CHAPTER 6

# THE STOUT–NGATA COMMISSION AND THE 1907 ACT

In 1905, James Carroll added a new ingredient to the Maori Land Council experiment. 'Idle' Maori lands were to be made available for agricultural development by way of compulsory vesting in the new Maori land boards. This attempt was partially defeated, but the Native Minister did not give up. As one historian puts it, Carroll returned to the fray with 'a new strategy that would appeal to the greatest number of Maoris and Pakehas alike'.[1] His proposal once again called for compulsory vesting of 'idle' lands, but in this case the exercise was to be based on a systematic inventory and appraisal of the status of Maori lands in the North Island.

Throughout the period under discussion it seems to have been assumed by a majority of Europeans that a great deal of the land held by Maori was unused, suitable for agricultural development and surplus to the requirements of the owners. Accurate information about the state of Maori land tenure, however, was in very short supply. Premier Seddon acknowledged in 1904 that 'Before any comprehensive system of administration can be fully inaugurated, a careful stock-taking of all Maori lands will be required'. Only when this information was available, he thought, could the Government advance towards its goal of 'opening up every acre not required by the Maoris for their occupation and support'.[2]

It is perhaps surprising that the need for such a 'stock-taking' was not recognised earlier, and especially during the debates which led to the 1900 Act. The explanation may be that there was little point to such a survey unless the information collected would actually be used to compel Maori landowners either put their unused lands into production themselves, or give others the opportunity to do so. By 1904, faced with the apparent failure of the Maori Land Councils to accomplish this goal, the Liberals were beginning to think along exactly these lines.

The new strategy which Carroll adopted after his partial defeat in 1905 was to set up a Royal Commission to 'Inquire into the Question of Native Lands and Native-Land Tenure'. The water was tested in a memorandum produced by the newly-reconstituted Native Department in mid-1906. This identified the need:

1. G Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', NZLJ, August 1985, p 245
2. 'Financial Statement', AJHR, 1904, B-6, p xvii

> To provide a more simple and workable method of ascertaining without delay what lands are needed by Maoris, and for at once setting aside selected areas for their use and occupation, giving to each section of Maori owners, in a simple way, a direct voice in selecting such lands to be retained by themselves, and in deciding in what way their surplus lands shall be dealt with; but taking away the power of pure obstructiveness.

Maori assets were to be inventoried, in other words, and landowners' requirements assessed on the working principle that no one would not be permitted 'to own land without using it'.[3]

This proposal was soon adopted by the Government. In August of 1906 Joseph Ward announced in the course of a statement on Maori land titles[4] that:

> It is not only desirable to settle Native titles as quickly as possible, but also to devise some means to bring the land under cultivation in the meantime. To meet these points the policy of the Government is—
>
> (1.) To set aside a sufficiency of Native lands for the maintenance of the Natives;
>
> (2.) To as far as possible give the Natives a 'start' to farm these lands and to guide them in making the land productive;
>
> (3.) To throw the balance open for settlement and cultivation – by (a) the Crown purchasing at the Government valuation, (b) vesting it in the Boards for lease in limited areas for terms not exceeding sixty-six years, and (c) allowing the Natives to lease it themselves for such a term under the supervision of the [Maori Land] Boards . . .

The Royal Commission which was to set this process in motion was formally appointed in January of 1907.

Selected as commissioners were Sir Robert Stout, the chief justice of New Zealand since 1899, and the recently-elected member of the House of Representatives for Eastern Maori, Apirana Ngata. These were shrewd choices. The widely-respected Stout, who was appointed chairman, had during his political career in the 1880s and early 1890s supported John Ballance's reforms. He could be relied upon to reach conclusions which the Government could live with.[5] One historian describes Ngata's appointment as attempt 'to conciliate the Maoris and those in parliament who represented Maori interests', describing him as 'a man who realized the Government's dilemma and who would temper as far as possible the blow to the Maori landowners'.[6] This is putting it rather mildly: having Ngata on the commission was the next best thing to having Carroll himself. On the whole, the Government could not have done much more to ensure that its goals were met without having Cabinet write the commission's findings itself.

