

PART I

‘Practically the Difficulty in Respect to Our Native Lands is Solved’



## CHAPTER 1

# THE ORIGINS OF THE MAORI LAND COUNCILS

In a recent study of the myths and realities of the Liberals' Maori land policy, Dr Tom Brooking laments that the Government in office during the last decade of the nineteenth century 'lost an opportunity for the development of a truly bicultural society' through its failure to give Maori farming 'a chance to succeed'.<sup>1</sup> If the Liberals had actively supported Maori agricultural development at that point in time, this historian suggests:

the results would almost certainly have benefited everyone in that the cycle of dependency, into which Maori were forced slowly but relentlessly, could have been broken. Our national debt would also have been lower and environmental damage less considerable . . . .

The author is careful to point out that this scenario is 'all speculative and counterfactual'. Some might consider the projected results of these speculations to be unduly optimistic. None the less, the idea that a crucial turning-point was passed in the waning years of the nineteenth century seems indisputable.

The immediate source of the Maori lands crisis of the late 1890s is easily identified. It forms the subject of Dr Brooking's aforementioned article, "'Busting Up" the Greatest Estate of All'. Simply put, between 1892 and 1900 the Crown purchased some 2.7 million acres of Maori freehold land, much of it at artificially low prices facilitated by the re-assertion of the Crown's pre-emptive right in 1894.<sup>2</sup> In 1891, after half a century of European land-buying, Maori retained some 10.8 million acres of land. When purchasing was provisionally suspended by the Crown at the end of 1899, less than eight million acres remained<sup>3</sup>.

Richard Seddon's Liberal Government had pursued this land-purchasing programme with single-minded determination – a determination explained, in no small measure, by the fact that the political survival of the Government depended upon finding sufficient land to satisfy the demands of thousands of European settlers for farms. As Sir Robert Stout and Apirana Ngata pointed out in 1907, it is

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1. Tom Brooking, "'Busting Up' The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', NZJH, April 1992, vol 26, no 1, p 97
  2. AJHR, 1907, g-1c, p 5. The Crown paid only £775,500 for this land. Private individuals acquired another 423,184 acres during the same period. See Brooking, p 84, for a discussion of the effects of pre-emption on prices.
  3. See 'Statement showing the Position of Native Lands in the North Island', AJHR, 1911, g-6, which offers a useful summary of Crown acquisitions for 1891–1911. The 1899 figure is an estimate based on data compiled for the Royal Commission on Land Tenure, which identified 7.5 million acres of Maori land in the North Island in 1903; AJHR, 1905, c-4, p 1566. I have not yet found any comparable figures for 1899–1900.

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essential to bear in mind when examining Maori land issues during this era ‘that the question of land-settlement generally . . . more than any other subject occupied the forefront of colonial politics’.<sup>4</sup> Breaking up large European estates for the purpose of closer settlement (a centrepiece of Liberal land policy<sup>5</sup>) did not even begin to satisfy this land-hunger. Purchases from Maori eventually provided more than twice as much new land for settlement as ‘estate-busting’, and at considerably less than one-tenth the price per acre.<sup>6</sup>

In order to expedite and accelerate its purchasing programme, the Government passed Maori lands legislation in wholesale quantities during the early 1890s. This is not the proper place to reconstruct or review the process, which has yet to be systematically studied by historians.<sup>7</sup> Suffice it here to say that the result was a body of legislation which opened avenues through, over and around many of the problems which at the start of the decade had been inhibiting the rapid transfer of land out of Maori hands. In restoring the Crown’s right of pre-emption, for example, the Native Land Court Act 1894 freed the Crown from interference by and competition with private purchasers. Some of the measures involved may well have had beneficial consequences for Maori, but on the whole ‘coercive and punitive’ elements dominated the Liberal approach.<sup>8</sup>

The consequences of the loss of so much land at derisory prices were severe and far-reaching. Maori agriculture showed clear signs of growth (in some parts of the country at least) during the 1880s.<sup>9</sup> The Liberal ‘land grab’ of the 1890s, Brooking argues, ‘stifled then shattered that recovery’.<sup>10</sup> A major factor was the loss of the remaining first-class lands. Premier Richard Seddon told the House in 1899 that he did not think Maori had a million acres left which was ‘fit for settlement’. Wi Pere, the member of Parliament for Eastern Maori, commented in the same debate that much Maori land was to be found ‘On the top of the Tararua Ranges and places like that’: ‘All the best of the land’, he lamented, ‘has long ago been acquired by Europeans’.<sup>11</sup> The Stout–Ngata commission on native lands and native land tenure would comment eight years later that:

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4. AJHR, 1907, G-1c, p 4

5. J S Duncan, *The Land for the People: Land Settlement and Rural Population Movements, 1886–1906*, p 170. This identifies the three ‘main tenets’ of this policy as 1. the prevention of land aggregation; 2. the use of legislation to enable the resumption and subdivision of large freehold estates; and 3. the use of leasehold tenures and cheap credit to enable European settlers with limited financial resources to take up farming.

6. Brooking, p 78. The average price per acre paid for Maori lands by the Crown in 1892–1900 was slightly in excess of 6s, whereas the average cost-per-acre for estates acquired under the Lands for Settlements Acts was about 84s.

7. As noted in Brooking, p 80. His own discussion, at pp 83–88, offers a useful overview and starting-place. See also *The Maori Land Legislation Manual*, Crown Forestry Rental Trust, Wellington, 1995, 2nd edition. This gives a comprehensive list and descriptions of legislation passed during this period which affected Maori land title and tenure.

8. Brooking, p 84

9. See R J Martin, ‘Aspects of Maori Affairs in the Liberal Period’, MA thesis, Auckland, 1956, pp 159–160, and John A Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1900*, Auckland University Press/Oxford University Press, Auckland, 1969, ch 1, especially pp 25–26.

