Ngai Tahu's Tangled Web

Part 2

Alan Everton

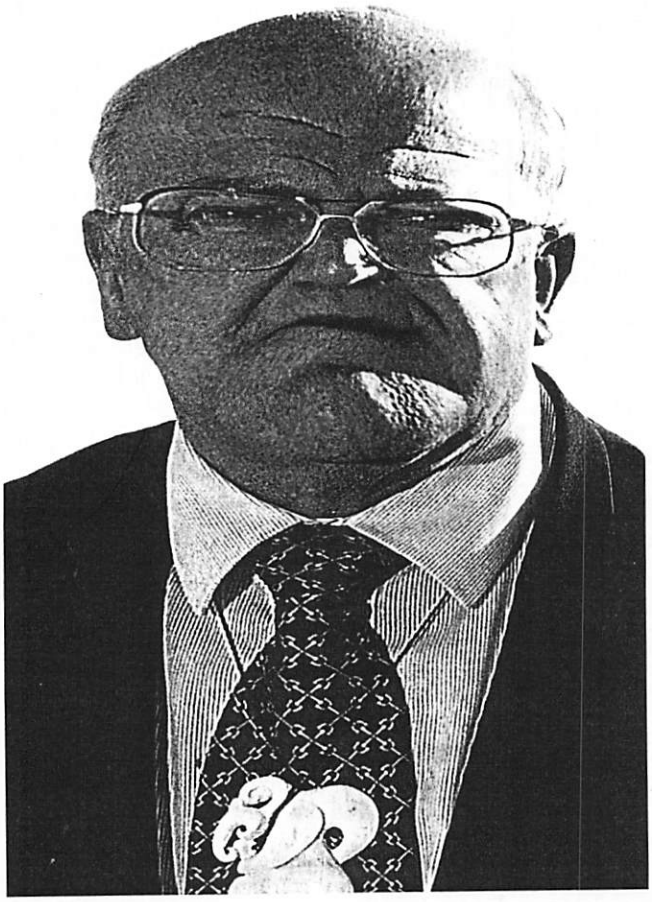
Last issue the process by which from 1844 Ngai Tahu, in 10 sales, disposed of most of the South Island to the Crown was outlined. By 1864 the Crown believed it had settled all the tribe's claims to its former territory, albeit by paying more than once to secure some blocks.

There was nothing to indicate that Ngai Tahu were unhappy with the outcome. Indeed, on several occasions they indicated they had been fairly treated and were satisfied with the result. By 1872, however, Ngai Tahu were in grievance mode and a steady stream of petitions began outlining their complaints. This article outlines the story of how the Crown responded to these claims over the next 100 years, dismissing some as unwarranted and effecting "full and final" settlements of others.

The Waitangi Tribunal, in its 1991 report, concluded that the Crown's "record of prevarication, neglect and indifference over so long a period, in facing up to its obligations, cannot be reconciled with the honour of the Crown." As a result of its recommendations another settlement is about to be made which will net the tribe $170 million, numerous pieces of South Island real estate and a raft of race-based rights and privileges.

The Tribunal claims to have conducted "a comprehensive, fair and objective inquiry into Ngai Tahu's grievances." *The Free Radical* says the evidence shows this avowal has about as much substance as most of its findings, which is to say little or none at all.

The tribe pressed two major land claims in the 70-odd years up till 1920. The first concerned an allegation that they were promised that one-tenth of the land sold would be reserved for them (the "tenths" concept) at the time of the Otago and Kemp purchases in the 1840s. Lack of space prevents an outline of the history of this claim; suffice it to say that by 1890 was proved to have been a fabrication.



The other centred on Kemp's purchase and, like the claim for tenths, had a 20-year hiatus following the signing of the deed in 1848. In fact, it originated not with Ngai Tahu but with the Native Land Court which, in 1868, decided that a provision in the purchase agreement had not been fulfilled, and they were entitled to more reserves. The issue is quite a complicated one, and requires some of the background given in the last issue to be reiterated.

Kemp's Purchase

When Henry Kemp, the Crown's purchase agent, dealt with Ngai Tahu in June 1848 he was instructed to mark out reserves of "ample portions for their present and prospective wants" before having the deed signed. However, surveying all the settlements scattered throughout 20-million acres of uncharted territory in mid-winter would have taken months, and the 500 or so Ngai Tahu who had gathered at Akaroa from as far away as Otago wanted their money immediately. So Kemp instead offered them an agreement guaranteeing them their "places of residence and plantations" which left to the Governor "the power and discretion of making us additional Reserves" when the land was surveyed.

Kemp's "vague and indefinite" arrangements were deemed unsatisfactory by Lieutenant-Governor Eyre, his immediate superior, who in the spring sent another agent, Walter Mantell, to finalise the reserves and then have Ngai Tahu sign a new deed releasing the Crown from any obligation to lay out additional reserves in future. Mantell was to make reserves of a "liberal provision for their present and future wants." He spent three months marking out 15 reserves and then returned to Akaroa to find fresh orders awaiting him from Eyre.

He was now told to stick with the original Kemp deed, marking out only their residences and cultivations, and assure the Maoris that they would later receive any additional land thought necessary for their future wants. Mantell replied that, acting on his earlier instructions, he had already provided an area sufficient for "the present and prospective necessities of the Natives" and the reserves could be considered "finally arranged." Kemp's deed, nonetheless, with its provision for further reserves, was allowed to stand as the purchase agreement. This situation bestowed a double-whammy benefit on

Ngai Tahu - "ample" reserves already provided by Mantell, and a deed allowing for further reserves in future.

Mantell set aside 6,509 acres of mostly first class land for 646 Ngai Tahu, or just over 10 acres per head.

Ideas about the amount of land needed to provide a livelihood changed over time. In the 1840s, when Wakefield's ideal of a nation of small cultivators ruled, 50 to 80 acres were considered ample for a European family. By 1860, when the Crown purchased the west coast, pastoral farming was paying best, and Ngai Tahu living there were each reserved on average an area nearly seven times more extensive than that allotted their Canterbury cousins. The latter, not surprisingly, now felt they were hard done by.

The realisation was brought home to them more particularly when their reserves began to be subdivided into individual allotments in the 1860s. This process, undertaken at Ngai Tahu's insistence and managed by them, began at Kaiapoi reserve, where those with rights were allotted 14 acres of farmland each. Entitlement was based on lists of residents made by Mantell in 1848 but, as was found by an 1887 commission of inquiry headed by Alexander Mackay, a Native Land Court judge, owing to the "stupidity and obstinacy of the Natives," the names of some hapu members were not recorded. In some cases this resulted in them or their descendants being allotted nothing in the subdivision.

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The court was engaged in settling disputes of this kind when it noticed the provision in Kemp's deed allowing for future reserves. Mantell gave evidence and might have volunteered his earlier conviction that he had fulfilled the intention of the deed by providing an area then considered ample for their future needs. But he now believed the area ought to have been larger to allow for the fact that increased settlement had lessened Ngai Tahu's traditional food supplies. It may have been this belief which led him to perjure himself, because he now told the court that he had received his amended instructions while still laying out the reserves and, following these, had at three settlements made provision for the residents' present needs only, leaving a further allocation to be made at some future time.

Full & Final Settlement #1.

The court, following the deed, ruled that the provision of extra land was at the discretion of the Crown, who called for an opinion from Mackay, then a Commissioner of Native Reserves, who was at the Court assisting the Ngai Tahu. He thought those with rights should be allotted enough land to bring the average up to that at Kaiapoi, 14 acres per head. Mantell agreed and additional reserves totalling almost 5,000 acres were ordered, including one of 1,000 acres to be divided among those who had received no share of the original reserves. Chief Judge Fenton, who presided, thought the concessions went "as far as a just and liberal view of the clause would require," and Mackay reported to the Native Department that the matter had been "finally and satisfactorily concluded." **(Full and final settlement # 1.)**

It is not clear how the total was arrived at, because according to a census made by Mackay there were in 1868 52 fewer Ngai Tahu living on the reserves than Mantell counted in 1848, but presumably some with rights were living elsewhere. Along with 1,850 acres already added by the central and provincial governments, this brought the total area of the reserves to about 12,500 acres, nearly double the area allotted by Mantell. Later further land was given as compensation for the poorer quality of some of the land awarded in 1868, and Kaiapoi residents gained a further area as compensation for the portions of their reserve allotted to non-residents. By the end of the 1880s, therefore, the reserves made under Kemp's deed totalled about 15,500 acres, or an increase of nearly 250 per cent over the original area. So much for the Crown being, in the Tribunal's word, "niggardly."

The Grievance Industry Takes Off - Inquiry #1

The 1868 awards were made "as a final extinguishment of all claims and engagements created under Kemp's Deed," but it was not long before Ngai Tahu were complaining that they had been unfairly treated. Four years afterwards they began making a series of claims in an effort to get the deed nullified or further compensation awarded, arguing that the land granted in 1868 should not be regarded as a final settlement because they had been unprepared then to press their other claims.

An 1872 select committee was the first to hear these allegations. They were presented by the MP for Southern Maori, H.K. Taiaroa, and were based, he claimed, on a speech made in 1862 by his father, a paramount chief, who had died soon after. Taiaroa claimed, with no supporting evidence, that his father had alleged that the purchase price was merely an advance, and that Ngai Tahu had only agreed to sign Kemp's deed because he (Kemp) had threatened to have soldiers sent to take possession of their land if they refused. Lacking any corroborating evidence, the committee might have been expected to reject the claim out of hand. Instead, it recommended a further inquiry.

By 1874 Ngai Tahu were claiming that the deed was null and void because of Kemp's "intimidation," that Kemp, moreover, had promised not to include a large inland portion of the block in the sale but had neglected to put that undertaking in the deed, and that Mantell had promised to pay them "the large outstanding balance" due for it. A petition the following year largely repeated these claims, and alleged in addition that Mantell too had caused Ngai Tahu to yield their territory by threats, and that the price paid for Kemp's block in toto was insufficient anyway!

Inquiry #2.