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3. 'Native Matters', MA 16/1, p 2
4. 'Financial Statement', 28 August 1906, AJHR, 1906-II, p xiii–xiv
5. 'Robert Stout', DNZB, vol II, pp 484–487. See also 'Memorandum on Owhaoka and Kaimanawa Native Lands, by the Hon R Stout', AJHR, 1886, G-9, for his blistering critique of Native Land Court procedures.
6. B Gilmore, 'Maori Land Policy and Administration during the Liberal period, 1900–1912', MA thesis, Auckland, 1969, pp 49–50

In their terms of reference, the attention of the commissioners was drawn to 'large areas of Native lands of which some are unoccupied and others partially and unprofitably occupied'. It was deemed to be:

> for the benefit of the Natives themselves and to the advantage of European settlement if prompt and effective provision were made whereby such lands should be profitably occupied, cultivated and improved . . .[7]

Accordingly, Stout and Ngata were to 'inquire and report as to the best methods to be adopted' for these purposes.

Their inquiries were to be guided by four questions. The commissioners were, firstly, to ascertain:

> 1. What areas of Native lands there are which are unoccupied or not profitably occupied, the owners thereof, and, if in your opinion necessary, the nature of such owners' titles and the interests affecting the same.

They were then to consider:

> 2. How such lands can best be utilized and settled in the interests of the Native owners and the Public good.

For this purpose, Stout and Ngata were to specify:

> 3. What areas (if any) of such lands could or should be set apart—
> (a.) For the individual occupation of the Native owners, and for the purposes of cultivation and farming.
> (b.) As communal lands for the purposes of the Native owners as a body, tribe, or village.
> (c.) For future occupation by the descendants or successors of the Native owners, and how such land can in the meantime be properly and profitably used.
> (d.) For settlement by other Natives than the Native owners, and on what terms and conditions, and by what modes of disposition.
> (e.) For settlement by Europeans, on what terms and conditions, by what modes of disposition, in what areas, and with what safeguards to prevent the subsequent aggregation of such areas in European hands.

They were also to report on:

> 4. How the existing institutions established amongst Natives and the existing systems of dealing with Native lands can best be utilised or adapted for the purpose aforesaid, and to what extent or in what manner they should be modified.

Stout and Ngata, in other words, were to examine the condition of all Maori lands in the North Island,[8] in order to identify those which were not being used to their

7. See commission of 21 January 1907, in 'Interim Report of the Commission appointed to Inquire into the Question of Native Lands and Native-Land Tenure', AJHR, 1907, G-1, pp i–ii

full potential. They were then to categorise these 'idle' lands according to modes of future disposition which would enable optimum use to be made of them. The commissioners were also to look at the various bodies involved with or influencing the administration of Maori land, and identify changes which might streamline the process.

Care was taken to spell out what the Government expected from the inquiry. Stout and Ngata were ordered:

> to make such suggestions and recommendations as you may consider desirable or necessary with respect to the foregoing matters and generally with respect to the necessity of legislation . . .

Lest there be any misunderstanding of the role which the commission was expected to play in the formulation of new legislation – or of what the focal point of that legislation would be – the instruction was elaborated:

> you are directed to so frame your reports as to facilitate prompt action being taken thereon, and in particular to furnish in such reports such detail as to the lands available for European settlement as will enable Parliament, if it deem fit, to give immediate legislative effect to such parts of your reports.

The fundamental purpose of the exercise, then, was to identify with precision which Maori lands were 'available' for settlement by Europeans, so that appropriate legislative action could be taken.

