

## MAORI AND RATING LAW

### 19.1 The Origins of Rating

By 1840, rating in England was a basic financial tool for local government to fund community goods and services. A 'rate' had become a tax, based on property ownership, which was levied by a local authority and applied to services at a local level. This kind of rating system, which was also to develop in New Zealand, has its philosophical origin partly in the legal theory that all land is ultimately held by the Crown. However, in New Zealand the question has persistently arisen in the development of rating law as to whether land not held by the Crown, but rather held by Maori in customary tenure, should be subject to rates. Maori land which was not purchased or investigated by the courts has generally remained exempt from rates.<sup>1</sup>

The different approaches of Maori and Pakeha to land use and development has also been a recurring theme in the development of rating law in New Zealand. Allegations have been made over time that valuation policy has failed to consider Maori land for anything other than European defined 'productive purposes'. Maori land was valued for rating purposes in the same manner as European land. However, the valuation of Maori land has periodically caused problems in allegedly being valued too low or too high. For example in 1883, at a time when the government reimbursed local authorities directly for rates owing on Maori land, the Property Tax Department was found to be valuing Maori land well above the market rate. On the other hand, in 1915 it was revealed that land in the King Country was being valued low to facilitate European settlement, despite the Valuer-General's insistence that lands should be valued in a standard manner.<sup>2</sup>

### 19.2 The First Rating Schemes

It was an imperative within the new colony to promote local government and, as a result, to also reduce the expenditure required from England. Local government in New Zealand, however, had a troubled existence after 1840, including various abortive attempts to establish municipal authorities in Wellington and Auckland. The earliest local body rating laws, the Municipal Corporations Ordinances of 1842

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1. The discussion in this chapter of Maori and rating law is drawn from Tom Bennion, 'Maori And Rating Law', Wellington, Waitangi Tribunal Rangahaua Whanui Series (draft), January 1995

2. v 12/416 Valuation of Native Lands 501, NA

and 1844, exempted the ‘properties . . . of the aboriginal inhabitants of the Colony’ (s 67). The Property Rates Ordinance 1844, however, which empowered the general government to rate the land, appeared to make no distinction. The Native Exemption Ordinance 1844 made it clear that Maori were generally intended to be subject to the new laws unless otherwise specified.<sup>3</sup> Roothing provided the impetus for the Public Roads and Works Ordinance 1845, under which elected boards would levy special rates (based on the number of acres owned) to create roads as required in areas such as Auckland. This too, did not appear to exempt Maori land. The 1849 Ordinance of the same name was similarly concerned with rates for roading, although the rate was to be based on the net annual value of houses, lands and tenements in the town. The Country Roads Ordinance 1849 created a system of rates based on the value of the land – a precursor to the most common form of valuation for rates. Crown land and ‘land belonging to . . . any of the aboriginal inhabitants of the colony’ was exempted from these Ordinances (under s 27 of the Public Roads and Works Ordinance and section 28 of the Country Roads Ordinance 1849).

With the creation of six provinces in 1853, each province adopted its own rating laws which generally excluded customary Maori land from their operation in keeping with section 19(10) of the Constitution Act 1852 which provided that provincial councils could not make laws ‘[a]ffecting lands of the Crown or Lands to which the Title of the aboriginal native Owners has never been extinguished.’

### 19.3 Road Boards and the Highway Boards Empowering Act 1871

Under the Municipal Corporations Act 1867 electors, who had to be ratepayers, could petition to create a borough to run local affairs. Maori land was included in the scheme, raising the legal possibility for Maori to participate in local elections. Road or highway boards, created in tremendous numbers in the 1850s and ‘60s, brought the provincial government under critical levels of debt which in turn prompted schemes for the main trunk line in the 1870s as a solution to these debts incurred from roading.

In 1871, the Highway Boards Empowering Bill was introduced to settle once and for all the question of rates for property held under Crown or Native title. This prompted debate in the House about the rating of Maori land. European resentment that Maori would be exempted from rates was raised in the House when it was argued that Maori should be rated because many now had Crown grants and used the roads.<sup>4</sup> Others, however, viewed the matter as rather more complex, pointing out, for example, that Maori in the Mangonui electorate already paid a substantial customs duty which might be used on roading, particularly in view of the fact that money collected for roads was invariably spent on European settlements in or

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3. However, s 12 provided that Maori be exempt from the ‘more severe penalties’ of the civil law while they remained ‘ignorant of the operation of the law in civil cases’.

4. NZPD, 1871, vol 10, p 358

around urban areas.<sup>5</sup> Maori participation in the construction of roads was also noted by those who opposed further rating of Maori land. Maori members suggested, amongst other things, that the Treaty of Waitangi had reserved all matters regarding land to Maori, and that Maori too poor to pay rates should be able to give land, or work on the roads, instead of paying rates.<sup>6</sup> Maori members expressed the fear that land might be taken compulsorily if rates could not be paid. The Act provided that owners of native lands would be liable to rates only if a native land court certificate of title had been issued, or if the native title remained unextinguished when the occupier was someone other than a Maori. This compromise was to appear in subsequent rating measures also. Fixed term pastoral lessees on Crown lands were to pay only half rates and the provision was made that the recovery of rates in arrears could only allow the forced sale of personal property (s 15).

