

Colonization and the Destruction of Gender Balance in Aotearoa

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The Indigenous peoples of Aotearoa/New Zealand have taken on the generic label "Maori" since colonization. The word simply means "normal" and became a way of distinguishing ourselves from the strangers (Pakeha) among us. Colonization has impacted detrimentally on all Maori; but it is apparent that colonization has impacted differently on Maori women and Maori men.

This article focuses specifically on how colonization has threatened to destroy the gender balance that was once an integral part of Maori law. It considers the status of Maori women according to Maori law, finding that there was no gender hierarchy and that women performed a range of roles that were considered to be highly significant. It then traces the impact of the introduction of Pakeha law into Aotearoa/New Zealand, with a particular focus on adoption laws as an illustration of the process. It finds that Maori law has been severely distorted by the influence of Pakeha law and that the consequences of that distortion have been particularly devastating for Maori women. It concludes with the view that Maori need to discard the patriarchal notions underpinning Pakeha law and reassert the philosophical basis of Maori law, thereby ensuring a return to the principle of balance that was so much a part of Maori existence prior to colonization.

La colonisation et la destruction de l'équilibre des sexes en Aotearoa

Les populations autochtones d'Aotearoa/Nouvelle-Zélande ont pris l'étiquette générique "Maori" depuis la colonisation. Le mot veut simplement dire "normal" et est devenu une façon par laquelle elles se distinguaient des étrangers (Pakeha) parmi elles. La colonisation a eu des répercussions nuisibles sur tous les Maori; mais il est évident que les répercussions de cette colonisation sont différentes pour les femmes que pour les hommes.

Cet article apporte une attention particulière à la façon par laquelle la colonisation menaçait de détruire l'équilibre des sexes, ce qui faisait partie intégrale de la loi maori. Le statut des femmes maori d'après la loi maori est considérée, mais on y trouve aucune hiérarchie des sexes car les femmes assuraient une variété de rôles étant considérés comme très importants. Ensuite, on remonte aux origines pour y voir les répercussions de l'introduction de la loi pakeha en Aotearoa/Nouvelle-Zélande, tout en portant une attention particulière aux lois d'adoption comme illustration du processus. Ce qu'on y trouve est que la loi pakeha a gravement déformé la loi maori par son influence et que les conséquences de cette déformation ont été particulièrement dévastatrices pour les femmes maori. En conclusion, il se dégage que les Maori ont besoin de se débarrasser des notions patriarcales soutenant la loi pakeha ainsi que d'affirmer la base philosophique de leur loi. Ainsi, cela assurera le retour au principe d'équilibre faisant partie importante de leur existence avant la colonisation.

Introduction

It is often assumed that, according to tikanga Maori (Maori law), leadership was primarily the domain of men and that men in Maori society exercised power over women. However, evidence abounds which refutes the notion that traditional Maori society attached greater significance to male roles than they did to female roles. This article begins with a discussion of the position of women in Maori society before colonization. It then considers the position of women under English law, and examines the effects that law had on Maori women as a result of colonization.

Maori Law and the Status of Women

The roles of men and women in traditional Maori society can be understood only in the context of the Maori world view, which acknowledged the natural order of the universe, the interrelationship of all living things to one another and to the environment, and the over-arching principle of balance. Both men and women were essential parts in the collective whole, both formed part of the whakapapa (genealogy) that linked Maori people back to the beginning of the world, and women in particular played a key role in linking the past with the present and the future. The very survival of the whole was absolutely dependent upon everyone who made it up, and therefore each and every person within the group had his or her own intrinsic

value. They were all a part of the collective; it was therefore a collective responsibility to see that their respective roles were valued and protected.

Maori cosmogony abounds with stories of powerful women, some of whom have been given a contemporary face through the work of Robyn Kahukiwa and Patricia Grace.¹ The tales of Maui-tikitiki-a-Taranga² are particularly instructive as to the influential roles that women held. Maui acquires fire from his ancestress, Mahuika. It is with the jawbone of his ancestress, Muriranga-whenua, that he fishes up Te Ika a Maui (the North Island) and makes the patu (club) with which to subdue Ra (the sun). And it is to his ancestress, Hine-nui-te-po, that he eventually succumbs when he fails in his quest to attain immortality.

Perhaps the most powerful indication that there was no hierarchy of sexes lies in Maori language, both the personal pronouns (ia) and the possessive personal pronouns (tana/tona) being gender-neutral. The importance of women is also symbolised by language and concepts expressed through proverbs. Rose Pere has written on the association of positive concepts with females, pointing to the description of women as *whare tangata* (the houses of humanity), the use of the word *whenua* to mean both land and afterbirth, and the use of the word *hapu* as meaning both pregnant and large kinship group.³ Pere has pointed out that the common saying, "He wahine, he whenua, e ngaro ai te tangata" which is often interpreted as meaning "by women and land men are lost," also refers to the essential nourishing roles that women and land fulfil, without which humanity would be lost.⁴ It should be remembered too that the earth is Papatuanuku, the ancestress of all Maori, and that land is of paramount significance to Maori socially, culturally, spiritually, politically and economically. Papatuanuku also played a key role in instructing her son, Tanemahuta, where to find the human element and how to make Hine-ahu-one, the first ever human woman, so that humankind could be created.

Pere describes her childhood as being full of very positive female models, and how her elders set the example of men and women respecting and supporting each other, and working alongside one another. She considers her Maori ancestresses, prior to the impact of Christianity, to have been "extremely liberated" in comparison to her English ancestresses. She points out that Maori women were not regarded as chattels or possessions, that they retained their own names upon marriage, that their children were free to identify with the kinship group of either or both parents, that they dressed in similar garments to the men, and that conception was not associated with sin or childbearing with punishment and suffering but that these were uplifting and a normal part of life.⁵

Pere also points out that assault on a woman, be it sexual assault or otherwise, was regarded as extremely serious and could result in death or, almost as bad, in being declared "dead" by the community and ignored from then on.⁶ Instances of abuse against women and children were regarded as *whanau* (extended family)⁷ concerns and action would inevitably be taken against the perpetrator. Stephanie Milroy has noted:

In pre-colonial Maori society a man's house was not his castle. The community intervened to prevent and punish violence against one's partner in a very straightforward way.⁸

Traditionally, therefore, the *whanau* was a woman's primary source of support. Her "marriage" did not entail a transferral of property from her father to her spouse. She remained a part of the *whanau*. Even if she went to live with her husband's *whanau*, she remained a part of her *whanau*, to whom her in-laws were responsible for her well-being. They were to ensure that she was well-treated and to support her. In cases where misconduct was shown, divorce was relatively simple so long as the correct procedures were followed. Divorce carried no stigma, and any issues as to custody and ongoing support of children were sorted out within the *whanau* context.

The absence of distinction between private and public domains in the context of family arrangements protected and affirmed women. Kuni Jenkins describes the interaction of a couple and their children with the rest of the *whanau* in the following terms:

In her cultural role the Maori woman was part of a community. The home unit was part of the whole *kainga* (village). Grandmothers, aunts and other females and male elders were responsible for rearing the children of the *kainga*. The natural parents were not the sole care-givers . . . The routines of the *whanau* were such that couples could not be isolated to lead independent lifestyles. Their communal living required constant contact and interaction with other members of the tribe in a concerted effort to keep the affairs of the group buoyant and operational.⁹

This form of social organization ensured a degree of flexibility for women not possible within the confines of the nuclear family. The presence of so many caregivers, and the expectation that they would assume much of the responsibility of child-rearing, enabled women to perform a wide range of roles, including leadership roles.

