

## Quick Submission

Your name:

ANNIE DORIS CLARKE

Name of the organisation you represent (if applicable):

Postal address or email address:

30.5.13.

TE PUKE.

Constitutional Advisory Panel  
 C/o Ministry of Justice  
 Dx 540083  
 Wellington

My Submission Regarding  
 the Constitutional Panel  
 Is that I want no change  
 to NZ's unwritten Constitution.  
 It has served us well  
 Since 1852 Constitutional  
 Act was passed in N.Z.  
 our founding Document  
 It may require some  
 alterations in the future  
 but should not be race  
 based

Dec 31/5/13

Equality for all, one people  
 one nation  
 A substantial amount has  
 been allocated to the Maori  
 party to spend on Maori  
 It would appear that very  
 few people other than  
 Maori know about this  
 Constitution of issue It  
 should be put on television  
 & advertised in all major  
 papers.

A. D. CLARKE

## Privacy and Confidentiality

Your personal information will be held in accordance with the Privacy Act 1993. This Act outlines the requirements for transparent collection, ethical use and secure storage of personal information.

The personal information you provide in this submission form will be used for the purposes of the Consideration of Constitutional Issues only.

You can also make a submission online  
 at [www.ourconstitution.org.nz](http://www.ourconstitution.org.nz)

5226

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/08/2013 12:09 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Postal City: Christchurch Postal Region: Canterbury Postal Post Code: Postal  
Country: New Zealand Full Names: Barbara and Hadyn Clarke Email:  
Phone: Postal AddressA: Postal AddressB:  
Submission: We do not want the Treaty of Waitangi included in any Constitutional law in new  
Zealand.

We want the Constitution to remain as it is at presently written. ( In several documents. )

Submitted on the 10 June 2013 at 11:21

 2649

**From:** Hugh Clarke  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/07/2013 10:07 a.m.  
**Subject:** CAP Submission

Maori seats should be abolished , New Zealand is a multicultural country and Maori or any other ethnic people including europeans should not get a head start in politics.  
Seats in parliament should be non racial and should endeavour to represent all New Zealanders.  
Hugh Clarke

MR H. O. CLARKE

1960

24 JUNE 2013

SUBMISSIONS,  
SECRETARIAT,  
CONSTITUTIONAL ADVISORY PANEL  
C/O MINISTRY OF JUSTICE.

Dear Sir,

I would first like to comment about the composition of the Panel. I take a grave view. We have 5 Maoris on the panel and another two New Zealanders with Maori interests.

The panel is over represented by Maoris. There is no balance, none whatsoever. The other members are ineffectual. I shall be writing a strong letter to the P.M.

ASPIRATIONS FOR N.Z.

How can we truly have high aspirations



(2)

for this country when we are not electing high quality people to represent us?

### COUNTRY TO BE RUN

Keep the same parliamentary system as it present. It may not be perfect but it is vastly superior to any thing else in the world. I am of course referring to the Westminster system.

I do however take issue — none should pass through the portals of parliament unless elected by the people of N.Z. I am of course referring to LIST M.P.'s. They should be abolished by each party.

### CONSTITUTION

Leave the constitution as it is written in several documents. Do not alter anything. The Treaty of Waitangi is not the founding document of N.Z. It was an agreement for the time with a limited, hazy, adjustable future, not definable.

## PARLIAMENT HAS SUPREME POWER

Yes, The judiciary may advise and offer suggestions but parliament makes the laws and is supreme.

## BILL OF RIGHTS

Perfectly adequate and provides sufficient protection to us.

The courts should be able to point out deficiencies (abuse) in rights but not over-ride parliament

## MAORI REPRESENTATION

I have mixed feelings about this.

Probably, no Maori Bill. If they have aspirations to enter parliament then let them be elected like everyone else. We are all New Zealanders.

## ELECTORAL MATTERS

Reduce parliament to 100 members

NO LIST M.P.'s

3 year term for parliament is perfect.

adequate.

5 years is too long for the people to endure a bad government especially with 2 terms.

Election date to be set by the P.M.

### ELECTORAL INTEGRITY LEGISLATION

If an M.P. deserts his party, then he or she should leave parliament. After all, they were elected by the people to represent that party.

PARTY HOPPING NOT ALLOWED for the same reason stated above.

Bring back the amendment to cover this.

### TREATY OF WAITANGI

The treaty is not in my view a founding document

N.Z. was already founded before the treaty was signed

Not all Maoris signed the treaty.

Under the treaty, those who signed it placed themselves under Queen Victoria's rule, legislation and protection.

Some Maori tribes were feared being attacked



by other tribes. The peaceful tribes actually asked for protection against warlike tribes.

It must be remembered that Maori is crowned no land. They claimed it by conquest, by violence, enslaving the over-run people, impregnating the captured women and so increasing the size of their tribal population.

There are people who read far too much into the treaty as do each successive generations of Maori.

Unless the treaty is dropped claims will go on and on. They will be never ending.

It was a document for the times. Not a document to be carried on for ever and ever.

The Maoris, in my view, are more protected under today's laws and protocols than I am.

The Maoris, in my view, are good people. They have done well under successive generations, they have entered parliament, some have achieved great fame, they are carvers, entertainers, artists, musicians, lawyers, doctors.



Professors, teachers, farmers, business directors,  
soldiers, Victoria cross holders, a general general  
so the list goes on and on. Yes there are  
some under achievers but that goes for every  
country in the world. No nation on earth  
is exempt from underachieving citizens.

### P.S. ELECTORAL INTEGRITY LEGISLATION

In some cases there may be times  
where an M.P. crosses the floor to vote  
another way, I accept this because  
he then returns to the elected party  
of which he is an elected member.

Please acknowledge this submission, thank you.

I Remain  
Yours Faithfully

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(H.O. CLARKE)

808

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 9/05/2013 7:46 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Jason Clarke Organisation Name: Email: z Phone:  
Postal AddressA ad Postal AddressB: Postal City:  
Postal Region: Auckland Postal Post Code. Postal Country: New Zealand Submission:  
1.) no i do not think our constitution should be a single written document. The reason is that most people i speak to do not want another expanded treaty document or a constitution based upon the treaty of waitangi.

The powers that be must start listening to the public and not their own idealistic politically correct select few consensus.

the real issue is what the public think. If you think the public want this then you have your blinkers on. Go out in the street and talk to people with out cameras, I do it every day. Today i spoke to 6 people about the treaty and the constitution, ALL of them were against both, that is the treaty's principles and the waitangi tribunals pro maori support. If the experts you put before the tribunal cannot be cross examined then it is not sensible to take their opinion as gospel. The constitutional process should not be continued and pushed through without 85% public support by referendum.

2.) No our constitution should not be re written or given precedent over our common law under no circumstances, once again, a select few are proposing to re write law that over rides our common law which has evolved on legal principle. Once again the public i speak to do not want this. Not one person i have spoken to including lawyers of high standing up and down the country agree with this. So why are the panel pressing forward when public opinion is so against such a move to support and bolster the waitangi treaty??? what is the motivation of you people when overwhelmingly joe public either does not understand the consequences or does not support this.????

If you ask everyone who is not involved with government or media or the elitist academia then you find you true public opinion, all changes should be put before the public and the consequences of the changes and debated with the public referendum of 85% to change the laws, this is not something a few can decide for the future of our children and our country.

3. The courts. parliament has proven that the minority has the say not the majority. Sensible legal principles and law should be decided and debated upon by the legal profession as a whole. Not a few lawyers who have become MP's within the serving government of the time. Any government official has a conflict of interest as their parties and personal interests override any sensible logical non partisan contributions they otherwise could make to such legal legislation.

Once again the real feel of the streets is that public opinion are not in the polling results but on the hearts of the people, everywhere and more so these days people are upset and bewildered with the waitangi tribunal decisions, government handouts and treaty settlements. The pro maori mantra inflicted upon New Zealand. the real New Zealand and everyone i

speak to is completely opposed to all of the decisions and this committee/group looking into the issues or discussions surrounding the Constitution. The group its self is not a proper representation of the public demographic, of left and right thinking, maori,non maori, korean, Chinese, indian, Pacific Island etc etc etc,

Regards and Save our Country and this is submitted on behalf of.

Jason Clarke, the Clarke family, The Colhoun family 300 members who forefathers arrival to NZ 1880's Crawford family numbers 350, all the people i have spoken to over the years who disagree with the waitangi farce. And 70% of the public who believe there should be no preferential treatment for maori.

Sent on the 9 May 2013 at 19:46

710

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 1/05/2013 7:34 a.m.  
**Subject:** My Submission  
**Attachments:** For NZ to grow as a modern dynamic society we must become colour blind.docx

Hi Please find my submission attached for consideration in this process

Regards

Leon

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I am using the free version of SPAMfighter.  
SPAMfighter has removed 246 of my spam emails to date.  
Get the free SPAMfighter here: <http://www.spamfighter.com/len>



For NZ to grow as a modern dynamic society we must become colour blind

You are either a decent person or not.

Regardless of colour or creed, despite your back ground and your religion it should have no bearing on your place in society.

People from all over the world come to NZ and have flourished, not all have a smooth path but seeing the opportunities with in education and employment or business do nothing impede them

We are now living in a multi-cultural society and we must all get on with creating a great future and stop looking back ward.

Ambition should be above tradition and your own personal growth should come first so you can be the best you can be within society.

We need to replace our legal system with a justice system where victims have rights.

Criminals must be innocent until proven guilty, but if proven guilty of crimes against society Justice must be effective and in the beginning should be harsh enough to encourage better behaviour and reformation.

Good behaviour should be rewarded and bad punished regardless of the excuses of the past as they are just that.

All treaty settlements must be done and dusted so the country can move forward as one,

Central and local government need to be reduced to their proper role of providing essential services, IE roading power water etc.

Taxation must be reduced to minimum, especially illegal taxes which are currently in place.

A culture of personal achievement and responsibility needs to be enshrined in any constitution that is drafted.

We need to grow up and become a mature society be forward looking and thinking.

I hope you consider my thoughts, I survived the Christchurch earthquakes and am appalled at the way citizens where and are being treated, the very people that where put in place and paid handsomely by central and local government to assist the citizens failed and continue to fail.

This was not the country I grew up in and we need to sort ourselves now or forever regret our actions and hold our heads in shame.

## Submission to the New Zealand Constitutional Advisory Panel 2013

As a supporter of Amnesty International, I write to add my voice in support of its submission to the current constitutional conversation.

I am concerned that all our human rights are not adequately protected in New Zealand law.

