

1. GENERAL GOVERNMENT POLICY: AMALGAMATION

1.1 Commerce, Christianity, and Colonisation

In 1974 the seminal work of Alan Ward on nineteenth century New Zealand, based on his Australian National University doctoral thesis, was first published as *A Show of Justice*.¹ The sub-title of this influential book identified the importance of racial 'amalgamation' in the history of that period. Also in 1974, Keith Sorrenson was the Smuts Fellow at Cambridge University and read a paper that he revised and published as an essay the next year. This essay – 'How to Civilize Savages' – was an examination of the 'British civilizing mission' in New Zealand. It identified three vital agents of civilisation – commerce, Christianity, and colonisation.²

The combined impact of these agents of civilisation was, as Professor Sorrenson put it, 'confidently expected to bring about what Europeans in the nineteenth century called the amalgamation of the races. The civilized Maori were ultimately to be absorbed or assimilated into the European population'.³

Dr Ward's description of 'amalgamation' policies read:

The 'permanent welfare' of the Maori included the abandonment by them as soon as possible of their own customs in favour of English law, and the adoption by them of such European skills as would command the respect and outweigh the prejudices of the incoming settlers. The saving of the Maori race involved the extinction of Maori culture.⁴

Writing shortly before the establishment of the Waitangi Tribunal by the Treaty of Waitangi Act 1975, Dr Ward and Professor Sorrenson both had pointed to the policy of amalgamation as crucial to an understanding of nineteenth century New Zealand history. These eminent scholars are now both emeritus professors who have contributed immensely to the work of the Tribunal in the last 25 years. It is therefore of interest that both of them writing as academics laid stress on 'amalgamation' long before the retrospective jurisdiction of the Tribunal, bestowed by amending legislation in 1985, led to claims-driven 'reconstructions' of New Zealand history. This is important in view of the criticisms by Professor Oliver of such reconstructions written for the claims arena by historians, lawyers and the Tribunal itself.⁵ It is of particular interest for this report that Pro-

1. A Ward, *A Show of Justice: racial 'amalgamation' in nineteenth century New Zealand*, Auckland, Auckland University Press/Oxford University Press, 1974 [and Canberra, Australian National University Press, 1974], reprinted 1995

2. M P K Sorrenson, 'How to Civilize Savages', *New Zealand Journal of History*, vol 9, no 2, 1975, p 97

3. *Ibid*

4. Ward, p 38

5. W H Oliver, 'Is bias one-sided?', *New Zealand Books*, vol 7, no 2, June 1997, p 17

fessor Sorrenson, well versed in the policies of colonial rule elsewhere in the British Empire, noted the continued pursuit of assimilation in later nineteenth century and twentieth century New Zealand 'when it was being tempered or abandoned in other parts of the colonial empire for segregation or differentiation.'⁶

1.1.1 Commerce

The thinking behind British notions of amalgamation and assimilation was based on the prognosis that Maori were a 'savage' people who nevertheless had the capacity for graduating to civilisation. Commerce was the first of the agents of civilisation to impact upon pre-contact Maori social formations. There were various forms of trade and commerce conducted by Maori with the officers, scientists and crew on the ships of voyaging explorers from Europe such as Cook, de Surville and du Fresne from 1769 onwards. Then in the next half a century hapu from most regions would have come into contact with traders seeking flax and timber and many hapu would have been influenced by more long-term contact with Pakeha hunters of seals and whales. In some communities there were 'Pakeha Maori' who had been incorporated in a variety of ways into the social structures of those communities.⁷ These early contacts have been described in fascinating detail in two major books written by Dame Anne Salmond.⁸ The extent, complexity and frequency of trading visits by European and American crewed shipping to New Zealand waters between 1773 and 1814 may be gleaned from a set of appendices prepared by Professor Salmond on sealing, whaling and timber trade voyages between 1773 and 1815.⁹

The text of the second of Professor Salmond's books also highlight examples of the direct knowledge of British colonial societies obtained by Maori. Some were taken to the Norfolk Island penal colony as early as 1793. Then there was a formal visit to Port Jackson, New South Wales, by a rangatira and sons from a Bay of Islands hapu in 1806 following journeys by a number of Maori to New South Wales, to Norfolk Island and even to India.¹⁰

There were a few Maori who made their way to Great Britain in the first decade of the nineteenth century and there were the 'Pakeha Maori' who were long-term residents among Maori communities. The resulting interactions led to significant changes to Maori economic life with the intro-

6. Sorrenson, p 97 [See M P K Sorrenson, *Land Reform in the Kikuyu country: a study in government policy*, Nairobi, Oxford University Press, 1967; *Origins of European settlement in Kenya*, Nairobi, Oxford University Press, 1968; *Separate and unequal: cultural interaction, South Africa, 1919-1961*, Auckland, Heinemann Educational Books, 1976; *Europe and southern Africa*, Auckland, Heinemann Educational Books, 1978]

7. T Bentley, *Pakeha Maori: The extraordinary story of the Europeans who lived as Maori in early New Zealand*, Auckland, Penguin Books, 1999

8. A Salmond, *Two Worlds: First Meetings Between Maori and Europeans 1642-1772*, Auckland, Viking, 1991; *Between Worlds: Early Exchanges Between Maori and Europeans 1773-1815*, Auckland, Viking, 1997

9. Salmond, *Between Worlds*, pp 518-533

10. *Ibid*, ch 9 ('The Hunt for Flax'), ch 15 ('Te Pahi, Governor King, George Bruce and Atahoe')

duction of potato, pigs, maize and other new commodities. Thus the socio-economic adaptation of certain aspects of Maori societies as a result of commerce began some sixty years prior to colonisation.

Hapu of Te Taitokerau, especially those of the Bay of Islands, would have been more frequently in contact with various aspects of Pakeha trade and commerce than hapu elsewhere. Sealers, whalers and timber merchants, however, visited many parts of the islands. Whaling in particular led to the establishment of a number of permanent or semi-permanent stations. By 1840 J S Polack, a contemporary enthusiast for amalgamation, wrote eloquently about the benefits of the burgeoning commerce for Maori:

The most pleasurable devotion of time, is no longer the dance of love or war; but barter. ... This new passion with the New Zealander may be regarded as the primary cause of his progression, from uncivilization to a new moral state of existence.¹¹

1.1.2 Christianity

Christianity was the second agent of European civilisation to arrive. Well-travelled Maori such as Ruatara of Hikutu from the Bay of Islands, who had sailed to Britain as well as to New South Wales on several occasions, played a leading role in assisting English missionaries to begin their work in New Zealand in 1814.¹² The various interactions flowing from commercial activities would have impacted on Maori and no doubt would have called for some adjustments in the conceptual frameworks of Maori knowledge systems in order to make sense of the arrival of shiploads of strange people, animals and goods. The nature of religious conversion sought by missionaries for the Anglican, Catholic and Wesleyan forms of Christianity entailed cultural re-alignments of an entirely different nature. The work of missionaries was necessarily and intentionally subversive of Maori knowledge systems and cultural practices, and assumptions of European cultural superiority were shared by the British, French and German men and women who established these missions. No doubt that was one of the reasons that commerce between Maori and Pakeha continued to flourish in the two decades after 1814 but that conversions to Christianity were few and far between. In the 1830s, however, there was a trickle and then a flood of religious conversions and Christian baptisms.

11. Sorrenson, p 100 citing J S Polack, *Manners and Customs of New Zealanders*, London, 1840, I, p 183

12. Salmond, *Between Worlds*, ch 17 ('Ruatara and Samuel Marsden')

In the decade from 1835 to 1845 the bulk of the Maori population became professing Christians.¹³ Taking on the external expressions of Christian civilisation would not necessarily entail a thoroughgoing rejection of Maori cultural knowledge systems, however much Pakeha missionaries might castigate Maori 'superstitions'. Indeed the syncretic and eclectic nature of many Maori religious movements that developed later on is strong evidence that matauranga Maori did continue to be nurtured and passed on within professedly Christian communities.¹⁴ To this day Maori cultural practices continue to inform the manner and form of religious observances of Maori in many 'mainstream' Christian denominations as well as in the independent Maori churches. Even so, there can be no doubt that the evangelistic work of Christian missionaries – both Maori and Pakeha – and the way of life exemplified by the mission stations must have made a huge impact upon Maori cultural knowledge systems and cultural practices from 1814 onwards and especially from 1835 to 1845.

1.1.3 Receptivity of Maori society

There has been academic debate about the receptivity of Maori societies to European ideas and about the question of whether Maori society became disrupted by early contacts or selectively borrowed from Pakeha and incorporated the borrowings into a substantially intact traditional framework. Professor Ward and most modern scholars have rejected 'both the old Eurocentric view that displacement of Maori culture by "superior" European culture was automatic and inevitable' and assertions that 'change in one area of traditional culture produced changes in the remainder until traditional society in some way "collapsed"'. Ward accepted, however, that epidemic diseases, the increased scale of warfare, new commodities and travel abroad 'meant a disturbance (though by no means a total disruption) of the traditional order, and it created new stresses and anxieties.' A major point advanced by his book was put in these words:

Once they had experience of the wider world, the intellectual curiosity, boldness and willingness to innovate of many Maori was such that they did not want to cling to an unmodified traditionalism. Perhaps this is only another way of saying that the traditional Maori social structure

13. Sorrenson, p 101

14. B M Elsmore, *Like Them That Dream: The Maori and the Old Testament*, Tauranga, Tauranga Moana Press, 1985

and value system were open and adaptive, not rigid or inflexible; and certainly the rivalry to demonstrate mana itself stimulated adventurousness and hence change. In any case the implications for Maori social institutions were very far reaching.¹⁵

The difficulty for the present research project is that the respective role of commerce, Christianity, and colonisation in modifying Maori cultural knowledge systems can not be unwoven from the wefts and warps of cultural interactions over a substantial period of time. Moreover commerce and Christianity had been making their contributions to socio-economic, cultural and political changes for many decades prior to the commencement of colonial rule in 1840. The jurisdiction of the Tribunal and the focus of the research commission are necessarily narrowed down to Crown policies and Crown actions or inactions from 1840 onwards. If one's starting point was the inevitable and fatal impact of European civilisation in undermining and subsuming Maori social formations, however, then there would be no point in carrying out the research. At worst Crown involvement in colonisation may have speeded up the inevitable demise of Maori knowledge systems and cultural practices, but the Crown ought not to be held responsible for the inevitability of the fatal impact upon aboriginal populations caused by contact with European civilisation. There were certainly nineteenth century settler politicians who at time held offices of responsibility and who could see no point in 'elaborate native policies'. Dr Isaac Featherston was one of them. The Maori Ethnological Research Board included in its files the record of a speech by Featherston during the general election of 1866:

Sir I confess I never held any faith in the elaborate native policies which have been at various times propounded by Statesman [sic] in this Colony. I have always adhered to the principle I enunciated twenty years ago – that as it is utterly impossible to preserve the native race from ultimate extermination and from annihilation through their connection with a civilised people, our chief duty consisted not in attempting elaborate theoretical policies but in rendering the dying couch of the race as easy and as comfortable to them as possible. Sir the same course which was a good policy twenty years ago is it appears to me only daily more strength [sic].

