10 'He rangi tā Matawhāiti, he rangi tā Matawhānui'

Looking towards 2040[1]

Māmari Stephens

As we look forward to 2040 and the bicentenary of the signing of te Tiriti o Waitangi[2] it is tempting to frame the discussion of '*quo vadis*, Aotearoa?' (Whither goest thou, Aotearoa?) as one giving rise to an instrumental 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?

I. An uncertain place

Such framing may simply not deliver the desired pathway. One particular set of problems arises from the well-known fact that te Tiriti o Waitangi continues to inhabit a position of uncertainty. We are not yet, as peoples and as a nation, at ease with, or reconciled to, our divided history. Consequently, the place of the Treaty is not broadly understood, or defined in New Zealand's social, political, and legal fabric.

As has been well explained by commentators and experts, the Treaty is perhaps most commonly understood, in the context of the general legal framework in New Zealand, to have comprised an international agreement between polities, recognisable within the domestic system to the extent that Parliament has expressly incorporated it within legislation.[3] Consistent with this recognition is its use as an extrinsic aid to statutory interpretation[4] on the courts' presumption that Parliament intends to behave in accordance with Treaty principles.[5] The Treaty is also accorded status as a 'foundational' document. This position is often called legal 'orthodoxy', but despite this assertion, debate continues as to the true nature of what the Treaty *actually* does, as both a matter of Western law and as a matter of Māori law.

Over the past 175 years judges, scholars, politicians, and commentators have variously asserted the Treaty did effect cession of sovereignty to the Crown by *hapū* (tribes), as Māori were capable of ceding sovereignty;[6] or that it did not because Māori were not capable of doing so;[7] or that Māori would never have ceded sovereignty and did not,[8] thus the Treaty legitimised an (illegitimate) constitutional revolution;[9] or that the Treaty become obsolete over the passage of

time, like other international treaties;[10] or that the Treaty is a contract,[11] a grand, even sacred compact[12] or covenant, that ought to be *tapu* (sacred), or set aside, from the machinery of law and government;[13] or that it is a supreme law document that upholds and protects Māori power and authority.[14] Each of these positions has been, or is, correct, at least, for some. None of these positions explains at all the real importance of this agreement, one of many, and their contested meanings that have shaped political discourse and revealed what Mark Hickford refers to as the "plurality of powers", legal and political, that jostle for attention in this country.[15]

This ambivalence is hardly new. Regardless, more than 33 pieces of legislation incorporate mentions of the Treaty or Treaty principles, and such references establish the Treaty as a mandatory relevant consideration for a significant amount of State activity. Thus, the Treaty has a very practical effect, despite its ambivalent status. In the context of Crown–Māori relationships, some limited steps have also been taken towards what Carwyn Jones describes as two key objectives of the entire Treaty settlement process, and a central concern of much of Māori legal history: self-determination and reconciliation, although these steps are fraught with tension.[16]

II. A careful debate

Much of the debate about the legal effects and dominant conceptions of the Treaty has been highly sophisticated, in specific contexts. As we have seen in this very book, current Treaty scholarship coalesces a set of richly nuanced accounts of the role, function, and importance of te Tiriti o Waitangi, and its parties, in New Zealand law, society, and cultures. Such scholarship eschews easy foundational narratives that seek to locate te Tiriti o Waitangi as the complete moment that somehow created nationhood, or that ascribe to the Treaty texts any kind of unbalanced exceptionalism. Such scholarship carefully avoids characterising Māori or Crown parties as homogenous entities, as in this scholarly realm uncomplicated dualism is rightly dismissed as an inadequate tool of analysis.

Some degree of this careful nuance has also made its way into the various public platforms established in recent years to pursue and interrogate the roles of the Treaty, particularly within the context of what we conceive to be the New Zealand constitution. For example, as a result of the 2008 Relationship Accord and Confidence and Supply Agreement between the National and Māori parties, the government established the Constitutional Advisory Panel, to stimulate public debate and awareness of the current constitutional arrangements, including the role of te Tiriti o Waitangi. The panel was also to provide Ministers with an understanding of New Zealanders' perspectives on those arrangements.[17]

Further, there was the separate establishment in 2010 of Matike Mai Aotearoa, the Independent Working Group for Constitutional Transformation, at a meeting of the Iwi Chairs' Forum. This establishment arose out of perceptions of Māori constitutional powerlessness in the face of the ongoing persistent exercise by the Crown of constitutional power without apparent Māori input. The

working group, convened by Moana Jackson, was charged, in its terms of reference, to develop[18]

> a model for a constitution for our country based on our tikanga and fundamental values, He Whakaputanga o te Rangatiratanga o Niu Tireni (the 1835 Declaration of Independence) and Te Tiriti o Waitangi.

