
MĀORI WOMEN AND THE NATIVE LAND COURT: GENDERED DISPOSSESSION THROUGH COLONIAL LAND LAW, 1865–1930

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ABSTRACT

This article offers a legal-historical examination of how colonial land law in Aotearoa New Zealand redefined Māori women's status as landholders between 1865 and 1930. Focusing on the establishment and operation of the Native Land Court, the analysis reveals that statutory and procedural mechanisms not only facilitated large-scale land alienation but also undermined the customary legal standing of Māori women. Through the individualisation of title, the exclusionary effects of coverture, and the administrative absorption of so-called “uneconomic” shares, Māori women were progressively marginalised in law and practice. Drawing on statutory sources, tribunal findings, and Indigenous legal theory, the article argues that this gendered dispossession represented more than a loss of property—it constituted a legal erasure of *mana wahine*, the relational authority and autonomy recognised under tikanga Māori. By reconstructing the legal framework through which Māori women were rendered peripheral to land governance, this study contributes a critical dimension to the historiography of colonisation and calls for the reconsideration of redress frameworks to reflect the gender-specific harms embedded in colonial legal design.

Keywords: Māori Women; Native Land Court; Colonial Legal Dispossession; Colonial Land Law; Mana Wahine; Tikanga Māori

Introduction

The colonisation of Aotearoa New Zealand brought with it a legal system that fundamentally altered Māori relationships to land, identity, and social order. While much attention has been paid to the economic and political effects of this transformation, the gendered dimension, particularly the impact on Māori women, has received far less sustained legal scrutiny. Prior to the imposition of British law, Māori women occupied positions of authority and responsibility within their hapū (sub-tribes) and iwi (tribes), including recognised roles in landholding and decision-making under tikanga Māori (customary law).¹ Land (whenua) was a taonga (treasure), held collectively and transmitted through whakapapa (genealogy), where descent and usage rights included both men and women as active stewards.²

This Indigenous legal system was disrupted by the introduction of the Native Land Court under the Native Lands Act 1865.³ The Court's mandate was to individualise Māori land tenure, effectively transforming customary communal land into alienable freehold title, based on English legal principles.⁴ Crucially, the Court's operations and underlying legal doctrines failed to recognise the collective, gender-inclusive structures that governed Māori land relationships.⁵ Though Māori women could, in theory, be named as owners in title awards, in practice they were frequently omitted or included in ways that marginalised their legal and economic standing.⁶ The shift from communal to individualised title not only undermined collective autonomy but also entrenched Pākehā patriarchal assumptions about property, authority, and gender.⁷

¹ *Tikanga Māori* refers to the customary system of values, principles and practices that guide Māori social and legal behaviour. It recognises the authority of both men and women, with mana (status, authority) not necessarily gendered. See Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* 28–32 (Rev. ed., Huia Publishers 2016).

² Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 24–30 (Int'l Research Inst. for Māori & Indigenous Educ. 2003).

³ Native Lands Act 1865 (N.Z.) ss 22–25 (establishing the Native Land Court and empowering it to convert customary title into Crown-recognised individual title).

⁴ Id. s 23 (limiting each certificate of title to no more than 10 named individuals), a structure entirely foreign to Māori communal landholding.

⁵ David V. Williams, *Te Kooti Tango Whenua: The Native Land Court 1864–1909* 73–75 (Huia Publishers 1999) (describing how Court practices imposed Western legal logics onto Māori communities).

⁶ Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921* 59–62 (Victoria U. Press 2008) (noting how women were often omitted from land title awards despite customary entitlements).

⁷ See Claudia Orange, *The Treaty of Waitangi* 114–117 (Bridget Williams Books 2011) (noting how land law was a vehicle for broader policies of assimilation and patriarchal norm enforcement).

The Native Land Acts and their amendments, including the 1873, 1888, and 1913 statutes, created legal frameworks that systematically excluded Māori women from control over land.⁸ Combined with common law doctrines such as coverture, which subsumed a married woman's legal identity under that of her husband⁹—and statutory succession rules that favoured paternal descent, the colonial legal system dismantled long-standing protections that Māori women had under tikanga.¹⁰ These changes were not incidental but stemmed from a deliberate policy of integrating Māori land into settler capitalism through legal assimilation.

Although scholars such as Ani Mikaere and Aroha Harris have critically examined the cultural and philosophical marginalisation of Māori women during colonisation,¹¹ there remains a significant gap in legal historical analysis that focuses specifically on the statutory and institutional mechanisms by which gendered land dispossession occurred. This article addresses that gap by offering a focused examination of how colonial land legislation, particularly as implemented through the Native Land Court, contributed to the erosion of Māori women's legal status between 1865 and 1930.

This study draws upon legislative texts, Native Land Court decisions, parliamentary debates, and relevant secondary literature to analyse the ways in which Māori women's legal agency was circumscribed. By focusing on law as a tool of colonial governance, it highlights how gender operated as a central axis of dispossession. The aim is to contribute a historically grounded legal perspective to the broader discourse on Indigenous rights, Treaty redress, and gender justice in Aotearoa.

