

2924

From:
To: <constitutionalreview@justice.govt.nz>
Date: 8/07/2013 5:07 p.m.
Subject: CAP Submission

It is my belief that the time has come to abolish the separate Maori elector's roll and the Maori Parliamentary Seats. The reasons for the creation of separate electorates is well established in the early history of our country and was a wise move at that time to provide voting rights when those rights related to the ownership of property. The subsequent failure to remove those special arrangements when voting rights became universal for all who had reached the age of 21, men and women both, has consequently resulted in the creation of an unhealthy separation of races. This country now is multi racial in a way that has accelerated since the middle of the last century with large groups of Pacific Island and Asian people now calling New Zealand their home by way of immigration and subsequent taking up citizenship. During the 1990's, at an Auckland secondary school prize giving I attended, I counted the flags hanging in the school hall representing the current pupils attending. There were more than 100 flags!

This is no longer a country made up of predominately white Europeans populating the towns and cities with Maori living in the backblocks as it was when I attended school in the 1940's, it is a country where many do not even realise that they may be 1/16th or less Maori, yet they have the right to a separate electoral roll which they do not bother to use. The fact that during the current period of choice open for Maori to state their electoral preference has seen almost as many choose to leave the Maori Roll as those who have chosen to be on that Roll. That tells me that the importance of that Roll is diminishing.

Our Parliament has many Members with a Maori heritage representing General Electorates or are there by virtue of their ranking on their party's list. This is where Maori, Pacific Island, Asian and other racial groups should be represented, working in racial harmony for the betterment of all.

W Davison.

Wally and Shirley Davison,

1571

From: "Ali Davison" <>
To: <constitutionalreview@justice.govt.nz>
Date: 25/06/2013 1:27 p.m.
Subject: CAP submission
Attachments: Submission to CONSTITUTIONAL ADVISORY PANEL .doc

Please find attached my submission to the Constitutional Review Panel.

Acknowledgement of receipt would be appreciated.

Thank you,
A Davison
Hamilton

SUBMISSION TO CONSTITUTIONAL ADVISORY PANEL

From: Alison Mav Davison,
Contact Ph:
Address: Hamilton Waikato, New Zealand

1. My aspirations:

There must be one law for all New Zealand people, arrived at by democratic means. I oppose any laws that establish or promote racial distinction or division. Major decisions should be made by conducting binding public referenda.

2. New Zealand's Constitution:

To achieve and maintain my dream the New Zealand Constitution should remain as it stands now – a set of rules that determines how we are governed and how we live together as a country. It does not need to be a single document

Parliament must retain exclusive power to make legislation as politicians are democratically elected by and answerable to, the people (and can be dismissed if necessary). A change to the format would mean judges – who are not elected by the people – making/altering existing laws. There is a danger that judges may not be representing the majority of New Zealand's people.

3. NZ Bill of Rights Act:

The current format has served us well. I am 100% in favour of the NZ Bill of Rights Act being 'entrenched', 75% Parliamentary vote for change or a majority vote in a public referendum is fair.

Private property rights should be included in the Bill of Rights. New Zealanders assets should not be under threat of confiscation for any political reason.

4. Treaty of Waitangi:

The original Treaty of Waitangi, which gave Britain the right to govern New Zealand and the Maori people acceptance as British citizens, should have no role whatsoever in our Constitution. The Constitution is a 'set of rules' that has withstood the test of time. The Treaty is not a set of rules (nor is it our founding document). Democracy has nothing to do with race. We are a multi-cultural not bi-cultural country. Leave race-based issues out of the constitution so that it continues to be apolitical for a fair and just democracy.

If contentious "Treaty principles" become part of the constitution NZ will eventually become a two-tiered, them and us, society. It would give opportunities for Maori to be granted special privileges when I'm sure we will prosper more if we are all guided and united by the same laws.

Keep the Treaty out of the Constitution please.

5. Maori Representation:

What is democratic about NZ's unique Maori seats in Parliament? They are guaranteed seats. Race-based politics should not be allowed. Both the Maori seats and separate Maori Roll should be abolished.

Maori should be insulted by the call for 'special' representation? How condescending to continually push the idea that they are victims. They are no more special than anyone else. The majority are perfectly capable of expressing their views. They are educated, intelligent people, able to vote in an election for their preferred candidate (Maori, Alaskan, Irish, Asian, or whatever nationality).

Is the Maori view, in national or local government affairs, more important than any other ethnic group in New Zealand? We are all immigrants to this wonderful country originally, some earlier or later than others. If we are ever to live harmoniously together we should start by living under the same laws and guidelines, no privileges given.

Maori electoral participation could be improved by encouragement and education, certainly not race-based literature. Pride in our country (everyone's country) needs to be ramped up. We are too busy bickering about the small stuff to realise how fortunate we are. In this technological age it isn't hard to get 'good' messages across. We need to look forward positively, not back. (Improving the behaviour of our elected MPs would also encourage voters to contribute.)

Voting in an election means capturing people's attention with a feeling of inclusion and importance. The turnout is never at the level it should be, Maori or otherwise. Education in this area needs to start at a young age, preferably in the family home, through pre-school, primary etcetera. The impact of good family interaction can't be stressed enough. Perhaps "Working together we can make a difference" or "Lead by Example" could become our mantra.

6. Electoral Matters:

We have far too many Members of Parliament who are List MPs. For a relatively small country we are over represented.

The 63 general electorate members deserve their spot. How the number of electorates is calculated seems fair but we cannot justify more than 100 seats in total. Why do we need special seats for Maori? Do we also have special seats for Asian citizens, Pacific Islanders, Dutch, American, South African? Maori are being given an unnecessary privilege over other New Zealanders.

With rapidly improving technology and information sharing the physical size of an electorate doesn't have the same importance as it may once have had. MPs have huge resources at their fingertips and should easily manage the workload if they are focused.

The current system of three yearly flexible election dates should continue. It works well as it is (If it aint broke why fix it?) If we have an effective government working for its people it will be re-elected. If not, it needs to be ousted sooner rather than later. Four years could be a disaster.

If a Member of Parliament parts ways with the party from which he or she was elected that MP should have to quit altogether. No party hopping. An MP should represent only the party he/she was elected/appointed by. Please reinstate the 2001 law requiring this course of action.

7 Other Issues:

a) I would like to see a Declaration of Equality enacted by our democratic Parliament to ensure that the people of New Zealand live under the principle of One Law for All. United we stand, divided we fall. Too many of our forefathers (of many nationalities) have given their lives for a free and fair New Zealand to see it falter now.

b) Any change in our constitution should only be legitimate if approved by voters in a binding public referendum. This is too big an issue to be decided by parliamentary vote, especially with MMP in the mix. A public referendum ensures the fairness of any change.

1437

From: ' Davison"
To: <constitutionalreview@justice.govt.nz>
Date: 18/06/2013 4:52 p.m.
Subject: CAP submission
Attachments: CAP submission from K Davison.doc

Please accept the attached submission for consideration by your Panel.

Acknowledgement of receipt would be appreciated.

K B Davison
Hamilton

CONSTITUTIONAL ADVISORY PANEL

SUBMISSION

1. Aspirations
2. Constitution
3. Bill of Rights
4. Treaty of Waitangi
5. Electoral Matters
6. Maori representation
7. Other comments

1. No law or act should be designed on the basis of race. All New Zealand citizens should be considered equal. New Zealand should be governed with respect to the wishes of the majority, without bowing to pressure from minority lobby groups.

2. We do not need a single document to define our Constitution. The Bill of Rights Act 1990 and the Constitution Act 1986 give sufficient guidance to elected politicians and give some flexibility when formulating new law.

3. The Bill of Rights Act should include the protection of private property rights. The Bill of Rights should be entrenched.

4. The Treaty of Waitangi gave the British Crown the right to govern New Zealand and Maori to be accepted as British citizens, subject to the same laws as all other immigrants. No special status. They are not the indigenous people of New Zealand. We are all immigrants.

The Treaty of Waitangi should not be considered as our founding document and not be part of our constitution.

5. We have far too many List MPs. The parliamentary term should remain at three years and the election date should be fixed e.g. the last Saturday in October every three years.

6. The Maori electoral role should be abolished, all citizens should be treated equally. Maori seats should be abolished, again, all citizens should be treated equally. Maori should have no special representation on local bodies.

7. I reject any reference to the Treaty of Waitangi in any constitutional documents and ask that all reference should be removed from existing legislation.

Race-based representation in government and local bodies should be abolished.

I would like the Waitangi Tribunal to be abolished

I do not accept that the Treaty of Waitangi is our founding document.

Kevin Bruce Davison

Contact Phone:

Address:

, Waikato, NZ

2135.

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 3/07/2013 9:25 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names:	John Davison	Organisation Name:		Email:		Phone:	
	Postal AddressA:			Postal AddressB:		Postal City:	Paihia
Region:	Northland	Postal Post Code:		Postal Country:	New Zealand	Submission:	I am

opposed to all forms of racism.

I submit that the maori parliamentary seats be abolished and that there should be one electoral roll for all New Zealanders.

Sent on the 3 July 2013 at 09:24

1104

From:
To: <constitutionalreview@justice.govt.nz>
Date: 5/06/2013 6:59 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Jocelyn Anne D'Oyly Davison Organisation Name: Email:
Phone: Postal AddressA: Postal
AddressB: Postal City: Culverden Postal Region: North Canterbury Postal Post Code:
Postal Country: New Zealand Submission: I believe the current proposals to change and
enshrine the New Zealand Constitution would result in a divided nation. It is vital that This issue
should not be allowed to fall prey to a vocal minority and should be very openly debated

Sent on the 5 June 2013 at 17:46

Quick Submission

Your name:

JENNIFER JARSON

Name of the organisation you represent (if applicable):

Postal address or email address:

NAPIER

The Treaty of Waitangi is central to any Constitution for this country, enshrining the rights of both Maori and Pakeha. The Bill of Rights must also be included, or at least referenced.

The Constitution must be a single document, not a collection of material which can't be easily referred to. It could be amended, perhaps every ten years, by referendum.

