the consequent land-selling, had an increasingly destructive effect on embyro Maori enterprise.

> The worst destroyer of consistent enterprise was the operation of the Native Land Court and subsequent land purchasing. It was exceedingly difficult for the owners listed on multiple titles, their shares increasingly fragmented through the introduced system of succession, to organise effectively to farm their land; on the contrary it was all too easy for owners to gain a ready penny by signing a deed of sale or lease or grant of timber rights to one, or several, of the land agents prowling the out-districts or lounging in the city hotels. Under these temptations chiefs betrayed their people and commoners betrayed chiefs. Nothing, save perhaps epidemic disease, was so disruptive of Maori life as this. (A. Ward, *A Show of Justice*, p. 267.)

Coupled with the problems of using the land that were generated by the Native Land Court's activities was the lack of systematic assistance from the government for Maori economic initiatives. Individualising Maori life seemed to mean that the Maori had to stand alone and create what they could from their own limited resources. Sir James Carroll, the Irish/Maori member of the Seddon cabinet, was one of the three commissioners on the 1891 Native Lands Commission and noted this fact in his dissenting report on the question of resuming Crown pre-emption:

> Is it not a somewhat melancholy reflection that during all the years the New Zealand Parliament has been legislating upon native land matters, no single bona fide attempt has been made to induce the natives to become thoroughly useful settlers in the true sense of the word? No attempt has been made to educate them in acquiring industrial knowledge or to direct their attention to industrial pursuits. Whatever progress they have achieved in that direction is owing entirely to their own innate wisdom and energy. (Quoted by Sir Apirana Ngata, "Maori Land Settlement", in *The Maori People Today*, p. 125.)

Eventually, particularly in those tribes that had tried to pick up the economic reins again straight after the war, disillusionment set in and Maori separatism once more became an issue.

A number of disparate protest movements were a sounding board for Maori dissent through to the end of the century. Petitions over land matters were put before Parliament and the Queen; an extensive but ultimately ineffective boycott of the Native Land Court was organised in 1895; there was a repudiation-of-land-sales movement in Hawkes Bay in the 1870s; and, most importantly, a Maori parliament (the *Kotahitanga*) met throughout the 1890s.

Despite 30 years of legislative activity that had as its primary objective the freeing of as much Maori land as possible for European settlement, Pakeha politicians were not totally myopic about Maori needs. Legislation was passed in Parliament to try and deal with some of the more "gamey" aspects of Maori land dealings. Unfortunately, these remedial measures often just made things worse. Also, constant tinkering with the land laws turned them into a luxuriant legal jungle:

> The new measures only served to aggravate the evils they were intended to prevent. This continued pretty well throughout the remainder of the last century until the Maori land legislation became so entangled a maze, that only trained and experienced men could hope with certainty to find their way through it. (N. Smith, *The Maori People and Us*, p. 171.)

CHAPTER 7: TWENTIETH CENTURY DEVELOPMENTS

Incorporations

In terms of the Maori people retaining control of their land and deriving economic benefit from it, one of the most significant developments has been the formation of Maori land incorporations.

Their origins go back to the nineteenth century when the Ngati Porou on the East Coast first started pastoral farming after the 1860s wars. By 1870 they had some small flocks up and down the coast and these expanded in the 1880s and 90s. But with the land having so many individual owners, economic development on any large scale was impossible unless some method of coordinating the various owners and mediating between their various rights could be found.

> It was necessary on the one hand to evolve a system of organising the individuals in the title in such a way as to stabilise corporate action and legal decisions, and on the other hand to secure legislative recognition of the title expressing such an organisation as could be legally offered to a money lender and on which he could lend ... The system is known as the incorporation of native land owners and is in effect an adaptation of the tribal system, the hierarchy of chiefs being represented by the Committee of Management. As with the tribal hierarchy, so with the Committee, its executive functions gravitate into the hands of someone capable of satisfying the diverse elements in the community, while complying with the business requirements of the undertaking. (Sir Apirana Ngata, in *The Maori People Today*, pp. 139-140.)

Ngata is the man most closely identified with the development of incorporations and their eventual recognition. The political pressure he directed, drawing on the resentment of the Ngati Porou towards the East Coast Maori Trust, eventually resulted in the incorporation method of land tenure being adopted in the East Coast-Gisborne area.

As originally set up by the Ngati Porou, the tribe formed a committee who acted as a board of directors or governors and worked out policy on behalf of the owners. The day-to-day running was done by the manager, and the tribal members provided the incorporation's workers. The only drawback to this sensible scheme was that it had no legal recognition or protection.

Advantage had been taken of a clause in the Native Land Court Act of 1894 that allowed the Court to incorporate the owners of a block of Maori land into one body. Anyone wishing to buy or lease Maori land could now deal with the one entity instead of many owners. But it was not until 1909 that Maori land incorporations were given full legal recognition, since when they have been, until recently, the principal means of Maori owners being actively involved in the development of their land.

The trust-land scheme

At the same time as the incorporations were being established, the trust-land scheme came into being. This effectively gave the management of Maori lands over to trustees or statutory bodies, who were more often than not European. Trusts were not a Maori-inspired initiative, but were accepted by a number of tribes as a way around the obvious difficulties of multiple ownership. The main criticism of them was "the lack of

systematic training for owners in estate management, training that the organisation itself could have provided. It did, however, suspend individualisation and was a positive step towards bringing idle Maori land into production." (I.H. Kawharu, *Maori Land Tenure*, p. 85.)

Continuation of land sales

The first twenty years of the twentieth century saw the final burst of Maori land-selling. In 1900 the Liberal Government had suspended Crown pre-emption once again, and "under the Maori Lands Administration Act of 1900, set up a system of Maori-dominated land councils to encourage leasing. By 1905 it was forced to yield to pressure. In that year a new Act replaced the land councils with boards, under much more rigorous European control and with greater powers. An increased volume of Maori land passed through the boards into pakeha occupancy and use." (M. King, "Between Two Worlds", in *The Oxford History of New Zealand*, p. 285.)

Pakeha land-purchasing was back with a vengeance and, despite the incorporations and land trusts, Maori farming was going through a period of unprecedented difficulty. The title muddle and the pressure for land had seen the number of Maori sheep farmers *fall* between 1890 and 1910.

The Stout-Ngata commission of 1907 was able to give a graphic description of the difficulties Maori farmers faced. This commission (officially called the Commission on Native Lands and Native Land Tenure) had been set up to investigate the productive use of Maori land and had resulted from concern about the resumed level of Pakeha land-purchasing.

> And where in spite of supreme difficulties the Maori has succeeded in making good use of his land the fact is not sufficiently recognised. The spectacle is presented to us of a people starving in the midst of plenty. If it is difficult for the European settler to acquire Maori land owing to complications of title it is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first to establish his own right to it, and secondly, to detach himself from the numerous other owners to whom he is genealogically bound in the title. And when he has succeeded he is handicapped by want of capital, by lack of training - he is under the ban as one of a spendthrift, easy-going, improvident people. (Quoted in N. Smith, *The Maori People and Us*, p. 199.)

Some of these factors have changed little since 1907, as will become clearer in Part II. The Maori Land Court is now a force for encouraging land use rather than an active hindrance. But it still takes a formidable amount of energy to get a scheme approved by the Court for a title in multiple ownership.

Although the commission called for positive assistance to the Maori landowner, virtually nothing happened between then and the late 1920s, other than that the continued selling of Maori land progressed rapidly.

> Between 1911 and 1920 Maori holdings were further reduced from 7,137,205 to 4,787,868 acres. And of this total, over three-quarters of a million acres were leased to Europeans and a further three-quarters of a million estimated as unsuitable for development. The tempo increased under the Reform Government after 1912. The new Native Minister, William Herries, pursued a policy of

"hustle". He was amenable to the pressure of land speculators in a time of steeply rising land values, and towards the end of the First World War wanted to find land to settle returned soldiers. Maui Pomare, an MP in 1912 and a minister from that time to 1928, supported Herries, in the belief that Maoris would survive best if forced to be as resourceful and acquisitive as pakehas. (M. King, in *The Oxford History of New Zealand*, p. 285.)

Sales of Maori land have proceeded at a much slower pace since then. The 4,787,686 acres of Maori land left in 1920 compares with just under 3 million acres (or 1.3 million ha) now.

First assistance to Maori farming

By the late 1920s, active measures to assist the Maori landowner who wished to farm had begun to take place. Sir Apirana Ngata was the driving force behind these developments; first as one of the spokesmen for the Young Maori Party, and then as Native Minister in the United Government from 1928.

