

## CHAPTER 2

# THE ERA OF THE DEVELOPMENT SCHEMES

### 2.1 Introduction

In the early 1920s a growing concern that Maori were losing the last of the land which might support them, coincided with a decline in Government interest in land sales. The interest turned to developing the Maori land which remained for Maori. This part of the report examines the role of the court and the land boards in the era of the development schemes.

### 2.2 Growing Concern about Maori Landlessness

In 1919 Parliament debated the Native Townships Amendment Bill. The bill provided that the Crown might buy up township lands which Maori had to date been leasing to Pakeha settlers. The MP for Taumarunui reflected the majority view that ‘No Maori in the King-country can sell his land to-day, for the reason that the Maori Land Board protects him, unless he has other land sufficient for his support’, and therefore the township lands could be disposed of without any injustice.<sup>1</sup> He was challenged however by the Grey Lynn MP, Payne who retorted:

We are out to rob these Native people of every acre they possess. We should conserve, rather, the land they have. Already, I believe, the average amount of land per individual held by these natives is only something under 40 acres – little enough, in all conscience, for a country the size of New Zealand . . . Surely the greed of the white people might be stayed a little, and, instead of making it still more easy to filch the remaining land from the Natives, we should try to encourage the Natives by every means to cultivate their own land and retain their affinity with the soil.<sup>2</sup>

While this was clearly a minority view at the time (the bill was passed), Payne’s concern was soon echoed in other circles. The report of the Under-Secretary of Native Affairs in 1920 gave the following figures for ‘Land still held by Maori owners in the North Island’:

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1. 22 October 1919, NZPD, 1919, vol 185, p 727  
2. Ibid

## 2.2 Maori Land Court and Boards, 1909 to 1952

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| Estimated as held by Maori,<br>31 March 1911 | 713,7205 acres  |
| Purchased by the Crown<br>(since 31 March)   | 1,009,949 acres |
| Sold by land boards (since 31 March)         | 1,339,570 acres |
| Acres left to Maori at 31 March 1920         | 4,787,686 acres |

The report went on to estimate the total land area actually available to Maori. Adding together the area occupied by Maori owners (380,000 acres), plus unoccupied lands, (which included papatupu lands, lands vested in land boards and not disposed of, East Coast Commission lands, Urewera lands not yet purchased, and other miscellaneous categories) gave a total of 1,657,278 acres. However, the report continued:

But of this it is estimated that about 550,000 acres are within the pumice area, and to this probably another 200,000 acres, which includes mountain-tops, springs, sand-dunes, &c. and land unfit for settlement, should be added. This leaves an area of 907,278 acres that may be considered suitable for settlement. This cannot be regarded as an excessive area for the use of 47,000 Maoris comprising the population of the North Island and their descendants. It is roughly 19 acres per head. Instead, therefore, of there being a large area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves.

Seeing that the Europeans have acquired about 62,000,000 acres of Native land, it might not be thought unreasonable to allow the Native owners to retain the small area remaining to them, for it may safely be said that the land leased to Europeans will never return to the occupation of the Native owners. The great problem is to get them settled upon their individual holdings; but this is an object not likely to be fully realised, as all Maoris will not become farmers any more than will all Europeans.

The report concluded that: ‘All the figures and the statements that can be made will not alter the position, which is that the Maoris have disposed of nearly all the lands that they can dispose of without leaving the bulk of them landless, and later, probably, to become a charge on the State.’<sup>3</sup> The minority view expressed a year before was now apparently held at a senior Government level. Landlessness and its cost to the state were the greatest fear. In 1923 Apirana Ngata commented:

One does not . . . want to see, after the Native land-ownership in this Dominion disappears – a half-educated, half-trained alien community, which is, according to the latest statistics, round the corner so far as its population and prospect of continued existence are concerned. One does not wish that to complicate more than is necessary the joint life of the two peoples in this country.<sup>4</sup>

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3. AJHR, 1920, g-9, pp 2–3

4. 21 August 1923, NZPD, 1923, vol 202, p 317

The report of the under-secretary was picked up by a meeting of chiefs at Waitangi in 1922:

in his 1920 report to Parliament the Under Sec of Native Affairs stated that the Europeans have acquired about 62,000,000 acres of Native land and that it would not be unreasonable to allow the Native owners to retain the small area of 907,278 acres now remaining to them for their own use and occupation. In view of the fact that the Maori population is increasing, this meeting therefore strongly urge that the purchase of Native lands by the Crown and Europeans should now cease, believing that if an earnest effort is made on the part of the Government to assist the Native [sic] financially they would, with the experience they have gleaned from their white brothers, make such lands productive to the advantage of themselves and of the Dominion.<sup>5</sup>

The view of the new under-secretary (expressed to the Native Minister) was that ending alienation of land ‘would mean a reversal of policy.’ However he thought that:

The time will soon come when this question will have to be faced, but the difficulty is that even if the late Under Secretary’s figures were correct, the area stated is by no means evenly distributed, and many Natives have much more land than they can profitably work, while others are practically landless and are making the best efforts they can to live. Wherever the European gets a footing he inevitably claims to be entitled to obtain the freehold of Maori leasehold land and by reasons of taxes, rates, health regulations and other restraining influences, gradually squeezes out these Natives who attempt to live up to European ways. I cordially agree that the Natives should have a fair opportunity to farm their own lands, and then if they are unsuccessful, other means of dealing with their land might be tried. There are many successful Native farmers, and would doubtless be more but the question of finance is always their difficulty. How this is to be solved is a more difficult problem than it appears on the face since money is always lent on the prospect of punctual payment of the interest and the principal when it falls due. The Native not being educated in the ways of thrift, finds difficulty in foreseeing the payment he has to provide for. Hence, many lending bodies will not advance unless the interest is secured upon some rental.<sup>6</sup>

### **2.3 1920–22 – A Change in Approach: The Land Boards and the Native Trustee**

There was a concrete, if arguably minor, sign of change in Government thinking the same year with the passing of the Native Trustee Act 1920. The Act allowed the trustee to establish a common fund, using funds held by the land boards from the sale of land, while the boards sorted out who were the proper vendors. About

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5. Letter from Maori chiefs and tribes assembled Waitangi Hui, Bay of Islands to Prime Minister Massey, 29 March 1922, ma 24/23

6. Under-secretary to Native Minister, 30 May 1922, ma 24/23

£578,000 was held at the time by the boards. As we have seen, this money could sometimes remain in the hands of land boards for a considerable period. In 1920 the money was held in the Public Trustee's common fund earning 4 percent. Land boards also held rents awaiting distribution while successors were appointed. Another part of the fund would be made up of £262,000 in undistributed rents from native reserves. The intention was to allow the Native Trustee to lend to Maori farmers who had partitioned their land and held individual parcels. In effect, it was said, the trustee would be a land board.<sup>7</sup>

This was a feeble response to the growing problem created by land sales. It did not require the expenditure of even one pound of Government money. Rather, on its face, the measure provided that Maori would fund development of their lands out of money which they should have held anyway from previous sales.

But even that was not assured. First, Maori had to individualise title to their lands to be eligible for funding. Herries was happy to point out that 'one great advantage will be – and this not the least advantage – that it will encourage them, almost compel them, to partition their land, because it is only on partitioned blocks that money will be advanced. It will take them out, I believe, of the communal system, which, in my opinion, is holding the Maori nation back.' He acknowledged that some Maori had described the 1913 Act as a *piri muru* an 'act to kill', this was a *piri rongoa* or *piri ora*, a healing bill. Money would be lent only to the owners of partitioned parcels, or to incorporations.<sup>8</sup>

Further, as Ngata pointed out, many of the loans the trustee might make would provide improvements which would directly benefit Pakeha lessees of Maori land. On that basis he hoped that the Government might actually spend some of its own money and supplement the trustee's fund. He was also concerned that, as the trustee could also invest funds in harbour boards and local government works, there might be a tendency to put money there. The focus on priority lending to Maori was not sufficiently tight.<sup>9</sup>

Once the Native Trustee was set up, he did not appear to begin lending money for some time. Ngata commented in 1921 that the slump in prices of produce had meant that the Public Trustee could not hand over cash to the Native Trustee as contemplated, but was handing over securities instead. It would be a 'long time', therefore, before any lending to Maori would actually occur.<sup>10</sup> Practically, it does not seem that the Native Trustee Act was a great success. Measures promoted by Ngata in the coming years were ultimately to prove more successful. However it was an important symbolic turning point in the Government attitude towards the use of Maori land.

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7. Herries, 15 September 1920, NZPD, 1920, vol 187, pp 965–966

8. Ibid, p 967

9. Ibid, pp 967 and 972

10. 8 December 1921, NZPD, 1921, vol 192, p 965. Ngata speaking to the Native Trustee Amendment Bill.

