Wastelands "which might doubtless easily be drained":[1] A Contextual Study of the Drainage of the Hauraki Plains

Alexander Douglas Young*

This article examines the differing perspectives on wetlands held by British settler colonists and Māori in New Zealand in the late 19th and early 20th centuries. Wetlands were viewed as wastelands by settler colonists, as they were not cultivated and developed in a Eurocentric manner. Furthermore, wetlands were viewed as dangerous landscapes. To settler colonists, in the context of wetlands, Māori had failed to mix their labour with the land, and make it productive; this failed to satisfy Locke's theory of property, which permitted settler colonists to take wetlands and drain them to produce productive farmland. Additionally, dominion theology gave settler colonists a religious mandate to improve the swampy wastelands and make them productive. This article traverses literature which discusses settler perceptions of wastelands and the origins of improvement, Lockean land law theory and dominion theology, before shifting to a case study of the Hauraki Plains Act 1908. This Act was an application of the wastelands doctrine, and led to the disenfranchisement of Hauraki Māori from their lands. The article concludes that whilst it led to the creation of productive farmland, the wastelands doctrine, manifested through the Hauraki Plains Act 1908, caused widespread social and ecological damage to the Hauraki Plains wetlands.

*Alexander D Young (LLB(Hons)/BSc). I dedicate this article to my late father, Dr Yatin Young. I know that you would have been very proud. To my mum, Arthur, Kit and Granny Sudha your enthusiasm and support has meant the world. I wish to extend my warmest thanks to Katherine Sanders at the University of Auckland Faculty of Law for her outstanding work in supervising my dissertation project. Email: youngalexanderd@gmail.com.

1 JC Beaglehole *The* Endeavour *Journal of Joseph Banks, 1768–1771* (2nd ed, Angus & Robertson, Sydney, 1963) vol II at 3.

1. INTRODUCTION

This article asks why New Zealand's wetlands were seen by settler colonists as wastelands. It also examines the role of the law in the drainage of these wetlands. The article argues that the colonial land law doctrines of wastelands and improvement were applied through legislation in New Zealand to drain its wetlands in the late 1800s and early 1900s. It argues that these concepts and their application were a product of dominion theology and Lockean land law theory undertaken by the Liberal Government to achieve its policy goal of close settlement. To support this argument, part 2 of the article reviews the literature pertaining to the development of the concepts integral to the argument. Part 3 relates the concepts discussed in part 2 to a case study, which focuses on the Hauraki Plains wetlands. This wetland, originally the country's largest, was significant to Māori, who utilised the wetland as a mahinga kai.[2] The case study examines the land policies of the Liberal Government and specifically assesses the Hauraki Plains Act 1908. It is argued that this Act was the embodiment of settler colonist land ideologies, whereby the wetland was a "swamp which might doubtless easily be drained".[3] Once the wetlands were drained and improved, they were farmed by Pākehā in close settlements. This process of land acquisition, drainage and improvement resulted in widespread ecological change and alienation of Māori land in the Hauraki Plains.

2. LITERATURE REVIEW AND CONCEPTUAL DEVELOPMENT

> *Property, in its fundamental sense, denotes the norms and rules that shape who can access and control resources. It therefore has an inherently social character: it is always about relationships between people.*[4]

This article recognises two conflicting perspectives on wetlands. Pākehā colonists and settlers saw them as underutilised "waste lands", whilst Māori saw wetlands as highly productive and sustainably utilised taonga. Corbin recognises that historiography has often been tied up in the study of "institutions, objects

2 Mahinga kai translates as food-gathering place: "mahinga kai" Māori Dictionary online <maoridictionary.co.nz>; Tom Brooking and Eric Pawson *Seeds of Empire* (Bloomsbury, London, 2010) at 13.

3 Beaglehole, above n 1, at 3.

4 Jonathan West "Owning the Otago Peninsula: The Role of Property in Shaping Economy, Society and Environment 1844–1900" (2012) 46(1) NZJH 52 at 55.

and practices rather than 'emotionally charged' subjects".[5] A mechanical legal history which focuses solely on a piece of legislation's impact on a landscape may be limited if it fails to capture communities' perceptions of the landscape. For the purposes of this article's argument, it is important to recognise how Pākehā settlers emotionally charged the land, as a space to be colonised. Furthermore, it is also important to recognise the significance of wetlands to Māori, for whom, both on a metaphysical level and from a practical perspective, lowland lakes and wetlands were highly valued, as they held vast fish resources termed "mahinga kai" by Māori, which literally translates as "food works". Wetlands, lakes, estuaries and rivers were inherently vulnerable to Pākehā drainage schemes, due to their fertility as floodplains and associated value as farmland. These conflicting perspectives on wetlands are described by Park: "The river country was only deceptively empty. Far from being waste land, the floodplain was cherished and intimately known, its places and rhythms named and valued from centuries of lives tied elaborately to it."[6] Subsequent to the application of what this article terms "the wastelands doctrine", Māori land was alienated, forests were felled, wetlands were drained and pasture was created where land had been "waste".[7] In this article the wastelands doctrine is defined as: the perception held by settler colonists of wetlands as unproductive land which has not been improved, enclosed and owned in a manner consistent with colonial land law doctrines.[8] The Resource Management Act 1991 defines a wetland as "permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions".[9]

2.1 The Settler Colonist Perspective on Wetlands as Wastelands

> *New Zealand is a palimpsest written on by only a few people, and only recently.*[10]

One of the first Pākehā to write on the palimpsest of New Zealand and cast an improver's gaze was Joseph Banks, the notable botanist who sailed with

5 Alain Corbin *The Lure of the Sea: The Discovery of the Seaside in the Western World 1750–1840* (trans Jocelyn Phelps, Polity Press, Cambridge, 1994) at vii.

6 Geoff Park *Ngā Uruora/The Groves of Life: Ecology and History in a New Zealand Landscape* (Victoria University Press, Wellington, 1995) at 61.

7 Helen Moewaka Barnes and Tim McCreanor "Colonisation, hauora and whenua in Aotearoa" (2019) 49(1) J R Soc of NZ 19 at 23.

8 Vinay Gidwani "Waste and permanent settlement in Bengal" (1992) 27(4) Econ and Pol Wkly 39 at 40.

9 Resource Management Act 1991, s 2.

10 Alfred W Crosby *Ecological Imperialism: The Biological Expansion of Europe 900–1900* (Cambridge University Press, Cambridge, 2004) at 218.

Captain Cook on the *Endeavour*, to the Waihou/River Thames in 1769.[11] By naming the Waihou the Thames, Banks imposed the language of empire upon it.[12] As Banks had been raised on an estate in Lincolnshire's fens, he was alive to the benefits of draining and clearing watery landscapes. It is hard to overstate his influence on the New Zealand landscape, a place which he saw as "an arcadia of which we were going to be kings".[13] Draining the "immense districts of teeming fertility, literally without an inhabitant, that did not produce a mouthful of food" enabled subsequent settler colonist governments to see the watery land's potential returns.[14] Drainage was ideologically motivated by 17th-century English philosopher John Locke, who stated: "land left wholly to nature, that hath no improvement of pasturage, tillage, or planting … is called as indeed it is, *waste*".[15] For those aboard the *Endeavour*, the swampy lowlands of the Hauraki plains were "waste" manifest.

A factor which contributed to settlers perceiving wetlands as wastelands was that settlers saw them as filled with toxic miasma and a threat to public health. During the 19th century, where modern medical practice was developing, the connection between landscape, environment and health was of great importance.[16] Consequently, the creation of healthy places, as actioned through legislation, was called for.[17] Additionally, humans were able to improve these lands through planting and drainage.[18] Swamp plants, and in particular rotting swamp plants, were deemed to trap air, and create unhealthy vapours, which negatively impacted upon the health of those that inhaled such vapours. Negative attitudes to swamp-related miasma can be seen throughout New Zealand in newspapers from the 1900s. A reporter from the *Wanganui Herald* in 1871 related concern for the "rank-and-marshy vegetation which throws off a foul miasma which no doubt poisons the air of the surrounding neighbourhood", and in half jest states: "The Isthmus of Panama could not produce a more malarious swamp of the same area." The reporter then continues

11 Park *Ngā Uruora/The Groves of Life*, above n 6, at 32.
12 Waitangi Tribunal *The Hauraki Report* (Wai 686, 2006) at 1105.
13 Beaglehole, above n 1, at 252.
14 Tony Ballantyne "Genesis 1:28 and the Languages of Colonial Improvement in New Zealand" (2011) 37(2) Vic Rev 9 at 10.
15 John Locke *Two Treatises of Government* (Awnsham Churchill, London, 1690) at 202 (emphasis added).
16 James Beattie "Colonial Geographies of Settlement: Vegetation, Towns, Disease and Well-Being in Aotearoa/New Zealand, 1830s–1930s" (2008) 14(4) Environ Hist 583 at 584; James Beattie "W. L. Lindsay, Scottish Environmentalism, Webs of Information, and the 'Improvement' of Nineteenth-Century New Zealand" in T Ballantyne and JA Bennett (eds) *Landscape/Community: Perspectives from New Zealand History* (Otago University Press, Dunedin, 2005) 43 at 43.
17 Hauraki Plains Act 1908.
18 Beattie, above n 16, at 588.

to implore local government to drain the several acres of water, otherwise "t[he] swamp will have performed no unimportant part in the work of death".[19] Further up the country, in 1860, the Presbytery of Auckland expressed relief in the *New Zealander* at the drainage of the "feculent pool of water" on the corner of Vulcan Lane and Queen Street, and the swamp at the lower end of Shortland Street, which was regarded as not being "conducive to the health of occupants in the vicinity".[20] From Napier, the *Daily Southern Cross* reported in 1875 concern that to the "disease-engendering swamps of Napier from which ascends a miasma polluting the atmosphere with its noxious influence, is mainly owing a large amount of the sickness which prevails among children and adults".[21]

With specific regard to the Hauraki Plains, the negative effect of wetlands is demonstrated by this statement made in 1830 by missionary James Preece, who proclaimed that the Hauraki Plains "has every sign of an unhealthy place. The land is very low and entirely surrounded by swamp, which extends for miles, and comes close to the settlement … vapour which arises there from during the whole of the summer had caused the death of three children." As a result of the threat posed by the swamp the church moved to high ground "washed by the sea".[22] This historical evidence demonstrates that settlers perceived wetlands as wastelands that were conducive to negative public health outcomes; furthermore, this link was a motivator for settlers to drain wetlands, and improve the land.