#### 19.4 The Native District Road Boards Act 1871

At the time of the Highway Boards legislation, Wiremu Katene, member for Northern Maori, proposed the introduction of a Bill whereby Maori could govern the application of highway boards' legislation in their own areas. Later in the year, Donald McLean introduced the Native Districts Road Boards Bill which he stated had its genesis in Katene's idea. Some parliamentarians were alarmed by the power it awarded to Maori who, according to the Bill, would make up three quarters of the boards' composition. According to the Bill, provincial government ordinances would cease to apply in those areas which elected to enact the provisions. While the Bill was passed, the Act did not operate extensively in practice, perhaps, Bennion suggests, because it was entirely voluntary and did not satisfy the broader calls by Maori for local self-government, particularly in the north. Katene later advised a gathering of chiefs that the Act was not what he had wished to establish, and that he had opposed the Bill in the House (in order to argue for a more powerful Native and European runanga). However, when he had heard a member say '[t]hat if the Natives would not pay rates they ought not to be allowed to use the roads but have to walk in ditches' he agreed to the Bill in order that Maori might enjoy some measure of control.<sup>7</sup> As the 1871 measure had not, for the most part, been taken up by Maori, McLean urged local European land boards to include Maori leaders. However, he appeared to regard the contribution of Maori land and labour for road works as 'sufficient for the time being'.<sup>8</sup> The Act was repealed in 1891.

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5. Ibid, p 364

6. Ibid, p 362

7. AJHR, 1872, f-4, p 4

8. McLean to Superintendent, Otago, 16 March 1872, ma 4/95; McLean to Superintendent, Taranaki, 14 October 1874, ma 4/20

### 19.5 The Rating Act 1876

Throughout the 1870s, Maori remained cautious about allowing roading which would attract rates to their land and often resisted attempts to establish roads in their own districts. For example, the construction of the road between Hamilton and Thames was disrupted by Maori who sought assurances that they would not be liable for rates if the road proceeded. Mackay, in a bid to avoid delays to the roading programme, urged that all native land outside townships, whether held under Crown grant or not, should be exempt. Under-Secretary Clark supported this exemption for similar reasons.

Following the abolition of provincial government, a number of measures were taken to improve the system of local government including the Rating Act 1876 which replaced the various ordinances in force with a uniform land valuation and assessment scheme. Rates were levied by local bodies at a percentage of the rateable values of all rateable property in the district. Substantial exceptions to 'rateable property' were made, including section 37(4) which exempted 'Lands over which the Native title has not been extinguished, and lands in respect of which a certificate of title or memorial of ownership has been issued, if in the occupation of aboriginal natives only'. The 1876 Act replaced the provisions of the 1871 statute by making Maori owners liable where their European lessees defaulted, with the provision that a local body had the right to sell property on 12 months notice if rates remained unpaid for a period of at least 14 days – an extremely short period of grace. While no Maori member of Parliament spoke when the Bill was debated, the European members appeared to resent the exemptions, complaining that efforts should be made to place Maori in the same position before the law as themselves.<sup>9</sup>

In practice Maori demonstrated enthusiasm and support for local roads except when rates were being levied to build them. At the meeting of the Maori parliament at Orakei in 1879, resistance to rating was evident. Tiopera Kinaki, for example, asserted that justice came from the Treaty of Waitangi and that the Government was at fault in 'the establishment of these Road Boards...[that] want me to pay for using that road [from Wairoa to Hokianga].' He said 'I am grieved about that'.<sup>10</sup> Te Hemara Tauhia was also concerned that, although the Government was aware that little land remained to Maori at Kaipara, road board rates were being levied and sales for rates in arrears were threatened.<sup>11</sup> Wiremu Paitaki of Ngatipaoa at Thames complained that '[w]e Maori do not understand the meaning of these Road Boards. Our ignorance of these Road Boards causes us to be put in gaol for taxes we do not pay'.<sup>12</sup> A resolution was finally carried by the Orakei hui that 'Road Boards and County Councils should not deal with Maori lands, except in the case of lands leased to Europeans'<sup>13</sup> (which was already the position of the 1876 Act).

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9. NZPD, 1876, vol 22, p 29

10. AJHR, 1879, sess 2, g-8, p 2

11. Ibid, p 27

12. Ibid, p 32

13. Ibid, p 35

In addition to these concerns, Maori faced the added problem of not being eligible to vote at the local level because they did not pay rates as required, for example, under the Counties Act 1876. However, where Maori were eligible to vote, the provision was that in the case of multiple ownership, only one person would appear on the rating roll. This meant that even legislation which purported to give Maori ratepayers voting rights did not guarantee that all owners would have the right to vote.