In 1929 Parliament, nearly ninety years after the Treaty of Waitangi, assumed direct financial responsibility for a policy of encouraging and training the Maoris to become industrious settlers under Government direction and supervision. It was the scheme that Carroll and other leaders of the Maori people pleaded for thirty-eight years earlier. In the launching of the development policy all relevant factors, historical, traditional, cultural and psychological, were assessed, current tendencies within the race were examined; and due consideration was given to the factor of leadership and persistent survival of the tribal organisation. Every resource, physical, mental and spiritual was marshalled in the argument to support the inception of the project. It was one chance in one hundred years of British rule in this country offered to the Maori people and it must not fail ... (Sir Apirana Ngata, in *The Maori People Today*, pp. 142 and 146.)

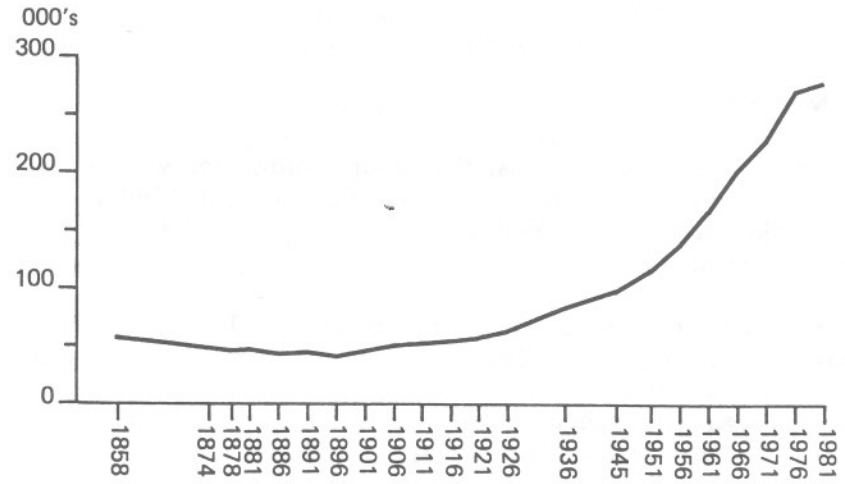
There is no doubting the importance of Ngata's land settlement schemes, even if they were not an unalloyed success. They established the importance of state assistance to Maori farming enterprises, and they gave the Maori people, for the first time since the Treaty of Waitangi, both the financial wherewithal and the boost in morale needed to bring more Maori land into productive use.

The schemes became a permanent feature of Maori rural life, but Maori farming in general remained in a difficult situation. Some of the schemes, particularly in Northland, were on poor land - steep, unstable, remote - and could not sustain production at an economic level. Others were too small, and this was true of dairy farms particularly (both Maori and pakeha) throughout the 1920s and 1930s. Workers on such farms found that they could earn more as casual labour on more efficient farms, usually pakeha owned. In other cases, land returning to Maori after the expiry of leases was in a run down condition ... The majority of the Maori people remained, nonetheless, dependent upon farming, which could not support them. Uneconomic farming sent workers into the towns and cities; rural communities thus became less viable and urban migration more attractive. Rural depopulation and urbanisation together were to contribute to a subsequent deterioration in race relations. (M. King, in *The Oxford History of New Zealand*, p. 287.)

The beginning of urbanisation

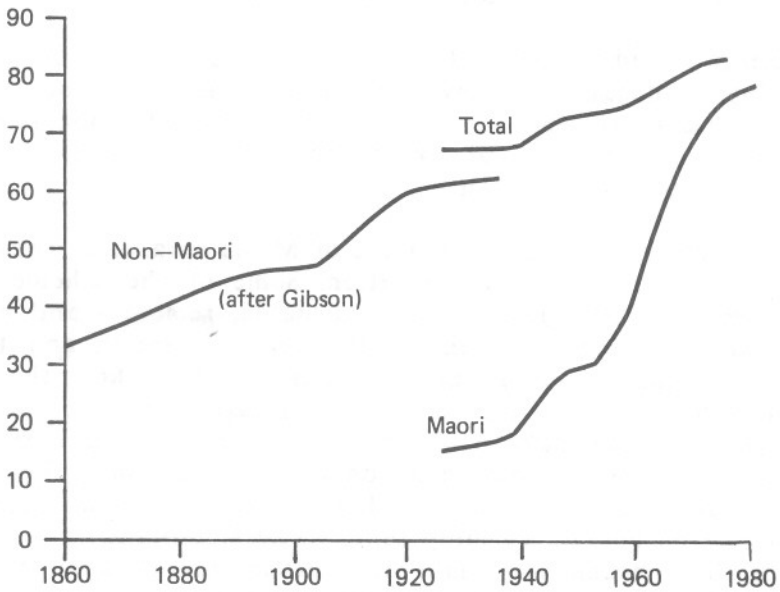
At the time that the government was finally beginning to support Maori farming initiatives as a means of economic development for the Maori people, who were still overwhelmingly rural dwellers, an upsurge in the Maori population was to mean that the available land was not sufficient to support the increasing numbers (Figure 1).

Figure 1: Growth in the Maori population, 1858-1981



Source: Census of Population and Dwellings 1951–1981, Department of Statistics

Figure 2 - Urban population as a percentage of the total population, 1860-1981



Source: Gibson, C.J., Demographic History of New Zealand, unpublished PhD dissertation, University of California, 1971

Census of Population and Dwellings, Department of Statistics

A new Maori migration began: this time to the towns and cities. The problems of absentee landlordism (that had started with the first title determinations in 1865) and untraceable ownership were to become marked as Maori people increasingly left their tribal lands from the 1930s on.

In 1936, 11.2 percent of the Maori population lived in urban areas, and this has risen rapidly since the Second World War as Figure 2 shows: 19 percent in 1945; 55.8 percent in 1966; 68.2 percent in 1971; and 78.5 percent in 1981.

Maori people went to the cities looking for jobs because government assimilation policies in the 1950s and 60s encouraged this, and because it was in accordance with an economic fact first pointed out by the economist Horace Belshaw in 1940: "... there is an unambiguous picture of a people whose land resources are inadequate, so that a great and increasing majority must find other means of livelihood." (H. Belshaw, "Maori Economic Circumstances", in *The Maori People Today*, p. 192.)

Belshaw realised that this meant at some point a fundamental shift for the Maori from a rural to an urban existence:

> If it is accepted that the Maori must be economically self-supporting, large numbers must migrate to other districts, many of them to the towns. The Maori districts are usually too remote to attract manufacturing industries to the labour supply. The prospect is disturbing both for Maori communities and individuals. The migrants will be strangers in strange cities forced into adjustment while divorced from the moral and material support of their communities. Until the full implications of this are understood there is no solution to the Maori problem. They are not yet understood either by the Maori or European communities or by the Government. (H. Belshaw, in *The Maori People Today*, pp. 197-198.)

Forty-four years later, Belshaw appears as something of a prophet. However, the effects of the urbanisation of the Maori population have been unpredictable. Rather than a lack of interest in the fate of their distant tribal homelands, urban Maori have been increasingly concerned about alienation of the land that is left, about the potential loss of their *turangawaewae* (right to belong and participate on the home marae), and have been correspondingly keen to restore rural marae and to create new urban ones.

Developments from the 1960s

During the 1960s, a number of reports aimed at the better utilisation of existing Maori land began to consolidate Maori opinion on land matters and to give further emphasis to a growing sense of Maori identity.

> Under the Maori Affairs Amendment Act (1967) Maori land held by not more than four joint owners was to be exempted from the jurisdiction of the Maori Land Court. To many Maori critics the Act opened the way for the more rapid alienation of Maori land. This traditional issue above all heightened Maori sense of identity in the 1960s and early 1970s ... Increasing anxieties at the continuing loss of land were given expression in the Maori Land March in 1975 and the Bastion Point issue. (G. Dunstall, "The Social Pattern" in *The Oxford History of New Zealand*, p. 425.)

Both the 1961 *Report on Department of Maori Affairs* (commonly known as the Hunn report) and the 1965 *Report on the Committee of Inquiry into the Laws Affecting Maori Land and the Powers of the Maori Land Court* (commonly known as the Prichard-Waetford Report) promoted explicitly Pakeha solutions to some of the problems that were perceived to be hampering the productive use of Maori land.

The national interest was to the fore in these reports, and they seemed insensitive to Maori feelings and beliefs. Insufficient attention was given to the development of a Maori economic base and to the Maori people's deeply-felt and legitimate spiritual and cultural attachment to their lands.

The land protests throughout the 1970s were a focus for the restatement of these traditional values and also made it clear that retention in Maori hands of the remaining Maori land was to be a serious point of issue between Maori and Pakeha.

In 1974, another Maori Affairs Amendment Act repealed the "no more than four joint owners" provision in the 1967 Act and restored the Maori Land Court's jurisdiction over these types of land sales. The present emphasis in Maori land legislation, therefore, is on providing the means for the Maori people to retain their land.