In addition to being public health threats, Christian theology assisted in colouring watery areas as the threatening residue of the great flood and they were seen as being the "abode of monsters stirred up by diabolical powers".[23] The perspective that people who inhabited marsh, fen or wetland landscapes were set apart and "outside" relative to non-wetland communities can be traced throughout history. Rudkin demonstrates how this has carried through to the 20th century when she asked inhabitants of an upland community on the Lincolnshire Wolds whether they knew details of a specific fenland custom and was told: "We wouldn't know that: they are strangers."[24] The English

19 "A Death Pool in Bell Street" *The Wanganui Herald* (New Zealand, 3 November 1871) at 2.

20 Presbytery of Auckland "Do We Want Drainage?" *The New Zealander* (New Zealand, 13 October 1860) at 3.

21 "News of the day" *The Daily Southern Cross* (New Zealand, 1 April 1875) at 2.

22 Beattie "Colonial Geographies of Settlement", above n 16, at 584.

23 Corbin, above n 5, at 7.

24 EH Rudkin "Folklore of Lincolnshire, especially the low-lying areas of Lindsey" (1955) 66(4) Folklore 385 at 389 in Stephen Rippon "'Uncommonly rich and fertile' or 'not very salubrious'? The Perception and Value of Wetland Landscapes" (2013) 10(1) Landscapes 36 at 48.

aversion to wetlands and their inhabitants is mirrored by the views held by settler colonists of Māori "savages" who inhabited New Zealand's wetlands.[25]

2.2 Historical Context of Drainage and Reclamation

The improvement of land through drainage and reclamation was not a practice born in New Zealand. Drainage occurred in England and Scotland for centuries prior to New Zealand's colonisation; furthermore, key agents of New Zealand's drainage, such as Banks, had roots in this history.[26] This history of wetland drainage was brought to New Zealand by settlers.

It is important to briefly assess the English historical context of drainage and improvement, to demonstrate the historical inertia of anti-wetland prejudice that settler colonists brought to New Zealand. In the mid-13th century, Matthew Paris described the "marvellous thing" that had happened in the marshes of the fenlands as they were transformed from an area of "sedge, deep mud, and marshy beds of rushes, inhabited only by birds, not to mention evil spirits" into "charming meadows, and even into arable land".[27] In linking the practical with the ideological, Rippon discusses the early connection between the draining of the fens and religious symbolism. The tangible clearance of the wetlands in England and Scotland was a "metaphor for spiritual labour and refinement".[28] The reclamation of the land, from the demonic wastes of the fen, coupled with the Lockean virtue of tilling the land, was an allegory for the improvement of souls. These reclaimed wetlands were ideal places for churches to be built — for example, Glastonbury Abbey was built on the reclaimed Somerset fens.[29] There is a clear link from early English history, that watery landscapes were places to be conquered in the name of the Lord, and that by "improving" such a landscape, one's soul would also be improved. This attitude contributed a similar ethic to the mindset of early colonists in New Zealand. There are clear parallels in the discriminatory enclosure practices perpetrated against Māori in the Hauraki Plains, as there were against "fen-folk" in England.[30]

25 Park *Ngā Uruora/The Groves of Life*, above n 6.
26 At 38.
27 E Gibson *Camden's Britannia 1695: A Facsimile of the 1695 Edition Published by Edmund Gibson* (Times Newspapers Ltd, London, 1695) in Stephen Rippon "'Uncommonly rich and fertile' or 'not very salubrious'? The Perception and Value of Wetland Landscapes" (2013) 10(1) Landscapes 36 at 51.
28 Rippon, above n 27, at 54.
29 At 54.
30 Geoff Park "'Swamps which might doubtless easily be drained': swamp drainage and its impact on the indigenous" in E Pawson and T Brooking (eds) *Making a New Land: Environmental Histories of New Zealand* (University of Otago Press, Dunedin, 2013) ch 10.

In linking to the emotional sense of place, Graham concurs that enclosure is a social and ecological story, one where the relationship between people and place was fundamentally altered.[31] The transformative effect of drainage demonstrates law's agency in bringing Locke's theory of property into lived reality. By presenting a theory of private property law as the reasonable and natural outcome of drainage and enclosure, Locke rewrote perspectives on how we see land today. The exclusionary theory of property law has been repeated by lawyers, judges and academics for generations, to the extent that "the displacement and dispossession … effectively materialised the mythic division of the world into people and things".[32] EP Thompson asserted that the law was fundamental in the construction of the "mythic world" and its "other", and this approach echoes Said's. According to Thompson, it was law "which became the instrument of reorganising (or disorganising) alien agrarian modes of production".[33] Through the wholesale splitting of common fens, marshes and fields into isolated parcels of drained "improved" land, enclosure fundamentally altered England, and consequentially those lands (New Zealand) that England would colonise.

The language of empire and colonisation can be seen in New Zealand's laws that sought to improve the wastelands of the "savage" indigenous populations. The binary of the colonist self and the Māori other is demonstrated in the adoption of Lockean notions of improvement by settler governments. These governments, based on their Eurocentric perspectives on agriculture, believed that Māori had not improved their lands, and so their lands lay in waste. As Burkhart demonstrates, the "coloniality of power implies the hegemony of Eurocentrism as epistemological perspective. … In the context of coloniality of power, . . . [Māori] identities were also subjected to the Eurocentric hegemony as a way of knowing."[34] The drainage of New Zealand's wetlands, and the destruction of a Māori taonga, under the guise of improvement, is an example of the subordination of Māori identities and ways of knowing to hegemonic English ways of knowing and "property thinking".[35] Through the digging of ditches and the clearance of wetland flora that had been sustainably utilised by Māori for generations, ideas of empire were brought into reality in the Hauraki Plains.

31 Nicole Graham *Lawscape — Property, Environment, Law* (Routledge, Cavendish, 2010) at 53.

32 At 55.

33 EP Thompson *Customs in Common* (Merlin Press, London, 1991) at 164.

34 Brian Burkhart *Indigenizing Philosophy through the Land: A Trickster Methodology for Decolonizing Environmental Ethics and Indigenous Futures* (Michigan State University Press, East Lansing, 2019) at 10.

35 Debjani Bhattacharyya *Empire and Ecology in the Bengal Delta: The Making of Calcutta* (Cambridge University Press, Cambridge, 2018) ch 10.

2.3 Dominion Theology, Locke and Improvement

Christian environmental discourse, in the form of dominion theology, strongly influenced New Zealand's environment, and in particular its wetlands, during the 19th century.[36] Dominion theology in New Zealand can be traced back to John Locke's *Two Treatises of Government*, which can be read as a legal and moral justification for settler colonialism and the non-consensual taking of Indian lands.[37] *Two Treatises* uses narratives of settler self and indigenous other to justify the expansion of empire into America. Locke's theory of property and property governance is evocative of the dominion theology used in justifying settler colonialism and empire expansion in New Zealand. Locke's first manoeuvre is to establish all of earth as the property of humankind in common.[38] Locke then highlights the difference between Europe and America, in asserting that America is "perfectly in a state of nature", unlike Europe which is not, and therefore lands in a state of nature may be appropriated without consent (whilst protecting European lands from appropriation).[39] Per Locke, for people to obtain private property, they must appropriate it from this land held in common. For Lockean theorists this right of appropriation by improvement is rooted in a natural law duty to perform deeds that preserve humankind.[40]

Locke's second manoeuvre relies on notions of colonial difference and develops a narrative of indigenous people as hunter gatherers, operating in a state of nature. Under Locke's theory, hunter gatherers do not mix their labour with the land in the form of farming, but merely create a property right in that they hunt.[41] Locke further constructs indigenous peoples as offenders against natural law, by leaving lands to waste and failing to improve their land. Locke concludes in stating that such indigenous peoples are "wild Savage Beasts" who "may be destroyed as a Lyon or Tyger".[42] Locke's theory of property justified European settlement on indigenous lands in America, making it a duty for settlers to improve the landscape, whilst simultaneously devaluing indigenous systems of property. This approach to property was applied in New Zealand in Earl Grey's writings to Governor Grey. In this correspondence, there is

36 James Beattie and John Stenhouse "Empire, Environment and Religion: God and the Natural World in Nineteenth-Century New Zealand" (2007) Environ Hist 413 at 413.
37 Burkhart, above n 34, at 34.
38 Locke, above n 15, at 25.
39 At 14.
40 Burkhart, above n 34, at 35.
41 Judith Whitehead "John Locke, Accumulation by Dispossession and the Governance of Colonial India" (2012) 42(1) J Contemp Asia 1 at 2.
42 Locke, above n 15, at 36.

evidence that the language and theories of empire were transported to the Hauraki Plains.[43]

Locke believed that, over time, surplus and private property rights were created out of this mixing of labour and land, and these were the seeds for "civilised" society. However, whilst "civilised" society was able to exercise private property rights, Locke felt that:[44]

> There are still great tracts of ground to be found, which the inhabitants thereof, not having joined with the rest of mankind in the consent of the use of their common money, lie waste and are more than the people who dwell on it do, or can make use of, and so still lie in common.

