(Belgrave, M., 2005: 227)

HISTORICAL FRICTIONS

MAORI CLAIMS & REINVENTED HISTORIES

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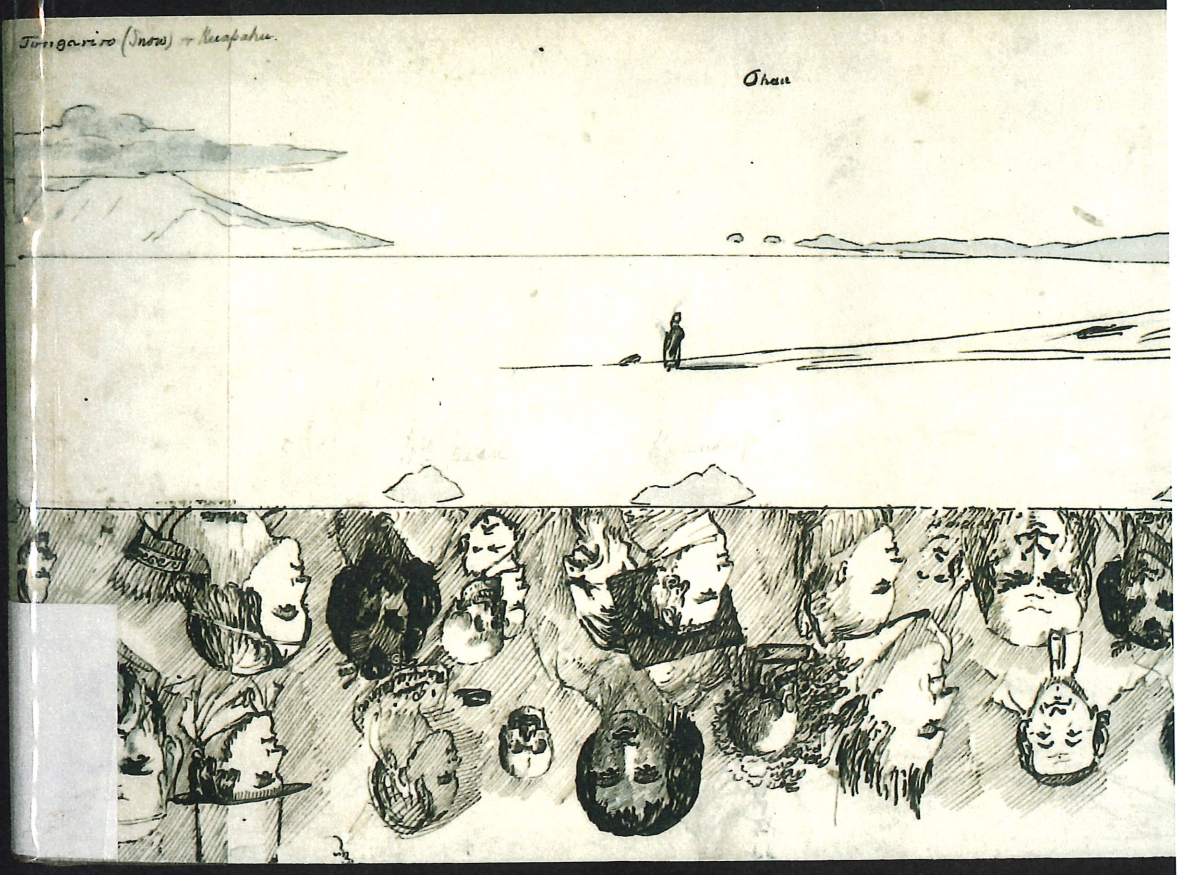

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argued that the emigrants, who had gone to Wellington, the South Island and the Chathams, could have no remaining interests in Taranaki. Their rights had been abandoned. By excluding everyone but the handful of Maori who were on site, the title to the land was stripped of the complexity on which most transactions elsewhere had foundered. While Spain denied many of the company's claims around Cook Strait because many owners were not signatories, in Taranaki there were no other rights that Spain was prepared to recognise. Waikato, who still threatened Taranaki in the early 1840s, had their claims purchased by the Crown in 1842. Although this appears to have allowed some of the Taranaki exiles, and eventually prisoners-of-war, to return home, Waikato would continue to exercise some influence in the area.

