

CHAPTER 5

GIFT OF THE PEAKS: THE ORIGINS OF TONGARIRO NATIONAL PARK

*R P Boast QC**

Tongariro National Park is one of New Zealand's most iconic national parks and is a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage site (one of three in New Zealand). It is listed by UNESCO under both a "natural" and a "cultural" designation, as is Uluru-Kata Tjuta (Ayers Rock) in Australia. Most New Zealanders are under the impression that the land for the National Park was acquired by a gift from Te Heuheu Tūkino Horonuku, paramount chief of Ngāti Tūwharetoa, in 1887. The "gift" is routinely referred to in management planning documents and so on. Yet, in fact, only a very small part of the current park was acquired by gift. The rest of it is a complex patchwork of acquisitions and partitions, by which a large amount of Māori land was acquired over a long period by the Crown and then given national park status. This chapter looks at the full history of the acquisition of the park, and argues that the full story, while perhaps less comforting than the supposed "gift", is both much messier and very instructive.

Le parc national du Tongariro est l'un des parcs nationaux les plus emblématiques de Nouvelle-Zélande ainsi qu'un site du patrimoine mondial de l'Organisation des Nations unies pour l'éducation, la science et la culture (en anglais United Nations Educational, Scientific and Cultural Organization (UNESCO) (l'un des trois sites ainsi reconnus en Nouvelle-Zélande). Il est répertorié par l'UNESCO à la fois sous une désignation "naturelle" et "culturelle", tout comme Uluru-Kata Tjuta (Ayers Rock) en Australie. La plupart des Néo-zélandais pensent que le territoire du parc national fut formé grâce à un don de Te Heuheu Tūkino Horonuku, chef suprême des Ngāti Tūwharetoa, en 1887. Le "don" figure régulièrement, entre autres, dans les documents de planification de gestion. En fait, seule une très petite partie du parc

* Professor, Faculty of Law, Victoria University of Wellington, New Zealand. All archival references in this chapter relate to documents held by Archives New Zealand, Wellington.

fut acquise par donation. Le reste découle d'une mosaïque complexe d'acquisitions et de partitions, grâce à laquelle de nombreuses terres māori ont été acquises par la Couronne sur plusieurs années, avant que Tongariro ne se voit octroyé le statut de parc national. L'auteur se penche sur l'histoire de la formation du parc, et soutient que celle-ci, même si possiblement moins plaisante à entendre que le récit du "don", en est à la fois beaucoup plus confuse et instructive.

I INTRODUCTION

Tongariro National Park, located in the centre of the North Island, is a place which all New Zealanders know about, most have seen, and many have visited.¹ It comprises a variety of diverse habitats, from beech forests to lava slopes, and contains the three great volcanic peaks of Ruapehu, Tongariro and Ngauruhoe. The volcanoes, always snow-covered in the winter, are active, and erupt spectacularly from time to time. The term "iconic" is over-used today, but Tongariro National Park undoubtedly *is* iconic, a New Zealand counterpart to Ayers Rock, Yosemite or Iguassu Falls.

Tongariro National Park is also one of New Zealand's three United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites. The other two are Southwest New Zealand/Te Wahipounamu, and New Zealand's Subantarctic Islands. The international legal instrument underpinning the list is the 1972 World Heritage Convention, ratified by New Zealand in 1984.² Three such sites for a country as scenic and as frequented by tourists as New Zealand is surprisingly few – the same as Guatemala, Malta, Niger, Uganda and Slovenia, and less than Costa Rica (four), Mongolia (four), the Ivory Coast (four), Panama (five) or Finland (seven), to say nothing of countries so well-endowed in history, scenery and archaeology as Sweden (15), France (41) or Mexico (33). New Zealand also ranks well behind Australia (19). Then again, there are only 23 World Heritage sites in the United States of America (much fewer than China, France, Germany, India,

-
- 1 I have done so many times, and have hiked many of the trails around the National Park, including the world-famous Tongariro crossing. (Sadly, my skiing abilities are non-existent.) I was also counsel for a number of the claimant groups in the Waitangi Tribunal's National Park Inquiry, Waitangi Tribunal *Te Kāhui Maunga: The National Park District Inquiry Report* (Wai 1130, Wellington, 2013) [*Te Kāhui Maunga*]. The hearings took place over eight weeks in 2006-2007 in various localities around the mountains, including a number of marae, but also other places, including, memorably, the Working Men's club in Ohakune. The hearings were presided over by Judge Wilson Isaac.
 - 2 Convention Concerning the Protection of the World Cultural and Natural Heritage 1037 UNTS 151 (opened for signature 16 November 1972, entered into force 17 December 1975). This instrument was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its 17th session, Paris, 16 November 1972.

Italy, Mexico, the Russian Federation and the United Kingdom), perhaps explained by a general lack of American enthusiasm for UNESCO. New Zealand at least ranks ahead of Albania (two), the Central African Republic (two), the Democratic Republic of Korea (two) and Benin (one). Policy-makers in New Zealand do not seem to be very interested, on the whole, in the UNESCO World Heritage list. There are probably a number of other places around New Zealand that might well qualify for inclusion. Why not Stewart Island, Mt Cook, Mt Taranaki, the geothermal springs and geysers of the Rotorua-Taupo region, the Northland kauri forests, or the carved and painted Māori meeting houses of the Gisborne region or Rotorua? Moreover, all of New Zealand's UNESCO World Heritage sites were already national parks or protected Crown lands before their inclusion, so nominating them involved no real trouble or expense to the state.

Nor has the World Heritage listing of New Zealand's existing three sites impacted on their management and protection in any significant way. All three are managed by the Department of Conservation, responsible for managing about one-third of the country's entire land mass, an agency which is lamentably over-stretched and under-resourced. (Indeed part of Tongariro National Park is quite significantly commercially developed as the North Island's principal skifield, administered by means of Department of Conservation concessions to commercial enterprises and various mountain and tramping clubs.) Nor has New Zealand played a role of any significance in the development of international law relating to heritage protection, and indeed enacted no domestic legislation relating to the protection of archaeological sites until as late as 1975.³ New Zealand's efforts in this respect do appear to be somewhat mediocre. New Zealand's rather average performance in the field of heritage protection (about which much could be said) is not, however, the theme of this chapter, which is focused on Tongariro National Park specifically and its origin myths.

Tongariro National Park has a somewhat unusual status. Te Wahipounamu and the New Zealand Subantarctic Islands are "natural sites", but Tongariro is a "mixed" site; in other words, it is not only a "natural" site, but also a "cultural" one. Tongariro was one of the first natural sites in the world to be given a "mixed" listing because of its cultural associations (in 1993). There are very few such sites (31, by my count). Examples are Mt Wuyi in China, Uluru-Kata Tjuta (Ayers Rock) in Australia, Machu Picchu in Peru, Tikal in Guatemala, and Calakmul in Mexico. The "cultural" component of a place like Tikal, which is a vast ancient Maya city located in an area of tropical rainforest, or of Machu Picchu, is obvious. What of Tongariro? It contains no archaeological sites of note, or at least none that compare with Tikal, or Machu

3 Historic Places Amendment Act 1975.

Picchu, or – to take another example – the rock dwellings of Cappadocia in Turkey's Göreme National Park, also a mixed site. Most of the "mixed" sites are cultural sites located in outstanding natural settings, but, as the example of Uluru-Kata Tjuta shows, not all are. One would expect that in the absence of archaeological or historical monuments, an applicant country would have to make a highly persuasive case to obtain a "mixed" listing. Uluru-Kata Tjuta is certainly sacred to Australian Aboriginal groups and iconic to all Australians. Quite how New Zealand managed to convince the international authorities in the case of Tongariro is unclear (not something I have had an opportunity to research), but it is surely safe to say that the "cultural" component of the listing must be largely due to the historic associations between the park and Ngāti Tūwharetoa generally, and the "gift of the peaks" to the Crown by Te HeuHeu Tūkino Horonuku in 1887 in particular. It is this "gift" which is the subject of this chapter.

II THE IMPORTANCE OF THE GIFT

Official planning documents relating to the National Park attach considerable weight to the Te HeuHeu Tūkino Horonuku's gift of the peaks to the Crown in 1887.⁴ An example is the Tongariro National Park Management Plan, operative from 2006 to 2016.⁵ Indeed the gift is capitalised in certain parts of the document – the Gift.⁶ The plan, quite accurately, does not claim that the entirety of what is now the park was ever the subject of Horonuku's gift, or indeed any gift. But Te HeuHeu's generous action in 1887 is, it is fair to say, seen as the foundation of the National Park:⁷

The nucleus of the park was a gift to the people of New Zealand by Te HeuHeu Tūkino IV (Horonuku), paramount chief of Ngāti Tūwharetoa, in 1887. The mountain peaks were set aside to be protected for and enjoyed by all the people of New Zealand. From this nucleus the park has grown to encompass an area of 79,598 hectares and today enshrines in its management the purpose of that gift made more than 100 years ago.

