NEW ZEALAND CENTRE FOR PUBLIC LAW
Te Wānanga o ngā Kaupapa Ture ā Iwi o Aotearoa

New Zealand Journal of Public and International Law

VOLUME 15 ▪ NUMBER 2 ▪ DECEMBER 2017

THIS ISSUE INCLUDES CONTRIBUTIONS BY

Debra Angus
Eve Bain
Natalie Baird
Oliver Hailes
Joanna Mossop
Sascha Mueller
Grant Phillipson
Pita Roycroft

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA
UNIVERSITY OF WELLINGTON

NEW ZEALAND JOURNAL OF PUBLIC AND INTERNATIONAL LAW

Faculty of Law
Victoria University of Wellington
PO Box 600
Wellington
New Zealand

December 2017

The mode of citation of this journal is: (2017) 15 NZJPIL (page)

The previous issue of this journal was volume 15 number 1, June 2017

ISSN 1176-3930

Printed by City Print Communications, Wellington

Cover photo: Robert Cross, VUW ITS Image Services

CONTENTS

The **New Zealand Journal of Public and International Law** is a fully refereed journal published by the New Zealand Centre for Public Law at the Faculty of Law, Victoria University of Wellington. The Journal was established in 2003 as a forum for public and international legal scholarship. It is available in hard copy by subscription and is also available on the HeinOnline, Westlaw, Informit and EBSCO electronic databases.

NZJPIL welcomes the submission of articles, short essays and comments on current issues, and book reviews. Manuscripts and books for review should be sent to the address below. Manuscripts must be typed and accompanied by an electronic version in Microsoft Word or rich text format, and should include an abstract and a short statement of the author's current affiliations and any other relevant personal details. Manuscripts should generally not exceed 12,000 words. Shorter notes and comments are also welcome. Authors should see earlier issues of NZJPIL for indications as to style; for specific guidance, see the *New Zealand Law Style Guide* (2nd ed, 2011). Submissions whose content has been or will be published elsewhere will not be considered for publication. The Journal cannot return manuscripts.

Regular submissions are subject to a double-blind peer review process. In addition, the Journal occasionally publishes addresses and essays by significant public office holders. These are subject to a less formal review process.

Contributions to NZJPIL express the views of their authors and not the views of the Editorial Committee or the New Zealand Centre for Public Law. All enquiries concerning reproduction of the Journal or its contents should be sent to the Student Editor.

Annual subscription rates are NZ$100 (New Zealand) and NZ$130 (overseas). Back issues are available on request. To order in North America contact:

Gaunt Inc
Gaunt Building
3011 Gulf Drive
Holmes Beach
Florida 34217-2199
United States of America
e-mail info@gaunt.com
ph +1 941 778 5211
fax +1 941 778 5252

Address for all other communications:

The Student Editor
New Zealand Journal of Public and International Law
Faculty of Law
Victoria University of Wellington
PO Box 600
Wellington, New Zealand
e-mail nzjpil-editor@vuw.ac.nz
fax +64 4 463 6365

NEW ZEALAND JOURNAL OF PUBLIC AND INTERNATIONAL LAW

The New Zealand Centre for Public Law was established in 1996 by the Victoria University of Wellington Council with the funding assistance of the VUW Foundation. Its aims are to stimulate awareness of and interest in public law issues, to provide a forum for discussion of these issues and to foster and promote research in public law. To these ends, the Centre organises a year-round programme of conferences, public seminars and lectures, workshops, distinguished visitors and research projects. It also publishes a series of occasional papers.

Directors

Director	*Professor Claudia Geiringer*
Director	*Dr Dean Knight*
Associate Director	*Dr Carwyn Jones*
Associate Director	*Dr Guy Fiti Sinclair*
Centre and Events Administrator	*Anna Burnett*

For further information on the Centre and its activities visit www.victoria.ac.nz/nzcpl or contact the Centre and Events Administrator at nzcpl@vuw.ac.nz, ph +64 4 463 6327, fax +64 4 463 6365.

"TRUST THE MINISTRY, TRUST THE DEMOCRACY, TRUST THE PEOPLE": ADMINISTRATIVE JUSTICE AND THE CREATION OF SPECIAL COURTS AND TRIBUNALS IN THE LIBERAL ERA

Grant Phillipson*

This article explores the evolution of administrative justice in the late 19th and early 20th centuries, during the reign of "King Dick" (Liberal Premier Richard Seddon). It examines the Liberals' creation of rights of appeal against administrative decisions and of quasi-judicial bodies to hear those appeals or to implement statutory schemes. One key theme is the creative interplay and conflict in the legislature between two (apparently contradictory) sets of ideas. The first was that growing state intervention should be accompanied by appeal rights (and "judicial tribunals" to hear them), in order to protect individual citizens, and that such tribunals should be as independent as possible. The second, sometimes promoted by Seddon, was that the people did not need protection from their own democracy and that appeals should be to ministers. Results included democratically-elected courts, frequent use of magistrates (cheaper but independent), creation of appeal rights and tribunals by the Opposition (not the government) and many others

I INTRODUCTION

Sir William Wade defines the purpose of administrative law as "keep[ing] the powers of government within their legal bounds, so as to protect the citizen against their abuse".[1] One aspect of administrative law is the judicial review of administrative decisions by the superior courts, which this article does not address. Another key aspect is administrative or statutory tribunals, which hear and determine "appeals by individuals aggrieved by an administrative decision taken by an organ of the

* PhD, BA(Hons). Dr Grant Phillipson is an historian and a member of the Waitangi Tribunal. The views expressed in this article are his own and not those of the Waitangi Tribunal.

1 William Wade and Christopher Forsyth *Administrative Law* (7th ed, Oxford University Press, Oxford, 1994) at 5.

state". Their "principal feature is that they do so in an effective, accessible, expeditious, and inexpensive way".[2] Authorities seem to agree that it is impossible to define or categorise tribunals in very precise or exclusive terms. They are statutory bodies which exercise judicial or quasi-judicial functions. Commissions of inquiry are not usually included.

The purpose of this article is to explore the evolution of administrative justice and tribunals in late 19th and early 20th century New Zealand, when the Liberal Government held power for a record 21 years. More particularly, it examines the creation of tribunals and rights of appeal against administrative decisions during the reign of "King Dick," Richard Seddon, the Liberals' populist premier. Seddon was Acting Premier in 1892–1893, and Premier from 1893–1906.[3]

Broadly speaking, the history of administrative justice has been seen from two perspectives: either as the development of a system which protected the rights of the individual citizen against potential state abuse or which put a brake on democratically-endorsed policies beneficial to the community.[4] Thus, the same judge, Lord Denning, "appears erratically in administrative law as the champion of individuals against state administrators (or as the judge most committed to demolishing democratic governance)".[5]

This dichotomy lies at the heart of the Liberals' ambivalence towards creating appeal rights (and specialised courts or tribunals to hear them). One Liberal lawyer told Parliament in 1900 that there was a "good deal of sickly sentimentalism" in the idea that a "universal right of appeal" was needed against the decisions of just and fair administrators.[6] The Liberals had "an implicit faith in the 'goodness' of State action".[7] They saw little need to protect citizens from their own democracy. Sir Robert Stout, also a Liberal member and lawyer, challenged this perspective in 1893 when he attacked Seddon's plan to reallocate New Zealand's "great estates" to small farmers. The compulsory

---

2 Chantal Stebbings *Legal Foundations of Tribunals in Nineteenth-Century England* (Cambridge University Press, Cambridge (UK), 2006) at 1.

3 Seddon was Acting Premier from 6 September 1892 to 30 April 1893 and Premier, 1 May 1893 to 10 June 1906. For Seddon's premiership, there are two key publications: Tom Brooking *Richard Seddon, King of God's Own: The Life and Times of New Zealand's Longest-serving Prime Minister* (Otago University Press, Dunedin, 2014); and David Hamer, *The New Zealand Liberals: The Years of Power, 1891–1912* (Auckland University Press, Auckland, 1988).

4 For an example of the latter approach, see HW Arthurs "*Without the Law": Administrative Justice and Legal Pluralism in Nineteenth-Century England* (University of Toronto Press, Toronto, 1985).

5 Susan Sterett *Creating Constitutionalism? The Politics of Legal Expertise and Administrative Law in England and Wales* (University of Michigan Press, Ann Arbour, 1997) at 63. Sterett provides a helpful analysis of how the two perspectives evolved in the United Kingdom.

6 William Napier (4 July 1900) 111 NZPD 272–273.

7 Michael Bassett *The State in New Zealand, 1840-1984: socialism without doctrines?* (Auckland University Press, Auckland, 1998) at 96.

acquisition of these estates, Stout said, must be supervised by a special court so as to ensure fairness and protect property rights.[8] Otherwise, a "Minister may, at his own sweet will, take a man's farm."[9] Seddon disagreed. "Trust the Ministry," he responded, "trust the democracy, trust the people".[10] Estate owners were in fact granted a right of objection to a court, but only because it was inserted by the upper house, and even then it was very narrowly drawn.[11] This example is discussed further below.

Rights of appeal against administrative decisions (and mechanisms to hear and determine them) were created despite much "trust the people" rhetoric. The Liberals embarked on significant state expansion and, as Chantal Stebbings put it, it was "inevitable and foreseeable that a significant increase in … government interference in the private, professional and property affairs of individuals would give rise to disputes not only between individuals, but between the state and the subject".[12] New government departments were established to administer the Liberals' new or more extensive forms of state intervention. Historian Michael Bassett noted that the public service trebled from 10,000 people in 1890 to 30,000 in 1904.[13] He commented:[14]

> By the time of Seddon's death in June 1906 the New Zealand Government had become educator, banker, insurer, facilitator, promoter, provider, guarantor and helpmate of last resort. Cabinet was the all-powerful centre of the country's activities. Seddon was widely known as "King Dick".

One dimension of this state expansion, which has received little attention from scholars, is the question of administrative justice and the special courts and tribunals that were created.

Courts and tribunals had various roles in the Liberals' "social laboratory" (so-called for its experimental nature and the perceived relevance of its reforms to "Old World" countries). The primary role was that of the ordinary courts – to deal with all the new offences that came with increased regulation – and is not the subject of this article. Specialised courts and tribunals were also used to implement new statutory schemes and/or resolve disputes arising from those schemes. These roles were usually the province of administrative tribunals in England after the 1830s, and are the focus of this article.

---

8 Sir Robert Stout (26 September 1893) 82 NZPD 698–699. See also Tom Brooking *Lands for the People? The Highland Clearances and the Colonisation of New Zealand* (University of Otago Press, Dunedin, 1996) at 116–119 and 123–127.

9 Sir Robert Stout (26 September 1893) 82 NZPD 698.

10 Richard Seddon (26 September 1893) 82 NZPD 703; and Brooking, above n 8, at 119.

11 Land for Settlements Act 1894, ss 10–16.

12 Stebbings, above n 2, at 37. See also W John Hopkins "Order from Chaos? Tribunal Reform in New Zealand" (2009) 2 Journal of the Australasian Law Teachers Association 47 at 49.

13 Bassett, above n 7, at 81.

14 At 112.

In brief, administrative adjudication under the Liberals took four forms:

(1) A court or court-like body was chosen to implement a statutory regime, including resolving disputes arising from that regime (examples include the Industrial Conciliation Boards and Arbitration Court, and the liquor licensing committees);
(2) A court or court-like body was given a more limited role confined to hearing appeals or resolving disputes arising from a statutory regime (examples include the Government Valuation Assessment Court and the 1903 secondary schools commission);
(3) A board or commission implementing a statutory regime was given judicial as well as administrative functions (examples include the Māori Land Councils and the Education Boards); and
(4) Ministers (or their delegates) or officials determined appeals or resolved disputes arising from particular statutory regimes (examples include the Minister of Works under the Scenery Preservation Act 1903 and the District Health Officer under the Factories Act 1901).

A key difference from the United Kingdom was that British legislators strongly preferred not to use magistrates or create special courts, whereas New Zealand legislators frequently did both.[15] The best known of the Liberals' new courts and tribunals are the Industrial Conciliation Boards and Arbitration Court (established in 1894), which resolved industrial disputes and regulated employment conditions and wages, but there were many others.[16] In the field of Māori affairs, for example, the Liberals under Seddon created two new special courts of record, three new administrative tribunals (two of which were soon abolished), and also bespoke statutory commissions for specific adjudications.[17]

It should be noted that legal scholars have tended to see tribunals as a 20th century, post-war phenomenon.[18] But Chantal Stebbings argues that the origins of administrative tribunals in the United Kingdom lay much earlier – at the beginning of the Victorian era – as a consequence of the industrial revolution and its effects.[19] The English model of boards or commissioners with mixed administrative and judicial functions was imported from the beginning of the New Zealand colony. Land Boards, for example, had administered the sale and leasing of Crown lands since the 1870s. These boards had a judicial function to hear and determine various matters, with a right of appeal to the Supreme Court

15 Stebbings, above n 2, at 41–49.

16 See James Holt *Compulsory Arbitration in New Zealand: The First Forty Years* (Auckland University Press, Auckland, 1986).

