū, and we think, a higher proportion of its lands than any other iwi of the North Island, but were not included in the inquiry. Nor could they have been. A presumably independent Court had said Ngāti Apa owned it, Ngāti Apa had other lands (over 41,000 acres as reserves) and that would have been the end of the matter. Ngāti Raukawa would have been better off if the lands had been confiscated because of their involvement in the New Zealand Wars. If that had been done, then following the pattern of events in Taranaki, they would then have had reserves, an income from 1926, and a hearing in the 1990s rather than 2020.

20. Ngāti Raukawa continue to be haunted by the decisions today. This is especially the case when questions of "mana whenua" arise. They arose for example in the 1990s on the allocation of commercial fishing entitlements, the recognition of customary fishing rights and the forging of relationships with local authorities. The risk is that unless the Tribunal is able and willing to make findings with regard to the decisions, they will haunt Ngāti Raukawa again on any negotiations to settle their Treaty claims.

What we will cover, and how:

21. We will seek to cover those things that support or do not support our assertions that the framework within which the Court operated was wrong, the Court's findings were wrong and critical matters were omitted.

22. We understand that some of the alleged wrongs will be covered by other claimants and so we will focus on those within our specialist knowledge. We will also flag where we know that

another statement is intended.

23. The exclusion of Rangitāne from interests in the block is considered too, but not to make a case for Rangitāne. It is to further illustrate the Courts' errors.

24. The limitations on the Native Land Court judges are acknowledged. They lacked access to the expert witnesses and autochthonous law studies that are now available. For example, from the 1980s a course in Tikanga has been offered by Te Wānanga o Raukawa. The early judges however, had frequently to rely on anecdotal evidence or personal experience while sitting outside of the tribes. Today's judges may come from within a tribal experience or from a revised scholarship that qualifies them to rethink past Native Land Court decisions.

25. Many Judges also lacked legal qualifications or, as in the second decision in this case, their judgments lacked judicial analysis and ostensible impartiality.

26. However, not just the Court was responsible for what the Court did but the Government that set it up. There were better options than the Native Land Court in our view, of which the Government ought to have been aware. It ought to have been obvious too, that the second decision was unjust, and that the Government could and should have intervened in the interests of equity and good conscience, just as the Government had done in respect of other Native Land Court decisions.

27. Māori themselves, are also more able to assist than their forebears. Our forebears knew more of the custom but today's leaders, who walk in both worlds, can better explain it. Today's Māori are more accustomed to educating Pakehā on Māori perspectives, and Pakehā are now more receptive to Māori world-views.

28. Nonetheless, most of the popular histories of the day,

although they were written by Europeans, supported the Ngāti Raukawa stance. That is not an argument that we take too far, however. TC Williams and Travers who led the written attack on the Court, were not neutral but had acted for Ngāti Raukawa; and those who came later, like Buick, may have been influenced by their largely unchallenged expositions.[5] There was also room for bias amongst those of a contrary view. Sir James Wilson, who sided with Ngāti Apa in a publication of 1914, worked for the Government and lived alongside Ngāti Apa, at Bulls.[6]

29. Of the modern, independent and professional historians, Professor Keith Sorrenson criticised the decisions as a "complete misrepresentation of the situation at 1840".[7] Those are strong and unambiguous words. On the other hand Angela Ballara, a foremost authority on tribal history and Māori political constructs, repeats the Court's account of a perpetual peace between Ngāti Toa and Ngāti Apa in her text on *Iwi* and in her account of Te Pikinga in the Dictionary of New Zealand Biography.[8] She does not mention the other side of the case however, and also relies on a government report of 1858 by WL Searancke. He was not neutral either, having led the purchase of the adjoining Te Awahou block on the government's behalf. Therefore, to assess the Courts' comprehension of native custom in the 1860's decisions, we turn to our own traditions and especially those traditions that the Courts omitted to consider.

30. Of those events and circumstances that the Court failed to consider, the most dominant in our traditions concern the Ngāti

[5] Thomas C Williams *New Zealand: The Manawatu Purchase Completed or the Treaty of Waitangi Broken* Williams and Norgate, London, 1868. WTL Travers *Some Chapter in the Life and Times of Te Rauparaha, chief of the Ngāti Toa* Wellington 1872, Christchurch 1975. TL Buick *Old Manawatū, or, The Wild Days of the West* Buick and Young, 1903, 1975.

[6] James G Wilson *Early Rangitikei* Whitcombe & Tombs, Christchurch, Wellington, Dunedin 1914.

[7] Sorrenson MPK *The Purchase of Māori Lands, 1865 – 92*, MA Thesis, University of Auckland, 1955 p 69. Cited in the Parewahawaha oral and traditional history report in *He Iti Nā Mōtai* doc.H1 p 25.

[8] Angela Ballara. 'Te Pikinga', Dictionary of New Zealand Biography, first published in 1990. Te Ara - the Encyclopedia of New Zealand, https://teara.govt.nz/en/biographies/1t56/te-pikinga (accessed 6 October 2019). Angela Ballara *Iwi: The dynamics of Māori tribal organisation from c. 1769 to c. 1945* Victoria University Press, Wellington, 1998 p 245.

Raukawa endeavours to conclude consensual arrangements with the iwi taketake for the settlement of the land. These include the allocation of lands for Ngāti Apa, Muaūpoko and Rangitāne, the alliance with the upstream Rangitāne of Ahuaturanga, and the peace agreement with the down-stream Rangitāne. This is part of the story of Ngāti Raukawa that is incomplete in the published histories. On the basis of the narrative to come, we contend that **the lawful settlement of Ngāti Raukawa in the inquiry district, in accordance with tikanga Māori, was on the basis of conquest, possession and consensus.**

31. Our statement will address, in Part C:

a) The alliance of Te Whatanui with Rangitāne of the upper Manawatū river in battles with Ngāti Kahungunu. This led to an arrangement which saw Te Whatanui and the last set of migrants effect a peaceful entry into Manawatū-Horowhenua via the Tararua ranges. It also led to Rangitāne taking the Ahuaturanga block with the agreement of Ngāti Raukawa.

b) The protection of Muaūpoko at Horowhenua following a chance encounter with Muaūpoko while crossing the Tararua ranges. In our traditions, it was this act of grace from a hard-bitten warrior that most impressed the Rangitāne leader, Te Rangiotu, of the very substantial fighting pa of Puketotara and which led to the peace agreement below.

c) The division of the land between Ngāti Raukawa, Ngāti Apa and Rangitāne.

d) The peace agreement of Whatiwhati Taiaha between Ngāti Kauwhata and Ngāti Rangitepaia, a hapū of Rangitāne on the lower reaches of the Manawatu river, following the battle over the Taonui repo. This was sealed by the union of Enereta Te One of Ngāti Tahuriwakanui and Hoani Meihana Te Rangiotu

of Ngāti Rangitepaia. As earlier indicated, it is from this union that we three descend.

e) The extension of the agreement to Ngāti Hineaute of Rangitāne of the lower Manawatū, and to Ngāti Raukawa, through the marriage of one daughter of the union to Hare Rākena, son of Te Aweawe and the other daughter to Te Rama Apakura, son of Erana Tuporo of Ngāti Takihiku and Ngāti Kauwhata and of Robert Durie, whaler of Kāpiti.

f) The subsequent threat to that agreement by a territorial dispute at Tūwhakatupua and the affirmation of the peace which this time was memorialised by the fashioning of three mere, one of which was placed with King Tawhiao as the ultimate representative for the preservation of peace.

g) The further memorialising of the peace by Hoani Meihana when relocating Puketotara Pā from the Manawatū river to Oroua Piriti. He did this by re-naming the marae as Te Rangimarie, and naming his grandson as Manawaroa in recognition of the steadfastness of Ngāti Raukawa in adhering to the peace.

h) The marriage of Manawaroa to Rangingangana of the whanau of Te Whatanui, and the marriage of their child Wiremu Kingi Te Aweawe to Pipi, of the whanau of Matene Te Whiwhi, of Ngāti Raukawa and Ngāti Toa, and the adoptions of Tamihana, brother of Hare Rakena, of Atareta of Ngāti Kauwhata and kuia of the Poananga whanau and of Marore, descendant of Te Rauparaha, and her daughter Ada, who married Taylor Whitirea Brown and settled next to the site of Parewahawaha marae.

i) The joint living relationships that resulted over a large land estate. These extended along the Oroua river from Aorangi to Rangiotu on the Aorangi block, over 20 miles in a straight line, and the same length again on both sides of the Manawatū river to about Hotuiti, midway between Foxton and Shannon.

j) How the above arrangements were in line with Native custom, or tikanga Māori, including the custom of moenga rangatira and hohou i te rongo.

32. 'Ngāti Raukawa' can mean either the sum of the descendant hapū, or a confederation of the district hapū and iwi. Unless the context otherwise requires, 'Ngāti Raukawa' in this paper means the confederation. That usage has existed since the migrations and the same use today is apparent from the constitutions of Te Runanga o Raukawa, the Raukawa ki te Tonga Trust (the Mandated Iwi Organisation for fishing purposes) and the Raukawa Trustees for the Raukawa marae. Accordingly, 'Ngāti Raukawa' means the confederation of Tainui hapū and iwi who took permanent occupation of the lands from Waitapu to Kukutauaki. To illustrate, the term includes Ngāti Kauwhata who do not trace descent from Raukawa but from Whatihua, who was the older brother Tūrongo, the father of Raukawa.

33. For cultural reasons, we also use "the Government" to mean "the Crown" as understood in the Treaty of Waitangi Act 1975. By doing so we respect the Rangitāne tradition that 'the Crown' meant 'the Queen'. In their view the Queen was not the cause of the wars, it was the government, and accordingly when they went to war it was to support the Queen, not the government. They described themselves as neutral, or kūpapa, an honourable term to describe how they remained seated when other Māori made a call to arms and how, when they went to war, they

described themselves as Queenites, fighting to uphold their promise to the Queen. [9]

34. Our Rangitāne traditions are therefore averse to making claims against the Crown when they should be against the Government but for the purposes of the Treaty of Waitangi Act, we use "the Government" to mean the Crown. However, it is our view that "the Crown" as used in the Treaty of Waitangi Act means more than it does when the same is interpreted by the New Zealand Courts. As is well known, the New Zealand Courts, unlike those in the United States for example, cannot strike down legislation and so the term "the Crown" in a statute is ordinarily taken to mean the Crown in its executive capacity. It does not include the Crown in its legislative capacity. Nor does it include the Crown in its legal capacity for the Courts have their own system for internal rectification. However, the same interpretation cannot apply to restrict the operations of the Waitangi Tribunal, which is not a Court, and which is specifically empowered to examine the Crown in both its executive and legislative capacities. It is quite different from the ordinary Courts in that respect.

35. That raises the question of whether the Tribunal can go further and examine the operations of the Native Land Court. In our opinion it can. The Tribunal can examine the operations of the Crown in the exercise of all aspects of its sovereignty, including each of its executive, legislative and legal dimensions, but limited to whether the overall exercise of governance was consistent with the Treaty of Waitangi. This takes a purposive approach to the Act's interpretation which is to ensure that Māori are not constrained in giving expression to their legitimate concerns of prejudice in the national governance of the country,

[9] Dr Featherston appears to have expressed this perspective of why the Native Contingent went to war, when he is reported to have said " all these tribes went with me to fight against the tribes who are fighting against the Queen's troops" Parakaia Te Pouepa to Queen, 4 July 1867, *AJHR*, 1867, A – 19 p 6. Interestingly, they did not regard "kupapa" as a derogatory term as it is now thought to be but as meaning 'neutral' or 'those who hold to the status quo'; and they saw themselves as maintaining the status quo as settled in the Treaty of Waitangi.

and with the objective that the past can be fully exposed, acknowledged then put to rest.

36. We use "iwi taketake" to refer to the people who were here when Ngāti Toa arrived in about 1821, namely Ngāti Apa, Rangitāne and Muaūpoko, of the Kurahaupo waka which had landed at Mahia at about the same time that the Tainui waka made landfall at Kawhia . "Iwi taketake" translates as those who were previously in occupation. We see this as more accurate than "the original occupiers" as used by the Native Land Court, since they were not the original occupiers. Iwi taketake is also more helpful than "mana whenua" which emerged as a term in the 1860s with some doubtful connotations about territorial sovereignty as distinct from personal mana, and "tangata whenua" which means, depending on the context, the "aboriginal people", the "home people" as distinct from the manuhuri or the hapū with customary authority in a district.[10]

37. "Kāpiti" refers to the island but is also used here for the whole of the coastal plains from Whangaehu to Raukawa Moana (Cook Strait), which reflects the customary usage, although "Kāpiti Coast" today refers to a smaller area.

PART B: CONTEXT AND FRAMEWORK

Background to the Court decisions

38. The proper acknowledgement of the Ngāti Kauwhata whanau of Oroua, would require several whakapapa. That only one is given here is because only one is central to this narrative or is necessary to support the arguments that are made. The

[10] P Buck *The Coming of the Māori* 1949 p 10 gives "the aboriginal people" for "tangata whenua". In 1974 there was some debate as to whether the television documentary *Tangata Whenua* presented by the noted historian Michael King, had treated "tangata whenua" as an equivalent for territorial sovereignty.

identification of the several other whakapapa, and how they interconnect, is an important work that has still to be undertaken.

39. The purpose of this section is to give a short background to the Court decisions on the customary ownership of Hīmatangi and Rangitikei-Manawatū of 1868 and 1869. It is intended to reflect the histories provided for the inquiry by Dr Anderson and her team, Professor Boast and Dr Husbands, and the published, modern histories of WC Carkeek (*The Kapiti Coast*), Patricia Burns (*Te Rauparaha: a New Perspective)* and JM McEwen (Rangitāne), all of which are more consistent with one another than they are inconsistent. Later in this statement, several of the assertions are considered in more detail.

40. By 1840, when the colonial government proclaimed sovereignty, Ngāti Raukawa occupied Manawatū with none now known of who could realistically challenge them. Te Rauparaha had the paramount mana from Whangaehu to Raukawa moana from 1824, when Ngāti Toa defeated the combined forces of the iwi taketake drawn from the whole of that area. Ngāti Toa quickly followed up that victory with successful attacks on Ngāti Apa pa on the Rangitikei river.

41. By descent, Te Rauparaha was as much Ngāti Raukawa as he was Ngāti Toa and by invitation, Ngāti Raukawa occupied the lands from Whangaehu to Kukutauaki, near Waikanae. They migrated in earnest from 1825 with some groups, including some of Ngāti Kauwhata and Ngāti Whakatere, arriving before them. As planned, they came in such numbers as to dominate the iwi taketake, the better to ensure quiet possession. Adding to the numbers were several migrants who were not actually descendants of Raukawa, like Ngāti Kauwhata, although they were invariably related.

42. Conflicts and battles ensued but more notably, settlements were sought. The first was for Ngāti Apa to take what became the Rangitikei-Turakina block, on the north side of the Rangitikei river. This left the Rangitikei-Manawatū block on the south side for Ngāti Raukawa. Te Rauparaha was unimpressed. He described Ngāti Apa as his slaves. Nonetheless Ngāti Apa took possession of the land. They then sold it, retaining however, significant reserves. One reserve alone comprised 41,000 acres.

43. On the opposite side of the Rangitikei-Manawatū block, there was already a longstanding pact. Hirawanu of the upriver Rangitāne, and Te Whatanui, a pre-eminent, Ngāti Raukawa rangatira forged an alliance in about 1826. The two combined to fight Ngāti Kahungunu in Heretaunga. In 1829, they reunited to fight there again when Te Whatanui led the final migration south through that district. Both then crossed over the Tararua pae maunga to enter Manawatū picking up on the way a remnant of Muaūpoko who eked a precarious living in the bush after Te Rauparaha had vowed to exterminate them for the murder of his children. Like Rangitāne, Muaūpoko were also of the Kurahaupo tradition. They joined Te Whatanui who agreed to protect them in the district from whence they had been removed, at Horowhenua.

44. Later it was agreed that Hirawanu would take the eastern Ahuaturanga block, which was roughly the same size as the block allocated to Ngāti Apa. In 1858, Hirawanu agreed to sell the block to the Government, while retaining some reserves.

45. Also, in 1858, a section of Ngāti Raukawa controversially purported to sell a smaller area around what is now Foxton, known as Te Awahou block.

46. Meanwhile, going back to about 1837, Te Whatanui had mediated a peace agreement between Reupena Te One of Ngāti

Whakatere and Ngāti Kauwhata and Te Rangiotu of the downriver Rangitāne, which led to marriages over five generations, or roughly 100 years, that brought together Rangitāne, Ngāti Kauwhata, Ngāti Toa and various branches of Ngāti Raukawa. The agreement also formalised the joint occupation of lands down the Oroua river and the lower reaches of the Manawatū river.

47. These arrangements left the Manawatū section of Ngāti Raukawa with just the Rangitikei-Manawatū block in its sole possession. That block was about the same size as those allocated on either side to Ngāti Apa and Rangitāne. This was despite the fact that Ngāti Raukawa had the larger population. In addition, this block had been only sparsely occupied by Ngāti Apa and Rangitāne. The Ngāti Raukawa leaders were adamant that this block would not be sold but would be kept as a reserve for future generations

48. With the passing of Te Rauparaha, Te Rangihaeata, Te Whatanui and Taratoa, between 1845 and 1863, Kawana Hunia of Ngāti Apa came to the fore in challenging the pre-eminence of Ngāti Raukawa in Manawatū. He was the son of Hunia te Hakeke who led Ngāti Apa until his death in 1848. Kawana, who was a redoubtable advocate for Ngāti Apa, intensified his vocal disparagement of Ngāti Raukawa, whom he would gladly see returned to Maungatautari. His opposition grew as Ngāti Raukawa aligned with Potatau of Waikato, elected as Māori King at a national hui in 1857 to represent the policies of mana motuhake and pupuru whenua. Kawana, on the other hand, aligned with the Government by fighting for the Crown (Queen) in the Taranaki Wars of the 1860s.

49. Meanwhile in 1853, Dr Isaac Featherston, who would later lead the purchase of the Rangitikei-Manawatū block, had been elected as the first Superintendent of the Wellington Province. He

had good political connections. He was a member of the House of Representatives and a confidant of Sir William Fox, who was alternately Premier and Leader of the Opposition for most of this period. Fox had taken up a 5000 acre run on the north bank of the Rangitikei river which he had purchased from the Government in 1849, immediately after the Government purchased the Rangitikei-Turakina block from Ngāti Apa. Featherston was an ardent provincialist, and a supporter of the Wellington Settlers' Constitutional Association. He was committed to the acquisition of Manawatū as the most desirable land for settlement and promoted the view that Māori were a dying race (for which there was some supporting evidence at that time).

50. In 1860 war broke out in Waitara and quickly spread. The extent of Ngāti Raukawa involvement in the war is unclear. It was not openly proclaimed because of land confiscation threats, but many of the hapū have their traditions about their engagement in the wars in Taranaki and Waikato. In our own case it is a matter public record that Ngāti Kauwhata of Manawatū were at the battle of Orakau in Waikato under the leadership of Tapa Te Whata, that they were required to deliver up their arms in Wellington and that Tapa Te Whata was threatened with confiscation. (It is not so well known that Ngāti Tahuriwakanui also sheltered Te Kooti at Awahuri when he was in hiding from the Government.)

