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.

CONTENTS

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Dion Tuuta, 1996.

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.

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[1] J. 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

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

[2] J.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

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[3]Interim 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

[4]Native 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.

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

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

[8]J.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.

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[9]W.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.

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[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.

Chapter One: The Stout-Ngata Commission

By 1907, what had become known as the "Native-land question" had given "every Ministry for the past quarter of a century anxious consideration." This "Native question" involved two matters of "immense importance to the country." The first of these was to find ways in which Maori could be settled so that they would become "industrious citizens", while the second matter, according to the government, involved the issue of how to utilise the "vast areas that are Maori tenure, unused and not likely to be used by the Maori people."[1] This land which was deemed as unlikely to be used by the Maori people had been placed in that state by over forty years of Crown legislation. This had created a situation where it was almost impossible for Maori to utilise their land. Through the imposition of legislation designed to bring Maori customary tenure in line with English law, and a plethora of amendments ensuring easy alienation, Maori control over their lands was steadily moving into the hands of settlers and the Crown. The mass of Maori land legislation which existed in 1907 also meant that Maori lands were effectively locked up against development. According to Paul McHugh, the government's approach to Maori land legislation was disjointed, occasionally experimental and usually a pragmatic response to particular issues.[2] These particular issues usually involved Maori land alienation.

The operations of the Commission on Native Land and Native Land Tenure had an important influence on subsequent Native land policy drafted by the Liberal Government during the first decade of the twentieth century. This chapter will examine the extent of that influence. It will discuss the Stout-Ngata Commission in terms of what it was set up to do and it will address some of the recommendations it made. This chapter will examine the Commission's activities as well as some of the views of Parliamentarians opposed to the Commission. As indicated earlier, the Stout-Ngata Commission stands in an unenviable position of uncertainty. This chapter 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 progressive policy which would assist Maori, or was it simply a vehicle to enable the government to find new ways to speed up Maori land alienation? Whatever the answer to this question, the Stout-Ngata Commission is significant if only for the fact that for the first time, a Commission had been established which could ascertain the wishes of Maori, face to face, in regard to the ownership and administration of their lands.

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[1] Ward, 16 July, *NZPD*, Vol. 139, (1907), p.424.

[2] P. McHugh, *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi*, (Auckland, 1991), p.281.

Believing that large areas of Maori land were unprofitably occupied, and undoubtedly heeding the desires of settlers hungry for land, the Crown appointed the then Chief Justice, Sir Robert Stout, and Apirana Turupa Ngata, Barrister of the Supreme Court and Member of Parliament, to the Commission. Stout and Ngata were to obtain the necessary information needed to further the advancement of settlement, while at the same time, making suitable provision for the Maori people. The Commission's subsequent findings and recommendations were, apart from at least one case, based entirely upon such meetings, largely reflecting the wishes of the Maori owners. These wishes were disclosed at hearings held on Marae, papakainga and other Maori areas. However, as the Commission only had the power to make recommendations, it was generally left to the Crown to use, and perhaps abuse, these recommendations as they thought fit. For the most part, the Commission's findings largely represented Maori wishes of the time, as expressed to the Commission within a context of government pressure on Maori to "use or lose" the land. The Commission undertook a massive task which was complicated by both Opposition attacks over the need for the Commission in the first place, and a complex body of Native land legislation which had evolved over time. Despite this, the Commission visited "some forty-eight different places in the Hawkes Bay, Poverty Bay, Bay of Plenty, Waikato, King Country, and North Auckland districts."[3] At these meetings, they interviewed hundreds of Maori people and amassed a huge body of information from which they furnished forty-two reports to the government over a two year period.

The Commission was headed then by Sir Robert Stout, born in Lerwick, capital of the Shetland Islands, on 28 September 1844.[4] According to Dunn and Richardson, by the time Stout was nineteen years old "he was admirably equipped to face the world on his own responsibility. His character had been moulded into a form from which it was never in any appreciable degree to deviate."[5] Stout is described as an advanced theological liberal, who was an eager follower of the scientific method. Due to his early exposure to the adverse effects of alcohol in Lerwick, Stout became an ardent advocate of prohibition and abstained from drinking himself. This opposition to the evils of alcohol can be seen in his advice to Maori during his time on the Commission when he recommended thrift and abstinence from alcohol and smoking. His years on the Shetlands also exposed Stout to harsh land laws, which forced pitiful lifestyles upon the poor and infirm. Dunn and Richardson state that it was the injustice of land laws in Great Britain which made him a "crusader on behalf of more liberal systems."[6]

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[3] I.H. Kawharu, *Maori Land Tenure: Studies of a Changing Institution*, (Wellington, 1977), p.25.
[4]Dunn, W.H. and Richardson, I.L.M, *Sir Robert Stout: A Biography*, (Wellington, 1961), p.14.
[5]Dunn and Richardson, p.18.
[6]Dunn and Richardson, p.19.

Robert Stout came to New Zealand in 1864, following the stories of family friends and reports of gold rushes in Otago. Upon settling in Dunedin, Stout took up teaching until deciding to enter the field of law in 1867.[7] On 4 July, 1871, Stout was admitted as a barrister and solicitor after completing his studies two years ahead of schedule, before taking up a successful legal practice. Stout's sporadic political career began in 1875, when entered the House of Representatives as the member for Caversham, and lasted on and off, due to financial reasons, until 1898, when he resigned his seat in Parliament. During this time he had held the positions of Attorney General, Minister for Lands and Immigration, and in September 1884, Stout assumed the role of Premier, in an alliance with Julius Vogel who acted as Colonial Treasurer. He held this position until 1887, when he lost his seat of Dunedin East to James Allen by twenty-nine votes.[8] Stout was knighted in 1886 but never became established as a politician due to the fact that "each spell in Parliament left him adversely affected financially and obliged to retire to the law in order to recoup his finances."[9]

By the late 1890's it became apparent that he was likely to transfer from politics to the Supreme Court Bench. As one of the country's leading legal practitioners, he was appointed the Chief Justice of the Supreme Court in 1899. He held this position until his retirement in 1926. It was during his career as Chief Justice that he was appointed to the Commission on Native Land and Native Land Tenure. To this Commission he brought his own personal ideology of thrift and hard work, forged no doubt through a combination of lifelong experiences and a wide knowledge of political theory. After witnessing first-hand some of the more cruel aspects of the landlord system on the Shetlands, Stout became a strong advocate of State leasing. According to David Hamer, Stout's ideal of State was a nation of small holdings, secured by the State. His opposition to land sales stemmed from a fear that the rich would monopolise the land market, creating the same social problems as the Old World. Hamer states that Stout had derived a belief, originating from the work of sociological and psychological writer Herbert Spencer, that most social and economic problems could be solved if individuals could be encouraged, enabled and even compelled (if need be) to be self reliant and independent.[10] Throughout his time on the Commission, Stout steadfastly maintained that the survival of the Maori race depended on farming. To a certain extent, Stout's views were mirrored by those of the second Commissioner, Apirana Ngata.

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[7]Dunn and Richardson, pp.20-21.
[8]D. Hamer, "Robert Stout" in *Dictionary of New Zealand Biography*, Vol 2, (Wellington, 1993), p.486.
[9]Hamer, p.487.
[10]Hamer, p.485.

Apirana Ngata was born in July of 1874. Marked for leadership from birth by his Ngati Porou elders, Ngata went on to become one of both Maoridom's and New Zealand's most notable modern figures.[11] According to Butterworth, Ngata emerged as an important Maori leader during the 1890's. His attainment of an influential position had been planned in advance by his Ngati Porou elders who had recognised the need to "produce men with a knowledge of English and of the Pakeha world."[12] Ngata's first steps to leadership began at a government Native School at Waiomatatini. From there, Ngata moved to Te Aute college in the Hawkes Bay where he proved to be so apt a student a special scholarship was arranged for him to attend the University of Canterbury in 1891. Ngata became the first Maori to gain a B.A. in 1893 and an M.A. a year later. He then studied for his LL.B. at Auckland University, passing his exams in 1896 and being admitted as a barrister in 1897.[13] Armed with education and a passionate pride in being Ngati Porou, Ngata began working to improve the situation of Maori through-out New Zealand.

At times, Ngata could be accused of being an assimilationist, but this paints too simple a picture of an enigmatic individual. In June, 1947, in an address delivered before the Polynesian Society, Sir Apirana explained how he had approached his work to younger Maori working in the civil service.

> Never mind the blessed Government; never mind George Shepherd, or anyone else. They are not the guardians of your thoughts or your efforts for your race: They are your employers for 40 hours a week only, sometimes less. Having done the job you are free men, and you can carry on your work for your people. That has been my policy all my life. I do not knuckle under to bishops or Prime Ministers. I am first of all myself. I am Ngati Porou.[14]

Ngata was a pragmatic, but essentially Maori, individual who realised that Maoridom needed to move into the future alongside their Pakeha counterparts. As has already been stated he could be scathing of aspects of Maori society, but these were aspects he saw as holding Maori back from taking their place in the future side by side with Pakeha. After gaining the seat for Eastern Maori in 1905, one of Ngata's first major assignments was to sit on the Stout-Ngata Commission.

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[11]G.V. Butterworth, *Sir Apirana Ngata*, (Wellington, 1968), p.3.

[12]G.V. Butterworth, 'The Politics of Adaptation: The Career of Sir Apirana Ngata', 1874-1928, MA thesis, Victoria University, 1969, p.6.

[13]Butterworth, *Sir Apirana Ngata*, pp.5-6. For a more detailed examination of the life of Sir Apirana Ngata see G.V. Butterworth, 'The Politics of Adaptation: The Career of Sir Apirana Ngata, 1874-1928, MA thesis, Victoria University, 1969.

[14]"Some Aspects of Maori Culture", an address delivered by Sir Apirana Ngata before the Polynesian Society at Wellington, 10 June, 1947, quoted in E. Ramsden, *Sir Apirana Ngata and Maori Culture*, (Wellington, 1948), p.89.

The Commission on Native Land and Native Land Tenure was set up on 21 January 1907, by "William Lee, Baron Plunket, the Governor of the colony of New Zealand acting by and with the advice and consent of the Executive Council."[15] By 1907 the Liberal Government was anxious to see the further development and advancement of New Zealand as a country. One of the only ways in which to achieve this was to develop and farm as much of the land as possible. A problem arose in the fact that previous native land legislation had placed Maori land in the unenviable position of barring the way to this development in the white mind. By 1907, the Government estimated that approximately eight million acres of land in the North Island was still owned by Maori, maintaining a population estimated to be about forty to forty-five thousand people. Although a great deal of this land was already leased to Pakeha settlers (almost one quarter), much of it lay "idle", a term settlers used to describe unproductive land, or land lying in its natural state. It was the Commission's task to find ways in which these lands could be brought into some form of productive capacity. Although there was an estimated eight million acres of Maori owned land remaining in the North Island, the Commission's jurisdiction did not extend over all of it.

"Papatupu" lands, or "lands the titles to which have not been ascertained by a competent tribunal" were excluded from the Commission's jurisdiction, thus excluding an approximate area of 468,752 acres in the Waiapu, Opotiki, Rotorua, Kawhia and North Auckland districts, from the Commission's investigations. These lands were reported to comprise "some of the best virgin lands in the North Island."[16] Another class of land classified as beyond the jurisdiction of the Commission by Parliament consisted of trust lands and lands held under special Acts. Approximately 1,709,871 acres of Maori land were either held under six special Acts or vested in the Maori Land Boards.[17] Approximately 145,187 acres of land held under special trusts and reserves administered by the Public Trustee (other than the West Coast Reserves) were also precluded on the basis of the terms of the various trusts. One example was the Wi Pere Trust Estate in Gisborne. Finally, approximately 2,350,000 acres of land which was either currently under lease, or at that time under negotiation for lease, was excluded from the workings of the Commission. This represented a substantial area of approximately 4,673,810 acres in total which "by statute and by the fact of settlement" were "excluded from the

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[15]Interim Report, *AJHR*, 1907, G1, p.i.

[16]Final Report of the Commission on Native Land and Native-Land Tenure, *AJHR*, 1909, Session I, G1-g, p.1.

[17]Final Report, *AJHR*, 1909, Session I, G1-g, p.2. Thermal Springs Districts Act, Urewera District Native Reserve Act, West Coast Settlement Reserves Act, Native Townships Act, Kapiti Island Native Reserve Act, East Coast Native Trust Lands Act.

operations of the Commission."[18] The Commission's investigations estimated the actual area owned by Maori in the North Island at that time to be about 7,465,000 acres, leaving an area of approximately 2,791,190 acres available for inquiry by the Commission.

Together, Stout and Ngata, aided by a lawyer and an interpreter, were charged with the task of ascertaining what areas of Maori land were "unoccupied or not profitably occupied, the owners thereof", and, if in their opinion necessary, "the nature of such owners titles and the interest affecting the same." The Commission was also to recommend how these lands could "best be utilised and settled in the interests of the owners and the public good." This part of the Commission's brief may have given Ngata some hope that the Crown was going to get behind Maori development. As well as these two tasks the Commission was to find out what areas, if any, might be set apart for individual Maori occupation by the Maori owners, in order to cultivate and farm. The land could still be held as communal lands for the purposes of the Maori owners (as a body, tribe or village) and for the future occupation by the descendants or successors of the owners. The Commission was also to ascertain how such land could, in the meantime, be properly and profitably used by other Maori who were not owners themselves; and on what terms and conditions, and by what modes of disposition. Added to this, Stout and Ngata were to investigate what areas should be set apart for settlement by Europeans, again on what terms and conditions, by what modes of disposition, in what areas, and with what safeguards to prevent the subsequent aggregation of such areas in European hands. Although this was a relatively small part of their brief, this was the question which seemed to take up most of their time and seemed to be in the forefront of the minds of those in Government at the time. The final task of the Commission was to ascertain how the "existing institutions established amongst Natives and the existing system of dealing with Native lands" could "best be utilised or adapted for the purpose of the aforesaid, and to what extent, or in what manner they should be modified."[19]

This was no light task and would involve travelling to many remote destinations throughout the North Island, and many hours interviewing hundreds of Maori owners. The Commission was also limited in its power. It was not established to right wrongs, although some Maori people may have viewed it as having such powers. At the beginning of each sitting the Commissioners would be welcomed by the local Maori and settlers alike. The sittings were viewed with interest by many and often drew the attendance of local members of Parliament as well as large crowds. It was usual for Stout

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[18]Ngata, 9 October, *NZPD*, Vol. 145, (1908), p1127.
[19]Final Report, *AJHR*, 1909, G1-g, p.2.

to address the meeting first by explaining the "Mission and Scope of the Commission." He also often took the opportunity to insist that "farming and industrial life was absolutely necessary if the race was to survive."[20] Both Stout and Ngata were aware of the Commission's limits and explained to the meetings that they could make recommendations only. As Stout explained, "we have the power to investigate and report and no status except that."[21] Although the Commission could make recommendations based on the desires of the Maori owners, it was explained that ultimately it was for "Parliament to finally settle [the] matter."[22]

The information sought by the Commission from Maori was considerable. The Commission wanted specific information regarding the land. They wanted to know of the existence of any leases over the land and statements of the rents paid for these leases. Stout and Ngata also wanted statements of any premiums paid for leases. Each owner was required to list any other lands they may have held in other areas or blocks and explain how these other lands were being utilised. If these other lands were leased, the Commission wanted to know to whom and at what rent. If these other lands were not let, they wanted to know how they were occupied. Further to this, owners were asked for statements showing where they resided at the time. The Commission also wanted information on any agreements or leases made between any of the owners and other persons, or between the owners of these blocks, and when these had been made and the price or value given on the purchase, sale or exchange. The number of stock grazed on the blocks was also required as well as the value of "the unexhausted improvement" on the land. The Commission also wanted to know the amount of money recently paid to the owners, or any of them, as premiums or rent on new agreements or leases or gifts. Perhaps the most important information the Commission required was in finding out what portions of the land the owners wanted for their own occupation, as well as what portions, if any, of the blocks the owners may have wanted to lease. The Commission wanted information regarding what portions of the land the owners wanted to be reserved as papakainga and finally, and perhaps most importantly in the mind of the Crown, what portion they might wish to sell and to state what they desired to hold.[23]

For the most part Maori seemed to view the Commission with hope. When visiting the Nuhaka district, Stout was interviewed by a local newspaper and was asked about the "feeling of the Natives in regard to the work of this Commission?" In Stout's opinion, the Maori seemed "very kindly disposed all through." He reported that wherever the

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[20]Maori Affairs File 78/3 Minute Book of evidence given before the commission in the Mohaka district.
[21]Newspaper clipping from *Daily Telegraph*, 23 February 1907, in MA 78/3.
[22]MA 78/3.
[23]Newspaper clipping from *Daily Telegraph*, 25 February 1907, in MA 78/3.