Both consultative processes ran across a broadly similar time period. Both processes provided in-depth information to the public, often by way of public meetings as well as web-based resources. Te Tiriti o Waitangi was a critical component for both processes, and it proved to be the subject of substantial numbers of public submissions. Both processes asked participants to imagine what role the Treaty plays and ought to play, and how it ought to govern how Māori, Pākehā, and other New Zealanders live and share power in this land. Both reports arising from both processes *declined* to recommend a definitive pathway, recommending instead further long-term conversation, further substantive public engagement, further sheer hard work to articulate a shared vision that should be at the base of, or a component of, this country's power-sharing, social, and political future.

While acknowledging that submissions revealed that "many New Zealanders remain sceptical that the Treaty can be a constructive element of our constitution and so may be reluctant to participate in a conversation about its future,"[19] the report of the Constitutional Conversation in 2015 recommended that gradual, inclusive, evolution of the Treaty's place in the New Zealand constitution continue, and recommended that the Government:[20]

- continues to affirm the importance of the Treaty as a foundational document;
- ensures a Treaty education strategy is developed that includes the current role and status of the Treaty and the Treaty settlement process so people can inform themselves about the rights and obligations under the Treaty;
- supports the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades;
- sets up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation; and
- invites and supports the people of Aotearoa New Zealand to continue the conversation about the place of the Treaty in our constitution.

Matike Mai Aotearoa, by comparison, proffered six possible models for constitutional reform to uphold Māori authority and Māori sovereignty. Most submitters appear to have identified the Treaty as integral to any reform, but even so, Matike Mai Aotearoa refrained from identifying a specific model or code. Instead, the Working Group recommended the following long-term plan:[21]

1. That during the next five years Iwi [tribal federations], Hapū, and other lead Māori organisations promote ongoing formal and informal

discussions among Māori about the need for and possibilities of constitutional transformation.

2 That such discussions also be included as an annual agenda item at national hui [gathering] of lead Māori organisations such as the Waitangi hui of the Iwi Chairs' Forum.
3 That a Māori Constitutional Convention be called in 2021 to further the discussion and develop a comprehensive engagement strategy across the country.
4 That at an appropriate time during the next five years a further Working Group be appointed to begin consideration of relevant structural and procedural issues as they pertain to Māori.
5 That at an appropriate time during the next five years Iwi, Hapū, and lead Māori organisations initiate dialogue with other communities in their rohe [regions] about the need for and possibilities of constitutional transformation.
6 That at an appropriate time during the next five years Iwi, Hapū, and lead Māori organisations initiate formal dialogue with the Crown and local authorities about the need for and possibilities of constitutional transformation.
7 That in 2021 Iwi, Hapū, and lead Māori organisations initiate dialogue with the Crown to organise a Tiriti Convention to further discussions about the need for and possibilities of constitutional transformation.

At the end of perhaps a few years of public consultation processes for these two projects, not to mention other processes in earlier years, it could be said that we are no further along in defining what the Treaty 'truly means' as the basis of any kind of commonly accepted future power-sharing arrangement. So, perhaps, in the context of the future, it does not much matter what the Treaty is supposed to be or do; rather, what matters is what people actually do in their daily lives as a result of its existence. Individuals, interest groups, *hapū*, conglomerates, alliances, will all project on to the Treaty their hopes and fears for the future, regardless of the labels and functions attributed to it.

III. A practical partnership?

In 2011, Justice Joseph Williams made the following observation about the future of the Treaty of Waitangi and the New Zealand constitution: "So, the real question here is not what we should do with the Treaty of Waitangi, but – . . . 'how do we perfect our partnership?' "[22]

Leaving aside those to whom the very idea of a Treaty partnership is anathema (across all cultural and political divides), I choose to interpret these words to refer to the idea of partnership as extending well beyond legislated settlements, political accommodations, regulatory checks and balances, policy documents, and corporate vision statements to the relationships we experience in our everyday reality. The problem is, as we gaze around our current social and political landscape, that true partnership 'on the ground' might well be an elusive thing.