The suggestion is, that from the "nucleus" of the gift, the park has organically "grown" in some way that is imbued with the gift's purposes. (It is elementary, however, that national parks do not grow by themselves but arise from and are expanded by state action and political decisions.) Moreover, it is suggested, Tongariro is not just any ordinary national park. The gift, it is claimed, gives a special

4 I usually refer to him as Te HeuHeu Tūkino Horonuku, or at times simply as "Te HeuHeu" or "Horonuku".

5 *Tongariro National Park Management Plan: Te Kaupapa Whakahaere mo Te Papa Rēhia o Tongariro* (Department of Conservation, Tongariro/Tāupo Conservancy, Turangi, 2006).

6 *Ibid.*, at 20-22.

7 *Ibid.*, at 4.

quality to this particular national park, differentiating it from others: "Although the park was modelled on a concept imported from the United States of America ... it was unique in that its nucleus was the gift of an indigenous people".⁸ For this reason, "a major new dimension was added to the national park ideal with the gift of the sacred volcanic summits creating a three-way bond between land, Māori and Pakeha".⁹

Most New Zealanders would probably go along with these benign, if somewhat vague sentiments. But one group of New Zealanders who do not is Ngāti Tūwharetoa, the actual donors of the "gift", if gift it was. Awkwardly for the official rhetoric, they perceive the circumstances of the gift as a *grievance*. To quote from the Waitangi Tribunal's summary of the Tūwharetoa claims in its *Te Kāhui Maunga* report (2013):¹⁰

At the time of the so-called "gifting" of the peaks, Ngāti Tūwharetoa were in a vulnerable position, and their objective was to keep the maunga [mountains] sacred by transacting a "tuku taonga" involving the Crown, Horonuku Te Heuheu, and six other rangatira of the region. In Ngāti Tūwharetoa's view, this imposed reciprocal obligations and conditions on the Crown – namely that there would be a partnership to hold and care for the maunga. In particular, title for Tongariro would be held jointly between Ngāti Tūwharetoa and the Queen.

The principal claimant for Tūwharetoa in the Waitangi Tribunal proceedings was Sir Hepi Te Heuheu, a direct descendant of Te Heuheu Tūkino Horonuku, the original donor. In short, in his and in Tūwharetoa's view, the "gift" was nothing of the kind. It was more like a trust in which Ngāti Tūwharetoa mana and authority would be maintained. There was no gift in the usual sense of the term – a donor giving something away to a donee with no strings attached. Moreover, the "gift" occurred because it was seen as the best way of preserving the sacred status of the mountains, rather than as creating a recreational space for all the people of Aotearoa.

Other claimants in the National Park Inquiry, while equally critical, took a rather different approach than Sir Hepi Te Heuheu and Ngāti Tūwharetoa. One group, Ngāti Hikairo, claimed that the government gifted the land *to itself* and the New Zealand public "without proper consultation and attention to properly ascertaining which group had interests in the maunga".¹¹ That is, Ngāti Tūwharetoa, in the strict

8 Ibid, at 20.

9 Ibid.

10 Waitangi Tribunal *Te Kāhui Maunga*, above n 1, at 12.

11 Ibid, at 14.

sense, are not the only ones with interests in the National Park lands. Claimant groups from the upper Whanganui region argued that the gift, or the Crown's acceptance of it, dispossessed them of their interests in the mountains:¹²

Whanganui iwi claim that they were substantially dispossessed of their lands in the National Park district, including, and in particular, the peaks of te kāhui maunga which the *Crown maintains* were gifted to it by Te Heuheu Tūkino.

It can be seen, then, that there has been a lot of recent rain on the gift's (or "The Gift's") parade. Why is this? Clearly, behind the attractive story of the gift, there lurks a more complex and messier reality.

The designated UNESCO site is not, as it happens, limited to the areas "gifted" in 1887, but extends to the *whole* National Park, which includes, but is not limited to, the "gifted" areas. It even includes the zones of intensive commercial development around the various skifields, which have nothing heritage-like about them, natural or cultural, unless perhaps as exemplifying the history and cultural importance of skiing in New Zealand. My principal focus in this chapter, however, is not so much on land use today, as the diversity and complexity of the National Park's legal and tenurial history. I question whether the National Park can indeed be perceived as a legal space which has grown up around Te Heuheu's gift and can be legitimately seen as furthering his vision. Indeed, in essence, there is *nothing* notably different about how the overwhelming bulk of the land within the National Park came into the state's hands. Rather, the methods by which the state acquired the land from Māori within the National Park were not different from other areas, but rather for all practical purposes the *same*.

Another issue is what exactly is meant, or envisaged, by the standard picture of Te Heuheu making a "gift". Presumably, the public perception is that of a spontaneous and generous idea formed by Te Heuheu himself, leading to his contacting the government of the day and making his offer in a statesmanlike way which was responded to in like manner by the representatives of the Crown. What happened in reality bears little resemblance to this picture, as will be seen.

To deal with all of the issues that this topic raises and to comment fully on the Waitangi Tribunal's report would require a book-length treatment. What I chiefly propose to do in this chapter is to analyse the actual legal mechanics of the "gift" in their wider historical context. The objective is a simple one: to convey the complexity and ambiguity of the events of 1887 to readers who are unfamiliar with the legal and political changes taking place in the North Island in the late 19th

12 Ibid, at 9 (emphasis added).

century. The point will also be made, and illustrated in detail, that overwhelmingly the land within the National Park boundary was not the subject of any "gift". The government certainly acquired the balance of the land from Māori, but, if I may put it this way, by rather different means that had nothing remotely gift-like about them. The real story is much less straightforward than a noble gift, but it is perhaps more interesting, and more revealing. In short, the origin of Tongariro National Park is a messy and intricate story, and in which many people played a role apart from Te Heuheu Tūkino Horonuku and the Native Minister. The park has a *history*, and an untidy one at that.

III THE KING COUNTRY NEGOTIATIONS AND THE TAUPONUATIA BLOCK, 1881-1886

The origins of Tongariro National Park lie not in any kind of quest to set aside areas for the preservation of scenery and biodiversity in New Zealand, but rather in the political and tenurial situation in the central North Island in the 1880s. In his by-now classic book on the New Zealand wars, James Belich devoted an interesting paragraph to the independent "King Country":¹³

We do not even know how big it was A survey in 1884 indicates that it encompassed 7,000 square miles, nearly one-sixth of the North Island – quite a large "isolated pocket". Thus, in the late nineteenth century, an independent Māori state two-thirds the size of Belgium existed in the middle of the North Island. Not all historians have noticed it.

In more recent years, as it happens, the King Country has been receiving a great deal of notice from the Waitangi Tribunal in the course of its recently-concluded Rohe Potae (or King Country) regional inquiry. It remains the case, however, that the Māori King movement (Kingitanga) is completely neglected in New Zealand public law.¹⁴

The "King Country", as this region is still known, no longer in any way autonomous, derives its name from the political fact that after the New Zealand wars the King Tawhiao took refuge there, where he and his supporters maintained their

13 James Belich *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland University Press, Auckland, 1986) at 306. I am not sure why Belich decided on conveying the size of the King Country by comparing it to Belgium. As the inhabitants of the King Country were not divided into two hostile linguistic and cultural camps – it was an entirely Māori-speaking state – perhaps it was actually a more coherent political entity than Belgium.

