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Our constitutional ecosystem

distinctive features and dangerous foes

Abstract

Based on an address to Hāpai Public in Wellington in July 2025, this article discusses the evolving constitutional ecosystem in Aotearoa New Zealand, including its many sources and distinctive features. Having identified its various strengths and ongoing development, the article highlights several significant threats to current constitutional arrangements and the need for ongoing vigilance.

Keywords Aotearoa New Zealand, evolving constitutional ecosystem, distinctive features, strengths, threats

My invitation is to explain our constitutional ecosystem: to share how I think about our constitution, especially its distinctive features, and to identify some of the threats – dangerous foes – that might unsettle the delicate equilibrium within that ecosystem.[1]

Our constitution

An explanation of our constitution would be a quicker exercise if we were elsewhere in the world: beginning, and ending, with someone waving around a copy of the constitution. The United States, Australia, Canada, and almost all other countries in the world have constitutions we can point to and cradle in our hands. They have a formal master text; in other words, a sacred written document that describes the governmental infrastructure that wields public power and sets out the key rules which constrain that power.

There is also an industry of language that comes with those constitutions. 'Written or codified' speaks to the way rules are presented in the master text; that is, committed to writing. 'Supreme' speaks to two points: first, a hierarchy, the fact that the constitution sits above other laws and may allow laws to be struck down if inconsistent; and, second, judicial enforceability: if there is striking down to be done, it is almost always a job for the courts, and that shifts some of the power from the democratic branches to the judicial branch. 'Complete' speaks to the extent to which a constitution gathers up all its rules, as opposed to leaving some things out, leaving it to custom and practice or other elaboration. 'Entrenched' speaks to restrictions on how the rules can be changed – commonly only by a supermajority vote or referendum – and implicitly gives the courts the power to invalidate constitutional changes that fail to comply.

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But I do not want to use this vocabulary or these yardsticks to describe our constitution, because, by and large, these are things that our constitution is not. Our constitution is largely unwritten, inevitably incomplete, not supreme, and – except for a handful of key provisions – not legally entrenched. A comparative framing reinforces a deficit model and obscures much of the virtue of our constitutional way of doing things. That is why I think it might be better to think about our constitutional arrangements as an ecosystem, because our constitution lives, is dynamic and is shaped by those within it – both those people who wield power and those who keep them honest.[2] And it is an ecosystem that is distinctive to place and has its own indigenous story.

I recognise some of our local constitutional storytellers who have offered stories of our constitution. To be clear, though, my account of our constitution is not merely an echo of Sir Kenneth Keith's constitutional summary in the preface to the Cabinet Manual; however, Keith's account is an excellent and pithy summary (Keith, 2023). Nor is my explanation a reprisal of the conceptual architecture of our constitutional infrastructure as expounded by Joseph in *Joseph on Constitutional and Administrative Law* (Joseph, 2021); however, that text continues to be a reference for heavy constitutional queries. Nor do I adopt Harris's approach of jigsawing our constitution together through a series of high-level principles (Harris, 2018); however, I would like to acknowledge his recent passing and the great contribution he made to our constitutional kaupapa. And, finally, nor is my explanation an explicit advertisement for Palmer and Knight's recent volume in Hart's constitutional systems of the world series (Palmer & Knight, 2022); however, the contextual frame and realist's lens adopted therein is impossible for me to shake, obviously.

Rather, for present purposes, I would like to share a series of 'thought bubbles' – a handful of different ways to think about the distinctive character of our constitution.

Constitutional ecosystem

The first of those thought bubbles is thinking about our constitution as an ecosystem. This acknowledges that, despite the absence of a sacred master text, our constitution – and clearly we have one – still performs the functions of a constitution.

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As I nodded to earlier, there are two parts to the business of a constitution. There is the positive aspect: to 'describe and establish' the major institutions of government and to 'state' their principal powers; in other words, to 'constitute' government (Keith, 2023, p. 1). And there is the negative aspect: to 'regulate the exercise of those powers in a broad way'; in other words, to 'restrict or control' government (ibid.). It is clear that our constitutional arrangements both empower and constrain the business of the state. But, as I said before, our constitution takes dynamic form, is human-centred and operated and, perhaps paradoxically, both fetters political power and is conditioned by the politics it seeks to control.

