

**He Wahine, He Whenua I Ngaro Ai? Maori
Women, Maori Marriage Customs and the Native
Land Court, 1865-1909**

Inano Walter

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Abstract

The aim of this study is to investigate and identify the effects the Native Land Court and native land legislation had on customary Māori marriage practices from 1865 to 1909. While researchers have produced a variety of important understandings of the court's role in promoting land loss in Māori society, Māori women's involvement in the court and its effects upon them is just beginning to be examined. This thesis makes a contribution to Māori women's history by accounting for the role the Native Land Court and associated land legislation played in reshaping customary Māori marriage practices in nineteenth and early twentieth century New Zealand. Even though native land legislation was one of the key mechanisms by which the state governed Māori land as well as marriage, this connection is rarely examined within the same frame. The Native Land Court is a forum where land and marriage did interact. Focusing on a case study of Ngāti Kahungunu, I situate prominent Māori women in the Native Land Court, and use their experiences to further understandings of how Māori marriage, which is often examined in a pre-European context, was shaped by land title investigations and succession cases.

This study was conducted utilising statutes, colonial newspapers and the *Napier Minute Books*. In the first chapter, this thesis uses ethnographic material to describe and interpret marriage customs prior to European contact, it draws upon missionary understandings of customary marriage upon arrival to Aotearoa, and also traces how colonial law managed marriage prior to the Native Land Court 1865. This provides vital contextual information for the later chapters. The next chapter discusses native land and marriage laws between 1865 and 1890 and how they affected customary Māori marriage practices. Chapter Three examines three prominent Māori

women involved in well-known legal cases. The final chapter discusses Māori women's political organising and traces their attempts to protect and retain land during the 1890s. The thesis ends with a discussion of the Native Land Act 1909, a significant consolidating act.

Focusing on the overarching structures of the law and its effects on customary Māori marriage allows this study to consider the broader effects it had on Māori society. What emerges from the study is how whakapapa and kinship structures underpin and inform Māori marriage, and how Māori forms of celebration continued to be practiced into the early twentieth century. Nonetheless, a main driver of change lay in assimilation policies that directed native land legislation towards individualisation of title, which undermined Māori women's access to own and manage land.

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Mauria te Pono - Believe in yourself.

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Glossary of Māori Terms¹

ahi-kā	burning fires of occupation
ariki	paramount chief
Atua	God
awa	river
hahunga	ceremony for uplifting bones
haka	ceremonial dance
hapū	sub-tribe
iwi	tribe
karanga	to call out or shout
kaumatua	elder
kawa	protocol
Komiti	committee
mana wahine	female authority
mana	prestige
marae	courtyard
maunga	mountain
moe-māori	co-habiting
mokopuna	Grandchildren
noa	ordinary
pā	fortified village
Pākehā	English or foreign
pākūhā	to hold a traditional wedding ceremony
Paremata Māori	Māori Parliament
pātaka	storehouse raised upon posts
puhi	virgin or woman of high rank
rangatira	to be of high rank
raruraru	trouble, problem, dispute
tangihanga	funeral rites of the dead
tapu	be sacred
tauā muru	war party
taumau/taumaha	arranged marriage
te reo Māori	the māori language
tikanga	correct procedure
tino rangatiratanga	sovereignty
tohi	baptism
tohunga	spiritual advisor
toko	divorce
tomo	betroth- arranged marriage
umu kōtore	marriage feast
utu	avenge
wāhine	women

¹ All definitions come from John C. Moorfield, Te Aka Online Maori Dictionary, <http://maoridictionary.co.nz/>.

waiata
whaikōrero
whakapapa
whakataukī
whānau
whāngai
wharepuni

songs
make a formal speech
genealogy
to utter a proverb
family group
foster, adopt or raise
principal house

Introduction: Māori Marriage Customs and the Native Land Court

The smell of freshly picked flowers lingered around the room, and mouth-watering savouries and culinary delights were in abundance for the wedding guests. The Ven. Archdeacon rose and toasted the newly married couple with a speech declaring ‘the couple have given me much pleasure, and I am gratified at having been invited to attend your marriage feast. The marriage state is honorable, and it has received the sanction and approval of the lord’.¹ By the mid-1870s, marriages celebrated in this way had become common between Māori, and while it had customary elements, in Western eyes it represented a sign of Māori uptake of Christian marriage. Interpretations of customary Māori marriage practices in colonial New Zealand typically focus on the pre-contact era, but examples like Hohepine Te Pohe and Taniora Tanerau’s wedding, which followed the Christian model, show Māori marriage practices were consistently undergoing change. Yet, the relationship between marriage and land remained an essential component in managing relationships, and this was recognised when the Native Land Court was established. Legislation that established the court on a national basis in 1865 not only empowered the court to manage the transfer of communal owned land into individual title, but also made it a measure of responsibility for the governing of Māori marriage. The Native Land Court, therefore, offers an excellent opportunity to capture the nexus between marriage and land often as a means to protect, retain or obtain land was done through strategic marriage alliances.

This thesis will examine the fundamental ways in which the Native Land Court impacted on Māori marriage practices in nineteenth and early twentieth century New

¹ *Waka Maori*, 7 March 1876.

Zealand. The establishment of the Native Land Court along with its associated legislation represented a turning point in the struggle for land control in colonial New Zealand. Indeed, the effects of the new land court and legislation went to the heart of Māori custom and cultural practices and influenced change in the very fabric of social life. Historian Hugh Kawharu believes the law and the court were a ‘veritable engine of destruction for any tribe’s ambition for long term and secure land tenure’.² Historian Judith Binney agrees, describing the court as an extension of the tools of war: ‘an act of war’ itself.³

Understandings of Customary Marriage in the Native Land Court

The Native Land Court has attracted much scholarly attention. In her doctoral thesis Angela Ballara uses oral evidence given by Māori witnesses in the Native Land Court to understand tribal organisation in Ngāti Kahungunu, and in the Hawkes Bay region.⁴ Legal historian David Williams’s approach differed in that he surveyed government policy, judicial practices and tribal practices as they relate to the Native Land Court.⁵ Over a decade later, legal historian Richard Boast provided a historical and legal analysis of the court covering the period 1862 to 1887; a time when vast legislative changes to Māori land were undertaken.⁶ While much of this scholarly focus has been on the North Island, Paerau Warbrick provides a corrective in his examination of the much-neglected history of the land court in the South Island during the mid-twentieth century.⁷ Warbrick employs Māori concepts such as whānau (family), whakapapa (genealogy) and whenua (land) reinforcing the importance of a Māori

² Judith Binney, “The Native Land Court and the Māori Communities”, in *The People and the Land/ Te Tangata me Te Whenua: An illustrated History of New Zealand 1820-1920*, ed. Judith Bassett, Judith Binney and Erik Olssen (Wellington: Bridget Williams Books, 1990), 143.

³ I. H. Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Oxford University Press, 1977), 15.

⁴ A. Ballara, “The Origins of Ngati Kahungunu” (PhD Thesis., Victoria University of Wellington, 1991).

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

⁶ Richard Boast, *The Native Land Court: A Historical Study, Cases and Commentary, 1862- 1887* (Wellington: Thomson Reuters, 2013).

⁷ Paerau Warbrick, “Maori Land Court 1960-1980”, (PhD Thesis., University of Otago, 2009).

world-view when examining the Native Land Court. Collectively these scholars have demonstrated that the Native Land Court was a central institution in Māori life. It touched the lives of every whānau and hapū (sub-tribe) through its investigations into title, as well as its partition and succession orders, for all land in Māori hands came under the court's purview. While the court has been used to reveal the impact colonial law had on customary land tenure, marriage customs have remained concealed, despite marriage being a key mechanism for managing whānau and hapū lands.⁸

Prior to the arrival of Europeans, Māori women, as individuals, held rights over land and resources. Those rights could be inherited by either parent and remained the woman's property, whether single or married.⁹ Historian Barbara Brookes argues that throughout the nineteenth century 'Māori continued to practice customary law to assert control over their future in which, they knew, their daughters were of central importance'.¹⁰ Māori women went before the court, but it is not known to what degree their rights to land within marriage were considered by this colonial institution, and furthermore whether native land and marriage laws operated to constrain Māori women's customary rights. This thesis seeks to investigate these issues as an additional layer in understanding how the Native Land Court impacted on married Māori women's land tenure rights, previously protected under customary law.

Māori women's experiences of the court barely register in the comprehensive scholarship on Māori land and the Native Land Court.¹¹ This cannot be explained by a lack of source material, as *The Native Land Court Minute Books Index* indicates that numerous Māori women actively engaged with the court notably: Airini Donnelly, Arihi Te Nahu and

⁸ David McNab, *No Place for Fairness* (London: McGill-Queens University Press, 2009). McNab covers civilization policy in the 19th century and provides a fascinating insight into what was going on in other parts of the world when the Native Land Court was being established.

⁹ Bettina Bradbury, "From Civil Death to Separate Property: Changes in the Legal Rights of Married Women in 19th Century New Zealand", *New Zealand Journal of History*, 29, no.1 (1995): 64.

¹⁰ Barbara Brookes, *A History of New Zealand Women* (Wellington: Bridget Williams Books, 2016), 55.

¹¹ Boast, *The Native Land Court*; Williams, *Te Kooti Tango Whenua*.

Hera Te Upokoiri. These books are a rich primary source for this thesis and are an invaluable resource. As Paerau Warbrick illustrates: ‘to this day cases regarding ownership or management, officially known as applications, are recorded in these books, which now total over 3000 and provide a wealth of information pertaining to Māori land titles and kin group relationships attached to the land.’¹² Contained within these volumes are detailed whakapapa charts spanning back many generations linking back to a common ancestor. Traditionally, the land court has been analysed within a legal framework emphasising court process and practice, but this has at times, acted to obscure the importance of a social history of women and whānau that clearly exists in the archival record. In addition to the *Minute Books*, I also make use of settler and Māori newspapers. As land was considered an important commodity in both Māori and Pākehā (European) society, many of the important land cases were discussed in the print media, indicating that the whole colony was invested in the outcome of land court cases. Despite prominent Māori women entering the courts and contesting for land titles, succession and inheritance, such as those named above, a solid body of research dedicated to their involvement has not yet taken shape.

The aim of this thesis is to explore the relationship between customary Māori marriage practices and colonial legislative reforms through a focused study of an institution. The term ‘customary Māori marriage’ for the purpose of this discussion is defined as a set of practices relating to courtship and betrothal. Referring to something called ‘customary Māori marriage’ can be problematic as it implies that Māori society was static prior to European contact, but as I have previously indicated marriage customs were dynamic and evolved in response to internal and external forces. Terms such as ‘custom’ and ‘Māori marriage’ obscure the fact that Māori society evolved from Polynesian origins and denies regional

¹² Paerau Warbrick, “Minute Books: An Integral Part of the Māori Land Court” in *The Lives of Colonial Objects*, ed. Annabel Cooper, Lachy Paterson and Angela Wanhalla (Dunedin: Otago University Press, 2015), 129.

variation. Anthropologist Marjorie Newton argues that these variations are important and must be considered when generalising Māori marriage.¹³ Likewise, Berys Heuer believes customs relating to Māori marriage were diverse, taking on many different forms and practices depending on the social status, iwi (tribe) or hapū of the individual.¹⁴ For this reason, I use the term ‘customary Māori marriage’ to refer to indigenous marriage customs before the arrival of Europeans, making allowances for the problematic nature of the term. In order to bring some specificity to what is a large topic, I have chosen to focus on Ngāti Kahungunu, which encompasses the Hawkes Bay, because by 1851 this region was a well-established producer of wheat, maize and fruit, making it an attractive region for settlers and farmers, who sought to gain access to Māori land.¹⁵ Furthermore, having a personal connection to the area has enabled me to contextualise the wider historical and whakapapa frameworks of the region from which my children descend.

This thesis examines customary Māori marriage practices prior to 1865 and charts its evolution through the Native Land Court from 1865 to 1909, beginning when the court was established on a national basis, and ending when a major reform of native land legislation was instituted. Although my focus is the Native Land Court, I also examine laws relating to Māori land as well as marriage, as both had the potential to restructure Māori marriage customs. I also explore political discourses and debate surrounding legislative reform in order to assess how Māori, specifically Māori women’s property rights, were viewed. Ethnographic writings and missionary sources are also consulted in order to establish the basic framework of Māori customary marriage.

Situating Māori Women in the Native Land Court

¹³ Marjorie Newton, “From Tolerance to “House Cleaning”: LDS Leadership Response to Maori Marriage Customs, 1890-1990”, *Journal of Mormon History* 22, No.2 (1996): 73.

¹⁴ Berys Heuer, *Maori Women* (Wellington: A. H and A.W Reed LTD, 1972), 456.

¹⁵ Mere Whaanga, “Ngati Kahungunu- European contact”, Te Ara- the Encyclopedia of New Zealand, accessed 1 November, 2016 <http://www.TeAra.govt.nz/en/ngati-kahununu/page-6>.

A concise study of Māori women's engagement with the Native Land Court is yet to be prioritised. Although historians of the land court agree that it imposed Western gendered views on mana wahine (female authority), few scholars have focused on women's experiences of the court. Nevertheless, some scholars have highlighted there is a need for further research. Pat Hohepa and David Williams, for instance, critique the court as a 'patriarchal institution in the way it was organised and in its operations'.¹⁶ Richard Boast proposes that 'the role played by women in the Native Land Court and Crown granting process is not well understood and could do with more research'.¹⁷ This is not to suggest that Māori women have been ignored entirely. Kerry Conlon's (2014) MA thesis on power, rank and gender in nineteenth century Hawkes Bay documents one woman's attempts to manage her land in the Hawkes Bay region. Conlon utilises the *Native Land Court Minute Books* to trace Hineipaketia's appearances in the court to retain tribally governed land.¹⁸ Like Conlon, this thesis brings Māori women to the forefront of New Zealand's colonial history and foregrounds gender as a category of analysis.

This thesis responds to Richard Boast's prompt to further research and seeks to integrate women into the evolution of the Native Land Court through instances of prominent Māori women who appeared in the courts to register their land interests. I use the Native Land Court as a space to investigate the extent to which women's land rights, previously protected under customary law, were constrained by the land court and its native title system. The study not only provides new insights into the way Māori women engaged with the Native Land Court, but also how the land court reached into the private realm of marriage. It argues

¹⁶ David Williams and Pat Hohepa, *The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession* (Wellington: Law Commission, 1996), 27.

¹⁷ Richard Boast has published extensively on the topic producing major works on the Native Land Court. He is one of the leading figures in this field, but continues to analyse the court outside of a gender specific framework.

¹⁸ Kerry Conlon, "Surveying Hineipaketia: The Politics of Power, Rank and Gender in Nineteenth Century Hawkes Bay" (MA Thesis., Massey University, 2014).

that between 1865 and 1909 assimilatory colonial policies in New Zealand undermined and restricted Māori women's access to land by governing marriage.

A priority of this thesis is to foreground Māori women in New Zealand's colonial history. Their experiences have not always been at the heart of New Zealand's historical scholarship. Linda Tuhiwai Smith has critiqued the way in which Māori women have been portrayed in nineteenth century New Zealand, noting that Māori women's experiences have been marginalised in history. Smith claims historicist thought is based on Western methods of research and does not align with Māori practices.¹⁹ What Smith means is that Māori worldviews and models of social organisation have rarely found a prominent place in historical scholarship. Rather, Western values have been imposed, making the Pākehā experience 'the norm'.²⁰ Legal specialist Annie Mikaere argues 'so long as they resist the temptation to define Māori culture and practices in terms of their own culture-specific understandings' Pākehā insights into Māori women's experiences can be of value. But historians have been uncomfortable with claiming any expertise on Māori women's lives. According to Margaret Tennant and Barbara Brookes: 'Maintaining a respectful distance has often meant perpetuating the invisibility of Maori women in our writing and teaching. It has often been easier, less painful, to homogenise women's experience, or to insert the hurried "of course things were different for Maori women", and move on'.²¹ Māori women's social history deserves further exploration, and the Native Land Court, which touched Māori lives in material ways, is an important historical institution that offers an opportunity to expand our understanding of women's colonial experiences. As the land court continues to be one of

¹⁹ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Dunedin: Otago University Press, 1999), 48.

²⁰ Bronwyn Labrum, *Women's History: A Short Guide to Researching and Writing Women's History in New Zealand* (Wellington: Bridget Williams Book, 1993), 17.

²¹ Barbara Brookes and Margaret Tennant, "Maori and Pakeha Women: Many Histories, Divergent Pasts?" in *Women in History 2*, ed. Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington: Bridget Williams Books, 1992), 29.

New Zealand's oldest statutory tribunals and remains a significant institution today, its gendered history demands investigation.

My research draws upon several bodies of scholarship: the work of ethnographers and anthropologists interested in kinship structures and customary marriage practices in New Zealand; legal experts who have traced specific Native Land Court cases using *Native Land Court Minute Books*; and histories of the social and economic impact of land loss for Māori. One of the most important bodies of scholarship drawn upon in this thesis are Waitangi Tribunal Reports. A standing commission of inquiry, the Waitangi Tribunal was given the task of determining whether Crown proceedings had been breached under the Treaty of Waitangi 1840, and since 1985 its reports have made a significant contribution to New Zealand historical scholarship. Because much of the Tribunal's work focuses on the Māori-Crown relationship, and is aimed at assessing historical injustices, social history, or questions of gender are not at its core. Nevertheless, the material gathered and reported upon in Tribunal reports provides much valuable data for those historians with an interest in social or women's history.

A substantial body of scholarly work on the Native Land Court exists. In contrast, much of the historical work on customary marriage practices in New Zealand focus primarily on the pre-contact period, usually based on nineteenth-century accounts that the authors project into the past. To date, studies of marriage have considered the impact of missionaries and Christian models of morality upon Māori, surveyed attitudes to interracial marriage, and explored gendered ideologies of marriage that underpinned and justified constraining the economic rights of women. In this thesis I bring the study of customary marriage into the post-1840 period, and consider how Māori marriage fared under the weight of introduced institutions, such as English law and the Native Land Court, which both ultimately sought to assimilate Māori.

A number of scholars have researched Māori women in pre-contact society, within customary marriage, or as landowners. In the 1950s linguist and anthropologist Bruce Biggs re-examined ethnographic material for his book *Māori Marriage*. Biggs traced marriage within Māori culture and its evolution since sustained European contact.²² Several decades earlier, Makereti Papakura's book *The Old-Time Maori* analysed marriage from a Māori woman's perspective also discussing other topics usually reserved to the woman's domain: child-birth, child-rearing practices, and marriage customs, all issues often ignored by male writers of Māori society.²³

Legal historians have also evaluated Māori marriage. Annie Mikaere argues that prior to the introduction of English law, Māori women had significant roles in Māori society, but their status was greatly reduced as a direct result of colonisation. In her "Maori Women: Caught in the Contradictions of a Colonised Reality" Mikaere clarifies that colonisation did not prevent Māori women from continuing leadership roles, as exemplified in Te Kotahitanga and the Women's Christian Temperance Union.²⁴ Mikaere specifies that it is 'ancient common law tradition' that is to blame for contemporary power imbalances that are not in alignment with traditional Māori tikanga (correct procedure). In part, legal historian Nan Seuffert agrees with Mikaere. In her examination of colonial marriage laws, polygamy and concubinage in New Zealand, Seuffert argues that colonial marriage laws were implemented in an effort to assimilate Māori to Western models of morality and encourage them towards a centralised jurisdiction. Her article is vital in considering the relationship between marriage

²² Bruce Biggs, *Māori Marriage: An Essay in Reconstruction* (Wellington: Reed for the Polynesian Society, 1970, first published in 1960).

²³ Makereti Papakura, *The Old-Time Maori* (London/Auckland: Victor Gollancz Limited/New Woman's Press, 1938/1986).

²⁴ Annie Mikaere, "Maori Women: Caught in the Contradictions of a Colonised Reality", *Waikato Law Review*, 2, (1994): 25.

laws and assimilation, a central concern in the Native Land Court during the nineteenth century.²⁵

Ngāi Tahu historian Angela Wanhalla's study of interracial marriages in New Zealand provides riveting material about the way interracial marriages began as economic relationships between whalers and traders and continued throughout the twentieth century. It considers the broader frameworks of the state, and to a lesser extent the church in managing these relationships.²⁶ Although interested in the relationship between the state and private life, Wanhalla does not explore the Land Court in much detail. More recently, in her book *A History of New Zealand Women*, Barbara Brookes pays particular attention to the history of Pākehā and Māori women, and briefly discusses the role of the land court on Māori women's legal rights within marriage.²⁷

Thesis Structure and Methodology

To examine the relationship between changing Māori marriage practices and the Native Land Court, I have chosen to structure this thesis around the Native Land Court Act and subsequent reforms between 1865 and 1909. The Native Land Act 1909 is a significant endpoint as it represents a major omnibus act that consolidated over 60 statutes, and was designed to simplify land alienation procedures. Of relevance to this thesis, is that this statute included clauses that aimed to encourage Māori to marry according to colonial laws, rather than by custom, although the Native Land Act 1909 recognised customary marriage as sufficient for land court cases.

²⁵ Nan Seuffert, "Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage in Aotearoa New Zealand," *Law Text Culture*, 7, (2003): 186-220.

²⁶ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* (Auckland: Auckland University Press, 2013).

²⁷ Barbara Brookes, *A History of New Zealand Women* (Wellington: Bridget Williams Books, 2016).

The chapters follow a chronological sequence, beginning with a discussion of customary marriage prior to the development of the land court, closing with the Native Land Act 1909. Chapter One sets out the key elements of Māori customary marriage prior to the arrival of missionaries and before English laws were established. Ethnographic writings provide a framework for interpreting what Māori customary marriage may have looked like prior to the arrival of Europeans.²⁸ Ethnographic material, much of it gathered by colonial officials and scientists in the mid-to late- nineteenth century, is a more conventional source for accessing indigenous custom. Like mission sources, ethnographic research has its limitations. For instance, although ethnographers obtained information from a number of different geographic areas and time periods, it was often presented in a generalised way. To an extent, this is of course difficult to avoid, but where possible I will indicate that different tribal areas had different kawa or protocol. Yet on the whole, there was enough similarity in practices that customary Māori marriage appears to be recognisable in each and every tribal area in the nineteenth century. The first chapter draws upon ethnographic material in an attempt to reconstruct traditional methods of arranging and celebrating unions.

After establishing how Māori marriage was practiced, Chapter One then turns to examine how missionaries viewed these marriage customs. In his journal William Williams, a member of the Christian Missionary Society, documented the dozens of customary marriages he attended. Annual summaries sent to London included information about baptisms, chapel attendance, sermons and marriages. The general purpose of the mission was to convert Māori from their ‘savage’ customs so that they could ‘receive the knowledge of Christianity’.²⁹ Missionary wives played a pivotal role in educating these ‘savages’ and

²⁸ Raymond Firth, *Primitive Economics of the New Zealand Maori* (London: Routledge & Sons, 1929).

²⁹ “Establishing the Church Missionary Society”, accessed 12 June 2016

<http://www.nzhistory.net.nz/culture/missionaries/mardsen-and-cms>, (Ministry for Culture and Heritage),

‘converting them to their own religion’. Once this had been accomplished it was assumed that the Māori would want to copy ‘English customs and model of behavior as well’.³⁰

In order to provide a fuller analysis, I also explore the attitudes held by missionaries at the time of the arrival. This is an important inclusion as it highlights why dissolving polygamy and other ‘savage’ marriage practices were regarded as necessary in order to convert to Christianity and be baptised. In the final section of the chapter, I briefly consider how customary marriage was viewed under English law at a time when dual pluralism existed in the colonies shortly after the signing of the Treaty of Waitangi.

Chapter Two lays out the native land and colonial marriage laws, and how they applied to Māori women. I engage in particular with the work of legal historian Nan Seuffert who argues that colonial marriage laws were implemented in an effort to assimilate Māori.³¹ The chapter investigates the extent to which colonial laws relating to land and marriage limited Māori women’s freedoms and access to land protected under customary law. By analysing these statutes side by side it is possible to see the all-encompassing nature of assimilation. Obtaining Māori land was at the heart of settler colonialism, but assimilation also encompassed the eradication of customary practices, such as marriage.

Through a series of case studies of Ngāti Kahungunu women, Chapter Three discusses how Māori women contested for their land in the land court. Three prominent women from Ngāti Kahungunu, in the Hawkes Bay region, who were active claimants and participants in the Native Land Court proceedings provide my case studies: they are Airini Donnelly, Arihi Te Nahu and Hera Te Upokoiri. The aim of the case studies is to explore how Māori women conceptualised their role through customary marriage and how they exercised

³⁰ S.J. Goldsbury, “Behind the Picket Fence: The Lives of Missionary Wives in Pre-Colonial New Zealand” (MA thesis, University of Auckland, 1986), 5.

³¹ Seuffert, “Shaping the Modern Nation”, 186.

that role in land courts. The main primary sources for this chapter is the *Napier Minute Books*, in addition to newspaper reports of the cases.

The final chapter focuses on Māori women's political activism in the late nineteenth century and their engagement in Paremata Māori, a Māori Parliament modelled on the colonial Parliament. I look at how Māori women mobilised politically in the 1890s to fight the effects of the land court on their economic freedoms. I explore also the extent to which political debates of this era impacted Māori women's rights around customary marriage and land and the way Ngāti Kahungunu women responded to this encroachment on their freedoms. The final section of the chapter considers women's lives after they won the right to vote in Paremata Māori in 1897, by focusing on social and political reforms of the early twentieth century and how these ideals informed the Native Land Act 1909. In the early twentieth century James Carroll and Apirana Ngata dominated Māori politics, and in this period set out a new vision for Māori as farmers who would continue to use the rural land. Both Carroll and Ngata absorbed European doctrines of gendered roles in society believing that Māori women should focus on the home and children, and stay away from politics. Carroll, Ngata, as well as Maui Pomare and Reweti Kohere, expressed concern over Māori health, particularly as the population started to decrease. They wanted to reform Māori society and positioned women, and marriage, as one of the key ways to bring about positive change in Māori life. This group, though, associated Māori marriage with immorality and sought to encourage Māori couples to follow Western models, including formalising their relationship under English law. It is this social and political context that informed the creation of the marriage clauses within the Native Land Act 1909, and which are detailed in Chapter Four.

The story that unfolds in these next chapters is one that prioritises women's experiences in the Native Land Court from 1865 to 1909, responding to a very important gap

in Māori women's social history. This thesis uses women's activities in the Native Land Court to illustrate how the court's governance impacted on the way customary marriage continued to be practiced as marriage customs had undergone significant change by 1876, and again by 1909.

Chapter One: Māori Marriage Customs Prior to 1865

Examining customary Māori marriage prior to the establishment of the Native Land Court in 1865 is fundamental to understanding the content for the subsequent chapters, but it also reveals the ways custom was understood by Māori, missionaries and under the law. For ease of understanding, this chapter is arranged into four sections. I begin by discussing the cultural framework in which customary Māori marriage is situated. Whakapapa is the central organising framework of Māori society and whilst many customs and practices have changed over time, whakapapa has remained the same. For this reason, the chapter begins by defining this concept, its role within Māori society, and its direct links to customary Māori marriage. From this vantage point we can begin to see why Māori sought to formalise, and in some instances, end their marriages. Next, I will locate customary Māori marriage amidst social organisation to demonstrate the role of whānau, hapū and iwi. Understanding social organisation is key to understanding the depth and significance of Māori marriages, which were typically categorised as taumau (arranged marriage), moe māori (co-habiting), tomo (betrothal) and pākūhā (traditional wedding). These categories are discussed in greater detail in Section Two of the chapter.

