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DIVERGING PATHS

AN EXAMINATION OF THE STOUT-NGATA RECOMMENDATIONS AND SUBSEQUENT LEGISLATION

A thesis presented in fulfilment of the
requirements for Masters of Arts.

Dion Tuuta
1996

This thesis is dedicated to my parents.

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Abstract

In 1907 the Commission on Native Land and Native Land Tenure was created in order to examine the state of Maori owned lands throughout the North Island of New Zealand. The Commission was headed by the Chief Justice, Sir Robert Stout, and Apirana Ngata, and became known as the Stout-Ngata Commission. The Stout-Ngata Commission of 1907-1909 ascertained how much "surplus" Maori land existed throughout the North Island during this time and the best ways to utilise and settle the land in the interests of the Maori owners and the public good. The Commission toured the country interviewing hundreds of Maori owners and relayed their wishes to the government in a series of forty-two reports. The Commission offered the government advice on matters affecting Maori land legislation. The purpose of this thesis is to ascertain the influence of the Stout-Ngata Commission on subsequent Maori land legislation and to highlight the impetus behind the legislation of the time.

This will be done by examining the activities of Stout and Ngata throughout the North Island and the recommendations they made to Parliament in regard to the management and development of Maori land. The thesis will then examine three major pieces of Maori land legislation that came in the wake of the Stout-Ngata Commission. A key question is how successful were the recommendations of the Stout-Ngata Commission in influencing this legislation.

Responses to the Commission throughout New Zealand were many and varied. In general, European politicians envisioned the Commission's recommendations as an avenue for the opening up of "surplus" Maori lands for European settlement. In general, the Maori members of Parliament were hopeful that the Commission would offer Maori a greater chance to farm and develop their remaining lands. Problems arose with the interpretation of the Commission's reports by government and the eventual translation of the recommendations into legislation. The government, overwhelmingly Pakeha in membership and outlook, pursued an official policy of assimilation.¹ Ideas of European superiority influenced the way Pakeha politicians approached the Commission's recommendations and the framing of Maori land legislation. This created a noticeable gap between the recommendations of the Commission and the legislation subsequently passed.

¹J. Metge, *The Maoris of New Zealand*, [1967], (London, 1976), p.303.

Introduction

"A farmer who no longer owns his own land and is merely a labourer tilling the soil forms no allegiance to either region or work; he has nothing to lose, nothing to fear for."¹

-Milan Kundera

By the year 1900, Maori and Pakeha had lived together in Aotearoa/New Zealand for sixty tense and turbulent years. By the year 1907, after more than forty years of successive legislation and litigation, the control of Maori land (and to a certain extent Maori destiny) rested effectively in the hands of an overwhelmingly European settler government. Maori exercised limited control over those lands which remained in their ownership. Now more than ever, Maori throughout New Zealand had something to lose and something to fear for. With the control of Maori land resting with a government pandering to the "earth-hunger" of Pakeha settlers, Maori were facing the very real prospect of total landlessness and poverty.

By the beginning of the twentieth century, land retention and land development were among the most important issues facing Maoridom. Maori had established a long history of ways in which they had attempted to control the tide of land alienation, wishing to retain it for the benefit of themselves and their descendants. From organised political movements, such as the Kingitanga and Kotahitanga, the efforts of Maori spiritual leaders such as Te Whiti o Rongomai, and Tohu Kakahi, to the more "in your face" method of armed resistance, Maori people explored many different avenues in an effort to retain their lands and their culture. The American historian, John A. Williams has starkly argued that the years between 1901-1908 saw Maori becoming "less concerned with autonomy and more concerned with finances and land development."²

By the beginning of the twentieth century Pakeha control of New Zealand was a well established reality, and a continued existence by Maori, as Maori, meant adopting Pakeha ways of making a living and walking to the beat of the capitalist drum. Yet, while Williams' belief that Maori were losing concern for autonomy is debatable, the issues of land retention, and the realisation of the need to develop land were becoming apparent to many, if Maori were to hold out against the seemingly never ending tide of Pakeha settlement. As a consequence, government policy which sought to continue unrestricted access to Maori land increasingly came up against Maori attempts to retain and develop their remaining estates. This was well illustrated by the differences that emerged between

¹M. Kundera, *The Unbearable Lightness of Being*, (London, 1984), p.283.

²J.A. Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891-1909*, (Oxford, 1969), p.128.

the recommendations of, and government responses to the Stout-Ngata Commission of 1907-1909.