15. *Ward, pp 17–18*

Twenty years ago these natives amounted to from eighty to a hundred thousand whilst now how many are they? not more than forty thousand at the outside and in twenty years to come they will be a mere handful left. What then is the use of hatching Native policies for a race which you cannot possibly preserve.¹⁶

Bill Oliver's review of influential Pakeha writers on history and politics from 1888 to 1929 has pointed out a theme of praising the noble intentions of colonists in their promotion of the colonisation project (even while castigating the Treaty of Waitangi as a folly). One of the books reviewed was William Pember Reeves' *The Long White Cloud*. Professor Oliver noted the quaint title for the chapter in which Reeves briefly mentioned the Treaty of Waitangi – 'In the Caudine Forks':

The reference, probably clearer to his contemporaries than to most of us, is to a battle in 321 B.C. in which a Roman army, thanks to the imprudence of its commanders, was trapped and defeated by another Italian tribe, the Samnites, and forced to make a humiliating surrender. Maybe this title was just a classy way of saying 'in a tight spot'; but perhaps we can read more into it. For the Romans, read the British; for the Samnites, the Maori; and for the surrender, the kind of policies reflected in the treaty – perhaps that sounds plausible? The Romans, of course, returned in strength, imposed the rule of law and civilisation, and defeated and absorbed the Samnites. Is that what Reeves is telling us? Is the reality of force hidden behind an allusive title readily accessible only to those familiar with Livy or with a classical dictionary to hand? Pakeha have never been at ease with the fact that their presence depended upon the application of superior force.¹⁷

Moreover as recently as 1995 a fast-selling populist tract has attacked the Treaty as 'a racial time bomb for the future' and condemned Maori culture as 'the culture of a primitive race' by comparison with 'the standards of a vastly more sophisticated ethnic group – Europeans'.¹⁸

It would not be productive for this paper to attempt to assess such derogatory perceptions of Maori knowledge systems and cultural practices. Nor is it possible to unravel the threads of history in order to assess the extent to which commerce and Christianity had irrevocably undermined matauranga Maori and tikanga Maori prior to the commencement of colonial rule. In any case the amended statements of claim filed in sup-

16. Featherston, 21 February 1866, Maori Purposes Fund Board Miscellaneous Papers 1908–17, MS Papers 0189-079, ATL Wellington. [Dr Featherston was a MHR from 1853 to 1871 and Superintendent of Wellington Province 1853 to 1871. He held office as a cabinet minister in 1861 and from 1869 to 1871. He was appointed the colony's first Agent-General in London from 1871 to 1876. Details of parliamentary careers in this and subsequent footnotes is derived from G H Scholefield, *New Zealand Parliamentary Record 1840–1949*, Wellington, Government Printer, 1950]

17. W H Oliver, 'The Treaty In Eclipse: Pakeha history and politics from 1888 to 1929', Massey Memorial lecture, 1998, p 10 [Reeves was a MHR (1887–95) – serving as a minister (1891–95), then represented the government in London as the colony's Agent-General (1895–1905) and the dominion's first High Commissioner (1905–08).]

18. S.C. Scott, *The Travesty of Waitangi: Towards Anarchy*, Dunedin, Campbell Press, 1995

port of the Wai 262 claim point to a right of development. The first amended statement of claim includes these paragraphs:

Te tino rangatiratanga o te Iwi Maori is the authority residing within and exercised by te Iwi Maori o Aotearoa me te Waipounamu/Rekohu prior to the arrival of the colonial government which includes but is not limited to the full and exclusive rights and responsibilities of manaakitanga, kaitiakitanga and tapu and the development of these rights.

Te tino rangatiratanga o te Iwi Maori incorporates a right of development which permits the Iwi to conserve, control, utilise and exercise rights over indigenous flora and fauna me o ratou taonga katoa.¹⁹

The second amended statement of claim (for Ngati Porou) includes these allegations:

5.2 (b) *Breaches of Such Rights:*

failure by the Crown, or its agents, ordinances, acts, regulations, orders, proclamations, notices, instruments, policies, practices, acts or omissions to actively protect the tino rangatiratanga of Ngati Porou and the matauranga mo nga tikanga o Ngati Porou including but not limited to the failure to uphold that tino rangatiratanga, and to ensure the control, access, guardianship, maintenance and fostering, and/or preventing the misappropriation of matauranga mo nga tikanga o Ngati Porou, amongst other by the following:

- ▶ the failure to protect the ongoing development of matauranga mo nga tikanga o Ngati Porou;
- ▶ the subsequent and resulting loss of the effective exercise by Ngati Porou of Ngati Porou tino rangatiratanga in all of its forms; and
- ▶ assimilation and urbanisation policies of successive governments generally.²⁰

1.1.4 Colonisation

It is abundantly clear, therefore, that the Tribunal's inquiry ought not to consider whether the Crown ever attempted to protect what Professor Ward termed 'an unmodified traditionalism'. Regard must be had to the evolutionary changes and developments desired by Maori. Rather the concern is to identify Crown policies, actions and omissions that have

19. First amended statement of claim, 10 September 1997, Wai 262 record of proceedings, doc 1.1(a)

20. Second amended statement of claim, 31 July 1998, Wai 262 record of proceedings, doc 1.1(b)

prejudicially affected Maori knowledge systems and cultural practices without consultation and without obtaining the consent of those whose tino rangatiratanga had been guaranteed in 1840. Prior to 1840 hapu and Maori individuals had significant freedom of choice as to whom they should trade with and upon what terms the commerce was conducted. The political and economic strength of hapu, the demographic superiority of Maori and the advent of musketry in the 1820's ensured that pre-colonial commerce between Maori and Pakeha was mutually beneficial to the trading parties even if it caused significant modifications of tikanga Maori in the course of time. The situation was similar with the influence of Christianity. Religious conversions involved the rejection of ancient duties and belief systems in favour of Christian values derived from an alien culture. Yet in Aotearoa these were not 'conversions' in the face of conquistador military might. Indeed, Maori missionaries carried out much of the successful work of Christian mission.²¹ Colonisation, however, operated more coercively. Especially was this so after the demographic balance tipped so that Maori comprised an ever decreasing minority proportion of the population. Crown colony governance was transformed into representative government and then responsible government of ministries elected by local colonists under the New Zealand Constitution Act 1852. The task of this research report, therefore, is to focus on Crown policies, actions and omissions that prejudicially affected Maori retention of their knowledge systems and of their cultural practices. To what extent did the Crown fail to measure up to the obligations of active protection? As will become clear in many sections of this report, this task is not an easy one.

Among the features of the British civilising mission promoted by colonisation mentioned in Professor Sorrenson's essay are the systematic colonisation programme partially implemented by the New Zealand Company, the Native Land Acts, war and confiscation of land. These colonisation measures are beyond the brief of the present research. He also referred to the Native Schools Act 1867 and the work of Resident Magistrates:

Unlike his counterpart in British territories in Asia and Africa, the R. M. was not an agent of indirect rule, but a key figure in displacing Maori law and customs by English criminal and civil law. The R.M., the Native

21. AK Davidson, *Christianity in Aotearoa: a history of church and society in New Zealand*, (2nd ed), Wellington, NZ Education For Ministry, 1999

Land Court judge, the village schoolteacher and the Native Medical Officer, had succeeded the merchants and the missionaries as the prime agents of civilization.²²

1.2 Amalgamation and the Young Maori Party

Yet, in accounting for the continued application of assimilation policies in New Zealand when they were tempered or abandoned elsewhere, Professor Sorrenson reaches a conclusion that poses a significant conundrum for the writing up of this report:

[T]here remained in Maori responses in the later nineteenth century sufficient to persuade Europeans that assimilation was indeed coming about. ... More important, in the later stages of the wars several Maori leaders allied with the Europeans in the pursuit of rebel guerilla leaders. These faithful allies could not be excluded from the post-war settlement; several of them became Maori M.Ps. But the future did not rest entirely in their hands. At the end of the century a new Maori elite emerged from the church secondary schools and universities. Their efforts for Maori health and land reform coincided with the revival of Maori population in the early years of the twentieth century. Again it was plausible for Europeans to believe that their assimilation policy was working; now it seemed to have the enthusiastic support of a new Maori elite.²³

What is more, some members of this 'enthusiastic' Maori elite reached high office as ministers of the Crown. It is therefore difficult to separate out 'Crown actions or inactions which affected Maori cultural or knowledge systems' from 'Maori responses to them' as stipulated in the research commission. Some of the Crown actions were themselves one of the Maori responses to the predicament faced by Maori as they considered how to survive and to sustain themselves in a country and an economy now dominated by Pakeha.

22. Sorrenson, p 107

23. Ibid, p 108

1.3 New Zealand Race Relations

James Belich has noted the importance of a range of nineteenth century European opinions about Maori and their future to an understanding of the legend of New Zealand race relations:

In an age without knowledge of bacterial and viral infection and immunity, there was a strong tendency to attribute [the decline of aboriginal populations], not merely to practical factors such as disease and alcohol, but also to more mysterious causes.²⁴

The 'more mysterious causes' included the views of racial determinists of a polygenist tendency for whom the inferior state of the 'dark races' was unchangeable. Then there were social Darwinists who assumed the survival of the fittest and who also assumed that Europeans were the fittest of all the races in the world. Thus Professor Belich quotes from a scientific paper published in 1882 by the New Zealand Institute. This paper by Alfred K Newman was read to the Wellington Philosophical Society on 22 January 1882. It contained a lengthy discussion on prevalent diseases and an analysis of statistics on death rates. According to Newman, who later served as a member of Parliament for many years, 'imported diseases have not been the chief causes leading to the disappearance of the Maori'. Rather, he opined, 'All over the world we see some races progressive, some stationary, others decaying'. Unsurprisingly, the Anglo-Saxon race was 'rapidly progressing', the French 'seem nearly stationary' and the Maori race was certainly decaying.²⁵ Thus Newman reached a firm conclusion, expressed in a matter of fact manner, on the inevitable extinction of the Maori race. Belich has highlighted the concluding sentences of the address:

Taking all things into consideration, the disappearance of the race is scarcely subject for much regret. They are dying out in a quick, easy way, and are being supplanted by a superior race.²⁶

It should be noted that the New Zealand Institute, which published this scientific prognostication, was the forerunner of the prestigious Royal Society of New Zealand. In the words of the Governor who served as the founding President of the Institute, Sir George Bowen, it was 'founded and endowed by the wisdom and liberality of the Colonial Legislature' pursuant to the New Zealand Institute Act 1867, a public Act of Parlia-

24. J Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Penguin Books, 1988, p 323

25. A K Newman MB, MRCP, 'A study of the Causes leading to the Extinction of the Maori', *Transactions and Proceeding of the New Zealand Institute*, vol 14, 1882, p 447 at pp 463, 469, 477 [Newman was a MHR, 1884–1896 and 1911–1922; a MLC, 1923–1924 – see J Stenhouse, 'A K Newman: Doctor, businessman, ethnologist, politician', *DNZB*, vol 3, pp 358–359]

26. *Ibid*, p 477 quoted in Belich, p 299

ment.²⁷ Thus scientific thinking such as Newman's was given credibility at that time by a body created by Act of Parliament, presided over by the Queen's representative in the colony and financially supported by the Government.

Monogenist thinking, including the legend of the Aryan Maori, was an antidote to the legend of the Dying Maori but both encouraged an assimilationist view of the Maori future for those who did not die. When the Maori population began to increase steadily from about the turn of the twentieth century, there arose what Belich called 'the legend of New Zealand race relations':

This emphasises inevitability ... and presents a pattern of nineteenth-century race relations which is like a simple slope – short, straight, and for Maori, downward. From this nadir the Maori are said to have been hauled by more enlightened Pakeha policy and a modern organization of their own – 'the Young Maori Party' – which itself apparently advocated Maori-European amalgamation.²⁸

Counterpoised to that type of legend, with respect to the New Zealand Wars that were the focus of his study, Belich suggested a revisionist historiographical position:

British aspirations as the agent of change; durable Maori independence, protected by military power, as the agent of stability; and the possible connections between this and Maori social and cultural resilience in the twentieth century.²⁹

For Professor Belich this perspective is important because according to him we ought not to ask how Maori society was damaged, but how it survived. It would seem evident that the presentation of the Wai 262 claim is itself an example of Maori social and cultural resilience, and yet the research commission for this report does require a review of some of the evidence on how Maori society was damaged. In carrying out a review of the evidence, it is suggested that the primary focus must be on how Crown policies facilitated 'British aspirations as the agent of change'. Moreover the diminution of Maori independence as time went by reduced the capacity of Maori social formations to strive for stability. Yet the fact remains that on the topics that are at the core of the present research commission there was often considerable ambivalence among Maori as to the merits or otherwise of many Crown policies. Even if poli-

27. G Bowen, 'Inaugural Address (4 August 1868)', *Transactions and Proceedings of the New Zealand Institute*, vol 1, 1868, Wellington, Government Printer, 1875, p 9. Section 3 of the 1867 Act empowered the Governor in Council to appoint and pay the salary of the Superintendent of the Geological Survey. Section 14 stipulated that general current expenses were to be provided for in the annual estimates laid before the House of Representatives.

