

AOTEAROA

Our Whakapapa,
Our Stories



Law and Legislation

Law and Legislation

This resource supports further inquiry into NZ's history of Law and Legislation.

Legislation is when a member of parliament suggests a law and then it is made official by an act of parliament.

The booklet tracks the ways that the creation of laws and legislation in parliament (by the government) gradually changed how New Zealanders lived together in this country.

Many of the laws gave an advantage to those in power. Some laws were introduced that over-ruled a culture's beliefs. Many of the new laws advantaged one culture over the other.

This clash of cultures is most easily seen in NZ in the different cultural views about the 'ownership' of land. Land was often in short supply and there was conflict between those who wanted the land and those that had it. Refer to our booklet on Migration to understand this better.

Another easy way to see how two different viewpoints can cause severe misunderstandings is to look at the Maori and the English versions of the Treaty of Waitangi. The 'sense' of the two versions is quite different.

It is worthwhile to consider the legal principle of **contra proferentem**. This principle states that if there are two meanings to a clause, as there is in the Treaty of Waitangi, the interpretation should favour the party who did not initiate the contract. In the case of the Treaty of Waitangi, the Crown initiated the Treaty therefore the Maori view should be upheld.

In this booklet we will cover:

- Pre-European tribal structure and the laws that this structure generated;
- The Treaty of Waitangi;
- The laws about Māori land e.g. the Land Claims Ordinance, the Native Lands Purchase Act;
- The laws that sought to assimilate Māori into the European culture e.g. The Native Schools Act, the Tohunga Suppression Act;
- The more recent laws that have divided New Zealanders e.g. The Foreshore and Seabed Act, the Terrorism Suppression Act.

Pre-European Tribal Structure

Tribal organisation and culture in Aotearoa evolved over many centuries. It included the *hapū*, a smaller, family related group living in their own *kāinga* (village). Several *hapū* could live together as members of the same *iwi* (larger tribe). *Iwi* had an *Ariki* (paramount leader), who was a person with high levels of mana. Other leaders were called *Rangatira* – they had more mana than *tūtūā* (the common people). Mana was inherited but could be enlarged by strong leadership or socially responsible lives. Mana could be lost through severe social offending or disregarding the community. Finally, there were the *Tohunga* (chosen) – these were individuals who displayed talent and aptitude at an early age (fishing, carving, tattooing, genealogical recitation) and were then mentored to enhance their specific knowledge.

Supporting Link

<https://www.youtube.com/watch?v=8w0zjqA3hUI>

Māori Law

NZ was divided into a network of *rohe* (districts) over which particular *iwi* and *hapū* held mana whenua (authority). Authority was established by length of occupation (known as *ahi kā*), active exploitation of the resources, and/or the conquest of previous occupants.

Competing for limited resources or settling *utu* could bring about conflict. Combat was hand to hand, mainly using the *patu* and *taiaha*. As conflict became more common Māori developed the *pā* (hill fort). It was built on suitable hills ideally with the sea or a river, lake, or swamp forming a natural barrier on one side. Stockades, as well as trenches and ramparts, were built to protect the sides open to enemy attack. Inside the *pā* was a village with sleeping huts, stores of *kumara*, and other foods in *pātaka* as well as pits for water or special access to a spring if possible.

Every *pā* had its protective deity. This was often a special stone which retained the mana or prestige of the *pā* and was buried under one of the corner posts. Generally the *pā* was the stronghold of the tribe, a place of refuge when danger threatened and security for all in time of war.

1835 He Whakaputanga Declaration of Independence of the United Tribes of New Zealand

The Declaration of Independence asserted sovereign power of New Zealand resided with the Confederation of United Tribes (Māori), and that no foreigners could make laws. The Declaration of Independence was acknowledged by the British Parliament in 1836. The *rangatira* (chiefs) who signed were continuing a tradition of safeguarding their people in the face of rapid change and challenges posed by Pākehā contact. The *rangatira* wished to strengthen their alliance with Great Britain, and assert Māori authority to the wider world.