NZ could well have a system with a President, like the Republic of Ireland, rather than the Governor-General representing the Queen. However

this is one aspect of a Constitution that will require time to evolve and is an example of why any move towards having a Constitution should take several years not in any sense be pushed through quickly. I say this despite the fact that the most pressing reason for having a Constitution is to prevent any government (specifically this one) pushing through legislation which removes basic human rights (eg the right ^{adequate} to housing) and diminishes sovereignty in our own country (by selling off N.Z.).

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

1675

From: Ayling Dawson Gmail <
To: "constitutionalreview@justice.govt.nz" <constitutionalreview@justice.gov...
Date: 27/06/2013 4:17 p.m.
Subject: "CAP" submission constitutional review

I want no change to New Zealand's unwritten constitution. It has served us well and I would like to see one New Zealand for all our citizens.

Joan Dawson

Tauranga

1544

From:
To: <constitutionalreview@justice.govt.nz>
Date: 24/06/2013 1:34 p.m.
Subject: FW: "CAP" submission NZ Contitution Review

-----Original Message-----

From: Natalie & Mason
Sent: Monday, June 24, 2013 1:23 PM

Subject: "CAP" submission NZ Contitution Review

I want no change to New Zealands unwritten constitution.

Natalie Dawson

Tauranga

Quick Submission

Your name:

Robert C. D. Lawton

Name of the organisation you represent (if applicable):

Postal address or email address:

to when there was tribal conflict and lawless early European settlers. Successive governments have bowed to pressure from European settlers to take land/confiscate it from the Maori without proper compensation. The Waitangi Tribunal is helping redress these actions. Settlement should include resources/assets at the time of signing the Treaty e.g. land, marine life, forests, but should not include radio frequencies, gas mining and distribution, electric power generation etc.

⑥ Maori Representation. Maori are well represented in Parliament. There are now significant numbers of Indian and Chinese citizens. Should they have a voice?

⑦ Electoral: 120 MPs is too many for a population of 4.5 millions. The system of list MPs is open to question. The term of Parliament should be four years.

Above all, NZ. needs a government of integrity, willing to deal positively with issues - especially those resulting from Royal Commissions.

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

① The Govt. of NZ should act for the wellbeing of its community and of the country - NOT from self interest or pressure from lobby groups.

② There should NOT be a written constitution as a single document.

③ Parliament should decide whether legislation is consistent with a constitution. Parliament is answerable to the people. c.f. courts are answerable to Parliament.

④ The Bill of Rights is deficient in NOT spelling out the responsibilities of the people.

⑤ The Treaty of Waitangi should become less important in the future. It was written and agreed

4767

From: Richard Dawson <
To: <constitutionalreview@justice.govt.nz>
Date: 31/07/2013 3:24 p.m.
Subject: CAP submission
Attachments: Dawson Submission.pdf

To Whom It May Concern,

Attached is a submission on the topic of the Treaty of Waitangi.

There is no linear reasoning in it. I discuss some familiar cases with the hope of offering questions that will help 'constitutionalize' the Treaty.

Sincerely,

Richard Dawson

Christchurch

Constitutional Conversation and Questions of Justice: The Treaty of Waitangi

Richard Dawson

He tao kii ekore e taea te karo, he tao rakau ka taea ano te karo.¹

In the late 1860's, it became known that the reefs beneath the mudflats at the end of the Kauwaeranga Creek contained gold. Native Minister James Richmond described the area as being 'in an exceptional legal position', for 'the Native title over it would probably not be recognized by courts of law' and 'it is not within the definition of Crown land'.² Local indigenes heard news of a colonial will to appropriate the area. In 1869, Tanameha Te Moananui and others sent these words to Parliament:

O friends the Assembly of Chiefs, salutations to you all.

... The word has come to us that you are taking our places from high water-mark outwards. ... O friends, it is wrong ... Our voice, the voice of Hauraki has agreed that we shall retain parts of the sea from the high water-mark outwards. These places were in our possession from time immemorial; these are the places from which food was obtained from the time of our ancestors ... down to us their descendants. Why do you desire to seize heedlessly upon these places? What fault of ours has been discovered by you? ...

O friends, our hands, our feet, our bodies, are always on our places of the sea; the fish, the mussels ... are there. Our hands are holding on to those, extending even to the gold beneath. The men, the women, the children, are united in this, that they alone are to have the control of all the places of the sea, and that the Europeans are to have nothing to do with them.

... Act justly towards the good tribe, because the searching for justice is with you.³

We might readily imagine that the petitioners hoped that their expressed desire to be treated justly would attract their audience into an amicable conversational interchange,

¹ This proverb attracted the attention of pioneer William Colenso. His translation is, 'A spoken spear cannot be warded off, a wooden spear can easily be warded.' See his article, 'On a better Knowledge of the Maori Race' (1879) *Transactions and Proceedings of the New Zealand Institute* 128.

² Quoted in F Sinclair, 'Kauwaeranga in Context', (1999) 29 *Victoria University Law Review* 139, 141.

³ *Appendices to the Journals of the House of Representatives* 1969, F. No.7, 18.

perhaps a *kanohi ki te kanohi* (face-to-face) meeting. We might wonder what questions the audience asked themselves when they were reading the petition. Did they struggle when trying to place the 'voice'? Did they struggle over how to compose a response, wondering what relation to constitute between the parties (egalitarian, hierarchical, distant, intimate, . . .)? How might the parties have imagined what 'justice' is?

Might acts of justice begin in a conversational performance? What are the conditions required for meaningful conversation (inter- and intra-cultural) to occur, in and out of the law? What are we doing when we are conversing, as distinguished from, say, commanding and lecturing? I have those and other questions in mind as I offer here a response to the Constitutional Advisory Panel's *New Zealand's constitution*, which 'invites' its readers 'to take part in a conversation about New Zealand's constitutional arrangements.'⁴ I focus my attention on questions of justice relating to the Treaty.

My questions, like anyone's questions, do not emerge out of a vacuum. In the 1990s, I wrote an economics doctoral thesis focusing on the process by which Maori tribes were deprived of 'their fisheries', the 'full exclusive and undisturbed possession' of which was supposedly 'guaranteed' by the Treaty of Waitangi. One motive for writing the thesis was to get a deeper understanding of interrelations between legal and economic processes, interrelations to which economists commonly pay inadequate attention. More recently, I wrote a law doctoral thesis that focused on the topic of justice. One motive for writing that thesis was to get a deeper understanding of the relationship between law and justice, a relationship to which lawyers commonly pay inadequate attention. Since writing my law doctoral thesis, I have been pursuing trans-disciplinary concerns. A question that interests me is one that influenced a political economic historian, namely, 'Why do we attend to the things to which we attend?'⁵ Related to that question, I am interested in forces such as culture and language, especially the ways in which a person or group can transform their culture and language, in part by asking original questions.

Original questions are at the core of legal transformation. Focusing on 'the judicial opinion as literary genre', Robert Ferguson suggests as much:

⁴ Constitutional Advisory Panel, *New Zealand's constitution: The conversation so far* (New Zealand Government, 2012) 4.

⁵ H A Innis, *The Bias of Communication* (Toronto, University of Toronto Press, 1951) xvii.

The real creativity in a judicial decision lies in the question that judges decide to accept as the basis of their deliberations. This question and its competitors are peculiar as well as central to the judicial opinion—so peculiar and so central as to make the interrogative mode the methodological anchor of judicial rhetoric. Every court makes a fundamental decision about the question before it, and the wording in that first decision controls all others.

The only sincere questions in judicial opinions—sincere in the sense that they ask for answers beyond the ken of the interrogator—appear in dissents. By way of contrast, a controlling opinion uses questions to establish agreed upon solutions. In an insistence upon *an answer now*, it resists mystery, complexity, revelation, and even exploration.⁶

Ferguson here offers a resource for judging the judiciary. Is it possible to provide judicial ‘solutions’ that take seriously ‘mystery, complexity, revelation, and even exploration’? If it is possible, what might become of the law? Might it (whatever ‘the law’ might be) increasingly resemble what we call imaginative literature? Might lawyers feel a pressure to reach for the Janet Frame within them? Might such a pressure help lawyers to do justice to the experience of their clients?

Ferguson’s essay is a contribution to efforts to imagine law as a literary enterprise. A landmark in these efforts is James Boyd White’s *The Legal Imagination*, first published in 1973. (My law doctoral thesis is an engagement with White’s work.⁷) Here is a key passage from his course in writing:

There is an idea . . . that the course has been working out from the beginning . . . [R]ather than as a dogmatic restriction on your freedom, it is meant as an invitation, as a thesis for your examination and response: that the activities which make up the professional life of the lawyer and judge constitute an enterprise of the imagination, an enterprise whose central performance is the claim of meaning against the odds: the translation of the imagination into reality by the power of language. Its art is accordingly a literary one, most obviously perhaps in the demand that one master the forces and limits of what we have called the legal

⁶ R A Ferguson, ‘The Judicial Opinion as Literary Genre’ (1990) 2 *Yale Journal of Law & Humanities* 201, 208 and 210.

⁷ R Dawson, ‘An Enterprise of the Imagination’: *Tuning in to James Boyd White’s Transformative Constitutionalism* (School of Law, University of Canterbury, 2010). A revised version that explicitly focuses on the topic of justice is in

language system speaking, as it does, in a set of official voices, reducing people to institutional identities, insisting on the repetition of inherited patterns of thought and speech (most frustratingly in its use of the rule) and reposing an impossible confidence in its fictional pretenses. The art of the lawyer is perhaps first of all the literary art that controls this language.⁸

White's book, to be sure, cannot be used as evidence to support claims that 'the frames of reference that are formed or confirmed in the law school experience will likely "imprison" the students for the rest of their professional lives.'⁹ White cavorts with the relation of 'imagination' and 'reality', suggesting a complex interdependence between them, one that will unsettle those who imagine a reality of separateness. In doing so, he invites his reader to consciously engage in the activity of self-'constitution',¹⁰ fashioning a voice of her or his own, in and out of the law. This activity is 'literary art' that can serve to promote authentic communication and community, in and out of the law. The key is a relationship with language that reflects an awareness of its limits and powers and silences, as well as its dangers, including spears that are often unnoticed as such.

