MAORI LAND

George Asher and David Naulls

Planning Paper No. 29
March 1987

Cover illustration: from a monoprint by Robyn Kahukiwa

ISSN 0111-0470
ISBN 0908601-53-0

New Zealand Planning Council, PO Box 5066, Wellington.

FOREWORD

On land was woven the distinctive social fabric of the independent Maori tribes. The Maori and the land became so inextricably entwined it seemed one could not exist without the other. *Maori Land* questions whether land can still underpin the social structures of Maoridom. Can the remaining Maori land underwrite tribal self-management free of state funding? What is its potential in economic terms? Will the cultural association of the Maori with the land survive other than on the shelves of libraries among the myths and legends of ancient times? Should the story of Maori land be kept from the children of Otara lest they learn not the love of the land but only the painful reality of their severance?

This report sheds new light to many on the paradoxes confronting Maori people in the ownership of Maori land. Through no fault of the Maori, that which custom dictates should be tribally-owned is held by individuals in defined shares. Within some tribal territories vast acreages remain, while in others there is little or nothing. Within those areas with plenty, some hold large shares while many have less than a foothold. It is at once apparent why the development of Maori land is seen as crucial for some but not for all. For many Maori - for the majority, I suspect - the oasis of Maori land is but a mirage.

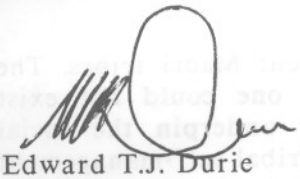
Can that change? The report exposes the need for radical thinking. Perhaps some areas of tribal foreshore, lake, river or forest can be held in perpetuity for the children of the tribes in cities, some corner of the world that is forever theirs, their cultural and holiday havens from paved streets where they too will know the love of the land. It may be, too, that from the small shares of many an economic base will emerge for the tribes, without threatening the larger shares of those who have worked hard to keep the home fires burning.

The opinion 'our future lies behind us' encapsulates the Maori world view. True to that perspective, the authors of this work for the New Zealand Planning Council have turned to the past to explain the present and pose the questions for the future. Can the remaining Maori land be made more secure? Can the law be bent to the maintenance of kin-group structures and customary blood-lines? Can tribal objectives be sustained without displacing hard-earnt individual rights? Can land development be stimulated and yet reconciled with customary norms? What compromises may have to be made?

The report does not presume to offer answers, though it provides some excellent clues. It will assist Maori people to find their own direction, while alerting others - in government, local authorities and the private sector - to the need to provide special strategies to accommodate the Maori land circumstance. For the issues are not confined to Maori people. They affect us all. As the report clearly demonstrates, Maori land as it exists today is the product of national policy, not Maori preference. The ultimate fate of Maori land may well be the final indicator of our performance as a bicultural country.

In promoting this study the New Zealand Planning Council challenges us to confront a major issue in building a better nation. It has brought the question of Maori land

within the purview of national planning and made it relevant to us all. I congratulate the Council on its foresight, and the authors for drawing together the scattered data on Maori land to provide this most helpful compilation.



Edward T.J. Durie
Chief Judge of the Maori Land Court
Chairman Waitangi Tribunal
Wellington

December 1986

CONTENTS

LIST OF FIGURES, MAPS AND TABLES

PREFACE

Maori Land started out as a project to study the land use potential of the remaining Maori freehold land. Quite early on it became apparent that this could not be done without first explaining the historical circumstances that have led to current Maori land use.

From this new starting point, a work emerged that attempted to do two things. First, to relate clearly how the present-day factors that hamper the use of Maori land have resulted from the process of British colonisation of New Zealand. And second, to analyse some of the major problems now associated with the retention and use of Maori land, together with some possible responses and solutions.

Part I of *Maori Land* deals with the historical background and relies heavily on the work of New Zealand historians. In this historical section, we have given considerable emphasis to Maori economic development in the nineteenth century, because the Maori achievement in this area seems to be largely unknown or undervalued by both Pakeha and Maori. The stereotype that Maori people are not interested in business, efficient agricultural production and the like is not supported by the historical record. That a number of Maori agricultural enterprises in both the nineteenth and twentieth centuries failed or did not fulfil their potential was not the result of a lack of inherent ability on the part of the Maori people involved, but rather because the right kind and level of government assistance was not available to them.

Part II discusses the current problems that prevent the effective and efficient use of Maori freehold land in ways that suit the needs of the land's owners. A number of responses and possible solutions are also looked at, with particular emphasis on those that seem to fit in with Maori landowners' social, economic and cultural preferences as far as these are known.

Neither author lays claim to originality in the ideas presented in *Maori Land*. Rather, it has been a matter of bringing together much scattered research, study and discussion into one publication. The report has been intended as an overview for the general reader, and therefore a broad-brush approach has been adopted.

In writing this study, we have both drawn upon the assistance of other people. In particular, we would like to thank Chief Judge Durie of the Maori Land Court; Messrs B. Robinson, Deputy Secretary and Maori Trustee, P. Little, Director of Land Development, and W. Dewes, Office Solicitor, of the Department of Maori Affairs, as well as Joe Williams and Anabelle Jacob for research assistance.

Perhaps the greatest debt is to the Planning Council, its Chairman during the time of writing Ian Douglas, and its Director Peter Rankin, for having the necessary patience and persistence to see this project through to publication.

Finally, the opinions and errors remain our own. And we do not apologise for our view that much more serious attention has to be paid to creating an environment in which Maori perceptions and beliefs about land and its uses have a respected place.

George Asher and David Naulls
Wellington
October 1986

PART I: MAORI LAND - THE PAST AND THE PRESENT

CHAPTER 1: INTRODUCTION

To understand the complexities surrounding the status and use of Maori land in the 1980s it is necessary to understand something of the past. Not just the period before the arrival of the Pakeha when the Maori held the land under a system of traditional tenure, but also the process of colonisation in nineteenth century New Zealand.

Throughout the nineteenth century there was competition between Maori and Pakeha for land, for economic development, and for control as the majority culture. All three issues were seemingly decisively settled by the wars of the 1860s - today the majority New Zealand culture is overwhelmingly European in origin.

The Maori people's conversion into a minority in the country they were the first to settle and civilise has inevitably left scars. The loser in the historical process remembers injustices far longer than the winner, who is likely to characterise such behaviour as an unhealthy preoccupation with the past. But injustices that now seem almost a forgotten part of history to the Pakeha world may be much more alive in Maori society.

Over the past 600 years, Maori needs from the land they have owned and controlled have not changed all that much: traditionally the land was a source of cultural, spiritual, emotional and economic sustenance, and that remains true today.

What has changed is that a number of legal, economic and social changes since the Treaty of Waitangi - not directly of the Maori's own making - have made these needs harder to fulfil in the twentieth century.

Also, the fact that the amount of land still in Maori ownership has declined to a fraction of what it was 150 years ago has made it more urgent to consider the future use of that land.

What would it mean for the Maori people if the remaining 1.3 million hectares passed out of their control? Should any more Maori land be taken for public works, or scenic reserve, or other activities in the "public" interest? How best can the remaining Maori land be used to satisfy Maori social, cultural and spiritual as well as economic preferences? These are probably the most important questions today about the use of Maori land.

To begin to answer them, we have to look at the historical forces that have altered Maori social structure and its relationship with the land forever. And it is in the nineteenth century that these forces are found.

It was in the nineteenth century that the vast bulk of Maori land was sold to Pakeha, that the Maori Land Court (still the most important institutional body in the disposal and use of Maori land) was formed, that fragmentation of ownership and title (which have bedevilled the use of Maori land ever since) began through the application of English law to customary Maori title, that circumstances developed which still see Maori behind Pakeha on every socio-economic scale, and that incorporations were established by the Maori to try and overcome some of the legal difficulties in using their land.

But the Maori's rich connection with the land goes back long before the beginning of European colonisation. The system of land tenure that the Maori had developed by the time of the first contact with the Pakeha reflected a precisely modulated social structure.

CHAPTER 2: MAORI PERCEPTIONS OF LAND BEFORE 1769

Whatu ngarongaro te tangata,
Toitu te whenua!

People perish
But the land is permanent!

To the early Maori, land was everything. Bound up with it was survival, politics, myth and religion. It was not part of life but life itself. Taking culture in its widest sense, there was no part of early Maori culture that was not touched by the land. The continued occupation of a piece of land was the most obvious sign of a link between generations - between those dead, those living and those yet to come - in a society without written records.

An insight into the perceptions and attitudes the early Maori brought to the land would provide a valuable background for attempting to understand the current strength of Maori feeling for ancestral land. Early historical accounts of these perceptions and attitudes are not prolific or detailed in their description, and most information comes directly from Maori individuals themselves, as well as through the continued application of Maori beliefs and practices associated with the land.

The following accounts by contemporary Maori writers, while still no doubt a shadow of the reality, capture the important elements of Maori attitudes to land:

> The Maori loved his land and identified with it. His close, spiritual relationship with the land stemmed from his traditional concept of the basic origin of mankind, deriving from the loving union of the earthmother, Papa-tu-a-nuku, with the sky-father, Rangi-nui-e-tu-nei ...
>
> The great number of Maori place names that have survived commemorate a mass of long-remembered history, mythology and imagery that illustrates the close relationship maintained with the land. Every natural feature bore names that spanned long centuries of Maori occupation. The primeval ruptures of the landscape were named to identify the titanic feats of Gods themselves. The dominant geological features recalled the strength of the supermen of old like Paoa, Tongokako and Rakaihautu. The long summer days with their hours of twilight at Murihiku and Rakiuru were a daily tribute to the magic of Maui, the greatest demi-god of all. The never ending list of names remains a record of the passage of generations of men and women, identifying and preserving scenes of wars, strategems, turmoil, peace, achievement and failure. They begin with birth itself and end in death, but always demonstrate the renewing cycle of life.
>
> The land was regarded as the sacred trust and asset of people as a whole. Laws of tapu were invoked only to protect well defined areas of land, lakes, rivers, waterways, or stretches of the seaside from human exploitation or defilement. Tapu would be applied for a period adequate to preserve or recover the sanctity of the soil or water. There were special cases when the presence of a burial ground, a malign taniwha, or some major infringement of a tapu, would result in the declaration of a specific area as a permanent wahi tapu, or sacred place. Each tribe would have its own sacred place where the mauri or talisman of the tribe was hidden, dating back to the arrival of the original tribal canoe from Hawaiki ...

> The mortal remains of countless generations of ancestors of the Maori were laid to rest in the bosom of the earth mother, secure in her sacred caves, sandhills and the other hidden places on tribal lands. There they remained to bind the glories of the past to the present. At the same time they presented their challenge to the tribe to maintain its integrity in the interests of generations to come. (D. Sinclair, "Land: Maori View and European Response", in *Te Ao Hurihuri: The World Moves on*, pp. 86 ff.)

> At birth a child's pito (umbilical cord) was buried with accompanying rituals as an iho-whenua (connection with the land). For children of rank it was customary to plant a tree over the spot. Thereafter the tree was named for the child as his iho-whenua. It stood as an expression of man over the land and was cited in disputes over land boundaries.
>
> Although the mythology of the Maori established the primacy of man over nature and validated his right to use the natural resources of the Earth-mother, myths, spiritual beliefs and customary usages indicated that man was not above nature. He was perceived as an integral part of nature and expected to relate to it in a responsible and meaningful way. (R. Walker, "Development from Below: Institutional Transformation in a Plural Society", in *Development Tracks*.)

> The Maori anthropomorphised the environment and patterned it intricately with tapu and ritual observances. In the forests a man might almost feel he was among his own kin. The trees were members of another branch of "the great family", and through them flitted the fairies, wood elves, and monsters of the Maori's mythopoetic imagination.
>
> Land and its resources impinged on every one of his social activities from food garnering to fighting, from regaling his guests with hospitality to propitiating his gods. He was a methodical agriculturalist and cultivated root crops on the non-forested land around his settlements. And yet in upwards of ten centuries of occupation of New Zealand, the Maori had made few dramatic changes in its surface features compared with those to be made by the European in his first century of colonisation. (I.H. Kawharu, *Maori Land Tenure: Studies of a Changing Institution*, pp. 40-41.)

From these accounts, then, we can picture a society that spiritually, intellectually, artistically, economically and socially is profoundly and intimately connected with the land.

Complex codes of behaviour were associated with its maintenance under tribal control. The observation of these codes was essential and transgressions were almost always redressed by swift and unmerciful action. Tribal groups were also expected to observe the protocols applying to the lands of neighbouring tribes.

Traditional Maori social organisation reflected and reinforced this relationship between the people and their land. The basic social units were the *waka* (extended tribes and subtribes who claimed descent from members of the original canoes of the "great fleet" and who generally located themselves in geographically distinct regions), the *iwi* (specific tribal groupings), the *hapu* (subtribes claiming an identity in their own right but which for the most part came under the umbrella of the iwi), and the *whanau* (extended family units).

These settlement patterns are still very evident today. And although changes in boundaries and in the geographic location of some tribes have taken place, the pattern appears to have been generally stable over a remarkably long period of time.

In 1846 Sir William Martin, then Chief Justice, wrote:

> So far as yet appears, the whole surface of these islands, or as much of it as is of any value to man, has been appropriated by the natives and with the exception of the part they have sold, is held by them as property. Nowhere was any piece of land discovered or heard of which was not owned by some person or set of persons. (*Parliamentary Papers*, 1890, G.1, p. 3.)

Traditional tenure

> All land was held tribally; there was no general right of private or individual ownership except the right of a Maori to occupy, use or cultivate certain portions of the tribal lands subject to the paramount right of the tribe. (Sir John Salmond, extract in the 1908-1931 reprint of *The Public Acts of New Zealand*, Vol 6, p. 87.)

The commonly accepted view of traditional Maori land tenure is that hapu and whanau groups were allocated the right to use predetermined areas of land according to the specific and general needs of the individual and group. Assigned rights of use and occupation were generally acknowledged by all individuals. Not even a chief could lawfully occupy or use any part of a designated holding without the observation of formal custom and the consent of the individual or group.

While Maori customary title allowed individuals and groups to "own" rights in the use and occupation of land, a veto existed on all alienation, or absolute giving away, of land outside the tribe. This exclusive and absolute right was given to the tribal head or paramount chief, but was generally exercised only after a consensus decision by the tribe.

Individuals or groups from other tribes were also given access rights and even invited or allowed to reside with particular tribes. In the latter case, they were permitted to use, cultivate and occupy sufficient lands as they required for their livelihood. In return, donations in the form of produce were given to the *tangata whenua* (original inhabitants).

Rights to customary land

Although slight tribal differences existed in the customs associated with Maori land tenure, there was general agreement on the basic principles by which tribal rights to land were established.

Take taunaha or discovery

This was a claim to land which had been previously unoccupied and to which there were no known claimants. The land was discovered and duly taken over; subsequent use and occupation made sure it was retained by the discoverer. Land acquired by this right was called *taunaha whenua.*

Take raupatu or conquest

The causes of the disputes which precipitated inter-tribal incidents and warfare were many. For various reasons, however, successful conquests and prolonged occupation of *whenua raupatu* (confiscated lands) were not common, and most of the boundaries established by the original waka are still intact. Conquest without successful occupation did not give the conqueror a right to those lands.

Te ahika

The principle of *ahika* or right of occupation and use was most important in traditional Maori society. It confirmed and was a co-requirement of all other rights to land. But while occupation was often cited as a necessary means of maintaining ownership over land, this could also be done by cultivating the land or by collecting food and other resources from it.

Take tupuna

Another means of establishing rights to land, and a logical consequence of the above three, was *take tupuna* or ancestral right. Succession to customary land was based on being able to prove unbroken descent from an ancestor whose right was recognised. This was done through an accurate recital of one's *whakapapa* or genealogy.

Take tuku or gifting

Many forms of land appropriation took place in this way. The rules, however, were clearly known by all those taking part. The person giving the land had to have sufficient rights to be able to do so, and the tribe had to agree to the transaction. As well, such lands had to be occupied or used by the person to whom they given. *Take ohaki,* or gifts made by a person who was close to death, were a common form of this type of transaction. High-ranking members of a tribe, usually the *rangatira* (chief), made appropriate use of gifting, often to cement alliances with neighbouring tribes or other groups who had assisted them in various ways.

Retaining Occupation

It was generally accepted that the fires of occupation had gone out if a member of the tribal group or the group itself ceased to occupy and use a particular piece of land for three generations or more. In a similar way, a defeated tribe could still lay claim to their land if survivors were still at large in the tribal territory or even if they were still on it as slaves or vassals of the conquerors.

But the best guarantee of maintaining the tribal land and heritage was through having the military strength to successfully defend it.

> The mana of a tribe was associated with a clearly defined territory. Boundaries were marked by physical features such as mountains, rivers, lakes, outcrops of rocks or specially erected boundary markers. The integrity of the tribal territory was maintained by the ability of the group to hold and defend it against other tribes. For this reason the precedence of the group over the individual was expressed in the aphorism "a house that stands alone will be

> consumed by fire". An individual had rights to cultivations and a house site, but access to natural resources in tribal land was shared in common with other members of the tribe. The mana of the land was vested in the chief. Only the group with the consent of the chief could alienate land. (R. Walker, in *Development Tracks*, p. 70.)

It was on the marae that the tribe debated and thrashed out public policy, with all members of the tribe having an equal right to speak (or be represented) and therefore help make the final group decision. And it was through being a member of the tribe and occupying the land that this right to speak on the marae was obtained.

Turangawaewae (a standing place for the feet) is the name for this right as a member of the tangata whenua to take part in the decision-making of the tribe on the marae. Any tribe that occupied a particular locality was the tangata whenua for that area.

Thus there grew up in Aotearoa a finely-balanced system of land tenure, with individual rights of land-use being subordinated to the need for maintaining group unity and survival. All the tribal members lived on, worked and defended the land from which they derived their economic, social and political sustenance. In return they all had some say on the marae in how that land was used or disposed of. Land was both the bread of life and an enduring symbol of where they stood in the world.

CHAPTER 3: 1769 ... THE BEGINNINGS OF A CLASH OF CULTURES

Although Tasman visited New Zealand in 1642 and was challenged by a Maori war canoe, the real beginnings of European contact are with James Cook and Jean de Surville in 1769.

Trade and barter were established: the pig, potatoes, metal tools and muskets on the one hand, and, as Kawharu records, "fresh food and water, timber for spars, flax for rope, occasionally women" on the other. But for forty years it was all rather spasmodic and, notwithstanding a thriving sealing and whaling trade in the South Pacific, it failed to result in permanent European settlement in New Zealand. (I.H. Kawharu, *Maori Land Tenure*, p. 64.)

Even though there had been developments such as tribes operating their own sealing boats, the adoption of the pig and potato, and the growing of some maize, the new European technical innovations had not had much effect on traditional Maori society before 1840 - with one major exception: the musket.

There is something of a historians' dispute about how influential a development the musket was on Maori tribal and social organisation. One picture is of tribal cultivations being neglected in order to produce goods to exchange for more muskets, the male labour force absent on campaigns for up to a year at a time, and semi-starvation in some areas by the late 1830s. On top of that, the death toll has been estimated at over 80,000 during the musket war period of 1800 to 1840.

However, other current historical opinion would regard such a portrait of Maori society in the period just before the Treaty of Waitangi as being overdrawn.