## 2.4 The Attitude of the Judges

The response of the land court judges to the growing Maori landlessness was to become more defensive of the interests of Maori owners. A debate which arose in 1921 over leasing of Maori land is instructive. A block of land on the east coast had been leased by the Maori owners on generous terms to members of the local tribe. These lessees were offered inducements to transfer the lease to Europeans. There was some objection from the owner/lessors, but they could not prevent the transfer. However the land board, in confirming the transfer, required that part of the money paid by the incoming European lessee for the transfer (£200) should be paid to the Maori owner/lessors, since they had originally granted the lease on favourable terms to the members of the local tribe. The Maori lessees sued.<sup>11</sup>

Ngata, speaking on the matter before Parliament, insisted that this practice was fair – and that it was occurring in his district also. The Maori lessors were entitled to this money as they had given the lease on generous terms and ought to be able to claim some of the advantage the Maori lessee had derived from that.<sup>12</sup> Nor was it the first case in the Gisborne district. At least two judges had adopted this practice. In the House a letter from a local lawyer was read out complaining that the boards had adjourned other similar transfer applications while awaiting validating legislation for the practice.<sup>13</sup> Validating legislation was passed, but it applied only in cases where a Maori transferred a lease to a European – not where a European transferred to another European – so only Maori lessees were affected.<sup>14</sup> Nevertheless, the issue was indisputably about protection being afforded by the land court to Maori owners against European purchasers. By imposing such requirements on these particular lease transfers, the judges were actively encouraging Maori lessees to keep land close to the Maori community from whom they were leasing it, and upholding the understanding the Maori owners assumed that they had with the Maori lessees. It was not surprising then, that the incident provoked a wider debate. The MP for Gisborne complained that the judges had been stretching the law for many years and that they should not be able to rely on such validating measures. ‘There is more diversity over the construction of the law by the Native Land Court than by any other Court in the Dominion. Why that is so I do not know, but it is a practice which has grown up, and which is encouraged by this House validating these improper things.’<sup>15</sup>

The protective activities of the judges were not, however, confined to lease transfer situations. They were also actively ensuring that Maori owners acquired full value for their leases when sales occurred. They did this despite strong lobbying from European lessees. In February 1921 a complaint was made that European lessees who sought to purchase the freehold were being given no credit

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11. *Tamao Onekawa v Tairawhiti District Maori Land Board*, 1921 Gazette Law Reports 251, and see s 311 of the 1909 Act.

12. 2 February 1922, NZPD, 1922, vol 194, p 102

13. *Ibid*, pp 96–98

14. 9 February 1922, NZPD, 1922, vol 194, p 380

15. 2 February 1922, NZPD, 1922, vol 194, p 98

## 2.4 Maori Land Court and Boards, 1909 to 1952

for the improvements they had made to the land. It was said that in districts where this was the approach of the court, such transactions had virtually halted. Gordon Coates, the new Native Minister, promised to call a conference of the judges on the matter. He hoped to give the judges 'clear and definite instructions as to the method of assessment to be pursued in such cases in future.'<sup>16</sup> Why Coates thought he could give such clear directives to judicial officers is not clear. Perhaps he was reflecting on the fact that, one month earlier, the Native Department had been separated from the Justice Department and placed under the control of the chief judge, Robert Noble Jones, of the Native Land Court. It was said that: 'This is the first time that there has been a combination of the judicial and administrative sections of the Department under one head. So far, no insuperable difficulties have arisen; the friction which sometimes arises under dual control is avoided, and it is hoped there will be some gain in efficiency, constructive cohesion, and united effort.'<sup>17</sup>

When the conference was eventually called in late August 1922, Coates seemed to have lost his earlier confidence, and made a very conciliatory speech to the judges which took pains to highlight their independence from Government:

The position that the Native Land Court Judges hold is an [sic] unique one and is probably without parallel in any other part of the Empire. You have, I understand, exclusive jurisdiction in all matters affecting the land of Maoris, however valuable it may be, and except in such cases where you manifestly trespass the bounds of your jurisdiction there is no appeal from the decision of your own Courts except to that ultimate resource of all British Courts, to the highest and most enlightened tribunal of modern civilization, viz, the Privy Council of the Empire. But not only are your duties of a judicial nature, . . . but you are also called upon in your position of Presidents of the Maori Land Boards to act as shields and protectors for the Maoris. It is your duty to see that in all transactions regarding their land they get a fair deal, make an honest bargain, are not unjustly or unfairly treated and that they are not rendered homeless and impoverished even by their own acts. The insistent call of settlement I know makes this a difficult task, but I think it may be said of the Judges and the Presidents that they have faithfully and honestly carried out the powers entrusted to them by the Crown.<sup>18</sup>

However while it was wise to leave 'as untrammelled as possible' the jurisdiction and power of the judges, there was a need to consider variations between regions, as uniformity in practice was desirable, since this brought equal application of the law to all coming before the boards, and consideration of this uniformity was the purpose of the conference, bearing in mind always however the safeguarding of the interests of Maori. The particular issues the Minister raised in his opening speech were the amount a lessee paid to obtain the freehold, along with rating and other like issues where the interests of Maori owners were generally at conflict with the freedom of Europeans to work or purchase Maori land.

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16. 14 July 1922, NZPD, 1922, vol 195, p 412

17. C B Jordan retired 31 December 1921. See AJHR, 1922, g-9.

18. 29 August 1922, ma 28 31/29

In the face of this pressure the judges took a clear stand in favour of Maori owners. They responded with a statement that no uniform approach could be decided on for the purchase of the freehold interest in leases by lessees, apart from the requirement that it must always be fair to Maori. They also commented that they were not satisfied that the Government valuation was always the appropriate amount for Maori to pay. When several MPs complained that while the Government valuation recognised the lessees' interest in the land the land boards made them pay the full unimproved value, Chief Judge Jones replied that the judges were not their own masters, they had to be careful in all that they did to protect Maori and see that dealings were not against Maori interests. He gave figures showing how, in particular instances, Maori were better to retain land and let a lease fall in and reap the benefit of the increased capital value, rather than to sell the underlying freehold. He also pointed out that valuations made for rating purposes were not necessarily the same as valuations that might be considered fair for sale purposes:

We put ourselves in the place of the Native vendor, and ask ourselves as prudent men whether under similar circumstances, apart from any sentiment, would we sell our own property at the price apportioned for it.<sup>19</sup>

Members of Parliament also had cause to complain about land court decisions over compensation for public works takings of Maori land. In 1927 the MP for the Bay of Islands (Bell) complained that in a recent compensation case concerning a school site at Kaikohe, where valuers valued the land at £500, the land court had 'gone right beyond the evidence and awarded nearly double that amount.' Public bodies in the north were said to be concerned about this precedent.<sup>20</sup> In discussions surrounding this case, it was noted that there was no right of appeal from such valuations. It is possible that the court was compensating for this lack of an appeal right for Maori.<sup>21</sup> Another member complained that judges of the Native Land Court were too much protecting Maori: 'I think it should be impressed upon Judges of the Native Land Court that they are wrong when they take the view that they are there to represent only the Native, because their aim should be to hold the balance fairly between the European and the Native and see that justice is done to both sides.' Further, he said that: 'Time after time I have known of absurd requests being made by Judges of the Native Land Courts and resulting in the deals falling through – making it impossible for those who would deal with the Natives to do so.' He thought that such restrictions were preventing people from dealing with native land at all.<sup>22</sup>

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19. Ibid

20. 19 October 1927, NZPD, 1927, vol 215, p 94

21. Coates commented that inquiries were being made whether an appeal right should be reinstated – the Supreme Court said it had been taken away – Native Land Court judges would welcome appeals but had bowed to the Supreme Court opinion on the matter.

22. Smith, 25 November 1927, NZPD, 1927, vol 216, p 555

## 2.5 Maori Land Court and Boards, 1909 to 1952

The appointment of Chief Judge Jones as Under-Secretary of the Native Department had obviously not, in the eyes of the judges, compromised their independence. However, it inevitably led to confusion on occasions. In 1932 the registrar of the Ikaroa division of the land court had to apologise to the chief judge for quoting his views on a matter then before the land court. The embarrassed official wrote, 'I now realise that possibly I was somewhat indiscreet in quoting you in your official capacity as Chief Judge and regret my indiscretion'.<sup>23</sup> Chief Judge Jones also sat on the Native Land Purchase Board. Quite what Maori owners would have understood by the whole arrangement is not known. If officials within the agencies administering and adjudicating on their land were confused, it is likely Maori owners were even more so.

### 2.5 The Land Development Schemes and the Land Boards

Another indication of changed official attitudes in relation to Maori land was the growing interest in development schemes. From 1911 Ngata had been urging that some form of development schemes on Maori land should be instituted.<sup>24</sup> However, successive Governments had to be slowly convinced of the worth of such an idea. Consequently, legislation to enable development schemes on Maori land was passed in a piecemeal fashion, and this meant that the development schemes, rather than following one coherent policy for Maori land use, evolved from a collection of methods for developing Maori land. These various methods had one thing in common, that they were attempts to have Maori land developed to provide a return directly to Maori, and in most cases have Maori (not necessarily the owners) participate in the development as farmers or labourers.

