# FEMINIST EPISTEMOLOGIES AND A LAW-IN-CONTEXT JURISPRUDENCE COURSE: A NEW ZEALAND EXPERIENCE

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I wish to focus on developments in feminist epistemology, or theories of knowledge and knowledge creation, and how they relate to teaching. I will first discuss the feminist epistemologies that have influenced my teaching. Then I will focus on how feminist epistemology influenced the design, the substance and the methods of teaching a law-in-context Jurisprudence course at the University of Waikato. As the title suggests, mine is a New Zealand experience, and the perspective of an American who has been in New Zealand for four years. This essay is an attempt to think through some of my experiences in New Zealand in light of my North American theoretical background. I hope that presenting my experiences will stimulate thinking from Australian perspectives.

## FEMINIST EPISTEMOLOGY

Feminist theories of epistemology start with the recognition that women can be knowers and that the experiences of women can produce knowledge.[1] Focus on the experiences of women in feminist epistemologies has resulted from critique of traditional notions of aperspectival objectivity. These critiques have deconstructed claims that knowledge is objective, revealing that such claims tend to cloak male experience based knowledge.[2] Feminists' recognition that legal knowledge has been created from the perspectives of men, especially a relatively small group of men in positions of power, has revealed that traditional assumptions of aperspectival objectivity in law have masked what is actually its "relentless perspectivity".[3] Recognising the male perspective of the law results in challenges to claims of objectivity, and claims that universal applicability of laws results in fairness. Examples of this perspectivity include its failure until quite recently to recognise sexual harassment as an injury, and construction of the laws concerning rape from the perspective of the (male) rapist.

Feminist challenges to the relentless perspectivity of the law have initiated a fairly intense theoretical debate, ranging from efforts to re-create "grand theory"[4] to "postmodern"[5] critiques. Postmodern critiques of foundational theory include critiques of the foundational assumption that there is an essential "women's experience". [6] At the same time, women of colour have challenged feminist theories that exclude their experiences.[7]

These debates have raised a series of difficult epistemological questions. Can any knowledge or theory claim objectivity or universality? What claims can we make for the knowledge that we produce? How widely relevant is knowledge? Is the only possibility for theory, as Lucie White claims, a "situated, reflective history of … practice.. ."?[8] Do these critiques suggest that the only theories that we can produce are reflections on our own experiences that might help others to think more deeply about their experiences? These are the questions that I have taken with me into teaching.

Two theorists have provided insight into these questions and have influenced my teaching. Katherine Bartlett has argued for an epistemological stance of "positionality" that "acknowledges the existence of empirical truths, values and knowledge, and also their contingency."[9] Common aspects of experiences may provide useful categories and a basis for knowledge that is identifiable as true. The recognition of these "truths" must be coupled with the realisation that the knowledge is limited by context. The individual perspectives of knowledge producers reflect the contested historical and political sites in which they work.[10] Context also refers to the social positions of the producers of knowledge, including positions of relative

power or powerlessness along axes of class, race, gender, sexual orientation, culture, religion, able-bodiness and other socially constructed groups. Geographical location is another component of knowledge. Positionality recognises that the way in which each person is situated, or positioned in society, affects what she perceives as truth and knowledge.[11] Truth and knowledge are therefore also positioned, or situated.

Donna Haraway, in turn, has made an important contribution to the development of feminist epistemologies by arguing that we should value knowledge claims that are situated, rather than looking for what has traditionally been called objectivity.[12] Traditionally "objectivity" has referred to those knowledge claims that we are prepared to recognise and value. Claims of objectivity in knowledge production have been false claims that the knowledge producer can see the subject of the knowledge from all perspectives equally at once without actually being situated anywhere, "the god-trick of objectivity."[13] Haraway argues that, "Only partial perspective promises objective vision."[14] Objectivity in her view involves taking responsibility for the partiality of knowledge production.[15] In turn, knowledge producers are accountable for the knowledge produced.[16] We cannot claim that we are not responsible for the "truth" that we "reveal."

