

CHAPTER 9

PUBLIC WORKS TAKINGS, 1880–1928

Crown policy concerning public works takings of Maori land began to reflect a more hardline policy by the late 1870s and certainly by the 1880s. This was largely as a result of settler and Government perceptions that Maori resistance was no longer such a serious threat. This more hardline policy inevitably did provoke some Maori resistance. This happened especially in Taranaki, where there was still considerable confusion over the implementation of land confiscations and proper reserves for Maori, and where previous Government promises seemed to have been disregarded. Maori resistance at Taranaki was peaceful and concentrated largely on disrupting public works projects being used to open up disputed land for settlement. However this was still intolerable to settler politicians, who responded by enacting a series of legislative measures that denied even basic legal rights and then ordered Government forces into Parihaka village to violently disperse the people living there and arrest their leaders.

The events at Parihaka were bound up in the process of public works takings. It was Government insistence in pushing roads through without consultation that hardened Maori resistance and this itself often took the form of obstructing roading. Subsequent major public works legislation also clearly reflected settler reaction to Parihaka. The Public Works Act 1882 began a new pattern of having separate taking provisions for Maori land and the 1882 measures were harsh and vindictive. Although some of the harshest provisions were amended within a few years, some of the discriminations begun in 1882 survived in some form for almost a century. The traditions established in 1882 also helped to create entrenched attitudes in taking authorities that were to have a profound legacy on takings of Maori land for many years and also affected Maori attitudes to public works takings.

The 1882 legislation was preceded by a noticeable change in Government attitudes to Maori land takings. By the late 1870s the general feeling of war weariness was beginning to fade and settlers were becoming increasingly impatient with what they regarded as unnecessary time spent in acquiring land. McLean retired in late 1876 and died shortly afterwards. At the same time settlers were more confident that Maori resistance had been largely broken down and consultative measures were no longer so necessary. Ward has described how native policy became much less sympathetic to Maori from the late 1870s, and especially after the departure of McLean was much more inclined to rely on the imposition of state might. In 1877, for example, the Native Affairs committee heard a petition urging that road board laws should not be applied in the Waikato as Maori could not pay their rates, and therefore would have to sell their land and impoverish their

descendants. The chairman, John Bryce, reported that the committee did not deem it necessary or desirable to recommend any alteration in the law in the direction of further exemption of native lands from local rates.¹

The shift towards a more hardline attitude to dealings with Maori is well illustrated by events in Taranaki in the late 1870s and early 1880s. Previous Governments had vacillated over whether some of the confiscated land in the district should be abandoned and over what lands were to be returned to Maori. Administrative practices on the ground had also led Maori to believe that some confiscations had been abandoned and they had returned and reoccupied certain lands. Now the Government attempted to push through necessary roads in order to go ahead with land sales without having made adequate reserves for Maori. Te Whiti and his supporters at Parihaka attempted to highlight this failure with passive resistance to road construction and the settlement of disputed lands.

Politicians initially hoped that road building would pacify the district. As late as 1879, the Native Minister declared that if it was a question of keeping up a small standing army or making roads, he preferred road making. He was supported by the member for Western Maori, as long as roads were not built against the wishes of Maori owners and Maori were offered employment in construction work.²

However, it wasn't long before Te Whiti's campaign of passive resistance came to be regarded as an intolerable challenge that had to be crushed. The new Native Minister John Bryce began a much more aggressive policy aimed at forcing Maori submission to Government policies. In 1880 Bryce reported on progress with roads and telegraph lines being constructed in spite of opposition from Te Whiti and his followers. He reported that the Armed Constabulary had found it necessary to destroy some small Maori cultivations and the fences surrounding them to put the road through. Since then Maori from Parihaka had come down, dug up the road and sown wheat. They had persisted in erecting fences across the road and 'appear rather to rejoice in being arrested'. The only solution Bryce could see was that the country generally, with the exception of some reserves set apart for natives, 'must be occupied by a close European population'.³

The Government reacted to the campaign of passive resistance at Parihaka with a series of legislative measures that were reminiscent of the 1863 wartime measures in their lack of concern for basic ordinary human rights and the often-quoted principles of English law. As had happened in the wars, public works legislation was again inevitably caught up in this process as an instrument of Government policy to crush resistance. Legislation directly concerned with the situation in Taranaki included the Confiscated lands Inquiry and Maori Prisoners Trials Act 1879, the Maori Prisoners Act 1880, the Maori Prisoners Detention Act 1880 and the West Coast Settlement Act 1880. This legislation breached many of the principles of English justice and included, for example, provision for indefinite imprisonment without trial. Obstructing a highway was also made a criminal offence, with harsh penalties. The West Coast Settlement Act was described as

1. Report of Committee, 18 September 1877, AJHR, 1877, I-3

2. NZPD, 1879, pp 932–933

3. Report by John Bryce, 13 August 1880, BPP, vol 16, pp 361–362

allowing Maori malcontents obstructing the work of settlement to be dealt with as criminals.⁴ Prisoners tried under this Act for obstructing the highway were sentenced to a harsh two years of hard labour at Lyttelton, then faced with a surety of £50 to keep the peace for six months after that.

At the same time, the Public Works Bill 1880 apparently initially contained clauses that allowed for the taking of Maori land in a similar manner to the old 1864 Act, and these clauses were presumably aimed at the people of Parihaka. The Maori members complained about the proposed clauses 14 and 15, in debate on the Bill, saying they were similar to the old confiscated land provisions. The clauses could also be used to take Maori land in other districts and it was implied that resistance there might be more violent than in Taranaki. The word ‘take’, while it may not mean much in English, had a ‘very deep meaning’ for Maori. Even loyal tribes would oppose the clauses. Maori members also wanted the Government to consult them about such proposals before such Bills were brought to the House. The Government promised that all modifications urged would be considered and clauses likely to lead to much discussion or felt to be of not such great importance would be abandoned in order to save time.⁵ In the end, for reasons that are not entirely clear, the 1880 Act did not contain the clauses the Maori members had complained about.

That was not the end of the matter however. Government forces invaded the settlement of Parihaka in November 1881 on the orders of John Bryce. In the face of passive resistance, Te Whiti and others were arrested, the people were dispersed, women were abused, and property was looted and destroyed. Once again settlers showed that when their interests were perceived to be at stake, the much-vaunted principles of English justice could be easily bent in pursuit of their aims.

Although the 1880 measures were dropped, the next major public works Act, the Public Works Act 1882, clearly bore the influence of the Parihaka troubles. As had happened before in the 1860s in response to war, the 1882 public works legislation was again used as a means of discriminating against ‘uncivilised’ Maori, who by implication did not deserve the traditional protections afforded to more civilised European landowners. The new Act treated Maori holding land by customary title even more harshly when it came to compensation. Once again traditional Maori land attracted punishment rather than the protections that had been guaranteed in the Treaty.

The Public Works Act 1882 incorporated many provisions of previous Public Works Acts and their amendments relating to general takings of land for public works purposes. The major difference was in the introduction of distinctly separate provisions for taking and paying compensation for Maori land, as opposed to European-owned land. These were not only separate but they were explicitly discriminatory towards Maori land and in particular customary Maori land. The impact was not only a short-term vindictiveness in response to Parihaka, but the Act began what was to become a long-standing custom in public works legislation of

4. Report, BPP, vol 16, p 375

5. NZPD, 1880, vol 37, pp 712–713

separate and discriminatory provisions relating to Maori land, some of which lasted well into the twentieth century.

The 1882 Act defined a ‘public work’ as any survey, railway, tramway, road, street, bridge, drain, harbour, dock, canal, waterwork, and mining work, electric telegraph, lighthouse, building, and every undertaking previously authorised by any Act of the General Assembly or provincial ordinance.

The general procedure for taking lands was contained in Part 2 of the Act, and was much the same as in previous Acts and amendments. The protections were also very similar. These included requirements for the Minister or local authority to prepare plans and make them public, to serve separate notice on owners and occupiers, and to hear and give due consideration to well-grounded written objections made within 40 days. As in 1876, Railways were exempted from these provisions when constructed under special Acts that had been scrutinised by Parliament. Land not required could be sold after first being independently valued and offered at that price to the original owner and then to adjacent owner(s). The exception being surplus land sold to an education board (ss 10–14).

As in previous enactments, land taken but not required immediately could be leased. Land could also be taken after a public work had been built if it was found that there were still private interests in land public works had been built on, or where it was desirable for the public ‘use, convenience, or enjoyment’ of any public work that further land needed to be taken. Written consent was also required before taking or entering land occupied by any building, garden, orchard, or similar, except if it was for railway purposes. The Minister or local authority could also make an agreement to purchase land required for a public work (ss 17–22).