The schemes had their genesis in consolidations of land carried out by the land court on the East Coast. The 1909 Act provided for schemes of consolidation, and Ngata used this section to promote such schemes on the East Coast. Consolidation was simply the pulling together, by means of land court orders, of fragmented landholdings, whether by purchases, exchanges and sometimes sales. It did no more than enable disparate interests in land to be combined, but since this was a fundamental requirement for any farming and other operations which followed, the term 'consolidation schemes' often became synonymous with development schemes in some areas.

The Government did not embark on large scale development immediately, but rather came to it over several decades. Through the 1920s, development efforts already underway provided the impetus for piecemeal legislative changes which in turn increased the possibilities for new schemes. In 1921 the consolidation provisions in the 1909 legislation were extended to allow Maori to exchange Crown

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23. Registrar of the Ikaroa Native Land Court to the under-secretary, 7 July 1932, ma 1, 19/1/25, Solicitor General's opinions 1910-42

24. M P K Sorrenson (ed), *Na To Hoa Aroha, From Your Dear Friend: The correspondence between Sir Apirana Ngata and Sir Peter Buck 1925-50*, Auckland University Press, vol 2, p 163

land as well as Maori land to obtain usefully sized holdings. The intention was for a mutual benefit. The Crown was able to pull together its various purchases and create economic holdings to onsell to Pakeha settlers, and thus relieve the pressure to buy further Maori land. Maori were no longer limited to Maori land for consolidation purposes.<sup>25</sup>

The district Maori land boards were central to the schemes as their legislative and practical shape evolved. Throughout the 1920s, the powers of the boards to lend money to develop Maori land were extended. The trend was to give the boards greater and greater freedom to develop Maori land as they saw fit, expend the money of the owners in the development of the land, and reclaim the costs of development, either by calling on the revenue, or charging the land itself, and ultimately through the land board having power to alienate. These powers were, however, usually subject to the consent of the Native Minister. Another feature of these provisions was that while they increased the power of the land boards, they also tended to reduce the legal control of the owners over lands placed under such development initiatives. Thus:

- In 1922<sup>26</sup> Maori land boards were enabled, with the consent of the Minister, to lend money on mortgage. This may not have worked very well, however, because the mortgage was a registerable document signed by all the owners. Land with numerous owners, improperly surveyed, must have been difficult to secure a registerable mortgage over. However the Waikato-Maniapoto land board reported 42 advances to Maori under this provision.<sup>27</sup> The Waiariki board had 47 mortgages to Maori in 1934.<sup>28</sup>
- Consequently, from 1926<sup>29</sup> the system was changed so that the boards could seek the Native Minister's approval to advance monies and the security was merely a statutory charge binding all the owners, without the requirement for a mortgage or personal covenant. While making it easier for the boards to expend money while still gaining security, the input from the owners was reduced. Significantly, the charge could include within it advances made prior to the provision coming into effect.
- In 1927<sup>30</sup> boards were enabled to purchase lands as they saw fit and hold them in trust for Maori – subject however to repayment of the purchase price and other payments as the land board required. Thus a land board could bind the owners to purchases of fresh lands without their explicit consent being required.
- Then in 1928<sup>31</sup> comprehensive provisions were enacted allowing boards to manage land as a farm on behalf of the Maori owners. Either the consent of the majority of owners was required, or an order of the Maori Land Court – which

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25. See NZPD, 1922, vol 194, pp 95–109

26. No 48, s 19, later s 99 of the 1931 Act

27. AJHR, 1934, g-11, p 18

28. Ibid, p 20

29. No 64, s 8

30. No 67, s 12

31. No 49, s 3

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had the same effect as obtaining the consent of the owners. The second option allowed farming initiatives to proceed again without the explicit consent of the owners, and in this case no consent from the Native Minister was required.

- In 1929<sup>32</sup> a general power enabled boards to purchase and farm lands out of funds at its disposal and to appoint managers for the farm. The consent of the Native Minister was required for such initiatives.

Thus by 1929, the boards had become the central movers in development schemes. This was not surprising, given their original purpose, and the fact that the presidents of the boards, as judges of the land court, were required to make various orders for consolidation, mortgage, lease, charge and other matters to establish the schemes. While the Native Minister retained overall control, the boards provided the finance and carried out the schemes on the ground.

Land boards also made advances for individual ‘units’. These were advances made under a court order to a sole owner or the owner and his family – all of whom were required to join in securing the loan. Where land was purchased by the board for these unit developments, the board had its own name left on the title to the purchased land.<sup>33</sup>

There was, however, some tension about the central influence of the boards. It was Ngata’s view that with the spread of Maori land development schemes as the principal means of managing Maori land, the judicial activities of the land court should drop away and the Government should more directly control land development efforts:

In these Courts we have the policy of appointing judicial officers to preside over the Courts, and, as Judges of the Courts, they are also Presidents of the Maori Land Boards. They have these duties cast upon them because they are the most important officers in their respective districts. Now, more and more, it seems to me, an urgent need has arisen for co-ordination between the Head Office and the instruments of the will of the Government out in the field – that is, in the Native Land Court District – whereby the policy of the Government or the Department may be carried out by officers in the field. If you have judicial officers you cannot issue instructions to them, because this House would rise up in arms and say, ‘Instructions are coming from the Native Minister to the Judges of the Native Land Courts, and that should not be.’ We have come to a period in the history of the Native Land Court when the whole policy will have to be recast. The idea is that the judicial element should be taken more and more out of the problem. The Native Land Court officers would then come into the position held by officers of any other Department – that is, they will be instruments for carrying out the will of the Government at any particular time. At present the will of the Government cannot be expressed so far as Native land is concerned if the chief officers continue to be treated as Judges and to be hedged round with the ‘tapu’ of the Judiciary.<sup>34</sup>

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32. No 19, s 26

33. Ibid, p 18

34. 16 July 1923, NZPD, 1923, vol 200, p 1077

These remarks appeared to be borne out in a dispute over the Te Kao scheme in Northland. That scheme was started with advances by the Taitokerau land board, under its president, Judge Acheson. The advances were secured by a retrospective charge over the land under the 1926 legislation. Acheson basically ran the scheme. The Native Minister never made the detailed consideration of the advances which was required before consent was given to them. Acheson contended that he could farm under Part xv anyway without ministerial consent. The scheme proved a financial disaster. In 1929, after much acrimonious correspondence, Ngata intervened and took control.<sup>35</sup>

After 1929 the role of the boards in the management of schemes was reduced by legislative changes sought by Ngata. In 1929 he secured over £200,000 for land development and an amendment giving the Native Minister authority to gazette any Maori land and thereafter control it absolutely, or through his appointed agents and develop it for farming. Owners might not thereafter interfere in the development. All stock, materials and other development costs became a charge on the land and the land court could make charging orders capable of registration. By 1934 some 76 schemes were running under this provision.<sup>36</sup> Ngata used this provision not only to develop large model farms such as Horohoro near Rotorua,<sup>37</sup> but also to gazette large districts and make advances to individuals or families living on separate small holdings – the family or individual receiving the money was known as a ‘unit’. A variation was to deal with a group of units together and advance them money as a collective.<sup>38</sup> The role of the land boards in these schemes was limited. The land court simply made the necessary consolidation, partition and charging orders.

At the same time, the Maori Trustee began to assume a greater role in development schemes, which also affected the involvement of the boards in land development. Until 1929 the Maori Trustee could only advance money on a first mortgage – this was practically limited to those instances where Maori had obtained a clear registered title to a distinct area of land. In 1929 the Native Land Amendment and Native Land Claims Adjustment Act authorised the trustee to be given control of a farm.<sup>39</sup> The Native Trustee Act 1930 made it possible for the trustee generally to be given the management of any native land as the Native Minister saw fit. The minister retained control over the appointment of farm managers, but otherwise the trustee determined how the farm was run and which of the owners might occupy it, and made advances as required. The trustee was therefore a powerful agent. From 1931 the minister was able to delegate to the trustee his powers to develop land under section 522 of the 1931 Act.<sup>40</sup>

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35. AJHR, 1934, g-11, p 12

36. Section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929 – later to become s 522 of the 1931 Act.

37. Ibid, p 34

38. AJHR, 1934, g-11. Both unit and ‘blanket’ unit schemes were later declared (by the 1934 commission – see below) to be ultra vires. Nevertheless, some £201,031 had been spent on these ultra vires schemes by 31 March 1934.

39. Aohanga Station

## 2.6 The National Expenditure Commission and the Native Land Settlement Board

In 1931 a consolidation of the Native Land Acts was passed which brought together all the already operating schemes under the one Act. The Bill was said to have been entirely drafted by the chief judge and under-secretary, Robert Noble Jones.<sup>41</sup> In 1932 further legislative changes were made as a result of recommendations of the National Expenditure Commission. The main legal change was that the Native Land Court took over the boards' judicial power to confirm alienations. This further reduced the role of the boards per se.