10. Brooking, p 97

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the area of good [Maori] land available . . . is not as great as is generally supposed. Of inferior land not suitable for close settlement, and fit only for forest reserves and such purposes, there is ample, but we doubt if there will be any keen demand for such land . . .<sup>12</sup>

It would not be in keen demand by European settlers, of course, because turning low-quality land into viable agricultural units was a much more arduous and expensive process than doing the same with good land. Selling the best of their property for artificially low prices thus created its own vicious circle for Maori landowners.

The Maori rights movements which became increasingly active during the 1890s were not simply a response to the new Government's land policies. The roots of the Kingitanga (Maori King) and Kotahitanga (Maori Parliament) lay much deeper in the New Zealand experience of race relations. Nor was land their sole concern, by any means. None the less, the Government's handling of the 'Native land question' was always a central issue, and opposition to the Native Land Court in particular became a rallying point for these movements. It was no coincidence that, as Martin notes, 1894 saw the Kingitanga and Kotahitanga, together with Apirana Ngata's Young Maori Party, fall into 'a loose alliance' on land issues.<sup>13</sup>

One of the first fruits of this alliance was the Native Land Court boycott of 1895. The land court occupied a key position in the process of land alienation. Basically, until it had determined ownership and a title had been issued, Maori land could legally not be sold or leased to anyone, including the Crown. Moreover, final land court approval was required for all such transactions.<sup>14</sup> In 1895 those who objected to the resumption of Crown pre-emption, which forced land prices down, joined those who objected to the very idea that a Pakeha-dominated court should have control over the way Maori landownership was ascertained. A boycott of the Native Land Court was declared through the Maori Parliament. Landowners were asked not to have anything to do with the land court, offering the prospect that:

If you will be brave and patient for one year then at last you will reap some reward, inasmuch as the bad laws enacted by the present Government for the native people will fail. If the Maoris will only cease this land dealing then favourable legislation will eventuate . . .<sup>15</sup>

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11. NZPD, vol 110, pp 744 (Seddon), 749 (Pere). The Premier was presumably referring to available (that is, unleased) Maori lands here. A 1903 survey by the Commissioner of Crown Lands concluded that 1,661,235 acres out of 7,491,463 acres of Maori land in the North Island (22.2 percent) were considered 'unfit for Settlement Purposes' of any kind. A substantial portion of the remainder would have been of marginal utility. See 'Report of Royal Commission on Land Settlement and Tenure, together with Minutes of Evidence', AJHR, 1905, c-4, p 1566.

12. AJHR, 1907, G-1c, pp 15-16

13. Martin, p 59

14. Under the Native Land Court Act 1894, by which the old trust commissioners were abolished and the court itself was given sole authority to grant final approval of alienations.

15. Quoted by Williams, p 72

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After a promising beginning, though, the boycott faltered. Whatever the reasons for this may have been, the desired effect was not attained.<sup>16</sup>

The principal goal of the boycott had been to stop Crown land-purchasing by cutting off its source of supply. Before long, as a result of ‘numberless meetings all over the North Island’ and many petitions ‘setting forth general principles for the future administration of Native lands’, opinion shifted in favour of a different approach.<sup>17</sup> In 1897, (her Jubilee year) a petition was sent to Queen Victoria by the Maori Parliament. This stated that, having sold some 60 million acres of land to ‘private persons and the Crown’ since 1840, Maori now desired ‘to retain and utilise our surviving land ourselves’. The petitioners pointed out that their request ‘can only be given effect to by passing such legislation prohibiting for ever the sale of our surviving lands to the Crown and private persons’, and called upon the Queen ‘as a momento of your anniversary’ to cause such legislation to be adopted. But they also noted that ‘any portions [of land] that we may not be able to cultivate we are willing and shall be pleased to lease for the purposes of settlement and development of the colony’.<sup>18</sup>

Commissioners Stout and Ngata, writing a decade later, stated that this ‘numerously signed’ document asked:

- (i) That the Crown cease the purchase of Native lands;
- (ii) That the adjudication, management, and administration of the remnant of their lands be vested in controlling Councils, Boards, or Committees composed of representative Maoris.

‘Though divided on many points’, they claimed, ‘the tribes were unanimous’ in requesting these changes.<sup>19</sup> The petition itself, however, did not actually contain any specific reference to ‘Councils, Boards, or Committees’,<sup>20</sup> while subsequent developments in the period 1897 to 1900 do not suggest that all (or perhaps even a majority) of Maori thought such institutions would necessarily be desirable.

At that time the Crown had recently acquired, or was in the process of acquiring, a large amount of Maori land. The very success of its land purchase policy made possible a concession to Maori opinion, in the form of a termination of land-purchasing.<sup>21</sup> Looking to the future, however, the Government would not be in a position to continue with such a moratorium unless Maori land continued to be made available to European farmers in quantities deemed to be sufficient to maintain the momentum of New Zealand’s agricultural development: any political party which cut off the supply of Maori land altogether in the middle of an economic boom was likely to be ejected from the Treasury benches with unseemly haste. From this perspective, a termination of purchasing had to be compensated-

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16. Williams, pp 72–73

17. As Stout and Ngata put it; AJHR, 1907, G-1c, p 5.

18. Petition reproduced in testimony of Wi Pere before the Native Affairs Committee, AJHR, 1899, I-3a, p 19.

19. Summary by Stout and Ngata, AJHR, 1907, G-1c, p 5. See also Williams, pp 73–74.

20. A point which Henare Kaihau made to the Native Affairs Committee in 1899; see AJHR, 1899, I-3a, p 19.

21. So Martin suggests, p 69

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for by a significant increase in the supply of Maori land made available for settlement by other means.

