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‘Maria Bargh and Carwyn Jones (Editors), 50 Years of The Waitangi Tribunal Whakamana I te Tiriti’

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Maria Bargh and Carwyn Jones (Editors), *50 Years of The Waitangi Tribunal Whakamana i te Tiriti* (Huia Publishers, 2025), 320pp. Paperback. NZ\$65. ISBN: 978-1-7755-0925-7.

This is a very significant and timely edited collection by Maria Bargh and Carwyn Jones – two of Aotearoa’s¹ leading experts on Māori legal and political issues, on the 50th Anniversary of The Waitangi Tribunal Whakamana i te Tiriti. The book very much succeeds in its mission to provide readers with an overview of the main types of activities the Tribunal has engaged in over the past half century and highlight some of its major achievements and the obstacles it has faced during this period. Due to the limitations of space, I will focus on five substantive chapters in the book which cover most of its major themes.

Hon Sir Edward Taihakurei Durie’s chapter on ‘I Te Timatanga’ provides a very useful overview of the establishment of The Waitangi Tribunal Whakamana i te Tiriti in 1975 and who better to do this than the longest serving Chairperson of the Tribunal so far: 1980-2004. Sir Durie first puts the establishment of The Waitangi Tribunal Whakamana i te Tiriti in historical context by arguing that its origins very much lie in the protest movements of the 1960s. He also quite rightly emphasises the crucial role played by the then Minister for Māori Affairs Matiu Rata in the establishment of the Tribunal through the passage of the *Treaty of Waitangi Act* in 1975.² The timing of the passage of this legislation was significant as the subsequent Muldoon National government had a very different perspective on the establishment of the Tribunal, illustrated by their two year delay in appointing the majority of the three judges composing the head of the Tribunal. Sir Durie also highlights the bicultural nature of the Tribunal from its inception, i.e. its membership was composed of both Māori and Pākehā. This reflected one of the main purposes of the Tribunal, which was to strengthen the Māori-Crown relationship in Aotearoa.

‘Historical Claims and District Inquiries: “The matter has been settled”?’ by Peter Meihana focuses on three reports of The Waitangi Tribunal Whakamana i te Tiriti that illustrate the range of subjects the Tribunal has addressed – this includes Crown purchases, confiscations, and the Native Land Court. However, before going into detail into the three reports the chapter emphasises the importance of the history and research of the Tribunal which has informed its reports and judgments in so many ways, especially regarding historical claims brought before it (i.e. pre-1992, before the famous Fisheries settlement). Meihana highlights the numerous atrocities committed or condoned by the Crown against Māori since Pākehā settlers arrived in Aotearoa, evidence of which has thankfully been passed on through the oral history traditions of generations of Māori iwi (people or nation). A pattern that was very quickly identified by the Tribunal was a consistent abrogation of the Crown’s obligations under Tiriti (the Treaty) and consequently therefore a responsibility to provide restitution to various iwi for primarily land that was stolen from them. Meihana maintains that through the recognition of the kāwanatanga (governance) of the Crown, Māori did not relinquish their own governance arrangements and right to rangatiratanga (self-determination).

¹ The book refers to Aotearoa only and not Aotearoa New Zealand and so out of respect I thought I would do the same in this review.

² This is something that I highlighted in my own research as well: Jatinder Mann, ‘The end of the British World and the redefinition of citizenship in Aotearoa New Zealand, 1950s-1970s,’ *National Identities* 21, no. 1 (2019): 73-92 and *Redefining Citizenship in Australia, Canada, and Aotearoa New Zealand* (Peter Lang, 2019).

Margaret Mutu's 'Issues Relating to Treaty Settlements: The Most Dishonourable Process of Managed Chaos' highlights that although The Waitangi Tribunal Whakamana i te Tiriti has found in favour of most of the historical claims presented before it, the settlement of those claims has been a very traumatic process for claimants. This according to Mutu reflects the Crown's inability to fully live up to the obligations of te Tiriti o Waitangi (The Treaty of Waitangi). Contrarily it holds on 'to the legal fiction of indivisible parliamentary sovereignty to retain to itself all the power, wealth, prosperity and privilege it gained from dispossessing Māori.' (p. 127) Even though the Tribunal has made numerous judgments in favour of Māori land claims submissions, the Crown has not acted in good faith when it comes to negotiating settlements on these claims. This includes passing legislation to extinguish rights and negotiating with groups that it feels are more likely to agree with its position. A large part of the motivation for this comes down to the false 'Doctrine of Discovery', which Māoridom has been fighting against since it was first applied to Aotearoa when Pākehā arrived. The Crown's own Office of Treaty Settlements is required to encourage possible and actual claimants away from seeking binding recommendations. These do not extinguish claims or do not allow the Crown to tell Māori what to do. Mutu quite rightly emphasises that the Crown through its actions is not respecting the principles of te Tiriti o Waitangi and is not allowing Māori to exercise tino rangatiratanga.

