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New Zealand's Forgotten Appellate Court? The Native
Affairs Committee, Petitions and Maori Land: 1871 to 1900

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Abstract: The second half the 19th century witnessed one of the most complex and destructive chapters in New Zealand legal history. The Native Land Court, Land Laws and Crown purchase and confiscation policies combined to create confusion, uncertainty and grievance in Maori land ownership and transactions. In response, thousands of Maori, and some Europeans, petitioned Parliament. Around two thousand of these Maori land related petitions were referred to the Native Affairs Committee of the House of Representatives, many of which involved complex disputes and legal issues in relation to Maori land. In several respects, the petitioners were treating this Committee as a de-facto 'Maori Land Appellate Court'. However, the Committee was no such court. Instead, this paper argues the Committee was effectively operating as a 'Maori Land Ombudsman'. Using petitions, Maori and Europeans would put their grievances and law reform suggestions before the Committee. In turn, the Committee would usually investigate and make recommendations for action. Although the Committee was ultimately unable to resolve many of the alleged grievances put before it, in a system where Maori had little political power, it fulfilled an important constitutional role as a check on judicial and government power in relation to Maori land interests.

Key words: Petition, Maori land, Native Affairs Committee.

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I Introduction

In nineteenth century parlance, when an individual or group petitioned either chamber of New Zealand's General Assembly they were formally *praying* for their petition to be considered.¹ Many of those who put their prayers before Parliament were Maori. In fact, over two thousand petitions were lodged before New Zealand's House of Representatives (the House) on behalf of many tens of thousands of Maori during the second half of the nineteenth century. Many of these 'Maori petitions' were referred to the House's Native Affairs Committee (the Committee). The Committee would make regular reports on the petitions it received, in both Maori and English. These reports are published in the *Appendices to the Journals of the House of Representatives* (the *Appendices*), and the English language versions will form the basis for analysing the petitions and the Committee's role in responding to them from 1871 until 1900.

The three decades from 1870 to 1900 was an era of rapid Maori land alienation and incessant change to the Maori land legislation. Although the Committee's reports show petitions involved all manner of topics, from Maori self-government to the establishment of schools, they also establish that the overwhelming number centred around one topic: land. Maori and a small number of European petitioners were effectively treating the Committee as an 'appellate court' to which they could put their grievances relating to Maori land.² Their petitions ranged from calls for reform of Maori land laws and the Native Land Court (Land Court), to appeals involving highly particularised grievances against the Crown, private purchasers and against the operations of the Maori land laws and Land Court.

Statutory reforms in 1900, marking a distinct, albeit temporary, change in approach to Maori land governance and Crown policy, were one of the ultimate results of these appeals to the Committee. This means the period from Committee's creation in 1871 to 1900 forms a relatively cohesive period of study. However, considering the significant volume of petitions and the work put in by the Committee in responding to them, the Committee's relative absence from the historiography around Maori land issues over this period is a disappointing omission. The Committee did have an important role to play. It was one of

¹ House of Commons Information Office "Public Petitions" (2010) United Kingdom Parliament <<http://www.parliament.uk>> at 2.

² The Legislative Council also had an equivalent Committee from 1882. See Legislative Council "Schedule of Select Committees Appointed During the Session" [1882] I AJLC at XV.

the few formal institutions where Maori could directly voice their concerns and grievances to lawmakers. It was a body where Maori could at least try to obtain redress outside the Courts and draw official attention to their problems. It was also an entity that could influence the development of Maori land law and the behaviour of related institutions such as the Land Court.

The reality was that over this period, the Committee suffered from major limitations, meaning it was not an effective organ for substantive justice. Some petitions were successful in prompting government action and, perhaps, systemic change, towards the very end of the 19th century. However, most were not. Moreover, whilst the volume of petitions did bring attention to the defects and injustices of the legal system governing Maori land, legislative responses were generally ineffective in achieving real change and possibly further complicated the legal environment.

The Committee's main utility for both Maori and Europeans was that of an accountability mechanism on both executive and judicial action in relation to Maori land interests. It was a body of constitutional importance not in the sense that it was a de-facto court, but as a check and balance in a system otherwise stacked against Maori interest. This role can best be characterised as a form of 'Maori land Ombudsman'. This reflects the fact that whilst it had no power to compel government action, the Committee was able to work with the executive and judiciary to investigate and attempt to resolve grievances. This was a role driven not by the Committee on its own, but by the volumes of petitions generated by Maori, helping create and develop an institution to which they could appeal against the wrongs of the land system, and at least hope to achieve actual justice, reform and redress.

II The Right to Petition

Petitions were used as mechanism for seeking justice, challenging laws and checking state power long before the 1870s. They are an ancient avenue for redress, of particular importance when traditional legal routes have been exhausted.³ Petitions to the Monarch were what led to the development of equity and the Court of Chancery.⁴ Moreover, the

³ David McGee *Parliamentary Practice in New Zealand* (3rd ed, Dunmore Publishing, Wellington, 2005) at 522.

⁴ Richard Boast, Jeremy Finn and Peter Spiller *A New Zealand Legal History* (2nd ed, Brookers, Wellington, 2001) at 17-19.

right to freely petition the Monarch is enshrined in the Bill of Rights 1688, underscoring its fundamental and historic constitutional importance.⁵

In England, the first petitions were presented directly to Parliament from the fourteenth century onwards. At first, most petitions involved local and personal grievances. However, by the nineteenth century, most petitions focused on matters of ‘public policy’, as the House of Commons had lost most of its medieval judicial functions.⁶ Ad-hoc committees were established to hear these petitions, but it was not until 1832 that a permanent petitions select committee was established.⁷

With the establishment of formal British rule in 1840, the right to petition was transplanted into New Zealand. As in the United Kingdom, this right extended to Parliament when responsible government was established in the 1850s, and was recognised in the first House of Representatives standing orders in 1854.⁸ A permanent public petitions committee was not established until 1865, however.⁹ The first identifiable petition from Maori to the House appears to have been in 1860.¹⁰

As a feature of New Zealand’s legal system and heritage, the right to petition is possibly overlooked. Indeed, formally appealing to Parliament might be seen as a quaint way of seeking redress or attempting to influence law making today. A dedicated petitions committee no longer exists whereas by the 1890s there were three House petitions committees, if the Native Affairs Committee is included.¹¹ Another change is that most 19th century petitions were from petitioners with a private grievance, whereas contemporary petitions are more focussed on public issues.¹² This decline of private grievance petitions in New Zealand has been connected to the creation of the Ombudsmen in 1967.¹³ This speaks to the constitutional role of Parliament’s petitions committees in 19th century New Zealand.