Notwithstanding the basis of such a doctrine being a colonial reading of the book of Genesis, such a doctrine found great favour with colonists around the world, and in particular the New Zealand Company. Edward Wakefield stated in evidence to a British House of Commons Select Committee that he believed there to be "a very full statement of the ancient law upon the subject of the exclusive right of the supreme authority to the waste lands of a country inhabited by savage people".[45] The pro-improvement and anti-waste attitude is clear in the 1894 words of New Zealand Premier Richard Seddon that "every tree felled meant the improvement of the public estate of this country".[46] In a further example, McAloon and Brooking refer to the pseudo-battle vernacular which early settlers used to refer to improvement, demonstrating the extent to which they believed humankind was set apart from nature. Annie Burns, an early Otago settler, and wife to a prominent priest, stated in 1848 that they were taking the land "from a state of nature, to a state of grace" and that "I must improve [the land], if I don't kill the scrub, it will kill me".[47]

Agricultural improvement was a key tool of empire expansion, as utilised by New Zealand's Church Missionary Society (CMS).[48] Samuel Marsden, the CMS's first leader, whilst impressed by Northland Māori kūmara, believed that

43 David V Williams *Te Kooti Tango Whenua: The Native Land Court 1864–1909* (Huia, Wellington, 1999) at 109.

44 Dame Anne Salmond *Tears of Rangi: Experiments Across Worlds* (Auckland University Press, Auckland, 2017) at 328 (quoting Locke, *Second Treatise*, ch 5, para 48).

45 Richard Boast "'Vague Native Rights to Land': British Imperial Policy on Native Title and Custom in New Zealand, 1837–53" J Imp Commonw Hist (2010) 38(2) 175 at 175.

46 (2 October 1894) 86 NZPD 473 at 191.

47 Thomas Burns "Journal of the Reverend Thomas Burns" (unpublished) 15 April 1848 in Jim McAloon and others *Unpacking the Kists: The Scots in New Zealand* (McGill-Queen's University Press, Montreal, 2013) at 151.

48 Beattie and Stenhouse, above n 36, at 419.

iwi "would be better able to 'clear and subdue uncultivated land' once equipped with iron axes, hoes and spades".[49] Charles Darwin, in his visit to the Bay of Islands in 1835, criticised land occupied by Māori as "uninhabited useless country", whilst being supportive of the improvements made by the CMS in Northland, which he found "exceedingly pleasant … [including] large gardens, with every fruit and vegetable which England produces".[50] This condescension towards land perceived to be uncultivated, and the praising of improved land, is typical of settler dominion theory in the 19th century.

Despite its pervasiveness, dominion theory and Lockean approaches to improvement in New Zealand were not without their detractors.[51] Guthrie-Smith in the third edition of *Tutira* stated critically: "Have I then for sixty years desecrated God's earth and dubbed it Improvement?" Furthermore, later in life he wrote, "the ruin of a Fauna and Flora unique in the world — a sad, bad, mad, incomprehensible business".[52] This perspective appears to have had little influence on the protection of wetlands, due to their perception as wastelands. Attitudes to improvement, dominion theology and Lockean land law theory are summed up by Brooking: "The two key teachings on land were: that settled cultivators were a superior, more orderly and more civilized human type than nomads; that land monopoly was wrong. Most knew the story and comprehended the allegory of Cain and Abel and accepted that allowing good fertile land to lie waste was a 'sin'."[53]

2.4 Māori Perspectives on Wetlands

In the late 19th century, the largely migrant European population were motivated to settle New Zealand, which had been idealised as a new Eden, through industrious application to taming the land. This application would reward settlers based on merit, in contrast to Britain, where wealth was largely a product of inheritance.[54] Had such an inquiry been made by colonists at the time of determining whether land was indeed "waste", Māori would have unquestioningly been able to demonstrate "ownership". According to White, an "irrefutably long history of Māori uses and occupation" was deemed immaterial:

49 At 419.
50 At 419.
51 Jim McAloon and others *Unpacking the Kists: The Scots in New Zealand* (McGill-Queen's University Press, Montreal, 2013) at 166.
52 At 171.
53 Tom Brooking "Use it or Lose it: Unravelling the Land Debate in Late Nineteenth-Century New Zealand" (1996) 30(2) NZJH 141 at 147.
54 David Hamer *The New Zealand Liberals: The Years of Power, 1891–1912* (Auckland University Press, Auckland, 1988) at 50.

"Undeniably, the history of legislative intervention in respect of waterways constituted an abrogation of Māori rights … No such legislation acknowledged any pre-existing Māori rights in waterways or made specific provision for the payment of compensation."[55] Monin highlights that ownership rights of Māori in relation to watery lands were highly extensive, and "ranged from the right to use specific resources like berries or eels, to absolute ownership as in the case of cultivation areas … Consideration of mana as well as of survival would have prompted Hapu to secure as wide a range of resources as possible: from eel fisheries to inshore fisheries, kauri groves and so on."[56] This demonstrates a fulsome and nuanced pattern of ownership and use rights for lands that were in constant use by Māori. Yet, unfortunately for the tangata whenua, such use was not at all like that of European agrarian practices.

The Māori perspective on land, water and their wetland interface was one that valued these watery spaces, instead of seeing them as waste. To provide an example from a northern iwi, Ngāpuhi, they saw Lake Ōmāpere, which is situated in their rohe (territory), as: "something that stirred the hidden forces in [Māori]. It was … something much more grand and noble than a mere sheet of water covering a muddy bed. To [Māori], it was a striking landscape feature possessed of a 'mauri' or 'indwelling life principle' which bound it closely to the fortunes and destiny of [the] tribe."[57] "Wittingly or unwittingly, countless drainage and diversion schemes affected the waterways, as did countless acts of pollution. … [S]ome explicit regard should [have been] had both to the specific ecological and other associations that Maori undoubtably had to inland waters and to the flora and fauna that they supported."[58] The contrast between colonial perspectives on land and water, articulated in modernist conceptions of private property and individual ownership of land, and the tikanga cosmological basis for customary interests in land, are most easily recognisable in their juxtaposition in Waitangi Tribunal hearings. Through the bringing to light of Māori cosmological and creation story-based interests in land, the deeply entrenched (from a legislative perspective) exclusionary theory of private property rights is rightly challenged.[59] Kaumātua (community elders) when

55 Ben White *Inland Waterways: Lakes* (Waitangi Tribunal Rangahaua Whanui Series, Wellington, 1998) at 28.

56 Paul Monin *Hauraki Contested, 1769–1875* (2nd ed, Bridget Williams Books, Wellington, 2006) at 13.

57 Waitangi Tribunal *The Whanganui River Report* (Wai 167, 1999) at 40.

58 Alan Ward *National Overview* (Waitangi Tribunal Rangahaua Whanui Series, Wellington, 1997) at 367.

59 Salmond, above n 44, at 299.

demonstrating their ancestral connections to bodies of fresh water, refer to these waters as "the life blood of the land".[60]

For Māori, the understandings of the interrelationships between people and land is far removed from the paradigm articulated by Lockean and dominion theorists.[61] Hohepa and Williams state:[62] "The Maori view of property … is conceptually different from that of Pakeha"; Māori see that "we belong to the land rather than the land belongs to us".[63] Similarly, Durie notes that "Maori [see] themselves not as masters of the environment but members of it. The environment owed its origins to the union of Rangi, the sky, and Papatuanuku, the earth mother, and the activities of their descendant deities who control all natural resources and phenomena."[64] For Māori, these creation myths and legends are part of a rich oral tradition and means of knowledge transfer, termed "matauranga Māori".[65] Marsden and Henare refer to this oral tradition as "fundamental knowledge", and these myths and legends as the basis for Māoridom's holistic perspective on the universe, and its environment, including its wetlands.[66]

The conflicting perspectives discussed above regarding wetlands as waste-lands, versus wetlands as taonga, held respectively by Pākehā settler colonists and the Māori residents of wetlands, played out in the Hauraki Plains during the late 19th and early 20th centuries.

60 At 299.
61 Williams, above n 43, at 111.
62 P Hohepa and DV Williams *The Taking into Account of Te Ao Māori in Relation to Reform of the Law of Succession* (NZLC MP6, Wellington, 1996) at 25, para 75.
63 Williams, above n 43, at 112.
64 ET Durie "Custom Law" (1994) 24(4) VUWLR 328 at 329.
65 Williams, above n 43, at 113.
66 M Marsden and TA Henare "Kaitiakitanga: A Definitive Introduction to the Holistic Worldview of the Māori" (Ministry for the Environment, Wellington, 1992) at 2 in Williams, above n 43 at 114.