Api Mahuika has written specifically on Maori women and leadership.¹⁰ Noting the widely held assumptions that Maori women did not fulfil

leadership roles in traditional society, he goes on to show that, with regard to his own people, such assumptions are inaccurate. His account is instructive, not just for the wealth of examples that he provides, but because of the way he gleans information about the role of women from songs, chants, proverbs, iwi histories and the naming of hapu and iwi.¹¹ It is vital, for reasons that will be discussed later, that our attempts to build a picture of Maori society before the arrival of the first missionaries and settlers are based on Maori sources of information.

Maori culture was an oral culture. Songs, chants and proverbs were therefore the primary means of transmitting knowledge, the vehicles through which ancient concepts and beliefs have been passed down to us today. That women played an important role in the maintenance and transmittal of iwi history and knowledge is clear from the numbers of waiata tawhito (ancient songs and chants) that have been composed by women. *Nga Moteatea*¹² is full of such waiata written by women, some of whom were clearly quite prolific composers. It seems entirely logical that those responsible for the physical survival and continuance of the iwi should also play a significant role in the survival of its history and therefore its identity.

The naming of hapu (kin groups) and whare tupuna (meeting houses)¹³ after women is a clear indication of the significance of those women. There are many such instances across a wide range of iwi.¹⁴ Iwi histories that have been handed down orally from generation to generation present a picture of a society where women and men featured in all aspects of life, and fulfilled all manner of roles. It is clear from such histories that Maori women occupied very important leadership positions in traditional society, positions of military, spiritual, and political significance. Jenkins refers to a number of dominant Maori women whose stories have continued to influence later generations. She includes Wairaka, who is said to have saved the Mataatua canoe from floating out to sea; Hinemoa, who seized the initiative and swam across Lake Rotorua in order to be with her lover, Tutanekai; and the legendary Rongomai-wahine of the Hawkes Bay area.¹⁵ The feats of these women are recorded vividly in oral histories; the fact that waiata¹⁶ continue to be composed about them today is a reflection of their enduring power and influence.

*The People of Many Peaks*¹⁷ gives some examples of women of mana (status) who lived between the years 1769 and 1869. One woman who came to the attention of the earliest settlers as a leader was Hinematiaro of Ngati Porou¹⁸, whose mana was recognised from Poverty Bay to Hicks Bay. Another was Rangi Topeora, of Ngati Raukawa and Ngati Toa descent. She was a signatory to the Treaty of Waitangi,¹⁹ a powerful landowner, and a

prolific composer of waiata. Her mother, Waitohi, was Te Rauparaha's²⁰ sister, a leader in her own right and a known military strategist.²¹ Heni Pore of Te Arawa²² epitomises the adaptability required of Maori leaders during the latter half of the nineteenth century. She fought against the British troops in support of the Maori King Movement²³ during the 1860s; she also fought in the battle of Gate Pa at Tauranga in 1864. Along with her husband, she managed a hotel at Maketu for a time and was later a staunch supporter and member of the Women's Christian Temperance Union, becoming secretary of the Ohinemutu branch in 1896. She was also a licensed interpreter and was very involved in land and other social issues. As more is written about such women, a picture emerges of Maori women from all iwi performing leadership roles of all types, alongside the men.

The Status of Women under English Law

The position of women in English law was derived directly from their status in Roman law:

The term [family] was invented by the Romans to denote a new social organism, whose head ruled over wife and children and a number of slaves, and was invested under Roman paternal power with rights of life and death over them.²⁴

According to the English common law, the head of the family (the husband/father) was in control of the household, and "... women and children were chattels to be used and abused by the paterfamilias as he chose."²⁵ As girls reached adulthood and married, they changed from being the property of their fathers to being the property of their husbands. Any property that a wife brought to a marriage was immediately vested in the husband, and he could do with it whatever he liked.²⁶ She either had no legal personality at all,²⁷ and simply existed to enable the legal person of the household to act effectively in the market,²⁸ or, at best, she was incapacitated, only a partial person.²⁹ Male ownership of the children meant that a mother had no rights whatsoever to her children. And a wife had virtually no legal means of ending the marriage in a way which would enable her to keep the children or to regain any former property or to get any upkeep from her ex-husband for herself or her children, no matter what the reason for the divorce.³⁰

The vestiges of this common law approach have remained apparent in many aspects of New Zealand law. Until comparatively recently, the marriage ceremony concluded with the couple being pronounced "man and wife," he retaining his independent personality, she losing hers and being

declared "in service" to him. The notion of illegitimacy and the law's condemnation of it were also reflective of common law principles, whereby a woman's reproductive powers could only be exercised in legal connection to a man, thereby creating property (children) for him. Until 1985, rape could not be perpetrated in New Zealand law by a husband against his wife.³¹ This stemmed from the notion of the wife being his property. To the present day the frequent inequities in division of matrimonial property,³² as well as the continued trivialization by the law and law enforcement agencies of domestic violence,³³ reflect the extent to which common law attitudes about the role of women continue to pervade the legal system.

The Impact of Introduced Law on Maori Women

When the missionaries and early settlers arrived in Aotearoa/New Zealand, they brought with them their culturally specific understandings of the role and status of women. Jenkins describes the conflict in values and the British reaction as follows:

Western civilisation when it arrived on Aotearoa's shore, did not allow its womenfolk any power at all - they were merely chattels in some cases less worthy than the men's horses. What the colonizer found was a land of noble savages narrating . . . stories of the wonder of women. Their myths and beliefs had to be reshaped and retold. The missionaries were hell-bent (heaven-bent) on destroying their pagan ways. Hence, in the re-telling of our myths, by Maori male informants to Pakeha male writers who lacked the understanding and significance of Maori cultural beliefs, Maori women find their mana wahine destroyed.³⁴

It is posited that this re-telling of Maori cosmogony led to a shift in emphasis, away from the powerful female influence in the stories and towards the male characters. The Maui stories became focused almost solely on the exploits of this male demigod, his ancestresses being made nearly invisible in the process. The account of the creation of the first woman, Hine-ahu-one, metamorphosed into a tale uncannily similar to the biblical myth of Adam creating Eve from his rib; Tanemahuta became the main figure in the story with Papatuanuku's essential role virtually silenced. Smith has referred to the Maori women within these stories having been turned into "distant and passive old crones whose presence in the 'story' was to add interest to an otherwise male adventure."³⁵

The female figures in Maori cosmogony were not the only target for missionary zeal and redefinition at the hands of the settlers. Their paternalism

also coloured their perceptions of the Maori women they found around them. Linda Smith notes:

Maori women were perceived either in family terms as wives and children, or in sexual terms as easy partners. Women who had "chiefly" roles were considered the exception to the rule, not the norm... Maori women were considered attractive in the absence of a pool of white women. Their autonomy was interpreted as immorality and lack of discipline. Christianity reinforced these notions by spelling out rules of decorum and defining spaces (the home) for the carrying out of appropriate female activities.³⁶

Aside from being regarded as the wives and children (the property) of Maori men, or potential bedmates for White men, Maori women were also sometimes regarded by the settlers as potential sources of land and economic security.