Recognition that all knowledge is situated does not mean that all claims to knowledge have equal value. Relativism is the mirror image of objectivity,[17] but it makes the same claims: it is also "a way of being nowhere while claiming to be everywhere equally."[18] Both objectivity and relativism deny the significance of location and the stakes in where one is positioned that are reflected in the knowledge that one produces.[19]

How then do we decide which knowledge claims we should value? There are at least two places to start. First, we might value knowledge claims that are situated, rather than looking for claims of the traditional objectivity. We might value knowledge that encompasses an inherent recognition of its situated aspects and its partiality, thus leaving space for other knowledge claims from other perspectives.[20] Knowledge producers who recognise the importance of their own perspectives in producing knowledge, who make attempts to broaden their perspectives, and who acknowledge the inevitable partiality of the knowledge produced, are taking steps towards producing valuable knowledge.

The discussion of situated knowledges suggests, for example, that producers of knowledge who are in privileged positions produce more valuable knowledge when they recognise the limitations of their perspectives, and therefore the limitations of the knowledge that they produce, especially with respect to groups whose oppression they do not share.

Haraway provides clues to a second approach to valuing knowledge that builds on "feminist standpoint epistemology" while addressing its critiques. Recognition of a "standpoint" from which one creates knowledge is recognition of the location or situation for the knowledge production.[21] Feminist standpoint epistemology usually claims that the material life activity and victimisation of the oppressed, (usually focusing on women), gives women access to knowledge that the oppressors (men) cannot share. For the oppressed, knowledge production requires engagement in struggles against oppressors:

> [O]ne must engage in the intellectual and political struggle necessary to *see* natural and social life from the point of view of that disdained activity which produces women's experiences instead of from the partial and perverse perspective available from the "ruling gender" experience of men.[22]

Standpoint theorists claim that feminist standpoint epistemology produces a "truer" knowledge than that produced from the "partial and perverse" experience of men.[23] Implicit is the claim that it results in an objective science: that women's experiences of struggles against male domination provide objective access to the relations of male domination and female suppression.[24] In making these claims, it is usually assumed that women share an authentic nature and therefore a common standpoint, or point of view, and common experiences upon which a feminist jurisprudence, for example, could be based.[25] Such assumptions essentialise woman's identity.

The essentialist assumptions underlying feminist standpoint epistemology, and its claim of a feminist standpoint, must be subject to careful scrutiny.[26] Such claims, especially when made by privileged white women, are subject to the same critique levelled at the "perverse perspective" of the "ruling gender." The resulting "universal scientific truth" may exclude the experiences of many women. Indeed, the underlying assumption of a "true" or "authentic" nature or identity of all women in the work of feminists who use standpoint epistemology in law has been specifically critiqued from a methodological perspective.[27] Such essentialist positions obscure crucial differences among women.

However, these critiques do not require standpoint epistemology to be discarded. There is good reason

to believe that vision is better from below the powerful; people who fit into socially constructed groups that are oppressed have more complete knowledge about the oppression and about those in positions of power with respect to their oppression than do those with power.[28] The survival of people in oppressed groups has often depended on their knowledge of the oppressors-it is in the interests of the oppressed groups, and not of the oppressors, to know about the oppression.[29] Haraway adds to feminist standpoint epistemology the recognition of the situated aspect of the knowledge produced by the oppressed groups. Women as an essentialist group do not produce objective or "scientific" knowledge. All knowledge is situated. Feminist standpoint epistemology suggests that middle-class white women who engage in political struggle may have better knowledge about their own sex and gender oppression by middle-class white men than may middle-class white men. This does not make the knowledge produced objective. It is a value judgement that the situation, or perspective from which the women produce the knowledge provides them with a more complete understanding, or is a better perspective than that of the men.

Valuable knowledge might be produced by oppressed groups about their own oppression with respect to groups that impose and enforce, or even simply benefit from, the oppression. Such knowledge might be seen to be most valuable when it also recognises its limitations: the extent to which it is based upon common experiences and who is included in the groups that share the experiences, and thus how widely applicable the knowledge is.

## USING FEMINIST EPISTEMOLOGY TO TEACH JURISPRUDENCE

The important characteristics of positionality and situated knowledges for my purposes, include first, recognition of the partiality of knowledge and limitations in producing knowledge, and second, the recognition that the position and contexts in which knowledge is produced form an integral part of the knowledge. I would like to talk about how these characteristics influenced the design, substance and teaching methods of a law-in-context Jurisprudence course. As context is important, let me sketch in the particular context in which the University of Waikato Law School and the Jurisprudence course developed.