<https://nzhistory.govt.nz/culture/declaration-of-independence-taming-the-frontier>

Introduction of British Law

In 1839 the British Colonial Office instructed Captain William Hobson to seek the approval of Māori chiefs to surrender sovereignty of their territory in return for benefits that included 'British protection and laws' with British judges in charge. Colonial officials introducing British law to Māori recognised that they needed to include existing Māori laws such as *tapu*. Laws brought into NZ from 1844 (Native

Exemption Ordinance) to section 71 of the NZ Constitution Act in 1852 included Māori laws and customs. Although this section existed it was never implemented.

Question

What could be some reasons that the section was never implemented?

***1840 The Treaty of Waitangi**

Supporting Links

<https://www.youtube.com/watch?v=4-IG0owx38U>

1841 Land Claims Ordinance

Background

Many of the early laws affecting Māori dealt with the ownership and sale of land. The Land Claims Ordinance 1841 established the Native Protectorate Department to prevent settlers fraudulently taking land from Māori. It also created the Old Land Claims Commission to investigate purchases of land from Māori before the Treaty of Waitangi was signed in 1840.

The Crown dismissed many of the more extravagant pre-treaty land claims by settlers, and radically reduced the area of land sold under other claims.

Another feature of the 1841 ordinance was that it allowed the Crown to keep the difference between land claimed and land awarded to European buyers. The colonial secretary argued that this policy did not conflict with the Treaty of Waitangi. He was among a number of settlers who asserted that Māori rights to land guaranteed by the Treaty only extended to land that was obviously used by them for housing or cultivation.

Question

How did the secretary justify keeping land to sell to the settlers? Was he right, in your opinion? What about ahi kā?

1843 The Colonial Office

The office ruled that all Māori were under the Queen's rule, signatories or not. While Māori believed that the land transactions they were making were similar to a tenancy, rather than an ownership agreement, the Crown began to gift to settlers what was seen as surplus land.

1844 The Native Trusts Ordinance

This was a formal declaration of the colonial government. Ostensibly focused on the welfare and protection of Māori it offered a solution of education and assimilation, this new preferred strategy being less expensive than war.

1846 Native Lands Purchase Ordinance

Background

From 1840 the European demand for land increased dramatically as settler numbers swelled. Under Article Two of the Treaty of Waitangi, only the Crown could buy land from Māori.

Governor Robert FitzRoy relaxed this rule in 1844, allowing direct purchases by settlers. Under the Native Land Purchase Ordinance 1846 Governor George Grey stopped such direct sales and Native Land Purchase Commission agents, working for the Crown, purchased as much Māori land as possible. The strategies they employed to convince the sellers were often dubious, and included:

- targeting the weaker members of tribes
- forcing sales under threat of military action
- purchasing from individuals rather than the groups who owned land rights collectively
- purchasing from non-owners
- promising reserves for Māori on tracts of land that they sold, then not providing them, or providing reserves that were smaller than promised or were on unsuitable land.

Question

in your opinion what was the worst strategy used? Say why.

1852 The New Zealand Constitution Act

This Act of the British Parliament granted self-government to the colony of New Zealand.

1854 Parliament

The first Parliament was formed. Only men who owned property of a certain value were eligible to vote. This excluded most Māori and Pākehā without land.

1858 Native Schools Act

This Act provided government subsidies for Māori education in mission schools. These subsidies were provided on the condition that students were taught in English.

1863 New Zealand Settlements Act

This law allowed for the confiscation of land – without compensation – from any North Island tribe said to be ‘in rebellion against Her Majesty’s authority’. Under the provisions of this act Te Āti Awa lost all their Taranaki lands. The short title of the act, ‘New Zealand Settlements’, referred to the intention to introduce new settlers onto the lands, but it disguised its real purpose, which was confiscation.