⁵ Bill of Rights 1688 (Eng) 1 Will & Mar c 1.

⁶ House of Commons Information Office, above n 1, at 6.

⁷ At 6.

⁸ New Zealand House of Representatives “The Standing Rules & Orders of the House of Representatives” [1854] I VPHR at 12.

⁹ John E Martin *The House: New Zealand’s House of Representatives 1854-2004* (Dunmore Press, Palmerston North, 2004) at 56.

¹⁰ New Zealand House of Representatives ‘Abstract of Petitions Presented’ [1860] I JHR at XVIII.

¹¹ New Zealand House of Representatives “Contents” 1890 III AJHR at IV.

¹² David McGee, above n 3, at 517.

¹³ David McGee, above n 3, at 523.

Many 19th century petitions were subject to relatively extensive investigation, and depending on their importance in the eyes of the Assembly, would occasionally result in the establishment of a committee just to hear that one particular petition. The 1871 London and Whittaker Petition Committee was one such example.¹⁴ After petitioning the House, a summary of the petition would be published in the *Journals of the House (Journals)*. It would then be referred to a committee where it might be considered, reported on and then referred to the Government for further consideration and action. Committee reports would be tabled in the House, and published in the *Appendices* and sometimes debated on. Moreover, petitions were often reported on in newspaper coverage of Parliament.¹⁵

Petitions were therefore a way of raising the profile of an issue, ensuring that matter was noted in the official records of Parliament and attracting the direct attention of lawmakers, Ministers and government officials.¹⁶ Even before exploring precisely why Maori often turned to petitions as a way of trying to resolve land issues, one can see their attraction as avenue for both seeking redress and directing political protest.

III Creation of a Committee

The creation of the Native Affairs Committee in 1871 has been attributed to a “flood” of Maori petitions to the House.¹⁷ This is a plausible explanation. Maori certainly had many grounds for grievance.¹⁸ The *Journals* also show petitioning parliament was a regularly used method of voicing an opinion and or seeking justice at this time. In 1870 over 100 petitions were presented to the House, of which 10 were identifiably from Maori,¹⁹ and in 1871 around 275 petitions were presented. Of these 20 were from Maori, mainly focussing on Land Court matters and land confiscation.²⁰ Although the ‘flood’ of petitions was evidently stemming from the settler community, dealing with these ‘Maori petitions’

¹⁴ House of Representatives “Proceedings of the Select Committee Appointed by the House of Representatives on the Petition of Messrs. London and Whitaker, Together with Evidence Taken by the Committee” [1871] II AJHR H4 at 2.

¹⁵ These observations are based on a review of materials from the time, including the *Journals*, *Appendices*, *Parliamentary Debates* and newspaper reports contained in the Papers Past database.

¹⁶ Martin, above n 9, at 517.

¹⁷ Robin Hinge, Cathy Marr and Ben White “Crown Laws, Policies, and Practices in Relation to Flora and Fauna, 1840-1912” [Waitangi Tribunal, Wai 262, 2001] at 381.

¹⁸ See Richard S. Hill “Nga whakataunga tiriti – Treaty of Waitangi settlement process – Origins of the settlement process” (13 July 2012) Te Ara – The Encyclopaedia of New Zealand <<http://www.teara.govt.nz>>.

¹⁹ New Zealand House of Representatives “Schedule of Petitions Presented” [1870] I JHR at XVII-XXIII.

²⁰ New Zealand House of Representatives “Schedule of Petitions” [1871] I JHR at XIX-XXXIII.

represented a significant amount of Parliamentary time and were arguably best dealt with by a committee focussed on Maori issues.

There is, however, no reason given for its creation on the official Parliamentary record. On October 5, 1871 the *Parliamentary Debates* simply note that Mr Edward J Wakefield's motion for the creation of a Native Affairs Committee was carried. It was ordered that a select committee of thirteen members be appointed "to consider all petitions, reports, returns, and other documents relating to the affairs specially affecting the Native Race that had not previously been disposed of by the House".²¹ It was to report to the House from time to time and to have the power to call for persons and papers. All four Maori MPs as well as the Native Affairs Minister Donald McLean, amongst others, were to sit on the Committee.²² No further elaboration is given.

There are other potential explanations behind the Committee's creation. Up until the mid-1860s, Native Affairs were the responsibility of the Governor, therefore petitioning the House before then would have been fairly pointless.²³ The Committee's creation therefore comes on the heels of the General Assembly obtaining responsibility for the matters that the Committee was charged with considering. Furthermore, four dedicated Maori electorate seats had only been created in 1868.²⁴ The four new Maori MPs elected in 1871 were demanding significantly greater Parliamentary representation for Maori just weeks before the Committee was created.²⁵ Moreover, the committee model was popular with Maori. Donald McLean even introduced the Native Councils Bill of 1873 to help give local Maori committees a greater official role in government and in resolving disputes.²⁶ This move failed due to settler opposition.²⁷ Thus, the Committee may have been an act of compromise to give Maori a greater voice in New Zealand's governance whilst not providing a real threat to settler interests.

The Committee therefore emerged at both a time of constitutional change and increased Maori participation in Parliament, as well as increasing levels of Maori grievance against government policies. Regardless of the precise reason for its creation, its key business was

²¹ (October 5 1871) 11 NZPD at 124.

²² At 124.

²³ Ministry of Culture and Heritage "Treaty Events 1850-99 – Treaty Timeline" (20 December, 2012) New Zealand History Online <www.nzhistory.net.nz>.

²⁴ Martin, above n 9, at 60

²⁵ (September 15 1871) 10 NZPD at 471.

²⁶ (September 30 1873) 15 NZPD at 1514.

²⁷ Waitangi Tribunal "Turanga Tangata Turanga Whenua: The Report on the Turananganui a Kiwa Claims, Volume 1" (Wai 814, 2004) at 416.

to attend to petitions. One day after Wakefield's motion 10 petitions, one of which was signed by 1060 Maori, were transferred to it from the Public Petitions Committee,²⁸ and the Committee's 1871 records show its business was entirely dominated by the consideration of petitions.²⁹ Dealing with Maori grievance therefore lay at the heart of what the Committee did from its earliest days, its first step in evolving into a de-facto 'Maori Land Ombudsman'.

IV Maori Land Issues, Grievances and Petitions

From 1871 until and including 1900 the Committee dealt with around 2,300 petitions, collectively representing tens of thousands of signatures.³⁰ Whilst a small number were from Europeans, the bulk of these petitions were from Maori. Of the petitions dealt with by the Committee over the study period, 80 to 85 percent identifiable touched on issues relating to Maori land, the Maori land laws and the Land Court. These 'land-related' petitions thus dominated and were a consequence of radical changes to Maori land governance and land ownership in the latter half of the 19th century.³¹ These changes would contribute significantly to Maori landlessness and economic marginalisation.³² For many of those adversely affected by the system, the Committee was effectively one of the few official bodies they could turn to.

