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THE MAORI LAND COURT AND LAND BOARDS, 1909 TO 1952

TOM BENNION

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LIST OF CONTENTS

Preface v

Introduction vii

Chapter 1: The Era of Land Purchasing 1

Introduction 1; The situation before 1909 1; The scheme for sales and leases under the 1909 Act 2; Changes in 1913 8; The land court, the land boards, and the operation of the land purchase system on the ground 14; Conclusion 40

Chapter 2: The Era of the Development Schemes 43

Introduction 43; Growing concern about Maori landlessness 43; 1920–22 – A change in approach: the land boards and the native trustee 45; The attitude of the judges 47; The land development schemes and the land boards 50; The National Expenditure Commission and the Native Land Settlement Board 54; The Board of Maori Affairs and the nominated occupier scheme 56; Land outside the development schemes 61; The Second World War 62; The boards and the court after 1932 63; The end of the boards 68

Chapter 3: Conclusion 73

Bibliography 75

LIST OF ABBREVIATIONS

ACMB	Appellate Court minute book
AJHR	*Appendices to the Journals of the House of Representatives*
app	appendix
ATL	Alexander Turnbull Library
ch	chapter
doc	document
DOSLI	Department of Survey and Land Information
fol	folio
MA	Maori Affairs series, National Archives, Wellington
MB	Minute book (Maori Land Court)
NA	National Archives
NZPD	*New Zealand Parliamentary Debates*
p, pp	page, pages
pt	part
ROD	record of documents
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
vol	volume

PREFACE

The author of this report is Thomas Bennion BA(Hist)/LLB(Hons), former legal officer at the Waitangi Tribunal and now a private consultant on Maori land law and Treaty issues. He was assisted in the research by Janine Ford BA(Hist)(Hons), a former tribunal researcher and author of five research reports on the Taranaki claim, now studying law at the Victoria University of Wellington.

The report has been prepared at the request of the Waitangi Tribunal, under the Rangahaua Whanui programme.

The report makes extensive use of Parliamentary debates, printed government reports in the *Appendices to the Journals of the House of Representatives* and general files on Maori Land Boards and Maori Land Court activities held at the National Archives in Wellington. To gain a picture of how the Maori Land Court worked in practice, a random selection of microfiche minute books were examined for each of the districts in the period 1911–12, 1924–25 and 1932–33 and 1940. Maori Land Board minute books are not recorded in a central archive, although a reasonable picture of board activities has been obtained from: John Hutton's report on the Waikato–Maniapoto District Maori Land Board; the minute books of the Tairawhiti district Maori Land Board (included in the microfiche collection of land court minute books); general files on the land boards held at National Archives; and the annual returns of the boards in the AJHRs.

The author received assistance from staff of the Waitangi Tribunal, Cathy Marr, Professor Alan Ward, Dr Grant Phillipson, and also staff at National Archives, Wellington and the Alexander Turnbull Library, Wellington. Draft reports by John Hutton and Rachael Willan have also been consulted.

INTRODUCTION

This report looks at aspects of Native and Maori land legislation and the operation of the Maori Land Court and the associated district Maori Land Boards in the period 1909 to 1952. While much research has been undertaken on the operation of the Native Land Court in the nineteenth century, relatively little work has been carried out for this century. In what twentieth century research there is, a natural bias has existed towards the groundbreaking development schemes initiated (in many cases) by Sir Apirana Ngata, and carried on by subsequent Governments after his resignation in 1934. But since those schemes never covered more than one quarter of Maori land, they are only part of the story.

1909 is a useful starting point because a major consolidation of the existing law was undertaken in that year and a new meeting of owners' procedure was enacted for alienations of Native land. Although the law was consolidated again in 1931, the underlying principles governing dealings with native land were not altered. The 1931 consolidation did however include additional provisions concerning land development schemes, provisions which began their life as miscellaneous amendments to native land legislation of the 1920s. This study ends in 1952, just before another codification took place. Once again, that codification did not take Maori land legislation and policy in a fundamentally new direction, although it did mark a bridge of sorts between the early decades of the century, when Maori were a rural agricultural community still owning substantial areas of land in the North Island, and the largely urban wage labouring population of today.

This report is essentially about the North Island only, although some South Island figures are mentioned. By 1909, most land in the South Island had been alienated so that only about 300,000 acres remained in Maori hands, and significant areas of that were in reserves. The North Island is where most Maori land was that was of interest to the Crown and Pakeha settlers. Conclusions about the operations of courts and Maori land boards do however apply in many instances to the South Island, particularly since the Maori Land Court and Maori Land Board for the South Island was in some periods situated in the North Island.

This report focuses on the operation of the land court and the land boards, what their functions were and how they operated in practice, how relevant they were in different decades to Maori land holders, and Maori responses to them. It asks whether the bodies and individuals responsible for decisions over Maori land were clear about their duties and responsibilities, and whether the legislation was similarly clear. Another key issue addressed is how far legislation and practice concerning the land court and the land boards gave Maori landowners control over their estates. In this respect a very useful model for analysis is provided by Erik Schwimmer in an insightful 1960s study. He considered that in the use of their land, Maori sought a bicultural relationship with the Crown where their preferences

would be catered for. To determine how far a bicultural relationship operated for Maori land tenure and land rights, Schwimmer suggested that four issues be looked at:[1]

- legal rights: did Maori have legal rights equal to Pakeha in land transactions and ownership?
- participation in collective goal attainment: did Maori join on an equal basis in the forming of agricultural policy?
- resources: did Maori have equal access to the resources needed for making their land productive?
- capacities: did Maori have equal capacity (in terms of educational attainment, technical skills and business expertise) for success in farming?

On the Government side, he suggested that a bicultural approach to Maori land policy would involve:

- acceptance of the validity of Maori culture – did Pakeha believe that Maori forms of landholding were as good as Pakeha ones?
- familiarity with Maori culture: were Pakeha familiar with the values underlying Maori landholding?
- conscious confrontation and reconciliation of conflicting systems: were decisions regarding Maori land reached after informed reflection upon the differences between Maori and Pakeha values?

I will return to these issues at the conclusion of this report.

1. 'The Aspirations of Contemporary Maori', pp 19–20, in E Schwimmer (ed), *The Maori People in the Nineteen Sixties*, Auckland, 1968

CHAPTER 1

THE ERA OF LAND PURCHASING

1.1 Introduction

Between 1909 and 1925 over 2 million acres of Maori land were sold or leased, almost all of this in the North Island.[1] After 1922, although purchasing continued, the Government had largely lost interest in obtaining more Maori land for settlement, and purchase activity gradually declined. Visits by land purchase officers and private purchasers, hearings before the Maori Land Court and Maori land boards, surveys, partitions, and meetings to consider partitions and sales, were the predominant experience for North Island Maori in the use of their lands in this period. The land court and land boards were essential to the purchasing process, because they were required to follow up proposals for alienations and ensure that purchases were properly completed and to check that the interests of both sellers and non-sellers were protected. How robust their powers were and how well they used those powers is examined in this part of the report. In addition, this part will examine how far the Crown in its own purchasing was subject to the checks and balances in the system of purchase.

1.2 The Situation before 1909

To understand the system of purchasing which was put in place in 1909 it is necessary to look briefly at the events leading to the development of the Maori land boards. The elevation of James Carroll to Native Minister in 1899 was followed by what became colloquially known as the 'taihoa' policy. In 1900 Carroll introduced the Maori Councils Act and the Maori Land Administration Act, the latter being an attempt to reconcile Government and Kotahitanga objectives. Maori were to voluntarily place their lands under the control of Maori Land Councils which would open them up for settlement and return rents to the Maori owners. A majority of the members of these councils were Maori, but with the chair appointed by the Governor.

The system was first applied in the Wanganui district. A study of that district strongly suggests that the Government objective to open up lands for settlement and production overwhelmed the Maori concern to retain some control over the process.

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1. For a detailed analysis see Rachael Willan, 'Maori Land Sales, 1900–30', report commissioned by the Crown Forestry Rental Trust, March 1996

There were attempts to bully councils into long term rentals.[2] When this did not succeed the legislation was changed.

In 1905, under the Native Land Settlement Act, the land councils, which had consisted of four Maori members out of seven, three of whom were elected, were replaced by three member district Maori Land Boards, with all three members being appointed, and only one required to be Maori. The Maori presence and influence was thus reduced. Also, compulsory vesting in the land boards was introduced.[3]

In 1906 the Native Land Department was separated from the Justice Department and set up with a land purchase arm. The Government voted money to recommence large scale purchasing of Maori land.[4] The Government appointed Sir Robert Stout and Apirana Ngata as commissioners to tour the country and recommend what lands might be sold by Maori and what they might usefully retain and develop for themselves. It was estimated that 7,600,000 acres of Maori land remained in the colony. Of that, the commission looked at 3,000,000 acres and made specific recommendations on under half of that area, recommending that 644,000 acres should be retained for Maori use, 410,000 acres leased and 241,000 acres sold.[5] The Native Land Settlement Act 1907 legislation provided that the land boards should implement the recommendations of the commission.

These developments set the scene for the large scale alienations which followed.

1.3 The Scheme for Sales and Leases under the 1909 Act

When the 1909 Act was introduced to Parliament, it was pointed out that it was complex legislation, and that the best legal minds of the day, the judges of the Native Land Court, James Carroll, Apirana Ngata, and John Salmond, had worked on the bill.[6] The central feature of the bill, distinguishing it from legislation in the recent past, was provisions allowing for the alienation of land by individual owners or meetings of owners. It has been suggested that it provided a 'ready and quick method' for the alienation of land. This is the conclusion that can be drawn from the volume of land sales in the period.[7]

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2. See Selwyn Katene, *The Administration of Maori Land in the Aotea District 1900–27*, MA thesis, Victoria University of Wellington, 1990
3. AJHR, 1951, G-5, pp 14–19, traces the evolution of the councils into boards and the changes through to 1913. And see Tom Brooking, '"Busting Up" The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History*, vol 26, no 1 (April 1992), pp 78–98
4. G V Butterworth and H R Young, *Maori Affairs*, Wellington, 1990
5. Butterworth, 1990, p 66
6. G V Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', *New Zealand Law Journal*, August 1985, pp 242–249 and 259
7. See for example John Hutton, 'A Ready and Quick Method: the Alienation of Maori Land by Sales to the Crown and Private Individuals, 1905–30', report commissioned by the Crown Forestry Rental Trust, 3 May 1996, and Willan 1996. Overall, between 1900–30 about 4.5 million acres were alienated in one form or another. Willan, p 2.

Reading the legislation, it is apparent that it enabled Maori owners to very quickly reach a decision to sell or lease land. At that point, however, a series of checks were provided to ensure not only that the transaction had been made without fraud, but that it would provide a proper return to the sellers, that no individuals were impoverishing themselves as a result of the transaction, and that minority opposition to the alienation was properly recorded. On their face, these checks suggested a procedure which was far from straightforward. The key agencies involved in enforcing the checks were the Maori Land Court and Maori land boards. Consequently, as will be seen, at least with regard to private purchases (some Crown purchases were exempt from these checks), it was the court and land boards who finally governed the rate at which sales and leases occurred, and the flow of land out of Maori hands in this period.

Dealings in Maori land were defined under the catch-all word 'alienation'. It had a definite meaning – almost any disposal of native land by its owners to third parties, including sales, leases, licences, gifts, and easements.[8] The Act made sales and leases easier firstly by removing many restrictions on alienations. In the past, alienations had been complicated by two types of restrictions. A block of land might be subject to a general restriction against sale (the restriction attached to the block), or, an individual shareholder might be restricted in what they could do personally with their shares in a block of land (the restriction attached to the particular shares). The 1909 Act provided that all existing restrictions were to have no force or effect on any alienation which might be made after the commencement of the Act.[9] Instead, a presumption would operate that such restrictions did not exist, a Maori personally could alienate their interests in land as they saw fit, and Maori land itself could be alienated as if it were European land. This was however subject to whatever special provisions the 1909 Act itself might provide for.[10] Many restrictions applying prior to the 1909 legislation had been imposed to give some measure of protection against unwise or unwitting alienations.[11]The 1909 legislation provided for a variety of ways of dealing with Maori owners over alienations, each variation depending on the number of owners of the block of land concerned.

1.3.1 Land with fewer than 10 owners

Where land had fewer than 10 owners it could be disposed of as if it were European land with only one substantive extra condition; the sale had to be brought before the appropriate Maori land board for 'confirmation', which is discussed below.

Things became much more complicated when there were more than 10 owners. Two courses could then be followed. Both required the intervention of the district

8. Section 2. Native land included customary as well as freehold native land.
9. That is 24 December 1909. Section 207(1).
10. The Act provided that a native might 'alienate or dispose' of land in the same manner as a European, and native land might be alienated or disposed of in same manner as if it was European land – s 207(2).
11. Without examining particular cases, it is however difficult to determine how widespread or significant the impact of this particular change was.

Maori Land Board. Either a meeting of the owners could be called by the relevant land board, or the potential purchaser could seek consent from the land board to proceed without such a meeting, something known as 'precedent consent'.[12]

1.3.2 Precedent consent method of land alienation

This method was, on paper, reasonably straightforward. Before executing an instrument of alienation, a party to the proposed alienation could ask a Maori land board whether an assembled owner meeting was required. The land board would decide this having regard to the 'public interest' and the interests of the native owners.[13] If consent was given, the purchaser could proceed as if the land were owned by less than 10 owners.[14] Having completed the purchase negotiations, one further step remained. The purchaser had to get confirmation of the purchase from the land board. This was a separate matter from the consent already given.[15]

This precedent consent procedure did not operate for long however.[16] In effect, after 1912, only the second method, a meeting of assembled owners, was available for the alienation of land with more than 10 owners.

1.3.3 Meeting of assembled owners

Where precedent consent was not applied for or not obtained, the assembled owners provisions applied. 'Some party' to a proposed alienation could apply to a Maori Land Board for a meeting with the owners. The meeting was then summoned by the Maori land board, but only if it was happy that the proposed alienation could be lawfully made and was not contrary to the interests of the owners or public.[17]

The board determined where and when any such meeting was held.[18] Notice was given, although meetings were not invalid if notice was not in fact received.[19] At any meeting five owners 'present or represented' were a quorum, irrespective of their shareholding.[20] The president of the relevant Maori land board or his representative had to be present also.[21] Given that blocks of land could have hundreds of owners, and that a meeting had to be called if the land had more than 10 owners, the quorum of five owners, or their representatives, was very low.

Resolutions to alienate were passed if those voting in favour of the alienation owned more shares in total in the land than any person voting against.[22] In other

12. Section 209(1)
13. Section 209(2)–(3)
14. Section 209(5)
15. Section 209(6) specifically stated this.
16. See below
17. Section 356
18. Section 341(2)
19. Section 341(3)
20. Section 341(5). The wording shows that this provision contemplated agencies, ie agents, attending meetings acting on behalf of owners.
21. Section 341(6)
22. Section 343

words, one or a few large shareholders could carry a matter against the wishes of many smaller shareholders. It was contemplated that any owner, trustee or proxy who voted against a motion could sign a 'memorial of dissent' in the presence of the representative of the land board, who would then make a written report of the result to the land board and deposit 'a statement under his hand of the proceedings of the meeting' together with any written resolution and memorial of dissent.[23]

The resolutions which a meeting of assembled owners could consider were to:

- vest land in a Maori land board for leasing or sale;
- lease land through the agency of the board for Maori settlement purposes;
- form an incorporation;
- accept an offer of purchase, lease or exchange from the Crown;[24]
- agree to any private offer of alienation;
- agree that land of certain types already vested in a board be sold.[25]

1.3.4 Confirmation

In the case of land owned by fewer than ten owners, or where a private purchaser had been granted precedent consent to negotiate over land held by more than 10 owners, once a deed or other purchase document had been signed, within six months it had to be presented to the nearest district Maori Land Board for consideration.[26] The board had to be satisfied that:

- the instrument of alienation had complied with formalities as to interpreters and other matters which provided evidence that the Maori signatories understood the effect of the transaction;[27]
- the alienation was not contrary to 'equity or good faith' or the interests of the owners;
- no native would become landless by the alienation. The Act defined this to mean a native whose total interests in Maori freehold land were 'insufficient for his adequate maintenance'.[28] No particular acreage was specified;
- the price paid was adequate, and had been 'sufficiently secured';
- no breach of trust was involved and no breach of any law.

