

KAWANATANGA AND MAORI AUTONOMY: THE ERA OF KOTAHITANGA AND COUNCILS, 1890–1920

With the repeal of the Native Lands Administration Act in 1888, the possibility of block committees and market prices for leasing and selling (via public auction) was replaced once again by ‘free trade’ in individual interests. Maori throughout the country came together in hui to oppose this backward step, meeting from the late 1880s through to 1892, when the Kotahitanga movement and a formal Maori Paremata (Parliament) were established. Central North Island Maori were strong supporters of this movement, which captured many of their aspirations for autonomy, self-government, and full management of their lands and destinies. Kathryn Rose and Bruce Stirling describe their support and involvement in the movement.¹ The only dissentients in our inquiry district appear to have been Ngati Wahiao, whom Ms Rose notes sought to emphasise their loyalty to the Government and their dissent from Kotahitanga.² Eastern Kaingaroa claimants, suggests Mr Stirling, were at first more interested in the setting up of the Urewera District Native Reserve, although Urewera tribes became fully involved in Kotahitanga from the mid-1890s.³

From 1892 to 1902, tribes from the Rotorua, Taupo, and Kaingaroa districts sent representatives to the Maori Paremata, seeking:

- ▶ the abolition of the Native Land Court;
- ▶ its replacement by Maori committees;
- ▶ total and independent self-management of their lands and resources through block and district committees;

- ▶ local self-government through district committees; and
- ▶ central self-government through a Parliament to act either independently (directly responsible to the Queen in London) or in association with the settler Parliament.⁴

In response, governments returned to Ballance’s principles of 1885 and 1886, creating provisions for incorporations in 1894, consulting Maori and the Paremata in the mid-to-late 1890s, and finally enacting the Maori Councils legislation of 1900. What was possible, as opposed to impracticable, can be seen in the Urewera District Native Reserve Act in 1896, which (for some Kaingaroa Maori) replaced the Native Land Court with Maori-controlled commissions, and provided for self-government and self-management through block and district committees.

The political force of Kotahitanga compelled concessions from the Liberal Government, and there were promising opportunities for Treaty-compliant policies. Richard Seddon spoke of extending the Urewera District Native Reserve Act provisions to other districts. Liberal policies, however, repeated both the promise and the flaws of Ballance’s 1880s approach, which appears to have been duplicated by Seddon in the 1890s. Maori won an apparent victory in the years 1898 to 1900, with an end to Crown purchasing of Maori land, the establishment of Maori land councils to manage lands and decide titles, and of Maori Councils to carry out limited local government functions.

Soon after Kotahitanga dissolved itself, however, there was a rapid reversal of policy in the years 1905 to 1913. The potentially Treaty-compliant system of 1900 was abandoned before it barely got started.

As in previous chapters, the key question for the Tribunal's consideration is:

- ▶ Did the Crown miss (or actively reject) opportunities and requests to give effect to its Treaty guarantees of Maori autonomy and self-government?

As background for this discussion, we provide a brief summary here of each of the alleged lost (or rejected) opportunities for the Crown to have given effect to the Treaty in this period.

CROWN OPPORTUNITIES TO GIVE EFFECT TO TREATY GUARANTEES

WHAT WERE THE OPPORTUNITIES FOR THE CROWN TO HAVE GIVEN EFFECT TO ITS TREATY GUARANTEES OF AUTONOMY AND SELF-GOVERNMENT?

- ▶ *The Constitution Act 1852*: Section 71 of this Act empowered the Governor to declare self-governing Native Districts in which Maori law and authority would apply and have the force of British law. This provision was never used, but it continued to be requested by Maori in the 1890s.
- ▶ *The Kingitanga*: After a series of hui in the North Island, the Waikato Tainui leader Te Wherowhero was raised up as King Potatau I in 1858. Ngati Tuwharetoa and Ngati Raukawa were founding tribes of the Kingitanga and had a complex relationship with the King and other Kingitanga iwi for the remainder of the century. The question of whether the Kingitanga could be recognised, accorded legal powers, and included in the political arrangements of the State, was under active consideration throughout the nineteenth century.



Map 7.1: Kotahitanga Parliament sittings

- ▶ *The Kotahitanga movement of the 1890s*: Maori wanted major reforms of the native land laws, a Maori-controlled process for determining title instead of the Native Land Court, local Maori self-government, and a Maori Parliament in conjunction with the settler Parliament. A self-convened Maori Parliament (Paremata), in which the Central North Island tribes were well represented, met from 1892 to 1902.

In response to this powerful political movement, the Crown made some concessions:

- provisions for block (not tribal) incorporations (1894);
- the Urewera District Native Reserve Act (1896), which purported to give the Urewera tribes a

general committee and a Maori-controlled commission to decide titles (instead of the Native Land Court);

- the taihoa policy – a temporary halt to Crown purchase of land;
 - Maori land councils with a majority of Maori members (some elected) and a Pakeha president to lease land voluntarily vested in the councils (1900);
 - introduction of Maori bodies into the title-determination process (1900); and
 - Maori councils to provide some legally enforceable powers of local government to Maori communities (1900).
- *The Maori Councils:* The Maori Councils Act 1900 provided an opportunity for Maori self-government at both a local and a central level. The yearly General Conferences of the councils were supposed to be a replacement for the Kotahitanga Paremata at a national, central government level. They were discontinued, however, from 1911. At a local level, the councils appear to have faded by the second decade of the twentieth century. Native Ministers and Maori members of Parliament of the time agreed that the councils failed because they had insufficient powers and were starved of funding.

Having provided this brief background to the alleged lost opportunities, we turn now to address the parties' submissions on these issues.

The claimants' case

In the prioritising of issues and material for closing submission, the parties paid brief attention to the issues of Kotahitanga, autonomy, and land (self-) management in the 1890s. Karen Feint argued that Tuwharetoa were at a low point 'demographically, psychologically, and socially', having lost control of their lands through the Taupouniatia hearings. Rather than giving up, the tribe supported the Kotahitanga movement as a response to the continuing

erosion of their efforts to exercise mana over their land, resources, and taonga. Tureiti Te Heuheu was a leader of the 'Home Rule' group, which sought autonomy (separate law-making powers for a Maori parliament), while others sought to reform Pakeha laws.⁵

As with the Rohe Potae compact, the Crown made enough limited concessions to undermine Maori opposition from 1898 to 1900, but stopped short of what Maori were really seeking. The Maori Lands Administration Act and Maori Councils Act of 1900 provided for some of the aspirations of Kotahitanga, but failed to provide either a separate Paremata or real power. Tureiti Te Heuheu took a strong stand on the Treaty of Waitangi and its guarantees to Maori, but the Crown did not provide a Treaty-compliant response.⁶

In terms of legislative remedies provided by the Crown, Michael Sharp and Jolene Patuawa have assessed the incorporation provisions of the Native Land Court Act 1894, and also the Maori land legislation of 1900 to 1909, in their generic submission on land issues. Annette Sykes and Jason Pou have assessed the Maori Councils Act 1900 in their generic submission on political engagement. Mr Sharp and Ms Patuawa argue that the 1894 Act provided an incorporation mechanism tailored to facilitate the alienation of Maori land. As a result, there was only one year in which Central North Island Maori used the provision (1898), to alienate several thousand hectares of Kaingaroa land. Otherwise, no incorporations were created under the 1894 Act.⁷

The reforms of 1900 were, in the claimants' view, based on the 1899 legislation that brought a halt to new Crown purchases of land. In response to Maori pressure, the Seddon Government returned to the idea of boards that would lease land on behalf of Maori owners. Maori opposed the possibility that such boards would be European-controlled. The 1900 Act, however, while allowing for Maori representation, kept the land councils controlled by Pakeha. The land councils set up under the Act had majority Pakeha membership, and Central North Island Maori did not support them, only vesting a very small amount of land. By 1905, the legislation had failed because, in the evidence of

Vincent O'Malley, Maori were reluctant to place their land under the control of a European-dominated administrative structure.⁸

Mr Sharp and Ms Patuawa argue that another weakness of the 1900 legislation was that it kept the Native Land Court, despite earlier proposals that it would be abolished. The papatupu block committees established by the 1900 Act were nonetheless a success, deciding the titles to much more land than was actually vested in the councils. In 1905, the Government dismantled the aspects of the 1900 Act that had tried 'to promote self-governance amongst Maori.'⁹ Partially elected councils were replaced with wholly appointed boards, still with a Pakeha majority. The Crown also resumed purchasing, and moved to introduce compulsion in the vesting of land in the new boards. No account was to be taken of owners' wishes in deciding whether to sell or lease compulsorily vested land. Finally, the Crown returned to direct alienation instead of vesting altogether in 1909, as well as restoring the Native Land Court to full power.¹⁰

Ms Sykes and Mr Pou addressed the Maori Councils Act 1900. They argued that Crown-sponsored councils were designed to subordinate Maori authority to that of the Crown. The Te Arawa runanga had been usurped by Grey's New Institutions, the Arawa and Tuwharetoa Committees were broken by the Native Land Court in the 1880s, and the Maori Councils Act of 1900 was part of this same pattern. The Act offered modest powers of 'self-management' in return for Maori leaders accelerating the pace of assimilation. The Crown wanted to try implementing a cultural revolution via Maori leaders instead of imposing it directly. The Act required councils to suppress 'injurious' customs, promote education via native schools, promote changes in health, and supply the kind of information to the Government (such as population statistics) that the old resident magistrates used to do. Councils were empowered to make bylaws to carry out this revolution, and to impose fines. The Prime Minister, Seddon, stated in 1900 that the purpose of the legislation was to make Maori land productive by ending Maori communal life and communal titles.

The main difference between settler politicians was the amount of time they were willing to allow for the process to work. Ultimately, if the councils could not move Maori in this direction, then compulsion would be resorted to. The Crown wanted, in effect, to destroy the whole Maori way of life.¹¹

The Crown's case

The Crown argues that there were three streams of Maori political thought in the late nineteenth century: the Kotahitanga movement; the Kingitanga council (Kauhanganui) movement; and the assimilationist aspirations of a small minority of Maori. The goals of these movements were diverse and (in some ways) conflicting. The Crown, therefore, could not easily provide for all Maori aspirations, even were it appropriate to have done so by the standards of the time. The Crown was by no means opposed to Maori meeting at national hui, and it provided a shorthand writer and food for the Orakei Parliament in 1879.¹² It had also gone some way to meet the reasonable aspirations of the 1880s, including the Native Committees Act 1883, which was a genuine attempt to engage with Maori concerns by the Crown. But successive governments felt that having separate legislative bodies on ethnic or racial lines would be divisive and risk increasing conflict and tension, rather than addressing it. However such views might be seen today – now, as then, there is a range of opinion – these were deep and genuine views shared by many in nineteenth-century New Zealand society. In these circumstances, it was not realistic or reasonable to expect the Crown to have established a Maori parliament.¹³

In Treaty terms, the Crown argues that article 1 transferred absolute sovereignty to it. The Treaty relationship is between sovereign and subject. Any conception of separate sovereignty or parallel governments does not fit within the Treaty. Article 2, on the other hand, guarantees more than just ownership of property. It guarantees a 'degree of Maori control and management over what Maori own'. Tino rangatiratanga is not the same thing before and after the

Treaty – chiefly control over people to the extent of executions or waging war was ended, for example. But it is more than just control and authority over property – elements of ‘self-management of non-material resources (people and culture)’ were protected by the Treaty. How much self-management is consistent with the Treaty, and how this changes over time, are proper matters for debate in the Crown’s view.¹⁴ A Maori ‘parliament’, however, was never going to be appropriate.

At the same time, the Crown argues that:

- ▶ it ought to have provided mechanisms for collective management of Maori land by Maori communities;
- ▶ it finally did so in 1894, by empowering the Native Land Court to create Maori incorporations;
- ▶ there was official recognition that Maori collectives should play a greater role in title determination processes as far back as 1872, and there was ongoing Maori agitation for it throughout the period; and
- ▶ local self-government like that envisaged in the Native Councils Bill of 1872 or the Native Committees Act 1883 was appropriate, but the difficulty for the Crown was in how to translate these things into bureaucratic institutions that would work in practice. Despite this recognition, and the reality of the 1883 Committees Act, successive governments considered separate legislative bodies on ethnic lines to be divisive and dangerous.¹⁵

In terms of its legislative solutions to these issues, the Crown submits that the Native Land Court Act 1894 provided for incorporations, which were a mechanism for Maori to manage their land collectively. The Tribunal’s historians, Nicholas Bayley, Adam Heinz, and Leanne Boulton, suggest that the Act only allowed for incorporation as a way to facilitate land alienation. The Crown argues that these historians overlooked the regulations published under the Act in 1895, which allowed incorporations to borrow money for land development, among other things. From 1894, therefore, the Crown argues that there was a proper mechanism available for the collective governance of land. It was not widely used in the Central North Island,

however, until the twentieth century. The Crown makes no submission about why this provision of the 1894 Act was not used.¹⁶

The consultation of the late 1890s, and the resultant 1900 legislation – the Maori Land Administration Act and the Maori Councils Act – has not been the subject of submission by the Crown. It offers no comment on how far or why the Government met Maori views, the significance of the mechanisms created in these 1900 Acts, or the significance of dismantling them from 1905 to 1909.

The Tribunal’s analysis

Neither the claimants nor the Crown have covered in their submissions all the issues of Kotahitanga and political engagement for the 1890s, but the evidence in front of the Tribunal is sufficient for us to identify and make findings on the key generic issues for the Central North Island. The Kotahitanga ‘home rule’ movement was an outgrowth of Maori aspirations of the 1880s, influenced in a small way by the Irish question, but was very much a continuation of the attempts to retain and then regain autonomy from the 1860s to the 1880s. Many of the same options were canvassed and remained available to the Crown as before, with models of institutional, community, and domestic-nation autonomy available throughout Europe, North America, and the Empire.

As we noted in chapter 3, this was the decade in which British courts recognised a divided sovereignty in the Pacific islands. It was also the decade of the second Irish Home Rule Bill, which passed the House of Commons in 1894, but was defeated in the House of Lords. We examine the New Zealand Liberal Government’s attitudes to Home Rule, as one of the key contexts for Maori aspirations to self-government at a national level. We also explore Liberal concessions to the Kotahitanga movement, including the provision for Maori land incorporations in 1894, consultation on draft bills in the late 1890s, and the Maori land councils and Maori Councils set up in 1900.

We return to our key question as the basis for our analysis.