The government commissioned Judge Fenton to investigate these claims. Those alleging intimidation were easily disposed of. As the Waitangi Tribunal found when dealing with the allegations against Kemp, including one that he would have the vendors killed, Ngai Tahu were willing sellers and the deed was witnessed by "reputable men," among them the Resident Magistrate.

Fenton noted that the boundaries were described in the deed, which Kemp had written in Maori and read out to the vendors, and with an accompanying map clearly indicated that the purchase encompassed all the land between the east and west coasts. They could not be questioned, Fenton ruled. As for the £2,000 originally accepted as payment for the block in 1848, now alleged to be proof that the chiefs did not know what they were doing, he responded: "It cannot be affirmed as a matter needless of proof that the price paid at the time

was insufficient. If the European race had never come into these seas the value of these Islands would still be only nominal. The immense value that now attaches to these territories is solely to be attributed to the capital and labour of the European."

He expressed surprise that none of the accusations had been made at the time of the 1868 settlement. The petitioners claimed that they were ignorant of their rights in 1868, but Fenton pointed out that they had had a "most able counsel" and the assistance of Mackay, "a most able and zealous adviser," while the Crown's agent, William Rolleston, had "displayed a desire to concede to the Natives as much as could be properly conceded."

Taiaroa responded to Fenton's findings by reiterating Ngai Tahu's claims in Parliament, and adding a couple of new ones also. The Kaiapoi chiefs had "abandoned" the sale during the negotiations in 1848, he said, while Kemp had included the inland part of the block in the deed "secretly and without authority." He again impugned Mantell's reputation and completed the slandering of two of Ngai Tahu's staunchest supporters by disparaging Mackay's role as an adviser at the court. He had "worked on the side of the Government." Fenton's report was labelled "deceitful".

Royal Commission #1

Ngai Tahu pursued the claim, and in 1879 the former governor, George Grey, now premier and trying to shore up a shaky majority in parliament, bowed to pressure from Taiaroa and set up a Royal Commission, comprising T.H. Smith & F.E. Nairn, to inquire into all the tribe's claims. For decades afterwards Ngai Tahu were to claim they had been swindled by the government's ignoring Smith's and Nairn's findings, that they were entitled to a reservation of a "large proportion" of the land sold in both the Otago and Kemp purchases. In 1910 another MP for Southern Maori, Tame Parata, declared that Smith-Nairn "was the only satisfactory inquiry that we have ever had."
Judged by standards of fairness and impartiality, however, that inquiry was a travesty. In a statement which is prescient of the Waitangi Tribunal's modus operandi, the Commissioners declared that they had "resolved to give to the Natives the fullest opportunity of stating their whole case in their own way, reserving only to ourselves the option of seeking such further evidence as we might consider necessary after their case had been put before us." They went one better than the Tribunal though in taking no evidence from the Crown.

Their two-year commission expired before they completed their inquiries, but they had heard enough to rule that Ngai Tahu would have brought their various claims before the court in 1868 had they been "properly advised." Witnesses had been "almost unanimous" that the boundaries of Kemp's block were not to include "anything beyond a strip of land on the eastern seaboard." It was "clear from the evidence" that Ngai Tahu were "not aware of the fact, or the object" of the 1868 agreement made there as a final settlement, nor were they "represented or heard in Court as parties to that agreement."

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Inquiries #3, 4 & 5.

Despite the commission's finding, most of these claims over time gradually lost any credibility they had. An 1882 committee of inquiry reiterated that the 1868 award was a "full and final settlement of all claims" under Kemp's deed. Two years later another committee endorsed this finding. It had heard a claim for the inland from Te Wetere, one of the original vendors. When shown the deed he positively denied its identity and claimed it had been fabricated for the occasion, until it was pointed out that it bore his signature, as did the receipt for the purchase money. And in 1888, before another committee, Taiaroa was examined on a claim that only a quarter of Ngai Tahu were at the 1848 sale, and conceded that the "greater number of chiefs" had signed the deed, including all those from Kaiapoi.

This committee also heard Rolleston challenge Taiaroa's assertion that Ngai Tahu had not been prepared to submit all their claims in 1868. "[L]etter after letter was sent out stating that the Court would sit to hear their claims; and Natives were present from all parts," he said. He and Mackay had taken them to the survey office to define upon the maps the lands they wished to have, "and the awards were made upon the Natives' own selection in fulfilment of the promises in the deed and the award of the Court. It was a matter of agreement between both parties to accept the decision of the Court." Mantell, when examined, agreed that at the time the Maoris had seemed satisfied with the outcome.

Nevertheless, Ngai Tahu's hopes of the Crown conceding them further reserves were not yet dashed.

Royal Commission #2

The 1888 committee had sat to consider a report by Mackay, who had been commissioned to inquire into cases of landless Ngai Tahu and allegations that their reserves were too small to maintain them. He made no investigation of landless Ngai Tahu, but he did have a decided opinion on whether those living within Kemp's purchase had adequate land.

According to Mackay, evidence given by Mantell in 1868 showed that Ngai Tahu in 1848 had been "coerced into accepting as little [land] as they could be induced to receive." Mantell had made reserves for their "present wants" only, leaving further land to be allotted later. His allocation of 10 acres per head was based on a count of 637 residents, but it was "not unreasonable" to assume that the number which ought to have been provided for was 1,000. It was a "condition" of the deed that the government set apart additional lands afterwards but that had been only "partially fulfilled" in 1868. European settlement had confined Ngai Tahu to their reserves and destroyed many of their old sources of food. "Their ordinary subsistence failing them through these causes, and lacking the energy or ability of supplementing their means of livelihood by labour" they were left to lead "a life of misery and semi-starvation on the few acres set apart for them."

Mackay held that the government remained under an obligation to fulfil the terms of Kemp's purchase, and that the best way to discharge it would be to provide further reserves, and a large endowment of land to be managed by trustees as well. Using a formula of his own devising, McKay valued Kemp's block at £124,533. With Crown waste lands selling for a minimum £1 an acre, the purchase price would have enabled the vendors to buy 124,533 acres. However, even this area would have been insufficient to provide for the needs of 1,000 Ngai Tahu, he believed. On the

basis that they required 100,000 acres for endowment purposes, and 50 acres each to live on, he calculated that, allowing for existing reserves, the tribe was entitled to additional 130,700 acres.

Mackay's report contained numerous errors of fact and was based on so many arbitrary assumptions that the committee would have been justified in dismissing it on these grounds alone. By quoting selectively from Mantell's 1868 evidence he made out that no settlement in Kemp's block had received its due quota of reserves in 1848. In fact, Mantell had testified that at only three settlements had he not provided for the residents' future needs, and even that statement, as we have seen, was perjury. Nor did he admit to coercing the residents into accepting minimum reserves. He had "consulted their wishes" as to locality, and "contended with them" over quantity. Only at the reserves that he claimed to have marked out after receiving new orders did he admit to fixing the area "at the smallest number I could induce the Natives to accept."

Nor was it a "condition" of the deed that the government made additional reserves. Such provision was to be at the Governor's discretion. And Mackay's contention that the court had only partially fulfilled this provision in 1868 overlooked his own role in its proceedings, and also contradicted his assertions in two earlier reports that its award had been a final settlement.

His assumptions that there were 263 Ngai Tahu missed in Mantell's census, and that the Crown needed to leave each resident 150 acres to fulfil the terms of Kemp's deed were nothing more than that, suppositions unsupported by any evidence. In a later report he was to maintain that Mantell omitted 843 Ngai Tahu, again without offering any proof for the assertion. But his valuation of the block , £124,533, was probably the most arbitrary of his postulations. A later commission (1920) valued it at half that amount. And Mackay's calculations took no account of the value of existing reserves. Five years earlier those in Canterbury were estimated to be now worth £126,967, and this took no account of the 5,000-odd acres secured under Kemp's deed in Otago.
The Tribunal, in 1991, thought McKay's a "well-documented and convincingly reasoned" report which showed "that in the view of perhaps the best informed European of the time, grave injustices had been done to Ngai Tahu which required to be remedied." The 1888 committee, however, were less impressed. They thought Mackay had ignored his brief to gauge the degree of landlessness among Ngai Tahu and merely written "a lengthened report of the [Kemp purchase] negotiations, and his view of the engagements connected therewith, which, to say the least, are not in accordance with any view he appears to have expressed or entertained prior to the date of his appointment."

In making its recommendations the 1888 committee largely ignored McKay's report and followed the advice of Rolleston, who was examined as a past under-secretary of Native Affairs and participant in the 1868 court proceedings who had also sat on the 1882 committee of inquiry. Rolleston was disparaging of Mackay's motives as well as his proposal. The policy of successive governments had been to make the "paternal care" of the Maoris "a vanishing quantity" and to promote "habits of industry." But some Native commissioners had "had a tendency towards fostering unfortunate claims, and towards the permanent creation of a Native Department." Mackay's proposal was "a striking instance of what I mean - the creation of a trust, an administration, a department; and the Natives would get very little out of it."

"It cannot be affirmed as a matter needless of proof that the price paid at the time was insufficient. If the European race had never come into these seas the value of these Islands would still be only nominal. The immense value that now attaches to these territories is solely to be attributed to the capital and labour of the European." - Judge Fenton

Ngai Tahu, Rolleston said, were "not fully or profitably occupying the reserves they already have. They are simply letting the land, and not occupying or cultivating more than a portion of it; and the tendency of the enlargement of these reserves is to create a people living in idleness," which was never the intention of the government. Mackay's proposal "would tend, not to civilisation, but the creation of an idle and degraded race; and it is extremely desirable that no step should be taken to prevent a labouring class from arising among the Natives. In the formation of that class among the Natives lies, to my mind, the future salvation of the race."

Rolleston thought the existing reserves "more than ample now, but the question is whether we can deal with individual cases of hardship or want. I think no Native should be without reasonable means of settlement upon land to keep him from absolute want." The committee agreed, although it took two more sessions to complete its report. It ruled that the provisions regarding reserves in Kemp's deed had been fulfilled, "although not in so liberal a spirit as may have been suitable to the case," but concluded that it may be "expedient" to grant more land to those without enough "to enable them to support themselves by labour on it." Its final report in 1890 recommended a further inquiry so that relief might be provided for these Ngai Tahu, as its evidence showed that their present provision was "by no means sufficient."

