McD McDONALD, A.J. Adoptions amongst Maoris....

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ADOPTIONS AMONGST MAORIS AND THE ADOPTION ACT 1955

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I INTRODUCTION

The Adoption Act 1955 was passed with one of its principal aims being the elimination of the differences between the law governing adoptions for Maoris and Pakehas. In this paper I wish to examine this Act and the steps leading up to it from the point of view of their appropriateness to, and effect upon, adoptions amongst Maoris.

I will first examine the different concepts of adoption held by Maoris and Pakehas. Secondly, I will trace the development of the law of adoption to the present day. This will include a brief description of the Adoption Act 1955. Thirdly, the reasons for changing the law in 1955 will be looked at. Fourthly, the effects of the change in the law in 1955 on the practice of adoption amongst Maoris will be investigated. Finally, New Zealand's adoption law will be contrasted with suggestions for reform in Australia's adoption law covering Aborigines.

By using the term "adoption" Pakehas are usually referring to legal adoption. In this paper, however, "adoption" is used to describe more than just legal adoptions, it also refers to informal arrangements for the care of children who are not, biologically, one's own. It does not include merely fostering however.

II CONCEPTS OF ADOPTION

1. Maori concepts

Adoptions in Polynesian cultures generally follow a similar pattern to Maori adoptions.[1] Before discussing Maori customary adoptions in particular I will discuss adoption practices in general in Eastern Oceania.

Certain characteristics of adoptions in Eastern Oceania have been described by Vern Carroll.[2] He says that adoptions are usually between close relatives, and usually by a single individual (although usually one who is married). Parents do not offer or "put up" their children for adoption, and those who do adopt frequently have children of their own already. The biological parents are ready, willing and able to continue to care for the child to be adopted. In addition, he notes that there is no effort to cut the link between a child and its biological parents, and in fact in time of illness or other difficulties a child will often return to the biological parents. Adoptions are rarely completed in accordance with legislation.

The words used in Maori to describe adoption indicate the concept of adoption held by Maoris.[3]

"In Maori a child adopted according to Maori custom is described as a *tamaiti whāngai* and the adoptive parents as *mātua whāngai*. The basic meaning of *whāngai* is to feed, and in this context it means to feed not only with food but with affection and instruction, to nurture in the full sense of the word. Synonyms also sometimes used are *tiaki* (look after), *whakatipu* (to make grow), and *tārutima* (to treat with care)".

In contrast, Pakehas speak of adoptive children as opposed to "natural" children, the former have both adoptive parents and "real" parents or "true" parents. The implications of the use of these words is that the adoptive relationship is inferior to the biological relationship of parents and child.

First I will look at descriptions of Maori adoptions in the past, and then turn to present day adoptions amongst Maoris.

A description of "the adoption of children in accordance with ancient Maori custom" is given by Geo Graham in *The Journal of the Polynesian Society*.[4] He states that adoptions were made to ensure that children reamined in the family, thereby retaining their tribal identity and rights of succession. A child might leave if, for example, the parents belonged to different tribes. If one parent died, the other might take the child back to its own tribe. Adoption by a member of the deceased parent's tribe would prevent this.

In Graham's article are translations of two statements about Maori adoptions given by two "old-time chieftains mentioned of Poneke (Wellington)". (The original manuscript is dated 1842). One of the chiefs, Mohi Te Ata-I-Hikoia, states that "There were frequent and many adoptions of children in the district of Heretaunga in my days".[5] Adoption conferred the complete *mana* of the adopter on the child.

Graham also supplied notes to Firth which formed the basis of Firth's description of adoption. Firth states that adoption was prevalent, but always limited to members of related groups. The object was "to retain the memory of family relationships severed by distance or from some other cause".[6] Firth notes that the child did not actually have to be taken away immediately. It could be named after the future adoptive parent and then when women, for example, reached marriageable age they would be sent for and married to a relative of the adoptive parent. He concludes that adoption is due to "a definitely regulated aim such as the strengthening of the ties of related groups, or the regaining of neglected land interests".[7]

In 1946 new regulations about birth certificates were formulated in New Zealand. Concern was expressed that where a child was adopted under the Maori Land Act 1931 there was no authority for making a new entry

in the register of births in the name of the adopting parents.[8] Therefore an illegitimate child legally adopted could not produce a birth certificate in its legal name. Discussion on this point gave rise to the following description of Maori adoptions by a Judge of the Maori Land Court.[9] "Adoptions were in the past and still are very common among the Maoris, and the fact of an adoption was always widely known among the people; in fact to establish an adoption according to Maori custom, it was generally necessary to show that the adoption was made public. It would therefore be well known to the child on growing up, and to the people of his hapu that he had been adopted. The fact of his adoption being generally known would be of no handicap to a Maori as it might be to a European.

Furthermore cases where a Maori has right of succession to land from his natural parents would be much more numerous than is the case with Europeans, and therefore nothing should be done to conceal the relationship of an adopted Maori to his natural parents".

What of the present Maori concept of adoption? Today Maori adoptions are completed for the traditional reasons, but new reasons also have appeared.

Adoption is still usually between relatives, and although adoptions are sometimes arranged to bring together parts of the family that have grown apart, a more common reason for adoption is that couples who do not have children of their own or have ceased to have them will miss the presence of children and therefore adopt. Adopted children know the identity of the biological parents and may at some stage return to them to be cared for.[10]

It is necessary for a child to know his true ancestry for certain occasions (e.g. if he is to speak on a *marae*). Therefore it is not concealed. (The Department of Social Welfare when arranging adoptions of Maori children record their tribal affiliations).

Adoptions by Maoris in the Cook Islands have been studied by Pamela Ringwood.[11] There, adoptions according to Maori tradition can be of two types, complete in that the adoptive parents become the legal parents of the child, or partial, where the child remains the legal child of his biological parents but is cared for by another family. Adoptions are mainly between relatives not strangers, and again a common reason is to provide company for childless couples or grandparents. But adoptions are also made to recognise an emotional tie, for example in the past families would adopt missionaries.[12]

With regard to the attitudes of Maoris to the practice of adoption today, Geraldine McDonald[13] and Jane Ritchie[14] have interviewed mothers about this. In McDonald's study, she noted that "the custom of adopting or of 'taking' (informal and possibly temporary adoption) young children is felt by Maoris themselves to be a peculiarly Maori practice."[15] The reasons given for adoption were to provide companionship, fulfil a lack in childless families, provide care for children, provide labour for family enterprises, and it may function as a symbolic act to replace the loss of a baby or to link families.

As has already been mentioned, adopted Maori children usually know the identity of their biological parents. As one of McDonald's informants said "I know my real mother and I speak to her when I see her, but my adopted mother is my family."[16]

One of the major differences between adoptions by Maoris and Pakehas is that children born in wedlock are adopted out by Maoris. Pakehas adopt out mainly illegitimate children (nowadays about seventy-five per cent of adopted children are ex-nuptial but in the past this figure has been higher).[17]

Seventy-one per cent of McDonald's sample (103) were families where no adoption in or out had taken place, but the women were frequently being asked for one of their children by some relative. Asked about whether they would wish to adopt a grandchild when they were older (not

necessarily legally) almost a half of the women would "certainly adopt a grandchild", and only a quarter were definitely against adopting.[18]

An interesting finding that has implications for the future practice of adoption is that Maori women who had Pakeha husbands were less willing to adopt a grandchild, and that "women with Pakeha husbands also suggested that the husband would be against 'giving away *his* child' - and here we have a basic Pakeha attitude".[19] In contrast, Maoris see the child as not belonging to one or other of the parents, but as belonging to the family, the *hapū*, and the tribe.

Urbanisation may have the same effect as intermarriage, i.e. a decrease in the incidence of adoption according to custom. Both factors mean Pakeha attitudes are present to a greater degree. For example, McDonald found adoption to be more common in kin-based communities than in migrant communities, and on the latter women were more likely to say they would adopt a grandchild only if there was a need for it.[20] By "need" the women usually meant a young girl giving birth to an ex-nuptial child.

