STATE AUTHORITY, INDIGENOUS AUTONOMY: CROWN-MAORI RELATIONS IN NEW ZEALAND/AOTEAROA 1900-1950

THE STOUT-NGATA INVESTIGATIONS OF 1907-8

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The Stout-Ngata investigations of 1907-8

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The 1906 extension of compulsion embodied government acc
a policy that people should not be able to 'own land without u

It also reflected Native Minister Carroll's view that leasing out Maori land under Maori Land Board control remained a better alternative to purchase. But it seemed insufficient to save many remaining tribal patrimonies, and so the minister needed other policies if a vestige of land-based rangatiratanga was to remain. Again, paradoxically, these hinged on compulsion. He called for a systematic appraisal of the status of Maori-owned lands, a prerequisite for implementing a plan that would enable Maori to maintain direct control of land they 'needed' and to have the rest in effect compulsorily managed on their behalf or, if really necessary, sold. As a result, in January 1907 the government appointed a commission of inquiry into the best ways to use the remnants of the Maori-owned estate. Lands definitely required and fully used by the tribes would be identified. The rest would be vested with Maori Land Boards for sale or leasing, whichever was deemed appropriate.

This was Carroll's way of meeting the growing tide of both Maori and pakeha disaffection with the government's land policies. The intention was that Maori would negotiate with the commission over the productive land they needed for their own immediate future, but the exercise clearly had ramifications for Maori autonomous control and retention of their land. To help persuade them to co-operate, Ngata was selected as a royal commissioner, along with a veteran Liberal politician, Chief Justice Sir Robert Stout. This was a highly important 'mediating role between the Pakeha government and the Maori tribes'. The pair would investigate all Maori lands in an attempt, in consultation with the owners, to identify those that were 'idle' or not 'profitably occupied'. They were then to recommend to the government how the various lands could best be 'utilised and settled in the interests of the Native owners'.

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Despite the degree of consultation involved, the commission's tasks were far from unproblematic, given a fundamental Crown agenda that sat uneasily with rangatiratanga. As Maori leaders were well aware, the commissioners were to conduct their inquiries and frame their recommendations firmly within the parameters of 'the public good'. This meant that which best suited the capitalist political economy and the pakeha settlers on which it primarily rested. To place optimistic faith in the official reassurances of the time, as many commentators have done, is to obscure the ultimate motivations for the exercise. These were clearly not to restore or protect remaining turangawaewae, but to secure its use in approved ways by (usually pakeha) approved persons.

Nevertheless, many Maori took advantage of the commissioners' willingness to travel and listen to their views. Many hoped not only to influence the recommendations, but also to send strong messages to the state. Some submissions, for example, called for an end to the Maori Land Boards. As it turned out, the commission was as sympathetic to Maori aspirations as it could be within its own terms of reference. Its reports during sittings in 1907–8 stressed that Maori desires for land retention needed addressing (so long as they were compatible with 'the national interest') and generally accepted owners' views. It also criticised aspects of state land acquisition, such as the Crown's overriding the interests of minorities of 'non-selling' collective owners when purchasing. It proposed that all alienations go through the Maori Land Boards, to provide some measure of protection.

The commission believed that, while permanent alienation would inevitably continue, it should be limited to less than a fifth of the remaining Maori lands. Ngata, moreover, was especially sympathetic when reporting that '[t]he Maori ideal is that he should be left alone'. The best way to achieve this, and to assist Maori to hold onto their land, the commissioners (and Carroll and the Young Maori Party) believed, was by *using* the land. This Maori could not do unassisted, and so the state needed to help. Stout and Ngata thus argued that greater powers be given the boards to assist Maori landowners by, for example, raising money on the security of land for their farming developments.

More fundamentally, development required addressing the fractionation of interests in land that had resulted from Native Land Court judgments. The commissioners proposed two ways to remedy this: incorporation and consolidation. In the first, the multiple owners of a block of land would 'incorporate' their fragmented shares in holdings to keep them in collective ownership, vesting control of the incorporation in a committee of management that represented and worked on behalf of the owners. This seemed to fit one definition of rangatiratanga over land that had passed through the Native Land Court's allocation procedures. In the second method, 'uneconomic' holdings in lands would be, through exchanges of shares, 'consolidated' into economic units for farming and development by individuals or small groups, along lines pioneered in Ngata's own Ngati Porou territory.