Royal Commission #3

This commission was also given to Mackay who, having already decided on a minimum of 50 acres per person, was bound to find that the vast majority of Ngai Tahu were entitled to more land. Few outside the chiefs' families would have managed to aggregate that amount when the reserves were subdivided. And so it proved. During his tour of Ngai Tahu's settlements he heard "the same statement made everywhere that the land is insufficient to maintain the owners on it. Even those who owned comparatively large areas made the same complaint." His report listed the holdings of 2,212 Maoris of Ngai Tahu descent, including half- and quarter-castes living amongst Europeans. Of these, according to the Tribunal's tabulation, only about one in ten had sufficient land according to his criteria.

These latter included H.K. Taiaroa, MP, whose holdings were too numerous for him to recall them all for the 1888 committee, and who now asked Mackay what the government intended doing about people like himself who owned portions of various reserves. Most Ngai Tahu, though, were, according to Mackay, obliged "to eke out a precarious livelihood" on small uneconomic sections, although Mackay saw "no absolute cases of destitution." Indeed, there were signs of affluence — most of them had wooden houses, "which in some cases are fairly well furnished," and were decently clad and had sufficient food — but these were deceptive, he thought. Anyone who knew them well found it "a most puzzling problem" how they managed to exist. They got by, he believed "on the credit obtainable from the tradesmen, and if that was stopped

many of them would be reduced to pauperism."

He listed several circumstances that had led to their impoverishment: the contributions made to aid Taiaroa in pressing their claims (!); the numerous meetings held to discuss these; a "house-building craze"; leasing their lands in order to get them fenced; and the fact that in "agricultural pursuits they are very backward."

This was true as far as it went. Mackay heard numerous complaints from people who in the mid-1870s had over-stretched themselves to subscribe to Taiaroa's fund for prosecuting their land claims in England. Taiaroa himself did not disclose his own contribution, although having pocketed £1,000 of the £5,000 payment for the Princes Street reserve (see insert) in 1874 it may reasonably be assumed not to have been large. The consensus among the petitioners seemed to be that £3,500 was collected, but as one petitioner complained, "no account has ever been rendered as to how the money was spent." All they could be sure of was that the English courts had never been troubled with their claims.

The house-building mania and the excessive time spent talking over their claims were confirmed by the Reverend J.W. Stack in his annual reports on the state of Canterbury Ngai Tahu during the 1870s. But Stack, who lived at the Kaiapoi reserve, noted other causes of their indigence which Mackay had missed. One was "their habits of reckless improvidence." Another was the "survival of many of their old communistic customs relating to property" which checked industry "by compelling the industrious to support the idle."

Mostly though he found they were poor because they were slothful, especially when it came to working their land: "With all the necessary appliances, and, as a rule, the best soil in the province, the Maoris do not cultivate enough for their own support. They prefer letting their lands, though the rental they receive is but a fraction of what they might obtain by working the soil themselves, and goes but a little way towards the necessaries of life. ... Neither the pressure of want, nor the prospect of gain, nor the advice of friends, prevail to induce the Maoris here to cultivate their lands."

It is curious that Mackay never mentioned this. He merely alluded to a "listlessness" engendered by their being "compelled to abandon their old and inexpensive mode of life and adopt new and uncongenial habits that require more means than they have at command to maintain." Yet in an earlier report he had been scathing about "their constitutional indolence and want of forethought, as particularly manifested in their scanty cultivations and unfenced pastures." Then he had judged their poverty was "entirely attributable to their own indolence and apathy," and considered there was "very little question but that the Natives might be in more comfortable circumstances if they would only exert themselves." Now he was recommending that they be given more land and the income from a massive endowment.

Two years after this report, in 1893, Mackay and the surveyor-general were appointed to compile a list of South Island Maoris with insufficient land and assign them sections. They did not complete the task until 1905, attributing the long delay to the lack of available Crown land.. They found 4,064 Maoris had insufficient land, most of them Ngai Tahu, and assigned them a total of 142,118 acres to bring their holdings up to 50 acres for each adult and 20 acres for each child.

The Waitangi Tribunal characterised this exercise as "a cruel hoax," noting that much of the land was in remote locations and "completely unsuitable" for settlement purposes. Most of that allotted to Ngai Tahu was in Southland, the bulk of it west of the Waiau River, where Mackay had found the local Maoris "very desirous" of obtaining a block. He had judged it a district where land "best suited for Native purposes" was available.

South Island Landless Natives Act, 1906.

The 1906 South Island Landless Natives Act gave effect to Mackay's allocations. Ngai Tahu did not regard it as satisfactory.

Inquiry #6.

In 1910 the tribe restated its case for further reserves to a Native Affairs Committee. The King's Counsel representing them explained that his clients' grievances related only to the Otago and Kemp purchases, as in all other sales they "consider that all the promises have been adequately fulfilled." No submissions regarding the Otago tenths claim were made, their counsel concentrating all his efforts on undermining the award of the 1868 settlement (full & final settlement #1), "because if we once get rid of the view that that was a satisfaction of these claims, then we have a perfectly open course before us."

To this end he argued that, as the court in 1868 had made its award only eight days after it found that one of the clauses in Kemp's deed remained unfulfilled, it was "obvious" that it was made "without consulting the Natives, without giving them an opportunity of being present" and was really "a piece of high-handed tyranny on the part of the Court." That such was the position had been "recognised by repeated commissions," he maintained.

In fact, as has been seen, the Ngai Tahu aside, the main players in the events of 1868 all agreed had been given every opportunity to press their claims. A more likely reason for their failing to do so is that the grievances did not then exist, or more than eight days were needed to concoct some. Nor had "repeated commissions" found otherwise. Only Smith-Nairn & Mackay had questioned the finality of the 1868 awards, but by misrepresenting the proceedings & findings of the committees of 1872, 1878, & 1889, the King's Counsel made it sound as though they too supported Ngai Tahu's case. As a result, the 1910 committee recommended a petition to government for favourable consideration.

Ngai Tahu, Rolleston said, were "not fully or profitably occupying the reserves they already have. They are simply letting the land, and not occupying or cultivating more than a portion of it; and the tendency of the enlargement of these reserves is to create a people living in idleness."

Royal Commission #4

With a world war intervening, the claim was not considered till 1920, when a Royal Commission under the chief judge of the Native Land Court investigated it. It decided that the 1868 proceedings had indeed been sprung on Ngai Tahu "without previous warning or notice," and found that this was scarcely "the kind of investigation contemplated" by the Act which constituted the court in 1865. If that award bound the 1920 commission it would "but perpetuate a wrong," since the judge and the witnesses on whose evidence the decision was based "all agree that the Natives ought to have been met in a more liberal spirit." Here the commission was referring to Mackay's and Mantell's recantations, and to Fenton's comment in his 1876 report that had Mackay recommended an award larger than 14 acres per head he "should certainly have sanctioned it."

The commission sought to evaluate what would have constituted a liberal award. "Certainly not 14 acres per head," it ruled, the number of landless Ngai Tahu proved this "beyond all doubt." A lack of suitable land precluded it making more reserves to fulfil the deed and it saw "but one way left" to compensate Ngai Tahu: to award it a sum of money equivalent to what Ngai Tahu could have received had the block been sold without any conditions attached, minus any valuable consideration they may have received.

"With all the necessary appliances, and, as a rule, the best soil in the province, the Maoris do not cultivate enough for their own support. They prefer letting their lands, though the rental they receive is but a fraction of what they might obtain by working the soil themselves, and goes but a little way towards the necessaries of life. ... Neither the pressure of want, nor the prospect of gain, nor the advice of friends, prevail to induce the Maoris here to cultivate their lands."
- Rev J.W.Stack

From the block's 20 million acres the commission deducted the "absolutely valueless land" and existing reserves, along with Banks Peninsula and the west coast, bought under separate deeds, to arrive at a saleable balance of 12.5 million acres, to which, after much consideration, it assigned a value of 1.5d per acre This put its worth at £78,125. Deducting the £2,000 purchase price and adding 72 years' interest at 5%, and a 1% [£3,825] contribution towards the "heavy expenses" incurred by Ngai Tahu in pressing the claim, it arrived at a sum of £354,000, which it recommended as full compensation.

The objection made to Mackay's valuation might be repeated here: any value placed on a commodity years after its sale can only be arbitrary. Its historical value is nothing more or less than what the parties to the transaction agreed to at the time. But that aside, the commission made a large error when it estimated the saleable balance at 12.5 million acres. It thought the area of the west coast was five million acres when in fact it was 7.5 million, leaving a balance of 10 million acres. On its own valuation, then, it ought to have recommended compensation of just over £281,000.

Native Land Claim Adjustment Act, 1928

Over the next few years the Native Land Court worked to determine who would be the Ngai Tahu beneficiaries of any settlement, and in 1928 a Native Land Claim Adjustment Act was passed.

Although no decision had been made on whether the recommendation of the commission would be given effect to, the Act established the Ngai Tahu Trust Board as a vehicle for discussing and arranging the terms of any settlement.

Full & Final Settlement #2

In 1935, in the depths of the Great Depression, the government offered £100,000 in full settlement, but was rebuffed by the Board. Negotiations resumed in 1938 with a Ngai Tahu delegation led by Sir Eruera Tirikatene, MP for Southern Maori, and these led eventually to the passing of the Ngai Tahu Claim Settlement Act in 1944. This was an Act "to effect a Final Settlement of the Ngai Tahu Claim" and provided for £300,000 to be paid in 30 yearly instalments of £10,000 each. The money was lodged with the Native Trustee while Sir Eruera and his people made "a second examination" of the offer, and in 1946, approval having been given, the settlement was sealed by the Ngai Tahu Trust Board Bill. **(Full & Final Settlement #2)** The payments were scheduled to end in April, 1973.

In 1969 Ngai Tahu, under Frank Winter, the chairman of the Board, petitioned parliament asking for the 1944 Act to be revoked and new legislation enacted providing for the payment of $20,000 a year to the board in perpetuity "in full and final settlement of the Ngai Tahu Claim." The petitioners denied that the 1944 settlement was "fair or equitable" and alleged that it "was not and never has been accepted by the Ngai Tahu Tribe as effecting a full and final settlement of their claim."