But availability was not simply a question of volume. In order for the trade-off to be effective, the costs and complications of leasing Maori land had to be reduced to a minimum. One obvious way to do so was to put in place a land administration system which would facilitate the utilisation of lands which were surplus to Maori requirements, by allowing substantial quantities to be leased to European settlers and farmers. As Premier Seddon would note in 1899, the Government saw terminating Crown purchase and establishing a land administration system as one indivisible package. The basic ‘objects sought for’ by the Government, he told the House, were:

- (a) that there shall be no alienation (of Maori land) by way of sales;
- (b) that the Maori lands shall not remain as they are at present, a burden to certain districts, keeping back the progress of the whole colony; and
- (c) that in lieu of the Natives going to law, and so wasting their substance and losing their land, there shall be a body corporate, who shall decide how the land is to be dealt with.<sup>22</sup>

Seddon was at this stage anticipating that a million acres of Maori land would be made available for leasing through the new system ‘in a very short time’, once the requisite legislation was passed. In this manner, he hoped, ‘the difficulty that obtains at the present time in respect to large tracts of Native lands would be removed: they would not remain idle and unoccupied, and so prove only a barrier to the settlement of many districts’.<sup>23</sup>

The idea of using some kind of body corporate to administer the remaining Maori freehold lands did not, of course, originate with ‘King Dick’ Seddon in 1897.<sup>24</sup> Variations on the same theme had often been proposed in the 1880s and 1890s, in response to a pressing need to find a modern substitute for the tribal structures which had regulated the use of Maori land before the Native Land Court system was imposed on Maori in the 1860s. The authority of these traditional structures and their traditional leaders had been eroded by the application of European concepts of land title and tenure, which in most cases gave absolute priority to the rights of individual landowners. When such a principle was applied to lands owned by dozens or even hundreds of owners – as much Maori land was after its passage through the Native Land Court – the result was ‘confusion, loss, demoralisation, and litigation without precedent’.<sup>25</sup>

The individualisation of titles also, in many cases, created serious problems for Maori landowners wishing to occupy and utilise the land which they retained. Such people, the Native Land Laws Commission noted in 1891, often found themselves in ‘a galling and anomalous position’, for:

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22. Maori Lands Administration Bill, NZPD, vol 110, p 743. See below.

23. NZPD, vol 110, p 743

24. Although according to both Wi Pere and Henare Kaihau (and, by implication, James Carroll) the initial proposal for the adoption of a board system in 1897 came from the Government; see AJHR, 1899, I-3a, p 19.

25. ‘Report of Royal Commission on Native Land Laws’, AJHR, 1891, G-1, pp x

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As every single person in a list of owners comprising, perhaps, over a hundred names had as much right to occupy as anybody else, personal occupation for improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. That apprehension of results which paralyses industry cast its shadow over the whole Maori people.<sup>26</sup>

Settler criticism of Maori for failing to make use of their lands seldom took adequate account of such factors.

The first attempts to find a solution were aimed primarily at expediting the utilisation of Maori land through lease or sale. In 1886, after several attempts, John Ballance succeeded in having the Native Land Administration Act, 1886 passed.<sup>27</sup> This suspended direct dealings in Maori lands, unless the Crown was the purchaser or lessee. Instead, it enabled the owners of a block to elect a representative committee.<sup>28</sup> The members of this block committee would then decide if any of the land under their control should be sold or leased, and on what terms and conditions. Lands to be alienated would then be handed over to a commissioner, or commissioners, appointed by the Crown under the Act, who would carry out the instructions of the block committee.<sup>29</sup> Income from leases or sales would be received by the commissioner who, after deducting costs, would distribute it to the owners.

In so far as the 1886 Act enabled the owners of a given block of Maori freehold land to act as a single legal entity, it was a significant improvement over anything which had gone before. None the less, the owners' involvement in land administration would cease altogether once they had handed their land over to the commissioner: they would have no say in the decisions which followed. Although Ballance was under the impression that he 'had won Maori acceptance of his proposals' prior to the passage of the Act,<sup>30</sup> few owners proved to be willing to entrust their interests to block committees, and none whatsoever were prepared to hand land over to a Crown-appointed commissioner. After a vigorous campaign for the repeal of the 1886 Act, the status quo ante was more or less restored in 1888.<sup>31</sup>

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26. AJHR, 1891, g-1, pp x-xi. Quoted in AJHR, 1907, G-1c, p 3. It was also noted, incidentally, that 'The pernicious consequences of Native-land legislation have not been confined to the Natives, nor to the Europeans more immediately concerned in dealing with them for land. The disputes then arising have compelled the attention of the public at large, they have filled the Courts of the colony with litigation, they have flooded the Parliament with petitions, given rise to continual debates of very great bitterness, engrossed the time of Committees, and, while entailing very heavy annual expenses upon the colony, have invariably produced an uneasy public feeling.'

27. See also K Sorrenson, 'The Purchase of Maori Lands, 1865-1892', MA thesis, Auckland University, 1955, pp 171-175, for a discussion of Ballance's policies and the 1886 Act.

28. This only applied where the block had seven or more owners, but blocks with less than seven owners could still be brought under the Act if all of them agreed to do so (s 12).

29. Dissenting owners could have their interests partitioned out by the land court (s 18).

30. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, University of Toronto Press, Toronto: 1974, p 297. See also T McIvor, *The Rainmaker: A Biography of John Ballance, Journalist and Politician, 1839-1893*, Heinemann and Reed, Auckland, 1989, pp 142-143.

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Soon afterwards, in 1891, a Royal Commission ‘to inquire into the subject of the Native Land Laws’ was appointed. Its members included W L Rees, James Carroll, and Thomas Mackay – all men with considerable experience in matters relating to Maori lands. Rees himself had long been an advocate of the incorporation of Maori landowners for administrative purposes, and his ideas on the subject had influenced Ballance in 1886.<sup>32</sup> James Carroll was a rising star in the Liberal party who would later become the first person of Maori descent appointed as Native Minister (1899–1912), while Thomas Mackay was a former Native Land Court judge who was at this time administrator of the West Coast Settlement Reserves in Taranaki.<sup>33</sup> Since Mackay died before the task was completed, the final report was largely the work of Rees and Carroll.

