CHAPTER 20

TINO RANGATIRATANGA: MAORI IN THE POLITICAL AND ADMINISTRATIVE SYSTEM

Treaty claims, and the debates about Treaty claims, commonly involve the recognition by the British in 1840 of the tino rangatiratanga of chiefs, tribes and individuals over their lands and valued possessions, under Article 2 of the Treaty. Pressures of time and space preclude a full recapitulation of that debate here, but some comments are offered on two of the main ways in which tino rangatiratanga might be expressed, namely Maori representation in the central Parliament and the authority of 'Maori committees'. Both of these have been matters of most serious concern to Maori since 1840 and both are the subject of reports in the Rangahaua Whanui research series.[1]

20.1 Maori Parliamentary Representation and the Maori Parliament Movement

The British Government realised by late 1837 that New Zealand was being colonised informally, mostly by British subjects, and believed that the flow of European settlement could regulated but not stopped.[2] It was also accepted, in the light of recent experience in Upper and Lower Canada, that the settlers would demand self-government and that this was indeed their right. But the British Government also accepted that the Maori needed protection least they suffer the fate of all other indigenous peoples exposed to European colonisation. While New Zealand remained a Crown Colony therefore, British policy attempted to steer between these poles of self-government and protection.[3]

The long-term approach adopted by the British for resolving the dilemma lay in 'amalgamation' of the Maori people into the same framework of law and govern-

1. See Bill Dacker, Michael Reilly and Leo Watson, 'Te Mamae me te Taumaha, A Report on Maori Representation and the Authority of Maori Bodie*s'*, Waitangi Tribunal Rangahaua Whanui series, draft report, 1996; and Vincent O'Malley, *Maori Committees,* Waitangi Tribunal Rangahaua Whanui series, draft report, 1996..
2. Alan Ward, *A Show of Justice*, Auckland University Press, Auckland, 1995 (4th ed), ch 3
3. William Renwick, 'Self-Government and Protection: a Study of Stephen's Two Cardinal Points of Policy in Their Bearing Upon Constitutional Development in New Zealand in the Years 1837–67' MA thesis, Victoria University of Wellington, 1962, ch 1

mental institutions as the settlers. Trying to protect the indigenous peoples of North America and Australia by making 'reserves' for them had not worked; they were merely marginalised in a broken version of their own culture until the reserves too were swept away by settlement. Instructions from the Colonial Office to Governor Hobson in 1840 therefore looked to 'the permanent welfare of the tribes' by bringing them progressively under British law 'than to the supposed maintenance of their own laws and customs'.[4]

E G Wakefield and the New Zealand Company planners also envisaged a mingling of the English gentry with the Maori chiefly class and their mutually lording it over the workers of both races; the British colonisation of New Zealand thus began, in theory at least, on a class, not a racial, basis. Avoidance of conflict and protection of Maori lay in incorporating them ultimately, but unhurriedly, into mainstream institutions, with all the rights and privileges of British subjects. Meanwhile their possession of land actually occupied would be recognised. These principles were in essence embodied in the Treaty of Waitangi by which the Governor Hobson in 1840 negotiated with some 500 chiefs the cession of sovereignty to the British Crown.

But the British Government had embroiled itself in serious difficulties from the outset. For the Maori were by no means as weak on the ground as had been supposed and they claimed all their lands, not just their settlements and cultivations. Moreover, the term used in the Maori version of the Treaty to equate with 'full possession' was 'tino rangatiratanga' – the 'entire chieftainship', of their lands and treasured things. The British officials had expected to find Maori grateful for the advent of their authority and happy to comply with British law; but while Maori were in fact grateful for Crown protection against the powerful settler companies and the French they were far from being totally compliant and submissive. Instead the stage was set for mounting confrontation over the land and over Maori intentions of preserving a considerable degree of autonomy; all discussion of political and jural institutions occurred in the context of that struggle.

When local courts were introduced, Maori accepted their jurisdiction in many cases involving disputes with settlers. They were much less willing to do so in disputes amongst themselves. Their compliance in either case depended on the willingness of the chiefs to maintain relations with the British authorities and to trade and seek employment in the new settlements. An attempt in 1843 by the New Zealand Company representatives and local magistrates to take an armed posse and serve a warrant on the powerful Ngati Toa chief Te Rauparaha, on disputed land at Wairau, resulted in the annihilation of the posse. Settlers pressed Governor FitzRoy to use his military force on their behalf but FitzRoy refrained until Hone Heke challenged British authority by cutting down the flagstaff at the Bay of Islands and sacking the town of Russell.

Heke's action was linked to questions of mana. In the years immediately after the signing of the Treaty the term 'tino rangatiratanga' did not feature commonly in

4. Russell to Hobson, 9 December 1840, co 209/8, pp 480–487 (cited in Ward, p 38)

public discussion but Maori did commonly express their concern for mana and how to safeguard it. In the north chiefs like Heke, who had been first to sign the Treaty, were resentful of the Crown's pre-emptive right of land purchase (a condition of the Treaty not well understood at the time),the Crown monopoly of customs and excise and the regulation of timber cutting. Some years later, at the great meeting of chiefs at Orakei (Auckland) in 1879, northern said that the British flag had been seen as symbolising a British claim to mana over the land, 'a means of taking the whole of our land', well beyond the terms of the Treaty.[5]

But FitzRoy and the next Governor, George Grey, were supported by many northern chiefs, standing by their compact with the Crown, in suppressing Heke's rising. When peace was restored Maori helped re-erect the flagstaff and called it 'Unity', symbolising a new effort to work in partnership with the British. In the Wellington district the Te Atiawa chiefs, partly out of rivalry with the Ngati Toa and partly also because they had entered into relations with the Crown over the negotiations for land, supported Grey in driving the Ngati Toa out of the disputed Hutt Valley.