The 1882 Act also had a separate series of provisions within Part 2, dealing with special power to take native lands by the Governor for any Government work. Presumably these powers did not therefore extend to local authorities. The provisions included the now long-standing right to take certain Maori land for roads without compensation, which had originated in the Native Lands Acts (s 23). In a new set of taking powers, the Crown could now take any Maori land whatever title it was held under, for a Government work by order of the Governor in Council ‘without complying with any of the provisions hereinbefore contained’ (s 24). All that was required was a gazetting for two months of any such order and the Governor could enter and take any lands necessary for a work. The Governor could also enter such lands to make surveys or levels without giving any notice or making any application to any person owning or occupying such lands other than the already published *Gazette* notice (s 25). The only restriction was that the consent of the person *occupying* (emphasis added) the land was required for entering cultivated land where crops might be damaged or where buildings of any kind were erected (s 25). Land taken or injuriously affected was to be made according to the following provisions. In the case of unextinguished native title, the Minister ‘may’ cause application to be made to the Native Land Court to ascertain what compensation should be paid, what persons were entitled to be paid and what land was affected by the Order in Council. After hearing such evidence as may be brought before it or as may be thought necessary, the court could make such orders as it thought fit. The court was to have all the powers of a compensation court for

this purpose, and compensation was to be paid to owners or occupiers as soon as practicable after the making of the court order. Interest not exceeding 7 percent per annum was payable from the date of the order (s 26).

Where title to Maori land was derived from the Crown, then compensation was payable as for European-owned land. There were also penalties for moving or destroying survey pegs or obstructing authorised workers, or for damaging or destroying bridges or buildings. Anyone obstructing a surveyor or anyone else involved in this work, or damaging or destroying associated pegs or survey marks, was liable to a fine of not more than £50 (s 26(3)). Anyone destroying damaging or removing any building or bridge on land taken was liable to be imprisoned for up to two years with or without hard labour (s 26(4)). These were the same as the penalties for the same offences under the general provisions in Part 10 of the Act. They seem to have been included again in the provisions dealing with native land as an extra warning and because that was the area where most offences were expected.

The general provisions in Part 3 of the Act relating to compensation for European-owned land or Maori land held by Crown grant were similar to those in previous Acts and amendments. The principle was that full compensation would be paid. Claims were to be determined by a compensation court, and there was a time limit of five years. The procedures for having claims heard and assessed were also similar. The clause retaining the right of the Crown under other legislation to take land for a road without compensation and to use the land for roads or railway purposes was also retained (s 72).

The powers relating to surveys in Part 4 were also similar to previous Acts and amendments. The clause requiring a surveyor to have permission to enter Maori lands was, however, amended. Now the permission of the Minister was required, or entry could be made under the authority of orders in council issued under the special provisions of Part 2 respecting the power to take native lands (s 77). This meant for Government works the requirement for permission had effectively been done away with. Provisions under Part 5 on roads were similar to previous legislation.

However, there were additional ‘special powers as to construction of roads in certain cases’. These were intended to allow the construction of Government roads in sparsely populated areas where the land had not yet been surveyed. Where the Governor was authorised to construct a Government road in such an area, he could issue a proclamation setting out the two termini of the proposed road and its general direction and width. He could then authorise survey work and at any time after the proclamation could take the land as though it had been duly taken under the Act. The road was to be deemed a Government road even though the provisions in Part 2 had not been complied with. The Governor then had one year to tidy up the survey and proclaim the exact land required taken. Compensation was payable under the provisions in Part 3 (s 123). This section seems to have been included because of the convenience similar provisions were found to have in constructing railways. However it represented a major loss of protection for landowners, and as it was designed for Government roads in sparsely populated areas it is likely once again to have had a considerable impact on Maori. The powers of river boards were similar to previous legislation.

The provisions concerning railways in Part 6 were also similar to those in previous enactments. In general, takings of land for railways were still exempt many of the protections available for other public works takings.

The special provisions dealing with Maori land required for Government works in the 1882 Act turned the clock back to the war years of the 1860s, but this time the intended discrimination against Maori was even more explicit. These measures were clearly influenced by the Parihaka troubles and had an air of vindictiveness. In terms of takings, all Maori land, whether Crown-granted or customary, was stripped of traditional protections that had been theoretically available to owners of all land in the 1870s and was still available for European-owned land. Even consent for entry onto cultivated land was only required from persons occupying the land which in many cases, especially in Taranaki, would be European lessees. The old requirement for permission for a surveyor to enter customary land was also removed in the case of land required for Government works.

The special provisions applied only to Government works and in theory were not available to local authorities. It is not clear how significant a protection this really was. As already seen, the protections and consultation had only really been taking place at a national level anyway. In addition, by having central government take land for them, local authorities could easily circumvent these restrictions.

In terms of compensation, while Maori land held by Crown grant was treated the same as European-owned land, customary Maori land was treated quite differently. It was up to the Minister rather than owners to make application for compensation and the important word was that the Minister ‘may’. This seemed to allow the Minister discretion rather than require application to be made. Compensation was then to be decided by the Native Land Court as it saw fit. There were obviously some practical reasons for these provisions. Unextinguished Maori title by its nature was communal, and exact individual ownership and description of land was still undetermined. Therefore if it was to be taken and compensation awarded on an individual basis, the court had to be involved. The insistence on dealing at an individual level rather than with iwi was however yet another attack on the mana of iwi supposedly protected by the Treaty. The provisions gave great power to the court to decide ‘as it saw fit’ on these matters. The court was also possibly at a disadvantage in determining the value of compensation compared with the expertise built up in a compensation court especially established for the purpose.

A series of rating Acts were also passed in 1882. The Crown and Native Lands Rating Act 1882 provided for the rating of Maori-owned land, whether held by title derived from the Crown or by customary title, within five miles of a public road in order to contribute towards the maintenance of the road and other public works. Notice of the rates demand for native owners was to be made in the *Gazette*, and if the rates were not paid within the required period, the Colonial Treasurer would pay them and make them a charge against the land. The owners of land where rates were paid could nominate one of their number to be a voter on the ratepayer’s roll.

The extension of rating was precisely what Maori had feared would happen if they agreed to roads on their land. All Maori members took the opportunity to criticise the Bill in the House. They also reminded the House that in many cases the

roads and railways that were brought within five miles of Maori land were made by compulsion and they had not been asked for by Maori.⁶

As usual there were numerous amendments to the Public Works Acts. Those concerning the Crown right to take certain Maori land for roads and railways without compensation have already been covered in chapter 5. Apart from this, one of the major amendments of the 1880s was concerned with land taking for defence purposes. The recent ‘Russian scare’ prompted the Government to become concerned about external defences. The annual public works report printed in 1885 referred to the recent threatened outbreak of war with Russia and the decision to place the chief ports of the colony in a state of defence. This consisted of beginning necessary works for the reception of guns. Within three months all the guns available in the colony were mounted and preparations were well underway for finishing associated works such as magazines, stores, barracks, and parapets as well as necessary access roads.⁷

The Government took some land under the Public Works Act 1882 for defence purposes, but then questions were raised as to whether the Act did provide sufficient powers for the purpose. The Public Works 1882 Amendment Act 1885 therefore extended the definition of public works to include any fortification for the purposes of defence (s 2) and validated the previous taking (s 10). The Act also placed defence takings on the same footing as for railways and therefore normal protections such as hearing of objections did not apply (s 4). Compensation provisions were the same as in Part 3 of the 1882 Act and were limited to matters concerning land taken (s 6).

The second amendment of 1885 was the Public Works Act 1882 Amendment 1885 (no 2). This was concerned mainly with extra powers concerning railways, including the power to acquire land for the purposes of supplying water to railways (s 16). Section 20 of the 1882 Act regarding consent before certain land or materials could be taken was repealed and replaced by new provisions. The consent of the owner was still required for the removal of bricks or stone from commercial sites but the consent of the Governor in Council was now required for the taking of land occupied by any building, orchard, or vineyard, or the cutting of any ornamental shrub (s 4). Land required for railways continued to be exempted from these provisions. The protections also remained eurocentric and there were still no similar protections in the provisions concerning Maori land.

The Public Works Act Amendment Act 1887 retained the harsh 1882 provisions for taking customary Maori land for Government works but made takings of Maori land derived from Crown title subject to the general provisions of Part 2 of the 1882 Act. Section 13 of the 1887 Amendment repealed and replaced sections 23 to 25 of the 1882 Act containing the special powers to take native lands. The replacement provisions in section 13 allowed the Governor to take any native land (namely customary land) and any land owned, held, or occupied by natives where title was derived from the Crown. For customary land, the provisions were the same as in 1882. For works, except railways, all that was required was an Order in Council to

6. NZPD, 1882, vol 43, pp 703, 716, 829

7. AJHR, 1885, vol 2, D-1, p 20

be gazetted defining the land needed in ‘general terms’. Two months after this the Governor could enter and take the lands required without giving any notice to the owners or occupiers other than what had been given in the Order in Council. Subject to these requirements there was no need to comply with ‘any of the provisions’ concerning general takings in the 1882 Act (s 13(1)).