The third and fourth sections examine outsider views of Māori marriage and early attempts to reform and reorganise it by missionaries and politicians. In Section Three I analyse missionaries' perceptions and understanding of custom, and how they drew comparisons to their own understandings of morality. I will focus on the experiences of two missionaries who were active amongst the Ngāti Kahungunu tribe situated in the Hawkes Bay: William Colenso and William Williams. In the final

section, I turn to the period 1840 to 1865, exploring the attitudes of politicians and colonists towards customary marriage documented in statutes and colonial newspapers. I will discuss the legal pluralism that existed after 1840, and how this affected customary marriage. Situated within the framework of law I will reveal the advantages and disadvantages of colonial marriage laws to Māori, and how Māori engaged with this system of governance.

Section I: The Cultural Framework

Whakapapa

Despite two centuries of interaction with Pākehā, Māori have retained some key institutions, values and practices across generations such as whakapapa. The reciting of whakapapa can be heard on public occasions such as tangihanga (funeral), hahunga (uplifting bones) and marriage to emphasise connections across various kinship groups. Understood in its simplest form whakapapa is genealogy and means to place in layers one on top of the other.¹ As a literal translation *whaka-* is a particle that is prefixed to adjectives, stative and verbs to ‘cause something to happen’. The word *papa* is a noun and is defined as ‘board, timber, floor, slab, plank’. As a verb, whakapapa means to literally ‘place in layers, lay one upon another, and recite in proper order’.² The primary function of whakapapa is to trace family connections that are foundational to organising Māori marriages.³

¹ Rodger Robertson and Nelson Wattie, *The Oxford Companion to New Zealand Literature* (Oxford: Oxford University Press, 1998), 133.

² John Moorfield, “Te Aka Online Maori Dictionary”, accessed May 14 2016 <http://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=whakapapa>.

³ Māori Marsden, *The Woven Universe: Selected Writings of Rev. Maori Marsden* (Otaki: Estate of Rev. Māori Marsden, 2003), 63.

Whakapapa is not restricted to the physical world but permeates throughout Māori society in songs, myths, carvings and creation narratives. Māori believed that humans originated from nothing or darkness to the separation of the earth and sky to the various deities fashioning the natural world.⁴ Although this is a simplified recollection of creation narratives, Māori Marsden concludes genealogy is important as a ‘symbolic mechanism’ and ‘as a cultural institution it pervaded much of Māori culture’.⁵ Paul Tapsell adds that ancestors are often used as reference points, for their names are written on the landscape, helping to maintain a complex web of kinship and descent.⁶

Mana (prestige) played a complementary role in respect to customary marriage but also in furthering our understanding of whakapapa. When organising marriages, ‘great importance was placed upon the matching of equivalent rank to retain the full mana of the individuals and their offspring’.⁷ Māori anthropologist Te Rangi Hīroa (Peter Buck) defines mana as the result of ‘successive and successful human achievements’ which was not a mysterious quality or fabrication of the mind.⁸ Mana is a word that cannot be easily translated into English, but is more readily accepted as a concept with several dimensions. Marsden provides a more detailed definition of mana, splitting it into two categories with two borrowed Greek words: *exousia* –permission from the gods to their human agent to act on their behalf and *dunamis*–the ability or power to perform the chosen task. Marsden states mana is the ‘lawful permission delegated by the gods to their human agents and accompanied by

⁴ Te Ahukaramū Charles Royal “Māori Creation Traditions- Common threads in creation stories”, *Te Ara- the Encyclopaedia of New Zealand*, accessed 15 May 2016. <http://www.TeAra.govt.nz/en/Maori-creation-traditions/page-1>.

⁵ Marsden, *The Woven Universe*, 63.

⁶ Paul Tapsell, “The Flight of Pareraututu: An Investigation of Taonga from a Tribal Perspective”, *The Journal of Polynesian Society* 6, no 4 (1997): 327.

⁷ Berys Heuer, *Maori Women* (Wellington: A.H. and A.W Reed, 1972), 38.

⁸ Peter Henry Buck, *The Coming of the Maori* (Wellington: Whitecombe and Tombs, 1949), 346.

the endowment of spiritual power to act on their behalf and in accordance with their revealed will'.⁹ Therefore, an individual who could whakapapa closely to a deity retained more mana and would be ushered into leadership roles in society, becoming a preferred candidate for marriage.

Whakapapa was a crucial component of the customary rules applied to marriage. For instance, marriage within kinship groups such as whānau and hapū was encouraged, as long as the couple were not closely related. Māori anthropologist Makereti Papakura gives the most detailed description of whakapapa and its role within Māori customary marriage stating:

The old Maori was very much against the marriage of close relations, and termed it incestuous, even to the third and fourth generation from a common ancestor. If the two people belonged to the second generation from a common ancestor, they were considered too close to marry, but were allowed to, if they were at least three generations from a common ancestor.¹⁰

Aside from incest, some iwi regarded marrying close kin as beneficial. There is evidence to suggest that prior to European arrival, the Ngāti Porou iwi regularly partook in first-cousin marriages. A proverb recited by the elders of the tribe is 'e moe i to tuahine (tungane) kia heke te toto ko korua tonu', translated as 'if the blood was shared among close kin, the hapū would not be compromised'.¹¹ This was a strategy used by elders to protect land held in common ownership which prevented their enemies from coming into possession.

⁹ Māori Marsden, "God, Man and Universe: A Maori View", in *Te Ao Hurihuri: Aspects of Maoritanga*, ed. Michael King (Auckland: Reed Books, 1992), 118.

¹⁰ Makereti Papakura, *The Old Time Maori* (Auckland: New Women's Press, 1986), 60.

¹¹ Api Mahuika, "Leadership: Inherited and Achieved", in *Te Ao Hurihuri: Aspects of Maoritanga*, ed. Michael King (Auckland: Reed Publishing Book, 1992), 56.

Similarly, whakapapa was a vital component for claimants who engaged with the Native Land Court from the beginning of its operation in 1865. Katerina Te Kaaho (Mrs D. Asher) of the Ngāti Pukenga tribe applied to have her relatives and her own interests defined in the court in 1896. Judge Wilson awarded her the block of land based on her ability to claim kinship rights recited through her whakapapa. So impressive was her claim, she could trace back ancestors to Toroa, one of the first ancestors that came from Hawaiki, 15 generations earlier.¹² Yet, when discrepancies occurred among plaintiffs in the Native Land Court the Judge was inclined to favour information supplied by a member who had a house at the locality in question. This is because that person was more likely to be knowledgeable in tribal history and traditions commonly referred to in Māori society as *ahi-kā*, than someone who ‘was living in the bush in a state of ignorance’.¹³

Whānau

Māori customary marriage was shaped by the needs of whānau in terms of enhancing their economic well-being. Sexual regulation was very rarely the primary purpose for marriage. Joan Metge clarifies that it was early European explorers to Aotearoa that described ‘the whānau’ as ‘the basic social unit of Māori society’, in which members contributed labour to the welfare of the group and was a feature of eighteenth and nineteenth century Māori life.¹⁴ Whānau were about three or four generations in size, with every member descended from a common ancestor. This family group represented the basic unit of the Māori economy. The whānau had group ownership

¹² *Auckland Star*, 5 October 1897.

¹³ *Taranaki Daily News*, 25 March 1911. *Ahi-kā* refers to continuous land occupation. Its literal translation is “burning fires of occupation”.

¹⁴ Joan Metge, *New growth from Old: The Whānau in the Modern World* (Wellington: Victoria University Press, 1995), 16.

over certain property and as a collective exercised right to particular lands and its produce. Overall, the whānau worked, ate and dwelt together in a distinct and recognisable group.¹⁵ It was also an important group because it had influential input over spouse selection and understood the whakapapa of potential candidates to prevent incestuous relationships.

The whānau is commonly described as the ‘family group’, but in Māori society its meaning is more complex. Its direct translation means to ‘be born’ or to ‘give birth’ and includes emotional, physical and spiritual dimensions based on an individual’s whakapapa. Anthropologists identify kinship as the central organising principle in tribal societies. As Roger Keesing notes the ‘most complicated, fascinating, and important modes of social grouping in tribal societies are based on kinship — on ties with blood relatives, in-laws, and ancestors’.¹⁶

In fact, whānau relationships encompassed whangai or foster children and included the immediate family but also the broader collectives.¹⁷ While the whānau represented blood-ties it could also be defined as an extended family which included spouses and adopted children who were not direct descendants, but participated in daily activities with the whānau group. Because adopted children (whāngai) were considered part of the whānau they were therefore considered for inheritance upon the death of a family member, particularly if a chief adopted them. This is discussed in later chapters, as whāngai children became important claimants in putting forth their interests for succession in the Native Land Court. According to Raymond Firth, ‘the

¹⁵ Raymond Firth, *Primitive Economics of the New Zealand Maori* (London: Routledge and Sons, 1929), 122.

¹⁶ Roger Keesing, *Cultural Anthropology: A Contemporary Perspective* (Canberra: Australian National University, 1935), 229.

¹⁷ Tai Walker, “Whanau- Maori and Family-Contemporary understandings of whanau”, Te Ara- the Encyclopaedia of New Zealand, accessed 1 June 2016 <http://www.TeAra.govt.nz/en/whanau-maori-and-family/page-1>.

object of such adoption was undoubtedly to retain close tribal connexion [sic] for war, and land inheritance'.¹⁸

Hapū

Hapū consisted of a number of whānau groups connected by descent plus residence. The hapū was the kinship group that participated in exogamous and endogamous forms of marriage. Bruce Biggs states 'there were no marriage classes nor strict rules of exogamy or endogamy, choice of mate was restricted by factors which favoured certain types of marriage'.¹⁹ Marriages outside the hapū (exogamous), were usually for a political purpose. Heuer clarifies 'marriage among all high-ranking women was predominantly political, and consequently subject to considerably more tribal surveillance and discussion than for less aristocratic members'.²⁰ It was not unusual for marriages to be arranged between highborn members from different hapū to strengthen an alliance between two tribal groups. Exogamous marriages were not always recommended and were viewed with some caution. The most significant problem with an exogamous marriage was the implications of bilateral land inheritance. Children born as a result of exogamous marriages had land claims in two groups, causing raruraru (trouble) amongst their kin. It also meant that their loyalties were divided between two different groups, and because of this, these children were closely monitored for any instances of deceitfulness. Children of an exogamous marriage identified themselves with the hapū whose meeting ground was more conveniently situated. Some colonial ethnographers claimed it was not unusual for

¹⁸ Firth, *Primitive Economics*, 112.

¹⁹ Bruce Biggs, *Maori Marriage* (Wellington: Polynesian Society Incorporated, 1960), 23.

²⁰ Heuer, *Maori Women*, 38.

male relations of the wife who had married into another hapū to kill her children in an act of utu (avenge), for favouring one group over another.²¹

Despite some caution surrounding exogamous marriage, there were also benefits to tying two communities together. Peace negotiations were one of the most valued benefits for an exogamy marriage in an attempt to set a permanent truce. For instance, marriage between Tuu-rongo and Maahinaarangi provided a link between Ngāti Kahungunu and Waikato Maniapoto tribal groups and is an important historical example of an exogamous marriage.²² On the other hand, an exogamous marriage could occur when a tribal group was conquered and its people taken captive by a victor. In her research on slavery in Māori tribal society, Hazel Petrie states that a rangatira (high rank) may take an additional slave wife, despite already being married or having several wives. While some slaves were treated as ‘concubines’, others attained a great deal of respect in their communities, as did their children.²³ The children of such union would not only inherit land but also their fathers’ rank. If they returned to their mother’s people there was the consequence of becoming slaves or even death.²⁴ Petrie argues when a rangatira died his slaves were not automatically forfeited. Instead the slaves would become property of the relatives of the rangatira who claimed them. This was standard practice between women and men as they had ‘equal rights over both slaves and land’.²⁵ Customs, traditions and kawa (protocol) differed from region to region but there was a common thread of understanding and systems among most tribal groups.

²¹ Elsdon Best, “Maori Marriage Customs: Being Notes on Ancient Maori Customs”, *Transactions and Proceedings for the Royal Society* (London: Publishers Print, 1921), 22.

²² Biggs, *Maori Marriage*, 23.

²³ Hazel Petrie, *Outcasts of the Gods? The Struggle Over Slavery in Māori New Zealand* (Auckland: Auckland University Press, 2015), 91.

²⁴ Best, “Maori Marriage Customs”, 22.

²⁵ Petrie, *Outcasts*, 92.

The challenges of land ownership and inheritance were an ever-present factor in marriage. Since land could be inherited through either parent it was vital that a marriage was not only approved by the parents of the woman, but also her relatives in the hapū, especially a woman's brothers. If the wife married according to exogamy and went to live with her husband's people, she lost rights to her whānau and hapū land interests.²⁶ However, a husband could equally leave his tribal lands to live with his wife's whānau. He could work and cultivate the land of the wife, but would not receive ownership, even after her death. The land would simply be shared between her children or be returned to her whānau or hapū.

Iwi

Iwi are the biggest kinship group made up of various hapū, and they can grow to considerable size. They are the largest political unit in Māori society and an ariki or paramount chief is responsible for governing the tribe. Customary marriage played a considerable role in tribal unity. For instance, Ngāpuhi, Te Rarawa, Ngāti Whātua, Ngāti Kahu and Te Aupouri are linked together under the grouping of Tai Tokerau or Ngāpuhi-Nui-Tonu. The amalgamation of these tribes derives from the marriage between two ancestors, Kairewa and Waimirirangi. The marriage represents connections across these tribal groups and is a significant example of the importance of kinship grouping in Māori society.²⁷

Some tribes were named after female ancestors like Rongomaiwahine and Ngāti-Hinekura, reflecting the influential roles held by women in Māori society. So well known was Waimirirangi, Queen of Ngāpuhi, that a song was composed in her

²⁶ Firth, *Primitive Economics*, 114.

²⁷ Rawiri Taonui, "Ngāpuhi-Ancestors", *Te Ara-the Encyclopaedia of New Zealand*, accessed 1 June 2016 <http://www.teara.govt.nz/en/ngapuhi/page-3>.

honour.²⁸ Māori women were not restricted to certain domains of Māori society based on their gender. This is reflected in the Māori language which lacks gender specific pronouns. In addition, Papatūānuku mother earth and Hine-Nui-te-Po-the goddess of night and death, are two strong female representations in Māori creation narratives which are instrumental in understanding a Māori world-view. Alternatively, women were given important roles of responsibility in omitting tribal knowledge through waiata (song), haka (ceremonial dance), ancient concepts and beliefs to ensure tribal survival but to also protect tribal identity.²⁹ For women represented the best ways in transmitting knowledge as their children and mokopuna (grandchildren) spent their early years in the home before leaving to gain new skills, such as agriculture, cultivation and hunting.

The model of whānau, hapū and iwi is considered the traditional model of socio-political structures and is a useful overview of basic political hierarchies and the flow of power in Māori society.³⁰ I have placed customary Māori marriage within tribal organisation to gain a fuller perspective, but to also demonstrate the important nexus between the two. In the next section I will describe the actual functions and practices of customary Māori marriage and ways in which it was understood prior to the development of the Native Land Court.

Section II: Celebrating and Dissolving Māori Marriage

²⁸ Cleve Barlow, *Tikanga Whakaaro: Key Concepts in Māori Culture* (Auckland: Oxford University Press, 1994), 33.

²⁹ Annie Mikaere, "Maori Women: Caught in the Contradictions of a Colonised Reality", *Waikato Law Review*, 2, (1994): 128.

³⁰ For a more specific and in-depth analysis of iwi structure refer to: Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c.1769-1945* (Wellington: Victoria University Press, 1998), 90.

There were many different types of marital arrangements in pre-European Māori society, however, most can be classed into the following four types: taumau, moe-māori, tomo, and pākūhā. The taumau or taumaha was a procedure that typically occurred amongst the rangatira families. Though Metge argues that the procedure occurred throughout all the social classes, in the case of those of rangatira rank marriage was arranged while the couples were still in infancy.³¹ Shortly after a female infant had had their tohi or baptism rites performed, a chief would approach the kin group of the female infant and request her hand in marriage for his infant son when she became of a marriageable age. This would need to be discussed and agreed upon by the elders of the girl unless there was an objection to the infant son and his relations. The formal arrangement was based on friendship or kinship of the parents, or upon the hope of instituting or reinforcing political ties. Once the girl was ready for marriage, she would leave her people to go and live with her husband's family.

During this time of extended engagement, it was expected that the young girl or puhi would remain in a virginal state until she was married. The tapu (sacred) of puhi required special residence away from the rest of the community, in a pātaka (storehouse). Elsdon Best details the physical and intrinsic importance of such dwellings for puhi (chieftainess).³² Puhi were considered special daughters of chiefs, were of high rank, and were treasured and protected by the people in her community. The puhi had attendants who prepared and in some instances fed her because she was highly tapu.³³ There is a general agreement that puhi were also renowned for their beauty and the pātaka would physically keep her safe from suitors who would travel

³¹ Joan Metge, "Marriage in Modern Maori Society", *Man* 57 (1957): 166.

³² Best, "Maori Marriage Customs", 22.

³³ Tapu is a concept or set of rules that prohibit certain procedures of actions. Women of high rank were believed to be incredibly tapu and could not touch common items- such as food that was regarded as noa. Noa was the opposite of tapu. Tapu denoted something holy or sacred, which is primarily what puhi were.

from afar to try and win her hand in marriage. Hine-Matioro, of Ngāti Kāhungunu descent, had a pātaka that was elevated high off the ground within the community to acknowledge her position of high priestess. Equally, pātaka could also be used as a method of punishment for a pūhi who tried to escape or breach a formal arrangement that had already been made.³⁴

The young girl spent a lot of time with her future husband's people to make the transition easier. To breach such an important agreement had serious consequences requiring a taua on the offending group to take items of value in order to settle the dispute. Disregarding a taumau was therefore not encouraged, as Māori sought to avoid disruption to the political balance of finely tuned relationships. Taumau was not restricted to infants and if the partners of an arranged marriage were both mature a period of betrothal was unnecessary, co-habiting a short time later.³⁵

The most straightforward method of marriage for a couple was to simply cohabit, also referred to as moe māori. A whakataukī (proverb) known among tribal elders was 'he iti kopua wai, ka he to manawa' translated as 'a small pool of water will exhaust a man's breath if he immerses himself therein'.³⁶ This was recited when a girl wanted to marry before her time, usually before puberty and sometimes before she had menstruated. The proverb alludes to the fact that marrying someone of younger age could come with all sorts of problems and implications. However, despite being an easy method of marriage it was not always the most favoured among kinship groups. If co-habitation occurred it was sometimes because the young couple had fallen in love and feared their union would not be approved.³⁷ If the union did not meet whānau and hapū expectations the relationship was considered harmful. Harmful

³⁴ Elsdon Best, *Maori Storehouses and Kindred Structures* (Wellington: A. R. Shearer, 1974), 11.

³⁵ Biggs, *Maori Marriage*, 34.

³⁶ Best, "Maori Marriage Customs", 49.

³⁷ Best, "Maori Marriage Customs", 49.

in the sense that tribal boundaries and land ownerships were not only compromised, but also harmful because of the exposure to tapu elements.³⁸ Therefore, an important whakataukī ‘korerotia ki runga ki te takapau whara-nui’ translated as ‘let matters be properly arranged by the elders in council. Do not let the young people cohabit promiscuously, but let the tribe marry them according to proper rules and older custom’ was very important when considering a new union.³⁹ Whereas, older couples could freely co-habit together and were generally respected as ‘husband’ and ‘wife’ within the community.

Makereti Papakura states tomo, a form of ‘arranging a marriage’, describes another method of marriage and it operated in a similar way to a taumau.⁴⁰ The key difference between tomo and taumau is that the latter did not involve the presence of the couples who are to marry, whereas tomo did. A tomo party would approach the girl’s whānau reciting whakapapa-tracing lineage right down to the prospective couple. This procedure ensured that all knew of the proposed union, and allowed members of relevant hapū to ask questions until agreement was reached, or not. This again shows the importance of whakapapa to all facets of Māori society, particularly when organising unions.

Tomo was routinely practiced by all iwi. Biggs gives one example from the King Country as described by a chief Te Hurinui. The future husband and his friends went to where the girl’s family lived. The prospective husband approached the person regarded as having the most authority, often a grandfather. The prospective bride and her people welcome the man (and his people) on to the marae (courtyard). After this an expert on the women’s side will begin to recite her whakapapa starting from a

³⁸ If breaches were made to something that was tapu, any ill coming to the individual was said to be a sign of misfortune from the gods.

³⁹ Best, “Maori Marriage Customs”, 32.

⁴⁰ Papakura, *The Old Time Maori*, 63.

certain ancestor down to herself. Beginning with the same ancestor the spokesperson for the man will recite his whakapapa down to the suitor. As the spokesperson reached the name of the groom he will request that the two couples be united by marriage and the marriage was then deemed to have taken place.⁴¹

Pākūhā was the formal handing over of the bride to the husband and was common in all social classes. In Waikato the handing over of the bride was performed in a wharepuni or in a house of the bride. The next day the news would circulate that the couple were now married and a feast would follow. If a couple had an umu kōtore (marriage feast) this would signal that the couple were aristocratic. This procedure was usually performed in front of both groups of families. A set speech by the relatives of the woman by her brothers and uncles would take place. The first mention of this process is recorded in John White's *Maori Customs and Superstitions* published in 1860.⁴² White states 'the New Zealanders had no marriage rite; yet there was a custom among some of them called pa kuha, which consisted of giving a woman to be the property of her suitor'. Elsdon Best found there was more than one type of pākūhā: ta pākūhā, kaupapa pākūhā, whakatakoto pākūhā, and ope pākūhā which all had slight variations in the ways the procedure was carried out.⁴³

The literature on pākūhā is fragmentary. The process could occur long after the couple had actually started co-habiting together. Biggs concludes that pākūhā probably only really occurred between people of rank, particularly if an umu kōtore was displayed. Yet, overall the procedure had a Christian emphasis reminiscent of a wedding ceremony and is hardly surprising that Best could not find reference prior to 1900. The introduction of Christianity and settler contact shaped and changed the

⁴¹ Biggs, *Maori Marriage*, 43.

⁴² John White, "Lectures on Maori Customs and Superstitions: Legendary History of the Maoris", *AJHR*, (1861), E-7, 19.

⁴³ Best, "Maori Marriage Customs", 49.

pākūhā from what was originally understood as the bride going to live with her husband, to include gift giving and elaborate feasting.

Marriage played an important role in strengthening political alliances, and this is illustrated by polygamy which appeared to have existed across all iwi. Paramount chiefs practiced polygamy. For example, Hongi Hika (Ngāpuhi) is known to have had five wives, Te Tirarau Kukupa (Ngāpuhi) twelve, and Te Heuheu Tukino, of Tuwharetoa, eight.⁴⁴ Lesser chiefs also had multiple spouses. Marriage with the principal wife was usually for political reasons, to link two hapū or iwi together. For this reason, such women would also be of high rank and tribal elders usually arranged the marriages. Children who resulted from these unions took precedence over subsequent siblings produced by other wives, in matters of privileges, rights and succession.⁴⁵ Having multiple wives was a reflection of chiefly wealth and status. As Erik Olssen clarifies, for Māori and ‘especially the woman, the wider kin group remained more important than the spouse’.⁴⁶ Therefore, strategic organising for potential suitors was crucial to a successful marriage, but could also be a relatively straightforward procedure if certain criteria were taken into account. The issue of divorce was no different in both upper and lower social classes, and couples tended to move freely between relationships.

Divorce was a fairly relaxed affair prior to European contact, but sustained European contact and colonisation changed the way in which Māori chose to end their unions.⁴⁷ The most common Māori term associated with divorce was *toko*, which

⁴⁴ Heuer, *Maori Women*, 17.

⁴⁵ Heuer, *Maori Women*, 18.

⁴⁶ Erik Olssen, “Families and the Gendering of European New Zealand in the Colonial Period, 1840-80” in *The Gendered Kiwi*, ed. Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), 39.

⁴⁷ Inano Walter, “Māori Divorce: Aspects of Māori Divorce in New Zealand from c.1800- 1950” (BA Hons diss., University of Otago, 2014).

means to ‘separate husband and wife by a rite involving karakia’.⁴⁸ If the couple became separated through death of the husband, the wife would remain a widow for one year after his death. Māori practiced *levirate* that comes from the latin word ‘levir’ meaning ‘husband’s brother’. It is a custom that states that a widow shall marry her dead husband’s brother. The brother should be biologically connected to the deceased or someone who is classified as being a brother, such as a whangai. The children of the deceased husband are still considered his, despite being biologically connected to the ‘new’ husband as well.⁴⁹ The new husband would then take on the deceased husband’s name. Māori were strong believers in levirate marriage and there is a general agreement that its overall purpose of doing was to protect tribal boundaries, but also ensure the widow and children were financially taken care of for the duration of their lives.⁵⁰

Overall, the most important aspect about customary Māori marriage prior to 1865 is that it was diverse. Whilst I have tried to place customary marriage into four discrete categories, it is in fact more complicated and fluid than these categories suggest. There is not one single definition or word that can easily explain what customary marriage was, and like many other societies around the world it varied based on the circumstances and worldview held. How someone was placed on the social ladder dictated how elaborate the procedure might be and what sort of sanctions were placed on the individual to keep the kinship groups balanced. Although marriage was proposed, discussed and arranged among the whānau and hapū groups, it was based on the understanding that it was for the greater good of the community.

⁴⁸ John Moorfield, Te Aka Dictionary Online, accessed 3 May 2016, <http://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=divorce>.

⁴⁹ *Britannica Academic*, s. v. ‘levirate’, accessed 27 June 2016, <http://academic.eb.com/EBchecked/topic/337979/levirate>.

⁵⁰ Best, “Maori Marriage Customs”, 62.

Successful and strategic marriages boosted the economy and productivity of kinship communities and cemented opportunities for continuous tribal sustainability. This is why whakapapa played such a foundational role in arranging unions to avoid incestuous relationships. Secondly, land ownership and inheritance for women were protected under customary marriage and did not warrant an automatic transfer of property to a husband.

In the next section I will explore the reaction and attitudes of missionaries to these customs, and how they tried to apply their own understandings of morality upon Māori. The establishment of a Christian Missionary Society (CMS) mission to New Zealand had its foundations in a letter Samuel Marsden wrote to Reverend Josiah Pratt (secretary of the CMS) in March 1808 asking for the establishment's support. Marsden wanted to 'improve' the Māori people initially through the introduction of small trade such as the manufacture of rope and fishing nets, while also teaching them the importance of Christianity. It was Marsden's intention not only to 'improve' the landscape of New Zealand and introduce Māori to gospel, but also to 'civilize'.⁵¹

Section III: Spiritual Enlightenment Through Marriage

Ethnographers' such as Elsdon Best, Te Rangi Hīroa and Makereti Papakura have largely interpreted customary Māori marriage prior to European arrival, and rarely touched upon the effects of cross-cultural contact on custom. Preceding sections revealed that the underlining strategy in organising unions was to protect tribal lands and boundaries. Key methods in doing this was through the recital of whakapapa between families, or simply prohibiting the automatic transfer of a woman's property

⁵¹ Tony Ballantyne, *Entanglements of Empire: Missionaries, Māori and the Question of the Body* (Auckland: Auckland University Press, 2014), 46.

to her husband upon marriage. The aim of the next section is to emphasise cross-cultural contact using the lens of the Christian Missionary Society to get a sense of how missionaries tried to apply their own understandings of morality to Māori. To do this, I will begin by exploring the context of customary Māori marriage when the CMS missionaries first arrived to New Zealand. In doing this, I offer a perspective on the motivations of the missionaries who believed it was necessary to reconstruct a ‘heathen’ and ‘barbaric’ culture, and shape them into godly subjects.

