

Gifts of tribal land to the Church: What happens when the tribe wants the land back?

by David V. Williams —

Senior Lecturer in Law, University of Auckland;

and member of CARE (Citizens Association for Racial Equality Inc.)

In the first two decades of British rule over these islands — prior to the disillusionment caused by the wars and their aftermath in the 1860s — there was very widespread goodwill between Maori tribes and Christian missionaries. Moreover the fledgling colonial state was in no position to establish and develop an education system so that the missionaries (more especially the Anglicans and the Wesleyans) ~~were~~ were directed to attend to the education of Maori people: Education Ordinance 1847. As a consequence there were a large number of land transactions in many parts of the country whereby a particular Maori tribe gifted pieces of land to Church authorities so that their children might receive an education from missionary ministers or teachers. In law, however, these transactions took a ~~different~~ significantly different form. The Church authorities obtained title to such land by means of a Crown Grant whereby the Queen bestowed an unencumbered freehold title upon the Church authorities. On some occasions there was a Deed evidencing the gift from the Maori tribe to the Crown and the terms of trust proposed, but a Deed was not essential and, in any case, it was not legally possible to challenge a Crown Grant by claiming that Maori customary title had not been extinguished!

What happened if no school ever eventuated on a block of gifted land? or if it went into permanent recess? Could the Maori donors claim the return of "their land"? Legally speaking the answer was "No." Wi Parata, on behalf of Ngati Toa, sought in 1877 the return of land called Witireia at Porirua which had been gifted in 1848. He failed. Years later, ^{in 1901,} there was still no school on Witireia and the Bishop of Wellington decided to invest accumulated revenue to establish a school ~~at~~ in the Wairarapa. When Ngati Toa heard of this they objected ^{stating} strongly that money raised from "their land" should ^{not} be spent for the benefit of Ngati Kahungunze. They failed in their bid to have a school established at Otaki where it could benefit themselves and their kinsfolk of Ngati Raukawa and Ngati Awa. Another example is the Orakei school and Church site gifted by Ngati Whataua in 1858 to enable a Church of England education to be provided in Orakei. For a few years there was such a church and school but they were closed. Was the donated land returned to Ngati Whataua? No. It was sold to the Crown and the money was paid to the trustees for two Anglican Maori schools in the Auckland area. When Ngati Whataua complained that their gift was to provide for their own children they received no redress. A Royal Commission ^{in 1938} relied on the English translation of the 1858 Deed which described the land as an "endowment of a school connected with the Church of England" — but compare the Maori text: "no te kura whakaaako i runga i nga tikang o te karakia o te Hahi o Ingarani."

Clearly it is the case that the law has paid no regard to the tribal nature of Maori land-holding and the tribal nexus involved in gifts of land to promote educational purposes. Should it

law's answer be the end of the matter? Surely not for Christians conscientised by the gospel of Jesus. In some cases the Government has at least partially rectified historic grievances: the sacred mountain of Taupiri ^{which was} confiscated in the 1860's has been returned to Waikato-Tainui; some of the Crown land at Takaparauka (Bastion Point) has been restored to Ngati Whataua; the "golf course" at Te Kopua (Raglan) has been handed back to Tainui Awhiro. Presently a draft Bill exists which, when enacted, will ~~settle~~ settle a long standing grievance with respect to a ^{former} Church property at Port Waikato. Discussions are commencing in Auckland to try to settle the Orewa School and Church site issue.

In the main Maori population centres of the Waikato and Tamaki Makarau (Auckland) there are concerned groups of Maori people insisting upon a re-examination of historic injustices. Yet there may be many other examples of ^{similar} injustices in other areas where Maori numbers are fewer. These must be attended to also, because if we do not learn from the mistakes of our past it is highly likely that we will ~~like~~ condemn ourselves to repeat ~~these~~ similar mistakes.

E nga waka, e nga iwi, e nga ro- tena
koutou, tena koutou, tena koutou katoa.

Na Rawiri.