Māori Women and Land Rights Under Customary Law Before 1865

Before the introduction of the colonial land regime, Māori society regulated land tenure through tikanga Māori, a dynamic system of customary law based on whakapapa (genealogy), use rights, and communal obligations. Within this framework, Māori women held recognised legal and social authority over land, particularly through descent-based claims and active

⁸ See, e.g., Native Land Act 1873 (N.Z.) s 48 (granting broad alienation powers to individual title holders); Native Land Administration Act 1886 (N.Z.); Native Land Amendment Act 1913 (N.Z.) ss 14–18 (allowing for Crown vesting of fragmented shares).

⁹ Under the doctrine of coverture, a married woman was legally incapable of owning property in her own name unless statutory exceptions applied. See Married Women's Property Act 1884 (N.Z.).

¹⁰ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 95–98 (Auckland U. Press 2013) (exploring how colonial definitions of family and descent disrupted customary succession patterns).

¹¹ See Mikaere, *supra* note 2; Aroha Harris, *Hikoi: Forty Years of Māori Protest* 18–21 (Huia Publishers 2004).

participation in decisions affecting land use, occupation, and inheritance.¹² This section examines the foundational features of Māori women's landholding status under tikanga prior to the establishment of the Native Land Court in 1865 and demonstrates that colonial representations of Māori women as legally subordinate were not rooted in Indigenous practice but were rather a projection of imported English patriarchal norms.¹³

Land (whenua) was conceptualised in Māori society not as a commodity but as a taonga (treasure) intrinsically connected to collective identity and mana whenua (authority over land). Rights to land were distributed through hapū and iwi networks and enforced through recognition of ancestral ties and active occupation, known as ahi kā roa (long-standing fires of occupation).¹⁴ Both men and women could hold rights to land as individuals within a collective, and these rights were exercised through a range of practices including residence, cultivation, burial of ancestors, and participation in hapū leadership.¹⁵

Historical accounts, including early missionary and ethnographic observations, confirm that Māori women often played pivotal roles in asserting and defending land claims. For instance, women were signatories to Te Tiriti o Waitangi in 1840, an act acknowledging their standing in both political and legal realms.¹⁶ In recorded cases of inter-hapū disputes, women participated as claimants, witnesses, and negotiators, and their presence at hui (meetings) concerning land matters was neither exceptional nor symbolic—it was juridically meaningful.¹⁷

Inheritance followed a bilateral model, where descent was traced through both paternal and maternal lines. This meant that Māori women inherited land from both sides of their

¹² Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 26–30 (Int'l Research Inst. for Māori & Indigenous Educ. 2003) (noting that customary land rights were deeply gender-inclusive and based on descent and community obligations).

¹³ See Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 14–16 (Auckland U. Press 2013) (explaining that early colonial perceptions of Māori gender roles were shaped more by Victorian ideologies than by actual Māori social structures).

¹⁴ Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* 212–218 (Rev. ed., Huia Publishers 2016) (describing ahi kā as both a legal and cultural mechanism for maintaining land rights).

¹⁵ Carwyn Jones, *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* 67–70 (UBC Press 2016) (noting that occupation and continued engagement with land were central to maintaining land entitlements).

¹⁶ Claudia Orange, *The Treaty of Waitangi* 42–43 (Bridget Williams Books 2011) (recording at least 13 known female signatories to Te Tiriti, indicating their leadership and recognition).

¹⁷ David V. Williams, 'Te Kooti Tango Whenua': *The Native Land Court 1864–1909* 29–30 (Huia Publishers 1999) (describing Māori women's active roles in land disputes before formal colonisation structures).

whakapapa and passed it on to descendants.¹⁸ The legal principle of take tūpuna (ancestral right) applied equally to women and men, as land rights derived from named ancestors, irrespective of gender.¹⁹ In many cases, women were instrumental in ensuring the intergenerational continuity of land entitlements, particularly in cases of intermarriage between hapū or when maintaining ahi kā on behalf of dispersed kin groups.²⁰

The centrality of women in land tenure under tikanga stands in sharp contrast to the model later imposed by the colonial legal system. British common law operated on the doctrine of coverture, which treated married women as legally dependent and generally denied them separate property rights unless modified by statute.²¹ This framework was incompatible with Māori understandings of gender and land, where women's authority was integrated into, rather than separate from, the social fabric of collective landholding.²²

Despite the consistent acknowledgment of women's land rights within Māori customary law, early colonial officials and lawmakers often ignored or misunderstood these realities. Reports from the 1840s and 1850s prepared for the Crown before the establishment of the Native Land Court routinely portrayed Māori men as the primary decision-makers, reflecting European assumptions rather than Indigenous legal structures.²³ This misapprehension laid the groundwork for subsequent legislative developments that undermined the legitimacy of women's landholding and redefined legal ownership along imported patriarchal lines.