* * *

White's play with the imagination-reality relation brings to mind difficulties expressed by Nganeko Minnhinnik (later Dame) in the 1980s. Minnhinnick, on behalf of Ngati Te Ata and others, sought to reduce the damage that was being done to the Manukau Harbour by various commercial enterprises, including an expansion project by New Zealand Steel. The Water and Soil Conservation Act 1967 had assigned powers to various Regional Water Boards (and other institutions) for granting rights to use natural water, to divert natural water, or to discharge natural water or waste-water. When New

press: *Justice as Attunement: Transforming Constitutions in Law, Literature, Economics, and the Rest of Life* (Oxon, Routledge, 2014.)

⁸ J B White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little, Brown and Company, 1973) 758.

⁹ M Taggart, 'Some Impacts of the PBRF on Legal Education' in C Geiringer and DR Knight (eds), *Seeing the World Whole: Essays in Honour of Sir Kenneth Keith* (Wellington: Victoria University Press, 2008) 250, 256.

¹⁰ White's use of the word 'constitution' as a verb draws from the 'literary' statesman Edmund Burke's reading of 'the British Constitution' in *Reflections on the French Revolution*, first published in 1790. A key passage from the *Reflections* resides in White's *The Legal Imagination* at 893-8. For a fuller discussion on Burke's literary constitutionalism, see J B White, 'Making a Public World: The Constitution of Language and Community in Burke's *Reflections*', in White's *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago, University of Chicago Press, 1984) 192-230.

Zealand Steel applied for a right to discharge water into the Manukau Harbour, Minhinnick found herself putting to work this subsection: 'Any ... person may ... lodge ... an objection to the application on the ground that the grant of the application would prejudice ... his interests or the interests of the public generally.'¹¹ She appeared before the Planning Tribunal in 1981. In what is suggestive of a failure of the legal imagination, Judge Turner noted that while the Act required the Tribunal to take into account environmental damage, in his view this was unrelated to the 'cultural and spiritual' matters:

But some Maori concerns are cultural and spiritual; they go beyond the mere physical environment. We have concluded that there is nothing in the Act which will allow us to take those purely metaphysical concerns into account. ... May we add that other sections of the community also have spiritual values, many of which are not recognised, indeed are trampled on, by the community at large.¹²

What, we might ask, are 'purely metaphysical concerns'? Might our response to that question depend upon our 'metaphysical' commitments?¹³ (Did Judge Turner imagine himself as having such commitments?) Might different commitments be associated with different imaginings of 'the physical environment'? Might different commitments give rise to different readings of the law?

In 1984, Minhinnick expressed her frustration with the legal process at a seminar sponsored jointly by the Commission for the Environment and the Centre for Maori Studies and Research:

In our dealings with government, with New Zealand Steel, with the Auckland Regional Authority and with other local government bodies, we have been made to go piecemeal, to go cap in hand as if we had no rights but were there to seek privileges to which we had no ancestral entitlement. We have been made to separate elements which cannot be separated, and to combine elements which cannot be combined. We have been reduced to one

¹¹ Water and Soil Conservation Act 1967, Section 24 (4).

¹² *Minhinnick v Auckland Regional Water Board* (Planning Tribunal, Decision A 116/81, 1981) 5.

¹³ In short, by 'our metaphysical commitments', I mean our beliefs relating to 'what there is'. But, you might ask, what do I mean by that? Here we might learn that we are engaging in a form of inter-cultural communication, which calls for a literary art. Much could be said, for example, about the word 'beliefs', but that would open the door to

argument, to say that the new indignities that are proposed for our beloved harbour and river are transgressions of our Maori spiritual values: one such degradation is to mix the Waikato River with the Manukau Harbour. Yet when we make that view known, we are told that spiritual values are not enough reason to stop a development. . . . [W]e have been on . . . this mono-cultural merry-go-round for four years . . . We have tried so hard to tell you in your language, and we have tried so hard to tell you on paper, something else that we have not been brought up to do. . . . The Manukau is almost dead. But what do we ask you? We ask that you recognise that we exist.¹⁴

How are we to justly read that passage? With what 'language' should we use? Would Minhinnick want us to use a (literary) language that resists the separation of the cultural and the spiritual and the legal? Would she desire a language that combines law and justice, one in which she could have a meaningful place ('exist')? Might the conjunction 'and' in the phrase 'law and justice' have a problematic disjunctive force?

Some lawyers claim or suggest that we can have 'objective' knowledge about the law, but not about justice, which is 'subjective'. In the spirit of White's *The Legal Imagination*, how do such lawyers imagine 'the law'? Might they do well to ask that question? In *Law's Quandary*, Steven Smith invites his reader to deliberately ask questions about our basic 'legal' questions:

Someone asks, in all seriousness, 'Do you believe "the law" guarantees religious organizations the right to participate in government subsidy programs on a nondiscriminatory basis?' I'm expected to say, 'Yes, because . . . ' or 'No, because . . . ' And I blush to admit that sometimes I do break down and say one of those things. But what I really want to say is this: 'What could that question possibly mean? What *is* this thing—"the law"—that you keep referring to? *What are we talking about?*'¹⁵

Those 'what' questions may sound like he is preoccupied with purely metaphysical concerns, which for some people are not relevant for 'the real world', especially the law. Smith would resist the prejudices against the metaphysical for the purpose of de-

questions about connected words. To do justice to the phrase 'our metaphysical commitments' in the context of criticizing Judge Turner, an anthropology student and a law student could write a doctoral thesis.

¹⁴ N Minhinnick's korero in EM K Douglas, *Maori Perceptions of Water and the Environment* (Occasional Paper No. 27, Centre for Maori Studies and Research, University of Waikato, 1984) 31-33.

¹⁵ S D Smith, *Law's Quandary* (Cambridge, Massachusetts: Harvard University Press, 2004) 13.

'thing'-ing 'the law', not the least for treating people as people rather than as things. For Smith, the law is not a 'thing' but an *activity* that people *do*, one purpose of which is doing justice to others and ourselves.

There is an important sense in which the law is centrally a questioning activity. We might ask, 'What are questions?' In the spirit of taking 'activity' seriously, a better question might be, 'What is it that we do when we ask questions?'¹⁶ That is a question that all of us, in and out of the law, might benefit from asking. Doing so might help us to ask better questions and to avoid a constitutional 'break down' when responding to questionable questions.

* * *

Concerning recent constitutional change, the Panel states: 'The New Zealand constitution increasingly reflects the fact that the Treaty of Waitangi is regarded as a founding document of government'.¹⁷ This change touches on the topic of justice:

Successive governments have acknowledged the Treaty's guarantees have not been consistently honoured, and have taken responsibility for redressing breaches of the Treaty through the settlement process. They have also accepted that the principles of the Treaty must be considered when making decisions, if future breaches are to be avoided.¹⁸

We might say that 'governments' have acknowledged acts of injustice, in the form of 'breaches of the Treaty'. Efforts to do some 'honouring' and 'settling' are attempts at acts of justice.

What, we might ask, are 'the Treaty's guarantees'? One possible point of departure for responding to that question is to address a question of standing. The Treaty of Waitangi Act 1975 established the Waitangi Tribunal for hearing 'claims' by 'any Maori ... that he or any group of Maoris of which he is a member is or is likely to prejudicially affected' by any 'act or omission' of 'the Crown' that is 'inconsistent with

¹⁶ This question resides in E N Goody, 'Towards a theory of questions', in E N Goody (ed) *Questions and politeness: Strategies in social interaction*, Cambridge, Cambridge University Press, 1978) 17.

¹⁷ Constitutional Advisory Panel, *New Zealand's constitution* (n 4), 7.

¹⁸ Ibid 8.

the principles of the Treaty'.¹⁹ That language is open to significant criticism from various standpoints. Let us not concern ourselves with neither the gender bias nor the vague term 'the principles'. In an essay titled 'The Ngai Tahu Claim', Tipene O'Regan (later Sir) has this to say:

A tribe has no legal personality. It cannot bring any legal action. ... Claims must be brought before the Tribunal by individual tribal members on behalf of the whole tribal group. But challenges can be mounted against the standing, authority, or competence of one tribal member by another This is obviously in breach of the Treaty's recognition of rangatiratanga. In the case of a large tribal group like Ngai Tahu this kind of interference can be devastatingly expensive. ...

Ngai Tahu's difficulty is that under the Treaty it is the tribe and not the individual which is the Treaty partner to the Crown. The individual only has standing in terms of the Treaty as a member of the tribe. ... Yet though the tribe is the Treaty partner it has no legal standing in the present state of New Zealand law, except through surrogates.

One should not think that this apparent tangle is accidental. It is not. It is the direct outcome of deliberate Government policy, now more than a century old, to destroy the collective force of the tribe and to individualize Maori culture, society, and their properties. ... This policy and its ramifications can only be considered as inconsistent with the principles of the Treaty and, indeed, it is arguable that the requirement on legal standing in the Treaty of Waitangi Act itself might be inconsistent with the Treaty.²⁰

For O'Regan, something is 'obviously' rotten with 'the present state of New Zealand law'. One problem is the misuse of the name 'Maori'. O'Regan might often think of himself as Maori, but not for all purposes, including the pursuit of justice through the Waitangi Tribunal, at least in some contexts.

Imagine an American lawyer visiting New Zealand reading O'Regan's words. She asks herself, 'Did he challenge the constitutionality of the Treaty of Waitangi Act in the courts?' After learning more about New Zealand law, she imagines him answering, 'I'd like to do so, but I can't get into court.' She has in mind the 1941 *Te Heuheu* case, in which Viscount Simon stated, 'It is well settled that any rights purported to be conferred

¹⁹ Treaty of Waitangi Act 1975, s 6.

²⁰ T O'Regan, 'The Ngai Tahu Claim', in I.H. Kawharu (ed) *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Auckland, Oxford University Press, 1989) 234, 252-3 (macrons omitted).

by such a treaty of cession cannot be enforced by the courts, except in so far as they have been incorporated in municipal law.’²¹ In short, we might say that O’Regan has no ‘standing’ for such a challenge.