The concept of women as leaders and spokespersons for their whanau, hapu and iwi would have been beyond the comprehension of the settlers or the Crown representatives who were sent to negotiate the Treaty of Waitangi. They could only conceive of dealing with men: "Maori men were the ones with whom the colonizers negotiated, traded and treated."³⁷ The fact that the Treaty was signed predominantly by men, sometimes pointed to as a reflection of pre-colonized Maori society's attitudes towards women, is more an indication of the influence of Christianity and the fact that those seeking signatories largely ignored the possibility of women signing. This approach has been recorded as having angered Maori women, thus leading the missionaries to allow some women to sign.³⁸ There were also occasions where Crown representatives refused to give in to pressure for women to be allowed to sign, probably losing potential male signatories as a result.³⁹ Thirteen women have so far been identified as having signed the Treaty⁴⁰ whereas it was once said that only three or four had done so. There may be many more but because Maori names, like the language, are generally gender-neutral it is difficult to tell how many more women were involved. Over time, people have come to assume that they were all men. This is one area which requires a great deal more research.

One of the most damaging effects of colonization for Maori women was the destruction of the whanau. It was clear right from the outset that Maori collectivism was philosophically at odds with the settler ethic of individualism. As Maori had their cultural and economic base wrested from them⁴¹ and as they were ravaged by introduced diseases⁴² their social structures were inevitably undermined. The disruption of Maori social organization was no

mere by-product of colonization, but an integral part of the process. Destroying the principle of collectivism which ran through Maori society was stated to be one of the twin aims of the Native Land Act which had set up the Native Land Court in 1865, the other aim being to access Maori land for settlement.⁴³ Not only was the very concept of individual title to land destructive of collectivism,⁴⁴ but the massive land loss brought about by the workings of the Native Land Court⁴⁵ meant that, as the Maori population stabilised at a low point towards the end of the century and began to grow,⁴⁶ Maori found that they had insufficient land left to support themselves. Whanau were eventually forced to break into nuclear families and move to towns and cities in search of work.⁴⁷

The Native Land Act 1909 declared Maori customary marriages to be valid for some purposes only and required Maori to undergo legal marriage ceremonies. These provisions, coupled with the parliamentary debates of the time,⁴⁸ signalled a renewed determination on the part of the state to both redefine and intrude into the whanau. The remoulding of the whanau into a nuclear family arrangement had been on the missionary agenda since their arrival:

Maori marriage was the despair of the missionaries. They made it a high priority for elimination and they preached hell-fire and brimstone to the sinful pagans who continued to practise it. They refused to accommodate or tolerate Maori marriage as being an alternative to their idea of the nuclear family and its demands on the colonial wife to be subservient, lacking in initiative and obedient to her husband. She 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 civilise her.⁴⁹

The deliberate destruction of whanau and hapu structures and the forcing of Maori women away from their whanau and into the Western model of the nuclear family left them vulnerable in a host of ways. They became dependent on their husbands as breadwinners, while they became increasingly isolated as caregivers at home. Some women were expected to work both outside and in the home, as economic hardship required them to contribute financially while Christian values about what constituted a good wife and mother compelled them to maintain that role as well. Such values also meant that husbands became increasingly the head of the family, wives feeling obliged to remain with them no matter what.

The Church schools trained Maori girls to domesticity, to become good

wives in the context of a nuclear family situation. Hukarere Protestant Girls' School was established in 1875 by the Bishop of Waiapu, William Williams, "with the thought of providing good Christian wives for the boys of Te Aute."⁵⁰ The denominational schools were actively discouraged from becoming too academically orientated, the Director of Education arguing in 1931 that the aim of Maori education should be to turn out boys to be good farmers and girls to be good farmers' wives.⁵¹ In 1906 the Principal of Hukarere described the daily routine of the girls as covering all aspects of domestic work, including cooking, washing, ironing and mending clothes.⁵² Judith Simon notes:

Maori girls were thus being fitted, not only for manual labour but also to fulfil the subordinate domestic roles deemed, within European culture, as appropriate for females.⁵³

However, attempts to set in place colleges for the specific purpose of giving Maori girls domestic training did not eventuate. The proposed colleges met with widespread Maori opposition on the basis that Maori girls should not be trained as servants.⁵⁴ Nevertheless, autobiographical accounts of Maori women indicate that some of them did take up employment in Pakeha (White) households⁵⁵ while others found that their being Maori disqualified them from being hired.⁵⁶ Sandra Coney notes that Maori women moved into domestic positions in hotels and institutions in large numbers in the period following the war,⁵⁷ this doubtless reflecting the urban migration that was taking place at that time.

Adoption: A Specific Example

The aggressive application of adoption laws to Maori provide an insightful illustration of how the assimilationist policies of the colonizer have affected the heart of Maori society, the whanau, and of the effects on women in particular.

In New Zealand adoption grew out of the desire to encourage couples to care for destitute children by giving them the security of knowing that birth parents could not return to claim their children at a later time.⁵⁸ The process evolved to serve a range of purposes, and was based upon the following underlying common law premises concerning the family and the respective roles of men, women and children. To constitute a real family, a married couple should have children; what is more, a married couple deserved to have children. Children should not be raised outside of a "real family" situation, that is, two parents who were married. A woman's sexual activities should only be exercised with reference to a single man, within the

context of marriage (and therefore owned by him). A woman's reproductive capabilities could only be legitimated if owned by a man in the context of marriage - hence the stigma of illegitimacy, from which the child had to be protected. Children were property, and could be owned by only one set of parents. It was therefore possible to substitute one set of owners (adoptive parents) for another set of owners (birth parents); so long as the issues of ownership were resolved finally, no other issues arose.⁵⁹

Maori had no institution which paralleled adoption.⁶⁰ While it was relatively common for children to be given to someone other than their birth parents to be raised, there was no substitution of parents, no sense in which a mythical nuclear family had to be recreated. The child was born and remained a child of the whanau. The child had an absolute right to know his or her whakapapa (genealogy). Reasons for giving a child to someone other than birth parents to raise included the strengthening of whanau structures through the securing of enduring bonds, benefitting couples without children, and providing relief for those under stress.⁶¹ Most importantly, there was no expectation that such arrangements had to be permanent: "There is no property in children. Maori children know many homes, but still, one whanau."⁶² And there was absolutely no stigma attached. If anything, these whangai children were often considered especially fortunate. Pere, who was raised until the age of seven by her grandparents refers to herself as "a grandchild who was truly blessed and loved."⁶³ Whangai children were generally regarded as special, often having been chosen by elders on the basis of their talents and their potential.⁶⁴

Initially, Maori whangai arrangements had been recognised as valid adoptions by the law, although, from 1901, it became necessary to confirm such arrangements by order of the Native Land Court so as to enable such matters as succession to land to be recognised.⁶⁵ Confirmation of the existence of such a relationship did not create the relationship, but merely acknowledged it. This changed, however, with the enactment of the Native Land Act 1909, which provided that, in order to create the legal relationship between adoptive parents and children, an order of the Native Land Court had to be granted.⁶⁶

The Attorney-General of the time addressed the Legislative Council at length on the 1909 Bill. He considered that, while adoption had been an important feature with Maori, it was "growing less with the advance of the race." The Act was to prevent the adoption by Maori of Pakeha (White) children, a prohibition which remained in force until 1955.⁶⁷ This, according to the Attorney-General, was necessary in view of the numbers of "indifferent European parents" and "heartless European mothers" who were abandoning

their children or imposing upon the "generosity and goodness" of "good-hearted" Maori women who possessed a great deal of "human tenderness." The prohibition was considered necessary due to the fact that "owing to the condition some of the Maori people live in" the children were not "living in a way we should consider proper for European children." So strongly did Parliament feel about the undesirability of Maori raising European children that further legislation was passed to enable such children to be forcibly removed and placed in "industrial schools."⁶⁸

What led such children to be given to Maori families is not clear, although it is known that some settler families gave children to cement ties with their neighbours.⁶⁹ It is also easy to imagine how difficult it might have been for any single Pakeha mother to keep and raise any children she had - and how Maori may well have been only too happy to take such a child in. The characterization of Maori women as "earth mother" types who longed to do nothing else but care for other people's children, even if the standard of care was considered to be inferior, says much for the prevalent view of Maori women. The utter condemnation of the Pakeha who were giving their children to Maori women is also interesting. Clearly the notion of simply substituting one set of parents for another did not apply to Pakeha children when the adoptive parents were Maori! There may also have been the fear that Maori had not yet fully reconciled themselves to the nuclear family model, which was considered to be the only civilised family arrangement possible. Or perhaps it was felt that single Pakeha mothers were being allowed to get off too lightly by simply giving their children to Maori, who judged neither them nor their babies as "illegitimate."