> The musket itself was not crucial; it was not very accurate, especially when poorly serviced. Initially it demoralised the enemy and thereby facilitated killing with traditional weapons; but soon new methods of pa construction and new tactics of keeping a distance and taking shelter meant not only that muskets were ineffective, but also that the more lethal close combat was prevented. (J.M.R. Owens, "New Zealand before Annexation", in the *Oxford History of New Zealand*, p. 46.)

Certainly, the great gusto with which the tribes began to participate in the burgeoning 19th century capitalist economy after the signing of the Treaty of Waitangi in 1840 does not suggest a society utterly demoralised by new methods of warfare. Traditional competition through warfare was transferred to economic competition; and not just between tribes - the Maori was prepared to take on settler society at its own form of economic development.

Up till 1840 the tempo of change was still largely under Maori control:

> ... the cultural framework of New Zealand in 1840 was still essentially Polynesian; all European residents absorbed Maori values to some extent; some Europeans were incorporated, however loosely, into a tribal structure; and the basic social divisions were tribal, not the European divisions of race, class or sect. The history of these years is of tribal societies interacting with each other and with Europeans: societies still traditional but undergoing major cultural change. (J.M.R. Owens, in *The Oxford History of New Zealand*, p. 29.)

Not that aspects of European culture were entirely foreign to traditional Maori society: competition and status had always been a part of Maori life, and the coming of the Pakeha allowed for new developments of it.

Tribes wishing to increase their standing vis-a-vis other tribes would encourage Pakeha to settle with them; token Pakeha were still somewhat rare and had status value. Also, some of the more intangible aspects of European society were fair game for status competition.

> As a variety of new ways of pursuing traditional social and economic rivalries came to hand, they were taken up with unabated vigour. In the 1840s the new enthusiasm was literacy, in particular testaments and prayer books, the universal vehicle of the prized skill which seemed to offer fresh opportunities for successful competition. These were the days in which men walked miles to a mission station in search of books, paying high prices for them in pigs. (A. Parsonson, "The Pursuit of Mana", in *The Oxford History of New Zealand*, p. 142.)

In addition, individual effort and ownership - so often associated with the European influence - were not unknown in traditional Maori society. Group interests overrode smaller group interests or individual interests, but Maori life was by no means totally communal. At the family or individual level, land rights were allocated on a "leasehold" basis that the holders could dispose of within the tribe and use how they liked. Other goods and possessions could be owned individually as well as communally - there were family *and* individual canoes and eel traps, for instance.

It has been recently argued that the right of individual disposal may have extended to the alienation of tribal land in traditional Maori society. (T.B. Layton, "Alienation Rights in Traditional Maori Society: a Reconsideration", *Journal of the Polynesian Society*, Vol. 93, No. 4, December 1984, pp. 423-440.) Although this is opposed to the usual view of traditional Maori land rights, it may help, if true, to explain the Maori enthusiasm for individual enterprise once the coming of the Pakeha provided the means and opportunity.

Maori society, then, could accommodate - and did - a degree of individual entrepreneurship by its members, but the increased opportunities for this created its own stresses on traditional ways of life.

> Timber cutting and squaring on European shore stations replaced the collecting of whole spars, gathered under the chief's direction. Many whaling captains gladly replaced deserting seamen with Maori hands who were considered very reliable. Several became pilots or harpooners... Men who made good this way did not usually wish to break ties with their kin in New Zealand but rather, in order to cement them, brought presents for their relatives or chiefs when they returned. But they were no longer bound by the horizons of the village, or its constraints. This too meant a disturbance (though by no means a total disruption) of the traditional order, and it created new stresses and anxieties. (A. Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, p. 18.)

These new stresses and anxieties were the beginnings of a complex cultural clash: Kawharu has written about the consequences of "a secular, stratified, individualistic society imposing its will upon a religious, egalitarian, group-centred society." (I.H. Kawharu, *Land as Turangawaewae: Ngati Whatua's Destiny at Orakei*, p. 3.)

But it appears the cultural clash was not quite as clear as that: for a Maori, as has been suggested, the European market economy allowed new opportunities for mana and competition; and these developments were largely not unwelcomed.

And on the European side, Victorian ideas of progress, material gain and individual advancement were not without their share of moral idealism. Progress had to be morally based, and while it may be achieved through individual effort, the end result had to be the further development and improvement of *society*, not just the individual members of it.

This partly accounts for the somewhat odd flavour of settler statements on Maori affairs, which often sound like cynical humbug now. Even if government policies towards the Maori people seemed to have the effect of destroying Maori society and most of the race as well, it was thought that this was no bad thing if it meant that the remaining Maori people had been Europeanised enough to take part in the benefits of Western progress, since progress was a moral good in itself.

Consequently, the cultural battlelines between Maori and Pakeha society in nineteenth century New Zealand were much closer than has often been asssumed. This very closeness was perhaps to create unresolvable problems when both societies began to compete more obviously for land and economic development after 1840, and the speed of colonisation began to pick up markedly.

The Treaty of Waitangi 1840: a new phase

The bringing of British sovereignty to New Zealand is often explained in terms of the "fatal impact" theory - that the Maori needed saving from the more unsavoury consequences of European contact, such as the slaughter of the musket wars, disruptions to tribal patterns, drunkenness and licentiousness. James Busby, the British resident, sent a despatch along these lines in 1837 that talked of a state of constant anarchy and claimed complete districts were becoming depopulated.

> These are unusual words to use of a country whose exports were booming, which continued to attract and hold traders and settlers and their families, and in which no missionary had yet suffered serious harm. But the alarmist reports persisted, and gained no little credibility in Britain ... the disorder alleged in New Zealand was taken seriously and helped to convince the British Government that it must intervene more actively in the running of the country. Ever since, it has been part of the humanitarian justification for British rule. The "fatal impact" theory had more to do with British interests than the state of New Zealand at the time. (J.M.R. Owens, in *The Oxford History of New Zealand*, pp. 41-42.)

Indeed, the assumption of British rule in 1840, and the subsequent increase in British settlers to the new Pacific colony, had far more of a "fatal" impact on Maori society than what had been going on *before* 1840. This can been seen in the effects of European diseases on Maori communities in the years following the treaty.

> Throughout New Zealand the mortality rates were appallingly high in the 1840s and 1850s. Influenza, whooping cough, dysentry and measles - notably the measles epidemic of 1854 - did dreadful damage among the Maori population, which also fell easy victims to tuberculosis. Many were carried off in the wake of these new diseases by severe infections of the upper respiratory tract, or by chronic bronchitis, exacerbated by habitual heavy smoking. In women, ill health,

> combined with the effects of gonorrhoea, syphilis, and tuberculosis, led to the sort of low fertility rates recorded in the Waikato in the late 1850s, when over one-third of married women in some areas were said to be barren. Children were especially vulnerable in epidemics, and malnutrition, which also accounted for many infant deaths, must have undermined their resistance. (A. Parsonson, in *The Oxford History of New Zealand*, p. 143.)

But prior to 1840, as has been pointed out, the level of change that was occurring still seemed controllable from a Maori point of view.

> Over a few decades Maoris were participants in a series of developments which other cultures had taken centuries to absorb. But formidable as these changes were, they took place within a Maori framework of values representing continuity with pre-European Maori ways rather than innovation. The ability of Maori tribes to withstand cultural pressures from outside lay partly in the nature of their social structure and controls... Maori kinship groupings were equipped to survive stress, and even disasters such as war and famine, at the local level. (J.M.R. Owens, in *The Oxford History of New Zealand*, p. 40.)

Nevertheless, at the time of British intervention, Maori society was seen by influential on-the-spot observers to be under intolerable pressure. That, and the protection of British interests, won the day in British government circles. New Zealand would become part of the Empire.

What were these British interests needing protection? Principally, a flourishing trade that had developed with the existing British colonies in Australia. Also, rising land prices and other economic factors in New South Wales were creating pressures for emigration from there to the potentially cheaper land in New Zealand. This and the humanitarian concern over the plight of the "anarchic" and "depopulated" Maori were the crucial factors.

The signing of the treaty

On 6 February 1840, 46 chiefs signed the Treaty of Waitangi. This followed a day of traditional oratory and discussion.

> The debate...was no academic contest of wit; no organised parties made the result a foregone conclusion. Had the majority refused to accept him, Hobson could not have annexed the country. (K. Sinclair, *A History of New Zealand*, p. 70.)

A "traditional" view, yearning for a return to that unspoiled Polynesia before the coming of the Pakeha, was pitted against the "progressive" view, that the European arrival was a fact and that British sovereignty would allow both races to move into a new future of peace, trade and Christianity side by side.

Tamati Waka Nene, a Ngapuhi chief, was the dominant voice on the progressive side and was instrumental in swinging the argument that way. But even Nene was not giving the British government an open cheque. He is recorded as saying to Governor Hobson.

> "... remain for us a father, a judge, a peacemaker. You must not allow us to become slaves. You must preserve our customs, and never permit our lands to be wrested from us... Stay then, our friend, our father, our Governor." (K. Sinclair, *A History of New Zealand*, p. 71.)

Other chiefs in favour of British rule took a similar view. In a famous and often quoted remark, Nopera Panakareao, a most influential Te Rarawa chief, said: "The shadow of the land goes to the Queen, but the substance remains with us." In a less famous but possibly more acute comment to the Reverend Richard Taylor eight months later, in January 1841, the same chief revealed his fear that "the substance of the land would pass to the European and only the shadow would remain with the Maori people." (Quoted in W. Parker, "The Substance that Remains", in *Thirteen Facets: Essays to Celebrate the Silver Jubilee of Queen Elizabeth the Second 1952-1977*, p. 169.)

Whatever the chiefs thought that British rule and the treaty meant, it certainly included the belief that they would continue to occupy and possess their lands and fisheries and control their own destinies.

After the first 46 signatures, nearly another 500 were obtained (mainly those of chiefs) as the treaty was toured throughout the country by missionaries and officials. Some significant tribes did not sign the treaty, either because they were not asked or because like Te Wherowhero, the great chief of the Waikato, they refused to sign. As a result, signed agreement to British rule through the medium of the treaty was by no means universal in the Maori world.

Ever since 1840 the treaty has been dogged by controversy over its legal standing in international and domestic New Zealand law, over the discrepancies between the English and Maori versions of the treaty, and over what the Maori chiefs at Waitangi understood they were giving away or receiving in return for their signatures.

These were by no means trivial problems: the confusion, ill-feeling and sense of injustice on the Maori side generated by the treaty were largely to determine the course of nineteenth century New Zealand history, and are still evident today in the Maori protests during the official Waitangi Day celebrations.

The three crucial points in the treaty were: the notion of "sovereignty", the protection of the Maori's lands and fisheries, and the Crown's right of pre-emption in any land sales.

There seems no doubt that the Maori chiefs and their followers were misled as to the meaning of sovereignty by the missionary translators - although probably not deliberately. The missionaries believed the treaty was in the Maori's best interests and " ... comparing the English with the Maori text it becomes apparent that Henry Williams was not simply trying to translate, but rather to rewrite the Treaty into a form that would be acceptable to the Maoris." (J.M.R. Owens, in *The Oxford History of New Zealand*, p. 52.)

The main difficulty was in the use of the word *kawanatanga* for the sovereignty the chiefs were giving up in return for the Queen's. Maori hierarchical tribal structure could accept the notion of the Queen as a paramount chief (*ariki*) who was a first among equals, but it would have baulked at the idea that, as a result of the treaty, the Queen had all the power and the chiefs none. However, at Waitangi the matter was not put to the chiefs in this stark way and the use of kawanatanga was part of this evasion.

> The first and third articles dealt with the ceding of tribal sovereignty in exchange for royal protection. In the Maori version of the Treaty, "sovereignty" and "protection" were represented by a word coined for the purpose *kawana-tanga* (lit. governor-ship). Why this should have been necessary is a moot point, since the Maori already had some well-tried notions about political

> organisation, rank and responsibility. Thus the word *rangatira* is equivalent to chief and *ariki* to paramount chief. There is no doubt the Maori would have understood the significance of *rangatira-tanga* or *ariki-tanga* - the exercise of chiefly powers; but that they understood the significance of government by the Queen of England as conveyed to them by the word *kawanatanga* is most unlikely. In the vital second article, however, there was no such room for doubt, since the Maori's "possession" of land, villages, and, indeed, all property was simply translated by the word *rangatiratanga*, and to the signatories' evident satisfaction this rangatiratanga was to continue, guaranteed and undisturbed. In other words, while they had little or no idea of what they were giving away, i.e. *kawanatanga*, they did have clear idea of what they were not giving away, i.e. *rangatiratanga*. It was their misfortune that they failed to see that the first would have to supercede the second. Moreover, it may be fairly assumed as a corollary that if *rangatiratanga* had been used instead of *kawanatanga*, the Treaty would not have been signed in February 1840, for no chief could have been persuaded to surrender his *rangatiratanga*, not even to the Queen of England. (I.H. Kawharu, *Maori Land Tenure*, pp. 5-6.)

Consequently, at the very moment the chiefs signed the treaty and Hobson proclaimed "He iwi tahi tatou" (we are now one people) the seeds of future distrust and, ultimately, warfare were sown between the two cultures.

Also, the Crown's pre-emptive right in land sales was clouded in the mists of confusion. Did it mean the Maori could sell *only* to the Crown or did the Crown merely have the right of first refusal? Contemporary accounts as to which it was that Maori chiefs believed to be the case are divided between both interpretations.

The greatest benefit that the Maori could have gained from British sovereignty was never available: controlled, orderly and limited colonisation. Even the comparatively small number of Europeans in New Zealand had already had a profoundly disruptive effect on Maori life; this disturbance could only grow as the settlers poured in after the extension of British rule.

And pour in they did: the European population increased seven-fold in less than two decades (from 11,489 in 1843 to 79,000 in 1860). At first the full influence of this tidal wave of settlers was not apparent; or to be more accurate, two patterns of development existed simultaneously for a time.

> To begin with there was little hint of trouble. All sections of the population seemed to gain from colonisation and the advent of *pax Britannica*. Traders got their profits, the settlers their land, the missionaries their converts; even the Maori thrived. The latter found their ranks were no longer being decimated by internecine warfare, and taking advantage of the unaccustomed freedom of movement, developed an earlier-acquired taste for commerce. It was not incidental that they held a numerical, and probably military, superiority over the colonists. But it was an inherently unstable situation, subject above all to the rate of European immigration and consequent pressure on Maori land. (I.H. Kawharu, *Maori Land Tenure*, p. 7.)

In the early stages of British rule the Maori continued to set the rules of contact between the cultures - it was still the dominant partner both in numbers and resources. For instance, up into the 1850s the settlers were still dependent on the Maori for food. But this was to change as the settlers' population increased and their need for

land correspondingly grew. By 1860 a numerical balance had been reached, and war as an instrument of policy on the part of the settlers was not fraught with the almost suicidal risks of 20 years earlier.

Land sales: 1800 to 1860

Not all the pressure to sell land came from the settlers. The Maori were willing even before the Treaty of Waitangi to "sell" land to Europeans and this activity continued after the treaty. They often had their own motives for selling land once they realised it was a marketable commodity.

> The intentions of chiefs who cheerfully signed deeds of sale for large tracts of territory aboard the land-buying ships appearing off their coasts have not yet been fully explained. In some cases it is apparent that, in their eagerness to acquire guns, goods and money offered for land, or to settle small communities of pakeha beside them as sources of trade or support against tribal enemies, they were careless of the details of transactions. *Often they appear to have believed they were granting rights of occupancy*, as they had granted them traditionally to allies or kinsmen made destitute in war, or, more recently, to isolated settlers. Offers of land made ashore, under the scrutiny of the assembled hapu, were likely to be much more exact and deliberate than those made aboard ship, and to include land disputed with neighbouring hapu or land recently conquered and tenuously held, rather than choicer land about the principal settlement.
>
> However, younger men in particular, finding that land had a commercial value, also knowingly sold areas of the hapu's principal land which they considered surplus to their requirements, often disregarding the rights of kin. This they did they said, in order to become "gentlemen". Kin were not entirely without remedies. Chiefs who signed sweeping deeds of sales were frequently obliged to modify them (thus giving the impression of repudiation which so infuriated early settlers) or else the purchasers were subject to additional claims by right-holders who had not shared the original payment. (A. Ward, *A Show of Justice*, p. 29. Our emphasis.)

Often there would be a scramble to get on the land-selling bandwagon. If it was not possible to stop one tribal member selling part of the tribal land, then other members would offer land to make sure they also got something from the tribal heritage. In some tribes a fatalistic reaction to disease and death would result in increased land-selling on the principle of taking payment today because tomorrow may be too late.

Land sales also became a way of asserting publicly a tribe's claim to the land involved. And it was the fact of payment that mattered, not the written document or the amount paid.

> Public payment in a sale was insisted on, first because the ceremony was just the sort of colourful event that would make it easily memorable, and thus improve its chances of survival in the oral record, and secondly because it was a triumphant announcement to other chiefs in the area that the sellers' claims to be the owners had been vindicated. The deed, therefore was of minor importance; receipt of payment was all-important. (A. Parsonson, in *The Oxford History of New Zealand*, p. 148.)

Up until 1840 it is uncertain whether the Maori understood that a written deed of sale meant they were giving up their right to the land for ever. At this point, settler activities such as building a house or planting crops on land they had bought fitted in with traditional Maori ideas of land tenure - individuals had always had the right to use plots of land for housing and crops within the tribal land holdings.

> Nor did the chiefs regard the land as being lost to them: by installing pakehas, they had simply put it to a different use. People who left a pile of goods in payment on the shore, and disappeared, however, could not expect their claims to be taken seriously. And so in 1839 Te Rauparaha's party, intent on William Wakefield's goods and the recognition they represented, signed away enormous amounts of land to him in both islands without the slightest concern. They simply could not conceive that Wakefield was bringing as many people as he said he was, or he would be capable of asserting his claims to so much land in any way that would jeopardise their own. Wakefield posed no physical, military threat; therefore his paper posed no threat at all. (Parsonson, p. 148.)

Two important features of traditional Maori land tenure are prominent in this rather laissez-faire attitude of Te Rauparaha and his people. First, a right to land is ultimately based on continuous occupation; and second, that occupation is guaranteed by military force - the ability to defend the land.

It did not take long for the flaw in this traditional view to be exposed by the arrival of the first settlers to make a home in the new British colony.

> ... Maoris quickly became aware of the true construction which foreigners placed upon deeds of land purchase. They realised now the significance of the deed itself - rather than mere usage - in establishing ownership. Though William Spain, the commissioner investigating land claims, disallowed many of the early purchases - notably some of the New Zealand Company's - as being unjust, it was clear that such allowances for Maori ignorance would not be made in the future. Henceforth sellers who signed a deed committed themselves irretrievably to permanent alienation. (Parsonson, p. 148.)

Now that tribal land could be lost for ever once a deed of sale was complete, the only way to prevent a sale or reclaim the land was by force. The other course of action was to sell part of the tribal lands first before a rival hapu or tribe tried to do so - particularly if ownership of the land involved was in dispute. This increased the incidence of sales being negotiated without the prior knowledge of those members of an iwi, hapu or whanau who had legitimate rights of "ownership".

A rather volatile situation was now in prospect. The Maori themselves were sometimes using land sales as a means of pursuing inter-hapu and inter-tribal disputes. A hapu might offer a block of land knowing full well that other hapu also had rights of use in that block. Sometimes a joint sales approach might be made, but more commonly a dispute would break out, sometimes ending in physical violence and even warfare.