For example, our Bill of Rights Act 1990 only incorporates civil and political rights. Yet, it is widely recognised that human rights are interrelated, interdependent and indivisible; this means that one set of rights cannot be enjoyed in a meaningful way if the other set of rights is not also adequately protected and respected too.

I believe civil and political rights, such as the right to life, cannot truly be achieved without the equal right to work, accessible health care, adequate housing and education, which are enshrined in the concepts of economic, social and cultural rights.

Despite having ratified the International Covenant on Economic, Social and Cultural Rights in 1978, successive New Zealand Governments have failed to fulfill their obligations to respect, promote and fulfil these human rights.

While the Government says economic, social and cultural rights are currently protected by subject specific statutes, current issues involving these rights, such as child poverty, show that the current system is not working to adequately protect our rights. The maze of laws and policies around economic, social and cultural rights make it difficult for New Zealanders to understand and access their rights.

Without a clear framework to guide legislation and policy it also makes it difficult to see if laws policies are actually working to recognise New Zealanders rights. In addition many human rights in New Zealand lack avenues to remedies if they are breached, which limit New Zealanders' access to justice - an essential right of victims of all human rights violations.

I therefore submit the following recommendations:

- The incorporation of economic, social and cultural rights into the Bill of Rights Act 1990;
- The entrenchment of the Bill of Rights Act 1990 so that the weight and importance of these rights is adequately recognised;
- The explicit inclusion of the power for judges to provide remedies when the Bill of Rights Act is violated;
- That New Zealand ratify the Optional Protocol for International Covenant of Economic Social and Cultural Rights, including opting in to its inquiry and inter-state mechanisms, so that New Zealanders have access to an international remedy;
- The establishment of a Human Rights Select Committee to ensure that the impact of legislation on human rights is sufficiently considered;
- The requirement of all levels of Government to take a human rights approach to addressing human rights issues; and
- Increased human rights education initiatives to increase awareness of economic, social and cultural rights.

I believe these recommendations will provide for stronger protections within our constitutional framework for economic, social and cultural rights.

Taking these measures will ensure a strong legal framework in which all rights are equally protected. It will ensure that the Government can take a rights-based approach to addressing rights issues in New Zealand such as child poverty.

New Zealand has an obligation to take steps to progressively realise such rights as the rights to health, education, and adequate housing. Ensuring they are explicitly protected in New Zealand law is a significant step in ensuring that New Zealand is a place where human rights are protected, respected and fulfilled.

Melissa Clarke  
Auckland  
New Zealand

1092

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/06/2013 2:01 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Mack Clarke Organisation Name: Email: Phone:  
Postal AddressA: Postal AddressB: Postal City: Taupo  
Postal Region: Bay Of Plenty Postal Post Code: Postal Country: New Zealand  
Submission: As a mokopuna of one of the original signees..Te Korohiko..from the central plateau area..from Te Haroto in the east..to Pohaturoa in the west..to Tokorangi in the south.. who was akin an chieftain to the (6)six Hapu of the Tauhara area of the northern basin of taupo..

believe the reasons for signing such an important document at Waitangi in 1840 along with Iwikau Te Heuheu a important chief also of Ngati Tuwharetoa was to..

1. Retain their Rangatiratanga..so that their mana would not be usurped by a foreigner from distant shores..a female at that..Kuini Wikitoria..
2. Retention of their whenua..to STOP the wholesale theft of their lands by the speculators who were hellbent of acquiring/stealing as much of their lands anyway..anyhow possible..

#### CONSTITUTION OF AOTEAROA..

In the compilation of this.. Constitution For Aotearoa (New Zealand)..MUST.. have Articles 1.2.3 of the TTW (Treaty of Waitangi)..intrinsically inserted as part of any makeup of any constitution

Furthermore..a draft of this constitution MUST be circulated to every known address in New Zealand giving them 3/6 months to peruse this constitution..then 3 months so as this constitution can be discussed at their relevant HAPU..Iwi levels..

A Referrendum will then be held..giving those ALL that have attained the age of 18 years in New Zealand.. who hold New Zealand citizenship..a right to vote..whether accept/NOT accept this new constitution of Aotearoa

Naku noa

Mack Clarke

of the Tauhara Hapu

Sent on the 5 June 2013 at 14:00



4356

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 9:29 a.m.  
**Attachments:** Submission to ConstitutionalConversation from Philip Clarke.docx

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Philip Maurice Clarke Organisation Name: n/a Email:  
Phone: Postal AddressA:  
Rd Postal AddressB: Postal City: Auckland Postal Region: Postal Post Code:  
Postal Country: New Zealand Submission: Submission Upload: Submission to  
Constitutional Conversation from Philip Clarke.docx

Submitted on the 31 July 2013 at 09:28

## **Submission to Constitutional Conversation from Philip Clarke**

### **Auckland**

I wish to address 5 topics.

#### **Nature of the Constitution**

I believe that the constitution should be distributed across a number of documents as it currently is as they provides, I believe, greater flexibility for New Zealanders.

#### **Security & Privacy**

This matter has not been particularly highlighted by the Constitutional Conversation as an issue but multiple recent developments in politics have indicated that this is a serious and ongoing issue given that we live in an information economy. Constitutional provisions need to be updated for this reality and to ensure the continuation of real democracy within an information economy.

#### **Electoral Matters**

One of the features many people have admired about NZ for over 100 years is its egalitarianism. This quality I believe is eroding in our society and I do think that the constitution can be a bulwark against this erosion. One of the features of western democracies over the last 15/20 years is lower rates of participation in the democratic process due to social and economic alienation. An expat NZ academic based at the London School of Economics, Professor Robert Wade, has recently written about the move of such western democracies, due to a lack of participation arising from alienation, as a move to 'substantive oligarchy'. That is that the alienation of the many permits the few to gain power and govern in their personal interest. These are complex trends but I suggest that 2 remedies could be used to stop them:

- Significant control on the private funding of political parties, or, and better, total state funding of political parties.
- A requirement that makes voting mandatory. It seems to me that if 99% of eligible voters vote, because they are required to, then we are likely to have a political life that is democratic and egalitarian.

#### **Monarchy**

This seems to be the major constitutional issue. Why wasn't it on the discussion agenda?

#### **Maori Seats**

This seems to me to not be an essentially constitutional issue but rather an issue of NZ (particularly Maori) political culture with constitutional ramifications. And any debate needs to proceed from a dialogue with Maori in the first place about their place and aspirations in our wider political culture.

125

**From:**  
**To:** <constitutionaireview@justice.govt.nz>  
**Date:** 9/04/2013 8:14 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Wendy Caroline Clarricoats Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB:  
Tauranga Postal City: Postal Region: Postal Post Code: Postal  
Country: New Zealand Submission: NZ should definitely have a written constitution, written in  
plain english so it's people can gain a clear and full understanding. Currently only those in power  
really know anything at all about our constitution. The majority of NZ'ers wouldn't know anything  
at all about it.

Our constitution should have higher authority than our laws simply because it is supposedly the main  
creed of our country and how we operate and run as a community. It should be the document that  
everything legal or otherwise must refer back to and comply with.

It should be something that is taught in school, considered to be 'highest most law' in our country and  
something that should include things like values that all NZ'ers should live be. Make it something to be  
proud of, something uniquely NZ. Make our country  
special. It won't happen overnight but it can start by having a document and having it taught in  
schools along with values like respect, loyalty and pride. The govt has taken religion out of schools so  
how about making schools 'value based' instead starting  
with Our Constitution.

I think the courts should have final say on whether our laws are consistant with the constitution  
because as we've seen so many times and continue to see, parliament and govt will make legislation  
to suit their own agenda, not necessarily for the good of the  
average NZ'er. Lets face it, parliament is big business and they are out to make money for NZ, so  
they will always be biased. The courts on the other hand are there to uphold the law. That is their role  
so they are more inclined to be looking out for the interests  
of the everyday kiwi.

Sent on the 9 April 2013 at 08:14

1757'

June 27<sup>th</sup> 2013

Dear: The Secretariat  
Constitutional Advisory Panel  
c/- Ministry of Justice

Re: New Zealand Constitution.

I believe New Zealand does not need a written  
Constitution and I strongly oppose any legislation  
or reference to the Treaty of Waitangi should  
one be drafted now or in the future.

Kristina Clayton.

Hamilton, New Zealand.

ALMA RENE NEWNHAM.

"  
TAURANGA

CHRISTOPHER LASCELLES NEWNHAM

Tauranga





1524

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 22/06/2013 5:03 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Rodner Allan Clearwater Organisation Name: Email:  
Phone: Postal AddressA:

Postal AddressB: Postal City: Hastings Postal Region: Hawkes Bay Postal Post Code:  
Postal Country: New Zealand Submission: Every person who resides permanently in New Zealand has the right to call themselves New Zealanders regardless of race. The treaty is a great founding document but that is all it is and should now be scrapped. It is after all over 150 years old and well

passed its use by date. Another thing that should be written into the constitution is equal opportunity for all. There should be no special treatment for certain races in any aspect of being a citizen of this great country

Sent on the 22 June 2013 at 17:02

4119

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 29/07/2013 10:44 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Angela Maree Clemens Organisation Name: Email:  
Phone: Postal AddressA: Postal  
AddressB: Postal City: Postal Region: Auckland Postal Post Code:  
Postal Country: New Zealand Submission: What's important:

1. A New Zealand that addresses social inequity issues; values social justice and looks after our vulnerable members.
2. We value our unique bicultural heritage whilst respecting the cultural diversity of our modern nation.
3. We balance individual rights with responsibility for participating harmoniously and respectfully with other New Zealanders and the global community.
4. Maintain MMP but in a revised form.
5. Require more than a 1 vote majority in house for passing legislation on significant issues.
6. Address inter- generational inequity via bi-partisan long range policy agreements, on issues such as capital gains tax and superannuation.
7. Develop economic models which value community participation, "social well-being", democratic capability and involvement, and environmental sustainability. Use these for policy decisions: cost/benefit analysis. Not just profit based models.
8. Address the lack of clarity of the position of Te tiriti o Waitangi as our nation's founding document.

Submitted on the 29 July 2013 at 22:43

## Submission to the New Zealand Constitutional Advisory Panel 2013

As a supporter of Amnesty International, I write to add my voice in support of its submission to the current constitutional conversation.

I am concerned that all our human rights are not adequately protected in New Zealand law.

For example, our Bill of Rights Act 1990 only incorporates civil and political rights. Yet, it is widely recognised that human rights are interrelated, interdependent and indivisible; this means that one set of rights cannot be enjoyed in a meaningful way if the other set of rights is not also adequately protected and respected too.

