

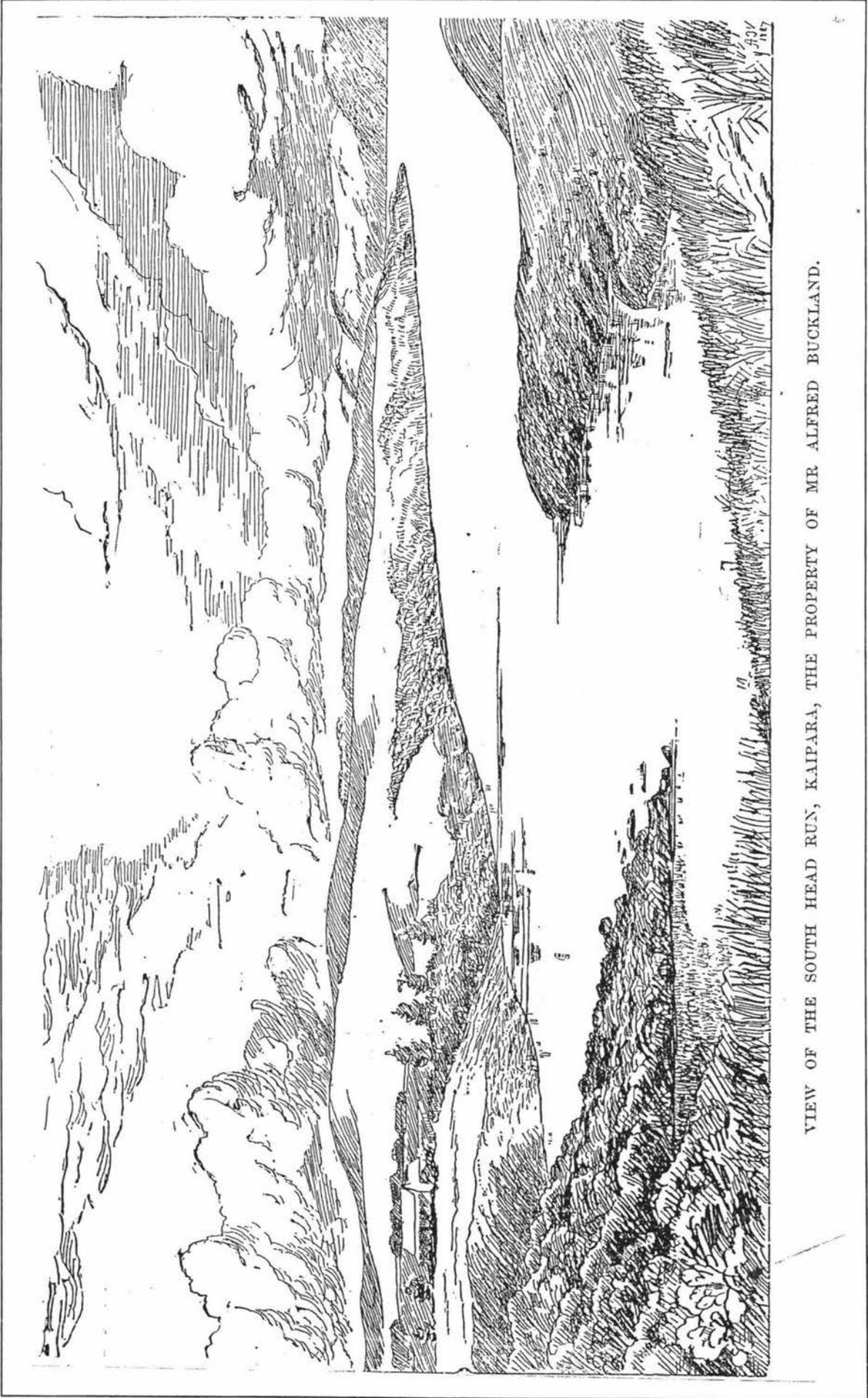
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LINES IN THE SAND / NGA MAENGA O TE ONE

**The Native Land Court in the Southern Kaipara / Kaipara ki te
Tonga and Tamaki Makaurau / Auckland:
A Reflexive Reconsideration**

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**A thesis submitted in partial fulfilment of the requirements for the
degree of Master of Philosophy, Massey University, October 1999**



VIEW OF THE SOUTH HEAD RUN, KAIPARA, THE PROPERTY OF MR ALFRED BUCKLAND.

ABSTRACT

This thesis examines the alienation history of seven selected Kaipara ki te tonga/lower Kaipara and Tamaki Makaurau/Auckland native/Maori land blocks under the regime of the land court from 1864 to the present. It has four parts.

The introduction presents an over-view of the nature of the history production process in the context of the post-colonial poststructuralist/postmodernist age, the nature and scope of the thesis topic area and the rationale driving the choice of an unusual strategy to re-present the native land court alienation process in the seven specific land blocks.

The theoretical perspective examines a variety of history-making strategies. An assessment is made of the suitability of modernist and poststructuralist/postmodernist approaches. The net outcome is a hybrid that combines the more appropriate aspects of each mode. An outline is given of a novel theoretical concept of the 'land-block-as-text.' This is predicated broadly on the experience of this unique Aotearoa/New Zealand geo-cultural unit and more specifically on the local and national historical import of the Orakei factor. It is postulated that Fenton's ideology for Orakei specifically and native land tenure generally became prescriptive texts.

It argues that the conventional histories of each of the seven blocks highlight an aspect of the contextual/politics paradigm: namely, that the presence (and the absence of presence) of Eurocentric textual material is the driving imperative of the shape which these conventional histories take.

Elements of the modernist approach together with the deconstructionist ploys of the poststructuralist/postmodernist schools are combined with more colloquial non-literate forms to suggest a new strategy. The issues of the goal of a multiplicity of voices, viewpoints, stories and methodologies mediated through one presenter are examined. An assessment is made of the appropriateness of placing so much omniscient variety under a single rubric. It is argued that on the one hand this form of history is more inclusive of all actors in the past-as-history, yet on the other dissipates the impact that a single authority might have.

The main body of the thesis begins with a selective account of some politico-judicial and ethnographic aspects of probably the most significant foundational acts of the

native/Maori land court system; the second Orakei title investigation, and the Fenton judgment of 1868/9.

There follows the histories of six land blocks perceived through a critical prism. They are: Paeroa, Pukeatua, Tuparekura, Pukapuka, Paparoa and Orakei 4A2A. This substantial central section of the thesis incorporates two textualized forms: an introductory schedule in conventional chronicle format (Annales) listing key facts and events of the alienation process for each block; and a new synthesis incorporating for each land block the history-making elements which are available for each block in order to indicate the nature of the historical problem at the land-face in a post-colonial age.

For example, the alienation history of Paeroa is premised substantively on the administrative records of the colonial regime; that of Pukeatua outlines the unique nature of the 'ownership' under Native Land Court-awarded title and the way in which alienation proceeded following clarification of the legal position; that of Tuparekura examines the exceptional informal and 'extra-legal' nature of the alienation process; that of Pukapuka highlights two main points: that a legal vacuum prior to the award of clear Court title allowed informal alienation by lease from a local rangatira to a local speculator, and that following the award of Court-title to absentee Maori owners the lawyers moved in and carved up the block; that of Paparoa scrutinises in substantial detail the inexorable process of alienation over several decades by a strategy of 'divide and rule' using both legal and 'extra-legal' means; and that of Orakei 4A2A examines the contest of the last of the Tamaki Makaurau Maori non-sellers against the power of the Crown.

A conclusion presents a summary of the significant patterns that emerge from the block histories and assess the efficacy of the theoretical strategy and methodology adopted in the thesis.

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I am humbled by many robust critiques of some of the earlier draft chapters from a number of persons including John Laurie, Wynne Spring-Rice, David Williams and Rapata Wiri. The responsibility for the final product however remains firmly in my court.

Finally and most fulsomely to my dear friends – Caril and Brian and my dear brother Peter and his children for their unconditional aroha in this labour of love.

ABBREVIATIONS

A	Assignment
ACL	Auckland City Libraries
ACLSC	Auckland City Libraries Special Collections
AI & ML	Auckland Institute & Museum Library
AJHR	Appendices to the Journals of the House of Representatives
aka	also known as (alias)
AMB	Auckland Minute Book (of Native/ Maori Land Court)
app, apps	appendix, appendices
a.r.p.	acres, roods, perches
a.s.l.	above sea level
AUP	Auckland University Press
BF	Block File
BWB	Bridget Williams Books
CFRT	Crown Forestry Rental Trust
CG	Crown Grant (at NALTO)
ch, chs	chapter, chapters
CT	Certificate of Title (at NALTO)
CUP	Cambridge University Press
DI	Deeds Index (at NALTO)
<i>DNZB</i>	<i>Dictionary of New Zealand Biography</i>
doc, docs	document, documents
DOSLI	Department of Lands and Survey (now subsumed within LINZ)
DP	Deposited Plan (at NALTO)
doc, docs	document, documents
<i>DSC</i>	<i>Daily Southern Cross</i>
ed	edition, editor
encl	enclosure
FCLA	Fletcher Challenge Limited Archives
ff	following
fol, fols	folio, folios
G	Grant (as e.g., in archival volume 8G, at NALTO)
HMB	Hauraki Minute Book (of Native/ Maori Land Court)
<i>HT</i>	<i>History & Theory</i>
HUP	Harvard University Press
ibid.	in the same book, chapter or passage, etc.
<i>JAWHS</i>	<i>Journal of Auckland & Waikato Historical Society</i>
<i>JE</i>	<i>Journal of Ethnohistory</i>
<i>JPacH</i>	<i>Journal of Pacific History</i>
<i>JPSoc</i>	<i>Journal of the Polynesian Society.</i>
<i>JPSt</i>	<i>Journal of Political Studies.</i>
KMB	Kaipara Minute Book (of Native/ Maori Land Court)
KTC	Kauri Timber Company Ltd
L	Lease
LINZ	Land Information New Zealand
m	metre/s.
M	Mortgage
Ms, Mss	Manuscript, Manuscripts

MA	Maori Affairs series (National Archives)
MB	Minutes Book (of Native/Maori Land Court)
MHR	Member of the House of Representatives
ML	Maori Land
MLC	Maori Land Court
MLCA	Maori Land Court Archives
MLC-W/ /NLC-W	Maori /Native Land Court - Whangarei
MMB	Mercer Minute Book (of Native/ Maori Land Court)
MS / MSS	Manuscript/s.
NA-A	National Archives (Auckland)
NA-W	National Archives (Wellington)
NAC / MAC	Native (Maori) Appellate Court
NALTO	North Auckland Land Titles Office (now a division of LINZ)
NLC	Native Land Court
NLCO	Native Land Court Order
NLPO	Native Lands Purchase Office
no, nos	number, numbers
NZF	<i>New Zealand Farmer</i>
NZG	<i>New Zealand Gazette</i>
NZH	<i>New Zealand Herald</i>
NZHPT	New Zealand Historic Places Trust
NZJH	<i>New Zealand Journal of History</i>
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
NZULR	<i>New Zealand Universities Law Review.</i>
OMB	Orakei Minute Book (of Native/Maori Land Court)
op. cit.	in the work already quoted/cited.
OUP	Oxford University Press
p, pp	page, pages
passim	throughout
PR	Provisional Register - of title (at NALTO)
qv/qqv	which see (refer to)
rod	record of documents
r.o.r. / RR	right of renewal
S	Sale
s, ss	section, sections (of an Act)
sec, secs	section, sections (of an article, book, report, etc.)
SNZ	<i>Statutes of New Zealand.</i>
SO	Succession Order
SJCT	St. John's College Trust (Auckland)
SJCTMB	St. John's College Trust Minute Book (Auckland)
T	Transfer, of land title (at NALTO)
TTDMLB/C	Tai Tokerau District Maori Land Board / Council.
TTMLC-W	Tai Tokerau Maori Land Court, Whangarei.
TI	Title Investigation (of land)
UALA	University of Auckland Library Archives
VUWLR	<i>Victoria University of Wellington Law Review.</i>
vol, vols	volume, volumes
WAI	Waitangi Tribunal claim
WAI-9	Waitangi Tribunal claim re Orakei (1985)

WAI-312 Waitangi Tribunal claim re Kaipara ki te Tonga (1999 >)
WAI-697 Waitangi Tribunal claim re Te Keti (1999 >)
WMB Whangarei Minute Book (of Native/ Maori Land Court)
W-MMB Waikato-Maniapoto Minute Book (of Native/ Maori Land Court)

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INTRODUCTION

"History is a pattern of timeless moments."¹

This thesis will de-construct some of the texts that claim to re-present/represent² the process of land alienation from tangata whenua to Pakeha interests in seven native/Maori land blocks under the regime of the Native/Maori Land Court.³ The focus of investigation is close-grained and local. Spatially, the field is the contiguous districts of southern Kaipara in Tai Tokerau/Northland and the isthmus of Tamaki Makaurau/Auckland; the temporal scope is, to paraphrase T.S. Eliot, open-ended: it has a beginning - the years in which the Native Land Court was planted as a socio-judicial mechanism to facilitate the orderly and pacific transfer of remaining land in customary title to individual title; but it remains open about any closure or resolution; that is, most of the lands were legally (and literally) alienated by the first decades of the 20th century but the outcomes arising from that alienation remained (and remain) a varying focus of attention for both affected and disaffected parties. The thesis will have the mode of presentation outlined immediately below:

- an introduction which will sketch the scope, shape and thrust of the thesis
- a statement of theoretical perspective focussing on the concept of 'land-block-as-text' with an explication of the methodology: 'reflexive contextualization.'

The main corpus of the thesis will firstly examine the:

- the significance of the 1869 Orakei judgment

then interrogate the histories of a selection of Native/Maori land blocks in the rohe/region of the southern Kaipara and Tamaki Makaurau/Auckland:

¹ T.S. Eliot, *Four Quartets*, Little Gidding, 1942, part 5.

² The word "represent" has at least *six* significant meanings: (1) it is *delegation*, to speak or stand for someone else in the French sense of lieutenant; as in an M.P. in Parliament; (2) it is substitution (again with the same French sense) as in a lawyer for a client in court; (3) it is *replication* (French sense again): for example, a photograph (image) represents a person photographed; (4) it is *repetition* by transforming the idea, action or behaviour in language in writing or speech; (5) it is *resemblance* as in a painting which transforms the visually perceived object into another shape; (6) it is *duplication*, e.g. as in a photocopy representing the original. Meanings 3-6 are usually rendered graphically with a hyphen.

³ The term 'Native' was used as the official Government descriptor of tangata whenua until it was replaced by the term 'Maori' under the Maori Purposes Act 1947. The word 'Native' will be used in this thesis unless the context is post-1947.

- Paeroa (in the south-western rohe/region of the southern Kaipara)
- Pukeatua (in the southern rohe/region of the southern Kaipara)
- Tuparekura (in the middle rohe/region of the of the southern Kaipara peninsula)
- Pukapuka (in eastern central Tamaki Makaurau / Auckland)
- Paparoa (in the middle rohe/region of the southern Kaipara peninsula)
- Orakei 4A2A (in eastern Tamaki Makaurau / Auckland)

The mode of presentation of each one of these seven block histories will take this form:

- an introductory section which will present a list of key points in chronological form – ‘annales’ - of the alienation process as distilled from the colonial record
- a fuller critical narrative, a micro-history which will inclusively and reflexively interrogate the colonial records using where practicable other verifiable evidence
- a conclusion which will draw together some of the similarities and differences between the selected block histories in the main body of the thesis; then essay some appraisal of the dissertation.

The texts which are the focus of this thesis are multi-form, multivalent: they can be broadly categorised as what are more conventionally known as the primary and secondary documentary resources and productions which have been retrospectively prospected and mined to shape an account, narrative or history; and the land block histories themselves. A full discussion of the meaning of ‘text’ in its many forms and appearances – graphical, literate, non-literate, symbolic, etc. - is located below. For the moment, ‘text’ will be used in the conventional sense of a graphic rendering in a prose sequence of the literal written word. A fuller explication of this writer’s idea of the land-block-as-text and qualification of any reader response that ‘anything-can-be-read-as-textuality’ is located further below and in the chapter on theoretical perspective.⁴

⁴ Refer this INTRODUCTION, pp. 9-10 ff. (below) and Chapter 1, THEORETICAL PERSPECTIVES, pp. 32-34 and p. 37-38 (below.)

Almost without exception these texts were premised on and generated by a colonial administrative imperative which required that transactions affecting land be recorded in written form. In short, the form and focus of the texts carried a specific prescription with a colonial Eurocentric bias. The texts that were produced and continue to be generated are thus hierarchical: they are grounded upon the records of the land transfer processes. Specifically, the central focus remains the written records of the Native/Maori Land Court. This judicial institution was legislated into existence in 1862, but did not function effectively throughout the colony until late 1865 following the passing of a colonial statute more favourable to settler interests than the first. Under the Native Lands Act 1862, probably due to the outbreak of the Anglo-Maori Wars only a total of 16 sittings were held colony-wide, all of them in the Kaipara jurisdiction, of which eight were title investigations affecting land blocks in the southern Kaipara rohe/region of this thesis. Two of these, Pukeatua and Papanoa will be examined in some detail in the block histories below.⁵ The dates of the Court sittings and the awards of title under the 1862 Act and the dates of issue of Certificates of Title under the superseding 1865 Act played a crucial role in subsequent investigations into legal title for the Papanoa and Pukeatua blocks in the early 1890s.

Any assessment of the ideological roots of the land court system as a practical solution to the manifest problems over the transfer of land ownership from aborigines to settlers is problematic. If a single figure could be identified with the development, introduction and implementation of the Native Land Court regime it would be the first Chief Judge Francis Dart.Fenton. His first-hand experiences during the late 1850s in the lower Waikato in attempting to establish a rudimentary process of indirect rule premised on a runanga-based magistrate's legal system informed and shaped his developing ideas on the 'native question'. It is more certain, however, that his direct involvement in, and judicial overview of the Compensation Court system in the wake of the New Zealand Settlements Act 1863 in many locations throughout the colony during 1864-66 galvanised his convictions. In part there was a synchronous development in the mid-1860s of the two legal systems, but the Compensation Court's business was effectively

⁵ Refer Chapter 4, PUKEATUA, pp. 76 ff. (below) & Chapter 7, PAPANOA, pp.137 ff., (below.)

complete by the late 1860s from which time the Native Land Court's activities grew exponentially. An important example was the Papakura case 1867 on which all subsequent succession cases in the land court were predicated.

His ideology imagined the development of a comprehensive colony-wide land title investigation process that would be instrumental in furthering the interests of the settlers while promoting the elimination of aboriginal title and the emergence of a Maori land-owning system not dissimilar to the English feudal court-leet model (Court of Record). A new title would be awarded on an individual basis either singularly, or jointly according to introduced English legal property codes and modified colonial praxis.⁶

There is a wide range of materials surviving from the processes of the Native/Maori Land Court. Of these the most significant are the recorded minutes of the Court's investigations of applications for title, succession, lease, sale, and exemptions from general statutory requirements. The historical value of this specific archive has been rigorously contested by a number of academics and other effected vested interest groups in the past 20 years.⁷ Provided they are used with more than the usual admonitory caution they are the only near-complete and thus essential resource of the human aspects of the land court alienation process.

This Native Land Court minuted record was amplified by a plethora of land title administrative records which documented with meticulous detail all

⁶ Lamentably, there exists no major biography of this key figure. His personal papers are still held by his family. There is a brief outline of his public life in *DNZB*, Vol.1 (1990), pp. 121-2. During his own life-time he wrote and published two works, *Observations on the State of the Aboriginal Inhabitants of New Zealand*, Auckland, 1859, and *Important Judgments: Delivered in the Compensation Court and the Native Land Court, 1866-1879*, Auckland, 1879. The date of composition of the first book can be ascertained with some certainty as the late 1850s; the dates of the twenty five judgments are various, but their exact composition dates can be more certainly corroborated from the recorded minutes of each case. Thus, the development of his ideas and praxis could be re-constructed with some degree of surety from the 1879 publication. An account of his work in the Lower Waikato is located in M.A.M. Roberts, 'Fenton's Plan: An Enquiry Into The Failure Of An Attempt To Introduce Civil Institutions In The Waikato In 1857', M.A. Thesis in History, University of Auckland, 1939. Some insight into Fenton's work in the late 1850s can be garnered (passim) from a history of the New Zealand frontier: R.Hill, *A History of the Police*, 2 Vols., 1992-5. A scholarly assessment of his role as Chief Judge can be located (passim) in A. Ward, *A Show of Justice*, 2nd ed., Auckland, 1997.

⁷ See for example, A. Parsonson, 'The Pursuit of Mana', in W.H. Oliver and B.R. Williams (eds.), *The Oxford History of New Zealand*, 1981, pp.140-167, Wellington, Oxford University Press; and 'The Challenge To Mana Maori', in G.W. Rice (ed), *The Oxford History of New Zealand*, 2nd ed., 1992, pp.167-198, Auckland; A. Ballara, 'The Pursuit of Mana? A Re-evaluation of the Process of Land Alienation by Maoris', *JPSoc* 91, (4), 1982, pp. 519-541; B. Layton, 'Alienation Rights in Traditional Maori Society, a Re-consideration', *JPSoc*, 93, (2),

matters which in various ways impacted on the property title right. These massive archives of evidential materials are some of the literal texts (which in turn shaped further texts) which will be interrogated in this thesis. The secondary texts (where they are extant) to be investigated are quite different in their form from the primary material. They are organised into a literate prose form given the generic label of 'block history' following a form evolving from as early as the procedures of the Land Claims Commission in 1841.

Until recently there has been a dearth of published secondary material relating directly to the Kaipara land alienation process. Systematic analytical inquiry has arisen only on account of the Waitangi Tribunal claims' industry in the past few years. There have been two major threads of inquiry: first, a claim's process – Wai-312 - was initiated in 1995; second, this latter research has been partly balanced by a co-ordinated Waitangi Tribunal national survey under the rubric of Rangahaua Whanui. Of direct relevance to this thesis has been a monograph on the early years of the Kaipara Court by Paul Hamer.⁸ The wider geographical context of Tai Tokerau/Northland and Tamaki Makaurau/Auckland has been quantified empirically by Michael Belgrave, with the research assistance of this thesis writer.⁹

As foreshadowed immediately above, the gap in the historiography of the southern Kaipara has been filled in only recent months by the release of histories of all 118 native/Maori land court title-awarded blocks under the aegis of the umbrella Ngati Whatua o Kaipara ki te Tonga Waitangi Tribunal claimant group. Their claim (Wai-312) is currently being heard. Some of the primary textual resources on which these block histories have drawn are of course the same resources on which a good part of this thesis is grounded; only our agendas are quite dissimilar.¹⁰ Theirs is one of advocacy; this is hopefully one of more distanced objectivity.

1984, pp. 423-446.

⁸ P. Hamer, 'The Native Land Court in Kaipara 1865-73' pp. 247-276, in R. Daamen, P. Hamer, and B. Rigby, *Auckland (Part I)*, Wellington, 1996.

⁹ M. Belgrave, *Auckland (Part II): Counting The Hectares: Quantifying Maori Land Loss in the Auckland District, 1865-1908*, Wellington, 1997.

¹⁰ B. Stirling, *A Summary of the Evidence of Bruce Stirling: 'Ngati Whatua and the Crown, 1864-1900'*, Wellington, 1998; *ibid.*, *Ngati Whatua Native Land Court Block Histories, 1864-1900*,

These late additions to a near nation-wide production of native/Maori land block histories generated in the past decade by the Waitangi Tribunal historical Treaty claims process might be compared with the situation in Tamaki Makaurau/Auckland. Here, one (and *only* one) defined land area that came under title investigation by the land court had become, as the outcome of an intense focus of tauiwi acquisitiveness since the first years of European colonisation, an issue of intense interest. That land block is Orakei. The contending issues arising from the Orakei factor have generated an avalanche of primary and secondary documentation encompassing an enormous range of an almost endless number of commissions, inquiries, investigations, prayers, petitions, etc, since the land title investigations into the status of Orakei were opened in 1866. Two chapters of this thesis will focus directly on aspects of the histories of this block: the first will examine some aspects of the second Orakei (1868) title investigation and the 1868/69 Fenton judgment; the second will scrutinise the history of the alienation of the last remaining third generation Orakei Maori freehold block: 4A2A, focussing specifically on the events leading to the Crown's compulsory acquisition of it in 1950.

Its sister block of Pukapuka, located in the area now known as the suburbs of east Remuera and Meadowbank, however, pales into insignificance in both the realms of academic and judicial history and the wider historical folk memory in comparison. Yet the history of its alienation by lease and by sale - records of which are scattered - warrants interrogation. As noted above it has not generated the same public attention as its northern neighbour, Orakei, which in itself might be good reason for historical investigation. There are however more serious scholarly reasons: Pukapuka is a rare prime example of cultural conflict over land utilisation at the epicentre of the colonial settlement of Auckland. The justifications for its inclusion in this thesis are manifold: no history of the Pukapuka block has ever been written; the manner in which Orakei was alienated aroused a variety of oppositional indigenous responses, one of which - the occupation/'trespass' in 1977/78 at Bastion Point - was on a nationally-

Wellington, 1998; and F. Small, *Twentieth Century Blocks in the Ngati Whatua Southern Kaipara Rohe*, Wellington, 1998; P. Wyatt, *Ngati Whatua ki te Tonga and the Crown, 1840-1869*, Wellington, 1998.

unprecedented large scale, whereas Pukapuka's alienation did not raise a ripple of opposition from any quarter including the Ngati Mahuta hapu of its legal titleholders: secondly, the surviving records point to competing claims to title among a number of tangata whenua groups and its speedy judicial resolution in favour of Ngati Mahuta was probably part of a wider rapprochement between the Kingitanga and the Crown in the late nineteenth century; thirdly, its acute proximity to both Orakei and the heart of the colonial metropolis is in itself of interest in any balanced overview of the colonial interface with the indigene in Tamaki Makaurau/Auckland; fourthly, the unusual situation of the legal status of its title from about the 1860s until the second title investigation (1890) demands inquiry.

Thus it is these written records, these texts, both in their abundance and their scarcity, in their concentration and their diffusion that will be interrogated in this thesis. The objective is to peel back the layers of the palimpsest or to stitch together the fabric where there is a lacuna. In a sense one of the rationales underpinning this thesis is to rigorously test the Derridean dictum that there exists nothing beyond the text. This aphorism often perplexes. Perhaps something has been lost in translation. Briefly, it does *not* mean that there is *no real world* but that we only encounter real referents through texts, representations and mediation. Tautologically, we as articulate sensate beings can never say what is independent of all saying. In other words, if language is all we have as an efficient all-round mediating tool, a heuristic device in the communication of meaning, then we have to come to terms with it. A fuller examination of the dictum is located in the following chapter below.¹¹

The remaining four native land block histories in this thesis will also be interrogated from this perspective. We have noted that there is a plenitude and paucity respectively for Orakei and Pukapuka. In the Kaipara, Paeroa has been selected as it an interesting test of the Derridean paradigm; and Pukeatua, Paparoa

¹¹ Refer Chapter 1, THEORETICAL PERSPECTIVES, pp.29 ff. (below.) Four useful and accessible guides to the poststructuralist and postmodernist world as it impacts on the social sciences are: L. Cahoone (ed.), *From Modernism to Postmodernism: An Anthology*, Cambridge, Mass., U.S.A., 1996; R. Cohen and M. S. Roth (eds), *History And . . . Histories Within The Human Sciences*, Charlottesville, U.S.A., 1995; K. Jenkins (ed), *The Postmodern History Reader*, London & New York, 1997; P.M. Rosenau, *Postmodernism and the Social Sciences: Insights, Inroads and Intrusions*, Princeton, N.J., U.S.A., 1992.

and Tuparekura have been included because each has some unique features apparent in the textual evidence which push the parameters of the Derridean injunction beyond the graphically presented frontier into the realms of folk memory and oral history. The history of Orakei 4A2A is unique for a number of reasons some of which have been alluded to above:¹² its past and its past-as-history is deserving of a wider readership and audience above all because its compulsory acquisition by the Crown in 1950 marks a closure of the script laid down by Judge Fenton some 80 years before. This script is in every sense the template of this thesis.

When academic historians compose their work they draw primarily on the written records of contemporary observers and participants of the events under consideration. These records are conventionally treated as primary sources, but, because they themselves are, of necessity, partial, selective and value-impregnated, they should be treated as secondary sources. The moment an object, text or relic has been identified by latter-day inquirers as material for the making of a history, it is immediately and irretrievably embedded in a specific cultural order. Many historians of nineteenth century Victorian Aotearoa/New Zealand have practised what is essentially a legitimisation of selected earlier documents. Nowhere is this more exemplary than in the domain of land law, where there was an evidential obsession with the culturally logocentric imperative to record everything for legal and administrative purposes from the tunnel-visioned perspective of the settler/colonist. Much of these land transfer records survive as a prescriptive template for the casual uncritical present-day inquirer. The challenge of shaping an alternative history needs to acknowledge this prescription. This is the driving force of the deconstructionist paradigm. Critical interrogation is the injunction while guarding against the postmodernist extremes of infinite regress, infinite deferral.

It is the purpose of this inquiry to attempt to moderate this Eurocentric white male bias, acknowledging that the textualised past is highly focussed, incomplete and ambivalent; and that its meanings, its significance, are multivalent. The ideal postmodernist and poststructuralist goal would be to write a

¹² Refer pp. 5-6 (above.)

history that incorporated multiple viewpoints to create plural pasts and new approaches to turning history into narrative. Notwithstanding this idealism the immediate problematic is the paucity of conventional textual evidence to attest to the others' experiences both of the past and in the past. A second challenge (putting to one side for the moment the lacunae in the textual record) in introducing multiple viewpoints into historical discourse is that any critique of the normal history paradigm needs to be balanced by a new vision of historical authority. In the end the paradox is that the individual historian of the new text would act as the single mediator which would privilege that version's overall viewpoint above others and implicitly authorise it as best by doing so. The alternative: multiple voices that dissipate authority and level privilege.

Given the difficulties of accessing and interpreting the varieties of versions of the past which are beyond the conventional/traditional historical paradigm this thesis can only point to the lacunae that exist and attempt to suggest vicariously a variety of plausible verisimilitudes.¹³ This then is the challenge of the postmodernist and poststructuralist age which can but be alluded to as an ideal construct in this introduction. It is probably an inescapable reality, despite the wishful idealism of literary and historical theorists, that unlike fiction, history can only have one voice, the historian's. At the end of the day, by privileging a historian's version of bi-culturalism and poly-vocalism in the text, it is the historian author who becomes the single mediator between past and present in any given text. The production of professional academic history by committee is an uncomfortable prescription.

The conundrum which is posed by any interrogation of the varieties of historical representation of the past, between historical sociology and anthropology, between oral and documentary history, between folk and professional academic history can be highlighted by the high-profile example of the native/Maori land block at the epicentre of the colonial metropolis of Auckland: Orakei. My purpose in focussing on this pivotal block of land is to explicate the thesis that the raw experience of the Orakei past has been (and

¹³ This challenge has been addressed with some scholarly flair by two Auckland University academics, Dr. Judith Binney and Dame Anne Salmond. Their recent published works are arguably a proof that a Eurocentric prescriptive historiographic paradigm can be broken.

continues to be) parcelled into a wide variety of texts. This observation leads first into a short explication of the definition of that word 'text', for some time a central canon of the linguistic turn in the postmodernist (and poststructuralist) litany; and secondly, to a presentation of my perception of the shape and nature of history. As we shall see below, it is true that all texts do not necessarily assume a written or graphic form. This is arguably a key issue, a fundamental problematic in the inter-face between a traditionally non-literate indigenous culture and a more recently literate European one. It is in a very real sense at the very heart of the whole matter of representation by a privileged group to its acolytes, by author to auditors and audience, and by writer to readers. The dissemination of knowledge is deeply implicated in the power system of any culture, whether Maori or European.

In its widest understanding the forms given to texts belong to a reflexive dimension of all representations by which a material device is proffered as standing for something significant; these shapes and forms can be verbal or non-verbal, print or non-print objects or artefacts. In a well-known essay, 'Meditations on a Hobbyhorse,' E. H. Gombrich has pointed out that a representation should not be looked upon as an imitation of something, or a mimesis (by which criterion a broomstick would fail to represent a horse in almost every way) but rather as something capable of substituting for the object represented for a specific purpose.¹⁴ The process whereby a decision is articulated on what is capable of substitution for the referent or object is an intrinsic part of the social fabric of the culture. As the focus of this thesis centres on traditionally opposed understandings of peoples' relations to the land there can be texts that assume no use of verbal articulation, that are images, symbols or icons with a representational significance. For example, in the context of this thesis: the geographer's map, the cartographer's representation, or the surveyor's plan; and significantly for Maori (imbued - arguably - with a strong legacy of pure 'felt' cognition) the referent of the map and plan - the landscape itself. This, quite literally and symbolically is a non-verbal text: the signified becomes its own referent; the landscape is a non-verbal text. We need to be reminded of this against the tyranny of the strictly

¹⁴ E.H. Gombrich, *Art and Illusion*, revised edition, Princeton, N.J., U.S.A., 1961, pp. 35-48.

linguistic approach which reduces the social world to an essentially discursive construction and to pure intellectual academic language games – “a ballet of bloodless categories.”¹⁵ On one side the semiotic approach is rigorously cerebral, literate; on the other, the pre-literate pure cognitive perception is sensate, felt. A fuller explication of one aspect of this: the land-block-as-text is located in the following chapter.¹⁶

In the context of this thesis however, these non-verbal (and/or non-written/non-print) forms will be acknowledged where appropriate. The principal focus, however, will be on the culturally encrypted forms of the dominant colonial culture to which the colonised peoples quickly adapted. This is the written mode, the literate form; these are the texts that will be interrogated if only because it is an accessible representational public record of past actions, a literate conduit between the recorder and the present inquirer. These records are the ore-body from which the present-day constructs and re-fashions the past and makes a history, a definition of which is now necessary. Cutting beneath all the nonsense that is deployed by proponents and opponents of postmodernism (and its more disciplined relation in the domain of history – poststructuralism) it must be insisted rigorously that history is commanded by an intention and a principle of truth, that the past which history has taken as its object is a reality external to discourse and rhetoric and that knowledge of it can be verified.

History is at once a complex cognitive cultural construct. It is manifest in many forms, four understandings of which will be explored below. It can assume many shapes, which can be encrypted with culturally significant codes, but this huge field needs a sharper focus where a privileged dominant hegemonic culture (and history) is under challenge politically and socially. In its infinite plenitude (which is obviously beyond the scope of this thesis), history is a variously texted past which can be organised into four broad representations: it can be offered in a literate prose sequence in either a scholarly mode (a form preferred by academe) or a populist vein (appealing to a wider readership), it can be rendered in a culturally poetic or artistic mode, such as waiata, ballad, theatre; it can be made

¹⁵ F.H. Bradley, *Principles of Logic*, Oxford, 1985, p. 35.

¹⁶ Refer Chapter 1, THEORETICAL PERSPECTIVES, pp. 37-40 (below.)

manifest as social ritual in the forms enacted in the discourse of hui, assembly, school-room and work-place; it can be signalled by an institutionalized rubric: marae powhiri, court protocol, church liturgy, executive proclamations. The texts of the past have their own presence (or absence of presence.) Importantly, this status is contingent on the political authority of the successor generations.

History is in that sense not all human experience, but that part of the past which is selectively re-called by individual and collective successors and which is transformed into texts – inscribed, spoken, moulded, shaped verbally and non-verbally: a manuscript, a discourse, a korero, a headstone, a whakapapa or a bill of sale. These histories differ; they are unique. They are read and heard in varied ways. With one or others, tangata whenua and the larger pool of peoples – Pakeha, Maori, whoever - interested in the land alienation process are adept at applying the appropriate mode of re-presentation. A schema might be constructed across different systems of cultural signs - the gossip of the neighbourhood, the dramaturgy of the Native/Maori Land Court session, the korero of the marae, the imperatives of the Government's directives, the rhetoric of the land claimants. These varied texts in turn can be distilled to shape histories of the land alienation process under the regime of the Native/Maori Land Court. It is our legacy that we are embedded in the cultural parameters of the post-Enlightenment Eurocentric legacy. This is where some of the more restrained of the postmodernist paradigms can be engaged as practical heuristic devices.

Each text has its appropriate cultural and social context for being read and/or listened to. Both Pakeha and Maori are variously and differently socialised and acculturated to varieties of histories. There are expressions about the past that are crafted to suit the time, place and circumstance. This in Aotearoa/New Zealand may be a nursery tale or korero, it may be local anecdote or public document, it may be a legal submission on the Articles of the Treaty of Waitangi in a court of law. Present-day expression about the past in histories is always assiduously moulded where it is driven by a subjective agenda: it can be the diary of a settler, it may be advocacy in a court of law, the liturgy of the church, the carved pou at the marae entrance or inscription on a public monument. In the

domain of this thesis, it may be a tract from the *Appendices to the Journals of the House of Representatives*, it may be land deed, or bill of sale, it might be petition and prayer to Parliament. These are the resources, the primary textualised graphic resources which are the engine driving this thesis.

A liberal open-minded cultural understanding allows us to shift easily between different modes of expression with no sense of contradiction. Most of us are attuned to what is appropriate, what is acceptable for the moment, for the occasion; however, there is always a danger that the individual voice, the alternative version and the contrary interpretation may never be heard in public as a monolithic colonising power or oppressive culture imposes its agenda and binds the many, the diverse in its hegemonic grip. The freedom to read a text as one chooses is always constrained by a shared social common sense of what meanings the expression might bear, what ambivalences it might cover, in what way each reading might distinguish the text from the past of which it is the transformation. In history, past and present are indivisibly fused.

The above explication of the nature of history is of course an idealised representation of its multi-various plenitude. More realistically, the goal of this thesis is to critique the microhistories and little narratives of the alienation of the native/Maori land block in order to test the limits of the modernist historical mode. It will examine the variety of histories crafted from the public record in the public domain. The objective is to interrogate the texts in order to distil a more open-ended history that embraces the middle ground; or to put it in the current academic vernacular, to simultaneously de-construct a selection of the multivalent texts and mould a new synthesis – a process called reflexive contextualisation. This strategy will be outlined in the following chapter.

The texts which the colonising power created in its almost obsessive drive to record the minutiae of the relations of titleholders and their associates to a precisely defined territory were always methodical and exhaustive, if not always painstakingly accurate. The high-profile example in this thesis – Orakei - generated a huge number of title investigations, applications for partitions, orders for re-hearings, land block exchanges, partitions and title successions, inquiries, commissions, suits and counter-suits, appeals, petitions, prayers, meetings and

protests over 130 years. In one sense the many histories of the peoples/tangata of Orakei became subsumed in the history of the land/whenua at Orakei. So the history of Orakei that shaped itself almost unconsciously in the minds of all peoples was informed by the perceived writ of the Pakeha legal process/system.

Thus, the raw experiences of the past were and are transformed into texts. These texts (in the *literate* sense) were and are packaged in their turn by the institutions that preserved and maintain them. It is of no lightweight significance that the archival documents of all land transactions are public records. Historians exploring the past come across the scripted texts in well-thumbed tomes or unopened dossiers. We all, both Pakeha and Maori, have widely different signifiers, registers and poetics for decoding this iconic encrypted past. Every reading can be a new experience, a confirmation, a suspension of the disingenuous. And history in its most fundamental and practical sense is all the ways the past is encoded in symbol form to make a continuously changing present.

History thus informs the agenda of the present. The texts of the past are public. Texts are available to be heard, viewed, read and interpreted. They are not shut away in personal private memory; they are represented/re-presented to elucidate, to inform, to disabuse, to propagandise, to liberate, to empower; they are reproduced to fit the agenda of the presenter, to complement or confront the mind-set of the auditor, viewer and reader.

But history is not just personal memory unless it be that very personal memory made into cultural artifact, external, public, social, sometimes accepted, at times contested. The histories of the Native/Maori Land Court's operations and the alienation of the lands of the tangata whenua are at once highly personal but very public. With Orakei the personal can become public, the personal can become political. Orakei is a creature of the public domain. That is a measure of the weight of the issues therein. The public cultural space of the historical Maori past of the city of Auckland/Tamaki Makaurau is unique. It has a very public profile in present times. Wellington/Whanganui a Tara has its Tenth's Trust represented in such high-profile places as the ex-rugby stadium at Athletic Park and parts of the Government Centre at Thorndon/Pipitea, but Auckland/Tamaki

Makaurau had a harbour headland close to its centre remaindered to tangata whenua. It is almost unquestionable that this fortuitous contingency can be traced to the decision of Judge Fenton in 1869 to award title to 689 acres at Orakei to three hapu constituencies of Ngati Whatua. What is probably incontestable is that it has a very public historical significance because of its unique location at the acute and contested interface of two cultures. Orakei became a focus in the various histories because the contest for this cultural space was public, prolonged and near-intractable. That history is now encapsulated in a variety of forms, from published document to the shape and form of some of most public spaces and institutionalised monuments within Tamaki Makaurau/Auckland.

The contest over the Orakei lands has had some significant outcomes, not the least of which has been a much higher public and civic acknowledgement of the Treaty-enshrined rights of tangata whenua. One of many examples of this is the newly created Auckland Research Centre on the refurbished second floor of the Auckland City Central Public Library in Lorne Street. This is dominated by two large paintings - one of Apihai Te Kawau, a principal rangatira of Ngati Whatua in the early colonial period; the other of William Hobson, first Governor of New Zealand. The visitor is reminded that a potent icon of present-day Ngati Whatua ideology is that the colonial power was invited by Te Kawau in late 1840 to centre its government operations in Auckland rather than Russell. There are two smaller displays enshrining selected documents generated by the colonial legal system, privileging the 1869 judgment of Francis Dart Fenton at Orakei, in awarding title to Ngati Whatua.

The judgment of Fenton is thus venerated. In that sense the text of the Orakei judgment is honoured by Ngati Whatua. They own that text, no matter what vicissitudes of fortune may have visited the tangata whenua or the ancestral lands themselves since that significant judicial pronouncement of early 1869. That the Orakei lands were progressively alienated in the earlier decades of the new century is entrenched in the wider public memory. In one of many successive unilateral actions over many decades a Crown initiative to develop high-cost housing at Bastion Point/Takaparawha in 1977-78 might have prevented any restoration of lands to tangata whenua. Thus what might have been a final

symbolic alienation was halted by the exceptional 506-day occupational stance at Bastion Point/Takaparawha in 1977-78. That event has been perceived historically as a significant watershed in the legal recognition of the fledgling tangata whenua partnership rights under the Treaty of Waitangi. It is at present a part of our past, of our history. The Orakei Block (Vesting and Use) Act 1978 and its replacement, the Orakei Act 1991 cemented a settlement which on balance partly acknowledged that the alienation of Orakei lands was a breach of the Treaty; that in the words of the present-day leading kaumatua of Ngati Whatua, Sir Hugh Kawharu:¹⁷

. . . the vesting of land in the Ngati Whatua o Orakei Maori Trust Board and the return of title would be to enable a restoration in tangible form some measure of Ngati Whatua's former tangata whenua status . . . [was] a belated recognition of the fact that the land had been once part of a much larger trust estate declared inalienable by the Maori Land Court.

Thus in a nice twist of fate the outcome of 130 years of struggle by a few tangata whenua against the Crown's actions was that Ngati Whatua o Orakei as defined in the 1991 statute emerged triumphant. These latter day texts are a representation of a Ngati Whatua o Orakei victory. Thus Fenton's 1869 judgment can be publicly honoured. The history of Orakei is a matter of public display. In contrast, that of its neighbouring block Pukapuka has been largely forgotten.

To turn to the focus of the first chapter of this thesis, the iwi/hapu grouping identified in 1868/9 by Chief Judge Fenton in the second Orakei title investigation as Ngati Whatua had historical and locally shifting land use rights by conquest and occupation in parts of the northern-central Tamaki Makaurau/Auckland isthmus; other hapu identified variously in evidence submitted under various other separate Land Courts' title investigations in lower Tai Tokerau/Northland as Te Taou, Mangamata, Ngati Marua, Ngati Rango, Ngati Rongo, Ngati Whatua Turuturu, Ngati Wai, Te Uri-O-Hau (and other appellations) had locally shifting land and tidal use rights in the wider Kaipara region/rohe; other Ngati Whatua peoples had rights in the general lower Tai Tokerau region; Kawerau had occupational and land use rights in parts of the

¹⁷ *JPSoc*, 101 (3), September 1992, pp. 228-229.

Waitakere ranges and the upper Waitemata; Ngati Paoa had similar rights in the coastal lands from Mahurangi to the eastern littoral of Tamaki Makaurau and the islands of the Hauraki seas; and various hapu of Waikato had rights in the central and southern Tamaki Makaurau isthmus, and at specific South Auckland localities such as Mangere, Hunua, Pukekohe, Waiuku and Awhitu.¹⁸

Historically the Native Land Court system transformed and intensified in a myriad of various cultural processes the links between people (both tangata whenua and tauwi) and a block of land. The production of New Zealand as a colonized European space necessitated (among a host of other things) the drawing of land boundaries and the naming of the defined block of land. In the initial part of the process of negotiating boundaries between surveyors and the local natives, these blocks were given (almost without exception in the upper North Island) a Maori appellation. Perhaps this was an explicit acknowledgement by the colonists of the indigene's intimate association with the land. Generally surveyors were enormously dependent on native guides with local knowledge; and specifically under the Land Court system worked hand-in-hand collaboratively with local indigenous claimants in demarcating boundaries. It was frequently an intensely competitive process between rival claimants.¹⁹

The exact detailed process of application for the surveying of a block of land and then claiming and defining a block of land under the regime of the Native Land Court and allied agencies of central government was complex. There are numerous records in many public archives. The five examples which follow are abstracted from the Native Land Court title investigation hearings.

At the hearing for Te Wai o Parewhakahau block immediately to the north-west of the upper Waitemata and on the borders of Tamaki Makaurau/Auckland, one claimant, Ngawaka Tautari of Te Taou (who was to become one of the title-holders in the Orakei block) gave evidence that: ²⁰

the land has been surveyed clandestinely several times. I have spoken about it several times with Mr McLean . . . I have not

¹⁸ Alan Ward, 'Historical Claims Under The Treaty of Waitangi: Avenue of Reconciliation or Source of New Divisions?' in *JPH*, 28 (2), December 1993, pp. 181-197.

¹⁹ G.M. Byrnes, 'Inventing New Zealand: Surveying, Science and the Construction of Cultural Space, 1840s-1890s', Ph. D. Thesis in History, University of Auckland, 1995 (passim.)

²⁰ KMB 1, p. 95, (7.1.1867.)

surveyed this land myself. This land has been taken by the Europeans. I wish this land to be given back to me. ”

The need for an authorised official survey was thus imperative because opposing claimants often employed their own surveyors for the same piece of land.

Confusion over the boundaries of Ihumatao, located immediately to the north-west of the upper Waitemata, caused disputes in a block adjoining it called Kahukuri. At the title investigation into that latter block the surveyor, a Mr. Blake, gave evidence that:²¹

Wiremu Reweti disputed one [survey] line. That has now been cleared up. The boundary starts at Ihumatao No. 3.

In the first title investigation in to the Hanekau block located in the south-western region of the southern Kaipara a leading Mangamata rangatira, Te Keene Tangaroa, gave witness that one of the claimants Hone Tupuhi had pointed out the boundaries to the surveyor. Tupuhi and eight others were awarded title to the block.²²

At the title investigation into the Waipapa block, located in the eastern hills over-looking the mid-Kaipara valley, (immediately to the north of the Pukeatua and Tauwhare blocks) Te Tahana gave this evidence:²³

A portion of this land was given to me and I wish to include it in the certificate. I admit that the land is theirs [i.e. Paora Kawharu, Kiwara Te Ro and Te Otene Kikokiko] The portion that was given to me was from Waiteramarama to the peg at the corner of Pukeatua and Tauwhare. Paora Tuhaere & others gave it to me while I was living in Auckland. I don't recall . . . Yes I do . . . it was 23 September 1870.

Agreement produced.

The gift was for the reason that our sister was given to Paora Kawharu as wife. This document was written at Hiore Kata [then the residence of Paora Kawharu in the mid-Kaipara valley several kilometres to the north.] About 20 persons were present.

At the title investigation into the mid-Kaipara valley block given the appellation Kopironui, in area 914:0:00 acres:²⁴

²¹ KMB I, op. cit., pp. 103-4, (3.5.1869.)

²² Ibid., pp.160-1, (18.2.1871.)

²³ Ibid, pp.157-9, (18.2.1871.)

²⁴ Ibid, p.154. (18.2.1871.)

The surveyor, Mr Richardson [was] sworn: 'Hori Te Paerimu pointed out the boundaries [but] when I was cutting the lines Paora Kawharu wanted to alter them, but the survey as it was agreed to is that shown on the map.'

Thus, in short, any account of the land alienation process, and especially under the block partition and fragmentation inherent under the Native/Maori Land Court regime of title succession, must focus on the native/Maori land block as a discrete geo-cultural entity. The demarcation of boundaries (and their consequent immutability) reified the status of a precisely defined tract of territory. Any block of Maori land could thus be invested with symbolic significance. It could be converted in to a commodity. Thus, in the New Zealand folk psyche the "block of land" (of whatever provenance) took on a unique quality.

To the colonists the Maori system of land use rights was but a 'beastly communism'. It was necessary to impose by legal authority a system that recognised discrete owners at one level only, that limited the consultative and negotiation process between sellers and buyers, and facilitated a more efficient transfer of title. As will be explicated later this was the ideological imperative driving the first Chief Judge of the Native Land Court, Francis Dart Fenton. One more part of the capitalist accumulation (and appropriation/expropriation) process was thus put in place through the imposition of the system of individualised title. The colonists, driven by paternalistic ideologies, envisaged the individualisation of title as being sufficient in itself to convert the Maori to the European methods of land tenure and management. This ethnocentric assumption was arguably totally oblivious to any traditional spiritual attachment of Maori to their land.

Since 1840 the patient but persistent goal of capital accumulation under Crown and later State authority was the extinguishment of customary title. Underpinning this unconscious ideology was the commodification and commercialisation of Maori land. As well, colonial policies sought to accumulate capital through the control of Maori labour as well as land. Even before the land wars in the 1860s this policy and the availability of casual work had produced sectors of independent wage-seekers and entrepreneurs in the midst of Maori communities consolidated on a kinship basis of production.

But the emergence of Maori entrepreneurs was the exception rather than the rule. Textual evidence is thin but the very existence of a meagre record

together with other circumstantial and anecdotal evidence would seem to indicate that in the Tamaki Makaurau/Auckland area the last traditional Ngati Whatua rangatira Paora Tuhaere operated in such a manner from the 1850s until his death in 1892.²⁵ His activities in the Pukapuka and Pukeatua blocks will be examined in more detail in the main corpus of this thesis.

His kinsman, Wiremu Watene Tautari, a titleholder in several Kaipara blocks and in three of the second generation Orakei blocks, appears to have capitalised on his relatively large rental income and his one-off 1912-13 compensation payments for the 'sewer infringement of riparian rights' at Orakei. He was heavily involved in the milling of kauri in the locality of the Kumeu and upper Kaipara streams and transporting the logs to Goldie's mill at Mechanics Bay, Tamaki Makaurau/Auckland.²⁶

The intriguing example of Hoani Paaka (Johnny Parker) in the Pukeatua block will also be explored in that block history. Underlying these high profile (and less well-known) exceptions, the social processes of Maori acculturation can only be inferred in the southern Kaipara and Tamaki Makaurau/Auckland from a range of scattered empirical evidence. Probably Ngati Whatua were more favourably placed than other hapu and iwi given their special relationship with the colonial power. The lynch-pin in this respect was their last traditional rangatira Paora Tuhaere.²⁷

Almost certainly the general erosion of traditional social and whanau solidarity increased rapidly after the Anglo-Maori Wars and the establishment of the Native Land Court, and by the 1870s Maori labour recruitment was the primary basis of extensive public works in roads, bridges, railways, telegraph lines, and bush clearing for settlement and agriculture in the upper North Island (and elsewhere.) In the main corpus of the thesis the impact of the capitalist

²⁵ Stephen Oliver, 'Paora Tuhaere', in *D N ZB*, Vol. 1, 1990, pp. 552-3.

²⁶ R. Blackley, *Charles Goldie*, 1997, p. 8; I..B. Madden, *Riverhead: Kaipara Gateway* 1966, p.25.

²⁷ P. Wyatt, op cit., pp.1-8 and 216-230. An anecdote recounted by Denis Raoul Nathan, the present head of the Auckland Jewish merchant family of L.D.Nathan, to the writer tells of a mutually agreed arrangement between L.D. Nathan & Co., importers and merchants of Fort Street whereby Ngati Whatua brought bulk imported dry goods, herbs, spices and groceries ashore from ships in the Waitemata in their skiffs, scows and waka, in return for the supply of goods and services to the natives at Orakei. This exchange included the provision of the best Bond Street (London) cloth for the dress suits of Paora Tuhaere. Personal communication with

system will be shown to subtly impact on Maori traditional values as they get drawn into the introduced cash nexus.

The planting of new colonial settlements and the establishment of a communications infra-structure altered both the pattern of Maori settlement and the rationale under-pinning their diurnal, seasonal and annual migrations. Historic pah and kainga in the hill areas of the southern Kaipara were abandoned.²⁸ Maori were employed as casual labour in bush felling, road and rail construction, mill work and general manual labour. The service industries of the burgeoning colonial metropole of Tamaki Makaurau/Auckland and the market and mill town of Te Awaoroa/Helensville attracted casual Maori labour.