Section 13 however also provided that native land, where title was derived from the Crown, had to be taken under the general provisions of Part 2 of the 1882 Act and its amendments. This at least restored some protections for Maori land where title was derived from the Crown (s 13(2)). For example, the protections concerning orchards, and so on, now also applied to Crown-granted Maori land, although these definitions remained eurocentric.

All Maori land taken for railways, however title was derived, was subject to the taking provisions of Part 6 of the 1882 Act and its amendments (s 13(3)). This placed Maori land on the same footing as other land taken for railways, and in all cases the protections for land taken for railways were considerably weaker. As the special provisions regarding taking Maori land were now repealed, this presumably meant surveyors still had to obtain permission of the Minister before entering native land.

In terms of compensation, the provision requiring the Native Land Court to hear cases concerning compensation for customary land was repealed. Instead, where any Maori land was taken for public purposes, whether originally held by customary title or by title derived from the Crown, the owners were required to rely on the Minister who ‘may’ make application for compensation to the Native Land Court. The court was to ascertain the amount of compensation to be paid and the individuals to whom it was to be paid, and the exact land affected by the Order in Council. The court could hear any evidence thought necessary and make such order ‘as to it shall seem fit’ (s 14).

The Public Works Acts Amendment Act 1889 contained provisions that generally continued to extend the powers of local authorities. For example, land taken by the Government for railways could be vested in a local authority for a road (s 5) and county councils could delegate certain powers to road boards (s 14). Drainage powers were also extended so that outlets to lakes could be considered drains (s 18). There were also extended powers relating to railways, for example regarding land taken (s 10) and leasing land (s 22). Compensation provisions were more detailed, for example the valuation of land taken was to be determined at the time the land was first entered (s 11). The Crown could also set apart land for fortifications from Crown lands, public reserves, and public domains, and land vested in local authorities or trustees for public purposes could be taken for fortifications and no compensation paid (ss 30–31). In terms of Maori land, the Native Land Court was now to determine all compensation claims regarding native land regardless of who had an interest in it, including Europeans. The Compensation Court was to have no jurisdiction at all for Maori land and sittings of the land court for compensation were to be notified in the *Kahiti* as well as the *Gazette* (s 16).

The Public Works Act 1894 was largely a consolidation Act incorporating the provisions and amendments of previous years. A major change however was that

the separate section on takings of native lands now appeared to be no longer restricted to just Government works, but to now apply to all local authority takings as well. The old requirement that the provisions referred only to Government works was dropped and they now related to any taking of land for a public work apart from that taken for railway and defence purposes (ss 87–88). The definition of a ‘public work’ was a consolidation of previous definitions. It included any survey, railway, tramway, road, street, gravel pit, quarry, bridge, drain, harbour, dock, canal, river work, water work, and mining work. Also included were any electric telegraph, fortification, rifle range, artillery range, lighthouse, or any building or structure required for any public purpose or use, including lands that might be necessary for the use, convenience, or enjoyment of the same. In addition, a public work now included lands for any lunatic asylum or associated use or for any public school or associated use. The definition of ‘native land’ was ‘land held by Natives under their customs or usages, whether the ownership thereof has been determined by the Native Land Court or not’. The Act continued the trend of separate provisions for taking native lands (Part 4) as well as separate provisions for areas such as surveys, roads, rivers, and general land takings.

Takings of lands for railways and defence, and takings of customary native lands were, as usual by now, excluded from the ordinary provisions of general takings of land for public works. The general provisions contained the usual protections for landowners such as the requirement for notice, the restriction on entering orchards, or similar places, without written consent, and the right to have objections heard. The provisions also allowed for purchase by agreement as well as compulsory taking. The procedures for disposing of surplus land also contained traditional provisions such as in most circumstances, the offer back at valuation price to the original owner, then adjacent owner(s), then sale at public auction (ss 10–33).

The principle for compensation for general land takings continued to be that of full compensation for land taken or damaged. The exception was for the traditional Crown right to take certain land for roads or railways without compensation under some other legislative authority, or for Crown lands taken for a public work. Where the Crown had rights to resume land under some Act, the compensation was also to be in terms of that Act. Compensation claims also retained their five-year limit for takings and had a one-year limit for damages (ss 34–36).

The general compensation procedures were updated but basically similar in principle to previous legislation. These included requirements that the claim be made in writing and detailed particulars given of the land and compensation claimed. Claims were to be determined by the Compensation Court. Provisions were made for estimating compensation including valuing land and compensation could be offered in land as well as money (ss 37–86).

Native lands were dealt with separately in Part 4 of the 1894 Act. The provisions in this part were also basically a consolidation of previous legislation. The distinction between customary land and that derived from the Crown was retained with harsher provisions for customary land. The general protections applying to general land takings still did not apply to Maori customary land taken.

The 1894 compensation provisions were also similar to previous legislation. For Maori land taken, all compensation claims had to be heard by the Native Land

Court. The Minister in the case of a Government work ‘may at any time’, and the local authority in the case of a local work, ‘shall, not later than six months after the date of the first gazetting’ of the Order in Council or proclamation taking the land, cause application to be made to the Native Land Court to ascertain compensation payable, persons entitled, and the exact land involved (s 90(1)). Anyone having an interest in native land taken, including any European, still had to have the claim heard by the Native Land Court. Other provisions regarding notice in the *Kahiti and Gazette*, and the paying of compensation were the same.

Where roads were surveyed and laid off on or over native land under the direction of the Surveyor General, the site of such a road was to be deemed a public road and was to vest in the Crown. Where roads were made on the boundary between land owned by natives and Europeans, the road was to be taken equally from both lands where practicable (s 95). Under Part 5 of the Act related to surveys, the old requirement was retained whereby the previous consent of the Governor in council was required before entering a native cultivation to make a road (s 98).

Other parts of the 1894 Act, relating to roads and rivers, railways, defence, drainage, and water supplies, were mainly a consolidation of previous legislation with some extensions of powers. For example, a landowner who bought Crown land could now require access through adjoining Crown land where possible and otherwise through private land under certain conditions (s 112). Land takings for railways and defence purposes also remained exempt from most of the general protections required for other land takings.

As usual numerous other amending Acts were passed in succeeding years. For example, the Public Works Act 1903 contained provisions regarding the setting back of frontages and road access (ss 2–3), the definition of public works was extended to include works for which money had been appropriated by Parliament (s 6), the definition of defence purposes was extended (s 15), and land could be taken for forest plantations, recreation grounds, or for the preservation of scenery as if such purposes were public works within the meaning of the 1894 Act (s 16). The Public Works Acts of 1905 and 1908 were compilations and consolidations of previous Acts and amendments.

It soon became clear that there were difficulties in defining what was ‘native land’ held by customary title and therefore under what part of the Public Works Act Maori land could be taken. The definition of ‘native land’ already differed according to the purpose of various statutes, and there was considerable argument over at what point customary title ceased, for example, at investigation, at registration in the land transfer system, at the issuing of a grant, or by statutory decree.

Questions were raised on this point in the case of the Te Taheke block, taken for electric lighting purposes in 1899. This was another of those confusing cases where the owner had ‘gifted’ land to the Crown, the Crown had paid money in ‘acknowledgement’ of the ‘gift’, and had also taken the land by proclamation under the Public Works Act. However, it had been taken as if it were ‘native land’ when in fact it had been investigated by the Native Land Court. The Supreme Court found that under the Native Land Court Act 1894, Maori land ceased to be customary land as soon as ownership had been determined by the Native Land Court. Therefore the

definition of ‘native land’ in the Public Works Act was ‘insensible’. Although it may have been correct at the time, as the Native Land Court Act 1894 had not then been enacted, it was made insensible by the passing of that Act. The compiler of the 1905 Act repeated the definition without noticing the change required. The only operative part of the definition now, therefore, was lands owned by natives under their customs and usages. The lands in question therefore were found not to be native lands and should have been taken under the general provisions of the Act and compensation paid.⁸ This left open the real possibility that the Crown had incorrectly taken other Maori lands in the same manner in the years 1894 to 1909. However the Rotoiti Validation Act 1909 was then passed, which validated the erroneous Order in Council for the blocks in question and also validated and declared immune from legal challenge all similar Orders in Council relating to the compulsory acquisition of native land (s 5). This retrospective validation was not unusual in public works legislation where doubts were raised about the legality of takings. However, in debates at least, the blanket nature of the validation was challenged.⁹

In the Public Works Amendment Act 1909, the definition of ‘native land’ was tidied up to mean land held by natives under their customs and usages. The time for the gazetted taking was also tidied up as it had also been questioned in court. The section concerning compensation was expanded to cover native land held by a body corporate or a Maori Land Board (s 91). The section concerning notice (s 18) was amended so that the provisions requiring the names of the owners and occupiers of land to be taken did not apply to natives, unless the title was registered under the Land Transfer Act. Where it was not, a notice was to be published in the *Maori Gazette*, but failure to do so would not invalidate the taking (s 4). The Native Land Act 1909 also repealed the old safeguard requiring the prior consent of the Governor in Council before surveyors could enter Maori-owned cultivations (s 403).