Before 1865, Māori women held land rights recognised under tikanga Māori that were relational, enduring, and enforceable within their kinship-based legal order. Their exclusion from landholding in the post-1865 colonial legal framework was not a reflection of pre-existing custom but the result of deliberate legislative and judicial redefinition. The Native Land Court,

¹⁸ Boast, *Buying the Land, Selling the Land*, supra note 6, at 58–59 (explaining bilateral inheritance and how maternal descent conferred legitimate rights to land).

¹⁹ Mead, supra note 3, at 217.

²⁰ Ani Mikaere, *Colonising Myths—Māori Realities: He Rukuruku Whakaaro* 91–93 (Huia Publishers 2011).

²¹ Married Women's Property Act 1884 (N.Z.); prior to this, common law severely restricted married women's rights to independently hold property.

²² Mikaere, *The Balance Destroyed*, supra note 1, at 32–34.

²³ See Appendices to the Journals of the House of Representatives (AJHR), 1858, G-9 (Commissioners' Report on Native Land), which largely framed Māori men as land decision-makers, omitting mention of female leadership roles.

far from recognising and formalising customary title, instead participated in a systematic erasure of Māori women's legal personhood in relation to whenua.

The Native Land Court and the Restructuring of Customary Title

The creation of the Native Land Court under the Native Lands Act 1865 marked a decisive shift in the legal status of Māori land and those entitled to it. The Court's stated purpose was to investigate claims to customary land and convert them into individualised titles recognised by the Crown.²⁴ In practice, however, this judicial mechanism significantly altered the structure of landholding, introducing English concepts of ownership, legal standing, and gender hierarchy into a legal context where they had not previously applied. For Māori women in particular, the Court's procedures and underlying legal assumptions contributed directly to the erosion of their customary land rights.

Under tikanga Māori, rights to land were relational and multi-generational, exercised and maintained through occupation, genealogy, and collective use.²⁵ The Native Land Court, by contrast, was premised on the identification of discrete individuals as legal owners, with the Court empowered to issue certificates of title to a maximum of ten named persons under section 23 of the Native Lands Act 1865.²⁶ This limit was purportedly introduced for administrative efficiency but had the practical effect of disaggregating collective ownership and privileging individuals—often male leaders—who were deemed to have the most visible or “*legally legible*” claims in the eyes of the colonial judiciary.²⁷

The criteria for determining ownership under section 24, which tasked the Court with ascertaining the “real owners” according to custom, were often applied through a colonial lens.²⁸ Judges and assessors brought with them expectations grounded in British legal traditions, which privileged male authority, continuous occupation, and market-use potential.²⁹

²⁴ Native Lands Act 1865 (N.Z.) s 22 (establishing the Court to ascertain and certify title to Māori land).

²⁵ Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 28–30 (Int'l Research Inst. for Māori & Indigenous Educ. 2003) (describing customary landholding as relational and inclusive of women's rights).

²⁶ Native Lands Act 1865 (N.Z.) s 23.

²⁷ Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921* 47–50 (Victoria U. Press 2008) (noting the administrative justification and the exclusionary effect on collective and female claimants).

²⁸ Native Lands Act 1865 (N.Z.) s 24.

²⁹ David V. Williams, *Te Kooti Tango Whenua: The Native Land Court 1864–1909* 86–91 (Huia Publishers 1999) (discussing how colonial expectations shaped the Court's interpretations of custom).

As a result, Māori women's roles in landholding, whether through maternal inheritance, seasonal use, or custodianship, were frequently dismissed or underemphasised in the Court's evaluations.³⁰ Moreover, the absence of Māori women from many title lists was not merely accidental but flowed from a systematic under-recognition of their legal standing within the Court's evidentiary and adjudicative processes.³¹

The Native Land Act 1873 restructured the system to allow for the inclusion of more than ten owners per title and required ownership to be recorded in a block register, but this reform failed to enhance women's legal agency.³² Though it broadened the list of names, the alienation provisions under sections 48 and 49 gave individuals significant powers to sell or lease their interests. These powers, when combined with the common law principle of coverture, left Māori women with limited control over land they might nominally "own" but could not protect against alienation by male relatives or spouses.³³ The Court also did not require joint consent from all owners to effect land transfers, and women—particularly those residing outside the rohe (region) or lacking formal representation—were often not consulted or informed.³⁴

Furthermore, the Court's records show a growing pattern of land fragmentation, where successive generations inherited increasingly smaller and administratively complex shares. Women's shares were frequently minor, often passed down through maternal succession lines, and more likely to be declared "uneconomic" under subsequent amendments.³⁵ This set the stage for later statutory interventions such as the Native Land Amendment Act 1913, which vested uneconomic interests in state-controlled boards—again bypassing individual consent, disproportionately affecting women.³⁶

Perhaps more significantly, the procedural culture of the Native Land Court reinforced exclusion. Hearings were adversarial and legalistic, conducted in English or mediated through

³⁰ Mikaere, *The Balance Destroyed*, supra note 2, at 35–38.

