

Ka Roimata Whenua Series: No. 2

The Treaty of Waitangi & the Ngai Tahu Claim

A Summary

Edited by
Harry C. Evison

Foreword by Rakiihia Tau,
Deputy Chairman of Ngai Tahu Maori Trust Board.

Ngai Tahu Maori Trust Board
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by Harry C. Evison

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*"Tuterakiwhanoa the child of Aoraki
who shaped Te Waipounamu
and made it fit for people to live in."*

Nga mea i hanga ai te tangata,
Ma te tangata ano e whakaaro a tu.

*(What man has created,
Man must resolve.)*

THIS BOOK HAS BEEN WRITTEN AND PRODUCED IN AID OF
THE NGAI TAHU CLAIM FUND

This was the command that thy love laid upon
 these Governors —
 That the law be made one
 That the commandments be made one
 That the nation be made one
 That the white skin be made one, and that it
 be made just equal with the dark skin . . .
 And that all might enjoy a peaceable life.

— Petition of Ngai Tahu to the Queen,
 23rd September 1857.

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(text by Harry C. Evison unless otherwise stated)

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Note on the Authors and the Text

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BEEI Dacker (Chapter 11) belongs to Dunedin and graduated in history from the University of Otago. For the last five years he has been involved in an oral history project with Ngai Tahu, and with research into Ngai Tahu leadership in the 19th century. He gave evidence to the Waitangi Tribunal on behalf of Ngai Tahu at Otakou in 1988, on social and economic aspects of the Ngai Tahu Claim.

Most of the text of this book originally appeared as a series of articles in "The Press", Christchurch, from 23rd March to 13th May 1988.

This book summarises the Ngai Tahu Claim. At the time of going to press the Claim was in the hands of the Waitangi Tribunal, and the evidence of the Crown and of other respondents to the Claim had not yet been presented. The merits of the Ngai Tahu Claim in the light of all the evidence from all parties, and the question of what remedies may be called for, are of course matters for the Tribunal to determine in due course.

Foreword

The Treaty of Waitangi is the one agreement under which New Zealand can achieve lasting respect and co-operation among its people of Maori and non-Maori origin, so important for our future generations. The historic decision of the New Zealand Court of Appeal of June 29, 1987 in the case between the New Zealand Maori Council and the Crown reached two major conclusions. First, that the principles of the Treaty of Waitangi are of overriding importance. Second, that "Those principles require the Pakeha and Maori Treaty partners to act towards each other reasonably and with the utmost good faith." The understanding of this decision requires the wider public to understand the Treaty of Waitangi and the contractual obligations made between the Maori and their Treaty partner.

The Waitangi Tribunal has been given the task of hearing and adjudicating upon claims by Maori people under the Treaty of Waitangi legislation of 1985. The Ngai Tahu Claim is one of the oldest of these, and perhaps has to do with more of the country and its natural resources than any other. Therefore we feel an obligation to give the reading public as clear an account of it as possible.

It is with this in mind that the Ngai Tahu Maori Trust Board offers this booklet, as a brief summary of the Ngai Tahu Claim. Each section of the Claim is presented in a style that is informative, interesting, and straightforward so that the main points can be easily grasped. The writers have themselves given detailed evidence on the Claim to the Waitangi Tribunal, and have heard the lengthy evidence given at the Tribunal hearings by our Maori people of the various Runanga from Kaikoura and Arahura south to the Bluff.

On behalf of the Ngai Tahu Maori Trust Board and of our Ngai Tahu people I should like to thank our writers for having given so freely of their time and thought to make this booklet possible, and again to our editor on whom naturally the main burden of its production has fallen. Their generosity is appreciated.

For many, a rediscovery of New Zealand history will assist the principles of partnership — "That the nation be made one, and that all might enjoy a peaceful life."

He roa te ara haere —

Kei te heke nga kapua, whakawhiitiki kia u. *

RAKIHIA TAU

Deputy Chairman,

Ngai Tahu Maori Trust Board.

* "There is a long way to go —

The clouds are lowering, let us make haste to succeed."

Some Important Events

- 1770: Captain Cook encounters double-hulled canoes at Kaikoura.
1800: European sealing-gangs and trading-ships on Ngai Tahu coasts.
1820s: Feud among Ngai Tahu tribes ("Kai Huanga"). Boulton and other Europeans living among Ngai Tahu at Murihiku.
1828: Te Rauparaha sacks Kaikoura.
1829: Ngai Tahu allow European coastal whaling stations.
1830: Paramount Ngai Tahu chief Te Maiharanui seized aboard British brig "Elizabeth" at Akaroa and murdered; Akaroa sacked by Te Rauparaha.
1831: Te Rauparaha sacks Kaiapoi and Onawe, but withdraws at Arowhenua.
1832, 1834: Ngai Tahu counterattacks against Te Rauparaha.
1834: Disastrous measles epidemic among southern Ngai Tahu.
1838, 1839: Tuhawaiki's expeditions against Te Rauparaha at Cook Strait.
1838-48: Recurring measles and influenza epidemics among Ngai Tahu.
1839: European farmers accepted among Ngai Tahu.
1840: First Christian mission at Waikouaiti. Treaty of Waitangi signed by Ngai Tahu. French settlers at Akaroa.
1844: Otakou Purchase. Lutheran Mission at Ruapuke.
1845: Crown awards 30,000 acres to French at Akaroa.
1848: Scottish settlers arrive at Dunedin. Kemp's Purchase.
1849: Mantell's Banks Peninsula Awards. Tiramorehu's protest to Lieutenant Governor Eyre (start of Ngai Tahu Claim).
1850: Arrival at Lyttelton of Canterbury settlers from England.
1853: Murihiku Purchase.
1856: Native Reserves Act. Akaroa Purchase.
1857: North Canterbury Purchase.
1859: Kaikoura Purchase.
1860: Arahura Purchase. Individualization of Kaiapoi Maori Reserve.
1868: First Native Land Court at Kaiapoi and Port Chalmers. Ngaitahu Reference Validation Act.
1879: Royal Commission of Smith and Nairn on Ngai Tahu Claim.
1887: Greymouth Maori Reserve to be leased in perpetuity.
1888-89: Joint Parliamentary Committee on Ngai Tahu Claim.
1906: South Island Landless Natives Act (repealed 1909).
1921: Royal Commission on Maori Claims.
1944: Ngaitahu Claim Settlement Act (concerning Kemp's Deed).
1975: Waitangi Tribunal established.
1985: Waitangi Tribunal reconstituted, for claims retrospective to 1840.
1986: Ngai Tahu Claim under Treaty of Waitangi lodged with Waitangi Tribunal.
1987: State-owned Enterprises Act; N Z Court of Appeal Judgment confirms status of Treaty.

Preface

New Zealand has entered on a period of rapid change in relations between Maori and non-Maori. The striking transformation in the status of the Treaty of Waitangi has taken many people by surprise. Regarded officially for more than a century as a mere curiosity, the Treaty has now been rescued from limbo by the legislature and the courts of law which previously spurned it. The Waitangi Tribunal legislation of 1975 and 1985, and the State-Owned Enterprises Act and subsequent Court of Appeal judgment of 1987, have given the Treaty a legal force it has never had before.

These developments have aroused opposition from those who argue that the Treaty is too old or too outmoded to be taken seriously. But non-Maori property-holders already owe much to the Treaty. In providing the justification for the British annexation of New Zealand, the Treaty paved the way for the statutes under which the Crown granted former Maori lands by way of the original freeholds and leaseholds from which today's property titles are derived.

Our century has been heavily influenced by beliefs established in the Victorian age. In 1908 the New Zealand High Commissioner William Pember Reeves expressed some of these in his influential volume "New Zealand," published in London. "There is reason to hope," wrote Reeves, "that the health of the Maori race is improving and that its spirit is reviving. The first shock with our civilisation and our overwhelming strength is over. The Maori, beaten in war with us, were not disgraced: though their defeat disheartened them, it did not lead their conquerors to despise them. Again, though they have been deprived of some of their land, and have sold a great part of the rest, the tribes are still great landlords."

This view of Maori history under European contact was widely held, and still is. But it was quite untrue of the South Island. Ngai Tahu did not succumb to the "shock" of a superior civilisation. John Boulton's Journal of 1827* records Ngai Tahu accepting European contact willingly, and twenty years later the pioneer settlers of Otago and Canterbury found them confidently engaged in farming and commerce. Ngai Tahu were not "disheartened" by defeat, nor was their prosperity cut short by it, for there was no war in the South Island.

By Reeves' time Ngai Tahu had long since been rendered destitute, but not by military reprisals, nor by profligacy. The cause

* Starke, J. (Ed): "Journal of a Rambler — the Journal of John Boulton" (1987)

was the legalised seizure of their economic resources by the state. Governor Grey's policies, as Commissioner Mantell's reports show, were applied specifically to prevent Ngai Tahu from becoming "landlords." What followed was a plain but tragic example of what happens when people are deprived of their livelihood.

This explanation may seem obvious enough in the light of the chapters which follow. Today it forms the basis of the Ngai Tahu Claim. But it has not been a popular explanation. Forty years ago when researching the Ngai Tahu Claim the present writer asked the Department of Maori Affairs in Wellington for access to the Department's archives.** The request was firmly refused. The reason: "This sort of research is not helping the Maoris. The Maori people need to be encouraged to look to the future, not to the past." So the crucial evidence of the 1879-80 Royal Commission of Smith and Nairn held in the Department's archives was not available.

In 1848 according to Commissioner Kemp Ngai Tahu were promised, in addition to their cultivations and places of residence and their mahinga kai or natural food resources, "ample reserves as a means towards their securing permanently the comforts and necessities of civilised life." But in 1868 the Ngaitahu Reference Validation Act enforced Chief Judge Fenton's procrustean award in the Kaiapoi Native Land Court, of a few eel weirs and an average of four acres per head of mediocre land, bringing Ngai Tahu's final share of their ancestral heritage to just 14 acres per head — at a time when Europeans could not expect to farm profitably on less than 100 acres of good land. Poverty and destitution inevitably followed.

Forty years later, High Commissioner Reeves was telling the world that the Maori had plenty of land and their decline had been due to culture shock and military defeat. Another forty years on, in 1948, academic research into Maori grievances was being officially discouraged on the grounds that it might reopen the supposed psychological wounds described by Reeves.

Today, after another forty years, the Smith-Nairn Commission's evidence is commendably in the National Archives for all to see, and the Ngai Tahu Claim is at last in the hands of the Waitangi Tribunal. The purpose of this book is to present a brief summary of the basis of the Claim, as a matter of public interest. As to the justice of the Claim, and whatever redress it may call for, those are matters for the Tribunal.

** Evison, Harry C.: "A History of the Canterbury Maoris (Ngai Tahu), with Special Reference to the Land Question" (unpublished thesis, University of Otago 1952)

But that the Claim has been so long drawn out is no fault of Ngai Tahu. It was in 1849 that Matiaha Tiramorehu first complained to the Lieutenant-Governor that the small areas reserved for Ngai Tahu were insufficient. "Let the boundaries be extended," he pleaded, "that we may have plenty of land to cultivate wheat and potatoes, and also land where our pigs, cattle and sheep may graze." The request was refused, although it could easily have been granted then.

Tiramorehu gave fair warning: "This is but the start of our complaining to you, Governor Eyre, and although you should return to England we shall never cease complaining to the white people who may hereafter come here."

Ngai Tahu have never ceased to maintain that their misfortunes were caused by the seizure of the land they wanted for their farming, and of their mahinga kai. But officialdom, readily supported by social theorists and public misconceptions, has for over a hundred years prevaricated with the doctrine that the 19th century Ngai Tahu decline was due to Maori psychological and cultural failings, instead of to the plain deprivation of economic resources.

The Ngai Tahu Claim has now been lodged with the Waitangi Tribunal. For the first time, the Claim is to be considered in terms of the Treaty itself. People who have a misconception of New Zealand history and are unfamiliar with the Treaty of Waitangi may feel some alarm at this novel and apparently startling development. Some politicians and other interests have been quick to stir misgivings based on ignorance.

For those who believe in justice such fears are groundless. The Waitangi Tribunal has been established by Parliament to examine impartially any harmful infringements of the Treaty alleged by Maoris against the Crown, together with the Crown's response.

The Ngai Tahu Claim is solely against the Crown. What remedies it may call for are for the Tribunal to recommend. All that the claimants ask is that justice be allowed to run its course.

— H.C.E., Sumner, June 1988.

1. The Treaty of Waitangi

Much has been written about the Treaty of Waitangi, but not always with the same clarity as the words of the Treaty itself. For example, the crucial "Pre-emption Clause" in Article Two is often supposed to have given the Crown the right to take Maori land at the Crown's own valuation. But the clause states both in the English and Maori versions, that the Crown was to exercise its right of pre-emption at a price agreeable to the Maori owners. For the Crown to pre-empt Maori land at its own price, as was done with Ngai Tahu awards, was clearly contrary to the "Rangatiratanga" guaranteed in Article Two of the Treaty, and tantamount to confiscation. It is inconceivable that Maori chiefs would have agreed to the Treaty on such terms.

For the purposes of Maori claims under the Treaty, the official English version and the Maori version are to be taken together. But besides the texts themselves, which seem clear enough, the legislation requires that decisions be based on the "principles" of the Treaty. What are these principles?

A Tuahiwi elder has expressed the principles of the Treaty thus: Article One, "Kawanatanga" or "governorship", meaning the Crown's responsibility to make just laws and govern by them, and the citizen's duty to abide by them; Article Two, "Rangatiratanga" or "chieftainship", meaning the guarantee of Maori property rights, — Maori ownership and control of their own economic resources; and Article Three, "Kotahitanga" or "one-ness", meaning equal rights for all, — economic as well as political. This required the abandonment of the old aristocratic Maori tribal system in favour of a community of equals as urged by the missionaries. Thus when the Kaiapoi Maori Reserve was individualized in 1860, equal portions of 14 acres each were accepted regardless of rank or lineage. This Maori adjustment in the interests of the equality required by the Treaty is today expressed in the Runanga system of community organization.