A small Maori settlement was constructed from about the 1870s close to the new rail route near the site of a kainga on the border of the recently surveyed Ongarahu and Pukeatua native land blocks. It was given the appellation Rewiti probably to commemorate either Tamaki Reweti, a long deceased son of the rangatira Apihai Te Kawau, both of whom had travelled to Kororareka/Russell in 1840 in a party of three tangata whenua to invite Governor Hobson to Tamaki Makaurau/Auckland in December 1840, and/or his cousin Wiremu Reweti Te Whenua who had received the title award for the adjacent Pukeatua block.²⁹

Locally, Maori labour was prominent in the extractive kauri and kauri gum industries. At one point in the 1870s up to one hundred Maori were employed at the McLeod brothers' timber mill in Te Awaroa./Helensville. Maori labour was employed extensively in the construction of the Te Awaroa/Helensville – Pitoitoti/Riverhead railway between 1871 and 1875; and in the extension from Kumeu to Tamaki Makaurau/Auckland in 1877-81.³⁰

To both Maori and Pakeha land in the expansive colonial period was or became a commodity: land could be accumulated or it could be sold. For some

D.R. Nathan, 1996.

²⁸ M.W. Spring-Rice, 'Maori Settlement in the Southern Kaipara,' Ph. D.Thesis in Anthropology, University of Auckland, 1996, p. 25.

²⁹ No textual evidence for the appellation is extant, but the rationale under-pinning this informed assumption is symptomatic of the whole history-making process of which this thesis is but a microscopic particle.

³⁰ There is a substantial volume of primary documentation on the Kaipara Railway, but the most accessible secondary source of details of this land-taking enterprise is located in *N.Z Gazette*, 1884, pp.1184, and I.B. Madden, op. cit., pp.130-136.

Maori it took on a turangawaewae function. Bastion Point, as alluded to earlier, became a high-profile nation-wide example in 1977/78, but there are hundreds of locations and sites which inspire reverence in Maori. On the other hand, to some colonists the similarity of the landscape's shapes and spaces might have also re-kindled an ancestral remembrance of lost land links in their places of origin.³¹

Thus, to re-iterate, any inquiry into the alienation process under the Native/Maori Land Court system in the southern Kaipara and Tamaki Makaurau/Auckland needs to focus at an early stage on the native/Maori land block as a coherent unit. Historically this has always been the situation whether it was a title investigation at the Land Court in Te Awaroa (Helensville), Auckland or elsewhere after 1864, or any number of the raft of Commissions of Inquiry directed from the national capital – Wellington - at various times under various authorities (notably in 1891, 1908/9, 1928 and 1938), or any one of a number of burgeoning claims investigated under the aegis of the Waitangi Tribunal after 1985.

The southern Kaipara had some 118 or so blocks of land which were brought under the Native Land Court title investigative process; the area known as Tamaki Makaurau/Auckland had but two blocks: Orakei and Pukapuka. Any regional hierarchy of these blocks sorted in some order according to their significance in the inter-face of two opposing cultures must place Orakei at the apex, Pukapuka at some indeterminate mid-point and the southern Kaipara blocks somewhere (mostly unsorted) at the bottom. Historically the southern Kaipara blocks have no clear hierarchy. The criteria for ranking them has never been a matter of concern except perhaps at a local level. In summary, the prioritisation of Orakei at the peak of the hierarchy is a function of the cultural contest between tangata whenua and tauwi over utilisation of land resources. That confrontation continues in other forms to this very day. For Orakei, as for all land blocks in the hinterland of the post-colonial metropole, this struggle has had no closure.

Historically, the production of histories of the land alienation process generally focussed on a unit with a spatial, linear and temporal coherence which would give the inquiry a sharp and intelligible focus: the precisely defined block

³¹ G.M. Byrnes, *op. cit.*, pp. 1-26; G. Park, *Nga Uruora*, Wellington, 1997, pp. 1-6.

of land. Nowhere has this been more evidential than in the historical investigations under the Waitangi Tribunal Act 1975 (as amended in 1985.) This mode of inquiry squares appropriately with the rational, empirical, quantitative parameters of the European post-Enlightenment perception of the shape of the past and history-as-the-past. A large number of block histories have been created as an outcome of the claims process set in train by the enabling Treaty of Waitangi Tribunal legislation of 1985. Generally the model most favoured has been the one developed by historians commissioned by the Tribunal. Notable among these has been the geographic, diachronic, linear model developed by Evelyn Stokes and generally emulated with appropriate modifications by David Alexander, Claudia Geiringer, Don Loveridge, Fiona Small, Bruce Stirling, Philippa Wyatt and others. In this thesis a block history will be constructed or reproduced by the writer along these lines and then reflectively critiqued using the interrogative methodologies of the poststructuralist and postmodernist schools.

This investigative strategy must test the notion that history is too often essentialised to a grand narrative sweep in order to construct heroic (and mundane) patterns from what arguably might be perceived as mere contingency. In this thesis the focus is on the detail, on the minute; the imperial, the global is forsaken. A salutary heuristic strategy has been suggested by Hans Kellner, that 'the text of history is a text that can only be seen by "getting the story crooked".'³² This seeming heresy, this apparent cavalier disregard for the modernist canons of empirical representation requires explication. Kellner is postulating a line of enquiry which is premised on the concept that there are no narratives in the archival relics of the past fretting anthropomorphously for the time when they will be resuurrected and told. He explains:³³

Neither human activity nor the existing records of such activity take the form of a narrative, which is the product of complex cultural forms and deep-seated linguistic conventions deriving from choices that have traditionally been called rhetorical; there is no "straight" way to invent a history, regardless of the honesty and professionalism of the historian.

³² H. Kellner, *Language and Historical Representation: Getting The Story Crooked*, Madison, U.S.A., p. x.

³³ *ibid.*, p. vii.

In a nut-shell, the contention is that history is made; but underlying this contention are the further questions focussing on how it is made, who makes it and for whom it is made. At one extreme some elements of the postmodernist school stressing the linguistic turn would dissolve all history into the area of pure textuality in which it would have little or no identity; at the other extreme, there remains a substantial number of historians who cling optimistically to the ideal of the mimetic representationality of historical writing on its traditional terms of getting the story straight.

One of the strategies of this thesis will be to examine the land tenurial prescription that was largely devised by Judge Fenton and taken on board by successive colonial governments, until such time as the script (with its endless but ultimately confounding amendments) had run its course well into the twentieth century. It will mean scrutinising the texts that are grounded on this prescription, at looking honestly at alternative sources of history, located not in documentary archives but in the oral record of discourse and rhetoric; in short, to de-construct the white, colonial, Euro-centric bias of the written record.

In recent years the question of the co-existence of different, even incommensurable or competing historical narratives, each with its own (sometimes mutually exclusive) claims to legitimacy, has become a vitally important issue. The global politics of the post-colonial world increasingly demonstrate that the models of historical reality long taken for granted by the dominant hegemonic groups do not and cannot tell the whole story; may, in fact be part of an attempt (conscious or otherwise) to repress much of the story that they have not wished to contemplate. Indeed, as a number of recent philosophers of history have argued, the very conceptual possibilities of a 'whole story' has been thrown into doubt. Furthermore, as Michel Foucault has pointed out,³⁴

. . . the more History attempts to transcend its own rootedness in historicity, and the greater the efforts it makes to attain, beyond the historical relativity of its origin and its choices, the more clearly it bears the marks of its historical birth, and the more evidently there appears through it the history of which it is a part.

This Foucaultian injunction is a salutary reminder of the constraints that are often imposed authorially in the production of "texts." An interest in the discursive

aspects of cultural representation needs to focus not so much on the interpretation or reading of cultural texts but on their relations of production, on the 'how' as opposed to the 'why'. All historiography needs have a specification of discourse and rhetoric in order to pursue an agenda. The problems and constraints which determined these strategies require a finer scrutiny.

These, and other issues will be addressed in the examination of the seven block histories in this thesis. The goal is to examine whether it is possible to discern a typical, normative pattern in the relations of production of the "block history." The following explication of some of the processes which occurred at the cultural inter-face over land issues may provide some clues:

The transformation of the system of land tenure under the regime of the post-1865 Native Lands Acts into Maori freehold title upset two core principles. First, the over-riding authority of the chief (or chiefs) was removed, except where they could establish actual ownership similar to that of the other lesser hapu members. Individuals thus became exposed to the concept of land as a personally-owned marketable commodity. Traditional hapu infrastructure was radically transformed. Second, the new land laws changed customary title into the English legal model of tenancy-in-common. Fenton's famous judgment in the 1867 Papakura case laid a foundation for this revolution in tenure.³⁵ Title to the land would be granted by the Court and would pass on the grantee's death to those entitled by descent. Typically many of these were resident in other parts of the country. This over-turned the customary rule that turangawaewae also depended on occupation of land. The long-term outcome of this was that turangawaewae came to be associated with a Maori individual's enjoyment of status as a tenant-in-common of the larger traditional customary land unit. As a result of the imposition of tenancy-in-common, turangawaewae was transformed and over the years became dependent upon a Maori being listed on the memorial of ownership issued by the Court. Titles became crowded as the relatives of deceased kin took their place. Eurocentric perceptions arguably had expected Maori owners to conclude succession arrangements amongst themselves, and to opt in or out by selling their shares among themselves or to others.

³⁴ M. Foucault, *The Order of Things*, New York, 1973, p. 371.

The nature of Maori attachment to land was (and remains) different from European. One unexpected outcome of land title individualisation was that successive generations sought legally recognised inclusion in the title with the result that titles became more fractionated as the number of shareholders increased exponentially.³⁶ Inevitable divisions between large numbers of shareholders resulted in the emergence of opposing groups of sellers and non-sellers, which lead in turn to a process of partition and increasing fragmentation

Maori land development by Maori for Maori became increasingly difficult and almost impossible. In the lower Kaipara there are two cases on record but there were probably few others which were not recorded. The first case was reported on by the young Apirana Ngata when he was engaged on the colony-wide Stout-Ngata Commission 1908. On the Te Ketu block in the mid-Kaipara valley Renata Poata Uruamo ran a dairy unit. He was the titleholder of part of this block, Te Ketu A, which he farmed in conjunction with the adjacent block, Te Ketu B, which he leased from his three Tahana cousins.³⁷ The second case featured Uruamo's cousin, the Reverend Hauraki Paora at Pukeatua F near the late-nineteenth century Maori settlement of Rewiti, a few miles up the Kaipara river from Te Ketu. He had been schooled at the Wesley College at Three Kings in Tamaki Makaurau/Auckland in the last decades of the nineteenth century and introduced European-style farming practices on his return to the small (10 acre) whanau block of Pukeatua F at Rewiti.³⁸ The leasing of land in Orakei became a vexed multifarious issue between the original titleholders or their successors and the last traditional rangatira, Paora Tuhaere in the 1880s and 1890s. The scramble for individualised title following his death was propelled by the legal exigency that clear title could lead to straightforward negotiation to lease from which the lessee would benefit.

On the other hand, accumulation of partitioned lands by Pakeha with easy access to capital was facilitated by the discrete individual title system. One example investigated in depth in this thesis is that of none other than the Chief

³⁵ F.D. Fenton, *Important Judgments*, 1879, op. cit., pp. 19-20.

³⁶ S. Webster, 'Cognatic Descent Groups and the Contemporary Maori: A Preliminary Reassessment', *JPSoc*, 84, June 1975, pp.121-152.

³⁷ *AJHR*, G-1G, 1909, pp.1-3.

³⁸ *DNZB*, Vol. 2, 1993, p. 178: 'Paora, Otene.'

Native Land Court Judge Francis Dart Fenton's two sons and daughter at Paparoa (located in the mid-South Kaipara peninsula) in the 1890s and 1900s. Their share-buying strategy was very typical of a host of similar instances of this pattern in the southern Kaipara (and nationally.) In spite of any idealistic efficiency in identifying an individual's (or individuals') shareholding the Fenton family's acquisition of shares was drawn out over some fifteen years. Over this long period a wide variety of tactics – among them direct approaches to reluctant vendors among the ever-increasing successive titleholders, repeated applications to the Native Land Court through their lawyer, Edmund Thomas Dufaur, and offers to existing lessors were employed in the attempt to obtain complete freehold title to Paparoa.

A second example interrogated in this thesis is provided in the Pukapuka block (located immediately south of the high-profile Orakei block.) The Maori titleholders from 1890, the Mahuta whanau of Waikato, were absentee owners resident in the distant Waikato. Their lawyers, Earl & Kent quickly capitalised on this. By the second decade of the new century the land was sub-divided for settler suburban estates Pukapuka was given the gracious appellation 'Meadowbank.' The remorseless stamping of Europhonic names on the land continued the process of colonisation.

A third example is explored in the history of a third generation Orakei block, 4A2A. The history of this 10 acre (and a few perches) block demands a wider readership if only because it tends to be overshadowed by the high-profile Bastion Point 'trespass' action of 1977/78. It is included in this thesis because it brings to closure in Tamaki Makaurau/Auckland the prescriptive text laid down by Fenton in 1868/9. In a unilateral action the Crown compulsorily purchased in 1950 the last of the freehold Orakei Maori land blocks.

Thus the European-imposed defined land block over successive decades and generations became variously and differently significant for both Maori and Pakeha. With respect to the latter, it could arouse a variety of responses. One of the more significant social impacts was the assumption of 'quasi-seigniorial lordship' rights over the acquired tract of very recently freeholded Maori land. In the main text of the thesis details of some of the cases of Richard Monk at Paeroa,

Allan Kerr-Taylor at Waikoukou, the first Native Land Court Chief Judge Francis Dart Fenton at Tuparekura, Sarah McLeod at Aotearoa, the Fenton brothers at Paparoa, Sir Henry Brett at Aotea, Alfred Buckland at several contiguous Kaipara South Head properties: Te Kawau, Omokoiti, Paihawanui, Waipiro and Koharatahi, and Judge John Rogan at Makiri will be alluded to in more detail at various points in the thesis. At Orakei the Coates family took received notions of Eurocentric *droit de seigneur* with some seriousness. They were the lessors of some of the western Orakei land blocks from 1898. Their huge kauri farm-house on the highest point of the rolling volcanic land made a statement of control, of permanence. It had been built from timbers barged from Commercial Bay on the metropolitan foreshore and hauled up the hill from Onepu Whakatakataka Bay. No doubt local Maori were employed in the construction of this double-verandahed timbered gentleman-farmer's residence. The nephew and aspiring politician Gordon Coates was a frequent visitor in the 1910s and 1920s to 'Sudeley.'³⁹

A closer interrogation of the multiform texts that focus on the land alienation process under the aegis of the Native/Maori Land Court in the southern Kaipara and Tamaki Makaurau/Auckland will highlight the multi-faceted nature of that process. In an attempt to grapple with this challenge this thesis has been informed by the current discourse on the nature of historical representation. The following chapter will attempt to illuminate some of the main lines of this debate and specifically the strategy that has been deployed to re-present (and represent) some of the block histories.

³⁹ E. McDonald, 'Thomas Coates at Orakei', in *JAWHS*, 27, (October 1975), pp. 33-34; refer also to photograph of Coates' estate following p. 121.



Copy of PWD 5019
 List from Nat. Archives
 1877

Chapter 1 THEORETICAL PERSPECTIVES

*"For us the land is matrix and destroyer."*¹

The word 'history' has two current colloquial uses that are constantly conflated, and hence, confused. The first understanding amounts to a vague gesture, which asserts our belief in the uninterrupted actuality of past persons and events; the outcome of this is a cognitive construct to which we give the appellation 'the past'. In cognitive terms we, as individuals, even as a collective, can only experience this in an infinitely microscopic and fragmented fashion. The second understanding is as a specific name for a complex cultural artifact of language representing past events and asserting a truth claim as the condition of its speaker/listener, writer/reader contract. At this juncture it is necessary to distinguish the polarities of fiction and fact which has been cogently stated by Meir Sternberg:²

History-writing is not a record of fact – of what 'really happened' – but a discourse that claims to be record of fact. Nor is fiction-writing a tissue of free inventions but a discourse that claims freedom of invention. The antithesis lies not in the presence or absence of truth value but of the commitment to truth value.

It is necessary to draw a firm distinction between the verifiability of statements in a text and the operative governing conditions of the entire text. This is a position endorsed by our own historian, Alan Ward. Working at the intersection of present-day political and ideological imperatives and personal ethical and professional demands he states:³

I do believe that where evidence given by historians does genuinely conform closely to the tests which the [history] profession has developed over the last three centuries – involving all the tests of corroboration, authenticity, the measures of the relative weight or substance or import of a piece of evidence or statement made, all these things which we familiarly work with

¹ J.K. Baxter, 'Poem In The Matukituki Valley', in J.E. Weir (ed), *J.K. Baxter: Collected Poems*, Auckland, 1980, p. 86.

² *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading*, Bloomington, U.S.A., 1995, p.26.

³ 'History and Historians before the Waitangi Tribunal: Some Reflections On The Ngai Tahu Claim,' *NZJH* (24) 2; October 1990, p. 155.

and pursue each other closely about – where these things are applied we do get closer to an understanding of what happened, and of how people read what happened, both the contemporary actors at the time and others subsequently. If the research has indeed been exhaustive, and the wider contexts in which the evidence was created are known and understood, we get to concepts of truth.

Alan Ward cites Peter Novick's *That Noble Dream: the 'Objectivity' Question and the American Historical Dream*, in which there is a fluent, clear and broad definition of 'objectivity':⁴

The principal elements of the idea are well-known and can be briefly re-capitulated. The assumptions on which it rests include a commitment to the reality of the past, and to truth as a correspondence to that reality; a sharp separation between knower and known, between fact and value, and above all, between history and fiction. Historical facts are seen as prior to and independent of interpretation: the value of an interpretation is judged by how well it accounts for the facts; if contradicted by the facts it must be abandoned. Truth is one, not perspectival. Whatever patterns exist in history are 'found', not 'made'. Though successive generations of historians might, as their perspectives shifted, attribute different significance to events in the past, the meaning of these events was unchanging. The objective historian's role is that of a neutral, or disinterested judge, it must never degenerate into that of an advocate or even worse, propagandist. The historian's conclusions are expected to display the standard judicial qualities of balance and even-handedness. As with the judiciary these qualities are guarded by the insulation of the historical profession from social pressure or political influence and by the individual historian avoiding partisanship or bias.

Poststructuralist and postmodernist theory questions what history can be, both as a real past and as a discourse about it. These theoretical challenges to traditional history began as a crisis of representation raised by the late modernist and structuralist theorists. It now encompasses a bewildering array of inter-related pure, applied and human sciences, art forms and literature. Arguably, at worst, its paradoxical nature savours of infinite regress, infinite deferral, bordering on stasis.

Its excesses are legion, but stripped of these extravagances, it has a practical utility and imperative. Specific to the domain of history, the poststructuralist challenge posits a critical re-examination of the nature and meaning of the accepted canons. In the discipline of history these issues include:

- the extent to which historians can combine the two meanings of history as actual past and modern representation when all we know of language seemingly subverts that very goal.
- the relationship between on the one hand a realist theory of a correspondence between history as written and the actual past, and on the other hand a constructionist view of history as a form of representation.
- the difficulties in judging the accuracy of the modern representation of the past against a postulated original when it is, by definition, past.
- the epistemological problematic of representing and re-presenting the past as it was when it is re-created in present-day forms.

In short, they highlight the relationships among the nature of historical knowledge, the social bases of its production, and its implications in the power system in our society. These issues serve to underscore the meaning of history as an inter-play of the multiple strands of past and present. A shift towards this understanding enables a finer cognisance of Eliot's aphorism that history is a pattern of timeless moments.

Poststructuralist and multiculturalist theorizing also produced another crisis of representation: the authoring/and authority of the voice in histories and history. In denying the universality of viewpoints and knowledge, multiculturalism and poststructuralism repudiated the unified and usually omniscient viewpoint of traditional history-telling by a single mediator in favour of diversity of gender, race, ethnicity, and other social distinctions.

The representation of the other through voice and viewpoint also posed problems for the representation of history as textual construction. New forms of history-telling were felt necessary to incorporate more representative views and voices from the past as they were constructed as a representation of that past. The more diverse the representation of voices and viewpoints, the more fragmented traditional historical representation as discursive construction became. The poststructuralist and postmodernist movements encountered considerable resistance in the discipline of history both globally and locally but in the Aotearoa/New Zealand arena a few academics have used some of the

⁴ P. Novick, 1988, pp. 1-2.

poststructuralist tenets as a foundation. James Belich, Judith Binney, Miles Fairburn and Anne Salmond might arguably be included in this group. Holding fast to the traditionalist mast in the brave new world of other voices, alternative scenarios and significant others have been such historians as Harry Evison (the Marxist viewpoint) and Evelyn Stokes (as historical geographer.)⁵

To contest the established canons of the logical positivists and empiricists in the modernist school requires stoicism (and a large armoury). But the bold stance can prove worthwhile because it seriously critiques the philosophical - both ontological and epistemological - underpinnings of the nature of history. The poststructuralist and postmodernist attack is two-pronged: first, it questions whether and how historical actuality can ever be re-presented; second, it undermines both the authority (in both senses) and the objectivity of traditional history. The first challenge is driven by the imperative to question reality; the second by that of confronting authority.

Thus the explicit goals of the historical turn are at once both problematical and paradoxical. The admonition always to historicize - whether texts, persons, events or even disciplines - subverts the former (reality) in achieving the latter (authority), or vice versa. All this is more than merely an academic intellectual exercise. As a result, deconstruction particularly challenges the implied primacy of the first term over the second in such classic Western dichotomies or binary opposites as male/female, nature/culture, real/artificial, reason/emotion, self/other, public/private, signifier/signified, theory/practice, cause/effect, and truth/fiction. In line with the deconstruction for example of the last four oppositions, deconstruction critics proffer their own texts not as new truths and authoritative works but only, presumably, as tactical moves in a continuous discourse, one which has no closure.

⁵ Representative and accessible examples of their academic work include: J. Belich, *I Shall Not Die*, Wellington, 1995; J. Binney, *Redemption Songs*, Auckland, 1995; H. Evison, *Te Wai Pounamu*, Christchurch, 1996; M. Fairburn, *The Ideal Society and its Enemies*, Auckland, 1989; A. Salmond, *Between Worlds*, Auckland, 1997; E. Stokes, *Te Raupatu o Tauranga Moana: The Confiscations of Tauranga Lands; A Report For The Waitangi Tribunal*, Hamilton, 1997. A recent and typical example of the local academic discourse between the modernist and postmodernist camps is located in two academic journal articles: P. Munz, 'The Two Worlds of Anne Salmond in Postmodern Fancy-Dress', and A. Salmond, 'Antipodean Crab Antics', *NZJH* (28) 1, (April 1994), pp. 60-75, and pp.76-79.

Whether defined as unravelling the hierarchical oppositions in a text to show how the text ultimately contradicts itself, or as a more wide-ranging interpretation in which the latter-day critic supplements the lacunae, and pursues the duplicities and ambiguities of the text's language far beyond its apparent significations, the deconstructionist's suspicion of language as subversive of its own meaning allows the deconstruction of a text by exposing its dilemmas and ultimate illogic.

As foreshadowed in the introduction above one of the rationales underpinning this thesis is to rigorously test the Derridean dictum that there exists nothing beyond the text. It is arguably too facile to accept this at face value, that reality consists entirely of texts, which is surely not a position worthy of much attention anyway. Instead deconstruction privileges a specific principle of interpretation that it finds in what it constitutes theoretically as 'texts,' for example, as compared with 'books.' History, according to the Derridean model, produces a discourse or text by performing operations on other discourses called 'documents.'⁶

It is worth emphasising that the phrase was used on a number of occasions by Derrida. Arguably its best expression is contained in the following context:⁷

The text *affirms* the outside, marks the limits of this speculative operation, deconstructs and reduces to the status of 'effects' all the predicates through which speculation appropriates the outside. If there is nothing outside the text, this implies, with the transformation of the concept of text in general, that the text is no longer the snug airtight inside of an interiority or an identity-to-itself . . . but rather a different placement of the effects of opening and closing

Derrida's 'nothing outside the text' is above all a critique of academic idealist strategies of marginalizing everything outside consciousness. This is the mind-set of the Euro-centric Enlightenment which is deeply implicated in the arrogant imperialist strategies of the modernist era. Deconstruction introduces a materialist notion of differential textuality in order to save what is beyond the conventional 'literate' text: the exteriority, the outside, the other, et al, from the pretensions of a

⁶ M. Poster, 'Textual Agents: History at "the End of History"', in M. Poster, *Cultural History + Postmodernity: Disciplinary Readings and Challenges*, New York, 1997, p. 42-71.

⁷ J. Derrida, *Dissemination*, 1981, pp.35-36, emphasis in original.

⁸ *N.ZH.* 24 January 1998, p.F5, my emphasis.

colonizing concept of mind. My interpretation of this Derridean concept imagines a Euro-centric trap contained within its own cultural paradigms. Acknowledging these 'Chinese walls' allows the admission of other textual productions that are beyond the scope of the conventional Eurocentric perspective. In this way other 'texts' can be appropriated as a post-colonialist strategy in the interrogation of the colonial land records.

In a recent review of Anne Salmond's latest publication, *Between Worlds*, her colleague, Hugh Laracy comments:⁸

The records of the *past* are always *incomplete* yet *multivalent*, and the *meanings* to be *extracted* from them are an *open-ended discourse*.

His comment is a pointer to the much larger conundrum of the nature and function of history and historiography and their relation to the past itself. Specifically in relation to the topic of my thesis it has a potency which resonates down to the very epistemological and ontological roots of that cultural construct - history.

This thesis is premised on the foundational ideology that history is incontestably an intellectualised rationalised construct, and as a consequence, should be perceived as a complex verbal artifact, an elaborate cultural belief-system. The block histories that are presented in this thesis are generally modelled on the conventional examples produced by culturally sensitive Pakeha scholars such as Evelyn Stokes within the Waitangi Tribunal research system. This presentation will incorporate an on-going critique. This particular strategy under the rubric "reflexive contextualisation" is to establish whether this is the appropriate form of history. To explain more fully: this jargon term, 'reflexivity'- is used of a multivalent tool combining both self-conscious and self-critical theoretical and practical approaches; the result will hopefully be a text that refers to its own construction (to use a metaphor: *to leave the scaffolding in place*) and is reflective about it in an explicit manner. Indeed, some would argue that 'reflective' is a more appropriate term than 'reflexive'. Reflexive contextualisation is a rather recherché term used of a multivalent tool combining both self-conscious and self-critical theoretical and practical approaches; the

outcome will hopefully be a text that refers to its own construction and is reflective about it in an explicit manner.

The manner in which the treatment of the alienation process through the mechanism of the Native/Maori Land Court is organised and represented textually has more than a hint of postmodernist and poststructuralist novelty. It combines a conventional modernist rendition, having for example a standard narrative structure presented in a straightforward diachronic form, but with deconstructionist elements. At bottom, this outcome has been driven by the volume of available remaindered textual evidence. Ranked by weight, the evidential graphic ore-body of the Orakei experience is gigantic, that of the southern Kaipara relatively meagre.

The shape and form of the textualisation may be likened to a collage for it will embody the eclecticism of montage or pastiche. It will blur genres by crossing the customary boundaries of the history discipline between the philosophy of history and historical sociology, between oral and documentary history, between folk and professional history. There will be a self-conscious attempt to make explicit the interaction among the process of converting evidence into sources, the interpretation of events, circumstances and situations as historical, and the choice and nature of representation then and since. Given the complementarity of the two contiguous regions and their often common and shared dramatis personae, there will be an inter-weaving of evidential materials to point up patterns of similarity and difference. The experiences of Orakei do cast a very long shadow, but it is to be hoped that in dimming the strength of the strobe-light and sharpening the focus, the experiences of the southern Kaipara can be transformed into histories that resonate in their own illumination away from the probing light of the Orakei experience. A richer contextualised tapestry is the goal.

Poststructuralism and postmodernism are (as their names suggest) wide-ranging, deep-probing, variously articulated phenomena of the recent past (varying generally from three to four decades) which involve a theoretical reappraisal of the very foundations of modernity. These critiques have been historically unique in their intensity and extent as they range across the academic

discursive field, affecting some disciplines such as art and architecture more profoundly than others such as history. The general conclusion of this radical re-assessment of the human cultural condition is that there are not - and never have been - any real foundations of the kind alleged to underpin the experiment of the modern.

The central premise of the poststructuralist and postmodernist challenges are that mankind today lives in social formations which have no legitimizing, ontological, epistemological or ethical grounds for mankind's beliefs or actions beyond the status of an ultimately self-referencing, rhetorical dialogue. This challenge then arose from a perception that the contemporary experiment in social living known as modernity was, despite exceptional specific successes (into which category Aotearoa/New Zealand's utopian striving of the 1890s and 1930s/1940s might arguably be placed) a general failure. And the inevitable consequence of this disquiet/disaffection with the perceived disjointed and dysfunctional contemporary condition has been a re-examination of its antecedents - the past and the various accounts constructed about the past by historians.

The net impact of these interrogative probes has been a paradigmatic shift in the patterns of understanding the dynamics, contents and forms of the historical process and the whole modernist historical product has been made to appear as a self-referential problematic expression of both vested and divested interests, an ideological discourse giving little or no insight into the past. The extent to which this is applicable to the micro-histories predicated on the colonial record underscores the strategy of this inquiry. The reflexive mode of presentation deployed in this thesis is essentially an explicit articulation of the variety of forms implicated in the making and shaping of history.

Simplistically, 'reflexive' is to be more than self-aware; it is also to be self-conscious and self-critical in theoretical outlook and praxis. Reflexivity results in texts that refer to their own construction in that very construction process. In other words they are self-referring and self-reflecting. How to embody

reflexive contextualization in practice requires a fuller explication. It can be organised along the following strategic lines:⁹

- context
- rhetoric
- genre
- institutions
- politics
- history.

Each component in the above list complements and implicates some or all of the others. A kaleidoscopic myriad of patterns can exponentially be produced. At the risk of courting reductionism the following is offered as further explication:

- context is produced through the application of different methodologies depending on choices about rhetorical and social construction of reality, poetics and politics; the writer/critic needs to examine not only how the context is constructed within a text but also the degree to which and how the context of the historian's own time is inscribed in the text, e.g. Fenton's *Important Judgments*, 1879, c.f. Waitangi Tribunal's *Orakei Report*, 1987.
- rhetoric is a vast domain but at bottom the writer/critic needs to ascertain the explicit or sub-textual imperative or logic that drives forward the intelligible, complex prose sequence that we label 'narrative', e.g. the differing advocacy and viewpoint of the two texts quoted immediately above.
- genre involves an examination of the appropriate mode of presentation or form embodying the historicization process, e.g. the academic thesis, a populist pamphlet.
- institutions are the organised collective communities that can determine the content and form of the text, e.g. claimant groups, the university, the Waitangi Tribunal.
- politics involves an understanding of the extent to which the authority to represent historical and cultural realities is unevenly shared and oft-times

⁹ J. Clifford & G.E. Marcus (eds.), *Writing Culture: The Poetics and Politics of Ethnography*, Berkeley, U.S.A., 1986, p. 6.

contested, e.g. the claimants' ideological and practical positions c.f. the outcome of any settlement.

- history is the emplacement of the text created or critiqued in specific temporal and spatial locations e.g. the electronic and print media, the oral testimony in the land court, korero of the marae.

Arguably the above explication is ranked by its priority in the creative and critical hierarchy. A closer scrutiny of only the first of these is now necessary.

Contextualisation is an enormously complex term. The dangers of reductionism again loom large. Simplistically it can refer to two elements: it is a process of constructing context within constructed histories as they represent the past as history; and the contemporary context of historians as they write their histories. The term is rendered complex by the varying meanings and usages of 'text' and 'textualisation' as indicated above. In historical practice they refer to both sources from the past and to the synthesis the historian produces in the present. As indicated above the shape of this contextualisation will incorporate the cross-over strategies of collage, montage and pastiche.

In presenting a rather full account of the rationale driving the representation of this dissertation it is to be hoped that the pathway through these block histories is more clearly sign-posted and that the imperatives driving these stories are more self-evident.

One criticism of the concept of everything-as-textuality alluded to in the introduction may be seen as an: ¹⁰

infinite and indefinite, all-inclusive series of networks of inter-relation whose connections and boundaries are not securable because they are ruled by never-ending movements of linguistic energy,"

and may thus act as a transcendental of sorts. This is where Foucault's methodology, with its emphasis on temporal and spatial contexts outside the conventional privileged paradigm becomes crucial. Foucault's methodology is consistent with the Derridean project of de-centring, *différance*, and free play as he, too, rejects a representational/mimetic reconstruction of history. Foucault,

¹⁰ Refer INTRODUCTION, p. 2 (above); F. Lentricchia, *After The New Criticism*, Chicago, 1980, p. 189.

however reins in the Derridean project through his emphasis on textuality as contextualised by a set of rules that is always subject to historical transformation.¹¹

Foucault emphasizes the aspect of power in terms of how all texts (in the widest sense of all that signifies) change temporally and spatially. Thus because Foucault's emphasis on power leads to questions concerning which discourses have been historically privileged, this leads into the poststructuralist and postmodernist critique of subjectivity to observe that traditionally the discourse of conventional academic history has been represented within the discourse of the subject as Euro-centric, Pakeha and male. Contemporary histories not only deal with the de-centring of the present subject from the position of knowledge and meaning, but also with the interrogation of the past from ex-centric positions or alternative perspectives.¹² The theoretical ideology informing this thesis includes some of the more radical forces of current discourse on the nature of historical representation. Some of the strands that under-pin the current revisionism that constitute poststructuralism and postmodernism will be deployed in the explication of a rather avante-garde foundational strategy in which the very focus of this thesis- whenua/land - will be grounded. In short, the concept of the land-block-as-text will be explored. The nature of the theoretical link between poststructuralism/postmodernism and the land-block-as-text might be perceived as rather novel and requiring something of a paradigmatic shift in conventional representational parameters. A brief outline below will explicate this proposition.

This theory is grounded on the network of connections which mesh together some of the perceptions at the colonial (and post-colonial) cultural interface embracing the concepts of land, literacy, oracy, representation and power. Land is not simply a neutral referent, but an emotionally charged one. It resonates with notions of ownership, resource utilisation and social attachment. There are a large number of synonyms in the English language which give specific turns and tropes to the word 'land' in its proprietorial sense. Synonyms such as *territory*,

¹¹ J. Derrida. *Of Grammatology*, Baltimore, 1976., p. 19; M. Foucault, *The Order of Things*, op.cit., p. 157.

¹² L. Hutcheon, *The Politics of Postmodernism*, London, 1989, pp. 57-73.

terrain, home, property, estate, plot, block, grounds are but a few of the many words reminding us of the bonding attachment which land engenders.

In comparison, in te reo the single word *whenua* has meanings not only parallel to that of English but it has a further referent to the placenta. Maori in their cultural praxis of internment of the spent placenta in the soil reinforce this link. The Maori bond with land is resonant with emotional, spiritual and natural organic associations. Land and mother in Maori become synonymous. The connection in English between land and the birthing process is less explicit, less prominent, but not unknown.

Under these multi-layered tropes, land and the way it is organised as territory/property/block/plot by the colonial administration, require a close scrutiny employing some of the more practical (and sensible) postmodernist strategies. In such conditions the constructed or customary relations between land and ethnicity, land and capital assume the added dimension of land and power. Land not only functions as a revelation of the status quo but also as the site of challenge to the accustomed borders of power. In both cultural discourses land functions as an icon of stability and a medium of change. At the level of colonisation all facets of the signification of land were brought into play in a complex way. To select but one aspect of this inter-action, the introduction of a globally-organised capitalist system in the land-based production and marketing of agricultural and timber products into a traditionally-organised subsistence economy was met with a variety of responses ranging from enthusiastic welcome to belligerent resistance. The organisation of territory to fit the demands of introduced technologies, novel economic systems, changing social practices and competing cultural regimes becomes under postmodernist scrutiny an intellectual site: land and landscape become a discursive terrain. Moving this thesis further into the extremities of the postmodernist realm - specifically that of semiotic theory - land becomes a text; and thus by perpetual extension, the texts become grounds of contestation. The metaphor comes full circle.

Thus land has become a text, one that can be read, turning the conventional historical-geographical observation - metaphorically at least - into a theatrical activity or rhetorical discourse. If land in its static and dynamic shapes

can be rendered as spectacle the historical geographer's role under the rubric of land-block-as-text is no longer just that of the critical observer who classifies and objectifies phenomenon according to the traditional temporal geographic paradigm but as a response to cultural stimuli. The interpretation of land, and specifically of the Maori land block becomes less of a fixed empirical science and more of a social process, a cultural dynamic.¹³ To locate this process specifically, the work of archaeologist Wynne Spring-Rice in the domain of the southern Kaipara is a leading example.¹⁴

The precisely delineated native/Maori land block is one of the more significant legacies of the imperial imprint on the colonized cultural space.¹⁵ In the stamping of a surveyed template on the ground (and its symbolic representation in cartography, calligraphy, legal writ, et al) the colonizing power set in progress an accelerating acculturation process that heightened the territorial imperatives of both colonizers and the colonized. Possession (and its corollary, dispossession) of a land block was given validation through the hegemonic legal authority.

The broad outcomes of the tensions arising at the cultural inter-face of colonized and colonists are too well known to be repeated here; however its impact on the bonds that linked (and continue to link) land/whenua and people/tangata need to be further explored within the parameters of that discrete geo-cultural unit – the native/Maori land block. At bottom there is a need to interrogate why many issues relating to land tenure and management are framed within the administrative unit of the native/Maori land block. The colonial recording machinery focussed on the native/Maori land block. It explicated in a manageable shape and form what happened on the ground, what happened to the land, and who was involved. Fenton's land court machine probably exceeded even his expectations. In 1864 there were about 156,000 acres in customary title

¹³ Geoff Park, 1997, *op. cit.* (passim.)

¹⁴ W.M. Spring-Rice, *op. cit.* (passim.)

¹⁵ G. M. Byrnes, *op. cit.* (passim.)

in southern Kaipara; in 1871, only 35,000 acres remained; and by 1900 about 15,000.¹⁶

The national figures show a similar whirlwind shift from customary title to individual title to alienation by way of sale. In the words of local academic Sir Hugh Kawharu, himself a senior kaumatua of Ngati Whātua o Orakei a Kaipara, this was a devastating “engine of destruction.”¹⁷ Yet this opinion needs interrogation in order to establish the exact complicity of both colonizing agents and willing sellers as well as whether the land court system was any more ‘land-grabbing’ than any other agency of the colonial administration. Further, the specificity of the so-called ‘destruction’ needs scrutiny.

Hugh Kawharu is publicly silent on the impact in his own rohe. None of his publications are focussed on the alienation process in the southern Kaipara and Tamaki Makaurau. That it impacted heavily on the area of land held in individual title is unquestionable, but its outcome in terms of altering the socio-cultural foundations of mana tanagata is arguably much more complex and various.

A global-view of the evidence for the southern Kaipara reproduced in cartographic form in a recent article indicates that the area sold by Maori directly to the Crown between 1858 and 1864 more than equalled the area alienated in the same region of southern Kaipara under the land court regime from 1864-1908.¹⁸ Simplistically, the land court was no more a destructive mechanism than the single land purchase agents of the Crown. It is perhaps indicative of the special relationship between the Crown and Ngati Whatua that one of the first sales of court-title determined land was to Judge Rogan in 1864. He had served as the Crown’s land purchase commissioner for eight years prior to appointment to the Land Court.

A brief exploration of recent academic articulations of the nature of traditional Maori social organisation in relation to perceptions of land and resource utilisation provides some answers to the framing of issues relating to

¹⁶ My estimate drawing largely on M. Belgrave, 1997, *op.cit.*, pp. 23-36, and B. Stirling, 1998, *op. cit.*

¹⁷ I. H. Kawharu, *Maori Land Tenure: Studies of a Changing Institution*, Oxford, 1977, p.15.

¹⁸ Barry Rigby, ‘Pre-1865 Crown Purchases’, in R. Daamen, P. Hamer, & B. Rigby, *Auckland, (Part 1)*, Rangahaua Whanui Series, Waitangi Tribunal, 1996, pp. 154-55 & p. 208.

land tenure and management within the administrative unit of the native/Maori land block. The under-lying precept to be firmly grasped is that it is misleading to think of a particular iwi or hapu having had a particular defined territory in the Euro-centric sense. Pakeha, who arguably, either misunderstood or deliberately disregarded Maori political organisation in their search for authority figures, frequently mistook chiefs of high prestige for 'paramount' rulers of large districts; later, they found it convenient, especially where land deals were concerned, to treat Maori as divided into fewer and larger units. In each case they ignored the significance of whakapapa and the politico-cultural shifting of emphasis from one tupuna to another depending on links with whenua. The institutionalisation of land transactions (a feature of the increasing utilisation of the Native Land Acts for the determination of individual title to remaining customary land after 1865), which rigorously insisted on establishing clear title to units of defined land, petrified the previously fluid, dynamic interaction of hapu. Thus the closely delineated Maori land block emerged as a culturally significant emblem for both Maori in their quest for ancestral roots and for Pakeha in their search for a piece of land on which to graft their own territorial imperative.

Maori land rights traditionally were embedded in the social process, and land utilisation thus became a history of social relationships. One outcome of this process was that Maori traditionally mediated land use rights through whakapapa, which (confusingly for Pakeha) were re-called or remembered according to the site. Or putting it more plainly, tupuna could be invested with a retrospective significance according to perceived contemporary political priorities. Thus a territorial unit was created out of the misunderstandings of the ignorant and manipulation by the unscrupulous – Maori and Pakeha alike. The official record of Maori social organisation and its territorial rights thus distorted and blurred the reality.¹⁹

Historically, the production of histories of the land alienation process generally focussed on a unit with a spatial, linear and temporal coherence which would give the inquiry a sharp and intelligible focus: the block of land. Nowhere has this been more evidential than in the historical investigations under the

¹⁹ G.M. Byrnes, *op. cit.*, (passim); A. Ward, *National Overview*, 3 Vols., 1997, (passim.)

Waitangi Tribunal Act 1975 (as amended in 1985.) This mode of inquiry squares appropriately with the rational, empirical, quantitative parameters of the European post-Enlightenment perception of the shape of the past and history-as-the-past.

A large number of block histories have been created as an outcome of the claims process set in train by the enabling Treaty of Waitangi Tribunal legislation of 1985. Generally the model most favoured has been the one developed by historians commissioned by the Tribunal. Notable among these has been the geographic, diachronic, linear model developed by Evelyn Stokes and generally emulated with appropriate modifications by David Alexander, Claudia Geiringer, Don Loveridge, Fiona Small, Bruce Stirling, Philippa Wyatt, and others. In this thesis a block history will be constructed or reproduced by the writer along these lines and then reflectively critiqued using the interrogative methodologies of the postmodernist school.

Any poststructuralist or postmodernist treatment must arguably interrogate the notion that history is linear, structural, progressive and essentialised to a grand narrative sweep. In this thesis the focus is on the detail, on the minute. The imperial, the global is forsaken. Yet in so doing, is this act of recognising the local, the small and the provisional a gratuitous and specious acknowledgement of a postmodernist viewpoint? Does the focus on the micro-narrative of the block represent but an interim stage in the progressive writing of a postmodernist account of the alienation of land blocks; or does it become, ipso facto, a succession of partially discontinuous frameworks of temporal and spatial eco-contexts; or worse, an antiquarian pastiche? The interrogative searchlight of some positive qualities of the poststructuralists and postmodernists will be employed in the deconstructive methodology of this thesis. A salutary heuristic strategy has been suggested by Hans Kellner, that 'the text of history is a text that can only be seen by "getting the story crooked".'²⁰ In recent years the question of the co-existence of different, even incommensurable or competing historical narratives, each with its own (sometimes mutually exclusive) claims to legitimacy, has become a vitally important issue.

²⁰ Refer INTRODUCTION, p. 23 (above.)

The global politics of the post-colonial world increasingly demonstrate that the models of historical reality long taken for granted by the dominant hegemonic groups do not and cannot tell the whole story; may, in fact be part of an attempt (conscious or otherwise) to repress much of the story that they have not wished to contemplate. Indeed, as a number of recent philosophers of history have argued, the very conceptual possibilities of a 'whole story' has been thrown into doubt. Furthermore, as Foucault has pointed out:²¹

The more History attempts to transcend its own rootedness in historicity, and the greater the efforts it makes to attain, beyond the historical relativity of its origin and its choices, the more clearly it bears the marks of its historical birth, and the more evidently there appears through it the history of which it is a part.

This Foucaultian injunction is a salutary reminder of the constraints that are often imposed authorially in the production of "texts." An interest in the discursive aspects of cultural representation needs to focus not so much on the interpretation or reading of cultural texts but on their relations of production, on the 'how' as opposed to the 'why'. All historiography needs have a specification of discourse, namely, who speaks? who writes? when and where? with and to whom? And under what institutional and historical constraints?

This somewhat lengthy exposition has hopefully thrown some light on the nature of the historical problem, specifically in relation to the cultural interface over colonization (land and settlement) issues. Further, it is the aim of this thesis that a closer interrogation of the multiform texts that focus on the land alienation process under the aegis of the Native/Maori Land Court in the southern Kaipara and Tamaki Makaurau/Auckland will highlight the multi-faceted nature of that process.

These and other issues will be addressed in the examination of seven block histories in this thesis. The goal is to examine whether it is possible to discern a typical, normative pattern in the relations of production of the native/Maori land block history.

²¹ M. Foucault, *op. cit.*, p. 371-375.

Chapter 2

FENTON at ORAKEI: the opening of the narrative

Some 21 years have passed since the high-profile media-grabbing 506 day protest during 1977 and 1978 at Bastion Point by some of the Orakei Maori Committee Action Group (and its public supporters) against proposed Crown initiatives for the development and resource utilisation of some 60 acres of 'uncommitted' Crown lands at Orakei. There is probably little doubt that this unprecedented concerted public demonstration was a significant contributing factor in hastening deliberative and consultative processes between the Crown and local Maori authorities in an attempt to resolve some of the issues arising from those Crown initiatives. Yet the Bastion Point twentieth anniversary celebrations at Orakei in early 1998 were a low-key affair, attracting minimal public attendance and no publicity or media interest. A television documentary produced and directed by film-maker Sharon Hawke (daughter of the leader of the Orakei Maori Committee Action Group, Joe Parata Hawke) first screened in June 1999 on TV1 presented a selection of recorded interviews with participants and witnesses from a number of viewpoints of the key players, both protagonist and antagonist. It was a typical example of the process whereby the past is constantly re-fashioned and re-moulded for present-day consumption, of the ways in which the past-as-history is constantly re-presented and of the ways in which rhetoric and advocacy can under-pin the history-making project. The dynamics of present-day political imperatives determine the shape in which the past should be cast.

One of the imperatives driving the form and content of that television documentary was that the received public understanding of the relationship of Ngati Whatua to the Crown should be perceived as one whereby the tangata whenua of Tamaki Makaurau/Auckland should be seen as generous and accommodating hosts who welcomed Pakeha to settle and trade in their midst. It is a present-day driving ideology of Ngati Whatua that a special relationship exists between Crown and tangata whenua forged out of necessity for mutual benefit but systematically betrayed by one party. In this wasteland of broken dreams and unfulfilled promises a community of resistance persisted. From this well-spring of discontent and dispossession in 1978 emerged a rampant

demonstration of anger. Reconciliation and rapprochement eventually ensued. The special relationship was restored. The crucible in which that perceived special relationship was forged was the historic 1869 judgment of Fenton.

This is why the emphasis on the role of Ngati Whatua in the history of Auckland is given exalted prominence in the new cultural facility at the Auckland City Library; why the publicity surrounding the venue of the America's Cup at the Viaduct Basin is but a further reinforcement of the nexus which inscribes a bond between named tangata whenua and tauiwi, manuhiri, et al; and why the links between Ngati Whatua o Orakei and the re-development of the railway lands -'the gateway to Auckland'- is crucial. In these ways the histories of Ngati Whatua, of Orakei and the wider temporal realm and space of Tamaki Makaurau/Auckland conflate and subsume each other.

Only the more exacting strictures of the historian's craft will demonstrate that the presence of some Te Taou and Ngaoho peoples (who were some of Apihai's peoples) at Okahu and Horotiu (Queen Street) around 1840 was fortuitous; and further, that Fenton's judgment recognised the co-incidence of that moment with the declaration of British sovereignty on 21 May 1840. In Auckland the 'artificiality' of the 1840 rule had less significance than in other areas such as Wellington and other central districts where there was a considerable amount of enforced Maori migration in the few months immediately preceding 1840.

It is too easily forgotten that other iwi and hapu have had at different times significant occupancy of the Tamaki Makaurau isthmus prior to the proclamation of British sovereignty on 21 May 1840: the peoples of the Hauraki, called very generally Ngati Paoa had had a very long history of land and sea resource use in areas adjacent to the Tamaki River and the adjacent islands of the Hauraki seas; Waikato had had a long history of intermittent occupancy (and accomodation with their Waiohua/Te Taou neighbours) of the northern, eastern and southern littorals of the Manakau Harbour, as far north as the fertile triangle between Maungawhau (Mt. Eden), Remu-era/wera (Mt Hobson), and Titiko-Puke (Mt. St. John); and in the vastness of the western Waitakere hills there dwelt small groups of a war-decimated iwi called Kawerau.

The entirety of the Tamaki Makaurau isthmus with the exception of the unsurveyed peninsula loosely called Orakei lying to the west of the 1841 block sold by Ngati Paoa to the Crown (which was developed as the Christian prosyletizing base known as St. John's for the Church Missionary Society's activities), had been alienated to the Crown or private settler interests by the late 1860s. Into this situation came the newly appointed Chief Judge of the Native Land Court, Francis Dart Fenton. It has already been noted above that he had an agenda and the following account specifically explicates how he fitted the testimony of the claimant groups to his own (and the colony's) model.

The Fenton Judgment 1869

The story of Orakei remains an open-ended one. Given the current perception that the 'Orakei issues' which attracted attention for over a century have been laid to rest it is perhaps opportune to re-examine the texts and the contexts of the landmark Fenton judgment. Central to the issues was and is the existence of a considerable tract of reserved real estate close to the heart of the settler metropolis. It forms a significant focus both real and figurative in the spatio-cultural interface of settler and tangata whenua.

There are two texts which are pertinent to the Fenton judgment; they are the judgment itself and the minutes of the Court sitting out of which the judgment arose; the one is complementary to the other. There are at least two contexts in which the Fenton decision can be placed. The first is the case-law context. The second is the current political context; and in both of these Fenton is a key player (if not *the* key player), a dual role about which he later had no false modesty.

The Genesis of the Orakei Judgment

The text of this document bears the distinctive imprint of its author, Francis Dart Fenton, Chief Judge of the Native Land Court from the time of its establishment on 30 October 1865 to inquire into and determine native land title in the jurisdiction of the colonial government. Although it was not formally 'published' until 1879 in a collection of important judgments of the Native Land and Compensation Courts it bears the date-line '22 December 1869'. The year '1869' is a typographical/clerical error. The date should be '1868'.

The minutes of the Orakei Native Land Court Minute Book attest that the interlocutory judgment was delivered on 22 December 1868.¹ Further, both daily newspapers, the *New Zealand Herald* and the *Daily Southern Cross* reported that the “Judge delivered a long and elaborate judgment which occupied two hours.”² It is assumed that the judgment was printed in some form or other.

The minuted record states “for judgment see papers.” The *New Zealand Herald* and *Daily Southern Cross* carried a summary of the judgment.³

The Legal Context

As alluded to in the introduction the interlocutory judgment declared by Fenton on 22 December 1868 and the consequent award of title on 9 February 1869 were delivered in a very new field of judicial operations. The Native Land Court had effectively come into being *ex nihilo* on 30 October 1865. Fenton informed a Native Affairs inquiry in 1891 that he had perceived that the new Court should set out to return to first principles, in this case what he conceived of as:⁴

the original principles of equity, [and that this must happen] until you have established a common law; ... the Native Land Court must respect its own, or you will never build up a system of common law.

Although the newly created Native Land Court was essentially a Court of Record (a legacy of the obsessive Anglo-Roman legal tradition of property conveyancing) it was a creature of, and dependent upon, statute. At the time of the Orakei interlocutory judgment and award of title, the two statutory keystones were the 1865 and 1867 Native Lands Acts. It is arguable that Fenton had some input into the formulation of the 1865 legislation;⁵ but whatever the provenance of that statute, Fenton seemed intent on putting his own distinctive stamp on its, and its successors', judicial interpretations.

The following section presents a concise outline of the objectives of the 1865 Native Lands Act. The legislation was driven overtly by expediency, as the Court was to have four interlocking, practically oriented purposes. The need to honour the Treaty of Waitangi which had been incorporated into the little-used

¹ OMB 2: p. 355, my emphasis.

² *NZH*, 23.12.1868, p. 6, iii.

³ OMB 2. p. 356; *NZH*, 23 December 1868: p.6, iii; *DSC*, 23 December 1868: p.4, ii.

⁴ *AJHR*, 1891, Sess. II, G-I, p.145.

⁵ B.D.Gilling, ““Engine of Destruction”? An Introduction to the History of the Native Land Court”, *IUWLR*, 24, 1994, pp. 124-5.

1862 Act was ignored and replaced by aims solely to expedite the conforming of Maori custom to English law and thus the easier acquisition by settlers of Maori land.

The first new purpose was: ⁶

to amend and consolidate the laws relating to lands in the Colony which are still subject to Maori proprietary customs.

This was necessitated by the multiplication of legislation relating to dealings with land belonging to Maori since the Treaty of Waitangi had guaranteed their continued possession and use of it.