51. The Native Contingent formed in 1860 and were quickly staffed by Ngāti Apa, Atihau Whanganui, Muaūpoko and some of Rangitāne. In the second phase of the Taranaki war, in 1864, the Native Contingent fought under the command of Dr Featherston.

52. The event that sparked the war in Taranaki was the Governor's purchase of Waitara from one who appears not to have been the true owner. The consequences were severe, and it is remarkable that the conflagration had not come earlier. In 1862

Government legislated for the establishment of a Native Land Court to determine the title to customary land before its purchase could be attempted. In an extraordinary development however, the legislation excluded Manawatū from the operation of the Act on the ground that this was necessary to meet the needs of certain scrip-holders. That is a position that we later consider to be indefensible. It also enabled Featherston to decide for himself who the true owners were.

53. On the return from the war with the Native Contingent, in 1864, Dr Featherston began the purchase of the Rangitikei-Manawatū block. He sought signatures or marks from whoever claimed an interest. There were many who so claimed from Ngāti Apa and Atihau Whanganui both of whom claimed a Kurahaupo lineage. The number of Ngāti Apa involved may account for a finding in the Native Land Court judgment of 1869, that the Government brought the land from Ngāti Apa. There were others from Ngāti Kahungunu some of whom had assumed residence with Rangitāne, and from Muaūpoko and Rangitāne.

54. Featherston's method of purchase included promises of reserves for those who signed. This may account for the signature of Tapa Te Whata, the only one from Ngāti Kauwhata who is known to have signed. His war efforts left him vulnerable but by signing he secured a reserve for his people. None from Te Reureu are known to have signed but there are others who did who purport to be from Ngāti Raukawa, although whether they had interests in possession in Manawatū, is not clear.

55. The Resident Magistrate for Manawatū, Walter Buller (later Sir Walter), assisted Featherston with the purchase. He was later a barrister specialising in Native Land Court business.

56. In 1866, with the support of Ngāti Apa and Atihau-Whanganui, Featherston claimed to have completed the purchase, but the Ngāti Raukawa protest was such that the Government was obliged to refer the matter to the Native Land Court.

57. That brings us to the Court hearings and the decisions that are central to this statement, but we first consider the environment in which the Court sat. By that time, there were settlers holed up in Wellington who had not received land and who were anxious to get it. Others had taken occupation with the agreement of local Māori, some from as early as the 1830's as with Mr Burr, Mr Bevan, and the run-holder, Captain Richmond, but there were many by the 1860s who held land under Māori leases or other informal arrangements. Large cattle and sheep runs existed under Māori leases along the open country that spanned the length of the Manawatū coast. There was therefore much pressure on the Government to complete the purchase. In addition, this was the best land close to Wellington, with rich soils, millable timber, a sea port and navigable river access into the interior. To maintain liquidity Government itself needed the large profit from the on-sale of the land to settlers.[11]

58. Meanwhile, Kawana had been willing to sell Rangitikei-Manawatū to his commander, Mr Featherston, when the Government negotiations to buy began in 1864 and he must be taken to have either believed that his people owned it, or believed that following his return from the war with the Contingent, armed and trained, he had acquired the mana to sell it. As if to demonstrate to the Court his customary mana or authority over others, in 1868, as the Court began its inquiry into the customary title, he and his followers openly destroyed Ngāti Raukawa properties on the southern side of the Rangitikei river.

[11] The port access was at Foxton. It has since been closed by the sandbar that grew when the settlers destroyed the landscape's natural cover. As to the imperatives for finalising the purchase of the Rangitikei-Manawatū block see Anderson, Green and Chase 2018, above, at pp 238 – 242, 245 – 249.

59. That that was a ploy and not a moment of pique, was evident when Kawana did the same, in 1873, as the Native Land Court was about to determine the customary ownership of land to the south, in Horowhenua.[12] It could only have advanced his mana, in line with Māori custom, that on both occasions, Kawana was able to do this with impunity, the Government taking no action, the Court expressing no concern, and the Court eventually finding in favour of Kawana's hapū, exclusively.[13]

The Court Decisions

60. The first decision, the Hīmatangi decision of 1867, concerned a part of the Rangitikei-Manawatū block, called Hīmatangi, which was about 11,000 acres. The question was whether 27 persons of Ngāti Raukawa who claimed not to have agreed to the Manawatū-Rangitikei sale, were entitled to all or any part of the land. The Court held that these were not entitled to the whole block, but, were entitled to half of it (less the interests of two of the 27 who had in fact signed the Deed). The reason was that in the Court's view, Ngāti Apa and Rangitāne had not been absolutely dispossessed by the Ngāti Raukawa invasion but had been compelled to share, equally, with Ngāti Raukawa.[14]

61. Ngāti Raukawa and the Government both rejected the decision. Ngāti Raukawa sought a rehearing. Government went one better and legislated that the Court had to deal with the whole block as one and that the whole be heard afresh. We will argue that the Government's intervention prejudiced Ngāti Raukawa.

[12] On that occasion, Hunia was probably there for his Muaūpoko wife, Haewa.
[13] It was difficult for Ngāti Raukawa to retaliate. They had been required to hand in their arms and were liable to have their lands confiscated under the New Zealand Settlements Act 1863, if they failed to do so. There was no similar requirement on Ngāti Apa. Ngāti Apa and others returning from service with the Native Contingent were reported to hold about 300 rifles.
[14] Anderson, Green and Chase 2018: pp 358 – 360; Boast 2018: Vol 1 pp 330 – 332; Vol 2 Appendices pp 4 - 5

62. The second Court found that Ngāti Raukawa as a whole had not acquired any right, title, interest or authority in or over the 240,000 acre block. Instead the whole was held by Ngāti Apa. The rationale was still the same, that the earlier occupants had not been absolutely dispossessed or to put it another way, had not been completely conquered, but further support for that conclusion was a finding that Ngāti Apa and Ngāti Toa were in a state of permanent alliance and friendship throughout the whole period.[15]

63. The Court went on to find that Ngāti Apa had agreed to some Ngāti Raukawa hapū possessing certain parts. The Court determined that this amounted to 6,200 acres, or a mere 2.6% of the block. Of that, 1,000 acres was awarded for individuals of Ngāti Kahoro and Ngāti Parewahawaha on the Rangitikei river and 5,200 acres for individuals of Ngāti Kauwhata in or near the Oroua valley.[16] The Court then whittled down those with interests from about 500 to 62.[17]

Postscript to the Decisions

64. Having achieved a major windfall from the Court, the Government would go on to make some concessions to appease the Ngāti Raukawa leaders, mainly by making further reserves. These were made for Ngāti Parewahawaha, the Reureu hapū and the Ngāti Kauwhata hapū. However, the biggest beneficiaries of this new largesse were the Hīmatangi hapū. The Hīmatangi Crown Grants Act 1877 gave them back their 11,000 acres.[18] This was bigger than any of the other reserves in the Rangitikei-Manawatū block, but like everyone else's land, it came back not

[15] The Court describes Ngāti Apa and Rangitāne as the "original people". In fact, others were in the district before them. This is referred to further below. The proposition that Ngāti Apa and Ngāti Raukawa were in a state of permanent alliance and friendship throughout the whole period is untenable in the opinion of Professor Boast - Boast 2018 above p 351.
[16] Tribal configurations have since changed. People referred then to Ngāti Kahoro and Ngāti Parewahawaha but today the reference is to Ngāti Parewahawaha and Ngāti Manomano.
[17] Anderson, Green and Chase 2018: pp 379 – 385; Boast 2018: Vol 1 pp 343 – 353; Vol 2 pp 11 – 15.
[18] Boast 2018 above, p374 – 380.

to the tribe but to specified individuals so that the tribal capacity to protect the people's land going forward remained severely limited.

65. The Act recited that this was because "… the Ngatiteau, Ngatituranga, and Ngatirakau hapus in the Ngatiraukawa tribe of aboriginal natives were, by Native custom, the owners of the said Himatangi Block, and they did not join in the said sale, and did not receive any of the purchase money therefor ….". While we agree that that was the case, the same leeway was not given to others for whom the same could be said. It was contrary to the first Court decision that Ngāti Apa owned half, and to the second Court decision that said that Ngāti Apa owned it all, and the Government relied on the second decision to extinguish the customary title for the whole Rangitikei-Manawatū block.

66. Professor Boast cites the opinion of Mr W Buller, the lawyer for the Māori, which seems the more probable possibility, that the Government did not want the land, and it had not been surveyed for sale, because it was of little value for European settlement being chiefly sand ridges.[19] It could also have been due to the persistence and reasoning of the leading rangatira, Parakaia te Pouepa, and the skill and connections of his lawyer, Mr Buller. Buller had worked for the Government in opposition to Ngāti Raukawa on the purchase of the Rangitikei block, then acted for the Hīmatangi representatives on the recovery of the land.

67. We now review the decisions, and the framework under which they were made.

The Structure for the Court Hearings

There should have been a Māori Court

[19] Boast 2018 above, p 375.

68. To enable Māori, the Government and settlers to engage over the use and alienation of Māori land, some certainty over the management rights in accordance with Māori custom would have been useful for all. A flaw in Government deciding who should undertake the task, was its interest in appointing willing sellers and in appointing decision-makers sympathetic to the government or to the assumed superiority of western law. A flaw in the Government's decision to appoint a Court of Pakehā judges, was their unlikely competence and their susceptibility to Government influence.

69. For those reasons Government should have looked to Māori themselves to establish a process. After all who better to determine and apply Māori custom than Māori people? Māori enterprise in institutional development and their capacity to develop their tikanga to meet new demands had been shown in the election of a King, for example, and the King's establishment of runanga, karere and watene to manage law and order in the papakainga. Our opinion is that there were Māori who were capable of managing a tikanga council to determine the customary owners in tribal districts and to develop processes for the appointment of representatives.

70. As it was, the Government appointed judges who were untrained in either judicial method or custom law - or both. Ostensibly, the judges had a specialist knowledge of Māori matters, their jobs as surveyors, traders or civil servants having brought them into contact with Māori; but it was really a case of a little learning being a dangerous thing. The lack of training in judicial method in fact finding, is most apparent in the second decision, which, as is considered below, read as a colourful narrative rather than a judgment of a court of law. Even more dangerous, as also shown from the second decision, was the determination of Māori custom on anecdotal evidence rather than

investigation, and the invocation of concepts or practices that had grown up in England and which were inappropriate for Māori law.

71. The essence of tikanga Māori as we see it, and that which signifies the main difference between tikanga and custom as applied by the Native Land Court, is that tikanga looks to the whole of the circumstances to determine what is tika, or just. As is referred to in Part C, the Court looked only at conquest when conquest was only a small part of the story.

72. Ngāti Tahuriwakanui will be filing a separate statement on the application of tikanga to explain this matter further.

73. We assume the Māori assessors would not have made a large difference in most cases. They were assessing in a Government court conducted according to the Government's legal processes and not in the Runanga zone using Māori ways of decision making and applying Māori values. In addition, according to the Court that sat on the Hīmatangi case, the assessors in that case neither spoke nor understood the English language.[20] While the evidence was heard in Māori with interpreters, we presume that the usual interchange between judges and lawyers, and the judges' own discussions on the decision, would have been in English.

The Court should have been independent

74. In theory, the Court, like all courts, was independent. In practice, that was not always so. The Government sought to exclude the Court from operating in the Manawatū. Then, when Government relented in response to Māori protests, it sought to narrow the issues in the Government's favour and sent in a high level legal team to influence the outcome. We will look at the Government interventions, the capacity of the Court to maintain

[20] Boast 2018 above, p 290

independence and the evidence on whether independence was in fact maintained.

The Intervention to exclude the Court

75. The Native Land Court was established after Ngāti Raukawa and Māori nationally had protested the Government buying land before the ownership was independently determined. The Court was also established after war had broken out over the Government buying land from a seller with a dubious title. Having bowed to pressure by constituting a Court to decide, Government nonetheless legislated that the Court could not sit in Manawatū. This left the government purchase agent, Dr Isaac Featherston, who was also a member of the House of Representatives, exposed to the old temptation of finding a willing seller.

76. The excuse for excluding Manawatū, as written into the legislation, was that certain scrip-holders had interests, but how their interests could justify removing an independent inquiry into the ownership is difficult to understand.[21] Land scrip is a certificate entitling the bearer to a piece of Government land should the Government have it or acquire it. However, Government did not have the Rangitikei-Manawatū block at the time, and whether it could acquire it had first to depend on a decision as to who owned it. Government was the only one who could purchase in those days, and it was not for the Government to decide.

77. Even were that not the case the scrip-holders' rights were based upon the land claims of the New Zealand Company, and the Company itself had sought land rights only around present-day Shannon, where a town called Te Maire was proposed and some

[21] The explanation is in section 31 of the Native Land Act 1862 which is preserved in section 82 of the Native Land Act 1865. See also Anderson, Green and Chase pp 242-243

lands downstream from there along the Manawatū river.[22] None of that was part of the Rangitikei-Manawatū block which was the only block in the district that the Government was interested in acquiring at the time. Most of it, apart from Te Maire itself, was in the 30,000 acre Awahou block, which the Government had already acquired and which was available to meet the scrip-holders' demands.

78. The more probable rationale for excluding the Native Land Court from sitting in Manawatū, was to prevent Ngāti Raukawa from gaining title, given previous opinion that Ngāti Raukawa were entitled and their well-known opposition to sales. In 1850, the Government's most senior and experienced land purchase officer, Donald McLean, later Sir Donald, had given the colonial secretary his view that Ngāti Raukawa were the dominant iwi south of the Rangitikei river and that it would be impossible to purchase the area without Ngāti Raukawa consent.[23]

79. It is also likely that Dr Featherston had a role in securing the Manawatū exclusion in the legislation. He had already secured his appointment as a Government Land Purchase Commissioner in order to attempt the purchase, notwithstanding the conflict with his political interests and that he had no previous experience or training in the role. He also had considerable political connections as already mentioned. The irony is that the old land purchase system was at its worst when the buying was done by a politician rather than a trained land purchase officer. For example, the botched purchase in Waitara that led to war, was managed by Governor Gore-Browne. Featherston too was fundamentally, a politician. Both had in common a conflict between doing the right thing and doing what suited their political interests.

[22] Anderson, Green and Chase 2018 above, p 34 – 52, 242 – 248. See also Boast 2018 above, pp 263 – 282.
[23] Anderson, Green and Chase, 2018, above, at p238. As to McLean's standing see Ray Fargher *The Best Man who Ever Served the Crown? A Life of Donald McLean* Victoria University Press, Wellington, 2007.

80. The astounding thing is the illogicality in Government continuing a process by which a large part of a province measured in miles and intended for a massive, European settlement, is acquired before the ownership is determined. Everyone affected must have known of the standard legal practice that the title is settled first.

81. Equally astounding is the Native Land Court assumption, that the Court could fairly deal with a dispute about its ownership after the purchase was in every other respect complete, payment made and partial possession taken.[24] How could a Court find against the sellers as determined by the Government, when that would disentitle or dispossess settlers, who, like the judges themselves, had travelled half the world and had spent most their savings, to settle here?

The intervention to include the Court

82. In dealing with the Native Land Court, the Government was sometimes expected to intervene in the Māori interest but not to intervene in its own interest, on questions relating to customary ownership, succession or the appointment of owner representatives for example. This included interventions to amend the Court's decisions. Professor Boast reports there were annual Acts of Parliament amending Native Land Court decisions.[25] We acknowledge that the decision to intervene or not was not always an easy one. The issue appears not to have been difficult for Government, however. The overwhelming impression in the cases that follow, is that the Government ignored the Māori interest but was assiduous in looking after itself.

83. We have referred to the initial exclusion of the Native Land Court and the Ngāti Raukawa protest that followed.[26] We now

[24] The issue the Government put to the Court was not who owned the land, but whether certain protestors against the sale had interests in it. It was the Court that decided nonetheless, that it would determine who owned the land.
[25] Boast 2018 p509
[26] Anderson, Green and Chase 2018 above 243 – 4.

refer to the protests after Government claimed to have bought the land, and to Government's decision to refer part of what the protest was about, to the Native Land Court. Government had reason to feel comfortable about doing so because by then, with Government needing money and settlers needing land, there would be pressure on the Court to protect the Government's purchase. Even so, the Government took extra precautions when legislating for the Court to engage.

84. We consider that in accordance with Māori custom the position for Ngāti Raukawa would have been that their hapū owned the land by right of conquest, possession and consensus, that only the hapū could have sold and that the hapū did not sell, notwithstanding that some individuals may have signed the deed. There was a question of whether those who signed had the authority of the hapū to do so.

85. Such a question could have invalidated the sale. The Government's question to the Court, however, was whether certain persons who had not signed had interests. The premise for such a question was that there had been a valid purchase and the Court could not otherwise decide. To put it bluntly the cards were stacked to protect the purchase.

The intervention to redecide the matter

86. There was another strange turn of events when Government intervened for yet another time following the decision on part of the block, called Hīmatangi, when the Court determined that Ngāti Raukawa and Ngāti Apa had half shares and suggested that that would be the case for the whole of the Rangitikei-Manawatū land.

87. The decision satisfied no-one. Ngāti Raukawa sought a rehearing; but Government went a step further to load the dice again. It passed a law requiring the Court to hear the whole block,

including Hīmatangi, afresh.[27] That was not the same as a rehearing. On a rehearing the Court reconsiders the case on the basis of the evidence already given, and that evidence seemed reasonably clear that Ngāti Raukawa owned half at least. The legislation however, required that the whole case be heard again, as though the first had never happened. It totally quashed the first decision to the disadvantage of Ngāti Raukawa but to the advantage of itself.

The Court lacked normal judicial capacity

88. Ordinarily, when parties give competing, hearsay stories, inadmissible in other Courts, a Court would be careful to explain why one account was preferred to another. In addition, the information or opinion that the Court has from its own inquiries, which is permissible in an inquisitorial Court, would be disclosed for debate.[28]

89. In this case, the minutes and the decision show that the usual safeguards were absent. The normal judicial capacity was lacking. In the judgment, the evidence is not assessed. There was also no discussion on what might constitute a conquest and yet that would be the central in the Court's decision. Professor Boast sums up the final judgment as being an historical narrative which was unrelated to the evidence.[29]

90. Two judges heard the second or final case, Chief Judge Fenton (a lawyer) and Judge Maning (a trader and writer). Boast is undoubtedly correct in attributing the judgment to the latter.[30] It presents as an idiosyncratic recollection, like that which Maning

[27] See s 40 Native Lands Act 1867

[28] We submit that the Court had an inquisitorial role. Its statutory task of determining the title to Māori land and the succession to land interests, in accordance with Māori custom, required the Court to determine for itself what that custom was. To that end it was aided by a relaxation of the rules of evidence in section 19 of the Native Lands Act 1886.

[29] Boast 2018: p 350.

[30] Boast 2018: p 345 – 350.

wrote, in *Old New Zealand: a Tale of the Good Old Times*.[31] In form and content the decision is unreliable, with many factual errors as we shall come to.

91. No personal criticism is intended. Of the 44 appointed as Judges from 1865 to 1901, only 13 had legal qualifications.[32] The criticism is directed to the Government which created the Land Court.

The Government Lawyers' intervention

92. Despite the loading of the dice, the Government sent in a Goliath of a legal team to oppose the shepherd who appeared for Ngāti Raukawa. The latter, TC Williams, was not a lawyer. He was the son of a missionary who came in to act on a day's notice. The instructed solicitor, Mr Izard, was suddenly, unable to appear, as with the Israelites when Goliath appeared with the Philistines.