MISSED OR REJECTED OPPORTUNITIES FOR MAORI AUTONOMY

KEY QUESTION: DID THE CROWN MISS (OR ACTIVELY REJECT) OPPORTUNITIES AND REQUESTS TO GIVE EFFECT TO ITS TREATY GUARANTEES OF MAORI AUTONOMY AND SELF-GOVERNMENT IN THIS ERA OF KOTAHITANGA AND THE COUNCILS?

The first option: Native Districts under the Constitution Act

Section 71 of the Constitution Act 1852 remained a live issue for Maori in the 1890s. It was one of the starting points of Kotahitanga – that the Act provided for fundamental rights under the Treaty. At its first formal hui at Waitangi in April 1892, attended by representatives from Rotorua, Taupo, and Kaingaroa, Maori leaders discussed the source of authority for them to form their own parliament. They agreed that authority for Kotahitanga and a Maori parliament arose from the 1835 Declaration of Independence, the Treaty of Waitangi, and section 71 of the Constitution Act. Having failed to obtain actual authority from either the British or New Zealand Governments in the 1880s, Maori proceeded to act as if in fact authorised under section 71 in the 1890s. This was their assertion of their tino rangatiratanga in the face of the Government's refusal to carry out section 71. The formation of a Maori parliament, covering both 'Native' and settled districts, was an adaptation of tino rangatiratanga and of the principles of section 71 to the new circumstances of the 1890s.¹⁷

Maori leaders continued to seek the cooperation and authorisation of governments (both British and New Zealand). Thus, Hone Heke brought the Kotahitanga's Native Rights Bill to the New Zealand Parliament, explaining in 1894 that Maori should have 'the sole right of enacting laws for themselves. There was not the slightest doubt

that the intention of section 71 of the Constitution Act of 1852 was to give them that right.' This was, he argued, the opportunity for the Government to carry out the spirit of the Constitution Act.¹⁸ Carroll replied for the Government that the spirit of the Act was embodied in the Maori seats, and the power they gave to represent Maori views and interests within the New Zealand Parliament.¹⁹ Throughout the debates of the 1890s, Maori continued to assert that section 71 should be carried out, by according legislative powers to the Maori Parliament. When accused in 1898 of advocating two different systems of law for Maori and Europeans, Te Heuheu replied that *he* was not doing so – two systems had already been created by the Treaty of Waitangi and the Constitution Act. What was required, he argued, was to give honest effect to these fundamental embodiments of Maori rights.²⁰

FM Brookfield points out that the Queen could still have set apart Native Districts, if advised to do so by her New Zealand ministers.²¹ The complete independence of Maori districts from the New Zealand Parliament was practically impossible, however, in the political context of the 1890s. Section 71 was no longer the real option it had been earlier. It required adaptation to new circumstances. The true answer to the dilemmas facing the Crown and Maori lay in other options by this time. Maori saw this clearly. In 1894, Kotahitanga introduced their Federated Maori Assembly Empowering Bill into the New Zealand Parliament. Its purpose, as Hoani Whatahoro explained, was for 'the authority of the law to administer Maori land and of Section 71 of the Constitution of 1852 to be given to the Maori people themselves'.²²

The second option: Native Districts and runanga under the 1858 legislation

The Government finally closed off this option in 1891, with the passage of the Repeal Act. This statute repealed a multitude of Imperial, national, and provincial legislation that was considered inoperative or redundant. The Native Districts Regulation Act 1858 and the Native Circuit

Courts Act 1858 were both repealed. Nonetheless, the power to provide Maori local self-government through the Districts Regulation Act remained for parts of the Central North Island, as it had been incorporated in its entirety in the Thermal Springs Districts Act 1881.²³ It was still possible for the Crown to give legislative and administrative powers to Maori runanga in those parts of the Rotorua and Taupo districts proclaimed under this Act. As in the 1880s, however, the Government chose not to do so. This plan of Fenton's and Rolleston's was quietly dropped. The Government retained the technical power to declare Native Districts until 1908, when this section of the Thermal Springs Districts Act was repealed.²⁴

The third and fifth options: Maori empowerment at the central government level, and legal powers for state runanga (Maori committees)

These options were the key ones available to the Crown in the 1890s. Having lost the battle to get more Maori seats in the settler Parliament, Central North Island Maori turned to another strand of their struggle for autonomy from the 1860s to the 1880s: a Maori national assembly to legislate for Maori in things Maori. As we have noted, the Crown argued in its submissions that this form of 'separatism' was never possible in the political context of the colony at the time, and it was not reasonable to have expected the Crown to meet this 'aspiration' in the circumstances of the time. We consider this argument in depth here, because it was the lynchpin of the Crown's case; if it fails, then the claims are well-founded in Treaty terms.

What was reasonable in the circumstances of the time? Parallels with Irish Home Rule were obvious and made at the time. How, asked some members of Parliament, could the New Zealand Government condemn Irish coercion Bills, having passed its own coercion legislation in Taranaki?²⁵ The idea of nationhood in New Zealand was hotly debated. Some considered that the Irish in New Zealand would eventually give up their separate school system and assimilate to the majority.²⁶ Others, such as

Ballance's *Wanganui Herald*, pointed out that Germans, Scots, and the Irish retained their 'national patriotism' in a melting pot like the United States, and that such national identity was 'one of the strongest guarantees of a good citizen.'²⁷ Irish Home Rule, and the many models of autonomy available throughout the world at the time, were widely discussed in Britain and New Zealand. Many politicians, especially Ballance and the Liberals, supported self-government for Ireland in the 1880s and 1890s. They also debated self-government for Pacific islands such as Fiji, Imperial federation, the appropriateness of a 'provincial' parliament for Ireland alongside continued participation in a federal British Parliament, the entitlement of British subjects to local self-government, and other such ideas.²⁸ In Britain, there was a fairly broad consensus that, no matter what, the Irish must at least be provided with institutions of local self-government.²⁹ The language of Irish Home Rule, so acceptable to New Zealand governments in the 1890s, was adopted by Maori and thrown back in the faces of settler politicians.³⁰

Although many viewpoints were expressed, we may take this 1887 pronouncement by the Prime Minister, Sir Robert Stout, as typical of majority Liberal thinking of the time:

Honourable members in this House know that years ago I expressed the opinion that the way to obtain good government in Ireland and true loyalty among the Irish people was to give them some form of self-government such as we ourselves at present possess. . . No one can look at the Irish question without feeling vexed, and ashamed, and annoyed: vexed that any portion of the British Empire should be in such a state that it should be considered that the people are not to be trusted to govern themselves; ashamed that the people cannot even be trusted to vindicate the law, and that the trial of those who have offended against the law is proposed to be changed to a different country; annoyed that what seems to outsiders a way out of the difficulty [Home Rule] should not have been chosen by English statesmen before this. In fact, if they had given to Ireland, at the time of the disestablishment of the Irish Church [1869], a form of Home Rule I believe that Ireland

would have been just as contented with that Government as this or any other colony is. . . I think Ireland has been misgoverned, and that if the English people were wise they would see it to be their duty to give the power of self-government to Ireland. . . I hope this House will show sympathy with the Irish nation and with those people in England, and especially in Scotland, who desire to see the Irish nation obtain some form of local government. I do not think that would inflict any injury on the British nation. . .³¹

What New Zealand politicians could conceptualise for Ireland, getting ‘annoyed’ when English statesmen failed to adopt obvious solutions, applied equally in their own backyard. It is no accident that Maori adopted the language of Home Rule to express their aspirations to Pakeha in the 1890s. Ballance had already assured Central North Island Maori that they were entitled to ‘large powers of self-government’ under the Treaty; ‘that is the meaning of the Treaty.’³² But his Government had failed to deliver on his promises in the 1880s. It remained to be seen whether the Liberals could make good on Maori Treaty rights to self-government and autonomy in the 1890s. And in the meantime, while Maori continuously asked for powers to decide their own titles to their lands through their committees, the Native Land Court continued to provide the only legal means of dealing with tribal lands throughout the decade. More and more land passed through the system. It was not too late for significant parts of Taupo and Rotorua as at 1891, but it was certainly so by the time of the Maori ‘victory’ of 1900. The failure, year by year in the 1890s, to provide Central North Island Maori with meaningful self-government and powers of self-management, was a decisive turning point for the claimants in our inquiry.

The Crown is correct that there were divisions and divergences in what Maori sought from it. Even so, a remarkable degree of unity was achieved by Kotahitanga, and many of its bottom-line aspirations were common to all Maori movements of the 1890s. When the Young Maori Party allied itself with the moderates in the Kotahitanga, the only real difference between the aspirations of all parties was

a matter of degree. Fundamentally, Kotahitanga and the Kingitanga both wanted the self-government that Ballance had promised them in the 1880s. They wanted Maori titles to be determined by Maori committees and not the Native Land Court. They also wanted a national Maori body to make laws for Maori lands and resources, and local committees to govern Maori communities. They called this ‘home rule.’³³ It applied to a distinct people living under their own customs and laws, rather than a separate geographical territory or ‘state’ such as Ireland. But that does not excuse New Zealand politicians from granting Home Rule to Maori, on the same basis as they advocated it for Ireland.

In response to the Kotahitanga’s Native Rights Bill, Dr Newman stated in Parliament: ‘Home Rule might be a fair claim in Ireland or Norway, but it was idle to talk of giving it to a mere handful of Natives scattered about in all directions.’³⁴ A separate territorial state was not, however, a conceptual requirement for Home Rule. The Government’s Maori Councils Bill of 1900 stated that:

reiterated applications have been made by the Maori inhabitants of those parts of the colony where the Maoris are more or less domiciled and settled, forming what is known as Maori centres and surroundings, for the establishment within those districts of some simple machinery of local self-government, by means of which such Maori inhabitants may be enabled to frame for themselves such rules and regulations on matters of local concernment or relating to their social economy as may appear best adapted to their own special wants. . .³⁵

We can see no reason of logic, principle, or theory, either at the time or now, that would preclude a national tier of law-making for the land and internal affairs of ‘districts’ so defined, reflective of a distinct people living on their own lands, centred around their own kainga and marae. As Wi Pere put it, while there was Maori land left in New Zealand, then Home Rule meant Maori making their own laws about their own lands. His fear was that the Kotahitanga Bill calling ‘for authority will not be granted, and perhaps for up to 30 years – like the Irish seeking home rule for

themselves. . . this Bill will not be granted until all the land has been given up, because then there will be no place to apply it.³⁶

Kotahitanga sought a national Maori body to provide institutional autonomy at a central level, in conjunction with district bodies to provide institutional autonomy at a community level, and block committees to provide communities of owners with collective authority over their lands and other taonga. In essence, it was very similar to the demands of the 1870s and 1880s. What was different was the degree to which Maori had united behind a single institution – their self-constituted parliament – and the degree to which the Government felt it necessary to compromise so as to defuse and defeat this unprecedented political combination.

The greatest debate within Kotahitanga was over whether a Maori ‘parliament’ should be equal with the settler Parliament and answerable to the Queen alone, or whether it should draft laws to be enacted by the New Zealand Parliament. The failure of successive governments to give Maori fair and equal representation in the settler Parliament remained a burning issue for both sides. The Crown argues that a separate Maori parliament of either type was impossible. But its submissions do not address the systematic exclusion of Maori from representation in local and central government at the time, or the willingness to provide a separate court, separate land laws, and a host of other distinct Maori arrangements. Also, the Crown was prepared to set up a national Native Lands Board to *purchase* Maori land, and all kinds of specialised boards and authorities. The difference here was that they would not permit a Maori-elected body to make the rules about Maori land. It was as simple – and devastating – as that.

Kotahitanga Maori were willing to dispense with the name of ‘parliament’, so that need not have been a sticking point. Te Heuheu, for example, thought it could be called by the innocuous name of ‘board’:

what I understand by such a board is a federation of the 37,000 people of whom I spoke [who had signed the Kotahitanga

petition], for whom the board should act, who should frame the laws under which the land is to be surveyed and subdivided, and provide the necessities of those persons who are without land, while at the same time it would provide the means by which those who possess land might have their interests conserved.³⁷

As a conceptualisation of Home Rule for Maori, this was entirely practicable. The very existence of a Maori parliament, meeting year by year for a decade, ought to have proved by the end of that decade that it would not in fact cause racial division or disharmony. Further, Ballance’s submission of his draft lands Bill at the national Waipatu hui in 1886, and Seddon’s submission of his Bills to the Maori Paremata in 1898 and 1900, indicates that the Crown could and did work with such meetings of representative Maori leaders to make the will of Maori known to the Government. Putting this on a more permanent and official footing would have been no great leap of principle or practice. To have worked, two things were required. First, the Government would have had to give Maori the power to shape legislation in a motive and meaningful way. There were many points of compromise possible between the parties, but (at a minimum) real power would have had to be shared over Maori land, its development, and its ‘closer settlement’. Secondly, a basis had to be agreed for dealing with matters of overlap between Maori ‘internal affairs’ and those of the settler communities. This would have meant both sides working at and giving meaningful expression to the Treaty principle of partnership.