From 1915 the law began moving towards closed adoption, restricting access to adoption records and information, but Maori were exempted from these requirements. Maori Land Court hearings remained open and details of Maori adoptions were published in both the Maori Gazette and the New Zealand Gazette. There was a clear understanding on the part of the judges that openness was a vital part of the Maori concept of adoption.⁷⁰

However, the 1955 Adoption Act brought virtually all adoptions under a uniform scheme of closed adoption, to be administered by the Magistrates Courts. The only exception was where the child and at least one applicant were Maori (which at that time included only those who were "half-caste" or more):⁷¹ such adoption could still go through the Maori Land Court process. Many Maori simply refused to participate and continued with informal arrangements but, in doing so, risked having their children removed by the Child Welfare Officers.⁷²

The 1962 Adoption Amendment Act required *all* adoptions to go

through the Magistrates Courts process. Strong sentiments of "one law for all" were expressed by the proponents of the amendment,⁷³ as opposed to arguments that equality was not the same thing as uniformity.⁷⁴ The Maori MPs objected strongly to the mainstreaming of adoptions, and were particularly critical of the Magistrates Courts for their refusal to grant adoption applications to aunts, uncles, or grandparents on the basis that the child was closely related to the adopters.⁷⁵ The Attorney-General made a point of rejecting the notion that older relatives should adopt children, instead praising young Pakeha couples who were prepared to adopt Maori babies.⁷⁶

From 1962, therefore, there were three ways in which Maori children could be adopted. First, there was adoption through informal means, without the involvement of the courts or legal recognition. This continued to constitute the vast bulk of cases. Secondly, there was legal adoption, assisted by Maori welfare officers, who would generally try to ensure openness and to keep children within their kin group. A Maori welfare officer would typically become involved where the birth and adoptive parents either knew or were related to one another and sought their assistance in order to legalise a pre-agreed arrangement.

Problems arose through the third of these means, legal adoption facilitated by child welfare officers. These welfare officers were contacted by homes and hospitals when children became available for adoption. A common situation was where a single (and usually young) woman who was living in an urban environment, cut off from whanau and too ashamed to contact them, had become pregnant. The birth mother was generally "worked on"⁷⁷ by the officers who argued that her child would be better off with a stable couple who could offer financial security. The shame associated with illegitimacy was emphasised to convince the woman that her whanau should not be informed and that she would be selfish to keep her child. She should look to marrying in the future, within which context further children would be acceptable. Children, like parents, could be replaced. There were also cases where the father of a child was Maori and the child was given up for closed adoption, either without the father's whanau ever knowing about it or even against the whanau's requests to be allowed to adopt the child.⁷⁸

The matching up of Maori babies to adoptive parents was also of extreme concern. Baby girls who did not "look Maori" were relatively easy to place, but boys were more difficult and dark babies especially so. The authorities had a system of "matching for marginality" so that Maori babies would often end up with adoptive parents who were considered marginal in some way. Alternatively, such babies could end up in a series of foster

homes or be institutionalised. All of this was considered preferable to living with the stigma of illegitimacy or the less civilised option of remaining within the whanau.⁷⁹

Closed stranger adoption has been subjected to major criticism as its long-term effects, particularly on birth mothers and their children, have been made apparent. Else has referred to it as "a social experiment with unknown and uninvestigated outcomes, conducted on a massive scale."⁸⁰ In that closed stranger adoption is based upon common law principles which relegate women and children to the status of men's property, it is hardly surprising that its consequences have been particularly devastating for women who have exercised their sexuality outside of marriage and for the products of such behaviour, their children.

But for Maori women and children, the ill-effects of closed stranger adoption are merely part of the complex web of oppression resulting from the aggressive assimilationism of the colonizer. The consequence of assimilationist policies (of which the imposition of closed stranger adoption was but one) has not simply been the perpetuation of the subordinate position of women and children, for such subordination was never a part of Maori law. It has been the near-destruction of the Maori social fabric, and its replacement with a set of values and philosophies founded on White male supremacy.

For Maori, the expunging of lineage and irrevocable trading in parental rights⁸¹ has meant even more than a lifetime of loss and grief for both birth mother and child; it has resulted in the loss of generations of irreplaceable taonga (treasured items)⁸² to the iwi concerned, and the stripping of cultural identity for the children involved and all their descendants. While the Adult Adoption Information Act 1985 enables contact to be made between birth mothers and their children under limited circumstances, there are nevertheless numerous Maori who will be unable to re-establish the connections under the legislation. They will remain lost to their iwi forever. And while there is now a greater degree of acceptance of openness in adoption practices, the law itself remains essentially unchanged.

Issues of openness aside, stranger adoption flouts Maori law insofar as it entails a refusal to acknowledge the responsibilities and rights of whanau, hapu and iwi with respect to their children. Yet Else makes the chilling observation that stranger adoption is "back on the political agenda."⁸³ The law's denial of the Maori person's inextricable connections with his or her whanau, hapu and iwi has long been a matter of concern for Maori:

The prevalence of Western opinion in influential areas of law... affirms the view that the Maori is to be treated as an individual and

that the communal orientation of Maoridom is without value or relevance.⁸⁴

The law continues to allow only the birth parents to have input into any adoption decision, unless they are unmarried, in which case the father's consent is required only if he is a guardian or if the court deems it expedient to seek it.⁸⁵ Durie-Hall and Metge point out that no other relative has a recognised right to be consulted or to make a counter claim.⁸⁶ As recently as 1989 the Family Court denied a paternal grandmother standing to apply for the revocation of an interim adoption order in respect of her grandchild, Inglis DCJ finding that she did not fairly come within the category of "any person" in section 12 of the Act. She was therefore denied even the opportunity of making the argument that her mokopuna (grandchild) should be raised within the whanau.⁸⁷ The following statement, made in 1986 by the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, encapsulates Maori dissatisfaction with the way in which adoption orders are made:

We do not think cases involving Maori children ought to be determined solely in accordance with Western priorities, or that those who do not have a Maori experience or training, are adequate arbiters or advocates of the best interests of the Maori child. We do not think the law should be weighted to denying the facility of Maori communities to care for their own in the way they best know how.⁸⁸

This observation applies beyond the issue of adoption, throwing down the challenge to the assimilationist policies of the past and present. Before Maori women and children can be restored to their rightful place within whanau, hapu and iwi, an essential first step is the restoration of Maori philosophies, Maori law. Control from those located outside the culture, well-intentioned or otherwise, is what has brought about the demise of the whanau and the consequent destruction of mana wahine, the status of women. It is only through a transferral of power back to Maori that the difficult task of formulating strategies to deal with the destruction wrought by colonization can begin. A vital part of that process will be the restoration of a belief system that recognises the intrinsic value of both men and women, encompassed within the framework of whanaungatanga.⁸⁹

The Position of Maori Women Today

Colonization is not a finite process; for Maori, there has been no end to it. It is not simply part of our recent past, nor does it merely inform our present. Colonization *is* our present. This final section seeks to explore what

it means to be a Maori woman in Aotearoa today. What is our colonized reality?