In New Zealand, the legitimacy of the British form of government, at least with respect to Maori, the indigenous people of NZ, is based on the 1840 Treaty of Waitangi. The British generally claim that in the Treaty of Waitangi Maori people ceded sovereignty, or the right to govern the country, to the British. In the Treaty, it is clear that Maori are guaranteed certain things, including te tino Rangatiratanga, which can only be loosely translated as chieftainship, and control over taonga (treasures) and resources, such as fishing.[30] I think it is fair to say that people have different views on what the Treaty of Waitangi means.[31] Since at least the late 1960s many Maori people have asserted that they did not cede sovereignty. The most logical and well-developed interpretations of the Treaty of Waitangi suggest that what Maori people were agreeing to, and what the British knew that Maori people were agreeing to, was the British coming into the country to govern the British, while the guarantee of te tino Rangatiratanga ensured that Maori people retained the right to govern Maori people.[32]

In the mid-1980s the Department of Justice commissioned Moana Jackson, a Maori lawyer, to conduct a study of Maori people and the criminal justice system.[33] Jackson talked to 2000 Maori people at hui (or meetings) using culturally appropriate methods of communication (and conducting a far more comprehensive study than the one commissioned). Jackson wrote an eloquent indictment of the racism of the New Zealand Criminal Justice System. He critiqued its basis in a monocultural philosophy and critiqued the substantive outcome of criminal convictions. He concluded, based on the argument that the Treaty guaranteed te tino Rangatiratanga, that parallel legal systems for Maori and non-Maori were mandated by the Treaty.[34] Debate continues around Jackson's proposal for parallel legal systems.

It is in this political and historical context that the University of Waikato School of Law was established. The goals of the school were to develop a bicultural approach to legal education, to teach law in context and to provide a professional legal education.[35]

### *Curriculum Design*

The development of a course in Jurisprudence provided an opportunity for implementing the goals of the school while recognising the first important characteristic of feminist epistemologies, the partiality of all

knowledge production. Jurisprudence is required in the LLB programme in Law II and was taught prior to the core curriculum (Property, Torts, Crimes, Corporate Entities, Contracts and Dispute Resolution). Initially, there was a team of three faculty members developing the Jurisprudence course, none of whom was Maori. It was initially decided to teach the course through concepts such as sovereignty and rights, which provides a fairly traditional approach to the course. Based on the interpretations of the Treaty with which I was familiar and the stated goal of developing a bicultural approach to teaching law, I suggested that both Maori and British legal concepts should be included in the course.

In the second year of the course we began to attempt to develop the bicultural aspects, and these developments involved recognising the partiality of our own perspectives in producing and reproducing knowledge in our teaching. In New Zealand a substantial body of literature exists in which Maori people critique non-Maori for researching and writing about Maori culture and thereby simultaneously appropriating and redefining it.[36] As one of my colleagues, Annie Mikaere, has written, "Maori concepts have been bandied about [by Pakeha commentators] almost as if they were qualified to understand them."[37] Jackson adds that such people tend to be "neo-colonialists who neither understand nor respect Maori nor or culture."[38] These critiques raised questions, about who should be deciding which Maori concepts to teach in the Jurisprudence course and who should be teaching the concepts, simultaneously.

Taking these critiques seriously in answering these questions involved recognising the partiality of our perspectives and therefore our limitations in producing and re-producing Maori legal concepts. However, this acknowledgment was not the end of the road. If we were not qualified to teach these concepts then who was? And who should decide who was? And who should decide what these people would teach? Or when or how they would teach it and how it would interact with the rest of the course? Limited time and resources influenced how quickly we could address these questions. Our first tasks included consultation with our Maori colleagues (recognising, of course, that they had plenty of their own work to do) and asking them to recommend people who could provide guest lectures on these topics. We also later realised that the Maori component of the course was fragmented because the Maori concepts were taught scattered throughout the course; this was probably a reflection of the fact that the course was still structured around the British concepts.

