SETTLEMENTS OF MAJOR MAORI CLAIMS IN THE 1940s: A PRELIMINARY HISTORICAL INVESTIGATION

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The Ngai Tahu Grievance and its Ramifications

1 By the middle of 1943, the New Zealand Government was beginning to pay serious attention to the settling of historical Maori grievances. It was driven by circumstances both proactive ("rewarding" the great contribution by the Maori to war effort) and, more especially, reactive - viz, Maori pressure as a quid pro quo for that war effort. On 16 June the four Maori Members of Parliament and the Hon Rangi Mawhete of the Legislative Council met the Acting Native Minister HGR Mason. It was decided that the Ngai Tahu claims should be the pioneering settlement.[1]

2 Ngai Tahu's grievances had surfaced periodically over many administrations, and had been the subject of a number of official enquiries. The former Ngai Tahu lands, especially those subject to "Kemp's Purchase" of 1848, were enormous in size - covering most of the South Island, and Stewart Island. The grievances, focused essentially around allegations that inadequate reserves had been created for the Maori at the time of the purchases, raised a series of issues of byzantine complexity. If these could be solved, noted Eruera Tirikatene (Cabinet Minister and Ngai Tahu kaumatua), "the way will be automatically paved for a settlement in connection with the other established claims".[2]

3 A tribal endowment in compensation for the lack of reserved land was mooted by a Commission in 1879, and from 1886 the Crown had investigated the granting of blocks of "land for landless natives" in the South Island. From 1893 Commissioner Alexander Mackay and (Surveyor-General) Percy Smith began drawing up lists of eligible South and Stewart Island Maori to whom these selected blocks of land might be allocated. Progress was so painstaking that the Commissioners did not complete their task until 28 September 1905. The 4063 identified beneficiaries were to be settled on 142,463 Crown acres. The Commissioners' recommendations were acted upon in several ways, particularly by the passing of the South Island Landless Natives Act of 1906. This, the Government seemed to think (judging by the pronouncements in parliament of its spokespersons, particularly those of Maori Cabinet Minister James Carroll), was a final settlement with Ngai Tahu.

4 "In effect", however, in the words of Crown Law contract historian David Armstrong, "the Crown had taken 18 years to arrive at an almost totally unsatisfactory resolution to the problem of the landless Ngai Tahu". Most of the allocations were not viable either economically or socially : the land was poor, access was difficult, the sections were often far from the homes of the beneficiaries, there were (especially initially) crippling restrictions on use of the land and its resources. "It is obvious that the 1906 Landless Natives Act was not a final settlement of Ngai Tahu claims", Armstrong concluded. Within a few years, petitions from Ngai Tahu over the "Kemp Purchase" and the question of reserves had begun again; by 1914, the Government had appointed another Royal Commission. This confirmed that few of the beneficiary Maori had been able to take up settlement on their allocated blocks.[3]

5 In 1916 the Native Land Court, under Chief Judge W E Rawson, was given the task of re-examining the "landless native" question. So flawed were the allocations that Rawson threw in a suggestion that would soon loom large in the discussion over the Ngai Tahu grievance : perhaps a monetary compensation was more viable? In 1920-21 yet another Royal Commission investigated this and other matters. Headed by the Native Land Court's Chief Judge Robert Jones, the Native Land Claims Commission (Jones Commission) concluded, inter alia, that the Crown had not treated Ngai Tahu in a "liberal spirit". The Commission opted for "the monetary solution", and worked out the amount through a complicated calculation. Because there had been Crown "neglect" in not settling "this long-standing grievance", interest should be awarded on the amount of money Ngai Tahu had (by the standards of the times) missed out on at the time of the Kemp Purchase. A "just and equitable" settlement would total £354,000, the bulk of it representing the interest rather than additional payment for the land.[4]

6 Section 29 of the Native Land Amendment Act of 1923 authorised the Native Land Court to investigate who in Ngai Tahu would be entitled to any such redress, and in 1925 it reported that 1551 persons were so entitled; a similar enactment of 1928 made provision for a Trust Board to represent these beneficiaries in any negotiations with the Government. When these began at once, the claimants' requests were within the parameters of cash compensation. From now on, the "test case" struggle for redress of grievance by this tribe was entirely over how much the payment should be. Their negotiators were talking of final settlements in money terms, however, only because their preferred option, the return of land, had not been conceded to them in any meaningful way after decades of investigations, negotiations and petitioning. The sticking points

were twofold. First, most Ngai Tahu were requesting payments in perpetuity, but the Government was proffering finite sums only. Second, negotiators prepared to listen to talk of finite sums rejected the offers (£50,000 in 1931; £100,000 in 1935) as being far too low as a starting point for discussions. Even National's candidate in the 1935 general election, while recommending acceptance, spoke of the latest offer as being "in part settlement" only.

