INDIGENOUS LEGAL ISSUES, INDIGENOUS PERSPECTIVES AND INDIGENOUS LAW IN THE NEW ZEALAND LLB CURRICULUM

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I INTRODUCTION

The difference between distinct types of Indigenous content in the law currigculum, specifically the difference between Indigenous legal issues and Indigenous perspectives of the law, was brought home to me early in my legal education. In fact, I brought the issue home myself. I was perhaps six weeks into my first year of law school and had returned home for the mid-semester break. We had been assigned an essay on a landmark New Zealand Court of Appeal case that dealt with the principles of the *Treaty of Waitangi*.[1] I was working on the assignment over the break and at some point started talking with my mother about what I was working on. The decision was indeed a landmark case in the development of the law relating to the *Treaty of Waitangi*, and I told my mother about how the bold spirits of the Court of Appeal had interpreted the principles of the treaty in a way that gave real force and effect to those principles. My mother was not as impressed as I had anticipated. 'Why did they use the *principles* of the treaty?' she asked. 'Why did they not simply give effect to the words? The words set out clearly and plainly the agreement. The treaty principles that the case deals with just seem to water down the agreement and the guarantees to Māori, don't they?' That was

when I first caught a glimpse of the possibility that there might be a difference between the law we were taught about at law school and the experiences of my people with that law and their perspectives of it. It was certainly not the last time that I would see this disjunction.

The disjunction suggests that considering the legal issues affecting Indigenous people is not the same as considering the Indigenous understandings of the law and the legal system. It suggests that there are distinct types of Indigenous content that may be relevant to the study of law. There exists a body of literature relating to the development of bicultural legal education in New Zealand that points to a number of important measures aimed at assisting that development.[2] The incorporation of Māori content is often argued to be one such measure. However, the existing literature tends to be more concerned with broader objectives of biculturalism than curriculum content; consequently, it does not consider the range or distinct types of Indigenous content, or the value of including particular types of Indigenous content in the curriculum. As Stephanie Milroy and Leah Whiu have pointed out, biculturalism in legal education requires sharing resources and decision-making power with Indigenous people as equal partners,[3] measures aimed at recruiting and retaining Indigenous students and faculty members,[4] and at implementing changes within the legal system itself.[5]

Incorporating a range of distinct types of Indigenous content into law courses can help to make the study of law more relevant to Indigenous people and provide a critical framework from which changes to the legal system can be advanced. This article identifies three different types of Indigenous content that may be usefully incorporated into the Bachelor of Laws (LLB) curriculum:

- Indigenous legal issues;
- Indigenous perspectives; and
- Indigenous law.

Studying the type of Indigenous content that I was exposed to in first year law is important, but, as my mother showed me, a greater range of content would yield greater benefits. To achieve the maximum benefit of incorporating Indigenous content into the LLB curriculum, it is vital first to clarify the objectives behind doing so; then to match the type of content to meet those objectives; and finally to ensure that the content is delivered in a way which is

suitable for that particular type of content.

This article considers each type of Indigenous content in turn. Each is described, their general benefits explored in relatively abstract terms, and their relevance to two specific LLB courses is outlined. Those two courses are the Public Law and Māori Customary Law courses offered at Victoria University of Wellington, New Zealand. Public Law is a core course in the LLB at Victoria University of Wellington and introduces students to New Zealand's constitutional and administrative law. Māori Customary Law is an elective course exploring the operation of Māori laws and law-making processes. I have drawn on my experiences of teaching in both courses to illustrate the importance of the different types of Indigenous content.

Indigenous legal issues can help students to explore the social role of law and connect legal education to the concerns of Indigenous communities. Indigenous perspectives can help to challenge aspects of state law through a critical discourse based on the experiences of Indigenous people. Indigenous law can help to explain the structure of and relationships between legal systems; the substantive content of Indigenous legal systems; and, in many instances, the content of state law. Each of these three types of Indigenous content makes a distinct contribution to legal education. Including a range of Indigenous content is important, not only for the development of the law and the legal profession, but, ultimately, for the Indigenous communities served by that profession.

II INDIGENOUS LEGAL ISSUES

A Definition

I use the term 'Indigenous legal issues' in this article specifically to describe Indigenous content that is distinct from both 'Indigenous perspectives' and 'Indigenous law'. For the purposes of this article, Indigenous legal issues reflect the content of the state legal system (not the Indigenous legal system itself). Indigenous legal issues might relate to laws within the state legal system that are specifically directed at or which affect the rights or activities of Indigenous peoples. For example, common law or legislation relating to native title might fall within this category. However, Indigenous forms of land tenure would not.