For one thing, exceptionalism, uncomplicated dualism, foundationalism, unvarnished bigotry, and self-interest can be pretty common in ordinary unmediated

public discourse about the Treaty in the wake of the Māori resurgence of the 1970s and beyond. These elements of discourse may not advance the bicultural awareness or agenda necessary to implement practical partnership. This is not to ignore the fact that so much more high-quality information is now available to all or most New Zealanders about our history and the role of the Treaty in it.[23] Significant longitudinal research now suggests that one particular roadblock to effective partnership can be simple self-interest in regards to the allocation and preservation of material resources. Research carried out as a part of the University of Auckland's School of Psychology's New Zealand Attitudes and Values Study[24] suggests that the New Zealand Pākehā population is perhaps more likely to be comfortable with a symbolic form of biculturalism, founded upon the idea of the Treaty, but this tolerance is less likely to be sustained if the practical implementation of redistribution is required, threatening economic self-interest. In short, where biculturalism (arguably a necessary condition for partnership) requires sharing of economic resources by Pākehā, it is more difficult to achieve.[25] The authors of this study suggest that this result suggests a reframing of public discourse is needed, away from entrenched ideological contests to address realistic concerns about the threats to self-interest.[26]

Justice Williams has also asserted that we are currently mired in the 'original sin' phase of partnership.[27] In this phase, Māori and Pākehā are often defined in relationship to each other, in terms of fault and blame for hara, or wrongs done, avenged and renewed, that are yet to be expiated, as well as perhaps fear of betrayal.

Indeed, there is a definite tendency for different camps to regard the other in moral and ideological absolutes. At least some of those who believe the Treaty has an important role in the future of New Zealand's constitution appear to regard those who do not as unmitigated racists. By the same token, those who would deny a prominent place for the Treaty in New Zealand's constitution also resent those who think differently, characterising them as 'reverse racists' or bigots, liberal or tribal elites, lacking a connection to the 'real world'. Both broad camps use facts or perceptions of facts to shore up their positions, and the positions are entrenched. In fact, Justice William's notion of our relationships being mired in the 'original sin' phase is consistent with other recent research from the New Zealand Attitudes and Values Study.

In one study, published in 2012, roughly 4,600 Pākehā and 1,600 Māori were surveyed from the 2009 electoral rolls about both Pākehā and Māori cognitions of rejection by each other, ethnic identification, intergroup anxiety, negativity towards each other, and political support for Māori.[28] The study found that members of the majority group (Pākehā) and minority group (Māori) fear rejection from the other group ('outgroup'), and they themselves respond by disparaging that outgroup. The authors of the study conclude this fear of mutual rejection and resulting mutual disparagement at the intergroup level has "tremendous capacity to thwart intergroup relations".[29] But in the case of Māori, such fear of rejection also proves a highly effective motivator for political actions.

In the wake of the year of Trump and Brexit, this demonstrable intergroup tension does not bode well for a measured and a truly bilateral approach to a new era of bottom-up partnership at the level of ordinary lives that reflects or matches some of the more positive partnership developments in regards to regulation, governance, and in some political contexts, as will shortly be discussed. Nor does this tension bode well for moving towards actual constitutional change with broad consent for the role, place, and effect of te Tiriti o Waitangi.

IV. A written constitution for uncertain times?

Perhaps the apotheosis of a top-down approach to constitution-building, albeit with strong and principled regard for a very specific conception of te Tiriti o Waitangi, has recently emerged. September 2016 saw the unveiling of Sir Geoffrey Palmer and Andrew Butler's Constitution Aotearoa project.[30] Unlike its cautious antecedents, the Constitutional Conversation and Matike Mai Aotearoa, this project cuts straight to what its framers hope is a usable outcome by creating a draft constitutional code. This document sets out the rules, principles, and processes about government in one document so that they are accessible, available, and clear to all. This draft code is intended also to eliminate the need for significant unwritten constitutional conventions and customs. Importantly, the document will "remove the mystery and provide an accurate map about how we govern ourselves".[31]

The framers of Constitution Aotearoa view the place and role of te Tiriti o Waitangi as a significant contributor to such mystery. A written constitution could also address the 'problem' of the Treaty's uncertainty. It could be argued that seeking to eradicate constitutional uncertainty ignores the critical role that uncertainty has played in New Zealand political constitutionalism.[32] Te Tiriti o Waitangi was but *one* agreement between the Crown and Māori among hundreds in our multi-textual legal history.[33] Each such agreement opened up new relationships between the signatories (and their descendants), new portals for negotiation, new sites of political uncertainty. These phenomena continue regardless of the state of legal constitutionalism.