Commission had sat, the Maori seemed "desirous of meeting the Commission", and that the Maori they had met "so far have been very reasonable. What they ask is not extravagant, and if you discuss the matter with them there is no difficulty in bringing them to a reasonable conclusion."[24] This optimistic view of the Commission by Maori raises the question of whether there were different views towards the Commission by Maori and Pakeha. Maori may have viewed the Commission as a vehicle for their improvement, while Pakeha viewed the Commission as an instrument for opening up Maori land for alienation.

Not everyone, however, was as enthusiastic about the appointment of the Commission. William Massey, leader of the Opposition at this time, was one of its most vocal opponents. Massey, who confessed he was "not much of a believer in Royal Commissions", slammed the work of Stout and Ngata throughout the Commission's two year existence.[25] In 1908 he stated that "we have had the Native Commission at work for the last two years at very heavy expense to the Dominion, and what have they done? Let anyone look at the last report. So far as I can see, they have done nothing to forward the settlement of the Native land. I say it would have been very much better if the Native Commission had never been set up."[26] He was supported in his views by other Opposition members. Mr William Thomas Jennings, the member for Egmont, held the opinion that "it was not a satisfactory Commission to set up on behalf of the people" of New Zealand. Jennings attacked the Commission on the basis that Stout and Ngata held "a bias in certain directions when the Native land question is touched upon." He also took exception to the fact that the Commission was only appointed to ascertain the wishes of Maori in connection with their lands. Jennings believed it would have been "a just thing on behalf of the white settlers to have placed on that Commission a settler who could have represented what were the wishes and the aspirations of the white settler."[27]

These two were not alone in holding such opinions. A.L.D. Fraser believed the "mistake was in ever setting up the Commission." Fraser believed there had been no necessity for the Commission in the first place and that it was "a weakness on the part of the Ministry." Fraser recognised Ngata's desire to uplift his fellow Maori but believed his "dreams" were "more or less of the theoretical order." Because of this, Fraser believed that the Government would "never receive anything that will be a guide to us as administrators in bringing down beneficial to the two races." In regard to the Commission's

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[24]Undated and untitled newspaper clipping in MA 78/14.
[25]Massey said this in 1908 when he was suggesting a Royal Commission should be set up to investigate into the condition of New Zealands prisons. *NZPD*, Vol. 143, (1908), p.25.
[26]Massey to Carroll, 1 October, *NZPD*, Vol. 145, (1908), p.773.
[27]Jennings, 19 November, *NZPD*, Vol. 142, (1907), p.1057.

recommendations that Maori should be given a chance to work their own lands, Fraser remarked that the "whole theory of the Royal Commission is Utopian, theoretical, the ideas of a dreamer."[28] Fraser's statements were designed to attack the Government on the basis that they had established the Commission to stall for time while trying to devise new Maori land policy. The Prime Minister, Joseph Ward, found Fraser's comments "exceedingly offensive" and denied that the Government was trying to "shelter itself behind the Commission."[29]

Other honourable members were more tactful in their attacks on the Commission. William Herries, the member for the Bay of Plenty, made it perfectly clear that although he did not "wish to say anything personal of the members of the Commission", for whom he entertained "the highest respect", he nonetheless thought it was wrong "for any Government to appoint to a Commission a member of the Judiciary Bench or a member of Parliament." Herries stated that he was opposed to the idea of both Stout and Ngata's appointment to the Commission because it meant a rise in both their salaries. This rather weak argument found favour with many Opposition members who continued to reiterate the point from 1907 to 1909. Herries also showed sympathy with Jennings' view "because of the expressed and known opinions of the members of the Commission."[30] The "bias" that Opposition members spoke of was in reference to the large amount of Maori land that had been recommended by the Commission to be settled under leasehold, rather than freehold. Freehold was definitely seen by many in Parliament at this time as the preferred option.

Ngata defended the Commission against these allegations by replying that "with the exception of one block- the Wharepuhunga Block, in the King-country - no land was recommended by the Commission either for sale or lease which was not voluntarily offered by the owners. Where the owners said they wished a block to be leased, the Commission recommended it for lease; where the owners said they wished the land to be sold, the Commission recommended it for sale." Ngata believed this was "a good indication to the House and to the country of what the Maoris themselves would like done with their land. In their opinion the greater part of their land should be opened for general settlement under leasing conditions, and not under sale. That is the Maori view of it."[31] The Maori view of the situation, according to Ngata, favoured leasing over sale, and this is evident in the Commission's final report, which, out of the grand total of 2,040, 877 acres investigated, recommended 696, 260 acres for general settlement. Although this

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[28]Fraser, ibid, pp.1062-1064.
[29]Ward, ibid, p.1070.
[30]Herries, ibid, p.1036.
[31]Ngata, ibid, p.1041.

represented a substantial amount of land (almost one third) the Maori owners were willing to have it settled on a leasehold basis, thereby maintaining ownership.

After carrying a thorough examination of past legislation dealing with Maori land, the Commission believed that "the mode of deal with Native lands in the past has not been beneficial to the Natives, nor to the Europeans desiring to obtain land for settlement, nor to the State."[32] This came to be a strong view of the Commission, which criticised nearly every major piece of Native-land legislation from 1862 onward.

Of all the recommendations made by the Commission, one of the most strongly advocated by Stout and Ngata was Crown assistance for Maori farming. These ideas, voiced in 1907, would eventually be given life by Ngata in 1929. After visiting the Wanganui District in April, 1907, the Commission believed there was a "distinct demand for an opportunity to be given to some of the owners to farm."[33] It was recommended that the Morikau No. 1 Block be vested in the Aotea Maori Land Board for the purpose of Maori farming. The President of the Board believed that the "settlement of the Maoris on their own lands might be deemed an experiment." The President of the Land Board put forward an idea similar to those which Ngata finally implemented in 1929. Instead of cutting up the Morikau Block into smaller areas for individual or family farms, the Board would farm the land as a whole and appoint a competent European to manage the farm along the lines of a station. The Maori owners would be given preference in all work on the farm, thereby gaining valuable practical experience of new farming techniques. Under this scheme, the financial difficulties would be overcome as the Board could borrow against the freehold. It was hoped that, if the "experiment proved successful, the Board could cut up the communal farm into small farms." Ngata and Stout believed that if their proposals for the settlement of Morikau No.1 block were carried out, and that if "systematic instruction and assistance were given instead of the half hearted advice so freely tendered" the younger Wanganui Maori would "distinguish themselves in the arts of peace as their fathers, under Meiha Keepa Taitoko (Major Kemp), and fore-fathers under other leaders, distinguished themselves in war."[34] Ngata may have written this part of the report with an eye on reminding the Crown of the role Wanganui Maori had played in protecting Wanganui settlers from the threat Titokowaru and the hau hau had posed forty years before, in their violent military campaigns against the government.

After visiting the Rohe-Potae (King Country) District in July, 1907, the Commission was even more critical of government legislative actions in dealing with King Country Maori.

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[32]Interim Report, *AJHR*, 1907, G1, p.1.
[33]Interim Report on Native Lands in the Whanganui District, *AJHR*, 1907, G1-a, p.12.
[34]ibid, pp.12, 13-14, 16.

The Commission stated that those who had "railed at the curse of Maori ownership should pause before passing final judgement to consider certain facts in the recent history of the King Country Maoris and of their lands, and the legislation affecting the same."[35] The Commission found that from 1884-1900 (broadly speaking) King Country lands were restricted "except as against the Crown." The "Native Land Administration Act, 1889," had given Maori with a title to land the power to dispose of or alienate their lands as they might think fit. Ngati Maniapoto were still restricted by this Act due to the fact that the Native Land Court had unable to award titles to the owners.

The Commission was of the opinion that this long period of restriction of private dealing had operated indirectly as a "deterrent to the proper utilisation and settlement of portions of their own lands by the Maori owners. This virgin territory was, as it were, walled round deliberately to keep out the wave of European settlement." However, when the area was finally opened, settlement came "not single spies but in battalions." It was found that, in the eight years between 1892-1900, the Crown had acquired, through purchase, or received in payment of survey liens (including interest afterward defined by the Native Land Court), approximately 687,769 acres of Maori land in the King Country district at the total price of 145,384 pounds, or an average price of 4 shillings per acre. The Commission believed that, under the circumstances, "any ambitions that the Maori owners might have had in the direction of farming their own lands were stayed. They could not but choose the easier way of raising money by the sale of their tribal lands."[36]

From 1892 to 1906, the rights of King Country Maori were sacrificed in the interests of Pakeha settlement. The Crown had retained the right of pre-emption in the King Country, buying land on "such terms as might be agreed upon between the Crown and the owners."[37] The Commission called this a "fiction", as the Crown, with no competition to fear, bought on its own terms. The Commission found that King Country Maori had been placed in a position of powerlessness, and the price paid for the land was "below the value." The price was set "in accordance with the will of Parliament." The Commission expected that the "Executive" justified the price paid on the basis that "it was furthering the interests of general settlement, even it [sic] it rated too low the rights of the Maori owners and its responsibility in the safeguarding of their interests."[38]

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[35]Interim Report on Native Lands in the Rohe-Potae (King Country) District, *AJHR*, 1907, G1-b, pp.1-2.
[36]ibid, pp.2-4.
[37]Native Land Alienation Restriction Act 1884, *Statutes of New Zealand* , 1884, pp.254-255.
[38]Interim Report, *AJHR*, 1907, G1-b, p.4.

By 1905, when the "Maori Land Settlement Act, 1905," was passed, the Crown was required to ascertain, before the completion of a land purchase, whether the seller had enough land for their continued maintenance. The Crown also had to pay the owners not less than the capital value of the land as assessed under the "Government Valuation of Land Act, 1896." However, the 1905 Act could also disadvantage individuals as Section 20 of the Act gave the majority of owners in a block of land the right to sell to the Crown, despite the wishes of the minority. The Commission believed this was "contrary to the laws of natural justice" as the wishes of individual owners were over-ruled.

The Stout-Ngata Commission therefore recommended "after a careful consideration of all the circumstances, that the present system of purchasing Native lands, so far as the Rohe-Potae was concerned, be discontinued." The Commission did not think it was "too late to foster systematic farming amongst the Ngati Maniapoto" and, in that belief, the Commission recommended the setting apart of "any lands they have demanded, over and above what we deem necessary for papakainga's." The Commission also found that a number of unsatisfactory leases had been entered into in the King Country under the "free trade" system. The Commission noted that a number of leases granted under the free trade system were "not beneficial to the Maori owners nor to the people of the colony." The Commission also noted that these leases could not be disturbed, as Parliament would "not venture to disturb the undoubted right of a European." After meeting and consulting with the owners of the Rohe-Potae district in regard to what they desired should be done with the area they offered for general settlement, the Commission found that the "general opinion was hostile to selling, and strongly in favour of leasing through Boards to the highest bidder."[39]

According to Hinde, McMorland and Sim, it may be recognised that law in general seeks to provide a set of rules by which the relations between persons and persons, and between persons and things, may be governed.[40] In carrying out their investigations, the Commission found that, for Maori, these rules were always changing. The Commission's first general report presented on 11 July, 1907 was critical of over forty years of "sharp changes or oscillations of policy, corresponding with changes of Government."[41] The Commission came down especially hard on the "Native Land Act, 1862", which established the principle of individual title where no such title had existed before. The Commission believed this "erroneous principle has been the pregnant cause of mischief and confusion. The continual attempts to force upon the tribal ownership of

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[39]ibid, pp.4, 6, 11, 12.

[40]G.W. Hinde, D.W. McMorland, and P.B.A. Sim, *Introduction to Land Law*, (Wellington, 1979), p.1.

[41]General Report of the Commission on Native Land and Native-Land Tenure, *AJHR*, 1907, G1-c, pp.1-2.

Maori lands a more pronounced and exact system of individual and personal title than ever obtained under the feudal system among all English speaking peoples has been the evil of the Native-land dealings in New Zealand."[42] The "Maori Councils Act, 1900" obviated the difficulties of individual ownership and enabled large blocks to be dealt with. This Act created Maori Land Councils in which owners could vest their lands or which could be appointed by the owners as their agents for the purpose of leasing their lands.

The Commission expressed the belief that the 1900 legislation was "doomed to fail" due to the reason that Maori "showed an unwillingness to intrust the administration of their lands to the Councils." This was due to four main reasons. Firstly, and not surprisingly, Maori objected to being deprived of all authority and management of their ancestral lands. Second, experience had taught Maori that legislative enactments were fickle, and might change at any time. The Commission believed Maori suspected the 1900 legislation was simply another attempt to "sweep into the maw of the State large areas of their rapidly dwindling ancestral lands." The third reason was that Maori were still unaware of the hidden costs, delays, and uncertainties of alienation by direct negotiation, such as survey liens and partitioning expenses. Finally, and perhaps most sadly, most of the lands, which in the year 1900 were declared to be lying "idle and unproductive", had reached that stage "when the struggle in the Native Land Courts was, or anticipated to be most acute, and for the majority of the Maori owners, so long as the title was in abeyance and they were immersed in the joys of litigation, the settlement of the country could wait. It was for the moment outside the range of their politics."[43]

The Commission on Native Land and Native Land Tenure was established to achieve the incredibly difficult task of satisfying Maori aspirations. The difficulty in this task arose when Maori aspirations were measured up against European and Parliamentary desire for land settlement. Despite giving favourable recommendations for Maori land development and farming, the Stout-Ngata Commission's ultimate role became that of ascertaining a simple and effective way of alienating Maori land for European settlement. Ngata explained before Parliament in 1908, that in considering the question of land settlement, the Commission realised that the land "must be put up for settlement in a way to conform as nearly as possible to the other land laws of the Dominion."[44] The Crown needed to find other ways to make use of the institutions already in existence to further the development of New Zealand. One such institution was the Maori Land Board. According to Alan Ward, these Boards, created in 1900, at last gave the Maori some

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[42]ibid, p.2.
[43]ibid, p.6.
[44]Ngata, 9 October, *NZPD*, Vol. 145, (1908), p.1128.

significant control of their land.[45] These organisations were to assume a greater role in the administration and alienation of Maori land under the subsequent legislation emanating from the Crown. Indeed, the findings of the Stout-Ngata Commission were to have a major impact upon subsequent government Maori land policy in general. This major impact, however, was in regard to the alienation of Maori land as opposed to Maori land development.

Despite legislation for alienation which ultimately arose out of Stout and Ngata's recommendations, criticism of the Commission continued even when it had completed its labours. James Allen, the member for Bruce, was appalled that the Commission had cost the country 5,135 pounds, for what he believed were worthless reports. When challenged by Ngata, Allen expressed his belief that "the Native influence in cabinet" was "too strong."[46] Edward Newman, the member for Manawatu, held similar views in regard to the Native Minister. Newman stated that Carroll himself was "more responsible than any other man in this Dominion for retarding the settlement of the Native land difficulty."[47] Ngata corrected Allen's assumption over the cost of the Commission by revealing that it had actually cost the country 9,576 pounds, 11 shillings and 7 pence. Ngata believed the Commission had done very valuable work for the Dominion as it would "affect not only our legislation, but the whole of our settlement of the Native-land question."[48] Ngata called the work of the Commission cheap at 10,000 pounds. He believed it would have been cheap at 50,000 pounds.[49]

It could be argued that the government placed Apirana Ngata on the Commission in order to gain the trust of Maori so that they would indeed appear before the Commission. This would have been a two way process however. Ngata undoubtedly used his position on the Commission to further his own ends. Ngata used the Commission to educate Stout about the potential capacity Maori had for farming, if given the proper finance and instruction when the Commission visited the East Coast. At the same time, Ngata and Stout used their time on the Commission to educate Maori throughout the North Island on what the government wanted done with their lands. Ngata saw this as being the most valuable part of the Commission's work, as he believed before this that Maori were relatively ignorant of the very real need to develop and work their own lands if they wished to retain them from the Pakeha. Also added to this, Ngata may have used his time on the Commission to compile his own personal inventory of Maori land and manpower.

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[45]A. Ward, *A Show of Justice*, (Auckland, 1974), p.311.
[46]Allen, 13 October, *NZPD*, Vol. 147, (1909), p.126.
[47]Newman, ibid, p.110.
[48]Ngata, 14 October, ibid, p.150.
[49]ibid, p.151.

This would have been useful to him when he later became Native Minister and implemented his own programme of Maori land development in 1928.