In this context, it seems clear that the more ‘extreme’ views in Kotahitanga were not feasible politically. A Maori parliament with independent authority, with its legislation submitted directly to the Queen or Governor for the royal assent, was never going to be acceptable to settler politicians. The political reality was that the British Government could do nothing, and that Maori who sought to exercise their tino rangatiratanga on a national level could only do so in partnership with the (settler-controlled) Crown. As Mr Stirling put it, there was:

an apparent contradiction in seeking independence, while calling on the institution from which you wish to gain independence to authorise it, but that is the conundrum confronting those who seek change through peaceful means.³⁸

Yet full independence from the New Zealand Government was not required by the Treaty. Rather, meaningful power-sharing at a central level, with a partnership between the Crown and the duly constituted representatives of Maori, was incumbent on both parties to the Treaty. This was exactly what the great majority of Central North Island Maori sought through Kotahitanga. It was a cardinal opportunity for the Crown to have acted consistently with the Treaty, and the movement's fundamental goals were clearly deliverable at the time. In 1895 and 1896, having rejected the Kotahitanga Bills seeking legislative authority for a national Maori body, Parliament passed the Urewera District Native Reserve Act. We make no findings on how that Act worked in practice, but it appeared on paper to give the Urewera tribes local self-government through hapu block committees and a district-wide General Committee, the power to manage their own lands collectively through those committees, and a special Maori-controlled commission to decide land titles instead of the Native Land Court.³⁹

Such a measure for the Central North Island tribes would have gone a long way towards meeting their Kotahitanga aspirations. Reviewing the parliamentary debates surrounding this Act in 1896, we note in particular the statements of the Prime Minister, Seddon, setting a standard by which we assess what was conceivable and practicable in the circumstances:

I am satisfied that there are exceptional circumstances in connection with the Tuhoe, and that those circumstances are favourable to the attempt being made, as provided by this Bill, to give them, in respect to the several matters mentioned in this Bill, self-government. In my opinion, the greatest evil that overtook the Natives arose from the fact that they were essentially a people governing themselves. They have

governed themselves for ages, and yet by our coming here, and by our civilisation, we took away from them all control and administration of their own affairs. They have not had any responsibilities cast on them, and the changed circumstances have been such that they – a people who are essentially a self-governing and self-contained people – where our civilisation has overtaken them, have been set aside, and this fact of having no responsibility and no government, in my opinion, has helped to destroy the former favourable attributes of the Native race. The Natives have from time to time come to respective Governments and respective Parliaments and said, 'Give us something to do; allow us to have some responsibility; allow us to take some part in the work of colonisation.' What is asked for by this Bill is not at all unknown; it has been pressed upon Parliament time after time. As far back as 1883 an attempt was made – Mr. Bryce being then Native Minister – to give the Maoris some responsibility, something in the way of having committees of management, especially in respect of Native affairs. But they were not looked upon as being trustworthy, and there were surrounding circumstances which debarred Parliament at that time from giving effect to what was proposed. However, the longer the experience I have had with the Natives the more forcibly it has come to my mind that we ought, at all events, to try what the result will be. . . . of allowing them to elect Committees, and giving the Committees power to deal with their affairs as mentioned in this Bill ...⁴⁰

I never was so gratified at anything that has arisen as at seeing a prospect under this Bill – and under what has been done – of preserving a large slice of country, which is essentially a Native country, to the Natives, keeping them clear as far as we possibly can, of the dark side of our civilisation, and having positive proof, as I think we shall have if this Bill becomes law, that they are able to look after themselves, and to manage their own affairs in such a way as will reflect credit upon themselves and upon the Parliament that has granted them the powers which, I say, they ask for, and which, in my opinion, they are entitled to receive. An honourable member representing the Native race said this afternoon that if this is granted to the Tuhoe Natives it will be asked for by the



Sir Richard Seddon, Prime Minister of New Zealand from 1893 to 1906.

Natives in other parts of the colony. If it proves a success with the Natives in the Urewera Country, then, I say, by all means grant the request alluded to. At the Native meetings – which they call Parliaments – we know they discuss measures which affect their race, and, after reading the reports of the discussions which take place at those meetings, I can assure honourable members that I am not saying anything at all discreditable to the European members of this House if I tell them that in respect of some of the measures discussed they can and do show us the way. . . as I have said, the Natives have been asking for a long time for more power to be given them. Let us give them that power. And by granting that concession I have no hesitation in saying that it will give us the opportunity of

seeing how far they are able to manage their own affairs, and in so doing promote the well-being of the race.⁴¹

A Prime Minister thinking in these terms was perfectly capable of keeping the Treaty in the nineteenth and early twentieth centuries. It remained to be seen whether and how far these sentiments – based as they were on a knowledge of the long history behind Maori efforts to govern themselves and their lands – would be translated into action.

As we have noted, the Rotorua, Taupo, and Kaingaroa tribes were strong supporters of Kotahitanga and its goals. In the evidence of Dr Ballara, the Kahui Wananga o Te Arawa (‘the great learned assembly of Te Arawa’) took the lead in the confederation’s 1891 petition, Te Karoro Tipihau. The petition was first planned at a meeting of Te Arawa churches in 1888. It was signed by 4988 Maori in 1889 and 1890, and was presented to Queen Victoria through the Governor in 1891.⁴² It sought a representative council to be elected by Maori, which would make policy and law for the approval of the Queen and the New Zealand Parliament. If ‘found productive of peace and good order’, then the Crown and Parliament would be expected to ‘give final effect’ to the council’s measures. There was no intention to:

separate the two races, but rather that the members of the Native race may become still more united under you our Queen; as your Majesty has already concluded with us a glorious bond of union in the Treaty of Waitangi, the terms of which, however, have not been given full effect to by the different Governments of New Zealand. This has filled the minds of your Maori people with misgiving lest the conditions embodied in that treaty should be altogether lost sight of. It is therefore on that account that your Maori people are steadfastly looking to you to afford them relief.⁴³

The Rotorua petitioners stressed that this was not seeking a separate or territorial state, but a council for Maori wherever they lived – those living among settlers ‘being still more burdened by the laws.’⁴⁴ This was a fairly typical request for ‘home rule’ from the Central North Island,



Bust of Queen Victoria, Te Papaïouru Marae, Ohinemutu, Rotorua, circa 1908. In 1891, Te Arawa took their aspirations for autonomy under the Treaty to the Queen, no doubt mindful of this bust, presented to them in 1870, and housed under a carved and painted canopy at Te Papaïouru Marae. Photograph by Thomas Pringle.

envisaging a Maori body to decide things Maori but in partnership with the Queen and the settler Parliament, and not conceptualised as (or limited to) any territorial ‘state within a state’.

In March 1894, the Kahui Wananga o Te Arawa called a huge hui at Ottawa near Te Puke to discuss issues like the Native Land Court and taxation. The hui decided that Te Arawa should boycott the court and also parliamentary elections. One of their goals was for rates to be used by the Kahui, not the Government, for its people’s benefit. The Kahui would also replace the courts, administer all Maori land, and become the institutional expression of Rotorua autonomy. This was an attempt to set up an ‘all-powerful authority to administer all the affairs of Te Arawa’. Maori self-government, therefore, was envisaged at two levels, the central (a council for all Maori) and the regional (a council for Te Arawa). Petera Te Pukuatua, a very prominent Ngati Whakaue rangatira, was its tumuaki in 1895, when it hosted the Kotahitanga Parliament at Rotorua. At that

sitting, the whole of Te Arawa adopted the Kotahitanga’s objectives as their own.⁴⁵

In the Taupo district, Te Heuheu became a leader of the Home Rule ‘party’, seeking full legislative powers for a Maori assembly rather than the submission of legislation to the settler Parliament for approval. In the late 1890s, however, he came to support compromise with the Government, so long as it delivered fundamental power for Maori to control their own lands and destinies. In 1898, he made a statement that looked back to the reforms of the 1880s, but was also remarkably prescient about Seddon’s 1900 legislation:

The cry of the Maori has been that they should be allowed to make the law themselves under the rights conferred upon them by the Treaty of Waitangi, but the Crown holds on to all these privileges, and refuses to surrender them, and only gives little trifling concessions to the natives. From then up to the present, the government has continued to act in the

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same way towards the Maori. So now all we say is this: You people have had control and disposal of these lands for a long time, and you have proved that you cannot use them for our benefit; they have slipped away from us continually. Give us the control ourselves; we ought to be considered.⁴⁶

The key point which prevented the Crown accepting a national Maori body to draft laws (or regulations) for Maori lands was not that it was inconceivable, impracticable, or unreasonable by the standards of the time. Rather,

it came down to economic self-interest. Settlers considered they had an equal or predominant interest in Maori lands, that those lands must in fact be transferred to them, and that ultimate power over them must be retained by the settler Government. (These points emerge very clearly in the parliamentary debates and other documentation of the time.) This was the reason why Home Rule was acceptable for the Irish but not for Maori.

Statement to the Waitangi Tribunal on behalf of Ngati Tuwharetoa

We have come to the conclusion of our hearings both here in Turangi and Taupo.

While this has been a moving and sometimes painful process, it was important for us to appear before the Tribunal to share the memories and the knowledge of our koroua, kuia and kaikorero.

This has been a story of how our whanau and hapu have challenged and fought against the overwhelming force of a Crown imposed regime that was oblivious to the unique values and attributes that were the mainstay of our survival and our identity as Ngati Tuwharetoa.

We have heard stories from all our various hapu and whanau. Each story has breathed 'life' into the wairua of our tupuna. We have heard how they all faced Crown adversity with dignity and pride and we have marvelled at their resourcefulness and endurance.

My singular concern in continuing this claim of my late father Sir Hepi, is to ensure the protection and maintenance of the mauri of our Tuwharetoatanga. This is the enduring legacy of my forebears.

HEREARA who forewarned us of the threat of colonialism

MANANUI who rejected Kawanatanga because it defiled our tikanga and mana ariki

IWIKAU who fought for unity so that we could control our own destiny

HORONUKU who stood up for justice and consolidated our mana whenua

TUREITI who witnessed the erosion of our mana and challenged the Crown to return our self-autonomy and self-respect

HOANI who pursued justice through the Crown's highest constitutional and legislative institutions

AND MY LATE FATHER **HEPI** who challenged the Crown to return our taonga and our rights to our taonga

So this has not been a personal choice for me. This has been a legacy, an inherent duty thrust upon me by my forebears.

I am reassured that this is not my legacy alone nor is it my journey alone. The involvement of Tuwharetoa at these hearings has demonstrated a simple and irrefutable fact – this is an inherent duty for all Ngati Tuwharetoa. It is derived from our tupuna **NGATOROIRANGI** and handed down to us all by way of our rarangi tupuna to the present day and forever into the future.

Tumu Te Heuheu, 6 May 2005 (doc E53)

Crown reforms of the 1890s in response to Kotahitanga – were they sufficient?

In 1891, the Native Land Laws Commission condemned:

- ▶ the principle of individualisation as both unnecessary and in breach of the Treaty; and
- ▶ the Native Land Acts (including the 1880s legislation discussed above)

It recommended various reforms.

Had something been done at that point, within parameters consulted and agreed with Maori, much Maori land in the Rotorua and Taupo inquiry districts could well have been preserved and developed by the tangata whenua. It was already too late for Kaingaroa, although not perhaps in terms of managing the small land base that remained in that district. Nonetheless, the Government was impressed with the political strength and unity of Maori, and had to make some concessions to their wishes. This, as we noted in chapter 3, was a powerful constraint on the Crown in this period. Ms Feint submitted that the Crown did just enough to get Kotahitanga to disband, but fell short of providing Maori with their real aim – power at the central government level. It follows from our discussion above that we must accept this submission. The Government, while prepared in practice to submit legislation to the Paremata for discussion and amendment, was not prepared to give it official recognition, or any official role or powers. This failure to provide for institutional autonomy at the central level – in circumstances where Maori sought it and the Crown could readily have met their wishes – is a serious breach of Treaty principles. Ultimately, refusal to share power in this way was a betrayal of the principles of partnership and Maori autonomy. But it does not follow from this that the Crown's other concessions were meaningless or ineffective.

Incorporations under the Native Land Court Act 1894

In response to the political pressure of Maori and the fundamental reasonableness of collective land management for Maori communities, Parliament returned to many of

Ballance's 1886 principles in 1894. The case for collective management of tribal lands had been before Parliament for decades. In 1884, for example, W L Rees put the situation very clearly:

a very gross act of cruelty and bad faith as well as folly was perpetrated by us when we compelled the Natives to hold their lands as individuals. The Treaty of Waitangi assured them of 'all of their rights in their lands'. The chief right of all was the right of tribal ownership – but a tribe of 500 persons is totally different from 500 distinct and opposing claimants. It is the tribe which owns the land, and it is the tribe which, in justice, ought to have sole power to use it or deal with it.⁴⁷

The Native Land Court Act 1894 provided for Maori block owners to be incorporated by the Native Land Court. The details of this Act will be considered in later chapters. Here, we note briefly that the Act provided for the collective management of Maori land by elected committees, equivalent to Ballance's block committees of 1886. The principal activity authorised under the Act was to alienate land. From the evidence available to us, there appear to have been two possibilities: incorporations could lease or sell land in a manner to be prescribed by regulation, so long as they had the consent of the commissioner of Crown lands; or they could hand their land over to district (settler) land boards, on which Maori had no representation, to sell or lease it as if it were Crown land.⁴⁸

It appears to have been the Government's intention to give control to these boards, which was explained in terms of active protection:

But all these things [dealing with property by incorporation and committees] must be done through the Land Board . . . and that will protect the Natives, and prevent injustice from being done.⁴⁹

The legislation stated that the legal estate was vested in the Crown from the point at which the land board got involved, and it is not clear to us whether owners could repudiate the results of the board's auctions. Before alienation, the Government could impose conditions by Order

in Council, or forbid alienation if the owners did not have enough other land for their support.⁵⁰ As far as we are aware, there was only one incorporation created in our inquiry district under the Native Land Court Act 1894, and it did not hand its land to the board for alienation. Kaingaroa owners of the Pohokura block incorporated to facilitate the sale of about 40,000 acres to the Crown.⁵¹ All the Government had to do was use section 126 of the Act to issue an Order in Council, stating that the terms of its deed with the owners were the terms and conditions under which this land could be alienated.⁵² We think it likely that, other than for Crown purchases that could be covered by such tailored Orders in Council, the Government intended incorporations to use the boards.

Under the 1886 Act, owners could partition their land or dissolve the committee if they did not agree with what it proposed. In the 1894 Act, owners were not given any express power or recourse vis-à-vis the committee at all (although this was later provided by regulation). After the land was leased or sold, any money was to be paid to the hated Public Trustee for distribution to owners, or for any other use prescribed by the Governor in Council. The owners or committee played no role whatsoever in applying or deciding how to apply the proceeds of their land. This point alone militated against widespread adoption of these incorporations in the Central North Island in this period (see chapter 11).⁵³

The ability to manage land collectively by incorporations under the 1894 Act, therefore, had the same flaws condemned by Maori in 1886, but with even fewer of their requested changes. Fundamentally, Maori wanted their lands managed by committees at two levels – at the immediate block level, and at a wider (hapu or iwi) ‘district’ level. If a Government commissioner or board was to auction their land, then they wanted officials to act jointly with Maori committees, and they wanted their own committees to manage the proceeds. Most of all, they feared and distrusted Pakeha boards and the Public Trustee. They also wanted to be able to manage their lands per se, and not be able to act collectively only to alienate them. Given

these clearly expressed reasons why Maori refused to use the 1886 Act (see chapter 6), it is hardly surprising that the 1894 Act was not used extensively in the Central North Island before 1900.