The second new purpose was to: ⁷

provide for the ascertainment of the persons who according to such [Maori proprietary] customs are the owners.

Such a process was an essential precursor to any move to anglicize Maori land ownership and to permit direct European purchasing - the proper owners under Maori land ownership had to be determined. Partly, this was to ensure fairness to those who did have rights; and partly, it was an attempt to forestall further outbreaks of warfare occasioned by purchasing from those with inferior rights - the ghostly precedent of Waitara haunted the legislators.

The third purpose was: ⁸

to encourage the extinction of such proprietary rights and to provide for the conversion of such modes of ownership into titles derived from the Crown.

Thus, the Court having determined the traditional owners, the extinguishment of those rights and the conversion of them to a type of title which could be recognised and dealt with by the British-style legal system, namely, a conversion to titles held by individuals from the Crown by virtue of a Crown grant would achieve two objectives. The first would be that ownership of land would derive from the Crown alone, an assertion of the Crown's ultimate sovereignty. Second, it would permit land to be purchased more readily by either the Government or private settlers who could deal with individual proprietors instead of a relatively amorphous and undifferentiated group of tribal owners.

The fourth purpose was: ⁹

⁶ NZ Native Lands Act 1865: Preamble.

⁷ Ibid.

to provide for the regulation of the descent as nearly as it can be reconciled with native custom.

This allowed for ownership, once having been determined by the Court, to be clearly retained and recorded to facilitate subsequent dealings.

As the Court was operating in a novel situation, Fenton aimed to create a body of case law for its own guidance, rather than adhere strictly to such English case-law as it could manage to relate its work to. In evidence given by Fenton to a Parliamentary Committee of Inquiry in 1891 he stated that it was the objective of the 1865 and 1867 Land Acts that the Court's judges should return to first principles, in this case what he conceived of as:¹⁰

the original principles of equity, [and this must happen] until you have established a common law. The Native Land Court must respect its own precedents, or you will never build up a system of common law.

In his singular way Fenton's vision was to entrench a system of clearly defined multiple ownership of native land by individuals.¹¹

Initially, little happened in this new Court, its members being almost identical with, and occupied in the Compensation Court, set up in 1863 to deal with claims for compensation by "loyal" Maori who had had their lands in Taranaki, Waikato, the Bay of Plenty and East coast regions confiscated as punishment for "rebellion." Fenton, as one of many judges involved in both Courts. was, for example, in New Plymouth for two months in mid-1866 adjudicating in the John Lewthwaite, Oakura, and Waitara South Compensation claims. Again, in April and May 1868, Fenton was in Christchurch and Dunedin for Native Land Court sittings.¹²

One of the key principles developed by the judges of the Compensation Court was the rule that the Court would consider only the state of things obtaining in 1840, at the time of the Treaty of Waitangi and the assumption of nominal control by the British Crown. This principle seems first to have been articulated in

⁸ NLA, 1865, op. cit.

⁹ Ibid.

¹⁰ *AJHR*, 1891, Sess. II, G-I, p.55.

¹¹ B.D.Gilling, op. cit., pp.125-126.

¹² Fenton, 1879, op. cit.,(passim); I.H. Kawharu, *Maori Land Tenure*, op. cit., p.15; B.D.Gilling, *ibid.*, p.115.; M.P.K. Sorrenson, 'The Purchase of Maori Lands, 1865-1892', M.A.Thesis in History, University of Auckland, 1959, pp 1-24.

detail in mid-1866 in the Compensation Court's judgment on the Oakura Block.¹³ The very artificiality of the 1840 Rule appears to have led to inequitable decisions in both Courts, even if it be admitted that it was but an instrument for establishing the writ of British law and order.

A second significant rule laid down by Fenton in the Compensation Court cases was that only evidence actually presented in Court could be admitted; the Court would not assume an inquisitorial role and search for its own evidence.¹⁴

A third rule laid down by Fenton (in the Papākura case heard in the Compensation Court in 1867) had a pervasive impact on the rights of succession to the newly created title. The outcome, both short- and long-term was the multiple fractionation and fragmentation of Maori land. It is a universally held opinion that probably no other legal interpretation had a more divisive socio-economic outcome for Maori.¹⁵

The Text of the Judgment

As indicated above the judgment is immediately based on the evidence or korero given orally in Maori and English by approximately fifty persons, both Maori and European intermittently over three months, from 20 October to 22 December 1868, and occupying twenty seven days, (twenty two of which were consecutive) and translated and transcribed into English by the clerks of the Court.¹⁶ The minuted documentary record of the Court's 1868/9 investigation into the Orakei title runs to 594 pages.¹⁷ This then is the substantive testimony on which Judge Fenton would have constructed his own experientially-driven opinion. A critical reading of all the evidence as presented to the Court against the text and spirit of the judgment shows an approximate concordance of the two. The judgment distils and essentialises the avalanche of sworn testimony, and in so doing, gives its own slant and coloration to the evidence.

The Court record would suggest that Judge Fenton's judicial decision was fair and reasonable, but given his later track-record of contrary and obstinate interpretations of the mercurially shifting native land legislation, the degree and

¹³ *AJHR*, 1866, A13, p.4; Fenton, 1879, *ibid.*, p.7.

¹⁴ Fenton, 1879, *ibid.*, p.86; A. Ward, *National Overview*, Vol. 1, 1997, p. 220.

¹⁵ Fenton, 1879, *ibid.*, pp.19-20.

¹⁶ *NZH*, 23 December 1868, p. 6 iii.

¹⁷ OMB 1 and 2.

extent of any personal bias in favour of one claimant over another must remain problematic. Thus, given that there is a specific tranche of archival material which broadly corroborates the basis for the judgment and award of title in favour of the successful claimant group - Ngati Whatua - it would be an interesting academic exercise to investigate the wider Orakei record to determine what sub-textual or inter-textual material that might have impacted on or influenced Fenton's 1869 Orakei judgment.

Text and Context

A thorough analysis of the evidential record is necessary in order to make some clear-minded sense of Fenton's judgment.

The schedule of witnesses, both Maori and Pakeha, at the Orakei title investigations, incorporated into the text below, gives the tribal identification of the native witnesses as proclaimed in self-appellation. In the cases of the identification stated in the names of the Pakeha witnesses listed in the schedule, I have used intra-textual and/or inter-textual data, where there was no self-appellation given.

It is commonly accepted that the judgment was driven principally by the interpretations constructed by Judge Fenton on the basis of the evidence submitted at the Orakei title investigations before the Native Land Court in Auckland in the last months of 1868. This assumption can only be tested by an analysis of the judgment against the body of the recorded evidence. The single remaining extant record of the Court hearings is in the Orakei Native Land Court Minute Books Nos.1 & 2, encompassing about 590 pages of written evidence. In its turn, the accuracy of this record is a highly problematic one. The two local newspapers of the day, carried limited reports of the hearings on an occasional basis, and thus have a limited corroborative value. A close scrutiny of all three minuted records shows an approximate concordance. But over-riding this immediate evidence there remains the point that this is the record of a colonial court mediated through a Euro-centric mind-set. The thoughts and feelings of the participants must remain forever lost and any attempt to second-guess them pure speculation and imagination. This would require a shift outside the domain of the political and textual paradigm in to the imaginative field of poetics and virtual reality.

The Problematic of Which Iwi or Hapu

One of the more perplexing aspects of any perception by one cultural group of another is the basis on which tribal affiliations are claimed, and the variety of appellations that can be given to any one socio-political group. Names wax and wane, groups are conflated and subsumed, generations are lost or stolen.

In the southern Kaipara for example there were a number of indigenous peoples who called themselves Mangamata. The name today has little currency or usage outside the small number of Mangamata descent or affiliation who are more generally grouped under the 'umbrella appellation' of Ngati Whatua. Mangamata is a 'lost' appellation of little general currency.¹⁸ A not dissimilar situation exists throughout Aotearoa/New Zealand. A recent publication by Angela Ballara, *Iwi: the dynamics of Maori tribal organisation from c.1769 to c. 1945*¹⁹ provides an interesting historical account of this process and is a useful reminder that appellations and the under-lying socio-political forces that give rise to the individual's choices of iwi and hapu affiliation are a metaphorical minefield for tauiwi. Appellations are chosen for a raft of reasons, not the least of which is political appropriateness. Perhaps even Judge Fenton sensed this when he labelled one Ngati Whatua ancestral component grouping as Ngaoho 1, and a descent group who re-emerged several generations later as Ngaoho 2.²⁰

Another grouping called Te Taou was (and arguably is still perceived) as the ascendant and successful hapu in Tamaki Makaurau/Auckland and the southern Kaipara. Its name has of course an acceptable connotation amongst its supporters and friends. On the contrary hand, the converse remains true amongst those of Kawerau, Mangamata, Ngaoho and other affiliations subsumed within or marginalised by this currently politically dominant hapu.

Ngaoho has been revived as a nomenclature for some Waoihua/Ngaiwi descent groups in Tamaki Makaurau/Auckland challenging the Te Taou hegemony and wishing to privilege the links with Waikato. A modern-day Fenton would perhaps distinguish them as Ngaoho 3.

The criteria for socio-political affiliation was normatively grounded in social constructs premised on genetic or biological provenance, even allowing for

¹⁸ M.W. Spring-Rice, 1996, op. cit., pp.10-18; and A Ballara, *Iwi*, 1998, op. cit., p.72.

¹⁹ Ballara, 1998.

²⁰ Fenton, 1879, op. cit., p. 59.

the ‘whangai’ adoptive social praxis widespread in traditional Maori society. Membership or affiliation with a particular hapu or iwi was thus based on a mix of biological, social, economic and historical factors. Often the identity that one proclaimed was one designed for political reasons to satisfy the eye of the beholder and/or ear of the auditor. And such praxis was a sophisticated art in a society traditionally driven by oral/aural etiquettes and reciprocities. In the colonial world the auditorium of the Court had a theatre not dissimilar from that of the marae.

The Minutes: The Self-Appelations of All Witnesses - Maori & Pakeha

This textual analysis of the minuted record continues with an examination of the tribal identities that were self-proclaimed by those who gave evidence.

Page	Name of Person	Iwi/hapu.
OMB 1:		
1-177:	MAORI:	
10-16	Apihai te Kawau	Te Tao [sic], Ngaoho, Uringutu. Te Ao [sic.]
17-37	Paora te Iwi	N. Tiata [Te Ata?]
37-57	Hori te Tauroa	N. Tiata, N. Paoa.
57-62	Wi te Wheoro	N.Naho/u [?] of N. Mahuta.
62-71	Eruera Patuone	[?]
72-113	Heteraka Takapuna	N. Paoa.
113-123	Haora Tipa	N. Hura of N. Paoa.
124-127	Kaitu	N. Hura; Patukirikiri of N. Paoa.
127-133	Hoterene Taipari	Wonaru [?] /Nonaru [?] /Nanaru [?]
134-143	Tamati Otatu	N. Hura of N. Paoa.
144-148	Koka te Muri	N. Matikiwhao of N. Paoa.
149-150	Harata Patene	N. Hura of N. Paoa.
150-151	Rawiri Tukurua	not present
151-153	Pita Taurua	Patukirikiri of N. Paoa.
154-157	Timoti Tatairu	Whakatohea.
157-160	Wiremu Kepa	N. Paoa.
160-165	Henare Te Paora	N. Paoa.
165-169	Matenga Ngaupara	N. Atiawa of N. Whanaunga.
169	Rawiri Tukurua	ill.
169-172	Mohi te Puatau	N. Pari; N. Hura of N. Paoa.
172-175	Hemi Kaihi	N. Hura of N. Paoa.
175-177	N.W-[?]-atanahira[?]	N. Maru of N. Paoa.
177-190:	PAKEHA:	
177-181	Charles Marshall	No explicit identifiers. A Pakeha-Maori, arrived NZ 1830. [Trader, Waikato Heads]
182-186	Chas. de Thierry	Licensed Interpreter
187.	Saml. J. Edmonds	No explicit identifiers
188-190	Jas. Mackay. Junior	Commissioner, Crown Lands
190-220:	Maori re-calls.	

221-233	Warena Hengia	Ngaoho, Te Tao[sic].
OMB 2.		
28-35	Ruka T. [sic]	N. Tipa of Waikato.
36-55	Matire Tuha	N. Rehia of Nga Puhi.
55-62	Te Hemara / Te H. Tauhia [?]	N. Rango/Rongo [?] of Mahurangi.
63-73	Pairama Ngutahi	Uruahau/Uriohau [?].
77-151	Paora Tuhaere	Te Tao [sic], Ngaoho, Uringutu.
152-159:	PAKEHA:	
152-159	William White	Wesleyan Missionary; arrived NZ . 1822.
159-239:	MAORI:	
159-173	Paramena	N. Whatua. Taou, Uringutu.
173-176	Watarauhi Tawhia	Kawerau.
177-193	Te Waka Tuaea	Taou, N. Rongo.
193-199	Paraone Ngaweke	N. Whatua. Mangamata.
199-220	Eruera Te Paerimu	Uringutu, Waiohua.
220-239	Te Hapimana	Te Haua. N. Pari of Mahurangi.
239-250:	PAKEHA:	
239-250	Geo. Graham	Engineer
250-262:	MAORI:	
250-259	Eruera Tionga	N. Timaho [?]
260-262	Papa Tare	Te Rarawa.
262-268:	PAKEHA:	
262-268	John Shearer	Master Mariner
269-281:	MAORI:	
269-281	William Te Reweti [PT's elder brother alias W.R. te Whenua] " I am father of 9 children."	Taou, Ngao [sic], Uringutu.
281-295:	PAKEHA:	
283-289	John Robertson	Hotel Keeper
289-293	Geo. Smith	Superintendent, Govt. Stores
295-308:	MAORI:	
	Wiremu Watene Tautari. [the son of Ngawaka Tautari; "one person, with 2 names; or 2 persons with separate names" in the NLC's 1869 Award of Title.]	Taou.

309-311: 309-311	PAKEHA: James George	No explicit identifiers
311-314: 311-314	MAORI: Aperahama Te Karu [Uruamo?]	Te Taou.
314-318: 314-318	PAKEHA: John Jermyn Symonds	Resident Magistrate, Onehunga.
318-325: 318-325	MAORI: Te Reweti Tamahiki [half-brother of Paora Tuhaere & Wiremu Reweti; named in honour of his deceased cousin, Te Reweti Tamaki, the son of Apihai Te Kawau who signed the Treaty & invited Hobson to Ak'ld, & who died young in 1842.]	Taou, Ngaoho, Uringutu.
326-333: 326-333	PAKEHA: Robert Maunsell	Archdeacon, C of E, Parnell.
333-340: 334-340 342-345	MAORI: Te Keene Tangaroa Tamati Otatu Tangiteruru	N. Whatua. Te Mangamata. [?]
345-346: 345-346	PAKEHA: Chas. O. B. Davis	Licensed Interpreter.
349-350: 349-350	MAORI (re-call) Apihai Te Kawau (re-call).	

The Judgment

The text of the Orakei judgment has a length of some 44 pages, most of it given over to a recapitulation of the history of the Tamaki Makaurau isthmus, *as perceived in the understanding of the Chief Judge* following the presentation of oral evidence by the two claimant groups, the four co-claimant groups and their respective counsel.²¹

The opening section of the judgment briefly listed the names of the claimants, and the tribes (on the behalf of whose members the named claimants are also claiming.)²² The second section was given over to Fenton's comments -

²¹ Fenton, 1879, op. cit., pp. 57-81, (my emphasis.)

²² Ibid., p. 57.

often acerbic, always opinionated - as to the conduct of the case, and the presentation, procedures, and protocols of the contending representations.²³ The third section, as stated above, was Judge Fenton's interpretation of the history of the Tamaki Makaurau isthmus from before earliest times up to 1845.²⁴ This section was divided into two parts: the first part outlined the history up till the occupation by Te Taou about 1741;²⁵ the second part presented a chronological account of the history over the hundred-odd years leading up to the proclamation of British sovereignty on 21 May 1840.²⁶ The remaining (and closer) years up to 1845 are reduced to a dismissive footnote as being of "little importance" in the "history of our case."²⁷ Intrusive between the two sections is a vigorously phrased judicial opinion concerning Takapuna's evidence regarding Ngati Paoa's "permanent pa" on Mount Eden.²⁸ In the fourth and final section Fenton outlined his opinion on the claims and counter-claims of the two claimant groups - Apihai te Kawau as chief of three Ngati Whatua hapu, Ngaoho, Te Taou, and Uringutu; and Heteraka Takapuna as chief of Ngati Paoa; and the four groups co-claimant with the second claimant.²⁹

Judge Fenton in his judgment considered first the cases of the groups whose claims were admitted but provided insufficient proof of their claims to Orakei. In his opinion, the four co-claimants - Hori Tauroa and Paora Te Iwi on behalf of Ngatiteata and Ngatimatamaoho, and Wiremu Te Wheoro and Hawira Maki on behalf of Ngatinaho and Ngatipou respectively - had "no interest, according to Maori custom, in the Orakei estate."³⁰

The claim of Heteraka Takapuna on behalf of Ngati Paoa was considered with some careful judicial argument. Judge Fenton firstly opined that there was no incontrovertible evidence that:³¹

the several things brought forward to support the joint title of Heteraka and Ngatipaoa had any connection with each other, [nor any] sequence or concatenary dependance.

²³ Fenton, 1879, op. cit., pp. 54-57.

²⁴ Ibid., pp. 57-81.

²⁵ Ibid., pp. 57-63.

²⁶ Ibid., pp. 65-79.

²⁷ Ibid., p. 80.

²⁸ Ibid., pp. 64-65.

²⁹ Ibid., pp. 81-96.

³⁰ Ibid., pp. 83-4.

³¹ Ibid., p. 86.

Then he proceeded to demolish the claim (grounded on the well-known take: descent, conquest, possession and occupation) of Ngati Paoa to claim Orakei.³²

The most pungent opinion in the judgment was reserved for the claim of Heteraka Takapuna. In four pages of closely argued opinion Fenton commented that Takapuna's claim was full of inconsistencies and contradictions. His claim was dismissed not only as it concerned himself but "all who claim by, with, or under him."³³

Judge Fenton's summation of the evidence presented in support of the claim of Takapuna and Ngati Paoa was meticulously argued. In no uncertain terms, the Judge implied that his claim was a total and transparent fabrication. Ten pages of the judgment were devoted to the rationale behind the dismissal of this claim. Heteraka Takapuna was sent 'packing' in no uncertain terms. It is too easily forgotten that the case we have been reviewing in the above paragraphs was in fact an appeal brought by Heteraka Takapuna against the dismissal of his case in the first Orakei title investigation sitting of 1866.³⁴

The final page of the Orakei judgment was given over to the successful claim, that of Apihai te Kawau and the three hapu constituents of what Fenton designated Ngati Whatua. Judge Fenton cited the disinterested evidence of the Maori supporters of te Kawau's claim, and the "European evidence" from many colonists and settlers:³⁵

that the arrival of the English power found them [Ngati Whatua] domiciled at Okahu in undisputed possession, and thus they have remained ever since as the dominant lords of the soil.

Matching the Record to the Text of Fenton's Judgment

In his judgment Fenton, perhaps with his sense of theatre, presented his brief statement concerning the issue of title to Apihai's claim at the end of his two hour-long summation of the proceedings on 22 December 1868. The text of the judgment concerning the successful award is:³⁶

This case is briefly this: Te Taou - a tribe resulting from the union of a Northern tribe with an ancient tribe called Ngaoho - came down from Kaipara for reasons which have been previously stated,

³² Fenton, 1879, op. cit., pp. 86-89.

³³ Ibid., p. 95.

³⁴ AMB 1, pp. 36-40 (29 November 1866.)

³⁵ Fenton, 1879, p. 95.

³⁶ Ibid., pp. 95-96.

extirminated the tribes that occupied this isthmus, entered into possession of the empty country and settled down permanently, and here they have ever since remained, except during periods of hostility, during which the surrounding land was being evacuated as being unsafe to live in, always returning as soon as the danger ceased.

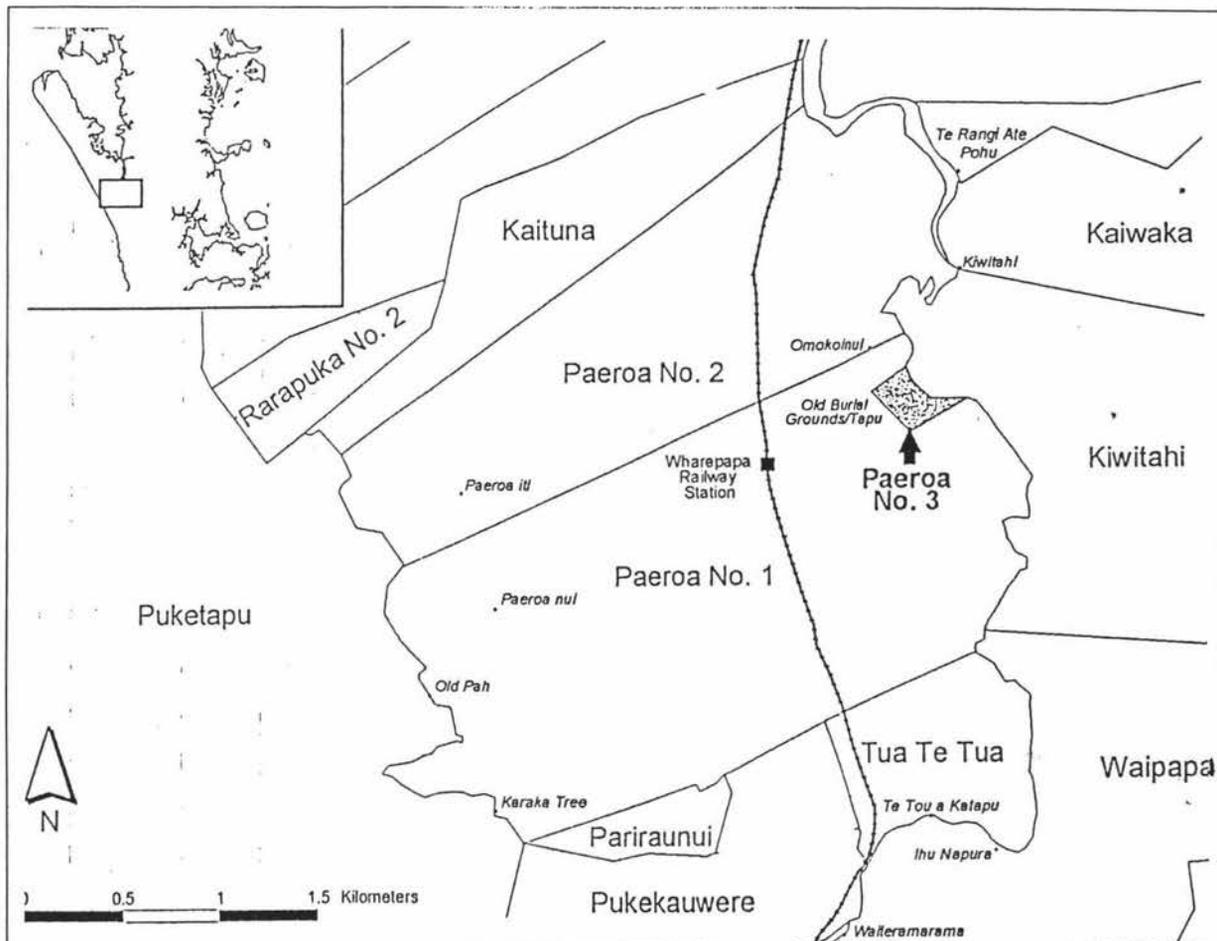
Shortly before and about the time of the arrival of Governor Hobson,

European evidence is imported into the case . . . all of whom . . . with one exception, Mr George Graham – more or less corroborate the fact by their recollection of different circumstances, that Apihai's people, under their generally known name of Ngatiwhatua [sic], were the sole resident natives here and on this part of the shores of the Waitemata at the time of the Governor's arrival, and that they had houses and cultivations at Auckland and Okahu. The arrival of the English power found them domiciled at Okahu in undisputed possession, and thus they have remained ever since as the dominant lords of the soil.

Thus was written the text that inscribed the award of title to 'Apihai's people'. It remains to this day – 140 years later a crucial text in determining the agenda, motivations and intentions of all the key players in the later convoluted and often contradictory histories of the Orakei peoples and their land. The text remains, but does its meaning and significance remain petrified as a test of the Derridean axiom?

Fenton's determination of the rights of the three hapu to the lands around and about Okahu/Orakei on the grounds of conquest and occupation alone has been rarely considered and remains unchallenged by historians. There is no doubt that these grounds are empirically sound, but it is interesting that Fenton needed the corroborative evidence of reputable white settlers - Symonds and Maunsell, for example to substantiate their claim. Further, there can be little doubt that the outcome in favour of their claim was a politically expeditious one. It suited Fenton's agenda that the matter of a designated surveyed Native Reserve should be fixed as soon as possible because they were the last remaining lands in Tamaki Makaurau/Auckland in aboriginal title. Further, the claims of Apihai te Kawau and his people were more credible against the earlier claim of Takapuna dismissed in 1866, and more substantive than that of the other claimants. And so it came to pass that Fenton fitted the texts of the so-called Ngati Whatua claimants in to his prescribed agenda. Thus both of these parties were satisfied. Fenton's judgment in its early years gave surety and stability to both settler and Maori

alike. It was a judgment, which at the time seemed politically sound if a little unusual in the specific terms of its award.



PAEROA Nos 1, 2 & 3

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 Ngati Whatua ki Kaipara claimant group

Chapter 3

PAEROA 1 & 2 (& 3): The Big, The Little (& the Urupa)

The Paeroa block case histories are presented as they provide a test of the classic Derridean model that there is nothing beyond the text; that is, the narratives are an experiential encounter with real referents, through text, representation, and mediation of the actual alienation process. As outlined in the theory section of this thesis (refer above) all past behaviour is interpreted like texts because it is only reconstructed by means of textualized evidence. This is a central core in the Eurocentric literary tradition's academic historical practice (and quite different from the praxis of other cultural forms.). And thus, the history of the Paeroa block (on which this micro-history is grounded) is largely mediated through texts that were created by the colonizing process. Any representation of the Maori point-of-view, of which the Court minutes is a high-profile example, is of course largely filtered through this medium, represented principally by the Native Land Court testimonies. Only rarely is the information represented herein taken directly from current oral (usually Maori) sources. Where it is, it will be well sign-posted.

The colonial records of the Paeroa alienation are fairly complete. In this respect the tales of the alienation of the Paeroa blocks are more transparent and less complex than those of Pukeatua, Paparoa, Tuparekura, Pukapuka, and Orakei 4A2A which are re-presented later in this thesis. The history of the alienation of the Paeroa block is a relatively straightforward narrative; the process or business of alienation is relatively brief and linear, but there are fairly obvious and transparent 'covert' agendas on the part of both alienee and alienor in most of the transactions involving the three contiguous blocks that made up the original parent unit. The over-hasty sale alienation transactions – both lease and sale - are ample evidence of the intense demands and pressures made by the two colonists - Monk and Phillipps - acting in an initially covert fashion, of divisions among tangata whenua and the sharp practice of land purchase agents and lawyers. It is a classically simple tale of cupidity. Before the narrative commences in full a preview of the key points of the land alienation histories of Paeroa 1, 2 and 3 - in effect a composite chronology compiled from the official colonial land and court records - is presented below:

PAEROA No.1: Stamping the Colonial Template on Maori Land

Title created: Title Investigation, NLC, Te Awaroa (Helensville), 20 February 1868.
Grantees: Paraone Ngaweke, Patoromu Tahuora, Te Hakuene Morehu, Paora Kawharu, Utakura Ratu, Paora Tuhaere, Te Watene Tautari, Kiwara Te Ro, Mawete, and Hikitia.
Area: 1,239:0:00 a.r.p.
Survey: ML 809, S. Harding
Costs: £3/10/- court costs.
£45/6/7 for survey.

Extending the Process of Alienation of Paeroa No. 1

- * Lease (with right of purchase) to John Phillipps for 15 years from April 1868, at £31/10/- per annum for 2 years and £44 for remaining 13 years.
 - * Lease (with right of purchase) to John Phillipps for 13 years from April 1870, at £44 per annum.
 - * Sale to John Phillipps of three interests for £250, 19 March 1870.
 - * Sale to John Phillipps of six interests for £240, 23 March 1871.
 - * Sale to John Phillipps of Paora Kawharu's one-tenth interest for £100, 2 August 1878.
 - * Taking of 10:2:12 a.r.p. for Public Works purposes, August 1884.
- Alienation completed at date of final sale to John Phillipps.

PAEROA No. 2: Stamping the Colonial Template on Maori Land

Title created: Title Investigation, NLC, Te Awaroa (Helensville), 20 February 1868
Grantees: Tinipia Te Karoro, Kipa Paenga, Wiremu Marua, Hone Hihi, Hamiora Tamatao, Maata Tira Koroheke, Maraea Te Whakaataata & Mereana Te Whakaataata.
Area: 733:0:00 a.r.p.
Survey: ML 809, S. Harding.
Costs: £ 3/10/- court costs.
£ 27/13/5 for survey.

Extending the Process of Alienation of Paeroa No. 2

- * Lease to John Phillipps (with right of purchase) for 15 years from April 1868 at £18/10/- per annum for the first two years and £26 per annum for the remaining 13 years.
 - * Lease to John Phillipps (with right of purchase) from April 1870 for 13 years at £26 per annum.
 - * Sale to John Phillipps of Kipa Paenga's interests for £55, 16 December 1878.
 - * Sale to John Phillipps of the interests of Tinipia Te Karoro, Maata Tira Koroheke & Kataraina Te Ahiwaru for £195, 13 December 1879.
 - * Sale to John Phillipps of Wiremu Marua's interests for £60, 21 April 1880.
 - * Sale to John Phillipps of Haimoana Pirika's interests (& those of Marea Te Whaakaata to which he had succeeded) for £120, 10 July 1880.
 - * Sale to John Phillipps of Paraone Taraa's interests for £133/16/-, 6 March 1883.
 - * Taking of 6:2:5 a.r.p. for Public Works purposes, August 1884.
- Alienation completed at date of final sale to John Phillipps.

PAEROA No. 3 : Stamping the Colonial Template on Maori Land

Title Created: Title Investigation, NLC, Te Awaroa (Helensville), 5 July 1878.
Grantee: Maata Tira Koroheke

Area: 11:0:19 a.r.p.
Survey: ML 3981, S. Harding.
Costs: £2 court costs.
£? for survey.

Extending the Process of Alienation of Paeroa No. 3

* NLC Order declaring land to be freehold of R. Monk, 25 August 1879.

Alienation of Paeroa No. 3 completed.

A more fulsome narrative can be drawn from this consolidated re-presentation of evidential material drawn from the colonial archive. As the alienation processes for Paeroa 1 and 2 were so inter-twined their histories will be told in tandem (taking care to delineate from time to time which is which.)

Title Investigation 1868

When the title investigation into the Paeroa land block was first heard on 20 February 1868 it was a single unit of 1,972 acres.¹ The native land agent (who later became a Crown Native Land Purchase officer) C.O. Davis appeared for the claimants, whose evidence was led by Patoromu Tahuora of Aotea on the south Kaipara peninsula, a rangatira of the Mangamata hapu of Te Taou who claimed Paeroa. He noted that Te Hakuene of Te Taou had a separate claim to the same land as did Tinipia Te Karoro and Wi Marua of the Ngati Marua hapu of Ngati Whatua, and said that a dispute as to ownership had arisen during the survey of Paeroa but that it had been settled. The disputants had resolved that one portion was to be for Hakuene himself and their Mangamata co-claimants, while the other was for Tinipia and his Ngati Marua people. Patoromu requested that Mangamata and Te Taou “be represented on one grant by Paraone Ngaweke, myself, and Te Hakuene” in the south-east of the block, and that Ngati Marua “be represented on the other grant by Wi Marua, Tinipia, & Kipa Paenga” in the north-west portion.²

Title Awards and Court Orders

No separate title was issued for the Paeroa parent block when its title was investigated by the Native Land Court in 1868 on account of the dispute between

¹ There is a probability that this might not have been the first case concerning title investigation. Several pages of the original minute books have been removed at date subsequent to the time of entry. A painstaking re-construction using other circumstantial evidence points to this conclusion.

² KMB 2. pp. 43-49.

hapu briefly outlined above. In the colonial register of deeds recorded in 1868 Paeroa No.1 was initially given the appellation Paeroa-nui, and Paeroa No.2 the appellation Paeroa-iti.³ Their areas were: 1239:0:00 and 733:0:00 acres respectively. The grantees were: No.1: nine named individual members of Mangamata hapu of Te Taou: Paraone Ngaweke, Patoromu Tahuroa, Paora Kawharu, Utakura Ratu, Paora Tuhaere, Te Watene Tautari, Kiwara te Ro, Mawete and Hikitia; No.2: eight members of Ngati Marua: Tinipia te Karoro, Kipa Paenga, Wiremu Marua, Hone Hihi, Hamiora Tamatao, Maata Tira Koroheke, Maraea and Mereana Te Whakaatata.⁴ Paeroa No.3 of 11:0:19 a.r.p. was the site of a urupa. It was not separately surveyed until sometime immediately prior to a title investigation on 2 and 3 July 1878. The claimant, Te Otene Kikokiko, a senior rangatira of Ngati Marua, maintained that it had been excepted from the survey of Paeroa Nos. 1 and 2. The title was awarded to his wife, Maata Tira Koroheke.⁵

Location

Geographically, the entire Paeroa block lies immediately to the west of the middle reaches of the meandering lower Kaipara River which is tidal at this point, some 10 kilometres south of the near-land-locked expanse of the Kaipara Harbour. In traditional Maori spatio-cultural terms the land known to them as Paeroa lay across an important portage route from the Kaipara harbour in the north to the waters of the Upper Waitemata Harbour towards the south east. The European cultural paradigm was quite different from that of Maori. The lands within the proximity of Paeroa presented an attractive area for colonial settlement, timber exploitation and pastoral farm development. Their open and accessible character and easy rolling terrain would have been inviting to many early settlers and graziers. Auckland, the principal commercial settlement (and erstwhile capital) of the colonizing power lay only 40 kilometres to the south east. Helensville, a few kilometres to the north, was a recently founded (1862) settler frontier town and developing shipping port built with welcoming tangata whenua consent near the

³ DI, Vol. 22D, pp.568 & 572, NALTO, LINZ.

⁴ KMB 2, pp. 48-9.

⁵ KMB 3, pp.295-6, 302 & 310.

site of the recently abandoned kainga of Te Awaroa.⁶ The prospects of a thriving shipping trade with Australia through the turbulent Kaipara Heads remained in the early years of the colonisation process but a thinly realised ideal. Storm-tossed passages through the turbulent harbour heads (and frequent wrecks) put paid to any realisation of this prospect by the last years of the nineteenth century. The tranquil waters of the Waitemata on the shores of which Auckland had been sited, again with the welcoming solicitation of the local tangata whenua (many of whom had tangata whenua links with the southern Kaipara) were a safer haven. The development of the port of Auckland linked Helensville commercially to that larger colonial metropolis.⁷

The entire Paeroa native/Maori land block of 1983:0:19 acres is located in the Kumeu Survey District II and III. It was first surveyed in 1868 and is bounded (clockwise from the north) by the Kaituna, Pohutu, Waipapa, Kaiwaka, Kiwitahi, Tuatetua, Pukekauwere, Pariraunui and Puketapu native/Maori Land blocks.

Topography

The three blocks together form a rough square. No.1 lies to the south-east, No.2 the north-west, and No. 3 is a small enclave on the north-eastern river side of No.1. The western and central areas of the combined blocks are broad rolling down land and up-raised river terraces, up to 100 metres a.s.l. in elevation. In the extreme west are the substantial remnants of westwind-blown sand dunes. On the eastern boundary of the block the Kaipara River, which meanders in a generally northerly direction, has created a narrow and flat series of low river terraces.

Vegetation

Prior to 1868 the block would have carried some of its native vegetation (Maori generally practised swidden agricultural methods), which would have been predominantly a low-level regime of fern and coarse grasses with pockets of a mixture of broad-leaved evergreen trees, manuka, kanuka, ponga, some kahikatea and puriri, podocarp and the occasional kauri closer to the Kaipara River.⁸ It

⁶ P. Wyatt. *op.cit.*, pp.1 and 226-230.

⁷ C. Sheffield. *History of Helensville*, Auckland, 1964, (passim); W.R. Ryburn, 'Tall Spars, Gum and Steamers: The European Settlement and Economic Development of the Kaipara District 1854-1948', M. A. Thesis in History, University of Auckland, 1997, (passim.)

⁸ ML Map Nos. 809 & 3981, NALTO, LINZ.

would have been relatively open country ideally suited to pastoral farming development by settlers and speculators in the colonisation process.

Paeroa 1 and 2: The Alienation Process 1868-1883 (continued)

The Native Land Court sittings of 20 February 1868 had ordered that both Nos.1 and 2 blocks be made inalienable by sale, or by lease for a period longer than 21 years. On the same date the Court ordered that the Crown grants be delivered into the hands of the surveyor to cover his charges of some £70 for the survey.⁹ When the title issued it contained no mention of the restrictions on alienation as requested by the owners and confirmed by court order.¹⁰ The Crown grants for both blocks were issued on 15 July 1868, but did not specify any restrictions as to sale or lease.¹¹ Between 19 March 1870 and 2 August 1878, Paeroa No.1 was bought piecemeal by virtue of 3 separate conveyances by John Phillipps, oil and colour merchant, of Auckland, from all the owners.¹² Between 16 December 1878 and 6 March 1883 John Phillipps acquired in five separate piecemeal conveyances the title to Paeroa No.2.¹³

In summary, these eight transactions between 1870 and 1883 from all native joint tenants-in-common of the Paeroa Nos. 1 and 2 blocks gave Phillipps the title to the 1972 acres of Paeroa Nos. 1 and 2. The alienation process by sale was, however not quite this straightforward. The pattern which unfolded – of lease (in these cases, registered formal leases) followed by sale was typical – regionally and nationally, of much land resource utilisation in the colonisation process. Land was needed by colonists for agricultural and pastoral purposes and they were generally impatient of formal official processes. John Phillipps, and his brother-in-law Richard Monk were among a small band of Auckland-based settlers who were vigorous in their pursuit of colonial enterprises in the lower Kaipara district. It had the immediate and obvious attraction of proximity to the new colonial settlement of Auckland. The brothers-in-law, together with another Mt. Albert. Auckland colonist, Alan Kerr Taylor, were among the first European alienors of land in the Kaipara River valley. Kerr Taylor had acquired the

⁹ KMB 3, p. 49.

¹⁰ CG, Vol. 8G, p. 66, NALTO, LINZ.

¹¹ CGs. 8G pp. 66 & 67, NALTO, LINZ.

¹² Sales. Vol. 24D, p.27, Vol. 24D, p. 466, and Vol. 28M, p.9, NALTO, LINZ.

Waikoukou block a few miles to the south-east of Paeroa in 1867, and John Phillipps (and his wife Mary and their son Frank) later acquired several native/Maori land blocks adjacent to Paeroa (as we shall note in detail below) and was later to play a role in the alienation of the Pukeatua block, (adjacent to Waikoukou.) Pukeatua is the subject of a complete chapter in this thesis.¹⁴

The Phillipps could be perceived by the latter-day observer as the archetypical urban-based entrepreneurial settler family with connections into the capitalist agency network of the colonial metropolis. The first and second generation of Phillipps were closely allied to the leading Auckland Jewish merchant family of L.D. Nathan & Co. Ltd. which had a network of funding and trade relations in Melbourne, Cape Town, San Francisco and London. Although there is no substantial empirical evidence it remains purely speculative that the Phillipps were able to tap in to this complex conduit of imperial capitalism.¹⁵

On 18 April 1868, the native titleholders of both Paeroa No. 1 and Paeroa No. 2 entered into separate 15 year lease agreements with John Phillipps. The terms of the leases were: Paeroa No.1 £31/10/- p.a. rent for years 1 and 2, and £44/-/- p.a. for the remaining 13 years; Paeroa No. 2: £18/10/- p.a. rent for the first 2 years, and £26/-/- p.a. for each of the succeeding 13 years. The two joint leases also gave Phillipps the right to acquire the land, or any portion of it larger than 50 acres, at the rate of £1/5/- per acre. If this intended purchase was proceeded with Phillipps was to retain £45/6/- of the purchase money as this was the amount he had already paid the surveyor, Harding. Again, the debt to the surveyor incurred by Maori who had initiated the survey in order to obtain a title was a pattern repeated a hundred times in the alienation process in southern Kaipara and throughout New Zealand/Aotearoa.¹⁶

On 26 February 1870 a new thirteen year lease was entered into for Paeroa No. 1. There were two changes in the detail of this agreement: the first allowed for the inclusion of the name of Wakura Ratu as successor to his late father Te

¹³ Sales. Vols. K2, pp. 557-8, 561; F4, p.690, & R5, p. 593, NALTO, LINZ.

¹⁴ Refer enclosed maps and Chapter 4, PUKEATUA, pp. 76ff. (below.)

¹⁵ Personal communication with Marina Fletcher (descendant of both John Phillipps and Richard Monk, 1996; personal communication with Dennis Raoul Nathan, 1996; L.D. Nathan, *As Old As Auckland*, Auckland, 1985; R.C.J.Stone, *Makers Of Fortune: A Colonial Business Community And Its Fall*, Auckland, 1973.

¹⁶ Lease. 22D, pp. 568 & 572, NALTO, LINZ.

Hakuene Ratu; the second change was more substantive. This was a purchasing clause:¹⁷

... the lessee is not to be at liberty to purchase less than 50 acres in one block, at a price of £25/- an acre, plus paying the debt of the survey lien due to Mr. Samuel Harding of £45/6/- paid by Mr. John Phillipps.

Another feature in the second lease which is worth highlighting was that one-tenth of the rent was to be paid to each grantee separately.¹⁸ This might well have arisen out of a dispute between Paora Tuhaere a leading rangatira from Okahu at Orakei, Auckland (and who features most prominently in this thesis) and Te Otene Kikokiko, another prominent local rangatira over the division of the purchase money from lands sold by Te Otene which erupted at Court sittings in April 1869.¹⁹

Similar leases were taken out with the grantees of Paeroa No. 2. It would appear that John Phillipps was merely the speculator behind the true lessee, who was his brother-in-law, and local settler Richard Monk. The latter was explicitly referred to at the Court sittings as the lessee rather than Phillipps. As shall be seen later, it was Monk who acquired the Paeroa lands from his brother-in-law, taking out a mortgage to do so.²⁰

Purchase of Paeroa No. 1 1870-1878

In March 1870 Phillipps began converting his lease to a sale, acquiring the interests of Paora Tuhaere, Paraone Ngaweke and Patoromu Tahuora for the sum of £250.²¹ Their equal undefined interests equated to just over 370 acres of Paeroa No.1, equivalent to a price of 13/5 per acre. These were undefined interests within the entire block, which must have made them rather difficult to utilise until they had been defined on the ground and by the Land Court. There was thus a strong incentive for John Phillipps to continue to acquire further undefined interests. This he proceeded to do. In March 1871 he acquired the undefined interests of Utakura Ratu (who now held two interests having succeeded to his father's interest in February 1871), Te Watene Tautari, Kiwara Te Ro, Mawete and

¹⁷ Lease. 24D. p.24, (No.41144), NALTO, LINZ (emphasis in original.)

¹⁸ Ibid., p.24.

¹⁹ KMB 2, pp. 98-100.

²⁰ CT 17/28 and CT 17/199; Mortgage No. 1503, NALTO, LINZ.

Hikitia for £240.²² These undefined share were equal to over 740 acres, giving an equivalent price of 6/5 per acre, less than half paid to the first group of sellers. The prominent local lawyer, sometime MHR, erstwhile Auckland Provincial Councillor and sometime – 1877-78 – Colonial Treasurer, John Sheehan was involved in this transaction.

The final transaction affecting the alienation of Paeroa No.1 took place in August 1878. Paora Kawharu, a tenant-in-common and local rangatira transferred the last one-tenth interest to Phillipps for £155. At the same time he transferred his interest in the adjacent block, Pariraunui to Phillipps.²³ It is only latter-day speculation that Paora Kawharu might well have been in a parlous cash position. As shall be seen later in this thesis Kawharu had a strong non-selling ideal, an example continued by many of his descendants (specifically some members of the Paora/Kawharu and Uruamo whanau), as will be explicated below.²⁴ Like many of his peers Paora Kawharu had a very large family to support and nurture. Nine of his children had survived infancy.²⁵ The amount he received for the sale of his share would represent approximately £100 for the one-tenth equity in Paeroa No. 1, or a price of about 16 shillings per acre, rather more than the other sellers had received. Shortly after completing this transaction he sold the land in 1879 to his brother-in-law, Richard Monk who had been the Court interpreter for the alienations in the 1870s.²⁶

Purchase of Paeroa No. 2 1870-1883

The historically elusive figure of Richard Monk was more prominent in the record of the transactions affecting Paeroa No.2. On 9 March 1877, Kipa Paenga of nearby Kopironui appeared before the Land Court at Te Awaroa/Helensville to apply for a partition of Paeroa No. 2 because he wished to cut out his interests in order to “sell to Monk.” Another titleholder, Tinipia Te Karoro also wanted to have his share cut out in order to sell to “Mr. Monk who is leasing the land.” Maata Tira Koroheke wished the entire Paeroa No. 2 block to be alienated to

²¹ Conveyance No. 41145, Vol. 24D, p. 27, NALTO, LINZ.

²² Conveyance No. 44071, Vol. 24D, p. 466, NALTO, LINZ.

²³ Transfer No. 60009, NALTO, LINZ.

²⁴ Refer Chapter 8, ORAKEI 4A2A, pp. 170 ff. (below.)

²⁵ Ngati Whatua Tribal Register, 1877; M. W. Spring-Rice, *op. cit.*, p.39; personal communication with Margaret Kawharu (great great grand-daughter of Paora Kawharu), 1997.

Richard Monk but four of the other titleholders objected. As nearly always occurred in cases of dispute between titleholders, the “owners withdrew outside [the Court].” It was agreed that the four titleholders on each side would have equal portions. The Court ordered accordingly, with the sellers being awarded 366:2:00 a.r.p. in the south-east of the No.2 block and the non-sellers being awarded an equal portion in the north-east, with the added proviso that they would continue to receive their half of Monk’s rent when the other half of the land was sold. The partition, however, was denied by the Court as it maintained it had “no jurisdiction” when the land was under lease.²⁷

Phillipps then began to acquire the interests of the willing vendors. In December 1878 he acquired Kipa Paenga’s interests for £55.²⁸ A year later he followed up this with the purchase in December 1879 of the interests of Tinipia Te Karoro, Maata Tira Koroheke, and Kataraina Te Ahiwaru for £195.²⁹ Phillipps continued his alienation of Paeroa No. 2 with the April 1880 acquisition of Wiremu Marua’s interests for £60 and the July 1880 acquisition of Haimona Pirika’s interests (including those of Maraea Te Whakaataata to which he had succeeded) for £120. Finally, in March 1883 he purchased Paraone Taraia’s interests for £133/16/-.³⁰ The final purchase occurred four days after Paraone Taraia had obtained a succession order for his interests (derived from Mereana Whakaataata.) This would almost certainly indicate that the final acquisition had been planned for some time.

John Phillipps had successfully acquired all of the interests in Paeroa No. 2. To re-capitulate the above alienations by way of sale: by 2 August 1878 John Phillipps had acquired all of Paeroa No. 1, and by 6 March 1880 he had purchased all of Paeroa No. 2. This was not the limit of Phillipps’ land aggrandizement. He purchased several land blocks immediately to the north of Paeroa No.2, each contiguous to the other: Kaituna (8 February 1870); Pahunuhunu No. 1A2 - part of the block once known as Wharepapa No.3 (15 March 1906); and Rarapuka No.2A (30 August 1894.) He also acquired a ¼ interest in Rarapuka No.2B (26

²⁶ CTs 17/28 and 17/199, NALTO, LINZ; and KMB 2 and 3, *passim*.

²⁷ KMB 3, pp.225-226 (9 March 1877.)

²⁸ Conveyance 64799, NALTO, LINZ.

²⁹ Conveyance 64800, NALTO, LINZ.

³⁰ Conveyances 64801, 82252, 66426, NALTO, LINZ.

October 1906), and entered into a lease agreement for the remaining $\frac{3}{4}$ s on 7 December 1906. Rarapuka was formerly known as Wharepapa No.4. As has already been indicated above, John Phillipps did not retain all of Paeroa No. 1. He sold most of the southern and central portions of the No.1 block to his brother-in-law Richard Monk on 7 August 1879, and farmed the remainder of No.1 as a unit with No. 2 and the Kaituna block.³¹ As well he acquired an interest in 1894 in the Pukeatua block a few kilometres to the south east of Paeroa.³²

It has been noted that Richard Monk acquired most of Paeroa No. 1 on 7 August 1879 from his brother-in-law John Phillipps. A few days later, on 25 August 1879, Monk acquired the small enclave of Paeroa No. 3 from the titleholder, Maata Tira Koroheke.³³

Paeroa No. 3

This small block contained a urupa, kainga and landing place on the Kaipara River and had apparently been excluded from the survey of the parent block in 1867. It was located at the north east corner of Paeroa No. 1. It was brought before the Court on 5 July 1878. The claimant Te Otene Kikokiko, a local rangatira maintained in his court testimony that he had ordered the survey the previous summer and that he was the only claimant to the land. He requested that his wife, Maata Tira Koroheke should join him on the title, maintaining that the small enclave was “excepted from the survey of Paeroa’s No. 1 and 2, because it is a burial place.”³⁴ In what from the minuted record appears to have been an unexpected development Tautari Ngaweke disputed Te Otene’s and Maata’s rights to the land.³⁵ The Court was adjourned. When the case resumed Tautari stated that outside the disputing parties had resolved that all three would be entered on the memorial of title. A renewed protest was made by Te Otene who insisted that only Maata’s name should go on the title.³⁶

³¹ B.V.M. Johnson, ‘Richard Monk’, *JAWHS*, Vol. 34, April 1979, pp.25-26; personal communication, Marina Fletcher (descendant of John Phillipps, & Richard Monk), 1996.

³² Refer to enclosed maps; also refer Chapter 4, *PUKEATUA*, pp. 76 ff. (below.)

³³ *KMB 3*, p. 310; PR 10/17; CT 9/204.

³⁴ *KMB 3*, pp.295-6.

³⁵ A local kaumatua, of Te Taou, who with his son, Wiremu Watene was a titleholder in Orakei; refer Chapter 2, *FENTON at ORAKEI*, pp.46 ff. (above.)

³⁶ *KMB 3*, p. 310.

Were we going to sell then Tautari's name should be on the memorial but we mean to keep this for a cultivation and burial ground. It is not intended for sale.

The Court awarded title to Maata but, despite the evidence presented to the court, placed no restrictions against alienation on that title.³⁷ Otene's denials of intending alienation proved to be empty declamatory words. A year elapsed and on 25 August 1879 the land court vested title in Richard Monk.³⁸ Despite exhaustive researches no further details of the purchase have ever been located. The most probable scenario that can be re-constructed is that it was Te Otene's intention to alienate the land many months before the court issued the title order. At the same sitting of the Court two days prior to the Paeroa No. 3 title investigation the wahi tapu block known as Te Pua O Te Marama of 329:0:00 a.r.p., (located some 10 kilometres further north of Paeroa) was awarded to Te Otene and Maata. By court order of 16 September 1879 the title to Te Pua O Te Marama was transferred to a settler Henry Allright, the purchaser from Te Otene and Maata.³⁹

The Railway

The benefits of the construction of a railway line from Te Awaroa (Helensville) to Riverhead had been promoted widely in the Auckland region. Riverhead is located at the extreme north-west reaches of the Waitemata Harbour. Prominent amongst the railway's advocates were colonists with a substantial vested interest in the development of the region: John Sheehan (the local lawyer), Alan Kerr Taylor (resident on his suburban estate of 'Alberton', Mt Albert in west Auckland, and absentee titleholder of the Waikoukou block south-east of Paeroa), John Rogan (the local Native Land Court judge, owner of the land blocks of Te Rae Te Awa, Makiri and Mangakura, south of Te Awaroa/Helensville and a suburban estate at Mt Albert in west Auckland) and Richard Monk.

In August 1884 a substantial area of Paeroa No. 1: (10:2:12 a.r.p.) and Paeroa No. 2: (6.2:5 a.r.p) was officially taken for Public Works purposes, being formally and belatedly taken for the railway that had been constructed through the two blocks many years' earlier. No trace of any claim for compensation has been

³⁷ KMB 3, op. cit., p. 310.

³⁸ PR 10/17, NALTO, LINZ.

