REVOLUTION OR EVOLUTION? THE RESPONSE OF THE LAW TO EARTHQUAKES IN NEW ZEALAND 1848 - 1948[1]

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I. Introduction

New Zealand's recent seismic activity is often considered unique, however history suggests this is incorrect. This will not be the only time that many Cantabrians experience a serious earthquake in their lifetime; history tells us once every few decades the ground will rumble in New Zealand. This pattern has continued since the start of New Zealand's colonial settlement, with serious earthquakes occurring in Hawkes Bay, Wellington, the Wairarapa, Murchison, Marlborough, Cheviot, and a volcanic eruption due to seismic activity at Tarawera.

The Canterbury earthquakes of 2010/2011 provoked a seemingly unprecedented response from the government – referred to as the official response of the executive. It encompassed; a Mayoral relief fund, general diversion of funds from other projects, and the Canterbury Earthquake Recovery Act.[2] Given New Zealand's history, it is worthwhile to ask if this really was so unprecedented. Was there in fact a blueprint for an official response that was developed in our history? The process of retracing and revisiting New Zealand's seismic events has revealed the evolution of an official response from the executive – from being a response that was practically non-existent to one that seems generous when compared with earlier events.

It is worth noting at the outset that New Zealanders did not normally turn to the common law and the courts in the wake of these disasters. When they did so it was for technical matters, such as appealing a workers' compensation board ruling in the wake of the Hawkes Bay Earthquake.[3] Therefore the common law will largely be absent from this study and instead the focus will be on the extra-legal (acts of the executive not expressly authorised by law) and the legislative responses.

1 Research completed as part of Canterbury University's Summer Scholarship Programme with the helpful guidance of Professor J Finn.

2 Canterbury Earthquake Recovery Act 2011.

3 *Brooker v Thomas Borthwick and Sons (Australasia) Limited* [1933] NZLR at1118; *Evans v New Masonic Company Limited* [1934] NZLR 68; *Public Trustee v Gill and Others* GLR [1934] at 693.

II. 1848 Marlborough Earthquake

Eight years after the Treaty of Waitangi was signed, Wellington was to record its first major earthquake. The earthquake struck on October 16th 1848, and was estimated to be 7.5 on the Richter scale. The shake was centred in the sparsely populated region of Marlborough, but did the most damage in the Wellington region, where approximately 4500 settlers were now living.[4] Colonial newspaper *The Spectator* described the damage as follows:[5]

> A melancholy scene presented itself... The Wesleyan Chapel and Messrs Rhodes store was thrown to the ground... we need not enter further detail, on every side a scene of ruin presented itself.

Only four brick buildings in the city escaped damage[6] and, to the dismay of Lieutenant-Governor Eyre and his Provincial Council, the chimneys of government house were destroyed.[7] The provincial government under Lieutenant-Governor Eyre did little to look after its settlers. Eyre himself had the reputation of being a "pretentious nincompoop"[8] in the settlement – a reputation that was probably reinforced by the actions that he took following the earthquake. No relief fund or any form of state assistance was set up, however Eyre did order that all ships attempting to leave Wellington harbour in the days after the earthquake be detained. He felt the inhabitants of Wellington would feel deserted if there was a mass exodus, and he was fearful about debtors using the commotion created by the earthquake to flee the settlement without paying their debts.[9] He noted at the time that this order was of dubious legality, disclaiming the statement that: "The local government will of course be responsible for any legal results which may arise from the detention of any vessels in consequence of the request made."[10] This was an early indication that a disaster of this kind can at times give rise to an "extra legal" form of authority, where the governing body takes action that has legal force, but has no legislation or common law precedent to support it.

It is of interest that the response to the 2010/11 Canterbury earthquakes encompasses this extra-legal component. The executive did not bypass the rule of law completely, but applied the law in such a manner that would be considered unacceptable outside a time of crisis. The Canterbury Earthquake Recovery Act[11] provides for the compulsory acquisition of property, which can

4 Eileen McSaveney "Historic earthquakes - The 1848 Marlborough earthquake" (2009) Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/historic-earthquakes/2>.

5 *New Zealand Spectator* (Wellington, 8 November 1848) at 2.

6 GW Rusden *History of New Zealand* (2nd ed, Melville, Mullen and Slade, Melbourne, 1894) at 473.

7 Letter from Lieutenant-Governor Eyre to Military Office regarding the repair of the Provincial Council buildings (16 October 1848).

8 *An Encyclopaedia of New Zealand* (Wellington, 1966) vol 1 E J Eyre, at [252].

9 Letter from Lieutenant-Governor Eyre to Governor in Chief Hobson regarding instructions to detain ships leaving Wellington harbour (20 October 1848)

10 Letter from Lieutenant-Governor Eyre to Military Office, above n 6.

11 Canterbury Earthquake Recovery Act 2011 s53, s54.

be exercised in the case of a red zoning, or for any other reason whatsoever. The government has historically possessed the power to compulsorily acquire property for its own purposes through the Public Works Act,[12] but never before has it been exercised so extensively. The notion of private property rights was abandoned in such a way that could only be justified in a time of crisis. This demonstrates that significant events can give rise to a response that is outside the conventional notion of the rule of law, but can be justified in the wake of a serious event.

Returning to the aftermath of the 1848 Earthquake, the colonial government also declared a day of prayer, which, while commendable in intent, hardly constituted practical support for the settlers suffering from the disaster. Indeed, it was perhaps merely an excuse to call the Legislative council together to pass other legislation,[13] suggesting that this special session of the council was not concerned with earthquake relief at all.