The principle of partnership is fundamental. The Crown has exercised its rights of sovereignty under Article One since the Treaty was signed in 1840. But the Ngai Tahu claimants consider it unjust that Ngai Tahu rights under Articles Two and Three were withdrawn under Governor Grey during the 1840s and have still not been restored. A reading of the Treaty text and the chapters which follow will show the points at issue.

The Treaty of Waitangi (English Version)

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes

of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands — Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession: but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection and imparts to them all the Rights and Privileges of British Subjects.

(signed) W. Hobson Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our

sig na eures or marks at the places and the dates respectively specified.
Do ne at Waitangi this Sixth day of February in the year of Our Lord
one thousand eight hundred and forty.

Treaty of Waitangi (Maori Version)

This Maori version was signed in 1840 by Ngai Tahu chiefs at Akaroa
(May 30th), Ruapuke (June 10th) and Otakou (June 13th).

Te Tiriti o Waitangi (The Treaty of Waitangi)

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira
me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o
ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo
ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua
ma tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu
Tirani. Kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini
ki nga wahikatoa o te wenua nei me nga motu. Na te mea hoki he
tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere
ma nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia
kau a ai nga kino e puta mai ki te tangata maori ki te pakeha e noho
ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihana he
Kapita na i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani
e tukua aiane amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira
o te Wakaminenga o nga Hapu o Nu Tirani me era Rangatira atu enei
ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki
ki tahi i uru ki taua Wakaminenga ka tuku rawa atu ki te Kuini o
Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki
nga Hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o
rato-u wenua o ratou kainga me o ratou taonga katoa. Otia ko nga
Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te
Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua ki
te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e
te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te
Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata
maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi
ki a na mea ki nga tangata o Ingarani.

(signed) W. Hobson Consul and Lieutenant Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga Hapu o Nu
Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu
Tirani ka kite nei i te ritenga o enei kupu. Ka tangohia ka wakaetia

katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.
Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau
kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Treaty of Waitangi (Translation of Maori Version)

This translation is from the Judgment of the New Zealand Court of Appeal
of 29th June 1987, and credited to Professor I.H. Kawharu. Maori linguists
point out that there is no precise English equivalent for certain terms and
expressions, such as "rangatiratanga" and "taonga", nor a Maori equivalent
for "sovereignty".

TRANSLATION OF MAORI VERSION OF THE TREATY
(from Court of Appeal Judgment, June 29, 1987)

Victoria, the Queen of England, in her concern to protect the chiefs and
subtribes of New Zealand and in her desire to preserve their
chieftainship and their lands to them and to maintain peace and good
order considers it just to appoint an administrator one who will
negotiate with the people of New Zealand to the end that their chiefs
will agree to the Queen's Government being established over all parts of
this land and (adjoining) islands and also because there are many of
her subjects already living on this land and others yet to come.
So the Queen desires to establish a government so that no evil will come
to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a captain in the
Royal Navy to be Governor for all parts of New Zealand (both those)
shortly to be received by the Queen and (those) to be received
hereafter and presents to the chiefs of the Confederation chiefs of the
subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the chiefs who have not joined
that Confederation give absolutely to the Queen of England for ever the
complete government over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all
the people of New Zealand in the unqualified exercise of their
chieftainship over their lands, villages and all their treasures. But on
the other hand the Chiefs of the Confederation and all the Chiefs will
sell land to the Queen at a price agreed to by the person owning it and
by the person buying it (the latter being) appointed by the Queen as her
purchase agent.

The third

For this agreed arrangement therefore concerning the Government
of the Queen, the Queen of England will protect all the ordinary people
of New Zealand and will give them the same rights and duties of
citizenship as the people of England.

Signed William Hobson
Consul and Lieutenant Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and marks thus
W as done at Waitangi on the sixth of February in the year of our Lord 1840

2. Ngai Tahu and the Treaty

In December, 1986, a claim was lodged with the Waitangi Tribunal on behalf of the Ngai Tahu people for compensation and re-stitution from the Crown for a long series of grievances reaching back nearly a century and a half to the first official purchase of Ngai Tahu land at Otakou in 1844.

To succeed, the claimants have to show that the Crown has failed to comply with the Treaty, and that Ngai Tahu have suffered as a result. The claim is purely against the Crown, in other words the State, not against private persons or corporations.

The claim is in the name of Rakihiia Tau and the Ngai Tahu Maori Trust Board, but the Board's beneficiaries include the descendants of the tribes which preceded Ngai Tahu in southern New Zealand — Waitaha and Ngati Mamoe — as well as Ngai Tahu itself. By the mid-eighteenth century the Ngai Tahu element had become dominant as much by marriage as by inter-hapu warfare. This was reflected in the chiefly structure of the tribe at the time of the Treaty of Waitangi. Today virtually all Ngai Tahu share descent with the earlier Waitaha and Ngati Mamoe.

After the signing at Waitangi, Lieutenant Governor Hobson gave orders for copies of the Treaty to be taken to every part of New Zealand where Maori chiefs might be persuaded to sign it. Towards the end of May 1840 H.M.S. Herald called at Akaroa with a copy of the Maori version of the Treaty.

In charge of the Treaty was Major Bunbury, Hobson's Deputy. With him as interpreter was Edward Marsh Williams, the eldest son of the leading Church of England missionary, Henry Williams.

At Akaroa on May 30, after some discussion, two Ngai Tahu chiefs signed the Treaty. Iwikau signed as a chief of his hapu (or "sub-tribe") Ngati Rangiamoa. Tikao signed as a chief of Ngai te Kahunukura using his chosen name of "John Love," beneath which Bunbury wrote, "an intelligent native."

The Herald next sailed on to Stewart Island and Ruapuke, where on June 10 three more chiefs signed, including Tuhawaiki, noted on the Treaty document as "the most important in this neighbourhood." At Otakou on June 13 the senior chiefs Karetai and Korako signed, bringing the final total of Ngai Tahu signatures to seven.

Bunbury then sailed north to Cloudy Bay, where, after getting

more signatures from northern tribes, he proclaimed British sovereignty over the South Island "by virtue of cession by the independent chiefs."

In 1840, besides the three Ngai Tahu communities that Bunbury visited, there were of course many more that he did not visit.

How many of their chiefs would have signed the Treaty can never be known, for his mission was cut short by the apparent anxiety of the ship's captain to get away from South Island waters with the approach of winter. But the seven who did sign were connected with the most numerous hapu of Ngai Tahu, including Ngai Tuahuriri, Ngati Ruahikihiki, and Ngati Huirapa, and were representative of the interests of the tribe as a whole.

We know why the British Government wanted to get the Treaty of Waitangi signed, for the Treaty itself explains that the Queen wanted to protect the just rights and property of the chiefs and their hapu, and to preserve peace, law and order in view of the increasing number of immigrants coming to the country.

But why did the Ngai Tahu chiefs sign the Treaty? First we may be sure that they were impressed by the promises in Article Two, that they would retain their chieftainship and that the hapu would retain their lands, settlements, and other valuable possessions.

They would also have noticed that under Article Two the Crown promised to buy Maori land at a price agreeable to the Maori owners, when exercising its "right of pre-emption" (or first right to buy). Under Article Three perhaps the offer of "the rights of Englishmen" seemed an added advantage.

But there was another reason for accepting the Treaty. Ngai Tahu had just suffered a series of disasters. In the 1820s they had been ravaged by a bitter civil war among their rival hapu. Then they were invaded from the North Island by Te Rauparaha and his allies, who from 1829 to 1831 destroyed the main centres of Ngai Tahu population as far south as Banks Peninsula.

Finally, in the 1830s Ngai Tahu of all ages had perished in repeated epidemics of European diseases, including measles, against which the Maori as yet had acquired no resistance. These calamities had reduced Ngai Tahu to probably much fewer than half their previous number, leaving only about 2500 survivors.

Ngai Tahu had achieved several expeditions to Cloudy Bay against Te Rauparaha in the 1830s, even as recently as November 1839, and Te Rauparaha had fallen out with his allies. But the war was still unresolved.

No doubt to the Ngai Tahu chiefs the Treaty's promises of peace and of the Queen's protection must have seemed attractive. And so it evidently must have seemed to Te Rauparaha, for he also signed the Treaty, not once, but twice.

By a strange coincidence, two weeks before the Treaty arrived at Akaroa the first Christian missionary in the South Island had landed in the heart of Ngai Tahu territory at Waikouaiti — the Wesleyan James Watkin, at the invitation and under the patronage of the whaling merchant John Jones. Within three years Watkin gained many converts, and he enlisted among his mission teachers such influential chiefs as “Mathias” Tiramorehu of Ngai Tuahuriri and “Solomon” Pohio of Ngati Huirapa.

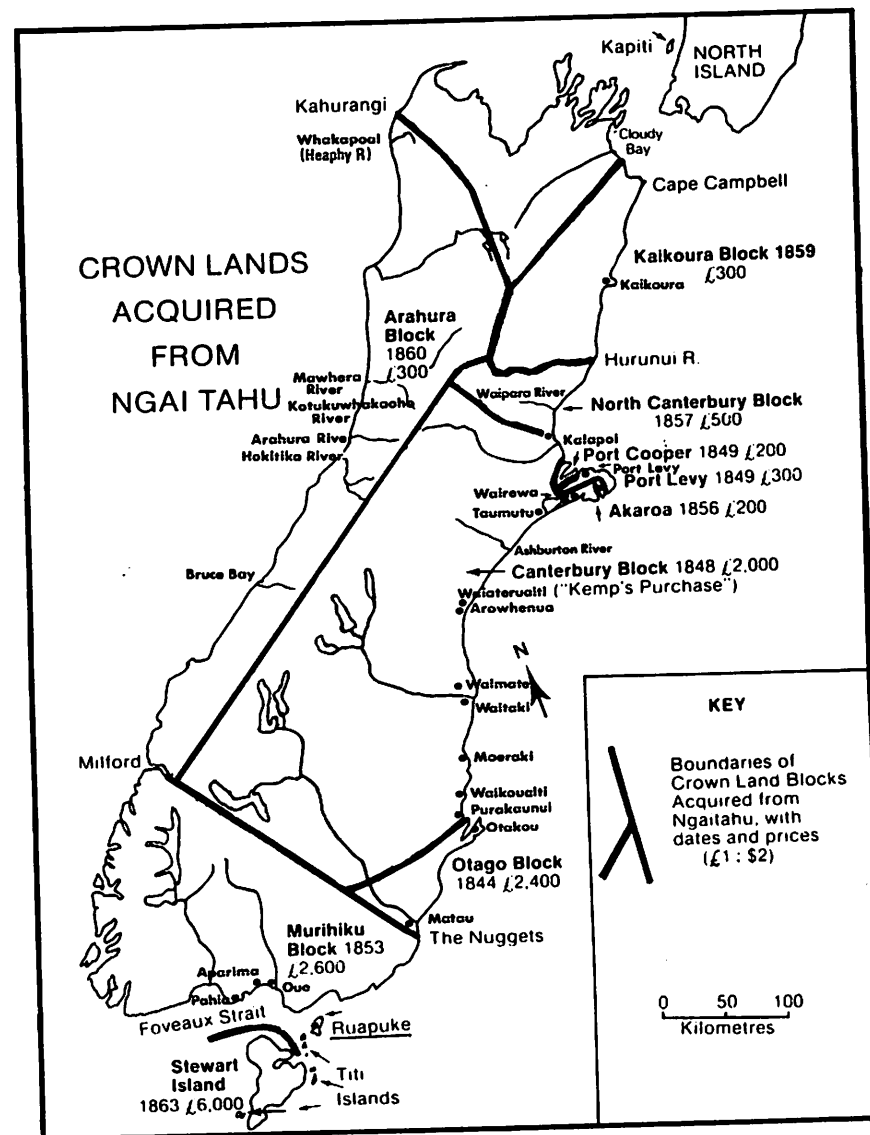
So it was that at the official purchases of Ngai Tahu lands at Otakou in 1844 and at Akaroa in 1848 (for Kemp’s Purchase), Ngai Tahu were remarked upon for the earnestness and regularity with which they assembled twice daily under their Christian chiefs for prayers and devotions. Calling for God’s blessing on their negotiations, they believed that they would find a just outcome and a prosperous future through the Christian faith which they now shared with the Government officials and company men who had come to buy their lands.

But despite Ngai Tahu’s prayers, and the Treaty’s promises, the Crown imposed its right of pre-emption so as to acquire Ngai Tahu land extremely cheaply. It was then sold at a large profit, at first in the interests of the land companies, and then from 1851 on the Crown’s own account.

Ngai Tahu were reduced to meagre land holdings a mere fraction of the size of those allocated to European settlers. Losing nearly all their “mahinga kai” (natural food resources) as well, they soon sank into poverty.

In the hope of obtaining redress, successive generations of Ngai Tahu took appeals, petitions and submissions to Committees and Commissions of Enquiry, and to Parliament, and to the Crown itself, without success. At the Royal Commission of Smith and Nairn in 1879-1880 (which was aborted by the then Government), 35 Ngai Tahu witnesses gave first-hand evidence of the Crown’s dubious land purchases of the 1840s and 1850s.

It was well that they did so, for before long old age carried them all away. But remarkably their evidence survived them. Now in the National Archives, it provides the basis for much of the present Waitangi Tribunal Claim, which Ngai Tahu today see as but the climax to a long struggle for justice and for the vindication of their honoured tipuna (forefathers) now departed.



Crown Acquisitions of Ngai Tahu Lands

Note on Monetary Values: In the land transactions of this period the pound sterling (£1), nominally equivalent to \$2, was of course worth much more than it is in the late 20th Century. In 1851 in Canterbury, £1 represented forty hours’ wages for an unskilled labourer or navy.