There were various other amendments up until 1928. For example a public works amendment in 1910 made the Native Land Court compensation award final for the amount awarded and the Public Works Act 1924 extended the definition of ‘bed’ of river or stream for the purposes of the principal Act, to include all land within stopbanks in order to allow for the removal of trees and other obstructions (s 6).

There were also many other legislative developments besides the actual Public Works Acts and amendments, that enabled Maori land to be taken for public purposes. The term ‘luxuriant legal jungle’¹⁰ applied to Maori land legislation in general also well describes the various public works taking legislation that was clearly developing in the years up to 1928. It is not surprising that Maori were often unsure what legislation their land was being taken under, even assuming they were aware of or understood all the relevant provisions. Lawyers and even legislators themselves were frequently confounded as well.

8. *In re Rotomahana and Taheke blocks* (1909) 29 NZLR 203

9. NZPD, 1908, vol 148, p 1501

10. G Asher and D Naulls, *Maori Land*, New Zealand Planning Council, Planning paper no 29, March 1987, p 38

The explanation for such a legislative tangle appears to be that measures were simply passed as settler needs required and little thought was given to the consequences for Maori. It is beyond the scope of this report to analyse every one of the numerous amendments to various legislation concerned with compulsory public works takings. Instead major trends in legislative and administrative policy are identified with particular regard to those having most importance for Maori land. It must be borne in mind that for individual claims however, it may be necessary to work out the exact legislative provisions applying at the time.

The legislative pattern already becoming evident by the late 1870s continued until 1928. There were increasingly wider definitions of public works purposes and more extensive legislation dealing with particular types of public works. Various Maori land legislation continued to allow general public works takings, such as the right to take up to 5 percent of land for roads and railways without compensation. This right was finally abolished by the Native Land Amendment and Native Land Claims Adjustment Act 1927 (s 30). The Maori Land Claims Adjustment and Laws Amendment Act 1907 also enabled Maori reserves to be taken for scenic purposes. Any Maori land set apart as a reserve other than a papakainga reserve could, if suitable for scenic purposes, be sold as a scenic reserve by agreement between the Minister and the Maori Land Board and with 'due regard to the interests of the beneficiaries' (s 29). The 1907 Act also dealt with the payment of compensation to owners by the court (s 3).

In addition, Maori land legislation often dealt with particular blocks of land for public works purposes. For example, the Native Land Amendment and Native Land Claims Adjustment Act 1916 enabled a portion of Tawhiti block to be taken under the Public Works Act 1908 as residential sites for the Tokomaru sheep farmers' freezing company (s 23). The Otago Heads Native Reserve Road Act 1908 vested part of the reserve in the Crown for roading and provided compensation for land taken. The Taumutu Native Commonage Act 1883 and amendments excluded 700 acres at Lake Ellesmere from the operation of the Railways Construction Act 1878 and vested the land for the support of native residents. The Governor, however, had the power of resumption if any of the lands were required for public works (s 5). The Westland and Nelson Native Reserves Act 1887 mainly protected European leaseholders by providing for perpetual leasing of Maori reserves in the districts (s 14). The Act also made the reserves subject to the Mining Act 1886 (s 18) and provided that the taking of native land for mining was to be a taking under the Public Works Act 1882 (s 19).

Some of the problems evident in trying to revest Maori land taken for public works in former owners also became more apparent during this time and special legislation was required allowing revestings. The Waipuka Block Road Revesting Act 1908, for example, concerned native land that had been taken for a road in Hawke's Bay. A more suitable line of road had then been found and therefore the old road land was revested in the former owners. This case, which could only be remedied by legislation, highlighted some of the problems experienced by the Native Land Court in dealing with land taken, but no longer required, for public works purposes. The Native Land Amendment and Native Land Claims Adjustment Act 1920 provided that Maori land taken for roading but no longer required where

the road was stopped could be vested in the former owners by the Native Land Court and the land would become Maori freehold title (s 7). This solved re-vesting problems for land taken for roads but not for other public works purposes.

Some general legislation also began to routinely contain provisions relevant to public works purposes. For example, the various Reserves and Domains Acts often contained provisions about particular pieces of land, where disposal or alternative use required a legislative enactment. The Reserves and Other Lands Disposal and Public Bodies Empowering Act 1910, for example, cancelled some reserves allowing certain blocks to be re-vested or reconveyed to Maori owners (ss 7, 20, 22). Some of these reserves were originally taken for public purposes. The Act also enabled roads to be closed and the land taken to be re-vested or exchanged (s 23). These Acts also often dealt with foreshores and harbour land, which were often still subject to Maori claims. For example, the 1910 Act vested a portion of the Napier foreshore in the local authority for municipal purposes (s 26).

A tradition also began during these years of including public works provisions and authorisations in various Finance Acts. The Finance Act 1918 (no 2) included authorisation for the extension of the Paeroa–Pokeno railway. For this purpose the Act was deemed to be a special Act authorising a railway within the purposes of the Public Works Act 1908.

Numerous Railway Acts also continued to be passed, such as the Railways Construction and Land Act 1881, which allowed land to be entered and taken for authorised railway purposes (ss 23–29) and gave powers concerning construction (s 34) and vesting of native ceded land (s 121). Numerous Railways Authorisation Acts were also passed, such as those between 1911 and 1914. These enabled specific railways to be built or extended and in many cases provided for the taking of land required. Special railways authorisations were also routinely made in schedules to the main Public Works Acts, for example the Public Works Act 1879.

Governments recognised the possibilities of electrical power in the late nineteenth century and the Electric Lines Act 1884 dealt with the control, construction, and maintenance of electric lines for telegraph, telephones, and electric lighting. The Act contained additional powers concerning electric lines (ss 7–8) as well as incorporating powers under the Public Works Act 1882, including compensation provisions.

Mining continued to be an important industry in the later years of the nineteenth century. The Coal Mines Act 1886 incorporated relevant provisions of the Public Works Act 1882 regarding the taking or use of private land for works. However the land was to vest in the applicant for a licence rather than the Crown. The Act also included compensation provisions, also to apply to the applicant rather than the Crown (s 54). The Mining Act Amendment Act 1887 (no 2) assumed that the Crown had the right to grant mining rights on the foreshore and under the sea. It also did away with riparian rights in mining districts. The Act also gave the Governor power to vary the terms of the contract without the consent of Maori in cases where Maori land had been ceded for mining purposes (s 5). Native lands within mining districts were deemed Crown lands for mining purposes (s 6).

The Mining Act 1891 was basically a consolidation of previous legislation, although coal mining was excluded. It contained various provisions regarding

mining and associated activities. These included procedures concerning compensation, miners' licences, prospecting, and constructing necessary works such as water races. Many provisions of the relevant Public Works Acts were incorporated. The Act also included special sections on prospecting on native land (ss 94–97) and mining districts on native lands (ss 205–211). There were also sections on 'resumption' of land for mining purposes, including native land that had been alienated (ss 212–219). The Mining Act 1926 retained some sense of the old agreements over cessions of Maori land for mining made between the Crown and Maori. On investigating title of native land, the Native Land Court could, on the application of the Governor-General, declare the whole or any portion of such land open for prospecting. This did not require the consent of the owners and occupiers. However agreement between the owners and the Crown was required before the land could be declared ceded for mining purposes (s 30). Native reserves were also to be made available for mining purposes in some cases (s 31). All ceded native lands were declared to be opened for mining but the agreements at ceding were to be upheld for as long as they continued in force (s 32). Until the freehold of such ceded land was acquired by the Crown, all fees, royalties, and rents would continue to be payable to the native owners (s 33). Alienated Crown or native lands were open for prospecting and could be resumed by the Crown for mining purposes under the same provisions as for takings for public works (ss 52–53).

The Government also continued attempts to gain ownership of natural resources in legislation such as the Rotorua Town Lands Act 1920 where any geothermal rights were retained by the Crown (s 15).