³⁹ KMB 3, p. 298.

located in this or any other research interrogation. It is unlikely that any compensation claim was made as the local tangata whenua had been persuaded by local 'worthy', John Rogan, the resident magistrate and land court judge to gift land for the line in 1871. Many local Maori followed the example he had set in the land blocks which he had acquired south of Te Awaroa/Helensville. As noted above local Maori had allowed the 'taking' of land for the line through their lands. This was part of the general mood of optimism and co-operation which prevailed in the district following the arrival of tauwiwi and the development of what some have perceived as a special relationship between Ngati Whatua and the Crown.⁴⁰ The Auckland High Court files which contain compensation cases involving land taken under the Public Works Acts have but one case involving a claim. This was made in 1885 on behalf of Alan Kerr Taylor of 'Alberton', Mt Albert, Auckland, the absentee owner of the Waikoukou block. The claim was for £235/-/- for the 1:0:8 a.r.p. taken in the Waikoukou block and an award of £30/-/- was made. Kerr Taylor was widely known in Auckland settler circles for his frugality.⁴¹

Conclusion

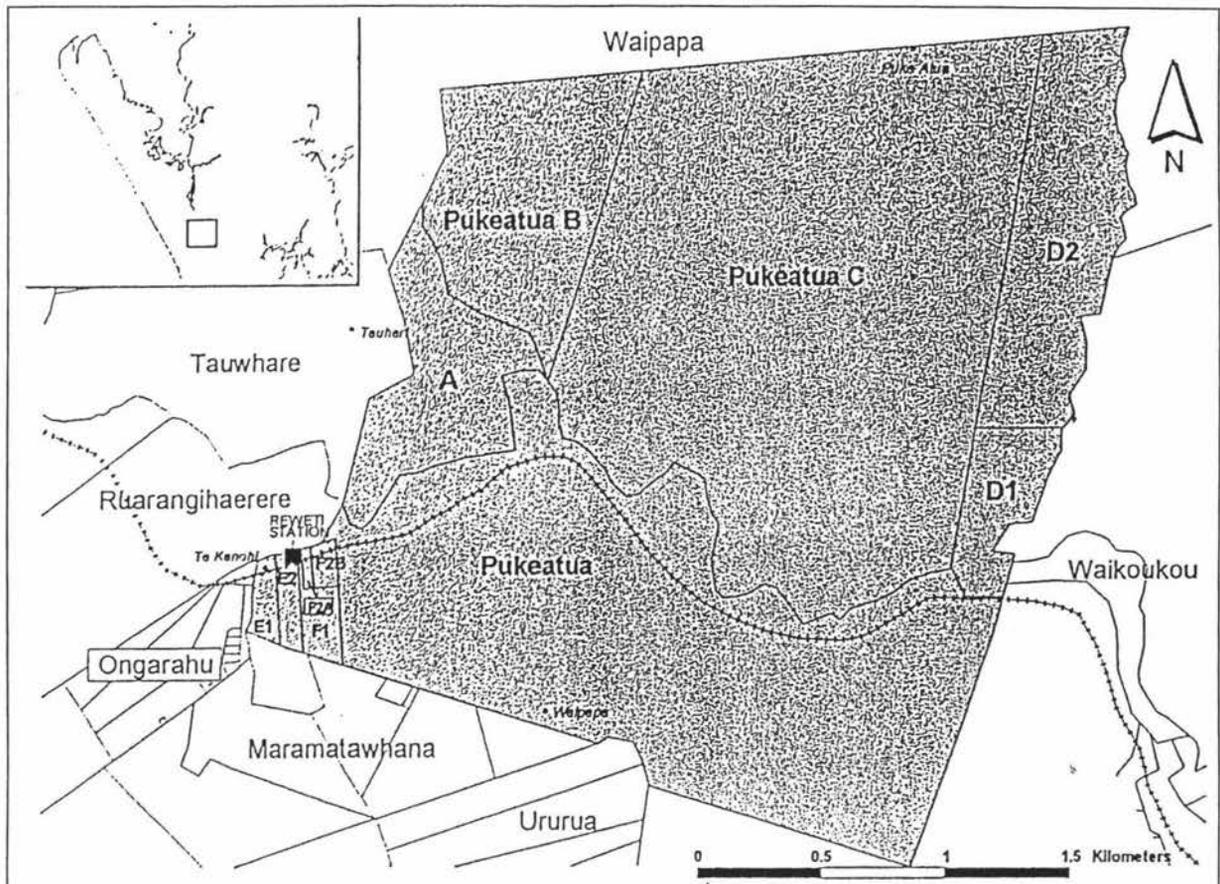
A reading of the above historical narrative gives as much of the history of the alienation of the Paeroa block as the official colonial records will allow. As with any construction of the past-as-history from the few relics still extant in the administrative record much of the personal detail has simply not survived (if it ever entered) in the public record. The inclusion of oral anecdote in the above narrative is justified on the grounds that this too is a text in the Derridean sense. Its incorporation in the above prose rendition is part of the contextualization process which the postmodernist, post-colonial paradigm enjoins: a re-call of the 'absences of presence'. The business of alienation was in retrospect remorselessly piecemeal and linear: in sixteen years between 1868 and 1883 the entire 1972 acres of Paeroa 1, 2 and 3 were progressively alienated by the sale of the interests

⁴⁰ P. Wyatt, *op. cit.*, p.1 and pp. 226-230.

⁴¹ NA-A :BBAE Acc.A 307, Box 60, fo. 56, 22.5.1885; Kerr-Taylor Mss, NZHPT, Alberton; personal communications with Innes Kerr Taylor & Don Kerr Taylor (grandsons of A. Kerr Taylor) 1998.

of the tenants-in-common who had been granted title within the terms of the Fenton paradigm.

There remain however many unknowns and many unanswerable questions. A mystery surrounds the missing pages of the minute book which probably contained the record of an earlier title investigation. Their contents constitute what amount in a Derridean sense to the 'absence of presence.' The rationale driving the necessity for the covert action of John Phillipps on the part of the alienors and the disputatious character of Tautari on the part of the alienees are but two further unresolved mysteries. Yet another imponderable is the power of capital, which is represented in this history by the agency of the principal alienors, Phillipps and Monk. An exploration of Phillipps' links with the local and international capitalist world could demonstrate and prove the power of the agency of capital. Yet another manifestation evident in this history is the power given to individual titleholders by the commodification of land. Under this process a sale was final and complete. There was little or no effective appeal, recall or (then) way of redress. 'Divide and rule' might well be a cliché but it succeeded in the case of Paeroa. The script which Fenton had devised was fulfilled to the letter in the case of Paeroa.



PUKEATUA: The Rohe of the Gods

Graphic Representation only

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 Ngati Whatua ki Kaipara claimant group

Chapter 4

PUKEATUA: The Rohe of the Gods

This inquiry into the past of the land block we know as Pukeatua is presented as an illuminating insight into some of the irregular and informal processes, which operated in southern Kaipara and Tamaki Makaurau/Auckland under the aegis of the Native Land Court. As fore-shadowed in the introduction one of the purposes of this account is to provide some explication of the dynamics of this profound alteration of the cultural foundations of an indigenous society.

The textualization of the Pukeatua experience and its placement at the centre of this historical inquiry is designed to provide the reader with an insight into the larger macrocosm of which it was an integral part. It is to be hoped that this close and full exposition will serve as a tantalizing exegesis of the native land court alienation process in the southern Kaipara.

The Alienation Process – a brief synopsis distilled from the colonial record

A sharply focussed account of the shift of land title from tangata whenua to colonist in Pukeatua has been given the following configuration in the records of the hegemonic colonial power. These are the bald facts extrapolated from the surviving public administrative records of the colonial regime and the public archives of some leading Auckland law firms as researched by the writer and as corroborated by historians commissioned by the current Kaipara ki te Tonga (Wai-312) claim group:¹

PUKEATUA: Stamping the Colonial Template on Maori Land

- * Title created: Title Investigation, NLC, Te Awaroa (Helensville), 28 June 1865.
- * Grantee: Wiremu Reweti Te Whenua (died November 1871.)
- * Area: 1,754:0:00 a.r.p. in 1864 survey; 1694:01:04 a.r.p. in 1894 partition survey.
- * Survey: ML 2217; E.F. Tole.

Extending the Process of Alienation of Pukeatua

- * Mortgage of £72 to William Morrin, of T. & S. Morrin & Co. .Ltd., Auckland, May 1871.
- * Transfer: William Morrin's mortgagee interest to Paora Tuhaere at a transaction price of £84/10/-, 21 January 1873.

¹ F.Small and B. Stirling, op. cit.

- * Te Wiremu Reweti & 8 siblings succeed their father as titleholder of Pukeatua 21 February 1873.
- * Transfer of mortgage from Paora Tuhaere to Edmund Thomas Dufaur, barrister & solicitor, of Auckland, February 1880.
- * Lease for 21 years at £60/- p.a. by E. T. Dufaur to Thomas Masefield Taylor, ironmonger, of Auckland, March 1880.
- * Contract for three-year kauri logging agreement from Paora Tuhaere & E.T. Dufaur to John Foster of Waimauku (1 of 2 alienors of the adjoining Kahukuri block), & Hunia Paaka [Parker, of Parker & Lamb??], logging contractor, of Waimauku, 1883.
- * Acquisition of 28:1:00 a.r.p. for Public Works purposes (railway), August 1884.
- * Transfer (re-payment of mortgage) of block for £84/- from E.T. Dufaur to Paora Tuhaere, July 1890.
- * Transfer by way of sale of 591 acres from Paora Tuhaere to Messrs.McDonald for £320/-, November 1890.
- * Succession Orders, Native Land Court, Te Awaroa (Helensville), January 1893.
- * Definition of Relative Interests, NLC, Te Awaroa (Helensville), September 1893.
- * Transfer of 15 2/3 shares to Phillips for £577/-, December 1893 -August 1894.
- * Transfer of 3 shares to McDonald for £138/-, 27 December 1893.
- * Partition Orders creating Pukeatua A, B, C, D, E & F, NLC, Te Awaroa, (Helensville), 21 August 1894.

PUKEATUA A

- * Title created: Partition Order, NLC, Auckland, 21 August 1894.
- * Grantee: Paora Kawharu.
- * Area: 93:0:00 a. r. p.
- * Survey: ML 3779/1; R. Morrow.

Extending and completing the process of alienation of Pukeatua A

- * Succession Orders, NLC, 1/8/1911: 19 persons succeed to Paora Kawharu's whole interest.
- * Lease by Tokerau Maori Land Board (in whom the 'daughter' block had been vested after 1909) to Thomas McIndoe for 21 years with r.o.r., May 1915.
- Transfer by way of sale to T. McIndoe, 1918.

Alienation of Pukeatua A completed

PUKEATUA B

- * Title created: Partition Order, NLC, Auckland, 21 August 1894.
- * Grantee: Donald McDonald.
- * Area: 132:0:00 a. r. p.
- * Survey: ML 3779/1; R. Morrow.

Alienation of Pukeatua B completed

PUKEATUA C

- * Title created: Partition Order, NLC, Auckland, 21 August 1894.
- * Grantee: Mary Phillipps
- * Area: 688:0:00 a. r. p.
- * Survey: ML 3779/1; R. Morrow.

Alienation of Pukeatua C completed

PUKEATUA D

- * Title created: Partition Order, NLC, Auckland, 21 August 1894.
- * Grantees: Kihirini Reweti, Te Kooti Reweti, Ngapipi Reweti, Poata Aperahama

(aka Renata Poata Uruamo), Haimona Pirika, & Eruera Tahana.

- * Area: 169:0:00 a. r. p.
- * Survey: ML 3779/1; A. Morrow.

PUKEATUA D1

- * Title created: Partition Order, Te Awaroa (Helensville) 11 July 1900.
 - * Grantee: Poata Aperahama (aka Renata Poata Uruamo.)
 - * Area: 42:0:00 a. r. p.
 - * Survey: ML 3779/1; A. Morrow.
- Sale to Mary Phillipps for £40/-, 22 November 1902.
Alienation of Pukeatua D 1 completed.

PUKEATUA D 2

- * Title created: Partition Order NLC, Te Awaroa (Helensville), 11 July 1900.
- * Grantee: Mary Phillipps.
- * Area: 127:0:00 a.r.p.
- * Survey: ML 3779/1; R. Morrow.

Extending and completing the process of alienation of Pukeatua D2

- * Sale of 2 5/6 shares to Mary Phillipps
 - * Mortgage by order of NLC to A. Morrow of £5/10/- (survey lien.)
 - * Transfer of Morrow mortgage to Frank Phillipps, 21 August 1895
 - * Partition Order creating D1 and D2, NLC, 11 July, 1900.
- Transfer by way of sale to Mary Phillipps for £40/-, 22 November 1902
Alienation of Pukeatua D 2 completed.

PUKEATUA E

- * Title created: Partition Order, NLC, Auckland, 21 August 1894.
- * Grantees: Kihirini Reweti, Te Kooti Reweti, Ngapiwi Reweti.
- * Area : 10:0:00 a.r. p.
- * Survey: ML 3779/1; R. Morrow.

Extending and completing the process of alienation of Pukeatua E

- * Transfer of all of Ngapiwi Reweti shares and a fraction (1 acre each) of the other 2 titleholders' interests (totalling 5:0:32 a.r.p., designated E1) to S.J. Vinson & R. Burns for £126/- on 18 August 1915.
 - * Partition order creating E1 & E2 on 4 November 1915.
- Alienation of Pukeatua E1 completed

PUKEATUA E2

- * Title created: 4 November 1915
- * Area: 4:3:08 a.r.p.
- * Partition order creating E2A & E2B, NLC, 9 October 1916.

PUKEATUA E 2A

- * Title created: 9 October 1916
- * No. of Titleholders: One.
- * Area: 2:1:24 a.r.p.
- * Transfer by way of sale from 1 titleholder to J.H.Lyons, for £65/-, 28 October 1919.
- * Designated European land between 1919 and 1972, when E2A was exchanged for an adjacent 5th generation block fragment: Ongarahu A3A1. Thus Pukeatua E2A reverted to Maaori freehold title in 1972.

PUKEATUA E 2B

- * Title created: 9 October 1916.
- * No. of titleholders: One.
- * Area: 2:1:24 a. r. p.
- * Succession orders increased titleholders to 6 persons between 1916 & 1922.
- * Transfer by way of sale to D. Lyons for £120/-, 4 September 1922.

Alienation of E 2B completed.

PUKEATUA F

- * Title created: Partition Order, NLC, Auckland, 21 August 1894.
- * Grantees: Paora Kawharu, Poata Uruamo, and 2 others.
- * Area: 10:0:00 a. r. p.
- * Survey: ML 3779/1; R. Morrow.
- * Partition order creating F 1 (0:2:27 a.r.p.), F2 (2:0:32.6 a .r. p.), and F3 (7:1:15.5 a.r.p), NLC, 28 June 1926.
- * Block F 1 of 0:2:27 a. r. p. was declared a public road, 28/6/1926.
- * Part of F 2 (0:2:00 a. r. p.) acquired under the Public Works Act 1937.
- * F 3 of 7:1:15.5 a. r. p. remains in Maori hands.
- * Partition order creating F 2A (0: 2: 00 a. r. p.) and F 2B (1:2:32.6 a. r. p.), MLC, 29 October 1965.
- * F2A was declared European land, 13 August 1971.

About 9: 0:06.1 a.r.p. of the ‘daughter’ block Pukeatua F (viz. F2B and F3) remains Maori freehold land at the time of writing.

These then are the bare facts as evidenced from the documented colonial record. It is of course an abstract premised on a Pakeha colonial construct which served the imperial imperative of keeping track of the ownership of precisely defined areas – whether vast or miniscule - of land alienated (and about to be alienated.)

We need to be reminded that from this massive colonial archive historians have quarried for differing purposes, to serve different agendas. This ore-load has been sifted more rigorously as part of the Waitangi Tribunal claims’ industry process over the past 15 years. From these ‘chronologies’ of ‘events’ the Crown and the Waitangi Tribunal claimants construct and re-construct their opposing advocacy positions. Never has the business of searching for sub-textual clues been more painstakingly undertaken in order to build a case clothed in rhetoric. The initiative driving the research process has been a general consensus that the tangata whenua were effectively dispossessed by legal fiat. This process has swollen to a flood as this viewpoint has been variously questioned, challenged and at times rebutted.

The major section that follows below is focussed on a robust deconstruction of the colonial record. It is preceded by an outline of the historical

and geographical context and then by a chronology of the key events in the alienation process.

Appellation/ Nomenclature; Areas and Extent

Pukeatua is a block of Maori land of some 1694 acres in the southern Kaipara located approximately some 20 kilometres south of Te Awaroa/Helensville and 35 kilometres north west of Tamaki Makaurau/Auckland. It was given this appellation in 1864 under the authority of the various agencies of the colonial administration, most importantly the Survey Office, Land Registry and Native Land Court. The block should not to be confused with the 23,800 acre block of the same name approximately 20 kilometres to the north-east purchased by the Crown on 20 January 1864 from Ngati Whatua. The signatories to the deed for this larger block were Tamati Reweti, Te Kiri Wera, Pukihi Taraia, Te Otene Kikokiko, Ngatote, Hohepa, Te Para, and again, "Tamati Reweti, for all Ngati Whatua." The larger block usually appears in the colonial land administrative records as the Parish of Pukeatua.² There is a peak within the boundaries of the larger block known to Maori as Pukeatua the "Hill of the Gods."³ There is no clear reason for the duplication of names. An informed guess would suggest that because the two blocks are within a few kilometres of each other, the smaller block was given the same name by Maori in the survey party in recognition of its link with a dominating peak in the larger adjacent territory. Generally, throughout the entire Tai Tokerau rohe the surveyors informed by local tangata whenua gave Maori names to the surveyed blocks.

The "Geo-Cultural" Context

In the light of the intense current debate on the definitions of iwi it is precautionary to explore some of the evidence pertaining to the self-identifications of Maori who were claiming title to the Pukeatua block, the adjoining neighbouring blocks and some more distant blocks in the middle reaches of the Kaipara River valley, its Waikoukou and Kumeu tributaries and the ocean-flowing Muriwai Stream. Broadly speaking the middle Kaipara Valley area is currently and in the recent past. the 'heartland' or turangawaewae of Te Taou peoples. To the south

² Deed 183, NALTO, LINZ; Parish Register, NALTO, LINZ.

³ Turton's *Epitome*, 1877, C110; G. Graham, 'A Legend of Old Mahurangi', *JPSoc*, 27, 1918,

and south-west in the northern foothills of the Waitakere Ranges tangata whenua identified themselves as Waiohua or Kawerau.

A critical examination of the historical evidence points to a complex pattern of social formation and identification. The status of any one descent group whether as larger formations – iwi, or smaller social organisations – hapu - was dynamic, as Angela Ballara puts it. It could grow, bifurcate or decrease and contract; it could wax and wane, as Joan Metge explains.⁴ Within the rohe of the geographical territory covered by the blocks known as Pukeatua and its adjacent and proximate neighbours (i.e the sub-region known as the extreme south of the southern Kaipara and the northern edges of the Waitakere Ranges) the principal marker of hapu identification from about the time of the late eighteenth century was Te Taou, the smaller, Kawerau/Waiohua. The first group was predominant in the north and centre of the rohe; the second group was scattered in the southern and south western parts of the rohe – in the foothills of the Waitakeres, along with a few representatives of the first group. In the dynamic continuum alluded to by Ballara and Metge (above) the historical dynamic of Te Taou in the late eighteenth and early nineteenth centuries was expansive. That hapu had acquired by conquest lands further to the south east of the Kaipara in parts of the Tamaki Makaurau isthmus. At the time of the formal acquisition of Aotearoa/New Zealand in 1840 peoples of Te Taou and other mixed affiliations had settled in scattered pockets on the Tamaki Makaurau isthmus, e.g. at Okahu/Orakei, Karangahape, and Ihumatao/Mangere. Their conquest of the isthmus can be dated to the year 1740. This occupation was interrupted at times by warring forays from enemies, the most significant of which was the invasion of musket-bearing Ngapuhi from the north in the late 1820s and early 1830s. Te Taou returned to the Tamaki Makaurau isthmus after a short period of enforced exile in Waikato.

The land block which is the central focus of this thesis will be referred to as Pukeatua, the name it was given under the colonial invention of cultural space.⁵ In the colonial administrative record it is located in areas III, IV, VI, VII of the

p.86.

⁴ Angela Ballara, 'Porongahau: The Formation of an Eighteenth Century Community in Southern Hawke's Bay', *NZJH* 29, (1), April 1995, p.5., and *ibid.*, *Iwi*, 1998, pp. 99-101; J. Metge, *The Maoris of New Zealand: Rautahi*, London, revised edition, 1976, p. 5.

⁵ The topic of cultural space is the focus of analysis in G.M. Byrnes, *op. cit.*

Pakeha-designated Kumeu Survey District. It is situated in the midst of other Maori land blocks surveyed about the same time. These blocks together with their extent in acres, roods and perches (a.r.p.) are (with the date of the Native Land Court title investigation in brackets) clockwise from the north:

WAIPAPA [south] - (18.2.1871). 1973:0:00 arp.

Titleholders: Kiwara te Ro, Paora Kawharu, Te Otene Kikokiko, Maata Tira Koroheke, Hikitia, Paraone Taraia, Tarata Mamete, Te Wirihana.

WAIKOUKOU Nos. 1 (5.1.1867). 256:0:00 arp. & No. 2 (16.2.1871) 2976:0:00 arp

Titleholders: Paora Tuhaere, Wiremu Reweti Te Whenua.

URURUA - (16.2.1871). 891:2:00 arp.

Titleholders: Paora Tuhaere, Te Hira Te Kawau, Waaka Tuaea, Eruera Te Paerimu, Hone Tupuhi, Kipa Matu, Hori Winiata Nopera, Arama Karaka Matuku, Wiremu Reweti, Wharepouru.

ONGARAHU (& MARAMATAWHANA) - (16.2.1871). 525:0:00 arp.

Titleholders: Waaka Tuaea, Hakuene Ratu, Hoterene Hikuera Te Tinana, Tahana Uruamo, Parata Tautari, Hori Hoete, Rangi Taierua, Tinipia Karoro, Koni Hihi, Arama Karaka Matuku.

(N.B. The appellation Maramatawhana was used for the southern portion of Ongarahu following the first partition of Ongarahu in 1901.)

RUARANGIHAERERE - (3.5.1869). 507:0:00 arp.

Titleholders: Te Otene Kikokiko, Matini Murupaenga (dc'sd.).

(N.B. Paora Tuhaere & Te Otene Kikokiko as trustees for Matini Tikipo Murupaenga.)

TAUWHARE - (20.1.1876). 243:0:00 arp.

Titleholders: Ngawaka Tautari, Te Otene Kikokiko, Wi Marua, Maata Tira Koroheke, Marereira Taia, Te Ratu Hakuene, Waaka Tuaea, Atareta Waikohu.

An attempt has been made to identify the hapu appellations of all the titleholders in the above six blocks. The identification process was quite straightforward. Most titleholders gave their hapu affiliation immediately subsequent to their self-identification in the opening passages of their korero before the Native Land Court sittings. It was unnecessary to detail each affiliation as they were overwhelmingly of Te Taou. This reinforces the commonly-held understanding that the rohe immediately contiguous to Pukeatua was the turangawaewae of this hapu.

A comparison between the hapu affiliation evidence of any one Maori title claimant with the evidence presented by the same person in respect of land blocks beyond southern Kaipara highlights the intense bond between land/whenua and

people/tangata. As explicated at some length in the introductory section of the thesis, Maori have multiple whakapapa bonds with many hapu and many rohe. A prominent example in southern Kaipara and Tamaki Makaurau is the rangatira Paora Tuhaere who identified himself with Te Taou, Ngaoho and Uringutu at the second Orakei block title investigations in 1868-9 but only as Te Taou in the southern Kaipara. The evocation of different tupuna names was and is wholly appropriate to the context and wholly consonant with tangata whenua cultural paradigms. Ngaoho and Uringutu were the ancient peoples of Tamaki Makaurau; Te Taou was the conquering ascendant hapu of the rohe around the Kaipara River valley and the Tamaki Makaurau isthmus. They inter-married with the former. Tuhaere was using whakapapa to mediate a land claim. This was a common cultural praxis in discourse between hapu in pre-colonial times. The arrival of tauwi gave it a further dimension to which the script devised by Fenton gave further urgency. Other land blocks not immediately contiguous to Pukeatua and located to the north-west, west and south-west of Pukeatua include the twelve blocks noted below; again, the noted date in brackets refers to the title investigation:

(1) KOPIRONUI (18.2.71.) 904:0:00 arp.

Titleholders: Hori Te Paerimu, Te Wirihana Huhu, Kitarina Teu, Raiha Perukino, Parata Tautari, Te Kamutoa Tamahiki, Wiremu Te Whenua.

(2) TE KETI (31.1.76.) 106 :0: 00 arp.

Titleholders: Aperahama Uruamo, Te Tahana Uruamo.

(3) KAHUKURI (3.2.69.) 3176:0:00 arp.

Titleholders: Pera Tare, Tautari Ngawaka.

(4) ONEONENUI (16.2.71.) 787:0:00 arp.

Titleholders: 16 were named in the award of title by the NLC; 10 were granted the title. The 16 were: (of these, 8 marked * were grantees) Te Keene Tangaroa, Wiremu Reweti [Te Whenua], Karauri Hautahi*, Paraone Ngaweke*, Hera Tauaro*, Te Moana, Te Koakoa, Paora Tuhaere*, Patoromu, Te Para*, Apihai Te Wharepouru, Arama Karaka Haututu*, Te Kiri Te Rangi, Kaingaro, Te Hemara Tauhia*, Kiorama*.

The 2 names not listed above who appeared as grantees were: Wiremu Pungaro, Matiu Tuturua.

(5) TUATETUA (27.6.77.) 123:0:00 arp.

Titleholders: North block: Te Otene Kikokiko.

South block: Paora Kawharu.

(6) PARIRANUI (30.4.69.) 66:0:00 arp.

Titleholder: Paora Kawharu.

(7) PUKEKAUWERE (2.7.78.) 285:0:00 arp.

Titleholders: Paora Kawharu, Te Keene Tangaroa, Kiwara Te Ro, Wirihana Te Huhu.

(8) RANGIAHUA (18.2.71.) 66:3:19 arp.

Titleholders: Paraone Ngaweke, Paora Tuhaere, Wiremu Reweti Te Whenua, Tamahiki [Reweti], Te Hira Te Kawau, Te Kepa Ahu.

(9) PAEKAWAU (16.2.71.) 73:3:23 arp.

Titleholders: Katene Ngapuki [wife to Wiremu Reweti te Whenua .]

(10) PAREKURA (16.2.71.) 55:1:11 arp.

Titleholder: Wiremu Pungaro.

(11) MAROROA (18.2.71.) 28:0:34 arp.

Titleholders: Kataraina Takutai, Te Taua Matatakotoroa, Te Anewa Ahiwaru, Pera Tare.

(12) MURIWAI (15.2.71.) 1285;0;00 arp.

Titleholders: Nopera Waitaheke, Paura Patu, Ngawaka Tautari, Utakura te Hakuene, Pera Tare, Te Kepa Matu.

An analysis of the self-ascribed hapu affiliations of the titleholders in these twelve blocks revealed some interesting patterns, namely: blocks numbered 1-7 (above) have an overwhelming predominance of titleholders aligning their identity with Te Taou. These blocks are located in the middle areas of the Kaipara Valley. In contrast, the titleholders in blocks 8-12 were a mixture of some peoples with Waiohua/Kawerau identification and some claiming Te Taou affiliation. Reference to any of the accompanying maps will show that these five blocks are contiguous with each other and are located in the northern fringes of the Waitakere Ranges, which historically were a place of refuge for the Waiohua/Kawerau people from Te Taou advancing from the north. All of these blocks including Pukeatua were brought under a land tenurial system of individual title in the twelve or so years from 1864; this title was determined by Pakeha judges on the weight of evidence presented in the newly-established Native Land Courts in an adversarial process of claim and counter-claim. Customary title was extinguished by order of the Court and vested in named individuals.

Pukeatua - The Parent Block

The total area in the survey of 1864 was given as some 1754 acres.⁶ The surveys taken at the time of the first major partition of the substantial remainder of the parent block in 1894 showed that this figure was in excess by some 60 acres of the 1864 survey. The latter calculation was some 1694 acres. Wiremu Reweti Te Whenua of Te Taou, a first cousin of the Tamati Reweti associated with the sale to the Crown of the larger 23,000 acre Pukeatua block to the north-east, ordered the first survey. In 1890 a little under one-third of the of the block, the southern portion, subject to a sale agreement between the vendor, Paora Tuhaere, younger brother of Wiremu Reweti Te Whenua, and the purchasers, John James McDonald and Donald McDonald, was surveyed at 591:0:04 acres. Four years later a survey of the block following a NLC Order of 24 October 1894 to partition the block into Pukeatua A, B, C, D, E, and F, indicated that the original area had been over-generously calculated.⁷ This empirical evidence squared with doubts expressed by counsel, Frederick Earl at the partition hearings of 17, 18 and 20 August 1894.⁸ By induction the 1894 figures yield a total acreage of 1694:01:04. Proportional abatements were made to some of the areas of the 1894 Native Land Court-ordered sub-divided portions in order that the claimed interest of Paora Kawharu, a senior rangatira of Te Taou, for two defined portions (later designated as A and F) of a fixed acreage could be met in full.

Geographically, the total block falls into two distinct zones - northern and southern - divided by the westward meandering Kaipara River. The northern part of the parent block received the designations Pukeatua A, B, C, and D at the hearings for the four separate applications for partition on 17, 18 and 20 August 1894 at Te Awaroa (Helensville.) Block D was further sub-divided into D1 and D2 at a NLC hearing of a partition application submitted by a non-seller, Poata Uruamo, of Te Taou, on 11 July 1900.⁹ Their areas were: Pukeatua A - 93:0:00 a.r.p.; Pukeatua B - 132:0:00; Pukeatua C - 688:0:00; Pukeatua D₁ - 42:0:00; Pukeatua D₂ - 127:0:00.

⁶ ML Maps 1 and 1a, LINZ.

⁷ *Ibid.*

⁸ AMB 6, pp.54 and 74.

⁹ WMB 7, pp.147-148.

The southern part of the parent block had two discrete and separate legal and administrative constituents:

(1) "Daughter " blocks E₁ - 5:0:32 acres; E₂- 4:3:08 acres; F-10:0:00 acres; arising out of the Court order of 20 August, 1894. These 3 small blocks form a square on the south side of the Rewiti railway station. All three were held in tenancy-in-common by named tangata whenua individuals after 1894.

(2) The much larger part (591:0:04 acres) of the geographic southern portion.. which will be referred to in this thesis as 'Pukeatua South', was sold by Paora Tuhaere (who does not in law appear to have been the legal titleholder but probably acted for the legal successors to the title, the Rewiti whanau who were his nephews and nieces) to the newly arrived Waimauku colonists and brothers Donald and John James McDonald. A Certificate of Title was issued 25 August 1891. It does not appear to have had any distinctive appellation.¹⁰ As we shall see later, the sale of the southern portion was not contentious as it was the sale of a divided portion, not of a share in the block.

Topography

The cartographic representation of the block shows it to be roughly trapezoid in shape. The northern two-thirds is an elevated uneven surfaced plateau forming the south-western edge of the Tai Tokerau hill-spine. The ridges and valleys have a general north-south alignment. This portion is between 15-180 m. in elevation. This hill portion of Pukeatua was designated A, B, C, and D from 1894 by the Native Land Court.¹¹ The other geographic portion lies immediately to the south of the Kaipara River, at the northern edge of the Waitakere Ranges foothills. This area is gently rolling with remnants of ancient alluvial river terraces. It is about 15-70 m. in elevation a.s.l. Administratively the extreme west of this zone received the appellations Pukeatua E and F. As noted above the balance of this zone did not receive a distinctive appellation on its sale to the McDonalds in 1891. These two geographic zones are separated by the west-flowing and winding Kaipara River, which is not tidal at this point, though the fresh water backs up as far eastward as Kumeu, five kilometres eastwards from the Pukeatua/Waikoukou

¹⁰ CTs 60/289, 60/290, NALTO, LINZ.

¹¹ KMB 5, pp.6-20.

Broadly speaking, the European paradigm was similar to Maori. Pukeatua lay across or close to suitable land transport routes from the colonists' settlements around the Kaipara Harbour to the principal regional settlement and sometime colonial capital - Auckland. Up till about the mid-1890s the principal roadway – little more than a rough horse-and-cart track from Auckland to Helensville (founded in 1862 close to the Maori kainga of Te Awaroa) ran but a short distance to the north and east of the Pukeatua block. The valley of the lower Kaipara River was too swampy to allow of easy foot or wheeled access. From around the early 1890s the Colonial Government's Department of Public Works began the process of forming a permanent roadway parallel to the Kaipara valley-floor railway between Te Awaroa (Helensville) and Kumeu.¹⁵

Vital in the opening up of the block to European-style resource (principally kauri and gum) utilisation and the development of pastoral grazing was the construction of the Helensville-Riverhead railway, and its extension to Auckland. This was planned from March 1871. It has already been noted in the preceding chapter that prominent southern Kaipara and Auckland settlers were in the spearhead of the political lobbying. The line was opened 28 October 1875, and the extension linking Kumeu (near Riverhead) to the colonial metropole of Auckland in July 1881.¹⁶

Land for the rail route was acquired by the Colonial Government. 28:01:00 acres were taken in the Pukeatua block.¹⁷ The route followed the floor of the Kaipara valley on the south side of the river. A railway station was located close to the site of the Maramatawhana kainga and a short distance from the Te Tineke pa, and mis-named Rewiti, probably to commemorate the late (died November 1871) Te Taou rangatira Wiremu Reweti Te Whenua. The immediate effect on the Maori settlement pattern in the area immediately west of the Pukeatua block was the final abandonment of the Tineke paa and the establishment in the late 1870s of a European-style Maori village at Rewiti.

¹⁴ ML maps 1 and 1a., NALTO, LINZ ; and M.W. Spring-Rice, op. cit., (passim.)

¹⁵ Proclamation 1229, 19/7/1892, NALTO, LINZ.

¹⁶ I. B. Madden, *Riverhead: Kaipara Gateway*, 1966, pp. 134-137; Refer also to Chapter 3, PAEROA, pp. 62 ff. (above.)

The Pattern of Maori Settlements (pre- and post-European)

In the 1860s, as a result of the lease and sale of land and the impact of the European economy and introduced agricultural and pastoral practices, Maori settlement patterns underwent a fundamental change. In pre-European times (and certainly prior to the Ngapuhi invasions of the 1820s and 1830s) there would probably have been both short- and long-term shifts of small numbers of Te Taou between the geographically discrete southern Kaipara and Tamaki Makaurau. The advent of the Pakeha capitalist economy based on the extractive resources of timber and on an animal grazing pastoral system substantially altered the life-style and cultural praxis of the indigenous people. To give but two of many examples: first, seasonal, annual and long-term migrations changed tempo; second, new settlement patterns emerged as old habitations were adapted or abandoned.

Some local Maori of Te Taou affiliation often lived with or resided on a long-term basis with their relatives at Okahu on the Orakei land block attracted by the growing colonial metropole of Auckland. The movement of at least one prominent figure in the local histories, Paora Tuhaere (ca. 1825-1892), could be re-constructed on a near-weekly basis, such is the voluminous extent of the documentation of the agency role of this highly public person in facilitating consultation and negotiation between tangata whenua and the colonial regime.¹⁸

Much less public was the life-style and work-habits of another local Maori figure, Wiremu Watene Tautari (ca. 1850-1933), a distant relative of Tuhaere. He was a titleholder in about five Native/Maori land blocks in the southern Kaipara and, very significantly both the parent block of Orakei, and three of its second generation partition blocks. His documented role as a kauri trader with a fleet of boats and barges on the Waitemata and the written evidence of his residing at Orakei, Huapai and Rewiti is evidence that he would have been frequently peripatetic, answering the call of the capitalist cash market.¹⁹ Many local tangata whenua would probably have been as mobile as Tautari.

¹⁷ LINZ, Proclamation 745; *N.Z.G.*, 1884, p. 1161.

¹⁸ There exists no major biography of this pivotal local and national figure. For the briefest outline refer *DNZB*, Vol.1, 1991, pp. 552-553.

¹⁹ Wiremu Watene Tautari remains a somewhat elusive historical figure. He and his father, Ngawaka Tautari were conflated as a single name in the 1869 Native Land Court's Orakei title award and correctly listed as two names on the 1873 Orakei Crown Grant. There is some scholarly debate as to their rangatira status in the Orakei rohe. Personal communication with

There is no superficial evidence of ancient or classical Maori pa or kainga within the exact boundaries of the block, but the block has not been surveyed archaeologically. It is scholarly conjecture that the upland nature of much of the block exposing it to the west winds rendered it a less hospitable zone for dwelling than the nearby sheltered valley floor; however, the area to the northwest, west and south-west has been investigated archaeologically in recent times. A thorough interrogation of the archaeological evidence has been made by Wynne Spring-Rice.²⁰ Her extensive investigations of the nature of Maori settlement in the southern Kaipara peninsula convincingly proves that this area supported many communities made up of groups of closely-related whanau functioning as economic communities in a flexibly delineated resource-utilisation area from the hills and valleys of the peninsula to the food-rich waters of the Kaipara Harbour. She has identified up to 120 pa and kainga sites from the Kaipara Heads to the Muriwai Stream, on the northern flank of the Waitakere Ranges. About a mile outside the south western boundary of the block on the lower slopes of the Kaipara Peninsula plateau complex was a hill pa known as Tineke. It was abandoned as a place of residence from about the 1850/60s.

Along the valley floor of the Kaipara River there were a number of kainga. Immediately outside the south-west boundary of the Pukeatua block there was a kainga on the north-east corner of the Ongarahu/Maramatawhana block (later subsumed within the European-style Maori settlement which came to be known as Rewiti through its proximity to the Rewiti railway station) immediately to the west of the 'daughter' blocks Pukeatua E and F. This kainga was under the leadership of Matini Murupaenga in the colonial period. A second kainga was at Kopironui, about 2 kilometres downstream from Rewiti. A third settlement was located at Ruarangihaerere, about two kilometres west of Rewiti under the rangatiratanga of Te Otene Kikokiko of Te Taou. A fourth kainga was at Wharepapa (present-day Woodhill), about three kilometres downstream; and a fifth at Te Ketu, about four kilometres downstream and north from Rewiti where

D.Simmons (1997.) Wiremu Watene Tautari was the subject around 1900 of a portraiture by Charles Goldie. It appears that he was a frequent visitor, client and customer of Goldie's father, a prominent Auckland businessman and kauri timber dealer. Refer, R. Blackley, *Charles Goldie*. Auckland 1997, p. 98; also personal communication with R. Blackley, 1996.

²⁰ M. W. Spring-Rice, *op. cit.*, pp. 78-96.

resided several whanau including those of Uruamo and Paora Kawharu, principally of Te Taou affiliation. Kawharu, a rangatira of Te Taou had shifted there sometime in the 1870s from his earlier home at Hiore Kata a few kilometres to the north.²¹

It is hazardous to attempt an estimate of the Maori population in the immediate vicinity of Pukeatua in the 1860s and 1870s. The Rogan census of 1869 covered the region from Mairatahi on the Kaipara South Head through Muriwai to Orakei at Tamaki Makaurau. This census enumerated 245 Maori, including half-castes.²² Likewise, the Government censuses of 1870 and 1878 will not yield a fine-grained analysis of the southern Kaipara.²³ Given this limited amount of data, the size of the Maori population outside the western boundary of Pukeatua can only be guessed at around 100 in the 1860/70s.

The documentary evidence pertaining to the Waitemata harbour settlements at Okahu and Orakei (which had of course a number of inhabitants who identified as Te Taou) would strongly suggest that there was considerable seasonal and annual movement between the southern Kaipara and the Waitemata. The net effect of the impact of a colonial economy was a shift of native peoples from traditional settlements to sites more adjacent to the colonial commercial centres of Auckland and Helensville.²⁴ The census figures for the Auckland and Kaipara areas show a net decline in Maori population up to 1891. Thus there was almost certainly a net decline in the Maori population in the areas contiguous to Pukeatua.

The Legal Apparatus of Land Alienation

Central to some understanding of the land alienation process under the Native Land Court regime are the records of that unique institution. It is imperative to regard the minute books with a skeptical eye: there is no way of knowing the proportion of the discussion before the court that was recorded, nor the agenda of

²¹ Ngiti Whatua Tribal Register, 1877, AI & ML, personal communication with Margaret Kawharu (descendant of Paora Kawharu.)

²² Rogan Letterbook, 1869, 28 October, AI & ML

²³ *A.JHR.* 1870, A-11, p. 4; *ibid.*, 1878, G2, pp.3-14.

²⁴ For example, the milling operations of the McLeod brothers at Helensville in 1865 employed about 100 people including many local Maori. Refer C.Sheffield, *op. cit.*, p. 73.

those who gave evidence, nor the veracity of the translation from Maori to English of the witnesses' testimony.

It is salutary to be aware that the minute books are not necessarily the only recorded evidence of the court process. Most blocks have extensive files of correspondence, applications and orders. Further, there are extant at least six judges' minute or note books for the Kaipara circuit.²⁵ An exhaustive trawling of these written depositories helped to fill in some vital gaps in the alienation sequences. Especially rewarding was the discovery of the judges' minutes on the Paora Tuhaere succession case on 19 February 1893. Micro-film copies of these minute books are available at the University of Auckland Library.

Title Investigation

Given that the minute books are problematic as reliable sources of information, the minuted record of the Pukeatua title investigation requires particular attention, not least because the microfilm and xerox copies of Kaipara Minute Book pages 20-29 are either missing or out of order. A recently acquired paper copy of the Kaipara Minute Books in mint copy condition has enhanced the legibility. As a result the crucial details of the korero given in support of Wiremu Reweti Te Whenua by the spokespeople for Te Taou assumes greater significance.

The title investigation for Pukeatua was held on 28 June 1865 at Tukupoto, near Te Awaroa/Helensville, one of the first sittings under the Native Lands Act 1865. All land law statutes have implied or explicit ante-vesting protocols, but the dates pertaining to the Pukeatua title award by the Court and the subsequent issue of a Crown grant are central to the controversy over admission to the title which emerged in the early 1890s.²⁶

Korero was given by Wiremu Reweti Te Whenua, the principal claimant representing the hapu of Te Taou. Corroborative evidence was given by seven prominent and senior rangatira and kaumatua and one kuia (Maata Tira Koroheke.) The other five names were Apihai Te Wharepouri, Te Otene Kikokiko, Paora Kawharu, Paora Tuhaere and Patiti Taierua. The korero of those giving evidence is highly significant in the light of later events concerning

²⁵ A-REPRO 4711, NA-A.

²⁶ KMB 1, p. 27.

individual title and the issues of trusteeship in respect of this block, the Orakei block and a host of Native/Maori Land blocks throughout Aotearoa/New Zealand. Some of the evidence recorded in the two pages of minutes reads:²⁷

Wiremu Reweti [Te Whenua] : I am one of the claimants. There are 30 other claimants and the whole of the Te Taou tribe.

All the other named claimants expressed individually their willingness to allow but one name in the title. The spirit of this consensus was succinctly expressed by Maata Tira Koroheke:

My claim on this land I waive in favour of the names given in by Wiremu Reweti;

and by Patiti Taierua: ²⁸

Pukeatua has been given into the hands of Wiremu Reweti [Te Whenua] by the whole tribe; let him have his land and his Crown Grant in his own name.

The title to Pukeatua was awarded to Wiremu Reweti Te Whenua prior to 30 October 1865 under the earlier Native Lands Act 1862. The Crown Grant was issued on 2 December 1865 solely to Reweti under the 1865 act.²⁹ As noted above, the different authorities for the legal instruments gave rise to disputes between interested parties some of which the 1893 Supreme Court case attempted to resolve.³⁰

The Mortgage, the Title Succession and their Complex Outcomes 1871-80.

The complexity surrounding the matters of the title and its succession together with unusual features of the mortgage and its putative encumbrance on the title present a situation that is a test of any historical interrogation. There is an abundance of textual evidence that serves to muddy any definitive interpretation. The sheer bulk of the textual evidence pertaining to the several mortgages, the various partition title investigations, the sale of the 591 acre 'Pukeatua South' block, the Supreme Court case, the succession investigations and the putative transfers of mortgage and title between Tuhaere and his lawyer Dufaur is a test of any historical interrogation. Often the apparent puzzling and contradictory nature

²⁷ KMB 1, op. cit., pp. 28-29.

²⁸ Ibid., pp. 28-29.

²⁹ Deed. Vol. 17D, fol. 811, NALTO, LINZ.

³⁰ Refer p. 104-105 (below.)

of the textual evidence serves to muddy any definitive interpretation on the occasion of the first reading of the textual evidence; in one aspect – the minutes of the succession case are ambiguous as to Paora Tuhaere’s inclusion in the title; this latter is in contrast to the Court order which does not include his name in the succession list. If we are to accept that in fact Paora Tuhaere was not a titleholder then the legality of all transactions involving Paora Tuhaere as titleholder after 1873 can be seen as ultra vires. In the light of Paora Tuhaere’s other extra-legal and/or informal transactions generally and in the Pukapuka block specifically, his activities with respect to the Pukeatua block are in keeping with the huge chasms that often yawned in the operations of the land laws as it tussled with the complexities of cultural differences.

In one aspect the evidence is quite equivocal– the minutes of the succession case are ambiguous as to Paora Tuhaere’s inclusion in the title; this latter is in contrast to the Court order which does not include his name in the succession list. Only by following the practical dictum of Alan Ward cited in the theoretical perspective cited above, and part of which needs repetition here can any sense be made of Paora Tuhaere’s activities in Pukeatua:³¹

where . . . all the tests of corroboration, authenticity, the measures of the relative weight of a piece of evidence or statement . . . are applied . . . we do get closer to an understanding of what happened; . . . if the research has indeed been exhaustive, and the wider contexts in which the evidence was created are known and understood, we get closer to the concepts of truth.

If we are to accept that in fact Tuhaere was not a titleholder then the legality of all transactions involving Tuhaere as putative titleholder after 1873 – the mortgage, the Native Equitable Owners beneficial owners’ case, the sale of ‘Pukeatua South’ – were beyond the law. In the light of Paora Tuhaere’s other ‘extra-legal’ transactions generally and in the Pukapuka block specifically his activities with respect to the Pukeatua block are in keeping with the huge chasms that often yawned in the land legislation as it tussled with the complexities of cultural acculturation. Tuhaere might be seen retrospectively as acting as a traditional rangatira in the wider interests of his whanua and whanaunga; another

³¹ Refer Chapter 2, THEORETICAL PERSPECTIVES: pp.29 ff. (above); *NZJH* 24 (2), October 1990, p.155.

construction might perceive self-serving interest. For some time this thesis writer believed that Tuhaere was the succeeding titleholder, given the large number of transactions affecting Pukeatua on which his name as vendor, mortgagor, mortgagee, etc appeared. Once it became apparent from the NLC official succession records that Tuhaere was not in fact a titleholder, the curious transactions of the re-mortgage and alleged transfer of title to Dufaur began to make much more sense. Further, the demand by other members of Te Taou including the Reverend Hauraki Paora and the Reweti whanau in the late 1880s for admission to the title fits into a pattern of restoration of title rights 'abrogated' by Tuhaere.

The situation of his sometime and occasional lawyer, Edmund Thomas Dufaur thus becomes even more contentious; it is perhaps not too difficult to accuse him of scurrilous and self-serving legal manoeuvres. Dufaur was probably the leading Maori land legal agent in colonial Auckland. It was he who brought together Morrin and Te Keene Tangaroa in the lease of Paparoa. He was involved in hundreds of Maori land dealings in the Tai Tokerau, Hauraki, Tamaki Makaurau, Waikato-Maniapoto and Tuwharetoa rohe.³² The archival material at the Auckland Institute and Museum Library contains a very slim but representative selection of his multifarious agency transactions from Muriwhenua to Taihape and from Taupaki to Te Aroha. He was deeply implicated with Paora Tuhaere in a number of transactions including as we shall see (or as we have seen) deals in the Pukapuka, Paparoa and Orakei blocks. His wife was Ngati Paoa. He was instrumental in the formation of the Kauri Timber Company in 1888, of which company he was the New Zealand chairman from 1891 to 1896.³³ By 1900 it was the largest industrial company operating in New Zealand.³⁴ Some idea of the Kauri Timber Company's direct involvement in the Maori land alienation process can be gained by an examination of the mortgage files in the North Auckland Land Transfer Office. One schedule alone listed forty five Maori land

³² Mortgage. Vol. 21M, fol. 622, entry no. 56033, NALTO, LINZ.

³³ Dufaur Mss., passim, AI & ML; and B. Carter, 'The Kauri Timber Company, 1888-1914', M.A. Thesis, University of Melbourne, Victoria, Australia, 1972, p.447; and KTC Mss, Series 0053. Fletcher Challenge Ltd Archives.

³⁴ Carter, op. cit., p. 34.

blocks in which it had timber cutting rights in the Hauraki and Tai Tokerau districts.³⁵

The immediate context of the succession order can be constructed from the public record. On 31 May 1871 Wiremu Reweti Te Whenua mortgaged the block to William Morrin, ironfounder, of Auckland for 1 year.³⁶ William Morrin died sometime in 1872, and the beneficiaries in his will were his brother, the speculator/investor Thomas Morrin, Samuel Jackson and Joseph Newman.³⁷ Wiremu Reweti Te Whenua died in November 1871. The mortgage was due for repayment in May 1872. On 21 February 1872, Paora Tuhaere applied to the Native Land Court for succession to the Pukeatua block to be determined. In the interim, probably to secure the title from passing to outside interests and/or to prevent the sale of the block by the mortgagees to recover their debt, Tuhaere arranged for the interest of two of the mortgagees to be transferred to himself for £84/10/- (the amount of the original mortgage plus interest.) The deal was arranged by the Auckland solicitor Edmund Thomas Dufaur.

At the succession hearing Paora Tuhaere told the Land Court that Wiremu Reweti had left no will and had nine children but that the land did not really belong to him, but to Apihai Te Kawau, their maternal uncle: "Te Reweti had it only to sell." As the land was 'really' Apihai's, Paora claimed it as his chosen heir. The outcome was a Court order which was minuted as "the above named persons are entitled to succeed." The persons "above named" were the nine children of Wiremu Reweti.³⁸ One reading of the text of the minuted record might construe that the applicant for the succession case to be determined (Paora Tuhaere) was implicitly included in the inclusive order of the judge. This eccentric reading would conflict with the explicit direction of the NLC order which is quite plain and quite straightforward: the successors were Te Wiremu Reweti and his 8 siblings.³⁹ In any event any legal interest that the Reweti whanau

³⁵ Mortgage. M. 18000, NALTO, LINZ.

³⁶ Mortgage. Vol.15M. fol. 838, NALTO, LINZ.

³⁷ Deed. Vol. 27D, fol. 171, NALTO, LINZ.

³⁸ KMB 3, p. 11 (21.2.1873.)

³⁹ NLC-A 2 18 Successions, Book 1: 1866-1885, p.4: Pukeatua Succession: applicant: PaoraTuhaere; deceased: Wiremu Reweti; date of NLC Succession Order: 11.5.1872; case heard at Helensville 21.2.1872; order in favour of Te Wiremu Reweti [WR's eldest son] and 8 others [i.e. his 8 siblings.]

might have had in the Pukeatua block was assumed by their uncle, Paora Tuhaere. In fact for the remaining twenty years of his life Paora acted as if he were the only grantee. This avuncular exclusion of the arguably rightful successors was to be a source of considerable tension in succeeding generations between the Reweti whanau and others who claimed an interest in the title. An exhaustive search of all the succession records pertaining to Wiremu Reweti Te Whenua has yielded no evidence of Tuhaere being the legal successor to his brother in the Pukeatua block. It is of course possible that there may have been a clerical omission of his name in the court record. A further possibility is that Tuhaere assumed the role of informal guardian/katiati for the nephews and nieces, some of whom would have been minors in 1873, but there is again no record of his being so appointed trustee by the court. The only instance of a similar appointment was in 1877 when Tuhaere was given the legal trusteeship of his 9 nephews and nieces in the northern Kaipara block of Kaihu No.1.⁴⁰

It is only in the textual relics of the record of some twenty one years later during a hearing over an Orakei block succession claim in 1893 that it becomes evident to the present-day inquirer that the Reweti children had effectively been by-passed in Pukeatua. At that 1893 claim Kihirini Reweti stated:⁴¹

... my father [Wiremu Reweti Te Whenua] was not put in as an original owner [in Orakei] because Paora was to have the Orakei lands and our father the Kaipara lands. We were very young when our father died [in 1871] and Paora was appointed successor to some of our father's lands. Paora was then put into the Kaipara lands.

On the basis of the archival documentary and oral evidence Kihirini Reweti in fact was in error in respect of Paora Tuhaere being appointed successor to 'some of our father's lands.' A close scrutiny of all the archival records (which are the textual relics of the past) pertaining to the so-called 'Kaipara lands' yields the following title and title succession details:⁴²

TAUPAKI: dec'sd titleholder Wiremu Reweti; applicant: Wiremu Reweti [son of WR.] NLC sitting 15.3.1875. Dismissed.

⁴⁰ KMB 3, pp. 213-214 (8.3.1877)

⁴¹ HMB 29, Orakei Succession Case No. 7 (cont'd.), pp. 150-151.

⁴² NLC-A 2 18 Successions, Book 1: 1866-1885, pp.3-4, and p.8.

WAIKOUKOU No. 2: dec'sd titleholder Wiremu Reweti; applicant: Wiremu Reweti [son of WR.] NLC sitting 15.3.1875. Dismissed.
PUKEATUA; dec'sd titleholder Wiremu Reweti; applicant Wiremu Reweti [son of WR.] NLC sitting 15.3.1875. Dismissed as case already adjudicated on [21.2.1872, refer above in main text.]

RANGIAHUA: dec'sd titleholder Wiremu Reweti; applicant: Taoho Reweti [son of WR] & another. NLC sitting 15.3.1875. NLC Order in favour of Paora Kihirini [Reweti, a son of WR] and 7 o'rs [the siblings] 15.3.1875. Trustees for minors: Paora Tuhaere & Te Keene Tangaroa.

URURUA: dec'sd titleholder Wiremu Reweti; applicant: Kihirini Reweti [son] & an other. NLC sitting 15.3.1875. NLC Order in favour of Wiremu Reweti [a son of WR] & 8 o'rs [the siblings] 15.3.1875. No trustees.