3. The Otago "Tenths"

The claim of the Ngai Tahu Trust Board in respect of the Otakou 'tenths' stems from the 1844 sale of the Otakou Block — more than 400,000 acres (162,000ha) of land stretching from the Otago Heads south along the coast to the Nuggets, which included the proposed site of Dunedin.

The southern Kai Tahu-Kati Mamoe people, who sold the land, claim that they were assured in 1844 that reserves would be made for them within the Otakou Block. There is evidence that they required after the "tenths" (that is, as they understood it, reserves amounting to one-tenth of the land sold) from the earliest years of the Otago Scottish settlement.

And they continued to urge their claim on the Government throughout the latter part of the nineteenth century, without success. There is, after all, no mention of "tenths" in the Otakou deed.

What, then, is the background to the claim?

In 1844, the land was bought not by the Government, but by the New Zealand Company, in the person of Colonel William Wakefield, the company's chief representative in New Zealand. The New Zealand Company was a public company that had recently begun the organised British colonisation of the central part of New Zealand (notably the small settlements of Wellington, Nelson, and New Plymouth). In 1842 a Scot, George Rennie, asked the company to help him establish a Scottish settlement in the South Island, and in 1843 the company instructed Wakefield to choose a site.

Wakefield then approached the new Governor, Robert FitzRoy, for assistance, and found him sympathetic to Rennie's scheme. But FitzRoy's Government was short of money, and surveyors, and the Governor decided that he could not spare the resources needed immediately for such a project.

Instead he would set aside the Crown's exclusive right to buy land from the Maori ("waive the Crown's right of pre-emption") and allow the company to purchase its own site.

FitzRoy was also anxious, however, that Maori interests be protected, and he therefore sent a Government official, J. J. Symonds, to supervise the purchase. Symonds set off south with the company surveyor, Frederick Tuckett, in April, 1844, and Tuckett eventually chose the Otago land for Rennie's Scots.

Negotiations with the southern chiefs began in June, 1844, but they were held up because of quarrels between Tuckett and Symonds. Symonds thought Tuckett was not being careful enough of Maori rights. In addition, the two men simply did not get on.

Symonds pulled out of the expedition twice, returning to Wellington to seek fresh instructions.

As a result, Colonel Wakefield himself (accompanied by another Government official) finally came south to conduct the purchase. On July 31, 1844, the Otakou Block was bought for £2400. Some 150 Kai Tahu-Kati Mamoe were assembled for the negotiations. The chiefs Tuhawaiki, Tairaroa and Karetai took the leading role.

Although the negotiations concluded amicably, there had been disagreements about both the price to be paid and the amount of land that Kai Tahu-Kati Mamoe wished to keep back from the sale, under their own control. The southern chiefs had considerable contact with Europeans; Tuhawaiki, in particular, had entered into te ao hou (the modern world) with enthusiasm, and owned more than one schooner.

The chiefs wanted a higher price for the land than the company offered. They had also wanted to keep the whole of the Otago Peninsula for themselves (one of their main settlements was at the Heads).

The Government officials had great difficulty getting Wakefield to agree that the Maori could keep any land at all on the Peninsula. In the end Kai Tahu-Kati Mamoe withheld some 9500 acres (3850ha) from the sale, about 6500 acres (2630ha) of which were at the Heads.

How, then, does the claim for "tenths" arise? First, the Otakou Block was sold to the New Zealand Company, specifically to Wakefield, who was widely known among the Maori; he was, we might say, "Mr Company." Kai Tahu-Kati Mamoe maintain that they therefore expected the company policy of "tenths" to be applied at Otakou.

The New Zealand Company had always had a policy of "Native Reserves" (generally called "tenths"), and from 1840 it began to select such reserves for the Maori in the central New Zealand settlements. It was stressed in company writings that such reserves, and the income from them, would compensate the Maori for the small sums paid for the land, and would give them the opportunity of sharing in the future of the new British settlements.

Second, Kai Tahu-Kati Mamoe claim that Wakefield made a verbal promise of the "tenths." In 1880 several Kai Tahu people gave evidence before the Smith-Nairn Commission, set up by the Government to investigate the general land grievances of Kai Tahu. According to their eye-witness accounts, Wakefield agreed in 1844 to return sections (wakawaka) within the block to the Maori, and this was why they had agreed to accept a smaller price for the land.

The 1844 reports of Symonds and Wakefield do not shed any further light on what was actually said to Kai Tahu. But it is clear

from their reports to their superiors that they discussed the "tenths" with each other, that they agreed that "tenths" would be made *in addition* to the land withheld from the sale, and that they considered it was the Governor's role to see to their selection. (The Government had by now taken over responsibility for the management of Company "Native Reserves" generally.)

It seems very likely, in fact, that had Rennie's settlers arrived in 1844, as expected, "tenths" would have been selected for Kai Tahu. Superintendent Richmond, Symonds' immediate superior, had indicated to Governor FitzRoy at the outset that he meant to select "tenths," which he interpreted as one-tenth of town, suburban and rural acres of the actual settlement — 12,055 acres (4880ha), (including the equivalent of 55 town acres), (22.3ha).

But Rennie's settlers did not come. For various reasons, the company's future looked bleak by early 1844. It thus decided to send out no more settlers, and Rennie's scheme was abandoned for the time being. It was 1848 before Scottish settlers finally arrived at Otago, and by then Captain William Cargill, leader of a new body, the Otago Association, had reached an agreement with the company in Britain that "tenths" would not be made at Otakou.

The Ngai Tahu Trust Board has brought this claim under Article 3 of the Treaty of Waitangi, which assures the Maori of the Crown's protection. It is claimed that the Maori sellers had a verbal assurance of "tenths," but that the Crown, which undertook to protect their interests in the transaction, did not in fact step in to see the "tenths" made. Governor Grey, FitzRoy's successor, issued a Crown grant to the Company for the Otakou Block in 1846, without securing the "tenths" to the Maori first.

Kai Tahu-Kati Mamoe maintain that their interests were thus "prejudicially affected," in that they lacked the sort of economic base they needed to make their own way in the new settlement Otago, with which from now on their future would be bound up. Note: "Kai Tahu-Kati Mamoe" is the southern dialect for "Ngai Tahu-Ngati Mamoe."

4. Kemp's Purchase

In the 1840s Ngai Tahu enjoyed the best of both worlds. They developed their tribal farming, while still using their prized mahinga kai which had made their land famous — the teeming resources of the sea, the shore, the rivers streams and lakes, the forests, and the land itself.

They expected to share the land with European newcomers, as they had already done for years with the whaling stations around the South Island coast. There was room for all.

But the New Zealand Company, which was promoting the systematic colonisation of New Zealand, disagreed with the Treaty of Waitangi and with the co-operative economic system of the Maori tribes. Like colonial land companies everywhere, they declared that tribal land was worthless without capital investment.

Ominously, the British Government adopted this view too, instructing Governor Hobson that the value of land in New Zealand would be "first created, and then progressively increased, by the introduction of capital and of settlers from this country."

In 1845 Captain Grey became Governor of New Zealand. He was instructed to honour the Treaty and protect Maori interests. But behind the scenes things were being arranged differently.

In 1847 the British Government advanced the New Zealand Company some money out of which Maori land would be purchased. The Governor was to do the buying, but "the company was to be intrusted with the disposal, for three years," of all land the Governor bought "in the Southern Government of New Zealand." Grey's task now was to buy the rest of the South Island for the company.

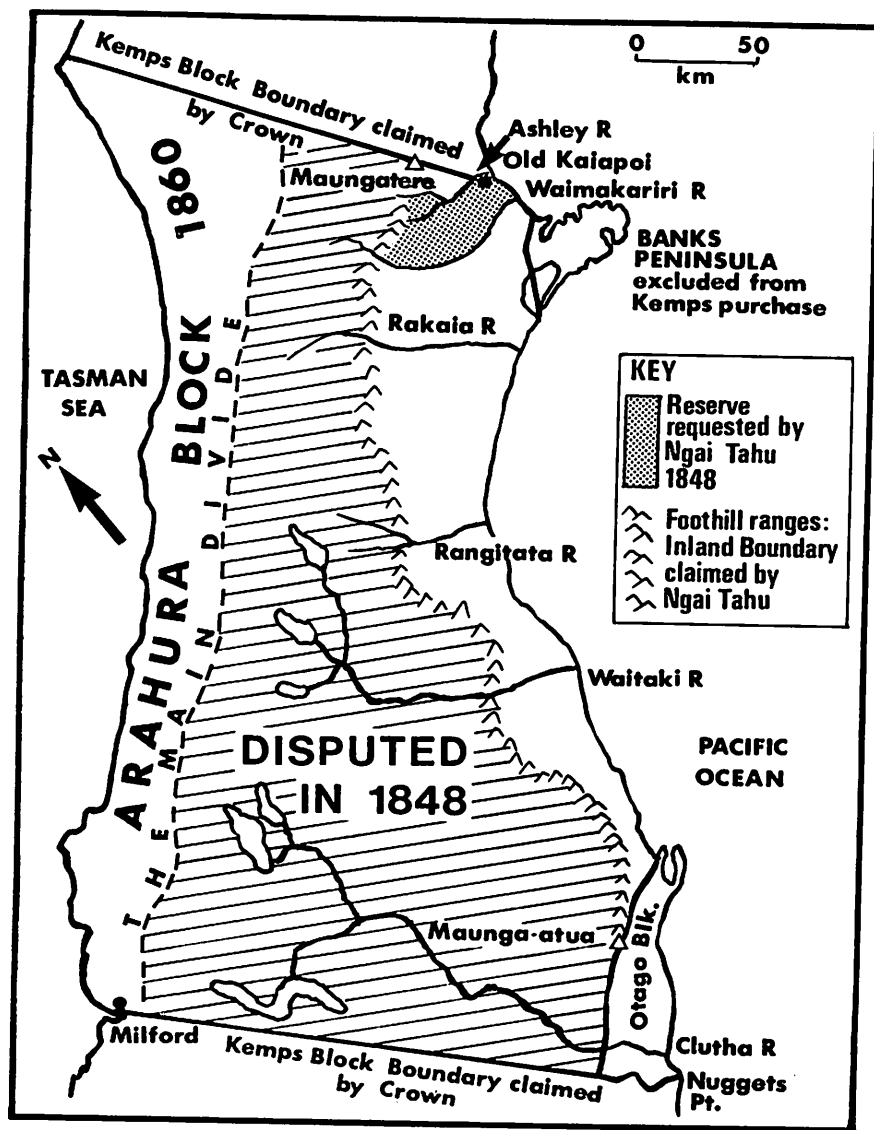
In 1843 Ngati Toa under Te Rauparaha had killed some company settlers from Nelson who had tried to arrest him and seize former Rangitane land at the Wairau near Cloudy Bay. In 1846 Grey imprisoned Te Rauparaha, and then befriended his three leading young chiefs.

They sold Grey the Wairau, and with it the whole Ngai Tahu coast south to Kaiapoi. This they had no right to do, since Ngati Toa had failed to hold any land south of Cloudy Bay against the Ngai Tahu counter-attacks of the 1830s.

In March 1848, Grey went to Akaroa and asked Ngai Tahu to sell the rest of the coast south to Otago Heads. Suspecting that he might pay Ngati Toa for this too, they agreed on condition they kept all their mahinga kai and ample reserve lands for their descendants. Grey consented, as was required by the Treaty.

In June 1848 Grey sent Commissioner Kemp to Akaroa to carry out the purchase. The inland boundary agreed to by Ngai Tahu was the line of foot-hills from Maungatere (Mt Grey) near Kaiapoi, south to Maungaatua at the boundary of the Otakou Purchase of 1844. Lake Waihora (Ellesmere) and Kaitorete Spit were to be excluded, as was Banks Peninsula where a French purchase was under negotiation.

The doctrine of the "worthlessness" of Maori land produced a company offer of £2000, to be shared among about 1500 Ngai Tahu owners. This was first rejected, but then accepted on condition that the terms agreed to by Grey were written into Kemp's Deed. It was then signed by thirty-six chiefs.



The Disputed Boundaries of Kemp's Purchase

The promised reserves, however, were not marked out before the Deed was signed, as had previously been the practice. Secretly Grey had just informed the British Government of a new strategy: the

Crown would buy the whole block, and then provide the reserves afterwards.

This, advised Grey, would have "the appearance of a boon conferred by the Government, instead of clothing it with a compulsory character." Grey was intent on making Maori tribes everywhere dependent on him as a benefactor, to strengthen his political position.

In August 1848 Commissioner Mantell arrived to set out the promised reserves. As he explained years later, his main aim as a young officer was to please Governor Grey.

He produced a map of Kemp's Purchase which the Maoris had not seen before. This showed the boundaries extending to the West Coast, not just along the foothills. Ngai Tahu were most indignant.

The Christian chief Tiramorehu testified later, "The only boundary that we mentioned to Mr Kemp was from Maungatere to Maungaatua. We said this to Mr Mantell, and wanted him to depart from amongst us. We wanted to hunt him off."

But Mantell assured them that they would get much larger reserves later on, and a large extra payment, and schools for their children, and hospitals for their sick. On these conditions he was allowed to stay on.

But he provided reserves averaging only ten acres (4 hectares) per person. British settlers were usually allowed hundreds, or thousands of acres. All outlying cultivations were to be abandoned, to avoid inconveniencing European settlement.

Mantell later testified, "I drew these boundaries in as close as I could, in fact I had some difficulty in the matter." Ngai Tahu protests to the Governor were referred to Mantell himself.

He replied: "The wants of the Natives are amply provided for in the reserves which I have made." In support of this he cited Moeraki, Tiramorehu's settlement, where 202 hectares had been provided for a community of eighty-seven people, — not even 3 hectares per head.

