Preface

As a rocking back and forth towards greater fairness and justice in those relations. Others, myself included, became more sceptical and highly anxious about is 'lawfare' and what came more to resemble infestation. For some of us, the isgivings of the critical theorists in the 1980s had been shown to have more action than some of us had then been willing to concede, enmeshed as we had been then of the potential for law to deliver meaningful justice and political change for tribal peoples. On this and to repeat, the jury is still out. In this new lawfare, the anxieties of lawyers buzzing around tribes' affairs, their land claims especially, have not been necessarily helpful and, in many respects, have become positive impediments to meaningful advance of their socio-economic and political status. In Australia, the social indicators were that after nearly 20 years of native title, boriginal peoples were in general worse rather than better off. Of course, the usual connection between, on the one hand, social deprivation and political marginalization, and, on the other, possession of legal rights is moot. Nonetheless, during the 1980s, the link was one that most of us regarded as unproblematically self-evident. To repeat, the possession of legal rights has not made tribes worse off, but equally it is less clear whether it has significantly—or even marginally—improved their general lot.

As the previous paragraph signals, I have been associated with some of the galism that evolved from the early 1980s, particularly in the New Zealand setting. Nonetheless, while making that personal and subjective association clear, I have tried to keep such recollection from the text. I have spoken of those associations elsewhere in the more intimate retrospection of a festschriften essay for the late Mike Taggart (a cherished and deeply missed contemporary who passed away soon after publication). I have not wanted such reminiscence to intrude into the narrative here. Nonetheless, there is necessarily an element of personal association in the modern history this book sets out to describe. It was written through the summer of 2010, commenced during a London visit and at the suggestion of our dear friend Professor Anna Yeatman. In the writing of this book, I particularly thank Professor Andrew Sharp and Dr Joshua Geitzler for their thoughtful and observant comments, with the usual exculpations, and the editorial team at Oxford University Press (John Louth, Merel Alstein, Anthony Hinton, and Emma Hawes) including the general editors of the Oxford Monographs in International Law series. I attended a colloquium in Ottawa on 1 March 2011 graciously organized by Ron Stevenson of Justice Canada and the discussion there has been incorporated into the text immediately before going to press (with particular gratitude to Simon Young). Tracey Tawhiao, a major Māori artist, who left the law for more a poetic and visionary but less remunerative way of life, generously designed the cover.

Finally I thank my family—the New Zealand, Australia, and Canada branches, but especially those most immediate here in the United Kingdom: my sister Kathy; Olivia and Louisa; and our son Frankie, for arriving on Guy Fawkes Day; and his Dad and my partner Andrew for everything.

P. C. McHugh
31 January 2014

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