The intense interest in New Zealand as a tourist destination in the last two decades of the nineteenth century appear to have stimulated Government interest in the development of tourist areas, scenic reserves, and national parks, although more research is required on this. The Tongariro National Park Act 1894 authorised the establishment of Tongariro National Park from lands gifted by Te Heuheu Tukino of Ngati Tuwharetoa in 1887. Some lands the Government wanted to include in the park were still owned by Maori and although the Government had purchased most shares there were still some outstanding and the owners refused to sell. The Act gave the Government power to take the remaining 'residue of lands' which were of 'no benefit to the native owners' and to pay compensation.

The Scenery Preservation Act 1903 extended powers to take land for scenery preservation in the main Public Works Act. The 1903 Act provided for the establishment of a commission which could investigate areas of possible scenic or historic interest or containing thermal springs. Regardless of whether they were Crown, private, or native lands, the council could then recommend those that were worthy of permanent reservation as scenic thermal or historic reserves (s 3). Once these reserves were proclaimed they were inalienable except by Act of Parliament and were not to be damaged in any way (s 4). The land required for these reserves could be taken under the provisions of the Public Works Act. Compensation was, however, to be paid to the Public Trustee who was to invest it and pay the income from it to the persons entitled (s 5(2)). The Act was amended in 1906 but this time only referred to Crown or private land and this was continued in the later 1908 Act.

An amendment Act of 1910 however specifically stated that private land included native land (s 3).

In addition, the Governor could from time to time, by notice in the *Gazette*, grant Maori the right to take or kill birds that were not protected in any reserve that was previously native land. Where such reserves contained ancestral urupa, the Governor could also give permission to continue the burial of deceased Maori there. These rights could be varied or withdrawn at any time, also by notice in the *Gazette* (s 7). All Maori land taken for scenic purposes under the Public Works Act 1908, 1905, or 1894 prior to this Act were also deemed to have been validly taken (s 10). Where land taken for a reserve was considered to be no longer suitable, for example the timber had been cut down, the reserve could be revoked, the land disposed of as Crown land and the proceeds applied to the acquisition of other reserves (s 8). The Governor could also by mutual agreement, exchange Crown land for land required for scenery preservation (s 11).

In parliamentary debates on the Scenery Preservation Amendment Act 1910, the Attorney-General explained that the power to take Maori land had been included in the original 1903 Act but removed in 1906 as the relevant provisions had not been translated into Maori and therefore could not be passed. Owing to the pressure of time, the matter had been allowed to lie, and the amended Act passed anyway. In addition the Government thought there was still sufficient power under the Public Works Act 1905 (s 14) and the 1908 Act (s 14). However, recent Crown legal opinion had held that fresh statutory power should be given to give the Crown the undoubted right to take native land for scenery preservation. Some of the most attractive scenery in the Dominion was on native land and it was desirable that power be given to the state to obtain these beauty spots for the people of the Dominion for all time. In particular, at the moment it was intended to preserve the Wanganui River. Full compensation was paid to native owners for the land taken and they would not be rigidly excluded from the reserves as long as they did not make any use of them contrary to scenery protection. They would also have some limited user rights. One of the Maori members of Parliament, Pere, had a number of concerns with the Act. He believed that some land previously taken had been allowed to deteriorate and if this was to happen, it would be better to return it to its original owners, Maori or European. He also thought that the assessment of value for compensation was unsatisfactory. The Act required some definite method of determining the value of such land. He also wanted a clause inserted in the Bill that required mutual agreement between owners and the Government before the land could be taken. He withdrew this when the Attorney-General assured him that ‘it must be by mutual agreement – so that nothing can be done unless the Natives agree’.¹¹

The Minister of Agriculture also explained that the 1910 Bill was intended to secure certain beauty spots and to give the Government certain powers which it was believed they had already possessed under Acts of Parliament. It was necessary chiefly on account of the Wanganui River, which it was desired to conserve as it was very beautiful and would in future no doubt attract many tourists. In reply to

11. NZPD, 1910, vol 153, pp 890–891

criticism of retrospective validations, the Minister denied that this was happening – it was simply intended to ‘validate straight business transactions done with the Natives . . .’. The Minister also claimed that his critics did not know or were unable to show a single transaction where the natives were not compensated or had not themselves given the land. In spite of this there was some criticism of the way the Crown had acted in the past where it was quite possible that natives had not been aware the land was being taken and had no opportunity of objecting or claiming compensation. The chief critic was the then member for Tauranga, Herries, who also criticised the practice of retrospective general validations.¹²

The legislative tangle over scenery preservation reveals again that the Crown may well have been involved in invalid takings and was forced to validate previous actions much as had happened after the Te Taheke case. The assurance from the Attorney-General that the agreement of Maori owners was sought before any land was taken for scenic purposes is remarkable and possibly requires further research. This was certainly not a legislative requirement and in fact Maori land, and customary land in particular, had fewer legal protections than European-owned land. It is perhaps more indicative of the general lack of Pakeha knowledge about the actual public works provisions with regard to Maori land by this stage. Pakeha often assumed by now that Maori land was treated the same as other land, when this was clearly not so.

It seems clear that the assurances of the Attorney-General did not make much difference in practical terms anyway. In 1916 Ngata took the opportunity in parliamentary debates to strongly criticise the administration of the taking of land for scenic purposes. He informed the House that the administration of the Act had caused a considerable amount of friction. The major error had been in not approaching the native owners of the lands when it was proposed to make the reserves. The first the owners often knew of it was the taking proclamation in the *Gazette*. This was the worst approach that could be taken as Maori then felt – and rightly so – that they had a grievance. Ngata gave examples of such action in the hot lakes district and around Lake Waikaremoana. He believed that what tended to happen was that local bodies, those keenly interested in conservation, or bodies such as the Chambers of Commerce, made representations to the Scenery Preservation Board or to members of Parliament on proposed reserves and the owner of the land was often the last to know about it. If it was European-owned land then the owners tended to be consulted first and asked about it and only when this failed then the compulsory provisions of the Public Works Act might be resorted to. Ngata insisted that the Minister had to consult with native owners first.¹³

Hydro power was also seen as an important future development by the early twentieth century. In anticipation of this, the Water Power Act 1903 provided for the vesting in the Crown of waters for electrical purposes and for utilising such waters for those purposes. The Act was to form part of the Public Works Act 1894 (s 1). The sole right to use water in lakes, falls, rivers, or streams for the purposes of generating or storing electricity vested in the Crown. The Governor had the

12. NZPD, 1910, vol 153, p 837–838

13. NZPD, 1916, vol 177, p 742–743

power to acquire any existing rights for such purposes and any land required for such purposes (s 2). These powers could be delegated to local authorities (s 3). The Minister, outside a mining district, could also grant rights for generating and using electricity and for driving any machinery by such means to anyone thought fit (s 4).

The Government also became involved in a number of settlement schemes, most of which were further attempts to ‘open up’ the country and to promote further European settlement. Many of these schemes were of course particularly directed at Maori-owned land. These schemes, starting with the Bay of Islands Settlement Act 1858 and including, for example, the thermal springs districts and Native Townships Acts, require a separate research paper. They were often established for the ‘public’ (namely, settler) good and often had a strong public works element, including land-taking powers. However, in many cases they appear wider in scope than the normal public works project, and require their own research. An example is the establishment of native townships.

The Native Townships Act 1895 preamble claimed the Act was intended to promote settlement and the opening up of the interior of the North Island. In some instances it appears such townships were also designed to assist the Government to provide facilities in tourist areas such as the Wanganui River. It was held that in many cases native title could not be extinguished in the ordinary way by Crown purchase and there were other difficulties impeding settlement. Therefore the Government could by proclamation declare any parcel of native land set apart as a site for a native township (s 3). This declaration could be made whether or not the land had been investigated by the Native Land Court. There were certain restrictions, such as the area could not exceed 500 acres, but there appears to have been no requirement to consult with or obtain the consent of Maori owners.

The Surveyor General was to survey the township site and lay off streets, reserves, and allotments. The reserves included public reserves, such as for school sites and recreation areas. The native owners were to be consulted in the selection of allotments made for them, but they were not to exceed 20 percent of the total site and were to include all existing urupa and buildings already built by owners. The relevant provisions of the Public Works Act were incorporated. For example, all roads were to vest in the Crown under the terms of section 12 of the Public Works Act. Compensation was payable to all persons having encumbrances over land. The rest of the allotments were to be leased and the rents were to be paid into the public account and then paid out to the Maori owners. In practice, the Government did not carry this out properly and soon succumbed to pressure to allow the lessees to purchase the freehold. The lands also became entangled in a nightmare of legal requirements and restrictions. A variety of often not very effective means of solving these problems often worked in settler or lessee interests rather than those of the owners. This report will only refer to those aspects of township lands directly involved in public works provisions, such as the disposal of land not required for public purposes.