The commissioners were called upon to answer five questions, which, as their final report put it, could:

be fairly condensed into two, thus:—

1. What are the origin, nature, and extent of the present defects (a) in the Native-land laws, (b) in the alienation of interests in native land, and (c) the Native Land Courts?
2. What are the principles on which the Native lands should henceforth be administered, so as to benefit both Natives and Europeans and promote settlement?<sup>34</sup>

Based on their findings with respect to the first question, the commissioners recommended in answer to the second that the Native Land Court and the Native land laws, ‘as presently constituted’, should ‘cease to operate’.<sup>35</sup> They proposed that a comprehensive new system for the management of Maori lands be created.<sup>36</sup> This was to be based on committees representing individual blocks and tribes. These committees would carry out most of the work hitherto undertaken by the Native Land Court in the determination of titles, with a stripped-down land court providing ‘a tribunal powerful enough to decide cases of dispute as a last resort’.<sup>37</sup> Administration of Maori lands was to be the responsibility of a ‘Native Land Board’.

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31. With the Native Land Act 1888. See Ward, p 298. Sorrenson, p 175, notes that a few committees were formed and one auction was held under the 1886 Act.

32. See Ward, p 296, and McIvor, p 141

33. See DNZB, vol 2, pp 409–411 (Rees) and pp 78–81 (Carroll), and G H Schofield (ed), *A Dictionary of New Zealand Biography*, Wellington, 1940, vol 2, p 22 (Mackay) for brief biographies.

34. Report, AJHR, 1891–II, g-1, p v

35. Ibid, p xxv. Carroll also wrote a sub-report which disagreed with Rees’ conclusion that the Crown should resume its pre-emptive right (pp xxvii–xxx). Thomas Mackay died before the commission’s work was completed. His notes contained a rather modest proposal for the creation of a Native Land Administration Board, the principal role of which would have been to advise Maori landowners on matters relating to title and administration; AJHR, 1891, G-1a, pp 20–21.

36. The following discussion, unless otherwise noted, is derived from pp xxii–xxiv of the report.

37. Titles would be issued by the Native Land Board, acting on the advice of committees.

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In commenting on previous Native Land legislation the commissioners had advanced two principal reasons why, in their view, Ballance's 1886 Act had been 'inoperative'.<sup>38</sup> The first was:

that the total control of their lands was taken away from the Maoris and placed in the hands of persons not in any way responsible to them.

The second reason was that participation:

was made optional and not imperative. The Natives objected to being totally deprived of all authority and management of their ancestral lands, and therefore they refused to bring those lands under the Administration Act.

The commissioners concluded, in other words, that Ballance's experiment had failed because Maori owners wanted to retain some kind of ongoing control over their land, whatever might be done with it. If most or all of the board members had been elected representatives of the landowners, it was implied, the scheme might have succeeded. Failing that, compulsion would have been necessary to make it work as intended.

The 'Native Land Board' scheme which the commissioners put forward in their 1891 report was quite far-reaching. It was proposed that the board consist of six members, including three Crown appointees and three elected by 'the whole tribal committees of the North Island [sic]'. The board was to hold 'plenary powers in regard to Native-land matters, save where the rights of Europeans come into question', and have 'full power to act in all things as trustee of the Native lands for the Native owners'. The owners were to appoint committees for each block, who would 'choose sufficient reserves for the people, and instruct the Native Land Board to lease or sell the balance as the case may be'. Should the owners fail to form a committee, the board could step in and itself 'perform the duties incumbent on owners. When committees failed to carry out their assigned work, the board was to 'perform it for them'.

All transactions between Europeans and Maori which affected Maori lands – other than land with a single owner, or whose owners held it in partnership<sup>39</sup> – would have to be carried out or approved by the Native Land Board. In the case of Maori freehold land, all leasing and sales proposed by the committees would be carried out by the board. The commissioners also recommended that all of the Maori reserved lands in the North Island be vested in the proposed board, including those presently administered by the Public Trustee,<sup>40</sup> and that this board be given 'sole power and authority' over all Maori lands for which titles had not yet been determined by the Native Land Court. The board was to enjoy 'the sole power of

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38. Rees commission, AJHR, 1891, g-1, pp xvi

39. Question no 4-v, p xxiii

40. Which at this time included, under separate pieces of legislation, the reserves in Westland (including Greymouth), the Nelson and Wellington Tenths reserves, and the West Coast Settlement Reserves in Taranaki. See D M Loveridge, 'The Adoption of Perpetually-Renewable Leases for Maori Reserved Lands, 1887–1896', Wai 145 record of documents, doc d1.

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leasing of all Maori tribal lands'. It would act on the directions of the block committees, but the leasing itself was to be carried out 'under regulations somewhat similar to the Waste Lands Regulations'. That is, once the committees handed lands over to the board for leasing, they would be treated much as if they were Crown lands of a comparable category. Where sales were concerned, the Crown alone would be allowed to purchase Maori land in fee-simple.<sup>41</sup>

Far-ranging as these provisions would have seemed at the time, they were only the beginning. The commissioners envisaged their Native Land Board as an institution whose influence would be felt in almost every facet of Maori dealings with the Crown. As they put it:

To this Board could be relegated most of the matters now coming before Parliament by petition. To this Board all applications for rehearing might be referred. . . . Not only would the Native Land Board relieve Parliament of the bulk of the Native work now cast upon it, and which it cannot understand – it would also relieve the Courts of much labour. The Maori real-estate management would practically devolve on the Board. The Trust Commissioners' Courts, the Supreme Court and Court of Appeal, the officials of the Stamp and Registration Offices, the Survey Department, the Native Department, and the Native Land Court would be more or less relieved; while the Public Trust Office would be delivered from the burden of administering the large reserves which now embarrass it.<sup>42</sup>

With such a board in control, the commissioners concluded, 'The public would be able to obtain land in many districts now locked up, in suitable areas, at an inconsiderable cost, with perfect titles, and without delay'.