2. European concepts

Informal adoptions were common amongst Europeans before they were legislated for, but the courts considered them to be against public policy.[21] This was because the arrangements entered into might be against the best interests of the child, and there was a presumption that a child was better off with its biological parents. (The means of the adoptive parents as compared with the biological parents were disregarded). Agreements between parties regarding adoptions therefore had no legal effect under the common law. If, however, a parent mistreated a child the court could not order the child to be returned to that parent.[22] In addition, the court of Chancery could intervene if a parent was not acting as a wise, affectionate and careful parent.[23]

Adoption during the last century had particular significance as an

economic transaction. Children capable of working were passed from one family to another as the need arose, for example to repay debts. Children would also be adopted to provide insurance so that in old age the parents would have someone to look after them.

The attitude of the common law can be contrasted with that of the civil law tradition. Under the Roman system, there were two types of adoption, one continuing throughout Roman history and the other emerging some time early in the Republic. The former was called *adrogatio*, the latter *adoptio*.[24]

Adrogatio was the adoption of an independent citizen by an old man who was likely to die without issue. The purpose of the adoption was to maintain the family *sacra* (observances in honour of the ancestors of the family). This form of adoption was permitted only with the consent of the civil and religious authorities, because it ended completely the *familia* of the adopted person.

Adoptio was the transfer of a *filiusfamilias* from one family to another, in which case the person was like any other child of the family, except that the *adoptatus* only had a right of succession on intestacy.

The French Civil Code, following the Roman tradition, permits two types of adoption, simple adoption and plenary adoption. In both types a prerequisite is that the adoptive parents have no legitimate descendants.[25] The difference is that in the latter the child does not belong to the family of blood except for prohibitions of marriage.[26] In the former the child remains in the family of origin, conserving all its rights in that family.[27] The adopted child owes subsidence to its biological parents, and vice versa if the child cannot get subsidence from its adoptive parents. Simple adoption can be revoked,[28] whereas plenary adoption cannot.[29]

The purpose of the French system is the welfare of children, brought to public attention particularly by the plight of orphans during and after the wars.

What is the present day concept of adoption amongst Pakehas? Carroll writes that "adoption" in the United States "... calls to mind the picture of a couple, who have tried unsuccessfully for many years to have children of their own, who finally, with considerable misgivings, have secured a child of unknown parentage from an institutional intermediary."[30]

In New Zealand, most children adopted by Pakehas are adopted by strangers.[31] (This can create a problem when the child wishes to marry, therefore under the Act the adopted child is deemed to cease to be the child of its natural parents except for the purposes of enactments relating to forbidden marriages or the crime of incest.)[32] But the numbers of adoptions by one parent and a spouse are increasing.[33] This is partly because more mothers are now keeping their ex-nuptial children rather than giving them up for adoption. During 1976 seventy-five per cent of the children adopted were ex-nuptial (this percentage has been decreasing, for example in 1972 it was eighty-three per cent).[34]

In the same year seventy-five per cent of the children were less than one year old at the time of placement,[35] but adoption of older children is increasing (at least partly the result of the Social Welfare Department's policy to encourage these adoptions and partly the result of increasing parent and spouse adoptions).

Adopted children tend to be regarded as having been unwanted by their natural parents, and therefore are being cared for as a result of the generosity of the adoptive parents. There are usually procedures specifically designed to conceal the identity of the natural parents from the child, and the identity of the adoptive parents from the natural parents.

Recently, however, there have been changes in the attitude towards adoption. Interest is now focussing on children's rights (aided by the demographic fact that there are more people wishing to adopt than there

are children available). For example, a private member's bill has just been introduced in Parliament to enable children to get access to information about their biological parents.

III THE LAW OF ADOPTION

1. History of the adoption law governing Maoris

Maoris, since the 1955 Act, have been required to follow the same procedure when adopting children as everyone else.[36] But this has not always been the case.

During the nineteenth century, Maoris could adopt according to Maori custom. Although this is generally accepted as being the case, it is difficult to establish the authority for this proposition. The New Zealand Constitution Act 1852 (U.K.) has a provision as to Maori laws and customs which states that[37] "... whereas it may be expedient that the laws, customs and usages of the aboriginal or Maori inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other ... it shall be lawful for Her Majesty, by any letters patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid ..."

But it seems that there is no provision specifically permitting adoption by custom. The courts took two different approaches when dealing with Maori custom. On the one hand there is the approach in *The Public Trustee* v. *Loasby*[38]. The issue in this case was whether the costs of a *tangi* should be borne by the property of the dead person. Cooper J held that the costs should be treated as funeral expenses because this custom was general and immemorial, not contrary to any statue and not unreasonable.[39] The court's approach, therefore, was to apply custom in accordance with the common law rules as to its application,[40] notwithstanding there was no provision specifically instructing the court to apply Maori custom.

Alternatively, the courts stated they derived their authority to apply Maori custom from the Maori Rights Act 1865. An example of this approach is *Tamaki* v. *Baker*,[41] where the court held that it had

jurisdiction under the Act to ascertain title to land according to Maori custom. In fact, the Act does not refer to custom, it merely states that all Maoris are deemed to be natural-born subjects of the Queen and all courts of law have jurisdiction over Maoris.

It seems that it is not possible to be any more conclusive as to where the authority for adoptions according to Maori custom comes from.

Maoris could also adopt under the Adoption of Children Act 1881 by virtue of section 2 of the Maori Rights Act 1865. *Arani* v. *Public Trustee*[42] held that Maoris in addition to having the right to adopt according to custom also had the right to adopt under the 1895 (i.e. 1881) Act.

From 1901 customary adoptions had to be registered.[43] The Act required registration of an adoption in the Maori Land Court in accordance with the regulations.[44] These state that a Maori wanting to adopt a child had to give written notice to the Registrar, who then dated, signed and sealed it. It was then deemed to be registered, and was notified by the Registrar in the *Gazette* and *Kahiti* (Maori Gazette).

Regulations in 1904[45] stated that before registration of an adoption, a judge of the Maori Land Court should inquire into the circumstances of the adoption and issue a certificate if he was satisfied that it was a bona fide adoption according to Maori custom and ought to be given effect to. The inquiry would be held in open court (incidently, the fee for the certificate and registration was £1, fairly cheap in comparison with later procedures which required solicitors).

The Maori Land Act 1909 changed this however. Under it the Infants Act 1908 (and preceding legislation) did not apply to Maoris adopting children, although it did apply to Maori children being adopted by Europeans. The 1909 Act also stated that customary adoptions that were not made and registered before the commencement of the Act (i.e. 1910) had no effect.

The difference between the 1901 Act and the 1909 Act is that under

the former a Maori had the power to give the status of an adopted child by Maori custom, and registration is merely evidence of the adoption. Under the 1909 Act the status of the adopted child is given by the court. This difference is highlighted in *Piripi* v. *Dix*.[46] The facts of this case were as follows. In 1907 a Maori woman lodged with the Maori Land Court notice of her adoption of three Maori children, with a request for registration. The notice was gazetted but did not come before the court until 1913. The court ordered a certificate under the 1901 Act to be issued, but by mistake an order was issued purporting to be an order of adoption by the court under the 1909 Act. It was held that the order was invalid because it did not fulfil the requirements of the 1909 Act.

In a case in 1905[47] Te Teti Hoera sought to adopt a child called Rori Watene. The court held that it was clearly of the opinion that the adoption was bona fide and in accordance with Maori custom. The factors the court took in consideration are outlined in the following passage:[48]

"The child sought to be adopted in this case is also nearly related to Te Teti, and it is somewhat significant that Te Teti had already adopted Te Rori's elder brother at birth and provided for him for thirteen or fourteen years, and when it died four or five years ago, he took Rori Watene, then seven or eight years of age.

There is no doubt that Te Teti is the representative chief of his hapu and much given to hospitality nor is it denied that he has made several attempts to adopt children of some of his relatives, but they appear to have always left him, owing they say, to his infirmity of temper, through he alleges entirely different reasons.

Both Te Teti and his wife suffer greatly from ill health, and they complain that they have been cruelly neglected in their extremity by the very persons who now oppose the adoption. It is absolutely certain that a very bitter feeling exists between the parties.