By this time the settlers had grown in numbers and, as anticipated, were pressing for self-government. In 1845 discussions centred on the possibility of creating municipalities, the boundaries of which would be drawn so as to include few Maori. Lord Stanley, Secretary of State for Colonies, considered it impossible to admit them to the franchise but some of his advisers and some settler leaders thought that those Maori who possessed the property qualification, an individual freehold or urban tenement under the introduced property law, should be enfranchised so as to give them a stake in the new society. Almost all Maori held land on customary tribal tenure so there was no likelihood that they could dominate the settler electorate.[6] The settlers, however, pressed for powers beyond the municipalities and over the country at large; their interest was to control national Maori policy and thus the land.

In 1846 an attempt was made to meet the situation by the grant of a constitution creating two provinces: New Ulster, comprising most of the North Island with its majority Maori population, and New Munster, comprising Wellington and the South Island where settlement was dominant and fast-growing. Earl Grey, a very pro-settler Secretary of State, proposed that there should be immediate representative assemblies for both provinces but that the Maori vote be contained by making the franchise dependent upon ability to read and write English.

In New Zealand, Governor Grey, aware of continued Maori restlessness and of the provacative effect of the proposed constitution, sought postponement of most of its provisions. He also managed to set aside proposals to register the uncultivated lands as Crown lands, securing the land instead by buying up huge areas of the South Island and parts of the North under the Crown's monopoly of land transactions and prosecuting settlers who leased directly from Maori (see above ch 5).

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5. Speeches of Paikea and Tare, AJHR, sess II, 1879, G-8, p 24 (cited in Dacker et al, p 80)
6. Renwick, pp 71–72

Grey meanwhile sought to draw the Maori chiefs into relations with the Crown by control of expenditure on Maori purposes. In his intructions to Governor Hobson in December 1840, and in supplementary instructions of January 1841, Lord John Russell had sought to provide for future Maori needs. This was partly to be through the reservation of sufficient land for their own occupation. Russell's January 1841 instructions also authorised the governor to make available between 15 and 20 percent of the profits from the sale of Crown land for Maori purposes (see above ch 1) But this was to include the salaries and administrative costs of the Protectorate of Aborigines and in the first years of the colony, with little land being traded, the costs of running the Protectorate would have exceeded 15 to 20 percent of the land fund, for some years at least. In 1847 Governor Grey abolished the Proctectorate Department, claiming that it had done little for Maori. The Protectorate had in fact done a great deal to secure some equity for Maori in land transactions and its abolition was a precursor of Grey's own sweeping purchases in the South Island and elswhere. But because he spent conspicuously on schools and hospitals which catered for Maori as well as settlers, made gifts to chiefs of flour mills, agricultural equipment, boats and suchlike, and introduced the system of paid Maori assessors in the Resident Magistrates' courts and Maori police, he created the somewhat specious impression of providing for Maori involvement in the new society. In fact the policy won a good deal of cooperation from Maori in the local regulation of day to day areas of settler-Maori contact, such as petty crime, trespass of stock and damage to crops.

In the aftermath of the 1846 constitution the control of expenditure on Maori purposes became a serious issue between Grey and the settler leaders. Representative government was in fact postponed for five years, Grey introducing only nominated councils for New Ulster and New Munster. However, Lt Governor Eyre of New Munster reported in 1849 that not only might the expenditure on 'native presents and entertainment natives' be struck out of the estimates by the Council but also that for education of Maori as well.[7] Grey therefore proposed to London that for Maori purposes a Civil List vote of £7000, plus 15 percent of the land fund, be reserved for the governor's control in future constitutional arrangements. He added that he assumed that Russell's original instructions still authorised the governor to spend 15 percent of the land fund for Maori purposes.[8] However, control of the land fund was about to be handed over to the provinces in the new constitutional arrangements and Earl Grey preferred that any sum reserved to the governor for Maori purposes come from the general revenue, principally the customs and excise duties to which Maori themselves were substantial contributors.[9]

Settler agitation for representative and responsible government nevertheless grew steadily and settler leaders sought a property qualification to keep all but a few Maori unfranchised. They also opposed the creation of any Civil List vote for Maori purposes under the governor's control. Maori leaders in Wellington, aware of the

7. Eyre to Grey, 29 May 1849, and Grey to Earl Grey, 22 June 1849, BPP, 1850, vol 6, pp 171–172
8. Grey to Earl Grey, 30 August 1851, BPP, 1852, vol 8, pp 32–33; see also Renwick pp 95–96, 151
9. Earl Grey to Grey, 23 February 1852, BPP, 1852, vol 8, encl 1, p 8, para 30

settler meetings, petitioned London to leave the governor in control.[10] In the event, the 1852 Constitution Act finally granted representative government, with a property qualification for the franchise. It was argued that there was no distinction by race, and Maori possessing individual property could join the governing institutions according to the policy of amalgamation. But some safeguards were added. Native Affairs was reserved to the Governor and the Imperial Government, and Grey did get his Civil List of £7000 for Maori purposes, variable by the General Assembly subject to confirmation in London. A further safeguard was clause 71 which provided for the creation of Native Districts, outside the settler Provinces, where Maori could live under customary law.

In the 1853 elections, held under the new constitution, the Wairarapa chief, Te Maniheru, who held individual property under Crown grant, registered as a voter and the electoral meeting for the district was actually held at his house.[11] This is a nice image of rural settler/Maori amalgamation, but it was close to tokenism. For only about eight Maori qualified for the vote. In Wellington and Otago the possibility of Maori being enfranchised and their votes being marshalled by rival candidates, made them a political football, as also in subsequent elections. For the most part they were bystanders – very suspicious bystanders. It is surely no accident that discussion of a separate Maori parliament or possibly a Maori king began to be promoted by mission educated chiefs of Otaki, near Wellington, and that their initiative began in 1853.

Before leaving New Zealand, Grey secured from the new legislature the allocation of most of the £7000 civil list for the missionary societies' schools, attended mainly by Maori but also by Pacific Islanders (from Bishop Selwyn's Melanesian Mission) and some destitute settler children. Subsequent requests by the general government to the Commissioners of Crown Lands for the provinces about the 15 percent for Maori purposes were ignored; that concept had now died – further expenditure on Maori purposes depended on votes of the settler assemblies.