Once satisfied of those matters, the board was to issue a certificate of confirmation 'as a matter of right'.[29] Until that occurred, the alienation was of no force or effect.[30]

This requirement for confirmation gave land boards not only an important role in ensuring that only the alienations beneficial to Maori would be passed, it could also be a significant incentive to private purchasers to ensure that they dealt adequately

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23. Section 344(2)–(3)
24. The ability to lease was not added until 1913, no 58, s 101(4)
25. Section 346
26. Section 218
27. Section 220(1)(a) and s 215
28. Section 2
29. Section 220(2)
30. Section 217(1). In addition, where land was owned in the name of one person only, an application could be made for the appellate court to order that it thereafter be held as European land – s 208.

with all affected Maori parties in any transaction, and completed transactions and did not leave the interests of some owners outstanding. If confirmation was not given, it was as if no transaction had occurred, which could be a financial disaster for a prospective purchaser.

In the case of land owned by more than 10 owners and where there had been a meeting of assembled owners who had passed a resolution in favour of an alienation, the process of confirmation was slightly different. The resolution of the meeting was reduced to writing and presented to the nearest Maori land board, along with a report from the land board's representative at the meeting, including any memorials of dissent. The land board then had to consider 'the public interest' and the 'interests of the owners' and determine whether to confirm the resolution itself.[31] If any of the owners might be made landless by the transaction, it was not to be confirmed, at least until their shares were cut out.[32] This confirmation process was similar to that for purchases involving land with under 10 owners, but there was no requirement to consider specifically whether owners understood the transaction, or whether it was contrary to equity or good faith, or if a breach of trust might be involved. This is presumably because those issues would be raised at the meeting of assembled owners, which was attended by a board representative who presumably would be aware of these issues.

Because of the added complexities of purchases where more than 10 owners were involved, and the added problem with finalising such transactions with all the owners, purchasers were given some assistance by further provisions that, where some owners dissented from a resolution to alienate, the land board could postpone its final decision on confirmation to allow time for dissenters to apply to the land court to have their interests partitioned out.[33] The board could also grant confirmation of the resolution before partition orders were made, taking into account shares to be cut out by the forthcoming partition orders.[34] If the resolution to alienate passed by the owners was not clear as to the boundaries of the land, the land board could take steps to ascertain the boundaries to give effect to the resolution and define them finally in its confirmation order.[35] Finally, if any person might be made landless by the alienation the land board could make application itself to the land court to have partition orders made to cut out that person's interest.[36]

Once a resolution was confirmed, in the case of an alienation to a private purchaser, the Maori land board itself became the agent for the owners to execute in the name of the land board an instrument of alienation in accord with the terms of the alienation. This was a very powerful agency which the statute created. The owners had no right to revoke the agency.[37] The land board could agree with the

31. Section 348
32. Section 349. 'Landless' had the same meaning as for confirmation for land with less than 10 owners – s 2 of the 1909 Act.
33. Section 348(1)
34. Section 348(2)
35. Section 350
36. Section 349(1)–(2)

purchaser in the instrument of alienation such terms, conditions and provisions as were consistent with the resolution.[38] At this final stage, the land board was also to satisfy itself that no undue aggregation of land was occurring in the hands of one purchaser.[39] This was an important plank of the Liberals' land policy.[40]

It can be seen from these provisions that both the land boards and the land court were important agencies when it came to finalising any purchase. They had considerable powers to assist a purchaser to complete a complex transaction, but by the same token, if they used these powers in a pedantic fashion, they could delay or frustrate such purchases. Also, the land court and the land boards could provide a check against each other in the interests of the Maori owners. A Maori land board might want to push to confirm an alienation in accord with a resolution of the owners, and obtain the best price by allowing the best land to be alienated, but the Maori Land Court could act independently to ensure that the dissenting owners had their interests properly protected.

However the worth of these safeguards was already undermined by the fact that the land boards were being asked to act both as trustee for land which Maori wanted to retain and settle themselves, while also being responsible for calling meetings and assisting purchasers to progress resolutions to alienate land. Not only that, they were being asked to make judicial rulings on whether particular alienations were in the best interests of Maori.[41]

These then were the rules for private purchasing. The situation was quite different however, for Crown purchases.

1.3.5 Alienations to the Crown

Under the 1909 legislation, purchases by the Crown were organised around the Native Land Purchase Board. It consisted of the Native Minister, the Under-Secretary for Crown Lands, the Under-Secretary of Native Affairs, and the Valuer-General.[42]

Where land was owned by fewer than 10 owners, the Crown could purchase or otherwise acquire any native land (apart from land vested in a land board or administered by it, or land held by an incorporation) in the same manner as European land, and confirmation by a Maori land board was not required.[43] Instead, there were requirements that no land could be purchased for less than the land value showing on the current district valuation roll,[44] and a purchase might not be made if

37. Section 356(6). The resolution and confirmation themselves not being a contract to carry out the alienation – s 356(9).
38. Section 356(7)
39. Section 356(8) – 3000, and later 5000, acres were stipulated.
40. See Brooking, 1992, pp 78–98
41. The land boards were first given the power to confirm alienations under the Native Land Laws Amendment Act 1908, s 7.
42. Section 361
43. Section 369
44. Section 372 – a roll taken for rates purposes, a district roll under the Valuation of Land Act 1908.

any Maori would become landless, and it was a duty on the Native Land Purchase Board to make 'due inquiry' in that regard.[45]

Where land was owned by more than 10 owners, the Crown could not apply for precedent consent. Instead, the meeting of owner procedures had to be invoked. The Act provided that the Native Minister would submit a proposal to the relevant Maori land board, which would 'thereupon' summon a meeting of owners to consider a resolution.[46] The land board was not required to consider whether a meeting was in the best interests of the owners, as it was for private purchases. It may have been presumed that the Crown would always act in the interests of Maori. Once a resolution was passed, the land board was to confirm the resolution in the normal manner (including partitioning out interests of dissenters, as for private alienations), then pass it to the Native Land Purchase Board. As soon as the land purchase board adopted the resolution, it became a contract of purchase directly between the owners and the Crown. The process was finalised when the Crown issued a proclamation that the land had been purchased and it had become the property of the Crown.[47]

Apart from these differences, the Crown also enjoyed two major advantages over private purchasers. Firstly, the Crown could restore pre-emption over particular areas for limited periods of time. Whenever it entered or thought of entering into a contract or negotiating for the purchase of native land, the Native Land Purchase Board could recommend to the Governor that an Order in Council be made prohibiting any other alienations of that block for up to one year, but this could be extended by six months as required.[48] Secondly, the Crown could purchase undivided interests.[49] While private buyers had to buy discrete blocks, the Crown was able to treat with only some shareholders and gradually increase its ownership within a block – seeking a partition of its interests out of the block at a later time if it was unable to secure all the Maori interests.

The Crown enjoyed another advantage. It could purchase from a Maori land board any native land vested in a land board and which the land board had power under the Act to sell. This could be done by private contract without auction or public tender, on terms agreed between the land purchase board and the Maori land board concerned.[50]

1.4 CHANGES IN 1913

While the 1909 legislation under the Liberals effected the major change from past policies, its operation in practice cannot be properly understood without also considering the changes made in 1913 by the Reform Government. The Reform

45. Section 373
46. Section 355
47. Section 368
48. Section 363(1)–(2)
49. Section 371
50. Section 366

Government drew support from North Island Pakeha farmers who wanted to own properties freehold, rather than leaseholds as favoured by the Liberals, and who felt they had a right to settle considerable areas of Maori land. This 'right' was quite bluntly asserted. In 1913 settlers at Waimana told the Native Minister, William Herries, that 'certain of the Natives near Waimana had started to carry out improvements along the river banks with the idea of retaining the land; the settlers considered it would be an injustice that the only pieces of flat land available should be monopolised and the settlers be driven to the hill tops whereon to establish their homes.'[51]

To satisfy this pressure for Pakeha land settlement, the new Government first made a clumsy attempt to buy up a large area of Maori land in the North Island. It introduced a Land Laws Amendment Act 1912 which contained a late amendment providing for Maori to enter directly into agreements with the Crown to sell or lease their lands by way of public auction.[52] This was an attempt to take advantage of an offer of some North Island chiefs to lease 250,000 acres for private settlement. Te Heuheu Tukino, Hiraka te Rango and others had approached Maui Pomare and through him, Prime Minister Massey, offering the lands for lease. Massey had had the amendment hastily drafted.

The scheme never came to fruition. When the amendment was debated in the House of Representatives, Apirana Ngata claimed to have a letter showing that the chiefs were no longer interested in the scheme. He pointed out the problems with it. First, he said that the Government now had to realise that chiefs could no longer guarantee the support of the people under them. The Native Land Acts made all owners equal. The Liberal Government had been approached with the same scheme under the 1909 legislation, and meetings had been held at Hawkes Bay, Taihape and Taupo. However the owners had not accepted the price offered by the Crown. Ngata outlined the features in the proposed bill which had discouraged the chiefs:

- the bill provided only for a sale, or lease with the right to purchase. No lease of a limited term of years was provided for;
- the purchase money would not be paid over as cash – rather, some large part or even all of it would be held and invested, and Maori receive the interest;[53]
- Maori were not anxious to put their lands under Crown land boards – they had been discouraged already by the Maori land councils/boards experience.[54]

This incident is important because it indicates both the Maori and Government views on land alienations at the time. Maori were prepared to offer large areas to settlers, but for a limited period, and they wanted cash from any alienations to be

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51. Notes of a meeting at Waimana, 11 February 1913, MA 28 31/29
52. Section 49
53. Although Ngata did not say it, consistent with the practice under the land boards, the money would almost certainly have been used to make basic improvements to the land (eg formation of roads) for the benefit of incoming settlers, if not loans to the incoming lessees to settle the land.
54. 17 October 1912, NZPD, 1912, vol 161, pp 328–329. Massey argued that the chiefs had only rejected the proposal after receiving a briefing on the bill from Ngata. Ngata did not deny that he had met the chiefs over the amendment, but insisted the chiefs had arrived at their own conclusion on the matter; 18 October 1912, vol 161, p 481.

paid directly to them. The Crown sought, on behalf of Pakeha settlers, outright ownership and the creation of a central fund as insurance for Maori welfare in the future.

1.4.1 The Native Land Amendment Act 1913

The Reform Government's second attempt at land legislation in 1913 was more successful. It attacked the area with the greatest potential to slow down land alienations, the system of checks operated by the Maori land boards and the land court once a decision to alienate had been made. The architect of this legislation was Native Minister William Herries. Prior to 1912 he had been a well known critic of the Maori land boards, claiming that Maori should be left in control of their lands to do with them as they wished. In August 1912 he explained to a deputation of Maori from Wanganui which complained that the land boards were attempting to put lands vested in them into perpetual leases that:

> he intended to inquire very closely into the question as to whether the Court and the Council could not be brought together and made one body. He has always opposed the tying up of Native land and handing it over to the Board. He could quite understand the feelings of the Natives in having their lands vested in the Boards very often without their knowledge. . . . He would endeavour to bring down legislation next Session, with the assistance of Hon. Dr. Pomare, which would remedy some of these evils. Any measure brought down would be submitted to the Chiefs or the Natives to see whether they could suggest anything better or to get their approval. He said he felt himself in the position of the protector of the remnants of the Native race, yet at the same time the land could not be allowed to lie idle when both the Natives and the Pakeha were wanting to settle it.[55]

The debate over the 1913 amendment bill concentrated mostly on provisions allowing the Government to buy lands, such as the West Coast leases in Taranaki, held on trust. The Government wanted to on-sell land to Pakeha tenant farmers unhappy with their current leasehold tenure.[56] There was, however, broader debate about the aims of the Crown policy to purchase Maori 'waste' land. The Government's view was that as long as it could get the land from Maori without compulsion, it was advancing the cause of settlement.[57] Apparently 'a very large section' of North Islanders were calling for all Maori land to be put into the hands of the public trustee and the purchase money simply apportioned to Maori – so the Government stance was apparently a major concession.[58] The belief was that Maori

55. MA 13/56 Ohotu block
56. See NZPD, 1913, vol 167, pp 823–824. The west coast settlement reserves bill was being debated at the same time as the 1913 Act. Herries accused the opposition of dragging out objections to the 1913 Act so as to delay debate on the west coast legislation – p 854. One member suggested that the bill breached the Treaty of Waitangi and suggested that it would need to be referred to the Home Government for consideration and approval, or else the Governor should not sign it into law – p 816. Pomare, as the Maori member of the Executive Council representing the native race, supported the bill and attacked Ngata and others who opposed it – pp 407 and 409.
57. 28 November 1913, NZPD, 1913, vol 167, p 388

had much 'useless land' which they could easily sell, and buy horses and ploughs to cultivate their remaining land.[59] The mere fact that the Crown was to be a major purchaser was seen as a protection in itself, since the Crown dealt fairly whereas the speculator was crooked. As one speaker put it, '[i]f the waste Native lands come into the hands of the Crown we have nothing to fear, because justice will be done both to the Natives and the country.'[60] However at least one member warned that there was no 'waste' Maori land left, as had been pointed out by the under-secretary himself in his report that year.[61] Members seem to have had difficulty recalling the extensive discussions about potential landlessness in the debates of the 1890s.[62]

Apart from provisions allowing the Crown to make purchases in the West Coast and other reserve areas, the 1913 Act made one major change to the general purchasing powers of the Crown. In a report in 1913 the under-secretary had complained that Crown offers of purchase were often being defeated at meetings of assembled owners – it was assumed that those opposing resolutions to sell or lease to the Crown were owners interested in making private deals with other parties. In the Crown view, this was speculation. The Crown could not avoid this problem because the 1909 Act required the Crown to apply for a meeting of assembled owners where there were more than 10 owners in a block.[63] This also meant that the Crown had to have any resolution from the meeting confirmed by a Maori Land Board, and the land court would cut out partitions for dissenters. The under-secretary commented:

> It is . . . desireable, in the larger blocks, where a number of owners are concerned, and a motion to sell has been defeated by a not fully representative meeting, that provision should exist for the Crown to acquire individual interests.[64]

The 1913 legislation simply repealed the requirement that the Crown call assembled owner meetings.[65] In one stroke, the Crown acquired the ability to avoid a publicly advertised meeting, and any requirement that it put one proposal for the purchase of a whole block to all owners who might be assembled. It also avoided the confirmation procedure before the land boards, including any orders that the land court might make to partition out the interests of dissenters. Instead, the Crown could use its power to purchase undivided interests to steadily buy up shareholders' interests. The only check on its powers were the requirements that the land be bought at the current recorded value under the Valuation of Land Act 1908,[66] and