One result of our recognition of our limitations that I did not foresee was that once the course was structured to include Maori concepts, and we made the effort to ensure that those concepts were taught by Maori experts, Annie Mikaere, whom I have quoted, became interested in teaching the course. One of the reasons that she became interested, she said, was because the course was now structured in a manner that clarified the need for participation by a permanent member of staff who was qualified to teach the Maori legal concepts. In the fourth year the course was restructured and she taught Maori Jurisprudence in a block at the beginning of the year.

## *Substance and Context*

The second important characteristic of feminist epistemologies, the recognition that the position and contexts in which knowledge is produced form an integral part of the knowledge, influenced how I taught even the traditional theorists included in the course, such as Austin. To illustrate my teaching of law in context, I will use a short example of teaching the students about Austin's theory of sovereignty. I sketched in the social context as follows. I began by telling my students that Austin's theory provides a description of British sovereignty in the 1830s, the time that he was writing and just prior to the signing of the Treaty of Waitangi.[39] I noted that Austin's work was published only through the efforts of his wife, Sarah Austin, who supported him all through his life with her earnings as a writer and translator.[40] The original publication of the first part of his lectures in 1832 received no notice outside Austin's close circle of friends.[41] It was Sarah Austin who managed to have the second edition of these lectures published posthumously in 1861.[42] She also wrote up *Lectures* on *Jurisprudence or the Philosophy of Positive Law* posthumously from his notes and had that published in 1863.[43] She wrote of her husband that he lived "a life of unbroken disappointment and failure."[44] Indeed, many critiques of Austin are better known than his work.[45]

Why is the work of a thoroughly critiqued failure studied in law schools over 100 years later? Sarah Austin's timing of the second edition of Austin's lectures in 1861 turned out to be fortuitous. It was

between the first and second editions of his lectures that law became a recognised subject in the Universities in England and the second edition almost immediately became an examination book at the universities,[46] ensuring widespread dissemination of his ideas. His legacy is the resulting influence and considerable influence that his work has had in the subject of jurisprudence in England, and the manner in which the ideas that he espoused facilitated British colonisation.

Austin defined the sovereign as the unlimited ruler of one united independent political society, meaning in part that the sovereign is not answerable to anyone else.[47] He also states that kinship groups, such as Native Americans, cannot constitute an independent political society, and therefore, according to his theory, cannot have a sovereign.[48]

The legacy that Austin's work created in the political context of British colonisation is reflected in the 1877 New Zealand case of *Wi Parata* v *The Bishop of Wellington.*[49] In this case Chief Justice Prendergast stated that the Treaty of Waitangi was a "simple nullity… [because] No body politic existed capable of making session of sovereignty…", that is, because Maori people did not constitute an independent political society with a sovereign capable of ceding sovereignty. This became the dominant interpretation of the Treaty in New Zealand until at least the 1980s, and some still argue for this interpretation today.[50] Although some contemporary New Zealand academics now argue that Prendergast got the law wrong in 1877,[51] his decision was not challenged successfully in Court until the mid-1980s[52] and in the meantime it certainly facilitated British settlement of New Zealand. It legitimated over 100 pieces of legislation to "legalise" Maori dispossession from Maori land.[53] It has been argued that all of these pieces of legislation were enacted in breach of the Treaty.[54] Today Maori people retain only 5 per cent of freehold land in New Zealand.[55]

Judge Prendergast, who decided the *Wi Parafa* case, studied law just after the second edition of Austin's work was published.[56] It seems possible that he read Austin then. Upon graduation, Prendergast had a difficult time getting work in England (this is always good for the students to know) so he moved to New Zealand, where he became a judge in 1875.[57] The language from his decision in the *Wi Parata* case that I have quoted may reflect the influence of Austin's work. Even if Austin's work did not directly influence Prendergast, it provides an example of a theory of sovereignty espoused at a historical moment when the ideology and language of sovereignty were very strong.

Teaching Austin's work in its social and political context is an example of situating knowledge. Explicit recognition of the essential contributions of Sarah Austin to John Austin's work and the resulting influence of his work provides an example of the crucial roles that women have played throughout history in supporting the production of knowledge: Austin's theory was not produced in a vacuum. Discussion of the reflection of ideas about sovereignty such as those contained in Austin's work in an influential New Zealand case makes the theory relevant to students in New Zealand and integrates jurisprudence into the law curriculum. The introduction of Austin's work provided the basis from which we then discussed the current sovereignty debate in New Zealand, some of which I have already outlined.