³¹ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 101–104 (Auckland U. Press 2013) (noting patterns of marginalisation in legal institutions and land proceedings).

³² Native Land Act 1873 (N.Z.) ss 42–44.

³³ Married Women's Property Act 1884 (N.Z.); under coverture, a married woman's separate legal identity was suspended, limiting her ability to defend land rights.

³⁴ Carwyn Jones, *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* 110–114 (UBC Press 2016) (exploring how Court procedures structurally disadvantaged those outside dominant networks, including women).

³⁵ Boast, *Buying the Land, Selling the Land*, supra note 4, at 105–108.

³⁶ Native Land Amendment Act 1913 (N.Z.) s 14 (vesting uneconomic shares in Māori Land Boards without requirement for individual consent).

interpreters. While Māori men, particularly those familiar with colonial systems, increasingly navigated this environment, Māori women faced structural disadvantages in access, representation, and credibility before the Court.³⁷ Historians such as Richard Boast have noted that even when women gave evidence, their claims were often minimised or interpreted within a male-centric narrative of land ownership.³⁸

In effect, the Native Land Court did not merely formalise Māori land rights—it recast them through the prism of colonial legal ideology, which equated property with individual ownership, legal authority with maleness, and land use with economic productivity. This transformation undermined the communal, intergenerational, and gender-inclusive basis of customary landholding. For Māori women, it meant a loss not only of land but of the legal recognition that had previously sustained their authority and mana within their communities.

Marriage, Property Law, and the Legal Marginalisation of Māori Women

The erosion of Māori women's land rights under the Native Land Court system was compounded by the application of English property and family law, particularly through the common law doctrine of coverture and its statutory reform under the Married Women's Property Acts. These legal norms, imposed during the late nineteenth and early twentieth centuries, radically altered the legal status of Māori women, transforming them from active landholders under tikanga Māori into subjects of colonial family law that assumed male authority and female dependency. The integration of these frameworks into the administration of Māori land law deepened the gendered nature of dispossession.

Under tikanga, marriage was not a contract that suspended legal personhood. Māori women retained their identity, autonomy, and property rights within their hapū after marriage.³⁹ Marriages were embedded within kinship obligations, and while whakapapa determined rights and descent, marriage did not extinguish a woman's ability to act independently in land and political matters.⁴⁰ This stands in stark contrast to the British doctrine of coverture, which was fully absorbed into New Zealand's common law system in the nineteenth century. Coverture

³⁷ Williams, *Te Kooti Tango Whenua*, supra note 6, at 99–103.

³⁸ Id. at 104.

³⁹ Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 31–34 (Int'l Research Inst. for Māori & Indigenous Educ. 2003) (explaining that marriage under tikanga did not extinguish female legal or social standing).

⁴⁰ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 22–25 (Auckland U. Press 2013) (noting the embedded nature of marriage within whānau and hapū responsibilities).

rendered a married woman legally incapable of owning property independently from her husband, bringing her civil existence under his legal identity.⁴¹

While the Married Women's Property Act 1884 marked an important shift by granting married women the right to own and manage property separately, the effect of this reform was limited in the case of Māori women.⁴² This was due, in part, to the complexity of overlapping jurisdictions between Māori customary land and Crown-granted land, and more critically, to the fact that most Māori land remained subject to restrictive alienation regimes under the Native Land Court system.⁴³ Even where Māori women held legal title to land, their ability to assert control over that land was constrained by their marital status and by the broader alienation powers conferred upon male relatives or collective owners.

One of the most significant issues facing married Māori women was the lack of protection against the alienation of land by their husbands or other male kin. Before the 1884 Act, women had virtually no legal standing to prevent such transactions, and even after the Act, the practical enforcement of separate property rights was inconsistent and often disregarded in rural or Māori contexts.⁴⁴ This was particularly problematic in cases where a woman's share in a block was minor or where she resided outside the region in which decisions about alienation were being made. The Court and Crown purchasing agents often proceeded with transactions without verifying consent from all owners, relying instead on the signatures of dominant male shareholders.⁴⁵

Additionally, marriage to Pākehā men introduced another layer of legal complexity. Cross-cultural marriages often meant that Māori women's legal identity and property interests were mediated through English legal principles that assumed male control.⁴⁶ In many such cases, Māori women lost practical authority over their land, particularly when their Pākehā husbands facilitated alienation or failed to recognise the customary obligations attached to

⁴¹ Susan Staves, *Married Women's Separate Property in England, 1660–1833* 5–6 (Harvard U. Press 1990); see also Blackstone's Commentaries on the Laws of England (1765), Book I, ch. 15.

⁴² Married Women's Property Act 1884 (N.Z.), which permitted women to own property in their own names but did not override customary land restrictions or alienation statutes specific to Māori land.

⁴³ Native Land Act 1873 (N.Z.) s 48 (granting individuals power to alienate land); Boast, *Buying the Land, Selling the Land*, supra note 4, at 73–76 (discussing post-title restrictions and collective alienation practices).