Grey did not implement clause 71 of the 1852 Constitution Act. Progress towards racial 'amalgamation' was well under way he reported, superficially, and there was no need to create Native Districts which would perpetuate 'barbarous customs'.[12]

By 1855, when the next governor, Gore Browne, arrived, settlers were pressing for responsible as well as representative government, including the control of Native Affairs by a settler minister. Responsible government was in fact granted in 1856 but, on Browne's recommendation, London directed that Native Affairs, including land purchasing, remain an Imperial responsibility. The great majority of the advisers whom Browne had consulted in New Zealand had argued that he should not transfer Native Affairs to the settler ministry, at least not without enabling Maori to become electors and requiring the assembly to accept the cost of any military action taken against Maori.[13] In 1858, however, a settler minister was

10. Renwick, pp 147–148
11. Paul Goldsmith, *The Wairarapa*, Wellington, Waitangi Tribunal Rangahaua Whanui series (working paper: first release), July 1996, p 32
12. Ward, p 86

appointed to offer advice to the governor. At the urging of the Anglican bishop, Selwyn, some thought was given to declaring the Waikato a Native District, but Grey had boasted of the progress of the 'amalgamation' policy and settlers were very hostile to 'shutting up' a large and fertile region of the country to freehold settlement in this way.

Browne and his officials therefore pressed on with the amalgamation programme, using the £7000 civil list vote for Maori purposes, most of it going to the mission schools. In 1858 the General Assembly took over the payment of £7000 for Maori education under ordinary appropriations, freeing the civil list vote for other purposes, but controlling the detailed allocation of the fund through the Native Minister. The civil list was divided that year between £2000 for hospital and medical care, £1000 in salaries for Assessors, £500 on presents and entertainment and £1800 on other matters – a total of £12,300.[14] The assembly was bitterly jealous of any payment for Maori purposes not controlled by themselves. In effect London's attempt, through the Civil List, to protect Maori from the Parliament in which they were not represented had begun to break down. Meanwhile, Maori were estimated by Browne to be contributing £51,000 in customs duties in 1856 compared with the settlers' £36,000.[15]

Maori were very well aware of the tenor of the settler assembly, remained deeply distrustful of it and continued to urge the governor to retain control of all matters affecting Maori. Meanwhile, their own initiatives had rapidly matured, taking two main forms. The kingitanga, or King movement, centred on the Waikato district and resulted in the choice of Potatau te Wherowhero as king in 1858, beginning a dynasty which lasts to this day. Among the many tribes who were too independent to place themselves under the mana of Potatau there developed a movement for large runanga, tribal assemblies, which, like the kingitanga, asserted tribal control over land, checked the tendency of individual chiefs to sell their community's patrimony and sought to admit settlers only on leasehold terms and under local Maori governance. The settler assembly in 1858 passed legislation to give the local runanga some power to make regulations which would be enforcable in the Resident Magistrates' courts, with the salaried Maori Assessors assisting. But these initiatives were designed as much to limit and control Maori as to empower them. Maori leaders recognised this and though many took the salaries and did cooperate in regulating such matters as stock trespass they continued to resist encrochments on their control of land.

Crown land purchasing in the North Island was increasingly frustrated and, determined to prevent what they regarded as illegitimate interference by 'land leagues', Governor Browne and the settler leaders in 1860 used the army to force through the survey of a disputed purchase at Waitara, Taranaki,in contradiction of solemn undertakings made in 1856–58. Fullscale war began, with Waikato Maori

13. Dacker et al, p 50
14. AJHR, 1858, B-2 and B-3. Renwick estimates that the total expenditure on Maori affairs in 1855–56 was £15,762. See Renwick, p 313
15. Browne to Labouchere, 31 May 1856, BPP, 1857, vol 10, p 502

supporting the Taranaki resisters.[16] In 1861 with the British army virtually stalemated, the Government in London replaced Browne with George Grey (for a second term) and reconsidered policy.

In 1860, as the war developed, Browne convened a conference of chiefs at Kohimarama, Auckland, in an effort to win their support for the Government's position. The minutes are important evidence of Maori attitudes.[17] In general speakers affirmed the benefits of the British connection. Many statements referred to difficulties in earlier times and affirmed the Christian faith and with it the law, te ture. The Queen was seen as the upholder of law and protector of both races as equals, or perhaps as older and younger brother. The younger, the Maori, asked for the law to be made known so that they would be included, as equals with the Pakeha. The Treaty was affirmed by northern speakers especially.

But the chiefs also complained that they were not in practice being treated equally with the settlers, or sharing with them in the councils of state. Several speakers linked their sales of land to the Crown with expectations of a consequent close relationship with the Crown, and expressed disappointment that this had not ensued. 'I sold my lands but you keep the laws, and do not allow me to share in them'.[18] Mohi and others complained that they had wanted to lease or sell land directly to settlers but had found this prohibited. Several speakers asked that Maori should be enabled to participate in the General Assembly, regardless of the language difference, others that they be consulted regularly by the governor. The Kohimarama conference itself was warmly welcomed, as was Browne's suggestion that it might become a regular meeting.

When Grey took up the governorship for his second term he quickly rejected two options available to him. London had given him authority to recognise the Waikato as a Native District and try to win the cooperation of the kingitanga. The settlers, however, remained hostile to this course and Grey resorted instead to a vain attempt to outbid the kingitanga by a refurbished version of the 1858 'official' runanga.[19] He also declined to convene an annual assembly of chiefs of all tribes such as Browne had assembled at Kohimarama. Grey considered it unwise to encourage the chiefs to develop a separate assembly.[20] Devoid of fresh ideas, Grey blundered into a resumption of the war in Taranaki and attacked the kingitanga in mid-1863.

