

CHAPTER 12

‘PRACTICALLY FREE TRADE AGAIN’

In the course of the debate on the 1909 Bill, William Herries complained that:

not an acre of that land which was recommended for settlement by the [Native Lands] Commission has yet been settled by Europeans, although the Commission reported three years ago [sic] and the 1907 Act was drafted and passed to carry out their recommendations.

He attributed this to the fact that the Maori Land Boards had not been given sufficient resources to prepare the Part I lands in question for settlement, and called for them to be ‘fully manned and ready to cope with the great amount of business that will accrue to them when the Bill becomes law’.¹ Herries may of course have feared that the boards would not have sufficient resources to ensure that all of the protective measures built into the 1909 Act were fully implemented. In context, though, it is more likely that the primary concern of Reform’s spokesman on Native Affairs was that no stone was left unturned in making as much Maori freehold land as possible available for settlement.

The Maori Land Boards seem not, in fact, to have been ‘fully manned and ready to cope’ when the Act took effect in 1910. At least one board had serious problems acquiring enough clerical help,² and all of them experienced delays due to a shortage of surveyors.³ But these sort of difficulties aside, the transition to the new regime appears to have been a relatively smooth one. The fact that Ngata was placed in charge of the process may well have helped.⁴ By June of 1910 most of the requisite administrative preparations had been made, and on the 10 June, six Maori Land Districts and boards were proclaimed (including the new ‘Waikato–Maniapoto’ board), together with a new set of regulations to govern their operations.⁵

The Native Department was exceedingly anxious not to be seen as a barrier to the full implementation of the Act. In its annual report for 1910 and 1911, the Under-Secretary commented nervously on the shortage of surveyors, which made it

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1. NZPD, 1909, vol 148, p 1105 (Herries). See also his criticisms of the commission in 1908, NZPD, p 1121.
 2. See J L Hutton, ‘The Operation of the Waikato–Maniapoto District Land Board’, CFRT, Wellington, May 1996, pp 13–14
 3. See especially T W Fisher’s long explanation and commentary in ‘Surveys’, AJHR, 1913, G-9, p 3. This suggests that the problem was in part at least of the Government’s own making.
 4. According to G V Butterworth, ‘Maori Land Legislation: The Work of Carroll and Ngata’, NZLJ, August 1985, p 248
 5. *New Zealand Gazette*, 13 June 1910, no 58, pp 1713–1714, 1717–1721

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‘impossible’ for the Maori Land Boards ‘to comply with the provisions of the statutes and place the lands on the market’, but asserted that they were:

now doing very good work, and facilitating settlement to a large extent, especially when one considers the advantages obtainable through the provisions of assembled owners’ meetings.

The statistics presented, T W Fisher hoped, would:

satisfy the pessimists that the Native Department is doing all it possibly can towards the settlement of Native lands. The Act of 1909 is, no doubt, the contributing factor; and when all its provisions are more universally known, and the parties concerned take the necessary initial steps, the cry of ‘unoccupied Native lands’ will be a thing of the past.

‘At the present rate of progress’, he predicted, ‘it may be assumed that after eight years there will be little, if any, Native land that is not revenue-producing’.⁶

In the following year’s report, Fisher admitted that ‘The settlement of Native land still appears to be a vexed question’, but then proceeded to show that more than one million acres of Maori land had been alienated since 31 March 1910, ‘of which 509,873 acres have actually passed from the hands of the Native owners by way of transfer of the fee-simple’.⁷ It was ‘obvious’, he claimed. ‘that, under the 1909 Act, alienation of Native land has made far heavier strides than in previous years’.⁸ Not coincidentally, perhaps, the 1911 to 1912 annual report was the first to present a full set of Maori Land Board statistics. Pessimists could see for themselves that very large quantities of land were being sold and leased.