B General Significance of Incorporating Indigenous Legal Issues

In this section I set out the basic objectives that may be achieved by teaching Indigenous legal issues. In general, there are three. Firstly, by recognising and prioritising the concerns of Indigenous communities, teaching Indigenous legal issues provides an essential part of the legal training for students who will go on to work with these communities.[6] Secondly, by honouring the 'big stories of the discipline' in the context of the law's particular relationship with Indigenous communities, addressing Indigenous legal issues contributes to an effective teaching and learning, enabling Indigenous law students to see the relevance of the state legal system to the issues that affect their communities.[7] Thirdly, it contributes to a discussion about the social role of law and the operation of the state legal system by raising questions about the universality of the law's application and effects.[8]

Furthermore, because this aspect of Indigenous content focuses on state law and the implications for the administration of the state legal system, law schools should already be relatively well-equipped to introduce it into the curriculum. In New Zealand, Indigenous legal issues may be found throughout the core LLB curriculum and many other courses will already include an examination of Indigenous legal issues.[9] Not only do Indigenous legal issues fit comfortably within the LLB curriculum, I argue that law schools are *the best* place for such issues to be taught. These issues deal with the application of state laws and the technical legal aspects of the operation of the state legal system. Law school faculty members are experts in the operation of the state legal system and its laws, and are best placed to teach this material.

The section which follows examines the role of teaching Indigenous legal issues in the Māori Customary Law and Public Law courses at Victoria University of Wellington.

C Indigenous Legal Issues in the Context of Constitutional and Administrative Law and Māori Customary Law[10]

Indigenous legal issues are relevant to courses which are specifically focused on Indigenous law (such as a course on Māori

customary law) as well as courses which have a different focus (such as a constitutional and administrative law courses, which focus on public law). This section outlines the relevance of Indigenous legal issues to the teaching of both types of courses.

1 Māori Customary Law

Teaching Māori customary law is primarily focused on substantive Indigenous law content. It may not be immediately apparent why Indigenous legal issues (defined above as dealing with the operation of the state legal system) would be relevant to such a course. While the course focuses on the content of the Māori legal system, it is, nevertheless, necessary for students to understand how that legal system interacts, or does not interact, with the state legal system. The operation of the Māori legal system is not dependent on the state legal system, but the state legal system can impose barriers on it.[11] One of the key issues that many Māori tribal groups are grappling with at present is how to give effect to their own laws in a way that also ensures their rights are recognised by the state legal system.[12] As noted above, these are matters that the law school is ideally placed to teach because it is the location of academic expertise in that system. While some aspects of Māori customary law could be taught in anthropology or history or Māori studies departments, the Indigenous legal issues that arise require a deep understanding of technical legal aspects of the state legal system.[13]

2 Constitutional and Administrative Law

The relevance of Indigenous legal issues to constitutional and administrative law might not be immediately obvious. Any course which focuses on constitutional and administrative law requires an understanding of the technical legal aspects of the state legal system; however, the relevance of issues which relate to Indigenous peoples might not be as clear. In this section, I focus specifically on one topic within New Zealand constitutional and administrative law — the *Treaty of Waitangi*.

The *Treaty of Waitangi* is a significant topic within the second year Public Law course taught at Victoria University of Wellington. The treaty was signed in 1840 between the British Crown and a grouping of Māori chiefs, initially, at Waitangi in the Bay of Islands. There is still debate as to the treaty's precise legal

status and its role in the acquisition of sovereignty by the British Crown.[14] For the purposes of this article, it is sufficient to explain that the essential agreement, in both the English and Māori language texts of the treaty, is that the Crown would have the authority to establish some form of government in New Zealand and that Māori property and other rights, and the authority of the chiefs would be protected.[15]

In the latter part of the 20th century, various obligations on the Crown were recognised by the courts, the Parliament, and the executive branch itself. The Waitangi Tribunal was established in 1975 to inquire into and report on claims that the principles of the treaty had been breached.[16] From the 1980s, new legislation which was considered to have a significant effect on Māori interests included reference to the principles of the treaty.[17] This led to treaty rights being enforced in the ordinary courts.[18] Since the 1990s, the Crown has been engaged in a comprehensive process of negotiations with Māori groups over redress for their historical claims.[19] Those developments mean that, today, the *Treaty of Waitangi* places limits on the exercise of public power across a range of subjects, functions, and institutions and, therefore, the treaty is highly relevant to constitutional and administrative law in New Zealand.