In preparation for this work, the Department of Lands was requested by the Native Minister to compile a detailed list of Maori lands in the North Island. Its confidential *Return of the Native Lands in the North Island suitable for Settlement* was produced early in 1907, in time for the start of the commission's work. The report covered 956 blocks, encompassing some 4,975,444 acres. The name, area, present utilization, and value per acre of the blocks were detailed, along with sundry other information.[9] The acreage figure gives some idea of the magnitude of the task which Stout and Ngata were being set. In the event, though, they would be required to deal with only part of this land. It appears that approximately half of the lands on the department's list were already leased, or under negotiation for lease. Some 2,791,190 acres were ultimately made 'available for inquiry by the Commission', and recommendations were made relating to some 2,040,878 acres thereof.[10]

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8. There is no express geographical limitation in the commission of 21 January 1907, but as far as I am aware no effort was made to deal with any other part of the country. The Native Land Settlement Act 1907 applied only to the North Island (s 3a).
9. New Zealand Department of Lands (W C Kensington, Under-Secretary). *Return of the Native Lands in the North Island suitable for Settlement (Confidential). Compiled by Direction of the Hon the Native Minister for the Use of the Native Land Commission, 1907*, Wellington, 1907, Turnbull Library. See also AJHR, 1907, C-1, 'Annual Report on Department of Lands', p 5, 'Maori Land Commission', which commented that 'No doubt a copy of this return will be attached to the Commissioners' report'. It was not – possibly because no comprehensive 'final report', as such, was ever prepared. AJHR, 1909, G-1g is the closest thing available.

It should be noted here that it was entirely up to the commissioners (subject of course to their terms of reference) to decide which blocks of Maori land they could and would deal with. Some commentators have suggested, usually in relation to the dispute over section 11 of the 1907 Act, that the commissioners were unable to examine and make recommendations about a particular block if the owners did not voluntarily cooperate.[11] This was not the case. The misapprehension may have arisen over Stout and Ngata's remark in 1908 that this had 'hampered us in obtaining the consent of Maoris to the opening-up of lands for settlement'.[12] In fact, there was nothing in their instructions requiring the consent of the owners, and the commissioners made no reference to such a limitation in their reports. In practice, though, they sought to consult the owners whenever possible. As they put it in the same report quoted above:

> if the Maori owners do not come before the Commission, and do not offer any land for sale or lease, their lands will, *unless the Commissioners recommend that their lands be taken without their consent*, remain unsettled . . . [Emphasis added.][13]

The commissioners had the power to act unilaterally, but seem to have been most reluctant to use it.

The commissioners began work soon after receiving their instructions, and by March 1907 had produced the first of many 'interim' reports.[14] These were based on numerous hearings held at centres all over the North Island. Stout and Ngata commented in their final report that:

> We considered it our duty wherever possible to meet the Maori owners of the lands, and to ascertain from them their wishes with regard to the disposition and settlement thereof. While making ample provision to meet the views of the minority or of individual owners whenever possible, we were guided by the expressed wishes of the majority so far as they were ascertainable in the open sittings of the Commission, and we can say that with very few exceptions the recommendations we have from time to time made in our reports were in accordance with the wishes of the Maori owners of the respective blocks.[15]

One historian who has taken a close look at the commission (one of the few) has concluded that the Maori owners who appeared before it were given a fair hearing.

10. See AJHR, 1909, G-1g, pp 1–3, 5, in which it was estimated that there were some 7,465,000 acres of Maori land in the North Island. Of this, 468,752 acres were Papatupu land; 1,709,871 acres were held under special Acts or vested in Maori Land Boards (374,856 acres); 145,187 acres were vested in or administered by the Public Trustee; and 2,350,000 acres were leased or under negotiation for lease. None of these 4,673,810 acres came within the terms of reference of the commission. Although not explicitly stated, it would appear that the 1907 departmental list 'Return' included leased lands, but excluded Papatupu or vested lands. As was acknowledged at the time, all of these figures should be treated as rough estimates.
11. See for example, R J Martin, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, Auckland, 1956, p 129
12. AJHR, 1908, G-1f, p 1
13. Ibid, pp 1–2
14. Gilmore, p 50 notes that it was decided early on that a single, general report would not be suitable.
15. Report of 21 December 1908, AJHR, 1909, G-1g, p 3

Gilmore, however, adds a caveat. In her opinion, although attention was paid to the expressed wishes of Maori landowners:

> the wishes of the Maoris were conceded only so far as they agreed with the general recommendations of the Commission, made on its analysis of the existing situation with regard to Maori land and land ownership and only to the extent that they agreed with the policy of the Legislature.[16]

Another way to put this would be to say that the wishes of the owners were given priority subject to the informed opinion of the commissioners, which in turn was constrained by the commission's terms of reference and the political climate in Wellington.

