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'Kevin Hille, Carwyn Jones, and Damen Ward, Treaty Law: Principles of the Treaty of Waitangi in Law and Practice'

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Kevin Hille, Carwyn Jones, and Damen Ward, *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice* (Thomson Reuters New Zealand, 2023), 282pp+xi. Paperback. NZ\$125. ISBN: 978-1-9911-0230-0.

A few years ago I would never have considered reviewing a legal book such as this. But having undertaken legal studies over these past few years to deepen my academic expertise in law I jumped at the chance, and I was most definitely not disappointed. This book explores the principles of Te Tiriti o Waitangi or the Treaty of Waitangi in law and practice. The latter is an important distinction as Hille et al. make the crucial point that Te Tiriti o Waitangi is not constitutionally enshrined. Furthermore, the authors illustrate that unlike other British settler societies such as Canada and Australia, the Aotearoa New Zealand constitution itself is not entrenched. So, it is more similar to the United Kingdom constitution, relying much more on statute and common law. This book could not have been published at a more opportune time with the extreme right-wing coalition government in Aotearoa New Zealand at the time of writing currently in the process of introducing a new Treaty of Waitangi Principles Bill which aims at essentially weakening the impact of Te Tiriti o Waitangi in the country.

Even though the book is not overly long in terms of length Hille et al. manage to explore the subject in quite some depth, specifically in eleven substantial chapters: 'The Treaty: Outline of its Legal Status and Effect'; 'Judicial Review and the Principles of the Treaty'; 'The Principle of Partnership, Reasonableness, and the Duty to be Informed'; 'The Principle of Active Protection'; 'The Principle of Redress'; 'Treaty Principles and Fiduciary, Fiduciary-like, and Good Faith Duties'; 'The Treaty and Statutory Interpretation'; 'Judicial Approaches to Tikanga Māori and the Common Law'; 'Tikanga Māori: Issues of Ascertainment, Context and Statutory'; 'Treaty Litigation: Parties and Representation'; and 'Treaty Settlements'. The vast majority of these chapters are single-authored by each one of the authors of the book, drawing on their own particular legal expertise.

The book starts from the very beginning: the signing of Te Tiriti o Waitangi in 1840 and the differences between the English and Māori translations which have been much written about. Hille et al. also emphasise that for much of Aotearoa New Zealand's history Te Tiriti o Waitangi was largely ignored both in law and in practice. It was only really with the passage of the *Treaty of Waitangi Act* in 1975¹, which paved the way for the establishment of the Treaty of Waitangi Tribunal, that saw much more notice being taken of Te Tiriti o Waitangi and Māori were able to take legal action for potential breaches of the treaty. However, the *Lands* case of 1987 was especially significant in actually highlighting the importance of Te Tiriti o Waitangi in practice, as this case defined treaty principles in some detail. The New Zealand Māori Council asked the Court of Appeal whether the government's plans to transfer land to state-owned enterprises breached the principles of Te Tiriti o Waitangi. Initially the Treaty of Waitangi tribunal only had the authority to look at possible current breaches of Te Tiriti o Waitangi. But this purview was subsequently made retrospective to 1840.

¹ I have actually written about the introduction of this fundamental piece of legislation in Jatinder Mann, *Redefining Citizenship in Australia, Canada, and Aotearoa New Zealand* (New York: Peter Lang Publishing, 2019), 129-133.

This allowed many more cases to appear before the tribunal over the following years. Hille et. al. highlight that broader jurisprudence when it comes to the place of Te Tiriti o Waitangi has been a mixed picture. At times courts have been quite forthright in emphasising the importance of Te Tiriti o Waitangi in a range of situations, and specifically the government at the time taking it into consideration in its deliberations on a particular policy area. But at other times they have qualified what 'taking it into consideration' means, thereby allowing governments greater freedom of manoeuvre. The book therefore illustrates the myriad ways in which the principles of Te Tiriti o Waitangi have impacted on Aotearoa New Zealand in practice. Since 1975 it truly has become a core part of the country, influencing so many different aspects. That is why the current Treaty of Waitangi Principles Bill is so controversial. Even if the government succeeds in limiting the principles of Te Tiriti o Waitangi in law, well statutory law in any case, there is well-established common law for courts to still draw on, and I would suggest that it is impossible to remove the principles of Te Tiriti o Waitangi in practice as they have become a part of the DNA of Aotearoa New Zealand.

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