In fact, just such an inter-hapu quarrel was the final precipitant of the wars of the 1860s. At Waitara a disagreement broke out between Wiremu Kingi, chief of the Ngati Kura branch of the Ati Awa tribe, and Ihaia Te Kirikumara of the Otaraua section of the same tribe. This became, from 1844 on, a long-running feud centred upon the attempt by Ihaia to sell land at Waitara to the government.

He finally achieved his aim when he found a supporter in Kingi's own hapu, a sub-chief named Teira who had his own quarrel with Kingi.

> Kingi lost his land, therefore, because two men who were his enemies pursued him until they achieved a sale. With Government cooperation, and a new government policy of cutting out and surveying the interests of land-selling groups as they came forward, Teira was able to push the sale through in 1859. When Kingi's people obstructed the surveyors the following year - expressing their own claims to Waitara - troops were sent on to the land, and on 17 March the first shots in the wars of the 1860s were fired at Waitara. (Parsonson, p. 152.)

Waitara was only the flashpoint for the wars, the actual forces that brought them about are found in the process of colonisation in New Zealand.

Serious disagreements had broken out between the settlers and the Maori over different interpretations of what constituted ownership in the first land sales. These conflicts were to persist in the 1840s, British rule or not.

After 1840: the role of the Crown in land sales

Crown pre-emption was also presenting its difficulties, and was to set some Maori tribes and the government on a collision course. The settlers were anything but disinterested spectators; in the early days of the colony, Crown pre-emption seemed the biggest obstacle to there being enough land on the market to satisfy settler demand.

The main cause was lack of money; New Zealand was to be a self-supporting colony and the first two governors, Hobson and Fitzroy, never had enough money in the coffers to embark on large-scale land-purchasing. They were also hoping to buy land cheaply, and it did not take some Maori tribes long to notice the disparity between the government's buying price from them and its selling price to the settlers - land bought at sixpence or a shilling per acre would later be resold for a pound.

> From 1840 to 1845 the British administration in New Zealand was usually in heavy debt and at times insolvent. Yet it was able to survive those first critical years largely on Maori goodwill and economic assistance. In spite of disillusionment and racial friction, Maoris continued to provide Europeans with food; they were still prepared to sell some land, surplus to their new farming requirements; as eager purchasers of tobacco, alcohol, and other dutiable items, they contributed most of the customs revenue, if indirectly. Even so, Hobson and his successor, Fitzroy, could not be expected to sustain government without considerable financial aid from Britain. But the Colonial Office required that the colony was set up on the cheap. Under this impossible regime, Fitzroy, Governor from 1843 to 1845, finally ran out of currency as well as revenue, and his administration was deeply in debt by the latter year. (W.J. Gardner, "A Colonial Economy", in *The Oxford History of New Zealand*, p. 59.)

During his rather desperate three years in New Zealand, Fitzroy abandoned Crown pre-emption in land sales and allowed private sales. This - apart from seeming to break one of the articles of the Treaty of Waitangi - only worsened his revenue difficulties. The government received a tax of a penny an acre on all private land sales. That was not enough to balance the books.

The beginnings of private sales

Fitzroy's decision to allow private sales was a concession to both Maori and settler pressure. Some settlers were assiduous in their efforts to provoke Maori discontent over both the prohibition against private sales and the miserly payments made by the Crown in its role as monopoly land-purchaser. Fitzroy himself acknowledged the settlers' effectiveness:

> During the last two years there has been a growing desire on the part of the natives to dispose of their own lands at their pleasure, irrespective of all interference or control. This desire has been industriously stimulated by settlers who have not only reminded them of the Treaty of Waitangi, but have continually taunted them with being no better than slaves while the provisions of that Treaty remain unexecuted. (Quoted in N. Smith, *The Maori People and Us*, pp. 107-108.)

Frequently, it should be noted, Maori land sales occurred because the Maori had other economic developments they wished to pursue with the money: for instance, the northern tribes were eager to raise money to buy trading schooners.

And because land sales were often used as an extension of tribal and personal quarrels, the amount of undisputed land for sale - whether bought by the government or privately - was insufficient for European farming needs.

Into this heady ferment of armed clashes between settlers and Maori, disputed land sales, private selling and a bankrupt government stepped the new governor, George Grey. Along with Seddon, Grey was to become one of the two most dominant and influential figures in nineteenth century politics and lost no time in making his mark.

Extensive land-purchasing by the Crown

Grey assumed Crown pre-emption again in 1846 and began extensive land-purchasing. Cheap land was to be the life-blood of European economic development in New Zealand, and, unlike his predecessors, Governor Grey had the assistance of an off-shore financier - the British government. From 1845 to 1854, Grey had a series of large Crown grants to help put the colony on a sound financial basis. By 1853, Grey had bought 32 million acres for fifty thousand pounds, mainly in the South Island. (W.J. Gardner, in *The Oxford History of New Zealand*, pp. 61-62.)

Part of the reason for the success of Grey and his chief purchasing officer Donald McLean was that they came up with a method of purchase that more or less dovetailed with traditional Maori practice. Land was negotiated for at tribal meetings, "at which the ownership, boundaries and price would be discussed. Large numbers of owners used to sign the deed of sale. In theory, the Government did not solicit offers of land, but in practice all the age-old tricks of the huckster or politician were employed by its agents." (K. Sinclair, *A History of New Zealand*, p. 81.)

In the 1850s, as New Zealand prosperity was increasing and, in turn, attracting more colonists, the pressures for land made the government land-purchasing officers less scrupulous. Secret deals were entered into with chiefs or with only part of the tribe, and tribal disputes were encouraged as a means of stimulating some of the claimants into selling.

> The tribes were divided into land-selling *(tuku whenua)* and land holding *(pupiri whenua)* factions. Government purchase agents began to deal in secret with the *tuku whenua* and ignored the claims of the *pupiri whenua.* Where the former included important chiefs and constituted a majority of the tribal population, the government agents usually obtained the land, despite the fact that they created a bitter legacy of feuds, sometimes leading to violence. (M.P.K. Sorrenson, "The Politics of Land", in *The Maori and New Zealand Politics,* p. 23.)

These activities not unnaturally aroused suspicion and antagonism and gave many Maori pause for thought about where the Pakeha's seemingly insatiable need for land would end.

And while Grey's land-buying efforts had been conspicuously successful in the South Island and reasonably successful in the North Island, the Maori still largely owned and controlled the best farmland in the latter. In some areas, such as Taranaki, Grey made little headway at all. And there, eventually, the settler pressure for land became so intense that the disputed Waitara sale went ahead and ended in war.

CHAPTER 4: MAORI ECONOMIC DEVELOPMENT 1840-1860

The Maori attitude to land sales in the period 1840 to 1860 underwent a transformation. What began as a willingness to sell some land that seemed surplus to tribal requirements turned into a deepening suspicion of growing Pakeha power and land hunger, ending up as an anti-land-selling movement.

Initially, however, the reasons why the Maori sold land reflected their own hopes for advancement through contact with the Pakeha and British rule. For them, the price paid for the land was often of secondary importance. Though they became increasingly eager for cash, and the horses, cattle and ploughs that it would buy, it was the long-term benefits of progress which seemed to them a more pressing reason for sale. In 1857 some Ngati Kahungunu chiefs of Hawke's Bay recalled the advice their kaumatua had given them a few years before: "Should the Pakeha wish to purchase the land here, encourage him; no matter how small the amount he may offer, take it without hesitation. It is the Pakeha we want here. The Pakeha himself will be ample payment for our land, because we can only expect to become prosperous through him." (A. Parsonson, in *The Oxford History of New Zealand*, pp. 148-149.)

But before looking at what went wrong - at how Maori expectations of progress ended up in the mud and gore of the battlefield - a closer look at Maori economic development will show the remarkable attempt by Maori society to come to terms with the new order of colonisation.

Hopes of prosperity through contact with the Pakeha were not founded on facile optimism. The Maori entered the exchange economy of the Pakeha with enthusiasm and no little skill.

Wheat was a major crop by the 1830s, and one chief in Northland was sending butter to the Bay of Islands traders. After 1840, agriculture continued to flourish to the extent that Maori farmers were "... supplying most of the foodstuffs for the European population and were even exporting a surplus to the new Australian gold-fields. By 1855 they were supplying half the total exports of the colony." (H. Miller, "Maori and Pakeha 1814-1865", in *The Maori People Today*, p. 84.)

A contemporary observer, William Swainson, is the source of some impressive figures on the level of Maori economic development by the late 1850s.

> In 1857 the Bay of Plenty, Taupo and Rotorua natives - being about 8,000 people - had upwards of 3,000 acres of land in wheat, 3,000 acres in potatoes, nearly 2,000 acres in maize, and upwards of 1,000 acres of *kumara*. They owned nearly 1,000 horses, 200 head of cattle, 5,000 pigs, 4 water-power mills, and 96 ploughs, as well as 43 coastal vessels averaging nearly 20 tons each, and upwards of 900 canoes. In the course of the same year the Ngatiporou from East Cape to Tauranga supplied 46,000 bushels of wheat to the English traders, at a value of thirteen thousand pounds. In 1860, according to the official statistical return, the natives of Eastern Canterbury - 480 in number - owned 205 horses, 214 head of cattle, 197 pigs and had 51 acres of wheat and 56 acres of potatoes under cultivation ... In a single year 1,792 native canoes entered Auckland harbour, bringing to market by this means alone 200 tons of potatoes, 1,400 baskets of onions, 1,700 baskets of maize, 1,200 baskets of peaches, besides very many tons of firewood, fish, pigs and kauri gum. (R. Firth, *Economics of the New Zealand Maori*, p. 449.)

Such was the Maori demand for coastal vessels that it formed the basis of a local ship-building industry. Also, the Maori was not content to be a mere grower of crops or a raiser of sheep and cattle; processing was undertaken as well. This was most spectacularly seen in what has been described as the flour mill "mania". Inter-hapu and tribal rivalry was given a new impetus through Pakeha economic organisation, and the tribal flour mill was often the most obvious symbol of this.

Although other examples of conspicuous consumption could be found, "the Maori had, in fact, begun to base a very full and increasingly complex economy on his success as a farmer. Apart from his eagerness to begin ancillary industries, like the milling of his own wheat and the weaving of his own wool, he developed his natural desire to take his own produce to market into a large-scale transport industry." (G.T. Alley and D.O.W. Hall, *The Farmer in New Zealand*, p. 19.)

A great deal of this agricultural and economic activity was in the Auckland province, which extended from Cape Reinga to just south of Lake Taupo. This area contained two-thirds of the Maori population, and also had access by land or sea to Auckland - the largest centre of Pakeha population and the major export base.

The almost dazzling pace of Maori economic development would not have been possible without some government support and encouragement, and this was provided by Governor Grey. Grey's measures in the 1850s were to be the only systematic assistance for Maori commercial enterprises until the land settlement programmes of the 1930s.

As part of his vision for the future of New Zealand, Grey saw the Maori as the country's agriculturalists while the Pakeha developed the industrial infra-structure. "Grey did everything he could to encourage Maori agriculture. He made them public and private loans (which they almost invariably repaid) for the purchase of ploughs, mills or small vessels. And throughout his governorship he laboured to establish other measures calculated to improve the condition of the Maori people and to 'elevate' them in the scale of civilisation." (K. Sinclair, *A History of New Zealand*, p. 86.)

These "other measures" included government-subsidised schools (including several specialising in rudimentary industrial training), hospitals in four North Island towns, and the sending of resident magistrates to some areas to extend the reach of British rule and to familiarise the Maori people with the nature of British law and its procedures.

However these efforts were not to be enough to avert racial conflict. Both Maori and Pakeha felt limited by the roles Grey wished to impose on them and by his attempts to regulate the ownership of land accordingly. From the Maori point of view, land sales during the term of Grey's first governorship had accounted for nearly half their original holdings, and concern was deepening. The Pakeha settlers, on the other hand, were not at all satisfied that the land was becoming available quickly enough. The result was that Grey's support programmes were not sufficient to dampen down the pressures building within Maori society, and served only to intensify those developing between Maori and Pakeha as economic competitors.

Breakdown between the two cultures

Maori discontent with their lot and their position vis-a-vis settler society began to surface in the early 1850s, the period of greatest Maori prosperity.

Even the economic success revealed a potentially negative side:

> The old economy had been abandoned; new methods of cultivation, new crops, new appetites, new habits, new ambitions had altered everything. There could be no return to the self sufficient village and the old order of things. They must go on. But what would happen if there should be an economic reverse, a sudden collapse of prices? The new order of things, if order it could be called, was plainly very unstable. (H. Miller, in *The Maori People Today*, p. 81.)

Insecurity was the keynote of the Maori world in the 1850s. Insecurity about declining chiefly mana, about the irrevocable altering of tribal social traditions, about the imposition of the new British law, the increasing tempo of land sales, the rapidly increasing European population, disease and the social consequences of alcohol; insecurity, in short, about the whole gamut of Maori and Pakeha relations.

Maori concern about the changes that were occurring was not allayed when the New Zealand constitution of 1852 came into force. Any fears they had about the scope of their involvement in the running of the colony could only have been accentuated when they discovered they had been effectively disenfranchised through a property qualification that exploited the fact that they did not own their land in individual title.

During the period of Grey's governorship, the Maori began to cast around for ways of dealing with their increasing insecurity and with some of the sources of conflict with the Pakeha.

One of their answers to the problem of inter-hapu conflict over land sales was European in the extreme - individualisation.

> ... this was intended to eliminate disputes about ownership. Each person would enjoy security of tenure without interference from others. A short-lived Government scheme of the mid 1850s to allow Maori sellers to buy back part of their land as individual crown-granted sections, as in the Hua block near New Plymouth, was wildly popular. In the early 1850s Waata Kukutai's people at the Waikato Heads were anxious to build their own central town, with individual sections and houses with brick chimneys: and other unanga passed resolutions calling for their lands to be partitioned and Crown-granted. (A. Parsonson, in *The Oxford History of New Zealand*, p. 153.)

While this may have solved some problems with disputed sales, any extended application of the principle could have led to still further pressure on Maori kin and social structure. The traditional communal ties would have been loosened further.

In the event, other solutions seemed to be more in keeping with the temper of the times: to try to ban land sales altogether; and to form the Maori King movement.

Anti-land-selling leagues or agreements had a mixed success. Those in the Waikato - partly formed as a check on the land-selling excesses of some of the chiefs - were more

successful than those in Taranaki, for instance. If other controls did not seem to work, then banning sales totally was the only effective way left of controlling the future of tribal land.

The Maori King movement was the focus for a developing mood of Maori nationalism. If the mixed society was not going to work - and increasingly it was the Maori perception that it was not working - then they would have to take matters back into their own hands. The result was that Maori opinion in some major tribes and geographical areas began to shift towards a policy of largely separate development as Pakeha pressure on Maori society and its landholdings began to intensify.

Maori nationalism or separatism was, in the end, a response to the pressure of colonisation - a final attempt by Maori society to compete with the settlers, to selectively control the adoption of Western culture, and in particular to control land sales.

The King movement was regarded in a variety of ways by Pakeha and Maori alike. For the chiefs it was a way of reasserting their declining authority and power: "The King movement was indeed a chiefly affair: it was, above all, the chiefs who wanted a king, perhaps because they felt the new individualism in society threatened their position, or perhaps they saw an opportunity, with the recent interest in law-making, to gain new power for themselves." (Parsonson, p. 154.)

Also, Maori opinion seemed to differ on whether the King was a direct rival to the Queen or more a plenipotentiary from the Maori people to the Queen; and whether the movement was truly separatist or more a matter of putting co-existence on a sounder Maori and Christian footing.

Some Pakeha saw the King movement as a harmless enough exercise and doomed to failure through the apparent inability of the tribes to agree, but most saw the King as a threat to the Queen, the government, and to land sales.

> There could not be two rival sovereignties in New Zealand; nor could the King be allowed to impose his law on Pakehas or give sanctuary to Maoris who had committed offences against Pakehas. The King was therefore more dangerous than a recalcitrant chief like Wiremu Kingi; and the invasion of the Waikato ... was ultimately more important than the seizure of Waitara. (M.P.K. Sorrenson, "Maori and Pakeha", in *The Oxford History of New Zealand*, p. 180.)

Throughout the 1850s then, colonisation was creating social, political and economic forces that made the idea of a Maori unity movement possible. What gave it even more point was the dramatic fall in agricultural prices from 1856 on - from 12 shillings a bushel to 3 shillings. This shook agriculture to its foundations - idle mills and land, crops rotting because it was not worth taking them to market. Much of the Maori agricultural production - particularly wheat - had been exported to the Australian market. This market collapsed as the non-agricultural population on the gold-fields of Victoria declined in relation to the increasing agricultural labour force in the state. By 1860, wheat exports from Auckland to Australia ceased entirely.

Furthermore, Maori pastoral and agricultural farming had not been a total success. Poor seedstock, inadequate fencing, poor maintenance of machinery, as well as over-cropping, led to poor returns from some farming initiatives and, along with the emerging mood of

Maori nationalism expressed in the King movement, may have reinforced a developing Maori urge to reject Pakeha ideas, including the capitalistic approach to agriculture.

At the same time, the fall in agricultural prices on the Australian market convinced Pakeha farmers of the relative advantages of pastoral farming compared with agriculture. This began to intensify demand for Maori land.

CHAPTER 5: WAR AND ITS AFTERMATH

Nearly 100 years of contact with the European finally ended with the outbreak of war at Waitara in 1860. Given the rivalry between the two peoples, war was probably inevitable at some point, but this did not make its eventual arrival any less tragic. And although land was the focus for the wars, the real contest was about who would control the developing multi-racial society in New Zealand. The Maori had vigorously entered a competitive money-based society and had proved to be a rather unexpected success. The wars were a recognition that there could not be two rival societies jostling for success from the same resource - the land. European colonisation, to be successful, would have to be in control.

> The rivalry that developed between the races was more than a naked contest for land, important though this was. It was also a contest for authority, for mana, for authority over the land and the men and women it sustained. Above all, there was the question of whose authority, whose law was to prevail ... But it remained to be seen whether the Queen, her servants in New Zealand and Parliament itself could make laws that would govern the land and the men it sustained. Europeans had no doubt that she and they could. In the fifty years that followed Waitangi, sovereignty became a practical reality, as Maori and their land were brought under English civil and criminal law. The best of British justice was applied. (M.P.K. Sorrenson, in *The Oxford History of New Zealand*, pp. 175-176.)

The prize the Pakeha received for winning the wars was the exploitation of the fertile North Island lands without the fear of further Maori competition. The post-war period was concerned with giving the Maori individual title to their land on the same basis as any other British citizen. That this would facilitate the buying of Maori land was acknowledged, but from now on there would be no special treatment for the Maori. Each would have the inalienable right to sell his or her land to whoever wanted to buy it, without interference from anyone else. At the same time, the settlers hoped that individualisation of title would break down the communal nature of Maori society and help its total assimilation into the Pakeha way of life.

Henry Sewell, when introducing the Native Land Frauds Prevention Bill in the Legislative Council in 1870, made as good a statement of this settler philosophy as anyone.