The Stout-Ngata Commission recognised well the situation Maori had been placed in due to the complex web of Maori land legislation which had been created since 1862. Accordingly, the Commission gave Maori beneficial consideration in their recommendations. At the same time, however, the Commission was used by the government as an instrument to further the goal of continuing settlement of Maori lands by Pakeha. The Commission was primarily used to compile an inventory of available Maori land for government use at a later date for purchase or alienation; and this became evident to the Commission by 1908. The Commission was then seen as a yardstick which the government could use to ascertain exactly how much Maori land could be taken possession of without causing Maori to become a charge on the State or charitable organisations. This would thus allow the government to claim that it was settling and developing the country, while at the same time making ample provision for the Maori. Ultimately the recommendations made by the Commission in favour of Maori wishes fell short of being fully implemented into legislation, as earlier suggested. This was because the government was not prepared to sacrifice such increasing settler access to land in the first decade of the twentieth century for the sake of the Maori people. The separation of the Commission's recommendations and intentions (generally advancing Maori interests) from the desire of government to advance continuing settler access to Maori land for settlement will be further discussed in the following chapters which examine specific legislation passed during, and directly after, the work of the Commission. By now focusing on such specific and important legislation, promoted as having arisen from the deliberations of the Stout-Ngata Commission, this thesis will continue to examine the theme of the separation of recommendation and legislation.

Chapter Two: "Native Land Settlement Act, 1907"

"To suggest that we are doing something that will be harmful to the Maoris is to suggest something that is contrary to fact."

-Prime Minister, Joseph Ward, 1907.[1]

The Native Land Settlement Bill was first introduced to Parliament by the Native Minister, James Carroll, on 30 October 1907 and passed on 25 November 1907. During its eventual passage into law, it raised a range of hotly contested issues in the New Zealand Parliament. The purpose of this chapter 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 an attempt to give effect to some of its recommendations. This chapter will also look at the debate surrounding the passage of the Bill into law, revealing the ideas and beliefs of the time that, despite the progressive recommendations made by the Commission for Maori, were really at the heart of the government's Maori legislation.

The 1907 Act was divided into three parts. The first part dealt with mechanisms for alienating Maori land; the second, dealt with land set aside for Maori occupation, and the third part consisted of miscellaneous provisions. This Act saw a move by the Crown to implement compulsory vesting of land in the Maori Land Boards, institutions which many Maori viewed with suspicion. This move towards compulsory vesting was later criticised by the Stout-Ngata Commission. Compulsory vesting came in Section 4 which declared that whenever the Native Land Commission had reported that any particular land was not required for occupation by the Maori owners, the Governor "shall declare by Order in Council that the land shall be subject to this Act." This Order was to define the boundaries of the land reported on by the Commission, in preparation for Section 5 which compulsorily vested the land in the Maori Land Board of the district.

Despite Section 6, stating that "land so vested in the Board shall be held in trust for the Maori owners beneficially entitled", once land was vested in the Board, the owners rights almost seem to have become a secondary consideration. Boards were to act as a trustee for the Maori owners as Section 7 of the Act stripped the owners of all power of disposition over their land or any anticipated income from land, by way of sale, lease or mortgage. However, with the Board's permission, money received through rents could be used as security for borrowing to improve other land beneficiaries may have owned.

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[1] Ward, 19 November, *NZPD*, Vol. 142, (1907), p.1070.

The government claimed that the 1907 Bill was framed upon the recommendations of the Stout-Ngata Commission. Yet these recommendations were selectively used by the Government in framing the 1907 Act. By 19 November, the Commission had investigated and reported upon approximately 554,000 acres of Maori land. Of this amount, 346,000 acres had been recommended for general settlement, leaving the balance of 208,000 acres for Maori occupation. Of the 346,000 acres the Commission had recommended for general settlement, only 66,000 acres had been recommended to be disposed of by way of sale. The Commission had recommended, in accordance with the Maori owners wishes, that the remaining 280,000 acres be opened up for settlement by way of lease.[2] The Native Land Settlement Bill went little more than half way in accepting the recommendation of the Commission. The Bill provided that any land deemed to be surplus by the Commission would be vested in the Maori Land Board for lease or sale. Instead of adhering to the recommendation of the Commission and wishes of the owners, that the majority of the land be settled under lease (in this case 280, 000 acres), the Section 11 of the Bill required that the land vested in the Maori Land Board would be split equally on a 50:50 basis, with half being offered for sale and half being offered for settlement by way of lease. Despite the fact that Maori were willing to open their land to settlement by way of lease, the Crown chose instead to implement compulsory sale over half the land vested in the Boards. The 66,000 acres offered for sale was not enough to satisfy the earth-hunger of Parliament.

This clause was both the result, and the cause of much debate over a theme that was to raise its head time and again during this period, namely the issue of freehold tenure versus that of leasehold. Division existed within Parliament over which was the preferred form of tenure. Carroll realised that there were those in Parliament who claimed that "there should be nothing but leasehold", those who claimed that "all tenure should be freehold" and those again who believed in "a percentage of both."[3] Carroll stated that the "latter course", which argued for a percentage of both freehold and leasehold, was the one which met with "the more general acceptance" and therefore, that was what the Bill proposed. Section 11, the section which split the vested land into two equal portions for sale and lease, was a compromise to satisfy both sides in the freehold-leasehold argument. This was a perfect illustration of the Pakeha desire for land over-riding any consideration for Maori welfare and development. Section 11 was a compromise, but it was a compromise between two groups of Pakeha in Parliament controlling Maori destiny; it was not a compromise made between Maori and Pakeha. Ngata was aware of

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[2]Carroll, 19 November, *NZPD*, Vol. 142, (1907), p.1032.
[3]ibid, p.1033.

the situation and reserved the right to "be able to put on record" his feelings with regard to Section 11.[4]

Those in favour of alienating Maori land to enable Europeans a freehold title argued that allowing Maori to lease their estates would transform them into a rent receiving race, which would soon be sapped of its energy and ambition to participate in New Zealands advancing society. Freeholders, such as William Massey, usually favoured placing Maori on an individual footing, arguing that Maori were presently denied the right to do as they wished with their land. Leasing, they argued, would not help forge Maori into the industrious, contributive people that Pakeha wanted them to be. Also, the freeholders argued that allowing Maori to lease their lands would turn them into a new class of monopolising landlords, a situation which many argued had driven people from England in the first place. Sir Robert Stout, after his first hand experience of harsh landlords in the Shetland Islands, was an ardent opponent of landlordism. When travelling through the Nuhaka district in 1908, he noted to a local newspaper that "the Natives are not the land monopolisers. The Europeans are the ones with the large blocks in the districts which we have been through."[5]

Those against the freehold were those who believed the Maori still needed to be protected from land speculators and themselves. The lease was advocated as a way of ensuring Maori did not become a landless people. Sir Joseph Ward summed up the situation in 1907, replying to Massey over his belief that legislative restrictions on Maori land sales should be removed. Ward explained that "unless the Legislature took due safeguards to protect the Maori, unless it took precautions to render it impossible for inroads being made on his lands by the free sales by himself ... a very large proportion of the Native race would quickly become depleted of their estates." This was described by Ward as the "principal fear of all responsible men" in Parliament because, should the Maori become landless, the government "would be in the very unhappy position of finding large numbers of the Maoris becoming a burden upon the Dominion and upon their more successful Maori friends."[6] Ngata himself highlighted that Maori were still keen to sell lands and were generally opposed to government restrictions. Williams argues that some Maori leaders, "looking perhaps too exclusively on the needs of their own generation, were still willing to sell on a competitive market."[7]

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[4]Ngata, 9 October, *NZPD*, Vol. 145, (1908), p.1128.
[5]Undated and untitled newspaper clipping in MA 78/14 Hawkes Bay.
[6]Ward, 19 November, *NZPD*, Vol. 142, (1907), p.1050.
[7]J. Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891-1909*, (Oxford, 1969), p.128.

Both sales and leases were to be arranged by public auction or public tender. In the case of sales, the purchaser was required to pay ten percent of the purchase money on acceptance of their offer by the Board. The rest of the purchase money was payable in instalments, most likely to facilitate quick settlement of the land in question as the purchaser was entitled to possession of the land upon execution of the purchase contract by the Board. Interest accrued on the unpaid money and the purchaser was in no way allowed to devalue the land in any way prior to completing the payment of the purchase price. Leases were to be executed for a period of fifty years without right of renewal. This was a very long period of time, and basically amounted to alienation to the owners at that time, as they lost direct control over their land, and the rent money derived from the lease. The leases had been set at fifty years as Ngata had envisaged that the next generation of Maori would be able to administer their own lands profitably. Lessees were also entitled to be compensated for any improvements they had carried out on the land before it could be revested in the Maori owners. The Board was therefore required to set aside an amount of money from the rents derived from the land as a sinking fund to pay for these improvements at the expiration of the lease. Under Section 34, deceased lessees could have their lease assigned to their heir by will or executor as if the land belonged to them in fee simple.

Preparation for settlement often involved surveys and roading which usually incurred high costs. The 1907 Act allowed the Crown to advance funds from Public Works to enable the Land Boards to prepare the land for settlement. These advances were charged against the value of the land, and were expected to be repaid, with interest, from the purchase money paid for the land. In effect, Maori owners, who may not even have wanted to sell their land in the first place were not only losing their land, but they were actually paying for the surveys which cut those lands up for European settlement with that same land they were losing. Revenue from land sales and leases was also used for other purposes.

The argument that leases would turn Maori into a rent receiving class was misleading, due to the fact that, very often, little if any rent or revenue was received at all. All revenue generated from land was controlled by the Board that was required to satisfy certain charges before owners got their money. Owners would receive their rent money after paying any Land Board administration costs, less any rates or taxes upon the land, and advances for public works. These were paid after paying into a sinking fund to pay for any improvements at the expiration of the fifty year lease. Owners also had to pay off any undischarged survey liens or mortgage payments. After meeting these requirements, many owners were left with little or no rent money at all. In the very worst cases the rent money might not be able to cover the charges on the land. This necessitated the owner to

come up with the money to pay, or being forced to sell the land. This proved to be one of the major reasons that Maori came to resist vesting their land in the Land Boards. Carroll, however viewed the Boards as a "protective institution" which shielded Maori from landlessness and poverty.[8]

As was often the custom when dealing with Native land legislation, the Bill was introduced late in the session, drawing criticism from the Opposition. W.H. Herries pointed out that "this tardiness seems to be the fate of all Maori measures."[9] Herries showed hostile opinions towards the Bill before he had actually read it, suggesting that it had been held back on purpose in order to force it through at the end of the session. The Government defended its timing on the basis that they were sticking to the schedule on the order paper and that they were only half way through the session anyway. Massey, however, pointed out that there was "no surer indication of the end of the session than the introduction of a Bill dealing with Native lands."[10] The view condemning the late introduction of Native legislation also drew support from Hone Heke, the member for Northern Maori, who suggested that this Bill should have been introduced earlier. Heke's reasoning for this was based on past experience of the adverse effects of rushing Native legislation through in the dying hours of a session. Heke was afraid that this new piece of legislation which was going to lay down a new policy would not be properly considered in the time available.

The Bill did indeed intend to lay down a new policy with regard to the settlement of Maori land. However, as Ngata noted, it did not touch upon the question of the investigation of titles, although there were many complications in connection with that part of the so-called "Native land question." Neither did the Bill touch upon the administrative part of the work of the Native Department. From its initial introduction, Carroll wanted the Bill to be referred to the Native Affairs Committee for any alterations the Committee may have thought necessary, and also to give the members of Parliament time to go through it. This motion was agreed to and the Committee was ordered to report on the Bill in ten days time.

Carroll considered the Bill as an "instalment of what must come, and of what must be faced as years go by." He believed it was necessary to have a definite principle adopted, so that the Commission, which the Bill authorised to extend its work for twelve months, could go on with its operations "with a clear mind." Carroll was also aware of the need to undertake a "complete, thorough, and proper consolidation" of all the Native land

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[8]Carroll, 19 November, *NZPD*, Vol. 142, (1907), p.1083.
[9]Herries, 30 October, *NZPD*, Vol. 142, (1907), p.287.
[10]Massey, ibid, p.288.

legislation, but proposed to put it off until the next year.[11] This measure, however, was not to be realised until two years later. On 19 November, 1907, Carroll stated that "the House is aware of the Commission set up last year to investigate and report upon the area of unoccupied Native land in the North Island, and the best means of utilisation of the land for the good of the Maori owners and for the public good. These reports have now come in. Members are familiar with them and the recommendations they contain, and this Bill is framed thereon."[12]

In his speech, Carroll made reference to the fact that it was "well known that the Commission was appointed for a certain purpose- to deal with unoccupied lands, and report, and make recommendations thereto." Carroll also made reference to the fact that it was known from "references in the Financial Statement what the cardinal lines of policy were that the Government was going to adopt, and that any measure brought in would be framed in the main on those lines." These cardinal lines of policy were mainly aimed at "the settlement of people on the unused lands." In giving the Financial Statement, Ward felt sure that the Parliament would be "only too anxious to pass such legislation as may speedily and satisfactorily settle the many difficulties" that had "arisen in Maori-land administration."[13] The main intention of the Crown was clear, the opening up of Maori lands for quick European settlement.

Carroll was well aware of the fact that the 1907 Bill did not provide for the owners, but instead focused on the lands which had been recommended for "public competition in the interests of general settlement." Carroll stated that the important question of providing for the owners of the land was impossible to "deal fully with at present." He did, however, go on to plead the case of the Maori by highlighting the fact that whenever the Crown passed legislation to further the settlement of the country, the question was always studied from "the point of view of satisfying the earth-hunger of the Europeans" and that the Crown had "never made any provision up to the present time indicating how we should deal with the balance of those lands, or how we should settle the Maoris thereon." Carroll argued that, "from the point of view of economics, if every man is worth 250 pounds to the State, then we should be forgetting the forty-thousand-odd Maoris in this Dominion if we made no real effort to provide for their welfare by the conservation of part of their lands and by improving their condition in life."[14]

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[11]Carroll, 19 November, ibid, p.1033.
[12]ibid, p.1032.
[13]Ward, 16 July, Financial Statement, *NZPD,* Vol. 139, (1907), p.424.
[14]Carroll, 19 November, *NZPD*, Vol. 142, (1907), p.1033.

The Bill postponed the issue of helping Maori settle and develop their own lands and Carroll argued that although this was the case, the issue had not been overlooked. The fact that the Bill did not go very far in helping Maori was proof, Carroll argued, that its application was confined to a limited area. All land subject to the Act was to be vested in a Maori Land Board, "in Trust for the Native Owners."[15] Under the 1907 Act, the Maori owners lost all power of disposition in connection with their lands. Carroll argued that this prohibition of private dealings would make the operation of the Act "simple and effective."[16]

William Herries, the Opposition member for the Bay of Plenty, criticised the Bill on the basis that Maori lost control over their land. Herries' "protective stance" favoured a more individualistic approach in which Maori were encouraged to look after their own affairs. Herries was a proponent of the free trade system in dealing with Maori land. He complained that the powers given to the Land Boards by the Bill were very limited, and that everything had to be "done with the approval of the Native Minister." Herries preferred an open system of land negotiation, arguing that Maori would get the highest possible price for their land through open competition, as to a lower price through direct negotiation with the Crown. Herries also made reference to the fact that, traditionally, Maori had generally been opposed to the vesting of land in Maori Land Boards as there seemed to be little benefit in the activity. Herries believed that if the Government could get the land occupied by the Maori, as provided for by Part II of the Bill, then Parliament would "make a great advance for the uplifting of the Maori and also some good to the country." Herries believed Part II could be used to encourage Maori to farm their own property, while the rest of the Bill "simply drags him down and makes him a rent receiver."[17] The Opposition slammed the Commission as a device for taking Maori land, even though the settlement of Europeans on the so called surplus Maori land, was also their first priority.

Apirana Ngata joined the debate after Opposition members had attacked the Commission's activities and personnel over potential bias. Ngata rejected any aspersions upon Sir Robert Stout or himself and went on to debate the Bill. Ngata was aware that, in regard to land dealings, the "Maori ideal" was that "he should be left alone." Ngata argued that from "1865 down to the present day the Maori has been trying to disentangle himself from the rest of his community, and thereby approach the pakeha ideal of having a separate individual title to land." This "innovation of individualism" was, according to Ngata, a Pakeha innovation which had led to many Maori desiring "unrestricted freedom

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[15]Native Land Settlement Act, 1907, *Statutes of New Zealand 1907*, pp.270-285.
[16]Carroll, 19 November, *NZPD*, Vol. 142, (1907), p.1034.
[17]Herries, ibid, p.1036.

of dealing." Another important theme which began to be touched upon during this debate was the issue of individualism. The Massey-led Opposition strongly advocated that it was time to place the Maori on equal terms with their European brothers, and this was a theme that was to be repeated often throughout the entire existence of the Stout-Ngata Commission and beyond.