17 These included the Validation Court, the Native Appellate Court, the Māori Land Councils, the Papatupu Committees, the South Island Landless Natives Commission and the Urewera Commissions.

18 Law Commission *Tribunal Reform* (NZLC SP20, October 2008) at 23.

19 Stebbings, above n 2, at 2–3 and 6–10.

from their decisions.[20] A 1904 case, *Lascelles v Marlborough Land Board*, established that the appeal right only applied to the boards' judicial (not their administrative) decisions.[21]

Thus, the Liberals inherited a number of specialised courts and tribunals.[22] The question was which adjudicatory models they would prefer, and how far they would replicate or adapt them in the expanding fields of state intervention. As William Pember Reeves put it, there were occasions where "fair tribunals", "removed" from direct political control, were seen as the most appropriate form of "State interference".[23]

Peter Cane's comparative history and analysis of administrative tribunals in the United States, the United Kingdom, Australia and France illuminates how and why such bodies have evolved.[24] At present, however, there is little published research to support such a study in New Zealand.[25] The Law Commission found only meagre information in its review of tribunals in 2008. Although it identified what it called some early tribunals in late 19th and early 20th century New Zealand, the Commission came to the conclusion that tribunals were really a later development.[26] It is hoped that the present article will help begin to fill a gap regarding an important era in the development of administrative adjudication in this country.

II JUDICIAL INDEPENDENCE AND THE SEPARATION OF POWERS IN TRIBUNAL DESIGN

In the choice and design of mechanisms to adjudicate disputes between citizens and the state, Peter Cane argues that the separation of powers was the key consideration in Westminster systems. Once the executive and legislature became largely integrated, the separation of powers was usually equated with the independence of the judiciary. Cane argues that judicial independence was thus a critical issue for tribunal design by the end of the 19th century.[27]

---

20 Land Act 1877, ss 30–32; and Land Act 1892, ss 52–54.

21 *Lascelles v Marlborough Land Board* (1904) 23 NZLR 651 (SC) at 652.

22 These included, among others, the Native Land Court, Trust Commissioners (who certified alienations of Māori land), the Warden's Court (which dealt with mining matters), the maritime Court of Survey, the Compensation Court for public works takings, Land Boards, Education Boards, Health Boards, Review Boards for property tax assessments, and the Military Pensions Board.

23 William Pember Reeves *State Experiments in Australia and New Zealand* (Allen and Unwin, London, 1902) vol 2 at 172.

24 Peter Cane *Administrative Tribunals and Adjudication* (Hart Publishing, Portland (OR), 2009).

25 Hopkins, above n 12, at 47–48.

26 Law Commission *Tribunals in New Zealand* (NZLC IP6, January 2008) at 12–20.

27 Cane, above n 24, at 24, 27–29, 69–70, 81 and 105.

In New Zealand in the 1890s, there was certainly debate as to whether bodies which would be given a judicial function should also be given a "judicial character" and be made independent of the Executive. This debate was influential during the Liberals' early, experimental period, especially from 1893 to 1895. This was when Seddon's Government established the Validation Court, the Native Appellate Court, the Industrial Conciliation Boards and Arbitration Court, the Railways Appeal Board, the Post and Telegraph Appeal Board and the Teachers' Court of Appeal, among others.

This article will examine four techniques that were used, sometimes in combination, to make administrative adjudicators independent. The first was appointments on "good behaviour" with statutorily-guaranteed salaries, or some equivalent security of tenure and salary. The second was the appointment of an existing judicial officer, usually a magistrate, either to act alone or as presiding officer. The third was not to have adjudicators appointed by the government – methods included election by constituencies, selection by the parties, or specification in statute that the nearest magistrate was to sit. The fourth was to make bodies with a judicial function reviewable by the superior courts, or to have a right of appeal to those courts from the decisions of administrative adjudicators. Commonly, the Liberals chose the second and third options, for reasons explored in this and the following sections.

In 1893, the Liberals established their first specialist court of record, the Validation Court, to implement a statutory scheme for the validation of incomplete or disputed Māori–settler land transactions. A commission had already been tried and failed (1889–1891),[28] and the Native Land Court had also been tried (1892).[29] It was now necessary, said the Attorney-General, to establish a court in which the judges "had some status by which their independence may be secured". This meant a "status that shall be practically the same as that of a Supreme Court judge".[30] Thus, the Validation Court judges' tenure was fixed by statute. They could only be removed "for such causes and in such manner as a Judge of the Supreme Court is removable". The new judges' salary was also guaranteed by statute and could not be altered during their term of office.[31] Each judge would sit with a government-appointed Māori assessor, but the assessors were not given the same security as the judges.[32]

---

28 The Edwards-Ormsby Commission, established in 1890 under the Native Land Court Acts Amendment Act 1889, ss 20–27.

29 For detailed information about the Validation Court and the context for its creation, see Bryan Gilling "The Validation Court: Crown, Judiciary, and Māori Land, 1888-1909" (research report, Crown Forestry Rental Trust, 1999).

30 Sir Patrick Buckley (18 September 1893) 82 NZPD 311.

31 Native Land (Validation of Titles) Act 1893, s 4.

32 Sections 3 and 5.

The Validation Court of 1893 was the only time the Seddon Government established a special court where the judges would have the same security of tenure and salary as the Supreme Court (unless Supreme Court judges themselves were used in a new court). There was a remarkable turn-around in 1894. Having made such a point of judicial independence and security of tenure for Validation Court judges in 1893, the Government brought in an amending Bill to undo the latter (and, so it was argued, the former). Seddon wanted to use Native Land Court judges in the Validation Court, so the law was changed to allow for judges to sit in both courts. In doing so, the Premier proposed changing Validation Court judges' tenure to serving at pleasure and also to take away the statutory guarantee that their salary could not be altered.[33]

Seddon's rival for leadership of the Liberal Party at that time, Sir Robert Stout (later Chief Justice), opposed this change. He was supported by some Opposition and dissident Liberal MPs, including lawyer George Hutchison.[34] Stout professed astonishment that cases worth many thousands of pounds could be left to "a judicial officer who might be dismissed at a moment's notice, who only held office at the will of the Government".[35] It was "simply a degradation … of the judicial functions", and he was "surprised the House submitted to it".[36]

In response, Seddon said that the issue was not one of law but of "fair play" between Māori and settlers. Any "man of common sense" could be a Validation Court judge. When Stout responded that it was entirely a matter of law, the Premier replied that the transactions had all violated the law anyway, hence the need to validate them.[37] And there were safeguards if the judges erred: appeals could be made to the Court of Appeal on points of law,[38] and parliamentary confirmation of the Validation Court's orders was required.[39] The use of Parliament in this role was contested. Some characterised the House as the "highest tribunal in the land", appropriately checking the outcomes of a politically controversial process, while others decried it as political interference in judicial decisions. As it transpired, parliamentary scrutiny of the Validation Court's orders proved to be a formality.[40]

---

33 These proposals were enacted by ss 3–4 of the Native Land (Validation of Titles) Act Amendment Act 1894. Most of the Native Land Court judges at the time were not trained lawyers.

34 (19 October 1894) 86 NZPD 939–943; and Gilling, above n 29, at 95–100. For Seddon and Stout's struggle over the leadership of the Liberal Party, see Brooking, above n 3, at 105–116.

35 Sir Robert Stout (19 October 1894) 86 NZPD 943.

36 At 943.

37 Richard Seddon (19 October 1894) 86 NZPD 943; and Sir Robert Stout (19 October 1894) 86 NZPD 943.

38 Native Land (Validation of Titles) Act 1893, s 21.

39 Sections 15–16.

40 Gilling, above n 29, at 47, 50 and 112.

Thus, the Liberals first decided in 1892 to use the Native Land Court to validate transactions. They then erected a special court of record (with judges having the same security of tenure and salary as Supreme Court judges) in 1893. The following year, they reverted to virtually the Native Land Court by deciding to use its judges in the Validation Court, abolishing the tenure and salary requirements. This was not atypical in the Liberals' *ad hoc* creation of specialised courts and tribunals. In this case, the bar for judicial independence was set lower in 1894 than in 1893 and – as noted earlier – Seddon did not try again to establish a new bench of judges with the same status and security as Supreme Court judges.

The question of judicial independence was also debated for the Industrial Arbitration Court in 1892–1894 with a different outcome: instead of creating judges with the same guarantees of independence as Supreme Court judges, it was decided to co-opt a Supreme Court judge to preside in the Arbitration Court. Yet the Government's intention had never been to establish a court at that level. In 1891, the Liberals proposed to establish district arbitration courts with the powers of the Magistrates' Court. Each court would have two elected members (representing workers and employers respectively) and a president appointed by the government.[41] There was concern that the latter could make the court too political, too much under the influence or control of the government. When the change was made to a single, national court in 1892, the Labour Bills Committee proposed a Supreme Court judge as president (understood to be the guarantee of both independence and impartiality).[42] Although the Minister, William Pember Reeves, accepted this change with equanimity, it led to an intense debate in the years 1892–1894.

In addition to their strong opposition to compulsory arbitration, the Opposition maintained that industrial arbitration was not a proper job for a Supreme Court judge. Chief Justice Prendergast's "protest" was read out in Parliament: his judges were already too busy and "object[ed] to having duties imposed upon [them] that are not judicial".[43] The upper house in Parliament, the Legislative Council, rejected compulsory arbitration *en bloc* but also held a special vote to express its disapproval of using a Supreme Court judge.[44] In 1892, the Government's leader in the Council was prepared to compromise on that point, and the Labour Bills Committee suggested the Auditor-General preside

41 Industrial Conciliation Bill 1891 (10-1), cls 41–43.

42 "Parliamentary Notes" *Evening Post* (Wellington, 25 August 1892) at 2; "The Conciliation Bill" *Bay of Plenty Times* (Tauranga, 30 September 1892) at 5; Holt, above n 16, at 26–27; and William Earnshaw (28 August 1893) 81 NZPD at 370; David Pinkerton (28 August 1893) 81 NZPD 373; William Tanner (28 August 1893) 81 NZPD 378 and James Wilson (28 August 1893) 81 NZPD 378.

43 Letter from Chief Justice Prendergast to the Minister of Justice (12 September 1892), quoted in William Rolleston (15 September 1892) 78 NZPD 131–132.

44 "Industrial Conciliation Bill" *Tuapeka Times* (Lawrence, 12 October 1892) at 6.

(this officer was perceived as independent).[45] But a major electoral victory in late 1893 enabled the Government to insist on both compulsory arbitration and the use of a Supreme Court judge.[46]

Thus the Arbitration Court, the ancestor of today's Employment Court, was created in 1894. There was, it should be noted, virtually no argument about the composition or functions of the lower tribunal, the Conciliation Boards, which consisted of elected representatives of the local employers' associations and the unions.[47] Neutral board presidents were to be chosen by the boards themselves, not the government, from outside their memberships.[48] Further, board members were elected for three years and could not be removed by the government.[49] This all helped to guarantee their independence.

The issue of what gave a board a "judicial character" and made it independent of the Executive was contested again in 1895–1896 when the Lands Minister, John (Jock) McKenzie, tried to establish Fair Rent Boards. This time, the Government's answer was to have a stipendiary magistrate as president. The boards' purpose would be to adjudicate rent disputes between landlords (including the Crown) and tenants. At that time, leasing from the Crown was a major form of landholding.[50] The other two members would be appointed by the Governor, all three to hold office during pleasure. There was to be no right of appeal from the boards' decisions.[51]

Stout condemned this proposal. An "arbitration board", he said, with landlord and tenant each selecting a member to sit with the magistrate, would be more independent.[52] Otherwise, the proposed board would be "entirely under the control of the Government" and could be "dismissed by the

---

45 Sir Patrick Buckley (27 September 1892) 78 NZPD 415; and "Political Notes" *Southland Times* (Invercargill, 30 September 1892) at 2.

46 [1894] JLC 52–53. See also Holt, above n 16, at 26–27.

47 For example (20 September 1893) 82 NZPD 438–461; and "Conciliation and Arbitration Bill" *The Star* (Christchurch, 3 January 1894) at 2.

48 Industrial Conciliation and Arbitration Act 1894, ss 30–46.

49 Reeves, above n 23, at 129. Reeves noted that in the first years of the system's operation, employers refused to elect their representatives, resulting in the government appointing members instead, but this was of relatively brief duration (at 129–130).