The Rees–Carroll scheme clearly was intended to correct the deficiencies which the authors had identified in Ballance's ill-fated 1886 legislation. The commissioners sought to provide for Maori representation by formally incorporating committees of owners and tribal representatives into the proposed land administration system. They sought to ensure that Maori would cooperate by giving the Native Land Board control over transactions affecting most kinds of Maori land, and also by enabling the board to compel intransigent or reluctant owners to alienate unused lands. If their plan had been fully implemented, the result would have been a rather draconian regime – and probably an unpopular one. It is by no means certain that the provisions for representation would have been considered adequate by landowners: for one thing, the Maori members of the board were to be appointed by the 'Tribal Committees' rather than being elected by owners themselves. Similarly, it seems certain that the provisions for the board to make decisions about alienation (where committees failed to act) would have been seen as a breach of the owners' Treaty rights under article 2.

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41. Carroll objected to the idea of a resumption of Crown pre-emption (pp xxvii–xxx). He argued that the best way to encourage Maori to dispose of lands which were surplus to their needs was to ensure that they would receive the best possible prices for them. 'Evidence adduced before the Commission', he noted, 'proved conclusively that, where the Government interposed with its pre-emptive right . . . the Natives could not obtain a fair price for their land', p xxviii.

42. Page xxiv

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We will never know, however, if the 1891 plan would have worked any better than the 1886 system. The recommendations of the Native Land Laws Commission were adopted by the Liberal government in a selective manner. The comprehensive system for Maori lands administration based on block committees and a Native Land Board was not one of the pieces which found favour. The 'Native Land Purchase Board' which was established in 1893 bore some superficial resemblance to the commissioners' 'Native Land Board', but as the name suggests its sole concern was the permanent alienation of Maori land. Maori representation on the Native Land Purchase Board was nominal, and the only role assigned to the landowners themselves was to accept or reject the board's offers.<sup>43</sup> On the whole, it is not unreasonable to conclude that the Liberal government chose to adopt the sections of the 1891 report which would assist in their land-buying programme – such as Rees' recommendation that the Crown resume its pre-emptive rights – and to ignore those which might impede the march of Liberal progress.<sup>44</sup>

But seven years and hundreds of thousands of acres later the situation was different. In response to the petition to the Queen the Premier himself would introduce legislation for the establishment of Native Land Boards. A draft of the proposed 'Native Lands Protection and Administration Bill' emerged early in 1898, and was widely circulated and discussed at numerous hui.<sup>45</sup> The initial response was largely unfavourable, though, and a number of petitions opposing the Bill were drawn up. A national meeting was then held at Papawai in the Wairarapa in May of 1898, at which Seddon, Carroll, and other Government representatives and sympathisers explained the Bill at length and urged its adoption.

Their explanations were not, on the whole, very well received. Three main factions were represented at the Papawai meeting. There were, firstly, the Kotahitanga supporters, who wanted (as contemporary usage had it) some form of 'home rule' in which a Maori Parliament would enjoy complete jurisdiction over Maori land. Further Government land legislation simply was not on their agenda. The second group also rejected the very concept underlying of the Protection Bill. Kingitanga supporters wanted all Maori lands to be brought under the Maori King, to be administered by a 'Maori Council', as proposed in a Bill prepared earlier by Henare Kaihau (member of Parliament for Western Maori).<sup>46</sup> These two factions joined forces to do battle against the third, which was made up of Maori who (as Paratene Ngata of Ngati Porou put it) saw Parliamentary action as the only way Maori could get 'the redress and assistance that they hope for'.<sup>47</sup> This pragmatic

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43. See the Native Land Purchase and Acquisition Act 1893; Martin, p 18; and Brooking, p 85

44. See Brooking, pp 84–85

45. The proceedings of six hui held during March, April, and May, are reproduced in 'Notes of Meetings between His Excellency the Governor (Lord Ranfurly), The Rt Hon R J Seddon, Premier and Native Minister, and the Hon James Carroll, Member of the Executive Council representing the Native Race, and the Native chiefs and peoples at each place, assembled in respect to the proposed Native Land Legislation and Native Affairs generally during 1898 and 1899', Wellington, 1900, pp 1–47. See AJHR, 1898, I-3a for comments by Paratene Ngata (pp 56–57) and Te Heuheu (p 25).

46. His Maori Councils Constitutional Bill was introduced in 1897 and 1898. It proposed the creation of a Maori Council sitting under the mana of the Maori King, which would assume full power over all matters relating to Maori land (among other things). See Williams, p 103.

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minority, which drew much of its support from the East Coast, wanted some kind of legislation to facilitate the administration of Maori land to be enacted immediately.<sup>48</sup>

The last-named group was the only one prepared to cooperate with the Government and promote its Protection Bill. Seddon accordingly asked the people involved to propose any amendments to his Bill which they considered desirable. This was carried out, and a much-altered version of the Bill was drawn up during June and circulated.<sup>49</sup> It called for the formation of Native Land Boards in designated districts, made up of the local Commissioner of Crown Lands and four Maori elected by local landowners.<sup>50</sup> This board would act as an agent for block committees, arranging for the lease of such lands as the committees decided to vest in it, and would have all the powers of the Native Land Court over such lands. ‘The Judges of the Native Land Court’, one clause of this ‘Papawai Bill’ cheerfully declared, ‘are hereby dispensed with’.

Opponents of the original Protection Bill continued to mobilise over the winter of 1898.<sup>51</sup> A committee was set up, based in Wellington, to lobby against it and get petitions ready for presentation to Parliament. They eventually collected some 10,000 signatures from Maori, objecting to the Government’s proposals. The supporters of the ‘Papawai Bill’ hastened to circulate their own petitions, garnering some 3000 signatures over the next three months – again, mostly from the East Coast.<sup>52</sup>

While this went on, the Government proceeded to draw up a new Bill – apparently without much reference to the Papawai recommendations. Laid before the House by the Premier on August 3rd, 1898, as the ‘Native Lands Settlement and Administration Bill’,<sup>53</sup> it provided for the creation of a suitable number of Native Land Districts. Each of these was to have a Native Land Board consisting of five members. These boards were to be made up of the local Commissioner of Crown Lands plus two Europeans appointed by the Crown and two Maori elected by the landowners of the district. One Maori member would be required for a quorum.