This new emphasis can be seen in the work of the present day Maori Land Court. It has become a distinctively Maori institution in the twentieth century, and for a number of years has been a force for the retention of Maori land rather than its alienation.

The present Chief Judge of the Maori Land Court, E.T.J. Durie, described what he saw as the evolution of the Court in a submission to the 1980 Royal Commission on the Maori Land Courts:

> The establishment of the Court in 1865 was primarily to determine the ownership of Maori lands and then to facilitate what Kawharu describes as the main administrative goal of the day: "viable Maori land titles for speedier European settlement."
>
> Before long, and starting in 1870, the Court was charged with certain parental responsibilities to Maori owners in the alienation of their lands. It was in a protective role that the court soon became known and it was in that capacity that the Court was seen to enter the present century.
>
> In the first half of this century, and in the latter quarter in particular, the emphasis shifted from the alienation of lands for European settlement, to the retention of lands for use, development and occupation by or on behalf of Maori people. Under the leadership of men like Sir Apirana Ngata (as Minister), tremendous strides were made in development for Maori settlement. The judges were very much involved but in an administrative capacity as well ... This fusion of judicial and executory or administrative functions may have been constitutionally unusual but it also seems to have worked. It continued for a period of nearly 50 years.
>
> After 1952 the Judges' role reverted to the more strictly judicial and the general control and administration passed to the Department (of Maori Affairs) ...
>
> The Court seems now to be endowed with another purpose. The paternal aspect of its role is diminishing, and there is instead a realisation that the Court exists today as a forum to facilitate and enable the utilisation of land held in multiple ownership, to facilitate owner-management of lands, and to settle

differences arising within the body of owners.

If the paternal aspect remains, it is mainly in the sense that the Court is seen as an instrument for the retention of Maori lands in Maori ownership, for the economic as well as the spiritual and emotional well being, of present and future generations. (E.T.J. Durie, submission to the *Royal Commission on the Maori Land Courts*, 1980.)

Conclusion to *Maori Land - The Past and Present*

Since the signing of the Treaty of Waitangi in 1840, the Maori tribal estates have declined from almost 27 million hectares to about 1.3 million. And that which remains is often in the form of fragmented holdings with a multiplicity of owners, predominantly absentee.

How this has come about is part of the complex process of British colonisation and settlement of New Zealand. In 1840, Maori society was still dominant and accepted the Pakeha more or less on its own terms. After Waitangi, all that was to change. The initial Maori enthusiasm for the technological benefits that came with the early settlers dissipated over the next 20 years in the face of the collapse of agricultural markets, the relentless pressure from the settlers for land, and the increasing exclusion of the Maori from any real say in the governing of New Zealand.

The continuing conflict between two markedly different peoples was to end in war - a war to decide who was to control the land and the economy which it supported. The question had been decisively answered by the mid 1860s - although guerilla warfare was to continue for another two decades - and Maori society was to be dominated for the next 30 years by the effects of the extension of British law, land-selling, and the operations of the Maori Land Court. Settler governments had decided that British notions of property were to apply, and this meant establishing individual ownership of what had formerly been communally-owned tribal lands.

Tribes heavily involved in land-selling, and in having individual ownership of their lands determined by the Maori Land Court, suffered a disruption of their ways of life, accompanied by a significant fall in population. This pattern repeated itself with various tribes right up until the turn of the century.

The Court, in its concern to take some account of what it believed to be Maori custom, took the fateful step of allowing children to inherit in equal shares, land interests from both their parents, often in localities where the fires of occupation had long gone out. So began three of the main characteristics of Maori land today: small, fragmented holdings as a result of one person or family partitioning their interest out of the main block; multiple ownership of many small interests in a block of land; and absentee ownership. The problems caused by these attempts to acknowledge traditional Maori concepts of land tenure were made worse by the failure to give these concepts any standing in the dominant Pakeha legal and financial systems, as will be discussed in Part II.

Assistance to Maori economic development after the wars of the 1860s was virtually nil until the farm assistance programmes associated with Sir Apirana Ngata in the 1930s. Despite this neglect, Maori agriculture and enterprise persisted, and the first successful answer to fragmentation of ownership - incorporations - was developed by the Ngati Porou to make use of their East Coast lands in the 1880s, although it was not until 1909 that legislation was passed to put incorporations on a sound legal basis.

While the early 1930s saw the beginnings of the first government attempts to stimulate Maori economic development since those of Governor Grey 80 years earlier, they were also the beginnings of a Maori migration from their rural land. Population pressure on too little land encouraged Maori people to take up work opportunities in the towns and cities. Today, 80% of the Maori population is in urban areas.

Because the Maori population has grown almost ten-fold this century and is also predominantly urban, the problems stemming from fragmentation of title and ownership,

as well as absentee ownership, have correspondingly increased.

Maori agriculture has had to continue to struggle against many adverse factors: the lack of adequate finance, managerial skill and advice; too small a productive unit and too little diversification; lands of marginal quality that are often remote from major markets; and occupations such as dairy farming that work against Maori preferences for group activity and cohesion.

Two major inquiries in the 1960s, the Hunn report and the Prichard-Waetford report, both of which dealt in some detail with the future of Maori land, put forward solutions that were overtly Pakeha in orientation and adopted a "use it or lose it" philosophy towards the land. Government legislation, particularly the 1967 Maori Affairs Amendment Act, reflected this approach. But the wheel was beginning to turn. The Maori land protests from the mid 1970s onward, and the steady revival of Maoritanga in an urban setting, began to restate traditional Maori preferences about the use of their land. Turangawaewae, and inseparable from it the development of a viable economic base, has resurfaced as a fundamental part of being Maori.

The stress now is on the retention of the remaining land as a heritage that all Maori can benefit from. Individual right of ownership is being increasingly countered by the argument that Maori freehold land is a communal resource that should be collectively owned again, through incorporations, trusts, tribal trust boards, and other suitable forms of group management. Fragmentation of ownership is no longer necessarily an evil, but a path to making the tribal lands communal again.

Part II of this publication goes on to deal in detail with those contemporary problems - resulting from decisions made in the past - that inhibit the use of Maori land. As well, it investigates a number of possible responses and solutions, and looks at how the Maori preference to retain their land and use it as a means to control their future development can be accommodated with New Zealand legal, planning and land-use systems.

PART II: MAORI LAND - PROBLEMS AND RESPONSES

CHAPTER 8: MAORI LAND TODAY

Maori land, as discussed here, is what remains in Maori ownership of the approximately 27 million hectares of tribal lands that the Maori held before the Treaty of Waitangi.

Under New Zealand law, three types of Maori land are defined:

- customary
- reserved and vested
- freehold.

Of these three types of land, Maori freehold predominates and is the main focus of this discussion paper. But first, some of the features of the other types are briefly described.

Customary land

This was land originally 'owned' by Maori people before title had been determined by the Native Land Court. All land in New Zealand before 1840 was regarded as Maori customary land, as this was the date chosen in 1866 by the Native Land Court from which to determine specific ownership or possession. Most customary land has since been retransferred into freehold titles by the Maori Land Court, or ceded to the Crown. From 1909 the Maori people have not been able to lay claim to customary land ceded to the Crown unless the Crown agrees that it is Maori customary land. Customary land will play no further part in this paper because, while the total area is unknown, it is believed to be insignificant. A submission to the 1980 Royal Commission on the Maori Land Courts claimed that: "if any customary land still remains it would by-and-large consist of rocky, barren islands and some tapu land excluded from Crown grants". (Centre for Maori Studies and Research, University of Waikato, *Submission to the Royal Commission on the Maori Land Courts*, p. 1.)

However, while the land area may be insignificant, we should note the Maori viewpoint that the Crown should have to prove its title to all Crown land, and if it cannot, then title should revert to the Maori owners.

Reserved and vested lands

These totalled some 27,600 ha in 1977 according to Appendix 1 of *Farming of Maori Leasehold Land: Report of the Committee Appointed to Investigate Problems Associated with Farming Maori Leasehold Land* (known as the Metekingi Report).

At the time of the large-scale 19th century land purchases, areas of land were reserved for Maori use, or reserves were created if the Crown believed tribes had been made virtually landless. Other land was reserved following the confiscations after the 1860s wars, and again when the Crown established townships on Maori land such as Tokaanu, Te Kuiti and Rotorua. Vested lands resulted from various government investigations into Maori land at the turn of the century. Those lands considered unusable or excessive to a tribe's needs were vested in a board for lease to settlers.

All reserved and vested lands were administered by the Crown in trust for the Maori

owners; some of these lands were in fact sold, or used for Crown purposes such as universities, others were leased in perpetuity and the income distributed to the Maori owners. Eventually, administration passed to the Maori Trustee, and the Hunn Report revealed what was left in 1960.