The Crown submitted that 1895 regulations, which it filed with the Tribunal, clarified and extended the legal powers available to owners and committees, and enabled incorporations to do much more than just alienate their land.⁵⁴ On reviewing these regulations, we agree that they required committees to act in accordance with the directions set down by owners at annual general meetings. They also empowered incorporations to make decisions enabling them to farm or develop the lands, and the Public Trustee to borrow money for development. Unfortunately, they also enabled the Crown to buy undivided individual interests as before, bypassing the committee and the incorporation altogether. The role and powers of the Public Trustee were extended by the regulations. In terms of leasing, the regulations required the agreement of the Minister, Public Trustee, and commissioner to any particular lease. Leasing had to be by tender or public auction, to follow the same rules for Crown land, to give all the powers of the lessor over to the Public Trustee after the lease was signed, and to have all proceeds administered by the trustee and spent for purposes prescribed by the Government. Selling land was easier – with the consent of the commissioner, it could be on any terms agreed by the parties. The proceeds, however, still went to the Public Trustee to be spent on purposes and in a manner set down by the Government, not owners.⁵⁵ As Ballance had noted in 1886, use of the Public Trustee was a deal breaker for Maori.

The Tribunal's findings on incorporations under the Native Land Court Act 1894

We agree that these regulations provided for additional activities and responsibilities, especially development for farming. Potentially, they allowed for collective management of retained land by a community of ‘owners’. The heavy and controlling role of the Government, however,

and especially the Public Trustee, accounts in part for Central North Island Maori not actually choosing to use it. They were seeking full control of their own lands by block and district committees, the replacement of the Native Land Court by committees, and full regulatory powers for a national Maori body. In those circumstances, the incorporation provisions of the 1894 Act were so deficient as to render them useless as a vehicle for the collective tribal management of tribal lands. We do not accept the Crown's suggestion that this Act met its Treaty obligation in the 1890s to provide collective management mechanisms.

Seddon's legislative proposals for reform, 1897–1900

From 1897 to 1899, the Seddon Government consulted the Kotahitanga leaders and negotiated the package of 1900 Acts which led at last to the enactment of fundamental reforms (similar to those recommended in 1891), and also facilitated the end of the Maori parliaments. By 1900, however, it was largely too late in terms of empowering Maori to carry out initial title investigations – most Maori land in the Central North Island inquiry region had already been adjudicated by the Native Land Court.

In 1899, however, the Crown did stop its decade-long campaign of very aggressive Maori land purchase, and agreed to the idea that Maori would make land available to settlers through leasing. The result of consultation with, and compromise with (and within) Kotahitanga was two key pieces of legislation. First, the Maori Lands Administration Act provided a new system of joint Crown–Maori management and leasing of Maori land. Secondly, the Maori Councils Act provided bodies for local Maori self-government. As part of the latter Act, there was provision for Maori to assemble and have policy input at a national level, at proposed general conferences of the district councils.⁵⁶ It seemed, therefore, that the key aspirations of Kotahitanga had been met, and this view was sold successfully to Maori leaders by a combination of settler and Maori politicians, especially Seddon himself, assisted by Carroll and Ngata.⁵⁷ We do not have evidence on the

detail of consultation from 1899 to 1900, the promises and undertakings of the Prime Minister and the Native Minister at those hui, nor the extent to which the substance of the 1900 legislation reflected what Maori had requested during this consultation, or what the Government had promised them. In the absence of such evidence, we are not able to make findings on how the 1900 legislation reflected on the Crown's Treaty duty to consult. We do note that there was a Treaty-consistent attempt to consult Maori generally, and also through their chosen representatives, the Kotahitanga Paremata.

Maori land councils as possible vehicles of autonomy and self-management

In the next section of this chapter, we will consider the Maori Councils as a vehicle for local self-government, and General Conferences as a means for Maori input to central government. Here, we concentrate on the provisions for Maori self-management of land and resources in the Maori Lands Administration Act 1900, which provided:

- ▶ Maori land councils with a majority of Maori members (mostly elected), which would manage the alienation of Maori land in conjunction with the Crown, and perform some of the functions of the Native Land Court; and
- ▶ block committees elected by owners to vest land in these councils, to direct the councils to either lease or sell it, and to carry out some of the functions of the Native Land Court.

This Act gave Maori much of what they had been seeking since the failure of the Native Councils Bills in the early 1870s – 30 years late, but still of much potential use to Central North Island Maori. The cardinal principle of the reforms was the virtual relegation of the Native Land Court to an appeal authority. Maori 'claiming to be the owners' of land could elect a committee to investigate its title, allocate it between whanau, and individualise it within whanau. The block committee's report would then be confirmed (or investigated in the case of disputes) by the land council.

This district council consisted of a Pakeha president, two to three appointed members (one of whom had to be Maori), and two to three elected Maori members. It was to exercise all the powers of the court, including title investigation (or confirmation of the block committees' reports), partitioning, and successions. A final appeal to the Native Appellate Court was still allowed.⁵⁸ The real question was whether this type of council, covering a much wider area than tribal districts, and with a strong Government component, would provide sufficiently meaningful Maori representation and be acceptable to Maori as a body for title investigation, partitioning, and successions.

Also, Donald Loveridge notes a fundamental uncertainty in the new law – the chief judge had to agree in each case to the council exercising its jurisdiction, and the circumstances in which he would or would not do so were not specified in the legislation. The Native Land Court continued as a parallel institution with, in the words of John Salmond, 'concurrent and discordant powers and duties in respect of the same matters.'⁵⁹

In terms of land self-management, the councils could now exercise the Native Land Court's incorporation powers, as provided for in the 1894 Act (which has been discussed above). Now, however, the incorporation committees would work to the councils instead of commissioners of Crown lands and the Public Trustee. The councils would lease or sell land (as instructed), and could borrow money from the Government for development. If Maori chose not to incorporate, all owners had to meet and agree to vest land in the council. Unlike the later 1909 provisions, there had to be a genuine majority of owners voting for the decision to vest their land in the council, and directing the council how to deal with it.⁶⁰

These provisions – as with the ones replacing the Native Land Court – were compromises between Kotahitanga's demand that Maori committees have full and total power and responsibility for title investigation and land management, and the Government's desire to control both processes. That desire arose in part from the active protection of Maori interests – as was clearly stated in Parliament in

the 1890s – and in part to ensure the protection of settler 'interests' in Maori land. It remained to be seen whether the degree of Government control – significantly less than in 1886 and 1894 – would facilitate or stifle Maori self-management. This lay at the heart of Maori fears about handing over their lands to any kind of Government-influenced (and likely, controlled) body. Te Heuheu and other Kotahitanga leaders petitioned about it in 1898, fearing that the proposed land boards would be 'absolutely controlled by the government, which will probably exercise its powers of control rather for the advantage of settlement in general than for the advantage of the Maori owners.' This was and would always be 'contrary to the letter and spirit of the Treaty of Waitangi, and to the rights of the natives as British subjects.'⁶¹

We will address this Act further in chapter 11, where we consider its significance to Maori titles and land administration in more depth. Here, we are concerned solely with the extent to which the Act replaced the Native Land Court, provided a means for collective Maori decision-making about community assets, and enabled Maori communities to lease land and accumulate capital for development. Dr Loveridge argues that the Act took a while to get off the ground, but that by 1905, Maori were starting to gain confidence in it and to vest their lands for leasing. Almost no land was vested in the Rotorua district, but, as we will see in chapter 11, some was vested in the Taupo–Maniapoto district (we have no information on whether it was Taupo or Maniapoto land).⁶²

Placed alongside 'what seemed to be the exciting "home rule" development of the Maori Councils, it [the land council system] was deemed to be progress along a route towards rangatiratanga.'⁶³ It 'seemed' to meet some requirements for Maori self-management of their lands. Historians have interpreted it positively as a measure that gave 'real autonomy' for Maori control over their own lands, the ability to preserve them, capitalise, and develop them. But while Maori now operated the processes of investigation and decision-making, they could be overridden by the Crown and its agencies. In Richard Hill's view,

Maori feared that this was simply another means for the Crown to take their lands, so there was initial reluctance to place land under what was essentially a government body on which they were represented. This defeated the councils' potential to be 'self-determinationist mechanisms'. But the potential was there, so some groups observed them for a while and then moved towards opting in. Dr Hill argues that the councils did not start out as vehicles of autonomy but that Maori began to consider that they *could be*. Whatever the difficulties, Kotahitanga had negotiated a system in which the Native Land Court's power was significantly modified, and in which Maori could retain some control over their lands.⁶⁴

But the settler Government was not satisfied with the rate of vesting, and dismantled the legislation from 1905 to 1907. The councils were turned into boards in 1905, with one nominated Maori member and no elected Maori representatives, and were controlled instead by Pakeha appointed by the Government. The Crown resumed active purchasing of interests. In 1909, the whole idea of vesting land in the boards was abandoned in favour of resuming direct purchase, and the Native Land Court was restored to full power over Maori land. The victory of 1900 was swept away. Maori land boards retained administrative powers but by 1913 they had become the Native Land Court in another name, consisting of the local judge and court registrar.⁶⁵ In Dr Hill's view, these changes disempowered what there was of Maori authority in controlling and administering land. Pretences that these mechanisms were to provide a degree of Maori self-government were abandoned. 'Land had remained the base for most of the [Maori] autonomy aspirations at the turn of the century', but 'even the small degree of jurisdiction granted in 1900 to Maori to control its rate and mode of disposition had quickly disappeared.'⁶⁶

Dr Loveridge's analysis supports this view, and he argues that (unlike the 1886 Act, which Maori did not support) Maori were starting to use the 1900 legislation and it was not *their* disuse of it that led to its dismantling.⁶⁷ Kotahitanga had won an apparent victory for Maori self-

management of land from 1899 to 1904, but it was very short-lived indeed.

The Tribunal's findings

What were Central North Island Maori entitled to under the Treaty?

Under articles 2 and 3 of the Treaty of Waitangi, and the principles of partnership, autonomy, and equity, Maori were entitled to self-government, in whatever form chosen by their duly constituted representatives, and agreed with the Crown. We have already discussed the long history of Central North Island Maori seeking to assert their tino rangatiratanga in this way, through:

- ▶ the Kohimarama Conference (and the petition for it to become regular);
- ▶ the runanga and komiti movement of the 1870s and 1880s;
- ▶ petitions and appeals for proportionate representation in the New Zealand Parliament;
- ▶ the Kingitanga;
- ▶ appeals to the Queen and the New Zealand Government for a national Maori assembly in the 1880s; and
- ▶ Kotahitanga and the Kingitanga in the 1890s.

From time to time, the Government had made concessions. Throughout the period, Maori rights to govern themselves through their own komiti or runanga were recognised, experimented with, and occasionally legislated for. But komiti and runanga were not provided with proper legal powers. At the national level, Governor Gore Browne promised to reassemble the chiefs for national consultation at Kohimarama, and the settler Assembly voted funds for it. Ballance rejected a 'separate' parliament or assembly for Maori but promised to consult and act at the will of the people. He agreed with Ngati Whakaue that this could involve an (informal) national Maori body.⁶⁸ He consulted such a hui at Waipatu in 1886. Similarly, the Liberals of the 1890s rejected the name of 'parliament' but submitted draft legislation to the Paremata for consultation, and agreed in

1900 to delegates from the Maori Councils having a consultative general conference at a national level.

Underlying these concessions, we think, was some degree of recognition of Maori rights to self-government. We have discussed the extent to which Europeans would not settle for just local self-government in chapter 3. Many settler politicians recognised that Maori were entitled to at least this level of power. The actual granting of local self-government to Maori – as to the Irish, and even to the New Zealand settlers in the 1840s – was seen in the 1890s as a panacea that might defuse requests for empowerment at the central level. Under article 3 of the Treaty, Maori were entitled to equal self-government with their settler fellow citizens. Constant recourse in the 1880s and 1890s to an explanation that the four Maori seats in Parliament (and the 1883 District Committees) were a sufficient provision for this right, was clearly untrue in the circumstances of the time and the principles of the Treaty.

The principle of partnership arises from the reciprocity in the Treaty, whereby Maori agreed to the Queen's *kawantanga* in return for the recognition and active protection of their *tino rangatiratanga*. The principle of autonomy arises from the full expression of that *tino rangatiratanga*. Wherever Maori have genuine autonomy, including self-government and control of their social and economic destinies, then the Treaty is being carried out. Finally, the principle of equity arises from the promise in article 3 of the rights and privileges of British citizenship. This principle does not require that laws be the same for settler and Maori, but rather that they be equal. This was expressed variously by Maori and Pakeha in the nineteenth century. In 1877, the national Omahu hui called for 'equal laws' for the races, which would, in their view, mean an annual national komiti for Maori, and proportional representation of both races in Parliament.⁶⁹ In 1882, John Sheehan told Parliament:

It had been said over and over again that the Natives should have equal laws, an equal voice in Parliament, and proper treatment by the Europeans; and it had been rejoined, 'Yes – while they are strong enough to demand it.'⁷⁰

The question was: were Maori strong enough to insist on it in the 1890s, and would the settler Parliament agree to equal rights of self-government for Maori?

Under the plain meaning and the principles of the Treaty, Maori were entitled to legal powers of self-government. This must necessarily have included the exclusive power to define their own membership, and manage their own lands and resources. These key incidents of self-government were recognised at the time, and given effect for the Queen's Pakeha citizens. Maori, however, were denied the fundamental rights of self-government from 1840 to 1900, with prejudicial effects for the ability of Central North Island hapu and iwi to manage their resources or control their destinies according to their cultural preferences and best interests. To give effect to the Treaty principles of partnership, autonomy, and equity, the Crown and duly constituted Maori leaders and representatives should have discussed and agreed the manner and institutional form in which Maori were to have equal powers, rights, and privileges to those of settlers, and the ways in which *kawantanga* and *tino rangatiratanga* would be given effect. Opportunities existed for such discussion and agreement throughout the nineteenth century, none more so perhaps than with Kotahitanga in the 1890s. We turn now to our findings on whether this opportunity was taken.

The Tribunal's findings on the third and fifth options

We find that:

- ▶ The Crown's failure to act on the findings of the 1891 Native Land Laws Commission, while there was still time for it to have made a significant difference in the Central North Island inquiry district, was a critical missed opportunity. While the Tribunal does not consider that the recommendations of that commission were *necessarily* sufficient or appropriate remedies, a crucial decade was lost before something similar was tried in 1900.
- ▶ For Maori to seek 'home rule' and a national body to make laws or regulations for their own lands and resources was entirely consistent with the Crown's

kawānātanga, and compliant with the Treaty guarantee of their tino rangatiratanga. The willingness of many to compromise with the Government was also in the spirit of the Treaty.