The Crown duly transferred most of Kemp's Purchase to the New Zealand Company, and later to the Canterbury and Otago provincial governments, without honouring Mantell's promises or the terms of Kemp's Purchase whereby Ngai Tahu were to keep all their mahinga kai and receive further large reserves. The land was disposed of to European settlers, the food-rich waters were gradually drained or fenced off, and so the mahinga kai were mostly lost.

Years later at the Royal Commission of Smith and Nairn in 1879 Commissioner Kemp to his credit testified as to the wrong that had been done:

"The understanding between the Native sellers and myself as

Crown agent when the purchase was made, was that they were (in addition to the purchase money, the pas or places of residence, and the mahinga kais which were then and there reserved or guaranteed to them), to receive ample Reserves from which in course of time, they might derive considerable rents as a means towards their securing permanently the comforts, and necessaries of civilized life.

"I am also bound to say, that without these promises the cession of the land would have been delayed, if not withheld, for an indefinite period of time."

But in 1880 the Government cut short the Smith Nairn Commission, preferring to leave things as they were. Indeed, in 1851 Mantell had acknowledged the real reason for the smallness of his reserves: "It would not enable the Natives, in the capacity of large landed proprietors, to continue to live in their old barbarism on the rents of a uselessly extensive domain.

Contrary to the Treaty, the Crown had forced the Maoris to abandon their chosen way of life. Only Europeans were to be runholders, and only Maoris were to be restricted to ten acres (about 4ha) a head).

5. The Banks Peninsula Awards

Officially Kemp's Purchase of 1848 included most of what is now Canterbury and Otago. Yet Banks Peninsula, which contained the only safe natural harbours on the 700km coastline between Cook Strait and Otago Harbour, was excluded from the purchase. Why?

In 1838 an enterprising French whaling captain, Jean Langlois, paid a deposit of about £6 worth of clothing to some Ngai Tahu at Port Cooper (now Lyttelton), and returned to France with the news that he had bought Banks Peninsula. He then formed a company to colonise the South Island, starting at Akaroa.

In August 1840 after a stormy four-month voyage Langlois put into Pigeon Bay with his sixty colonists. Meanwhile, the French warship sent for his protection under Captain Lavaud had put into the Bay of Islands only to find New Zealand a British possession. It was now illegal to buy land from Maoris.

But Langlois was undeterred. Some Ngai Tahu chiefs on the peninsula were convinced that the British were in league with their tribal arch-enemy Te Rauparaha, because it was the British brig "Elizabeth" that had smuggled him and his warriors into Akaroa for their first deadly attack in 1830.

Since they had learned, moreover, that Britain and France were historic enemies, their resentment against the British made them strongly pro-French. A French settlement at Banks Peninsula

seemed a good safeguard against Te Rauparaha's possible return concealed aboard another British ship.

So although Langlois had left his 1838 "Deed" behind in France, he had no trouble getting some more chiefs at Pigeon Bay to sign a replacement deed. He also obtained an agreement to sell a much larger area for about £5000 in goods, to be paid within ten years. Lavaud later reported that Langlois simply got the Maoris to sign blank sheets of paper, filling the rest in himself as he pleased.

At Akaroa, however, the leading chiefs refused to sell more land to the French, although they allowed them ashore. When the French took Maori land for their Akaroa town site and proceeded to allocate sections to settlers, selling some at quite high prices, the local chiefs looked to the British authorities to uphold Maori rights under the Treaty. But the British Resident Magistrate at Akaroa did not interfere. How did the French get away with it?

Unfortunately for the pro-French and the pro-British chiefs, they were all backing wrong horses. In Europe the British and French Governments were adopting a new mood of co-operation — the Entente Cordiale. They were not going to quarrel in faraway Akaroa.

In 1843, the Land Claims Commission under Colonel Godfrey investigated the French claim at Akaroa. It found no evidence to prove either Langlois' alleged 1838 purchase, or the French claim to the whole peninsula. But the "pro-French" chiefs supported the French claim to certain small areas, and wanted to give the French first option if any more land were sold. Godfrey referred the whole question to the British Government.

The French payments, according to Godfrey's Commission, had amounted to £240, which entitled them to only about 1000 acres (405 ha). In 1845, the British Government decided, however, to reimburse the French Company for £7500 spent in establishing its colony, by a grant of 30,000 acres (12,140 ha) of Maori land at Akaroa. Maori rights under the Treaty were thus sacrificed to the Entente Cordiale.

In May 1849, the New Zealand Company demanded Banks Peninsula harbours for its new Canterbury settlement. Governor Grey wanted to avoid the embarrassment of having to admit that Kemp's Deed (which he had previously praised to the British Government) had not secured the peninsula for the company.

Commissioner Mantell was appointed to deal with the Maoris. Before going to Banks Peninsula he conferred with Grey's subordinate in Wellington, Lieutenant Governor Eyre, as to how the wishes of Grey and the company could both be achieved.

Eyre and Mantell decided to tell the Maoris that they had forfeited the whole peninsula to the Crown because some of them

had offered to sell it to the French. As a consolation Mantell would "award" the Maoris some reserves and small payments, for which the company provided £650. In return the chiefs would have to sign deeds of sale, which would then legitimise the Crown's intended transfer to the company of the 210,000 acres (85,000 ha) of Banks Peninsula that had not been awarded to the French.

Details of Eyre's conference with Mantell, and of Mantell's subsequent tactics, are contained in Mantell's notebooks and diary, now in the Alexander Turnbull Library. Mantell was to "carry matters with a high hand," as he recorded in his notebook in Greek script.

At Banks Peninsula Mantell duly told the chiefs that if they did not like his offer they could leave it and get nothing. "The Governor will praise your conscientiousness," he said.

If they objected to the smallness of the reserves he was providing, these would be "narrowed." At Purau for example, where the company awarded one settler 500 acres, the Maoris had extensive cultivations. But Mantell reserved them only nine acres, requiring all their other cultivations to be abandoned.

The Maoris knew the value of the land, as an Englishman had just offered them £100 for 200 acres at Pigeon Bay. But the Crown forbade private sales.

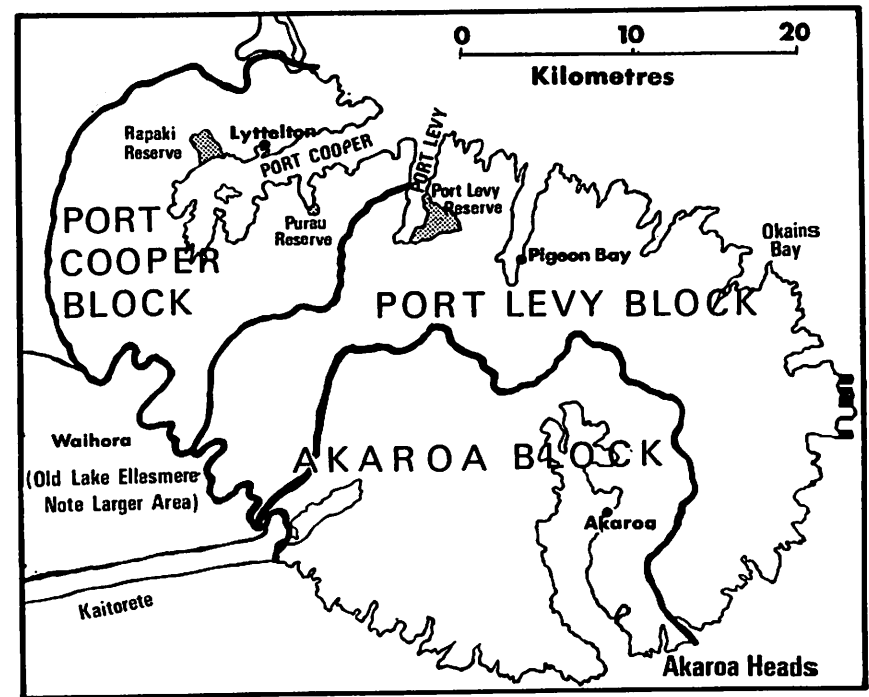
At Port Levy the chiefs requested a payment of £1000, and they asked to retain Okains Bay and part of Pigeon Bay and Port Levy as their share of the land — perhaps altogether 3000 hectares of the 40,000 hectare block. But instead, Mantell allowed them only 550 hectares, at Port Levy, and a payment of £300.

After five weeks of wrangling at Port Cooper, and another six weeks at Port Levy, Mantell got the signatures he wanted. Even so, he had to resort to using "proxy signatures" for some of the chiefs who refused to sign. He wrote in his diary, "His Excellency has taken a poor course to get out of his mismanagement about the Peninsula."

For his "Deeds of Sale" Mantell paid £200 at Port Cooper and £300 at Port Levy. But he gave up and returned to Wellington when the Akaroa chiefs refused to accept £150 for their block, blaming them for their "insolence and turbulence." Nevertheless the Crown later handed over the whole peninsula to the Canterbury settlement, Akaroa block included, and it was soon occupied by European settlers.

The "pro-French" chiefs thought that the French might yet return with the promised £5000 and take charge, while the others thought that the British Government would, in Mantell's words, "take care of them." Both were to be disappointed.

The French sold out to the New Zealand Company. Mantell's



The Banks Peninsula Awards, 1849

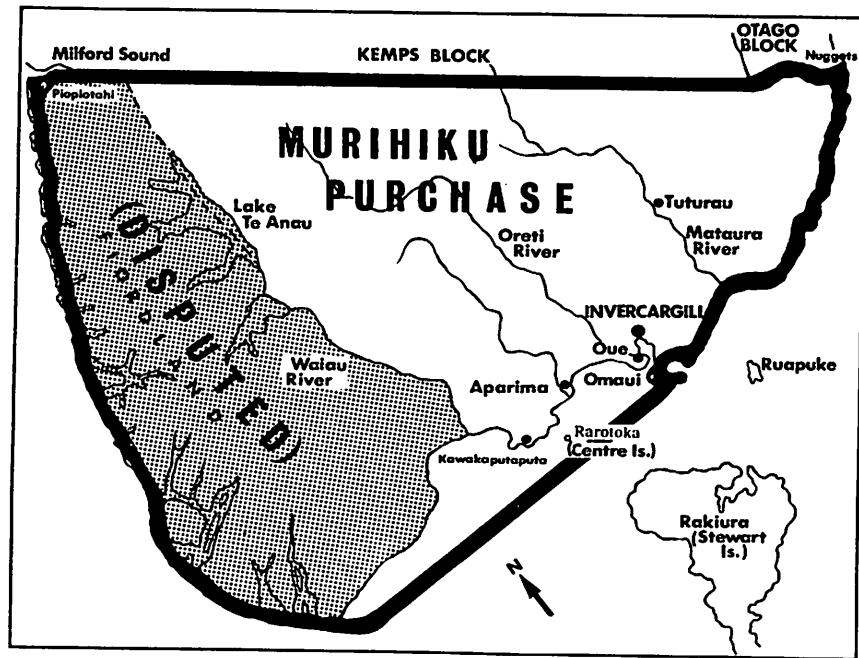
reserves in the Port Cooper and Port Levy blocks left Ngai Tahu with barely 200 acres (80 ha) of arable land and 2020 acres (817 ha) of steep land, for a population of about 200 people. They were worse off than those in Kemp's Block.

Ngai Tahu maintain that the Crown's refusal last century to allow them land on an equal footing with British settlers, in accordance with Articles Two and Three of the Treaty, prevented them from progressing as independent farmers and reduced many to destitution.

6. The Murihiku Claim

The Murihiku part of the Ngai Tahu claim concerns the land south of a line drawn from Balclutha to Milford Sound. The purchase was negotiated and concluded by Walter Mantell who had earlier played a part in Kemp's Block and the Banks Peninsula Awards in 1848-49.

The Ngai Tahu chiefs of the area had offered the Government a



The Murihiku Purchase

purchase of land in the southern part of the South Island. We may assume that they expected the precise details of area, price and Maori reserves to be negotiated with them.

In April, 1851, Mantell offered his services as land purchase agent to the Governor. Mantell gave among his qualifications for the job the fact that in Kemp's Block he had kept the reserves for Ngai Tahu down to 10 acres per person. His offer was accepted on that basis, and there was a clear implication that he was to do similarly in Murihiku.

Mantell began his journey through Murihiku in late 1851. His progress was recorded in a diary, and that diary shows some instances where Mantell refused to allow the reserves requested by Ngai Tahu. The diary refers to such disputes at Aparima-Jacob's River, Kawakaputaputa, and Omaui. Mantell conducted large meetings of Ngai Tahu at Port Chalmers and Bluff in the early months of 1852. He eventually secured the agreement of Ngai Tahu to sell the Murihiku Block for £2000, with seven reserves excepted. Mantell was to return in 1853 with the money to conclude the deal, but when that time came there were delays in forwarding the money from Wellington.

Ngai Tahu were annoyed and threatened to withdraw the offer, but Mantell eventually gained their agreement to sell for the higher price of £2600 (which he had to mortgage his house to obtain immediately).

Such at least is the story in the official record. The Royal Commission of Smith and Nairn, sitting in 1880, heard from 13 Ngai Tahu who had witnessed or taken part in the sale. Their evidence shows a number of differences from the official record.

First, Ngai Tahu asked for more reserves than Mantell allowed. These were, in addition to those mentioned in Mantell's diary, situated at Oue, Waimatuku, the Waiou River, Opuaki, the Mataura Falls, and Centre Island (Rarotoka). Centre Island was of particular importance as a settlement and urupa (cemetery) and some witnesses told the commission a story like this:

"Mantell looked over to . . . Rarotoka and said, 'I must have that island . . . to place a powder magazine there, and to have a place for a prison.' We replied to Mantell 'We will not let you have that island, Mantell; Leave that for ourselves.'"

Second, most of the witnesses testified that there had been an additional part of the purchase price not mentioned in the deed.

