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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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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)
DNZB	<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
DSC	<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)
HT	<i>History & Theory</i>
HUP	Harvard University Press
ibid.	in the same book, chapter or passage, etc.
JAWHS	<i>Journal of Auckland & Waikato Historical Society</i>
JE	<i>Journal of Ethnohistory</i>
JPacH	<i>Journal of Pacific History</i>
JPSoc	<i>Journal of the Polynesian Society</i>
JPSI	<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 Ketī (1999 >)
WMB	Whangarei Minute Book (of Native/ Māori Land Court)
W-MMB	Waikato-Maniapoto Minute Book (of Native/ Māori Land Court)

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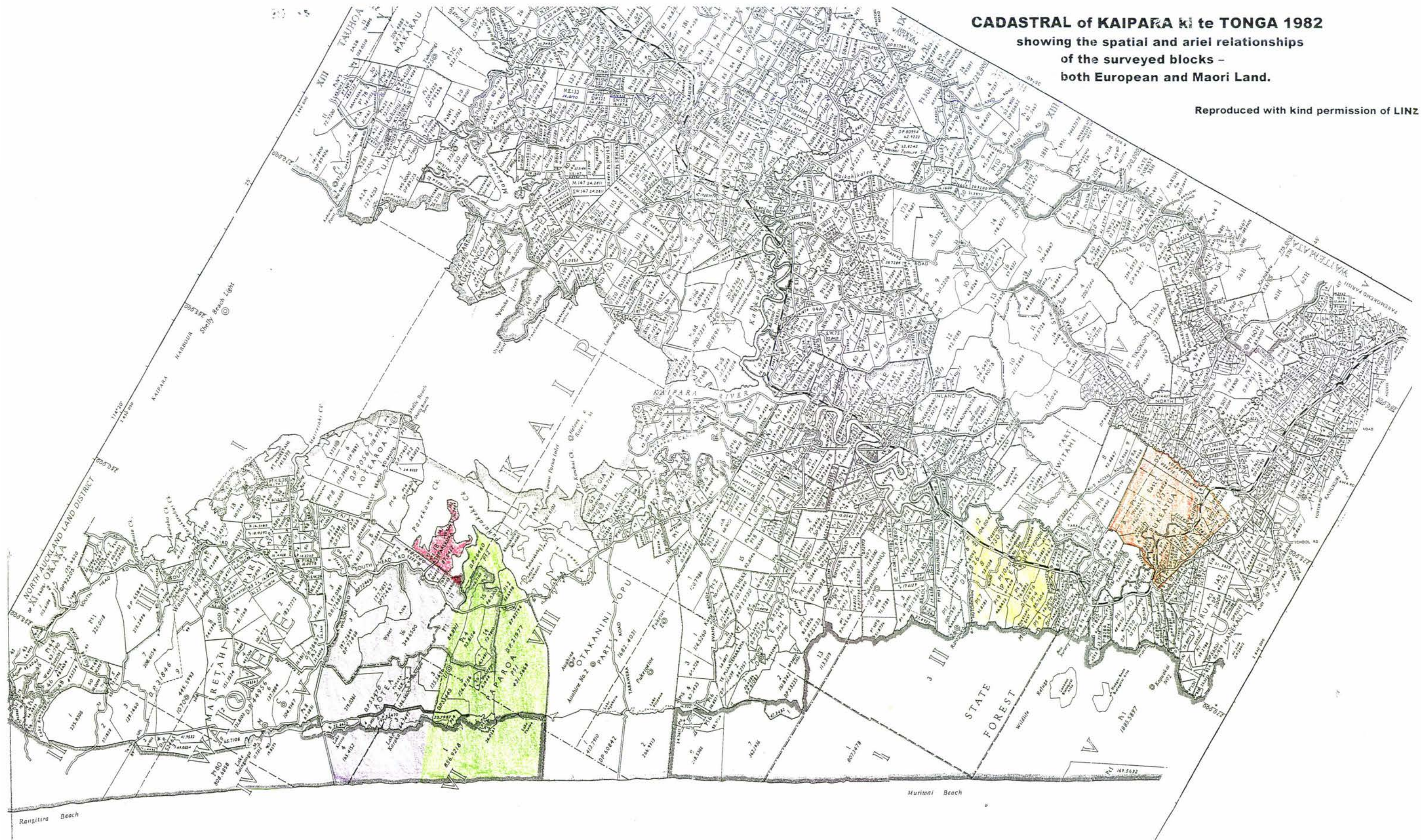
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CADASTRAL of KAIPARA ki te TONGA 1982

showing the spatial and ariel relationships
of the surveyed blocks –
both European and Maori Land.

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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 Paparoa 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 Paparoa 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, PAPAROA, 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 tauwi 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 Awaoroa/Helensville. Maori labour was employed extensively in the construction of the Te Awaoroa/Helensville – Pitoitui/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-seignorial 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.



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