- ▶ The Kotahitanga movement was a positive development, easily compatible with loyalty to the Queen, the rule of law, Maori self-management, and ‘closer settlement’ (by settlers *and* Maori) through the leasing or development of the remaining Maori land base. When Maori set up their own elected body – self-funded and with an elaborate electoral system, rules, and a very large degree of popular support – the Crown should have worked with it, encouraged it, and empowered it. Seddon’s submission of his draft legislation to the Paremata shows the correct attitude, and an approach that could easily have become permanent and institutionalised. The title of ‘parliament’ need not have been a sticking point, given the Maori willingness to use another title, to seek legislative authority from the New Zealand Parliament, and to work with the Government if possible. The Crown’s failure here was another critical missed opportunity. The Crown’s submission about separatism, in respect of this particular movement, misses the point and also the political context of how Maori affairs were administered at the time. In failing to incorporate Kotahitanga into the machinery of the State, and share power with Maori in a meaningful way at the central level, the Crown acted in serious breach of the principles of the Treaty.
- ▶ In failing to, at the very least, make the same degree of self-determination available to Central North Island Maori that it made available to Urewera Maori (regardless of how that turned out in the end), the Crown acted in breach of the Treaty.
- ▶ In failing to meet any of the Kotahitanga aspirations until as late as 1900, the Crown compounded its earlier breaches of the Treaty in respect of Maori self-government and autonomy, with compounding prejudicial effects for Central North Island Maori.

The 1894 provision for incorporations was not a sufficient or appropriate means of meeting the Crown’s Treaty obligations. Given the stated Maori objectives of the time, and their particular fear and distrust of the Public Trustee, this ought to have been obvious to the Liberal Government.

- ▶ The Crown’s 1900 land reforms, as negotiated with Maori leaderships through the Kotahitanga parliament, were broadly consistent with the Treaty. It was a serious Treaty breach, however, when they were dismantled so soon after 1900, restoring effective Pakeha and Government control of Maori land, the full powers of the Native Land Court, and Crown purchasing of Maori land and of individual interests. This dismantling of much that Maori had been seeking since 1870, without giving it a real chance to work, and in combination with the resumption of active purchasing, was a very serious breach of Treaty principles. The disempowering of Central North Island Maori so soon after their potential empowering in 1900 had serious consequences for their social and economic destinies in the twentieth century.
- ▶ Above all else, the Crown rejected one of the most important and crucial opportunities for Treaty partnership in the history of this country. Kotahitanga (and Kingitanga) leaders were willing to make compromises, to act in partnership with the settler Parliament, but to do so from a basis of mana Maori motuhake. The opportunity to institutionalise Maori autonomy at the central level, to provide meaningful power and partnership between Maori and settler leaders, was a unique one. Maori themselves created the machinery. Year after year, they elected their representatives and sent them (with plenty of relatives to observe and keep them honest) to deliberate and express the Maori will – tino rangatiratanga – to the people of New Zealand. In response, there was a failure of vision and of aroha, and a triumph of settler self-interest, that subverted and defeated this Maori endeavour. We consider this to be a very serious

breach of Treaty principles, with enormous prejudice for Central North Island Maori.

The fourth option: inclusion of the Kingitanga in the machinery of the State

The Kingitanga did not disappear, as many settlers hoped, with the end of the aukati, the intrusion of the Native Land Court, and the death of King Tawhiao. By the 1890s, the aspirations of all North Island tribes were so closely aligned that Hone Heke used King Tawhiao's petition of 1884, and his 1886 correspondence with Ballance, as primary articulations of Kotahitanga's goals.⁷¹ In the mid-1890s, Kotahitanga leaders made overtures to the Kingitanga, which started sending representatives to the Maori Parliament. The two movements, however, remained separate in a formal sense and pursued their goals on a parallel path. In 1898, a major divergence of views developed between the Kotahitanga 'moderates', who sought to amend Seddon's draft legislation and settle for something less than an independent parliament, and those who wanted to keep pushing for full legislative powers.⁷² Te Heuheu was a leader of the latter group, which included Tuwharetoa, Ngati Raukawa, and Te Arawa.⁷³

At the same time, the Kingitanga submitted Bills to the New Zealand Parliament similar to Heke's earlier ones, to establish a national Kaunihera (council) to manage Maori affairs, with committees to replace the Native Land Court and provide Maori local self-government. The Kaunihera was to be elected, with some members also nominated by the King. Before the 'split' of 1898, this was in fact considered by some a Kotahitanga Bill and supported as such in 1897, as well as in 1898. Te Heuheu and Ngati Tuwharetoa petitioned in support of the Kingitanga Bill in that year.⁷⁴ Addressing the Native Affairs Committee, the ariki explained that the meaning and purpose of the Kingitanga was, and had always been, identical to that of Kotahitanga. Both movements would accept a national Maori body to manage their own internal affairs, if the Government could be brought to empower one.⁷⁵ Mr Stirling argues that the split in Kotahitanga has been exaggerated, and points

as well to the Taupo support of Kingitanga initiatives in the 1890s, and the links and common goals between Kotahitanga and the Kingitanga.⁷⁶ His evidence on these points is useful, but further research is required before we can be sure of the exact relationship between the movements. We accept the Crown's submission that many tribes did not want to come 'under' the King, but the Kotahitanga support of the Kingitanga Bill in 1897 to 1898 suggests that compromise and even union between the movements was possible.

There was argument and debate from 1898 to 1899, with Taupo and other Kingitanga increasingly coming in to support the moderate Kotahitanga position in 1899. And finally in 1900 there was unity: Kingitanga, Home Rule Kotahitanga, and 'moderate' Kotahitanga agreed that the proposed legislation (the Land Administration Bill and Maori Councils Bill) was the best that could be obtained.⁷⁷

The Tribunal's findings on the fourth option

What was the Crown's Treaty obligation to those of its Maori citizens who continued to entrust their destinies to the Kingitanga? We think the evidence of the 1890s is that the Kingitanga remained a vital political force, capable of working with Kotahitanga and reconciling many of its fundamental goals with that movement. The constitutional rights provided for in section 71 required adaptation in the circumstances of the time. If some among Kotahitanga were, as Mr Stirling shows, willing to support a council involving a formal role for the King, then this was a vital opportunity for the Crown to have facilitated the political empowerment of, and peaceful relations between, its Maori citizens. Further evidence would be required before we could be certain of the point.

Formal recognition of the King and his council probably required regional rather than national arrangements. Relationships were complex, but it does appear that there was an enormous potential for common action. Maori were trying to govern themselves voluntarily on a national basis in the 1890s. What divided people most, according to Te Heuheu, was not knowing which way the Crown

would jump. Once some form of national ‘board’, ‘council’, ‘runanga’ or whatever was endorsed by the Government, he argued that both Kingitanga and Kotahitanga would come in behind it – only Te Whiti and Tohu’s people would remain outside. This was the opportunity articulated to the Crown by Te Heuheu and other Kotahitanga leaders.⁷⁸ It was, in our view, a unique opportunity with potential for great benefit to Maori and the people of New Zealand. The Crown’s failure to act on it was unreasonable in the circumstances, and inconsistent with the principles of the Treaty.

We turn now to the question of whether the Maori Councils set up in 1900 gave effect to the Crown’s Treaty guarantees of autonomy and self-government.

MAORI COUNCILS AND THE TREATY GUARANTEE OF AUTONOMY

DID THE MAORI COUNCILS GIVE EFFECT TO THE CROWN’S TREATY GUARANTEES OF AUTONOMY AND SELF-GOVERNMENT?

The Seddon Government passed the Maori Councils Act in 1900. It was drafted jointly by the Government and representatives of the Paremata and the ‘Young Maori Party’. It had the potential to empower Maori local self-government after a delay of 60 years, and to provide a meaningful voice in central government through its annual conferences. The Government persuaded the Kotahitanga movement to disband on the strength of it.

We did not receive specific historical evidence on the Act or how it operated in our inquiry districts in the twentieth century. It is of such critical importance to the claims, however, that we have relied on published historical accounts to reach preliminary conclusions. In particular, we have consulted the parliamentary debates and the recent historical analyses of Ranginui Walker, Richard Hill, and Raeburn Lange. Their work has enabled us to draw conclusions at a generic level, but we note the absence of evidence on the particulars of our inquiry districts. Also, the Crown has

not made submissions on the relevant issues. Our findings, therefore, are constrained by the limited evidence on the one hand, and by the limited positions taken by the parties on the other. Having relied on evidence not presented formally to the Tribunal, we summarise it relatively fully in the next sections.

The historical arguments of Richard Hill

Dr Hill, citing Dr Ballara, observes:

Just as the search for autonomy by Maori had been fundamental to Maoridom in the nineteenth century, it remained at the heart of Maori aspirations in the twentieth. For decade after decade, ‘Maori people in each district constantly endeavoured to find ways to control their own affairs, proclaim their group identity whether as tribe or hapu, and enrich their lives; they aimed at enhancing the mana of the hapu in their inner affairs, and sometimes that of the tribe as they looked outward, striving to control their land and membership and take their affairs out of the hands of government.’⁷⁹

The Young Maori Party and the Maori Councils Act

According to Dr Hill, a new generation of Pakeha-educated Maori leaders believed that full tribally based autonomy was no longer the answer. They mediated between the Crown and Kotahitanga, obtaining compromises that ‘were deemed to be measures of self-government’.⁸⁰ In 1900, the Crown made ‘what seemed to be’ two significant concessions to autonomy – legislating for Maori organisations of land management and self-government. Dr Hill points out that the timing is significant – most Pakeha still wanted assimilation and believed Maori were dying out, but the concessions were in fact compelled by pressure from Kotahitanga and its semi-ally, the Kingitanga.⁸¹

Dr Hill’s interpretation of the Young Maori Party is that educated leaders willing to cooperate with the State can often achieve the most in terms of real gains for their people, and be the most subtle at undermining the settler majority’s domination. He disagrees that they were

supporters of assimilation, wanting rather to combine the best of Pakeha 'civilisation' with the best of Maori culture, thereby saving Maori as a people and race. Well aware of Pakeha military and political power, the 'party' leaders were pragmatists who accepted that they should work within the boundaries of settlement and Pakeha politics. But their pragmatism also led them to work within the parameters of Maori tribal politics as well, despite their rhetoric about primitive tribal isolation. Ngata, their most influential leader, was particularly skilled at working with tribal leaders, and in economic terms his land policies were in effect a form of separate development for Maori communities.⁸² Maori would learn from and, in the words of Te Rangihiroa, bring 'his equal contribution to the partnership with the Pakeha.'⁸³

The Young Maori Party called for race pride, race consciousness, self-respect, and self-reorganisation. Setting tensions about 'tribalism' aside, there was sufficient common ground for it to work with Kotahitanga. Even more importantly, the Government needed Maori leaders as intermediaries to defuse the political pressure and strength of Kotahitanga and the Kingitanga. The result was the 1900 Acts, which were portrayed at the time, and have sometimes been interpreted since, as 'large concessions' to the Maori demand for self-government. Dr Hill does not accept this interpretation. He argues, rather, that the Government was worried about the apparent mass Maori support for Kotahitanga, and wanted some kind of safety valve.⁸⁴

Through Carroll – who rejected autonomy but wanted Maori to retain some customs and land – the Government turned to 'moderate' Maori for advice. This advice came in the context of nineteenth-century Crown willingness, 'however desultory', to use native committees. Ngata, Heke, and Tureiti Te Heuheu, for example, came to the view that such committees were a more attainable solution than a Maori parliament. The Young Maori Party supported calls for Maori local self-government and for Maori to control their own lands. It took this (with the rest of its agenda) to many hui and sought the support of 'traditional leaders.'

Many Maori were suspicious of this watering down of Kotahitanga's goals, but others came to accept it. At the same time, Carroll and the Young Maori Party influenced the Government to accept that limited self-government and land management committees might be controllable enough (and cheap enough) to work.⁸⁵

By 1898 the Prime Minister, Seddon, was willing, as Dr Hill puts it, to universalise the principles underpinning the Urewera legislation. Full assimilation was the aim, but it would be slowed or even suspended in political and land matters, though encouraged via health measures that would undermine aspects of contemporary Maori communal living and lifestyles. On the other side, the Ohinemutu Parliament in 1900 appointed a subcommittee to draft a Bill for the new committees, chaired by Heke and assisted by Ngata. The Parliament endorsed the Bill, thereby rescinding its former minimum demand for a standing national Maori representative body. The suggested institutions drew on nineteenth-century experiments – the 1860s official runanga, the native committees of the 1880s, and also Maori unofficial komiti. The committees would be supervised by the Crown, so that made them palatable to the Government. The result was the Maori Councils Act 1900.⁸⁶

The results of the Maori Councils Act

Dr Hill argues that 'on the surface the legislation provided for devolved local government powers which approached those of boroughs and town boards.'⁸⁷ But the councils were to be 'heavily constrained and guided' by the Crown. Dr Hill's examples of this are the model bylaws prepared by the Young Maori Party for the councils to rubberstamp, the appointment of an organising inspector (Ngata) and later sanitary inspectors, and the appointment of a Pakeha superintendent.⁸⁸ On the other hand, Dr Hill notes Maori agency and emphasises that the councils were supposed to do at least one meaningful thing in the eyes of the Government – health reform – and they were designedly to draw on Maori tribal energies at a flax-roots level to do so. The Crown accepted that the councils would 'broadly

reflect tribal configurations and operate accordingly, while Maori considered that the councils marked a break from the exclusion of Maori from New Zealand political processes. Dr Hill considers this to be an achievement for Maori, but also a deliberate design on the part of the Government to appropriate Maori aspirations and steer them into safe channels.⁸⁹

The third option: from Maori Parliaments to General Conferences

Part of this strategy included the necessity of having a national Maori body – but a safe one instead of the Maori Parliaments. The 1900 Act therefore allowed for general conferences of Maori Council representatives, but it was not to have any powers – Dr Hill calls it an anodyne solution. With this in place, the Government pressed for Kotahitanga to disband, a message preached by Carroll and Ngata in 1902 at the joint Kotahitanga–Maori Councils meeting at Waiomatatini. The decision to merge with the Maori Council general conferences marked the end of the political threat, as the Crown saw it. Dr Hill argues that while the conferences were ‘an occasional pan-tribal forum of some value, they did not represent any significant advance for autonomy’.⁹⁰

The fifth option: local self-government at district and kainga levels

At first, the Maori Councils and komiti marae did ‘reflect and give effect to some of the aspirations of iwi, hapu and whanau’.⁹¹ Maori tried to reappropriate them – that is, to use them for unintended purposes with unintended powers. Also, Maori broadly shared some aims with the Government, especially meaningful health reform. Maori often experimented with whatever could be extracted from the Crown instead of boycotting it in the twentieth century.