Although the *Treaty of Waitangi* might be unique to New Zealand, Indigenous rights in other jurisdictions have similar constitutional implications.[20]

III INDIGENOUS PERSPECTIVES

A Definition

Indigenous perspectives are another aspect of Indigenous content that could be usefully incorporated within the LLB curriculum. Indigenous perspectives provide contextual and theoretical background although not necessarily substantive law content; that is, Indigenous perspectives need not explain the technical operation of laws within either the state legal system or Indigenous legal systems. These perspectives are the views of Indigenous individuals or communities of the way the law operates. They may be perspectives on the state legal system or an Indigenous legal system in general, or on particular laws or areas of law within a legal system. Indigenous perspectives might include

an Aboriginal community worker explaining his view of the regulation of the delivery of health, housing, and other social services. Indigenous perspectives might also include Māori lawyers, experienced in the *Treaty of Waitangi* claims process, setting out their views on the effectiveness of that process.

Indigenous perspectives are not simply about the ethnicity of the person delivering the content — they must be reflected in the content itself. For example, a Māori person explaining the requirements for registering a claim with the Waitangi Tribunal would be delivering content that falls into the category of Indigenous legal issues, as would a non-Māori person setting out the same material. But if the content included the perceived objectives of those requirements, their utility, whether they are consistent with the aspirations of Māori, the resolution of treaty claims, or broader goals of reconciliation, then the content moves into the category of Indigenous perspectives. Indigenous perspectives will sometimes, but not always, reflect the experiences of whole communities. As recognised in the social sciences, individual perspectives may reflect only the views of one Indigenous person; but, so long as this is acknowledged, the value of such perspectives should not be undermined.[21] If a range of Indigenous perspectives can be incorporated in a course or throughout the curriculum, then so much the better.

B General and Theoretical Significance of Incorporating Indigenous Perspectives

Incorporating Indigenous perspectives into the LLB curriculum achieves different outcomes compared with incorporating Indigenous legal issues. As noted above, this type of Indigenous content is more about context and theoretical perspectives than the technical detail of how specific laws operate. Indigenous perspectives, therefore, can assist in developing understanding of the social role and effects of law, by reflecting on the law in action.[22] They provide a critical framework for analysing laws and legal systems. In this sense, Indigenous perspectives can be seen as closely related to critical legal studies and more particularly critical race theory.[23] These perspectives can challenge the basic hierarchies that are maintained by law and legal systems by providing a view of the law based on the lived experiences of

Indigenous people.[24] This is something that only Indigenous perspectives can provide.

Indigenous perspectives are often delivered in a manner that diverges from traditional methods of teaching; for example, traditional narrative structures are often used to express Indigenous perspectives on particular legal subjects.[25] Of course, storytelling is not a form that is unique to Indigenous cultures, nor is it entirely foreign to a legally-trained audience. There is, after all, something of a story in every case that comes before the courts. Storytelling may be particularly significant for Indigenous peoples because, for groups that sit on the margins or even outside the dominant legal culture, storytelling can be a powerful tool for giving expression to experiences that might otherwise not be heard, for promoting solidarity and challenging the status quo.[26] Therefore, incorporating Indigenous perspectives can not only broaden the range of substantive content that students may usefully consider, but can also encourage critical thinking about the law.

C Indigenous Perspectives in the Context of the Treaty of Waitangi and Māori Customary Law

Indigenous perspectives are important in understanding the law relating to the *Treaty of Waitangi* and crucial to an understanding of the Māori legal system, as addressed in the Māori Customary Law course which I teach at Victoria University of Wellington.