Maori Reserves of (mainly) South Island and lower North Island	24,200 acres (9798 ha)
Taranaki Reserves	71,600 acres (28988 ha)
Reserve sections in townships	200 acres (81 ha)
Vested for leasing	193,000 acres (78138 ha)
	289,000 acres (117005 ha)

A Commission of Inquiry into Maori Reserved Land in 1974-75 resulted in special legislation allowing most of the above land to be vested in Maori land incorporations and trusts. It then ceased to be reserved land and became ordinary Maori freehold land, but was still subject to the reserve leases.

Consequently, little reserved and vested land now exists but the spectre of it remains in the perpetual leases that limit the development options available to the present Maori owners of the former reserved lands. Some of these difficulties are examined in the section entitled *Greater control of Maori development by Maori people*, pp. 87-88.

Maori freehold land

The current extent of Maori freehold land is 1,317,517 hectares according to the 1983 Department of Statistics' *Year Book*. This represents 5% of New Zealand. Most of the Maori freehold land is in the North Island, where it forms a band across the centre of the island and makes up 11% of the total land area. But the relative certainty of these numbers masks a good deal of confusion about the nature and extent of Maori freehold land.

For instance, the simple proposition that Maori freehold land is owned by Maori, and general land (up until 1975 called European land) is owned by Pakeha, does not hold up at either end. Maori own both Maori land and general land. Pakeha own general land and many have also bought into Maori freehold land.

It is difficult to distinguish accurately between Maori freehold land and general land. The Maori Affairs Act 1953, which defines general land, Maori freehold land, Maori customary land and Maori reserve land, is not clear. The major difficulty is in the distinction between general land and Maori freehold land.

The 1980 Report of the Royal Commission on the Maori Land Courts went into some detail about the complexities surrounding the Act's definition of Maori freehold land. In the end it settled on what seemed a simple and practical definition:

> For the purposes of our enquiry we will take Maori freehold land to mean that land which comes under the jurisdiction of the Maori Land Court, though we recognise that in certain instances the Court has jurisdiction over general land. While this may be criticised as begging that question, a complete precise

definition would only confuse matters in our present discussion. (*The Maori Land Courts: Report of the Royal Commission of Enquiry*, p. 23.)

Even this is hardly secure ground as the powers and jurisdiction of the Maori Land Court have been changed in the past and seem likely to change again in the future. And although this type of definition can be converted into some kind of physical reality - the 1,317,517 hectares mentioned earlier - it is doubtful whether the figures in the *Year Books* actually represent the amount of Maori land still in Maori hands.

The series in the *Year Books* going back to 1960 is incomplete, with figures not being given in some years or being repeated in others because updates were not available. The figures from 1960 to 1965 repeated a Department of Lands and Survey estimate of 4,072,398 acres (1,648,050 ha). From 1966 to 1969 the *Year Books* quote 3,906,565 acres (1,580,939 ha) which is taken from the 1965 *Report of the Committee of Enquiry into the Laws Affecting Maori Land and the Powers of the Maori Land Court* (known as the Prichard-Waetford Report). These figures were estimates as well.

There is a gap in the series from 1970 until 1975, when the figure of 1,323,404 ha appears in the 1975 *Year Book*. This number is then repeated until 1980. In 1979 the Department of Maori Affairs estimated that there were 1,224,104 ha of Maori freehold land and published this in their *Annual Report to Parliament* for that year.

The Maori Affairs estimate seems to have formed the basis for the current series in the *Year Book:* 1,217,646 ha in 1980; 1,212,952 ha in 1981; and 1,317,517 ha in 1983. However, this latest figure casts some doubts on the accuracy of these statistics as an extra 100,000 ha of Maori freehold land has suddenly appeared in the official statistics.

A look at the legislative changes in the 1960s and 1970s which altered the classification of Maori freehold land will give a good idea as to why the statistics are so chaotic.

Despite most Maori people wanting Maori land to remain as a separate land category, government policy until recently has been in the opposite direction. Since 1909 the legislation has been directed to "removing" Maori land from the record once the number of owners drops to a manageable size. Sale or transference of ownership begins this process. As soon as Maori freehold land is sold, it ceases to be Maori land. This includes sales to other members of the tribe. In the case of solely-owned Maori land, transferring or "willing" has the same effect, even if it is by a parent to a child.

To hurry individualisation along, amendments were made to the Maori Affairs Act in 1967 that converted Maori land into general land if it was owned by four people or fewer or by an incorporation. So a considerable amount of Maori land ceased to be classified as such at the stroke of the legislator's pen. Enough concern was voiced by Maori people that in 1975 further legislation was passed changing land owned by Maori incorporations back into Maori land. Possibly some of this incorporation land trickled into the Maori Land Court records between 1981 and 1983 and accounts for the statistical increase in Maori land during that period. The Maori Land Court records are the basis of the present statistics for Maori land.

Other factors that influence the accuracy of any statistics on Maori freehold land include the fact that, according to the 1980 Royal Commission, some 29% of Maori land titles are unsurveyed; and doubts about the accuracy of the Maori Land Court records as to title areas.

T.R. Nikora, a registered surveyor and Planning Officer with the Department of Lands and Survey, in a submission to the 1980 Royal Commission, gave an example of the inaccuracy of the Maori Land Court's records of title areas when they were used as a starting point for the inter-departmental Ruatoki Land Use Study.

> Total title areas were produced and this was then compared with a total area within a known periphery from survey information in the Department of Lands and Survey. The two did not compare, but while there was confidence in survey information the conclusion was that there can be no confidence in title information and that land remained unaccounted for somewhere. (T.R. Nikora, *Submission to the Royal Commission on the Maori Land Courts*, No. 57, p. 4.)

For these reasons it seems unlikely that definite numbers can be produced for the amount of Maori freehold land. There is probably in excess of 1 million ha, but how much in excess is not known at this point.[1]

This would not matter all that much if it were purely a matter of statistics, but, as will become apparent, the factors that make it impossible to calculate accurate numbers are also factors which limit the full use of Maori freehold land.

Owning general land

It is true that Maori people own general land (such as an urban house section) as well as Maori land, and that just to concentrate on the various types of Maori land understates the total amount of land in Maori ownership. However, it is not possible from the Land Transfer Office records to find out the extent of general land in Maori hands. Moreover, whether the Maori people as a group own more land in total than the 1.3 million ha of Maori freehold listed in the 1983 *Year Book* is not the point at issue.

The fact that there are Maori owners of general land does not invalidate the point that the Maori people have a special relationship with Maori land, whether it is freehold, customary or reserved, and that there are also unique difficulties associated with the use of this land. Sometimes this special relationship may be with general land as, for instance, when a marae is solely owned and so is classified as general land. The distinction is between land that may have been purchased for personal use and land that has been inherited from generation to generation, irrespective of its legal status.

Back in 1961 the *Report on Department of Maori Affairs* (referred to as the Hunn Report) asked the question: "Would the Maori people regard home ownership as an acceptable basis for turangawaewae today?" That is, would they see their ownership of general land in a personal capacity as still fulfilling some of their traditional relationship with the land?

Turangawaewae means literally a standing place for the feet, and it commonly refers to the assertion of rights as tangata whenua. To be able to prove turangawaewae, Maori people have to be able to show they have ownership rights in the tribal lands.

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1 Latest estimates (1986) using the computerised MAIA System put the figure at 1.18 million hectares.

When the Hunn report asked its question, the answer was a quiet no. Since then, that response has been an increasingly resounding one. So much so that the 1980 Royal Commission on the Maori Land Courts had this to say about turangawaewae when comparing the evidence it heard with what had been said to the earlier 1965 Prichard-Waetford Report on Maori Land and the powers of the Maori Land courts.

> The widespread change in Maori thinking about the ownership of small undivided interests in Maori Land is well illustrated by comparing views often expressed to us with those in the Prichard report. The whole philosophy of that report was that multiple ownership resulting in fragmentation and a vast number of uneconomic interests was an evil. Everybody's land was nobody's land. The idea of retaining small interests because of considerations of "turangawaewae" was only *mentioned twice* to that committee of inquiry and was never a serious issue. *Fourteen years later the climate of opinion has markedly changed.* Turangawaewae has become an important consideration. Conversion is not generally favoured. (*The Maori Land Courts: Report of the Royal Commission of Inquiry*, pp. 24-25, our emphasis.)

The point is that Maori freehold land represents the bulk of what is left of Maori tribal lands. These are the lands that the current owners' ancestors occupied, used and controlled for hundreds of years and numerous generations. Today's Maori owners of this land are the direct descendants of those ancestors, and their rights to ownership - and hence their connection with the life of the tribe, their turangawaewae - come from proving a continuous genealogical link.

A piece of general land, on the other hand, unless it provides ancestral connections, is just land - there may be pride of ownership, as there is for Pakeha, but that is all.

Maori culture remains tribal in essence, and so maintaining the link between the tribal members and the tribal lands is still crucial.