This thesis seeks to examine the legislation which arose from the recommendations of that Commission, officially entitled the Commission on Native Land and Native Land Tenure, but better known as the Stout-Ngata Commission. This Commission was charged with the task of inquiring into what areas of Maori land were unoccupied or not profitably occupied in an effort to discover ways in which this land could be used and settled in the "interests of the Native owners and the public good."³ The Liberal government at this time hoped that the Commission could supply them with the answer to what was termed the Native difficulty. However, as a vehicle for pursuing progressive Maori land policy which would get behind the idea of government funded Maori land development, the Stout-Ngata Commission seemed doomed to failure due to the fact that Parliament mainly consisted of individuals whose primary concern was the development and progress of New Zealand. These men were influenced by ideas of Maori inferiority, assimilation, and the idea that Maori were a dying race. Combined with the desire of Parliamentarians to see the land settled and developed as quickly as possible, Maori interests were relegated to a secondary position, despite the Commission often condemning the role that government had already played in legislating the Maori into near landlessness.

This thesis then examines and discusses the influence that the operations of the Commission on Native Land and Native Land Tenure had on subsequent Native land policy drafted by the Liberal Government during the first decade of the twentieth century. Chapter one of the thesis will discuss the Stout-Ngata Commission in terms of what it was set up to do and will also discuss some of the recommendations it made. It will also examine the Commission's activities and will describe some of the views of Parliamentarians who were opposed to its activities. The Stout-Ngata Commission nowadays stands in an unenviable position of historical uncertainty. Chapter one seeks to help unearth answers to the question of what exactly the Commission was set up to do. Was it set up to help the government design a progressive policy in regard to the retention and development of Maori land, or was it simply a vehicle to enable the government to find new ways to speed up Maori land alienation? With these questions in mind, the later chapters will examine specific legislation that was purported to have grown out of the recommendations and reports of the Stout-Ngata Commission.

Chapter two examines the Native Land Settlement Act which was first introduced to Parliament by the Native Minister, James Carroll, on 30 October, 1907 and passed on 25

³Interim Report of the Commission on Native Land and Native-Land Tenure, *Appendices to the Journals of the House of Representatives*, 1907, G1, p.1.

November, 1907. During its eventual passage into law this measure raised and revealed hotly contested issues in the New Zealand Parliament. The purpose of chapter two is to examine the main intentions and provisions of the Native Land Settlement Act in view of the fact that the government claimed that the Act was a direct response to the Stout-Ngata Commission, and was therefore an attempt to give effect to some of its recommendations. Chapter two will also look at the debates surrounding the passage of the Bill into law. These debates revealed the ideas and beliefs of Parliamentarians of the time. Despite the progressive recommendations made by the Commission for Maori, at the heart of the government's Maori legislation were beliefs that were often in complete opposition to them.

Chapter three continues the theme of examining recommendations against legislation by examining the 1908 Maori Land Laws Amendment Act. This Act attempted to patch up perceived deficiencies in the existing legislation. However, the Amendment Act was little more than an offering to pacify the Opposition which still demanded an effective way of solving the Maori land "Native difficulty." This Act also gave the Crown time to continue preparing what it hoped would become the final solution to its perceived Maori land problems. However, parts of the Act did open ways for Maori to gain potential access to farming success. For example, the 1908 Maori Land Laws Amendment Act extended the powers of the Maori Land Boards, giving them Native Land Court powers to confirm alienations and assume the administration of all Native Townships. The purpose of chapter three, then, is to examine the Maori Land Laws Amendment Act, 1908, in light of how it affected Maori, while at the same time, considering the Act against the recommendations of the Stout-Ngata Commission.

Chapter four looks at the Native Land Act, 1909. This was a major piece of legislation which still stands as the largest piece of Maori legislation to date. It consisted of 410 sections organised into twenty-four parts.⁴ This Act not only dealt with Maori land dealings, but also dealt with such seemingly unrelated matters as Maori marriages, succession rights and the adoption of children. The 1909 legislation was an attempt to reconcile the irreconcilable, namely, facilitating the desires of those Maori wishing to maintain and develop their lands, and the desire of Pakeha to obtain those same lands. The purpose of chapter four is to examine the motives behind the passage of the Native Land Act and to examine any benefits it may have given Maori. While the 1909 Act retained a number of provisions from the Native Land Settlement Act and the Maori Land Laws Amendment Act, as well as many others, this consolidated piece of legislation saw a dramatic shift in policy away from the 1907 and 1908 Acts. The final report of the

⁴Native Land Act, 1909, in *Statutes of New Zealand*, 1909, pp.155-265.