14 A number of overseas visitors to my law school have expressed their astonishment to me in learning that New Zealand evidently still possesses an independent Polynesian monarchy and are curious to learn more of its legal, constitutional and political significance. There is not much literature available to assist them. Why New Zealand public lawyers ignore this fascinating and historic political formation, so rich in possibilities for legal and political inquiry, I have no idea.

independent polity for about 17 years.¹⁵ It had some resemblance to Vilcabamba, the independent Inca state in the Andes, where a defeated indigenous monarchy maintained a precarious independence for a number of decades following the acquisition of Peru by the Spanish.¹⁶ It also has some affinities with the so-called "refuge zones" in the Yucatan and Guatemala in the 16th and 17th centuries, independent areas remote from the colonial centres of authority, where indigenous people could retreat to and from which Europeans were excluded, but which also existed in a kind of economic and political symbiosis with the colonial regime.¹⁷ Like the Maya refuge zones, the King Country had its own complex internal politics and religious affairs. Its "capital" was the large village of Tokangamutu, where King Tawhiao spent most of his time and met regularly with his council. The Kingitanga leadership did not see itself as being in conflict with the British Crown – rather it was colonial settler politicians they were wary of.¹⁸ Although the idea of a separate and autonomous Māori state may today seem quixotic, in fact this was not necessarily the case in the 1860s and 1870s. New Zealand was still a quasi-federal state until the enactment of the Abolition of the Provinces Act 1876. As Cathy Marr

15 It is unclear exactly when the "King Country" began, or when it ended. Tawhiao left the Waikato after the defeat of the Kingitanga forces at the battle of Orakau (31 March-2 April 1864). He left the King Country in 1881, but the negotiations between the government and the Rohe Potae chiefs lasted until around 1885. The Kingitanga, or Māori King movement, was one of a number of kingships established in Polynesia in the 19th century. Other examples are the Tongan, Fijian, Hawaiian and Tahitian monarchies.

16 On Vilcabamba, see John Hemming *The Conquest of the Incas* (Macmillan, London, 1970) at 377-455. Vilcabamba maintained its independence from Spanish Peru for 35 years, governed by descendants of the Inca royal family. The viceroy of Peru, Francisco de Toledo, eliminated the Vilcabamba statelet in 1572. The last member of the Inca ruling dynasty, Tupac Amaru, was executed in Cuzco on 24 September 1572.

17 Not surprisingly, these refuge zones have proved to be of considerable interest to historians of the Maya peoples in the colonial era. See (in alphabetical order) Laura Casa Barrera *Caminos en la selva: Migración, comercio y resistencia: Mayas yucatecos y itzaes, siglos xvii-xix* (Colegio de México and Fondo de Cultura Económica, México D F, 2002) (distinguishing between "los pueblos de encomienda", that is, villages paying tributes to the colonial authorities, and "los pueblos de huidos", refugee villages outside the zone of colonial authority); Nancy Farriss *Maya Society under Colonial Rule: The Collective Enterprise of Survival* (Princeton University Press, Princeton, 1984); Grant Jones *Maya Resistance to Colonial Rule: Time and History on a Colonial Frontier* (University of New Mexico Press, Albuquerque, 1989); Grant Jones *The Conquest of the Last Maya Kingdom* (Stanford University Press, Stanford, 1998); and Jan de Vos *La paz de Dios y del Rey: La conquista de la selva Lacandona (1525-1821)* (Secretaría de Educación y Cultura de Chiapas and Fondo de Cultura Económica, México D F, 1980) (on the conquest of the last independent Maya polities of the Lacandon forest zone in the 17th century).

18 See John Eldon Gorst *The Maori King; or The Story of our Quarrel with the Natives of New Zealand* (Macmillan & Co, London and Cambridge, 1864) at 87: the Kingitanga leaders "did not understand the term 'King' in the sense in which we use it; but though they constantly professed loyalty to the Queen, attachment to the governor, and a desire for the amalgamation of the races, they did mean to maintain their separate nationality, and have a Chief of their own selection".

has pointed out in a recent study, the Kingitanga leaders were well aware of section 71 of the Constitution Act 1852, which provided for separate Māori districts. Marr has integrated her new analysis of Kingitanga political history with New Zealand constitutional history, including its abandonment of federalism in 1876 – thus making the creation of a separate Māori autonomous polity within the overall constitutional framework of the country much more difficult, if not impossible, to achieve.¹⁹ This may have been one reason why Tawhiao decided to negotiate.

A "King" implies a kingdom, and the "Rohe Potae"²⁰ of the King Country enclosed a large, if slowly contracting area, running from the southern boundary of the Waikato confiscation boundary to the upper Whanganui, and enclosing some or all of Lake Taupo and all of the high volcanic peaks which are now included within Tongariro National Park. The peaks were thus definitely within the King Country, an important political fact. This meant that the mountains were very difficult for Pakeha to get to, as the King Country was closed to Europeans. The largest iwi-hapu grouping within the King Country was Ngāti Maniapoto, but their traditional tribal territories, although very extensive, did not include the mountains. These belonged, rather, to Ngāti Tūwharetoa and to the upper Whanganui tribes, also supporters of the King movement and part of the Māori King's polity. King Tawhiao himself was Waikato, and for him the King Country was a place of refuge and exile.

In 1881, King Tawhiao decided to return from exile to his traditional lands in the Waikato. His departure from the King Country caused intense political interest and excitement in the country, much of it sympathetic and friendly – in fact King Tawhiao was welcomed and feted wherever he went, and he even went on a trip to England in the hope of meeting Queen Victoria. From 1881 to around 1886, there was an intense period of political negotiations, which basically involved three sides: the New Zealand government; the leaders of the King Country iwi (Maniapoto, Raukawa, Tūwharetoa and others); and the King movement itself and its leadership. The latter soon became marginalised from the negotiations, which were principally carried out by two successive Native Ministers, John Bryce and John Ballance, with Māori tribal leaders, notably Taonui Hikaka of Ngāti Maniapoto, Hitiri Te Paerata of Raukawa and Te Heuheu Tūkino IV Horonuku of Tūwharetoa. The negotiations were complex, and cannot be analysed here in any detail. Politically, the most important factor was the growing divergence of opinion within the chiefly

19 Cathy Marr *Te Rohe Potae Political Engagement*, research report commissioned by the Waitangi Tribunal for the Te Rohe Potae District Inquiry (Wai 898, Doc#A78, 2011) at 15. On the negotiations with King Tawhiao, see now Michael Belgrave *Dancing with the King: The Rise and Fall of the King Country* (Auckland University Press, Auckland, 2017).

20 The Māori term means essentially an enclosing or encircling boundary.

leadership, and the decision by Horonuku to detach himself and Tūwharetoa lands from the main negotiations and to forge a separate path of his own.

How and why this happened is still unclear, notwithstanding a great deal of recent closely-focused research. Horonuku was present at some of the earlier meetings with the government and the other chiefs, but in the course of 1884, Tūwharetoa dropped out of the chiefly political alliance. It was a key component of the negotiations that the King Country leadership would apply to the Native Land Court for a formal definition of the King Country boundaries. In 1885, the Tūwharetoa leadership, with the support of some upper Whanganui chiefs, took the pivotal step of deciding to bring a separate application to the Native Land Court for an investigation of the title to the vast Tauponuiatia block of about one million acres, which included much of Tūwharetoa's traditional lands, and *parts* of the mountains. (The term "parts" here is also a matter of importance: the Tauponuiatia boundaries included the peaks of the mountains and their northern and eastern sides, but not their southern and western flanks – which Te Heuheu Horonuku did, therefore, not actually claim, or at any rate not in the Native Land Court.) From Horonuku's perspective, a key problem was that the main application to the Court by the King Country chiefs included part only of Tūwharetoa's traditional lands, cutting their lands in two, and leaving a substantial area outside the boundary. He might also have been worried about a "deluge" of smaller applications by various smaller groups and individuals within Tūwharetoa tribal boundaries, which for various reasons it was necessary to forestall.²¹ The Tauponuiatia case was triggered by an application to the Court filed under Te Heuheu Tūkino Horonuku's name dated 31 October 1885. Although the application probably suited the government's purposes, there is in the Waitangi Tribunal's view no evidence to suggest that the government did anything to encourage or facilitate the application.²²

It seems that it was in the course of 1885 that the first discussions occurred about formally setting aside the mountains in some manner. On 6 January 1886, Lawrence Grace, Member of Parliament for Tauranga and Te Heuheu Horonuku's son-in-law, advised the Native Minister (John Ballance) that he had met with Te Heuheu and his inner circle in 1885 to discuss a number of key matters. These included purchasing of land by the government for the main Auckland-Wellington railway line, setting

21 On this, see Paul Husbands and James Mitchell *The Native Land Court, land titles and Crown land purchasing in the Rohe Potae district, 1866-1907*, research report commissioned by the Waitangi Tribunal (Wai 898, Doc#A79, 2011) at 79.

22 See Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Volume I, Wai 1200, 2008) at 329-333.

aside the volcanic peaks of Ruapehu, Tongariro and Ngauruhoe as "inalienable reserves" (there was no suggestion of a "national park") and the need:²³

... to settle the Native tribes of Taupo permanently on portions of their tribal lands which can only be done by passing their lands through the Court and individualizing their titles thereto as thoroughly as possible.

