

CHAPTER 3

TAURANGA MAORI AND THE CROWN, 1840–64

3.1 INTRODUCTION

This chapter provides a linking narrative of the developing relationship between Tauranga Maori and the Crown between the signing of the Treaty of Waitangi in 1840 and the beginning of the Tauranga war in 1864. We relate events in the region to broader developments in the colony, particularly the gathering conflict between the Crown and Maori over land, which erupted into war at Waitara in 1860, and over the Kingitanga, which led to the invasion of the Waikato by British troops in 1863. We discuss these events to provide the necessary context for an accurate understanding of the Tauranga raupatu.

After briefly describing the arrival of Pakeha in the Tauranga district, we discuss the signing of the Treaty there. Next, we comment briefly on the involvement of Tauranga Maori in the emerging colonial economy and at greater length on the main issue of relevance for us: the extent of the Crown's presence in Tauranga before the wars of the 1860s and the degree to which English civil or criminal law was applied to Maori. For some time, it was not at all clear how far the Crown could go, in practice, in applying English law to Maori *inter se*, or to matters between Maori and Pakeha, though the Crown did try on occasions to apply the law in both circumstances. Some of these attempts are examined in Professor Alan Ward's pioneering 1973 study *A Show of Justice*,¹ and we look at two examples that relate to Tauranga, both concerning fights in 1842 between Tauranga Maori and their long-standing enemies: Ngati Tamatera in the west and Ngati Whakaue in the east.

Finally, we examine another facet of the relationship between the Crown and Tauranga Maori: the involvement of the latter in the Kingitanga and the Taranaki and Waikato wars. The question here is whether the adherence of Tauranga Maori to the Kingitanga was a proper exercise of their rangatiratanga or, as the Crown maintained at the time, a breach of their loyalty to the British Queen. In our next chapter, when we describe how, after the Waikato war, the Queen's troops fought Tauranga Maori at Pukehinahina and Te Ranga, that question will be of crucial importance.

1. See Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), esp pp 42–60

3.2 THE ARRIVAL OF PAKEHA IN TAURANGA

In November 1769, on his first Pacific voyage, Captain James Cook sailed his ship, the *Endeavour*, past Tauranga. He described the coastal area as being full of plantations and observed a number of fortified villages on promontories.² It would be 50 years before the next European visitor arrived, and by then the introduction of guns, pigs, and potatoes would have already begun to transform the lives of Tauranga Maori. The devastating warfare that followed the introduction of firearms was dealt with in the previous chapter; here, we discuss the changes brought about by the arrival of missionaries and traders.

3.2.1 Missionaries

When the Reverend Samuel Marsden visited Tauranga in 1820, he found that, despite having had no previous onshore contact with Pakeha, local Maori had already acquired pigs and potatoes, two important food items introduced by the Europeans. There were several further visits to Tauranga by missionaries from the Church Missionary Society (CMS) between 1826 and 1834. The missionaries found three major pa at Otumoetai, Te Papa, and Maungatapu. They reported that Maori were keen to have missionaries settle among them, and in 1835 a mission station was established at Otamataha, on the tip of the Te Papa Peninsula. Previously, an important pa had existed at Otamataha, but it had been destroyed with great loss of life during a Ngati Maru raid in 1828. Consequently, the site was considered tapu and was no longer occupied. The willingness of Tauranga Maori to see the missionaries settle at Otamataha may have been due in part to a belief that the missionaries would help to protect the site. It is also likely that they hoped that the missionary presence would attract trade and deter attacks by their enemies. From the missionaries' point of view, Te Papa was ideally located on good flat land between the two most populous pa, Otumoetai and Maungatapu. The outbreak of warfare with Te Arawa in 1836 forced the CMS to abandon the mission station, but in January 1838 Alfred Brown arrived at Te Papa as the new resident missionary, and he quickly set about trying to negotiate the purchase of the land occupied by the mission.³ (The CMS's acquisition of what we refer to as 'the CMS blocks' in 1838, the Crown's investigation of the transactions in 1842, and the transfer of the blocks to the Crown in 1867 are discussed in chapter 8.)

Brown had some notable early successes in his efforts to convert Maori to Christianity, one of them being his conversion of the renowned tohunga Tahu (one of the signatories to the deeds conveying the CMS blocks), who became a mission teacher.⁴ Even more significant for the future of Tauranga was the conversion of the young Ngati Haua rangatira Tarapipipi, son of the famous warrior chief Te Waharoa.⁵ Tarapipipi, who took the name Wiremu Tamihana

2. Document D7, p 21

3. Document A29, pp 5–12; doc J2, pp 36–39

4. 'Matiu Parakatone Tahu', DNZB, vol 1, pp 414–415

5. 'Wiremu Tamihana Tarapipipi Te Waharoa', DNZB, vol 1, p 515–516

(William Thompson) at his baptism in June 1839, was to play an important role in the events which are the focus of this report. It was not long, however, before Brown faced competition from those he derisively referred to as ‘papists’. Roman Catholic bishop Jean Baptiste Pompallier visited Tauranga in March 1840, and two months later a permanent Catholic mission station was established at Tauranga.⁶ The Catholic church would also have some success in converting Tauranga Maori, and to this day Catholicism has continued to be influential in some Tauranga hapu.

3.2.2 Traders

During their 1826 visit, the CMS missionaries became the first Pakeha to engage in trade with Tauranga Maori; they found that the local Maori had an abundance of pigs and potatoes, which they were eager to trade.⁷ By the late 1820s, groups of Te Arawa and Ngai Te Rangi were scraping flax for visiting European traders, and in 1830 Phillip Tapsell settled at Maketu, where he acted as the flax agent for a Sydney trading company.⁸ According to Richard Boast, who gave evidence for Ngai Te Rangi, Tapsell was taken to Maketu by Hori Tupaea of Te Whanau a Tauwhao and several Ngati Whakaue chiefs.⁹ The land on which Tapsell established his trading station was purchased from Ngai Te Rangi, but before long Maketu developed into a large Te Arawa community. Ngai Te Rangi responded by enlarging their nearby pa at Te Tumu. Before long, both communities became involved in scraping flax to trade for muskets, powder, and other European goods. As we related in section 2.3, the area around Maketu became the site of warfare between Te Arawa and Ngai Te Rangi in the later 1830s.¹⁰

In the early 1830s, several Pakeha traders also established themselves at Otumoetai, Te Puna, and Te Papa, and Maori engaged in trading pigs, potatoes, and dressed flax for muskets, powder, blankets, tobacco, and other goods. Three Frenchmen, Louis Bidois, Emile Borell, and Pierre Potier, who all married Pirirakau women, were based at the mouth of the Wairoa River. Another early trader who took a local wife was John Faulkner; he married Ruawahine of Ngai Tukairangi and established a trading station at Otumoetai. Such marriages were a necessary means for Pakeha to gain acceptance by local Maori. By the end of the 1830s, though the flax trade was in decline, Tauranga Maori were still actively trading pigs and potatoes.¹¹ Gilbert Mair senior, the captain of the CMS vessel the *Herald*, described Tauranga in 1839 as:

6. Document J2, pp 42–43; Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 50–51

7. Document J2, pp 56–57

8. Stokes, *A History of Tauranga County*, p 53

9. Document I12, pp 53–54

10. Document A2, p 7

11. Stokes, *A History of Tauranga County*, pp 58–59; doc A47, p 37; doc J2, pp 58–60; ‘John Lees Faulkner’; ‘Ruawahine Irihapeti Faulkner’, DNZB, vol 1, pp 118–119

A very fine country, with much level land about the sea coast, the soil being very fertile. Potatoes and Corn are to be found in great abundance. More Flax has been dressed [here] than at any other place on the coast, and I have known near 150 tons to be procured in the course of one year. It has become a famous place for curing pork.¹²

Despite the brisk trade in goods, few attempts were made to buy Maori land before 1840. Apart from the two CMS transactions at Te Papa, only seven claims relating to pre-Treaty land transactions in the Tauranga area were submitted to the Land Claims Commission.¹³ Of these, three involved land allegedly acquired by Pakeha men through marriage to Maori women, while four involved other alleged purchases or gifts. One claim for half an acre was eventually recognised by a Crown grant, while a claim on behalf of Faulkner's family was settled by the commissioner of Tauranga lands.¹⁴

3.3 KAWANATANGA AND RANGATIRATANGA AT TAURANGA, 1840–64

In this section, we examine the application of kawanatanga, or governance, to Tauranga Maori. We begin with a brief outline of the coming of the Treaty of Waitangi to Tauranga and its consequences for local Maori. Then, we discuss economic developments and social conditions, with a brief note on Crown involvement in commercial activity at Tauranga. Finally, we consider the extent to which the Crown's kawanatanga authority was applied at Tauranga in practice in the period 1840 to 1864.

3.3.1 The Treaty of Waitangi in Tauranga

Captain William Hobson arrived in New Zealand on 29 January 1840, bearing instructions from the British Government to negotiate for the cession of sovereignty by Maori to the Crown. Hobson set out to achieve this goal by means of a treaty. This treaty was drafted soon after Hobson landed in New Zealand and, on 6 February, just nine days after his arrival, he secured the signatures of 45 chiefs to it at Waitangi. He then obtained more than 56 signatures at Hokianga on 12 February. This success persuaded him to seek the cession of the whole of New Zealand.