I believe civil and political rights, such as the right to life, cannot truly be achieved without the equal right to work, accessible health care, adequate housing and education, which are enshrined in the concepts of economic, social and cultural rights.

Despite having ratified the International Covenant on Economic, Social and Cultural Rights in 1978, successive New Zealand Governments have failed to fulfill their obligations to respect, promote and fulfil these human rights.

While the Government says economic, social and cultural rights are currently protected by subject specific statutes, current issues involving these rights, such as child poverty, show that the current system is not working to adequately protect our rights. The maze of laws and policies around economic, social and cultural rights make it difficult for New Zealanders to understand and access their rights.

Without a clear framework to guide legislation and policy it also makes it difficult to see if laws policies are actually working to recognise New Zealanders rights. In addition many human rights in New Zealand lack avenues to remedies if they are breached, which limit New Zealanders' access to justice - an essential right of victims of all human rights violations.

I therefore submit the following recommendations:

- The incorporation of economic, social and cultural rights into the Bill of Rights Act 1990;
- The entrenchment of the Bill of Rights Act 1990 so that the weight and importance of these rights is adequately recognised;
- The explicit inclusion of the power for judges to provide remedies when the Bill of Rights Act is violated;
- That New Zealand ratify the Optional Protocol for International Covenant of Economic Social and Cultural Rights, including opting in to its inquiry and inter-state mechanisms, so that New Zealanders have access to an international remedy;
- The establishment of a Human Rights Select Committee to ensure that the impact of legislation on human rights is sufficiently considered;
- The requirement of all levels of Government to take a human rights approach to addressing human rights issues; and
- Increased human rights education initiatives to increase awareness of economic, social and cultural rights.

I believe these recommendations will provide for stronger protections within our constitutional framework for economic, social and cultural rights.



Taking these measures will ensure a strong legal framework in which all rights are equally protected. It will ensure that the Government can take a rights-based approach to addressing rights issues in New Zealand such as child poverty.

New Zealand has an obligation to take steps to progressively realise such rights as the rights to health, education, and adequate housing. Ensuring they are explicitly protected in New Zealand law is a significant step in ensuring that New Zealand is a place where human rights are protected, respected and fulfilled.

Neil Clemens  
Auckland  
New Zealand

916

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 27/05/2013 10:09 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** Constitution Submission byPaul Clements.docx

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Paul Alan Clements Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Kerikeri  
Postal Region: Postal Post Code: Postal Country: New Zealand Submission:  
Submission Upload: Constitution Submission by Paul Clements.docx

Sent on the 27 May 2013 at 10:08



1/6

## **Constitution Submission by Paul Clements**

### **1. NZ Constitution**

Single written document?

No. Current legislation appears to function acceptably.

Should the constitution be supreme law?

No. Any constitution needs to be capable of being modified as the circumstances change.

Parliament or courts to be the determinant concerning consistency of legislation with the constitution?

Parliament. Courts are not subject to review of their decisions by the voting public.

### **2. Bill of Rights**

Does the Bill of Rights supply sufficient protection?

No comment.

What other things should be done to protect rights?

Nothing.

Should the Bill of Rights Act be supreme law?

No. Any Act needs to be capable of being modified as the circumstances change.

Parliament or courts to be the determinant concerning consistency of legislation with the Act?

Parliament. Courts are not subject to review of their decisions by the voting public.

What additional rights should be added to the Act?

None.

### **3. Treaty of Waitangi**

What role should the Treaty of Waitangi have in our constitution?

Nil. The Maori people are not the original inhabitants of NZ, but there has been a very active position of ensuring that people think that they were. Subsequent to the signing of the Treaty of Waitangi, the Maori were quite happy to continue slaughtering the Moriori people, with the European government turning a blind eye to the genocide that was actively practiced. Maori have only been in NZ about 600 years. Why does this make them the owners of everything?

The Treaty of Waitangi is the largest single reason that NZ struggles to progress, as we have an industry based solely upon the Treaty of Waitangi, and how a small proportion of the population can continuously be supported by the large majority. I have been a taxpayer in NZ for over 55 years, and



continue to be a taxpayer, and the Treaty of Waitangi continues to exist solely for the purpose of making claims against the taxpayer for some previous wrongs that may or may not have occurred. It is about time that NZ Maori joined the real world, and discovered what thousands of Maoris living in Australia have discovered: Pull your finger out, work hard, and the rewards will arrive.

Should the Treaty be made a formal part of the constitution?

No. An industry exists that is solely dedicated to extracting tax payer funds for no apparent benefit to the vast majority of Maori. Why perpetuate this rort?

#### **4. Maori Representation**

How should Maori views be represented in parliament?

Exactly the same way as the rest of the voting public is represented. Nominate a candidate, undertake the work on the hustings, and become elected if they are considered by the general public to be good enough. Any other method of representation is race based, which I thought was illegal in NZ.

How could Maori electoral participation be improved?

This is strictly for Maori to determine, not the committee. If Maori are not interested in the electoral process, then that is a choice that should be respected. Why should a minority of the population be given special status in regard to participation, when the remainder of the population are not?

Maori representation in local government.

Not by allowing an unelected minority to have a controlling vote on every committee, as happens in Auckland City. If Maori want to join the real world, rather than continuously bleating about their plight, then they are quite at liberty to stand for local body positions, just the same as the rest of the population.

#### **5. Electoral Matters**

How many members of parliament?

100. To have electoral representation based upon the current allocation of occupant numbers to each electorate, no Maori (or Pacific island/Irish/Scots/Norwegian/Singaporean etc) seats, with the MMP balance being made up from the list seats – currently about 35 seats. When the population increase reaches the stage where the MMP proportion cannot be made up from the available list seats (say 80 electorate seats, and 20 list seats), only then should the representation be increase beyond 100.

Parliament term?

3 years. Too short to be really effective, but 4 years would allow really long term damage to occur. We only have a single house, so the checks of an upper house do not exist. Conversely, become a state of Australia, and change the NZ state parliament term to 4 years.

Election date?

Not important

Size and number of electorates?

Status quo appears to supply effective representation. NZ needs to progress past the stage when any person has direct access to their MP at a clinic on Saturday morning.

Party leaving?

If a member is elected, then they are intended to represent the views of their electorate. If the views of the relevant party change, but the views of the electorate do not, then the member is required to continue to represent the views of the electorate.

If a member is in parliament via the list system, then they do not represent the views of an electorate, but are elected due to the party policies. If the member disagrees with the party policies, then the only option is to resign from parliament. There should be no ability for a list member to remain in parliament at the taxpayer's expense, when they are not contributing to the running of the country.

Oath of allegiance:

Currently, all members of parliament are required to undertake an oath of allegiance to the Queen. The taxpayers of NZ supply the money to operate parliament, thus the taxpayers of NZ employ the members of parliament. We currently have a situation where the members of parliament have no allegiance to the people that employ them. I would recommend that all members of parliament undertake an oath of allegiance to the Queen and to all of the people of NZ. This legal requirement would immediately reduce the stupidity levels within parliament, as the emphasis would revert to actually trying to work for the people of NZ, rather than solely their little voter bases.

The above does not consider the prime question that I often consider: Would I employ the relevant member of parliament?

## 6. General

The imbalance in the committee representation is of real concern. Why is the committee not made up of a balance of NZ'ers, being (roughly):

15% asian

15% maori

10% pacific islands

60% the balance – of which I am one.

## 7. Conclusion

The discussion on the relevance of, and requirement for a constitution is (presumably) driven by the Treaty of Waitangi influence coming to an end, due to the termination of the settlement process actually being within the foreseeable future. As a consequence, when the settlement process is

completed, Maori will have lost a large part of their income stream. The incorporation of the Treaty in to any constitution will allow claimants to continue claiming against the provisions of the constitution, which will open up a new income stream.

I have a very jaundiced view of the ability to influence the workings of any government committee, as in my opinion, government committees decide the output they wish to arrive at, incorporate some minor items they are quite happy to vary, consult the general public, vary a couple of the non essential minor items, and then recommend exactly what they originally decided upon. The committee can then declare that they have consulted, listened to the public, and changed a couple of minor details.

I would be very surprised if the Treaty of Waitangi is not incorporated in to the constitution, as I presume this is the prime reason for the imbalance in the committee representation.

P A Clements

768

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 6/05/2013 9:20 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission  
**Attachments:** Constitution.pdf

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Samuel Leslie Christian Clements Organisation Name: Email:  
Phone: Postal AddressA:  
Street Postal AddressB: Postal City: Postal Region: Auckland City Postal Post  
Code: Postal Country: New Zealand Submission: Submission Upload:  
Constitution.pdf

Sent on the 6 May 2013 at 21:18



Sam Clements

Our Constitution Submission

2013

**Do you think our constitution should be written in a single document?**

In essence, yes, providing that such a document has been well constructed and thought through, and that its articles are comprehensive and sound, without being unduly lengthy, complex, or ambiguous in nature. It should have the power to inspire and to unify, yet at the same time be reflective of the ethnic and cultural diversity inherent within our population makeup. It needs to be accessible in both language and tone, to all educational stratus of our society, and to possess the power of durability down through the generations. At the same time, it needs to reflect broadly the philosophical and ideological values that have endured from our earliest inhabitants through to the present day. This is of particular importance, as a document that does not in tone reflect the inherent characteristics that constitute and underpin what has contributed to our 'New Zealand-ness', has little prospect of standing the test of time.

A single constitutional document potentially creates less confusion as to what values, rights, outlooks and beliefs we broadly and collectively hold as a nation, and may serve to help encapsulate and present to the international community of nations a template for effective national cohesion and nation building. The creation of such a document ought also to carefully examine and consider the strengths and weaknesses of those from other nations, without however attempting to emulate or 'copy' their design. Our document ought to be distinctively reflective of the heritage and history of the New Zealand people.

**Do you think our constitution should have a higher legal status than other laws (supreme law)? Why?**

Possibly, however this would require the constitution to be extremely well constructed and crafted, which in turn would require the very careful and considered input of a parliamentary royal commission, the judiciary, and esteemed New Zealanders from a broad range of backgrounds. It would also need to be presented to New Zealanders for draft consideration in phases, possibly through periods of public consultation or referenda, or a combination of the two.