'From Historical Claims to Kaupapa Inquiries' by Judge Wilson Isaac (Chairperson of The Waitangi Tribunal Whakamana i te Tiriti from 2009-2024) is probably one of the most unique chapters in the book as it takes the form of an interview that one of the co-editors of the collection, Carwyn Jones undertook with Judge Isaac. Through his answers to a range of very incisive questions Judge Isaac charts the move away of The Waitangi Tribunal Whakamana i te Tiriti from predominantly historical claims (which it had dealt with primarily up to that point) to Kaupapa (principle or policy) cases. Firstly though, Judge Isaac points out that when he took over as Chairperson of the Tribunal there was an urgency to clear any outstanding historical claims as the then government had placed a deadline for such cases to be considered by the Tribunal. However, once this was done, he observed a shift in the types of cases appearing before the Tribunal to more Kaupapa ones. Thankfully the expertise in the Tribunal had deepened from its early days to handle cases of this type. But Judge Isaac does emphasise that the Tribunal certainly faced challenges during his time as Chairperson, which predominantly related to lack of resources, which has been a problem since its establishment. He does though credit having good working relationships with several Ministers for Māori Affairs as contributing to the success of the Tribunal's work during his tenure.

Tracy Whare's 'Rangatiratanga: Constitutional Issues' explores the important relationship that The Waitangi Tribunal Whakamana i te Tiriti has to Aotearoa's constitution. Specifically, the way in which the Tribunal has interpreted and applied Article 2 of te Tiriti o Waitangi and its clear and complete protection of tino rangatiratanga. Whare emphasises that the latter informs all the work undertaken by the Tribunal in her opinion. The chapter focuses on three reports that the Tribunal produced on cases appearing before it: Whaia te Mana Motuhake In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim, The Report on the Trans-Pacific Partnership Agreement, and Tomokia Nga Tatau o Matangireia: Constitutional Kaupapa Inquiry. Whare explains that the first and third found in favour of Māori claims, but the second found in favour of the Crown, much to her dismay. Interestingly Whare also highlights the impact of the United Nations Declaration on

the Rights of Indigenous Peoples (UNDRIP) on the work of the Tribunal and the upholding of te Tiriti o Waitangi more broadly.³ Although the latter is not legally binding on signatory states it has been drawn upon by the Tribunal and New Zealand courts more broadly when determining whether the Crown is adhering to its responsibilities under te Tiriti o Waitangi.

This book makes such an important contribution to not only the existing literature but to Aotearoa society more broadly, which is quite rare for a book in my experience. It strikes an excellent balance between overview and detail when it comes to exploring the work of The Waitangi Tribunal Whakamana i te Tiriti over the past half century. I am amazed by how much it packs in, in just over 300 pages whilst at the same is not overwhelmingly, but very accessible. The book is also not just a celebration of the Tribunal, several of the chapters acknowledge the limitations it has. But they do though illustrate the important work the Tribunal has done and the difference it has made not only to Māori but to improving Māori-Crown relations. The fact that the current right-wing government in Aotearoa has tried to undermine the Tribunal in several ways clearly shows that it considers it a threat. However, the Tribunal endures despite these repeated assaults, and it is my sincere hope that it continues to fulfil its role despite these challenges. I wholeheartedly recommend this book to readers, both specialist and general. In fact, it should have pride of place on the bookshelf of any New Zealander who is interested in learning more about the crucial role that The Waitangi Tribunal Whakamana i te Tiriti has played and continues to play in Aotearoa.

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³ For more on this see Jatinder Mann, 'The implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Australia, Canada, and Aotearoa New Zealand,' *Journal of Australian, Canadian, and Aotearoa New Zealand Studies* 5 (2025): 51-104.