28. Belich, p 300

29. *Ibid*, p 301

cies might be said to have prejudicially affected matauranga Maori and even if they advanced amalgamation or assimilation to Pakeha values and cultural preferences, there were a number of prominent Maori leaders who openly supported just such an approach. Indeed on occasion they were the ministers of the Crown who actually crafted and implemented these policies. Of course, at the same time there were a wide range of quite different responses from other Maori – including indifference to government-sponsored reform initiatives and avoidance of new legal obligations. Sometimes there were instances of passive non-compliance and outright resistance from Maori leaders who operated outside the structures of the government. This report must attempt to provide some historical understanding of these various Maori responses to Crown policies on education, health, language and other matters of critical importance for Maori knowledge systems and cultural practices. The written record available to the researchers is rich in material on Crown policies and also includes examples of emphatic Maori protests and acts of resistance. Less can be said about passive non-compliance although unwillingness in some areas to establish and support Native schools, for example, would be an observable instance of passive non-compliance. The main focus, however, must be on the Crown policies themselves and thus it is first necessary to paint the canvas of the broad outlines of general government policy affecting Maori cultural practices and knowledge systems from 1840 to the present day.

1.4 Preparing Crown Policy on Amalgamation

Peter Adams and Mark Hickford are New Zealand scholars a generation apart who have carefully perused the Colonial Office records on the annexation of New Zealand during research for doctoral theses examined at the University of Oxford. Both of them stress the significance of a report on New Zealand by Captain William Hobson of HMS *Rattlesnake* prepared in 1837 at the instance of the Governor of New South Wales.³⁰ By early 1838 some form of imperial intervention in New Zealand had been sanctioned in principle. As Dr Adams posed the problem faced by the few officials in the Colonial Office concerned with the matter, the government 'had avoided shipwreck in the Scylla of the New Zealand Association and was now trying to pull clear of the Church Missionary Society

30. P Adams, *Fatal Necessity: British Intervention in New Zealand 1830–1847*, Auckland, Auckland University Press/Oxford University Press, 1977, p 123; M Hickford, 'Making "territorial rights of the natives": Britain and New Zealand, 1830–1847', D Phil thesis, University of Oxford, 1999, fols 112–114

Charybdis' but Lord Glenelg, the secretary of state, 'was steering with all the irresolution of an indecisive politician.'³¹ The foundation for an alternative policy was provided by Captain Hobson's report, and, of course, he was later invited to become the Consul and Lieutenant Governor for the proposed new British dependency of New South Wales. As Dr Hickford notes, however, Hobson's opinions regarding Maori were rather reminiscent of co-existing Association sentiments:

In reporting to your Excellency my views and observations on the social condition of the New Zealanders I cannot repress a feeling of deep regret that so fine and intelligent a race of human beings should in the present state of general Civilization be found in Barbarism, for there is not on earth a people more susceptible of high intellectual attainments or more capable of becoming a useful and industrious race under a wise Government.³²

That colonisation was explicitly intended to elevate New Zealanders to the benefits of general civilisation was spelt out in Lord Normandy's 1839 instructions to Hobson. Elsewhere I have drawn attention to the importance of these instructions in the development of modern Treaty jurisprudence. The paramount Treaty principle of good faith as propounded by the Court of Appeal in 1987 and the principle of active protection elaborated by the Waitangi Tribunal in the *Orakei Report*, *The Ngai Tahu Report*, and *The Muriwhenua Land Report* have been directly sourced to the 1839 instructions.³³ The focus of attention by the courts and the Tribunal has been on Crown policies relating to land and the necessity of ensuring that sufficient land was to be retained by Maori for their comfort and subsistence. Generally overlooked, in the favourable consideration of the Normanby instructions, have been those sections of Colonial Office policy that urged the imposition of Britain's civilising mission as an adjunct of colonisation. The royal instructions asserted:

There are yet other duties owing to the aborigines of New Zealand, which may be all comprised in the comprehensive expression of promoting their civilization, – understanding by that term whatever relates to the religious, intellectual, and social advancement of mankind. For their religious instruction, liberal provision has already been made by the zeal of the missionaries, and of the missionary societies in this kingdom; and it will be at once the most important, and the most grateful of

31. Adams, p 122

32. Hickford, fol 114 citing Hobson to Bourke, 8 August 1837, CO 209/2, fols 34–34a, PRO [This dispatch is published in BPP, vol 3, p 24]

33. D V Williams, 'Te Kooti tango whenua': *The Native Land Court 1864–1909*, Wellington, Huia Publishers, 1999, pp 102–103 – citing *N Z Maori Council v Attorney-General* [1987] 1 NZLR 641 at p 682 (Richardson J) and pp 692–693 (Somers J); Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim [Orakei Report]* (2nd ed), Wellington, G P Publications, 1996, pp 137–147; Waitangi Tribunal, *The Ngai Tahu Report*, Wellington, Brooker and Friend, 1992, pp 219, 233–240, 251–255, 270–272; Waitangi Tribunal, *The Muriwhenua Land Report*, Wellington, G P Publications, 1997, p 117

your duties to this ignorant race of men, to afford the utmost encouragement, protection, and support, to their Christian teachers. I acknowledge, also, the obligation of rendering to the missions such pecuniary aid as the local Government may be able to afford, and as their increased labours may reasonably entitle them to expect. The establishment of schools for the education of the aborigines in the elements of literature, will be another object of your solicitude; and until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice, and of cannibalism, must be promptly and decisively interdicted.³⁴

The notion that observance of their customs was to be 'carefully defended' was thus seen to be a qualified and temporary measure until Maori were 'brought within the pale of civilized life'. There is no evidence, however, that the transitional and temporary nature of the Crown's respect for Maori law and traditional knowledge systems was communicated by Crown officers in 1840 when they made representations to Maori during debates on whether or not Maori should adhere to the Treaty of Waitangi.

1.5 Crown Representations in 1840

It has been suggested that rather too much weight has been accorded to the written terms of the Treaty of Waitangi when compared with the lack of attention which has been given to contemporaneous oral representations by Crown officers.³⁵ Certainly it is the case that much more is known about the written preamble and articles of the Treaty of Waitangi than is known about other statements by Crown officers and agents to Maori in 1840. At hui considering whether or not to adhere to the Treaty, during the nine months that Treaty copies were taken around the New Zealand islands in 1840, key issues of debate and discussion included concerns as to the status of Maori customary law and the role of chiefs in the new colonial order. The assumption that those oral discussions should be of less weight than written material is a modern monocultural

34. Normanby to Hobson, 14 August 1839, BPP, vol 3, pp 87–88

35. D F McKenzie, *Oral Culture, Literacy and Print in Early New Zealand: the Treaty of Waitangi*, Wellington, Victoria University Press, 1985

prejudice similar to the notion that it was only the English law of tenure which applied in colonial land law. It is rather more compelling to presume the opposite. To interpret what has gone on between outsiders and members of an indigenous society with a predominantly oral culture, more weight should be given to the spoken than to the written word in seeking to ascertain the meaning and scope of any agreements reached. In the interaction that occurred between an indigenous society and a European imperial government, only the European side kept a written record. The least that one might have expected in terms of good faith principles is that oral representations by European officials should have been carefully recorded at the time and treated as matters of the utmost importance.

It is not surprising that Maori scholars such as Henare, Kaa and Jackson have argued for the vital importance of a 'protocol' to the Treaty of Waitangi or 'fourth article'.³⁶ They are referring to an oral statement made on Hobson's behalf in English and Maori at Waitangi in which the imperial consul guaranteed protection of ritenga Maori (Maori custom) immediately prior to the first signings of the written form of the Treaty. The statement was written down and recorded by missionary witnesses but was not reported on in Hobson's official dispatches. It has been dismissed by the historian Orange as a verbal commitment given only by chance which amounted to very little.³⁷ The protocol ought to be considered, however, along with a number of other instances of both oral and written promises made during the course of the Treaty's travels in 1840 that expressly guaranteed the Crown's respect for Maori customary rights and that were officially recorded. Ward instances some of them:

The officials, for their part, considered that by recognising customary Maori land claims in the Treaty they had taken all necessary measures to confirm chiefly privileges. Major Bunbury, Hobson's first military commander, proffering the treaty to Hapuku of Hawkes Bay, stated that it was not the intention of Her Majesty's Government to lower the chiefs in the estimation of their tribes, and that his signature being now attached to the treaty would only tend to increase his consequence by acknowledging his title. In order to avert suspicion of the Treaty, Hobson also issued a circular letter repudiating suggestions that the Maori would be degraded by the advent of British authority, and telling the chiefs that the Governor will ever strive to assure unto you

36. Te Runanga Whakawhanaunga i Nga Hahi (M Henare and H Kaa), 'Biblical Understandings of Covenants and Treaties' in A Blank, M Henare and H Williams (eds) *He Korero Mo Waitangi*, 1984, Ngaruawahia, Te Runanga o Waitangi, 1985, pp 171–178; M Jackson, 'Criminality and the Exclusion of Maori', *Victoria University of Wellington Law Review*, 20, (Monograph 3, 1990), pp 32–33

37. C Orange, *The Treaty of Waitangi*, Wellington, Allen and Unwin/Port Nicholson Press 1987, p 53

the customs and all the possessions belonging to the Maoris. Finally, missionary George Clarke was appointed Chief Protector of Aborigines and instructed to assure the Maori that their native customs would not be infringed, except in cases that are opposed to the principles of humanity and morals.³⁸

Justice Durie (as he now is) in a 1996 university address and the Waitangi Tribunal in a 1997 report have come down clearly in favour of the view that Crown representations in 1840 on respect for Maori custom are important for Treaty jurisprudence. Hobson's 'fourth article' statement at Waitangi is one of the representations which have been highlighted. Durie said in his address:

In any event a mono-legal regime had not been contemplated during the execution of the Treaty of Waitangi. On the contrary, Maori were specifically concerned that their own laws would be respected. There was no lack of clarity in their position that they were not about to give away the laws of their forebears. At Waitangi the debate became mixed with a dispute amongst the representatives of the missionary churches. There the governor's response, as translated to English, was read out for him as follows:

The Governor says the several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Maori custom, shall be alike protected by him.

This is sometimes called the fourth article. The governor had adjourned to consider the matter and had delivered a written response.

By the time the Treaty reached Kaitaia however, the debate, and the Maori insistence on respect for their own law, had crystallised. Correctly in my view, Maori identified the issue as one not just of law but authority. Nopera Panakareao, the leading rangatira of Muriwhenua, put it this way in the Treaty debate at Kaitaia that, the shadow of the land goes to the Queen but the substance remains with us.

Due to poor health the governor could not attend at Kaitaia but there Willoughby Shortland conveyed the Governor's explicit message:

The Queen will not interfere with your native laws or customs.

American precedent is undoubtedly correct in asserting that in treaties with indigenous people of oral tradition, verbal promises are as much a part of the Treaty as that subscribed to in the documentation. It

38. Ward, p 45

cannot then be said, as a matter of fact, that the Treaty introduced the law of England if the corollary is that Maori laws then ceased to be applicable. The Treaty is rather authority for the proposition that the law of the country would have its source in two streams.³⁹

Similar arguments appear in section 4.2 of the Waitangi Tribunal's *Muriwhenua Land Report*. The Tribunal acknowledged and gave weight to the importance of oral statements made by speakers for both partners in the Treaty debates, including Tamati Waka Nene's admonition to the Lieutenant Governor: 'You must preserve our customs and never permit our lands to be wrested from us'.⁴⁰

1.6 Instructions for the New Colony

The annexation of New Zealand as a dependency of New South Wales was shortlived. In December 1840 instructions were despatched to the governor of the newly erected separate colony. Relevant for present purposes was the instruction that Hobson was authorised to constitute a legislature with power to enact ordinances for the peace, order, and good government of the colony. 'The aborigines of New Zealand will, I am convinced be the objects of your constant solicitude' wrote the secretary of state, Lord Russell. His view of 'solicitude' was that Hobson was 'to look rather to the permanent welfare of the tribes now to be connected with us, than to the supposed claim to the maintenance of their own laws and customs.'⁴¹ Hobson chose not to inform Lord Russell that he had already most publicly and solemnly pledged Her Majesty's guaranteed protection for that very same 'supposed claim'. This is perhaps not surprising in the light of his 1837 assessment, quoted above, of the potential for Maori to become civilised. Somewhat paradoxically he argued in October 1840 for the urgent need to provide military protection for the authority of the government and the protection of settlers even though he noted that 'the native population offer us but trifling interruption'. In explaining this paradox, Hobson asserted that the habits of Maori 'are so inveterately opposed to those of civilised life, and their practices so repugnant to the customs of Englishmen, that we can scarcely hope to preserve such harmony when the settlers become more numerous.'⁴² It is apparent that he was fully committed to civilising Maori along the lines of the instructions

39. E T Durie, 'Will the Settlers Settle? Cultural Conciliation and Law', *Otago Law Review*, vol 8, 1996, pp 460–461 [Durie's source of the 'fourth article' text is W Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*, Wellington, 1890, p 32]

40. *The Muriwhenua Land Report*, pp 112–114 [The Tribunal gives a source for Shortland's statement at Kaitaia: 'John Johnson's journal, 28 April 1840, Auckland Public Library'. See also T L Buick, *The Treaty of Waitangi*, New Plymouth, Thomas Avery, 1936, p 191 quoting a written circular of 27 April 1840: 'That the Governor will ever strive to assure unto you the customs and all the possessions belonging to the Maori:'] See also New Zealand Law Commission, *Maori Custom and Values in New Zealand Law*, Wellington, NZ Law Commission Study Paper 9, 2001, pp 72–74

41. Russell to Hobson, 9 December 1840, BPP, vol 3, p 149

42. Hobson to Russell, 15 October 1840, BPP, vol 3, p 235

he had received from Lord Russell. He was much less interested, it seems, in implementing his own clear and public guarantees for the continuance of Maori custom law that had been issued in conformity with the earlier instructions he had received from Lord Normanby to carefully defend Maori customs.