Much of my discussion will concentrate on two prominent missionaries who spent various time during their careers in the Hawkes Bay region. Both William Colenso and William Williams carefully documented their interactions and experiences with Māori as they moved into Māori communities. It is these engagements that influenced their approach to which aspects of Māori custom should be abandoned, such as polygamy. Lastly, I will discuss how the increased presence of missionaries after the 1830s did little to deter Māori from abandoning their customary practices entirely, which is reflected in how Māori chose to formalise their unions. Although Māori started to embrace Christian rituals of marriage, this does not mean Māori were totally removed from custom; rather they took aspects of European rituals and practices to serve their own purposes and better their position in society. To a degree this was influenced not only by missionaries, but also the fashion for ‘white wedding’ ceremonies occurring in Great Britain at the time.⁵²

When the first wave of CMS missionaries arrived at Paihia, Bay of Islands, in 1814, Māori were engaged in valuable economic and social relationships with traders and whalers. Europeans provided access to a new range of goods and commodities,

⁵² Sandra Coney, *I Do: 125 years of Weddings in New Zealand* (Auckland: Hodder Moa Beckett, 1995).

including metal products, such as hooks and nails. Correspondingly, a variety of relationships between Māori women and European seafarers emerged at this time, ranging from commercial exchange, to co-habitation, and formal marriages that followed custom. Historians Erik Olssen and Michael Reilly have acknowledged that European writings cast Polynesian women as ‘exotic’ and ‘erotic’, comparing their sexual transactions with male seafarers as a form of ‘prostitution’.⁵³ However, as previously highlighted, it was customary for unmarried Māori women to have any number of sexual partners she wished and ‘some women initiated sexual relations with sailors in exchange for goods’.⁵⁴ Although these relationships between Māori and male newcomers were discouraged, there was little that missionaries could do to prevent them, for Māori and newcomers both regarded them as a vital ingredient in the establishment and ongoing success of the extractive industries. Furthermore, these interactions between the two groups meant that some Māori women and their families incorporated white men into their kinship structures (refer to fig 1.2).

As a form of customary Māori marriage was to simply ‘moe-māori’ or co-habit together marriage in traditional Māori society was not always well understood by outsiders. As Ngāi Tahu historian Angela Wanhalla states, these outsiders ‘tended to apply Western understandings of morality and marriage to indigenous cultures’.⁵⁵ According to Damon Salesa, missionaries did not discourage interracial marriages; they simply disliked the idea of unmarried cohabitation (refer to fig 1.3). However, missionaries believed that if both individuals were indigenous and lived together this

⁵³ Erik Olssen and Michael Reilly, “Te Tutakitanga o Nga Ao e Rua”, in *Ki Te Whaiao: An Introduction to Māori Culture and Society*, ed. Tania Ka’ai, (Auckland: Pearson Longman, 2004), 140.

⁵⁴ Olssen and Reilly, “Te Tutakitanga”, 145.

⁵⁵ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* (Auckland: Auckland University Press, 2013), 23.

was not ‘concubinage’.⁵⁶ Concubinage therefore implied a hierarchy involving a lower status (Māori) woman with a higher status (white) man, usually sailors, sealers, traders or whalers. That missionaries considered concubinage fundamentally different from co-habitation implies that they ranked Māori social practices below those of Pākehā.

Missionaries viewed the regulation of marriage as essential to paving the way for conversion to Christianity that encompassed models of sexual propriety, morality and respectability, and sought in particular to abolish polygamy.⁵⁷ It was Samuel Marsden’s view that the acceptance of Christian marriage would serve to encourage ‘civilised’ ways of life amongst Māori. He thought that a married missionary offered a fine example of a ‘civilised’ individual to which Māori would want to aspire. In Marsden’s words:

It appears to me that a married woman, coming along with her husband in the mission would...if a prudent woman, prove the greatest comfort and protection to her husband, sweeten his trials and sustain his burdens.⁵⁸

Yet, Marsden’s attempts to control the marriage market did not prevent male missionaries having relationships with Māori women. William Colenso was stationed at the Ahuriri station house in the Hawkes Bay between 1844 and 1850. It was discovered that he had become embroiled in not only an adulterous relationship but what was also perceived as a polygamous one. Colenso was dismissed from the CMS in 1852, after he had fathered a child to the family servant, Ripeka Meretene. Once the baby was born Ripeka continued to live in the confines of Colenso’s house

⁵⁶ Damon I. Salesa, *Racial Crossings: Race, Inter-marriage, and the Victorian British Empire* (Oxford: Oxford University Press, 2011), 79.

⁵⁷ Wanhalla, *Matters of the Heart*, 23.

⁵⁸ J.B. Marsden, *Memoirs of the Life and Work of Samuel Marsden* (London: London Printing Press, 1857), 41.

alongside his wife Elizabeth Colenso and their two children. Perhaps the most remarkable aspect of Colenso's affair is he had been participating in the very practice he had been discouraging. The CMS wanted to convert Māori from their 'heathen' ways. Colenso had embarrassed not only the society, but also himself as he found his mana and respect diminished amongst local Māori.⁵⁹

As the missionaries travelled up and down the East Coast trying to convert Māori to Christianity, polygamy remained at the forefront of their agenda. William Williams had taken up his CMS training in England prior to arriving to Paihia and until 1837 was the mission doctor. Williams gained an excellent knowledge of the Māori language and at the end of 1837 he had translated the New Testament and most of the Book of Common Prayer. After various posts throughout the East Coast, Williams finally settled in Hawkes Bay at the end of May 1867. Aside from his knowledge of the Māori language, Williams seems to have disapproved of most Māori social customs and practices and worked tirelessly to change them, including customary marriage.⁶⁰ For example, in 1844 Williams 'went to Rakaukaka after timber. Kemp and his party from Paokahu, wishing to have his daughter married to a young chief who already has a wife. It shows a great derangement of feeling that there should be many persons who countenance this proposal'.⁶¹ Although the young chief was already married, Māori considered it socially and economically acceptable to have another wife.

⁵⁹ Peter Wells, *The Hungry Heart: Journeys with William Colenso* (Auckland: Random House, 2011), 177. Wells discusses how Colenso's mana diminished when local chiefs discovered he had been involved in an affair with Ripeka Meretene. Kawepo who had been like a son to Colenso, ultimately lost respect for the missionary while his own mana continued to rise within the local community.

⁶⁰ Frances Porter, "Williams, William", from the *Dictionary of New Zealand Biography. Te Ara - the Encyclopaedia of New Zealand*, accessed 12 June 2016
<http://www.teara.govt.nz/en/biographies/1w26/williams-william>.

⁶¹ Frances Porter, ed., *The Turanga Journals 1840-1850: Letters and Journals of William and Jane Williams Missionaries to Poverty Bay* (Wellington: Victoria University Press, 1974), 273.

In June 1840 Williams wrote in his journal: ‘married 13 couple of the natives baptized yesterday. This step has been deemed expedient because many of the men have two or more wives, all of whom are put away save one’.⁶² As Christianity spread its influence into more Māori localities, Māori became aware that baptism was a necessary step prior to marriage. Therefore, the missionaries’ goal in converting Māori to Christianity became more of a reality within the Hawkes Bay. Certainly, baptisms were on the rise. Williams wrote in July 1849: ‘examined five candidates and then baptized 52 adults and addressed them upon the importance of the covenant into which they had entered’.⁶³ The increase in baptisms was on the understanding that Māori would eventually have to abandon their own customs and beliefs to accept God into their lives.

Williams sometimes came across situations where Māori wanted to convert to Christianity but could not do so because of their polygamous relationships. Williams found:

One of the candidates, a man of good information, has the misfortune to have two wives, and though he had come to a determination to retain only one, the poor woman who was to be rejected was not so easily to be satisfied. The husbands baptism is therefore deferred.⁶⁴

At Porangahau Williams encountered a situation where a young man with two wives and had to decide which one he would choose:

He is one of the best-informed men I have met with. When the examination was closed, I observed that he had an obstacle in the way of his baptism.

⁶² Porter, *The Turanga Journals*, 107.

⁶³ Porter, *The Turanga Journals*, 532.

⁶⁴ Porter, *The Turanga Journals*, 552.

‘Does this woman pass’ said he. I replied that as far as her answers went she did. ‘Then I shall take this woman for my wife, and send the other away, that I may no longer have any hindrance’.⁶⁵

For the young man from Porangahau, his decision was relatively easy but in other situations it was not always the case. A chief called Matuku refused to give up one of his wives and Williams recorded:

as befitted a chief, had two wives, neither of who was he willing to put away. He therefore would not enter the class for baptism, nor could the Church accept him as a candidate for such. Colenso felt he could not reprove him.⁶⁶

There is evidence to show that some men really struggled with the idea of conforming their world-view towards a Christian outlook. Some of the older chiefs were simply ‘too old to change’, despite many being baptised by Colenso as ‘it was not easy for the Māori to set all that aside, as well as all his wives but one, and accept as substitute this new doctrine of humility and peace’.⁶⁷ In fact, Colenso had come across one man who had asked if he could be ‘unbaptized’ because he found the new religion was too hard and wanted to return to his former habits and customs.⁶⁸

On the other hand, others were ‘induced by Satan’ himself. On 23 June 1849 Williams wrote:

Hear this morning that the chief Whata, who has lately returned from the south, has set up the profession of popery... But Satan induced him to cast off his wife & take another woman. This led to the separation of his christian

⁶⁵ Porter, *The Turanga Journals*, 222.

⁶⁶ A. G. Bagnall and G. C. Petersen, *William Colenso: His life and Journeys* (Wellington: A.H & A.W. Reed, 1948), 292.

⁶⁷ Bagnall and Petersen, *William Colenso*, 238.

⁶⁸ Bagnall and Petersen, *William Colenso*, 248.

relations from his company, and now he takes refuge under the more lenient discipline of the papists, because they will allow him to live as he lists [sic].⁶⁹

Yet, sometimes Māori wanted to abandon their old practices of customary Māori marriage and wholly embrace Christianity. On 21 April 1847, ‘there is some excitement in the Pa today [i]n consequence of a proposed matrimonial alliance. A large assemblage is expected tomorrow of the opposing parties’.⁷⁰ The next day Williams noted in his journal:

Last night the woman was sent back to the parties who are opposed to the match with the understanding that if she persists in her partiality, the party shall allow her to marry. The case is thus, the woman is a widow and her late husband’s friends wish her to marry a relative of her husbands but she, acting upon the christian principle that she is free gives preference to a suitor from another tribe. There is still much excitement but the people are beginning to disperse.⁷¹

Whilst an arrangement had occurred to marry a male relative, the woman was dissatisfied, and tried claiming that her Christian faith allowed her to choose her own suitor. Evidently, Māori contested which aspects of their faith they chose to identify with.

Māori did not abandon their marriage customs entirely, but increasingly Māori chose to celebrate unions in a European and Christian manner. At the settlement of Waimarama, Colenso married a Māori couple, Te Wakatomo and Dina te Rangi Koianake. Te Wakatomo was dressed ‘both well and neat in plain and good English

⁶⁹ Porter, *The Turanga Journals*, 530.

⁷⁰ Porter, *The Turanga Journals*, 430.

⁷¹ Porter, *The Turanga Journals*, 430.

clothes; so, also was Te Hapuku, his father'. The bride was dressed in 'an elegant shawl over her gown and English straw bonnet and veil! With artificial flowers in her hair!!!'.⁷² The feast that proceeded, which was paid for by the remaining money from the Ahuriri purchase, would be remembered in Pakowhai and Patangata for many years. Evidently, chiefly Māori were taking on aspects of the white wedding, notably the formal clothing and feasts, but mixed these with customs such as kinship approval, haka and waiata.

By the 1860s, Māori were keen adopters of the 'white wedding' popularised by the British royal family.⁷³ At this time, as Wanhalla's study of interracial marriages illustrates, Māori brides increasingly wore a white wedding dress, the groom wore his best suit and the service was performed in the Māori language. The couple would be welcomed on to the marae by a waiata or haka; speeches were made in te reo Māori, highlighting whakapapa connections between the bride and groom. Gift giving would feature not just for the couple but also the guests. As Wanhalla notes, though, it was Church-run Māori-language newspapers that tended to publish stories of chiefly Māori taking up these Christian traditions in order to encourage Māori to change, which suggests that customs remained prevalent during this time.⁷⁴

So what did customary Māori marriage look like through the lens of the CMS missionaries? Missionaries did not approve of inter-racial marriages, sex before marriage or polygamy. They worked tirelessly throughout the first half of the nineteenth century to shape Māori into a 'civilised' society, particularly in the Hawkes Bay region. Some Māori made the conversion willingly and others struggled

⁷² Bagnall and Peterson, *William Colenso*, 329.

⁷³ Coney, *I Do*, 7.

⁷⁴ Wanhalla, *Matters of the Heart*, 34.

with the change. As historian Tony Ballantyne claims in *Entanglements of the Empire*, the conversion of Māori to Christianity did two things: it not only introduced Māori to the world of spiritual enlightenment and how they could be saved, but it also made Māori into Christian subjects by stressing the importance of marriage.⁷⁵ If they were willing to give up their customs, especially polygamy and arranged marriages, Māori would be openly accepted into the faith.

Section IV: Customary Marriage and Colonial Laws

The final section of this chapter will discuss how the early colonial laws and statutes attempted to bring Māori under a common marriage framework. As I have previously discussed, missionaries played a pivotal role in converting Māori to Christianity and attempting to eradicate indigenous customs. The colonisation process in nineteenth century New Zealand meant that Māori were essentially caught between two structures of influence: Christianity and English law. Missionaries preached to Māori that their forms of marriage were not ‘valid’ or accepted unless sanctified within the church. Colonial authorities wanted Māori to abandon their customary marriage practices entirely and become unified within one jurisdiction as part of the broader aim of assimilation. Māori were faced with spiritual and legal challenges in this new and rapidly expanding environment. The next section, therefore, will explore how Māori marriage customs fared in the face of laws designed to regulate marriage in the colony and addresses several attempts made by colonial authorities to unite Pākehā and Māori under a shared jurisdiction. I will consider the advantages and disadvantages of colonial marriage laws for Māori women.

Legal Pluralism

⁷⁵ Ballantyne, *Entanglements of the Empire*, 6.

Law is an essential aspect of state building. In order to run a state efficiently the administration of taxes and the governing of law are all central components.⁷⁶ Nan Seuffert refers to this process in the title of her journal article as ‘shaping the modern nation state’.⁷⁷ Yet, when two forms of authority co-exist in the same locality it complicates matters. As legal scholar Brian Tamanaha says ‘the law will rule whatever it addresses, but legal pluralism challenges this’.⁷⁸ Legal historian Sally Merry further defines this theory as a ‘situation in which two or more legal systems co-exist in the same social field’.⁷⁹ According to Stuart Henry, an expert in criminal justice, ‘legal pluralism holds that every society contains a plurality of legal orders and legal subsystems’.⁸⁰ For Māori, customary law is inextricably linked to land. This is demonstrated in whakapapa, whakataukī, waiata and customary marriage. Subsequently, the overarching goal for policy makers was to override customary law and bring Māori under a common jurisdiction. Once this was achieved there was a great deal of certainty that control over land would follow soon after. This in turn could be taxed and administered by the state contributing to the overall assimilation process.

After the signing of the Treaty of Waitangi in 1840, two forms of authority co-existed in the colony.⁸¹ Historians Judith Binney and James Belich both agree that

⁷⁶ Brian Tamanaha, “Understanding legal pluralism: Past to Present, Local to Global”, *Sydney Law Review* 29 (2007): 380.

⁷⁷ Nan Seuffert, “Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage in Aotearoa New Zealand,” *Law Text Culture*, 7, (2003): 186-220.

⁷⁸ Tamanaha, “Understanding”, 377.

⁷⁹ S. Merry, “Legal Pluralism”, *Law and Society Review* 22 (1988): 870.

⁸⁰ S. Henry, “The Construction and Deconstruction of Social Control: Thoughts on the Discursive Production of State Law and Private Justice”, in *Transcarceration: Essays in the Sociology of Social Control* ed. K. Lowman, R. McKenzie and T. Plays (Gower Publishing: Aldershot, 1987) 6-7, 107-11.

⁸¹ More often than not, legal pluralism is studied in relation to colonial and post-colonial societies where one set of legal systems will interconnect with customary practices and beliefs. Legal pluralism emerged in response to studies of indigenous communities in the twentieth century by key figures such as anthropologist Bronislaw Malinowski. It eventually led to the questioning of how colonised people dealt with indigenous and European law.

British authority and indigenous leadership continued to operate alongside each other for the next twenty years, with neither party fully aware of each jurisdiction.⁸² This is not a case isolated to Māori, as similar methods of political self-government were introduced in other parts of the world during this time.⁸³ Under Article Two of the Treaty, Māori were confirmed and guaranteed ‘te tino rangatiratanga’: the exercise of chieftainship over their lands, villages and all treasured things.⁸⁴ Māori continued to apply their own customary practices in their localities, where they constituted the majority of the population and resolved tribal matters accordingly. Historian Alan Ward notes that Māori still had ‘substantial physical control of the country and initiative in how far they would accept European influences’.⁸⁵ Certainly, the introduction of Christianity was a reflection of how they would treat the law, ultimately ‘reshaping’ it to suit their own needs.⁸⁶

Shortly after the Treaty was signed, British authority at a local level was not immediately clear. For instance, Te Hapuku, a prominent chief of Hawkes Bay, retrieved a whaleboat from a settler who had cursed him. From a customary perspective this was a form of taua muru; a method of retribution for Te Hapuku having his mana degraded by the settler who cursed him. From a European perspective this was a form of theft. Major Bunbury suggested to Governor William Hobson that:

⁸² Judith Binney, “Two Communities” in *The People and the Land / Te Tangata me te Whenua: An Illustrated History of New Zealand 1820-1920*, ed. Judith Bassett, Judith Binney and Erik Olssen (Wellington: Bridget Williams Book, 1990). James Belich, “The Governors and the Maori: 1840-1872” in *The Oxford Illustrated History of New Zealand*, ed. Keith Sinclair (Auckland: Oxford University Press, 1990), 86. James Belich, *The New Zealand Wars* (Auckland: University Press, 2015), 78-9.

⁸³ Sally Merry states that legal pluralism was also happening in Africa, Asia and the Pacific under advanced capitalism. Interestingly, Europeans were not the first to impose this legal structure on indigenous communities as they had been exposed to conquests and migrations for centuries.

⁸⁴ Claudia Orange, *The Treaty of Waitangi* (Wellington: Port Nicholson Press, 1987), 40.

⁸⁵ Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand* (Canberra: Australia National University Press, 1974), 39.

⁸⁶ Ward, *A Show*, 39.

some trifling degree of deference might be paid to their present state and condition, in order gradually to prepare and make them comprehend the more complex and expensive forms of our civil institutions and criminal laws.⁸⁷

Early policy makers had to proceed in a way that would not immediately disrupt relationships between Māori and Pākehā. Because of this, assimilation would be a slow and strategic process. To elaborate further, customary law was still respected and valid in areas where there was a dense Māori population, but as the ultimate goal was assimilation of Māori to English law, customary laws were required to eventually disappear and this included marriage customs.

Marriage Legislation

For Māori, customary law is inextricably linked to land as I have previously iterated. Therefore, eradication of custom was crucial for successful state building by Pākehā, as it opened up the control of land. One avenue of gaining access to land was through marriage. As I have shown, Māori women's lands were protected on marriage, as it did not involve the automatic transfer of ownership of that land to her husband. However, by changing those conditions under state law, it slowly brought Māori under a common jurisdiction.

In 1842 the Marriage Ordinance was passed into law. It stated that all marriages performed by 'any minister of any Christian denominations whether episcopally ordained or not, prior to that year' were valid.⁸⁸ There was no mention of Māori within the ordinance but by 1847, there was mention of the 'native race' in section 44 of the Marriage Ordinance:

⁸⁷ Ward, *A Show*, 45.

⁸⁸ Marriage Ordinance 1842, *New Zealand Statutes*, 105.

Nothing herein contained shall apply to any marriage which may be contracted otherwise than according to the provisions of this Ordinance between two persons both of the Native race: provided that this Ordinance shall come into operation in respect of marriages between person of the said race in such districts and at such times as the Governor shall by Proclamation from time to time appoint.⁸⁹

The 1847 Ordinance recognised Māori customary marriage as ‘valid’, but at the same time they sat on the perimeters of the colonial jurisdiction. Seuffert claims that this alignment of customary and colonial laws ultimately became the ‘boundaries of the nation’.⁹⁰ By this, Seuffert means that although the laws did not exclusively exempt Māori from the act, it did implicitly provide for customary marriage in its recognition as valid.

In 1854 the Marriage Act was passed ‘to regulate the Law of Marriage in the Colony of New Zealand’.⁹¹ For a marriage to be considered ‘valid’ it had to be performed by a minister, a ‘notice of every intended marriage was to be given to the registrar’ and a marriage certificate was to be issued. Essentially, the act set up state regulation of marriages, making marriage accessible to everyone. Māori were encouraged to marry according to regulations set out under the act, but it was not compulsory. The lack of enforcement enabled customary marriages to continue to be practiced, but over time this would slowly be eroded by a policy of assimilation that covered all aspects of Māori life, particularly marriage.

There were some Māori who embraced the formalisation of marriage and celebrated with Christian rituals. One example was the marriage between Henry

⁸⁹ Marriage Ordinance 1847, *New Zealand Statutes*, 70.

⁹⁰ Nan Seuffert, “Shaping the Modern Nation”, 195.

⁹¹ An act is a law that is passed by parliament. Prior to this it is called a Bill.

Taratoa and Emily Te Rua from the Heretaunga. It took place on Wednesday 2 April 1850, at the Chapel of St Johns, Auckland. It was an elaborate feast with no fewer than 150 guests, which filled a spacious hall decorated with flags and several toasts given to ‘the Maori bride and bridegroom’. A newspaper article reported that the celebrations were ‘additional evidence of what Christian civilization has accomplished for the aborigines of New Zealand’.⁹² Whilst there is a very obvious trajectory whereby Māori chose to formalise their unions with pressure from missionaries, and pressure from the law, there were those who remained somewhat impervious to the changing environment. This involved living as husband and wife, where the community knew and acknowledged them as a couple, but without the ‘official’ paperwork. More than likely, this was because Pākehā laws had little effect in their respective districts.

There were disadvantages to following colonial marriage laws, especially in relation to land. Customary Māori marriage allowed women a great deal more independence than Pākehā women.⁹³ Under English law, Pākehā women lost all rights to property after marriage. When Māori women married they brought with them large tracts of land gifted from their whānau. This was on the understanding that if no children resulted from the union, the land would simply revert back to the whānau or hapū. The husband was allowed to live and produce crops on the wife’s land, but could not claim rights to her property. For Māori, land was considered a communal commodity in which various whānau and hapū respected and acknowledged each other’s boundaries. This respect was based on not only the mana of the chief in charge of tribal areas, but also by the concept of whakapapa in which groups had ancestral

⁹² *New Zealander*, 6 April 1850, 2.

⁹³ Barbara Brookes, *A History of New Zealand Women* (Wellington: Bridget Williams Books, 2016), 78.

claims too. Unfortunately, the increase of settlers to New Zealand after the 1840s greatly reconfigured the meaning of property and land for Māori, towards individualisation of title.⁹⁴

In 1854, parliament discussed the disadvantages of marriage for Māori women under colonial marriage laws. Their concerns were prompted by the case of Kenehuru who had thirty acres of land gifted to her by three chiefs when she married Edward Meurant in 1835. When Meurant applied for a Crown Grant for Kenehuru's land, Governor Grey confiscated twenty acres and gave a Crown Grant for the remaining ten. A petition was submitted on behalf of Kenehuru, who was the one contesting the loss of her property. On discussion of Kenehuru Meurant's case Hugh Carleton argued:

If a native woman marry a European subject of the Queen, her land is confiscated to the Crown; but if she merely lives in concubinage with a European, all the power in New Zealand cannot touch one acre of that land.⁹⁵

If Kenehuru was to live in concubinage with Meurant (or alternatively, a Māori customary marriage) Kenehuru's rights over land were protected. In parliamentary debate on the petition, Henry Sewell deliberated as follows:

Upon moral considerations, I cannot bring myself to believe that, when Kenehuru became his wife, she thereby lost the native right that had been guaranteed by treaty, in as much as that, in such cause, it would have been more advantageous to her, in a temporal point of view, to have lived with him in concubinage than to have married after the rites of a Christian Church.⁹⁶

⁹⁴ Brookes, *A History*, 78.

⁹⁵ *New Zealand Parliamentary Debates*, 1854-1855, 220.

⁹⁶ *New Zealand Parliamentary Debates*, 1854-1855, 220.

It is clear from this example that formalising unions under British law had no real advantage for Māori women. Seuffert argues that colonial marriage laws were ‘increasingly constructed and policed to assimilate the indigenous Māori to a centralised jurisdiction while simultaneously producing race and gender difference within the nation-state’.⁹⁷ Her point is that by excluding Māori customs considered to illustrate ‘backwardness’ and associating them with ‘concubinage’ and ‘polygamy’, the law essentially redefined the ‘modern nation state’, allowing policy makers to legislate for certain social practices. Richard Ford makes a valid argument that the purpose of jurisdiction ‘does its most important work, not by repressing local difference, but by producing it, by dividing society into distinctive local units that are imposed on individuals groups’.⁹⁸ A steady and concentrated effort of state building in the mid-nineteenth century propelled Māori towards new marriage practices and reconfigured land ownership.

Conclusion

The first half of the nineteenth century brought swift changes to Māori society, their leadership, their faith and their customary laws. The first sections of the chapter relied heavily on ethnographer’s accounts to recreate customary marriage prior to European arrival. In order to do this, significant space was dedicated to explaining key terms and concepts in Māori society that are directly related to marriage. Once this was established, it meant that it was possible to see how missionaries viewed traditional customs and also highlight what they sought to reform. William Williams and William Colenso worked tirelessly in their efforts to convert Māori to Christianity as

⁹⁷ *New Zealand Parliamentary Debates*, 1854-1855, 221.

⁹⁸ Richard Ford, “Laws Territory: A History of Jurisdiction”, *Michigan Law Review* 97 (1999): 908.

their journals revealed. A large part of conversion to Christianity involved abandoning customary marriage practices such as polygamy, and this continued into the 1840s and 1850s. After the signing of the Treaty of Waitangi, two forms of authority co-existed in the colonies. Legal pluralism was a necessary step in slowly bringing about assimilation of Māori under colonial law, which would eventually supplant indigenous customary practices. This was performed by the implementation of statutes and laws that sought to bring Māori under a shared jurisdiction. What this last section has ultimately demonstrated is Pākehā authority was not immediate, and that assimilation to European institutions was a slow and drawn out process. As will be seen in the following chapters, although during the 1840s and 1850s colonial marriage law was introduced, it was slowly applied to Māori, for Māori continued to practice customary marriage into the twentieth century.