In the aftermath of this event it was first observed that some buildings fared better in earthquakes than others. *The Wellington Independent* noted that: "We may here remark that the damage has been sustained by those possessing brick and clay dwellings. Wooden houses in every instance have escaped."[14]

The paper also suggested that:

> It is advisable that a public meeting of settlers should be convened, for the purpose of appointing a committee to report upon the late disastrous affliction, and to call upon the Executive to appoint an Inspector of Works so that in future buildings may be erected after some well matured and systematic plan.

This advice was not followed, for no such committee was set up. This marked the start of an extraordinarily slow process that would eventually lead to the introduction of earthquake building standards in New Zealand. Unfortunately it would be another 83 years before they were first implemented, and then only partially. If the government of the day had taken heed of this advice it is likely that events such as the Hawkes Bay earthquake would not have been nearly as disastrous.

This first event of 1848 demonstrated that, at the time, the law provided little assistance to those affected. The little support that was provided was indirect. The detaining of ships in Wellington harbour and a designated day of prayer may have had some impact on morale but provided little in the practical sense; there was no assistance to repair damage or rebuild the lives of those who had suffered the most. It is likely that the executive of the day did not see itself as having a significant role to play in rehabilitation, since at this time New Zealand was a young British colony - a settler society where a form of national governance had only recently been established. It is probable that at that time Governor George Grey and his Lieutenant-Governors saw their

12 Public Works Act 1981.
13 Suspending Act 1848.
14 *Wellington Independent* (Wellington, 25 October 1848) at 4.

role as largely administrative; a conduit between New Zealand and the ruling British government. In addition the government was financially constrained; the previous Governor Robert Fitzroy had been forced to issue government debentures in order to balance the books, and this was against the explicit instruction of the British government.[15] Therefore the lack of response could be attributed to both the mindset and the resource constraints of the times - it wasn't seen as their role in society, and they did not have the resources to play that role. Certainly those affected seemed to have little expectation of government assistance, as there were no reports decrying the lack of response.

III. 1855 Wairarapa Earthquake

The 1855 Wairarapa earthquake had an estimated magnitude of 8.2 on the Richter scale, making it the largest recorded earthquake in New Zealand. It was centred in the Wairarapa, but once again it was Wellington that experienced the most damage. Due to its size, it had a considerable impact on the geography of the region. A strip of land was raised between Wellington and the Hutt Valley, where State Highway 2 now sits. Furthermore, the previously swampy Basin Reserve was drained and gave the city its historic cricket ground.[16] However, most of the effects of this event were not ones that could later be seen as assets for Wellington.

Fortunately, due to the 1848 event, many stone and brick buildings that had been destroyed in that earthquake had been re-erected in wood. Although the double storied wooden council chambers and government offices were both destroyed, it is likely that the change in construction material due to the 1848 event was a factor in the low death toll of between five and nine people.

It may surprise many to discover that the government's response to the largest earthquake in New Zealand history was limited. Some tents were provided by the colonial forces for those whose houses had become uninhabitable.[17] That aside, Wellington's Superintendent Isaac Featherston was primarily concerned with the state of the Provincial Council building, which was uninhabitable.[18] Most of his correspondence was dominated by this issue and assistance to the settlers amounted to merely the aforementioned provision of tents. Featherston was said to have assumed the "prerogative and practices of a monarch"[19] as Superintendent of Wellington. It seems he was a somewhat self-interested monarch as the colonial reports of the time strongly reinforced the idea that the executive did not see itself as having a role to look

15 Keith Sinclair "Grey, George – Biography" (2010) Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/biographies/1g21/>.

16 Minister for Culture and Heritage "Massive earthquake hits Wellington region" (2011) <http://www.nzhistory.net.nz/massive-earthquake-hits-wellington>.

17 Letter from Superintendant of Wellington I Featherston to Brigade office regarding provision of tents for settlors (January 29 1855)

18 Letter from Colonel Hamley to the Wellington Superintendent I Featherston regarding the Provincial Council buildings (30 January 1855)

19 *An Encyclopaedia of New Zealand* (Wellington, 1966) vol 1 I Isaac Featherston at [287].

after the settlers; in the reports available the provision of tents receives just a passing mention. This was indicative of a government concerned only with the rehabilitation of itself. There was no special session of Parliament, nor was the Provincial Council called.

The response to these early events suggests there was an expectation of self-reliance with regard to how the general populace coped with earthquakes; any government assistance was minimal, and for the most part the government of the day merely looked after itself and expected the settlers to do the same. This sits in stark contrast to the governmental response to the 2010/11 Canterbury earthquakes. Although the idea of extra-legality had been introduced, little had been developed in terms of a blueprint for an official response. This can be explained by looking to the wider colonial environment and limited government of the time. There was certainly no provision of social welfare in the day to day operations of government and thus no expectation of assistance even in the aftermath of events such as these. The response of the law was essentially non-existent; the evolution of a government response had not yet begun.

IV. 1886 Tarawera Eruption

The inhabitants of Te Wairoa, and other Māori settlements in the shadow of Mt Tarawera, were awoken in the early morning of the 10th of June 1886 by several large earthquakes. These were followed by columns of molten rock, smoke and ash as Mt Tarawera erupted, causing villages to be covered with millions of tonnes of ash which changed the landscape of the region. Notably it caused the destruction of the famous pink and white terraces, New Zealand's first tourist attraction. Approximately 120 people were killed.[20]

This event was a turning point in the disaster response of the New Zealand government. Government funds were used for the first time to help those affected recover some losses in the wake of this event, although newspaper accounts of the time suggest that initially the government was reluctant to help. *The Auckland Star* stated: "Claims have been made for the losses of the eruption which the Government state they can no more recognise than they could the losses of sheep in a recent storm."[21] However this was not the case. It is apparent in the government accounts that sums were paid, including "compassionate allowances" of hundreds of pounds to several individuals.[22] Some local governments from outside the region even provided assistance.[23]

The government also provided land for natives whose own land had been rendered worthless by the eruption. Future Prime Minister John Ballance was Native Affairs Minister at the time and he declared he would "put them

20 Ministry for Culture and Heritage "Eruption of Mt Tarawera" (2011) <www.nzhistory.net.nz/eruption-of-mt-tarawera>

21 *Auckland Star* (Auckland, 4th September 1886) at 2.