58. Ibid
59. Ibid. The contradiction was obvious – if the land to be sold was bought by Europeans for cultivation purposes, why was it 'useless' to Maori?
60. 28 November 1913, NZPD, 1913, vol 167, p 396
61. Ibid, p 405. There were also some complaints that the legislation was being rushed through at the end of the session, eg p 397.
62. See the Hutton report and the Preamble to the Maori Lands Administration Act 1900.
63. Section 370
64. AJHR, 1913, G-9, p 2
65. 1913, s 112
66. Section 372

that the Native Land Purchase Board satisfy itself that no Maori would be rendered landless.[67]

As to the specific changes to the role of the land boards and the land court, Herries contended that in 1909, with the rush of alienation applications opened up by the new legislation, the old boards could not cope because they did not have sufficient 'judicial ability'. It seems that he meant the ability to allow alienations. He mentioned a case near Auckland where even though the president had been a 'strong man' he had been outvoted on an alienation matter by the other two members of the board – one Maori, one European.[68] Herries may also have been reacting to problems which had arisen with the Native Land Court making orders in ignorance of board actions. In one case, the Crown had organised a meeting of assembled owners and had obtained a resolution in favour of sale to the Crown. The land had in the meantime been partitioned by the land court and one of the partitions alienated.[69] Herries had had to order the land board presidents to notify the judges of all assembled owner meetings to avoid this sort of problem.[70]

Herries described his proposed new system in this way:

> By the 1909 Act all land transactions, all confirmations of sales or leases, passed through the Maori Land Boards. The Native Land Courts were confined to questions of title and to questions of succession. The Maori Land Boards were the sole means by which you could purchase land from the Natives, either by the Crown or the Pakeha purchaser. When I took office it was felt that the Boards were not strong enough, and there was a general desire that they should be abolished and that the whole question of the purchase of Native land and the confirmation of dealings should be vested in the Native Land Court. I found that I could not exactly do that without entirely recasting the 1909 Act. What I have done in this Bill is this: I have practically made the Native Land Court and the Maori Land Board the same. The North Island is to be divided into Native-land districts, and in each of those districts there will be a Judge and Registrar. The Judge will constitute the Court, and the Judge and Registrar will constitute the Maori Land Board; practically the Maori Land Board will be the Judge himself. We hope by that means to give a more judicial aspect to the system of Maori Land Boards than was the case before.[71]

The confusion of duties is obvious. The land boards were already compromised in having to act as trustees and promote settlement for Maori, as well as progress private alienations, and make rulings on the benefit of those alienations for their Maori beneficiaries, as well as the general public. Now, they would also have to make decisions on partitions designed to protect the interests of dissenters. How could the dissenters be sure that the land board was properly considering their interests in a partition, when the board was also finalising a purchase and seeking the best price for the sale of the block of which their land was a part? The scheme

67. Section 373
68. 3 August 1916, NZPD, 1916, vol 177, p 741
69. Under-secretary to Native Minister, 24 October 1912, MA 19/3
70. Native Minister to under-secretary, 21 October 1912, MA 19/3
71. 28 November 1913, NZPD, 1913, vol 167, pp 385–386

certainly would provide a 'one-stop' alienation service, but the cost would be confusion for all parties about the role of the land boards and land court.

Accordingly, one would think that under such a scheme the land boards and the court would be careful to distinguish between their respective roles. It was evident from the beginning however that this was unlikely to occur. When asked if he was 'wiping the Boards out?', Herries replied that he was 'practically amalgamating' the land court and the boards, 'but we still maintain the term 'Boards,' under which the Judge can sit either as a Court or as a Board.'[72] Nor did the fudging of roles end there. Although the land boards were to consist of a judge and a registrar (the arrangement to date had been a president, a Maori member and a European member), it was said that the judge would 'practically' be the land board.[73] As Herries put it several years later, 'Practically speaking, the Judge of the Native Land Court is now the Board, and the Judge of the Native Land Court presides over all meetings in which any alienations are confirmed.'[74] And in an exchange between Herries and James Carroll over the continuing role of the land boards, Herries said that he hoped that the boards would have less and less to do with actually administering land:

> I hope in a few years the Boards will not have anything to do with the land. I practically abolish the Boards. I want to keep them a judicial body for the granting of confirmations and various judicial matters that come before them at the present time.
>
> The Hon Sir J CARROLL – Confirmation is administrative.
>
> The Hon Mr HERRIES – I call it judicial. The whole scheme of the Bill was practically to abolish the Boards, only if I had actually abolished the name of the Board it would have meant considerably greater difficulty in preparing the Bill and altered their constitution entirely.[75]

The 'greater difficulty' was a reference to the other functions of the boards, such as the administration of lands already vested in them on behalf of Maori, and administration of monies from sales and rents until they could be distributed to individuals. It was not legally possible for a court, a body designed to adjudicate on issues, to have such ongoing and extensive trustee functions.[76] There was no Maori Trustee at the time to take on this role. Had he actually abolished the land boards, Herries would have had to have designed a separate body to take on these functions, or immediately returned vested lands to their Maori owners and left it to private purchasers and lessees to make arrangements for the distribution of sale and other monies held by the land boards on behalf of owners. This would have raised problems for the successful completion of purchases and leases. So the land boards

72. Ibid, p 386
73. Ibid
74. 3 August 1916, NZPD, 1916, vol 177, p 741
75. 9 December 1913, NZPD, 1913, vol 167, p 857
76. The Minister of Internal Affairs, Bell, also hinted at this in debate on the bill in the Legislative Council when he said that 'it is desireable to distinguish to a certain extent between the judicial duties of the Court and the administrative duties of the Land Board, though both are discharged by the same individuals . . .', ibid, p 866.

were 'practically' abolished only as far as Crown and private purchasers and lessees were concerned, since they only needed to apply to the boards for a confirmation order. But they remained significant institutions for Maori, because of their ongoing administration of lands and monies on behalf of Maori.[77]

The Maori MPs recognised this. Ngata was concerned the changes would weaken the Native Department by putting extra work on the judges. 'Much depends on the personal predilection of the Judges. If a Judge thinks most of his work as President of the Maori Land Board, he will, if this additional work is imposed upon him, hardly do justice to the other branch of his work; and if he thinks most of his work as Judge of the Maori Land Court, he will not do justice as President of the Maori Land Board. I speak with some knowledge of this matter – with experience of the Waiariki and the Tairawhiti Maori Land Boards.'[78] Ngata unsuccessfully moved that a Maori resident in the district be added as a third person to each land board.[79] Carroll also argued eloquently for the inclusion of a Maori member.[80]

There appears to have been only one suggestion that there might be an actual conflict of interest created by the new law, and this concerned the proposal that Maori land boards delegate some of their powers to Crown land boards constituted under the Land Act 1908.[81] It was suggested that persons presently sitting on these Crown land boards had family members interested in Maori land.

1.5 THE LAND COURT, THE LAND BOARDS, AND THE OPERATION OF THE LAND PURCHASE SYSTEM ON THE GROUND

It is not possible to know exactly how the system operated in each district without a full analysis of alienation figures and Maori Land Board proceedings in each district. John Hutton has produced one report on the Waikato–Maniapoto Maori Land Board.[82] Some of the minutes of the Tairawhiti district Maori Land Board are held in National Archives in Wellington as part of the microfiche collection of Maori Land Court minute books. Another source of information could be the statements from the Maori land board representative who attended each meeting of assembled owners[83], but these have not been located, if they were ever independently kept. The following section looks at general statements and particular cases which hint at the underlying general practice, and also highlight cases of abuse.

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77. In the Legislative Council it was said there were still 'many functions cast upon the Maori land board by various statutes' and it was desirable to continue the existence of the Board for the performance of these functions. 28 November 1913, NZPD, 1913, vol 167, pp 385–386.
78. 28 November 1913, NZPD, 1913, vol 167, p 400
79. 4 December 1913, NZPD, 1913, vol 167, p 577
80. Ibid, p 837
81. Ibid, pp 579 and 817
82. John Hutton, 'The Operation of the Waikato–Maniapoto District Maori Land Board', report commissioned by the Crown Forestry Rental Trust, May 1996
83. Required under s 344(2)–(3) of the 1909 Act – noted above

1.5.1 Customary land

Before land could be purchased, it had to have the legal status of Maori freehold land. Maori land in its 'original' legal state, known as 'customary land', did not have a formal list of owners who could sign off on an alienation of the land. Accordingly, in the nineteenth century, a precursor to almost all land purchases had been an application in the land court for a determination of the owners of customary land and the issuing of a certificate changing the status of the land to Maori freehold land and listing the owners who had power to sell.

In the period after 1909 this occurred much less frequently, as most customary land had already changed status to Maori freehold land. Figures from the Maori land court, and a perusal of land court records, show the small and dropping number of applications for investigation of title from 1909–22.[84]

Year	Title orders
1913	61
1914	82
1915	24
1916	22
1917	23
1918	10
1919	33
1920	11
1921	14
1922	15

However, occasionally a block remained in customary title and this impediment to the beginning of the purchase process had to be overcome. In 1917 an MP enquired about what was being done to individualise titles to land around the Tokaanu township, which it was said was overgrown with blackberry. 'Owing to the fact that the land was held by Maoris, and had not been subdivided, the district was not going ahead. If one Maori tried to cultivate a small portion of the land near the Township of Tokaanu other Maoris claimed it, and so cultivation was stopped.' He hoped steps would be taken immediately to have the land court promptly individualise title.[85] The reply came back that the blocks concerned had until recently been customary land. The land court had only recently sat and clothed them with a freehold title. They were said to have been some of the last large blocks in the North Island without a Maori freehold title.[86]

84. AJHRs, 1913ff, G-9 series
85. Hindmarsh (Wgtn Sth), 14 September 1917, NZPD, 1917, vol 180, p 151
86. Ibid, p 152. The Government was attempting to purchase the blocks.

In 1920 there was a complaint that Maori on the East Coast were refusing to take the 6000 acre Tikitiki block, which was still customary land, through the land court, so that rates would not have to be paid on it. Customary land was exempt from rates. The owners had refused to attend land court sittings on the matter. In this case it was pointed out that the land had actually been before the land court, but judgment had not yet been issued. The Native Minister commented that there were now only 15,000 acres of customary land remaining in the whole of New Zealand.[87]

1.5.2 Under 10 owners

It is hard to determine from records such as land board minutes which alienated blocks had fewer than 10 owners as opposed to those alienated under other provisions. Rachael Willan has shown that the Crown and private buyers used this provision to purchase very large cumulative areas.[88] Ngata commented on this phenomenon in 1916:

> Large areas of Native land are yearly changing hands by way of direct alienation. The law is that where the land is not owned by more than ten owners an alienation may be effected by the individual execution of the owners. Justices of the Peace, lawyers, and other official witnesses, and licensed interpreters of the first grade, go around with the deeds and obtain the individual signatures of the owners.[89]

Land Court minute books do not record if partitions were undertaken for the express purpose of reducing ownership sufficiently to avoid having to call a meeting of assembled owners. Instead, many partition orders appear to have been sought as a consequence of alienations, rather than prior to them. The peak number of partition orders made by the land court appears to have been in 1916, which roughly coincides with the peak years for land alienations by sale and lease. In other words, the peak in partition orders does not precede the peak in alienations, suggesting that partitions to reduce ownership for sale purposes may not have been a widespread practice.[90]

1.5.3 The application of the precedent consent method

As was noted above, precedent consent could be applied where there were more than 10 owners of the land and a private purchaser sought permission to deal with the owners as if there were only ten. Minutes of the Tairawhiti District Maori Land Board suggest it was frequently sought and granted in that district.[91] However, in 1912 the Supreme Court ruled that alienations contemplated by section 209 of the Native Land Act (the section concerning more than 10 owners) were 'dealings by

87. 24 September 1920, NZPD, 1920, vol 187, p 1290
88. Willan, 1996
89. NZPD, 1916, vol 177, p 71
90. See tables below. This data is however subject to many variables which make a more precise correlation difficult. Partition orders are discussed below.
91. For Example, 3 Tairawhiti District Maori Land Board MB (1910), pp 250ff

the whole owners' and the land boards, in granting precedent consent to dealing with the individual owners direct, 'must grant its consent not to alienation of the individual shares, but to a proposed alienation of the whole block and by all the owners.' This created a problem. The Tairawhiti land board had been using provisions of the 1909 Act for the incremental confirmation of sales.[92] That is, it was granting precedent consent to an alienation of land, and then making incremental confirmation orders as each parcel of shares was purchased. In effect, the land board was giving private purchasers an ability similar to the Crown's ability to buy up individual shares.

However, the Supreme Court ruling meant that once precedent consent was granted, the land court could not go on to confirm a part purchase of the block, but must wait until all owners had signed up to the sale. This raised the possibility of purchase negotiations dragging out for many months, and owners who had not yet signed up to the purchase holding out to obtain a higher price for their shares. The situation was made more acute by the fact that, by law, the land board had to receive an application for confirmation within 18 months of precedent consent being issued.[93] So if a purchase was not completed in that time, the purchaser had to apply all over again for precedent consent. For fear of encouraging speculation 'together with the fact that the Board must avoid anything which would tend to form a tangle of incompleted titles', the Tairawhiti land board determined that it was not in the interests of the public or Maori to grant precedent consents, except where they were applied for by 'the whole of the owners under special circumstances.'[94]

An attempt was made to remedy the situation with the passage of section 8 of the Native Land Amendment Act 1912, which provided that precedent consent granted on the application of one owner had the effect of granting permission for all owners to negotiate to sell their interests unless some limits were imposed on the consent.[95] However, Herries commented in 1916 that the system had been abolished 'principally because of a judgment of His Honour the Chief Justice in the Supreme Court, who practically held that the Act as it stood on the statute-book was inoperative.'[96] Whether this refers to the 1912 case or a fresh case is not clear.

The Tairawhiti District Maori Land Board minutes do not generally discuss the precise reasons why precedent consent might be given or refused. It was generally granted without comment. In the odd case it was refused – it seems where opposition from owners was evident.[97] In one case, involving an application for precedent consent to purchase the 85 acre Pourewa (or Sporings) Island, the land board noted that a woman appearing on behalf of her dead father wanted his share divided out of any sale:

92. Section 281(2)
93. Section 209(7)
94. 8 October 1912, 4 Tairawhiti District Maori Land Board MB (1912), p 286
95. And see 5 Tairawhiti District Maori Land Board MB (1913), p 8, 10 January 1913
96. 3 August 1916, NZPD, 1916, vol 177, p 737
97. For example, June 1910, 3 Tairawhiti District Maori Land Board MB: p 250 precedent consent given, noted there were no objectors; p 251 consent refused because a dispute among owners is evident.

> The Board pointed out this was only an application for consent & they [the owners] need not sign the deed of sale unless they liked and it would come before the Board afterwards when they may or may not confirm.[98]

This suggests that the board did not have a problem with granting precedent consent in the face of mild concerns, because of its power to intervene later when confirmation was sought.