Meanwhile in 1862, the Canterbury politician, J E FitzGerald, had moved in the General Assembly a series of resolutions affirming the amalgamation policy, asserting that no law should be passed which did not give Maori and settler equal civil and political privileges and proposing that Maori be brought into the Government, Parliament and the provincial councils without delay. The assembly passed only the statements of principle and defeated the third resolution, for Maori representation

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16. See Keith Sinclair, *Origins of the Maori Wars*, Wellington, New Zealand University Press, 1957, ch 14
17. The original minutes are filed as MA 23/10, NA, Wellington; a serialised version was published in the official journal, *Te Karere Maori*, from April to November 1860; see also discussion in Dacker et al, pp 25–40 and Ward, pp 115–118
18. Mohi Te Ahi-a-te-Ngu of Waikato (cited in Dacker et al, p 30)
19. Ward, ch 9
20. B J Dalton, *War and Politics in New Zealand*, Sydney, Sydney University Press, 1967, p 145

in Parliament, by 20 votes to 17. But the issue had been considerably advanced and remained a live one.

It had been assumed, since the 1846 and 1852 constitutional discussions, that as Maori acquired property in individual title they would join the ranks of electors. It was also assumed that this process would speed up as Maori customary land went through the Native Land Court set up in 1865 and recipients of new, individual, titles qualified for the franchise under the 1852 Constitution Act. In 1865, however, prompted by a petition from the Otaki chiefs presented by J E FitzGerald, there was further discussion among settler leaders of granting a measure of Maori parliamentary representation anyway, as a means of helping to end the war. Nothing ensued until 1867 when the Stafford Government asked FitzGerald to draft a bill. This was presented in Parliament by Donald McLean and provided for Maori representatives (who might be Europeans) to be elected by adult Maori male suffrage. This was to be a temporary provision, for five years, by which time it was expected that many Maori would have qualified for the general roll. The actual form of representation reflected settler rather than Maori concerns: the agreement on four seats, three in the North Island and one in the South, was determined largely by the fact that it preserved the distribution between the islands which would otherwise have been disturbed by the grant of increased representation to the goldfields of the South Island's west coast. On the other hand it was largely because the South Islanders were concerned at the prospect of three additional settler members from the North (garnering the votes of the Maori electors) that the Government accepted an amendment making it mandatory that the Maori representatives should themselves be Maori.[21]

Although the first elections were poorly publicised and thinly contested, Maori were quick to apprehend the importance of parliamentary representation and the four seats were contested seriously as the century wore on. Nor were the Maori members as manipulable and incompetent as many settlers expected. The record of their speeches in fact reveals a sharp awareness of matters affecting their people, especially the impact of the Native Land Acts and Native Land Court, about which they continually, but vainly, protested. The number of Maori with property qualifications for the general electoral roll increased only slowly and, although some Maori voted for both the general electorate of their district *and* for the Maori representative, their preference to retain the Maori seats was strong, and a measure which was intended to be transitional and temporary was renewed and has remained to the present day. From 1872, two or three Maori were also nominated to the Legislative Council. The Council was abolished in 1951.

The dual voting of Maori was ended in 1893. From that date persons of more than 50 percent Maori descent were to go on the Maori roll; those of less than 50 percent on the general roll; those of exactly 50 percent each way had a choice! This fatuous system of measuring the degree of Maori 'blood' of course never

21. NZPD, 1868, vol 2, p 494; W K Jackson and G A Wood, 'The New Zealand Parliament and Maori Representation', *Historical Studies*, vol 11, no 43, October 1964, p 387

worked in practice, most people of any Maori descent who identified as Maori voting on the Maori roll.

The question of whether the four Maori seats in the national Parliament provided sufficient representation for Maori has long been a contentious one. If it is assumed that Parliament representation should be on a communal basis and that the number of Maori (or settler) members of Parliament should be in proportion to the size of the community in the nation generally, then Maori were greatly under-represented by the four seats for most of the century. The authors of the report *Te Mamae* appear to take this view and regard the four seats as little more than tokenism, convenient to the settlers in providing a specious form of Maori participation in the making of laws that affected them. This, however, is to overlook the view that, until 1893 at least, the *main* means of providing for Maori representation in the national Parliament was intended, in 1867, to be through Maori participation in the general electorates, both as voters and as candidates. The charge of token representation becomes more serious after 1893 when persons of more that 50 percent Maori descent were excluded from the general roll. This situation was not corrected until 1974, when Maori (of any degree of Maori parentage) were accorded the right to opt for the Maori or for the general roll. Depending upon the number of Maori opting for the Maori roll so the number of Maori seats would be determined, on the basis of approximately the same number of electors for each Maori seat as for each general seat. The number of Maori seats rose to five for the first time in 1996.

But Maori have never felt that their representation in the political and administrative system was adequate either in numbers at the centre or in terms of control of local tribal matters, especially land. Governments did not reconvene a consultative Maori assembly, on the lines of the Kohimarama conference, and the Maori representatives in Parliament quickly sensed their weakness in the General Assembly alongside 72 Pakeha members. Various proposals for increased Maori representation were put forward, ranging from 50 percent Maori representation (signifying two peoples equal in power and status) to two or three additional Maori members. In 1875 and 1876 a bill introduced by H K Taiaroa, member for Southern Maori, to increase the Maori membership was defeated in the House of Representatives.[22] Some very able Maori, such as Major Te Wheoro of Waikato and Henare Tomoana of Hawkes Bay, strong allies of the Crown during the wars, left the Parliament after one or two terms in the 1870s and became active leaders of autonomous Maori movements. In many districts of New Zealand, in fact, chiefs who had been 'kupapa' (neutral or loyalist) in the wars, developed movements aiming to regain control of the land and to secure some genuine equality and partnership with the settlers in the governmental and administrative structures. For them the promises at Waitangi, and at the time of their allegiance in the wars, had not been fulfilled.[23]

In 1879, Paora Tuhaere, principal chief of the Ngati Whatua (Auckland), convened a 'parliament' of chiefs, from almost all districts, at the Orakei marae.[24] He