Figure 1.1. Hone Heke and his second wife Hariata dressed in flax cloak, c.1845. Ref, E-309-q-2-033, Alexander Turnbull Library.



Figure 1.2 A Māori woman watching over a sleeping soldier, c. 1845-1858. Ref, A-113-034, ATL.

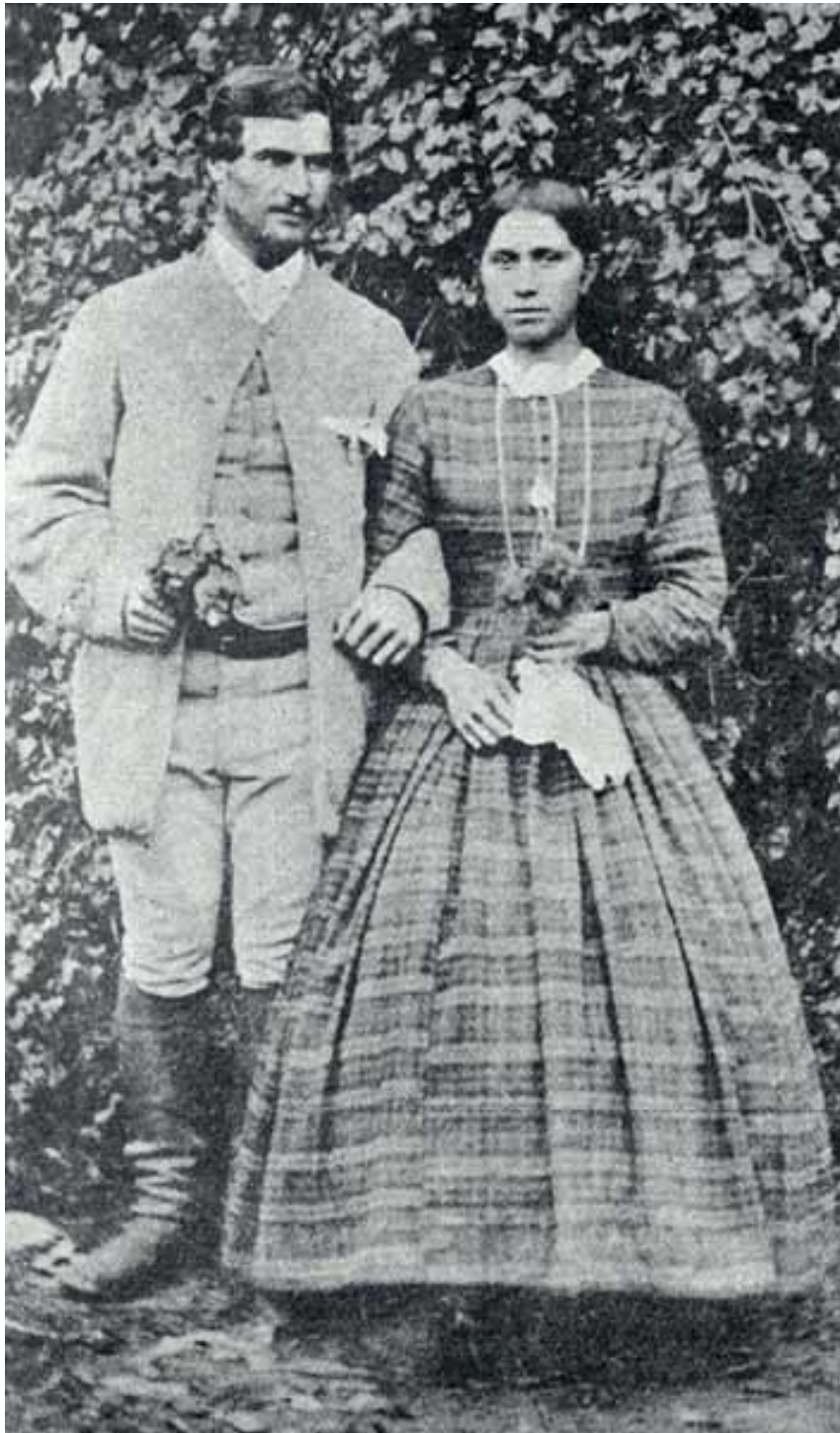


Figure 1.3 Unidentified Māori couple believed to be the first to marry in a Christian Church. Photo CD 15, IMG0080, Christchurch City Libraries.

Chapter Two : Marriage Customs and Colonial Legislative Frameworks

Between 1865 and 1884 Māori women's ownership of land, previously protected under customary Māori marriage, was undermined through a series of statutes and legal decisions relating to land and marriage. This can be further identified by examining the Native Land Court, but also decisions made in the colonial courts, as both forums increasingly sought to redefine the validity of Māori marriage, and restrict Māori women's access and authority over tribally owned land.

In order to assess historian Nan Seuffert's argument that colonial marriage laws not only policed Māori, but also produced 'race and gender difference within the nation-state', this chapter will survey both the Native Land Court and the colonial courts, as both courts impacted Māori women. In her groundbreaking book, *A History of New Zealand Women*, historian Barbara Brookes identifies that the effect marriage had on Pākehā women ultimately 'negated women's legal personhood'.¹ Whereas, for Māori women, their land remained protected under customary marriage, but what happened when they married European men? Did colonial laws of coverture that 'negated [Pākehā] women's legal personhood' apply to the control of Māori women's property?² Therefore, in surveying the Native Land Court and the colonial court alongside each other, this chapter will reveal ways in which both courts applied marriage laws to two distinct sets of women under varying conditions and circumstances.

¹ Barbara Brookes, *A History of New Zealand Women* (Wellington: Bridget Williams Books, 2016), 78.

² Brookes, *A History*, 78.

To capture these variances, this chapter is split into two sections. The first section explores the Native Land Court from 1865 to 1873. It is during this period, that the courts initially respected and referred to custom in all their dealings with Māori owned land. This can be supported by the theory of ‘dual pluralism’, whereby two systems of law primarily respected one another’s existence cited in Chapter One. However, if a Māori woman married according to European law, their land automatically came under colonial jurisdiction in the colonial court, and was no longer protected under customary law. These distinct but separate spaces in which the law operated in will be unpacked further in the chapter to come.

In the second section, I examine the Native Validation Marriage Bill 1877. Despite the bill never becoming a statute it generated a great deal of debate in Parliament and the colonial newspapers, and prompted a petition from Arihi Te Nahu, a prominent Ngāti Kahungunu woman. She was opposed to the bill, as she believed it would essentially have brought Māori under the requirements of the Marriage Act 1854, which involved a public announcement and uniting Māori under Christian denomination, as ministers of the main churches were only authorised to marry couples.³ Arihi’s concerns reflect the importance custom continued to play even throughout the 1870s as not all Māori wanted to conform to Christianity. Coincidentally, Arihi appears in the Native Land Court contesting for her succession to tribal lands providing a direct relationship to the Native Land Court and colonial court. Next, the Native Succession Act 1881 will be discussed to demonstrate how the Native Land Court dealt with issues surrounding succession and what impact this had on Māori women who owned property. Lastly, the New Zealand Married Women’s Property Act 1884 will be explained to showcase how aspects of Māori custom

³ Marriage Act 1854.

influenced legal reforms during nineteenth century New Zealand which benefited Pākehā women. In the next chapter of this thesis, I will then demonstrate how these laws were put into practice using key women from the Ngāti Kahungunu, Hawkes Bay region as case studies.

Section I: The Native Land Court, 1865-1873

The Native Land Court was established in 1865 to identify individual owners of Māori land and ease the process of land purchase for British settlement (refer to fig 2.1).⁴ Some women quickly became acquainted with the judicial process and freely participated in the predominantly male legal sphere. When going before the land court, Māori women were engaging with a new legal framework in which they were forced to establish their customary rights. This procedure involved identifying their relationship to the land using whakapapa as their main source of evidence.⁵ Taking whakapapa and oral traditions out of their tribal context and placing them within a legal space redefined their significance by making them an instrument of government policy. In order to receive a Crown Grant, a title investigation process was initiated which basically extinguished communal customary title and issued individual title to the claimant.⁶

Historian Richard Boast stresses that while women sometimes spoke in the land court, this was not usually the case, for most witnesses were male. This was certainly true in Waikato as Tom Moke of Ngāti Mahuta and Ngāti Hikairo descent recalls his father Paahi Moke saying ‘the old people decided that women should not

⁴ Ann Parsonson, “Stories for Land: Oral Narratives in the Maori Court”, in *Telling Stories: Indigenous History and Memory in Australia and New Zealand*, ed. Bain Attwood and Fiona Magowan (Wellington: Bridget Williams Books, 2001), 21.

⁵ Detailed whakapapa charts can be found throughout the Native Land Court Minute Books providing insight into the land and people referred to.

⁶ Ranginui Walker, *Ka Whaiwhai Tonu Matou: Struggle Without End* (Auckland: Penguin, 1990), 135.

be there'.⁷ However, evidence suggests in the *Native Land Court Minute Books* that women who did appear in the court did so in their own right and were women of mana from their respective regions.⁸ There is further evidence that indicates that the courts did not discriminate against married Māori women and non-married women as both could freely participate within the court. Interestingly, women of high mana were not always directly involved in individual court proceedings, however, land dealings could not be completed without their authority, demonstrating the power and influence of Māori custom, in and out of the Native Land Court during this period. A good example of this is highlighted by chieftainess Hineipaketia from Heretaunga, commonly referred to as 'Queen Hineipaketia' in colonial newspapers, where 'land sales relied on her endorsement' during the 1840s to the 1870s.⁹ These differing accounts of women within the court can be attributed to tribal variation in regards to kawa or protocol.

The operations of the land court involved a European magistrate appointed in every district under section 74, which specified that 'every conveyance made shall be interpreted and executed before a judge or a justice of the peace'.¹⁰ Māori jurors or assessors sat alongside the judge. Boast states 'it is hard to exaggerate the importance of this institution which seems to have no exact counterpart in other British colonies'.¹¹ Tom Bennion and Judi Boyd add that there were contradictory viewpoints about 'custom' at the time the Native Land Court was established, writing that 'there was no clear understanding of what "Native custom" was in succession', including

⁷ Parsonson, "Stories for Land", 24.

⁸ Richard Boast, *Buying the land, Selling the land: Governments and Maori Land in the North Island 1865-1921* (Wellington: Wellington University Press, 2008), 83. Richard Boast, *The Native Land Court: A Historical Study, Cases and Commentary 1862-1887* (Wellington: Thomson Reuters, 2013), 76.

⁹ Brookes, *A History*, 78.

¹⁰ Native Lands Act 1865, no. 71.

¹¹ Boast, *The Native Land Court*, 76.

how custom was to be applied under this new legal format.¹² Nevertheless, from its beginnings, the court accepted the validity of customary marriage and, until 1873, recognised that Māori women could continue to own property in their own right. As the nineteenth century progressed, registering land under the jurisdiction of The Native Land Court became necessary for succession and land entitlements. The 1880s saw an increase of Māori women entering the courts to contest the wills of fathers, uncles or husbands, which is discussed further in Chapter Three.

The Native Land Act

Prior to the establishment of native land legislation only the Crown could purchase Māori-owned land, known as Crown pre-emption, a common practice in British colonies. Purchasing by deed was the most effective method the Crown exercised, and by 1862 two-thirds of the country had left Māori ownership. This included the South Island, some parts of the North Island, especially in the Wellington region, the Wairarapa, Hawkes Bay, Auckland and Northland. When the Crown waived its pre-emptive right to purchase land, in order to extinguish native customary title, it was ‘a step taken in no other jurisdiction’.¹³ This waiver stated the Native Land Act 1862 cancelled the right of Crown pre-emption under Article II of the Treaty of Waitangi: ‘Her Majesty may be pleased to waive in favour of the Natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of pre-emption of their lands’.¹⁴

The four most significant features of the Native Land Act 1865 were as follows: firstly, the legislation provided a statutory waiver of Crown pre-emption,

¹² Tom Bennion and Judi Boyd, *Succession to Maori Land, 1900-52, Waitangi Tribunal: Rangahaua Whanui Series* (Wellington: Tribunal, 1997), 4.

¹³ Boast, *The Native Land Court*, 57.

¹⁴ Native Land Act 1862.

abolishing the Crown as sole purchasers for Māori land, opening the land market up to other potential purchasers. Secondly, it established a new judicial body, the Native Land Court; thirdly it set up a process by which Māori customary titles could be converted into Crown-granted freehold titles. Lastly, the '10 owners rule' restricted owners on a certificate of title to ten. In theory it was believed that the ten may be trustees for landholders, but in practice, once a Crown Grant was received they became the legal owners.

In cases of intermarriage, Māori women represented, for some European men, an attractive route to land acquisition. Certainly, it was widely accepted at the time that Māori women were more likely to marry Europeans than the other way around. Judith Binney suggests some Māori women willingly participated in native court proceedings, later transferring their titles into their husband's names.¹⁵ One of the obvious drawbacks of this approach was that if the relationship ceased it meant whānau land was essentially lost and could not be later transferred back into the wife's name. Some Māori women who were married to European men felt the pressure of obtaining certificate titles for their land. One reason for this can be attributed to Māori women's position in both European and Māori communities, especially if they were of mana and wealth.

A case involving Elizabeth Koka Fulloon, granddaughter of the famous Tūhoe chief Hemi Te Mautaranui, is an important example of a Māori woman that had mana and wealth but utilised her whakapapa to a different advantage. In 1865, an envoy of Pai Mārire followers had killed Elizabeth's brother James. At the time of his death, James had a daughter to Ngāti Maniapoto woman Teni Rangihapainga called Emily

¹⁵ Judith Binney, "'In-between' Lives: Studies from within a Colonial Society", in *Disputed Histories: Imagining New Zealand's Pasts*, ed. Tony Ballantyne and Brian Moloughney (Dunedin: Otago University Press, 2006), 99.

Maraea. Elizabeth had always strongly detested the relationship between Teni and James and stipulated that Teni must live elsewhere away from the family house during their relationship. This was partly because Elizabeth disliked James being in a relationship with a Māori woman, but probably because they were unmarried. When Elizabeth applied for the government pension she denied that she had relatives in the colony, which had two impacts. Firstly, it was a rejection of her Māori kin who had raised her from a young age negating her whakapapa but also her mana. Secondly, it prevented Emily from receiving a claim for a confiscated land grant up until she was an adult in 1908. In denying that she had no relatives, Elizabeth used her whakapapa or more specifically genealogy to her advantage in order to access government assistance, and in doing this essentially prevented her nieces access to tribal lands bequeathed to her by her father.¹⁶

Another example is provided by Māori woman Airini Karauria and Irishman George Prior Donnelly who married on the 6th of December 1877 at the Anglican Church of St John the Evangelist in Napier. Donnelly had arrived in New Zealand from County Tipperary in 1862. Certainly, he would have been in search of land and his marriage to a high-ranking woman such as Airini proved to be a formidable alliance. George Donnelly assisted in numerous land claims, persuading Airini's relatives to obtain a Crown Grant. Airini had substantial knowledge in tribal lore and whakapapa that contributed to her overall success in pursuing certificates of title. Airini died in 1909 and bequeathed her land at Waimarama to her husband, which he sold by auction in 1911. Under customary law the land would revert back to the whānau or be inherited by her children, however, because Airini and George were married under

¹⁶ Binney, "In-between Lives", 99.

European law, George could dispose of her lands as he wished.¹⁷ In addition, Airini's land had been granted a Crown Grant and was now under the jurisdiction of common law, which ultimately overrode customary practices.

Some Māori women chose not to marry their European partners in order to protect their tribal lands. Sadly, if Māori ignored the court they lost their land or if they attended the court proceedings and secured a certificate of title, Māori participated in 'the first step to major land loss'.¹⁸ To avoid a 'fatal impact' theory that characterises Māori women as passive victims of European colonisation, Boast clarifies that gaining land title certificates was entirely voluntary, and alternatively Māori could leave their land in customary title.¹⁹ In fact, many Māori women did continue to hold land in customary title, but for those who did not they found their customary rights and power now replaced with a more classical and 'English feudal tenure'.²⁰

In 1869, the Native Land Act was amended and one of its most significant features involved allowing Māori women to continue to own property, allowing them the legal capacity of a *feme sole* under clause 22. This clause was important because the court accepted customary marriage as a 'legal' and 'valid' union. Yet under colonial law married Māori women lost their legal rights to their husbands, which included the freedom to retain economic control over property. Therefore, the amendment was enacted to clarify Māori women's rights, and initially support customary marriage practices.²¹

¹⁷ S.W. Grant, "Donnelly, Airini", from the *Dictionary of New Zealand Biography. Te Ara- the Encyclopedia of New Zealand*, accessed 20 June 2016
<http://www.teara.govt.nz/en/biographies/2d14/donnelly-airini>.

¹⁸ Parsonson, "Stories for Land", 40.

¹⁹ Richard Boast, *Maori Land Law* (Wellington: Butterworth, 1999), 53.

²⁰ Boast, *Maori Land Law*, 53.

²¹ Native Land Act 1869.

These amendments, however, did not stop some husbands trying to challenge their wife's privileges upheld by the Native Land Court. William Alexander Cannon, a Pākehā man, who resided at Te Aute, was married to a Māori woman Hokomata, also known as Mary Ann Cannon (refer to image 2.3). Along with six others, she had interests in a block of land called Koroki (No1) containing 9 acres. The block was conveyed by all grantees to William Ellingham for 300 pounds on 2 December 1869. However, Cannon argued in court that Hokomata was unaware of what she was signing, and had not received a fair share of the payment given by William Ellingham. Cannon claimed Mary Ann had signed without his knowledge, and that he had not transmitted his own estate into the block. It was later discovered that Hokomata had received the rightful share of the money and the Deed had been explained and carefully interpreted to her. At the conclusion of the case it was noted 'as regards the purchaser, the transaction was altogether clear of fraud'.²²

Under similar circumstances Cannon tried to argue once more about another block of land at Turamoe, consisting of over 2,000 acres. Cannon protested that his wife had not only leased land without his consent to James Henry Coleman, but she also had not received money for the land. However, she had in fact received the money owed to her, and under clause 22 of the 1869 act she did not in fact require her husband's permission. These examples reported by the Hawkes Bay Native Lands Alienation Commission 1873 emphasise that initially the court did work to protect Māori women's legal rights held under customary marriage.

David Williams and Pat Hohepa have described the Land Court as a 'colonially defined patriarchal institution both in the way it was organised and its

²² AJHR, 1873, G-7, 14.

operations'.²³ We can see this operating in the 1873 the Native Land Act, which changed the way Māori women could own and manage their tribal lands. One of the key functions of the new reformed act was that it abolished the ten-owner requirement, which was never to be reintroduced again. In 1873 The Hawkes Bay Native Lands Alienation Commission heard evidence from many Māori that local chiefs were running up debt at local stores, and repaying them with land based on the ten-owner interests in court investigated blocks of land. Another key function of the Native Land Act 1873 which was a threat to Māori women's position regarding customary tenure was embodied by clause 86, which 'provided nevertheless that in every case the husband shall be a party to such deed; and that the signatures of both husband and wife shall be attested in the manner and form hereinabove mentioned'.²⁴ Māori women now lost the freedom to lease and collect rent set out under the Native Land Act 1869 without the signature and permission of their husband.

Thus, a European husband could legally sell land as he pleased, including his Māori wife's land if they were married legally, even without her consent. In 1876 Samuel Williams, the nephew of CMS missionary William Williams, wrote to Sir Donald McLean, politician and Native Minister, complaining of the damage the Native Land Act was causing:

We all of us know that according to Native usage and custom a Native woman can deal with her land without reference to her husband and Native women who have had their lands brought under these acts have in very many instances dealt with them without their husbands signing the deed they not considering

²³ David Williams and Pat Hohepa, *The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession* (Wellington: Law Commission, 1996), 29.

²⁴ Native Land Act 1873, no 56.

that their husbands had any voice in the matter and the husbands considering that they had no right to interfere.

These married women are now being told that according to English law they cannot deal with their own lands without their husbands being parties to the deed. In regard moreover to past transactions vigorous efforts are now being made by certain individuals to induce them to repudiate contracts, which they have entered into in that way and make free arrangements with other persons...²⁵

Working in close proximity to Māori communities, Williams witnessed the destructive side to the Native Land Acts and its ability to change, shape, undermine and marginalise Māori women's tenure.

The erosion of Māori women's land tenure rights captured the attention of the government-run Māori-language newspaper, *Waka Maori*. One article from 1878 reported that the law should protect Māori women's property and that the safest way to do this would be to 'make her property inalienable during the period of coverture'.²⁶ This would eventually 'save her from being despoiled of her property either by her husband or her husband's creditors'.²⁷ So important was the issue of land loss in Māori society it started to become a regular feature of discussion in Māori newspapers.

Once the Native Succession Act 1881 was introduced it clarified the way land was to be inherited and succeeded within court processes. It was an 'act to extend the

²⁵ Angela Ballara, "Wahine Rangatira: Maori Women of Rank and their Role in the Women's Kotahitanga Movement of the 1880s", in *The Shaping of Modern History: Essays from the Journal of History*, ed. Judith Binney (Wellington: Bridget Williams Books, 2001), 85.

²⁶ *Waka Maori*, 21 December 1878.

²⁷ *Waka Maori*, 21 December 1878.

Jurisdiction of the Native Land Court in the Estate of Deceased Natives'. Māori custom allowed land to be inherited through both parents. Children who were whangai or adopted were also entitled to succeed to land. Traditionally, those who did not live on the land usually lost their rights to succeed after three generations had passed. Essentially, land was governed by kaumātua or elders of the village who determined not only who could live there but who could inherit. Yet to the majority of settlers the application of these customs to succeed to land, which had been given a certificate of individual title, did not sit well. It had been suggested that the Crown should manage land according to the principles of English law, disregarding customary practices entirely. According to historian Alan Ward, The Native Land Court set up a body of 'self-proclaimed experts who tried and frequently failed, to interpret Māori custom'.²⁸

One of the obstacles in gaining succession to land was the colonial courts lack of understanding around the definition of 'native custom', and while they did respect women's access to land ownership until 1873, it disregarded these practices later on in the century. The most significant effects of the 1881 act were that Māori women lost the right to leave property to whom they wished upon death. Clause 3 stated 'in respect of hereditaments the Court shall assume that marriages according to the customs and usages of the natives are valid, and shall then be guided by the law of New Zealand'.²⁹ To 'be guided by the law of New Zealand' meant that native customs around succession was to now be dictated by colonial laws. This clause now imposed upon Māori women the same restrictions as Pākehā women, which meant they could

²⁸ Alan Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand* (Canberra: Australia National University, 1973), 186.

²⁹ Native Succession Act 1881, clause 3. *NZ Statutes* 1881, 113. Angela Ballara, "Wahine Rangatira: Maori Women of Rank and their Role in the Womens Kotahitanga Movement of the 1890s", *New Zealand Journal of History* 27, 2 (2002): 135.

not construct a will without their husband's agreement, in writing (unless she was widowed). As Barbara Brookes notes 'this could have been a disaster but the following year the mistake was realized' and clause 4 of the Native Lands Amendment Act 1882 included the words 'as nearly as it can be reconciled with Native custom'.³⁰ This 'native custom' referred to Māori women's freedom to deal with their own land as they wished.

Prior to the Native Succession Act 1881, the Intestate Native Succession Act 1861 provided that when a Māori died intestate with Crown-granted land in their possession, the land was then to be passed to successors according to Native custom. However, the English law of intestacy provided that only 'legitimate' children were entitled to property. Most Māori children were considered 'illegitimate' by the standards of English law in 1861. This meant the land would revert back to the Crown. The very first Native Land Act to pass in 1862 made no specific mention of succession and it was probably widely assumed that legal interests would be dealt with in the ordinary courts.³¹ Three years later the Native Land Act 1865 included planning for successions under section 30:

Court may ascertain proper representatives of owner dying intestate: In any case any Native shall die or shall have died seized or entitled at law or in equity of or to any hereditaments and without having made a valid disposal of such hereditaments by will or settlement it shall be lawful for the court upon the application of any person claiming to be interested in any such hereditaments to inquire into the matter and ascertain by such evidence as it may think fit who according to law as nearly as it can be reconciled with

³⁰ *NZ Statutes* 1882, 181. Brookes, *A History*, 78.

³¹ Bennion and Boyd, *Succession to Maori Land*, 4.

Native custom ought in the judgment of the Court to succeed to the hereditaments whereof or whereto such person may have died so seized or entitled as aforesaid or to any part thereof.³²

This clause was implemented under ‘Succession to Hereditaments’ - Part III (2) of the 1865 Act.³³ The high Māori mortality rates in the late nineteenth century informed the question of succession ‘on the death of a grantee, who usually died intestate’ (without making a will).³⁴ The land court’s primary concern was to deal with Māori succession orders in the same way as English law.

The Native Succession Act 1881 was enacted to simplify circumstances under the Intestate Native Succession Act 1861 and the Native Lands Amendment Act 1882. However, over the course of the late nineteenth century, lawful succession could be extremely difficult to determine. Luckily, the flaws of the statute in regards to married Māori women were quickly amended the following year. As noted, Māori women’s rights were restored under the Native Lands Amendment Act 1882. Binney argues, though, that the amendment was a response to the extent to which women’s land had been acquired, rather than an overall interest in women’s equality.³⁵

Section One of this chapter has demonstrated the Native Land Court was a vehicle in facilitating the legal transfer of customary title to individualisation title. This meant that Māori land would be recognised under English law allowing the transfer of property for land sales to the increasing settler population. Parliament made changes to laws governing Māori land regularly as part of its goal of acquiring land through rapid assimilation, particularly aimed at Māori women. Not only did the

³² The Native Lands Act, 1865, no. 71.

³³ Hereditaments is an old term used to describe land held under Crown title once land had passed through the Court.

³⁴ The Native Lands Act, 1865, no.30.

³⁵ Judith Binney, *Stories Without End: Essays 1975-2010* (Wellington: Bridget Williams Books, 2010), 246.

Crown try to attain land through Crown Grants, but husbands tried to gain access to their wives' lands by putting their cases forward in the Native Land Courts. Section Two of this chapter examines how Māori women's rights within marriage were interpreted in the colonial courts in ways that affected Māori women's liberties under customary law.

Section II: Marriage Laws and the Courts

From the 1870s and into the 1880s, Pākehā women were seeking greater economic freedoms within marriage, including the right to retain control over property after marriage. In public and political debate, feminist reformers and their political supporters looked to Māori women as a model of property ownership upon marriage.³⁶ This is because Māori women's property was protected under customary law and did not warrant an automatic transfer of goods upon marriage to the control of her husband. When the Married Women's Property Act 1884 was passed into law, it reflected a growing political and social activism amongst women in New Zealand, and followed the English example, where two years earlier the Married Women's Property Act 1882 was passed representing 'a measure which comes home to every fireside in the empire'.³⁷ In order to understand the hardships endured by women prior to legislative reform in 1884, it is necessary to explore the circumstances that led to the statute in the first place. Next I will discuss the categories of women who could independently own property and how they used the law to their advantage. Lastly, I

³⁶ Brookes, *A History*, 4.