22 "Supplementary Estimates" *Timaru Herald* (Timaru, 18 August 1886) at 3.

23 "Summary for Europe" *Otago Daily Times* (Dunedin, 18 June 1886)

on land sufficient to keep them from destitution".[24] Both examples show a significant shift in the response of the government. There was a growing feeling that the executive had a role to play in providing for the welfare of its people. Furthermore the assistance given gave rise to the notion that a natural disaster of this kind was not merely the responsibility of the region it affected, but of the whole country. This represented the beginning of an evolution of an official response to natural disasters.

The charitable provision of financial aid and other resources in the immediate aftermath and in the longer term has become one of the central pillars of the official response in the face of such events. While non-government organisations take on a role in this area, the executive still has a significant part to play. The 2010/2011 Canterbury Earthquake saw funds set up both at a local and central government level[25] in addition to the financial aid from the Earthquake Commission for damaged property. This element of the response to Tarawera can be seen in every event that has occurred since, and coincides with the development of an expectation by the public that the government will assist in a charitable manner in response to significant unforeseen events.

Following the Tarawera eruption the government sent both S Percy Smith (the Assistant Surveyor-General) and a scientist, Dr Hector, to produce separate reports on the geological impact on the area.[26] Dr Hector was a scientist of significant standing in the colony – the advisor to the government on all things scientific and described as having his "finger in every pie", with a reputation for writing concise and balanced reports.[27] It marks the first occasion any representatives of the government were sent to the affected area, and suggests that the government was taking a strong interest in the geography of the region. Nevertheless this could have had more to do with concern for the aforementioned pink and white terraces than concern for the inhabitants of the area.

This event was unprecedented in that the number of deaths far exceeded any of the previous events. It was the first time an event had caused the wholesale destruction of settlements, which occurred around Tarawera. It is perhaps for these reasons that the government decided to come to the aid of those affected, putting aside the individualistic notion of self-responsibility to help those who were so clearly in need.

All conjecture aside, this decision was to mark the beginning of the evolution in the response of the law to earthquakes in New Zealand, where the Government would gradually take more and more responsibility for compensating for the loss and effects of these events.

24 "Parliamentary Notes" *Poverty Bay Herald* (Gisbourne, 30 August 1888) at 2.

25 "Christchurch Earthquake Appeal" (27 February 2011) The Christchurch Appeal Trust <http://christchurchappealtrust.org.nz/>; "The Mayoral Earthquake Relief Fund" The Christchurch City Council <http://www.ccc.govt.nz/homeliving/civildefence/chchearthquake/MayoralReliefFund.aspx>.

26 Dr Hector "The Recent Volcanic Eruptions (Preliminanry Report On) [1886] I AJHR H25; S Percy Smith [1886] I AJHR H26.

27 *An Encyclopaedia of New Zealand* (Wellington 1966) vol 1 James Hector at [384].

V. 1901 Cheviot Earthquake

Estimated at 6.8 on the Richter scale and centred in the Amuri district, this earthquake devastated the town of Cheviot. It was also felt strongly in Christchurch where some chimneys fell down, the cathedral lost its spire, and liquefaction occurred in Kaiapoi.[28]

The government's response to this event was immediately evident. A "Mayors Fund" was formally set up to provide for victims of the earthquake.[29] The government formed a relief committee from its own Members of Parliament to administer the relief funds and invited applications from those who had been affected.[30]

In the immediate aftermath Prime Minister Seddon visited the areas affected. The autocratic "King Dick" had been heavily involved in mining on the West Coast, and the destitution he saw influenced his political beliefs.[31] He reportedly made one of his typical rousing speeches. He declared that he:[32]

> Felt it his duty to go to Cheviot at the earliest opportunity after the disaster it had suffered, and congratulated the settlers upon the plucky manner in which they had faced the situation.

He also stated how struck he was by the expressions of affected settlers who seemed grateful that "it had not fallen on a thickly populated place like Christchurch, where the result would have been awful".[33]

Prime Minister Seddon's speech shows the evolving mind set of governments in response to these disasters. In previous events there was no duty on the part of the Governor, or Prime Minister, to go and visit the sites of these events. Certainly in 1886 a representative of the government was sent, however this was neither the Prime Minister, nor even a Member of Parliament.

Prime Minister Seddon displayed a commitment to funding repairs, declaring it was the governments "duty" to keep roads open.[34] The response built upon the response to Tarawera, and involved several elements that would quickly become part of the blueprint of the official response to disasters of similar magnitude.

28 "New Zealand's deadliest earthquakes and past earthquakes in Christchurch" (2010) Natural Hazards Research Platform < http://www.naturalhazards.org.nz/NHRP/Hazard-themes/Geological-Hazards/February-22nd-aftershock/New-Zealand-s-deadliest-earthquakes-and-past-earthquakes-in-Christchurch>

29 "A Public Fund" *The Star* (Christchurch, 19 November 1901) at 3.

30 "Committee Formed" *The Star* (Christchurch, 21 November 1901) at 1.

31 David Hamer "Seddon, Richard John – Biography"(2010) Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/biographies/2s11/1>

32 "The Premier" *The Star* (Christchurch, 10 December 1901) at 1.