22. Dacker et al, pp 97, 99, 107
23. Ward, ch 13
24. A record of its proceedings are printed in AJHR, 1879, sess 2, G-8

saw this a part of a continuum from the original Treaty discussions of 1840 through the Kohimarama conference, which, he regretted, had not been reconvened as promised. Maori still sought that relationship with Government, respectful of their mana, which the Treaty and the governor's speech at Kohimarama had implied. Tuhaere and other chiefs were critical of the system of four Maori seats in the national Parliament, not so much because of lack of capability in the members (though some were seen as being easily seduced by Pakeha goals of wealth and power) but because they were too few in number to be effective, either in the Parliament or in to have any hope of truly representing their huge electorates and the many tribes within each of them. Some speakers at Orakei favoured an increase of Maori seats in the national Parliament but the stronger interest was in holding a series of meetings and developing a separate Maori parliament to deal with Maori concerns. This was by no means a wholly separatist concept, for most speakers, and the resolutions at the end of the conference, continued to affirm allegiance to the gospel, the Queen and the law, and to recognise them as sources of Maori advancement. But they sought the equality of standing with the settlers that they believed they had been promised, and the best means of securing that equality. There was a good deal of detailed criticism of the land laws, laws which deprived Maori of control of their coastal and inland fisheries, and laws controlling the shooting of game on Maori land. Te Keene, as assessor of the Native Land Court, flourished a copy of the Native Lands Act 1862 and declared that it was from that the mana of the land had been lost.

Many Maori felt that a separate Maori parliament would enable Maori better to work together, both among themselves and with the Pakeha. This was the impetus for the Kotatitanga or Maori parliament movement which, after a series of further meetings, was formally launched at Waipatu, Hawkes Bay, in 1892. It was the basis also of a petition of the Maori members of General Assembly in 1883 (Tomoana, Taiaroa, Te Wheoro and Tawhai) to the Aborigines Protection Society in England for an elected Maori assembly, with legislative and administrative functions, responsible to the governor but not the national Parliament.

Against this trend, was the emergence in the national Parliament, of men like the mixed-race leader James Carroll, who first represented Eastern Maori in 1887 then switched to the general seat of Gisborne in 1893, became Native Minister in 1899 and served briefly as Deputy Prime Minister. New Zealand was a small society and many Maori had engaged in farming and in the commercial economy as best they could. Many had attended the village schools and learned English. By the 1890s an elite group, exemplified by Apirana Ngata, had gone through the private denominational secondary schools and were beginning to graduate from the universities. They exemplified success in what was a widespread Maori aspiration to engage with the modern world, master its skills and acquire wealth and status alongside the settlers. For them a separate Maori parliament and legal/administrative system seemed hazardous and retrogressive.

20.2 Maori Councils and Committees

Alongside, and contributing to, the proposals for stronger Maori national representation, were various forms of local or regional runanga, councils or komiti. These developed naturally out of traditional tribal assemblies, but took up some of the organisational features of church mission or state committees (such as office-bearers, written minutes, and formal resolutions) to meet new needs. Tribal runanga, runanganui crossing tribal lines, developed strongly in the 1850s to try to retain mana against encroaching Government authority. In Hawke's Bay and Poverty Bay they asserted control over the runholders, seeking to develop, in effect, a leasehold system, in defiance of the Native Land Purchase Ordinance 1846.

Two attempts were made to give the runanga a form of official recognition. In 1858 the General Assembly passed the Native District Councils Act and the Native District Circuit Courts Act. The first empowered local runanaga, with the local Resident Magistrate to pass by-laws to regulate civil injuries and lesser criminal offences; the second gave the Maori Assessors authority to enforce the by-laws, on their own for small matters (the £5 jurisdiction), and with the Resident Magistrate on circuit for more serious matters. The system was not well funded or supported administratively but several runanga were encouraged in their efforts at local self-regualation and some chiefs (Assessors) enthusistically exceeded their jurisdiction.

In 1861 Grey embarked upon a much more substantial system of official local and district Runanga, building upon existing structures with much greater funding and administrative support. Several Maori districts, notably in the north, engaged seriously and with much promise, in this endeavour. On both occasions, however, the settlers and officials had ulterior motives for setting up official Runanga: it was hoped that they would determine customary rights to land and oversee the sale or lease of land to the Crown or to settlers. The use of the local Runanga was by no means an inappropriate way of approaching either the issue of settling land title or of regulating land alienation; it did, after all, offer a way of involve the tribal leadership in open, representative, and public dealings. Had something like this been attempted in the 1840s, as a way of handling land purchase, it might have won Maori support. By 1858, however, and more especially by 1861, the Government's record on land purchase and its aggression in Taranaki, had made Maori almost everywhere highly suspicious of any official proposals to do with land. Grey's purpose of undermining or outbidding the kingitanga was also fairly obvious. Consequently, what might have otherwise been an appropriate approach to the land question met little favour at the time with Maori, who continued to support the kingitanga and attempt to manage land through their unofficial tribal assemblies. In turn the Government lost interest in supporting the runanga system, which became neglected after the resort to war in 1863.[25]

By 1865, the Government had found a new way of securing access to Maori land. The Native Lands Act of that year (and its predecessor of 1862), set up the Native Land Court and launched the process of converting customary tenure to a form of

25. Official and unofficial runanga in the 1850s and 1860s have been discussed in detail in Ward, chs 6–9

pseudo-individualised title. Every owner named on the new titles could sell his or her interest directly to settlers (see above ch 7). The system battened upon the intersecting nature of Maori customary rights; traditional rivalries and want of capital both to pay debts and to develop their own farms, propelled Maori into the land courts.