1.5.4 Over 10 owners – assembled owner meetings

The assembled owner procedure was new in the 1909 legislation. One historian has described it as 'a very important provision because it was at these meetings that the tribal leaders could exercise their influence to stop the improvident sale of land.'[99] Did it serve this function? The process was described in 1916 as follows:

> The system of buying from the assembled owners is this: You give notice to the Maori Land Board that you desire a meeting of the assembled owners to be called. The Board issues notices to all the owners they can find or of whom they know the addresses who are connected with the block, and they publish a notice in the Gazette and the Kahiti that a meeting of the assembled owners will be held at a certain place on a certain date to consider the question whether the land will be sold to John Smith at the Government valuation. Of course, there is a chance of abuse in these first steps, and one of the weaknesses of the process is the difficulty of getting the notice brought before the owner, but that is a matter that has been got over to a great extent. There is no very serious complaint now with regard to a Native not getting the notice, because the Kahiti is very freely circulated amongst the Natives, and if they do not get the actual notice they probably hear from some one else that a meeting is to take place. There is a system by which proxies can be given by those who cannot be present personally, and under the original regulations a certain amount of abuse crept in with regard to these proxies. . . . Then, when the purchaser gets his meeting of assembled owners, if he can get a unanimous vote he proceeds to apply to the Maori Land Board to get his purchase confirmed . . . [100]

There was a class of cases where there were more than 10 owners for a block, but the assembled owner procedure was not followed. Where an owner had died and the succession orders had not been finalised so that the successors were not registered, they were treated as one person only. So in the Oharae block in the Tai Tokerau district, a purchase in 1915 was allowed to proceed without a meeting of owners being required, because although 22 persons were alive with interests in the block, there were only eight registered owners.[101] Given the notorious backlog in succession orders,[102] it is possible that cases such as this were common. But if that were true, it is odd that more protest was not recorded. It is likely that in some cases,

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98. 5 September 1910, 3 Tairawhiti District Maori Land Board MB (1910), p 265
99. Butterworth, 1990, p 67
100. 3 August 1916, NZPD, 1916, vol 177, pp 737–738
101. *Foster v Tokerau Maori Land Board* [1916] NZLR 1006, and s 8(1)(d) Native Land Amendment Act 1913
102. See the separate report on succession.

where owners became aware at an early stage of negotiations for a sale or lease, successions were brought up to date in contemplation of the alienation. Court minutes in the period show that succession applications were often heard alongside alienation and partition applications. The lack of protest might also be put down to a lack of notice of a proposed alienation.

The extract quoted above notes that problems had been experienced with getting notice to owners. The comment that 'if they do not get the actual notice they probably hear from some one else that a meeting is to take place' is a telling one. Possibly the speaker was correct. The minute books of the Tairawhiti District Maori Land Board do not disclose any pattern of problems with notice. Nor do the minute books of the land court in the period disclose concerns about notice. In any event, the 1909 Act provided that a meeting could not be invalidated because any owner had not actually received notice.[103]

The technical requirements for notice in the Kahiti seem to have been closely adhered to. When in 1921 it was discovered that several resolutions had been passed by meetings of assembled owners without the required prior notice in the Kahiti, the Crown solicitor advised that such an omission was fatal to any resolutions passed.[104] However, the requirements were not so strict as to the content of such notices. In 1912 a meeting of assembled owners passed a resolution to vest certain land near Dannevirke in the Ikaroa District Maori Land Board for sale by public auction. One owner attacked the decision on the basis that the notice was insufficient. It had stated that the land, 'or any part of it' might be sold. It was argued that the words 'any part' did not detail what land might be affected, and that it was possible that an amended resolution, quite different in substance from what was set out in the notice, could be carried by a minority of owners attending a meeting. This argument was rejected. The Supreme Court said that the notice fairly set out the substance of the resolution and there was no possible misunderstanding.[105]

A larger problem was the way in which proxies were used at assembled owner meetings. It seems that proxy voting quickly became popular. This popularity was initially boosted by the land boards. In 1910 some boards were sending out proxy forms with each notice of a meeting of assembled owners. The under-secretary stressed that this procedure was not to be followed and forms were to be issued only on request.[106] Why he gave this direction is not clear. It does not seem to have been out of any concern for Maori purchasers. The concern may have been that the practice encouraged private speculation. In the first years of the operation of the

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103. Section 341(3)

104. 23 March 1921, MA 1 19/1/25

105. *Atenata Wharekiri v The Ikaroa District Maori Land Board* (1912) 31 NZLR 477 (SC). The resolution of the meeting was held to be void however because it restricted the board to sell by public auction – when the statute allowed sale by public auction or tender. The judge commented that 'a Native owner who is not supposed to know the whole law' might well have agreed on the express understanding that only auction would be considered.

106. Under-Secretary T Fisher to presidents of Maori Land Boards, Aotea, Waiariki, Waikato–Maniapoto, Tokerau, Tairawhiti, Ikaroa districts, 27 October 1910, MA 1 19/3

assembled owner scheme, the Government complained that Maori were using the proxy process to defeat sales to the Crown. The under-secretary noted in his annual report in 1913 that:

> persons acting as proxies have attended meetings solely for the purpose of endeavouring to defeat a sale to the Crown. Although no actual proof can be brought to bear, it is assumed that in some cases a proxy represents the lessee of the land or would-be purchaser or speculator, besides acting for the Native owners, and his knowledge and ability are brought to bear by the use of arguments that will appeal to the Native's imagination, and so defeat the motion before the meeting.[107]

The under-secretary recommended that the land boards should, pursuant to their own regulations, limit the appointment of proxies to other owners in the block only. He also recommended, and got, an amendment allowing the Crown to avoid assembled owner meetings – as has been seen above.

The Native Minister commented on the problem of proxies in 1916:

> Under the old system, when the Act was passed in 1909, before we knew better, a proxy could be given which did not state the intention of the man who gave the proxy. Cunning Natives then used to go round and get proxies from the owners who did not wish to attend, and if there were two Pakeha purchasers trying for the same piece of land the Native with his pocket full of proxies got a high price, because he could transfer those proxies intended to benefit one purchaser to the other purchaser for a price, or if there were only one purchaser he could demand more money for his proxies. I do not say that this was often done, but there was always the possibility that it might be done.[108]

The solution was an amendment in 1916 requiring proxies to state, on their face, the wishes of the person granting the proxy. This particular solution appears to have been suggested by the President of the Waikato–Maniapoto Maori Land Board. He gave an example of a meeting of assembled owners in Te Kuiti where, out of 79 owners in a block, only four owners were present in person at the meeting. The solicitor acting for the proposed lessee had proxies from 35 other owners. The four owners present voted against a resolution to lease the land. The solicitor exercised the proxies in favour of the alienation. Justice Holland, acting as deputy for the president, had declared the resolution carried. Twenty owners attended a subsequent board meeting where the president himself presided. They managed to convince him that the earlier vote should be disregarded. A fresh vote saw the resolution to alienate lost, suggesting that those owners who had signed proxies had merely authorised the solicitor to act on their behalf, but had no knowledge of the motion that would be put. The president recommended that in future the motion should be stated in the proxy form itself.[109] This case also illustrates that the low

107. AJHR, 1913, G-9, p 2
108. 3 August 1916, NZPD, 1916, vol 177, pp 737–738
109. W J Bowen, President of Waikato–Maniapoto District Maori Land Board to under-secretary, 21 October 1911, MA 1 19/3

quorum requirement (five owners or their representatives) in the 1909 Act could sometimes allow meetings of owners which were very poorly attended to nevertheless pass major resolutions concerning alienation.

There was also a problem with owners who had signed proxies turning up to meetings and voting at odds with the way the proxy holder voted. In 1911 John Salmond was asked whether boards could legitimately refuse to consider proxies where an owner represented in the proxy was present. He thought that they could.[110] The Native Land Amendment And Native Land Claims Adjustment Bill 1914 (clause 2) was designed specifically to prevent speculators operating at assembled owners meetings, by requiring people attending meetings to say if they were acting as agents or not. Agency, which the Government viewed as evidence of the involvement of speculators, was said to be 'rife' in Maori land sales.[111]

There were also problems with purchasers who persistently requested extra meetings. To remedy this, in 1915 there was an amendment to provide that purchasers who asked for a second meeting of owners within 12 months of a previous meeting must lodge with the land board the likely expenses to Maori of attending.[112] This suggests that not only did boards readily grant meetings on the request of purchasers, but that the meetings were also an expense to Maori. Several meetings over one block, or over adjoining blocks in the same district may have been a considerable expense in time and money to the owners. It would be interesting to discover if these sorts of costs had an impact on land sales, either by placing owners in debt, or by encouraging them to consider several alienation proposals at the one meeting. Gazette notices for meetings of assembled owners show that it was quite often the case that several alienation proposals over different blocks would be considered at a single meeting.[113]

The problems did not end with the passing of a resolution at a meeting of owners. There might also be trouble if a meeting did not get a unanimous vote:

> There might be a majority who are willing to sell, but there might be a certain number of objectors – generally people living on the place – who do not want to sell, and the difficulty is to protect their rights. When the procedure was first in operation there was often not sufficient time given to the non-sellers to register memorials of dissent, and some Natives were not aware that they could do so. Now there is ample opportunity given to the non-sellers to register their dissent, and before the land is alienated to the purchaser the interests of the non-sellers must be cut out. That means a survey of the block, and very often trouble occurs in cutting out their interests.[114]

There was also a need to give minorities who rejected sales more time to object. Under the 1909 Act, a Maori land board could confirm a sale as little as half an hour after a meeting. Indeed, a case went before the Native Affairs Committee where a

110. 23 August 1911, MA 1 19/1/25
111. 5 October 1915, NZPD, 1915, vol 174, p 610
112. Ibid. Native Land Amendment and Native Land Claims Adjustment Act 1915.
113. The *Gazette* recorded these notices under the index entry 'Native land – Alienation – dates fixed for meetings of, – owners of certain blocks.'
114. 3 August 1916, NZPD, 1916, vol 177, pp 737–738

land board confirmed an alienation only one hour after a meeting of owners. The 1913 Act increased the time for filing a memorial of dissent to three days. In 1916 this was increased to seven days. This did open up a further speculation problem – a rival purchaser might get an owner to file a memorial in return for extra cash for the land. But the Government decided that it could live with this possibility.[115]

1.5.5 Partitions

Partition applications were an integral part of the alienation process. They were either made before or during alienations. The most common reason for making an application seems to have been to divide the interests of non-sellers out of a block. Partitions fell within the jurisdiction of the Maori Land Court, so there is a quite comprehensive and readily accessible record of applications and the results. The figures for orders made in the court in the period are as follows:[116]

Year	Partition orders
1913	783
1914	1019
1915	2083
1916	2172
1917	1617
1918	1247
1919	1119
1920	904
1921	813
1922	898

The number of orders appears to rise in the years when alienations were also high, demonstrating a rough correlation between the two:[117]

115. 5 October 1915, NZPD, 1915, vol 174, p 610
116. AJHRs, 1913ff, G-9 series

Year	Sales	Leases	Total	Partition orders
1912–13	210,553	241,562	452,115	783
1913–14	234,120	136,582	370,702	1019
1914–15	215,651	91,609	307,260	2083
1915–16	142,961	101,696	244,657	2172
1916–17	160,651	103,564	264,215	1617
1917–18	148,706	135,081	283,787	1247
1918–19	154,046	45,002	199,048	1119
1919–20	126,030	40,267	166,297	904
1920–21	103,694	43,184	146,878	813
1921–22	55,015	50,914	105,929	898

Sales and leases through land boards (acres)

From a perusal of land court minutes in this period, the following general conclusions can be drawn about partitions.

- Partitions generally were associated with alienations, with applications either being received before negotiations with a potential purchaser, or after a decision had been made to alienate the land, if a group of dissenting owners was identified. In fact, the Native Land Amendment Act 1913 specifically provided that for any partition application made by a Maori owner 'the land shall, as far as practicable, having regard to the interests of the Native owners, be subdivided into such areas according to quality and utility as will enable each allotment to be disposed of to an individual purchaser or lessee by the Native owner or owners . . . according to law.'[118]
- In most cases, the partition was not disputed, an arrangement having been made among the owners before the application was brought to court. In the Rotorua region, many partitions were prearranged by committees. For example: 'the shares were arranged by a Committee of seven chosen from N'Parua',[119] or, 'We have arranged a partition of that part of this block lying between the road and the Waikato River in such a manner as to give each partition frontage to the road and also to the river. The estimated area of the land between the road and the river is 2884 acres and we have divided it as follows: . . .'.[120] In one case it was even stated that a partition dispute had been referred to a committee of tribes meeting in Te Ngae who had ruled on it.[121]

117. Willan 1996 and AJHRs 1912–22, G-9 series
118. Section 46
119. 9 November 1911, 56 Rotorua MB (1912), pp 177–183
120. 13 November 1911, 56 Rotorua MB (1912), p 208
121. 23 January 1912, 56 Rotorua MB (1912), p 242. However one person objected to the ruling and the matter ended up before the land court.

- In cases where the partition had been pre-arranged, the court minutes indicate that the court would undertake a cursory examination based on whatever maps and brief (from the minutes) explanations were put before it. For larger blocks where many owners were involved, the investigation would be more extensive.
- Where a dispute arose, the court would usually send groups away to sort out an arrangement among themselves, with the court overseeing the negotiations to ensure that general equity was maintained among the owners in the final result.
- Where the court had to adjudicate on a partition dispute, it would call and hear sometimes quite extended evidence, and in its decision would have regard to valuations, previous and current occupation and use of different parts of the block, and general equity. For example, in one disputed application, a visit by the court to the block revealed a valuable limestone deposit on it. The court ordered that a fresh partition proposal be drawn up to allow all owners to share in the deposit.[122] In another case, a partition plan before the court showed a river in the wrong position, prejudicing one owner who had cultivations near the river. An amended order was issued.[123] In yet another example, in 1910 there was an appeal from a Native Appellate Court decision, where that court, on discovering that two elderly people with land in the Waimarino block, not present at the partition hearing, would lose their cultivations, adjusted the partition order made.[124] In another case a partition was appealed against as unfair because one party was apportioned an area containing a large part of a watercourse going through the land. The appeal was upheld.[125] In another case, one owner who had used and managed a block claimed special preference in a partition scheme. The land court ruled that it could take some account of the occupation and use by that owner, especially on those areas where the land was of equal value, but where the part of land claimed by that owner was of greater value than the rest of the block, occupation and use of itself was not sufficient to upset a presumption of equity between the owners.[126] In another decision in 1926 a partition order was varied because:

> partition of the papakainga portion . . . upon a strict basis of the relative interests in the whole block, is not practicable. The papakainga portion has become closely occupied and to give each family or section of owners its exact proportion of area would be inexpedient firstly because it would entail hardship on resident owners by

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122. 4 May 1911, 53 Otorohanga MB (1911), p 39
123. 11 May 1911, 53 Otorohanga MB (1911), p 83
124. 23 November 1910, Appellate Court 8, reel 277, case no 38, Native Appellate Court panui (Akld 1910–43), p 48, judgment re appeal by Pihopa Turehu from decision given at Wanganui on 16 July 1910, partition by Native Appellate Court Waimarino, nos 3G, 3H, 3J and 3K blocks.
125. Okurupatu A3 sec 2B no 3, 18 September 1914, 3 Ikaroa ACMB, p 363, Wellington, Jackson Palmer CJ, MacCormick J: 'inspection of the land makes it plain that while in other respects the land partitioned is of fairly even quality the appellant's area does not adequately represent the value of her interest owing to the fact that while appellant owns less than ¼ of the total area the portion awarded to her contains about ¾ of the wide and deep watercourse on the land . . . Court below not aware of the true position as the appellant neglected to attend and respondents counsel was not familiar with the land . . .'
126. 27 May 1911, 53 Otorohanga MB (1911), pp 181–182

> taking away part of their occupations and improvements and probably in one or two cases even houses, and secondly because small pieces would be left here and there which could not profitably be dealt with.[127]