A A Broken System

The legal system governing Maori land in the late 19th century had many defects. It is important to briefly discuss the key sources of grievance produced by this system in tandem with its political context. This provides helpful perspective to later discussion.

By the time the Committee was created, Maori land issues already had a complicated history.³³ Throughout the 1840s and 1850s the Crown had acquired ownership of almost the entire South Island and parts of the North Island from Maori via pre-emption,³⁴ a

²⁸ New Zealand House of Representatives "Journal" [1871] I JHR at at 165.

²⁹ 1871 Minute Book of the Native Affairs Committee, LE1, 1871/8.

³⁰ Numbers and observations used in this section, unless referenced otherwise, are based on the reports of the Committee: 1872 until 1900.

³¹ Boast, Finn and Spiller, above n 4, at 140.

³² Richard Boast *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921* (Victoria University Press, Wellington, 2008) at 296.

³³ At 119.

³⁴ At 26.

system where the Crown had the sole right to purchase land in Maori ownership.³⁵ By the 1850s, land alienation via pre-emption and an increasing settler population led to Maori resistance movements and, eventually, violent conflict. In response, the Government confiscated large areas of North Island land from Maori in the mid-1860s.³⁶

Land confiscation would eventually be seen by settler politicians as an ‘expensive mistake’, generating Maori grievance against the Crown and creating on-going confusion around land ownership as well.³⁷ The tide of grievance would only keep on rising, however. On top of confiscations, the 1860’s also saw Crown pre-emption replaced by a system of ‘free trade’ in Maori land.³⁸ To effect this, the Native Land Court was established, coming into full operation in 1865. Its role was to investigate ownership of land according to Maori custom. Once ownership was established a Crown grant was issued awarding the owners a freehold title.³⁹

The goal of land court system was to extricate the Government from land purchasing and translate customary title into a form of individualised tenure, allowing land to be sold to private purchasers.⁴⁰ However, it quickly became apparent that the system was open to fraud, that individualising and vesting ownership in 10 people was incompatible with the Maori tenurial system of tribal ownership,⁴¹ and that the costs of surveying and of the Court process itself were hugely burdensome.⁴² Moreover, the only avenue of appeal against Court determinations was a rehearing before the Chief Judge of the Court, who was often the original judge in the matter.⁴³ A specialist appeals court would not be set up until 1894.⁴⁴

Later changes compounded the original defects of the Land Court system. Writing in 1960, a Maori Land Court judge noted:⁴⁵

³⁵ Richard Boast, Andrew Erueti, Doug McPhail and Norman F Smith *Maori Land Law* (2nd ed, LexisNexis, Wellington, 2004) at [4.1.2].

³⁶ Boast, Finn and Spiller, above n 4, at 145-148.

³⁷ At 149.

³⁸ At 152.

³⁹ Boast, Erueti, McPhail and Smith, above n 35, at 69-70.

⁴⁰ At 71-72.

⁴¹ David V Williams *Te Kooti Tango Whenua: The Native Land Court 1864-1909* (Huia Publishers, Wellington, 1999) at 4-5.

⁴² Boast, Finn and Spiller, above n 4, at 158.

⁴³ Native Affairs Committee “Reports of the Native Affairs Committee” [1884 – Session II] II AJHR I2 at 1.

⁴⁴ Boast *Buying the Land*, above n 32, at 195.

⁴⁵ Norman Smith *Maori Land Law* (A. H. & A. W. Reid, Wellington, 1960) at 11.

Since 1865 there has been a long and complicated series of statutes dealing with the Maoris and Maori land, varying considerable in degree and nature at different times, but all designed, one way or another not only to provide reasonable safeguards for Maori owners, but also to bring about the effective use and settlement of Maori lands. The results expected were not always achieved, and this would give rise to further changes in the law in such a way as to create so complicated a maze that only trained and experienced men could find their way through it.

That was putting it mildly. From the 1870s to the early 1890s, numerous Acts were passed to help ameliorate the worst effects of the Native Lands Acts. Whilst some were useful reforms,⁴⁶ laws would often conflict with each other and frequent amendments generated confusion and uncertainty.⁴⁷ Moreover, attempts to substantively move away from the Land Court approach were short-lived.⁴⁸ Wholesale change was politically impossible, with constant pressure from settler politicians to ‘free up’ Maori owned land for other uses.⁴⁹

The Government’s own role as buyer of Maori land interests was a major source of grievance in itself, and arguably more damaging than the Land Court.⁵⁰ The Crown re-entered purchasing with earnest in 1873, becoming the main buyer of Maori land.⁵¹ Indeed, the dominant government ‘Maori policy’ of the era has been characterised as the acquisition “of as much Maori freehold land as possible as cheaply as it could”.⁵² To help facilitate this the Government set up special land regimes and re-imposed pre-emption over certain areas from 1881,⁵³ and eventually the whole country in 1894,⁵⁴ which “Maori often took exception” to.⁵⁵ Government purchase agents also used several strategies and tactics to encourage Maori to sell,⁵⁶ even when ownership interests were disputed.⁵⁷

⁴⁶ Boast, Finn and Spiller, above n 4, at 155.

⁴⁷ Williams *Te Kooti Tango Whenua*, above n 40, at 14.

⁴⁸ Boast, Finn and Spiller, above 4, at 156.

⁴⁹ At 118

⁵⁰ At 78.

⁵¹ At 154-155.

⁵² Boast *Buying the Land*, above n 32, at 450.

⁵³ Boast, Erueti, McPhail and Smith, above n 35, at 93.

⁵⁴ Boast, Spiller and Finn, above n 4, at 154 -156

⁵⁵ Keith Sinclair, *Kinds of Peace: Maori People After the Wars, 1870-1875* (Auckland University Press, Auckland, 1991) at 38.

⁵⁶ See Boast *Buying the Land*, above n 32, at ch 6.

⁵⁷ At 108.