> The object of the Native Lands Act was two-fold: to bring the great bulk of the lands in the Northern Island which belonged to the Maoris, and which, before the passing of that Act, were extra commercium - except through the means of the old purchase system, which had entirely broken down - within the reach of colonisation. The other great object was the detribalisation of the Maori - to destroy, if it were possible, the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Maori race into our social and political system. It was hoped by the individualisation of titles to land, giving them the same individual ownership which we ourselves possessed, they would lose their communistic character, and that their social status would become assimilated to our own. (Quoted in N. Smith, *Maori Land Law*, p. 12.)

Confiscation

Once the direction of the war became clear, some sections of settler society lost no time in sensing the prospects for massive economic gain.

> Military victory and Auckland's expansion were organically linked in the confiscation policies of 1863-65. Grey, as Governor for the second time (1861-66), made limited proposals for punishing Maori "rebels" by taking some of their land. Two Auckland businessmen in the Ministry of 1863-4, Frederick Whitaker and Thomas Russell, seized upon Grey's proposals and inflated them into massive confiscation on an economic rather than a punitive basis. They calculated that Auckland would find the farming hinterland it now needed by selection of the best Waikato lands virtually as a prize of war ... These devices for extending European settlement had very meagre results. Where war had failed, uneasy peace and private purchasing (legalised in 1865) had greater success. Auckland speculators, notably Thomas Morrin and J.C. Firth, acquired huge tracts of the Waikato by unscrupulously exploiting both European law and Maori disarray and poverty. (W.J. Gardner, in *The Oxford History of New Zealand*, pp. 65-66.)

Even if the confiscations were not fully successful - and around half the area was eventually returned to the tribes or paid for - they were manifestly unfair and aroused a legacy of considerable bitterness amongst the Maori which exists to the present day.

> In the selection of the land for confiscation, fertility and the strategic location of land were more important than the owners' part in the rebellion. Some tribes, like Ngati Maniapoto, who were heavily engaged in the Taranaki and Waikato wars, got off scot-free; others, such as the central Waikato tribes, lost virtually all their lands. The plan to sell large areas of confiscated land at high prices was a dismal failure ... But in due course the confiscation and military settlement had considerably expanded the European frontier. (M.P.K. Sorrenson, in *The Oxford History of New Zealand*, pp. 185-186.)

Moreover, when confiscated land was returned it did not always go to the original owners, was frequently of inferior quality, and not necessarily of major tribal significance.

> The Ngatihaua retained above 275,000 of their 400,000 acres centred around Matamata. But this was land they had obtained by conquest; the original Ngatihaua land, on the delta between the Horotiu stream and the Waipa river, south of Ngaruawahia, was not restored. (A. Ward, *A Show of Justice*, p. 334.)

It was the taking of the land itself and not the casualties of war in defending it that fuelled the Maori sense of grievance.

> Confiscation - the raupatu - was the main barrier to reconciliation. As Tamati Ngapora, a younger brother of the first Maori king and chief adviser to the second, put it in 1872, 'If the blood of our people only had been spilled, and the land remained, then this trouble would have been over long ago.' Maoris did not resent their defeat in war; only the accompanying loss of land. (M.P.K. Sorrenson, in *The Oxford History of New Zealand*, p. 187.)

The land confiscations are the single greatest injustice in our history and the worst possible precedent for future government acquisition of Maori land, whether for public works or other activities in the "national interest".

Creation of the Native Land Court

Detaching the Maori from their lands through legal means was slower but in the long run was to prove just as sure.

1862 saw the first legal measures to deal with Maori communal tenure, namely the procedures to set up a Native Land Court under the Native Lands Act of that year. The Court was not finally formed, however, until early in 1865: the year of another Native Lands Act.

The 1862 proposals would have seen the local Maori chiefs playing a prominent part in the Court's determinations, since some of them would have been nominated to the panel of assessors in each district. Instead, the Native Land Court in its final form followed the conventions of British courts of law.

> Now that he was Chief Judge, Fenton abandoned this idea and set about creating a tribunal along the lines of the Supreme Court, whereby a roving judge could sit in any centre, summon witnesses, hear evidence and hand down a judgement with due pomp and formality. On 11 January 1865 all existing districts proclaimed under the 1862 Act were cancelled and the Colony was made one district subject to the jurisdiction of one Court. (A. Ward, *A Show of Justice*, p. 180.)

Whatever the reasons behind that particular decision - and there was a case for the kind of court that was set up - it decided the future pattern of Maori land dealings. European values would predominate and Maori notions of justice, evidence and debate would have to bend themselves to the Court's way of working.

It is generally agreed that the Native Land Court had four main functions:

> (1) To settle and define the proprietary rights of the Maori in the lands held by them under Maori custom.
>
> (2) To transmute the Maori customary title into one that was understood in English law.
>
> (3) To facilitate dealings in Maori lands and the peaceful settlement of the colony.
>
> (4) To remedy the invidious position occupied by the Crown under its pre-emptive right.
>
> (I. Prichard and H.T. Waetford, *Report of the Committee of Inquiry into the Laws Affecting Maori Land and the Powers of the Maori Land Court 1965*, p. 16.)

As the second part of this report will make clear, these aims have not been totally fulfilled. But in 1865 the Court seemed the most expedient way of bringing Maori land on to the market.

Determining ownership by individual title

The 1865 Act ratified the earlier Native Lands Act and abolished the Crown's pre-emption, so allowing private sales again. It was also the 1865 Act that decided the maximum number of owners listed on the title to any block of Maori land would be ten. The ten named on the title were to be trustees for the other unnamed owners. This was a

recognition of Maori tribal ownership of land - titles were determined on a hapu basis, not on individual ownership.

Unfortunately, the ten named "owners" had the legal right to sell the land without consulting their unnamed co-owners. And enough did this to force the government to pass another Act in 1867 to prevent the practice. That was not totally successful, and so in 1873 new native lands legislation was enacted. Under the 1873 Act, "memorials of ownership" took the place of certificates of title; all the owners' names had to be listed on the memorial, and before any sale could be completed all their signatures had to be obtained. "This made it easy for agents to begin to purchase a title but hard to complete the purchase and in fact slowed the rate of alienation." (A. Ward, *A Show of Justice*, p. 255.)

But the 1873 Act probably caused more evils than it stopped. Under Maori traditional tenure, the tribe had owned the land communally and each individual or family group had the right to use a specified part of the tribal lands. Now, *each* tribal member would have a share (or relative interest) in the tribal lands to do with what they liked - including sales to outsiders. So secret land dealings began in which signatures would be acquired one by one until the sale was completed.

> Since all owners were listed, such chiefs as were still good trustees of their people's land were powerless to stop surreptitious sales by rank and file owners. Consequently those chiefs who had long resisted now tended to sell in their old age because the land was passing away and they sought to share the proceeds before they died. (A. Ward, *A Show of Justice*, p. 256.)

This individualisation of Maori society created other problems that hampered land use.

> As every single person in a list of owners, comprising perhaps over a hundred names, had as much right to occupy as anybody else, personal occupation for improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. That apprehension of results which paralyses industry casts its shadow over the whole Maori people. In the old days the influence of the chiefs and the common customs of the tribe afforded a sufficient guarantee to the thrifty and provident; but when our law forced upon them a new state of things, then the lazy, the careless and the prodigal not only wasted their own substance, but fed upon the labours of their more illustrious kinsmen. (Native Laws Commission, 1891, quoted in N. Smith, *The Maori People and Us*, pp. 184-185.)

However, while the Native Land Court was the legal agency through which individualisation of title and its resulting problems came about, it did take some account of Maori tradition. For instance, the Court devised a procedure to ensure that beneficiaries received title to Maori land in a manner resembling accepted Maori custom.

Traditionally, although children in Maori society "could trace descent through either parent, they inherited rights to use of land only in the village where they lived and were active members. Their rights to land in the village of the other parent lay dormant unless they chose to live there, and the rights of absentees were usually lost after three generations of absence. Children did not inherit in equal shares from both parents, regardless of where they resided. Essentially the land remained in the control of the elders of a village community and rights to its use descended to those who

resided among and made their primary identification with the community." (A. Ward, *A Show of Justice*, p. 186.)

What the Court did, through Fenton, its Chief Judge, was to decide on an administratively simple but rather fluid interpretation of the succession process in Maori society.

> He therefore divided the estates of Maori deceased, male or female, in approximately equal shares, smaller and less economic with each succeeding generation, until they were so over-crowded and fragmented as to put the actual land almost beyond efficient use. Moreover, the whole Maori population was encouraged to indulge in the pursuit of inheritances from both sides of their ancestry and in districts remote from where they lived. (A. Ward, *A Show of Justice*, p. 187.)

The consequences of this decision have been increasingly felt ever since. For it has led to two of the major characteristics of Maori land today: many people owning small fragments of rural land that are too small on their own for economic or legal use; and absentee ownership or landlordism.

The effects of the Native Land Court hearings

Claims to ownership were seldom settled without dispute. The opportunities to present and defend claims often opened the way for rival factions within iwi or hapu to demonstrate their superiority.

> Any group could ask the Court to investigate its claims to land, and once the case was gazetted it was the responsibility of all other claimants to appear in court and defend their own claims. In other words, the Court perpetuated all the difficulties that had attended earlier sales: any one faction could take the initiative and throw all the others on the defensive. This explains why people were often eager to bring their land before the Court. There was always one party of claimants anxious to use it to score a point off their opponents, to be the first to apply for a hearing of their claims, and secure confirmation of their title. The very act of application could be taken as an assertion of overriding claims. The claimants themselves would mention the fact as part of their evidence, and the Court for its part afforded them superior status during the hearings as claimants, who had the right to present their evidence and cross-examine after all the other groups of counter-claimants had their turn. (A. Parsonson, *The Pursuit of Mana*, p. 163.)

Increasing contact with the Native Land Court also meant increasing social disruption for the tribes involved. This partly came about through the Court's method of operation.

> Wherever there was continuous purchase activity Maori life was badly organised. Individual dealings disintegrated tribal unity. The authority of chiefs was undermined as all individuals were awarded full rights to sell their share of land. Tribal divisions created by individual dealings were solidified as the battles were carried to the new marae of the Native Land Court. Once engaged in Court sittings Maoris had to ignore their own tribal cultivations and move to the unsavoury atmosphere of the European towns. Here they lived, often for months on end, with unsatisfactory shelter, little wholesome food, and frequently spent long periods intoxicated as they squandered the money advanced

by purchase agents. In these conditions European diseases took a greater toll on the population. (M.P.K. Sorrenson, "Land Purchase Methods, 1865-1901", *Journal of the Polynesian Society*, Vol 65, No. 3, September 1956, p. 191.)

Long court delays and appeals against unfavourable decisions led to an impoverishment of the participants who had to sell more land to pay off their debts, thus continuing the downward spiral of land-selling.

Land-purchase "rings" often operated in conjunction with local shopkeepers to take advantage of the enormous delays while claims were being heard by the Native Land Court. These activities were so notorious that they even attracted sharp contemporary comment. The *New Zealand Herald* in March 1883 wrote in these terms about the Cambridge Court:

> The working of the Native Land Court has been a scandal ... for many years past, but as the chief sufferers were the Maoris, nobody troubled themselves very much ... The cases went on month after month ... All this time the Maoris were living near a European town; to keep them, advances were made by land-buyers [and] .. enormous interest was charged. The money usually went for rum ... and the whole of the time of the sitting was spent in drunkenness and debauchery. The consequence was, that at the conclusion of the Court, they had entirely divested themselves of their land, and had spent the whole of [their] money. (Quoted in M.P.K. Sorrenson, "Land Purchase Methods", p. 189.)

Court sittings were often inadequately advertised, blocks were not dealt with in any set order, and so claimants had to wait weeks for their case to come up. Until the 1880s, furthermore, the Court sat in European towns, sometimes hundreds of miles from where the Maori owners lived, and only the claims of those who attended the hearings were heard.

> It is not surprising that many Maoris were embittered by land dealings and the operation of the Native Land Court. They sought redress by appealing to the Supreme Court and the Court of Appeal, only to end up on the familiar merry-go-round of debt. The Makauri case, for example, which came before the Native Land Court four times and also before the Supreme Court four times, in fifteen years of litigation, was said to have cost the Maori owners eighteen thousand pounds in legal expenses. (Sorrenson, p. 187.)

Maori depopulation as a consequence of selling land

The human consequences of this system of land-purchase can be seen in the pattern of Maori depopulation in the nineteenth century. Those tribes that were selling land actively, dealing with the Native Land Court, and having the most contact with the European system and way of life, declined in numbers the most rapidly.

> Two generalisations can be made. Firstly, there is nothing to support the theory of associating depopulation with defeats in war; for this theory to be valid there would have to be evidence of a rapid decrease in the seventies - even more rapid than that of the friendly tribes. Secondly, there are significant correlations between depopulation and the opening of each territory to land purchase and European settlement.
>
> There was apparently an increase in the Waikato in the seventies while most of the tribe were living under stable conditions in the King Country. The decrease

> in the eighties accompanied the gradual move back to small reserves on the Lower Waikato and the dispersal of groups to work on the gumfields, Government contracts and European farms. (Sorrenson, pp. 193-194.)

A similar pattern can be found for other tribes: those that sold land in the 1860s and 70s suffered a decline in population that began to reverse by the 1880s and 90s (Ngati Kahungunu and Ngapuhi); those that sold land later (for instance, the Tuhoe in the Urewera country) registered a fall of population in the 1890s.

The evidence from the period also suggests that those tribal areas which were having as little to do with the Pakeha as possible were not only increasing in numbers but were also in much better physical and social health.

> The difference between the Kingites and the Maoris that Europeans are accustomed to see is very marked. The men and women are healthy looking, while the number of children playing about, and of fine stout infants to be seen in the arms of their mothers, is remarkable. It is sad to think that those natives who have least to do with Europeans are in every respect the best of their race; but so it is. It is sad for them because the separation which at present exists cannot continue for ever. (*New Zealand Herald*, 9 May 1878: quoted in M.P.K. Sorrenson, "Land Purchase Methods", p. 195.)

Avoiding contact with the Pakeha was never a practicable option in the nineteenth century. Eventually, the last three hold-outs against land sales and the Native Land Court - the Waikato tribes and Ngati Maniapoto in the King Country, and the Tuhoe in the Urewera - had their remaining lands surveyed, and title determined and individualised. Subsequently, most of the tribal land was sold; economic deprivation and social dislocation followed.

In 1883 the Ngati Maniapoto chiefs allowed a survey to begin so that the main trunk railway could be extended through the King Country. Part of the agreement had been that titles would be determined as *hapu* interests rather than individual titles; also, private purchasing and alcohol were prohibited, and Native Land Court hearings were held in Maori villages rather than the European towns.

But even these precautions were not enough to stop the alienation of land and the collapse of the Ngati Maniapoto social order. Government neglect of Maori farming and economic initiatives and secret land dealings by government land-purchase agents acted as the catalysts.

> In the King Country, despite the original decision to define *hapu* interests only, disputes among claimants had led to individuals being listed in the titles. However, the chiefs and community opinion at first restrained individuals from selling their interests and the sheep farming projects that Wahanui and others had envisaged had begun. Government officers gave no encouragement whatsoever to these, but waited cynically for them to fail. A typical comment from one land purchase officer to another reads: "they have sheep on the brain and this makes them quite unmanageable and until the mania passes away, or until they overdo it, or quarrel among themselves over the sheep and where they should run they will not think of selling". In 1890, however, Wilkinson reported gleefully that he had succeeded in breaking through the opposition and made the first freehold purchase in the King Country; the secretiveness of the deal amply displayed the cynicism and fundamental immorality of the government agents' activities ... Before long news of the sale leaked out, the familiar process of jealousy and distrust convulsed the Ngati

Maniapoto and more land was sold. (A. Ward, *A Show of Justice*, p. 299.)

Of the original 1,844,730 acres held by Ngati Maniapoto, 753,175 had been bought by the government by 1890. As well, the Ngati Maniapoto population began to show the almost inevitable decline as the sales went ahead.

> By 1890 the Court had individualised most of the titles. The tribe had broken into small groups, earning a precarious living on Government contracts, rabbit-hunting and flax gathering. The Government had begun to purchase individual interests in land and in the later nineties broke down remaining resistance and completed the purchase of some large blocks. In the same period there was a certain amount of drunkenness, despite the prohibition. A decrease in population was recorded in both the 1891 and 1896 censuses. (M.P.K. Sorrenson, "Land Purchase Methods", p. 194.)

Meanwhile, Tawhiao, the Maori King, and his Waikato supporters had been living in the King Country since the end of the wars and resisting land sales there. Their wish to eventually return to the lower Waikato was complicated by the fact that only small reserves were available to them. However, their return was hastened by a Native Land Court decision.

> The Court decided in 1888 that the King and his Waikato tribe had no claim to land in the King Country since they had taken up occupation after 1840, the cut-off date which the Court applied for establishing title. (M.P.K. Sorrenson, in *The Oxford History of New Zealand*, p. 187.)

Again, the population of the Waikato tribe, which had been rising in the 1870s when they were in the King Country, showed a fall in the '80s as the reserves proved inadequate to maintain their lifestyle and they had no option but to disperse in search of employment.

The same processes happened to Tuhoe in the Urewera. Survey was allowed under limited circumstances; a special commission rather than the Native Land Court was to establish title; and elected committees were to manage the resulting blocks. Work began in 1896 and was completed by 1907. Of the 650,000 acres, around 10 percent still remained in Tuhoe hands by 1920 and this was largely unsuitable for economic development. It was also the only tribe to reveal a fall in numbers in the 1901 census.

Continuing Pakeha desire for land

European need for land was incessant in the second half of the 19th century. The pressures came first from the switch from agriculture to pastoral farming by the settlers, intensified by the refrigerated meat trade, and then, in the 1890s, from the development of intensive dairying in the North Island. The Liberal Government of Richard John Seddon, elected in 1893, was committed to expanding the rural sector, encouraging closer land settlement and the breaking up of large estates, and improving farming standards and output. The main driving forces were to be overseas borrowing and cheap Maori land.

> The Liberals also transferred 3 million acres of Maori land to Pakeha ownership in an effort to quench the insatiable thirst of North Island settlers. In 1893 McKenzie [Minister of Lands] brought Maori land sales under government direction, partly in an attempt to end unscrupulous dealing. But in the long term, government monopoly hastened rather than slowed alienation ... Maori land

was bought at prices well below market value, and, as it was so cheap, many more settlers benefited from the acquisition of this land than from the break up of large estates. By 1929 the Reform administration had bought a further three and a half million acres from the Maoris. Maori landowners rather than the "squattocracy" were vanquished by the state's promotion of closer settlement. (T. Brooking, "Economic Transformation", in *The Oxford History of New Zealand*, p. 238.)

CHAPTER 6: MAORI ECONOMIC DEVELOPMENT AFTER THE WARS

From 1865 on, the majority of the Maori world desired peace with the Pakeha and the opportunity to continue with their pre-war agricultural and economic activities. The futility of further warfare was clear, and there was considerable fear among the tribes that further military resistance would provoke more confiscation of land. Post-war separatist movements, such as those of the Maori King, or Te Whiti's community at Parihaka, were essentially peaceful.

Far from being defeated and demoralised at the end of the wars, the Maori people, whether they had fought for or against the Pakeha, were willing to enter the mainstream of New Zealand society, just as they had been doing before hostilities broke out.