However the general rule, as noted above, was to consider whether the partition was equitable. 'The proper principle to adopt in partition is to give to each party a fair proportion of the land while preserving the existing occupation only in so far as can be done without injustice to anybody. If one party has occupied more than its fair share it must be prepared to give up something on partition.'[128]

So while many partitions arising out of alienations seem to have been agreed, there is evidence that in more than a few cases they did some violence to the iwi or hapu estate. This was admitted in a discussion about partition in the House of Representatives in 1916:

> In some cases perhaps the relative interests of certain descendants of chiefs might be larger than those of other members of the tribe. But if you take a block in which there are, say, a hundred Natives, and they all have equal interests, each Native will be entitled to a one-hundredth part of the block. The modern practice is to partition this up according to the value of the land, so that it is possible for those who reside and have their cultivations on the block, and who are not willing to sell, to have legitimately and rightly some portions of their cultivations taken from them, because they are probably cultivating the most valuable land, and cultivating more than they are entitled to have if a division of the block were to take place and each one was given an exact share according to the relative interests by value of the land. Some of these complaints, therefore, are without foundation and cannot be entertained, because that which is complained of is strictly legal. The people who live on the land naturally cultivate the best portions of it. They extend their cultivations over the land, so that if the land was equally divided according to their relative interests they would have to part with that portion of the land which is in excess of their individual share. That is one of the faults peculiar to landholding in common, and it cannot be helped.[129]

This discussion raises an important point. While owners were not under any compulsion to sell, – Butterworth has suggested that the assembled owners procedure 'gave rangatiratanga a legal recognition'[130] – if any one of the owners wished to sell, then the hitherto coherent land block held in common was split by partition. This threw the onus on Maori to present a completely united front. Any dissenters could cause the iwi or hapu estate to be split up to enable them take out their individual share. The comment above suggests that such partitioning following meetings of owners could be quite destructive of tribal or hapu holdings. It also suggests that the power of assembled owners meetings to hold on to land was largely illusory. The mere fact of a meeting being held was almost a guarantee that

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127. 23 Tairawhiti ACMB (1926), p 229 Pakowhai
128. 25 February 1918, 1 Waiariki ACMB, p 339, in re Waerenga East 2A. Also see 4 December 1930, 10 Aotea ACMB, p 516 re Hautu 3F7
129. 3 August 1916, NZPD, 1916, vol 177, p 738
130. Butterworth, *Maori Affairs*, 1990, p 67

some land would be purchased, and pressure placed on the remaining estate which, if the partition were a significant one affecting fertile areas in the block, made it less economic as a consequence.[131]

The harshness of partition can be demonstrated in several cases. In the case of the Parihaki block there was a decision to sell land in the block, and also an application to the land court to cut off the non-sellers' piece. The land court judge visited the block; but he awarded the houses of some of the residents and some of the best cultivations to the European purchasers who bought the interests of non-resident Maori owners.[132]

Another case involved the Manukau F block. The non-sellers refused to come to court to discuss partitions apparently because the judge refused to visit the block to discuss the partition details, and the court partitioned the land without the non-sellers being present. A petition was laid before Parliament complaining that:

> at the meeting of assembled owners the resolution was carried subject to a condition that the interests of all permanent occupiers on the block be partitioned before the resolution was confirmed; that the petitioners found that the kaingas and cultivations of several of the permanent occupiers had not been excluded from sale, and are now lost to their owners; that the shares of some of the permanent occupiers had been located by the Court in such a poor part of the block that they found it necessary to remove from the block; that some of the owners who appeared at the meeting and objected to the sale had their shares sold; that one owner had his kainga located by the partition of the Court in a different subdivision from that to which it belongs.[133]

In the final result one owner at least was faced with the blunt option either of removing his house from a boundary or being compensated when it was destroyed.[134] This result, while viewed as unfortunate, was not regarded as in any way particularly exceptional or abhorrent – confirming the attitude evident in Herries' statement above.

Partition could be pushed to odd extremes. For example in 1925 the land court had to consider how eeling rights in a lagoon in the Hereheretau block should be allocated. The lower court (sensibly) treated the rights as communal, but the appellate court ordered that the rights be treated as individual, and directed the lower court to make an appropriate division, taking care to ensure that others retained rights of access over the water where the individual rights were held.[135]

The ongoing problem of partitions associated with sales is evidenced by a comment of the Maori Appellate Court in 1930 that the land court had been called on to review voluntary agreements for 'innumerable partitions' under sections 121

131. This process of partitioning out dissenting interests is explained above – p 6

132. 3 August 1916, NZPD, 1916, vol 177, p 761

133. Ibid, pp 756–758

134. Jackson Palmer CJ at AJHR, 1917, G-6A

135. 18 April 1925, 22 Tairawhiti ACMB (1925), p 226, re Hereheretau B2L. While one cannot argue with the decision of the court that eel rights were properties controlled by particular persons or groups, the requirement that they now be turned into individual property interests reduced custom to absurdity. The lower court had possibly been attempting to avoid this by treating them as communal – but that too did not do justice to custom.

and 59 of the Native Land Amendment Act 1913 – which allowed a review of partitions if circumstances arose where the court felt a hearing was justified. The main point to be considered in such applications was 'whether the partition is an equitable one and if not can it be varied without prejudice to rights acquired under the partition by third parties.' One ground for such a review was that a non-seller might have retained a more valuable portion of the block than the sellers.

A 1913 report provided more detail on the problems of surveying partitions on the ground. Often subdivisions were noted on a sketch plan, but later, when a comprehensive survey was carried out, it would be found that there was not sufficient land and adjustments had to be made pro rata. Lack of access was also a problem. While the legislation and land court rules[136] required that a preliminary report on likely road lines must be prepared, no one was willing to pay for this report. Maori would not deposit the money for this preliminary survey work up front, especially since they might not be happy with the access lines proposed. An amendment in 1913 required that, in subdividing a block, the land court should particularly have regard to 'water-supply, road-access, aspect, and fencing boundaries'. Each subdivision should, as far as possible, contain a reasonably sufficient area of land suitable for a homestead, and generally the court should have had regard to 'the configuration of the country, the best system of roading, and facilities for settlement.'[137] Maori owners however, had different priorities. It was noted in 1916 that:

> the difference between the Department's and the Native owners' view is that the Department holds that the partition scheme should be attempted to be carried out on the general configuration of the country, whereas the Native owners desire a partition according to family 'takes' and occupation rights.[138]

1.5.6 Confirmation

As has been noted above, alienations by sale or lease, along with other transactions, required confirmation by a district Maori land board. The requirements varied, depending on whether the purchase was made with fewer than 10 owners, using the precedent consent method, or using the assembled owner procedures. The common process for the private purchaser to follow in obtaining confirmation was described in 1916 as follows:

> First of all he has to pay the money to the Board, or to give satisfactory receipts, so that the Board would be perfectly satisfied that the Maoris have got the money. Then he has to make a declaration to show that he has not got more land, including the land he is intending to buy, [over about 5000 acres]. He then has to show that the Native he is purchasing from is not landless. It is his business to find that out, and generally that takes some time to do. Further, he has to show that the transaction is all right for the

136. Section 117 of the 1909 Act, and rule 29
137. Section 54 of the Native Land Amendment Act 1913
138. Under-secretary, AJHR, 1913, G-9, p 3

> Natives, and it is for the Board to judge whether it is in the interests of the Natives to sell. Eventually he has to show that the price is adequate, the Government valuation being taken as a guide. The conditions, therefore, are fairly onerous.[139]

It is correct to say that, on the face of things, the confirmation process contained important safeguards to Maori selling land. In practice however, the safeguards often did not apply or were poorly applied.

As has been noted above, confirmation could in some cases follow very quickly after resolutions had been passed. The incident mentioned above, where confirmation was given half an hour after a meeting, suggests that some assembled owner meetings may have taken place close to and perhaps alongside Maori land board sittings, perhaps even in the same premises. Hutton finds in his study of the Waikato–Maniapoto District Maori Land Board that the board rarely refused confirmation and did not inquire into the reasons why Maori might want to sell land. Without that inquiry Hutton asks how the board could properly gauge whether or not a sale was 'contrary to equity or good faith, or in the interests of the Natives alienating' – a requirement for alienations of blocks with fewer than 10 owners or where precedent consent had been obtained. He says the inquiries that were made into applications for confirmation generally concerned whether sellers would be landless or not. The minutes of the Tairawhiti District Maori Land Board show that that board also did not inquire into the reasons for a sale. Most alienations were confirmed with little more than the comment 'supporting papers satisfactory', and a standard condition that the purchase money be paid to the board within one or 2 months of its decision. However the minutes also regularly record disputes about confirmation applications, on the grounds of valuation, disputed terms (for leases), and possible landlessness for some of the sellers. For example, in one case the board refused confirmation for a sale because valuation evidence ranged between £24 and £50 per acre, the purchasers were offering £30 an acre, and the Government valuation was well below this figure.[140] The Tairawhiti board was not hesitant about checking and challenging valuations. There appears to have been a general suspicion about Government valuations. This was also reflected in comments in the land court. In 1911 the court in Rotorua commented that 'Government valuers are notoriously circumspect in their valuation and the Courts' experience is that the market value of Native land is invariably higher than the Government Valuation.'[141]

But occasionally boards were caught out. The Ikaroa board was sued in 1912–1913 for confirming a sale of land at a lower than current valuation. The board had decided to grant an application for confirmation over part of the Aorangi block, subject to proof of payment of the purchase price. In the interim the Maori owners applied to have the confirmation overturned. The purchaser was offering £10 per acre. The Maori owners had made the board aware of a recent valuation of £18 per

139. 3 August 1916, NZPD, 1916, vol 177, pp 737–738
140. 5 Tairawhiti District Maori Land Board MB (1913), p 70, 8 May 1912
141. 6 November 1912, 56 Rotorua MB (1912), p 137. This was in relation to a compensation application for a public works taking.

acre, and that there was a second purchaser prepared to pay this. The second purchaser lodged an application for confirmation, at the new higher price. The board asked the Valuer General about the higher valuation and was told that it had been made under a wrong assumption about recent sales in the area. Consequently the board signed a certificate of confirmation in favour of the first purchaser. The Supreme Court held that land boards did not have to confirm sales at or in excess of the current valuation, but had a discretion. The court cautioned however:

> that a board which confirms a sale £10 per acre when the existing valuation of the land is £18–5 per acre, takes on itself a heavy responsibility, and exposes itself to a grave suspicion of having betrayed the very interest which it was established to protect.[142]

That the board had acted in this way did not give the court any jurisdiction, however, to interfere in the matter. Whether this was a one-off incident or reflected a more serious general situation is not clear. While the land boards might be prepared to attack Government valuations, which were often very low, it is harder to gauge whether, as a general rule, they tried to obtain the best market price, or merely settled for a reasonable price in order to get the alienation confirmed.

As to the question of landlessness, the onus was on the purchaser to produce evidence to show that sufficient land remained to the owners. This involved checking the court registry under the names of the sellers to ascertain their other land interests. While the purchaser provided the primary evidence, it seems that the Tairawhiti land board at least always independently considered this and other statutory requirements before issuing confirmation orders. The issue of landlessness seems to have been on the mind of the board at every stage of the alienation process. For example, when negotiations for the purchase of Pourewa Island were proposed:

> The Board pointed out to Mr Nolan [counsel for the purchaser] that this island was a fishing station and also the natives got their shell fish and also seaweed there and these are matters the Board must see into.[143]

But because 'landless' was defined not by a certain number of acres, but instead by 'sufficiency for maintenance',[144] it is difficult to discover what criteria the boards actually used. The Tairawhiti board and the Waikato–Maniapoto board do not seem to have had a fixed number of acres in mind. The test appears to have been whether owners would be able to continue to support themselves, or whether they would become a burden on the state. Given this ambiguity, and the push for land sales to encourage European settlement, it is perhaps not surprising that the test of landlessness appears to have been set fairly low. In a 1912 case, the Tairawhiti District Maori Land Board confirmed a sale in the absence of the owner on the

142. *In re Aorangi 3G no 3C* (1913) 32 NZLR 673, p 676
143. 5 September 1910, 3 Tairawhiti District Maori Land Board MB (1910), p 265
144. Section 2 of the 1909 Act

statement of the agent William Cooper[145] that the owner lived away from the district and was cultivating the lands of his wife:

> He is an able bodied man able to earn his own livelihood. He works at shearing and other work and does not occupy any of his Wairoa lands. He does not use the land in question. In my opinion he has sufficient other lands to maintain him.[146]

This seemed to anticipate an amendment in 1913[147] that landlessness did not occur where the land being sold would not in any event provide sufficient support to the Maori owner and also where a vocation, trade or profession or other form of income could provide an alternative adequate income. The Native Minister made the telling comment at the time that while the Crown could not purchase land so as to make Maori landless, 'if they are landless already – as a great many of the Natives are – they are no worse off than they are at the present time.'[148] The 1913 amendment was quoted in a 1922 case to support the conclusion that owners who leased all their land but thereby received rents adequate for their maintenance were also not landless.[149]

Of more interest to politicians of the time than the definition of Maori landlessness, was the requirement that confirmation should not issue if the purchaser would, by completing the purchase, obtain total interests in land beyond certain limits set by the Government.[150] A key Government policy in the period was land reform and putting Pakeha farmers on their own small holdings. Thus it was the issue of speculation and methods to limit it which caused most public debate. The issue of 'dummyism', said to be widespread in many districts, caused some discussion in 1916. Dummyism was the process where speculators got others to sign declarations that they held no more than the limited acerage any one buyer was allowed, and thereby gaining several entitlements to buy Maori land. Instances were given where a few persons held large areas under several leases, and held the leases under different names. As each one 'fell in' at a different time and affected only a few hundred acres, the speculators were, it was alleged, able to renew the leases without being suspected of undue aggregation.[151] In a variation on this, it was noted that a solicitor in the Ongarue district had leased land in excess of the aggregation limits by having some of the land bought under the name of his wife. The Government response was to place a proclamation over this land preventing sales except to the Crown.[152] Native Minister Herries admitted, however, that the proclamation would last only two years, and the solicitor could get in to purchase

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145. Later husband of Whina Cooper.
146. 8 May 1912, 5 Tairawhiti District Maori Land Board MB (1913), p 73
147. Section 91 of the 1913 Act
148. 28 November 1913, NZPD, 1913, vol 167, p 389. And p 389: 'in this Bill I have studiously avoided any compulsion for any Native to sell; and, as far as my idea is concerned, I always will avoid it as long as we can open the waste lands for settlement'.
149. *Sarten v Aotea District Maori Land Board* [1922] NZLR 586 SC
150. Section 220(f) of the 1909 Act
151. Smith (Waimarino) 3 August 1916, NZPD, 1916, vol 177, p 761
152. Ibid, pp 73 and 177

in the few days between the expiry of this proclamation and the commencement of a new one.[153] He said, however, that a declaration had to be made before purchasing that the purchaser did not hold more than 7600 acres. An Order in Council was the only way of waiving this requirement – and these were rarely granted, only once that Herries could recall, in the case of land at Mokau. Herries also reiterated that the protections in the 1909 Act in general would prevent such abuse. Cash must be paid in advance or receipts shown to the land board, a check must be made that native owners would not be landless, and the purchaser must sign a declaration that they held no more than about 7600 acres of land of various classes. According to Herries, the boards were very strict about these matters and if not, 'they deserve to be called to account in a very severe manner'.[154]

1.5.7 Crown purchasing

It seems that, after 1913 and the repeal of the requirement that the Crown seek a meeting of assembled owners when there were more than 10 owners in a block, the Crown only appeared before the land court and land board rarely, and mostly in relation to purchase matters when it required partitions. This was because, for alienations involving less than 10 owners, the Crown was only obliged to have the purchase checked by the Native Land Purchase Board. The land boards had no jurisdiction. If the Crown chose to purchase individual interests in blocks with more than 10 owners, those purchases were also checked by the land purchase board and not by the Maori land boards. Combined with its power to prevent others from dealing with lands the Crown was interested in, the Crown was in a formidable position to conduct purchase operations on its own terms, with very few independent checks on its performance.