By the 1890s the system was discredited amongst both the Maori community, and the European one, which disliked the “risky and uncertain titles” it produced.⁵⁸ In 1891, a major inquiry, the Rees-Carroll Commission, concluded “if the Legislature had desired to create a state of confusion and anarchy in Native-land titles it could not have hoped to be more successful than it has been”.⁵⁹ The 1890s saw efforts to improve the system, and in 1900, the creation of new institutions to manage Maori land along with the withdrawal from widespread Crown purchasing of Maori land. Although these reforms represented a genuine change in tack, by 1900 most Maori land had been through the Land Court process,⁶⁰ and the area of land in Maori ownership was around half its 1870 level.⁶¹

B Petitions to the Committee: A Response to this System

In this context it is unsurprising that those affected turned to Parliament to express displeasure. For Maori there were more particular reasons for petitioning the Committee. Primarily, petitions were a response by those unable to pursue legal remedies when they had suffered an injustice at the hands of the Land Court or due to the actions or inactions of the Government. Additionally, petitions reflected the lack of Maori political power in a system dominated by settler interests. Overall, issues with the Maori land system were driving those adversely affected to search for an official outlet for their grievances and concerns, and that outlet was the Committee.

Maori were very much a minority voice in the political system. There were only four Maori MPs in the House. Thus Maori ability to make an impact via their elected representatives was extremely limited.⁶² Yet they were up against governments keen to alienate as much Maori land as possible. Petitions therefore would have been a way of amplifying Maori input into the law-making process and at least ensuring a particular petitioner’s views were registered. Moreover, petitions were an accessible way of attracting the attention of key politicians involved in Maori affairs.

This does not mean that Maori were simply using petitions to stage political protest against the system. Indeed, the ‘land related’ petitions can be divided into two camps. Firstly,

⁵⁸ Richard Boast “The Lost Jurisprudence of the Native Land Court: The Liberal Era 1891-1912” (Paper presented to the Unearthing New Zealand’s Constitutional Traditions Conference, Wellington, 29-30 August 2013).

⁵⁹ James Carroll, Thomas McKay and William Rees “Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws” [1891- Session II] II AJHR G1 at XI.

⁶⁰ Boast *Buying the Land*, above n 32, at 68.

⁶¹ Williams *Te Kooti Tango Whenua*, above n 41, at 61.

⁶² Martin, above n 9, at 61.

there were petitions specific to the petitioners' circumstances. These include requests for law reform based on the particular circumstances of the petitioners. These 'private grievance' petitions dominated, making up around 85 percent of 'land related' petitions. The second group of 'land related' petitions includes petitions expressing an opinion on the land laws or the operations of the land court in general. Initially, these were very much in the minority, however, general 'policy' or 'law reform' petitions did increase to around a quarter of Maori land related petitions in the 1890s.

These statistics establish that, for the petitioners, the Committee was predominantly a body at which to direct their personal grievances rather than a body in which to direct political protest. Furthermore, what is striking about these petitions is that the vast proportion of petitions were either "virtually in the nature of appeals from the decisions of the Native Land Court" or centred around disputes that would usually be resolved in the ordinary courts.⁶³ For example, requests for rehearings before the Land Court were the single most common petition topic and payment disputes with both the Crown and private sellers as well as issues with succession in land, defective surveys, incorrect boundary lines and frauds were also common petition subjects. Many would have therefore petitioned the Committee simply because their grievances were not able to be resolved by either the Native Land Court, or the ordinary Courts, due to limited appeal rights and an inflexible and often confusing body of statute law. One petitioner even claimed he was told by a Land Court judge that he should appeal the case to Parliament.⁶⁴ Thus, appealing Parliament would have effectively been an avenue of last resort in several cases.

Even if legal remedies were available, petitioning the Committee would have been attractive to those unable to afford legal proceedings or simply wanting to maximise their chances of a favourable outcome. One petitioner was told by his lawyer to file proceedings in the Supreme Court and send a petition to Parliament against a Land Court decision.⁶⁵ Moreover, As Sinclair identified, "there were no costs to petitions to Parliament whereas the cost of court proceedings would be a deterrent to weak or frivolous cases".⁶⁶ Furthermore, although petitions had to be sponsored by a member of the House, this does not appear to have been a problem, and petitions from Maori were also exempted from the

⁶³ Native Affairs Committee "Reports of the Native Affairs Committee" [1876 – Session I] II AJHR I4 at 9.

⁶⁴ Native Affairs Committee "Reports of the Native Affairs Committee" [1881 – Session I] II AJHR I2 AJHR at 8.

⁶⁵ Native Affairs Committee "Report on the Petitions of Hitiri Te Paerata and Others, Together with Minutes of Evidence" [1888 – Session I] III AJHR I3d at 1.

⁶⁶ Sinclair, above n 55, at 119

manner and form requirements.⁶⁷ However, whilst cost and accessibility were undoubtedly factors, for many there would have been considerable costs in going to Wellington to give evidence as well as waiting perhaps years for a determination.

The Committee was also used as a mechanism through which to hold executive decision-making to account. There were numerous petitions based on the land confiscations of the 1860s and more contemporary land confiscations for roads. There were also many petitions based on Crown grants not being awarded, landlessness, the unscrupulous actions of Crown land purchasing agents, lack of Land Court sittings in a particular area, opposition to land taxes, restrictions on land alienation, the return of lost burial grounds, as well as petitions founded on unfulfilled Crown promises such as failure to establish reserves, often going back decades. European petitions to the Committee generally concerned leases and the effect of constantly changing laws on various purchases they had been trying to make. These challenges to executive action give the body of petitions an almost administrative law character.

Petitions were used as a way of protesting against the system in general as well as a way of engaging with the legislative process, as well. Although in the minority, general policy or ‘law reform’ petitions frequently attracted the most signatures, sometimes running into the thousands. These petitions were often in response to a proposed piece of legislation. For example, in response to the 1893 Native Land Purchase and Acquisition Bill, the Committee had to field 25 petitions opposing the Bill, collectively signed by over 2,700 people.⁶⁸ However, not all petitions were opposed to particular Bills, and some offered suggestions of how that particular bill, or the law in general, might be improved.

It is also important to place the Committee in context. Maori land disputes were certainly fought out in the Supreme Court and Court of Appeal.⁶⁹ Maori would also have directly lobbied politicians and officials, including the four Maori members. Part of this would have included significant letter writing campaigns, effectively a form of informal petitioning.⁷⁰ Petitions were also sent to the Legislative Council and even the Queen.⁷¹

⁶⁷ New Zealand House of Representatives “Standing Orders of the House of Representatives” [1894 Session I] III AJHR H11 at [317].

⁶⁸ Native Affairs Committee “Reports of the Native Affairs Committee” [1893 Session I] III AJHR I3 at 18.

⁶⁹ See Sinclair, above n 55, at 119, and Boast *Buying the Land*, above n 31, at 195.

⁷⁰ Claudia Geiringer “Subsequent Maori Protest Arising from the Crown Land Purchases in Muriwhenua 1850-1865” (Waitangi Tribunal, Wai 45, 1993) at 9.

⁷¹ Governor of New Zealand “Dispatches from the Secretary of State to the Governor and the Governor to the Secretary of State” [1889 Session I] I AJHR A1 at 36.