The settler politicians were delighted at the way the system took hold. Henceforth they had no need for Maori runanga or committees. Conversely the Maori, realising that the sale of individual interests undermined their previous tribal control of land, began to press for the formal recognition of tribal committees. The remainder of the nineteenth century thus witnessed various proposals coming from the Maori side, all rejected, watered down or circumscribed by successive Governments, who knew full well the importance of keeping the system of individual dealing alive. Thus when Donald McLean introduced a Bill in 1872 which might have given local Maori committees power in respect of title determination, he had to withdraw it in the face of settler hostility. John Bryce did secure the enactment of a Native Committees Act in 1883 but for very large districts, not appropriate to the numerous tribal divisions which Maori wanted to empower, and advisory only to the all-powerful Native Land Court. Of the committees created under the 1883 Act the 'Kawhia committee', chaired by John Ormsby and representing the Ngati Maniapoto and Ngati Hikairo tribes, proved most effective in settling questions of title and leasing land.[26]

Meanwhile an alternative form of Maori committees was being developed principally on the East Coast under (among others) the very able Maori Assessor, Paratene Ngata and the entrepeneurial chief, Wi Pere. These committees were essentially 'block committees' representing the hapu or hapu clusters that owned the big blocks of land in that district. They secured the support of the 1890–1 Commission into the Native Land Laws (the Rees-Carroll commission), which reported in favour of dealing with land by hapu, not by individual owners. As discussed above (ch 15) the commission's recommendations led to the passage of the Maori Land Councils Act of 1900 which, with the Maori Councils Act of the same year, aimed to give a considerable amount of local authority to the tribes, in repect of a range of matters such as health, sanitation and consumption of alcohol as well as over land.

It is generally well known that the members of the kotahitanga and kingitanga were divided in the years leading to the passage of the 1900 Act. Many favoured legislating independently for Maori, as a Home Rule parliament, to by-pass the Native Land Court and place land under the authority of tribal committees both for determination of title and for subsequent leasing or development. Others favoured securing ratification of their bill by the national Parliament, and the Maori members of Parliament introduced it there for successive years from 1895. The influence of

26. These movements are discussed in Ward, ch 18, and in greater detail in a report by Vincent O'Malley, 'Maori Committees in the Nineteeth Century', Crown Forestry Rental Trust, 1996. For the Kawhia Committee see Cathy Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), 1840–1920*, Wellington, Waitangi Tribunal Rangahaua Whanui Series, (working paper: first release), December 1996

powerful and confident members of the national Parliament such as Carroll, and of new leaders such as the young law graduate Apirana Ngata, together with the persistent Maori desire to work with the Crown rather than against it, led to the acceptance of the Government's bill and thence to the disbandment of the kotahitanga parliament.[27]

The Councils began promisingly, with even the kingitanga accepting a Land Council in the Waikato, in return for King Mahuta himself being given a seat in the Legislative Council of the national Parliament. But, as Dr Loveridge has shown, settler impatience at the slowness with which they made land available for settlement led to the Maori Land Councils, renamed Maori Land Boards in 1905, being stripped of powers which would have made them vehicles for any real self-determination. Soon they lost their Maori membership as well and became part of the official apparatus of land alienation, for the most part. The powerful Maori autonomist movements of the late nineteenth century had effectively been sidetracked and defeated.

In the early twentieth century then, the main avenues by which Maori engaged with the processes of Government and administration were via the four seats in the national Parliament (and two or three members in the Legislative Council) and the local councils dealing with health and sanitation. In respect of land the system of incorporation of owners and elected block committees, launched in 1893 in repect of the Mangatu blocks and given general legislative recognition from 1894, provided some scope for local hapu leaders. But the incorportions' powers were carefully defined by the Native Land Act 1909 and its successors and hapu autonomy was undermined by the dubious device of the 'meeting of assembled owners' also introduced in 1909.

Over three million more acres of remaining land passed from Maori hands between 1900 and 1930. When, in the 1920s, Wiremu Ratana movement began to command increasing support from the Maori people, burgeoning in numbers but increasingly marginalised in the economy, he looked for means of secular as well as spiritual advancement for the common people. The Ratana leaders thought it necessary to capture the four Maori seats in Parliament, and in 1932 Eruera Tirikatene took Southern Maori. The leaders of the New Zealand Labour party then discerned the electoral strength of the Ratana movement and made the famous alliance which led to Ratana nominees becoming the official Labour candidates. With the secret ballot being introduced for the first time in the Maori seats in 1937, voters' reluctance to oppose their chiefs at a public show of hands no longer applied and the four seats fell to the Ratana/Labour alliance, Apirana Ngata being defeated by the Labour candidate in 1943.

In the twentieth century, as in the ninetheenth century, Maori have continued to express demands for tino rangatiratanga, as guaranteed under article two of the

27. See John A Williams, *Politics of the New Zealand Maori: Protest and Cooperation 1891–1903*, ch 7. Dr Don Loveridge has discussed these developments in some detail in his report, *Maori Land Councils and Land Boards: A Historical Overview, 1900 to 1952*, Wellington, Waitangi Tribunal Rangahaua Whanui Series, Decmber 1996 and his views are summarised above, pt 1, pp 10–48.

Treaty. Governments' responses to these demands have been tempered by a desire to retain power and control over land and other resources, at the central level and within the bureaucratic institutions. Maori were feeling the impact of land-taking. In an effort to keep up with the shift of Maori into urban areas after the second world war and the great depression, the Department of Maori Affairs focused on welfarist activity designed to remove obstacles thought to hinder the economic progress and social absorption of Maori people.[28] 'The objective was to achieve equal rights and opportunities for the Maori without depriving them of the right to cultural pursuits of their choice'.[29]

During the Second World War, however, Maori assumed unprecedented responsibility in the administration of their own affairs, with considerable success.[30] In 1939 a Maori military unit was formed and in 1940, the 28th Maori Battalion left for the war. As further pressure mounted for recruits, the Government continued to favour voluntary Maori conscription but sought new ways to encourage Maori involvement in the war effort. In 1941, Parere Paikea, Maori Member of Parliament, was given responsibility for this, and his authority grew as additional responsibilities were shifted onto the emerging Maori War Effort Organisation. In 1942, the Prime Minister approved a scheme submitted by Paikea which provided for a network of tribal committees to work closely with Maori communities to encourage recruitment.[31] Maori values were to be applied to the organisation's deliberations and decisions and all tribes were to be involved. In its first six moneths the organisation formed 315 'tribal' committees in 21 zones around the country, coordinated by 41 tribal executive committees. The scheme received no Government funding, but operated on voluntary assistance from the community. Maori seized the opportunity to demonstrate their planning and leadership talents.