7 The Trust Board would use the money for the collective benefit of the tribe - to promote education, health, land and industrial development etc. In 1938 a representative selection of Ngai Tahu met Acting Native Affairs Minister Frank Langstone as part of the Government's "sincere effort to finalise" all Maori claims; Eruera Tirikatene and the rest of the delegation agreed that a "final settlement" was sought, and declared they had received a mandate for this from meetings with their people. Sums sought ranged from £364,583 to £375,000 in order to provide for the "future needs" of the iwi. War intervened, and matters went on hold until the new initiatives of 1943.

Developments on "the Lakes" and Raupatu Grievances

8 The in-perpetuity request of the Ngai Tahu was based on significant precedents. In 1922 the Arawa tribe had settled with the Government over their local lakes : the beds of the "Arawa District Lakes" and the right to use their waters remained firmly in Crown lands, but the iwi had title to all islands "not heretofore specifically alienated" and rights of access to them; moreover use, management and control of parts of lake beds "or any Crown lands on the border" of lakes could be vested in the Arawa, and the tribespeople could "catch for their own use any indigenous fish". An Arawa District Trust Board would receive a grant of £6,000 per annum. This settlement became a precedent for a similar arrangement with Tuwharetoa in 1926. A tribal Trust Board would receive £1,000, plus £3,000 annually, together with the revenue from 50% of all fishing licences above £3,000 (and other sundry revenues) for Lake Taupo and surrounding waters.[5]

9 The grievances issue was gathering momentum. By 1926 the Government was ready to consider the greatest Maori claims of all, those of the powerful federations of tribes which had experienced the confiscation of vast areas of land after defeat of the Maori side in the Anglo-Maori Wars of the 1860's. A Royal Commission of Inquiry into raupatu (confiscations) was established, commonly called the Sim Commission after its chair (Sir William Sim). After a series of exhaustive hearings, it recommended a solution in line with the precedent of monetary redress in perpetuity. In the case of the two major raupatu areas, it opted for the Taranaki tribes to receive £5,000 per annum for "land unjustly confiscated" and the Tainui federation to receive compensation of £3,000 annually for "excessive" confiscation.

10 The 1931 Native Purposes Act gave the Government authorisation to settle the raupatu grievances, but there was that very significant caveat that such settlements should be final settlements, subject only to later alteration to rectify "mistake, error or omission". Years of intermittent negotiation with claimant tribes now ensued. Delays were caused by a number of factors, including the economic constraints of the Depression. There were differences within the tribes, too. Some tribespeople rejected the concept of monetary compensation, particularly within Tainui where a strong school of thought insisted upon return of land as the only acceptable redress for land seized. Others opted for annual cash payments but at a higher rate than that recommended by the Sim Commission. The Government's attitude towards both raupatu and non-raupatu claims was that compensation should be both monetary, and finite. Tainui, for example, were told that annual payments would stop when a total of £100,000 (later £125,000) had been reached. All such offers were rejected.[7]

11 The advent of the Labour Government in 1935, and New Zealand's gradual emergence from the Depression, led to renewed efforts to gain "final settlements". As Professor Alan Ward has said, the thrust of Labour's policies towards the Maori was that Maori interest would be best served by dint of the Government's "major social programmes of welfare, health, housing and education" but complementary to this was a policy with an element of what later became called "positive discrimination". In particular, Labour made a concerted effort to resolve major outstanding grievances in 1938 - particularly with the two most pressing claimants, Ngai Tahu and Tainui.[8]

12 Progress was delayed, with the consent of the claimants, by the outbreak of the Second World War. The country was united behind the war effort, with the Maori - as individuals and collectively - joining enthusiastically in the various areas of endeavour established to meet "the emergency". Even the King Movement, which since 1881 had taken the attitude that Kingitanga would in the event of external war be pacifistic until its raupatu grievance was settled, put in "an intensive campaign to support the war effort in non-combative ways". At a hui in Wellington in 1942 the Government endorsed the war effort of Tainui (the host federation of Kingitanga) which had persistently declined to cooperate with the state's war activities in the First World War. By 1943 Maori claimants were overtly reminding the Government both of the sacrifices their people were making in the war effort and of the fact that their grievances remained unresolved after 80 or more years of protest.[9]

The Major "Full and Final" Settlements

13 A boost was given to their claims when on 26 May 1943 Eruera Tirikatene, MP for Southern Maori and a leading Ngai Tahu, was elected to Cabinet. At once he urged a "final settlement" of the historical grievances of the Maori, beginning with the longest-running - that of his own people. In June H G R Mason noted that the Ngai Tahu negotiators had long been stressing the 1921 Jones Commission recommendation of £354,000, a figure "before the eyes of the Natives ever since". Since this was the result of an assessment by an independent tribunal, opting for it had seemed to the claimants to be the likeliest way of obtaining - after so long - a settlement that was even partially satisfactory. Since the late 1930 s negotiations, the figure had been revised upwards to £375,000.