Inquiry #7.

The petition was heard by the Maori Affairs Committee in 1971 and rejected, then given further consideration the next year on a technicality and rejected again.

To the 1971 committee Mr Winter stated that the 1944 legislation was introduced without the knowledge of more than "a handful" of the beneficiaries, and that the proposed settlement was "discussed at a meeting of three or four persons at Moeraki and then announced virtually as a fait accompli at a larger meeting at Temuka." Committee member, Whetu Tirikatene-Sullivan, daughter of the late Sir Eruera, told the House that these assertions were "totally inaccurate" and had been "completely refuted." From May 1943 until the passage of the December 1944 Act "numerous" meetings were held in both the North and South Islands, she averred, and before the 1946 legislation was passed "as many as 80 meetings" were held with the beneficiaries. Furthermore, in official deputations to the government since, the Ngai Tahu Trust Board had "specifically endorsed their continuing acceptance" of the 1944 settlement.

The Crown submitted that the 1944 settlement and its 1973 adjustment barred Ngai Tahu from seeking any further relief in respect of Kemp's purchase but the Tribunal was not impressed by its arguments. Ngai Tahu could not be prevented from re-opening old claims now that a later Act gave them the right to make claims based on breaches of the Treaty going back to 1840, it ruled.

In 1972 the petitioners conceded that Ngai Tahu had accepted the 1944 settlement but asked to present an amended petition because "the people at the time of the settlement were not fully aware of the effects. They thought they would be getting a lump sum of $600,000 [£300,000]." The committee could not legally allow this, but it agreed to hear their submissions anyway. (!) As no fresh evidence was produced the committee was unable to alter its recommendation.

Mrs Tirikatene-Sullivan told the House that the petition was submitted before she was told of it, otherwise she would have made the petitioners aware of the inaccuracy that caused it to fail. As for the claim that the beneficiaries had been unaware of the Act's effects: at the 80-odd specially convened meetings "there were 109 movers and seconders of formal resolutions which accepted a compensation payment of £10,000 a year for 30 years. This was the specific proposal they accepted." Of those 109, 93 were now dead. About half of Mr Winter's 10 supporters had told the committee they were overseas at the time of the meetings, she said. "But they

endeavoured to give *ex post facto* evidence, and this was second-hand."

Full & Final Settlement #3.

Matiu Rata, shortly to become Minister of Maori Affairs in a new Labour government, thought the petitioners had "a real case" & advised them to submit a reworded prayer. In the event they did not need to. The following year, 1973, a month before the 1944 settlement was due to expire, Labour introduced a Bill giving effect to their wish for payments of $20,000 per year. During the Bill's first reading Mr Rata said that Ngai Tahu's petition had made it obvious to his government "that the so-called settlement of 1944 was by no means to be regarded as a fair and final settlement." Ngai Tahu had only accepted it on the basis "that in years to come a more enlightened determination would prevail." Taking into account the fluctuation in purchasing power, the view expressed by the 1921 [sic] Royal Commission, and the "very unsatisfactory" 1944 settlement, the government considered "the matter ought to be settled in a more reasonable way."

He was assured that the perpetual provision could be considered "a just and equitable settlement," he said, and that "the proposal has been well received by those concerned." **(Full & Final Settlement #3).** At the Bill's second reading three months later, however, he moderated the finality of this remark. Now he thought that while it was a "realistic attempt to meet what has been a long outstanding problem" he conceded that Ngai Tahu board "may feel that this of itself can never be considered final and absolute payment." It was all the invitation the Waitangi Tribunal needed to re-open the claim.

The Tribunal disregarded all evidence that the 1944 offer had been widely discussed before being accepted, & made no mention of the petitioners' assurance that they sought perpetual payments as a full & final settlement. It thought there was "very real doubt as to how much, if any consultation" preceded the 1944 legislation. "What in fact happened was that a unilateral settlement was reached in 1944 which was later retrospectively accepted as a fait accompli." It was not seen as binding by Ngai Tahu and had only been accepted because more "enlightened" treatment was expected in future. Nor had Mr Rata characterised the 1973 adjustment as final & irrevocable, "although no doubt the government hoped they had heard the last of it."

The Crown submitted that the 1944 settlement and its 1973 adjustment barred Ngai Tahu from seeking any further relief in respect of Kemp's purchase but the Tribunal was not impressed by its arguments. Ngai Tahu could not be prevented from re-opening old claims now that a later Act gave them the right to make claims based on breaches of the Treaty going back to 1840, it ruled. Such a submission was "not only untenable but difficult to reconcile with good faith on the part of the Crown." Furthermore, the 1944 & 1973 Acts had not discharged the Crown's obligations under the Treaty, which was "not even mentioned" in them.

But if the earlier settlements did not bar further claims, why should Ngai Tahu regard this latest one as final? The Tribunal's reassurance on this score was hardly consoling to taxpayers. It drew "a clear distinction" between a 'settlement' made before the Treaty of Waitangi Act 1975, "and without reference to or in pursuance of the principles of the Treaty," and one in which the Crown "fully implemented" the recommendations of the Tribunal. But it could not rule out the possibility that in "rare instances" its settlements would not prove binding. "There may be an exceptional case when new and highly relevant facts are discovered or new or extended Treaty principles are developed which might justify a review," it cautioned.

With the Crown footing the bill for claimants' researchers to sift every available record before a claim is presented, the likelihood of them unearthing new facts is probably remote. And if its report into the Ngai Tahu claim is any guide, any "highly relevant" facts which are found to damage the claimants' case will simply be ignored. But if appeals are to be allowed on the basis of new or extended Treaty principles the gravy train is almost certain to keep rolling for a good while yet. For the Tribunal has "exclusive authority" to determine the meaning and effect of the Treaty, and Treaty principles are whatever it deems them to be.

To be concluded.

The opportunism evident in many of Ngai Tahu's claims and the forbearance shown them by the authorities is perhaps best illustrated by the case of the Princes Street reserve. This was a 1.5-acre site on Dunedin's waterfront which in 1853 land commissioner Walter Mantell, without informing the local authorities, reserved for the local Ngai Tahu as a landing place for their boats. The Maoris never used the site and it was only years later, when the town was expanding rapidly and a quay was proposed for the spot, that the council found that what had originally been designated public land was now claimed by Ngai Tahu.
The ensuing legal wrangle went against Ngai Tahu, and Mantell, now the government's Native Minister, resigned his post in disgust. The local courts found he had reserved the site without proper authority but, with the government agreeing to give Ngai Tahu £500 for an appeal to the Privy Council, the council decided on a compromise "to save the money being squandered in law." In 1872 Ngai Tahu were paid £5,000, and later £5,000 in accrued rents, in return for signing away all claims to the land. Needless to say, Ngai Tahu did not see this as a full and final settlement, and in 1939 they returned to court seeking a ruling that their claim had not been tested on its merits. This the judge dismissed, saying they could not claim to have been unfairly treated. A claim was lodged with the Tribunal but it was unable to find that they had suffered detriment for the "loss" of a reserve which they never had title to, never made use of and yet for which they had received £10,000 in compensation.

Free Radical #28 Dec. 1997.

Ngai Tahu's Tangled Web

Part 3 (conclusion)

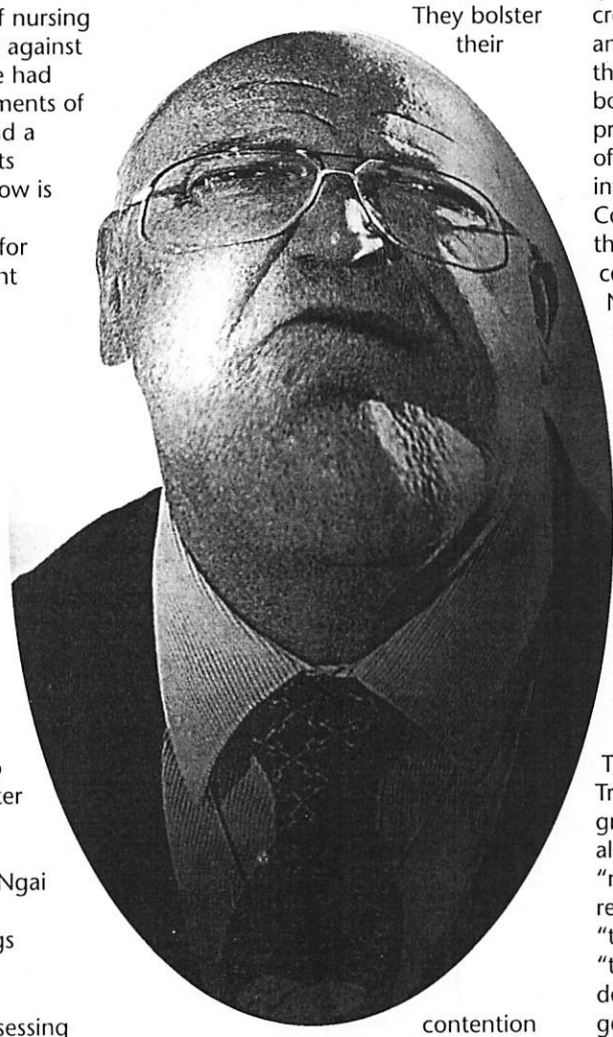
Alan Everton

Prior to the Treaty of Waitangi Act being amended in 1985, the 200 or so claims submitted by Ngai Tahu to the Waitangi Tribunal would have been dismissed as the absurd wish-list of a tribe with a long history of nursing imaginary grievances against the government. By 1985 there had been three 'full and final' settlements of its one legitimate land claim, and a series of inquiries had stripped its other claims of all credibility. How is it then that taxpayers will soon have to foot a $170 million bill for a fourth 'full and final' settlement of the South Island tribe's gripes?