The clauses of the legislation relating to land administration were a curious mixture of compulsory and voluntary features. The Bill was not to apply automatically to all Maori lands, but neither was the decision left up to individual block committees. Instead, the landowners of each district were to decide if the legislation should be adopted for any given district – with a simple majority being required if a vote had to be taken (cl 11). If the landowners of a district agreed to come under the Act, then ‘all Native lands therein’ would be vested in the Native

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47. AJHR, 1898, I-3a, p 72 ?882

48. See Ngata’s account of Papawai in AJHR, 1898, I-3a, p 57.

49. Reproduced in AJHR, 1898, I-3a, app B, pp 110–112. The amended Bill was formally presented to Seddon at a meeting held in Wellington on 5 July 1898: see ‘Notes of Meetings’, pp 48–52.

50. Clause 2 of this draft Bill stated that the Maori members were to be ‘appointed’, but see cl 39–40.

51. The Government continued to meet with various Maori groups, to discuss the original Bill and the Papawai amendments. Two such hui are covered in see ‘Notes of Meetings’, pp 52–66 (1 August and 26 September 1898).

52. AJHR, 1898, I-3a, p 86

53. Reproduced in AJHR, 1898, I-3a, pp 94–109

## Maori Land Councils and Maori Land Boards

Land Board, in trust for the owners (cl 13), and the board would exercise all the powers of the Native Land Court over lands vested in it (cl 21). The boards were also empowered to set aside reserves from the vested lands, for residence, cultivation and other purposes, if they deemed it necessary (cl 18). The balance could be leased for a maximum of 42 years (a 21-year term plus one renewal), on terms set by the board (cl 16). Provision was made for the Native Land Board to borrow the funds required to prepare vested lands for leasing (cl 32).

The new 'Native Lands Settlement and Administration Bill' was sent straight to the Native Affairs Committee for consideration in August of 1898. The committee was then faced with the rather formidable task of considering a numerously-signed set of petitions relating to the Government's original Protection Bill, another set of petitions relating to a revised version of this Bill (the 'Papawai Bill'), and the Government's new Bill – which bore little resemblance to the subjects of either petition. During September and October witnesses from both sides were heard, and were subjected to vigorous cross-examination by Maori members of Parliament supporting the witnesses' opponents. Wi Pere of Eastern Maori, for example (who had spoken in support of the original Bill at Papawai) at one point accused Mr. Te Heuheu of Tuwharetoa (who opposed it) of misleading the committee,<sup>54</sup> while Henare Kaihau of Western Maori and Paratene Ngata spent a good deal of time exchanging personal and political insults.

In the end more heat than light was generated. Despite the length of the hearings, and despite the fact that Paratene Ngata and his supporters repeatedly requested that some kind of administrative scheme be implemented in 1898 – for their own districts if a national scheme was not possible<sup>55</sup> – nothing was done. The Native Affairs Committee concluded that it was 'impossible, at this late period of the session, to give due consideration to this measure', and recommended that the Bill stand over until the following year.<sup>56</sup> According to one biographer, Premier Seddon was by this stage feeling so 'harassed and irritated' by the conflicting demands of the rival factions that he was happy to go along with such a postponement.<sup>57</sup>

These factions returned to the fray in 1899. In the 1898 their only significant point of agreement had been that land sales should cease. The new session brought signs of a growing consensus among Maori that some kind of a board or council system should be (or, perhaps, would have to be) adopted. Parliament had received a new set of petitions pointing in this direction, and the Native Affairs Committee sat to consider them, with a view to working out a compromise.<sup>58</sup> This year Maori Members of Parliament did most of the talking.

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54. AJHR, 1898, I-3a, p 24

55. As noted above, both the Papawai Bill and the Government's revised Bill provided in different ways for the land administration scheme to be applied selectively.

56. AJHR, 1898, I-3a, p 1

57. R M Burdon, *King Dick: A Biography of Richard John Seddon*, Whitcombe and Tombs Ltd, Christchurch, 1955, p 184

58. The proceedings of three meetings between the Government and various Maori groups in March of 1899 are covered in 'Notes of Meetings', pp 66–88. They provide a useful insight into the chief concerns at this stage of the proceedings.

## Origins of the Maori Land Councils

The first to give evidence was Henare Kaihau of Western Maori. Basically, he suggested that if the Government was prepared to give way on the question of granting some measure of self-government, as outlined in his earlier Maori Council Bill, the people he represented would be prepared to accept the adoption of some of the land administration measures proposed in the Government's Native Lands Settlement and Administration Bill of 1898.<sup>59</sup> The people he spoke for would want such a land council to have full control over alienations within its district, and to have all the powers of the Native Land Court.<sup>60</sup> Kaihau was followed by Hone Heke of Northern Maori. Heke's personal preference was for all restrictions upon Maori lands to be removed. He was, however, prepared to support a modified version of the Government's 1898 Bill, provided that bringing lands under the control of boards was optional. That is, he opposed any such measure unless the initiative lay solely with owners. 'It should not be', he stated, 'that the Board have the immediate and absolute right to control and administer all or any Native lands unless in the first place the owner or owners submit their lands for the Board to administer and control'.<sup>61</sup> Heke was also opposed to giving boards the powers of the Native Land Court, unless all of the boards' members were elected representatives of the owners.

