other countries. As for the study under review: it is a technically accomplished, highly original and intellectually stimulating work which deserves a wide readership.

DONALD M. MacRAILD

Northumbria University, UK

A Simple Nullity? The Wi Parata *Case in New Zealand Law & History*. By David V. Williams. Auckland University Press, 2011. 287pp. NZ price: $49.99. ISBN: 978-1-86940-484-0.

I KNEW THAT I WOULD LIKE Professor David V. Williams's latest book before I had even opened its first pages for it presented an interesting quandary: one of my favourite scholars writing about one of my (so I thought before I read this book) least liked judicial decisions. As the title suggests, this is a book about a legal case, *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) 72 (SC), decided in 1877 by the then Supreme Court (now High Court). This case, as Williams notes, is 'a landmark decision in New Zealand law for its dismissal of the Treaty of Waitangi' (p.3). In fact, the court declared the Treaty to be 'a simple nullity', a line that has since reverberated throughout legal history and gives the book its opening title.

The popular 'facts' of the case state that in 1848 the chief of the Ngāti Toa tribe sought to give tribal land at Whitireia as an endowment for a school to be established there to educate the tribal children. The chief accordingly entered into a verbal arrangement with the then-Lord Bishop of New Zealand. In 1850 a Crown grant was made, without the knowledge or consent of the tribe, to the Lord Bishop. The grant stated that the land had been ceded from Ngāti Toa for the school. However, no school of any kind was ever established. Ngāti Toa sued, seeking return of the land. Ngāti Toa lost the case. Chief Judge Prendergast, whose name appears on the judgment for the court, ruled in favour of the Crown grant. The court stated:

> On the foundation of this colony the aborigines were found without any kind of civil government, or any settled system of law. There is no doubt that during a series of years the British Government desired and endeavoured to recognize the independent nationality of New Zealand. But the thing neither existed nor at the time could be established. The Maori tribes were incapable of performing the duties, and therefore of assuming the rights, of a civilised community.

Prendergast explained:

> On the cession of territory by one civilised power to another, the rights of private property are invariably respected, and the old law of the country is administered, to such extent as may be necessary, by the Courts of the new sovereign . . . . But in the case of primitive barbarians, the supreme executive Government must acquit itself, as best it may, of its obligation to respect native proprietary rights, and of necessity must be the sole arbiter of its own justice.

Prendergast concluded that 'the title of the Crown to the country was acquired, *jure gentium*, by discovery and priority of occupation, as a territory inhabited only by savages'. In reaching this conclusion, Prendergast observed that the Treaty of Waitangi provided little support to the Ngāti Toa argument because the Treaty was 'a simple nullity'.

At the turn of the century, the Privy Council deemed such reasoning in *Wi Parata* as going 'too far' (*Nireaha Tamaki v Baker* [1901] A.C. 561). However, New Zealand's judiciary ignored the Privy Council, the only occasion where a local court publicly avowed its disapproval of a superior tribunal's ruling. Later, in 1941, the Privy Council

reinterpreted the Treaty as enforceable in the courts if recognised in legislation (*Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] A.C. 308). This did not occur until 1975 with the enactment of the Treaty of Waitangi Act. The *Wi Parata* decision was partially overruled in a series of cases in the 1980s and fully in 2003 (*Attorney General v Ngati Apa* [2003] 3 NZLR 643).

In this remarkable book, Williams has the courage, foresight and intellect to delve into the modern lambasting of the 'simple nullity' observation of the Treaty as reprehensible and notorious. He asks, 'Was the *Parata* decision really so very wrong? Is the Treaty still not "a simple nullity" in law?' (p.4). Williams's book seeks to make sense of *Parata* and does so by going back to the beginnings of colonial rule in the 1840s. Thus this book is about more than simply the intricacies of one legal case. It explores the 'range of tensions and conflicts *within* the colonists' society', including the 'pivotal importance in the late nineteenth- and early twentieth-century disputes concerning the role of churches in the provision of education' (p.7).

A Simple Nullity is divided into ten chapters, each with wonderfully descriptive headers. The first chapter, entitled 'The arrival of Christianity on the Kapiti Coast', describes the vision that four Christian men had during the years 1846 and 1847 for a Trinity College to be built along the Kapiti coast within the Ngāti Toa region. The next chapter, 'An "exemplary haven" in a troubled land', brings to the fore the agency of the Māori leaders in the gift of the land for the school. Here Williams makes the important point that his history narrative is 'unconfined by the constraints of a [Waitangi] Tribunal inquiry' (p.27). Importantly, the author explains, 'I am not disposed to accept that able Ngati Toa and Ngati Raukawa leaders in the 1840s should be portrayed as victims of Pakeha duplicity that was sanctioned in colonialist law by a Crown grant made without their consent . . . . In my view, there is more to the story of the gift of Whitireia than breaches of good faith by the Crown and by the clergy' (p.27). An exploration of the deeper story becomes the focus of chapter three, 'A fraud on the donors?' Williams tells us upfront that the so-called 'facts' of the case were never proved in the court case because the case was argued purely on questions of law. For example, there is the 'extraordinary fact' (p.44) that the plaintiff, Wiremu Parata Te Kakakura, did not attend the court hearing. Chapters four to six continue this context setting: chapter four queries whether the land was gifted or granted; chapter five asks, 'Why did the Church cling to the gifted land?'; and chapter six focuses on key events in the 1870s.