The National Expenditure Commission was established to consider efficiencies in 'public expenditure'. Its final report dealt at length with the Native Affairs Department, the Maori land boards and the Native Land Court. It made many interesting observations about the working of the boards and the court. The commission noted that although there were seven independent land boards, the monies of all of them were held in one common fund and each board was required to pay into the consolidated fund annually 'on account of administration expenses, both of the Board and the Court, such sum as the Native Minister thinks fit.' This had been statutorily provided for since 1924. Prior to that, the salaries of land board officials had come out of the consolidated fund and had not been recouped from the boards.<sup>42</sup> The commission commented that despite the ability of the boards to loan monies and operate independently, if the boards got into financial difficulties the state would be expected to rescue them. For this reason it felt they could be reviewed under the general heading of native administration.<sup>43</sup> These comments demonstrate how much the boards were viewed as part of the general native administration of Government rather than as independent bodies.

The commission gave its own version of the history of the land boards. It said that prior to 1900 the restrictions on sale or disposal of native land 'were not sufficiently rigid for the proper protection of the Natives, and alienations were becoming so numerous that a grave danger arose of the Natives ultimately becoming more or less a charge on the State.' Therefore the district councils appointed under the Maori Lands Administration Act 1900 were given 'power to review all transactions and to terminate negotiations considered inimical to the interests of the Native owners.' However, these councils 'apparently did not function satisfactorily' and in 1905 were converted to boards.<sup>44</sup> This view of the history failed to reflect the fact that the councils had been reconstituted in large part

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40. This power was curtailed after 1932, AJHR, 1934, g-11, pp 28–29. The Native Land Settlement Board (see below) stood where the minister had in approving managers and took over approvals for any finance advanced. The minister could no longer place lands under the trustee. In 1934 only a few farms came under either of these two types of land development.

41. 28 October 1931, NZPD, 1931, vol 230, p 576

42. AJHR, 1932, b-4a, p 25. The under-secretary in a memo to the Native Minister, 5 August 1932 (ma 1/19/1/14), commented that prior costs were being recouped prior to 1924 as well.

43. Ibid. The under-secretary also noted that of money that was borrowed, much was spent on roading which provided a benefit to the general public much more than to the lands which it was charged against.

44. AJHR, 1932, b-4a, para 257, p 33

to facilitate further sales. It was a view of history which supported the present paternal role of the boards however.

Looking at the composition of the boards since 1913, the commission concluded that they could be deemed ‘one man’ boards because of the casting vote of the chairman in addition to his ordinary vote. The commission concluded:

The fact that the President has jurisdiction over alienations and that he is also the Judge of the corresponding Native Land Court district indicates that the line of demarcation between the duties of Boards and Courts has in some respects disappeared, and there appears to be little objection to the Courts taking over from the Boards those functions which can reasonably be vested in them.<sup>45</sup>

The commission thought that the boards had changed considerably from their original role to ‘protect Natives from exploitation’. The trend in recent legislation was towards assisting Maori socially and economically. Thus the one-man boards were now substantial financial concerns and a judicial officer might not be the most appropriate person to deal with large financial matters.<sup>46</sup> Significantly, the commission noted that ‘the functions of the Maori Land Boards have so changed in recent years that they are in reality branches of the Native Department, and should be recognised as such.’<sup>47</sup>

The commission recommended, to further clarify the respective roles of the boards and the courts, that the ‘judicial functions’ of the land boards be transferred to the courts. ‘Routine duties’ undertaken by the judges should be transferred to the ‘Commissioners of the Courts’ who had sufficient authority under existing statute.<sup>48</sup> The boards, once they had lost their judicial functions, could then be absorbed into the department. The commission also considered placing the land court under the Department of Justice, but felt that leaving it in the Native Department allowed for better contact with Maori. With the removal of the judicial functions of the land board to the court, and with the removal of other land board work to the department, the judges should be reduced to no more than four, including the chief judge – then head of the department.<sup>49</sup>

The commission was concerned that the Native Minister had powers unparalleled by any other department and that constitutionally this was not healthy.<sup>50</sup> There was no direct parliamentary control over development activities, but only control by the Native Minister. His approval was required for properties to be put under the management of the Native Trustee, to exercise powers under

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45. AJHR, 1932, b-4a, p 33

46. Ibid, p 33

47. Ibid, p 30. After examining elsewhere various development works, most being undertaken by the boards, the commission noted that ‘the tendency has been to treat the Maori Land Boards as district offices of the Department’ even though not all schemes were actually funded from board funds. Ibid, p 32.

48. Ibid, p 28. There was a power to appoint commissioners of the land court to take some of the work load off the judges, and five had been appointed – pp 28 and p 39.

49. Ibid p 28 and p 39. In view of the ‘diminishing Court work’ there was a current proposal anyway to retire two of the judges. Ibid, p 27.

50. Ibid, p 37. An illustration of this was said to be his working relationship with Te Puea, including a much discussed incident where Ngata removed a Pakeha supervisor with whom Te Puea did not agree.

## 2.7 Maori Land Court and Boards, 1909 to 1952

section 522 to develop land, and for investments and farming operations undertaken directly by the land boards.

Following the commission report, the Native Land Amendment Act 1932 provided that a newly established Native Land Settlement Board, chaired by the Native Minister, but including representatives from the Treasury, Agriculture, Lands and Survey and Valuation departments, should in future give consent to all land board activities, including mortgages issued by the land boards, advances secured by securities over the land, purchases of land to be held on trust for Maori, and lands purchased and farmed under the 1929 amendment.<sup>51</sup> While this 1932 legislation reined in Ngata's powers, it also further reduced the role of the land boards and the land court judges in development schemes. The Native Land Settlement Board took over the finances of some schemes.<sup>52</sup>

### 2.7 The Board of Maori Affairs and the Nominated Occupier Scheme

In 1933, when it was discovered accounts had been falsified by an official of the Native Department, Ngata was forced to resign in the face of an adverse report of an independent commission and there was a further re-organisation affecting land development. A Board of Native Affairs replaced the Native Land Settlement Board, retaining essentially the same powers as the settlement board, and taking over all development scheme finances and approvals and the management of any securities arising under the schemes. A new departure was that district committees, consisting of the Maori Land Court judge of the district and two other people with 'practical farming experience' were to act as delegates of the land settlement board in the districts. The 1934 commission had recommended that a Maori be on this board, but that was not provided for and the obvious candidate – Ngata – was not available.<sup>53</sup> In addition, the office of the Native Land Court in each district became the district office of the department and the development work was decentralised there. The Native Trust office became part of the department.

In 1937 Prime Minister Savage, as chairman of the Board of Native Affairs, noted that:

Purchases by the Crown have now practically ceased and the interests of owners are to a great extent safeguarded by the Native Land Courts. ... The policy today is to assist the Maori to develop and farm his lands, to train him in those branches of agriculture most suited to his needs, to profitably occupy and improve his idle

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51. AJHR, 1934, g-11. The legislation (s 7) also abolished the Native Land Purchase Board – signalling a clear end to any large scale Government purchasing efforts.

52. Including the Waipipi Development Scheme, begun by the Waikato-Maniapoto District Maori Land Board. The Kaihau scheme also came under the control of the Native Department in 1933. A base farm in Te Kuiti, which became the property of the Waikato-Maniapoto board under the exercise of its power of sale under a mortgage to secure the balance of purchase money, was brought under the Native Department in June 1932, AJHR, g-11, p 20.

53. Claudia Orange, *A Kind of Equality: Labour and the Maori People 1935–49*, MA thesis, University of Auckland, 1977, p 18

territory, to settle and cultivate the remnants of his tribal inheritance, and with the assistance of State funds to rehabilitate and establish him as a producing and self-reliant citizen.<sup>54</sup>

The effort had begun a year earlier with the inauguration of nominated occupier schemes. The 1934 commission had recommended that legislation be enacted:

to enable the Native Land Settlement Board to nominate an occupier for the development or farming of Native land, whether such occupier is an owner in such land or not, and to permit of such nomination being made, at the discretion of the Native Land Settlement Board, upon consideration of a recommendation of the Native Land Court of the District, after an opportunity has been given to all persons interested to be heard.<sup>55</sup>

The commission contemplated that, in most cases, while consolidation was carried out, the nominated occupier would not ‘without unfair delay’, get a secure title. Accordingly the Native Land Settlement Board should act as agent for the owners to grant a lease and these could be provisionally registered under special provisions enacted for that purpose.<sup>56</sup>

In the Native Land Amendment Act 1936 these proposals for ‘unit schemes’ were essentially put into effect. The Board of Native Affairs could gazette any Maori land or land owned and occupied by Maori and any land vested in the Native Trustee or a Maori land board as under its control. The board then had full powers to develop the land, and nominate occupiers, outside of the owners if necessary, on the recommendation of the Maori Land Court. The nominated occupier had in essence no more than a licence revocable at the will of the Board of Native Affairs.<sup>57</sup> Monies could be advanced by the board to the occupier, which became a charge on the land. The charge could also include ‘a reasonable proportion of the administrative expenses of the Native Department’.<sup>58</sup> Maori land boards were to be the agents of the owners to lease the land. No lease, however, could be granted except on the direction of the Board of Maori Affairs. ‘Natives’ generally were to be given preference unless none of the owners were found suitable.<sup>59</sup> A system of provisional registration was set up to record the order for a lease where the lease itself could not be registered because the land title was incomplete.<sup>60</sup> The total term of any lease, inclusive of renewals, was not to exceed 50 years.<sup>61</sup> Compensation for improvements was provided for. All current section 522 schemes begun by Ngata were brought under this legislation.<sup>62</sup> Significantly, while the land was under the

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54. AJHR, 1937, g-10, pp 3–4

55. AJHR, 1934, g-11, p 43

56. Ibid, p 44

57. Section 16(3)

58. Section 18(1)

59. Section 24(3)

60. Section 24(5). A title could be incomplete for many reasons. The lack of an adequate survey of partition and other court orders was a standard reason.