Wi Pere of Eastern Maori was the last to speak. He continued to support the Government's 1898 Bill, but wanted modifications which would strengthen the power of the boards. Like Heke and Kaihau, Pere thought that block committees of owners should be able to dictate which of their lands were made available for alienation. 'It should be for the owners', he stated:

to tell the Board what part of the land they propose to lease, and what part they propose to retain for any particular specific purpose, and then, having informed the Board of their wishes, it will be the duty of the Board to see that their wishes are carried out.<sup>62</sup>

Like Kaihau (but for different reasons), but unlike Heke, Pere wanted the boards to have a monopoly on the sale and lease of the lands in their districts. All lands would come under the Act, and those who did not wish to go through the boards would be unable to lease their land. Allowing 'private arrangements' to continue without board involvement, Pere thought, 'will simply again result in the evil leases of which we have had experience in times past'.<sup>63</sup> If, on the other hand, all alienations had to be arranged through the boards, he was certain that Maori lands 'will be put on the same footing as lands leased by Europeans to Europeans', and their rental rates would rise to market levels.<sup>64</sup>

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59. See especially AJHR, 1899, I-3a, p 3 ?3

60. See 'Clauses proposed by Mr Kaihau, MHR', AJHR, 1899, I-3a, pp 24-25, and NZPD, vol 110, p 740 (Seddon)

61. AJHR, 1899, I-3a, p 12 ?11

62. Ibid, p 14

63. Ibid

64. Ibid, pp 15, 20 ?5

## Maori Land Councils and Maori Land Boards

Maori landowners, in other words, should be free to ignore the boards, but if they did should not be able to lease their lands. And Pere demanded further limitations. He proposed that:

Where lands are shut up and not worked by the Native owners, the Board should be given power to make a stipulation: that if those lands are not worked or some return got from them within a specified time, then the Board shall have the right to take over the control and administration of those lands and see that something is done with them. That would still be for the benefit of the Maori owners – that is, with regard to people who are too lazy to work their lands so as to derive any benefit or return from them.<sup>65</sup>

To put his position another way, Pere felt that:

the principle desire of Native owners, generally speaking, is that they should retain the mana of their own land. Let them retain the mana of their own land, but they must work the land. If they like to work the land with their own hands, well and good, but if they like to put the Board in the position of their hands and let the Board do the work for them that will also meet the case.<sup>66</sup>

The people on the East Coast, he told the committee, wanted such a system even if those in other parts of the country did not.

As a result of these hearings, the Native Affairs Committee recommended to the Government in October of 1899 that ‘legislation be introduced this session to, as nearly as possible, meet the views of the Natives’.<sup>67</sup> Shortly afterwards a revised version of the Government’s 1898 Bill was introduced in the House. This Maori Lands Administration Bill probably pleased Hone Heke more than anyone else. It proposed the adoption of a land council system for the North Island (only) based on block committees of owners, whose permission would be required before land could be vested in a council. The owners could also chose whether or not the land council should be able to exercise the powers of the Native Land Court over their land. Private alienations would be allowed, but all transactions had to be approved by a council, which among other things was required to ensure that the vendor or lessor had ‘sufficient land left for his occupation and support’.<sup>68</sup> Both Heke and Pere supported the new Bill, but none the less it lapsed without being passed. According to Seddon, speaking in 1900:

Last session amongst the Maori representative there was a divergence of opinion, and so material was it that they were unable to proceed.<sup>69</sup> They asked that we should stay proceedings with respect to the purchase of Maori lands, to give the Maoris an

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65. Ibid, p 15

66. Ibid, p 20, para 5

67. Report, 3 October 1899, AJHR, 1899, I-3a, p 1

68. NZPD, vol 110, pp 740–745

69. At the time Hone Heke had accused Seddon of cutting short the proceedings of the Native Affairs Committee before the Maori members could reach a consensus: NZPD, vol 110, p 287.

## Origins of the Maori Land Councils

opportunity during the recess of again reviewing the proposed legislation, and bring it up this session.

‘That course’, he concluded, ‘was followed’. The requested ‘stay in proceedings’ was provided in the Native Land Laws Amendment Act 1899, which was passed on 24 October 1899.<sup>70</sup> Section 3 specified that Native land could no longer be purchased by the Crown, the only exception being made for the completion of sales where sale agreements had already been entered into.<sup>71</sup>

The deadlock reached in 1899 was, in essence, the same one which had arisen at the Papawai meeting. The supporters of Maori ‘home rule’ remained at odds with those who considered it both necessary and desirable to seek a solution to Maori problems through the Parliament of New Zealand. The Government’s decision to stop buying Maori land was probably a significant factor in tipping the scales in favour of the ‘legislative’ faction, along with the appointment of James Carroll as Native Minister in December of 1899.<sup>72</sup> In any case, this group succeeded in dominating the next meeting of the Maori Parliament, held at Rotorua early in March of 1900. Proposals were put forward and approved which led to the introduction of two sets of legislation to Parliament later in the year. One dealt with land administration<sup>73</sup> and the other with local government. The latter provided for the creation of elected councils for Maori communities, which would enjoy powers comparable to those exercised by European local bodies. In return for the support of the ‘legislative’ faction for this measure, the ‘home rule’ faction was prepared to support a Bill setting up a board system to facilitate the administration of Maori lands.<sup>74</sup> One key issue, however, was not resolved at Rotorua: the question of whether the vesting of land in these boards would be voluntary or compulsory.

When the Maori Lands Administration Bill was committed on 11 October 1900, Premier Seddon commented on the difficulties which had attended its birth. A different Bill, he noted, had been submitted to Maori for consideration, and ‘brought before the House and circulated’:

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70. See NZPD, vol 111, p 264. The Act was presumably needed to stop the statutorily-stipulated expenditure of funds on land purchase. It was repealed in 1902.

71. Which took in almost 800,000 acres of Maori land in 1899–1900: see AJHR, 1900, g-3

72. Alan Ward, ‘James Carroll’, DNZB, vol 2, p 80. Also, the Government had extended an olive branch to the Kingitanga, seeking a compromise. It was proposed, among other things, that Mahuta be appointed to the Legislative Council. Such measures were discussed with Waikato representatives as early as early as March of 1899, if not before: see ‘Notes of Meetings’, pp 81–88, Auckland, 18 March 1899).