93. The Government case was led by Sir William Fox who, as we have said, was alternately the Premier and Leader of the Opposition. He was also an experienced barrister. He led an aggressive case against Ngāti Raukawa and took every chance to belittle Mr Williams. He was familiar with Ngāti Apa whose case he espoused, his home being established in their territory. He was assisted by Mr Hart, a Wellington solicitor. Also, in attendance to assist were Walter Buller, the Manawatū Resident Magistrate, equivalent to a District Court Judge today; and the Chief Superintendent of the Wellington Provincial Government, member of the House of Representatives and Government Land Purchase Commissioner, Dr Featherston.

[31] FE Maning *Old New Zealand A Tale of the Good Old Times … by a Pakehā Māori* Whitcombe and Tombs Ltd 1912.
[32] BD Gilling *The Nineteenth Century Native Land Court Judges* 1994 Wai 64 doc #G5. Gilling notes that the Court's operations were more administrative than judicial and judges sometimes held roles as both administrators and judges.

94. The balance was marginally improved for the second case in 1869. Wellington lawyer, WL Travers, appeared for Ngāti Raukawa, but without a junior to assist him. The Government was represented by the Attorney-General, James Prendergast, later Sir James and Chief Justice, with Buller and Featherston again in attendance.

95. The Government's intervention was despite a real doubt that it was entitled to be there. The Government team did not appear for any particular Māori but appeared for the Government and purported to argue a Government case. In our view however, the Government could not have a case because the hearings were for Māori only. The question was whether certain named persons had customary interests in the land. The only counterclaimants could be other Māori claiming customary interests. Had there been no Government intervention at the hearing, and as Ngati Apa had not presented a counterclaim, the Ngāti Raukawa claimants could have proceeded to formal proof of occupation – a comparatively trifling task.

96. The Government's attendance before the Native Land Court was contrary to the intention of the Native Lands Act 1862, in our view. The Act not only relieved the Government from deciding a politically charged issue about the ownership of the land, but we consider its purpose was also to exclude the Government from deciding the ownership. The Government's conflicting interest in preferring willing sellers as owners showed the need for decisions on ownership to be made independently of the Government. The decision had also to be seen as independently made so that the Government's proper course, we submit, was to abide the Court's decision rather than attend as an interested party.

97. There was a risk that Ngāti Raukawa might take to arms against the Government's one-sided interventions but it was a small risk given the Government's show of might in Taranaki in

land confiscation, military settlements, disarming opponents and arming supporters who might then commit atrocities against civilians.

98. Nonetheless, to the best of our knowledge there was no other instance where Government appeared in Court to support one side or the other, in the determination of owners, successors or representatives.

The Court was biased

99. The first indication of bias was when the Government attended under the leadership of the former prime minister and the Court did not question its right to be there. The next was in the Court's unnecessary denigration of Ngāti Raukawa and praise of Ngāti Apa in the written judgment, as if to predispose the public in this highly publicised case to a conclusion based on extraneous perceptions. Professor Boast mentions this colouring of the combatants, but is uncertain as to its importance.[33] We consider that when laid alongside those findings that are not supported by evidence, and which can be shown to be wrong, as referred to in Part C below, it points inexorably to a bias, or a contrivance to reach a result favourable to the Government. Professor Boast, after looking more widely at the factual findings, and especially the untenable position of an ongoing peaceful relationship with Ngāti Apa, finally concludes that this was probably a case of bias. We understand the need for caution but in our view, the bias was palpable.

100. On the face of the decision, the bias favoured Ngāti Apa but it was Government who benefited most, and the Court simply followed the Government's slant. The Ngāti Raukawa position was that Ngāti Apa took Turakina while they kept Manawatū. Nonetheless, when Ngāti Raukawa would not sell Manawatū, the

[33] Boast 2018 above, p 351.

Government looked to Ngāti Apa to sell it, even although Ngāti Apa had already sold Turakina.

101. Ngāti Apa could do so from a position of comfort. They had the government's backing to sell. Government had also provided them with a 41,000 acre reserve at Turakina and other reserves as well including 1,600 acres on the north bank of the Rangitikei river, and Government would provide them with further reserves again in Manawatu. This was far in excess of anything given to Ngāti Raukawa on the south bank of the river, as Ngāti Parewahawaha will later address. Perhaps more importantly Ngāti Apa could, with the backing of the Government, extract an utu from Ngāti Raukawa for having invaded the land by leaving them close to landless, and by effecting a whakahē, or punishing them by putting them in the wrong.

102. It was significant then that the Court did not stop at determining the interests of certain Ngāti Raukawa protestors who had not signed the Deed, but purported to decide which iwi was entitled to the whole block. We can see no reason why the Court went out of its way to go that far, other than that it was seeking to support the government by validating the purchase. The second decision even more than the first, was phrased to meet the Government's concerns, even although the Government's concerns were not an issue for the Court.

The Court was inconsistent

103. A theme of inconsistent decision-making runs through Professor Boast's description of the Native Land Court. It dominates his account of the Maungatautari and Rohe Pōtae investigations[34] and is repeated in his analysis of the Manawatū judgments. As he noted, the Hīmatangi and Rangitikei-Manawatū decisions contradicted each other. He then adds that these were

[34] Boast 2018 above, p 606, 635, 639, 682

followed by two other decisions in the southern part of the inquiry district on whether Ngāti Raukawa had affected a conquest.

104. In the Ngarara West judgment of 1890, the Native Land Court held, contrary to what was said in 1869, that Ngāti Toa were *not* at peace with Ngāti Apa throughout the period of the invasion but were at war.[35] We think the literature and research reports clearly support that view.

105. The Ngarara Court went on to find there was indeed a conquest. It was a conquest involving Ngāti Toa, Ngāti Awa and Ngāti Raukawa. The Court also took a rounded approach noting how different groups spread to different parts with unsettled boundaries while holding together for protection, forming new identities as with those from different hapū who aggregated as Ngāti Parewahawaha. We agree with Professor Boast that "the Ngarara court [came] to a much sounder understanding of the realities of settlement and occupation …." and that the Ngarara Court considered a much wider set of circumstances than had previously been entertained.[36] We have already said how the Ngarara approach fits better with tikanga Māori.

106. Then in 1910, Government enacted legislation for the Horowhenua block to allow the Native Appellate Court to substitute a fresh decision for the one of 1873. This time, in contradiction of the 1873 decision, the Appellate Court found that Ngāti Raukawa had taken the land by conquest.[37] Once more in the interpretation of custom, the Native Land Court reached wildly different conclusions; and once more it is the later interpretations that most reflect the oral tradition and tikanga. However, it is not the inconsistent decision making that presents the largest concern in this case. It is more the level of factual manipulation and

[35] Boast 2018 above pp 380 – 382.
[36] Boast 2018 above, p 382.
[37] Boast 2018 above, p 502 – 509.

contrivance in the decisions that have continued to hold the centre stage in Ngāti Raukawa history.

107. These cases make the point that findings of fact, unlike findings of law, are not binding on later Courts confronted by different evidence. Custom, like foreign law, is also a question of fact.

108. Nor did Government treat their own findings of fact as binding on themselves. In 1859 the Government bought the 30,000 acre Te Awahou block from Ngāti Raukawa, presumably because Ngāti Raukawa owned it by conquest. Then it bought the Rangitikei-Manawatū block next to it on the basis that it was owned by Ngāti Apa because Ngāti Raukawa had not completed a conquest. The blocks were part of the same flat land and there was no pertinent difference between them. The impression is that the Government was buying from whoever would sell.

109. Professor Boast considers the Ngarara Court had a more rounded approach to custom by looking at a larger range of circumstances than conquest. We agree. The Ngarara case showed the way and the 1912 case followed suit. That leads to the next issue about the failure of the early Court to look at Māori custom in the round.

The Court's conceptual framework was wrong

110. Putting the case in today's terms, the Native Land Court of the day lacked a kaupapa Māori framework. It saw custom through a western lens and not through Māori eyes.

111. It would also have been better had Māori made the decisions, through structures that they formed themselves, not only to determine customary land entitlement, but to determine how custom might be applied to the management of the land in rapidly changing circumstances. It may be thought that Māori lacked the capacity to do this but we do not agree. When Ngāti

Kauwhata claimed land rights at Maungatautari on the grounds that they had not abandoned it, the Native Land Court, after very protracted and costly proceedings, eventually found against them. However, the matter had also been put to the Māori King. His karere had promptly replied that there would be a place for Ngāti Kauwhata at Maungatautari if they returned.[38] That is all that needed to be said to capture the essence of the Māori custom on ahi kā.

112. The Native land Court's reduction of custom as a source of land rights, to five silos, illustrates the difference. The Native Land Court reduced the pūtake or sources of customary land rights to five categories, take taunaha (discovery), take tūpuna (ancestry), take raupatu (conquest) and take tuku (gift) with take ahi kā (occupation) as a common requirement for each.[39] The approach, of putting things in silos with decisions made within the confines of each, reflects a form of western jurisprudence, which goes back to Roman Law, with which Māori were not familiar. The Māori jurisprudence is to consider the whole of the circumstances to determine what is just in a particular case, identifying from a smorgasbord of norms, the norm most suited to the circumstances. Looked at from a Māori view, one provides more certainty but the other is more certain to be just.

113. It is unsurprising that Māori relied on conquest in Court. To win one plays to the decision-maker's rules.

114. The consequence of the Court's approach, in the Hīmatangi and Rangitikei-Manawatū cases, is that the Court focused on just conquest, seeing that as the most likely to apply, and did not have regard to the interplay of the other four, or of other variables like the value Māori placed on the mana of the fighting chiefs, or the chiefly practices in peace-making like moenga rangatira and

[38] For the historical context see Boast 2018 pp 528, 542, 561 – 2, 567

[39] The categories were explained by Norman Smith, later Judge Smith of the Māori Land Court, in *Native Custom and Law affecting Native Land* Māori Purposes Fund Board, Wellington, 1942, pp 47 - 87.

hohou i te rongo. Also missing from the record was any debate on what was necessary for conquest to be proven. That was the trump card that the Court played only after the tribes and the Government had played theirs. We refer to the extraordinary proposition that conquest required the total dispossession or removal of one side. Part C is about the concepts and the missing evidence that are also part of Māori custom and tradition.

PART C: THE FACTS AND ARGUMENTS

115. This part concerns the facts and arguments, both the facts that the Court found for and those that were not discussed, and the principles the Court found for, even when they were not argued before the Court.

How Ngāti Kauwhata came to Oroua

116. The 1869 Court, which purported to determine that Ngāti Raukawa had no claim to any part of the Rangitikei-Manawatū block, explained away the Ngāti Kauwhata occupation of the Oroua valley in a most extraordinary way. The Court determined that the land allocated to Ngāti Kauwhata was on the south side of the Manawatū river, presumably somewhere about Koputaroa held by Ngāti Takihiku and Ngāti Ngārongo or the Aratangata and associated blocks held by Ngāti Huia. The Court went on to say that nonetheless Ngāti Kauwhata intruded into Manawatū, the land of Ngāti Apa, without any authority. Professor Boast appears incredulous and comments "It would be interesting to know what Ngāti Kauwhata people today would make of this. Judge Maning's narrative appears to have virtually nothing in common with what Ngāti Kauwhata say about their own history in either the cases relating to Aorangi or at the investigation of Ngāti Kauwhata claims to Maungatautari in 1881 ….".[40]

[40] Boast 2018 above p 350 and in footnote 1562

117. We can find nothing in the evidence of the day or in the thorough research for this inquiry that supports the Court's finding. We assure the Professor that Ngāti Kauwhata regards this part of the decision as nonsense. We agree that it does not fit with the Ngāti Kauwhata evidence before the Native Land Court, and nor does it fit with the evidence in the taonga tuku iho sessions given in this inquiry. The accounts vary in detail but each may be seen as a small variation on the evidence that after crossing the Rangitikei river at its lower reaches, Ngāti Kauwhata moved up to the Rangataua stream and followed that stream to its source by the dome that is part of the Whakaari range, where they met with and followed the Mangaone stream that flows in the opposite direction and empties into the Oroua river near the old Rangitāne Pa of Te Awahuri. A section settled there and have been there since, although a contingent also travelled down the Oroua river, and from there down the Manawatū, to join with the main migration at Taumanuka, Ōtaki and at Waiorua on Kāpiti Island. Later most of them returned to the Oroua Valley but some stayed on in the Pukehou and Waikawa blocks, near the coast.

Conquest

118. We have said that by limiting its inquiry to conquest the Court was not giving effect to custom. The Court in fact went further to say that the "original occupiers", by which the Court meant the previous occupiers, must have been totally disposed or completely expelled for a conquest to be effected. What was missing was any argument on the level of slaughter or displacement necessary, in native custom, for a conquest to be proven.

119. Professor Boast rejects the requirement for some annihilation, and once more we agree.[41] There is no tradition that we know of by which genocide or total expulsion was necessary

[41] Boast 2018 p 505.

for the mana of a rangatira over a general area to be usurped. The Tribunal's Rekohu report refers not to the annihilation or expulsion of the Moriori but to their subjugation and that is an extreme case.[42] Ballara refers to Ngāti Ira being driven out of Wellington but that too is given as an exception to the rule.[43] She describes two scenarios. After reviewing the battles in one area she notes "No people is completely driven out or conquered; after defeat in battle the overriding mana might have passed from one group to another but peacemaking and intermarriage among the former enemies were the rule".[44] She also refers to places where the defeated groups remained in a client relationship, perhaps paying tribute.[45]

120. Our evidence is that genocide is not in fact a customary practice or is not what Māori would call tika. They would more likely label that as kohuru, and kohuru, as distinct from a justifiable utu, was not acceptable in tradition.

121. We are not aware of any tradition by which an extermination or complete expulsion was undertaken in order to establish an authority to rule. Customarily it was enough to say, by way of example, that after the battle of Waiorua, Te Rauparaha held the mana of the district from Whangaehu to Kukutauaki. It was sufficient in Māori custom that Te Rauparaha would hold that mana for as long as he continued to assert it or until he lost it in battle and someone else took over the district instead. His extermination or expulsion of all others may have helped Te Rauparaha to keep control but Te Rauparaha may have preferred to keep them in either a subservient or client relationship (to use a

[42] See *Rekohu* Waitangi Tribunal 2001, pp 40 - 41

[43] Angela Ballara *Iwi: The Dynamics of Māori Tribal Organisation from c. 1769 to c. 1945* 1998 Victoria University Press p 245.

[44] Ballara, above, p 116.

[45] Other works do not support the view that subjugation or annihilation were prerequisites to conquest as a source of title to land. The closest to that view from Elsdon Best is that "sometimes" conquered tribes are "reduced to a state of vassalage and compelled to set aside a portion of the products of lands and waters, as a tribute to be taken to their conquerors". Lt Col Gudgeon considered simply of conquered tribes that "they would remain a tribe but under the mana of strange chiefs". Sir Peter Buck The Coming of the Māori (1949) devotes a chapter to warfare and AP Vayda Māori Warfare (1970) a book but neither suggest that subjugation or annihilation were pre-requisites.

term of Angela Ballara) or in a consensual relationship as allies. In any event he was under no customary compulsion to effect an extermination or complete dispossession.

122. The determination of Te Rauparaha to wipe out Muaūpoko is an example of an intention to exterminate but that was not in order to establish a conquest. A conquest was achieved by success in battle. The purpose in this case was to exact utu for the murder of Te Rauparaha's children.

123. We are also not aware of any other occasion, before or after the Rangitikei-Manawatū decision, where the Native Land Court applied a dispossession or extermination test. Nonetheless, in this case, after finding that Ngāti Apa had not been completely exterminated, and after writing out Rangitāne from its narrative, as will shortly be described, the Court went on to hold that Ngati Apa were alone entitled to the block. Ngāti Raukawa were entitled only to those parts that Ngāti Raukawa occupied with Ngāti Apa consent.

124. We have then to consider the source of the Ngāti Raukawa title. It illustrates once more the limitations on the Native Land Court's reduction of title claims to the five categories described.

125. The right came partly by conquest as various hapū of Ngāti Raukawa took over the land. This will be argued separately as each hapū has their own story, but in the case of Ngāti Kauwhata of whom we are part, we can say that the acts of conquest began from when the Ngāti Kauwhata migrants crossed over the Rangitikei river, and after moving inland along the Rangataua stream to the northern aspect of the Whakaari dome, moved down the Mangaone stream to take possession of the Awahuri flats, killing or capturing the very few Ngāti Apa who were there. Later they attacked Rangitāne pā within the Ahuaturanga block, as referred to below.

126. The authority came also by an informal transmission from Te Rauparaha, through his sister Waitohi, both of whom were by birth, as much Ngāti Raukawa as they were Ngāti Toa. Ngāti Raukawa came at the bidding of Waitohi, who, following a standard military tactic, sought to flood the land with her own people to consolidate the gains Te Rauparaha had made. The practice was not limited to Māori and was probably universal. In the same way, after successful battles in Taranaki and Waikato the Government confiscated the land and flooded it with settlers who, by sheer numbers, would prevent a counter-attack.

127. Ngāti Raukawa came in such preponderant numbers as to hold the mana themselves, freeing up Te Rauparaha to seek further worlds to conquer in the south. We consider that that was enough to effect a consensual transfer of mana in accordance with Native custom. However, such a source of title is not on the Native Land Court's list. A story then arose that the land was gifted to Ngāti Raukawa by Ngāti Toa. There is evidence in the Court's minute books that expresses that view. We think the story of a tuku or gift from Ngāti Toa was probably an attempt to find a way of meeting the Court's requirements to show that there was a valid take, or source of title, of which take tuku, or gift, was one. We consider land gifts were usually of smaller, discrete land parcels and were accompanied by some ceremony or marriage that would mark the occasion. Gifts also had their own rules about a return to the donor if the purpose of the gift failed.[46] We have found no record of a gift-giving event despite the significance that such an event would have held in this instance. Te Matapunenga discusses 'tuku' in more detail.[47]

[46] An example of a modern gift was the allocation of land in Hauraki to be occupied by members of Ngāti Tuhourangi after the Tarawera eruption had left them homeless. After living there for many years, the occupants returned to Rotorua bringing their dead with them for reburial in the home soil. In 1974 Tuhourangi leaders endeavoured to return the land, but it had acquired a native land court title in the names of the original Tuhourangi occupants and obtaining transfers from the many successors proved too difficult.

[47] See entry for tuku in *Te Mātāpunenga – a Compendium of References to the Concepts and Institutions of Māori Customary Law* 2013, Richard Benton, Alex Frame Paul Meredith Te Mātāhauariki Research Institute, University of Waikato.

128. The more likely scenario is that Ngāti Raukawa simply possessed the territory and came in sufficient numbers as to have a dominant possession that became nine-tenths of the custom law. It is difficult to imagine a gift if, as in the case of Ngāti Kauwhata of Oroua, that to be given was already possessed. There was then no significant challenge to the Ngāti Raukawa possession until after the passing of Te Rauparaha, Te Rangihaeata, Te Whatanui and Taratoa between 1845 and 1863, and no act of aggression in reprisal until that of Kawana Hunia in relation to Ngāti Parewahawaha in 1868.