Ngata argued that the Bill introduced, for the first time, the beginnings of a new policy - namely, what should be done with the areas reserved for Maori? Ngata believed the time had arrived when the Crown had to look at the "Native Question" from the standpoint of whether the Maori was capable, under supervision and proper assistance, of farming large areas of their own land. Ngata was well aware that Maori were indeed capable of becoming successful farmers. He had witnessed, first hand, the efforts and successes of his own people on the East Coast in sheep farming. Ngata believed the Crown should legislate for the Maori first, and for the lands that they wanted to retain for their use and occupation. He also argued the Crown should "give him a proper title, ample powers, financial assistance under proper safeguards, and expert instruction in farming."[18] These ideas were still being expounded by Ngata twenty years later, when he was finally given the chance to test them as Native Minister.

Despite the fact that his own party had introduced the Native Land Settlement Bill, Ngata had originally opposed its passing due to the fact that its original draft made no provision for Maori what-so-ever. It was not until the Liberals consented to make adequate provision for Maori needs in those areas retained for their occupation that Ngata gave his support. This support was bought by the addition of Part II, which sought to make provision for land occupied by Maori , which was added by Ngata himself. Once behind the Bill, Ngata gave it his full support. While almost all previous legislation had been directed at facilitating the settlement of Maori land by Pakeha, no comprehensive measure had ever been attempted for the purpose of settling Maori on their own lands. Ngata argued that this was "attempted here for the first time on a comprehensive scale" under Part II of the Bill.

Ngata's speech seemed to be aimed at moving the emotions of those interested in Maori welfare, and parts of it ring with assimilationist ideals. For instance, Ngata believed the Government should "take hold of what is best in the Maori and seek to develop it by direct assistance and instruction. The recommendation of the Native Land Commission that the Government should appoint instructors in farming to the Maoris was not an idle recommendation, and in this Bill we should seek to adopt it; and I am sure expenditure in

[18]Ngata, ibid, pp.1041-1042.

this respect would not be grudged by members."[19] Ngata's hope that other members of Parliament would find favour in the idea of financially backing Maori development and instruction did not quite fall flat, but did not go as far as he had hoped. The Bill did not adopt the Commission's recommendation to appoint farming experts to instruct Maori. However, Section 60 did allow Maori lessees to borrow money to stock and improve the land on the security of the lease or any moneys receivable by him in respect of other land vested in the Maori Land Board. While access to funds might have helped an individual begin farming operations, it did not in any way guarantee success. Success could only come with the proper application of knowledge, and most Maori lacked knowledge of modern farming methods. More than anything else, the Native Land Settlement Bill was simply a way of freeing up Maori land for Pakeha settlement. In their haste to get the Bill passed, however, the Liberals may have taken an accidental step towards effective policy aimed at Maori land development. A small step, but a step never-the-less.

Social Darwinist ideas such as the survival of the fittest and capitalist notions concerning production and advancement had their adherents within Parliament. These views often shone through when debating the potential effects of the Bill. William Massey attacked the Government on the grounds that it was not doing anything towards helping Maori to take their place beside their Pakeha counterparts. Once again Massey was expounding his assimilationist ideas. Massey was "absolutely certain that the Natives will never be as industrious as they ought to be until the titles to their lands are individualised and each Native is given an opportunity of owning the land he occupies and made sure of the reward of his labours in that respect." Massey also used the Bill to attack the Government's to decision ignore the Commission's recommendations and impose Section 11, dividing "surplus" land equally for sale and lease, despite owners wishes. If this was the case, Massey asked "what is the good of the Commission?" Massey, along with many other members of Parliament, believed that Maori land legislation was redundant. In speaking about Maori land legislation he stated that Parliament was "tinkering with a machine that is past repair, which is obsolete and out of date, and which ought to be chucked on the scrap heap. It ought to be replaced by another machine which would be more up to date and work better than the present one."[20] Massey's "new machine" was a policy aimed at individualisation of Maori land holdings and a free trade system of land dealing.

This was a very important debate at this time as the issue of what was described as Maori "communism" was viewed as a major barrier to the advancement and development of the

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[19]ibid, p.1044.
[20]Massey, ibid, p.1045.

Maori in the white mind. For these men, Maori communism, or tribalism, held up settlement, and progress. Herries believed a Maori, "when educated", was "as good a man as any of the white people", and that Parliament should encourage educated Maori to go out into the world to work for a living. It was believed that education was one of the keys to breaking down tribalism amongst the Maori. Herries explained, however, that, without work an educated individual "goes back to the pa, puts on his blanket, and becomes a Maori again."[21] These sort of views highlight how some of New Zealand's leaders at this time thought of the Maori people and sheds light on some of the ideas which may have driven their policy making decisions.

Sir Joseph Ward, leader of the Liberal Party entered the debate at this stage affirming "as a matter of policy, that it is desirable that, after all the requirements of the Maoris are provided for as recommended by the Royal Commission, half of the remaining portion of the land should be set aside under the freehold system and half under the leasehold system, so as to enable Europeans to get land upon one tenure or the other and settle upon it."[22] Ward's comments highlighted the government's main intention of settling Pakeha on Maori land, while the issue of providing for the Maori was basically nothing more than a secondary consideration which was flouted as a justification for taking their so-called surplus land.

By professing to be providing Maori with enough land for their maintenance, and taking that part that they could not fully utilise, the Crown argued that it was acting for both the good of the country, and the Maori themselves. Darwinist and capitalist ideals crop up again here. Many people believed that if the Maori could not use their land, then they had no right to it. Sir Robert Stout and Apirana Ngata themselves were of the opinion that with regard to land, the Maori had to "use it or lose it." They therefore lost no opportunity in their time on the Commission to tell Maori throughout the country that they must either use their land or make way for someone who would. In the Native Land Settlement Bill, the Crown thought it had found a "fair" way of providing land for settlement to those who wanted it, while at the same time, ensuring that the Maori would not become landless. The only problem with the new system was that it was not necessarily that fair.

Dividing the surplus lands of Maori for sale and lease was defended on the basis that, after providing the necessary land for Maori occupation, selling half the surplus would provide the owners with money to enable them to "profitably use their own land" and

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[21] Herries, ibid, p.1020.
[22] Ward, ibid, p.1047.

leasing the remainder could provide land to Pakeha who may not have had the "necessary capital to purchase a freehold in the first instance."[23] Again, this highlights the Crowns main intention to get as many people on the land as quickly as possible by providing land at cheaper rates through leases.

One of the Native Land Settlement Bill's major opponents was Henare Kaihau, member for Western Maori. Kaihau highlighted how, through past experience, Maori were untrusting of Land Boards which received owner's rent money and were required to spend it on administration costs, often leaving the owners with very little or nothing. Kaihau asked how many years would pass before the Maori would "derive any particle of profit" from their leased lands, and how much money would be "expended in the administration of those lands by the Boards?" In Kaihau's opinion, the owners of the land would continue to suffer under the 1907 proposals, which he described as "a seizing and taking away of the last of their mana over their land." Kaihau went as far as stating that under the Act the land would be "confiscated." In an emotive speech the member for Western Maori claimed, not without reason, "that no Government from the first down to the present has ever done proper justice to the Maori people" and in passing the Bill the Crown would be carrying out "murder through-out the Island." Kaihau refused to support the Bill as it placed the control of Maori land in the Land Boards, institutions which he believed, had no actual power. The real power, Kaihau stated, was "in the hands of the Government all the time. The Board is merely a phantom- simply a servant."[24]

Kaihau simply did not trust the government to deal honestly with Maori. He believed that, although the government professed a desire to make some provision for the Maori, "experience does not justify any belief in that profession." Kaihau believed the Crown's professed desire to help Maori was "absolute humbug" and that the government's actions would leave Maori unprovided for. Unlike those who believed Maori were either dying out, or dying in, Kaihau asked "What about all their descendants in the future? Where will there be any land for them?"[25] Kaihau was not alone in thinking of the future needs of Maori. Apirana Ngata was also mindful of the potential landlessness of Maori descendants. One year later, when debating the 1908 Maori Land Laws Amendment Bill, Ngata expressed his feelings on the matter by stating that the government would not have done its duty in setting apart an area for Maori settlement. Ngata argued that the area set aside for Maori settlement by the Commission only catered for the "needs of the present generation of Maoris." Although Ngata himself may have viewed the future of Maoridom

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[23]ibid, p.1051.
[24]Kaihau, ibid, pp.1052-1055.
[25]ibid, p.1055.

in an assimilationist fashion, he still believed that "further provision" had to be made "for the future generation of Maoris... out of the area set aside for European settlement."[26] The government was looking to the future, but, once again, it was a future seen through white lenses. Many people in Parliament, as opposed to Ngata, did not believe that there would be a future generation of Maori, and therefore, only the needs of the present generation needed to be catered for.

Henare Kaihau, untrusting of the Crown, opposed the Bill all the way through the House. He wanted to know who had framed the Bill and whether the Maori had asked for any new legislation affecting their land. In Kaihau's mind the power to "seize and take away, under an Order in Council, the land of the Maoris without the slightest regard to what their wishes may be" was an "absolutely extraordinary proceeding" and he thought Parliament should call the Bill the "Maori Land Confiscation Act."[27] The move to compulsory vesting of Maori land in the Land Boards was in effect confiscation under the guise of development and benevolent management. Under article 2 of the Treaty of Waitangi, the Crown confirmed and guaranteed "to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their lands and estates forests fisheries and other properties ... so long as it is their wish and desire to retain the same in their possession."[28] The compulsory provisions of section 11 of the Native Land Settlement Act, 1907, went directly against Article 2 of the Treaty of Waitangi.

The Liberals held what could be described, rightly or wrongly, as a protectionist approach to Maori. For the most part, the Liberals believed the Maori were unable to make suitable provision for their own maintenance. The free trade system of land dealing was viewed with a certain amount of trepidation. It was believed, probably not without cause in certain areas, that if the Maori were exposed to a system of free trade in land dealings, they would be tempted to sell their entire birthright out from beneath themselves, eventually becoming a burden upon the state and charitable organisations. This protectionist stance was opposed by those who believed that the restrictions imposed by Parliament had no right to be there and that in fact they were holding Maori back from the benefits and freedom of individual title. Adherents to the free trade system argued that the Maori were denied, by legislation, the same rights as their Pakeha counterparts. Walter Symes, the member for Patea believed "it would be a good thing if we took all our Native legislation on to the tennis court and made a bonfire and burnt it all."[29]

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[26]Ngata, 9 October, *NZPD*, Vol. 145, (1908), p.1128.
[27]Kaihau, 20 November, *NZPD*, Vol. 142, (1907), p.1128.
[28]Article 2 of Treaty of Waitangi, reproduced in C. Orange, *The Treaty of Waitangi*, (Wellington, 1987), p.258.
[29]Symes, 19 November, *NZPD*, Vol. 142, (1907), p.1066.

Legislation concerning Maori was viewed by many as separatist and a bar to their proper civilisation and assimilation into mainstream Pakeha society. In reality, what these people were really arguing for was that each individual Maori should have the right to sell his or her piece of land without interference from either the government or the Maori Land Councils or Boards. The use of the term "protectionist stance" should not be taken literally. While individual members within Parliament may have had sympathy for the plight of Maori, most Parliamentarians of the time, Liberals and Opposition alike, agreed with the idea of continuing the purchasing of Maori land. Debate existed, however, over just how much was land enough.

The Bill then did not go very far in actively helping Maori to develop their lands, and, as has already been stated, both Carroll and Ngata realised this. Hone Heke, the member for Northern Maori, was not restrained by party loyalty and stated his views in plain terms. As a prominent Maori leader, Heke considered that "the State ought to come to our assistance more than they are doing under this Bill." He preferred leasing of land to sale but, even more than that, Heke desired "the encouragement of the Natives themselves to work their lands." Heke found favour with the Stout-Ngata's recommendation that farming experts be financed to help teach Maori modern farming methods on their own land. As a consequence, he wanted the 1907 Bill to go further than it did by incorporating this recommendation. Heke pointed out that the Maori had had "no such education" before. From the "early days of colonisation" of New Zealand "up to the present time", Heke noted, there had been no practical assistance given to the Maori by the Crown, which had concentrated its efforts on acquiring Maori land "to satisfy the desires of the Europeans for the settlement of their own people."[30] In some ways, it could be seen that the Crown did not treat the Maori as their people. They treated them as a problem that had to be dealt with as quickly and as efficiently as possible.

The main problem for Maori in regard to land legislation, was, as Carroll noted, the fact that nearly "the whole time of Parliament is occupied in studying out the best interests of the Europeans." Maori interests were "left on one side; and when he makes a claim today for a share in the consideration which the State extends or should extend to every section of the community, honourable members begin to discuss his land as if it belonged to the State, and not to him." After listening to the Bill being debated, Carroll stated that "one would think, to hear the honourable members discuss the Native land question, that the land actually belonged to the Pakeha."[31] This again raises the issue of how Parliament approached the framing of its laws. For the most part, Maori were curiously invisible in

[30]Heke, ibid, p.1079-1080.
[31]Carroll, ibid, pp.1081-1082.

the government's mind during the drafting of legislation, despite the Crown's professed desire to place Maori on an even footing with their Pakeha counterparts. In effect the Crown did place Maori on an even footing with Pakeha during the drafting of its laws by effectively ignoring them and treating Maori no differently from Pakeha, even though Maori were hampered by legislative restraints that Pakeha were free of. Maori members were therefore placed in what must have been a frustrating position of acting as the government's conscience, reminding the Crown that two races lived in Aotearoa/New Zealand, but, at the same time, having limited power to improve the situation of their people. It is tempting to compare their situation to someone valiantly trying to protect a sand castle from the incoming tide, desperately defending what they had, holding out to the last, but ultimately fighting a losing battle.

It must be remembered that during this time the Commission had only been working for six months, and had reported on approximately half a million acres of land in the North Island. Section 10 of the Bill provided that the Crown might, by Order in Council, prevent all private alienation of Maori land whether the Commission had reported on them or not. This was seen to be grossly unfair by the Opposition, arguing it would cause an injustice to individuals already in the process of negotiating a sale or lease. Massey was against the recommendations of the Commission as he believed that Stout and Ngata were "against anything in the way of private negotiations."[32]

The Crown was so impatient to have New Zealand developed into full productive capacity that it was unwilling to wait for the Commission to complete its investigations before devising legislation which would have fulfilled this aim. Maori aspirations were therefore sacrificed to the great god of progress. During the Committee stage of the Bill, it had been alleged that the Bill had been introduced because the "European population wanted to occupy the Native lands." Massey was offended by statements of this nature, believing that this was not the case at all. Rather, it was because "they -the Europeans- saw huge blocks of Native lands lying idle...and they wished to bring this into cultivation and use, irrespective of race."[33] According to Massey, the Crown was acting on behalf of all New Zealand due to Pakeha outcry over the idleness of Maori land. It was not because Pakeha wanted to own Maori land at all. It was simply due to the fact that all Pakeha wanted was to see New Zealand developed by anyone who could. If the Maori could develop the land, then there would have been no need for the legislation. Hone Heke was not so trusting of these professed altruistic motives underlying the need for the legislation. Heke believed that pressure was being brought to bear on the Legislature

[32]Massey, ibid, p.1215.
[33]ibid, p.1123.

because Pakeha wanted to get the freehold of Maori land.[34] Massey dismissed this view by stating that he believed Heke was mistaken, even though Massey himself was one of the most vocal advocates of allowing settlers the freehold of Maori land.

Relentless in his opposition to the Bill, Massey argued that the proposed legislation would do nothing to forward the settlement of New Zealand. Massey attacked the government for its monopoly on purchasing Maori land accusing them of being nothing more than speculators. Ward argued that this had been a protective measure and that, as opposed to private speculators, the government purchased Maori land, "not with the object of holding them and waiting for the increased value to accrue to sell them again, but with the object of insuring that they should be utilised for settlement purposes by European people who really require land."[35] Ward declared that the law was being altered because of agitation which had existed over the best form of land tenure, as well as the all important question of the settlement of locked up Maori land. The Native Land Settlement Bill was viewed by Ward as progressive Native-land policy, "an earnest desire to do what is right and best for the Maoris, and at the same time try and obtain land for the Europeans after the Maoris have been provided for."[36]

It seems inconsistent that the Liberal government which proclaimed that the settlement and maintenance of the Maori was their primary consideration placed the mechanisms dealing with Maori settlement in Part Two of the legislation. Surely a government truly intent on providing for Maori settlement would have placed this as the first and most important section of the legislation, rather than relegating it to a close second. Ngata himself noted that it seemed as though, under Part One of the Bill, "the interests of the Maoris had been subordinated to the general land-settlement of the Dominion."[37] When reading the Act, one is stuck by the fact that Part Two of the Act, which dealt with land for occupation by Maori, is made up of eight relatively short sections. This is contrasted to Part One, which dealt with the vesting of Maori land in the Land Boards, which is made up of 50 individual sections. It seems that making provision for the proper maintenance of Maori was so simple a process that it did not require as much attention to detail as the legislation which enabled the alienation of their land.