The short answer is that the settlement is a swindle. It is based on the findings of a Tribunal that judged Ngai Tahu's claims not by standards of truth and equity, but against 'principles' which have been formulated by a crude re-writing of New Zealand history. Hardly less culpable is the government. It acquiesced to the workings of this kangaroo court, and then entrusted taxpayers' interests to the negotiating skills of a Minister who supports special laws favouring Maoris, and whose ignorance of the history of the Ngai Tahu claim shows that he has swallowed the Tribunal's findings unquestioningly.

The Tribunal is charged with assessing whether claims brought before it involve breaches of the Treaty of Waitangi. None of Ngai Tahu's claims did, but that proved no barrier to the Tribunal sustaining many of them, because it felt itself "not confined to the strict legalities" of the matter, but free to judge whether the claims involved breaches of Treaty 'principles,' rather than that document's literal terms.

And what are these Treaty principles? In effect, they are whatever the Tribunal says they are. Till recently they did not exist outside of the imaginations of a few revisionist academics bent on promoting apartheid or some milder form of bi-culturalism in New Zealand. They bolster their



contention that Maoris are dupes of the white man's assimilationist policies by arguing that the chiefs who signed the Treaty comprehended its significance differently from the British colonists. The Treaty's 'principles' derive mainly from the understanding of its meaning a chief in 1840 might have gained from hearing it read aloud in Maori, as divined by these modern-day mind-readers.

"Partnership"

It did not take long for their musings to be accorded the status of historical truth. For instance, the Tribunal was able to treat as an established fact the 'principle' that the signing of the Treaty created a partnership between Maoris and the Crown. In reality it did no such thing. As Walter Christie shows in his book *Treaty Issues*, the partnership principle traces to an erroneous decision of the Court of Appeal in a 1987 case involving the New Zealand Maori Council. It is founded on nothing more than the opinion of five judges who combined a lamentable ignorance of New Zealand's history with a willingness to ignore the constitutional principle that they are appointed to apply the law, not make it. There is not an iota of evidence that the British authorities intended to establish such a partnership, nor that the chiefs saw this as the Treaty's object. Overwhelmingly, the evidence is that both parties believed its effect to be what the English version plainly states - that it gave the Crown sovereignty and Maoris no rights additional to those enjoyed by other British subjects.

The Tribunal felt itself able to ignore the Treaty's literal terms, however, on the grounds that it is "a remarkably brief, almost spare, document" which was "not intended merely to regulate relations at the time of its signing" but "to operate in the indefinite future when "the new nation would grow and develop." As it saw it, "the broad and general nature of its language indicates that it was not intended as a finite contract but rather as a blueprint for the future. As Sir Robin Cooke [then president of the Court of Appeal] has said, 'What matters is the spirit.' "

This is simply nonsense. The Treaty was a treaty of cession, and like all such was concerned with rights and territory: with defining what rights and territory were held or ceded by the contracting

parties. Its language, at least in the English version, was not broad and general but precise and not easily misconstrued. It was a blueprint for the future only to the extent that it laid down what rights and territory the parties would have following its signing. Its "spirit" is as incapable of being accurately ascertained as the Maori perception of what it meant, and equally irrelevant to its effect.

By the first article, the Crown gained sovereignty over New Zealand. The chiefs ceded this "absolutely and without reservation." By the second article the Crown confirmed and guaranteed to all Maoris 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." By this article also the chiefs yielded to the Crown the "exclusive right of Pre-emption" over such lands as they might wish to alienate, at prices to be agreed upon by them and the Crown's agents. By the third article the Crown extended to every Maori "all the Rights and Privileges of British subjects."

The settlement is a swindle. It is based on the findings of a Tribunal that judged Ngai Tahu's claims not by standards of truth and equity, but against 'principles' which have been formulated by a crude re-writing of New Zealand history.

The effect of the English version is unambiguous. The whole Treaty settlement industry is based on the Maori version. This spoke of *kawanatanga* instead of sovereignty; *tino rangatiratanga* instead of property rights; and *taonga* instead of property — all terms with meanings as pliable as plasticine apparently. The Pandora's box opened by the Treaty of Waitangi Act was the authority it gave the Tribunal to "reconcile or harmonise" the two texts. A rule of interpreting bilingual treaties holds that neither text is superior and each should be interpreted by reference to the other. But the tribunal ignored it. Since most chiefs signed the Maori version, it chose to give "considerable weight" to this and made little attempt to interpret any of its ambiguities in the light of the English text.

Thus the Tribunal is sure that Maoris would have understood the guarantee of *tino rangatiratanga*, "a complex and subtle concept," to have encompassed something more than the possession of their lands and other property listed in the English text. According to the Tribunal, the term "necessarily carries with it, given the nature of their ownership and possession of their land, all the incidents of tribal communalism and paramountcy. These include the holding of land as a community resource and the subordination of individual rights to maintaining tribal unity and cohesion."

The Treaty's 'principles' derive mainly from the understanding of its meaning a chief in 1840 might have gained from hearing it read aloud in Maori, as divined by these modern-day mind-readers.

According to its interpretation, what the Crown was really recognising in article two was the Maoris' "just rights" to maintain "their own customs and institutions." *Tino rangatiratanga*, therefore, guaranteed Maoris "tribal self-management on lines similar to what we understand by local government." This meant that the Crown obtained the cession of sovereignty "subject to important limitations upon its exercise. In short the right to govern which it acquired under the Treaty was a qualified right. It was inherent in the Treaty's terms that Maori customary values would be properly respected."

This is simply self-serving tosh. Maori customs and institutions in 1840 included cannibalism, infanticide, exposing the old and the ill, slavery, internecine tribal warfare, and the practice of *utu* and *muru*. All these practices were outlawed under Article Three. Not only does the Tribunal's interpretation run directly counter to the express terms of the English version of the Treaty, but it also contradicts evidence contained in its own report. In fact, as it acknowledged, Europeans viewed tribalism "as one of the worst evils of Maori life" and "strenuous efforts" were made to replace this type of collectivism with the individual rights guaranteed in Article Three. The Crown's aim was "to assimilate [Maoris] speedily into western culture and values."

And by the 1860s it was evident that Maoris themselves, in their demand for the individualisation of their reserves, were also desirous of throwing off their "tribal communalism." In 1860 Ngai Tahu chiefs announced that the "voice of all the people" was for subdivision, so that "our difficulties and quarrels may cease, that we may live peaceably, and that Christianity and good works may thrive amongst us." The Treaty gave the Maori, for the first time in his history, the chance to escape the influence of the tribe and, in the word's of Kaiapoi's Rev. Stack, to "do what he likes with his own." Within a short time many Maoris had voted with their feet. By the end of the century only about half of all Ngai Tahu were living in tribal communities, and the trend has continued ever since.

Sir Apirana Ngata observed in a 1922 booklet explaining the Treaty that the granting of the rights and privileges of British subjects was "the greatest benefit bestowed upon the Maori people" and the part of the Treaty "that impresses the Maori people most." Yet the Tribunal mentions it only once, when making the point that *tino rangatiratanga* "has always loomed large in Maori consciousness - even above Article Three." This neglect is not accidental. The Tribunal's whole *raison d'être* is bound up in its interpretation of Article Two, and this interpretation remains plausible only so long as the other two articles are ignored.

Besides that of partnership, the Tribunal derived two other principles from its interpretation of the Treaty's meaning — both equally bogus.

Rangatiratanga & pre-emption

First, as Maoris signed the Treaty on the understanding that it ceded sovereignty to the Crown in exchange for the protection of their *rangatiratanga* - "the right of Maori to retain their full tribal authority and control over their lands and all other valued possessions" - the Crown was obliged to actively protect Maori *rangatiratanga*. Second, the Crown's pre-emptive right to buy Maori land imposed on it a duty to engage in all such dealings with "sincerity, justice and good faith." Any tribe alleging a breach of these principles is entitled to call on the Tribunal to investigate its claims and seek a recommendation for compensation when detriment is shown to have occurred.

In respect of the Ngai Tahu claim, the

partnership principle was breached if the Crown did not act "reasonably and with the utmost good faith" when dealing with the tribe. The principle enjoining the protection of its *rangatiratanga* was breached if the Crown did not provide it with an official protector when negotiating to buy its lands. And the principle connected with pre-emption was breached if the Crown did not first ensure that Ngai Tahu wished to sell land or, having made the purchase, neglected to leave the tribe with sufficient land in the form of reserves.

Treaty principles & Ngai Tahu

The spuriousness of these 'principles' becomes apparent to anybody who troubles to enquire into the history of Ngai Tahu's claims. They are supposedly based on the understanding that Maoris had of the meaning of the Treaty, in particular of the partnership principle and the guarantee of their *rangatiratanga*. Yet not once in the ensuing decades, when Ngai Tahu were peppering the government with their land claims, was any appeal couched in terms which remotely hint at them viewing their rights under the Treaty as the Tribunal says they would have. Indeed, this writer came across just one allusion to the Treaty in the myriad petitions, reports and memoranda connected with their claims, and that referred to the explicit guarantee it makes concerning Maori ownership of their fisheries.

Nevertheless, the Tribunal is able to conclude that the Crown breached the principle requiring it to appoint a protector to safeguard the tribe's *rangatiratanga* in every purchase but one. This was not hard to find. Ngai Tahu had no protector following its first land sale because in the meantime the protectorate department had been abolished. This, the Tribunal decided, meant the tribe was reliant on "the ability and goodwill of land purchase officers" to safeguard its *rangatiratanga*, and they, being incapable of looking after the interests of the government and the tribe, settled for looking after those of the government only.

The Tribunal reinforced its formulation of this principle by referring to the instructions given to Captain Hobson by the colonial secretary, Lord Normanby, prior to the signing of the Treaty. Normanby wished the Crown's land purchases to be undertaken by a protector of aborigines. When Governor Grey arrived in 1845, however, he judged the cost of the department to be too great in proportion to the benefits the Maoris were deriving from it, and axed it. In particular he noted the large sum appropriated to the salaries and allowances of the Chief Protector and his two sons, who "were equally disliked by the Natives and the settlers." Grey's policy was to control the Crown's dealings with the Maoris himself and spend the department's budget on them directly.