### 19.6 The Native Lands Rating Act 1882

From the late 1870s increasing pressure came to bear on local authorities to find alternatives to government funding for public works. In 1882, two new rating laws came into force simultaneously: the Rating Act and the Crown and Native Lands Rating Act. The former Act changed the basis of valuation (from annual to capital value – the latter being the value of the land plus improvements) and exempted Maori lands where the original title had not been extinguished and the land was occupied, as well as all lands owned by Maori ‘of which there is not an owner or occupier other than a Native’ (s 2). The latter Act, intended to provide local government with its own funding base, widened the rateable Maori land to include all Maori land within the borough boundaries (s 3). Exceptions were made for: Crown and Native land occupied by Europeans (s 6(14)); Maori land within the counties of East and West Taupo, Kawhia, Sounds, and Stewart Island (s 6(13)); and Maori land more than five miles from any public road open for horse traffic (s 6(15)). Other provisions were that Maori enrolled on the ratepayers roll were eligible to vote in local body elections and that government expenditure was recovered with the stamp duty which had to be paid whenever the land was leased to non-Maori or when it was sold or exchanged for the first time (sections 17 and 12 respectively). It is interesting to note that something of a circular system operated here. Local authorities levied rates and the government paid them. When Maori subsequently sold or leased their land, they paid a percentage of the purchase or lease price to the government as a means for the government to recover the rate. Maori consequently received ten percent less than the market price for their land. The final notable provisions were that rates not paid by Maori within three months would be paid by the colonial treasurer (ss 9 and 15) and the Governor in Council could proclaim districts where Maori owned lands could be rated under the ordinary law.

A typical response to the Act came from the member for Dunedin South, who said:

I can't see why [Native] lands should be exempt from rates . . . Surely they should pay something to the State for the benefit they receive from State expenditure . . . My opinion is that the sooner we make the Maoris understand that they are not to be pampered the better it will be for us and them.<sup>14</sup>

Some Pakeha members, however, suggested that Maori were being taxed for roads they had never asked to have built and the measure was ‘but another attempt to fleece the Natives’.<sup>15</sup> There was also strong criticism that rates were imposed on Maori with only a very limited provision for Maori representation on local bodies.<sup>16</sup> For example, the member for Rangatikei expressed considerable concern that ‘we compel [Maori] to pay taxation for inflicting that hardship upon them without them having any voice in the matter’.<sup>17</sup> Maori themselves were concerned that rated lands were not increasing in value as predicted, and that accumulating unpaid rates might force the sale of Maori lands for payment, or that some Maori might be unaware of the new law and fail to pay rates, thereby having the lands taken from them also. Finally, the member for Western Maori reminded the legislature that Maori had already paid 10 percent tax on the initial sale of their land (presumably in reference to stamp duty, as discussed above).<sup>18</sup>

In 1885, Hauraki Maori expressed concern to Native Minister Ballance that they be exempt from rates because they had gifted their land for a road and could not afford to pay rates for it too. Despite his caution about rating land not yet passed through the court, Ballance advised that ‘when they get their land in their own name, [Maori] should stand in the same position as non-Maori and pay rates.’<sup>19</sup> Maori from Tauranga also complained to Ballance that they were being singled out for rating charges when theirs was the only name appearing on the Crown grant, although they were meant to be representatives of a whole hapu.<sup>20</sup> Ballance showed greater sympathy for the Maori position in addressing the concerns of Gisborne Maori. He said:

With regard to [the Native Lands Rating] Act, I am not personally in favour of it. I do not know whether the Rating Act will be repealed by Parliament, as there is strong feeling in favour of the Natives paying rates; but my opinion is that Native lands should not pay rates until they can be used, and therefore I am not in favour of the present Rating Act . . . But I think that, when title has been ascertained, and the interests of the Native owners subdivided, the time has come when they should take the same position as Europeans.<sup>21</sup>

The Native Lands Bill 1888 proposed taxation on all Maori lands. This provision was subsequently removed from the Bill following petitions from over 1500 people. The Crown and Native Lands Rating Act Repeal Act 1888 instead provided for the continuance of rating under the 1882 Act, but it ended the scheme of Treasury reimbursements to councils. This change deeply concerned Members of Parliament who had large amounts of Maori land in their electorates because of the loss of

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14. NZPD, 1882, vol 43, p 709

15. Ibid, p 709

16. Ibid, p 704

17. Ibid, p 710

18. Ibid, p 712

19. AJHR, 1885, g-1, p 48

20. Ibid, pp 60, 63

21. Ibid, p 71

revenue this would create for their local bodies.<sup>22</sup> Under the Act, Maori were provided the one safeguard that all rates paid in the district were to be spent in that same district. Under the Repeal Act, Maori were also liable for rates for the maintenance of hospitals.

In total £67,369 was paid out to local bodies by the Crown for rates levied under the 1882 Act. Of that amount, £38,235 had been recovered by 1924 while £29,134 had not been recovered (although realistically Crown purchases of lands on which rates were unrecovered probably lowered that amount to around £15,000).<sup>23</sup>

### 19.7 The Rating Acts Amendment Act 1893

The long title to the Rating Acts Amendment Act 1893 noted that it was an Act to 'declare all Native Land to be Rateable Property.' While local authorities and many members of Parliament were pleased with the new amendment, saying, for example, that it was 'time [Maori] should contribute to the taxes of the colony',<sup>24</sup> Maori members opposed this extension of liability. While Maori petitioned to have the Bill delayed, the Government agreed to rate at a half rate land that had been through the land court, thereby retaining significant exceptions for Maori land. While stating that all native land, held customarily or otherwise (s 15) was to be rateable, the Act made provision for a number of exemptions, including Maori land occupied by Maori and outside the boundaries of towns or boroughs which would be levied at half rates and exempt from any special rates. No rates at all were to be levied from other lands including (amongst other things) land more than five miles from a public road or highway (s 18(1)). This Act was later consolidated with other rating legislation under the Rating Act 1894.