The last two decades have seen increased statutory mention of Treaty principles and Maori perspectives.⁹⁰ It might be argued therefore that, while the law has been both destructive and neglectful of Maori in the past, Maori perspectives are now being incorporated into the law and that this should surely lead to improvement. Such a view is simplistic, however, and ignores the context within which such measures were made and are implemented.

Throughout the 1970s Maori protest over Treaty grievances had been gathering momentum, as Jane Kelsey describes:

Maori grievances over the theft of land, suppression of culture, dishonouring of the Treaty of Waitangi, and denial of economic and political self-determination had become the focus of high-profile protests, frequently led by powerful and articulate Maori women.⁹¹

These protests⁹² forced Maori grievances into the public consciousness and into the arena of national politics. In both 1972 and 1984, the Labour Party's election platform included a promise to deal with Treaty grievances. Such undertakings led to the establishment of the Waitangi Tribunal in 1975⁹³ and, during the years 1984-1987, to "the heyday of Treaty revival."⁹⁴ Kelsey notes how these years saw references to the Treaty become "commonplace in political, academic, legal, bureaucratic and, to some extent, public discourse."⁹⁵ Yet despite the proliferation of Treaty rhetoric, the legislative provisions incorporating Treaty principles were weakly drafted, and usually subject to interpretation by non-Maori decision-makers. And as the Treaty became increasingly unpopular with the electorate, it was gradually sidelined, both in legislation and in the courts.⁹⁶ Kelsey describes the dilemma of government (both Labour and, after 1990, National) as:

how to convince sufficient Maori of their goodwill to relieve the pressure from the state while reassuring an increasingly insecure Pakeha population and economic interests that their economic and political power was secure.⁹⁷

However, just as significant as the debate on the effectiveness or otherwise of the legislative provisions incorporating the Treaty, is the fact that Maori women as an identifiable group with particularly pressing needs have remained virtually invisible to the law. One example is the Health and Disability Services Act 1993, which implements the recent health reforms. Section 8 lists as one of the Crown's objectives in the delivery of health care

“[t]he special needs of Maori and other particular communities of people for those services.” In 1994 there was one Maori director on each of the fifteen Crown Health Enterprises; two of them are women. The health status of Maori women is acknowledged as being particularly poor,⁹⁸ and yet our needs remain legislatively invisible and *we* remain largely invisible in the significant bodies operating within the new structure.

Maori women remain largely absent from consultative and advisory bodies set up by the Crown to provide Maori input into decision-making processes. The continued determination to negotiate with Maori men while ignoring Maori women, 154 years after the signing of the Treaty, is the gravamen of a claim lodged in 1994 against the Crown before the Waitangi Tribunal.⁹⁹ According to Denese Henare:

Maori women [have seen] that injustice and said to each other, ‘... There’s something wrong with the way the Crown continues to perpetuate this attitude of no value in Maori women.’¹⁰⁰

Such dismissiveness on the part of the Crown does little to affirm Maori women at a time when the pace of economic change has impacted on Maori with extreme harshness.¹⁰¹ Many Maori women are forced to work both outside and in the home, while others are not so fortunate as to find paid employment at all. Often isolated from the support of whanau, both physically and culturally, Maori women are particularly vulnerable to overwork, ill-health, and domestic violence. And public characterization of these problems is frequently unhelpful, viewed through the simplistic, distorting lens of racism.

An illustration of such distortion is provided by a comparison of the popular perception of two successful films that have come out of the New Zealand film industry in recent years. “The Piano” is the story of a mute Scottish woman with a daughter who is sent by her father to Aotearoa/New Zealand to marry an early settler. Against a backdrop of breath-taking scenery, she is subjected to mental cruelty as well as physical and sexual abuse. Her husband sells her piano, her only means of communication and the one thing aside from her daughter that she cares passionately about, to the neighbour for a piece of land. The neighbour acquires the piano in the knowledge that she wants it back desperately and informs her that she can buy it back from him with sexual favours. When he eventually decides that he can no longer require such terms, he returns the piano without full “payment” (proving that abusers are basically decent men), whereupon she begins to spend time with him of her own accord (proving, apparently, that women really do mean “yes” when they say “no”). Her husband, upon

discovering this liaison, punishes her by cutting off her finger with an axe.

"Once Were Warriors" is a gritty film about an urbanised Maori nuclear family for whom unemployment, alcohol, crime, poverty, domestic violence and tragedy are features of daily life. The husband is a heavy drinker and physically violent, both in and outside the home. The eldest son joins a gang, another is taken into care after getting into trouble with the law. The eldest daughter is raped and commits suicide. There is absolutely nothing of beauty in this film, no pretty scenery, no stunning cinematography. It is harsh and brutal.

It is extraordinary that the two films have been so widely regarded as having nothing in common, other than their phenomenal success. In fact, while very differently packaged, the two films have a great deal in common. Both perpetrate stereotypical views of Maori. "The Piano" portrays Maori men as child-like but strong, useful for carrying the piano over impossible terrain and assisting with fencing, but otherwise to be merely tolerated. "Once were Warriors" also portrays Maori men as child-like, inherently violent and unable to cope with the pressures of urbanization through any means other than their fists. Both films are about very strong women struggling to make their way within the context of the nuclear family and common law expectations about the roles of men and women within it. Both films are harrowing tales of abuse.

However, only one is a tale of hope. The woman in "Once Were Warriors" is able to leave her abuser, reject the nuclear family model and return to the safety of her whanau; the best available option for the woman in "The Piano" is to leave the abuser who physically mutilated her for the one who subjected her to sexual abuse, to move from being the property of one to belonging to the other. Return to Scotland to the father who had clearly married her off as something of a liability is not an option. Even if it were, she would simply revert to being his property, liable at any moment to be traded to yet another man in marriage.

The vast majority of viewers and reviewers seem not to have seen these particular points of similarity and difference between the two films. "The Piano," a film reflecting the colonizer's racism and entrenched tradition of oppression of women, is transformed in the public eye into an erotic love story set in beautiful nineteenth century New Zealand. "Once Were Warriors," a film which reveals the devastating effects of colonization on some Maori, particularly some Maori women, is primarily perceived as reinforcing the stereotypical views about the violence of Maori men.¹⁰² That the Maori woman in "Once Were Warriors" is struggling inside the oppressive family framework that the settler woman had to deal with over a century and a half before in "The Piano" is a powerful indication of the destructive impact that

common law principles of family have always had on Pakeha (White) woman and now, as a result of colonization, on Maori women too.