> In point of fact as even a cursory reading of contemporary published reports of the Native Department officers reveals, among many tribes the cessation of fighting was accompanied by an upsurge of determination to come to grips with the apparently unshakeable pakeha world and to succeed in it. Not only were there requests from kupapa (friendly) tribes such as the Ngapuhi for settlers, gaols, doctors, schools and communications, but as has been stated, McLean's officers also received a warm welcome from former "rebels" such as the Ngati Raukawa, and most of the people in the Taupo, Bay of Plenty and upper Wanganui districts. Maori leaders asked for magistrates to come amongst them to teach them the law and build schools, they asked for appointment as assessors and policemen; they asked for roads and townships in order, they said, that they might widen their markets and sources of employment and purchase goods competitively. For some communities these were fairly new requests, but for many they were only a resumption of the drive of the pre-war years to engage with the incoming Western order and share its advantages equally with the pakeha. The renewed engagement was a conscious adaption, but not an acceptance of total assimilation to the pakeha mould. (A. Ward, *A Show of Justice*, p. 264.)

So Maori society by and large saw the war as an interruption to the process of adapting Pakeha ways and competing on an equal footing with the settlers. The Maori still wanted to receive the positive benefits of European society, while retaining those of their traditions that ameliorated the worst excesses of the Pakeha way of life.

However, Maori land development was to be considerably more difficult after 1865 than it had been before it. For a start, there was little government recognition that the Maori would need help and financial assistance if they were to re-activate their economic development, and the settlers, who before the wars had seen the Maori as an increasingly bothersome competitor for land and resources, had no intention of allowing the government to re-establish the tribes as economic forces.

With very little government assistance, the Maori economic achievement in the 1870s was considerable. Grain growing began again in most districts, schooners and flour mills were re-activated, and pastoral farming started in the East Coast, Hawke's Bay and other areas. Even the Waikato King and his followers were trading across their self-imposed barrier, the *aukati*, and receiving agricultural machinery from government officials. The Maori King strategy was to control trade so as to stay out of debt and not be tempted to sell land as a means of raising money.

Often, however, these developments were insecurely based or dependent on the inspiration and leadership of a particular hapu chief. If he died, the economic activities sometimes died with him. Also, the existence of the Native Land Court, and

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.)

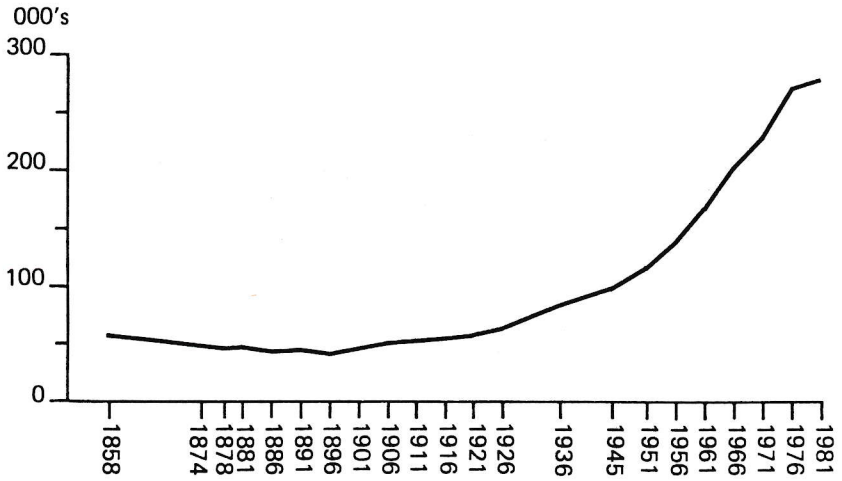
There is no doubting the importance of Ngata's land settlement schemes, even if they were not an unalloyed success. They established the importance of state assistance to Maori farming enterprises, and they gave the Maori people, for the first time since the Treaty of Waitangi, both the financial wherewithal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

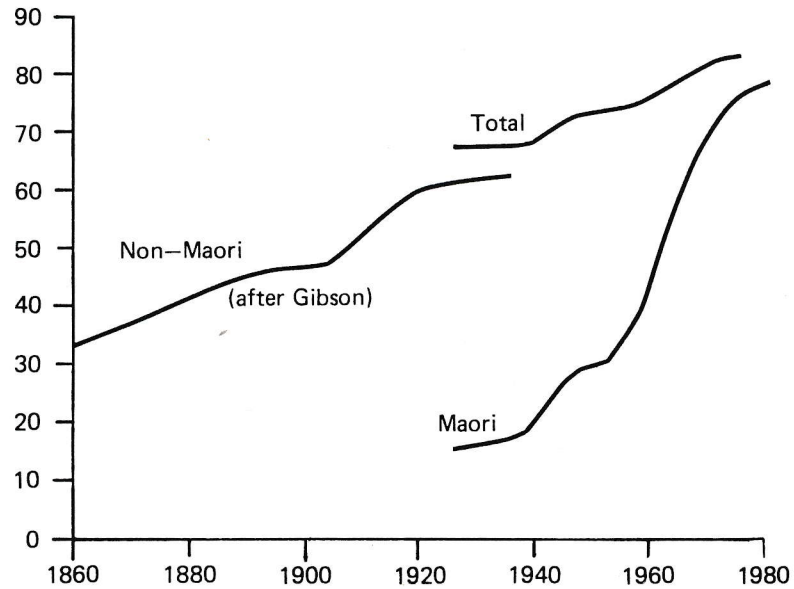
At the time that the government was finally beginning to support Maori farming initiatives as a means of economic development for the Maori people, who were still overwhelmingly rural dwellers, an upsurge in the Maori population was to mean that the available land was not sufficient to support the increasing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

---

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:

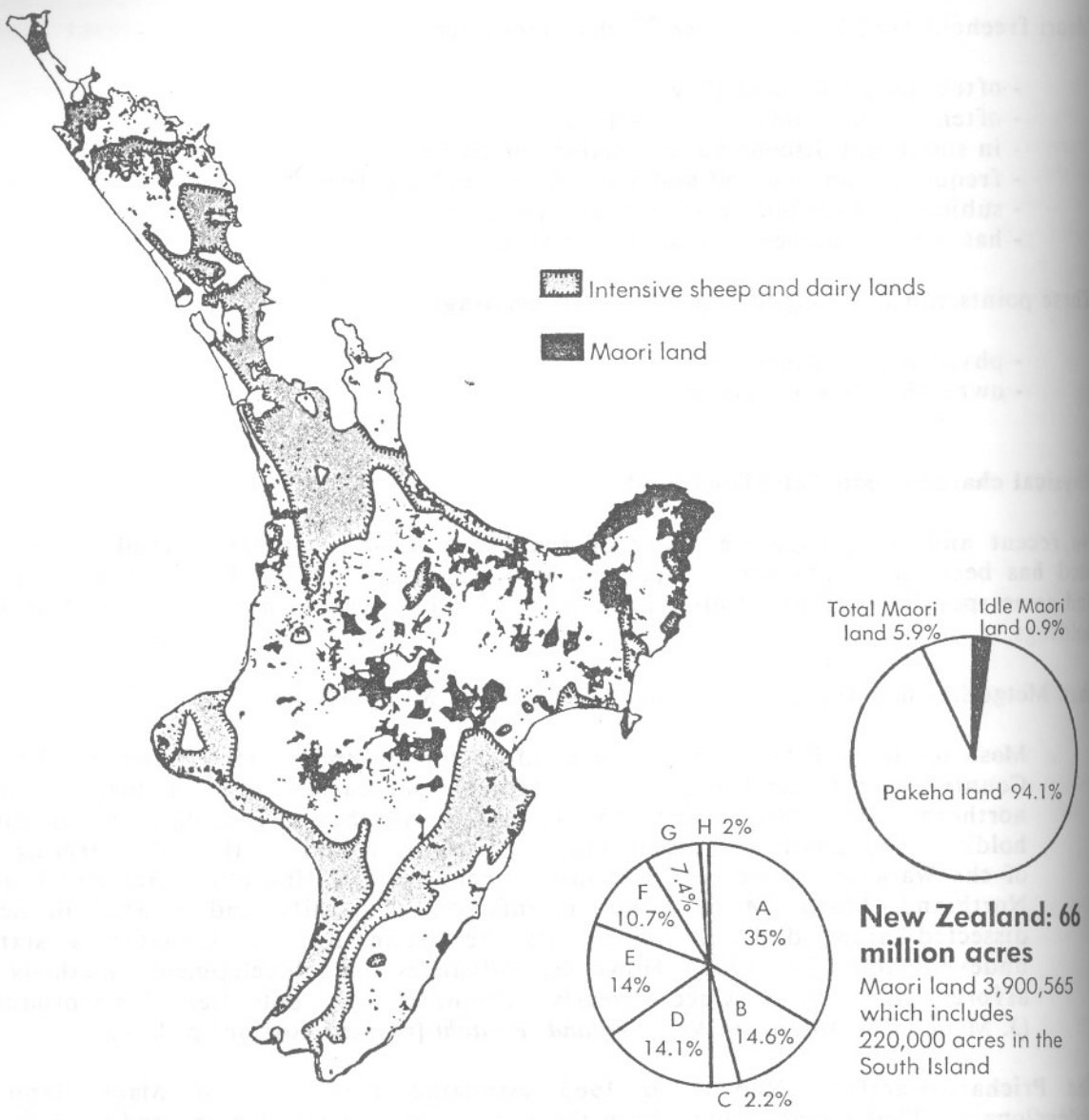
> Most of it is located in the central sector of the North Island in the King Country, the Central Plateau, the central and eastern Bay of Plenty, and the northern East Coast. Northern Northland also has a considerable amount but holdings are small and discontinuous. Little is found in the rich farming 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

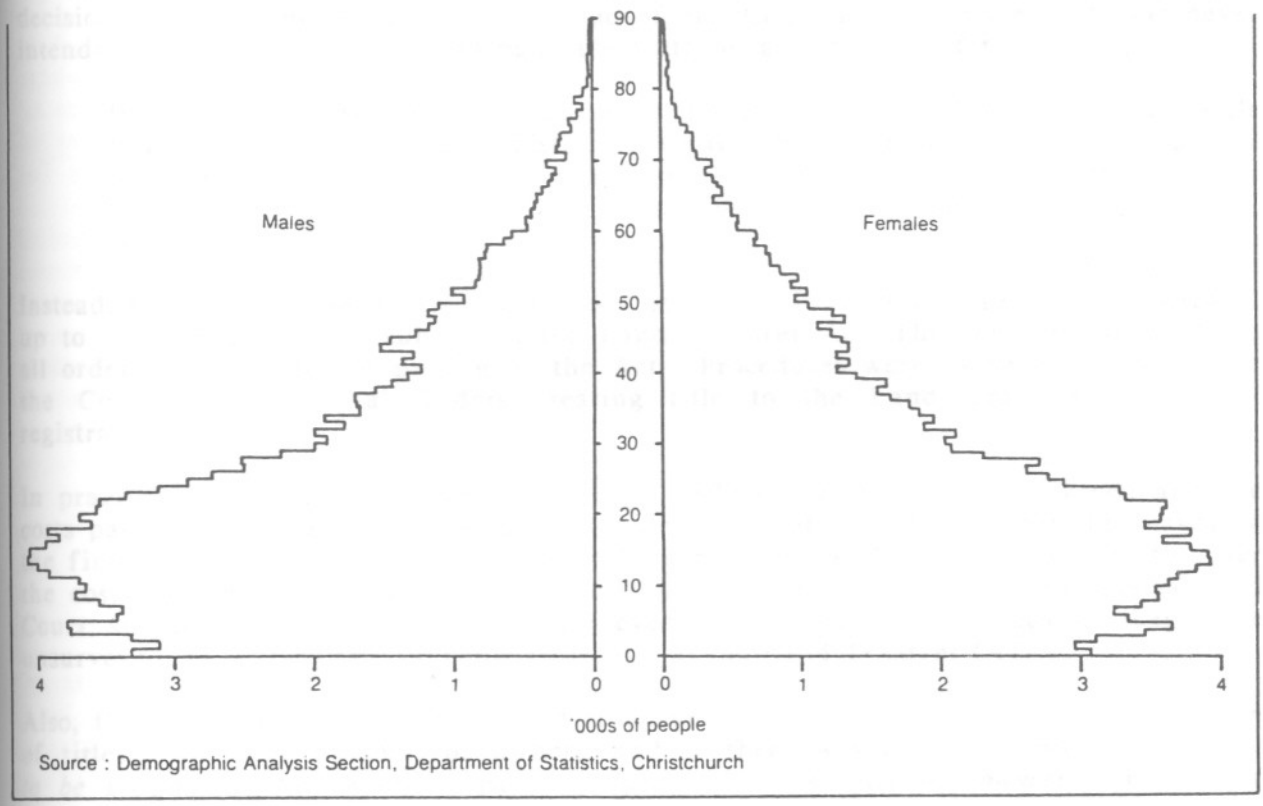
to appear and difficult to maintain. (I.H. Kawharu, *Maori Land Tenure*, p. 108.)

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

compulsorily acquired by the Maori Trustee, and so lose all rights to turangawaewae. The conversion fund ceased in 1975, and it was announced in June 1984 that the government would return all land interests worth less than $1000, and sell more valuable interests back to the owners in the form of an interest-free loan to be repaid with future income from the land.

Characteristics of Maori owners

A number of socio-economic and demographic factors add to the difficulties already encountered with fragmentation of ownership.

Not much is known about the socio-economic status and age of the current Maori owners. It seems reasonable to assume that the majority of owners are of the older generation, since most Maori land interests are not acquired until a member of the preceding generation dies.

With close to half the Maori population aged under 15, coupled with the rapid increase in the Maori population until quite recently, the process of fragmentation of ownership seems likely to continue.

Most Maori land interests are inherited from deceased owners, so it is unlikely that there is a concentration of ownership in any one Maori socio-economic group. However, this can point to a further problem when it comes to making use of Maori land. At the present time, the Maori people are over-represented in the more unskilled employment categories. The 1981 census shows that the Maori people are under-represented in the professional, technical and administrative sector of the work force. (See Table 2 opposite.)

This means that some groups of owners may need considerable technical and administrative resources and assistance in dealing with their lands.

The other major characteristic of the owners of Maori land is that many of them now live in urban areas, and so are, in effect, absentee owners. This situation is likely to continue indefinitely since nearly 80% of the Maori population live in urban areas. In fact, the majority of Maori landowners are now absentee.

Complicating these general ownership characteristics is the fact that Maori land is unevenly spread between tribes: some have a good deal more than others.

Also, contrary to what might be expected, the owners do not form one homogeneous grouping - the Maori people - but instead are composed of diverse elements such as Pakeha, charitable institutions, the Crown through the Maori Trustee, the descendants of the original Maori owners, and other Maori who have no direct ancestral claims to the land they own. Then there are those Maori who claim that their rightful interests in Maori and general land were unjustly taken from them through inconsistencies in administration or through coercion.

The differences in attitude between young and old, urban and rural, absentee owner and local owner, owner and non-owner occupier, sellers and non-sellers, can complicate decision-making. Where decisions may involve thousands of owners, some of the problems in more fully using Maori freehold land become apparent. To quote from a submission made to the Auckland Regional Authority.

TABLE 2: Major occupation groups of full-time labour force

(Occupation major group of full-time labour force by total population, New Zealand Maori population, Pacific Island Polynesian population, and sex, percentages, 1981*)

Occupation	Total Population			New Zealand Maori Population			Pacific Island Polynesian Population		
	M	F	Total	M	F	Total	M	F	Total
Professional, Technical ...	12.1	18.0	14.1	2.6	7.6	4.2	2.4	2.4	3.1
Administrative, Managerial ...	5.5	1.1	4.0	0.6	0.3	0.5	0.3	—	0.2
Clerical and Related	7.9	32.3	15.9	3.3	15.1	7.2	3.5	13.4	6.9
Sales	8.3	11.2	9.3	1.4	4.0	2.3	1.2	2.7	1.7
Service	5.8	12.2	8.0	4.8	19.7	9.7	5.3	21.1	10.7
Agriculture, Forestry, Fishermen	13.2	6.4	10.9	13.5	6.6	11.2	2.0	1.1	1.7
Production, Transport, Labourer	43.9	14.6	33.9	63.0	32.2	52.8	72.5	42.7	62.2
New Workers Seeking Work ...	0.5	1.2	0.8	2.2	5.8	3.4	1.3	3.0	1.9
Inadequately Described ...	0.9	0.6	0.8	1.5	1.6	1.6	2.1	2.3	2.2
Not Reporting Any Occupation	2.3	2.2	2.3	7.0	7.0	7.0	9.3	9.1	9.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

**1981 Census (Provisional)*

Source: New Zealand's Multicultural Society: A Statistical Perspective, State Services Commission, February 1982

> The present system makes it very difficult for all sections of the Maori people to regard their lands as being a positive part of everyday Maori life. The system of having split-up land shares owned by thousands of different Maori scattered about the country is actually a pakeha device that has ended up destroying the unity of the Iwi and Hapu (Tribe and Sub-Tribe) and has allowed individuals to do what they like, thereby setting relative against relative and dividing the people as a whole.
>
> The younger Maori, who generally rarely own such shares, are left on the sidelines and see their inheritance gradually lost to them. Yet, much of our energies and aspirations as a people are embodied in our youth who are demanding, more and more, the right to have some say over the future of their family lands. (Auckland District Maori Council, 1981.)

Kawharu has pointed out that the Maori, particularly over land questions, is extremely sensitive to family and community opinion. Indeed, the community may be as active as the local owners in the formation of opinion in the lead-up to an owners' meeting, and may well have more influence than absentee owners who have attended. (Kawharu, *Maori Land Tenure*, p. 229.)

Evelyn Stokes, in her study *Tauranga Moana: The Impact of Urban Growth*, succinctly summarises the leadership tensions:

> The quality of Maori leadership is also at stake. Leaders have to be able to face up to and adapt to changing circumstances. At times the kaumatua, elders, may push the younger, better-educated into negotiating situations with Pakeha officials. At other times the elders, who are the traditional leaders, feel they must cope themselves with a situation with which they are ill-equipped to deal. The potential for generation conflict and crisis in leadership is considerable in Maori communities faced with the kinds of pressures caused by urban expansion. There may also be difficulties caused by absentee owners, who have migrated to other urban areas for jobs, but who want a stake in decision-making, or even want to return home to live. Few Pakeha officials comprehend these sorts of stresses in a community or understand why there may be difficulty in reaching any decision. (E. Stokes, *Tauranga Moana*, p. 69.)

Fragmentation of ownership and title have been perceived as putting enormous obstacles in the way of effectively using Maori freehold land, both in the owners' and in the nation's interest. The problem has been to find acceptable solutions.

Solutions to fragmentation

Other than incorporations, which were essentially a Maori initiative to deal with their fragmented lands, the solutions offered by successive governments have tended to stress individualisation of title, thereby reducing the number of possible owners. Not that the idea of individual title to a piece of land has been entirely unwelcome in the Maori world. There is what Stokes has called "the basic ambivalence in Maori attitudes towards land". This arises out of the co-existence of individual and group concepts of ownership. Both are held strongly by Maori people and any solution to the problems of fragmentation must take them both into account.

Turangawaewae, as has been pointed out, is one of the strongest cultural manifestations today of the communal basis of Maori land, and its importance cannot be underestimated. As the marae is still the appropriate forum for Maori debate on major issues - a fact

which is becoming increasingly evident - being able to assert authority on one's home marae is a powerful force for wanting to retain a land interest, no matter how small. Even amongst the younger generation, there is a reluctance to sell their often tiny land interests, even if these may no longer be strictly necessary for the affirmation of one's turangawaewae.