In touring Maori areas in 1895, Seddon and Carroll heard similar complaints from Maori to those earlier heard by Ballance. For example, it was alleged that Maori would never be able to pay their rates and that it was inevitable that their land would be taken from them as a result.<sup>25</sup> In the same year, the Native Affairs Committee received three petitions claiming that Maori were not receiving proper notices relating to the rating of their land and that rating values were being wrongly assessed.<sup>26</sup> The committee recommended that the petitions be referred to Government for an inquiry into these matters. Furthermore, when rates were extended to Taranaki reserves, the Public Trustee attempted to protect the interests of Maori beneficiaries and warned that rating land which generated a low income would load the land and inhibit future development as well as raise the danger of 'indirect confiscation'.<sup>27</sup> Despite his efforts, the Rating Act Amendment Act 1895 provided

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22. NZPD, 1888, vol 62, p 380

23. Bennion, p 32

24. NZPD, 1893, vol 82, pp 407–408

25. AJHR, 1895, g-1, p 33

26. Petitions from Paratene Matenga and 181 other, Taituha Hape and 68 others, H tare Tikao and 22 others, AJHR 1895, i-3, p 6

27. AJHR, 1895, i-5a, p 20

that all native lands vested in the Public Trustee under the West Coast Settlement Reserves Act 1892 or otherwise should be deemed rateable (s 2(1)). A concession to the trustee was the provision that reserve land occupied by Maori only, or unoccupied, should be rated at half normal rates and that no special rates should apply (s 2(3)).

### 19.8 The Native Land Rating Act 1904

In 1904 a Bill dealing specifically with Maori rates was introduced by James Carroll. Carroll said 'I have always held and pronounced myself in a public way that Native Lands should be rated more than they are at present . . . that the Maoris should come into line with the Europeans and bear their fair share of the public burdens.' At the same time he acknowledged that Maori were under certain disabilities.<sup>28</sup> The introduction of the Bill triggered debate about the Maori Land Councils established in 1900 (see ch 15 above) and aroused Maori members' objections to compulsory vesting in councils. (Clause 8 of the Bill gave the Minister the option to put under the control of the land councils land carrying rates in arrears.) Maori members insisted that, before the Bill was passed, they be freed from the constraints of stamp duty on land sales and that provision be made for advances for settlement by Maori so that they might compete equally with Pakeha as farmers and therefore also pay the necessary rates.<sup>29</sup> Maori asserted that 'Maoris should be given the permanent administration of their own lands and their own affairs' and that it was 'inflicting a great injury on them to treat them in this way'.<sup>30</sup> Moves to have the clause removed were unsuccessful.

Some members of Parliament appeared to show some support (or at least sympathy) with Maori. For example, the member for Napier (an Opposition member) argued that:

To place the further incubus of rating . . . on the Native race, with their hands and feet tied as they are in dealing with their lands, is ungenerous, and taking advantage of members of the British race that, I feel sure, was never anticipated when we joined hands in treaty with them in 1840.<sup>31</sup>

This member also wished to see Maori able to lease their lands as they saw fit and be protected from sale which would denude them entirely of land.<sup>32</sup> In addition, another member questioned the basic fairness of involuntary vesting for non-payment of arrears, saying:

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28. NZPD, 1904, vol 128, pp 196–197

29. Ibid, p 610

30. NZPD, 1904, vol 131, p 350

31. Ibid, p 352

32. Ibid, p 352

It would be precisely the same thing as though with our own lands we were arbitrary enough to pass an enactment to take the lands of any of us and hand them over to the County Councils or Road Boards to administer.<sup>33</sup>

Another member strongly asserted that the Bill be delayed, saying:

the whole of this country did originally belong to the Natives, although it is now occupied by Europeans. This land belonged to them, and now we are going to make them pay rates. I do not believe they will do this.<sup>34</sup>

When it was pointed out that the Government had a duty to ensure that Maori did not become landless,<sup>35</sup> the Government introduced the provision that 'Native reserves in the Middle [South] Island occupied by Maoris' should not be liable for more than half rates (s 17).

Despite objections and petitions from prominent Maori leaders (Keepa Te Rangihiwini and Te Wherowhero Tawhiao) and their numerous supporters, the Bill was passed making half rates payable only on Native land where a title had been ascertained (with exceptions) and exempting only customary or papatupu land from rates under section 2(2). The Act also allowed the Minister to place the land under the administration of the district land council (s 9) or to pay the rates and place a caveat against dealing with the land and take a portion for the Crown on the next partitions of the land (ss 10–12). Even more significant was the provision that if the Minister thought that Maori owners were keeping customary land out of the court to avoid paying rates, he could apply to the court to ascertain the title (s 2(2)). Bennion states that:

this [provision] removed a voluntary element from the land court procedure and forced Maori to deal with their land in a way which they had not agreed to. Looked at it logically, the provision did not make sense. Since the land was exempt from rates, how could it be said owners were trying to avoid paying them? It also appears to be in direct contradiction to article ii of the Treaty of Waitangi.<sup>36</sup>

The Act does, however, appear to be the first to direct that Maori owners be noted on valuation rolls, which would ensure they were eligible to vote in local body elections.