To some degree, the minimalist text of the Treaty has provided a degree of potential freedom to the Treaty parties to forge and build such negotiated relationships and *ad hoc* solutions to identifiable problems, these relationships being inherently uncertain. Such relationships, be they co-governance arrangements, political alliances, negotiation-focused, or otherwise, ideally require a focus on which actions and principles would best uphold the relationship between those parties. That also cannot be known in advance. This kind of uncertainty requires constant communication between parties, because there must be an acceptance that no party to the relationship has the privilege of perfect information. Indeed, all perspectives and presumptions are mutable; they are in a state of positive uncertainty.

However, there is a significant danger in over-simplifying the virtue of uncertainty, particularly when that uncertainty results, not from the interpretation

of the text of an agreement and the positive dynamic of maintaining a functional relationship, but from lack of transparency or from obfuscation, or from caprice exercised in the context of relationships where a high degree of trust is demanded. If uncertainty results from these things or from lack of access of parties to sufficient information to be able to make decisions, then uncertainty is not positive at all; it creates the potential for abuse and the perpetration of disadvantage.

Thus, the creation of a codified constitution incorporating the texts of the Treaty will, the authors of Constitution Aotearoa expect, eradicate the potential for abuse that may be caused by sterile uncertainty.[34]

Accordingly, the draft constitution seeks to re-visit the 1985 White Paper Proposal that would have seen te Tiriti o Waitangi incorporated in legislation (in that case an entrenched Bill of Rights for New Zealand, which eventually did not come to pass as envisaged).[35] Many Māori at the time opposed the 1985 proposal on the basis that the texts of the Treaty could to be too easily amended.[36] Constitution Aotearoa proposes to include a provision to prevent amendment of the Treaty texts. The relevant draft articles will recognise and affirm existing rights, duties, and obligations held by Māori, and to which the Crown (to become the State) are subject. In addition, the document will affirm that the Treaty is 'always speaking' and that it applies to new circumstances as they arise. The Waitangi Tribunal will remain, and the Waitangi Tribunal and 'established experts' can be consulted on issues involving the Treaty and *tikanga Māori*.[37] Constitution Aotearoa also appears to be a work driven by urgency. Demographic and social change is gathering pace, without the protections the authors view as necessary for retaining a secure and coherent place for the Treaty and Māori rights within our constitutional framework.

It is also important to note that by embarking on this particular journey towards a written constitution, and in providing a draft (republished with a bilingual Māori/English text in April 2018),[38] Sir Geoffrey and Andrew Butler seem to eschew an approach based on constitutional realism, and in particular the notion that constitutional practice (including culture) comes before constitutional form.[39] On the other hand, both authors identify the importance of consultation with Māori,[40] yet downplay the fears of 1986 (assuming that it is just not clear those fears still exist).[41] The authors acknowledge the consultative recommendations of the "long and thoughtful report" of Matike Mai Aotearoa mentioned above, advocating instead the implementation of the much more generic 30 year-old recommendation of the 1986 Royal Commission on the Electoral System, for Parliament and the government to[42]

> enter into consultation and discussion with a wide range of representatives of the Māori people about the definition and protection of the rights of the rights of the Māori people and recognition of their constitutional position under the Treaty of Waitangi.

It remains important, however, to pay heed to the notion of Māori as constitutional agents in their own right: with a constitutional culture worthy of enactment, upon which the Matike Mai report was based. Māori ought not merely be presumed to be a specific subset of citizens, or special interest group, petitioning for the protection of their rights and position. Such an approach, even by default, would restrict any constitutional conversation with Māori to the limits imposed by what Moana Jackson sees as the Crown monologue, of course without the Crown, but with no appreciable change in effect.[43]

Certainly, Constitution Aotearoa does aim to engage in more concrete attempts to allay Māori fears, by way of more substantive, less pigeonholed, engagement. Whether this process as a whole will help us move towards a broader and more practical notion of partnership remains to be seen. The worrisome alternative is that this process achieves little more than further entrenchment of existing and opposed positions. Perhaps the even more worrisome alternative is that nothing comes of these efforts at all.