Other more general settlement schemes also contained compulsory land-taking powers and require further research particularly as to their impact on Maori land. For example the Land for Settlements Act 1908 and 1925 provided for compulsory land taking under certain conditions and for compensation to be paid. Land could

also be taken to provide workers' homes. There was a special procedure for taking land and the provisions of the relevant Public Works Act were to apply for compensation, with certain extra provisions particularly applying to land taken for the purposes of this Act. The owners or agents of owners of any Maori freehold land could also enter into agreements for the sale or lease of such land if required under the Act (s 97). The various Land Acts provided the other main way of acquiring land, including by compulsion. However the purpose was for settlement rather than public works and therefore these Acts are only referred to in this report where they have a direct impact on public works takings.

Forestry was also beginning to become a significant industry by the 1920s. Forestry Acts had been passed as early as 1874 and were mainly concerned with the management and control of Crown land set aside for forestry. The Forests Act 1921 was also concerned with the management rather than taking of Maori land in connection with forestry. Maori could by agreement transfer land to the control of the State Forest Service but it remained Maori land and could not be alienated by the service (s 35). However there were limitations in certain circumstances on the sale of timber which did become an important lever for the Crown in applying pressure on landowners for various purposes. The Native Land Court and the Maori land boards also required the consent of the Minister of Forests before they could grant timber cutting rights (s 35). As will be seen in later chapters, the power to place restrictions on the sale of timber was later used to pressure owners to 'agree' to purchases of land for public purposes such as scenic reserves.

The public works powers and responsibilities of local authorities were also significantly extended in the years up to 1928. Land-taking powers were provided for works such as irrigation, water supplies, river control and soil conservation and drainage as well as the many areas already traditionally under local control, such as local roading. As well as extending local authority powers within the main public works legislation, there were numerous Acts specifically designed to extend the public works powers of local authorities. Many of these powers up to 1928 were in the area of further development of lands for settlement and again were passed in settler interests.

The Counties Act Amendment Act 1883, for example, gave powers to county councils to control and supply water for irrigation purposes for farming. Powers included taking lands under the Public Works Act, making surveys, and the power to construct dams and associated works (s 37). County councils could also take streams to supply water races (s 32). The definition of water race included dams and reservoirs (s 31). The Counties Act 1886 further extended county council powers regarding irrigation and drainage (ss 266–289) while also extending county council control of roads to those running through native lands (s 245). The Water Supply Act 1891 also updated the powers of county councils with regard to constructing, controlling, and maintaining water races for irrigation, including powers to take lands and requirements regarding the payment of compensation.

The River Boards Act 1884 gave control of all rivers, streams, and watercourses in a district to the local river board (s 74). The river boards were also given additional powers to those provided in the Public Works Act 1882 (s 76). The boards were also entitled to construct works on tidal waters with the consent of the

Governor (s 87). The Sand Drift Act 1903 gave the Governor on the petition of a local authority or two or more interested persons, the power to proclaim districts under the Act for the purpose of controlling sand drift and preventing further encroachment of sand on to farm land. The Minister of Lands was then required to develop a scheme for controlling sand drift that applied to all land in the proclaimed area and this could include Maori land. The Act appears to be more concerned with the control of land rather than actually taking land. There was also provision for objections to land being included in the scheme. However, it did allow for rating to cover the costs of the scheme and presumably land could be sold if such rates could not be paid. Where the proclaimed area contained Maori land, the public notice was also to be in Maori as well as English (s 2).

There were already considerable drainage powers for local authorities within the main Public Works Act. However separate drainage legislation was also enacted. These could contain general powers and some also related to particular districts or operations. The Land Drainage Act 1893 established drainage districts and drainage boards and attempted to classify land according to drainage requirements, all in an effort to provide for the drainage of agricultural and pastoral lands. There was special reference in the Act to the taking of Maori land for drainage purposes. Maori land could be taken the same as other land for drainage purposes and the taking was to be under the provisions of the Public Works Act 1882 and amendments. The Land Drainage Act 1908 was a consolidation of previous drainage legislation. The Swamp Drainage Act 1915 was especially enacted to provide for the drainage of large swamp areas to make such land available for settlement. Again there was power to take land under the Public Works Act (s 7) or land could be purchased. Land used exclusively for Maori settlement could not be taken unless in the opinion of the Governor-General it was necessary for the successful conduct of drainage operations.

There was other legislation and special Acts for special areas, for example the Hauraki Plains Acts 1908 and 1926. The 1926 Act for example increased the powers of the Minister of Lands to facilitate work on the Hauraki drainage scheme. This included the power to purchase or take any native land or other land necessary for the more effective carrying out of drainage (s 7).

Local authorities were also given extended town planning responsibilities, for example in the Town Planning Act 1926. The impact of town planning on public works taking is covered in more detail in later chapters. However the 1926 Act provided for the preparation of planning schemes by local authorities to cover town and rural areas. Compensation was payable under the Public Works Act for damage done or for land taken. Betterment was also to be assessed by the Compensation Court established under the Public Works Act. The planning schemes were to deal with matters including roads, streets, and footpaths, buildings, reserves, recreation grounds, and open spaces, objects of historical interest or natural beauty, sewerage, drainage, and water supply, amenities, and ancillary or consequential works in relation to these.

The administration of public works takings during the late nineteenth century requires more research. In terms of Maori land takings, the sheer variety and complexity of legislation that was being added to the old legislative traditions

created considerable confusion and many opportunities to bend provisions to advantage or to simply evade compensation. Disentangling all this in any detail is a very large research task. However some issues are apparent from even preliminary research.

It is clear that in the 1880s and 1890s the aggressive attitude towards Maori rights shown at Parihaka was continued. For some time any threat of Maori resistance was met with a show of force. Ward has described how Bryce continued using displays of force to overcome Maori opposition to public works projects. In the Thames district, for example, road and river clearing works were pushed through with a strong force of Armed Constabulary nearby.¹⁴

Historians have noted that, in general, by the 1880s and 1890s legislative and administrative policies were clearly designed to further settler, particularly farmer, interests; while little attention was paid to the impact on Maori values and concerns. The policies of cooperation and negotiation were once again abandoned when they no longer seemed necessary and Maori resistance seemed to have been crushed. At the same time, Maori efforts to take a real part in the machinery of state were continually blocked and rebuffed, with resulting disillusionment.¹⁵ For example, according to Ward, Bryce found Maori proposals for increased powers of local government ‘original and amusing’.¹⁶ By the early 1890s, the once crucial role of the Native department was over and no longer needed as Maori had been effectively marginalised. The process of subordination to the settler political and legal system was also well underway. The rule of law was also shaped to suit the majority settler convenience. Old protections were now very narrowly interpreted and the Treaty of Waitangi was increasingly dismissed or ignored. For example, the 1877 *Wi Parata* case denied previously accepted colonial law principles and the Native Land Act 1909 ensured that customary Maori title could not prevail against the Crown. These new policies explicitly rejected Maori claims to Treaty guarantees. At the same time the Crown continued to try and roll back previous understandings of Treaty guarantees through, for example, assuming control of geothermal and foreshore rights for various purposes. Many of these were linked to public works activities. For example, many drainage and reclamation works destroyed traditional fisheries and encroached on disputed areas such as foreshores.

The marginalisation of Maori from participation in economic growth was achieved by a number of means and the operation of the Maori Land Court and continued land purchase was probably the most significant of these. However it is clear that public works programmes were also important, in that development was geared to meet settler interests while Maori concerns and needs were largely ignored.

Public works provisions reflect the overall pattern of the times. Roading and drainage projects, for example, favoured European settlement and farming while little attempt was made to prevent the resulting encroachment on reserves favoured by Maori as food sources or destruction of fishing grounds. There are many now

14. A Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand*, Auckland, Oxford University Press, 1973, p 285

15. *Ibid*, pp 274–275

16. *Ibid*, p 293

famous cases that occurred during these times. An example is the long fight by the Maori owners of Lake Wairarapa to prevent the destruction of their traditional fishery in the interests of providing more farm land. As in many other cases, attempts by local Maori to reach a compromise with farmers were also rejected.¹⁷

Public works also began to encroach on reserves set aside for Maori as the result of previous large-scale loss of land and on the last remaining tribal lands in many areas. Governments did not recognise any need to preserve remaining tribal land from public works takings or to ensure successive takings for different purposes were not having the effect of steadily encroaching on remaining land or reserves. As the scope of public works changed, Maori land also came under new threats. For example, in many areas Maori had chosen reserves that allowed them access to traditional food supplies such as coastal strips. These were often originally agreed to as they were not good farm land. However, when scenic reserves became a public works concern, many of these reserves were compulsorily taken for this purpose and the justification was often that the land was not suited to farming anyway.