The Ngāti Apa-Ngāti Toa "alliance"

129. Supporting the Court's finding that Ngāti Apa had not been conquered, the Court also found that Te Rauparaha and Ngāti Toa were in a state of permanent alliance and friendship with Ngāti Apa, throughout the invasion.[48] We submit that that position is untenable in view of such events as the battle of Waiorua in which Ngāti Apa and Rangitāne combined to launch a combined attack on Te Rauparaha and Ngāti Toa. That was not an event that the Court could have overlooked. Rangitāne and Ngāti Apa had assembled over a thousand toa by drawing on allies of the Kurahaupō tradition from Whanganui, Tamakinui-a-Rua (Dannevirke), Wairarapa and Arapaoa (Marlborough Sounds).[49] Ballara puts the figure at "nearly 2000".[50] It was the largest known, traditional fighting force to have ever assembled in the district.

130. It is submitted however that the whole historical record should be reviewed to get a proper perspective on this issue. This section traces the recorded history of tribal relationships to challenge the Native Land Court's assumption that throughout the

[48] See RP Boast *Ngāti Raukawa: Custom, Colonisation and the Crown 1820 – 1900* of 2018, commissioned for the inquiry as recorded as document #xx, p 347.
[49] More accurately there are two traditions as Whanganui have a different narrative on Kurahaupō origins.
[50] Angela Ballara entry for *Te Rangihaeata* in Dictionary of New Zealand Biography, 1990.

invasion, Ngāti Toa and Ngāti Apa were permanent friends and allies. We submit that it discloses an intense enmity between Te Rauparaha and the Kurahaupō hapū of Rangitāne and Muaūpoko, as well as Ngāti Apa, an animosity that would eventually result in peacemaking, especially with Rangitāne and Muaūpoko, after Ngāti Raukawa arrived.

131. McEwen, the author of *Rangitāne,* considers the Ngāti Toa invasion began with the expeditionary visit of Te Rauparaha and others in 1819.[51] McEwen's main informants were our grandfather and granduncle, Mason Te Rama Durie and Wiremu Kingi Te Aweawe. The unprovoked attacks on Rangitāne are said to have started then, and to have resulted in the treacherous killing of Tokipoto, a leading rangatira of Ngāti Hineaute of the southern section of Rangitāne and the father of Te Aweawe who eventually succeeded Tokipoto.

132. Tokipoto was at Hotuiti, an island in a former lagoon near the Manawatū river between Shannon and Foxton. On the pretext of paying a friendly visit, Te Rauparaha was taken to see Tokipoto by Tokipoto's sons, Mahuri and Te Aweawe, whereupon Tokipoto, with other rangatira, was slain, without provocation, and without warning.[52] For Rangitāne, the name of Te Rauparaha was associated with treachery, from then on. The subsequent fighting, however, was mainly with Muaūpoko at Horowhenua and Kāpiti before the expedition returned home.

133. The story of an alliance between Te Rauparaha and Ngāti Apa traces back to the interval between the 1819 expedition and the 1822 migration of Ngāti Toa. This 1822 migration involved

[51] McEwen 1986: p 121. In his Introduction to the book, McEwen acknowledges our kaumatua, Mason Te Rama Apakura Durie and Wiremu Kingi Te Aweawe as primary informants.

[52] Carkeek 1966 at p 17 puts this event 4 years later in 1823 following the Ngāti Toa migration. Patricia Burns in *Te Rauparaha – a new perspective* 1980 AH and AW Reed at p 61 has a similar view to Carkeek, and castigates Buick for raising the story without citing sources. For present purposes the difference does not matter. Rangitāne tradition is clear that Tokipoto, who was the leading rangatira for Ngāti Hineaute at the time, was killed by Te Rauparaha in treacherous circumstances, even if accounts vary in detail and timing, and that Te Rauparaha was distrusted and disliked as a result.

men, women and children, mainly of Ngāti Toa, intending to settle permanently on the Kāpiti coast. In 1819, Te Rauparaha and his followers had successfully fought a battle against Ngāti Apa in which Te Pikinga, her brother and certain others were captured and were taken with Te Rauparaha and Ngāti Toa on their journey home. Anxious to secure a safe passage for when his people migrated, Te Rauparaha and Te Rangihaeata returned by sea to the Ngāti Apa pā of Te Awamate near the Rangitikei river-mouth. There, Te Rangihaeata announced his marriage to Te Pikinga and so gained an agreement on safe passage.

134. The agreement held when the Ngāti Toa migration arrived, but fighting resumed with Muaūpoko when the migrants reached Horowhenua. The cause of fighting may have been the slaughter on the way of a high-born Muaūpoko woman. Alternatively, Muaūpoko may have simply sought revenge for the attacks in 1819. In any event, when the large migration of men, women and children arrived in the vicinity of Papaitonga, Te Rauparaha accepted an invitation to a feast with Muaūpoko where he and his party were treacherously set upon. While Te Rauparaha escaped, certain of his children were killed. No doubt Te Rauparaha viewed Muaūpoko as treacherous as well, and since Muaupoko and Rangitāne were from the same nest, Rangitāne were also probably viewed with suspicion.

135. Burns considers Te Rauparaha had come to the district in peace.[53] Her argument appears convincing given that his group was not a war party but men, women and children on the move, and given the alacrity with which Te Rauparaha accepted the invitation to an evening at Papaitonga pā. However, it is clear that following the death of his children, Te Rauparaha was concerned to destroy Muaūpoko entirely.

[53] Burns 1980: p 102.

136. Thereafter the Ngāti Apa alliance, if that is what it was, ceased to operate as an alliance. Ngāti Toa secured Kāpiti Island, displacing Ngāti Apa and Muaūpoko.

137. Te Rauparaha then learnt that in preparation for a reprisal, three Ngāti Apa rangatira went to Hotuiti where they planned an attack with the aid of Rangitāne. Te Rauparaha is said to have slaughtered those involved. Significantly too, in a very full account published by S Percy Smith, Te Rangihaeata and Te Pikinga were there as well and Te Pikinga played an active role in luring certain leaders from out of the pā, under the pretence of a peace, only to be killed.[54] This does not line up with a permanent alliance.

138. In reprisal, Muaūpoko, along with Ngāti Apa and Rangitāne, assembled the very large army that we have already mentioned. Notwithstanding that the surprise attack was made on Kāpiti Island at Waiorua where Ngāti Toa would be seriously outnumbered, the besieged Ngāti Toa, and Te Rauparaha, carried the day. The battle served only to confirm the mana of Te Rauparaha from Whangaehu to Raukawa moana (Cook Strait). The fact was that taua from all the Kurahaupō hapū from Whangaehu to Cook Strait had attacked and had been defeated.

139. The extent to which relationships had changed was evident when one of the Ngāti Apa attackers taken in the battle, Te Rangi-mairehau, sought mercy on account of his relationship with Te Pikinga, and was immediately put to death.

140. Te Rauparaha wasted no time in sending taua "up and down the coast killing and capturing fugitives from the fight."[55] This included an attack on Ngāti Apa at Awamate in which two Ngāti Apa leaders were killed.[56] Clearly, if there had been an

[54] S Percy Smith *History and Traditions of the Maoris of the West Coast, North Island of New Zealand, Prior to 1840 Polynesian Society* page 394 (available online)
[55] McEwen 1986, above, p132.
[56] Carkeek 1966: p 20.

alliance, it was at an end at this time. Six months later Ngāti Toa again attacked Ngāti Apa, this time at Te Poutu.

141. The respected historian Angella Ballara paints a different picture of the peace agreement in her entry for *Te Pikinga* in the Dictionary of New Zealand Biography. She writes that Te Rangihaeata took Te Pikinga in a chiefly marriage alliance, which she says bound Te Rangihaeata to Ngāti Apa by ties of mutual protection, and that Ngāti Apa gifted a slab of greenstone.[57] She also implies that Ngāti Apa were able to claim equal land rights with Ngāti Raukawa as a result of this marriage and that it was because of this marriage that there was a peace with Ngāti Raukawa.

142. We have a different view of the history. We consider that the union of Te Rangihaeata and Te Pikinga was not properly a peace pact to end war, with the sacred obligations of hohou i te rongo, for at that time there was no ongoing war, Ngāti Toa had gone home and Te Pikinga and other captives already provided a security for safe passage.[58] Te Rangihaeata's announcement in our view, changed the relationship from one of power imbalance to a more useful military alliance to secure a peaceful re-entry for Ngāti Toa on their subsequent migration south.

143. Like all military alliances however, the Ngāti Apa alliance lasted only for so long as it was convenient to maintain it. We have no doubt that the marriage was respected by Ngāti Raukawa as an important one, as it was by Te Rangihaeata, who respected all his wives, but the irrefutable fact is that soon after Ngāti Toa had passed through Ngāti Apa territory, Ngāti Toa were relieving Ngāti Apa of their Kāpiti stronghold, Ngāti Toa attacked and killed them at Hotuiti, Ngati Toa repulsed their attack at Waiorua

[57] See also Boast 2018 p 381 footnote 1692.
[58] The elements of Hohou i te Rongo are described in the entry for that name in Benton, Frame, Meredith *Te Mātāpunenga – a compendium of references to the concepts and institutions of Māori Customary Law* 2103 Victoria University Press.

killing many of their leaders, Ngāti Toa attacked Ngāti Apa in their own territory, and Te Rangihaeata would lead the campaign to keep Ngāti Apa to the north of the Rangitikei river. At Awamate, in 1824, Ngāti Apa were effectively given graphic notice that the family of the groom were now in charge.

144. For the same reasons, the evidence is decidedly against the Native Land Court finding that Te Rauparaha and Ngāti Toa were in a state of permanent alliance and friendship with Ngāti Apa throughout the whole time of the invasion.

145. However, we continue the narrative because the tribute to Te Pikinga in the Dictionary of New Zealand Biography, goes further to state that the marriage between Te Pikinga and Te Rangihaeata inclined Ngāti Raukawa to treat Ngāti Apa with consideration so that, relations were peaceful on the whole, and later, because of this marriage, Ngāti Apa were able to claim equal rights with Ngāti Raukawa to the territory which, it was claimed, they shared.

146. We accept that important marriages are usually respected by Māori and that Ngāti Raukawa would have respected the union as well, but also with respect, the flaw in the view in the Dictionary, is that Ngāti Raukawa in fact apportioned the land so that Ngāti Apa took to the north of the river and Ngāti Raukawa to the south, as described below. There was no land that was in fact meant to be shared by them. Relations were then peaceful in our view only insofar as the introduction of Christianity, the Treaty and a Governor, were putting an end to warfare. Te Rauparaha and Te Rangihaeata were adamant nonetheless, that Ngāti Apa were not to cross the Rangitikei river. There were in fact skirmishes, but the Ngāti Raukawa settlers of Ngāti Parewahawaha, as well as the hapū of Te Reureu, on the southern

banks of the river, enforced the arrangement, the people of Te Reureu erecting pou rahui to make that position clear.[59]

147. Nor do we accept there was an even balance of power. John White's early account supports our view. He refers to the constant arrival of armed Ngāti Raukawa in heke after heke "and the manner in which they roamed over the Manawa-tu and Rangi-tikei districts, treating the remnant of the Nga-ti-apa and other original tribes with the greatest rigour…". The account states that "[t]he Nga-ti-apa then formally placed themselves at the mercy of Rangi-hae-ata, whose connection, so frequently alluded to, with a chief of their tribe induced him to treat them with leniency, and they were accordingly permitted to live in peace, but in a state of complete subjection."[60]

148. The authenticity of White's views may be open to challenge but we submit that it is clear, on the historical evidence, that Ngāti Raukawa came in such numbers as to dominate the territory, that it was a planned military strategy to follow conquest by an overwhelming occupation, and that the strategy was successful.

149. We contend that it has long been accepted amongst Manawatū and Horowhenua Māori that Te Rauparaha had established his mana throughout the territory in 1824, given that the whole of the Kurahaupō hapū had challenged him without success, and that his position was consolidated and was made unchallengeable with the arrival of large numbers of Ngāti Raukawa starting from about 1825. In corroboration is the fact that from this point Te Rauparaha could safely turn his attention to the construction of a fleet of waka that from 1827 would enable him to begin his attacks deep into the South Island, and which in

[59] We understand that the evidence on this will be given by the hapū concerned and we therefore take the point no further.

[60] John White *The Ancient History of the Maori, his Mythology and Traditions: Tai-nui. [vol. VI] Chapter vii. — Lands Taken in War, and How Given to the Tribes (Travers.)* pp 73 – 75. We think the reference to a connection with a Ngāti Apa chief should refer to the marital relationship.

1829, would enable him, Te Whatanui and others to begin an attack on Whanganui.[61]

150. The point is sometimes argued that the contribution that Rangitāne and Ngāti Apa made to the Haowhenua battle in 1834, in support of Ngāti Raukawa, evidences that the relationship had turned to an alliance by that time. Our response is that we are no longer talking about the alliance, if there ever was one, with Ngāti Toa. We are talking about support for Ngāti Raukawa and here there is a very telling point. Hirawanu of northern Rangitāne, and Te Peeti Te Aweawe of southern Rangitāne, with other Rangitāne rangatira, joined the Raukawa ope taua to fight Te Atiawa at Haowhenua in that war. They came to support Ngāti Raukawa, and it is highly unlikely that they would have done the same, at that time, for Ngāti Toa.

151. At this point we return to the particular circumstance of Rangitāne and their less than friendly association with Ngāti Toa. Ngāti Hineaute of Rangitāne had still to avenge the murder (as they saw it) of Tokipoto in 1819, when his successor, the mātāmua, Māhuri, was also to be killed by Ngāti Toa in equally treacherous circumstances. Fighting had quietened down in the district when, in 1834, Māhuri, his younger brother Te Aweawe, and numerous others of the Kurahaupō tradition, were invited to a feast of some newly introduced food at Kukutauaki, by Ngāti Toa.[62] Without warning or provocation, they too were set upon and most, including Māhuri, were killed. Te Aweawe was spared for saving the life of a Ngāti Toa rangatira in an earlier battle.

152. Te Aweawe would come to lead Ngāti Hineaute from this point. He promptly retaliated with a successful surprise attack in which upwards of sixty of Ngāti Toa are said to have been killed.[63]

[61] McEwen 1986: pp 135 – 136.
[62] That is Kukutauaki in our tradition, although most others claim it was at Waikanae.
[63] McEwen 1986: p 136.

However, that would be the last of the customary battles with which Rangitāne would be involved against Ngāti Toa.

153. Significantly, it was Te Whatanui of Ngāti Raukawa who had warned Māhuri and Te Aweawe, as well as Te Hākeke of Ngāti Apa, against attending the feast at which Māhuri was killed. Te Whatanui would continue his efforts to protect Muaūpoko, and would seek the establishment of a peace with the southern section of Rangitāne. The peace agreement is the last of the issues outlined at the beginning of this statement, but it was preceded by another significant agreement, an allocation of lands to the northern section of Rangitane

Identifying the iwi taketake

154. The Court wrote Rangitāne out of its narrative to make Ngāti Apa the sole owners of the Rangitikei-Manawatū block. Our view is that the Court was wrong to do so. That point must now be made not to uphold the rights of Rangitāne, for after all, their claims have now been settled, but to uphold the Ngāti Raukawa position that the Court's decision was flawed. We refer to the Court's findings that Ngāti Apa were the only "original people" with an interest in the Rangitikei-Manawatū block, that Rangitāne were the same as Muaūpoko, and that the Puketōtara Pa people were Ngāti Apa half-castes.[64] We assert that Ngāti Apa, Muaūpoko and Rangitāne were all prior occupants, that each was separate and autonomous and that the people of Puketotara Pa were not a community of Ngāti-Apa half-castes.

155. The three groups occupying the district when Te Rauparaha arrived in 1819, were Muaūpoko, Ngāti Apa and Rangitāne. Although all descended from the crew of the Kurahaupō waka, each was separate and occupied a different part of the district.[65]

[64] Boast 2018 above p 348.
[65] JM McEwen *Rangitāne* 1986 Reed Methuen Publishers Ltd pp 10 – 15 and 18 – 27.

156. Kurahaupo landed at distant Mahia Peninsula in about 1350 (assessed by allowing 25 years for each generation on the whakapapa chain). That would be about the same time as the landing of the Tainui and Te Arawa waka. There were three captains, Ruatea, Whātonga and Popoto.

157. Whātonga, from his first wife, Hotuwaipara, had Tara. Those descendants of the crew who subscribed to his name, as Ngai Tara, went on their own journey arriving in what is now Wellington, where the harbour is named for Tara (Te Whanganui-a-Tara). Later, according to Carkeek, a section pushed north to Pukerua Bay.[66] McEwen, on the other hand, describes Ngai Tara as amongst the groups in Manawatū when Rangitāne crossed the Tararua ranges in about 1575.[67] He also describes them as based at Horowhenua (pp 53 – 54) and in particular, at Lake Papaitonga.

158. This supports the argument that Muaūpoko, who lived at Papaitonga, were in fact part of Ngai Tara. We subscribe to that view, but that is not an issue that needs to be resolved here. To the extent that Muaūpoko descend from Tara, they are plainly distinct from Rangitāne who come from Tara's half-brother (as referred to below).

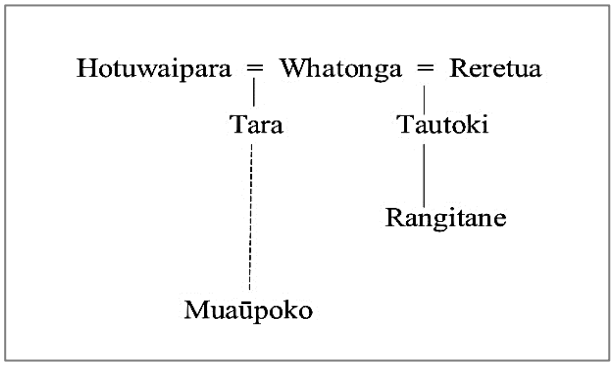
159. However, McEwen records Muaūpoko as constituted by various descendants of Rangitāne.[68] The difficulty is that Muaūpoko are not heard of in whakapapa as they are named for an event - the carrying of a head.[69] In Manawatū in the 1940's they were generally called Mau-upoko – with no pejorative loading intended as it was well understood that norms were different in olden times. Muaūpoko today prefer 'Muaūpoko',

[66] WC Carkeek *The Kāpiti Coast* 1966 AH and AW Reed: p2
[67] Carkeek 1966 pp 51 – 52.
[68] McEwen 1986 pp 97 – 102.
[69] That account was provided orally by Wiremu Kingi Te Aweawe of Rangiotu in an address to the Victoria University students in about 1960. The address was given in association with Raniera Rikihana of Ōtaki. It was organised by Whatarangi Winiata and Wattie Carkeek, the author of *The Kāpiti Coast.* McEwen acknowledges WK Te Aweawe as an informant in the introduction to *Rangitāne* (above) and Carkeek does the same in *The Kāpiti Coast.* The Muaūpoko naming account is in *The Kāpiti Coast* at p5.

which we now use, since it is tika that they should karanga for who they are and that we should respond according to their call.

160. Whether by descent from Ngai Tara or as part of Rangitāne, however, Muaūpoko are a distinct and autonomous group. They were also territorially discrete being primarily based at Papaitonga Pā, in Horowhenua, at the time of the Ngāti Toa invasion.

Figure A.