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Provision for land exchanges for consolidation had, indeed, been enshrined in legislation since the establishment of judicial devices to detribalise land ownership in the 1860s. With the reintroduction in

1894 of Crown 'pre-emption' over Maori land purchase, too, the state had encouraged incorporation, hoping this would lead to leasing. The Crown was now particularly receptive to these aspects of the Stout–Ngata recommendations, for increasingly fragmented share ownership had meant that Maori holdings had been more difficult to acquire, and less productive if not so acquired. It envisaged purchase as the main solution to the 'public good' issues surrounding Maori land; both development methods highlighted by the commission ideally enabled easier purchase and hence quicker pakeha settlement.

At the very least they facilitated greater Maori production, and tribal spokesmen stressed this as well as ownership and control. They noted that, if several recommendations were taken together, consolidations and incorporations would enable them to develop the land themselves. Whatever the ravages of the past, some land-based rangatiratanga might be retrieved. Incorporation could certainly be seen from a Maori perspective as (in Ngata's words) 'in effect an adaptation of the tribal system, the hierarchy of chiefs being represented by the Committee of Management'. Consolidation, too, was often an affirmation of collective autonomy over land, especially via whanau-based ownership and production.[58]

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THE 1909 NATIVE LAND ACT

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The 1909 Native Land Act

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By 1908, Maori land administration had diverged widely from the system implemented in 1900. Many lands controlled by Maori Land Boards had been compulsorily vested, and since 1907 the boards had been able to sell some of the property in their charge. Groupings struggling for autonomy, while increasingly less confident about retaining a significant land base and focusing instead on their collective identity, continued to stress the ultimate nexus between land and people. In 1909 a major Kingite petition demanded both full Maori political autonomy and land rights. But that year became infamous for Maori as yet another signpost on the long route to losing their land. Legislation was passed that was to sharpen their need to work on a form of autonomy that would not necessarily be based on any substantive turangawaewae. This was the Native Land Act, which grew out of the Stout–Ngata highlighting of the confused state of Maori land legislation. Among its many rationalisations, clarifications and consolidations, the Act further simplified and accelerated procedures for the alienation of land from Maori. Once again the Young Maori Party aided the Crown's endeavours, hoping to secure compromises along the way. Ngata himself had been appointed Parliamentary Under-Secretary to Carroll in 1908 to assist the Counsel to the Office of Law Drafting, John Salmond, prepare the Act. Soon Ngata took over many functions within Carroll's portfolio, including that of land legislation.

Various measures (most recently the 1907 Native Land Settlement Act) had ostensibly protected chiefly mana over the land, but contained overriding provisions which minimised such protection. Although it contained some protective devices, the Native Land Act removed others. Among many things, it abolished Crown pre-emption again, ostensibly giving comfort to those Maori who had argued that participation in the free market embodied their rangatiratanga. But even the permanent head of the Native Department, Judge T W Fisher, acknowledged that the 'main feature of the present law is the widening of the avenue and facilitating the alienation and settlement of Native lands'. The rationalisation of Maori land legislation, in short, was used

to contribute to ongoing alienation. There was no longer even any *talk* of taihoa.[67]

Scholars have tended to see the 1909 Native Land Act as a turning point in the processes of land alienation. Even a defence of the Act as a 'major concession to Maori', arguing that it was 'carefully studded with safeguards to protect long-term Maori interests', agrees that it greatly facilitated alienation. A cautious analysis concludes that 'due consideration of Maori interests failed to carry the political weight it perhaps should' in Parliament, the desire to free up more land for pakeha settlement having taken precedence over supposed good intentions. More commonly, the Act is baldly depicted as a 'complete reversal of the sentiments expressed in the Act of 1900': it 'opened up the trading and alienation of Maori land and it allowed for removal of all previous restrictions on the sale of Maori land'.