The following year the Under-Secretary was able to report that total alienations had risen to 1,483,048 acres since the implementation of the Act, of which 723,122 acres had been sold. Fisher attributed this in part to the ease with which the Crown could purchase land using Part XVIII. ‘All negotiations for the purchase of Native land’, he pointed out:

have to be carried out in accordance with the Act, and the price is to be not less than the value ascertained by certificate from the Valuer-General; therefore all that is necessary is for the Natives to approach the President of the District Maori Land Board, or the Land Purchase Department [sic] direct, when the matter would be explained to them, and if they were agreeable to sell at the Government valuation they could execute a transfer and receive the purchase money.⁹

Using this streamlined procedure, the Crown alone acquired 101,975 acres of Maori land in 1911 to 1912 (see Table II.21). The Under-Secretary was well aware

6. AJHR, 1911, G-9, pp 1–3

7. This figure includes Crown purchases which did not require confirmation by the Maori Land Boards, and so are not included in the figures given in Table II.26.

8. ‘General Summary’, AJHR, 1912-II, G-9, pp 2–3

9. AJHR, 1913, G-9, p 2

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of the possible long-term consequences of such intensive purchasing by the Crown, commenting that:

it will be only a question of a few more years when the Maoris (who some seventy years ago owned all the land) will, as a result of the activity displayed by alienations affected during the past three years . . . be left with a limited area for occupation.

Despite this, he was willing to recommend that one of the few significant restraints on Crown purchasing under the 1909 Act be removed. Because some motions to sell under Part XVIII were allegedly being ‘defeated by a not fully representative meeting [of assembled owners]’, the Under-Secretary proposed that the Crown be allowed to purchase individual interests where blocks had more than 10 owners.¹⁰

By the time the 1911 to 1912 report was written, New Zealand had a new Government and Fisher had a new Minister. When Massey’s Reform government took power late in 1912, W H Herries entered Cabinet. As noted earlier, the new Native Minister had supported the passage of the 1909 Act through the House. Herries found its provision for ‘practically free trade’ to be congenial, although he expressed regret that the legislation did not go ‘a step further’ in opening up Maori land for settlement.¹¹ And he did not, in fact, make wholesale changes to the 1909 legislation when he acquired the power to do so, although the Maori Land Boards experienced more modification than most parts of the system.

The member for the Bay of Plenty had signalled his intentions towards the Maori Land Boards before taking office. In 1908, for example, when the boards had been given the responsibility for approving all alienations, Herries had commented that:

Now everything will be done by the Maori Land Board. Here, I think, the Minister might go still further . . . At present we have this administration by which lands are vested in Boards. I do not believe in it, but as we have it we have to put up with it and try to make it as good as possible.

To this end he outlined a revised system of land administration, based on the existing Maori Land Districts, recommending that:

in each of those districts there should be stationed a permanent Judge of the Native Land Court, who should also be President of the Maori Land Board. I believe there would thus be considerable savings in expense, and that far better work would be done if there was one highly paid and highly qualified official . . . you would [thus] combine the Native Land Court and the Maori Land Board, and you could afford to properly equip and staff the Board.¹²

The Liberals, however, preferred to retain the separation between the boards and the Maori Land Court.

Herries had also expressed concern in 1909 that the boards did not have sufficient resources to open up the lands already under their control for settlement

10. AJHR, 1913, G-9, pp 2–3

11. NZPD, 1909, p 1103 (Herries)

12. NZPD, 1908, p 1121 (Herries)

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(see above). One aspect of this problem was tackled in the first session of Parliament under Reform. The Native Land Amendment Act 1912 contained a provision related to lands vested in the Boards under Parts XIV and XV. Where boards had done nothing with a particular piece of land (as evidenced by the fact that it had not been alienated, and had no charges on it), the owners could apply to the Governor in Council to have it re-vested in the equitable owners.¹³

Greater changes awaited in 1913, with another Native Land Amendment Act. After praising the 1909 Act at length (and his own 1912 Amendment Act providing for re-vesting) Herries told the House that:

When I took office it was felt that the [Maori Land] Boards were not strong enough, and there was a general desire that they should be abolished and that the whole question of the purchase of Native land and the confirmations of dealings should be vested in the Native Land Court.