On 1 March 1840, Hobson suffered a stroke and partial paralysis, from which he did not recover sufficiently to continue the negotiations with Maori himself. Instead, he had copies of

12. Gilbert Mair senior, captain of the CMS vessel *Herald*, 1838, MS-papers-2025, ATL (doc M9, p 36)

13. The Land Claims Commission was established in 1840 to investigate pre-1840 land purchases and make recommendations to the Governor that Crown grants be issued in favour of purchasers who had legitimately acquired land from Maori: see sec 8.3.

14. Document A13, pp 19, 28–31

the Treaty sent around the country with military officials and missionaries so that further Maori signatures could be gathered. Two copies were taken to Tauranga. The first was sent to Alfred Brown, the resident CMS missionary. On 1 April, Brown noted in his diary that he had ‘Received communications from His Excellency the Lieut-Governor wishing me to procure signatures of any leading Chiefs in this neighbourhood to the treaty which had been signed at Waitangi’. But Brown does not appear to have regarded the task as being one of momentous importance, merely noting on 10 April that he ‘gave up the day to procuring signatures of the Natives to the Government treaty’.¹⁵ Brown had been reluctant to broach the Treaty with the chiefs in view of recent intertribal fighting in the district.¹⁶ Altogether, Brown gathered 21 signatures, though it is not clear whether he obtained all of them on 10 April. Seventeen of the signatures were witnessed by CMS staff members Hoani Aneta, Henry Taylor, and James Stack, while the other four, including that of Aneta, were witnessed by Stack alone, which suggests that these were a later addition. Among the signatories were several important rangatira: the principal Ngati He chief at Maungatapu, Taipiri; the Ngai Te Rangi chief Te Whanake; and the Ngati Pukenga rangatira Te Kou. But the prominent Te Whanau a Tauwhao rangatira Tupaea withheld his signature. The full list of signatories was: Hoani Aneta, Huitao, Kapa, Nuka (Taipiri), Pikitia, Putarahi, Reko, Tamaiwhawhia, Tanarumia, Tari, Te Haereroa, Te Hui, Te Konikoni, Te Kou, Te Mako, Te Matatahuna, Te Paetui, Te Peika, Te Pohoi, Te Tutahi, and Te Whanake.¹⁷ According to Dr Claudia Orange, Brown did not immediately send the signed copy of the Treaty back to Hobson because he hoped that Tupaea and some others would eventually sign it.¹⁸

Hobson was especially anxious to secure the signatures of Tauranga chiefs in view of the previous fighting in the district. A second copy of the Treaty was taken to Tauranga by Major Thomas Bunbury on 11 May 1840. To his surprise, Bunbury found that Brown had already collected signatures, though he was keen to add those of Tupaea and other Otumoetai chiefs. Bunbury met the chiefs at Te Papa the day after his arrival and, with Edward Williams reading the Treaty and interpreting the discussion, urged them to sign so that regular government could be established and the growing number of Pakeha in the country controlled. But the chiefs were not persuaded, since they could not see how, if they ceased fighting, the Government could protect them. Moreover, Bunbury had not brought the blankets that were usually distributed to those who signed the Treaty. Such impediments might have been overcome had Bunbury, impatient with the ‘dilatatory habits’ of the Maori, given them adequate time for discussion. But he was unwilling to wait, and so he left for Maungatapu Pa without having

15. The Elms Trust, ed, *The Journals of AN Brown: CMS Missionary Tauranga, Covering the Years 1840–1842* (Tauranga: The Elms Trust, 1990), p 12

16. Claudia Orange, *The Treaty of Waitangi*, 2nd ed (Wellington: Bridget Williams Books Ltd, 1995), p 70

17. Claudia Orange, for The Ministry for Culture and Heritage in Wellington, *Tauranga Treaty Copy*, undated (<http://www.nzhistory.net.nz/gallery/treaty-signs/tauranga.htm>, downloaded 16 November 2003)

18. Orange, *The Treaty of Waitangi*, pp 70–71

obtained any more signatures. Bunbury did not stay long at Maungatapu either – having been assured by the chiefs that the important men had already signed the Treaty, he left hurriedly, declining an invitation to dine.¹⁹

In subsequent years, the refusal of Tupaea and other Tauranga chiefs to sign the Treaty was used by them as a justification not to accept the Queen's sovereignty. As we note below, this argument was used by the Marutuahu chief Taraia in 1842, when he denied that the Governor could intervene in his conflict with Ngai Te Rangi. However, Maori accession to the Treaty was only one of the means whereby Britain gained sovereignty over New Zealand (albeit an important means). Hobson used the accession of the many chiefs who had signed the Treaty as the reason for his declaration of sovereignty over the North Island on 21 May 1840. But, having not received the copies of the Treaty bearing the signatures of South Island chiefs by that date, he declared British sovereignty over that island by virtue of Cook's discovery. The publication of Hobson's proclamation in the *London Gazette* on 2 October 1840 completed the process of British acquisition of sovereignty over New Zealand.²⁰ By that time, some 530 chiefs had signed either the Maori or the English text of the Treaty, making it one of the most thoroughly signed treaties between indigenous people and a European government in history. Though important chiefs such as Taraia, Tupaea, and most of the Arawa chiefs had not signed the Treaty, once British sovereignty was proclaimed over New Zealand they became British subjects, bound in law by the sovereignty of the Crown, whether or not they liked it and whether or not they understood its full legal purport. The obverse of this, of course, is that all chiefs, whether or not they signed the Treaty, were entitled to what the Treaty, in both of its texts, promised them.

This long-accepted legal view was reiterated by the Rekohu Tribunal, as follows:

the Colonial Office took the view that the Treaty applied to all, whether they had signed it or not. The Treaty was primarily an honourable pledge on the part of the British to the people of such lands as might in fact be acquired or annexed. The consensual nature of its drafting, and to a large extent its completion, does not prevent its application as a unilateral undertaking where required, as much binding upon the honour of the Crown as a Treaty to which there was full consent. There appear to have been significant North Island rangatira who did not sign, and no signatories for the greater part of the South Island when sovereignty over that area was proclaimed, and yet the Treaty must be taken to have applied in all places when sovereignty was assumed.²¹

19. Orange, *The Treaty of Waitangi*, pp 73–75

20. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), pp 162–163

21. Waitangi Tribunal, *Rehoku: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 30

3.3.2 Economic and social developments at Tauranga, 1840–64

Until war broke out in 1864, Tauranga was an outpost of a fledgling colonial economy centred on Auckland. Though the Anglican and Catholic missions at Tauranga encouraged Maori agriculture, and Pakeha already resident in Tauranga helped to facilitate trade, the initiative lay mainly with Tauranga Maori themselves. There was disagreement between Crown and claimant witnesses before this Tribunal over the degree to which Tauranga Maori participated in the new economy of the Pakeha and the benefits they derived from it before 1864.²² But, because of a lack of data from so early in the colony's history, we are unable to come to firm conclusions on such matters. Nevertheless, the available information suggests that Tauranga Maori did attempt to take advantage of new trade and agricultural opportunities as they became available.

Edward Shortland estimated that in 1843 Tauranga Maori cultivated four acres of wheat, 500 acres of maize, 1800 acres of potatoes, and 600 acres of kumara.²³ As the Auckland market developed, Tauranga Maori, in common with Maori elsewhere, increased their production of grains, vegetables, and fruits. Initially, the produce was sold to new colonists not yet able to grow their own, but in the decade from 1849 most was exported to the Californian or Victorian goldfields. Maori trade with Auckland was widely alluded to, albeit not fully quantified, in returns published in early newspapers, in Auckland Provincial Council records, and in books such as William Swainson's *Auckland, the Capital of New Zealand*. Swainson recorded that in 1852:

one thousand seven hundred and ninety-two canoes entered the harbour of Auckland, bringing to market by this means alone two hundred tons of potatoes, fourteen hundred baskets of onions, seventeen hundred baskets of maize, twelve hundred baskets of peaches, twelve hundred tons of firewood, forty-five tons of fish, and thirteen hundred pigs; besides flax, poultry, vegetables, &c. They are the owners also of numerous small coasting craft – many of them purchased at a cost of upwards of two hundred pounds each; also numerous flour mills, worked by water power.²⁴

Swainson did not specify the contribution of Tauranga Maori, though Cooper's 1857 *Settlers' Guide* stated that they owned 'numerous coasting vessels' and supplied Auckland with perhaps 'more wheat, potatoes, India corn, onions, etc than any other part of New Zealand'.²⁵ Wheat was probably the most important cash crop of the late 1850s and early 1860s, and Governor George Grey claimed that, in the year before the Tauranga wars, Maori

22. See doc J2, pp 59–62; doc M9, pp 33–56; doc N7, pp 11–13; doc N17, p 7; doc N15, pp 4–5; doc P15, pp 39–40

23. Shortland to Clarke, letter and enclosed return, 13 July 1844, MS-86AA, Hamilton Public Library (doc M9, p 40)

24. William Swainson, *Auckland, the Capital of New Zealand and the Country Adjacent: Including Some Account of the Gold Discovery in New Zealand* (Auckland: J Williamson, 1853), p 142

25. Isaac R Cooper, *The New Zealand Settler's Guide* (London: E Stanford, 1857) (as quoted in Stokes, *A History of Tauranga County*, p 65)

in the district had harvested and sold 100,000 bushels of it.²⁶ This lends support to Cooper's view that Tauranga Maori were amongst Auckland's leading suppliers of produce.