1 Treaty of Waitangi

As noted above, addressing Indigenous legal issues, such as the *Treaty of Waitangi*, is a significant aspect of constitutional and administrative law in New Zealand. It is possible to gain an instrumental understanding of the operation of the law relating to the treaty without reference to Indigenous perspectives, but incorporating Indigenous perspectives allows for a much more complete analysis of this area of the law. One need only compare the work of Māori scholars such as Moana Jackson[27] and Ani Mikaere[28] with prominent, non-Māori, treaty scholars[29] to see that these Indigenous perspectives provide another dimension to the field. The former tend to place a much greater emphasis on the experiences of Māori in understanding the meaning and implications of the treaty compared with the latter. Furthermore,

Māori jurists who are very much a part of the state legal system establishment, such as former and current High Court judges, Justice Eddie Taihakurei Durie and Justice Joe Williams, provide legal analyses that are rooted in the experiences of Māori individuals and communities.[30] If such perspectives are not included in courses addressing Indigenous legal issues, students are effectively being exposed to only one side of the story.

2 Māori Customary Law

Indigenous perspectives are absolutely crucial when dealing with substantive areas of Indigenous law, in courses such as Māori Customary Law. This course addresses the key concepts that underlie the Māori legal system, such as *mana* (spiritually sanctioned authority), *tapu* (system of religio-social restrictions that contribute to the maintenance of social order), and *whanaungatanga* (the centrality of kin relationships). These concepts, and their associated values and practices, are reflected not only at the crisis points of conflict and its resolution, but in the everyday lives of Māori individuals and communities.[31] To understand how the Māori legal system operates, it is necessary to understand how it regulates people's behaviour. That is why the lived experiences of Māori are vital to this course. I bring my own experiences to the classroom and, as a Māori myself, provide one Indigenous perspective. But my legal training has been grounded in the state legal system and the expertise that I can bring to the class is different than that which can be provided by experts in Māori law, Māori philosophy and culture. Therefore, when teaching this course, Māori guest speakers who have such expertise are invited and readings from Māori scholars are included in the course materials. I also use audio and video recordings of Māori discussing their experiences of Māori law. This provides students with access to a range of Indigenous (in this case, Māori) perspectives that explain and illustrate aspects of the Māori legal system to which they would not otherwise be exposed.

IV INDIGENOUS LAW

A Definition

Indigenous law is the content of Indigenous legal systems. The incorporation of Indigenous law within the LLB curriculum is,

therefore, related to the operation of those legal systems and the substance of the laws and legal institutions that comprise them. Indigenous law is not dependent on the state legal system,[32] despite there being areas where the two may interact.[33] State law may incorporate Indigenous law, recognise or restrict it. Indigenous and state legal systems may respond and adapt to one another.[34] Ultimately, though, it is important to remember that the legitimation of Indigenous law is internal to Indigenous legal systems and Indigenous communities.[35] With regard to the two courses referred to in this article, the basic content of Māori customary law is Indigenous law, while the *Treaty of Waitangi* is taught as an Indigenous legal issue (this is not to say that Indigenous law is not relevant to the *Treaty of Waitangi*). Before addressing that issue, this section considers the general significance of incorporating Indigenous law into the LLB curriculum.

B General Significance of Incorporating Indigenous Law

Substantive Indigenous law is perhaps the most difficult aspect of Indigenous content to incorporate into the LLB curriculum. Indigenous law derives from world-views, philosophies, and societies that are different to those from which common law legal systems have developed.[36] Its sources, form, and content are, therefore, not necessarily suited to being taught at the institutions that teach state law. However, with careful consideration of appropriate pedagogy, important aspects of Indigenous law can be taught in law schools.[37]

Law schools aim to prepare students to engage with the state legal system, not Indigenous law. However, there are, in New Zealand at least, areas of the state legal system that rely (directly or indirectly) on Indigenous terms and concepts.[38] If a student can gain a basic understanding of Indigenous law then this will better prepare them to engage with the state legal system in areas such as environmental law,[39] family law,[40] and fields where its relevance might be more obvious such as Māori land law[41] and the *Treaty of Waitangi*.[42]

There are also collateral benefits. In much the same way that learning a second language often improves one's general language skills and understanding of the native tongue, being exposed to a legal system that is different from the state system is actually

beneficial in understanding that state system. In the case of Māori law, the legal system in question is a customary system. Studying Māori customary law gives students cause to consider the characteristics of customary law as compared with common law and statute law. This is often the only time that students will study customary law and this therefore improves their understanding of customary law in general — including the customary law that informs much of the state legal system's common law foundations.[43] Such study will also often sharpen students' critical analyses of the qualities of statute and common law, encouraging students to think not only about the content of laws, but about the structure of legal systems. This type of comparative analysis can of course be undertaken with any other differentiated legal system. Similar benefits have been identified in the incorporation of significant aspects of transnational law by some North American and European law schools into their curricula.[44]