Constitutional collision

Our ecosystem arises out of a collision – a constitutional collision. When explaining this to folk from abroad, I often enlist Justice Joe Williams' description of how our nation state was created by the collision between two sets of laws, metaphorically carried by two important seafarers (Williams, 2013). There was Kupe's law, the laws of iwi, hapū and whānau; that is, tikanga Māori, the rules brought by Māori when they travelled in their waka across the ocean and first settled this place. And there was Cook's law: the English common law brought by colonial settlers on their tall ships that then followed. The values and concepts of those legal systems are different – even if the different caricatures of each might be slightly over-egged – and hence the idea of collision. We can also recognise the role that te Tiriti o Waitangi/the Treaty of Waitangi plays in providing a point of contact for these laws. As Williams put it, te Tiriti is 'the mechanism through which these two systems of law would be formally brought together in some sort of single accommodation' (ibid., p. 7). In other words, te Tiriti is a means by which the relationship between the Crown and iwi/hapū can be expressed on an ongoing basis and the interaction between the different legal orders is to be mediated.

It is from this collision and mediation that our system of state law emerged: 'te tātai ture', as we might perhaps call it (Stephens, 2025). Williams also spoke of 'lex Aotearoa' as the third law, emerging from the two; however, it seems likely that he was dreaming of a future with the possible emergence of a more enlightened hybrid (Williams, 2013, p. 32). In any event, the balance between Cook's law and Kupe's law has evolved over time. We remember the dark times of strong hostility on the part of Cook's law to Kupe's. More recently, we can see some light from a new dawn and steps towards reconciliation. Among other things, the recent *Ellis* case in the Supreme Court signals greater receptiveness to tikanga Māori and tikanga-ā-iwi in the shaping of common law rules, which is an example of how the equilibrium within our ecosystem is evolving.[3]

The existence of two distinct – and interacting – legal orders also means the title of this address needs an asterisk. To be clear, when I am speaking of 'our' constitution, I am talking in terms of state law/te tātai ture as it manifests in Aotearoa New Zealand as a nation, recognising the

continuing operation of tikanga Māori as its own legal order and its distinctive constitutional kaupapa (Godfery, 2016).

Constitutional mimicry

Much of the British style of government came to be embedded in our ecosystem and much of the structural form of our arrangements mimics those British origins. That is our 'constitutional mimicry'. From the Palace of Westminster comes the idea of parliamentary government: where the political executive – ministers – are drawn from the legislature – the elected representatives. That shapes how we hold our governments to account, through interlocking links and chains of responsibility. Our ministers are responsible to the House of Representatives for what they do, and for what public servants do in their name or the King's. And the members of the House are ultimately responsible to us as electors. That is our style of democratic government – responsible government (Palmer & Knight, 2022, p. 62).

The question for us remains how far does that mimicry continue today? How much have we reshaped that style of government with indigenous tweaks and local initiatives? MMP is an obvious one. Or do we still cling to an idealised notion of Westminster government? And perhaps more so than Westminster itself, as it is distracted by the in-and-out of Europe?

Constitutional masquerade

One distinctive, institutional feature that continues in the name of Westminster government is our 'constitutional masquerade' (ibid., p. 9). By that I mean the difference between legal form and practical reality.

Most vividly, we see that in the frequent, formal allocation of power to the sovereign or governor-general. But, in reality – by dint of convention – that power is exercised according to the wishes of ministers. 'The King reigns but the government rules', as Keith puts it (Keith, 2023, p. 3). Here we also see the force of constitutional convention, which converts the King and governor-general from powerful emperors into puppets of democratic government; and rightly so.

We can also see the masquerade in the difference between the Executive Council and Cabinet. The Executive Council, at law, is the formal body advising the governor-general on what to do and what instruments to sign. But, in reality, we know Cabinet – which is entirely a creature of convention and has no formal legal status – has all the real decision-making power and the Executive Council is just a rubber-stamping process. We could go on. The machinery of government has lots of examples of where this masquerade happens and where we can see this difference between legal form and real power (ibid., p. 4). This is one of the reasons Matthew Palmer and I say our constitution can only be truly understood when viewed through the lens of legal realism (Palmer & Knight, 2022, p. 9).

> So many of our constitutional rules are reflected in conventions – arising from a sense that there is a right way to do things, and one especially evident from an established practice over time.