This proposition does have merit, as it has the potential to 'unify' all New Zealanders under one particular set of supreme laws. On one level, this might appeal to the average New Zealander's sense of 'fair play' and 'equal opportunity'. It might well suit the egalitarian nature that, although perhaps lessening, is still arguably deeply embedded within our national psyche. However, on another level, there similarly exists an underlying suspicion of 'overarching' laws, or attempts to 'lock in' certain values at a national level. This was well

Sam Clements

Our Constitution Submission

2013

demonstrated in the poor response to former Prime Minister Jenny Shipley's attempt to instigate feedback to a government initiative to encourage New Zealanders to think about what ethical values we want to possess as a nation, and of the manner in which we wish to develop stronger families and more integrated communities.

**Who should have the power to decide whether legislation is consistent with the constitution: Parliament or the Courts? Why?**

Ideally the courts. This is made more feasible given we now have a supreme court. It would however make necessary very careful review by parliament, of the legal mechanisms surrounding appointments to the court, its overall makeup, and the nature and extent of the powers it would possess in both upholding and reviewing the consistency or otherwise of legislation. It would also necessitate the passing in to law by parliament of an Act governing the mechanisms by, and circumstances in which, supreme court justices could be removed from their positions in the event of judicial impropriety or incompetence. Leaving such power in the hands of parliament would potentially greatly undermine the integrity and 'potency' of such a national constitutional document, in turn undermining its mana in the eyes of many New Zealanders. This approach ought to be avoided at all costs.

2828

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/07/2013 3:41 p.m.  
**Subject:** CAP Submission

I believe that the Maori seats should be abolished as their existence strikes at the very meaning and intention of democracy

Lucinda(Lucy) Clerk

2709

**From:** Steve Clerk" <[redacted]>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 5/07/2013 2:15 p.m.  
**Subject:** CAP Submission

The Maori seats should be abolished because, quite simply, their existence is undemocratic.

Steven Clerk



THE NEW ZEALAND CONSTITUTION

I wish to make a submission regarding the proposed changes to the New Zealand constitution, and associated matters.

Name of submitter: Dr Graham Stephen CLIFF

/ 5

Email:

Contact phone number:

\*\*\*

The following submission points are guided by the layout of the document titled "The Constitution Conversation", from the government website: <http://www.ourconstitution.org>

CONSTITUTION

1. Our constitution should not be written in a single document. The present arrangement, whereby it is drawn from various pieces of legislation, confers flexibility in a desirable way that a single piece of legislation could not. When a constitution is created as a single instrument of law, it tends to become an impediment to necessary change in the face of altered circumstances; it is almost impossible to rescind (its establishment is designed to make it that way); certainly, amendments are possible, but those tend to be more difficult to achieve than are changes to individual laws. (The current debate in the United States, regarding the constitutional "right to bear arms" is an obvious example – that nation appears to be paralysed in its efforts to move forward in step with the modern era). Similarly, a written New Zealand constitution (especially one with the Treaty of Waitangi at its core: see below) could be expected to fossilise this nation's legal framework. In contrast, the unwritten constitution of the United Kingdom has repeatedly shown itself to be highly adaptable to the demands of changing times; this is the essence of "positive law" (i.e. that which is posited, in accordance with prevailing norms and preferences). The citizens of the United Kingdom are certainly no worse off, in terms of constitutional rights and guarantees, than those of the United States.
2. It is a loaded question to ask if our constitution should have a higher legal status than other laws, because the question is predicated on the assumption that a single-document constitution is the preferable option. It follows, from what I have said above, that our constitution should not have higher legal status than other laws (i.e. be regarded as supreme law) because it is part and parcel of those laws.
3. Similarly, to ask who should have the power to decide whether or not legislation is consistent with the constitution, assumes the paramount status of a discrete, written constitution. In any event, Parliament must be the final arbiter of whether or not any particular piece of law is, or is not, consistent with this country's constitutional rules and conventions. There are two reasons for this: firstly, under a Westminster-style system of

democracy, such as New Zealand has, Parliament must be the paramount authority in the state, because it embodies the general will of the people. Secondly, the judiciary are unelected officers of the state, so that regardless of their competence in jurisprudence, they cannot be said to be representative of anybody. Furthermore, whilst reckless, incompetent or dishonest politicians can be voted out of office at regular intervals, there is no such safety mechanism to remove judges who may be politically and/or ideologically biased, or no longer up to the job (unless they are seriously mentally disabled and thus able to be retired on health grounds).

#### TREATY OF WAITANGI

1. There is no longer a place for the Treaty of Waitangi in New Zealand's constitution (and accordingly, the Waitangi Tribunal should be disestablished). There are several reasons for saying this: firstly, whilst it may be that, as claimed in the Constitution Conversation document, "The Treaty is generally regarded as New Zealand's founding document" (although I have yet to see any credible, researched data to support this sweeping claim), this assumption is in error. The Treaty represented a pragmatic solution to what was, at the time, a seemingly insoluble problem of reconciling differences between both European settlers and Maori, and also between Maori and other Maori. Furthermore, it was cobbled together in a hurry, and thus there has been disagreement about both its intent and meaning ever since. The true founding document of this nation was the Constitution Act of 1852 (an amendment of the 1846 Act) which granted, for the first time, self-governing status to the colony of New Zealand, and initiated the process of democratic electoral representation. Secondly, a mid-nineteenth century agreement between two very different cultures, neither of which could have envisioned the society of our present times, is quite inappropriate as an instrument of legal and social policy. Its interpretation is therefore becoming both practically problematical and politically vexed; it threatens to imprison the nation in a mid-nineteenth century mindset, and this is particularly evident in the attitudes and claims of activist Maori. Thirdly, it has become a socially divisive factor, for whilst it fuels Maori aspirations of separatism, it simultaneously alienates non-Maori who see "the Treaty partnership" as undermining democratic representation. (There is a partnership, as determined by the Appeal court in 1987, but it is not an equal one: it is more akin to a teacher-student, or employer-employee relationship. In other words, equality between people [as individuals] is not the same thing as equality between peoples [as groups]). Fourthly, interbreeding, between those of Maori ancestry and others, renders the ethno-racial distinction progressively less meaningful (even though different cultural values and practices may persist); considerations, rights, and privileges based on accident of birth are morally repugnant. In summary: treaties may be, and are, quite legitimately rescinded when the conditions which prevailed at their inception are considered to no longer obtain; the Treaty of Waitangi is redundant.
2. It follows from this argument that there are no grounds for the formalisation of the Treaty of Waitangi in New Zealand's constitution.



## **MAORI REPRESENTATION**

1. In keeping with the recommendation of the Royal Commission on the Electoral System in 1985, the Maori seats in Parliament should be abolished. The reasons are two-fold: firstly, as a matter of principle, the existence of race-based seats is an affront to egalitarian democracy – Maori enjoy the privilege of electoral choice that is denied to all other New Zealanders. This deliberately preferential treatment is, however, consistent with the principles of consociationalism, which is a political ideology that advocates power-sharing (it is akin to “affirmative action” – the policy of deliberate discrimination in favour of a minority which is perceived to be underprivileged); it is a highly contentious system of governance, and of questionable efficacy. Secondly, such institutional differentiation may tend to emphasise social divisions; this is particularly evident in the current MMP climate of this country, such that the balance of power may be held by a minority party with separatist policies.
2. The preferable way to increase Maori participation in the electoral life of New Zealand is by means of education: through the enhanced teaching of civics in schools, and also by way of adult education (perhaps marae-based). All of the political parties represented in Parliament welcome Maori participation in their affairs, and there are Maori members of Parliament who represent general constituency seats, or are list members.
3. There is no place for reserved seats for Maori in local government: it is patronising to them because it implies that they are insufficiently competent to foot it with everyone else. Maori views and perspectives ought to be taken into account when policies and plans are drafted, but submissions by Maori should be given the same weight as those of other social groups; if the case made by Maori has merit, then it will be given serious consideration.

## **BILL OF RIGHTS**

1. The Bill of Rights Act 1990 (“the Act”) is, in the main, a desirable piece of legislation; the freedoms that we enjoy in New Zealand are, in many ways, the envy of the world. There are deficiencies in the Act however; for example, its enforcement of non-discrimination places a limitation on individual liberty. In a free society, an individual ought to be able to enjoy the right to arbitrarily discriminate in favour of, or against, others, individually or collectively, even though this cannot generally be considered to be a good thing; the matter is fundamentally an ethical issue, not one for the law. It is always better to educate than to legislate.
2. The Act ought to place greater emphasis on freedom of expression. Freedom of speech is fundamental to liberal democracy, but the protection offered by the Act is less than that conferred by, say, the United States Constitution. The people of New Zealand deserve a legal guarantee that they can speak their minds, even if this causes offence to others (provided that to do so is not libellous or defamatory), and without this resulting in official censure or prosecution. After all, taking offence is a voluntary act.
3. The Act ought not to be afforded the status of supreme law, because it would thereby place unacceptable constraint on the legislature, in the same way that a written constitution might do. None of us can confidently predict what the future holds, and there may be unforeseen

exigencies which demand new legislation, or legislative changes, which may not be compatible with the Act.

4. The Courts should have the power to decide whether or not legislation is consistent with the Act, subject to the provisions above; that is, the Courts may make recommendations to Parliament if inconsistency is judged to have occurred in legislation, but it must remain the prerogative of Parliament to decide whether or not to act upon such recommendations. In other words, whilst it is acceptable for the judges to create case law, they cannot be allowed to create, *de facto*, statutory law: to do so would be to usurp Parliamentary sovereignty.
5. No additional rights are recommended.

#### **ELECTORAL MATTERS**

1. The number of members of Parliament is probably about right; however, this is less important than how they are selected and deployed. Given that the Maori seats should be abolished, the remainder should be weighted more heavily towards general electorate members, with a commensurate reduction in the number of list members.
2. The term of Parliament should be four years – but if, and only if, a bicameral legislature is re-established. A longer Parliamentary term would facilitate better, long term policy creation, and simultaneously discourage election bribes by the different political parties, by way of short term expediency. However, the greater power thereby conferred on the governing party (or coalition) would need to be tempered by the influence of a second chamber; the latter ought also to be elected by the general population.
3. The election date should be fixed by statute, unless the government loses a vote of confidence, when it must go to the people. This would eliminate political game-playing, and create a fairer basis on which the vying political parties could compete for votes.
4. Although the population of New Zealand is relatively small, its geographical distribution is such that the logistics of adequate constituency representation demand more general members. This policy would also tend to ameliorate the discrepancies created by the requirement to have roughly the same number of people in each electorate; under the present system, geographical areas with differing characteristics and needs may find themselves lumped together. At the same time, Regional Councils should be abolished, their duties and powers to be transferred to District Councils, which should be consolidated and enlarged as necessary; wherever possible, the territorial boundaries of those District Councils should coincide with those of Parliamentary electorates. This strategy would make the coordination of local and central policy planning, together with its implementation, far more efficient than at present.
5. If a member of Parliament quits, or is ejected from, the political party from which he or she was elected, then that member should be removed from Parliament forthwith; if a general member, there should be a by-election, and if a list member, to be replaced by another list nominee.
6. If a sitting member of Parliament elects to quit Parliament during a Parliamentary term, then unless given special dispensation by government – for example, on grounds of ill-health or the national interest – that member ought not to be afforded any benefits or privileges that would otherwise have accrued, had he or she seen out the full Parliamentary term.