Did O’Regan think of challenging the *Te Heuheu* decision? It is arguable, for example, that the Treaty involved not so much a ‘cession’ but a redistribution of ‘sovereignty’.²² The idea of tribes having a Treaty-based standing to challenge statutes may be disturbing to some people. I am reminded here of Joseph Vining’s book *Legal Identity*, which tells a story of the law of standing. In one section, Vining exercises his analogical imagination and connects legal life to an octopus on the ocean floor:

[O]nce a case is formed only certain facts, certain laws, certain consequences, certain persons are treated as relevant, *except* insofar as the court chooses to break out and consider the relevance of other laws, effects, or persons. Inside the self-constructed home everything does not depend on everything else and entities do not dissolve conceptually into some other entity or some large unity. The court can swim out into the great sea around and dart back when frightened by its dark vastness. But when considering standing and jurisdiction the case is not yet formed and the legal mind has no home. Fear may make it too difficult to admit, except by allusion, that one is swimming in the sea and that one’s behavior is a reaction to it. Denial is a normal defense of the human mind against great fear; the legal mind is not peculiar in this regard.²³

Vining’s will to connect law to ‘everything else’ may arouse the kind of fear about which he talks. Those who insist that we should keep law separate from the rest of life, including questions of justice, might well question the value of analogical reasoning about law. Such reasoning, however, may awaken us to the analogies that we already live by. An awakening could be liberating, especially for the ‘home’-less.

* * *

According to the translator, Rev Henry Williams, the Treaty of Waitangi was ‘an act of love’ towards the indigenes ‘on the part of the Queen, who desired them to secure

²¹ *Hocni Te Heuheu Tukino v Aotea District Maori Land Board* [1941] NZLR 590, 596.

²² See, for example, J Williams, ‘Not Ceded but Redistributed’, in W Renwick (ed), *Sovereignty and Indigenous Rights: The Treaty of Waitangi in International Contexts* (Wellington, Victoria University Press, 1991) 190.

their property, rights and privileges'.²⁴ In situations of competing claims to 'property', a basic question concerned the structure of the process by which such claims were to be resolved. Before 'the Queen' (or her representative) could 'secure their property', 'their property' had to be identified. (In 1840, in a different context, Pierre-Joseph Proudhon explicitly asked the 'what' question in *Qu'est-ce que la propriété?*) Who was to do this and how? 'The Treaty', it seems to me, is silent on such matters.

In 1860, Governor Thomas Gore Browne announced that 'military operations' would be 'undertaken by the Queen's forces against natives in the province of Taranaki in arms against Her Majesty's sovereign authority'.²⁵ Chief Wiremu Kingi had been 'interfering' in a land transaction between Browne and Te Teira Manuka, a member of the Te Ati Awa tribe. Kingi, however, had repeatedly claimed that Manuka, did not have the proper authority to transact. Responding to an ultimatum from the commander of the operations, Kingi wrote:

Friend Colonel Murray,

Salutation to you in the Love of our Lord Jesus Christ. . . .

You say that we have been guilty of rebellion against the Queen, but we consider we have not, because the Governor has said that he will not entertain offers of land which are disputed.

The Governor has also said, that it is not right for one man to sell the land to Europeans, but that all the people should consent. You are now disregarding the good law of the Governor, and adopting a bad law.

I have . . . great love for the Europeans and Maories. Listen; my love is this, . . . put a stop to your proceedings, that your love for the Europeans and the Maories may be true.

I have heard that you are coming to Waitara with soldiers Is this your love for me, to bring soldiers to Waitara? This is not love; it is anger. . . .

All the Governors . . . have heard my word, which is, that I will hold the land.²⁶

²³ J Vinig, *Legal Identity: The Coming of Age of Public Law* (New Haven, Yale University Press, 1978) 94.

²⁴ H Carleton, *The Life of Henry Williams, Archdeacon of Waimate* (Auckland, Upton, 1874) 313.

²⁵ T Gore Brown, Proclamation, 22 February 1860, reproduced in *British Parliamentary Papers: Colonies, New Zealand* (hereafter 'BPP') 12 (Shannon, Ireland, Irish University Press) 6.

²⁶ W Kingi, Letter to Lieut. -Colonel Murray, 21 February 1860, reproduced in BPP 12, 6.

The 'proceedings' that Kingi sought to stop were nothing less than the beginnings of a policy to destroy the collective force of the tribe and to individualize Maori culture, society, and their properties.

Kingi's 'word' had no weight, for the soldiers opened fire. He soon sought to have an arbitrator appointed to settle differences between himself and Browne. He suggested that Queen Victoria was a fitting possibility. When Browne refused to accept the proposal, Chief Renata Kawepo offered these words:

It was proposed to leave it to the Queen to judge between the Governor and William King Well, does this look in your opinion like a rebellious word in regard to the Queen . . . ? Sir, the Maori does not consider that he is fighting against the Queen; I beg therefore that you cease to pervert words, and rather to consent to our proposal that . . . it may be left for the Queen to decide in this quarrel²⁷

We can be sure that Kawepo (and Kingi) would oppose any dispute resolution process in which governors, especially unliterary ones, could become judges of their own cause. We might say that word-critic Kawepo sought to limit the governing power of the Governor and to contribute to a just structure of governance.

Unfortunately, Browne failed to show Kawepo that he (Browne) was capable of either good listening or a literary art, perhaps in the form of refutation him in a serious and playful conversational interchange.

* * *

Let me leap back to relatively recent history and address Treaty 'settlement' issues. In the early 1980s, the Ministry of Agriculture and Fisheries sought to implement a 'market' system of Individual Transferable Quotas for managing the 'open access' sea fisheries. Section 88(2) of the Fisheries Act provided that nothing in the statute's regulatory scheme shall affect 'Maori fishing rights'. Runanga o Muriwhenua and the New Zealand Maori Council were successful in persuading the High Court to put a stop to the full implementation of the system. In 1987, the Crown set up a Joint Working Group. Principal negotiators for the 'Maori' claim were: Tipene O'Regan, of the Ngai

²⁷ Quoted in W Swainson, *New Zealand and the War* (London, Smith, Elder and Co., 1862) 34.

Tahu Trust Board; Robert Mahuta, of the Tainui Trust Board; Sir Graham Latimer, of the Maori Council; and Matiu Rata, of Runanga o Muriwhenua. Soon after the negotiations began, some participants in the fishing industry raised concerns about the mandate of the Maori negotiators, questioning 'the extent to which the Maori members on the Working Party are representative of the Maori community and can therefore bind them to any solution reached.' More particularly, 'are they there as representatives of all Maoridom, or because of their proven ability to negotiate with the Crown?'²⁸

During 1992 a public company, Sealord Products Limited, which held 26 per cent of the total fishing quota, was put up for sale. The two groups of negotiators signed a Memorandum of Understanding whereby the Crown would, among other things: 'Provide Maori with the capital (\$150 million) to participate in a joint venture with Brierley Investments Ltd to purchase Sealord Products Ltd.' In return 'Maori' would, 'Agree that the proposal would 'satisfy and extinguish . . . all commercial fishing rights and interests, whether they arise from customary rights, the Treaty . . .'. Clause 4 of the Memorandum stated: 'Both parties recognise that the mandate of the Maori principals is a key threshold issue to the further progress of the proposal.' To acquire the mandate, the Maori negotiators visited tribes throughout New Zealand. There was antagonism over various aspects of deal. Numerous (but by no means all) tribes were against the deal and did not want the negotiators to enter it.

In September 1992, a Deed of Settlement was drawn up and executed following a hui in the Banquet Hall of the Beehive. The signatories included the 'Maori' negotiators and representatives of various tribes (17 in total) and of the New Zealand Maori Council and of the National Maori Congress. Representatives of various dissenting tribes began a legal challenge, claiming that those signing had no authority to make contract binding other Maori. Counsel for the plaintiffs, argued: 'What purports to be a contract . . . is a nullity because it lacks the authority of those it seeks to bind.'²⁹ Without success in the High Court, the plaintiffs went to the Court of Appeal. The Court's President, the Right Honourable Sir Robin Cooke, delivered the judgment. Key passages are as follows:

²⁸ Quoted in J Kelsey, *A Question of Honour?: Labour and the Treaty, 1984-1989* (Wellington, Allen & Unwin 1990), 119-20.

²⁹ Quoted in *New Zealand Herald*, 8 November 1992.

If there are shortcomings in the drafting of the deed . . . , it is nevertheless an historic step. The Sealord opportunity was a tide which had to be taken at the flood. A failure to take it might well have been inconsistent with the constructive performance of the duty of a party in a position akin to partnership. . . .

The term 'Maori', used repeatedly in the deed, is not defined. . . . The Maori negotiators and other signatories are . . . adamant that they signed only on behalf of those who had authorised them to do so and were not purporting to bind other Maori. . . . Representing a number of appellants and with support from all, Mr Mathison asked this Court to make a formal and final declaration that the deed is not binding on iwi or others who have not authorized its signature. The Solicitor-General . . . suggested that the declaration was being sought for political purposes. It would certainly be wrong for the Court to grant a declaration for political purposes, and we accept the submission of the Solicitor-General and other counsel for the respondents that a formal declaration is not appropriate in the circumstances.

. . . All that can safely be said is that the deed was negotiated by some responsible Maori leaders and has significant Maori support but also significant Maori opposition. For the reasons about to be given, it is immaterial that an accurate assessment cannot be made. . . .

The deed is couched in the form of a legal contract Nothing in . . . the deed as a whole should be allowed to obscure the truth that the deed is a compact of a political kind, its subject-matter so linked with contemplated Parliamentary activity as to be inappropriate for contractual rights. . . .

The deed does not of course purport to repeal the Treaty of Waitangi. Clause 1.3 says as much, virtually expressly. Moreover a nation cannot cast adrift from its own foundations. The Treaty stands. Parliament is free, if it sees fit, to repeal s 88(2) of the Fisheries Act and to make other legislative changes envisaged in the deed. . . .

Parliament is free to enact legislation on the lines envisaged in the deed or otherwise. Whether or not it would be wise to do so and whether there is a sufficient 'mandate' for any such legislation are political questions for political judgment. The Court is not concerned with such questions.³⁰

The appellants may well accept that a 'failure' to take the 'tide' at the 'flood' 'might well have been inconsistent with the . . . position akin to partnership'. For them,

³⁰ *Te Runanga o Wharekauri Rekohu Inc v Attorney General* [1993] 2 NZLR 301, 306-9.

however, so too might unreasonable pressure to take the 'opportunity' on the terms given to them. The Crown was not offering any alternative options to 'Maori', as the 'Maori' negotiators were well aware. The fact that the 'Maori' negotiators signed the deed does not indicate an absence of pressure. Concerning 'Maori', with whom was the 'partnership'? Who was controlling the floodgates? Could the Court have asked a different question as a basis for its deliberations?