The public works takings also reveal a notable lack of consultation and communication with Maori. In part this was encouraged by legislation. Notification provisions were less protective for Maori land than for other land. However the separation of Pakeha and Maori communities and to a significant extent, racism, also often resulted in a lack of even informal communication, as often happened where European-owned land was required for public works. There was often no attempt to explain the need for projects to Maori or to find out Maori views, especially at a local level. Ward points out, for example, that taking authorities were unconcerned about destroying ancient eel weirs that may have been used for generations in the course of river or harbour works. The destruction was commonly not explained, there was no prior attempt to investigate alternatives and in these cases there was no compensation.¹⁸

Officials and politicians often made the excuse that protections such as serving notice were impossible for Maori land, whether customary or Crown-granted, owing to the large number of owners, many of whom were scattered throughout the country. This continued to be a favourite excuse well into the twentieth century. However this was largely a problem created by the Crown. Previous experience both before and after the wars had shown that, when forced to by circumstance, it was possible for the Crown to obtain Maori land or cooperation for public works by dealing at the level of iwi or hapu leaders through a process of negotiation and consultation. The Native department had also built up a great deal of expertise on this. It was largely European insistence on breaking down the traditional authority of iwi and dealing at an individual level that had caused the problems that were now obvious in dealing with individual owners. The Government creation, the Maori Land Court itself, was largely responsible for making the problem much worse by creating a system that resulted in vast fragmentation of Maori title.

However, instead of accommodating Maori needs by modifying or creating new protections, even the ordinary protections offered to non-Maori, were sacrificed in

17. For example re Lake Wairarapa, MA 13/94

18. Ward, p 284

the name of administrative convenience. Many ordinary protections, while appearing neutral, also had the effect of discriminating against owners of Maori land in practice. The special problems caused by fragmentation of title, for example, would have required accommodations just to make protections effectively equal with those for non-Maori. However, provisions were traditionally only made from a Pakeha viewpoint, and features such as multiple ownership, which were common to Maori title, were commonly regarded as anomalies or exceptions to the general rule and therefore not requiring special concern.

Had it wished to use it, the Crown already had access to a legislative system of communication with Maori owners that was developed for when the Crown wished to purchase Maori land. In those cases the owners had to be consulted and a system was developed of calling meetings of owners to consider and vote on proposals to sell land. Although this system may have had flaws, at least it offered some means of communication with owners. In addition, the Crown had the expertise of the court to draw on in determining owners. However, taking authorities were noticeably reluctant to use this system. It was regarded as too slow and cumbersome and it also seems to have simply been too tempting to automatically assume that if Maori land was required for public works then it was 'too difficult' to contact the owners and to rely instead on compulsory powers. The result was a failure to not only offer the same protections as for general land but also to modify provisions to take into account the special features of Maori title.

It was also true, as some argued, that in certain cases such as for railways, everyone lost their normal protections in order to make railway building feasible for the benefit of the whole community. However, railway building did not single out a special class of the community and it also required special Acts of Parliament where each proposal could be individually scrutinised and, in theory, rejected. This alternative protection was not available for Maori land generally and even where Parliament did scrutinise railway takings involving Maori land, the few Maori members were effectively powerless to insist on a real accommodation of Maori concerns. It is also difficult to believe that many of these discriminatory provisions were the result of carefully weighed decision making when the circumstances in which they were enacted are taken into account. Settler politicians were clearly determined to crush even passive resistance such as that offered by Te Whiti and his supporters. They clearly felt that remaining protections for Maori land had to be dismantled as quickly as possible and they openly believed that traditional Maori usages and tenure should give way to 'superior' European traditions.

The 1882 Act and later amendments not only had considerable impact at the time but assisted in creating entrenched attitudes towards the treatment of Maori land for public works taking, many of which lasted well into the twentieth century. The idea, for example, that it was too difficult to notify owners persisted in discriminatory notification provisions that were not constructively improved until the 1970s. The fewer protections for Maori land, especially regarding compensation, also inevitably helped make Maori land a prime target for takings. The fact that the Minister was responsible for applying for compensation also set up conflicts of interest and inevitably led to delays or failures to apply for compensation. The provisions that meant once Maori land was taken, the aftermath was the problem of

the Maori Land Court to deal with and there were none of the processes such as the hearing of objections to be gone through, also made Maori land an easy target.

The ease with which Maori land could be taken, and other circumstances that created difficulties for Maori owners in economically using their land, contributed to European convictions that Maori land was worth little in Maori hands and would be better off used more efficiently for settler purposes. It was only one step further to decide that because Maori land was worth so little, and compensation was so marginal, then most public works would automatically be worth more than any compensation due. It became a notable and long-standing practice that many compensation applications were not even made because it was decided the 'betterment' was worth more than any compensation due and therefore everyone should be saved the trouble of the application.

The problem was aired in parliamentary debates in 1887. Criticism was made by Maori members of the procedure where the Minister had to be relied on to initiate compensation claims. In this case a private company had built the Kaihu Valley railway through Maori land and had paid for fencing but no compensation for damage to the land. The Minister of Works was asked to explain. After at first denying any Government responsibility for a private company, the Minister explained that no compensation was paid because, as the value of the land was greatly enhanced by the construction of the railway, it was thought that the owner had no intention of making any claim for money for the land taken.¹⁹ The problems of having applications for compensation made and prosecuted for Maori land remained long-standing issues well into the next century and will be discussed in more detail in later chapters.

Williams has shown that legislation in general by the late 1870s and 1880s was increasingly designed to protect settler interests, regardless of the impact it might have on the Maori way of life. By then Maori were effectively relegated to the periphery of economic life. They were successfully marginalised and were increasingly subject to effectively discriminatory legislation. Williams cites the Impounding Act 1884 as a general example of this. This Act provided that damages for trespass could only be recovered by occupiers of fenced land (s 6), except for most of the South Island. South Island graziers therefore had their economic position on unfenced lands protected, while North Island Maori communities had no protection for unfenced vegetable cultivations.²⁰ The increasingly discriminatory provisions in public works legislation were a reflection of this overall trend.

In many cases public works projects were influenced by political pressures and local interests, particularly in the late nineteenth century when works such as railways were expected to result in economic prosperity for a district. Noonan has explained how, prior to 1920, public works were characterised by political priorities as much as anything else. There was considerable political pressure on the Government to supply public works to districts in return for political support and there was a strong political influence on decisions regarding the construction of

19. NZPD, 1887, p 120

20. D V Williams, 'The Use of Law in the Process of Colonisation: An Historical and Comparative Study with Particular Reference to Tanzania (mainland) and New Zealand', PhD thesis, University of Dar es Salaam, 1983, p 322

roads and rail in particular.²¹ Political pressures could result in railways being built in areas where it was clear they were not required and in the routes being diverted to particular towns or in particular directions where engineering requirements suggested quite different decisions should have been made. In the end quite deliberate, although not always successful, attempts were made to ensure railways escaped such blatant political interference. Maori were largely marginalised outside this system of political patronage but found that when they opposed certain works the absolute necessity of siting them on Maori land was not a matter for debate.

In the absence of clear protections for Maori interests, other imperatives naturally began to take precedence. It seems clear, for example, that financial considerations and administrative convenience often took priority over Maori interests. In 1884, land was required near Greymouth for a quarry in connection with harbour works being carried out by the public works department. The land was a native reserve and although the Works department had already carried out extensive works on the land it decided to try and get guaranteed possession for a few more years. The owners agreed to lease the land rent free and promised they would not ask for any rent or compensation for the land or metal, on the understanding that the land would be returned to them when the Government no longer needed it. The problem for Works was that the land was a reserve and under the law on reserves any lease had to go to public tender. This would mean the department might have to compete with private interests and might therefore have to pay a high price while the owners were willing to let them use the land for free. When the Public Trustee was approached on the matter he told Works they could either take the land under the Public Works Act or come to an agreement about undisturbed possession for a few more years. The agreement was the preferred option because there was considerable concern from Maori that they were rapidly losing their reserved land and if the land was taken the owners would have to buy it back – something they were unlikely to be able to do. In the end the Greymouth Harbour Board, who would inherit the works, presumably on Works department advice, decided to simply take the land and so ensure the land would be acquired cheaply. The land was taken by proclamation in a *Gazette* notice of May 1886. Maori interests and concerns, even though they were well known to the Crown agencies involved, were simply ignored.²²

Native reserve land takings for public purposes at Greymouth also reveal common problems concerning compensation. Local bodies and the Works department commonly decided on compensation values themselves and these often, in the early years at least, appear to have been accepted by the Native Land Court. In the case of reserves however the Public Trustee was obliged to act and had the resources to dispute the amount offered. In this case the Greymouth Harbour Board offered £200 compensation for land taken and after taking the case to court, the Public Trustee was awarded £500 plus costs. However compensation payments also reveal many of the problems faced by owners as a result of Native Land Court decisions. In this case there was a dispute over who the money should be paid too.