61. Section 26

62. Section 4(4)

## 2.7 Maori Land Court and Boards, 1909 to 1952

scheme, owners were barred from exercising ‘any rights of ownership’. Mere trespass was a summary offence punishable by £20 or three months imprisonment.<sup>63</sup> This was harsher than earlier legislation, which prevented interference only to the farming operations.<sup>64</sup> There was also a general power for the Board of Native Affairs to lend money on mortgage, and to delegate any of its powers to the Maori land boards or the Native Trustee.<sup>65</sup> An official describing the effect of the legislation said that it ‘suspends the operation of the ordinary law and gives the Board of Maori Affairs an open mandate to develop and improve the land and place it under capable management . . . extraordinary measures of a more or less emergency nature.’<sup>66</sup> In practice the board eventually became simply a creature of the department – the Native Minister only occasionally attended and the under-secretary therefore chaired the board.<sup>67</sup>

There were two sorts of schemes: broader areas, usually consolidated, and known as ‘schemes’; and developments called ‘units’, which were smaller areas which had not been consolidated by the land court before development, but which might be grouped and called a scheme all the same.<sup>68</sup> While many Maori earned a steady wage off such schemes, they were ultimately not economically viable. By 1939 development work absorbed about 5000 Maori who would otherwise have been on social security. The annual wages bill of the department was over £500,000.<sup>69</sup> The 1936 Act entirely circumvented the problems of multiple ownership. Cash went straight into keeping people on the land, the Government provided all fencing and other farming materials and charged it against the land. It was estimated in 1937 that some 15,925 people were catered for by over 1500 unit settlers.<sup>70</sup>

But after 1941 the number of units that were being settled decreased, in Ngata’s view because Maori were losing enthusiasm for the schemes as they were pushed out of day to day control:

The people have the fear and feeling not without justification that all control of their lands will pass from them and they will become the sport of Pakeha supervisors and Boards . . . Wherever Maori leadership should find scope it is denied it and we as a race see all the practical measures taken for our good committed to Pakehas. The fact is that the Pakeha scheme of administration as it is interpreted in Wellington does not permit of the Heads there sleeping soundly unless the administrative positions right down to the humblest are held by Pakehas . . . Thus altruistic schemes for the betterment of Maori are readily turned into magnified services where Pakeha

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63. Section 42

64. This was also the view of the commission, 1934, AJHR, g-11, p 32. See s 522(3)(f) of the 1931 Act, when the Native Minister gave notice ‘no owners shall, except with the consent of the Native Minister, shall be entitled to exercise any rights of ownership in connection with the land affected so as to interfere with or obstruct the carrying out of any [development] works.’

65. Sections 48–49

66. Williams to Blan, 24 March 1952, ma 60/1, quoted in Orange, p 70

67. Orange p 71, and see AJHR, 1937, g-9 for a full discussion of the work of the board.

68. See Orange, pp 73ff

69. Ibid, p 73; see also AJHR, 1939, g-9, p 4

70. Orange, p 74

supervisors, shepherds, inspectors, teachers and all see opportunities for their own employment and preferment.<sup>71</sup>

Certainly the very centralised control under the Board of Native Affairs did not allow for an equal partnership for Maori in land development. Also, under the 1936 legislation, Maori occupiers informally occupied the land, but their rights vis a vis the owners (who were only sometimes one and the same) were not legally well defined. Leases were meant to be given but rarely were.<sup>72</sup> Although there was criticism about the uncertainty in land titles which the nominated occupiers generated, the department did nothing. At the same time, consolidation work slowed – precisely at the time when this might have been of the greatest advantage in clarifying some of these underlying title problems.<sup>73</sup> Many Maori expressed a preference for operating outside these schemes by seeking funds to buy lands of their own. But the Government was not supportive. European lands were not to be acquired. The emphasis was on developing Maori land. Te Puea was twice turned down in requests to use monies to purchase non-Maori lands for development.<sup>74</sup>

In addition, there were conflicts of interest in the administration of these schemes. Field officers of the department held an ambiguous position:

In one sense, the Department was mortgagee; in another sense it was a trustee – or as one officer put it, ‘mother and father’ to the Maori. . . . On the one hand, the Department was accountable for Government funds, on the other, it was responsible for general Maori welfare. It was not surprising then, that Maoris experienced a kind of ‘love-hate’ relationship with the Department and the Department in return extended a paternal care that was sometimes probably misplaced.<sup>75</sup>

In 1940, Ngata expressed grave concern that the Government would favour the nominated occupiers over Maori owners of the land. This was not what had been understood when the schemes had been started. The original understanding was that land titles were to remain unchanged under the schemes. This was true on the face of things. The Board of Native Affairs had not been made an owner, it primarily represented the Crown as mortgagee and determined the purposes and the methods by which state money should be expended. And while the board had been given very wide powers, it was ‘implied in the circumstances of the inception of the schemes and expressed in conferences with communities’, that the lands would be administered in the interests of their owners and in general accord with their wishes and aspirations.

But while the owners understood that the state’s advances would become a charge on their lands, and a mortgagee sale technically could result, it had been expected that the state intervention would only be temporary, and that the occupiers, while they had generally ‘evolved’ from the ‘families or communities

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71. Ngata to District Governor, Rotary International, Auckland, 24 March 1939, quoted in Orange, p 76

72. Orange, p 77

73. Ibid, p 78

74. Ibid

75. Ibid, p 81

interested', would not become permanent title holders, to the total exclusion of other members of the family or community.<sup>76</sup> Ngata cited as an example of this dilemma the Waiapu River scheme where 1300 Maori lived, but only a narrow alluvial strip on the north side of the river was suitable for dairying. Virtually all lands of the 1300 owners were under the scheme. If those lands should be subdivided by the Board of Native Affairs into less than 80 individual holdings, and 80 owners given power to exclude others, 'the future of a thousand Maoris may be left to the imagination.'<sup>77</sup>

There was another, perhaps more immediate, problem. It was very clear by 1940 that the notion that Maori would live a semi-rural lifestyle on or close to land development schemes was no longer viable because of the growing population. This increasing population was drifting to the towns.<sup>78</sup> The Auckland economist, Belshaw, concluded in 1940 that:

there is an unambiguous picture of a people whose land resources are inadequate, so that a great and increasing majority must find other means of livelihood. . . . No tribe has sufficient land to support all of its people.<sup>79</sup>

Even if all Crown lands were to be used for Maori settlement, there would still not have been sufficient land.<sup>80</sup>

Ngata's response was to maintain faith in development schemes. He suggested that a farm labouring class could emerge to deal with the situation, which would grow vegetables in small reserves and supplement this with seasonal labour.<sup>81</sup> However, this was clearly inadequate.

At the Maori Labour Conference in October 1936, land issues were raised directly by Maori delegates. Among other things, they asked that:<sup>82</sup>

- the Maori Settlement Act of 1905 and its subsequent amendments be immediately repealed;
- the Native Land Amendment Act 1932 section 7(2) (establishing the Native Land Settlement Board) be immediately repealed;
- the Native Trustee Act 1920 and amendments be repealed;
- 'That all other Acts not at our disposal for description, but which applies to the administration of Maori matters be repealed (The Native Land Act 1931 &c)'.

In their place there should be an 'all embracing Statute that will cover every activity pertaining to the welfare of the Maori, financially, socially, physically and morally.' Provision was to be made in this statute for the 'amalgamation of all the multifarious rights and duties of the Native Department, the Native Trustee and the

76. Ngata in Sutherland (ed), *The Maori People Today*, 1940, pp 147–148

77. Ibid, p 149. Ngata concluded: 'There have been wholesale dispossessions of the Maori in the last hundred years as the result of Pakeha-directed policy, but we should not have another, the final one.'

78. AJHR, 1937, g-10, pp 7–9

79. H Belshaw, 'Maori Economic Circumstances', Sutherland, p 192

80. Ibid

81. Ngata in Sutherland, p 152. He cited Ruatoki as an example. There were 150 'unit' farms there, but a population of nearly one thousand.

