The Treaty in practice

Page 3 – Obtaining land

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How to obtain land for European settlement was always a key issue in Ne Zealand. The Treaty of Waitangi gave the Crown the exclusive right to buy Māori land, but things changed from the 1860s. As the conflict of the 1860s c to a close, the government backed up its conquest through the law and a new court system. Māori lost thousands of acres of land, and the effects would be felt for decades to come.

The Native Land Court

The Native Land Court was created in 1865. This centralised, Pākehā-controlled court was based largely on the settlers' legal system and converted customary title to land to individual title, effectively making it easier for Māori land to be sold to settlers.

The court replaced a system that had been set up in 1862. Under the Native Lands Act of that year, settlers could directly buy Māori land – for the first time since the mid-1840s. Māori had a large role in deciding land ownership. Eleven Māori became judges of the localised court system, which was trialled with some success in the north. All this changed after 1865. The Māori judges were demoted to the position of assessors and no longer had a decisive role in matters of Māori custom.

The Native Land Court was required to name no more than 10 owners, no matter the size of the block of land. The newly named owners then held their lands individually, not communally as part of (or as trustees for) a tribal group. The new owners could deal with the land as they saw fit, including selling it. Some sold willingly, while others were picked off by shady dealers who got the sellers into a debt that could only be paid by selling land.

The courts often sat far from the lands under investigation. Hearings could stretch on for months, making it very expensive for Māori to attend. Any individual, whether a rightful owner or not, could apply for investigation of title. This forced whole communities into court because it only considered evidence presented to it on the day. If customary owners boycotted proceedings or were simply unaware their lands were under investigation, the land could be awarded to others.

Even successful claimants found that it was so expensive to secure title (including court fees and payments to lawyers, interpreters, surveyors, hoteliers and the like) that they had to sell some of the interest in the land they had been awarded. Debt entrapment became a standard technique of unscrupulous land speculators, and there were many fraudulent dealings.

The court ignored complex Māori customs relating to land ownership and succession in favour of a simplified set of rules. There was little recognition of tribal variations in custom or of the way in which resource rights to the same lands could be spread among several different groups. This often increased tensions among tribes appearing in court, forcing them to compete for exclusive rights to lands they might once have shared.

Undermining tribal ownership

The court was doing more than just converting customary Māori title into lands held under grant from the Crown. It was also removing communalism and encouraging the sale of Māori lands to the settlers. All of these were factors that would also undermine tribal authority.

The means of issuing land titles reflected this. Parliament attempted to ensure that the 10 named owners of a parcel of land were trustees for the rest of their tribe. The first chief judge, Francis Dart Fenton, simply ignored this. He believed this kind of communal ownership was not the aim of the 1865 act. As a result, large numbers of Māori were dispossessed of their lands. Māori communities set up their own tribal komiti (committees) as an alternative to the Native Land Court. The Crown recognised these only as advisory bodies to the court.

The Native Land Act 1873 took individual ownership even further. It stipulated that every owner was to be listed on the title but that title could no longer be awarded

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to hapu or iwi, as was theoretically possible under the 1865 act. Each named owner was free to sell his or her interests without reference to other owners. There was no legal basis for multiple Māori owners to act as a group until 1894. Many communities found that their land was now a series of paper titles owned by unaccountable individuals. The only thing they could effectively do with their land was to sell it.

Land purchasing from the 1870s

The government's ambitious immigration and public works policies sparked another round of aggressive land purchasing from the early 1870s. By the early 1910s nearly three-quarters of the North Island had passed out of Māori ownership. In the South Island, where most land had been acquired by the Crown before 1865, Māori retained less than 1%.

Not all of this land had been sold. Under the Public Works Lands Act 1864 and subsequent laws, Māori (and European) lands could be acquired for roads, railways and other public works, sometimes without compensation. Some Māori land was targeted for compulsory acquisition in preference to nearby Pākehā land. Roads were sometimes circuitously routed through Māori reserves. Māori also complained that land taken for schools was neither used for such purposes nor returned to them if it was not used. They also claimed that later they had to pay rates to local bodies, on which they were not represented, for services they did not receive.

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