Constitutional potpourri

So far, I have been reflecting on the system, structure and institutions. Next, we might want to think about the particular rules within our constitution and where we find them.

Forgive the metaphor, but I sometimes think about a 'constitutional potpourri'. Think of a pot of colourful rose petals. The sources of our constitutional rules and norms are many and varied. Again, the lack of a sacred document means we do not have a single source. Take Keith, for example. He lists prerogative powers, statutes (both New Zealand and English or British), decisions of courts, the Treaty of Waitangi, and constitutional conventions (Keith, 2023, p. 2). A brief explanation of the character of those sources is needed.

Prerogative powers are the old powers and instruments of the sovereign that continue to survive today – the remnants of when the monarch used to rule personally. These include powers and instruments like the governor-general's power to appoint ministers, and various letters patent. Statutes include both ours and a handful of old British ones. Obviously, our Constitution Act 1986 is one of the most important. It is the 'principal formal statement' of our constitutional arrangements, in Keith's language (ibid., p. 1), or the 'premier constitutional statute' in Joseph's (Joseph, 2021, p. 31). But the content of the Constitution Act is only a partial sketch of our constitution. That Act describes some, but not all, of the different branches of government. For example, it does not constitute or describe the judicial branch; it only speaks to judges' independence (e.g., rare circumstances for removal from office and the non-reduction of their salaries) (Constitution Act 1986, ss23–24). Keith adds other legislation that has a constitutional feel: the Electoral Act 1993; the New Zealand Bill of Rights Act 1990; the Senior Courts Act 2016; and the Official Information Act 1982 (Keith, 2023, p. 1; Joseph, 2021, p. 31). Magna Carta 1297 (Imp) and the Bill of Rights 1688 (Imp) as carried here from England are also identified in the constitutional mix. Here, it is usual to note some emerging academic terminology. Constitutions with rules spread across a variety of statutes might be called 'multi-textual' constitutions (Albert, 2023). And there is something in that for us.

Court decisions, or the set of rules developed by judges when deciding individual cases – our 'common law' – generate important constitutional norms and expectations, even though the courts cannot strike down legislation like the Supreme Court in the United States or elsewhere. Some talk about the blockbuster *Fitzgerald v Muldoon* case in the 1970s as

our big constitutional case, when Robert Muldoon was told off for trying to abolish a statutorily mandated superannuation scheme by press release – a case that we still open with when teaching public law at law school.[4] Or the famous Lands case in the 1980s, as Lord Cooke and others opened the door to the renaissance of te Tiriti/the Treaty in state law.[5] But we might also include the Court of Appeal's discussion a few years ago of the 'no surprises' principle in Winston Peters' privacy-based claim against the attorney-general and Paula Bennett.[6]

The Treaty of Waitangi is also included in the list: it goes without saying – of course, as Keith notes – that te Tiriti is clearly a constitutional source. And it is an especially precious instrument, which touches the exercise of public power throughout the system nowadays.

Finally, constitutional conventions round out Keith's list of sources. So many of our constitutional rules are reflected in conventions – arising from a sense that there is a right way to do things, and one especially evident from an established practice over time. In the absence of canonical written rules, we rely so much on conventions that Matthew Palmer suggests we could describe our constitution as a 'customary' constitution (Palmer, 2006, p. 136). He has a point, perhaps; at least, if teamed with the earlier terminology of multi-textualism. That is, one authentic descriptor of our constitution might be a 'multi-textual and customary' constitution. In any event, conventions are everywhere. Conventions structure the judgement the governor-general makes about which leader to appoint as prime minister following an election. Or a public servant's obligation to tender free and frank advice (even if that is also nodded to in the Public Service Act nowadays) (Public Service Act 2020, s12(109b)). I think of conventions as 'binding constitutional practice'; in other words, they are a civic conscience. Importantly, conventions are not directly enforceable in court like formal rules; they are enforceable, instead, through moral suasion, condemnation, adverse political reaction and other cultural consequences. The point here might be that all countries rely on constitutional conventions to fill the gaps in their master text constitutions (but some did not realise how much so until a particular president in the United States – and others – started running roughshod over them). We have so many conventions that we have a written catalogue of many of them; namely, our Cabinet Manual (Cabinet Office, 2023; Aroney, 2015, p. 34). This manual is another one of our key constitutional sources, although not one in Keith's list. A good way to think about the Cabinet Manual is as a dictionary of existing practice and usage, largely reflecting and recording practice that has emerged over time (Kitteridge, 2006).