In the light of the strong indication that Paora Tuhaere had not been appointed successor as titleholder to his deceased brother is the evidence of a second application, on this occasion lodged by Wiremu Reweti (the first application had been made by Paora Tuhaere) for a sitting to appoint a successor. This of course was dismissed as nine successors – the Reweti siblings including Wiremu Reweti - had been appointed successors on 21 February 1872.⁴³

The lack of any evidential record pertaining to Paora Tuhaere's succession is of course central to some of the concerns of this thesis.

Close Encounters of the Colonial Kind: Paora Tuhaere and Thomas Morrin

Thomas Morrin was probably one of the largest dealers in land transactions in the 1870s and 1880s in the Auckland Province (specifically the Lockerbie estate north-east of Hamilton) and even further south with the Ruanui block near Taihape where he was speculatively involved with one of the scions of the South Canterbury Studholmes.⁴⁴ In the context of this focus on Pukeatua were his links to a number of persons and circumstances in the Maori land block of Paparoa on the southern Kaipara peninsula, and the Native Reserve known as Pukapuka I in Tamaki Makaurau. He was the 21 year term lessor (with a purchasing clause) of Paparoa.⁴⁵ This is the block that the two sons, Roger Edward and Carleton Hugh, of the Chief Judge of the Native Land Court, F.D. Fenton, acquired piecemeal between 1892 and 1912; but that (as they say), is another history, which will be told later. As well, Thomas Morrin was involved in land leasing transactions with

⁴³ Refer above, p. 96.

⁴⁴ R.C.J. Stone, *op. cit.*, pp. 131-139.

⁴⁵ Lease. L.514, NALTO, LINZ.

St. John's College in West Tamaki, Auckland.⁴⁶ This rural land less than a mile from the south eastern borders of the Orakei land block was part of his stud horse breeding and training entrepreneurial empire.

As well as these interests in West Tamaki, Morrin held two separate leases (one of 10 years dating from 4.1.1878, the second of 21 years dating from 1.1.1881) of the lesser known Pukapuka Native Reserve of 94 acres - known officially as Pukapuka I, between the Purewa and Orakei Creeks, due south of the Orakei land block (present-day Auckland suburbs of eastern Remuera and Meadowbank) from Paora Tuhaere, whose title to Pukapuka itself was not clear.⁴⁷ The history of Pukapuka itself is yet another story of the manipulation by estate agents and the legal fraternity over conflicting and rival inter-iwi and inter-hapu claims to lands with enhanced capital values. In the pages below an attempt will be made to sketch some of the 'ghostly' lost history of Pukapuka.⁴⁸

The Mortgage and the Timber Leases: Dufaur Again

In 18 February 1880 Paora Tuhaere mortgaged the Pukeatua block to Edmund Thomas Dufaur, solicitor, of Auckland.⁴⁹ This transaction was construed by Dufaur as a transfer of title. Dufaur then proceeded to act as though he was the titleholder. In a declaration dated 22 May 1885, he made the following interesting statement:⁵⁰

I am the legal owner (of Pukeatua), part of which has been taken by Government for the Kaipara - Waikato Railway.

In his self-perceived role as titleholder he had entered into a lease agreement for 21 years with Thomas Taylor Masfield, ironmonger, of Auckland (probably a business colleague of Morrin in the ironmongery enterprise, T. & S. Morrin Ltd.), but due to the non-payment of rents within a year, the lease agreement was defaulted.⁵¹ This complex of legal transactions was a core issue at the heart of the Supreme Court case in 1893.⁵²

⁴⁶ Series 2, passim, StJCTMB.

⁴⁷ Dufaur Mss., Folder 35, Ms. 93/67, AI & ML.

⁴⁸ Refer Chapter 6, PUKAPUKA, pp.122 ff. (below.)

⁴⁹ Mortgage. Vol. 31M, fol. 135, NALTO, LINZ.

⁵⁰ Title Register 20, fol. 27, NALTO, LINZ.

⁵¹ Lease. Vol.32M, fol. 135, entry no. 64713, NALTO, LINZ.

⁵² NZLR XL 1893, pp. 729-733.

The exploitation of the timber resources of Pukeatua commenced sometime in 1883 when a three year kauri logging agreement was made between Dufaur and Tuhaere on the one part, John Foster, storekeeper, of Waikoukou, on the second part, and Hunia Paaka⁵³, bushman, of Pukeatua on the third part.⁵⁴ A related document reveals a contract between Paaka and John Alexander Lamb, logging contractor of Auckland. John Foster was a settler of Waikoukou, a small colonial village settlement immediately south east of the Pukeatua block. The logs were dragged by bullocks to a:⁵⁵

. . .water station at Waipapa on the Kaipara River or to the two broad creeks on the Pukeatua block running into the Kaipara River.

Foster was more than just a storekeeper. He had become the owner of the Kahukuri block immediately south east of Pukeatua, on default of a mortgage in 1877.⁵⁶ He also held various gum-digging licences in the locality.⁵⁷ In turn the Kahukuri block had been mortgaged between 1882 and 1884 to L.D. Nathan & Co., a quietly prosperous Jewish trading enterprise as old as the Colony itself, and the largest general merchants' and importing company in Auckland, if not the colony. Foster was in a kauri-gum and grocery trade relationship with L.D. Nathan & Co. of Fort Street in the colonial metropole, as were many small town traders throughout northern New Zealand.⁵⁸

On his death in 1893 his widow became involved in disputes with some of the Reweti whanau over informal leases and pig-hunting rights in the Kahukuri block, as well as altercations with Alfred Buckland, stock and station auctioneer, of Newmarket, Auckland, over both the sale of her cattle and Buckland's right of

⁵³ Hunia Paaka may well have been the same person as John Parker, the founder of the well-known Onehunga timber company, Parker & Lamb established in 1904. It was a household name in Auckland until the 1960s when it was taken over by Fletcher Timber Company. A.I. & ML has the Parker & Lamb archives, which need further interrogation.

⁵⁴ Dufaur Mss. Folder 28, Ms. 93/67, A.I & ML.

⁵⁵ Ibid., Folder 28. (N.B. There are three places called Waipapa on the Kaipara river.)

⁵⁶ DI 14a. fol. 402, NALTO, LINZ.

⁵⁷ Hesketh & Richmond Mss., Box 39 - Foster File, ACL.

⁵⁸ DI 13A. fol. 289, LINZ; L.D. Nathan, *As Old As Auckland*, 1985, p. 98; and personal communication, D.R. Nathan, 1996. The international capital links of the Nathans need interrogation.

access across her Kahukuri property from Muriwai in his agents' cattle-drives from the Buckland grazing properties at the Kaipara South Head.⁵⁹

On 25 July 1890 Dufaur 're-conveyed' the Pukeatua block to Paora Tuhaere following the receipt by Dufaur of the £84 owing under the 1880 'conveyance'.⁶⁰

The Alienation of Pukeatua South

On 5 November 1890 Paora Tuhaere transferred that part of the parent block south of the Kaipara River to the McDonald brothers. Originally this was surveyed at about 621 acres but 28 acres and 1 rood had been taken for the Kaipara railway in 1884. The sum paid by the McDonalds was £320.⁶¹

The Regime of the Native Equitable Owners' Act 1886-94: A Show of Equity?

Paora Tuhaere's actions after 1886 may well be explicable by the responses from several members of his extended whanau and of his Te Taou affiliates to the Native Equitable Owners Act 1886. This was an attempt to admit to the title those for whom the land may have been held in trust by the limited number of grantees admitted to early land court titles. More plainly, the single grantee or limited number of grantees awarded title under the 1865 Native Land Act and its many amendments, might have been acting as trustees for a much larger group. The 1886 Act allowed the rights of that group to be partially recognised. It was perhaps an attempt to redress the 10-owner rule and during the short life of the act (some eight years before it was repealed) there was a considerable amount of activity to attempt to redress real or imagined injustices throughout the colony. Specifically, as we shall see, a number of suits were brought in respect of a number of land blocks in southern Kaipara and Tamaki Makaurau/Auckland including Paparoa and Orakei.

In the following sections the focus will be on the documents which record the claims and counter-claims to the title to the Pukeatua block following the death of the Paora Tuhaere on 12 March 1892. A reading of the documents makes it clear that Tuhaere had no clear legal title to Pukeatua and was acting *ultra vires*.

⁵⁹ Hesketh and Richmond Mss, Box 39 - Foster File: A. Foster to Hesketh, various-1893, (passim), ACL; and personal communication, M. Waller (grandson of Buckland), 1996.

⁶⁰ Conveyance. Vol. R37, fol. 546, NALTO, LINZ.

⁶¹ Conveyance. Vol. R36, fol. 900, entry no. 118140, NALTO, LINZ.

He was caught in the cultural conflicts of interest at the colonial inter-face: the traditional values of a senior rangatira and the legal code of the super-imposed land tenure system.

Relative Interests

The south western edge of Pukeatua in pre-contact times had probably presented a broad bush-clad face to Tuhaere's people - members of Te Taou, dwelling in several papakainga, or in post-contact times, in the new settlement of Rewiti, along the floor of the mid-Kaipara River valley. There is little doubt that it was a focus of their daily attention for, among other things, there was a sacred site - a wahi tapu associated with the convalescence of warriors at the abandoned Tauwhare pa between the Kaipara River and the Pukeatua block.⁶²

The activities of the kauri logging operators in the whole neighbourhood including the Pukeatua block and its adjoining eastern block, Waikoukou (which its absentee titleholders the Pakeha settler family, Kerr Taylor of 'Alberton', Auckland had milled some time in the 1880s), would have attracted considerable notice in the mid- and late- 1880s.⁶³ Thus it is probable that the logging activities initiated by Dufaur and Tuhaere aroused their curiosity. Tuhaere was one of several rangatira of Te Taou.⁶⁴ His mana whenua was probably secure in Orakei, but in the Kaipara it was often contested.

The question of the relative interests of the extended family descendants of the original titleholder, Wiremu Reweti Te Whenua became an issue in the early 1890s, even before Tuhaere's death on 12 March 1892. A close kinsman of Reweti (and Tuhaere), the Reverend Hauraki Paora, a resident of Rewiti and Okahu/Orakei, sought some resolution of the issue of beneficial ownership under the Native Equitable Owners Act 1886. In the name of his father, the septagenarian Paora Kawharu (a senior rangatira of Te Taou), and a kinsman, Hakuene Ratu, the Reverend Hauraki Paora filed suit for consideration by the

⁶² G. Murdoch, *Historical Perspectives: On The Southern Kaipara, Lower Waikato And Wairoa Valley: A Background Report For The Impact Assessment of ARA Bulk Water Scheme Proposals 1988, Part 1, The Southern Kaipara*, Auckland, 1988, p. 37.

⁶³ Alberton Mss, V. Kerr-Taylor to Alan Kerr-Taylor, 12 December, 1889; DSC 17 March 1886, p. 8, 3 May 1886, p. 7, and 8 August 1887, p.5. Personal communication with Innes and Don Kerr Taylor, grandsons of A. Kerr-Taylor, 1996.

⁶⁴ Stephen Oliver, 'Tuhaere, Paora', *DNZB*, Vol.1, 1990, p.58.

Native Land Court.⁶⁵ Sittings of that institution were held at Te Awaroa (Helensville) on 28 September 1891, and adjourned to Auckland between 7 and 10 October 1891.⁶⁶ At the latter sitting submissions were made by Frederick Earl, solicitor, on behalf of the applicants. He sought a resolution of the confused legal status of the title and requested that the matter be referred to the Supreme Court for consideration. It was stated that the land was leased under the 1862 Native Land Court Act. Whether this referred to historic or current leases is not clear. Certainly there is no extant record of a lease current in 1891, although it is alluded to in the 1894 partition applications (see below). The case was adjourned.⁶⁷

Paora Tuhaere died on 12 March 1892 at Orakei.

Succession: Claim, Counter-claim = Confrontation?

As noted in the introductory comments the record of this case appears not in the usual minute books of the Court, but in the note books of Native Land Court Judge, Spencer von Sturmer. The case was heard on 19 January, 1893. It is apparent from the record that there was contention over the right of Tuhaere's only surviving child, Mere Paora Tuhaere, aged 18 years, to succeed to her father's interest, however they might have been defined in legal terms with respect to the Pukeatua block. The solicitor acting for some of the Reweti family, Joseph Sykes, argued that:⁶⁸

. . . it was Paora Tuhaere's intention to give the Pukeatua block to the children of Wiremu Reweti. I did not hear his daughter mentioned.

Opposing korero from Kihirini Reweti, a son of Wiremu Reweti Te Whenua was more generous:⁶⁹

Before he died, Paora Tuhaere said he wished his interest in the Puketua block to go to the descendants of Wiremu Reweti and to Mere Paora in equal shares.

This comment should be compared with Kihirini's evidence of two days earlier, in the Orakei succession case, in which he stated:⁷⁰

⁶⁵ I.H. Kawharu, 'Paora, Otene', *DNZB*, Vol. 3, 1994, p. 265.

⁶⁶ KMB 6, pp. 33 & 44-47.

⁶⁷ *Ibid.*, p. 47.

⁶⁸ A-REPRO 4711/1034, NA-A.

⁶⁹ HMB 29, p.149, (17 January 1893.)

⁷⁰ *Ibid.*, p. 149.

My father was not put in as an original owner (in Orakei), because Paora was to have the Orakei lands and my father the Kaipara lands...but Paora was granted lands in the Kaipara after the Orakei decision.

The evidence of Mere Paora cited by her lawyer confirmed that “ Pukeatua should become my property and of my cousins.”⁷¹

Justice von Sturmer ordered that Pukeatua be held in equal shares by seven persons, namely Mere Paora Tuhaere, and six surviving members of the Reweti whanau: Kihirini, Paora, Te Puna, Te Keene, Ngapipi, and Te Kooti.

The Supreme Court Decision.

The scheduled hearing in the Supreme Court finally took place before Mr. Justice Connelly on 7 April and 17 May 1893 in Auckland. A similar and related case concerning the Paparoa block had been dealt with on 26 August, 14 September and 25 November, 1892. Some indication of the probable outcome of the Pukeatua case was provided in the Paparoa judgment.⁷²

The judge in the Pukeatua case, taking his direction from the precedent of the Paparoa case, opined that there were three questions to be answered:⁷³

(1) Did "the Native Equitable Owners' Act, 1886" apply only to lands the certificates of title to which were issued upon proceedings initiated under "the Native Lands Act, 1865" and subsequent Acts?

(2) Notwithstanding the proceedings under "the Native Lands Act, 1862", in view of the issue of the certificate of title under "the Native Lands Act, 1865", and of the issue of the Crown grant under the same Act, or of the issue of either the certificate of title or the Crown grant, did the Native Land Court have jurisdiction to hear and entertain the application?

Did the dealings in the Pukeatua block entered into by Tuhaere and Dufaur, namely, the mortgage of the block by the grantee's successor constitute a sale or a conveyance of title?

The judgment brought down was:

(1) that the NEO Act of 1886 did not apply only to lands for which certificates of title were issued after the passing of the 1865 Act, which received the Royal Assent on 30 October, 1865. The Crown grant to Reweti on 2 December 1865 came within the

⁷⁰ HMB 29, op. cit., pp.150-1.

⁷¹ Ibid., pp. 99, and 150-1.

⁷² Refer Chapter 7, PAPANOA, pp. 141 ff. (below.)

⁷³ NZLR. XL. 1893, pp. 731-3.

scope of the 1865 Act, even though the title had been awarded on 28 June, 1865;

(2) that the Court did have jurisdiction to hear the application; [and]

(3) that the mortgage of the block did not constitute an absolute conveyance.

In his final judgment, Justice Connelly had the following comments to make:

. . . the mortgage by Wiremu Reweti to William Morrin...was transferred to Paora Tuhaere, . . . who . . . professing to be acting under his power of sale, conveyed the land to Dufaur . . who . . . in turn re-conveyed it to Tuhaere.

Mr. Justice Connelly further commented that:⁷⁴

. . . it is therefore now admitted by both parties to the transaction . . . that, although purporting to be a conveyance, it was a mortgage only..

Many questions can be raised about the purpose behind this series of related transactions, not least of which is the agenda of the key players, Dufaur and Tuhaere. The circumstantial evidence would point to a maximisation of the potential opportunity of timber exploitation. Tuhaere was the putative titleholder; Dufaur was on occasions Tuhaere's lawyer; he was chairman of the biggest industrial company operating in New Zealand: in the 1890s and early 1900s: the Kauri Timber Co. Ltd.

Equity In Deed And Law

The Supreme Court case had been played out fourteen months after the death of Tuhaere. No clear leader of Te Taou had emerged.⁷⁵ The Reverend Hauraki Paora, a son of the southern Kaipara rangatira, Paora Kawharu, persisted in his vigorous attempts to resolve the matter of relative interests in the Pukeatua block. In an application dated 19 August 1893, he, on behalf of his father (Paora Kawharu), and Hakuene Ratu applied for a hearing into the relative interests in the Pukeatua block.⁷⁶

The hearing began at Te Awaroa/Helensville on 19 September 1893. Frederick Earl appeared for the applicants, Paora Kawharu and Hakuene Ratu.

⁷⁴ *NZLR*. op. cit., p. 733.

⁷⁵ Waitangi Tribunal, *Orakei Report*, Wellington, 1987, pp. 43-46.

⁷⁶ *N.Z.G.*, 1893, II, pp. 1282-83.

Joseph Sykes appeared for Mere Paora Tuhaere and the Reweti whanau. The line-up of the opposing parties looked like a re-run of the succession case in January of that year.⁷⁷

The Court record states:⁷⁸

. . . the question of adjusting the relative interests had been discussed between all the parties for two days and they had come to an agreement.

The number of titleholders was increased from nine to thirty two and admitted to the title as tenants-in-common, holding between them in severalty twenty five shares. The largest single shareholding was the 2½ shares awarded to Paora Kawharu. This seems to have been an accurate representation of his kaumatua status in the Te Taou community. Hakuene Ratu, Wiremu Watene Tautari, and Hikiera Taierua received 1½ shares each. They were distant cousins of Paora Kawharu. Mere Paora Tuhaere, Hori Winiata, Toko Reweti, Rahui Kepa, Haimona Parika, Poata Aperahama, Paraone Taraia and Kiwara Te Ro received 1 share each, and the remaining twenty shareholders received fractionated shares each. The gradations of the size of shareholding would be a representation as far as can be ascertained the socio-political ranking of the members of the extended whanau and the Te Taou hapu.⁷⁹

Within 11 months of the admission of thirty two named individuals to the title 11 2/3 shares had been acquired by two separately interested European parties:⁸⁰

(1) the McDonald brothers, the recent alienors (November 1890) of the 'Pukeatua South' block and the 21 year term lessees of an undefined portion of the parent block; and

(2) Frank Phillipps, oil and colour merchant, of Auckland and his wife, Mary Phillipps.⁸¹ The company that the Phillipps had founded was known as Phillipps and Impey, a leading Auckland paint and hardware merchant.

⁷⁷ KMB 6, pp. 9 -11.

⁷⁸ Ibid., p. 12, and NLC Order 422, 19 September 1893, NLC-W.

⁷⁹ AMB 6, pp. 12 -13.

⁸⁰ Transfer: T16978 and T16979, NALTO, LINZ.

⁸¹ Native Land Court Orders Z1335 /36 /37, and 424, 425, 446.

Denouement: the Dismemberment of the Hill of the Gods

The final act in the alienation of Pukeatua unfolded in a scenario that was replicated a thousand-fold throughout the land. As has been foreshadowed above, two European purchasers sought partition of their acquired interests. The non-sellers equally sought partition to protect and safeguard their resolutely-held interests. Four cases for partition were brought before the Native Land Court between 17 and 21 August, 1894:

Case 1: Paora Kawharu (applicant)

Case 2: Renata Poata Uruamo (applicant)

Case 3: Mary Phillipps (applicant)

Case 4: Donald McDonald (applicant)

The 12 pages of evidence record some matters of special note that perhaps gives this partition a unique cast. All agreed that Paora Kawharu should get the 116 acres on the west side of the parent block as this was a "choice piece of land."⁸² This received the appellation Pukeatua A. Donald McDonald who had a 21 year lease from Paora Kawharu for an undefined portion of the parent block was awarded 138 acres to the north of his own property, Pukeatua South, across the Kaipara River. This defined portion received the appellation Pukeatua B.⁸³ Mary and Frank Phillipps were awarded the central portion of the block, some 688 acres representing the 15 2/3 shares "purchased from seventeen natives."⁸⁴ The 1894 survey map shows that most of this portion had been cleared of its bush, no doubt the result of Tuhaere's and Dufaur's exploitation of kauri and other hardwood timbers. This was designated Pukeatua C.⁸⁵ The eastern portion of the block, designated Pukeatua D, of some 169 acres, was awarded to five named non-sellers including Renata Poata Uruamo, a nephew of Raheara Uruamo, the wife of Paora Kawharu. Uruamo's political position over the individualisation of title had a parallel stance, albeit in vain, in his resistance over the partition of the Orakei

⁸² AMB 6, p.54.

⁸³ *Ibid.*, p.74.

⁸⁴ *Ibid.*, p.74.

⁸⁵ ML Maps 1 and 1a, LINZ; AMB 6, p.74.

block after 1898.⁸⁶ Uruamo's oppositional stance to alienation met with greater success in the partition of the nearby Hanekau block between 1896 and 1906⁸⁷.

A singular feature of the last processes of the alienation of the Pukeatua block was the special plea of Frederick Earl, that the most valuable portion of the block, on the south side of the Rewiti Railway Station, later surveyed as 20 acres, should represent a second interest of Paora Kawharu. The final order however did not fully meet this strong representation. The twenty acres were divided into two equal portions, E and F, the first in the names of three members of the Rewiti whanau, the second in the names of Paora Kawharu, Renata Poata Uruamo, and two others respectively.⁸⁸

The non-selling stance of some of Te Taou, encouraged by Uruamo and the Paora (Kawharu) whanau did not hold for long. In 1896 five of the six owners of Pukeatua D capitulated to the blandishments of Mary Phillipps, wife of Frank Phillipps. This second generation block was partitioned on her petition to the Court on 11 July 1900.⁸⁹ Uruamo finally alienated his residual portion in 1903 to Mrs Phillipps.⁹⁰

Only 118 acres of the Pukeatua block remained in Maori hands in 1903. How much longer this holding stance would prevail was a very open question. The appropriation of Maori land by the legal processes of the dominant culture in Pukeatua had yielded few winners, many losers. In human individual and social terms the cost/benefit equation was sorely out of kilter. The 'engine of destruction' had literally (and perhaps metaphorically) cut a track through the rohe of Te Taou. Resistance to the appeal of the cash rewards was minimal and confined to but a few.

Conclusion

The remainder of the original block, designated Pukeatua F, a tiny fragment (nearly square in shape and of some 9½ acres in area) remains today in the hands of the successors to the 1886 Native Equitable Owners case: the successors to the Paora (Kawharu) and Uruamo families. Several shareholders are currently

⁸⁶ AMB 6, p.74; *Orakei Report*, op.cit., pp.42-3.

⁸⁷ AMB 6 pp. 215-223, and 230-236; and AMB 7, pp. 276-77.

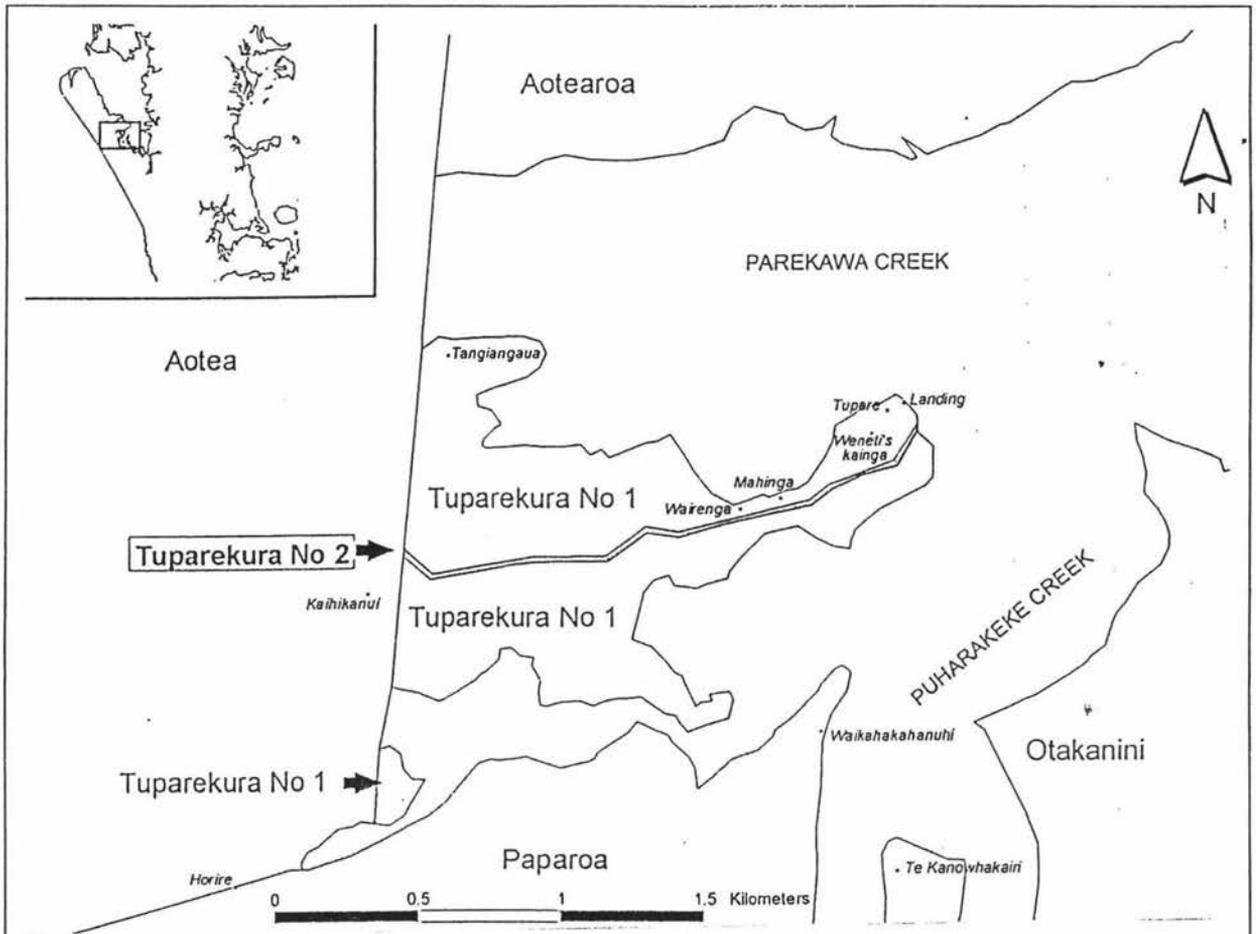
⁸⁸ AMB 6, p. 74.

⁸⁹ WMB 7, pp. 147-8.

registered as tenants-in-common and incorporated as a trust as titleholders of the last fractionated portion of Pukeatua. Almost in denial of its meaning- the 'Hill of the Gods'- this fragment is located on flat land immediately adjacent to the fast motor and rail tracks to the commercial market of the post-colonial metropolis.

The case of the alienation of the Pukeatua is a microcosm of cultural conflict, displacement, adjustment and adaptation between two worlds. It remains a fascinating case history of the adaptations of two cultures at the colonial interface of land with all its varied significances. The behaviour and activities of Paora Tuhaere and of his sometime legal complicitor Dufaur is only explicable in terms of his *not* being the legal titleholder of Pukeatua. In the midst of all the textual evidence which remains extant (and there remains little in the legal record with respect to Pukeatua that is not extant- except of course the record of Tuhaere's putative titleholding) Paora Tuhaere is never explicitly referred to as the 'titleholder', only as 'aboriginal native', 'vendor', 'mortgagor', 'mortgagee' and 'lessee'. In a rare triumph of legal and moral right and practical commonsense in the history of the native land law system the Native Equitable Owners Act 1886 provided the dispossessed titleholder successors – the Reweti siblings and their cousin Mere Paora Tuhaere their rightful legal position. The block was partitioned and the rightful new legal owners could choose to deal with it as a commodity if they so chose. The spirit of the law was thus with exceeding slowness brought into synchronisation with reality. Those who were in one sense arguably beyond the text were brought back into its scope and no longer marginalised in the cracks between two cultural systems. Those who were 'other' were brought within the 'assimilationist' model of acculturation that was emerging. Yet by that same act they were brought within the parameters of the individualistic-based capitalist system. A new form of colonization was incipient.

⁹⁰ Transfer.T 30557, NALTO, LINZ.



**The Fenton Enclave:
TUPAREKURA Nos. 1 & 2**

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Chapter 5

TUPAREKURA: 'White Mischief' Afoot

Tuparekura shares at least two aspects in common with its distant connection Pukapuka: it has no history, at least none in the conventional formalised form that we know as a micro-history; and it features, more prominently than in Pukapuka, an actor crucial to the Land Court's foundational acts: Francis Dart Fenton. In the Pukapuka scenario his role is that of witness called to support the Mahuta claim (and rebut the counter-claim of Paora Tuhaere) the 1890 title investigation; in the Tuparekura history his role is a personal one of alienator. The history of Pukapuka will follow that of Tuparekura.

Tuparekura, a 289 acre block has been chosen to highlight some of the quirky features of the Native Land Court system, two of which will be introduced immediately and returned to in full later: first, in the initial alienation process, 7 acres of Tuparekura (for which he publicly declared he had no need to obtain title) became the *personal* property of Francis Dart Fenton, the Chief Judge of the Native Land Court;¹ secondly, Tuparekura shares with a few blocks in the Kaipara and many throughout Aotearoa/New Zealand the phenomenon of a mistaken belief that land may appear to be wholly alienated by the process of the sale of shares in a multiple land holding, yet closer interrogation often reveals incomplete alienation as a result of errors and oversights made in the complex business of ascertaining the exact status of a fraction (defined or undefined on the ground) of partitioned and fragmented land holdings.

These two aspects are quite discrete, not connected. Arising out of each of these there are at least two features worthy of the historian's attention: (1) a roadway 2 chains wide and a few miles in length and later surveyed as 20:1:00 a.r.p. in area was delineated through the larger block and given a separate 'conventional' block title; the rationale behind this was probably to give the Fenton family access/egress to and from the Kaipara harbour from the western-adjointing block of Aotea, which Fenton had acquired on 8 May 1880 from the two European titleholders (Sir Henry Brett, an absentee owner resident at Pupuke, Takapuna, on Auckland's northern shores, & H.E. Williams); (2) the process of

¹ My emphasis; *AJHR* 1891, G-1, p.49.

fractionation, inherent in the system of multiple share ownership and equitable sibling inheritance and for which Fenton was largely responsible in introducing and implementing on a national scale, brought confusion as to legal entitlement, with the result that one of the two Tuparekura daughter blocks was for some time believed erroneously to have been *wholly* alienated.²

This however is to anticipate the very interesting and unique events that shape this history of Tuparekura. As usual in the mode of presentation commences with a brief chronological guide to the alienation process.

TUPAREKURA No. 1: Stamping The Colonial Template On Maori Land

Title Created: Title Investigation – NLC, Te Awaroa (Helensville) 15 July 1880.
Grantee: Patoromu Te Akariri.
Area: 289: 2: 7 a: r: p.
Survey: ML4978-A, R. Connell.
Costs: £2/-/- court costs.
£7/-/- for survey.

Extending the process of alienation of Tuparekura No. 1

- * Lease to Ihapera Nelson for 21 years from July 1880.
- * Assignment of lease from Ihapera Nelson to Francis Dart Fenton, February 1882.
- * Transfer by way of 'sale' of 'Part A' of 7:0:00 a.r.p. for 10/-/- from Patoromu Te Akiriri to Francis Dart Fenton, 12 December 1888. The sale was not immediately recognised by the NLC.
- * Lease to J.A. Wilson of part of block (which later became 1B), for 25 years (RR), at £15/15/- p.a. rental, 26 August 1910. Confirmed MLB 27.7.1911.
- * Partition into 1A of 71:0:30 a.r.p. and 1B of 216:2:11 a.r.p., NLC, 26 July 1911.

TUPAREKURA No. 1A: Stamping The Colonial Template On Maori Land.

Title created: Title Investigation – NLC, Te Awaroa (Helensville), 26 November 1911.
Grantee: One Maori owner.
Area: 71: 0:30 a. r. p. Total acreage until 1931 when most of '2' (the "Road") was merged, making a new total of 82:2:00 a.r.p.
Survey: ?.
Costs: £? court costs.
£24/5/- for survey.

Extending the process of alienation of Tuparekura No. 1A

- * Partial transfer of interests (2/7 ths = 20:0:00 a.r.p.) for £40/1/6, from Maori owners to Harold Monk confirmed by NLC in July 1931.
- * Partition into 1A1 of 41:3:11 a.r.p. with 1 owner (Monk.) and 1A2 of 40:2:29 a.r.p. (10 Maori owners.)

Alienation of 1A1 completed.

² My emphasis; F.D. Fenton, 1879, pp.18-19.

TUPAREKURA No. 1A2

Title created: Title Investigation – NLC, Te Awaroa (Helensville), 8 July 1931.
Grantee: 10 Maori owners.
Area: 40: 2:29 a. r. p.
Survey: ?.
Costs: £? court costs.
£? for survey.

Extending the process of alienation of Tuparekura No. 1A2

- * Purchase by E.G. Leighton (the titleholder of the adjacent blocks of Tuparekura 1A1, 1B, part of “2” and part of Aotea block) of the interests of 8 Maori owners, 1964 (= ca. 36:0:00 a.r.p.) 14.12.1964. The MLC refused to confirm transfer because not all 11 owners had signed the deed.
- * Purchase by E.G. Leighton of 2,381 shares via the Maori Trustee on 14.10.1970. This was confirmed by the NLC on 17/2/1971. Leighton’s shareholding stood at 47,619 shares out of a total of 57,143 (= ca 37:0:00 a.r.p.)
- * Declaration by MLC that 1A2 remained Maori freehold land, 26.4.1983. The two outstanding interests of 2/ 21 ths were succeeded to by the nine and ten children respectively of Eruini and Wirihana Hawke.
- * Unsuccessful suit by Leighton to have 1A2 declared “general” land in 1993; the other 19 owners (all Maori) declined consent.

TUPAREKURA No. 1B

Title created: Title Investigation – NLC, Te Awaroa (Helensville), 26 November 1911.
Grantees: several Maori owners.
Area: 216:2:11 a. r. p.
Survey: ?.
Costs: £? court costs.
£? for survey.

Extending & completing the process of alienation of Tuparekura No. 1B

- * Tokerau Land Board approved purchase by Harold R. Monk of 144:1:21 a.r.p., 11.11.1920.
- * Tokerau Land Board approved purchase by Harold R. Monk of 72:0:30 a.r.p., 21.9.1921.

Alienation of Tuparekura 1B completed.

TUPAREKURA No. 2 (“Road”) : Stamping The Colonial Template On Maori Land

Title created: Title Investigation – NLC, Te Awaroa (Helensville) 15 July 1880.
Grantee: Patoromu Te Akariri.
Area: 20: 1: 00 a. r. p.
Survey: ML 4978-A, R. Connell.
Costs: £2/-/- court costs
£? for survey.

Extending and Completing the Process of Alienation of Tuparekura 2

* Sale to Francis Dart Fenton for £10/-, 15 February 1881.

N.B. Harold Monk acquired No. 2 from Fenton's successors in 1924 and proceeded to incorporate the part of it (11:1:10 a.r.p.) contiguous with Tuparekura 1A within Tuparekura 1A (ibid,above.) The 'unused' part of '2' was included in Tuparekura 1A2 (q.v.).

Alienation of Tuparekura 2 completed.

All histories however require a contextualized placement: spatially and temporally and we now turn to a reflexive reconsideration of the micro-history of Tuparekura.

The Native/Maori Land Block known as Tuparekura is located on the eastern littoral of the southern Kaipara peninsula. The historic Tuparekura consisted of two parcels of land, one very much larger than the other, the former being a peninsula of 282:2:7 a.r.p. bound on its northern, eastern and southern margins by the Kaipara Harbour, and on its western flank by the Aotea block; the latter, infinitely smaller parcel, being but the tip of a separate peninsula of 7:0:00 a.r.p. located southwards from the much larger parcel, across a narrow estuary, and bounded by the harbour on three sides – north, east and south, and on its western boundary by the Aotea block. A sharp focus needs to be trained on the confusing and shifting pattern of block nomenclature (descriptors and numerators.) As Michael Belgrave has pointed out in his overview of the Land Court alienation process in the Auckland district, Maori land block appellations sometimes defy all logic.³

In this respect Tuparekura is somewhat different from other Tai Tokerau blocks in that one descriptor was used during the period of its 'informal' alienation, and a second set of simultaneous 'parallel' descriptors were given when matters were formalised from the time of the 1880 title investigation and first partition. This confusing situation arose solely out of the singularly idiosyncratic behaviour of the Chief Judge of the Native Land Court.

Thus, in some legal land administrative documents the larger peninsula was designated as Tuparekura 'B'; and the tip of the second peninsula was designated as Tuparekura 'A'. The latter was the smaller block which F.D. Fenton

‘acquired’ informally. From the time of the first title investigation and partition in 1880 the appellation ‘B’ of the ‘informal’ 282:2:7 a.r.p. parcel disappeared and the designations Tuparekura 1 and 2 were applied to it; in the meantime, the appellation of the smaller ‘A’ parcel, ‘owned and occupied’ by the F.D. Fenton’s successors up till about the second decade of the new century seems to have remained in a legal limbo until it was subsumed within the neighbouring Aotea block (owned by the Fentons) sometime after 1915.

There are no extant texts which account explicitly for these shifts in appellation. It is necessary to go behind or beyond the text – to make informed inferences sub-textually in order to flesh out the bones in the evidential record. A closer examination of the detailed recorded processes involved in alienation, partition, and native succession between 1880 and 1915 suggests that the Fenton interests played a leading role.

Thus, before moving on to some of the detail that this introduction summarises, the situation at the turn of last century was:

- Tuparekura ‘A’ of 7:0:00 a.r.p. was ‘squatted on’ by the successors to F.D. Fenton (d. 23.4.1898), presumably his two sons, Roger Edward and Carleton Hugh, whom we shall meet in later on in the history of the adjoining block of Paparoa ;
- Tuparekura ‘B’ (known as Tuparekura 1 and 2 from the time of the first title investigation in 1880) of 282:2:7 a.r.p. was Maori Land in the name of the six successors (three of whom each held $\frac{1}{4}$ share; and three of whom each held $\frac{1}{12}$ th of a share) to Patoromu Te Akiriri (d. before 29.11.97, probably in 1891, at Shelley Beach, Kaipara), the first sole titleholder.⁴

Fenton’s Unique Arrangement

Modern (or postmodern!) sensibilities may find the singularly distinctive behaviour of Francis Dart Fenton, Chief Judge of the Native Land Court quite inappropriate in present day’s terms, but in the context of his own time and place, the incidence of informal and specific ‘treaties’ between settlers and and representatives of local hapu throughout the early stages of the colonisation

³ M. Belgrave, *Counting The Hectares*, 1997, op.cit., pp. 11-12.

⁴ MLC-A 2 20 Successions, Book 3, 1896-1906, p.23.

process was or had been the norm, at least up to the 1860s. Fenton had seen at first hand in the Waikato and the Kaipara many distinctive styles of land buying operations in the late 1850s and early 1860s.. What is perhaps a little distinctive about Fenton is that he allowed the continuation of the informal system well into the period - some 30 or so years - of the operations of the Native Land Court entirely for his own, and his family's benefit.⁵

It is a matter of public record that he was a most out-spoken and controversial figure. Yet there was nothing covert about his operations. This detailed history of his own personal land dealings opens, perhaps appropriately with the account he gave to the 1891 commission into the Native Land laws of his involvement in the Tuparekura block: ⁶

I bought seven acres of land – a corner of a block of 300 acres, of which I held a twenty one years' lease because it contained a convenient landing place for my boats. There was only one owner. He asked me ten pounds and also wanted me to surrender the lease. I surrendered the lease and paid him the ten pounds for the seven acres. He was perfectly satisfied and thought he had done a good thing; but I cannot get a Crown title.

Why not?

The law does not provide for such cases. You can get a title for an undefined piece of land, share of an estate, but where it is defined you cannot get a title. My case has one advantage. I have full confidence in the vendor. I have his deed, witnessed by a Native Land Court Judge, and passed by the Trust Commissioner according to law, and the land was fairly bought for a due consideration. There I am on my land, and I escape all rates and taxes through want of a Crown title, so that I am not so badly off after all.

Yet you cannot get or transmit a title?

No, nor do I want to so long as I am alive, or while my children are alive. We do not want to sell or part with it. .

From the official extant primary records a short history of, first, the initial alienation process of the general block known as Tuparekura; and second, the processes whereby confusion arose as to the total alienation of Tuparekura 1A1 - but a bare skeletal outline - can be re-constructed.

⁵ W. Renwick, 'F.D. Fenton', in *DN ZB*, Vol. 1, 1990, pp. 121-2, and A. Ward, *A Show of Justice*, 1995, op. cit., (passim.)

⁶ *AJHR*, 1891, G-I, p.49.

The First Alienation

An investigation of title into the land block known as Tuparekura was held at Te Awaroa/Helensville on 13 July 1880 before Judge Rogan. The claimant Patoromu Te Akiriri was awarded the title to the two partitioned portions of the original block, Nos. 1 (of 282:2:7 a.r.p.) and 2: 'the road', (of 20:1:00 a.r.p.) Shortly after the grant for No. 2 was issued to Patoromu Te Akiriri, the land was transferred to the well-known Maori wife of local Pakeha identity, surveyor, land speculator and interpreter Charles Nelson, Ihapera/Isabella Nerihana/Nelson. She transferred the title within a year (in 1881) to Fenton. There is only very scattered textual evidence in the land administrative and land court records on this woman. A surviving photograph in the local Te Awaroa/Helensville museum captures the very appealing beauty of this 'half-caste' woman.

A transaction in the western-neighbouring block of Aotea was undoubtedly closely linked to this latter transfer. In early 1880 Fenton had acquired the title to Aotea from the original alienees, Sir Henry Brett and H.E. Williams. The acquisition of the title to the Tuparekura 'road' block would have given Fenton access to the Kaipara Harbour from the Aotea block. It is perhaps more than a coincidence that the survey of Tuparekura defined a road running west-east through Tuparekura from the Aotea boundary to the tip of the peninsula. There is no written record to corroborate the evidence given by Fenton at the 1891 Commission inquiry that he had an informal lease of what became Tuparekura 1 from Patoromu. Retrospective re-construction from the surviving records would suggest the following probable scenario:

In return for relinquishing the informal lease of the entire block Patoromu entered into an agreement to sell Fenton the seven acres at the tip of the adjoining peninsula and on which Fenton had established his residence, 'Crosland'. As a double surety of Fenton having continuing access to the Kaipara Harbour a road (which became Tuparekura No. 2, with a separate title) was cut from the surrounding block (to be called No.1.) For reasons that are not clear Ihapera Nelson acquired the title to the road. She held that title for a brief period before transferring it to Fenton in 1881. The documentary record of the Court order for a Memorial of Ownership to be issued in the name of Patoromu Te Akiriri has a

hand-written note scribbled above the word “Patoromu” bearing the words: “altered to Ihapera Nerihana [Nelson] at the request of Patoromu.”⁷

Local archaeological and other circumstantial corroborative evidence would suggest that Fenton had occupied and resided occasionally on the seven acres for several years prior to 1881. It was given the English name ‘Crosland’ and was the base for Fenton’s pioneering viticultural work in the local district. Yet as we have seen above in his evidence to the 1891 Commission he steadfastly refused to obtain title to this small ‘block’. On 12 December 1888 he settled the informal transaction with Patoromu for the sum of £20/-/-, but the Native Land Court did not recognise this immediately. The formal transfer was not entered in the records until 1909.⁸

The documentary trail with respect to the seven acre block after 1909 becomes very convoluted, but it is not appropriate or relevant to re-construct its history. What remains certain is that the alienation of the small block from Maori to colonist began as an informal lease agreement sometime in the 1870s between the Chief Judge of the Native Land Court, Francis Dart Fenton and a local Maori, Patoromu Te Akiriri, probably well known to Fenton; the formal title was not recognised by the Native Land Court and the Land Transfer Office until 1909.

The Missing Shares and the Incomplete Transfer.

The main block of Tuparekura had the appellations (with area) No. 1 (289:2:7 a.r.p.) and No. 2 (20:1:00 a.r.p.). It was partitioned in 1911 following a Native Land Court order because a 25 year lease at £15/15/- p.a. for part of the block (216:2:11 a.r.p.) which became 1B had been granted to J.A. Wilson in 1910. Tuparekura 1A (71:0:30 a.r.p.) remained Maori land. It is this ‘daughter’ block that is the focus of the narrative recounting the process of partial and incomplete alienation.

The Tuparekura 1B block was purchased over the period of a year (1920-1) in two stages by Harold Monk, a son of Richard Monk, sometime MHR, and alienor and titleholder of part of the mid-Kaipara valley block of Paeroa No. 1 and its small adjacent block, Paeroa No. 3. The Monks were a well known settler

⁷ NLC-W, 80/3336.

⁸ Transfer 50089, NALTO, 17.5.1909.

family in the district.⁹ Harold Monk had acquired all the interests in 1B from Maori shareholders by 1922, so that at that date only Tuparekura 1A of some 71 acres remained in native ownership. The successor to Harold Monk, his son Percy set about acquiring all of Tuparekura 1A from the twenty owners in 1930. That process, continued by his successors in a further sub-divided portion, known as 1A2, (as will be recounted below) had not been completed by 1999; yet the present titleholder, E.G. Leighton of the majority of undivided shares in Tuparekura 1A2 has been carrying out farming activities as if he were the outright owner. Leighton had began acquiring shares in the grand-daughter block in 1964. As well, he had become the outright owner of the adjoining Tuparekura 1A1, part of Tuparekura 2 and part of the adjoining Aotea block.

As we have noted in our introduction the process of the purchase of shares in Tuparekura 1A from the native shareholders began in 1930. The block was at the far end of a peninsula bounded on three sides by the Kaipara Harbour and in the west by Tuparekura 1B. The only practical access was by way of the mud-flats. The 1A block had remained undeveloped and was reported as being covered in scrub and infested with rabbits.

A development in the alienation process of Tuparekura 1A occurred as the outcome of the purchase by Monk of the shares of some titleholders who were minors (with the consent of their trustees.) The issue was brought to the attention of the Tai Tokerau District Native Land Court Judge F.O.V. Acheson. He ruled that the transfer was not in the best interests of the minors. The application to have the purchase of the whole block confirmed was struck out until a meeting of the owners could be held.

At a meeting in February 1931 the majority of owners of 1A present were against the proposal to sell the whole block to Monk.¹⁰ As a result, only a partial transfer of interests to Monk (2/7ths equating to 20 acres) for £40/1/6, was confirmed by Judge Acheson in July 1931. The subsequent partition saw the western portion of 1A (given the appellation 1A1) go to Monk and the balance at

⁹ Refer Chapter 3, PAEROA, pp.62 ff. (above.)

¹⁰ Minutes, Meetings of Owners, 17.2.1931, NA-A: Maori Files: BAA1, A139 MA-W, R 6276, Box 234.

¹¹ M.I. van Ruyssvelt, Senior Clerk, to Judge Gillanders Scott, Tuparekura Correspondence File, Tai Tokerau MLC-W, K318, 8/9/1964.

the tip of the peninsula (1A2) remained with the Maori owners. An urupa containing five graves of 9:1:08 a.r.p. located at the eastern tip of the block was noted in the partition hearing, was to have been cut out, but this injunction was never carried out.

There was also the problem of Tuparekura No.2, the 20 acre road strip running east-west from the Kaipara Harbour through 1A and 1B to the Aotea block. This strip, originally owned by Fenton was acquired by Harold Monk from the estate of Roger Fenton (the son of the Judge) in 1924. In 1931 Tuparekura 2 was amalgamated into 1A enabling Monk to merge part of the road-line (11:1:10 a.r.p.) with his 2/7ths interest making a total acreage of 31:2:24 a.r.p.¹¹ The unused part of Tuparekura 2 ('the road'), was included in Tuparekura 1A2. The purchase by Monk of another 'seventh' (10 acres) in 1A in August 1931, took his total acreage to 41:3:11 a.r.p. The remaining balance of 41:1:22 a.r.p. (Tuparekura 1A2) stayed with the Maori owners but was effectively cut off from any other access except the mud flats. This portion included the urupa. Tuparekura 1A2 has remained intact since 1964 when E.G. Leighton first began to acquire the interests of Maori shareholders. In 1963 the Commissioner of Crown Lands advised the Maori Land Court that Leighton had applied to reclaim part of the Kaipara Harbour. It has been noted above that Leighton had already acquired the title to No. 1A1, part of No. 2 ('the road') and part of the western-adjointing block of Aotea. Leighton planned to stop-bank and then grass 78 acres in the vicinity of Tuparekura 1A2. This plan would clearly impact on the remaining Maori land. Thus it was necessary for the owners to be approached for the surrender of their riparian rights.¹²

Leighton purchased the interests of several owners in 1964, but the Maori Land Court refused to confirm the transfer to him because not all the owners had signed the deed. There had been a succession in 1964 which had increased the number of owners of Tuparekura 1A2 to eleven. The Maori Land Court suggested that Leighton should apply under Section 387 or 438 of the Maori Affairs Act

¹² M.I. van Ruyseveldt, Senior Clerk, to Secretary for Marine, Tuparekura Block Correspondence File, Tai Tokerau MLC-W, K 318, D.B.33/3/43.

1953 to have the land block placed under the aegis of the Maori Trustee. In February 1965 Leighton's proposal for reclamation was approved under Section 178 (b) of the Harbours Act 1950. Several months later the Maori Appellate Court confirmed a transfer of 45.24 shares out of a total of 57.143 shares to Leighton. In 1970 a further 2.381 shares were acquired, to bring his shareholding to 47.619, equating to approximately 37 acres.

No partition has been made to date. Tuparekura 1A2 was declared to be Maori freehold land by the Tai Tokerau Maori Land Court on 26 April 1983. On the Schedule of Ownership Orders E.G. Leighton is recorded as a European holding 47.619 shares. The outstanding 9.524 shares in Tuparekura 1A2, representing about 4 acres in the theoretically 'undivided' block were succeeded to by the nine and ten children respectively of Eruini and Wirihana Hawke in May 1986. One of the nine children is Joe Parata Hawke of Bastion Point fame. Leighton's attempt to change the status of 1A2 to 'general' land in 1993; he was unsuccessful in obtaining the consent of the other title-holders, the Hawke whanau.

At the time of writing access to the 41 acre block at the tip of the Tuparekura peninsula by the successors of Eruini and Wirihana Hawke is a continuing issue, due to difficulties with Leighton, the owner of the majority of shares. Leighton's projected reclamation schemes have never been realised.

Conclusion

The initial informal alienation of the seven acres of Tuparekura is not so much remarkable in its very occurrence, because there were many, often unrecorded instances of this throughout the colony. No, it is rather the very fact that the act was carried out by a man the architect and engineer of the land title system between 1865 and 1881. There can be little question that Fenton perceived himself in a personal colonist's role in his relations with the indigenous people involved in his purchase of the seven acres and his persistent refusal to seek title for it. His personal relationship with both Ihapera Nelson and Patoromu Te Akariri was almost certainly in this mould. The public record – the texts – ironically indicate that the whole transaction was regarded as quite literally 'beyond the text', that the natives/Maori alienating were regarded as beyond

ordinary normative processes of consciousness, public acknowledgement, etc. But in rejecting any move to give the transaction any public acceptance and authority Fenton was carrying out his own private act of colonisation.

The other feature of the Tuparekura which requires attention in these concluding comments is that concerning the so-called 'lost shares'. It is a curious twist of the highly complex succession patterns (which we have already noted was one of Fenton's foundational acts in 1867) that a Maori whanau prominent in both Orakei and the southern Kaipara should have succeeded to the 9.524 shares. This is but one of the thousands of examples nationally of the long-term outcomes of the Papakura case 1867 cited in the introduction. The succession of Eruini and Wirihana Hawke occurred well before one of the members of the Hawke whanau came in to the national spotlight in his Bastion Point protest in 1977-8. Unlike Bastion Point at Orakei, the sea-marsh lands at the tip of the Tuparekura peninsula remained the concern of only one acquisitive alienor and his few agents. The Hawke whanau only became aware of the intrinsic value of their fractionated small-holding in any resistant sense after the events of Bastion Point. That served to galvanise their resolution to remain non-sellers in Tuparekura 1A2.¹³ In a very real sense the Hawke whanau's relationship with Tuparekura and the would-be alienor during the early period when they were ignorant of their titleholding remained 'beyond the text'; yet paradoxically when they became conscious of their shareholding they were immediately brought into a conscious relationship with the legal freedoms and constraints of the capitalist market-place. The outcome of the attempt to oust them from their inheritance was a refusal by them to allow that appropriation. Metaphorically they may have once been beyond the text, mere anonymous titleholders, but from the moment of their cognisance of their title they ironically became other than colonised.

¹³ Personal communication with Grant and Rocky Hawke, and Nellie Clay (of the Hawke whanau), 1998.