Lord Russell made it clear to Hobson that he was highly impressed by a report recently to hand from Captain George Grey in South Australia 'Upon the best Means of Promoting the Civilization of the Aboriginal Inhabitants of Australia'. According to the secretary of state, this report was 'an illustration of the manner in which men far more ignorant of the arts of civilized life than the New Zealanders may be won over', and he attached it as enclosure No 5 to Hobson's formal instructions.⁴³ Among Grey's thirty seven points were these:

I would submit, therefore, that it is necessary from the moment the aborigines of this country are declared British subjects, they should, as far as possible, be taught that the British laws are to supersede their own, so that any native who is suffering under their own customs may have the power of an appeal to those of Great Britain, or, to put this in its true light, that all authorized persons should, in all instances, be required to protect a native from the violence of his fellows, even though they be in execution of their own laws.

So long as this is not the case the older natives have at their disposal the means of effectually preventing the civilization of any individuals of their own tribe, and those among them who may be inclined to adapt themselves to the European habits and mode of life, will be deterred from so doing by their fear of the consequences that the displeasure of others may draw down upon them.

So much importance am I disposed to attach to this point, that I do not hesitate to assert my full conviction, that whilst those tribes which are in communication with Europeans are allowed to execute their barbarous laws and customs upon one another, so long will they remain hopelessly immersed in their present state of barbarism: and however unjust such a proceeding might at first sight appear, I believe that the course pointed out by true humanity would be, to make them from the very commencement amenable to the British laws, both as regards themselves and Europeans; for I hold it to be imagining a contradiction to suppose, that individuals subject to savage and barbarous laws, can rise into a state of

43. Russell to Hobson, 9 December 1840, BPP, vol 3, p 151

civilization, which those laws have a manifest tendency to destroy and overturn.⁴⁴

1.7 Fitzroy Ordinances

After the death of Hobson, Captain Robert FitzRoy was appointed Governor. He was less convinced than either his predecessor or his successor, Grey, of the need to embark on an immediate frontal assault upon Maori laws, customs and cultural knowledge systems. Yet FitzRoy too was quite clear that any partial recognition of Maori customs and values would be an interim measure only. This was openly set out in two Ordinances enacted during his tenure as governor that did incorporate and acknowledge some elements of Maori custom. These measures contained most explicit formulations of the longer-term Crown policy to promote assimilation and amalgamation of the races. There was an idealistic element in these policies, but it was a paternalistic idealism that conceived of amalgamation as a one-way process of civilising Maori. The only debate was as to whether Crown policy should attempt the immediate elimination of Maori laws and customs or should adopt a more gradual approach. It was assumed as axiomatic that there was nothing that colonists might learn from tikanga Maori.

The preambles to these two ordinances enacted in 1844 were as follows. The Native Trust Ordinance commenced:

WHEREAS The Native people of New Zealand are by natural endowment apt for the acquirement of the arts and habits of civilized life, and are capable of great moral and social advancement: And whereas large numbers of the said people are already desirous of being instructed in the English language and in English arts and usages: And whereas great disasters have fallen upon uncivilized nations on being brought into contact with Colonists from the nations of Europe, and in undertaking the colonization of New Zealand Her Majesty's Government have recognised the duty of endeavouring by all practicable means to avert the like disasters from the Native people of these Islands, which object may best be attained by assimilating as speedily as possible the habits and usages of the Native to those of the European population:

44. Grey to Russell, 4 June 1840, BPP, vol 3, p 166

In a similar vein, the Native Exemption Ordinance began with this recital:

WHEREAS it is greatly to be desired that the whole aboriginal native population of these Islands, in their relations and dealings amongst themselves, be brought to yield a ready obedience to the laws and customs of England: And whereas this end may more speedily and peaceably be attained by the gradual than by the immediate and indiscriminate enforcement of the said laws, so that in course of time, the force of ancient usages being weakened and the nature and administration of our laws being understood, the Native population may in all cases seek and willingly submit to the application of the same:

The former of these ordinances was never gazetted and thus did not come into force as law. The latter came into force but met a storm of public disapproval from colonists in New Zealand and private disapproval, but not disallowance, from Colonial Office officials.⁴⁵ As it was repealed in 1846, there was no opportunity to assess its impact on Maori.

1.8 Grey On Amalgamation

FitzRoy's gradualist approach was immediately repudiated by his successor, Grey. With the Resident Magistrates Courts Ordinance 1846 Grey began to implement policies, along the lines of his 1840 report, that were intended to ensure rapid progress towards the assimilation of Maori into 'the arts and habits of civilized life'. Being in line with his own thinking developed in South Australia, Grey was perfectly happy to satisfy the demands from the New Zealand Company and the House of Commons for an 'equal and impartial administration of the law'.⁴⁶ The governors may have differed over the appropriate timetable for implementation of Crown policy. Nevertheless both Fitzroy's and Grey's Ordinances are of importance for present purposes. They illuminate the unambiguous determination of early colonial law and policy to promote amalgamation of the races and to eliminate tikanga Maori as a source of law or a basis for governance principles. Instead, Crown policy openly promoted the replacement of Maori cultural knowledge systems with the norms and values of British culture and British conceptions of civilisation. Dr

45. Ward, pp 65–68

46. Adams, pp 224–226

Hickford's description of Grey's policies in his first term as governor is that:

Grey was also endeavouring to transform certain Maori from subjects of *ius gentium* into subjects of municipal law – a process of 'amalgamation' that could be attended by his propagandistic reportage on 'improving' Maori. That is, he could proceed to present himself as nourishing Maori incorporation into an empire through measures of 'improvement', instructing certain Maori as labourers, constructing thoroughfares, establishing savings banks in which Maori, such as the released and tamed Te Rauparaha, could deposit monies. He sanctioned Kemp's translation of *Robinson Crusoe* into Maori, 'to give natives a taste for reading'. ... 'Amalgamation' represented a way of extricating certain Maori from a universe of *ius gentium* and of presenting the willingness of Maori to comply with imperial projects of 'discipline' and introduced legal norms within New Zealand.⁴⁷

Hickford then quoted from an 1847 report by Grey:

Commerce and agriculture are rapidly expanding. Improved methods of cultivation adopted by the natives – the large quantities of wheat they now produce, and the erection of mills throughout the country, some of which are their own property will be too valuable to permit them to engage in war.⁴⁸

Grey's prophecy that Maori would be unwilling to engage in further warfare proved to be dimly inaccurate during his second term as governor in the 1860s. He was perhaps incapable of understanding that Maori might wish to engage in the modern economy for their own reasons and indeed to strengthen their hapu structures, rather than to be subsumed as amalgamated members of the British empire and its civilisation. Many of Grey's policies are not pertinent to this paper with its restricted focus. The role of Resident Magistrates from 1846 to 1894 as district officers responsible for bringing Maori within the scope of English law and colonial authority may be relevant to the Wai 262 claim but it is beyond the scope of the present research commission. So too are Grey's 'flour and sugar' policies, his gifts to certain Maori of ploughs, mills, seed, livestock and schooners, and his ambivalent treatment of chiefs.⁴⁹ Central to his amalgamation policies, however, and to the focus

47. Hickford, fol 299

48. Ibid, citing Grey to Earl Grey, 25 March 1847, CO 209/51, fols 255a–276, PRO [This dispatch is published in BPP, vol 6, Command 892, p 6. The full published quotation differs a little from Hickford's PRO source: 'Commerce and agriculture are rapidly extending the improved methods of cultivation adopted by the natives; the large quantities of wheat they now produce, and the erection of mills throughout the country, some of which are their own property, are gradually rendering them an agricultural population, whose property will be too valuable to permit them to engage in war; and although there are still some warlike spirits who may occasion partial disturbances, I do not see any probability of any extensive outbreak ever again taking place.']

49. Ward, pp 86–87

of this report, were Grey's policies on education and on the establishment of hospitals.

Education policies will be the subject of more detailed attention in chapter 3. At this point it is necessary to emphasise the importance of the Education Ordinance 1847. That ordinance was a crucial legislative foundation for implementing the amalgamationist policies of the Crown. New Zealand was not to be a pluralist society. There was to be only one official language and that would be English. These policies were to be followed rigorously in the ensuing decades. They continue to impact on Maori society to the present day. Missionary societies had established schools from 1816 onwards that were avowedly committed to the assimilation of Maori into European values, particularly by conversion to Christianity. However, the medium of instruction in those schools was the Maori language. A great deal of missionary effort was expended in devising a written form of Maori and then in the translation of English prayers and services into Maori and books of the Bible from Hebrew and Greek into Maori. The significant rate of literacy among Maori, which was a feature in many hapu by the time of the Treaty of Waitangi, was literacy in the Maori language.⁵⁰ Many thousands of copies of printed books written in Maori were in circulation prior to 1840.⁵¹ Even if the functional literacy rate, like the rate of religious conversion, may have been exaggerated by publicists for the missionary societies, a desire for literacy in Maori was nevertheless an important feature of Maori life at the outset of colonial rule.⁵² It is most important to stress therefore that the Education Ordinance 1847 now required the mission schools to change course and to provide instruction to Maori in the English language. Section 3 read:

3. In every school to be established or supported by Public Funds, under the provisions of this Ordinance, Religious Education, Industrial training, and instruction in the English language, shall form a necessary part of the system to be pursued therein.

As with education, so with health. Grey's provision in 1847 for the establishment of hospitals in Auckland, Wellington, Wanganui, and Taranaki was never presented simply as a disinterested action of government for the alleviation of suffering and ill-health. Although the hospitals were established in settler townships they were 'for Europeans and natives' and the 'medical gentleman already selected to preside over two of them, are both by education, manners, and position in society, qualified

50. H Lee and G Lee, 'The Politics of Maori Education: History, Policies, Conflicts, and Compromises', *Waikato Journal of Education*, vol 1, 1995, pp 95–96

51. H W Williams, *A bibliography of printed Maori to 1900*, Wellington, Dominion Museum, 1924 [reprinted Wellington, Government Printer, 1975], pp 1–12

52. McKenzie, pp 14–19

to gain the regard and esteem of the natives.' Consistent with his amalgamationist outlook, Grey anticipated that 'the establishment of these mixed hospitals for Europeans and natives, under such careful superintendence, will produce very beneficial effects on the native race.'⁵³ Later in his first term as governor, Grey reflected on the role of these hospitals:

I think it impossible therefore to deny that, viewing it simply as a question of relief to the suffering, the maintenance of these hospitals is a matter of paramount importance to the native race; whilst, if the question is also viewed as a means for the diffusion of civilization, by showing the natives the value of and accustoming them to European houses, food, and comforts, and also as a means of gaining their attachment to the British Government and British race, I think it becomes still more evident that the proper and effectual maintenance of these hospitals is a matter of great importance; and now that the first expense of building and furnishing them has been incurred, whilst considerable endowments have also been bestowed upon them, their future maintenance will really involve a very trifling charge upon the public funds.⁵⁴

As the period of Crown colony government drew to a close, Grey was extraordinarily optimistic about the success of the amalgamation policies he had pursued so vigorously during his term as governor. In February 1852 he drew Earl Grey's attention to newspaper accounts of races and sports at Wanganui, Wellington and the Wairarapa Valley where Maori were 'mingling and competing on equal terms with the Europeans'. This illustrated, he thought:

the amalgamation of the two races inhabiting these islands, which is rapidly taking place, as evidenced by the considerable Maori population which each European settlement has now attracted to its vicinity, or contains mixed up with its white inhabitants, in which cases both races already form one harmonious community, connected together by commercial and agricultural pursuits, professing the same faith, resorting to the same courts of justice, joining in the same public sports, standing mutually and indifferently to each other in the relation of landlord and tenant, and thus insensibly forming one people.⁵⁵

53. Grey to Earl Grey, 4 February 1847, BPP, vol 5, pp 640–641

54. Grey to Earl Grey, 13 February 1852, BPP, vol 9, Command 1779, p 73

55. Grey to Earl Grey, 7 February 1852, BPP, vol 9, Command 1779, p 71

1.9 Settler Governments on Amalgamation

The constitutional transitions following the imperial legislature's enactment of the New Zealand Constitution Act 1852 saw the transfer of governmental power from Crown appointed officials to responsible ministers drawn from the settler controlled General Assembly. These constitutional re-arrangements were carried out without consultation with Maori and they were of considerable importance for the future nature of the relationship between the Crown and Maori. Nevertheless, with respect to Crown policies on amalgamation of the races and assimilation of Maori into the cultural norms of British civilisation there was a continuity of government policy.