C Relationship between Indigenous Law and Constitutional Law

The fundamental reason that Indigenous law ought to be taught in law schools is that Indigenous legal traditions form part of our constitutional background. John Borrows has argued that the treaties signed between Indigenous groups and the British Crown in Canada were executed according to Indigenous forms.[45] These treaties sit at the heart of the Canadian constitution, bringing with them the Indigenous legal traditions that give them authority.[46] Although New Zealand has a different constitutional framework to Canada, suggestions that the *Treaty of Waitangi* should be understood within a Māori legal context have been made, adopting similar lines of argument.[47]

1
Relevance of Māori Customary Law to the Treaty of Waitangi

That Māori law gives meaning to New Zealand's constitution highlights the important connections between teaching Indigenous law and teaching Indigenous legal issues. Again, the links between teaching Māori customary law and teaching the *Treaty of Waitangi* as part of a Public Law course are instructive.

The *Treaty of Waitangi* and Māori law are both central to

teaching the constitution of New Zealand. One issue central to the constitutional significance of the *Treaty of Waitangi* is the role that it played in the acquisition of sovereignty by the Crown. In line with an early case on the issue[48] some have argued that the treaty played no role as a legal instrument in the transfer of sovereignty.[49] Others suggest that it was precisely the instrument by which the Māori chiefs ceded sovereignty.[50] Still others suggest that the treaty did not transfer sovereignty, but created obligations on the Crown in the exercise of that sovereignty.[51] These positions are based on various interpretations of the rules of international law. But some scholars, such as Ani Mikaere, argue that, given the context in which it was signed, the authority of the treaty must be based on Māori law.[52] Mikaere, a prominent Māori legal scholar, describes the Māori legal system as 'the first law of Aotearoa' and argues that it is the only legal system upon which New Zealand's constitution could have legitimately been based.[53] That line of argument places Māori law at the very foundation of New Zealand's constitution.

Even a conservative approach to New Zealand constitutional law must recognise a place for both the *Treaty of Waitangi* and for Māori law. In New Zealand, the *Treaty of Waitangi* has been described by former Waitangi Tribunal Chairperson, High Court judge and Law Commissioner, Eddie Taihakurei Durie, as being 'authority for the proposition that the law of the country would have its source in two streams'.[54] This suggests that substantive Indigenous law is relevant to the study of constitutional law in New Zealand and that this type of Indigenous content should be included in LLB courses that address New Zealand's constitutional arrangements.

V CONCLUSION

Incorporating Indigenous content into the LLB curriculum can result in a variety of valuable outcomes. This article has identified three different types of Indigenous content: Indigenous legal issues, Indigenous perspectives, and Indigenous law. Each of these should be seen as an important element of legal education, though it is useful to recognise that the different types of Indigenous content achieve different objectives. Incorporating Indigenous content should therefore begin with clearly identifying the aims of that

incorporation as an important aspect of curriculum design. The appropriate type of Indigenous content to achieve those aims can then be addressed. The different types of Indigenous content must also be approached differently if they are to be delivered effectively.

Each of the three types of Indigenous content discussed here are relevant to subjects within the LLB curriculum. The incorporation of Indigenous legal issues requires the kind of expertise concerning the state legal system that law school faculties possess. Indigenous perspectives require that the views of Indigenous people are included in the course in order to articulate a critique of the operation of law (within the state legal system or an Indigenous legal system) that is founded on their experiences as Indigenous people. Those involved in legal education may need to look beyond the law school and perhaps even beyond the legal profession to find these kinds of perspectives. Indigenous law may be the type of Indigenous content that is most difficult to incorporate into the LLB curriculum because it is most appropriately taught by Indigenous institutions in accordance with the traditions of their communities. However, the law school can provide students with useful tools for analysing different legal systems, including Indigenous legal systems and/or customary legal systems. If taught in partnership with Indigenous communities, some aspects of substantive Indigenous law may be incorporated into the parameters of the law school. As I have argued in this article, a basic understanding of Indigenous law is necessary for students to gain a fuller understanding of some aspects of the state legal system; in particular, the basis of constitutional law.