> Although these feelings are Maori, for me they are my Tuhoetanga rather than my Maoritanga. My being Maori is absolutely dependent on my history as a Tuhoe person as against being a Maori person. It seems to me there is no such thing as Maoritanga because Maoritanga is an all-inclusive term which embraces all Maoris. And there are so many different aspects about every tribal person. Each tribe has its own history. And it's not a history that can be shared among others. How can I share with the history of Ngati Porou, of Te Arawa, of Waikato? Because I am not of those people, I am a Tuhoe person and all I can share in is Tuhoe history. (John Rangihau, "Being Maori", *Te Ao Hurihuri: The World Moves On*, pp. 174-175.)

Therefore, Maori freehold land - the remnant of the once extensive tribal lands - continues to play a central role in the development and maintenance of Maori tribal identity, as well as continuing to be a source of conflict and misunderstanding between the Maori and Pakeha worlds.

CHAPTER 9: CHARACTERISTICS OF MAORI LAND

Maori freehold land has a number of characteristics:

- often marginal in quality
- often remote from major markets
- in small and discontinuous portions or parcels
- frequently unsurveyed and without secure legal title
- subject to multiple ownership and succession
- has a high number of absentee owners.

These points can be grouped into two main headings:

- physical characteristics
- ownership characteristics.

Physical characteristics of Maori land

No recent and comprehensive study of the characteristics of Maori land or how it is used has been done, but some impressionistic information is available in general terms and some specific land-use studies have been done of areas with considerable Maori land holdings.

Joan Metge has had this to say about the quality of Maori land:

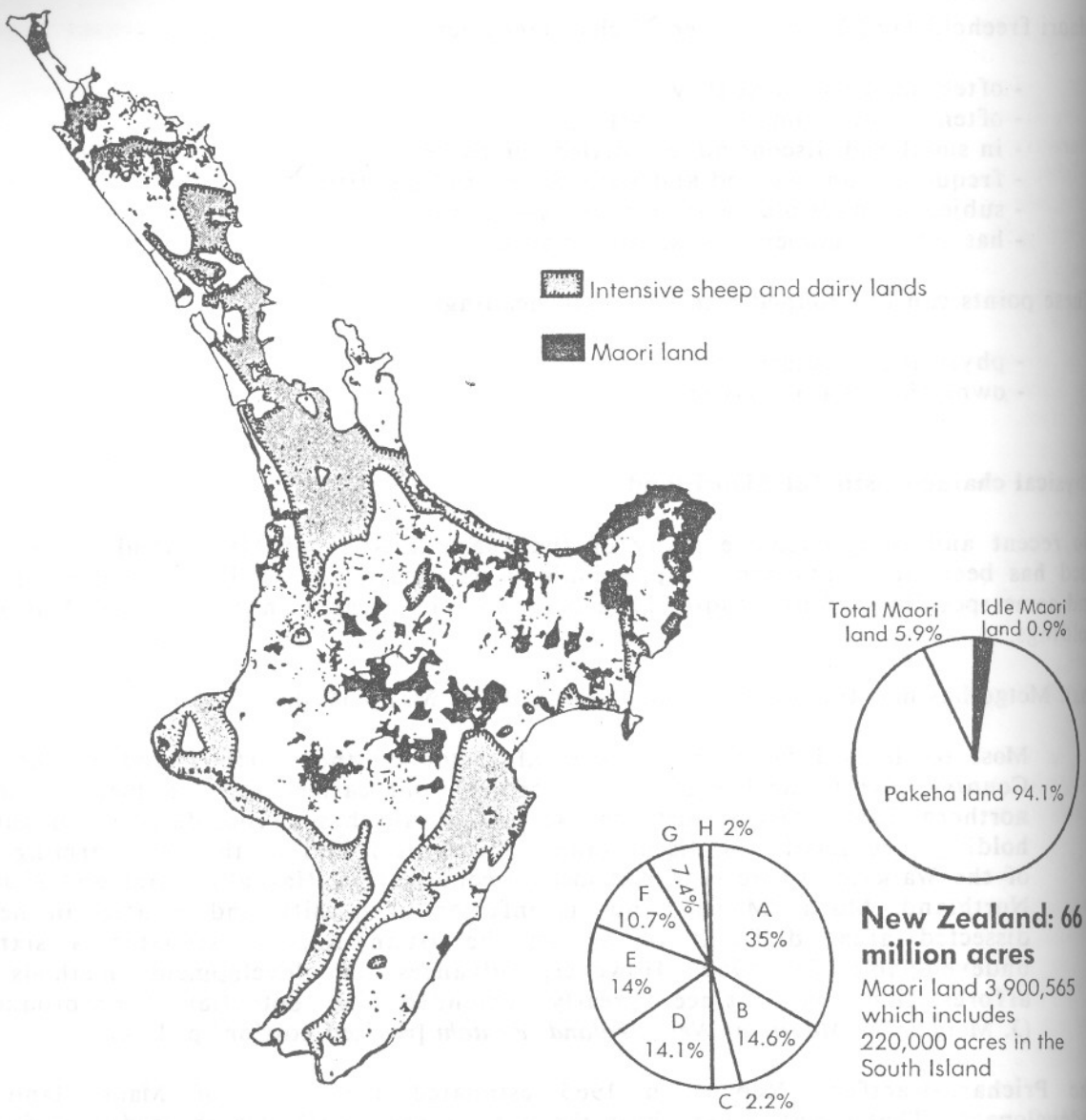
> Most of it is located in the central sector of the North Island in the King Country, the Central Plateau, the central and eastern Bay of Plenty, and the northern East Coast. Northern Northland also has a considerable amount but holdings are small and discontinuous. Little is found in the rich farming areas of the Waikato, where land was lost by confiscation, Hauraki Plains and Southern Northland. Much "Maori Land" is inferior in quality and located in heavily dissected areas difficult of access; the Hunn Report estimated a sixth as undevelopable in 1960. However, advances in development methods and afforestation have since greatly extended its potential for production. (J. Metge, *The Maoris of New Zealand, Rautahi* [revised edition] p. 110.)

The Prichard-Waetford Report in 1965 estimated that 7.4% of Maori land was undevelopable. That seems to have been the last extensive study which used some form of use classification. At that point Maori land-use broke down as shown on the following page.

Since then the only other major study that has looked at Maori land holdings has been the 1978 report by the committee appointed to investigate problems associated with farming Maori leasehold land. Referred to as the Metekingi Report, it published a tenure classification, and so is not directly comparable with any of the earlier studies. Its breakdown of the various administrative structures involved in the development of Maori freehold land was as follows:

- section 438 trusts account for 2.4% of land use
- leases for forestry, pastoral farming and horticulture account for 18.7% of land use

Map 1: Maori rural land in the North Island (1965)



New Zealand: 66 million acres

Maori land 3,900,565 which includes 220,000 acres in the South Island

Use of the Maori land in the North Island, 1965

A Leased or under development by Board of Maori Affairs
B Under active incorporation
C Under inactive incorporation
D Farmed but not leased
E Unoccupied but probably suitable for development
F Unoccupied, probably suitable for forestry
G Unoccupied, probably of no use
H Reserves

Source: A.C. Walsh, *More and More Maoris*, p. 19

- incorporations account for 25.2%
- development blocks under the control of the Department of Maori Affairs account for 8.2%
- other Maori land (unoccupied, occupied without tenure or freehold) accounts for 45.5%.

(Source: *Farming of Maori Leasehold Land*, Appendix 1.)

There is, however, some doubt as to the overall accuracy of the Metekingi Report figures. In particular, the area of land administered by Maori Affairs Act section 438 trusts only included land under lease, whereas the land area for Maori incorporations included *all* land, whether or not it was leased. As a consequence, the figures for section 438 trusts are understated and those for land unoccupied, or occupied without tenure or freehold, overstated.

What would be useful to Maori landowners, local authorities and other people or organisations involved in the use and development of Maori land are some reliable statistics for both tenure and land use, provided on a tribal as well as national basis. Information organised in the following way could provide some useful comparisons of land use and tenure trends.

Major administration forms are:

	Leased	Managed	Total (hectares)
Maori Trustee			
S438 trusts			
Incorporations			
Board of Maori Affairs			
Not formally administered			

The major use forms are:

	Leased	Managed	Total (hectares)
Pastoral farming			
Forestry			
Horticulture			
Mining or commercial			
For reserves (natural state)			
Not commercially used			

However, as well as being costly, the completion of this exercise would depend on information not available at present and which may be extremely difficult to obtain in some districts.

Ownership characteristics

A major hurdle to the economic, social and cultural development of Maori land is the title system that was foisted upon the Maori owners by successive governments and perpetuated by the Maori Land Court once it began its task of individualising Maori customary and communal title in 1865.