### FINAL COMMENTS

My aspiration for New Zealand is that it becomes a truly democratic, multicultural nation-state, in which all citizens will enjoy equal rights and responsibilities; where our history can be acknowledged, but not control us; where we can be "New Zealanders" rather than Maori and non-Maori (and where use of the term "Pakeha" can be discouraged); in other words, the country manages to achieve a level of political and social maturity, which is currently sadly lacking.

Government must be strong and unified, with enough checks and balances to keep it honest. It must serve, but not dictate to the people, whether or not they voted for it; binding referenda and citizens' assemblies must become part of the political landscape, and civil control should be achieved through a greater emphasis on reward, and lesser reliance on punishment. Above all, our nation needs to cherish its freedoms, which means that the fewer laws we have, the better.

Graham Cliff

21.04.13



5194

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/08/2013 11:37 a.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Karlle Clifton Email: Postal City: Papamoa Postal  
Country: New Zealand Submission: My aspirations for Aotearoa New Zealand is for it to become  
a truly bi-cultural nation (maori and non-maori). I think we are so lucky to be internationally unique, no  
other place in the world like our place. I think diversity is the key to unity and I

hope as a nation we not only acknowledge it but embrace it. I am not confident yet that most kiwi's get  
it but with good education and conversations like this we are heading in the right direction. I think I  
would like to see our nation become a republic but

I have not yet learnt enough about it to be fully convinced it is the best idea. I would like to be better  
informed about this.

Submitted on the 10 June 2013 at 21:31

5194a

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/08/2013 11:37 a.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Karlie Clifton Email: Postal City: Papamoa Postal  
Country: New Zealand Submission: I don't think this is an easy thing to decide as I am not sure  
how it would work. I don't know if the TOW itself needs a place in a new constitution but the principles  
could. To continue evolving as a still very young bi-cultural nation that values partnership,

participation and protection would be important to me.

Submitted on the 10 June 2013 at 21:46

51946

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 8/08/2013 11:37 a.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Karllie Clifton Email: Postal City: Papamoa Postal  
Country: New Zealand Submission: I like the idea of a single document for our constitution but we  
need to make sure we get it right! It is not something to be rushed and has to be in the best interest of  
all New Zealanders. I am not sure about it having more power than supreme law as

I am not well informed about this. However, I do think though that the courts should be the ones to  
decide on the consistency of legislation with the constitution. Governments change so I don't see how  
they could be consistent.

Submitted on the 10 June 2013 at 21:36

22.7.2013

3051

... Napier

The Secretariat,

I am concerned that the NZ Bill of Rights does not appear to cover the economic, social and cultural rights that should be heritage. Therefore, I believe the phrase should be included.

Sincerely

Lee Chen Toal

1143

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 6/06/2013 9:24 p.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: David James Clode Organisation Name: Email:  
Phone: Postal AddressA: Postal AddressB: Postal City: Lower Hutt Postal Region:  
Postal Post Code: Postal Country: New Zealand Submission: 1). Electoral terms should be four years, and for a fixed period of time. The exception would be if the Opposition is able to pass a vote of no confidence and demonstrate a vote of confidence in themselves.

2). Ne Zealand should have a written constitution that overrides parliament. The Constitution should only be able to be amended by a 75% or greater vote in parliament, and by ratification by a majority of voters in a referendum. The New Zealand Bill of Rights Act should be incorporated into the Constitution.

3). Local Government elections should also be held every four years, and should be held in the years between general elections (ie if general elections were held in 2014 and 2018, local government elections would be held in 2016).

4). The Maori seats should be abolished because effective Maori representation can be achieved through general electorate and list seats in parliament.

Sent on the 6 June 2013 at 21:23



418

**From:**  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 16/04/2013 8:11 a.m.  
**Subject:** <http://www.ourconstitution.org.nz/> form submission

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: Kelvin Gordon Clout Organisation Name: Email: Phone:  
Postal AddressA Postal AddressB: Postal City: Tauranga  
Postal Region: Bay of Plenty Postal Post Code: Postal Country: New Zealand  
Submission: 1) We do not need 120 MP's to run a country of 4.5m people! I would prefer to see say 60 MP's, who all actually carry out meaningful functions for the betterment of NZ

2) The parliamentary term should be 4 years, which allows the government to carry out their mandate, and also reduce the number of 'electoral/economic cycles' brought about by preparing for the next election

3) I have no preference re the setting of the election date.

4) Electorates should each be approx the same size in terms of population. With my reduced number of MP's there would be reduced need for list MP's

5) Any MP who leaves their party should be subject to a bi-election so the people can decide if they agree with that MP's move

Thank you for making this submission process so easy :-)

Sent on the 16 April 2013 at 08:10

5063

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 3:17 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: charles kopa clover    Email Address:    Phone:  
Postal AddressA:    Postal AddressB:    Postal City:  
Postal Region: waikato    Postal Post Code:    Postal Country: New Zealand  
Submission: kiaora

i believe te tiriti is very important in the creation of a constitution and is still very much apart of our countrys heritage and make up even today. the principles of partnership and active protection should be promoted and represented within the constitution

because they show a combined positive effort of both maori and pakeha in protecting our rights as a country. i am happy if this is put into one single document or one of many but having te tiriti in their shows kotahitanga and acknowledges the struggles my

tupuna have been through for my sake. i truly believe that my tupuna went into this partnership with the british crown for the betterment of the future generations. they believed that this strong partnership would be the foundation of a great journey that

would suppour maori in achieving greatness on a globel scale. Te tiriti is currently represented in 62 acts of parliment and i believe that this should continue within our constitution.

kiaora

Submitted on the 18 June 2013 at 13:07

5063a

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 7/08/2013 3:17 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: charles kopa clover      Email Address:      Phone:  
Postal AddressA:      :      Postal City:      Postal Region:  
waikato      Postal Post Code:      Postal Country: New Zealand      Submission: kiaora

i believe maori should be represented in all aspects of government from local body to within parliament itself. i believe capped maori seats should be only used to cap the minimum requirement of representation and that hapu should be more involved within local

government /council issues as to how assets within the hapu are utilised. around land,rivers,forests, their should be hapu representatives on every council for consultation. this promotes the treaty principle of partnership!

Submitted on the 18 June 2013 at 13:15

879

**From:** "Gary Clover"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 20/05/2013 3:46 p.m.  
**Subject:** re: SUBMISSION TO THE CONSTITUTIONAL ADVISORY PANEL .docx  
**Attachments:** SUBMISSION TO THE CONSTITUTIONAL ADVISORY PANEL .docx

From: Rev Gary Clover,  
Stoke Methodist Presbyter

With thanks,

Gary Clover



1

SUBMISSION TO THE CONSTITUTIONAL ADVISORY PANEL,  
Professor John Burrows & Sir Tipene O'Regan, Co-chairs,  
Commission on Issues Relating to the New Zealand Constitution

by

Rev Gary A.M. Clover, MA, BD, Dip.NZLS

Contact Details:

Nelson

## INTRODUCTION

1. Gary Clover is a minister in The Methodist Church of New Zealand, ordained in 1988, currently 10 years stationed as Presbyter of the Stoke Methodist Parish, Nelson.
2. I am a fifth generation Anglo-New Zealander or Pakeha of British origin, thus, not a "European". My family on both sides have been citizens of this land by right of Te Tiriti, since 1840 on my mothers' side in Wellington and in Nelson, and since the mid-1860s on my father's side. I therefore regard myself, in the words of Sir Edward Takurei Durie, as "tangata Tiriti" alongside Maori as "tangata whenua".
3. Degrees and Post-Graduate Diplomas:  
M.A. (1<sup>st</sup> Hons) (Auckland, 1973), specialising in early NZ mission history & Te Tiriti O Waitangi, under Professor Keith Sorrenson & Assoc. Professor Judith Binney. His MA thesis was entitled, *Christianity Among The South Taranaki Maoris 1840-53; a history of the Wesleyan Mission at Waimate South*;  
Bachelor Divinity (Otago, 1987).  
Diploma of the NZ Library School, Wellington, 1973; thereafter employed as a reference assistant and cataloguer at the Alexander Turnbull Library (1974), and NZ Room reference assistant and archivist at the Canterbury Public Library, Christchurch, 1975-1980.  
Christchurch Secondary Teachers College Diploma; taught at [redacted] (1980-1981), and as a reliever at [redacted] and [redacted]  
Diploma of Trinity Methodist Theological College (1986); ordained 1988.
4. Publications:
  - i) Various journal articles on the Treaty of Waitangi as a covenant to be honoured, eg:  
*"Te Tiriti O Waitangi; a still valid compact of dual sovereignty and mutual obligations between the Crown and the Maori Tribes", The Journal of the Christian Brethren Research Fellowship (119, November 1989);*



*"Te Tiriti O Waitangi; a covenant partnership between two sovereign equals", Today's Christian (11, February-March 1990);*

*"Honour The Treaty", The Vision New Zealand Congress 1997, (Auckland, Vision New Zealand, chapter 20);*

*"One Partner, One Vote", Stimulus; the New Zealand Journal of Christian Thought and Practice (VI, 2, May 1998) -formerly Journal of the CBRF;*

*"The Gospel and Bi-Culturalism", unpublished paper for the Vision NZ Theological Stream Task Force, 1998;*

ii) Mission and Church history, eg:

*"Going Mihinare', 'Experimental Religion', and Maori Embracing of Christianity – A Re-assessment", The Journal of the Christian Brethren Research Fellowship (121, April 1990);*

*"Brethren and Rivals; Co-operation and conflict between missionaries of the Church Missionary Society and the Wesleyan Missionary Society 1815-1870", Stimulus; the New Zealand Journal of Christian Thought and Practice (VII, 2, May 1999) -formerly Journal of the CBRF;*

*"Te Putarua, Te Awaroa, Te Matoe, and Te Hau Maringi – Why Methodists should know and honour them", The Wesley Historical Society (NZ) Journal 2010, (92, December 2010);*

*"More heroes of the Faith; Minarapa Te Rangi-hatu-ake and Te Aro Pa, 1839-1840", WHS (NZ) Journal 2012, (95, December 2012).*

Also English Wesleyan missionaries to NZ, eg., biographical article on, Rev John Skevington, 1815-1845, WHS Journal 2009, (89, December 2009); and:

*"The Other Missionary Printer; the Career of Rev William Woon 1830-1858, Wesleyan printer in Tonga and New Zealand" – full length biography awaiting publication by The Wesley Historical Society.*

*The Road To Methodist Union in 1913, (Christchurch, Methodist Publishing, September 2012)*

iii) Also, numerous newspaper and journal articles and comments on Treaty matters, and the 1995 Moutoa Gardens demonstration in Whanganui, etc.

iv) Bi-Cultural and Multi-Cultural experiences:

Teaching in schools with a strong Maori component.