Chapter seven constitutes the heart of the book. Here Williams focuses on the case itself and includes several strong and fascinating new arguments. One positions Richmond J as the author of the judgment (not Prendergast CJ) and examines an often overlooked component of the judgment that accepts the natural law principles of *jure gentium* that are the basis of the modern doctrine of aboriginal title (p. 166). Chapter eight discusses what has happened to this land block from 1877 until the present day.

Chapter nine is a standout. Williams outlines his approach to legal history and explains why he has thought it necessary to focus an entire book on one case that is 'invariably taken to be wrongly decided' (p.199). It includes excellent long bullet point lists that summarise key legal events. While chapter ten provides a short overall conclusion, it is the final words in chapter nine that resonate most strongly and wisely with me: 'New Zealand law still treats the Treaty of Waitangi itself as little more than "a simple nullity". If we are to cast stones at Prendergast and Richmond for their 1877 views, ought we not equally to condemn the almost total lack of consideration for the Treaty, especially the original Maori text, Te Tiriti o Waitangi, in contemporary legal discourse?' (p.233). I agree.

A Simple Nullity is an outstanding book, expertly researched and written, and published beautifully by Auckland University Press. Anyone interested in New Zealand's early

schooling history, the history of the church and religion, Māori/Pākehā relations and, of course, legal history will find this a fascinating and refreshing read.

JACINTA RURU

University of Otago

The Settler's Plot: How Stories Take Place in New Zealand. By Alex Calder. University of Auckland Press, Auckland, 2011. 299pp. NZ price $45. ISBN: 978-1-86940-488-8.

NEW ZEALAND has not produced many top essayists who write about a wide range of matters from nature and place to non-fiction, fiction and even texts setting out to be deliberately deceitful. Before the First World War W.P. Reeves, along with that questionable historian J.P. Grossman, produced some useful essays on matters of moment such as deforestation. So too did Blanche Baughan once she switched from poetry to contemplating the great outdoors. The interwar period produced Pat Lawlor, Monte Holcroft, Eric McCormick, Robin Hyde and occasionally J.C. Beaglehole on identity, writing and painting, and the farmer naturalist Herbert Guthrie-Smith on transforming the land. Robert Chapman and W.H. Oliver wrote some interesting examples early in their academic careers in the post World War Two period that traversed the overlap between history, literature, culture and politics. So too did A.H. McLintock with his interest in painting and his involvement with the *Encyclopaedia of New Zealand*. In more recent times Geoff Park wrote eloquently about the natural world, along with Les Molloy (as did Denys Trussell somewhat more whimsically), while Michael King contemplated the meaning of being the descendant of vigorous colonisers set upon remaking society and environment. Latterly, fiction writers such as the two Fionas — Kidman and Farrell — have begun to write about the experience of growing up in New Zealand and the consequences of serious natural disasters such as the Christchurch earthquakes. Poet Brian Turner and painter Grahame Sydney have also had their say on environment, aesthetics and sport. Various other journalists and academics have tried their hand at essay writing with mixed results and there is a burgeoning number of blogs of extraordinarily variable quality available on the web. It is a pleasure, therefore, to read the work of Alex Calder, which is polished, sophisticated, scholarly and perceptive, yet refreshingly free of jargon or entrenched and/or extreme theoretical posturing.

Calder writes about many things in this collection, from the experience of bush and beach to the meanings of the outputs of various major writers, historians, propagandists and con men. The central idea that ties together this somewhat disparate collection of essays about texts is the notion promulgated several years ago by Judge Eddie Durie that the settlers must learn to settle. By this both Durie and Calder imply that descendants of British and European immigrants will never be truly comfortable in this country until they learn to accept New Zealand as it is rather than continually trying to turn it into something else. Such peaceful reconciliation with this place, of course, also requires ongoing dialogue with the first settlers of this land and acceptance of their understandings of the ways in which this place is special.

Calder organises the essays into four roughly chronological sections: 'Belonging' (the question of Pākehā tūrangawawae); 'Landing' (cross-cultural encounters in the nineteenth century); 'Settlement' (appropriating land, transforming the landscape, life in the suburbs); and 'Looming' (different kinds of New Zealanders and the awareness of a distant place in the world). This seems a logical way to organise the material and certainly makes sense to an historian.

The background essay entitled 'Nature and the Question of Pakeha Turangawaewae' is