But Dr Hill rejects strenuously the idea that Maori ability to get some use and advantage from the system in its early days made it a genuine compromise between Crown and Maori, giving some official recognition of rangatira-tanga. This was not an opportunity that was lost because

the Crown had the will or potential to meet some key Maori aspirations but failed in execution. The Maori aspirations for autonomy and partnership were ‘mostly’ on the Maori side alone, and the Crown never really intended to allow Maori autonomy or anything short of full assimilation, whatever appearances might have been in the late 1890s and early 1900s. In support of this, Dr Hill stresses the determined Maori land grab of the Liberals which was, he argues, their real purpose and intention. Ngata backed the system as the only way to get any devolved power for Maori at all, but feared that, by its very nature, it ‘doomed Maori self-government’. Even so, Dr Hill concedes a certain amount of what he calls flexible realism to the Crown, in setting up a system that could in fact, even if in limited ways, be used by and acceptable to Maori at all.⁹²

In exploring this paradigm, Dr Hill suggests that the Crown was determined to centralise and control the councils via the Native Department, inspectors, and superintendent. But in fact (after Ngata and Gilbert Mair), his evidence shows that the Department took little interest and the means of control were minimal – partly because the system was no longer seen as important by the second decade of the century. In terms of appropriation, some councils tried to control Pakeha living among Maori or doing things which affected Maori communities, and to exercise powers not actually allowed to them. The councils were prevented from doing so. Similarly, when the councils did not act against tohunga in the way expected, the Crown took back control and gave it to the police in 1907. But Maori did gain some benefits, including via health and sanitation reform. The Young Maori Party genuinely believed that the councils, along with greater legal equality, ensured that Maori had a greater degree of actual or potential control over their own destinies.⁹³

The first general conference asked for greater powers. They wanted to regulate Europeans living in Maori kainga, to have the authority to deal with assaults, thefts, and other crimes, and to have full local government powers in wholly Maori areas. Carroll tried to get this extra authority for the councils in 1901 and 1903, but got only a minor increase of

powers. Because the Government was fearful of the councils and of devolving power to Maori, it kept them so short of powers and resources that they could do neither what they wanted, nor even what the Government wanted in terms of health reform, prohibition, and social control. As a result of their relative powerlessness, Maori enthusiasm waned and only six general conferences were ever held. Ngata resigned in 1904, despairing (says Dr Hill) at the lack of state support. When Mair left in 1907, central administration languished.⁹⁴ Dr Hill concludes: 'Denied meaningful rangatiratanga, the Councils declined; they therefore became of decreasing significance as agencies of government instrumentalism, and were even further starved of funding and authority.'⁹⁵

Some councils stopped operating or continued only in name. Marae komiti flourished despite the state of the district bodies in some areas, while in others Maori simply reverted to customary structures untainted by Crown supervision or the unpopularity of the dog tax. Within a few years of their establishment, the resource-starved councils were obviously unable to deal with the concerns of either Maori or the Government. Ngata tried to revive them when he became Native Minister – especially through the conference of 1911 – but did not succeed.⁹⁶ But Dr Hill stresses that the Crown's refusal to resource the councils adequately was not the only reason for their collapse. He points out that many Maori organisations not funded by the State have nonetheless been very successful. The councils had no power over land, an essential ingredient of self-government, and the Maori land councils (later boards) had failed to provide any means of autonomy or self-management.⁹⁷ 'In essence,' he concludes,

the Councils languished because their primary purpose was not to effect but to contain, even to restrain, rangatiratanga. Maori who had sought to make use of them in pursuit of autonomy found the state's parameters too constraining to do so effectively.⁹⁸

This was even more the case after 1916, when the Massey Government took away the power of Maori communities to elect the councils, providing instead for them to be

appointed by the Crown. This was fatal to any pretence that the councils were vehicles of autonomy. Some survived in various limited ways over the next couple of decades.⁹⁹

The historical arguments of Ranginui Walker

In his biography of Sir Apirana Ngata, Professor Walker argues that the idea of devolving 'municipal type of power' to Maori committees was 'timely, because it was less radical' than a separate Maori Parliament, and therefore could be stomachable by the Government. The 1900 legislation 'mollified, but at the same time finessed Kotahitanga and the Kauhanganui'. The Maori Councils Act 'conferred a limited measure of self-government on Maori communities, which tended to be in isolated rural areas away from main centres of Pakeha settlement'.¹⁰⁰ Professor Walker notes, that although Maori communities were able to make 'useful reforms' under the Act, it 'blunted the radical thrust of Kotahitanga and the Kauhanganui for mana motuhake by redirecting Maori energies into tasks paralleling those of local bodies'.¹⁰¹

Carroll appointed Ngata Organising Inspector of Maori Councils in 1902. His job was to promote the establishment of councils and assist them with their administration and management of finances. At the outset, the councils identified the 'fundamental weakness' of their empowering legislation, which was the lack of funding to do the work required of them, especially in upgrading marae facilities, sanitation, and improving Maori health. The councils also took seriously their obligation to try to control noxious weeds on Maori land. They debated lots of ways to generate income, including donations, having the dog tax paid by lessees of Maori land come to them instead of Pakeha local bodies, and state revenue for Maori areas not actually serviced by the Pakeha local bodies. But local bodies would not share revenue and the Crown would not give more. This failure on the part of the central government, concludes Walker, was the 'Achilles heel of the councils for the next ten years'.¹⁰²

In the meantime, Kotahitanga was losing support. Parliament's rejection of the Native Rights Bill, the failure to complete unification by merging with the Kingitanga and, to an extent, growing discontent at the costs of the enormous hui, had caused it to lose momentum. Walker suggests that it was 'ripe for a takeover bid'. In March 1902, a large combined hui of 1500 leaders from the Maori Councils and Kotahitanga was held at Waiomatatini. Ngata and Wi Pere argued that Kotahitanga should cease because it had achieved what it wanted. The alienation of Maori land had stopped, the Maori land councils and Maori Councils were in place, and these were the embodiment of Kotahitanga's principle of self-government. The councils were watchdogs that would warn Parliament if something was going wrong – there was nothing left for Kotahitanga to do. Ru Rewiti suggested that the Maori Council annual general meeting replace it.¹⁰³

The Native Minister, Carroll, argued that the Treaty would continue independently of the Kotahitanga o Te Tiriti o Waitangi:

The Treaty will never cease. That is our salvation. We are now joining them together, the adult and the yearling, and uniting them in the kotahitanga of the councils. The people of Kotahitanga have abandoned their treasure, because they are not here. *Therefore the only Kotahitanga for you is the General Assembly of the councils.* [Emphasis added.]¹⁰⁴

The hui resolved to merge Kotahitanga with the annual general meeting of the councils.

Professor Walker suggests that this decision to replace Kotahitanga with the Maori Councils was 'premature'. Ngata resigned in 1904, symptomatic of a malaise described by Mair. The latter had started out with great enthusiasm but 'discovered a lack of commitment and support from the Government'.¹⁰⁵ He did not even have an office. There was a general conference in 1903, and three more after it. A report from the first conference was tabled in Parliament, but the rest were not even recorded because there was no administrative support. Mair tried to resign in frustration, and the councils 'drifted on with some losing interest and

others struggling to meet the objectives of the Act'.¹⁰⁶ In 1906, Mair wrote that much progress had been made in sanitation, dog registration, and temperance without any assistance from the Government 'worthy of the name'. Professor Walker concludes:

This is not what Apirana and Carroll had in mind when they drafted the Maori Councils Act. They were genuine in their belief that the annual general meetings of the Maori Councils would lift the burden from the tribes hosting the large hui of Kotahitanga. Unwittingly they had served the Government's purpose of laying to rest an authentic Maori political movement, in the belief that cooperation with the Government through a statutory body implied a reciprocal relationship of mutual respect and guaranteed support. In the meantime the Councils were left to struggle on unsupervised and without support for the next five years.¹⁰⁷

Ngata's failure to save the councils in 1911

In his capacity as Minister in Charge of Maori Councils, Ngata called a General Conference on 29 August 1911. He could not afford to invite more than one delegate from each of the 21 councils. 'The Government's neglect of the councils,' argues Professor Walker, 'to the point of their becoming almost moribund, was reflected in Ngata's proposal that the first order of business was to draw up reasons for the councils' continuance.'¹⁰⁸ Chief among these was the steady increase of population, reflecting in part the health improvements made in the preceding decade. The conference recommended that the Minister protect the Act and its amendments in the interests of the Maori people.

Funding remained a key constraint. The conference explored most of the options considered back in 1903, when this problem was first identified, including a tenement tax, voluntary contributions from rents, and a tax on stock. But the proposals were no more feasible in 1911 than in 1903. Professor Walker concludes that the decline of the Maori Councils was clearly a result of the Government not funding them adequately. Equally, however, it was also bound up with the Government's determination to maintain

settler control of Maori institutions. The 1911 conference passed a resolution deploring the replacement of Maori sanitary inspectors with European ones.¹⁰⁹ According to Professor Walker, Peter Buck and Maui Pomare had seen Maori sanitary inspectors as ‘extensions to Maori of their own empowerment within the state to improve Maori health.’¹¹⁰ The Crown, according to Professor Walker, had now reclaimed that power and reasserted the structural domination of Pakeha over Maori.

Professor Walker concludes:

There is no question that in the first decade of the century, the Maori Councils played an important role in the cultural adaptation of tribes to modernity in isolated rural areas. Although it was likely that the councils became moribund because of Government failure to commit resources to support them, some of their initiatives were not entirely lost. The marae tribal committees maintained what they had started, keeping the marae functioning and in good order. The irony is that the Government let the Maori Councils lapse only to revive them in 1945 under the Maori Social and Economic Advancement Act, when Ngata’s political career had ended.¹¹¹

Professor Walker notes that Ngata did his best for the councils in 1911 but failed to get the Government support necessary to empower them as genuine vehicles of autonomy.

The historical arguments of Raeburn Lange

Dr Lange’s evidence relates to health reforms, a task for which the Government of the day intended the councils to play a meaningful role. We have already noted the evidence of Dr Hill, that the Crown’s intentions in terms of public health were genuine, but stymied by its equal fear of giving Maori real power. Dr Lange notes that proposals for local Maori health boards had been turned down by the Government in the late nineteenth century. ‘[E]ven health committees might become the thin end of the wedge’ for Maori to have real local self-government.¹¹² But Government opposition had not ‘quenched the Maori

desire for the kind of autonomy and revitalised social control that could be achieved by officially recognised local boards and committees. By the late 1890s the force of Maori opinion had brought the government to a realisation that it could not deny these aspirations completely.’¹¹³

Dr Lange suggests that credit for securing eventual agreement to the 1900 Bills goes to Ngata. The Government was prepared to enact ‘self-government legislation’ (as Dr Lange calls it) because of the particular shape given to it by the Te Aute Association. Although Kotahitanga had set the aims, it was the association’s participation that secured Government agreement.¹¹⁴ From the late 1890s, the association had supported the idea of local Maori committees as vehicles for health reform, to capture and preserve existing Maori social control and authority and bring about the kinds of changes necessary. Native Minister Carroll announced at Papawai that the intention was to set up marae committees to control and improve kainga. Both Carroll and Seddon emphasised that the Bill was to have a focus on community health and, as Carroll put it, to “‘preserve the race as far as can be done’”.¹¹⁵

The Act itself referred to the intention of conferring a ‘Limited Measure of Local Self-Government upon Her Majesty’s Subjects of the Maori Race’. But Dr Lange adds that the emphasis on health and welfare was misleading because it allowed the Government to pass an Act ‘without too many misgivings’ that was in fact much more of a political innovation than it appeared to be.¹¹⁶ The preamble acknowledged that it:

originated in the ‘reiterated applications’ of Maori communities for a system that would enable them to frame for themselves such rules and regulations on matters of local concernment or relating to their social economy as may appear best adapted to their own special wants.¹¹⁷

In introducing the Bill, Carroll emphasised that it was an effort to help Maori organise themselves for control of domestic and sanitary matters. Heke said that the Bill had strong Maori support for the dual purpose of putting their informal committees on a proper footing while at the same

time promoting better health. Dr Lange concludes that the Bill ‘defused’ Kotahitanga’s campaign because it conceded a ‘limited measure’ of self-government whilst retaining state control over the new committees. At the same time, the Act was a social welfare measure and also approved by Maori as such. For the Government, it was closely connected to public health legislation and a Crown and public awareness of the need for state action on public health.¹¹⁸

Unlike Dr Hill, Dr Lange suggests that ‘wide-ranging responsibilities’ were in fact conferred on the councils by the Act. New Zealand was divided into districts administered by councils elected triennially. As well as elected members, there was an official member (Government-appointed) and an advisory counsellor (a chief). Under the councils, village or marae komiti had the responsibility of acting in each kainga. The councils were to promote the health, welfare, and well-being of their constituents by making bylaws to regulate sanitation, water supplies, alcohol, tohunga, meeting houses, urupa, eel weirs, oyster beds, hawkers, noxious weeds, domestic animals, and registration of births, deaths, and marriages. Finance was to come from the Crown, in the form of government grants and subsidies, and from local revenues – rates, fines, and the dog tax. General conferences would be held to review the system and discuss Maori health generally. Many rangatira and communities had great hopes for how it would all work in practice.¹¹⁹

Did the Government truly empower the councils?