In evaluating the role which Maori landowners played in the commission's findings, the context of its proceedings must be considered. Basically, owners had the choice of cooperating with the commission, and making the best of the situation, or not cooperating, and having no say whatever in what was to be done with their lands. It appears that the first course of action was generally preferred. The fact that most of the commission's work was carried out in the shadow of the Native Land Settlement Act 1907 may go a long way towards explaining this.

By mid-July of 1907 the commissioners had produced reports on only four cases, some of which would require further investigation.[17] None the less, they were ready to issue their first 'General Report'. This included an extensive review of Maori land policy and legislation since 1865, including the legislation currently in operation, and of the present tenure situation.[18] At the conclusion of this survey, Stout and Ngata outlined the priorities which they intended to apply when making recommendations concerning the disposition of Maori lands. These were, in summary, that:

1. The settlement of Maori on the remaining Maori lands should be the first consideration;
2. In the leasing of the surplus lands provision should be made for future occupation by the descendants and successors of the present owners; and
3. While some of the surplus Maori land should be sold, the purposes of any such sale should be clearly defined.

With respect to the last, the commissioners commented that:

> the area of good land available for disposition in this manner, having regard to the present necessities of the Maori people, their prospects as settlers under a proper system, and the needs of their descendants, is not as great as is generally supposed. Of inferior land not suitable for close settlement, and fit only for forest reserves and such purposes, there is ample, but we doubt if there will be any keen demand for such land.

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16. Gilmore, p 51. Much of chapters 4 and 5 of her thesis focus on different aspects of this question.
17. AJHR, 1907, G-1c, p 1
18. It should be noted that the Stout–Ngata review of legislation was presented as an extension of that in the Rees commission's 1891 report.

> Where we have recommended areas for sale, we have done so at the request of the owners . . .[19]

Given such statements, Maori could expect fairly rational recommendations from Stout and Ngata, which were not likely to include permanent alienations on a large scale. They could not, unfortunately, expect a comparable level of rationality from Parliament – or if anyone did, they were disappointed.

The 1907 session, which had began a few weeks before the above-mentioned 'General Report' was penned, eventually produced the Native Land Settlement Act 1907.[20] The purpose of this legislation was to give effect to the recommendations of the commissioners. Two categories of Maori land were created by these recommendations: the first, when they reported 'that any Native land is not required for occupation by the Maori owners, and is available for sale or leasing' (s 4(1)); the second, when they reported that 'any Native land should be reserved for the use and occupation of Maoris' (s 54(1)).

The latter lands could be brought under 'Part II' of the Act by Order in Council, which meant that no person could acquire any kind of interest therein without the consent of the Governor in Council. But there were two exceptions. Where the commission had recommended that all or part of the land 'should be leased to Maoris', the local land board was authorised 'to act as the agent of the Maori owners . . . for the purpose of leasing the same' (s 55(1)). Similarly, where Stout and Ngata recommended that all or part of the land be leased to a specific Maori or Maoris, the Maori Land Board could act as the owners' agent and 'lease such land accordingly without public notification, public auction, or tender' (s 56(1)). Leases arranged by the land boards under these sections were to be dealt with as if the lands had been made available for leasing under part I of the Act, with certain modifications. Sale was prohibited, and all leases and sub-leases had to be held by Maori. The board was also empowered to reduce rents under certain conditions (s 57).