In contrast to such contemporary assessments, Dr John Battersby, in evidence presented on behalf of the Crown, argued that 'Tauranga was only a small contributor to colonial trade in the 20 years before 1860' and there was accordingly little trade to disrupt when the war and confiscation came to the region.²⁷ In support of this argument, Battersby pointed to, for example, the relatively infrequent record of ships from Tauranga entering the port of Auckland.²⁸ However, the figures of ship arrivals in Auckland that he used are not a complete record of all ship visits to Auckland in the period and do not account for all types of vessels used by Maori.²⁹ As with other commercial or social developments of the period before 1864, the evidence presented to this Tribunal on Tauranga Maori participation in coastal shipping and trade is not comprehensive enough to allow us to come to any firm conclusions.

Though Tauranga Maori, like Maori in other districts, were eager to take up new agricultural and commercial opportunities, this enthusiasm did not necessarily bring about an improvement in Maori living conditions. For instance, we can be reasonably sure that the Maori population of Tauranga was dropping throughout the period. After 1842, this decrease was due to imported infectious diseases rather than warfare. We lack reliable statistics, but estimates suggest that the population of Tauranga Maori was declining steadily, as was the national Maori population. A visiting missionary, James Hamlin, estimated that there were 700 fighting men at Tauranga in 1840, which, if correct, would have put the total population at about 2000. By the late 1850s, a British naval officer, Commander Drury, and an Austrian scientist, Christian Hochstetter, each estimated a total Maori population of between 800 and 1000. In 1862, William Colenso stated definitively that the Maori population of Tauranga was 957.³⁰

Finally, we note there was little, if any, Crown involvement in Maori agriculture and commerce at Tauranga during this period, as was to be expected in the early years of the colony. Though Governor Grey, in particular, attempted to encourage Maori economic development, the practical aid that he did provide was limited.³¹ But if the Crown did little to assist Tauranga Maori to become involved in the colonial economy, it did not, at this stage, do anything to disadvantage them. In particular, it did not target their land for European settlement. (At that time, Crown purchasing was concentrated largely in the vicinity of Auckland, the New Zealand Company settlements on both sides of Cook Strait, and in the pastoral districts of Otago, Canterbury, the Wairarapa, and Hawke's Bay.) In Tauranga, the Crown dealt with pre-1840 land claims such as those of the CMS (discussed in chapter 8), but it did not purchase

26. Document A38, p7

27. Document M9, pp 55-56

28. Ibid, pp 33-56

29. Cross-examination of Battersby, fourteenth hearing, 15 October 2001, tape 1, side B

30. Stokes, *A History of Tauranga County*, p 70

31. Document M9, pp 54-55

any land before 1864. Nevertheless, by the 1850s Tauranga Maori were aware of the pressures being exerted on other Maori to sell land, particularly those in Taranaki and the Waikato.³²

3.3.3 Kawanatanga in Tauranga

(1) Introduction

As Alan Ward noted in *A Show of Justice*, during the negotiation of the Treaty the extent to which kawanatanga would impinge on rangatiratanga was not fully discussed, though the British ‘still had ill-formed intentions of using chieftainship, transformed by Christian education . . . as the pivot of local administration in the land’.³³ This was the British colonial policy known as ‘indirect rule’, which relied on local princes in much of imperial India and paramount chiefs in Britain’s African colonies (and even in late-nineteenth-century Fiji) to apply customary rather than English law to local peoples. Vestiges of that policy were haphazardly applied in New Zealand, where Governors and Ministers relied on chiefly ‘allies’ for advice and assistance. The New Zealand chiefs were not formally incorporated into the structure of government, except at the bottom tier of administration as assessors, or as assistants to colonial officials or judges.

At Waitangi in 1840, various promises were made to respect Maori law and custom, shorn of such excesses as warfare, cannibalism, and infanticide. Following a request from Bishop Pompallier, Hobson agreed to announce that all religions would be respected. At the suggestion of William Colenso, he added that his promise would extend to Maori ritenga (custom). Hobson also sought to counter suggestions that Maori authority would be degraded by the advent of British authority, and he issued a circular telling the chiefs that ‘the Governor will ever strive to assure unto you the customs and all the possessions belonging to the Maoris’.³⁴ When George Clarke senior was appointed chief protector of aborigines later in 1840, he was instructed to assure Maori that ‘their customs would not be infringed, except in cases that are opposed to the principles of humanity and morals’.³⁵ These official pronouncements show that Maori generally, and especially those in areas such as Tauranga where there was virtually no civil administration, were not expected to modify their customary law to conform with English civil and criminal law.

Clarke’s appointment was the first step in the development of a native administration in New Zealand. Several sub-protectors were appointed to assist him, and they were posted to outlying districts with the authority to deal with petty cases of crime or conflict according to ‘native usage’. Edward Shortland was appointed sub-protector of aborigines for the

32. For example, the ‘loyal’ chief Rawiri Puhirake reportedly stated to Thomas Smith in 1861 ‘Let the Government be cautious; if land is bought there will be trouble’: Smith, ‘First Report’, 26 December 1861, AJHR, 1862, E-9, sec 4, p 5.

33. Ward, p 44

34. Hobson to New Zealand chiefs, 27 April 1840 (as quoted in Ward, p 45)

35. Clarke, 1840, BPP, 1844, app, p 349 (as quoted in Ward, p 45)

3.3.3(2)

eastern district, including Tauranga, and he was also made a police magistrate. He set up his headquarters at Maketu in October 1842 but was sent to the South Island to investigate land claims in July 1843 and did not return until February 1844. Shortland left Maketu for good in April 1845, but not before being involved in a hearing into the validity of the CMS purchases at Te Papa (see ch 8). He was not replaced.³⁶

(2) *The Ongare incident*

Soon after arriving at Maketu in 1842, Shortland was involved in attempts to resolve a conflict which had erupted between Ngai Te Rangi and the Marutuahu confederation over land at Ongare. This headland in the harbour in the western part of the Tauranga Moana district was on the frontier between the two groups. In our last chapter, we briefly described conflicts between the two sides during the ‘musket wars’, which left the coastal area between Whitianga and Katikati almost deserted by the 1830s. Towards the end of the decade, there was some reoccupation, particularly of Ongare, under the leadership of the Ngai Te Rangi chief Te Whanake, and Paetui, who appears to have had links with both sides.

According to the Ngati Tamatera rangatira Taraia Ngakuti Te Tumuhuia, Te Whanake’s occupation was approved by Marutuahu on the condition that Te Whanake would only grow crops there. However, Te Whanake built a pa and desecrated urupa where some of Taraia’s relatives were buried.³⁷ When Taraia heard of Te Whanake’s actions, he led a war party to Ongare and, on the night of 22 May 1842, attacked Te Whanake’s kainga. Seven people were killed (two of whom were eaten³⁸) and about a dozen others were taken as slaves. Alfred Brown described the victims as professed Christians and part of his congregation.³⁹ Te Whanake and Paetui had signed Brown’s copy of the Treaty but Taraia had refused, and he roundly dismissed the Crown’s right to intervene in his dispute with Ngai Te Rangi. In Taraia’s opinion, the Ongare attack was a matter of utu – it was payment for violence against his ancestors by Ngai Te Rangi. Tauranga Maori were apparently keen to seek utu of their own but Brown dissuaded them from doing this. Instead, they wrote to Clarke requesting that he come to Tauranga and inquire into the incident.⁴⁰

Clarke met Taraia in June and was told that the incident was between him and Ngai Te Rangi and had nothing to do with the Governor.⁴¹ Following this, the Executive Council met and considered using force to apprehend Taraia and release the prisoners. But Hobson had only 40 troops available and this was considered insufficient for the task. Clarke determined

36. ‘Edward Shortland’, DNZB, vol 1, pp 395–396

37. Taimoana Turoa, *Te Takoto o te Whenua o Hauraki*, edited by Te Ahukorami Charles Royal (Auckland: Reed Publishing, 2000), p 237 (doc M10, pp 12–13); doc M10, pp 12–13; doc M14, pp 2–3

38. Document M10, p 12; Evelyn Stokes, *Whanau A Tauwhao: A History of a Ngai Terangi Hapu*, University of Waikato Centre for Maori Studies and Research, occasional paper 8 (October 1980), p 43

39. Document M10, pp 14–15

40. Document M9, p 1

41. *Ibid*, p 2

to try mediation once more. On 8 July 1842, he and the Colonial Secretary, Willoughby Shortland, met with Taraia, who again reiterated that his fight with Tauranga Maori need not concern the Governor. He emphasised that he had not signed the Treaty of Waitangi and that the Governor had no authority over him.⁴² After their meeting with Taraia, Clarke and Shortland moved on to Tauranga to meet with the local chiefs there.

