Indigenous Peoples and the State: International Perspectives on the Treaty of Waitangi
Edited by Mark Hickford and Carwyn Jones. Routledge, New York, 2019.
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Reviewed by Linda Te Aho

Just over thirty years ago, in the High Court decision *Huakina Development Trust v Waikato Valley Authority*, Justice Chilwell famously stated: "There can be no doubt that the Treaty is part of the fabric of New Zealand society."[1] At a symposium celebrating 30 years of the *Huakina* decision, Tom Bennion described the judgment as "a marker, a significant new structure sticking out in the legal landscape, indicating the shape of arguments to come." This collection of work brings together a range of arguments for our time concerning the meaning and importance of the Treaty of Waitangi, shaped by different perspectives on its context and history.

Foundations of Indigenous–State Relationships
The book is in three parts. The first part opens with a chapter by Dr Carwyn Jones on Māori and State visions of law and peace. Jones locates the Treaty against a backdrop of "key values of the Māori constitutional tradition." He draws upon the work of Indigenous scholar, Robert Williams Jnr, in exploring what such an approach might mean for our understanding of the Treaty. He concludes that the work of Robert Williams and others illustrates the importance of understanding the meaning of treaties between Indigenous peoples and States by viewing them as instruments within the Indigenous world and not only as a legal mechanism of the colonising State.

Renowned Indigenous scholar, John Borrows, explores the scope of interpretive frameworks for understanding bijural treaties in Canada and New Zealand. Borrows critiques origin stories and false visions that have led to "troubling consequences" such as non-Indigenous law being made supreme. An interesting feature of this chapter is Borrows' analogies comparing law to religion.

The contribution by David Williams discusses John Borrows' "living tree" approach to constitutional interpretation in Canada and the application of *terra nullius* in Australia, *and* in New Zealand and Canada. Williams revisits arguments that critique concepts (such as aboriginal title) for being based on ethnocentric assumptions of European superiority. The revelation in this chapter is the light brought to bear on important arguments in papers by Ned Fletcher and Trevor Williams that the author hopes will provoke further inquiry into the history and historiography of the Treaty. In reconsidering his own theories about the drafting of the Treaty, Williams posits that the Treaty may have been intended by its drafters to be protective of Māori rights, rather than a hastily crafted document intended to usurp those rights.

Giving Meaning to the Treaty Through Time
In the second part, Saliha Belmessous begins by contextualising the Treaty of Waitangi with reference to the historical tradition of treaty-making between European and non-European polities to negotiate European expansion. Bain Attwood then looks towards a "post-foundational" history of the Treaty that he believes could enable New Zealanders to imagine alternative futures. Jacinta Ruru explores the failing modern jurisprudence of the Treaty in a chapter that focuses upon judicial cases concerning water under the Resource Management Act 1991 (RMA). Ruru argues that New Zealand's modern Treaty jurisprudence is in many respects expansive when compared with other legal systems "seeking to reconcile with their Indigenous peoples," but, citing Justice Joseph Williams' landmark article, "Lex Aotearoa,"

Ruru agrees that the cases represent missed opportunities to adapt and mould RMA processes in new and innovative ways.

Diverse Sites of the Treaty Relationship

Whilst many chapters in the book discuss "Crown–Māori relations," or "Indigenous–State relations," the importance of Rawinia Higgins' chapter lies in the fact that it explores the relationship between the Treaty of Waitangi and Tūhoe, her iwi, who did not sign the Treaty. The chapter provides a personal perspective about mana motuhake by reference to a well-known traditional song. Although mana motuhake is classically defined as autonomy or independence, Higgins embraces Mason Durie's explanation that it also "embodies a link with customary Māori systems of authority, especially in the face of colonising forces."

Mark Hickford reflects on the Treaty and its constitutional dimensions in making a case for a research agenda that engages with the untidiness of the historical record, rather than relying upon scholarship that leans towards "soothing simplicities" or the "comforts of nation-building." He raises some interesting points, but the density of language in this chapter may mean that they will pass many by.

Natalie Coates examines some of the legacies of historical Treaty settlement processes and looks to ways in which the Māori and Crown Treaty relationship should be reflected in future.

The final chapter has Mamari Stephens looking forward to 2040 and posing the question: "just which constitutional or political mechanism, or approach, or plan, or model will best deal with the 'Treaty issue' and give rise to the best result, the most harmonious society, the best protection of rights, and the best and most inclusive overall cultural template"?

Whether this will be a written constitution, or a focus on perfecting a political partnership, Stephens argues that we must move to understanding each other as whanaunga (relations) being deeply connected to each other.

Discussion

The book demonstrates that the Treaty of Waitangi is a living and historically rich example of the types of negotiated agreements that mediate relationships between Indigenous peoples and States or settler communities. Most of the chapters are written by New Zealand legal academics, many of whom are Indigenous. The inclusion of scholars such as John Borrows, Bain Attwood, and Saliha Belmessous add an important international dimension. This book will be most appealing to academics and university students across disciplines who are seeking a serious re-examination of the Treaty of Waitangi and its application to law, policy and identity.

I share the editors' hope that the collection will help to reinvigorate the scholarly and public discussion relating to the Treaty of Waitangi and its meaning, and contribute to the international discourse on Indigenous–State compacts.

[1] [1987] 2 NZLR 188, at 210. As a result of that case, the Treaty is now part of the context in which legislation which impinges upon its principles is to be interpreted, even where a statute is silent as to the Treaty or its principles.

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