Furthermore, as later discussion will illustrate, petitions were also often just one part of long-running sagas including court proceedings and official inquiries, committees and royal commissions. Petitions considered by the Committee would have only been “the tip of iceberg, in terms of the body of Maori written protest”.⁷²

What is distinctive about the Committee is that it even though it was a body firmly embedded in the settler political system, it was readily accessible to Maori, devoted to hearing grievances from Maori, and where Maori petitioners could effectively set the agenda. There were no Ombudsmen back then, Maori Parliamentarians were not particularly effective in relation to the Native Land Acts, and the Government and the Courts were very often the source of petitioner grievance.⁷³ If Maori were adversely affected by the Land Court, a statute or the Government, the Committee was therefore one of the few places they could turn to. Indeed, the petitions establish that the Committee was readily used to try and draw attention to and resolve particular grievances, as well as to challenge Government actions, and attempt to influence the constantly evolving body of Maori land law statute

V The Committee's True Role: A Maori Land Ombudsman?

The defects of the Land Court and the system more broadly were what drove thousands to sign petitions to the Committee. Unfortunately for the petitioners, there is little evidence to suggest that the Committee was particularly effective in delivering results for most petitioners. In light of this, the Committee is better characterised as a form of ‘Maori Land Ombudsman’ rather than a de-facto ‘Maori Land Appellate Court’.

Formally, the Committee was only a select committee of the General Assembly. It could not compel Government action. It could not overturn decisions of the Courts. Whilst it also had the traditional role associated with select committees of considering legislation, it could not even ensure its own recommendations on Bills survived the next stages of legislative process. It was entirely dependent on the moral force of its recommendations and the good will of other, more powerful, actors. This reality is encapsulated in the 1894

⁷² Geiringer, above n 70, at 8.

⁷³ Alan Ward *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand* (Auckland University Press, Auckland, 1974) at 271.

Standing orders which stated that “Committees have only power to report their opinions to the House”.⁷⁴

The view that the Committee, and therefore the petitions, had an extremely limited impact is backed up by Geiringer and Williams. The former stated that the:⁷⁵

Committee had no teeth. Much of the time, the Committee’s recommendations appear to have been ignored. During the late nineteenth century and early twentieth centuries, there is almost no evidence that Government attempted to resolve the grievances referred back to them by the Committee.

Whilst the latter noted:⁷⁶

Maori who managed to convince a parliamentary committee of a grievance were almost invariably referred back to hearing before the very Land Court in its ordinary jurisdiction which had been the source of its problems in the first place.

The Committee certainly had major limitations, as these quotes attest to. Furthermore, considering its place in the legislative branch and its inability to compel any form action to be taken on its recommendations, it would be surprising if the Committee was functionally a ‘Maori Land Appellate Court’. However, this does not mean the Committee was nothing more than a place for petitioners to vent their grievances. Ward’s analysis of the Committee hints at the fact that it played a more significant role in the context of Maori land issues.⁷⁷

While the Native Affairs Committee set up after 1872 to handle the flood of petitions became an important part of New Zealand’s constitutional machinery ... Here too redress could not be gained on the large questions such as return of confiscated lands but in a variety of small questions, especially if Government members were absent, petitioners were able to obtain favourable decisions.

And in relation to land matters:⁷⁸

The Committee received scores of appeals from the Land Court and although it declined to review judicial decisions, from time to time reported that it considered there were grounds for a

⁷⁴ New Zealand House of Representatives “Standing Orders of the House of Representatives” [1894 Session I] III AJHR H11 at [233].

⁷⁵ Geiringer, above n 70, at 10

⁷⁶ Williams *Te Kooti Tango Whenua*, above n 40, at 244.

⁷⁷ Alan Ward, above n 73, at 271.

⁷⁸ Ward, above n 73, at 271.

rehearing, or urged correction of a faulty survey. It then rested entirely with the Government and the Land Court whether action was taken, but a favourable decision by the Committee (as in the case of back rents for the Princes Street reserve) especially if taken up the Opposition, could embarrass the Government or cause a well-disposed Minister to act.

This analysis demonstrates that there is more to the Committee than simply writing it off as an ineffective institution. In fact, whilst the Committee certainly had major limitations, it could also produce positive outcomes in certain circumstances and the Committee had important investigative and accountability functions. These functions can be analogised with the modern Ombudsman. Ombudsmen are an important check on executive power, tasked with investigating and reporting on complaints resulting from the acts and omissions of the executive branch of government. They can also take a broader, systemic view in its reports and although they have no power to change executive decisions, its recommendations carry considerable weight.⁷⁹

Whilst the Committee's recommendations did not receive anywhere near the same level of respect as those of today's Ombudsmen, its role as a "grievance representative" for both Maori and Europeans is captured by the modern Ombudsman idea.⁸⁰ The Committee did act as a form of check on judicial and executive action in respect of Maori land issues. The very fact its recommendations were unenforceable adds weight to the analogy. Moreover, the Land Court "was an administrative as much as it was a judicial body",⁸¹ that worked closely with the executive branch.⁸² Thus, this extension of the Ombudsman concept into the judicial realm is not too much of a stretch.

A Native Affairs Committee as Maori Land Ombudsman: The Evidence

In order to establish that the Committee exercised important Ombudsman-like investigatory and accountability functions, and conclusively rule out the possibility that it acted as a de-facto Court, it is necessary to explore evidence from the Committee's own reports, the Rees-Carroll Commission as well as several further petition-based examples.

The Committee's reports

⁷⁹ Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand's Constitution and Government* (4th ed, Oxford University Press, Melbourne, 2004) at 267-268.

⁸⁰ Philip A Joseph *Constitutional & Administrative Law in New Zealand* (Thomson Brookers, Wellington, 2007) at 366.

⁸¹ Boast, Finn and Spiller, above n 4, at 119.

⁸² Williams *Te Kooti Tango Whenua*, above n 41, at 237-244.

The Committee's reports suggest the Committee would have been an ineffective appeals body for many petitioners, helping rule out the possibility of it effectively being a court.⁸³ However, they also show the Committee was concerned with investigating petitions fairly and that the Committee was exercising an important accountability role. This was especially the case by the 1890s when it investigated most petitions as well as directly criticised the Land Court and the Government, and not just the lack of formal appeals process from the Land Court, as had been the case in the 1870s and 1880s.

When the Committee considered a petition, they would hear evidence and then make a report based on its determinations. These reports would usually consist of a short summary of the petition's subject-matter and then a brief recommendation based on the Committee's findings, or lack thereof. The Committee's individual reports for a particular session of Parliament were published together as one report in the *Appendices*. A handful of petitions each year would be separately published along with the often quite extensive written and oral evidence taken by the Committee in relation to the petition.