50 The Liberals emphasised the importance of leasing from the Crown as a way of getting settlers onto the land. The Crown had many thousands of tenants in the 1890s. A Fair Rent Board was seen as a way of revaluing the government's leases in perpetuity by the backdoor. See Hamer, above n 3, 94–97 and 271–276.

51 Fair Rent Bill 1895 (116-1), cls 5–7 and 33.

52 Sir Robert Stout (4 September 1896) 95 NZPD 383.

Government at a week's notice or a day's notice, if they do not do what the Government want[s]".[53] Stout argued:[54]

> There is no security of tenure of office. They may have to deal with most important questions. They may have in towns to fix the value of hundreds or thousands of pounds or millions of property, and you give them less security of tenure than you give a messenger of the House. What is to happen? Is that a judicial tribunal?

In any case, the Fair Rent Bill proved too unpopular with Liberal backbenchers to get through the House, but an important question was debated: what would suffice to make this kind of board a "judicial tribunal", to give it a "judicial character"?[55] Clearly, Stout was not satisfied that the Government's answer – having a magistrate as president – would suffice without other structural safeguards for the board's independence. Yet the use of a magistrate (sometimes with assessors) was to become a frequent approach for the rest of Seddon's premiership.

In part, this was because Supreme Court judges were too few and too expensive to use often in administrative adjudication. McKenzie did consider using these judges instead of magistrates on the Fair Rent Boards, but rejected the idea because they "would not be able to give proper attention to the matter" and would see it as a "secondary" responsibility.[56] Appointing new, highly paid judges, at an equivalent level to the Supreme Court, was an experiment that had already been tried and abandoned in the Validation Court. District Court judges do not seem to have figured prominently in anyone's thinking, and were rarely used for administrative adjudication.[57] This left the cheaper, more accessible lower courts: the stipendiary magistrates for settlers and the Native Land Court for Māori. Appeals and disputes, for example, arising from the Government's 1895 native townships scheme were to be determined by the Native Land Court or its Chief Judge instead of a scheme-specific tribunal.[58] Similarly, the Liberals added magistrates to the public works Compensation Court in 1894 to deal more cheaply and expeditiously with smaller claims.[59]

---

53 At 383.

54 At 384.

55 See generally (4 September 1896) 95 NZPD 382, 383–384, 386, 393 and 398–399.

56 John McKenzie (4 September 1896) 95 NZPD 382. See also John McKenzie (10 October 1895) 91 NZPD 258.

57 In the Liberal era, the hierarchy of the regular courts was (from lowest to highest): Magistrates' Court, District Court, Supreme Court (later the High Court) and Court of Appeal. The railways appeal board (discussed below) is an example of where District Court judges were used.

58 Native Townships Act 1895, ss 4(2), 8–9, 18(3) and 22.

59 Public Works Act 1894, ss 50–54. Previously, the Supreme Court judge had discretion to appoint magistrates (among others) as deputies in cases worth up to £500, unless parties objected (Public Works Act 1882, ss 40–41). In 1894, the Liberals made it mandatory for magistrates to preside in all cases worth £250 or less. The

Perhaps the most important example from this early, formative period was the insertion of a magistrate to chair the liquor licensing committees in 1893. Prohibition was one of the great political questions of the day, and Stout tried to use it to split the party and take the leadership from Seddon.[60] Since 1881, committees elected by ratepayers had been responsible for licensing public houses.[61] By the early 1890s, the lack of any legal membership of these committees had been exposed as a serious problem. Important court cases in 1891–92 pointed to a need for licensing law reform.[62]

The courts held that bias was the "inevitable result of leaving such questions, involving such strongly-felt and hotly-contested issues, to be decided by judges popularly elected", which was "of necessity inconsistent to a great extent with the existence of a true judicial temper".[63] Nonetheless, a "special tribunal" of this kind, "selected by popular vote" must "inquire and judicially decide … upon a view of all the circumstances".[64] The licensing committees' duties were "of a judicial character".[65] If a committee had "not in reality heard and determined the case as a judicial tribunal in accordance with the Act", the superior courts could compel it to do so.[66] The Sydenham Licensing Committee, which had been elected on a platform of refusing to grant any licences at all, had one of its decisions quashed in 1892 and was condemned for not bringing a "judicial mind" to its determinations.[67]

The legal problem facing legislators in the wake of the Sydenham cases was how to get elected committees to behave more "judicially". For prohibitionists, however, the problem was that the courts seemed willing to prevent the committees from imposing prohibition by the backdoor (by turning down all licensing applications).[68] The political problem facing Seddon was how to avoid his

---

Supreme Court judge was given a new discretion to appoint magistrates or District Court judges to preside in cases worth between £250 and £1000.

60 Hamer, above n 3, at 113, 115–119.

61 Licensing Act 1881, s 13; and Conrad Bollinger *Grog's Own Country: The Story of Liquor Licensing in New Zealand* (2nd ed, Minerva, Auckland, 1967) at 31–34.

62 Hamer, above n 3, at 115; *Taylor v Isitt* (1891) 9 NZLR 678 (SC); *Isitt (The Sydenham Licensing Committee) v Taylor* (1892) 10 NZLR 646 (CA); *Quill v Isitt* (1892) 10 NZLR 663 (SC); *Isitt v Quill* (1892) 11 NZLR 224 (CA); William Pember Reeves (2 August 1893) 80 NZPD 389; and Bollinger, above n 61, at 36–37. Reverend Isitt was the chair of the Sydenham Licensing Committee.

63 *Taylor v Isitt*, above n 62, at 695.

64 *Isitt v Taylor*, above n 62, at 658.

65 At 658–659.

66 At 660.

67 *Isitt v Quill*, above n 62, at 225 and 242–243.

68 *Taylor v Isitt*, above n 62, at 696–702; *Isitt v Taylor*, above n 62, at 658–660; *Quill v Isitt*, above n 62, at 666–673; and Bollinger, above n 61, at 37.

Government being wrecked on the shoals of prohibition.[69] In the meantime, Sydenham residents had organised a petition, seeking a right of appeal from the licensing committees to the Supreme Court.[70]

Stout, who had defended the Sydenham Licensing Committee in court,[71] introduced a Licensing Bill in 1893 as part of his efforts to destabilise Seddon's premiership.[72] Stout's Bill provided that a pledge (of no-license) on the part of committee members did not disqualify them from sitting or render a committee's decisions "liable to be questioned or set aside", thus tackling the Court of Appeal's ruling head-on.[73] Seddon's rival Bill won in the House but it encountered stiff opposition in the Legislative Council. Some of this opposition was focused on the view that magistrates would provide a fairer mode of licensing.[74] The Government decided to amend its Bill, adding a magistrate as the licensing committee's chair. This helped get the Bill through the Council, the Attorney-General noting that this compromise gave the committees a "judicial head".[75]

It should be noted, however, that not all professional magistrates were lawyers. In the same year, the Attorney-General had brought in legislation to expand the role and responsibilities of the stipendiary magistrates.[76] The question of requiring all magistrates to be lawyers was debated, as was the possibility of shoring up their independence by having magistrates appointed on good behaviour. Ministers preferred to keep the magistracy open to non-lawyers and to have all magistrates – whether exercising the ordinary, special or extended jurisdictions – serve at pleasure; their view prevailed.[77]

After the early experimental period, the Liberals often used magistrates (either alone or as presiding officers) to give statutory bodies a judicial character. Even if a magistrate was not inserted to ensure independence and proper procedure, a body like the Pharmacy Board could be compelled to

---

69 For the risk of prohibition splitting the Liberal Party and losing Seddon the premiership, see Brooking, above n 3, at 116–121 and 152.

70 "Parliamentary News" *New Zealand Herald* (Auckland, 30 July 1892) at 5.

71 *Taylor v Isitt*, above n 62, and *Isitt v Taylor*, above n 62.

72 For further information on the struggle between Seddon and Stout, and their rival licensing Bills, see Hamer, above n 3, at 115–118; and Brooking, above n 3, at 118–121.

73 Sir Robert Stout (2 August 1893) 80 NZPD 379; and Alfred Saunders (2 August 1893) 80 NZPD 382.

74 George McLean (5 September 1893) 81 NZPD 616–617; and James Bonar (6 September 1893) 82 NZPD 12; and Sir George Whitmore (6 September 1893) 82 NZPD 20–21.

75 "Parliamentary Notes" *Evening Post* (Wellington, 8 September 1893) at 2; and [1893] JLC 133.

76 The Magistrates' Courts Act 1893. Prior to this Act, the professional magistrates were Resident Magistrates.

77 See Magistrates' Courts Act 1893, s 15; [1893] JLC 40–41; "Wellington Gossip: Our Magistrates" *Hawke's Bay Herald* (Napier, 8 September 1893) at 3; and "House of Representatives" *Evening Post* (Wellington, 7 September 1893) at 4.

make a "judicial decision" in the proper manner by the Supreme Court.[78] The cost of litigation in the superior courts, however, made such instances rare. What marked the Sydenham and other licensing cases was that both publicans and prohibitionists had the funds to fight each other through the superior courts; many other citizens did not.

It is difficult to be precise about whether or not some of the scheme-specific arrangements for magistrates constituted courts or tribunals separate from the Magistrates' Court. For example, income tax appeals were not to be heard by the Magistrates' Court per se but by a stipendiary magistrate, who, for that purpose, was given "all the powers conferred upon a Stipendiary Magistrate by the Magistrates' Court Act 1893".[79] Some statutes, such as the land tax and Government Valuation statutes, created new courts with specific names.[80] Other statutes prescribed the magistrate's new powers, procedures and jurisdiction in detail, as in the Old-age Pensions Act 1898, but did not formally establish a named court.[81] Rarely, such as in the 1904 Act for registering, supervising, suspending, and deregistering midwives, the Magistrates' Court itself was specified: it was given power to hear midwives' appeals and to "make such order as it thinks just, and such order shall have effect accordingly".[82] But many statutes simply stated that a magistrate or magistrate and assessors were to determine the matter. The Immigration Restriction Act 1899 stated:[83]

> any person dissatisfied with the decision of such [immigration] officer shall have the right to appeal to the nearest Stipendiary Magistrate, who shall make such inquiries as he shall think fit, and his decision thereon shall be final …

In cases where a new jurisdiction was not outlined in detail, there were nonetheless key differences between magistrates acting as administrative adjudicators and magistrates sitting in the Magistrates' Court. The restrictions on the monetary value of cases that the magistrates could decide were

78 *Ayres v Pharmaceutical Society of New Zealand* (1901) 3 GLR 304 (SC) at 306–308. It was not until the 1930s that a formal right of appeal was added to the legislation, with a magistrate and appeal board: see Pharmacy Act 1939, s 31.

79 Land and Income Assessment Act 1900, s 24.

80 Government Valuation of Land Act Amendment Act 1900, s 15; and Land and Income Assessment Act 1900, s 25.

81 Old-age Pensions Act 1898, ss 18–44 and 66–67.

82 The Midwives Act 1904, s 13.

83 Immigration Restriction Act 1899, s 3(1).

removed,[84] their decisions were often final,[85] and assessors were always full members of the court (at least one of whom had to concur in the decision).[86] These were significant differences.

While the preference for magistrates (with or without assessors) is easily detected in the Liberals' legislation, there were – in keeping with the *ad hoc* and contested nature of these arrangements – many exceptions. This is illustrated by the debate in the early 1890s over employment-related appeals for government workers in the railways, the post and telegraph service and state schools.

A "court of appeal" for railway workers was discussed as the Liberals debated what to do more generally about the governance of the state railways.[87] In the process of asserting more ministerial control in 1894, Seddon ended up abolishing the Railways Commissioners who had run the railways since 1887.[88] With direct ministerial control restored, the Premier also proposed an appeal board for workers, consisting of a representative from management, a workers' representative and the minister as chair. A leading Liberal MP, former Speaker JW Steward, said this "tribunal" lacked the necessary "judicial character". Stout then suggested an amendment in committee that the board be chaired by a District Court judge or a magistrate, which the Premier accepted. Seddon's motion in this respect was agreed to by the House, but the board would be recommendatory only; the minister would make the final decision.[89]

There was a similar debate about the post and telegraph service, for which the proposed appeal board would have powers to summons witnesses, hear evidence under oath, compel the production of documents and make recommendations to the minister. Here, the issues discussed were whether a magistrate or the head of another department should be brought in as chair, whether there should be greater worker representation on the board, and even whether there should be a single, independent, impartial, "properly judicial" board for the whole civil service, with no officials on it at all.[90]

---

84 Magistrates' Courts Act 1893, ss 28–31, setting a cap of £100 for the ordinary jurisdiction, £200 for the extended jurisdiction, and £300 for the special jurisdiction.