Under Part ii of the Native Land Settlement Act 1907, then, Maori owners retained the title to their lands. Their ability to transfer any interest in them was restricted, with the land boards being given jurisdiction over all leasing. In effect, a specified portion of the lands remaining in Maori ownership was to be taken 'off the market' as far as Europeans were concerned. Some 867,479 acres of the 2,040,878 which were eventually the subject of recommendations by the commission (42.5 percent) were potentially subject to Part II.[21]

The lands deemed by the Native Land Commission not to be required for occupation by their owners were provided for in Part i of the Act. Where such recommendations were made, the Governor could by Order in Council place the land under Part i. This meant that it automatically became vested in trust in the local Maori Land Board (s 4(1) and s 5). The terms of land boards' trusteeship,

19. AJHR, 1907, g-1c, pp 15–16
20. Statutes, 1907, no 62
21. Statutes, 1909, g-1g, p 5

however, were quite different from those which it exercised in the case of lands vested in the boards under the 1900 and 1905 Acts. Lest there be any misunderstanding of this point, it was expressly provided that the boards could not exercise over Part i lands any powers conferred on them by those Acts and their amendments (s 9). In other words, the 1907 Act was not to be considered part of the body of land-administration legislation based on the 1900 and 1905 Acts and their amendments.

When lands were vested under Part i, the land boards were required to divide them into 'two portions approximately equal'. One of these portions was to be set aside for sale, the other for leasing (s 11(1)). The allocations could be varied with the consent of the Native Minister, but 'a due proportion as aforesaid' between the two categories had to be maintained. After certain preparations had been made, the land for sale was to be disposed of at public auction, subject to an upset price fixed by the Native Minister (which, as Professor Ward notes, at least brought the era of 'secretive purchasing for trivial prices' to an end[22]). Conditions similar to those for Crown Lands under the Land Act 1892 were imposed, requiring occupation and improvement of the land purchased (s 16 to 26).

The lands set apart for leasing were also to be disposed of at public auction, subject to an 'upset rental' fixed by the Native Minister, for a maximum term (renewals included) of 50 years. Provision was made for compensating lessees for their permanent improvements at the end of the lease, and for the revesting of the land in the owners at that time, under certain conditions.[23]

At this point in time (1907) the commissioners had earmarked some 346,000 acres of Maori land as being available for 'general settlement', of which 66,000 acres was designated for sale (19.1 percent) and 280,000 for leasing (80.9 percent).[24] They would eventually place some 696,261 acres out of the 2,040,878 which the commission dealt with (34.1 percent), into a category which potentially made them subject to Part i.[25] Stout and Ngata's deliberations would thus eventually mean that almost 700,000 acres of Maori land – around one-tenth of the total remaining in Maori hands at this time – were liable to be involuntarily vested in land boards, out of which some 350,000 acres might be sold to European settlers and the rest leased. The revenue from the sales would accrue to the owners, via the land boards, but the land itself would be lost. Vesting Maori land in the boards without the permission of the owners was not a complete novelty by 1907: but empowering the land boards to sell vested lands was a new departure. Until this time, the only form of alienation permitted for lands vested in the boards, whether voluntarily or involuntarily, had been leasing. One historian has described this provision as 'a serious invasion of the relatively non-discriminative legislation which had been introduced by the Liberal Government'.[26]

22. 'James Carroll', DNZB, vol 2, p 80
23. Sections 29(1) and 32. Under-Secretary. 29(2) the land board was required to set aside a fund, from rental income, to compensate lessees for improvements.
24. Gilmore, p 60
25. AJHR, 1909, G-1g, p 5
26. Martin, p 128–129