73. The first Native Lands Administration Bill was introduced by Carroll on 16 August, but was allowed to lapse after first reading. A Maori Lands Administration Bill No 1 was then introduced by Seddon on 2 October, but was also allowed to lapse after first reading. A Native Lands Control and Administration Bill was introduced by Seddon on 25 September, which went to the Native Affairs Committee on 11 October. The Maori Lands Administration Bill No 2 introduced by Seddon on 3 October was the basis for the Act finally passed on the 12 October.

74. See Williams, pp 106–109, for a discussion of the 1899 deadlock and its resolution. Apirana Ngata had played a leading role on the pro-Government side. According to G V Butterworth, ‘The Politics of Adaptation: the Career of Sir Apirana Ngata, 1874–1928’, MA thesis, 1969, p 43, however, ‘Ngata’s role in this should not be overstated’.

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The difference between the two Bills was material. Under the one Bill the Maori landowners are given the right voluntarily to surrender their lands to the Board. . . . In respect of the other Bill – that vesting the land in the Board – it was made absolute – that was, immediately the Board was formed in the district all the papatupu land, as well as any land under the Land Transfer Act or any other act, was immediately vested in the Board.

Opinion had been divided, Seddon stated. On the one hand, ‘Exception was taken by a large section of the Natives to their lands, without their consent or without their being consulted, being handed over to this Board’. On the other, ‘A very large section of the Natives were afraid of this voluntary system. Some of them say they are so slow in coming to conclusions that they would not within a reasonable time bring their lands under the Act’.<sup>75</sup>

This fundamental issue was not resolved until the last moment, when the two Bills were placed before the Native Affairs Committee. As Seddon put it:

we used the Bill containing the voluntary system as the parent stock upon which could be drafted the absolute [system] – if the majority of the Maoris favoured that. I may say that when the matter came before the Committee there was no support at all of the absolute system – practically none. Such being the case, we are now dealing with this bill as amended by the Committee.<sup>76</sup>

As introduced, and eventually passed by the House, this Maori Lands Administration Bill contained no provisions which forced Maori to bring their lands under the proposed Maori Land Councils.

According to the Native Land Laws Commission of 1891, the principal reason for the failure of Ballance’s earlier land board experiment was that, given a choice, Maori had opted not to become involved. Seddon could not ignore this uncomfortable precedent, but chose to down-play it. ‘We have had legislation from time to time in the past’, he acknowledged, ‘and each measure was supposed to solve the difficulty’:

but the trouble had always arisen from the fact that the Maori landowner had no confidence in the legislation. Look at Mr Ballance’s Act of 1886 – one of the most beneficial measures that could be introduced, and which would have saved thousands [of acres of land] to the Maoris; but the Maoris had no confidence in it, and it was practically a dead letter.

Anticipating a potential line of attack by the Opposition, the Premier expressed confidence that history was not about to repeat itself. ‘Members may say’, he asked rhetorically, ‘How do you come to that conclusion?’ Seddon’s answer was:

I say we have the chiefs and representatives of the Maoris in the north, east, and west of the North Island. . . . We have had the King natives here for the first time

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75. NZPD, vol 115, p 166

76. Ibid

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taking part through their chiefs or arikis in the discussion of this proposal. They are now asking for this legislation.

In short, there was no need for any concern because all of the principal Maori leaders had declared their support for the new land council scheme. Assured that the Government was starting out ‘with . . . the confidence of the Maori landowner’, Seddon predicted that ‘once a move is made and this Bill is passed, practically the difficulty in respect to our Native lands in the North Island is solved’. That was his opinion, he declared, ‘and I have the assurance of those who are able to advise me that that will be the case’.<sup>77</sup>

It should be noted here that the Premier’s closest advisers on this legislation included the Native Minister, James Carroll, and Apirana Ngata, one of the authors of the Rotorua compromise. But Ngata, it later transpired, saw the Maori Lands Administration Act 1900 as ‘an unworkable compromise between opposing principles’, which he only accepted as being better than nothing at all.<sup>78</sup> One of the 1907 reports of the Royal Commission on Native Lands and Native Land Tenure, which he co-authored, would conclude that the 1900 Act had been ‘doomed to fail’ for exactly the same reasons that the 1886 Act had failed.<sup>79</sup> And the Native Minister’s private opinion may have been similar. One historian notes that Carroll could hardly have failed to realise that the 1900 Act had the same basic flaw as the 1886 Act, and that the land council system would in fact be likely to ‘reduce the rate at which land could be made available for settlement’.<sup>80</sup> It is difficult to argue with this observation: in 1891 Carroll himself had advocated a compulsory system of Maori land administration as the only way of overcoming the flaws of the Ballance plan. There are grounds for supposing that Seddon was misled by his advisors on this issue – or perhaps found it expedient to be misled by them.

If the principal Maori supporters of the Bill were pessimistic, what of its former opponents? R J Martin has concluded that ‘Maori support for the measure was a matter of expediency rather than approval of the policy as a whole’.<sup>81</sup> By simply agreeing to the passage of the Maori Land Administration Act 1900, which did not actually bind them to any action, they secured the continuance of the Crown’s voluntary moratorium on new purchases. The question in 1900 was, would Maori landowners also consider it expedient to vest their unused lands in the Land Councils? And what would the Government and Legislature do if the 1900 Act, like its predecessor of 1886, failed to achieve the expected results?

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77. Ibid, p 168

78. According to Williams, p 111. Ngata objected in particular to the combination of judicial and administrative functions. Hone Heke gave voice to very similar objections during the 1900 debates in the House.

79. AJHR, 1907, G-1c, p 6

80. Martin, p 79

81. Ibid, p 118