The Committee's reports contain revealing comments that it did not view itself as having a direct role to play in either remedying the defects of the Land Court system and the Maori land law system more broadly. This was as volumes of petitions were forcing it to engage with these very issues. In 1883 the Committee reported that "disappointed claimants seem to think that they can bring parliamentary influence upon the Chief Justice by petitioning the House, and getting their case stated to this Committee: and the sooner this erroneous impression is removed the better". Earlier in 1876, it stated that it did not feel competent to make recommendations "involving complicated questions of Native title to land" and that it is not desirable that it should "act in the capacity as a Court of Appeal from the Native Land Court".⁸⁴ This view was again expressed 12 years later in the 1888 reports,⁸⁵ and in 1884 it acknowledged simply that it did not have the time or resources to carry out such a function.⁸⁶

These comments are perhaps the greatest indictment on it being anything more than a body where petitioners could vent their grievances and rule out the possibility of it being a "Maori Appellate Court", at least in the 1870s and 1880s. This view is supported by the

⁸³ Numbers and observations used in this section, unless referenced otherwise, are based on the reports of the Committee: 1872 until 1900.

⁸⁴ Native Affairs Committee "Reports of the Native Affairs Committee", above n 63, at 9.

⁸⁵ Native Affairs Committee "Reports of the Native Affairs Committee" [1888 – Session I] III AJHR I3 at 12

⁸⁶ Native Affairs Committee "Reports of the Native Affairs Committee" [1884 – Session II] II AJHR I2 at 1.

fact the Committee was a dead-end for around 45 percent of land related petitions. This 45 percent either received no substantive recommendation from the Committee or it formed an opinion adverse to the petitioner. This was particularly pronounced in the 1870s and 1880s, reflecting an aversion to becoming involved in appeals from land court and what it considered to be “matters of public policy”.⁸⁷

Despite the Committee’s professions otherwise, it did often engage with matters of public policy and what were effectively appeals from the Land Court. In fact it gave a majority of land-related petitions a favourable recommendation. This rose to around two thirds in the 1890s, suggesting the Committee was more willing to engage with law reform suggestions and what were effectively Land Court appeals by then. For the purposes of this discussion, a favourable recommendation includes when it formed an opinion favourable to the petitioner or thought the facts warranted further investigation. The Committee would then refer such petitions on to another body for further inquiry and resolution, keeping alive the possibility that the particular alleged grievance might be resolved. Problematically, the reports are generally silent on whether favourable recommendations were actually acted upon. However, what they do show is that a favourable recommendation from the Committee was no guarantee of a proper inquiry or resolution being made by the Government. Whilst they sometimes mention petitions that were inquired into and resolved, a much larger number of petitions were from former petitioners seeking a previous recommendation to be carried out, forcing the committee to reiterate its original recommendation, occasionally in quite forceful terms.⁸⁸

Even though the reports appear to indicate the Committee was not particularly effective in achieving substantive results, they do establish the Committee was constantly engaging with Government officials and the Land Court. They contain plenty of comments and evidence attesting to the fact the Committee would interview and acquire evidence from both these groups. Additionally, the Committee required the Native Department, and presumably its successor agencies from 1892,⁸⁹ to report on petitions “as a matter of standard procedure”.⁹⁰ The Committee would also critique the behaviour of the Land Court and Government. By the 1890s, the Committee was not afraid to criticise the officials or

⁸⁷ Native Affairs Committee “Reports of the Native Affairs Committee”, above n 64, at 6-7.

⁸⁸ See Petition No. 148/1889, Native Affairs Committee “Reports of the Native Affairs Committee” [1890 – Session I] III AJHR 13 at 7.

⁸⁹ Boast *Buying the Land*, above n 32, at 297.

⁹⁰ Geiringer, above n 70, at 9.

the Court itself. For example, in 1889 the Committee concluded that a Land Court judge was wrong to exclude a petitioner in a succession to land case, and that the Chief Justice was wrong to refuse a rehearing,⁹¹ and in 1894 it determined that a petitioner's case had been mismanaged in the Land Court.⁹² It would even offer advice on how its procedures and operations could be improved.⁹³

The Committee was thus instrumental in ensuring the Land Court and the Government were fully aware of petitioner grievances, and at the very least demanded a degree of public accountability from the two groups who often perpetrated the alleged grievance behind a petition.⁹⁴ It was forcing government agencies responsible for Maori land purchasing to front up and justify its actions or the Court's resolutions where a grievance was raised. Moreover, it is hard to imagine that its repeated calls over two decades for the creation of an Appeals Court for Maori land issues was not connected to the creation of the Native Appellate Court in 1894.

The simple fact the Committee would investigate most land-related petitions was central to its Maori Land Ombudsman role. A review of every Committee report from 1872 to 1900 reveals that where there was evidence pointing to a real injustice, the Committee was very concerned to do right by the petitioners. As Sir James Carroll said in 1922, "in all his experience the Committee had set itself to weigh with an even hand the question of right and wrong".⁹⁵ Moreover, where the Committee believed it had firmly established a wrong on the evidence before it seems it would not hesitate to make this clear, often recommending special legislation be passed to carry their recommendation into effect.⁹⁶ The Committee thus did try to investigate matters fairly and with a sense of natural justice, thereby providing an important Ombudsman-like service to those seeking to challenge government and Land Court decision-making.

⁹¹ See Petition No 112/1889, Native Affairs Committee "Reports of the Native Affairs Committee" [1889 – Session I3] III AJHR I3 at 6.

⁹² See Petition No 24/1894, Native Affairs Committee "Reports of the Native Affairs Committee" [1894 – Session I] III AJHR I3 at 5.

⁹³ See Petition No 444/ 1887, Native Affairs Committee "Native Affairs Committee: (Report of), On Petition of Te Teira Tiakitai, of Hawkes Bay, and Seven Others, Together with Minutes of Evidence" [1887 – Session I] I AJHR I3c at 1.

⁹⁴ Geiringer, above n 70, at 9.

⁹⁵ Native Affairs Committee "Native Affairs Committee Room: Report of Proceeding at Opening Ceremony" [1922 – Session I] II AJHR I3b at 3.

⁹⁶ See Petition No 74/1883, Native Affairs Committee "Reports of the Native Affairs Committee" [1883 – Session I] III AJHR I3 at 2.

2 *The Rees-Carroll Commission*

The Rees-Carroll Commission was a major 1891 investigation into Maori land issues and laws. Its findings and accompanying evidence provide interesting insight into the Committee's limitations as well as its role as an accountability mechanism, however ineffective.