Spain's reasons for denying the emigrants their interests are not too difficult to locate. He was concerned primarily with the pragmatic question of finding a compromise between Maori claims, as he saw them, and the practical need of colonists for secure titles to land. He inquired extensively into Maori custom and believed that his decisions respected customary practice where this was certain, 'but where doubtful or not clearly ascertained', he 'allowed justice, equity, a common-sense view, and the good conscience of each case, to supply their place'.[17] Maori custom was accepted only to the extent that it corresponded to the interests of the colony. Spain's argument was consistent, but not bound by the standard European texts of the day, Emmerich de Vattel[18] and the international case law that had been generated in the Americas and elsewhere in the British Empire. Vattel linked occupation, and in particular cultivation, with rights to land. Spain wrote:

> It appears to me that those Ngatiawa [Te Atiawa] who, having left this district after the fight [with Waikato], sought for and obtained another location, where they lived and cultivated the soil, and from fear of their enemies did not return; cannot show any equitable claim, according to native custom or otherwise, to the land they thus abandoned. Had they returned before the sale, and with the consent of the resident natives cultivated the soil without interruption, I should have held that they were necessary parties to the sale.[19]

Maori title depended on custom, in Spain's view, but this was equated with cultural and economic activity as defined by European practice. The problem with recognising title based on cultivation is that it made recognising the rights of absentee owners very difficult. Spain was particularly concerned about not recognising the rights of returning prisoners-of-war kept as slaves, as this could undermine 'almost every title to land' and lead to endless litigation.

By 1844 the settlers were already sitting in New Plymouth, looking covetous[ly] on the land that Spain recommended should be theirs. However,

the vast majority of dispersed Taranaki Maori considered the sale void. Governor FitzRoy was not obliged to implement Spain's recommendations, although he was on difficult legal ground when he made Crown grants of land without recommendations from the Land Claims Commission. He chose not to recommend an award of land in Taranaki, appearing to accept the military difficulties inherent in such a decision and the representations of Bishop Selwyn and Clarke that the Ngamotu deed should not be relied on.[20] This was a political decision, but it also demonstrated FitzRoy's tendency to prefer the view of the missionary humanitarians to that of the increasingly influential New Zealand Company. His priority was the Wellington settlements and the Wairau. To ensure Maori compliance in negotiating compensation and new land sales in these areas, FitzRoy had to sacrifice the settlers' interests in Taranaki, for, if he did not acknowledge the rights of Taranaki hapu back in Taranaki, this would have jeopardised his negotiations with the same people whose claims around Wellington were admitted. FitzRoy's refusal to hand Taranaki over to the settlers was therefore based on a combination of political necessity and a sense of the justice of Maori claims, but he created problems for himself and his successors as, during the 1840s and 1850s, governors endeavoured to provide land for the encircled and increasingly embittered settlers in Taranaki.[21] In this they were substantially successful, with over 75,000 acres purchased between 1844 and 1859, well above the 60,000 recommended for the settlement by Spain. However, from the very first acquisition, the 3500 acres negotiated by FitzRoy in November 1844 to provide a legitimate title to the land on which the company settlers squatted, these purchases were divisive, setting those who were willing to sell against those who were not. The government's determination to push through sales, coupled with the complex nature of the customary interests in the land, ensured that many of these sales went through without the full agreement of those who held such interests.

During the 1844 negotiations for the FitzRoy block, many of the Te Atiawa participants made it very clear that this would be the only purchase they allowed, and insisted on the removal of settlers from beyond its boundaries.[22] When the much less conciliatory Grey arrived with sterner instructions from the Colonial Office, he met with heated opposition in early 1847, particularly from Wiremu Kingi Te Rangitake, a Te Atiawa rangatira living at Waikanae on the west coast north of Wellington. Absentee chiefs were united with locals in rejecting further sales. To Grey's annoyance, Kingi announced that he and his people would return to Waitara and settle on the very land most desired by the settlers because of its potential as a port. Grey's response was to go around Te Atiawa by buying the Tataraimaka block of 4000 acres and the Omata block of 12,000 acres from neighbouring Taranaki chiefs. Some [t]y-eight Te Atiawa chiefs from Ngai Te Whiti then weakened and sold the