³⁷ *Star*, 17 October 1882.

will look at the correlation between customary marriage practices and colonial laws relating to married women's property rights.

Married Pākehā women were entitled to own property like Māori women; however, husbands managed and collected the revenue. Wives were not allowed to make a will without their husband's consent and were not allowed to sell or purchase property without their husband's permission.³⁸ This loophole in the statute meant a woman could be coerced into leaving property to her husband in the event of death even if it was against her wishes. It was the woman's responsibility to settle any debt that she had acquired prior to the marriage, and once she was married all monetary issues became the responsibility of the husband.³⁹ As Brookes has stated, 'marriage negated women's legal personhood and on marrying, women lost their legal, economic and sexual autonomy'.⁴⁰ Despite these disadvantages marriage was still regarded as the 'main occupation of women'.⁴¹

When a couple married they essentially became one legal entity and any court procedures could not be settled without the husband's authority. Theoretically, this also meant both husband and wife could not prosecute each other. The only exception was when a woman could give evidence against her husband was if she was assaulted by her husband or had applied to the court for a protection order.⁴²

Marriages became complicated when the relationship and financial circumstances became unstable. While women were not allowed to make any financial decisions, it was possible for them to run a household using credit from various shops and organisations. For instance, Amelia Courage took her husband's

³⁸ *New Zealand Jurist Reports* (NZJR), I, 1875-6.

³⁹ *Auckland Star*, 6 January 1883.

⁴⁰ Brookes, *A History*, 78.

⁴¹ Raewyn Dalziel, "The Colonial Helpmeet: Women's Role and the Vote in Nineteenth-Century New Zealand", *New Zealand Journal of History* 11, 2 (1977): 115.

⁴² Brookes, *A History*, 78.

credit to 25 shillings for household articles, much to her husband's dissatisfaction. Amelia noted 'I reddened with shame...he looked as black as a thundercloud, and I felt somewhat like a criminal going to be hanged'.⁴³ At the conclusion of the argument it was agreed that it was Amelia's fault and it was not to happen again. Essentially, the problem lay in married women's lack of independent status, leaving them powerless to control possessions or income. This made women economically and physically vulnerable.⁴⁴ Until 1860, there were three categories of women who could own property who fell outside the parameters of the common law: Māori women who married Māori men by custom whose land remained on the fringes of the Native Land Courts; women who had a marriage settlement; and women who had prenuptial agreements that protected their property when a relationship ceased.⁴⁵

Māori women legally married to Europeans found their property was managed under New Zealand law with a husband controlling the couple's property during his lifetime.⁴⁶ By the 1880s the loss of property through marriage was something Māori women were grappling with. It was claimed that some women in the Hawkes Bay were refusing to marry European men 'because they would thus be deprived of land held under Crown grant which then became subject to British law'.⁴⁷ Yet there were some Māori women who used the English law to their advantage. Māori women, such as Mary Hardy and Euphemia Arthur, already in relationships with Europeans, secured their land interests through settlements. Their lands in the Rākaukākā block near Gisborne were secured in a trust. Euphemia received large annual rental returns

⁴³ Brookes, *A History*, 78.

⁴⁴ Frances Porter and Charlotte Macdonald, *My Hand Will Write What My Heart Dictates: The Unsettled Lives of Women in Nineteenth Century New Zealand as Revealed to Sisters, Family and Friends* (Auckland: Auckland University Press, 1996), 260.

⁴⁵ Bettina Bradbury, "From Civil Death to Separate Property", *New Zealand Journal of History* 29, 1 (1995): 44.

⁴⁶ Bradbury, "From Civil Death", 44.

⁴⁷ Brookes, *A History*, 108.

while Mary became a tenant for life, and received income for her children and herself.⁴⁸ This was one way in which customary practices and colonial law overlapped and could benefit either party depending on the individual circumstances.

Validating marriages between ‘natives’ was another way to prevent major land loss, and keeping land in Māori ownership. The Native Marriages Validation Bill 1877 was initiated to restore Māori women’s rights, which were seized from them under the Native Land Act 1873. Clause 86 of the Native Land Act 1873 stated ‘every marriage heretofore celebrated between Natives, where the marriage ceremony shall have been performed by any person who at the time was duly authorized by law to celebrate marriages’, at the time.

Customary marriage continued to be practiced within the colony, and although the marriage ceremonies were performed by duly authorized persons they were of doubtful validity because of noncompliance with other requirements under the marriage laws of the colony. In order to remove doubt over future marriages, H. K. Taiaroa, the Member for the Southern Māori electorate, introduced the Native Marriages Validation Bill 1877, with clause 4 legitimating all Māori marriages: ‘every marriage hereafter to be celebrated between Natives shall, if the ceremony be performed before some person duly authorized to celebrate marriages be valid and binding, without any further or other compliance with the marriage laws which may then be in force’.⁴⁹

Although the bill was never passed into law, it did attract attention from both Māori and European politicians who debated its possible impact on land titles. At the second reading, Mr Whittaker supported the bill but he was adamant that a clause

⁴⁸ Bradbury, “From Civil Death”, 47.

⁴⁹ Native Marriages Validation Bill, 25.

should stipulate the protection of property already disposed of.⁵⁰ Mr Whittaker supported the bill because he believed that validating future native marriages would be beneficial to all Māori, but he was concerned that the bill would invalidate previously granted title investigations and sales.

On 1 December 1877 the Native Affairs Committee reported that the 'Native Marriage Validation Bill was unnecessary and should not be proceeded with'.⁵¹ Robert Douglas and Captain Morris opposed the bill because they believed it 'would invalidate many land contracts'. Captain Morris believed that the measure would promote immorality as 'Māori women would rather live in adultery than sacrifice their land, and it was distasteful to Natives'.⁵²

Arihi Te Nahu, a Māori woman of high rank from the Hawkes Bay was concerned that in legitimating customary marriages, the Bill therefore made them amenable to New Zealand colonial law. This essentially meant that Māori women would lose the freedoms and rights to control their own land. Fundamentally, Māori women would be treated like Pākehā women under the law. Arihi had John Bryce prepare a petition on her behalf. It stated:

The petitioner prays that the Native Marriages Bill of 1877 may not render valid retrospectively informal marriages between Maoris, and sets forth reasons showing that such a retrospective law would have an injurious effect upon herself.⁵³

Although it was John Bryce who put the petition in on her behalf, it highlights Arihi's capacity to work within a legal framework but also consult those who were more

⁵⁰ *Parliamentary Debates*, 1877, 57.

⁵¹ *Globe*, 26 November 1877.

⁵² *Globe*, 26 November 1877.

⁵³ *Appendix to the Journal of House of Representatives*. Reports of the Native Affairs Committee, 1877.

familiar with the judicial process. Arihi Te Nahu's involvement is of particular interest as she appears in the Native Land Court records several times. Did she see a potential conflict of interest? Did she see the bill as impeding her land interests? Or did she genuinely believe the bill had no real benefit? I argue that based on her petition, Arihi simply regarded the bill as injurious to her property interests and to her mana.

At this time, the Native Land Court continued to recognise customary marriage as valid. Whereas by the late 1880s in the New Zealand courts, one of New Zealand's infamous legal figures James Prendergast considered marriage according to Māori customary law as having no legal validity.⁵⁴ His reasoning stemmed from the *Rira Peti v Ngaraihi Te Paku* (1888) court case regarding a will contested by Ngaraihi Te Paku. Rira stated that she was married under customary law to Turkino, a witness. Nan Seuffert believes previous Marriage Acts placed Māori at the 'boundaries of the nation', by exempting it from the requirements of the Acts, while recognising customary marriage as valid.⁵⁵ However, Prendergast's decision to ignore custom entirely now undeniably excluded Māori from the 'boundaries of the nation'. The court was undecided whether the sole legatee under the will was in fact married to Turkino or not.

While Prendergast was aware of the exemption of Māori marriages under the 1847 Ordinance, he concluded that the exemption simply meant that the 1842 Ordinance rules now applied. Since the 1842 Ordinance had not been repealed, the 1847 Act stated 'except as to such marriages as were excepted from the operation of that (1847) Ordinance.' Prendergast added 'unless there is some other law on the

⁵⁴ Richard Boast, *Maori Land Law* (Wellington: Butterworth, 1999), 16.

⁵⁵ Nan Seuffert, "Shaping the Modern Nation: Colonial Marriage Law. Polygamy and Concubinage in Aotearoa New Zealand", *Law Text Culture*, 7 (2003): 198.

subject, marriages between person of the native race is governed by the common law of England as modified by the Marriage Ordinance of 1842.⁵⁶ Prendergast's decision highlights how Māori women's rights were treated differently under the law, depending on which court system governed customary marriage. At times customary marriage was valued and accepted in the Native Land Court, and at other times, its importance was denied, even deemed invalid, as with Prendergast. As traditional customary practices started to slowly disintegrate, colonial law strengthened, dissolving the utopia of 'legal pluralism'.

Conclusion

Native land statutes passed between 1865 and 1882 worked to protect, or at times constrain Māori women's rights over land. The initial aim of this chapter was to demonstrate how laws passed over the course of the nineteenth century continued to displace Māori women in regards to land possession. However, evidence suggests that the Native Land Court made reference to custom in court rulings and worked to protect Māori women's rights to land tenure. By contrast, in other legal forums such as the colonial courts, custom was not of central importance, and was largely overlooked or deemed invalid, as demonstrated in the Prendergast decision.

In examining both courts, this chapter illustrated that if a Māori woman married a European in accordance with the Marriage Act 1854, her land quickly came under the jurisdiction of colonial law. Whereas, if a Māori woman married under customary law, her tribal land was protected and governed in the Native Land Court until 1873. From 1873 onwards, Māori women then lost the ability to lease and

⁵⁶ Nan Seuffert, *Jurisprudence of National Identity: Kaleidoscopes of Imperialism and Globalisation from Aotearoa, New Zealand* (England: Ashgate Publishers, 1998), 37.

collect rent without their husband's signature and permission. A further blow came when the Native Succession Act 1881 was passed, which stated women lost the right to decide who could succeed or inherit her property upon death. Yet the following year, the act was rectified and restored women's ability to control her property, a right which Pākehā women gained under the Married Women's Property Act 1884.

It is clear from the examples in this chapter that the colonial courts and the laws relating to property and marriage worked in different capacities, and demonstrates that custom was not well understood in the courts' early operations. The Native Land Court and the colonial court processes in dealing with customary Māori marriage could be straightforward, chaotic, or contradictory at times. As obtaining land was a primary agenda in nineteenth century New Zealand, it was recognised that marriage to Māori women provided one means of doing so. The next chapter will focus on case studies of women from the Ngāti Kahungunu region and will measure how these statutes were put into practice.

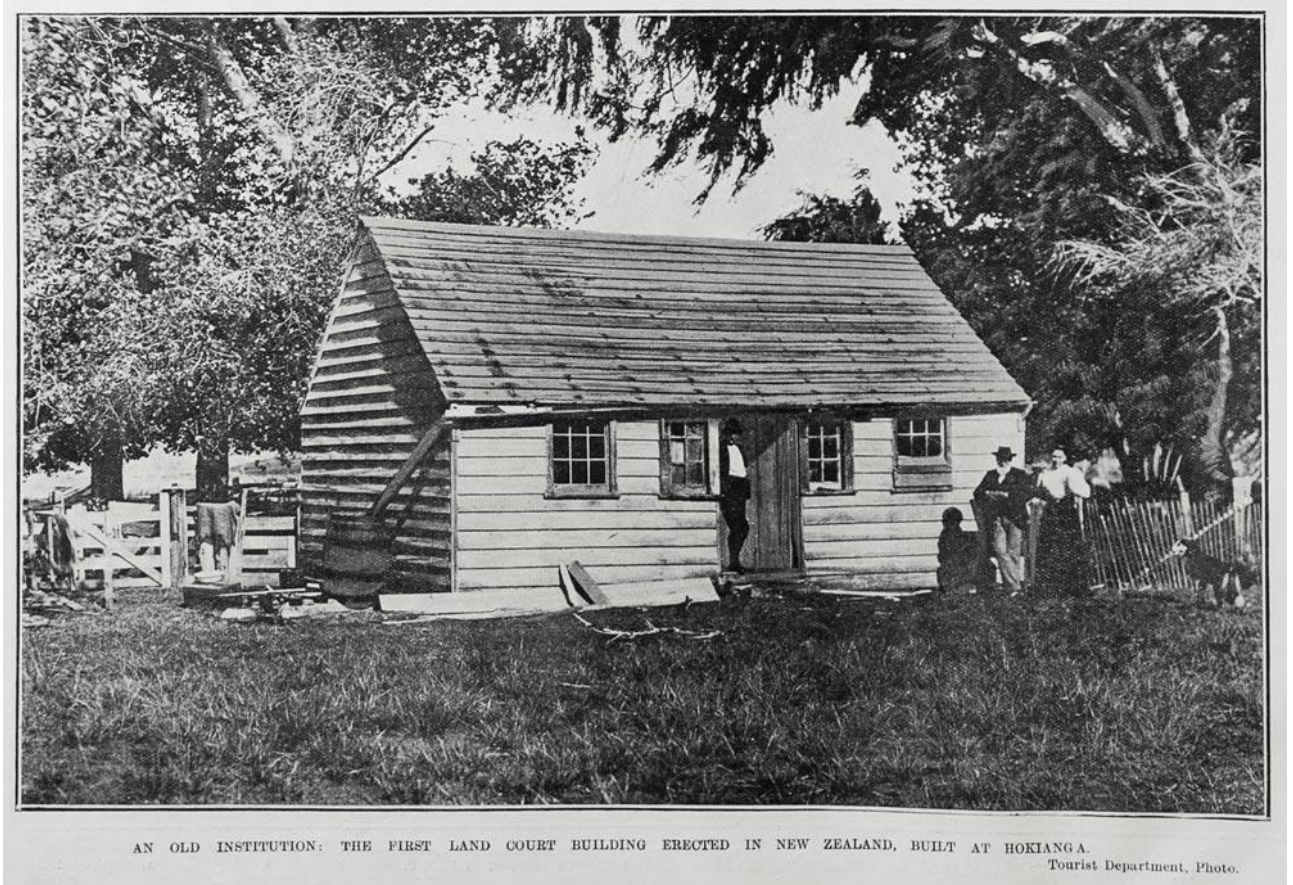


Figure 2.1 A picture of the first Native Land Court in Onoke, Hokianga. The first Native Lands Act was predominately in the Northland because of tensions in other provinces. Ref: AWNS-19070502-2-4, Auckland Libraries.



Figure 2.2 A picture of a Native Land Court hearing in the Whanganui area in the late 1860s. This photo reflects that Māori women were active in the courts from its inception. Ref, 1/1-000013; G, Alexander Turnbull Library.



Figure 2.3 Mere and Alexander Canon c.1870s. Intermarriage between Māori and Pākehā became well established by the 1870s. Accessed Te Ara, <http://www.teara.govt.nz/en/intermarriage>.

Chapter Three: Case Studies in the Dissolution of Customary Māori Marriage, 1880-1900

The relationship between customary Māori marriage practices and the Native Land Court is not always immediately obvious. This is because one would assume the role of the Native Land Court is to solely deal with matters relating to customary land. However, individualisation of land titles fractured collectively held titles and undermined whānau, hapū and iwi kinship structures. If we consider the court in this broader context it is here that the overarching effects of the court and its wider implications on Māori marriage can be seen. The purpose of this chapter is to analyse the impact the Native Land Court had on Ngāti Kahungunu women who represented their land interests during the final decades of the nineteenth century. It does not focus specifically on how the court marginalised married Māori women, but rather, considers the effects the court had on the way customary marriage was upheld through case studies of three prominent Māori women in Ngāti Kahungunu referred to by Pākehā as ‘The First Wives’: Princess Irene, Princess Alice and Princess Sophie.

As it stands, the current scholarship on Māori women and their involvement with the Native Land Court is sparse.¹ It was rare, says Ann Parsonson, to hear the voice of senior women in the court, even if they were well versed in whakapapa and tribal knowledge, both important aspects used to support land claims.² Richard Boast’s research suggests a similar pattern to that identified by Parsonson:

¹ Richard Boast, *The Native Land Court: A Historical Study, Case and Commentary 1862-1887* (Wellington: Thomson Reuters, 2013), 76.

² Ann Parsonson, “Stories for Land: Oral Narratives in the Maori Court”, in *Telling Stories: Indigenous History and Memory in Australia and New Zealand*, ed. Bain Attwood and Fiona Magowan (Wellington: Bridget Williams Books, 2001), 24.

While women did occasionally speak in the Land Court, this was not typical, and most witnesses and all conductors were male. Women did sometimes appear in the Court as claimants in their own right, and might announce themselves and the nature of their claim, but tended not to play a role when evidence of traditional history and descent was being presented. This may perhaps simply reflect traditional gender roles and how functions were allocated at formal meetings in Maori society, but this is a matter for judgment by those with the requisite expertise.³

Most studies in the field of the Native Land Court have mainly focused on Māori men who presented their land claims. I argue that careful consultation of the *Native Land Court Minute Books* shows numerous examples of Māori women who were not only present but successful in claiming their land interests in the Native Land Court, as exemplified in the Ngāti Kahungunu region. This chapter responds to this gap in historical writings and demonstrates that Māori women did play an active role in the court, precisely because they could inherit and retain their interests in land, unlike Pākehā women, whose land interests passed to their husband, brothers or sons.

To illustrate the broader effects the Native Land Court had on Māori customary marriage practices I have structured this chapter into three parts. The first will focus on the methods employed by the Native Land Court to undermine whānau, hapū and iwi organisation as it forced Māori to choose preferred tribal affiliations in order to gain access to land. Historian James Belich has stated the Native Land Court was ‘designed to destroy Māori communal land tenure and so facilitate Pākehā land buying and “detrribalize” Māori’.⁴ As Chapter One demonstrated, Māori could

³ Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921* (Wellington: Victoria University Press, 2008), 83.

⁴ James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane/Penguin Press, 1996), 258, 259.,

whakapapa to numerous tribes and hapū, which is why whānau, kaumātua and kuia played pivotal roles in organising unions. Therefore, the attack on tribal structures had devastating effects on how customary marriage continued to be managed, organised and practiced. Kinship groups such as whānau, hapū and iwi are a vital component in allowing whakapapa to evolve. Once the court changed this it led to large dislocation and ongoing health issues which will be discussed in greater detail in Chapter Four.

The aim of the second section is to explore the relationship between mana and land in the court and ways land tenure changed dramatically over a short period of time. Accordingly, it was women of mana and status who were typical claimants who appeared in the court. Women also had to be knowledgeable in both tribal and judicial processes. Because going to court was time consuming and expensive, women only appeared if they felt their case would be successful. As this chapter will demonstrate, sometimes women of mana deployed what were described at the time as suspicious methods to support their land cases indicating their ability to manipulate the legal system to their advantage.

My final point is about the function of whakapapa. In previous chapters I have demonstrated how whakapapa permeated all aspects of Māori society, from the beginning of creation, down to organising potential suitors for unions. Yet, as the nineteenth century progressed, within the Native Land Court whakapapa was of central importance as a necessary tool for witnesses, plaintiffs and defendants to assert their interests in land claims. The procedure for organising unions using whakapapa was ultimately reshaped by the courts practices. The case studies in this chapter will demonstrate how the Native Land Court continued to reshape and reformulate the ways in which whakapapa was utilised within a judicial setting.

Section I: Dismantling Kinship Structures

A substantial body of scholarship has illustrated how the Native Land Court was destructive in Māori communities, particularly in relation to communal holding of land. Of most concern in this section is how the Native Land Court impacted kinship structures, ultimately threatening the continuation of customary marriage practices. A good example of this can be seen in the Ihaka Te Tihi case from 1867 as it indicates community approval was highly valued, since it was the whānau, hapū and iwi that sanctioned relationships, particularly if a couple were only co-habiting or practicing moe-māori. If they functioned like a couple they were considered married in the eyes of family and the community.

In the Ihaka Te Tihi Case, the nature of a marriage played a very important role in helping to define entitlement upon succession, and set a precedent in regards to succession within the Native Land Court. Ihaka died intestate and was the owner of a block of land under Crown Grant. Ihaka's widow applied to the Native Land court for an order registering her interests in the block for their three children. However, Te Tihi, Ihaka's brother and other hapū members opposed this application. They believed that Māori custom should prevail and the block of land should be returned to the hapū as it was understood that Ihaka was simply a trustee on behalf of the group, as opposed to being the owner.

A witness named Te Hapimana confirmed that the deceased chief Isaac 'was married. Did not know when the marriage took place. He lived with his wife before marriage. Did not know when the marriage took place. They had children after the

marriage'.⁵ If English law prevailed, the principle of primogeniture would have favoured a succession to the oldest son in preference to younger brothers. Instead, Chief Judge Fenton set a precedent where if Māori died intestate, the interests should pass to the children equally, regardless of gender. Relieved, Ihaka's wife could give her children a rightful share of their father's estate. Once tribal lands were given Crown Grants they were no longer reintegrated back into hapū collectives when a member died intestate, as discussed in Chapter Two. They were in fact awarded to individuals, which ultimately meant that the prominence of kinship groups became secondary, essentially leaving hapū collectives powerless in their contestation for land. In Annie Mikaere's words, 'it was clear from the outset that Māori collectivism was philosophically at odds with the settler ethic of individualism'.⁶

Case Study: Princess Irene

The first case study for this chapter is a well-known legal drama, the Omahu case, involving Renata Kawepo's grandniece Airini Donnelly, and Wiremu Muhunga Broughton, Renata's adopted son.⁷ The case captured the attention of both local and national politicians, and the public—both Māori and Pākehā, particularly in the Hawkes Bay region. The reason for this public interest was that the case was an inter-Māori dispute between two hapū factions involving the Native Land Court, the Supreme Court and the Privy Council in London. The dispute at the centre of the case also led to the brutal death of a whānau member.⁸ The Omahu case illustrates that

⁵ Belich, *Making Peoples*, 258.

⁶ Annie Mikaere, "Maori Women: Caught in the Contradictions of a Colonised Reality", *Waikato Law Review*, 2 (1994): 33. Richard Hill, *State Authority, Indigenous Autonomy: Crown Māori Relations in New Zealand* (Wellington: Victoria University Press, 2004), 98.

⁷ Boast, "The Omahu Affair, The Law of Succession and the Native Land Court" *Victoria University of Law Review* 46 (2015): 852.

⁸ *Grey River Argus*, 29 October 1889.

kinship structures could easily be fractured because of court proceedings and more importantly court outcomes.

Renata died in 1888, and was a very wealthy man. Under his will, he bequeathed all his tribal interests and property to Wiremu Broughton. The probate was granted to Wiremu; however, several months after the probate was granted, Airini produced a second will, in her favour. On the day of Renata's death Airini went to his house, in which his two wives were sleeping. Detail on the position of the 'two wives' exists in numerous recollections of the Wiremu Broughton case and deserves special mention. Despite missionaries and assimilationists attempts to drive out polygamous relationships in the earlier half of the nineteenth century, chiefs such as Renata preferred to continue with their traditional customary marriage practices. This case provides an important snapshot in time, which strengthens the argument that polygamy continued well into the late nineteenth century, despite many believing that it had virtually disappeared.

The Omahu block was a large tract of land situated between Napier and Hastings, and was of considerable significance to the Hawkes Bay people. The block had not been investigated until 1890 and Boast suggests earlier attempts to gain a certificate of title were 'fruitless'.⁹ By the time the block was investigated the principal hapū were Ngāti Hinemaru and Ngāi Te Upokoiri. On the day Renata died Airini had gone to his home, produced a pen and paper and Renata put a cross to mark his signature.¹⁰ Airini stated that Renata had changed his will and wanted to leave his assets and tribal interests to her. That she had kept the will a secret for so long made the jury suspicious of her motives. Airini opposed Wiremu's application for probate,

⁹ Boast, *The Native Land Court*, 492.

¹⁰ *Star*, 13 August 1888.

and the Native Land Court investigation of title into Omaha became entwined in the litigation of the will in the ordinary courts. Unfortunately, Airini's attempt to get probate was unsuccessful because of the methods used to produce a second will.

The fact that the Omaha block had not yet been investigated made for an interesting case. Airini underhandedly placed a claim in the Native Land Court that she was the rightful heir of the Omaha Block. If Airini had been successful in the Native Land Court the Omaha block was not actually Renata Kawepo's to bestow in his will. However, the Privy Council granted the probate to Wiremu, and costs were awarded against Airini on the highest scale. The case was a long and drawn out process proving costly and time consuming. For these reasons, the women who resorted to the Native Land Court and were of high mana and status were also financially secure.

Wiremu eventually returned to his people and was met with an ecstatic crowd mainly consisting of Ngāi Te Upokoiri members. The *Daily Telegraph* reported:

Everyone seemed to wend their way in the direction of the White road crossing, where Mr. Broughton and party were met by a most enthusiastic crowd, who lustily cheered as that gentleman stepped into the coach, to which was attached four greys. A long procession was then formed; nearly all the cabs in the town followed, while a number of natives, waving torches in the air as they proceeded along the street, seemed to enjoy it immensely.¹¹

Wiremu made a speech to the cheering crowd and thanked everyone for their support. The substantial public support for Wiremu reveals that the dispute between Airini and Wiremu was not just between two individuals but rather two hapū. Renata left the will in favour of Wiremu because he considered Wiremu to be a chief of Ngāi Te Upokoiri

¹¹ *Daily Telegraph*, 30 November 1888.

and assumed that he would support and take care of the immediate hapū group. By contrast, if Airini had won the Omaha Case under the jurisdiction of the Native Land Court this would have meant a victory for her, her siblings and her cousins only benefiting the whānau group.

Airini, unhappy with the outcome, lodged an appeal with the Privy Council in London. This certainly reflects the characteristics of Airini. Airini Donnelly was born in 1855, and who could whakapapa to Ngāi Te Upokoiri, Ngāi Te Whatu-i-Apiti and Ngāti Kahungunu (refer to fig 3.1). From a young age she was taught the importance of tribal lore and history, showing a keen interest in land court procedures and land legislation. Renata was instrumental in ensuring Airini received both a Western education as well as an immersion in tribal knowledge. Before Airini married, she convinced her uncle to allow her to represent him in the Native Land Court and constructed her case so well she was awarded 1000 acres. Despite the disapproval of chiefs in the district, including Renata, in 1877 Airini married George Donnelly, a Pākehā farmer. Airini was passionate and feisty in the land court and fought to have Māori farm their own lands. Airini's Pākehā name was 'Princess Irene'.¹²

While the investigation was pending, inter-hapū disputes escalated and Wiremu Broughton's uncle shot and killed Airini's brother because he ploughed on land that was not rightfully his. The Supreme Court proceedings were published in the *Grey River Argus*:

where a person is in possession of property in land any attempt to forcibly oust him was punishable at law. If the person had a claim to the property, he must assert his rights peaceably or in a court of law. Referring to the murder cases

¹² Miria Simpson and Patrick Parsons, *Ngā Taumata: He Whakaahua o Ngāti Kahungunu: A Portrait of Ngāti Kahungunu 1870- 1906* (Wellington: Huia Publishers, 2003), 167.

his Honour said there might have been great provocation in the eyes of the Maoris, but such in law reduces the crime from one of wilful murder to manslaughter.¹³

The newspaper reported the full extent of the murder case, but also the magnitude of the Omaha case as a result of ongoing inter-hapū squabbling. On 13 February 1890 the judgment of the Omaha case was finally released:

In closing our judgment, we are unable to define the interests of the parties who we thus place together. We would willingly accord them separate portions had we seen our way, but they have been so mixed up that we are unable to do so. If the parties would agree to any arrangement we would most willingly give effect to it in our judgment, meantime we can only say that...we think that Airini Tonore has, as the representative of Te Rangikamangungu and Hawea, with her party, the largest interest in this portion of the block which she calls Oingo and part of Otupaopao.¹⁴

The block was partitioned in favour of Airini Donnelly, and according to the *Bush Advocate* ‘those who base their claim under Renata’s mana have been signally defeated’.¹⁵ The Native Land Court ruled in Airini’s favour, despite the suspicious ‘alleged’ circumstances in which she produced a will.¹⁶ The court’s decision to finally favour Airini’s claim over Wiremu led to the dislocation of Ngāi Te Upokoiri and fractured whānau relationships between both Airini and Wiremu.