## *Teaching Methods*

I have discussed examples of the manner in which feminist epistemologies influenced the design and substance of the University of Waikato School of Law's law-in-context jurisprudence course. I can touch only briefly on methods in the classroom that addressed feminist epistemologies. To illustrate the situated aspects of knowledge, I placed a chair in the centre of the U-shaped classroom. I asked students sitting around the chair to sketch it and to pass around their sketches. We discussed how the sketches were different depending on where the students were sitting in relation to the chair; for example, some students in the back row had parts of the chair obscured by the people and tables in front of them. So the students' perspectives on the chair depended on where they were placed in relation to the chair, and although they might be able to crane their necks and get a bit better view, or look at the pictures drawn by people who were sitting in different places or talk to those people about their pictures, or even change their own position in relation to the chair to some extent, they could never see all of the chair from every perspective at once. As Donna Haraway writes, "Relativism and totalisation [or objectivity] are both 'god-tricks' promising vision from everywhere and nowhere equally and fully…"[58]

Later in the course we also talk about valuing perspectives on the chair. We discuss the rule of law and

the underlying myth of the level playing field. If we do not start from a level playing field then power imbalances are involved in distinguishing the perspectives on the chair — should we value the perspectives of the powerful or the powerless? Does it depend on whether it is a chair that we are viewing or whether it is the oppression of the powerless that we are viewing? Is the view from below the chair better? When? To what extent do the powerful have the resources to impose their views of the chair on those who are relatively powerless? The discussion of situated knowledges also provides the class with one of many critical perspectives on the theorists discussed throughout the year. The extent to which each theorist identifies and analyses her or his own perspective, and the effect this has on the credibility of the theory, is discussed. Students are also asked to consider and analyse their own perspectives in the essays that they write for the course.

## CONCLUDING THOUGHTS

In conclusion, all knowledge is situated. Teaching involves the creation of knowledge. Attention to theories of knowledge and knowledge creation in teaching requires awareness of the partiality of knowledge, limitations in producing knowledge and the context in which knowledge is produced. Feminist epistemologies can be useful tools in developing strategies for teaching; focusing us as educators on the political and social context in which the knowledge we teach is produced, on the political and social context in which we re-produce the knowledge, on our own limitations in reproducing knowledge, and on methods for teaching our students about the situated aspects of knowledge. Feminist epistemologies present us with the imperative of uncloaking the prevailing myth of objectivity in the knowledge that we produce through teaching, and, therefore have implications for the ways in which we design all of our courses, for the substance of our courses and for the teaching methods that we use.

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1 Susan Hekman, *Gender and Knowledge: Elements of a Postmodern Feminism* (Boston: Northeastern University Press, 1990); L Stanley & S Wise, Method, Methodology and Epistemology in Feminist Research, in L Stanley ed, *Feminist Praxis: Research, Theory and Epistemology in Feminist Sociology* (London: Routledge, 1990) 20–59; S Harding, Introduction: Is There a Feminist Method?, in S Harding ed, *Feminism and Methodology* (Bloomington: Indiana University Press, 1987).

2 KA Lahey, ... Until Women Themselves Have Told All That They Have To Tell… (1985) 23 *Osgoode Hall LJ* 525.

3 K Abrams, Hearing the Call of Stories (1991) 79 *Cal L Rev* 971, at 976.

4 Eg C MacKinnon, *Towards a Feminist Theory of the State* (New York: Routledge, 1989).

5 Eg D Cornell, *The Philosophy of the Limit* (New York: Routledge, 1992) 1–12.

6 J Scott, Experience, in J Butler & J Scott eds, *Feminists Theorize the Political* (New York: Routledge, 1992); D Fuss, *Essentially Speaking: Feminism, Nature and Difference* (New York: Routledge, 1989).