⁴⁴ Richard Boast, *The Native Land Court: A Historical Study* 158–160 (NZLC Historical Report 2019) (noting the low enforcement of women's land rights even after statutory reform).

⁴⁵ David V. Williams, *Te Kooti Tango Whenua: The Native Land Court 1864–1909* 107–109 (Huia Publishers 1999) (examining Crown purchase practices and their disregard for full owner consent).

⁴⁶ Wanhalla, *Matters of the Heart*, supra note 2, at 101–104 (explaining how legal norms within Pākehā society disadvantaged Māori women in interracial marriages).

Māori land ownership.⁴⁷ The courts rarely intervened in these matters, viewing them as civil disputes or as part of the accepted framework of property law, thus normalising the dispossession that occurred through marriage.

The effects of these legal structures are visible in the way statutory and judicial processes operate. For instance, section 14 of the Native Land Amendment Act 1913 allowed for the vesting of uneconomic interests in Māori Land Boards without requiring the active consent of all owners.⁴⁸ Women's minor shares, often inherited through maternal succession, were disproportionately affected by these provisions. In practice, this meant that the combined forces of coverture, land consolidation, and Crown-facilitated alienation deprived Māori women of both legal agency and material resources, even where the law nominally recognised their ownership.

The cumulative result was a profound disempowerment. While Māori men were increasingly incorporated into the structures of colonial governance and land negotiation, albeit within constraints, Māori women found themselves excluded from both the customary system that once affirmed their rights and the colonial legal regime that replaced it.⁴⁹ The framework of marriage law, rather than serving as a private domain of equal partnership, became a conduit for reinforcing gender hierarchies and facilitating land loss.

Māori Women, Uneconomic Shares, and the Impact of Land Consolidation Laws

By the early twentieth century, the fragmentation of Māori land ownership had become a central concern of colonial lawmakers. This fragmentation was not accidental; rather, it was the logical outcome of decades of title individualisation and Crown purchasing facilitated through the Native Land Court. The resulting multiplicity of owners per block, many of whom held only minute interests, led to what lawmakers described as “*uneconomic shares*,” small land interests deemed too insignificant for practical use or administration. The legislative response to this perceived problem was a series of consolidation and vesting measures that further eroded Māori land rights, disproportionately impacting Māori women, whose shares were often minor, inherited, or geographically disconnected from administrative centres.

⁴⁷ Ibid. at 106–108 (documenting several instances in which Māori women's land was alienated through Pākehā spouses without their full understanding or participation).

⁴⁸ Native Land Amendment Act 1913 (N.Z.) s 14; see also Boast, *supra* note 6, at 180–183.

⁴⁹ Mikaere, *The Balance Destroyed*, *supra* note 1, at 36–39.

The Native Land Amendment Act 1913 was a pivotal statute in this development. Section 14 of the Act allowed the Native Land Court to vest uneconomic interests—defined not by statute but in administrative practice—into Māori Land Boards without the need for the consent of the owners.⁵⁰ This power was extended under subsequent amendments and regulations, allowing for state-managed consolidation schemes to transfer these fragmented interests into Crown or trustee control, ostensibly for more efficient management and development.⁵¹ The vague definition of “uneconomic” left it open to discretionary interpretation by the Court and Crown officials, who frequently targeted marginal interests held by women, especially those who had inherited land through maternal succession lines.⁵²

Women were particularly vulnerable in this regime for several reasons. First, their interests were more likely to be smaller due to patterns of partial succession and the underrepresentation of women in initial title determinations.⁵³ Second, many Māori women had relocated—whether through marriage, employment, or urbanisation—and were thus unable to attend Court proceedings or assert their interests directly.⁵⁴ The bureaucratic process often proceeded without proper notification or meaningful consultation, and absenteeism was commonly taken as implied consent.⁵⁵ While men with larger interests or established local presence were more likely to contest or negotiate consolidation terms, women’s claims were more easily absorbed into the administrative machinery.

Furthermore, the role of Māori Land Boards, while initially presented as protective, evolved into one of facilitation for alienation.⁵⁶ These Boards often prioritised economic development and Crown acquisition objectives over customary relationships to land. Māori women, lacking legal representation and often excluded from administrative discourse, were

⁵⁰ Native Land Amendment Act 1913 (N.Z.) s 14 (empowering the Court to vest uneconomic interests in Māori Land Boards without the consent of individual owners).

⁵¹ Native Land Amendment and Native Land Claims Adjustment Act 1916 (N.Z.) ss 3–5; see also consolidation regulations under the Native Land Act 1909 (N.Z.).

⁵² Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921* 211–213 (Victoria U. Press 2008) (discussing how uneconomic shares were largely undefined but widely applied).

⁵³ Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 41–43 (Int’l Research Inst. for Māori & Indigenous Educ. 2003).