**Stamping the Colonists' Template On The Land
[1] : ORAKEI and PUKAPUKA. 1930s**

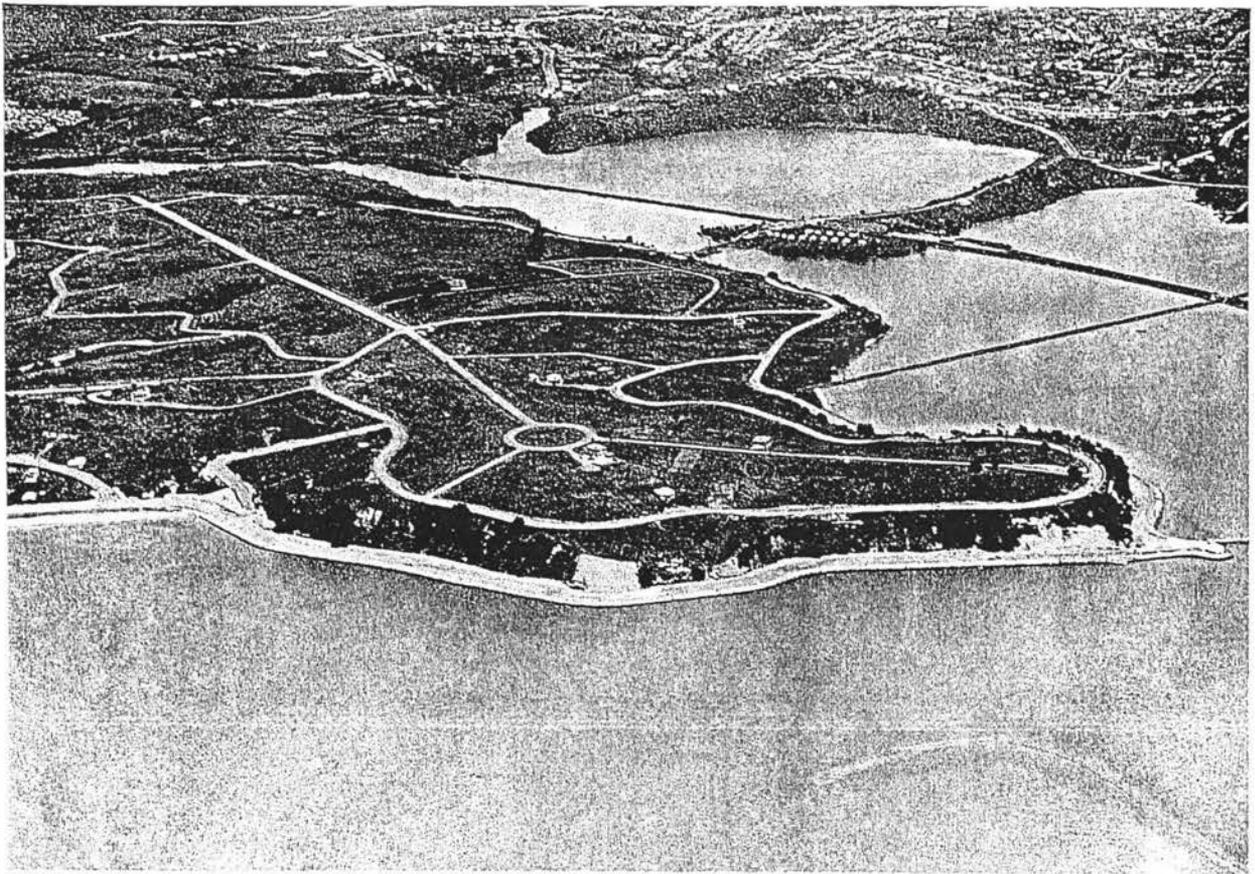
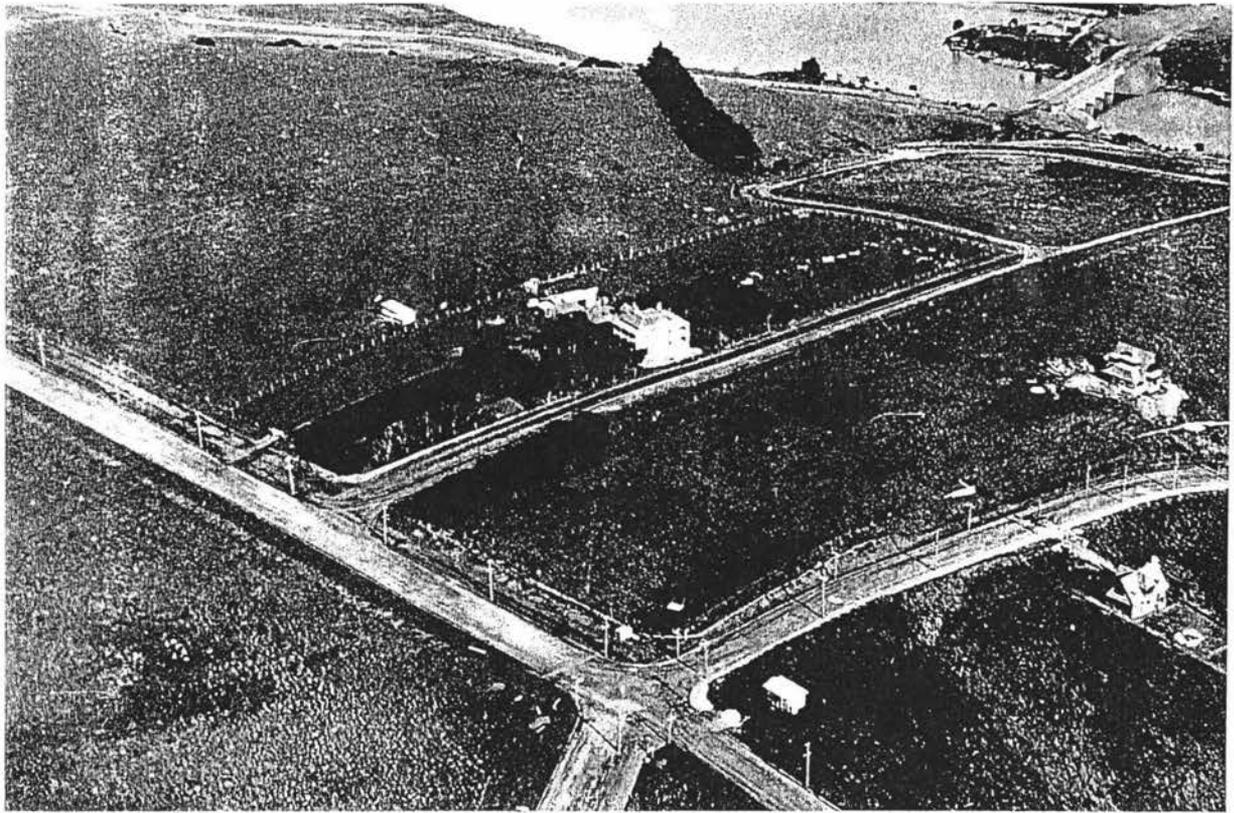
Top: Orakei - part of the partitioned Native Reserve showing at centre the two-storied farmhouse of the lessor, Thomas Coates and the beginnings of white settler suburban settlement about 1930.

Bottom: Orakei (and Pukapuka) from the air about 1938. In the foreground runs the new waterfront roadway, across the centre runs the new railway deviation, and at right centre runs the sewer pipeline.

The peninsula in the foreground is the site of a pa of the Waiohua people which was stormed in the 18th century by other peoples led by the legendary giant Kawharu. The armed band scaling the cliffs let loose rocks which crashed to the beach below awakening the paa inhabitants. Hence the local place-name: Onepu Whakatakataka.

In the distance Pukapuka I is mostly given over to vegetable market garden plots and Pukapuka II has been sub-divided for white settlement (present-day Meadowbank and eastern Remuera.)

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Chapter 6 PUKAPUKA I: The 'Lost' Block

Pukapuka I is a Tamaki Makaurau native/Maori land block which has no history, no narrative in the current accounts of the alienation of lands under the Native Land Court process. Yet there exist at least two substantial archival records¹, the remaining scattered,² out of which a coherent history can be constructed. It has never been adjudged an area worthy of historical investigation because any issues it may have generated in its own time have long since faded from both public and personal memory. Thus the past of this block when constructed into a narrative tells a tale of disputed "gifts" and grants of land occupation and resource use from one grateful iwi/hapu to another, of Crown grants prepared but never issued, and ultimately (in the absence of any clear legal title for approximately 30 years) of the opportunity it offered for informal leasing to the benefit of the lessor and the legal agents of the putative titleholders/lessees. But first, the 'Annales' of the alienation process are short-listed below:

PUKAPUKA No. I

Legal Description: Lot 238, Section 16, Parish of Waitemata, County of Eden, III
Rangitoto S.D.

Area: 94:0:0 a.r.p.

Stamping the Colonial Template on Maori Land

- * Deed of sale from Te Hira Te Kawau of Orakei to Crown for £270/-, 17 March 1854. N.B: Pukapuka No. 2, further east of No.1, was sold by Paora Tuhaere (cousin of Te Hira), of Orakei for £500/- to the Crown on 22 March 1854.
- * 'Verbal' gift of Pukapuka No.1 by Acting Governor Wynyard to Te Wherowhero (Potatau) sometime between 1854 and 1860. No deed of cession or promise of

¹ The 2 substantial records are:

- (1) the minutes of the Native Land Court's two title investigations and two partition hearings; these were recorded in: (i) 1868: Auckland MB 1, p.146; (ii) 1890: Mercer MB 2, pp. 69-185. and MMB 3, pp. 2-11; the partition hearings were recorded in: (i) 1902 in MMB 7, pp. 42, 55, & 81; (ii) 1908: MMB 11, pp.123-143. The other record of the 1890 title investigations is Judge Puckey's Minute Book, No. 14, pp. 264-310. The substance of this is little different than the 'official' record.
- (2) the National Archives (Wellington) Series 13 Special File, No. 66, Pukapuka. This archive has not been sighted by this writer, though the bibliographic record from the National Archives is noted in full on p.125 below.

² These are scattered through the records of the LINZ's Auckland archives and the Auckland Institute & Museum Library (AI & ML.) The pivotal documents are the lease agreements between Paora Tuhaere and Thomas Morrin for Pukapuka I in 1878 and 1881. These are archived in the manuscript collection of the papers of Dufaur, Biss, Lusk & Fawcett, barristers and solicitors (AI & ML Ms 93/ 67.)

Crown Grant was made.

- * Crown took possession of the block on or about 10 January 1864 following the outbreak of hostilities between the Crown and the Kingitanga in 1863.
- * Crown proclamation 17 December 1864 confiscating all rebel natives' lands "as far as the waters of the Manukau and Waitemata." No Compensation Court claims were proceeded with as the title was still vested legally in the Crown, no legal transfer having been effected following the promise of gift to Potatau.
- * Title Investigation: NLC, Auckland, 4 March 1868: claim by Ihapera Kati [niece of Potatau] & Paora Tuhaere; outcome - case dismissed as the court "has no jurisdiction."
- * Crown prepared Crown Grant dated 28.6.1869 in favour of Matutaera Te Tapuka (aka Mahuta Tawhiao), Tamati Ngapora (Manuwhiri) & Matire Toha but this did not issue.
- * Paora Tuhaere claimed at the second title investigation in 1890 that Pukapuka had been returned to him, Reweti Tamahiki & Te Kira on a visit to the Maori King in 1872. He further claimed that Matire Toha had gifted her interest to him on 2 October 1875.
- * Lease agreement from Paora Tuhaere to Thomas Morrin, ironmonger, of Ellerslie, Auckland, for 10 years at £85/- p.a., dated from 4 January 1878.
- * Lease agreement from Paora Tuhaere to Thomas Morrin, ironmonger, of Ellerslie, Auckland, for 21 years at £85/- p.a. for 7 years, the £100/- for remainder, dated from 1 January 1881.
- * Crown Grant of 1869 cancelled on 9 July 1889.
- * Order-in-Council dated 21 May 1890 giving NLC the jurisdiction to hear and determine the matter of the title.

PUKAPUKA No. I (continued)

- * Title created: Title investigation, NLC, Auckland, 6 September 1890.
- * Certificate of title: 13 April 1894
- * Grantee: Tawhiao Tiahuia and Ihapera Kati (in equal shares)
- * Area: 93: 0: 00 a. r. p.

Extending and completing the process of alienation of Pukapuka I

Lease for 99 years dated 15 April 1903 between Mahuta Tawhiao & Tahuna Herangi and Pilkington, farmer of West Tamaki at £125/- to £400/- p.a.

- * Partition of parent block into 1A (9:0:30 a.r.p.) to non-sellers: Mahuta Tawhiao and Tukotuko Tawhiao; 1B (78:0:0 a.r.p.) to the other owners: and 1C (about 7½ acres) to Te Paea Paora conditional on her dedicating it to the Crown.

Pukapuka 1A

- * Title created: Partition order, NLC, Auckland, 5 June 1908.
- * Grantees: Mahuta Tawhiao & Tukotuko Tawhiao (in equal shares.)
- * Area: 9:0:30 a.r.p.

Extending and Completing the Process of Alienation of Pukapuka 1A

- * Transfer by way of sale between the 2 owners to Geo. Sedgwick Kent, barrister & solicitor, of Auckland, 17 May 1911. Amount £ ?

Alienation of Pukapuka 1A completed.

Pukapuka 1B

- * Title created: Partition order, NLC, Auckland, 5 June 1908.
- * Grantees: 8 titleholders (all Ngati Mahuta of Waikato.)
- * Area: 78:0:00 a.r.p.

Extending and Completing the Process of Alienation of Pukapuka 1B

- * Lease for 50 years to Geo. Sedgwick Kent, barrister & solicitor, of Auckland, 23 December 1909.
- * Transfer by way of sale from all the registered titleholders [10?] to G.S. Kent, 31 October 1910. Amount: £ ?

Alienation of Pukapuka 1B completed.

Pukapuka 1C

- * Title created: Partition order, NLC, Auckland, 5 June 1908.
- * Grantees: Te Paea Paora (of Ngati Mahuta of Waikato.)
- * Area: 7½ acres.

Extending and Completing the Process of Alienation of Pukapuka 1C

- * Lease from Te Paea Paora to G.S.Kent, barrister & solicitor, of Auckland, produced 22 June 1908.
- * Transfer to the Crown produced 6 March 1912.

Alienation of Pukapuka 1C completed.

Pukapuka I and its neighbouring block Pukapuka II are located in the eastern central part of the Tamaki Makaurau/Auckland isthmus on the south eastern slopes of the Orakei Basin and are drained by the principal creeks of the Basin: Orakei, Pukapuka and Purewa. Pukapuka II did not come within the jurisdiction of the Native Land Court and its history is noted briefly below in order to give the history of Pukapuka I a geo-political context.³

The five surviving records of the Native Land Court's sittings concerning this block warrant a rigorous examination for several reasons:

(1) It is one of only two blocks on the Tamaki Makaurau/Auckland isthmus that came under the jurisdiction of the Native Land Court; the other of

³ The Crown bought the 103 acres of Pukapuka II from Paora Tuhaere of Orakei on 22 March 1854 for £500. (Deed 235, NALTO, LINZ.) It was defined as a Native Reserve by Sir George Grey and returned to Paora Tuhaere as a Crown Grant on 12 January 1864 (6G 945, NALTO, LINZ..) It was sold by Paora Tuhaere to the lessor, Cheeseman on 30 September 1868 (22D 648,

course is its northern neighbour, Orakei. The second Orakei hearings of late 1868 and early 1869 often referred to the Pukapuka block and the dismissed Pukapuka title investigation of April 1868.⁴

(2) As it was finally alienated in a manner that appears to have been volitional (by way of partition and sale) into the hands of settler agents/interests in the first decade of the 20th century it never became a focus of contention between shifting coalitions of sellers and non-sellers and their respective allies as did its neighbour, Orakei. Further, although it is arguably within the scope of the retrospective 1985 Waitangi Tribunal legislation, it has never been re-litigated as an issue of principle by any parties with vestigial or erstwhile interests.⁵

(3) In the long period between the first historic document in the Pakeha record - the deeds maps of Pukapuka I and II surveyed in 1854 (published in Turton in 1877⁶) - and the award of a clear title in 1890, the block history is vague and uncertain, the construction of which would be a test of any contextualist's art and craft.

(4) For example, the discovery by this writer of legal documents in a collection archived at Auckland Institute & Museum Library and the lack of any corroborative evidence in the public record of their registration suggests that Pukapuka I was alienated by way of formal lease from 1878 (and probably informally during the late 1850s and 1860s) by the putative owner, Paora Tuhaere of Orakei, to a number of different Auckland settlers, including Cheeseman, Crummer, Morrin and Strange.⁷

(5) A late discovery is the knowledge of the existence of a special file in the Wellington office of the National Archives in Wellington on Pukapuka. This

NALTO, LINZ.)

⁴ OMB 1 & 2, (passim.)

⁵ The matter of an injunction issued in the name of Joe Parata Hawke in 1991 concerning the development of a small block of land for a hotel/conference centre at the head of the peninsula has not been pursued in this thesis. The peninsula separates the Orakei Basin from Te Wairanga/Hobson Bay, immediately south of the Orakei Rd bridge. On its northern extremity there is the site of an 18th century pa, which is probably the place which was first called Orakei: the place of adornment. Personal communication with David Simmons, 1996.

⁶ H. Turton, *Maori Deeds of Crown Purchase, North Island, Auckland Province*, Volume 1, 1877, pp. 180-1.

⁷ Dufaur Mss., AI &ML, Ms 93/67, folder 32.

file, probably quite large, has not yet been sighted by this writer. The bibliographic record of this file in the National Archives Series List reads:⁸

This land [Pukapuka] was purchased by the Government for £270. Potatau (Te Wherowhero) had a burial ground and cultivation upon it so the Government gave the land to him. After Potatau's death [June, 1860] Tamati Ngapora claimed the land had been given to him. He leased the land to Mr. Cheeseman, who fenced it but as Tamati had no Crown Grant, the lease was illegal. He requested that a Crown Grant be issued to him. The residents near Pukapuka complained that a road providing access to their land had been closed by the fencing of Pukapuka. As the road was on private property the Government could not interfere. The Government confiscated land, however as Tamati Ngapora was known to be a rebel. £200 compensation was paid to Mr. Cheeseman for his improvements. A Crown Grant was made out for Tamati Ngapora and two others, but never issued. Tawhiao and others claimed interest in this land. The Crown Grant was withheld pending an investigation. Later the Crown Grant, still unregistered, was found to be unrestricted. There are numerous memoranda re Pukapuka. Special legislation to be introduced into Parliament to place restrictions on Pukapuka was drafted. The Crown Grant was cancelled and Pukapuka was referred to the Native Land Court. The NLC ordered the issue of a Crown Grant and "the Mangere and Pukapuka Titles Validation Act, 1891" was discontinued as warrants were issued under the Land Transfer Act. 1861-1892.

In the absence of the records alluded to in the above abstract the only point that requires further investigation is the implied confiscation of Tamati Ngapora's Pukapuka lands. There is no record of this in any of the official documentation including the voluminous printed *Raupatu* documents. Clearly the title to the land still technically lay in the hands of the Crown as the Grant had never been issued. In the vacuum that ensued for about 21 years - between 1869 when a Grant in favour of Te Wherowhero was prepared but withheld, and the award of title in 1890 - Pukapuka I had no clear valid legal title. In an arguably fine point of law it was technically in Crown title. The neighbouring Ngati Whatua rangatira, Paora Tuhaere, residing intermittently at Okahu, a mile north of Pukapuka, appears to have used this hiatus to his own advantage.

(6) The evidential material highlights the significant fact that this area of the isthmus had been gifted probably around 1836 by a grateful Ngati Whatua to Te Kati of Ngati Mahuta of Waikato (and brother of Potatau Te Wherowhero, the

⁸ National Archives, Maori Affairs Dept., Series List, Section 1: Head Office, Series 13: No. 66.

first Maori King) in return for the latter's offer of safe haven to the former from the marauding Hongi Hika's raids in the 1820s and early 1830s through the Tamaki Makaurau isthmus. Te Kati and his peace-settlement bride Matire Toha of Ngapuhi resided intermittently at Pukapuka (and Mangere, in South Auckland) in the pre-colonial and early colonial period.

(7) The colonial record for the Pukapuka I block is blank between the award of title in 1890 and its incrementally piecemeal official alienation by partition, lease and sale after 1908. Its native titleholders were individual members of the extended Mahuta whanau (the family of the Maori King) of Ngati Mahuta of Waikato. They were absentee owners, residents at places more comfortably their turangawaewae/heartland, further south, at Waahi (Huntly), Ngaruawahia and Mangere. It was almost certainly managed by the Auckland legal firm of Earl & Kent and leased to local Auckland farmers in the period 1890 to 1910. There was at least one instance of informal leasing, evidence of which was cited in the partition hearing of 1908. The alienation of the block is a classic early example of the agency of lawyers in the transfer of fractionated native land to settler interests. It certainly represents a triumph of the capitalist ethic over collective interests.

The five extant NLC archival records of this block consists of: 2 title investigations in 1868 and 1890; 2 partition hearings in 1902 and 1908; and a recent discovery by the writer of this thesis: Judge Puckey's note-book of the second title investigation in 1890. The judge's note-book is about half the length of the clerk's minutes but contains little of substantive difference. It appears that the judge's notes may have been used by the clerk in writing up the Court record.

The First Title Investigation 1868

The first title investigation into Pukapuka was held in Auckland on 4 March 1868. It was dismissed. The minutes in full read:⁹

4.3.1868: Te Pukapuka.

Ihaperu Kati [daughter of Te Kati and Matire Toha, and niece of the late Maori King, Potatau,] called; stated that the land was situated this side of Orakei. It belonged formerly to Te Kawau and

⁹ AMB 6, p. 146, (4.3.1868.)

he gave this land to my ancestor Te Kati and Te Wherowhero, my mother. I wish to call Paora Tuhaere as a witness.

Paora Tuhaere stated that he had heard that the land had been surveyed from the person who occupied it on lease Mr. Cheeseman. He could obtain a tracing of it from the Government. There was no Crown Grant when this land was transferred. It was given to Te Kati and Matire as a place to reside in and for Ngapuhi to reside in when they came from the north. We first set it apart for this people. Te Hira sold it to the Government. This piece of land was included in the deed of sale. Te Hira sold it.

The claimants were informed that the Court had no jurisdiction in this case.

Dismissed.

The Second Title Investigation 1890

A paraphrase of the *New Zealand Herald* report of this is re-presented below. It has been rigorously tested and checked against the only other substantial record: the 130 pages of the Mercer Native Land Court Minute Book. Given that both documents are products of the literate Pakeha culture, the corroborative compatibility of both records appears to be an accurate representation of the sworn testimony. It is probable that the minutes of the title investigation were made available to the *Herald*.¹⁰

The Court proceeded on the assumption that the Crown gave the land to Te Wherowhero/Potatau sometime between 1854 and 1860 and that the title was "good and valid." A brief history of the block was given by the Court. The significant details in this history were that in 1823, peace was made between the Ngapuhi invader Hongi and Te Wherowhero (later entitled as Potatau, the first Maori King) of Ngati Mahuta; and to confirm that peace, Matire Toha, a Ngapuhi chieftainess, was given in marriage about 1824 to Te Kati, Te Wherowhero's younger brother. Te Taou, the earlier conquerors of the Tamaki Makaurau isthmus who had fled to Waikato for protection from Ngapuhi, were brought back and reinstated in their former possessions by Te Wherowhero. A grateful Te Taou gifted land at Onehunga to Te Wherowhero, another piece at Remuera to Te Watere te Kauwae, and Pukapuka to Te Kati. The land at Onehunga and Remuera appears to have been given about 1836, but the date of the gift of Pukapuka could

¹⁰ *NZH*, 13 Sept. 1890, p.14; MMB 2, pp. 65-99, 102-185 (12 August-6 September 1890.)

not be ascertained. The identity of the donor, whether Apihai Te Kawau or his kinsman, Uruamo was disputed in the submitted evidence.

Paora Tuhaere, a maternal nephew of Apihai Te Kawau, one of the counter-claimants before the Court said it was not an absolute gift for all time. In 1854 it was sold by Te Hira Te Kawau, son of Apihai, to the Crown. On the sale to the Crown becoming known, Te Wherowhero/Potatau came north with an armed force, and, to avert threatened hostilities between Waikato and Te Taou, and because of the dead buried there, Colonel Wynyard, the Acting-Governor, handed the land verbally over to Te Wherowhero but no deed of cession or promise of a Crown Grant was proffered. Claims were submitted by several parties: that of Ihapera Kati, daughter of Te Kati and Matire Toha and niece of Potatau, was based on the gift by the Governor; that of Tawhiao was also based on the same gift or promise; a third claim was made by Tiahuia, granddaughter of Tamati Ngapora on the basis of an alleged gift to him by Te Wherowhero/Potatau. The final claim, a counter-claim was lodged by Paora Tuhaere on the basis that the gift to the peoples of Waikato and Ngapuhi was not a gift for all time, but to provide a hospitable place for Ngapuhi visiting their kinswoman Matire, the wife of Te Kati. H.A.H. Munro, a Judge of the Native Land Court, in 1862 was asked by the Government to report on the nature of Tamati's claim to Pukapuka. In his report dated 3 April 1862, Munro noted that Tamati Ngapora stated the land was verbally promised to him by Colonel Wynyard, the Acting-Governor. Another judge of the Land Court, John Rogan also gave evidence that the land was given back to Potatau, but no promise of a Crown Grant was made. A further European witness, the Rev. Dr. Purchas evidenced that he had always heard from Maori that Pukapuka was Tamati's land.

On the 16 January 1864 Pukapuka was taken possession of by the Crown but not confiscated. The lands at Mangere, a few miles to the south of Pukapuka were treated similarly. Compensation claims were lodged for the Mangere lands, but at the subsequent sittings no award of compensation was made. No compensation claim was ever lodged for Pukapuka, presumably for the reason that the title to the land was still vested in the Crown., as no legal transfer had followed their promise or gift of the land to Te Wherowhero/Potatau. In 1868, the

Government, probably with a desire to appease the Maori King party, directed the preparation of a Crown Grant in favour of Matutaera te Tapuke (Tawhiao) and Tamati Ngapora, and at the suggestion of Chief Judge Fenton the name of Matire Toha, the Ngapuhi widow of Te Kati was added. A grant was prepared and signed on the 28 June 1869, in favour of Tawhiao & Tamati Ngapora without the title being restricted. In evidence in support of his counter-claim Paora Tuhaere stated that he learned of the preparation of a Crown Grant to Tawhiao and others some years later. On a visit to the Maori King in Te Kuiti in 1872 by Paora Tuhaere and other Ngati Whatua, Tuhaere claimed that Tamati Ngapora publicly returned Te Pukapuka to Paora Tuhaere, Reweti Tamahiki, and Te Hira Te Kawau. Further, on 2 October 1875 Paora Tuhaere claimed that Matire Toha conveyed her interest in Pukapuka following the signing of a deed in Paora's lawyer Edmund Thomas Dufaur's office. This legal figure is by this point a familiar figure, a recurring motif in the tangled web of land dealings as agent for the interests of not only Paora, but the interests of international capital and local settler in the wider Tai Tokerau, Tamaki Makaurau and Hauraki rohe.¹¹ The Court however expressed doubt as to Paora Tuhaere's testimony that Matire Toha had freely followed Tamati Ngapora's example of a returned gift to Tuhaere.

In its summation, the Court decided that the alleged gifts, promises, or contracts entered into by Tamati Ngapora and Matire with Paora Tuhaere had no force or effect. The land was not held by natives under their customs or usages, and native custom could not in this case be admitted as a factor. The Court dismissed the claim of Paora Tuhaere and ordered that a Crown Grant issue to Matutaera te Tapuke (Tawhiao), Ihapera Kati, and Tiahuia, in equal shares.

Pukapuka I: The Lost Years, 1854-1890

The following narrative is constructed largely from the very full minutes of the Land Court record of the 1890 title investigation and a number of other land archives' documents.

According to the evidence given by Paora Tuhaere's lawyer Dufaur in the second title investigation in 1890 the Crown leased the land at some stage in the

¹¹ Refer especially to the chapters in this thesis on PUKEATUA, pp. 76 ff. (above), and PAPAROA, pp.137 ff. (below.)

1860s to William Crummer, a leading Auckland colonist and speculator. Further, it would appear that the Crown Grant of 1869 prepared in favour of Matutaera Tapuke (Tawhiao), Tamati Ngapora (Manuwhiri) and Matire Toha was never issued. In the lengthy hiatus which ensued in the following years – some 21 years - in which there seems to have been a vacuum as to its clear legal title, Paora Tuhaere, the leader of Ngati Whatua who lived but a mile north of Pukapuka at Okahu in the Orakei block, assumed the management of the Pukapuka block for the Mahuta whanau.

In the period immediately following the cessation of the Waikato wars, and the confiscations of their lands under the 1863 New Zealand Settlements' Act, the legal status of Pukapuka, clearly included within the Waikato people's lands "up to the Waitemata and Manakau", was uncertain. No claims' investigation into Pukapuka was held by the Compensation Court. Tuhaere claimed in evidence at the second title investigation in 1890 that the block was returned to him, Reweti Tamahiki and Te Hira Te Kawau (his half-brother and nephew respectively) by Manuwhiri (Tamati Ngapora) on a visit by Paora Tuhaere to Te Kuiti in 1872. This was cemented by a return of Matire Toha's share of the gift to Tuhaere on 2 October 1875. Whatever the actual and legal situation was in the early 1870s, it would appear that any active Crown management or legal responsibility of the block had waned or lapsed. Paora Tuhaere effectively controlled the management of the block; his half-brother Reweti Tamahiki was dead before 3.4.1876¹², and his nephew Te Hira Te Kawau never took any interest in the management of his lands, including his interests in Pukapuka and Orakei.

In evidence at the 1890 title investigation the retired judge of the Native Land Court, Francis Dart Fenton was not prepared to give an opinion as to whether the letters produced as evidence in Court from Manuwhiri to Paora Tuhaere gave a transfer of title or merely conferred the management of the land. Fenton gave evidence that at no point during the time that he (Fenton) was consulted about the addition of a further name to the 1869 Crown Grant to Pukapuka I was the name of Paora Tuahere mentioned. He stated that three of the

¹² MLC – A 2/18 Successions: Book 1 (1866-1885), No. 23, Rangiahua and Wharepapa No. 1.

old Ngati Whatua people testified in the Orakei evidence that they had no claim to land “hereabouts.”¹³

In a further interesting twist Fenton stated in the 1890 evidence that he had been acting for the Dashper Park Stud Co, a race-horse company associated with Thomas Morrin, a lessor of Pukapuka I from 1878, in their offer in 1885 to purchase some of the Pukapuka block from Tawhiao, Manuwhiri and Matire. Their bid of £1600 for the land block of Pukapuka I was not accepted. Yet again, as in other land blocks, the figure of Thomas Morrin played an important role in the alienation process.¹⁴

The circumstantial evidence corroborated from a number of public and private documents points strongly to Paora Tuhaere of Ngati Whatua acting as putative owner (or at least agent and/or manager for the Maori King, Tawhiao) of Pukapuka I during the period 1872 to 1889. It is curious that the matter of the non-issuance of the 1868 Crown Grant was never attended to by the Crown or the colonial government for over two decades. Finally, in 1889 the Government’s attention was drawn to the hiatus and action was taken to correct it. The timing of the renewed interest was probably associated with the warming of relations between the Government and the Kingitanga; the Government’s agenda being the opening of the ‘King Country’ to settlement and the building of a railroad linking Te Awamutu in the upper Waikato and Marton further south in the Rangitikei. The Crown Grant (never issued) was cancelled in 1889 and a Native Land Court title investigation called by Order-in-Council in 1890.

In 1878 and 1880/1 Paora Tuhaere entered into lease agreements with one of the colony’s most active land speculator colonists, Thomas Morrin, a resident of the neighbouring rural suburb of Remuera. The lawyer in these arrangements was again the familiar legal figure of Dufaur.¹⁵ The fortunes of Thomas Morrin suffered a major reversal in the long depression of the 1880s, some details of which are chronicled in Russell Stone’s study of Auckland’s colonial business community.¹⁶ Morrin had a large number of individual and company interests, often heavily mortgaged, in landholdings in many parts of the North Island,

¹³ MMB 2, p.162 (27 August 1890.)

¹⁴ *Ibid.*, p.161.

¹⁵ Refer pp. 95-6 (above.)

including his own Auckland local area of Remuera and West Tamaki. One outcome of his speculative excesses was the assignment of his lessee interest in Pukapuka I to a person called Strange sometime in the 1880s according to the evidence given at the second title investigation.

The Pukapuka Judgment and Award of Title 1890

The second title investigation was held in Auckland in late August and early September, 1890. It occupies some 130 pages of the Mercer Minute Books 2 and 3. Title to Pukapuka I was granted to three members of the extended Mahuta whanau of Ngati Mahuta of Waikato in September 1890. A claim for ante-vesting to an unspecified date when it was first 'managed' by Tuhaere for the Mahuta whanau was made, but the judge deferred a ruling on this. There is no evidence that an ante-vesting ruling was ever made. The Certificate of Title was dated 13th April 1894.¹⁷

The balance of the evidence both explicit and sub-textual would seem to suggest that the Court issued a judgment in line with the earlier interests of the Crown in order to continue a policy of placating the interests of the Kingitanga. The date - 1890 - is significant. The Colonial Government was desirous of opening the 'King Country' for settlement. The admitted Court evidence that it was occupied intermittently by Ngati Mahuta from 1836 and importantly in 1840 (the date of formal cession to the Crown) and that a Crown Grant had been prepared but not issued would have added substantive weight to the Court's rather 'political' decision.

PUKAPUKA I: Partition

A 99 year lease of the land was contracted formally 15 April 1903 between Mahuta Tawhiao and Tahuna Herangi of Ngati Mahuta and a Mr. Pilkington, farmer of West Tamaki, Auckland at £125/-/- to £400/-/- p.a. There is no evidence, circumstantial or otherwise of any informal lease between Pilkington and the titleholders' agents before that date. Following a Land Court hearing Pukapuka I was partitioned on 5 June 1908 into 1A (9:0:30 a.r.p.) to non-sellers: Mahuta Tawhiao and Tukotuko Tawhiao; 1B (78:0:0 a.r.p.) to the other owners:

¹⁶ R.C.J. Stone, 1973, op. cit., pp.131-139.

¹⁷ CT 70/130, LINZ.

and 1C (about 7½ acres) to Te Paea Paora conditional on her dedicating it to the Crown. Pukapuka A, a small partitioned block lying between the separated portions of Pukapuka B was transferred by way of sale by its 2 owners, Mahuta Tawhiao and Tukotuko to George Sedgwick Kent, of the legal firm of Earl & Kent on 17 May 1911. Frederick Earl, a founding partner of the legal firm had represented Ihapera Kati in the 1890 title investigation. There is no record of any separate lease agreement as is the case of its sister block, Pukapuka B. This latter second generation block was leased for fifty years from 23rd December 1907 to Geo. Sedgwick Kent by all the owners except Te Paea Paora and Hera Herangi (aka Hera Tahuna) in a document produced on 4 March 1908; a separate lease agreement between the latter and Kent was produced 22 June 1908. Earlier, Te Paea Paora's individual lease agreement with Kent had been produced on 16 January 1908.¹⁸ All the registered owners of Pukapuka B transferred their interests to George Sedgwick Kent by way of sale on 31 October 1910.¹⁹ The transfer to the Crown of Te Paea Paora's title to Pukapuka C (to be laid out as roads) was done in the name of her agent, George Sedgwick Kent by transfer produced on 6 March 1912.²⁰

Over the following eight years (27.5.1912-1.4.1920) the alienated block was subdivided and on-sold in about 100 small lots of sizes ranging upwards of half an acre.²¹ The suburbs of Meadowbank and eastern Remuera were emerging. The legal firm of Earl and Kent, one of whose partners, Frederick Earl had appeared for the successful claimant Ihapera Kati in the title investigation in 1890, had in turn successfully acted as a conduit in the land transfer process from thirteen owners to over 200 settlers. Tauwiwi interests ruled.

Conclusion

This small pocket of the Tamaki Makaurau/Auckland isthmus, some 94 acres, became suburban allotments for tauwiwi through the pacific machinery of the Land Court. The imperatives of individualisation of title determined that the matter of freehold native title had its own inescapable logic and power. Ngati Mahuta were

¹⁸ CTs 70/130; 171/197, NALTO, LINZ.

¹⁹ CT 170/26, NALTO, LINZ.

²⁰ Transfer 64491, NALTO, LINZ.

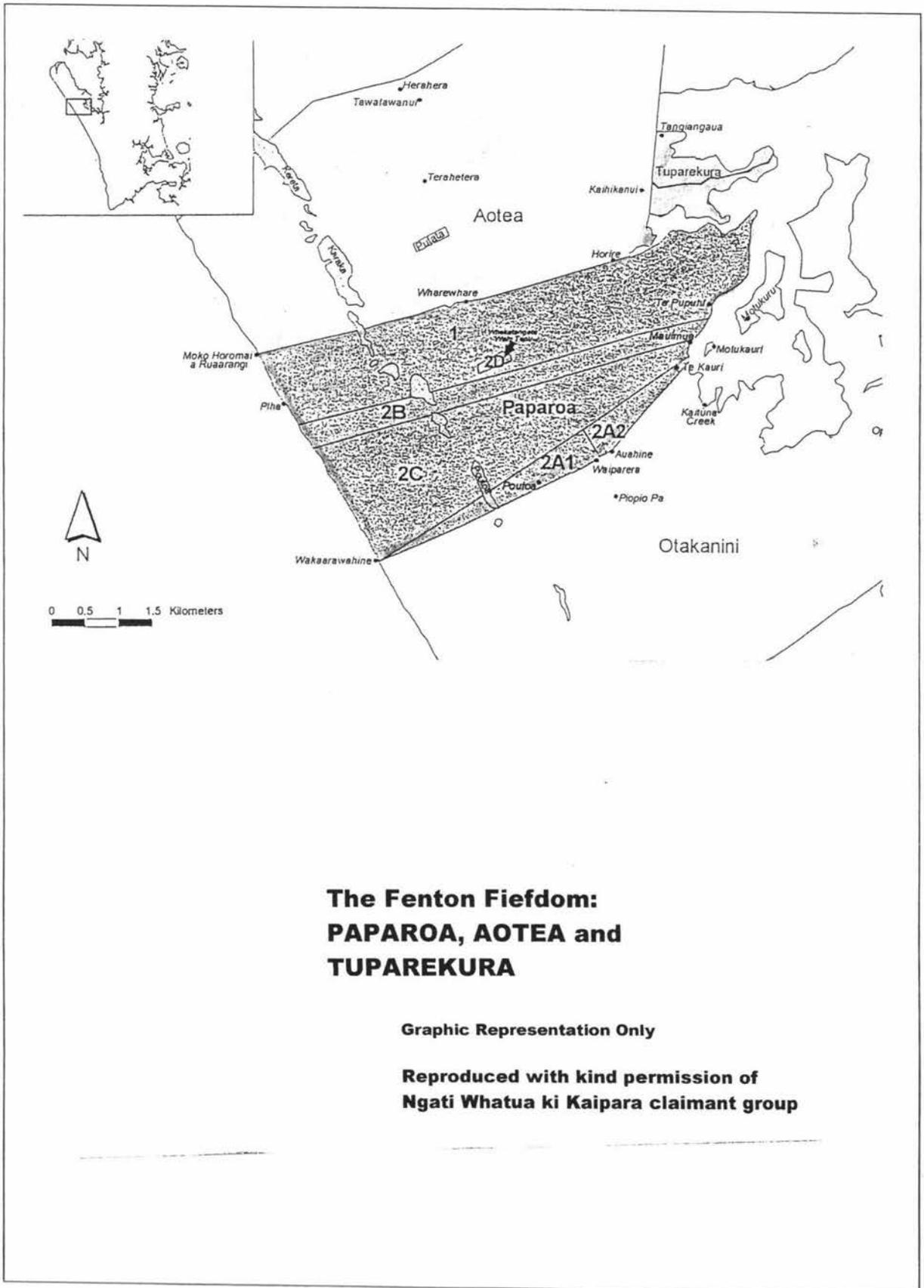
²¹ CTs 171/197; 177/141, NALTO, LINZ.

free to dispose of their interests as they saw fit – and they chose to liquidate their legal title to part of the Tamaki Makaurau/Auckland isthmus where they had had traditional rights for many years, perhaps since time immemorial. It was arguably in the best interests of the Crown that relations with the kingitanga should be more cordial. One outcome of that native policy development was the award of title to Pukapuka I in 1890 to Kingitanga interests. Perhaps there is an historic irony that Te Rata Mahuta, the Maori King, did not arrive by train from Huntly for the partition hearing in Auckland in 1908. One wonders whether he was aware of the forthcoming partition proceedings, or whether he left matters to his Auckland lawyers, Earl and Kent.²² It is a matter of no small wonder why Ngati Mahuta exercised no sign of interest in the disposal of their Tamaki Makaurau/Auckland interests. Perhaps there is some textual evidence in the te reo letters in the National Archives file which await interrogation.

The matter of the limbo in which the legal title of Pukapuka remained for several decades remains a very curious situation to which some attention must be drawn in this conclusion. Legally it was Crown land even if the Crown might have been aware of the verbal gift to Ngati Mahuta. Perhaps it was in the best interests of the Crown to let ‘sleeping dogs lie’ and turn a blind eye to the activities of Tuhaere and Morrin. This would have been consistent with the Government’s strategy of keeping the loyalist Paora Tuhaere firmly on their side. Certainly, the sense of urgency with which the Crown brought about a title investigation in 1890 begs the question that the Crown was undoubtedly seeking a reconciliation with Ngati Mahuta specifically and the Kingitanga generally. In an ironic footnote it was retired Native Land Court Chief Judge Francis Dart Fenton who called Paora Tuhaere’s bluff as to his rights to Pukapuka. That Ngati Mahuta were given title is a matter of record as is the way in which they acquiesced in its alienation by their Auckland lawyers. In a sense Ngati Mahuta chose to remain paradoxically beyond the text yet beyond the pale of colonisation and within the metaphorical ‘line of confiscation.’ The symbolic piercing of the so-called ‘King Country’ by the Auckland –Wellington railroad at the beginning of the 20th century may well have brought about a further introspection and reluctance to

²² MMB 11, pp. 135-136.

participate in the wider colonial economy and society. The withdrawal to the place they called Turangawaewae was underway.



**The Fenton Fiefdom:
PAPARUA, AOTEA and
TUPAREKURA**

Graphic Representation Only

**Reproduced with kind permission of
Ngati Whatua ki Kaipara claimant group**

Chapter 7 PAPAROA: “Softly, Softly Catchee Mousee”

The case of the land alienation process in Paparoa is a classic exemplar of the ‘divide & rule’ paradigm. The written archive of the land transfer system, that relic of the colonial administration, for Paparoa is over-full. It illustrates in its plenitude the overt motivations of the large number of actors in a scenario that unfolded over the best part of 40 years.

The land-hunger of the alienors, the Fenton brothers and sister (children of the Judge of that name), the cash-hungry avarice of many of the dozens of Maori eventually admitted to the title, the rivalry between the aspiring and actual lessors are all transparently evident in the documentary evidence produced by the colonial land administration regime. This is the textual evidence which records the alienation process in all its variety of strategems. Most of the documentary record for this block is extant. In comparison with Pukapuka (above) there are very few gaps in the administration record; however, what is missing from the written record is any substantive indication of the human side of the alienation process. The referents which the text points to can only be second-guessed, hazily inferred from a host of other miscellaneous clues and relics of the past. For example, what corroborative evidence is there of Roger Fenton’s claim that his family “were always impoverished.”¹ Any textual evidence of the family’s income and expenditure is locked away with their personal papers. There are similar imponderables concerning the parties who made up the other part of the land transaction business. For example, what social and economic impacts and outcomes did the alienation process have specifically on local Maori. We can only infer from the empirical data relating to employment in road-building gangs, timber mills and kauri gum digging that Maori suffered severe socio-economic dis-location. Only in a very limited sense do these texts flesh out the total impact of land dispossession on Maori. The contextualization process in filling out a full multivalent micro-history of Paparoa can be likened to putting together a jig-saw of countless moves, ploys and counter-moves. An over-arching view points to an

¹ Roger Fenton to Native Minister, James Carroll, 12 November 1904: J 1905/36 and J 1/1905/794, NA -W.

ever-changing strategy on the part of the alienors – the Fenton brothers; and an equally vigorous clamour by local Maori to gain legal admission to the title and participate in the ensuing outcomes.

The long, drawn-out process of the Paparoa land alienation process is summarized below:

PAPAROA : Stamping The Colonial Template On Maori Land

Title Created: Title Investigation – NLC, Te Awaroa (Helensville) 2 June 1865.
Grantee: Te Keene Tangaroa.
Area: 4,540: 0: 0 a:r: p.
Survey: ML5, S. P. Smith.
Costs: £2/-/- court costs;
£7/-/- for survey.

Extending the Process of Alienation

- * Lease (with unilateral right of purchase at £1000) to Thomas Morrin, ironmonger, of Auckland, for 21 years at £40 p.a., from 26 October 1876.
- * Mortgage from Pateoro to E.T.Dufaur, barrister & solicitor, of Auckland, for £182/10/-; seven years from December 1888.
- * Mortgage from Pateoro to E.T.Dufaur, for £124/5/-; seven years from 6 August 1890.
- * Definition of Relative Interests, Te Awaroa, 19 September 1893.
- * Order under the Native Equitable Owners Act 1886, Te Awaroa, 20 January 1895.
- * Sale to the Fenton brothers (Roger Edward and Carleton Hugh Fenton) of the entire interests of 11 owners and the partial interests of 7 owners for £243/15/-, 4 June 1894.
- * Sale to the Fenton brothers of the entire interests of 4 owners, the balance of the interests of 4 owners, and the interests of 4 further owners for £161/5/-, 7-18 April 1896.
- * Sale to the Fenton brothers of the interests of 5 owners, for £52/10/-, October 1896.
- * Partition Orders – NLC, Te Awaroa (Helensville), July 1900, dividing the parent block into Paparoa No.1 awarded to the Fenton brothers (Roger Edward and Carleton Hugh); and Paparoa No. 2 awarded to remaining Maori owners.

PAPAROA No. 1 : Stamping The Colonial Template On Maori Land

Title created: Partition Order – NLC, 17 July 1900.
Grantees: Roger Edward and Carleton Hugh Fenton.
Area: 2,108: 0: 00 a.r.p.
Survey: ML 6965; Percy Holt.
Costs: £3/-/- court costs;
£? for survey.

Alienation of Paparoa 1 completed from date of Partition Order

PAPAROA No. 2 : Stamping The Colonial Template On Maori Land.

Title Created: Partition Order – NLC, Te Awaroa (Helensville) 17 July 1900.
Grantees: Mere Paora Tuhaere (1¼ shares), Manihera Katikati (1 share), Whakatau (7/12 share), Te Rau Hotereni (2/3 share), Whakaruku Hotereni (2/3 share), Te Wira Paraone (5/8 share), Aherata Paraone (5/8 share) and 23 others (6¼ shares).
Area: 2,321:0:00 a:r:p.

Survey: ML 6965, Percy Holt.
Costs: £2/-/- court costs;
£49/12/- for survey.

Extending the Process of Alienation of Paparoa No. 2

Partition Orders: NLC, Te Awaroa (Helensville), 21 May, 1903 (refer 2A, 2B, 2C & 2D below.)

PAPAROA No. 2A : Stamping The Colonial Template On Maori Land

Title Created: Partition Order – NLC, Te Awaroa (Helensville) 17 July 1900.
Grantees: 6 owners in 1 23/24 shares: Ihapera Weneti (½ share), Kerei Mu (½ share), Pairama Mu (½ share), and 3 others (11/24 share).
Area: 400:0:00 a:r:p.
Survey: ML 7196, Wilson & Jackson.
Costs: £2/-/- court costs.
£13/3/4/- for survey.

Extending the Process of Alienation of Paparoa No.2A

- * Lease to Robert Ferrall (of Parkhurst, near Te Awaroa/Helensville) for 21 years from 23.9.1905 at £11/12/- per annum.
- * Transfer of lease to Edith Fenton, spinster and daughter of F.D. Fenton, December 1905.
- * Sale of 15/24 share (247 acres) to Edith Fenton for £280/13/5 in November 1911.
- * Partition Orders – NLC, Auckland, August 1912 (refer 2A1 & 2A2 below.)

PAPAROA No. 2A1 : Stamping The Colonial Template On Maori Land

Title Created: Partition Order – NLC, Auckland, 17 August 1912.
Grantees: Kerei Mu, Pairama Mu, and Ngapipi Reweti (shares acquired by Edith Fenton.)
Area: 246:3:5 a:r:p.
Survey: ML 8963, H. Miller.
Costs: £1/-/- court costs;
£28/1/7/- for survey.

Extending the Process of Alienation of Paparoa No. 2A1.

- * Sale to Edith Fenton, November 1911-January 1912 (refer Paparoa No.2A above.)
Alienation of Paparoa 2A1 completed at date of sale.

PAPAROA No. 2A2 : Stamping The Colonial Template On Maori Land

Title Created: Partition Order – NLC, Auckland, 17 August, 1912.
Grantees: Ihapera Weneti (½ share), Mere Kapa (1/8 share), Mere Hare Kapa (1/8 share).
Area: 153: 0: 35 a: r: p.
Survey: ML 12469, compiled from previous surveys.
Costs: £1/-/- court costs;
£2/2/- for survey.

Extending the Process of Alienation of Paparoa No. 2A2.

- * Lease transferred from Edith Fenton to Kathleen Griffiths, 29. 9. 1915.
- * Lease transferred from K. Griffiths to Alice Mason, 9. 8. 1917.
- * Lease transferred from Registrar to Edith Fenton, 12. 2. 1923.
- * Lease transferred from Edith Fenton to Gertrude Anderson, 13.7. 1923.
- * Sale to Gertrude Anderson for £460/-/-, 28. 3. 1927.

Alienation of Paparoa 2A2 completed at date of sale

PAPAROA No. 2B : Stamping The Colonial Template On Maori Land

Title Created: Partition Order – NLC, Te Awaroa (Helensville) 21 May 1903.
Grantees: 10 owners in 1,080 shares: Heretina Manukau (196 sh.), Paikea Manukau (196 sh.), Piwara Manukau (196 sh.), and 6 others (296 shares).
Area: 460:0:00 a: r: p.
Survey: ML 7197, Wilson and Jackson.
Costs: £2/2/-- court costs;
£15/16/- for survey.

Extending the Process of Alienation of Paparoa No. 2B

* Sale by Tokerau District Maori Land Board to Edith Fenton for £523/5/-, 26.6.1912.

Alienation of Paparoa 2B completed at date of sale.

PAPAROA No. 2C : Stamping The Colonial Template On Maori Land

Title Created: Partition Order – NLC, Te Awaroa (Helensville), 21 May 1903.
Grantees: 21 owners in 71/8 shares: Mere Paora Tuhaere (1¼ sh.), Te Amene (¾ sh.), Te Rau Hotereni (2/3 sh.), Whakaruku Hotereni (2/3 sh.), and 17 others (in 3 19/24 shs.)
Area: 1,457: 0: 00 a: r: p.
Survey: ML 7195, Wilson and Jackson.
Costs: £2/-/- court costs;
£33/-/8 for survey.

Extending the Process of Alienation of Paparoa No. 2C

* Sale by Tokerau District Maori Land Board to Edith Fenton for £1,657/7/-, 26.6.1912.

Alienation of Paparoa 2C completed at date of sale.

PAPAROA No. 2D (Whakatangata) : Stamping the Colonial Template On Maori Land

Title Created: Partition Order – NLC, Te Awaroa (Helensville), 21 May 1903.
Grantees: 55 owners in equal shares.
Area: 20:1: 00 a: r: p.
Survey: ML 6965, Percy Holt.
Costs: £2/-/-- court costs.
£ ? for survey.

Not alienated in any legal or technical sense, but it was located within the boundaries of the much larger Paparoa 1 and when that block was partitioned in 1903 the NLC did not make any provision for access to the wahi tapu.

Appellation/Nomenclature; Areas and Extent

The southern Kaipara peninsula land block given the appellation Paparoa should not be confused with the place of the same name, located 20 kilometres to the north-east across the Kaipara Harbour. The same or similar names are not uncommon throughout Aotearoa. The entire block is located in the Waioneke

Survey District VI and Kaipara S.D. VIII and XII , first surveyed by the Colonial Government in 1865.² In extent it is 4540:0:00 acres, and stretches from the Tasman Sea in the west across the waist of the narrow southern Kaipara peninsula to the Kaipara Harbour in the east. The parent block will be referred to as Paparoa. its partitioned constituents as Nos.1 and 2, and the latter's components as 2A, 2B, 2C, and 2D. This latter block is a wahi tapu known as Whakatangata.

The textual evidence on the first Maori Land block map, designated ML5 bears the graphic appellation 'Paparoa Reserve'. This is probably a reference to its prior exclusion from the Crown purchases in the early 1860s at the northern tip of the Kaipara Peninsula to the north of Paparoa. The designation 'reserve' seems to have carried no significance in the context of the Land Court's title investigation. Paparoa was treated as any other Maori customary land and not treated as a special case.

Topography

The block is approximately rectangular in shape. In elevation it rises from sea level in the west, through a series of rounded hills, approximately 100 metres high in the mid-west, and descends through a number of gently shaped valleys to the eastern margin of the peninsula.

Vegetation

Prior to the 1860s the block would have carried all its native vegetation, which would have been predominantly a low-level regime of fern and coarse grasses with isolated pockets of a mixture of scrubby broad-leaved evergreen trees, manuka and kanuka, a few solitary podocarp and kahikatea specimens, and scattered stands of ponga, toitoi and flax. On the western margin this fernland regime would have given way to a habitat of sand-dune grasses and ground-hugging, wind-adapted coprosmas, stretching in a north-west/ south-east band up the Tasman coast. The eastern littoral along the Kaipara Harbour supported a tidal swathe of mangroves.³

² ML Map No. 5, NALTO, LINZ.