Under these circumstances it is entirely natural and reasonable

for Te Teti to adopt a child to tend himself and wife in their frequent illnesses and they both declare that already the lad Rori Watene does so tend and care for them."

What was the justification for changing the law to prevent Maoris from adopting Pakeha children?

During the debate on the Maori Land Bill 1909, the Hon. Dr Findlay said that the Bill was carrying adoption to a third stage by removing jurisdiction for making orders from the Magistrate's Court to the Maori Land Court.[49] He justifies Maoris not being permitted to adopt Europeans by saying that it is[50] "a wise protection, because there have been many cases in which indifferent European parents have imposed upon the generosity and goodness of the Maori. I want to make it clear that I do not blame the Maori at all. The Maori women particularly have an amount of human tenderness which I believe will put to shame many heartless European mothers who abandon their children. But that is not sufficient. It is not sufficient that the Maori women should themselves be good-hearted people, but we should look to the interests of the child; and we know that these children, owing to the condition some of the Maori people live in, are not living in a way we should consider proper for European children".

The Maori Land Act 1931 declared Maoris could no longer adopt according to custom, and could only adopt a Maori child or a descendant of a Maori.

I will now turn to the consequences of adoption.

Adoption, (whether formal or informal), means that the child has new possibilities for inheriting property. What was the pre-European Maori custom on the inheritance rights of adopted children? It is appropriate first to describe the rules governing inheritance by biological legitimate children of the deceased. Children shared fairly equally in the property of the parent, although items of particular value

would go to the eldest son. The distribution was made according to instructions given in a public statement or bequest (*ohāki*) made shortly before death.

Land could be passed down to children in the sense that they would have the right to occupy and use it, but it could not be handed over to outsiders without the consent of the larger group (*hapū* or tribe as the case may be).[51]

The rules governing adopted children are less clear because they were recorded by Pakehas only in the context of disputes over property rights, which tended to lead the various parties to argue for an interpretation of the custom that suited their claim. It can be assumed, however, that as one of the reasons for adoption was to regain neglected land rights, adopted children must have affected the distribution of property in some way.

In 1907 the House of Representatives ordered to be placed before it a report showing the recent decisions of the Maori Land Court and the Maori Appellate Court in regard to "... adoption of children and the succession of such children to the adopting parents".[52]

The first case in the report was *Karamu Reserve*[53]. The facts of this case were as follows. The applicant was the grand nephew of the deceased who had died intestate. He wanted an order to be made in his favour as nearest-of-kin. The application was opposed by the adopted child of the nephew of the deceased.

A number of witnesses were examined in an attempt to discover what the Maori custom was. The results were confusing, summarised by Mackay J. as follows:[54] "Of the nine witnesses examined on the subject as to whether a foster-child [adopted child] would succeed as a matter of course, only one gave positive evidence in favour of the contention; all the others either directly or indirectly admitted that a bequest was necessary to confer the property on the foster-child, to bar the right of the nearest-of-kin".

In this case judgment was given in favour of the grand nephew but the decision was appealed. The Maori Land Court decided the case in conjunction with two others. But first it stated[55] "the general conclusions we have arrived at upon the Native customs of adoption and *ohaki*, after a consideration of the evidence given and the numerous authorities and decisions referred to during the hearing of the three cases".

An interesting preliminary point to be resolved by the court was how to apply to Maori custom the common law rules about custom as a source of law. Custom must, under the common law system, have existed since time immemorial. But as counsel pointed out, how can there be custom affecting titles that have only existed for twenty or thirty years? The court stated that the custom to take into account was that which had existed among Maoris from time immemorial. The court should then decide if that custom applied to the circumstances of the time.[56]

It seems that the attitude towards custom as a source of law was reasonably flexible. For example, it was said by the Maori Appellate Court that it is[57] "abundantly clear that Native custom of adoption, as applied to the title of lands derived through the Court, is not a fixed thing. It is based upon the old custom as it existed before the arrival of Europeans, but it has developed, and become adapted to the changed circumstances of the Maori race of to-day". Where there was a conflict between Maori custom and "the law of New Zealand" (i.e. the law governing Pakehas), the former was to prevail.[58]

The court concluded Maori custom was as follows:[59]

"If the adoption were made with the consent of the hapu or tribe, and the adopted child remained with such tribe or hapu it would be entitled to share the tribal or hapu lands ... Under such conditions it would be entitled to succeed to the property of the adopting parent... If there were no near relatives, and the adopted child had duly cared for the

adopting parent in his old age, he would succeed to the whole of the interest of the adopting parent... If there were near relatives, the adopted child would share in the succession... The adopted child would lose his rights if he neglected his adopting parent in his old age, or ceased to act with, or as a member of, the hapu or tribe". The contribution to the *hapū* and tribe was a crucial factor.

The court awarded the property in *Karamu Reserve* in equal shares to the adopted child and the nearest-of-kin.

A summary of the approach of the courts over the years was given by the Maori Appellate Court in a decision regarding the succession to Heni Hekiera.[60] It was stated that there was no custom amongst Maoris of succession to tribal lands.[61] "When a man died his interests in the tribal lands reverted to the tribe; on the other hand, every child, either at birth or upon arriving at manhood or womanhood, became *ipso facto* entitled to a share in the tribal lands. Succession was in those ancient times confined to certain personal property or occupational rights to small pieces of land used for cultivation or some similar purpose". But once tribal rights to land were converted into recorded titles under the Pakeha system, the "Maori custom of succession" was defined in the Maori Land Court. The earlier decisions of the court held that adoption did not necessarily entitle the child to inherit all the property of its adoptive parent, but such a right might succeed if supported by an *ohāki*. Later decisions shifted in favour of the adopted child, holding that it was to be regarded in the same way as a biological child of the parent, and could therefore succeed to all the property of the parent. This change occurred as custom was brought into line with the law covering Pakehas.

In Heni Hekiera's case the court was asked to define the Maori custom of adoption in several new situations. As there was no custom to apply, the court thought it would be expedient to define the custom

in line with the law covering Pakehas. Therefore, because to allow adopting parents to succeed to the lands of their child "agrees with the law of New Zealand" and was seen as being just, it was "incorporated into the present Native custom of succession".[62]

Smith discusses the rights of adopted children to succeed to the lands of their parents, noting that different practices prevailed in different areas.[63] This is probably the clue to why there is so much conflict over what the real custom was, because it differed from tribe to tribe.

Section 16 ss 3 (c) of the 1955 Act states that an adoption order made before 1 April 1954 would not affect the operation of any rule of Maori custom as to intestate succession to Maori land. The Maori custom articulated by the courts was only applied to intestate succession, because wills were a Pakeha concept recently imposed. The passing of property by *ohāki* was abolished in 1895.[64]

What were these rules that operated before the Maori Affairs Act 1953? The custom was that an adopted child succeeded to the property of the adoptive parents. If the child died intestate before its parents, the land went to the issue of the child or the source from where it came.[65] Other property was disposed of under the law governing Pakehas.[66]

But at the same time the child retained the right to succeed to its biological parents, and if he died intestate without the adoptive parents could not succeed to lands he got from his biological parents.

This was held in *re Pareihe Whakatomo* deceased.[67] Myers, C.J. said[68] "... there is a general rule of native custom that the succession to Native freehold land should follow the source from which the interest in such land had been derived, and that there was no exception or subsidiary custom applying especially where the intestate was an adopted child".