85 Magistrates' Courts Act 1893, ss 156 and 158, which provided for rehearings and a right of appeal to the Supreme Court.

86 There was no provision for assessors in the Magistrates' Courts Act 1893.

87 Frederick Pirani (14 August 1894) 84 NZPD 593.

88 Seddon had not intended to go so far in the short term and planned rather to add the minister as an additional Railways Commissioner. But, when the Bill was in committee, a Liberal backbencher moved an amendment to abolish the commissioners altogether, which Seddon then strongly supported, adding that it had been his intention to do so anyway in the near future.

89 "General Assembly" *Otago Daily Times* (Dunedin, 13 September 1894) at 2; [1894] JHR 256; and Government Railways Act 1894, ss 6–7.

90 See generally (17 October 1894) 86 NZPD 866–874.

In response to criticism from its own backbenchers as well as the Opposition, the Government held that an external board for the whole civil service was only better in theory; in reality decision-makers needed "to have some knowledge of what was going on in the various departments".[91] In other words, insider-experts were wanted, not impartial outsiders. This question of insider/outsider expertise could be fraught. When, for example, Seddon decided to appoint civilian doctors to the Military Pensions Board in 1901, he came under fire in the House.[92]

Unlike for the railways board, the Government refused to have a magistrate as chair of the post and telegraph board in 1894. It did agree to use a senior official from another department (technically an outsider) and to increase worker representation on the board.[93] Thus, the 1894 Post and Telegraph Appeal Board consisted of the Commissioner of Taxes (as chair), the administrative head of the telegraph branch and two workers' representatives.[94]

The Teachers' Court of Appeal, established the following year, was different again from both of these boards. It had a narrower jurisdiction, limited to suspensions or dismissals, but it was called a "court" and made final decisions rather than recommendations. There was no right of appeal from its decisions. Lawyers were not allowed to appear in this court, which was empowered to waive any technical error in the proceedings, was not bound by the strict rules of evidence, could hold hearings in public or private, and was to hear and determine the appeal "according to equity and good conscience".[95]

In terms of composition, early suggestions included the minister as the "court of appeal"[96] or a single, national court consisting of a magistrate as chair, the Inspector-General of Education and an elected teachers' representative.[97] But the Government decided that a national-level court was impractical, given the number of districts and Education Boards involved, which required local representatives from each side plus an "umpire".[98] This shifted representation on the court from the central government's Inspector-General to the relevant Education Board, which would now select a member. The teachers' union would choose the other member, and the umpire would be a magistrate.

---

91 Joseph Ward (17 October 1894) 86 NZPD 874.

92 Edmund Allen (20 August 1901) 117 NZPD 473–474; and Richard Seddon (20 August 1901) 117 NZPD 374.

93 Joseph Ward (17 October 1894) 86 NZPD 874, 879; and [1894] JLC 255.

94 Post and Telegraph Department Act 1894, s 5.

95 Public-School Teachers Incorporation and Court of Appeal Act 1895, ss 13–26.

96 James McGowan (14 August 1894) 84 NZPD 602.

97 "Parliamentary Notes" *Thames Advertiser* (Thames, 7 July 1894) at 2.

98 William Pember Reeves (14 August 1894) 84 NZPD 602–603.

A teacher's ability to bring an appeal was limited by the fact that their local union had to agree in advance to appoint a member of the court and to pay any costs awarded against the appellant.[99]

Soon after, in *Auckland Education Board v Haselden*, we have a rare glimpse of what the Court of Appeal thought about this kind of new court.[100] The majority decided that, regardless of its mode of appointment:[101]

> The tribunal is called a "Court," and is to proceed judicially by hearing evidence on oath. It can order the reinstatement of the teacher and award compensation and costs.

Further, the rules about bias and perceived bias must apply to "all persons who act in a judicial or semi-judicial character", which included the two members of this court who were appointed by the parties.[102] The court's functions were "practically judicial".[103]

One of the three Court of Appeal judges, Pennefather J, dissented. In his view, the "policy of the Act seems to be to establish not a Court in the ordinary sense (although the term 'Court' is employed), but a Board of Arbitration".[104] "Each party", he considered, "naturally nominates some friend of his own, or some person belonging to his own class, and the function of the umpire is to maintain the balance between the two."[105] The "possible evil arising from a slight bias is more than compensated for by the confidence which both parties feel in the Board as a whole".[106] This is because they were represented on it and there was an impartial chair, a common model for the Liberals' tribunals.

The Court of Appeal's majority decision, however, echoed the point made by Stout and other lawyers in Parliament. Bodies which heard and determined a matter affecting private rights (usually with powers to hear evidence on oath and compel the production of documents) should have a "judicial character" and act "judicially".[107] Under this approach, such bodies would be independent, impartial, and procedurally amenable to control and correction by the Supreme Court (and not the Executive). Although the mode of appointment used in private arbitration might have been adopted, as in the

---

99 Public-School Teachers Incorporation and Court of Appeal Act 1895, ss 14–15.

100 *Auckland Education Board v Haselden* (1898) 17 NZLR 277 (CA). For more information about this case, see Esther Irving "Haselden, Frances Isabella" Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand <www.TeAra.govt.nz>.

101 *Auckland Education Board v Haselden*, above n 100, at 282 per Prendergast CJ.

102 At 287 per Conolly J.

103 At 285 per Conolly J.

104 At 288 per Pennefather J.

105 At 288.

106 At 288.

107 At 282 and 287.

Teachers' Court of Appeal, the court-like bodies' function was judicial, not arbitral. The Liberal Government, however, tried to limit superior court control of administrative adjudicators, as I explore further in the next section.

To summarise thus far, one guarantee that bodies with court-like functions would act in a properly judicial manner was to have them chaired by a lawyer. And, partly in order to make them as independent as possible of the Executive, existing judicial officers – already independent – were preferred. Magistrates were used far more often than judges. In order to secure as much independence as possible for the magistrate in the context of doing justice between the state and its citizens, and to make administrative justice cheaper and accessible, legislation sometimes specified the "nearest" magistrate, rather than the government choosing a magistrate to sit.[108] In the case of the Teachers' Court of Appeal, the Minister, WP Reeves, noted that the minister would have to choose the magistrate because the Education Board districts were too large to stipulate the "nearest magistrate", but after that "the Minister has nothing whatever more to do with the matter".[109]

Debates continued throughout the Liberal period about the advantages of using superior court judges versus cheaper, speedier, more locally accessible and less formal hearings by magistrates.[110] By 1903, as Parliament was told by Opposition member John Duthie, magistrates were increasingly "deciding between the Government in conflict with the public".[111] It was therefore "necessary they should be in a position that was quite secure and independent".[112] "Of late", he claimed, "the conviction had become too general that it was useless to resist the Government in our Courts."[113] Also, it was clear to everyone that the Liberals' "tendency now was to do away with any appeal [from the magistrate] to the Supreme Court".[114]

In the years 1903 to 1905, therefore, the Opposition tried to get the Government to increase the structural guarantees of magistrates' independence by giving them higher salaries, fixed by statute, and the same security of tenure as superior court judges.[115] In one year, this change was even moved

---

108 Sir John Hall (20 September 1892) 78 NZPD 237; Shops and Offices Act 1904, s 31(d); Factories Act 1901, s 63(4); Immigration Restriction Act 1899, s 3(1); Land Drainage Act 1893, s 32(4); Land Drainage Act 1904, s 34(4); and Public Works Act 1894, s 45(4).

109 William Pember Reeves (10 October 1895) 91 NZPD 248.

110 For example the debate about the Licensing Acts Amendment Bill 1904: (1904) 130 NZPD 259, 263, 447–449 and 693–694; and the debate about the Midwives Bill 1904: (1904) 128 NZPD 73.

111 John Duthie (8 September 1903) 125 NZPD 371.

112 At 371.

113 At 371.

114 Frederick Baume (12 August 1904) 129 NZPD 448.

115 See generally (8 September 1903) 125 NZPD 370–374; (12 August 1904) 129 NZPD 447–449; and (18 August 1905) 133 NZPD 750–765.

by a Liberal MP, lawyer Frederick Baume, and it had some support among Liberal backbenchers.[116] As another means to the same end, the Opposition sometimes proposed using Supreme Court judges instead of magistrates, as with the "petitions court" of three magistrates created for licensing polls in 1904.[117]

Seddon blocked these kinds of proposals. In industry-related matters, he was prepared to use the Arbitration Court or its president (who was a Supreme Court judge).[118] Matters such as workers' compensation for accidents would thus be resolved by the Arbitration Court, which "ought to be cheap and not hampered by technicalities".[119] Another example was the Agriculture Implement Inquiry Board. This was a recommendatory body but was otherwise given all the powers of the Arbitration Court. The Arbitration Court's president was its chair.[120]

Nonetheless, Seddon challenged his opponents to cite a specific instance of political interference with a magistrate and none was forthcoming. Further, it would be unwise, he said, and unprecedented throughout the Empire, to give magistrates the same status and security of tenure as superior court judges.[121]

The premier also remained committed to representative or elected "courts", despite the risks pointed out by the judiciary in the licensing and education cases cited above. From an administrative justice perspective, using elected members might not provide for impartiality – bias was often a problem.[122] But it did make tribunals more independent of the Executive. Stout had made this point in his attack on the Fair Rent Board in 1896.[123] Jock McKenzie made the same argument about

---

116 Frederick Baume (12 August 1904) 129 NZPD 448.

117 See generally (8 September 1904) 130 NZPD 259, 263; (23 September 1904) 130 NZPD 447–449; and (5 October 1904) 130 NZPD 693–694.

118 See for example the Workers' Compensation for Accidents Act 1900, s 8.

119 Reeves, above n 23, at 214.

120 Agricultural Implement Manufacture, Importation, and Sale Act 1905, ss 5–6. The board's other members were two farmers' representatives (nominated by farmers' organisations), a workers' representative (nominated by the Trade and Labour Councils), and a manufacturers' representative, the president of the Industrial Association of Canterbury.

121 Richard Seddon (8 September 1903) 125 NZPD 374; and Richard Seddon (12 August 1904) 129 NZPD 449. For the issue of bureaucratic interference with or pressure on magistrates in administrative adjudication, see Gaynor Whyte "Beyond the Statute: Administration of Old-age Pensions to 1938", in Bronwyn Dalley and Margaret Tennant (eds) *Past Judgement: Social Policy in New Zealand History* (Otago University Press, Dunedin, 2004) 125 at 126–134.

122 Reeves, above n 23, at 142.

123 Sir Robert Stout (4 September 1896) 95 NZPD 383–384.

elective Land Boards in 1892 and the Land Purchase Commissioners in 1894.[124] In at least some quarters, representative tribunals were considered both more independent of the Executive and more likely to command the confidence of those represented.[125] Reeves' Industrial Conciliation Boards were elected. They were also empowered to appoint their own chairmen (from outside of their memberships), rather than the Crown appointing them, which helped keep the boards independent.[126] Government-appointed tribunal members, on the other hand, were always vulnerable to the accusation that they favoured the government in order to secure reappointments or "lay under a strong inducement to please their masters rather than do justice".[127]

Representative tribunals helped secure structural independence but were also part of the Liberals' strong belief in democracy and democratisation. This belief underlay their whole approach to tribunals, and we turn to consider it next.

III "TRUST THE PEOPLE": STATE POWER AND SAFEGUARDS IN A DEMOCRACY

"Trust the Ministry, trust the democracy, trust the people": as noted, this was Seddon's argument in 1893 for why the process of "bursting up" the great estates did not need to be supervised by a specialist court.[128] Incidentally, it was also his argument in 1894 for why the Railway Commissioners should be abolished and the government should control the railways directly.[129]

The Liberals' belief in democracy was an overarching principle which influenced all their policies. As historian David Hamer explained, the Liberals believed that democracy in New Zealand had come of age with full adult suffrage and, therefore, with *them* as its first truly democratically elected government. The people were the state, and, through their representatives, could be trusted to run their own affairs.[130] Hence the tide of Liberal thinking tended to run against using independent commissions or boards instead of government departments.[131] Among the casualties were the Railway

---

124 John McKenzie (12 August 1892) 77 NZPD 53; and John McKenzie (20 July 1894) 83 NZPD 634.

125 Reeves, above n 23, at 129–130 and 142–143.

126 See Industrial Conciliation and Arbitration Act 1894, s 32(4).

127 See for example Andrew Rutherford (23 October 1903) 126 NZPD 768; and Reeves, above n 23, at 129.

128 Richard Sedden (26 September 1893) 82 NZPD 703; and Brooking, above n 8, at 119 and 309. Brooking notes that the slogan "bursting up" the great estates was common in the 1890s, "in the House, on the hustings and in newspaper discussions".