Might the Court have done well to say more about the word 'Maori', including possible inapt uses? The appellants clearly felt that the use of the word 'Maori' in the term 'Maori negotiators' was problematic. The proceedings that the appellants sought to stop were, for them, a continuation of a policy to destroy the collective force of the tribe, along with certain collective values associated with tribal culture. Each of the appellants might often think of themselves as Maori, but not for all purposes, including the pursuit of justice in relation to the organization and control of the fisheries and the meaning of the Treaty.

'The Treaty stands.' What does that mean? My 'the Treaty' can never be exactly the same as your 'the Treaty'. When our different readings matter in situations of conflict, we should expect judges to recognize differences and to make judgments about them. For the appellants, the refusal to recognize the tribes as the basic Treaty partner was inconsistent with 'the Treaty'. The 'leaders' who accepted the 'Sealords deal' were, for them, far from being 'responsible'. The orientational metaphor 'step forward' arguably is not apt.

In short, putting aside the 'result', the judgment of the Court failed to address some fundamental questions, which could have opened up fruitful complexity and exploration. With such an opening, the appellants might have felt that the Court had more fully heard them.

* * *

The Sealords case reopened questions about the limits of Parliament's powers. In *New Zealand's constitution*, the Panel fails to mention the existence of a very important conversation about the relationship between Parliament and the Courts. (Philip Joseph

has been particularly vocal here.³¹) 'Parliament', says the Panel without question, 'can make laws about anything and everything, so long as a majority of members of Parliament support the proposal.'³² We might wonder why the Panel says this without question. What are some dangers of not questioning?

Here we can draw from critical commentary on the apartheid regime. During that tragic time in South African history, Etienne Mureinik dared to ask questions about the relationship between law and justice with the hope of eliminating authoritarian ways of thought and expression that made apartheid possible. Mureinik insisted that law is more than a set of rules handed down from a sovereign. Law, for him, includes the principles needed to animate, invent and justify legal rules. The word 'justify' in the last sentence is a key one. Partly though his criticisms of the apartheid judiciary, Mureinik worked out an image of law as 'a culture of justification'. Here is a fragment:

It may be . . . that the most objectionable feature of apartheid was the systematic use of the law to treat people differently without justification. For lawyers who believe that the central aspiration of law is to strive for the ever better justification of decisions, this characteristic put apartheid into mortal conflict with law itself. That aspiration, for such lawyers, is why judges, in contrast to officers of other organs of government, invest so much effort in reasoning their judgments. It is also why the law, in court, insists upon the right to be heard and the right to proper consideration and why, in South Africa and elsewhere, the law has for some time been engaged in extending these rights to new spheres of extrajudicial government decisionmaking, for they are rights in service of the better justification of decisions. The aspiration to better justification, for those lawyers, is the reason for the international trend toward review of administrative decisionmaking for unreasonableness, for an unreasonable decision is one without plausible justification. . . . How, then, lawyers who share this aspiration might ask, could racial discrimination, the defining feature of which is that it is not justified, have flourished in a system that prided itself . . . on its adherence to law?

What was crucial was the doctrine of the supremacy of Parliament It was that doctrine that immunized the apartheid statutes, and the bulk of what was done under them, from judicial challenge. . . . Racial discrimination flourished in law because the legal system

³¹ See, for example, P. A. Joseph, 'Parliament, the Courts, and the Collaborative Enterprise' (2004) 15 *The King's College Law Journal* 321.

³² Constitutional Advisory Panel, *New Zealand's constitution*, n 5, 9.

plainly declared its own ultimate foundation to be beyond the need for justification, and it consequently announced that the enterprise of justification was itself unimportant.

This result was possible because lawyers, collectively, suspended inquiry into the justification of parliamentary supremacy. Judges, even those who abhorred racism. . . , took parliamentary supremacy for granted. Practicing lawyers, even radical ones, assumed parliamentary supremacy to be beyond legal challenge. Law teachers, even those whose lives were dedicated to renouncing injustice and teaching the virtues of constitutionalism, reared graduates who entered the profession entirely reconciled to living and working and thinking in a system of justification whose ultimate justification could not be justified.³³

The possible consequences of imagining 'law' as an object, in the form of a system of rules, rather than as a multidimensional activity that includes 'justification', are clearly significant and worthy of attention. When the 'enterprise of justification' is done poorly or not at all, we will have before us not law worthy of the name but authoritarians, who should be resisted with the best effort at justification that we can give. We might hope that the above passage from Mureinik could serve as a valuable resource for justifying acts of justification – the passage perhaps could contribute to 'the international trend toward review of administrative decisionmaking for unreasonableness'. Mureinik may well have hoped that his image of law as a 'culture of justification' could help shift the boundaries of legal culture, including political and ethical commitments influencing professional discourse.

Mureinik had a passion for the game of chess.³⁴ He might have compared law and chess: both involve actors, rules, strategies, roles, and relations. Unlike chess, however, the rules in law evolve as the 'game' is underway. A chess player who insists in the middle of a game that she will not allow her bishop to be taken by her opponent's queen, because queens have too much power, may destroy the game.³⁵ A South African lawyer, such as Mureinik, who insists that he and his fellow players should check the power of Parliament, may save the game.

³³ E Mureinik, 'Emerging from Emergency: Human Rights in South Africa' (1994) 92 *Michigan Law Review* 1977, 1984-88.

³⁴ See C Lewis, 'A Tribute to Etienne Mureinik – Friend and Colleague' (1998) 14 *South African Journal on Human Rights* 1, 1.

³⁵ Here I am drawing from an image in R A Posner, *The Problems of Jurisprudence* Cambridge (Massachusetts, Harvard University Press, 1990) 50.

What can New Zealand lawyers learn from South Africa? Have many suspended inquiry into the justification of parliamentary supremacy? Have practicing lawyers, even radical ones, assumed parliamentary supremacy to be beyond legal challenge? Have law students uncritically accepted the doctrine of parliamentary supremacy?³⁶

* * *

In 2011, the Waitangi Tribunal released its *Ko Aotearoa Tenei* report, which concerns law affecting Maori culture and identity. The claims were broad and deep:

The . . . claims are not the orthodox territorial claims in which [tribes] negotiate with the Crown to reach full and final settlements. Rather, these claims ask novel questions about who owns or controls three things:

- matauranga Maori (which . . . refers to the Maori world view, including traditional culture and knowledge);
- the tangible products of matauranga Maori – traditional artistic and cultural expressions that we will call taonga works; and
- the things that are important contributors to matauranga Maori such as the unique characteristics of indigenous flora and fauna – what we call taonga species – and the natural environment of this country more generally.

. . . [The] claim is really about who (if anyone) owns or controls Maori culture and identity. The claimants fear that in complex, modern, and globalised New Zealand, the taonga that they say are integral to Maori culture and identity are subject to too many outsider rights and too few Maori rights. They say their language, symbols, stories, songs, and dances have been commodified by people who have no traditional claim to them. They say the native flora and fauna upon which their culture and identity are built have been controlled, modified, and privatized by people, companies, or government agencies who have no affinity with those things The claimants say they have no control over the physical and spiritual well-being of the lands and waters in their traditional territories.³⁷

³⁶ The doctrine is alive in law textbooks. 'Parliament may enact any law that it pleases, and the Courts must apply the law and not question it.' M McDowell and D Webb, *The New Zealand Legal System* (2006) 108. For critical commentary, see my article 'Connecting the Common-Law Mind and Sovereignty -Talk, with Shakespeare's *King Richard II* as an Analogical Source' (2009) 15 *Canterbury Law Review* 237, 260.

³⁷ Waitangi Tribunal *Ko Aotearoa Tenei: A Report into Claims Concerning New Zealand Law and Policy Affecting Maori Culture and Identity* (Te Taumata Tuatahi) (Wellington, Legislation Direct, 2011) 17-18 (macrons omitted).

The 'novel questions' may assist with the realization of the Tribunal's hoped-for 'longer conversation', called for in its earlier *Foreshore and Seabed* report.³⁸ Who might 'own' or 'control' the questioning about 'who owns or controls'? A real conversation perhaps by definition requires that the parties involved cease efforts to 'control'.

How can we avoid a battle? In an article on the 'battle' in the 'salt-sand environment', Jacinta Ruru remarked that 'the foreshore landscape evokes tense possessive dialogues: mine, not yours.'³⁹ She points out that there are other possibilities: 'the future could read quite differently: ours, yours and mine'.⁴⁰ Such movement in the language of identity opens possibilities to 'heal and restore our embittered relations with one another, creating a truly bicultural (and subsequently multicultural) nation in the process'.⁴¹ Readers of the Waitangi Tribunal's reports will do well to pay attention to 'our' language and to our transformations of it as we talk. The way we talk shapes who we are becoming.

In *Ko Aotearoa Tenei*, the Waitangi Tribunal suggests much about movement as it concerns our horizons, including the actuality and desirability of change:

As a nation we should shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises made about our ongoing relationships. . . . After decades of profound social and political change, and a generation-long focus on the resolution of past grievances, we are now ready to enter a new stage in the relationship.

Altered demographics mean we must do this in any event. . . . The nation is becoming more ethnically diverse than ever before, while at the same time some of the lines between Maori and Pakeha have become blurred. Inevitably, the Treaty relationship will become more complicated. This does not lessen its relevance, however: in societies such as Australia and Canada the issue of aboriginal rights is no less important for their broad multiculturalism. And, despite the 'blur' in the middle, our two founding cultures remain distinct. . . .

³⁸ Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington, Legislation Direct, 2004) 139-40.

³⁹ J Ruru, 'The Political and Juridical Battle in the Salt and Sand Environment', in J Ruru, J Stephenson, and M Abbot (eds), *Making Our Place: Exploring Land-use Tensions in Aotearoa New Zealand* (Dunedin, Otago University Press, 2011), 23, 36.

⁴⁰ Ibid.

⁴¹ Ibid 37.