The effects of this system have been to stymie both individual and collective Maori enterprise. Chief Judge Durie of the Maori Land Court has pointed out that: "'Maori titles' as they are called, do not reflect the traditional Maori way at all. The defined but fractionated and absentee ownership of today accords neither Maori tradition nor British legal preferences and modern Maori titles are as much an impediment to Maori communal enterprise as they are to individual enterprise." ("New Approach to Maori Land in the 1980s with Particular Reference to its Settlement and Resettlement in the Northern half of the North Island", *Address to the NZ Geographical Society*, 1980.)

When the Maori Land Court began its investigations into title some of the first title grants were on a communal basis. But these were few in number and communal ownership today is rare. At first, titles were awarded to ten people or fewer; and while it may have been intended that they held title for the whole tribe, most became absolute owners in their own right. Later, the names of more than ten members were put on a title, but it was uncommon for any one title to be awarded to all the members of a tribe. Instead, it was usual to break up the tribal lands into allotments, putting some members into one and others into another. Often, one individual would represent a family and so not everyone would be on the title. As a result of this process, the land was cut up into parcels that ignored traditional rights of use. Many people became dislocated from areas they had been previously associated with; others with legitimate rights of ownership were left totally landless.

In this way, individual ownership of the tribal lands became established. Inevitably, people applied to have the block to which they had the legal title defined and cut out, either to use themselves or to sell. Thus began the breaking up of the tribal land as an integrated unit. The right of the individual to sell their land title with or without the approval of their tribal elders has contributed significantly to the subsequent decline in Maori freehold land.

At the same time the Maori Land Court adopted a policy for the inheritance of land interests that was believed to follow Maori custom, but has had the effect of fragmenting ownership to an extraordinary degree in some cases and of creating absentee ownership. Children were able to inherit in equal shares the land interests of both their parents with no requirement that they continue to live with the tribal group. As generation succeeded generation - many of them leaving no wills - the land interests split in a geometric progression. And with the rapid increase of the Maori population in the 20th century, the splitting of land interests has continued to multiply. Figure 3 shows the potential for future fragmentation, since most Maori people under the age of 30 have yet to inherit their land interests.

The combination of individualisation of title and succession through both parents has had profound social consequences as Hugh Kawharu has noted:

> ... the trend towards individualisation of title through partition, together with bilineal succession, has contributed much to the cultural hiatus in which the Maori now finds himself. It has brought diffusion of control over tribal estates, a reduction in the incentive to live in a given locality, and a dissipation of resources through fragmentation. When, added to this, there is a right to alienate interests regardless of kin obligations in general and (tribal) community authority in particular, an individual's judgment is bound to be vulnerable to whim and passing circumstances. Accordingly in a milieu of rewards not fully understood and of customary sanctions felt to be of little account, unity of purpose in community and sub-tribal organisation has been slow

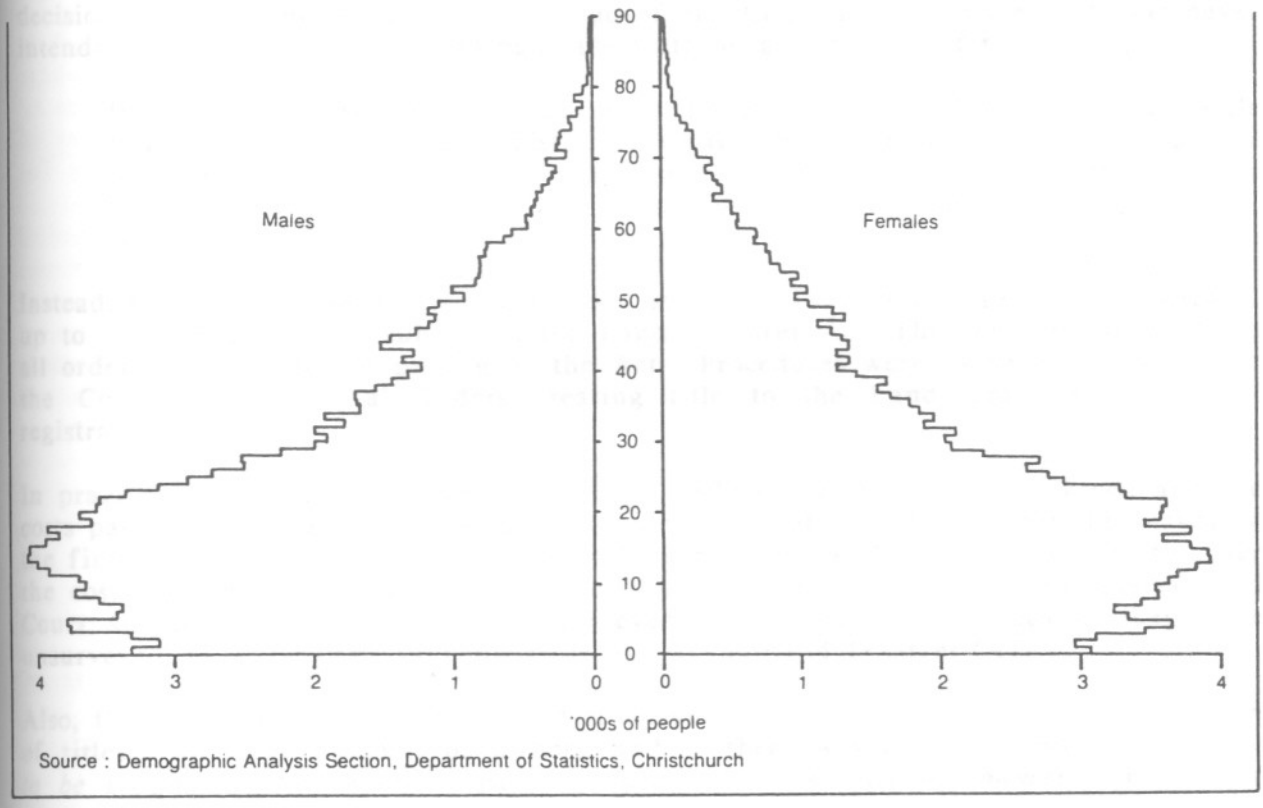
to appear and difficult to maintain. (I.H. Kawharu, *Maori Land Tenure*, p. 108.)

The administrative consequences of individualisation of title and succession through both parents have also been profound. It is these factors that have put many obstacles in the way of the efficient use and control of Maori freehold land, whether for cultural, economic or social purposes.

The main problems have been:

- insecure title, leading to difficulties in getting loans and maintaining ownership;
- poor title records, making it difficult to trace ownership and the exact size and position of land;
- unsurveyed blocks and irrationally partitioned holdings often with no access, making it difficult or impossible to use the land legally;
- fragmentation of land, creating small and often uneconomic units;
- multiple ownership and fragmentation of ownership, making it difficult to use the land or get agreement from the owners on land development options.

Figure 3: Age-sex structure of the Maori population at 31 March 1984



Source : Demographic Analysis Section, Department of Statistics, Christchurch

CHAPTER 10: TITLE PROBLEMS

Registration of title

Almost all privately-owned land in New Zealand is registered at the Land Transfer Office. The main elements of this system are that a certificate of title is granted to the registered owner and the state guarantees title. The certificate of title is the legal core of the system: it describes those who hold or have interests in the land, gives the exact boundaries of the land, and notes any encumbrances such as mortgages or rights of way. Anything that affects the title is recorded on the certificate.

It offers a simple, accurate and cheap system of land registration. Legal ownership of land occurs not because someone has agreed to purchase the land but because the documents transferring ownership have been registered and the new owner is recorded on the register. The owner is recorded as having a *legal interest* in the land specified on the certificate of title.

Vast tracts of Maori freehold land are not registered in the Land Transfer Office, and so the Maori owners do not have *legal* ownership under the New Zealand land transfer system. There are a number of reasons for this, most of which stem from the establishment of the Maori Land Court.

The Court has provided an additional means of recording title, and even has the power to create title to Maori freehold land, and is bound to keep records of these decisions. But, as the present Chief Judge of the Court has made clear, it was never intended that the Court's decisions be a substitute for a certificate of title.

> It has been convenient to summarise those orders in what are called "Title Binders" but they are administrative things only with no legal significance in themselves, and they are not meant to be substitutes for Land Transfer titles. (E.T.J. Durie, *Submission to the Royal Commission on the Maori Land Courts*, No.11, pp. 66-67.)

Instead, the Native Land Court Act of 1894 made all titles which had been investigated up to 1894 automatically subject to the Land Transfer Act. This was also to apply to all orders made after the passing of the Act. Procedures were to be followed so that the Court could send all orders creating title to the Land Transfer Office for registration.