Native Land Commission had been presented to Parliament at the end of 1908 with recommendations concerning such things as the consolidation of the Maori land laws, the Native Land Court and taxation of Maori land. This chapter will examine how much of an impact the recommendations of the Commission had upon the drafting of the 1909 Act, continuing the theme of examining recommendations against legislation.

Despite giving life to three major pieces of Maori land legislation, most notably the Native Land Act 1909, little has been previously written on the activities and efforts of the Stout-Ngata Commission. What little there is, has been placed either in the context of Sir Apirana Ngata's career or within general discussions on early twentieth century Maori land policy. Discussions on the Stout-Ngata Commission itself range in opinion, from those arguing that it had little or no impact in achieving land legislation beneficial to Maori, to those who believe that the recommendations of the Commission did grant considerable concessions to Maori landowners. In *Ka Whawhai Tonu Matou: Struggle Without End*, Ranginui Walker painted a very pessimistic view of the Stout-Ngata Commission, arguing that any progressive recommendations it made were doomed to failure due to the Pakeha desire for Maori land. Walker saw the Stout-Ngata Commission as another opportunity for Maori development subsumed by the Pakeha desire for land settlement, while he believed that all Maori gained from the Commission was Sir Robert Stout's support for the principle of Maori farming.⁵

Graham Butterworth took a more optimistic view of the Stout-Ngata Commission, examining its activities in greater depth than anyone else to date. Although he agreed with the basic premise that the government "was only concerned with acquiring Maori land for settlement", Butterworth nonetheless believed that the Commission had other benefits such as fulfilling a mediating role between the Pakeha Government and the Maori people. Butterworth believed the Commission's reports on future Maori land policy and administration, which embodied much of the Maori viewpoint, were "a landmark in the evolution of Maori policy."⁶ Butterworth's view was mainly concerned with the role of Ngata, who he believed used his time on the Commission to look "very successfully after his own people's interests." Despite these concessions granted to Stout and Ngata, Butterworth took the basic view that in the end the Commission was simply another instrument of the Liberal Government used to answer its critics and to solve the "Native land question." Butterworth expressed the idea that the Commission's success, such as it was, stemmed from Maori accepting the Commission as a lesser evil that might preserve at least some of their remaining lands.

⁵R. Walker, *Ka Whawhai Tonu Matou: Struggle Without End*, (Auckland, 1990), p.179.

⁶G.V. Butterworth, 'The Politics of Adaptation: The Career of Sir Apirana Ngata', MA thesis, Victoria University, 1969, pp.126-127.

In a similar vein to Butterworth, M.P.K. Sorrenson saw Ngata as having a more noticeable hand in the reports of the Stout-Ngata Commission. Sorrenson gave Ngata credit for persuading Stout as to the potential merits of Maori farming through exposing him to the successful farming achievements of his own Ngati Porou people on the East Coast. Sorrenson remained relatively neutral towards the Commission, noting that the reports' paramount consideration was the settlement of the Maori on their own land. However, he was aware that the government used it as a device for the alienation of Maori land. Sorrenson's views were mirrored by those of Michael King, who also believed that the Commission was greatly influenced by Ngata. King saw the Commission being established in response to concern about the resumption of European land purchases.⁷ King believed that although the Commission proved itself to be almost wholly sympathetic to the difficulties of Maori land owners, and accordingly called for action, little was done. Instead, more land was sold to Pakeha.

American historian John Williams saw Ngata's time on the Commission as laying the foundation of his career, a time when he developed policies he was to pursue for the rest of his life. This thesis agrees with this idea and sees the reports and recommendations of the Stout-Ngata Commission as being the precursor to the later era of Maori development, an era that Ngata himself was to implement twenty years after the activities of the Commission on Native Land and Native Land Tenure. Williams also argued that the Commission partially reversed the trend of the time by returning a substantial amount of control over Maori land to the Maori owners. According to Williams, the Commission's purpose was not to propose a new means of opening up Maori land but to designate which land should be dealt with by each of the existing means.⁸ This view contrasts with that of Walker and Butterworth who drew more direct attention to the legislative use of the recommendations. Williams however, did realise that it was ultimately up to the government to carry out the Commission's reports as it thought fit. Williams also highlighted the activities of Stout and Ngata in persuading Maori to direct their energy towards agriculture and actively to use the land or risk losing it to someone who would. This persuasion to "use it or lose it" did become a significant objective of the Commission's work, and it came to be a common opening address used by Stout in an effort to educate Maori on the need to develop their land with government assistance which might be forthcoming, or run the real risk of relinquishing it to others.