We acknowledge that some New Zealanders feel a sense of unease about these ideas. After all, they require us to jettison some long-held assumptions about who and what we are. But these assumptions are becoming more and more difficult to sustain anyway. History and the future both demand that we make the leap to acceptance of Maori culture and identity as a founding pillar of our national project. This is not just a matter of justice (though it is that, of course). Demographics, economics, and geo-politics suggest it is now a matter of necessity.

The signs are generally positive that we are now ready. There is a deep reservoir of goodwill between our cultures, and much commonality.⁴²

That passage brings to mind a conference some years ago. During an address, the Hon. Tariana Turia, a Crown minister, expressly identified herself as 'Maori'. She also, perhaps due to the force of habitual modes of thought ('some long-held assumptions about who and what we are'), set 'Maori' and 'the Crown' in opposition – them versus us. The reality, however, was 'more complicated', the expression of which called for something of a literary art. There was a 'blur', which if unacknowledged could lead to talking past each other. However, too much 'blur', might support imperialistic and mono-cultural perceptions of reality. In the pursuit of doing 'justice', it seems to me that all of us will do well to hold in our imaginations both the 'blur' (and 'commonality') and the reality of difference (the 'distinct'). There are important moments when we need to attend to *both* similarity *and* difference. In doing so, we may hope to begin a constructive transformative conversation, in which we develop the constitutional capacity to hear each other well.

⁴² Waitangi Tribunal, *Ko Aotearoa Tenei* (n 31) (Te Taumata Tuarua; Volume 2) 714-15 (macrons omitted).

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From:
To: <constitutionalreview@justice.govt.nz>
Date: 15/04/2013 8:51 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Robert Ross Dawson Organisation Name: Emæ"
Phone: Postal AddressA: Postal AddressB: Postal City: Auckland Postal Region:
Postal Post Code: Postal Country: New Zealand Submission: Okay, I have got the
message.....a very, very, important topic, and you definitely want to hear our opinions.....and we have
two minutes to tell you our views!

At the outset I have to tell you I am one of those despised species....male, white, old, Christian, so
treat my submission on that level!

I agree that the framework of rules by which a nation regulates its affairs in the broadest sense, i.e. its
"constitution" is important and worthy of discussion. As you note, we do have such a set of rules, it is
just that they are not tidily set out in one
cohesive document. There is a degree of vagueness, as many of the rules devolve from practices in
other nations especially the UK. Even our home-grown rules such as the Treaty have had a
chequered past with varying degrees of attention being paid. Our system
of representation has been a bit of a patchwork to say the least and even our judicial system has
changed intermittently and even its most fervent supporters would hardly claim perfection in its
present status.

I make no bones about the fact that I am intensely wary about this current effort to examine the
prospects for NZ constructing a single, cohesive, constitutional legal document. My wariness is
reinforced by the reality that 99.9% of humans act in a reactionary
manner...and I don't mean "reactionary" in the current political sense of the word. I simply mean that
we humans are much better at seeing what 'we don't like' about current conditions, and we are
extraordinarily poor at constructing genuinely "what we might
like", forward-looking forms to guide behaviour. We are also very bad at anticipating the unintended
consequences of our decisions.

As much as folk might like to describe notable "constitutional" upheavals, such as the American
Declaration of Independence and subsequent Republican model of government; or the French or
Russian revolutions as being, well 'revolutionary' or 'visionary', I
think a little thought would reveal that they were essentially a 'reaction' against then current political
and/or legal conditions. In other words they leapt, in the stress of the moment into something new
without really having much appreciation of what the
change would mean.

I believe the terms of reference of this NZ constitutional study risks producing a lot of "reaction" to
current or past injustices, whether they be worries about the Treaty, disquiet about our unicameral
Parliament, concern about smallness of the pool of talent
to encompass all levels of judgement and appeal within our judiciary, etc., etc.. And of course we
often see voices raised against the monarchy...usually every time some member, even perhaps
minor royalty make a fool of themselves in front of the media. In other
words I fear we will see a good deal of very understandable human 'reaction', often over single
issues within the larger debate.

I worry as to just how your team will make judgements of any validity with regard to these veins of
public concern. Will 1000 voices raised to incorporate the Treaty against 25 voices against tell you
anything of real value about the wider public posture?

I do hope I am proved wrong and that your team will find itself able to find a genuinely forward-looking
consensus view....with incorporation of a range well considered, likely (albeit) 'unintended'
consequences. Good luck with your crystal ball-gazing! And please
take those zealots who want to..."tidy up all our constitutional bits and bobs into one legislative

vehicle", or those who think .."we need a constitution of our own to tell the world of our national maturity"...out the back and quietly give them a kick where it hurts most!

Incidentally it is my opinion the absolute nadir moment of constitutional practice in NZ (but which probably broke no actual constitutional rule) was when an exuberant senior member of an incoming government shouted across the Chamber to the outgoing governing party...."We won, you lost, eat that!"

I observe he is one of your panel members! But I am just a silly old/male/white/fool, etc.. Best of luck.

Sent on the 15 April 2013 at 20:50

3591.

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 15/07/2013 3:54 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission
Attachments: stephen's submission (2).docx

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

Full Names: stephen dawson Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB:
Postal City: Auckland Postal Region: Auckland Postal Post Code: Postal Country:
New Zealand Submission: Submission Upload: stephen's submission (2).docx

Sent on the 12 July 2013 at 11:15

What are your aspirations for Aotearoa New Zealand?

- 1) *I want to see the current constitutional principles in supreme law.*
- 2) *I want to see the continuance of MMP.*
- 3) *I want an environment that is clean, green and sustainable.*
- 4) *I want to see the Treaty principles honoured.*
- 5) *I want peace in our land. I want an absence of civil disorder.*
- 6) *I want a corruption free state.*
- 7) *I want a relatively egalitarian society.*
- 8) *I want to see that people's rights are protected by supreme law.*

How do you want our country to look in the future?

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How many MP's should we have? Why?

- 60) *We should have 120 MPs.*
- 61) Our total population is the size of Sydney and we don't need to be over governed.

Submission on the Constitutional Review

- 62) A popular view is to create a Senate, but I would rather the money be spent on social services
- 63) Besides that, this Government would likely reject anything that cost them too much money. Hey will be looking for fiscal neutrality.

How long should the term of Parliament be?

- 64) *The term of Parliament should be 4 years.*
- 65) The country is safer with a longer election cycle and less pork barrel politics.

How should the election date be decided?

- 66) *The election date should be determined by the Electoral Act as the second Saturday in November every 4 years unless the Government calls a snap election.*
- 67) Convention is unsafe. Law is better.
- 68) Why? Because those with power are not to be trusted.

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

- 69) *We need 120 electorates.*
- 70) *60 of these are geographical electorates.*
- 71) *60 of these are list and Maori electorates.*
- 72) The Maori and list MP's proportion varies but there is no overhang in this model of Parliament.
- 73) By dividing the population size by 60 you get the number of people per electorate.
- 74) By dividing the Maori roll by the previously decided population per electorate you get the number of Maori seats.

Submission on the Constitutional Review

- 75) Where possible, electorate boundaries should accommodate communities of interest. Tribal boundaries in Maori electorates are the obvious example, but not the only one.

How should Maori views be represented in Parliament?

- 76) The cabinet manual needs modification to ensure compliance with the principles of the Treaty of Waitangi.
- 77) Parliament must have a Maori advisory unit that has input into all regulatory impact report's, advises Treasury and the DPMC and provides confidential advice to all political parties during the draft legislation phase.
- 78) The name, "Maori Affairs Select Committee" is in itself a crown construct.
- 79) *It should be renamed the Rangatiratanga committee and have a right of veto over all legislation before the now named Maori Affairs Select Committee.*
- 80) Personnel selection by number for this committee is as the status quo with government members in the majority. Individuals would need to convince the Speaker that they have Maori whakapapa.
- 81) The committee does not have the power to initiate legislation.
- 82) That right is the Parliaments and Government.
- 83) In this I realise that the ultimate Rangatiratanga is the Parliament's, but the convention now is that the Parliament will always follow the committee's advice. The Treaty of Waitangi did promise crown kawanatanga.
- 84) Members of the Rangatiratanga committee may still introduce Private Members Bill's.
- 85) And the Rangatiratanga committee still has the ultimate right of veto over all things exclusively concerning Maori.
- 86) One has to ask "What is in the best interests of Maori? The presumed answer is "Participating in an parliamentary democracy with a fully accountable House of Representatives"
- 87) *The Maori electoral option should continue until Maori want to get rid of it. It may die its own natural death when or if Maori are ready.*

How could Maori electoral participation be improved?

88) It is in the best interests of Maori and all New Zealanders that Maori are represented in the mainstream.

89) The Maori electoral option should continue.

90) Registration as an elector should be automatic if you are over 18 and have an IRD number.

91) The registration by default should be into a general electorate with the opportunity to opt into a Maori electorate.

92) This is an Information and Communications technology problem, not a problem of political philosophy.

93) Folk must be able to vote with their mobile phones or on Facebook.

94) There is an opportunity here to save vast amounts of money and lead participatory democracy in the world.

How should Maori views and perspectives be represented in Parliament?

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

108) I have already said that the Treaty should be a formal part of our constitution.

109) ***It is not too big a challenge to say in a constitution that "Henceforth no Act in the Parliament may contravene the principles of the Treaty of Waitangi."***

110) ***Section 20 (c) could say that "The Crown seeks reconciliation with the Tangata Whenua over historical violations of Treaty principles. It apologises for and grants amnesty for past failures to honour Treaty principles." And....***

111) ***"In exchange for honouring the Treaty principles there cannot be any more retrospective litigation after the Treaty claims process is complete"***

112) I'm concerned by the dilution of Maori intellectual capital.

113) 50% Maori governance of every state body may be a prevailing assumption, but it is not necessarily in Maori interest.

114) In article 3 of the Treaty, the crown promised to protect all things of treasure to Maori.

115) For example co-governance of the Urawera forest or the Waikato River is entirely appropriate.

116) Co-governance of the Royal New Zealand Ballet may not be.

117) ***It is clear that a Co-Governance Act is needed.***

Submission on the Constitutional Review

118) It is up to individual iwi to decide which of their own toanga they wish to co-govern with the crown.

119) ***All state organisations not co-governing with iwi should establish a Maori standing committee to advise governance a.k.a the Auckland City Council model.***

120) Co-Governance has some practical benefits.