82. Orange, app 3, 'Report of the Maori Labour Conference October 1936'

Maori Land Boards' and the setting up of a 'Board, a Committee or an Executive Council' comprised of the Native Minister, various other ministers, and Maori and Pakeha representatives from Parliament. A Native Administration Department should also be created whose head would be known as the native administrator. The meeting also called for an inquiry into the numbers of landless Maori. The Government should purchase suitable farms on Crown lands for such landless Maori. Maori farmers with holdings that were too small should have them increased to a level sufficient to obtain a reasonable living, and those who wished to 'continue on wages' should be given an opportunity to obtain a freehold section for a home. Where lands were under lease and the lease was not returning a living, the Government should re-purchase the lease and reinstate the owner. The Government should purchase areas of land close to tribal pa to preserve the 'Native communal system of living'. Further alienations of Maori land should be restricted, except where required to create financial capital for the Maori affected.

The delegates also expressed concern about the position of owners under the land schemes, and the charges being applied to lands under development without the explicit consent of their Maori owners.<sup>83</sup>

While these remarks were an attack on some elements of the schemes, in substance they were an endorsement of the general thrust of Government policy to date. Any real disagreement was about the level of control the owners retained over the schemes. This was reflected in other statements, such as requests that owners themselves should have first right to settle on land, that roads over scheme lands not become public thoroughfares without the consent of owners, that where schemes were not operating strictly in accord with the basis on which the land was handed over, they should be returned immediately, that Maori should have an equal right with the authorities in the selection of officers, and that preference be given to Maori in the appointment of supervisors and others involved in land development. It was also argued that beneficiaries should be able to scrutinise income from sales of stock and other products, and that where stock or products were transferred between schemes, the correct scheme should receive a credit. Finally, 'the Rights and Privileges of the Native owner [should] be respected, and they be treated as partners with the Crown in the development of their lands.'<sup>84</sup>

## 2.8 Land outside the Development Schemes

There was a more substantial role for the land boards and the land court in the management of lands falling outside these development schemes. However, a description and figures on land falling outside development schemes is hard to

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83. The meeting called for Part xvi of the 1931 Act (which provided that Maori land might be applied to settlement purposes by order in council) to be amended to provide 'that the native shall have entire control of his land subject to the charges thereon' and that arbitration measures be put in place where there was a dispute between the Crown and Maori about the Crown mortgage held over such lands. They also wanted owners to see yearly budgets and for them to be subject to approval from the owners.

84. Ibid

## 2.9 Maori Land Court and Boards, 1909 to 1952

come by for this period because of the emphasis on the schemes. It appears, however, that some hundreds, if not thousands of Maori families were managing land blocks outside the schemes during the 1920s and 1930s, with some success. In 1940 Ngata commented that on the East Coast, at Wairoa and in parts of the Hawke's Bay, Manawatu, Whanganui, Taranaki, the King Country, at Whakatane and North Auckland, there were 'large areas occupied and farmed by Maoris outside the official development schemes.' The majority were mortgagors to Maori Land Boards, the Native Trustee and banks and other private institutions. On the East Coast more than nine-tenths of the Maori-farmed lands were outside the schemes and trusts. 'A rough estimate based on general knowledge of the distribution of Native lands in the North Island shows that there is as large an area in that category as has been developed to date under the official development policy.'<sup>85</sup>

The rough estimate given by Ngata indicates some indifference at a Government level to this alternative approach to development – even though it clearly was significant. This is indicated too by a comment of Ngata about the future of these lands after 1940 – that they should be brought in under the existing land development schemes.<sup>86</sup> He obviously retained faith in the schemes as the best route to the development of Maori land.

### 2.9 The Second World War

Such was the situation leading up to and at the beginning of the Second World War. The development schemes, while employing many Maori and usefully developing some areas, in many cases had an underlying title problem which gave Maori owners only a precarious hold on their own land, because of the lack of progress in bringing necessary consolidation orders before the land court. By 1938–40 it became clear that, with the growing population, not all Maori could in fact be settled on rural lands. A survey in 1934 showed most rural dwellers were receiving income from other than agricultural pursuits.<sup>87</sup>

The war hastened change. The Native Department had curtailed the expansion of land development operations as Maori manpower decreased due to the war. By 1942 new development work had ceased.<sup>88</sup> At the same time, however, the Government began to think about rehabilitation for Maori after the war. A Maori Rehabilitation Finance Committee was established at the end of 1943.<sup>89</sup>

There was trouble placing returning Maori on the land, in part because of the uneconomic nature of much of it and also because Maori land was exempt from compulsory acquisition clauses in the Servicemen's Settlement and Land Sales Act

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85. Ngata in Sutherland, p 151

86. Ibid

87. Orange, p 83

88. Ibid, p 134

89. Ibid, pp 135–136

1943.<sup>90</sup> These developments forced the department to reappraise its land development policy. Officers were asked to comment on the development to date. The confusion over tenure was noted.<sup>91</sup> Maori were increasingly asking that their title position be clarified. There was a feeling that greater Maori participation in development was required. A serious review of land development was, however, postponed because it was felt to be too difficult. 'In the meantime, the difficulties of multiple ownership, arising from succession, became more complicated with the passage of time.'<sup>92</sup>

## 2.10 The Boards and the Court after 1932

Despite the finding of the National Expenditure Commission in 1932 that the Maori land boards should be absorbed into the Native Department, they retained a separate existence. The under-secretary in 1932 noted that there was still land vested in them which required administration, rents had still to be collected and to be distributed and arrangements made with tenants. Consequently no real savings could be made in administration costs and it might be wise to keep them for a time, but confine their activities to confirmation and purely administrative matters, leaving the advancement of monies for development to a central board. The under-secretary also pointed out that if the boards were dispensed with, a valuable source of money for Maori affairs would be lost, as the land boards held unallotted interest and could make use of unclaimed money from rents and sales.<sup>93</sup> So the boards remained.

Ngata was concerned that under the re-organised schemes, which for obvious reasons centralised many matters in Wellington, the land boards were feeling stripped of power. Maori were complaining that the schemes were being too strictly supervised and wondered if there was not an excess of bureaucracy and excessive concentration of authority in Wellington. In contrast to his comments in 1923, he now thought that:

The Minister ought to have more confidence in the local officers of the Department, and I make a plea for the Maori Land Boards. Members of those Boards are feeling that they are being relegated to a very inferior place in the economy of the Native Department. The Maori Land Board has got a bad name in the past, and that bad name has stuck. It is evidently being used by someone responsible for the present position to ostracize, as it were, the Maori Land Boards and prevent them from taking their proper part in the administration of the affairs of the Maori race.<sup>94</sup>

However, although their role in schemes had been reduced, the land boards could still exercise a suffocating control over individual Maori owners. It may be for this

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90. Ibid, p 137. This reduced the areas available which were preferred by Maori returned servicemen.

91. Ibid, p 138

92. Ibid, p 139

93. Under-secretary to Native Minister, 5 August 1932, ma 1/19/1/14

94. 14 October 1937, NZPD, 1937, vol 248, pp 869–870

role that they had received their ‘bad name’. An example was the fight of a Maori owner to use 100 acres of farm land near Featherston in 1935. Because land values were depressed and because of his personal attachment to the land, the owner, Mitai Mikaera, rejected a suggestion from the Ikaroa Maori Land Board that he sell his land and move to another block where the land board felt he could improve his position. Instead, he sought to have returned to him some £600 which the board had loaned out on a mortgage on his behalf (he received £39 per annum). His family was ill and near starving, and his house was in a very poor condition – it was described in correspondence as a ‘hut’. The land board maintained that the land was unsuitable for farming, and was prepared to use Mitai’s money to build him a house on other land, and consider any ‘definite proposition’ put forward by him for his son’s education. Mitai appealed to the Native Minister:

as I have a good education from Te Aute College and at the Queen’s University, Kingston, Canada, and as I am of sound mind and body and quite capable of looking after my own affairs without resort to the patronising tutelage, protection or supervision of any Maori land board or callous Government officials who do not know what it is to go without the ordinary necessities of life and who would squeal if their pay is with-held for even one day, and as I am at the present time in need of my own money for the purpose of adjusting my affairs and of improving my living conditions and farm, I would respectfully ask that you will be good enough to direct that the whole of the amount held by the Ikaroa Maori land board on my behalf should be paid to me without reservation.

As I badly need assistance from my own funds at this moment, I shall be glad if you will kindly expedite the payment to me of my money and so help to prevent the continuance of my family’s need of food and the ordinary necessities to keep body and soul together.