Despite the court’s role in fracturing kinship structures between Ngāi Te Upokoiri and Airini Donnelly, the courts did respect married Māori women.

Throughout the court case, Airini was married to George Donnelly and the court did

¹³ *Grey River Argus*, 29 October 1889.

¹⁴ Boast, “The Omaha Affair”, 861.

¹⁵ *Bush Advocate*, 15 February 1890.

¹⁶ *Star*, 13 August 1888.

not attempt to undermine Airini from claiming her interests in the Native Land Court, reminding us that the court did not discourage or prevent married women appearing in cases. It was understood that either male or female lines could inherit land; therefore, the inclusion of women in this legal jurisdiction was warmly encouraged.

Case Study: Princess Alice

Arihi Te Nahu was born and raised in Te Hauke, granddaughter of prominent chief Te Hapuku (refer to fig 3.2). Arihi was married several times. Her first husband, Pirika Te Aro-Atua, gave her no issue. She then married Hamiora Tupaea and they had a son, Hori Tupaea II. Arihi had spent a considerable amount of time representing her interests, like Airini Donnelly, and had excellent tribal knowledge, whakapapa and history affiliated with her hapū. Arihi's various marriages demonstrate that dissolving a union was a simple process, particularly under customary law. Another good example of the way the Native Land Court continued to undermine and erode whānau, hapū and iwi structures involves a probate case between Arihi Te Nahu and Haurangi, her uncle.

Prior to Haurangi's death Arihi had approached him and asked him to make his will in her favour, but Haurangi refused, stating he wished to leave his lands to his mokopuna instead, which included Arihi's children. When the will was presented in court Arihi produced a second will in her favour, which was supposedly drawn up by Arihi's husband Hamiora prior to Haurangi's death. According to Arihi she 'guided Haurangi's hand while he made his cross to his name, which was signed by Hamiora'.¹⁷ Arihi Te Nahu's case shares similarities with Airini Donnelly's court case against Wiremu Broughton. Both women produced a second will and in both

¹⁷ *Press*, 26 January 1889.

cases assent was attained in a similar fashion using ‘a cross’ as a form of signature. The claim presented by Arihi Te Nahu was so unconvincing the plaintiff argued that the will Arihi produced was forgery and either she or her husband were not actually present on the day they stated because of a lack of credible witnesses.

Arihi insisted the reason why Haurangi refused to leave the land to anyone else in her generation other than herself was because Haurangi believed the people did not care for him responsibly. A witness, Robert Cooper, said that Haurangi had previously made a will to Watene’s son, but it was believed that prior to Haurangi’s death he wanted to nullify this stating:

Look at the state I am in, filth and dust. I am here; Watene draws my rents from Waimarama and rents of Te Aute that Gaisford pays. He has drawn these rents; he sold my horses and carts, and I wish you, Arihi, to look after me; to take me to your place. I won’t have a will drawn out, but you look after me, if necessary, at any time. I will leave my land to my grandchildren.¹⁸

Cooper’s statement supported Arihi’s case that she was the rightful heir of Haurangi’s estate. Arihi was a strong and determined woman of great mana and knowledge and was never afraid to take matters into her own hands. For instance, in the Resident Magistrate Court Arihi Te Nahu was charged with having damaged a single furrow plough that belonged to Heta Waihoe. Mr. Loughnan appeared for the complainant (Heta Waihoe), and Mr. Dick for the defendant (Arihi Te Nahu), who pleaded not guilty. It is clear that Mr. Loughnan wanted to make an example of Arihi stating ‘the damage done might appear trivial, but the case was a really serious one’.¹⁹ Mr Dick, on the other hand, asked His Worship to take into consideration the connection with

¹⁸ *Daily Telegraph*, 23 January 1889.

¹⁹ *Daily Telegraph*, 5 August 1889.

this incident and Te Haurangi's Will. Despite being two separate cases, the fact that the Haurangi Will was common knowledge in the Resident Magistrate Court indicates that the courts at times impinged on each other to a degree.

Identified within both the Omahu case and the Haurangi Will case is the overarching power the Native Land Court held which contributed and impacted kinship structures and tikanga practices. More so, prominent Māori women were aware of this special authority and used the rules accordingly to access land they believed was rightfully bequeathed to them. The next section will illustrate the way women's mana and relationship with land changed over the course of the nineteenth century.²⁰

Section II: Women's Mana and Relationship with the Land

The Native Land Court essentially facilitated the purchase of Māori land by allowing tribally owned land to be converted into individual titles. The structure of the court certainly had an influence in the way cases were assembled and operated. It was much more likely for Māori men to receive individualisation of Māori land rather than women, or their respective hapū. Correspondingly, this not only changed Māori women's status and mana, but also changed their relationship with the land. As I have demonstrated in the previous chapter, the various Native Land Acts, notably clause 86 in the 1873 Act, undermined Māori women's land tenure. However, the central focus of this section is the specific methods used in acquiring land, which undermined women's mana and status owing to the Native Land Court.

²⁰ *Press*, 28 August 1877. This article discusses Arihi's involvement in another well-known legal case, The Waka Libel Case against Russell Henry, demonstrating her familiarity with the judicial process.

An example of the methods employed by women in the Native Land Court can be clearly seen in the cases involving Airini Donnelly and Arihi Te Nahu. These cases share a few similarities: both women acquired and produced ‘second wills’ under circumstances in which the testators ‘were too weak to sign in full’, using a cross to sign instead.²¹ Furthermore, both women produced these second wills a considerable time after the testator had passed away. In fact, because of the circumstances surrounding both cases the respective judges suspected fraud and were very suspicious of the women’s motives. What is particularly significant about these two cases is two women of mana and chieftainess in their own right used similar strategies to their advantage. I argue that the Native Land Court jurisprudence made women rethink their strategy in receiving land bequeathed to them in wills. Despite their motives sometimes being doubted by judges, both women understood the judicial process very well and sometimes utilised strategic methods. In effect, this changed not only the woman’s relationship with the land, but also their mana. This can be easily explained by analysing these scenarios from a Māori world-view, for it was believed the more land you acquired the more mana you acquired. In both court cases, methods only appeared ‘suspicious’ to those who worked for the court. So while these women compromised their mana in order to receive their land interests, they successfully won their court cases gaining and heightening their mana overall within their own Māori communities.

During the land court proceedings, it was very important for claimants to stipulate whose mana they fell under when registering land interests. A good example can be found in the Ohiti Block that was investigated in 1887. The colonial newspaper reported the judgment of the case in full and noted ‘it would not be difficult to show

²¹ *Star*, 13 August 1888.

that Mrs Donnelly (Airini) occupies a superior position to that of any of the claimants of N’Hinemanu in this case, inasmuch that it was the “Mana” of her ancestors that enabled the Ngaiteupokoiri and N’Hinemau to return hither’.²² Another example can be found in the Omaha Block:

the conquest of Taraia 1st we admit, also that he made peace with Turauwha, who, we believe, lived under the mana of Taraia, he still retaining influence in the district and that influence was ultimately amalgamated with Taraia’s, by the marriage of his daughter Rakaitekura with Rangituehu, the nephew of Taraia.²³

Demonstrating whose mana a claimant fell under was an important process in the courts, because it forced women to choose ancestors who would support their case. This appears to have been the standard format when representing cases to the court.

The marriage between Airini Donnelly and George Donnelly is a good example of the ways in which Māori women used their position in their traditional settings, including mana, in order to participate in the ever changing European environment. It was believed that Airini and Renata Kawepo had become estranged, ‘chiefly on account of her marriage, but also on account of land disputes’. He had referred to Airini’s marriage by saying that ‘the root of the tree came to New Zealand and grafted on to a branch of a New Zealand tree, and that root was sending up the sap to the branch’.²⁴ Renata Kawepo’s metaphor for Airini’s marriage reflected the way he really felt about George Donnelly: that he was using Airini to gain land. Airini was certainly very successful in the land courts, winning over a dozen cases. She was well versed in tribal knowledge and the judicial process. It is therefore possible that Airini

²² *Hastings Standard*, 8 June 1897.

²³ Napier Minute Books, 1890, 131-134.

²⁴ *Hawkes Bay Herald*, 12 July 1888.

may have deliberately married a European man to assist in her land claims, cementing relationships with people more familiar with the law. This intentional tactic by Airini can be seen as a successful method in acquiring land. Ultimately the union of Airini and George was judged a ‘formidable combination in the successful acquisition of land’.²⁵

Case Study: Princess Sophie

A further example of the way woman’s mana and relationship with the land changed during Native Land Court proceedings can be identified in the case study involving Hera Te Upokoiri (refer to fig 3.2). Hera had a rich whakapapa, as her father and mother were both people of high standing in their respective communities. The union of Hera’s parents embodies the ways in which customary Māori marriage was implemented to prevent tribal warfare, and prevent inter-tribal disputes. In the Hawkes Bay there was a period of extensive inter-tribal fighting during the mid-1820s. Many hapū and iwi left, some following Pareihi to exile at Mahia, and others following Te Wanikau, paramount chief of the Ngāi Te Upokoiri hapū to the Manawatu. Ngāi Te Upokoiri occupied pā (fortified village) sites at Mangatahi, Whanawhana, Kereru and Wakarara. News reached Te Wanikau’s people that some of their relatives were killed by the Ngāti Apa hapū, of the lower Rangitikei river. It was decided that Te Wanikau had to avenge these deaths and prepare for utu on the Ngāti Apa people when a peace agreement was negotiated. In accordance with Māori marriage customs, Te Wanikau offered his niece Ruta Kau in marriage to Kawana Hunia, son of Te Hakekeke. Following the tradition of marriage practices, Ruta left

²⁵ S. W. Grant, “Donnelly, Airini”, from the *Dictionary of New Zealand Biography*. *Te Ara - the Encyclopedia of New Zealand*, accessed 20 June 2016
<http://www.TeAra.govt.nz/en/biographies/2d14/donnelly-airini>

her people to go and live with her husband's people at Parewanui, south of Bulls.

Ruta and Kawana had five children, Hera being the youngest, born in 1845.²⁶

As I discussed in Chapter One, when a woman left her tribal region she forfeited her rights to land. Yet, Māori custom allowed for one of Ruta's children to return to her tribal lands in order to access their mother's inheritance. It was Hera Te Upokoiri that returned to her mother's lands at Ngatarawa and Ohiti. Hera joined the last journey with her people and returned to Omaha in 1863 while her siblings returned to Raukawa.²⁷

The circumstances in which Hera chose to return to her mother's lands under custom compromised her position in claiming for the Ohiti Block. The judges released their findings stating:

As for the claim of Hoana Pakapaka and Hera Te Upokoiri, we reject that of the latter on the grounds that she has never occupied Ohiti. It is true that she returned to Heretaunga in 1860, but we doubt whether her parents or grandparents ever occupied this block. Certainly her brothers and sisters never returned to this district.²⁸

According to the Native Land Court records the judge rejected Hera's claim to the Ohiti Block which happens to neighbour the Omaha Block, which Airini and Wiremu were contesting for. Yet, the predominant hapū for the Omaha block was Ngāi Te Upokoiri, which is also Hera's primary hapū, so the fact that the courts did not take this into consideration indicates that extent in which Māori women's status and mana was compromised when contesting for land.

²⁶ Historic Places Trust, accessed 1 January 2017 <http://historicplacesaotearoa.org.nz/assets/HPHB-NEWSLETTER-1-May-2014.pdf>.

²⁷ Historic Places Aotearoa, accessed 1 January 2017 www.historicplacesaotearoa.org.nz.

²⁸ *Hastings Standard*, 8 June 1897.

The relationship with land and the mana of Māori women continued to undergo a series of sustained changes within the Native Land Court. This is demonstrated in both Airini and Arihi's cases which both utilised similar strategies in accessing land they believed was rightfully theirs. Next, when claimants put forth their interests it was important to choose the mana they fell under, making them choose ancestors of more significance than others. Certainly, relationships between whānau members were also overlooked and customary hierarchical practices were sometimes dismissed. I use Hera Te Upokoiri as my final example to stress how important it was for women to uphold tradition, even if it limited her claim in another block of land such as the Ohiti Block.

Section III: Whakapapa

Whakapapa, which was used particularly for arranging unions, was applied in the Native Land Court so claimants could register their land interests. Whakapapa is the genealogical descent of things living from the atua (god) to this present moment.²⁹ As I have discussed in Chapter One, whakapapa is the pinnacle of life, connecting time, people and places together on a continuous thread which links people back to their natural surroundings (maunga, mountain, iwi, awa, river). One of the essential aspects of whakapapa is the ability to use that knowledge as a basis for organisation, for example, when arranging unions between potential suitors. In fact, the tradition of Tanenuiarangi and Hineahuone is an appropriate reminder within Māori society to avoid incest. Tanenuiarangi was the first man to enter the world and he married Hineahuone (the first woman) and had a daughter Hinetitama. Tanenuiarangi co-

²⁹ Cleve Barlow, *Tikanga Whakaaro: Key concepts in Māori Culture* (Auckland: Oxford University Press, 1994), 173.

habited with his daughter Hinetitama and they had children, which were the first humans to inhabit the earth. The children told Hinetitama that they were the product of an incestuous relationship and she was so ashamed she went to the underworld and was known as Hinenuitepo, or the goddess of death.³⁰

From this example we can witness since time immemorial that incest was not accepted. Therefore, understanding genealogy was important in cementing kinship and economic ties. Cleve Barlow explains ‘all the people in a community are expected to know who their immediate ancestors are, and to pass this information on to their children so that they too may develop pride and sense of belonging through understanding the roots of their heritage’.³¹ When cases were heard in the Native Land Court they could be a long and drawn out process. A simple reason for this was because of the ways in which whakapapa was understood. According to Richard Boast

Reflecting both the complexities of Polynesian tenure and intricacies of Maori tribal history, cases could be almost impossible to unravel and could sometimes take weeks or even months to hear, and could then be followed by rehearings, petitions to Parliament or to the government, and reinvestigations.³²

This is not to say that all Māori did was argue in the Native Land Court. Rather, it took time to work out how tribal members were connected and whether their claims were legitimate. Sometimes, the courts could not make sense of the evidence and believed that the information was ‘contradictory’. For instance, in the Omaha Case the evidence used to show Taraia’s interests in the block of land stated:

³⁰ Barlow, *Tikanga Whakaaro*, 174.

³¹ Barlow, *Tikanga Whakaaro*, 174.

³² Boast, “The Omaha Affair”, 845.

These, along with the descendants of Hinehore, occupied it; and in the mass of contradictory evidence is extremely doubtful, first, what extent of land Taraia 2nd owned? Second, what division, if any, he made among those children? Third, what Hinehore's interest was? We find these people and their descendants being here and there all over the block, but it is generally admitted that Mahuika owned the land to the south of Ohiwia (though Airini Tonore runs a boundary through it).³³

The court decided to award the land to the descendants of these people. This varied depending on who could make the strongest claim to the area. Indicating whakapapa to the land was of crucial importance:

In conclusion, we have given what we believe to be our best judgment in the interests of the parties to this land. Our task has been of extreme difficulty owing to the nature of the evidence and the manner in which the different cases have been put forward.³⁴

In 1892, two years later the Omaha block was reheard. The judgments in the Native Land Court Minute Book stated;

contradictions and discrepancies that we find, not only in the evidence of different witnesses, but often in the evidence of the same witness in different portions of his or her testimony, we have come to the conclusion that only a few small fragments of genuine history have been preserved, and that the greater part of the story that has been laid before us is either the result of ingenious invention, or of the unconscious change which necessarily takes

³³ Boast, *The Native Land*, 499.

³⁴ Boast, *The Native Land*, 505.

place in the handing on of tradition from mouth to mouth, especially where the remembrance of the real facts has been hazy.³⁵

The Native Land Court failed to recognise the importance of time. The contradictory statements were probably due to the fact that Māori understood time differently in connection with the way whakapapa was understood. As Judith Binney argues, the purpose of an oral narrative culture was to establish meaning for events, and ‘to give a validation for the family’s and the group’s particular claims to mana and knowledge’.³⁶

Teasing out some of the themes which surround the concept of time in a Māori paradigm will help our understanding of the crucial role it played in the Native Land Court. Te Maire Tau, for example, believes that ‘time’ or temporal time within Māori oral tradition is the opposite of Western frameworks where historians, philosophers and novelists have all misunderstood its importance.³⁷ The same can be said in a court setting, where claimants can recite whakapapa in a way that fits within what Te Maire refers to as a ‘ritualized and rhetorical format’, but he cautions that sometimes the recital of whakapapa can be told in a ‘mythic framework that we can trace back to the ‘atua’’.³⁸

The way in which Māori envisioned and recollected events such as battles, songs, deaths and marriages meant that the concept of future and past was not understood as it is today. Instead, time ran on a continuous thread, with each generation adding to the rich layer of whakapapa. As discussed in Chapter One,

³⁵ Boast, *The Native Land*, 696.

³⁶ Judith Binney, “Maori Oral Narratives, Pakeha Written Texts: Two Forms of Telling History”, *New Zealand Journal of History* 21, 1 (1987): 27.

³⁷ Te Maire Tau, “I Nga Ra o Mua”, *Journal of New Zealand Studies* 10 (2011): 45.

³⁸ Tau, “I Nga Ra”, 48.

whakapapa is translated to literally mean ‘to place in layers, lay one upon the other’.³⁹ In a Western model, the history of time is understood as a lineal sequence, thus making evidence used by Māori seem contradictory.

Ann Parsonson has discussed some of the terminology used in court proceedings to demonstrate how claimants identified their relationship and history with the land. ‘Take tupuna’ was the most straightforward term for land rights, meaning ‘rights to land passed on through whakapapa’ brought before the courts. Noho tuturu demonstrated a ‘continuous occupation’ as described by the courts, which meant over many generations. Mana or kaha or atete was generally referred to as meaning ‘power to hold’.⁴⁰ The judgment on the Omaha case refers to the concept of ‘take tupuna’ stating; ‘We are therefore of the opinion that the four ancestors- Hikawera, Taraia II, Hinehore, and Hikateko- constitute the true take tupuna to this land’.⁴¹ This was the main method the courts used in determining who had rightful occupation to a block of land. Other times claimants did not have the ability to read, but could certainly show their claim to boundaries through the recital of whakapapa. Wiramina Ngahuka for instance stated in court:

I live at Wharerangi, Moteao as well as at Papaepaetahi. My hapus are Ngati Mahu, Ngai Tarauwha, Ngai Tangihia, Ngati Hinepare and Ngati Takiora. My tribe is Ngati Kahungunu. I know the land shown on plan before the Court. Do not understand maps. I can trace the boundaries of my claim.⁴²

Wiramina Ngahuka was another woman who went before the Native Land Court regularly. She was putting a claim into the Omaha Block by ancestry, occupation,

³⁹ John Moorfield, Te Aka Online Māori Dictionary, accessed on 14 April 2016 <http://maoridictionary.co.nz/word/9727>.

⁴⁰ Parsonson, “Stories for Land”, 27.

⁴¹ Boast, *The Native Land*, 696.

⁴² Boast, *The Native Land*, 498.

bravery and mana, laying her claim in the ancestor Taurauwha. Airini Donnelly put in the primary counter claim, claiming the whole block of land under Ranikamungu, Hawea, Tuhotaoriki, and Pakapaka under four gifts given to her by Tuku. For each case she claimed bravery, mana, and occupation and in support of her claim she used a map to show the subdivisions in the block called Otupaopao, Kaera, Moana, Kawera Hiwi, Oingo, and Matatanamia. The Oingo block consisted of 500 plus acres.⁴³ Certainly from the many individual cases above, whakapapa continued to be of incredible importance in relation to land claims in the Native Land Court.

Conclusion

Previous studies on the Native Land Court have focused on the experiences of Māori men, leaving little space for an examination of Māori women's narratives. Current scholarship argues that Māori women's involvement with the court was sparse. Yet, women came before the court, sometimes featuring at the core of important and historical cases like the Omaha Affair or the Haurangi Will Case. By centering this chapter around case-studies of the 'First Wives' of Ngāti Kahungunu, it has revealed the impact the Native Land Court had on women's land tenure, but also its wider implications on marriage practices.

These wider implications included the erosion of whānau, hapū and iwi structures due to inter-Māori disputes, seen in challenges to wills and probates. Through closer examination of the case studies we saw that Māori women's mana and status in relation to land changed when they went through the procedure of Native Land Court proceedings. The importance of whakapapa and its significance in organising unions, and its traditional purpose shifted slightly to become more compelling in land cases. Considering the Native Land Court through these women's

⁴³ Boast, *The Native Land*, 499.

experiences ultimately reveals how some Māori women participated in this legal sphere. For women of mana, the Native Land Court served as an opportunity to increase authority and standing through the acquisition of land, but for those women of lower rank their freedoms in relation to land tenure, succession and inheritance that were previously protected under customary law were slowly eroded.



Figure 3.1 Airini Donnelly (nee Karauria) c. 1870-1880. Daughter of Karauria Pupu of Ngāti Kahungunu. Ref, ¼ -022- 134-G, Alexander Turnbull Library.



Figure 3.2 Arihi Te Nahu, granddaughter of Te Hapuku, Ngāti Kahungunu. C. 1870-1880. Ref, ¼-022106-G, Alexander Turnbull Library.



Figure 3.3 Hera Te Upokoiri, photograph taken in the 1880s by Samuel Carnell. Ref, ¼-022137-G, Alexander Turnbull Library.

Chapter Four: Māori Women's Political Organising, 1890s-1909

Over time sustained legislative reforms upheld through the Native Land Court as well as the colonial courts lead way to major land loss for Māori. In response to this phenomenon, Māori women started to increase their presence but also their involvement in political organising. This is not new, however, as historically Māori women have periodically had roles in political undertakings in both pre and post-contact society. This is reflective of women's rights to bilateral land inheritance as well as holding chiefly positions within their descent groups. During the post-contact period at least five signatories with identifiable female names are present on the Treaty of 1840.¹ But it was not until the 1890s that Māori women had some success in political mobilisation on a national scale. Although attempts were made in the 1830s and 1840s to utilise local Komiti (committee) to settle disputes through tikanga methods, by the 1850s these Komiti had developed nationwide. These Komiti had limited success, as Adrienne Puckey explains because, 'Māori did not abandon runanga and other traditional decision processes in favour of forms modified to Pākehā purposes'.² Māori political mobilisation in the 1890s differed from previous iterations in that women sought leadership roles in the movement for Kotahitanga and within Paremata Māori, the Māori Parliament.

This chapter investigates how matters relating to land and customary marriage informed and shaped Māori women's political concerns and their efforts to gain voting rights within the Māori Parliament. This chapter will also explore Pākehā

¹ Claudia Orange, *The Treaty of Waitangi* (Wellington: Port Nicholson Press, 1987), 45.

² Adrienne Puckey, "The Substance of the Shadow: Māori and Pākehā Political Economic Relationships, 1860–1940: A Far Northern Case Study" (PhD Thesis, University of Auckland, 2006), 137–138.

women's political activities to provide context for Māori women's actions, and understand how two separate movements in Māori and Pākehā spaces influenced each other's political ambitions. A common source of frustration for both Pākehā and Māori women was alcohol and its threat to the family unit. Although both groups of women shared similar concerns about the influence of alcohol, they diverged in an important way: Māori women sought the right to vote in order to protect their interests in land. Despite the differences in their political ambitions, the endpoint remained the same: gaining the right to vote.

Historical writings on Māori women tend to traditionally finish with the passing of the Electoral Reform Act 1893, when New Zealand women won the right to vote, with particular emphasis placed on Meri Te Mangakāhia's involvement in the suffrage campaign. Yet, she also played a more pivotal role in arguing for Māori women's suffrage in the Māori Parliament, where she gave an important and powerful speech. This chapter pushes beyond the 1890s into the early twentieth century in order to chart activities after Māori women won the right to vote in 1897.

The period 1890 to 1909 has been characterised as a time when Māori society was undergoing a series of rapid social and economic changes in a short space of time. The expansion of European settlement led way to the introduction of illnesses in which Māori had no immunity to leading to depopulation and displacement for many. The spread of disease was eased in some remote areas with the introduction of European doctors.³ In the late nineteenth century, a group of young Western-educated Māori intellectuals began to advocate for the reform of tribal society in order to increase the prospects of Māori survival. Marriage and land were two areas of reform

³ Derek. A. Dow, *Maori Health and Government Policy, 1840-1940* (Wellington: Victoria University Press, 1999), 78.

included on their agenda. In this context of reformist endeavour, the Native Land Act 1909 was introduced. It ‘simplified and accelerated procedures for the alienation of land from Māori’ as well as defining customary marriage and how it should be regulated.⁴ This chapter ends by reflecting on the significance of the 1909 Act for the future of Māori marriage.

Native Land Court Legislation During the 1890s

By the end of the nineteenth century women no longer considered The Native Land Court an institution that protected their customary lands. As we saw in Chapter Two, Māori women land owners who chose to marry under European law automatically forfeited their property to their husbands. Furthermore, clause 86 of the Native Land Act 1873 ‘provided nevertheless that in every case the husband shall be a party to such deed; and that the signatures of both husband and wife shall be attested in the manner’.⁵ While men gained access to lands that were previously controlled by customary law, Māori women’s autonomy became threatened under this new colonial regime. Nan Seuffert reminds us that ‘marriage jurisdiction and law also participates in the creation of the public order, including the production of a homogenous nation opposed to cultural and racial difference’.⁶

The 1891 Native Land Laws report based on Māori and non-Māori testimony was highly critical of the Native Land Acts. The report stated that the court ‘had gradually lost every characteristic of a Native Court, and has become entirely

⁴ Richard Hill, *State Authority, Indigenous Autonomy: Crown Maori Relations in New Zealand/Aotearoa 1900-1950* (Wellington: Victoria University Press, 2004), 98.

⁵ Native Land Act 1873, Clause 86.

⁶ Nan Seuffert, “Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage in Aotearoa New Zealand,” *Law Text Culture*, 7, (2003):185.