⁵⁴ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 119–122 (Auckland U. Press 2013) (noting the mobility and displacement of Māori women through marriage and urban migration).

⁵⁵ David V. Williams, *‘Te Kooti Tango Whenua’: The Native Land Court 1864–1909* 189–192 (Huia Publishers 1999).

⁵⁶ Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* vol 2 (Wai 1200, 2008) at 747–748.

unable to challenge vesting decisions effectively. Even when legal remedies were available in theory, the cost and complexity of challenging a vesting order or seeking partition discouraged most from pursuing claims.⁵⁷

The Crown's focus on economic utility as the central criterion for land retention was rooted in settler ideologies that equated land value with productive use, typically agricultural. This approach ignored the cultural, spiritual, and genealogical value of land to Māori, and particularly to women, who played key roles in maintaining the continuity of land-based identity through whakapapa.⁵⁸ Where customary landholding recognised the intergenerational stewardship of whenua, including through minor but symbolically significant shares, the Crown's model reduced ownership to its market potential.

Legal scholars and Waitangi Tribunal findings have since acknowledged that the consolidation and vesting provisions effectively stripped thousands of Māori of their land interests without due process.⁵⁹ For Māori women, the effects were particularly acute. Not only were they excluded from processes of consultation and decision-making, but their land loss was also compounded by pre-existing structural disadvantages in inheritance, representation, and legal recognition. The cumulative effect of these policies amounted to a gendered and administrative dispossession—one conducted not through overt expropriation but through the machinery of legal rationality and economic “efficiency.”

Land Consolidation and the Native Land Amendment Act 1913

The Native Land Amendment Act 1913 marked a significant turning point in the Crown's administration of Māori land. It represented a continuation—and intensification—of earlier legislative strategies aimed at rationalising Māori land tenure into forms compatible with settler economic development. While the Act was framed in terms of administrative efficiency and economic productivity, its practical effect was to accelerate the alienation of Māori land under the pretext of consolidation. Crucially, the Act's impact disproportionately affected Māori women, whose fragmented interests and exclusion from decision-making processes rendered them particularly vulnerable to dispossession.

⁵⁷ Boast, *supra* note 3, at 230–232.

⁵⁸ Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* 210–215 (Rev. ed., Huia Publishers 2016).

⁵⁹ Waitangi Tribunal, *He Maunga Rongo*, *supra* note 7, at 741–749; see also Waitangi Tribunal, *Tūranga Tangata, Tūranga Whenua: The Report on the Gisborne Claims* (Wai 814, 2004) at ch. 9.

Before the 1913 Act, the Native Land Court had already produced considerable fragmentation of Māori land interests through its successive title awards and inheritance orders. The shift from tribal to individual ownership under the Native Lands Acts of 1865 and 1873 had led to land blocks being held by hundreds of owners, each with minuscule and often functionally unusable shares.⁶⁰ The Crown's response to this problem was not to revisit the structural flaws of its land laws, but to pursue a policy of consolidation and aggregation under increasingly centralised state control.

Section 14 of the Native Land Amendment Act 1913 gave the Native Land Court the power to vest so-called “uneconomic interests” in Māori Land Boards without the consent of the owners.⁶¹ While the statute did not define what constituted “uneconomic,” this term was interpreted by officials to include shares too small to support independent development or too administratively burdensome to manage.⁶² The policy rationale for this provision was grounded in the desire to facilitate block consolidation and to remove impediments to leasing and sale. Yet this administrative solution disregarded the cultural and legal significance of even minor land interests within Māori communities.

Māori women were particularly disadvantaged by this framework. Due to successive patterns of succession and historical exclusion from initial title listings, women frequently inherited small, scattered shares—often passed down through maternal lines—that fell within the category of uneconomic holdings.⁶³ The vesting of these shares into Māori Land Boards meant that control over the land shifted from individual or whānau-based decision-making to centralised institutions prioritising commercial use and alienation.⁶⁴ Women who had no formal representation on these Boards were thus excluded from both ownership and governance, even where their connection to the land remained active and culturally significant.

Moreover, the Act's consolidation powers operated in tandem with wider Crown purchasing strategies. Under section 18 of the 1913 Act, the Native Land Court could confirm

⁶⁰ Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921* 187–189 (Victoria U. Press 2008).

⁶¹ Native Land Amendment Act 1913 (N.Z.) s 14.

⁶² Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* vol 2, at 743–745 (Wai 1200, 2008) (noting how the term “uneconomic” was applied to a wide range of shares without clear criteria).

⁶³ Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 42–45 (Int'l Research Inst. for Māori & Indigenous Educ. 2003).