33 Ibid.

34 Ibid.

In hindsight Prime Minister Seddon's response to Cheviot is perhaps not surprising. His liberal government laid the first foundations of the welfare state. They instigated the first state housing scheme with the Workers Dwellings Act[35] and passed the Old Age Pensions Act in 1898 which provided pensions for those unfit to work and in destitution.[36] In his election campaigns in 1896 and 1899 Seddon and his party asked the question "Was the government to be by the selfish few or by those who represented the feelings and aspirations of the people?"[37] In many ways the evolution of the response of the law to earthquakes was an extension of the evolution that was occurring in political governance in New Zealand. The state was beginning to take on a greater role in the lives of its citizens and also starting to do a better job of looking after those who could not look after themselves. It is natural therefore that those in destitution due to an earthquake could now expect more in the form of relief from the state.

VI. 1929 Murchison Earthquake

On June 17th the small town of Murchison was shaken by an earthquake registering 7.8 on the Richter scale, killing 17 people. This was a sparsely populated area and many more people would have lost their lives in this earthquake had the area been more populated.

A relief fund was set up by the local council to provide for those that had been affected. They asked for an initial grant from the government of £500.00; this request was complied with immediately.[38] The government also set up a "Central Earthquake Committee". The committee was similar to that set up after the Cheviot earthquake, except the structure was extended. Under the Central Committee was a Sub-Committee and under this were various "District Relief Committees". Each committee made recommendations of provision of relief to the committee above it, and while generally accepted, in some cases decisions were reviewed or adjusted.[39]

In addition to the compensation for damage and loss of business, the relief fund provided pensions for widows, orphans and injured persons as a result of the earthquake.[40] Perhaps a sign of the times (the welfare state would be introduced by the election of the first Labour government 6 years later) this extension of relief past the mere provision for damage was significant. The government showed a willingness to cover the full cost of the event, taking on the responsibility for those indirectly affected. The relief funds were described as "liberally subscribed" and "public sympathy was roused".

35 D Hamer *The New Zealand Liberals* (Auckland University Press, Auckland, 1988) at 182.
36 Ibid at 147.
37 Ibid at 231.
38 "£500 for Murchison" *Evening Post* (Wellington, 21 June 1929) at 10.
39 "The Earthquake Central Committee Measures for Relief" *Evening Post* (Wellington, 30 October 1929) at 13.
40 "Widows Pensions Earthquake Sufferers £43,000 for Distribution" *Evening Post* (Wellington, 9 March 1932) at 8.

There was a feeling that the disaster should not be confined to the region that suffered it, but rather the whole country should bear most of the cost;[41] and the government responded accordingly.

Notably the government commissioned a geological survey report. In it the authors H T Ferrar and L I Grange discussed the introduction of building bylaws that could mitigate the destruction caused by such an event. The report stated that:[42]

> As earthquakes of this intensity occur in New Zealand from time to time, some provision should be made to minimise the damage they cause. It would be impossible to erect buildings that would resist the shocks of a disastrous earthquake, but when, in future, houses are being built, chimneys could be reinforced at small extra cost, and other minor precautions could be taken to ensure that there is not a wholesale destruction of chimneys when a moderately severe earthquake arrives.

The observations are similar to those following the 1848 event. It is unfortunate that once again these recommendations were not followed. It is frustrating to see that the government of the day had the knowledge at its disposal to legislate for building regulations that would mitigate the loss of life in a future event, yet did not use the opportunity to pass anything into law. In this sense the response of the government to the Murchison earthquake was woefully inadequate. It is with disturbing foresight that Farrar and Grange wrote:[43]

> To wait for a larger loss of life before taking any adequate steps to prevent disastrous earthquake destruction does not commend itself to commonsense, and to take these steps and to learn the lesson of the Murchison earthquake does not mean the adoption of any alarmist attitude. Prevention is always better than cure.

An earthquake of similar magnitude would occur less than two years later. The Hawkes Bay earthquake was centred in a highly populated area and the devastation caused by unreinforced chimneys and stone and brick buildings would be unlike anything New Zealand had ever seen before.

The Murchison event is often forgotten as it occurred just two years before the Hawkes Bay earthquake and did not cause the same devastation. Nevertheless, the effect was significant. There was a continuation of the evolution of the government's response; a more formalised relief committee was set up with more resources which provided relief to a wider range of people. A geological report was also commissioned by the government similar in scope to the reports commissioned following Tarawera – except in this case it is evident it was solely concerned with earthquakes and the prevention of harm from them. It is the inaction of the government in respect of the recommendations in this report that would have the most impact. If the government had enacted the building standards that had been recommended by the report, many lives could have been saved two years later.

41 "A Year Ago the Big 'Quake" *Evening Post* (Wellington, 14 June 1930) at 10.
42 "A Year Ago The Big 'Quake A Fateful Morning" *Evening Post* (Wellington, 14 June 1930) at 10.
43 Ibid.

