

Gifts of tribal land to the Church:

What happens when the tribe wants the land back?

By David V. Williams
Senior Lecturer in Law, Auckland University,
and member of CARE (Citizens Association for
Racial Equality)

In the first two decades of British rule over these islands - prior to the disillusionment caused by the wars and their aftermath in the 1860's - 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 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 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 the 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 in the Wairarapa. When Ngati Toa heard of this they objected strongly stating that money raised from "their land" should not be spent for the benefit of Ngati Kahungunu. 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 in the Orakei School and Church site gifted by Ngati Whatua 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 Whatua? 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 Whatua 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 "Mo te kura whakaako i runga i nga tikanga o te karakia o te Hahi o Ingarani."

Clearly it is a case that the law has here paid no regard to the tribal nature of Maori landholding and the tribal nexus involved in gifts of land to promote educational purposes. Should the 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 Takaparawha (Bastion Point) has been restored

to Ngati Whatua; the "golf course" at Te Kopua (Raglan) has been handed back to Tainui Awhiro. Presently a draft bill exists which, when enacted, will 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 Orakei School and Church site issue.

In the main Maori population centres of the Waikato and Tamaki Makaurau (Auckland) there are concerned groups of Maori people insisting upon a re-examination of historic injustices. Yet there may be 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 condemn ourselves to repeat similar mistakes.

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

Na Rawiri.