Six months working on a secular, socialist, kibbutz in Israel December 1974-1975, and on further O.E. travelling through Europe with "Bridge In New Zealand".

Superintendent Presbyterian of the Whanganui Methodist Parish 1992-1996 during and involvement in the Moutoa Gardens demonstration, and mission work sharing in baptisms and tangi in Maori communities up and down the Whanganui River.

Working with Samoan and Tongan congregations in other Methodist parish ministry.

v) The Reasons I Hold My Views

Thus, my academic background in early New Zealand and Treaty history, my professional, secular, work career prior to my entering the Methodist ministry, my bi-cultural experiences of Maori communities and issues, and my religious vocation in Methodist parish ministry, are the reasons for the views I now express as my contribution to "The Constitution Conversation".

### MY ASPIRATION FOR AOTEAROA-NEW ZEALAND

1. As I told Professor Burrows at the Forum he attended in my Stoke parish's Lounge on Saturday, 27<sup>th</sup> April, I have spent much of my adult life writing on, defending the place of, and promoting, the place of Te Tiriti in both its language versions, as the founding constitutional document of this country.
2. My desire for this country is to see within my life time, as much as is possible, a full end to the distrust and discord between Maori and Pakeha, and the fulfilment of the tribes' rightful place in the government, economy, and society of New Zealand as promised in the "tino rangatiratanga" clause 2 of the Maori language Te Tiriti. This is the only way to bring a complete peace between Maori and Pakeha societies.
3. Specifically, I see that the only way for this discord to end is for our Pakeha ruling elite to truly listen to, and grant, to the tribal chiefly leadership their aspirations to a full and fair share of self-determination in the affairs of our bi-national nation as was promised in the sacred covenant our forbears in the Crown negotiated with the chiefs in 1840. They must ask Maori, as King David asked of the Gibeonite leaders, wronged by David's predecessor, Saul, "*What must I do that you might bless me?*" And then our Pakeha leadership must honour and carry out the answer they receive, no matter how difficult politically this may be.
4. Then, in any written constitutional document which may emerge, each language text of the Treaty must fully included, as the great majority of tribal Maori leadership advocate. It is not good enough to include just the five vague and woolly "Principles of the Treaty" the Labour government came up with in 1989. Besides those enumerated, the principles from a Maori world view, such as, "Manawhenua", "Manawairua", "Mana Motuhake", "Manaakitanga", "Kaitiakitanga", "Whanaungatanga", and "Kotahitanga", would then also need to be enumerated. To understand what I am saying here, I recommend the Advisory Panel consult, James Ritchie's *Becoming Bicultural* (Wellington Huia Publishers, 1992).
5. As a Christian minister, my faith understanding is that the "God of nations" to which our National Song refers, as a God who keeps His eternal word, blesses those leaders and those nations who keep the promises they make with other nations, and brings curse upon those leaders and nations who dishonour God's name by dishonouring their undertakings.
6. Thus, I refer the Advisory Panel members to a little-known story from the Jewish scriptures, the Old Testament, about a treaty made between Joshua and the Gibeonite peoples of Canaan at the time of the Hebrew invasion.
7. In *Joshua*, chapter nine, the Gibeonite leaders, on seeing how the other Canaanite peoples were being annihilated, tricked the Israelite general, Joshua, into making a treaty with the Gibeonites to spare them. Three days later the Hebrew leaders learnt that they had been duped. "*But all the [Hebrew] leaders said to all the congregation, 'We have sworn to them [the Gibeonites] by the Lord, the God of Israel, and now we may not touch them. This we will do to them, and let them live, lest wrath be upon us, because of the oath which we swore to them. ...So they [the Gibeonites] became hewers of wood and drawers of water for all the congregation, as the leaders had said of them.'*" (*Joshua*, chapter 9, verses 19-21)
8. Fast forward 200 or more years to 2 *Samuel* 21, verses 1-14. King Saul had been killed by the Philistines on Mt Gibal. There had been a seven year civil war between the sons of Saul and David's supporters until David succeeded to the throne of Israel.

After a time there followed three successive years of famine in Israel which King David recognised as divine judgement and asked the Lord for the reason. God told David that it was because of the sin of Saul, who, zealous to exterminate the heathen from Israel, had slain some of the Gibeonites with whom Joshua had made a treaty.

9. King David, then, asked the Gibeonites, a remnant of the Amorite tribes of Canaan, what they would accept as settlement for the injustice Saul had heaped on their people, asking, *"What should I do for you? And how can I make atonement that you may bless the inheritance of the Lord?"* Also, more directly, *"What do you say that I shall do for you?"*
10. This was a remarkable example of godly humility on the part of a ruler such as King David. As restitution for Saul's crime, the Gibeonites demanded justice in terms of a life for a life. *"...let seven of his [Saul's] sons be given to us, so that we may hang them up before the Lord at Gibeon on the mountain of the Lord"*.
11. So King David had seven of Saul's sons handed over to be hung. (Although, the cynic may say, David was able to remove seven rivals to his throne.) But he spared Mephibosheth, Jonathan's son, *"...because of the oath of the Lord which was between them, between David and Jonathan, the son of Saul."* And after that, the record says, *"...God heeded supplication for the land."* The drought came to an end.
12. This story should remind us all, even today, over 173 after the original signings of the Treaty of Waitangi, how important it is in any nation's life that treaty promises are kept, and the solemn intentions of such covenants between different peoples or nations are honoured. By such faithful keeping of our word does the "God of nations" bless our inheritance.
13. It appears not to matter whether the original undertaking was done by deceit, or the document signed was flawed as many claim of the Treaty of Waitangi. Nor does the passage of time annul the undertakings of a sacred covenant. Just as commercial contracts and taxation laws continue unbroken from one generation to another, so the commitments of "kawanatanga" (Crown governance) and "tino rangatiratanga" (the tribes' "entire chieftainship", or self-governance over their treasured resources), made between the British Crown and the Maori tribes must be fully honoured in good faith by the partners to the Treaty, for our nation to enjoy the fruitful blessing of Almighty God.
14. After all, successive New Zealand Governments since 1854 have honoured the Treaty clauses of both language versions where it has suited them, in the transfer to Crown sovereignty, in the land sale pre-emption, and in equality for all as British subjects. They continue to exercise the right of "kawanatanga". So to not so honour the "tino rangatiratanga" clause of the Maori language text, is a clear breach of the solemn undertakings made at Waitangi and around New Zealand, and invites the wrath of Almighty God and a curse to be upon our nation.
15. I would argue that the on-going discord between Maori and Pakeha, highlighted each year on Waitangi Day, the flagrant breach of solemn undertakings between the Crown and Ngai Tuhoe for a form of self-determination which led to the 1916 troubles and the Urewera police raid in our own time, the periodic land occupations and disputes such Te Whiti's at Parihaka in the 1880s and at the Moutoa Gardens in recent years, and the abysmal place of Maori people in our nations' health, education, and socio-economic statistics, are examples of God's wrath on our otherwise settled and peaceable society, as were the Anglo-Maori disturbances of

5

the 1860s.

## CONCLUSION

1. I would also have liked to have had much to say on many other matters the Advisory Panel has raised, but shall leave my further comments to the following concise list:
  - \* the Maori seats (leave it to Maori to decide when they might go);
  - \* the number of electorates (increase to 150 to obtain more manageable electorates and a chance to obtain a better quality of MP);
  - \* the proportion of Electorate to List MPs should always remain as much as practically possible at an equal level (ideally 75-75 in a House of 150 MPs);
  - \* the length of Parliament (four years, but only with suitable democratic safeguards such as fixed electoral terms and citizens' referenda binding on government);
  - \* longer more regular sittings of Parliament;
  - \* a lowering of the electoral threshold to 4% (if the "Piggy-back" provision is removed);
  - \* List MPs being required when expelled from their party to resign from Parliament (in order to maintain parliamentary party proportionality);
  - \* a written constitution if we must (or an easily available written guide to the documents, international conventions, entrenched laws, and cabinet conventions which go to make up our Constitution now);
  - \* if New Zealand goes republican, that our President be popularly elected.
2. I thank the Advisory Panel for its work in laying out so clearly the constitutional issues to be discussed, for putting together this 2013 Constitution Conversation as an opportunity for opinions such as mine above to be heard, and for taking the trouble to come to Stoke on April 27<sup>th</sup>.

*Gary A. Clover*

Gary A. Clover (Rev)

Date: 20 May 2013





1822

14-06-2013

Wanganui

Dear Panel,

The Foundation of Democracy is that all citizens must be equal with no regard to race, religion, or gender, and all citizens must be treated exactly the same under the law.

"I strongly oppose any legislation or reference to the Treaty of Waitangi in any current or future legislation."

If in the future a written constitution is drafted I am strongly opposed to any race-based legislation."

Yours sincerely

M E Coutant



2504.

**From:** "Hugh Coates"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 4/07/2013 10:15 a.m.  
**Subject:** Constitutional Questionnaire

- 1 120 member – this number would seem to be sufficient for a country of this size
- 2 4 years – the present term is not sufficient to allow the country to appreciate the effect of government policy
- 3 The election should be held on the anniversary of the previous election and so obviate political manoeuvring
- 4 The population size of the electorate
- 5 Revert to "first past the post" system, the experiment with "MMP" has led to over compromise, too much beaurocracy and woolly dceisions

1884'

17th June 2013

To the Secretariat  
Constitutional Advisory Panel,  
c/- Ministry of Justice,  
DX SX 10088  
WELLINGTON

Re: THE PROPOSED WRITTEN CONSTITUTION  
BEING CONSIDERED.