There was nothing barring Grey from taking this action. Normanby was merely the politician in charge of colonial affairs at the time Hobson was despatched to New Zealand, and he had been replaced before the Treaty was signed. Later governments were at liberty to adopt or adapt his policies as they saw fit. Even so, Grey and his successor Governor Gore Browne, who between them oversaw eight of the nine remaining purchases of Ngai Tahu land, should have been safe from the charge that they ignored Normanby's instructions. *In every sale the land purchasers appointed were either officers of the Native Department or men well acquainted with and sympathetic to the Maoris.*

The effect of the English version is unambiguous. The whole Treaty settlement industry is based on the Maori version. This spoke of kawanatanga instead of sovereignty; tino rangatiratanga instead of property rights; and taonga instead of property — all terms with meanings as pliable as plasticine apparently.

The Tribunal tried to paint Walter Mantell, who negotiated three of the purchases, as some kind of Maori-phobe who later underwent a conversion, but other sources portray him differently. The Encyclopaedia of New Zealand says he was a man who "from the outset, was deeply aware of European responsibility for the future of the Maori," while the notebooks he kept during his 1848 negotiations "give the most understanding account of Maori life in Otago at the time."

The principle that the Treaty signified a partnership enjoins the Crown and the Maoris to act towards each other reasonably and with good faith. The Tribunal, however, while finding the Crown guilty of various breaches of this injunction, deigned not to notice any infractions of it by Ngai Tahu. Numerous instances of Ngai Tahu's duplicity during the land-sale process have been instanced in earlier issues, but a recapping of one should be enough to show the Tribunal's double standard in applying this principle.

Ngai Tahu & Banks Peninsula revisited

In the late 1830s and early 1840s a French colonising company tried to purchase Banks Peninsula from the local Ngai Tahu who, when the sale was investigated, admitted to parting with only small sections of it. The peninsula contained about 250,000 acres, but the company had estimated its extent at just 30,000 acres and the Crown, after talks with the French government, agreed to a maximum grant of that area on the basis that four acres would be allowed for every pound spent on the venture. Eventually it was established that the French had spent enough to entitle them to about 47,000 acres, but the grant of 30,000 acres was allowed to stand.

In 1845 the French tried again to secure title to the whole peninsula and two more agreements were negotiated with Ngai Tahu. By now the local Maoris had signed six deeds with the French, five of them in breach of the Treaty's pre-emption clause, and in return had received consideration worth about £1,750. In 1848 when Kemp and Mantell finalised Kemp's purchase, which was intended to include the peninsula, they were assured by local Maoris that it had been sold to the French.

The following year the New Zealand Company began preparing for the arrival of the first batch of Canterbury settlers. It had bought the rights of the now defunct French company and planned to use Lyttelton as a port. Now, however, Ngai Tahu was adamant that Lyttelton had not been sold. At this point Grey could have put an end to their mendacity by having their breaches of the Crown's right of pre-emption cause them to forfeit their right to the land. But instead he chose to treat the matter as a misunderstanding" and instructed that "some small payment" and reserves be made in return for giving up their claim. By 1856 the whole peninsula had been signed over to the Crown in three lots, in return for £650 and six reserves totalling 3,427 acres.

An impartial Tribunal would hold the Maoris fortunate to have done as well as they did. For an area about one-hundredth the size, they received payments well in excess of that made for Kemp's purchase, and reserves that gave them each about one and a half times as much land on average. Yet the Tribunal, ignoring the Crown's reminder that this was a result of its forbearance, charged it with having done "grave harm" to Ngai Tahu "by the serious and numerous breaches of the Treaty and its principles," and found it was under a "clear duty" to repair the damage. "Good faith and the spirit of partnership require no less."

The Tribunal decided that the French deeds had conveyed "only very small pieces of land" to the company, and that of the 30,000 acres it was awarded, only 1,700 acres were actually bought. The rest "were, in effect, confiscated by the Crown" and despite "repeated efforts by Ngai Tahu" no relief or remedy had been granted (in fact, in 1857 Ngai Tahu told the Crown the peninsula had been fairly bought and the Tribunal was the first to hear otherwise). The Tribunal found Grey's refusal to recognise that Ngai Tahu still owned the land meant Mantell's instructions were "infected" with bad faith. As a result Mantell had been "inflexible over the purchase price," "threatened" that the earlier transactions with the French had imperilled their title, and acted as if his function was merely to make an award, rather than negotiate a purchase. "All such conduct was in complete disregard of Ngai Tahu's *rangatiratanga* over their land and a clear breach of Article Two."

Ironically, the Treaty principle that the Crown was found to have breached most often was that connected with the pre-emption clause. The Tribunal again referred to Normanby's instructions to justify this principle. He foresaw the Crown paying an "exceedingly small" price for Maori land because it had no more than a nominal value in their hands, because a large government expenditure would be needed to enable European settlement, and because the real consideration the Maoris received would be the enhancement in the value of the land they retained following the settlers' arrival. The Tribunal reasoned that, as the Crown's right of pre-emption was an "extremely valuable monopoly right," cheaply gained, the Maoris had granted it in return for Crown protection of their *rangatiratanga*.

This is simply another attempt to re-write history. As explained earlier, the Crown's motive in instituting pre-emption was not to enrich itself but to protect the Maoris from unscrupulous land dealers. In fact, pre-emption was more a liability than a boon to a cash-strapped government in its early years. Its land fund was in deficit in every year but one in the decade following the signing of the Treaty, and in 1862 it abolished pre-emption. A principle that the Tribunal would have us believe is based on a *quid pro quo* in reality benefited the Maoris handsomely and the Crown hardly at all: Pre-Treaty sales involving millions of acres were overturned so the Maoris could resell the land to the Crown, which was now further bound to protect their *rangatiratanga* during the sale process.

Maori customs and institutions in 1840 included cannibalism, infanticide, exposing the old and the ill, slavery, internecine tribal warfare, and the practice of utu and muru. All these practices were outlawed under Article Three.

"Sufficient endowment"

Normanby also instructed Hobson not to purchase any land from Maoris "the retention of which by them would be essential, or highly conducive to their own comfort, safety, or subsistence." European settlement was to be confined to such districts as they could alienate "without distress or serious inconvenience to themselves." From such generalities the Tribunal found it "abundantly clear" that the Crown was under a duty to leave Maoris "a sufficient endowment for their own needs - both present and future."

And what constituted a sufficient endowment? There was no single answer to this question, the Tribunal ruled. It depended upon "a wide range of demographic facts including the size of the tribal population; the land they were then occupying or over which the members enjoyed rights; the principal sources of their food supplies and the location of such supplies; the extent to which they depended upon fishing of all kinds, and on seasonal hunting and food gathering."

What the Crown needed to have regard to, it held, was the fact that while "over time Ngai Tahu would become increasingly involved in the new economy, this would occur only gradually and over a relatively lengthy time-span." In the meantime, in addition to sufficient land "to enable them to engage on an equal basis with European settlers in pastoral and other farming activities," a "generous provision" of land had to be secured for them to maintain their old hunting and foraging economy, along with their eel-weirs and other fishing grounds.

These stipulations are so far removed from the idea of "ample" reserves held by officials at the time as to be laughable. A Crown witness told the Tribunal that the 10 acres of land per head reserved for Ngai Tahu during Kemp's purchase in 1848 matched the amount then thought necessary for Europeans to obtain a livelihood. The Tribunal was not impressed by his argument. While his conclusion was "no doubt logical," it did not consider the needs of Ngai Tahu could "be based solely on a narrow and somewhat mechanistic formula." They had to retain "sufficient land to enable them to live comfortably and to prosper." The Treaty required this to "be generously and fully recognised. The rigid application of a formula of say 10 to 15 acres is totally inconsistent with such an approach."

In fact, a formula of 10 to 15 acres per head was not rigidly applied. Based on censuses taken at or near the time, the approximate area set aside for resident Ngai Tahu varied considerably from block to block. In the Otago purchase it was about 47 acres per head. In the Kemp purchase the original 10 acres per head was over the next 40 years increased by about 250 per cent. On Banks Peninsula the average was about 15 acres per head, in Murihiku, about 33 acres. Kaikoura's reserves averaged almost 70 acres per head. The west coast reserves averaged about 63 acres per head and a further 3,500 acres were set aside as an endowment. Stewart Island residents had an average of almost 38 acres each, and they too were left with endowment lands.

The Tribunal maintained that after the sales "an increasing Ngai Tahu population put real pressure on reserves, that were less than sufficient for the smaller communities that existed at the time they were made." Yet even its own figures contradict this assertion.

Expert witnesses estimated the Ngai Tahu population in 1848 at 2-3,000. The Tribunal, doubtless to better enable it to belittle the area reserved to the tribe, thought it "reasonable to assume" that it approximated the larger figure. A census in 1874 put it at only 1,716, however and even by 1896 the reserves were home to only 2,100 Ngai Tahu. Numerous other censuses could be quoted to show that years after the sales the population of many reserves was less than when they were made. It was declining figures like these that led many Europeans, and Maoris too, to believe that the Maori race was dying out.

Various figures may be quoted when it comes to estimating the total area reserved to the tribe, depending on the year of the return consulted. The Tribunal's report, not surprisingly, quotes one of the smallest when it gives a total of 37,492 acres. Dividing this by its estimated population of 3,000 enables it to assert that the average area reserved was just 12.5 acres per head. However, even a conservative estimate would put the total at 45,000 acres at least, without taking into account the 5,500 acres of endowment lands, the lands set aside for half-castes, and the 3,500 acres which Ngai Tahu retained on Ruapuke Island. Then if an 1844 census which numbered the tribe at less than 2,000 is used, the average holding of each member rises to nearly twice the Tribunal's estimate. When it is unable to bend the figures to bolster Ngai Tahu's case it simply omits them. For instance no mention is made of the value of these reserves, which an 1882 return put at £358,137.

If the French who arrived at Akaroa in 1840 were around today they would no doubt be flabbergasted to hear the Tribunal characterising the reserves left to Ngai Tahu as "grossly insufficient" and their inhabitants as "virtually landless." When the French were set ashore, most of them without a sou to their name, they were allotted five bush-covered acres each, from which they managed to obtain a living. But the Tribunal can classify holdings five times larger as "no more than nominal" because it has already decided that officials in the 1840s and early 1850s should have had the prescience to know that large-scale pastoralism was the land-use of the future.

