The Treaty of Waitangi occupies an unsettled place in New Zealand’s constitution, law and life. Although there is almost universal agreement that it is a foundation document, this is not reflected in the legal status of the Treaty, or necessarily in its treatment by government. The Treaty engenders strong emotions on both sides of the political divide. Many New Zealanders are ambivalent about it. For some, it is a private issue; for others, it is very public, and very political. Both the legal… Read more
But New Zealanders are a practical people and our constitution is quintessentially pragmatic. It seems to me that generations of legal scholars, with honourable exceptions such as Jock Brookfield, and certainly judges and law officers of the Crown, have averted their eyes from studying such matters too closely, perhaps in case they do not like what they find. In my 2008 book on The Treaty of Waitangi in New Zealand’s Law and Constitution I detailed this process of the contemporary reinterpretation of the meaning of the Treaty of Waitangi. I outlined the key aspects of the resulting meaning of the Treaty that were contributed by each official institution. And I further boiled that down to a statement that I consider still captures the essence of its contemporary meaning: (4). The law of New Zealand can be found in several sources. The primary sources of New Zealand law are statutes enacted by the New Zealand Parliament and decisions of the Courts of New Zealand. At a more fundamental level, the law of New Zealand is based on three related principles: parliamentary sovereignty; the rule of law; and the separation of powers. As a former British colony, the New Zealand legal system is heavily based on the English law, and remains similar in many respects. There are also