14 There were several stated reasons for the £375,000 figure, the most obvious being a revision to compensate for the years since the Jones Commission. Another reason, however, was given, and this existed independently of the 1921 recommendation. It reflected Ngai Tahu's consistent rejection of the basis on which the Jones figure had been reached, viz a price of $1\frac{1}{2}$d per acre for $12\frac{1}{2}$ million "saleable" acres (minus previous payment, plus interest). Instead, the tribal elders claimed that the nineteenth century practice of awarding "tenths" to the sellers should have been followed; at a fair price of six shillings per acre over $1\frac{1}{4}$ million acres ("tenths" based on the "saleable" land area purchased), monetary compensation of £375,000 was owed. In a sense the Ngai Tahu perspective on this was preemptive; Chief Judge Shepherd, for example, had assessed that on legal grounds, interest (the bulk of the Jones recommendation) did not need to be taken into account. He had recommended a much lower figure.

15 Tirikatene and Mason opted for a "realistic" compromise between Shepherd and Jones, viz a total of £300,000. In view of the costs of the war, this would be paid out annually over 30 years. It was, said Mason, "the most reasonable chance I see of anything like an expeditious settlement"; he reminded his Government that "the money would be expended for purposes which would be the some considerable extent in substitution of other Government expenditure, possibly from the Social Security Fund, which otherwise might be incurred." As Professor Ward later noted, an annual instalment of £10,000 was a "considerable" sum at the time. The claimants considered they could do a great deal with it. Tirikatene spoke on their behalf in noting that it would "enable a well planned policy to be adopted ... with regard to the needs for housing, private water supplies and sanitation" and so forth. The pioneering major claim was now inexorably geared to monetary compensation.[10]

16 By the first week of August 1943 Mason had worked out "probable amounts required to settle all claims" (excluding "Surplus Land Claims", which were subject to a further enquiry) if the £300,000 figure for Ngai Tahu was acceptable. It had already been conceded that the Tainui and Taranaki raupatu claims, given the Sim Commission recommendations of in-perpetuity payment, should be settled on the basis of infinite rather than finite sums. Moreover, the Sim Commission amounts had been increased. Tainui for example were to receive £5,000 per annum in perpetuity plus £1,000 per annum for 35 years (for arrears since 1936, when negotiations with the Labour Government began). The Taranaki settlement, on which an understanding had already been reached, was to have an extra £300 lump sum payment in compensation for the desecration of Parihaka by the New Zealand Constabulary Force in 1881. Of the other seven claims under consideration, it was envisaged that land could be purchased to meet the grievances of five of them - but this would total only £76,000.

17 Claims other than Ngai Tahu's then, could be settled by a one-off payment totalling £81,550, plus £17,000 per annum (£11,000 of this for finite periods). Internal Government memoranda show that this was genuinely considered a reasonable deal. Mason: "In respect of some of the claims, doubts can be raised respecting their merits but the position of the Crown has been compromised by reports of commissions. I propose to re-examine the merits where any serious question can be raised but this of course will not mean that every doubt must be resolved in favour of the Crown nor exclude a reasonable compromise where there may be some doubt still remaining." The quid pro quo was that these settlements were definitely to end the redressing of grievances. When Tirikatene noted in February 1944 that all claims were receiving "the earnest consideration of the Prime Minister and the Government", he averred that "no stone will be left unturned to attempt to carry out the undertakings of the Government with regard to finalising all claims for all time."[11]

18 Extra delays ensued, partly because of an inrush of further claims (Tirikatene gave Prime Minister Peter Fraser details of some four dozen outstanding claims that August). By October 1944, the Maori were universally and vocally frustrated at the seeming lack of advance. At a "Maori Conference" in the Ngati Poneke Hall in Wellington on 18-20 October, some 400 representative delegates (including the Maori politicians) demanded "immediate consideration" of their grievances : "the Labour Government must bring down a Policy which would be both a monument to the Party and an avenue for the self-expression of, and the assumption of responsibility by, the Maori Race." The delegates divided claims and grievances into five categories. On category 1, "claims investigated and ready for settlement" (ie, the major claims, long under negotiation), it commented that there was "undue delay for no apparent valid reason".