The 50–50 split of 'general settlement' lands, it should also be noted, was not based on any recommendation made by the Native Lands Commission. Indeed, this provision was completely out of step with the procedures adopted by the commissioners from the beginning. Their practice was to consult (as far as possible and practicable) with the Maori owners concerning the disposition of their land, and then to produce lists which, piece by piece, made specific proposals for what was to be done with the land. One of the commission's first major reports, for example, which appeared on 22 March 1907, dealt with a number of blocks on the East Coast, in the Tairawhiti Land District. One of these was the Mohaka Block.[27] Stout and Ngata had held two hearings in Mohaka earlier in the month, at which they discovered that the land in question had been subdivided into 55 units. Specific proposals were made by the owners for each unit. The commissioners apparently approved of most of these proposals, and produced a schedule which made specific recommendations for each of the 55 units. Out of 24,255 acres, 910 were to be reserved as papakainga, 20,870 were required for Maori occupation (including 17,576 which would come under Part i for leasing to specified Maori), and 2475 acres were to be leased to the highest bidder.

The Maori owners of the Mohaka blocks had thus identified 2475 specific acres of land which they did not require for their own purposes, and were prepared to lease. If this land was placed under Part i of the 1907 Act, however, the ownership would be vested in trust in the Tairawhiti Land Board. Approximately 1237 acres would then be designated as land for sold at public auction to the highest bidder. Neither the land board nor the owners would have any choice in the matter.[28] Similarly, if the owners had wanted to sell all of this land to raise capital, they would not have been able to do so.[29] Stout and Ngata later commented concerning section 11 that:

> We are of opinion that the full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law, and we have no doubt that now we have pointed out the position the Government and the Legislature will both consent to an alteration of the existing law.[30]

While acknowledging that 'It is not our duty or function to enter upon any disputed political question', they then proceeded to point out at great length why the provision was discriminatory. Section 11, the commissioners clearly implied, amounted to confiscation of Maori lands.[31]

In describing the provisions of section 11 as an inadvertent 'mistake' by parliamentarians, Stout and Ngata were indulging in a polite fiction. Ngata better

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27. Actually Mohaka 1 and 2, situated on the north bank of the Mohaka River; AJHR, 1907, G-1, pp 9–11 (report), pp 14–16 (Schedule)
28. In this instance, though, for reasons unknown, all of the land in the Mohaka block was later placed under Part II in February of 1908 (see *New Zealand Gazette*, 18 February 1908, 1908, vol 1, p 620.
29. An eventuality which Stout and Ngata noted; AJHR, 1908, G-1f, p 1.
30. AJHR, 1908, G-1f, pp 1–2
31. AJHR, 1908, G-1f, p 4: 'many Europeans own unoccupied lands, and we think it has not been suggested that such lands should be confiscated by the State'.

than anyone else knew that the objectionable provisions had been placed in the Act because the Government had succumbed to political pressure: he himself had toed the party line and voted for the measure he later condemned.[32] According to one historian, the Liberals were forced into this course of action by internal pressure. An election was imminent, and it was feared that the Government would lose the rural vote unless a substantial portion of the 'waste' Maori lands was made available for freehold tenure by European farmers. Barbara Gilmore concludes that:

> as the interests of the Maori landowners and the [European] farmers were not compatible, something had to be sacrificed. The half leasehold, half freehold provision of the 1907 Act was the sacrificial 'burnt offering'.

It should also be noted that many of the likely drawbacks of section 11 were pointed out in the course of debate on the Bill.[33]

The 1907 Act also extended the term of the commission to 1 January 1909. It appears that this was done in hopes that, if the commission looked at enough Maori land, its recommendations would eventually match the 50 percent sale–50 percent lease balance required by Parliament.[34] A subsequent amendment also enabled Maori Land Boards, if a 50–50 division of a particular block was deemed 'impracticable or inexpedient in the public interest or in the interests of the Maori owners', to request permission from the Governor to use a different formula. In such cases, however, the land board had to make adjustments in its dealings with other section 11 lands, so that in any given year half of them were made available for sale and half for lease.[35] And this was the last concession. The vesting provisions of the 1907 Act, as modified in 1908, were embodied in the Native Land Act of 1909. Until new vesting of this kind ceased on 15 December 1913, it remained compulsory for half of the Maori lands vested in the boards on the commission's recommendation to be set aside for sale at public auction.[36]