There is some evidence that after 1913, when it was no longer under a statutory obligation to hold meetings of assembled owners, the Crown commonly chose to avoid them and purchased undivided shares. The annual reports of the Native Land Purchase Board suggest this.[155] Occasions when individual shares were to be purchased are noted. Many instances are noted where the Crown intended to exercise its pre-emptive power – a further indication that it was involved in the drawn out process of purchasing individual shares.[156] The reports also show, however, that on many occasions meetings of owners were 'directed'. But, judging by the very few meetings of assembled owners actually called to consider alienations to the Crown, these meetings do not seem in all cases to have been meetings summoned by a land board under the legislation. They may have been meetings summoned at the direction of the Minister. If that is the case, what was the nature of the Crown meetings that did occur with Maori owners? What notice was given, and what checks were there to ensure that adequate notice had been given?

153. Ibid
154. 13 July 1916, NZPD, 1916, vol 177, pp 88–89
155. See AJHR, G-9, table C, 1909 and subsequent years
156. *Gazette* notices issued whenever this power was used – and many such notices were issued.

What checks were there to ensure that the Crown offered a fair market price? The legislation merely required the Crown to offer a price no lower than that on valuation rolls. What power did the Crown imposition of pre-emption give it in such meetings? Was the power used to effectively force down the price that was offered? If owners at a meeting rejected a proposal to alienate, did the Crown thereafter use its power to buy up individual shares? It is useful to briefly examine comments about Crown purchases in this period to answer these questions and also to consider whether the process would have been much different if the Crown had been required to continue with assembled owner meetings and seek confirmation of resolutions to alienate land before the land boards.

Because it was not required to purchase whole blocks, which the process before the land boards encouraged, the Crown arguably hindered Maori development in some situations where it purchased blocks incrementally. For example, in 1935, when the Crown applied to have its interests in the Matakaoa block on the East Coast defined, it was found that the Crown had purchased a set area of 380 acres previously and had since acquired undivided interests. It now wished to place these undivided interests adjoining the earlier purchase. The Maori owners were aggrieved about these subsequent purchases and questioned the good faith of the Crown. The Maori Appellate Court found that it could not look into the question of good faith, but only inquire if the purchases were legal – which they were. The Maori owners had obtained a ruling in the lower court that non-sellers were to have preference in the selection of land when the undivided areas were defined on the ground. But the court at a further hearing had changed its mind and given the Crown preference so that it could have its adjoining area. Maori contended before the appellate court that the first ruling should not have been overturned and that the second ruling was arbitrary and without precedent in the district. Their appeal was dismissed.[157]

The Waipiro block, of some 35,000 acres, was another example of the impact of Crown purchases of undivided shares. The land had been leased at the turn of the century. Maori owners sought to restock the land once the lease fell in, but were unable, because Maori land was involved, to get finance. It was said that Crown buying into the block had exacerbated the situation. The Maori owners used the whole block for grazing, but did not know what parts the Crown might own absolutely once its interests were partitioned out. Consequently, Maori did not know which parts to improve, and they had been told that there would be no payments for improvements from the date Crown purchasing had commenced.[158] These situations could not occur with private sales, because the requirement for confirmation ensured that private purchasers were diligent about completing purchases of whole blocks so as to secure a good title.

Apirana Ngata complained that the purchase of undivided interests created a tendency among native land purchase officers to prolong their tenure by spreading their purchases over forty or fifty blocks, all happening at the same time. 'The

157. 24 Tairawhiti ACMB (1928 and 1937), p 156 Matakaoa
158. 16 March 1921, NZPD, 1921, vol 190, pp 156–157

policy resulted in one or more officers patrolling a district for years, acquiring little bits at a time, and holding their jobs for a long period of years.'[159]

It seems, however, that where Maori presented an entirely united front, they could avoid Crown proposals for alienation. For example, in 1917 Native Minister Herries replied to a suggestion that the Crown purchase 30 acres at Ketetahi springs, that the land purchase officer had informed him Maori would not sell and would not attend meetings of assembled owners. He promised to try again to complete a purchase, but 'compulsion could not be applied if the Natives would not sell'.[160] Ketetahi Springs remain in Maori hands today, although completely surrounded by Crown land.

However, once the Crown had begun purchasing, there was very little that could prevent it finalising a purchase of a whole block, or as much land in a block as it was interested in. It could also turn to the land court on occasions where one or two owners held out. In one case, the Crown had obtained all the interests in a block except those of one man who was a follower of Te Whiti and remained faithful to his ideals and therefore would have nothing to do with the land court. The court passed what it considered a fair partition proposal for him. This does not appear from land court minutes to have been a common practice however. Presumably the ability to impose pre-emption and purchase individual shares did the trick for the Crown in most cases. Nor is there evidence that a provision of the 1913 Act allowing Maori Land Court judges to independently report to the Minister on any lands they thought should be partitioned was much used.[161] The Maori MP Parata had complained in 1913 that the provision would mean that 'While the Maori may be having his breakfast the Judge is partitioning without his knowledge'.[162] The minute books suggest that, in almost all cases, Maori owners initiated partition applications.

Here it is worth mentioning that partitioning out the interests of non-sellers from a Crown purchase was not without cost to the Maori owners concerned. In 1916 there was a complaint that in the case of Crown purchases and associated partitions 'exorbitant charges' were made against Maori owners for examining plans. Under the 1909 Act the general practice was that the costs of survey incurred by the Crown were charged against the land, which included the cost of examining the plan, which was required before it could be approved by the Chief Surveyor, and this approval completed the survey. The Government argued that such examination as a rule cost very little, being the actual costs of the examiner's time, but would vary according to the size of the block and the accuracy of the surveyors work. Five per cent interest was charged, as the 1909 Act provided, from the date of completion of the survey.[163]

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159. NZPD, 1932, vol 234, p 665
160. 14 September 1917, NZPD, 1917, vol 180, p 152
161. 28 November 1913, NZPD, 1913, vol 167, p 386
162. Ibid
163. 3 August 1916, NZPD, 1916, vol 177, p 708. The MP who complained in this case was challenged to provide details of specific cases of overcharging.

Not only was Crown purchasing incurring costs for Maori, but it appears that they were in many cases getting a reduced price for the land. In 1920 Ngata alleged that Crown purchasing of relatively improved Maori land had been 'on the cheap' for many years. He said this had been known for some time, 'although one often felt impelled to demur to the policy of the Native Minister in purchasing Native lands, one felt that the war period was not the right time to raise a voice in protest.' He argued that, in general, Maori had received pre-World War I prices for their land in the Hawkes Bay and Wairoa, in the Poverty Bay and on the East Coast. Further, because the Government got these lands relatively cheaply, the cost of settling soldiers after the war had been relatively cheap. The land was bought at the Government valuation, which was set at a level appropriate for local taxation purposes, but not for sales. Maori had no opportunity to contest the value in the courts as Pakeha were able to do. Ngata suggested that at least 10 per cent was added to the value of the land once it reached Pakeha hands just because it was owned by Pakeha. The value to the country of these cheap purchases was, he thought, inestimable.[164] The Government did not reject the broad implications of Ngata's points, merely pointing out that fresh valuations were used in recent King Country purchases.[165] In 1921 Ngata again mentioned that Maori land was bought at prices varying from £1 to 12s 6d an acre and that those prices had not varied since 1909 when the valuations were made. He alleged that purchases were still going on at those prices.[166]

Ngata's comments were echoed to some degree by Maori landowners. As early as December 1912, a meeting of 600 Maori at Whakatane requested that the new Reform Government, among other matters, pass a Maori land valuation act allowing Maori to appoint someone to value lands on their own behalf whom they deemed suitable to do this.[167]

It is not possible in this report to come to a conclusion on the accuracy of Ngata's remarks. Certainly there had been a massive boom in land prices from about 1915 when the Government introduced the Discharged Soldiers' Settlement Act providing for a scheme of resettlement of returned soldiers as farmers. Ex-servicemen were given preference in all lands opened up for settlement and given advances to buy and settle land. In a land market already rising on the basis of expectations at the end of the war, this measure put 22,792 new purchasers in the real estate market with over £23,000,000 of borrowed money. Land values increased accordingly. The peak of the land boom was 1921 when 4.5 million acres sold for just under £82 million.[168] It is estimated that two-thirds of rural land in New Zealand changed hands between 1916 and 1924.[169]

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164. 51 September 1920, NZPD, 1920, vol 187, pp 975–976
165. Ibid, p 980
166. 61 March 1921, NZPD, 1921, vol 190, p 156
167. MA 28 31/29, papers for judge's conferences 1911, 1913, 1922
168. *Land Development by Government 1945–1969*, H J Plunket, Agricultural Economics Research Unit Technical Paper no 14 (1973), pp 13–14
169. 'Economic Transformation' in the *Oxford History of New Zealand*, p 232

It seems therefore that the Government, where it may have bought Maori land at Government valuation in the period, bought at less than market value. But if that were the case the net affect on Maori is harder to work out. Land prices were inflated in the period. Undeniably though, being denied independent valuation in a period of such flux in land prices, put Maori landowners at a considerable disadvantage. The lack of confirmation before an independent body like the land boards did not help the situation. One can speculate that, if many of these Crown purchases had been subjected to the assembled owners meeting procedure, and if they had come before the land boards for confirmation, the Maori owners might have obtained a better price, or at least an independent review of the price, and the views of dissenting groups might have been more clearly known, and their interests partitioned out as coherent blocks for future Maori settlement.

1.5.8 The attitude of the boards and the court

The adequacy of the few checks provided by the legislation to protect Maori interests in this purchasing activity is, however, thrown into further doubt by the fact that the prevailing Government policy of Maori land alienation was shared by the land boards. The sheer number of owners' meetings which were summoned by the land boards and alienations which were subsequently approved with little or no comment (in the minutes of the Waikato–Maniapoto and Tairawhiti land boards at least) testify to this. The boards did not see their primary goal as the development of Maori land for Maori, but rather its alienation at a reasonable price, with Maori retaining enough to provide a living, or none where a living could be made away from the land. In 1912 the president of the Tairawhiti land board commented that the boards were anxious to 'encourage the settlement of waste Native lands, and to give effect to legitimate dealings, after duly safeguarding the interests of the Native alienor.'[170] The comment reveals that the boards were not passive adjudicators of matters coming before them, but active promoters of settlement, and that they had a belief that there were Maori owned lands which were 'waste' for Maori, but valuable to Europeans.

Indeed, the boards were so anxious in some regions to assist with alienations, that they lent money held on behalf of Maori to the Crown to fund Crown purchases. In 1916 the Audit Office noted that the Waikato–Maniapoto land board had advanced £320 to a land purchase officer as an imprest, which was subsequently refunded to the board. The office found this irregular and pointed out that land purchase officers had no connection with boards.[171] Astonishingly, the under-secretary replied that it was merely a question of the land board temporarily assisting the Native Land Purchase Department from funds on which there was no immediate call, and further, that since the land purchase was entirely a Government transaction, there would be ready call on the Government should any action have to be taken to recover such an advance. This procedure was, he said, followed by

170. 8 October 1912, 4 Tairawhiti District Maori Land Board MB (1912), p 286
171. Audit inspector to controller and Auditor General, 16 December 1916, MA 19/11

several boards.[172] Apparently the Crown solicitor also received advances in this manner.[173] President Bowler said that large sums were paid over to assist land purchases.[174]

Further evidence of the encouragement boards gave to potential purchasers came in a warning issued in 1907 when the under-secretary had to warn land board and department officers against supplying lists of owners and information from files to potential purchasers without instructions from the registrar of the Maori Land Court in the district.[175] And in 1910 the under-secretary noted that large numbers of applications to lease were being advertised in the *Gazette* for which Maori were being told that the rental would be fixed at 5 percent of the Government valuation. The under-secretary pointed out that it was up to the prospective purchaser to make an offer, which would likely be well in excess of the Government valuation. The Government valuation was merely a guide to land boards so that dealings should not be confirmed at a questionably low value.[176]

These problems had developed largely because of the confusion the Government had created by changing the original functions of the land boards, and then combining them with the court. Prior to 1913, the boards had faced problems with Government interference in their operations. At a sitting of the Tairawhiti land board in October 1911, the president, Aleck Keefer, announced his resignation, claiming interference in his legal jurisdiction by the Under-Secretary of the Native Department. A purchasing syndicate had come into the district seeking to obtain coastal lands. Some 15 people had entered into arrangements to sell over 20,000 acres in a single block. The board was asked to consider in its September and October meeting applications for precedent consent for persons to make further purchases. The prospect was that the whole block of around 40,000 acres might be purchased in this way. The Native Department was concerned that some of the purchasers would gain more land than was allowed under the limits on aggregation imposed by the legislation. The correspondence is incomplete, but it seems that Keefer was considering cutting corners for notice, to allow the purchase activity to continue. The under-secretary intervened, arguing that the legislation was being misinterpreted by the president. Keefer's threat of resignation followed. He agreed to remain for a time on the board provided he was not further interfered with.[177] The Native Minister subsequently received a petition from Otene Pitau and 26 others arguing that Keefer was a president who supported Maori interests and did not want to see them wronged. They asked that the under-secretary be removed to another position or be 'directed to keep within his boundaries and work he is fitted to'.[178] It

172. Under-secretary to registrar, Waikato–Maniapoto District Maori Land Board, 12 October 1915, MA 19/11
173. Registrar to under-secretary, 8 October 1915, MA 19/11. It was admitted that on several occasions amounts had been advanced out of the official account to the Crown solicitor and native land purchase officer in order to facilitate purchase of native lands by the Crown.
174. Bowler to under-secretary, 28 June 1913, MA 19/11
175. Under-secretary to all presidents and registrars, 12 July 1907, MA 19/13
176. Under-secretary to all presidents of all Maori land boards, 20 December 1910, MA 19/3
177. Under-secretary to Native Minister, date unknown. First page missing. MA 19/13
178. Petition to Native Minister, 4 October 1911, MA 19/13

seems that these owners were anxious to sell, and backed a board president who would support their preferences in the use of their land.