Matthew Palmer suggests … a rule is constitutional if it 'plays a significant role in influencing the generic exercise of public power'; he would add a postscript too: 'whether through structures processes, principles, rules, conventions, or even culture' …

Keith's list is, as I say, a traditional and pretty helpful list of sources. The other big constitutional books add a handful of other sources, like international law, law and custom of Parliament, academic writing on the constitution and so forth. But a shopping list – a subjective shopping list – has blind spots and needs to be continually added to. Today, especially in the light of the Supreme Court's ruling in the *Ellis* case, tikanga needs to be included in the list. And documents like the 'Statement of tikanga' presented to the court and the Law Commission's later *He Poutama* report should probably be identified as constitutional sources, as these documents are, no doubt, now canonical explanations of the way tikanga Māori speaks or should speak to state law.[7]

A better way to think about where we find our constitutional rules might be – as Matthew Palmer and I do in our book – to adopt a systemic approach working across each branch of government. Our focus is then on a branch's governing instruments; the interpretation of those instruments by whoever is charged with their enforcement; any common law generated within that branch, in the sense of formalised rulings of applicable norms and proper practice; and any conventions or constitutional practices binding as a matter of morality or conscience only (Palmer & Knight, 2022, pp. 12–14). And we might also need a rule of recognition to assess when something rises to the level of 'constitutional', although the definition of 'quasi-constitutional' is hotly debated by scholars (Albert & Colon-Rios, 2019). Again, Matthew Palmer suggests a robust one: a rule is constitutional if it 'plays a significant role in influencing the generic exercise of public power'; he would add a postscript too: 'whether through structures processes, principles, rules, conventions, or even culture' (Palmer, 2006, p. 137).

Working all that out, rules passed by the legislature are important and constitutional, at least those significantly influencing the generic exercise of power. And, correspondingly, the courts' interpretation of those rules is important too. But, as an example, the Public Service Act is also probably one of the most important sets of rules, though the interpretation and enforcement of those rules is left, for the most part, not to the courts but to the public service commissioner, and, perhaps, our political governors too. And both Cabinet and the public service commissioner also promulgate important guidance on the operation of the Cabinet and the public service, in forms such as Cabinet circulars and ethical codes. And, to complete the picture, I have already explained how conventions governing the executive are gathered up in the Cabinet Manual.

That is a long way of making a simple but important point. Each branch has rules and norms – expressed in different ways and interpreted by different folk – that do the work of a constitution.

Constitutional ordinariness

Ordinariness, constitutional ordinariness, contrasts with sacredness. We do not worship a rarified document containing engraved testaments. We see the constitution everywhere, hence the potpourri.

We also – generally, at least – reject the idea of hierarchy among our statutes. Rather than having constitutional rules that trump, we have a flat legislative structure. Parliament can make any law whatsoever through its ordinary processes. And it can similarly repeal any law, without impediment. The courts will recognise and enforce the law most recently passed by Parliament as the valid and operative law, even if it conflicts with a constitutional rule in an earlier statute.

That is one recital of parliamentary sovereignty – or the full power to make laws – in its strongest form (Palmer & Knight, 2022, p. 127). But there are a few glosses or exceptions. First, a handful of our electoral laws, along with the term of Parliament, are entrenched, so they must be changed in accordance with special processes (Electoral Act 1993, s268). These processes specify the 'manner and form' by which any change must be made; in our case, changes need to be made by public referendum or supermajority in the House. Second, the courts and the common law increasingly recognise the reality that there are some statutes which are more important, and inherently constitutional, such that they might be given some priority in the interpretative process if they conflict with ordinary statutes. For present purposes, resisting the temptation to dive into doctrinal details, it is sufficient to record that there is a range of judicial techniques that do this work. Third – and more controversial but not fanciful – is an argument that some law changes implicating especially precious aspects of our constitution might be beyond Parliament's ordinary law-making capacity. For example, some submitters, including me, before the Justice Committee on the Treaty Principles Bill speculated about whether amending or nullifying te Tiriti might lie beyond Parliament's ordinary competence; in other words, an exercise of constituent power by the *demos* – the people's special power to reconstitute the constitution – might be needed for any change to be effective.