3. CASE STUDY: HAURAKI PLAINS ACT 1908

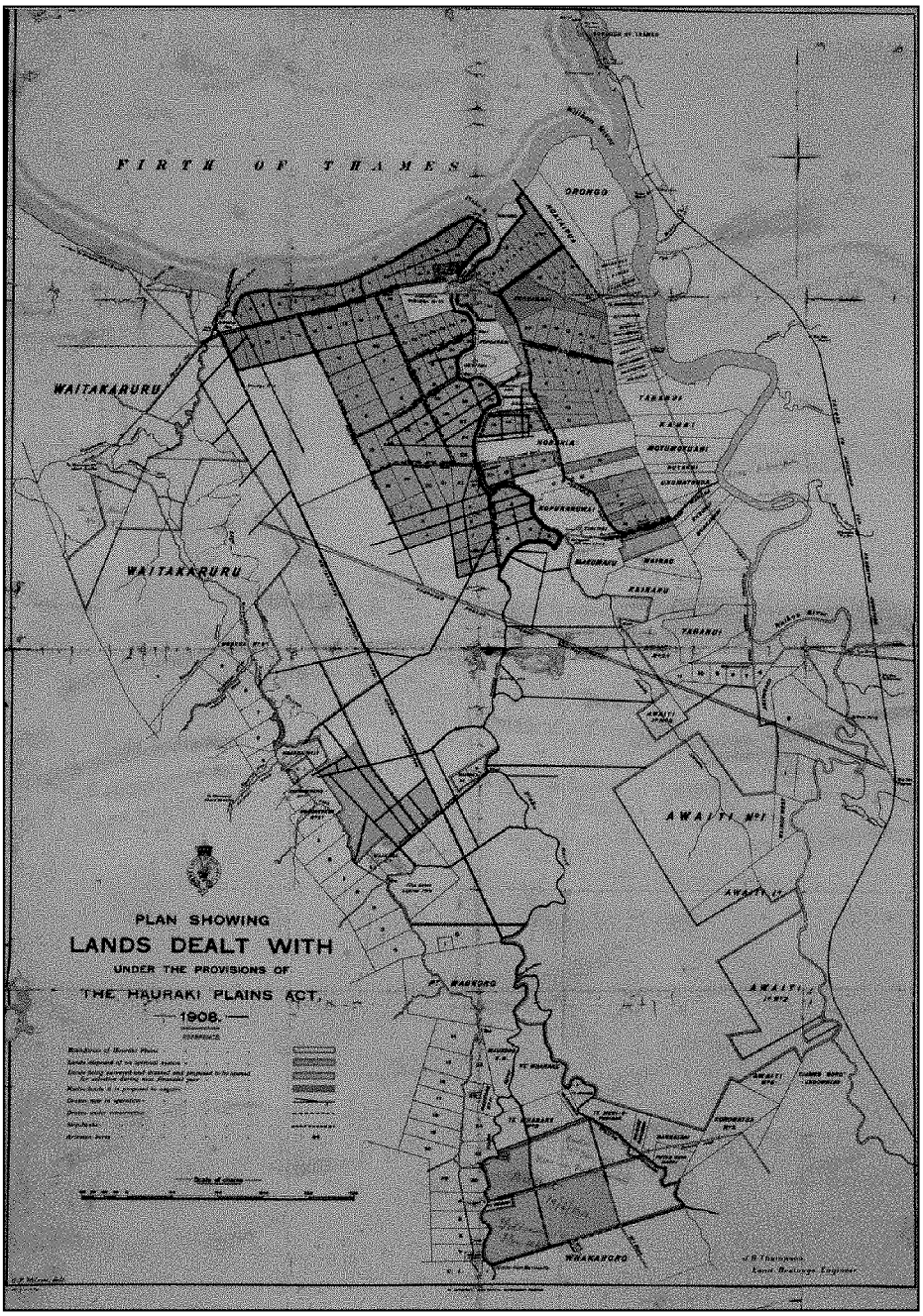

Figure 1: Lands dealt with under the Hauraki Plains Act 1908.
Source: Annual Report of the Department of Lands and Survey [1912] II AJHR C8 at 24.

3.1 The Liberal Government and Land Policy

In this part, the article moves from the development of concepts related to wetland drainage in New Zealand to a case study of the Hauraki Plains Act 1908, which illustrates the application of the wastelands doctrine. The Hauraki Plains are located in New Zealand's North Island at the mouth of the Firth of Thames. The Hauraki Plains Act 1908 enabled the Liberal Government to drain New Zealand's largest wetland and convert this "wasteland" to productive farmland held in close settlement. However, as West rightly states: "local studies must situate particular places within much wider processes and larger scales of time and space".[67]

Accordingly, the temporal and legal context of the Hauraki Plains Act 1908 must be established. The Act was a product of the Liberal administration, which governed New Zealand from January 1891 until July 1912.[68] Land law was at the centre of the Liberal world view, and land settlement "occupied the forefront of colonial politics".[69] The settlement of the North Island of New Zealand was expanded considerably by the Liberal Government acquiring 3.1 million acres of Māori land between 1891 and 1911.[70] An early product of this administration was the Royal Commission into the Native land Law.[71] This commission condemned pre-existing land legislation, and highlighted the confusion produced by the great volume of pre-existing land legislation.[72] Hamiara Mangakahia articulates the confused position of a landowner in 1891:[73]

> there is a continual changing of these laws, and a constant taking of clauses from one Act and then putting them into another, and then afterwards repealing them; and then, with all this, there are amendments going on, the effect being so to complicate matters that the greatest confusion prevails.

Ironically, the Liberal Government's efforts, and in particular those of John McKenzie (the then Minister of Lands), to simplify New Zealand's land law, resulted in marked confusion for Māori interests in land. Such confusion was disadvantageous to the interests of Māori in seeking to protect their use rights to wetlands in the Hauraki Plains. "Pakeha also believed that ownership somehow

67 West, above n 4, at 55.
68 Richard Boast *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Victoria University Press, Wellington, 2008) at 177.
69 Stout and Ngata "Report" [1907] I AJHR G1C at 24.
70 Tom Brooking "'Busting Up' The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911" (1992) 26(1) NZJH 78 at 78.
71 Waitangi Tribunal, above n 12, at 765.
72 At 765.
73 Hamiora Mangakahia "Minutes of Evidence" [1891] II AJHR G1 at 36.

improved the character of the owner and enriched in a moral and spiritual sense all those who lived off the land."[74] This attitude to land settlement is the embodiment of the improvement principle advocated for by the Liberal Government.[75]

Land policy and in particular close settlement were the foci of the Liberal Government, an attitude accurately captured by Boast who states: "'close settlement', which, of course, became the mantra of the Liberals after 1891".[76] The Waitangi Tribunal in the Hauraki Report found that between 1892 and 1905 the Liberal Government increased its purchases of Māori land through increased borrowing and the desire to achieve its policy objective of close settlement, which Boast defines as: "dense rural settlement, a recreation of the densely settled English rural world — but, importantly, minus the petty oppressions of squire and parson".[77] The key purpose of close settlement would provide an increased tax base to finance further loans, and then further public works, thereby avoiding the insecurity associated with landlordism.[78] Hamer writes of how criticisms of landlordism are balanced out with praise for peasant proprietors and an idealisation of the sturdy yeoman.[79] In his memoir, Vaile provides another example of Eurocentric close settlement improvement attitudes, when he wrote of his farming experience in the central North Island and stated: "here in New Zealand we seize a piece of primal country whereon no work had been done since the dawn of time. And in two or three years have it in pasture … [we] settlers have sought out and slain the monsters and prepared the waste places for future prosperity."[80] In Vaile's language, the prejudice against waste places is evocative of attitudes of English fen reclaimers — the notion of doing battle with the wasteland, and improving it, and winning is made clear. The settler belief that, prior to their engagement, the land had not been used for productive purposes, and that the settler was fulfilling a duty to future generations by improving the land, is also evident.[81]

As the Waitangi Tribunal noted in the Hauraki Report, the cost of this programme was the acquisition of vast areas of land for settlement, at a low cost, from Māori landowners.[82] This scheme of close settlement was not economically

74 Brooking "Use it or Lose it", above n 53, at 141–142.
75 Waitangi Tribunal, above n 12, at 806.
76 Richard Boast and Richard S Hill (eds) *Raupatu: The Confiscation of Maori Land* (Victoria University Press, Wellington, 2009) at 164.
77 Boast *Buying the Land, Selling the Land*, above n 68, at 124.
78 At 124.
79 Hamer, above n 54, at 71.
80 Jane Moodie "Preparing the Waste Places for Future Prosperity? New Zealand's Pioneering Myth and Gendered Memories of Place" (2000) 28(2) Oral History 54 at 55.
81 At 55.
82 Waitangi Tribunal, above n 12, at 797.

viable without low-cost Māori land, as the Tribunal notes: "In view of the imperatives of the borrowing scheme, it was unthinkable — to settlers and their governments — that Maori land should remain undeveloped."[83] This is the lived application of the wastelands doctrine: the settler government, in its desire to propagate close settlement in New Zealand and generate a viable tax base, was unable to recognise the value to Māori of the Hauraki Plains in their "undeveloped" state. Brooking refers to a "broad-based [Pākehā] consensus [which] also incorporated the simple idea that no one, whatever their race or class, had a moral right to own land unless they used it productively".[84] Such a consensus saw wetlands used productively by Māori as mahinga kai, as land that was unproductive, underdeveloped and a wasteland — a wasteland able to be taken for the purposes of close settlement. McKenzie, who immigrated to New Zealand from Scotland as a product of the Highland Clearances, sought to "bust up" the great estates, in favour of close settlement, and he saw iwi as akin to the landed gentry of England and Scotland with vast land holdings.[85] The "great estates" in England were the majority of freehold land. This land was owned by approximately 600 families.[86] Under McKenzie's policies, family-owned farms, sized 340 to 600 acres, tended to become economically prosperous.[87] Māori land alienation under the Liberals was extensive — originally Māori land totalled 27.5 million acres; however, by 1914, this had been reduced to 4.9 million acres.[88] McKenzie focused his "busting up" on land holders, perceived to be leaving their land to idle waste.[89] A sad irony of history is that McKenzie assisted in imposing on Māori similar suffering to which he was subjected as a child of the Clearances.[90]