This is a significant statement, and describes fairly accurately what happened in 1886-1887. To Grace, an influential politician, setting aside the peaks, individualising title and obtaining land for the government for the purposes of completing the all-important railway were all interconnected aspects of a single policy. That policy can be seen, essentially, as the further colonisation of an important part of the North Island internal frontier.

In the Waitangi Tribunal's *National Park* inquiry, it was argued by counsel for Tūwharetoa that Te Heuheu was manipulated into filing a separate investigation into Taupouitua by the Grace family and other people. But the Waitangi Tribunal was unconvinced. In the Tribunal's view, Te Heuheu at all times saw himself as acting in Tūwharetoa's interests, not the government's, and he made up his own mind on all matters of importance.²⁴ It is in my view very difficult to be certain, and it is no less difficult to decide, who first had the idea of formally reserving the mountains.

IV A NATIONAL PARK?

Conservation is often seen as the opposite or antithesis of land use. Conservation is not using land; rather, it is leaving it in its "natural" state. In fact, little land anywhere is in a "natural" state, and certainly not the lands of Tongariro National Park. "Conservation" is certainly a kind of land use, and often has to be quite activist and managerial in order to achieve the desired goals, including constructing trails and tracks, zoning, and removing animals, plants and – at times – human beings and their settlements, in order to promote the objective of conservation. There is a growing literature on the extent to which "scenery" and "landscape" are culturally constructed, a literature to which Simon Schama, one of the most distinguished of modern historians, has been an important contributor.²⁵ As Schama puts it, "the

23 Lawrence Grace to John Ballance, 6 January 1886, cited in Waitangi Tribunal *The Pouakani Report 1993* (Wai 33, 1993) at 127.

24 Waitangi Tribunal *Te Kāhui Maunga*, above n 1, at 290.

25 Simon Schama *Landscape and Memory* (HarperCollins, London, 1995). There is a large literature on the cultural construction of landscape: see (in alphabetical order) Tim Bonyhady *The Colonial Earth* (Melbourne University Press, Melbourne, 2000); William Cronon (ed) *Uncommon Ground: Rethinking the Human Place in Nature* (WW Norton & Co, New York and London, 1995); and Thomas R Dunlap *Nature and the English Diaspora: Environment and History in the United States*,

healing wilderness was as much the product of culture's craving and culture's framing as any other imagined garden".²⁶ Wilderness "does not locate itself, does not name itself"²⁷ – it took an act of the United States Congress to set aside Yosemite Valley as "wilderness" in 1864, despite the fact that the area had a long history of Native American settlement and that much of its supposedly pristine ecology was actually the product of land management practices carried on by its indigenous people. Much the same can, of course, be said about the creation of Tongariro National Park in 1894. Attitudes to nature and the environment are deeply culturally embedded; as William Cronon, doyen of American environmental historians has pointed out:²⁸

... even when we travel through a beautiful mountain landscape in the Sierra Nevada or a remote rainforest in the Amazon – places that on their surface may seem as uncontaminated by humanity as anywhere on earth – we cannot help experiencing them not just as natural environments but as cultural icons.

Tongariro National Park is yet another example. It is one of the most important cultural icons in the country, in fact. The political and cultural assumptions underpinning scenery preservation and conservation are now widely recognised, and the idea of a pristine, human-free environment, Antarctica aside, is a myth – a pernicious myth, according to some.²⁹

National parks are a recent invention. At the time of the "gift", there was only one national park in existence anywhere in the world. This was Yellowstone National Park, set aside in 1872. It is very hard to imagine that Te Heuheu could have heard of it. What, actually, is a "national park"? Today they are probably seen as existing principally for the purposes of conservation. This is not, however, how they were perceived in the 1880s, when the first national parks in the world were being established. A "national park" was exactly that, a *park for the nation*, a place for the people to visit and to enjoy themselves in the open air and to be refreshed and inspired by landscapes. Modern notions of biodiversity protection and ecosystem management did not exist in the 19th century. Mention has already been made of the connections between railway construction and preservation of the mountains in the

Canada, Australia, and New Zealand (Cambridge University Press, Cambridge and New York, 1999).

26 Schama, above n 25, at 7.

27 Ibid.

28 William Cronon "Foreword" in William Cronon (ed) *Uncommon Ground: Rethinking the Human Place in Nature* (WW Norton & Co, New York and London, 1995) 19 at 20.

29 See generally Stephen Budiansky *Nature's Keepers: The New Science of Nature Management*, (Weidenfeld and Nicolson, London, 1995).

case of Tongariro National Park. One obvious connection is that without the railway, the ordinary public had no possibility of gaining access to the peaks or to anywhere close to them. There was no road access, and getting to the mountains involved a punishing journey on horseback and on foot taking days or weeks. With a railway, visitors could actually get there. In fact, one of the stations on the railway near the mountains was, and still is, named "National Park", intended as a gateway for visitors getting there by train. The railway, however, was not finally completed until 1908, and before then would have had few visitors. Tongariro did not become iconic immediately.

How, then, did Tongariro National Park come into being? The earliest mention I have found of the idea is in J Kerry-Nicholls' *The King Country*, published in London in 1884, where he suggests that the mountains should be made a "public park".³⁰ From this, it can be taken that the idea of reserving or setting aside the mountains in some way was already a subject of public discussion in New Zealand before Lawrence Grace's meetings with Te Heuheu Horonuku in 1885. It is not at all impossible, in fact quite likely, that it was Grace who suggested the idea to Te Heuheu, rather than the other way around. In early January 1886, as seen, Grace forwarded his programme of scenery protection, land acquisition, and title individualisation to the government. On 27 January 1886, T W Lewis, Under-Secretary of the Native Department, sent a telegram to W H (Henry) Grace, Lawrence Grace's younger brother – W H Grace was a land purchase officer working for the Department – requesting him to have Ruapehu and the other mountains set aside *by the Native Land Court*:³¹

Hon: Native Minister wishes you to take steps to have Ruapehu and mountains round it made a reserve for public purposes. The Natives will probably consent to this being done without the land being purchased.

W H Grace was at Taupo, attending the Native Land Court sittings relating to the Taupouiatia block, this being the huge area of land in the Central North Island for which Te Heuheu Horonuku had applied to the Court for a title investigation the preceding year.

At this point, it is necessary to comment briefly on the Native Land Court and how it operated.³² The Court was set up by the Native Lands Acts of 1862 and 1865,

30 JH Kerry-Nicholls *The King Country: or, Explorations in New Zealand* (RCIN 1141878, London, 1884) (reproduced by Capper Press, Christchurch, 1974) at 302-303.

31 T W Lewis, Under-Secretary, Native Department, to W H Grace, telegram, 27 January 1886 [copy], MA-MLP 1, 1903/118.

32 For a more extended treatment, see Richard Boast *The Native Land Court 1862-1887: A Historical Study, Cases and Commentary* (Thomson Reuters, Wellington, 2013) [*The Native Land Court*

and replaced the earlier system of extinguishment of customary titles by Crown pre-emptive purchase. The legislation set up a special process of judicial inquiry by which Māori could apply to the Court to have their customary land titles "investigated" and the ownership defined, following which the owners as ascertained by the Court would be eligible to receive a Crown grant – or, in later years, a certificate of title under the Land Transfer Acts – and in this way having their customary title converted to a legal Crown-granted freehold, usually co-owned as a tenancy in common. Section 5 of the Native Rights Act 1865 gave exclusive jurisdiction over matters relating to Māori customary title to the new Native Land Court.³³ In 1873, by the Native Land Act of that year, the statutory law was significantly remodelled to create a new class of interim – but in reality, semi-permanent – equitable titles, known as memorial interests.³⁴ By 1886, the Native Land Court had investigated millions of acres of land, mostly in the North Island, and large areas had been converted to the new legal tenures provided for in the legislation, whether by Crown grant or by memorials of title set out in Native Land Court formal orders. From small beginnings, the Court's influence and effects had radiated out over an increasingly wide area.

The King Country leadership had kept their lands outside the Court system, but it was integral to the negotiations between the government and the chiefs that the King Country lands be inquired into by the Court, boundaries settled, and the ownership determined. This was carried out in the course of 1886-1887, when about three million acres of the former King Country was investigated. This was done however, not in a single case, but, as has already been explained, in three separate cases (the King Country proper, also known as the Aotea block,³⁵ the Taupouuiatia

1862-1887]; and Richard Boast *The Native Land Court 1888-1909, Vol 2: A Historical Study, Cases and Commentary* (Thomson Reuters, Wellington, 2015). There is a large literature on the Native Land Court, and its operations have frequently been important in historical inquiries carried out by the Waitangi Tribunal.