The Rating Amendment Act 1910 further simplified rating law as it applied to Maori land, thereby making it as close to Pakeha rating law as was feasible. While customary land remained exempt from all forms of rating, a major provision was introduced that, unless otherwise provided, all Maori freehold land was to be subject to rates in the same manner as European land (s (2)). The coercive power of the Minister to bring customary land into the court was dropped and limitations were made on lands held by Maori Land Boards or the Public Trustee which were

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33. *Ibid*, p 806 (Ormond)

34. *Ibid*, p 808

35. *Ibid*, pp 805, 814–815

36. Bennion, p 42

to be liable only to the extent that the land produced revenue (s 4). As Bennion notes, the statutory distinctions between liable and exempt lands and full or half rating were thereby abolished and the South Island Reserves lost their half-rated status (with no explanation given). Under these new provisions, the bulk of Maori land had finally been brought within the general rating regime and become liable for rates.<sup>37</sup> The Governor in Council retained the power to exempt lands from rates (a provision which had existed since the Rating Amendment Act 1893) and did so in respect of the Urewera lands of which over six hundred thousand acres was still unroaded. However, all such exemptions were to be provided for in this discretionary manner. Ngata surmised that the 'expected result of this Bill will be to force a large area of land in the North Island into settlement' as Maori would have to lease their lands to pay rates. There would be no legal 'shelter' as there had been under the 1904 legislation.<sup>38</sup>

A further amendment to the Rating Act in 1913 made the collection of rates on Maori land even easier. It provided that any number of areas of Native freehold land, within the district of one local authority which had the same group of beneficial owners, could be collectively liable for all rates levied by the local authority (s 9).

### 19.9 Wartime and Post-War Rating

The financial demands of the First World War put further pressure on local authorities, who in turn raised the issue of the rating of Maori land in the search for a solution to the problem. In particular, the National Efficiency Board, which had been created for the war effort, urged the Prime Minister on behalf of local authorities to rate Maori lands according to the standards used for European lands or let the state subsidise local authorities where rates were not paid.<sup>39</sup> However Herries, Native Minister, supported only a limited power to register charges or liens against Maori land under the Native Land Court titles, noting that there would be 'strenuous opposition' from the Maori members and their supporters.<sup>40</sup> In particular, Herries noted that:

It would be contrary to the universal policy of all New Zealand Governments to allow Native land to be sold for non-payment of rates or to be so charged with liens as to destroy the equity of redemption, and thus render a Native landless without giving him a chance of occupying the land and getting enough out of it to pay rates.<sup>41</sup>

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37. Bennion, p 44

38. NZPD, 1910, vol 153, p 436

39. National Efficiency Board to Acting Prime Minister, 18 May 1918, DB, p 490

40. Herries to Minister of Internal Affairs, 24 May 1918, DB, p 484, and see the same sentiments in Minister of Maori Affairs to Acting Prime Minister, 15 July 1918, DB, p 484

41. Herries to Minister of Internal Affairs, 24 May 1918, DB, p 484

In disagreeing with the Minister, the Board radically suggested that settlement by individual Maori farmers was not constructive and their 'useless and unoccupied' Maori lands should be sold for European settlement. As for the 'landlessness' which might result for Maori, the Board felt it would be better for Maori to sell their unoccupied lands even if this left them no other lands for their support.<sup>42</sup>

While this matter was deferred by the Government, the financial position for local authorities appears not to have improved after the war and the pressure to collect rates continued. The Native Land Amendment and Native Land Claims Adjustment Act 1919 gave sole discretion to the land court, on partition, to award additional land to any owner who had paid survey charges, rates or otherwise expended money for the benefit of all owners in a block.

In 1920, Maori petitioners advised the Minister of Lands that:

We would like to bring under your notice the fact that we are now being rated for the first time. We are agreeable to pay general rates, but we wish to be exempted from the harbour rate and the hospital rate . . . We are quite prepared to be rated on the lands we have improved, but not on our unimproved lands, and we ask you to take special note of this. With respect to the hospital and harbour rates we would like the Government to use the power that it possesses under Section 5 of the Rating Act 1910 to exempt certain lands from rates by Order in Council.<sup>43</sup>

The more general Maori response included complaints of an apparent lack of consultation at a local level before rates were imposed and willingness to pay for facilities coupled with a desire for some separate development and for unimproved lands to be exempt.