I am very opposed to the above proposal,  
If there is a draft for the constitution, I oppose  
any legislation or reference to the Treaty of Waitangi  
being in it. Any country split with different beliefs  
never survives in harmony or not at all!

There is something wrong with us as a people when  
we can't live together with respect for each  
nationality that reside here.

Are we not grateful and thankful for what we have here,  
we are all given the same privileges, This proposal  
could be a disaster.

Yours faithfully

TAURANGA

# Maori representation in Parliament: the Case for Retaining the Seats

## 1.1 Introduction

The New Zealand Parliament contains a number of ‘reserved’ Maori seats. Since their introduction in 1867,<sup>1</sup> the Maori seats have been a source of contention in New Zealand politics. Many politicians and political scientists have argued for their abolition, asserting that the reserved seats are not only superfluous in the Mixed Member Proportional electoral system (MMP) – which arguably ensures proportional representation for Maori without recourse to guaranteed seats – but further, that they side-line ‘Maori issues’ and are therefore ineffective. The Maori seats are also accused of creating ‘Parliamentary overhang’, thereby subverting the will of New Zealand voters. More cogently it is contended that the Maori seats contravene the principle of ‘inherent equality’ (the axiom of democracy)<sup>2</sup> and represent an insidious form of reverse racism. As a ‘Maori seat-defender’, the author of this submission will address each of these arguments to make a conclusive case for the retention of Maori seats. This submission will therefore argue that the seats are necessary to ensure a ‘Maori voice’ in Parliament, and that they guarantee the effective voicing of their electors’ concerns. Further, it will assert that Maori seats do not create democratic inequality, and are important to Maori as a symbol of the *tino rangatiratanga* which was guaranteed to Maori under the Treaty of Waitangi.

## 2.1 The History of the Maori Seats:

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<sup>1</sup> Phillip Joseph *The Maori Seats in Parliament* (New Zealand Business Roundtable, Wellington, 2008) at 8.

<sup>2</sup> RA Dahl *On Democracy* (Yale University Press, New Haven, 1998) at 79.



Maori seats have a “lineage of some 140 years”<sup>3</sup> and were initially created to provide Maori (males) with a political voice. When the New Zealand Constitution Act was passed in 1852, it conferred the right to vote which was based on individual property ownership.<sup>4</sup> This had the effect of politically disenfranchising the majority of Maori, whose communal land holdings were not recognised.<sup>5</sup> The Maori Representation Act 1867 established four Maori electorates, within which voting rights were based upon nationality rather than property. These separate electorates also prevented Maori from ‘swamping’ European seats<sup>6</sup> and encroaching upon “non-Maori majority’s domination of Parliament.”<sup>7</sup> The seats were intended as a temporary measure while Maori customary land was converted to Crown grants,<sup>8</sup> yet were extended in 1872 for five years under the Maori Representation Act Amendment and Continuance Act, and then indefinitely in 1876.<sup>9</sup> Until the introduction of MMP, the number of Maori seats remained at just four, when a formula which calculated the number of seats “in accordance with the Maori Electoral Option”<sup>10</sup> supplanted them. Thus, the number of Maori seats in the MMP Parliament is determined

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<sup>3</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 351.

<sup>4</sup> Phillip Joseph *The Maori Seats in Parliament* (New Zealand Business Roundtable, Wellington, 2008) at 6.

<sup>5</sup> Ibid.

<sup>6</sup> Xanthaki, Alexandra and Dominic O’Sullivan, “Indigenous Participation in Election Bodies: The Maori in New Zealand” (2011) Int’l J. Group Rts 16(2) at 191.

<sup>7</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 357.

<sup>8</sup> Ibid.

<sup>9</sup> Maori Representation Acts Continuance Act 1876

<sup>10</sup> Phillip Joseph *The Maori Seats in Parliament* (New Zealand Business Roundtable, Wellington, 2008) at 5-6.

by the number of Maori who register on the Maori roll during the Optional period.

Currently, seven Maori seats exist.<sup>11</sup>

### 3.1 The case for the seats:

The historical context of the seats now established, what case can now be made for their retention? In *A v Secretary of State for the Home Department*, Lord Bingham stated that to legitimise “preferential treatment” a “reasonable or objective justification for the distinction”<sup>12</sup> must be provided. Therefore, the burden of the law falls on the defender of Mori seats to “establish objective justification for their existence.” Putting the question of whether Maori seats are, in fact, preferential treatment briefly to one side, can such justification be established?

3.2 The implementation of the highly proportional MMP voting system has led many to believe that reserved Maori seats are redundant. Removal of the Maori seats would render the Maori vote contestable and, it has been argued that the “relative size of Maori as a social group”<sup>13</sup> in New Zealand is sufficiently large to compel political parties to compete for Maori party and constituency votes.<sup>14</sup> To gain Maori political support, parties would be obliged “to select Maori candidates both for high list places and winnable constituency seats.”<sup>15</sup> Maori political participation would become a priority for all parties. It has

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<sup>11</sup> The New Zealand Parliament “The Origin of the Maori Seats” (2011) New Zealand Parliament Paremata Aotearoa <<http://www.parliament.nz/en-NZ/Features/7/9/e/00NZPHomeNews201109011-The-origins-of-the-M-ori-seats.htm>>

<sup>12</sup> *A v Secretary of State for the Home Department* [2005] AC 68 at [115].

<sup>13</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 348.

<sup>14</sup> Royal Commission *Report of the Royal Commission on the Electoral System: Towards a better democracy* (1986) 81 at 3.2

<sup>15</sup> *Ibid.*

therefore been suggested that removing “separate Maori electorates”<sup>16</sup> would actually increase Maori representation.

**3.3** Can the continuation of the seats be justified in light of this argument? It appears so.

The suggestion that removal of Maori seats would increase Maori representation in Parliament is highly optimistic. In truth, indigenous representatives are “rarely elected where indigenous people constitute numeric minorities within the nation whole.”<sup>17</sup>

Instead, political parties attempt to “gain the non-indigenous majority vote”,<sup>18</sup> which, as a larger percentage of the populace, affords greater chance of election. Voting rights without reserved seats may thus be insufficient to ensure that Maori participation is effective as parties may not pursue their votes. Moreover, effective participation is right afforded to Indigenous Peoples under the United Nations Declaration on the Rights of Minorities under article 2(3).<sup>19</sup> While New Zealand, as a non-member of the Council of Europe, has not ratified this Declaration, its ratification by 28 European States is “indicative of international trend on minority rights.”<sup>20</sup> A voting system in which Maori candidates may seldom be elected is ineffective, and in contravention of this Convention. Maori seats ensure the existence of Maori MPs in Parliament. The Maori seats are therefore not redundant under MMP and their retention is justifiable.

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<sup>16</sup> Ibid.

<sup>17</sup> Xanthaki, Alexandra and Dominic O’Sullivan, “Indigenous Participation in Election Bodies: The Maori in New Zealand” (2011) *Int’l J. Group Rts* 16(2) at 181.

<sup>18</sup> Ibid.

<sup>19</sup> United Nations Declaration on the Rights of Members belong to National or Ethnic, Religious and Linguistic Minorities (18 December 1992).

<sup>20</sup> Ministry of Justice “International and domestic law on minorities” (2000) Ministry of Justice Tahu o te Ture <<http://www.justice.govt.nz/publications/publications-archived/2000/pacific-peoples-constitution-report-september-2000/international-and-domestic-law-on-minorities>>



**3.4** Yet, critics of the Maori seats argue that they do result in ineffective representation by virtue of side-lining ‘Maori issues.’ Separate Maori seats results in “separate-Maori representation” and correspondingly “separate non-Maori representation.”<sup>21</sup> In other words, because MPs are accountable to the constituencies by which they were elected, this means that “non-Maori MPs are not responsible to Maori communities.”<sup>22</sup> The numerically dominant non-Maori MPs have no need to reconcile Maori issues with non-Maori issues. Further, according to the Royal Commission, Maori MPs, as a minority in among MPs, can “only gain progress on these issues if that non-Maori majority deigns to notice the issue and lend them a hand.”<sup>23</sup> Maori seats, therefore, render Maori MPs ineffective as they limit those people who are accountable for promoting Maori views to a minority group in Parliament with reduced political persuasion.

**3.5** These Royal Commission comments, however, were made when the number of Maori seats was restricted to just four,<sup>24</sup> and represented a true minority of electorate seats. Today, “seven dedicated Maori seats”<sup>25</sup> exist in Parliament. This growth in seats has increased the authority with which the Maori MPs assert Maori views, and the political sway they have over other seat-holders. Maori MPs comprise a reasonable force in Parliament and can thus force the non-Maori majority to ‘notice the Maori issue.’ Maori seats therefore afford effective representation of Maori views.

**3.6** In fact, it has been argued that reserved seats afford inflated representation to Maori due to the political phenomenon of ‘overhang.’ Overhang occurs when a party wins more constituency seats than its share of the party vote ‘entitles’ it to, and the number of seats in Parliament are increased

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<sup>21</sup> Phillip Joseph *The Maori Seats in Parliament* (New Zealand Business Roundtable, Wellington, 2008) at 13.

<sup>22</sup> Ibid.

<sup>23</sup> Royal Commission *Report of the Royal Commission on the Electoral System: Towards a better democracy* (1986 ) 81 at 91.

<sup>24</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) *Election law Journal* 347 at 360.

<sup>25</sup> Ibid.

to include these additional seats. Consequently, a political party could gain more than 50 per cent of the vote, and yet be unable to govern because the proportion of the vote required to form a majority government has swelled.<sup>26</sup> This, arguably, subverts the expressed will of the New Zealand populace. While “Maori seats do not produce overhang per se”,<sup>27</sup> the voting patterns – namely the “erosion of Labour party support in the Maori seats”<sup>28</sup> – surrounding the reserved seats have caused such overhang. Maori MPs are gaining Maori electorate seats, but not the corresponding portion of party vote, resulting in their “disproportionate leverage”<sup>29</sup> in Parliament. It is argued that this inflated representation is illegitimate.

3.7 This problem, however, is attributable to the MMP electoral system itself and not the Maori reserved seats. Overhang is considered illegitimate because it affords disproportionate representation in Parliament. Disproportionate representation, however, is one of the unfortunate realities of MMP. For example, in 2011, the United Future party gained only 0.6 per cent<sup>30</sup> of the party vote, with a corresponding seat entitlement of 0.7 per cent of one seat. Yet, because Peter Dunn successfully retained his Ōhāriu electorate seat, United Future maintains a seat in Parliament.<sup>31</sup> Such inflated representation lends support to the ‘tail wagging the dog’ argument, which states that minority parties have disproportionate sway in Parliament, but this problem is with MMP and not the Maori seats.