By its account, it was plain that Ngai Tahu "were interested as early as 1848 in engaging in pastoral activities," but instead they were "ghetto-ised" on "small uneconomic units on which they could do little more than struggle to survive." It could "only assume that the Crown consciously decided that 10 to 12 acres was sufficient for individual Ngai Tahu but that individual Europeans required vastly more land."

In fact it was not until the 1850s that New Zealand began to become well stocked with sheep. In 1848, when most of the south's good grazing land was included in Kemp's purchase, it was far from obvious that a wool-growing squatocracy would later emerge on the Canterbury plains. As the Tribunal itself noted, a year after Kemp's purchase there were just three sheep runs between Kaiapoi and Kaikoura.

The signs of a Ngai Tahu desire to go sheep farming in 1848 were even fewer. They seem to be confined to a request made to Mantell by some Kaiapoi Ngai Tahu for a run of 1,000 acres for two sheep and their lambs, and a letter from a chief a year after the sale complaining that his reserve was not big enough to contain his stock, although Mantell at the time made no note of any sheep, and recorded that the chief had given him "the greatest support and assistance" in laying out the reserve.

It is true that in 1856 when the Crown repurchased the North Canterbury block, Kaiapoi Ngai Tahu expressed a desire for two reserves on good sheep-growing country. But they were interested only in land already being farmed, and were willing to forego this for a higher price. The same pantomime was played out during the Kaikoura purchase in 1859. The locals insisted on reserving lands already farmed by Europeans, but when told that was out of the question and offered their choice of unoccupied country, opted for a large block of coastline that would secure them their fisheries. Later a local related that they preferred to reserve land that supplied their traditional foods. "When the Pakeha came the Maori knew nothing of the cow and the sheep."

The Treaty gave the Maori, for the first time in his history, the chance to escape the influence of the tribe and, in the word's of Kaiapoi's Rev. Stack, to "do what he likes with his own." Within a short time many Maoris had voted with their feet.

Nevertheless, it is a recurring theme of the Tribunal's report that Ngai Tahu were determined "to participate and thrive in the new world" and were only prevented from doing so by their "niggardly allocations" of land. The Crown was even rebuked for not reserving land that could later be used for dairy farming, as if it ought to have foreseen the future of an industry which only emerged half a century later. Had it done so, though, it is unlikely that Ngai Tahu dairy farms would have proliferated. The Rev. Stack reported from Kaiapoi in 1872: "Though very fond of milk and butter, there is not one household that provides itself with these things, everyone shirks the trouble."

Like Royal Commissioner Alexander Mackay in 1887, the Tribunal ignored the numerous accounts of Ngai Tahu's work-shyness. Nor did it remark on data that refuted its charge that their land "was no more than sufficient for a bare subsistence." Maori censuses included returns showing the land under crop. In 1896 just 857.5 of their 45,000-odd acres were set aside for this purpose. In other words they were cultivating about two per cent of their land. Their stock totalled just under 6,000 head, or about one for every seven acres. If, as the Tribunal asserts, the tribe was in a "parlous, some might say pitiable condition," the reason should have been obvious. But it preferred to blame their poverty on a lack of land and the Europeans who had "overwhelmed" and "marginalised" them.

Hunting & foraging undermined?

Other breaches of the Treaty principle which protects Ngai Tahu's *rangatiratanga* were found to have occurred as a result of the Crown neglecting to allow them to continue their traditional hunting and foraging pursuits. This claim stemmed from a clause in Kemp's Deed guaranteeing them their "plantations." Kemp, who was fluent in Maori, had used the phrase 'mahinga kai' in the Maori version of the deed to signify plantations or cultivations, believing it to be the accepted meaning of the term.

Ngai Tahu in 1848 had not led him to believe they had a different understanding of it, nor did they protest that Mantell was breaching the Deed's terms when he refused their requests for "forests for weka-hunting - whole districts for pig runs." Before the Land Court in 1868, however, they

maintained that *mahinga kai* to them signified their traditional sources of food, and that Kemp and Mantell had promised they would retain their eel-weirs and other fishing grounds. Kemp acknowledged discussing eel-weirs, but did not concede that their reservation was "to be an exclusive one." All he had promised was that "a sufficiency of land was to be set apart for them under 'Mahinga Kai,' that is to say grounds fit for cultivation of their crops."

Not once ... when Ngai Tahu were peppering the government with their land claims, was any appeal couched in terms which remotely hint at them viewing their rights under the Treaty as the Tribunal says they would have. Indeed, this writer came across just one allusion to the Treaty in the myriad petitions, reports and memoranda connected with their claims.

Mantell was positive he had not made such a pledge: "All that I promised at any place to the Maoris on this subject was, that their rights of fishing on and beyond their own lands should be neither less nor more than those of Europeans." The court, though, held that Ngai Tahu understood the phrase to have a wider meaning than Kemp's translation of it, and that it included such things as pipi grounds, eel-weirs and fisheries, "excluding merely hunting grounds and similar things which were never made property in the sense of appropriation by labour." To fulfil the condition it ordered a total of 324 acres of fishery easements be made for the tribe at various spots within Kemp's purchase.

A decade later Ngai Tahu renewed their claim. To the 1879-80 Royal Commission they brought lists specifying all the places where they had traditionally hunted and foraged, and convinced the commissioners that under Kemp's Deed these were not to be interfered with. However, Mackay saw the matter differently during his 1887 commission. In Ngai Tahu's view, he noted, the clause entitled them to fish, catch birds and rats, and procure berries and fern-roots over any portion of the block. "Under this interpretation they would be entitled to roam at will over the whole country - a state of affairs that could not have been contemplated."

After this Ngai Tahu seem to have realised that the claim was too extravagant to be treated seriously and over the next 100 years the issue appears to have been raised only twice more, and then more as a matter of form. The Tribunal, though, saw it as "one of the most emotionally charged elements" of the tribe's case, and gave it lengthy consideration.

It found the claimants' archaeologist "somewhat equivocal" about Ngai Tahu's understanding of the meaning of *mahinga kai* in 1848. He did not doubt the modern meaning was "all places at which food was obtained," but there was evidence that Ngai Tahu had discriminated amongst such places in earlier times. A chief who signed Kemp's deed had referred to "my mahinga kai; also my eel-weirs."

However, the claimants also proffered the evidence of a linguist, who was asked to decide if the expression had the narrow meaning of 'cultivations' or a broader one of 'places where food is produced or procured.' Etymologically, he said, the term was comprised of the verb *mahi*, 'make or produce' and its object *kai*, 'food'. The suffix -nga typically meant 'the place where.' Therefore he thought the term originally had the broader meaning. This was an odd conclusion to come to when by own his definition *mahinga kai* meant 'a place where food is made or produced.' A linguist ought to know that produce is not a synonym for procure. The Oxford Thesaurus says to *produce* is to "make, manufacture, create"; to *procure* is to "obtain, acquire, pick up, find."

The Tribunal was happy to accept this piece of linguistic sleight-of-hand, however, and conclude that it was "highly likely" that the expression meant different things to the two parties in 1848. It agreed with the claimants that the meaning 'cultivations' known by Kemp in the North Island "would not necessarily apply in the south." It found it "inconceivable" that Ngai Tahu would have agreed to forfeit "at one stroke" all access to their traditional food sources, and "even Kemp must have known" that.

The Tribunal here was simply setting up a straw man. There is no evidence that Ngai Tahu were "overnight expected to forgo all access to such resources." The evidence suggests the opposite was the case. The Tribunal itself, to counter the Crown's argument that Ngai Tahu had by the 1840s relinquished many of their traditional food-gathering activities, insisted that "while the scale may have diminished, the activity continued." In fact Ngai Tahu for years continued to use the land they had sold in this way until Europeans settled on it. As late as 1866 Mantell was hoping that his promise that they could fish beyond their own lands would be allowed to hold good for some time yet.

If anything, it is a lack of evidence that best confutes the Tribunal's interpretation of *mahinga kai.* The chiefs who signed Kemp's Deed lived scattered throughout the South Island and, if they truly believed it secured them the right to continue in all their old hunting and foraging customs, it would be reasonable to assume that they would make similar demands when the remaining eight blocks were sold. There is no record of any such request though. Signatories to Kemp's Deed appended their marks to at least six of the later deeds as well, yet nowhere is there an indication that they expected anything more to be reserved than their homes, cultivations and grazing for their livestock.

Even had the Tribunal noticed this it would not have altered its finding, however. It rejected a Crown submission that the lack of reference to *mahinga kai* in other deeds meant that Ngai Tahu had voluntarily surrendered their traditional food sources. Such an argument was "founded on the notion that Ngai Tahu, at the time of signing the deeds, could foresee the future and were prepared to relinquish all but their most important *mahinga kai* in anticipation of other benefits to come from European settlement." And the evidence "showed clearly" that they had no such perception. Ngai Tahu, it seems, were not to be held responsible for a lack of forethought. Only the Crown was expected to be prescient and, as such, held accountable for the tribe's future well-being.

Accordingly, the Tribunal found that Ngai Tahu had no intention of abandoning their old food-gathering customs, and the Crown's failure to guarantee them these in nine of the 10 deeds was a denial of its *rangatiratanga.* This allowed it to rule that food-gathering sites like Lakes Ellesmere and Forsyth, and sites of "national importance" like Kaitorete Spit, ought

should be reserved for the tribe, regardless of the fact that it parted with them at the time without objection.

Unwilling sellers?

The principle governing the Crown's right of pre-emption also required it to ensure that Ngai Tahu were willing sellers. The Crown may have anticipated that it was in the clear here, as Ngai Tahu were willing, if not eager sellers in every purchase it made from them. If so it had not reckoned on the Tribunal's interpretation of the principle. It held, in effect, that the Crown was not entitled to bargain and come to terms with the Ngai Tahu sellers, but was under a duty to accede to any demand they may have made to retain this land or that *taonga*. Anything less was a denial of their *rangatiratanga*.