The major demand by local authorities around 1920, however, was to have rates charges registered against blocks of land rather than registered titles (thereby allowing previously exempt Maori land which had not passed through the court to be rated). Advice was sought from the land court registrars, some of whom thought this would not be a difficult adjustment, while one registrar pointed out that councils in his area were careless in their rates demands, referring to whole areas of the country and not specific blocks or titles; a lax practice which might be continued under the proposed system.<sup>44</sup> Herries responded to continued demands for powers to charge the land for unpaid rates with the comment that it was unfair to allow communally owned land to be sold for rates since many did not directly derive benefit or use from it, and that individualization was the answer.

Also in 1920, Arthur Ormsby noted in the *New Zealand Truth* that, in 1885, Ballance had argued that Maori had made their contributions in the form of land taken for roads and railways and given for national parks and educational purposes, and also in lands taken for confiscation. He said:

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42. National Efficiency Board to Acting Prime Minister, 4 July 1918, DB, pp 476–478

43. Office of Minister of Lands, 25 March 1920, DB p 458

44. Registrar Tairāwhiti Court to Under-Secretary of the Native Department, 28 April 1920

the amount of land now in [the] possession of the Maori in the North Island, unoccupied, is estimated at 19 acres per head. This would mean that if the local bodies are to levy the same it is only a matter of a short period when they (the natives) will become landless and paupers.<sup>45</sup>

During the early 1920s, pressure continued to be applied to Government by local authorities to make Maori lands more susceptible to rating charges and to make customary lands liable for rates. In 1923 the Native Land Amendment and Native Land Claims Adjustment Act provided for consolidation schemes, first envisaged by Ngata, which allowed the court to vest land in the Crown to satisfy outstanding rates (s 6(5)).

### 19.10 The Native Land Rating Act 1924

While many laws, especially in the nineteenth century allowed for the rating of Maori land, the actual return on rates was poor until the 1920s when progress in collecting rates was made. The Native Land Rating Bill was introduced to the House in 1924, (having first been suggested by the land court judges two years earlier). Its effect was to:

simply transfer the whole question over to the Native Land Court, and give the Court the power to deal with each individual case that comes before it. It may use rents for the purpose of paying rates; it may enter into an arrangement in regards to arrears; and it has the power to arrange with the local authority and the Natives as to how much shall be paid.<sup>46</sup>

Under this new provision, liens would be simple charging orders, easily imposed by the court (a system which local bodies had been agitating for since 1910). Ngata stated his opinion that while the legislation might force Maori communities to decide how better to utilise their lands, ‘a large area of so-called Native land in this country is land which should not be liable for any rates at all.’<sup>47</sup> Customary land continued to be exempt under section 4(a) of the new legislation. Section 9 of the Act provided for the recovery of rates by way of applications for charging orders upon the land which would be noted in the court records and registered against the title if one existed. A receiver would then be appointed who had the power to lease the land to recover the rates if necessary. If the rate remained unpaid after one year, s 10 of the Act allowed the land to be vested in the Native Trustee for sale, subject to the consent of the Native Minister.

At a conference convened by Te Kuiti local authorities in 1927, one legal representative for some Maori groups argued that Maori ‘objected to paying rates on unoccupied holdings, especially as the Government held large areas of land on

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45. *New Zealand Truth*, 25 September 1920

46. NZPD, 1924, vol 205, pp 1051–1053

47. *Ibid*, p 1057

which no rates were paid'.<sup>48</sup> The conference generally called for an end to the veto power of the Minister and the unrestricted power to sell land for unpaid rates. Other Maori also brought a petition to Government in September 1927, recalling the words of Stout in 1885 when the Main Trunk railway line began, that Maori lands would not be rated until sold or leased.

### 19.11 The Consolidation Commission

The Native Land Amendment and Native Land Claims Adjustment Act 1927 had also outlined a programme to establish a Native Lands Consolidation Commission, which Ngata turned his attention to soon after his appointment as Native Minister in 1928. With a view to extending consolidation schemes to North Auckland and the King Country, Ngata was intent on ridding native lands of outstanding rates in order to promote land development. Ngata encountered resistance from Maori to the scheme especially in the Rohe Potae, where Maori rejected both rates and a consolidation scheme and emphasised the agreement struck with Ballance in 1885 (that lands would not be rated until leased or sold). Maniapoto leaders eventually offered £13,000 to settle outstanding rates with eight local authorities. This offer was accepted by the councils.

The Native Land Amendment and Native Land Claims Adjustment Act 1930 authorised the Native Minister to make payments to local authorities in settlement of rates, and to take a charge to satisfy the payment, on land that was either outside or inside the consolidation scheme (s 13). Ngata, and other Maori, again pleaded for finance to enable Maori to compete fairly with Europeans and meet rates demands. The Native Land Act 1931 confirmed the provisions of the 1930 Act and reinforced the provisions for boards to administer lands, make payments towards rates from revenue received (s 343); to administer other lands when rates were in default (s 538); to make compromises with local authorities (s 536) and for the Native Minister to compound rates and acquire land in satisfaction thereof (s 537).