7 L Smith, Maori Women: Discourse, Projects and Mana Wahine, in S Middleton & A Jones eds, *Women and Education in Aotearoa 2* (Wellington: Allen & Unwin, 1992); K Irwin, Towards Theories of Maori Feminisms, in R Du Plessis ed, *Feminist Voices* (Auckland: Oxford University Press, 1992); A Harris, Race and Essentialism in Feminist Legal Theory (1990) 42 *Stan L Rev* 581; A Parashar, Essentialism or Pluralism: The Future of Legal Feminism (1993) 6 *Can J Women 6 L* 328; *K* Crenshaw, Mapping the Margins: intersectionality, identity politics, and violence against women of color (1991) 43 *Stan L Rev* 1241; E Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988).

8 LE White, Paradox, Piece Work and Patience (1992) 43 *Hastings LJ* 853, at 855.

9 K Bartlett, Feminist Legal Methods (1990) 103 *Harv L Rev* 829, at 880; D Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (New York: Routledge, 1991) 188.

10 Experience is not a word we can do without ... [i]t serves as a way of talking about what happened, of establishing difference and similarity, of claiming knowledge that is "unassailable." Given the ubiquity of the term, it seems more useful to work with it, to analyse its operations and to redefine its meaning. This entails focusing on processes of identity production, insisting on the discursive nature of "experience" and on the politics of construction. Experience is at once always already an interpretation *and* is in need of interpretation. What counts as experience is neither self-evident nor straightforward; it is always contested, always therefore political. (citation omitted) Scott, *supra* note 6, at 37.

11 Bartlett, *supra* note 9, at 880–881; Haraway, *supra* note 9, at 190.

12 Haraway, *supra* note 9, at 183–201.

13 Haraway, *supra* note 9, at 190–91.

14 *Id* at 190.

15 *Id* at 190.

16 *Id* at 190–191.

17 D Connell, Toward a Modern/Postmodern Reconstruction of Ethics (1985) 133 *U Pa L Rev* 291, at 378.

18 Haraway, *supra* note 9, at 191.

19 *Id*.

20 *Id* at 190.

[21] *Id* at 190–191.

[22] Harding, *supra* note 23, at 185; Harstock, *supra* note 23, at 157, 159–160.

[23] Harding, *supra* note 23, at 185.

[24] *Id* at 184–185, 188; Stanley, *supra* note l, at 27.

[25] Bartlett, *supra* note 9, at 873–874.
"My effort here takes a similar form [to a Marxian analysis of capitalism] in an attempt to move toward a theory of the extraction and appropriation of women's activity and women themselves. Still, I adopt this strategy with some reluctance, since it contains a danger of making invisible the experience of lesbians or women of colour. At the same time, I recognize that the effort to uncover a feminist standpoint assumes that there are some things common to all women's lives in Western class societies." (Citations omitted.) Harstock, *supra* note 23, at 164; *see* P Cain, Feminist Jurisprudence: Grounding the Theories (1989) 4 *Berkeley Women's LJ* 191, at 213–214 (discussion of "lesbian standpoint").

[26] Haraway, *supra* note 9, at 196 "There is no single feminist standpoint because our maps require too many dimensions for that metaphor to ground our visions."

[27] Bartlett, *supra* note 9, at 873–874; but see CA Littleton Feminist Jurisprudence: The Difference Method Makes (1989) 41 *Stan L Rev* 751, at 771–784 (Littleton defends MacKinnon's work against Bartlett's critique that MacKinnon uses standpoint epistemology and that her work is therefore essentialist).

[28] Haraway, *supra* note 9, at 190–191.

[29] See R Frankenburg, *White Women, Race Matters: The Social Construction of Whiteness* (Minneapolis: University of Minnesota Press, 1993) 191–235 (a discussion of how it is in the interests of white women to be unaware of the privilege that they experience due to their race); CA MacKinnon, *Feminism Unmodified* (Cambridge: Harvard University Press, 1987) 147 n 6 ("'Male', which is an adjective here, is a social and political concept, not a biological attribute; it is a status conferred upon a person by a condition of birth. As I use 'male,' it has nothing to do with inherency, preexistence, nature, inevitability, or body as such. Because it is in the interest of men to be male in the system we live under (male being powerful as well as human), they seldom question its rewards or even see it as a status at all.")

[30] R Walker, The Treaty of Waitangi as the Focus of Maori Protest, in IH Kawharu ed, *Waitangi:* Maori *and Pakeha Perspectives* of *the Treaty of Waitangi* (Auckland: Oxford University Press, 1989) 263, 263–269.