121) I'm worried about gridlock and paralysis on boards with large Maori contexts.

122) I've learned by bitter experience the debilitating effects of conflict in Maori organisations and in many ways Maori progress has often been sabotaged by internal conflict.

123) I see the prevailing attitude of Pakeha ethnic superiority and I realise that Maori governance failure is likely to be exploited for political gain.

124) Maori organisations will be subject to much more scrutiny and be expected to fail.

125) The Pakeha gifts of democracy, accountability, perseverance, science and the law et al, are really helpful to Maori and the common good of our nation.

126) We will need these Pakeha gifts for the foreseeable future.

127) A culture that has given the world Charles Upham, Ed Hillary, and Peter Blake can't be all that bad.

128) ***As well as standing Maori committee's or co-governance arrangements where appropriate; all state organisations would have to report annually on their implementation of Treaty principles.***

129) The local Bodies Act will need amendment.

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

130) ***Yes, I do think the Treaty should be a formal part of the constitution.***

131) The Treaty principles can be written into a Human Rights Act amendment, probably to section 20.

132) ***The Treaty was a promise made in 1840 and the price of citizenship was paid for by the Maori battalion in World War 2.***

133) ***There will never be harmony in this land until the Crown keeps its promise.***

Submission on the Constitutional Review

134) There is a sense of moral illegitimacy about the Crown.

135) A cynic would say that it's residual white guilt.

136) *The Crown needs to take the moral high ground, get the legitimacy it needs, and restore Pakeha honour.*

137) *A constitution without the Treaty would be illegitimate.*

138) *An illegitimate constitution sets us up for civil disorder in the future.*

Summary of main points.

What are your aspirations for Aotearoa New Zealand?

- 1) *I want to see the current constitutional principles in supreme law.*
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Stephen Dawson

Auckland

June 2013

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 30/06/2013 8:37 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission
Attachments: constitutional submission..docx

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

Full Names: Stephen Dawson Organisation Name: n/a Email: webmaster@ourconstitution.org.nz
Phone: Postal AddressA: Postal AddressB:
Postal City: Auckland Postal Region: Auckland Postal Post Code: Postal Country:
New Zealand Submission: Submission Upload: constitutional submission..docx

Sent on the 30 June 2013 at 20:36

1992

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52) Parliament needs a check on its powers, and in the absence of a Senate, this check comes from the Supreme Court.

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

53) *It is very clear that the Act as it stands will need review and improvement before ratification.*

54) *The Right to environmental sustainability must be added to the Act. This generation has no right to steal the environment from our decedents. We are stewards for our mokopuna.*

55) *It is very clear that we must honour the rights promised to the Tangata Whenua in the Treaty. Say "No Act in the Parliament may contravene the principles of the Treaty of Waitangi."* There is much more about this in the Treaty section of the submission.

56) *There should be a section 20 (c) that says "The Government seeks forgiveness for failures to honour Treaty principles. It acknowledges the grievance and in exchange there is to be an amnesty and no further retrospective litigation after the Treaty claims process is complete."*

57) *Rights contained in other Acts, e.g. privacy, official information, compensation for public works etc. will need to be coalesced into the amended Act.*

58) *New Zealanders will want a measure of poverty enshrined in a constitution.*

59) This will not protect us from poverty, which is a political decision, but it does protect our right to know about the impact of political decisions on poverty.

How many MP's should we have? Why?

60) *We should have 120 MPs.*

61) Our total population is the size of Sydney and we don't need to be over governed.

Submission on the Constitutional Review

- 62) A popular view is to create a Senate, but I would rather the money be spent on social services
- 63) Besides that, this Government would likely reject anything that cost them too much money. Hey will be looking for fiscal neutrality.

How long should the term of Parliament be?

- 64) *The term of Parliament should be 4 years.*
- 65) The country is safer with a longer election cycle and less pork barrel politics.

How should the election date be decided?

- 66) *The election date should be determined by the Electoral Act as the second Saturday in November every 4 years unless the Government calls a snap election.*
- 67) Convention is unsafe. Law is better.
- 68) Why? Because those with power are not to be trusted.

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

- 69) *We need 120 electorates.*
- 70) *60 of these are geographical electorates.*
- 71) *60 of these are list and Maori electorates.*
- 72) The Maori and list MP's proportion varies but there is no overhang in this model of Parliament.
- 73) By dividing the population size by 60 you get the number of people per electorate.
- 74) By dividing the Maori roll by the previously decided population per electorate you get the number of Maori seats.

Submission on the Constitutional Review

- 75) Where possible, electorate boundaries should accommodate communities of interest. Tribal boundaries in Maori electorates are the obvious example, but not the only one.

How should Maori views be represented in Parliament?

- 76) The cabinet manual needs modification to ensure compliance with the principles of the Treaty of Waitangi.
- 77) Parliament must have a Maori advisory unit that has input into all regulatory impact report's, advises Treasury and the DPMC and provides confidential advice to all political parties during the draft legislation phase.
- 78) The name, "Maori Affairs Select Committee" is in itself a crown construct.
- 79) ***It should be renamed the Rangatiratanga committee and have a right of veto over all legislation before the now named Maori Affairs Select Committee.***
- 80) Personnel selection by number for this committee is as the status quo with government members in the majority. Individuals would need to convince the Speaker that they have Maori whakapapa.
- 81) The committee does not have the power to initiate legislation.
- 82) That right is the Parliaments and Government.
- 83) In this I realise that the ultimate Rangatiratanga is the Parliament's, but the convention now is that the Parliament will always follow the committee's advice. The Treaty of Waitangi did promise crown kawanatanga.
- 84) Members of the Rangatiratanga committee may still introduce Private Members Bill's.
- 85) And the Rangatiratanga committee still has the ultimate right of veto over all things exclusively concerning Maori.
- 86) One has to ask "What is in the best interests of Maori? The presumed answer is "Participating in an parliamentary democracy with a fully accountable House of Representatives"
- 87) ***The Maori electoral option should continue until Maori want to get rid of it. It may die its own natural death when or if Maori are ready.***

Submission on the Constitutional Review

How could Maori electoral participation be improved?

- 88) It is in the best interests of Maori and all New Zealander's that Maori are represented in the mainstream.
- 89) *The Maori electoral option should continue.*
- 90) Registration as an elector should be automatic if you are over 18 and have an IRD number.
- 91) *The registration by default should be into a general electorate with the opportunity to opt into a Maori electorate.*
- 92) This is an Information and Communications technology problem, not a problem of political philosophy.
- 93) *Folk must be able to vote with their mobile phones or on Facebook.*
- 94) *There is an opportunity here to save vast amounts of money and lead participatory democracy in the world.*

How should Maori views and perspectives be represented in Parliament?

- 95) *The cabinet manual needs modification to ensure compliance with the principles of the Treaty of Waitangi.*
- 96) *Parliament must have a Maori advisory unit that has input into all regulatory impact report's, advises Treasury and the DPMC and provides confidential advice to all political parties during the draft legislation phase.*
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Submission on the Constitutional Review

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106) One has to ask "What is in the best interests of Maori? The presumed answer is "Participating in a parliamentary democracy with a fully accountable House of Representatives"

107) The Maori electoral option should continue until Maori want to get rid of it. It may die its own natural death when or if Maori are ready.

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

108) I have already said that the Treaty should be a formal part of our constitution.

109) ***It is not too big a challenge to say in a constitution that "Henceforth no Act in the Parliament may contravene the principles of the Treaty of Waitangi."***

110) ***Section 20 (c) could say that "The Crown seeks reconciliation with the Tangata Whenua over historical violations of Treaty principles. It apologises for and grants amnesty for past failures to honour Treaty principles." And....***

111) ***"In exchange for honouring the Treaty principles there cannot be any more retrospective litigation after the Treaty claims process is complete"***

112) I'm concerned by the dilution of Maori intellectual capital.

113) 50% Maori governance of every state body may be a prevailing assumption, but it is not necessarily in Maori interest.

114) In article 3 of the Treaty, the crown promised to protect all things of treasure to Maori.

115) For example co-governance of the Urawera forest or the Waikato River is entirely appropriate.

116) Co-governance of the Royal New Zealand Ballet may not be.

117) ***It is clear that a Co-Governance Act is needed.***

Submission on the Constitutional Review

118) It is up to individual iwi to decide which of their own toanga they wish to co-govern with the crown.

119) *All state organisations not co-governing with iwi should establish a Maori standing committee to advise governance a.k.a the Auckland City Council model.*

120) Co-Governance has some practical benefits.

121) I'm worried about gridlock and paralysis on boards with large Maori contexts.

122) I've learned by bitter experience the debilitating effects of conflict in Maori organisations and in many ways Maori progress has often been sabotaged by internal conflict.

123) I see the prevailing attitude of Pakeha ethnic superiority and I realise that Maori governance failure is likely to be exploited for political gain.

124) Maori organisations will be subject to much more scrutiny and be expected to fail.

125) The Pakeha gifts of democracy, accountability, perseverance, science and the law et al, are really helpful to Maori and the common good of our nation.

126) We will need these Pakeha gifts for the foreseeable future.

127) A culture that has given the world Charles Upham, Ed Hillary, and Peter Blake can't be all that bad.

128) *As well as standing Maori committee's or co-governance arrangements where appropriate; all state organisations would have to report annually on their implementation of Treaty principles.*

129) The local Bodies Act will need amendment.

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

130) *Yes, I do think the Treaty should be a formal part of the constitution.*

131) The Treaty principles can be written into a Human Rights Act amendment, probably to section 20.

132) *The Treaty was a promise made in 1840 and the price of citizenship was paid for by the Maori battalion in World War 2.*

133) *There will never be harmony in this land until the Crown keeps its promise.*

Submission on the Constitutional Review

134) There is a sense of moral illegitimacy about the Crown.

135) A cynic would say that it's residual white guilt.

136) *The Crown needs to take the moral high ground, get the legitimacy it needs, and restore Pakeha honour.*

137) *A constitution without the Treaty would be illegitimate.*

138) *An illegitimate constitution sets us up for civil disorder in the future.*

Summary of main points.

What are your aspirations for Aotearoa New Zealand?