21. R J Noonan, *By Design: A Brief History of the Public Works Department, Ministry of Works, 1870–1970*, Crown copyright, 1975, pp 108–109

22. Correspondence, MA 1, 6/10/7

Many local Maori felt the land had been awarded to chiefs on behalf of the hapu. However the judge involved and the family claimed the land was solely awarded to individual chiefs for their own benefit and could be willed to direct family members to the exclusion of everyone else. The Public Trustee was unsure for some years who to pay compensation to and eventually kept the capital and only distributed income from it. It was also added to the moneys paid to all beneficiaries for a variety of other public works takings and damages to reserves in the area. This resulted in a long running dispute and many petitions to Parliament.

Maori were also routinely asked to accept takings on the grounds they were ‘necessary’ for the good of the whole country but at the same time the definition of public works was being continually extended to include almost any purpose required by settlers. At the same time, Maori requests for works were rarely accorded the same importance. The taking powers were often also extended in an ad hoc fashion, with considerable resulting confusion. The lack of concern for Maori rights is perhaps reflected in the number of takings where the legality was questioned and validating legislation had to be subsequently enacted.

The changing definition of ‘public works’ underlined the trend in public works provisions which seemed to increase when local and central government became the most common taking authorities and in a new colony that required considerable development. The inherited English principle had emphasised the need for special Acts for particular takings each requiring parliamentary scrutiny. This was considered appropriate when private enterprise was doing most of the taking and it was retained to some degree in New Zealand, especially for railways. However, Government taking authorities found it increasingly more convenient to also extend the definition of public works to provide more general taking powers. This was probably inevitable in a new society requiring considerable public works. However, at the same time in the rush for development there were few alternative protections put in place, the only check being political and public pressure.

This may not have been such a problem where works were clearly of benefit to the whole community but Maori were by now often on the outside and the ‘necessity’ of many works seemed questionable. For example, a rifle range may have seemed a valid necessity for defence purposes when external threats seemed imminent, but when these faded the general authorisation remained, even if the main purpose of the rifle range was now more to provide for the recreational hobby of local farmers. For Maori, increasingly outside the settler community, the compulsory taking of rapidly diminishing ancestral land for a rifle range that in effect catered to the hobbies of local farmers, seemed extremely unfair. In other cases, drainage works seemed to enhance a few farms while destroying food sources for a whole hapu and birds were slaughtered while traditional Maori hunting seasons were ignored. The refusal to accommodate Maori concerns and the destruction of often significant areas for often seemingly petty reasons helped create a legacy of bitterness as far as Maori were concerned to the whole concept of public works takings.

During this time Maori made many attempts to express concern through petitions and through the Maori members of Parliament. While some small changes were made, in general they had little success in changing the major provisions. An

example is the concern expressed about the lack of communication with Maori owners about public works takings. In 1889 the member for Western Maori was successful in having the sittings of the court regarding compensation notified in the *Gazette* and the *Kahiti*.²³ However, his additional request, that native burial grounds and other places of great value to natives be protected from takings, was not acted upon.²⁴

The destruction of burial grounds was a common cause of Maori complaints. In 1888 the member for Western Maori asked the Government to take steps to prevent the Public Works department and local bodies from desecrating native graveyards as these were on land being taken for roads and railways.²⁵ However legislative protection for burial grounds was not enacted until 1948. This was in spite of the fact that exemptions for other places of value to non-Maori were always available. Although the Public Works department insisted that it routinely inquired about possible burial sites, this procedure was clearly not adequate. It relied on administrative policies that could be neglected or changed at any time. It also neglected to take into account the practice of other taking agencies such as local authorities. The destruction and desecration of burial sites was another issue that continued to cause concern well into the twentieth century.

Concern was also expressed about the expertise of the Native Land Court in assessing compensation for land taken. The court was clearly originally involved to determine the individuals who were entitled to compensation and in early years to determine the title of land involved in a taking. The responsibility for assessing compensation was clearly given out of administrative convenience and there was concern from Maori leaders that land court judges were not as expert in assessing compensation as those appointed to the Compensation Court for that specific purpose.

In the 1903 debates on the Scenery Preservation Act, Heke agreed that the Northland Kauri forests should be protected, but objected to takings under the Public Works Act, as he objected to compensation for Maori land being assessed by a separate tribunal.²⁶ In 1905 the member for Northern Maori also complained that the judges of the Native Land Court might know nothing at all about deciding the value of property, whereas Europeans had a specialist court and he asked that the provisions be made the same as for Europeans in determining compensation.²⁷ As the Native Land Court judges gradually became more protective of Maori interests this situation changed slightly and there was a more mixed attitude to the Maori Land Court judges assessing compensation. While concern was still expressed about their expertise in the area, their understanding of the special problems facing Maori land was by then also often acknowledged.

Ironically the more protective attitudes of judges caused the Crown some concern. In 1910, a public works amendment made the Native Land Court award final with no right of further appeal. By 1927 the right of appeal to the appellate

23. Public Works Amendment Act 1889, s 16

24. NZPD, 1889, p 497

25. NZPD, 1888, p 305

26. NZPD, 1903, vol 126, pp 710–711

27. NZPD, 1905, p 537

court had been restored.²⁸ This was at the request of the Crown because of concern that some judgments were too generous.²⁹ The issue of whether the Maori Land Court should hear compensation was yet another concern that lasted well into the twentieth century.

The taking practices of local authorities appear to have continued to be a low point in the takings of Maori land. It is often very difficult to clearly disentangle central and local government responsibilities and administrative practice when public works takings were involved. As can be seen in the legislation described, local authorities often had to rely on ministers or Government departments to consent to, or to take land on their behalf. There were often theoretical divisions in responsibility, for example local authorities often had responsibility for local or secondary roads while central government was concerned with main highways. However in practice this was often blurred. The Public Works department could develop roads and then hand them over to local authorities, and powers regarding main highways, for example, could be delegated to local authorities. The provisions of the Main Highways Act 1922 are a good example of this. Local authorities had also already developed a practice of having central authorities take land on their behalf, often to avoid the extra restrictions or requirements that local body takings involved. The same procedure often applied when authorities wanted to dispose of land taken. It is quite clear that local bodies also exerted considerable political pressure on Government on behalf of what they saw as the interests of their communities.

Other issues apparent in general public works takings of Maori land during this time have already been referred to in chapter 5. These include the often unscrupulous activities of taking authorities and the lack of political will to properly supervise takings or remedy obvious injustices. It was clear, for example, that the Government was not prepared to interfere with the activities of local bodies other than to occasionally act as mediator. In 1888, the Native Minister explained the background to a case in Otaki, where Maori had erected a fence over a road built by the local body because compensation was still in dispute. The late Native Minister had intervened and promised that native rights would be protected. He sent his under-secretary to bring about an agreement between the natives and the local body. In the end £100 was paid to the owners. The Minister explained that the Government had no responsibility in the matter beyond that of mediation. The responsibility rested entirely with the local body.³⁰

It seems clear that during this time some erroneous assumptions became entrenched that also lasted well into the twentieth century. These included the beliefs that public works provisions basically treated Maori landowners the same as everyone else and that Maori were informed before land was taken. The closest administrative procedure to this was the public works policy to notify the Native department of takings of Maori land but not only was this policy only intermittently

28. Native Land Amendment 1927 and Native Land Claims 1927 Adjustment Act, s 15

29. Complaint was made that the values were being assessed by some judges far too highly and upon no fixed principle, Under-Secretary of Maori Affairs to Under-Secretary of Public Works, 15 December 1927, MA 19/4/48, AAMK 869/696f

30. NZPD, 1888, p 541

followed but it became increasingly ineffective as the influence of the department waned from the 1890s. It is clear that, for the most part, Maori attempted to participate in economic developments during this time and continued to support public projects where they were of obvious benefit to all. It is equally apparent however that now dominant Pakeha interests intended to find no place for Maori in the new scheme of things. In the public works area, while Maori land continued to be taken with scant regard for Maori interests, the same taking authorities commonly evaded responsibility in areas where public works would have benefited Maori. Given their experiences with public works takings in the late nineteenth and early twentieth century it is not surprising that Maori often regarded the whole concept of public works land takings as little different than a continuation of land confiscations.