In view of the fact that women, both Maori and Pakeha, must now deal with the gender inequality perpetuated under Pakeha law, it may be assumed that Maori women's interests would be best served by joining forces with Pakeha feminists. Linda Smith concedes that the feminist struggle is relevant for all women in Aotearoa/New Zealand.¹⁰³ However, she goes on to observe that "[o]ur rage as an oppressed group is directed at dominant white structures which sit over us, and so encompasses white women as much as white men."¹⁰⁴ And Leah Whiu expresses the dilemma of forming an alliance with Pakeha feminists with absolute clarity: "What affinity can we share with white women if they refuse to acknowledge and take responsibility for their colonialism?"¹⁰⁵ She points out to these women:

It seems to me that my struggle necessarily takes account of your struggle. I can't ignore patriarchy in my struggle. Yet you can and do ignore the "colour" of patriarchy, the culture-specificity of patriarchy. And in so doing you ignore me.¹⁰⁶

This is not to suggest that Pakeha feminists have nothing to offer Maori women in our struggle against patriarchy and colonialism. So long as they resist the temptation to define Maori culture and practices in terms of their own culture-specific understandings, and accept their responsibilities as a relatively privileged group (relative to Maori women that is) to promote changes *sought by Maori women*, their insights into the workings of White patriarchy may well be of use to Maori women. This commonality of interest should not, however, disguise the differences in experience. Maori women's interests are, in the end, our own:

Our struggle as Maori women is our own struggle. To lose control of that struggle is to lose control of our lives. We are not in a position therefore to simply endorse or graft on to the projects of white women. We have to develop according to the reality and logic of our lives.¹⁰⁷

Perhaps the most debilitating legacy of colonization for Maori women is the effect it has had on our perceptions of ourselves. Earlier in this paper, examples were given of the sorts of leadership roles that women had performed traditionally. It is clear that female leadership roles did not end with colonization. Maori women were active in Te Kotahitanga and the Women's Christian Temperance Union.¹⁰⁸ And during this century there have been countless Maori women who have come forward to take the lead in difficult times. Henare has pointed out that

... if you look at the work over the last twenty years in terms of the contention for the treaty, language and social issues, Maori women have been at the forefront.¹⁰⁹

And for every woman who has become a national figure, there are countless others who are considered leaders at the iwi or hapu level.¹¹⁰

This raises a vital question: with this wealth of historical evidence showing clearly the leadership roles that Maori women have performed over time, why has it become so common for people to assume that leadership in Maori society is traditionally a male preserve and that female roles are considered to be of less value than male roles? No matter how numerous they have been, how diverse their skills and fields of leadership, and how wide-ranging their iwi affiliations, for some reason the achievements of these women have been marginalised as being "exceptions to the rule," the rule being that only men could be leaders. The facts give the lie to any such rule of male leadership, relegating it to the category of yet another stereotype. As with any stereotype, it is unfounded. And its potential to become a self-perpetuating truth makes it extremely harmful.

It is contended that these changes in perception of the role of women have come about as a direct result of colonization. With the deliberate destruction of traditional Maori philosophies and values and the attempted replacement of them with those of the missionaries and the settlers, Maori have been "caught in the contradictions of a colonised reality."¹¹¹ We are not alone in this. Aroha Mead recently made the following observation:

The sexism which has occurred in Maori society originates more from colonisation than heritage, and it is a problem as common in international indigenous societies as is alienation of lands and resources. Maori leadership has got to work this through and de-programme all that does not rightfully belong within our Iwi histories. Maori women, as we all know, are the backbone of Maori society and that isn't only because of our ability to bear children. It is unfair, soul destroying and a tragic waste of much needed skill, energy and commitment, to continue to deny Maori women their rightful place in Iwi/Maori decision-making.¹¹²

The challenge for Maori, women and men, is to rediscover and reassert Maori law within our own whanau, and to understand that an existence where men have power and authority over women and children is not in accordance with that law. It stems instead from an ancient common law tradition which has been imposed upon us, a tradition with which we have no affinity and which we have every reason to reject.

Glossary of Maori Terms:

<i>haka</i>	chant, the performance of which achieves collective preparedness and unity of purpose
<i>hapu</i>	extended kin group, consisting of many whanau
<i>iwi</i>	people; descent group, consisting of many hapu
<i>kainga</i>	community; village
<i>kuia</i>	elderly female relative; elderly woman; ancestress
<i>mana</i>	prestige; standing
<i>mana wahine</i>	women's status
<i>mokopuna</i>	grandchild; descendant
<i>Pakeha</i>	White New Zealander
<i>patu</i>	hand-to-hand combat weapon
<i>taonga</i>	a highly treasured or precious thing
<i>tikanga Maori</i>	Maori law; Maori custom; Maori philosophies
<i>waiata</i>	song
<i>waiata tawhito</i>	chants recording iwi histories and knowledge
<i>whakama</i>	ashamed
<i>whakapapa</i>	genealogy
<i>whakatauki</i>	proverb
<i>whanau</i>	kin group
<i>whanaungatanga</i>	kinship ties; the interrelationship of all living things through genealogy
<i>whangai</i>	literally "to feed;" used to refer to a child raised by someone other than her or his birth parents
<i>whare tupuna</i>	ancestral house; focal point for hapu meetings and events

Notes

A version of this article (which has been altered only to the extent considered necessary for purposes of a non-New Zealand audience) was published as "Maori Women: Caught in the Contradictions of a Colonised Reality," *Waikato Law Review* 2 (1994), p. 125.

1 Kahukiwa, R & Grace, P *Wahine Toa: Women of Maori Myth* (1984). Important work is also being continued on the female figures in Maori cosmology by Aroha Yates-Smith of Waikato University.

2 Maui Tikitiki-a-Taranga is a very significant character in Maori storytelling. He was born prematurely, his chances of survival uncertain. Yet he grew to be a special person who achieved much for his human descendants. He slowed the path of the sun across the sky so that people would have sufficient daylight for their needs; he fished up Te Ika a Maui, literally the fish of Maui, which is the North Island of Aotearoa/New Zealand; he sought the gift of fire for his descendants; but he failed in his quest to obtain immortality, gaining instead

the gift of homecoming following death, a place where the spirits of those who have passed on are cared for by our ancestress Hine-nui-te-po.

- 3 "To us the dreamers are important" in Cox S (ed) *Public and Private Worlds* (1987) 59.
- 4 *Ako: Concepts and Learning in the Maori Tradition* (1982) 17-18.
- 5 Supra note 3, at 56-57.
- 6 *Ibid*, 57.
- 7 The term whanau describes the smallest unit in Maori social organisation. While commonly translated as equating with the Western concept of ÔfamilyÔ, this is an oversimplification. The whanau commonly consisted of up to three generations of closely-related kin, and typically numbered around thirty people.
- 8 Milroy, S "Domestic Violence: Legal Representation of Maori Women" (unpublished paper, 1994) 12.
- 9 Jenkins, K "Reflections on the status of Maori women" (unpublished paper, 1986) 12.
- 10 "Leadership: Inherited and Achieved" in King, M (ed) *Te Ao Hurihuri* (1975) 86.
- 11 The term iwi is commonly translated as ÔtribeÔ, but it is posited that a better translation is simply ÔpeopleÔ, or ÔnationÔ. The iwi consisted of numbers of hapu, which consisted of a number of whanau (see supra, n 8). The hapu was the most significant social unit on a day-to-day level, with people living in hapu-based communities, or kainga. The iwi was the largest social and political unit. People gathered together for iwi purposes to make particularly important decisions, to go to battle, or when action on a large scale was required. All the members of an iwi descended from one eponymous ancestor.
- 12 Ngata, A & Jones, P *Nga Moteatea* Part I (1928); Part II (1961); Part III (1970).
- 13 Whare tupuna are large ancestral houses which are used for a wide range of purposes. They are usually hapu-based, and each one is normally named after a particularly significant ancestor.
- 14 The hapu with which the writer is primarily affiliated, for example, bears the name of a woman, Pareraukawa.
- 15 Supra note 9, at 8-9.
- 16 The descendants of these women continue to celebrate their feats through the composition of numerous modern-day songs and other art forms.
- 17 Orange, C (ed) *The People of Many Peaks: The Maori Biographies from the Dictionary of New Zealand Biography, Vol 1, 1769-1869* (1990).
- 18 Iwi, or nations, take the name of an eponymous ancestor, and usually preface that name with the word "Ngati" which literally means "the descendants of." So Ngati Porou refers to a particular iwi, the descendants of an ancestor named Porou.
- 19 The Treaty of Waitangi is widely regarded as the founding document of the nation state of Aotearoa/New Zealand. It was a document drawn up by Crown officials, translated into Maori by missionaries and signed by Governor Hobson and a number of Maori leaders during 1840. The English and Maori texts are

not direct translations of each other and the questions of what exactly Maori agreed to give up to the Crown as well as what exactly the Crown guaranteed to Maori have remained a source of contention ever since. The Crown insists that the Treaty constituted a cession of sovereignty by Maori; many Maori take issue with that interpretation and argue that the Treaty merely cemented Maori sovereignty, while allowing the Crown a place within that overarching Maori sovereignty.