While Shortland and Clarke were in the Tauranga Moana district, they proposed that the Crown should purchase the disputed area at Katikati in order to create a buffer zone between Ngati Tamatera and Ngai Te Rangi. Although this proposal gained the support of both Taraia and some of the Christian chiefs at Tauranga, other leading Tauranga chiefs, including Hori Tupaea, at first refused to sell any land.⁴³ In the meantime, the Tauranga chiefs agreed to leave the disputed area between Hauraki and Tauranga unoccupied.⁴⁴ Edward Shortland, who took up his position as sub-protector in October 1842, continued to negotiate for the settlement of the dispute. He found much support, but not universal approval, for the idea of placing Europeans on the land at Katikati.⁴⁵ Willoughby Shortland, by then the acting Governor, called at Tauranga again in December, apparently to continue negotiating the purchase of land. But he was unable to do so because of fighting between Te Arawa and Tauranga Maori.⁴⁶ After this date, we have no evidence of any further attempt by the Crown to purchase the land. We agree with the opinions of Professor Alan Ward and Vincent O'Malley in their Crown–Congress Joint Working Party paper that the Crown's proposal was probably a ploy on the part of Clarke, who saw it as 'a temporary expedient to ease inflamed tensions'.⁴⁷ Indeed, the immediate outcome was a fragile – although lasting – peace between Hauraki and Tauranga Maori.

Taraia's resistance to intervention by the Crown at Ongare therefore constituted a serious challenge to the effectiveness of the Crown's rule. Rather than seek redress through traditional means, Ngai Te Rangi and other Tauranga tribes agreed to leave the matter in the hands of the Governor, but they were left with a sense of injustice when the Crown failed to punish Taraia at all.

(3) *Crown involvement in disputes with Te Arawa*

The disputes with Marutuahu were further complicated when Ngai Te Rangi and Ngati Whakaue (of Te Arawa) came to blows at Maketu and Tuhua late in 1842. After the alleged killing by Tauranga Maori of the son of Arawa chief Tangaroa, some Ngai Te Rangi at Tuhua were

42. Ibid, p 5

43. CH Wake, 'George Clarke and the Government of the Maoris: 1840–1845', in *Historical Studies, Australia and New Zealand*, vol x, no 39, November 1962, p 349; Ian Wards, *The Shadow of the Land: A Study of British policy and Racial Conflict in New Zealand, 1832–1852* (Wellington: Department of Internal Affairs, 1968), pp 60–62; doc M9, pp 5–6

44. Document M9, p 7

45. Ibid, pp 11–12

46. Ibid, p 13

47. Document A13, p 37

3.3.3(4)

attacked by a force led by Tangaroa and several were killed and eaten.⁴⁸ When Willoughby Shortland arrived at Tauranga in December 1842, he immediately requested that all available British armed forces be sent to Tauranga to prevent further fighting between Ngai Te Rangi and Ngati Whakaue.⁴⁹ Troops under the command of Major Bunbury arrived on 18 December.⁵⁰ Despite considerable tension at Maketu and Tauranga after the arrival of the British troops, further fighting between Te Arawa and Ngai Te Rangi was avoided and the soldiers did not become directly involved in the conflict. When tensions eased, the troops were withdrawn. In the nine months he spent at Maketu as sub-protector, Edward Shortland mediated between the two sides, but it was the chiefs themselves who eventually made peace in 1845. According to Boast, the peacemaking was recorded on stone markers located at Maketu and Tauranga. The peacemaking also covered rival claims to Motiti Island; although a dispute arose there in 1852, it did not lead to fighting.⁵¹

The conflict between Ngai Te Rangi and Ngati Whakaue provoked anguished discussion among Crown officials, who were well aware of their responsibilities to prevent bloodshed but acutely conscious of their inability, for lack of military support, to do much about it. Attorney-General William Swainson argued (with some support from Clarke) that chiefs who had not signed the Treaty (such as Taraia, Tupaea, and the Te Arawa chiefs) retained their sovereign independence, were not British subjects, and were not subject to English law. Willoughby Shortland responded by arguing that, since the whole of New Zealand was British territory, all Maori came under British rule.⁵² As we have noted above, the British Colonial Office concurred with Shortland's position, and this soon became the accepted view amongst Crown officials in New Zealand.⁵³

(4) Appointment of Government officials to Tauranga

Early in 1846, the new Governor, Captain George Grey, abolished the protectorate system. As Ward put it, Grey was determined to 'destroy the authority of the chiefs, supplant Maori custom with common law and force the pace of amalgamation'.⁵⁴ In place of protectors, Grey relied on a native secretary directly responsible to himself, and under an ordinance of 1846, he appointed resident magistrates to Maori districts. The latter were given summary jurisdiction in disputes between Maori and Pakeha, but in dealing with disputes between Maori, they were to constitute Courts of Arbitration composed of the magistrate and two chiefs acting as assessors. Their decisions had to be unanimous, thereby giving some recognition in Maori matters to rangatiratanga.⁵⁵

48. Document M9, p16

49. Ibid

50. Ibid, p 21

51. Document 112, pp 75–80; see also doc M9, pp 29, 57

52. Wake, pp 350–351

53. Document M9, pp 25–26

54. Ward, p 73

55. Ibid, pp 73–74

In 1852, Thomas Smith was appointed resident magistrate for the district of Rotorua and Bay of Plenty. He was stationed first at Rotorua and then at Maketu.⁵⁶ As far as we can ascertain from the available evidence, Smith's involvement with Tauranga Maori was limited; unless there was a serious dispute, he was unlikely to appear in the area. Even disputes between resident Pakeha and Maori did not usually involve Government officials: since most of the Pakeha traders who lived in Tauranga were married to local Maori women and occupied land on sufferance, they had to accept customary law as applied by the chiefs.

It appears that, by the mid-1850s, some disputes had arisen among hapu of Ngai Te Rangi or between Ngai Te Rangi and other iwi over land rights at Tauranga. The arrival of the Kingitanga in the district seems to have contributed to these divisions.⁵⁷ In response, some chiefs of the 'Kuini' (Queen) faction at Tauranga requested that a resident magistrate be stationed permanently there. At the Kohimarama conference in 1860 (see sec 3.4.4), Wiremu Patene claimed that he had been writing to the Governor since 1856 asking for a 'Pakeha Officer to be our head' so that the disputes at Tauranga could be settled.⁵⁸ However, no resident magistrate was stationed there until March 1860, when Henry Clarke was appointed. The district for which Clarke was given responsibility included the whole of the Bay of Plenty. Clarke appointed six Maori assessors to work under him in villages around Tauranga.⁵⁹ He claimed that at first Kingitanga adherents questioned his right to adjudicate in matters concerning them but that by the end of 1861 this 'prejudice' had passed. However, he also noted attempts by Kingitanga followers such as Henare Taratoa to establish their own runanga to settle disputes.⁶⁰

In 1861, Smith was appointed civil commissioner for the Bay of Plenty and Rotorua under Grey's 'new institutions' initiative.⁶¹ The civil commissioner was to preside over a district runanga of chiefs, with resident magistrates and village runanga forming a lower tier of native administration. In Ward's view, this system promised Maori 'a substantial measure of legislative, judicial and administrative authority in their own districts'.⁶² It also aimed to extend the authority of the Governor into districts such as Tauranga where his authority had previously been limited. Smith was instructed by the Attorney-General, Henry Sewell, to proceed to Tauranga and gain 'the assent of the Natives . . . to the introduction of the new Institutions'.⁶³ However, Smith claimed that when he explained the proposed system to Tauranga Maori on 18 December 1861, the majority rejected it because they either were not willing to place themselves under the authority of the Governor or wished to remain

56. Ibid, p 80

57. Document M9, pp 59–60

58. 'Speeches at Kohimarama', 10 July 1860, MA23/10, ArchNZ, p 205 (doc M9, p 59)

59. Stokes, *A History of Tauranga County*, p 72

60. 'Report from Henry T Clarke, Resident Magistrate, Tauranga', 18 October 1861, AJHR, 1862, E-7, pp 40–41

61. Ward, p 130

62. Ibid, p 126

63. Henry Sewell, 'Preliminary Instructions to T H Smith', 14 December 1861, AJHR, 1862, E-9, sec 4, p 3

3.3.4

‘neutral’. At the time, according to Smith, several informal runanga were operating in Tauranga independent of Government authority and were proving relatively successful.⁶⁴ In April 1862, Smith reported that the majority of Ngai Te Rangi would bring their runanga under the authority of the Governor only if they were paid, which he was unwilling to do. However, one hapu, Ngati He, was apparently willing to allow its runanga to be part of the Governor’s scheme without being paid.⁶⁵ In general, Smith appears to have spent most of his time in Rotorua, although he was in Tauranga just before British troops arrived early in 1864.⁶⁶ Plans to implement Grey’s ‘new institutions’ at Tauranga were soon abandoned once hostilities commenced in the Waikato.