If sent for, I shall be glad to come to your office and receive my money and to give you my personal assurance that I will neither squander my money nor come on the State for maintenance in the future.<sup>95</sup>

He also provided references from three Pakeha attesting that his land was suitable for farming. The Native Minister replied that the question of the release of his funds was one for the land court to decide and it was not desirable that the Native Minister should interfere with the legitimate functions of that statutory authority.<sup>96</sup>

Another case involved a sale of part of the Rangitoto Tuhua block.<sup>97</sup> The district Maori land board, as legislation permitted, held on to all of the sale monies. It promptly lent them back to the Pakeha purchaser on a mortgage of 7 percent. Apparently this was not an uncommon practice. When the mortgage matured in 1929, the Pakeha mortgagor made application for renewal but was informed that some of the Maori former owners required financial assistance for the purpose of developing their own holdings. The Pakeha mortgagor was requested to reduce the

95. Mitai Mikaera to Native Minister, Te Kohai, 5 July 1935, ma 1 5/8/22

96. Native Minister to Mitai Mikaera, 18 September 1936, ma 1 5/8/22

97. ma 1 5/8/1. The 5/8 series deals with requests to the Minister of Native Affairs.

principal by £1000, which he did. The land board then lent money to the former owners from their own purchase proceeds to develop the unsold part of the block. Again, this was not an uncommon practice. One former owner approached the land board and asked that he be allowed to have some of the capital of the money which had been lent (ie a part of his entitlement when the mortgages were repaid by the former owners) to cover outstanding debts. The board refused the request. When the matter was appealed to the Native Minister, the under-secretary advised that minister that this ‘appears to be a case where the Native should be protected from himself. Apparently when advances are made he only gets deeper into debt. I suggest it be left to the Board to deal with.’<sup>98</sup> The case is particularly poignant because the former owner making the request had expenses outstanding from the recent burial of three of his children, including debts to the local hospital board and the company which had supplied timber for the coffins.

To be sure, these were perhaps extreme cases which came to the notice of the Native Minister, but it is significant that a Maori conference noted in 1945 that:

two particular Acts . . . are repugnant to the Maori people as a Race. . . . Native Land Act 1931 – *Section 281* – and the Public Works Act of 1908 and of 1928 and their Amendments.

As regards Section 281 [section dealing with moneys from alienation of Maori lands] of the Act of 1931 we have to state that this piece of legislation tends – in effect – to create an inferiority complex in Maori people. Legislation of this sort is so repugnant to the English idea and principles as appertaining to the liberty of the subject that its parallel does not exist in the law now expressed in the Statutes and applying to the English as a Race. . . . [it] does not connote equality between the two Races as British subjects. . . . [it is] diametrically opposed to . . . Article the Third of Treaty of Waitangi . . .<sup>99</sup>

Meanwhile, the legal position which the boards held in relation to the land court continued to be a matter of confusion for officials. This can be seen in a controversy which arose in 1949 over whether an alienation executed by a Maori land board prior to 1932 should be confirmed by the court after 1932 – when confirmation became a court matter. Significantly, the under-secretary’s view was that ‘in view of the dual capacities of the Judges there appears to be no point in requiring the confirmation of instruments executed by the Boards’, and a law change was recommended in the Maori Purposes Bill of 1949 to the effect that instruments of alienation executed by Maori land boards did not require confirmation.<sup>100</sup> However the under-secretary was advised that the Minister of Maori Affairs was not keen to alter the bill at this late stage. Instead the minister ‘asked that the Judge concerned

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98. Under-secretary to Native Minister, 1 February 1932. The draft letter for Ngata to sign read ‘It appears that nearly £500 was sent to you during the last 12 months and that you still continue to incur fresh debts. The Board is afraid if you go on this way you will soon exhaust your money and that you will be left without support of your children.’

99. Report of Native Land Acts Sub-Committee to chairman, 23 March 1945, Nash papers 1/2067/0395–0416 (Maori conference).

100. Under-secretary to the Minister of Maori Affairs, 31 May 1949, ma 1 5/2/15

be requested to confirm the lease that has given rise to the proposed legislation'. The under-secretary urged that: 'At no time in the past has it been the practice for instruments of alienation executed by Maori Land Boards to be confirmed by the court.' Only recently had the registrar general required it of a lease executed by a Maori land board under Part i of the Maori Land Amendment Act 1936. The lease was eventually registered without being confirmed but the registrar general now wanted the issue cleared up. There had been no requirement prior to 1932 as it would have been 'absurd' for the board to both execute and confirm. But the 1932 change (Maori Land Act 1931, section 270) had required all instruments to be confirmed by the court. The under-secretary submitted to the Solicitor General that 'as the President of the Board and the Judge of the Court are by statute the office of one person (section 77 of the 1931 Act), it is equally absurd that confirmation should be required by a Judge of an instrument executed by himself.'<sup>101</sup>

However the registrar general saw matters quite differently:

I do not . . . devote much importance to the fact that, as the President of the Board and the Judge of the Maori Land Court are by statute the office of one person, it is equally absurd that confirmation should be required by a Judge of an instrument executed by himself. The late Judge Jones – a sound authority on Land Transfer as well as Maori Land law – for many years held the dual office of Judge of the Maori Land Court and District Land Registrar, and I remember occasions when as District Land Registrar he declined to register orders which he had previously made as a Judge. The point is that the functions of a Judge and of a President are different.<sup>102</sup>

He was supported by the Crown Law Office. The Crown solicitor argued that under the 1913 Act the registrar, though he might be overruled by the judge (whose decision was final in the case of disagreement), could sit and hear confirmations. He therefore had the deliberative powers of a member of the board – powers much greater than those as registrar of the court. So the board was not absolutely the same as the court.<sup>103</sup> Apart from confirmations, the registrar as a board member could hear many other matters alone on delegation from the president. So a registrar alone might grant a lease under the 1931 legislation. Confirmation would then not be a formality at all. The granting and confirming authorities would be different. Accordingly, confirmations were required in these cases. In cases where the board leased as owner rather than as agent (ie when it held the land as trustee) then confirmation was not required.<sup>104</sup>

This opinion led to the under-secretary hastily seeking the enactment of the necessary retrospective legislation. As he explained to the Minister of Maori Affairs in September 1949, 'in past years a large number of leases of land subject to Part i of the 1936 Act have been executed by the various Maori Land Boards at the direction of the Board of Maori Affairs and in no case have the leases so granted

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101. Under-secretary to Solicitor General, 8 July 1949, ma 1 5/2/15

102. Acting registrar general to under-secretary 29 July 1949, ma 1 5/2/15

103. This was in practice not much of a distinction – as the registrar had no power to hear confirmations alone.

104. Crown solicitor to under-secretary 22 August 1949, ma 1 5/2/15

been confirmed'. He pointed out that section 24(4) of the 1936 Act stated that the land court might inquire into lease proposals and report on them and it was the 'invariable custom' of the Board of Maori Affairs to ask the court to make a recommendation as to terms and conditions – and the Board of Maori Affairs again almost invariably acted on the land court's recommendation when issuing directions to the Maori land board to issue the lease. It would be best, therefore, to have retrospective legislation and 'continue a situation in law which has for the best part of 20 years existed in fact.'<sup>105</sup> Accordingly section 20 of the Maori Purposes Act 1949 provided that alienations dealt with by the board did not require confirmation, and backdated this provision to December 1932.

In 1949 the problem of the dual roles of the judges again arose. The judge and president of the Ikaroa district complained that the head office of the Native Department had sent a memorandum to the registrar asking what the court had been doing in relation to certain lands in the South Island. The president alleged that the department had asked 'the Registrar [of the court] or Administrative Officer [of the board] as a separate entity to criticise the work of the Judge or President as a separate identity'. In such a case the president felt that it was his duty to 'my office and its traditions to inform you that this course of action is considered improper and not in the interests of efficiency'.<sup>106</sup> The head office had in fact intended the request to be dealt with by the board, that is, both the president and the registrar, but since the correspondence was addressed to the registrar it was easy to see how the confusion had arisen. The head office response was to issue a memorandum to all board presidents and the chief judge of the land court stressing that land board administration officers and presidents should clarify what matters were to go direct to presidents and what matters should be dealt with by registrars alone.<sup>107</sup>

This discussion drew an agitated response from Judge Browne who complained that the practice of addressing all communications to the registrars and leaving it entirely to those officials to decide what communications the presidents saw, 'besides being very humiliating to the Presidents, creates a very strong tendency on the part of the Registrars to act independently of the Presidents, to ignore them altogether, and very frequently to usurp their functions.' While in theory presidents were supposed to be acquainted with all activities of their board, in practice only what the registrars thought the presidents should know was coming through.<sup>108</sup> Browne's suggestion was that presidents vet all incoming correspondence. The department replied that he would be 'submerged' by the volume. In other districts there was an 'understanding' between the registrar and the president which prevented the problems complained of by Judge Browne.<sup>109</sup>

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105. Under-secretary to the Minister of Maori Affairs, 1 September 1949, ma 1 5/2/15

106. Harvey to under-secretary, 4 November 1937, ma 1 49/19

107. 16 November 1937, ma 1 49/19

108. Browne J to under-secretary, 19 November 1937, ma 1 49/19

109. For example, President Kearn (Tairāwhiti) to under-secretary, 23 November 1937. Judge Harvey simply said that as the department had control of all correspondence, he just wanted to get those matters which might require direct action from him to the under-secretary, 1 December 1937 – and there the matter rested.