The governor had had the power under chapter XIV of the 1846 instructions, to proclaim "Aboriginal Districts" where 'laws, customs, and usages of the aboriginal inhabitants, so far as they are not repugnant to the general principles of humanity' might be maintained.⁵⁶ Given Grey's views on amalgamation, it is not surprising that the power was never exercised. Likewise, the settler-elected government could have arranged for Letters Patent to create Native districts under section 71 of the 1852 Constitution Act. This power was never utilised, although technically it remained in force until repealed by the Constitution Act 1986. The failure to proclaim Native districts was not due to a lack of interest in section 71 on the part of Maori. On the contrary, there were recurring expressions of desire for self-government and for the continued application of tikanga Maori in districts to be proclaimed under section 71. This desire featured in much correspondence with the colonial government and also in petitions to Queen Victoria by Hirini Taiwhanga of Ngapuhi and Matutaera Tawhiao, the Maori King in the 1880s.⁵⁷ The colonial government firmly rebuffed such requests.⁵⁸

56. 'Respecting the Aborigines of New Zealand'; BPP, vol 5, p 543 [The Act, Charter and Instructions of 1846 are collated and annotated in *Ordinances of New Zealand, 1841–1849*, Wellington, Colonial Government, 1850, pp 24–64; ch XIV is at pp 63–64]

57. Ward, p 287 quoting from an 1884 letter, Tawhiao to Bryce, MA 13/93, NO 84/359

58. Ibid, pp 297–298 citing Ballance minute, 26 January 1885 and Attorney-General's opinion, 27 February 1885 in MA 23/4, NO 85/1961; MA 23/4, NO 86/1101. Also Ballance to Te Wheoro and Tuhaere, AJHR, 1885, G-1, pp 27–29

Meanwhile, in the Native Schools Act 1858 the settler government continued support for the mission schooling system along the lines established by the Education Ordinance 1847. That Act repeated the earlier Ordinance's explicit emphasis on English language instruction and on industrial training for pupils in state supported mission schools. The events of the war period in the 1860s, however, led to a drastic collapse in Maori support for education at most of the missionary supervised schools. As a result Parliament enacted the Native Schools Act 1867 to provide for a new system of secular schooling for Maori. These schools

were required to continue with the assimilationist goals that appeared in the earlier legislation for mission schools. Thus section 21 stipulated:

No school shall receive any grant unless it is shown to the satisfaction of the Colonial Secretary by the report of the inspector or otherwise as the Colonial Secretary shall think fit that the English language and the ordinary subjects of primary English education are taught by a competent teacher and that the instruction is carried on in the English language as far as practicable

In adopting this provision Parliament reinforced in the area of Maori education the policy laid down a number of enactments and resolutions passed earlier in the 1860s. An 1862 report to Parliament by the Wesleyan Superintendent and school inspector, Henry Taylor, identified a number of serious impediments to progress in 'carrying out the work of civilization among the aboriginal Native race, through the medium of schools'. The first and most serious of these impediments was 'that state of communism in which all kinds of property are held'. He wrote of the need to develop ideas of individual ownership in the classroom. 'In the School-room' he suggested, 'we may gradually train them to a proper perception of the *meum* and *tuum*.'⁵⁹ Then there was the impediment of the Maori language itself:

The Native language itself is also another obstacle in the way of civilization. So long as it exists there is a barrier to the free and unrestrained intercourse which ought to exist between the two races. It shuts out the less civilized portion of the population from the benefits which intercourse with the more enlightened would confer. The School-room alone has the power to break down this wall of partition between the two races. Too much attention cannot be devoted to this branch of Maori education.⁶⁰

The notion that intercourse between the two races must be conducted entirely in the superior language, culture and civilisation of the Europeans could not have been more clearly stated. Taylor was also concerned that 'Native habits of filth and laziness also impede the progress of civilization' and strongly recommended health education in schools.⁶¹

The General Assembly in 1862 was happy to accommodate a number of Taylor's concerns. The Native Land Act 1862, establishing the Native

59. H Taylor, 'Further Report on Native Schools in the Province of Auckland', AJHR, 1862, E-4, p 35

60. Ibid, p 35

61. Ibid, p 36

Land Court, contained a preamble that equated 'the peaceful settlement of the Colony' and 'the advancement and civilization of the natives' with assimilating Maori ownership of land 'as nearly as possible to the ownership of land according to British law'. Moving Maori away from communism towards individual ownership of property was a cornerstone of Crown policy. Then there was a lengthy debate in the House of Representatives on a number of resolutions moved by the member for Ellesmere, J E Fitzgerald. As originally moved there were five resolutions put to the House:

1. That, in the adoption of any policy or the passing of any laws affecting the Native race, this House will keep before it, as its highest object, the entire amalgamation of all Her Majesty's subjects in New Zealand into one united people.
2. That this House will assent to no laws which do not recognize the right of Her Majesty's subjects, of whatever race, within this colony to a full and equal enjoyment of civil and political privileges.
3. That a recognition of the foregoing principle will necessitate the personal aid of one or more Native chiefs in the administration of the Government of the colony, the presence of members of the Maori nobility in the Legislative Council, and a fair representation in this House of a race which constitutes one-third of the population of the colony.
4. That the same principle ought to be respected in the constitution and jurisdiction of all legislative bodies subordinate to the General Assembly, and of all Courts of law within this colony.
5. That a respectful address be presented to His Excellency the Governor, praying that His Excellency will be pleased to cause such steps to be taken as he may be advised will bring the policy above indicated into operation with the least possible delay.⁶²

Members of the House had little difficulty in concurring with the 'entire amalgamation' of all subjects 'into one united people'. The amalgamation policy was embraced by the settler legislators without a division. So too was the theory of equality propounded by the second resolution.⁶³ The resolution seeking support for the presence of Maori in the executive and in the Legislative Council and for 'fair representation' in the House of Representatives for one third of the colony's population was an entirely different matter. The third resolution was voted down after a division and the mover then withdrew the remaining resolutions.⁶⁴ The question of

62. 6 August 1862, NZPD, 1861-63, pp 483-484

63. 7 August 1862, *ibid*, p 510

64. *Ibid*, p 513

Maori representation in the General Assembly is not of immediate concern to this report.⁶⁵ What is of significance is the clear articulation in 1862 of amalgamation of the races as the 'highest object' of governance in New Zealand. The Native Schools Act 1867 was an important step towards that 'highest object'. In chapter 3, it will be noted that the thrust of this policy was carried through until the disestablishment of the Maori Schools system just over a century later in 1969. By that time, assimilation/amalgamation had given way to the integration policy enunciated in the Hunn Report, 1960.

In the area of health policy, the settler governments elected pursuant to the 1852 Constitution Act began to implement policies intended to apply in areas of Maori population distant from the hospitals established by Grey in settler townships during the Crown colony period. The Native Districts Regulation Act 1858 was enacted, according to its preamble, 'in order to promote the civilization of the Native race'. Under this Act the Governor in Council was empowered to make regulations 'on matters of local concernment or relating to the social economy of the Native race'. The list of topics upon which regulations might lawfully be made is most instructive in elaborating the matters of social economy about which Maori were deemed in need of direction in order to progress towards civilisation. Subsections (1)–(6) and (8)–(9) of section 2 concern regulations for best practice management in respect of pastoral farming: cattle trespass, public pounds, boundary fences, cattle branding, diseases amongst cattle, thistles, fires, and dogs. Civilisation, it seems, was firmly equated with the imposition upon Maori communities of European pastoral farming techniques and fencing animals in, rather than allowing papakainga living where animals roamed and it was the crops that were protected by fences. Subsection (7) and (13) dealt with land use right issues as between Maori, public property and common property. The remaining subsections were pertinent to health and housing issues:

- (10) For enforcing the cleansing of houses and other buildings in a dirty and unwholesome state.
- (11) For the suppression of common nuisances.
- (12) For providing for the health and personal convenience of the inhabitants of any Native village pa or assemblage of houses.
- (14) For the prevention of drunkenness.

65. See Waitangi Tribunal, *Maori Electoral Option Report*, Wellington, Brooker's Ltd, 1994

- (15) For the sale removal and disposal of spirituous and fermented liquors, and for the restriction or prohibition of such sale removal and disposal.
- (16) For the suppression of injurious Native customs, and for the substitution of remedies and punishments for injuries in cases in which compensation is now sought by means of such customs.

Resident magistrates and civil commissioners appointed under this Act and the Native District Circuit Courts Act 1858 thus had wide-ranging powers at their disposal. They were given an opportunity to exercise those powers under what were known as the 'new institutions' for the governance of Maori districts that Grey introduced during his second term as Governor in the early 1860s.⁶⁶ Section 6 of the Native Districts Regulation Act made mention of ascertaining 'the general assent of the Native population affected thereby' and the government spoke of its new institutions as 'the Runanga system' – which might indicate a reliance on modalities of tikanga Maori. Nevertheless, it must be emphasised that all powers under the Act were exercised under the surveillance of the Crown appointed Pakeha officials. The sources of their powers were the Act passed by the General Assembly and gazetted regulations made pursuant to the Act by the executive government.

The introduction of the 'new institutions' was accompanied by a proposal to create a network of 20 surgeons whose salaries were calculated to absorb about one-eighth of the budget allocated to the introduction of the 'Runanga system'.⁶⁷ This was the first organised governmental effort to provide for native medical officers (NMOs) to attend to the health needs of Maori. Derek Dow has traced the pattern of distribution of NMOs and the varying degrees of their diligence and effectiveness over the years from 1862 onwards.⁶⁸ There can be no doubt the provision of NMOs was not just a matter of government policy to promote the amalgamation of the races. There were many requests and petitions from Maori calling for the posting of an NMO to their area. The attractions of the new institutions to replace the old was poignantly captured in a waiata included with letters written in 1863 by Te Mokena and Patihana Te Aukomiro of Rangitukia requesting medical assistance for Maori in the Waiapu district of the East Coast. The printed text was in English only:

66. Ward, pp 125–146

67. 'Minute by Governor Sir George Grey on the subject of His Excellency's Plan of Native Government', October 1861, AJHR, 1862, E-2, p 12

68. D Dow, "Specially suitable men?": Subsidized Medical Services for Maori, 1840–1940, *New Zealand Journal of History*, vol 32, no 2, 1998, pp 163–188

A SONG.

Think not, O Governor, that I am two-hearted

No other thought now dwells within me.

One only thing now engages my mind –

The two-united* which have banished evil:

There was nought in the old† (system).

Now I turn to the new.