3.3.4 Conclusions

Between the signing of the Treaty by Tauranga chiefs in 1840 and the outbreak of war in Tauranga in 1864, there was a very limited official presence in the region – as was the case throughout much of the country. Government involvement in the Tauranga economy was virtually non-existent, and no Crown purchasing of local Maori land took place until 1864. With a skeletal native administration, which usually operated at a distance from Tauranga, the Crown’s ability to apply any kind of law to Maori in place of their own customary law was severely limited. After the Government’s efforts to end the fighting of the early 1840s, there was very little recorded interaction between its officials and Maori at Tauranga until 1860. It seems that in this period the Crown was happy for Maori customary law to continue without interfering, unless Maori acted in a way considered to breach universal laws of morality. This situation was beginning to change with the appointment of a resident magistrate at Tauranga and a civil commissioner to the Bay of Plenty in 1860 and 1861. The Crown did make some tentative steps to apply English civil and criminal law at Tauranga through runanga made up of local chiefs, but these attempts met with mixed responses. Many Ngai Te Rangi chiefs of the ‘kuini’ faction, such as Wiremu Patene and the whole of the Ngati He hapu, appear to have supported these initiatives. On the other hand, there was also considerable opposition from those who did not align themselves with the Queen. It is clear that, by the time Crown forces advanced into the Waikato in 1863, English and colonial law had not been systematically applied to Tauranga, and so to a large extent customary law prevailed.

64. ‘First Report from T H Smith’, 26 December 1861, AJHR, 1862, E-9, sec 4, p 4

65. ‘Third Report from T H Smith’, 8 April 1862, AJHR, 1862, E-9, sec 4, p 19

66. Smith to Colonial Secretary, 11 February 1864, AJHR, 1864, E-2, p 12

3.4 KAWANATANGA AND KINGITANGA

3.4.1 Introduction

As we stressed in chapter 1, the Crown had a responsibility to temper its application of kawatanga by respecting rangatiratanga. Before this could happen, it needed to allow chiefs a substantial role in the exercise of government. The inability of the Government to do this, and thus give chiefs an effective voice on issues affecting them and their lands, was an important reason why many turned to an alternative authority – the emerging King movement. Those chiefs included some from Tauranga. Their support for the Kingitanga led to involvement in the Taranaki and Waikato wars, following the invasion by Crown forces of Waitara in north Taranaki in 1860, and the Waikato in 1863. For Tauranga Maori, these conflicts were an important prelude to the war that was fought on their lands at Pukehinahina and Te Ranga, which we discuss in our next chapter.

3.4.2 Tauranga Maori and the Kingitanga

The Kingitanga, which had its origins in the early 1850s, was firmly established with the selection of the Tainui chief Potatau Te Wherowhero as the Maori King in 1858. In its broadest sense, the movement was a Maori response to the European colonisation of New Zealand. In a more particular sense, it was an attempt to stem the alienation of land and, with that, the loss of chiefly authority, or rangatiratanga, over that land. Many Pakeha, including Governor Browne, regarded the Maori King as a rival to Queen Victoria and a threat to the Crown's sovereignty. The politician and editor of Auckland's *Daily Southern Cross* newspaper, Hugh Carleton, saw the movement as 'aping British institutions' and thought that it was bent on establishing 'an *imperium in imperio*' in New Zealand.⁶⁷ Maori supporters of the Kingitanga saw it not in that light but rather as a movement that would protect them, their rangatiratanga, and their land by acting as a local authority within the wider nation of Aotearoa.

The story of the selection of the Maori King has often been told.⁶⁸ We recount it briefly here. Although chiefs who visited Britain in the early nineteenth century sometimes came home with the ambition to set themselves up as a Maori king, the 'effective beginnings of the King movement', as Professor Keith Sinclair put it, 'are traceable back to 1853'.⁶⁹ Early in that

67. *Daily Southern Cross*, 5 May 1857

68. The main sources used here are: Maharaia Winiata, *Centennial Celebration, 2nd May 1858–1958: Founding of the Maori King Movement, Turangawaewae Marae, Ngaruawahia* (Ngaruawahia: King Koroki, 1958); see also Pei Te Hurinui Jones, *King Potatau: An Account of the Life of Potatau Te Wherowhero, the First Maori King* (Wellington: Polynesian Society, 1959); James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period, 1845–1864*, 2 vols (Wellington: Government Printer, 1983), vol 1, pp 150–154; MPK Sorrenson, 'The Maori King Movement, 1858–1885', in *Studies in a Small Democracy: Essays in Honour of Willis Airey*, edited by Robert Chapman and Keith Sinclair (Auckland: Pauls Book Arcade, 1963), pp 33–55; Angela Ballara, 'The King Movement's First One Hundred Years', introduction to *Te Kingitanga: The People of the Maori King Movement* (Wellington: Bridget Williams Books, 1996), pp 1–4; John Gorst, *The Maori King; Or the Story of our Quarrel with the Natives of New Zealand*, edited by Keith Sinclair (Auckland: Pauls Book Arcade, 1959).

69. Keith Sinclair, *The Origins of the Maori Wars* (Wellington: New Zealand University, 1957), p 68

year, a young Otaki chief, Matene Te Whiwhi, led a deputation around the North Island promoting the idea of uniting the tribes behind a Maori king and asking leading chiefs in turn to accept the kingship. The deputation carried a letter from Tamihana Te Rauparaha, who had recently visited England, where he had been presented to Queen Victoria, and who now urged the tribes to select a king of their own. At Wanganui, the group met Governor Grey and Bishop Selwyn. The bishop told them that ‘you, the Chiefs, should carry the proposition of love and union to all the tribes’.⁷⁰ Te Whiwhi’s party asked the leading Whanganui chief, Turoa, to accept the kingship, but he declined and instead proposed Te Heu Heu of Ngati Tuwharetoa. Te Heu Heu also declined, but he proposed Te Amohau of Te Arawa, who declined and proposed Te Hapuku of Hawke’s Bay, who then himself proposed Te Kani a Takirau of Ngati Porou. After several other such proposals, Tupaea of Ngai Te Rangi was suggested.⁷¹ But Tupaea would not accept the honour either and sent the proposal back to Te Heu Heu, who then put forward Potatou Te Wherowhero of the Waikato. Te Wherowhero also declined.

Then the young mission-educated chief of Ngati Haua, Wiremu Tamihana, took the lead. He sent a message to Te Wherowhero, who was living at Mangere, urging him: ‘Return home to Ngaruawahia, for you should die there at home.’⁷² After Te Wherowhero’s return, the movement gathered pace under the leadership of Tamihana, thenceforth known as the ‘King Maker’. At a series of grand hui in the Waikato in 1857 and 1858, Te Wherowhero was repeatedly asked to accept the kingship. Finally, at Ngaruawahia on 2 May 1858, he consented and was anointed by Tamihana.⁷³ Ever since, the kingship has remained in Te Wherowhero’s family, and Tamihana’s descendants have performed the coronation.

Although some of the younger advocates of the King movement, such as Tamihana, were much influenced by Christian philosophy and quoted scriptural passages, older Kingite leaders were intent on emphasising traditional Maori values and leadership. In a situation where any individual, even freed slaves, could deal with land, the chiefs wanted to reassert their mana within tribes and, lest chiefs themselves offend by selling land, assert the mana of a king over chiefs. After the crowning of Te Wherowhero, Tamihana explained that:

it is deemed proper that the chiefs should be of one mind, and select a person who shall be entrusted with these treasures for the earth (that is the protection of our property, the management of our lands, etc). We have seen that wars arise from disputations about land, wherefore we seek out him, that he may be a depository for our lands. He will restrain the father who is badly disposed towards his son, and the elder brother who would take

70. Matene’s account of Selwyn’s words, in *Te Karere Maori*, 3 August 1860, p 39 (as quoted in Sinclair, *The Origins of the Maori Wars*, p 69)

71. Winiata, p 10

72. As quoted in Winiata, pp 13–15

73. Winiata, p 17

advantage of the younger brother. He will manifest his displeasure in regard to that which is evil; he will do away with the works of confusion and disorder, and he will be a covering for the lands of New Zealand which still remain in our possession.⁷⁴

Later, Tamihana explained to Governor Browne why he had set up the kingship:

The reason why I set up Potatau [Te Wherowhero] as king for me was, [that] he was a man of extended influence and one who was respected by the tribes of this island . . . I set him up to put down my troubles, to hold the land of the slave, and to judge the offences of the Chiefs . . . I do not desire to cast the Queen from this island, but from my piece [of land]. I am the person to overlook my piece.⁷⁵

When the Governor admonished Maori in the Waikato for setting up their King, Tamihana asked whether it was ‘on account of the Treaty of Waitangi that you are angry with us? Was it then that we were taken possession of by you? If so, it is wrong.’⁷⁶

Although Tamihana had a vision of a Maori nation, territorially and politically autonomous, he and most other Kingitanga chiefs did not advocate driving Europeans out of the colony – they wanted merely to stop the settlers’ relentless advance inland. For this reason, the King movement established an aukati at Mangatawhiri as the boundary between the King’s and the Queen’s land. (An ‘aukati’ was defined by the Ngati Awa Tribunal as ‘a line that no one may cross with any intention that may be judged as hostile to those on the other side’.⁷⁷) As Paora Te Ahura put it at the Rangiriri hui in 1857, they saw themselves as being in ‘alliance’ with the Queen. Or, as the Wesleyan missionary at Te Kopua, Alexander Reid, explained, their view was that: ‘The King on his piece; the Queen on her piece; God over both; and love binding them to each other.’⁷⁸