Under the Maori Affairs Act 1953, in the case of an intestacy the

destination of Maori freehold land was determined by the Maori Land Court in accordance with custom.[69] Other real property and all personal property was disposed of in the same way that Pakehas disposed of their estate.[70] Custom did not apply to land derived by will and therefore the next-of-kin would succeed.[71]

Under the Maori Affairs Act 1953 the Maori Land Court had exclusive jurisdiction to grant probate of wills or letters of administration.[72] But in 1967 the law regarding succession by Maoris was completely altered.[73] In the case of an intestacy, the estate and the Maori land interests passed according to the Administration Act 1952.[74] Jurisdiction to grant probate was restricted to the Supreme Court.[75] In line with the law covering Pakehas, interests in Maori land became subject to duty and could be used for payment of debts by the administrator, and the law as to the validity of wills was changed to match the law for Pakehas.[76]

But the Maori Affairs Amendment Act 1974 again reversed the law in that the Maori Land Court is to have jurisdiction over intestate (but not testate) succession to Maori land.[77] Also, under the Act a new administrative structure is set up, the Maori Land Board, on which there must be a certain number of Maori members.[78]

The Maori Affairs Amendment Acts of 1967 and 1974 are an illustration of different policies with regard to Maoris, this time in the area of land legislation.[79] In particular, the question of the right of a Maori owner to transfer Maori land from Maori title to ordinary freehold title. One of the provisions in the 1967 amendment was that holdings of Maori land with less than four joint owners was to be transferred to the Land Transfer Register and not be under the jurisdiction of the Maori Land Court.[80] The 1974 Act had the opposite effect, aiming to retain Maori land under Maori ownership. Transfers made under the 1967 Act could be reversed.[81]

It can be seen that there is a continuing conflict between making the law of Maori succession identical to the law governing Pakehas, or

retaining differences, due particularly to the special nature of Maori land ownership. That is, land ownership is regarded as important by Maoris not for financial reasons but social reasons (in particular, it forms a link with the past). Also, there has always been controversy over which is the best way to deal with Maori land. The view at present is to regard Maori land as belonging to all Maoris, not just individuals, and as needing special protection.

The other main legal consequence of adoption is in the field of sexual relations. Under Maori custom an adopted child could marry a child of its adoptive parents, as long as they were not closer than second cousins to each other.[82] This is in contrast to the 1955 Act, where people cannot marry if, by reason of an adoption, they are within the prohibited degrees.[83]

2. History of the adoption law governing Pakehas

The first statutory provision for adoption in New Zealand was the Adoption of Children Act 1881.[84] "The principle of the Bill was simply to declare that the benevolent might find wider scope for generous action; and that the results of their generosity might obtain some security by law". The preamble states that it is "An Act to legalize the Adoption of Children", and under this Act a married person of the same sex as the child could apply to adopt that child. A District Judge, with the consent of the child's parents or guardians, could make an order authorising adoption.[85] But unlike later adoption laws, the adopted child did not acquire any rights to the property of his adoptive parents, and therefore although under section 6 all rights and legal responsibilities between the child and his natural parents were terminated, this did not include the right to property.

The Adoption of Children Act 1881 Amendment Act 1885 extended jurisdiction over the adoption of children to Magistrates.

These statutes defined a child as being under the age of twelve.

The Adoption of Children Act 1895 raised the age of adoption to fifteen years.

Concern at the practice of baby-farming led to legislation to allow for licensing of adoptive parents (The Infant Life Protection Act 1907). This was extended by the Child Welfare Act 1925 where prospective parents had to get a licence.

When the 1907 Act was the subject of a question in the House of Representatives, one member[86] "... had it on very good authority in Christchurch that it was a physical impossibility for one person to do all that work unless she happened to be a strong, able-bodied young woman who could fly round on a bicycle".

When debated on in the Legislative Council, an important consideration was that the "... measure will benefit the colony, because it will assist in the direction of the rearing of a vigorous and strong race".[87] The fact that children were an asset to the state was emphasised.

3. Present adoption law

The Adoption Act 1955 made extensive changes to the law, the most important for the purposes of this report being section 18. Under this section an adoption order may be made on the application of any person, Maori or not, in respect of any child, Maori or not. This is now the only system for adopting children legally.

For the purposes of the Act, a Maori is defined as being "a person belonging to the aboriginal race of New Zealand; and includes a half-caste and a person intermediate in blood between half-castes and persons of pure descent from that race."[88]

I will now briefly describe the 1955 Act.

Consent to an adoption must be obtained from the child's biological parents or guardian.[89] A report from a Social Welfare Officer must be considered by the court before an interim order is made.[90] Procedure for an adoption is as follows: A social welfare officer visits

and approves the home of the prospective adoptive parents. (Usually two visits are made each of about two hours duration). Once approval is given, the child can be placed in the new home. (The practice in Wellington at present is for the adults wishing to adopt to attend two group meetings arranged by the Department of Social Welfare. Attending the meetings are other prospective parents, social workers and people who have already adopted children. There are also in-depth interviews held in the offices of the Department. All this can take up to six months before an approval letter is finally sent). If however, the adoption is an in-family adoption, the procedure is less complex. The social worker will just visit the home and write a report for the court.

The hearing regarding the interim order is usually held within two months of placement.[91] While the interim order is in force the social worker can visit the child to check on its progress. The order remains in force until an adoption order is made (or until it is revoked).[92] Usually the child must have been living in the new home for at least six months. No applications under the Act can be heard or determined in open court.[93] The court can make an adoption order without making an interim order first if special circumstances render this desirable and the conditions governing the making of an interim order have been complied with.[94]

The effect of an adoption order is that an [95]"... adopted child is now, with few exceptions, as fully a member of the family of the adoptive parent as if he had never been related to his natural relatives and had been born to the adoptive parent in lawful wedlock".

Between 1955 and 1962 applications by Maori parents for a Maori child were dealt with by the Maori Land Court, but now all adoptions are dealt with in the Magistrate's Court. A difference is retained, however, in that the Department of Maori Affairs administers adoptions by Maoris.

Adoption applications administered by the Department of Maori

Affairs are very few because the Department is not a placement agency and therefore only deals with applications where the prospective adoptive parents already know the child concerned.

In these cases the Department will carry out all the duties that the social worker does in the case of adoptions by Pakehas (i.e. visiting the home, writing a report for the court and either doing the necessary paper work or instructing the parents wishing to adopt to do it).

In the South Island however, an arrangement exists between the two departments under which a social worker prepares the court reports instead of an officer from the Department of Maori Affairs when the applicants and child are Maoris.

CHRONOLOGY OF THE MAIN LEGISLATION ON ADOPTION IN NEW ZEALAND

	Law Governing Adoptions by Pakehas	Law Governing Adoptions by Maoris
	Common Law	Maori Custom
1881	Adoption of Children Act	
1885	Adoption of Children Act 1881 Amendment Act	
1895	Adoption of Children Act	
1901		Maori Land Claims Adjustment and Laws Amendment Act
1909		Maori Land Act
1931		Maori Land Act
1953		Maori Affairs Act
1955	Adoption Act	
1962	Adoption Amendment Act	

The law before the change in 1955 was as follows.

Legal Maori married to Legal Maori	can adopt a Maori child or one of Maori descent less than fifteen years old. Maori Land Act 1931 cannot adopt a European.
Pakeha married to Pakeha (i.e. anyone other than a Maori)	can adopt a child of any race less than twenty-one. Infants Act 1908
Legal Pakeha (including a person of less than half Maori blood) married to Legal Maori	can adopt a Maori child less than fifteen but not a Pakeha child which could be adopted only by the Pakeha partner with the consent of the other partner, and must be the same sex as the Pakeha and less than twenty-one.
Unmarried Maori	can adopt a Maori less than fifteen and at least thirty years younger than the applicant, cannot adopt a Pakeha
Unmarried Pakeha	can adopt a Maori or Pakeha less than twenty-one if of the same sex as the applicant there must be at least eighteen years difference between the child and the applicant, and if of different sexes at least forty years difference.

The law after the change in 1955 was as follows.

	Applicants	Child	Jurisdiction
Maoris	Sole applicant	Maori	Maori Land Court
	One of joint applicants	Maori	Maori Land Court
	Sole	Pakeha	Magistrate's Court
	One of joint	Pakeha	Magistrate's Court
Pakehas	Sole	Maori	Magistrate's Court
	Both joint	Maori	Magistrate's Court
	Sole	Pakeha	Magistrate's Court
	Both joint	Pakeha	Magistrate's Court

IV REASONS FOR CHANGE IN THE LAW

In 1955 the adoption law was considerably revised. Attitudes towards children were changing, and with an excess of people wishing to adopt over the number of children available, more attention could be paid to the welfare of children.

In the 1956 annual report of the Child Welfare Division the 1955 Act is commented on favourably; "Child Welfare Officers welcome this development and regard the Act as an outstanding piece of social legislation".[96]

In 1951, H.C. Sharpe in the *New Zealand Child Welfare Workers' Bulletin* wrote about adoption procedure seen from the viewpoint of a Child Welfare Officer (excluding Maori adoptions). The criticisms he makes are relevant as an indication of the reasons for the change in the law.

