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The Waikato-Tainui claim - the Treaty in practice

Legacy of war: settling the Waikato-Tainui claim

In 1995 New Zealand's Parliament heard how the invasion of the Waikato in 1863 was:

wrongful and totally unjustified ... the confiscations were unjust, and ... Waikato-Tainui, far from being in rebellion, were in fact defending hearth and home ... The Waikato war and the confiscations that followed caused devastation ... The people were dispersed, and there was widespread suffering, distress and deprivation ... The land of their ancestors had been taken from them with the stroke of a pen.

The Crown signed a Deed of Settlement with Waikato-Tainui that year. This included a formal apology for the actions taken in the wars of the 1860s and their legacy.

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Prelude to war

The ancestral lands of Waikato-Tainui stretch from the south head of the Manukau Harbour to the Mokau River. This territory, along with that of Ngati Maniapoto, was the heart of the King movement, or Kingitanga, formed in 1858. In that year a number of chiefs placed their tribal lands under the mana of King Potatau as a guarantee against sale. Within their territory, the king's law, administered by his runanga (tribal council), would prevail. Europeans were not necessarily excluded, as long as they acknowledged the king's authority.

Many settlers found it impossible to reconcile the aims of the Kingites with British sovereignty and rapidly increasing colonisation. Some Kingite chiefs tried unsuccessfully to stop their warriors from joining or supporting iwi fighting against the Crown in Taranaki in 1860. This fuelled calls for a decisive military confrontation with Waikato and their Ngati Maniapoto allies.

Conflict in the Waikato

On 9 July 1863 Governor Grey called on all Maori living north of the Mangatawhiri River (the northern boundary of the Kingitanga) to take an oath of allegiance to the Crown. Two days later he announced that military posts would be set up along the Waikato River; any Maori who resisted were liable to have their land confiscated. Next day British troops crossed the aukati or boundary at the Mangatawhiri. The Kingites saw this as a declaration of open war. The conflict that followed culminated in a British victory at Orakau at the beginning of April 1864.

The government's terms were harsh: submit to the Queen and surrender all arms and land, except for the reserves allocated by the government. Instead, the Waikato people withdrew south into the Ngati Maniapoto heartland, where they took up defensive positions. British troops did not pursue them. The Waikato war was effectively over.

Raupatu

The New Zealand Settlements Act 1863 allowed the confiscation of land belonging to any tribe, or section of a tribe, judged to have rebelled against the Queen's authority. The confiscated Waikato territory initially comprised 1,202,172 acres (4869 sq km), including virtually all of Waikato north of a line drawn from Raglan to Tauranga. Approximately 314,364 acres (1273 sq km) was 'returned' to those Waikato Maori who were judged not to have rebelled or, as is claimed by Waikato-Tainui today, to Maori who were not the correct owners. The area finally confiscated totalled 887,808 acres (3596 sq km). This was the raupatu.

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Resistance continues

The confiscation after the war was a source of great bitterness and stood in the way of any reconciliation in the following decades. Grey and the settler government tried to persuade the king and his followers to return to reserves on the confiscated land. Each time, King Tawhiao (who had succeeded Potatau) refused to accept anything less than the return of all confiscated land. To Europeans this was an impossible demand, given that the Crown had granted much of the territory to settlers. The king finally returned to Pukekawa in the lower Waikato in 1881, but the running sore of raupatu remained.

That year, Tawhiao and more than 500 of his followers finally laid down their weapons, although they declined to swear an oath of allegiance to the Queen. After this, the Maori King and his followers tried to regain their lands through peaceful means. Tawhiao took a petition to the Queen in 1884, but he was referred back to the New Zealand government, which rejected his plea.

Waikato Maori also refused to enlist in the New Zealand expeditionary force during the First World War. Consequently Waikato was the only Maori district to suffer conscription (compulsory military service). The anti-conscription movement in Waikato was directed by Te Puea Herangi, who led a revival of the Kingitanga.

Settlement?

The government began to take Waikato complaints more seriously in the 1920s. A Royal Commission was set up in 1926 to inquire into the confiscation. Known as the Sim Commission after Chairman W.A. Sim, it had restricted terms of reference. It was to investigate whether the land confiscated 'exceeded in quantity what was fair and just', and, if so, how much compensation should be offered. The issue of whether the invasion of the Waikato was justified or consistent with the Treaty of Waitangi was not under examination.

The Commission found that confiscation had been excessive. It recommended an annual payment of £3000, to be administered through a trust board. The Waikato people were far from satisfied. 'I riro whenua atu, me hoki whenua mai' (Since land was taken, land should be given back). Further negotiations and meetings followed.

Waikato people fully supported the war effort in the Second World War, and after the war the Labour government stated its determination to settle the grievance. In 1946 Waikato agreed to an annual payment of £5,000 (later \$15,000) in perpetuity, to be administered by a trust board. Prime Minister Peter Fraser stated that he had no doubts about the 'inherent justice of the claims of the Maori people'. The government saw this settlement as full and final.

Reviewing the claim

High inflation had heavily eroded the annual payment by the early 1980s. The circumstances surrounding the Waikato war and land confiscation came under review. The Waitangi Tribunal's report on the Manukau claim stated that 'the option of peace was not given and the Waikato tribes were forced into a defensive war ... all sources agree that the Tainui people of the Waikato never rebelled but were attacked by British troops in direct violation of Article II of the Treaty of Waitangi'.

The findings of the Sim Commission were examined. People noted that it had not conveyed a real sense of the crippling impact of confiscation on the Waikato people and that the annual payments were trivial by modern standards.

Waikato never considered the 1946 settlement as full and final. They asserted that the offer had been a fait accompli; given the circumstances of the time and the dire economic and social condition of their people they had felt they had to accept it. The government also acknowledged a need to

reassess the 1946 settlement and began a dialogue on this with Waikato in 1989.

Deed of settlement

This dialogue developed into full negotiations in the early 1990s. Tainui opted to conclude a Treaty claims settlement under the 'direct negotiations' system (bypassing the Waitangi Tribunal) that the government was now offering. In May 1995 the Crown signed a Deed of Settlement with Waikato-Tainui that included cash and land valued at \$170 million. It was, the deed noted, an endeavour between the Crown and the claimants to settle the Waikato claim and to remove the sense of grievance felt by Waikato that went back to the 1860s.

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