Incorporating Indigenous content into the LLB curriculum is both possible and highly valuable. In order to be effective, such incorporation must be based on clearly identified objectives, with the type of content deliberately selected to meet those objectives, and delivered in a way which is suited to that content. This may sometimes be challenging for law schools, but it should ultimately prove rewarding for students, the profession, the legal academy and the communities served by graduates. And, hopefully, it will help to bridge the gap between the law taught in law school and the law as experienced by Indigenous peoples.

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[1] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641.

[2] See, eg, Stephanie Milroy and Leah Whiu, 'Waikato Law School: An Experiment in Bicultural Legal Education' [2005] *Yearbook of New Zealand Jurisprudence* 173; Leah Whiu '**Waikato Law School's Bicultural Vision — Anei Te Huarahi Hei Wero I A Tatou Katoa: This is the Challenge Confronting Us All**' [2001] *Waikato Law Review* 265; Jacinta Ruru, 'Legal Education and Maori' in Claudia Geiringer and Dean R Knight (eds), *Seeing the World Whole: Essays in Honour of Sir Kenneth Keith* (2008) 243.

[3] Milroy and Whiu, above n 2, 185.

[4] Ibid 188.

[5] Ibid 191–194.

[6] Christine Zuni Cruz, '[On the] Road Back In: Community Lawyering in Indigenous Communities' (1998–1999) 5 *Clinical Law Review* 557, 595.

[7] Gerald F Hess, 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 52 *Journal of Legal Education* 75, 84.

[8] Christine Parker and Andrew Goldsmith, '"Failed Sociologists" in the Market Place: Law Schools in Australia' (1998) 25 *Journal of Law and Society* 33, 50.

[9] Courses taught at Victoria University of Wellington which specifically address Indigenous legal issues include the core papers 'Introduction to the New Zealand Legal System' and 'Public Law'; elective papers such as 'Māori Land Law' and 'Family Law'; and postgraduate seminars such as 'The *Treaty of Waitangi*: Claims, Settlement and Reconciliation'. These cover a range of issues relating to the *Treaty of Waitangi* as well as particular topics such as legal rights associated with Māori land and aboriginal title.

[10] There is significant debate around the appropriateness of the term 'customary law' to describe indigenous legal orders. For an overview of this debate see Sally Engle Merry, 'Legal Pluralism' (1988) 5 *Law & Society Review* 869, 875–879. The term is used in this article to describe a dynamic legal order which includes the rules and values developed by Māori to govern themselves and also rules and processes that have developed in conjunction with state institutions such as the Māori Land Court and the Waitangi Tribunal. See, eg, New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper No 9 (2001) 1–7.

[11] See, eg, *Wildlife Act 1953* (NZ) s 63. This section makes it an offence for any person to have in their possession any skin or feathers from protected wildlife and effectively prohibits Māori from exercising their own laws and practices in relation to the protection and/or taking of wildlife.

[12] New Zealand Law Commission, *Waka Umanga: A Proposed Law for Māori Governance Entities*, Report No 92 (2006) 12.

[13] For example, an analysis of whether the *Māori Land Act 1993* (NZ) appropriately reflects Māori customary land tenure requires a technical understanding of the effect and interpretation of that legislation.

[14] Matthew Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution* (2008) 359.

[15] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 663.

[16] *Treaty of Waitangi Act 1975* (NZ) s 4.

[17] See, eg, *State Owned Enterprises Act 1986* (NZ) s 9; *Conservation Act 1987* (NZ) s 4; *Resource Management Act 1991* (NZ) s 8: *New Zealand Public Health and Disability Act 2000* (NZ) s 4; *Local Government Act 2002* (NZ) s 4.

[18] See, eg, *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641; *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129; *Ngai Tahu Māori Trust Board v Director General of Conservation* [1995] 3 NZLR 533; *Barton-Prescott v Director General of Social Welfare* [1997] 3 NZLR 179.

[19] Philip Joseph, *Constitutional and Administrative Law in New Zealand* (3rd ed, 2007) 83–91.

[20] See, eg, *Constitution Act 1982* (Canada) s 35, which provides express constitutional recognition of the existing aboriginal and treaty rights of aboriginal people.

[21] See Jana Bradley, 'Methodological Issues and Practices in Qualitative Research' (1993) 63 *Library Quarterly* 431, 434–437.

[22] See Parker and Goldsmith, above n 8, 49.

[23] Karl Upston-Hooper, 'Slaying the Leviathan: Critical Jurisprudence and the *Treaty of Waitangi*' (1998) 28 VUWLR 683, 692–4.