161. For their part, Rangitāne descend from Whātonga through his second wife, Reretua, who had Tautoki, the father of Rangitāne. Ngāti Rangitāne became a large iwi occupying lands from Heretaunga (Hastings) to the Marlborough Sounds. The section based at Tāmakinui a Rua (Dannevirke) extended into the Manawatū where their principal settlements in the Manawatū at the time of the Ngāti Toa invasion were spread along the length of the Manawatū river, from Raukawa (Ashurst) near to Apiti (Manawatū Gorge), to the river mouth at Te Awahou (Foxton). They were not the first to occupy the area, so that the description given of them in the Native Land Court as the 'original people' is not accurate. McEwen records that Rangitāne first invaded the Manawatū in about 1575. They displaced or absorbed Ngāti

Māmoe, Ngāi Tara, Ngāti Houhia and Ngāti Hotu who were there before them.[70]

162. We submit that the Court should have called them the "prior occupants", or in Māori, the "iwi taketake", that is, those long established as against more recent arrivals. Thus, it was said "Taketake ake tēnei tangata a Te Rangiotū, nō Rangitāne, nō Ngāti Rangitepaia" – which conveys the sentiment that the iwi and hapū to which Te Rangiotū belonged, were long established in comparison with the people of Ngāti Raukawa.[71]

163. We come then to Ngāti Apa, the third group who were in the district when Ngāti Toa arrived. Apa was the son (or grandson) of another captain, Ruatea, and so Ngāti Apa are on a line that is distinct from both Muaūpoko and Rangitāne. Those affiliating as Ngāti Apa also moved south and crossed the Tararua ranges where their principal settlements at the time of the Ngāti Toa invasion were in the Rangitikei district north of the Rangitikei river, and especially around Turakina.

164. **The point is that contrary to the Native Land Court findings, the three groups were separate in terms of both whakapapa and dominant, territorial location.** Nor were they in alliance. At the time of the Ngāti Toa invasion, long-standing battles between Ngāti Apa and Rangitāne were still continuing.[72] Muaūpoko, for their part, were not steadfastly committed to either side. Although there had been some intermarriage between Rangitāne and Muaūpoko, there had also been intermarriage between Muaūpoko and Ngāti Apa. **There is no basis known to us by which the Native Land Court could have conflated Muaūpoko and Rangitāne.**

[7070] McEwen 1986: p 51.
[71] C Orange (ed) 1990-2000 *Ngā Tāngata Taumata Rau 1990:280*
[72] McEwen 1986 pp125 – 130.

165. In addition, as McEwen records, the 600 – 700 who occupied Puketotara Pa, downstream from the confluence of the Oroua and Manawatū rivers, were of the Ngāti Te Rangitepaia hapū of Rangitane, under Te Rangiotu, the father of Hoani Meihana Te Rangiotu.[73] Te Rangiotu was well-known for his distinguished Rangitāne pedigree, and since the pedigree of his parents is also well-known, it is clear that although he would presumably have a Ngāti Apa connection somewhere in the genealogical lattice, he was certainly not a Ngāti Apa half-caste.

166. Nor have we ever heard the inhabitants of Puketotara described as Ngāti Apa half-castes, as the Native Land Court did. They have been described simply as Ngāti Rangitepaia. Nor is there a record of Ngāti Apa having lived at Puketotara. At best there is a record of three Ngāti Apa rangatira visiting Hotuiti, which is much further downstream, to plan a joint attack on Te Rauparaha shortly before the battle of Waiorua in 1824.

167. **The Court cited no evidence to support its conclusion that the people of Puketotara were Ngāti Apa half-castes, we have found no evidence to support that view in the literature known to us, or in the research reports commissioned for this inquiry, the Rangitāne whakapapa do not support the Court's conclusion and the conclusion is contrary to Rangitāne traditions.**

168. **It is contended that the Court was also wrong in its view that Ngāti Apa were the only "original people" entitled in the Rangitikei-Manawatū block.** Rangitāne were in known occupation of Rewarewa, Raewera and Puketotara, all stockade pa on the true right bank of the Manawatū river. With regard to the true right bank of the Ōroua river, they are recorded as having fished the Rotonui-a-Hau swamp and as having lived at

[73] McEwen 1986: pp 141, 143, 148.

Mangawhata papakainga. These were all in the bounds of the Rangitikei-Manawatū block at 1840.

The Ngāti Raukawa alliance with northern Rangitāne

169. This section considers how the northern section of Rangitāne aligned with Te Whatanui of Ngāti Huia, a hapū of Ngāti Raukawa.

170. The "northern section" refers to the Rangitane hapū who lived within what became the Ahu-a-Turanga block (hereafter written as "Ahuatūranga" to align with current survey appellations). Ahuatūranga extended from Umutoi (above Ashurst) to below Tiaki Tahuna. Tiaki Tahuna was a papakainga on the west bank of the Manawatū river about two kilometres below present-day Longburn. In the 1860s it was shifted half a kilometre further west to Pioneer Highway when the road (and later the Foxton railway), replaced the river for transport. The "southern section" runs from the southern boundary below Tiaki Tahuna along the Manawatū river to its mouth. The southern boundary starts in the west at approximately the confluence of the Taonui and Oroua waterways, before the Taonui was reshaped by draining, and which marked the western extent of the Ahuatūranga block.

171. The division marks the two stages of the river's journey from Āpiti to the sea, with the steeper gradient in the northern section producing a stronger flow than in the south, where the gradient is less and the river is meandering and sluggish.

172. Chief of the northern section, at the time of the Ngāti Toa invasion, was Te Hirawanu, also known as Kaimokopuna. He was based at Raukawa Pa near Apiti (the Manawatū gorge), but also had at least two pa on the eastern or Hawke's Bay side of the ranges. He was of the Rangitāne hapū of Ngāti Te Rangiwhakaewa, later called Mutuahi as a result of an event in a battle.

173. The northern section, with forests so impenetrable as to confine raiding parties to the river, was less affected than the south by the Ngāti Toa and Ngāti Raukawa incursions coming in from the west coast. On the other hand, however, Hirawanu and his people had been long involved in battles against Ngāti Kahungunu in the east.

174. It was because of the wars with Ngāti Kahungunu that Hirawanu formed an alliance with Te Whatanui of Ngāti Huia. In the 1820s Te Whatanui had sought to relocate his people to Hawke's Bay and had fought with Ngāti Kahungunu. He had not been successful. Subsequently, he had taken groups of Ngāti Raukawa from the north to 'Kapiti" arriving on the west coast. Finally, in 1828 he led the last of the major migrations of Ngāti Raukawa to Kāpiti, but this time taking a route through Hawke's Bay to settle some old scores. Te Hirawanu was there to meet him at the point where he arrived in Hawke's Bay. Te Hirawanu fought alongside Te Whatanui, in battles extending as far north as Te Whanganui-a-Orutu (Napier). He lost his son and a cousin who was taken as a wife for Te Hāpuku.[74] As a further consequence, Te Hirawanu would later be attacked in his pā in Manawatū, in reprisals from Ngāti Kahungūnu.

175. Accordingly, while there was enmity in relation to Ngāti Toa, there was no known disaffection with Te Whatanui. Instead, there was an enduring alliance dating back to the battles in Hawke's Bay.

176. Later still, when Hirawanu and the northern Rangitane hapū wished to sell their land to the government, keeping only small reserves, Ngāti Raukawa agreed. In custom Ngāti Raukawa could claim it. Rangitāne had participated in the battle of Waiorua and this was part of the spoils of war that Te Rauparaha could pass on to his people of Ngāti Raukawa. Ngāti Raukawa had also the

[74] McEwen 1986: pp 133-134

numbers to press their point of view. Nonetheless at a meeting near the western end of the Manawatū Gorge in 1858, Ngāti Raukawa agreed to waive any claims to the Ahuaturanga block, notwithstanding their opposition to land sales.[75] The long-standing alliance between Te Hirawanu and Te Whatanui was undoubtedly a factor, but there is other evidence that Ngāti Raukawa was looking to an equitable division of the land with the iwi taketake. When the surveyors surveyed the Ahuaturanga block for sale, they were not interrupted by Ngāti Raukawa (although there were complaints about the western boundary from Ngāti Kauwhata).

The Ngāti Raukawa Peace with Muaūpoko

177. In Rangitāne tradition, as recorded by McEwen, it was when Te Whatanui was crossing the Tararua ranges that he found the remnants of Muaūpoko living precariously in the remote forests. He took the Muaūpoko under his wing and settled them on a part of their former lands beside what is now Lake Horowhenua, promising them protection against Ngāti Toa.[76] This is said to have cut a deep impression on Rangitāne, including Te Rangiotu of southern Rangitāne, and to have led Te Rangiotu to seek a peace arrangement with Te Whatanui, as is referred to below. However, we take the Ngāti Raukawa peace with Muaūpoko no further than the point we have just made as we understand the circumstances surrounding the support of Te Whatanui for Muaūpoko is a contentious issue in this inquiry and that it will be argued by the hapū most affected.

Apportioning the land

178. As Professor Boast has also pointed out, the 1869 Court did not take account of the extensive efforts of Ngāti Raukawa to secure peace and consensus. The Ngāti Raukawa allowed that

[75] McEwen 1986: p 144.
[76] McEwen 1986: p 146

each of the prior occupants, of Rangitāne and Ngāti Apa, should have an area of roughly equal size having regard to where each was principally located. We understand that others will be dealing with this in more detail, but for the present we add that the fairness amounted to generosity in our view. There was an equality in size and value notwithstanding that there had been a conquest and notwithstanding that Ngāti Raukawa had by far the larger number. The comparative sizes remain in view today in the many Ngāti Raukawa marae in the district compared with those of the prior occupants.

179. Ngāti Raukawa agreed that Ngāti Apa should take the district from Whangaehu to the Rangitikei river. Nearly all of Ngāti Apa lived in that district, mainly around Whangaehu and Turakina. The land became called Rangitikei-Turakina.

180. They agreed that northern Rangitane should take, exclusively, the area from the Taonui stream to the ranges.[77] This, called Ahuatūranga, included the northern Rangitāne papakainga along the Manawatū river.

181. Ngāti Raukawa took for themselves the land in between that became known as Te Awahou and Rangitikei-Manawatū. It was very sparsely occupied, especially in the Oroua valley, which was either in swamp or dense bush.

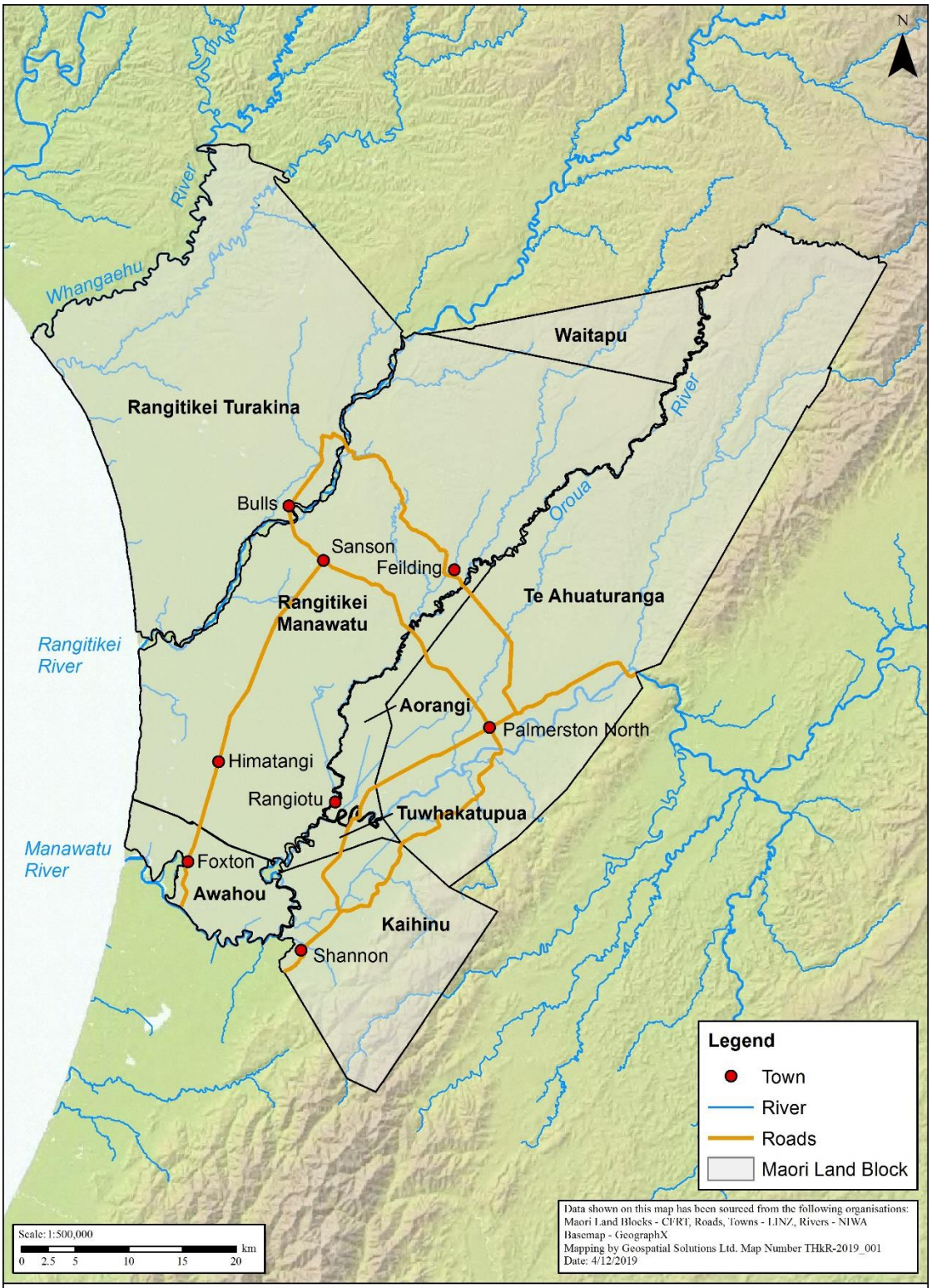
182. Ngāti Apa had kainga on the southern side of the Rangitikei river and sparse occupations down the coastal edge to Omarupapaku bush (near Foxton). While Māori generally were comfortable with nuances, in this case there was a reasonable expectation that Ngāti Apa would reside north of the river but if living south would become part of the Ngāti Raukawa people. The larger occupation of iwi taketake was by Rangitāne at Puketotara on the fringe of the Ngāti Raukawa block, some 600 to 700 people,

[77] Ngāti Kauwhata maintained the boundary was the Mangaone Stream near Palmerston north airport and continued to hold to that view notwithstanding that they eventually agreed to the Taonui stream.

and also at Hotuiti, but with them there was a peace agreement, as referred to below, and a pattern of joint occupations.

183. The three blocks were close to 240,000 acres each. The balance, between the Oroua and Taonui waterways, and south from Tokomaru to Paparewa (Shannon), was jointly settled pursuant to a peace agreement between Ngāti Raukawa and southern Rangitāne.The lands concerned are shown in Map A.

Map A



Maori Land Blocks

The Ngāti Raukawa Peace with southern Rangitane

184. This section describes the Rangitāne settlements along the lower Manawatū river at the time of the invasion, the intrusion of Ngāti Raukawa into the area, and a peace agreement between the southern Rangitāne and Ngāti Raukawa.

185. At the time of the invasion, the southern section was led by Pohoi Te Rangiotū of Ngāti Rangitepaia who was based at Puketotara, and Te Aweawe of Ngāti Hineaute based at Hotuiti and Tuwhakatupua. All were along the Manawatū river.

186. The Manawatū river was the tribal highway. Rangitāne settlements on the lower river were at the river-mouth; at Hotuiti a lagoon inland from the river between present day Foxton and Shannon; at Paparewa (Shannon), Rewarewa and Raewera near what is now Moutoa,[78] at Puketotara, the main Rangitepaia pā supporting some 600 – 700 people; at Tuwhakatupua on the opposite bank; and at Tiaki Tahuna.

187. Several of the Ngāti Raukawa migrants took occupation from when the heke arrived, including at Rangitikei, Te Awahuri and Poutu, but following traditional tactics, the migrating hapū camped together at Kāpiti Island or Ōtaki until the district was militarily secure, then moved out to the various places following the battle of Haowhenua in 1834. Ngāti Ngārongo, Ngāti Whakatere and others established themselves on what became the Awahou block, Ngāti Te Au, Ngāti Tūranga and Ngāti Rakau on what became the Hīmatangi block, the many hapū who united as Ngāti Parewahawaha on the Manawatū coast to Rangitikei, and Ngāti Kauwhata in the Oroua valley. The Reureu hapū came later in 1842 and 1846.

[78] We are not sure that Rewarewa or Raewera existed at the time of the invasion or of their precise location.

188. Ngāti Whakatere of Ngāti Raukawa also established settlements on the east side of the river to the Tararua ranges from Tokomaru to Te Maire, near to present-day Shannon.[79] Ngāti Kauwhata established settlements and pa from Te Awahuri as far south as Mangawhata near present-day Rangiotu, and as Ngāti Kauwhata or as Ngāti Wehiwehi (bearing in mind that the persons concerned were linked to both), they extended their occupations beyond the Taonui swamp on the eastern side of the Oroua river at Rangiotu, to Tiaki Tahuna.[80]

189. There were inevitably battles, both before and after Haowhenua. These included attacks on Hotuiti, Puketotara, Tuwhakatupua, Roto a Tāne and Tiaki Tāhuna.[81] Ngāti Kauwhata also attacked a settlement near Awapuni in what is now Palmerston North, where Rangitāne had established extensive Karaka groves.

190. Conflict came to a head over access to the Taonui swamp. The dispute was with Ngāti Kauwhata presuming to catch eels at spots long cherished by Ngāti Rangitepaia. Wiremu Kingi Te Aweawe referred to it in an address to Victoria University students in about 1960. He advised of a consequential battle in the Taonui swamp involving Ngāti Kauwhata and Ngāti Raukawa against Rangitāne in which the intruders were not successful despite their access to guns, but which led eventually to a peace pact.

191. The only corroboration that we have found of this piece of oral tradition, is an unsourced statement by AGS Bradfield. He refers to attacks in the 1820s on Motuopoutoa pa near Anzac Park and at Te Kuripaka opposite Awapuni, both places being now in Palmerston North. He refers to the attackers as simply ancient

[79] McEwen 1986: p
[80] In the early records, Ngāti Wehiwehi are also recorded as Ngāti Ihi-Ihi, but the latter name has now dropped out of use.
[81] McEwen 1986: p 135.

tribes in the North. Bradfield then states "About 1830 another war party from Rangitikei and beyond attacked the Rangitānes at the Taonui lake (near Rangiotu) as the lake was the breeding place of delicious eels. This was the first time that firearms were used but the invaders were again defeated with heavy losses."[82] The reference to a war party from Rangitikei and beyond appears to refer to Ngāti Kauwhata who had entered the district from there.

192. The outcome was a peace agreement that has continued to hold special significance for the Ngāti Raukawa, Ngāti Kauwhata and Rangitāne hapū from that day to the present, and which is regularly referred to. In tradition, Te Whatanui was held in high regard by Ngāti Rangitepaea and Ngāti Hineaute not only because of the old northern alliance, but also because of his respect for Muaūpoko and the place that he had made for them. His intervention was sought to bring an end to further hostilities, and he was instrumental in securing the peace of Whatiwhati Taiaha in about 1837.