³ ML Map No. 5, LINZ; M.W. Spring-Rice, *op. cit.*, pp. 10-12.

Location

Geographically, the block lies west to east across the waist of the lower Kaipara peninsula. In traditional Maori spatio-cultural terms it lay across the land access routes from the north of the peninsula to the settlements further south.⁴ The estuaries on its eastern littoral provided significant landing points for waka crossing the Kaipara Harbour. The long strand of the Tasman Sea shore, which Maori called One Rangitira was an important communications line. High sea-cliffs south of Muriwai to the Manakau Heads made beach access and portage difficult if not impossible in this locality.

Broadly speaking, the European paradigm was similar to that of Maori. A number of land blocks at the tip of the southern Kaipara peninsula had been purchased by the Crown in the early 1860s. Their future development as pastoral grazing estates depended on access to them by long land and sea passages.

The Native/Maori Land blocks adjoining Paparua are: Aotea, immediately to the north, Tuparekura, to the north-east across the narrow Ohoriri estuary, and Otakanini, immediately to the south. A block history of Tuparekura has been recounted earlier.⁵

Pre-Contact Settlements

There are a number of ancient pa sites in the Paparua block. None appears to have been inhabited at the time of the European colonisation of the peninsula.⁶ The closest occupied sites in the 1860s were further north at Mairerahi and further south at Haranui. In 1869 the population of these areas and Paparua (still further south towards the southern reaches of the harbour) was 112, according to Judge Rogan's census.⁷ Generally, Maori of the peninsula identified themselves principally as Ngati Mangamata with only occasional affiliations to Te Taou and Ngati Whatua.⁸

Title Award

Paparua was awarded to a local rangatira, Te Keene Tangaroa of Mangamata hapu of Te Taou under the Native Land Act 1865 by a Crown Grant dated 2

⁴ Spring-Rice, *op. cit.*, pp. 16-25.

⁵ Refer Chapter 5, TUPAREKURA, pp.110 ff. (above.)

⁶ Spring-Rice, *ibid.*, pp. 79-81.

⁷ Rogan Letterbook, 28 October, 1869, AI & ML.

November 1865. Evidence supporting his claim had been given in the Native Land Court hearing at Te Awaroa (Helensville) on 27 June 1865 under the Native Land Act 1862. Two features of the title investigation and the subsequent issue of a grant were significant in the light of subsequent events. First, a large number of Te Keene's iwi and associated hapu, withdrew their claims in preference to his claim for the title.⁹ This early period, approximately 1864-1873 witnessed a continuation of the pre-1864 pattern of active and usually co-operative participation by Ngati Whatua people with the Crown and its agents.¹⁰ An analysis of all the very early title investigations in the region of southern Kaipara from the recorded minutes evidence reveals that this was a very common practice. Certainly it was the case, as we have seen above, for Pukeatua.¹¹ Secondly, the different statutory authorities, namely the Native Land Act 1862 v. its successor and replacement of 1865 for the title and grant respectively gave rise to later confusion and contention. Some twenty six years later attempts were made in both the Native Land Court and the Supreme Court to resolve these issues.¹²

Title Investigation

Te Keene Tangaroa, who had ordered the survey, named more than twenty others as co-claimants to the land. He was a very powerful rangatira in the southern Kaipara and married to a daughter of Apihai Te Kawau. Importantly he was a co-titleholder with his cousin-in-law Paora Tuhaere in the west Tamaki Makaurau/Auckland land block known as Taupaki. Others not named by Te Keene – including Apihai Te Kawau, Paora Tuhaere and Te Wiremu Reweti – claimed through the same tupuna as Te Keene. One of the co-claimants Paraone Ngaweke also said that the survey was wrong and that although he had had a dispute about it with Te Keene, it had been done now so he said, “let it remain as it is.”¹³ This reluctance to dispute the survey probably derived from well-grounded fears over the costs of re-surveying. As it was, the survey costs impacted heavily on the title investigation.

⁸ KMBs 1, 2, 3 (passim); Spring-Rice, *op. cit.*, pp. 3-70 (passim.)

⁹ 3BG, p.219. NALTO, LINZ ; KMB 1, p. 20.

¹⁰ P. Wyatt, 1998, *op. cit.*, (passim.)

¹¹ Refer Chapter 4, PUKEATUA, pp. 76 ff. (above.)

¹² Refer pp.150-151 (below.)

¹³ KMB 1, p.16.

Te Keene then told the court that he wished his name alone on the title as the land could be “divided hereafter, when each claimant can pay for the plan and the deed.”¹⁴ Some years later Paora Tuhaere said that this reference to the costs of the plan and the deed referred to the £100 debt Te Keene had incurred in surveying the land and the owners had agreed to put the title in his name only so that it could be a security for the debt. At a succession hearing in 1886 some of those who had been present at the 1865 hearing revealed that they “were ashamed to oppose” him as they could not contribute anything to the court costs.¹⁵ The court determined that all those present did indeed agree that the title could vest in Te Keene alone and the court ordered accordingly, although the certificate of title – issued under the authority of the 1862 Native Lands Act – did note that Te Keene and 22 others, “were the sole owners of the said block of land.” The title then noted that it had been agreed by the ‘owners’ that the title would vest in Te Keene alone.¹⁶

The textual evidence thus explicitly states that many others had rights to the land equal to Te Keene’s own, indicating his role as trustee for all. There are interesting parallels with the Orakei title investigation, court order and Crown grant in 1868/9.¹⁷ Nevertheless, the title, when it did issue in the form of a Crown grant was instead issued to Te Keene alone in November 1865 under the 1865 Native Lands Act not the 1862 Act under which the case had been heard.¹⁸ There was no mention of the other twenty two leading rights-holders or of Te Keene’s trustee status; as the remaining owners were to learn twenty years’ later, after Te Keene’s death in 1885, they had been dispossessed.

Leases

On 18 November 1876 Te Keene Tangaroa entered into a 21 year lease agreement, with an attached right of purchase at a fixed price: ¹⁹

if the lessee at any time be desirous of becoming a purchaser then of giving of one month notice and in payment of £1000/- the

¹⁴ KMB 1. p. 20.

¹⁵ KMB 4. pp. 332-337.

¹⁶ KMB 1. pp. 15-20.

¹⁷ Refer above, Chapter 2, FENTON AT ORAKEI, pp. 46ff. (above.)

¹⁸ CG, Vol. 3BG, p.219, No. 2643 BNC, NALTO, LINZ.

¹⁹ Lease. Vol. B5, fo. 461, No. 8521, NALTO, LINZ; R.C.J. Stone, 1973, op. cit., pp. 131-139.

lessor shall convey the said heridaments and premises in fee simple.

The lessee was Thomas Morrin, of Ellerslie, Auckland, by historical occupation an iron-monger, but more widely known as a large-scale property dealer and speculator in the Auckland metropolitan and provincial district. Morrin (as we have already noted in the chapters on Pukeatua and Pukapuka) was a recurrent figure in the land alienation process. Over the following seven years the lease was re-assigned on three separate occasions: the first time, on 17 September, 1878 from Morrin to Alfred Buckland, auctioneer, of Auckland²⁰; on the second occasion, 30 May, 1879, from Buckland to E. and E. Wood, of Auckland²¹; and on the third occasion, on 13 July, 1879, from the Woods to Richard Webster, farmer of Ellerslie, Auckland.²² Webster occupied the block and carried out farming operations there. In August 1883 and April 1884 he entered into agreements with his northern neighbour, Francis Dart Fenton (the titleholder of the native land block Aotea, adjacent to Paparoa, since 8 May 1880) for the erection, “with reasonable haste”, of a post and wire fence between the Aotea and Paparoa blocks.²³

The first and third leases were organised by that familiar figure in the land alienation process, Auckland solicitor Dufaur, whose hold on the Paparoa block was further secured with a mortgage of £100 to Webster, a three-year loan taken out in September 1885 at 8% per annum. The tightening hold was given a further twist in 1888 with mortgages advanced by Dufaur to Te Keene Tangaroa’s successors, these being against the title rather than merely against the lease.²⁴ Yet another twist in Dufaur’s favour occurred late in 1890 when Webster defaulted on the mortgage. Dufaur took possession of the lease and sub-leased it to Daniel McEwan in March 1891.²⁵

Alfred Buckland was the titleholder and leaseholder of several of the large blocks on the tip of the South Head of the Kaipara Peninsula, either purchased

²⁰ Vol. B5. p.838, No. 9293, NALTO, LINZ.

²¹ Vol. B7. p. 9, No. 9653, NALTO, LINZ.

²² Vol. R5. p. 650, No. 82634, NALTO, LINZ.

²³ Vol. R.36. pp. 135-6, No. 115032, NALTO, LINZ.

²⁴ Refer pp. 148-149 (below.)

²⁵ Mortgage, Vol. R16, fol. 429, No. 96245; and Agreement, Vol. R36, fol. 135, No. 115032, NALTO, LINZ.

from the Crown or leased from European titleholders in the 1870s. He was one of the colonial metropole's leading entrepreneurs operating a developing stock auctioneering business in suburban Newmarket. It is probable that the Paparoa lease fitted into his larger scheme of operating cattle grazing farms on the southern Kaipara peninsula.²⁶

The Fenton family had had an association with the southern Kaipara area for some years prior to the 1880s. Francis Dart Fenton had been Resident Magistrate for Kaipara between 1854 and 1856. From 1865, following his appointment as the first Chief Judge of the newly established Native Land Court, he was often in the southern Kaipara rohe on personal or court business. He maintained a residence in Jermyn Street in the old official administrative district of the colonial town of Auckland, but a short distance from land court venues in Shortland and Symonds Streets. From about 1879/80 he was developing a country seat at Tuparekura, a few hundred metres from the north east corner of Paparoa, and which he had named Crosland, a name with Fenton affiliations in distant Yorkshire, England. A full account of the alienation of Tuparekura was explicated in Chapter 5 above.²⁷

Succession

The titleholder of Paparoa, Te Keene Tangaroa died in December 1885. His will devised his estate to six people only. This left out not only the 22 natives who had had their names included on the land court's title but any others with interests in the land. Following Te Keene's death the Native Land Court interpreted his title to be unhindered by any trustee status and treated him as sole owner. Those named in his will succeeded to the Paparoa title outright at a Te Awaroa (Helensville) land court hearing of September 1886. Those named in the will were opposed by others with customary interests in the land, including Patoromu Te Akiriri, who told the court that Te Keene:²⁸

²⁶ *N.Z. Farmer*, 1878, No. 4, p. 56; M. Waller (grandson of Buckland), personal communication, 1996.

²⁷ W.L. Renwick, 'Fenton, Francis Dart', *DNZ B*, Vol. 2, 1993, pp.121-122; NLC Order 80/3336; A-REPRO 4711/1034, Judges' MB 13, 1888-9, pp. 83-92, NA-A.

²⁸ KMB 4, pp. 332-334; Patoromu Te Akiriri was also the alienating titleholder of the adjoining block. Tuparekura, refer to Chapter 5, TUPAREKURA, pp. 110 ff. (above.)

did not include [in his will] others who had a right to the land . . . they being descendants of the ancestors and [who] had a right thereto. I heard Te Keene state to the Court that the land in this block [would] be our reserve.

Paora Tuhaere confirmed Patoromu's evidence, adding that:

The land was allotted to the deceased, as awarded by the Court, because others were afraid to oppose him, he having paid for the whole survey while the others did not, and for the same reason they did not apply for a re-hearing. They were ashamed to oppose the deceased, because they did not subscribe to the cost of the survey. Deceased paid about £100 himself. Deceased was only a trustee for the whole of us in this block; the land being restricted, is only a reserve for us.

Paora Tuhaere, (a familiar figure in the pages of this thesis) was probably the most influential agent in facilitating peaceful accommodations between many factions within local tangata whenua and between them and the agents of the Crown, the Government, and tauwi generally. He was a senior rangatira of Te Taou with Ngaoho and Ngati Whatua affiliations, a resident of Okahu at Orakei in Tamaki Makaurau/Auckland, and frequently a visitor/guest at many kainga throughout southern Kaipara. He had busied himself in the affairs of the land court for over two decades and was unquestionably well versed in the intricacies of the labyrinthine Native Land statutes and their endless amendments. There remains no written textual evidence, however, that Tuhaere was aware of the recently- passed Native Equitable Owners Act 1886 – in force since July of that year – which could have been used in this, the Paparoa succession case. This act allowed for the recognition of any trust that may have been intended when title was vested in a single or in a few owners under the restrictive provisions of the 1865 Native Lands Act, especially its idiosyncratic '10-owner rule'. Although the case had begun as a succession claim it would almost certainly have been within the discretionary procedural powers of the court to have adjourned the succession claim until such time as the interests of the many other owners could have been recognised by an order made under the 1886 act. Yet there is no documentary evidence that the Court considered this alternative; it continued to hear testimony under its earlier authority.

The court directed that Wiremu Watene Tautari (who was also the youngest of the titleholders in the Orakei block in Tamaki Makaurau/Auckland),

who had whanau and hapu links with the lower Kaipara and who was one of the key applicants in the Paparoa succession case, should try to arrange a settlement outside the court building. This procedure was widespread in many cases of dispute and claims' resolution under the aegis of the Native Land Court. One outcome of this 'informality' was that no written record was made of the hui korero/discourse. This is enormously frustrating for the latter-day historian. As has been noted in the opening theoretical sections of this thesis, there is no documentary text of these discussions; thus we needs must construct a text from other relics of the past.

Paora Tuhaere informed the court later that day that the contending parties had agreed to the list of 63 names given by Patoromu as those to be appointed successors. The court reserved its judgment until the following day, 23 September, 1886. It referred to the claim of those opposing the devisee's of Te Keene's will that there were:²⁹

certain latent equities having interest in the land and that the operation of the will must not be permitted to obliterate these.

The Court observed that these other interests had been admitted by all in 1865 and were admitted today by Te Keene's representatives. It went on to remark that the land was under a lease agreement with a purchasing clause:³⁰

to Europeans whose position the Court declines to prejudice by adding the 63 names tendered to the Court [by Patoromu Te Akiriri.]

The applicants were informed by the court:³¹

should the European not exercise his right to purchase it will be open to the natives to apply for a subdivision in the usual manner and thus to have their names included in the title to the subdivisions. Title was then awarded to the six persons named in Te Keene's will: Kirhipana Pateoro, Te Hira Pateoro, Merea Kingi, Kingi Ruarangi, Eruera Maihi and Karauria Houtahi.

In December 1888 grantees from the Pateoro whanau, who had just had their succession upheld by the Land Court, took out a seven-year mortgage of £182/10/- from the Auckland solicitor Dufaur. This mortgage was approved by the Trust Commissioner but does not appear to have been registered against the

²⁹ KMB 4, p. 336.

³⁰ Ibid., p.336.

³¹ Ibid., p.336.

original Crown grant.³² A further mortgage for £124/5/- was taken out with Dufaur in August 1890.³³

The Native Equitable Owners Act 1886

The matter of the title to the Paparaoa block was raised again by Dufaur's increasing legal stranglehold on the Paparaoa block. In September 1891 Paora Tuhaere and others with legally unrecognised interests in Paparaoa made application under the Native Equitable Owners Act 1886, Section 2, claiming to be beneficially entitled. The Native Land Court sat at Te Awaroa (Helensville) on 20 and 28 September 1891 to consider the application. The presiding judge of some 18 years' experience on the NLC bench was Spencer von Sturmer; and two barristers of up to 20 years' involvement in Native Lands' litigation: Frederick Earl (who was also the legal agent for Mahuta interests in the Tamaki Makaurau block of Pukapuka³⁴) and Dufaur, appeared for Paora Tuhaere and the grantees (and their successors) respectively. The case was adjourned. Judge von Sturmer determined that the Supreme Court should rule on whether the Paparaoa block could be made subject to the 1886 act given that the block was investigated in 1865 under the Native Land Act 1862 and a certificate of title was ordered under that act, but that a later certificate of title was ordered under the 1865 act. In point of law the 1886 act referred only to the widely used 1865 act and not the rarely used 1862 act – a clear case of the letter of the law (the text) versus its spirit (the sub-text)³⁵

Meantime, the lead applicant, Paora Tuhaere, had died on 12 March 1892 at Okahu in Orakei.

The lawyer for Te Keene's successors, none other than the ever-present Dufaur, had opposed the application in the Native Land Court. His agenda of course was that they – the titleholders - were his mortgagors. But his agenda was double-edged: he was also acting for the would-be purchasers of Paparaoa, the Fenton brothers – sons of the recently retired Chief Judge of the Native Land Court, Francis Dart Fenton. Dufaur attempted to use the nature of the original

³² Vol. 2B, fol. 558, DI, NALTO, LINZ

³³ Mortgage, Vol. R44, p. 775 (no. 126255), NALTO, LINZ; TTMLC-W: A799 'Sold' file, & Trust Commissioner's Mss, TCr 90/53, and 90/54.

³⁴ Pefer Chapter 6, PUKAPUKA, pp.122 ff. (above.)

investigation (conducted under the authority of the 1862 act) to deny the applicants - Tuhaere and others - a hearing under the 1886 act.

The Supreme Court

The Supreme Court sat on three days, 26 August, 14 September and 25 November 1892. Its ruling held that the equitable owners application could be heard by the land court as the Crown grant had been issued under the NLC Act 1865 and that was all that was required to comply with the stipulations of the Native Equitable Owners Act 1886. The explicit details of the judgment began with an outline of the two questions that the Supreme Court had to consider:³⁶

“1. Does “ The Native Equitable Owners Act, 1886 ” apply only to lands the certificates of title to which were issued upon proceedings initiated under “ The Native Lands Act, 1865 ”, and subsequent Acts?

2. Notwithstanding the proceedings under “ The Native Lands Act, 1862 ”, in view of the issue of certificates of title under “ The Native Lands Act, 1865 ”, and of the Crown Grant under the same Act, or of the issue of either the certificate of title or the Crown grant, has the Native Land Court jurisdiction to hear and entertain the present application.

In his lengthy judgment Mr. Justice Connolly stated that:

the words of “ The Native Equitable Owners Act, 1886 ”, are plain - that the Native Land Court, upon the application of any Native claiming to be beneficially interested in any land certificates of title to and Crown grants of which were made under “ the Native Lands Act, 1865 ”, in favour of, or to Natives nominally as absolute owners, may make inquiry and declare trusts. It was contended that this only applied where both the Crown grant and the certificate of title were made under the Act of 1865; and further that the proceedings must have been issued under that Act. I see no reason for departing from the plain words of the statute, and consequently, hold that, although the proceedings were initiated before the passing of the Act of 1865, they must also have been completed before the passing of that Act if they are to oust the jurisdiction of the Native Land Court to deal with applications under “ The Native Equitable Owners’ Act, 1886 ”.

In the present case the certificate of title was ordered to be issued on the 27th of June, 1865, but was not actually issued until the 10th of November, 1865; and the Crown grant, stated on the face

³⁵ NZLR, Vol. XI, 1893, pp. 523-527.

³⁶ Ibid., p.524.

of it to be a “grant under ‘ The Native Lands Act, 1865 ’ ”, is dated the 2nd of November, 1865. “ The Native Lands Act 1865 ” was passed on the 30th of October, 1865 and came into force on passing.

I therefore answer the first question in the negative and the second in the affirmative.

Return to the Native Land Court 1893

In the light of the Supreme Court judgment, the Native Land Court on 20 January 1893 resumed its adjourned inquiry of 28 September 1891 into the application of Paora Tuhaere (since deceased) into the nature of the title to the Paparaoa block. The applicants were specifically seeking a determination as to the existence of any intended trust in Te Keene Tangaroa’s ownership. The applicants were represented by Francis Dart Fenton whose interest was of course far from altruistic as he had been attempting with minimal success from the late 1880s to acquire shares from the titleholders in the Paparaoa block. Unsurprisingly, the application was opposed by Dufaur who of course had a vested interest as mortgagor to the small group of titleholders.

This narrative of the court’s proceedings under the resumed Native Equitable Owners Act case needs to be rendered as simplistically as possible. There is a weight of documentary evidence to be sifted and weighed against an over-arching contextual frame. A rigorously tested scenario corroborated against all the available textual evidence allows of the following historical reconstruction.

Fenton referred to the June 1865 minutes and the original certificate of title ordered in June 1865 before calling evidence from tangata whenua with reference to the successors to the 22 grantees named in the original title. This came to a total of 71 successors but when those who succeeded to more than one interest were accounted for the final list was for 38 grantees, plus of course the six who had already succeeded to Te Keene’s interests. Dufaur did not present any evidence to support his case. His case at that stage was strong: his clients were still on the title, as were his leases and mortgages; further, Dufaur pointed to the 21-year 1876 lease to Morrin which included the covenant of a right of purchase for £1000.

Fenton then inquired as to how Morrin’s lease was to be noted on the title orders. Very extraordinarily it was determined that Fenton would draw up a draft

order for Dufaur's approval. Unsurprisingly, Fenton's draft was unacceptable to Dufaur as it noted that - as required by the Native Equitable Owners Act, s. 5 – no interest in Paparoa had been alienated prior to the passage of the 1886 act (the act only applied to unsold land.)

Dufaur still wanted Morrin's lease and right-to-purchase noted in the orders but Fenton responded by pointing out that Dufaur's position was already protected in law (s.5 of the 1886 act protected the interests of lessees.) Judge von Sturmer agreed with Fenton, but nonetheless agreed to add to the NLC file (not the title) a June 1893 memorandum noting the existence of the lease. The final order under the Native Equitable Owners Act was minuted on 20 January 1893 but did not issue until September of that year.³⁷

An appeal lodged by Renata Poata Uruamo of Te Ketī (who was not included in the list of new owners) in March 1893 was finally heard by the Appellate Court two years' later on 9 April 1895. It will be recalled that this is the same Uruamo who figured prominently in the Pukeatua protest. Uruamo will appear again in a similar role with a claim for an interest in the Orakei block in 1891.³⁸ The lower court's decision was upheld.³⁹

Relative Interests Defined

The litigation pertaining to Paparoa meantime took on a further dimension. At a Te Awaroa (Helensville) sitting of the Native Land Court on 19 September 1893 an application for a definition of relative interests was heard. The outcome of this was that the 44 owners had their interests defined in 22 shares, with the shareholding being spread amongst the Reweti, Hoterēni, Takerei, and Manukau whanau. The largest shareholders were Hohepa Reweti (1¼ shares), Mere Paora Tuhaere – whangai daughter of the deceased Paora (1¼ shares), Patoromu Atakiri (1 share), Karauria (1 sh.), and Katairana (1 share.) The probable rationale driving the determination to ascertain precise levels of interest was the need to identify what was being sold if shares in the Paparoa block were alienated. The titleholders would have been aware of the substantial competing interest by prospective buyers that had been evidenced in the preceding years, especially the

³⁷ Judge von Sturmer Minutebook. A-REPRO. 4711/1034, pp. 83 ff. NA-A.

³⁸ Refer Chapter 8, ORAKEI 4A2A, pp. 170 ff. (below.)

³⁹ AMB 6, p.129.

opposing pressures of the local Fenton family, the various lessees and occupiers, and the Auckland solicitor Dufaur.

Adding yet another dimension to the dynamics of the alienation process, the principal actors were aware of that a further Native Land bill was scheduled to become law late in 1894. This bill would re-introduce Crown pre-emption but did allow one year for the completion of existing purchase negotiations; and again in 1895 an amendment extended the deadline to two years.

On 4 June 1894 the brothers Roger Edward and Carleton Hugh Fenton drew up a deed for the purchase of Paparoa for approximately £1,000 or £45 per share. This figure was based on values assigned to the land block under the terms of the 1876 lease; by 1905 the value of half of the block was £1,337 so the grantees were being paid less than half the land's value.⁴⁰ The offer price for the shares was of course nicely pitched by the Fentons because if the amount had been any lower than £1,000 the grantees might have instead alienated to the lessee who still held the right to purchase before the expiry of the lease in 1897. As has been noted above, the lessee was none other than Dufaur. Some of the local grantees were employees of the Fentons on their land in the adjacent Tuparekura and Aotea blocks and some were in debt to them.⁴¹

In summary the documents record that 11 owners sold their entire interest and 7 sold part of their interest to a total of 5 5/12 shares in Paparoa for a total of £243/15/-. Half of the vendors lived in the southern Kaipara rohe as far east as Tuhirangi and as far south as Waimauku, with 9 vendors resident at distant Orakei in Tamaki Makaurau/Auckland. The Fentons' actions put pressure on the existing sub-lessee, Daniel McEwan. He petitioned the House of Representatives on two occasions, in 1895 and 1897, to allow him to complete his purchase. He claimed that the new grantees determined by the NLC in 1893 refused to honour the purchasing clause. Francis Dart Fenton corresponded with the government in 1894 opposing McEwan's petition, claiming that few improvements had been carried out by McEwan. He maintained that if McEwan felt strongly enough on the matter he could seek redress under the terms of the Native Land (Validation of Titles) Act 1893. Fenton went on to support the claim of his sons maintaining that

⁴⁰ Copy of Entries in District Valuation Roll, with J 05/36 in J 1/1905/794, NA-A.

they had “been solicited by the natives to purchase the place,” and that nearly one half of the owners had sold their shares already. He continued that: ⁴²

Messrs. Fenton had arranged for some of the natives, who are scattered about the Kaipara, to settle permanently on a portion of the block, as a perpetual native reserve, being desirous, not only that they should be permanently provided with land, but also that they should be resident near them, for convenience of labour, a mutual advantage.

This comment was typical of Fenton senior’s paternalistic attitude towards Maori. His proposals were totally unrealistic and in fact totally self-serving. Suffice to say that nothing came of his (and his sons’) patronising schemes. What is surprising is that there appears to be no record of any attempt by the sub-lessee, Daniel McEwan to instigate any legal action to enforce the right-to-purchase clause in the 1876 lease contract.

Fenton Share Purchases Confirmed 1895-1896

In January 1895 Roger Edward and Carleton Hugh Fenton notified the land court and the Auckland Commissioner of Crown Lands that they had acquired shares in the Paparoa block and that they were in the process of acquiring more prior to the passage of the Native Land Court Act 1894 (with its Crown pre-emption clause.)⁴³ The court responded that they should first seek confirmation of the shares already acquired. Yet despite this advice the court proceeded to hear a related application regarding the Fentons’ uncompleted transactions on 13 and 14 August 1895. In very detailed evidence Roger Fenton outlined the current juncture of his negotiations with the Paparoa block shareholders. For example he stated that that Riria Kereta had been paid £17/10/- for her ½ share with a further £5 due when the court permitted the completion of the transaction.

His accounts were introduced as evidence. They demonstrated that advances totalling about £150 having been paid out to a further 12 intending vendors yet no corroborating evidence was called from the shareholders.⁴⁴

The belated application for confirmation of alienation was finally heard in Auckland on 11 January 1896. Perhaps rather surprisingly the Fentons were then

⁴¹ J 1/1898/211, NA-W.

⁴² J 1/1905/794, NA-W.

⁴³ Messrs Fenton to the CJ of the NLC and Auckland Commissioner of Crown Lands, 8.1.1895; C.S. 1407, BAAZ: 1108/4407, Box 158, NA-A.

represented by that familiar legal counsel Dufaur. Once they had been on opposing sides of the Paparoa litigation but circumstances had changed: the Fentons had recently acquired the Paparoa lease; McEwan having apparently admitted defeat. The grantees insisted that rental payments were to continue until the expiry of the lease in 1897 even when interests had supposedly been sold (although they could not be said to have been sold until this was confirmed by the Native Land Court, and even then the alienated interests had yet to be defined on the ground.)

At the hearing the vendors were also required to confirm the purchase and show they had sufficient other lands outside those sold to maintain themselves but their imprecise statements as to the adequacy of their other land holdings do not appear to have been scrutinised by the court. The matter of the rents was raised again, this time by Te Rangi Hikiera Tauerua. Dufaur and the grantee disputed a particular method of payment as to whether it was a promissory note or other. Fenton agreed to settle the matter then and there, but it is not recorded whether this was ever done.⁴⁵ The hearing for confirmation of alienation was adjourned until 18 January 1896 (being held again in Auckland) to allow Fenton senior to respond to the question of the rents, but also to ascertain whether two of the intending vendors, Kingi Ruarangi and Reweti Whakahau had sufficient other lands apart from the 29 acres (or 1/28 share) of the 816 acre Hanekau B land block, south-west of Rewiti in the far south of the southern Kaipara. When proceedings re-opened Francis Dart Fenton appeared and denied that the rent due under the lease was to be paid to those who sold their shares. The vendors, however produced promissory notes from Fenton for a value approximately what was due in rent but while he acknowledged that he had issued the promissory notes he denied that they were related to the rents. This was evidently not how the grantees had interpreted his actions and his notes.⁴⁶

As indicated by their land court testimony, the vendors appeared to be under the impression that the Fentons would continue to pay rent on the 1897 lease even though some undefined interests had been sold, and Fenton senior had

⁴⁴ Judge Wilson's Minutebook, p. 7. A-REPRO. 4711/1113. NA-A.

⁴⁵ AMB 6, pp. 226-229.

⁴⁶ *Ibid.*, pp. 226-229.

to submit a declaration to the court (possibly in early 1896, prior to the confirmation hearing) denying that he had made any promise of this nature to those who signed the deed of sale, stating categorically that those who sold were not to receive rents once they had signed the deed.

This assertion is a little confusing, for the lease was still current and any pretended purchase Fenton might have arranged had no validity until confirmed by the land court so his liability for rent could hardly be said to have been extinguished until his purchase was confirmed by the court. Fenton also made the declaration because he claimed he could not give evidence in person as he could not get to it by horseback due to his advanced age, adding that the roads were impassable for carts.⁴⁷ This type of statement is particularly ironic as it would have been highly unlikely that he would have accepted such an attempted justification from any witness unable to attend his courts when he was Chief Justice. Fenton senior, further claimed that he was not even present when the deed was signed (presumably it was organised by his 2 sons), stating enigmatically that:⁴⁸

I had no desire to purchase for my sons or to assist them in purchasing any of the shares of those natives who lived in our immediate neighbourhood, who greatly desired that their shares should come to us for many reasons which need not be particularised.

Quite what the 'many reasons' Fenton was alluding to is uncertain, however it is of more than passing interest to note that Fenton had had a close association with the Kaipara in the 1850s as Resident Magistrate, and had returned to settle in the 1870s. The employment (and credit) he offered to the local indigene might also be amongst his 'many reasons'. Fenton's declaration went on to claim that when he went to Auckland in the winter of 1894 Ngati Whatua owners living at Orakei constantly pressed him for money to complete the purchase allowed for under the lease's purchasing clause and that, "wearied of their importunity", he relented until he had no money left in the bank, whereupon he said that they sought promissory notes from him for their shares. He even claimed that a member of the Reweti whanau had accosted him in the street, and in a drunken state, demanded

⁴⁷ A799 'Sold' file, TTMLC-W.

⁴⁸ Ibid., A799 'Sold' file, TTMLC-W.

that he should acquire further shares. He claimed that such incidents were why he had to leave Auckland and had not been back. He further averred that he was concerned lest he should die before the promissory notes became due when the lease expired in 1897, and thus he passed the notes and his interest in the block over to his 2 sons. He concluded by admitting that only those who held promissory notes were entitled to their share of the rents up to the time they received cash for their shares, although keenness to close the purchase appears to have been his primary motivation in making this admission. Those who had been paid by cheque or cash and who also swore that they had been promised their rents until the expiration of the 1897 lease were denied by then court, and Fenton was only required to pay the rent to the three grantees who had the promissory notes.⁴⁹

The veracity of the former Chief Judge's assertions regarding the grantees' desperation to sell him their shares is impossible to ascertain from the textual evidence, although their indebtedness to him can be validated from the written record as can their general impoverishment. Nevertheless, the altruistic motives that he ascribed to his behaviour seem questionable in the light of his statement to the court under oath that he had actually visited Orakei to seek out sellers. This conflicts with his suggestion that vendors were "accosting him in the streets" in a desperate attempt to sell.⁵⁰

When Did The Fentons Get Title?

It is exquisitely ironic that the transfer of title from tangata whenua to colonist/settler in the Paparoa land block was such a convoluted affair. In his early career Fenton had been concerned that any newly devised land transfer process be as methodical and orderly as possible. Yet such was the cumbersome machinery of the very process in the third decade of its history that some very curious incidents occurred with respect to the issue of title for Paparoa; and further, as we have noted above, Fenton completely eschewed the need for a title to his personal enclave at the nearby seven acre block of Tuparekura.⁵¹ Fortunately for the historian most of the documentary evidence seems to have survived in the

⁴⁹ AMB 7. pp. 20-27.

⁵⁰ Ibid., pp. 20-27.

⁵¹ Refer Chapter 5, TUPAREKURA, pp. 110 ff. (above.)

records' offices and archives. The matter of the issue of title for Paparoa is a very interesting affair.

On 18 January 1896 the Native Land Court, sitting in Auckland, issued a certificate of title under s.118 of the Native Land Court Act 1894, confirming the Fentons' purchase of Paparoa. The court had found that the Fentons had already acquired the shares of several grantees and were negotiating with 14 other grantees for further shares before the 1894 act was passed. For reasons best known only to the Fentons, they submitted the court's decision to the District Land Registrar, who instead of entering it as 'produced' on the existing certificate of title made out to the various 'native' titleholders as a court order, used it as the basis for an entirely new certificate of title which was entered in the title records under the names of the two brothers Fenton. The new title acknowledged that their interests were only equal to 65 parts out of 264 parts of the whole. The title error was only noted some years later. The earlier erroneous title was cancelled. A new certificate was only issued to the Fentons for their shares as a result of the land court's partition order of 17 July 1900 when their shareholding was properly defined. It is of more than academic interest that the erroneous certificate issued after May 1896 was in direct contradiction with the certificate of title which had issued in July 1895 as a direct result of the land court's January 1893 ruling under the Native Equitable Owners Act. This ruling, as we have noted above, had been affirmed by the Native Appellate Court in April 1895.

The Fentons Acquire Further Shares

Meantime the Fenton brothers continued the process of buying shares in the Paparoa block. This gives all the appearance of being pursued in a very thorough and very relentless manner. The textual evidence, specifically the two archived transfer documents of 1894 and 1896 allow of a very fascinating reading. The preamble to the 1896 document has been copied by the clerk of the Lands Office from the text of the 1894 transfer document, the evidence of which is clear from the crossing out of the "~~4 June 1894~~" date (thus), and the over-writing of the later date: "7 April 1896" (thus!) ⁵² Two of the titleholders signed the deed on that date but their names and the amounts they were paid were then crossed out because the

⁵² Transfers: 17896/1-14 (1894); and 24839/1-7 (1896), NALTO, LINZ.

land court later refused to permit the alienation of their shares (see below.) A closer scrutiny of the text reveals that only part of the second name should have been crossed out for the $\frac{1}{6}$ share and the $\frac{1}{2}$ share sold by Hami Tawaewae only the smaller amount was held back by the court.

The detail of the exact amounts transferred is excruciatingly fine; an insight into the painstaking (but as we have observed at times prone to human error!) process can be garnered from these selected examples from both documents:

On 18 April 1896 Karauria Houtahi of Te Papa and seven others sold a total of $3\frac{7}{12}$ shares at the same price as in 1894 (£45 a share) for a total of £161/5/-; the largest shareholding was that of Karauria Houtahi ($1\frac{1}{6}$ shares) with Kingi Ruarangi, Te Reweti Whakakau and Riria Kereta of Te Parekura next with half-a-share each; on 26 October 1896 Te Ira Pateoro and Te Puna Reweti, then living at Orakei, signed away their fractional shareholding for a total of 18/15/-; on 23 June 1897 at Orakei, Kirihipina Pateoro sold her $\frac{1}{4}$ share and Ropiha Terewai his $\frac{1}{2}$ share for a total of 33/15/-. In all, during 1896/7 a total of $5\frac{1}{4}$ shares were alienated for a total of £236/5/-.

The Fentons' Publicity-Shy Activities

A further complication which then emerged at that stage of the alienation process allows of perhaps only one 'construction', namely that the Fentons wanted the whole matter proceeded with as quietly and efficiently as possible. The complication referred to above was that Roger Fenton informed the court that he did not want a public notice gazetting the confirmation of the Fentons' Paparoa acquisitions. He stated that "neither we nor the natives want to be bothered just now with the business," maintaining that there was no necessity to do so until the deed required registration.⁵³ He was of course, as is apparent from the 1896 deed of transfer alluded to above, still involved in negotiating for additional shares in Paparoa. The court did not accept Roger Fenton's demand; it did not withdraw the application for confirmation of alienation of the transferred shares but merely adjourned the hearing for that confirmation until the next sitting of the court.

⁵³ 'Sold' file A799, TTMLC-W.

This action of the court was too much for Fenton senior who rejoined in yet another missive to the court that the application to withdraw had been withdrawn due to his view that: ⁵⁴

the notices which the rules require to be served on each individual owner are simply invitations to them to come and deny their signatures. This necessitates having both the interpreter and the witnesses in attendance. Considerable expense is the result ...

The natives as a rule keep straight enough until they are tempted by the Court or other people to go wrong.

Fenton senior's questioning of the integrity of his and his sons' purchases of shares in the Paparoa block from the vendors and his lack of faith in the characters of the 'natives', contrasted earlier with his apparently altruistic concern for their welfare and future. The irony doubles when Fenton senior complained of the costs of the very court whose heavy costs he had so blithely inflicted upon the Maori claimants who had appeared before him in his days as Chief Justice before 1882.

In desperation Fenton senior wrote to the land court again on 18 July 1897 stating that his two sons would not be appearing at the Te Awaroa (Helensville) land court on the 20th, reiterating that the claim had been withdrawn, should not have been advertised, and should be adjourned sine die, adding a final note that: ⁵⁵

it is possible that we may get more signatures before the limited time to complete the alienation business expires.

Interests Defined On The Ground

By late 1897 the two Fenton brothers were ready to apply to the court for the partitioning out of their interests but yet another statutory regulation of the labyrinthine land laws loomed to thwart their attempt. This took the form of the requirements of the Native Land Laws Amendment Act 1895, s.5, which prevented the acquisition of Maori land by those holding more than the equivalent of 640 acres of first class land. This had been an outcome of the recommendations of the 1891 Royal Commission led by Rees and Carroll. The Fentons had acquired shares equivalent to about 2,000 acres of the 4,540 acres of the parent

⁵⁴ Ibid., 'Sold' file A799, TTMLC-W.

⁵⁵ Ibid., 'Sold' file, A799, TTMLC-W.

Paparoa block and even given that much of this was of second class quality that limit – of 1.000 acres - too had been exceeded. An attempt was made by them to withdraw their application but the sitting went ahead and their application was dismissed by the court in October 1898.

The Play At Other Names: ‘Dummyism’

The next tactic that the Fenton brothers deployed in their attempts to acquire the Paparoa block was to register the additional shares in the name of a nominal buyer. Their spinster sister, Edith Fenton, a gentle woman of artistic and musical sensibilities, and resident for most of any one year in ‘sylvan’ Devonport on the northern shores of the Waitemata (and only occasionally resident at Crosland), was chosen as the ‘dummy’ for this operation in duplicity.⁵⁶ The extent to which she was an independent or collusive party can only be at this stage (100 or so years after the events) speculative. There exists however an abundance of correspondence that she entered into with the colonial administration in the first two decades of the new century relating to her involvement in the management of the Paparoa lands (especially the leasing thereof) on which some fair assessment of her role in ‘running the family farm’ could be made.

The details of the transactions were clearly recorded in the archival records. At this juncture – 1898/99 a total of 2¾ shares were bought in Edith Fenton’s name. These were the 2 shares of minors Te Rau and Whakaruku Hotereni, purchased for £80 from their trustees Hoana Waaka and Poata Uruamo. The monies were paid to the Public Trustee. A ¾ share held by Te Amene of Mercer was purchased in December 1898 for £33/15/-. It is recorded that Roger Fenton actually paid the monies to the Public Trustee which strongly suggests that the purchase was in his and his brother’s interests.⁵⁷

The Fenton’s ‘dummyism’ plan, however came unstuck. Edith Fenton applied to the land court to have her acquisitions confirmed. The case was heard on 28 September 1899 at the distant north-east Kaipara settlement of Pahi, 20 miles across the harbour. This sitting approved her purchases, but a further sitting re-examined the acquisitions and refused to confirm her purchases.⁵⁸

⁵⁶ *Spectator*, 14 August, 1936, p. 7; and Nominal Card Index, sub ‘Fenton’, ACL.

⁵⁷ ‘Sold’ file. A799, TTMLC-W.

⁵⁸ KMB 7, pp. 254 and 266.

Paparoa Partitioned

This setback to the Fentons' agenda was but temporary. The brothers again submitted applications to the land court for confirmation of purchase. The first scheduled sitting on 5 December 1899 at Te Awaroa (Helensville) was adjourned when the two brothers failed to appear. A second sitting in Auckland on 22 December 1899 was again adjourned when the brothers were present but could not produce any witnesses to their purchases. The case was adjourned for a third time. A fourth sitting on 19 March 1900 in Auckland confirmed all the recent purchases of the Fenton brothers, save for a tiny fraction of 1¼ shares on the grounds that the 3 vendor parties involved did not have sufficient other lands.⁵⁹

This meant that a total of 10 2/3 shares of the 22 shares in Paparoa had been alienated to the Fenton brothers. Their sister's acquisitions of shares came before the court yet again. And again, her acquisitions were not confirmed by the court, on the grounds that the area being acquired exceeded the statutory limitations of s.3 of the Native Land Laws Amendment Act 1895. This section put a limit of 500 acres on blocks for which an exemption from the 1894 Act's restrictions on purchasing could be sought. The Fentons still had some major challenges ahead in their plan to acquire the Paparoa block.

In the interim the brothers Fenton moved to consolidate their slow but steady share acquisition programme. In June 1900 they applied to the land court for a partitioning out of their shareholding. The fractionation of Paparoa had been set in train sometime before by the application of the curious succession laws that Chief Justice Fenton had established with his landmark Papakura judgment in 1867. The fragmentation of the lands that were represented by a myriad of fractionated shares was about to begin.

Paparoa No. 1

This partition arose from a land court order of 17 July 1900 which represented the interests acquired by Roger Edward and Carleton Hugh Fenton between 1894 and 1897. The total area of the block arising out of the definition on the ground of the acquired shares was 2,129 acres but there was 20 acres 1 rood and nil perches within the block, later defined as Paparoa D, that remained in Maori ownership.

⁵⁹ KMB 7. op. cit., pp. 254 and 266; and AMB 7, p. 143.

This was the Whakatangata wahi tapu noted earlier as being marked on the original plan. A further 7 acres 3 roods and nil perches had already been taken for roading through the eastern part of the block, leaving 2,101 acres for the Fentons.

Paparoa No. 2

This block represented the interests not acquired by the Fentons when they acquired shares in the parent block between 1894 and 1897. Included in these interests were the shares allegedly acquired by Edith Fenton, a supposed purchase that had not been confirmed by the land court. These shares were of course still legally Maori shares. The land was awarded to 30 titleholders with the largest shareholder being Mere Paora Tuhaere, the daughter and successor (to most of his shareholdings in other blocks including Pukeatua and Orakei) to the rangatira Paora Tuhaere who had figured so prominently in the Paparoa title investigation and many other Kaipara land court inquiries et al, between 1864 and 1892.⁶⁰

After deducting 6 acres 1 rood and nil perches for the road which traversed the north-eastern corner of the block its area was 2,314 acres 3 roods and nil perches. Even after making allowances for the 20 acres of the wahi tapu noted above, the combined area of Paparoa Nos.1 and 2 does not add up to the 4,540 acres surveyed in 1865, a difference which is probably accounted for by the inaccuracy of the original survey.

The Fiscal Costs of Partition

In April 1904 the Assistant Surveyor-General applied to the Land Court for a lien of £49/12/- over the land to cover the outstanding survey costs. In December 1904 the land court, sitting in Auckland, placed the lien as a mortgage against Paparoa No. 2 (which by then had been partitioned into three portions, which presumably stood charged with a proportion of the cost dependent upon their area.) This mortgage was later transferred to Robert Ferrall, who was also involved in dealings with the new partitions (see below).⁶¹

The Unresolved Fenton Purchase, 1900

Edith Fenton still had the problem of the dismissal of her application for confirmation of the shares she had allegedly acquired in August and December

⁶⁰ Refer to schedule at beginning of this chapter, on pp. 138-140 (above.)

⁶¹ 'Sold' file, A799, TTMLC-W.

1898. She wrote to the Minister of Lands, James Carroll in March 1900 asking that the purchases be validated because she was certain that the monies paid to the owners would never be recovered. The exact nature of the restriction seems to have become confused for Edith Fenton claimed the court treated her applications as exceeding the acreage limit not because she was acquiring more than 640 acres herself but because Paparoa *in toto* exceeded the acreage limit. This seems to be a reference to the limitations on individual land holdings put in place under the Liberal/Labour Government in an effort to enforce small and actively used holdings; however, as noted above, the purchase had been refused in 1900 not because her holdings were excessive but because the block being acquired exceeded 500 acres and thus remained restricted under the 1895 act.

Partition of Paparoa No.2

The principal titleholder of the block, Mere Paora Tuhaere (only surviving child of Paora Tuhaere) and three others had applied for an application to cut out their interests in a defined strip adjacent to the Fentons' Paparoa No. 1. The purpose was probably a proposed sale to the Fentons. This interpretation is consistent with her active selling position in the many blocks to which she had succeeded to in the wider Kaipara and Tamaki Makaurau/Auckland rohe, including Orakei. Her application was heard on 31 May 1901. The court observed that dividing the land would not automatically enable a sale, and:⁶²

that there may be others who will want to sell and that therefore it is better to leave the partition till the sales have been made.

This was undoubtedly a reference to the continuing acquisitions of shareholders' interests by Edith Fenton. It was to be some time before the Fenton purchase was resolved, but despite the strong injunction noted above, the court sat in May 1903 and proceeded to act on Mere Paora's application.

Paparoa No. 2A

This slim sliver of land ran across the entire peninsula which was about 8 miles' wide at this point, but the bulk of its 400 acres lay in the centre with only small frontages along the west and east coasts. It lay in the south of the parent Paparoa block between No. 2C to the north and Otakanini to the south.

⁶² AMB 7, p. 251.

Survey Costs

The surveyors, Wilson and Jackson obtained a land court order in April 1907 imposing their overdue survey charge as a mortgage on the block. As well, the block was also charged with a proportion of the £49/12/- cost of the survey of the original Paparoa No. 2 block which was still outstanding.⁶³

Edith Fenton Tries Again

In September 1903 Edith Fenton again wrote to the Native Minister James Carroll informing him that the block had been partitioned into four sections: namely, "Paparoa No.1 and Nos. 2A, 2B and 2C" (Edith Fenton had overlooked the 20 acre wahi tapu – Paparoa 2D contained within her brothers' No.1.) The largest of these (No. 1) was owned by her brothers but at that stage the other three (Nos. 2A, 2B, and 2C) were owned by various groups of 'native' owners. As these three blocks, in which she held shares, were now below the acreage limit which had blocked the completion of her purchase before, she sought to be allowed to partition out her shares adjacent to her brothers. She concluded, albeit a little optimistically, that further shares were available for sale and that she had expressed a firm interest in acquiring them.⁶⁴ The official response was a very firm negative: "this application has been in hand a number of years; ...we had better say definitely that it will not be granted."⁶⁵ This, combined with the land court's earlier refusal to confirm Edith Fenton's purchase, appears to have ended the matter for the moment, but not the Fentons' involvement with Paparoa.

The Leasing Contest: the Ferralls v. the Fentons

Edith Fenton had attempted to obtain a lease of Paparoa No.2 at £57 per annum through the Maori Land Council. At about the same time – October 1904 – a local settler, Robert Ferrall, who, with his Ngati Whatua wife and six half-caste sons farmed 400 acres at nearby Parkhurst was also endeavouring to secure a lease on Nos. 2A, B and C at £65 per annum. He maintained that many of the local settlers were opposed to the Fentons' stranglehold on some of the land in the local district.⁶⁶

⁶³ A799 'Sold' file, TTMLC-W.

⁶⁴ J 1903/1290, NA-W.

⁶⁵ J 1/1905/794, NA-W.

⁶⁶ J 1905/36; and J 1/1905/794, NA-W.

In December 1904 Roger Fenton intervened on his sister's behalf in a letter to Carroll. He said he had been negotiating the lease on her behalf but denied that this was evidence of the 'dummyism' which he maintained Ferrall had implied. Roger Fenton continued that his late father Francis Dart Fenton (d. 1898) had not been a "very good business man" and had left his widow and daughter Edith poorly provided for. He and his brother now supported the two women, they living at Crosland for several months of the year and he wished that their rights in the family farm to be regularised. Thus his desire for the lease to be in his sister's name. He argued that the 'native' owners had consented to the informal lease of No.2 for which they paid "fair rent."⁶⁷

Roger Fenton also claimed that he had advanced funds for the survey of the land, with the 'natives' to repay the Fentons from the rent due under the lease. It is not clear to which survey he was referring, presumably the Holt survey of 1900, but it is clear that this survey had not been paid for as it now stood as a mortgage against the land.⁶⁸

Ferrall had close personal relationships with tangata whenua. There was at least one Ngati Whatua member on the Tai Tokerau District Maori Land Council to which Ferrall had applied for removal of the restrictions on alienation imposed by s.117 of the 1894 NLCA. The Council responded on 19 January 1905 recommending removal of restrictions to enable a lease to be executed.⁶⁹ The Council's approval was too late however, because it seemed that due to the removal of restrictions the existing lease agreement was no longer valid. A new lease took time to be drawn up and signed by the scattered titleholders. Finally the land court, (which had taken up the authority of the recently lapsed Land Council) did approve the new lease to the Farrells and 23 September 1905 it was entered on the title to Paparoa Nos. 2A and 2B (leased to Mrs Ferrall), with a separate lease to Robert Ferrall for the larger Paparoa 2C.⁷⁰

⁶⁷ Roger Fenton to Native Minister, Jas. Carroll, 20 December 1904, J 1905/36, NA-W.

⁶⁸ Ibid., Fenton to Carroll.

⁶⁹ J 1905/36 and J 1/1905/794, NA-W.

⁷⁰ CTs., Vol. 130, fos. 120, 121, 122, NALTO, LINZ.

Survey Liens, Mortgages, the Ferralls' Capitulation and Fentons' Purchase

The Ferralls' victory was short-lived however, for they appeared to fall into financial difficulties. Edith Fenton was assigned their leases on 4 December 1905 and on the same day a mortgage from Edith Fenton to Robert Ferrall was registered against the 3 titles (2A, 2B and 2C.) The Fentons' grip on the Paparoa titles was further tightened when in November 1907 they acquired other mortgages registered against all three blocks from the mortgagees, the surveyors Wilson and Jackson. At the same time they acquired the mortgage held by Ferrall against all three blocks, a mortgage that arose from the 1900 partition survey by Holt.

A penultimate stage in the alienation of Paparoa 2A came in November 1911- January 1912 when Edith Fenton acquired three shareholders' interests, one of which was that of the ubiquitous Ngapipi Reweti who was soon to play a pivotal role in the partitioned Orakei block with the alienations to the Crown from 1912. The transaction cost to Edith Fenton was £280/15/6. The partition order creating Paparoa 2A1 (246:3:5 a.r.p., representing the shares acquired by Miss Fenton from the three latest vendors) and 2A2 (153:0:35 a.r.p., representing the remaining non-sellers) was made by the land court on 17 August 1912.

Paparoa 2B and 2C: Competing Leases and the Fenton Purchase 1904-1912

The negotiations for the lease of these two blocks have been described in the preceding section on Paparoa 2A (above.) In the matter of the acquisition by way of purchase Edith Fenton deployed a different tactic to acquire the whole of Paparoa 2B and 2C from that used in the acquisition of Paparoa 2A. A meeting of the 'owners' of the 2 blocks was called by the Tai Tokerau District Maori Land Board under the terms of the 1909 Native Land Act and held at Te Awaroa (Helensville) on 20 September 1911. A majority of the shareholders of both blocks present at the meeting approved the sale. The Board acted as agents for the grantees and sold the land to Fenton for the government valuation figure, which in the case of 2B was £523/5/-, and 2C, £1,657/7/-.⁷¹

The alienation of Paparoa by 1912 was nearly complete.

The Remains of the Parent Block : 2A2 and 2D

⁷¹ Transfers 67412 (for 2B) and 67413 (for 2C), NALTO, LINZ.