Tauranga Maori had been involved in the King movement since the offer of the kingship to Tupaea. They had had an even longer association with Tamihana’s Ngati Haua since Tamihana’s father, Te Waharoa, had supported them in their earlier wars against Te Arawa. As a reward, Ngati Haua were granted land at Omokoroa. Te Waharoa spent much of his later life there, and Tamihana sometimes resided there.⁷⁹ As the focus of the movement had shifted to the Waikato, Tauranga Maori were actively involved in the hui that culminated in Te Wherowhero’s selection as King, and they formally pledged their allegiance to the new King in a letter of 5 April 1859. That letter was signed by 15 Tauranga rangatira, including Te Moananui, Petarika Te Kanae, and Reweti Manotini (who acted as Tamihana’s secretary), and unequivocally declared: ‘ki a Potatau, he tukunga atu tenei na matou i o matou whenua “ki raro i tou

74. *Daily Southern Cross*, 11 June 1858 (as quoted in Gorst, p 267)

75. Tamihana to Browne, 7 June 1861 (as quoted in Winiata, p 14)

76. Tamihana to Browne, undated (as quoted in Winiata, p 14)

77. Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 35

78. *New Zealander*, 3 July 1858

79. Evelyn Stokes, *Wiremu Tamihana, Rangatira* (Wellington: Huia Publishers, 2002), pp 16, 49

kingi tanga” (“To Potatau – we wish to place our land under your kingship”).⁸⁰ Other Tauranga Maori wrote to the King in 1859 expressing similar sentiments.⁸¹

To what extent the hapu of Tauranga aligned themselves with the Kingitanga after 1858 is a complex question to answer at this remove. Government officials came to the conclusion that the hapu of the western part of the district were aligned to the movement while hapu of the east were not.⁸² The problem with this assessment is that many Ngai Te Rangi hapu had customary interests in, and moved between, both sides of the harbour. On top of this, some leaders, such as Hori Ngatai, aligned themselves with the movement although they usually resided in the eastern part of the district, while many who mainly resided in the west did not declare themselves Kingitanga.⁸³ Those hapu who declared themselves to be part of the movement either through word or deed before the invasion of the Waikato included Pirirakau and Ngati Hangarau of Ngati Ranginui and Mateiraitai, a Ngai Te Rangi hapu.⁸⁴ Those who declared that they did not belong to the movement were largely those hapu based around Maungatapu such as Ngati He and the related Ngati Hoko.⁸⁵ In conclusion, it seems safe to state that those Ngai Te Rangi hapu that resided around the edge of the harbour and on the inshore islands, as well as the Te Whanau a Tauwhao, had considerable numbers on both the Queen’s and the King’s side by 1863, while others took a neutral stance. The hapu without interests in the west, such as Ngati He and Nga Potiki, remained ‘loyal’ to the Queen, while most Ngati Ranginui hapu sided with the Kingitanga.

The level of alleged commitment to the Kingitanga before 1863 amongst its adherents varied considerably in the reports of Government officials. For example, Smith stated in December 1861 that no fewer than two-thirds of Tauranga Maori were ‘professed Maori Kingites’ and such was their commitment it was pointless to try to persuade them to give up their allegiance.⁸⁶ However, Clarke had reported two months earlier that the influence of the Kingitanga was waning. He reported that ‘The hostile feeling which existed against the Government during the Taranaki war, and the sympathy evinced towards the Waikato movement, has very much cooled down. The name of “King” is very seldom heard now among them [Tauranga Maori].’⁸⁷ Based on such reports, it is impossible to draw definitive conclusions on the level of Kingitanga support at Tauranga. The reports say more about the motives

80. *Te Hokioi*, no 1, (8 December 1862), p 4, in *Niuepa: Maori Newspapers* (<http://www.nzdl.org/cgi-bin/niuepalibrary?a=p&p=about>, downloaded 7 November 2003)

81. Document P15, pp 59–60

82. ‘Report from TH Smith’, 25 January 1862, AJHR, 1862, E-9, sec 4, p 13; ‘Report from TH Smith’, 8 April 1862, AJHR, 1862, E-9, sec 4, p 19

83. Document P15, pp 61–62

84. This was a large hapu based at Otumoetai. The name appears to be no longer in use.

85. ‘Report from Henry T Clarke’, 18 October 1861, AJHR, 1862, E-7, p 42; ‘Report from Henry T Clarke’, 29 January 1862, AJHR, 1862, E-9, sec 4, p 14

86. ‘Report from TH Smith’, 26 December 1861, AJHR, 1862, E-9 sec 4, p 5

87. ‘Report from Henry T Clarke’, 18 October 1861, AJHR, 1862, E-7, p 41

of the writer than what was happening on the ground in the region at that time. Clarke, in particular, seemed eager to impress his superiors by showing that the influence of the Kingitanga was relatively slight in his district.

Whatever its degree of influence, we do not see the establishment of the Kingitanga in the Waikato, and the support of Tauranga Maori for it, as being in breach of English law, colonial law, or the Treaty. We concur with Emeritus Professor Frederic M Brookfield, an authority on constitutional law, who has argued that the Kingitanga could have been regarded as having ‘the status of [a] domestic dependent nation after the North American model in United States law’. In addition, he continued, the ‘common law doctrine of aboriginal rights was received in New Zealand as “part of a body of fundamental constitutional law” necessarily incident to the acquisition of British sovereignty’, and that body of law included limited rights of Maori self-government.⁸⁸ There was nothing in the law at the time to prevent Maori chiefs from putting their land under the mana, or rangatiratanga, of one of their number they called a king, thus giving him a veto over the alienation of that land to the Crown. On the contrary, the Treaty confirmed the chiefs’ rangatiratanga over their land, allowed them to continue to apply customary law, and gave them a right to withhold land from alienation. The proclamation of British sovereignty over New Zealand did not require the automatic elimination of Maori law and custom (except for the suppression of certain excesses).

There was some recognition of this fact in early ordinances and more specifically in the New Zealand Constitution Act 1852. Section 71 of that Act allowed native districts to be set apart by letters patent, within which Maori ‘Laws, Customs, or Usages’ should be observed in ‘all their Relations to and Dealings with each other’, so long as these were not ‘repugnant to the general Principles of Humanity’. No such districts were ever set apart, though they could have been for the Waikato, before the war, and the King Country afterwards. That, according to Brookfield, would have given ‘districts such as the King Country a domestic, dependent nation status’.⁸⁹ However, those who exercised authority for the Crown regarded the Kingitanga as a threat to their notion of sovereignty, which they saw as being one and indivisible. They believed that there should be only one law, based on English civil and criminal law, that was applied to all, Maori and Pakeha alike.

3.4.3 The Waitara war

It is generally recognised that the New Zealand wars of the 1860s were ignited by Governor Browne’s use of arms to enforce the Waitara ‘purchase’. This transaction had been effected through a minor chief, Teira, against the wishes of the leading Te Atiawa chief, Wiremu Kingi

88. Frederic M Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (Auckland: Auckland University Press, 1999), p 116

89. *Ibid*, pp 116–118



Fig 1: *Tomika Te Mutu*, 1866. Watercolour by Horatio Robley. Reproduced courtesy of the Fletcher Trust.

Te Rangitake.⁹⁰ There was widespread Māori support for Kingi's cause, and a considerable number of Māori from other parts of the country went to fight alongside him. Although many Taranaki Māori had been hostile to Tainui since the 'musket wars', they joined the King movement after the Crown's invasion of Waitara. This put the King movement under an obligation to support Wiremu Kingi. Although the King and Tamihana did not authorise intervention, several parties of Waikato and Ngāti Maniapoto went to support the Taranaki tribes in their resistance to the British troops. These groups included a Ngāti Haua taua led by Wetini Taiporutu that was badly mauled in a battle at Mahoetahi.⁹¹ We have been told in claimant evidence that some Tauranga Māori, including 10 Pirirakau, fought in Taranaki.⁹² Since these people had close connections with Ngāti Haua, it is possible that they were part of Wetini's taua, though they are not mentioned in James Cowan's classic 1922 account of the wars. Cowan often provided the tribal affiliations of those Māori involved, and he interviewed many Māori survivors of the campaigns. Largely as a result of Tamihana's influence, a truce was brought into effect in Taranaki in April 1861, though the war resumed there in May 1863. In the meantime, however, the Governor had attempted by diplomacy to wean the chiefs away from their support for the King movement.

90. The authoritative text is Sinclair's *The Origins of the Māori Wars*. His interpretation was accepted by the Tribunal in its report on the Taranaki raupatu: see Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996) pp 57–82.

91. Cowan, pp 193–200

92. Document N9, p 10



Fig 2: Hamiora Tu. Photographer unknown.
Reproduced courtesy of the Alexander Turnbull
Library (PA1-O-328-16).

3.4.4 The Kohimarama conference, July 1860

In July 1860, Governor Browne invited some 200 rangatira to a conference at Kohimarama in Auckland. Claudia Orange described the conference as ‘a means of confirming allegiance to the Crown of as many Maori tribes as possible, thereby isolating the Taranaki “rebels” and the King Movement’.⁹³ Although most of the districts were represented, there were no rangatira from Taranaki and only a few from the Waikato. There were six representatives from Tauranga: Wiremu Patene, Maihi Pohepohe, Tomika Te Mutu, Hamuera Te Paki, Hamiora Tu, and Manihira Rakau, all of them from various Ngai Te Rangi hapu. Three of them, Wiremu Patene, Maihi Pohepohe, and Hamiora Tu, had recently been appointed assessors to the new Tauranga resident magistrate, Henry Clarke.