⁶⁴ Boast, *supra* note 1, at 198–200 (describing the shift of control to Māori Land Boards and the alienation of minor interests).

the sale of land even where not all owners had consented, so long as the Crown had acquired a majority share.⁶⁵ This facilitated compulsory alienation in practice, particularly when Māori Land Boards, acting as intermediaries, endorsed sales without full consultation. In the context of fragmented shares and absentee owners—a group that included many Māori women who had moved away for work or marriage—this meant that land could be sold or vested with little to no input from key stakeholders.⁶⁶

The administrative logic behind the 1913 consolidation regime reflected a settler economic worldview that prioritised productive farming, clear title, and commercial leasing over relational landholding and intergenerational stewardship.⁶⁷ For Māori women, whose legal status had already been diminished through coverture and procedural marginalisation in the Native Land Court, the 1913 Act further entrenched their exclusion. It reduced their rights to bureaucratic entries in title schedules and rendered their land interests subject to vesting without meaningful legal recourse.

While subsequent legislation, such as the Native Land Act 1931, continued this policy trajectory, the 1913 Act set a critical precedent in redefining land interests not by custom, but by economic utility.⁶⁸ In doing so, it stripped thousands of Māori, and particularly Māori women, of land that remained central to their identity, whakapapa, and wellbeing. The language of economic rationalisation masked a process of administrative expropriation that permanently altered the relationship between Māori communities and their land.

The Impact of Colonial Land Law on Māori Women's Legal Status and Authority (Mana Wahine)

The imposition of colonial land law in Aotearoa did more than transform patterns of land ownership; it fundamentally reshaped the legal personhood of Māori women. Legal personhood—the recognition of individuals as rights-bearing subjects under law—was progressively narrowed for Māori women through the combined impact of statutory exclusions, procedural marginalisation, and doctrinal biases within the colonial legal

⁶⁵ Native Land Amendment Act 1913 (N.Z.) s 18.

⁶⁶ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 117–120 (Auckland U. Press 2013); see also David V. Williams, 'Te Kooti Tango Whenua': *The Native Land Court 1864–1909* 176–179 (Huia Publishers 1999).

⁶⁷ Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* 210–213 (Rev. ed., Huia Publishers 2016).

⁶⁸ Waitangi Tribunal, *He Maunga Rongo*, supra note 3, at 749.

framework. These changes undermined mana wahine, a concept grounded in tikanga Māori that embodies the spiritual, political, and genealogical authority unique to Māori women.⁶⁹ In place of this inclusive and relational legal identity, Māori women were redefined within a system that rendered them peripheral to land governance and legal recognition.

Under tikanga Māori, mana wahine was not merely a cultural attribute but a legal one, expressed through participation in decision-making, guardianship of whenua, and intergenerational transmission of whakapapa.⁷⁰ Women could hold and defend land rights, act as rangatira (leaders) within their hapū, and function as kaitiaki (guardians) of their communities' most important resources. Their legal identity was affirmed through kinship roles and was not contingent on marriage status or economic productivity.⁷¹ However, with the arrival of British law, this framework was displaced by a system that interpreted personhood through male-centred legal concepts—namely, individual ownership, formal legal title, and contractual capacity.

The Native Land Court system, while ostensibly open to all Māori claimants, embedded these colonial assumptions in both procedure and substance.⁷² Māori women were often excluded from hearings, left off title registers, or assigned lesser shares due to their gender, marital status, or distance from the land.⁷³ Even when named in titles, the legal structure offered little in terms of participatory rights or veto powers over land transactions. Statutory instruments such as the Native Land Act 1873 and the Native Land Amendment Act 1913 concentrated administrative discretion in the hands of the Court and Land Boards, which routinely exercised that discretion in ways that disadvantaged female owners.⁷⁴

Furthermore, the doctrine of coverture, as incorporated into New Zealand's common law framework, meant that Māori women who married—especially to Pākehā men—lost

⁶⁹ Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* 50–53 (Int'l Research Inst. for Māori & Indigenous Educ. 2003) (defining mana wahine as both legal and spiritual authority rooted in whakapapa and social role).

⁷⁰ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* 121–125 (2d ed., Zed Books 2012) (emphasising the centrality of relational identity and women's roles in Māori society).

⁷¹ Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* 18–22 (Auckland U. Press 2013).

⁷² David V. Williams, *Te Kooti Tango Whenua: The Native Land Court 1864–1909* 102–105 (Huia Publishers 1999) (discussing structural barriers to women's participation in Court processes).

⁷³ Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921* 202–204 (Victoria U. Press 2008).

⁷⁴ Native Land Act 1873 (N.Z.) s 48; Native Land Amendment Act 1913 (N.Z.) s 14.

effective control over their property unless specific statutory exceptions applied.⁷⁵ This undermined not only their rights in a technical legal sense, but also the underlying tikanga values that recognised their authority as independent persons. The concept of legal personhood, in the colonial legal imagination, became synonymous with Pākehā male norms of ownership, rendering Māori women's traditional legal roles both invisible and invalid.

The consequences of this shift extended beyond property rights. Legal identity was a key determinant of participation in decision-making, economic autonomy, and political voice. By marginalising Māori women in land law, the colonial state also excluded them from the broader processes of governance and negotiation that followed, including Treaty settlements, Crown consultations, and local administrative bodies.⁷⁶ This institutional exclusion reinforced intergenerational disadvantage and disrupted the transmission of mana wahine within whānau and hapū.