129 Richard Seddon (7 September 1894) 85 NZPD 520; and Richard Seddon (11 September 1894) 85 NZPD 602–604.

130 Hamer, above n 3, at 43–46, 78, 81, 100, 103–104, 106, 116–117, 120, 196, 199–201, 218–222, 231 and 277–278. See also William Hall-Jones (19 September 1893) 82 NZPD 433–434.

131 Hamer, above n 3, at 43–44.

Commissioners, mentioned above, and the Central Board of Health (replaced by the Health Department in 1900).

Also, there was a widely held belief that the people (that is, their representatives) could be trusted to act fairly and not harshly.[132] The *Wanganui Herald*, for example, urged its readers to trust the government to administer the sand-drift and noxious weeds laws without doing hardship to anyone, no matter how drastic the laws' provisions or how great the potential risk for landowners.[133] Much Liberal thinking tended to run against the need to provide for appeals. The view was that if appeal rights seemed necessary, then the answer was to improve administration. A royal commission of 1909, for example, found that the solution to police grievances was not to give the police an appeal board but to ensure that they were fairly administered.[134] In the case of police, however, and of the Asylums Appeal Board discussed below, the need for "discipline" also trumped the possible disruptions of an appeal right.[135] Whereas for a profession like teaching, it was not anticipated that an appeal right would "interfere with the discipline of the service".[136]

The Liberals sometimes preferred that appeals go to the minister (or bodies that made recommendations to ministers) rather than courts.[137] In response to Stout's call in 1893 for a "court of appeal" for the compulsory acquisition of the great estates, Seddon argued:[138]

> The Court of Appeal is the Minister of the day – that is to say, the Parliament of New Zealand – because he is a member of the Executive… [T]his bogey was raised of the power given in the Bill being abused. There is no danger of any such thing. We have a Responsible Minister. The Minister of the day represents public opinion, and, if any Minister abused any power such as this, the result would be that that Minister, and the Ministry of which he was a member, would not remain much longer in office. The honourable member [Stout] must trust the Ministry, trust the democracy, trust the people…

This view was also expressed from time to time by other ministers, such as JG Ward, who later succeeded Seddon as premier. In 1899, elements in the left wing of the party proposed a Lunatic Asylums Board to hear and determine employees' grievances, composed of a magistrate, one of the

---

132 John E Martin *Honouring The Contract* (Victoria University Press, Wellington, 2010) at 21.

133 "Sand Drift" *Wanganui Herald* (Whanganui, 21 August 1903) at 4.

134 Richard Hill *The Iron Hand in the Velvet Glove: The Modernisation of Policing in New Zealand, 1886-1917* (Dunmore Press, Palmerston North, 1995) at 238.

135 "Police Force of New Zealand (Report and Evidence of the Royal Commissions on the)" [1909 II] IV AJHR H16B at xli.

136 William Pember Reeves (10 October 1895) 91 NZPD 248.

137 See for example "The Dairy Industry: Complaints Concerning the New Regulations" *The Star* (Christchurch, 30 May 1901) at 3.

138 Richard Seddon (26 September 1893) 82 NZPD 703.

asylum's official Visitors and an employees' representative.[139] The Government's preference was either no appeal rights or, if unavoidable, for a board modelled on the Post and Telegraph Appeals Board (managers' and employees' representatives, and with recommendatory powers only).[140] That way, said Ward:[141]

> the appeal would go to the Minister, who was responsible to the country and to the House, and then, if anything improper was done in dealing with the appeals, the public opinion of the country, and of the members of the Legislature, could be brought to bear to keep the Minister – if he was doing anything unfair or unjust – in line.

For that reason, it was also important to have the proceedings of appeal boards open to the press.

In this instance, Ward emphasised the necessity of responsible ministers having the final say over the public service.[142] But "trust the people" could extend to asking Parliament to trust local government boards elected by ratepayers. For the boards established in 1898 to build rabbit-proof fences, the Minister suggested that the experiment could be tried without giving a right of appeal against the boards' special rating assessments. If the boards turned out to act unfairly, which was not expected, a commissioner could always be added to the scheme later to hear appeals.[143]

On other occasions, Liberal members debated whether the people's true representatives were local bodies or the House. The "trust the people" argument was used in support of both – and, increasingly, of the central government's officials as well, since officials were controlled by ministers responsible to the House.[144] In the case of the noxious weeds legislation and the public health reforms of 1900, virtually no appeal rights were given from the sweeping new powers of inspectors and Health Officers.[145] Critics on both sides of the House were assured that the powers accorded to officials and ministers would be used with prudence and restraint, without undue harshness.[146] "You will not trust the Health Officer?" was the interjection during Liberal lawyer WJ Napier's speech on the Public Health Bill.[147] Napier had invoked "trust the people" when calling (without success) for safeguards

---

139 Lunatic Asylums Board of Inquiry Bill 1899 (58-1); and Lunatic Asylums Board of Inquiry Bill 1900 (41-1).

140 "Political Notes" *Otago Daily Times* (Dunedin, 7 July 1900) at 6; and (4 July 1900) 111 NZPD 266–267 and 271–272.

141 Joseph Ward (4 July 1900) 111 NZPD 271.

142 At 271–272.

143 (26 October 1898) 105 NZPD 437–439.

144 See for example (23 August 1900) 113 NZPD 224–232.

145 Noxious Weeds Act 1900; and Public Health Act 1900.

146 (13 July 1900) 111 NZPD 564, 565 and 579–580; and (23 August 1900) 113 NZPD 193 and 229–231.

147 (23 August 1900) 113 NZPD 224.

in the form of local body control or a right of appeal to a court from the decisions of Health Officers. In Napier's view, Gladstonian Liberalism[148] stood for trusting *the people*, not for trusting "the personal will of a centrally appointed officer".[149]

According to David Hamer, Seddon's promotion of – and exemplification of – democracy helped reconcile New Zealanders to increased state intervention and authoritarian "bureaucratic interference":[150]

> The Opposition tried its best to exploit this aspect of State socialism as involving the loss of liberty and the creation of an oppressive bureaucratic State machine. But, at least while Seddon was Premier, they were not very successful. Seddon's style made such criticism difficult to put across.

In practice, too, ministers delegated the hearing of appeals. Reeves rejected the proposal that the Minister of Education would be the "court of appeal" for teachers "because it would mean that he would have to do nothing else", but also because the Minister would not necessarily be the "fit and proper person" to hear appeals.[151] Objections to the minister about takings under the Scenery Preservation Act 1903 were heard by magistrates.[152] Appeals against the decisions of the Urewera Commission were delegated to a second commission.[153] If the Police Commissioner closed down an orphanage, the statute provided a right of appeal to the Minister or some "fit person" appointed by the Minister.[154] There might be little difference, therefore, between appeals directly to ministers and appeals to recommendatory boards. In both cases, a quasi-judicial process informed the minister's decision.

If a board or commission was established to implement a statutory scheme, key issues included its degree of independence from the Executive but also whether it was given power to resolve disputes arising out of the scheme. In the case of the scheme for "bursting up" the "great estates",[155] a Board of Land Purchase Commissioners was set up to estimate the land values, negotiate purchases, and recommend to the minister whether land should be acquired compulsorily. The board consisted of three officials: the Surveyor-General, the Commissioner of Taxes and the local Commissioner of

---

148 WE Gladstone, the British Liberal Prime Minister, had used "trust the people" as a slogan in the 1892 election campaign in Britain: see SJ Lee *Gladstone and Disraeli* (Routledge, Abingdon (UK), 2005) at 169.

149 William Napier (23 August 1900) 113 NZPD 224–225.

150 Hamer, above n 3, at 200–201.

151 William Pember Reeves (14 August 1894) 84 NZPD 603.

152 See for example "Department of Lands: Scenery-Preservation" [1909 II] II AJHR C6 at 3.

153 Judith Binney *Encircled Lands: Te Urewera, 1820-1921* (Bridget Williams Books, Wellington, 2009) at 422.

154 Infant Life Protection Act 1896, s 22. The power to delegate the hearing and determination of the appeal was introduced in this Act. Compare Infant Life Protection Act 1893, s 12.

155 See Brooking, above n 8, ch 7.

Crown Lands (regional Lands Department head).[156] This board was not very independent of the Executive, a point which even ministers acknowledged.[157] It could not hear appeals or resolve disputes and had no judicial function; it was not an administrative tribunal in the accepted sense. McKenzie did try to make his board more independent in 1894 by adding two members with both local knowledge and democratic credentials: the local MP (who might be an Opposition member) and the county council chairman.[158] In McKenzie's and Seddon's view, this introduction of what they called "local representation" would foster public confidence in the board.[159] McKenzie said of Stout, who wanted a court instead of the board:[160]

> The honourable gentleman is always saying "trust the people". Well, here is the people's representative [the local MP], and the only representative the people have on the Board, and yet the honourable gentleman is not prepared to trust him.

But this proposed compromise was rejected by the House and the board stayed as it was for the time being.[161]

The Government had intended that the Public Works Act's Compensation Court would only determine disputes about *compensation*. But, when the Land for Settlements Bill was in the Legislative Council, a right of objection to land being taken was inserted. Rather than choosing the Minister's board, the Council provided for objections as well as compensation to be heard by the Compensation Court.[162] This court was composed of assessors appointed by the parties and a Supreme Court judge. This was only a partial victory for Stout's point of view, however, because the court's power was narrowly drawn. The estate owner could object "to any land being taken" and the court would determine what land the Crown was "entitled to take" (under the Act's schema of classification)

---

156 Land for Settlements Act 1894, ss 3–4. The Commissioners of Crown Lands were statutory officers, who usually also held the position of Chief Surveyor, and were the senior regional officials of the Lands Department in the colony's ten land districts. The commissioners were *ex officio* heads of the district Land Boards and exercised statutory powers.

157 John McKenzie (20 July 1894) 83 NZPD 634.

158 At 634–635.

159 John McKenzie (31 July 1894) 84 NZPD 231 and 233; and Richard Seddon (21 August 1894) 85 NZPD 71.

160 John McKenzie (31 July 1894) 84 NZPD 230.

161 Two more members were added in 1895: a civil servant to inspect and report to the minister on all land proposed for acquisition, and a member of the Land Board of the district concerned. Then, in 1900, the board was reconstituted under the Land for Settlements Consolidation Act (again with no elected members) to consist of the Land Purchase Inspector (the senior official under this Act), the Surveyor-General, the Commissioner of Taxes, and two local members (the local Commissioner of Crown Lands and a local resident appointed by the minister).

162 [1894] JLC 156–158.

and what land the owner was "entitled to retain". This was quite a constrained appeal right.[163] McKenzie even claimed that no *principle* was involved in this and other amendments (that is, these were machinery matters). There was some collaboration between the Government and the Council over these new responsibilities of the Compensation Court.[164]

Stout and others continued to advocate that a minister should not be able to take land "at his own sweet will" and that all such decisions should be made by a "judicial tribunal".[165] In 1896, for example, the Government proposed compulsory resumption of land for mining purposes.[166] On the one side, there were the usual calls for a "judicial tribunal", an independent board or court.[167] On the other side, there was the familiar argument that this would favour rich landowners who could afford litigation. The minister "understands the matter", it was said, and would see it "settled in a fair way".[168] The outcome was that the Bill was not changed, although a quasi-judicial inquiry by the goldfields warden would inform the minister's decision.[169] An amendment was inserted which clarified that there would not be the usual appeal from the Warden's Court in this case.[170]

When Seddon later instituted a state programme in 1903 for acquiring private land for scenic reserves, he took a similar approach to the land for settlements scheme. The Scenery Preservation Act provided for a government-appointed commission to make recommendations to a minister as to what land should be acquired. Any dispute about compensation would be decided by the Compensation Court.[171] Again, this particular commission had no judicial function; it was not empowered to hear and determine objections. Owners were given a right of appeal to the minister, as Seddon often

---

163 Land for Settlements Act 1894, ss 12(2) and 16(1)–(2). The narrowness of the objection right was underlined in 1900 in the Land for Settlements Consolidation Act 1900, which specifically confined the right of objection to the matters covered in ss 12–13 (the "limitations" on what the Crown could take) and not to the general section empowering compulsory acquisition. See ss 11–13 and 17(2) of the 1900 Act.

164 See (1894) 86 NZPD 294–295 and 494–495.

165 Sir Robert Stout (29 September 1896) 96 NZPD 286–288.

166 See generally (29 September 1896) 96 NZPD 286–288 and 298–302.

167 At 286–288; George Hutchison (29 September 1896) 96 NZPD 291; Robert Thompson (29 September 1896) 96 NZPD 298–299; and Charles Button (29 September 1896) 96 NZPD 302.

168 Thomas Duncan (29 September 1896) 96 NZPD 299–300.

169 Mining Act Amendment Act 1896, ss 13–14 and 17.

170 [1896] JHR 378-379; and Mining Act Amendment Act 1896, s 57.