33 Native Rights Act 1865, section 5.

34 On the memorial of title system and the operation of the Native Land Act 1873, see Boast *Native Land Court 1862-1887*, above n 32, at 97-100. The memorial system lasted for 13 years, and it was then replaced in two stages by Part III of the Native Land Court Act 1886 and by section 73 of the Native Land Court Act 1894. This legislation fused the two earlier categories of Māori land title deriving from the Court process (that is, Crown granted freehold interests, and equitable memorial interests), into a single freehold interest today known as Māori freehold land, which makes up about 13 per cent of the North Island. The Taupouuiatia cases were decided under the Native Land Court Act 1880, and the legal interests created by the Court in this block were all memorial of title interests.

35 The King Country (or Rohe Potae, or Aotea) block, at 1.65 million acres, was the biggest land block ever investigated by the Native Land Court sitting at Otorohanga, just inside the former King Country boundary. The Court gave judgment on 23 October 1886: see (1886) 2 Otorohanga MB

block, and the Waimarino block³⁶ in the upper Whanganui region). These were the three largest blocks of land the Court ever inquired into, Tauponuiatia, at about one million acres, being the second-largest of the three.

Tauponuiatia was not so much a case as a vast and highly managed process, lasting from January 1886, when the formal investigation hearings began at Taupo, until September 1887, when the Court made its final orders splitting this huge area into 176 sub-blocks, 25 of which were awarded to the Crown. The process was a somewhat remorseless one, and an examination of the Court records gives a strong impression that it was very carefully planned and managed from behind the scenes. The final Crown award included, but was not limited to, six small blocks around the three volcanic peaks, and it was these six which comprised the "gift". Over the period of 18 months from January 1886 to September 1887, which included a number of adjournments, the Court had divided and redivided Tauponuiatia into numerous smaller sub-blocks, vesting some in named owners and others in the government, and essentially redrawing the tenurial map of a large area of the North Island interior. It has to be remembered that this very elaborate process occurred simultaneously with the Native Land Court's separate investigations into the other King Country lands, Rohe Potae and Waimarino blocks, the three being heard by different judges and assessors in different places (Taupo, Otorohanga and Whanganui). This was one of the biggest and most consequential tenurial transformations in New Zealand history.

The Tauponuiatia sequence of cases began with an initial determination by the Court on 28 January 1886 fixing the principal ancestors for the block. After hearing evidence from Te Heuheu Tūkino Horonuku and other people, the ancestors for the block were fixed as two great Tūwharetoa ancestors, Tūwharetoa and Tia, both of whom had died centuries before. Only hapu that could trace their descent lines back to these two ancestors could be admitted into the Tauponuiatia titles, a position that the Court did not budge from, notwithstanding much protest and discontent from the chiefs of other iwi, Ngāti Raukawa and Ngāti Maniapoto. In one of the partition hearings, that relating to the Maraeroa subdivision of Tauponuiatia West, Taonui Hikaka of Ngāti Maniapoto became so enraged and frustrated with the process that he left the Court with all his followers. According to the Court minutes:³⁷

55-70; and Boast *Native Land Court 1862-1887*, above n 32, at 1168-1190 (printing the judgment in full, together with notes and commentary). Tūwharetoa were not active participants in this case.

36 Waimarino was also a very large block (454,189 acres). The Native Land Court, sitting at Whanganui, made its orders relating to Waimarino on 1 and 15 March 1886: see (1886) 9 Whanganui MB 199-200, 290; and Boast *Native Land Court 1862-1887*, above n 32, at 1110-1116.

37 (1886) 5 Taupo MB 81.

Taonui got up to discuss Judgment of Maraeroa. Court informed him that the judgment was given and would not be discussed. Taonui then got up and took all his people outside – and on being told to return and explain his Conduct to Court he refused – policeman was sent to bring him back and he was obstructed in execution of his duty. Taonui after some little time appeared before Court. Court fined him 40s. (Fine paid).

As the cases unfolded, W H Grace was actively engaged in purchasing undivided share interests on behalf of the government, interests which would in turn be recognised by the Court in the form of allocations to the Crown all over Tauponuiaia as the process progressed. It was against this backdrop of partitioning and Crown purchasing – private purchasing of the area was illegal – that the discussions relating to the "gift" took place. The gift, if gift it was, thus occurred within the context of a large scale and highly managed sequence of Court hearings, disputes, surveys and allocations of blocks to individuals and to the government.

V RUAPEHU AND TONGARIRO BLOCKS: FORMALITIES AND HESITATIONS

The implementation of the "gift" thus occurred within a framework of intricate partitioning and subdivision of the land blocks around the peaks. To make this process a little more comprehensible, I have broken the sequence down into its main steps. As noted, the first Tauponuiaia decision on 22 January 1886 fixed the main ancestors for the whole of Tauponuiaia. From this point, the rapid-fire partitioning and allocation process began more or less immediately. The analysis below does not deal with the process in its entirety, but concentrates only on the steps relevant to the setting aside of the peaks. The process is unfortunately a little complicated.

A Creation of Okahukura Block (3 February 1886)

Okahukura was one of the largest and most important subdivisions of Tauponuiaia, covering 82,760 acres. It was partitioned out of Tauponuiaia by the Native Land Court on 3-4 February 1886, that is, just two weeks after the initial title investigation. It lies to the west of the mountains and includes parts of all three. The eastern boundary of Okahukura was simply a straight line on the plan running in a north-south direction line connecting the mountain peaks. There is practically no material in the minute books of the Court about this case; like all the others, it seems to have been very efficiently managed from behind the scenes. Te Heuheu Tūkino Horonuku appeared in the Court on 3 February 1886, and produced a survey plan of the block and handed in a list of hapu to whom the block was to be allocated. There was evidently no discussion, and no opposition, and the Court made the orders asked for without comment. The position was that Okahukura, containing parts of the mountains, was now a separate surveyed sub-block.

B Partition of Okahukura Block and Creation of Tongariro No 1 and Ruapehu No 1 (4 February 1886)

The very next day, another Tūwharetoa leader named Te Keepa Puataata appeared in the Court at Taupo and asked the Court to partition Okahukura (the partition of a partition, in other words). Again the careful preparation behind the scenes is evident. Okahukura was, at the request of the applicants, split into *ten* sub-blocks. These were Okahukura Nos 1-6; Okahukura proper (the largest section by far); Motuopuhi, an island in Lake Roto-a-Ira; and Tongariro No 1 and Ruapehu No 1. Ruapehu No 1 was a wedge-shaped block defined by a three-mile radius from the main peak at Paretetaitonga and by the Okahukura surveyed boundaries, and accounted for about one-quarter of the mountain on its northwestern side. Tongariro No 1 was made up of two-interconnecting half-circles measured from the highest point of the Tongariro massif and from Ngauruhoe, an active volcanic cone. While the rest of Okahukura was allocated to a number of hapu, these two peak blocks were allocated to seven individuals (the same seven for each sub-block). Once again, there is not much information recorded in the Court minutes. All that is said about Tongariro No 1 and Ruapehu No 1 is the following:³⁸

Tongariro No 1 to Te Heuheu Tūkino, Matuaahu Te Wharerangi, Paurini Karamu, Patena Hokopakakeke, Keepa Puataata, Ngahiito Rangimawanui, and Tureti Te Heuheu estimated areas to be absolutely inalienable by sale or lease.

Ruapehu No 1 to the same parties to be absolutely inalienable – by sale or lease. Area 3560 acres.

These areas were identified so that they could be reserved separately in some way. Presumably, this was why they were asked to be vested in a restricted group of Tūwharetoa leading chiefs. The blocks were "inalienable", which meant that they could not be sold to private purchasers, not that they could not be sold or otherwise alienated to the Crown.

On 3 March 1886, W H Grace – he is the Crown land purchase officer mentioned earlier, obviously constantly on the scene during the partitioning process – wrote to the Native Department to advise that an arrangement had been made with Te Heuheu to reserve the areas around the mountains. Whether this was Te Heuheu's idea, or Grace's, is not clear.³⁹ It is likely that Te Heuheu would want the mountains to have special status and protection. Legally, however, all that had happened was that part

38 (1886) 4 Taupo MB 119; and *Boast Native Land Court 1862-1887*, above n 32, at 1105. Tureti (correctly Tureiti) Te Heuheu was Horonuku's son.