VII. 1931 Hawkes Bay Earthquake

Mid-morning on Tuesday 3 February 1931 New Zealand's worst natural disaster struck. An earthquake of magnitude 7.8 impacted the Hawkes Bay region. It almost completely destroyed the towns of Napier and Hastings in addition to damage in the surrounding districts. Two hundred and fifty-six people died, many of whom were killed by falling bricks and masonry when they fled outside. A fire started in chemist stores in central Napier within minutes following the earthquake. Fire fighters were powerless to stop the fire, as the local reservoir was emptied by burst pipes and efforts to pump sea water were halted after the pumps became clogged with silt. The remains of Napier's central business district were destroyed, claiming more lives in the process. While Hastings also suffered from fires, the water supply was not depleted and the fires were therefore able to be fought effectively, causing significantly less devastation.[44]

In the wake of the earthquake many fled to the safety of the open spaces of the shoreline, only to discover that the sea had retreated far back from the high water mark. This caused a fear of a tsunami, however the tsunami did not arrive - the sea had retreated permanently. Furthermore, Napier's wetlands, notably the Ahuriri lagoon, were drained of water. In total 2000 hectares of new land was raised out of the water by the earthquake. The debris from the city centre and landslide are now what constitutes the raised esplanade on Marine Parade.[45]

A. Initial Response

A massive response was called for, given the impact and destruction. The government wasted no time in setting up a relief committee. The same process was followed as occurred after Murchison - local committees were set up in affected areas to report back to the "Central Control Committee".[46] The Murchison relief committee was still in existence at the time and still had approximately £10,000 in its accounts which was hastily transferred into the Hawkes Bay relief fund.[47] In Auckland, Wellington, and Christchurch, the Mayors organised the collection of funds by the local bodies to contribute to the relief fund. The Auckland District Law Society also provided aid.[48] Initially the fund was primarily concerned with "urgent and necessitous cases", followed in priority by the reconditioning of houses, maintenance of widows, orphans and dependants of other victims of the earthquake.[49] On

44 Eileen McSaveney "Historic earthquakes - The 1931 Hawke's Bay earthquake" (2009) Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/historic-earthquakes/6>

45 Ibid.

46 "Central Control Committee Set Up Immediate Action" *Evening Post* (Wellington, 7 February 1931) at 15.

47 Ibid.

48 "Law Society's Aid" *Evening Post* (Wellington, 28 February 1931) at 11.

49 "Relief Funds Local Committees Personal Announced" *Evening Post* (Wellington, 13 February 1931) at 7.

the morning immediately following the earthquake there was a meeting of various business people, other residents and several Ministers of the Crown. The meeting resolved the immediate provision of food, water, clothing and sanitary needs in addition to making provision to expand the police force.[50] In the immediate aftermath of the earthquake prisoners were released "on their honour" from the Napier prison to help with the rescue effort on the understanding they would return to the prison by nightfall; all returned, none used the opportunity to escape custody.[51] While many were killed, the rescue effort was extensive, leading to miracles such as the discovery of a 91 year old man alive, three days after the event.[52]

B. The Hawkes Bay Earthquake Act

An emergency session of parliament was called on 11 March in order to pass urgent legislation dealing with both the global depression enveloping the nation and the Hawkes Bay earthquake.[53] This "emergency session" was convened over a month after the earthquake, suggesting the speed of Prime Minister Forbes's government's response was less than adequate, however this was not an issue that caused any significant controversy at the time. One description of Forbes said his "lack of initiative and his intractability made him unsuited to the office of Prime Minister, especially at a time of national crisis" and he was known to make a decision and stick to it stoically, refusing to budge in the face of contrary opinion.[54] However his government's response to the Hawkes Bay earthquake runs contrary to these accusations.

The passing of the Hawkes Bay Earthquake Act was significant. It is interesting to note that, although the last regulation passed through the Act was in 1938, it still remains on our statute books and could theoretically be invoked at any time. The Act allowed the government to make regulations concerning the affected areas by an Order in Council, effectively bypassing parliament. The power was wide and included[55]

> Making any provision which may be convenient for the administration of this part of this Act, or which may be desirable or necessary in order to carry out its objects into full effect.

Plenty of regulations were made, from those concerning liquor licensing to the exemption of stamp duties.[56]

50 "Earthquake Experiences" (lecture notes presented to the Civil Defence School of Instruction - Law and Order Specialist Course, Wellington, May 1943).
51 "The Prisoners" *Evening Post* (Wellington, 6 February 1931) at 9.
52 Eileen McSaveney above, n 39.
53 "Parliament Opened Today Government's Programme Outlined" *Evening Post* (Wellington, 11 March 1931) at 10.
54 W. J. Gardner "Forbes, George William – Biography" (2010) Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/biographies/3f9/1>
55 Hawkes Bay Earthquake Act 1931 s55.
56 "Regulations under the Hawke's Bay Earthquake Act, 1931" (June 25 1931) *New Zealand Gazette* at 1835.

The Act contained two major parts. The first was the establishment of "The Hawkes Bay Adjustment Court" to administer claims for relief and deal with other issues such as litigation around titles to land (the local land registry office and all its records having been destroyed by the fire). *The Government Gazette* defined the role of the adjustment court as to "determine questions affecting such rights and liabilities, and to make such orders as seem equitable".[57] The court was not required to follow strict rules of evidence nor were there any fees to appear before it.[58] In essence the powers of this institution were extremely wide; it is a testament to the Chief Justice at the time and the Magistrates that worked in the Court that the decisions of the court led to very few appeals, only one coming to light during the conduct of this research.[59] The novelty of this court is that due to the Hawkes Bay Earthquake Act having never been deleted from the statute books, it (at least technically) remains in existence today. Dame Sian Elias may well find it surprising to discover she is also Chief Justice of a court she has likely never heard of.