Brooking describes the condemnation of Māori landowners in the late 1800s as "communists who needed to be made into individualists".[91] Members of Parliament across the political spectrum believed that Māori held land in a "communistic manner" and were a people who "lived in a state of communism".[92] There was concern amongst members of the Liberal Party that

83 At 797.
84 Brooking "Use it or Lose it", above n 53, at 145.
85 Tom Brooking *Lands for the People? The Highland Clearances and the Colonisation of New Zealand: A Biography of John McKenzie* (University of Otago Press, Dunedin, 1996) at 98.
86 Tom Brooking "Beyond the Orderly Appearance of Productive Land" in J Ruru, J Stephenson and M Abbott (eds) *Making Our Place: Exploring land-use tensions in Aotearoa New Zealand* (Otago University Press, Dunedin, 2011) 91 at 95.
87 At 98.
88 At 99.
89 Brooking *Lands for the People?*, above n 85, at 129.
90 At 129.
91 Brooking " 'Busting Up' ", above n 70, at 92.
92 At 92.

leases issued by Māori landowners were "unfair, exorbitant and insecure".[93] Brooking articulates the concern felt by lessees, who were worried Māori would "rackrent their hardworking British tenants".[94] A common complaint amongst settlers was that iwi and hapū were the North Island's landlords and acted in a manner similar to the holders of the great estates.[95] Liberal parliamentarians, driven by McKenzie, sought to prevent Māori from becoming land monopolists. One MP typified the wastelands doctrine when he stated: "This lazy, indolent and regressive people could not 'utilise' their land nearly as effectively as the individualistic British settler."[96] Further Members saw Māori land as a "wilderness" which lay "waste and unproductive".[97] Māori-owned land was seen to be wasted as bush, infested with weeds and a breeding ground for small birds.[98] Further parliamentary debates show how Māori land was seen by the Government as "lying waste and unproductive" and "blocking the settlement of the Crown lands of the colony. Only *bona fide* hard-working, thrifty and progressive British settlers could unlock this resource and bring it into utility."[99] One can see how easily the application of such ideologies was made to wetlands as, to a settler, they would have appeared even more "unproductive" and lying in waste than a field scattered with weeds and sheep.

Attitudes against wastelands and that which could not be utilised were at times extreme: "The assault on wetlands began … with colonisation … too often … one has considered the marshes and swamps to be lost waste land … bug filled holes that would be better filled or drained."[100] In 1894 one MP suggested to "burn every tree to the ground except for Totara and rata which could be used for fencing and building purposes".[101] Land could not be left to idle, and multiple MPs were condemnatory of Māori for permitting extensive tracts of land to "'rest' under bush".[102] The language of dominion theory is present in these statements, with politicians demonstrating the ingrained moral duty to improve the land. However, whilst faith was a motivating factor, money was too — Liberal parliamentarians also stated that Māori-owned forested

93 Hamer, above n 54, at 42.
94 Brooking " 'Busting Up' ", above n 70, at 92.
95 Monique von Alphen Fyfe "Woe Unto Them That Lay Field to Field: Closer Settlement in the Early Liberal Era" (2016) 47(1) VUWLR 123 at 126.
96 (19 August 1892) 77 NZPD 221.
97 The Native Land Purchase and Acquisition Act 1893, preamble.
98 (2 October 1894) 86 NZPD 473.
99 (21 September 1894) 86 NZPD 195.
100 Matthew Hatvany "Environmental Failure, Success and Sustainable Development: The Hauraki Plains Wetlands Through Four Generations of New Zealander (2008) 14 Environ Hist 469 at 483.
101 (24 September 1894) 86 NZPD 200.
102 Brooking " 'Busting Up' ", above n 70, at 93; (31 August 1893) 81 NZPD 526 and (24 September 1894) 86 NZPD 227.

wasteland ought to be cleared in order to spread their "accumulated storehouse of wealth" and could be utilised by family farmers.[103]

The Liberal Government had a deep-seated confidence in the smallholding settler in close settlement to utilise modern agricultural science in order to improve wastelands into productive pasture with greater utility than the "traditional, superstitious Maori".[104] Brooking notes that Liberal politicians shared an "anti-landlordism" sentiment; however, Māori "landlordism was the most malevolent variant of that oppressive institution", as Māori landowners barred settlement and improvement of otherwise fertile lands, and locked them up in the same manner as the great estate owners of England and Scotland did.[105] Therefore, the Liberal Government's policy of close settlement, and a desire to "bust up" the great estates of Māori, was an integral part of the drainage of wetlands, as large areas of communally held Māori wetland, seen to be lying in waste and used unproductively, were obtained, drained and improved in order to facilitate close settlement and their effective utilisation by British smallholding farmers. These Liberal land policies were not explicitly racist — indeed they had laudable aims, consistent with Liberal policies of encouraging close settlement, revitalising rural communities, and sharing property, wealth, economic agency and power more evenly for Pākehā settlers.[106] Unfortunately, such policies did not have such positive impacts on those Māori whose land was acquired rapidly, often without notice and with minimal, if any, compensation.[107]

The Liberal Government criticised Māori land on the basis it was a wasteful and unproductive wilderness. The Liberals' policy sought to improve these wastelands, for the benefit of settlers, which (from a Eurocentric perspective) McKenzie articulated when introducing the Native Land Purchase and Acquisition Act 1893.[108] "The time has come, when the Natives must be called upon to make up their minds as to whether they would make good use of their land, or allow use to be made of it by the government."[109] The Liberals saw land policy and usage as a key totem in their plan for nation building, and this attitude is made clear in land they protected as well as altered.[110]

103 (21 September 1894) 103 NZPD 200 and 207.
104 Brooking " 'Busting Up' ", above n 70, at 93.
105 (21 September 1894) 86 NZPD 197, 199 and 212; (31 August 1893) 81 NZPD 539; Brooking " 'Busting Up' ", above n 70, at 93.
106 Brooking " 'Busting Up' ", above n 70, at 97.
107 At 87.
108 von Alphen Fyfe, above n 95, at 145.
109 (5 September 1893) 81 NZPD 512–513.
110 von Alphen Fyfe, above n 95, at 125.

3.2 Scenery Preservation

In 1908 when the Hauraki Plains Act was introduced, New Zealand had a burgeoning scenery preservation movement.[111] Such a movement was arguably initiated from a Liberal perspective with McKenzie introducing the Scenery Preservation Act 1903, in order to preserve what he stated as "some of the finest scenery in the world".[112] The scenery preservation movement sought to protect and raise up picturesque landscapes, and not swamplands perceived to be harmful to health, and economically useless. This legislative scheme celebrated the aesthetic values of the sublime, and ironically, these mountain areas also lacked economic utility; however, they were still worth preserving to settlers.[113] An irony of McKenzie's early scenery preservation efforts was that the Government was put to significant expense in order to preserve land that lay "in waste". McKenzie went to the length of articulating the importance of preventing scenic lands from falling into private ownership, and he expressed pride at the "beauties" of the volcanic plateau being "preserved for all time".[114] It was easy from a Liberal perspective to see why wetlands were not romanticised, but instead were seen as dark and dangerous wastes. This negative construction of wetland landscapes and their marginalisation in the public consciousness made it easy to implement policies to take advantage of wetlands and provide justification for their improvement. Beattie raises the sceptical viewpoint that the Scenery Preservation Bill was only introduced because setting aside the national park did not threaten agriculture, and by not threatening agrarian improvement it was compatible with Liberal land policy.[115] This scenery preservation legislation further entrenched settler notions of which land was perceived as unproductive waste.

3.3 Hauraki Plains Act 1908 — The Legal Mechanisms for Drainage

Whilst notable in its brevity, only spanning three pages, the Act granted the Minister of Lands wide-reaching powers. Sections 2 and 3 of the Hauraki Plains Act set aside all the land included in the Act's schedule to be "made fit for settlement", this land totalling 90,000 acres.[116] Under s 3, the Minister of Lands is afforded broad discretion to undertake "such works as he thinks fit for the drainage, reclamation and roading of the said land [wetland described

111 Brooking *Lands for the People?*, above n 85, at 179.
112 At 179.
113 Beattie, above n 16, at 386.
114 Brooking *Lands for the People?*, above n 85, at 179.
115 Beattie, above n 16, at 386.
116 Hauraki Plains Act 1908, s 2.

in the schedule] or otherwise for rendering the same fit for settlement".[117] The discretion afforded to the Minister to drain the wetland and construct infrastructure was notable in its significance and it is a reasonable inference that the exercise of discretion would have been coloured by the Minister's policy goal of achieving close settlement and making wastelands productive.[118] Under the Act, "a considerable number of small native holdings" were acquired, to enable the construction of a stopbank along the western bank of the Waihou River and to better facilitate colonial settlement.[119] These holdings are visible in Figure 1 as the areas of land outlined in blue. The dialogue surrounding the Act is demonstrative of settler colonist perceptions of wetlands as wastelands and how they can be improved as an act of imperial expansion, for the benefit of the Dominion's productivity. The Act benefited from support across the political spectrum, with the leader of the Opposition, Massey, being congratulatory of the Prime Minister and his members of Cabinet, as their Act would facilitate the draining of wastelands that could then be improved into productive farmland, most suitable for dairy farming.[120] Poland, a member of the Liberal Government, also congratulated the Minister of Lands, as the Act would bring a large area of unproductive land into a revenue-producing state, able to carry hundreds of settlers.[121]