European'.⁷ The committee was set up to investigate the operation of the existing laws on alienation and disposal of Māori owned land in the colony. The government appointed William Lee Rees, a lawyer and agent for East Coast land, together with James Carroll, an MP for Eastern Māori and Thomas Mackay, a former Land Purchase Officer. The investigative body, referred to as the Rees-Carroll Commission, criticised the court for granting certificate of titles to individuals rather than iwi or hapū. A witness before the committee provided a good example of this in his statement saying the government confiscation of the Mohaka-Waikare blocks in Hawkes Bay was largely due to maladministration, leaving many kinship groups displaced.⁸

Following the Rees-Carroll Commission 1891, Māori MPs drafted The Native Rights Bill 1894 in conjunction with Kotahitanga, a pan-tribal political group. The aim of the bill was to abolish the Native Land Court and allow Māori to manage and develop their lands using their own land laws. Unfortunately, at the first reading all Māori MPs left the chamber in protest and in 1896 Parliament rejected it.⁹ The Native Land Court Act 1894 was a major consolidating act. The act reintroduced Crown Pre-Emption, before later being amended in 1895 and 1896. The new amendments exempted small blocks with one or two owners. The Native Land Court Act 1894 allowed land to be exchanged between Māori and between Māori and the Crown so that the Crown could combine land into workable blocks predominantly for European land settlement.¹⁰ These provisions had very little success. By the late nineteenth

⁷ Report of the Commission Appointed to Inquire in to the Subject of the Native Land Laws 1891, AJHR G-1.

⁸ Richard Boast, *Maori Land Law* (Wellington: Butterworth, 1999), 82.

⁹ Rāwiri Taonui, "Te ture – Māori and legislation - The Native Land Court", *Te Ara - the Encyclopedia of New Zealand*, accessed 1 June 2016. <http://www.TeAra.govt.nz/en/te-ture-maori-and-legislation/page-3>.

¹⁰ Boast, *Maori Land Law*, 94.

century ‘in every way the Court undercut Māori land and all that went with it: social cohesion, chiefly authority, economic sustenance and cultural vitality’.¹¹ This included the sustained but gradual dismantling of customary Māori marriage practices by successive governments with a sharp focus on assimilation policy. Though it would not be until the start of the twentieth century, when the effects of these policies would become more visible.

Māori Women’s Political Organising

In order to contest the government’s control of land, Māori women initially supported the leaders within their communities. In April 1892, Māori leaders from the North Island met at Waitangi in the hopes of forming a separate body of authority referred to as Kotahitanga. Most of the concerns among iwi leaders were the continued loss of land and the inefficiency of existing structures such as The Native Land Court and the law to halt the continued dispossession of land.¹² Māori believed this was a direct breach of the benefits promised to them under the Treaty of Waitangi 1840.

Forming a separate body under Te Kotahitanga took a great deal of consideration cutting across geographical, historical and tribal boundaries.¹³ Women supported the men in their efforts to establish a separate government, but they also presented petitions to the government on their own account or on behalf of their iwi. Between the years 1886 and 1896, women produced over forty petitions regarding land issues in response to continued government pressure placed on Māori to sell their land for the growing settler population. By 1890, less than 40 per cent of Māori

¹¹ Charlotte Macdonald, “People of the Land, Voting Citizens in the Nation, Subjects of the Crown Historical Perspectives on Gender and Law in Nineteenth-Century New Zealand”, *Law and History*, 2 (2015): 47.

¹² Macdonald, “People of the Land”, 38.

¹³ Macdonald, “People of the Land”, 38.

owned land remained in the North Island and there were only a handful of reserves in the South Island.¹⁴

Māori women also offered their support to Pākehā political organising, as alcohol was a concern in both Māori and Pākehā communities. By the 1890s many Māori had joined the Women's Christian Temperance Union (WCTU). The WCTU's magazine *The White Ribbon* reported on women's various activities including what occurred in Māori regions, revealing traces of Māori life within the magazine. Māori were concerned that alcohol was having a devastating effect in their communities. It was reported some men were getting drunk and signing sale papers or selling land to pay for debt: 'drink was a great danger to the Maoris and they recognised it'.¹⁵ European women believed that when Māori were sober 'they would get on just as well as Europeans for they were naturally very intelligent and capable fully as talented as the white population'.¹⁶ Clearly, it was believed that if Māori abstained from alcohol, they too could be 'model' citizens of society, but it was also hoped its eradication might guarantee further protection of their land.

The oldest and first honorary Māori member to join the WCTU was 'a rangatira over eighty years of age who donned the White Ribbon'.¹⁷ Māori wives of politicians also participated:

On Friday, shortly before noon, we arrived at Paki Paki where a branch was organised by Miss Stirling about twelve months ago. A reception was accorded us forthwith in the public hall, and about one o'clock we went across to the house of Mr Mohi, the chief, whose wife is our president.¹⁸

¹⁴ Tania Rei, *Maori Women and the Vote* (Wellington: Huia Publishers, 1993), 10.

¹⁵ Rei, *Maori Women*, 10.

¹⁶ *The White Ribbon*, Napier, 15 June 1908.

¹⁷ *The White Ribbon*, Christchurch, 16 October 1909.

¹⁸ *The White Ribbon*, Christchurch, 16 October 1909.

Ngapua, the mother of Hone Heke, MP was another example of a Māori woman holding an important position:

A deputation of Maori women, headed by the Maori chieftainess... waited upon Lady Stout and asked her to become the President of their local Union, Ngapua told how her women were doing all in their power to prevent the great evils resulting from using alcoholic beverages, and were seeking to influence all the Maori people to become total abstainers.¹⁹

Māori women who held traditionally prestigious roles in their society were now joining national groups, not just within Māori communities but also as participants in Pākehā organisations. This is because alcohol contributed to rapid land loss through running up debt, but also displaced many kinship groups.

The Opening of Te Kotahitanga

On June 13 1892, at Waipatu Hawkes Bay, the official opening of Te Kotahitanga took place. Te Kotahitanga was an Māori initiative that sought to engage in ‘colonial legal regimes’, rather than militaristic solutions to the problems Māori faced.²⁰

Historian Charlotte Macdonald adds the Kotahitanga was ‘a law-making machinery in order to retain land, and control over land’.²¹ Māori women’s efforts to fundraise, petition and support their local chiefs were finally achieved. Māori members of the New Zealand House of Representatives were welcomed as well as iwi who supported Te Kotahitanga. Māori leaders such as Timi Kara (James Carroll), Meiha Rapara, Hirini Te Kani and Wi Parata were all called on to the marae and men and women

¹⁹ *The White Ribbon*, Napier, 15 June 1908.

²⁰ Miranda Johnson, “Chiefly Women: Queen Victoria, Meri Mangakahia and the Maori Parliament”, in, *Mistress of Everything: Queen Victoria in Indigenous Worlds* ed, Sarah Carter and Maria Nugent (Manchester: Manchester University Press, 2016), 232.

²¹ Macdonald, “People of the Land”, 59.

performed a haka.²² The official party carried the Treaty of Waitangi flag, the Deed of Union, the Bible and a copy of The Treaty of Waitangi. Henare Tomoana, the host, welcomed the guests and spoke about the purpose of the movement. His speech alluded to the Treaty of Waitangi and representation under section 71 of the Constitution Act 1852. Māori believed that a breach of these acts led to the formation of Kotahitanga.²³

The Māori Parliament was modelled on New Zealand's Parliament. A Lower House with 96 elected members and an Upper House with 50 members was formed. Māori women were permitted to speak in Parliament, but they were not allowed to vote or stand as members. This was in stark contrast to the New Zealand Parliament where no women could speak, or even be present for that matter.²⁴ Electoral districts were determined by tribal boundaries and a constitution was established.

Macdonald explains that by adapting a European model, however, traditional structures of law and law making were coming into collision with existing sources of authority such as ownership rights, kin connections and marriage.²⁵ Adding to this argument, kinship structures under a unified leadership were compromised. The whānau, hapū and iwi were no longer under the leadership of a singular rangatira, adding to the fragmentation of kinship structures. To compromise mana across various descent groups was a reflection of Māori land displacement. Māori were seeking a unified government because the law continued to undermine Māori tino rangatiratanga (sovereignty). However, Māori sought to create a new indigenous space. The fact that Māori were able to overcome existing tribal structures indicates the fluidity and nature of tikanga, as outlined in Chapter One.

²² Rei, *Maori Women*, 15.

²³ Johnson, "Chiefly Women," 241.

²⁴ Brookes, *A History*, 133.

²⁵ Macdonald, "People of the Land", 37.

Women of various mana and status were involved with Kotahitanga. These women were the wives or family members of chiefs or local politicians. For instance, Akenehi Tomoana was the wife of Henare Tomoana, one of the highest-ranking families in Heretaunga. Wikitoria Te Ua was the wife of Taranaki Te Ua, nephew of Henare Tomoana; Pukepuke Tangiora, a leading woman of Ngāti Mihiroa, was married to Te Kotahitanga leader Mohi Te Atahikoia.²⁶ Ema and Hiriana Tiakitai were women of the family of Tiakitai and Te Teira Tiakitai of Waimarama. Before his death in 1847, Tiakitai was one of five highest-ranking principal chiefs of Hawkes Bay. Niniwa-i-te-Rangi was a chieftainess of Ngāti Hinewaka in the Wairarapa.²⁷ Niniwa was responsible for organising and acting as treasurer for the newspapers aligned with Kotahitanga: *Te Puke Hikurangi* and *Te Tiupiri*.²⁸ The newspapers advanced Kotahitanga political activism, and are an important example of women voicing their political concerns on a national scale. The concerns, which were filtering into Māori newspapers, encouraged a greater political awareness among the women.

The WCTU can be considered a training ground for Māori women political activists. Moreover, the majority of these women were connected to Ngāti Kahungunu, from a tribe where women were heavily involved with land, as the previous chapter has shown. These women represent a small sample of powerful women leading the movement, highlighting their independence and mana. The women's involvement with their husband's affairs in Kotahitanga made them

²⁶ Hariata Baker, "In Memory of a Visionary", New Zealand Herald, 17 November 2016, accessed 26 March 2017: http://www.nzherald.co.nz/the-country/news/article.cfm?c_id=16&objectid=11749328; Angela Ballara, "Te Atahikoia, Mohi", from the *Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand*, accessed 26 March 2017. <http://www.TeAra.govt.nz/en/biographies/2t18/te-atahikoia-mohi>.

²⁷ Angela Ballara, "Wahine Rangatira: Maori Women of Rank and their Role in the Women's Kotahitanga Movement of the 1880s", in *The Shaping of Modern History: Essays from the Journal of History*, ed. Judith Binney (Wellington: Bridget Williams Books, 2001), 132.

²⁸ Angela Ballara, "Niniwa-i-te-rangi", from the *Dictionary of New Zealand Biography. Te Ara - Encyclopaedia of New Zealand*, accessed 24 November 2016 <http://www.TeAra.govt.nz/en/biographies/2n15/niniwa-i-te-rangi>.

knowledgeable of the aims of Te Kotahitanga and the issues that were confronting their people. Having been involved in the WCTU, the women were also aware of the suffrage movement that was gaining momentum throughout the country, with many supporting enfranchisements.

Calls for Māori women's suffrage coincided with the general suffrage movement, which sought to gain the vote for all women in New Zealand general elections. By the 1890s five attempts had been made to pass this legislation. All attempts had failed, partly because both Māori and Pākehā politicians opposed this reform. The spokesman for women in the House, Sir John Hall, proposed an amendment to include the vote for women in an Electoral Bill in Parliament. This would allow women to vote for members of the New Zealand House of Representatives. Yet, James Carroll of Ngāti Kahungunu voted against this proposal for Eastern Māori, as well as Tame Parata of Ngāi Tahu and the Member for Southern Māori. A newspaper article in the *Korimako Hou* supported their position, which 'encouraged Māori women to divert their attention and energies to the welfare of their children and grandchildren and to leave such complex matters as politics to their husbands, brothers and fathers'.²⁹ In 1891, the Electoral Bill was proposed again. The Upper House, and the Legislative Council rejected it. But more importantly, Māori politicians including Hori Kerei Taiaroa of Ngāi Tahu and Rapata Wahawaha of Ngāti Porou, both members of the Legislative Council, voted against it.

Women's enfranchisement received support from Eparaima Te Mutu Kapa of Te Aupouri who had close affiliation with Te Kotahitanga. He 'heartily supported the measure', but others were less receptive.³⁰ For example, Hoani Taipua of Ngāti

²⁹ Rei, *Maori Women*, 29.

³⁰ Rei, *Maori Women*, 30.

Raukawa and the Member for Western Māori were vehemently against Māori women's inclusion in the women's franchise as he thought they were not sufficiently qualified to vote.³¹ Despite Māori women having historical involvement with tribal politics and land, opposition from Māori male politicians was somewhat unexpected.

Thinking more broadly, however, opposition from male politicians to women's involvement in the political space maybe compared to that of customary practices on the marae. While women were present on the marae, there were very important roles reserved for only women; such as karanga (call) and waiata, while men were involved with whaikōrero or oratory. When a gathering of two groups exchanged dialogue, it was the men who dictated the space, similar to that of Parliamentary proceedings. In fact, Wahawaha spoke of this when the bill reached the Legislative Council. He believed that women were always excluded from sacred ceremonial duties. Wahawaha claimed 'it is only in the last few years that the voices of fanatical women have been heard in the streets of Wellington and Gisborne and other places. We do not know whether the old rule was the correct one or whether this is the right thing'.³² While women would always support the men who were talking, the role of whaikōrero was predominantly for males.³³ As Māori male politicians moved into a European framework of law, they chose which elements of European doctrine suited them, such as the excluding of Māori women in Parliament.

While Māori women gained the right to vote in 1893, they were not afforded the same opportunity in the Paremata Māori. At the second session of Paremata Māori that same year in Waipatu, Hawkes Bay, Meri Te Mangakahia, a key figure in the women's suffrage movement, addressed the members of Parliament. With the support

³¹ Rei, *Maori Women*, 31.

³² Rei, *Maori Women*, 32

³³ Poia Rewi, *Whaikōrero: The World of Māori Oratory* (Auckland: Auckland University Press, 2010), 67.

of Akenehi Tomoana both women presented their case to the lower house that women should be allowed to vote and stand as candidates in Paremata Māori. Akenehi Tomoana, wife of MP Henare Tomoana, was a staunch supporter of Meri's concerns, but she believed that the status of Māori women within Te Kotahitanga needed to remain lower than that of the men.³⁴ By this time, some Māori women believed that they were of lower mana than their male counterparts, despite women's historical involvement with land decision-making. There is a distinct paradigm shift whereby women's political involvement was not just limited to women of mana and status, but extended the interests of women throughout all Māori communities in Aotearoa. The central concern for Māori women was the ongoing dispossession of their rights through the Native Land Court system and land laws, and the 'inability of the Māori communities to prevent the sale, mortgage and leasing of its lands by individuals, the cost of surveys and court fees'.³⁵ Meri stood up in parliament and made five important points:

- 1) He nui nga wahine o Nui Tireni kua mate a ratou taane, a he whenua karaiti, papatupu o ratou. There are many women who have been widowed and own much land.³⁶

At the end of the century the court increasingly dealt with succession and inheritance as demonstrated by Airini Donnelly and Arihi Te Nahu's court cases. Meri believed that women as landowners should be given a political voice, just as men did.

³⁴ Angela Ballara. "Tomoana, Henare", from the *Dictionary of New Zealand Biography. Te Ara- the Encyclopedia of New Zealand*, accessed 14 December 2016
<http://www.TeAra.govt.nz/en/biographies/2t46/tomoana-henare>.

³⁵ Ballara, "Wahine Rangatira", 129.

³⁶ Ministry for Culture and Heritage "So that women may receive the vote",
<https://nzhistory.govt.nz/media/photo/so-that-women-can-get-the-vote>, accessed 20 March 2017.

Meri's second point highlighted the flaws in the Native Land Court system. Descent was based on bilateral senior lines which did not just favour male descendants.

- 2) He nui nga wahine o Nui Tireni kua mate o ratou matua, kaore o ratou tungane, he karaiti, he papatupu o ratou. There are many women whose fathers have died and do not have brothers.³⁷

Technically, the Native Land Court should have recognised that daughters were entitled to inherit land from their fathers, even if they had a brother. Although, I suspect this issue was not as straightforward as it seems, particularly if fathers had not made a 'valid' will. This essentially gave the Native Land Court the power to determine how land was distributed in the event of death.

Though women were familiar with court procedures by the end of the nineteenth century through the management of lands. More importantly, many high-ranking wāhine (women) of Ngāti Kahungunu owned large tracts of land, and in order to protect these tribal lands they engaged with The Native Land Court. The establishment of Te Kotahitanga was an institution with its own authority, and it was anticipated that they would have the power to create their own laws and administer a system of management for the remaining Māori land.³⁸ This was certainly one of Meri's intentions when she made her third point:

- 3) He nui nga wahine mohio o Nui Tireni kei te moe tane, kaore nga tane e mohio o Niu Tireni kei te moe tane, kaore nga tane e mohio ki te whakahaere i o raua whenua. There are many women who are knowledgeable of the management of land where their husbands are not.³⁹

³⁷ Ministry for Culture and Heritage "So that women may receive the vote",

³⁸ Ministry for Culture and Heritage "So that women may receive the vote",

³⁹ Ministry for Culture and Heritage "So that women may receive the vote",

The fourth point made by Meri was:

- 4) He nui nga wahine kua koroheketia o ratou matua, he wahine mohio, he kurati, he papatupu o ratou. There are many women whose fathers are elderly, who are also knowledgeable of the management of land and own land.⁴⁰

Women commonly represented their fathers or uncles, particularly as they became more literate and familiar with the judicial process of the Native Land Court. Airini Donnelly, who from a young age represented her uncle Renata Kawepo's interests in a block of land and won his case, is a good example. The last point Meri made was:

- 5) He nui nga tane Rangatira o te motu nei kua inoi ki te kuini, mo nga mate e pa ara kia tatou, a kaore tonu tatou i pa ki te ora i runga i ta ratou inoitanga. Na reira ka inoi ahau ki tenei whare kia tu he mema wahine. There have been many male leaders who have petitioned the Queen concerning the many issues that affect us all, however, we have not yet been adequately, compensated according to those petitions. Therefore, I pray to this gathering that women members be appointed. Perhaps by this course of action we may be satisfied concerning the many issues affecting us and our land. Perhaps the Queen may listen to the petitions if they are all presented by her Maori sisters, since she is a woman as well.⁴¹

Women felt men no longer represented their land interests and by giving women the chance to vote, their needs could be better reflected in the political sphere.

Māori women's involvement in Paremata Māori also captured the attention of colonial newspapers. Dunedin's *Otago Witness* reported:

⁴⁰ Ministry for Culture and Heritage "So that women may receive the vote",

⁴¹ Ministry for Culture and Heritage "So that women may receive the vote",

Amongst the questions brought up yesterday was equal rights for women.

Several of the speakers pointed out that for years the work done by their husbands was no good, and women must do something. Under the Treaty of Waitangi all were treated alike, but they had not been so served.⁴²

Māori women's political activism was needed to overcome and correct the lack of care and protection of land by the men.

After Meri's speech the matter was deferred until the evening session. The evening church service meant the discussion was delayed again until the next day. Unhappy about the postponement, Meri insisted that there be no further delays of the motion. It was two days later before the motion was revisited but abandoned because the Constitution of Te Kotahitanga had already been completed. Despite this setback the women continued to organise themselves to solve problems associated with land.

During a session of the Kotahitanga Parliament the women held their own informal meeting. The women spoke of the Native Land Court and its effects and decided the leasing and surveying of Māori owned land should cease. Any men or women who persisted in these practices were to be fined by Te Kotahitanga. As women had also been supporters for the Kotahitanga movement, and helped raise funds for its establishment, they felt therefore, they should be given the right to vote.

The *Poverty Bay Herald* reported:

The Maori Women's Parliament at Te Hauke has concluded. The following resolutions were passed: - (1) To have nothing to do with the Native Land Court; (2) to cease all further selling of land; (3) no further renting of land, and (4) that no further surveys should be gone into. Should any man, woman, or child break the above regulations they will be fined such sum as the Maori

⁴² *Otago Witness*, 10 January 1895.

Women's Committee may think right. In bringing the meeting to a close, the Chairwoman said: "We find that after many years the men's endeavours to conserve our interests have failed, and therefore we, the women, have formed ourselves into a parliament or committee, and now we are going to do what we can. Our lands are slipping away from us everyday into the hands of the Government, and therefore we must protect ourselves. Should we not succeed, we find ourselves like a ship on a sand bank, 'spreading our wings to the wind'".⁴³

At the same hui, Horiana Tiakitai of Ngāti Kahungunu described such land sales as 'the greatest disaster to touch us'. They all agreed that the courts initiated 'the plunder of the lands of the Māori people, a road set up to benefit the Government and its servants and agents'.⁴⁴

Te Wahine Hui was a significant step forward for Māori women to establish, identify and prevent further land loss. Te Wahine Hui symbolises an important era whereby Māori women nationally mobilised themselves to prevent further land loss and major dislocation for Māori, by boycotting the Native Land Court. It also represents major success for Māori women who gained the right to vote in Paremata Māori, after having won the vote in the colonial Parliament. This was particularly important as Māori society started to undergo a series of changes relating to health, depopulation and land loss. This is more accurately reflected in the next section, which focuses on the role of the Young Māori Party agenda and ways in which they sought to manage affairs that were impacting Māori society as a whole.

What Happened After the Vote?

⁴³ *Poverty Bay Herald*, 14 January 1895.

⁴⁴ *Thames Star*, 14 January 1895.

An incredible victory in itself, once Māori women gained the right vote their political ambitions became the target of Māori reformers such as the Young Māori Party (YMP). Through the women's political success, it was hoped that the women might be receptive to phasing out customary marriage practices, as members of the YMP associated these practices with immorality and 'backwardness' and linked reform of such practices with improvements in Māori health and welfare. This section looks at their reformist agenda, situating it within the context of their Christianity and concerns over the health of the Māori population. This context is provided in order to situate the Native Land Act 1909, partially led by Apirana Ngata, a leading light of the YMP. Would it lead the way to more radical transformations to customary marriage in the decades to follow?

When Māori women were advocating for their rights in the Kotahitanga, marriage within Māori society was being reformulated. Nineteenth century colonial marriage laws established a civil registration and licensing process. According to Nan Seuffert and Annie Mikaere, these laws were also designed to assimilate Māori to a centralised jurisdiction, all part of 'shaping the modern nation'.⁴⁵ Annie Mikaere argues by forcing Māori women away from their kinship collectives into European models of nuclear family, it left women vulnerable in many ways, such as their ability to retain their customary land. Policy makers believed that Māori women, 'had to prize highly her role of housewife and mother and believe it to be God's will... the Maori female had to be domiciled very quickly to the values of the new regime that had arrived to civilize her'.⁴⁶ This idealised, but colonialist, imagery of Māori women

⁴⁵ Nan Seuffert, "Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage in Aotearoa New Zealand," *Law Text Culture*, 7, (2003): 1856.

⁴⁶ Annie Mikaere, "Maori Women: Caught in the Contradictions of a Colonised Reality", *Waikato Law Review*, 2 (1994): 134.

could only become a reality when Māori put aside their customary practices, including customary marriage.

Yet, customary Māori marriage continued to be practiced in the late nineteenth century, including by cross-cultural couples. For instance, Pare Aruhe and Thomas Grayson, a Waimata sheep farmer, had lived together for some time, never formalising their relationship in 1896.⁴⁷ Many couples lived together for ‘decades’ before formalising their union, often only doing so when they had estates to entail. In the early twentieth century Māori couples still continued to marry by custom, despite legislative reforms particularly where the couples had high mana. For example, Hera Herangi, a granddaughter of King Tāwhiao, and niece of Mahuta, married a chief of Ngāti Raukawa in 1900 according to custom in an elaborate ceremony.⁴⁸

The procedure of customary marriages remained largely the same but due to the introduction of European law some of the traditional methods of settling breaches within marriage were discouraged. The *Hawera Star* reported in 1891:

now-a-days, the parties being agreed, the husband announces to his fellows at the kainga that he has taken a certain girl as his wife, and if this is not disputed the marriage is considered to be good... in olden days any unfaithfulness by either party was punished by forfeiture of the offender’s goods, the sentence or “muru” ... but in this district the old Maori court of procedure is no longer recognized. The modern Maori marriage ceremony would therefore, seem to be a very loose sort of tie.⁴⁹

⁴⁷ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* (Auckland: Auckland University Press, 2013), 81.

⁴⁸ *New Zealand Herald*, 19 September 1900.

⁴⁹ *Marlborough Express*, 30 April 1891. The story originally came from the *Hawera Star* but was reproduced in the *Marlborough Express*.

Changing traditional methods of muru (retribution), which dealt with unfaithfulness, rearranged customary marriage to be considered a loose and insignificant Māori ceremony.

Although customary marriage was still practiced, Pākehā marriage customs were absorbed into ways Māori celebrated their unions. In the Bay of Islands town of Russell, for instance, Māori marriage festivities were occurring with a church choir and ‘cakes and plum puddings ...counted by hundreds’.⁵⁰ At Ngawapuru, in 1892 a ‘bride wore the customary veil, wreath, and orange blossoms, and looked very charming’. The marriage coincided with the opening of Huru’s new house named Whakamiharo and after the wedding feast ‘Nihara proposed “The Queen”, and pointed out that the Natives were gradually adopting European customs’.⁵¹ Thus it is important to bear in mind that although there were changes to customary marriages at a legislative level, this did not stop Māori from maintaining their marriage practices, or even taking elements of European customs to reflect their circumstances as some Māori continued to fall outside the government radar.

By the late nineteenth century a new generation of Māori leaders with a Pākehā education emerged, and they believed that tribal autonomy was not only unviable but also undesirable.⁵² These Māori leaders initially fell under the title of Te Aute College Students Association (TACSA), which was formed in 1897, before being renamed as The Young Māori Party, a nickname given to them by Apirana Ngata (refer to fig 4.3). The group had its roots in strong Anglican doctrines, which encouraged Māori to live virtuous Christian lives. It came under considerable criticism at the time from Māori leaders for its reform agenda. This focused on

⁵⁰ *Auckland Star*, 26 August 1891.

⁵¹ *Woodville Examiner*, 29 December 1892.

⁵² Richard Hill, *State Authority, Indigenous Autonomy: Crown- Māori Relations in New Zealand* (Wellington: Victoria University Press, 2004) 46.

bringing the technological, cultural and other benefits of European civilisation to Māori communities, particularly in the area of health and sanitation, whilst also preserving elements of Māori culture. This is not to be confused with assimilation strategies, as historian Lachy Paterson clarifies. Though assimilation forces ‘were encroaching upon Māori society’, Paterson suggests these responses are best understood as ‘adaptive acculturation’. Simply meaning that TACSA chose which aspects of Māori tikanga and European culture should continue to be practiced, while abandoning some of the particularly concerning customs such as customary marriage.⁵³ Taking aspects of Māori culture and fusing them with European elements meant that the Young Māori Party were prepared to pay ‘a high cultural price to secure socio-economic progress’.⁵⁴ A good example of this is witnessed in the work that Reweti Kohere did.