This course of action, however, had not been adopted, because the Minister ‘found that I could not exactly do that without entirely recasting the 1909 Act’. Accordingly, he explained:

What I have done in this Bill is this: I have practically made the Native Land Court and the Maori Land Board the same. The North Island is to be divided into Native-land districts, and in each of these districts there will be a Judge and a Registrar. The Judge will constitute the Court, and the Judge and the Registrar will constitute the Maori Land Board: practically the Maori Land Board will be the Judge himself . . . We are practically amalgamating the Courts and the Boards; but we will maintain the term ‘Boards’, under which the Judge can sit either as a Court or as a Board.¹⁴

Since 1905, all members of Maori Land Boards had been appointed by the Crown, but at least one was required to be a Maori. Not only was this special provision abolished in 1913, but the process of appointing members thereafter largely became a function of ordinary Public Service procedures. If any Maori became a member of a Maori Land Board, it would be a consequence of personal achievement rather than institutional design.

This change came under vigorous attack in the ensuing debates. James Carroll, in particular, made a strong protest against ‘the excision from the Board of any Native representation’. The Maori Land Boards, he pointed out, were not dealing with European or Crown land: ‘Surely’, he argued:

it is a universal principle, recognized by all civilized races, that there should be representation on any Board dealing with the interests and property of those concerned – representation of those concerned . . . In all other cases, too innumerable to mention, there is Maori representation where their interests are concerned. But in this case why is the Maori member taken off?

The former Native Minister suggested that answer was:

13. Statutes, 1912, no 34

14. NZPD, 1913, p 385 (Herries). See 1913, no 58, s 21–42.

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Because he [the Maori member] was a check, perhaps, against unfair dealing; because he was a discretionary unit that might examine and study transactions between Maoris and Europeans that came before the Board for confirmation.¹⁵

Government members of Parliament took exception to Carroll's 'strong language', but were unable to make an effective response, other than to bluster that it was an insult to suggest that Native Land Court judges could not be relied on to ensure fair dealing.¹⁶

But in the end the Maori members were removed from the boards. This meant that the owners of the lands which had been vested in the Maori Land Councils and land boards no longer had any vestige of direct involvement in decision-making with respect to these lands. Those who had voluntarily vested their lands, in particular, would have been justified in complaining that radical changes had been made by the Crown without appropriate consultation.¹⁷ It also meant that a single individual held complete judicial and administrative control over the Maori lands in each district. This concentration of powers came in for considerable criticism during the 1930s.

The 1913 Amendment Act made a number of other changes to the 1909 legislation, most of which tended to facilitate the availability of Maori lands for alienation in one way or other. The 1912 provisions for re-vesting lands in owners were modified (s 96–106), and the terminal date for new vesting land in the boards under Part XIV was set at 31 March 1914 (s 5). The presidents of boards were required to report each year to the Native Minister on Maori freehold lands in their districts 'not actually used' by the owners, which could 'conveniently' be partitioned. Provision was made for the Crown to proceed, on the strength of these recommendations, with compulsory partitions.¹⁸ Herries also adopted Fisher's suggestion that the Crown be allowed to purchase individual interests under Part XVIII, but took the idea a step further. Section 109 enabled the Crown to acquire any interest in Maori lands, including Maori freehold land, Native reserves vested in the Public Trustee, and lands vested in the Maori Land Boards themselves – and including undivided shares in blocks owned by more than 10 people, even if a Crown offer to purchase under Part XVIII had previously been rejected by the assembled owners.¹⁹

Section 109 was by far the most contentious part of the 1913 Amendment Act, and constituted its most significant deviation from the policy which lay behind the 1909 Act. Ngata attacked the Bill as an expression of 'the greed of the pakeha,

15. NZPD, 1913, vol 167, p 837 (Carroll)

16. See, for example, Reed's comments about Carroll's suggestion: NZPD, 1913, vol 167, p 839.

17. Some owners did so to the Royal Commission which examined the leasing of vested lands by the boards 40 years later: see 'Report of Royal Commission appointed to Inquire into and Report upon Matters and Questions relating to certain Leases of Maori Lands vested in Maori Land Boards', AJHR, 1951, G-5, p 19. Referring specifically to the Aotea district, the commissioners described the elimination of Maori representation in 1913 as 'a departure from one of the conditions which existed at the time of the voluntary vesting of the lands by the Maoris'.