* Religion and Law. † Maori Law and ‘Tikanga.’⁶⁹

It is not possible to assess from the written records how widespread was the support for this notion that there was ‘nought in the old’. Later reports of Maori frequently resorting to *tohunga* rather than to doctors indicate widespread continuing respect for the old ways. A priori, one would assume that many Maori for a long time (and some Maori to this day) have viewed *tohunga* and doctors as complementary health care providers. The choice of who would be consulted would depend of the presumed nature of the illness, and whether or not ‘*mate Maori*’ or breach of *tapu* issues were thought pertinent, as well as other factors such as cost, travel time and religious beliefs. What the written record does disclose, however, is that there were a very large number of requests from Maori communities to the government calling for the appointment of NMOs; or the subsidising of local doctors to allow them to attend Maori patients; or for improvements in the medical and nursing services in Maori districts. Examples of nineteenth century petitions to Parliament include:

- ▶ a request in 1876 for a medical man in the district from Whangaehu to Turakina and Rangitikei;
- ▶ a petition in 1885 for a NMO in Otaki;
- ▶ petitions in 1895 for a medical practitioner in the Wairarapa, to subsidise a doctor in Whangaroa, for a medical practitioner in Rangitaiki and Whakatane, for a medical practitioner in Pitoone (now known as Petone) and Hutt, and for the appointment of a particular person (not fully qualified apparently) as the medical man to attend Maori in Karioi and Upper Wanganui;
- ▶ another petition in 1897 relating to the Turakina district; a petition in 1899 for an NMO at Uawa and Tokomaru.⁷⁰

It can be seen that such requests came from many different parts of the country. The development of a more coherent health policy for Maori from 1900 onwards, discussed below, did not stop the flow of petitions:

69. Patihana to Grey, 25 March 1862, AJHR, 1863, E4, p 42

70. Petition of Nahona Ahukarama and 43 others, AJHR, 1876, I-4, pp 9–10; J 1, 1899/129 (517), Medical Attendance at Otaki, NA Wellington; J 1, 1900/842 (537), Medical Attendance on Natives in Wairarapa, NA Wellington; J 1, 1905/1514 (598), Whangaroa – NMO, NA Wellington; Petitions 125 and 303/1895, AJHR, 1895, I-3, pp 14, 16; J 1, 1895/1266 (472), NMO at Karioi, NA Wellington; J 1, 1897/1624 (503), Turakina – Petition for NMO, NA Wellington; J 1, 1899/1293 (540), Uawa and Tokomaru – Petition for Appointment of NMO, NA Wellington

- ▶ Whangaroa Maori petitioned again in 1902;
- ▶ there were requests from the community in Tolaga Bay in 1904 for a Native Department subsidy;
- ▶ in 1911 petitioners from Mangonui sought a subsidy to allow the local doctor to visit the kainga without charge;
- ▶ another 1911 petition was from Maitahi in Westland for a medical man to be posted to Bruce Bay.⁷¹

And so it went on. Requests were directed to the government by other less formal means as well. An example is the correspondence from Irai Tihau of Wairewa (in the Akaroa area) in 1889 and 1890 seeking a NMO in his locality.⁷² Then there were requests submitted through parliamentary representatives such as the 1898 request by a member of Parliament, Hone Heke, and others for a cottage hospital in the Hokianga area.⁷³

Although there was undoubted enthusiasm from some Maori leaders for the provision of health services to Maori from Pakeha doctors acting as NMOs, it is also evident that many Maori did not wish to banish the old entirely and turn to the new. The political reports of resident magistrates contain numerous examples of the difficulties they had encountered in progressing Maori towards civilisation as they understood it. Thus H W Bishop, resident magistrate at Mangonui in 1883, reported that the services of the NMO, Dr Trimnell, had not been required much in the last year because Maori preferred to visit a *tohunga* by the name of Ahipara. Bishop noted that 'so unbounded was the confidence in her, that Natives have come from all parts of the Island to invoke her aid.' Nevertheless he felt sure that her popularity would wane and he confidently predicted that 'as a *tohunga* she will soon be a thing of the past.'⁷⁴ In the same year another resident magistrate, R Bush at Opotiki was attempting to curtail Maori attendance at tangihanga to farewell deceased persons. He and a doctor had pointed out the danger of spreading infection if a body was not buried 'at once without any gathering whatever'. He then reported that

two days subsequently I learnt that the instructions had been altogether disregarded, that her body was still unburied, and that nearly the whole tribe had assembled to tangi. I had to threaten to send a constable to see that [her body] and all future dead bodies [were] buried immediately after death, and (?) if they did not bury her at once. This had the desired effect, and she was quickly interred.⁷⁵

71. J 1, 1905/1514 (598), Whangaroa – NMO, NA Wellington; J 1, 1906/20 (601), NMO for Tolaga Bay, NA Wellington; Petition 235/1911, LE 1, 1911/7, Native Affairs Committee, NA Wellington; LE 1, 1911/7, box 402F, Native Affairs Committee, NA Wellington

72. MA 21/19, Medical Papers, 1884–90, NA Wellington

73. J1, 1898/658 (509), Hokianga – Proposed Home for Sick and Helpless, NA Wellington

74. Bishop to Lewis, 5 June 1883, AJHR, 1883, G-1A, pp 1–2

75. Bush to Lewis, 4 June 1883, AJHR, 1883, G-1A, p 5

The resident magistrates were based in areas where few Pakeha settlers lived. Tikanga Maori customs and usages obviously continued to control the lives of people in Maori communities. Even in such districts, however, there were challenges from resident magistrates such as Bush, from the work of Native school teachers and the visits of Native medical officers. Many of the Crown appointees went about their duties with a supreme confidence in the work of assimilation. By way of an example, Richard Woon, resident magistrate in the interior beyond Wanganui, reported in 1877:

A great change is now coming over the Natives as they gradually assimilate to our manners and customs, and owing to their highly imitative natures, it will not be long before they become civilised and amenable to law.⁷⁶

Woon regretted however that he could not yet speak so favourably of the ‘moral and physical condition of the Natives’.⁷⁷ This refrain in resident magistrate reports, along similar lines to Taylor’s 1862 concerns about ‘Native habits of filth’, eventually led to a publication by the Organizing Inspector for Native Schools, James Pope, called “Health for the Maori: A Manual for use in Native Schools”. This manual, which is discussed further in chapter 4, was translated into Maori and the Minister of Education noted that ‘teachers have been enjoined to give due prominence to the subjects treated of, not only in connection with the school work, but also in their intercourse with their Native neighbours.’⁷⁸ It is a matter of interest that in the 1880s the government was prepared to adopt a bilingual policy in order to get across its social policy on health and sanitation to the wider Maori population, even though it was the English language text only that was intended for use in schools. Clearly the Native School system was seen as a primary focus for the advancement of Britain’s civilising mission in New Zealand not only in the education of children but also in outreach to the Maori population as a whole.

1.10 Maori Ministers of the Crown and Amalgamation

As a consequence of the Maori Representation Act 1867 four members were elected to the House of Representatives to represent Maori electorates from 1868 onwards. In addition, following a resolution of the Legis-

76. Woon to Clarke, 22 May 1877, AJHR, 1877, G-1, p 17

77. Ibid

78. Stout to Jervois, ‘Eighth Annual Report of the Minister of Education’, 1 June 1885, AJHR, 1885, E-1, p xxii; Pope to Inspector-General, 31 March 1885, ‘Education: Native Schools’, AJHR, 1885, E-2, p 14 [For facsimile extracts from Pope’s ‘Health for the Maori’, 1884 and the translation ‘Te Ora Mo Te Maori’, 1886 see J Simon (ed), *Nga Kura Maori: The Native Schools System 1867–1969*, Auckland, Auckland University Press, 1998, p 122]

lative Council in 1871, it became a convention to appoint two Maori members to the upper house of the General Assembly. From 1872 there was also a Maori presence in the executive branch of government with the appointment of Wiremu Katene and Wiremu Parata to the Executive Council. Until the 1890s, they and their successors were not offered substantive responsibilities for any government portfolio. They were simply 'Members of the Executive Council representing the Native Race' sitting in Cabinet as ministers without portfolio. James Carroll on the other hand became a senior minister of the Crown for a considerable period of time, including two short stints as Acting Prime Minister in 1909 and 1911. He represented the Eastern Maori constituency early in his career and then went on to represent European constituencies.⁷⁹ At that time the law often mentioned the term 'half caste' and degrees of 'blood' in defining Native and European.⁸⁰ The research commission for this project requires comment on 'Maori responses' to Crown policies. Although Carroll represented European constituencies for much of his political life, and would have been thought of as a half caste at that time, it seems evident that leaders such as him cannot be ignored in assessing Maori responses to Crown policies. If Maori served as ministers of the Crown then that fact must be given due recognition also.

Carroll was obviously a very successful product of the amalgamation policies. 'Half caste' he might have been, but he spoke about Maori in terms no less paternalistic than his settler colleagues and their predecessors. For example, in 1894 he spoke for the Government in opposition to the Native Rights Bill introduced to the House by the Northern Maori MP, Hone Heke. He accepted that Parliament's laws affecting Maori 'had not been altogether free from evil'. Nevertheless, in his view,

the tendency of the legislation and of the Legislature had been directed to ameliorating and civilising them. It had been in the direction of consummating the behest contained in the Treaty of Waitangi, to make the Natives British subjects in every particular. That had been the aim of all their legislation. But they could not make a Native fully a British subject, they could not put him in a position to enjoy thoroughly and completely the rights and privileges of a British subject, unless they took him by the hand and made him advance step by step; and the sooner they made him advance into line with his European brethren the better it would be for all. This was the advancement he would like to see. So

79. James Carroll was MHR for Eastern Maori, 1887–1893; MHR for Waiaapu, 1893–1908; MHR for Gisborne, 1908–1919; MLC, 1921–1926. He served as a Minister of the Crown from 1892 to 1912, being knighted (KCMG) in 1911.

80. According to section 2, Native Land Act 1909, 'Native' includes a half caste and a person intermediate in blood between half castes and persons of pure descent of the Native race; 'European' means any person other than a Native, and includes an incorporated body. Nowadays, any person who traces descent from ancestors, half of whom were Maori, would usually be identified as Maori. [But for a different perspective, see the work of a researcher for Te Matahauariki at the University of Waikato School of Law: P Meredith, 'A Half-caste on the Half-caste in the Cultural Politics of New Zealand' in *Maori und Gessellschaft*, MANA Verlag, 2000] The Maori Affairs Amendment Act 1974 has defined as Maori any person who is a descendant of a Maori. No-one is obliged to identify themselves as Maori in any cultural or ethnic sense, but laws such as the Electoral Act provide a choice of identification that did not exist in earlier times.

long as the Maori people took up a negative position, and did not appreciate anything done by the Legislature, or anything done by the Europeans, or by those who represented them in Parliament, in the direction of advancement and progress, and of their sharing the full responsibility which they should share with their co-colonists, they fell behind.⁸¹

The language is the language of compulsion. Maori were not to have a choice about the matter. They must be 'made' to 'advance'.

By 1900 Carroll was sufficiently powerful in the hierarchy of the Liberal Party government to be able to formulate an entirely new policy direction for Native affairs. He had been the somewhat token Member of the Executive Council representing the Native Race since 1892, but late in 1899 he was the first Maori to be appointed as Minister of Native Affairs. He then introduced the 'taihoa' policy to slow the pace in Crown purchasing of Maori land for a period. While not prepared to countenance the extensive exercise of Maori autonomy proposed in Heke's Native Rights Bills, Carroll did offer a modest grant of self-management to Maori communities under the Maori Councils Act 1900. In return, however, Maori leadership was expected to ensure that the pace of amalgamation quickened substantially. The 'self-management' powers granted to the Maori councils read as a programme for amalgamation of the Maori population into the virtues of British civilisation. It was no doubt reasoned that this cultural revolution might perhaps be better received if it were implemented by Maori leadership, rather than directly imposed on Maori by settler politicians and their officials. The 'carrot and stick' nature of the Crown's policy is evident from the wording of the preamble to the Maori Councils Act:

Whereas reiterated applications have been made by the Maori inhabitants of those parts of the colony where the Maoris are more or less domiciled and settled, forming what is known as Maori centres and surroundings, for the establishment within those districts of some simple machinery of local self-government, by means of which such Maori inhabitants may be enabled to frame for themselves such rules and regulations on matters of local concernment or relating to their social economy as may appear best adapted to their own special wants: And whereas it would conduce to the higher civilisation and contentment of the Maoris themselves if they were authorised and encouraged in such

81. 10 September 1894, NZPD, 1894, vol 85, p 555

laudable desires: And whereas, in furtherance of these objects, it is expedient to make provision for the establishment of local elective bodies of Maoris within such districts for the purposes aforesaid, and to invest those bodies with the powers of carrying out such rules and regulations as may be prescribed, and of enabling them to frame necessary by-laws.