The Peace of Whatiwhati Taiaha

193. This section considers the peace of Whatiwhati Taiaha and its confirmation by marriages over five generations, extending the bonds of peace and consanguinity throughout Ngāti Raukawa and Ngāti Toa. The marriages were introduced to the Tribunal by the late Iwikatea Nicholson, a leading kaumatua of Ngāti Raukawa, in the Korero Tuku Iho session at Raukawa marae on 17 November 2014.[83] The name of the peace may come from the story of Te Heuheu who, on the death of his son in the 1834 battle of Haowhenua, broke his taiaha across his knee and vowed to fight no further in that battle.

[82] Bradfield AGS *The Precious Years* 1962 Kerslake, Billens and Humphrey Ltd: p 104
[83] #4.1.49 pp 61 – 64.

194. The peace formalised the joint occupation of the southern Rangitāne lands, not just by partition but by living side by side, as on the Aorangi and Kaihinu lands from Tokomaru on the Manawatū river and Mangawhata on the Oroua to Paparewa (Shannon). Even the Puketotara block, the never-conquered land of Ngāti Rangitepaia, was given over for joint occupation. Ngāti Raukawa whanau, like that of Rikihana Carkeek, were farming there until the 1940s.

195. The peace was eventually sealed by the marriage of Enereta te One and Hoani Meihana Te Rangiotu. They were the children of the leaders of the two disputants over the Taonui swamp. Hoani Meihana was the son of Pohoi Te Rangiotu. He took the name Hoani Meihana on his conversion to Christianity and baptism in about 1840 by Rev John Mason of the Putiki Mission.

196. Enereta Te One was the daughter of Reupena Te One of Ngāti Whakatere and Ngāti Kauwhata who had led part of the Ngāti Kauwhata migration. He had settled at the northern end of the Aorangi block beside the Oroua river. His son, Te Kooro te One, was renowned for opposing land sales and his vision of a tribal reserve. Te Kooro lived at Mangawhata near to Rangiotu, and also at Tiaki Tahuna, in both cases, alongside Rangitāne.

197. Their marriage, and that of their daughter Hurihia to Te Rama Apakura of Ngāti Raukawa and Ngāti Kauwhata, sealed an ongoing connection between the Rangitāne marae at Rangiotu and the Ngāti Kauwhata marae of Aorangi.

198. Enereta and Hoani Meihana enjoyed the status of moenga rangatira, a term used to refer to such marriages but used also, and used here, for one born from a chiefly line. Professor Sir Hirini

Moko Mead has described the custom.[84] The process of negotiating a peace agreement, he wrote, was called hohou rongo [hohou i te rongo], to make peace. Hohou, he wrote, is to bind and lash together so that each side accepts a responsibility to uphold the agreement and the agreement itself becomes binding on the whole tribe. To make the binding real, political marriages might be arranged each partner to be a person of standing in their iwi, the issue then belonging to both sides. Mead referred to the advice of Iwikatea, a kaumatua of Ngāti Raukawa, that the descendants are called takawaenga – those who stand in between, in the event of a dispute, or to bring those affected together. In the 1980s, Iwikatea instanced the need for the takawaenga to lead Rangitāne and Ngāti Raukawa to a combined settlement. Iwikatea referred to that briefly in his evidence to you in 2014 already referred to.

199. The significance of the agreement was first, that it settled land rights for the lands between the Oroua river and the Ahuaturanga block, and the lands south of the Ahuaturanga block from Tokomaru to Paparewa on one side of the river, and around Puketotara on the other, as already described. Second, it was a reminder that contrary to the opinion of the Court in 1869, might is not right in tradition, that wars had to be justified to be tika and peace, no matter how elusive, had to be pursued.

200. Enereta and Hoani Meihana had Ema and Hurihia. Ema married Hare Rakena Te Aweawe the son of Te Aweawe, son of Tokipoto. Now both Ngāti Hineaute and Ngāti Rangitepaia were bought into the pact – covering the whole of the southern Rangitāne. Hurihia married Te Rama Apakura, son of Erana Tuporo of Ngāti Raukawa and Ngāti Kauwhata and the whaler from Kāpiti Island, Robert Durie.

[84] HM Mead *Tikanga Māori Living By Māori Values* 2003 Huia Publishers: 2003 pp 167 – 180. See also Benton, Frame, Meredith *Te Mātāpunenga* 2013 Victoria University Press: entry for Hohou I Te Rongo pp 86 – 93.

201. At this point we leave the arrangements of the third and fourth generations to refer to the moenga rangatira. Below are the Te Aweawe and Te Rangiotu whanau lines and the Enereta Te One line, by which the Kurahaupō and Tainui waka were joined.

Kurahaupo: Ngāti Hineaute	**Kurahaupo: Ngāti Rangitepaea**	**Tainui (Raukawa, Kauwhata)**	
Whatonga = Reretua	Whātonga = Reretua	Hoturoa	
Tautoki	Tautoki	Hotuope	
Rangitāne	Rangitāne	Hotumatapu	
Kopu-parapara	Kōpu-parapara	Motai	
Kūaopango	Tokatūmoana	Ue	
		Rakamamao	
	Te Pūehu	Tawhao	
	Te Aweawe	Whatihua	
	Maiao	Uenukuwhangai	
	Kohungaiterangi	Kotare	
	Tūwharemoa	Kauwhata	
	Tamakere	Tahuriwakanui I	
Uengarehupango	Te Aonui	Poroaki	
Te Awariki	Te Rangimahuki	Te Rama Apakura I	
Ngaroroa	Rangiāraia	Te Ipuangaanga	
Kuaoriki	Wākoreao-te-rangi	Kinomoerua	
Wairerehua	Rangi-whaka-arahia	Punga	
Hineaute	Kaingahare	Tahuriwakanui II	
Rākaumāuri	**Te Rangitepaia**	Poroaki	
Kahutaratara	Tirohangakino	Rangitepure	
Hinerautekihi=**Tokipoto**	**Te Rangiotu = Riria**	**Reupena Te One**	
Te Aweawe	**Hoani Meihana Te Rangiotu=**	**Enereta Te One**	
Hare Rakena Te Aweawe	=	**Ema**	

Notes

The Ngāti Hineaute line to Te Aweawe is through his mother, Hinerautekihi. The line to his father, Tokipoto, starting from Kūaopango above, is:

Toamahuta > Toarere > Tarahia > Tarapata > Tūwhakahiku > Uengarangi > Manokihau > Te Whakaruhitaua > Roitaniwha > Hinewhakiirirangi > Hinekautu > Tokipoto.

See McEwen pp 236,255 for Tokipoto and 236, 276, 277 for Hinerautekihi.

For the Rangiotu whakapapa see entry by Mason Durie for *Te Rangiotu* Dictionary of New Zealand Biography 1990 and see also McEwen pp 235, 236, 237, 239. See also WC Carkeek *The Kāpiti Coast* 1966 AH and AW Reed p6.

The Tainui line is from Sir Mason Durie whakapapa books held privately.

The first wife of Te Aweawe was Taruke but his second wife, Roka, was probably more senior, being the daughter of Rangikangaehe, a direct descendant from Hauiti. Roka's younger sister, Riria Potangotango was married to Te Rangiotu. Roka was previously betrothed to Mahuri, brother of Te

Aweawe, who was killed by Ngāti Toa at the so-called feast of the pumpkins. Te Aweawe's father had previously been killed by Te Rauparaha at Hotuiti, on the first expedition in about 1819.

The lines to Enereta include:

	Raukawa	Raukawa
	Rereahu	Rereahu
	Rongorito	Maniapoto
	Huitao	Kawairirangi
Kauwhata		Rungaterangi
Tahuriwakanui		Uekaha
Poroaki		Tutanumia
Te Rama Apakura		
Te Ipuangaanga		Parekarewa
Kinomoerua	Kapu	Heipiripiri
Punga	Mokai	Kaitereo
Tahuriwakanui II	Maui	Kapaotu
Poroaki	Taoroa	Tinotangata
Rangiatepure	Rangiatepure	Tongatonga
Reupena Te One	Reupena Te One	Parekohuru (Hiria)
Enereta	Enereta	Enereta

202. We had come to the second generation of Ema and Hurihia as the children of Enereta Te One and Hoani Meihana Te Rangiotu. Ema, the eldest sister, married Hare Rakena Te Aweawe the son of Te Aweawe whose father, Tokipoto, had been killed by Te Rauparaha. The marriage to Hare Rakena extended the peace pact to embrace Ngāti Hineaute and thus the balance of southern Rangitāne.

203. Then, Hurihia married Te Rama Apakura, who was the son of Erana Tuporo of Ngāti Raukawa and Ngāti Kauwhata and of Robert Durie (Pape), a whaler on Kāpiti Island. Iwikatea explained to the Tribunal how Enereta and Te Rama were in fact cousins of the same hapū, their common ancestor being Tahuriwakanui II.[85] Hurihia and Te Rama had Hoani Meihana Te Rama Apakura (John

[85] #4.1.9 p 63

Mason Durie).[86] Hoani Meihana Te Rama Apakura married Kahurautete Matawha, of the Ngāti Hāunga hapū of Ngāti Toa, and, through the wife of Te Hāunga, Te Kāhuirangi, also of Ngāti Raukawa and Ngāti Rangatahi.[87] Her grandmother, Wharekiri, had married James Cootes (Reweti Kuta), also a whaler on Kāpiti Island.

204. Further, as part of the third generation, Ema Heeni and Hare Rakena Te Aweawe had Manawaroa Te Aweawe.

205. Manawaroa was named for the peace making which his grandfather, Hoani Meihana had famously referred to earlier, in a tribute to Ngāti Raukawa - "Ko te manawaroatanga o Ngati Raukawa ki te pupuri te rangimarie, ara te whakapono'. Manawaroa was the eldest grandson of Hoani Meihana. Hoani Meihana's eldest granddaughter was named Rangimarie. In addition, on the construction of a roadway linking to the Oroua river in 1867, which would soon be bridged and would lead on to Foxton, Hoani Meihana had shifted Puketotara papakinga from its position downstream on the Manawatū river to its current site at what became called Rangiotu, and the marae there was named Te Rangimarie, again in recognition of the peace.

206. Hare Rakena thus descended from Te Rangiotu, Te Aweawe and Reupena Te One, three senior rangatira in this district at the time of the migrations bringing together the iwi taketake and the iwi heke. Reupena, of both Ngāti Whakatere and Ngāti Kauwhata, had led one section of Ngāti Kauwhata in the migrations and had settled at the northern end of the Oroua block at Te Kohanga, Aorangi, where Rāwiri Durie, older brother of Sir Mason and Sir Taihākurei, now farms.

[86] Hoani Meihana Te Rama Apakura had Rāwiri, Matawhā, Kahu Hurihia Taipana and Mahuenoa Paewai. Matawhā is the father of Sir Mason and Sir Taihākurei and grandfather of Meihana.
[87] As described by Iwikatea Nicholson #4.1.9 p 63.

207. Manawaroa Te Aweawe married Rangingangana Winiata of Ngāti Pareraukawa and Ngāti Parewahawaha. Through her father, Winiata Pataka, she descended from Nēpia Taratoa, who led one of the Ngāti Raukawa heke and settled on the Rangitikei river. Through her mother she descended from Hitau, sister of Te Whatanui. Te Whatanui returned to his kainga tuturu, Waihāhā, on the shores of Lake Taupo, and left no issue in the district. His presence in the Horowhenua district where he lived, is maintained through his sister, Hitau. From the siblings of Rangingangana we have Professor Whatarangi Winiata, founder of the Wānanga o Raukawa, and Rachael Selby, co-chair of the Wai 113 Claim Forum.

208. Referring to the fourth generation, Wharawhara III, the daughter of Manawaroa and Rangingangana, married Pakake Leonard of Ngāti Huia and Ngāti Rangiwewehi, Te Arawa. Manawaroa and Rangingangana also had Wiremu Kingi Te Aweawe, a principal informant for the authors, McEwen and Wakahuia Carkeek. Wiremu, known also as Bill Larkin, and his cousins, Atareta Poananga and Hoani Meihana Te Rama Apakura, were leading figures for Rangitāne in the Manawatū in the 20th century. Wiremu married Pipi who descended from Waitohi, the sister of Te Rauparaha, and through her, Matene Te Whiwhi. Pipi's sister Parewahawaha, married Rikihana Carkeek who farmed on the Puketotara block. Rikihana had first, Rikihana Te Rei who had Te Waari Carkeek, a noted tribal historian, and subsequently, the late Wakahuia Carkeek, who wrote *The Kāpiti Coast* which was published shortly before his death.

209. Whāngai relationships were also a customary means of keeping connections. Tamihana, younger brother of Hare Rakena Te Aweawe, married Waitokorau of Ngāti Toa, and adopted Atareta, daughter of Hori Te Mataku and Ani Patene Durie (sister

of Te Rama Apakura) of Ngāti Kauwhata. Atareta was the mother of the first Māori to be Chief of General Staff, Brian Poananga.

210. Tamihana and Waitokorau also adopted Marore, direct descendant of Te Rauparaha, and Marore's daughter, Ada Atireira Tamihana. Ada married Taylor Whitirea Brown of Ngāti Parewahawaha and was active in promoting the construction of Parewahawaha house on the marae on the Ohinepuhiawe block where she lived.

211. Tariuha Te Aweawe, brother of Wiremu Kingi Te Aweawe, was an advisor to Iriaka Ratana, MP for Western Māori. Tariuha adopted Tariana Turia of Ngāti Apa, who formed the Māori Party.

212. In the fifth generation, more than 100 years after the marriage of Enereta Te One and Hoani Meihana Te Rangiotu, Rāwiri Durie, eldest son of Hoani Meihana Te Rama Apakura (JM Durie) married Katarina Katene of Ngāti Toa. His sister, Mahuenoa Durie, married Rui Paewai II grandson of Manahi Paewai I of the Tamakinui a Rua section of Rangitāne, completing the century old cycle.

213. The relationships that developed are summarised as follows:

Figure B.

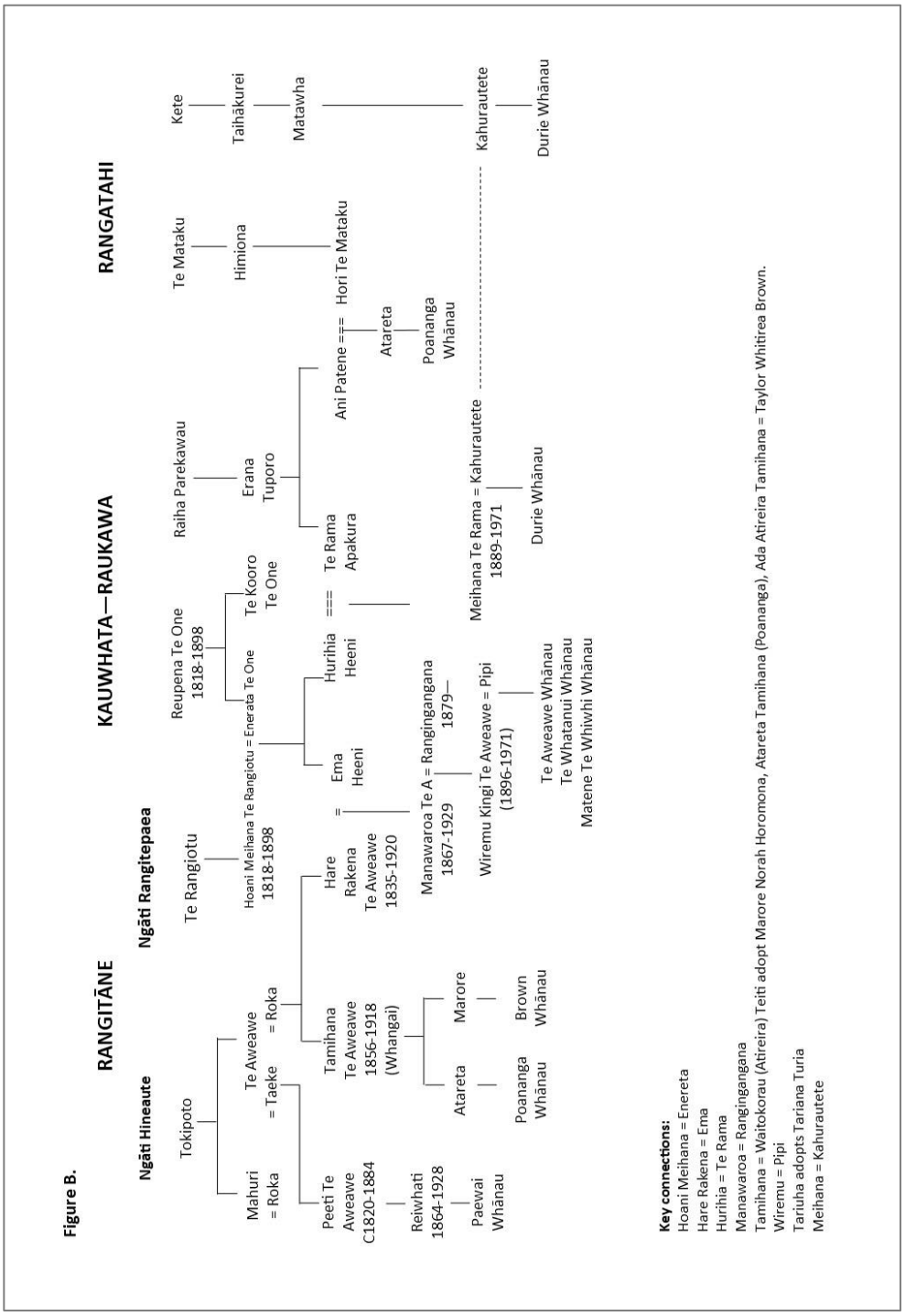


Figure B.
RANGITĀNE
KAUWHATA—RAUKAWA
RANGATAHI
Ngāti Hineaute
Ngāti Rangitepaea
Tokipoto
Te Rangiotu
Reupena Te One
1818-1898
Raiha Parekawau
Te Mataku
Kete
Mahuri
= Roka
Te Aweawe
= Taeke
= Roka
Hoani Meihana Te Rangiotu = Enerata Te One
1818-1898
Te Kooro
Te One
Erana
Tuporo
Himiona
Taihākurei
Matawha
Peeti Te
Aweawe
C1820-1884
Tamihana
Te Aweawe
1856-1918
(Whangai)
Hare
Rakena
Te Aweawe
1835-1920
=
Ema
Heeni
Hurihia
Heeni
===
Te Rama
Apakura
Ani Patene ===
Hori Te Mataku
Atareta
Poananga
Whānau
Reiwhati
1864-1928
Manawaroa Te A = Rangingangana
1867-1929
1879—
Paewai
Whānau
Atareta
Marore
Wiremu Kingi Te Aweawe = Pipi
(1896-1971)
Meihana Te Rama = Kahurautete
1889-1971
Kahurautete
Poananga
Whānau
Brown
Whānau
Te Aweawe Whānau
Te Whatanui Whānau
Matene Te Whiwhi Whānau
Durie Whānau
Durie Whānau
Key connections:
Hoani Meihana = Enereta
Hare Rakena = Ema
Hurihia = Te Rama
Manawaroa = Rangingangana
Tamihana = Waitokorau (Atireira) Teiti adopt Marore Norah Horomona, Atareta Tamihana (Poananga), Ada Atireira Tamihana = Taylor Whitirea Brown.
Wiremu = Pipi
Tariuha adopts Tariana Turia
Meihana = Kahurautete

Figure C.