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<sup>26</sup> Phillip Joseph *The Maori Seats in Parliament* (New Zealand Business Roundtable, Wellington, 2008) at 21.

<sup>27</sup> Jeremy Sparrow “The Truth About Maori Seats” (LLB (Hons) Dissertation, Otago University, 2010).

<sup>28</sup> Phillip Joseph *The Maori Seats in Parliament* (New Zealand Business Roundtable, Wellington, 2008) at 20.

<sup>29</sup> *Ibid* at 21.

<sup>30</sup> Electoral Commission “Overall Count Results - Overall Status” (2011) Elections

<[http://www.electionresults.govt.nz/electionresults\\_2011/partystatus.html](http://www.electionresults.govt.nz/electionresults_2011/partystatus.html)>

<sup>31</sup> Electoral Commission “Official Count Results - Successful Candidates” (2011) Elections

<[http://www.electionresults.govt.nz/electionresults\\_2011/successfulcand.html](http://www.electionresults.govt.nz/electionresults_2011/successfulcand.html)>

**3.8** It appears, therefore, that there exist many justifications for the continuation of the Maori seats. This submission will now return to the question of whether the Maori seats contravene the inherent equality which constitutes democracy, thus conferring ‘preferential treatment’ on Maori people through a form of reverse racism.

**3.9** Democracy may be defined as the “right of all citizens to involve themselves in the electoral system on an equal basis.”<sup>32</sup> ‘Equal basis’ means that when one person’s “factual situation is indistinguishable from another [it] should be given just treatment.”<sup>33</sup> Put more simply, like cases should be treated alike. Further, The Human Rights Act 1993 specifically delineates race<sup>34</sup> and ethnic or national origins<sup>35</sup> as prohibited grounds for distinguishing such factual situations: when unequal treatment is justified by these grounds, such treatment is discriminatory.<sup>36</sup> Therefore, it is arguable that basing ‘participatory rights’ in Maori seats on ethnic grounds conflicts with both “the right of all citizens to involve themselves in the electoral system on an equal basis”<sup>37</sup> and, more broadly, democracy itself

**3.10** While Maori electoral participation under the reserved seats is different to non-Maori participation,<sup>38</sup> it is not true that “Maori seats thereby breach the principle of democratic equality.”<sup>39</sup> A different form of representation is not analogous with inequality in representation. In fact, Maori seats do not render the vote of one voter less “determinative of the issue as is the vote of any other.”<sup>40</sup> all persons qualified to vote in New Zealand are afforded the ability to “vote

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<sup>32</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 348.

<sup>33</sup> *Patel v Chief Executive of the Department of Labour* [1997] 1 NZLR 102 at [111]

<sup>34</sup> Human Rights Act 1993, s 21(f)

<sup>35</sup> *Ibid*, s 21(g)

<sup>36</sup> *Ibid*, s 65

<sup>37</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 348.

<sup>38</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 361-2.

<sup>39</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 362.

<sup>40</sup> *Ibid*.



directly on the issue of who will enter parliament to represent him or her.”<sup>41</sup> While some MPs will inevitably enter Parliament by virtue of the Maori vote alone, a choice from which all non-Maori are legally excluded<sup>42</sup> this situation is equivalent the geographical limitations placed on each voter’s right to vote per the Electoral Act 1993.<sup>43</sup> A person who resides in North Dunedin cannot vote in the Christchurch Ilam electorate, for example, and is thus legally excluded from influencing who will occupy the Ilam seat in much the same way that non-Maori are excluded from voting on who will occupy a Maori seat. Because of the geographical constraints placed on all voters, therefore, it cannot be argued that the Maori vote affords Maori ‘preferential treatment’ in the form of advantageous political representation.

3.11 There is still an argument to be made, however, that distinctions in New Zealand’s electoral laws based upon ethnicity alone are “just plain wrong.”<sup>44</sup> Is this argument legitimate, however? When the Treaty of Waitangi was signed in 1840, it guaranteed Maori the right to *tino rangatiratanga* or the “the unqualified exercise of (their) chieftainship.”<sup>45</sup> One aspect of such chieftainship is the “right of Maori to participate *as Maori* in the decision making process of the New Zealand state.”<sup>46</sup> The reserved seats achieve this goal: they allow Maori to elect Maori representatives who are accountable to their Maori electors. The seats, therefore, are a tool to give effect to the Treaty, and they are regarded by Maori as such. The Waitangi Tribunal in their “Maori Electoral Optional Report” stated that the reserved seats are viewed by Maori as the “principle expression of their constitutional position in New Zealand” and are seen as

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Electoral Act 1993, ss74(1), 75(1) in Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 362.

<sup>44</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 363.

<sup>45</sup> IH Kawaharu *Waitangi: Maori and Pakeha Perspectives on the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 314.

<sup>46</sup> Andrew Geddis “A Dual Track Democracy? The Symbolic Role of the Maori Seats in New Zealand’s Electoral System” (2006) 5(4) Election law Journal 347 at 358-9.

the exercise “of their *tinio rangatiratanga*.”<sup>47</sup> Maori seats demonstrate a “particular message about their special status by virtue of first occupancy”,<sup>48</sup> and acknowledge that Maori are Treaty partners. In this context, distinctions based upon ethnicity are legitimated.

#### 4.0 Conclusion

The Maori seats play a crucial role in New Zealand’s electoral law. They remain relevant and necessary in the context of MMP, and effectively promote ‘Maori issues’ in Parliament. Further, while the seats provide a different channel by which Maori electors can exercise their right to vote, this difference is not unfairly advantageous to Maori: Maori and non-Maori have equal abilities to participate in New Zealand’s political system. Finally, the seats ensure that Maori have the ability to exercise their *tinio rangatiratanga* as guaranteed by the Treaty of Waitangi in 1840. It is clear that the Maori seats are an important feature of the New Zealand political landscape, and must, therefore, be retained.

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<sup>47</sup> Waitangi Tribunal Department of Justice *Maori Electoral Optional Report* (1994 ) 5 at 3.1

<sup>48</sup> Xanthaki, Alexandra and Dominic O’Sullivan, “Indigenous Participation in Election Bodies: The Maori in New Zealand” (2011) *Int’l J. Group Rts* 16(2) at 192.





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**From:** "Mark Cocks"  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 14/04/2013 3:23 p.m.  
**Subject:** FW: My submissions regarding the current constitutional review

Subject: FW: My submissions regarding the current constitutional review

I understand that unless we the public add our views to this constitutional review, we are likely to end up with a constitution favouring one ethnic group in a multicultural society.

Please accept my submissions below as part of the constitutional review being carried out, based on the questions you have asked on your web site.

Hopefully most New Zealanders will make a submission.

What are your aspirations for Aotearoa New Zealand?

To become a multicultural population of New Zealanders, with no specific ethnic group singled out for special mention or treatment

How do you want our country to be run in the future?

As a multicultural population of New Zealanders, with no specific ethnic group singled out for special mention or treatment

Do you think our constitution should be written in a single document? Why?

Yes- because we need to move on from the historical Treaty of Waitangi as having any relevance to our future

Do you think our constitution should have a higher legal status than other laws (supreme law)? Why?

Yes- because we need one document which is overriding

Who should have the power to decide whether legislation is consistent with the constitution: Parliament or the Courts? Why?

The courts

Does the Bill of Rights Act protect your rights enough? Why?

No- presently our rights are readily put aside to favour Maori interests

What other things could be done to protect rights?

Make sure the new constitution does not favour any one ethnic group over others

Do you think the Act should have a higher legal status than other laws (supreme law)? Why?

Yes

Who should have the power to decide whether legislation is consistent with the Act: Parliament or the Courts? Why?

Courts

What additional rights, if any, could be added to the Act? Why?

No comment

Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution?

Absolutely none at all- it's irrelevant historically and all it does is favour one ethnic group at the expense of all the other ethnic groups- this is racially discriminate thinking even to suggest the question.

Do you think that the Treaty should be made a formal part of the constitution? Why?

Absolutely not- it's a historic document which has no relationship to our multicultural society today. this is racially discriminate thinking even to suggest the question.

How should Maori views be represented in Parliament?

The same as the views of all other ethnic groups- should not be represented at all. this is racially discriminate thinking even to suggest the question.

How could Maori electoral participation be improved?

It should not be a concern of this constitution in any way- this is racially discriminate thinking - why not ask how Chinese or Indian electoral participation be improved????

How should Maori views and perspectives be represented in local government?

The same as all New Zealanders views, whether Chinese, European, Indian or any other races views. Again, this question shows racially discriminate thinking.

How many members of Parliament should we have? Why?

The same proportion per head of population as UK (i.e. many less than now!) Because we have too many and they are too expensive in a small country

How long should the term of Parliament be? Why?

4 years- to achieve some stability before the electioneering starts again.

How should the election date be decided? Why?

Fixed date so everyone knows where they stand in advance

What factors should be taken into account when the size and number of electorates are decided? Why?

No input to offer on this, except that racially based special seats must be abolished

What should happen if a member of Parliament parts ways with the party from which he or she was elected? Why?

If elected by the public- stays in parliament until the next election as an independent

If a list MP must leave parliament immediately

Mark Cocks



4825

**From:** <webmaster@ourconstitution.org.nz>  
**To:** <constitutionalreview@justice.govt.nz>  
**Date:** 31/07/2013 4:34 p.m.

Sent from The Constitution Conversation #link:<http://www.ourconstitution.org.nz/>.

Full Names: John Cody Organisation Name: Too much emphasis is being placed on affiliations  
to corporate bodies Email: Phone: Postal AddressA:

Postal AddressB: Postal City: Postal Region: Postal  
Post Code: Postal Country: New Zealand Submission: The status of 'citizen' needs to be  
strengthened in terms of both rights and contribution. Two of the trends that have worked against this  
are: 'commercialisation' of important provisions (e.g. access to health care, privileging the position of  
large employers

and private shareholders); and a 'pragmatic' disregard of statutory objectives and standards by  
ministers and bureaucrats (e.g. DHBs and CYFS) in order to advance party political and corporate  
interests. The National Integrity review underway by Transparency  
International is an important parallel process which has, I believe, implications for this review.

Submitted on the 31 July 2013 at 16:33