The Prime Minister's 1909 report to the House of Representatives regarding the success of the Hauraki Plains Act demonstrates both the vigour with which the swamp was drained and the extensive nature of the drainage. The two Priestman dredges, specially ordered from England, were effective: "... the Piako and Waitakaruru Rivers were incapable of discharging the waters forced upon them. ... [S]everal tongues of land impeding the flow of the river have been removed by the Priestman dredges".[122] Furthermore: "The Awaiti River has been widened and deepened by the dredges for a considerable distance."[123] The application of the wastelands doctrine, according to the historical evidence, suggests that the Government was surprised at the Act's rapid success in improving the plains: "Lands which in previous floods would have been covered by flood-waters to a depth of 3 ft. are now unaffected by the rains, and

117 Section 3.
118 Brooking *Lands for the People?*, above n 85, at 98.
119 (6 October 1908) 145 NZPD 920.
120 At 919.
121 At 919.
122 Joseph G Ward "Drainage Operations in Hauraki Plains: Report for the Year Ended 31st March, 1909" [1909] II AJHR C1C at 1.
123 At 1.

remain dry."[124] By 31 March 1909, 127 miles of drains had been constructed; this occurred alongside extensive river clearances — such that waterways previously completely blocked, were opened up.[125] The Act's success prompted more optimism from the Government: "it is hoped that fully 30,000 acres will be ready for closer settlement within eighteen months" (late 1910).[126] From this report it is clear that the colonial ideal of converting wastelands to farmland was at the forefront of the minds of both the legislature and the drainage workers themselves: "There is now no question but that the drainage of the Hauraki Plains will give a handsome return to the State for all its expenditure, besides converting profitless lands into rich settlement lands capable of carrying a large population."[127] It is notable that the commentary on the Bill's success failed to recognise the negative social impacts of the legislation on Hauraki Māori and the ecological effects associated with landscape transformation.

In addition to the original 90,000 acres set aside in the Act's schedule, s 9 permits the Minister to take "any area or areas of land adjacent to the land set apart under this Act as aforesaid, the acquisition of which is in the opinion of the Governor necessary for the more effective carrying-out of the drainage or other works authorised by this Act or for the better disposal of the land so set apart".[128] The broadening of scope which the Minister may exercise discretion over led to a total of 200,000 acres being improved.[129] This is an increase on the original 90,000 acres, and it is this article's argument that the inclusion of s 9, and the resultant increase in discretion, led to more extensive takings, ultimately resulting in an area of drained land stretching from Thames to Matamata.[130] The broad discretion afforded to the Minister of Lands to take and improve land "as he s[aw] fit" had a significant impact, most notably on Hauraki Māori.[131]

124 At 1.
125 At 1.
126 At 2.
127 At 2.
128 Hauraki Plains Act 1908, s 9(1).
129 NZPD, above n 119, at 919.
130 At 920.
131 At 920.

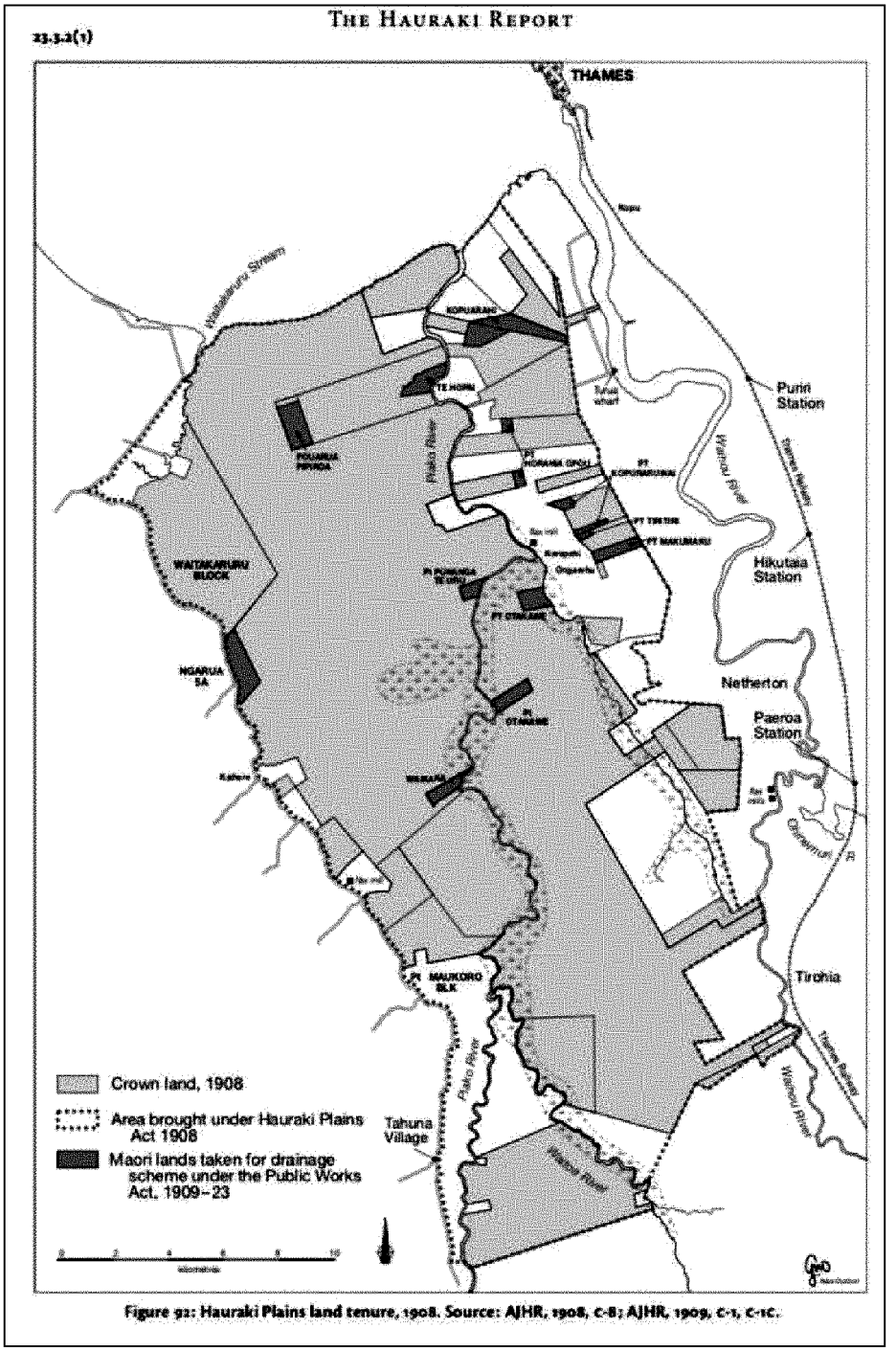

Figure 2: Landownership in the Hauraki Plains — 1908.

3.4 Māori Land Takings

By 1908 the Crown had established extensive land holdings in the Hauraki Plains — see Figure 2.[132] Conversely, Figure 2 also demonstrates the diminished nature of Māori land holdings in the Hauraki Plains at 1908. The purchase history of Crown land in the Hauraki Plains prior to 1890 is varied and extensive, with acquisitions of Māori land being documented prior to 1840.[133] For the purposes of this article's argument, the focus is on the land taken under the Hauraki Plains Act 1908, and how that land was then used in concert with land already held by the Crown to facilitate widespread drainage of the wetland area. Whilst the land held by Māori in 1908 is a small area, relative to the land previously taken, it still totalled 1,027 acres. Furthermore, these blocks provided a gateway to the drainage and subdivision of the plains for settlers.[134] The Undersecretary for Lands stated in 1909 correspondence to the Undersecretary of Public Works, in reference to these "small" pockets of Māori land, that: "These native areas are an impediment to the more successful drainage of the adjoining land."[135] These small pockets of Māori land were of additional significance, as they were the last remaining papakāinga (communal living areas) of Hauraki Māori who had already experienced extensive land alienation. Further research demonstrates the Janus-faced nature of land policy in the early 20th century. Whilst parliamentary debates demonstrate that the Government saw the existing wetlands as wastelands, it believed that such "dreary wastes" could be used to turn a profit for the Government.[136] It was imperative from a financial perspective that the Crown obtain the remnant Māori land holdings that bordered the Piako River. Subsequent to these takings, the Hauraki Plains, which had been the largest wetland network in New Zealand, were transformed from swampy lowland to fertile grassland.[137]

The catalyst for the Hauraki Plains Act was the 1906 survey prepared by engineer WC Breakell, who was engaged by the Undersecretary for Lands.[138] This survey was an application of the wastelands doctrine to land perceived to be of little value to Māori, but upon improvement via drainage, could become

132 Waitangi Tribunal, above n 12, at 1092.
133 At 86.
134 Robyn Anderson *The Crown, The Treaty and the Hauraki Tribes* (Hauraki Maori Trust Board, Paeroa, 1997) at 123.
135 Undersecretary for Lands to Undersecretary for Public Works "Works and Development Head office file" 48/258 (1909) in Anderson, above n 134, at 123.
136 At 123.
137 Hatvany, above n 100, at 470.
138 Anderson, above n 134, at 118; White, above n 55, at 15; WC Breakell "Department of Lands — Annual Survey Report to the Under Secretary for Lands" [1908] I AJHR C1 at 78.

valuable pasture.[139] In his survey, Breakell beseeched the Government to quickly obtain the last Māori-owned land, in order to minimise the overall costs of the drainage project (and by keeping costs to a minimum, the Crown could then on-sell the land at a profit, having been drained):[140]

> Besides the question of desirableness of consolidation for purposes of roading and subdivision, there is another important matter to be considered: All the drainage works will benefit and improve the Native lands as much as the Government lands. … [I]t would be extremely expensive if the work had to be intermittent. If the blocks above referred to were acquired, it would be quite practicable a year after their acquisition to have 15,000 acres ready for settlement, and I am of opinion that if put up to auction, the above area would be readily sold at £8 to £10 per acre — possibly more.