In practice, however, this never came about. Title orders had to be surveyed and the costs paid for by owners who either could not afford it or did not want the survey in the first place. Sometimes the Crown did the survey and took part of the land to cover the costs, which only aroused Maori opposition to surveys. As a result, the Maori Land Court started keeping records of unsurveyed title orders which, because they were unsurveyed, were incapable of being registered at the Land Transfer Office.

Also, the Crown did not want its land title system made disorderly by the registration of titles with large numbers of owners, and so there was provision that *no title had to be issued in cases where a piece of land had more than ten owners,* even if the owners wanted one.

A further obstacle to the granting of title for Maori land was that a fee had to be paid to register it. This raised the question of who paid when the land was owned by many - a good number of whom did not want the "Pakeha title" anyway?

For these reasons the registration of Maori land at the Land Transfer Office, and hence the granting of full legal title, has been erratic.

Other factors have contributed to non-registration. The Maori Land Court, for instance, has been able through its title orders to grant ownership without survey being completed. For partition orders, which are used to clearly demark an owner's share of the land from the parent title, survey has never appeared to be necessary. This has meant that in some districts as many as 50 percent of partitions have never been surveyed.

Even where blocks have been surveyed, multiple succession has eventually increased the number of owners to more than 10 - sometimes up to several hundreds, with the resulting disqualification from registration.

So, while the Maori Land Court can create title it cannot create a *legal interest* in the land, and it thereby disqualifies the owners from the benefits and legal protections of the land transfer system. Chief Judge Durie has pointed out the drawbacks:

> Thus, those having the benefit of a right of way order of the Court stand to lose that benefit if they do not secure the registration of that order in the Land Transfer Office against the servient tenement. In the same way, leases, transfers and the like still require to be registered in the Land Transfer Office if full security of tenure is desired. (E.T.J. Durie, *Submission to the Royal Commission on the Maori Land Courts*, p. 67.)

The most obvious consequence of this title insecurity is that loan finance is hard to raise. Most lenders in the private finance sector will not lend on properties where there is no registrable and secure title. Nor will the Rural Bank - the major source of rural development finance - lend in these circumstances. This has forced a number of Maori landowners to rely almost entirely on the Department of Maori Affairs for development finance.

Poor title records

No one institution has a reliable record of Maori freehold land titles. This creates considerable confusion and expense in legal fees when any title searching is done or a modification to the use of the land which would affect the title is proposed.

Maori freehold land titles fall into three categories:

- complete on the land transfer register
- incompletely recorded on the land transfer register
- solely recorded on Maori Land Court records.

The resulting problems are obvious. Owners who wish to inspect their certificate of title at the district Land Transfer office may find there is no record of their land there. Any record may be held at the nearest Maori Land Court. Even if there is a certificate of title at the Land Transfer office, it is often "invalidated" by the fact that the certificate does not bear the name of the existing owners. These would have to be confirmed by the Maori Land Court.

At the district Maori Land Courts, the title records are in many ways inadequate. Among the most common inadequacies are:

- inaccurate or no description at all of land
- poor or missing diagrams
- missing plans
- incomplete or inaccurate ownership lists
- roadways, rights of way, etc. not recorded
- computation mistakes.

These complications obviously impose time and financial costs on the owners which may exceed the actual worth of their land interests. This has led to apathy among owners who, thinking that they have only a "spadeful" interest in their tribal land, have not bothered to find out and may not know where the land is. Their children will be placed in a similar situation. Also, an awareness of these probable difficulties and costs will not encourage owners to want to develop land that is being under-used and has not been registered. Updating ownership lists was described by the 1980 Royal Commission of Inquiry into the Maori Land Courts as involving "a formidable amount of work" as their own table shows:

Table 1: Estimate of time to bring ownership lists up to date

District	Estimated Time (Years)
Waikato-Maniapoto	10
Waiariki	About 50
Tairawhiti	Not less than 3
Aotea	More than 5
Ikaroa	Up to 4

There are a number of reasons why the Court's ownership lists are outdated. First and foremost is the fragmentation of ownership caused by each deceased owner's land interests being inherited equally by their children or near relatives. The job of compiling and recompiling lists of owners, and accurately calculating and recording their interests, has outstripped the Maori Land Court's resources. This has meant that there are now a number of serious inaccuracies in the ownership lists. For example:

- Inaccuracies and omissions from previous recordings may have resulted in some owners being missed off existing ownership lists - and so future successors may be alienated from their "rightful" land interests. The main reasons for this have been past "arranged" successions, "wrong" successions to "wrong" names, and compulsory conversions.

- Owners frequently have aliases or nicknames which have not only confused the recorders of the ownership lists but also anyone involved in conveyancing, searching out owners or establishing who has a succession right to the land interests of deceased owners who are still named in the ownership lists. Other problems have stemmed from some owners using different names in different blocks of land.

- A number of deceased people are recorded as current owners; this has come about because the deceased person's successors:

- did not know there were any land interests to succeed to;
- did not know the procedure for succeeding to those interests; or
- deliberately avoided succeeding to them as they had such small "uneconomic" interests that they feared being removed from the record, making them landless.

- There are now an enormous number of wrong or inadequate addresses.

Further complications have been introduced into the ownership lists through sales of shares in the land to Pakeha, the Crown and Maori outside the kin group; and through successions outside of the kin group, either through wills or people dying intestate.

Unsurveyed blocks and irrational partitions

The owners of unsurveyed blocks of Maori freehold land have a less secure title, which can limit their options for using the land. But to complete these surveys now is an extremely time-consuming and costly operation. It was estimated in 1980 by the Royal Commission of Inquiry on the Maori Land Courts that it would cost $2.1 million. Since 1978 the Department of Lands and Survey has had a special budget of $50,000 a year to survey Maori partitions, at which rate it will take 40 years to complete the task. The current programme is directed towards lands considered to be high priority because of the potential benefits to the owners.

Also, even if all titles are surveyed many of the partitions they relate to will not conform to current land-use regulations. Many partitions are extremely long and thin, or houses are sited on someone else's section because of irregular partition. Significant details relating to roading and other physical features were sometimes overlooked or not taken into account when actual partition applications were made. This has resulted in some areas of Maori land being completely landlocked by surrounding general or Crown land.

The 1980 Royal Commission of Inquiry on the Maori Land Courts condemned the mess that Maori freehold titles had fallen into, but acknowledged that the cost of doing anything about it could be prohibitive. The Department of Maori Affairs was clearly of this view:

> The ideal is that all Maori land should be on the land transfer register, but it is doubtful if this is even remotely practicable. Even if the questions of the survey were all cleared up there would remain difficulties of multiple ownership with large numbers of owners holding small shares. (Department of Maori Affairs, *Submission to the Royal Commission of Inquiry on the Maori Land Courts.*)

Title problems - suggested solutions

Notwithstanding the difficulties involved in giving full legal recognition to Maori land titles, the Royal Commission recommended the following courses of action:

> (52) Because the system of recording details, including the ownership of Maori land within the records of the Maori Land Court has led to large areas not being registered in the Land Registry Office, urgent consideration should be given to the provision of resources to enable all Maori land to be quickly brought under the land transfer system and the registration there of all Court orders affecting that land...

(53) The feasibility study about a national office of land record initiated by the Minister of State Services could provide the Government with a plan showing how best the ownership records of Maori land can be transferred to the proposed central office of land record (or the Land Registry Office). If this information cannot be provided by the study then a special working party composed of representatives of the appropriate state agencies should be set up without delay to provide the information...

(54) The registrars of the Maori Land Court should have a statutory exemption from the payment of registration fees to the Land Registry Office to enable them to overcome one of the impediments which prohibit them at present from registering many Court orders...

(56) A feasibility study of the use of electronic data processing in the work of the Court should be undertaken by the department and the State Services Commission...

(59) The survey section possessed by the Department of Maori Affairs prior to 1971 and then transferred to the Department of Lands and Survey should remain where it is. There is, however, a need for an increase in cooperation between the Court and the Department of Lands and Survey... (*The Maori Land Courts: Report of the Royal Commission of Inquiry*, p. 132.)

Some of the Royal Commission's recommendations in this area have been adopted in whole or in part. The first steps in the computerisation of Maori Land Court records began in 1985 as one of the functions of the automated Maori land ownership record (MAIA). This system is intended to improve title recording and documentation and make the information more accessible to Maori landowners. It has the added advantage of enabling the Court's records to be put on the same basis as other government computer-based land information systems. Currently these include:

- automated land transfer journal
- automated land transfer index
- automated cadastral map (key of titles by land-block)
- modification of the existing Valuation EDP system.

It is intended that these systems (including MAIA) be integrated into a single Land Information System network. It must be noted, however, that impediments relating to Maori land title will not be fully overcome until Maori land has been adequately surveyed and practical solutions found to facilitate the process of multiple succession.

The Royal Commission had no doubt about the benefits of giving Maori owners a *full* legal title to their land.