"The Maoris said: 'You will have to give us a good price.' Mr Mantell said, 'I shall give you a good price . . . Do not consider what I am giving you now as the large payment, but hereafter I shall establish you schools and hospitals' . . . It was not until everything was explained about schools and hospitals that we wanted to sell the land. If it had not been explained, we should not have sold the land."

The schools and hospitals, to be established at every Ngai Tahu settlement, were clearly crucial in persuading Ngai Tahu to accept Mantell's offer. Yet these were never established, and the result was that Ngai Tahu were at a disadvantage in the new world. As one chief told the commission:

"If those schools had been established, I would have had as much knowledge as those who are very good at sums. If those schools had been established, there would have been many of us resident magistrates and lawyers."

Third and most important, five of the chiefs told the Royal Commission that they had only wished and intended to sell the land as far west as the Waiou River — that is, they did not wish or intend to sell Fiordland. They told Mantell this, and he refused to resolve the matter:

"Q: When the natives mentioned those boundaries do you recall whether Mantell was satisfied with them? A: Mantell said it was too little . . . Mantell said 'If you would let me have the whole of the

land, I would be satisfied.' To the best of my knowledge that was all that passed."

Yet Fiordland was included in the deed, and two chiefs testified that Mantell agreed to a reserve at Milford Sound or Piopiotahi, which means that the matter of Fiordland may have been discussed further. These chiefs, however, implied that this arrangement was made privately with Mantell — that is, not with the agreement of the whole meeting.

Moreover, none of the witnesses said that the objection to selling Fiordland was resolved in the meetings. There is, therefore, a strong possibility that Mantell included Fiordland in the sale without the proper consent of Ngai Tahu.

Walter Mantell had a change of heart a few years after the Murihiku purchase and went to England to press the British Government to honour his promise of schools and hospitals. That Government said that it was up to the New Zealand Government. Mantell did not raise the issue of the reserves or of Fiordland.

In the 1870s and 1880s the Government made grants for Ngai Tahu who had been left out of the original reserves. These Half-Caste Grants were fixed at ten acres for men and eight acres for women. A family, therefore, would get 18 acres, at a time when the minimum useful size for a farm was over 100 acres.

Further allocations, on the basis of 50 acres for adults and 20 for children were made in the 1906 South Island Landless Natives Act. The responsible commissioners reported that they had taken twelve years to make the allocations, mostly "Due to the absence of suitable blocks of land in which to allocate the claims . . . In the end, lands have actually been found to meet all the requirements as to area, but much of the land is of such a nature that it is doubtful if the people can profitably occupy it as homes."

Most of this land was in the Murihiku Block, and was, as the commissioners said, steep, forested, and remote. Since 1906 parts have become more valuable, but the redress was still held by Ngai Tahu to be inadequate.

In a summary, the Ngai Tahu claim in respect of the Murihiku Block is that the purchase was contrary to the Treaty of Waitangi in that:

- certain reserves that they wished to keep were denied to them;
- the full purchase price of schools and hospitals was not paid;
- the land west of the Waiiau was wrongly included in the sale;
- the Crown has failed since to make adequate compensation for these acts, thereby keeping Ngai Tahu in a state of near-landlessness.

7. The Princes Street Reserve, Dunedin

Kai Tahu-Kati Mamoe of the Otago region not only failed to secure "tenths"; they were unable even to gain a title to a modest Reserve on the Dunedin foreshore. The piece of land generally known as the Princes Street Reserve is small — about three-fifths of a hectare — yet the volume of paper it has generated is quite remarkable, and is evidence of the determination with which Kai Tahu-Kati Mamoe maintained their claim to it.

The site was approved by Governor Grey as a "Native Reserve" in 1853, after Kai Tahu sought a small piece of land where they could erect houses for accommodation when visiting Dunedin to trade. But Walter Mantell, Commissioner of Crown Lands (Otago), who recommended the Reserve to Governor Grey, did not select the land that Kai Tahu wanted, and in fact, his Reserve was not suitable as a landing site. He later explained that it was "out of the way."

But there was another reason, too, for his choice. Mantell was one of a small group of government officials heartily disliked by the independent Scottish settlers of the Otago Association. And from the circumstances in which he selected the site, and the fact that it was at first an unpublicized arrangement between himself and the Government, it seems clear that he hoped above all to irritate the settlers — especially their leader, Captain Cargill, with whom Mantell got on badly. The interests of Kai Tahu do not appear to have been uppermost in his mind.

Before long, the new Otago provincial government challenged the Maori right to the Princes Street land — notably after the value of Dunedin commercial sites shot up with the arrival of the gold rush population in the early 1860s, and the Crown began leasing the "Native Reserve" very profitably. The province argued that the land — which at the time, before harbour reclamation began, was on the foreshore — had clearly been designated a reserve for wharves and quays when the settlement was planned. Governor Grey, it was said, had no power to change that designation. It seemed doubtful, too, whether the proper steps had been taken to secure the Maori title to the Reserve.

Ultimately the provincial government was successful in its bid for the land. The land was Crown-granted to the Superintendent of Otago Province as a reserve for "wharves and quays" in 1866, in curious circumstances; Governor Grey later wrote that he signed the grant "in ignorance of what I was doing." In fact the Otago members of Parliament had done a deal with some of their northern colleagues, and government Ministers thus saw to it that the Crown grant was issued. The land later passed to the Dunedin

City Corporation, which leased it. (Harbour reclamation prevented its use for "wharves and quays.") And in 1867 the central government also paid over to the provincial government the reserve's rents (some £6000) which had accumulated in the early 1860s before it was granted to the province.

The Kai Tahu chiefs Hori Kerei Taiaroa and John Topi Patuki at once challenged the Crown grant. They petitioned both houses of parliament, and Queen Victoria (citing the Treaty of Waitangi). They pursued their claim in the courts without success, for in the courts of the time it was not possible for them to present their own sort of case and have it argued on its merits.

Finally they agreed to abandon an appeal to the Privy Council in 1872, and to give up their claim to the Reserve, in return for a payment of £5000 from the province. In the view of their Pakeha advisors, the appeal would be expensive and might well fail, and the compromise was the only sensible course of action open to them — even though it meant accepting an injustice. Taiaroa then led a campaign for the return to Kai Tahu of the £6000 back rents, and after a number of years secured £5000 of this amount from the government.

Despite this outcome, Kai Tahu never really accepted the loss of the Princes Street Reserve; they continued to press for an investigation of the title. They did not consider the payments were adequate compensation for the loss of the land (estimated to be worth \$78,000 in the 1890s). The Reserve had appeared to offer their only chance of a real stake in the town founded on their back doorstep, with which from now their future would be bound up.

For Kai Tahu lost not only Mantell's Princes Street Reserve, but also the land near the Dunedin "Exchange" (as it later became) that they had used as a landing place and marketplace from the earliest years of the settlement. In 1858 the New Zealand Government had asked the Otago provincial government to secure to the Maori a site in this area "in perpetuity" for a lodging-house and landing place. But the provincial government would not agree, and the New Zealand government did not pursue the matter.

Kai Tahu-Kati Mamoe thus claim that in the matter of a Dunedin "Native Reserve" the Crown failed to protect their interests, despite its obligations under Article 3 of the Treaty of Waitangi.

8. The Forced Sales:

Akaroa, North Canterbury, Kaikoura

In January 1849 Charles Torlesse crossed the Waimakariri to survey the Kaiapoi district for the New Zealand Company. But Ngai Tahu told him that the "white man's land" was south of the river, and north of it was theirs.

They did not accept the "Wairau Deed," by which Governor Grey claimed to have bought the northern Ngai Tahu lands from Ngatitōa. Under Kemp's Deed they still wanted to keep the land between the Waimakariri and Ashley rivers, and they objected to the Government sending surveyors and runholders on to their unsold lands.

Later, when Torlesse tried to survey across the Waimakariri, his observation post was burned down. The culprits were fined, but Torlesse reported ". . . General dissatisfaction among the natives as to the manner in which the purchase and payment of their lands has been effected."

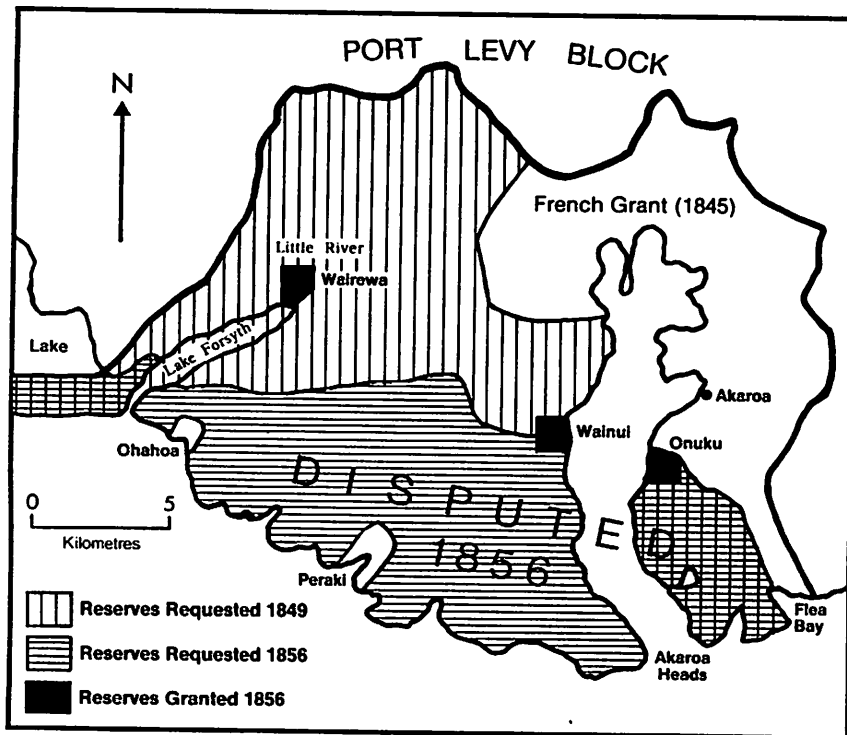
In July 1849 Commissioner Mantell was sent to Banks Peninsula to browbeat the local chiefs into accepting the Government's meagre "awards." The Akaroa chiefs rejected his offer of £150 for their 32,000 hectare block, with only 760 hectares in reserves.

They were prepared to surrender more than half the block for European settlement but wanted to keep the rest for themselves, including the whole Little River basin. This sharing of the land was perfectly consistent with the Treaty of Waitangi, under which they were not obliged to sell to the Crown if they did not agree to the terms offered.

During 1850 Ngai Tahu repeatedly protested against Europeans moving on to their lands. They appealed to Grey to "return and discuss the place for the Maori to sit upon," and to "write to the pakeha that they may let us alone."

But all these protests were in vain. In 1849 Governor Grey had reported to the British Government that he had already purchased the whole territory between Nelson and Otago for British settlement, "without any possibility of those embarrassing questions arising between the European and the Native population in reference to titles to land."

Accordingly in August 1850 the British Parliament passed the Canterbury Association Lands Settlement Act. This statute empowered the Canterbury Association to sell all the land from the Waipara south to the Ashburton River, with no reference to Maori land rights. It allowed Grey to ignore all Ngai Tahu complaints, whatever their merits.



The Akaroa Block and 1856 Award

The Akaroa Block comprised about 33,000 hectares. It appears that the Ngai Tahu chiefs, based at Onuku, Wainui (Opukutahi), and Wairewa, wanted to keep most of this for themselves. They had allocated enclaves to Europeans for whaling and other purposes, and had agreed in principle to allocate the French an undefined area at Akaroa. However in 1845 the British Government awarded the French 12,140 hectares which was to extend north to Pigeon Bay, but the exact boundaries were not defined. In 1849 Commissioner Mantell was sent to purchase the Akaroa Block for the Crown for £150. Mantell was to mark off the boundaries of the French Block, and to award Maori reserves totalling 760 hectares. But Ngai Tahu demanded reserves as indicated by the vertical shading, totalling about 15,500 hectares. This was refused. News then arrived that the New Zealand Company had bought out the French interest. Mantell was instructed not to complete the survey of the French block, and he returned to Wellington without making the purchase. In 1850 the British Government authorized the New Zealand Company's subsidiary, the Canterbury Association, to dispose of the whole of Banks Peninsula to incoming settlers, Akaroa Block included, and with the arrival of the Canterbury settlers at the end of 1850 this disposal of the land was proceeded with. Six years later when Commissioners Johnson and Hamilton were instructed to carry out Mantell's award of 1849 nearly all the land had been sold, except for the rugged southern portion of the block. Ngai Tahu now requested this as a reserve (horizontal shading), but were allocated only the three reserves at Wairewa, Wainui and Onuku, of about 162 hectares each. Because of the vague wording of Hamilton's Deed the whole question remains in dispute.

The settlers moved on to the land in good faith, some purchasing Crown titles and others leasing, until by 1856 the Banks Peninsula and North Canterbury blocks had been completely taken up by colonists, settlers, and speculators. Many of them were annoyed at meeting opposition from local Ngai Tahu. Nothing had been done to secure to Ngai Tahu the share of the land to which they were entitled under the Treaty.

But Ngai Tahu, unaware that a British statute could make things legal that were previously illegal, did not give up. In 1851 the Akaroa chief Te Puka, who had refused to sign Mantell's 1849 "award," wrote to the Governor complaining of European cattle being turned out to graze on Maori land at Akaroa Heads.

Grey told his secretary to send the complaint to the Akaroa magistrate. He in turn passed it on to Godley, the Canterbury Association's officer at Lyttelton, with the comment, "The lands alluded to are leased to the Europeans complained of, by the Canterbury Association." Godley, backed by the statute that had empowered him to lease the Akaroa Heads, naturally did nothing.