Edith Fenton still held the leasehold for 2A2 until she transferred it on 29 September 1915 to Kathleen Griffiths, who in turn transferred it to Alice Mason on 9 August 1917. Mason defaulted on the mortgage, which was held by Edith Fenton. The lease was transferred 'on sale in default of mortgage' back to Fenton on 12 February 1923. A transfer of the lease of Paparoa 2A2 from Fenton to Gertrude Anderson was registered on the title in July 1923. Anderson subsequently purchased the block from the 'native' successors to the 3 grantees of the 1912 partition order for £460 on 28 March 1927 after the lease had expired (and after an outstanding survey lien of £2/2/- was paid.)⁷²

The status of Paparoa 2D – Whakatangata – of 20:1:0 a.r.p., as noted in the introductory schedule remained technically and legally Maori freehold land. It is completely surrounded by Paparoa 1 which we have noted was sold to the Fentons in 1900. No provision for access to the wahi tapu was made at the time of the 1900 partition order nor at the time of the 1903 partition order of Paparoa No. 2.⁷³

Conclusion

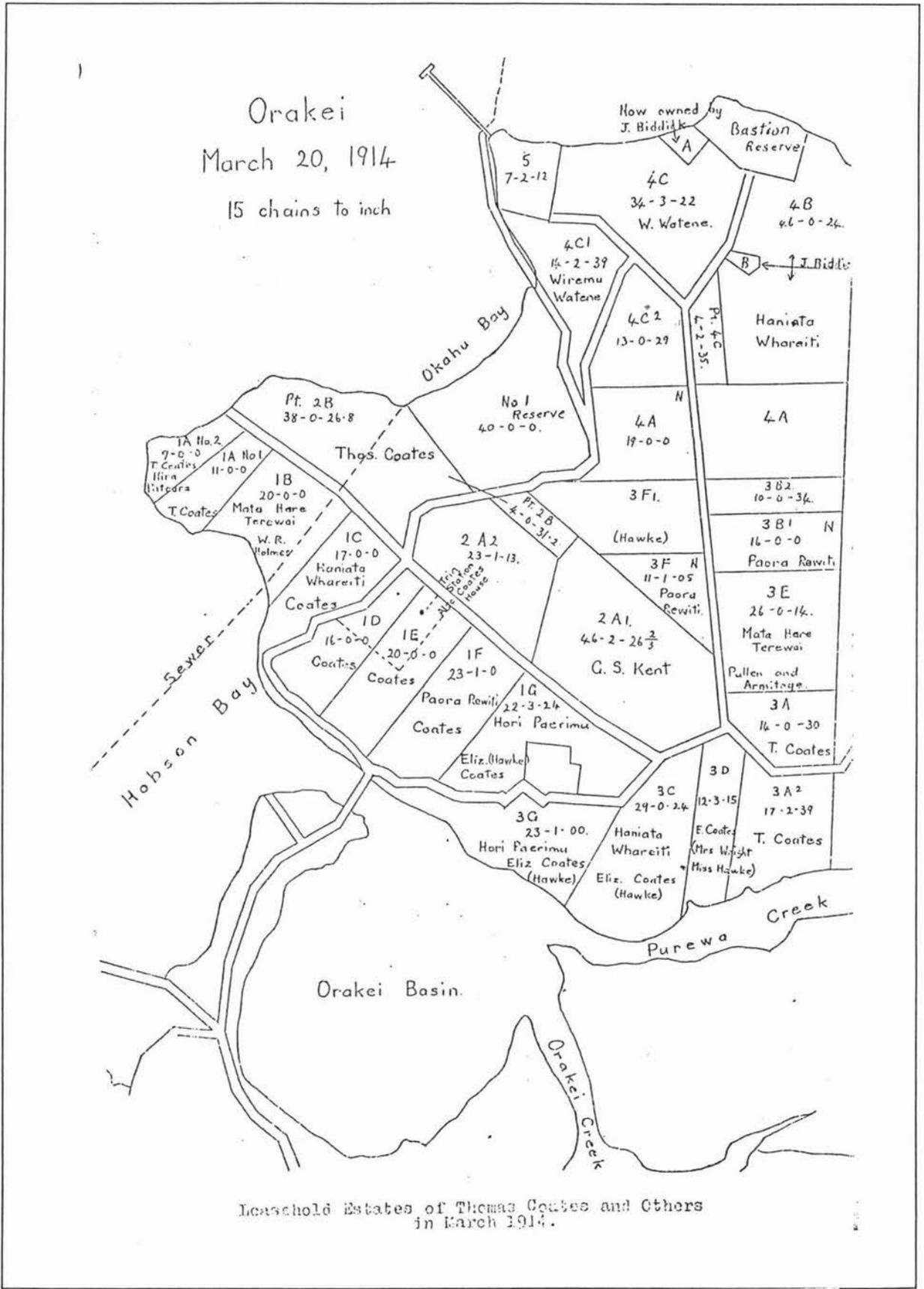
This micro-history of the alienation of Paparoa is a very full and very clinical example of the classic Derridean model that there is nothing beyond the text. It fits perfectly within the paradigm of a straightforward chronicle of what happened to the land, how it was alienated, how indigene were dispossessed and makes no value judgments about the morality of the appropriation. Yet the Derridean aphorism remains paradoxical. The comments made about Fenton senior in relation to Tuparekura is equally apposite for his three adult children at Paparoa. The very absence of any human aspect to the process of alienation in the official record is an echo of the Derridean concept of the absence of presence. Maori remain but ghostly figures at the court sessions, but a long procession of figures in an inexorable process of dispossession and disempowerment.

As has been fore-shadowed in the introduction to this chapter there is no explicit evidence of the motivations and imperatives driving all of the actors and agents. The question which persists sub-textually is whether these narratives of

⁷² 'Sold' file, A799, Paparoa Block Order file 400, Correspondence file (K594), TTMLC-W.

⁷³ Paparoa Block Order file 400, DB 19/1/16, TTMLC-W.

the alienation of Paparoa are an experiential encounter with real referents, through text, representation and mediation, of the actual land transfer process. In other words, can words capture the feel of the past; or does one need poetics and/or rhetoric. Something is perhaps lacking from a cool rational account in the modernist historic tradition. Perhaps there is a case for alternative presentations, for other re-presentations of the past-as-history.



ORAKEI: The Alienation Process as at 20 March 1914
 showing Titleholders of 'Daughter' Blocks
 And Lessors

Reproduced with kind permission of Estate. Elizabeth Jackson

Chapter 8 ORAKEI 4A2A : A Last Defiance

This block has been included in this thesis for several inter-related compelling reasons. Prior to its compulsory acquisition by Crown fiat in 1950 it was the last surviving freehold latter-generation Maori land block in the 689 acre Orakei block to be alienated, and in a wider context, the last Maori land block in the greater Tamaki Makaurau/Auckland rohe to be acquired for tauwi interests. Only a few blocks of Maori land in the lower Kaipara survived the alienation process; they were (and at the moment of writing are): Otakanini, which is the only one of 118 parent blocks in the southern Kaipara rohe to escape the act of legal appropriation; part of Te Ketī, part of Pukeatua, and a few wahi tapu fragments.¹ The common thread linking Orakei 4A2A with Te Ketī A and Pukeatua F2 and F3 were (and are) some named members of the extended Uruamo and Paora (Kawharu) whanau who were variously titleholders of the three blocks.

The history of Orakei 4A2A is only presently alive in the memories of the very few – mostly the descendants of some of the last nine titleholders who were arbitrarily and unilaterally dispossessed. Yet this personal history is of such significance within the wider framework of the Orakei experience (and the national history) that it deserves a wider audience and readership. In contrast the history of the 506 day Bastion Point protest in 1977 and 1978 was such a high-profile media-grabbing event that other forms of resistance – especially those that fall within the less spectacular arena of reasoned discourse - in the Orakei community tend to be crowded out.

The history of the alienation of Orakei 4A2A is an appropriate one for the final case-study in this thesis. It represents a last scenario in a script, the foundational draft of which was written by Chief Judge Francis Dart Fenton as long ago as the 1860s. In making this claim, this writer is not eschewing the very tangible and significant outcomes which issued forth from the Orakei situation in the years after the alienation of Orakei 4A2A in 1950; however these issues are probably more appropriately dealt with elsewhere as they come under the aegis of

¹ Otakanini and Te Ketī are not dealt with in this thesis. The Pukeatua survivors/morehu are the

a wholly different rubric, a new script, one largely developed by a new (and first-time Maori) Chief Judge of the Maori Land Court, Edward Taihakurei Durie, who was (and is) also, *ex officio*, Chairman of the Waitangi Tribunal. Thus the history of the total alienation by way of compulsory acquisition by the Crown of Orakei 4A2A must be dealt with under the rubric of the Fenton script. Orakei 4A2A is Fenton's swan-song, one of the last enactments of the Fenton prescription. For the indigene it is marked, not by the orchestrated coda that distinguished Bastion Point 1977-78, but the quiet murmur of despair of the few.

The alienation of Orakei 4A2A however shares two features common to many other cohort blocks nationally. One of these features is consolidation and exchange of interests, a not uncommon phenomenon with increasing fragmentation/fractionation and separation of *tangata* from *whenua* nationally especially from the time of Sir Apirana Ngata, Minister of Native Affairs in the 1920s.² This feature however remains unique in the Orakei land alienation process. The Crown permitted (albeit reluctantly) the satisfaction of non-selling interests in 4A2 to be consolidated with the same non-sellers' interests in the adjacent *papakainga* land (other shares in which were also being acquired by the Crown) and then exchanged for the Crown's purchased interests in 4A2 and 4A4. The outcome was the exchange of shares in 4A2 in 1928 and the creation in 1938 of an 'exchange' block, given the appellation 4A2A. About one third of an acre of *papakainga* land was swapped for a little over 10 acres of hill land.³

Another shared national feature was the phenomenon of non-selling. There were however certain features of the 4A2A non-selling which were more rare on a national scale. First its persistence over three or four generations. Second, there were few urban blocks nationally where this occurred. In Orakei this resistance led to a defining on the ground of the interests of sellers and non-sellers and an increasing fragmentation of original parent blocks. In the case of Orakei 4A2 and 4A4 this led to the creation of 4A2A and 4A2B. The non-selling resolve of the nine titleholders (and their successors) of 4A2A persisted until compulsory

fragments of Pukeatua F2 and F3; refer Chapter 4, PUKEATUA, pp. 76 ff. (above.)

² The statutory facility for exchange was first introduced under Sec. 14, NLC Act, 1894.

³ I.H. Kawharu, *Orakei; A Ngati Whatua Community*, Wellington, 1975, pp. 20-21.

acquisition in 1950. All other Maori hill-side freehold land in the partitioned Orakei block had been alienated to the Crown well before 1938.

The persistent non-selling stance gave rise to another feature that the third generation block 4A2A shares with few other blocks nationally: compulsory acquisition by the Crown 'for housing purposes'. Nationally the Crown had often acquired relatively portions of Maori land blocks for roading and rail purposes from the 1870s but it rarely took land for housing in that early period. This latter practice gathered momentum from the 1930s with the housing policy of the first Labour government 1935-1949, yet the 1950 compulsory taking by the Crown of Orakei 4A2A was rather unique in Maori experience both for its time and in its urban context.

Like other block histories in this thesis it is presented in two forms: first, an introductory schedule of the key points in order to guide the reader through the labyrinthine maze of the alienation process; secondly, a fuller narrative account bringing together in a reflexive contextualization process as much textual and oral material as possible.

The following schedule is presented as a summary of the alienation narrative extrapolated from two major archives: the surviving public administrative records of the colonial (and post-colonial) regimes and the public archives of some leading Auckland law firms as researched by the writer. Where practicable, appropriate and pertinent, the documentary evidence has been corroborated with other academic histories of the native land alienation process in Orakei. In some cases, where accessible the viewpoints, usually oral, of some descendants of the titleholders has been ascertained and checked against the written colonial record.

ORAKEI 4A : Stamping The Colonial Template On Native Lands.

Title Created: Partition Order, NLC, Auckland, 10 January 1898.
Grantee: Paora Kawharu (died 2 August 1908.)
Area: 46:0:24 a:r: p.
Survey: ML ?; surveyor ?.

Extending the Process of Alienation of 4A.

* Lease 3220 of that part of 4A of 27:0:24 a.r.p. with a capital value of £486, lying on the eastern side of the north-south Takaparawha ridge (present day Kupe St) , Paora Kawharu to James Biddick, farmer, of Orakei, for 21 years from 6.11.1898 at £27/2/6 p.a. The leased portion became 4A3 and 4A4 after

partition in 1918 (see below.)

- * Order-in-Council of 14.10.1913 prohibiting alienations greater than 1 year.
- * Similar Orders-in-Council were repeated annually until 1918.
- * Jas. Biddick died 26.6.1910: probate of will granted to J.E. Biddick, farmer, and W.J. Biddick, master mariner, both of Orakei.
- * Transfer of lease, the Biddicks to C.P. Marshall, gent. of Akld., produced 4.7. 1918. The latter transferred the lease to H.M. the King; this transfer was produced on the same date.
- * Partition Order – NLC, Auckland, 10 October, 1918, partitioning the ‘daughter’ block 4A into four unequally sized ‘grand-daughter’ blocks: 4A1, 4A2, 4A3, & 4A4.

ORAKEI 4A1 : Stamping The Colonial Template On Maori Land

Title created: Partition order – NLC, Auckland, 10 October; 1918.
Grantees: Manuera Paora Kawharu, Ngakuku Kawharu, & Hikoi Kawharu in equal shares.
Area: 6:1:14a.r.p. [unleased south-west part of 4A: about present-day Takitimu St.]

Extending the Process of Alienation of 4A1

- * Sale by 3 Kawharu brothers (refer ‘4A1 Grantees’ above) to Crown, some time between 10.10.1918 (date of Partition Order) & date of Crown Land *NZ Gazette* notice: K. 2166, 16.1.1919.

Alienation of 4A1 completed.

ORAKEI 4A2: Stamping The Colonial Template On Maori Land.

Title created: Partition order – NLC, Auckland, 10 October, 1918.
Grantees: the non-sellers of 4A; specific names have yet to be sighted in any document.

Thus, it is assumed that the various titleholders of the Orakei No. 1 Res. C 2B2 listed in the 1938 Kennedy Commission Report who exchanged their shares in part of that 40 acre papakainga block for a fraction of the Crown’s interest in 4A2 were the same persons as the non-sellers in 4A2 (& 4A4 – q.v. below.)

The Papakainga/4A2 ‘Exchange’ shareholders:

In 1928 the interests of the non-sellers in 4A2 who also held interests in that part of the 40 acre papakainga located in Orakei No.1 Reserve C 2B2 were exchanged for some of the Crown’s purchased interests in 4A2. In 1937 the non-selling interests in 4A4 were merged into 4A2 on the partition of the latter into 4A2A & 4A2B.

The list below was prepared from the very detailed information given in the 1938 Kennedy Commission Report first printed in the *AJHR 1939*, G-6, pp. 37-45. On these pages the Commission lists a schedule showing the devolution of interests in Orakei No.1 Reserve. I have extracted from that schedule only those interests which were exchanged for a Crown interest in Orakei 4A2 by Exchange Order dated 31/8/1928.

The list below is a composite compilation showing the fractionated interests of the 21 shares first invested in some of the first partition titleholders in 1896/8 in Orakei No.1 Reserve (part of the papakainga) and to which the nine non-selling titleholders of 4A2 as shareholders in Orakei No. 1 Reserve had variously succeeded:

1. Eriapa Poata Uruamo - 1/88.
2. Hemaima Hauraki Paora – 1/198.
3. Mereana Pakiorehua Uruamo – $1/47520 + 1/792 + 1/1152 + 1/54 + 1/1260 + 1/2880$.
4. Maungatai Paora – $1/47520 + 1/792 + 1/1152 + 1/54 + 1/1260 + 1/2880$.
5. Wiremu Paora - $1/47520 + 1/792 + 1/1152 + 1/54 + 1/1260 + 1/2880$.
6. Ritihia Paora - $1/47520 + 1/792 + 1/1152 + 1/1260 + 1/2880$.
7. Titiata Hauraki - 1/54.
8. Matire Toha - 1/54.
9. Hori Roera – 1/1620.

[N.B. It is estimated that these fractions represented about one third of an acre of the 40 acre papakainga land.]

As an example of the fractionated complexities of Maori shareholder succession under the individual title system the details of Mereana Pakiorehua Uruamo's inheritance in Orakei No. 1 Reserve *only* are re-presented below:

Mereana Pakiorehua Uruamo's 6 separately succeeded shareholdings were:

$1/47520$ as 1 of 14 successors by NLC Order 8/9/1919 to Rahera Paora's $1/1320$ share, in turn inherited as 1 of 9 successors to Paora Reweti's $1/330^{\text{th}}$ share on 3/11/1915, in turn 1 of 29 successors to Hori Winiata's original (1896/8) $1/2$ share in Orakei No. 1 Reserve by NLC Order on 11/8/1911;

+ $1/792$ as 1 of 14 successors on 8/9/1919 to Rahera Paora's $1/22^{\text{nd}}$ share; in turn inherited from Paora Reweti's $1/330^{\text{th}}$ share on 3/11/1915; in turn inherited 13/8/1911 from Hori Winiata's original (1896/8) $1/2$ share in Orakei No. 1 Reserve;

+ $1/1152$ as 1 of 14 successors on 8/9/1919 to Rahera Paora's $1/32$ share which she inherited from Paora Reweti on 3/11/1915, in turn inherited 13/8/1911 from Hori Winiata's original $1/2$ share in Orakei No. 1 Reserve;

+ $1/54$ as one of 19 successors to Paora Kawharu's original 1898 one single share in Orakei No. 1 Reserve on 27/2/1911;

+ $1/2160$ as one of 14 successors to Rahera Paora's $1/160^{\text{th}}$ interest; RP inherited her share on 3/11/1915 from Paora Reweti's $1/15^{\text{th}}$ interest; PR succeeded as one of 9 successors on 31/3/1900 to his brother Toko Reweti's (alias Te Toko Matariki) original one share in Orakei No. 1 Reserve;

+ $1/2880$ as one of 14 successors to Rahera Paora's $1/80^{\text{th}}$ share; this share was devolved via Paora Reweti's $1/20^{\text{th}}$ share inherited on 13/7/1900 from Te Keene Reweti's $1/4$ (one-quarter) share in Orakei No. 1 Reserve.

ORAKEI 4A2 : Stamping The Colonial Template On Maori Land (continued)

Area: 12:2:26 a.r.p., being balance of un-leased part- the western half - of 4A2; approximately the areas south-west of the present-day Ngati Whatua o Orakei Health Centre & west of the line of present-day Kupe Street including present-day Ngaoho Street. The north-west corner of 4A2 touched the southern loop of present-day Kitemoana Street.

Extending the Process of Alienation of 4A2

- * Exchange Order, 31.8.1928, in which the Crown swapped its purchased interests in 4A2 with the interests of nine (9) of the many titleholders of Orakei No. 1 Reserve C2 B within the papakainga. Refer pp. 37-44 of 1938 Kennedy Commission, *AJHR G-6*, 1939; (also, see above: the 9 names listed in 4A2, sub 'grantees.')

In 4A2 the consideration was £1,469/5/5 for 12:2:6 a.r.p. Total shares were 22.65. Numbers of shares purchased by Crown: 16.5125; leaving non-sellers with a total of 6.1375 shares. Crown paid out £1,272/1/2 in purchase money.

In 4A2 there was an exchange order, dated 31.8.1928 vesting certain shares of the Crown in the various native non-sellers and others, thus reducing the Crown area in 4A2 by 0:0:26.58 a.r.p. (i.e. under ¼ acre.) In 1937 the non-selling interests of the shareholders of 4A4 (q.v. below) were merged with their interests in 4A2 and thus the final Crown area of 4A2B was defined on partition as 2:1:38.6 a.r.p.

- * Partition Order – NLC, Auckland, 6 October, 1937, dividing 4A2 into 4A2A (non-sellers representing 5.14 shares = £677) and 4A2B (H.M. King, i.e. Crown, representing 17.51 share = £[? Illegible].)

ORAKEI 4A2A : Stamping The Colonial Template On Maori Land

Title created: Partition order under sec.146 of NLA, 1931 – NLC, Auckland, 6 October 1937.

Grantees: the non-sellers of 4A2; specific names not yet sighted in any document.

Area: 10:0:30 a.r.p. Court order of 6.10.1937 that 4A2A be 10 acres, with an access strip (30 p.) from the road [present day Kupe St] in satisfaction of non-sellers' interests as per their respective shares and in full satisfaction of their interests in the 2 blocks, 4A2 and 4A4.

Extending the Process of Alienation of 4A2A

- * Proclamation 13053 of 7.9.1950: Crown compulsorily acquires block for "housing purposes" under Public Works Act 1928. Declared Crown Land in *NZ Gazette* 20.9.1950.

Alienation of 4A2A completed.

ORAKEI 4A2B : Stamping The Colonial Template On Maori Land

Title created: Partition order – NLC, Auckland, 6 October, 1937.

Grantees: H.M. the King in full satisfaction of interests purchased in 4A2.

Area: 2:1:38.6 a.r.p.

Alienation of 4A2B completed.

ORAKEI 4A3 : Stamping The Colonial Template On Maori Land

Title created: Partition order – NLC, Auckland, 10.10.1918.

Grantees: Manuera Paora Kawharu (m): 3.01875 shares

Ngakuku Kawharu (m): " "

Hikoi Kawharu (m): " "

Hori Roera (m): 1.0625 shares

Mereana Roera (f): 0.85625 "

Tiaho Roera (f): 1.0625 "

Waimapuna Kawharu (f): 5.125 "

Area: 17: 0: 26 a.r.p., [being leased south-east part of 4A parallel to east-west

boundary; with Orakai 3B2 to the south.]

Extending the Process of Alienation of 4A3

* Sale to H. M. the King prior to listing as Proclamation K 2166 listed as Crown Land in *NZ Gazette* 16.1.1919.

Alienation of 4A3 completed.

ORAKEI 4A4 : Stamping The Colonial Template On Maori Land

Title created: Partition Order – NLC Order, Auckland, 10 October 1918.

Grantees: non-sellers of 4A. Titleholders ? : probably the same as 4A2 because the agreement made in 1918 on partition was that the Crown would receive leased and un-leased portions of 4A (4A3 and 4A1 respectively) and the non-sellers would receive likewise leased/unleased portions (4A4 and 4A2 respectively.)

Area: 9:3:38 a.r.p. [being leased north-east part of 4A, parallel to east-west boundary, with 4B to the north.]

Extending and Completing the Process of Alienation of 4A4

* NLC Order, 6 October 1937 that the non -seller interests in 4A4 following Crown purchase of shares in 4A4 be merged with their interests in 4A2A partition of 4A4 was “found to be inadvisable in the public interest and the interest of the Natives.” Total shares were 22.65: numbers purchased by Crown: 18.15625; non-sellers: 4.49375. Crown paid out £1,015/1/6 in purchase money. The non -sellers in 4A4 re-located their interests in 4A2 by way of merger with the non -selling interests of 4A2 (they were the same persons) in 1938.

Alienation of 4A4 completed.

These then are the chronicles as evidenced from the documented colonial record. Like Hayden White’s famous list of random annalistic dates of an eight century Frankish kingdom they have a multiple significances according to varying ideological perspectives, individual experiences and cultural understandings.⁴ The annales list is of course a Pakeha construct which first served the imperial imperative of keeping track of the ownership of precisely defined areas – whether vast or miniscule - of land alienated (and about to be alienated.) There is a symmetry in the annalistic form of historiography which in Hayden White’s words is “consistent with notions of transition by infinitesimal degrees.”⁵ The final unilateral alienation of 4A2A was one of the last acts in the Fenton prescription. The script had met continued defiance from a proud few.

A Fuller History of the Creation of 4A2A and its Summary Alienation

On 9 February 1869 after an adjournment of 49 days following the 22 December 1868 interlocutory judgment in favour of the three hapu under the sobriquet –

⁴ H. White, *Tropics of Discourse*, Baltimore, 1978, pp.15-18.

Ngati Whatua - employed by Fenton to describe their apparent 'consolidated' form - Te Taou, Ngaoho and Te Uringutu, the Native Land Court pronounced on the details of the award of title for the 689 acre Tamaki Makaurau/Auckland block known as Orakei. The minuted record vested title in the paramount elder Apihai Te Kawau of Te Taou, Ngaoho and Uringutu affiliations (with links to Wai-o-hua and Tainui) upon *trust* for himself and *eleven others* and who would appear in the grant as "cest qui trusts [sic] as tenants in common, not joint tenants." The grant as ordered and sealed by law did not issue until 1873. The grant's wording, presumably copied from the sealed order *differed from* the minuted record of the Court. In the 1873 grant the *twelve* beneficiaries named in the minutes were rendered as *thirteen* names and no mention was made of "cest qui trusts" held as "tenants-in-common not joint tenants."

The creation of the title to Orakei 4A2A took place legally on 6th October 1937; and it lasted as a separate legal entity some 13 years: it was formally acquired on 7 September 1950 by compulsory order of the Crown. Its parent 4A2 (and its siblings 4A1, 4A3, & 4A4) was created on 10 October 1918; the grand-parent block, 4A on 10 January 1898; and the ancestor block (Orakei) was given formal title on 9 February 1869 (as noted more fully above); however the dynamics that set in play the fractionation and fragmentation of the 'inalienable' Orakei land block and which led to the persistent independence of the sole survivor 4A2A can be traced through to the first years of operation of the land court.

This historical outline focuses on that single block of 10:0:30 a.r.p. located on the western incline of the Takaparawha (eastern) ridge of the 689 acre Orakei block 3 miles due eastward from the hub of the colonial metropole. By itself the tiny block has little that could generate a fulsome history; only by placing it very squarely in its immediate context - the Orakei native land block can any sense and significance be made of the challenges and pressures that an imposed alien land tenurial system brought to all actors – alienors and alienees caught up in a complex cultural clash of competing tenurial rights and territorial imperatives. 4A2A's history only makes complete sense and assumes greater significance

⁵ H. White, *Metahistory*, Baltimore and London, 1973, pp.60-61.

when placed in the wider context of the tangled threads of the repurcussive issues affecting the entire 689 acre Orakei block. Thus in this construction of a block history of 4A2A, there will be much discussion of the crucial issues of trusteeship and/or beneficial ownership; and little or no discussion of such related social matters as landlessness, impoverishment, health conditions, nor any discussion of battery reserves for the defence of the realm. The conflict between the two concepts of (1) trusteeship for the collectivity of the Orakei people and (2) the Fenton-imposed individualised title system is irrefutably the single core issue in the Orakei lands situation.

In the 1930s the 4A2 and 4A4 blocks were the last of the Maori freehold blocks in Orakei holding out against sale to the Crown (or any other tauiwī!) The recurrent non-selling opposition was led by several members of at least three generations of the successors to the original 4A titleholder, Paora Kawharu: members of the inter-related and extended Paora (Kawharu) and Uruamo families. An explication of this resistance is thus now very necessary. A perusal of the introductory schedule of key events and dates affecting the 4A block will reveal the predominance of the Paora (alias Kawharu) and Uruamo names amongst the titleholders. This, however was only the situation *after* 1898; for that was the time - 10 January 1898 – that a Native Land Court order for the first partition of the so-called ‘inalienable’ Orakei block did issue. It will have been noted from the schedule that Paora Kawharu was the grantee for Orakei 4A, in area some 46:0:24 acres, roods and perches.

At this juncture it should be noted that neither Paora Kawharu, nor his brother-in-law Aperahama Uruamo, nor the senior Uruamo, all of whom were men of mana in Tamaki Makaurau and the southern Kaipara were included in the original 1869 Orakei title. Their exclusion is most probably explicable by the power-play of inter- and intra- hapu politics dominated as they were in parts of colonial lower Kaipara and most of colonial Tamaki Makaurau/Auckland by Paora Tuhaere from the 1860s until his death in 1892. All the evidence points to Paora Tuhaere as the penultimate (before Fenton) arbiter of the 12 (or 13!) names in the 1869 award of title by the Court.

Partition of the ‘Inalienable’ Orakei Block

Tuhaere's death in 1892 in the context of the rapid acculturation changes which were skewing traditional societal structures laid the ground for a significant upsurge amongst Orakei Maori for inclusion in the title to the Orakei lands. The first applications for partition were filed on 13 June 1896 and repeated on 22 October 1896. These were all adjourned or dismissed. The next firm indicator of serious disaffection with the 1869 order of things was the cancellation in 1896 of Paora Tuhaere's disputed 1883 succession to Apihai Te Kawau. These dynamics (and others, not least of which the steady growth of the colonial metropole across the northern and central parts of the Tamaki Makaurau isthmus) coalesced in a concatenation of forces focussing on a realisation of individualised title; the outcome in 1898 was the partition of the single 689 acre block into 27 portions and individual title for 21 named individuals. Concomitant with this was the award of separate titles to the separately defined papakainga block of some 39 or 40 acres known as Orakei No. 1 Reserve, located on the flat land at Okahu Bay between the hill blocks encircling it on three sides with the Waitemata on the northern side.

Discussions and negotiations for partition amongst the tangata whenua appear to have dragged on intermittently for over a year during 1896-1898. The native land court session hearing on a further partition application commenced on 3 November 1896. A preliminary partition was drafted on 19 January 1897, but the final order was not made till 12 January 1898.⁶

The political struggles for power in Orakei, however can be traced back, albeit a little more sketchily, into the years prior to the death of Tuhaere (1892.) Only one year prior to his demise there is a very brief record of a very significant event indicative of profound disquiet amongst Orakei peoples over trusteeship and beneficial ownership. On the 16 March 1891 an application by Renata Poata Uruamo under the Native Equitable Owners Act 1886 (to decide who were the real beneficial owners) was heard before CJ Seth-Smith at Auckland.⁷ The terse minute of that hearing reads:⁸

⁶ AMB 7, pp.51, 72-82, 86-87, 91-94.

⁷ The same Uruamo who brought a similar case re the Pukeatua title (see Chapter 4, PUKEATUA, p.76 ff. (above.)

⁸ AMB 4, pp.69-70.

C.J.: I see an order for Certificate was issued on the 10th February 1869 to twelve Natives, so this case clearly does not come under the Act of 1865. Upon the Certificate a Crown Grant was issued to Apihai Te Kawau in trust for several other Natives. Dated the 8th July 1873. This also shows that the case does not come under the Native Equitable Owners' Act 1886.

Application dismissed for want of jurisdiction.

Forty years further on, the 1930/1 Acheson Report of Court of Inquiry into the '1928 Petition on the Papakainga' was amazed that it was not dismissed on its merits but for "want of jurisdiction."⁹ Acheson's report continued:

What was the Equitable Owners Act of 1886 passed for, if not to enable ownership questions like that of Orakei to be settled in a formal manner after inquiry before a properly constituted Court?

And further pointed out that:

... in circumstances such as these, can the Orakei Natives be held solely to blame for the delay in settling this question of *trusteeship*?

One outcome of the demise of Paora Tuhaere was that 21 persons (the successors to the original titleholders) holding between them some 13 shares were awarded title separately to 3 discrete parts of Orakei: (1) to the 39 (sometimes recorded as 40) acres of Orakei No 1 Reserve (the papakainga at Okahu Bay), (2) to the Orakei No. 5 Reserve (of 7:2:12 a.r.p.) at Takaparawha Point, and extensively (3) to the wide sweeping swathe of hillside blocks – 27 blocks of sizes varying from a 7:0:00 a.r.p. (1A No. 2) to as much as 46:2:26.666 a.r.p. (2A No.2.)

As foreshadowed above there was a growing desire by Orakei Maori to deal on an equitable and empowered basis in the capitalist economy into which they were being inexorably drawn. The dealings of Paora Tuhaere in the leasing of the Pukapuka block in the late 1870s and early 1880s have been noted in detail elsewhere in this thesis, as have his dealings in the resources of the Pukeatua block. His land dealings in the partition and progressive alienation by way of lease and sale of the partitioned Taupaki East block of which he was one of two titleholders should also be noted though they have not been examined in detail in this thesis. That knowledge and the experience of many tantalisingly attractive commercial engagements in the wider region (some of which have been listed in

⁹ Acheson MSS., op cit., 'Report on Orakei Papakainga' (the '1928 Petition' Inquiry), Box 3:2.1.2,

other parts of this thesis) would have been a further spur to individualisation of title.

An examination of the documents of the St John's College Trust (whose large rural property was to the east and south-east of the Orakei block) and lease documents at the North Auckland transfer office of LINZ indicate that within a few months of the issue of the January 1898 partition order most of the subdivided Orakei blocks had been leased to local settlers or their agents.¹⁰ Of particular relevance in the focus of the 4A 'daughter' block is the fact that a 21 year lease to the local sea-faring colonial settler family - the Biddicks of Bastion Point - was entered into on 26 November 1898, ten months after the partition order issued.¹¹

The Papakainga and 4A2/4A4: The Crown's Progressive Moves 1918-1950

The 4 daughter blocks of 4A were alienated in the usual pattern of sellers v. non-sellers, partition and acquisition. 4A1 and 4A3 were acquired by the Crown in 1918 in such a manner. In these cases the Crown had the added advantage of the statutory right of pre-emption - private purchases were forbidden; even leases were prohibited except through the Crown, which had purchased many of the litigation with some of the lessors including the Coates and Biddick families and the law firm of Earl and Kent (as agents for the G.P.Hawke estate¹²); but these need not concern us in the matter of the alienation from tangata whenua.

Of the hillside/farmland 2nd generation blocks, 4A2 and 4A4 remained Maori freehold land throughout all of the 1920s and most of the 1930s. But the pressure from the Crown was relentless. The Auckland City Council in the 1930s

UALA, emphasis in original.

¹⁰ The ubiquitous legal firm of Earl & Kent loomed large in these agencies; Hesketh & Richmond also featured; Dufaur was terminally ill in 1898:
Leases Nos. 6703: Orakei 1G & 3G, of 46:0:24 a.r.p., Hori Paerimu to G.P. Hawke, 10.8.1898;
--- 6704: Orakei 3D of 12:3:15 a.r.p., Mere Paora Tuhaere to George Penrose Hawke, 10.9.1898;
--- 6624: Orakei 3A West & 3A2 West of 17:3:21 a.r.p., Muri Watene Tautari, Merea Kingi, Maki Waata, & Tatai Arangi Watene & 2 minors to Thomas Coates, 20.12.1904;
--- 6625: Orakei 2A1, 2A2 & 2B of 112:1:18 a.r.p.(except 6 acres 'reserved' for Wiremu Watene Tautari), Hikiera Taierua, Merea Kingi, Maki Waata, Wiremu Watene Tautari to Thomas Coates & Benjamin Hawke, 23.6.1899;
--- 6934: Orakei 3C of 29:0:24 a.r.p., Hariata Whareiti to G.P. Hawke, 18.8.1899.
All lease documents located at NALTO, LINZ.

¹¹ Lease No. 3220, NALTO, LINZ.

was promoting the concept of Orakei as a model settler suburb; the first Labour Government elected in 1935 held out the prospect of utopia for the dispossessed, the unemployed, et al, although it was unclear on which side of the pale Maori came even under a socialist administration with links into the Ratana movement. Meantime, on the ground in Orakei the demand for land continued. On the 'flat' in the 40 acre papakainga only two small fragments (viz. Orakei No.1 Reserve C2B1 & 1 Reserve 2B1- in the names of Maki Waata & others) remained. The Crown had acquired most of the hillside blocks between 1913 and the late 1920s. The Crown continued the purchase of individual shares in 4A2 and 4A4 in the 1920s. Crown applications for partition of 4A2 and 4A4 were submitted on 5 separate occasions in the late 1920s and early 1930s. All were dismissed or adjourned. In three of the five applications the judge was the sympathetic F.O.V. Acheson. In a letter to Wiremu Paora in 1938 he paternalistically stated that the Orakei people:¹³

have always looked to me as a Father & Guide in all matters affecting their interests in land."

In the penultimate case for partition of 4A2 and 4A4 in 1934 the following testimony from the non-sellers was typical:¹⁴

Evidence of Mereana Pakiorehua Uruamo [aka Mereana Paora]:

I strongly oppose partition of this land. Although I appear in the title as an owner, I confess that I am not the owner, and it would not be right of me to partition other people's land. The people who sold to the Crown were *trustees* and had no right to sell. The Crown had no right to buy and knew it had no right. The land belonged to our ancestor, but the descendants of the ancestor did not sell the land. It was sold by *trustees* who had no right to sell. I have always known that I hold as *trustee* only. Let that question be settled first- *the trusteeship of Orakei*.

At the final (and thus successful – for the Crown!!) 1937-8 application similar testimony was given by her sister:

Evidence of Maungatai Hauraki Paora [Mrs Babbington]:

¹² No connection with the Orakei and Kaipara Maori family of the same name.

¹³ Acheson Mss, UALA, MS 96/1, 2.1.2, Orakei Papers, Letter to Wiremu Paora, 6 July 1938 (my emphasis.)

¹⁴ KMB 19, p. 260, (7 November 1934.)

I also am a non-seller and was formerly a seller as to partition. I support my sister in opposing the partition. My other sister, Tiatiaata is a nurse at Cook Islands. On her behalf I object also.

I object also on behalf of Hauraki Paora (decsd) and his successors.

Some of the owners are absent.

It was the NLC which decided that Orakei belonged to the 3 tribes Ngaoho, Te Tao U, and Uringutu. We are trustees only, and therefore wish the main [??] Orakei trouble cleared up before we agree to any partition.

One year prior to this case, Judge Acheson summed up the significance of the 4A2 and 4A4 blocks in his 'Minority Report' to the J.A. Lee Committee of Inquiry:¹⁵

... I beg to recommend that the interests of the non-sellers in 4A2 and 4A4 be not partitioned in the ordinary way but located by way of exchange in Lands Department. subdivisions adjoining the Papakainga Reserve so that all the Native holdings will be in one compact block.

The testimony given by the two Paora sisters at the several court hearings in to the partition of 4A2 was given consistent and fulsome backing by Judge Acheson in all the official inquiries, government initiated conferences and native land court reports during the decade 1928-1938. The abstracts represented in the preceding pages (above) are indicative of the core of the Orakei problem as Acheson perceived it. Politically his comments were perhaps 'out of order', but his stance was morally supportive of the continual formal protesting by prominent members of the Paora (Kawharu) whanau from around 1900 to the present day. Their opposition took a form that was always robust, measured and within the law. Judge Acheson's sympathies for Maori generally eventually cost him his judicial position in 1943 in a case unrelated specifically to the Orakei situation.¹⁶ The action of the extended Paora (Kawharu) – Uruamo whanau can be contrasted with the 'trespass protest' action taken by Joe Hawke and others over 506 days during 1977/8 at Bastion Point. Acheson had consistently pointed to the very ambivalent, even contradictory title award of 1869. In the 1936 Lee Committee of Inquiry into

¹⁵ Minority Report of the J.A. Lee 'Committee on Orakei', Acheson Mss, *ibid*.

¹⁶ Acheson Mss., Box 3: 2.1.2 (*passim*.)

Orakei matters he made some very pertinent observations on the inter-related issues of:¹⁷

- * the issue of title to Apihai Te Kawau as sole owner and then naming 12 or 13 persons as 'cest qui trust' (or beneficiaries);
- * on whether 13 persons (or 12 names with one name possibly representing 2 persons) was intended;
- * and whether that was a deliberate defiance of the 1865 Act's prohibition on no more than 10 persons.

On the crucial issue of trusteeship Acheson was of the strong opinion that the repeated applications, petitions and prayers initiated by interested parties led by Otene Paora for the matter of trusteeship to be decided unequivocally by the Native Land Court, had met with countless re-buffs and cursory dismissals by either the House of Representatives, the Legislative Council, or the Land Court itself, between 1904 and 1930. This point-of-view is re-iterated both by the Waitangi Tribunal in its 1987 Orakei Report and by Hugh Kawharu in his biographical sketch of his uncle, Otene Paora.¹⁸

Meantime, back on the ground in Orakei the Crown pressure on the non-sellers continued unabated. A lengthy extract from the recorded evidence is re-presented below in order to allow the reader a fuller grasp of the mediation processes which are implicit in the power of the written word (as a transcript of the spoken word.) In turn the extract allows a closer understanding of the limitations of the representational and referential aspects of language. The court minute books' extracts below are from the 1934 application by the Crown for a partition of 4A2 and 4A4:¹⁹

ORAKEI 4A2 and ORAKEI 4A4.

Application for PARTITION (resumed from folio 248)

Mr Armit (Comm'r for Crown Lands): I am here to ask for a definition and partition of the Crown's interests in these 2 blocks. The Crown has acquired the major portion of both blocks and desires a partition. There was some trouble with the natives over

¹⁷ Minority Report, *ibid.*, pp. 6-8.

¹⁸ *Orakei Report*, *op. cit.*, pp.56-7; p. 77; *DNZB*, Vol. 2, p. 178.

¹⁹ KMB 19, pp. 257-263: (7 Nov.,1934), my emphases.

4A2, and the Court refused the Crown's application for an injunction . . .

In 4A4 the consideration was £1371/-/- for 9:3:38 a.r.p. Total shares were 22.65: numbers purchased by Crown: 18.15625; non-sellers: 4.49375. Crown paid out £1,015/1/6 in purchase money. . [compare 1937 figures: Crown - 18.16 shares; non-sellers - 4.50 shares.)

Summary: if they take road frontages they will get less pro rata:

4A2: 9/10s of an acre pro rata for a road frontage c.f. 3:1:38 a.r.p. pro rata for back block.

4A4: 6/10s of an acre pro rata for road frontage c.f. 1:3:38 a.r.p. pro rata for back block.

Mereana Pakiorehua Uruamo called: I will not ask any questions.

Crown: In 4A2 the consideration was £1,469/5/5 for 12:2:6 a.r.p. Total shares were 22.65: numbers purchased by Crown: 16.5125 shares; non-sellers: 6.1375 shares. Crown paid out £1,272/1/2 in purchase money. [In 1937 the figures were: Crown: 17.51 shares; non-sellers: 5.15 shares (+ 0.14 by exchange.) [1937 figs. from KMB 21 p.159.]

Crown: In 4A2 there was an exchange order vesting certain shares of H.M. Gov't. in the various native non-sellers and others, thus reducing the Crown area in 4A2 by 0:29.53 a.r.p.

The Crown's last purchases were made in 1929 re 4A4, & 1931 re 4A4.

We ask for a partition now as it cannot possibly prejudice the rights of the natives in the matter of their petition.

This is the Crown's case as to its rights.

I produce a sketch plan showing a suggested partition of each block. The native area in each case to run from end to end by lines parallel to the road, and to be located on the northern side in each case with frontage to the road. This is only a suggestion.

As an alternative it is suggested that the Native interests come out of 4A4 altogether and be located into 4A2 on the northern side with 2 frontages to the roads. I'm not sure if one of the roads (on the western side) is closed but the road between 4A2 and 4A4 is closed.

If the Natives would prefer to locate on the south side the Crown has no objection.

I ask that the partitions be on a share basis as the land is of equal value approximately.

There are no buildings. A little fencing.

The cultivations over which there was a Magistrate' Court action some time ago is on the eastern side of 4A2.

This closes the Crown's case.

Evidence of **Mereana Pakiorehua Uruamo**:

I strongly oppose partition of this land.

Although I appear in the title as an owner, I confess that I am not the owner, and it would not be right of me to partition other people's land.

The people who sold to the Crown were *trustees* and had no right to sell. The Crown had no right to buy and knew it had no right.

The land belonged to our ancestor, but the descendants of the ancestor did not sell the land. It was sold by *trustees* who had no right to sell.

I have always known that I hold as *trustee* only. *Let that question be settled first- the trusteeship of Orakei.*

Evid. of Maki Waata: I ask that our ancestral land be not broken up. We ask that the papakainga be left to us. I support the previous speaker. I did not sell my interest in Orakei, neither did my father [Wiremu Watene Tautari]. The Crown knew it had no right to buy Orakei. I support Mereana's objection to these partitions.

Mereana Paora Uruamo (re-called):

Another petition has been lodged and is now in the hands of our MP.

Ct rules that no good purpose will be served by delaying the partition.

Crown: The land affected by the partition is outside the papakainga, and up on the hill slopes to the east of Orakei Village.

Mr Hubble (for Crown): we must press our case for partition, but are willing to consider any alternative suggestions.

MPU: I am on the title to these 2 blocks, but I admit I only hold as *trustee* for the beneficial owners.

Therefore these interests are affected by the same *trusteeship* question on which Mr Sullivan acts for us. So I object to these partitions going on.

Time only will enlighten us with regard to Orakei. I am not prepared to give evidence.

Maungatai Hauraki Paora [Mrs Babbington]:

I also am a non-seller and was formerly a seller as to partition. I support my sister in opposing the partition. My other sister, Titiata is a nurse at Cook Islands. On her behalf I object also.

I object also on behalf of Hauraki Paora (decsd) and his successors.

Some of the owners are absent.

It was the NLC which decided that Orakei belonged to the 3 tribes Ngaoho, Te Tao U, and Uringutu. We are *trustees* only, and therefore wish the main Orakei trouble cleared up before we agree to any partition.

Court inspects **4A2 and 4A4.** **Present: Jdge Acheson, Mr Ropiha, Land Surveyor,** and assessor appointed to help Court; also Court clerk.

The 4A4 block is long and narrow, and a very narrow strip of Native Land in the middle of Crown land was found to be inadvisable in the public interest and the interests of the natives. It would be 20 chains long and 1 chain wide. Accordingly, Court decided to make an amalgamated partition of these adjoining blocks, and locate the whole of the Native award in 4A2.

Inspection of 4A2 showed that the suggested location of the Native area on the south side of 4A2 proposed on behalf of the Crown would include a big portion of a deep gully in the Native portion. Court could not approve of this. Court then had to consider whether to award the Natives frontage only at a high value (£3/10/- to £5/-/-); or in the alternative back land only at a lower value; or in alternative a strip along the northern side of 4A2.

On the basis of the District Valuer's figs the frontage value would -?[illeg] the acreage for the Natives. A long and narrow strip is not approved by the Court.

Court offers inspection - -? [illeg.] to award the Natives the back or western portion on a valuation basis. Mr. Ropiha, assessor recommends this to the Court after close inspection.

Court decides to award to the non-sellers the 10 acre western back portion plus an access strip 3 chains long and 1 chain wide (10:0:30 a.r.p.) at the n.e. cnr to give access to the road. This takes the designation 4A2A. "The portion for the Natives will be close to the papakainga and good bldg. sites."

The order of the court was carried out. 4A2A and 4A2B were created. In the following year - 1939 - the Government put up some of the first State houses along the length of a new street named Kupe Street. The Government had of course already acquired the hillside blocks of 4A1 and 4A3 and the blocks due south of these. In the early 1940s house construction began on the 4A2B block on western side of Kupe Street. The first Labour Government's 'houses for the people' were under construction in every corner of the land. In the process of caring for the homeless and dis-empowerd the new socialist Government was treating tangata whenua unequally. In so doing it was repeating not dis-similar policies of the Liberal-Labour Government 1891-1912.²⁰

In 1950 the Government compulsorily acquired the rump of 4A2, the residue containing 10:0:30 a.r.p. and known as 4A2A. The Government offered compensation amounting to £2000. Some accepted; some including Maungatai Hauraki Paora refused the insult, a sign of resolute defiance to the last. In a footnote which is both noble and ironic, Mereana Pakiorehua Uruamo refused to uplift the compensation monies offered by the Government and continued paying rates on this land to the Auckland City Council until her death in 1961. Such was the nature of the defiant wairua that forged a bond between tangata and whenua. Mereana Pakiorehua Uruamo was more than just a morehu but fought on in protest with passion and dignity.²¹

The script of Francis Dart Fenton had run its course, had served its purpose. A new text formulated by the first Maori Chief Judge of the Maori Land Court and Chairperson of the Waitangi Tribunal, Edward Taihakurei Durie which would provide Ngati Whatua o Orakei with the opportunity for redress and empowerment had yet to be delivered.

²⁰ T. Brooking, *Lands For The People?*, op. cit., pp.97-156.

²¹ Personal communication with Eriapa Maru Uruamo and Rangimarie Rawiri, (grand-children of Mereana Pakiorehua Uruamo) July 1999.



**Stamping the Colonists' Template On The Land
[3] TAMAKI MAKAURAU: ORAKEI 1987/8.**

An aerial shot looking north over the Takaparawha Peninsula taken about 1987/8 showing the mixed land uses – residential & recreational that reflect the on-going compromises between tangata whenua and the Crown following the 1987 Waitangi Report recommendations.

The partition block Orakei 4A, part of which (4A2A) was acquired 'compulsorily' by the Crown in 1950 for 'housing purposes', is located approximately at centre (running west-east.)

Kitemoana Street ('Boot Hill') is located at top left (below Takaparawha Point), the 'new' Orakei marae at top left centre, and the Savage Memorial at extreme top right (near Kohimarama Point aka Bastion Point.)

National Business Review July 26, 1996.

demonstrates that diverse interpretations are possible, that there is no final 'truth', but that some truths are more final than others.

These block histories prove that the past-as-history can be construed as a re-constituted mess of contingencies where only too often present-day political imperatives prevail. Only occasionally do we get a glimpse of the human, idiosyncratic, irreducible other-ness of people and their relations to each other, even as agents for cultural systems that were in collision. Thus we have captured a fleeting look at a variety of human responses to the commodification of native land: the imperial indifference of the Monks and the Phillipps as they administered their new estates from the metropolitan world of Auckland; the idiosyncratic willfulness of Francis Dart Fenton as he cheerfully eschewed the laws he had helped to draught and implement colony-wide; the devices used by the Fenton brothers and their sister Edith; the assertive rangatiratanga of Paora Tuhaere caught between the demands of the traditional world and the excitement of the new; the entrepreneurship of Wiremu Watene Tautari as he traded Kaipara timber in the mills of the Waitemata ports and seized on the potential of the capital profits from individualisation of the Orakei title in 1898; the shortsightedness of many nameless Maori titleholders; the defiant resolve of many others: the Uruamo, Kawharu and Hawke whanau to single out (unfairly) but three names.

These are but a few figures who stand out in this patterned retrospective re-constitution of what would otherwise be a chaotic, ephemeral, contingent and discontinuous mess. The inter-action of the two cultures through the native land court system in the struggle for control of the land and all its physical, economic, social, spiritual associations had some very tangible effects and outcomes. That nearly all the remaining land in native title in 1865 was alienated under the court is obvious; but the human impact on an indigenous culture's resource base and spiritual bonds with whenua was (and is) immeasurable. Equally complex ^{and covert} was (and is) covert was the power of the text as an instrument of colonisation, as an agent of alienation, as a machine in the history-making process. In a sense as both Derrida and Foucault perceived, the text was one of the leading edges of the imperial design. Human agency played its part as we have seen in the cases of

Dufaur, Tuhaere and Fenton; but as has been amply illustrated with many examples, they used the prescriptive texts in ways that stretched the letter of the law until the cracks yawned wide. The incorporation of the aboriginal lands into a system of individual ownership and the imposition of one uniform legal writ for land acquisition was a very uneven but seemingly inexorable process.

It is arguable that during this period of enormous cultural adjustments the intrinsic truths or relative importance of texts and agency in the shaping of history were in a state of huge flux. The postmodernist focus on language and its graphic form – the text – derives not so much from any intrinsic logic of the arguments of postmodernists or from some of their more successful demonstrations and exemplifications; rather it is derived from the nineteenth (and twentieth) century's Euro-centric hegemonic extension of textuality through social space on the one hand, and on the increasing reduction of agency to a dim ideological hope, on the other. Putting it another way, on the one hand the present-day inquirer seeks for those individuals who had the capacity to resist the overwhelming power of the Crown in order to celebrate the role of agency; while on the other hand the historian is reminded of the hegemonic grip of textuality and its relics, that texts have multiple meanings and that there are gaps in the textual record.

All this is a matter of considerable wonder; but in a defence of agency over texts the historian attempts to preserve the unity and the validity of the experience of historical figures: the Hawkes, the Pateoros, the Fentons, at al. Perhaps in an age where the role of the agent is in attrition it is the historian's role in preserving the memory of the role of the individual agent whether he or she be constructed as hero or villain.

Epilogue

In 1880 the leading rangatira of the collective indigenous group which Francis Dart Fenton had called 'Ngati Whatua', Paora Tuhaere was given the Crown Grant to a block of 30 acres at the eastern extremity of the Whangaparaoa Peninsula 20 miles to the north-north-east of Tamaki Makaurau/Auckland, in the heartland of what was once the rohe of a rival iwi, Ngati Paoa. No doubt it was a grateful gift from an accommodating government for the support that the old chief had given them. Tuhaere must have viewed this land from the verandah of his

villa on the hill at Okahu Bay, Orakei: the peninsula of Whangaparaoa is clearly visible across the straits of Rangitoto. One wonders what would have crossed the old chief's mind as he contemplated that vista. He died in 1892. In 1895, his successor Mere Paora transferred the 30 acre grant to prominent Auckland lawyer Edwin Hesketh, whose widow in turn transferred it to Robert Henry Anson Shakespear in 1901.¹

These acts are resonant with cultural significance. They mark further events in the sequence of the annalistic form of historiography that in Hayden White's words is "consistent with notions of transition by infinitesimal degrees."² The shift in the cultural foundations of the system of land tenure in the southern Kaipara and Tamaki Makarau/Auckland was generally progressive and pacific; yet it is ironic that the site from which Tuhaere viewed his 30 acre gift should be in the same area as the unilateral seizure of Orakei 4A2A by the Crown in 1950 and the occupation of Bastion Point/Takaparawha in 1977-78.

The script devised by Fenton had run its course; random forces of contingency were emerging – a new script needed to be shaped to accommodate the new spirit. The scraps of Fenton's text were scattered in the winds over Bastion Point/Takaparawha in 1977-78.

¹ CT 23/63; NLC Order Z2745; T 26487; Z 2746; T 26488, NALTO, LINZ.

² H. White, *op. cit.*, pp. 60-61.

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IV. PERSONAL COMMUNICATIONS

Nellie Clay (Orakei)
Esther Davis (Orakei)
Prince Davis (Orakei)
Marina Fletcher (Te Awaroa/Helensville)
Rocky Hawke (Orakei)
Tauhia Hill (Haranui)
Margaret Kawharu (Rewiti)
Don Kerr-Taylor (Waimauku)
Innes Kerr-Taylor (Waimauku)
Dennis Raoul Nathan (Epsom)
David Simmons (Remuera)
Malcolm Waller (South Head)