## 2.11 Maori Land Court and Boards, 1909 to 1952

The problem of dual roles was obviously such that where relationships between the individual officials were poor, there was the potential for serious procedural difficulties – possibly to the detriment of Maori owners and beneficiaries.

### 2.11 The End of the Boards

In 1948 there was a Maori request that Maori members be put on the land boards – something which Maori had requested when the boards were re-organised in 1913.<sup>110</sup> This proposal was circulated to the judges for comment. Their replies revealed the state of the land boards at the time. Ivor Pritchard, speaking of the Taitokerau board, commented that: ‘The two members of the Board are full time Government servants. The money transactions of the Board are, except in respect of payments to beneficiaries, to be exercised only with the consent of the Board of Maori Affairs.’ As to meetings of owners, the decision of the board whether to call them normally involved a conference between the judge and the registrar – the judge knowing the court position, the registrar the department’s position. The actual confirmation was by the court, but the land board completed the transaction by affixing the seal to the legal document. Having a meeting to consider each confirmation, in which the board would have to formally consider the matter and call its own meeting to do this, would decrease efficiency. It seems from the tone of the rest of the letter that formal board meetings did not occur in that district – there was a comment that ‘a formal Board sitting at stated intervals’ would not progress matters such as agencies undertaken by the board. It was said that: ‘In matters affecting particular groups the president in his rounds consults them – it would be difficult in his so doing not to make arrangements as to how the Board will deal with their matters.’ In other words, an extra member would require a meeting to be called on all matters. The president concluded that:

in short the Board is flexible with the Registrar in the Office and the President round the district. Some matters come to the Office and are dealt with by the Registrar, some are dealt with by me in the district and some are dealt with by us after conference in Auckland. In many cases we confer by telephone. A large proportion of the decisions of the Board are on questions involving knowledge of law and on them Maori members would be unable to assist. Fixed meetings (say monthly) would restrict the movements of the President who (as Judge) already has difficulty in fitting in all the sittings necessary.<sup>111</sup>

President and Judge Whithead from Hastings agreed that formally convened meetings would be unduly restrictive. Matters in Ikaroa and the South Island were entirely administrative for the board and the registrar did them all apart from exceptional situations. But he did think that Maori should be represented on land boards in areas where they undertook activities which ‘seriously affect the

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110. See above

111. Pritchard to under-secretary, 8 September 1949, ma 28 31/29

economic, social and intimate lives' of Maori in the area. He felt that if Government policy were to encourage land boards to engage in activities beyond the purely administrative, they should include Maori and specialist members. This could lead to eventual severance of the boards from the court, which would probably be to the advantage of both.<sup>112</sup> R P Dykes in Wanganui also foresaw delays, saying that Maori representation on boards had been trialed in the early days of the boards and been found wanting – the present system had been operating satisfactorily since 1913.<sup>113</sup>

President and Judge Beechey saw no advantage in adding a lay Maori member to land boards, as most of their work concerned legal or business matters. Section 77 of the 1931 Act allowed land boards to associate persons in an advisory capacity anyway. Beechey admitted he had never used the provision, although he consulted expert staff. He also pointed out that the system prior to 1913 had been found to be unsatisfactory. Presently the boards worked efficiently and speedily. He added: 'in so far as the proposal may have relation to the extension of the powers and functions of Boards I would mention the danger of the admixture of administrative and judicial duties of the Presidents. It is well recognised that these duties cannot be carried out by one man where there is a possibility of any conflict between the two and in practice that conflict is constantly arising.'<sup>114</sup>

Judge Harvey by contrast thought the addition of one member to the Waiariki land board would strengthen it – but for reasons contradicting the other judges. Where a board was not acting beyond collecting and distributing rents, he thought that the addition of a Maori member would be of no value whatever. Constitution changes for the land boards should be considered in conjunction with widening their powers and ensuring they used those powers for the benefit of Maori. He commented: 'I heartily disagree with the suggestion that a judge cannot act with vigor as a Board President without disturbing his judicial integrity; our Court is so seldom concerned with real disputes between Maoris.'<sup>115</sup>

These comments and the Maori request had, however, been overtaken by other events. In September 1949 the under-secretary was suggesting to the Minister of Maori Affairs much more radical changes to the constitution of the boards. He argued that, save in one respect, the original functions of the boards had disappeared.<sup>116</sup> Accordingly, the Maori Trustee and the boards were operating parallel systems in terms of development lands which was leading to confusion. In this situation it was a matter of principle that the boards should go, not the trustee:

Each Maori Land Board has a separate corporate identity and existence, and it is open to any of the Boards to pursue a course which might be in conflict with the Government's policy or the policy of the Boards as a whole. Boards can follow their own wishes regarding work and systems. As an instance of a Board going its own way

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112. 16 September 1949, ma 28 31/29

113. 5 September 1949, ma 28 31/29

114. 8 September 1949, ma 28 31/29

115. 7 September 1949, ma 28 31/29

116. The one respect was management of vested lands.

## 2.11 Maori Land Court and Boards, 1909 to 1952

in the face of all advice and objections, I need only mention the Tokerau Maori Land Board's activities at Te Kao under a former President.<sup>117</sup>

The under-secretary continued:

A fundamental to the Boards is that the President's of them are the Judges of the Maori Land Court. In principle, it is altogether wrong that those concerned to see to the application of the law should be involved in matters which are purely administrative.

He further pointed out that the boards in essence consisted of one man, as the judge had the final say in all matters, making the Registrar a 'mere cipher'. The suggested replacements were district Maori affairs boards which would have a Maori member (locally nominated), the Registrar, and the Commissioner of Crown lands or Superintendent of Land Development for the district.

An attached history of the boards argued that they had merely been intended in 1913 to be a short term expedient for reasons of convenience, with all power going to the Maori Land Court. However 'the Government concluded there was room for virtually only one body exercising power and authority over Maori land and that was the Maori Land Court, but because it was necessary, for reasons of convenience, to keep the Boards alive for what was anticipated to be a short period, the expedient of having Boards comprising the Judge and the Registrar . . . was hit upon'. It was therefore 'virtually by accident' that the boards survived, until they were found to be a convenient medium to distribute funding when Maori economic development became a focus of policy.

In February 1951 the under-secretary again wrote to the Minister of Maori Affairs about concerns the minister had expressed about judges becoming involved in the administrative affairs of the department. The under-secretary pointed out that this stemmed from the dual position occupied by the judges. Judge Harvey in Rotorua was directing administrative staff, and believed he had a right to do this as land board president. The arguments for abolishing the boards were again set out: 'It is entirely and fundamentally wrong that Judges of any Court should be mixed up in administrative duties. (Note: the original idea in having the Judges appointed as Presidents of the Board (Act of 1913) was that they should simply hold the pass while the administrative functions of the Boards were being handed over to the Land Boards under the Land Act).' Also: 'Though the Boards are instruments of Government, they are not answerable to any authority save in the last resort through the sanction that members may be removed from office.'<sup>118</sup>

On 6 July 1952 Minister of Maori Affairs, M A Corbett, gave the department permission to prepare plans to abolish the boards. The final paper put to Cabinet stressed the overlap of work between the land boards and the land court but also included the reasoning that the 'position of the Judges of the Maori Land Court as Presidents of the Boards is open to criticism since they may be required to deal with

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117. 13 September 1949, under-secretary to Minister of Maori Affairs, ma 28 31/29

118. 9 February 1951, under-secretary to Minister of Maori Affairs, ma 28 31/29

the same matter both judicially and administratively. It is clear that, on principle, no judicial officer should be placed in such a position.’ It was also stressed the survival of this situation was a ‘historical accident’.<sup>119</sup>

The boards were abolished by legislation in 1952. A final accounting noted that at 31 January 1951 they held £335,500 in Government securities, £286,000 in mortgages, farms and the like, and £58,000 in other securities. The total money held for beneficiaries was £1,305,500.<sup>120</sup> The under-secretary wrote to the presidents of the land boards advising them that the amendment did not reflect on their administration. Rather, the concern was to reduce the number of bodies dealing with Maori affairs and ‘to overcome a fundamental objection to Judges being engaged in work which is purely administrative in its nature.’<sup>121</sup>

There was some Maori objection to their demise. Ngati Whakaue objected strongly to abolishing the boards, stressing their personal associations to those connected with the Waiariki district.<sup>122</sup> The Kaokaroa tribal executive, at Te Poi, sought a royal commission to consider the issue before the bill to abolish the boards was passed.<sup>123</sup> Nevertheless, the legislation abolishing them was assented to on 29 August 1952.

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119. Draft 13 July 1951. Cabinet approval was 8 October 1951; see Secretary of Cabinet to Minister of Maori Affairs, 9 October 1951, ma 28 31/29.

120. ma 28 31/29. This money went to the Maori Trustee.

121. ma 28 31/29

122. Telegram to Minister of Maori Affairs, 21 July 1952, ma 28 31/29

123. Ibid, 28 August 1952