- 20 Te Rauparaha is well-known to many New Zealanders as a fighting chief who posed a threat to early British law in this country. What is almost always overlooked is that Te Rauparaha's chief military strategist was in fact his sister, Waitohi. She has been rendered all but invisible in popular history.
- 21 Ibid, 13-14 (Hinematiaro), 328-329 (Rangi Topeora), and 353-354 (Waitohi).
- 22 Rei, *T Maori Women and the Vote* (1993) 14.
- 23 This movement was established during the 1850s as a means of unifying all Maori against the continued sale of land to the Crown. It was regarded by the Crown as a direct challenge to its sovereignty. The Crown eventually declared war on Maori who it considered to be involved in the King Movement, and confiscated vast tracts of Maori land for the burgeoning settlement.
- 24 Quoted in Scutt, *J Even in the Best of Homes* (1983) 9.
- 25 Ibid, 11.
- 26 Ibid, 12.
- 27 For an example of this view, see Blackstone, *W Commentaries on the Laws of England*, Book 1, (1809), ch 5.
- 28 Naffine, *N Law and the Sexes: Explorations in Feminist Jurisprudence* (1990) 104.
- 29 Minow, *M Making All the Difference* (1990) 127-128.
- 30 *Supra* note 15, at 15-18.
- 31 As a result of the Crimes Amendment Act (No 3) 1985, it is now possible for a husband to be charged with the rape of his legal spouse (see s 128(4) of the Crimes Act 1961).
- 32 *Walsh v Walsh* (1984) 3 NZFLR 23 and *Haslam v Haslam* (1985) 3 NZFLR 545 are two Court of Appeal decisions which highlight the judicial undervaluing of a wife's contribution to the marriage partnership.
- 33 See Busch, R, Robertson, N and Lapsley, H *Protection From Family Violence: A Study of Protection Orders Under the Domestic Protection Act* (1992) and Busch, R and Robertson, N "Contextualising the Bristol Inquiry" (1994) 2 Waikato Law Review.
- 34 Jenkins, K "Working paper on Maori women and social policy" written for the Royal Commission of Social Policy and quoted in the Report of the Royal Commission on Social Policy (1988) Vol III, 161; *Ōmana wahine* refers to the status of women.
- 35 "Maori Women: Discourse, Projects and Mana Wahine" in Middleton, S & Jones, A (eds) *Women and Education in Aotearoa* 2 (1992) 34. Berys Heuer provides a classic example of the damaging effects of these male-centred

- reinterpretations of Maori creation stories in *Maori Women* (1972) 55: "Culturally, the role of women was made clear in the account of their creation. The first woman was formed out of a mound of earth and impregnated by her male creator with a life spirit. From this, woman was regarded as being a passive receptacle for the dominant life spirit".
- 36 Ibid, 48-49.
- 37 Ibid, 49.
- 38 Orange, C *The Treaty of Waitangi* (1987) 90.
- 39 Idem, where it is noted that Major Bunbury refused to allow a Ngati Toa woman to sign at Cloudy Bay. Her husband also refused to sign.
- 40 Rei, supra note 22, at 8-9.
- 41 First the land was taken through confiscations carried out pursuant to the New Zealand Settlements Act 1863 and later via the operations of the Native Land Court, established by the Native Land Act 1865. Later, seas and waterways were taken through legislation beginning with the Oyster Fisheries Act 1867.
- 42 Pool, I *Te Iwi Maori: A New Zealand Population Past, Present and Projected* (1991) chapter 5.
- 43 These twin aims were spoken of by the Hon. H. Sewell, NZPD Vol 9, 1870: 361.
- 44 For an account of how the principle of collectivism was undermined by the law, see the *Report of the Commission of Inquiry into Native Land Laws* (1891) AJHR, G-1, xi.
- 45 Simpson, T *Te Riri Pakeha: White Man's Anger* (1986) 168-173.
- 46 Supra note 42, at 101.
- 47 Ibid, 153-154. Pool refers to the migration of Maori workers from rural areas to smaller centres such as Pukekohe, as having taken place throughout the first half of the twentieth century. However, the most significant urban migration took place in the decades immediately following the Second World War, being described as "perhaps the most rapid urbanward movement of a national population anywhere, at least until the end of the sixties" (ibid, 154).
- 48 The adoption provisions and parliamentary debates concerning them, discussed below, are further evidence of this desire to remould the whanau.
- 49 Supra note 9, at 12.
- 50 Barrington, JM *Maori Schools in a Changing Society* (1974) 164. Te Aute was a church boarding school for Maori boys.
- 51 Strong, TB "The Problem of Educating the Maori" in Jackson, PM *Maori and Education: Or the Education of Natives in New Zealand and its Dependencies* (1931) 192. For a general discussion of how the schools were discouraged from focusing too much on academic subjects, see Barrington, ibid, chapter 7 and Simon, J "The Place of Schooling in Maori-Pakeha Relations" (Ph. D Thesis, University of Auckland, 1990) chapter 4.
- 52 Supra note 50, at 176-177.
- 53 Supra note 51, at 100.
- 54 Coney, S "Maori women shun domestic service" in Coney, S *Standing in the Sunshine* (1993) 225.

- 55 Stirling, A & Salmond, A *Amiria* (1976) 32-3.
- 56 Edwards, M *Mihipeka: Early Years* (1990) 131.
- 57 Supra note 54.
- 58 Rockel, J and Ryburn, M *Adoption Today: Change and Choice in New Zealand* (1988) 7.
- 59 See especially Sweeney, M "Between Sorrow and Happy Endings: A New Paradigm of Adoption" (1990) (2) *Yale Journal of Law and Feminism* 329; Shawyer, J *Death by Adoption* (1979); and Else, A *A Question of Adoption* (1991).
- 60 While it is common for the Maori concept of whangai to be paralleled with adoption, it is argued that the two concepts are so fundamentally different that they cannot and should not be spoken of as being similar in any way. The term whangai literally means Ōto feedŌ and is used to refer to children who are raised by someone other than their birth parents.
- 61 *Puao-te-ata-tu* Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (1988), Appendix 22-23.
- 62 Ibid, 23.
- 63 Supra note 3, at 57.
- 64 For an illustration of such an arrangement, see Stirling, E and Salmond, A *Eruera: The Teachings of a Mori Elder* (1980) 88-93; see also Pere, supra note 3, at 46.
- 65 Native Land Claims Adjustment and Laws Amendment Act 1901, s 50.
- 66 S 161.
- 67 The ban was imposed by s 164 of the Act, a section that was not reenacted in the 1955 Act.
- 68 All of the phrases quoted in this paragraph are taken from Dr Findlay's address on the Bill, NZPD Vol 148, 1909: 1275.
- 69 Supra note 61, at 23.
- 70 Else, supra note 59, at 179.
- 71 Maori Affairs Act 1953, s 2.
- 72 Else, supra note 59, at 181.
- 73 One who took this view was the Attorney-General, Mr Hanan, who insisted that "...in this country we are two races but we are one people...Despite the differences of our cultural heritage, for the future the rights of the children and the obligations of the parents should be identical" (Else, *ibid*, 183).
- 74 Eg Mr H Mason, (Else, *idem*).
- 75 Ibid, 182.
- 76 Ibid, 183.
- 77 For some powerful examples of the pressure put on birth mothers generally to give up their babies for adoption, see Shawyer, supra note 59.
- 78 Else, supra note 59, at 188-189.
- 79 Ibid, 80, 190.