19 With regard to claims investigated but awaiting finalisation of specific aspects (second category), "the evidence produced clearly indicated lack of interest in the finalisation of matters of the utmost importance to Maori Claimants, on account of some alleged legal technicality or policy." To retain its credibility among Maori, the Government had to act fast. Tirikatene played a key role in forcing the pace. He had travelled extensively within Ngai Tahu territory, gaining general tribal acceptance for the £300,000 settlement; and kept up liaison with Taranaki. "The Conference has proved conclusively", he told Fraser, that the views of the claimants' negotiators were "those which have been actuating the minds of the whole of the Maori people irrespective of party politics and sectarianism".[12]

20 On 15 December 1944 the Taranaki and Ngai Tahu claims were the subject of legislative solution. The preambles to both Acts stated their purposes as being to effect "a Final Settlement". The Ngai Tahu legislation was for "releasing and discharging His Majesty's said Government from any claims or demands which might hereafter be made on it" with reference to the "Kemp's Purchase" lands investigated by the Jones Commission. The Taranaki Act, effecting a settlement on the basis of the Sim Commission findings, had similar provisions: "full settlement and discharge of the aforesaid claims"; "settlement of all claims and demands which have heretofore been made or which might hereafter be made" arising from raupatu. Both Acts noted that the claimants had agreed to accept those settlements, and in supporting the legislation the Parliamentary Opposition stressed such agreement to these "reasonable" settlements. Eruera Tirikatene wrote in 1946, in the context of the establishing of a new Trust Board for Ngai Tahu, that "my settlement is a final one".[13]

21 Professor Ward concluded recently that the 1944 efforts "to rectify Ngai Tahu grievances" were "serious and genuine". "There is little doubt", added Crown Law historian Armstrong, "that the compromise solution reached in 1944 was seen as a final settlement by the government of the day and key Ngai Tahu representatives such as Tirikatene ... Moreover, there seems little doubt that the Government firmly <u>believed</u> it was acting with the sanction of Ngai Tahu, as expressed through their representatives." Tirikatene had promised Ngai Tahu that their sanction would be sought subsequent to the passing of the legislation and before a new Trust Board was established to administer the compensation fund. From time to time over the next two years he travelled to many kainga within Ngai Tahu territory and visited fellow tribespeople living outside tribal boundaries. As on his visits before the passing of the Act, almost all people attending the various hui opted for the settlement as their only realistic chance of redress.

22 Although the Trust Board was much later to claim that "the 1944 legislation had been enacted without the knowledge and support of more than (at most) a handful of the beneficiaries", and provided some impressive testimony to this effect, the contemporary evidence is more than adequate to show that there was only a small degree of opposition (centred in the Tuahiwi/Kaiapoi area). A deputation of proposed Board members to Fraser and Tirikatene on 20 September 1946 confirmed this. A Southland representative, for example, thanked the pair for "settling the longstanding grievances of the Maoris", and a South Canterbury/North Otago representative said Fraser "had done more for them than they had hoped". When the Trust Board was established by legislation in 1946, Makere Ralph Love was Tirikatene's private secretary. He later recalled that "no Maori land claim settlement has been so thoroughly well discussed by the beneficiaries concerned". The Minister had paid "meticulous care ... in his relentless wish to always consult with his people on such issues." No doubt the Ngai Tahu people felt that they had little choice but to accept a £300,000 "Final Settlement", but there seems little doubt but that they did so accept.[14]

23 By the end of the Second World War one major claim, Tainui's raupatu grievance, remained unresolved. Prime Minister Fraser noted that the claimants themselves had suggested that their claim lie dormant until New Zealand had defeated the "common menace" of fascism, and that they had "completely identified themselves with the war effort". A climate of goodwill prevailed, and the Taranaki "Final Settlement" had provided the precedent for in-perpetuity monetary compensation in broad agreement with the findings of the Sim Commission of 1926-7. Tainui's Michael Rotohiko Jones, private secretary to the Minister in charge of Native Affairs (H G R Mason), acted as intermediary between Crown and Tainui. The influential Princess Te Puea agreed that a monetary settlement completely excluding any "land for land" deal was adequate; the money was needed for her grand schemes of development.