The second major part of the Act was financial provision for the rehabilitation of the district. This included provision for suspension of land or income tax in cases of hardship, provision for local authorities to take loans from the government and general authority to grant financial assistance out of the crown accounts.[60] The Minister of Finance was authorised to pay out of the Government's Reserve Fund Account of up to £1,250,000 to individuals "who have suffered loss or damage by reason of the earthquake"[61] or up to £250,000 for loans to local authorities;[62] all was at the discretion of the Minister of Finance. The Act also set up the "Hawkes Bay Rehabilitation Committee" for the purpose of considering applications for assistance that would report to the Minister of Finance.[63] Furthermore, the Minister of Finance had the power to waive land or income tax due to undue hardship stemming from the earthquake, or even "waive conditions, securities and charges, and to remit or postpone repayments" on repayments to the Crown.[64]

There was to be a third major part in this act, a levy on insurance to pay for the cost of this disaster and future disasters of a similar nature, however at this time the proposal was heavily opposed. The Farmers' Union believed it would impact farmers disproportionately because farmers were "already over taxed".[65] The Freezing Companies Association, Associated Chambers

57 Ibid at 1798.
58 Nicholas Wood "After the 'quake: the legislative response" (2012) NZ Lawyer Online <http://www.nzlawyermagazine.co.nz/Archives/Issue146/146F6/tabid/2671/Default.aspx>
59 *Re HH* [1938] GLR 110
60 Hawkes Bay Earthquake Act 1931.
61 Hawkes Bay Earthquake Act 1931 s38(a).
62 Hawkes Bay Earthquake Act 1931 s38(b).
63 Hawkes Bay Earthquake Act 1931 s42.
64 Hawkes Bay Earthquake Act 1931 s49.
65 Letter from Farmers Union to GW Forbes regarding the proposed insurance levy in the Hawkes Bay Earthquake Act 1931 (22 April 1931).

of Commerce and Matamata Farmers Association were other examples of the many that wrote to the Prime Minister to express their disdain for the proposal.[66] The opposition was not to the fund itself, but rather to the method of collection through a land insurance levy that many saw as inequitable towards those who held large portions of land and therefore had to pay the most insurance.[67] The issue became more significant when Prime Minister Forbes declared he would consider the failure of the Hawkes Bay Earthquake Bill to pass as a vote of no confidence in the government. However he relented, and this part of the Act was dropped. The Bill was passed into law with the help of the opposition Labour party.[68] There was an unusual degree of co-operation on both sides of the house during the debate for this bill; it was in stark contrast to that of the debate only a few days earlier concerning the Finance Act, which the Labour party was aggressively filibustering.[69] This would not be the last time the issue of earthquake insurance was raised; in 1934 the Member of Parliament for Napier Mr. Barnard introduced a private members' bill on the basis of the dropped clause in the Hawkes Bay Earthquake Act,[70] and once again the bill did not pass.

The idea of a nationalised fund to pay out in the event of an earthquake goes to the heart of collective responsibility for such disasters. Some argued that certain parts of New Zealand were immune from earthquakes and should not have to pay such a tax. Aside from the uncertainty around this, as Mr Barnard stated Napier had shown that "everyone was anxious to help the restoration of the shattered area".[71] Such a fund would almost complete the evolution from the mid 19th century view of individual responsibility to collective responsibility. However the fund would not come into existence yet.

Hawkes Bay marked the first occasion that specific legislation was used as part of the official response. It would not be used in the same manner until the 2010/11 Canterbury earthquakes. In one key respect the Hawkes Bay Act was similar to the Canterbury Earthquake Recovery Act. The Canterbury Act aroused considerable controversy because it granted the power to the Crown to override existing legislation without first requiring the consent of Parliament. Yet the means to exercise this power is also contained in s66(1)

66 Letter from Freezing Companies Association to GW Forbes regarding the proposed insurance levy in the Hawkes Bay Earthquake Act 1931 (17 April 1931); Telegram from Matamata Farmers Association to GW Forbes regarding the proposed insurance levy in the Hawkes Bay Earthquake Act 1931 (20 April 1931); "Earthquake Relief Measures – Legislation Condemned" *Dominion* (14 April, 1931).

67 "Disaster Fund the Insurance Surtax Flat Rate Opposed" *Evening Post* (Wellington, 14 March 1931) at 10.

68 "Moral of the Session" *Evening Post* (Wellington, 28 April 1931) at 8.

69 "Safe Buildings Construction Bill to be Introduced Mr Forbes Promise" *Evening Post* (Wellington, 9 April 1931) at 10.

70 "Earthquake Loss National Fund Proposed Labour Member's Bill" *Evening Post* (Wellington, 6 July 1934) at 13.

71 Ibid.

of the Hawkes Bay Earthquake Act 1931.[72] However, while the Hawkes Bay Act provided for financial rehabilitation, today the Earthquake Commission is carrying much of the financial burden.

C. Building Construction Legislation

The Hawkes Bay Earthquake sparked another major debate about building construction legislation in New Zealand. Immediately a clause was inserted into the Finance Act 1931 which gave local authorities the power to make bylaws under the Municipal Corporations Act 1920 for the purpose of regulating and controlling the design of buildings in relation to their resistance to "earthquake shakes".[73] It also granted the Governor-General the power to issue regulations that would have the force of bylaws in areas where the local government had itself taken appropriate action and instigated its own set of bylaws. The government also requested a model bylaw to be produced by the Standards Institute which was published in 1935.[74]

This was a temporary measure as a special committee on building construction was also set up by the government immediately following the earthquake. The Building Construction Bill was based upon the report by this committee and was put before the house soon after the earthquake in 1931.[75] It did not pass initially and by 1933 it still had not become law. Prime Minister Forbes blamed the opposition from the architects who believed nothing should be done that would be unnecessarily restrictive and result in increased cost.[76] The Bill continued to lie dormant and in 1935 the government commissioned UK expert Sir Reginald Stradling to present a report on the building regulation requirements of New Zealand. The report was "monumental" but suffered from bureaucratic disagreement over the funding for the measures that were recommended.[77]

The Wellington City Council was one of the few local bodies which used the opportunity to draft a local bylaw. However it only concerned the construction of future buildings – there was no requirement for those that already existed to be bought up to standard. They also had the city engineer do a review of all the buildings in the Wellington central business district. The owners of existing buildings that were not up to standard were notified and in many cases they agreed to do the necessary work voluntarily. Auckland firmly refused to develop such bylaws as they had not suffered a significant earthquake in modern memory.[78]

72 Nicholas Wood above, n 58.
73 The Finance Act 1931 (No 2) s41.
74 Building Act 2004 (Introduction).
75 "Better Building Bill Before House Amendments Indicated Principles Approved" *Evening Post* (Wellington, 23 October 1931) at 5.
76 "Safe Buildings Construction Bill to be Introduced Mr Forbes Promise" *Evening Post* (Wellington, 5 October 1933) at 12.
77 An Encyclopaedia of New Zealand (Wellington, 1966) vol 1 Building Construction at [270].
78 "Safer Buildings Preparation of Code Committee Personnel Alteration Problem" *Evening Post* (Wellington, 30 July 1934) at 10.