V. Towards *whanaungatanga*

In addition to legal constitutional change as sought by the authors of the Matike Mai report and Constitution Aoteroa, we must also move to a new and practical era of partnership. Such a partnership reaches beyond (but without jettisoning) elite relationships, legal forms, regulation, policy, and symbolism. We cannot wait until 2040 to do so. We must move to understanding each other (and each other's practical needs) as *whanaunga*, relations, being deeply connected to one another, regardless of ethnic kinship, although, in the changing demographics of this country, such kinship will also inevitably retain importance. In 2017 New Zealand reached the dubious milestone of a prison muster of 10,000 inmates strong, more than half of whom are Māori.[44] We have a long way to go.

So, what to do? For one thing, in our everyday lives, and not just the lives we put on show, we have to resist the temptation to heap scorn and contempt on those we fear or resent. For another, engage with those self-same people. Talk to the people we loathe the most, within reasonable limits. *Whanaungatanga* might be defined as the art of creating connection, perhaps even when we may not want to connect with certain kinds of people. Perhaps those kinds of actions can be counted as part of the enduring legacy of the existence of te Tiriti o Waitangi. Only once that civic form of *whanaungatanga* truly exists for most New Zealanders will substantial formal and legal constitutional change and true power-sharing by broad consensus become possible.

Notes

1 To the person of narrow vision – a narrow horizon, to the person of broad vision – a broad horizon.

2 In this chapter I refer to the proper name of te Tiriti o Waitangi to refer to the full name of the document comprising both language texts, and 'the Treaty' is used as the shorthand label.
3 *Hoani Te Heuheu Tukino v Aotea District Māori Land Board* [1941] AC 308.
4 *Huakina Development Trust v Waikato Valley River Authority* [1987] 2 NZLR 188 (HC).
5 *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR.
6 Grant Morris *Law Alive: The New Zealand Legal System in Context* (3rd ed, Oxford University Press, Melbourne, 2015) at 69.
7 Phillip Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Thomson Reuters, Wellington, 2014) at 51–52.
8 Waitangi Tribunal *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Legislation Direct, Wellington, 2014). The Tribunal determined that the Treaty was not a treaty of cession, that is, it was not an agreement, whereby *Rangatira* ceded authority to the Crown to make decisions for *iwi* and *hapū*.
9 F. M. Brookfield *Waitangi and Indigenous Rights: Revolution Law and Legitimation* (Auckland University Press, Auckland, 1999) at 85–107.
10 Jeremy Waldron "FW Guest Memorial Lecture 2005: The Half Life of Treaties: Waitangi, Rebus Sic Stantibus" (2006) 11(2) *Otago LR* 161.
11 K. J. Keith "International Law and New Zealand Municipal Law" in J.F. Northey (ed) *The AG Davies Essays in Law* (Butterworths and Co, London, 1965) 130 at 146; Meredith Gibbs "Justice as reconciliation and restoring mana in New Zealand's Treaty of Waitangi settlement process" (2006) 58(2) *Political Science* 15.
12 Geoffrey Palmer and Andrew Butler *A Constitution for Aotearoa New Zealand* (Victoria University Press, Wellington, 2016) at 148; R. Cooke "Introduction" (1990) 14 *NZULR* 1 at 8.
13 See for example, C. J. Elias "The Meaning and Purpose of the Treaty of Waitangi" (2015) *Māori Law Review* <http://maorilawreview.co.nz/2015/10/the-meaning-and-purpose-of-the-treaty-of-waitangi-dame-sian-elias/>.
14 Moana Jackson "The Treaty and the Word: The Colonization of Māori Philosophy" in Graham Oddie and Roy Perrett (eds) *Justice, Ethics, and New Zealand Society* (Oxford University Press, Auckland, 1992) at 1. Cited in J. Orsman "The Treaty of Waitangi as an Exercise of Māori Constitutent Power" (2012) 43 *Victoria University of Wellington Law Review* 345.
15 Mark Hickford "Interpreting the Treaty – Questions of Native Title, Territorial Government and Searching for Constitutional Histories" in B. Patterson, Richard Hill and Kathryn Patterson (eds) *After the Treaty: The Settler State, Race Relations and Power in Colonial New Zealand* (Steel Roberts, Wellington, 2016) at 101.
16 Carwyn Jones *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (University of British Columbia Press, Toronto, 2016) at 142–143.
17 Constitutional Advisory Panel "New Zealand's Constitution: A Report on a Conversation: He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa" (2013) *Ministry of Justice* <www.ourconstitution.org.nz/store/doc/FR_Full_Report.pdf> at 9.
18 Moana Jackson and Margaret Mutu "The Working Group for Constitutional Transformation: Primer Number 1" (April 2012) <www.converge.org.nz/pma/iwi-primer1.pdf> at 2.
19 Constitutional Advisory Panel, above n 17, at 22.
20 Constitutional Advisory Panel, above n 17, at 16.
21 Moana Jackson and Margaret Mutu "He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation" (2016) <www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf> at 11.