39 W H Grace [writing from Taupo] to T W Lewis (Under-Secretary, Native Department), 3 March 1886, MA-MLP 1, 1903/118.

of the mountains had been partitioned out of the main blocks and vested in seven people, who now possessed the equitable title to the peaks by way of memorial of title under the Native Land Court Act 1880.

C Creation of Ruapehu No 2 and Tongariro No 2 (16 March 1886)

The next step came when the counterpart blocks to Ruapehu No 1 and Tongariro No 1, that is, Ruapehu No 2 (estimated to contain 4,376 acres) and Tongariro No 2 (6,949 acres), were partitioned out of the Rangipo North block on 16 March 1886.⁴⁰ These blocks were to the east of the existing Ruapehu No 1 and Tongariro No 1 blocks. Once again, there is very little information in the Court minutes, and no evidence was taken.⁴¹ A list of owners was handed into the Court by Mita Taupopoki. This time, there was a challenge to the list: Wineti Paranihi and Paurini wished to have their names added to the list of owners. This was opposed by Te Heuheu (who was thus obviously present in Court, although evidently not fronting the case). Wineti Paranihi was then sworn in, but the evidence he gave, if any, was not recorded, the minutes simply stating that "Te Heuheu Tūkino after some discussion agreed to Wineti Paranihi's name being inserted", which it was (Paurini's was not). There were no objections in Court to the Tongariro No 2 list. The lists of owners for these two blocks were different, and had only one name in common, Te Heuheu's, and both also differed from the Tongariro No 1 and Ruapehu No 1 lists. The Nos 1 and 2 blocks are just mirror images of one another and one would think that the owners would probably be the same, or would overlap, but apart from Te Heuheu's name, the lists have no names in common at all. The names inserted into these particular titles seem, therefore, to be representative rather than reflecting customary interests at the hapu level. Whether the Court noticed this or not, certainly no inquiry was made. Once again the managed and artificial nature of the process is clear.

By now, there were 19 names in the four Tongariro and Ruapehu (that is, Tongariro Nos 1 and 2 and Ruapehu Nos 1 and 2) blocks. Te Heuheu Tūkino was in all four. The Tongariro No 1 and Ruapehu No 1 lists were the same; the Tongariro No 2 and Ruapehu No 2 differed from their "mirror" blocks and also from one another, having only Te Heuheu's name in common. Three of these owners sold (that is, did not gift) their interests to the Crown before the blocks were repartitioned in September 1887.

40 The boundary line between Okahukura and Rangipo North bisected Tongariro, Ngauruhoe and Paretaitonga.

41 See (1886) 5 Taupo MB 12, 31.

D Further Negotiations 1886-1887

It was still to take well over a year before the "gift" took place. What exactly was planned for the mountains from March to December 1886 is unclear. It was also apparently unclear at the time. In February 1887, Patrick Sheridan of the Native Department wrote to W H Grace at Taupo demanding to know what, if anything, was happening with respect to the idea of reserving the mountains that Grace had referred to in his letter on the subject sent nearly a full year previously. Sheridan's letter reveals that a bill providing for the setting aside of the mountains was in preparation:⁴²

What is the position of the Tongariro Nos 1 and 2 and the Ruapehu Nos 1, 2 and 3 blocks which in your letter of the 3rd March last you state it had been arranged with Te Heuheu and fellow chiefs to set aside as public recreation grounds. Do the orders of the Court vest them in the Crown for that purpose or has a title to them been obtained by deed of conveyance? A bill is being drafted which [proposes] to vest them in Te Heuheu, the Resident Magistrate of the District, and a third person to be nominated every three years by the Governor as a national park under the provisions generally of the Domains Act 1881.

But the bill was premature, as nothing had happened to formalise any transfer of the mountains to the government. Grace's response to the Native Department explained that the Tongariro and Ruapehu blocks "are not vested in Crown by order of Court but each block is vested in the names of five to seven persons in each".⁴³ Grace went on to discuss a recent meeting between the Native Minister (Ballance) and Te Heuheu in Rotorua, at which the transfer of the peaks had been discussed. However, as a matter of law, Te Heuheu now had no power to make a gift of the peaks by himself, but would need the agreement of the other owners. Why the titles to the mountain blocks had been allowed to be complicated in this way is also unclear.

To add to the complexities, a number of other Māori people began writing to the Native Department objecting to the projected transfer of the mountains, which does at least show that some kind of transfer had become common knowledge. On 9 May 1887, a chief named Te Huiatahi wrote to Ballance on behalf of himself and 180 others objecting to any transfer. In his letter, Te Huiatahi, himself an owner in Ruapehu No 3, remarked that "we beg to contradict the assertion that it [the transfer] was granted by all of Tūwharetoa" and described the whole arrangement as "a secret

42 Sheridan to W H Grace, 15 February 1887, MA-MLP 1, 1903/118.

43 W H Grace to Sheridan, 17 February 1887, MA/MLP 1, 1903/118.

dealing".⁴⁴ This objection was a serious matter, and W H Grace and Native Department staff had to take action to marginalise the protest as best they could. This was achieved by alleging that Te Huiatahi was a follower of a local Māori prophet leader named Te Kere Ngataierua, known as a staunch opponent of land selling and of the Native Land Court, and for this reason there was no need to pay any attention to him.⁴⁵ There were a number of other protests.

E The Final Steps in 1887

In 1887, nearly at the very end of the Taupouuiatia process, the Native Land Court partitioned the Tongariro No 1 block into Tongariro 1A, 1B and 1C, Ruapehu No 1 into Ruapehu 1A and 1B, and Ruapehu No 2 into Ruapehu 2A and 2B. The Court was asked to vest Tongariro 1A and 1B, Ruapehu 1A and Ruapehu 2A into the name of Te Heuheu Tūkino solely "for the purpose of conveying same to the Crown as the gift for a park". The new blocks created small circular areas around the highest point of Mt Tongariro, around Mt Ngauruhoe and a slice of Mt Ruapehu around the high peak known as Paretetaitonga (8,596 ft/2,620 m).

Following the partition, Te Heuheu executed the Deed of Conveyance transferring all his interests in the Tongariro 1A, 1B, 2A, 2B and Ruapehu 1A and 2A blocks to the Crown. This was not a conveyance of all of Te Heuheu's legal interests in the peaks, as the deed of conveyance makes no reference to Tongariro 1C, 2C or to Ruapehu 1B and 2B where Te Heuheu still retained a substantial interest as an owner of (at least) a one-seventh undivided share. The deed related only to the "A" blocks and Ruapehu 2B. Strictly speaking, all that the deed conveyed to the Crown was Te Heuheu's equitable estate in the "peaks" blocks where he was now sole owner, as no legal title to the peaks as yet had come into existence, and would not do so until such time as the surveys were done, lodged with the Native Land Court, and final titles issued. The vesting of the blocks in the Crown happened on the same day as the execution of the deed of the gift. The way the gift was given effect was by means of an oral application made by Te Heuheu in the Native Land Court at 10 am on the morning of 23 September 1887. According to the Court minutes, Te Heuheu applied to have the blocks awarded to the Crown "as a gift from

44 Te Huiatahi and others to Te Paranihi (Ballance) "Minita o te Taha Maori" 9 May 1887, citing from the official English translation on file MA-MLP 1, 1903/118. On Te Huiatahi and his protest, see Richard Boast *Buying the Land, Selling the Land: Governments and Maori in the North Island* (Victoria University Press, Wellington, 2008) [*Buying the Land, Selling the Land*] at 346-347.

45 W H Grace to T W Lewis (Native Department Under-Secretary), 28 May 1887, MA-MLP 1, 1903/118. On Te Kere, see David Young "Te Kere Ngatai-e-rua" in *The Dictionary of New Zealand Biography, Volume II: 1870-1900* (Auckland University Press in association with the Ministry for Culture and Heritage, Auckland, 1993) at 517-518; and David Young *Woven by Water: Histories from the Whanganui River* (Huia Publishers, Wellington, 1998) at 123-155.

himself for the purpose of a National Park".⁴⁶ Working on the assumption that the gifted area would be granted to trustees, he asked that he be made one and that his son succeed him on his death. Presumably, Te Heuheu would at this point have been acting on the assumption that the arrangement was to be according to the terms of the draft bill introduced into Parliament by the Native Minister, John Ballance, the preceding April.⁴⁷ The gift was accepted on behalf of the government by T W Lewis, head of the Native Department, who produced the deed of conveyance to the Court. The Court thereupon vested the six blocks in the Crown "in a state of Freehold".