18. See s 44–62

19. See s 109 and Spiller et al, *A New Zealand Legal History*, Brooker's, Wellington, 1995, p 162

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eloquent and aggressive', insofar as section 109 might allow the Crown buy Maori lands held in trust which were currently being leased. This measure, he asserted, had been devised:

not primarily to obtain the waste lands of the Natives, but in order to get the lands that are now in the occupation of European tenants under Maori landlords so dealt with that the tenants will be able to secure the freehold of the land if they so desire.

(Ngata, as noted earlier, could find no grounds to object to measures which concentrated on 'the acknowledgedly large remnant of surplus Native land'.²⁰) James Carroll took a very similar tack, berating the Government for proposing legislation which would give it 'the power to purchase Native interests in . . . trust lands hitherto held inviolate'. He asked:

why is the Government doing it? Is it to benefit the general public? Is it to make ordinary Crown lands to be cut up and sold to the general public, so as to promote close settlement and develop settlement?

The answer to the last two questions, he declared, was negative: such purchasing would 'only benefit . . . the European tenants' of such lands by enabling leases to be converted into freeholds.²¹

Given Reform's general preference for freehold over leasehold tenure, there was probably a degree of substance to these charges, but further research would be needed to ascertain what effect this legislation actually had. Ngata, at least, suspected that its aims were more political than anything else. 'This Bill', he commented:

was devised by the Native Minister to mark a departure from the Act of 1909 and from the policy of his [Liberal] predecessors. The honourable gentleman had to do something. I know that in his heart of hearts he believes that by a slight amendment of the Act of 1909 all that should be done to accelerate the settlement of Native lands can be done.²²

The Native Minister himself stated in 1913:

As long as I can get the land from the Natives without compulsion I think I shall be advancing the cause of settlement. What I want to do is give the Native himself a chance of cultivating his own land. I want to allow him to sell his own useless land, and use the money in order to buy ploughs and horses to enable him to cultivate his own land that is cultivable. That is the policy of this Bill.²³

But the system was already designed to expedite the sale of Maori land, and so was already capable of doing almost all that he and his party wanted it to do. Major

20. NZPD, 1913, p 400 (Ngata)

21. NZPD, 1913, vol 167, pp 838–839 (Carroll)

22. Ibid, p 400 (Ngata)

23. Ibid, p 388 (Herries)

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modifications would have been superfluous – and even dangerous. The fact that Herries shied away from disbanding the Maori Land Boards altogether for fear that a change of this magnitude might disrupt the 1909 system, says a good deal about the character of the original legislation and the system which it put in place.

The 1913 Amendment Act had no obvious impact on the nature or rate of the Maori Land Boards' business, one way or the other. As Chart II.1 illustrates, transactions appear to have been processed at similar levels before and after it was passed. Total sales made through the boards actually peaked in 1911 to 1912

Chart II.1: Acreage of Maori Lands Sold and Leased through Maori Land Boards, 1910 to

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1933. Based on data presented in Tables II.25–27.

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(293,215 acres), but exceeded 200,000 acres per year until 1914 to 1915, and exceeded 100,000 acres per year thereafter until 1920 to 1921. Total leasing also peaked in 1911 to 1912 (336,083 acres), but with one exception remained above 100,000 acres per year until 1917 to 1918. It was not until the last year of the Great War that total alienations fell below 100,000 acres.

The boards did what can only be described as a 'land office business' during the 1910s, despite chronic staff shortages in 1914 to 1918 due to the demands of military service and the ravages of the influenza epidemic at the end of the war.²⁴ The 1920s were a different matter. The sharp decline in the volume of alienations at the beginning of the decade was due in part to the post-War recession.²⁵ The contracting supply of Maori lands worth settling upon, however, was also a significant factor. In 1920 C B Jordan, the Under-Secretary of the Native Department, carried out an inventory of 'Land still held by Maori Owners in the North Island'.²⁶ He found that, deducting lands purchased by the Crown and 'Alienated by sale through the Maori Land Boards',²⁷ Maori on 31 March 1920 were left only 4,787,686 acres of land out of the 7,137,205 which they had owned on 31 March, 1911 – some 67.1 percent. (Although Jordan did not attempt the calculation, this total represented perhaps three-fifths of the land which Maori had controlled in 1900, when the Maori Land Administration Act had been passed.)