Not only did the organisation successfully reduce the threat of conscription by providing the necessary Maori enlistment, but it also expanded to deal with housing and certain social security issues pertaining to Maori. Education, vocational training and land use also eventually fell within the auspices of the organisation. It appeared that Maori were finally moving towards participation in the mainstream in New Zealand, on their own terms, to a considerable, and growing, extent. While Paikea was successful in extending the organisation's lifespan from the originally conceived six months, by mid 1943 it appeared to the Native Minister that the organisation was undermining the authority of the Native Department. Despite Maori attempts to make permanent the organisation's autonomy, by June 1944, scaling down of the organisation had begun. Maori responded, in an attempt to

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28. A Fleras, 'From Social Welfare to Community Development: Maori Policy and the Department of Maori Affairs', *New Zealand Community Development Journal*, vol 19, no 1, 1984, p 33
29. A Fleras, 'Towards "Tu Tangata"', Political Science, 1985, vol 37, p 23
30. All discussion of the Maori War Effort Organisation comes from Claudia Orange, 'An Exercise in Maori Autonomy: The Rise and Fall of the Maori War Effort and Organisation', *New Zealand Journal of History*, April, 1987, pp 156–172
31. Claudia Orange, 'A Kind of Equality: Labour and the Maori People, 1935–1949', MA thesis, University of Auckland, 1977, pp 129–130

become a permanent part of the national scene, by demanding an investigation into the administration of Maori affairs.

The Maori Social and Economic Advancement Act 1945, which resulted, was only a partial victory for Maori. Eruera Tirikatene (Southern Maori) was one of the progenitors of the Act. According to Claudia Orange:

> Firstly, he had hoped to secure a permanent place throughout the whole of the administration for members of the Maori race; and secondly, he had wanted to reorganise the administration so that all the resources of Government, such as education, helah, and housing, for example, could be co-ordinated and made more easily available to meet the needs of the Maori people. His objectives were thwarted by the pasage of the 1945 Act, for Maori participation of the kind that he envisaged, at top levels of Government, was excluded, and the Board of maori Affairs structure remained unchanged'.[32]

Prime Minister Peter Fraser too had hoped for much more from the Act, saying:

> It was early recognised by myself that if the Organisation was absorbed into the ordinary activities and routine of the Department it would to a very great extent, be stultified and could not possibly exercise that positive beneficial influence, and carry out the work specified by Parliament for it to do as efficiently as if it was practically an autonomous organisation. It has been my aim to make the Organisation as self-controlling and autonomous as possible.[33]

But the committees and executives had, however, lost the autonomy and leadership enjoyed previously. They were neither completely independent nor wholly a part of the Government.[34] However, the Act did draw the Department into a wider range of work and committed it to a larger degree of cooperation with Maori than had previously existed. Meanwhile, the Department grew stronger, with increasing Maori personnel. Commencing with the appointment of T T Ropiha as Secretary of Maori Affairs in 1948, senior positions were increasingly filled by Maori. Maori also began to be appointed to the Maori Land Court judgeships, beginning with Judge E T Durie in the 1970s.

The Maori Women's Welfare League flowed from the 1945 Act also. Female Welfare officers were appointed under the Act and organised committees of Maori women to advance the welfare of women and children. These Maori women's welfare committees formed the basis of the Maori Women's Welfare League, established in 1951 as an incorporated soceity, receiving operating funds from the Government. The League focuses primarily on family centred interests such as education, health, housing and welfare, which encouraged a unifying Maori voice on matters of universal concern for Maori, as well as having strong roots at the tribal level.

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32. Orange, 'A Kind of Equality', p 155
33. Fraser to Under-Secretary, 21 September 1948, ma 35/1 (cited in Orange, 'A Kind of Equality', p 192)
34. Orange, 'An Exercise of Maori Autonomy', p 170

The 1945 Act was replaced in 1962 by the Maori Welfare Act, under which the New Zealand Maori Council was established. At this time, Maori urbanisation was well advanced, and looking to a new Maori social order, it tended to draw away the authority of the tribal structures rather than complementing and adding to them.

Despite these significant developments, the Maori people at large had been economically marginalised by urbanisation; rising unemployment affected Maori particularly seriously. Increasing frustration and protest by Maori in the 1970s over their status in New Zealand society led to, amongst other things, a broad-based Government re-appraisal of the role and function of the Department of Maori Affairs.[35] In the 1970s the 'Tu Tangata' policy (literally meaning 'people standing tall'), was developed by Kara Puketapu who became the Secretary for Maori Affairs in 1977. It introduced community based planning and implementation of policy and programmes for Maori at the local level.[36] In hindsight, it was the beginnings of a policy of 'devolution'. The most successful of the 'kokiri' ('to advance') units, which were the building blocks of the policy, were the kohanga reo (Maori language nests) staffed voluntarily by parents and grandparents.[37] These exemplified the Department's general shift away from 'top-down' management to a community based 'bottom-up' philosophy.[38] While some sectors of the Maori community appeared to support the principle of Tu Tangata as an expression of Maori autonomy, others remained sceptical of the Department's intentions and were suspicious that Maori would not be adequately resourced in their new role.[39]

In the 1980s, the Tu Tangata philosophy became the Government's best hope for achieving three policy objectives concurrently: the minimisation of Government spending on Maori; the reduction of Maori dependency on welfare services; and the pacification of Maori demands for increased self-determination.[40] In 1988, the Labour Government announced its intention to replace the Department of Maori Affairs with a Ministry of Maori Affairs. It also proposed setting up an interim Iwi Transition Agency (ITA) which would strengthen the iwi (tribal) operational base; develop delivery mechanisms for iwi; and transfer existing programmes to iwi within five years, at which time the ITA would also disband. The Ministry of Maori Affairs, which would replace the defunct Department, would deal with policy issues only, monitor other departments' responses to Maori needs, advise Government on Maori issues and act as a legislative 'watch dog' for Maori interests.