In March 1852 Ngai Tahu took advantage of Governor Grey's official visit to Lyttelton to confront him with a large hui complaining of the increasing encroachment by pastoralists on their unsold lands. Grey reassured them that the Queen would attend to their interests in good time; but meanwhile he begged them not to molest the pastoralists. But by the time Grey left the Colony in 1853 his promises had come to nothing.

Early in 1856 Grey's successor Colonel Gore Browne met a Maori deputation at Akaroa, which became unruly when the Governor whimsically suggested that his soldiers could "polish them all off before breakfast."

Returning to Auckland Governor Browne told Chief Commissioner Donald McLean to send Wellington District Commissioner Johnson to Akaroa and carry out Mantell's award of 1849. But Johnson reported from Akaroa that he had met with a refusal: "The Natives would rather incur the risk of being dispossessed by force, which alternative, they inform me, was given them by His Excellency the Governor." Johnson also reported that Ngai Tahu maintained their claim to the land north of Kaiapoi.

McLean then asked Christchurch Magistrate W. J. W. Hamilton to negotiate with Ngai Tahu. They dropped their demand for the Little River basin, now occupied by Europeans, but they again asked to retain both sides of Akaroa Heads, and the southern part of the peninsula as far as Lake Forsyth for the many absentees.

Hamilton's Akaroa Deed stated merely that they were to surrender "the places (or areas) under dispute," and gave no place names or map. The Maoris did not realise until later that they were

not getting their large block, but only the £200 and 1200 acres in reserves that Hamilton provided when they signed the deed.

How Hamilton, a devout churchman, could have imagined his 1200 acres (480 ha) would be sufficient for 90 Akaroa block residents and perhaps scores of absentees is a mystery. His report mentions that they had extensive wheat and potato crops beyond the reserves which, he said, "seem barely sufficient for them, as they own some 80 head of stock, and have already applied to rent 400 acres of the pasturage just sold by them to the Crown at Little River."

However, Hamilton went on to Kaiapoi where on February 5, 1857, he got the North Canterbury Deed signed for £500. The whole block had by that time been allocated to Europeans, so Ngai Tahu received none of the reserves they requested near Motunau and Hurunui for their stock.

Late in 1858 Commissioner James Mackay was sent from Collingwood to buy the Kaikoura Block of nearly a million hectares. Most had already been leased or sold by the Nelson authorities to pastoralists.

Ngai Tahu asked for £5000 and a reserve of 40,000 hectares — no more than already held by many European runholders. But after months of wrangling Mackay beat them down to £300 with reserves of about 2200 hectares — which he described as mainly "of the most useless and worthless description" — telling them that otherwise they would get nothing. To try to accommodate their horses and cattle the 90 Ngai Tahu inhabitants had to buy back some land from the Government.

Today Ngai Tahu claim that the Akaroa, North Canterbury, and Kaikoura "purchases" were really forced sales because the Crown had allocated nearly all the land to Europeans before they came to buy it from Ngai Tahu; and that the Crown also broke the Treaty in refusing to allow Ngai Tahu grazing land on the same scale as the European runholders.

9. The Arahura Claim

The Arahura block extends from Kahurangi (or Kahuraki) Point north of Karamea, to Milford Sound or Piopiotahi, and is bounded on the east by the Main Divide along the Southern Alps. It was purchased for the Crown by James Mackay on May 21, 1860, at a price of £300, with certain reserves set aside for Ngai Tahu.

Mackay made his first visit to the Coast in 1857. At Mawhera Pa (now Greymouth), Ngai Tahu offered to sell an unknown amount of land for £2500, but the Government was not interested. Shortly afterwards, however, the presence of gold on the Coast became

known and the Government determined to buy the block before Ngai Tahu became aware of the value of gold.

So James Mackay was sent back to the Coast in 1859, with instructions to spend no more than £150 and to leave no more than 500 acres (about 200ha) in reserves. On August 3, 1859, there was a meeting between Ngai Tahu and Mackay at Mawhera. Some favoured selling some land, but, as Mackay reported, no-one was prepared to part with

"The country laying within the Mawhera and Kotukuwhakaoho and Okitika (Grey, Arnold, and Hokitika Rivers) ... as the highly prized greenstone is procured from the Arahura ... I found it impossible, from the value attached to its possession, to extinguish the Native title with the sum of money at my disposal."

Mackay therefore proceeded to Auckland for further instructions. He returned to the Coast in March 1860 with orders to spend up to £400 and to set aside no more than 10,000 acres (about 4000ha) in reserves. He spent some weeks allocating reserves up and down the West Coast.

At a large meeting at Poherua in late April, Ngai Tahu informed Mackay that they still wished to keep the 200,000 acres (about 80,000ha) between the Mawhera, Kotukuwhakaoho, and Hokitika Rivers. Mackay reported that, after some days of discussion, Ngai Tahu agreed to sell the whole block for £300 with certain reserves left out. The greater part of the land that Ngai Tahu wished to keep was to be included in the sale.

Ngai Tahu have suggested that Mackay only gained agreement to the sale of the block between the three rivers by making threats or promises. They have also submitted that as Mackay had been told twice that the block between the rivers was not for sale, the Government had no right to pressure Ngai Tahu to sell it.

Ngai Tahu demanded a reserve of 1000 acres (about 400ha) at the Mawhera or Grey River. Mackay agreed to this, and 500 acres (about 200ha) that were set aside at the mouth of the river later formed a substantial part of the town of Greymouth. The other 500 acres were up the river. The tribe also demanded, in Mackay's words, "that a very large reserve should be made at the River Arahura ... with a view of giving them a right to its bed, from which is obtained the highly prized greenstone ..."

Two thousand acres (about 800ha) was the area agreed on. Ngai Tahu wanted all the land between the mouth of the river and Mount Tuhua, about 23km up the river. Mackay, not being a surveyor, agreed that they could buy back additional land up to Mount Tuhua if the 2000 acres did not extend that far. The difference was later found to be 14,000 acres (about 5700 hectares) and this land was

given by the Government to the Hokitika Harbour Board in 1872 without allowing Ngai Tahu to exercise their option.

Mackay also noted on the map attached to the deed that "The whole of the river bed of the Arahura belongs to the Natives, to its source." Surprisingly, Mackay did not mention this fact, or the matter of the land up Mount Tuhua, in the body of his report; it was only on the attached map. The reservation of the Arahura bed was ignored by the Crown until 1976, when partial recognition was given.

Most of the other reserves set aside in the Arahura Purchase were beside or at the mouths of rivers, relating in part to traditional sites of occupation and food-gathering. A number of these reserves were never actually given to Ngai Tahu.

In some cases the reserves were eroded by the rivers or sea; in others, land was taken for public works or other Government purposes. This happened on numerous occasions in the town of Greymouth, the central part of which was built on the Mawhera Reserve of 500 acres.

James Mackay had foreseen the possibility that the Mawhera Reserve would be regarded by the pakeha as a desirable site for a town. In his report of May 21, 1860, he stated that he "much regretted" Ngai Tahu insisting that the land be kept for them, "as it enables them to retain the best landing-place. I however found that further argument would have endangered the whole arrangement..."

When the gold rush began in the mid-1860s the town of Greymouth started to grow, the new residents leasing land from Ngai Tahu. In 1866 the reserve was brought under Government control, and in 1871 the leaseholders began to agitate for the right to buy the land outright. To this Ngai Tahu were absolutely opposed, and the argument continued for years.

In 1887 the Government made a compromise. The Westland and Nelson Native Reserves Act recognised nominal Ngai Tahu ownership of the reserve lands on the West Coast, but imposed leases on 21-year terms, renewable forever. Rents were set only once in every 21 years, and the Public Trustee (later the Maori Trustee) had control over the land.

This law was much criticised by Ngai Tahu as it removed them from any control over their own land. As Tame Parata, the M.P. at the time for Southern Maori said, the trustee "will go on extending the leases time after time to the end of the world, and the Natives will never obtain possession of their ancestral land again." Objections also focus on the long period between rent reviews.

The South Island Landless Natives Act of 1906 has already been mentioned in the article on the Murihiku block. Under that act, 3660 acres (about 1480 ha) were allocated in the Arahura block, chiefly

at Bruce Bay and Whakapoai. These lands were generally of little agricultural value and in remote areas.

Because of the terms of the act, and its repeal in 1909, some of the land which Ngai Tahu should have received, remained with or reverted to the Crown. Ngai Tahu regard the terms of the act, and its inadequate scope, as a continuing breach of the Treaty.

For Ngai Tahu, the issues in the Arahura block are loss of land and loss of culture. The purchase left them without proper access to greenstone, a vital part of their culture. The effective loss of the Mawhera Reserve drove the people of that area south to Arahura, where there was not sufficient land for all those who wished to live there.

The other reserves on the Coast were also insufficient, and so many West Coast Ngai Tahu had to leave the Coast. Deprived of their land base, the people also lost the chance to remain as a strong group that could fully preserve their cultural values.

In recent years the West Coast Ngai Tahu have taken over the administration of the reserves on the Coast that were formerly under the Maori Trustee. These lands are now administered by the Mawhera Incorporation, but the incorporation is still bound by the 21-year review of rent and the perpetual leases enacted in 1887 by the Crown.

Ngai Tahu therefore claim that they are still suffering from the effects of past actions of the Crown.

10. The Mahinga Kai Claim

"I have seen no grander sight than the fire upon a country which has never before been burnt . . . We fired the flats as we rode down, and made a smoke which was noticed between fifty and sixty miles off."

So wrote Samuel Butler to his family in England in 1862. He was among the gentlemen sheepfarmers who doubled their money within a few years in the Canterbury high country.

Later another runholder, Edgar Jones, wrote: "In a heavy nor'wester it is wonderful how, from the dry leaves on the ground, fire would spread into the branches of the tall beech trees and sweep up a hillside. One very dry summer the whole bush went. Quite ten thousand acres were burnt."

He added, "Native birds were very plentiful, especially the paradise duck. We used to have very pleasant shooting parties. Three guns used to shoot 100 to 200 in a morning . . . They were too tame, too easily shot."

Firing the grasslands and forests, draining the swamps, diverting the waterways, and reclaiming the shorelines destroyed both the

wildlife and its habitat. But it produced a landscape at once more profitable and, to the European settlers, more like home.

The wholesale slaughter of wildlife for "sport" was reminiscent of Old England, where in a single "battue" gentlemen with beaters might shoot thousands of birds in one day. Later when introduced predators — cats, rats and stoats — destroyed the native ground-birds altogether, the acclimatisation societies introduced new game more satisfying to the sportsman's instinct.

To most colonists these were welcome changes. A wild country was being tamed.

But to Ngai Tahu whose homeland it was, a whole way of life was being swept away. The term "food-gathering economy" today may suggest a regime of spartan simplicity. But in the 1840s the vast grasslands were teeming with weka and native quail. The forests yielded plenty of pigeons, kaka and other birds.

The forest margins supplied native rat and kakapo — one bird providing a meal for two men. Besides all these were many kinds of vegetable food, the best-known being the bracken-fern root and the cabbage-tree — an esteemed source of sugar.

The inland waters were bountiful with ducks of various kinds, valued for their eggs as well as for their flesh. There also were various species of eel by the million, as well as native trout, freshwater crayfish, lampreys and whitebait. The estuaries and lagoons, and the beaches and rocks of the shore were prolific with lobsters, crabs, flatfish and shellfish too numerous to mention, each with its distinctive flavour.

The sea was an inexhaustible larder of fish and shark of amazing variety unexcelled anywhere in the world, and Ngai Tahu in their double-hulled canoes could venture as far offshore as necessary to get them. Many kinds of seabird, their chicks and eggs, were also available, the most prized being the chick of the titi or sooty shearwater, today called muttonbird.

The "mahinga kai" (literally "food-works") by which these natural foods were obtained, each in its appointed season and by long-perfected techniques, were highly prized by Ngai Tahu, who followed traditional paths even far into the interior and set up seasonal camps for the purpose. The annual heke ("migration") in April to the Titi Islands in Foveaux Strait, to which double-hulled canoes sailed 750km from Kaikoura, is the only surviving example to-day.

The communal use of natural resources was basic to the Maori economy, and hence to the whole social fabric. But it formed no part of the colonial economy introduced by British annexation in 1840. There was no market for "Maori food", except for such of the fish as appealed to European taste.

The mahinga kai of Ngai Tahu had to make way for the new economic order of capital investment — first in wool production, then timber, gold, wheat, meat, dairy produce, and lastly, fish. Production mainly for use was replaced by production mainly for profit.

Today there is general ignorance of the fact that the Crown guaranteed Ngai Tahu all their fisheries and other natural food resources, under Article 2 of the Treaty conditionally and under Kemp's Deed absolutely. Agricultural, industrial and recreational interests now each claim the right to use natural waters as they please. Even where Maori rights can be exercised they are far outnumbered.

Lake Ellesmere, for example, was probably the richest food-basket in the country. Teeming with millions of eels, flounders, herrings, cockles, pipis, and waterfowl it was immeasurably the greatest of the mahinga kai guaranteed to Ngai Tahu under Kemp's Deed. The lake-edge shown on Captain Thomas's sketch-map of 1849 indicates that the volume of the lake and its adjoining wetlands must have been several times what they are today.

But the lake-level was lowered and the surrounding swamps and lagoons were drained, and the resulting reclaimed land was largely usurped by the Crown. Waters feeding the lake have been taken for irrigation.

Domestic and agricultural effluents have polluted the lake. Within recent memory, the once vast population of sizeable eels has faded away, and the introduction of commercial quotas has virtually displaced Ngai Tahu from the fishery.

Today's economy sees natural waters as a means of waste-disposal rather than as a source of life and nourishment as in Maori times. Snow-fed rivers might survive. But in South Canterbury and North Otago for example, the lowland rivers and streams and their associated lagoons and estuaries, once so rich in eels, fish and bird-life, are now a sorry sight.