24 At a grand hui at Turangawaewae in that Easter 1946, Fraser, Mason and Tirikatene (in his capacity as "Member of the Executive Council representing the Native Race") attended on behalf of the Crown. "The gathering was one of the largest and most representative of the tribes held on the marae at Ngaruawahia for several years", the Waikato Times reported. Kaumatua from as far afield as Helensville in the north, the Bay of Plenty in the east and the Manawatu in the south, joined King Koroki, Princess Te Puea and M Ratana, MP. Before the Crown delegation met the Tainui chiefs and people on Saturday 20 April, however, there was a significant Good Friday korero on the marae. Tita Wetere of Morrinsville, inheritor of the Kingmaker mantle, poured scorn on the notion of monetary compensation. He attacked the view that "the spiritual loss of the land" could be rectified by money, and condemned the alleged Crown attitude that

"material advancement should be an acceptable substitute for the soul and mana of the race". For him, matters of the Kingitanga mana took such precedence that all other things "fade into insignificance", and he said so to the Prime Minister on the 20th. The great majority however had opted for a resolution to the raupatu claim along the lines mooted by Te Puea and her circle.

25 When Fraser had to return to Wellington in the afternoon, substantive agreement with Tainui had been reached but the issue remained clouded because of a degree of disunity on the Tainui side over the issue of statutory recognition of the King. The Kingite leadership now put public pressure upon the "statutory recognition" faction as well as meeting in private with the Crown negotiators. This led to another great hui on Monday 22 April, where the leadership of Kingism repudiated Wetere's stance in the knowledge that Fraser's conditions - pan-Maori acceptance of the authority of the King - could not be met. Wetere was censured for his actions, and in the early afternoon, prompted by Te Puea, leading elder R Edwards announced that consensus had been reached to do a deal with the Crown. For its part, the Crown had made concessions in behind-scenes discussions. The hui then placed on record "its appreciation of the sympathetic attitude taken by Mr Fraser and Mr Mason". The deal, signed by Princess Te Puea and three others on behalf of Tainui, was for £5,000 per annum in perpetuity, "and it was held to be only fair, as reciprocating the fine spirit of the people in time of war, to make a payment of £50,000 for the ten-year period since 1936, £5,000 of which was to be paid forthwith, and £1,000 a year for a further 45 years." After this the Government settled with Whakatohea for a lump sum payment of £20,000.

26 With the last of the big negotiations completed, and an election looming, the Prime Minister invited the Maori electorate "to decide whether or no my guidance has been worthy of your trust". At the elections the Labour Party retained the four Maori seats (the fourth having swung from National to Labour in 1943) and received the highest percentage to that date of Maori support, 63.85%. On 7 October the Waikato-Maniapoto Maori Claims Settlement Act implemented the Tainui agreement and established an appropriate type of Trust Board. The only point made by the Parliamentary Opposition was to stress that there should be no elements in the Act which could lead to future dispute. In speaking to the measure, Prime Minister Fraser went beyond the Sim Commission in support of the justice of the Tainui claim. Those who studied the raupatu issues, he noted, had no doubts about "the inherent justice of the claims of the Maori people". "I think historians have agreed, and those who have read history have agreed, that an injustice has been done." The Opposition pledged to expedite the matter, "an acknowledgement of the justice of their claim".

27 The Government and Opposition were clearly in no doubt that this was a magnanimous gesture which would end Tainui claims once and for all; the long title of the measure called it definitively "An Act to effect a Final Settlement" and the preamble followed the precedents to talk of "full settlement and discharge" of the raupatu claim. Contemporary reports record no dissent from within Tainui to the statement in the preamble that the tribes, via their representatives , had endorsed the settlement, nor any public Tainui opposition to the passing of the legislation. In the parliamentary debate on the legislation, the Maori MPs saw it as a just settlement, and M Ratana claimed that with the three big settlements the "Government has fulfilled its promises to the Maori people." In Michael King's assessment, "the quality of life in Waikato was markedly different as a result of the settlement". The hui at Turangawaewae meant that "a sore that had festered for eighty-two years was finally healed". Although the compensation could "never wipe away the blood that has been shed", Te Puea said, "it means much to know that we have been proved right". "Our ancestors have been vindicated in the sight of New Zealand." [15]

28 On 12 October 1946 the Finance (No.2) Act implemented the deal for compensation for Whakatohea's grievances over the "excessive confiscations" (Sim Commission findings) of 1866. The £20,000 "in settlement of all claims and demands which have heretofore been made or which might hereafter be made" were for "the purchase or acquisition of land suitable for settlement and development". Later a Trust Board was established to administer these monies. [16]