All things considered, the best strategy open to Maori landowners from late 1907 onwards was probably to cooperate with the commission – to attend hearings and make their wishes known. If owners did so, they had a good chance of influencing the commissioners' recommendations. As one historian puts it 'Many Maori communities were probably persuaded to accept the Commission as a lesser evil. They would preserve some at least of their lands if they cooperated, for to hold out might mean more draconian measures later'. Ngata reportedly told one meeting of landowners in Hawke's Bay that 'If you do not do as we wish, directly our backs are turned the Crown will seize all your land'.[37] Lands being occupied and utilised,

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32. See Gilmore, pp 64–65, and NZPD, 1907
33. Gilmore, pp 61–65. The quotation is from p 65. Herries commented in 1909 that at this time 'the freeholders and leaseholders were pretty much on the balance, so that the gentleman responsible for the Bill of 1907 put in this clause so as to get it through the House': NZPD, vol 148, 1909, p 1104 (Herries).
34. Statutes, 1907, no 62, s 52. See Gilmore, pp 60–61, and Butterworth, 'Maori Land Legislation', p 246.
35. Statutes, 1908, no 253, s 17. Ngata thought that the latter requirement made the whole amendment 'impracticable'; NZPD, 1908, p 1128.
36. Statutes, 1909, no 15, s 270. Under s 95 of 1913, no 58, new vesting was to end with the passage of the Act.

or which might be required in the near future, could be placed under the protective provisions of Part II of the 1907 Act. It would appear that Stout and Ngata made every effort to comply with the owners' wishes in this regard. This would mean that some kind of limit could be imposed on amount of land exposed to possible sale under Part i of the 1907 Act. The fact remains, however, that Maori landowners could suffer the permanent alienation of a portion of their 'unused' lands without consenting to such sales (see Table I.6).

Between February of 1908, and January of 1910, more than half a million acres of Maori land were placed under the control of the Maori Land Boards under the 1907 Act – some two-thirds under Part i (which were vested in the boards) and the balance under the administrative provisions of Part ii. Since little was done with this land by the boards before 31 March 1910, when they came under the virtually identical terms of Parts XIV and XVI of the Native Land Act 1909, their subsequent disposition is best discussed in the context of the latter Act (see below).

Table I.6: Lands vested under the Native Land Settlement Act 1907. The totals are based on a search of the *New Zealand Gazette* for 1906–13. The Maori Land District in which the blocks were located is not identified in the relevant proclamations.)

| Year | Part 1 | Part 2 | Total | Percentage total |
|---|---|---|---|---|
| 1908 | 3532 | 55,952 | 59,484 | 11.8 |
| 1909 | 312,566 | 131,537 | 444,103 | 88.0 |
| 1910 | 1000 | | 1000 | 0.2 |
| Total | 317, 098 | 187,489 | 504,587 | 100.0 |
| Percentage total | 62.8 | 37.2 | 100 | |

## 6.1 Conclusions

Up to the end of 1908 the Stout–Ngata commission made recommendations which affected some 1,811,000 acres of Maori land. Some 1,563,740 acres of this was land recommended for general settlement (696,261 acres) or for Maori occupation (867,479 acres) under the provisions of Parts i and ii of the 1907 Act.[38] Further recommendations were made in 1909 by Stout and his new fellow commissioner Jackson Palmer. Neither the exact amount of acreage involved, however, nor the nature of the recommendations is entirely clear.