Question

What would you do if someone came and confiscated your home?

1862 Native Lands Act

These acts established the Native Land Court. This freed up more land for purchase by settlers as it individualised Māori land title. Justice minister Henry Sewell described the aims of the court, 'to bring the great bulk of the lands in the Northern Island ... within the reach of colonisation' and 'the detribalisation of the Māori – to destroy, if it were possible, the principle of communism upon which their social system is based and which stands as a barrier in the way of all attempts to amalgamate the Māori race into our social and political system.'

Although many Māori were willing land-sellers, the operations of the Native Land Court led to deep dissension among Māori and also contributed to serious health and social problems.

Any 'interested Māori person' could apply for a Native Land Court hearing, and speculators often convinced individual Māori to sell land before its other tribal owners knew of the sale. The Native Land Court's hearings were frequently held some distance from tribal homelands, requiring landowners to travel and accommodate themselves in another territory. They also had to pay court costs, survey costs and legal fees.

***1865 Native Lands Act**

Background

Coming little more than a year after the Waikato War, this legislation was to achieve what many believed had not been accomplished on the battlefield – acquiring the land necessary to satisfy an insatiable settler appetite. Historian Judith Binney described the Native Lands Act as an 'act of war'.

The Court was required to name no more than 10 owners, regardless of the size of a block. All other tribal members were effectively dispossessed. The newly designated owners held their lands individually, not communally as part of (or trustees for) a tribal group. They could manage it, and sell it, as individuals and for their own benefit.

Māori landholdings declined dramatically in the late 19th century. Between 1870 and 1892, 2 million hectares of Māori land was transferred to Pākehā ownership. At the signing of the Treaty of Waitangi in 1840 Māori owned almost all of the North Island, by 1892 they owned little more than a third, and a quarter of this was leased to Pākehā. Another 1.2 million hectares of Māori land would be sold by 1900.

Supporting Link

Land loss <https://youtu.be/rynnk2LBEY0>

The Māori Representative Act

This Act established four seats in Parliament exclusively for Māori, and Māori men were now eligible to vote.

***1867 The Native Schools Act**

From the outset the priority of the schools was the teaching of English. The plan was to phase out the native schools once English had taken hold in a community. Initially, the Māori language was allowed to facilitate English instruction, but as time went on official attitudes hardened against any use of Māori language. In later years many Māori children were punished for speaking their first language at school. For many

years the insistence on English was generally accepted by Māori communities, who were secure in their Māoritanga and wished their children to be prepared for success in the Pākehā world.

Beyond basic reading, writing and arithmetic, the curriculum was heavily skewed towards instruction in manual and domestic skills.

***1907 Tohunga Suppression Act**

Tohunga were the holders of knowledge including health matters (rongoā). They were experts in the use of medicinal plants and herbs. This Act of the NZ Parliament aimed at replacing tohunga as traditional Māori healers with "modern" medicine.

European settlers had noted the good health and fitness of Māori when they arrived but the diseases that Europeans brought with them were unable to be cured by traditional healing practices. The perceived loss of power of the tohunga, along with missionary preaching, led many Māori to accept the new religion of the Pākehā – thus destabilising the traditional Māori lifestyle.

Many tohunga then declined to pass on their oral traditions leaving Māori bereft.

Colonial leaders thought that Māori were a "lost race" and that banning traditional practices of spiritual and cultural leaders would hasten assimilation. The Act was repealed in 1962.

Question

*Think/pair/share - were the new colonists afraid of the power of the Tohunga?
Say why.*

The 1926 Royal Commission

This commission on land confiscations was formed in 1926, and the first compensatory settlements were paid by the Crown to Te Arawa and Ngāi Tahu.

1928 The Public Works Act

This provided the Crown with the statutory authority to acquire any land for public works.

1953 The Māori Affairs Act

This forced unproductive Māori land into use.