Unlike Dr Hill, Dr Lange emphasises the weakness of Government involvement rather than the heaviness of state control. He notes the appointment of Gilbert Mair as Superintendent of Maori Councils (1903 to 1907), who was supposed to liaise between the councils and the Native Department. Mair was active and toured the North Island periodically, met with councils, and corresponded with them. When he retired in 1907, James Cowan and Maui Pomare were considered as successors but instead it was made one of the responsibilities of the Records Clerk (till 1919). He was much less active in the role, and did not

go out and meet with councils. There was also Ngata’s appointment as Organising Inspector, 1902 to 1904, which involved his visiting the councils, advising them, and making sanitary inspections. He was replaced in 1904 by Pirimi Mataiawhea of Rotorua, but his health was poor and he was able to do very little. He was not replaced when he died in 1907. The Young Maori Party tried to get Wi Repa appointed in 1911 but nothing happened.¹²⁰

The councils’ patron in Government was Carroll, Native Minister till 1912. Carroll’s view was that the prediction of Maori extinction was a mistake, that problems were temporary results of the Maori wars, and that the supposed decline could be stopped by economic self-development assisted by the Government. He believed deeply in the councils’ ‘experiment’. According to Dr Lange, he saw its main aim as a separate Maori system to promote grassroots health reform, to ensure the survival and progress of the Maori race. He travelled around New Zealand explaining the new Act and encouraging the new councils. He told council leaders at their 1908 ‘congress’ that the advent of the Pakeha had caused the Maori canoe to drift, but by the councils they could take the drifting canoe and turn it around to stem the torrent. After his election in 1905, Ngata was also an advocate for the councils in Parliament. In 1909 he took on many of the Native Minister’s health responsibilities, and toured all the newly elected councils in that year.¹²¹

The key problem, according to Dr Lange, was that neither Carroll nor Ngata could secure for the system:

the practical government backing it needed. In this respect it was handicapped from the start. The appointments of Mair and Ngata were the biggest contributions the government ever made, but both men eventually resigned in disillusionment.¹²²

The only sources of revenue were fines, dog tax, donations, and Government subsidies. The dog tax was very unpopular and hard to collect. There were lots of voluntary donations from enthusiastic Maori in the first few years but this source dried up. Government grants and subsidies (especially to help sanitary works) were tiny, and there were

no subsidies at all after the first two years. Government money barely covered administration costs and left almost nothing for sanitation works. Even worse, no Government money was provided at all after 1909, except for part of the salary of the clerk who acted as superintendent. This was also stopped from 1913.¹²³

As early as 1902, Ngata thought it 'absurd' to expect the councils to attain their aims with so little support. Pomare emphasised this problem in his official reports from 1902 to 1904. The first General Conference and the Maori members of Parliament also pressed the point. Tame Parata and Heke asked in Parliament why the councils were denied the powers and funds to do their work, and predicted that they would 'come to nothing' with their 'hands tied' in such a way. Dr Lange says that Carroll could never answer the charge of insufficient funding. The Arawa and Horouta councils pointed out the impossibility of obeying Government sanitary injunctions with so small a budget. The General Conferences of 1908 and 1911 considered all sorts of taxes and rates but decided they were impracticable. The superintendent, JB Hackworth, agreed privately that the Government's attitude was very disappointing, but all he could do was urge the councils to try harder to raise voluntary donations.¹²⁴

Dr Lange concludes that the early achievements of the councils were mainly due to their own efforts. Once their first 'extraordinary enthusiasm' subsided, the lack of Government backing began to tell. Carroll promised in 1908 to do all he could to get money, but warned that only self-reliant and energetic councils would be supported. In 1909, Ngata also emphasised that councils would have to show that they could use money effectively. Dr Lange suggests that both Carroll and Ngata were embarrassed, aware as they were that it was the lack of Government assistance that had produced the inadequacies of which it then complained, and not the other way around.¹²⁵

After 1912, under Herries as Native Minister, few if any references were made to the councils or Maori health. The Native Department lost all interest in them. When

Buck took up his position in 1919, he was told that most of the councils only existed in name any more. Dr Lange concludes:

The story of the rise and fall of the Maori Councils in the two decades after 1900 is a sad commentary on the political priorities of the time. The achievements of the councils movement might well have been enormous throughout this period if the enthusiasm of 1900 had been nurtured through the years by generous official finance and support.¹²⁶

Most councils became fairly inactive when, despite the advocacy of Ngata, Carroll and others, the Government withdrew its meagre financial support and the guidance and encouragement of its field staff. At the same time, Maori enthusiasm cooled because health reform was the only activity the Government really let them undertake. Dr Lange argues: 'It is true that Maori leaders were disappointed when it became clear that the government was not prepared to grant any local self-government beyond the regulation of local health matters.'¹²⁷ But even health reform languished because the Government provided so little support. Te Heuheu recognised this when, in the dark days after the influenza epidemic, he told the Legislative Council that the disastrous Maori death toll would have been much smaller if the councils had been better supported by the Government.¹²⁸ This was despite Government statements such as that of Seddon, who told Whanganui Maori in 1902 that the success of the councils delighted him, and vindicated the Government's faith in the ability of Maori communities to govern themselves. Some Pakeha opinion was sceptical – leaving health laws to be administered by 'natives' was 'futile' and the whole idea of Maori self-government was considered by some to be a 'farce', a 'travesty', an 'absurdity'. There was also criticism of the legislation as perpetuating Maori communalism and separation instead of assimilation.¹²⁹

Even without any official support or funding, some councils survived the First World War and still existed on paper in 1919, when they were put under the Health Department.

Buck then tried to revive them with some success in the 1920s, but not as organs of local self-government so much as health agencies. After he departed in 1927, some councils continued to operate until the Second World War, although again without any Government assistance or funding. The Division of Maori Hygiene was abolished in 1930, and after Buck's departure there was no longer any recognition of a need to involve Maori and their leaders in the development and implementation of health policy as it affected them.¹³⁰

The operation of the councils in our inquiry districts: the evidence of Tureiti Te Heuheu

As we noted above, there is insufficient evidence available to the Tribunal on how exactly the councils operated in the Central North Island. Nonetheless, we note the views of Tureiti Te Heuheu Tukino, as presented to the Government in the Legislative Council. Three things were of overriding concern to him: first, that the Treaty of Waitangi and the personal relationship between Crown and Maori must be kept; secondly, that Maori and Pakeha had fought and bled together in the First World War, and that Maori soldiers must be resettled on Maori land among their kin and communities; and thirdly, that the Maori Councils had become a dead letter in the 1910s and must be given real power and funding.

In terms of the first point, we note his speech to the Legislative Council in 1918, where he reminded Parliament of the principles of the Treaty, in the language of the day. He described the operation of two forms of mana under the Treaty – that of the British Government, and that of Maori – and of the need to keep the Treaty:

By the second clause of the Treaty of Waitangi, Queen Victoria allowed us the mana which we held as chiefs. First of all, she granted us her protection; secondly, she allowed us the privilege of conducting our own business; thirdly, she granted our mana as chiefs; and, fourthly, she endowed us with the mantle of her protection and graciousness

– kindness. Unfortunately, one or two of our tribes reading this clause 2 of the Treaty of Waitangi took the view that our youths should not go forward to the war – that the Queen of England, or the present King, was to protect them. But clause 3 of the Treaty of Waitangi provides that we shall conduct our own arrangements – ‘Her Majesty the Queen extends to you the privileges of being British subjects’ – just the same as your British people. In the face of that provision how could any of us, either chiefs or tribes, attempt to keep out of the war.¹³¹

The Treaty retained living form in the twentieth century, in the relationship between Maori and the Crown:

the graciousness of Queen Victoria was not confined to the terms and provisions of the Treaty of Waitangi. She sent along her son, the Duke of Edinburgh, to personally converse with the Maori people. Later, King Edward the Seventh sat on the throne of his ancestors, and he in his turn did not forget his Maori subjects. He sent his son here, the Duke of York, in 1901. The Duke subsequently became our King. But before he became our King he sat with us, ate with us, spoke with us, and enjoyed himself with us. All of these, I want you to understand, are points which we considered before we sent our youths forward to the war.¹³²

Although the mana of the British Government was guaranteed by the Treaty, Te Heuheu stressed the existence of a Maori nation as at 1918, and asked for a representative of that nation to go as one of the New Zealand envoys to the post-war peace conference.¹³³

Central North Island Maori aspirations, in the view of this great leader, remained as they had always been: keeping the Treaty; partnership with the Crown; and Maori autonomy. In respect of the councils by the 1910s, he told Parliament:

During the Seddon Government the Maori Council Acts were introduced, providing for the sanitation of Maori settlements and dwellinghouses generally; but I am sorry to say

that during the Massey Government those Acts have been so treated that they are now practically a dead-letter. I say that if those Maori Councils had had the encouragement that they should have had, and, indeed, which they did have prior to the present Government coming into power, the scourge which has just lately passed over the country would not have carried off so many of my Maori people. Had those Maori Councils been encouraged, the mothers and daughters of our people would have been rapidly taught to act as nurses for our Maori patients. I do hope that the Council will support me in my appeal that the full authority of the Maori Councils should be restored to them, so that they will continue the work they have done in the past. I think, also, that those Councils should be supported out of the public funds. I quite approve of the [Public Health Amendment] Bill, and if it is passed, I hope the Maori Councils will be invited to co-operate in the working of the Bill.¹³⁴

Tureiti Te Heuheu had served as advisory counsellor of the Tongariro Maori Council, so must have been fully aware of these matters.

THE TRIBUNAL'S PRELIMINARY FINDINGS

The most recent historical scholarship on the councils, as recited above, enables us to make the following preliminary findings.

The third option: empowering Maori at the central government level

The historical evidence seems clear that the General Conferences did not provide a representative national Maori body in replacement of the Paremata. The Government's assurances in this respect, given to the Maori Paremata in 1902, were not honoured. The conferences met regularly from 1902 to 1906, but only twice after that. They had no powers, and only a minimal consultative role. According to the evidence available to the Tribunal, their advice appears

to have gone largely unheeded, even on the relatively restricted matters they were permitted to discuss. The main exception was some tightening up of the councils' powers (especially to regulate alcohol) in 1903. The Government's expectation of the general conferences was that they might revise bylaws, so long as the Native Minister approved, and power was provided for that in the 1903 Amendment Act.¹³⁵ This fell far short of a consultative or legislative role in Maori affairs at the central government level. The 1908 'congress' seemed promising, with ministers in attendance, but it proved the final conference (apart from Ngata's 1911 one).¹³⁶ Tame Parata challenged the Government in the House, asking when it would introduce legislation to give effect to the 1908 conference's recommendations. Carroll replied that the matter would have to stand over till 1909, and that appears to have been the end of it.¹³⁷

General conferences did not, therefore, substitute for the Paremata in either a formal or an informal manner. The Liberal Government of the 1890s had submitted draft legislation to the Paremata, and had submitted jointly drafted legislation to the New Zealand Parliament. As far as we are aware, no such function was accorded to the General Conferences in the following decade. Although we do not have detailed historical evidence on the conferences, the available material suggests that further research is unlikely to uncover a different interpretation of this question. Nonetheless, additional research would be useful. On the basis of the evidence available to us, we find that the Crown's continuing failure to empower Maori at the central government level after 1900 was a serious breach of Treaty principles, with ongoing, cumulative prejudicial effects.

The fifth option: Maori local self-government through Maori Councils

The historical evidence suggests that the Maori Councils Act 1900 was intended to provide genuine local self-government for Maori communities at a district and kainga level. This was certainly the intention of the authors of the

Act, the Paremata which endorsed it, and the New Zealand Parliament which enacted it. On the basis of the evidence available to us, successive governments failed to deliver the reality of self-government to Central North Island Maori because:

- ▶ The councils had no power to manage lands, and the potential of the parallel Maori land councils as vehicles of autonomy and self-management was taken away from 1905. There was a strong nexus between Maori self-government and ability to control their own destinies on the one hand, and the ability to control and manage the community's principal assets, especially land, on the other. The failure to give the councils and komiti power over land was a very significant inbuilt weakness.
- ▶ The councils had inadequate powers for self-government, except in health reform. This appears to have been the view at the time of the General Conferences, Maori members of Parliament, and even of Native Ministers, such as Carroll in 1901 and 1903.
- ▶ The councils had inadequate Government finance and support, and this was the main reason for their virtual inactivity after 1910. This proposition was agreed by all the scholars whose work we consulted, and also by the main historical players, including officials such as Mair and Hackworth, the Government's ministers (Carroll and Ngata), and Maori leaders such as Te Heuheu. Government assurances of 'plenty of assistance' and funding were not carried out. Although we do not have specific research on the Central North Island councils, we see no reason to doubt such a generally agreed proposition.

And yet Government subsidies had been a normal part of assisting local authorities since the 1870s.¹³⁸ Road boards, river boards, hospital boards and many others had a mix of local funding subsidised by the Government, often pound for pound. Hospitals, for example, received just under 40 per cent of their funding from Government subsidies between 1886 and 1910.¹³⁹ There was nothing unusual in principle,

therefore, when both the Public Health Act and the Maori Councils Act of 1900 provided for the payment of subsidies to Maori Councils for the health and sanitation works that the Government wanted carried out.¹⁴⁰ Government and Maori agreed in principle, therefore, that the work of the councils needed to be subsidised. What was unusual, perhaps, was the way in which the Government avoided actually paying subsidies in this instance.

Native Minister Carroll promised the 1908 General Conference that councils would get 'plenty of assistance' from the Government, including funding, in return for which they were to promise to 'go on improving and becoming more self-reliant year by year.'¹⁴¹ Ngata and Parata questioned the Native Minister in Parliament a month later, about the vital necessity of Government funding for the councils, which had not had any subsidies since 1903, and were getting Government assistance of less than £17 each. Carroll dodged the question, and his undertaking to the general conference was not carried out.¹⁴² To the contrary, all Government funding ceased from 1909.

We agree with the Tribunal in its *Napier Hospital and Health Services Report*, which found that:

having launched the Maori council scheme and induced Maori, including Ahuriri Maori through the Tamatea Maori Council, to rely upon it for improving the health of their communities, the Crown breached the principle of *partnership* by failing to resource the councils adequately or, for some years after 1911, at all. . . [Emphasis in original.]¹⁴³

- ▶ Governments of the day did not provide adequate (or any) remedies for these deficiencies.
- ▶ Further, the Crown removed the whole basis of the councils as organs of self-government in 1916, when it took away the power of Maori communities to elect their members, making them appointed by the Government instead. From that point on, the coun-

cils lost any surviving potential to become vehicles of *tino rangatiratanga*.

We also note that Maori and the Crown agreed that health reform was necessary, should be sponsored by community leaders and the State, and should be carried out by Maori *komiti* in Maori districts. Although the language of assimilation was much used, it appears from the evidence of Dr Hill, Professor Walker, and Dr Lange that Maori, including the Young Maori Party, were to be the instruments of reform, and that *they* did not serve assimilationist goals in the sense advocated by some Pakeha of the time. As a result, the councils did not fall into line behind non-agreed culture change. They wanted, for example, to enforce community standards by licensing *tohunga*, rather than banning them (as sought by the Government). This policy led the Crown to take power away from the councils, passing the *Tohunga Suppression Act* of 1907. It follows, therefore, that we do not accept the claimant submission that the Crown used Maori Councils as instruments to impose a cultural revolution on Maori communities.¹⁴⁴ We do, however, accept that the Crown sought to control the councils, to appropriate and redirect the political strength of *Kotahitanga* into safer, more acceptable channels.¹⁴⁵ In doing so, while starving the councils of real power and funds, it succeeded in repressing rather than empowering Maori autonomy.