When it became clear that the Government intended to combine the work of the court and the boards, several judges complained about the increased workloads. Judge Jones in the Tairawhiti district thought the combining of the offices of the judge and presidency in his district 'untenable'. His Native Land Court duties kept him absent from his offices in Gisborne for most of the year and therefore he could not keep a proper watch on the money coming in to the land board. He also pointed out that documents requiring the seal of the president and registrar together would have to await his return to Gisborne. Added to that, Jones was also, incredibly, working as the district land registrar at the time![179] In the Waikato–Maniapoto district, president Bowler was also feeling the pressure, noting in 1912 that his own time and that of his staff was already pushed with the volumes of correspondence being received.[180] He had noted that the boards had developed significant business ever since the Government had increased their jurisdiction and placed more lands under them prior to 1910.[181]

Maori landowners were also concerned about the increased workload. A meeting of 600 persons in Whakatane in December 1912 said that there was serious 'inconvenience' in that Judge Browne was both president of the land board and judge of the land court – this workload was delaying hearings. An extra judge was required.[182] The under-secretary was not however impressed with these arguments. He saw great efficiencies to be gained. If at any time the work of the board should be delayed because the judge was engaged in court work, then an officer of the department could be used.[183]

Notices of sittings pasted in to the front of land board minute books commonly showed a list of court sitting dates with an asterisk beside those places and dates where board sittings would also take place. These notices contemplated that the board would sit on the same day as the court. Presumably it sat in the land court offices. In the Tairawhiti district, even before the board and the court were practically combined, it seems to have been the practice for the president to conduct public auctions of land in the land court rooms.[184] One can imagine that once the personnel of the court and the boards became the same, Maori owners would have had difficulty in following exactly in what capacity an official, judge or president was acting when dealing with their land. Where did the adjudication function end and the trustee function begin? When should an owner seek to be represented by

179. Memo from Jones J to under-secretary, 21 December 1912, MA 19/13. The local chamber of commerce and the Gisborne Law Society weighed in on the judge's behalf. See Hamilton Irvine, Secretary of Gisborne Chamber of Commerce, 31 August 1912, and George Stock, President of Gisborne Law Society to Native Minister, 20 August 1912, MA 19/13.
180. Bowler to under-secretary, 19 April 1912, MA 19/11
181. President Bowler to under-secretary, 21 December 1910, MA 19/11. He repeated requests for more staff, being overworked etc 'this Board is getting to be a big thing under the new Act'.
182. 10 January 1913; Hurinui Apanui and 23 others to Native Minister from Te Whare o Toroa Whakatane, MA 28 31/29, papers for judge's conferences 1911, 1913, 1922.
183. Under-secretary to Native Minister, 9 October 1912, MA 19/13
184. For example, 17 August 1910, 3 Tairawhiti District Maori Land Board MB (1910), p 263

legal counsel, and when could they be sure that the board was acting in their best interests? In his adjudication function, how far was the president taking account of Government policy when it came to an alienation, and how far was he looking out for the future interests of the owners?

In 1918 the administration officer for the Ikaroa and South Island Maori land board resigned, citing the unsatisfactory nature of the board's work, including the point that 'very large sums were held on credit for the beneficiaries for many years with no steps taken to inform Maori that the sums existed, yet the board was often paid a good commission for distributing money'.[185] His other reasons for resigning make interesting reading. The officer alleged:

- in a number of cases, large sums had been advanced out of the board's general funds to meet rates or charges against particular blocks. Yet the board was only liable to pay rates when it had funds in hand for the particular block affected;
- important blocks were actually vested in the board while for others the board was merely agent for owners. For the blocks vested in the board, there had been serious neglect of responsibilities. There had not been regular inspections, a number of these blocks were not bringing in any revenue, and inadequate steps had been taken to secure tenants;
- the payment of rents on some blocks had been allowed to fall into arrears, and rent notices had not been followed up when not complied with;
- where alienations had been confirmed subject to payment, no steps were taken to see that the terms of confirmation were complied with;
- often no steps were taken to carry out directions of the board.

While routine paperwork was maintained, the registrar considered that the land board was entirely overlooking in many cases its responsibility as trustee for Maori. He argued for proper supervision of the work of the boards and pointed also to the several and anomalous roles held by both registrars and board presidents.[186]

In fact, boards throughout the country were having problems in fulfilling a prime trustee function, the distribution of purchase monies and rents from alienations. In almost all private alienations confirmed by the boards, a condition of confirmation was that money was paid to the board – ostensibly for later distribution, although the board had powers to hold money and disburse it when it saw fit, having regard to the interests of the Maori sellers. The board used this power extensively, and became, in effect, a kind of welfare agency for Maori. Court minute books are full of applications to release interest or the capital from land purchases. In the case of alienations to the Crown, the boards had a similar role. Maori wanted cash for sales, and would not accept debentures. This policy, combined with Government concern that Maori not be made completely landless and thrown on the resources of the state meant that 'when there are large sums to be paid over to the Natives, the Boards generally insist that a certain portion of the purchase money is handed over to the

185. Registar of Ikaroa and South Island districts to under-secretary, 10 January (undated but order in file suggests 1918), MA 24/23

186. Ibid

Public Trustee, or used to purchase a farm, or stock a farm or other land which the seller holds in his own right.'[187]

From the outset, the boards had trouble distributing these monies. There were several problems. One was that the beneficiaries were hard to locate, another was that they were often living outside the board district. For example in May 1911 the president of the Tairawhiti board wrote to the under-secretary seeking permission to travel to distribute £6000–£7000 in rents which had been collected from incorporated blocks, purchase monies in several blocks, a sale in Waipiro, rents in other native townships, and rents from lands vested in the board.[188] In 1910 he had asked permission to travel to Tologa Bay to pay £2000 purchase monies from the Arakiti no 2 block.[189] The fact that board members had to seek permission of the Government to travel to undertake distribution effectively gave the Government some control over how and when distributions occurred. For example, in 1912 the under-secretary wrote to the same president of the Tairawhiti board advising that the expense of sending an officer to Opotiki to make disbursements should be avoided.[190] In 1914, Apirana Ngata asked what was being done about delays in distributing rent and purchase monies collected by the boards. Delays of up to 18 months were being experienced. He said that this was due chiefly to the centralisation of the business of the boards and the lack of proper machinery for distribution. Native Minister Herries replied that delays would be minimised now that the boards and land court were 'amalgamated'. Distribution could now be made through the president of the Maori land board at the sittings of the land court.[191]

But while the amalgamation may have made for a more efficient land purchasing service, it does not appear to have improved greatly the distribution of purchase monies and rents. In 1915 it was said that in the Waikato–Maniapoto district about 24 inquiries per week were received from Maori owners regarding monies alleged to be due.[192] The situation with the Ikaroa board has been noted.

The other concern of the registrar at Ikaroa, that purchase monies were being used as a general fund, was not an isolated example. In 1913 there was concern that in the Waikato–Maniapoto district, income received from blocks was not being credited to those blocks in the board accounts, but to other blocks the board was responsible for.[193] Similar problems were found in the Tairawhiti district, where it was said in 1916 that the board had no accurate records to show that monies it distributed were being distributed to the right owners or former owners according to their particular interests in particular blocks.[194]

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187. Herries, 3 August 1916, NZPD, 1916, vol 177, p 739
188. President Keefer to under-secretary, 27 May 1911, MA 19/13
189. President Keefer to under-secretary, 28 December 1910, MA 19/13
190. Under-secretary to president, 17 June 1912, MA 19/13
191. 7 October 1914, NZPD, 1914, vol 170, p 448
192. Memo from E T C Downard, accountant to under-secretary, 4 June 1915, MA 19/11
193. Under-secretary to president, 27 June 1913, MA 19/11
194. H A Lambs, audit inspector to controller and auditor-general, 8 May 1916, MA 19/13

An area that might reward further research is how far the personnel of the boards and the Government were reliant on the boards to be self funding, and to fund native department activities generally. Apart from assisting Crown purchases by making loans, the boards were directly paying some of the costs of the presidents and other officials. For example, the minutes of the Tairawhiti board record a payment of a premium to a finance company for what seems to be a life insurance policy for £500 for the president of that board.[195] If the boards relied on income from sales and leases to fund their expenses, this would have been an incentive for them to hold on to money meant for beneficiaries, or at least have presented a conflict in that regard. But it might also have encouraged boards to ensure that lands were sold or leased for a reasonable price.

1.6 Conclusion

In the period of large scale alienations from 1909 to the mid-1920s, the Maori Land Court and the district Maori Land Boards acted as facilitators and promoters of the alienation of Maori land. Not only were they obliged by legislation to facilitate sales, they also actively encouraged them. They saw their primary duty as ensuring that alienations occurred, whilst leaving enough land for Maori for their 'adequate maintenance'. That phrase was never, however, properly defined. It was watered down by amendments, and there was no requirement to consider the maintenance of groups on the land as opposed to particular individuals.

Because they had contradictory roles both as trustees of Maori land for Maori development, and also promoters of the alienation of alleged 'waste' Maori lands, the boards could not, and did not focus adequately on the needs of their Maori beneficiaries. Indeed, the work of promoting alienation took up much of their time and resources, to the detriment of their role as trustees. They were also placed in the contradictory position of promoting the best price in alienations as land boards, while protecting the interests of non-sellers in partitions carried out by the land court.

The Crown, through provisions in the original scheme for purchasing land under the 1909 Act, and particularly through amendments in 1913, was able to initiate and complete purchases without recourse to the land court or the boards except for partition orders. Indeed, the system of purchasing established by the legislation was so favourable to the Crown, that one wonders in some cases if its purchases were not almost a form of compulsion – particularly where pre-emption and individual share buying was involved.

While many Maori owners undoubtedly wanted to alienate their lands in this period, they also wanted to remain in control of the sale or lease process, ensuring that they received a good price for the land and that cash was provided up front, and that they retained sufficient land for their own use in the changing economy. The

195. 4 July 1910, 3 Tairawhiti District Maori Land Board MB (1910), p 254

discussion surrounding the offer of a quarter of a million acres for lease in 1912 was one indication of this. The demand from six hundred Maori at Whakatane for independent valuations for land was another. When Herries visited the Bay of Plenty district as the new Native Minister, he was told that matters of sale and leasing should be more in Maori hands, and that there should be more Maori faces on the court bench (the appointment of assessors was suggested). The people particularly wanted cash up front for sales, rather than delayed payments.[196]

The system of purchasing initiated in 1909 and modified in the subsequent decades did not deliver on these demands. Instead it delivered a system of land boards without Maori representation, with conflicting and confused responsibilities, acting on the one hand as an active promoter of land settlement, on the other as supposed protector of and administrator for Maori interests. The general approach of the boards was not to question the need to settle 'waste' Maori lands, and indeed in some cases provide short term funding for purchases. At the same time it was meant to independently look out for Maori interests by checking that owners were given adequate notice of purchase proposals, that the prices being paid were fair, that the land remaining to Maori was reasonable and properly partitioned and that the former owners received payments or the benefits from payments for the land. Not surprisingly, the boards turned out to be quite poor at fulfilling these latter roles. Because there was no clear description of landlessness in the legislation, and no clear policy for the future development of Maori communities, the boards merely ensured by a cursory examination that individuals retained enough resources that they would not become reliant on the state for support. This was minimal assistance compared with the great advantages Pakeha settlers were obtaining through private and Crown purchasing of Maori land. Even if boards had been inclined to exercise their protective role more powerfully, they could not have prevented many Crown purchases after 1913, when the compulsory requirement to call meetings of owners for blocks with more than 10 owners was removed.

While the land purchase system did ensure that cash payments for sales and rents were readily made, particularly from private purchasers, there were often long delays in distributing those monies, and the boards retained control over much of them. Shortly after wholesale purchasing recommenced under the 1909 legislation, the under-secretary pointed out in very plain terms the logical outcome of the Government policy:

> Those who will take the trouble to study the previous reports together with this will naturally come to the conclusion that, proceeding on the lines of the past three years, it will be only a question of a few more years when the Maoris (who some seventy years ago owned all the land) will, as the result of the activity displayed by alienations

196. Attached to memo, Herries to under-secretary, 7 February 1913, MA 28 31/29. They did not agree with the present law which provided that where purchasers could not make up cash payments, a deposit could be made, followed by a series of annual payments. They preferred the cash immediately – and wanted the law amended to provide that the Government pay the full purchase price direct to Maori, and then collect the remaining payments itself, passing on to Maori any interest. On this tour Herries visited Tauranga, Te Puke, Whakatane, Taneatua, Waimana, Opotiki and Rotorua.

> effected during the past three years, for which period an average of 500,000 acres per annum have been alienated, be left with a limited area for occupation. Many who want to work their land find they must lease it to obtain subsistence as . . . 'very few' are able to raise finance.[197]

In the decade after the passing of the 1909 Native Land Act, there is little evidence that the land court and the boards were empowered or desired to take notice of that warning.

197. Under-Secretary for Native Affairs, 1913, AJHR, G-9, pp 3–4

CHAPTER 2

THE ERA OF THE DEVELOPMENT SCHEMES

2.1 Introduction

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

2.2 Growing Concern about Maori Landlessness

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

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

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

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

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

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

> But of this it is estimated that about 550,000 acres are within the pumice area, and to this probably another 200,000 acres, which includes mountain-tops, springs, sand-dunes, &c. and land unfit for settlement, should be added. This leaves an area of 907,278 acres that may be considered suitable for settlement. This cannot be regarded as an excessive area for the use of 47,000 Maoris comprising the population of the North Island and their descendants. It is roughly 19 acres per head. Instead, therefore, of there being a large area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves.
>
> Seeing that the Europeans have acquired about 62,000,000 acres of Native land, it might not be thought unreasonable to allow the Native owners to retain the small area remaining to them, for it may safely be said that the land leased to Europeans will never return to the occupation of the Native owners. The great problem is to get them settled upon their individual holdings; but this is an object not likely to be fully realised, as all Maoris will not become farmers any more than will all Europeans.

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

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

3. AJHR, 1920, G-9, pp 2–3
4. 21 August 1923, NZPD, 1923, vol 202, p 317

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

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

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

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

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

There was a concrete, if arguably minor, sign of change in Government thinking the same year with the passing of the Native Trustee Act 1920. The Act allowed the trustee to establish a common fund, using funds held by the land boards from the sale of land, while the boards sorted out who were the proper vendors. About £578,000 was held at the time by the boards. As we have seen, this money could

5. Letter from Maori chiefs and tribes assembled Waitangi Hui, Bay of Islands to Prime Minister Massey, 29 March 1922, MA 24/23
6. Under-secretary to Native Minister, 30 May 1922, MA 24/23

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

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

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

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

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

7. Herries, 15 September 1920, NZPD, 1920, vol 187, pp 965–966
8. Ibid, p 967
9. Ibid, pp 967 and 972
10. 8 December 1921, NZPD, 1921, vol 192, p 965. Ngata speaking to the Native Trustee Amendment Bill.

2.4 THE ATTITUDE OF THE JUDGES

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

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

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

11. *Tamao Onekawa v Tairawhiti District Maori Land Board*, 1921 Gazette Law Reports 251, and see s 311 of the 1909 Act.
12. 2 February 1922, NZPD, 1922, vol 194, p 102
13. Ibid, pp 96–98
14. 9 February 1922, NZPD, 1922, vol 194, p 380
15. 2 February 1922, NZPD, 1922, vol 194, p 98

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

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

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

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

16. 14 July 1922, NZPD, 1922, vol 195, p 412
17. C B Jordan retired 31 December 1921. See AJHR, 1922, G-9.
18. 29 August 1922, MA 28 31/29

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

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

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

The appointment of Chief Judge Jones as Under-Secretary of the Native Department had obviously not, in the eyes of the judges, compromised their

19. Ibid
20. 19 October 1927, NZPD, 1927, vol 215, p 94
21. Coates commented that inquiries were being made whether an appeal right should be reinstated – the Supreme Court said it had been taken away – Native Land Court judges would welcome appeals but had bowed to the Supreme Court opinion on the matter.
22. Smith, 25 November 1927, NZPD, 1927, vol 216, p 555

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

2.5 THE LAND DEVELOPMENT SCHEMES AND THE LAND BOARDS

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

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

The Government did not embark on large scale development immediately, but rather came to it over several decades. Through the 1920s, development efforts already underway provided the impetus for piecemeal legislative changes which in turn increased the possibilities for new schemes. In 1921 the consolidation provisions in the 1909 legislation were extended to allow Maori to exchange Crown land as well as Maori land to obtain usefully sized holdings. The intention was for a mutual benefit. The Crown was able to pull together its various purchases and

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

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

create economic holdings to onsell to Pakeha settlers, and thus relieve the pressure to buy further Maori land. Maori were no longer limited to Maori land for consolidation purposes.[25]

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

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

25. See NZPD, 1922, vol 194, pp 95–109
26. No 48, s 19, later s 99 of the 1931 Act
27. AJHR, 1934, G-11, p 18
28. Ibid, p 20
29. No 64, s 8
30. No 67, s 12
31. No 49, s 3

allowed farming initiatives to proceed again without the explicit consent of the owners, and in this case no consent from the Native Minister was required.