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But the Act was little more than another (albeit significant) milestone along a well-established road towards alienation, although in preparing it Ngata and Carroll undoubtedly attempted to make the best of a bad situation for Maori. Settler pressure on the Liberals (from both 'radical leaseholders' and right-wing 'freeholders') ensured that its primary thrust could be in no other direction than that already firmly established. The name of the new Native Land Purchase Board was evocative enough of the Crown's aspirations to gain most of the rest of Maori land for pakeha settlement. The 1909 legislation, moreover, cemented in place a longlasting regulatory regime, creating 'an integrated system for the control and alienation' of Maori land that gave potential purchasers a variety of strategies. Under its principles, which remained in place over the next half-century, transfer of control of land 'between races' was the focus of Maori Land Board activities.

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Some of the Native Land Act's provisions, however, especially those inserted under pressure from the Maori MPs, could be used by Maori communities to further their own purposes. A depiction of them as a 'significant recognition of rangatiratanga' is highly debatable, but does remind us that Maori agency continued to operate in even the bleakest of circumstances. From the corridors of state to the humblest villages, Maori people attempted to maximise their communal gains within the range of possibilities available. One such device had been included in the legislation in response to the Stout–Ngata Commission's criticisms of bulk Crown purchasing of individual interests in Maori-held land. This was the provision that, generally, owners needed to be assembled in order to approve the disposition of land. The 'resolution of assembled owners' became a key element of the sales method for decades. The meetings enabled leaders to speak out against improvident sales of land, in many cases encouraging leasing out in preference to irreversible loss. In the eyes of the official historians of the Native Department, this provision 'gave rangatiratanga a legal recognition in a crucially important area'.

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Ngata had fought hard for this. His motives in helping prepare the Act included, as always, the desire to preserve as much Maori culture as was compatible with the benefits and inevitabilities of 'western civilisation'. Acutely aware of the culture–land nexus, he felt that the only way for his people to successfully farm, and therefore retain, a sizeable number of their remaining estates was to secure pakeha capital and 'scientific' know-how. The Native Land Act, therefore, included procedures for boosting Maori agricultural and pastoral production. Consolidation procedures, for example, were streamlined and incorporated blocks were given a firmer legal footing. Once incorporation had been approved by assembled owners, management committees could be established. These had the ability to borrow money without the involvement of officials. The Act also gave Maori Land Boards powers to invest Maori clients' money through the Public Trustee, holding out the possibility of finance for collective ventures. More important still, it was in this Act that Ngata had secured for the first time (citing his own commission's findings, which reflected a number of Maori submissions) specific legislative provision for Crown-aided land consolidation.[68]

But none of these altered the fact that the legislation as a whole was essentially another measure to effect rapid land alienation. Concomitantly, it sought to encourage breakdown of a communal way of life and operation. It abolished the papatupu block committees, which had made many successful title recommendations, and once again the Native Land Court possessed sole jurisdiction to investigate customary title. Hui of assembled owners were obliged to work through Maori Land Boards, and this was seen as compromising their independence. People soon learned that the overriding purpose of the boards had now become that of the prime 'facilitators and

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promoters of the alienation of Maori land'. Even though they were formally charged with preventing Maori landlessness, for example, they rarely refused to confirm alienation when vetting land transactions. The Waikato-Maniapoto Maori Land Board is said, baldly, to have 'operated as an agent of the Crown'. The removal of the Crown's monopoly on buying Maori land, moreover, often interpreted as Ngata's concession to frustrations over low prices and hence a way of meeting Maori demands for self-determination, was no more than a supplementary means of speeding up alienation.

The main aim of the Liberal government had always been pakeha land settlement, even through the taihoa period. Alienation of land from Maori was integral to it, particularly given New Zealand's increasing role as 'the farm of Britain', based on sheep but reinforced by the rise of dairying. State-imposed 'compromises' of various sorts were intended to disempower Maori, marginalising their land and (related) political aspirations. Even the Native Land Act's consolidation measures were to be made available to Maori only at the Crown's discretion, a state-defined public good constituting the main criterion. The Act was 'the juggernaut of legislation relating to the purchase of Maori land', *designed* to force the pace on sales.