Published reports seem to indicate that a small amount of land was recommended for Maori occupation by Stout and Palmer (Part ii),[39] but other sources suggest that

37. Butterworth, 'Maori Land Legislation' p 246
38. AJHR, 1909-I, G-1g, 'Native Lands and Native–Land Tenure: Final Report of Native Land Commission', 21 December 1908, p 5. Recommendations were actually made for 2,040,877 acres, but 229,877 of these in the 'special recommendation' category were subject in the first instance to other Acts.

a large amount of additional land was recommended for general settlement. A confidential report prepared by the Native Minister for the Premier in April of 1909, for example, states that a total of 1,121,516 acres had been 'recommended by the Native Land Commission to be set apart and rendered available for purposes of general settlement'.[40] This is more than 400,000 acres larger than the December 1908 figure. Summaries prepared by the Native Department between June and December of 1909 give a figure of 943,521 acres recommended for general settlement by the commission. This is greater than the December 1908 figure by more than 200,000 acres (figures for Maori Occupation lands remained the same as in Deember of 1908, at 867,481 acres).[41] These totals, however, included a good deal of land for which special conditions applied.

The latest of these reports, for example, shows that as of 7 December 1909, the 943,521 acres recommended for general settlement consisted of 328,882 acres which had already been vested in Maori land boards under the terms of the 1907 Act, and 312,159 acres for which Orders in Council had yet to be issued. Another 302,480 acres were to be dealt with in other ways.[42] Of the 867,481 acres recommended for Maori settlement, 228,154 had been covered by Orders in Council, 458,460 acres had not, and 180,867 acres which were being otherwise dealt with.[43] Had all of the recommendations been followed, then, some 641,041 acres would have been vested in the land boards under Part i of the 1907 Act, for 'General Settlement', and 686,614 acres would have been set apart for Maori occupation under Part ii.

The vesting of lands in the Maori land boards is dealt with at length in a subsequent section. Suffice it here to note that board statistics indicate that the recommendations of the Stout–Ngata commission were not carried out in their entirety. As far as can be determined, a total of only 347,954 acres of Maori land were vested in land boards under Part i of the 1907 Act and its amendments,[44] leaving nearly 300,000 acres unaccounted for. Similarly, it appears that the amount of land placed under Part ii by Order in Council actually fell after December of 1907. Even though 228,154 acres had reportedly been covered by Orders in Council, annual reports of the Department of Native Affairs in the period 1911 to 1927 indicate that the maximum amount of Part ii land administered by the land boards at any given point was 214,146 acres in 1919, to which it had risen from a low point of 204,628 acres in 1911.[45] Even the maximum figure leaves in excess of

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39. See AJHR, 1909, G-1h
40. MA 16/1: Letter of 27 April 1909 from Carroll to 'Prime Minister', p 4
41. MA 16/1: 'Position as regards the Native Land Commission's recommendations as on . . .', reports dated 10 June, 11 October, and 7 December. Minor variations are due to my rounding-off of acreage fractions to whole numbers.
42. This induded lands subject to a timber agreement (135,000 acres), lands subject to leases (78,142 acres), lands which had been incorporated (69,338 acres), and 20,000 acres 'wrongly included by the Commission and since found to be sold'.
43. This included lands which had been or were in the process of being incorporated (some 153,747 acres), and lands which had been under negotiation for lease at the time of recommendation and had since been leased (27,120 acres).
44. See Table II.10. Part I of the 1907 Act was continued by Part 14 of the 1909 Act.

450,000 acres unaccounted-for. A comment made by W H Herries in 1908, that ‘as an actual engine for settling the land this commission might just as well not have existed’, may have been prophetic.[46]

It appears to the author that the Government ceased to implement the recommendations of the Stout–Ngata commission when the Native Land Act 1909 was passed, even though the provisions of the 1907 Act were embodied in the new legislation. Why this should have been the case – if in fact it was the case – is an question which will require further research to answer. At present the only conclusions that can be drawn are, first, that the Stout–Ngata commission seems to have had much less impact on Maori land tenure on the ground than a scrutiny of its reports might otherwise lead one to believe; and, second, that a thorough study of the commission’s operations and their outcome of their recommendations is sorely needed.

45. Part II of the 1907 Act was continued by Part 16 of the 1909 Act.
46. NZPD, 1908, p 1121 (Herries). He also complained that ‘If all the Native Minister’s wishes were carried out . . . the Native Land Boards are not equipped to carry out the provisions of last year’s Act [1907]’.