

BOOK REVIEW**INTERNATIONAL HUMAN RIGHTS LAW IN AOTEAROA
NEW ZEALAND**

BY MARGARET BEDGGOOD, KRIS GLEDHILL AND IAN MCINTOSH
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PHILIPPA MORAN*

*International Human Rights Law in Aotearoa New Zealand*¹ is the work of some 15 authors, a mix of academics and practitioners, edited by Margaret Bedggood, Kris Gledhill and Ian McIntosh. All of the authors and editors are highly esteemed and have significant expertise in their areas of contribution.

This treatise of international human rights law and its application in Aotearoa New Zealand is the first comprehensive study in this area that specifically explores the New Zealand perspective. The size and format of the text indicate that it will be useful to both universities and practitioners working in this ever-developing area of the law. The text covers a broad array of concepts falling within the umbrella of human rights law and draws upon a wealth of international and New Zealand jurisprudence.

The authors explain that the text is divided into four broadly thematic parts: chapters 1 to 3 establish the context of both international human rights law and human rights law in Aotearoa New Zealand; chapters 4 to 7 introduce the international human rights legal framework; chapters 8 to 16 examine particular rights and New Zealand's adherence to international norms; and chapters 17 to 20 outline some novel areas where the intersection of international human rights law is continuing to emerge.

The introductory chapters begin with Andrew Geddis' overview of the theoretical and relatively recently advanced historical framework of international human rights law. While the United Nations and its predecessor the League of Nations are widely known to have been born as a direct response to World Wars I and II, Geddis traces the origins of international human rights law even further with a synopsis of transnational movements in response to slavery, and in support of women's, workers' and migrants' rights which drove state actors to develop international legal mechanisms in this area. To frame the New Zealand context, Paul Rishworth explains the development of the common law legal system and the nation's unique constitutional context, with particular focus on the New Zealand Bill of Rights Act 1990 (NZBORA) and the Treaty of Waitangi. He convincingly argues that seemingly unrelated legal procedures, such as judicial review and

* LLB(Hons)/BA. Solicitor at Buddle Findlay.

1 M Bedggood, K Gledhill and I McIntosh (eds) *International Human Rights Law in Aotearoa New Zealand* (Thomson Reuters, Wellington, 2017).

administrative law, have influenced the recognition of common rights and freedoms.

Rishworth introduces a theme prevalent throughout the text; the shortfall in the protection of economic, social, and cultural (ESC) “second generation” rights in Aotearoa New Zealand. These rights have traditionally been deemed non-justiciable and were excluded from the NZBORA on the basis that rights such as those to housing, education, and health are more appropriately addressed in government policy because of the resources required for their fulfilment. By contrast, civil and political rights enshrining equal access to existing freedoms have been protected in common law and statute. Rishworth, as with the majority of other authors in the text, rejects the orthodox view that ESC rights are intrinsically unenforceable. While still controversial, calls to legislate for substantive ESC rights are being progressively acknowledged. A number of developing nations have made headway in jurisprudence on the enforceability of ESC rights. New Zealand would benefit from greater protection of these rights in addressing its current crisis of inequality.

In the following chapter, Māmari Stephens provides an insight into Māori jurisprudence and human rights protections, including tensions arising from the relational particularity of some rights in tikanga Māori versus the European concept of universality of rights. Some readers may struggle with certain pōwhiri protocol, for example, limited speaking rights and seating arrangements for women, which inevitably cause friction with Western concepts of gender equality. However, Stephens’ chapter provides an invaluable resource to those unfamiliar with tikanga; she explains the conceptual underpinnings of these protocols through mana and tapu and provides illustrative examples of how resolution can be achieved in balancing other interests with a foundational respect for Māori culture.

The succeeding chapters offer a more in-depth study of the international human rights legal framework. Natalie Baird’s chapter explains the various United Nations organisations and their functions, the nine core international human rights treaties and their optional protocols, regional approaches to human rights, and New Zealand’s engagement with these mechanisms. This sets the framework for many of the subsequent chapters, which first explore the international human rights framework relating to a particular subject, then the continental instruments, and finally New Zealand’s domestic approach to the issue. This formulaic structure is an effective means by which to organise the chapters. It allows readers to compare and contrast global treatment of such issues and to understand how New Zealand’s implementation of different human rights standards equates to the recognition of such rights in other forums.

The remainder of the text’s second section further expands on core human rights concepts, duties, and protections. Claire Breen’s chapter discusses the overlap between international human rights law and international humanitarian law applicable in times of armed conflict. Breen explains the controversy between these two frameworks, as the ability to detain and kill

a person under the latter framework appears to fundamentally conflict with the rights to life, liberty, and security of the person under the former. Gledhill explains States Parties' triumvirate obligations to "respect, protect, and fulfil" each of the rights contained in the international instruments through the establishment of enforcement procedures and other mechanisms of domestic implementation; requiring immediate effect for civil and political rights and "progressive realisation" of ESC rights. This further highlights the emergent view that protection of ESC rights is unfairly classed as secondary to civil and political rights.