The rule of law is especially prone to misuse as a slogan – or, as we sometimes call it in the academy, a 'floating signifier' – able to be loaded up with whatever meaning is convenient for any particular argument ...

Constitutional contestation

Thinking more about those constitutional rules, we might recognise that some of them are big woolly ideas that are not entirely prescriptive and lack the hard-edged character of rules found in master text constitutions. Think of the big ideas that animate our constitutions: parliamentary sovereignty (or legislative supremacy); rule of law; separation of powers; and even democracy itself. We know the gist of each of these concepts. But sometimes, when we drill deeper, parts become more and more contestable, the ideas often lack definitive meaning, or there is a lack of clarity about their outer limits. That is my 'constitutional contestation'.

The rule of law is especially prone to misuse as a slogan – or, as we sometimes call it in the academy, a 'floating signifier' – able to be loaded up with whatever meaning is convenient for any particular argument: anything from a basic requirement to rule by and through law, along with the idea that we are all subject to law; to an expectation that rules should be promulgated in a form that is capable of being obeyed; to an additional expectation that rules should be generated through democratic means; to an expectation that rules made also should respect fundamental human rights or other higher-order norms, either as divined by the courts or enshrined by legislatures (see generally Tamanaha, 2004).

Thus, we need to take some care. These big ideas provide us with some vocabulary and ways to reason about matters that are precious, albeit sometimes with content that is contestable. And they might not provide immutable solutions, especially when they come into conflict or sit in tension with each other.

Constitutional dialogue

We are bringing our constitution to life here, as we reject a documentary approach and speak of our ecosystem. Within that, there is a chorus of voices – dialogue between and within the different branches of government. Hence the idea of constitutional dialogue. This reminds us, again, that a constitution is a human habitation and a place for our community to have conversations about important matters. Here, I just want to acknowledge the existence of that chorus and to acknowledge the different tones of different branches. The branches speak with different voices (Palmer & Knight, 2022, p. 22). The executive branch speaks of policy and efficacy. The parliamentary branch speaks of priority and accountability. The judicial branch speaks of legality and fidelity. Or something like that.

The key point is that our actors have different concerns and express themselves in different voices, which makes dialogical conversations within our ecosystem sometimes challenging. And the practice of these constitutional conversations means constitutional 'discourse' might be a better linguistic descriptor – especially when branches talk past each other, when institutions are not listening to each other, or the when dialogue is discordant (Nathan, 2024).

Constitutional guardians

With that chorus, constitutional probity depends on key guardians or kaitiaki; that is, those who speak up for doing the right thing. These are our constitutional guardians. We are all familiar with the role the courts play in enforcing the rule of law and constitutionality. But dotted throughout our system are other guardians who also encourage, urge or demand constitutionally proper behaviour, whether it is the attorney-general or solicitor-general, the speaker or the clerk, the public service commissioner; or the now fashionably called 'fourth branch' institutions or, as I prefer, the integrity branch – the ombudsman, auditor-general and similar watchdogs (Knight, 2024).

Our constitution depends on the friction that these guardians create – enforcing rules, conventions or other expectations – in order to slow, constrain and control public power. Public servants also have a crucial guardianship role, manifest especially through the provision of free and frank advice and policy stewardship. Free and frank advice generates, we hope, pause and reflection on the part of our governors and slows the juggernaut of political expediency, through the friction of expert analysis from those with non-partisan competence.

Constitutional ebb and flow

The final point is about how our constitution changes: through constitutional ebb and flow. I have already nodded to a couple of instances of evolution. Our constitutional ecosystem evolves, typically incrementally and pragmatically, through changes in the rules across the full range of constitutional sources.

Statutes change in the ordinary way. Other than certain electoral provisions, legislative reform of the constitutional statutes generally does not need elevated mandates, even if that might still be desirable for reasons of legitimacy. The Cabinet Manual and standing orders change as a result of systemic review and in the light of experience. Conventions morph to address the unexpected or to shake off the old-fashioned and out of date.

Evolution, not revolution. And that is probably a fitting way to complete our metaphor of the constitutional ecosystem – an evolving ecosystem.

I worry about what we see on foreign shores, where political leaders of previously reliable democracies are openly hostile to the rule of law: engaging in unimaginable warfare against judges, proclaiming their own divine right to govern as they see fit …

Dangerous foes

I close by sharing some of my worries: dangerous foes that risk deleteriously unsettling the constitutional ecosystem and disrupting hard-fought for, and important, balances.