To add insult to injury, Ward believed it was "the duty of the Natives of the Dominion to work with the Government of the country, and to carry out the will of Parliament, and to give an opportunity for that portion of their land which they cannot make use of

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[34]Heke, ibid, p.1123.
[35]Ward, ibid, p.1126.
[36]ibid, p.1128.
[37]Ngata, ibid, p.1215.

themselves to be made available for European settlement."[38] Despite his professed desire to see to the well being of the Maori, it was not until 1908 that he actually came face to face for the first time in his life with significant numbers of Maori, as well as with the land hunger of their Pakeha neighbours.[39] The Native Land Settlement Bill was passed into law on 25 November 1907. It had undergone intense scrutiny from Parliament as to whether it would solve the "Native-problem." Despite assurances from the government that it would help ease problems in fostering Maori land settlement, it would ultimately fail in this aim. Within one year it would be amended for something which was hoped would do the job better. The main difficulty with this legislation lay in the fact that it did not represent the best interests, nor the wishes, of Maori people. Nor did it entirely reflect the predisposition or recommendations of the Commission itself, a Commission which was now in close touch with Maori people and their views.

The Act therefore represented well the growing separation between the Commission's recommendations, and the legislative intentions of parliamentarians. This separation of recommendation from legislation is a central theme of this thesis. The following chapters will therefore continue to examine this growing separation by examining two further pieces of important legislation that ostensibly also grew out of the findings and recommendations of the Stout-Ngata Commission; the Maori Land Laws Amendment Act, 1908, and the Native Land Act of 1909.

[38]Ward, 20 November, ibid, p.1128.
[39]M. Bassett, *Sir Joseph Ward: A Political Biography*, (Auckland, 1993), p.162.

Chapter Three: "Maori Land Laws Amendment Act, 1908"

The 1908 Maori Land Laws Amendment Act was an attempt at patching up deficiencies in the existing legislation. It could be seen as nothing more than an offering to pacify the Opposition which still demanded an effective way of solving the "Native difficulty" while the Crown continued preparing what they hoped would become the final solution to their perceived Maori land problems. However, parts of it did open a way for Maori to gain potential access farming success. The 1908 Maori Land Laws Amendment Act extended the powers of the Maori Land Boards, giving them the former Native Land Court power to confirm alienations and assume the administration of all Native Townships. The purpose of this chapter is to examine the Maori Land Laws Amendment Act 1908 in light of how it affected Maori, while at the same time, considering the influence of the relevant recommendations of the Stout-Ngata Commission on the framing of this legislation. While the government took some note of the Commission's advice on certain matters, this chapter seeks to unearth what might be said to have been really driving this piece of legislation.

Although it had only been in operation for a year, difficulties had arisen in the working of the 1907 Native Land Settlement Act. Section 11 had ordered that land vested in the Board should be divided into two equal portions, one for lease and one for sale. As is often the case, the proper working of the Act was impeded by reality. In practice the Board found itself "beset with considerable difficulties in attempting to carry it out."[1] In reality, the Commission discovered that not all the blocks they investigated could be divided exactly equally into halves for freehold and leasehold. In March 1908, Stout and Ngata submitted a report to Parliament on the operation of Section 11. The Commissioners explained that Section 11 of the 1907 Act had caused "much distrust" among the "Wanganui and Ngati Maniapoto Tribes" and that this had hampered them in "obtaining the consent of Maoris to the opening-up of lands for settlement." The Commissioners believed in their report that the "full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law."[2]

Stout and Ngata were aware that Maori objected to having no power in regard to the sale or lease of their land and believed that Section 11 treated Maori unfairly. The Commissioners warned that "any State that fails to give equal rights to all its citizens, whatever their race or colour, fails in its duty, and condemns its Government as

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[1] Carroll, 9 October, *NZPD*, Vol. 145, (1908), p.1115.

[2] Report of the Native Land Commission on the Operation of Section 11 of "The Native Land Settlement Act, 1907.", *AJHR*, 1908, G1-f, p.1.

incompetent." Section 11 failed to give Maori equal rights as European New Zealanders because Maori freeholders wishing to lease were automatically forced to sell half the land they wished to lease. The Commissioners also described the section as a "two-edged sword" which restricted those who wished to sell land as well, automatically forcing them to lease half their land, thereby pushing them into the position of landlords. The Commission argued that in a "free State with a just Government the Maori freeholder" could not be "placed in a position inferior to the European landowner." They went on to explain that Maori rightfully resented "this attempt to place them in a servile position compared with European landowners." The Commission was scathing of Section 11 because not only did it act against the interests of Maori, it acted against the general interests of settlement by acting as "direct encouragement not to put their lands under the management of the Maori Land Boards."[3]

Added to the Commissioners' woes was their concern over Crown purchases in the Rohe-Potae district. The Commissioners had found that since the report of 1907 had been issued, the Crown had bought large areas of Maori land. These purchases had included areas recommended by the Commission for Maori occupation and leasing. The Crown had totally ignored the Commission's recommendations in the Rohe-Potae district. The Commission lay the blame of the current Maori land situation at the feet of the government, and believed the Crown had a duty to the Maori. The State had prevented Maori from getting titles to their lands "save after long delays and great expense" as well as casting a great burden upon them by compelling Maori to have their lands surveyed before ascertainment of title could proceed. The Commission pointed out that many Europeans at this time owned unoccupied lands but it did not think it had been suggested "that such lands should be confiscated by the State."[4]

Because of the complaints over its operation, Section 11 of the Native Land Settlement Act was modified by Section 17 of the Maori Land Laws Amendment Act. Now, the Governor, in any case where he was of the opinion that an equal division of a block was impractical, could authorise the whole block to be sold or leased or unequally divided. The Governor could also vary the proportion sold and leased in different blocks so long as the "total area disposed of in any one year shall be half freehold and half leasehold."[5] It was hoped that this amendment would give the government "some degree of elasticity" in opening the land for settlement.

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[3]ibid, pp.2-3.
[4]ibid, pp.3-4.
[5]Herries, 9 October, *NZPD*, Vol. 145, (1908), p.1119.

William Herries admitted a "certain hardship" would be caused by this amendment. This was an understatement. Instead of going for a half sale/half lease approach to each block of vested land, the Crown opted instead for half sale and half lease approach to the total area vested in the Board. The amendment of this section meant that some owners could possibly have all of their vested land sold by the Board while others may have their lands leased. All of the decisions affecting these vested lands lay with the Board as the Maori owners, under section 7 of the 1907 Act, lost all power of disposition over their lands. The Land Boards, described by Carroll as a "protective institution", could also be oppressive institutions.[6]

The Maori Land Laws Amendment Act also gave life to two recommendations of the Native Land Commission. Section 12 allowed that where vested land was owned by 10 or more people, the Board could occupy and run the land as a farm rather than leasing the land. Under this section the Board was empowered to appoint a farm manager who would chair a management committee elected by the Maori owners. The manager was required to act in accordance with recommendations made by the management committee subject to control of the Maori Land Board. Any revenue which may have been derived from the farm was to be expended by the Board in the same manner as rent, and expenses in setting up the farm were to be a charge on any revenue derived from the land or any other land owned by the same owners. After the Board had received its pound of flesh, it was free to use the remainder of any revenue received to pay for the management of the farm. The Board could also borrow money on the security of the farms stock, crops or chattels for the purposes of farming. This section may not gone as far as Ngata and Carroll may have liked. But at least it was a start, another step towards helping Maori farming potential. This could give some Maori access to finance to begin farming operations. Of course, this was dependant on the Land Board which controlled the land, and the owners of the land. Also, this section did not apply to Maori land that had already been vested under Part One of the 1907 Act, denying those already within the system a chance.

Under section 15 of the Act, control the Thermal Springs District was delegated from the Governor to the Maori Land Board. This section also opened the Thermal Springs District for leasing to the Maori owners, with agreement from the Board in compliance with the Maori Lands Administration Act, 1900. This had been recommended by the Stout-Ngata Commission in their first report on the Rotorua County. The Thermal Springs District story began in 1880 when Chief Judge Francis Dart Fenton had asked Te Arawa for a township to be established in the area so that travellers visiting the area for its

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[6]Carroll, 19 November, *NZPD*, Vol. 142, (1907), p.1083.

world renowned hot springs might do so in comfort. Te Arawa agreed to this request and allocated 3,600 acres of land, which was surveyed and divided into sections. The Crown undertook to be the agent of Te Arawa "for the purpose of leasing, and undertook also the collection of rents."[7] The spirit of cooperation at this stage was good, and the negotiations were confirmed in Parliament by an Act called the "Thermal Springs District Act, 1881", and an amending Act of 1883. Sections of the town that was to become Rotorua were advertised and leased by public auction, with the lessees then entering into possession. However, "from henceforth a change came over the spirit of the administration."[8] Te Arawa claimed that under the various Thermal Springs District Acts they had been prohibited from alienating land to anyone save the Crown, a position which had robbed them of their tino rangatiratanga. At the same time, they could only lease their lands through their appointed agent, the Crown. The Crown therefore had an effective stranglehold on Te Arawa by the time the Native Land Commission visited the area.

In a letter to the Stout-Ngata Commission in 1908, members of Te Arawa set out their position which had reversed from the cooperative day of the 1880s. After experiencing first-hand the selective memory of the Crown, Te Arawa leaders were wary of Crown promises. They explained to the Commission that they had not been easy to deal with "because we have grown suspicious of the pakeha law and justice. We have grown suspicious of schemes emanating from the Government."[9] They questioned the professed protection offered by the Crown asking that if it was "the aim of the Government to secure for us against the designing pakeha the highest price paid for our land why should that Government be allowed to dictate to us whatever terms they choose for the very valuable lands and other natural resources that we hold?" Why indeed? The Crown had promised Te Arawa protection from Pakeha greed and exploitation then acquired more than one half of the lands in their district at prices "that we in the after-wisdom of experience are convinced were inadequate."[10]

Te Arawa believed they had been liberal enough in the past in parting with their land to the Crown for settlement purposes. All they asked was that they be allowed to hold on to those lands which they still owned, and asked the Commission to consider the "trammels" which had prevented them from "having in our midst pakehas of out choice that could have taught us the art of farming." Te Arawa explained, when appearing before the Commission, that they were now "ignorant and suspicious and tenacious of

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[7]Memorandum on General matters affecting Arawa, in, MA 78/12 Thermal Districts. National Archives, Wellington.
[8]MA 78/12 Thermal District.
[9]Undated letter to Commission on Native Land and Native Land Tenure from members of Te Arawa, in, MA 78/12 Thermal District.
[10]MA 78/12.

our lands." They therefore asked for the bulk of their lands to be reserved for their use and occupation, and that they be assisted in utilising them properly. Te Arawa were confident that the same alertness they showed during the fighting days of war would be shown in the days of peace, "when the 'taiaha' must give way to the 'ko'."[11]

The Commission found in favour of Te Arawa in their plea for beneficent consideration. After investigating the situation in the Thermal District the Commission blamed the unproductive state of that district on the actions of Crown since 1880. It reported that the various Rotorua hapu, except Ngati Pikiao, could not be said to own surplus lands available for sale. Nor did they have a large area available for settlement under lease, and the land that they did hold was the least suitable for pastoral purposes. The Commission decided that if it was a fact, "that whilst acting as a Trustee for the Native owners, the Crown, having prohibited the Natives from selling their lands, bought them at an inadequate price, the action of the Crown cannot be defended." The Commission believed Te Arawa had amongst them "splendid material" just awaiting organisation and development on industrial lines and believed it was "the duty of the State to undertake such organisation and development. They accordingly recommended the establishment of five communal experimental farms in the district, each run along the lines as stated in Section 12 of the 1908 Act, to act as a school of agriculture for the younger Maori of the district. The Commission recommended that the State should find a proportion of the manager's salary, but that the farm should bear all other costs. Both Stout and Ngata agreed that the "expense to the State of such an experiment would be a mere bagatelle with the money expended by the Department of Agriculture for the benefit of the farming community generally."[12] These recommendations found some form of expression in Section 14 of the Maori Land Laws Amendment Act, 1908, which made provision for land in the Thermal Springs District to be "administered as a farm for the benefit of the Natives."[13]

Another significant section of the Act was Section 32. This empowered the Crown to advance money for the purpose of surveying papatupu lands. This section was undoubtedly designed with the intention of making this untouchable land ready for the land market. The advance from the Crown was to become a charge by way of mortgage on the land, placing those who may have owned these lands into debt before they could even decide what they wanted done with their land. The Maori Land Laws Amendment Act, 1908, became law on 10 October, after receiving its first reading on 1 October,

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[11]ibid.
[12]Report of the Commission on Native Land and Native Land Tenure, in, MA 78/12 Thermal District.
[13]Maori Land Laws Amendment Act, 1908, in *Statutes of New Zealand*, 1908, pp.229-241.

1908. Ten days of intense discussion saw similar views and accusations fired from all corners of Parliament.

As always, Natives affairs came down relatively late in the session, drawing sharp criticism from both the Opposition and certain members of the government. Agitation still remained in the Opposition for a consolidation of the Native-land laws. Although Carroll realised that the Native-land laws drastically needed to be consolidated the government had resolved not to bring in any new native-land policy during the 1908 session, most likely because the legislation to effect such a measure was still in the process of being drafted. Frederick Ehrenfreid Baume, the member for Auckland East, stated that in 1904 the Commission on Statutes Revision had found the task of consolidating the Maori land laws an impossible task due to intricacies involving title to land and the possibility of raising many difficult questions of implied repeal. Carroll explained that the many and varied Acts were necessary in land administration because the circumstances were so varied in the different districts.[14] In some districts land was held by individual Maori owners, land that had been confiscated and returned to Maori, land held jointly by many, land held under certain conditions, and lands held under customary title. All of these different situations had led to a different piece of legislation by the Crown in its never-ending search for a simple and effective method of Maori land administration. Unfortunately for both Maori and the Crown, it had led to a situation of overkill, where the web of legislative structure designed to guide people, ended up binding them into helplessness.

Massey and the Opposition had been crying out for a consolidating Bill since at least as early as 1907. It had been claimed by members of the House and members of the Commission on Statutes Revision that consolidation was impossible. Carroll knew this was not the case. It was not impossible, but it also would not be easy. Despite assurances made in 1907 that a consolidating measure would be brought down in 1908, the Bill that was supposed to solve the Native Question did not materialise until a year later.

The session had opened with the Governor Plunket's speech praising the efforts of Stout and Ngata in the work on the Commission. A "happy result" had been secured by the Commission in that "a very large amount of land has been recommended by the Commission for European settlement while retaining for the Native owners such areas as

[14]Carroll, 31 July, *NZPD*, Vol. 144, (1908), p.69.

are desirable for their use and occupation."[15] Once again the interests of Maori seemed to be placed in a secondary role to those of European settlement and progress.

Massey was not so enamoured of the Commission's activities and believed the Governor's assurance that land would be opened up due to the Commission was merely flamboyance on the part of the government. According to Massey, "we were given to understand a year or two ago that this Native Land Commission was going to get over all the difficulties. We have had the Native Commission at work for the last two years at very heavy expense to the Dominion, and what have they done? Let anyone look at the last report. So far as I can see, they have done nothing to forward the settlement of the Native land. I say it would have been very much better if the Native Commission had never been set up."

Massey believed he had been hearing promises of quick solutions to the Native question "for the last fourteen or fifteen sessions." He stated that he had predicted during the 1907 session, that "not a single acre of land" would be opened for settlement under the 1907 Act. He now praised himself for his foresight, and slammed the government for its lack of effective action. He accused the government of stalling for time, stating that the "policy of the Government in connection with Native legislation is a policy of Micawberism- they are waiting for something to turn up. They are not looking forward." In Massey's opinion, the policy of the government was a policy of "taihoa-itis." He was inclined to think that "the men who profess and pretend to be leaders in connection with Native matters, and who are leading the country to believe that they are endeavouring to solve the Native difficulty, are doing everything they possibly can to place obstacles in the way of reform."[16]

Massey may have been as close to the reality of the matter as anyone was able to get. It is tempting to think of the Maori members of Parliament as carrying out some kind of covert plan intended to help Maoridom hold back Pakeha encroachment upon their remaining lands. There is probably a measure of truth in this assumption, but the reality of the situation was that the Maori members could no more hold back further alienation than they could stop the sun from rising. However, just because they could not stop it, did not necessarily mean that they did not have to try. Some believed that they could in fact halt legislation. The Maori members of Parliament could indeed place stumbling blocks in the way of Parliament, if only to impede the progress of ill considered legislation

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[15]Governor's Speech, 29 June, *NZPD*, Vol. 143, (1908), p.3.
[16]Massey, 30 June, ibid, pp.23-24.

toward Maori. This could give Maori breathing space and time to gather their wits. Ngata may have realised that his role could not achieve all he desired at the time.