Firstly, it is apparent that the very Department responsible for dealing with the Committee's recommendations did not take petitions seriously in the 1870s and 1800s. This is established by the evidence of Mr Thomas Lewis, long-term employee and Under-Secretary of the Native Department. His role was both to report on all the petitions to Parliament relating to Native Affairs as well as head the Land Purchase Department. He submitted "there is no doubt, that most, if not all, their grievances are their own fault", and the result on untruthful evidence given by Maori to the Land Court.⁹⁷ Moreover, the fact the Department might advance the purchase of a block of land whilst the Committee was investigating a petition in connection to that very same block reinforces this contemptuous attitude towards Maori petitions.⁹⁸ Research by Geiringer also appears to corroborate the existence of official hostility to petitions.⁹⁹ Altogether, this illustrates how powerless the Committee may have been in ensuring executive agencies properly investigated and acted on its recommendations, particularly as these agencies would often be implicated in the original grievance.¹⁰⁰

In contrast, petitions "were a great nuisance to politicians" and there is the evidence they and the Committee were successful in putting the Government and the Land Court in an uncomfortable position.¹⁰¹ An interpreter for the Land Court, Edward Harris, gave evidence stating that the Court made sure everyone was allowed to speak and give evidence at Court for fear of prompting petitions to Parliament.¹⁰² Furthermore, another witness identified a continual cycle of legislation, grievance, petitions and legislation, suggesting petitions, via the Committee, were drawing attention to the defects of the

⁹⁷ Carroll, McKay and Rees "Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws", above n 59, at 149.

⁹⁸ Boast *Buying the Land*, above n 32, at 108.

⁹⁹ See Geiringer, above n 70, at 9-10.

¹⁰⁰ At 10.

¹⁰¹ Sinclair, above n 55, at 119.

¹⁰² Carroll, McKay and Rees "Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws", above n 59, at 2.

system and prompting law-makers to take some level of action.¹⁰³ However, whilst the Committee was thus providing for a degree of accountability, resulting in prima-facie favourable official responses or changes in behaviour, petitions may have also been double-edged swords. Changes to Land Court procedures ensured proceedings were time consuming, making the Court even more burdensome on Maori. Additionally, statutory responses to petitions may have contributed to the “appalling complex legislative jungle”, thereby generating fresh grievances.¹⁰⁴

The ultimate accountability response to the petitions may have been the Commission itself. The Commission directly acknowledged the system had led Maori to flood Parliament with petitions.¹⁰⁵ In its proposal for a Titles Court to deal with past disputes and the creation of Native Land Boards to manage Maori land, the Commission envisaged solution that would permanently relieve the Committee of the “matters now coming before Parliament by petition”.¹⁰⁶ However, even though the Titles Court idea was implemented,¹⁰⁷ wholesale system change was not forthcoming and the Government purchase of Maori land continued for most the 1890s, with many enactments passed to help facilitate Crown acquisition of Maori land.¹⁰⁸ Thus petitions and the Committee helped prompt official reaction and acknowledgement that the Maori land law system was defective. However, they were still unable to produce substantive changes into the 1890s, illustrating the limited power of petitions and the Committee.

3 The Committee and the 1890s

The main limitation of Rees-Carroll Commission for the purposes of this discussion is that it leaves the 1890s unaccounted for. Despite this, there is evidence attesting to both the Committee’s limitations as well as its ability work as an accountability mechanism over this decade.

The 1895 petition *Te Reneti Te Whauwhau* is one example of the Government’s land purchasing agencies continuing to have little regard for petitions. The petition was in response the Native Department continued and determined efforts to purchase the island of

¹⁰³ Carroll, McKay and Rees “Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws”, above n 59, at 3.

¹⁰⁴ Boast, Finn and Spiller, above n 4, at [4.4.3].

¹⁰⁵ Carroll, McKay and Rees “Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws”, above n 59, at XI.

¹⁰⁶ At XXIV.

¹⁰⁷ Boast *Buying the Land*, above n 32, at 190.

¹⁰⁸ At 193.

Tuhua from its Maori owners, who opposed sale. The Committee recommended a permanent Native reserve be set up for the benefit of the owners. Not only was this recommendation not acted upon, the Crown continued its efforts, unsuccessfully, to purchase the land until the 1920s.¹⁰⁹

Conversely, there is evidence that the Committee was able to draw Government action to grievances and prompt a favourable response. We see the Committee explicitly mentioned in s 12 of the Native Claims Adjustment Act 1895, a section devoted entirely to giving effect to a Committee recommendation, allowing for an appeal from the Native Land Court by a petitioner.¹¹⁰ Moreover, in 1896 the Committee dealt petition in connection to the same area of land in Porirua that had been subject to the now infamous *Wi Parata* litigation. Whereas *Wi Parata*'s own petition had received no recommendation in 1876,¹¹¹ the 1896 Committee recommended the pre-emption era Crown grants be cancelled by special legislation, and that the land be returned to the "Native donors along with all the rents accrued thereon". The Government took up the issue, proposing a Bill at first, but eventually winning the land back, for the Crown, from the Bishop of Wellington in the Court of Appeal in 1901. However, the church won on appeal to Privy Council in the case of *Wallis v Solicitor-General*. The *Wi Parata* saga continued well into the 20th century.¹¹²

Although these are just limited examples, the favourable ones hint at the Government taking a more constructive role in responding to petitions and the Committee's advice. They are also evidence that the Committee's 1890s recommendations could prompt action broadly in favour of petitioners. Equally, the Te Whauwhau petition shows Committee recommendations could fail in the face of Government resistance.¹¹³ There was no guarantee either way. Additionally, the examples show how petitions were often one part of long-running disputes in relation to Maori land.

4 Accountability in the legislative domain

The Committee's role was not only confined to resolving grievances. The Committee did consider Maori land legislation, and a significant body of petitions were devoted to 'law

¹⁰⁹ Boast *Buying the Land*, above n 32, at 435-437.

¹¹⁰ Native Claims Adjustment Act 1895, s 12.

¹¹¹ See Petition of Wiremu Parata and 18 Others, Native Affairs Committee "Reports of the Native Affairs Committee", above n 63, at 1.

¹¹² David V Williams *A Simple Nullity? The Wi Parata case in New Zealand law & history* (Auckland University Press, Auckland, 2011) at 175-196.

¹¹³ For an 1880s case study, see Judith Binney *Encircled lands: Te Urewera, 1820-1921* (Bridget Williams Books Ltd, Wellington, 2009) at 284-294.

reform' issues. It thus had a direct role to play in the legislative process, thereby allowing petitioners an opportunity of engaging in law-making in the area of Maori affairs. The Committee could therefore have been exercising an accountability role in sense of drawing law-maker attention to the defects of the system that Parliament had created, and working to promote systemic change via legislation.