Polluted by sewage and industrial effluent, depleted by irrigation schemes and diversions, and periodically ravaged by flooding, they are without doubt among the most degraded waters in the country. These resources, once deemed worthless without the benefits of economic development, are now rendered worthless because of them.

The over-use of natural resources has also caused irreversible destruction. Pressure on high country vegetation and soils, long warned against, has over the last half-century resulted in accelerated soil erosion, lowland flooding, and silting or gravelling-up of waterways.

And now in recent years, again under the demands of the export



Muttonbirding in the 1920s

(Photo by George M. Turner)

The photographer George M. Turner visited the Titi Islands during a typical muttonbirding season, and writes in the September 1930 edition of *Wanderlust* thus: "This picture shows bundles of green totara bark and broad sheets of kelp blown up to make bags. The bag hanging up on the right has a limp-shell patch at the bottom left corner. The totara bark was cut into lengths to suit and placed vertically around the kelp bag when filled with muttonbirds, for protection. The bottoms of the bags were first placed in flax-woven outer bags to protect them in transit. Then the whole was bound very tightly with twine or flax. This kit, if not broken, would keep the birds for two years or even more. Work was begun in October preparing these packaging materials for the muttonbirding season the following April."

These kelp bags or "poha", depending on size, contained from 12 to as many as 150 prepared birds. This description by Turner was exactly as noted by Edward Shortland at a beach near Timaru in January 1844 (eight months after the close of the season): "The boats were hauled on the beach, and by them stood the cargo with which they had been freighted, consisting chiefly of poha-titi (kelp casks of preserved muttonbirds). Many of these were from five to six feet high, and ornamented with feathers. They were all designed as presents to relatives at Waiateruati, or Banks Peninsula; and from the latter place, in all probability, a great number of them would be sent to the north side of Cook's Straits."

market, Ngai Tahu's last readily-available mahinga kai, the sea-food of the shore line and the coastal and deep-sea fisheries, have come under the same pressures of pollution and commercial exploitation.

In 1980 the "World Conservation Strategy" issued by United Nations agencies listed the South-West Pacific Fishing Zone, centred on New Zealand, as one of the few remaining zones not threatened by over-fishing. Today it is so no longer.



Plucked muttonbirds being brought to a 1920s camp by the men.

(Photo by George M. Turner)

The annual taking of the titi or muttonbird chick (*Puffinus griseus*), with all its attendant technology and social organization, on the remote and often stormy islands off the Stewart Island coast, was perfected during the centuries before European arrival, and continues today. Muttonbirding today is a living example of Ngai Tahu — Ngati Mamoe traditional use of their many kinds of mahinga kai which used to be carried out up and down the country before the land was taken for European settlement. Muttonbirding is a family affair. All ages camp on the islands for the six-week season. The right to take titi is strictly by right of whakapapa (ancestry), and is organized in whanau (extended families). Whanau are responsible to the tribe for correctly exercising their property rights on their particular allocation, and for keeping strictly to the agreed conservation and "town-planning" principles that have been handed down from the past. Whanau allocations are marked out on the ground in wakawaka (sections). Poaching is strictly forbidden, as is the killing of adult birds. Under this communal system an annual harvest of about 250,000 birds has been sustained for many generations without threatening the resource, — whereas New Zealand's commercial fisheries, under Government control or private "market-led" exploitation, are evidently being severely depleted.

Ngai Tahu claim compensation from the Crown for their lost mahinga kai, and an effective partnership with the Crown in the management and control of those that remain, including fisheries. They claim that the Crown under the terms of the Treaty is obliged to protect the Maori right and interest in natural food resources including fisheries, and to arrest their decline and where possible bring about their restoration.

1.1. The Social Consequences

The Treaty of Waitangi was supposed to protect the Maori from the excesses that had marked European colonisation elsewhere. The promises extracted by Kai Tahu from the servants of the Crown during most of the land purchase negotiations, as conditions of those sales, were also intended to ensure that future Maori generations would benefit and not suffer from the effects of colonisation.

However, the Crown's failure to ensure that Article 2 of the Treaty of Waitangi was honoured meant the loss of traditional resources as Europeans gathered in the land, destroying the habitats of the animals and plants upon which the Maori economy depended. And the failure of the Crown to fulfil the promises made by its servants as conditions of the land purchases and the meanness of the reserves set aside after the purchases, deprived the Maori of land which should have been their main economic asset in the new economic order.

Participation in the cash economy of the European was their choice in the first half of the nineteenth century. By the end of it, as the Maori economy declined, there was no choice. Through lack of land the Maori could only compete with the European in that cash economy at the lowest level — that of the wage labourer.

From the mid-1830s the Maori welcomed opportunities for commerce with the European. In the 1840s and 1850s schooners owned and operated by rangatira such as Tuhawaiki, Karetai, Tairua, Potiki, Waruwarutu and Topi, traded along the coast and between Port Nicholson (Wellington) and southern ports.

There are records of the scale of this early trade. In 1839 Octavius Harwood received 1161 baskets of potatoes at Otakou. He recorded thirteen baskets as weighing 2130 pounds, averaging 163 pounds per basket.

Crops of wheat, corn, potatoes and carrots, were grown at Waikouaiti, Otakou, Ruapuke and Tuahiwi for sale to immigrants. Fish were caught and sold to settlers. In 1859 a ton of groper was sold at Lyttelton, the price rising from 4 shillings each to 10 shillings, so great was the demand.

But as European numbers grew they no longer were dependent on Maori produce, transport and labour. In the resulting competitive world, the European had the advantage of greater experience in a commerce for which they set the rules and, through the injustices of the land purchases, they also possessed nearly all the land. Thus Maori agriculture could not be significantly developed, and wage labour provided the only means of participating in the cash economy.

In 1859 the missionary Wohlers noted that despite their best

efforts "... the Maori are still poor while the Anglo-Saxons soon become well-to-do people ..."

A combination of factors made the situation worse. The people were strongly motivated to become respectable members of the new society. But to improve the little land they did possess required capital for implements and fencing. Wages, however, were increasingly spent on food as mahinga kai (traditional food resources) disappeared.

Thus capital had to be obtained by the leasing of land. And the considerable costs of seeking justice for their grievances were also often met by leasing land. Often there was no land left for even their own crops.

In 1872 the missionary James Stack described the Canterbury Maori as "condemned" by "the scanty yield from a scanty patch of soil ... to a life of poverty and privation ...". In 1880, he observed that: "... in spite of poverty, they never relax their efforts to clothe and house themselves like their European neighbours. The privations they are forced to undergo, in order to do this, none but those who live amongst them can have any idea of."

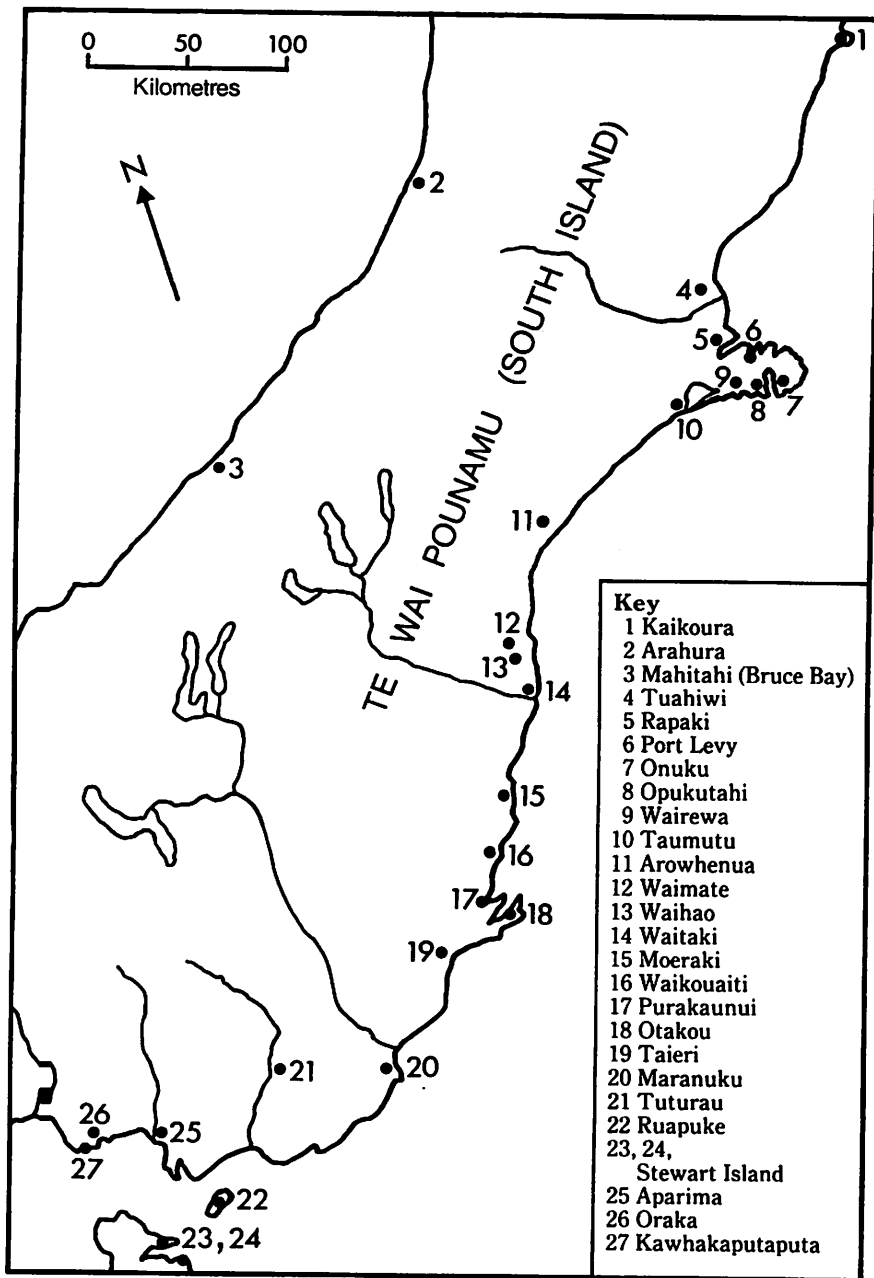
The Ngai Tahu Petition of 1874 described the condition of the people: "The condition of the Natives of the Middle Island is bad. As long as we have strength to work as servants to the Europeans, as long as the Market is accepting that servitude we are keeping ourselves and our families above want. Should this strength fail — and the time will come when it will — then we will be little better off than a mass of paupers thrown upon the present Lords of the land."

That strength did at times fail. In 1881 in Parliament H. K. Tairua acknowledged the aid given by the Government to aged and "indigent" natives of Kaiapoi and East Taieri but he pleaded for the destitute people of the other twenty-seven Kai Tahu-Kati Mamoe settlements.

This poverty was beginning to break up the Maori communities by the 1890s. Statistics from Alexander Mackay's 1891 Commission of Inquiry show this clearly. The official census of that year counted 1231 Kai Tahu living at the Native settlements. Mackay's total of 1663 included those living elsewhere.

His statistics show that landlessness was far greater amongst those living elsewhere, those without a place of permanent residence or with a European name but no "blood" designation. Only one of this group had "sufficient" land (more than 50 acres), while 216 were landless.

Of the rest, only 128 had sufficient land, while 457 were landless. These statistics show the lack of land also beginning to break down



Ngai Tahu Settlements about 1881

the cultural bonds that bound the individual to hapu (sub-tribe), to iwi (tribe), and to the land.

From 1890 to the present day, that breakdown has continued. Today only seven, possibly nine (depending on the definition of kaika [settlement]) of the 27 places Taiaroa mentioned in Parliament in 1881, have retained a significant Maori population.

A combination of factors determined the pace of that migration over the years. The area of land retained varied from place to place in quality and quantity. In 1868 it ranged from 5 acres per head at Wairewa to 68 acres at Otakou. Maori-European relations also varied from place to place, as did the leadership of the Maori communities.

The lack of land and the poor quality of land when retained, saw some small communities disappear well before World War II. People with some acreage of reasonable quality were able to cling to it with the development of small dairy farms in the 1890s. This happened at Kaiapoi, Waikouaiti and Otakou.

Even that advantage was lost after World War II, when small dairy farming ceased to be economically viable. Many Maori dairy farms were so small that incomes had to be supplemented with seasonal work, which declined with increasing mechanisation. And the loss of seasonal work was particularly devastating to Maori communities with little land such as Arowhenua, Moeraki and Wairewa.

The last 100 years history of Kai Tahu-Kati Mamoe speaks overwhelmingly of the problems caused by lack of land. The histories of a few rangatira families fortunate to have larger acreages show the advantage land gave.

They were able to invest income from leasing land and from farming, in their children's education. By the turn of the century among their children were doctors, lawyers, a surveyor and ministers.

Migration from their communities left the people very exposed to the negative attitudes to Maori culture of the majority of Europeans amongst whom they then lived and worked. Maori culture had changed to cope with the early trade, the impact of the introduced diseases, the decision to give their spiritual and temporal loyalty to the Crown and Christianity, and early intermarriage with Europeans.

The lack of land, the nearly complete loss of traditional resources and the resulting dispersal of their communities, changed a vital cultural dialectic into a substantial cultural loss.

The failure of successive Governments to settle the grievances also ensured cultural change would become cultural loss. Many rangatira tried to redress a decline in traditional knowledge as early

as the 1870s. Success with their land claims would have given the leadership the time, the resources and the mana to effectively deal with it. Continual failure bred a feeling of hopelessness that led many to give up much of their heritage.

Kai Tahu, Kati Mamoe and Waitaha have in the 148 years since the signing of the Treaty of Waitangi experienced immense changes. Some changes were welcomed, some were stoically endured and some still are strenuously resisted. In their attempts to be in control of their own destiny, Te Kerema ("The Claim") remains as important as it ever was.