Of the 4.8 million acres remaining, some 3.5 million was defined as 'profitably occupied'. The total included 2,810,637 acres which had been 'Leased through Maori Land Boards',²⁸ 319,771 leased by other means, and an estimated 380,000 acres occupied by Maori owners. Some 1,277,278 acres of Maori-owned land were therefore defined as 'unoccupied' (including some 210,648 acres 'Vested in Maori Land Boards and undisposed of').²⁹ Jordan calculated:

If to this area of unoccupied land is added the 380,000 acres estimated to be occupied by Maori owners, you have a total area of 1,657,278 acres available for the use of the Maoris. But of this it is estimated that about 550,000 acres are within the pumice area, and to this probably another 200,000 acres, which includes mountain-tops, springs, sand-dunes, &c, and land unfit for settlement, should be added. This leaves an area of 907,278 acres that may be considered suitable for settlement.

24. See AJHR, 1919, G-9, p 2. The president and registrar of the Waiariki board died in the course of a land court hearing in Whakatane during the epidemic.

25. See AJHR, 1922, G-9, p 1. 'the financial stringency has affected the Native race equally with the Europeans. Many dealing for Native lands by private persons had to be abandoned or postponed, since the proposed alienees were unable to arrange satisfactory finance.'

26. AJHR, 1920, G-9, pp 2–3

27. 1,009,949 and 1,339,570 acres, respectively. The board figure presumably excluded Crown purchases through the boards. Given that total sales through the boards totalled 1,685,933 acres in 1911–20, these apparently amounted to some 346,363 acres during this period.

28. This total would have included Part XVIII and confirmed leases.

29. The 200,000-odd acres of Part XVI lands which the boards had not been able to lease by this point in time were presumably included in Jordan's 634,773 acres of 'other unoccupied lands', although some may have been classified as occupied by owners.

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Given Seddon's estimate 20 years and two million acres of sales earlier, that Maori had barely a million acres left which was 'fit for settlement',³⁰ Jordan's standards for determining 'suitability for settlement' cannot have been very high.

In any case, he suggested that an area of 907,278 acres:

cannot be regarded as an excessive area for the use of the 47,000 Maoris comprising the population of the North Island and their descendants. It is roughly 19 acres per head. Instead, therefore, of there being a large area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves.

It must be noted here that this finding was based on the assumption that the three million-odd acres of Maori land leased to Europeans in 1920 would 'never return to the occupation of the Native owners'. None the less, it is difficult to fault Jordan's conclusion:

that the Maoris have disposed of nearly all the lands that they can dispose of without leaving the bulk of them landless, and later, probably, to become a charge on the State.

He was not the first to voice such concerns, by any means.

The 1898 petition to the Queen had called for 'legislation prohibiting for ever the sale of our surviving lands to the Crown and private persons'. More recently – and moderately – Ngata, had warned Herries during the 1913 debates on the Native Land Amendment Act that:

the time has come when we must say 'let us consider the Maoris in each district, and see whether in the past we have not rendered them almost homeless – whether the time has not arrived to reserve blocks to them absolutely and make these areas inalienable.'³¹

The impact which Jordan's warning made on the Native Department can best be judged by the fact that almost a decade would pass before purchases of Maori lands by the Crown for general settlement came to an end.³² Another 508,106 acres of Maori land were purchased through the Maori Land Boards by the Crown and private purchasers over the following 13 years, before their powers of approval over alienations was taken away in 1932.

In theory, fears that Maori would be rendered landless by selling land were without foundation, due to the many safeguards built into the 1909 Act by its

30. NZPD, 1899, vol 110, p 744 (Seddon): see Part I, above.

31. NZPD, 1913, vol 167, p 402 (Ngata). He also warned that 'I speak with an experience of what took place in the years from 1893 to 1897. I say that what was done in those years will be repeated, if not exceeded, by what the Native-land-purchase agents will do under this Bill'.

