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Announcements

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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON - TE HERENGA WAKA

"The Use of 'Tangata Whenua' and 'Mana Whenua' in New Zealand Legislation: Attempts at Cultural Recognition"

42 VUWLR 259-276 (2011)
Victoria University of Wellington Legal Research Paper No. 51/2022

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington, Te Herenga Waka - Faculty of Law
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In Aotearoa New Zealand the use of Māori words in legislation has become widespread, to better recognise and legally provide for Māori culture and values. However, their use has not been without criticism or difficulty. At the simplest and most basic level, there have been difficulties with knowing what the words mean or encompass, and some errors have been made – both in the choice of the words used in the legislation and by bodies applying them in practice. At a more fundamental level, their use has been criticised for, on the one hand, potentially subverting the fundamental principles of our legal system and, on the other, subverting the development of Māori cultural identity.

This paper focuses solely on the use of the two terms "tangata whenua" and "mana whenua" in New Zealand legislation. It discusses the range of uses of these two terms, and the issues and difficulties they have raised. The focus is on the use of these terms 'pepper-potted' throughout English-language legislation, rather than on their use in extensive passages of Māori text.

The paper identifies some suggestions for overcoming some of the difficulties identified and thus better achieving the aims and benefits of using te reo Māori kupu in legislation. It concludes with the paradox facing those who wish to use such terms or who have to interpret them once used.

"Application of Affirmative Action Law in New Zealand: Uncertainty in Coverage, Definition and Results"

HRR Journal 2, 2004
Victoria University of Wellington Legal Research Paper No. 52/2022

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The term “affirmative action” refers to policies designed to benefit particular minority groups in society. Such policies may be used in any area of public life but are most commonly found in education and employment. This paper takes a case study approach, asking how the law regards affirmative action measures, particularly the current legal tests and thresholds for justification of affirmative action measures. It addresses what guidance New Zealand law provides in respect of the kinds of measures that can be adopted in such situations. Unfortunately, New Zealand law in this area is not as clear as one would like it to be. The relevant tests and thresholds are confused, overlapping and uncertain. This makes it difficult for an institution to apply them if it is considering – or has implemented – affirmative action measures.

"Violent Women in Film: Law, Feminism and Social Change"

Mediating Law (Melbourne, November 2002).
Victoria University of Wellington Legal Research Paper No. 53/2022

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This article addresses the depiction of violent women in film and questions the feminist analysis of such violence, specifically the view that such depictions are liberating for women. The author discusses film analysis, the role of violence in film generally, and then violence by women in Hollywood films in the 1990s. Particular attention is paid to the rape-revenge narrative, with the author examining the broad themes and messages these films contain, and how they relate to social arguments and trends. This article presents an argument against the adoption of these portrayals as clear feminist victories by asserting that the law portrayed is irrelevant to feminist social change.

"Indigenous Environmental Justice: Access to Environmental Justice for Māori"

(2022) 22 Vermont Journal of Environmental Law 1
Victoria University of Wellington Legal Research Paper No. 54/2022

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Access to environmental justice addresses the more typical access to (procedural) access to the decisions by which natural resources are allocated, and justice in the substantive results of those decisions. While environmental justice goals are typically conceptualised as being either procedural or substantive, indigenous Māori claims to and aspirations for environmental justice introduce additional elements that make this binary categorisation too simplistic. This paper suggests that there is a third type of environmental justice that needs to be identified and addressed separately: indigenous environmental justice.

Unique to Māori as indigenous people is their cultural connections to Aotearoa New Zealand's natural environment, while also having a history of dispossession and forced alienation from it. One way of conceptualising Māori aspirations for environmental justice is as three types of goals. One goal for Māori environmental justice is political, in that it concerns the distribution of power. This goal is for the active protection of the environmental assets of Aotearoa as well as the recognition of Māori authority to control and/or share in making decisions over them. A second type of environmental justice goal is cultural: for Māori values and culture to be equally respected and protected in environmental law and decision-making, including metaphysical as well as physical features of the natural environment. A

third type of goal is the respect of equality of treatment as individuals. This encompasses the more traditional procedural and substantive aspects identified above. This includes access to the legal system in respect of environmental and resource decision-making, and the distribution of environmental benefits and burdens; this distribution is most commonly discussed in relation to bearing of environmental burdens such as pollution and its impact on individual health.

This paper updates an earlier paper that introduced some of the different types of environmental justice: procedural, substantive, and indigenous. It discusses aspects of justice under the New Zealand Resource Management Act 1991 and Environment Court. The second half of the paper illustrates some of these elements and issues with two case studies: Mount Te Aroha and the Tui mine pollution, and the aftermath of the grounding of the MV Rena in the Bay of Plenty.

The issues arising from the loss of land and resources after colonisation adds an extra layer of complexity to the discussion of environmental justice. Some issues of environmental justice for indigenous peoples will concern traditional, procedural aspects, such as an individual's access to the courts for environmental claims, and some will concern traditional substantive elements, such as the distribution of pollution and other environmental burdens. Other environmental justice claims can only be understood in terms of these additional historical, political and cultural elements of justice.

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Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

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