Recent scholarship and Waitangi Tribunal reports have begun to address this legacy by explicitly recognising the gendered effects of land alienation and legal suppression.⁷⁷ Yet much of the legal and policy architecture that governs land and Treaty settlements continues to reflect the structures established in the nineteenth and early twentieth centuries. Despite formal equality under contemporary law, Māori women continue to encounter barriers that trace back to this foundational redefinition of legal personhood.

Understanding the loss of mana wahine as a legal transformation—rather than a byproduct of broader colonial change—is essential for developing meaningful redress. The colonial legal system did not merely fail to protect Māori women; it actively redefined their identity and authority within a legal language that erased their prior status. Recognising this requires not only historical analysis but a reevaluation of current legal frameworks through the lens of Indigenous women's rights and tikanga.

Conclusion

This article has demonstrated that the legal marginalisation of Māori women during the

⁷⁵ Married Women's Property Act 1884 (N.Z.); see also Boast, *supra* note 5, at 191–192 (noting persistent legal confusion over women's land rights in marriage).

⁷⁶ Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* vol 2, at 734–738 (Wai 1200, 2008).

⁷⁷ See Waitangi Tribunal, *Wai 894: Te Urewera Report* (2017) vol 5, ch. 24 (addressing gendered exclusions in Crown purchasing and administration of land).

colonisation of Aotearoa was not an incidental by-product of a broader shift in land law, but a targeted consequence of legislative and judicial structures that systematically undermined their status as landholders and legal actors. The transformation of land tenure through the Native Land Court dismantled the customary protections that had previously recognised the authority and mana of Māori women, replacing them with individualised title systems that favoured male claimants and commercial interests.

The introduction of English common law concepts—particularly coverture and formalised property rights—created a legal environment in which Māori women were treated not as autonomous rights-bearers but as dependents within a patriarchal framework. The subsequent development of consolidation regimes and the use of Māori Land Boards to administer “*uneconomic*” shares only deepened this exclusion. Women were routinely stripped of minor but meaningful land interests, often without consultation or consent, through statutory mechanisms that cloaked dispossession in administrative efficiency.

This process not only dispossessed Māori women of land but also redefined their legal personhood. Where mana wahine had once affirmed their central role in the stewardship and governance of whenua, the colonial legal order recast them as marginal figures within their own communities. Their voices were excluded from land hearings, their names erased from titles, and their ability to transmit land through whakapapa severely curtailed.

Recognising the gendered nature of colonial land law in New Zealand is essential to understanding the deeper consequences of legal reform during this period. The historical silencing of Māori women within the Native Land Court and related institutions has had enduring effects—economically, socially, and legally. Any serious engagement with the Treaty of Waitangi and contemporary legal redress must account not only for the loss of land but for the loss of status, autonomy, and recognition that accompanied it.

By recovering these histories through focused legal analysis, we acknowledge the need for a more inclusive jurisprudence—one that does not merely restore land but restores dignity and authority to those whose legal voices were once systematically silenced.

References

Books:

- Angela Wanhalla, *Matters of the Heart: A History of Interracial Marriage in New Zealand* (Auckland Univ. Press 2013).
- Ani Mikaere, *Colonising Myths—Māori Realities: He Rukuruku Whakaaro* (Huia Publishers 2011).
- Ani Mikaere, *The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori* (Int'l Research Inst. for Māori & Indigenous Educ. 2003).
- Carwyn Jones, *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (Univ. of British Columbia Press 2016).
- Claudia Orange, *The Treaty of Waitangi* (Bridget Williams Books 2011).
- David V. Williams, *Te Kooti Tango Whenua: The Native Land Court 1864–1909* (Huia Publishers 1999).
- Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Rev. ed., Huia Publishers 2016).
- Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (2d ed., Zed Books 2012).
- Richard Boast, *Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921* (Victoria Univ. Press 2008).
- Richard Boast, *The Native Land Court: A Historical Study* (NZLC Historical Report 2019).
- Susan Staves, *Married Women's Separate Property in England, 1660–1833* (Harvard Univ. Press 1990).

- William Blackstone, *Commentaries on the Laws of England* (Oxford 1765).

Statutes & Legislation:

- Married Women's Property Act 1884 (N.Z.).
- Native Land Act 1873 (N.Z.).
- Native Land Amendment Act 1913 (N.Z.).
- Native Land Amendment and Native Land Claims Adjustment Act 1916 (N.Z.).
- Native Land Act 1909 (N.Z.).
- Native Lands Act 1865 (N.Z.).

Reports, Tribunal Findings & Parliamentary Records:

- Appendices to the Journals of the House of Representatives (AJHR), 1858, G-9.
- Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008).
- Waitangi Tribunal, *Tūranga Tangata, Tūranga Whenua: The Report on the Gisborne Claims* (Wai 814, 2004).
- Waitangi Tribunal, *Wai 894: Te Urewera Report* (2017).