32. In the late 1920s Gordon Coates gradually cut off the amount of money available 'until land purchasing ceased to be a significant activity of the Department' (Butterworth and Young, *Maori Affairs: A Department and the People Who Made It*, Iwi Transition Agency-GP Books, 1990, p 72). Maori land continued to be acquired for various purposes, but never again in large quantities for conversion into forms for European settlers. Coincidentally (perhaps) Jordan himself was retired the following year when the department was restructured. See AJHR, 1922, G-9, p 1

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authors. In order to approve an alienation of any kind, the Maori Land Boards were required under section 220(c) of Part XIII to first be ‘satisfied’ that no Maori would, as a result of the transaction in question, ‘become landless within the meaning of this Act’. In cases where the Crown was able to buy without reference to a Maori Land Board the Native Land Purchase Board was not, under section 373 of Part XIX, allowed to complete a sale unless ‘satisfied’ that ‘no Native will become landless within the meaning of this Act by reason of that purchase’. The Act defined a ‘Landless Native’ as one whose total beneficial interests in Native freehold land were ‘insufficient for his adequate maintenance’. The Maori Land Boards were also required by section 220(b) to ‘satisfy’ themselves that the alienation was not ‘contrary to equity or good faith or to the interests of the Natives alienating’.

The question, of course, is whether the Maori Land Boards (and the Native Land Purchase Board) observed the letter and spirit of the Act under which they operated. The sheer volume of land which was sold after 1910, and the sheer speed at which it passed out of Maori ownership, are sufficient to raise doubts as to whether sales were fully investigated to ensure that the criteria set by the Act were fully met. The only study of Maori Land Boards procedures available at the present time does little to dispel such doubts. In his recent survey of the workings of the Waikato–Maniapoto board, J L Hutton found, to begin with, that it ‘only rarely refused to confirm the alienation by sale or by lease of Maori land’.³³ Most cases moved swiftly through the board’s ‘stream-lined administrative process’, in the course of which:

there was very little, if any, examination of the *reasons* behind the sale of specific blocks of Maori land. For example, the Board only rarely inquired into questions such as poverty, debts, failed farming ventures, migration, difficulties of title, lack of capital for development, and disputes. [Emphasis in original.]

‘Yet without such an examination,’ Hutton observes, ‘it is difficult to see how the Board could have properly gauged whether or not the sale was not “contrary to equity or good faith, or to the interests of the Natives alienating”.’

It appears that the board did consistently check to see if the Maori disposing of land owned other land elsewhere. In fact, the author notes, this appeared to be the only measure of validation which the board applied. But even then, he found that:

no questions were asked as to the quality of these other lands, whether they were straddled with debts, liens or the like, or whether they could sustain agriculture. Furthermore, it appears that the Board was prepared to confirm the purchase of land from elderly Maori (even, it seems, if this meant that they were rendered landless), without considering the possibility that potential successors to these interests were being made landless.

33. Hutton, pp 16–17

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(Had the position had not been eliminated in 1913, a Maori member of the Waikato–Maniapoto board would perhaps have asked such questions, and forced a closer scrutiny of these transactions.)

No evidence is available at present to demonstrate that all seven of the Maori Land Boards adopted the same cursory approach as the Waikato–Maniapoto board. None the less, there are grounds for suggesting that the statutory provisions made in 1909 to prevent Maori from being rendered landless wards of the State may not have been properly enforced by the Maori Land Boards during the 22 years when they were responsible for doing so. If a narrow definition of ‘landlessness’ suited the rubber-stamp approach of boards under pressure to ‘advance the cause of settlement’ (to use Herries’ phrase), it had little to recommend in terms of any wider consideration of ‘the interests of the Natives alienating’. It is very difficult, almost a century later, to see how the wider interests of Maori were served by a land administration system which facilitated the permanent alienation of more than two million acres of their land within 20 years.