[24] See, eg, Moana Jackson, 'The Treaty and the Word: The Colonization of Māori Philosophy' in Graham Oddie and Roy Perrett (eds), *Justice Ethics and New Zealand Society* (1992) 1, 1–26.

[25] See, eg, John Borrows, 'Fourword: Issues, Individuals, Institutions and Ideas' (2002) 1 *Indigenous Law Journal* ix.

[26] Richard Delgado, 'Storytelling for Oppositionists and Others: A Plea for Narrative' (1988–1989) 87 *Michigan Law Review* 2411, 2412–13.

[27] See, eg, Jackson, above n 24, 1–26.

[28] See, eg, Ani Mikaere, 'The Treaty of Waitangi and Recognition of Tikanga Māori' in Michael Belgrave, Merata Kawharu and David Williams (eds), *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (2005) 330, 330–348.

[29] See, eg, F M (Jock) Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (1999); Paul G McHugh, *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi* (1991).

[30] See, eg, Eddie Taihakurei Durie, 'Custom Law: Address to the New Zealand Society for Legal and Social Philosophy' (1994) 24 *Victoria University of Wellington Law Review* 325; Joe Williams, 'Colonization Stories from Across the Pacific' (2006) 7 *Asia Pacific Law and Policy Journal* 65.

[31] For example, *mana*, *whanaungatanga*, and *tapu* all play a role in determining how hosts and visitors should interact as well as how disputes should be resolved and social conflict addressed: see Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (2003) 11–24.

[32] Jackson, above n 24, 6.

[33] David Williams, 'Unique Treaty-Based Relationships Remain Elusive' in Michael Belgrave, Merata Kawharu and David Williams (eds), *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (2005) 366, 381.

[34] Richard Hill, *State Authority, Indigenous Autonomy: Crown–Māori Relations in New Zealand/Aotearoa 1900–1950* (2004) 88–103.

[35] Jackson, above n 24, 6.

[36] Ibid 5.

[37] Christine Zuni Cruz, 'Toward a Pedagogy and Ethic of Law/Lawyering for Indigenous Peoples' (2006) 82 *North Dakota Law Review* 863, 879.

[38] See, eg, *Resource Management Act 1991* (NZ) s 7(a) which requires anyone exercising functions or powers in relation to 'resource management activities' as defined under the Act to have particular regard to 'kaitiakitanga' (the Māori concept of guardianship), amongst other matters.

[39] Ibid.

[40] New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper No 9 (2001) 55.

[41] See, eg, *Re Lundon & Whitaker Claims Act 1871* (1871) 2 NZCA 41, 49, which provides an early instance of the courts recognising Māori customary law.

[42] Richard Boast, 'Waitangi Tribunal Procedure' in Janine Hayward and Nicola R Wheen (eds), *The Waitangi Tribunal: Te Roopu Whakamana I te Tiriti o*

Waitangi (2004) 53, 54, which demonstrates that it is not only Indigenous legal issues which are relevant to the study of the *Treaty of Waitangi*, but that a familiarity with Indigenous law is also of assistance to lawyers working in this field.

43 See Leon Sheleff, *The Future of Tradition: Customary Law, Common Law, and Legal Pluralism* (2000) 79–92.

44 See, eg, Sebastien Lebel-Grenier, 'What is Transnational Legal Education?' (2006) 56 *Journal of Legal Education* 190; Jan Klabbers, 'Legal Education in the Balance: Accommodating Flexibility' (2006) 56 *Journal of Legal Education* 196.

45 John Borrows, 'Ground-Rules: Indigenous Treaties in Canada and New Zealand' (2006) *New Zealand Universities Law Review* 188.

46 Ibid 162.

47 See, eg, Mikaere, above n 28, 333–4.

48 *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) 72.

49 See, eg, John L Robson (ed), *New Zealand: The Development of its Laws and Constitution* (2nd ed, 1967) 3–5.

50 See, eg, Kenneth J Keith, 'The Treaty of Waitangi in the Courts' (1990) 14 *New Zealand Universities Law Review* 37.

51 Palmer, above n 14, 154–68.

52 Mikaere, above n 28, 343.

53 Ibid 331–4.

54 Eddie Taihakurei Durie, 'Will the Settlers Settle? Cultural Conciliation and Law' (1996) 8 *Otago Law Review* 449, 461.