171 Scenery Preservation Act 1903, s 5.

preferred,[172] although, as noted above, the hearing of objections could be delegated in practice to a magistrate (who made recommendations to the minister).[173]

According to historian Tom Brooking, the scenic reserves programme was one of Seddon's most important and lasting contributions to New Zealand.[174] What it shows in terms of legal history is that expanding state intervention could be accompanied by very weak protections for affected citizens. Seddon was happy to use independent or semi-independent boards if they were *recommendatory only*, and – if a right of appeal seemed warranted – for appeals to be decided by ministers, the representatives of the people. According to Brooking, Seddon was not to blame for the way in which scenery legislation was used against Māori after his death,[175] but it was Seddon's Act which first left citizens no recourse except an appeal to the minister who wanted to take their land.[176] How far could citizens really "trust the people"?

If tribunals *were* established to hear objections, the Liberals tried to limit the higher courts' supervision of them. Legislation often specified that a tribunal's decision was to be final,[177] or (less often) had an "ouster clause" that proceedings could not be removed to the Supreme Court by *certiorari* or other means.[178] In 1909, the Crown argued in *Reynolds v Attorney-General* that its civil service boards were government tribunals with "purely ministerial functions",[179] not "judicial tribunals", and so were outside the supervision of the courts.[180] Reynolds had been dismissed on the recommendation of such a board. At stake in this case, counsel for Reynolds said, was an "important question of constitutional law": "If this tribunal is held to be merely ministerial and not controllable by the Supreme Court, then Civil servants will be at the mercy of a corrupt Government or a biased or dishonest tribunal."[181] The Court of Appeal ruled that a civil service board of inquiry was a "quasi-

---

172 Scenery Preservation Act 1903, s 5; and Public Works Act 1894, ss 17–18 and 88(2).

173 "Department of Lands: Scenery-Preservation", above n 152, at 3.

174 Brooking, above n 3, at 370–371.

175 At 371.

176 Subsequent legislation for scenery preservation and scenic reserves continued this provision.

177 For example Factories Act 1894, s 33; Factories Act 1901, ss 13(2), 63(7); Immigration Restriction Act 1899, s 3(1); Infant Life Protection Act 1896, s 22(1); Land Drainage Act 1893, ss 11(1), 20 and 32(5); Native Townships Act 1895, s 4(2); and Public-School Teachers Incorporation and Court of Appeal Act 1895, s 24.

178 For example Land Act 1892, s 40; Rating Act 1894, s 34; Industrial Conciliation and Arbitration Act 1894, s 72; Native Land Laws Amendment Act 1895, ss 57–61; and Licensing Acts Amendment Act 1904, s 12.

179 *Reynolds v Attorney-General* (1909) 29 NZLR 24 (CA) at 34. The Crown solicitor argued: "The tribunal is a piece of government machinery for the administration of the Civil Service, and its functions are purely ministerial, and therefore it is not subject to control by the Court."

180 At 34–35.

181 At 34–35.

judicial tribunal"[182] and could be controlled by the Supreme Court so long as, first, the board's recommendation arose from a "judicial inquiry"; secondly, its "report is something without which the Governor cannot act"; and thirdly, the board's "judicial inquiry" was still ongoing.[183]

Challenged on its "tendency" to deny a right of appeal from administrative adjudicators to the Supreme Court, the Government responded that only the rich could afford such appeals.[184] The Liberals' administrative justice often had the advantage of being cheaper and locally accessible. But Baume queried the Government's democratic credentials:[185]

> The Minister [of Justice] seemed to consider it democratic that the poor man should be debarred the right of appeal; but it was more democratic to allow the poor man the right of appeal.

A right of appeal from a local adjudicator to the Supreme Court could certainly disadvantage ordinary citizens. Applicants for an old-age pension, for example, had to be impoverished before they could qualify.[186] How many of them could have afforded an appeal to the Supreme Court if turned down by the magistrate? Midwives' appeals were made to magistrates rather than the Supreme Court for the same reason.[187] Many of the poorer citizens in New Zealand simply could not afford expensive forms of litigation.[188] It was no accident that the Liberals called the local Magistrates' Court the "Court of the people".[189] An appeal from that court, therefore, was potentially of benefit only to richer citizens and to the (comparatively very well-resourced) state itself. An example is income tax appeals. In 1903, Seddon introduced an appeal from the magistrate to the Supreme Court not because tax payers wanted it but because the Tax Department found the magistrates "unsatisfactory" and wanted a right of appeal from their decisions.[190]

---

182 At 39.

183 At 37–40.

184 James McGowan (12 August 1904) 129 NZPD 447–448.

185 Frederick Baume (12 August 1904) 129 NZPD 448.

186 Old-age Pensions Act 1898, s 8: applicants had to have an income of less than £52 per year.

187 This suggestion was actually made by the Leader of the Opposition: William Massey (1 July 1904) 128 NZPD 73

188 See for example the Waiohau fraud case in Binney, above n 153, at 282–294 and 471–493; and Waitangi Tribunal *Te Urewera Pre-publication Part II* (Wai 894, 2010) at 882–883. The cost of litigation prevented this community from pursuing their legal options in the Supreme Court, with the result that they were evicted from their homes in 1907.

189 Frederick Baume (12 August 1904) 129 NZPD 447.

190 Richard Seddon (23 October 1903) 126 NZPD 737.

Baume's response to his party leaders was that they should make the Supreme Court less expensive, perhaps by waiving its fees, rather than having no appeals.[191] Rehearings (by the original adjudicator) were seldom proposed, except where they were already of long standing, as for the Land Boards and the Warden's Court.[192] New appellate tribunals were also seldom established. The Native Appellate Court (established in 1894) was an exception in that respect. For the most part, therefore, there was a single appeal to an administrative adjudicator and only rarely a second appeal from that level of adjudication to the Supreme Court.

Given that the Liberals' tendencies were sometimes hostile to both administrative tribunals and rights of appeal against administrative decisions, the question has to be asked: why were so many created?

Part of the answer lies in examining the kinds of statutory schemes that attracted rights of appeal. Often, such rights were accorded because it was property rights at issue.[193] This reflected both common law and Opposition priorities. The Liberals almost always agreed that disputes about compensation should be decided by some kind of independent adjudication. Appeal rights were also accorded to those who objected to assessments for income tax, the land tax and the various rates that could be struck by a growing array of local bodies.[194] If the state wanted to take or alter land for drainage schemes, adjust water courses, carry out protective works to prevent sand encroachment, take land for scenery preservation or interfere with real property in ever more ways, then rights of appeal or objection were often provided in a scheme-specific arrangement.[195]

Appeal rights were less prevalent in the expanding field of government regulation by inspectors. This was partly because some matters were too urgent to permit delay. Under the Stock Acts, for example, inspectors could destroy animals to prevent the spread of disease and there was no right of objection.[196] Similarly, inspectors under the orchard and garden pests, dairy industry, and fertiliser

---

191 Frederick Baume (12 August 1904) 129 NZPD 448. See also the Workers' Right of Appeal Bill 1900 (162-1), brought by Liberal backbencher Jackson Palmer, which sought to give workers a right of appeal to the Supreme Court without having to provide security for costs.

192 See for example the Mining Act 1891, s 284; Mining Act 1898, ss 136(22) and 279; Land Act 1885, s 79; and Land Act 1892, s 52.

193 For example George Hutchison (29 September 1896) 96 NZPD 291.

194 For example Land and Income Assessment Act 1891; Land and Income Assessment Act Amendment Act 1892; Land and Income Assessment Acts Amendment Act 1894; Land and Income Assessment Act 1900; Rating Acts Amendment Act 1893; and Rating Act 1894.

195 For example Land Drainage Act 1893; and Land Drainage Act 1904.

196 For example Stock Act 1893; and Stock Act Amendment Act 1898.

statutes could exercise their powers without any appeal rights.[197] An orchard inspector, for example, could "go into a man's orchard and root out the trees at his own sweet will".[198] But when concrete remedies were suggested, such as an appeals tribunal for the dairy industry,[199] they received little or no support in Parliament.[200] The political reality was that the public did not want factory owners protected from the "tyrannical power"[201] of enforcing hygiene in dairy factories. Also, as we have seen, new state powers were often accompanied by reassurances that the government and its inspectors could be trusted not to act harshly.[202]

Nonetheless, some statutory schemes provided that government inspectors could be stopped or delayed by appeals. The primary example is the Factories Acts of the 1890s. If an employer objected to the inspector's decisions on sanitary matters, the employer could appeal to the local Health Board. The board's decision was final, and the government could make regulations about how the board was to hear and determine appeals.[203] For other decisions by the inspector, the employer could appeal to the local magistrate, who was given the power to hear and determine the appeal, and to confirm, reverse, or modify the inspector's decision, or to make any "order as may be just or reasonable".[204] In 1901, after the Public Health Act 1900 created a Health Department, factory appeals on sanitary matters were heard by local councils, with a further right of appeal to the District Health Officer (a government official), whose decision was final.[205] Otherwise, appeals remained with the magistrates.[206] It was not until 1904, however, after serious agitation by shopkeepers about enforced

---

197 For example Orchard and Garden Pests Act 1896; Orchard and Garden Pests Act 1903; Manure Adulteration Act 1892; Fertilisers Act 1904; Dairy Industry Act 1894; and Dairy Industry Act 1898.

198 William Field (21 October 1903) 126 NZPD 690.

199 Alexander Hogg (10 October 1894) 86 NZPD 643.

200 At 638–647.

201 Walter Buchanan (14 October 1898) 105 NZPD 46.

202 See for example the debate on the Orchard and Gardens Pests Bill 1903: (21 October 1903) 126 NZPD 688, 690, 697 and 698–699.

203 Factories Act 1891, ss 31 and 75; and Factories Act 1894, s 33.

204 Factories Act 1891, s 81; and Factories Act 1894, s 76. This appeal right was first inserted in 1891 by the Legislative Council, which intended that this appeal would be to the Health Board, but a conference of both Houses agreed that appeals would be heard by the magistrate: see (1891) 74 NZPD 276, 484, 577 and 599.

205 Factories Act 1901, s 13(2). The government's plan had been for a single appeal to local borough or county councils, which had taken on functions previously performed by the Health Boards. The Labour Bills Committee added a further appeal right (for the inspector as well as the employer) from the local body to the District Health Officer. See Richard Seddon (10 October 1901) 119 NZPD 332; and "The Factories Bill, Labour Bills Committee's Amendments" *The Star* (Christchurch, 4 October 1901) at 1.

206 Factories Act 1901, s 63.

closing hours, that employers in shops and offices received the same appeal rights as factory employers.[207]

In all these statutory schemes, employees had no appeal rights because their conditions were regulated separately through the Industrial Conciliation Boards and Arbitration Court (see above).

State compulsion in health and education attracted limited rights of appeal. Napier's admonition that he would "rather have the people free than clean" was not supported.[208] As we saw earlier, his call for appeal rights in the public health regime was ignored. Magistrates were empowered to settle disputes about *compensation*, if buildings or property had to be destroyed, and to hear appeals from parents who had a conscientious objection to vaccinating their child.[209] Otherwise, the Public Health Act 1900 gave virtually no rights of appeal against the sweeping new powers of the government's Health Officers. In the case of education, Education Boards had a minor judicial function because parents could appeal to the school committee and then the board if a child was suspended or expelled. Parents could also appeal to the board if a school committee refused a certificate exempting a child from attendance.[210] But, on the whole, appeal rights in the areas of health and compulsory state education, which impinged so significantly on the lives of citizens, were limited.

There were virtually no appeal rights in state schemes that were seen as conferring a boon (as opposed to interfering with or regulating a right). The modern welfare state, with its conception of benefits as entitlements, was still some way off. There was no appeal if a magistrate declined to grant an old-age pension.[211] Similarly, when the Government made millions of pounds of low interest loan finance available to settlers from 1894, the statute did not provide a right of appeal if a would-be farmer was turned down for a loan.[212]

In both cases, an authority was interposed between the government conferring the boon and the citizen receiving it – the magistrate (for pensions) and an Advances Board (for loans to farmers). The

---

207 Shops and Offices Act 1904, s 31. For the agitation about the Shops and Offices legislation, see Hamer, above n 3, at 192–194; and Brooking, above n 3, at 272–277.

208 William Napier (23 August 1900) 113 NZPD 224.

209 Public Health Act 1900, ss 25 and 170.

210 Education Act 1904, ss 139 and 142. These provisions replicated provisions of the Education Act 1877, ss 87 and 90, when the Education Acts were consolidated under the Education Acts Compilation Act 1904. The Liberals under Seddon chose to retain these provisions but not to add additional appeal rights, apart from the creation of a special court for teachers' employment appeals in 1895.