29 In the year of these two raupatu settlements, 1946, another Royal Commission of Inquiry was - as promised - appointed to investigate "Maori claims touching certain lands commonly known as surplus lands of the Crown". This Surplus Lands Commission, chaired by Sir Michael Myers, found the matter to be enormously complicated and did not report until October 1948. It concluded that "certain Maori tribes had suffered injustice by reason of the fact that certain lands had become surplus lands of the Crown", but it split over what recommendations should grow from this. To resolve the injustice whereby Maori were entitled to an equity in 87,582 acres of surplus land, the more generous of the rival recommendations was that of A T Samuels and H T Reedy. The Government opted for their conclusion that £61,307 should be paid to the Maori (compared with Myers' recommendation of £15,000). The tribes "agreed to accept payment of the said sum in full settlement and discharge of their claims" over surplus land. In 1953 this was legislated into effect, with eg, the Tainui Trust Board receiving £4155.18.0d "for the benefit of the subtribes within whose boundaries were situated the respective areas of surplus lands." [17]

Further Monetary Settlements

30 Meanwhile there had been other monetary settlements. On 12 May 1949 a deal had been reached over the Kauhouroa Block in the Wairoa District, following up the Sim Commission's deliberations. A £20,000 lump sum was legislated for, to be administered by the Wairoa (later Wairoa-Waikaremoana) Maori Trust Board; this was stated in the Act, as usual, to be "in full settlement and discharge" of claims. The following year, under the new National Government, a similar formula was enacted with respect to the claims of the tribespeople of the Patutahi Block in the Gisborne District of Tairawhiti (following up the report of the Jones Commission of 1921), their settlement being for £38,000. In the same legislation another of the Jones Commission's recommendations was dealt with. This "full settlement and discharge" of claims awarded £50,000 to the claimants concerned in the Aorangi Block of the Waipukurau District. [18]

31 In 1953 the Government settled "all claims and demands which have heretofore been made or which may hereafter be made" for the Ngatahira area of the Omarunui Block in the Ikaroa District, viz for a sum of £4,000. Similarly, Taitokerau settled "all claims and demands which have heretofore been made or which may hereafter be made" on the question of surplus land, viz for a lump sum of £47,154.4.0d. The following year, after majority tribal agreement on 31 October, a "full settlement and discharge" of claims over the Pukeroa Oruawhata (Rotorua Township) land in Waiariki District was legislated for. The agreed sum was £16,500. In 1955 the system of trusts was regularised and consolidated under the Maori Trust Boards Act. In 1958 the Tuhoe (later Tuhoe-Waikaremoana) Maori Trust Board was established, upon settlement of claims relating to the Urewera for a lump sum payment of £100,000. In 1977 some of the annual payments were increased, but not so as to keep pace with inflation. [19]

32 The various monetary compensations, particularly those paid out over a period of time or in perpetuity, have not withstood the test of time. As Professor Ward has pointed out, the high rate of inflation in recent years could not have "reasonably" been anticipated in the 1940s and 1950s. Some minor tinkering with the payments from the 1970s has scarcely mitigated this decline in value, for the adjustments themselves were not inflation proofed. Sir Robin Cooke, President of the Court of Appeal, recently characterised Tainui's post-1977 payment of $15,000 as "trivial". From the late 1960s Ngai Tahu agitated for a rescinding of their 1944 agreement, in favour of making their annual $20,000 an in-perpetuity arrangement in line with the other major settlements. They had settled on the basis of a lump sum the purchasing power of which had become severely eroded by dint of its stretched-out payment; by 1967, their annual payment had become worth the 1944 equivalent of only $8640.

33 A "more just settlement" of $20,000 per annum in perpetuity, the Ngai Tahu petitioners submitted, would become the "full and final settlement of the Ngai Tahu Claim". But after the Labour Government legislated for this in 1973, inflation made this arrangement, too, of little meaning. The iwi renewed its claim, as might have been expected. In a sense this was predicted at the time of the in-perpetuity settlement by the then Minister of Maori Affairs, Matiu Rata, who noted that the beneficiaries "may feel that this of itself can never be considered final and absolute payment". A mere two years after that Douglas Sinclair contributed to a book analysing "Aspects of Maoritanga" : "It will be apparent that the settlements negotiated were hopelessly inadequate to provide reasonable compensation for the enormously valuable land claims. The time is overdue to review the whole of these settlements..." [20]

"Reasonable Cooperation", Past and Present

34 An even more fundamental flaw in the monetary compensation settlements was the neglect of the "spiritual dimension", of the Maori people's socio-cultural identification with the land. This has been a particularly strong grievance for the raupatu tribes, who saw not only their resource bases confiscated from them but also the forcible alienation of their most sacred sites; burial grounds, mountains, rivers etc. This was a double blow, and monetary compensation, although it partially redressed the problem of the loss of their resource-based taonga, in no way addressed the loss of mana and of spiritual taonga. In 1946 National MP E B Corbett, later to be Minister of Maori Affairs, agreed that monetary payments were, for the Taranaki, "no adequate compensation for loss of land". Why, then, did the tribes accept "full and final payments"?