"Indiscriminate placements" concerned Child Welfare Officers. The Infants Act 1908 required (for children under six years)[97] "that the foster-parents shall care for the child satisfactorily day by day and does not envisage the necessity for safeguarding it in a more permanent relationship, nor provide any means by which the best possible choice of parents could be made, especially as at present the number of prospective adoptive parnets far outweighs the number of children available for adoption."

He criticised the fact that children could grow up with people who may never complete a formal adoption.

Parents wishing to give their children for adoption and others wishing to adopt could advertise to this effect in the newspapers. This proved to be a great risk for the children concerned.

No period of residence before an adoption order is made was required. Such a time period, when the home can be kept under supervision, was felt to be "most necessary".

With regard to the adoptive parents, Sharpe did not approve of elderly parents adopting because they may not be able to give the child the companionship and parental care it needs, and the child may have to devote many years of its life later on caring for the parent.[98] He did not

approve of adoptions by ill people for the same reason. The applicants should be stable in their marriage relationship.

Throughout Sharpe emphasises the importance of the welfare of the child being considered, and not just the wishes of the various adults. He ends by recommending[99] "the ideal arrangement seems to be for the parents to transfer guardianship to an approved organisation which then has the sole right of placing the child in the best adoptive home possible. No further consent would be required from the parents, neither would they know where the child went".

These criticisms relate mainly to adoptions by strangers and therefore are not particularly relevant to Maori adoptions.

With regard to the law of adoption for Maoris specifically, in the late 1940s doubts were expressed about the law that Maoris could only adopt Maori children and not children of other races.[1] There had been cases of Maoris wishing to adopt Pacific Islanders, e.g. Niueans but being unable to do so. The Under-Secretary for Maori Affairs explained that "the whole of the law of adoption relating to Maoris is the prevention of the devolution at law of Maori lands into the hands of non-Maoris".[2] But under continued pressure the Department of Maori Affairs changed its attitude in favour of amendment in the law (it was then suggested that this should be done in the course of the consolidation of Maori statutes). The reasons for the change were that it was thought that not many Maoris would adopt Europeans anyway, and if a European is adopted then that child should be entitled to a share in the estate.

In 1952 an inter-departmental committee was set up to consider the laws regarding adoption. On it were representatives of the Child Welfare Division and the Department of Justice. The inclusion of representatives from Maori Affairs was an after-thought, the committee had already had its first meeting before the Secretary of Justice wrote to the Department of Maori Affairs inviting them to send representatives.

The Maori Affairs representatives prepared a memorandum for the Committee outlining their views.[3] They made five points: (1) Maoris should be able to adopt any child, (2) all applications where one parent is a legal Maori should be dealt with by the Maori Land Court, (3) Maori Welfare Officers should give the report to the court if the child is a Maori, (4) the requirements of prior approval, lodging the application within one month and interim orders should not be necessary for Maori children because almost invariably the child is adopted by a relative, and (5) the new legislation should generally apply to all Maori adoptions.

The first draft of the Adoption Bill 1954 included two interesting provisions regarding Maoris that were not included in the second draft. Clause 5 about interim orders was not to apply where the application was made to the Maori Land Court in respect of a Maori child. Clause 6 (Restrictions on placing or keeping a child in a home for adoption) by virtue of sub section 4 was not to apply where the child is a Maori and is in the home for the purpose of adoption by a Maori or by two spouses one of whom is a Maori. These provisions seem to be more in accordance with the Maori practice of adoption than the provision of the 1955 Act. The reasons for their exclusion are not apparent.

In 1954 judges of the Maori Land Courts were asked for their opinions on the Bill. There was criticism of the interim order procedure because it was felt that Maori parents, not understanding the law would fail to make orders absolute. It was also felt Maori adoptions should be held in open court in accordance with custom. Neither of these recommendations were followed. All the suggestions of the Department of Maori Affairs were implemented except that prior approval and interim orders were not automatically by-passed in the case of Maori adoptions.

The Adoption Bill that eventually became the 1955 Act had its first reading on 29 September 1954.[4] The then Attorney-General (The Hon. Mr Webb) said that as the Bill was quite far-reaching his object was to introduce

the Bill and let it lie until the following year. On 4 May 1955 a second draft of the Bill was presented to the House. The Bill was read a first time and then referred to the Statutes Revision Committee. On 20 September the Committee reported to Parliament that it recommended the Bill be allowed to proceed as amended. Mr Harker (the member for Hawkes Bay) said the Committee hoped "the result would be to wipe the distinction between adopted children and children of ordinary marriages".[5] (It is interesting to note the assumption regarding the status of children offered for adoption).

The debate in Parliament took place on 26 October 1955. The Hon. Mr Marshall (Attorney-General) introduced the Bill. He said that the original draft of the Bill was the result of deliberations of the inter-departmental committee set up in 1952. (The committee worked on the draft but did not actually present a report). Mr Marshall went on to say that "it is obvious that a complete revision of our law was necessary in order to bring our legislation into line with modern thought on this subject."[6]

The features of the Bill that he stressed were the provision for an investigation of the applicants and their home before a child is placed, the delay before an adoption order is made to allow an independent observation of the reactions of the child and the new parents to the situation and that the court must be satisfied as to the suitability of the applicants to care for the child. Mr Marshall also commented on clause 5 that allows an adoption order to be made immediately, and cited the example of a relative who had looked after a child for a considerable period as the type of case this clause was designed for. Finally he discussed the clauses dealing with consents.

The Hon. Mr Mason then spoke, saying that the legislation would give results that "any humane person would wish to see".[7]

The Hon. Mrs Ross (Minister for the Welfare of Women and Children) said the Bill "has put the adoption laws of New Zealand well to the fore."[8]

She seemd to be particularly concerned with situations in the past where natural parents had reclaimed their children once they reached fourteen or fifteen and were economically useful. The clauses in the Bill about consent she saw as overcoming this problem, and she was therefore strongly in favour of them.

The Hon. Mr Tirikatene spoke for all the Maori members. He said he welcomed the Bill, and then mentioned clauses that referred to Maoris but without passing opinion on them. He said with regard to adoptions by Maoris, [9]"We have our problems in the same way as our Pakeha friends. The Maori people are fond of bringing up children. Couples take children of relatives from birth or during early age, and bring them up as their very own children. The Bill gives adopted parents as well as natural parents the right to be heard so that the child's future will not be jeopardized by some unfortunate happening concerning the families". He commended the Bill.

The next speaker was Mr Freer (who had an active interest in the topic, being president of an adoption society). It is interesting to note the concept of adoption he held, he said, [10]"It is high time that individuals should no longer arrange adoptions for in many instances we find that a person arranges the adoption of an infant to adopting parents who reside in exactly the same locality as the natural mother. I have known of cases where the adopting parents have been seriously embarrassed within a short number of years because of the natural parent's action in coming along to the kindergarten and then to the school and making herself known to her child, although not prepared to accept any responsibility for the child in providing shelter and bringing it up". (Although he talks of natural *parent's* action he seems to mean natural *mother*.) It can be assumed that Mr Freer was not talking about Maori children because at that time there were a negligible number of Maori children in kindergartens.

The specific changes in the law in 1955 with regard to Maoris were for a number of reasons. The existence of two separate codes was complicated and inconvenient to administer. To know which system a person came under it was necessary to calculate degrees of Maori blood. Making distinctions of this kind had become odious. Maoris were beginning to adopt strangers (on the European pattern) more often. In the late 1940s there was a dramatic change in the quality of housing for Maoris, as well as rapid urbanisation. It has been suggested that these two factors made a change in the attitude of Maoris towards informal adoptions. In new houses with rooms designated for specific purposes people were more cautious about providing for extras. Urbanisation meant adopting the attitude of those around (to a certain extent), and the prevailing attitude of urban Pakehas was unfavourable to informal adoptions.