211 Old-age Pensions Act 1898, ss 26–27, 35(3) and 66.

212 Government Advances to Settlers Act 1894.

Advances Board, however, was not very independent, since it consisted of the minister and senior officials – although a single member who was not an official was added in 1895.[213]

Thus, interference with property rights was most likely to attract appeal rights and a scheme-specific form of adjudication.

Another important factor was that the Liberals inherited a lot of special courts and "tribunals" in 1891. Seddon abolished some, such as the Trust Commissioners[214] and the Review Boards for tax appeals. These boards (which consisted of non-legal members appointed by the government) heard appeals against land tax assessments.[215] They were replaced in 1894 by magistrates and then in 1900 by an Assessment Court, composed of a magistrate and two assessors.[216] But many specialised courts and tribunals were retained when the relevant statutory scheme received a major overhaul from the Liberals. These included the Land Boards,[217] Native Land Court,[218] Compensation Court (for public works),[219] Military Pensions Board,[220] and the maritime superintendents and Courts of Survey.[221]

Another crucial factor in the creation of appeal rights and scheme-specific adjudication was the legislative process itself. It was in Parliament that concerns about separation of powers and administrative justice on the one hand, and the belief that citizens in a true democracy needed few safeguards or protections against state power on the other, were reconciled. Both sets of ideas were subject in Parliament, of course, to contingency and politics. It is to this aspect of matters that we turn next.

---

213 Sections 15–17; and Government Advances to Settlers Act Amendment Act 1895, s 2.

214 See Grant Phillipson "'An appeal from Fenton to Fenton': The Right of Appeal and the Origins of the Native Appellate Court" (2011) 45(2) NZJH 170 at 182. See also Native Lands Frauds Prevention Act 1881 Amendment Act 1888, s 4: every commissioner shall "hold a Court open to the public for the purpose of investigating cases that may be brought before him". There was a right of appeal from the Trust Commissioners' decisions to the Supreme Court: Native Lands Frauds Prevention Act 1881, s 16.

215 Land and Income Assessment Act 1891, ss 20–21. See also Property Assessment Act 1879, s 61.

216 Land and Income Assessment Acts Amendment Act 1894, s 11; and Land and Income Assessment Act 1900, ss 25–28. Income tax appeals were heard at first by a review board (1891), then by a magistrate (1892).

217 Compare Land Act 1892 and Land Act 1885.

218 Compare Native Land Court Act 1894 and Native Land Court Act 1880.

219 Compare Public Works Act 1894 and Public Works Act 1882.

220 Compare Military Pensions Extension to Contingents Act 1900 and Military Pensions Act 1901 with Military Pensions Act 1866.

221 Compare Shipping and Seamen's Act 1903 and Shipping and Seamen's Act 1877.

IV DEMOCRACY IN ACTION: "COMMITTEE MATTERS"

Administrative appeals and adjudication were often considered "machinery matters" or "committee matters": that is, ministers did not consider them to be core features of their Bills and were prepared to see them changed, ousted, or inserted in committee.[222] There were four opportunities for this: when Bills were referred to a select committee of the House or the Council, or debated by the committee of the whole House or whole Council. Party discipline at the time was not the monolith it became later in the 20th century. Liberal backbenchers, and occasionally some ministers, amended government Bills in committee and were willing to vote against clauses to which they objected.[223] The Opposition also won significant concessions in committee, especially with "machinery" clauses. And waiting in the wings was the Legislative Council, famously Seddon's bête-noire, which frequently rejected, eviscerated or improved his Bills (depending on one's point of view).[224] In 1900, for example, the Council inserted a whole Assessment Court (a magistrate and two assessors) into the Liberals' Government Valuation scheme.[225]

The Sand-drift Act 1903 was quite typical. In order to halt sand encroachment, which was becoming a significant threat to coastal farmland,[226] the Government proposed to give itself "drastic" powers to impose sand-drift schemes, the costs of which would have to be paid by landowners.[227] Pro-Liberal newspapers reassured the public that, as with the Noxious Weeds Act 1900, the state could take these powers but be trusted not to act "arbitrarily" or to cause "unnecessary hardship".[228] The Liberals' intention at first was to have no appeal rights at all.[229] Then, in response to criticism of their first Bill,[230] the second Bill allowed a right of appeal to a magistrate as to the apportionment of costs. A select committee considered inserting an arbitration-style court instead, in which assessors would be appointed by the parties. Ultimately, the Committee recommended adding an assessor appointed by the government and one by the local authority. At least one of these assessors would have to concur

---

222 See for example (28 October 1905) 135 NZPD 1215–1217.

223 For the Liberals' approach to party discipline and the caucus principle, see Hamer, above n 3, at 119–125, 147–149, 192–194 and 214–215.

224 For Seddon's battles with the Legislative Council, see Brooking, above n 3, at 142–143, 153–154, 158, 166, 171, 173 and 262–263.

225 John Ormond (31 August 1900) 113 NZPD 393; [1900] JLC 85–87; and Government Valuation of Land Act Amendment Act 1900, s 15.

226 See Peter McKelvey *Sand Forests: a Historical Perspective of the Stabilisation and Afforestation of Coastal Sands in New Zealand* (Canterbury University Press, Christchurch, 1999).

227 Sand-drift Bill 1902 (126-1); and James Carroll (22 September 1902) 122 NZPD 533.

228 "Sand Drift" *Wanganui Herald* (Whanganui, 21 August 1903) at 4.

229 Sand-drift Bill 1902 (126-1).

230 (22 September 1902) 122 NZPD 533–536.

in the magistrate's decision.[231] Then, when the House was in committee, an Opposition member successfully moved that the appeal right should be broadened to an appeal about whether lands should be included in or excluded from the scheme.[232] The Minister responsible for the Bill, James Carroll, accepted all these changes and promoted some of them in the House.[233]

At other times, ministers were simply unable to prevent these kinds of amendments.[234] An important example was the "Old Age Pensions Court" (as it was popularly known), which the Government had never intended to create. Seddon's most important contribution to the welfare state was the creation of our first old-age pension scheme in 1898.[235] Seddon's plan was to have pension applications heard and determined by deputy registrars, with a right of appeal to the local magistrate. The deputy registrars would have powers to summons witnesses and hear sworn evidence.[236] The Opposition, however, won an amendment that magistrates would decide all pension applications.[237] This Opposition amendment was motivated, so it was said, by the need for pension claims to be investigated by "a more competent tribunal" than a registrar.[238] One aim was to kill Seddon's Bill with amendments; another was to make very certain that only the "deserving poor" succeeded in getting a pension, and to avoid any hint of official patronage in pension decisions. Seddon's proviso in 1897 – for the magistrates to decide on the papers rather than dragging all elderly applicants into court – was one of many points sacrificed in 1898 to get his Bill passed.[239]

Committee amendments of this kind were so frequent that it is not safe to assume without checking that any appeal right or form of adjudication was actually intended by the Government. In 1899, for example, the Liberals enacted the important principle that immigrants denied entry to New Zealand by an official should have a right of appeal to a magistrate.[240] But in fact this was never the Government's intention; it was inserted in the Immigration Restriction Bill 1899 on the motion of

---

231 James Carroll (28 September 1903) 126 NZPD 3–5; and [1903] JHR 288–290.

232 [1903] JHR 288–289; and (1903) 126 NZPD 5–14 and 366–367.

233 James Carroll (28 September 1903) 126 NZPD 3–5.

234 For example Holt, above n 16, at 46–47 and 52.

235 Martin, above at n 132, at 189.

236 See (29 November 1897) 100 NZPD 213–214.

237 At 214.

238 "The Halting Pensions Bill" *Evening Post* (Wellington, 30 November 1897) at 4; and "Our Political Special" *Daily Telegraph* (Napier, 30 November 1897) at 3.

239 "Notes From the Gallery: Another All Night Sitting: Members Clothed in Rugs and Blankets: Old-Age Pensions Bill" *Auckland Star* (Auckland, 30 November 1897) at 3; "Our Political Special" *Daily Telegraph* (Napier, 30 November 1897) at 3; [1898] JHR 224–225; and Brooking, above n 3, at 172–173.

240 Immigration Restriction Act 1899, s 3(1).

dissident Liberal lawyer George Hutchison.[241] The 1899 Act was intended to control non-British immigration,[242] but Seddon had reassured the House that the Government would not administer it unfairly.[243] Other Liberal members agreed with the premier that the Act was not "likely" to be carried out harshly.[244] "Trust the people" once again seemed to be the Government's position. Yet, as historian John Martin argues, New Zealand's version of the "White Australia" policy had its origins here. [245]

V DEMOCRACY IN ACTION: ELECTED TRIBUNALS

Chantal Stebbings noted that 19th century British tribunals adopted some of the practices of arbitrators, but not their mode of appointment (by the parties).[246] It was very different in New Zealand. An important aspect of the Liberals' philosophy of democracy and "trust the people" was their efforts to ensure that tribunals had a representative element. This took the form of either election of members by constituencies or selection of members by the parties in particular cases. The definition of a tribunal's constituencies was sometimes hotly debated, as was the question of who should be the neutral presiding officer.

As we have seen, the Liberals provided for elected representation of workers and employers on the Conciliation Boards and Arbitration Court, and on the railways' and other appeal boards. In keeping with the idea that the people or parties affected by a tribunal's decision should be represented on it, there was a rare statutory provision authorising teachers to appoint women to the Teachers' Court of Appeal.[247] The Tūhoe tribe elected their representatives on the 1896 Urewera Commission.[248] This commission had both judicial and administrative functions: it decided land titles in the Urewera District Native Reserve,[249] and could exercise the administrative powers of the reserve's General Committee.[250] As noted earlier, Seddon and McKenzie also tried to arrange "local representation" on

---

241 [1899] JHR 234; and George Hutchison (10 October 1899) 110 NZPD 451–452.

242 See Immigration Restriction Act 1899, s 3(1). See also (6 October 1899) 110 NZPD 373, 379–380 and 383–384; (10 October 1899) 110 NZPD 450–451; and Martin, above n 132, at 151.

243 Richard Seddon (6 October 1899) 110 NZPD 382.

244 "House of Representatives" *Evening Post* (Wellington, 11 October 1899) at 2.

245 Martin, above n 132, at 151–152. See also Brooking, above n 3, at 163–164.

246 Stebbings, above n 2, at 292.

247 Public-School Teachers Incorporation and Court of Appeal Act 1895, s 14(1).

248 Waitangi Tribunal *Te Urewera pre-publication Part III: From self-governing native reserve to national park* (Wai 894, 2012) at 22.

249 Urewera District Native Reserve Act 1896, ss 3–12.

250 Urewera District Native Reserve Act Amendment Act 1900, s 9. The Urewera Commission may not have exercised its administrative functions (see Waitangi Tribunal, above n 248, at 44).

the Board of Land Purchase Commissioners. There was even a proposal that a liquor tribunal might be elected by a poll of members of the House.[251]

As noted above, the Liberals sometimes used the arbitration mode of appointment, where each side in the dispute chose an assessor. Alternatively, the Government allowed some local say by having local authorities appoint an assessor, as with the sand-drift court of 1903. An additional benefit of assessors in the arbitration model was that lay expertise could be provided for tribunals at little cost to the government itself, especially for particularly technical inquiries (see the section on non-legal experts below).

The Liberals also made sporadic attempts to introduce a representative element into some older statutory courts and tribunals. Some, such as Education Boards and the Public Works Compensation Court, already had elected members or members appointed by the parties. That is one reason why the Education Boards, for example, survived when the Railway Commissioners did not. For others, such as the 1866 Civil Service Board, representation was introduced when the statutory scheme was overhauled (resulting in a new Civil Service Classification Board in 1905).[252]

Of the non-elected boards, perhaps the most important were the Land Boards, which played a crucial role in colonising New Zealand. The Liberals' first attempt to make these boards elective was defeated in 1892. One objection at that time centred on the boards' "judicial functions": to elect "judges" was considered undesirable and even un-English.[253] After its failure in 1892, the Government settled for informal representation by appointing local MPs to the boards.[254] In 1904, ministers scuppered a Liberal backbencher's Bill because it proposed using the parliamentary franchise to elect Land Boards.[255] Ministers preferred to restrict representation to Crown tenants – this degree of representation on Land Boards was not granted until 1907, when Ward was Prime Minister.[256] Some ministers even opposed the elective principle altogether on the basis that the people's representatives – the government as the "trustees of the people" – already controlled the Land Boards.[257] Hall-Jones avowed that he was "one of those who believes in trusting the people", but in this case it meant ensuring that Parliament's land policy could not be disrupted by some other elected

---

251 Licensing Acts Amendment Bill 1903 (188-1), cl 36.

252 Compare Civil Service Classification Act 1905, ss 7–10 and 12 with Civil Service Act 1866, s 10.

253 See generally (12 August 1892) 77 NZPD 54, 55, 60 and 64.

254 James McGowan (17 August 1904) 129 NZPD 508.

255 At 496–520.

256 Joseph Ward (17 August 1904) 129 NZPD 497–499; and Land Laws Amendment Act 1907, s 27. The 1907 Act also put an end to the practice of appointing sitting MPs to their local Land Boards (s 27(3)).