The areas set aside for Te Heuheu were then included in the Crown award when all Taupouiatia orders were finalised on September 24. By these means, Te Heuheu's "gift of the peaks" was facilitated by the Native Land Court. The "gift" was in fact an allocation to the Crown by the Native Land Court of certain sections of the former Taupouiatia block and was one of a number of the various sections of the block awarded to the Crown. Thus did the high peaks of what is now Tongariro National Park come into Crown ownership.

No doubt, most readers will have given up trying to fathom this intricate and disorderly process of land partitioning and "gifting", and will be wondering as well what the significance of it all was. And the truth is that it *was* a complex and multi-staged process, bewildering even now and which must have been even more so for Ngāti Tūwharetoa at the time. Essentially, the Taupouiatia block was repeatedly sliced and diced by the Native Land Court into a large number of smaller sub-blocks which were vested either in lists of Māori individuals, or, alternatively, in the Crown. By the time the Court had done with Taupouiatia, it had been cut up into no less than 176 sub-blocks, 25 of which were allocated to the Crown on 24 September 1887, including the six "gift" blocks (that is, Tongariro 1A, 1B, 2A, 2B and Ruapehu 1A and 2A) as well as 19 others. The government thus ended up in possession of the circular areas around the peaks as well as numerous other large areas which it had either bought, or alternatively had taken for survey expenses. What can be said about this process, then, and the "gift"? This process of repeated partitioning of a block by the Native Land Court with a number of the pieces of the pie going to the government was, in fact, quite standard practice, especially the Crown taking substantial areas to pay itself for survey costs. On the other hand, there definitely was some kind of generous action by Horonuku setting aside the peaks in trust. This action, however, was deeply entangled within the Native Land Court's standard investigation and partitioning process. Moreover, the government also acquired some areas later to fall

46 (1887) 9 Taupo MB 270.

47 Ibid.

within the National Park *not* by "gift", but rather by means of the much less inspiring processes of individualised share buying and taking land for survey costs. The main point is that the government's acquisition of the National Park lands within Taupouuiatia arose partly from Horonuku's actions (whether these can be accurately characterised as a gift or not) and partly by other means, some of the latter being at least questionable in various ways.

The remaining peaks blocks within Taupouuiatia, those outside the circular blocks at the very tops of the mountains, were still jointly owned by Te Heuheu Horonuku and various other Māori chiefs of the hapu of Tūwharetoa. To acquire these areas lower down the mountain slopes, the government had to buy them. It proceeded to do so, but it was a slow process. Some of the owners were reluctant to sell at any price, others negotiated for more money. To complicate matters, some of the owners of the lower mountain blocks soon died, including Horonuku himself, who died at Waihi, a Māori community on the southern shore of Lake Taupo, in July 1888. He was succeeded by his son Tureiti. The deaths of some of the owners meant that succession orders for the lower-slope blocks now had to be obtained in the Native Land Court, which meant waiting for the Court to conduct hearings at Taupo. The Native Department, for its part, was reluctant to spend any more money on acquiring land within Taupouuiatia, officials regarding the region as essentially barren and useless for European settlement. A Native Department memorandum of September 1889 describes the situation as it had developed, or perhaps more accurately, as it had stagnated, by that time:⁴⁸

The original idea was that the Natives should have given the land as a gift. When they got it through the Court they then demanded payment – afterwards they gave a small area around the summit of the mountains but for the bulk of the reservation some of them are I believe unwilling to negotiate at all and others demand payment at a rate far in excess of the value of the land. Going on with the purchase at present means taking at least £3000 out of the money available for the Awarua purchase. A title could not be completed under any circumstances until a [Native Land] Court sits at Taupo as some of the owners are dead and successors have not been appointed.

The Awarua block mentioned in the memorandum is a large area to the southeast of the mountains, which the government wished to acquire from its owners to provide additional land for the Auckland-Wellington railway line, a much more important matter than a national park as far as officials of the Lands and Native Departments saw things.

48 Memorandum, Sheridan to Lewis, 24 September 1889, MA-MLP 1, 1903/118 (National Archives, Wellington).

In fact, it took nearly 16 years after the transfer of the upper peaks blocks for the Crown to purchase the lower mountain blocks. Owners were paid sums varying between £30-£100 for their shares as co-owners.⁴⁹ Some of the co-owners were burdened with Court fees and debts incurred for survey expenses, which may explain why they eventually capitulated and sold their shares. In November 1893, T W Morpeth, Registrar of the Native Land Court at Auckland, forwarded to the Native Department six conveyance orders for the blocks.⁵⁰ These documents were accompanied by a voucher for arrears of Court fees owed by the owners, and a request that the Chief Surveyor could now withdraw the government's survey liens. Presumably, the co-owners were to have these sums deducted from their payments.

VI THE NON-TAUPONUATIA BLOCKS

The discussion thus far has focused only on the Tauponuia block and its complex investigation and partition in 1886-1887. As was indicated earlier, however, a very significant section of the mountains, and thus of land which is now within the Tongariro National Park boundaries, was actually wholly outside the Tauponuia block. Te Heuheu Tūkino Horonuku did not include these areas within the Tauponuia external boundary because he did not claim them. They belonged to other iwi and hapu, including Ngāti Rangi of the Waiouru-Ohakune area and the peoples of the upper Whanganui valley, including the Uenuku people of the Manganui-a-te Ao valley west of the mountains and the descendants of the ancestors Tamakana and Tamahaki of the upper Whanganui. The area outside Tauponuia included the entire southern and western sides of Mt Ruapehu. It is important to grasp that much of what is now inside the Tongariro National Park boundaries, including the high westward-facing slopes of Mt Ruapehu, fell completely outside the Tauponuia process. No question of a gift arose, or could have arisen, with these areas.

These western and southern areas fell within other blocks, many of which had rather complex and chequered histories of their own. The most important of these was Waimarino, the third of the three King Country blocks, comprising a very large area bounded by the Whanganui River on its western side and including much of the westerly part of Ruapehu. Waimarino went through the Court at more or less the same time as Tauponuia, but it was claimed by different groups entirely and the Court hearings were not in Taupo, but in Whanganui. Waimarino, a huge area of 454,189 acres, was investigated in March 1886, that is, at more or less the same time

49 See table of payments in Boast *Buying the Land, Selling the Land*, above n 44, at 351.

50 Morpeth to Sheridan, 29 November 1893, MA-MLP 1, 1903/118 (National Archives, Wellington).

as Tauponuiatia.⁵¹ Waimarino did not belong to Ngāti Tūwharetoa but instead to various hapu of the upper Whanganui.

How the eastern side of Mt Ruapehu became government property before the "gift" blocks came into existence is remote from any notion of a gift. The applicant for title to Waimarino was one Te Rangihuatau, an upper Whanganui chief. The application for investigation of title, dated 27 December 1885, was signed by just three people. The application for investigation was processed very rapidly, with just two months elapsing between the filing of the application and the gazetted hearing date. The Court's "investigation" of the block, if that is what it can be called, was extremely cursory with virtually no evidence being heard, and it was vested in 1,110 individuals as co-owners between 1 and 15 March 1886. Then, just one year later (5 April 1887), following a concerted attempt by the government's land purchase officer to acquire individual share interests, the block was partitioned by the Native Land Court at the application of the Crown. No less than 417,500 acres were awarded to the Crown on this partition, including the western side of Mt Ruapehu. Some areas were set aside as reserves for both the selling and non-selling owners, but these were positioned on the western side of the block, nowhere near Mt Ruapehu.

The investigation and partition of Waimarino amounted to a massive extinguishment of customary title and its transference to the Crown. The scale of this block, and the rapidity of investigation and partition, stand out. Certainly, there was nothing noble or gift-like about it. The history of the Waimarino block shows that the government's acquisition of the lands within the National Park boundary was chequered right from the beginning. Other substantial sections of the National Park land are comprised of yet other non-Tauponuiatia blocks, principally on the southern side of Mt Ruapehu. I am reluctant to weary the reader with other complex block histories, but on the whole, very similar processes as happened with Waimarino occurred with these other parcels of land.

Contemporary newspapers reflected public opinion that the Waimarino partition was excellent news, although this had nothing whatever to do with national parks. Newspaper headlines focused rather on the availability of new land for European settlement. Shortly before the partition hearing, the *Evening Post* (Wellington) reported:⁵²

The Waimarino block on the North Island railway line comes before the Land Court next week. I learn that the road party at Pipiriki, up the Wanganui River, are making

51 The decision is at (1886) 9 Whanganui MB 290; and Boast *Native Land Court 1862-1887*, above n 32, at 1116.

52 *Evening Post*, Vol XXXIII, Issue 72, 26 March 1887, at 2.

good progress with the bridle track to the line. This will tap a portion of the Waimarino block, regarding which I have been told by a gentleman, who has lately been into the block, that it contains a large quantity of the best land in the colony.