The 1962 amendment to the Act transferred jurisdiction over all adoptions to the Magistrate's Court. The Attorney-General (The Hon. J.R. Hanan) in introducing the Bill to bring about this change said its main purpose was to do away with one more of the provisions differentiating Maoris and other New Zealanders.[11] "Now that the Maori people are, I think, better equipped to deal with the normal courts and their attitude towards adoption has come more closely into line with that of the rest of the community, the time has arrived for the whole jurisdiction of adoption to be transferred to the Magistrate's Court".

The use of the word "normal" implies that the Maori Land Court was regarded as an "aberation" or "departure" from the "normal" structure. Integration as a policy and this method of achieving it will be discussed in the conclusion to this paper.

V EFFECT OF THE CHANGE IN THE LAW ON MAORI PRACTICE

At the time of the change in the law in 1955 it was expected that there would be fewer adoptions completed formally by Maoris. It is however, very difficult to obtain evidence on this. There are separate statistics for the number of adoptions completed legally by Maoris and non-Maoris only for the period 1951-1961. These are not, however, very revealing.

Looking at the straight numbers of Maori legal adoptions, they increase steadily, only dropping in 1955, 1956 and 1957, but increasing again more rapidly after that.

If the numbers are expressed as adoptions per 1,000 population, Maoris adopted less frequently than non-Maoris. The average over the ten years for non-Maoris was 1.37 adoptions per 1,000 people, for Maoris it was .63 adoptions for every 1,000 people.

But the Maori population was disproportionately represented by younger people in comparison with the European population (see the comparison of birth rates). If the numbers of adoptions are expressed as adoptions per 1,000 births, it can be seen that Maoris and Europeans adopted at about the same rates. Europeans on average during the ten years adopted one child for every 33.7 births, Maoris adopted one child for every 27.9 births.

It took until 1959 for the Maori adoption rate to be as high as the 1954 rate.

Adoptions 1951-1961

	Non-Maori		Maori (where both child and adoptive parents are Maori	
	No. of Adoptions	Per 1000 pop.	No.	Per 1000 pop.
1951	1,405	1.32	147	.80
1952	1,430	1.33	186	.66
1953	1,445	1.35	240	.53
1954	1,347	1.48	228	.57
1955	1,455	1.39	170	.80
1956*	887	2.33	163	.86
1957	1,691	1.25	199	.73
1958	1,671	1.30	246	.61
1959	1,969	1.12	333	.47
1960	1,880	1.19	362	.45
1961	2,172	1.06	407	.42

*low totals due to change in interim order procedure

Number of births per one adoption

	European	Maori
1951	31.8	35.6
1952	32.5	29.3
1953	32.1	23.0
1954	36.0	25.0
1955	34.4	34.2
1956	56.9	37.8
1957	30.7	33.3
1958	32.2	27.9
1959	27.8	21.4
1960	29.5	25.5
1961	26.6	19.1

What does the 1955 Act mean in practical terms for a Maori wishing to adopt? *Adoption Procedure Guidelines*[12] gives an indication of the processes involved if a Maori wishes to adopt a Maori child legally. There is the option of making the application through the office (fee of $6) or through a solicitor (fee approximately $80). The policy of the Social Welfare Department is to recommend that applicants go to a solicitor.

The procedure for an adoption within the family is as follows:

1. Applicants inquire.

2. Community officer
   Advises applicants to get the birth certificate
   Arrange application at the office to get birth certificate

Advise applicants to arrange for parents to sign forms of consent and affidavit (must be signed in the presence of certain people specified in the Act) and return forms to the office

3. Community officer sends to the applicants:
   Application for adoption order
   Affidavit in support of applicants' application
   Copy of marriage certificate
   Signed consent of parents
   Signed affidavit of parents
   Child's birth certificate
   Applicants must sign in the presence of the Deputy-Registrar and pay the Court fee.

4. Court requests a welfare report

5. Community officer makes home visits and prepares a report

6. Court makes an iterim or final order

7. (If interim order given) during the six months it is in force community officer visits the home, arranges completion of application for final order, and sends a report to the Court.

If the adoption is through a solicitor then he will:

1. Arrange lodgement of the following forms at the Court and payment of the $2 fee.
   Birth certificate of child ($1 copy)
   Consent form
   Copy of marriage certificate
   Applicants affidavit
   Applicants application

2. Advise applicants on hearing arrangements

3. Escort applicants and child into the chamber

4. Assist the court as required

5. Arrange completion of application for final order.

In 1970 the District Welfare Officer for Gisborne reported [13], "We endeavour as far as possible to obtain the consents, birth certificates and marriage certificates before offering adoptive parents to their solicitors. We do encounter difficulties where the adoptive parents are in the rural areas and are not prepared to take time off work to have the various documents witnessed by an authorised person. On occasions it has been necessary to travel many miles, uplift the adoptive parents, transport them to an authorised witness, complete the affidavits

and documents and attestations thereof and finally return the parents to their homes".

The annual reports of District Welfare Officers provide information on the practice of adoption. The 1975 report from Gisborne states that there are a great number of informal adoptions, not legalised because the proposed adoptive parents do not have the resources to employ a solicitor. Therefore it was recommended that adoptions be referred back to the Maori Land Court.[14] In the same year Rotorua reported less and less involvement of community officers because most applications were being referred to solicitors.[15] In 1974 Whangarei stated informal adoptions continued to increase. The reason suggested was that there were lots of cases of elderly parents looking after their grandchildren, and the fact of their age deterred them from applying for an adoption order in case they were refused.[16] Hamilton also reported quite a lot of informal adoptions.[17] In most cases where the Department is consulted the child is already in the house and is related to the applicants.

Palmerston North also recommended in 1973 that the Maori Land Court should again resume responsibility for the hearing of adoption applications.[18]

Whether the Department of Maori Affairs will recommend applicants to a solicitor depends on the area. For example, the Auckland District Office usually does the complete adoption, Rotorua refers a majority of cases to a solicitor, and in Gisborne the Department advises the parents to get their own marraige certificate, the birth certificate etc. and then refers them to a solicitor.

The changeover in jurisdiction over adoptions by Maoris from the Maori Land Court to the Magistrate's Court in 1962 was monitored by the Department of Maori Affairs. In 1966 the Secretary of Maori Affairs stated that in the first two and a half years of the new system adoption orders fell short of the old figures by about 600 cases.[19] The Department at that time was conducting a housing survey which consisted of a house to house check of 20,200 households in the North Island. It

was estimated that there were between 10,000 and 12,000 Maori children living in homes where they had no status in 1966.

The reasons suggested for the fall in numbers of adoptions being legalised after the 1962 amendment were the costs and the formal procedures involved. The reports of the District Officers at the time support this view.

One of the requirements under the 1962 Act is that the report to the court must have information on the police record (if any) of the applicants. Some District Offices reported that the police were reluctant to give information to Maori Welfare Officers, who were therefore subjected to the indignity of having to be identified by Child Welfare Officers.

Among the people opposed to the 1962 amendment were members of the New Zealand Maori Council. But the Secretary of Maori Affairs replied to criticism as follows:[20]

"The situation is that the Adoption Amendment Act 1962 was passed as another step forward in the Government's policy of unifying the laws for Maori and Pakeha. It was approved by the New Zealand Maori Council but with private misgivings and against the strong opposition of some of their members. When the Bill appeared in the House, it draw violent reactions from some sections of the Maori people. The objections, as far as they could be defined, were two-fold:

(1) There is a great reluctance on the part of Maoris, through unfamiliarity, to go to the Magistrate's Court and

(2) Maoris will be obliged to employ counsel which will cost them £15 or more in each case.

These two objections were met, or intended to be met, by amending the Bill to include "Maori Welfare Officer" in the definition of "Child Welfare Officer", thus giving him the same right as a Child Welfare Officer

to appear in Court and be heard in those cases which were hitherto under the jurisdiction of the Maori Land Court.

Though the Maoris rationalised their opposition in the form of the two objections already stated, their real apprehension is emotional and more deep-seated. They regard the Maori Land Court as their own court and rest comfortably in the belief that it understands the Maori point of view. They fear the other courts that have criminal jurisdiction and are frequently heard to say that this is the place where the Maori is punished...

The Minister feels that once the Maori gets used to dealing with the ordinary institutions of Government, his faith and confidence in them will develop and the policy of integration will thereby be assisted".