1967 The Māori Affairs Amendment Act

This Act enabled the compulsory conversion of Māori freehold land with four or fewer owners into general land. It increased the power of the Māori Trustee to compulsorily acquire and sell so-called uneconomic interests in Māori land.

In line with the Crown's desire to remove all kinds of legal differentiation between the races, the entire separate Māori land title system was, ultimately, to disappear. The proposed legislation was designed to hasten something that many officials and politicians believed to be already underway: the 'two races rapidly becoming one'. The state would use its increased powers of 'conversion' to develop land in the 'national interest', regardless of the wishes of Māori.

The Māori Land Court would be able to declare any 'Māori land' owned by four or fewer owners to be 'European land', and such property lost all protection against alienation. There were also provisions making Māori land subject to the same constraints as European land, one typical consequence being that 'village communities grouped about a marae [could no longer] be set up on Māori rural land'.

From now on, the Crown could never rely automatically upon the support of its own creature, the New Zealand Māori Council (NZMC), having underestimated Māori anger at what seemed, from a Pākehā perspective, to be logical proposals. Working from a submission drafted by its Tairāwhiti Council, the NZMC joined with the Māori MPs (headed by Matiu Rata) and many other prominent Māori in leading the opposition to the Māori Affairs Amendment Bill. Māori leaders continued to oppose it to the end. Finally the Act – the 'land grab Act' – was passed, embodying and expanding the state's right to alienate Māori-owned land even against the wishes of the interested parties.

While the NZMC helped lead the campaigns against the new legislation, many other Māori organised to voice their opposition.

Some were willing to engage in dialogue within parameters set by the state, but others were not. The high degree of intransigence on the land issue was partly influenced by Māori disillusionment at being hit disproportionately during the first post-war recession. The legislation generated a campaign that proved to be a turning point in the Māori struggle for rangatiratanga.... (to be in charge of themselves).

<http://nzetc.victoria.ac.nz/tm/scholarly/tei-HilMaor-t1-body-d7-d4.html>

***1975 Waitangi Tribunal**

When Matiu Rata was Minister of Māori Affairs, the government created the Waitangi Tribunal to hear Māori claims of breaches of the Treaty of Waitangi. The Tribunal was created to report on and suggest settlements for contemporary Māori claims to the government, and to ensure that future legislation was consistent with the treaty. Claims were relatively rare in its first decade, and most of the Tribunal's early inquiries addressed local environmental and planning issues.

In 1985, the government extended its jurisdiction to claims about any alleged breach of the Treaty since 1840. This resulted in a huge increase in the number of claims and an expansion of the Tribunal's activities. The Tribunal concluded that governments had breached the treaty on countless occasions since 1840, and that Pākehā NZ had been built on many broken promises and bad deals. These conclusions exposed deep-rooted racism, and a public Pākehā backlash followed.

Despite this, the Tribunal has made a major contribution to remedying some of the more unsettling aspects of NZ's colonial legacy.

Supporting Links

<https://teara.govt.nz/en/waitangi-tribunal-te-ropu-whakamana>

Question

Think/pair/share – which New Zealanders would not want to hear that the government had breached the Treaty? Why?

***2004 Foreshore and Seabed Act**

In NZ, the seabed is the land under water and the foreshore is the land regularly covered by the tide (the wet part of the beach). It includes land covered by high tides in spring, the space occupied by the air and water above the land, and the soil and rock under it.

Crown ownership

English law was brought to NZ with the Treaty of Waitangi in 1840. It said the government was the owner of the coastal water, foreshore and riverbeds.

Māori rights

For a long time, Māori had used land under the water for bringing in canoes, recreation, fishing, battles, burials, and collecting seaweed. The Crown's assumed ownership overlooked these Māori activities.

Public access

New Zealanders have traditionally believed they had the right of access to rivers, streams and beaches but the law did not say that they had this right.