- 1) *I want to see the current constitutional principles in supreme law.*
- 2) *I want to see the continuance of MMP.*
- 3) *I want an environment that is clean, green and sustainable.*
- 4) *I want to see the Treaty principles honoured.*
- 5) *I want peace in our land. I want an absence of civil disorder.*
- 6) *I want a corruption free state.*
- 7) *I want a relatively egalitarian society.*
- 8) *I want to see that people's rights are protected by supreme law.*

How do you want our country to look in the future?

- 9) *I want my grandchildren to live in a state where the current constitutional principles are supreme law.*
- 10) *I want my grandchildren to live in a place that contains a Parliament with a wide range of people's views, even views that they don't agree with, but accept as legitimate.*
- 11) *I want my grandchildren to live in a sustainable environment that is clean and green.*
- 12) *I want my grandchildren to live in a place where the agreement made with the Tangata Whenua is honoured.*
- 13) *I want my grandchildren to live in a state where there is no more retrospective Treaty grievance.*
- 14) *I want my grandchildren to live in a state without civil disorder.*

Submission on the Constitutional Review

- 15) *I want my grandchildren to live in a society that is corruption free.*
- 16) *I want my grandchildren to walk freely down the street without having to see beggars the way I have her in Auckland and also Wellington.*
- 17) *I want my grandchildren to live in a society without big class divisions and inequality. Our country is not the Guatemala of the South Sea's*

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

- 18) *No, the Bill of Rights Act does not protect my rights enough.*
- 19) *The Act does not include the right to a sustainable environment*
- 27) *It is well past time that we had a constitutional measure of poverty because that is what New Zealander's want.*

What other things can be done to protect rights?

- 28) *It is very clear that the Act as it stands will need review and improvement before ratification.*
- 29) *The Right to environmental sustainability must be added to the Act.*
- 30) *It is very clear that we must honour the rights promised to the Tangata Whenua in the Treaty. Say "No Act in the Parliament may contravene the principles of the Treaty of Waitangi." There is much more about this in the Treaty section of my submission.*
- 31) *There should be a section 20 (c) which says "The Government seeks forgiveness for historical violations of Treaty principles. It grants an amnesty for past failures to honour the Treaty principles and in exchange there is to be no further retrospective litigation after the Treaty claims process is complete"*
- 32) *Rights contained in other Acts, e.g. privacy, official information, compensation for public works etc. will need to be included in an amendment.*
- 33) *New Zealander's will want to have a measure of poverty enshrined in a constitution.*

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

- 35) *Yes, the Human Rights Act should be supreme law.*
- 37) *I do not want our country to be a failed state and a written constitution helps prevent that.*
- 41) *We need to spell out everyone's roles, rights and responsibilities before a crisis comes.*

Submission on the Constitutional Review

46) *A constitution protects vulnerable people against the abuse of power.*

47) *A constitution allows the rich to get on with making money in a peaceful civil environment*

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

49) *The courts should have the power to interpret the Act.*

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

55) *It is very clear that we must honour the rights promised to the Tangata Whenua in the Treaty. Say "No Act in the Parliament may contravene the principles of the Treaty of Waitangi."*

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Submission on the Constitutional Review

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- 77) *Parliament must have a Maori advisory unit that has input into all regulatory impact report's, advises Treasury and the DPMC and provides confidential advice to all political parties during the draft legislation phase.*
- 79) *It should be renamed the Rangatiratanga committee and have a right of veto over all legislation before the (now named Maori Affairs Select Committee).*
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- 98) *It should be renamed the Rangatiratanga committee and have a right of veto over all*

Submission on the Constitutional Review

legislation before the now named Maori Affairs Select Committee.

107) The Maori electoral option should continue until Maori want to get rid of it. It may die its own natural death when or if Maori are ready.

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

109) It is not too big a challenge to say in a constitution that "Henceforth no Act in the Parliament may contravene the principles of the Treaty of Waitangi."

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137) A constitution without the Treaty would be illegitimate.

138) An illegitimate constitution sets us up for civil disorder in the future.

Stephen Dawson

Auckland

Submission on the Constitutional Review

June 2013

4168

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 30/07/2013 11:58 a.m.

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

Full Names: Tegan Dawson- mcMurdo Organisation Name: Email:
Phone: Postal AddressA: Postal AddressB: Postal City:
Rolleston Postal Region: Postal Post Code: Postal Country: New Zealand Submission:
The Treaty has produced so much heart ache and mixed messages. The Treaty would have to be
apart of the constitution as it wasn't implemented by the Crown in the 1940's and there after why
would we dismiss it when we are trying to amend the wrong doing.
The constitution should be an opportunity for the Crown to make legal the principles of the Treaty and
reshape NZ's thinking/mindset and have a more balanced education system that isn't based on British
values. We need people to have local understanding of
the history that occurred and respect the tangata whenua to up held their mana.

Submitted on the 30 July 2013 at 11:57

1639

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 26/06/2013 5:33 p.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Alan Day Organisation Name: Email:
Postal AddressA: ; Postal AddressB: Postal City: Hamilton
Postal Region: Waikato Postal Post Code: Postal Country: New Zealand Submission:
As New Zealand has developed into a multicultural tolerant country, to go forward once all current treaty claims have been settled we will have no need for any race specific representation in any NZ Government of other elected group. The number of ethnic members represented in parliament is proof of our acceptance of the "person" rather than the race. Until the race element is taken out of our parliament & society the grievance groups will continue to create reasons to have racial policies. Those who have gone to Australia with NO welfare to fall back onto have not returned to NZ in large numbers proving if they know there is no welfare they are motivated to find work.

We need to create a society not reliant on welfare.

Sent on the 26 June 2013 at 17:32

3684

From: "Brian Day" <constitutionalreview@justice.govt.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 18/07/2013 11:34 a.m.
Subject: Constitutional review

I am strongly opposed to any reference to the Treaty of Waitangi or its principles in any constitutional document as I believe in one law for all New Zealanders and an abolition of race based legislation. Therefore I also request that all race-based or ToW references be removed from all existing legislation, that race-based parliamentary seats be abolished and that race-based representation on local bodies be abolished.

I also believe that the Waitangi Tribunal should be discontinued.

Brian Day

Pukekohe

New Zealand

3615

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 16/07/2013 6:33 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Phil Day Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Christchurch Postal Region: Postal
Post Code: Postal Country: New Zealand Submission: Written constitutions dictate what we
are ALLOWED to do. Presently, we are allowed to do anything until there is a law to stop it. Our
statutes ARE our constitution.

A constitution like that of USA makes it a revered document which cost millions in lawyers' fees every year to challenge or change.

The courts are one of our few brakes on the whims of parliamentarians.

KEEP IT THAT WAY, or there will be no way of stopping politicians.

We already elect our dictators!

Sent on the 16 July 2013 at 06:31

3615 a)

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 16/07/2013 6:39 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names: Phil Day Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Chrstchurch Postal Region: Postal
Post Code: Postal Country: New Zealand Submission: The bill of rights seems to be the basis
of our 'constitution' but it is just another statute and should be treated as such and kept out of the
hands of politicians.

Politicians MAKE the laws, judges INTERPRET the laws.

Once the politicians have made the laws, it's out of their hands. If they don't like it, they should have done it right in the first place, and anyway, they will waste few million more trying to draft another, or re-interpret laws left by the previous government.

Sent on the 16 July 2013 at 06:38

3615 b)

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 16/07/2013 6:51 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names:	Full Name:	Organisation Name:	Email:	Phone:
Postal AddressA:	Postal AddressB:	Postal City: Christchurch	Postal Region:	Postal
Post Code:	Postal Country: New Zealand	Submission: The treaty stopped conflict between two warrior peoples.		

It is a treaty between two cultures.

As NZ becomes more 'multi-cultural' the maoris will be left behind.

Their elders are making lots, but overseas investors find the treaty 'quaint' at best, and interfering at worst.

The Orientals are looking to 'inset in\buy NZ and are put off by something that many of them find rather primitive.

Sent on the 16 July 2013 at 06:49

3615c)

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 16/07/2013 6:52 a.m.
Subject: <http://www.ourconstitution.org.nz/> form submission

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

Full Names:	Phil Dy	Organisation Name:		Email:		Phone:	
Postal AddressA:	Postal AddressB:	Postal City:	Chrschurch	Postal Region:		Postal Post	
Code:	Postal Country:	New Zealand	Submission:	Apartheid!			

Sent on the 16 July 2013 at 06:50

From: <webmaster@ourconstitution.org.nz>
To: <constitutionalreview@justice.govt.nz>
Date: 16/07/2013 7:02 a.m.
Subject: [http://www.ourconstitution.org.nz/ form submission](http://www.ourconstitution.org.nz/form submission)

3.615d)

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

Full Names: Phil ay Organisation Name: Email: Phone:
Postal AddressA: Postal AddressB: Postal City: Christchurch Postal Region: Postal
Post Code: Postal Country: New Zealand Submission: GET RID OF MMP!!! - unless we go
bi-cameral again.

MPs were originally 'Member Petitioners' elected to look after their electorate.

We've now got a number of unelected hangers-on.

Vote for your MP, and the listed "MPs" can be ministers and heads of departments,
working in the Beehive getting input from MPs ELECTED TO LOOK AFTER THEIR CONSTITUENTS.

MPs should concentrate on their 'flock' and leave others to run ministries and departments.

To get a clear picture of how people feel, the electorate should vote on the SALARY of their
candidates. That would be a TRUE measure of popularity, and it would show us how many
candidates are committed to their 'flock' or the 'lovely lolly' they hope to make
out of their "Beehive Experience".

Sent on the 16 July 2013 at 07:00

686

From:
To: <constitutionalreview@justice.govt.nz>
Date: 28/04/2013 9:02 p.m.
Subject: The form on your contact page has just been submitted

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

Contact Name: Jannette De Best Phone: Email: Comment: Keep the
status quo!!!!

Sent on the 28 April 2013 at 21:01

4940

From: John de Bueger
To: <constitutionalreview@justice.govt.nz>
Date: 26/07/2013 8:56 a.m.
Subject: CAP Submission

I object to a non-representative committee, intent on imposing their narrow race-based biased views on the rest of the country. There is no need for a constitutional review, no need for a constitution, no need for a longer electoral term, and with MMP, no need for Maori seats.

john de Bueger

f