BY WHAT RIGHT?

On October 31st 2016 the Crown opened its case in the Kaitāia Court against the Rangiāniwaniwa Six with an attempt to have the expert evidence of Professor Margaret Mutu not heard by the Court. That evidence is about who actually owns the land at Kaitāia airport. It was filed last month and makes interesting reading. More importantly it raises important constitutional questions about the legitimacy of the trespass charges laid by the Crown against the six when it evicted them from the airport last year.

Another interesting read also became available last month, and it too raises important constitutional questions. *A Constitution for Aotearoa New Zealand* is the latest book from former Prime Minister and Attorney General, Sir Geoffrey Palmer. Co-written with Dr Andrew Butler of Russell McVeagh, it argues for a written constitution in this country that will hold government accountable, transparent, responsive to, and reflective of the values of all citizens of Aotearoa New Zealand.

A values-based constitution for this country is also the focus of Matike Mai o Aotearoa (the Independent Constitutional Transformation Working Group) who have identified seven key constitutional values; the *value of tikanga*, the *value of community*, the *value of belonging*, the *value of place*, the *value of balance*, the v*alue of conciliation*, and the *value of structure*.

Both the Matike Mai Report and the Palmer / Butler book note that the Māori renaissance challenges the constitutional orthodoxy which holds that the Crown legitimately acquired sovereignty in the 19th century. One commentator, Otago University law professor Andrew Geddis, poses the questions, "If, in fact,…[Crown sovereignty] was accomplished not by consensual transfer, as the Waitangi Tribunal found in its Te Paparahi o te Raki report, but rather by force or diktat, then by what right does the Crown rule? And, if it doesn't have such a right, then don't we need to establish a new constitutional settlement that more justly sets out the basis for Crown-Māori relations?"

Another commentator, Rhodes Scholar Max Harris notes, "Some say that 'if it aint broke, don't fix it'. But one question we don't often ask is: from whose perspective are we judging whether the system is broke? From the perspective of some groups who have been at the end of unjust legislation in recent years, like the *Foreshore and Seabed Act 2004*, or the 2010 legislation banning all prisoners from voting, the system is very much broken and does need fixing. I think the perspectives of these groups need particular weight. They know what it's like to face unconstitutional legislation and not to be able to do much about it."

Add to that list the Rangiāniwaniwa Six. Having already been trespassed from land they own, they also faced being denied the right to prove their ownership in Court. For them a values-based constitution won't did not come in time. However they and their cause will contribute to its eventual arrival.