Local bodies had short-lived enthusiasm for the consolidation schemes, but the economic depression from 1929 raised new concern that Ngata's compromises had removed the ability to enforce payment of rates. In April 1933 the Government appointed a committee to look into the rating issue in general. Evidence given to the committee highlighted the familiar problem of Maori inability to gain finance and overcome the burden of rates. While Maori speakers tended not to question the principle of paying rates, they pleaded for exemptions for various reasons. Timu Te Kerehi and others of Wairoa submitted (rather too simplistically) that 'we should not pay any rates to the borough or to the county council or to the harbour board for the reason that under the Treaty of Waitangi we are not supposed to pay rates.'<sup>49</sup>

The committee also provided the forum for local bodies to air their concerns, one of which was the fact that Maori non-payment of rates had become worse since the

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48. *New Zealand Herald*, 26 August 1927

49. 17 May 1933, ma 1 20/1/14

1924 – 25 legislation because Maori had refused to pay once they knew their land could not be taken off them without charging orders. (Maori were generally confident that either the land court, or finally the minister, would be lenient.) The demand from local bodies was again that Maori be rated as Europeans by individualising land titles and making the land revenue-producing. Underlying all complaints was a disapproval of the Maori lifestyle and approach to land use.<sup>50</sup> However, local bodies apparently did not want Maori to lose their land but rather to be able to lease good land to rate-paying Europeans if the land was not being used productively. In its final report the committee noted that:

No local authority, however urgently in need of revenue, desires to see Natives dispossessed of their lands and it is certain that no Government could stand by and watch Native land generally being compulsorily disposed of for rates liabilities.

It broadly recommended better use of the existing system and some policy changes in the application of the existing law, including the introduction of a statutory charge against revenue from the land rather than any charge affecting the land itself.

No legislation followed the committee's report and the existing law continued to be enforced. Bennion comments that as the recording systems improved and more land became individualised or incorporated, the land boards appear to have been quite helpful to rates collection<sup>51</sup>. For two reasons, however, very little land seems to have been taken for rates arrears alone. First, the Ministerial veto remained a block to this solution (Bennion notes that it was the policy of successive ministers to refuse consent)<sup>52</sup> and second, the land court appeared ambivalent and in some cases hostile towards using the Rating Powers Act, largely because the court procedures were time-consuming.

By 1938 there was argument from the Cook County Council that 'the Treaty of Waitangi' (presumably specifically the refusal of ministers and courts to allow the taking of Maori land for rates) was preventing an effective solution to the rating problem.<sup>53</sup>

Rates compromises in Whakatane, whereby the county council agreed to remit 50 percent of rates where occupiers could make satisfactory arrangements to pay, resulted in a record collection in 1947 of 87 percent of the county council rates and 99 percent of the drainage rates. However, in Hokianga County (of which one third was Maori land) the consolidation schemes and rates compromises were not producing rates as expected. The council did not seem to have gone to the lengths of the Whakatane county to collect rates from individual owners or occupiers. The Taitokerau District land court judge, Judge Acheson, argued that little of the rates collected to date had been spent on roading in Maori areas and that Maori had not

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50. See 20 July 1933, ma 1 20/1/14, for example by the solicitors acting for the borough council at Ohakune

51. Bennion, p 70

52. Ibid, p 71

53. *Poverty Bay Herald*, 20 July 1938, DB, p 542

yet been compensated for the thousands of acres of 'surplus lands' secured under old land claims investigations.<sup>54</sup>

In 1940, the Department of Native Affairs reported that charging orders were on the decrease, that the Maori Land Boards were being appointed as receivers, where required, and that there was 'general satisfaction' with the systems for collecting payments.<sup>55</sup> For example, a record collection of rates was made at Waiapu (77 percent) in 1941 and further progress was reported in subsequent years. This was not true however for Ikaroa and South Island court districts where 'numerous' applications were received for charging orders each year and no compromises were noted.<sup>56</sup> In 1940, Michael Joseph Savage, as chairman of the Board of Maori Affairs, summarised Government attitudes to rates demands in saying:

Believing that it is neither equitable not just to the Maori race that its birthright should be whittled away though non-payment of rates on areas which have in the past lain idle, the Government is reluctant to agree to the enforcement of rating charges by sale until such a time as the particular Native has had a reasonable chance of obtaining from his land the necessary revenue to meet living-expenses, farm maintenance, and interest and rates.<sup>57</sup>

Bennion notes that Savage's attitude was shared by the land court judges as they struggled to balance the demands of councils and Maori ratepayers.<sup>58</sup>

## 19.12 The National Government and Land Development

The Maori Purposes Act 1950 embodied a National Government policy to utilise 'unproductive Maori land' which gave local authorities a further impetus to collect rates arrears. Section 34 of the Act allowed the Land Court to appoint the Maori Trustee to effect alienations of land which was: unoccupied; uncleared of noxious weeds; where rates had not been paid and the amount of rates had been charged against the land. By 1961, the Maori Trustee was receiver for 341 blocks for unpaid rates.<sup>59</sup>

In 1965, the Government established the Pritchard – Waetford committee to investigate Maori land questions (see ch 15 above). The committee set aside Maori concerns to retain their links with remaining lands through fractional interests, however uneconomic, and recommended that sweeping powers be given to the courts to bring fragmented blocks into productive development. The Maori Affairs Amendment Act 1967 subsequently sought to put many of the report's recommendations into effect and was fiercely opposed by important Maori groups. One of the

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54. Acheson to Under-Secretary of the Native Department, 21 October 1935, DB, p 513

55. AJHR, 1940, g-9, p 9

56. Ibid; AJHR, 1941, g-9, p 6

57. AJHR, 1940, g-10, p 6

58. Bennion, p 78

59. G and S Butterworth, *The Maori Trustee*, Wellington, 1991, p 83

concerns was that the compulsory conversion of Maori freehold land with four or fewer owners into the category of general land, made the land fully liable for rating.