Once the award had been made, the general tone of the press was jubilation. One newspaper carried the headline "Important Decision of Native Land Court: LARGEST AWARD EVER MADE".⁵³ (The "award" referred to was the area awarded to the Crown in 1887). According to the article:⁵⁴

The Native Land Court came to a decision on the Waimarino block this morning, when the Chief Judge gave his decision that 41,000 acres represented the interests of 100 non-sellers and 417,500 acres of the Government. This is the largest award yet made by the Native Land Court, and the block is one of great value, opening up the interior of the North Island.

Although the Waimarino case started a little later than Tauponuiatia, the investigation and partition happened much more rapidly – suspiciously rapidly perhaps – meaning that the first part of what is now the National Park to come into the hands of the government originated not from the three peaks transferred to the Crown by Horonuku, but rather from the Waimarino partition. The part of the mountain passing to the government as a result of the Waimarino partition was significantly larger than the "gifted" areas that passed to the government in September 1887.

VII ESTABLISHING THE NATIONAL PARK

It took some years before the National Park, considered as a legal entity, began to emerge. It took 16 years for the state to obtain clear titles to Ruapehu 1B and 2B and Tongariro 1C and 2C. The Tongariro National Park Act was not enacted until 23 October 1894. At this time, the construction of the main trunk railway in the North Island interior was still incomplete, the engineering obstacles being formidable, and the line was not finished until 1908. Not till then was it possible to travel overland from Auckland to Wellington by train. The completion of the line meant also that the general public was now able to get to the National Park with relative ease.

The preamble to the Tongariro National Park Act 1894 described it as an Act "to authorise the Setting-apart of a certain Tract of Land around and in the Vicinity of the Tongariro Mountain as a National Park". The preamble to the Act made reference to Te Heuheu Horonuku's cession of 23 September 1887, and went on to refer to the

⁵³ *Thames Star*, Vol XIX, Issue 5675, 5 April 1887, at 2.

⁵⁴ *Ibid*.

so-called "residue" interests as being without any value to the remaining co-owners:⁵⁵

And whereas the residue of the said lands [that is, the remaining interests in the lower peak blocks, set out in the Schedule] so described is of no use or benefit to the Native owners thereof, and is being acquired from time to time by Her said Majesty, through the purchase of the shares or interests of such Native owners therein, with the view of carrying out the intention of the original gift.

The Governor-General was authorised to set aside the lands set out in the schedule as a National Park at some time in the future once the Crown had a clear title to all the land (this, in 1894, the Crown did not yet have). The legislation set up trustees to manage the park, who included Tureiti Te Heuheu (Horonuku's son and successor), the Minister of Lands, the Surveyor-General and the Director of Geological Surveys. In case the remaining owners remained reluctant to sell, section 2 of the Act gave the government power to take the land compulsorily under the Public Works Act 1882. No doubt, having this threat hanging over them was a powerful incentive in persuading the remaining owners to sign the government's purchase deed.

Other parcels of land were added in a piecemeal way to the park. When the Rangipo North block was partitioned in 1899, the Native Land Court awarded 12,069 acres to the Crown, of which 7,859 acres fell within the National Park boundary as described in the schedule to the 1894 Act. As the Crown purchasing programme continued, the remaining areas within the boundary were gradually filled in. The National Park was finally proclaimed formally on 29 September 1907, with 62,300 acres being set aside. The date of the origin of the National Park depends on whether one sees the 1894 Act or the 1907 proclamation as the formal establishment of the park: strictly speaking, the latter would appear to be the correct date. Further areas outside the 1894 boundaries have been added in more recently. National parks were still a new idea even in 1907, and the government was uncertain about what it should do about its new acquisition. There was no scientific exploration of the park until 1907-1908,⁵⁶ and no park ranger was established until 1931.

VIII CONCLUSIONS: ORIGIN MYTHS AND NATIONAL PARKS

The "gift of the peaks" should be seen, therefore, as a kind of founding myth. According to the myth, Tongariro National Park takes its origin from a noble action by a great Māori chief who gifted this outstanding area to the nation. The myth is a benign one, and is not wholly untrue, but it certainly serves to obscure the real history

⁵⁵ Tongariro National Park Act 1894, preamble.

⁵⁶ See *Report of the Board of Tongariro National Park* [1908] AJHR G3. The report includes a scientific study on the park by Dr L Cockayne and P Turner.

of Tongariro National Park and how it came to be possessed by the state. In fact, the way in which the New Zealand state has come to own Tongariro National Park was the outcome of a complex array of factors that lasted over several decades, originating from the break-up of the autonomous King Country and the investigation of its various components by the Native Land Court. Most of the National Park has come to be owned by the state in ways which do not differ from standard land acquisition tactics developed after the establishment of the Native Land Court: undivided share buying, sequential partitioning, and taking land in lieu of survey costs. Tongariro National Park, for the most part, has a history which is not too different from Te Urewera National Park or Whanganui National Park.

There are some curious counterparts with Yellowstone National Park in the United States. It too has an originating myth. In the case of Yellowstone, the founding myth is the so-called "campfire story", an account which has been told and re-told – and even re-enacted – on numerous occasions:⁵⁷

According to popular tradition as presented in countless publications and public speeches during the past seventy-five years, the idea of Yellowstone National Park originated with one man on a specific day. As this tradition has come down to us, on the evening of September 19, 1870, members of the Washburn-Langford-Doane expedition gathered around a campfire at the junction of the Gibbon and Firehole Rivers (called Madison Junction) in what would become Yellowstone National Park. They had just completed a tour of the area's many remarkable wonders, and, rather than lay claim to the region for personal gain, they had the idea of setting aside the geyser basins and surrounding country as a national park. The "campfire story," promoted and celebrated by several generations of conservation writers, historians, and National Park Service employees, became well established in the popular mind as the way not only Yellowstone but also national parks in general originated.

This cherished account has been dissected by two historians of the American West, Paul Schullery and Lee Whittlesey, who have found that it rests on very slender foundations. They have also investigated why the story is so cherished, and what this reveals about historical myth-making in general. They point out:⁵⁸

Believers and defenders of the story seem to have regarded it as an essential element of the National Park Service culture and just as important in "selling" the mission of the national parks to the public.

57 Paul Schullery and Lee Whittlesey *Myth and Origin in the Creation of Yellowstone National Park* (University of Nebraska Press, Lincoln, 2003) at xiii.

58 *Ibid*, at 93.

The campfire story is "without question lousy history, but it is not without greater meaning, even yet".⁵⁹

The latter observation is a good place to end this chapter. Perhaps the really interesting question about the "gift of the peaks" is why the story is so important in New Zealand. Why is it constantly retold and recycled? Perhaps it is important because it apparently shows that national parks in this country are in some sense a bicultural project. Māori and Pakeha can come together in a shared respect for the country's natural heritage and a desire to safeguard it. Tongariro National Park was the nation's first, indeed one of the first anywhere, which adds to its importance in this respect. As the campfire myth is widely seen in the United States as the origin not merely of Yellowstone, but indeed of all national parks in the United States, so too the "gift of the peaks" has come to be seen as the foundation for all national parks in New Zealand, and indeed for the very idea of a "national park" itself. The story is benign, comforting and useful. Nonetheless, it has come at a price. It is very striking that although coffee table books about New Zealand's national parks are legion, there are very few explorations of the actual histories of New Zealand's national parks and how they came into existence. Mt Egmont National Park, for example, was possible because of the government's confiscation of land in Taranaki during the 1860s. Te Urewera National Park originated from the government's land purchasing and consolidation policies in the Urewera region in the 1920s. National parks, at the end of the day, have their own complex histories. Myth-making may have its place, but there remains a need for a thorough understanding of these histories, and indeed of the history of the concept of a "national park" itself. This is becoming even more important as the Ministry of Justice begins to use national parks as a type of public estate that can be utilised to provide redress for Māori groups in negotiation with the Crown. This has already happened with Te Urewera National Park and further negotiations are probably in store for Tongariro and Egmont National Parks. These developments have not been accompanied by any national debate about our national parks: how they came to be there, what their particular histories are, and what they have come to mean.

59 Ibid, at 91.