The Runanga Iwi Act 1990 was integral to this policy in providing for the establishment of 'runanga' (councils) as legal corporations which would function as the authoritative voice of iwi in their dealings with the Crown. The Act set out the essential characteristics of 'iwi' and the rules for the registration and operation of iwi authorities, or 'runanga iwi'. In 1991, however, and following the election of

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35. Fleras, 'From Social Welfare to Community Development', pp 33–34
36. Ibid
37. Fleras, 'Towards "Tu Tangata"', p 29. As of 2 October 1984, there were 302 such language nests in operation in New Zealand.
38. Fleras, 'From Social Welfare to Community Development', p 35
39. Fleras, 'Towards "Tu Tangata"', p 31
40. Ibid, p 36

a National Government, the Act was repealed. The Act has been criticised as an attempt to 'create' a Treaty partner in the form of runanga in the image of Pakeha legal institutions.[41] Objections were also made over the failure of the legislation to recognise the significance of the hapu (sub-tribe) and whanau (extended family) under the Treaty. The Government was accused of causing unprecendented in-fighting in districts as different runanga struggled for access to funding.[42]

Following the repeal of the Runanga Iwi Act and the abolition of the Department of Maori Affairs, the new Ministry of Maori Affairs (Te Puni Kokiri) was established, comprising specialist divisions for health, education, training and economic resource development. The Ministry emphasises the regional delivery of services, with the co-operation of iwi who can choose to form legal entities and contract with Government to deliver services to Maori people in their region.[43]

During these reforms, particularly in the late twentieth century, Maori have consistently maintained the fundamental importance of the principle of partnership under the Treaty, while at the same time recognising the the complexities surrounding the concept of 'iwi' in contemporary society. It has been stated that partnership between Maori and the Crown at the most senior level is essential, in addition to well managed devolution of Maori services to the Maori community.[44] True partnership, some Maori assert, must be between Maori and the Government itself, not Government departments, as they have no guarantee of their, or the departments' accountability for the needs of Maori.[45] Many Maori, and others, recognise the complex nature of applying treaty terms to the contemporary context. In particular, the identity of 'iwi' in contemporary Maori society, raises certain challenges. In asserting the right of iwi to govern themselves as governmental or jurisdictional authorities in their own right, concern is expressed that iwi have power over their resources.[46] 'It is considered imperative that Maori participate in the formulation, implemention and evaluation of those national development plans and programmes which directly affect them.'[47] There are also, however, significant concerns about the place and nature of iwi today. While the Runanga Iwi Bill was seen by some to impose rigid, inflexible Pakeha concepts upon the iwi,[48] some groups warned Government that the iwi was not the root of power, which is dispersed between hapu and whanau.[49] There is also the contemporary (particularly post-Second World War) challenge of urban Maori, some twenty percent of whom are said to be 'de-tribalised' and 'de-culturalised' as well. Urban Maori, some suggested, must be able to establish incorporated runanga to cater for their particular needs (a move that has provoked criticism from the more traditionally organised groups[50]).

41. Ngati Irakehu, Submission to the Maori Affairs Committee, 1990, no 151
42. Kia Mohio Mia Marama, Submission to the Maori Affairs Committee, 1990, no 164
43. McLeay, 'Two Steps Forward, Two Steps Back', Political Science, vol 43, no 1, 1991, p 41, footnote 51
44. New Zealand Maori Council, 'A Response to: He Tirohanga Rangapu–Partnership Perspectives', Wellington, 17 June, 1988, pp 17–18
45. Te Runanga o Te Rarawa, RI Bill Submission, no 53
46. Nga Kaiwhakamarama i Nga Ture, RI Bill Submission, no 59
47. Erihapeti Rehu Murchie, Human Rights Commissioner, RI Bill Submission no 89
48. Nga Kaiwhakahaere o Ngaruahine Conservation and Water Rights Committee, RI Bill Submission, no 112
49. Te Runanga o Ngati Porou ki Tamaki, RI Bill Submission, no 50

Maori have also shown a willingness to advance possible structures for accountablility of Maori, given the opportunity to enjoy greater autonomy. For example Ngai Tahu, a South Island iwi, stated that its runanga should be the principal shareholder for Ngai Tahu and accountable to Ngai Tahu only in the management of its assets. At the same time, the iwi asserts that the runanga should be accountable to the Crown for the management of resources voted by Parliament. According to the iwi, auditors should be appointed by the iwi as an expression of the autonomous management of its affairs, although the Crown should have the right to specify the form of audit and the responsible auditor in respect of Crown monies and functions used by the iwi authority. It was also advised that iwi should be in a position to accept or decline the Crown services and resources in a contractual relationship.[51]

Given Maori demands and expectations of Government and the bureacracy, as briefly introduced here, and given the present level of commitment by Government in managing Maori affiars, it is widely recognised by Maori and Pakeha alike, that the policy of devolution, despite its difficulties, remains the most appropriate vehicle for the expression of Maori autonomy within bureaucracies. Devolution has accordingly been described as 'an acceptable way, for many Maori, of securing tino rangatiratanga.[52] It has been likewise been dubbed 'a genie now freed from the bottle in which history has entrapped it' which, once freed, cannot be stuffed back in the bottle again.[53] The present direction, if indications are correct, is for the Government to pursue its devolution and associated schemes, but on terms more widely acceptable to Maori. Challenges remain, however, for Maori to determine the shape and nature of contemporary Maori society under the Treaty, and for Government to better accommodate those structures, once they are established.

Outside bureaucratic management of Maori affairs, however, recent developments in New Zealand at the level of political representation may have a significant impact on the shape of Maori affairs in the future. In October 1996, New Zealand held its first general election under the mixed member proportional system of voting, with considerable success for Maori. Fourteen Maori members of Parliament were elected, a significant increase on the seven representatives in the previous Parliament. The predominantly Maori, New Zealand First Party, has entered into coalition with the National Party to form the first government under the new system of proportional representation.

50. RI Bill Submission, no 37 (no identity provided)
51. Ngai Tahu Maori Trust Board, RI Bill Submission, no 85
52. McLeay, p 46
53. The Mahuta Committee on Devolution, 1986, quoted in Ministry of Maori Affairs, *Ka Awatea*, Report of the Ministerial Planning Group, Wellington, March, 1991, p 71