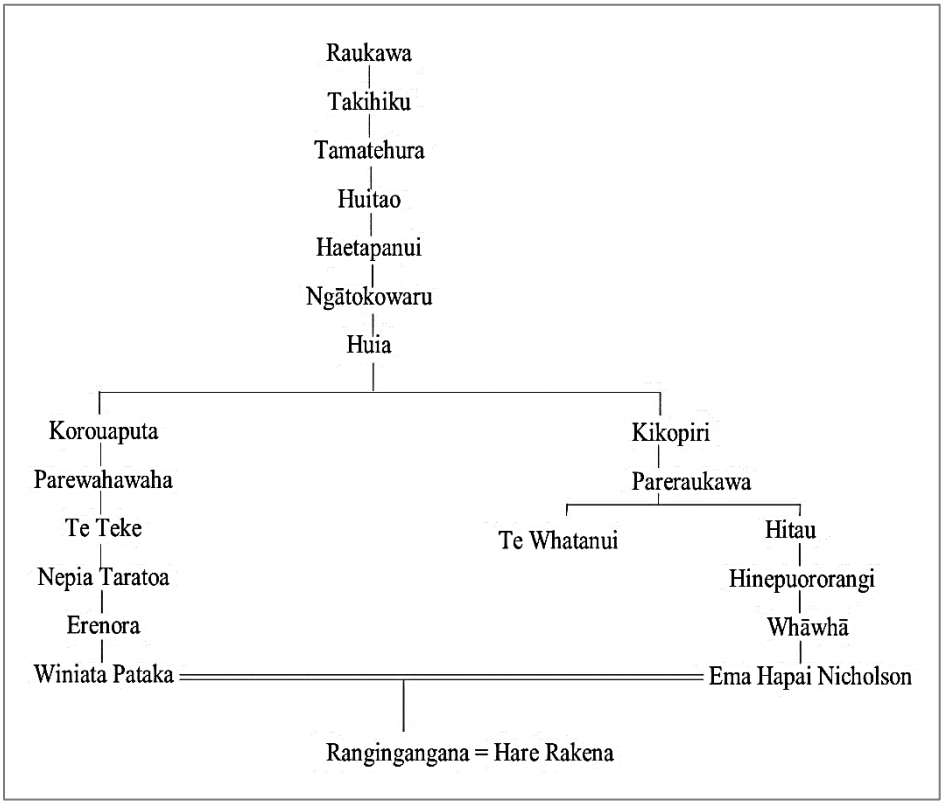

Raukawa
Takihiku
Tamatehura
Huitao
Haetapanui
Ngātokowaru
Huia
Korouaputa
Parewahawaha
Te Teke
Nepia Taratoa
Erenora
Winiata Pataka
Kikopiri
Pareraukawa
Te Whatanui
Hitau
Hinepuororangi
Whāwhā
Ema Hapai Nicholson
Rangingangana = Hare Rakena

Figure D.

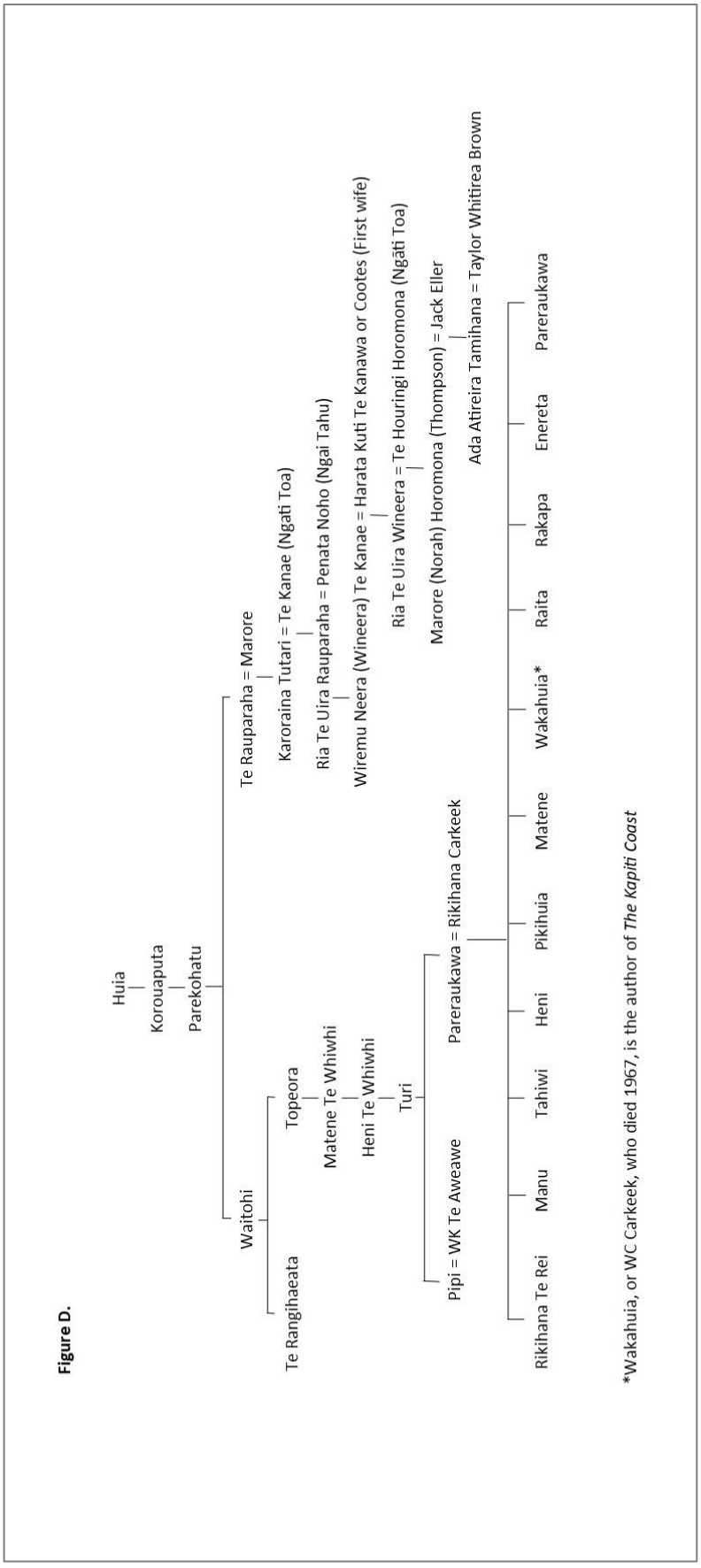


Figure D.
Huia
Korouaputa
Parekohatu
Waitohi
Te Rangihaeata
Topeora
Matene Te Whiwhi
Heni Te Whiwhi
Turi
Pipi = WK Te Aweawe
Rikihana Te Rei
Manu
Tahiwi
Te Rauparaha = Marore
Karoraina Tutari = Te Kanae (Ngati Toa)
Ria Te Uira Rauparaha = Penata Noho (Ngai Tahu)
Wiremu Neera (Wineera) Te Kanae = Harata Kuti Te Kanawa or Cootes (First wife)
Ria Te Uira Wineera = Te Houringi Horomona (Ngāti Toa)
Marore (Norah) Horomona (Thompson) = Jack Eller
Ada Atireira Tamihana = Taylor Whitirea Brown
Pareraukawa = Rikihana Carkeek
Heni
Pikihuia
Matene
Wakahuia*
Raita
Rakapa
Enereta
Pareraukawa
*Wakahuia, or WC Carkeek, who died 1967, is the author of The Kapiti Coast

214. From our perspective, as members of Ngāti Kauwhata, land rights came from winning the peace through land allocations and arranged marriages. The land allocations, as settled by 1840, left the leaders of Ngāti Apa holding mana north of the Rangitikei river, those of northern Rangitāne holding mana east of the Taonui stream, and the hapū and iwi of the Ngāti Raukawa confederation holding mana over the central Rangitikei-Manawatū block, with Ngāti Kauwhata holding the true right aspects of the Oroua river valley from the Whakaari dome. This left an elongated strip from the Oroua river to the Taonui stream. The northern aspect was held in custom by the Ngāti Kauwhata leaders, and the lands from there to the Manawatū river-mouth, were held by Rangitāne as to the Tuwhakatupua and Puketotara blocks, and held jointly as to all else. As given effect by the peace agreement, and in approximate terms. Rangitāne-Ngāti Kauwhata occupied north of Rangiotu; Rangitāne-Ngāti Whakatere occupied the Kaihinu blocks between Tokomaru and Paparewa (Shannon), Rangitāne and the Ngāti Raukawa hapū of Ngāti Te Au, Ngāti Tūranga and Ngāti Rākau occupied the Hīmatangi block and Rangitāne and the Ngāti Raukawa hapū of Ngāti Whakatere, Ngāti Ngārongo and Ngāti Patukōhuru occupied the Te Awahou block. As mentioned by Iwikatea, these have their own records of intermarriage with Rangitāne, Iwikatea referring in particular to the hapū of Hīmatangi.[88]

215. Accordingly, it is land allocation and whakapapa, not conquest, that figures most in the traditions of Ngāti Tahuriwakanui, save to the extent that our forebears were obliged to argue in terms of conquest in the Native Land Court because of the Court's perception of native land rights in restricted categories. In fact in our view of the custom the three-way apportionment of the land was a customary measure, just as the allocation of the land

[88] #4.1.9 p

by Ngāti Toa was a customary measure to consolidate military gains. The three-way allocation was fair and should have been enough for Ngāti Raukawa to gain ownership of the Rangitikei-Manawatū block. The peace agreement which settled the entitlement to the remainder was also customary and should have been respected as well. The applicable tikanga related to manaakitanga, manatika, tātai hono, te tatau pounamu, moenga rangatira and hōhou i te rongo, but these sorts of tikanga, or aspects of Māori custom, were outside the Court's ken. The Court saw only savages, who failed to be as savage as savages are supposed to be.

216. We refer now to the lands that were jointly held, east of the Oroua and the lower reaches of the Manawatū river.

PART D: NGA WHENUA PĀPĀTUPU O TE RANGIOTU RĀUA KO TE AWEAWE

217. We begin this section with an overview of the changing scene for Ngāti Raukawa and Rangitāne and will then address the same in more detail. The peace held fast as the land in the Oroua valley and south along the Manawatū river was jointly held by Ngāti Raukawa and Rangitāne. However, neither Ngāti Raukawa nor Rangitāne was able to hold the land against the Government. Within 40 years of the Treaty of Waitangi, none of the land was held under the authority of the rangatira. All that can be said is that some members of Ngāti Raukawa and Rangitāne, but not others, retained fractionated shares in disbursed allotments that were mostly small.

218. The occupational pattern also changed as the hapū left their traditional, riverside pa and papakainga to relocate alongside the roads and railways that were the mainstay of the settler economy. Individual survival depended less and less on the customary

economy of reciprocal gift giving which served also to maintain relationships between hapū.[89] The tribal economy could not be maintained as no resources remained in tribal ownership. With the loss of the land and the destruction of the natural environment, the pristine forests, swamps, and rivers, there were also significant losses in Māori spiritual capacity and wellness.[90]

219. For a time, some enterprising arrangements kept the customary order alive but eventually these too could not survive the winds of change. Hoani Meihana Te Rangiotu shifted Puketōtara papakainga from the Manawatū river to the new road from Palmerston to Foxton where it crossed the Oroua river. He secured the surrounding land from the government as a reserve. He then placed on the reserve both Rangitāne and Ngāti Raukawa families and maintained customary values through the Māori Christian church. Hoani Meihana then re-established the Puketotara marae on the land, which he renamed as Te Rangimarie, in honour of the peace agreement. Unfortunately, the Native Land Court would eventually fragment the titles and the ownership of the Puketōtara reserve as well, and with loss of the central system of customary control, most of the block would eventually pass from Māori ownership.

220. To go back to pre-European times, Adkin's maps (Map IX and XI) show the myriad settlements along the lower reaches of the Manawatū river in the southern takiwā of Rangitāne from the river-mouth to the southern boundary of the Ahuaturanga bock.[91] By the 1830's these had become infused with Ngāti Raukawa hapū

[89] Described as 'gift-exchange' in Raymond Firth *Economics of the New Zealand Māori* 1959 Wellington, New Zealand: Government Printer.

[90] For a full description of the spectacular scenic amenities of the original cover of the district see the account of Charles Kettle's journey up the Manawatū river in 1846, and especially the account of Thomas Bevan recorded in GC Petersen *The Pioneering Days of Palmerston North* 1952 pp 14 – 21, 23 Kerslake, Billens and Humphrey Ltd Levin

[91] Leslie G Adkin 1948 *Horowhenua: its Māori place names and their typographical and Historical Background* 1948 Department of Internal Affairs, Wellington.

extending from the river-mouth to Moutoa, co-existing with Rangitāne and with some European whalers who had intermarried.

221. Intrusions with a view to European settlement began in the 1840's. The waka navigability of the river from the mouth to Apiti (Manawatū Gorge) was established for the settlers with the journeys of Jack Duff in 1840 and Charles Kettle in 1846, although the navigation was increasingly difficult as one moved upstream in the Ahuaturanga block, to a point where the waka had to be poled. Also in the 1840's, a small settlement was established at Te Awahou (Foxton), Thomas Cook had established a store at Paiaka, on the opposite bank, the Kebbell brothers had established a timber mill at Haumearoa, Captain Robinson had a cattle run further down the river, the Symons were farming at Oturoa and a town to be called Te Maire was mapped out for the New Zealand Company where Shannon now stands. Te Maire did not materialise on the ground although a church was erected there by the rangatira, Taikopōrua, Stephen Hartley settled there and Thomas Bevan established a rope walk there, for the conversion of flax fibre to rope, in 1848.[92]

222. Along the river Māori were raising pigs and growing potatoes, wheat, maize, kumara and flax for sale locally and for Wellington, transported by schooner from Te Awahou.[93]

223. The principal Rangitāne settlements at this time were at Hotuiti (between Foxton and Shannon), Tokomaru (near the convergence of the Tokomaru and Manawatū rivers), Te Pararema (adjacent to Tokomaru), Paparewa (Shannon), Raewera, Puketotara, Tuwhakatupua, Rewarewa and Tiaki Tahuna. These were mainly fortified pā with associated papakainga. The further

[92] C. Knight *Ravaged Beauty* 2014 Dunmore Publishing Ltd pp 59 – 62. GC Petersen *The Pioneering Days of Palmerston North* Kerslake, Billens and Humphrey Ltd. Levin p22 – 23.
[93] Knight above p 62, GC Petersen above, chapter II.

settlements of Ngawhakaraua, Rangitāne, and Opiki may have developed later, in about the 1860s, as also did Rangiotu. [94]

224. Māori also established churches in the district. Puketotara, which was the largest Rangitāne settlement, boasted to have built the first church in European style, ahead of the famed church of Rangiatea at Ōtaki which was erected at the direction of Te Rauparaha. Puketotara papakainga had since shifted to Rangiotu and all that remains of the old church, which was destroyed in a fire, is the bell which is still held at Te Rangimarie marae. Ngāti Raukawa established a major church at Moutoa, part of which was later re-erected downstream at the Ngāti Whakatere marae of Poutu, and which still survives.

225. The relocation of Māori settlements began with the sale of the Ahuaturanga block and the transport of settlers by steamer to the closest point to that block that was safe for steamer navigation, on a bend beside the papakainga Ngāwhakaraua. Māori from downriver relocated to there and a large papakainga was established with a substantial wharerunanga and wharepuni, able to accommodate travellers. The steamer which brought in the settlers was the *Pioneer*. A dry weather road was developed to take settlers from Ngāwhakaraua to Karere, and later, further on to papaioea waerenga or clearing which became Palmerston North. The dry-weather road became called for the steamer, and in a euphemism for the road, it was named *Pioneer Highway*. Later a wooden railway with a horse drawn carriage was established. Some of the places shown are in Map B.

226. Further relocations followed. A similar settlement called Rangitāne was established further down from the bend in Pioneer Highway, on a track to the Oroua river that would later become

[94] Knight above pp 37, 47, 266; AGS Bradfield *The Precious Years* 1962 Kerslake, Billens and Humphrey Ltd. Levin p 104.

part of the road to Foxton. Tiaki Tahuna was relocated further along Pioneer Highway from its original site on the Manawatū river where it was named for an adjoining sandbank. There it became known to the settlers as Jackeytown. In the same way the bend in the river at Ngāwhakaraua became known to them as 'Half-Crown bend'.

227. Opiki may have existed as a settlement earlier than the period suggested as above, as it said that Major Keepa Te Rangihiwinui was born in a settlement there. In any event, large numbers of river Māori shifted to Opiki as well, but possibly that happened later, when Europeans settled, and workers were needed for draining and market gardening.

228. As mentioned, Hoani Meihana was responsible for shifting the remainder from Puketotara to a papakainga established in 1867 – 1868 shortly upstream and beside the Oroua river. This was known then as Oroua Piriti, the Oroua bridge having been established over the Oroua river on the road from Pioneer Highway, and which by 1870, would extend to Foxton. The place is known today as Te Rangiotu.[95] The roadway to Palmerston North was extended to the Gorge by 1870 and the road through the Gorge was completed by 1871.[96]

229. It was there at Oroua Piriti that the marae was re-established and was renamed Te Rangimarie, as already mentioned in recognition of the peace. That peace was maintained and saw the lands jointly occupied by Ngāti Raukawa, or Ngāti Whakatere in particular, and Rangitāne, from Tokomaru near Palmerston North to Shannon. The blocks were named for the Rangitāne rangatira, Kaihinu, of Tūwhakatupua pā.[97]

[95] Mason Durie. 'Te Rangiotu, Hoani Meihana', Dictionary of New Zealand Biography, first published in 1990. Te Ara - the Encyclopedia of New Zealand, https://teara.govt.nz/en/biographies/1t67/te-rangiotu-hoani-meihana (accessed 26 September 2019). See also Anderson, Green, Chase p 342.
[96] Knight above, p76.
[97] Knight above p43.

230. The peace was not perfect, however. After certain of the Rangitāne leaders returned from service with the Native Contingent in the Taranaki war, alongside the government troops, in 1868, they harboured new thoughts of military prowess and claimed the Tūwhakatupua lands for Rangitāne. Ngāti Whakatere and Ngāti Rangitāne prepared for battle but two Church layreaders, Henere Te Herekau of Ngāti Whakatere, and Hoani Meihana, stood between the combatants. Peace was restored, boundaries were adjusted and three mere were made from a single large greenstone slab. One called Manawaroa, which commemorated the earlier truce between Rangitane and Ngati Raukawa, was presented to Tawhiao, the Maori King, and is on display at Mahinarangi on Turangawaewae marae. [98] Tane-nui-a-Rangi was placed on loan to the Manawatu Museum; and Te Rohe-o-Tuwhakatupua is held by the descendants of Hoani Meihana.

PART E: CONCLUSION

231. The Rangitikei-Manawatū Block, of some 240,000 acres, stretches from the vicinity of Foxton to beyond Kimbolton. In an unexpected decision of 1869, the Native Land Court found that Ngāti Apa held the customary title to the land. By so finding, the Court effectively determined that this enormous block had been properly sold to the Government, leaving the principal occupiers, the hapū of Ngāti Raukawa who had opposed the sale, almost landless. Having regard to our previous comments, **we consider it only just, that the Tribunal should make an unqualified finding that the decision was wrong and that it was prompted by unworthy motives. The Tribunal should find instead that**

[98] As proposed by Matene Te Whiwhi of Ngāti Raukawa, the King was the ultimate arbiter in the resolution of disputes between Māori.

on the basis of conquest, possession and consensus, the customary owners were the Ngāti Raukawa hapū in possession, but jointly with Rangitāne along the Manawatū and Oroua rivers. We will now summarise our opinions.