The main purpose of the Bill (as stated by the Minister) was to eliminate provisions differentiating Maoris and Pakehas. This also had the effect of eliminating differences between Maoris and other Polynesians.

Although there is no way of knowing the numbers of Polynesians other than Maoris adopting or being adopted, it is interesting to note that while they have a similar concept of adoption to Maoris, they have always been under the Pakeha system.

The effect of the 1962 amendment has been recorded. It is reasonable to assume that if by merely changing the jurisdiction over adoption, members decreased significantly, then the more far-reaching changes in 1955 would also have an effect on adoptions by Maoris.

In 1955 approximately four-fifths of the Maori population lived in rural areas. It is doubtful that knowledge of the 1955 Act would have been very widespread (there were articles explaining it in *Te Ao Hou*[21] but its circulation was small, even in 1960 it had only reached 5,000). It has been suggested therefore that people adopting according to custom would continue to do so, and it was not until urbanisation and the disintegration of rural communal living that legal adoptions increased.

At present there are many Maori grandparents formalising the adoption of their grandchildren. The reason often is to prevent other members of the family taking the children. This is more in line with the Pakeha concept of adoption than with the Maori practice.

Smith writes that section 22 of the 1955 Act (no applications under the Act are to be heard or determined in open court) is a provision that [22]"effects a change in the law and practice regarding adoptions by Maoris, which had formerly been heard in open court in keeping with the Maori idea that an adoption was a public act which should be known to all". It is interesting to note that this criticism was made by judges of the Maori Land Court when the Act was introduced.

In 1944 a judge of the Maori Land Court (at Waiariki) noted there had been a large increase in the number of applications for adoption orders over the last year. He believed that one explanation for this was that the Social Security Department Officers [23]"... have got into the habit of informing the Maori guardians of children being provided for by such guardians under all sorts of arrangements, that they will not be permitted to draw children's allowances unless such children are legally adopted by them".

In fact, the officers were not correct, the Director of the Social Security Department stated that the policy was to pay family benefit directly to the actual guardian of the child, whether recognised legally as such or not. The misapprehension was fairly widespread however, the Taranaki Daily News of 21 November 1944 said "Adoptions occupy [a] greater part of Land Court sessions due to requirements of Social Security Legislation".

VI CONCLUSION

The various changes in the law of adoption covering Maoris, beginning with the recognition of customary adoptions through to the Adoption Act 1955 (and the 1962 amendment) by which the law for Maoris and Pakehas is almost identical, can be viewed as part of a trend in legislation dealing with Maoris.

Trends in Maori/Pakeha relations in general in New Zealand have been highlighted by Metge by the use of models describing official Government policy, starting with amalgamation and passing through assimilation to integration and perhaps now biculturalism.[24] But as Metge stresses, official policy and actual practice do not always coincide. Assimilation was officially abandoned in 1961[25] in favour of integration, i.e. a policy that would combine Maori and Pakeha while retaining a distinct Maori culture. This involves eliminating differences that would mean inequality and discrimination, but also positive measures that would help the retention of Maori culture.

In terms of legislation this trend results in changes to eliminate differences between the law governing Maoris and that governing Pakehas. For example, marriages of Maoris had to be registered in accordance with the law governing Pakehas from 1952[26], in 1961 separate registration for births and deaths was abolished.[27] But there remain differences, for example separate representation in parliament.[28] (Although some Maoris want this distinction removed now).

The differences are mainly in the laws about Maori land and the constitution of bodies dealing with Maori affairs, (e.g. the existence of the Maori Affairs Department).

The present adoption law provides an instance within itself of the two conflicting types of legislation dealing with Maoris. On the one hand it has applied the same law to Pakehas and Maoris (against some strong opposition from Maoris).[29] But it has also retained the difference in the administration in that officers of the Department of

Maori Affairs prepare court reports etc. and not Social Welfare Officers.

It is interesting to note that it has been suggested that when the present adoption law is revised, and preliminary steps have been taken in this direction, the Department of Social Welfare will probably assume full responsibility. The Department of Maori Affairs will not have a role to play in the practicalities of adoption, although it may act in an advisory role. (For example, making suggestions to the government about how the Department of Social Welfare should deal with Maori applicants).

The question of whether minority groups should have special legislation arises frequently, not only in New Zealand but also in other parts of the world. In Australia, the Royal Commission on Human Relationships recommended in 1977 that [30] "adoption authorities and adoption agencies should make every effort to employ Aboriginals to arrange adoptions of Aboriginal children or develop special adoption agencies manned by Aboriginals for this purpose".

At the first Australian conference on adoption (in February 1976) adoption by Aborigines was discussed. It was felt very strongly that Aborigines should have control of adoption and fostering agencies responsible for the placement of all Aboriginal children. It was stated that current adoption law and practice "is contributing to the disintegration of Aboriginal culture since it fails to take account of Aboriginal family law". [31]

Can parallels be drawn between the situation of Aborigines and that of Maoris? First, at the conference self-determination was given as the guiding principle underlying current policies for Aboriginal people. (This was used to support the argument for separately organised agencies). Secondly, at present in Australia it is difficult to place children with Aboriginal families. Thirdly, the question of identity was stated as follows: "in a racist society an individual is white or black. One cannot be part black, part white. An Aboriginal child will soon learn from his white classmates that he is not one of them, that he is different,

and that he belongs to the black community. Even if he looks white. The position taken by Aborigines on this issue is therefore that any child of Aboriginal parentage, no matter what his physical appearance or his degree of Aboriginality is an Aborigine". Do these three points apply to Maoris? In New Zealand probably a policy of multi-culturalism as opposed to self-determination (and its connotations of separatism) is favoured by both Maoris and Pakehas. Although there have been separatist movements amongst Maoris, these do not seem to have found widespread support.[32]

With regard to the second point, there is no difficulty in placing Maori children with Maori families. In addition, nowadays prospective adoptive Maori parents place less importance on which tribe the child belongs to and are happy to adopt the child whatever its tribe.

Thirdly, in New Zealand there is not the clearcut Maori/Pakeha division. There is a considerable amount of intermarriage, and this results in Maoris defining themselves as both Maori and Pakeha.[33] Terms used to describe this are 'half-caste', 'half-and-half' and 'a bit of both'.

It is suggested, therefore, that the position of Aborigines is not analogous to that of Maoris. But even so, would it be helpful to set up a separate and different administrative structure, for example, follow the frequently stated suggestion that jurisdiction over adoption should be returned to the Maori Land Court? There are four factors relevant to the answer to this question. Firstly, the Maori Land Court has a limited role only in the consequences of adoption (i.e. intestate succession to Maori land), and therefore it would not be expedient administratively or necessarily appropriate to have adoptions also administered by that court. To retain jurisdiction in the Magistrate's Court would mean adoptions would be in line with other family matters that are dealt with by the courts.

Secondly, as there are not two clearcut mutually exclusive groups

i.e. Maori and Pakeha, two systems seem less appropriate. In addition, where would other ethnic groups (e.g. Tongans, Chinese) fit? Should they be put in the system that is nearest to their concept of adoption, and if so now would this be ascertained?

Thirdly, the justification for different provisions is to compensate for special difficulties, do these exist in the field of adoption, and if they do are they of sufficient significance to require different provisions? On the one hand it is said that Maoris are diffident about approaching the Magistrate's Court and government departments, but on the other hand it is argued that one system for everyone is a step towards integration and ultimately better Maori/Pakeha relations. Perhaps the compromise of administration by the Department of Maori Affairs is a different provision that compensates for any difficulties, and at the same time is not widely at variance with the notion of having one system, the Department being so well established and accepted.

Finally, looking at New Zealand society as a whole, multi-culturalism as a policy (i.e. the active assistance to the various minority groups to maintain their cultures) is, I believe, the policy to be preferred. In the context of adoption, how is this policy best served? It is probably too late to return to the pre-1955 position, and would result in too big a difference between Maoris and Pakehas to gain acceptance. It also would probably not be what Maoris want. (See the attitudes of the young urban mothers in McDonald's study). But whether the present system is retained or not, there will likely to continue to be significant numbers of informal adoptions. Whether we treat these adoptions as inferior to legal adoptions is the more important question. If they are accepted, in the sense that children adopted informally are regarded as having the status of legally adopted children socially, although not necessarily for the purposes of succession, we will be supporting a policy of multi-culturalism.