Between 1911, when it began producing results, and 1920, the total sales of Maori land almost surpassed those of the massive alienations of the 1890s. Within two decades of the legislation, over 2.3 million acres had been sold. The Maori Land Boards were, in other words, very efficient at the major job expected of them. Government expectations had, in fact, risen with the coming to office of the conservative Reform Party in 1912. To meet the wishes of would-be and actual 'small farmer' constituents, it escalated land purchases through the Native Land Act machinery. Ngata believed that Native Minister Herries, who had long advocated (along with Pomare, the Member of the Executive Council Representing the Native Race) rapid individualisation of customary tenure, 'will poison by aiming at the foundation of our strength ... the proprietorship of the land'.[69]

Herries had an extreme 'use it or lose it' approach to Maori land. In proclaiming a policy that was overtly the opposite of taihoa, that of 'hustle', he was impatient with the 'safeguards' which the Young Maori Party had

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secured in Maori land legislation. Believing that the Native Land Act needed amending to facilitate purchase, his 1913 Native Land Amendment Act was designed to enable quicker alienation. The only significant amendment to the 1909 legislation before 1931, it further boosted state powers to vest land for leasing in the Maori Land Boards. At the same time, it facilitated the transfer of vested Maori leasehold lands to the (generally pakeha) tenants. The 'protection' afforded by vesting land in the boards, then, turned out to be 'only marginally better than none at all', and a third of the leasehold acreage was permanently alienated well within two decades. Other patrimonial 'safeguards' were also removed. In particular, the necessity for the Crown to purchase through 'resolution of assembled owners' and Maori Land Boards was rescinded. Although on the surface such moves gave greater autonomy to collectives, it was also easier for Crown agents to buy interests in land from individuals, often clandestinely, following this up by securing Native Land Court intervention to gain usable and saleable blocks.

Moreover, the 1913 amending legislation merged the Native Land Court and the Maori Land Boards. Carroll and others had suggested that Maori representatives on the boards were a 'check ... against unfair dealing' in alienation and management of the lands vested in them. But now the boards not only covered the same districts as those of the court, but comprised only two people, the Native Land Court judge and his registrar. Even the minister acknowledged that in effect 'the Native Land Board will be the Judge himself'. With no Maori input into the institutions that were supposedly buffers between Maori and the Crown, there were many ramifications for rangatiratanga. Owners of blocks which had been vested in Maori Land Councils or their successor boards, for example, 'no longer had any vestige of direct involvement in decision-making with respect to these lands'.

Ngata and Carroll had wanted to give a culture 'steeped in Commun ism' time to adjust, seeing leasehold as the way of retaining vestigial Maori land in Maori hands while improving their socio-economic circumstances. When the leases expired, the Maori patrimony would be ready for further development via newly acquired farming skills and the accumulated proceeds from ground rents. For Herries and his co-thinkers, however, for Maori to be 'hustled' into

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the 'civilisation' of the twentieth century meant that they were to be parted from most of the rest of their land. Learning quickly to be 'European', speaking only English, living in western ways, behaving like the British

through observing and copying such exemplars of society as policemen — all involved leaving the land or, at most, working for the pakeha farmer on it. Herries had, in fact, sponsored legislation enabling qualified Maori to be legally declared European, one intended effect of which was that their interests in land could be purchased without any inconvenient restrictions at all (not that many took the bait, and some who did were actually attempting thereby to facilitate their management of collective lands). Under the Native Land Amendment Act, land alienation became more than ever the dominant activity of the Native Department, the agency in charge of the assimilation agenda as well as the Crown's land purchasing.[70]

The Young Maori Party, then, had failed to persuade Reform in its early years in government to continue policies which played for time, on both land and lifestyle issues, until tribal mana could be re-established in a way that fitted contemporary developments. Despite consistently attempting to get greater Maori collective input into the administration and disposition of their lands, often invoking the Treaty of Waitangi in the process, Ngataism was fighting a losing battle. In its very attempts to ameliorate the consequences of the pressures for alienation, it became complicit in them. The imperatives of the hegemonist paradigm within which it operated, and the power of the state with which it co-operated, had led inexorably to government machinery that was increasingly geared to disempowering Maori as collectively organised and resourced groups. After 1913, with the organised pakeha working-class crushed after coercive suppression of the great strike, the final Crown push for Maori land alienation accelerated.

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