This is purely speculation but Ngata may have realised that they only way for Maori to maintain themselves and their remaining land was to give the Pakeha the show they demanded. Maori would have to refashion themselves into what Pakeha and Parliament wanted to see. This was namely, a thrifty, diligent and industrious people willing to work themselves into the grave for the sake of a Pakeha ideal, a race almost worthy to stand side by side with their Pakeha brothers and sisters. Only then, once they had proved themselves would they receive any true measure of consideration. Of course, total assimilation would never happen and even if Maori had assimilated themselves, it would never have been enough for a people who measured worth in skin colour. Maori were doomed to become second class citizens from the outset of self government in New Zealand, if not before. The later Social Darwinism and fatal impact theory have a lot to answer for in New Zealand. As James Belich writes, in principle, "non-Europeans could be converted all the way to equality; in practice, equality was usually a step ahead of even the most eager converts, dangling ever in front of them like the hare in front of a racing greyhound."[17]

Henry James Greenslade, the member for Waikato saw the most important industry in New Zealand, upon which its prosperity mainly depended, as being pastoral and agricultural development and he argued that it was the governments duty, "as well wishers of the Dominion", to do all it possibly could to advance the best interests of those industries. Greenslade's views found favour with many in Parliament. The "best interests" Greenslade spoke of was land development for farming purposes, and in 1908 that still meant land development for Pakeha farming purposes. Greenslade viewed the Native Land Settlement Act of 1907 as a step forward, and was "very pleased indeed" that the government was "determined to make a further effort towards the opening up of our Native land." Greenslade's comments reflect the attitude of many in Parliament at this time. As Carroll had noted a year earlier, Pakeha ministers did indeed speak of Maori land as if it was their resource to be opened and used as they thought fit. Unlike some who endeavoured to discount the efforts of the Native Land Commission, Greenslade backed Stout and Ngata as performing a very important task. This was because Greenslade represented a constituency which contained perhaps the largest area of locked up Maori land in the North Island. Greenslade hoped the Commission's recommendations would lead to these areas becoming available for settlement by Europeans. When the Commissioners presented their reports, Greenslade believed the

[17]James Belich, *Making Peoples*, (Auckland, 1996), p.125.

duty devolved upon Parliament, "as well wishers of the Dominion", to see that "those lands are speedily made available for settlement under the best possible conditions."[18] Charles Henry Poole also took the time to praise the Commissioners for their "hard work" on the basis that their reports would "place large areas of land on the market for settlement."[19]

Ward believed that contrary to the "views expressed by the leader of the Opposition, I think that Commission has been doing very valuable work. I consider we ought to regard very highly the recommendations of the Commission, especially when we remember its personnel, and the experience of its members, and the care they have bestowed on their recommendations for the guidance of Parliament and the people of the country."

Despite Herries' admission that the amendment to Section 11 of the Native Land Settlement Act would cause certain hardships, he maintained that the 1907 legislation had been a failure as predicted by the Opposition during its inception. Herries claimed that as of 9 October, 1908, "not a single acre of Native land" had been disposed of under the provisions of the 1907 Act. He faulted both Stout and Ngata for the excuse that this was due to Section 11. He attacked Section 11 as being the main reason that Maori would not bring their land under the consideration of the Commission and therefore impeding settlement. Herries believed that "as far as providing settlement of the land is concerned, the Commission has up to the present been a failure ... as an actual engine for settling the land this Commission might just as well not have existed." Herries believed that the activities of the Commission were a waste of time that had not been necessary. Instead, he believed that the Crown could have settled more land if it had simply continued purchasing under the powers conferred by previous legislation and had encouraged leasing under Section 16 of the 1905 Maori Land Settlement Act. Herries called the Commission "a costly luxury" and maintained that it was not producing sufficient results.[20] These results that Herries spoke of was land for European settlement. Apirana Ngata replied to Herries' criticism, which he believed was mistaken, by explaining quite simply that it was not the function of the Commission to carry out its own reports into effect.[21]

It could be argued that there were two factions which existed within Parliament at this time, those who believed that the salvation of Maoridom lay in becoming an

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[18]Greenslade, 30 June, *NZPD*, Vol. 143, (1908), pp.13-15.
[19]Poole, ibid, p.81.
[20]Herries, 9 October, *NZPD*, Vol. 145, (1908), pp.1121-1122.
[21]Ngata, ibid, p.1127.

individualised capitalist people, and those who believed that the time for this had not yet arrived. It could be argued that both sides at this time did believe that Maori needed to become assimilated into the dominant Pakeha society, but the actual argument lay in whether 1908 was the right time to strip Maori of their communal past and make them individuals in the eyes of the law standing on their own. These were ideas that had been voiced a year earlier, and the passing of the Maori Land Laws Amendment Act would still not see them die. Assimilation was viewed as the way of the future, yet not everyone believed the time was ripe to inflict individualism upon the Maori. William Herries was situated firmly in the assimilationist camp. His views were also shared by men like William Massey and John Stevens, the member for Manawatu, who saw "no reason why we should not have legislation as will tend to a proper blending of the races."[22] He thought that the Crown should be fostering the settlement of Maori and European side by side in an effort to break down cultural barriers between the two.

In practice, the breaking down of cultural barriers meant breaking down Maori tribalism and communalism. William Massey, who professed that he wanted Maori to succeed at farming, opposed Ngata's idea of Maori communal farms. When asked whether it would not be fair to lend Maori money if they had the required security, Massey replied "certainly, if they farm as Europeans farm." Massey wanted Maori to farm on an individual basis, stating that the difficulty in connection with "this communal business" was that Maori involved in a communal farming venture would have "no feeling of ownership and no feeling of responsibility." In a speech which displayed anti-socialist views, Massey claimed that until Maori were given feelings of ownership and responsibility, they would "never be fit to stand side by side and shoulder to shoulder with the other settlers of this country."[23] Despite James Carroll explaining that Maori communal farming had already proved successful on the east coast, it was still dismissed by the Opposition as an unprofitable venture of the theoretical order.

The "Native difficulty" left parliament in a quandary. The government desired some miraculous piece of legislation which would solve its problems in one fell swoop, when such an intricate subject required patience and different methods of dealing with the many and varied situations Maori found themselves in. Carroll recognised that the "same hard and fast rule of one district" could not "be applied for the betterment of another." Unlike many other members of Parliament, Carroll was aware of Maori mentality. Besides the fact that land type might have differed from district to district, Carroll realised that Maori attitudes towards the government and the law also varied. Carroll defended the

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[22]Stevens, ibid, p.1124.
[23]Massey, ibid, p.1133.

incorporation of small holdings into communal farms, describing it as the only chance many Maori had to do any good with their land. This was indeed the case as, over the years through Crown grants being succeeded to by the children of the original grantees, many holdings had fragmented to the point where many were unviable to be run as economically competitive farms. Carroll saw no harm in passing legislation to enable owners to incorporate. Carroll may have goaded Parliament into accepting the idea by explaining that it would be easier to deal with a corporate body instead of hundreds of owners. "Then", Carroll explained, "you can obtain a good title."

Carroll defended the government's pursuit of a protectionist attitude towards Maori. He cited the successes of the Ngati Porou to show how Maori could make "splendid farmers", and believed the government should make legislative provision for Maori to enable them to farm their land "and not cast doubts upon the possible success of the venture." Carroll believed that to "leave them alone and say there is only one correct way - individualisation - is absurd." Opposition members, such as William Jennings, argued that they disdained protectionist measures because they denied the Maori their full individual rights. Carroll saw through this plea for equality for what it really was, a play to give Maori "a free hand in order to sell to the Pakeha."[24]

Ngata looked upon the 1908 Bill as an indication of the Crown's good faith towards the Commission, if not the Maori people. Ngata believed the greater portion of the 1908 Bill was founded on the recommendations of the Commission. Ngata explained that "thirteen clauses of the Bill" were based on Commission reports, "giving effect altogether to all the recommendations made by the Native Land Commission in their reports of this year with the exception of four or five."[25] This, to Ngata, showed the government's good faith in connection with the Commission by showing that they intended to give effect to their recommendations as far as practicable.

Ngata replied to Herries' questioning of the value of the Commission by quoting a sentence expressed to him by a Rotorua Maori upon one of the Commission's visits there. Ngata reported that a man had said, in regard to the work of the Commission, "this means to us a new lease of life." For Ngata, the real value of the Commission lay in its educating Maori to become aware of the situation in modern New Zealand. The Commission brought Maori face to face with the legislation of the day, the needs of European settlers, and with the desire of the government to throw Maori land open for settlement. Because of the Commission on Native Land and Native Land Tenure, Ngata

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[24]Carroll, 9 October, *NZPD*, Vol. 145, (1908), pp.1143-1145.
[25]Ngata, ibid, p.1126.

explained, "Maori were brought face to face with the pressing needs of settlement, and brought face to face with this aspect of the question: that they themselves must utilise their lands, and unless they utilise them they must make way for others."[26] It could be argued then that apart from opening a possible avenue for Maori land development, Stout and Ngata used the Commission in an attempt to shake them from a position of complacency and possible ignorance about the seriousness of the situation.

Commission recommendations expressed a view that the legislature could assist Maori to confront this situation; and to take advantage of it by retaining and developing their land, with the assistance of the Crown. However, as has been illustrated in this chapter, the legislature continued to move native policy in directions opposed to that in which the Commission was moving. The next chapter will continue this examination of a legislature and Commission moving in opposite directions by discussing perhaps the most important piece of legislation ostensibly to grow out of the Stout-Ngata Commission, the Native Land Act of 1909.

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[26]ibid, pp.1127-1128.

Chapter Four: "Native Land Act, 1909"

"We must have the land, and I hope Sir, that this present Government will bring forward such a solution that the whole question will be robbed of its present bitterness and that we shall see in a very little while that the solution is much simpler than we thought."

-E.H. Taylor, M.H.R.[1]

The Native Land Act, 1909, was a major piece of legislation which stood for two generations as the largest piece of Maori legislation. The Act comprised 410 sections and was organised into twenty-four parts.[2] It not only dealt with Maori land dealings, but with such 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 this chapter 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 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 also, then, examine how much of an impact these recommendations of the Commission had upon the drafting of the 1909 Act.

Butterworth argues that the 1909 legislation conceded a number of Maori demands and codified Maori land law. At the same time, it simplified and sped up the alienation of Maori land.[3] Sir Hugh Kawharu takes a more pessimistic view of the 1909 Act, arguing that for the "majority of the Maori people there appeared to be little to relieve the gloom, and what little there was illusory."[4] Butterworth argues that the move to hasten alienation by the Ward Ministry was caused in part by a sharp recession in 1909 creating resentment and bitterness towards the Ward government. To combat this resentment the government turned to the opening up of Maori land to reduce unemployment and satisfy the Pakeha desire for land.[5]

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[1]Taylor, 13 October, *NZPD*, Vol. 147, (1909), p.106.
[2]G.V. Butterworth and H.R. Young, *Maori Affairs: Nga Take Maori*, (Wellington, 1990), p.66.
[3]G.V. Butterworth, 'The Politics of Adaptation, The Career of Sir Apirana Ngata', MA thesis, Victoria University, 1969, p.138.
[4]Kawharu, *Maori Land Tenure*, pp.25-26.
[5]Butterworth, 'The Politics of Adaptation, p.138.

The 1909 Native Land Act consolidated into one Act, a total of 49 Public Acts, 18 Local Acts and two Private Acts which had been passed during the period 1871 - 1908[6]. The task of consolidating the chaotic series of land laws into one coherent Act was supervised by the Solicitor-General, Sir John Salmond, working in conjunction with Sir James Carroll, Apirana Ngata, and the Native Land Court Judges. Butterworth argues that faced with the dissatisfaction among Pakeha New Zealanders caused by the 1909 recession, Carroll and Ngata had to devise a means of satisfying Pakeha land hunger in the Act.[7] It was a measure which introduced new changes to previous Native Land Laws designed to speed up both the ascertainment of title over customary Maori land, and the alienation and administration of Maori land.

The 1909 Act widened the opportunities to alienate Maori land and simplified the procedure involved. Under section 207 all previous restrictions on the alienation of Maori land were removed, save for any that were imposed by the Act itself. Also, to speed up the process Maori land could be alienated in four different ways. The first of these was private alienation by the owners themselves. Any land owned by ten or fewer owners could be disposed of as the owners thought fit, placing owners in this category more or less on the same footing as Pakeha. Individual Maori who had sole title to a block of land were entitled to convert their title into a European freehold, thereby releasing it from the constraints and restrictions of Maori land legislation. All private alienations of Maori land were subject to confirmation of the fairness of the terms of alienation by a Maori Land Board.

Maori land owned by more than ten owners could only be alienated through a Maori Land Board, acting as a statutory trustee or agent of the owners or through a meeting of assembled owners, who were given a range of powers dealing with speeding up alienation. Alienation through the Land Board was divided up into two ways. The Land Boards had assumed a dual role as both owners of land, and agents or trustees of Maori owners with lands vested in the Board. Through Part Fourteen of the 1909 legislation, land that had been previously vested in the Board under the Native Land Settlement Act, 1907, (through the recommendation of the Stout-Ngata Commission) was brought under the 1909 Act. This land more or less remained subject to the same conditions as defined by the 1907 legislation. The Board was still required to dispose of half of the land by sale and half by lease by public auction or tender. In the same way, Maori owners could still, by the resolution of a necessary majority, vest their land in a Board for the purpose of sale or lease.

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[6]Butterworth and Young, *Maori Affairs*, p.66.
[7]Butterworth, 'Politics of Adaptation', p.138.

Under Sections 240 to 242 the Boards were required to subdivide their land for European settlement, into allotments and lay out all necessary road lines. It was also the duty of the Board to "form and construct" these roads as well as any bridges that were required within five years of laying out the road lines. Added to this, the Board was required "from time to time" to classify all land vested in it in accordance with the provisions of the Land Act, 1908, as being either first class, second class or third class land. All of these requirements had existed in the 1907 legislation with advances of up to twenty thousand pounds being made to each Board from the Public Works Fund each year. Under the 1909 legislation, the Boards funding for these tasks was increased to up to fifty thousand pounds per year, but from a new source totally devoted to the acquisition of Maori land.[8] All of these measures were gearing up for the expected sales in Maori land. The government ideally wanted the Boards to have completed the preliminaries of land settlement before the land had even been sold. By preparing the land for the settlers that they knew would come, the Boards were supposed to be instrumental in speeding up the entire settlement process from acquisition to the first cut of the settler's axe.

The second role of the Land Board required it to administer vested land as an agent of the owners. This had formerly been administered under Part Two of the 1907 Act, which dealt with land for Maori occupation. The provisions created under the 1907 Act were continued under Part Sixteen of the 1909 legislation . Under these Sections, Maori land vested for Maori occupation could be leased to other Maori only, although the owners could, by resolution, bring other land under the provisions of this Part of the Act. Land subject to Part Sixteen was to be made inalienable, except by lease through the Land Board, a resolution passed by the assembled owners, or with the consent of the Native Minister and subject to the requirements of the 1909 Act.

The third mode of possible alienation was given life under Part Seventeen, which gave statutory recognition to the idea of incorporation. When Maori freehold land was owned by more than five people "as tenants in common", the Native Land Court was empowered to make an order of incorporation after receiving either a resolution of assembled owners or the consent of the owners of at least half the land. Incorporated owners became a corporate body with their land held in trust. The incorporated owners still had the power to sell the land, but only with the consent of the Governor and confirmation from the Board. Any funds arising from either the lease or sale of the land were not paid directly to the incorporated owners directly, but to the Land Board or the Public Trustee who were to first discharge any debts incurred, such as rates and taxes, fees and commissions

[8]See Section 274, Native Land Act, 1909, *Statutes of New Zealand* , Session I-II, 1909, p.223.

or any other expenses incurred in respect of the alienation, before paying the residue to the owners. The continuation of this practice was explained by the Attorney-General Dr. John Findlay. Maori owners were not allowed to dispose of an equitable interest in any Maori land, nor pass on any anticipated revenue from Maori land because the Crown did not expect them to spend it "wisely." Under the 1909 legislation the government would only allow Maori to "deal with the legal estate under the machinery provided." The government had still had total control over what Maori could do with their property and capital arising from it because the Crown was of the opinion that the majority of Maori rent money was wasted. By placing restrictions on what Maori could do with the revenue from their land the Crown believed it could steer Maori towards development. Despite this, an important concession contained in the Act meant that incorporated bodies were given the power to manage the land as a farm, and with the consent of the Governor, could borrow money on the security of the land for the purposes of managing and improving the land or to discharge debts and liabilities. This gave established Maori incorporations, such as those operating on the East Coast, access to necessary financial assistance for further development.