FOOTNOTES

1. See Vern Carroll ed. *Adoption in Eastern Oceania* (Honolulu: University of Hawaii Press, 1970).

2. Ibid, 3.

3. Joan Metge, *The Maoris of New Zealand* (London: Routledge & Kegan Paul, 1976).

4. Geo Graham, "Whangai Tamariki" in *The Journal of the Polynesian Society* 1948 Vol. 57, No. 3, 268.

5. Ibid, 272.

6. Raymond Firth, *Economics of the New Zealand Maori* (Wellington: Government Printer, 1959) 126.

7. Ibid, 127.

8. Letter from the Chief Judge of the Maori Land Court to the Deputy Registrar-General, 20 February 1946.

9. Ibid.

10. Metge, 145.

11. Pamela Ringwood, "Adoption Procedures in Cook Islands and New Zealand" in *The New Zealand Law Journal* 7 October 1975, No. 18, 677.

12. Ibid, 678.

13. Geraldine McDonald, *Maori Mothers and Pre-School Education* (Wellington: New Zealand Council for Educational Research, 1973).

14. Jane Ritchie, *Maori Families* (Wellington: Victoria University of Wellington Publications in Psychology No. 17, 1964).

15. McDonald, 141.

16. Ibid, 142.

17. *The New Zealand Official Yearbook* (Wellington: The Government Printer, 1977) 92.

18. McDonald, 147.

19. Ibid, 148.

20. Idem.

21. I.D. Campbell, *Law of Adoption in New Zealand* (Wellington: Butterworth, 1957) 1.

22. Ibid, 3.

23. *R* v. *Gyngall* [1893] 2 Q.B. 232.

24. W.W. Buckland and Arnold D. McNair, *Roman Law and Common Law* (Cambridge: Cambridge University Press, 1965) 42.

25. The French Civil Code, art. 343.

26. Art. 356.

27. Art. 364.

28. Art. 370.

29. Art. 359.

30. Carroll, 4.

31. *The New Zealand Official Yearbook*, 92.

32. S. 16.

33. *The New Zealand Official Yearbook* 92.

34. Idem.

35. Idem.

36. With the exception that, until amendment in 1962, if a Maori wished to adopt a Maori child, the application was made to the Maori Land Court not to a Magistrate's Court.

37. S. 71.

38. (1908) N.Z.L.R. 801.

39. Ibid, 806.

40. René David and John E.C. Brierley, *Major Legal Systems in the World Today* (London: Stevens & Sons, 1968) 326.

41. [1900] A.C. 561.

42. [1920] A.C. 199.

43. The Maori Land Claims Adjustment and Laws Amendment Act 1901, S.50.

44. Regulations under S.50 of the Maori Land Claims Adjustment and Laws Amendment Act 1901.

45. Ibid.

46. [1918] N.Z.L.R. 691.

47. *Re Adoption of Rori Watene* (20 January 1905). Unreported, Maori Land Court M.B. 9/228-30.

48. Ibid, 7.

49. *New Zealand Parliamentary Debates*, (Wellington: Government Printer, 1909, Vol. 148) 1275.

50. Idem.

51. Firth, 357. Metge 14.

52. *Appendix to the Journals of the House of Representatives* (Wellington: Government Printer, 1907, Vol. 3) G.5, 9.

53. Idem.

54. Ibid, 10.

55. Ibid, 11.

56. Idem.

57. Ibid, 17.

58. Ibid, 13.

59. Ibid, 11.

60. Ibid, 18.

61. Idem.

62. Idem.

63. Norman Smith, *Maori Land Law* (Wellington: A.H. & A.W. Reed, 1960) 42-43.

64. The Maori Land Laws Amendment Act 1895, S. 33.

65. *Re Pareihe Whakatomo* [1933] N.Z.L.R. S. 123.

66. Infants Act, Part III.

67. [1933] N.Z.L.R. s.123.

68. s. 130.

69. S. 116 (3).

70. S. 116 (1) (2).

71. Smith, 55.

72. S. 125.

73. The Maori Affairs Amendment Act 1967.

74. S. 76.

75. S. 79.

76. S. 78, S. 77, S. 75.

77. S. 25.

78. S. 9.

79. Metge, 111.

80. Part I.

81. S. 68.

82. Elsdon Best, *The Maori* (Wellington: Board of Maori Ethnological Research, 1924) 477.

83. S. 16.

84. *New Zealand Parliamentary Debates* 1881, Vol. 39, 281.

85. S. 3.

86. *New Zealand Parliamentary Debates* 1907 Vol. 139, 267.

87. *New Zealand Parliamentary Debates* 1907 Vol. 142, 621.

88. The Maori Affairs Act 1953, S. 2.

89. The Adoption Act 1955, S. 7.

90. S. 5.

91. Diane Zwimpfer, *Early Indicators of Adoption Breakdown*. (MA Thesis, Victoria University of Wellington, 1978). 2.

92. S. 15.

93. S. 22.

94. S. 5.

95. Campbell, 10.

96. C.E. Peek, "Annual Report of the Child Welfare Division" in *Appendix to the Journals of the House of Representatives*, 1956, Vol. 3, E.4, 9.

97. H.C. Sharpe, "Adoption Procedure in New Zealand" in *The New Zealand Child Welfare Workers' Bulletin* 1951, Vol. 1, No. 3, 1.

98. Ibid, 2.

99. Ibid, 3.

1. For example, by officers of the Department of Maori Affairs.

2. Letter from the Under-Secretary of Maori Affairs to a firm of solicitors in Hastings, 21 October, 1949.

3. Memo for Committee on Adoption Law: Views of Department of Maori Affairs on Maori Adoptions, 19 June, 1952.

4. *New Zealand Parliamentary Debates* 1954, Vol. 304, 2034.

5. Ibid, 2531.

6. *New Zealand Parliamentary Debates* 1955, Vol. 307, 3347.

7. Ibid, 3351.

8. Idem.

9. Ibid, 3354.

10. Ibid, 3355.

11. *New Zealand Parliamentary Debates* 1962, Vol. 330, 117.

12. Connie Hanna, *Adoption Procedure Guidelines* (Wellington: Department of Maori Affairs, 1976).

13. District Welfare Officer's Report: Gisborne 1970.

14. District Welfare Officer's Report: Gisborne 1970.

15. District Welfare Officer's Report: Rotorua 1970.

16. District Welfare Officer's Report: Whangarei 1974.

17. District Welfare Officer's Report: Hamilton 1974.

18. District Welfare Officer's Report: Palmerston North 1973.

19. Letter from the Secretary of Maori Affairs to the Secretary for Justice, 7 June, 1966.

20. Letter from the Secretary of Maori Affairs to the Secretary for Justice, 29 March, 1963.

21. E.g. "About Adoptions: New Legislation Proposed" in *Te Ao Hou* 1955, No. 10 (Vol. 3, No. 2).

22. Smith, 45.

23. Letter from a judge of the Maori Land Court to the Under-Secretary of the Native Department, 20 April, 1944.

24. Metge, 302.

25. J.K. Hunn, *Report on the Department of Maori Affairs 24 August 1960* (Wellington: Government Printer, 1961).

26. The Maori Purposes Act 1951, s.8.

27. The Births and Deaths Registration Amendment Act 1961.

28. The Electoral Act 1953, s. 23 (as substituted by s. 2 of the Electoral Amendment Act, 1976).

29. E.g. The New Zealand Maori Council and The Maori Women's Welfare League.

30. *Royal Commission on Human Relationships Final Report* Vol. 4, Part V. The Family (Canberra: Australian Publishing Service, 1977) 127.

31. Elizabeth Sommerlad (ed.) "Homes for Blacks: Aboriginal Community and Adoption" in C. Picton (ed.) *Proceedings of First Australian Conference on Adoption* (Canberra: The Committee of the First Australian Conference on Adoption, 1976) 160.

32. Metge, 316-317.

33. Ibid, 40.

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