[31] Eg M Jackson, *The Maori and the Criminal Justice System — He Whaipaanga Hou: A New Perspective, Pt 1* (Wellington, Department of Justice, 1988) 264–279; Walker, *supra* note 32, at 263–269; E Taihakurei Durie & GS Orr, The Role of the Waitangi Tribunal and the Development of a Bicultural Jurisprudence (1990) 14 *NZULR* 62; S Jackson, Decolonising Aotearoa (1990) 9/10 *Race Gender Class* 42.

[32] Walker, *supra* note 32, at 263–265.

[33] Jackson, *supra* note 33.

[34] *Id* at 265.

[35] University of Waikato School of Law Handbook (1991) 7.

[36] Eg Ngahuia Te Awekotuku, He Tikanga Whakaaro: *Research Ethics in the Maori Community* (Wellington: Manatu Maori, 1991).

[37] A Mikaere, Book Review (1990) 14 *NZULR* 97, at 99.

[38] M Jackson, The Treaty and the Word: The Colonization of Maori Philosophy, in G Oddie & R Perrett eds, *Justice, Ethics and New Zealand Society* (Auckland: Oxford University Press, 1992) 9.

[39] HLA Hart, Introduction, in John Austin, *The Province of Jurisprudence Determined* (London: Weidenfeld and Nicolson, 1955) xi.

[40] *Id* at viii-ix.

[41] *Id*.

[42] *Id* at ix.

[43] *Id*.

[44] *Id* at xvi.

[45] *Id* at xi.

[46] *Id* at xvii.

[47] J Austin, *The Province of Jurisprudence Determined* (London: Weidenfeld and Nicolson, 1955) 193–194.

[48] *Id* at 207–211.

[49] (1877) 3 NZJR (NS) 72.

[50] Eg G Chapman, The Treaty of Waitangi — fertile ground for judicial (and academic) myth making Duly 19911 *NZLJ* 228, at 231. Chapman notes regarding the Wi Parata decision, "In its clarity of exposition, and basic soundness of judgment, it is fitting testimony to the quality of that most learned Chief Justice's judicial work." *Id.*

[51] F Hackshaw, Nineteenth Century Notions of Aboriginal Title and their Influence on the Interpretation of the Treaty of Waitangi, in IH Kawharu ed, *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989) 92, 93 ("instead of reflecting established law, *[Wi Parata]* reflected untested positivist-inspired legal theories. .."); FM Brookfield, The New Zealand Constitution: the search for legitimacy, in IH Kawharu ed, *Waitangi* : *Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland: Oxford University Press, 1989) 1, 10 ("the work done recently by academic writers … appears to leave no doubt that since the late 1870s successive New Zealand judges have misunderstood the law… on the whole they did indeed get it wrong"); but compare D V Williams, Te Tititi o Waitangi — Unique Relationship Between Crown and Tangata Whenua?, in IH Kawharu ed, *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* (Auckland, Oxford University Press, 1989) 64, 87 (referring to *Wi Parata*, "Modern legal scholars tend to be squeamish about such a transparent moulding of legal doctrine to suit the convenience of colonial capitalism, and no doubt the colonial judiciary did 'misunderstand,' deliberately or otherwise, the doctrine of aboriginal title … colonial judges in many parts of the Empire were adept at reaching decisions convenient for colonial Governments which were at the expense of indigenous peoples' rights.")

[52] *New Zealand Maori Council v Attorney General* [l987] 1 *NZLR* 641.

[53] M Jackson, Land Loss and the Treaty of Waitangi, in Witi Ihimaera ed, *To Ao Marama 2: Regaining Aotearoa* (Auckland: Reed, 1993) 77.

[54] *Id*.

[55] P Havemann, "The Pakeha Constitutional Revolution?" Five Perspectives on Maori Rights and Pakeha Duties (1993) 1 *Waikato LR*

53, at 54.

[56] WH Oliver, ed, The *Dictionary of New Zealand Biography (Vol I)* (Wellington: Allen and Unwin, Department of Internal Affairs, 1990) 354–355. In 1881 Prendergast sanctioned the raid on Parihaka. In November 1881 he was knighted,

[57] *Id.*

[58] Haraway, *supra* note 9, at 191.