The Councils consisted of between six and 12 elected Maori members, with a Stipendiary Magistrate as an ex officio member. The most significant sections of the Act for present purposes were sections 15 and 16. Under section 15, Councils were required to formulate plans acceptable to Maori of their district that would ensure the observance of all rights and duties of tribes in relation to social and domestic matters; achieve the suppression of injurious Maori customs; promote education and the management of Native Schools; and generally promote the health and well-being of Maori inhabitants. Councils were also to collect statistics and report to the Governor on general health and well-being of Maori in the district; movement of population and the extent of intermarriage; and the extent of cultivated land along with the number of people engaged in industry. These reports would provide the type of information formerly provided to the government in the reports of the now abolished resident magistrates. In order to carry out their plans councils were empowered to make bylaws on a wide range of matters including health, cleaning of houses, common nuisances, drunkenness, tohunga, meeting houses, registration of dogs, trespass of cattle, eel-weirs, shellfish beds, burial grounds, recreation grounds, hawkers, smoking, gambling, water supplies, sanitation, and animal diseases. Councils were also authorised to impose fines for non-compliance with any of their bylaws.

The provision on tohunga is of particular interest. Section 16(5) enabled councils to pass bylaws:

For regulating the proceedings of tohungas, and the punishment of fine of those (whether European or Maori) who practice upon the superstition or credulity of any Maori in connection with the treatment of any disease.

No attempt was made by settler leaders to disguise the fact that Carroll's Maori Councils initiative was not meant to impede the government's ongoing commitment to assimilationist policies. Allowing elected Maori to administer local affairs was not to mean a lessening of effort to

undermine Maori communalism. This was stated with great forcefulness by the premier Richard Seddon, during debates on the 1900 legislation:

And I believe I am voicing the desire of the great majority of the people of the colony when I say we do not wish to see the Maoris disappear, nor do we wish to see them a burden upon the ratepayers. We do not wish to see them landless, but we do desire and we do insist that the land owned by them shall be made productive, and that this keeping back from settlement valuable lands in the colony, which has been the case for so many years, must be put a stop to. ...

It is this communal life, this non-subdivision of land, and the communal titles which force them into idleness, carelessness, and neglect.

...

[The Bill] will put a stop to this communal life which is so disastrous to their well-being.⁸²

There was some debate as to the time that might elapse before the assimilation goal would be reached. Thus a long serving Taranaki politician, Thomas Kelly, voiced the opinion in 1901 that 'it will take a considerable period of time before a full assimilation of European law and custom will be made by the Maoris generally'.⁸³ There was no doubt about the goal being sought by government policy however. If exhortation by Maori councils failed to move Maori in the directions desired by the government, then compulsion would be resorted to. With respect to tohunga, for example, the resident magistrate quoted above had thought in 1883 that they would 'soon be a thing of the past'. In 1900 they were certainly not 'of the past' so the Maori Councils Act aimed at 'regulating the proceedings of tohungas'. In speaking of regulating tohunga it might have been possible to permit and indeed honour the role of tohunga who were the repositories of tikanga Maori cultural knowledge and wisdom. This would not have been inconsistent with penalising the activities of those quacks and charlatans, both Pakeha and Maori, who professed a medical knowledge or skill they did not have. A nuanced approach such as this was not contemplated by the enthusiasts for progress, and just seven years later the Liberal Party government intensified its pressure on Maori communities with a blanket condemnation of tohunga. The criminal justice system and coercive compulsion were brought into play with greater vigour by the enactment of the Tohunga Suppression Act 1907. This topic will be discussed in more detail in a later chapter.

82. 12 October 1900, NZPD, 1900, vol 115, pp 168, 171–172

83. 29 October 1901, NZPD, 1901, vol 119, p 836 [Kelly was a New Plymouth MHR, 1869–1884, then a Liberal appointee as a MLC, 1892–1913]

With the Maori councils came a renewed emphasis on improving Maori health and hygiene. Gilbert Mair was appointed Superintendent of the 24 Maori councils in 1903 and in 1906 he reported 'extraordinary progress was rapidly made, particularly in greatly improved sanitation, registration of dogs and the checking of intemperance' except in the Waikato district where the 1900 Act was not applied 'owing to the bitterly hostile attitude of Mr Mahuta'.⁸⁴ Of course the response of the Kingitanga movement to this and to other aspects of Crown policy was driven by the continuing desire to establish institutions of authentic self-government and local autonomy for Maori. So one Maori response was to choose not to serve in councils that had to operate under the tutelage of Pakeha officials such as Mair. In many districts Maori leaders did cooperate with the Crown established bodies. A new band of men joined in the task of amalgamation as 'prime agents of civilization' – to use Sorrenson's expression quoted earlier. They were the 'Sanitary Inspectors for the Maoris' and the 'Health Officer to the Maoris'. Mair's report records the following information:

The following persons have been appointed Sanitary Inspectors, and are paid out of the Civil List for Native Purposes.

Viz—

Elsdon Best, Matatua Council District.	£150.
Taiawhio T, Tau, Rongokako, "	36.
Ihaia Hutana, Tamatea, "	36.
Hori Pukehika, Whanganui, "	50.
Raureti Mokonuiarangi, Arawa & Tauranga,	50.
Waaka te Huia, Ngatiwhatua & Wairoa,	50.
Riapo, T, Puhipi, Mangonui & Hokianga,	50.

[Generally] speaking, these officers are performing excellent work, notably Mr Best and Raureti Mokonuirangi [sic], but with [further] assistance still better results could be obtained. They furnish periodical reports to Dr Pomare.⁸⁵

It is perhaps worth noting that the sole Pakeha appointee, Elsdon Best, received three times the salary of the other inspectors. It is possible, however, that the salary as a sanitary inspector was an indirect means of funding the ethnographical investigations, to be discussed below, that he was working on at the same time.

84. G Mair, 'Confidential report', 1 August 1906, MA, 23/14, Maori Councils 1906–1907, pt a, NA Wellington, pp 1–2

85. Ibid, p 3

Dr Maui Pomare, one of the first generation of Maori to progress from schooling at Te Aute College and go on to obtain university qualifications, was appointed the 'Health Officer to the Maoris'. He laid down the duties required of the sanitary inspectors.⁸⁶ In this capacity as a Crown official Pomare made a speech to the Australasian Medical Conference in Melbourne in 1908, referring to himself as a 'Ministerial Captain of Health'. For him sanitation reform was in the nature of an evangelistic mission for the assimilation of Maori. His purpose was to ensure 'the dissolution of time-honoured customs, the tearing down of ancestral habits and teachings, the alteration of Maori thought and ideas of living, in fact a complete revolution in their socialistic, communistic and private life'.⁸⁷ It is evident that Pomare was fond of such rhetoric. He had used almost exactly the same words in 1901 shortly after he had been appointed to this work. Two relatively long quotations from the opening remarks and from the conclusion of his first report serve to illustrate Pomare's fervour for his reforming mission. He began with these words:

It was with a heart full of fear and trembling that my mission was undertaken. Fear and trembling, did I say? Yes, for the deeply rooted superstition of ages – the strongholds of tohungaism, the binding laws of tapu, the habits and practices of centuries, the mistrust of the pakeha – these were the Goliaths in the way of sanitary progress amongst the Maoris. For what did all this mean? It meant the dissolution of time-honoured customs, the tearing-down of ancestral habits and teachings, the alteration of Maori thought and idea; in fact, a complete change in their socialistic, communistic, and private life. It meant more; it meant the gentle persuasion, the authority not of force, but of clear convictions of the evils of the present system of half-European and half-Maori ways of living, and the benefits of a better, more sanitary, higher, and nobler way of life. Yes; it meant the introduction of things entirely new and foreign to the Maori mind and life. Who can change the customs of a nation in a day? No; not in a month, nor a year, nor a generation could they be changed, for progress is a plant growing. But the change must come; it has to come. The Maori will yet bloom with the fairest of the Anglo-Saxon; and why not? And yet can we make men clean by Act of Parliament?

Who cares to have a stranger poking around his back door, condemning his favourite nooks, the ash-heaps resulting from his laziness,

86. M Pomare, *Duties of Sanitary Inspectors for the Maoris*, 19 May 1903, Wellington, Government Printer, 1903 in MA 23/14, Maori Councils 1906–1907, part b, NA Wellington

87. MS Papers 1901, Pomare, MWPN (Sir), 1876–1930, 'The Maori 1908', ATL Wellington

the hundred and one things which sanitarians know are detrimental to the public health? Who cares to have his habits disturbed, the pet meeting-house of his ancestors pulled down? And yet it was because of the utter hopelessness of his sanitary conditions, the thorough knowledge that unless the flagrant infractions of Hygeia's laws were quickly stopped the Maori would surely disappear with the moa, that gave me courage and hope to fight the cobwebbed customs of the past and to introduce the new.

You can imagine my complete surprise and joy when upon my first lectures I found that the Maori mind was not altogether unteachable; in fact, he was anxious and willing to better his condition. In many places I was welcomed with song and dance and speech. ...

And yet with all these encouraging welcomes you must not imagine that the work has been smooth all the way, for we have had many difficulties to contend with – many seeming obstacles to overcome – more of which anon; but the willingness of the majority overbalances the prejudices and the doggedness of the rest. But we expect all these things. They must meet us on our onwards march to health and progress.

His conclusion was optimistic:

In conclusion, I may state that there has been a thorough awakening. Many comfortable homes have been erected within the past year. Whole villages have been cleaned. In view of the plague, circulars were sent to all the Councils urging the necessity of burning up all rubbish and destroying the plague-carrying rodents. A hearty response has been met with everywhere even among the most conservative; but with these Councils in motion, with the eagerness to advance, the Native work has increased till I feel that one man cannot do justice to himself or to the whole Maori population, and so I urge that several competent Inspectors – say, four in number – with salaries of £150 each, be appointed to carry on the inspection of Maori Kaingas, in conjunction with the Village Committees, these men to be entirely under the control of the Department; and, further, that all matters touching the health of the Maori be under the control of the Public Health Department, so that there should not be any friction, and that the gradual introduction of the public-health laws can be made, till we shall have one law for the pakehas and the Maoris. And so we may hope that these reforms will

soon be the commencement of the most desired condition of which Gibbon dreamed, Macaulay prophesised, and the Grand Old Man (Sir George Grey) hoped, longed, and worked for: when Maori and pakeha will stand side by side in the commercial, social, and political realms, firmly united – when

“Our Maori blood shall still flow on
In a new coming race,
That when the old is dead and gone
We may yet find its trace
In nobler types of humankind,
With traits wherein there blend
The white man’s more prosaic mind,
The poet Maori trend.”⁸⁸

In the body of the report, along with some more prosaic information about how he had set about his duties, Pomare had some more purple prose in condemnation of tohunga:

Tohungaism is in its death-throes; and though it may be compared with the feline of nine lives, yet it is surely dying out.

The strong arm of the law is the only potent medicine that can kill this cancerous malady. A few doses of the lock-up will soon have the desired effect. It is wonderful how superstitious even the most enlightened are. Who has not seen a delicate silk-attired lady of fashion sign her wishes over her left shoulder at the inconstant moon? Who does not dream of bad-luck when there are thirteen at a table? Who has not heard of the mariners refusing to go to sea on a Friday? And who has not seen an old shoe cast at the happy wedded pair? And if these things can happen in the far advanced, we can surely excuse some of the peculiarities of the Maori, who has barely emerged from the dark night of superstition into this blazing sun of civilisation. However, I do not by any means excuse the acts of tohungas. The immersion of the sick in the cold rivers, I am glad to say has been stopped by the Councils; not that a bath, even a cold one, is altogether detrimental, but that the attending risks in exposure &c, are so enormous and the result so disastrous that it has been deemed wise to stop all such treatment.⁸⁹

88. Pomare to Chief Health Officer, 1901, 88-059-3, Papers of Dr Harold Turbott, ATL Wellington, pp 1, 2, 6–7

89. Ibid, p 5

The strength of Pomare's conviction that absorption was the only path for Maori was repeated in the strongest possible words in his 1906 report:

This is a warrior race used to fighting for liberty or death. All this gone, fighting is no more. There is no alternative but to become a pakeha.⁹⁰

1.11 Maori Congress, 1908

In July 1908 the Government convened a national gathering of Maori council representatives and other persons interested in the welfare of Maori. At this Maori Congress, ministers of the Crown stressed the importance for Maori of the 'boon of health' and of education as 'the essence of civilisation'.⁹⁰ The Native Minister, Carroll, spoke to delegates of the importance of sanitation:

This question of sanitation was most important – perhaps the most important they could discuss, for they had to be physically perfect in order to enjoy the blessings of life. The enjoyment of physical health depended upon the observation of perfect cleanliness in dwellings and proper attention to drainage. He wished to remind them that their ancestors did not fail in these respects, but built their homes on high lands, and had their own peculiar native councils, whose business it was to attend to such matters.