At the same time, a rating Bill was introduced to the House and debated within the wider context of land development issues. The Bill provided that the court could vest land in the Maori Trustee to lease, sell or otherwise alienate if it felt that the alienation of the land would facilitate the payment of future rates. No ministerial check was provided and the authority levying the rate was required to advise the court on the 'best utilisation' of the land. The Minister for Local Government hoped that '[the Bill] would enable a good deal more Maori land to be brought into production'.<sup>60</sup> Rata complained that Maori lands were being judged by their 'production' while no such requirement was placed on Crown or general lands.<sup>61</sup> The section (155) of the Act was violently opposed by Maori, and eventually repealed by section 6 of the Maori Purposes Act 1970. However, this was done on the grounds that it was a 'dead letter provision' as the Maori Land Court had preferred to use others powers allowed to it to vest lands in trustees for better management.

### 19.13 Contemporary Issues

In 1987, the Government introduced a new rating Bill designed to consolidate and rationalise the rating powers of different types of local authorities under the one Act. It did not significantly alter the existing scheme for the levying and recovery of rates on Maori land. Bennion describes the provision exempting customary land as 'more symbolic than practical' presumably in reference to the small amount of land retained under this title. The power to have Maori land sold for rates was removed as a result of arguments that it was contrary to the principles of the Treaty.<sup>62</sup>

Claims before the Tribunal indicate that historic and contemporary rating issues remain a concern for Maori groups. Bennion notes that 'at the heart of many contemporary submissions is the old concern that the different cultural approach of Maori to their lands ought to be taken into account, as well as the Treaty promise of undisturbed possession'.<sup>63</sup> Councils with large areas of communally owned Maori land accept that the land may never be developed and the rates will periodically need to be written off. For example, in the *Daily Post*, it was reported that 'nearly one third of a million dollars in rates owing on Maori-owned land had been written off – an annual event which the Rotorua District Council had labelled farcical and embarrassing.' The mayor said that attempts to change the Rating Act had failed, and commented that 'It is absolute nonsense to put a commercial value on multiple owned Maori land which can never be sold'.<sup>64</sup> On the other hand, the provisions of

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60. NZPD, 1967, vol 353, p 3335

61. Ibid, p 3079

62. NZPD, 1987, vol 48, p 4165

63. Bennion, p 83

64. 'Maori land rates written off', in *Rotorua*, 1 May 1996

Part XIII of the Rating Powers Act 1988 mean that Maori land which is accessible and developed is liable for rates. However, the difficulty in collecting rates for Maori land under multiple ownership allows Maori land-owners of well developed land to avoid paying rates even though they receive services from councils. Some councils consider that uncollectable rates should become a cost to central government, not regional councils.

### 19.14 Conclusion

The rating of property to pay for social services is a reasonable exercise of *kawana-tanga*, legitimated by article 1 of the Treaty. However, Maori lacked capital other than their land, and they made a valid point that rates charges, especially in respect of customary land, amounted to a compulsion on them to sell land. The usual arguments that rating is a reasonable device to oblige people to develop land and make it yield revenue do not apply with the same force when land was in multiple title without a single legal personality and not readily able to attract credit from either the private market or the state. Maori cultural values require land to be set aside for *wahi tapu*, or *mahinga kai* (and therefore not yielding a revenue) need also to be considered. The legislative provisions that rated Maori land only when it was leased, or developed and yielding a revenue, are therefore more appropriate, in Treaty terms, than rates on Maori customary land, or undeveloped land. There is also the problem that Maori, in remote areas especially, saw little in the way of services for their rates. The exempting of certain categories of Maori land from the payment of rates, and the levying of other lands at half the usual rate were, therefore, reasonable attempts by the legislature to recognise the particular situation of Maori, but arguably did not go far enough. Given all the problems of title and credit, and the very small amount of Maori freehold land left by the 1920s, given also the compulsory takings of a percentage of Maori land under public works legislation, it can certainly be stated that no Maori land should have been sold up by the Maori Trustee or any other agency, for the non-payment of rates, and that rating should only have applied to land from which significant revenue was being made.

Detailed research in local body records, Maori Trustee files and Maori Land Board Files, held in district offices around the country, would be necessary to determine, with any precision, the takings of Maori land for non-payment of rates. In many more, indeterminable instances, arrears of rates contributed to other pressures to sell land. In terms of Treaty settlements it is questionable whether such time-consuming research is cost-effective. Arguably grievances arising from rating should be dealt with as a general factor in Treaty negotiations before a particular date (1940? 1945?) with individual attention being given to claims arising from later land takings for rates.