> Younger Maoris see belonging as a matter of feeling and action rather than land ownership, but even those who have settled in urban areas still sometimes hesitate to dispose of such a tangible link with their origins. (J. Metge, *The Maoris of New Zealand, Rautahi*, p. 114.)

Until recently, government-sponsored programmes to deal with the fragmentation of Maori land have taken little account of turangawaewae. Individualistic attitudes were pursued throughout the 1950s and 1960s as part of official government policy towards the development of Maori land. The credo of the times seemed to be, if the land would not, or could not, be used by the current owners, then it should be sold to those who could use it - either Maori or Pakeha. This seemed to be the motivation behind the much-disliked conversion fund where the Maori Trustee compulsorily bought up all those interests worth less than $50. Other measures to deal with the land stressed consolidating blocks into large enough units to be used economically by one or two owners, with the others trading or selling their interests and their turangawaewae as well.

It should not, therefore, be assumed that Maori who sold their interests in Maori land were necessarily motivated by personal gain. In a situation where the land was not likely to be developed because of the obstacles that have been described, selling one's interest was perhaps the only means available of exercising an option about the use or non-use of the family or tribal land. Similarly, transferring the interest to another family or tribal member was a way of helping someone eventually use the land, even if it was not oneself. In fact, quite large numbers of owners have gifted their shares to get one of their family on to the land.

But as a method of dealing with fragmentation, selling one's interest in Maori land is considered by many Maori owners, non-owners and prospective owners to be highly undesirable under most circumstances, given that it results in the loss of turangawaewae. The alternative has been to seek more communal arrangements which combine the retention of turangawaewae with more convenient forms of administration.

Amalgamation

This method allows large numbers of impractical partitions to be amalgamated by transfer, sale or exchange into new titles and larger, more economic blocks. Each owner taking part in the scheme just substitutes his or her share in the original partitions for an equivalent share in the newly-formed block. The cash value of the interest remains the same. Each share is determined by the Maori Land Court which issues an amalgamation order. Amalgamation has been applied extensively to Maori lands, particularly in the establishment of development schemes under Part XXIV of the Maori Affairs Act, 1953. Over the last decade, however, its popularity has declined. Some of the reasons are:

- Some owners do not like to lose the individuality of their particular family block by merging it with many others - they wish to maintain a direct link with the ancestral lands and keep their family marae warm.

- Amalgamation usually means fewer people are needed to run the new development, and so those who are not needed (sometimes up to 80% of the population) may have to leave the area in search of work. The resulting depopulation socially and culturally deprives both the remaining community and those having to re-establish elsewhere.

- A departmental policy of appointing the best available staff to run Part XXIV developments may mean outsiders are brought in to run the block.

- The owners may feel prohibited from offering their own perspectives and advice on the development of the scheme and eventually suffer a loss of identity with their land. Under these conditions, owners are more prone to 'sell' their shares, or adopt a carefree attitude towards the operation of the scheme.

Amalgamation directly confronts the problem of fragmented titles, but does not come fully to grips with fragmented ownership. It offers a solution which is administratively convenient, but which can effectively alienate the owners from their turangawaewae, whether by geographical rearrangement of the land or by removal of control over it.

Aggregation of ownership

This is an alternative to amalgamation. Consolidation of titles is still the objective but, unlike amalgamation, existing titles do not have to be varied or cancelled - the original titles remain intact. A vesting order from the Maori Land Court confirms the relative interests of each owner in much the same way as they are confirmed in amalgamation. Aggregation may be seen as an advantage by those owners who wish to have their particular landholding retained as an identifiable block. This, however, can create problems once a development begins earning revenue. With the East Taupo Forests Trust, for instance, the planting of some areas was done well in advance of others. The problem was how to distribute income fairly to all owners, including those whose particular block was not producing revenue yet. Working out a fair system involved the owners in extra administration costs and time.

Combined partition

With this method, a number of small partitions can be "consolidated" into one title, whether or not the blocks of land are alongside one another. This procedure is particularly useful because it allows Crown and general lands to be included in the rearrangements if these owners are agreeable. It therefore allows the use of Maori land which has become restricted by blocks of general or Crown land. The rearrangement and formation of new titles means that registration at the Land Registry Office can be completed and the land has a secure title for borrowing. Combined partitions are generally associated with small-scale developments, such as residential housing, marae, or similiar community facilities.

Incorporations

These have provided an answer to some of the problems of fragmentation and are amongst the oldest of Maori organisations. Upon incorporation, as it operates at present, the current owners become shareholders according to their respective interests in the land. Instead of owning the land, they own shares in the incorporation and are paid dividends

on income resulting from development activities. The committee of management is elected by the shareholders and has the power to enter into contracts on behalf of the shareholders, borrow money, or lease land. It must, however, get the consent of shareholders before it can sell any of the land.

Incorporation is therefore another way of addressing the problems that can result from fragmentation of title. And because the incorporation is the single registered owner of the land, the borrowing difficulties associated with a cluttered title are removed.

On the other hand, fragmentation of ownership can continue to occur, since shares are subject to succession as in other Maori land interests. Indeed, the keeping of records relating to shares, unclaimed dividends and so on may be more complicated than for land held in multiple ownership.

The 1967 Maori Affairs Amendment Act made substantial changes to the law relating to incorporations which have made them less popular with Maori landowners.

Before 1967, membership of an incorporation was restricted to the descendants of those named in the first titles to lands included in that incorporation, with each owner retaining a share in the land itself. Because dealing in shares on the open market was not permitted, complete protection from outside takeovers was provided. Even within an incorporation, control existed over undue aggregation of shares by individual members.

Section 41 of the 1967 Act, however, transformed a share in the actual land into a shareholding in the incorporation, and it became possible to trade shares on the open market.

Also made possible was the setting of minimum shareholdings. The move was an attempt to combat fragmentation of share interests, but it has led to situations where people have been deprived of their turangawaewae by being removed from the ownership list. It must be noted, though, that the minimum share can only be set by agreement at a general meeting and the decision can be subsequently reversed or modified.

The 1967 legislative changes, which followed the recommendations of the Prichard-Waetford Committee, may be viewed as more of an attempt to bring Maori incorporations into line with Pakeha private companies than to resolve the complexities of fragmentation, which have continued to exist. At the same time, incorporations have proved that fragmentation is not an insurmountable obstacle to the successful utilisation of Maori land.

Section 438 trusts

These are created under section 438 of the Maori Affairs Act 1953. The terms of the trust are either set or approved by the Maori Land Court, and can be tailored to suit the owners' particular circumstances. The flexibility of trusts means they can be adapted to meet many of the problems of fragmentation of title and ownership. A trust order can apply to one block of land or to many. Adjacent blocks can be placed under the one system of administration and management without the expensive and time-consuming business of amalgamating titles. The Matapihi-Ohuki Trust in the Bay of Plenty, for instance, controls 50 small blocks in multiple ownership through appointing the same group of trustees for each block.

Chief Judge Durie has given a convincing rationale for section 438 trusts:

> ... the Court has been largely responsible for promoting such forms of management as that conceived under section 438. When the Court is hearing an application and it appears that the block of land involved is not under any proper management, is neglected, or is being used in a manner that is unfair to owners or any section of them, then the Court becomes concerned to ensure that some form of management is eventually settled upon and established. Sometimes, if the individual block is not an economic unit by itself, the Court will endeavour to establish several blocks in the vicinity under one system of management. And so there are a variety of trusts, from the small family ones, to larger and more tribal concerns. In this way too, the Court has been able to effectuate the Maori propensity to do things as a body, or group. While there are many Maori who prefer to have their own farms, and who should be given assistance to that end, there are many others who are content to manage farms for large concerns with some relief from administrative detail, or to live and work in groups on large forest and farm schemes.
>
> The trust system of management seems acceptable to many Maori owners, either as a permanent arrangement, or as a prelude to the eventual formation of an incorporation, but generally it seems to offer more flexibility than is practicable within incorporations. (E.T.J. Durie, *Submission to the Royal Commission on the Maori Land Courts*, pp. 37-38.)

Maori trust boards

The Maori Trust Boards Act 1955 allows for the creation of trust boards. Although not specifically designed to resolve the problem of fragmentation, they are a viable and effective means of coming to grips with it.

Trust board activities are generally aimed at enhancing the well-being of their beneficiaries. Health, education and vocational training are some of the areas they are concerned with, and they may, with the consent of the Minister of Maori Affairs, "acquire any land or interest in land, whether by way of purchase, lease or otherwise, and with the same prior consent may sell, lease, sublease, or otherwise dispose of any such land or interest..." (section 26[1]). Because their activities and powers are not confined to land, they have a flexibility which adds to their attraction when compared to incorporations.

Beneficiaries in a trust board arise by fact of birth and, unlike incorporations, no vesting order is required. Nor is there, in theory, the danger associated with incorporations of an individual being deprived of shares and therefore turangawaewae. Although boards are required by section 42 of the 1955 Act to keep an updated roll of beneficiaries, section 43 places the onus on the beneficiaries to ensure their names are included.

Extending the trust concept

The trust concept increasingly brings us back full circle to the idea of turangawaewae - in the sense of holding the land in trust for future generations.

This, of course, is the basis for considering another answer to fragmentation of ownership; and one fully in harmony with traditional Maori attitudes towards their land. If fragmentation is allowed to go on long enough with everyone retaining their land interest no matter how small, the land eventually becomes communally owned again.

It is this idea that has begun to dominate influential Maori opinion about how to solve some of the current difficulties associated with the use of Maori freehold land. This approach can be seen in the New Zealand Maori Council's *Kaupapa* issued in February 1983 and the short-lived draft Maori Affairs Bill that began its legislative stages in June 1984 before the change of government.

To quote from the *Kaupapa:*

> [Our objective] is to keep Maori land in the undisturbed possession of its owners; and its occupation use and administration by them or for their benefit. Laws and policies must emphasise and consolidate Maori land ownership and use by the whanau or kin group.
>
> If we are true Maori, we must insist that Maori land ownership be viewed entirely differently from ownership as it is understood in British law. Our land interests are an inheritance from the past entrusted to the future in which we have no more than certain rights to enjoy the fruits of the land in our own lifetimes, and a duty to convey those rights to succeeding generations. (New Zealand Maori Council, *Kaupapa Te Wahanga Tuatohi,* p. 10.)

If the turangawaewae approach is to prevail, then there have to be ways of co-ordinating the many owners and recording their interests in the land. The *Kaupapa* envisages doing this through a series of trusts and incorporations that can operate at family, hapu and tribal level, and which includes the present incorporations, section 438 trusts, and tribal trust boards. As for keeping track of the numerous owners of small interests - a task currently beyond the present system - this could be done through whanau trusts, for example, or putea (communal accounts).

As the *Kaupapa* points out, this solves the increasingly expensive problem of formally recording individual ownership, with its potential for alienation.

> We propose that the owners of fractional interests be permitted to have their shares held in trust wherein fractional shareholdings can be combined. The combined income of the trust shares would then be retained for use for the benefit of the owners, their marae or for assistance to individual beneficiaries.
>
> No expensive recording of increasing numbers of fractional shares would be required. The owner, upon transferring personal shares to the putea would remain identified. All descendants could prove their rights to assistance from the trust by providing evidence of their ancestry. The vital link back to the land of their ancestors - to their very being - is retained and yet the call for more economical recording of ownership is answered. (*Kaupapa,* p. 14.)

To bring this about there will need to be:

- the setting up of appropriate trusts to administer on a fair and equal basis the distribution of whanau or putea funds;
- a means of safeguarding the interests of owners who are dead or unable to be contacted;
- a procedure to allow former owners who have been dispossessed (through conversion, for instance) or their descendants to re-establish ownership rights;

- a decision will have to be made on the appropriate "value" of an uneconomic share and a means of reviewing this if fragmentation stops or the worth of an uneconomic share increases because of a rise in land values.

Summary

This range of solutions to fragmentation of ownership highlights the polarity of opinion that can exist between owners, particularly the fact that not all owners will want to surrender their right to dispose of and sell their Maori land interests.

It is also not clear where majority opinion lies on the issue. The present Chief Judge of the Maori Land Court, E.T.J. Durie, in his submission to the Royal Commission on the Maori Land Courts, was not willing to say which way the balance fell:

> Today the Maori opinion is divided and the different approaches are apparent in many of those who appear before me. On the one hand some prefer arrangements on succession to avoid fragmentation, or, by vesting order, exchange, gifts and sales, have expended time and money to enable one of their number to acquire a predominant interest. Others are active in buying shares of close and distant relatives alike with a view to acquiring sole ownership of the whole, or to be able to partition out a part. On the other hand, others prefer that all entitled should succeed no matter how large or small the interest. There are those opposed to one lease, even though, in order to favour a relative, the rental might be quite nominal. There are those who oppose partition and prefer that all should be part of a common venture.
>
> There are those who would sell readily on the open market and there are those who would restrict sales to within the tribe, or the family. This became very apparent recently when some owners decided to sell on the open market, a section within a distinctive Maori village. I would be unable to guess which view predominates. (E.T.J. Durie, *Submission to the Royal Commission on the Maori Land Courts*, p. 19.)

It is certain that where land interests still have considerable monetary value this debate will be more keenly felt. The Maori Council *Kaupapa* recognises this when it says "We believe these measures will reduce the frequency of sales of Maori land but are adamant that the rights of a part owner to sell must not override the rights of other shareholders wishing to retain their land". And "...the Court must be satisfied that the interests of any of the major owners are adequately protected, and may partition the interests of the major owners, or, may provide for payment and successions to specified shareholders to continue." (*Kaupapa*, pp. 12 and 17.)

There would seem to be general acceptance that a major interest in a block of Maori land in multiple ownership, or a block of land owned by ten or fewer owners, needs to be treated differently from a small interest among many others. And this appears to be the Maori Land Court's practice.

Chief Judge Durie again:

> A block with several owners all with small shares will be treated differently from one where 70% of the shares are held by one person. The legislature has provided some guidelines. Section 215 prescribes that land owned by more than ten is to be dealt with in certain ways and land owned by fewer might be dealt with in much the same way as general (European) lands.

> A more difficult situation arises when some large tribal project is mooted involving numerous blocks and numerous owners in a common scheme. Should one particular family owning one individual block be allowed to threaten the whole scheme by refusing to join in on it? British concepts would incline to say "yes" but Maori customary lore would say "no". The question arose in the establishment of the Lake Rotoaira Forest Trust on some 225,000 ha and in respect of 78 blocks. The Supreme Court considered that the Maori Land Court had a far-reaching discretion in the matter... (E.T.J. Durie, *Submission to the Royal Commission on the Maori Land Courts*, pp. 20-21.)

Not all examples, however, are of a minority obstructing the plans of the majority. The minority may be at risk from the proposed activities of the majority of owners.

In some cases an owner or owners may have an economic block they are using profitably which is surrounded by fragmented and "uneconomic" blocks. These owners might not want the block that they are using productively in a Pakeha way included in some form of amalgamation scheme or title "consolidation".

So any movement towards a more collective form of multiple ownership through trusts or incorporations must provide protection for those owners with a large interest in a block in multiple ownership, or who have an economic block that would be in the way of a trust or incorporation development.

Traditionally, the Maori Land Court has been the body to adjudicate in these possible disputes between owners - often disputes between family members. In Chief Judge Durie's view, the Court as a court of law can best protect the individual as it sifts through the various conflicting options and opinions to reach its decision. However, the Maori Land Court has a wider role than this purely judicial one:

> But as distinct from most Courts of Law, it could be said that the main function of the Maori Land Court is not to find for one side or the other, but to find social solutions for the problems that come before it: to settle differences of opinion so that co-owners might co-exist with a measure of harmony, to seek a consensus viewpoint rather than to find in favour of one, to pinpoint areas of accord and, to reconcile family groups. (E.T.J. Durie, *Submission to the Royal Commission on the Maori Land Courts*, p. 48.)

CHAPTER 12: MAORI PREFERENCES FOR LAND USE

The previous chapters showed how a number of schemes to assist in the increased use and development of Maori land have either not been effective or have created considerable dissatisfaction because they did not fit in with Maori preferences for the use of their land. We now look more closely at what those preferences are in the mid 1980s.

The statistically verifiable gap between Maori and Pakeha on a number of social, educational and economic indicators has motivated some Maori to question whether present New Zealand society is serving the best interests of their people. What evidence we have demonstrates that the Maori people - and particularly their youth - are bearing disproportionately the burden of unemployment. Maori young people also figure disproportionately in New Zealand's crime statistics and have a significantly lower level of educational achievement compared with Pakeha youth.

Therefore, while there has been an increasing emphasis on using Maori freehold land as an economic base, such development will not be a purely economic concern; goals such as providing employment and a degree of social and cultural cohesiveness will also be pursued, along with the preservation of the land's traditional cultural and spiritual associations.

Maori owners' economic, social and cultural preferences will be discussed under two general themes:

- retaining Maori land; and
- fostering Maori self-determination.

Retaining Maori land

Maori land has several cultural connotations for us. It provides us with a sense of identity, belonging and continuity. It is proof of our continued existence not only as people, but as the tangata whenua of this country. It is proof of our tribal and kin ties. Maori land represents turangawaewae.

It is proof of our link with ancestors of the past, and of the generations yet to come. It is an assurance that we shall forever exist as a people for as long as the land shall exist.

But also land is a resource capable of providing even greater support for our people - to provide employment - to provide us with sites for dwellings - and to provide an income to help support our people and to maintain our marae and tribal assets. (*Kaupapa*, p. 10.)

That statement from the New Zealand Maori Council would seem to summarise a great deal of contemporary Maori opinion. The traditional cultural associations with the land are still strongly held; as well, there is an acceptance and a determination to retain the remaining land and use it for the benefit of family and tribal groups. Land is the link with a remembered past, and also one of the ways to a better future. The task ahead is to use Maori freehold land more fully, so that the goals of deriving income, creating employment, providing rural housing and strengthening Maori culture can be achieved.

An important aspect of the uses associated with Maori land is the persistence of traditional Maori concepts, values and beliefs. It is these that have created a

distinctive pattern of Maori land use: living on the family land and not in a nearby town; locating housing and economic developments around the marae; protecting land and water of ancestral significance; developing the land in the interests of all the family or tribal members.

Current Maori initiatives in land development and use are focussed on trying to build on these traditional values, so that future developments more accurately reflect Maori needs and expectations.

Recognition of the Maori relationship with ancestral land

> ....the principal tribes with their subtribes came to occupy definite areas with fixed boundaries. The love of their own territory developed to an absorbing degree, for tribal history was written over its hills and vales, its rivers, streams and lakes and upon its cliffs and shores. The earth and caves held bones of their illustrious dead and dirges and laments teemed with reference to the love lavished upon the natural features of their homelands. (P. Buck, *The Coming of the Maori*, p. 379.)

This attachment to ancestral land still continues, *even* if it is no longer held in Maori hands. Under section 3 (1) (g) of the Town and Country Planning Act 1977, "the relationship of the Maori people and their culture and traditions with their ancestral land" is a matter of national importance. This means that, where appropriate, district and regional schemes must take account of this relationship.