Given the nature of these generic findings and the evidence on which they are based, specific evidence on the operations of the Central North Island councils on the ground is unlikely to disagree with them in any fundamental way. One exception is likely in health reform, where councils possessed some real powers (though lacked funds). We do not know the extent to which they were able to direct and assist their communities in the important business of public health in our inquiry districts. With that proviso, we make a preliminary finding that the Crown failed to honour its undertakings to *Kotahitanga*, failed to provide meaningful self-government to Central North Island Maori through the *Maori Councils Act*, and

in doing so breached the Treaty principles of partnership, autonomy, active protection, and equity.

In 1918, *Tureiti Te Heuheu* gave Parliament a timely reminder of the principles of the Treaty, in the language of the day (see above). The Queen had guaranteed Maori her protection, the privilege of ‘conducting our own business’, their ‘*mana* as chiefs’, and (a second time) the mantle of her most gracious protection and utmost kindness. In return, Maori recognised the *mana* of the British Government. The Queen had also granted Maori the privileges of British subjects, which included equality with the British and (stating it a second time) the privilege of conducting their own affairs. The reciprocity and permanence of the Treaty relationship was embodied and renewed in ongoing, personal ties with the Queen and her descendants, and the sending of Maori soldiers to spend their blood in the First World War. The Treaty principles of partnership, autonomy, active protection, and equity, as interpreted and explained by the Tribunal in its reports, can be clearly discerned in *Te Heuheu*’s explanation of the Treaty to Parliament in 1918.¹⁴⁶

The Treaty principle of partnership required the Crown to consult the General Conferences at least to the same degree that it showed itself willing to work with the *Paremata* in the late 1890s. Instead, it left the conferences powerless, even in an advisory capacity. No Treaty partnership was possible on such a basis, and the conferences (irregular anyway) were discontinued from 1911. The Treaty principle of autonomy required the Crown to give full powers of local self-government to the councils and committees (including a role in managing the community’s lands and resources). It also required the Crown to ensure that the councils were adequately resourced to do their work, rather than knowingly starving them of funds in the face of contrary appeals from Maori and its own Native Ministers.

The principle of active protection required the Crown to support and promote constructive Maori endeavours, not to starve them of funds until they became, in the

words of Te Heuheu, a ‘dead-letter’. It also required the Crown to support and promote tino rangatiratanga, both at the central and local government levels. The principle of equity required the Crown to provide equal (not necessarily the same) powers and funding for local self-government, and equal (meaningful) representation at the central

government level, for all its citizens. In failing to carry out these obligations, despite the best efforts and representations of Maori and its own Native Ministers, the Crown committed a serious breach of the principles of the Treaty of Waitangi.

SUMMARY

- ▶ For Maori to seek ‘home rule’ and a national body to make laws or regulations for their own lands and resources was entirely consistent with the Crown’s kawanatanga, and compliant with the Treaty guarantee of their tino rangatiratanga. The willingness of many Central North Island Maori, including Te Heuheu, to compromise with the Government was also in the spirit of the Treaty.
- ▶ The Kotahitanga movement was a positive development, easily compatible with loyalty to the Queen, the rule of law, Maori self-management, and ‘closer settlement’. When Maori set up their own parliament, self-funded and with an elaborate electoral system, rules, and a very large degree of popular support, the Crown should have worked with it, encouraged it, and empowered it. Seddon’s submission of his draft legislation to it shows the correct attitude, and an approach that could easily have become permanent and institutionalised. The Kohimarama Conference in the 1860s and the Waipatu hui in the 1880s were useful precedents.
- ▶ The title of ‘parliament’ need not have been a sticking point, given the Maori willingness to use another title, to seek legislative authority from the New Zealand Parliament, and to work with the Government if possible.
- ▶ The Crown’s suggestion that this movement was ‘separatist’ is based on a fundamental misunderstanding of Kotahitanga and also of the political context of the times.
- ▶ In failing to incorporate Kotahitanga into the machinery of the State, and share power with Maori in a meaningful way at the central level, the Crown acted in breach of the principles of the Treaty.
- ▶ Above all else, the Crown rejected one of the most important and crucial opportunities for Treaty partnership in the history of this country. Kotahitanga and Kingitanga leaders were willing to make compromises, to act in partnership with the settler Parliament, but to do so from a basis of mana Maori motuhake. The opportunity to institutionalise Maori autonomy at the central level, to provide meaningful power and partnership between Maori and settler leaders, was a unique one. Maori themselves created the machinery. Year after year, they elected their representatives and sent them (with plenty of relatives to observe and keep them honest) to deliberate and express the Maori will – tino rangatiratanga – to the people of New Zealand. In response, there was

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a failure of vision and of aroha, and a triumph of settler self-interest, that subverted and defeated this Maori endeavour. We consider this to be a serious breach of Treaty principles, with great prejudice for Central North Island Maori.

- ▶ The 1900 reforms were inadequate because so many of them were dismantled within less than a decade. The annual General Conferences were the basis of persuading Kotahitanga to disband, but they did not provide a genuine alternative for Maori autonomy at a central level and were discontinued anyway from 1911. The Maori Councils were a more promising initiative for self-government, but officials, Ministers, and Maori of the time agreed that the Government's refusal to fund them properly was fatal to their success. This was in breach of the Treaty.
- ▶ By 1920, Central North Island Maori had still not achieved the full legal powers of local or regional self-government that their settler fellow-subjects had possessed since the 1850s, nor had they secured their right to tino rangatiratanga at the central level. The management of their own lands, people, and internal affairs had been promised and guaranteed by the Treaty. The Crown's ongoing refusal to honour the Treaty in this respect was a serious one.

Notes

1. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 240–248; Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1556–1614
2. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 244–245
3. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1569–1570, 1586
4. *Ibid*, pp 1556–1614
5. Karen Feint, closing submissions on behalf of Ngati Tuwharetoa, 9 September 2005 (paper 3.3.106), pp 19–20
6. *Ibid*, pp 20, 216
7. Michael Sharp and Jolene Patuawa, generic closing submission on twentieth century land administration, 6 September 2005 (paper 3.3.81), pp 51–53
8. *Ibid*, p 11
9. *Ibid*, p 12
10. *Ibid*, pp 12, 15–17
11. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77), pp 46–49
12. Virginia Hardy, Sally McKechnie, Damen Ward, and Peter Andrew, closing submissions on behalf of the Crown, 14 October 2005 (paper 3.3.111), pt 2, pp 32–34
13. *Ibid*, pp 34–35
14. *Ibid*, pt 1, pp 21–22
15. *Ibid*, pt 2, pp 32–35, 125
16. *Ibid*, pp 313–327
17. Kathryn Rose, 'The Fenton Agreement and Land Alienation in the Rotorua District in the Nineteenth Century', report commissioned by CFRT, September 2004 (doc A70), pp 242–243
18. H Heke, 10 September 1894, NZPD, 1894, vol 85, p 553
19. J Carroll, 10 September 1894, NZPD, 1894, vol 85, p 555
20. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, 1-3(a), p 14
21. F M Brookfield, *Waitangi and Indigenous Rights: Revolution, Law, and Legitimation* (Auckland: Auckland University Press, 1999), p 117
22. Hoani Whatahoro (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1576). Whatahoro was the tiamana (chairman) of the Paremata.
23. Thermal Springs Districts Act 1881, s 9; Interpretation Act 1888, s 21(2)

24. Thermal Springs Districts Act 1908
25. 11 May 1887, NZPD, 1887, vol 57, pp 201–210
26. 11 May 1887, NZPD, 1887, vol 57, pp 209–210
27. R P Davis, *Irish Issues in New Zealand Politics, 1868–1912* (Dunedin: University of Otago Press, 1974), p 102
28. See, for example, *ibid*, pp 148–149, and the newspapers and parliamentary debates of the era.
29. A O'Day, *Irish Home Rule 1867–1921* (Manchester: Manchester University Press, 1998), pp 124, 186–187, 194–195, 198–199
30. See, for example, Wi Pere's speech, 25 September 1896, NZPD, vol 96, p 192
31. R Stout, 11 May 1887, NZPD, 1887, vol 57, pp 207–208
32. 'Notes of Native Meetings', AJHR, 1885, G-1, p 27 (doc A65(k), p L133)
33. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1558–1614, especially pp 1584–1614
34. A Newman, 10 September 1894, NZPD, 1894, vol 85, p 559
35. J Carroll, 12 October 1900, NZPD, 1900, vol 115, p 201
36. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1586
37. Te Heuheu (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1603)
38. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1585
39. Urewera District Native Reserve Act, 1896
40. Native Committees Act 1883
41. R Seddon, 24 September 1896, NZPD, 1896, vol 96, pp 167–168
42. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 307–308
43. 'Despatches from the Governor of New Zealand to the Secretary of State', AJHR, 1892, A-1, p 9
44. *Ibid*
45. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 308–309
46. Te Heuheu (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1605)
47. W L Rees (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1561–1562)
48. Native Land Court Act 1894, ss 126, 130, 131
49. Sir P A Buckley's explanation of the Bill in the Council, 11 October 1894, NZPD, 1894, vol 86, p 653
50. Native Land Court Act 1894, ss 122–134; see also our discussion of the 1886 Act in chapter 6.
51. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1297
52. 'Prescribing Terms and Mode upon which the Alienation of Certain Lands Known Collectively by the Name of Pohokura may be Effected', 13 April 1899, *New Zealand Gazette*, 1899, no 32, p 755
53. Native Land Court Act 1894, ss 122–134
54. 'Rules and Regulations under Division II., Part II., of "The Native Land Court Act, 1894"', 1 April 1895, *New Zealand Gazette*, 1895, n 25, pp 610–614 (doc H42)
55. *Ibid*
56. Maori Councils Act 1900, s 29
57. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1591–1613
58. Maori Lands Administration Act 1900
59. Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952*, Waitangi Tribunal Rangahaua Whanui Series, 1996 (doc A60), pp 24–25
60. Maori Lands Administration Act 1900
61. Te Heuheu and others (as quoted in Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1599)
62. Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910', report commissioned by CLO, October 2004 (doc A77), p 185; Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952*, Waitangi Tribunal Rangahaua Whanui Series, 1996 (doc A60), pp 35–40
63. Richard Hill, *State Authority, Indigenous Autonomy: Crown–Maori Relations in New Zealand/Aotearoa 1900–1950* (Wellington: Victoria University Press, 2004), p 70
64. *Ibid*, pp 70–75
65. *Ibid*, pp 76–79, 84, 102
66. *Ibid*, p 79
67. Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey', report commissioned by CLO, October 2004 (doc A77), pp 185–198; Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952*, Waitangi Tribunal Rangahaua Whanui Series, 1996 (doc A60), pp 35–75
68. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 44, 46
69. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 202–206
70. J Sheehan, 13 July 1882, NZPD, 1882, vol 42, p 299
71. H Heke, 10 September 1894, NZPD, 1894, vol 85, pp 551–552
72. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1585

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73. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a)
74. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, p 1597
75. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a), pp 7, 15-16, 28-30
76. Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', report commissioned by CFRT, September 2004 (doc A71), pt 2, pp 1584-1613
77. Ibid, pp 1592-1613
78. 'Report on the Native Lands Settlement and Administration Bill, together with Petitions and Minutes of Evidence', 3 November 1898, AJHR, 1898, I-3(a), pp 14-31, 52
79. Richard Hill, *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950* (Wellington: Victoria University Press, 2004), p 43
80. Ibid, p 43
81. Ibid, pp 43-44
82. Ibid, pp 43-46
83. Ibid, p 47
84. Ibid, pp 47-48
85. Ibid, p 48
86. Ibid, p 49
87. Ibid, p 50
88. Ibid, p 57
89. Ibid, pp 50-52
90. Ibid, pp 50-53
91. Ibid, p 53
92. Ibid, pp 53-58
93. Ibid, pp 54-61
94. Ibid, pp 58-62
95. Ibid, p 62
96. Ibid
97. Ibid, pp 62, 68-79
98. Ibid, p 63
99. Ibid
100. Ranginui Walker, *He Tipua: the Life and Times of Sir Apirana Ngata* (Auckland: Viking, 2001), p 89
101. Ibid, p 90
102. Ibid, pp 95-96
103. Ibid, p 98
104. Ibid
105. Ibid
106. Ibid, p 99
107. Ibid
108. Ibid, p 162
109. Ibid
110. Ibid, p 163
111. Ibid
112. Raeburn Lange, *May the People Live: a History of Maori Health Development 1900-1920* (Auckland: Auckland University Press, 1999), p 141
113. Ibid
114. Ibid, pp 141-142
115. Ibid
116. Ibid, p 143
117. Ibid, pp 143-144
118. Ibid, p 144
119. Ibid, pp 144-146
120. Ibid, pp 191-192
121. Ibid, pp 193-194
122. Ibid, pp 194-195
123. Ibid, pp 195-196
124. Ibid, p 196
125. Ibid
126. Ibid, p 197
127. Ibid, p 228
128. Ibid
129. Ibid, p 230
130. Ibid, p 258
131. T Tukino, 26 November 1918, NZPD, 1918, vol 183, p 386
132. Ibid, p 387
133. Ibid
134. T Tukino, 10 December 1918, NZPD, 1918, vol 183, p 1054
135. Maori Councils Amendment Act 1903, section 9
136. David Williams, *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices* (Wellington: Waitangi Tribunal, 2001), pp 40-43
137. J Carroll, 7 October 1908, NZPD, 1908, vol 145, p 986; see also NZPD for 1909, p 943.
138. Waitangi Tribunal, *Te Roroa Report* (Wellington: Brooker and Friend Ltd, 1992), pp 184-185; Michael Bassett, *The State in New Zealand 1840-1984: Socialism Without Doctrines* (Auckland: Auckland University Press, 1998), p 328
139. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 122
140. Public Health Act 1900, s 65; Maori Councils Act 1900, s 19
141. David Williams, *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices* (Wellington: Waitangi Tribunal, 2001), pp 40-41
142. 20 August 1908, NZPD, vol 144, pp 275-276
143. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 170-171
144. Annette Sykes and Jason Pou, generic closing submission on political engagement, 2 September 2005 (paper 3.3.77), pp 46-49
145. Ibid, pp 46-49
146. T Tukino, 26 November 1918, NZPD, 1918, vol 183, pp 386-387