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

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

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

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

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

These remarks appeared to be borne out in a dispute over the Te Kao scheme in Northland. That scheme was started with advances by the Taitokerau land board,

32. No 19, s 26
33. Ibid, p 18
34. 16 July 1923, NZPD, 1923, vol 200, p 1077

under its president, Judge Acheson. The advances were secured by a retrospective charge over the land under the 1926 legislation. Acheson basically ran the scheme. The Native Minister never made the detailed consideration of the advances which was required before consent was given to them. Acheson contended that he could farm under Part XV anyway without ministerial consent. The scheme proved a financial disaster. In 1929, after much acrimonious correspondence, Ngata intervened and took control.[35]

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

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

35. AJHR, 1934, G-11, p 12
36. Section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929 – later to become s 522 of the 1931 Act.
37. Ibid, p 34
38. AJHR, 1934, G-11. Both unit and 'blanket' unit schemes were later declared (by the 1934 commission – see below) to be ultra vires. Nevertheless, some £201,031 had been spent on these ultra vires schemes by 31 March 1934.
39. Aohanga Station
40. This power was curtailed after 1932, AJHR, 1934, G-11, pp 28–29. The Native Land Settlement Board (see below) stood where the minister had in approving managers and took over approvals for any finance advanced. The minister could no longer place lands under the trustee. In 1934 only a few farms came under either of these two types of land development.

2.6 THE NATIONAL EXPENDITURE COMMISSION AND THE NATIVE LAND SETTLEMENT BOARD

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

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

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

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41. 28 October 1931, NZPD, 1931, vol 230, p 576
42. AJHR, 1932, B-4A, p 25. The under-secretary in a memo to the Native Minister, 5 August 1932 (MA 1/19/1/14), commented that prior costs were being recouped prior to 1924 as well.
43. Ibid. The under-secretary also noted that of money that was borrowed, much was spent on roading which provided a benefit to the general public much more than to the lands which it was charged against.
44. AJHR, 1932, B-4A, para 257, p 33

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

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

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

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

The commission was concerned that the Native Minister had powers unparalleled by any other department and that constitutionally this was not healthy.[50] There was no direct parliamentary control over development activities, but only control by the Native Minister. His approval was required for properties to be put under the management of the Native Trustee, to exercise powers under section 522 to develop land, and for investments and farming operations undertaken directly by the land boards.

45. AJHR, 1932, B-4A, p 33
46. Ibid, p 33
47. Ibid, p 30. After examining elsewhere various development works, most being undertaken by the boards, the commission noted that 'the tendency has been to treat the Maori Land Boards as district offices of the Department' even though not all schemes were actually funded from board funds. Ibid, p 32.
48. Ibid, p 28. There was a power to appoint commissioners of the land court to take some of the work load off the judges, and five had been appointed – pp 28 and p 39.
49. Ibid p 28 and p 39. In view of the 'diminishing Court work' there was a current proposal anyway to retire two of the judges. Ibid, p 27.
50. Ibid, p 37. An illustration of this was said to be his working relationship with Te Puea, including a much discussed incident where Ngata removed a Pakeha supervisor with whom Te Puea did not agree.

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

2.7 The Board of Maori Affairs and the Nominated Occupier Scheme

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

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

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

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51. AJHR, 1934, G-11. The legislation (s 7) also abolished the Native Land Purchase Board – signalling a clear end to any large scale Government purchasing efforts.
52. Including the Waipipi Development Scheme, begun by the Waikato-Maniapoto District Maori Land Board. The Kaihau scheme also came under the control of the Native Department in 1933. A base farm in Te Kuiti, which became the property of the Waikato-Maniapoto board under the exercise of its power of sale under a mortgage to secure the balance of purchase money, was brought under the Native Department in June 1932, AJHR, G-11, p 20.
53. Claudia Orange, *A Kind of Equality: Labour and the Maori People 1935–49*, MA thesis, University of Auckland, 1977, p 18

assistance of State funds to rehabilitate and establish him as a producing and self-reliant citizen.[54]

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

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

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

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

54. AJHR, 1937, G-10, pp 3–4
55. AJHR, 1934, G-11, p 43
56. Ibid, p 44
57. Section 16(3)
58. Section 18(1)
59. Section 24(3)
60. Section 24(5). A title could be incomplete for many reasons. The lack of an adequate survey of partition and other court orders was a standard reason.
61. Section 26
62. Section 4(4)

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

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

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

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

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63. Section 42
64. This was also the view of the commission, 1934, AJHR, G-11, p 32. See s 522(3)(f) of the 1931 Act, when the Native Minister gave notice 'no owners shall, except with the consent of the Native Minister, shall be entitled to exercise any rights of ownership in connection with the land affected so as to interfere with or obstruct the carrying out of any [development] works.'
65. Sections 48–49
66. Williams to Blan, 24 March 1952, MA 60/1, quoted in Orange, p 70
67. Orange p 71, and see AJHR, 1937, G-9 for a full discussion of the work of the board.
68. See Orange, pp 73ff
69. Ibid, p 73; see also AJHR, 1939, G-9, p 4
70. Orange, p 74

supervisors, shepherds, inspectors, teachers and all see opportunities for their own employment and preferment.[71]

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

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

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

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

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

71. Ngata to District Governor, Rotary International, Auckland, 24 March 1939, quoted in Orange, p 76
72. Orange, p 77
73. Ibid, p 78
74. Ibid
75. Ibid, p 81

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

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

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

Even if all Crown lands were to be used for Maori settlement, there would still not have been sufficient land.[80]

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

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

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

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

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76. Ngata in Sutherland (ed), *The Maori People Today*, 1940, pp 147–148
77. Ibid, p 149. Ngata concluded: 'There have been wholesale dispossessions of the Maori in the last hundred years as the result of Pakeha-directed policy, but we should not have another, the final one.'
78. AJHR, 1937, G-10, pp 7–9
79. H Belshaw, 'Maori Economic Circumstances', Sutherland, p 192
80. Ibid
81. Ngata in Sutherland, p 152. He cited Ruatoki as an example. There were 150 'unit' farms there, but a population of nearly one thousand.
82. Orange, app 3, 'Report of the Maori Labour Conference October 1936'

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

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

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

2.8 LAND OUTSIDE THE DEVELOPMENT SCHEMES

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

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

84. Ibid

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

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

2.9 THE SECOND WORLD WAR

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

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

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

85. Ngata in Sutherland, p 151
86. Ibid
87. Orange, p 83
88. Ibid, p 134
89. Ibid, pp 135–136

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

2.10 The Boards and the Court after 1932

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

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

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

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

90. Ibid, p 137. This reduced the areas available which were preferred by Maori returned servicemen.
91. Ibid, p 138
92. Ibid, p 139
93. Under-secretary to Native Minister, 5 August 1932, MA 1/19/1/14
94. 14 October 1937, NZPD, 1937, vol 248, pp 869–870

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

> as I have a good education from Te Aute College and at the Queen's University, Kingston, Canada, and as I am of sound mind and body and quite capable of looking after my own affairs without resort to the patronising tutelage, protection or supervision of any Maori land board or callous Government officials who do not know what it is to go without the ordinary necessities of life and who would squeal if their pay is with-held for even one day, and as I am at the present time in need of my own money for the purpose of adjusting my affairs and of improving my living conditions and farm, I would respectfully ask that you will be good enough to direct that the whole of the amount held by the Ikaroa Maori land board on my behalf should be paid to me without reservation.
>
> As I badly need assistance from my own funds at this moment, I shall be glad if you will kindly expedite the payment to me of my money and so help to prevent the continuance of my family's need of food and the ordinary necessities to keep body and soul together.
>
> If sent for, I shall be glad to come to your office and receive my money and to give you my personal assurance that I will neither squander my money nor come on the State for maintenance in the future.[95]

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

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

95. Mitai Mikaera to Native Minister, Te Kohai, 5 July 1935, MA 1 5/8/22
96. Native Minister to Mitai Mikaera, 18 September 1936, MA 1 5/8/22
97. MA 1 5/8/1. The 5/8 series deals with requests to the Minister of Native Affairs.

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

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

> two particular Acts . . . are repugnant to the Maori people as a Race. . . . Native Land Act 1931 – *Section 281* – and the Public Works Act of 1908 and of 1928 and their Amendments.
> As regards Section 281 [section dealing with moneys from alienation of Maori lands] of the Act of 1931 we have to state that this piece of legislation tends – in effect – to create an inferiority complex in Maori people. Legislation of this sort is so repugnant to the English idea and principles as appertaining to the liberty of the subject that its parallel does not exist in the law now expressed in the Statutes and applying to the English as a Race. . . . [it] does not connote equality between the two Races as British subjects. . . . [it is] diametrically opposed to . . . Article the Third of Treaty of Waitangi . . .[99]

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

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

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

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

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

However the registrar general saw matters quite differently:

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

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

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

101. Under-secretary to Solicitor General, 8 July 1949, MA 1 5/2/15
102. Acting registrar general to under-secretary 29 July 1949, MA 1 5/2/15
103. This was in practice not much of a distinction – as the registrar had no power to hear confirmations alone.
104. Crown solicitor to under-secretary 22 August 1949, MA 1 5/2/15

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

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

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

105. Under-secretary to the Minister of Maori Affairs, 1 September 1949, MA 1 5/2/15
106. Harvey to under-secretary, 4 November 1937, MA 1 49/19
107. 16 November 1937, MA 1 49/19
108. Browne J to under-secretary, 19 November 1937, MA 1 49/19
109. For example, President Kearn (Tairawhiti) to under-secretary, 23 November 1937. Judge Harvey simply said that as the department had control of all correspondence, he just wanted to get those matters which might require direct action from him to the under-secretary, 1 December 1937 – and there the matter rested.

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

2.11 The End of the Boards

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

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

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

110. See above
111. Pritchard to under-secretary, 8 September 1949, MA 28 31/29

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

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

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

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

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

112. 16 September 1949, MA 28 31/29
113. 5 September 1949, MA 28 31/29
114. 8 September 1949, MA 28 31/29
115. 7 September 1949, MA 28 31/29
116. The one respect was management of vested lands.

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

The under-secretary continued:

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

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

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

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

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

117. 13 September 1949, under-secretary to Minister of Maori Affairs, MA 28 31/29
118. 9 February 1951, under-secretary to Minister of Maori Affairs, MA 28 31/29

the same matter both judicially and administratively. It is clear that, on principle, no judicial officer should be placed in such a position.' It was also stressed the survival of this situation was a 'historical accident'.[119]

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

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

119. Draft 13 July 1951. Cabinet approval was 8 October 1951; see Secretary of Cabinet to Minister of Maori Affairs, 9 October 1951, MA 28 31/29.
120. MA 28 31/29. This money went to the Maori Trustee.
121. MA 28 31/29
122. Telegram to Minister of Maori Affairs, 21 July 1952, MA 28 31/29
123. Ibid, 28 August 1952

CHAPTER 3

CONCLUSION

The advent of the development schemes in the early 1920s probably had more to do with the declining Government interest in purchasing land for Pakeha settlers and the fear that Maori would become a burden on the state, than a concern to ensure a reasonable future for Maori. The Native Trustee established in 1920 used Maori money, loaned to individuals only in yet another effort to break down any communal elements in Maori land ownership, and did not operate for several years from lack of funds in any event. However, largely through the influence of Sir Apirana Ngata, sufficient money was voted in the 1920s and 1930s to fund a series of major land development schemes, in which the land court and the boards were heavily involved. That involvement had dropped off by the early 1930s, however, as Ngata became concerned to reduce the role of the boards in the management of the schemes. With the fall of Ngata in 1933, the control of the schemes remained in the hands of central Government, along with subsequent changes to them, such as the nominated occupier scheme. By this time a genuine concern was apparent, at least at a central Government level, to make adequate provision for Maori in the future. The court remained, however, an important body in determining the rights of Maori owners under leases, and something of a protector of their land interests where they remained intact. The courts were in fact the subject of complaints that they were becoming too protective of Maori interests and came under pressure from Pakeha politicians to change their stance, a pressure which they successfully resisted. The land boards, however, became increasingly redundant with regard to the larger schemes for land development, although they retained considerable power to intervene in the lives of individual owners with the many lands outside development schemes. Indeed, there was a growing Maori concern that the boards and the court had become an overly powerful patronising influence by the 1930s, stifling individual initiative.

Maori land development after 1932 became even more centralised, with the establishment of the Native Land Settlement Board (later to become by the Board of Native Affairs). All decisions about Maori land development were handled in Wellington, with advice only from the regions. Under policies like the nominated occupier schemes, land development concentrated on the individual owner rather than the group, and development money and assistance went to individual Maori farmers rather than groups of owners working in common. Legal owners were in this way often reduced to being unwilling landlords of their own lands and with no control over the money spent on developments on their lands.

There was little change in policy in the late 1930s, when it became apparent that the future Maori population could not be accommodated on developed rural lands, but would have to make a living elsewhere. It was not until several years after the Second World War that the new situation for Maori landowners was squarely faced.

Although the land boards were not abolished until 1952 they had been largely redundant in fact through the 1940s, meeting only informally to make administrative adjustments to Maori land holdings using the limited powers which the legislation had left for them. Curiously, it was not until the abolition of the boards in 1952 that the Government acknowledged the conflicts set up by the legislation between the role of the land boards and the land court, which had dogged their operation for more than forty years.

Returning to the issues raised at the introduction to this report, it can be seen that Maori land owners were not, in the period from 1909 to 1952, placed in a position of common partnership with the Crown in the development of their lands. They did not enjoy legal rights equal to Pakeha in land transactions and ownership. In fact, the regime for land purchase by the Crown under legislation in 1909 and 1913 amounted almost to compulsion where pre-emptive and individual share buying measures could be employed. Nor did Maori work with the Government on an equal basis in the formation of agricultural policy. Before 1920, there was very little suggestion that Maori would even require such a policy. A crude concern that they not become 'landless' and a burden on the state was the extent of the state's concern. While the development schemes in their early years satisfied immediate Maori demands for land development, the schemes were increasingly centralised and bureaucratised so that the owners were left with few legal rights over their own land while it was under development. Maori did not have equal access to the resources needed for making their land productive. They had sold land cheap in the post World War I period, and much of the finance for development came out of their own pockets. That said, the Government did vote considerable funds for development in the 1930s. However, there is little suggestion that the validity of Maori culture was accepted, or that Pakeha politicians and officials believed that Maori forms of landholding were as good as Pakeha ones. Nor were Pakeha officials and politicians familiar with or much interested in the values underlying Maori landholding. 'Sentimental attachment' was the phrase used to describe Maori values with regard to land. Decisions regarding Maori land were not reached after informed reflection upon the differences between Maori and Pakeha values. The land boards which made many of the decisions for Maori about land development did not have Maori members on them, despite repeated requests from Maori that this be the case.

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