35 The answer is, perhaps, two-fold. First, they saw that they had no choice if they were to receive any compensation at all. Mrs E Tombleson MP put it this way in 1972, vis a vis the renewed Ngai Tahu claim before the Maori Affairs Committee: "It was found that each petitioner was of the opinion that the decision in 1944 was not completely binding and they thought, to quote the petitioners of that time, that half a loaf was better than no bread." This does not imply duplicity on the part of the claimants : acceptance of "half a loaf" does not preclude hope that in the future the donor might become more generous, particularly if the donor's role in the impoverishment of the recipient in the first place is more fully appreciated. The negotiators of the 1940s will have noted keenly, by virtue of the fact that settlement was pending after so long, that political standards and public mores alter over time. The Ngai Tahu counsel submitted in 1971 that the real question about 1944 was whether it was a fair and equitable settlement in terms of the prevalent morality of the 1970s.

36 Second, and relatedly, some tribes at least saw continuing payments as ongoing Crown acknowledgement of past injustices, a perpetual reminder that the Crown conceded complicity (in Corbett's words) in their "loss of mana, or the loss of prestige". In 1946 Prime Minister Fraser accepted that the Opposition MP had "struck the right note when he said that in addition to the money there was the question of the sense of a wrong rectified, of an injustice put right, and that is more important than any monetary transactions or provisions". The Prime Minister had previously commented that the in-perpetuity payments promised to Tainui were viewed by the tribespeople as "a continuing heritage of the tribe". It seems possible that what Tirikatene called "perpetual appropriations" for Arawa, Tuwharetoa and the raupatu iwi were regarded by their recipients as a kind of "symbolic rent" in lieu of - even pending - the return of land. Those who rent out property, even on perpetual lease, retain of course ultimate ownership. Such "rents" were seen as an (albeit poor) alternative to adequate tribal resources for advancing the socio-economic interests of the tangata whenua. When they lost their material value, therefore, they lost some of their symbolic value as well. But not all, since the tribes still insist that it is their land - and that therefore they have a right and a duty to renegotiate the "rent". [21]

37 This line of argument is tentative, and based on fragmentary evidence. But there can be not the slightest doubt that the perception by tribespeople of continuing alienation from their land, particularly from wahi tapu, is a major impediment to reconciliation between the Crown and the Maori. The Tainui negotiators put it this way to the representatives of the Crown in July 1989, when formulating their overarching approach to compensation for raupatu : "To restore mother earth (Papatuanuku) and all her spirituality to her orphaned children of Tainui." It appears inescapable that one of the lessons of the past is that monetary compensation needs not only indexation if it is over a period of time, but also supplementation by the provision of productive land and the return of "sacred land" (including rivers and mountains).

38 The extant documentation which has been uncovered so far on the historical settlements of the twentieth century does not reveal duplicity or bad faith on the part of either of the partners to the Treaty of Waitangi, Maori or Crown. Rather, it reveals a determination by both to resolve finally longstanding grievances in good faith, in accord with the standards and realities of the time. To conclude otherwise is to stand accused of ahistoricity. A keynote demand of the Maori Conference of 1944 was the establishment of an independent tribunal to investigate and then resolve the claims; the 1975 establishment of the Waitangi Tribunal and the later alteration of its terms of

reference back to 1840, and Government aid to claimants fighting their cases by that and other means, has gone a long way towards meeting this request. The recent publication of the Principles for Crown Action on the Treaty of Waitangi points the way forward to an updating, in accord with the spirit of the late twentieth century, of the "reasonable cooperation" of half a century ago. [22]

Richard Hill
8/11/89

FOOTNOTES

1 Mason to Prime Minister, 17 June 1943, 2067/0159, Nash Papers, National Archives.

2 Tirikatene to Prime Minister, 25 June 1943, 2067/0157, Nash Papers, National Archives. For the long Ngai Tahu struggle for redress, refer to Taiaroa Papers, Canterbury Museum.