Dame Tariana Turia and Sir Pita Sharples

Notable for:

- founding the Māori Party in 2004 following the Foreshore and Seabed Act controversy in which the Government declared that NZ's foreshore and seabed were owned by the Crown, despite Māori claims for customary title. Tariana Turia was a Labour MP but left the party over their approach to the controversy. Pita Sharples was an academic and had previously called for the creation of a Māori party in Parliament.
- leading protests against the Foreshore and Seabed Act of 2004 until it was repealed in 2011.

Images



The treaty principle that the Crown has a duty to consult with Māori has been applied over several years in dealing with the ownership of the foreshore and seabed. Above, the minister in charge of treaty negotiations, Michael Cullen, and Māori Affairs Minister Parekura Horomia enter Maraenui Pā, Ōpōtiki, in 2008. They were recording progress on consultations with local Te Whānau-ā-Apanui people. Below, Joshua Wikipiwhi-Heta leaps high during his wero (formal challenge) to Cullen's successor, Attorney-General Christopher Finlayson, at Puatahi Marae, Warkworth, in 2010. Finlayson was attending a hui as part of further consultation on the Foreshore and Seabed Act.

Supporting Links

<https://teara.govt.nz/mi/law-of-the-foreshore-and-seabed>
https://en.wikipedia.org/wiki/M%C4%81ori_Party

Question

The Foreshore and Seabed Act caused many fierce arguments in NZ. Can you see why?

2007 Terrorism Suppression Act

Citing the Terrorism Suppression Act, police arrested 18 people in raids linked to alleged weapons-training camps near the Bay of Plenty township of Rūātoki. In addition to raids in Rūātoki and nearby Whakatāne, police executed search warrants in Auckland, Hamilton, Palmerston North and Wellington after 12 months of surveillance of activist groups.

Among those arrested was Tūhoe activist Tame Iti. Police claimed Iti was involved in running military-style training camps in the Urewera Ranges and was planning to establish an independent state on traditional Tūhoe land.

In February 2012, only Iti and three others were brought to trial on charges of participating in a criminal group and possessing firearms. The jury could not agree on the former charge, but all four were found guilty of firearms offences. Two received nine months home detention and the other two – including Iti – were sentenced to 2½ years in prison.

In 2013 the Independent Police Conduct Authority found that police had ‘unnecessarily frightened and intimidated’ people during the raids. This included elderly people and children. In 2014 Police Commissioner Mike Bush apologised for mistakes made during the raids.

Supporting Links

<https://nzhistory.govt.nz/page/anti-terror-raids-urewera>
https://en.wikipedia.org/wiki/Terrorism_in_New_Zealand

*2011 Marine and Coastal Area (Takutai Moana) Act

In 2011 the National-led government replaced the Foreshore and Seabed Act 2004 with the Marine and Coastal Area (Takutai Moana) Act 2011. Crown ownership of the foreshore and seabed was replaced with a ‘no ownership’ regime.

Under the law, iwi could apply to the court or negotiate with the Crown for recognition of customary rights (which protect activities such as collecting hāngī stones or launching waka) or customary marine title over a particular area. However, these interests could not prevent existing rights and uses such as fishing, aquaculture and public access.

Supporting Links

<https://teara.govt.nz/en/law-of-the-foreshore-and-seabed/page-5>
https://www.hobsonspledge.nz/about_us

2019 Piri Haeata ki Parihaka The Parihaka Reconciliation Bill

This bill is an apology to the Parihaka community for the Crown's historical actions at Parihaka.

The Bill also provides:

- A commitment to an annual Parihaka-Crown leaders' forum.
- A relationship agreement between the Parihaka Papakāinga Trust, 10 agencies and three local authorities.
- A \$9 million contribution to the development of Parihaka.
- Protection of the name Parihaka against commercial exploitation (which will require authorisation of the Parihaka Papakāinga Trust).

Supporting Link

<https://www.beehive.govt.nz/release/te-pire-haeata-ki-parihaka-parihaka-reconciliation-bill-passes-third-reading>