The Rees-Carroll Commission evidence does suggest that petitions, via the Committee, did draw attention to many of the evils of the system, thereby resulting in ameliorating legislation to help protect beneficial owners and reduce fraud. The Native Equitable Owners Act 1886 was one such statute, an act which Williams directly connects to the impact of petitions.¹¹⁴ However, the Committee's ability to deliver effective accountability should not be overstated. Firstly, the Committee made clear its reluctance to consider matters of 'public policy' on several occasions. Furthermore, whilst some of legislative changes were helpful, they also contributed to confusing labyrinth of legal rules, and did not alter the fundamentals of the system, which remained largely unchanged for most of the study period. Moreover, when such changes were put into effect, such as the Native Lands Administration Act 1886, they were short-lived.¹¹⁵ Calls for wholesale reform therefore went unheeded.

It is only towards the end of the 19th century that there appears to have been a change in attitude towards Maori land interests. An 1895 Tuhoe petition for tribal control of their lands in 1895 met with success when the Urewera District Reserve Act was passed in 1896. Although this Act possibly owed more to direct Tuhoe-Crown negotiations than a single petition.¹¹⁶ However, when a Maori MP, using petitions to support his proposals, proposed a Bill in 1894 that would have vested control of Maori land in Maori Councils, it was strongly opposed and rejected by other MPs.¹¹⁷ This reaction stands in marked contrast to the Maori Lands Administration Act of 1900.

The Maori Lands Administration Act attempted to restrict Maori land alienation and promote its effective use by establishing Maori Land Councils. A majority of council members were to be Maori, and the Councils were to have functions such as helping to

¹¹⁴ Williams *Te Kooti Tango Whenua*, above n 41, at 173.

¹¹⁵ Boast, Finn and Spiller, above n 4, at 156.

¹¹⁶ Binney, above n 113, at ch 10-11.

¹¹⁷ Waitangi Tribunal "Report of the Waitangi Tribunal on the Orakei Claim" (Wai 9, 1987) at [4.6].

determine land ownership and controlling land alienation.¹¹⁸ It coincided with a withdrawal from Crown purchasing and its creation owed much to the leadership of the Native Affairs Minister James Carroll.¹¹⁹ However, Maori petitions also had some impact on the reforms. The Committee took a number of petitions over several years in connection with the proposed reforms and recommended “legislation be introduced this session to, as nearly as possible meet the views of the Natives”. The Committee Chairman stated that the:¹²⁰

Object in presenting these petitions to the House was for the purpose of getting the views of the representatives of the Maori race, on this Committee, as to what form the legislation should take in order to limit the evils complained of in the petitions.

The Chairman also noted that it was the unanimous wish of ‘the Natives’ to stop the future sale of Maori land, and “to bring about some way of managing their lands differently to what obtains at the present time”.¹²¹ This Act shows how Maori petitioners, through the Committee, could ensure that the legislature was aware of the adverse effects of the Native Land Acts. The Committee was thus promoting a form of political accountability and allowing Maori to engage in law reform opportunities.

VI Conclusion

The Native Affairs Committee’s continues to exist to this day, in the form of the Maori Affairs Select Committee. It was only in 1922, after over 50 years of existence, that the Committee received a permanent meeting room. At the official opening of this room Sir William Herries, a 20 year veteran of the Committee who had served as Native Affairs Minister for nine years, gave an intriguing speech. He described the Committee as “certainly, as far as Native matters were concerned, the highest Court in the land”. He went on to say that the Committee was both the “hardest-worked” in the House, “and looked on by the “Natives as their Parliament to which they could all appeal to right their

¹¹⁸ Boast, Finn and Spiller, above n 4, at 163-164.

¹¹⁹ Boast *Buying the Land*, above n 32, at 213-215.

¹²⁰ Native Affairs Committee “The Proposed Native Lands Settlement and Administration Bill (Minutes of Evidence Taken in Relation with Petitions Relating To)” 1899 IV AJHR 1899 I3A at 10.

¹²¹ At 24.

grievances”. Sir William recalled one petitioner even had the “temerity” to appeal to the Committee against a judgment of the Privy Council.¹²²

Grand language for what was a grand occasion. Although doubtful, it may well have been that from 1901 the Committee developed real teeth as a political body and as an institution of justice for Maori. It was certainly still dealing with large numbers of petitions. However, if Sir William was in any way referring to the Committee’s first 30 years, he was significantly overstating the case. The Committee was no great ‘Court of Appeal’ or Maori Parliament.

Indeed, the Committee suffered from major limitations that meant it was unable to achieve justice or positive change for many whose petitions came before it. “It was very difficult, then and now, for petitions to achieve results.”¹²³ Nonetheless, it still had an important place and role in New Zealand’s legal and political systems. As Ward noted, “the Native Affairs Committee was one institution which helped create just sufficient flexibility to prevent the Maori from quite despairing of the parliamentary system”.¹²⁴ Although at the end of the 19th century the Committee’s role may not have been one of a powerful appellate court, it can be seen as contributing to the creation of a permanent Maori Appellate Court, a court that still exists. There is also evidence that the Committee was able to achieve positive outcomes for a number of petitioners, increasingly towards the end of the century.

Most importantly, the Committee acted as check on both judicial and executive decision-making, ensuring a degree of Parliamentary accountability and oversight over two powerful and dominating actors in the area of 19th century Maori land alienation and governance: the Native Land Court and the Government itself. Whilst select committees all have an important accountability role to some extent, what made the Native Affairs Committee unique was that its role as ‘Maori Land Ombudsman’ was ultimately the result of petitioner initiative.¹²⁵ It were petitions that drove the great bulk of the Committee’s work and defined its constitutional role as a check on the actions of the Crown in relation to Maori land, at the very least ensuring grievances were formally communicated to

¹²² Native Affairs Committee “Native Affairs Committee Room: Report of Proceeding at Opening Ceremony”, above n 95, at 3-4.

¹²³ Sinclair, above n 55, at 93.

¹²⁴ Ward, above n 73, at 271.

¹²⁵ Palmer and Palmer, above n 79, at 169.

responsible officials as well as compelling some level of explanation from the Land Court and the Government.

Without individual Maori and Europeans taking the effort to gather signatures and formally petition Parliament the Committee's role would have an extremely limited one, confined to dealing with the occasional bill, and the Crown's powerful role as both regulator and buyer of Maori land would have been even more untrammelled. Thus, despite its failings, the Committee should be remembered as a unique institution for 19th century Maori. An institution where ordinary people could, with relative ease, engage with the key figures responsible for Maori affairs through the ancient right to petition.

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