Breakell wrote in his initial survey that "there are blocks on the eastern banks of the Piako River still partially in the hands of the Natives. If these blocks, fronting the river [for a stretch of 5 miles] were acquired, the Government would have a complete block of very valuable land easy to reclaim, easy of access, and easy to cut up for settlement."[141] Furthermore, he stated that: "If the Government [were to] continue [its] present progressive policy as to [the] Hauraki Plains, there is no doubt in my mind that the property will become a most valuable asset and return an enormous revenue."[142] He signs off his survey with the words "'the plains' … capabilities are beyond my description".[143] From this evidence it is clear that the Hauraki Plains, in an improved, drained state, represented great value to the Government. Resultantly, this also recognises the implicit *devaluing* of the wetland in its natural state. Whilst it may have been technically accurate from an English land law perspective to refer to the Hauraki Plains as "wasteland", it was disingenuous for such a principle to be used in order to take Māori land at a low price and then use that land to significantly increase the value of the Government's own land. This financial imperative, articulated by Breakell, was heeded by the Government and in September 1909, under the Hauraki Plains Act 1908, nine blocks of land, bordering the Piako River and the Awaiti Stream, and totalling 905 acres, were

139 David Alexander *Selected Public Works Takings in the Twentieth Century* (Hauraki Maori Trust Board, Paeroa, 1997) at 201 appended to Robyn Anderson *The Crown, The Treaty and the Hauraki Tribes* (Hauraki Maori Trust Board, Paeroa, 1997) at 191.

140 Breakell, above n 138, at 80.

141 At 80.

142 At 80.

143 At 80.

taken from Māori.[144] Alexander reports that Māori were not approached by the Crown prior to the lands being taken.[145] Then in 1911 a further 1,017 acres was taken in another nine blocks.[146] The taking of these pockets of land, which total nearly 2,000 acres, was controversial.[147]

The portions of Māori land taken under the Act were the final remnants of genealogically significant land, and the area as discussed has a rich history as a pā site.[148] Some of the land taken was papakāinga, and some was the sole land holding of hapū.[149] Regarding one papakāinga at Kerepihi called Ongarehu which was taken in 1908, this land was taken even though it was not swamp and did not need to be drained.[150] The Waitangi Tribunal stated that the land was required for "a stores depot, slips and a headquarters for drainage operations".[151] Protest by one of the land's owners led to their prosecution, who cited the fact that they had no other land to live on.[152] Furthermore, an investigation by Judge MacCormick of the Native Land Court, which held the land was papakāinga, was not enough to prevent it being taken because "it was necessary for the effective carrying out of the drainage scheme".[153] The Hauraki Plains Act tells a story of settlement acts undertaken with a perceived necessity, with minimal regard to the effects of such necessity.

Another example of the settler colonists having little regard to the effect of their takings under the Hauraki Plains Act pertains to one of the blocks taken in 1911, Horahia Opou, which prompted objection from Panikena Utuku and Kahukore Utuku, who wrote to the Native Minister (and crucially not the Minister of Public Works) pleading that their land not be taken as their interests "did not exceed 50 acres", and that "neither person has any other lands whatever to leave to our children".[154] Regardless of this, the Crown took this block in May 1911.[155] This taking of Māori land, when the owners had no other land upon which to reside, was not the preferred policy of the Government. However, in instances such as the above, where the land was highly desirable to the Government, it could be taken, leaving the former owners landless.[156]

144 Alexander, above n 139, at 204.
145 At 205.
146 At 205.
147 Waitangi Tribunal, above n 12, at 1145.
148 Louise Furey *Oruarangi: The archaeology and material culture of a Hauraki pa* (Auckland Institute and Museum, Auckland, 1996) at 10.
149 Waitangi Tribunal, above n 12, at 1145.
150 At 1145.
151 At 1145.
152 At 1145.
153 At 1145.
154 Alexander, above n 139, at 185.
155 At 185.
156 Boast *Buying the Land, Selling the Land*, above n 68, ch 4.

A further example of this policy in the Hauraki Plains is the taking of the Ngarua 5A2 block in 1916, an area of land totalling 394 acres. This land was seen by the Lands and Survey Department to be "first class land … alluvial flats … covered with flax, cabbage trees and manuka". Furthermore, "the Native owners on being approached were not inclined to sell to the Crown at all".[157] One reason for this may have been that the land contained an urupā, a highly tapu (sacred) site for Māori.[158] The drainage engineer, Thompson, recommended that "this land should be acquired for the betterment of the Hauraki plains, and should be taken compulsorily under the provision of the Hauraki Plains Act for the more effective carrying out of the drainage and for the better disposal of the Hauraki Plains land".[159]

Despite the value placed upon the wetlands taken by the Crown, they devalued it when compensating the hapū from which the land was taken. The initial compensation quantum offered for this land was £3,000, and it was discounted to £2,200 because of the amount of drainage required to improve the land.[160] These examples demonstrate the lengths to which the Crown would go to obtain land that would either be productive once drained, or would further enable the drainage, subdivision and sale of land to settlers. This land was obtained in a manner which minimised expenditure by the Crown and was then improved from an "idle waste", that was highly valuable to Māori, and then sold on at a profit to settlers. According to the Waitangi Tribunal, these public works takings were the final piece in the Crown's acquisition of the swampy plains: in total, 1,923 acres were taken between 1909 and 1911.[161] The Māori landowners were not consulted prior to their land being taken, and there was "no indication that the Crown made known to the owners its willingness to provide alternative land".[162] The Waitangi Tribunal states that taking of Māori land, and the subsequent drainage of the plains, was (from the Crown's perspective) "trumpeted as a success by which a dreary waste had been transformed into a generally productive district, and 3500 were now living where previously there were only a few natives".[163] However, the Tribunal then articulates the lack of protection for Māori interests in the Hauraki Plains, and recognises that Māori ownership of land was an impediment to economic development.[164] These takings occurred in the face of the Stout–Ngata commission reporting

157 Waitangi Tribunal, above n 12, at 1145.
158 Alexander, above n 139, at 186.
159 At 187.
160 Waitangi Tribunal, above n 12, at 1069.
161 At 1069.
162 At 1069.
163 At 1079.
164 At 1079.

in 1907 that "Hauraki Maori could not afford to sell more than 3000 acres and needed most of their remaining land for their own use".[165]

A mere two years after the publishing of Breakell's report, the district surveyor, Thompson, reported to the House of Representatives that 16,398 acres of land would be offered for sale the following May (1911) and that this land was valued at £75,660.[166] This is more than the 15,000 acres predicted by Breakell and speaks to the success of the drainage works. The same survey uses the language of improvement: "The country has also been greatly improved by the stock running on [the drained land]. The financial aspect proves that your early expressed opinion [that of the Undersecretary of Lands] has been fully justified, and that the Dominion has a very valuable asset in the Hauraki Plains."[167] By 1919 a total of 2,573 acres had been taken from Māori, with 38,994 acres of plains being drained and made available to 294 settler farmers.[168] Whilst the Crown's argument in draining the plains was to take a 160,000-acre, flood-prone "morass" and make it productive, the Waitangi Tribunal recognised that "in doing so, the Crown also had an eye on the financial returns as a result of opening up this land".[169] The Tribunal concludes that Māori did not receive adequate compensation and that "for [Hauraki] Maori, public works [drainage] takings must have indeed felt akin to confiscation".[170] The wastelands ideology can be seen in the words of the Government land purchase officer, who commented in 1896 that "after all their lands [were] of very little benefit to them".[171] At the Tribunal it was submitted that "while the quantities of lands in public works takings in the 20th century were relatively small, they had a cumulative effect of reducing still further an already decimated tribal estate and destroying important food and resource gathering grounds".[172] The acquisition of the Hauraki Plains by the Crown from Māori per the "fit for settlement" section (s 3) of the Hauraki Plains Act: "as the minister sees fit" is the clear outworking of a settler perspective which believed wetlands (or wastelands) could be improved with drainage.[173] What is not often discussed, however, is how the Crown benefited from such a policy, and that what had been a great asset for Hauraki Māori, in the form of mahinga kai, was taken and converted into a valuable asset in the form of fertile dairy land.

165 At 859.
166 JB Thompson "Drainage Operations in the Hauraki Plains" [1910] I AJHR C8 at 5.
167 At 5.
168 Waitangi Tribunal, above n 12, at 1070.
169 At 1073.
170 At 1073.
171 At 1094.
172 At 1095.
173 Hauraki Plains Act 1908, s 3.