THEN THE PAKEHA CAME

With the advent of the European there were wars and collisions of all sorts. As an immediate result of this the people were scattered everywhere, and the Maori canoe began to drift. Let them now take the drifting canoe, turn it round and make it stem the torrent, and by proper attention to sanitation so improve their condition that they would be as physically well as their ancestors certainly were before the drift.

He then spoke, somewhat paradoxically perhaps, about the need for Maori self-reliance and also the government's willingness to provide 'plenty of assistance':

'BE SELF-RELIANT'

He put it to them seriously that there are only two ways open. To strive for one they must improve their position to neglect it they must

90. Pomare, 'Report of Health Officer to the Maoris', AJHR, 1906, H-31, p 67

90. The quotations which follow are reports of the Maori Congress held in Wellington from 16 July 1908: MS Papers 0189-173a, Maori Purposes Fund Board news clippings concerning Maori affairs 1908–1911, ATL Wellington. John Thornton, mover of the last motion quoted, was the headmaster of Te Aute College who insisted on educating selected pupils for university matriculation despite the strong disapproval of the Department of Education which argued for technical and manual training for Maori: 'Report on Te Aute and Wanganui School Trusts', AJHR, 1906, G-5, pp iv–v; 'Evidence of W W Bird, Government Inspector of Native Schools', *ibid*, pp 93–99; see also J M Barrington, 'Learning the "Dignity of Labour": Secondary Education Policy for Maoris', *N Z Journal of Educational Studies*, vol 23, no 1, 1988, pp 45–58

go down. He assured them that they would become better men if they strove together to better their position while the Europeans would certainly come to their assistance if they saw them trying to help themselves. He knew that all these things required funds but he assured them that in their efforts to uplift themselves they would get plenty of assistance. So he appealed to them to be self-reliant, and to make strong efforts to work out their own salvation. If the Government agreed to provide them with ordinary funds he wanted their assurance that they would go on improving and becoming more self-reliant year by year. (Applause.)

Carroll clearly saw significant government funding as of the utmost importance to closing the gaps between Maori and Europeans, although quite how 'plenty of assistance' would lead to Maori self-reliance was not spelt out.

Following Carroll's speech, Pomare took the opportunity to table a number of resolutions drafted by a meeting of sanitary inspectors. They dealt with matters such as compulsory registration of births, deaths and marriages; teaching breathing exercises in all the native schools to lower the risk of consumption (tuberculosis); and the translation into Maori of the Public Health Act 1900.

The next session of the Maori Congress was chaired by the Chief Justice, Stout, who at that time was engaged with Ngata in the Native Land Commission to ascertain the extent of non-productive use of Maori-owned land. The Minister of Education, George Fowlds, gave an address. For Fowlds 'education was the essence of civilisation' and he hoped that delegates would return to their homes 'with a fuller determination to uphold and support the native schools in the work they were doing'. A debate followed about the place of te reo Maori in the education system. There was a clear difference of opinions:

Hone Heke, M.P., strongly urged that the Maori tongue should be systematically taught in the native schools, as at present the people were in great danger of losing their language altogether. This must be prevented at all costs, for if the language were not retained they would lose their nationhood and be neither one thing nor the other.

A Crown official present disagreed and put the government position that teaching of the English language was paramount:

Mr W W Bird, MA, Inspector of Native Schools, said that whatever might be the fault of the native school system, he believed that the one vital part of it had been the teaching of the English language. In such schools steps had to be taken to remove the principal bar between the two races, the bar of language. But in any case the children had plenty of time in which to practice their mother tongue, for their school day was only four hours long. He thought the proper place for school instruction in the Maori language was at Te Aute, and he would be pleased to see it introduced into the syllabus there.

The line that primary schools should strongly promote the English language and leave it to Maori communities to conserve te reo Maori was to be a consistent thread of government policy for many years. At this Congress, the Pakeha headmasters of Maori boarding schools then took the opportunity to promote academic achievement, including Maori language, for those few Maori students seeking to matriculate for University education. They argued against the prevalent view that manual and industrial training should be the only focus for Maori education:

TEACH THE MOTHER TONGUE

On the motion of Mr A Wilson, principal of St Stephen's College, Parnell, seconded by Hamiora Hei, LLB, it was resolved:—

That in view of the extra labour imposed upon Maori students through being instructed and examined in a language not their mother tongue and with a view to help conserve the Maori language, this Congress considers that Maori should be made an optional subject for matriculation at least and that a committee consisting of Dr Buck, Messrs J. Thornton and G A Hansard and the mover be appointed to draw up a memorial on the subject to be submitted first to the Councils and Professorial Boards of the four University Colleges and finally to the Senate of the University.

A PLEA FOR EQUALITY

A strong plea for equality of educational advantages for Maori and pakeha children was made by Mr J Thornton, who said that he had found a general feeling that the Maori youth was good enough to go upon the land, was good enough to become a carpenter, but was not

good enough to become a member of the learned professions. He maintained that the Maori was in every way the intellectual equal of the European. So he moved:—

Having regard to the fact that Maori should have the same educational advantages and opportunities as Europeans and that it is desirable that Maori youths of approved ability should be encouraged to qualify for the learned professions, this Congress is of opinion that the heads of secondary Maori schools should be urged to select suitable students with a view to their becoming matriculation candidates.

The motion was seconded and heartily supported by Te Rangihiroa (Dr Buck), and carried unanimously.

On the other hand, Hone Heke's pleas for the systematic teaching of Maori at the primary level in the Native schools drew no positive response from Crown ministers and officials nor a resolution from the Congress.

Heke was not alone in expressing concern for the future of te reo Maori. In an interview in 1910 Henare Kaihau, MP for Western Maori, spoke of his vision for a revived Maori Parliament in a new township to be established between Ngaruawahia and Taupiri. The real value of the proposed new township was explained to a *Dominion* reporter:

A Rallying Point for Maori Sentiment

Speaking through an interpreter Mr Kaihau explained to a *Dominion* reporter what he conceives to be the real value of his proposal. He believes that unless some such scheme is brought into operation the Maori language, Maori tradition, and Maori customs will be lost to an irreparable extent before many years have gone. The real Native language was fast passing away, Mr. Kaihau declared, and if it was to be preserved it must be systematically taught. Similarly many grand Native customs were passing and to preserve them some place must be provided where they could be fostered and practised. The township would provide a rallying point for Maori sentiment and it was confidently expected that it would find a warm corner in the hearts of all North Island Maoris, including those who were not followers of King Mahuta. There was a general feeling that since the Maoris had been ruled by European laws they had gained little and lost much. Their lands had been taken from them for much less than their value, and so they would regard this effort at local self-government with sympathy.

It is also hoped to revive the old-time tohunga, the real tohunga. “Our people used to live to be 100.” said Mr Kaihau, “now they died at fifty. We still have some men who have power in faith-healing, though not so much power as formerly, but if we get back our old customs they will gain more power.”⁹¹

It should be noted that this comment on tohunga was made just three years after the enactment of the Tohunga Suppression Act 1907.

1.12 Reform Administrations from 1912

The Reform Party came to power under the leadership of William Massey in 1912 and dominated government ministries until 1928. There were, of course, very distinct political differences between the Reform Party, the declining Liberal Party and the rising Labour Party during those years.⁹² The general government policy favouring the assimilation of Maori was not however one of those party political points of difference. If anything, the Reform-led administrations were even more rigorous in pursuing the assimilationist goal. The Native Minister under Massey was William Herries who was a representative of the rural gentry old guard.⁹³ When in opposition in 1903 he spoke in general support of the Maori Councils Amendment Bill then before the house but added that

He would, however, like to see legislation brought in to put an end to the kainga and to the pa, to make Maoris live the same as the Europeans, and have the same aspirations and views as the Europeans, and then there would be no necessity for legislation of this kind.⁹⁴

When he became Native Minister in 1912 he was quick to praise the work of Native school teachers whom he considered were ‘the pioneers of civilization in the back blocks’.⁹⁵ The Reform government continued to place a heavy emphasis on the exclusive use of English in Native schools ‘because linguistic unity is the most important step towards national unity’.⁹⁶ There was also a policy movement towards what is now known as mainstreaming with a 1912 proposal recommending that Native schools should eventually be handed over to the control of Education Boards, despite opposition from some Maori leaders including Apirana Ngata.⁹⁷ Bird and Porteous outlined the policy of the Crown in their 1914 report. They wrote that ‘The policy of the Department is to transfer the

91. ‘Looking Back’, *Dominion*, 31 August 1910 in MS Papers 0189-170B, ATL Wellington

92. L Richardson, ‘Parties and Political Change’ in WH Oliver (ed), *The Oxford History of New Zealand*, Wellington, Oxford University Press, 1981, pp 209–220

93. WH Herries was MHR for Bay of Plenty, 1896–1908, and for Tauranga from 1908 until his death in 1923. He was Native Minister from 1912 to 1921, being knighted (KCMG) in 1920.

94. 12 November 1903, NZPD, 1903, vol 127, p 515

95. 27 September 1912, NZPD, 1912, vol 160, p 537

96. Porteous, ‘Report of Inspector of Native Schools’, 22 May 1915, AJHR, 1916, E-3, p 8

97. 25 September 1912, NZPD, 1912, vol 160, p 415

Native schools to the control of the Education Board as soon as the Maoris have reached the stage where they have sufficient knowledge of English to speak it in their homes, or where, as a result of an influx of Europeans to the district, the majority of the children are Europeans.' They noted, however, that 'The transfer of schools is becoming more difficult year by year owing to the increase of racial prejudice, European parents exhibiting strong objections to Maori children attending public schools in common with their own.'⁹⁸ In the event, of course, it was not until 1969 under the auspices of the integration policy announced in the Hunn Report, 1960, that Native schools were eventually transferred to the control of Education Boards.

In the area of Maori health policy the Reform governments did not deviate from earlier policies. This is not surprising as Pomare, the staunch believer in the absorption of Maori, served as a minister of the Crown in all the ministries formed from 1912 to 1928.⁹⁹ For most of that period he sat in the Cabinet without responsibility for any major portfolio, but he did serve as Minister of Health from 1923 to 1926.¹⁰⁰ The land policy of the Reform government as exemplified by the Native Land Amendment Act 1913 was consistent with the strongly assimilationist general line taken by the government in this period. That Act amalgamated the work of the Native Land Court with the Maori Land Boards and gave ministers of the Crown enhanced powers to facilitate the purchase of individual interest in Maori land and then use the acquired land for settlement by Pakeha. There were, therefore, no significant changes in the political landscape or in general Crown policies relevant to this research commission until 1928. In that year the rump of the Liberal Party revived itself as the United Party and defeated the Reform Party in the general election of that year. As a result Sir Apirana Ngata returned to the Treasury benches and he was the second Maori leader to directly participate in the formation of Crown policy on Native affairs when he entered into office as Native Minister.¹⁰¹ His influence led to a number of policy initiatives affecting Maori that will be considered at the beginning of the next chapter.

98. Bird and Porteous, 'Report of Inspectors', 15 February 1915, AJHR, 1915, E-3, p 6

99. For an interesting comment on Pomare's shift from Crown official to member of Parliament see Ngata to Buck 17 May 1911, MA 31/42, Correspondence with Dr Peter Buck 1910-1925, NA Wellington: 'Pomare has been retired from the Health Department. Valentine was not long in making up his mind and so Pom is definitely out against Kaihau. His is a forlorn hope, and I wish him joy of the contest of ousting the mighty Waikato boss: [Despite Ngata's pessimism, however, Pomare did in fact win the Western Maori seat in 1911.]

100. Pomare represented Western Maori as a MHR from 1911 until his death in 1930. He was knighted (KBE) in 1922. From 1912 to 1928 he was a member of the Cabinet usually as the member of the Executive Council representing the Native Race and Minister of the Cook Islands. In addition to being Minister of Health from 1923 to 1926, he served briefly as Minister of Internal Affairs in 1928.

101. Ngata was the MHR for Eastern Maori continuously from 1905 to 1943. He was a minister without portfolio representing the Native Race in the Ward ministry from 1909-1912 (when Carroll was the Native Minister). He was knighted in 1927(Kt) and returned to power with Ward in 1928. He served as Minister of Native Affairs and of the Cook Islands from 1928 until his resignation in 1934.