> We consider that real advantages would accrue to the Maori people from a State guaranteed system of land title under the control of the Land Registry Office. They would be able to deal with their land under a system much simpler than the present one; there would be certainty of title and hence none of the disadvantages now suffered in borrowing money for land development. Conveyancing would be simpler, and an up-to-date record of title would enable steps to be taken to amalgamate uneconomic blocks and to use aggregation for the benefit of the Maori owners. (*Royal Commission into the Maori Land Courts*, p. 42.)

However, not all Maori owners would agree that the advantages outweigh the

disadvantages. A significant proportion of Maoridom is of the opinion that the present confused state of the titles is one reason why more Maori freehold land has not been sold or alienated, and that this would be the result of full title registration.

The Royal Commission saw this fear as no more than a bogey whose force had been laid to rest now that there were more safeguards against further alienation. But it remains doubtful whether the Maori people feel as convinced. One legacy of the 19th and 20th century drives to acquire Maori land for Pakeha settlement and farming has been considerable suspicion by the Maori people of schemes that may be to their overall benefit if they also make the process of sale and alienation easier.

As will be demonstrated in Chapter 12, whatever possible solutions are proceeded with must take account of Maori preferences for the use of their land and not be just the most administratively convenient solution. The creation of a single system of recording titles in the Land Registry Office will not end all the confusion. Fragmentation of title and ownership add a further layer of difficulty that must also be dealt with if Maori land is to be developed for the benefit of its owners and Maoridom in general.

It must also be remembered that, despite the legal obstacles described so far and an unwieldy consultation process for blocks of Maori land in multiple ownership, a considerable amount of Maori land is in production or is a recognised part of the Maori cultural and spiritual heritage. Any title registration system must find a way of recording all owners' interests, even if they are not formally entered on the certificate of title.

CHAPTER 11: FRAGMENTATION PROBLEMS

The creation of additional titles

The process of partitioning each owner's land interest means that a block of land that starts with a number of owners and one title inevitably ends up split into two or more separated titles. As previously stated, many of these partitions may be too small to develop economically or impossible to develop because they are land-locked or an impractical shape. This process was very common in the past, and was normally carried out to satisfy the wish of an individual owner to demark an area of land for occupation - individual or group housing - or for other family uses, such as a dairy farm. Changing economic conditions, technology, and the sheer impracticality of some activities often meant that the reasons for partitioning the land in the first place ceased to be appropriate. The result: small parcels of land - many of them isolated through the lease or purchase of surrounding land - which are of little or no economic use to their owners.

In some cases, the lands have accumulated a rate debt which is extremely high, particularly where previously lower-yielding areas have been re-zoned for horticultural or semi-urban purposes. To pay the debt off, the land may have to be sold. Frequently, the balance from the sale will not be enough to repurchase tribal lands in the immediate vicinity or usable land elsewhere. In this way some Maori landowners are made landless.

Originally the Maori Land Court could make partitions without further consultation with the local authority or the need to comply with district scheme ordinances, subdivision controls and related by-laws. Partitions have since been subject to the Local Government Act 1974. This imposes some control over the form of the partition and the uses it may be put to.

The Maori Land Court retains certain wide-ranging powers, however, and can decline an order that meets the relevant local authority regulations if it believes the partition not to be in the owners' interests.

The creation of additional owners

Multiple ownership as a particular feature of Maori freehold land dates from the Native Land Court's first determinations of title in 1865.

Once all the owners were listed in the memorials of ownership and succession started, the inevitable process of fragmentation of ownership began. Multiple succession, however, is acceptable to the Maori because it allows them to maintain their ancestral link to tribal lands, no matter how small their interest may be.

With the extremely rapid increase in the Maori population since the turn of the century, the number of owners has increased greatly and the size of their interests or shares diminished accordingly. On the whole, the pattern is towards many minor shareholders and a few major shareholders.

As already described, an owner in common wanting to make sole use of land can apply to the Maori Land Court for a partition order. This divides the title still further as each part-owner has his or her block carved out of the original whole title. The newly-created title itself then becomes subject to succession and possible further partition.

Succeeding to Maori land interests

The estate of any person who died before 1968 and whose land interests have not yet been succeeded to will be dealt with by a judge of the Maori Land Court. It is not uncommon for Maori land interests not to be immediately succeeded to - some of the reasons for this will become clear in the next sections. In fact, the Court in some instances is dealing with successions from the last century!

Since 1968 there have been many changes to the law of succession as it affects Maori land interests. In broad outline, the current situation is that for small estates (less than $20,000 worth of Maori land interests) succession orders can still be granted by a judge of the Maori Land Court.

For larger estates, whether a will has been made or not, succession orders are granted by the Registrar of the Court on application by the administrator of the estate.

Current legislation (passed in 1974) allows the following people to succeed to interests in Maori freehold land when no will has been made:

- the surviving spouse for life or until remarriage; and
- the children (including any ex-nuptial children).

In other words, the emphasis today in succeeding to Maori freehold land interests is on maintaining the bloodline, and so keeping the land within the family and the tribal group.

Potentially, titles and part-shares of titles split even further as each generation inherits and applies for succession orders. There is, however, a provision that allows for a voluntary "arrangement" to be made through the Court so that one or a few of the heirs can receive all the deceased's land interests.

What has been described so far is the process when someone dies without making a will. With a will, the person can leave their Maori land interests to whomever they like - a Pakeha or a member of another tribe - and also the heirs do not necessarily have to succeed to equal shares. In theory, this could mean that fragmentation of ownership is slowed up or even halted.

In practice, however, most Maori people maintain extremely close kinship ties and it is unlikely that only one of the possible heirs - unless the heirs themselves decided otherwise - would inherit all or the bulk of the land interests. In fact, most Maori people die without leaving a will, secure in the belief that their land interests will be distributed according to what has become Maori custom - that is, among the various children in equal shares. And the Family Protection Act would safeguard the interests of the surviving spouse and any children if a will left Maori freehold land interests to outsiders.

Ownership of Maori land by outsiders

On top of the problems already associated with multiple ownership - such as unwieldy and out-of-date ownership lists, the problems of tracing absentee owners, and land interests so small as to be completely uneconomic - a further level of difficulty is introduced by the number of outsiders who own Maori land.

Outsiders can become owners in a number of ways. One way is through estate administration, where the administrator of a large estate may be unfamiliar with the complexities of Maori land law. (It is the administrator who decides how the Maori land interests will be succeeded to in an estate where no will has been made.) Frequently the administrator will apply all or most of the surviving land interests to the surviving spouse, as would be the case if a Pakeha died intestate. If the surviving spouse is from outside the tribe, then an outsider has been introduced into the ownership lists. Not only that, the spouse could remarry and leave the land interests to the second spouse or the children of that marriage, and so the land interests become even more distanced from the tribal connection.

It is not the Registrar's job to challenge the legality or factual correctness of a properly filled-out succession order; it is purely the administrative function of vesting the land in those people named in the application. This means that in some cases, such as the sequence of events just described, the succession or vesting orders would be contrary to the law as it now stands.

Maori freehold land ownership lists contain various other people apart from the descendants of the original owners. Wills are one way this has happened, and a number of non-Maori individuals and charitable or church organisations own interests in Maori freehold land through that avenue.

Also, to try and combat what were seen as the evils of fragmentation of ownership, various legislative amendments have been made that have seen outsiders introduced into the ownership lists. In many cases these have been leaseholders buying an interest in the land they farm. This "live-buying" has been one of the most significant provisions resulting in non-Maori ownership of Maori land interests. Non-Maori may own an undivided interest in Maori land or be one of the tenants in common, although, since the Maori Affairs Amendment Act 1974, a non-Maori has to buy all the interests in a particular block of land or none at all. It is no longer possible for a non-Maori to buy some interests now and some later to eventually become the sole owner.

Outsiders from other tribal groups also pose substantial concerns for the Maori owners who have ancestral claims to their lands. The most obvious "outsider", however, is the Crown.

The Crown, through the Maori Trustee, is in many ownership lists and is often the majority owner. The Maori Trustee's holdings come from a number of sources:

- by buying, on behalf of the Crown, land the government wanted to take over, and which - through a process of buying up the owners' interests and then partitioning out the block - has been the main vehicle for the Crown's acquisition of Maori land since 1909;

- by compulsorily buying small "uneconomic" interests under a certain value; and

- by "live-buying" from Maori who wished to sell and selling to other Maori owners in that block or to other Maori as prescribed by statute.

The compulsory buying of "uneconomic" interests through the conversion fund has now ceased, but because interests are often difficult to sell again the Maori Trustee has ended up as an owner in many blocks of Maori freehold land. It was the activities of the conversion fund that often stopped people succeeding to their Maori land interests. Better to leave it in the name of the deceased ancestor than to apply for a succession or vesting order to a land interest smaller than the $50 minimum and have this