This is a ludicrous restriction to impose on the Crown, of course, and completely ignores the fact that purchasing land is a process freely entered into, in which agreement is reached by way of negotiation. Naturally, Ngai Tahu as owners could demand whatever they liked, but the Crown was equally at liberty to refuse what they asked. If it was not, then the process is not a sale but a stick-up. The Crown had no power to impose terms on the tribe, and most sales were finalised only after Ngai Tahu wrangled from it a higher price or larger reserves than originally offered. If Ngai Tahu did not like the Crown's offer they were free to end the negotiations, as they did during the west coast purchase. The signing of a deed signified that terms had been agreed upon, often after weeks of bargaining.

An idea of the Tribunal's reasoning can be gained from its view of Mantell's actions as he laid out the Kaiapoi reserve within Kemp's purchase. Kemp's Deed, which Ngai Tahu had signed a short time before, specified that all their land within the boundaries was ceded apart from the "small exceptions" reserved for them. Mantell, though, received a demand for a reserve 10-15 kilometres wide stretching right across the island, encompassing about 500,000 acres. He declined this, showing them instead the 2,640-acre reserve he proposed, and recording that a "great consultation followed ending in their declaring themselves content."

The Tribunal found that what was "in no way an unreasonable request" had been "summarily dismissed" over Ngai Tahu's *rangatiratanga*. It heard a valuer put an 1848 value of £205,000 on a 220,000-acre block of this land, and place its prairie value today at $370 million. It is probably findings like this that allow Ngai Tahu to claim that its $170 million settlement represents less than one cent in the dollar of the real value of its claims. Mackay in 1887 would have valued the same block at £2,750, and the 1920 Royal Commission at half that again. Ngai Tahu only claimed for the 220,000 acres, maintaining that the original request was for a reserve ending at the foothills, even though Mantell's reports clearly contradict this. A claim for a coast-to-coast reserve would have rather undermined another old claim they tried to revive — that the inland portion of Kemp's block was never sold. Interestingly enough, at other times they backed their claims by quoting chapter and verse from Mantell's records.

If the French who arrived at Akaroa in 1840 were around today they would no doubt be flabbergasted to hear the Tribunal characterising the reserves left to Ngai Tahu as "grossly insufficient" and their inhabitants as "virtually landless."

A most fruitful source of their claims was testimony offered to the 1879-80 commission by Ngai Tahu chiefs concerning the Murihiku purchase. The commission did not take evidence on this sale from Mantell, the purchasing officer, which left it largely up to the Tribunal to decide the worth of the chiefs' allegations. Its rulings turned out to be a bit of a lottery for the claimants. A number of their claims were based on the evidence of one Horomona Patu, some of whose recollections, the Tribunal found "were clearly faulty on a variety of points." At other times, though, it found him perfectly reliable. He recollected that Mantell had neglected to fulfil a promise to lay out a 200-acre reserve at Waimatuku. The Tribunal allowed a claim based on this assertion, which it deemed to have "a convincing ring about it."

Ngai Tahu missed out on the jackpot in Murihiku, however, although it was not for want of trying. It will be recalled that the Tribunal labelled Mackay's attempts in the 1890s to locate landless Ngai Tahu on blocks west of the Waiau River in Southland "a cruel hoax" because it deemed the land uninhabitable. The claimants apparently thought differently, judging by their attempts to establish that this land was claim included southern Fiordland and Lakes Manapouri and Te Anau may have made it seem more desirable to them.

One of their tame historians argued that Mantell's deed map had been drawn to deceive because, to him, it seemed that the Island's south-west coastline could have been mistaken by the vendors for the Waiau River, leading them to believe they were not selling the area claimed. The Tribunal's perusal of the map showed no possibility of any such confusion, however. Also, the deed had been read out in Maori and the boundaries would have been clear to all who heard them.

The claimants then relied on another allegation made by Patu in 1879-80, that Murihiku had been sold not by the local chiefs but by those from Otago. Patu, the claimants alleged, was a paramount chief from western Murihiku and his name was not on the deed. This was proof that local Ngai Tahu had not agreed to sell the land west of the Waiau. However Patu had been having one of his memory lapses. Forty-one of the 59 chiefs named on the deed were identifiable, and nearly two-thirds came from Murihiku, including all the leading chiefs. There was no evidence that Patu was a paramount chief.

The claimants had better luck arguing that Ngai Tahu never intended to part with any greenstone. They claimed that the tribe had always held *pounamu* to be a valuable asset for trade and cultural purposes. It was "our taonga and belongs to us," they said, and they called on the Tribunal to recommend that all *pounamu* in the South Island be made the property of Ngai Tahu "for use in any way they see fit."

There was little proof offered to substantiate this claim. Although pounamu is now recovered elsewhere, there is no evidence that Ngai Tahu at the time of the sales were aware that it existed anywhere apart from the Arahura River on the west coast. And, arguably, in 1860 when Ngai Tahu resold the west coast its value had been so much reduced by the advent of European tools and weapons that it was no longer regarded as a *taonga* by the tribe. No request had been made to reserve it at the time of Kemp's

purchase, which included the west coast. And when Charles Heaphy in 1847 visited the tiny remnant of the tribe living at Arahura he found them a miserably poor lot. "Beyond seeking to obtain an iron pot or an axe in exchange for a meri [sic] pounamu, their life appeared to be without aim or purpose," he recorded.

There was no mention of *pounamu* in the west coast deed either. James Mackay, the purchase agent, had noted the hapu's insistence on retaining a 200,000-acre block of land centred on the Arahura. But he was then offering only £200, and the vendors were willing to forego the block if he raised his price. Later Mackay recorded that they were willing to settle if they retained a reserve running in a strip up each side of the Arahura "with a view of giving them a right to its bed." Mackay's assurance that they might retain a section of the riverbed was not recorded in the deed, but was later given effect to.

The claimants argued, however, and the Crown accepted, that Mackay's intention was that the bed of the river and its tributaries, together with their banks, were to be reserved to the vendors. The Tribunal went even further. Given *pounamu's* "deep spiritual significance in Maori life and culture," it was satisfied that Ngai Tahu did not consciously agree to part with any greenstone. "Given the high intrinsic value of this taonga to all Ngai Tahu" it considered that specific mention of it in each deed was required to signify Ngai Tahu's intention to part with it. Accordingly, it recommended that ownership of all *pounamu* in the tribe's former territory, whether found on Crown or private land, should be vested in the tribe.

Crown acquiescence

This was not the first time the Crown had meekly subscribed to the claimants' version of events, and if taxpayers are wondering now what it was doing while the Tribunal and the tribe set out to pick their pockets, they need only consult the record of the Tribunal's proceedings to learn how little protection was afforded their interests.

For one thing, the Tribunal gathered its evidence following "Marae protocol." Among other things, this meant that witnesses were questioned in a "culturally appropriate" way. Cross-examination was inappropriate. Apparently kaumatua would have seen this as "a sign of disrespect or hostility." The Tribunal thought it could achieve the same end by asking them to expand on a point or speak further on a subject. The Crown regarded such procedures as "entirely appropriate."

Then again the Crown's historians were told not to put their evidence forward in a manner which was partial to the Crown, nor to act as its advocates. A reading of the Tribunal's report will confirm how well they followed instructions. Much of their evidence was so partial to the claimants' case as to raise the suspicion that they were accepting retainers from both sides. The Crown did seem a little put out that, while it was following the rules, the "enthusiasm" of Ngai Tahu's historians was making them advocates of its claims, but there is no sign that it made an effort to right this imbalance.

Christchurch journalist Brian Priestley was hired by Ngai Tahu as a public relations adviser and attended several of the Tribunal's sessions. He resigned after three months. In that time, he said, "I don't think I was asked a single intelligent awkward question. I should have been. I resigned because I am basically a puzzler after the truth and not a one-eyed supporter of causes." It would, he thought, "be hard to imagine any public body less well organised to get at the truth."

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Chronology of Events

1844-64 Ngai Tahu dispose of their territory in the South Island to the Crown; about 32 million acres of land is sold for £14,750, with the tribe retaining reserves totalling about 45,000 acres for its 2,000-odd members.

1868 Native Land Court awards Ngai Tahu about 5,000 acres of additional reserves as a final settlement of its claims under Kemp's Deed.

1872-1910 Ten parliamentary select committees and other inquiries, and three Royal Commissions investigate Ngai Tahu's claims regarding the Otago, Kemp and Murihiku purchases. By 1910 the tribe's claims concerned Kemp's purchase only.

1920 A Royal Commission decides the 1868 award did not adequately fulfil the terms of Kemp's deed and recommends a payment of £354,000 as a settlement of Ngai Tahu's claim.

1944 Ngaitahu Claim Settlement Act is passed, providing for 30 annual payments of £10,000 each to the tribe in "full and final settlement" of its claim.

1969 Ngai Tahu petition parliament asking that the payments of $20,000 per year continue in perpetuity in "full and final settlement" of their claim.

1973 Maori Purposes Act provides for payments to Ngai Tahu of $20,000 per year in perpetuity.

1985 Treaty of Waitangi Act 1975 amended, allowing Maoris to make claims against the Crown for breaches of Treaty principles from 1840 onwards.

1987-89 Waitangi Tribunal hears about 200 Ngai Tahu claims alleging breaches of Treaty principles by the Crown both during and after its land purchases from the tribe.

1991 Waitangi Tribunal report on the Ngai Tahu land claims recommends that "speedy and generous redress" be made to the tribe for the "great detriment" it has suffered as a result of the Crown's breaches of Treaty principles. Later in the year the Crown and Ngai Tahu begin negotiating a settlement.

September 1997 Crown's final settlement offer submitted to Ngai Tahu. It includes a cash offer of $170 million; the handing over of various parcels of land, several islands, lakebeds and greenstone deposits; the option of buying $250 million of South Island Crown land, and the first right of refusal to buy surplus Crown land in the future; and the statutory recognition of the tribe in conservation and food gathering matters and other areas of cultural, historica and spiritual significance.

November 1997 Te Runanga o Ngai Tahu votes to accept the Crown's offer after a postal ballot of about 12,000 eligible beneficiaries results in 5,945 (93 per cent) of the 6,341 who voted signalling their acceptance of the proposed settlement.