- 80 Ibid, 197. Damning criticism has also come from Shawyer, *supra* note 59 and from Sweney, *supra* note 59.
- 81 *Supra* note 61, at 23.
- 82 Children are commonly referred to by Maori as being ŌtaongaŌ, a word used to describe things that are considered precious.
- 83 *Supra* note 59, at 201. Else also has this to say: "Because adoption is seen as an almost free substitute for state assistance of all kinds, it tends to be promoted when New Right philosophies of maximum self-reliance and minimal aid to families prevail" (at 202).
- 84 *Supra* note 61, at 22.
- 85 Adoption Act 1955, s 7.
- 86 Durie-Hall, D and Metge, J "Kua Tutu te Puehu, Kia Mau" in Henaghan, M & Atkin, B (eds) *Family Law Policy in New Zealand* (1992) 54, at 71.
- 87 *Re Adoption 17/88* 5 FRNZ 360, 371.
- 88 *Supra* note 61, at 24.
- 89 Whanaungatanga is a concept which embodies the interrelationship of all living things through genealogy and the reciprocal responsibilities that relatives have to one another.
- 90 Eg Treaty of Waitangi Act 1975, where the Treaty is referred to throughout the Act; State Owned Enterprises Act 1986, s 9; Long title to the Environment Act 1986; Conservation Act 1987, s 4; Maori Language Act 1987, Preamble; Resource Management Act 1991, s 8; Te Ture Whenua Maori (Maori Land) Act 1993, Preamble.
- 91 Kelsey, J *Rolling Back the State: Privatisation of Power in Aotearoa/New Zealand* (1993) 233.
- 92 For further discussion of the particular groups and events of the times, see Walker, R *Ka Whawhai Tonu Matou: Struggle Without End* (1990) 209-236.
- 93 The Waitangi Tribunal was established pursuant to the Treaty of Waitangi Act 1975 with the powers of a Commission of Inquiry. It was empowered to hear claims by Maori that they had been prejudicially affected by Crown actions, Acts or policies which were inconsistent with the principles of the Treaty of Waitangi. The Tribunal's task was to hear such claims, determine whether or not they were well-founded and, if well-founded, to make recommendations to the Crown as to how the prejudicial effects could be ameliorated.
- 94 *Supra* note 91, at 235.
- 95 *Idem*.
- 96 For a careful analysis of the way in which the Labour government dealt with the incorporation of Treaty principles in a range of policy areas, and of the way the courts handled such provisions, see Kelsey, *A Question of Honour: Labour and the Treaty 1984-1989* (1990); and Kelsey, *supra* note 91, chapter 21.
- 97 *Supra* note 91, at 243.
- 98 Health statistics in respect of Maori women have been gathered, published and commented on in Pomare, E and de Boer, G *Hauora - Maori Standards of Health: A study of the years 1970-84* (1988); Ministry of Maori Development,

Ka Awatea (1991) 36-41; Maori Women's Welfare League, *Rapuora: Health and Maori Women* (1984); Spoonley, P. *Racism and Ethnicity* (1988) 26-27; Broughton, J and Lawrence, M *Nga Wahine Maori me te Kai Paipa* (1993). Some of the negative indicators referred to by Broughton and Lawrence include the lung cancer death rate (3.6 times higher for Maori women than for non-Maori women), the likelihood of death from coronary heart disease (3.5 times higher for Maori women in the 25-44 year age group than for non-Maori women in that age group) and the likelihood of death from respiratory disease (4.6 times higher for Maori women in the 25-44 year age group than for non-Maori women) (*ibid.*, at 11).

- 99 Lodged in July 1993, the Particulars of Urgent Claim allege that "[t]he Crown's actions and policies have been inconsistent with its obligations under the Treaty of Waitangi to protect and ensure the rangatiratanga of Maori women as individuals and members and leaders of tribes and families. These actions and policies have resulted in an undermining of Maori women so that their status as rangatira has been expropriated due to the Crown's failure to accord Maori women status and power within the political, social and economic structures it has created" para (h)).
- 100 Henare, D "Carrying the Burden of Arguing the Treaty" in Ihimaera, W (ed) *Vision Aotearoa: Kaupapa New Zealand* (1994) 126.
- 101 Kelsey, *supra* note 91, at 339-343.
- 102 Irihapeti Ramsden has this to say about such stereotypes: "What does the warrior imagery achieve for us? It does validate the colonial takeover and sustains it. It also reinforces the symbolism of Maori as an aggressive people, randomly violent and savage and fulfils the expectation of those behaviours in television programmes such as *Crimewatch*. It has the converse effect of making non-Maori appear rational, dispassionate and civilised" ("Maori Policy, Maori and Government Objectives", address to the Hui Whakapumau: Maori Development Conference (August 1994) 9). She also observes that: "An analysis of the normal annual activities of any precontact Maori communities would probably reveal that people were more heavily involved in gardening, food preservation, the production of complex technical and art forms, and making and rearing babies, than in conflict...It would not have fitted the Victorian world view to report that they had invaded a country of artists, agriculturalists, astronomers, lovers and parents who had fought to retain their precious things" (at 10-11).
- 103 *Supra* note 35, at 47.
- 104 *Ibid.*, 48.
- 105 Whiu, L "Women, Law and Policy: Essay 2" (unpublished Paper, 1994) 6.
- 106 *Ibid.*, 7.
- 107 Smith, *supra* note 35, at 48.
- 108 Rei, *supra* note 22. Te Kotahitanga was the Maori Parliament established in 1892. It tried for many years to persuade government that it was the rightful body to make laws for Maori, but it eventually folded due to lack of resources and lack of government preparedness to recognise it.

- 109 Henare, *supra* note 100, at 126. Examples include such women as Te Puea Herangi, Whina Cooper, Tuaiwa Rickard, Nganeko Minhinnick and Mira Szaszy.
- 110 In 1993, Nga Kaiwhakamarama I Nga Ture (the Maori Legal Service) conducted a poll amongst Maori to find out who they considered to be Maori leaders. The responses indicated that, for most Maori, leadership is located firmly at the hapu and whanau level (62% of those named were leaders at hapu/marae level or hapu spokespersons at iwi level), with only three commonly recognised national Maori leaders gaining a significant degree of recognition (over 10%) outside their iwi borders. They were Professor Mason Durie, Te Arikinui Dame Te Atairangikaahu, and Dame Mira Szaszy.
- 111 Smith, *supra* note 35, at 48.
- 112 "Maori Leadership", address to the Hui Whakapumau: Maori Development Conference (August 1994) 3-4.