⁷M. King, 'Between Two Worlds', *The Oxford History of New Zealand*, 2nd ed., (ed.) G.W. Rice, (Auckland, 1992), p.291.

⁸J.A. Williams, *The Politics of the New Zealand Maori: Protest and Cooperation 1891-1909*, (Oxford, 1969), p.128.

In general then, most of the histories of the Stout-Ngata Commission focus mainly on the role played by Ngata, seeing him as the main driving force of the Commission, while Sir Robert Stout takes a secondary role, and is often barely mentioned. One of the only exceptions to this arises in Waldo Dunn and Ivor Richardson's biography of Sir Robert Stout. Dunn and Richardson placed the significance of the Commission's reports on their emphasis on the encouragement and training of Maori, to settle and work their own lands efficiently, and the idea that Maori education should be given an agricultural bias. Dunn and Richardson believed that Stout deserved credit for "his insistence on the importance of regarding the settlement of Maori as the primary consideration in dealing with Native owned land and for his emphasis on the duty of the government to educate the Maori for farming and industry."⁹ While Stout does deserve credit for his stand on Maori farming, this thesis is inclined to view Sir Apirana Ngata as playing the predominant role in the activities of the Commission.

Therefore, most of the histories which have included references to the Stout-Ngata Commission have generally focused on Ngata, to the detriment of Stout; and most have examined the recommendations against subsequent legislation in a passing sense only, arriving at cursory and tentative conclusions as to the central theme of this thesis- to what extent did the recommendations of the Stout-Ngata Commission influence subsequent legislation. By examining in detail three pieces of legislation in the Commission's aftermath, this thesis will then examine this theme in more detail than earlier histories have been able to do. In so doing, the thesis will examine an issue that remains one of contention and interest whenever the Stout-Ngata Commission is considered today.

This thesis concludes that the Stout-Ngata Commission was doomed to fail as a vehicle for pursuing progressive Maori land policy. The Commission had recommended giving Maori a realistic chance of developing, successfully farming, and maintaining their lands. The Commission's recommendations for Maori farming, however, were not fully implemented. The main reason for the Commission's failure, and the most simple, was, as Walker believes, Pakeha desire for Maori land. This conclusion, however, is driven by underlying ideas which were the real reason the Commission failed to bring about significant beneficial change for Maori. By 1907, ideas of progress, racial superiority, and assimilation were common throughout the country and in Parliament. The men who controlled the direction New Zealand would take were themselves controlled by these ideas. By 1907, development of New Zealand was the main ideal of the Liberal government which drove their policy making decisions. Nothing would be allowed to hold back New Zealand's progress, least of all the Maori people.

⁹W.H. Dunn, and I.L.M. Richardson, *Sir Robert Stout: A Biography*, (Wellington, 1961), pp.174-175.

Tied in with this ideal of progress was the second notion of racial superiority and stereotypes which effectively barred Maori from taking an active role in the development of New Zealand. At this time, Maori were seen as a defeated people and a race which would either die out or die in through being assimilated into the dominant European culture. As Maori and Pakeha most often lived in separate communities, this fostered the creation of myths and stereotypes which worked to the disadvantage of Maori. Maori were viewed as lacking the intelligence, moral virtue, and drive to play a part in the advancement of New Zealand. As the Stout-Ngata Commission explained, the Maori was "under the ban as one of a spendthrift, easy-going, improvident people."¹⁰ These ideas were a natural part of European thought and were the real impetus behind government policy. Any recommendations made by the Stout-Ngata Commission first had to run the gauntlet of these two ideas, and if they did not conform, they were discarded as being "utopian" or "the ideas of a dreamer."¹¹ The Maori were viewed as the past, a redundant past, while the Pakeha saw themselves as the future. The future for the Pakeha meant developing the land, as quickly and as efficiently as possible. It was these two ideas and trains of thought which defined the way the government approached the framing of its Maori land laws. The Stout-Ngata Commission did not fail the Maori people, the New Zealand government did.

¹⁰*Appendices to the Journals of the House of Representatives, (AJHR), 1907, G1-c, p.15.*

¹¹*Fraser, New Zealand Parliamentary Debates, (NZPD), Vol. 142, (1907), p.1062.*