The fourth mode of possible Maori land alienation was realised under Part Eighteen which defined the powers of assembled Maori owners. This was an entirely new policy, described by Findlay as "the most novel part of the Bill."[9] Upon the application of an owner, Maori Land Boards were empowered to call a meeting of all owners in a block of land to consider proposals for its alienation. The meeting was not deemed to be invalid if some of the owners did not receive notice, and needed a quorum of five owners in order to be valid. Any proposal for alienation would be discussed and put to a vote of the assembled owners. A resolution would be passed if the owners voting in favour of the resolution owned a larger area of the land affected than those who voted against it. Although a memorial of dissent could be signed by those against the resolution, the majority effectively bound the minority to their will. Apart from the power to agree to sell their land, the assembled owners were also empowered to pass resolutions. They could vest their land in the Board for lease or sale (under Part Fourteen), or allow the Board to lease the land to another Maori (under Part Sixteen). Assembled owners could also decide to incorporate (under Part Seventeen) or sell to, or exchange land with, the Crown. Butterworth argues that the granting of this power to assembled owners was a very important provision because it was at these meetings that tribal leaders could exert their influence upon the proceedings to stop the improvident sale of land.[10]

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[9]Findlay, 20 December, *NZPD*, Vol. 148, (1909), pp.1277-1278.
[10]Butterworth and Young, *Maori Affairs*, p.67.

This empowerment of assembled owners may have been created in response to Section Eleven of the 1907 Act, which empowered the Governor to compulsorily vest Maori land in the Board once reported on by the Stout-Ngata Commission. This section had proved to be very unpopular with Maori owners who had held back their land from the Stout-Ngata Commission as a result. Although, Section Eleven of the 1907 Act was continued under Part Fourteen of the 1909 Act, the Governor's power to compulsorily vest land in the Maori Land Boards was extinguished except in cases where breaches of the Noxious Weeds Act and the Rating Act were committed. Sir James Carroll explained that the government would depend on the initiative of the assembled owners to bring further areas under the Boards for general settlement.[11]

Safeguards were placed into the Act in order to provide some semblance of protection to Maori. Section 217 stipulated that no private alienation by a Maori would be effective unless it had been confirmed by a Maori Land Board (for land in the North Island) or a Native Land Court (for land in the South Island).[12] For an alienation to be confirmed the Board had to be satisfied that it was in accordance with the 1909 Act and was not contrary to equity or good faith. Under the 1909 legislation the Board had to ensure the proposed purchase price was adequate, and this was to be based on current Government land valuations. Alienations could only be effected once the purchase money had been paid or secured and the Board was satisfied that the proposed alienator was within the limitation of area prohibitions. Once the Board was satisfied the alienation was not in breach of any trust, and was not prohibited by any other law, it was free to issue a certificate of confirmation, which was to act as proof that all the requirements of alienation had been met.[13] In all Maori land transactions the Board (in the North Island) and the Court (in the South Island) still had the power of veto and was not bound by the resolution of the assembled owners. This may have been placed in the legislation by Carroll who viewed the Boards as a "protective institution."

Also, under Part Thirteen, Section 220 the Land Board had to be satisfied that any proposed alienation would not leave the Maori owner landless before it could grant consent. Under the Act a "Landless Native" was defined as a Maori whose total beneficial interests in freehold land were insufficient for their maintenance. Kawharu describes this safeguard as an "ambiguous state" which came to be recognised more in the breach than in the observance.[14]

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[11]Carroll, 15 December, *NZPD*, Vol. 148, (1909), p.1102.
[12]H. Basset, R. Steel, and D. Williams, *The Maori Land Legislation Manual: Te Puka Ako Hangahanga Mo Nga Ture Whenua Maori*, (Wellington, 1995), p.272.
[13]ibid.
[14]Kawharu, *Maori Land Tenure*, p.26.

Another provision which could be described as a safeguard, for the Crown if not for the Maori, was Part Twelve of the Act which imposed a limitation on the amount of Maori freehold land an individual could acquire through either sale or lease. It was deemed unlawful for an individual to acquire more than "a total area of three thousand acres" but this limitation was not to apply if the land was "of such poor quality" that it could not be "profitably occupied in areas of less than three thousand acres." This limitation was also not to apply in any case where the Governor believed it "expedient in the public interest" to authorise any alienation of a larger area of land by an Order in Council. The Act stipulated a formula for calculating the total area of land involved in a purchase based on its value or classification. A single acre of first class land (with an unimproved value of four pounds or more per acre) was to be equal to seven and a half acres of third class land (with an unimproved value of less than two pounds). Similarly, a single acre of second class land was to be equated to two and a half acres of third class land. This meant an individual could purchase up to four hundred acres of first class land, fifteen hundred acres of second class land, three thousand acres of third class, or any mixture of lands so long as they stayed within the three thousand acre limit.[15]

The imposition of this limitation was viewed with disfavour in the Legislative Council by John Ormond who saw it as having the potential to cause "very serious difficulty indeed." Ormond claimed to have had experience with settlement, and believed that most of the land that would become available for settlement was in a wild state, good when cultivated but requiring "long and severe work" before becoming productive. He contended that four hundred acres of first class land would be insufficient for settlers and that the limitation would "debar the intending settler from going into the wilds."[16] Ormond went on to contend that even if the limit were doubled it would only make a bare living for a settler and his family.

Ormond's suggestion that the limitation of first class land be doubled or increased up to twelve hundred acres drew criticism from the Attorney-General who stated that Parliament could not go on "allowing large areas of Crown or Native land to be taken up by any one man....it is time the areas were reduced." Findlay believed that liberality in giving land to the few would leave "the bulk of our people landless; and that is not the kind of thing that we at this time of the day should permit."[17] In Findlay's opinion, it was the duty of Parliament to make the best possible use in regard to dividing up the land the Crown would soon make available for settlement, and he argued Ormond's suggestion to increase the limitation would not help in that direction.

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[15]Native Land Act, 1909, *Statutes of New Zealand*, 1909, Sessions I-II, pp.201-203.
[16]Ormond, 21 December, *NZPD*, Vol. 148, (1909), p.1328.
[17]Findlay, ibid, p.1340.

Despite these so-called safeguards, the main intention of the Bill, the increased alienation and settlement of Maori land by Pakeha, was clear. For evidence of this intention one only has to examine Part Twenty-three of the 1909 Act. Under Part Twenty-three, Section 416, of the 1909 Act, the government was empowered to establish the Native Land Settlement Account. From this account, the government was empowered to spend up to half a million pounds a year for the purposes of purchasing Maori land, surveying Maori land for settlement, and for making advances to the Maori Land Boards for the construction of roads, bridges and other matters in preparing Maori land for settlement.

Land owned by Maori at this time was divisible into two different kinds, customary land and Native freehold land. Customary land was "land which is owned by Natives under their customs and usages, and has never been alienated from the Crown by Crown grant or otherwise."[18] Native freehold land was land that was owned by Maori under an English title through a Crown grant. John Salmond, the law drafting officer who oversaw the drafting of the 1909 Act, argued that customary land, since it had never been Crown-granted, belonged to the Crown, subject to the right of those Maori who had a claim to it by virtue of Maori custom.

By 1909 roughly half a million acres of customary or papatupu land still remained in New Zealand. According to the final report of the Commission on Native Land and Native Land Tenure, by 1909 this should not have been the case. The Commission's final report stated that the Native Land Court, which converted customary land into Native freehold land, was "becoming burdened more and more with succession claims and with applications for partition."[19] The Commission believed that if the Land Court Judges were "relieved of much of the routine work", and if the "energies of the Native Land Court and the resources of the Native Department" were directed to "virgin districts and less to the more settled portions of the North Island, settlement would extend more rapidly and with greater benefits to the Dominion."[20] Part One of the 1909 Native Land Act dealt with the constitution, jurisdiction and workings of the Native Land Court in order to free it up to deal with the determination of Native titles. Native Land Court Commissioners were appointed under Section 4 to do the routine Court work the Stout-Ngata Commission had spoken of in order to free up the Judges to catch up on a backlog of work that had piled up.

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[18]J. Salmond, *Memorandum. Notes on the History of Native-Land Legislation*, Reproduced in *The Maori Land Legislation Manual: Te Puka Ako Hangahanga Mo Nga Ture Whenua Maori*, (Wellington, 1994), Appendix C.

[19]Final Report of the Commission on Native Land and Native Land Tenure, *AJHR*, 1909, Session I, G1-g, p.7.

[20]ibid.

Other important parts of the 1909 Act were Sections 84 - 87 and Section 100. Sir John Salmond had included in the 1909 Bill, presumably on the instructions of Ministers, a battery of privative and other clauses aimed at making Maori assertions of customary title non-justiciable against the Crown.[21] This provided that Native customary title could not be enforceable by any legal proceedings either against the Crown or against grantees from the Crown. Carroll argued that this principle was "essential to the security of the title of all Crown land and private land in the Dominion." It was, he continued, "a most important step, as it removes all possibility of future litigation with regard to Native land titles.[22] Salmond believed that Maori rights to their customary lands were recognised by the Treaty of Waitangi in 1840, but that theirs was merely a moral claim, dependent upon the goodwill of the Crown and not recognisable or enforceable by law.[23] Sections 84 - 87, and Section 100 of the Act gave such an effect that once land had been granted by the Crown, the validity of the title could not be questioned.

These sections effectively placed the final say in all disputes between Maori and Pakeha, or Maori and the Crown, over customary title in the hands of the Crown. Salmond explained to Ngata that these sections had been framed as they were with the intention that any dispute between Maori and the Crown as to the right to customary land would be settled by Parliament.[24] Salmond stated that Maori would "have nothing to fear from the decision of that tribunal, and to allow the matter to be fought out in the Courts of law would not, I think, be either in the public interest or in the interest of the Natives themselves."[25] Alex Frame argues that Salmond saw Maori grievances as being a political question to be addressed by Parliament, rather than a judicial one that could be solved in Court. Salmond argued that the sections nullifying Native customary title against the Crown had not meant to be interpreted in such a way. Salmond's faith in the Crown maintaining an impartial attitude towards disputes with Maori was naive in today's light.

The passing of the Native Land Bill through Parliament was anything but smooth. It received its first reading in the House of Representatives on 11 November 1909 and was brought before the House for discussion on 15 December at half past eleven at night.[26]

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[21] A. Frame, *Salmond: Southern Jurist*, (Wellington, 1995), pp.112-113.
[22] Carroll, 20 December, *NZPD*, Vol. 148, (1909), pp.1273-1274.
[23] Salmond, *Memorandum. Notes on the History of Native-Land Legislation*, Reproduced in *The Maori Land Legislation Manual: Te Puka Ako Hangahanga Mo Nga Ture Whenua Maori*, (Wellington, 1994), Appendix C.
[24] Salmond to Hon Mr. Ngata, 22 December 1909, Crown Law Office, Wellington, Case File 84, cited in Frame, p.114.
[25] ibid.
[26] *NZPD*, Vol. 148, (1909), p.1099.

William Massey was appalled that it had been brought down so late in the evening and expressed his dissatisfaction by trying to stall the Bill. Massey was over-ridden by Carroll who moved for the committal of the Bill to the Legislative Council, explaining that it had received the closest scrutiny of the Native Land Court Judges. Carroll reminded Parliament that "more than any one else", Massey had asked for a consolidating measure "session after session" and he went on to give an outline of the Bill. Carroll explained that the 1909 Bill was moving Maori into the future. He believed that the times were changing for the Maori people, and it was time to "shift the pegs along the line of progress" and that, what was "suitable to the Natives and their conditions a few years back will no longer answer to-day."[27]

William Herries praised the drafting of the Bill but believed the country was still "crying out for something more." Herries looked at the Bill in terms of its power to alienate Maori land, as he believed "that is the most important part that we white men, or pakehas, have to consider in our dealings with the Natives." Herries was quite plain in expressing his real desire about what he wanted the Bill to do. He wanted some means by which Pakeha could "get settled on the Native land: that is really what we want in the North." Herries favoured the sections designed to place individual Maori owners on an equal footing with their Pakeha counterparts in the eyes of the law, and in that respect called the Bill an advance. Herries had always been a proponent of individualism and free trade, and he was pleased with the individualising sections because he believed that they would "do more in the direction of cutting up Native land than any enactment that has been passed during the last decade."[28]

Herries was opposed to some of the safeguards that had been written into the Bill and described them as bars to alienation, which he thought should be removed. He opposed the provision whereby an individual wishing to alienate Maori land had to prove the alienator was not going to be left landless. Herries had wanted Carroll to amend this so that any Maori with a profession or trade which could give him adequate maintenance could not be counted as landless as he had a means of supporting himself. Similarly Herries was not happy with the power of the Maori Land Board to negate an alienation if it believed it was not in the interests of the alienator as he thought this gave the Board a very arbitrary power. Herries believed the 1909 Bill was a good start, but he did not "care for the policy of the Bill." As he done when debating previous Maori land legislation, Herries argued that the Crown was treating Maori as children, by keeping

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[27]Carroll, 15 December, *NZPD*, Vol. 148, (1909), pp.1100-1101.
[28]Herries, ibid, p.1103.

them under the "tutelage" of Boards and Courts. Herries believed in "adopting a policy which would fit him more year after year to become a European."[29]

Once again, Herries argued for a general policy of assimilation, claiming that the 1909 Bill was driving Maori backwards to the "communal system." Assembled owners, incorporations and vesting lands, Herries believed, were giant backward steps barring Maori from becoming equal with their Pakeha counterparts because they accustomed Maori to "herd together" and to "just take orders from their chiefs."[30] The kind of policy the government was pursuing, Herries believed, did not encourage Maori to think for themselves and did nothing to help them get ahead. Herries stated that he did not want to see the "racial line" drawn in New Zealand and that he wanted to see the Maori placed in the same position as the European. Herries believed that Carroll had been the man to implement this as he was an individual respected and trusted by both races. What Herries did not realise, was that the "racial line" he spoke of had been drawn before New Zealand had ever been settled by the Pakeha. It had been drawn many years earlier by explorers and social thinkers who had assumed white European society to be far superior than any other race that had ever existed.

Vernon Herbert Reed, the member for the Bay of Islands agreed with Herries assimilationist stance, stating that the "object of a good Native policy should be the Europeanizing of the Maori." Reed also believed that past government policy had restricted Maori development more than helped it. In a patronising speech Reed explained that one only had to look around Parliament to see that the Maori were capable of looking after themselves. The problem was, he argued, that Maori had not been taught their responsibilities and this made them less attentive to work. Reed did not see the sense in leasing Maori land for fifty year terms as he believed the Maori race would no longer exist at the expiration of the leases. Reed believed that "in fifty years' time the Natives will have been Europeanized, either by intermarriage with the Europeans or else by having taken up the European mode of life. The conditions of the Maori in fifty years will be entirely different from the conditions of today." As a proponent of ideas aimed at assimilating Maori into European ways of life, Reed was opposed to the idea of Maori leasing their land. He believed that leasing was crippling the settlement of New Zealand and ought to be stopped. Reed saw the provisions that cancelled restrictions on land sales and the provision allowing individual Maori owners to have their land treated as European land as "an advanced step in the right direction" and was "confident that the Natives,

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[29] ibid, p.1105.
[30] ibid, p.1106.

especially the progressive Natives, will want to get their own piece of land under this section, so that they can put it in the position of being European land."[31]

George Pearce, the member for Patea, expressed his disapproval of past government policy by stating that, in his opinion, the way they had settled the land through the use of Maori Land Boards was wrong. Pearce believed it had been building up a "Maori landlordism in the North Island." The lease was viewed by some in Parliament as hindering more than helping the Maori. Pearce believed that leases were bad for Maori both "morally and physically." In his opinion, the only salvation for the Maori was "to get him to work at something."[32] Pearce was fully prepared to allow Maori the full value of their land if they wished to sell it, but wanted leases to be stopped, as he thought they were bad for the country.

On 20 December, the discussion over the Native Land Bill was taken up again in Council by the Attorney-General John Findlay who explained some of the past attempts at Maori-land legislation to Parliament. Findlay believed that those who advocated individualisation as the solution to the Maori land question were advocating "counsel not only of folly but also of weakness." Findlay was of the notion that one could not expect the Maori to be able to comprehend the full impact of what it meant to be a fully individualised society. In Findlay's and other members of Parliament's minds, Maori society could not be expected to understand the complexities of European civilisation in the short span of time that Pakeha had been in New Zealand, and he therefore believed in the Crown taking a protective stance towards Maori.