Browne opened the conference by reading – and somewhat reordering – the English text of the Treaty. According to Browne, the chiefs who signed the Treaty had ceded ‘absolutely and without reservation all the rights and powers of sovereignty’.⁹⁴ Then Browne spoke of attempts by ‘persons south of Auckland’ to renounce their allegiance to the Queen, set up a Maori King, and ‘declare themselves an independent nation’. At a recent meeting in the Waikato, he said, it was proposed that Wiremu Kingi, ‘who is in arms against the Queen’s

93. Claudia Orange, ‘The Covenant of Kohimarama: A Ratification of the Treaty of Waitangi’, NZJH, vol 14, no 1 (April 1980), p 64

94. Thomas Gore Browne, ‘The Minutes and Proceeding of the Kohimarama Conference of Native Chiefs’, 10 July 1860, AJHR, 1860, E-9, p 4

authority', should be reinforced by men from the Waikato and Kawhia. Because of these developments, Browne stated, he had called the chiefs together to hear their views. He asked for their suggestions on the better protection of property, the punishment of offenders, the settlement of disputes, and the preservation of peace.⁹⁵

In their discussion of the Treaty, the chiefs expressed divergent views. Northern chiefs, led by the venerable Tamati Waka Nene, who had swung opinion in favour of the Treaty at Waitangi, mainly supported Browne in remembrance of what Hobson had assured them. On the other hand, Paora Tuhaere of Ngati Whatua dismissed the Treaty as 'Ngapuhi's affair', an opinion that was voiced by others. After some two weeks of discussion and dispute, Donald McLean, Browne's Native Secretary, felt obliged to read the Maori text before he called on the conference to endorse or ratify it. Throughout the conference, as Orange pointed out, McLean carefully manipulated the language of the Treaty: like Henry Williams at Waitangi, McLean played down the coercive aspects of sovereignty (*kawanatanga*) by emphasising the protective function of the Crown as 'te maru Kuini' (the shadow of the Queen).⁹⁶

At the end of the conference, McLean brought the chiefs together and they all agreed to pass a resolution pledging to 'do nothing inconsistent with their declared recognition of the Queen's sovereignty, and the union of the two races, also to discountenance all proceedings tending to a breach of the covenant here solemnly entered into by them'.⁹⁷ But McLean failed to gain unanimous endorsement for two other resolutions: one approving Government policy at Waitara, the other condemning the King movement. Many chiefs were critical of Browne's failure to investigate Kingi's case with care. So far as the King movement was concerned, they could not see anything wrong with accepting the Queen's sovereignty and refusing to condemn the King movement.

We now look briefly at the contribution of the six Tauranga representatives.⁹⁸ Wiremu Patene welcomed the Governor 'in the administration of what is good', but he complained that the Governor's ways were 'not made manifest in every place' and he asked where the Governor was at the time of the sprouting of the King movement. In this, the Governor had 'acted foolishly': 'Had you written to us at the commencement, then it would have been right – whereas now it has become a great tree.' Hamiora Tu reiterated this message, saying that the King movement should have been dealt with at the beginning but also asking that peace be made with Wiremu Kingi. Maihi Pohepohe also requested this, so 'that his [Kingi's] body and the Governor's may become one'. Manihira Rakau said the chiefs should inquire into the character of the Governor's speech and added that he did not hear one thing wrong in it.

95. The English text of the speech is reproduced in Thomas Gore Browne, 'The Minutes and Proceeding of the Kohimarama Conference of Native Chiefs', 10 July 1860, AJHR, 1860, E-9, pp 3-5.

96. Orange, 'The Covenant of Kohimarama', p74

97. Thomas Gore Browne, 'The Minutes and Proceeding of the Kohimarama Conference of Native Chiefs', 10 July 1860, AJHR, 1860, E-9, p 24 (as quoted in Orange, 'The Covenant of Kohimarama, p 69)

98. The quotations that follow are taken from speeches excerpted from the record of the Kohimarama conference proceedings, July 1860, MA23/10, ArchNZ (see doc M9(c)(13)).

Tomika Te Mutu echoed the Governor's hope that, if the King movement were ignored, 'the King will vanish'. Tomika added that he did not believe in the King: 'that is evil work'. He later remained loyal to the Queen, acting on her side when imperial troops attacked Pukehinahina. In a later statement at the conference, Tomika again expressed disapproval of the King movement but then added that his land had been handed over to the King by others, though he claimed still to hold the mana over it. Tomika also asked for a magistrate to be sent to Tauranga. The Tauranga delegation was pleased that Clarke had just been appointed resident magistrate and they were prepared to work with him as their 'head'. Patene was one of the recently appointed assessors. He too disagreed with the King movement, though he thought that the war with Wiremu Kingi should be ended. After the conference concluded, four of the Tauranga representatives wrote to Governor Browne. They expressed their support for the Treaty, for the introduction of laws to punish large and small offences, and for the practical exercise of the Queen's sovereignty at Tauranga.⁹⁹

The Ngai Te Rangi representatives at the conference were from the eastern part of the Tauranga Moana district, an area that remained largely loyal to the Crown when the Waikato war began. Known Kingite supporters were not invited, and none of the Tauranga speakers supported the King movement. But this did not mean that they were uncritical of the Governor; although they did not openly criticise his handling of the Waitara dispute, they certainly wanted the quarrel with Kingi to be ended and peace to be restored, in common with other speakers. And, as we have noted, several of the Tauranga chiefs pointed out that Browne's failure to provide law and order through the appointment of magistrates had left the field open for the King movement.

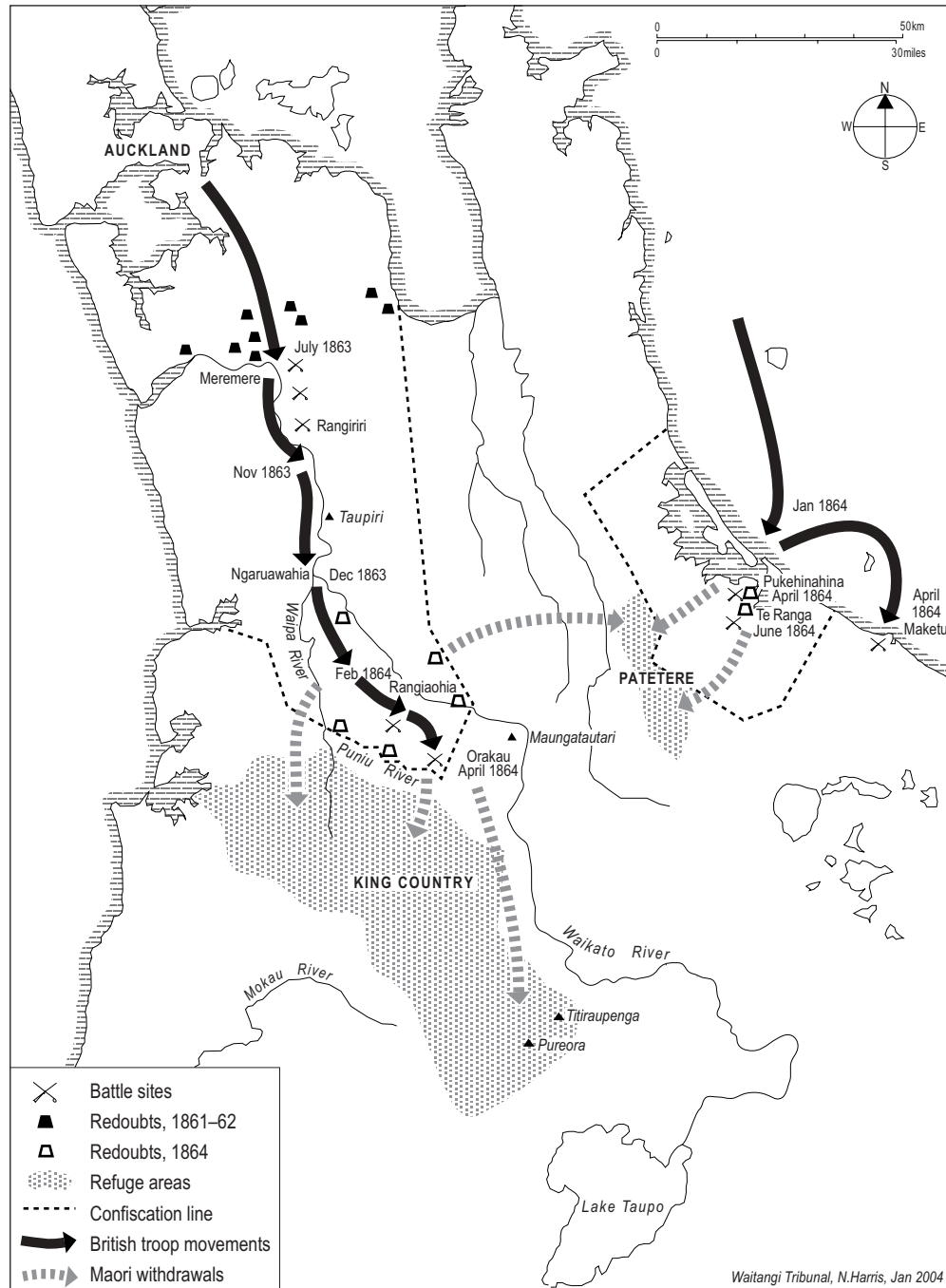
3.4.5 The Waikato war

Before the Waikato war began in July 1863, the Government had devised two policies to break what was called the King movement's 'land league'. The first was a move to abolish the Crown's right of pre-emption. This was initially attempted by the Native Territorial Rights Bill in 1859, though that Bill was disallowed by the Imperial Government for being in breach of the Treaty. But, after the disaster of Waitara, caused in the eyes of the Governor's critics by Crown purchase blunders, a Native Land Act was passed in 1862. It was not disallowed and would have permitted the direct purchasing of Maori land by settlers once a Native Land Court had individualised the Maori interests in it. Because of the war and subsequent land confiscations, the Act was not applied, except in one or two instances north of Auckland. It was replaced by the Native Lands Act 1865, which was gradually brought into operation in many parts of the country not affected by confiscation.