A man of considerable influence, Reweti Kohere was a founding member of TACSA and also appointed secondary editor to the monthly newspaper *Te Pīpīwharau* (The Shining Cuckoo) published in both English and te reo Māori (refer to fig 4.4). The publication was an Anglican newspaper and was circulated widely across the country. A central concern of Kohere’s was the issue of sexual immorality, believing that the tangihanga represented a space in which these liaisons could take place. Kohere wanted the tangihanga to take a single day, otherwise both sexes would have to spend a greater deal of time in the same communal sleeping space, which could lead to extramarital affairs taking place. These ‘affairs’ were discouraged by staunch Anglicans, and by shortening the tangihanga it limited the

⁵³ Lachy Paterson, “Reweti Kohere’s Model Village”, *New Zealand Journal of History*, 41 no.1 (2007): 28.

⁵⁴ Hill, *State Authority*, 43.

opportunity for them to occur.⁵⁵ Kohere was not the first to raise the issue. At the first TACSA conference, Reverend Herbert Williams delivered a paper on ‘Courtship and Marriage among the Maori’. Williams suggested that prior to marriage, during the engagement period, Māori should remain celibate and get to know one another better. He believed that by doing this, love would prevail over the taumau or arranged marriage.⁵⁶

Ngata, another TACSA member delivered a paper called ‘Sexual Immorality Amongst the Maori’ in 1897. He believed that sexual relations between Māori were still tied to their ‘savage’ nature and that they were unable to curb their lust. Ngata suggested that both education and the Gospel would assist to reform Māori morality, and employment could be an outlet for these ‘animal spirits’.⁵⁷ Ngata believed that children learnt about sexual relations from their parent’s open discussions. He also felt strongly that using European models as templates would improve Māori society claiming ‘we must look for the individualisation of our land, and the dissolution of our communistic system’ which would encourage a sense of privacy and shame amongst individuals, encourage families to live in separate dwellings, thereby decreasing the opportunity for illicit sex.⁵⁸ Kohere too was a strong believer that social improvement was possible with religion. He attacked Mormonism, which had a large number of followers from the East Coast, particularly in the Hawkes Bay, particularly its tradition of polygamy, even though Mormons did not practice it at that time.⁵⁹ Kohere was particularly known for his views against tohungaism (spiritual

⁵⁵ Inano Walter, “Aspects of Maori Divorce in New Zealand from c.1800-1950”, (Honours diss., University of Otago, Dunedin, 2014).

⁵⁶ Te Aute College Students’ Association (1st Conference: 1897 Feb: Gisborne).

⁵⁷ Te Aute College Students’ Association (Paper No.11), 41.

⁵⁸ Te Aute College, 42.

⁵⁹ Paterson, “Reweti Kohere”, 28.

advisor) and ‘employed a rational approach to Māori beliefs in ghosts and witchcraft, asserting they were just not credible’.⁶⁰

The Young Māori Party’s reformist discourse was activated by a concern about Māori health, and anxiety over a decline in the population. There was much talk in Pākehā newspapers, amongst politicians, and in scientific circles about Māori as a ‘dying race’. These reformers believed they could utilise Western science, medicine and aspects of European culture for the improvement of Māori people.⁶¹ For TACSA did not just want Māori to regenerate and repopulate but also to prosper in this ever-changing environment.

So, Māori were not only resisting Pākehā structures of government but also facing the prospect of their race ‘dying out’. At the end of the 1850s the two populations were virtually even. By 1874, Māori were outnumbered by 6:1 and by 1901 there were believed to be 770, 313 Pākehā and only 45,549 Māori.⁶² Major land loss was a crucial factor in Māori depopulation. Damp living conditions and overcrowded spaces led to the further spread of disease. Infants and children were contracting disease that they had no immunity to, dying before they reached adulthood.⁶³ The magnitude of disease and land loss was not wholly realised until the early twentieth century, when a range of Māori-led initiatives were instigated.⁶⁴

Maui Pomare, another member of the Young Māori Party, returned from his medical training in the United States in 1901 and was appointed the first Māori Health Officer. In his role he argued the importance of education of Māori girls as well as the hygiene of the home. Like the Anglican Revd. Frederick Bennett who argued in 1901,

⁶⁰ Paterson, “Reweti Kohere”, 35.

⁶¹ Hill, *A State*, 46.

⁶² Ian Pool, *Te Iwi Maori* (Auckland: Auckland University Press, 1991), 61.

⁶³ Brookes, *A History*, 138.

⁶⁴ Raeburn Lange, *May the People Live: A History of Maori Health Development 1900:1920* (Auckland: Auckland University Press, 1999), 50.

‘if the race is to be regenerated it must be done through the instrumentality of our Maori women’, Pomare supported education in domesticity.⁶⁵ In 1902 he developed ‘Maori Model Village[s]’ for young Māori ‘lads’ and women who had passed through native schools, and in some instances native high school. The village was to be built on land at Pamoana near the Whanganui River, if a land grant could be secured.⁶⁶ Pomare and those of his generation, also sought to undertake reform through education and welfare. Two boarding schools were established in Napier, Hukarere (Anglican) and St Joseph’s (Catholic), with three more being established: Queen Victoria, Auckland in 1903, Turakina (Presbyterian) in 1905, and Te Wai Pounamu (Anglican) near Christchurch in 1909. The first to approve of these female boarding schools was Ngata who believed marriages between Te Aute boys and Hukarere Girls would do nothing but good. The women would complement their husband’s public reforms and health agendas and help increase the Māori population.⁶⁷

Practical domestic skills were taught in boarding schools, including health, first aid and home nursing. Training girls in boarding schools to become qualified nurses was another branch that worked towards improving Māori health. Pomare declared in 1908 that these nurses were to ‘go forth to care for the sick, to lecture, and to uplift humanity’.⁶⁸ These skills were taught in the hope that they could ‘train girls of the Maori race in all domestic duties so as to fit them to’. Educational training in health and domesticity represented an excellent method for increasing the Māori population.

Ngata, who won the Eastern Māori seat in 1905, brought the reforming zeal of the Young Māori Party into parliament. He played an important role in the

⁶⁵ *New Zealand Herald*, 5 June 1901.

⁶⁶ *Press*, 1 July 1908.

⁶⁷ Lange, *May The*, 115.

⁶⁸ Dow, *Maori Health*, 130.

formulation of the Native Land Act 1909, which consolidated the previous laws into one comprehensive act. In total 69 statutes or part statutes were brought together, and one of the party's main objectives was to impede Crown purchasing of undivided shares under freehold Māori land.⁶⁹ The 1909 Act also allowed the renewal of private purchasing, reversing the reimposition of Crown pre-emption under the Native Land Act 1894.

In August 1909, when a draft Native Land Bill was being prepared, Apirana Ngata questioned the Chief Judge of the Native Land Court about the procedure for successions and their proposals for amendments to the existing law. Chief Judge Jones had prepared a paper in 1907 on the issue and the paper began with a statement regarding succession:

There is no ancient Maori custom of succession. The child, upon birth or attaining manhood or womanhood, became as a matter of course entitled to a share of the tribal lands. And upon death such share reverted to the tribe. Such limited custom of succession as existed was confined to personal estate such as greenstone, heirlooms or to the right to occupy small pieces of land as cultivations. The present Native custom of succession has grown up in the court where it has developed gradually and where it is probably still being modified.⁷⁰

This precedent evolved from the Te Tihi Case discussed in Chapter Three, in which widows could inherit under Māori custom:

A wife or husband has no right of succession, except where deceased has been put into the title by the tribe as such husband or wife, when, if there be no

⁶⁹ Boast, *Maori Land Law*, 88.

⁷⁰ Tom Bennion and Judi Boyd, *Succession to Maori Land, 1900-52*, Waitangi Tribunal: Rangahaua Whanui Series (Wellington: Tribunal, 1997), 17.

children or near kin objecting, the wife or husband may be appointed successor.⁷¹

If a spouse had died, the Native Land Court had the ability to allow the wife an interest if it was required for her ongoing support. Bennion and Boyd state the reason why the court developed in this way was that:

It was a Maori custom to keep the tribes or hapu together, so that where a woman marries into a strange tribe, her children would lose their right to their mother's land, except such as returned to their mothers hapu. Similarly, if a man left his hapu and lived upon his wife's land, his children or descendants would have no right to the lands of his hapu unless they returned to live upon them.⁷²

It was Chief Judge Jones' intention that the existing system be shaped towards the English descent laws where possible.

On the issue of Māori marriages Jones believed they were still a 'ticklish' issue. There was a suggestion that English law should be applied and the longstanding recognition of customary Māori marriages brought to an end. Jones commented:

No doubt from the moral point of view it is highly desirable to bring about a reform, and if it would not be looked upon as offering a premium to immorality, the case might be met by a provision in the native land acts, that all undisputed or proved children of deceased natives shall for the purpose of succession be treated a legitimate and that the same interpretation should apply to 'children' in a Maori will unless the contrary intention can be inferred.⁷³

⁷¹ Richard Boast, "The Omaha Affair, The Law of Succession and the Native Land Court", *Victoria University of Wellington Law Review*, 46 (2015): 847.

⁷² Bennion and Boyd, *Succession*, 17.

⁷³ Bennion and Boyd, *Succession*, 17.

Yet the 1909 Act did not take Māori succession to land in any significant new directions. It simply stated that, on intestacy, succession to Native freehold land was to be determined ‘in accordance with Native custom’. It continued the Native Land Court custom in relation to spouses, providing that the spouse of a deceased was not to take any interest, except that the land court might give a widow a life interest.

Section 140 outlined this requirement, stating:

On the death intestate of any Native the wife or husband of the deceased shall not be entitled, as such, to any share of interest in any real or personal estate of which the deceased so died intestate, and that estate shall be distributable in the same manner as if the said wife or husband had died before the death of the deceased; but it shall be lawful for the Native Land Court, if it thinks fit, on an application made by or on behalf of the widow of the deceased, at any time within two years after the death of the deceased, at any time within two years after the death of the deceased, and on proof that she has not sufficient land or other property for her maintenance, to make either or both of the following provisions:-

- a) To appoint to the widow an estate for life in the whole or such part of the real estate of the deceased as in the opinion of the Court is required for her maintenance:
- b) To appoint to the widow an absolute interest in the whole or such part of the personal estate of the deceased as in the opinion of the Court is required for her maintenance.⁷⁴

Section 201 ‘Marriages of Natives’ stated:

⁷⁴ Native Land Act 1909.

Every marriage between a Native and a European shall be celebrated in the same manner, and its validity shall be determined by the same law, as if each of the parties was a European; and all the provisions of the Marriage Act, 1908, shall apply accordingly.

191. Every marriage between two natives may, at the option of the parties, be celebrated either-

- a) In the same manner as if each of the parties was a European; or
- b) In the presence of an officiating Minister under the Marriage Act, 1908, but without complying with the other requirements of that Act.⁷⁵

One of the priorities of this overhaul in legislation was a conscious effort to align Māori marriage practices with European models. Stating that all Māori marriages will not be considered ‘valid’ unless performed in the presence of an officiating Minister reflects this. While the Native Land Act 1909 did not change the conceptual structure of Māori land law, it was a vital step towards uniting Māori and Pākehā under a single marriage law.

Conclusion

In the late nineteenth century and early twentieth centuries both Māori and Pākehā women participated in political activism. New Zealand was the first country in the world where women gained the right to vote in September 1893. While Māori women partook in this campaign for electoral reform, at the core of Māori women’s concerns was the issue of land. This chapter has largely assessed these concerns through Meri’s speech to Kotahitanga, but also Te Hui Wahine during one of the Paremata sessions. The outcome from Te Hui Wahine at the end of the nineteenth century was for Māori

⁷⁵ Native Land Act 1909.

women to deliberately boycott The Native Land Court, and adopt other measures that would better serve Māori women's interests. Believing men had not represented their best interests in Parliament, Māori women sought the right to vote in the Paremata Māori, where they hoped they could advocate for reform from the perspective of mana wahine. They succeeded in this, by winning the right to vote in the Kotahitanga parliament in 1897.

Equally important after the vote, new initiatives in health and education were proposed that had Māori women at their centre. At the forefront of these proposed changes were Māori male leaders who had received a European education entrenched in Christian doctrines, and who sought to reform and remake aspects of Māori society that they saw as contributing to poor Māori health and sanitation. Eradicating 'immoral' practices and encouraging Western models of domestic life and housing were a part of their platform for change. Māori women's roles in reform involved a Western education in domesticity, and taking up Western models of marriage: this required vast change to practices and worldview. By 1909, under the Native Land Act, marriages between Māori were to be undertaken in accordance with the Marriage Act 1908, rearranging the significance and importance of customary Māori marriage. Scholars have considered the 1909 Act as a 'turning point' for land administration, but native land legislation in fact governed many aspects of Māori society, with consequences for land tenure as well as the ability of Māori to maintain customary marriage practices.



Figure 4.1 Meri Te Mangakahia, C.1890. Ref, C5101, Auckland War Memorial Museum.



Figure 4.2 The opening of Paremata Maori in Greytown, 1897. Richard Seddon is pictured to the left of the picture wearing a top hat. Ref, PAColl-1892-77, Alexander Turnbull Library.



Figure 4.3 Top left is James Carroll (Ngāti Kahungunu), Apirana Ngata (Ngāti Porou), Maui Pomare is bottom right (Ngāti Mutunga, Ngāti Toa) and bottom left is Te Rangi Hiroa (Ngāti Mutunga), also known as Peter Buck. Ref, ½-050150-F (top left), 00094-D-F (top right), 0094-e-F (bottom Left), 1/1-014583-G (bottom right), Alexander Turnbull Library.

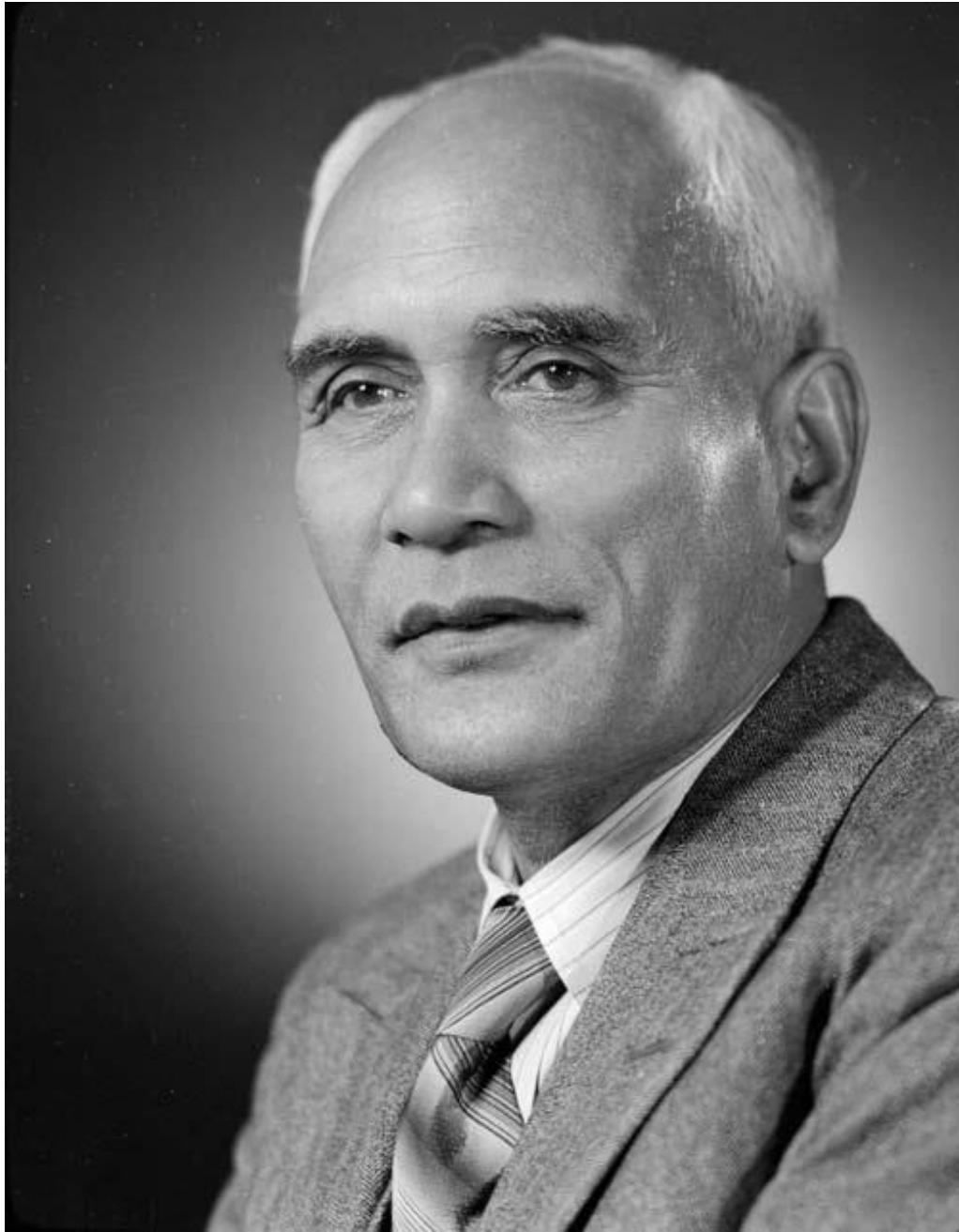


Figure 4.4 Reweti Kohere, a less well-known member of the Te Aute College Student Association. Ref, ¼-019918-F, Alexander Turnbull Library.



Figure 4.5 Te Haumihiata Te Atua and Wi Te Tau's wedding in 1909. European elements of marriage attire are noticeable with the wearing of white, hats and suits. Ref, 98-110/2.R6BS5, Wairarapa Archive.

Conclusion: The Evolution of Customary Marriage and the Native Land Court

The bride's family triumphantly offered congratulatory speeches declaring 'Welcome to the feast! Let us this day be reunited; let the diverging lines of our ancestry come together again in this couple. I rejoice, and am glad on account of the marriage of these our children, for they are brother and sister'.¹ In focusing on native land legislation and the Native Land Court, this thesis has looked beyond current understandings of customary marriage practices to consider how marriages like Hohepine Te Pone and Taniora Tanerau have evolved over time, but also the role the Native Land Court and the law played in promoting change. While families still played a pivotal role in organising customary marriage in the 1870s, the ways in which marriage was celebrated and respected was consistently changing.

At the beginning of this thesis I proposed that the Native Land Court provided a nexus for new understandings of the ways customary Māori marriage practices endured and altered, under the introduction of this new institute in the period 1865 to 1909. The thesis has utilised ethnographic material, biographies, *Napier Minute Book*, colonial newspapers, and statutes to recreate customary marriage practices within the Native Land Court framework. These sources also allowed me to capture changes to customary marriage and land tenure throughout the period under examination, particularly in relation to legislative reforms, which intensified as the nineteenth century progressed. As Paul Tapsell suggests, land sat at the heart of organising marital unions, for land was not just an economic entity for Māori but also tied to lineage and mana: 'ancestors are used as reference points, as their names are written

¹ *Waka Maori*, 7 March 1876.

on the landscape maintained by whakapapa and by kinship networks'.² Since the Native Land Court managed land and customary marriage it provides the perfect site to analyse how customary marriage practices evolved in colonial New Zealand. Indeed, that native land legislation also covered marriage reflecting the incredibly important relationship between land and marriage within Māori society, but also the state's recognition of this interconnection.

This study explored the various ways native land laws and the Land Court initially respected customary marriage, but at other times denied its validity in favour of a European jurisdiction. There is evidence indicating that the Native Land Court united Māori communities and their commitment to kinship structures, respected Māori women's rights to manage land, and recognised the crucial role of whakapapa in all land proceedings. Yet, at times there is evidence that the court divided Māori communities and whānau, and undermined Māori women's access to land, hiding behind a thin veil of on-going land legislative reforms.

One of my goals was to trace Māori women's experiences in the Native Land Court. This was partly in response to legal historian Richard Boast's suggestion that further research on Māori women in the Native Land Court was needed, but more importantly it was because understanding of Māori women's lives in the nineteenth century is not a major focus of historical scholarship. This thesis has responded to Boast's invitation for researchers to look more closely at Māori women's engagement with the Native Land Court, but challenges his claim that court proceedings primarily only involved Māori men. This study has addressed aspects of gender relations by centering Māori women's experiences in colonial New Zealand. As the thesis shows,

² Paul Tapsell, "The Flight of Pareraututu: An Investigation of Taonga from a Tribal perspective", *The Journal of Polynesian Society* 6, no 4 (1997): 327.

there is a vast body of information in the *Native Land Court Minute Books* about Māori women spanning hundreds of court cases from 1865 onwards. Māori women were far from ‘absent’ in Native Land Court proceedings. Some played direct roles in the court as defendants, witnesses, plaintiffs or defendants, and even if many women did not go before the court, nonetheless their lives were strongly affected by what went on in land court hearings. The sheer abundance of archival material created by the Native Land Court title investigation, succession and partition cases warrants further investigation from the perspective of Māori women’s lived experiences. Such a vantage point might produce new histories and perspectives of land and the law, and of the Native Land Court itself.

A major finding of this thesis is that customary marriage practices are not just strongly related to kinship and whakapapa, but *is* kinship and whakapapa. In the first chapter, Māori concepts of whakapapa and kinship were placed within a wider cultural, social, political and economic context in order to illuminate customary marriage concepts and practices, prior to European arrival. It was crucial to provide this context as it showed the centrality of whakapapa to all aspects of Māori society, and from there the ways marriage was viewed and valued in Māori society could be further elaborated. In splitting the first chapter into manageable sections this thesis was able to move between the varying attitudes and perspectives of early missionaries to New Zealand, prior to the introduction of the Native Land Court, not only to understand how they viewed Māori customs associated with marriage as ‘savage’, but also to consider the emphasis missionaries placed on converting Māori to Christianity, and the on-going effects it continued to have on Māori society throughout the nineteenth and early twentieth century. The last section of Chapter One introduced another key concern of the thesis: the legal structures in place prior to the

establishment of the Native Land Court in 1865, and how two forms of law co-existed after the signing of the Treaty of Waitangi, a system referred to as ‘legal pluralism’.

In Chapter Two this thesis investigated the ways in which the Native Land Court initially respected custom and Māori women’s freedoms and access to land up until 1873. This investigation identified women’s involvement with the court, but it also examined women’s ability to adapt to European legal concepts. For instance, Arihi Te Nahu submitted a petition to the government over the introduction of the Native Marriages Validation Bill because it would affect her property rights within marriage. This demonstrated not only the level of interest in customary marriage in nineteenth century New Zealand, but also Māori women’s capacity to use political strategies to defend their land interests and rights.

A key finding of Chapter Two was that despite Māori society being termed ‘savage’ by European outsiders, they in fact had a sophisticated set of tribal structures and forms of governance, including the way Māori women used, owned and managed their land upon marriage to her husband. Whilst Pākehā women faced an automatic transfer of property to her husband upon marriage, Māori women did not. Aware of this difference Pākehā women argued for greater economic freedoms within marriage based on the example of Māori society. Eventually, the Married Womens Property Act in 1884 was passed into law. In this case, colonial law makers drew upon customary Māori practices in the late nineteenth century in an effort to deal with Pākehā women’s inequality, yet as Chapter Two demonstrated, at times Māori women’s economic rights were not always protected under native land legislation or within the Native Land Court. These policies included having a husband present when a lease was signed and having to have wills made in the company of the husband. Husbands started to play a more dominant role in the way Māori women organised

and managed their land affairs due to on-going land reforms. Whereas European husbands continued to manage all wife's property and possession at the time of marriage as they were considered 'one' entity upon marriage dissolving Pākehā women's legal hood.

In the following chapters I continued to reinforce the importance of whakapapa and kinship structures to heighten understandings of customary marriage. This was more clearly identified in Chapter Three when prominent Māori women appeared before the court to register their land interests, demonstrating the way the courts continued to fracture and in some cases break kinship structures through succession and probate court rulings. Whereas whakapapa continued to play a pivotal role in support of land cases to establish claimants' relationship to the land, as it also placed stress upon kin networks. A clear example of fractured relations due to court proceedings was highlighted in the infamous Omaha Case involving Airini Donnelly and Wiremu Broughton and again in the Haurangi Will Case. In using case studies from court cases in Chapter Three, this research illustrated the broader effects the Native Land Court had on women and customary marriage practices. At the Native Land Court's inception, it had to make reference to custom in its decisions, but customary practices were not well understood, so precedents were set on a case-by-case basis.

In Chapter Four, this thesis compared the economic and political status of Māori and Pākehā women in the 1890s, finding that both women continued to operate in separate spheres, and very rarely came into contact unless their activities directly impinged on one another. For an example, Pākehā women embraced the Women's Christian Temperance Union and encouraged Māori women to become members because both were faced with effects of the 'demon drink' on their families. Most

importantly, alcohol was linked with land loss for Māori as some prominent chiefs were selling communal land to settle debts at taverns and grocery shops that accelerated land loss and displaced many Māori communities.

When looking at Māori women's history it is essential to consider a variety of source materials, one of the most important being the *Native Land Court Minute Books*. In bringing Māori women to the forefront in Native Land Court research I have been able to identify how the court dealt with customary marriage practices, but there is much more research that needs to be done before historians can fully comprehend the impact of native land legislation and the Native Land Court on Māori marriage. Future investigations might consider investigating the legal eradication of Māori forms of marriage in the 1950s. For instance, in 1951 the Māori Purposes Act was passed stipulating in section 8 that 'marriages in which a party is a Maori be subject to general law', meaning that future customary marriages no longer had any legal status.³ Any couple who chose to continue to marry under customary law were also ineligible to receive state welfare assistance, such as the family allowance. Future research on Māori women and marriage reform might ask whether the 1909 Native Land Act provided an important legislative foundation that enabled the 1951 reform to take place. While the 1909 Native Land Act considered customary marriage sufficient for the succession processes related to Māori land, it also required Māori couples increasingly conform to the marriage law.

The influence of assimilation policies on the fate of customary marriage throughout the nineteenth and early twentieth century opens up significant questions. In doing further research, could a relationship between the Native Land Court and the Māori Purposes Act 1951 be identified? What further impact did nineteenth century

³ Maori Purposes Act 1951.

land legislation continue to have on Māori after the 1950s? These are important questions, particularly as the idea of legal pluralism dissolved by the early twentieth century, and assimilation to European notions of ‘model citizens’ became the norm. Despite its exploratory nature, this study offers some insight into the way Māori managed their land, but more specifically how European law and jurisdiction constrained Māori women’s rights. A further study looking at the period 1909 to 1951 would certainly be beneficial for Māori women’s scholarship, but also illuminate the extent to which customary marriage remained significant during this period.

Overall, the results of this research indicate that the main drivers of change concerning Māori marriage lay in assimilation policies which worked slowly but steadily over the course of the nineteenth century to minimise Māori women’s rights to land. An overarching goal of successive colonial governments was to unite Māori and Pākehā under a shared common marriage law, which required that Māori give up their ‘savage’ customary practices. Most importantly, however, is that these assimilation policies were slow and Māori women were resilient. They underwent progressive sustained change to their world-view and to their understandings of how unions had to adapt to colonial law. As reforms were implemented, Māori women’s strategies develop, which even extended to participating in a European model of parliament. This demonstrates the sophistication of tikanga and its ability to change, mould and reinvent aspects of tradition to reflect the surrounding environment.

The evolution of customary marriage has at times paused, progressed, and regressed under the Native Land Court – an institution designed to manage land and marriage. In analysing customary marriage in relation to the court, this research has shown ultimately how assimilation policies deeply affected whakapapa and kinship structures.

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