3 David Armstrong, 'Land for Landless Natives', Waitangi Tribunal document WAI-27, M16, especially pp55,87.

4 'Reports of Native Land Claims Commission', Appendices to the Journals of the House of Representatives, G-5, 1921

5 Native Land Amendment and Native Land Claims Adjustment Act, 1922; Native Land Claims Adjustment Act 1924 (sec 29); Native Land Amendment and Native Land Claims Adjustment Act, 1926 (secs 14-15); E T Love election pamphlet, 21 Nov 1935, box 3b, part II, Taiaroa Papers, Canterbury Museum.

6 Richard Hill, 'Enthroning "Justice Above Might"?: The Sim Commission, Tainui and the Crown', Department of Justice unpublished manuscript, Wellington, 1989.

7 Native Purposes Act, 1931; David Armstrong, 'The Ngai Tahu Claim Settlement Act, 1944', Waitangi Tribunal document WAI-27, M16, pp 79-80.

8 Waitangi Tribunal, 'Closing Address: Counsel for Crown', document WAI-27, X1, p115, 119; Waitangi Tribunal, 'Land for Landless Natives', document WAI-27, M9C.

9 Hill, op cit, pp 2-3, 8-9.

10 Mason to Prime Minister, 17 June 1932, 2067/0159, and Tirikatene to Prime Minister, 25 June 1943, 2067/0157, Nash Papers, National Archives. More generally, for the Ngai Tahu settlement, see documents generated by the Waitangi Tribunal claim WAI-27, particularly David Armstrong, op cit; WAI-27, document M17, vols I and II, 'Supporting Papers to : The Evidence of David Armstrong'; 'Crown Counsel's Submission on Ngai Tahu Claim Settlement Act 1944', WAI-27, document M22; 'Supporting Papers to Crown Counsel's Submission on Ngai Tahu Claim Settlement Act 1944', WAI-27, document M23; 'Closing Address: Counsel for Crown', document WAI-27, X1.

11 Mason to Prime Minister, 6 August 1943, 3/3, Fraser Papers, National Archives; Waitangi Tribunal document WAI-27, M23, op cit.

12 Tirikatene to Prime Minister, 24 October 1944, 2067/0114 (with enclosures), Nash Papers, National Archives.

13 Taranaki Maori Land Claims Settlement Act; Ngai Tahu Claim Settlement Act; New Zealand Parliamentary Debates, vol 275, 1946, pp 188,191 (25.9.46); Tirikatene to Prime Minister, 12 September 1946, 2067/0163, Nash Papers, National Archives.

14 Ngai Tahu Maori Trust Board, 'Annual Report - 1968-69' and other documents in Waitangi Tribunal, WAI-27, M23, op cit; Waitangi Tribunal document WAI-27, M22, op cit; Armstrong, op cit, pp 86-8.

15 This discussion of the post-War Tainui settlement is adapted from Hill, op cit, which has full references. For the election statement, refer to Tirikatene to Fraser, 10 September 1946, 3/3, Fraser Papers, National Archives.

16 Finance (No. 2) Act, 1946, sec 2; Maori Purposes Act, 1949, sec 26.

17 Hill, op cit, p 11; Maori Purposes Act, 1953, sec 28.

18 Maori Purposes Act, 1949, sec 29; Maori Purposes Act, 1950, secs 58, 62.

19 Maori Purposes Act, 1953, secs 25 and 28; Maori Purposes Act, 1954, sec 4; Douglas Sinclair, 'Land Since the Treaty', in (ed) Michael King, Te Ao Hurihuri, Wellington 1975; Maori Trust Boards Act 1955; Maori Purposes Act 1958, sec 9.

20 Maori Purposes Act, 1977; Waitangi Tribunal 'Crown Counsel's Submission on Ngai Tahu Claim Settlement Act 1944', WAI-27, M22, p 32; New Zealand Parliamentary Debates vol 382, 1973, p 500 (6.3.73), vol 383, 1973, p1197(8.6.73); Tainui/Coalcorp case, Court of Appeal Judgement, CA 126/89, 3 Oct 1989, typescript; Douglas Sinclair, op cit.

21 New Zealand Parliamentary Debates, vol 275, 1946, pp 180, 192, 195(25.9.46); vol 380, 1972, pp 2552-3 (14.9.72); Tirikatene to Fraser, 12 Sept 1946, 2007/0163, Nash Papers, National Archives; Feist to Minister of Maori Affairs, 9 Nov 1971, in WAI-27, M23 op cit, p 48.

22 TOW 5/3/2 pt 2, Justice Department; 2067/0114, Nash Papers, National Archives.