Note: Kai Tahu and Kati Mamoe are southern dialect forms for Ngai Tahu and Ngati Mamoe.

12. Government Responses to the Claim

When Governor Grey took office in 1845 he was instructed by the British Government to "honourably and scrupulously fulfil the conditions of the Treaty of Waitangi." Had he done so, there might have been no Ngai Tahu claim today.

But Grey was allowed to undermine the Treaty. First he abolished the "Protectors of Aborigines" appointed by Governor Hobson to see that Maori interests under the Treaty were safeguarded. Then in 1848 he laid down the policy that anything the Maoris were allowed to keep for themselves when selling land to the Crown was merely a "boon" from the Government, not a right under Article Two of the Treaty.

Under Article Three of the Treaty the Crown undertook to "protect" the Maoris. Grey took upon himself the role of "protector" in the paternal sense, as if Maoris were incapable of knowing what was best for themselves and had to be rescued from their own devices.

The Ngai Tahu claim may be said to date from October, 1849, when Matthias Tiramorehu wrote from Moeraki to Lieutenant-Governor Eyre complaining about the smallness of Mantell's reserves.

At Governor Grey's direction Eyre rejected the complaint on the grounds that "Questions relating to land and reserves cannot be reopened once they have been settled." This showed the futility of having to appeal to the Governor against his own decisions. How did elected Governments later respond to the claim?

The first step taken by the newly elected colonial Government in 1856 was the Native Reserves Act. This gave control of Maori reserves to Government Commissioners who could lease out the land for 21-year terms and direct how the money was to be used.

In 1860 the Reserves Commissioner, W. L. Buller, persuaded the Kaiapoi Maoris to divide their large reserve into individual holdings of 14 acres. This was done with most other Ngai Tahu reserves by the Native Land Court in 1868.

Individualization was supposed to be for the benefit of the Maoris. But the Attorney-General, Henry Sewell, later explained that the Government's purpose was to bring more of the land on to the market and to break down the communal Maori system.

And so it happened. Finding their individual plots too small for farming, many owners had to lease or sell them off, and bitter disputes over individual ownership rights often divided previously close-knit communities.

While Alexander Mackay was commissioner from 1864 to 1882 he did his best to protect Ngai Tahu interests. But in 1882 Maori Reserves were transferred to the Public Trustee, and the position deteriorated. There was no requirement for the trustee even to consult with the owners. The Crown at various times took Maori reserve lands for roads and railways, scenic reserves, defence purposes, and to meet the demands of local bodies and mining and timber companies, often without the owners' knowledge.

In 1920 the reserves were transferred to the "Native Trustee" in the Department of Native Affairs — later the Maori Trustee in the Department of Maori Affairs. In 1975 a Royal Commission on Maori Reserves made recommendations to give more control to the Maori owners, some still not implemented.

In 1868 Ngai Tahu took their claim under Kemp's Deed to the Native Land Court's first sitting at Kaiapoi. A challenge to the validity of Kemp's Deed failed. But Ngai Tahu then brought a claim for the promised mahinga kai (natural food resources).

After granting some eel-weirs, Chief Judge Fenton surprised the claimants by introducing an order of reference from the Government requiring him then and there to settle all claims under Kemp's Deed. Ngai Tahu were not prepared for this, as many claimants were in Otago. With their lawyer they walked out in protest.

Nevertheless, Fenton proceeded to award on average four acres per person, on top of Mantell's ten acres, in "final settlement" of the Ngai Tahu Claim. Years later Fenton admitted that this was quite insufficient.

The claimants then appealed to the Supreme Court, but the Government put the case beyond the Court's reach by passing the Ngaitahu Reference Validation Act, legitimizing Fenton's award. The Supreme Court subsequently declined jurisdiction over costs, although Ngai Tahu argued that Maori customs and usages had by the Treaty of Waitangi become part of the common law of New Zealand and therefore lay within the jurisdiction of the Court. The

following year the Court of Appeal decided against Ngai Tahu over the Princes Street Reserve in Dunedin, also on a technicality. Turning to Parliament, Ngai Tahu in 1879 succeeded in getting a Royal Commission set up to investigate the claim. The Commissioners Smith and Nairn were highly critical of Fenton's proceedings, and announced that in both Otago and Kemp's Blocks Ngai Tahu were entitled to the "Tenth's," since they had sold both to the New Zealand Company. The Native Minister, John Bryce, thereupon cut off the commission's funds and announced that no action would be taken.

A further Royal Commission under Alexander Mackay in 1887 recommended that to remedy landlessness Ngai Tahu needed a grant of 186,112 acres (75,318 ha), of which 140,000 should be for endowment purposes. Nineteen years elapsed before Parliament in 1906 passed the South Island Landless Native Act. This provided for 57,514 hectares to be granted, to allow 20ha per adult and 8ha per child.

But the land allocated by the Government was largely so rugged and remote as to be uneconomic, and in 1909 the act was repealed before all the land had been granted. According to the Under-Secretary of Lands in 1910, "The granting of land was an act of grace on the part of the Crown, and there was no obligation to make any awards whatever." Grey's policy lived on.

In 1921 a further Royal Commission recommended that Ngai Tahu should have been paid £78,125 instead of £2000 for Kemp's Block in 1848. This with interest and adjustments entitled them to £354,000 in 1921 — a tidy sum, representing perhaps nearly \$20 million in today's terms.

But 23 years elapsed before the Government in 1944 passed the Ngai Tahu Claim Settlement Act providing among the 500 beneficiaries a grant of £10,000 (\$20,000) a year for thirty years, late continued indefinitely. However the 1944 Act addressed only Kemp's Deed, not the Treaty, and today half-a-century of inflation has reduced the annual \$20,000 to barely one-twentieth of its original value.

The policy established by Grey, that Maoris could only receive their share of the country's economic resources as "hand-outs" from a paternalistic government instead of as a right under the Treaty of Waitangi, has continued down to the present day. It is the basic point at issue in the Ngai Tahu Claim.

Ngai Tahu want to return to the provisions of the Treaty and manage their own due share of the country's resources for themselves.

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* CLAIMANT EVIDENCE ; DOC # B2
RE KEMP'S BLOCK , H.C. EVISON



(iv) As regards price, Kemp was to offer Ngai Tahu £2,000. Governor Grey in his later Despatch to Earl Grey dated 24th March, 1849 revealed that this sum had been fixed by the Government "without consulting the wishes" of the Maoris (Doc. 3/3, p 3).

* CLAIMANT EVIDENCE : DOC # B3
SUPPORTING PAPERS , H.C. EVISON
Doc. 3/3 p 3

Harry's selective use of evidence is bad enough. His careful exclusion of the word "cheerfully" from the panel he has drawn below shows his true colours!



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3

PAPERS RELATIVE TO

NEW ZEALAND. Wakefield concurred with me in thinking was a fair and just amount to give the natives.

13. To act upon the principle that, where the natives are so weak that they cannot defend their lands, the Government should assert what the New Zealand Company now represent as the rights of the Crown, and forcibly take the natives' lands from them; and again, to refrain from asserting the so-termed rights of the Crown, when the natives are so strong that they could protect themselves, would certainly acquire for the Government the contempt as well as the distrust of the whole native population; and that especially when, as in the present case, the natives made no fictitious opposition to the occupation of their lands, but cheerfully yielded all their rights for that sum which, without consulting their wishes, the Government had fixed as a just amount.

The Right Hon. Earl Grey,
&c. &c. &c.

I have, &c.,
(Signed) G. GREY.

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Editorial

Restoring the Taha Maori

Of all the consequences fired by economic exploitation or military oppression, none are more potent or more intractable than nationalism and its distorted image, racism. On almost every continent today, the resentments of the exploited against the exploiters, and of the oppressed against the oppressors, are articulated in doctrines of national or racial liberation, while in the opposite direction the exploiters and the oppressors justify their actions with doctrines of national, cultural, or racial superiority. And so it has been throughout human history.

Yet within these struggles, peeling away the layers of rhetoric and prejudice, we almost invariably find a solid basis of injustice and exploitation. Some years ago, sociologists palmed off on to us the theory that such struggles are the result of a "clash of cultures", whereby through a sort of cultural Darwinism the stronger "culture" came out on top. More recently, the Reaganites have nailed their colours to the masthead of an alleged "Western culture" — which of course has to comprise all that is good, while the "enemy culture" — presumably "eastern" — contains all that is bad. The "clash of cultures" is a convenient way of disguising what is really going on in the world.

In New Zealand, the call for more of *taha Maori* — the Maori element — to be incorporated into public policies and institutions is becoming more insistent. Provision for more Maori language in schools, a Maori television channel, official status for the Maori language, recognition of Maori rights under the Treaty of Waitangi and of the Maori right to do things in their own way — all these demands mark an unmistakable resurgence of *Maoritanga* with overtones of a new and vigorous Maori nationalism, which New Zealanders of all ethnic backgrounds have now got to come to terms with. Knowing that nationalism is a political force that can be harnessed for evil as well as good, many liberals and even socialists feel uneasy or alarmed.

The recent publication of the report "*Puao-te-Ata-Tu*" ("Daybreak") by the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (Govt. Printer, June 1986) adds a further dimension to this already complex problem. The report finds that

deep resentments have been generated among Maori people because of the *Pakeha* domination of the Social Welfare Department, and recommends that the Department be completely reorganised to meet the specific needs of Maori people. The Report asks the Government for a social policy that will "attack all forms of cultural racism in New Zealand that result in the values and lifestyles of the dominant group being regarded as superior to those of other groups, especially Maori."

This Report contains some of the sophistries that modern sociology has fostered for us — "The *Pakeha* ethos", "*Pakeha* culture", "*Pakeha* economy", "*Pakeha* system", "*Pakeha* values", "*Pakeha* mind", and later on, "Western society", "Western principles", "Western tradition", "Western law", "Western opinion", — all these expressions ignore the fact that "*Pakeha* society" and the "Western world" are and always have been deeply divided by conflicting interests and opinions. *Pakeha* social welfare beneficiaries also suffer indignity and resentment at the hands of the Department's bureaucracy: the humiliation of unemployment knows no ethnic or racial boundaries. And there is not much point in attacking the inequities of the unemployment benefit system unless we also tackle the root causes of unemployment.

However, "*Puao-te-Ata-Tu*" must be heeded. So must every other Maori demand for cultural recognition. The creative energies of national and ethnic cultures are part of a common human heritage. They have illuminated human society for centuries past. New Zealand is the only country where *Maoritanga* can be encouraged and fostered, and New Zealanders have a duty to do this. Besides, nothing would suit the interests of the right-wing better, than for New Zealand to be plunged into racial conflict fired by assertions of European cultural superiority on the one hand and Maori superiority on the other.

New Zealand is sitting on a time-bomb. It can be diffused only by making common cause against the exploitation and injustice that modern capitalism increasingly inflicts on all its victims.

— Harry Evison

1 / NOV 1997

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14 November 1997

The Editor
The Nelson Mail Ltd
P O Box 244
NELSON

Dear David

Mr Denis Hampton's Letter dated 28 October 1997

Thank you for your letter of 12 November inviting me to comment on Mr Hampton's letter stating that I have been "very selective" in my research for my book *Te Wai Pounamu the Greenstone Island*. It is a pity that Mr Hampton has provided only one page from my book in support of his rather sweeping claim. "Solid research", which he claims to practise, does not deal in such wide generalisations based on single instances.

Mr Hampton's example concerns my use of James Stack's reports to the Native Department in 1872 and 1874, referenced on page 437 of my book. He complains that whereas I state that Stack advocated the break-up of the Maori reserves, I have not allowed that "it was not for their assimilation per se", or that Stack considered that "the reserve system operated very much to the detriment of the Maoris' well-being".

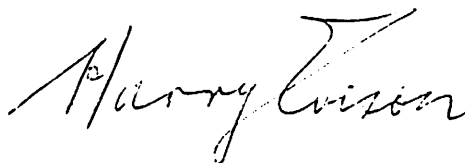
By cutting off my passage about Stack part way through, Mr Hampton has obscured the fact that on the previous page (436) I explain that Stack was a close friend of Chief Judge Fenton of the Native Land Court, and had "come round to Fenton's views that the most urgent need was to 'civilize' the Maoris". It is in this context that I go on to quote from Stack's reports. I do not make the bald statement simply that Stack advocated "the break-up of the reserves". I have already stated that his purpose was to "civilize" the Maoris - which, in the context, implies rescuing them from all their present evils. I stated that according to Stack the benefits of abolishing the reserves were that "every individual Maori's section" would be "surrounded by land in the occupation of white men", and that Ngai Tahu would then "become absorbed in the general population, and cease to regard themselves as a separate and foreign people." Having given Stack's opinion that the abolition of the reserves would be beneficial to the Maoris, it would be repetitious to go on and say that he thought the reserves system was to their detriment.

Mr Hampton seems to suggest that I should have gone further, and repeated Stack's opinions about the Maoris being "idle, dirty, and improvident", and "spending their time in idle abuse and vain complaints", and about their "moral condition", and "the idle living on the industrious", and so on. Stack's priggishness in reporting on the sexual activities of others, and his animosity towards the traditional Maori way of life and towards the Ngai Tahu Claim, are obvious from the reports copied by Mr Hampton. If I have not quoted enough from these in my book to make Stack's animosity clear, the want is supplied in Stack's report of 15 September 1873 which I have quoted in full on pages 437-438, but which Mr Hampton has cut off part way.

Mr Hampton says that "Stack's reports through the 1870s" reiterated that "Ngai Tahu did receive adequate reserves, but were loath to use them", and that he has told Tau Henare so. I wonder has he also told Mr Henare that in AJHR 1878 G-1, page 17, Stack reported of the Ngai Tahu reserves that "The amount reserved for them is ridiculously small when compared with the average holdings of the colonists."

Yours sincerely,

Harry Evison.



Encl: Mr Hampton's material returned herewith.