The necessity of building construction legislation had been discussed since the very first event in 1848. Although now partially achieved, most of the country still did not have any sort of earthquake resistance requirements. The power of local bodies would later be expanded by the Municipal Corporations Amendment Act 1968 – it allowed local bodies to order the strengthening of demolition of buildings that would pose a risk during a moderate earthquake. Local governments in Wellington and Christchurch took advantage of this power.[79] Building codes in 1965, 1976, 1984 and 1992 have since altered the requirements of building construction and now apply standards for earthquake resistance on a national level.[80]

D. Other Legislation

The Land Transfer (Hawkes Bay Earthquake) Act[81] was passed in order to develop a process for replacing the registry of title deeds that was destroyed by fire. Any evidence of title could be considered by the Land Registrar and a title would be provisionally granted if they were satisfied that the title did in fact belong to the applicant. Any disagreement was heard before the Adjustment Court.

The role of the Central Committee was enshrined in legislation (which also remains on our statute books today) under the Hawkes Bay Earthquake Relief Funds Act.[82] This gave the committee full legal status, rather than the mere 'extra legal' status similar committees in the past had been given.

E. Hawkes Bay's Legacy

The Hawkes Bay earthquake occurred against the backdrop of the great depression. At a time when the government coffers were extremely bare the immediate needs of those affected were still provided for. This was a point not lost on the Member of Parliament for Napier, Mr W. E Barnard suggesting "it was all the more appreciated when the severity of the depression in which through we were passing was remembered".[83] Indeed, immediately before the Earthquake Act, the Finance Act 1931 was passed, which cut public servants wages in the face of decreasing commodity prices in an attempt to save the government money.[84] This demonstrates how far governments and society had come in its attitude towards disaster response. This attitude of the executive was far removed from that of the governments of the mid 19th century who expected victims of disasters such as these to manage their own needs.

79 The Building Act 2004 above, n 66.

80 Eileen McSaveney "Earthquakes - Building for earthquake resistance"(2009) Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/earthquakes/4>

81 Land Transfer (Hawkes Bay Earthquake) Act 1931

82 Hawkes Bay Relief Funds Act 1931

83 "Relief Funds Local Committee Personnel Announced" *Evening Post* above, n 44.

84 "Labour's "Stonewall" Finance Bill Strongly Opposed House Sits Through the Night" *Evening Post* (Wellington, 24 March 1931) at 9.

The Hawkes Bay earthquake did represent a turning point – until 1931, the response of the law in New Zealand to these disasters had been a gradual evolution, but the response to the Hawkes Bay earthquake constituted a revolution. It did build on the response of previous events but the evolution had quickened. The response of the government to this disaster dwarfed any other events in New Zealand's history; it used the response to Murchison as a starting point but built upon it extensively. The Hawkes Bay Earthquake Act was unprecedented, the relief provided and the machinery set up in the form of the Hawkes Bay Adjustment Court was impressive even by today's standards. Furthermore, the initial stages of the building construction legislation were introduced as a direct result of this event, and the issue of a dedicated earthquake fund was brought to the fore, commencing a debate that would eventually lead to the establishment of the Earthquake and War Damage Commission. It would not be until 2011 that an earthquake on a similar scale would strike New Zealand. It is a testament to Prime Minister Forbes's government that 80 years later the government would lead a response similar in many ways to the response that occurred in 1931.

VIII. 1942 Wairarapa Earthquakes

An earthquake of magnitude 7.2 struck in the Wairarapa and Wellington regions on the evening of 24 June 1942. Centred near Masterton, the town suffered the most damage, with many brick buildings destroyed. However, Wellington also suffered some damage, mostly in the form of fallen chimneys and broken windows. Five weeks later on August 1, while the damage was still being repaired, another earthquake struck registering 5.6 on the Richter scale, and the following day the region was hit by a 6.8 tremor. Both caused more damage to the area, although the August shocks were much deeper than those in June, hence the damage was not as severe in most places.[85]

A. Initial Response

A state of emergency was immediately declared in Masterton by the Mayor. The badly damaged business district was cordoned off and the military was called in to protect it from looters.[86] The native department sent an inspector to determine the state of native houses in the area, while the government also agreed to provide loans to the owners of those houses that were in need of repair; some grants were made to those who could not provide security for a loan.[87]

85 Eileen McSaveney "Historic earthquakes - The 1942 Wairarapa earthquakes" (2009) Te Ara - the Encyclopedia of New Zealand <http://www.TeAra.govt.nz/en/historic-earthquakes/9>

86 "Repairs Refused Owners' Deplorable Attitude Legislation Proposed" *Evening Post* (Wellington, 28 July 1942) at 3.

87 Letter from New Zealand Government to County Clerk Masterton District Council regarding recommendations for repair of the district (26 March 1943).

