
Chief Justice James Prendergast and the Treaty of Waitangi: Judicial attitudes to the Treaty in New Zealand during the latter half of the nineteenth century (individual paper)

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Chief Justice James Prendergast has largely been demonised over the last two decades as a result of his famous decision in the *Wi Parata v The Bishop of Wellington* case in 1877. In that decision, he notably stated that the apparent cession of sovereignty in the Treaty of Waitangi was "a simple nullity". This statement has effectively taken on a life of its own, and is still cited – with polarising effect – in the current debate on the place of the Treaty in modern New Zealand society. This paper argues, however, that the debate and commentary on the case has largely omitted to consider Prendergast as a man of his times and background and as an important part of a small legal community. The part that others had to play in the *Wi Parata* case is often not mentioned, for example. This paper seeks to redress the balance somewhat. In doing so, it does not underestimate the devastating effect which the decision had in supporting the alienation of Maori land. However it emphasises that Prendergast's view represented the orthodoxy of the time, and for some considerable time thereafter, and that his main fault was that he failed to rise above the prejudices of the settler society in which he lived. This paper makes reference to the international influences on Prendergast in making his decision, especially in relation to the doctrine of native title. For example, Prendergast was influenced by Marshall CJ's decisions in *Johnson v M'Intosh* (1823) and *Cherokee Nation v The State of Georgia* (1831).

CURRICULUM VITAE

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Tertiary Education: 2002 Doctorate of Philosophy (Legal History), University of Waikato
1997 BA (Hons), University of Waikato (History)
1996 LLB (Hons), University of Waikato
BA (Major = History), University of Waikato
1995 Licentiate Teaching Diploma in Speech and Drama (LTCL),
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Distinctions/Honours: 2005 Received a Victoria University Teaching Excellence Award
2004 Received 'The Victorias' Best Lecturer Award - Faculty of Law
1997 First class honours in BA(Hons)
1996 First class honours in LLB(Hons)

Employment Record: 2006-2009 Senior Lecturer, Faculty of Law, Victoria University
2002-2005 Lecturer, Faculty of Law, Victoria University
2001 Negotiator/Policy Analyst, Office of Treaty Settlements
Adjunct Lecturer in History and Law, Victoria University
1998-2000 Doctoral Assistant, University of Waikato
1995-2009 Facilitator, SibSupportNZ (national support network for the
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2006-2008 Co-researcher for the Tertiary Learning Initiative Project
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PUBLICATIONS

Journal Articles

Morris, Grant “Salmond’s bench: the New Zealand Supreme Court Judiciary 1920-1924” (2007) 38(4) Victoria University of Wellington Law Review 813-830.

Morris, Grant “James Prendergast and the New Zealand Parliament: Issues in the Legislative Council during the 1860s” (2005) 3 New Zealand Journal of Public and International Law 177-193.

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Book

Morris, Grant *Law Alive: The New Zealand Legal System in Context* (Oxford University Press, Melbourne, 2009).

Chapter in book

Morris, Grant “‘The final legal frontier’: the Treaty of Waitangi and the creation of legal boundaries between Maori and Pakeha in New Zealand society” in Lynette Russell (ed) *Colonial frontiers: Indigenous-European encounters in settler societies* (Manchester University Press, Manchester, 2001)

Other

“The New Zealand Law in Literature/Law in Visual Media Database” (2009) on-line computer database containing bibliographical and thematic summaries of New Zealand works of fiction which feature legal references (to be located on the www.vuw.ac.nz website).