The Court's role

232. The Court's main rationale was that Ngāti Apa had not been conquered because customary conquest required a complete dispossession. The rationale is contrived in our view. We are not aware of any compendium of cases or body of literature that supports the Court's opinion. In addition, this important issue was not raised as an issue at the hearing. The cases and the literature show rather that conquest was complete when victories on the field or heroic acts of aggression or benevolence left no doubt in peoples' minds as to who held the mana to control relationships in the district going forward. The literature points to many customary acts that rally against the total dispossession theory. These include the cessation of the battle on the slaughter of the chief at the stern of the waka or on the death of the mātāika, the resolution of disputes by the selection of single combatants, the taking of captives, the incorporation of the defeated into the tribe, the making of peace agreements, the arranging of marriages and the division of the land to victors and vanquished alike.

233. The underlying assumption of the Court's rationale was that the right to land could be determined on the basis of a single test like proof of conquest. The Court was bound by its statute to give effect to Māori custom, but the identification of a single norm as the basis for the decision is the antithesis of a customary Māori approach. The Māori approach as we see it is to look to the whole of the circumstances to determine what is tika, or just. On the history as we understand it, Ngāti Raukawa had undertaken several courses of action to secure a just outcome. They agreed to take the least occupied land, they agreed that Ngāti Apa and the

upriver Rangitāne should have the lands they mostly occupied, and that each would take about the same in size despite that Ngāti Raukawa were the more numerous. They also sought a customary peace agreement in respect of the balance leading to joint occupations and they created a refuge for Muaūpoko, the group most at risk of further attacks from Te Rauparaha. Ina te mahi, he rangatira. As the pēpeha puts it, this is the work of a rangatira and this too was part of Māori custom.

234. The best evidence of Ngāti Raukawa good intentions was in a tribute to them by one whose iwi had suffered at their hands. In a well-known pepeha, of which there are several variations, Hoani Meihana te Rangiotu of the Ngāti Rangitepaia hapū of Rangitāne, paid homage to Ngāti Raukawa in his reference to the steadfastness of Ngāti Raukawa in holding to the peace, at a time when Ngāti Raukawa had the capacity to wage war:

"Te Manawaroatanga o Ngāti Raukawa ki te pupuri i te rangimarie, ara i te whakapono". [99]

Hoani Meihana built a new church on the lines of a meeting house and called it Te Rangimarie, to commemorate the accord reached between Rangitāne and Ngāti Raukawa. The house is also known as Te Maungārongo o Ngāti Raukawa me ngā iwi o te Manawatū me Rangitikei.[100]

235. This evidence of customary practice was excluded from the Native Land Court's consideration through its pre-determination of five westernised sources of land rights and its narrow focus on just one of them.

[99] That is the pepeha as recorded by William J Phillipps in *Carved Māori Houses of Western and Northern Areas of New Zealand* 1955, Wellington, Government Printer.
[100] See entry for Hoani Meihana te Rangiotu by Mason Durie in the Dictionary of New Zealand Biography.

236. The basis for the Native Land Court's finding that Ngāti Apa had retained the customary title, was the factual finding that Ngāti Apa were in a state of permanent alliance and friendship with Ngāti Toa throughout the invasion. We see this as another example of contrivance, for the evidence to the contrary was graphic and well known. Such customary title as Ngāti Apa may once have possessed had been extinguished from at least the battle of Waiorua in 1824. Ngāti Apa organised a major attack involving tribes from Whanganui to the South Island in a gathering of warriors estimated at about 2000. The attack failed with the loss of many of the attacker's lives. It ended with Ngāti Apa being defeated in their own pa on the Rangitikei river and the killing of two of their leaders.

237. The extent of contrivance is manifest as well in the writing out of Rangitāne and Ngāti Kauwhata from the customary ownership of the Rangitikei-Manawatū block. The 1868 Court found that Ngāti Raukawa and Ngāti Apa owned equally, that part within the block's boundaries known as Hīmatangi. It was not Ngāti Apa who held Hīmatangi in such numbers, however. There is no record of distinct Ngāti Apa settlements on that block at 1840 or later although there was some intermixing. The reference should have been to Rangitāne who had a major pa at Puketōtara within the Hīmatangi block with some 600 – 700 persons. They had smaller settlements there as well.

238. The second Court dealt with the situation by describing the people of Puketotara as Ngāti Apa half-castes. Categorically, they were not. At 1840 they were the people of Ngāti Rangitepaia. Prior to the migrations, they had fought under Pohoi Te Rangiotu against Ngāti Apa. The Court also conflated Rangitāne with Muaūpoko, but as we have shown, Muaūpoko and Rangitāne were distinct as well.

239. Finally, the Court found that Ngāti Kauwhata had encroached into the north from lands allocated to them south of the Manawatū river. Again, this is an extraordinary conclusion. It was contrary to the clear evidence given to the Court that Ngāti Kauwhata came into the district and took occupation before the allocations were made; and that they entered from the Rangitikei district over the Whakaari dome in the north.

240. The Court must also have known that previously, Sir Donald McLean concluded that Ngāti Raukawa were the customary owners. As Chief Land Purchase Commissioner, Sir Donald was the person who had been most responsible for determining the customary land ownership before that function was taken over by the Native Land Court. He was probably the most informed European on the subject. In 1849, Sir Donald found that the land south of the Rangitikei river could not be acquired without the consent of Ngāti Raukawa. Sir Donald was also aware that the Ngāti Raukawa leaders had resolved to retain the land.

241. The Court would certainly have known that Ngāti Raukawa had consistently maintained its claim to the land and that they had protested when in 1866, the government claimed that it had purchased it. The Court became seized of the issue because of those protests. It should also have known that Government was relying on the predominant signatures of Ngāti Apa and the Whanganui tribes who were not only related to Ngāti Apa by blood but were former enemies of Ngāti Raukawa, and that the hapū of Ngāti Apa and Whanganui had fought with the Government in the Taranaki wars.

242. The Tribunal should also look to the quality of the Court's judgment and the integrity of the process that the Court followed. The judgment does not read like a Court judgment that carefully

weighs each evidentiary item. It reads more like the idiosyncratic journalism of the fake news genre. There is no analysis of the evidence, and conclusions are reached on critical issues that were not debated at the hearing, like the total displacement theory or the status of the people of Puketōtara.

243. The process too requires examination. The issue the Court had to decide was whether certain named persons had customary interests. The issue that the Court in fact decided was which tribe had the customary authority. It adds to an inference of bias that the Court was willing to go further than it was supposed to, and by doing so it gave a seal of approval to the Government's purchase.

244. We have mentioned that the Court narrowed the issues to a question of conquest. We have only to add that if the Māori witnesses narrowed their evidence to suit, it was logical for them to hone their cases to the Court's predispositions.

245. In now reviewing the decision it may be important for the Tribunal, if there are doubts about embarking on this course, to consider that the decision that was made in 1869, was based entirely on matters of fact (custom itself, like foreign law, being also a factual rather than a legal question). In our view, while the decision remains on the register of a court of record and cannot now be removed, it need not bind later Courts or others conducting a review, when fresh evidence shows that the facts as found for are plainly incorrect.

246. The Native Land Court itself has adopted the position that findings of fact are not binding on later Courts. How else can one explain the inconsistencies with other Native Land Court decisions to which we have referred, on conquest as a source of title. There is even inconsistency in the Manawatū cases themselves and further inconsistencies with other decisions made

south of the Manawatū river. The finding of no conquest in 1869, conflicts with the decision of a half conquest in 1868. The Government has also to face up to the enigma that if Ngāti Raukawa had not effected a conquest then Te Awahou was sold by the wrong people, and if it had effected a conquest Rangitikei-Manawatu had been sold by non-owners.

247. As we have seen, south of the Manawatū river there were different findings again on whether Ngāti Raukawa had affected a conquest, the Māori Appellate Court eventually finding, in the early 20th century, that Ngāti Raukawa, along with Ngāti Toa and Te Atiawa, had indeed affected a conquest. In these circumstances the Tribunal would be remiss in our view, were it not to address the anomalies in the 1869 decision, and if the Tribunal is minded to follow the decisions of the Native Land Court, the Tribunal will need to determine which one to follow.

248. One's instinct is to be cautious when criticising the decisions of those appointed by the Government to perform a judicial function. Even so, to give effect to the Tribunal's purpose as we see it, the Tribunal must strive to be more just than cautious. Excessive caution will not do justice to those affected when something has gone seriously wrong. In this instance one must also reflect on the fact that in 1869, the Native Land Court was staffed mainly by persons without legal qualifications and second, that no one should be allowed the protections accorded to judges if the Government appoints persons not qualified to judge. In this instance there can be no doubts about who wrote the 1869 decision and it was not written by a lawyer.

249. On our assessment of the 1869 decision in the light of the further evidence now available, we consider it is demonstrative of bias at best and corruption at worst, using 'corruption' according to standard dictionary definitions, of dishonest or fraudulent

conduct by persons in power. We rely for our opinion on the high level of factual contrivance and of acting in excess of jurisdiction to promote a favourable outcome for the government in its aim to conclude the largest ever purchase in the history of Manawatū.

The Crown's role

250. For the purposes of the present point we revert to the standard use of 'the Crown' instead of 'the Government', in Tribunal proceedings, for reasons that we hope our Rangitāne ancestors will understand. We have given our view that a purposive approach is called for in the interpretation of the Treaty of Waitangi Act. On that approach the Tribunal should be willing to review all aspects of the Crown's exercise of sovereignty. The Tribunal should strive to ensure that historic claims of the hapū are heard and determined without undue constraints based on western generated, legal technicalities so that durable settlements may result. The Tribunal should review all aspects of the colonial governance and not only those relating to the Crown in its executive and legislative functions but in its legal capacity as well. We therefore repeat that the Tribunal should have no hesitation in reviewing decisions of the Native Land Court, especially in these circumstances where the Court in question is not a Court of inherent jurisdiction but is an instrument for giving effect to government policy.

251. If the Tribunal is unwilling to accept that view, it is still the case in our opinion that Government must bear responsibility for the Court's decision because of the extent to which the Government kept its finger on the scales of justice through its unnecessary and politically motivated interventions. For one thing, a situation had been created that should never have arisen. The decision was made when the sale could not be retracted without serious consequences for large numbers of financially

committed settlers and for a government whose continued solvency depended on it.

252. We have assessed the role played by the Government leading up to the final decision. We consider that such a contrived decision would not have come about but for the Government's input: the exclusion of the Court when it suited,[101] the inclusion of the Court when it suited,[102] the Government's appearances before the Court,[103] the closed terms of reference for both the 1868 Court and the Court of 1869,[104] and the failure of the government to intervene on the decision, whether because it was made without jurisdiction or because it was plainly unjust.

253. The expectation of an intervention may seem strange today, but it was commonplace at the time. The Native Land Court decisions resulted in substantial injustices for many. In this case, Government's subsequent efforts to provide redress, short of overturning the decision, impliedly accepted that a wrong had been done. [105] Those steps were mere palliatives however, for the real problem was that the hapū of Ngāti Raukawa in possession at the time had not sold the land by the customary mode of

[101] This refers to the exclusion of Manawatū from the operations of the Native Land Court in the Native Lands Acts 1865.
[102] This refers to the statutory direction to the Native Land Court to determine the entitlement of certain non-sellers.
[103] This refers to the decision of the government to appear in opposition to those claiming land rights in the Hīmatangi hearing when it was not an interested party and when the proper practice was for government to abide the Court's decision; and the decision to appear in opposition at the 1869 hearing. In the first instance the government attended through a major legal team led by the former prime minister and in the second by a similar legal team led by the Attorney-General. It also adds to the inference of bias that in neither case did the Court question the right of the Government to appear.
[104] This refers in the first instance to the wording of the 1868 Court reference. The issue from a Māori view was whether Ngāti Raukawa had fairly and squarely sold the land. The question put by the Government was whether certain persons who had not signed the Deed had customary interests in the land. The Government question left no room for the Court to vitiate the sale. The second reference is to the Government's intervention when the 1868 decision, awarding half shares, was not to its liking. Rather than follow the normal process of a rehearing, where further evidence is not admitted, the Government disposed of the earlier evidence by quashing the decision and directing that the whole be done afresh.
[105] The Court not only went further than it needed to, but it exposed a patent injustice. The Government did not overturn the decision however, as it had frequently done in other cases of Native Land Court injustices, for it was conflicted in having an interest in the outcome of the case. The government's subsequent actions show its awareness of the injustice, however. The Hīmatangi land was returned to the Hīmatangi hapū. The reserves for Ngāti Parewahawaha and Ngāti Kauwhata were increased and reserves were made, gratuitously, for the Reureu hapū.

transacting, and (in our opinion), Ngāti Apa did not have the right to sell.

254. While it remains important that the Tribunal should respond to the 1869 decision, for the reasons to follow, the problem at the heart of all is the role of the government, not the role of the Native Land Court, nor even the role of Ngāti Apa. The Native Land Court and Ngāti Apa were merely links in the chain that caused Ngāti Raukawa to lose their lands in Manawatū. What started the chain of causation was the Government. It started as a direct result of Government's conflicting interest in supporting Ngāti Apa as the owners, in order to acquire the Rangitikei-Manawatū block while knowing that Ngāti Raukawa would not sell it.

255. The very thing that the Native Land Acts of 1860 and 1865 were intended to prevent, was that Government should have any further role in determining the ownership of Māori land because of its conflicting interest. That is the nub of the issue. Understanding that enables the Tribunal to identify that the true cause of the problem was Government's exclusion of Manawatū from the provisions of those Acts, leaving the Government free to promote Ngāti Apa as the true owners. In case the Tribunal considers that the claims under the Act are restricted to acts of the Crown in its executive capacity, we add that for reasons earlier given, the decision to exclude Manawatū from the operations of the Native Land Court, is attributable in our view, to Sir William Fox and Dr Featherston.

256. It also appears that Ngāti Apa did not seriously challenge the mana of Ngāti Raukawa until they wore the Government's military uniform and held the Government's rifles. We know of no challenge to Te Rauparaha from 1824, when his mana was indisputable, until 1849, when he died (of old age). The challenge

came in an address by Kawana Hunia, then a young rangatira, at a hui which Te Rauparaha attended. However, nothing further was heard, of which we are aware, until after 1860, the year in which the Native Contingent formed and Ngāti Apa aligned with the Government. The Government's support for Ngāti Apa emboldened them to claim the ownership of the Rangitikei-Manawatū block and thus to exact utu on the northern invaders.

257. Kawana was then voluble in his claim to mana over the Rangitikei-Manawatū residents. To demonstrate his mana to the Native Land Court, Kawana and his followers destroyed Ngāti Raukawa property on the south side of the Rangitikei river, as soon as the Native Land Court sat to determine the ownership interests. The real message to the Court was that he was able to do this impunity, without any immediate reaction from Ngāti Raukawa or the Government.

258. From a Māori customary viewpoint, the reactions from Ngāti Apa were to be expected. Mana was held only for so long as mana was in fact maintained. Utu was always on the cards and a whakahē was always likely if the opportunity presented. The problem was that Ngāti Raukawa could not respond to Ngāti Apa in the customary way. They could not have done so, even assuming they might have wanted to, without bringing the war to Manawatū and risking the confiscation of their land under the New Zealand Settlements Act 1863. Any act of aggression against any part of "Her Majesty's Forces" was lawfully an act of rebellion. Of greater concern was the Government's failure to uphold the Treaty promise of fair and even treatment for all, as Government turned a blind eye to Kawana's acts of destruction.

259. When the putake of the spring is poisoned, so also is all that flows from it. The exclusion of Manawatū from the provisions for the independent investigation of the Māori

customary titles, gave free rein to the government to buy Manawatū according to its own predilections and self-interest when the Government's objective of acquiring the land might not otherwise have been achieved. Subsequent Government interventions were infected by the same venom of conflicting interests. Unmanaged conflicts of interest are the root of corruption and corruption is more damaging to the soul of a tribe than transparent confiscations.

260. Our issue then is not so much with the Court; and it is certainly not with Ngāti Apa. Our 20th century forebears appreciated that we were all caught in the same web of government deceit. By 1940, one hundred years after the Treaty, the direct descendants of Kawana Hunia, Hoeroa Marumauru I on the Rangitikei river at Parawanui, Bulls[106] and Te Rangitakuku Metekingi on the Rangitikei river at Rata, one of the most advanced managers of Māori land in the country, were recognised with great affection and respect on our Ngāti Kauwhata marae, as distinguished leaders and contributors to Māori affairs for the benefit of all Māori.

261. Nonetheless, for other reasons we consider it is just and necessary that the Tribunal should intervene to make an unqualified finding that the Native Land Court was wrong. The Court decision was hugely prejudicial. It meant that Ngāti Raukawa could not stop the sale. It led to one of the largest property losses for Māori people in the country.

262. The decision has continued to frustrate the legitimate expectations of the Ngāti Raukawa people. As we have said, the decision probably explains why Ngāti Raukawa were not included with the tribes for whom Trust Boards were established in 1926,

[106] Hoeroa Marumaru I was father of the late Hoeroa Marumaru II, Judge of the Māori Land Court and a personal friend of one of the authors of this paper).

to receive annuities in partial recognition for their extraordinary losses. Then, through landlessness, many hapū were unable to participate in the Government funding of land development schemes. In the 1990s, the decision constrained the Ngati Raukawa negotiators seeking the allocation of fishing interests based on coastline ownership. It impacted too on the settlement of customary fishing rights along the coast and the decision affected the establishment of relationships with local authorities. Were Ngāti Raukawa to negotiate with Government now to settle their land claims, then unless this Tribunal is willing and able to intervene it is likely that the decision will haunt them again.

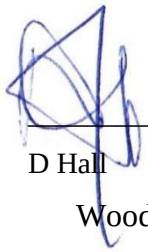
263. The history of our people has been significantly distorted by the Court's decision and its focus on conquest. The Court's pre-conception of conquest as the primary source of title has resulted in a voluminous court record of testimony with warfare at the heart of it and virtually nothing on the creation of the peace. That evidence, the Court's decision, and the contemporary public debate that the decision engendered, has provided the basis for much of the popular history on our forebears' settlement of the Manawatū. It has created a distorted picture of who we are and the society that our forebears set out to establish. The rich tapestry of our history has been left threadbare. That is the third reason why the Tribunal should intervene on the Court's decision in our view. It is also the further reason why the Rangimarie story has now been told.

264. We have finally to mention the fundamental political issue that underlies everything to do with the Treaty. It concerns the legitimate expectation of all Māori who hold to the Treaty, that Māori would manage Māori matters themselves. There was never a need for a government created court to determine the customary entitlement to Māori land. In our review of Ngāti Raukawa opinion in the Manawatū, Māori were capable of establishing their

own institutions to resolve customary issues and the process had begun with the establishment of the Kingitanga. That is why Manawaroa is sitting at Turangawaewae.

DATED at Wellington this 16th day of December 2019

For:
Emeritus Professor Sir Mason Durie
Hon Sir Edward Taihākurei Durie and
Professor Meihana Durie



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