3.5 Global Examples of Colonisation

The application of the wastelands doctrine to wetlands was a process which occurred throughout Britain's colonies. In Australia, Giblett describes the drainage of wastelands as "a colonial device for subduing an ostensibly recalcitrant, even rebellious indigenous population and wetland environment".[174] This perspective that the wetland itself is something rebellious, that necessitates control, mirrors the language used in New Zealand, that swamps and bush must be fought with. In India, the Bay of Bengal was drained to further colonisation and the development of a colonial urban metropolis on the Bengal Delta.[175] These colonial drainage projects and the application of the wastelands doctrine, whilst beneficial for the growth of the British Empire, also were detrimental to the interests of indigenous peoples. Gidwani sees that: "the doctrine of waste is more than a means of delineating land categories, it was a representation of cultural inferiority and physical infirmity … of the colonised people".[176] The impact of the Hauraki Plains Act 1908 and the wastelands doctrine on Hauraki Māori demonstrates the imperial subordination of Māori cultural interests, with one tree in particular, the kahikatea, or white pine, offering a useful analogy for the legal straitjacketing of a rich ecological world and its indigenous peoples.[177]

3.6 Kahikatea Analogy

The Report of the Royal Commission on Forestry describes: "The white-pine, or kahikatea … forms pure forests … on low-lying swampy ground … As is well known, the soil of the white-pine swamps, when drained and the trees removed, forms the richest of agricultural land, which when grassed is of extreme value for dairy farms. … Since no land is more suitable for occupation than that of the white-pine swamps, when drained, their value in this regard is a strong plea in favour of the removal of the trees forthwith."[178] Māori valued kahikatea *in situ*. Pond describes them as the "fruit basket of the forest", as kahikatea grew berries that were a diet staple for Māori, birds and reptiles.[179] Mudfish, a Māori delicacy, hibernate under the damp roots of the kahikatea during the dry summer.[180] When the kahikatea were felled, many native birds lost their hunting

174 Rodney Giblett *Postmodern Wetlands: Culture, History, Ecology* (Edinburgh University Press, Edinburgh, 1996) at 114–115.
175 Bhattacharyya, above n 35, at 1.
176 Gidwani, above n 8, at 40.
177 Bhattacharyya, above n 35, at 77.
178 "Recommendations, Report of the Royal Commission on Forestry" [1913] I AJHR C12 at xxiii–xxiv.
179 Wendy Pond *The Land With All Woods and Waters* (Waitangi Tribunal Rangahaua Whanui Series, Wellington, 1997) at 33.
180 WJ Phillipps *The Fishes of New Zealand* (Avery, New Plymouth, 1940) at 143.

and breeding grounds. So, when the trees were felled and the swamps were drained, the hill country fell silent. Large flocks of birds, such as the kererū, a prized Māori food source, would migrate to consume swamp foods such as that produced by the kōwhai. The deforestation of kahikatea, as part of the taking and the drainage of Māori wastelands under the Hauraki Plains Act 1908, in order to facilitate the demand for settler land, shows that the application of dominion theology and Lockean attitudes to land were successful in deflecting Māori claims to land. Despite their exercise of use rights by Māori, such as harvesting of kahikatea berries, colonial attitudes to land were successful in facilitating the expansion of the British Empire, as had been the case in India.[181]

Globalisation, technological change and market demands were all benefited by the application of the wastelands doctrine in New Zealand, as manifested through the Hauraki Plains Act. Refrigerated shipping made New Zealand's beef, lamb and dairy products accessible to the European market, which farmers in close settlement were able to facilitate, due to their productive land, that had formerly been "waste" swampland. White noted for the Waitangi Tribunal that New Zealand's "future lay in sheep and cattle, not eel and koura".[182] The wastelands doctrine worked in concert with the demands of an expanding empire, resulting in the disenfranchisement of tangata whenua's wetlands which they treasured as mahinga kai. One example, localised to the Hauraki Plains, is that of successful smallhold improvers in the Hauraki Plains, the Bagnall family, famous for manufacturing butter boxes out of kahikatea, for shipping dairy products back to Britain. Elderton writes of the Bagnalls having "drained, fenced and otherwise improved [the land]".[183] The Bagnalls generated wealth for their family, as a result of settling land that was reclaimed waste swampland. However, despite it being perceived as a wasteland, the Bagnalls and their peers were not the first families to make the Hauraki Plains their home.

3.7 Impact Upon Māori

The Hauraki wetlands had supported a significant Māori population. Along the Waihou River there were 186 separate Māori settlements, 152 kāinga and 29 pā.[184] The Waitangi Tribunal has reported the 1886 Hauraki Māori population as approximately 2,500.[185] The subsequent drainage and land takings displaced this population.[186] In the Hauraki Plains Bill's first reading it was noted that

181 Bhattacharyya, above n 35, ch 1.
182 White, above n 55, at 1.
183 Arthur Elderton "The Resources of New Zealand", entry in *The Cyclopedia of New Zealand* (Cyclopedia Company, Auckland, 1897) vol 1 at 6.
184 Waitangi Tribunal, above n 12, at 1104.
185 At 854.
186 Park *Ngā Uruora/The Groves of Life*, above n 6, at 27.

"areas of Native land … sandwiched between various parts of the block [to be drained] … must be acquired in fairness to the country".[187] This is a clear example of settlers enforcing the wastelands doctrine and implying that the land is only valuable when drained, and that the property rights of Māori must be subordinated to further the greater colonial good. Whilst Pākehā viewed the swampland as wasteland, it was highly valuable to Māori, who made use of the land and water all year round. In the winter the Hauraki Plains flooded inland by approximately 30 miles. Such was the extent of the seasonal flooding that only the canopy of the tall kahikatea could be seen, along with canoes sailing over the expanse of floodwater.[188] However, despite use of the Hauraki wetland as a place for shelter, food and transportation, it was still believed by legislators to be waste: "They have too much land, and they do not use it … Unless the land is in a state of production the Natives should be compelled to make it productive."[189] This evidence demonstrates the authority of Lockean and dominion theory with legislators of the day.

The Liberal Government's desire for productive land can be demonstrated in the Hauraki Plains Bill's Legislative Council debates. The lack of regard for the land in its natural watery state was disregarded: "for although in dry weather one could walk over it, when the rains came one could put a stick down about 30ft in the swamp".[190] Mr Kelly congratulated the Government on its bold attempt to add to the Dominion's productive might, which describes a common thread in the debates of "adding to the Dominion's productivity".[191] No recorded mention is given to the displacement of Māori. Furthermore, the local historical text *Taming the Hauraki Swamp* contains little mention of the impacts that drainage had on Hauraki Māori.[192] The strength of colonial influence and the expansion of empire and assertion of adding value to the Dominion can be seen in the marginalisation of tangata whenua in relation to their wetland taonga. Māori lost both their physical and metaphysical riches that went with the swamplands and rivers. By being excluded from the legislative processes that would shape and diminish their future relationship with the whenua, Māori lost their voice.[193] Many wetlands have been the subject of Waitangi Tribunal claims, and a sense of alienation and loss for land that was not a "waste" is

187 (6 October 1908) 145 NZPD 919.
188 Park *Ngā Uruora/The Groves of Life*, above n 6, at 45.
189 Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws [1891] II AJHR G1 at 14.
190 (7 October 1908) 145 NZPD 954.
191 At 954.
192 Ken Clover *Taming of the Hauraki Swamp* (Historical Society of the Hauraki Plains, Ngatea, 2007).
193 Catherine Knight *New Zealand's Rivers: An environmental history* (Canterbury University Press, Christchurch, 2016) at 48.

still keenly felt by Māori.[194] This is exemplified in the submissions of Pauline Clarkin (a member of Ngāti Hako of the Hauraki Plains) to the Waitangi Tribunal:[195]

> The swamp and rivers were kete kai and spiritual places for our people. The drainage … took them away. The Crown did not replace them with a means of sustenance for us …

The impact of the wastelands doctrine on Māori, actioned by the colonial drainage of wetlands, which was facilitated by the Hauraki Plains Act 1908, is conveyed in these excerpts from the Hauraki Report:[196]

> It is abundantly clear that much devastation was wrought on the land and waterways of Hauraki in the name of colonisation and economic development. Natural resources … were exploited with little thought for environmental consequences because the focus was on economic growth. … Maori in Hauraki have suffered a loss of traditional resources.

Furthermore:[197]

> … the Crown failed to acknowledge Maori spiritual and material values, and failed to take these into account when allowing settler economic exploitation of resources.

The wastelands doctrine successfully deflected the claims of Hauraki Māori to their wetlands, despite the Treaty of Waitangi's second article referring to forests and fisheries as taonga and demonstrable evidence that, for Māori, wetlands were not wastelands.[198]

4. CONCLUSION

The drainage of the Hauraki Plains by the Liberal Government, following the passage of the Hauraki Plains Act 1908, resulted in a near-total transformation of the landscape of the plains, of which, at present, only 6 per cent of pre-colonisation wetland still exists.[199] This application of the wastelands doctrine

194 At 48.
195 Waitangi Tribunal, above n 12, at 1148.
196 At 1158 and 1159.
197 At 1099.
198 Te Tiriti o Waitangi (1840), art 2.
199 Hatvany, above n 100, at 487.

to the Hauraki Plains wetlands grew the British Empire and expanded the Dominion's productive might. However, as Brooking notes, the acquisition of Māori land and the resultant disenfranchisement of the plains' original residents "widened the fracture in the New Zealand dream, a fracture which has yet to be healed".[200] For Hauraki Māori — seen by settler colonists to be rack-renting landlords — their traditional way of life was ended by the Liberal policy goal of close settlement. Settler colonists, influenced by dominion theology and Lockean perspectives on land law, saw the wetland of Hauraki Māori as idle waste manifest, filled with toxic miasma and being used unproductively. For settlers in the late 19th and early 20th centuries, it was a moral and religious duty to drain the wetland and produce improved, fertile farmland, thus fulfilling the will of God. Whilst the application of the wastelands doctrine, as exemplified by the Hauraki Plains Act 1908, was a success for the Liberals and settler colonists, the Waitangi Tribunal permits one to be "appalled … at the wanton destruction of land, forests and waterways".[201] Guthrie-Smith later in life worried that: "have I then for sixty years, desecrated God's earth and dubbed it improvement?" This article has argued that the application of the wastelands doctrine, and the drainage of the Hauraki Plains, did just that. Like Guthrie-Smith, we should hope that this "lamentable *laissez-faire* in regard to misuse of the land and water is passing away".[202]

200 Brooking *Lands for the People?*, above n 85, at 154.
201 Waitangi Tribunal, above n 12, at 1159.
202 Herbert Guthrie-Smith *Tutira: The Story of a New Zealand Sheep Station* (Blackwood, Edinburgh, 1921) at 422.