22 Justice Joseph Williams "The Status and Nature of the Treaty of Waitangi" in C. Morris, J. Boston and P. Butler (eds) *Reconstituting the Constitution* (Springer, Berlin/Heidelberg, 2011) 185–190 at 186.
23 Particularly in view of the extraordinary popularity of publications such as Claudia Orange's 1987 book *The Treaty of Waitangi*, which has sold over 40,000 copies. Claudia Orange *The Treaty of Waitangi* (rev ed, Bridget Williams Books, Wellington, 2011).
24 In regard to the broader study, see <www.psych.auckland.ac.nz/en/about/our-research/research-groups/new-zealand-attitudes-and-values-study.html>.
25 See Chris G. Sibley and James H. Liu "Attitudes Towards Biculturalism in New Zealand: Social Dominance and Pakeha Attitudes Towards the General Principles and Resource-specific Aspects of Bicultural Policy" (2004) 33(2) *New Zealand Journal of Psychology* 88 at 95. This study identified that biculturalism and the core place of the Treaty of Waitangi was more positively viewed by Pākehā subjects where those subjects did not face direct competition (for example, for access to scholarships in affirmative action programmes).
26 See Sibley and Liu, above n 25, at 96.
27 Williams, above n 22, at 187.
28 Fiona Kate Barlow, Chris G. Sibley, and Matthew J. Hornsey "Rejection as a Call to Arms: Inter-racial Hostility and Support for Political Action as Outcomes of Race-based Rejection in Majority and Minority Groups" (2012) 51(1) *British Journal of Social Psychology* 167.
29 At 175.
30 Palmer and Butler, above n 12, at 148.
31 At 25.
32 Mark Hickford *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire* (Oxford University Press, Oxford, 2012) at 9.
33 See generally R. Boast "Rethinking Multi-textualism: Rethinking New Zealand's Legal History" (2006) 37 *VUWLR* 547 at 555–558; R. Boast "Treaties Nobody Counted On" (2011) 42 *VUWLR* 653–670. See also Mark Hickford *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire* (Oxford University Press, Oxford, 2012) 101–102.
34 Palmer and Butler, above n 12, at 25.
35 See Geoffrey Palmer "A Bill of Rights for New Zealand: A White Paper" [1984–1985] 1 *AJHR* A6.
36 Perhaps aptly demonstrating what the researchers in the New Zealand Attitudes and Values Study research from 2012 pointed out above: demonstrable fear of presumed rejection from the minority group (Māori) by the majority group (Pākehā).
37 Draft Articles 72, 73, 74 and Appendix, in Palmer and Butler, above n 12, at 25.
38 In Geoffrey Palmer and Andrew Butler *Towards Democratic Renewal: Ideas for constitutional change in New Zealand* (Victoria University Press, 2018).
39 Matthew Palmer "New Zealand Constitutional Culture" (2007) 22 *NZULR* 565 at 567.
40 At 567.
41 Palmer and Butler, above n 12, 156.
42 Royal Commission on the Electoral System "Towards a Better Democracy" [1986–1987] IX *AJHR* H3 at 112, cited in Palmer and Butler, above n 12, 159.
43 Moana Jackson "Where Does Sovereignty Lie?" in Colin James (ed) *Building the constitution* (Institute of Policy Studies, Wellington, 2000) at 196–200. See also Richard Dawson *The Treaty of Waitangi and the Control of Language* (Institute of Policy Studies, Victoria University of Wellington, 2001).
44 Department of Corrections "Prison Statistics" <www.corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics.html>.