The extensive destruction of chimneys in both Wairarapa and Wellington was of considerable concern to the government. As both earthquakes hit during winter, there were many homes left without sufficient heating which posed a risk to the health of residents. The country was still in the midst of World War Two, which compounded the problem and caused a shortage of tradesmen. The central government agreed to subsidise the local government's 30 per cent of the cost of chimney repairs.[88] Tradesmen had to be brought in from all over the country to supply the labour; the government subsidy was designed to bring the cost of repair back into the realm of normality. Unfortunately many workmen were clearly under-qualified for the job and displayed a lack of competence. This caused many complaints and the government agreed to absorb the cost of correcting them.[89]

B. Legislative Response

These events bought a renewed call for an earthquake insurance fund administered by the government.[90] Many building owners did not have the necessary funds at their disposal to repair their property.[91] This served to reinforce the belief that universal earthquake insurance was needed.

It was suggested that earthquakes had much in common with the risks of damage caused by the enemy in war time – no location was immune from risk and it was nearly impossible for the individual home owner to take steps to protect themselves effectively.[92] Therefore the government resolved to append earthquake damage onto the War Damage Commission which was in existence as a result of World War Two. On 2 March 1944 the Earthquake Damage Emergency regulations were issued and essentially stated that any property that fell under the war damage scheme was now insured against both earthquake damage and earthquake fire.[93]

An early hurdle in passing the legislation that Prime Minister Fraser had to deal with was the argument that this insurance should also cover flood, tempest and other disasters, thus expanding the liability of the government considerably. While Mr Fraser responded favourably to that argument he did not see it as urgent at this time.[94] Furthermore, the Act only allowed funds held in the accounts of the Earthquake and War Damage Commission

88 Ibid.
89 Letter from the Secretary of Treasury to the Minister of Finance regarding the cost of earthquake repairs (21st April 1943).
90 "Quake Insurance Companies Liability Criticism in House" *Evening Post* (Wellington, 21 August 1942) at 4.
91 "Repairs Refused Owners Deplorable Attitude Legislation Proposed" *Evening Post* (Wellington, 28 July 1942) at 3.
92 "War Damage Position of Fund Earthquake Risk" *Evening Post* (Wellington, 17 August 1944) at 6.
93 "Earthquake Risks Insurance Plan Questions Raised" Evening Post (Wellington, 28 March 1944) at 6.
94 (29 March 1944) 264 NZPD 786.

to be used. If a disaster depleted these funds and more were required, that government would have to come back to Parliament to get approval for the use of public funds.[95]

Standalone legislation was passed on 23 November to fund the insurance and the Earthquake and War Damage Bill was passed into law.[96] This was effectively compulsory earthquake insurance as the fund was maintained by a levy on insurance premiums – if you chose to insure.[97] The Minister of Finance at the time, Walter Nash, described the philosophy behind the Earthquake and War Damage Act as follows:[98]

> The endeavour has been to work out a principle under which the whole loss is deemed to be a national loss, and under which those people who might be affected will subscribe towards a fund to meet losses which may come to any of them.

This quote sums up how far the attitude of the executive had come since the early earthquakes in the mid 19th century. A fund had finally been established to nationalise the loss of earthquakes. There can be no doubt that the losses that arose from the earthquakes that had gone before led to the development of the fund. Although the name has been changed, other disasters added and war damaged dropped, the fund in essence, still remains in existence today. We know it as EQC (The Earthquake Commission).

The role of the Earthquake Commission was bought to the fore in the wake of the Canterbury earthquakes. Thankfully in the years following the establishment of the fund there were few major disasters that depleted it. Therefore the Commission was able to absorb the enormous cost of the Canterbury event and covered insured homeowners for the first $100,000 of damage to their property. This coverage would not have existed without the foresight of Prime Minister Fraser's government.

C. Building Code

There was renewed debate concerning a standard building code for the whole country. There was difficulty surrounding the fact that a local body could advise the owner of a dangerous existing building but they could not compel the owner to do anything about it.[99] However, while the issue was raised repeatedly, the government did nothing more than continue to develop model bylaws for local councils.[100] Perhaps the executive was distracted by the earthquake insurance issue; they were not willing to deal with the problem at this time.

Inevitably questions surrounding building construction have succeeded every major event. However, historically, the executive has done little to answer these. The recent Canterbury event saw the same questions asked; the

95 Ibid.
96 (23 November 1944) 264 NZPD 1587
97 HF Von Haast "War and Earthquake Damage Insurance" (1944) 6 NZLJ 67 at 67.
98 (28 September 1944) 266 NZPD 619
99 "Reducing Earthquake Risk" *Evening Post* (Wellington, 12 August 1942) at 4.
100 Ibid.

central government responded by announcing an "Earthquake Prone Building Policy Review".[101] What, if any, changes that will be made to New Zealand's building construction legislation as a result of the Canterbury earthquakes remain to be seen. It is apparent from these historical events that the lack of response has had disastrous consequences. The current government would be wise not to repeat the mistake of their predecessors in failing to address this issue.

IX. Conclusion

The evolution of the executive's response to severe earthquakes has been substantial since 1848. New Zealand has moved from a very limited response, involving no monetary outlay, to a universal system that provides compensation to every insured person for loss caused by an earthquake. For the most part this change was evolutionary, however the response to the Hawkes Bay event was revolutionary.

The evolution is ongoing, such that we see many elements in our disaster response today that were developed earlier in our history. The events of our past have shaped the way the executive responds to the events of today. It was these early events that gave the New Zealand government an effective blueprint for a response; it was these events that led to the development of nationalised earthquake insurance, and earthquake building standards. The events of the past have enabled us to evolve our legislative policy and infrastructure, and sharpen our preparation for events of the future.

101 Department of Building and Housing *Earthquake Prone Building Policy Review Terms of Reference* (Department of Building and Housing, March 2012)