Findlay's protective stance towards Maori did not mean that he wanted Maori to retain all their remaining land, far from it. Findlay himself believed that alienation was the most important aspect of the 1909 Bill and he believed the removal of all restrictions on dealing in Maori land was a "piece of masterly draftmanship."[33] This removal of restrictions was argued to be an attempt at "clearing the decks" for following provisions. The only restrictions which were to apply from then on were those contained within the Bill itself. Findlay believed the 1909 legislation would remove the impediments and obstacles that had "stood in the way in connection with the alienation of Native land for at least twenty years." He saw the measure as "providing a cheap and expeditious method for the European settler to go on to Native land." Findlay was opposed to those in Parliament who advocated individualising Maori holdings because individualism basically meant free trade in Maori lands, a situation he saw as being detrimental to New Zealand as a whole.

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[31]Reed, ibid, pp.1106-1109.
[32]Pearce, ibid, p.1110.
[33]Findlay, 20 December, ibid, pp.1273-1276.

Findlay believed that past New Zealand governments dealings with free trade had given New Zealand a monument to "human greed, perfidy, and chicanery." As far as Findlay was concerned, free trade was a method of land purchase which gave rise to dishonourable dealings, it allowed "the harpy and the scoundrel" to take advantage of the Maori, a people he believed were easily "befooled."[34] As far as Findlay was concerned, past attempts at free trade had shown it to be a foolhardy direction, necessitating further enactments to prevent fraud.

Findlay believed the two races were fusing together and most likely saw Maori society as ultimately having to give way to what was believed to have been a technologically and culturally superior European society. This is evidenced in Findlay's explanation of how the 1909 Bill regulated Maori adoption practices. Under the 1909 Bill, Maori were no longer allowed to adopt Pakeha children. Although Findlay believed that Maori women had "an amount of human tenderness" which would have "put to shame many heartless European mothers", he also believed that the Crown had a duty to look after the interests of the child involved. Findlay believed that the conditions which many Maori lived in at that time were not what "we should consider proper for European children."[35]

Wi Pere was the only Maori member of the Legislative Council at this time cast a critical eye over the 1909 legislation. His remarks in Council almost earned him a formal rebuke from the Attorney-General. As far as Pere could see, the only part of the Bill which benefited Maori was under Part Seventeen which allowed Maori to borrow money on the security of their land. Pere stated that he had always asked Parliament for money for Maori to develop their lands but that he had always been refused. The reason for this refusal he claimed was that "if the Government were to give the Maoris the money to improve their land the Government would have no land to buy, for the Maoris would not sell." Pere asked his fellow Councillors, that if there was any love in their hearts for the Maori people, to join him in asking the Attorney-General to insert a provision providing Maori with seven hundred thousand pounds for land development. When he was informed that the Upper House had no power to insert such a provision Pere concluded that he was in a "mad house" and asked what was the "use of saying we are the House of Lords?"[36]

Pere was adamant that Maori would not benefit greatly from the 1909 legislation. He thought the advancing of money to the Maori to improve their land was "only bait" and stated that the "persons who compiled this Bill worked hard and made it so that they

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[34]Findlay, 21 December, ibid, p.1339-1342.
[35]Findlay, 20 December, ibid, p.1275.
[36]Pere, 21 December, ibid, p.1335.

could be admired by the party in power: that is all." Clearly Pere was meaning Carroll and Ngata. During the passage of the 1909 Bill into law, much had been made of the fact by members of the government about the great deal of hard work Sir James Carroll and Apirana Ngata had put into drafting the legislation. It almost seems as if the Crown were congratulating themselves at having Ngata help in the drafting of the Bill as it could have given them a convenient scapegoat should any criticism about the way the Bill treated Maori come their way. Wi Pere believed that the fact a Maori had helped prepare it, did not mean it was necessarily that good for Maori. After listening to the honourable Oliver Samuel praising Ngata's efforts, Wi Pere observed that "I do not know that it goes to say that because the Hon. Mr. Ngata made it the Bill is any good."[37] Pere explained to the Council that if they wanted to preserve the Maori "do not give him the power to sell."

Wi Pere saw the Bill for what it really was, another legislative attempt to alienate Maori land, with little provision for Maori. Pere believed it was quite obvious what the government was doing, it was "attending to the crowd that is arriving in New Zealand." This indeed was part of the underlying reason behind the Bill. New Zealand's population was increasing, and the demand for land from settlers, as well as parliamentarians was to be satisfied from whatever land the Maori could give, or whatever land could be taken from the Maori. In an emotionally charged speech, Wi Pere told the Legislative Council that "If you think I am going to give you a hand to slay the Maori people, well, you are mistaken." In all his time in Parliament Pere had never known satisfactory legislation tending to the welfare of the Maori people and the 1909 Act was no different, in his opinion, to any other previous piece of Maori land legislation. Pere stated that he would do his best to retain the remaining Maori lands for "the benefit and welfare of those that are to follow me."[38] He concluded his speech by prophesying that unless the Crown gave Maori access to larger amounts of capital to develop their land the Maori would find themselves "Under the white man's table."[39]

These sentiments were echoed by Te Rangihiroa, the new member for Northern Maori, who had been elected following the death of Hone Heke. Te Rangihiroa expressed the belief that if the Maori were to bear "part of the burden of the State, we must also be granted the privileges that Europeans enjoy, and we must have a right to Government assistance the same as the Europeans do." Te Rangihiroa desired to see the "Maoris raised above being the hewers of wood and drawers of water for other people."[40] Unfortunately, with the Native Land Act and its later amendments opening new avenues

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[37]ibid.
[38]ibid, p.1336.
[39]ibid, p.1337.
[40]Te Rangihiroa, 26 November, *NZPD*, Vol. 147, (1909), p.389.

for the alienation of land, and many Maori still prepared to sell to both the Crown and private individuals, Te Rangihiroa's fear would nearly become reality. Within twenty years, to a very large extent the Maori had become, as they always feared they would, 'hewers of wood and carriers of water' to the dominant Europeans, the morehu, the underprivileged ones.[41]

The potential for this situation had been recognised by the Stout-Ngata Commission throughout its entire existence. It had advised the government in various reports recommending that the Crown should cease purchasing Maori land and encourage leasing and the training of Maori to farm and settle their own lands efficiently. Despite these recommendation the government had seen fit to pass legislation specifically designed to free up Maori land for settlement purposes by Europeans. In December 1908, the Stout-Ngata Commission had presented a brief final report to the government detailing two years work and highlighting suggestions as to the direction the Commission believed the future of Maori land policy should take. These recommendations were, on the whole, ignored, but they did not die with the end of the Commission. Apirana Ngata would prove to be a patient man, and the recommendations of the Stout-Ngata Commission for Maori development would eventually see life, with full government backing, twenty years later.

The 1909 Native Land Act then was a complex piece of legislation that sought to regulate across a broad range of Maori interests, well beyond Maori interests in land, though the land remained the core of the legislation. The Act was drafted after the Commission had completed its deliberations and had furnished most of its reports. Ngata had been transferred from the Commission to assist with its drafting. This was done presumably to provide some continuity between the Commission's findings and the Crown's legislative wishes.

However, as this chapter has argued, the context of providing access to land by settlers continued, ever more strongly. So did Crown unwillingness to sponsor Maori developing their land themselves continue. In the end, this meant that, as with the earlier pieces of legislation discussed in the preceding two chapters, the 1909 Native Land Act came to illustrate how far apart the Commission and Crown had grown by 1909.

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[41]M.P.K. Sorrenson, *Maori and Pakeha Since 1870*, (Auckland, 1967), p.27.

Conclusion

From the outset of the establishment of the Stout-Ngata Commission, it was taken for granted by most members of Parliament that at least some Maori land would have to be given up for European settlement. At this stage in New Zealand's development, the ideas underlying Maori land legislation were dominated by conceptss such as capitalism, assimilation and racial superiority where the continuing purchase and development of Maori land by Pakeha was viewed as a natural part of the Dominion's advancement and progression into the future. Maori were viewed as being part of a past that could no longer be allowed to hold back the future. In the European mind, it was difficult, if not impossible, for Maori to play a part in New Zealand's progression as it was still believed that most Maori simply did not possess the capacity, intellect or energy to contribute to the building of a nation. At this stage, Maori were still under the ban of being stereotyped as a "spendthrift, and improvident people."[1] Added to this, they were still under the stigma of being a defeated people who were dying out.

With this context in mind, then, this thesis has examined the origins and deliberations of the Stout-Ngata Commission against a backdrop of Crown and Maori concern for the future status and use of Maori land.

The thesis has discussed the origins of the Commission, against a brief history of Crown-Maori land dealings. It has acknowledged that the purpose of establishing the Commission may well have been in the broad interests of Maori. This point is acknowledged against some historiographical debate on this very question.

However, be that as it may, this thesis then argues that it soon emerged that, as the Commission continued to meet with Maori and furnish reports, the legislation that was being proposed and passed by the Crown increasingly bore little resemblance to the Commission's findings. The Commission and the Crown are seen to have been on increasingly divergent paths. There are many reasons for this, revealed in this thesis, that this conclusion will now summarise.

A material difference existed in the Commission on Native Land and Native Land Tenure in that for the first time an extension of the Crown asked Maori owners what they would prefer to be done with their land instead of simply assuming. An extension of the Crown met face to face with Maori owners, on Marae and in papakainga, on Maori land. For the first time, Maori were spoken to in plain terms. Stout and Ngata themselves were under

[1] General Report of the Commission on Native land and Native-Land Tenure, *AJHR*, 1907, G-1c, p.15.

no illusions that the Crown would not take no for an answer. Both Stout and Ngata themselves believed that the land should be developed and used to its full potential. As both the Commissioners had explained many times, if the owners would not profitably use the land, then the Crown would definitely find someone else who would. In all likelihood, that person would have been Pakeha. Despite this, their recommendations were generally sympathetic towards Maori, and their reports laid the foundations for progressive Maori land policy.

The roles of Sir James Carroll and Apirana Ngata at this time were very important, if not critical. Both men were powerful personalities of their time with Carroll having a great measure of control over Maori destiny as Native Minister, and Ngata beginning to flourish as a lawyer, commissioner and parliamentarian. It could be argued that both Carroll and Ngata saw Maori as still being in need of protection from European law, but at the same time they realised that Pakeha would not allow Maori to hold up their progress. The first decade of the twentieth century was therefore a critical time for Maori. Carroll, Ngata and other Maori leaders such as Hone Heke, Henare Kaihau, Te Rangihiroa, and Maui Pomare realised this, but they all believed different approaches were necessary to enable Maori to survive. Pomare and Te Rangihiroa (at least at this time) generally believed the future of Maoridom lay in assimilation with Pakeha society, and both these men could be quite scathing of Maori society at times. Heke and Kaihau were critical of Pakeha control of Maori and desired more separate destinies between the races. Both Carroll and Ngata stand out as enigmas in the debate over the future of Maoridom. Certainly, both men could be critical of certain aspects of Maori society, but at the same time they were among its staunchest defenders.

All of these men were products of their time, a time which saw New Zealand desperately trying to define itself. Both Carroll and Ngata were among the more realistic Maori thinkers of the day. They could be critical of Maori society but this was probably due to their realisation of the need for Maori society to adapt quickly to the modern world, and to their own European education. Carroll and Ngata were well aware that Pakeha would not let Maori hold them back, and to a certain extent both men probably believed that Maori should not hold Pakeha back, but should be progressing with Pakeha on their own terms. It could be argued that Carroll and Ngata were assimilationists but this is too simple a picture. Both men had a good appreciation of both cultures and could see the value in both. Both men were pragmatists, but were essentially Maori in their outlook.

The Stout-Ngata Commission was an attempt at somehow finding a way to reconcile something that was next to impossible in early twentieth century New Zealand. This something was the desire of Maori wishing to retain and develop their own land for

themselves and their descendants, and the desire of European settlers and the Crown to obtain that land for their own use. On the surface, the Crown claimed that it did not mind who developed and used the land so long as someone did. On the face of it, this seems a reasonable position, however, Crown inaction denied Maori a realistic chance of obtaining the necessary finance and skills needed to free willing individuals of the constraints of communal title. Crown inaction also denied Maori access to the necessary finance and skills to develop their land into successful working farms.

In early twentieth century New Zealand it was still believed that the Maori were dying out and this played a part in why the Crown seemed concerned only with leaving Maori with enough land for their continued maintenance. Many members of Parliament believed that Maori would either die out or become "Europeanized" through being assimilated into Pakeha society, a natural progression in the fatal impact theory which was popular at the time, validating European dominance at that stage of world history. Maori society was actually increasing in numbers and this was to cause problems of landlessness by the 1920s. Ngata probably realised this when he said "I cannot disguise from the House the fact that, with regard to the Native lands, my feeling is that it is our duty as Maori representatives to save as much as we can of those lands for the present generation of Maori's, and as a provision for the future." He then went on to state "We have not done our duty when we have set apart an area for Maori settlement. The area that the Commission has set apart for Maori settlement in their recommendations is an area set apart for the needs of the present generation of Maoris, and if the system is successful in regard to the area so set apart, then further provision has to be made for the future generation of Maoris, and that has to be made out of the area set apart for European settlement. The section of last year was undoubtedly a compromise, as stated by the member for Bay of Plenty."[2] This compromise resulted in section 11 of the Native Land Settlement Act 1907. This compromise was made between those who favoured freeholding and those who favoured leaseholding in Parliament. It was not a compromise made between Maori and Pakeha. Section 11 itself went against the wishes of those Maori who had stood before the Commission bringing the fate of their land with them, a Commission which they viewed with good faith, a Commission which they viewed with hope. They were betrayed by the government which took the Commissions recommendations and twisted them into a means of alienation.

From the outset, the Stout-Ngata Commission was used by the government to find land for European settlement. Despite sympathy for the Maori situation, Stout and Ngata were under no illusions about what they were doing and they lost no opportunity to tell those

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[2]Ngata, 9 October, *NZPD*, Vol. 145, (1908), p.1128.

they interviewed the exact scope of the Commission. Whether Maori interpreted their addresses correctly or not is beside the point. What is evident from the Commission's recommendations is that, apart from people in the Wharepuhunga block, who wanted to be left to themselves, Maori were not opposed to settlement. What they were opposed to for the most part was the total alienation of their lands. They were not opposed to selling their land in certain circumstances, but the main push by Maori was to lease their land to Pakeha settlers. And this came to be reflected in the reports of the Commission. The problem for Maori lay in the fact that the amount of land they were willing to sell did not satisfy Parliament.

Another problem for Maori was that a great number of settlers and politicians alike were opposed to Maori leasing their land. This was due to various reasons such as the fact that most settlers preferred to own the freehold rather than lease land. It was argued by those in parliament preferring the freehold over Maori land that the lease was actually holding up settlement and development of the country because there was no real incentive for the lessee to improve the land as it would ultimately revert to the owners at the expiration of the lease, and although the owners were expected to pay the lessor for any improvements they may have made on the land, in many cases the money was seen as being inadequate. Added to the problem, as far as the "freeholders" were concerned, was the idea that allowing Maori to lease their land was also bad for the race. It was argued by men such as Vernon Herbert Reed, member for the Bay of Islands, that allowing the Maori to become a "rent receiving race" would sap them of their vigour. Men such as Reed and Herries feared Maori leases would turn Maori into a new class of landlords, simply content to receive and waste their money. These parliamentarians argued that the only way to improve the Maori race would be to make them work and become an industrious people on par with Pakeha, and that the lease would take from Maori the desire or inclination to work and play a part in New Zealands development.

As a consequence, the Stout-Ngata Commission can be seen to have fairly attempted to represent Maori wishes for their land, against certain political realities of the day. Though such realities were strongly felt by Stout and Ngata themselves, they were nonetheless able to furnish recommendations that might be seen to have generally favoured continuing Maori retention and development of their land; which is what Maori wanted.

Against this, the legislature showed a stronger regard for other factors, as discussed above, which strongly militated against such Commission recommendations. In the end, the fact that the Crown and Commission were essentially on diverging paths meant that, with the resulting legislation remaining as the primary yardstick, the Commission was unable to influence and see put into effect its well-meaning preferences for the retention

and development of Maori land. The Native Land Settlement Act 1907, the Maori Land Laws Amendment Act 1908, and especially the Native Land Act 1909, set the scene for the continued purchase of Maori land by the government and settler alike. These pieces of legislation reflect the huge gap between what the government claimed to be doing for Maori and their actions on the ground. The government claimed to be acting in the interest of Maori and Pakeha alike, but Maori interests were relegated to second place, reflecting the government's true priorities, the settlement and development of land by Europeans. Thus, as indicated earlier, the Stout-Ngata Commission did not fail the Maori people, the New Zealand government did.

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