There has been some controversy over how liberally this relationship should be interpreted. The Planning Tribunal, in the few cases that have come before it, has taken an extremely restrictive view and ruled that land which is not Maori land or Maori freehold land cannot be regarded as ancestral land. This interpretation is opposed by almost all Maori opinion.

From the Maori point of view, ancestral land would include:

- recognised tribal boundaries and tribal symbols on the landscape such as mountains, rivers and lakes;
- papakainga (dwelling places) and marae;
- waahi tapu (sacred precincts) such as landing places of canoes, burial grounds, battlefields, and areas containing spiritual symbols, as well as wai tapu (sacred waters) including mudflats, lakes, rivers, streams, swamps;
- land in Maori ownership, whether by incorporation or on a multiple owner basis;
- land containing natural resources of traditional cultural significance and which may become the subject of protective tapu.

This suggests that the people most qualified to define ancestral land are the kaumatua (tribal elders) of the tangata whenua (the local people who have ancestral rights of occupation and use of a particular locality). In effect, the tangata whenua regard themselves as kaitiaki (guardians) of the tribal areas, regardless of who may be the current title-holders.

The physical environment embodies the historic and cultural values of Maori people, while Maori place names provide the basis for information about physical features and the historical, natural and mythical events associated with the Maori people of a particular area. These aspects act to enhance Maori identity and the sense of belonging

to that area, and are reinforced by the ritual and cultural practices associated with marae, as well as the practices of tapu and rahui (prohibition) which currently exist.

The Motunui outfall proposals, for example, were obviously out of keeping with the Te Ati Awa people's continued use of the reefs and sea-bed off the Taranaki coast as a source of seafood to offer their guests as a matter of tribal prestige and honour. The reefs and sea-bed are also a source of cultural information as the names can be used as reference points to recall a vivid account of Te Ati Awa tribal history.

Although such a wide-ranging, continuing relationship is outside most Pakeha notions of ownership, the practical effects may not be too difficult to deal with. Finding an urupa (burial site) on a Pakeha farm may not unduly restrict how that patch of land is used. The local Maori people may want it fenced off or may be willing to remove the bones to another site. Sensible compromises can be worked out if dialogue is maintained between the landowner, the local council and the local Maori community.

Incorporating the Maori ancestral relationship into planning schemes would not only enrich the overall perception of a particular landscape but also New Zealand's total cultural environment. Such a broadening of perspective has undoubtedly been encouraged by the work of the Waitangi Tribunal which, since its establishment in 1975, has commanded increasing respect.

Utilising Maori freehold land

> Our philosophy on the retention of Maori land is of paramount importance in considering the disposition of interests in Maori land. We are convinced that the Maori land resource provides both the economic base and the spiritual mana to bind the people together. It is essential not only to preserve this base but to broaden it. (*Kaupapa*, p. 13.)

There is now a widespread acknowledgement by official Maori bodies and many Maori landowners that successful utilisation of Maori land is the key to its retention. Finding a productive use for previously unused or under-utilised lands not only keeps them in Maori ownership but can also satisfy a number of other Maori goals and preferences. An example is the giant East Taupo and Rotoaira Forest Trust. The planting of the forest under a leasehold arrangement retains ownership in Tuwharetoa hands, and, through providing rental income and creating work for Tuwharetoa people within their own tribal area, establishes a basis for the upgrading of marae and the development of other cultural resources.

At the same time, it must be pointed out that development has not been, and will not always be, an option available to all owners, nor does all Maori land have the potential for successful development. Changing economic and market circumstances have dramatically transformed the commercial potential of some Maori lands over the past decade. Kiwifruit farming in the Bay of Plenty, for example, has provided the opportunity for some Maori owners to greatly enhance their association with their land. Those owners, on the other hand, who were not in a position to make a successful transition from pastoral to horticultural farming, have been hard-hit by the escalating rates and the increased demands for their land from outsiders that have accompanied the rise in market value.

> There is a deep-seated concern for preservation of the marae as an institution for this epitomises Maori cultural identity. The marae is the place where traditional values are preserved and enhanced. The marae will remain sacred ground, the matrix where the culture is still strong, the place where the culture adapts to changes, grows and is strengthened. On the marae Maori people acquire a sense of belonging, identity and self esteem. Most urban Maori still feel the need to return home periodically, and many will retire eventually to the ancestral marae. The prospects for Maori rural development seem to be strengthening the reciprocal and complementary relationship between rural marae and urban kinsfolk. (E. Stokes, "Population Change and Rural Development: The Maori Situation," *Studies in Rural Development*, No. 1, p. 36.)

Traditionally, a community would live near its marae - the focal point for all important community activity. The marae is still the centre of contemporary Maori culture, but the desire of some Maori people to live near their marae and keep it "warm" has been hampered by either planning restrictions or not being able to raise a house mortgage against an "insecure" title.

Since the 1977 Town and Country Planning Act, the town planning restrictions have been eased and in some rural areas planning permission may be granted to those Maori people who wish to live close to their marae. Taupo and Tauranga counties, for example, have special Marae Community Zones and Papakainga zones that make this preference a possibility. However, a number of county councils still have zoning restrictions in their district schemes, and for marae residential housing to become a general reality these would have to be removed.

But this has its own difficulties:

> Many Maori people are deterred by the apparently complex procedures of the Town and Country Planning Act, which are operated by Pakeha bureaucrats. And many feel that county councils which are dominated by Pakeha farmers have little sympathy with Maori aspirations. There is scope for a good deal more dialogue between county councillors and their Maori constituents in many New Zealand counties. (E. Stokes, *Tauranga Moana*, p. 29.)

Papakainga zones can be used to get around title difficulties when residential housing on Maori land is desired. Two basic approaches have been used to date: one utilises the existing subdivision procedures, with each owner receiving a certificate of title; the other entails the vesting of land in a trust with accompanying rearrangement of ownership shares and clarification of occupational boundaries.

The first approach inevitably leads to alienation, since new titles have to be created and the area of land for subdivision is often of insufficient size to accommodate all owners. Where subdivision occurs, moreover, land is taken by local authorities for reserve purposes.

Under the second approach, where a cross-leasing arrangement is adopted, the interests of individual owners can remain intact. This is not always possible, however, and alienation may occur as a result of individual owners agreeing to increase or forfeit their shares to enable a practical occupation of the site.

Variations on these approaches are currently being explored. The most satisfactory arrangement would appear to be one in which a clear distinction can be made between

ownership of land and occupation as a use of the land. This would protect the rights of the owners while ensuring that occupation rights for use as housing provide the occupier with sufficient security and privacy, as well as the flexibility to enable transfer to prospective occupiers.

In addition, rural resettlement is constrained by the lack of economic opportunity and the costs of servicing, such as power and roading.

> There is no point in encouraging people to go back to the pa if the result is the development of a Maori peasantry eking out a bare subsistence in remote rural localities conveniently out of sight of central and local government administrators. After all, rural poverty and unemployment were the reasons many Maori families migrated to the cities in the first place. The important issue seems to be how to develop policies which encourage employment opportunities in rural Maori communities. (E. Stokes, *Some Problems of Rural Resettlement in Maori Communities*, p. 7.)

Rural resettlement will depend on the creation of job opportunities which, in part, depends on the economically feasible development of Maori land. So Maori economic and social preferences are entwined here: the social preference of rural living will not be possible without the productive use of existing Maori land.

When the rural housing project is a sub-division, the provision of essential water and sewerage services can be very costly to the Maori owners. The standard procedure is that each property within the settlement contributes towards a loan, and every owner or nominated owner may take part in a loan poll to support or oppose it. In some areas, however, Maori land has been grouped under one rates assessment. So a block of Maori land with subdivision potential may be 50% of the total zoned land area, but account for less than 10% of the allotments. Each allotment has one vote, and so the loan poll is heavily weighted against a servicing proposal and the ultimate settlement of Maori land.

Subdivision costs are usually met by the selling of sections on the open market. Therefore the subdivision for a family development must be greater than the actual area required, so that people from outside the family or tribal group can buy in. This may not always appeal to outsiders, nor may the tribe or family want the extra numbers in the settlement. Such circumstances contribute further to Maori land alienation.

Resisting compulsory acquisition

The compulsory acquisition of Maori land for public works has also been a major source of grievance for Maori people who question the need for the Crown and local authorities to actually own the land on which they propose to establish their works. The role of town planning procedures in this process has contributed to the suspicion with which they are regarded by Maori people.

Leasing is seen as a possible answer. A case in point is the Ohaaki geothermal power project, where the Crown provides an agreed rate of compensation which acknowledges the value of the land to its Maori owners.

A similar concern is the acquisition of reserves by local authorities as a condition of approving subdivision or partition applications. Many Maori landowners support exemption from this provision, given that several thousand hectares of land have been gifted or otherwise presented to the Crown for the benefit of local communities and the

nation as a whole.

The anomalies and iniquities of subdivision or - more specifically - partition of Maori land are illustrated in the Maori Appelate Court case, Harataunga West 3B. Esplanade reserves were taken from large areas of Maori land fronting the river. The land taken extended well beyond that which was the subject of the proposal, detrimentally affecting landowners who knew nothing of the original application. Three important omissions were made:

- its status as ancestral land was undermined by its vesting as historic reserve when it would have been appropriate to set it aside as a reservation under section 439 of the Maori Affairs Act 1953, thereby keeping intact its direct link to the tangata whenua;

- the discretionary power of the local authority to recommend to the Minister of Lands that the width of the esplanade reserve be reduced was not exercised;

- through inconsistencies inherent in Maori partition and subdivision approval procedures not all owners of the affected block were notified of the proposal and its probable effects, the result being that they lost all rights of objection, hearing and appeal.

Conservation

> ... a plan of conservation was worked out and included in our agreement with Feltex. These conservation measures would allow us to harvest the mature trees and allow natural regeneration of our forest, which would remain our heritage, and would continue so for ever. Everyone, especially the environmentalists, appears to know (or think they know) what is best for us and continues to talk down to us and carry on making arrangments on our behalf. We didn't ruin our country (i.e. forests, fisheries, etc.) - it was done for us - and I believe we know more about conservation than they have ever learned. (Koa Murdoch, *Submission from Waitutu Incorporation to Maori Economic Development Summit Conference*, p. 2.)

One of the outcomes of New Zealand's settlement history is that much of the remaining Maori land coincides with what is left of the country's native flora and fauna. This puts many Maori landowners in an invidious position, since economic development - particularly through forestry - of the undeveloped land is the only option available to them. The local people see the creation of new jobs and income for the community as more practical and powerful motivators than preserving natural wilderness areas. The pressures have become more intense as local people have moved out of the community in search of work elsewhere. With high unemployment in most regions, the absentee owners wish to gain what extra income they can from their share of the tribal lands. Those in the local community also need income and the jobs that come with these types of development. In parts of Northland, for example, the return from forestry leases is now higher per hectare than farming. (Dr P. Hohepa, *New Zealand Listener*, June 16 1984, p. 55.)

Consequently, when a deal is worked out to the satisfaction of both the Maori owners and the forestry company and is then opposed by conservation groups, there is some understandable concern on the part of Maori people. This concern is now widespread as many Maori communities have been faced with the same dilemma: to preserve the areas or to press on with productive developments to the benefit of the owners. Current Maori-

initiated solutions have been to argue for a cross-leasing system so that Maori owners can use productive land elsewhere in the area, while their particular piece is preserved for conservation reasons. Alternatively, if land cannot be cross-leased or exchanged, compensation payments could be paid to the Maori owners as a continuing rental. (*Kia Kokiri*, p. 41 and *Dominion*, 9 April 1985.)

The flexibility that cross-leasing can provide applies also to land which either cannot sustain development or which it would be wiser to retire from production. But whatever the circumstances, utmost consideration should be given to ensuring that the value of their land to Maori people is not subordinated to the interests of the public or environmental pressure groups.

Fostering Maori Self-determination

The historical record clearly indicates that decisions affecting Maori land and Maori people cannot be made for them. The success of any venture, be it the establishment of a trust or the framing of legislative provisions, is more often than not determined by the extent to which the decisions are made by those Maori people directly affected. This acknowledgement is the first step towards meeting the Maori desire for self-determination - a desire which is being voiced with greater frequency and intensity than ever before.

Greater control of Maori development by Maori people

> There are two features which stick out in the Maori experience. Firstly, they have been in a losing position. They have lost land, their children are losing in the education process, their youth are losing the battle for jobs, and politically they are in a "no win" position.
>
> The second feature is that of non-participation. They have not influenced the passage of history, but have watched it happen. Without participation they have failed to understand the system, how it can be influenced, or how options can be created. It is these experiences, not their traditional beliefs, which force them to look and dwell in the past, to become frustrated and propose negative options. In a nutshell, they are powerless because they lack control over:
>
> (a) resources
> (b) information
> (c) relationships
> (d) decision-making.
>
> (R.T. Mahuta, *Huakina: Report to New Zealand Steel*, p. 25.)

This was probably the dominant theme to emerge from the Maori Economic Development Summit Conference held at Parliament in late 1984. There was great concern that, unless the Maori people controlled more of the resources needed for their development, progress would continue to be slow. The influence of that idea could be seen in the calls for: money spent on Department of Labour PEP schemes to be channelled instead to Maori tribal organisations for the development of under-used Maori resources; the creation of a Maori investment bank; and the Department of Maori Affairs to be restructured as a corporation or to be replaced entirely.

More control of land development is manifested in Maori landowner dissatisfaction with

reserved land leases and a number of other lease arrangements. The New Zealand Maori Council in its *Kaupapa* called for a number of changes to the perpetual reserved land leases. These included: reducing the rent review period from 21 to 5 years; and converting perpetual leases to 25-year leases.

Leases for 99 years are increasingly being regarded by Maori landowners as a form of alienation, since it is up to three generations before control of the land returns to its owners. There is a preference that forestry leases now be for the life of one planting, 20-30 years, as has been established with the Ngati Hine lease in Northland. There, the arrangement is strictly a one-crop rotation of thirty years, with the Ngati Hine people being able to resume control of the land and develop the next crop themselves. They are paid a rental on the value of the land which is revised every five years.

Other long-term lease arrangements have also been criticised and some owners would either wish to buy out current leaseholders or to renegotiate the terms and conditions of the leases. That, for instance, is the current policy of the Taitokerau people of Northland (*Kia Kokiri*, p. 18). Other alternatives are to use the rents from reserved lands or leases in perpetuity to buy other land or to undertake other types of commercial enterprise.

Labour-intensive developments

> Faced with the reality of uneconomic use of their land and chronic unemployment, the Ngati Whatua of Otamatea came to the realisation that in order to survive it was imperative that they harness, consolidate and coordinate the unutilised resources available to them - the undeveloped and uneconomic use of their land and the large pool of unemployed people - so that some future and economic security would be provided for the people. It was seen that one way to do this was to set up a Charitable Trust. (*In Order to Survive*, Otamatea Maori Trust Board, January 1983, p. 8.)

The need to create employment opportunities, either for those people wishing to return to their home area or for those wanting to stay there, has been the impetus behind a number of land development programmes. It also responds to the need to keep occupational and ownership rights warm.

The national emphasis on more intensive land use has meant that the often small and scattered holdings of Maori landowners can now be brought into production. Also, the formation of trusts has made it easier to administer and so develop fragmented Maori lands. The spin-offs from these new types of development are employment and, in some cases, training opportunities as well. The latter is seen as being particularly important for young Maori people, who may have missed out on receiving adequate training through the education system. Admittedly, some of the new ventures are too small to be profitable, are under-capitalised from the beginning, or are too remote from accessible markets. For instance, some market garden projects have been difficult or impossible to sustain. But a number of possibilities still remain in rural areas for Maori landowners, such as camping grounds, hunting and recreation lodges, caravan parks and other tourist attractions and facilities.

Other avenues of rural employment using Maori land are marae-based projects, although government funding would be needed to set them up. This has been suggested as a way of dealing with Maori unemployment in the Tainui area. (*Submissions to Maori Economic Development Summit Conference*, Tainui Maori Trust Board, October 1984, p. 11.)

Maori cohesion and co-operation, particularly in ancestral rural areas, is a feature which can contribute greatly to increased production and work satisfaction. Examples of this kind of co-operation occur in the Bay of Plenty-Whakatoohea Trust Board. The systematic use of land and associated resources is matched with the preferences and skills of the available labour. In this way, the social and economic development of the individual and the community helps reinforce tribal turangawaewae.

Desire for information and resources

Maori people's desire for appropriate information and adequate resources to enable them to develop their land was reaffirmed at the Maori Economic Development Summit Conference in 1984. The conference report recommended "that existing information which is presently fragmented among government agencies be decentralised and disseminated to regional and tribal groups, and regional task forces involving appropriate Government and private expertise be established." (*He Kawenata*, p. 10.)

Inadequate information and poor communication of it are matters of great concern to Maori landowners. The need for more reliable data on Maori land ownership, and better access to it, has already been raised and mention made of progress achieved. Blockages in the transfer of vital information on the development potential of land resources, on means of production, and marketability, require a similar concerted effort to ensure improvement.

These blockages are a consequence, on the one hand, of Maori landowners' inability to effectively locate and gain access to the available information, and on the other hand, of the general inability of the information producers to recognise and take account of the unique difficulties confronting Maori landowners. It would be appropriate, therefore, to either extend the role of at least one existing agency, such as the Department of Maori Affairs or the Development Finance Corporation, or else create another to take responsibility for the collection and communication of relevant information.

Not all Maori landowners and developers experience insurmountable difficulties in obtaining access to available land information. But those who have become familiar with the system may still be dissatisfied, owing to deficiencies in the information itself. For example, it is usually tailored to mainstream trends and objectives, and therefore tends to straitjacket Maori development options. While this may not be detrimental to Maori landowners in times of sustained growth and stable markets, it may fail to provide the flexibility required in periods of economic uncertainty. Furthermore, the incorporation of social and cultural preferences as means to, and outcomes of, economic objectives is not greatly encouraged by the information currently available.

In the absence of appropriate information, many landowners have experimented with ways of achieving social and cultural objectives which are compatible with economic development. An improved circulation of information on the relative successes and defects of these experiments would be of benefit to Maori landowners, and perhaps prevent the duplication of inappropriate models. Without a well-researched and thoroughly-tested base of information, continued experimentation could prove extremely costly, not only to owners of Maori land but to the whole country.

Maori land-based developments do not as a rule require the initial purchase of land, and the owners' equity is usually higher than for non-Maori land development. While this may be perceived as giving Maori landowners an advantage, several factors may combine at any given time to reduce the economic potential of their land.

One area of concern has been the limited borrowing capacity of Maori landowners. Many lending institutions have been wary of providing finance because of unattractive offers of mortgage security and the lack of a 'track record' in conventional borrowing for business development. At the same time, many Maori owners are reluctant to risk alienation through mortgagee sales following debt overcommitments. It is significant, too, that the majority of operations involving Maori land are pastoral-based farms, many of which are currently experiencing small or negative returns. A further problem is the unavailability of finance for the initial phases of development, especially where feasibility studies and professional expertise are required.

Limiting factors are compounded in areas where land is only average to marginal in terms of its potential for supporting greater diversification. Much land presently in Maori ownership is what is left from the confiscation and alienation of fertile lands. In such circumstances, the costs of borrowing, acquiring additional expertise and transporting produce may outweigh the potential benefits of pursuing certain development options.