Civic illiteracy

My first worry is civic illiteracy. Thinking in terms of a constitutional ecosystem, I hope, reinforces the need for careful stewardship and kaitiakitanga towards our constitution by both the governors and the governed, something that can only be done with an appreciation of our constitutional ecosystem, its ingredients and their interaction. Or, perhaps more importantly, an understanding of power, probity, stewardship and citizenship. We have a way to go on that, as you know. A year or two ago, I might have added constitutional disengagement, but the flood of participation in select committee processes now belies that and perhaps now presents a different problem.

Rushed law-making

The checks and balances in our ecosystem take time to do their work. Legislative urgency and other forms of expedited or rushed law-making are like a bushfire, quickly ravaging everything around before anyone can notice or do anything meaningful. I am especially worried about how we break ministers' addiction to urgency – common to ministers of different political stripes. Cracking this addiction to urgency is hard but important. Add on top of this the current rigidity of coalition compacts and their prescriptive time frames: 100 days of action and quarterly action plans. Government by Gantt chart. These governing agendas should be scorned, if only because the time frames prescribed do not accommodate the sanitising effect of good governance and policy deliberation.

Mischievous hyperbole

Ill-founded attacks on our judges and other integrity institutions, claiming activism, overreach and stepping outside their constitutional lane, amount, in my view, to mischievous hyperbole, a worrying playbook imported from abroad. These inflated systemic claims do not survive close scrutiny, even if we might disagree with the odd judicial decision, as is inevitable. And these claims are designed to unsettle the relationship of mutual respect and comity between branches. These over-egged and mischievous claims have the worrying consequence of eroding the legitimacy of some of our most important constitutional bulwarks.

Rule against law

Relatedly, we have what we might describe as the rule against law. I worry about what we see on foreign shores, where political leaders of previously reliable democracies are openly hostile to the rule of law: engaging in unimaginable warfare against judges, proclaiming their own divine right to govern as they see fit, and, most worryingly, posturing as if they intend to ignore judicial rulings. We cannot let that

dangerous playbook start to seep into our ecosystem. Worryingly, though, we can perhaps begin to see some of our populist folk becoming emboldened by despotic behaviour elsewhere.

Institutional hollowing

I worry about institutional hollowing – again inspired by a foreign playbook – where some of our institutional guardians are weakening by the seeding of folk lacking the wisdom, courage or commitment to the kaupapa to deliver the probity our ecosystem needs. While there is no ideal or perfect mix, these appointments change the balance within the ecosystem in ways, I think, we will regret.

Disdain for expertise

I know only too well that there is a global and local attack on expertise – a rising disdain for expertise: open warfare against knowledge institutions, such as universities and our community of scholars; disregard for internal institutional competence within government. Because much of our ecosystem depends on dialogue and reason, disdain for expertise and counterviews weakens our ecosystem's antidotes to political expediency.

A rise of responsiveness

Finally, there is the rise of responsiveness within the public service. From outside, I detect a change in institutional balance, where responsiveness is now more valued over free and frank advice. Recent amendments to the Public Service Act point to a changing posture (Public Service Amendment Bill 2025). But I think that follows a strong cultural turn before. Again, while there is no magical prescription, reducing friction within the system – and the sidelining of neutral competence especially – seems to me to be very undesirable.

Conclusion

Aotearoa New Zealand's constitutional ecosystem – our dynamic and distinctive way of constituting and controlling government power – is precious. Nurtured and trusted, it performs admirably as a constitution, with a mix of strengths and weaknesses relative to master text constitutions. But, importantly, ongoing vigilance is needed to defend it against dangerous foes that risk unsettling the balance within.

1 This is a lightly revised version of an address to Hāpai Public: Institute of Public Professionals Aotearoa New Zealand delivered in Wellington in July 2025. Thanks to Theo Dawson for research assistance.
2 Compare Quentin-Baxter, 1980, p. 290: a constitution as 'a human habitation'.
3 *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239. See also Law Commission, 2023.
4 *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (HC).
5 *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA).
6 *Peters v Attorney-General* [2021] NZCA 355, [2021] 3 NZLR 191.
7 *Ellis v R (Continuance)*, Appendix: Statement of tikanga; Law Commission, 2023, p. 12.

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