99. Document M9, pp 59–60

TE RAUPATU O TAURANGA MOANA

3.4.5



Map 8: The Waikato war

The Crown's second policy measure was the New Zealand Settlements Act 1863, which provided for the confiscation of land from Maori said to be in rebellion. We discuss this Act in more detail in chapter 6. Although the measure was not introduced before the invasion of the Waikato, plans were already afoot to confiscate land there. When Grey replaced Browne as Governor at the end of 1861, he was determined to deal with what he and his advisers

perceived as the dire threat to Auckland posed by the King movement. Grey decided to construct a military road through south Auckland, to reach Pokeno on the edge of the Waikato. As we noted above, the King movement's response was to impose the aukati at Mangatawhiri Stream, beyond which British forces passed at their peril. Although the war was resumed in Taranaki after imperial troops were ambushed by Maori at Oakura on 4 May 1863, General Cameron was soon able to move the bulk of his troops to Auckland in preparation for the larger task of invading the Waikato. On 14 July, Grey issued a proclamation that called on supporters of the King in the Waikato to allow imperial troops to take up posts on their lands and, if they resisted, threatened them with the confiscation of their land. The proclamation was backdated to 11 July, because Cameron's forces had already advanced across the Mangatawhiri Stream on 12 July. Concurrently, armed forces accompanied by civil officers called on Maori between south Auckland and the Waikato to declare their allegiance to the Queen or to depart for the King's territory. Many chose the latter and their property was destroyed.¹⁰⁰

A week after imperial troops crossed the Mangatawhiri, they met concerted armed resistance at Koheroa. After overrunning the Maori fortifications there, Cameron continued to press deeper into the Waikato. Meanwhile, the King's forces counterattacked by striking at outlying settlers and Cameron's lines of communication in the Hunua and Wairoa Ranges. Once he had fought off these attacks, Cameron continued his advance upriver. He used gunboats to outflank Maori fortifications at Meremere and force its evacuation on 1 November. Next, he assaulted and took the well-defended pa at Rangiriri on 21 November. Cameron's way into the Waikato was then clear, and he took Ngaruawahia, the King's capital, without a fight on 8 December. It took several more months to overwhelm the King's forces in the Waikato–Waipa Basin, but this was finally achieved with the capture of Orakau on 2 April 1864.¹⁰¹

When Cameron invaded the Waikato, supporters of the King movement throughout the island were drawn into the fighting, because of their allegiance to the King and because of traditional tribal and whanau alliances. Tauranga supporters of the Kingitanga became involved in several theatres of war. The few details of this involvement provided by the claimants and the Crown are sourced mainly from Cowan's account of the New Zealand wars. According to Cowan, a party of Ngai Te Rangi and Pirirakau led by Hori Ngatai and Titipa fought in the Hunua and Wairoa Ranges and Titipa was killed at Wairoa.¹⁰² Cowan did not mention any participation by Tauranga Maori in the engagements at Meremere and Rangiriri, although Hori Ngatai, in reminiscences recorded by Gilbert Mair, said that he and others from Tauranga were present at Meremere and fired on Cameron's gunboats on the Waikato River.¹⁰³ Cowan said that some men from Ngai Te Rangi fought at Hairini, near present-day Te

100. Gorst, pp 245–246; Cowan, pp 251–252

101. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), pp 142–176

102. Cowan, pp 259–260, 291

103. Gilbert Mair, *The Story of Gate Pa: April 29th, 1864* (Tauranga: Bay of Plenty Times, 1937), p 22

3.4.6

Awamutu, on 22 February 1864.¹⁰⁴ After Hairini, the Ngai Te Rangi contingent entrenched themselves with Ngati Haua at Te Tiki o Te Ihingarangi, on the lower slopes of Maungatautari, but they were not attacked by Cameron's troops. They withdrew from there on hearing of Colonel Robert Carey's occupation of Te Papa at Tauranga.¹⁰⁵ For this reason, no Tauranga Maori fought in the final battle of the Waikato war at Orakau in April.

One problem with Cowan's account is that he gave no estimates of the number of Tauranga Maori involved in the various engagements in the Waikato. We get some idea of the figures, however, from a report by compiled by Thomas Smith in February 1864, after most Tauranga Maori present there had returned home. Smith estimated that a total of 233 out of a population of 571 adult males had joined their allies in the Waikato. Most of these (169) came from hapu on the western side of the harbour, including Ngaitamarawaho (19 of 21 adult males), Te Mawaitai (19 of 25), Ngaitamarawhariua (30 of 31), Pirirakau (23 of 27), Ngatitokotoko (20 of 21), Te Urungawera (19 of 23), Te Whanau a Te Tauwhao (11 of 22), and from the hapu of Ngatitamahapai, Ngaterangi, Ngatipango, and Ngatimotai (30 of 43).¹⁰⁶ Other western hapu, including Patutahora, Te Ngare, and Te Pohoera, contributed 10 men out of a total of 55. However, none of the 35 Te Patuwai adult males joined the war. On the eastern side, only 34 warriors out of a possible 238 had joined the King's cause, almost half of their number being from Ngai Te Ahi. In addition, Smith noted that 30 out of 80 men from Tuhua, Motiti, and other offshore islands had joined the King's forces.¹⁰⁷

3.4.6 Conclusions

At this stage in our report, we make no findings on the involvement of Tauranga Maori in the Waikato war, though we do so when considering the issue of rebellion in our next chapter. Here, we merely conclude that, although hapu from the western part of the Tauranga district were heavily represented, Tauranga Maori did not make a very substantial contribution to the Waikato war. They were involved in various minor engagements in the Hunua and Wairoa Ranges, and in the Waikato itself, but apparently they did not take part in the major engagement at Rangiriri, and were certainly not at Orakau. We can be reasonably sure that Tauranga Maori took part in Waikato engagements to support their King and because of their connections to Ngati Haua. It is notable that the majority of those who went to the Waikato were from hapu in the western part of the Tauranga district. These groups had close associations

104. Cowan, p 357

105. Ibid, p 421

106. Smith's original spelling has been retained. Some of these hapu names (specifically, Te Mawaitai, Te Urungawera, Ngatitamahapai, and Ngatimotai) are not recorded on the Tauranga Moana register of claims. They appear to be no longer used and may have been absorbed into other hapu.

107. Thomas H Smith, 'Return showing Native Settlements and Tribes in Tauranga, with Number of Adult Male Population in each and Number from Each which have Joined Insurgents since Commencement of Hostilities', 11 February 1864, AJHR, 1864, E-2, p 13. Smith made an earlier return which said that 260 of 542 adult males had gone to the Waikato, but we have not used this since it did not include hapu affiliations: see sec 4.3.

with Wiremu Tamihana and Ngati Haua, as was stated in tangata whenua evidence before the Tribunal.¹⁰⁸ In fighting Ngati Haua's battle, they were paying utu, or compensation, for Ngati Haua's support for them in the 'musket wars'. It is thus not surprising that the Tauranga force spent the last phase of the war entrenched with Ngati Haua at Te Tiki o Te Ihingarangi. No doubt, they would have defended that pa had it been attacked before they had to return to defend their own lands when imperial troops landed at Te Papa.

3.5 CHAPTER SUMMARY

The main points in this chapter are as follows:

- ▶ Though there was considerable interaction between Tauranga Maori and Pakeha in the period before 1864, the presence of the Crown in the district was relatively limited. For this reason, and as a result of the resistance shown by some Tauranga hapu to the Government encroaching in their affairs, customary law largely prevailed in the region until 1864. Attempts to apply English criminal and civil law were largely limited to the period after 1860 and even then were sporadic and piecemeal in nature before 1864.
- ▶ From the late 1850s, many Tauranga Maori looked to the emerging Kingitanga as an alternative source of authority to that of the Crown. This tendency was particularly marked amongst those hapu with close historical ties to Ngati Haua and this led to their involvement in the Waikato war. On the other hand, those Tauranga Maori with weaker ties to Ngati Haua largely refused to side with the Kingitanga.
- ▶ Though their contribution to the defence of the Waikato was relatively limited, the well-documented involvement of some Tauranga hapu in the Waikato fighting was to have important implications for all Maori in the district.

¹⁰⁸ For example, Kihī Ngatai noted that, in Te Turupa of Ngati Hangarau's famous lament for her husband who had been killed in fighting with the British, she asked the Ngati Haua tupuna Tamanataha and Tamangarangi to welcome him into the next world: see doc D24(a), pp 13–14, 20.