The rights to equality and non-discrimination are conversed by Breen and Bedggood. These are arguably the foundational rights which were enshrined as a consequence of the atrocities of World War II. Consistent with the foundational nature of these rights, New Zealand's Human Rights Act 1993 only addresses equality and non-discrimination, which is further reinforced in section 19 of the NZBORA. Breen and Bedggood explain the positive obligations these rights impose on states, the recognised justifiable limits on such rights, and the increasing trend of intersectionality, where individuals face discrimination on multiple grounds. Importantly, the authors recognise the recent concept of "reasonable accommodation"; treating all people the same or "neutrally" may result in disadvantage to particular individuals or groups, highlighting the distinction between equality and equity of treatment. While there is some repetition in the content of these introductory chapters, particularly in outlining the international human rights legal framework, each chapter deals with the framework in varying levels of detail. This is a pragmatic and useful approach as it allows each chapter to be read alone as a comprehensive account on its particular subject matter.

The succeeding nine chapters comprising the third section of the text are dedicated to particular rights. Most of these discussions show that, despite New Zealand's reputation as a country with a strong human rights record, significant further action is needed to fulfil New Zealand's international obligations. Particular issues addressed in the New Zealand context include the practice of detaining refugees and asylum seekers, out-dated data protection legislation in the age of "informational panopticon", disenfranchisement of prisoners, arbitrary preventive detention, gender pay equity, limited progress in the normalisation of Māori and New Zealand sign language as official languages, and limits on the justiciability of ESC rights in the context of the present housing shortage. As with Rishworth, these authors clearly treat ESC rights as equivalent to civil and political rights; *International Human Rights Law in Aotearoa New Zealand* consistently emphasises the need for states to equally recognise and realise these rights for their citizens.

Two chapters deal solely with the rights of specific marginalised groups; refugees and indigenous peoples. Baird provides an overview of the rights of refugees, including the emerging need to accommodate non-political asylum-seekers such as those displaced due to the effects of climate change. Claire Charters discusses indigenous peoples' rights, emphasising issues of self-

determination and identification, and the pertinence of land rights to these populations. However, there are no chapters dedicated to the rights of other subverted groups that have been recognised in stand-alone human rights instruments, such as children,² persons with disabilities,³ and women.⁴ The rights of these groups are interwoven in the chapters dealing with thematic rights, including equality and non-discrimination, workplace rights, and culture, language and education. This approach is consistent with the idea that segregating the rights of these groups may further marginalise them; they should be accommodated within the mainstream recognition of universal rights. However, further editions of the text may benefit from a dedicated exploration of the rights of each of these vulnerable groups to maintain their visibility.

The final section covers increasingly pertinent issues relating to the crossroads of international human rights law and other areas of law that are not immediately obvious companions. The intersection with intellectual property law and its impacts on indigenous peoples' rights to their culture are examined by Lida Ayoubi. This chapter considers the contentious idea that researchers' rights to patent protection may overcome the general population's rights to the availability of food and the highest attainable standard of health. Breen explains the role of human rights in the maintenance of peace and security, and states' extraterritorial application of human rights standards in extreme circumstances of occupied territory or inter-state conflict. This chapter is more complementary to Gledhill's earlier chapter on international humanitarian law, which also addresses situations of armed conflict, and is perhaps uneasily placed in this final section of the text. Ceri Warnock then shares insights into developing concepts of environmental rights, focussing on the rights to clean water and air, and biodiversity. While these basic environmental needs indirectly arise from traditionally recognised human rights, Warnock innovatively argues that recognition of environmental rights necessarily involves the extension of traditional concepts of rights-holders to future generations. The text concludes with Maria Hook's chapter on the interrelationship of international human rights law and private international law, exploring access to justice issues and states' ability to exercise cross-border jurisdiction on human rights issues in appropriate circumstances. Conflict of laws issues inevitably arise in circumstances where states have different international human rights law obligations which may be to the advantage or disadvantage of the human subject of the proceedings.

2 United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).

3 United Nations Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008).

4 United Nations Convention on the Elimination of All Forms of Discrimination Against Women 1249 UNTS 13 (opened for signature 18 December 1979, entered into force 3 December 1981).

Overall, *International Human Rights Law in Aotearoa New Zealand* will prove an invaluable resource for students and practitioners alike. It provides a comprehensive account of an area of law that is increasingly prevalent in the context of economic and social inequalities, states' controversial 'counter-terrorism' measures, the Syrian refugee crisis, global warming, and #metoo.