257 See generally (17 August 1904) 129 NZPD 501, 507–509 and 519–520.

representatives.[258] McGowan, the Liberal Justice Minister, was jeered at for holding this view: "You are a Tory, not a Liberal".[259]

This shows that other considerations could and did override the representation principle. In the case of the Government Valuation Assessment Court (created in 1900), the Liberals refused to allow local authorities to appoint one of the two assessors.[260] The Leader of the Opposition claimed that it was a "Liberal principle" to include an assessor chosen by the people.[261] "Trust the people" was thrown in Seddon's face; it must surely include trusting the local people who knew their district and situation best.[262] But the Government argued that local authorities were dominated by big landowners with an interest in keeping valuations low for tax purposes; their representation on the court would be a "Conservative", not a Liberal principle.[263] Representation of property owners on the tribunals that heard their appeals was indeed an Opposition principle under Massey's leadership – either directly, by the aggrieved landowner appointing a member, or indirectly, by the local authority (elected by ratepayers) doing so.[264]

Another example of political expediency was the Liberals' attempts to defuse conflict over prohibition by either getting rid of or diluting the influence of the elected representatives on the licensing committees. Seddon tried to do this in 1894 and again a decade later, but he was unable to get the House to agree.[265]

The Liberals resisted representation altogether for their Māori land tribunals, correctly believing that giving Māori a greater say would retard land alienation. In Te Urewera, which was considered unsuitable for settlement, Seddon agreed in 1895–1896 to an elected Māori commission (with two Crown appointees) to decide titles instead of the Native Land Court.[266] But he refused to replace the

---

258 William Hall-Jones (17 August 1904) 129 NZPD 519–520.

259 An interjection by an unknown member during James McGowan's speech: see (17 August 1904) 129 NZPD 508.

260 See (11 November 1903) 127 NZPD 474–485. See also Walter Buchanan (23 October 1903) 126 NZPD 765 and Richard Seddon (23 October 1903) 126 NZPD 770, where the same issue was argued in respect of the Land Tax Assessment Court.

261 William Massey (11 November 1903) 127 NZPD 475.

262 Thomas Mackenzie (11 November 1903) 127 NZPD 478.

263 James McGowan (11 November 1903) 127 NZPD 476; and Alexander Hogg and Sir William Russell (11 November 1903) 127 NZPD 477.

264 William Massey (10 October 1904) 131 NZPD 1.

265 Richard Seddon (13 September 1894) 85 NZPD 649–650 and 657; (9 October 1894) 86 NZPD 602; Licensing Acts Amendment Bill 1903 (188-1), cl 14(a); and Richard Seddon (11 November 1903) 127 NZPD 453.

266 Urewera District Native Reserve Act 1896, ss 3–9; Waitangi Tribunal, above n 188, at 417–418, 423 and 426–428; and Binney, above n 153, at 383–395, 398–399 and 404–410.

court with Māori committees elsewhere, as tribal leaders sought, and had even stripped the Māori assessors of their powers in the court the year before.[267]

It was not until 1900, after negotiation with the leaders of the mass Māori Parliament movement (Te Kotahitanga), that the Premier agreed to the establishment of elected Papatupu Committees. These committees assumed some of the title investigation powers of the Native Land Court. Another new tribunal, in the form of the Māori Land Councils, combined administrative and judicial functions. The councils would administer and lease to settlers any land that Māori chose to vest in them and could also exercise many of the Native Land Court's powers.[268] These new Māori Land Councils had a mix of elected Māori members and government appointees, and, in practice, they had Māori majorities.[269] The Chief Judge of the Native Land Court retained significant powers: the councils could not exercise their jurisdiction without his direction, aggrieved parties could appeal to him, and Māori could still use the court instead of the councils if they preferred.[270]

In 1905, however, Seddon decided to abolish these councils, partly because Māori had been hesitant to vest land in them for leasing. There was no negotiation with Kotahitanga, which had disbanded after the 1900 reforms. The councils were replaced by Crown-appointed, Pākehā-dominated Māori Land Boards, despite Māori opposition.[271] The Papatupu Committees were abolished four years later.[272]

VI NON-LEGAL EXPERTISE

The question of elected tribunals was also bound up with the question of providing lay expertise (such as teachers on the Teachers' Court of Appeal) in tribunal decision-making. This, like everything else to do with the Liberals' tribunals, was decided on an *ad hoc* basis – and sometimes by the Opposition rather than the Government during the parliamentary process. If lay expertise was required – and not inconvenient in some way to the Government's agenda – then legislation provided for it. For several years, for example, the Liberals got rid of lay members in tax appeals because they were believed to favour lower assessments, especially when the assessors were selected by local

267 Phillipson, above n 214, at 179–184.

268 Māori Lands Administration Act 1900, ss 6 and 9; Donald Loveridge *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952* (Rangahaua Whanui research series, Waitangi Tribunal, 1996) at 3–28.

269 Vincent O'Malley "Runanga and Komiti: Maori Institutions of Self-Government in the Nineteenth Century" (PhD Thesis, Victoria University of Wellington, 2004) at 299.

270 Māori Lands Administration Act 1900, ss 8 and 9–14.

271 Loveridge, above n 268, at 36–40 and 61–63.

272 Native Land Act 1909.

authorities.[273] On the other hand, nominated boards like the Land Boards could be both representative of sector interests and composed of lay experts.[274]

Lay experts were considered useful for particularly technical inquiries. The Conciliation Boards and the Arbitration Court, for example, could sit with two assessors in matters of particular technical complexity. These assessors would be chosen by the parties and would be full members for that case.[275] While many statutes used general language for such experts – "fit" persons was common – some specified qualifications. In an investigation where a steamship casualty related to an engineering issue, for example, at least one of the assessors had to have a first-class engineer's certificate.[276] Objections about constructing drainage works on private land, including the mode of construction, were to be heard and determined by an engineer selected by the objector and the Drainage Board. If they could not agree on an engineer, the objection would be heard by a magistrate and two assessors (appointed by the parties).[277]

Depending on the circumstances, a lay expert could be preferred over a lawyer as the chair or president. Under the Secondary Schools Act 1903, for example, the Government established a commission to resolve disputes between the Minister of Education and secondary school boards. The Act developed a scheme to increase the provision of free secondary education, and extend a degree of state control over the endowed secondary schools.[278] If a board failed to produce a controlling scheme for its school (covering management of property, curriculum, fees, exams and other matters), or if the scheme was not approved by the minister, then the minister could refer the dispute to a commission. The commission was to be chaired by the Chancellor of the University of New Zealand. Its other members were the Inspector-General of Schools, representing the Ministry, and a person chosen by the board of governors. The commission's scheme would be binding on both the board and the minister.[279]

Lay presidents were often a feature of boards or commissions whose role was mostly administrative (with only a minor judicial component), such as the Education Boards. Officials who

---

273 See for example John Ballance (4 August 1891) 73 NZPD 97; and Alexander Hogg (11 November 1903) 127 NZPD 477.

274 "Crown Lands: Report of the Royal Commission on Land-Tenure, Land-Settlement, and Other Matters Affecting the Crown Lands of the Colony: Together with Minutes of Evidence" [1905] II AJHR C4 at vii.

275 Industrial Conciliation and Arbitration Act Amendment Act 1895, s 4.

276 Shipping and Seamen's Act Amendment Act 1896, s 3.

277 Land Drainage Amendment Act 1894, s 3; and Land Drainage Act 1904, s 21.

278 Brooking, above n 3, at 350–360.

279 Secondary Schools Act 1903, ss 8–9.

were subject experts were sometimes preferred to preside in such bodies, as with the Crown Lands Commissioners in the Land Boards.

Although it was not common, an official was sometimes made a lay "tribunal". In 1899, for example, Commissioners of Crown Lands were given some of the powers of the Warden's Court outside of mining districts (with no right of appeal from their decisions).[280] When acting in that capacity, the commissioner was considered a "tribunal" by the courts.[281] A right of appeal from the commissioner's decision was added after the Supreme Court pointed out that Parliament must have "overlooked" it.[282] In 1901, as noted above, the government's Health Officers were made the final authority for appeals about sanitary matters in the inspection and registration of factories.[283]

VII CONCLUSION

The granting of appeal rights and the composition and appointment of specialised courts and tribunals could be *ad hoc*, inconsistent and subject to constant tinkering. Sometimes no appeal rights were allowed at all, or appeals went to ministers to decide instead of a court or tribunal.

Inconsistency came about in part because of the clash and creative intersection of two key viewpoints of the time. The first was that a growth in state intervention should be accompanied by appeal rights (and "judicial tribunals" to hear them), in order to protect individual citizens against possible injustice, and that such tribunals should be as independent as possible from the Executive. This view was promoted in Parliament by legal members, dissident Liberal backbenchers, Opposition members or the Legislative Council – and only occasionally by ministers.

Against this influential proposition, the countervailing view – espoused in particular by Seddon and his ministers – was that "the people" did not need protection from the actions of their representatives; responsible ministers and their officials could be trusted to administer "drastic" laws directly (instead of having an independent board or commission), fairly and without undue harshness. Thus, Seddon's Government preferred to have:

(1) Boards and commissions that were limited to recommendations;
(2) Few or no administrative appeal rights;
(3) Appeals to ministers or a body that made recommendations to ministers; or
(4) Appeals to a local magistrate (with or without assessors).

---

280 Mining Act Amendment Act 1899, s 3.

281 *Re Beattie v Wallis* (1901) 3 GLR 164 (SC) at 165.

282 At 165; Robert McNab (6 November 1901) 119 NZPD 1180–1181; and Mining Act Amendment Act 1901, s 3.

283 Factories Act 1901, s 13(2); and Richard Seddon (10 October 1901) 119 NZPD 332.

The choice depended on the particulars of the statutory scheme at issue and the politics around its enactment.

These two imperatives interacted in unexpected and creative ways. One example is the importance of the representative principle in the composition of specialised courts and tribunals, which was held to make them both more democratic (representative of the people, communities or parties concerned) and more independent of the Executive. Another is the use of stipendiary magistrates. On the one hand, they were already judicial officers and thus considered independent, despite the debates about their security of tenure, and they could be used to give administrative adjudication its "judicial character". On the other hand, the magistrates were the "Court of the people" and potentially provided a less expensive, local, accessible and speedy form of administrative justice. The combination of these two examples – a local magistrate sitting with democratically-chosen assessors – became a familiar model during Seddon's premiership.

The 1903 statutory regime for sand-drift protection shows how the two viewpoints could be debated and reconciled through the parliamentary process. The Government's initial Bill provided no appeal rights at all for an admittedly "drastic" scheme of state intervention. In response to criticism in Parliament, the minister included a right of appeal in his second Bill, restricted to the apportionment of costs to individual citizens. His intention was that appeals would be heard by a local magistrate. During the Bill's passage through Parliament, the Opposition successfully moved an amendment to broaden the appeal right so that it covered inclusion in or exclusion from the scheme as well as costs. Also, on the recommendation of the select committee, appeals were now to be heard by a magistrate and two assessors. One assessor would be appointed by the government and one by the local authority (to give the local community both influence and confidence in a tribunal that would make important decisions affecting it). The minister accepted all of these changes as committee matters, not core to the Bill. Sometimes, as noted, Seddon and his ministers did fight these kinds of amendments and won; sometimes they fought and lost. It is not safe to assume that either the fact or the form of administrative adjudication in any piece of Liberal legislation was actually intended by the Government.

Overall, the number and extent of administrative appeal rights created during Seddon's premiership seems limited from a modern administrative law perspective. But that is from the perspective of appeals as an essential protection of the rights of individuals, rather than as a drag on fair and democratically-endorsed processes that benefit the community. Both viewpoints influenced the legislative process in the 1890s and early 1900s with varied results. When the new "tribunals" created by the Liberals were added to the variety of inherited boards, commissions and special courts which they chose to retain (though sometimes in a more democratic or representative form), a rich tapestry of administrative adjudication existed in New Zealand before the First World War. Many of the bodies were transitory, appearing and disappearing with amendments to the relevant statutory regime. As a result, some seldom or never sat while others were prolific. The 19th century legacy is an important but hitherto largely concealed influence on the forms and nature of modern administrative justice in New Zealand and would benefit from further study.