The Board of Maori Affairs has a specific policy commitment to provide finance for the development of Maori land in multiple ownership. Although its procedures and approval criteria are similar to most other lending institutions, its particular commitment enables it to overcome the hurdle of defective title and to avoid alienation by mortgagee sale; considerations which make the land unattractive as security to other institutions.

In some instances, access to the Board's finance is improved by an established liaison with prospective applicants at district level, and by the efforts of district land advisory committees and staff of the Department of Maori Affairs to increase business skills and management awareness. The chances of successful development are increased by this close working relationship, but the Board's apparent preference for funding 'tried and true' development options to reduce risks limits the range of options available to Maori owners.

Much difficulty in financing Maori developments arises from the fact that the owners, while they may have abundant land resources, are restricted by the lack of a sufficient cash flow. The Board of Maori Affairs may help overcome this situation by capitalising the interest on loans.

For some time it has been proposed within Maoridom that a Maori development bank be established. Should this idea come to fruition, it will be of most benefit to Maori landowners if it can make available to them:

- expert advice tailored and structured to meet the particular impediments associated with Maori land development;
- a package of advisory services and well-researched development options as a supplement to loans;
- a set of training and development programmes designed to enhance management skills and to reduce risks at different stages of a project's implementation;
- adequate finance to ensure that major projects can be funded, and that short-term financial deficiencies can be overcome.

Conclusion to *Maori land - Problems and Responses*

Since 1769 Maori society has shown a powerful ability to adapt to change and to adopt fresh ideas. This was evident in the years following the Treaty of Waitangi - a golden age of Maori cash agriculture and commercial enterprise - and then when Maori society picked itself up after the 1860s wars. It was apparent again during the Second World War when tribal committees were given unprecedented autonomy over Maori affairs to mobilise Maori support for the national war effort. The fact that this autonomy was removed once the emergency had passed was further proof that the declines that have occurred in Maori fortunes have not resulted from a lack of resourcefulness or durability on the part of the Maori people.

Rather, it has been periodic resurgences in Pakeha demand for land that has so often seen Maori initiatives interrupted. The consequences have been to place enormous pressure on that Maori resourcefulness and adaptability which even now seeks to draw on the sustaining power of the little land that remains.

If Maori land is to be retained, along with its integrity as a resource for maintaining the heritage of its owners, there has to be an acknowledgement of Maori culture, both in its national and its tribal contexts, as the indigenous culture of New Zealand. The effects of not acknowledging this have been well documented; yet relatively little has been done to counter them. To date, the Town and Country Planning Act 1977, and then only through the persistence of the New Zealand Maori Council, has been the only statute outside the Maori Affairs Act and those legislative provisions dealing exclusively with Maori matters to have significantly dealt with the cultural relationship of Maori people with their land.

And even then, the achievements that are possible under this more enlightened legislation have not occurred to the extent that the Maori Council and many Maori people anticipated in 1977. Constructive innovations have been inhibited by the inability of Pakeha administrators to understand and acknowledge Maori perspectives and come to grips with them in the context of their own concerns and responsibilities. That local government structures are capable of the flexibility required is shown by the implementation in some areas of developments such as papakainga zones. This flexibility needs to be extended to central government so that, for example, a simpler and more appropriate form of recording Maori land ownership is instituted.

The retention of Maori land in Maori ownership will only come about through a systematic and integrated adoption of Maori perspectives in all policies and statutory provisions affecting that land. This means creating policy guidelines and, where necessary, legislative provisions that recognise the essence of the Treaty of Waitangi and the present circumstances of Maori people in both their rural and urban environments.

Many innovative activities are being proposed and implemented by Maori people. The task ahead is to draw together the important inter-relationships among these activities and anticipate how they can contribute to a more effective strategy of self-determination. This was the focus of the first national conference of Maori authorities held at Rotorua in August 1985, which agreed in principle to the formation of a federation of Maori economic authorities.

What is needed in association with such a strategy is a way of measuring the movement of the Maori people away from a state of relative dependency towards one of self-reliance. This need may be answered by the Ten Year Maori Development Plan currently

being prepared by the Board of Maori Affairs. But without access to adequate finance, together with the expertise to ensure that a range of development options is widely available and continually reviewed in the light of changing economic conditions and social circumstances, any strategy for Maori self-determination can be little more than a gesture of good faith.

Pakeha people can best contribute to this latest resurgence of the Maori through the attitudes they bring to it. The historical record reveals an absence of sustained, systematic and non-prescriptive assistance. It reveals an assumption that the Pakeha knows best for the Maori, but demonstrates that Pakeha initiatives have only compounded the difficulties they presumed to address, or created new ones. There is an important place for financial and technical support on the part of Pakeha, but the most valuable contribution will be the willingness to accept and adapt to those initiatives which arise within Maoridom.

BIBLIOGRAPHY

Adams, P. — *Fatal Necessity: British Intervention in New Zealand 1830-1847*, Auckland University Press/Oxford University Press, 1977, Auckland.

Alley, G.T. and Hall, D.O.W. — *The Farmer in New Zealand*, Department of Internal Affairs, 1941, Wellington.

Asher, G. and Kingi, P. — *Maori Planning Kit*, Auckland Maori Planning Committee, n.d., Auckland.

Buck, P. — *The Coming of the Maori*, Whitcombe and Tombs, 1962, Wellington.

Butterworth, G.V. — "Maori Land Legislation: The Work of Carroll and Ngata", *New Zealand Law Journal*, August 1985, pp. 242-249.

Centre for Maori Studies and Research, University of Waikato — *Submission to Royal Commission on the Maori Courts*, 1979 (unpub.).

Crawford, P. — *Maori Land Issues*, Taupo County Council, Special Report No. 8, April 1982.

Durie, E.T.J. — *Submission to the Royal Commission on the Maori Land Courts*, No. 11, 1979.

Durie, E.T.J. — "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 New Zealand Geographical Society (Inc.)*, 1980 (unpub.).

Evans, B.L. — *A History of Agricultural Production and Marketing in New Zealand*, Keeling and Mundy Ltd., 1969, Palmerston North.

Firth, R. — *Economics of the New Zealand Maori*, Government Printer, 1972, Wellington.

Gould, J.D. — *The Rake's Progress: The New Zealand Economy Since 1945*, Hodder and Stoughton, 1982, Auckland.

Gould, J.D. — "The Twilight of the Estates 1891 to 1910," *Australian Economic History Review*, Vol X (1970), pp. 1-26.

Hunn, J.K. — *Report on Department of Maori Affairs*, Government Printer, 1961, Wellington.

Kawharu, I.H. — *Maori Land Tenure: Studies of a Changing Institution*, Clarendon Press, 1977, Oxford.

Kawharu, I.H. — "New Zealand: Salvaging the Remnant" in *Land Tenure in the Pacific*, R.G. Crocombe (ed.), Oxford University Press, 1971.

King, M. (ed.) — *Te Ao Hurihuri The World Moves on: Aspects of Maoritanga*, Longman Paul Limited, 1981, Auckland.

Layton, T.B. — "Alienation Rights in Traditional Maori Society: A Reconsideration", *Journal of the Polynesian Society*, Vol. 93 No. 4, December 1984, pp. 423-440.

McCarthy, T.P. — *The Maori Land Courts: Report of the Royal Commission of Inquiry*, Government Printer, 1980, Wellington.

McCreary, J.R. — "Population Growth and Urbanisation", *The Maori People in the Nineteen Sixties*, Edited by E. Schwimmer, Longman Paul, 1968, Auckland.

Mackay, P. — *Te Whenua: Maori Land an Introduction*, Northland Community College, n.d., Whangarei.

McLauchlan, G. — *The Farming of New Zealand*, Australia & New Zealand Book Company Pty Ltd, 1981, Auckland.

Mahuta, R. Te K. — *Huakina: Report to New Zealand Steel*, Centre for Maori Studies and Research, University of Waikato, 1981.

Maori Affairs, Department of — *Submission to the Royal Commission on the Maori Land Courts*, 1979.

Maori Affairs, Department of — *Kia Kokiri: Proposals for Progress of the Maori People of Taitokerau*, Department of Maori Affairs, April 1984, Whangarei.

Maori Economic Development Summit Conference — *He Kawenata*, Summary Report of the Maori Economic Development Summit Conference, 1984 (unpub.).

Metekingi, W. Te R. — YFarming of Maori Leasehold Land: Report of the Committee Appointed to Investigate Problems Associated with Farming Maori Leasehold Land, 1978.

Metge, J. — *The Maoris of New Zealand, Rautahi*, (Revised edition) Routledge and Kegan Paul, 1976, London.

Murdoch, K. — *Submission on Behalf of Waitutu Incorporation to Maori Economic Development Summit Conference*, 1984.

New Zealand Maori Council — *Kaupapa: Te Wahanga Tuatahi*, 1983.

New Zealand Planning Council — *He Matapuna: Some Maori Perspectives*, 1979, Wellington.

Nikora, T.R. — *Submission to the Royal Commission on the Maori Land Courts*, No. 57, 1979.

Oliver, W.H. and Williams, B.R. (eds.) — *The Oxford History of New Zealand*, The Clarendon Press/ Oxford University Press, 1981, Oxford and Wellington.

Otamatea Maori Trust Board. — *In Order to Survive*, January 1983.

Parker, W. — "The Substance that Remains" in *Thirteen Facets: Essays to Celebrate the Silver Jubilee of Queen Elizabeth the Second 1952-1977*, ed. Ian Wards, Government Printer, 1978, Wellington.

Pearson, W. — "New Zealand Since the War: 7. The Maori People" *Landfall*, Vol. XVI No. 2, 1962, pp. 148-180.

Pocock, J.G.A. (ed.) — *The Maori and New Zealand Politics*, Blackwood & Janet Paul Ltd, 1965, Auckland and Hamilton.

Prichard, I. and Waetford, H.M. — *Report of the Committee of Inquiry into the Laws Affecting Maori Land and the Powers of the Maori Land Court 1965.*

Rosenberg, G. — "Maori Land Tenure and Land Use: A Planner's Point of View", *Journal of the Polynesian Society*, Vol. 75 No. 2, June 1966, pp. 210-222.

Sinclair, K. — *The Origins of the Maori Wars*, Auckland University Press/ Oxford University Press, 1976, Auckland.

Sinclair, K. — *A History of New Zealand*, new and enlarged edition, Penguin Books, 1980, Harmondsworth.

Smith, N. — *Maori Land Law*, Reed, 1960, Wellington.

Smith, N. — *Native Custom and Law Affecting Native Land*, Maori Purposes Fund Board, 1942, Wellington.

Smith, N. — *The Maori People and Us*, Maori Purposes Fund Board/A.H. and A.W. Reed, 1948, Wellington.

Sorrenson, M.P.K. — "Land Purchase Methods and Their Effect on Maori Population, 1865-1901", *Journal of the Polynesian Society*, Vol. 65 No. 3, September 1956, pp. 183-199.

State Services Commission — *New Zealand's Multicultural Society: A Statistical Perspective*, February 1982.

Stokes, E. — "Rural Settlement of Maori Land: The Role of Section 438 Trusts", *NZ Geographers' Conference Proceedings* (11), 1981.

Stokes, E. — *Tauranga Moana: The Impact of Urban Growth*, Centre for Maori Studies and Research, University of Waikato, 1980.

Stokes, E. — "Population Change and Rural Development: The Maori Situation", *Studies in Rural Development* No. 1, Department of Geography, University of Canterbury, 1979, pp. 23-43.

Stokes, E. *Some Problems of Rural Resettlement in Maori Communities*, Paper to NZ Demographic Society Conference, Wellington, 3-4 July 1980.

Stone, R.C.J. *Makers of Fortune: A Colonial Business Community and its Fall*, Auckland University Press/Oxford University Press, 1973, Auckland.

Sutherland, I.L.G. (ed.) *The Maori People Today: A General Survey*, Whitcombe & Tombs Limited/Oxford University Press, 1940.

Tainui Maori Trust Board *Submissions to Maori Economic Development Summit Conference*, October 1984.

Walker, R. "Development From Below: Institutional Transformation in a Plural Society"; in *Development Tracks*, ed. Ian Shirley, The Dunmore Press, 1982.

Walsh, A.C. *More and More Maoris*, Whitcombe and Tombs, 1971.

Ward, A. *A Show of Justice: Racial "Amalgamation" in Nineteenth Century New Zealand*, Australian National University Press, 1974, Canberra.

Ward, A.J. "The New Zealand Gentry 1890-1910: Twilight or Indian Summer?", *Australian Economic History Review*, Vol XIX, 1979, pp. 169-175.

Wards, I. *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832-1852*, Government Printer, 1968.

Williams, J.A. *Politics of the New Zealand Maori: Protest and Co-operation, 1891-1909*, University of Washington Press, 1969, Washington.

Winiata, M. "Leadership in Pre-European Maori Society", *Journal of the Polynesian Society*, Vol. 65 No. 3, September 1956, pp. 212-231.

APPENDIX: MAORI LAND - A CHRONOLOGICAL SUMMARY

	Major event/ legislation	Amount of land in Maori title	Continuing developments
1840	Treaty of Waitangi signed. First NZ Company settlers arrived in Wellington area.	26,709,342 ha (66,400,000 acres)	From 1835-1850s the Maori rapidly adopted and adapted elements of European culture: Christianity, trade, commercial agriculture, the English language. The Maori population was providing food for the settlers and producing half the colony's exports by the mid 1850s.
1842	Land Claims Commissioners' Courts established to adjudicate on fairness of land claims between settlers and the Maori.		
1844	Crown's pre-emptive right to buy land from the Maori waived by Governor Fitzroy. Private sales between Pakeha buyers and Maori sellers allowed.		
1845	Captain (later Sir) George Grey became Governor.		Between 1845 and 1853 Grey purchased 32 million acres under Crown pre-emption for 50,000 pounds, including most of the South Island.
1846	Crown pre-emption resumed.		
1850	Pakeha population reached 25,000.		
1852	Constitution Act gave settlers the first institutions for self-government.	34,000,000 acres approx. still in Maori hands.	From 1856 on the agricultural depression and consequent fall in prices seriously affected Maori commercial enterprises.
1860	Pakeha population at 79,000 surpassed declining Maori population. The land wars began.	21,400,000 acres still in Maori hands.	
1864	Confiscation of 3.25 million acres in North Island began. Approx. half of this was later returned.		

	Major event/ legislation	Amount of land in Maori title	Continuing developments
1865	Main campaigns of the war over. Native Land Courts established. Crown pre-emption ceased, private sales began again.		The beginning of the attempt to convert traditional Maori multiple ownership to individual title. In 1865, blocks in multiple ownership could have no more than 10 owners listed on the title. Fragmentation of ownership began as European succession laws were applied to Maori people dying intestate. Children inherited land equally from both parents - leading to smaller shares in the land as each generation inherited. Tribes extensively involved in land-selling declined in population more rapidly than those who were not.
1871	Government became a major land purchaser again. Private sales continued.		Throughout the 1870s, Maori agriculture, farming and trade with the Pakeha continued, although not on the same scale as before the wars of the 1860s. Maori interest in education and learning English carried on through Maori school system. First co-operatives and incorporations formed.
1873	Native Land Act. All Maori owners had to be listed on the title and their signatures obtained before sale.		
1883	Sales of Maori land in the King Country began to allow surveying for the main trunk railway.		By 1900, 753,175 acres of the original 1,844,780 acres in Maori hands in the King Country had been bought by the Crown.
1891	Liberal Government gained power.	11,079,486 acres still in Maori hands; of this, 10,829,486 in the North Island, 250,000 in the South Island.	Intensive dairying began in the North Island, creating more pressure for alienating Maori land. The Liberal Government bought 3.6 million acres between 1891 and 1911.
1892	Government resumed control of buying Maori land.		
1894	Native Land Court Act passed. This became the basis of present-day Maori incorporations.		Maori incorporations now had a legal basis and started becoming large-scale developments with the Ngati Porou tribe on the East Coast.

	Major event/ legislation	Amount of land in Maori title	Continuing developments
1896	Maori population reached lowest point in 19th or 20th centuries (42,113). Pakeha population now 701,101.		Period of "smoothing the pillow of the dying Maori" attitude to Maori affairs.
1900	Maori Lands Administration Act encouraged leasing of Maori Land. Government stopped purchasing land.		Maori-dominated councils set up to encourage leasing of Maori land. But pressures for increased settlement of Maori land brought return to policy of encouraging and making it easier to sell the land than to lease it.
1905	Maori Land Settlement Act. A new wave of Pakeha land-purchasing began.		
1907	Titles to Maori land in the Urewera country ascertained by special tribunal.		By 1920, 90% of the 650,000 acres of land in the Urewera area sold to Pakehas. No major area of land now left in Maori hands.
1911		7,137,205 acres (approx.) remain in Maori hands.	
1912	Reform Government gained power.		Selling of Maori land intensified during the period 1912 to 1920. Land was wanted to settle returning soldiers from World War 1. Intense land speculation from 1916-1924. Maori land was one of the few sources of available cheap land. 2.5 million acres sold between 1911 and 1920.
1920		4,787,686 acres remain in Maori hands.	
1929	Native Land Amendment Act		First concerted and adequate government financial aid to develop Maori land and commercial enterprises. Beginning of extensive Maori small-scale dairying and farming. 500,000 pounds spent 1929-1934.
1936	Maori population double that of 1896 (82,326). Pakeha population 1,491,486.		

	Major event/ legislation	Amount of land in Maori title	Continuing developments
1939	World War II began.	4,028,903 acres remain in Maori hands.	Period of believing that the Maori economic future lay with developing the remaining land holdings. Population pressures determined otherwise: from 1936-1961, the Maori urban population increased from 10% to 40% of all Maori. Maori land unable to support the increasing numbers of Maori.
1961	Hunn Report published. Maori population doubled again from 1936. Now 167,086.		Creation of the Maori Education Foundation stimulated provision of Maori housing and attempted to deal with fragmentation of ownership problems.
1965	Prichard-Waetford Report on Maori Land Courts published.		Prichard-Waetford Report tried to solve fragmentation of ownership and make it easier to transfer Maori land into general (European) title.
1967	Maori Affairs Amendment Act passed, making it easier to transfer Maori land to a general title.		Throughout 1960s, general Maori concern that attempts to solve fragmentation of ownership problems were dispossessing people of their direct link with the land. That is, owners of small land-shares were being forced by legislation to sell their "uneconomic" shares. There was renewed concern that too much land was passing out of Maori hands.
1974	Maori Affairs Amendment Act. Reviewed 1967 Act and made provision for re-transferring former Maori land, now under general title, back to Maori freehold land.		This legislation reflected a growing Maori viewpoint which wanted to retain as much remaining land as possible as Maori freehold land.
1975	Waitangi Tribunal formed to make recommendations on claims relating to the practical application of the	3 million acres (1,323,564 ha) are the remnants of the tribal estates.	

	Major event/ legislation	Amount of land in Maori title	Continuing developments
	principles of the Treaty of Waitangi, but excluding grievances arising prior to 1975. Maori Land March.		
1981	Maori population reaches 279,252. Pakeha population 2,896,485.		Maori urbanisation had increased to just under 80% by 1981. Unemployment increased steadily throughout late 1970s and 1980s, accompanied by a renewed determination to establish a viable economic base for Maori development. Maori International set up, federation of Maori economic authorities proposed.
1985	Waitangi Amendment Act passed, allowing the Waitangi Tribunal to recommend on claims dating right back to the Treaty's enactment in 1840.		